

**11STRAT033 Removal of acquisition from Ausgrid land - Lot 11 DP 855023
- south of Swansea**

Folder No: F2010/02788/02/03
Report By: Strategic Planner - Trevor Prior

**Submission and Committee's Recommendation:
No. 3**

Council:

- A. Supports the Planning Proposal at Attachment 1 and requests a Gateway determination from the Department of Planning and Infrastructure (DPI) pursuant to the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*;
- B. Resolves to place the Planning Proposal on exhibition, subject to the outcome of the Gateway determination;
- C. Notifies stakeholders and affected landowners of the Gateway determination and public exhibition period.

In accordance with Section 375A of the Local Government Act 1993 a division took place.

<u>For the Motion</u>	<u>Against the Motion</u>
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Cr. Birt	Cr. Gissane
Cr. Coghlan	
Cr. Fraser	
Cr. J. Harrison	
Cr. Piper	
Cr. Wallace	
Cr. Johnston	
Cr. Edwards	
Cr. W. Harrison	
(carried)	

As this concluded the business the
Chairperson terminated the meeting at 6.36pm.
Minutes adopted by resolution of Council,
at its meeting held on 17 October 2011.

..... MAYOR

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11STRAT033 Removal of acquisition from Ausgrid land - Lot 11 DP 855023 - south of Swansea

Council Ref: F2010/02788/02/03 - D02210568
Report By: Strategic Planner - Trevor Prior

Précis:

In recent years, Council has been reviewing its financial situation and the implications of land acquisition identified in Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004). In 2007, Council's Executive initiated a review of Council's foreshore acquisition responsibilities. This review resulted in approximately \$11 million of acquisition costs being saved, by removing Council's acquisition responsibilities from all 'low priority' foreshore acquisition land via Amendment 39 to LMLEP 2004.

This report examines the potential to similarly remove Council's acquisition responsibilities from Ausgrid's land south of Swansea (Lot 11 DP 855023).

The proposal is to:

- remove Council's acquisition responsibilities from a 17 hectare parcel of land (Lot 11 DP 855023), south of Swansea, owned by Ausgrid (previously Energy Australia) in exchange for a public right of way (ROW) over the land. This parcel of land was valued at almost \$11 million in 2006; and
- rezone part of the Ausgrid land from 6(1) Open Space to 6(2) Tourism and Recreation under LMLEP 2004 (and RE2 Private Recreation under proposed LMLEP 2011), so as to comply with section 27 of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*.

It is recommended that the Planning Proposal be submitted to the Department of Planning and Infrastructure (DOPI) for Gateway Determination, and that it should proceed to exhibition and community consultation, subject to the Gateway's determination. The Gateway will advise of the required exhibition periods and timeframes to process the amendment.

Recommendation:

Council:

- A. Supports the Planning Proposal at Attachment 1 and requests a Gateway determination from the Department of Planning and Infrastructure (DOPI) pursuant to the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*;
- B. Resolves to place the Planning Proposal on exhibition, subject to the outcome of the Gateway determination;
- C. Notifies stakeholders and affected landowners of the Gateway determination and public exhibition period.

Background:

The subject land is adjacent the foreshore of Lake Macquarie, south of Galgabee Creek, and represents the southern extent of the proposed Lake Macquarie Coastal Wetland Park. The land comprises 16.77 hectares, and was valued by Council's Property

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Department at \$10.9 million in 2006. It is zoned partly 6(1) Open Space, 7(1) Conservation (Primary), and 7(2) Conservation (Secondary) under LMLEP 2004. The land zoned 6(1) contains a range of recreation facilities, including Nesca Park and Bargoed House, which is used for seminars and holiday accommodation for Ausgrid employees.

Ausgrid has recently advised, *"while the land is not public land, it is land owned by Ausgrid, as a State Government corporation, as it was before the recent sale of Ausgrid's former retail electricity business."*

Much of the land identified for acquisition under LMLEP 2004, was 'rolled-over' from LMLEP 1984. However, the subject land (Lot 11 DP 855023) was identified for acquisition during the process of developing LMLEP 2004 because of the land's strategic values, as outlined below:

- It is bordered on three sides by Council-owned land (including Galgabba Point Reserve to the north), and Lake Macquarie on the fourth side;
- It is a large parcel of land in 'public' ownership, with recreational infrastructure desirable for augmenting Swansea's sporting facilities;
- It contains vegetation of high ecological value and of regional significance;
- In public ownership, it maintains continuity of public foreshore land of high value biodiversity;
- The purpose of placing acquisition on the land was to 'flag' the need for maintaining the land in public ownership.

The 2007 review of foreshore acquisition land described the Ausgrid land as

high environmental and community value. It contains extensive natural areas as well as Nesca Park. It will also connect extensive areas of foreshore to the north and south already acquired by LMCC and is adjacent a large parcel to the south-east owned by the RTA.

As reported in 08STRAT029, this land was categorised as 'high acquisition priority' by Council officers, who will *"commence discussions with Energy Australia to try and avoid need for acquisition."*

Discussions have taken place and have resulted in a Memorandum of Understanding (MOU) being signed between Council and Ausgrid (see Attachment 2). The MOU contains three maps showing the subject land, the land's current zoning and area for acquisition under LMLEP 2004, and the general area over which a public ROW to the lake foreshore is proposed.

The MOU establishes the agreed circumstances and process by which a public right of way (ROW) will be agreed by Ausgrid in exchange for Council amending LMLEP 2004 to remove the acquisition obligations from the land. However, as the MOU is not legally binding, a subsequent legal agreement will also need to be signed between the parties to ensure that the intent of the MOU is implemented.

The agreed process established under the MOU includes:

- Council commencing the process to amend LMLEP 2004 (to remove the acquisition obligations from the land) once both parties had signed the MOU. This Planning Proposal represents the commencement of the required LEP amendment;

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- Council proceeding to seek the Minister's approval to the proposed LEP amendment (subject to all *EP&A Act* requirements being met) once a legal agreement has been signed between the parties. The legal agreement will be developed once Gateway approval to proceed has been received. The legal agreement will be presented to Council for approval before seeking the Minister's approval to the LEP amendment.; and
- Ausgrid proceeding to register the ROW over its land, immediately after the LEP amendment is approved.

This process does not seek to fetter Council, Ausgrid, the Minister for Planning and Infrastructure, or any other authority, in the administration of their powers or responsibilities under the *EP&A Act* or any other legislation. The subsequent legal agreement with Ausgrid will include a specific provision in this regard. Therefore, if, for any reason, the LEP amendment process determines that the amendment is inappropriate, the process will then cease, with the MOU and legal agreement will have no further effect.

Proposal:

It is proposed that Council proceed with the amendment to LMLEP 2004 to:

- remove the acquisition requirement from Ausgrid's land (Lot 11 DP 855023) south of Swansea in exchange for a public ROW being created over the land; and
- rezone the 6(1) Open Space land to 6(2) Tourism and Recreation under LMLEP 2004 (and RE2 Private Recreation under proposed LMLEP 2011), as outlined in the Planning Proposal at Attachment 1.

Following Council's resolution to proceed, the Planning Proposal will be forwarded to the DOPI for Gateway determination under the provisions of the *EP&A Act*. The Gateway will advise of the required exhibition periods and timeframes for processing the amendment.

Consultation:

Extensive consultation has taken place between staff from Council and Ausgrid in order to achieve the agreed MOU, and to identify a potential route for the proposed public ROW.

Consultation has also occurred with Council's Sustainability and Community Planning Departments, whose comments follow.

Sustainability Department

- The value of this land to the community is more than can be provided by the proposed public ROW;
- While Council needs to reduce its acquisition liability, this also removes a layer of security for the biodiversity on the site, which cannot be provided by land use zones alone;
- Alternative means of securing the biodiversity values of the land into the future could include:
 - Mobilising the local member and the community to have the State Government secure the land in public ownership, with the option of leasing recreational infrastructure back to Ausgrid.

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- The land with environmental values being transferred to Council, or the Office of Environment and Heritage, while Ausgrid retains the land containing the recreational infrastructure.
- Negotiating a Voluntary Conservation Agreement, over high-value biodiversity land, under the *National Parks and Wildlife Act 1974*, or place a covenant over such land.

Integrated Planning Response

The above alternative suggestions for securing the land have not been canvassed with Ausgrid. However, Ausgrid's recent response to becoming part of the Lake Macquarie Coastal Wetland Park was:

"In relation to the request for Ausgrid to enter into a separate MOU for the establishment of the Lake Macquarie Coastal Wetland Park, Ausgrid wishes to advise that it has an established Environmental Management Plan for the Bargoed House site which is considered sufficient to protect the environmental value of the land."

The land with environmental values is currently zoned 7(1) Conservation (Primary) and 7(2) Conservation (Secondary) under LMLEP 2004. These zones permit a limited range of low-impact development e.g. drainage, earthworks, environmental facilities etc. However, they also permit dwelling houses where the land is at least 40 hectares. Transferring ownership of the land to Council, or OEH, would not guarantee a different management regime than currently exists under Ausgrid's ownership, as both Council, and OEH, have limited budgets for management activities. There is also the potential for Ausgrid to offer part of the site up as a biodiversity offset in the future, an option that would be removed if the land was transferred to OEH or Council.

Community Planning

Community Planning was involved in developing the MOU with Ausgrid, and in identifying a potential ROW route through the site. However, Community Planning has also advised that investigations have recently commenced on the Open Space and Recreation needs of the Swansea Planning District as part of Council's review of its Developer Contributions Plan. NESCA Park contains established sports/recreation area/facilities, but has accessibility issues. Until investigations are sufficiently advanced into Swansea's future open space/recreation needs, Community Planning is unable to advise whether the NESCA Park sports/recreation facilities may be required to assist in meeting Swansea's future recreation needs. Such investigations are expected to take 6 to 12 months.

Integrated Planning Response

Ausgrid expressed concern about allowing public access to the recreation facilities at NESCA Park during the MOU process. Removal of the acquisition requirement from LMLEP 2004 now, would not limit Council's ability to acquire the recreation facilities if required in the future.

Further consultation will occur with Council staff, and other relevant agencies as determined by the DOPI through the Gateway process, in accordance with the *EP&A Act*. The public exhibition of this amendment will provide an opportunity for the community to comment on the proposed amendment.

Implications:

Policy Implications:

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The current proposal will also amend LMLEP 2004 by removing Council's acquisition obligations from Ausgrid's land, and by rezoning the 6(1) Open Space land to 6(2) Tourism and Recreation (and RE2 Private Recreation under proposed LMLEP 2011). Such rezoning is necessary because section 27 (1) of the *EP&A Act* requires that:

"An environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 26 (1) (c) [which includes public open space] must specify an authority ... to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991."

While the current acquisition provisions under LMLEP 2004 provide Council with some potential to delay acquisition of the 6(1) zoned land, if the need for it has not yet been created, the Standard LEP template will not allow these provisions to be carried forward. Council will be obliged to purchase land at the request of the owner when the new LEP comes into effect.

The Planning Proposal is consistent with Council's Lifestyle 2020 Strategy, the Lower Hunter Regional Strategy, relevant section 117 Ministerial Directions, and State Environmental Planning Policies. Further detail on the proposal's consistency with these policies is contained in Attachment 1.

Environmental Implications:

Council's Sustainability Department advised that lifting the acquisition obligation will remove a layer of protection that provides long-term security through public ownership of land of high environmental value. Public ownership is considered to minimise development pressure, improve management of the land remain, and allow the community a higher level of input into management of the land.

Whilst the Ausgrid land remains in 'public' ownership for now, ownership of this land could alter through changes in State Government Policy on the electricity industry. The acquisition obligation ensures that, in the long-term, the land will be in public ownership, with either the State Government Corporation, or Council.

In view of the foregoing, Council might consider whether it is Council's role, and/or priority, to acquire land for environmental purposes – or whether this is a State government responsibility.

Council's Sustainability Department is currently developing a coordinated agreement (MOU) with a number of agencies regarding the establishment of the Lake Macquarie Coastal Wetlands Park (LMCWP). The subject land comprises the southern extent of the proposed (LMCWP). Ausgrid's recent response (29 April 2011) to being part of the LMCWP stated that Ausgrid *"has an established Environmental Management Plan for the Bargoed House site which is considered sufficient to protect the environmental value of the land."*

Future inclusion of the land into the LMCWP is not precluded by the proposal to remove Council's acquisition obligations from the land.

Social Implications:

Community Planning has advised that the future recreational/open space requirement of Swansea is currently being investigated, but investigations will not be complete for 6-12 months. Removing Council's acquisition obligations from the land will not, preclude further negotiations over the use of Ausgrid's facilities, should the investigations identify this need.

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The amendment will have a positive social benefit, as there is currently no public access to the lake foreshore over the subject land. Council is also unlikely to prioritise acquisition of the land due to its expense, and expected resistance from Ausgrid, so the alternative ROW would bring forward possible access. There is already extensive public access to the Lake Macquarie foreshore, with over 110 kms (or 56%) of the lake's foreshore in public ownership.

Financial Implications:

Land identified for acquisition under LMLEP 2004 amounted to over \$93 million according to a valuation report prepared by Council's Property Department in 2006. The value of Council's current acquisition obligations (under LMLEP 2004) amounts to \$69.44 million (at 2006 values). The reduction is due to the removal of 'low priority' foreshore land under Amendment 39, and land purchases since the 2006 report e.g. land at Trinity Point and Cameron Park.

Sites valued at over \$1 million, which are still to be acquired by Council, include:

Sites with values over \$1 million still to be acquired under LMLEP 2004		
Property	Owner	2006 Value (\$million)
Lot 11 DP 855023 Pacific Hwy Swansea - 17.87ha	Ausgrid	\$10.90
Lot 1 DP 1022127 Main Road Glendale - 3.0445ha	RailCorp NSW	\$4.20
Lot 6 DP 791995 Pacific Highway Swansea - 16.87ha	RTA	\$3.95
Pt Lot 115 DP 755233 Oakdale Road Gateshead - 2.762ha	Department of Lands	\$3.30
Lot 220 DP 1021925 Victory Row Toronto - 8364m ²	RailCorp NSW	\$2.50
Lot 201 DP 805914 Main Road Boolaroo - 9,647m ²	Pasminco	\$1.83
Lot 32 DP 847397 Awaba Road Toronto - 6,5373m ²	Eraring Energy	\$1.50
11 Robertson Street West Wallsend - 6079m ²	Hammersmith Management Pty Ltd	\$1.40
Lot 121 DP881828 Mandalong Road Morisset - 1.661 ha	Mayfair Securities	\$1.05
Total Value of Sites over \$1 million		\$30.63
Total Value of Sites <u>under</u> \$1 million		\$38.81
Total Value of Acquisition Sites		\$69.44

This proposal will deliver a financial saving to Council. Such savings (approximately \$11 million, or 15.7% of current acquisition obligations) will enable Council to focus its financial resources on other high priority community needs.

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Risk and Insurance Implications:

There are no insurance or risk implications, as the amendment will be processed in accordance with Council Procedures, the *EP&A Act*, and its associated Regulation. Advising the DOPI of the proposed amendment is a requirement of the *EP&A Act*.

Options:

1. Council supports the Planning Proposal to amend LMLEP 2004, as outlined in Attachment 1, and to forward the Planning Proposal to the DOPI for Gateway determination under section 56 of the *EP&A Act*. Council also resolves to place the Planning Proposal on public exhibition, subject to the outcome of the Gateway determination. This is the recommended option, because of the social and financial benefits it will deliver.
2. Council seeks to negotiate an alternative means of securing public access over the site and the biodiversity values of land, possibly following one of the suggestions provided under the Consultation section of this report. This option is not the preferred option, as it is considered unlikely to be successful, and may jeopardise the good relations developed with Ausgrid through the MOU process.
3. Council does not support the proposed Planning Proposal. This is the least preferred option, as securing future public foreshore access over the subject land is likely to be delayed indefinitely, and the (\$11million) acquisition obligation for Council will remain under LMLEP 2004 and the future Standard LEP.

Conclusion:

It is recommended that Council support the Planning Proposal at Attachment 1, which proposes to amend LMLEP 2004 to remove Council's acquisition responsibilities from the subject land (Lot 11 DP 855023), and to rezone the 6(1) land to 6(2) Tourism and Recreation under LMLEP 2004. This will reduce Council's acquisition responsibilities by approximately \$11 million, while achieving benefits for the community by providing public foreshore access without the need for acquisition.

Manager - Integrated Planning - Sharon Pope

Attachments:

- | | |
|--|-----------|
| 1. Planning Proposal to Amend LMLEP 2004 - Removal of Council Acquisition Lot 11 DP 855023 Swansea | D02255471 |
| 2. Signed Memorandum of Understanding between Council and Ausgrid - removal of acquisition from Lot 11 DP 855023 - land south of Swansea | D02211430 |

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 EP&A Act, 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

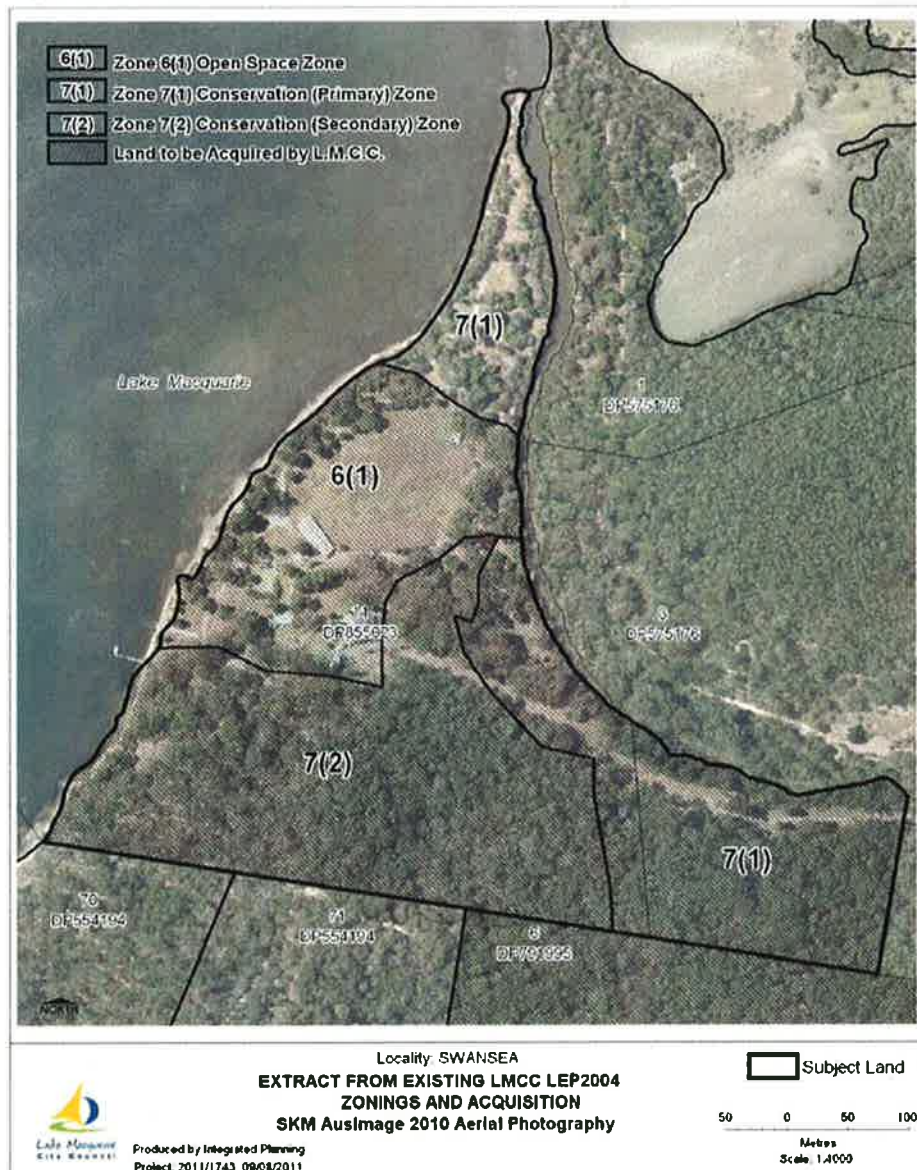
There has been no previous public consultation regarding this Planning Proposal. Council will consult with the public as directed by the Department.

Maps

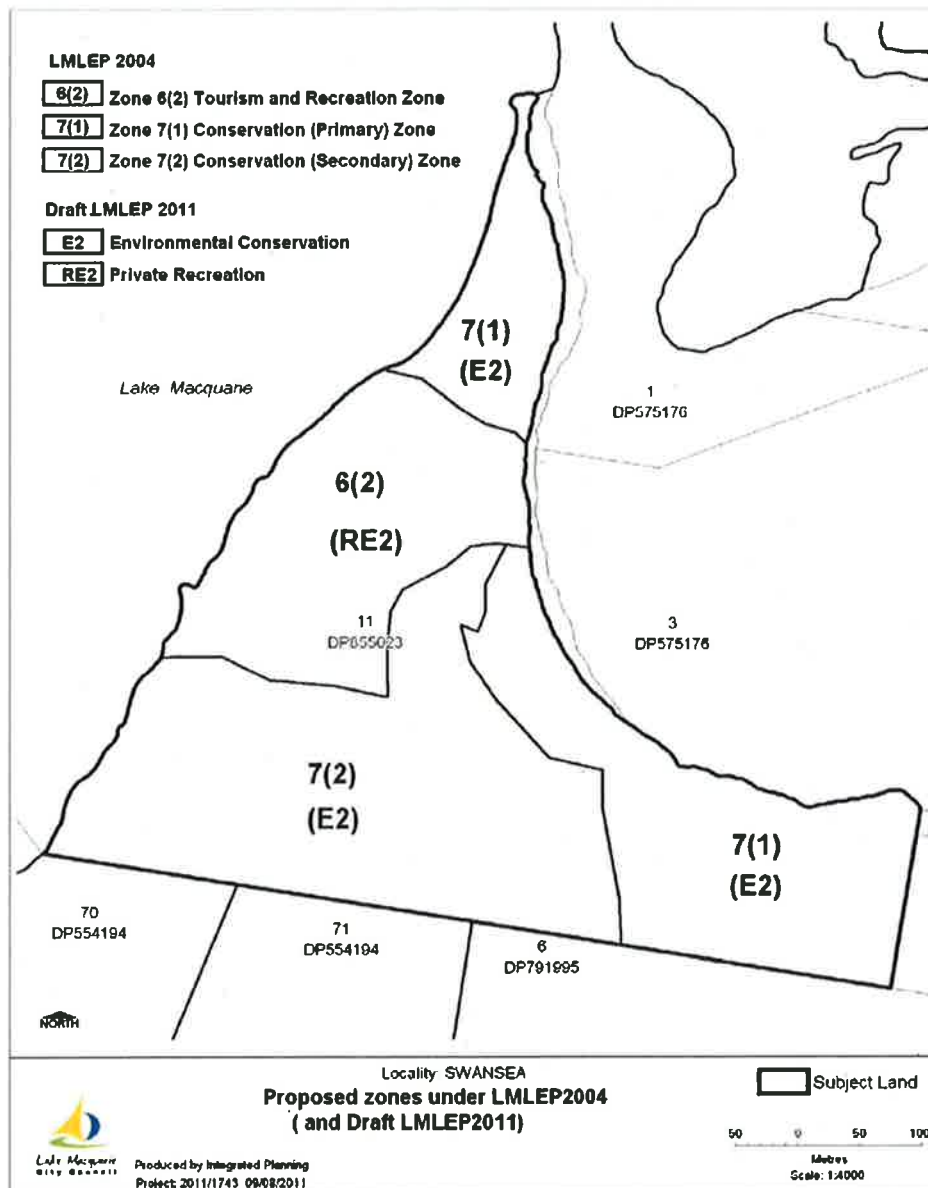
Annexure 1 – Aerial Map and Current Zones

Annexure 2 - Proposed Zones

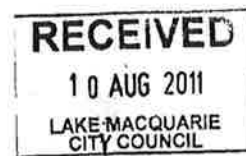
Annexure 1 - Aerial Map of the land with current Zoning and Acquisition under LMLEP2004



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



Lake Macquarie City Council



and

Ausgrid ABN 67 505 337 385

MEMORANDUM OF UNDERSTANDING

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Parties

Name Lake Macquarie City Council (ABN 81 065 027 868)
Address City Administration Centre, 126-1 38 Main Road, Speers Point NSW
2284

Fax Number 02 49587257

Email Address tprior@lakemac.nsw.gov.au

Contact Trevor Prior

Name Ausgrid (ABN 67 505 337 385)
Address Level 14, 570 George Street Sydney NSW 2000
Fax Number 02 9269 2414 (Extn 32414)
Email Address kgunton@ausgrid.com.au
Contact Kate Gunton

Background

- A. The Public Access Concept ("Concept") is a collaborative project between Lake Macquarie City Council ("LMCC") and Ausgrid.
- B. The project involves the parties establishing permanent public access by way of easements over part of Lot 11 DP 855023 ("the Land") owned by Ausgrid.
- C. Once agreed the Concept will allow LMCC to amend its LMLEP 2004 to remove LMCC's acquisition obligations from the Land.
- D. The parties have entered into this Memorandum of Understanding to record their agreement in relation to the following:
 - (a) to agree to a collaborative relationship between LMCC and Ausgrid for the delivery of the Concept.
 - (b) to record what each party agrees to do in relation to the Concept; and
 - (c) to establish the basis upon which the parties will work towards common goals for the Concept.

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Understanding between the parties

1 Definitions

The following meanings apply unless the contrary intention appears:

Concept means the Public Access Concept, being a proposal to explore the circumstances in which permanent public access may be established over the Land in order that LMCC may amend LMLEP 2004 and remove its acquisition obligations from the Land.

Easement Land means the part of the Land shown hatched and marked 'Proposed ROW land' on the plan attached as Annexure 3.

MOU means this Memorandum of Understanding between LMCC and Ausgrid.

Land means Lot 11 DP 855023 known as Bargoed House and Nesca Park, part of which Ausgrid is the registered proprietor.

LMLEP means Lake Macquarie Local Environmental Plan 2004.

2 Interpretation

2.1 The parties acknowledge and agree that this MOU does not create a legally binding agreement between the parties.

2.2 In interpreting this MOU, unless the context indicates a contrary intention:

- (a) (headings) clause headings and the table of contents are inserted for convenience only and must not be used when interpreting this MOU.
- (b) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.
- (c) (corporation) a reference to a corporation includes its successors and permitted assigns.
- (d) (rights and obligations) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this MOU.
- (e) (requirements) a requirement to do any thing includes a requirement to

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cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.

- (f) (including) including and includes are not words of limitation.
- (g) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning
- (h) (singular) the singular includes the plural and vice-versa.
- (i) (rules of construction) neither this MOU nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (j) (legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (k) (time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.
- (l) (writing) a reference to a notice, consent, request, approval or other communication under this MOU or an agreement between the parties means a written notice, request, consent, approval or agreement.

3 Target date for agreement

- 3.1 The parties will work together to reach agreement regarding the Concept and to amend the LEP as contemplated by this MOU by 31 December 2012.
- 3.2 The parties acknowledge that achievement of the target date involves the performance of other entities, including the NSW Department of Planning and Infrastructure and its Minister, and may agree to a different target date for this or any other reason.
- 3.3 Either party may cease work described in this MOU at any time.

4 General understanding

- 4.1 The parties will work towards the common goal of developing the concept and Ausgrid acknowledges that the roles and responsibilities expressed in

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clause 7 are the principles under which Ausgrid will grant permanent public access over the Easement Land in a manner consistent with the objectives of the parties.

- 4.2 As a result of entering into appropriate legally binding arrangements for permanent access over the Easement Land, LMCC will finalise action to remove its acquisition obligations from the Land under LMLEP.
- 4.3 The parties will endeavour to make joint decisions regarding the development of the Concept.
- 4.4 The parties agree that this MOU sets out the general roles and responsibilities of LMCC and Ausgrid as well as proposed requirements of the Concept.
- 4.5 The parties are committed to using their best endeavours to implement this MOU.
- 4.6 All parties agree not to disclose, advertise, or publish the details of this MOU without the prior written consent of the other parties, unless required to do so under law.

5 Preamble

- 5.1 Ausgrid owns the Land, which Council considers contains some significant vegetation and recreational assets.
- 5.2 A plan of the Land is attached at Annexure 1.

Under the LMLEP, the Land is zoned partly 6(1) Open Space, partly 7(1) Conservation (Primary), and partly 7(2) Conservation (Secondary). These zones reflect the Land's use and environmental significance.
- 5.3 Additionally, the Land is identified for acquisition by LMCC under LMLEP 2004, reflecting its potential to provide community access to the foreshore of Lake Macquarie and its environmental significance. LMCC, for similar reasons, has also identified other land around the Lake foreshore for acquisition.
- 5.4 A map showing the zoning of the Land; and LMCC's acquisition obligations under LMLEP 2004, is at Annexure 2.
- 5.5 In 2007 and 2008, LMCC undertook a review of all foreshore land to be acquired by LMCC under LMLEP 2004, to determine the acquisition priority of such land. Properties identified as being of low-acquisition

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priority were subsequently removed from the Council's acquisition obligations under Amendment No 39 to LMLEP 2004.

- 5.6 Under the above acquisition review, the Land was assessed as High (acquisition) Priority, due to its high community and high environmental significance, including its ability to link with extensive foreshore areas to the south and north already in public ownership.
- 5.7 The parties agreed to commence discussions to achieve an alternative means of gaining public access to the lake foreshore, over the Ausgrid Land, to avoid the question of acquisition.
- 5.8 The purpose of this MOU therefore, is to establish the circumstances under which Ausgrid will permit public access over the Land, in order for LMCC to amend LMLEP to remove LMCC's acquisition obligations from the Land.

6 General roles and responsibilities of LMCC

- 6.1 It is agreed that the roles and responsibilities of LMCC, in relation to the Concept, include the following:
- 6.2 As the Concept will see part of the Land used by the public, Council will provide Ausgrid with arrangements satisfactory to Ausgrid in respect of public risk and liability arising from the proposed public use of the Easement Land.
- 6.3 Obtaining all necessary reports, surveys, studies and other documents required for any planning consent and other approvals and obtain all consents, approvals permits and the like required for the public access over the Easement Land.
- 6.4 Following agreement between the parties of the permanent public access over the Easement Land, by way of this MOU, LMCC shall commence an amendment to LMLEP to remove its acquisition obligations from the Land.
- 6.5 Co-operate with Ausgrid to establish an agreed route for the public access way over the Easement Land, to achieve access from the Land's eastern boundary in proximity to the Easement Land's access road, to the Easement Land's southern boundary in proximity to the foreshore of Lake Macquarie.
- 6.6 Surveying, designing, and constructing the public access way following agreement between the parties and at no expense to Ausgrid.
- 6.7 Locating, designing, and constructing the public access way to minimise adverse environmental impacts, by avoiding unnecessary removal of

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vegetation (including trees) and excessive earthworks (i.e. cut and fill), and by applying appropriate techniques to prevent siltation and excessive runoff during and after construction.

- 6.8 Designing the public access way to cater for pedestrian and bicycle access only, and to prevent access by motor bikes, or other motorised vehicles (other than for those people with mobility disabilities).
- 6.9 Following the parties entering into a legally binding agreement to give effect to this MOU, LMCC shall seek the Minister's approval to amend LMLEP, to remove LMCC's acquisition obligations from the Land.

7 General roles and responsibilities of Ausgrid

- 7.1 The roles and responsibilities of Ausgrid, in relation to the Concept, include the following:
- 7.2 Granting permanent public access over the Land by means of an easement and/or public right of way (ROW), where the ROW is to be:
 - 7.2.1 restricted to the Easement Land only.
 - 7.2.2 located to provide access from the public road system at the Land's eastern boundary in proximity to the Land's access road, to the Land's southern boundary in proximity to the foreshore of Lake Macquarie.
 - 7.2.3 no greater than 6 metres wide, unless additional width is agreed by Ausgrid due to engineering difficulties imposed by the Land.
- 7.3 Agree to enter into a legally binding agreement with LMCC to give effect to this MOU, prior to the acquisition provisions over the Easement Land being removed by way of an amendment to LMLEP 2004 provided that the binding agreement will ensure that the public access way arrangements do not take effect until the day after the LMLEP is amended as proposed by this MOU.
- 7.4 Registering the ROW immediately following gazettal of the amendment to LMLEP 2004 which gives effect to expunging LMCC's acquisition obligations over the Land.

8 Meetings and Planning for Concept

- 8.1 Representatives of LMCC and Ausgrid will be available to attend

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meetings necessary to deliver the Concept.

9 No Fetter

- 9.1 The parties acknowledge and agree that nothing in this MOU shall be taken to fetter the discretion of either party in exercising any of its functions under any statute or regulation or in making any decision relating to its operations.
- 9.2 Nothing in this MOU is intended to constitute representation, warranty or guarantee by or on behalf of any party.
- 9.3 The parties acknowledge that this MOU is not and is not intended to be a legally binding agreement between the parties

10 Costs

- 10.1 Each party agrees to bear its own costs in the preparation, negotiation and execution of this MOU and the legally binding agreement to give effect to this MOU.
- 10.2 Council must pay for all other costs arising from or associated with this MOU, the Concept and the creation of the public access on the Easement Land, including studies, reports, development application costs, works to construct the public access (including any environmental works and environmental contributions or off-sets), survey plans, registration costs and charges including charges for permits, consents, approvals or other authorisations) and stamp duty.

11 Governing Laws

- 11.1 This MOU is governed by the laws of New South Wales

12 Counterparts

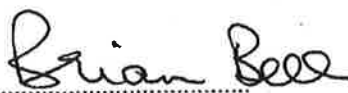
- 12.1 This MOU may be executed in any number of counterparts, which identical counterparts when taken together shall be deemed to constitute one and the same instrument.

Signed for and on behalf of
LAKE MACQUARIE CITY COUNCIL
 by its authorised delegate
 in the presence of:

Witness

Delegate


 Sign & print name
HELENA TOWNSEND


 Brian Bell
 General Manager

Signed for and on behalf of
AUSGRID ABN 67 505 337 385
 by its authorised delegate in the
 presence of:

SIGNED SEALED AND DELIVERED
 for and on behalf of **AUSGRID**
 by KATHERINE MARGARET GUNTON
 its duly constituted Attorney pursuant
 to Power of Attorney registered
 Book 4528 No. 401


 Attorney

 Witness

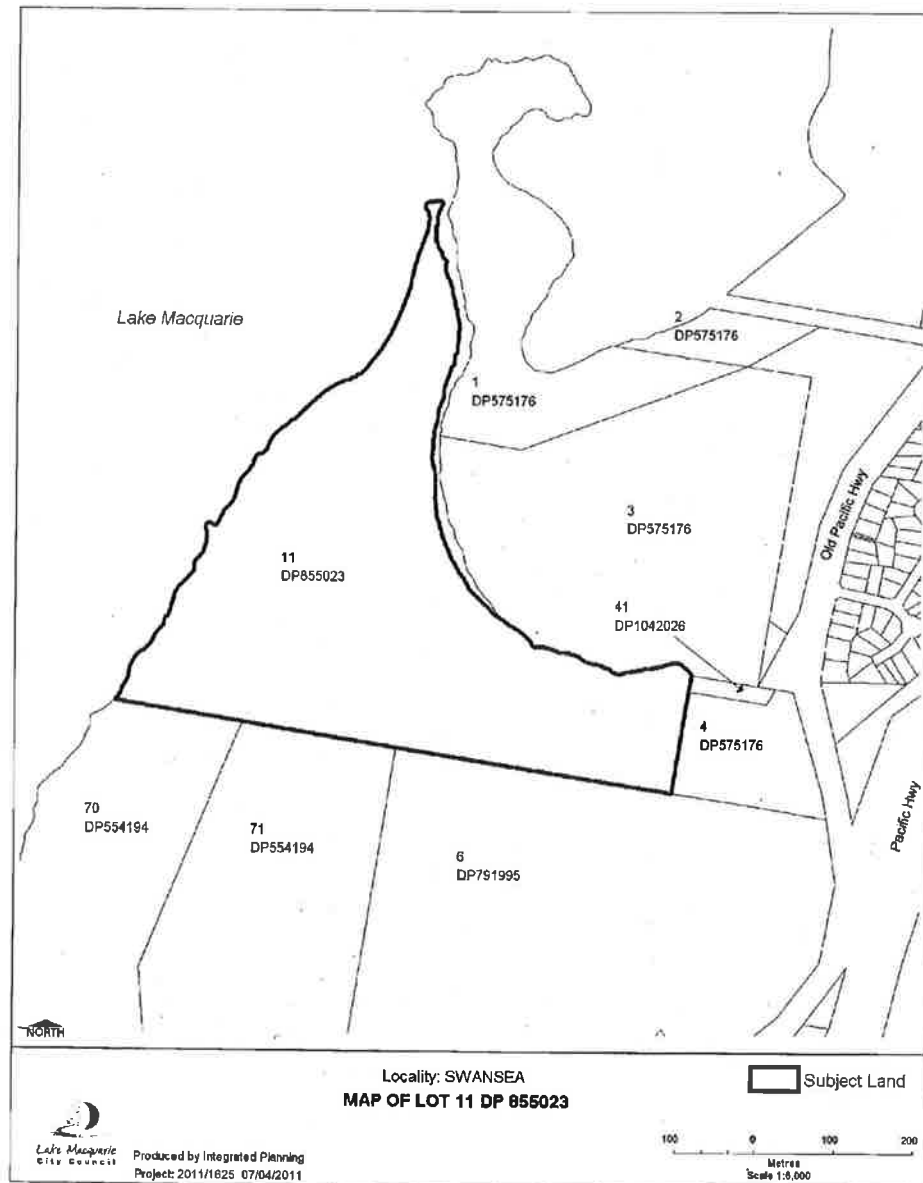
Witness

Delegate

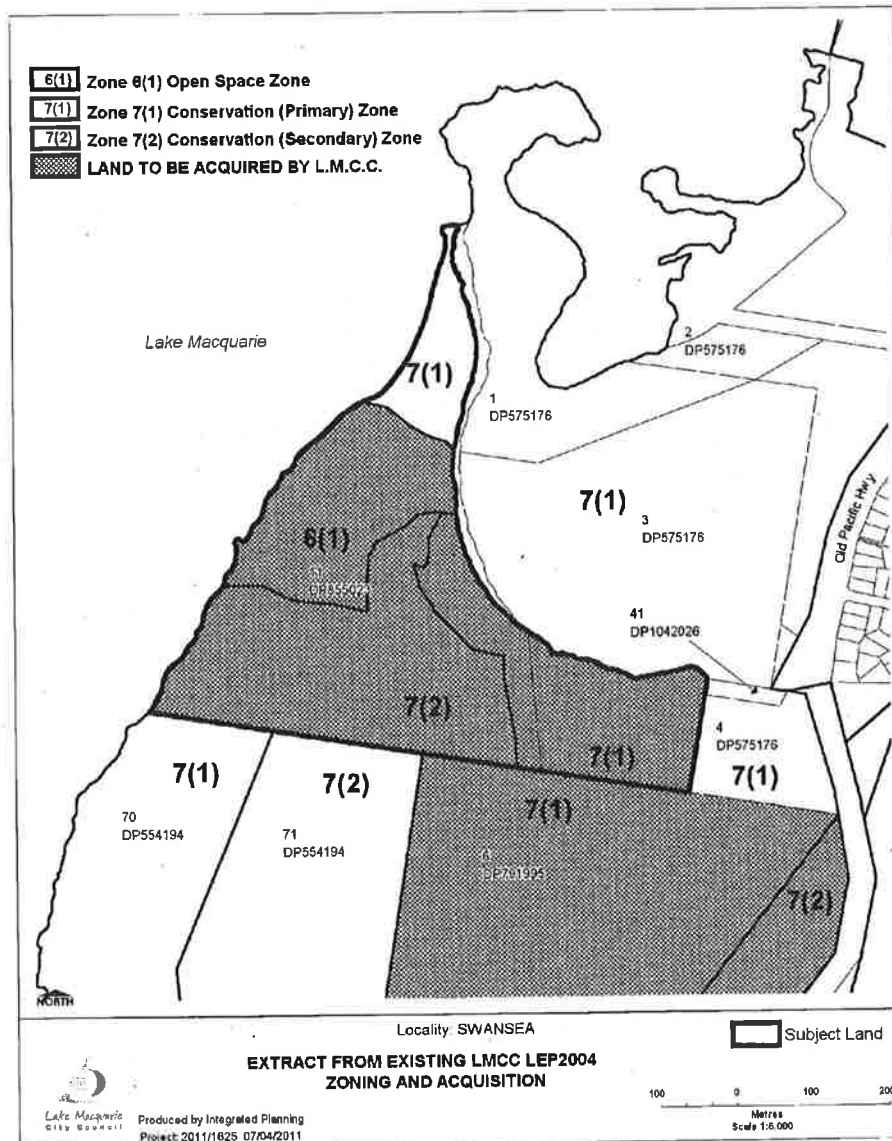
Sign & print name

Sign & print name

Annexure 1– Map of the Land



Annexure 2- Zoning and acquisition under LMLEP 2004



Annexure 3 – Proposed ROW land.

