

Amendment to Lake Macquarie LEP 2004 - Ausgrid Land, Swansea

Proposal Title : **Amendment to Lake Macquarie LEP 2004 - Ausgrid Land, Swansea**

Proposal Summary : **This Planning Proposal aims to amend the Lake Macquarie LEP 2004 (LM LEP 2004) by:**
1. Removing Lake Macquarie City Council's public land acquisition obligation under clause 55 (Acquisition of land required for community purposes) from Lot 11 DP 855023; and
2. Rezoning part of Lot 11 DP 855023 from Zone 6(1) Open Space Zone to Zone 6(2) Tourism and Recreation Zone under LM LEP 2004.

PP Number : **PP_2011_LAKEM_011_00**

Dop File No : **11/18905**

Proposal Details

Date Planning : **21-Nov-2011**

LGA covered : **Lake Macquarie**

Proposal Received :

Region : **Hunter**

RPA : **Lake Macquarie City Council**

State Electorate : **LAKE MACQUARIE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Housekeeping**

Location Details

Street : **Old Pacific Highway**

Suburb : **Swansea**

City :

Postcode : **2281**

Land Parcel : **Lot 11 DP 855023**

DoP Planning Officer Contact Details

Contact Name : **Susan Blake**

Contact Number : **0249042709**

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RPA Contact Details

Contact Name : **Trevor Prior**

Contact Number : **0249210715**

Contact Email : **tprior@lakemac.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub : **Lower Hunter Regional**

Consistent with Strategy : **N/A**

Regional Strategy : **Strategy**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	16.77	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : Council resolved at its City Strategy Committee Meeting on 4 October 2011 to send the Planning Proposal to the Department of Planning & Infrastructure requesting a Gateway Determination to enable amendments to LM LEP 2004 pursuant to section 54 of the EP&A Act 1979. Additional information was requested from Council on 1 & 17 November to complete the adequacy assessment. Council responded on 9 November, and the final information was received on 21 November 2011.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) ie. to remove Lake Macquarie City Council's public land acquisition obligation and rezone land.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : This is a Lake Macquarie City Council initiated Planning Proposal which aims to amend the Lake Macquarie LEP 2004 (LM LEP 2004) including:

- * Removing Lake Macquarie City Council's public land acquisition obligation under clause 55 (Acquisition of land required for community purposes) from Lot 11 DP 855023; and
- 2. Rezoning part of Lot 11 DP 855023 from Zone 6(1) Open Space Zone to Zone 6(2) Tourism and Recreation Zone under LM LEP 2004.
- 3. If the proposal proceeds as an amendment to draft LM LEP 2011, it is proposed that the draft LEP zones be converted to the following under the standard template:
 - * Zone 6(2) Tourism and Recreation Zone to RE2 Private Recreation
 - * Zone 7(1) Conservation (Primary) Zone to E2 Environmental Conservation
 - * Zone 7(2) Conservation (Secondary) Zone to E2 Environmental Conservation
- 4. Under s.27 of the Environmental Planning & Assessment Act 1979, and s.27 of the Land Acquisition (Just Terms Compensation Act) 1991, as Council has determined that the land is

not required to be acquired, Council must use its best endeavours to remove the relevant reservations and provide written notice that the land is no longer designated by that authority for future acquisition. Consequently, the 6(1) Open Space zone needs to be rezoned to remove Council's liability to acquire the land.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.3 Mining, Petroleum Production and Extractive Industries

2.1 Environment Protection Zones

2.2 Coastal Protection

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 71—Coastal Protection

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

SEPP 71 - Coastal Protection.

In accordance with Schedule 1 of the SEPP, Lake Macquarie is identified as a coastal lake. The subject land has frontage along the coastal foreshore to Lake Macquarie.

In accordance with the SEPP 71, cl. 2, the relevant aims of the policy are to:

(b) protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore.

Clause 7 & 8 of the SEPP requires that these aims are considered in the preparation of an LEP.

In assessing this requirement, Council has argued that presently the site has no public access as it is privately owned (Ausgrid).

However, in accordance with clause 55 of LM LEP 2204, the land was to be acquired by Council for public purposes which would have allowed unimpeded access to the foreshore.

This PP will remove Council's obligations to acquire the subject land for public purposes. Therefore, the community's ability to have foreshore access along this site will be compromised, and as defined in cl. 2 & 8, consequently diminish the extent, of the physical, land-based right of access of the public to or along the coastal foreshore. Council has determined that public benefit will be achieved via a right-of-way over the land, and this has been negotiated in an Memorandum of Understanding between Ausgrid and the Council. This access will provide a 6 metre width access way to a point along Lake Macquarie's foreshore.

Council has indicated this is an appropriate compromise as approximately 110km or 56% of Lake Macquarie foreshore within the LGA is proposed for public ownership, including the land to the immediate north and south of the site. Additionally, Council argues that there will be a saving of approximately \$10.9 million of Lake Macquarie rate payers money by not acquiring the land.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Council has provided the following maps:

- * aerial locality plan with existing zone boundaries and the land acquisition extent.**
- * proposed zone map and proposed acquisition map (which clarifies the site in terms of an amendment to the draft Lake Macquarie LEP 2011 map)**

A series of additional maps for the site has been provided including:

- * Aboriginal sites**
- * Acid sulfate soils**
- * Flooding**
- * Bushfire prone land**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

As the PP relates to the removal of Lake Macquarie City Council's public land acquisition obligation under clause 55 (Acquisition of land required for community purposes), and the rezoning of land, the Regional Team supports a 28 day exhibition period.

A copy of the Memorandum of Understanding between Lake Macquarie Council and Ausgrid regarding the establishment of a permanent public access over the land to the lake foreshore should be publicly exhibited with the PP.

The supplementary material provided by Council to the Department in regards to clarification of the proposal should be inserted into the Planning Proposal prior to exhibition.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

1.3 Mining, Petroleum Production & Extractive Industries

Under cl.3, the s117 Direction applies if the PP will have the effect of prohibiting or restricting the development of resources including coal, other minerals, production of petroleum or extractive materials. The existing zoning of the subject land prohibits this type of development, and the permitted land uses are likely to be incompatible with such development. Consequently, as part of the PP the planning authority must consult with the Director General of the Department of Primary Industries. Once a reply is received, the consistency with the s117 Direction will need to be determined.

2.2 Coastal Protection

In accordance with the s117 Direction, cl.4, a PP must include provisions, and give effect to, and be consistent with the various NSW Coastal Policy and Design Guidelines. The Coastal Design Guideline 2003, Chpt 2.3 Protecting the Natural Edges, sets objectives to retain the foreshore and headlands in public ownership for public uses, and enhance the character and function of spaces along the foreshore and headland.

The PP only intends to place in public ownership a small area of the allotment foreshore area. Council has identified in the Memorandum of Understanding (MOU) with Ausgrid, that a 6 metre Right of Way (ROW) will be created to provide access to the lake foreshore.

Council has justified that Lake Macquarie already has over 110km of public foreshore identified for acquisition under LM LEP 2004. Presently the site has no access as it is owned by Ausgrid, so the ROW will enable a new access to the foreshore. The 2006 Valuation report of Council's acquisition and liabilities, and the 2007 Council review of all waterfront acquisition land, justifies that by not acquiring this land, it will save Lake Macquarie rate payers approximately \$10.9 million in acquisition costs.

Accordingly, the Director General (or delegate) may agree under cl.5(b) of this Direction, that he is satisfied that the provisions for the PP that are inconsistent are, justified by a study prepared in support of the PP, and is considered under cl.5(d) as being of minor significance.

3.4 Integrating Land Use

This s117 Direction applies as this PP will create, alter or remove a zone or provision relating to urban land including land zoned for tourist purposes. In this circumstance the Zone 6(1)Open Space will be rezoned to Zone 6(2) Tourism and Recreation.

The Director General (or delegate) may agree under cl.5(d) of this Direction, that he is satisfied that the provisions for the PP that are inconsistent are considered as being of minor significance.

4.1 Acid Sulfate Soils

In accordance with cl.6, the Council must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils unless the Council has considered an acid sulfate soil study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The Council has identified that LM LEP 2004 clause 35 addresses acid sulfate soils, and any future development will be subject to further assessment if and when an application is submitted.

Consequently, in accordance with cl.8(b) of the s117 Direction, the Director General (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of this Direction are of minor significance.

4.2 Mine Subsidence and Unstable Land

In accordance with cl.4(a) of the s117 Direction when preparing a PP that would permit development on land that is within a Mine Subsidence District, Council must consult with the Mine Subsidence Board. The subject land is within the Swansea-North Entrance Mines Subsidence District. Once a reply is received from the Mine Subsidence Board, the consistency with the s117 Direction will need to be determined.

4.3 Flood Prone Land

This direction applies as Council is preparing a PP that alters a zone or provision that affects flood prone land. In accordance with cl.4 of the s117 Direction, a PP must include provisions that give effect to, and are consistent with the NSW Flood Prone Land Policy and principles of the Floodplain Development Manual 2005. Council identifies that cl.32 of LM LEP 2004 satisfies these requirements. The PP is therefore not inconsistent with this s117 Direction.

4.4 Planning for Bushfire Protection

The subject land is identified as Bushfire Prone Land. Consequently, in accordance with cl.4 and 7 of the s117 Direction, to enable examination of consistency, with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination.

5.1 Implementation of Regional Strategies

The site is not individually identified in the Lower Hunter Regional Strategy. Council has identified the PP is consistent with the Lower Hunter Regional Strategy and the Department agrees with this review. The PP is not inconsistent with this s117 Direction.

6.2 Reserving Land for Public Purposes

In accordance with cl.4 of this s117 Direction, a PP must 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 (or delegate). This PP would reduce

reservations of public land by 16.77ha in the Local Government Area. In 2006 and 2007 Council investigated the extent of all its open space and 'waterfront' acquisition land, and determined this allotment was not required for acquisition.

In accordance with cl.8(d) the Director General (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of this Direction are of minor significance.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Sufficient information has been provided to assess the proposal in preparation of the Gateway Determination.**

The supplementary material provided by Council to the Department should be inserted into the Planning Proposal prior to exhibition, to ensure clarity for the public.

Proposal Assessment

Principal LEP:

Due Date : **December 2011**

Comments in relation to Principal LEP : **A s.65 certificate has been issued for the Principal Plan. Council is presently reviewing several conditions of the s.65 certificate and is expected to be resubmit a revised LEP and s.64 submission, being draft Lake Macquarie LEP 2011. Consequently, this PP may occur prior to the implementation of the Principal Plan.**

Assessment Criteria

Need for planning proposal :

Lake Macquarie Council has justified the PP based on the following details:

- * In 2006 Lake Macquarie Council reviewed their acquisition liabilities under LM LEP 2004. The report identified \$93 million worth of land to be acquired. Council began to consider future options regarding land acquisitions.**
- * In 2007 Council reviewed all 'waterfront' acquisition land. This led to LM LEP 2004 (Amendment 39) which removed acquisition responsibilities from all 'low' priority waterfront land. This site was identified as a high priority land acquisition property, so did not form part of this amendment.**
- * Council has now determined that the principal public benefit in acquiring this site, would be the facilitation of public access to the foreshore of Lake Macquarie. Council considers that this public benefit can be achieved by creating a public right-of-way over the site to the lake foreshore rather than acquiring the whole allotment.**
- * Lake Macquarie City Council and Ausgrid (landowners) have signed a Memorandum of Understanding to establish the process by which the acquisition obligations can be removed from the subject land in exchange for creating a public right-of-way over the property to the foreshore of Lake Macquarie.**
- * Council considers that this approach would also save the ratepayers of Lake Macquarie approximately \$10.9 million in land acquisition costs.**
- * Additionally Council believes that the significant environmental values of the subject land will be protected by the current and proposed land zonings.**

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Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)

The site to be rezoned is too minor to be identified individually within the LHRS. The rezoning is a consequence of the removal of Council's public acquisition liability.

SEPP 71 - Coastal Protection

As indicated previously the proposal is inconsistent with the aims and objectives of cl.2 & 8 of SEPP 71 as the proposal is likely to result in the impeding or diminishing of the physical land-based right of access of the public to or along the coastal foreshore.

However, Council has determined to create a right-of-way over the land to provide public access. This forms part of the Memorandum of Understanding with Ausgrid. Consequently, consistency with the SEPP is considered satisfactory in this circumstance.

Lake Macquarie City Council Lifestyle Strategy 2020

This strategy provides the long term direction for the overall development of the City including protecting the City's biodiversity and enhancing public access to coastal foreshore.

Council has justified that the PP provides access to the coastal foreshore as it has entered into a Memorandum of Understanding with Ausgrid to allow a public right-of-way access on the land to the lake foreshore which presently does not exist.

Council has indicated that the PP is an appropriate compromise as approximately 110km or 56% of Lake Macquarie's foreshore within the LGA are proposed for public ownership.

Environmental social economic impacts :

Council considers that the PP will not impact on environmental values as the land that is partly zoned 7(1) Conservation (Primary) and 7(2) Conservation (Secondary) will retain these zones under the present PP.

The site is presently owned by Ausgrid, and there is no public access to the foreshore available.

Council had previously identified this land as being highly valued and to be acquired for public purposes as it provide access to the lake foreshore. Council has reviewed its public land acquisition strategy and has determined that the public to be adequately served by provision of a right-of-way to the lake foreshore. This will also save a significant amount of money for the rate payers of Lake Macquarie.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	NSW Department of Primary Industries - Minerals and Petroleum Mine Subsidence Board NSW Rural Fire Service		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning_Proposal_Ausgrid_Land_Swansea.pdf	Proposal	Yes
Council_Report_&_MOU_Ausgrid_Land_Swansea.pdf	Study	Yes
LMCC_Additional_Gateway_Information_PP_Ausgrid_Swansea.pdf	Study	Yes
LMCC_PP_Additonal_Info_Gateway.pdf	Study	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.3 Mining, Petroleum Production and Extractive Industries
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.2 Reserving Land for Public Purposes

Additional Information : **It is recommended that:**

1. The Planning Proposal be supported.
2. The Gateway determine that supplementary material provided by Council to the Department in regards to clarification of the proposal, s117 Directions and land use information should be inserted into the Planning Proposal prior to exhibition.
3. A copy of the Memorandum of Understanding between Lake Macquarie Council and Ausgrid regarding the establishment of a permanent public access over the land to the lake foreshore should be publicly exhibited with the Planning Proposal.
4. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A Act') as follows:
 - (a) the Planning Proposal be made publicly available for 28 days;
 - (b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to preparing LEPs (Department of Planning 2009)
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - * NSW Department of Primary Industries (Minerals & Petroleum)
 - * Mine Subsidence Board
 - * NSW Rural Fire Service
6. The Director General (or delegate) agree with the following section 117 Direction inconsistencies - 2.2 Coastal Protection as the inconsistency is justified by a study prepared in support of the Planning Proposal; 3.4 Integrating Land Use; 4.1 Acid Sulfate

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Soils; and 6.2 Reserving land for Public Purposes, as the inconsistencies are of minor significance.

Consultation is required with the NSW Department of Primary Industries (Mining), the Mine Subsidence Board, and NSW Rural Fire Service to determine consistency with section 117 Directions - 1.3 Mining, Petroleum Production & Extractive Industries; 4.2 Mine Subsidence and Unstable Land; and 4.4 Planning for Bushfire Protection respectively.

7. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

8. The time frame for completing the LEP is 9 months from the date of the Gateway Determination.

Supporting Reasons :

Lake Macquarie Council has indicated that they no longer wish to acquire the site for public purposes. In this circumstance, land acquisition liabilities are a Council responsibility.

Signature:



Printed Name:

Monica Gibson

Date:

6/12/2011

