

Planning Proposal

Amendment to LMLEP 2004 (Removal of Council Acquisition and Rezoning – south of Swansea)

Local Government Area	Lake Macquarie City
Name of Draft LEP:	Lake Macquarie Local Environmental Plan 2004 (Removal of Council Acquisition and Rezoning – south of Swansea)
Subject Land:	Lot 11 DP 855023.
Maps:	Annexure 1 – Aerial Map and Current Zones Annexure 2 – Proposed Zones

Part 1 – Objective of the Planning Proposal

To remove Council's acquisition responsibilities, under Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004), from lot 11 DP 855023 south of Swansea, owned by Ausgrid (previously Energy Australia) and rezone part of this land from 6(1) Open Space to 6(2) Tourism and Recreation (and RE2 Private Recreation under LMLEP 2011).

Part 2 – Explanation of the Provisions

The amendment proposes the following changes to the LMLEP 2004 map:

Amendment Applies To	Explanation of the Provision
Application of LMLEP 2004 clause 55 (Acquisition of land required for community purposes) in relation to lot 11 DP 855023 (owned by Ausgrid, south of Swansea) on LEP zoning Map 31	Lot 11 DP 855023, owned by Ausgrid, and identified for acquisition by LMCC under LMLEP 2004, comprises 16.7 ha and is zoned partly 7(1) Conservation (Primary), partly 7(2) Conservation (Secondary), and partly 6(1) Open Space. The land zoned 6(1) contains private recreation grounds (Nesca Park), camping facilities, and holiday accommodation for Ausgrid's employees (Bargoed House). The 6(1) land will need to be rezoned to 6(2) Tourism and Recreation, in conjunction with removing Council's acquisition obligation. The 6(2) zone will become an RE2 Private Recreation zone under Council's Standard LEP (LMLEP 2011), which is under preparation. LMCC and Ausgrid have signed a MOU to establish the circumstances, and process, by which the acquisition obligations can be removed from the subject land in exchange for creating a public right-of-way (ROW) over the property to the foreshore of Lake Macquarie.

The table below summarises how the amendment will be converted into the draft Lake Macquarie LEP 2011 (Council's draft Standard Instrument LEP) and what other maps will need to be amended.

Amendment Applies to:	Explanation of Provision
Equivalent of Land Zoning Map 31 under LMLEP 2004	The land currently zoned 6(1) Open Space, is to be rezoned to 6(2) Tourism and Recreation under LMLEP 2004. The 6(2) zoned land will be 'converted' to RE2 Private Recreation under the draft Lake Macquarie LEP 2011. The land currently zoned 7(1) Conservation (Primary) and 7(2) Conservation (Secondary) will retain these zones under LMLEP 2004. However, both zone 7(1) and 7(2) will be 'converted' to E2 Environmental Conservation under Council's Standard LEP, draft LMLEP 2011.
Draft LMLEP 2011 Land Reservation Acquisition Map (also Land Zoning Map 31 under LMLEP 2004)	The acquisition liability, as identified by the relevant acquisition cross-hatching, is to be removed off the Land Reservation Acquisition Map (i.e. LMLEP 2004 Land Zoning Map 31). Under the circumstances, no acquisition liability for this land will be included on the Land Reservation Acquisition Map under Council's Standard LEP (Draft LMLEP 2011).

Part 3 – Justification for Planning Proposal

- 1 Is the planning proposal a result of any strategic study or report?

The LEP amendment is part of a continuing review of all Council acquisition liabilities under LMLEP 2004, following a Valuation Report in 2006, which found that Council had over \$93 million worth of land to be acquired.

In 2007, Council undertook a review of all 'waterfront' acquisition land. This resulted in its acquisition responsibilities being removed from all 'low' priority 'waterfront' land via Amendment No 39 to LMLEP 2004.

The subject land has been valued at \$10.9 million, and is protected from inappropriate development under its current Open Space and Conservation zonings.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A principal public benefit in acquiring the subject land would facilitate public access to the foreshore of Lake Macquarie. Public access to the lake foreshore will now be via a public ROW.

Removing Council's acquisition obligations under LMLEP 2004 necessitates deleting the relevant acquisition cross-hatching from the LEP's zoning map 31. However, section 27 of the *EP&A Act 1979*, requires that land reserved for a public purpose in an LEP must identify the State authority responsible for its acquisition. Consequently, the existing 6(1) Open Space zone, over part of the land, must also be changed to an alternative zone, to comply with section 27 of the *EP&A Act*.

3. Is there a net community benefit?

Yes. The Proposal will save the ratepayers of Lake Macquarie almost \$11 million in land acquisition costs – or approximately 15.7% of Council's remaining \$69 million of land acquisition costs, as calculated in Council's 2006 Valuation Report. At the same time, the environmental values of the subject land will be protected by the current, and proposed, zonings.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Yes. The Lower Hunter Regional Strategy, Lower Hunter Conservation Plan, and NSW Coastal Policy contain no requirement that Council acquire the subject land.

5. Is the planning proposal consistent with the local council's Community Strategic plan, or other local strategic plan?

Yes. Council's Lifestyle 2020 Strategy (LS 2020) provides the long-term direction for the overall development of the City, and is a tool for managing private and public development in Lake Macquarie. LS 2020 seeks to protect the City's biodiversity and enhance public access to conservation and foreshore areas. However, Council and Ausgrid have entered into a MOU to allow a public ROW across the land to the lake foreshore, without the need for acquisition. In addition, the existing and proposed zones will protect the land's biodiversity. In Lake Macquarie local government area (LGA) alone, there is over 110 kms of lake foreshore in public ownership, and therefore available for foreshore access. This figure represents over 56% of the lake foreshore (without including public foreshore in Wyong Shire) and further foreshore areas are proposed for acquisition under LMLEP 2004.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP)?

Yes. The only SEPP relevant to this Planning Proposal is SEPP 71 – Coastal Protection. SEPP 71 aims to protect and enhance public access to coastal foreshores. Although not strictly a 'coastal foreshore', the subject proposal is designed to achieve additional public access to the foreshore of Lake Macquarie via a ROW, without the need for acquisition.

Additionally, SEPP 71 clause 14 (Public Access) only requires that:

A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.

The Planning Proposal is consistent with clause 14, as it applies to land, over which no public access currently exists, and no development is currently involved. The MOU, agreed with Ausgrid, will allow public access to the lake foreshore without the need for acquisition.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The s117 directions relevant to this planning proposal are addressed in the following table, demonstrating that the planning proposal is consistent with the relevant s117 directions.

Ministerial Directions	Objective	Consistent	
2.1 - Environmental Protection Zones	This direction requires that a draft LEP contain provisions to facilitate the protection of environmentally sensitive land.	Yes	Although the proposal will remove Council's acquisition obligations from the land, it maintains the existing conservation zones over all areas currently zoned for environmental protection.
2.2 - Coastal Protection	This direction seeks to implement the principles of the NSW Coastal Policy 1997. A 'Key Action' of the Policy is "to increase the opportunities for public access to coastal foreshore areas".	Yes	Council, as the acquisition authority, has determined that foreshore access via a public ROW, without acquisition, is a more effective way of achieving the Policy's key action. In addition, Lake Macquarie already has over 110 kms of public foreshore, with more lake foreshore identified for acquisition under LMLEP 2004.
2.4 - Recreation Vehicle Areas	This direction aims to prevent land with significant conservation values from being impacted by recreational vehicles.	Yes	The draft amendment does not propose any recreation vehicle areas, and maintains the existing conservation zones/provisions over the land.
3.1 - Residential Zones	This direction requires a draft LEP to include provisions that encourage the provision of housing.	Yes	The proposal relates to land zoned for Open Space and Conservation purposes only.
3.2 - Caravan Parks and Manufactured Home Estates	This direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	Yes	The rezoning of the land zoned 6(1) Open Space to 6(2) Tourism and Recreation will continue to allow Caravan Parks and Manufactured Home Estates on this land.
3.3 - Home Occupations	This direction requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	Yes	The amendment will not affect provisions relating to home occupations, and will retain the provisions of LMLEP 2004 in this regard.

4.1 – Acid Sulfate Soils	This direction aims to avoid significant adverse environmental impacts from acid sulfate soils, particularly from land-use intensification.	Yes	Existing LMLEP 2004 clause 35 Acid sulfate soils, adequately addresses this issue. Any future development on the subject land, including any public access way, will be subject to the preparation/assessment of a Development Application under LMLEP 2004, including clause 35. Such development is expected to be located to avoid the potential exposure of Acid sulfate soils.
4.2 – Mine Subsidence and Unstable Land	This direction aims to prevent damage to life, property, and the environment on unstable land or land potentially subject to mine subsidence. It requires consultation with the relevant Mines Subsidence Board (MSB).	Not fully.	It is considered that removing Council's acquisition obligations from the land does not warrant consultation with the MSB. However, rezoning of the 6(1) land to 6(2) will permit some additional land uses, including various forms of tourism accommodation. The Department of Planning and Infrastructure (the Department) may therefore determine the need for consultation with the MSB as part of its Gateway determination.
4.3 – Flood Prone Land	This direction aims to ensure that development of flood prone land is consistent with the Government's Flood Prone Land Policy and Manual.	Yes	Existing clause 32 Flood prone land, under LMLEP 2004, satisfies this direction. There is also sufficient elevated land on this site to locate significant future development above flood level.
4.4 – Planning for Bushfire Protection	This direction aims to protect life, property, and the environment from bushfire hazards, by discouraging incompatible land uses.	Yes	Existing clause 33 Bush fire considerations, under LMLEP 2004, satisfies this direction. Any future development on this land, including the proposed access way, will require the preparation of a Development Application and assessment under the <i>EP&A Act</i> , including clause 33 of LMLEP 2004.
5.1 - Implementation of Regional Strategies	This direction requires a draft LEP to be consistent with the relevant State strategy that applies to the LGA.	Yes	The draft amendment is consistent with the Lower Hunter Regional Strategy, as well as the Lower Hunter Conservation Plan, and the NSW Coastal Policy 1997.

6.2 - Reserving Land for Public Purposes	This direction aims to facilitate land for the provision of public services, as well as to remove reservations of land for public purposes where the land is no longer required for acquisition. The direction states that a draft LEP shall not create, alter, or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department.	Yes	The amendment proposes to remove the acquisition layer from the subject property, as foreshore access will be achieved via a public ROW, without the need for acquisition. Council, as the acquisition authority, considers this to be a more effective way of achieving this community outcome, and seeks the Department's approval under this direction.
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8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The actual removal of Council's acquisition obligations, and the rezoning of land from 6(1) to 6(2), will have no environmental impact on sensitive environmental land. Additionally, all environmentally sensitive land is to maintain an appropriate conservation zone to protect the land's flora and fauna values. A public access way is currently permitted in such conservation zones, and any future access way will require the preparation of a Development Application, and appropriate assessment and approval under the *EP&A Act 1979*.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. Appropriate conservation zoning and assessment processes are considered sufficient to address any potential environmental effects.

10. How has the planning proposal adequately addressed any social and economic effects?

Removal of Council's acquisition responsibilities from the land will save the ratepayers of Lake Macquarie almost \$11 million, which Council can utilise to provide and maintain other social needs of ratepayers. In addition, the MOU signed with Ausgrid will achieve public access to the lake foreshore without the need for acquisition. Council will therefore be able to direct its scarce financial resources to acquiring other high priority foreshore land currently in private ownership.

11. Is there adequate public infrastructure for the planning proposal?

Not applicable. The amendment does not affect the delivery of public infrastructure in the area.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Ausgrid has confirmed its support of the Planning Proposal through its signing of the MOU to allow public access to the lake foreshore over its land. It has done so on the basis that the acquisition obligations under LMLEP 2004 will be removed. The requirement for consultation with other public authorities will be undertaken as directed by the Department through the Gateway process.

Part 4 – Details of Community Consultation

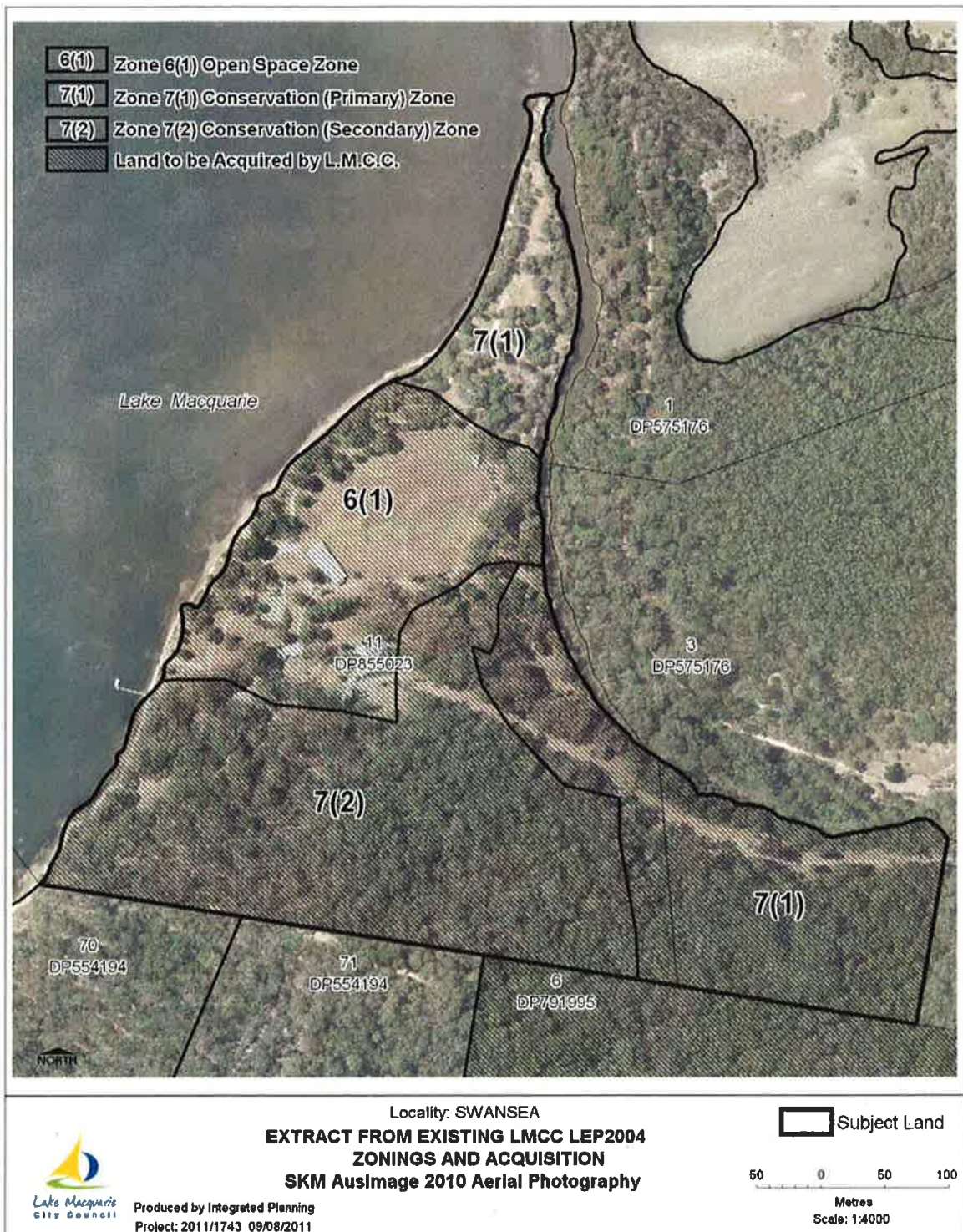
There has been no previous public consultation regarding this Planning Proposal. Council will consult with the public as directed by the Department.

Maps

Annexure 1 – Aerial Map and Current Zones

Annexure 2 - Proposed Zones

Annexure 1 - Aerial Map of the land with current Zoning and Acquisition under LMLEP2004



Annexure 2 - Proposed zones under LMLEP2004 (and Draft LMLEP2011)

