

9 November 2011

Ms Susan Blake
Department of Planning and Infrastructure
PO Box 1226
NEWCASTLE NSW 2300

Dear Susan

Subject: Additional Gateway Information - Planning Proposal - Ausgrid land south of Swansea

I refer to your email dated 1 November 2011, seeking additional Gateway information in respect to the subject Planning Proposal.

Firstly, I emphasise the following points before addressing each of the additional requested pieces of information:

1. This is a Council-initiated Planning Proposal, which is designed to achieve public access over Ausgrid's land without the need for acquisition at approximately \$11 million.
2. No proposed development underlies this Planning Proposal, other than the proposed public access way, which is permitted under the current planning provisions. In this regard, the access way is permitted, as an "environmental facility", in each of the current zones applying to the land.
3. The proposal to rezone the 6(1) Open Space land to 6(2) Tourism and Recreation, is a necessary consequence of section 27 of the EP & A Act, due to the acquisition layer being removed from the land. The rezoning has nothing to do with any proposed future development of the proposed 6(2) land by Ausgrid.

A response to each item in your email now follows.

Maps. The requested maps of the subject land (lot 11 DP 855023) showing affectation by Aboriginal Heritage, ASS, flooding, and bushfire are enclosed with this letter.

Acquisition and 7(1) Zone. As shown on Attachment 1 of the Planning Proposal, and Annexure 2 of the MOU, the acquisition hatching under LMLEP 2004 does not affect the area of 7(1) land in the northern section of the subject lot.

SEPPs and Lake Macquarie Coastal Wetland Park (LMCWP). In regard to SEPPs 14, 26, and 44, I advise as follows:

- SEPP 14 – no SEPP 14 Coastal Wetlands exist on the subject lot.
- SEPP 26 – no SEPP 26 littoral rainforest exists on the subject lot;
- SEPP 44 – Council's environmental specialist has advised that it is unlikely that any core koala habitat exists on the land. However, without a detailed survey of native vegetation, it is not possible to determine whether SEPP 44 will apply to this land. However, all of the land's significant vegetation is

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Our Ref: F2010/02788 Your Ref:

currently within an environmental protection zone, as envisaged by SEPP 44. Part 2 of SEPP 44 deals with “Development control of koala habitat”, and Council will carry out the requirements of this Part, prior to considering any DA for the proposed access way.

As for the LMCWP, this is a concept involving 10 separate areas, east of Lake Macquarie between Dudley and Swansea, owned by either NSW Government agencies or LMCC. The objective of this concept is for the natural values of these areas to be managed in a co-ordinated way as a linked system. A voluntary Memorandum of Understanding (MOU) has been developed to achieve this purpose. Ausgrid’s land represents the southern extent of the proposed LMCWP. To date, Ausgrid has not entered into the MOU for the LMCWP, stating that *“it has an established Environmental Management Plan for the Bargoed House site which is considered sufficient to protect the environmental values of the land”*. Notwithstanding Ausgrid’s advice on the LMCWP concept, this is a separate issue, that can continue to be pursued regardless of the current Planning Proposal.

S117 Directions.

1.3 Mining. The only change in the Planning Proposal, which has any potential to affect mining, petroleum production, or extractive industries, is the change in zoning from 6(1) Open Space to 6(2) Tourism and Recreation. Following is a comparison of land uses allowed in each of these zones. Land uses underlined represent uses not permitted in the other zone.

Land Uses under LMLEP 2004

Zone 6(1) Open Space

Permitted without consent. Exempt development as provided in Schedule 1.

Permitted only with development consent.

Animal establishments; car parking facilities; caravan parks; cemeteries and crematoriums; child care centres; clubs; community facilities; drainage; earthworks; educational establishments; emergency services facilities; entertainment facilities; environmental facilities; helipads; marinas; places of public worship; recreational facilities; restaurants; roads; signs; sporting facilities; stormwater management facilities; telecommunication facilities; utility installations.

Prohibited development. Development not listed above.

Land Uses under LMLEP 2004

Zone 6(2) Tourism and Recreation

Permitted without consent. Exempt development as provided in Schedule 1.

Permitted only with development consent.

Animal establishments; backpackers’ accommodation; car parking facilities; caravan parks; clubs; community facilities; drainage; earthworks; eco-tourism facilities; educational establishments; emergency services facilities; entertainment facilities; environmental facilities; function centres; helipads; hotel or motel accommodation; manufactured home estates; marinas; places of public worship; pubs; recreational facilities; restaurants; roads; serviced apartments; signs; sporting facilities; stormwater management facilities; telecommunication facilities; tourist resorts; utility installations.

Prohibited development. Development not listed above.

It is clear from the above table that neither zone permits any land use related to mining, extractive industries, or petroleum production. However, LMLEP 2004 clause 19 (Development for the purpose of a mine) continues to operate to permit a mine on any land “if the mine is underground.” The Mining SEPP provides a similar provision.

In addition to the above, the Mining SEPP does not operate to override the above LEP provisions, as neither “agriculture” nor “industry” is permitted in either of the above zones.

In view of the above, S117 Direction 1.3 does not apply to this Planning Proposal. However, Council could consult with the NSW Department of Primary Industries, during exhibition of the draft LEP amendment, if considered necessary by the Department.

2.3 Heritage Conservation. LMLEP 2004 lists all items of European heritage, and no such items are listed for the subject land (including Bargoed House). In any case, any proposed public ROW will be located over 100 metres from Bargoed House, and will be well screened by natural vegetation.

LMLEP 2004 does not list items of Aboriginal heritage. However, a REMS search revealed two such items on, or near, the subject land – refer to the map at the end of this letter. Notwithstanding, this is a DA matter, which will be appropriately addressed at that stage to ensure that no impact occurs to any such items. However, for the purpose of this Planning Proposal, the proposed rezoning and removal of the acquisition hatching will have no impact on any items of Aboriginal heritage significance.

3.4 Integrating Land Use and Transport.

As emphasised earlier, the 6(1) zone is being rezoned to 6(2) because section 27 of the EP & A Act does not allow the 6(1) zone to remain without an acquisition authority being identified.

The objectives of this S117 direction relate to various forms of urban development improving access, by various means of transport, to various other forms of urban facilities and services. However, recreation and tourism land, by its nature, must locate where the natural features of the land are attractive for these purposes. The 6(2) zone, in this case, reflects the existing recreation and tourism use of the subject land for sport, camping, boating, functions, and holidaying purposes. The subject land is also located very close to the southern extent of the Swansea residential area to the north.

In view of the above, the Planning Proposal is consistent with this S117 direction.

4.1 Acid Sulfate Soils (ASS). Refer to the table at Attachment 1 of the Planning Proposal. The site is affected by ASS, as shown on the attached ASS map. However, the only proposed ‘intensification’ of land use associated with this Planning Proposal, is the proposed public access way over the land. This is likely to be as benign as a walking track, which hardly disturbs the associated soil. Furthermore, the majority of the access way will be located on elevated land well above any potential ASS. As indicated earlier, the public access way is already permitted under the existing LEP provisions, and does not rely on this Planning Proposal. In addition, existing LMLEP 2004 clause 35 (ASS) adequately ensures that this issue will be appropriately addressed at the DA stage.

Regarding any possible future development in the proposed 6(2) zone (in which nothing is presently proposed), there is sufficient elevated land to avoid any potential

ASS – refer to contours on the Flood map. In addition, existing clause 35 will similarly apply to any future development in this zone.

Consequently, the Planning Proposal is consistent with this direction.

4.2 Mine Subsidence and Unstable Land. Refer to the table at Attachment 1 of the Planning Proposal. The subject land is within the Swansea-North Entrance Mines Subsidence District. The Department may therefore wish Council to consult with the Mines Subsidence Board as part of the exhibition of the draft LEP amendment.

4.3 Flood Prone Land. Refer to the table at Attachment 1 of the Planning Proposal. The land is flood affected up to approximately the 1.5m contour level – see red 1.5m contour on the attached Flood map. However, the only development associated with this Planning Proposal, which may possibly be affected, is the proposed public access way. In addition, as far as any other possible future development on this land, there is sufficient elevated land above the 1.5m contour to avoid such flooding.

Existing LMLEP 2004 clause 32 (Flood prone land) satisfies the requirements of this s117 direction.

4.4 Planning for Bushfire Protection. Refer to the table at Attachment 1 of the Planning Proposal. The land is bush fire prone as indicated on the attached bushfire map. However, the only proposed development, which is associated with this Planning Proposal, is the proposed public access way – which commonly occurs in such areas. As emphasised earlier, such an access way is already permitted on this land under LMLEP 2004, and does not rely on this Planning Proposal to be allowed. In addition, existing clause 33 (Bush fire consideration), under LMLEP 2004, applies to all proposed development on bush fire prone land.

Notwithstanding the above, Council will consult with the NSW Rural Fire Service during the exhibition of the draft LEP amendment, if deemed necessary by the Department.

6.2 Reserving Land for Public Purposes. Refer to the table at Attachment 1 of the Planning Proposal. Please note, it was LMCC, as the ‘public authority’, that initiated an acquisition requirement for itself, regarding the subject land, under LMLEP 2004. Similarly, it is LMCC, as the ‘public authority’, that wishes to remove the acquisition under LMLEP 2004. This is entirely a local matter, which is completely consistent with this direction, although the concurrence of the Department’s Director General is still required.

As outlined in the “Justification for the Planning Proposal,” Council commenced reviewing its acquisition obligations under LMLEP 2004, following a Valuation Survey Report in 2006, which revealed over \$93 million worth of land to be acquired. In 2007, Council initiated a review of all waterfront acquisition land to determine its acquisition priority. All such land was assessed for its ‘community’ and ‘environmental’ value. This resulted in such land being classified as either ‘low’, ‘medium’, or ‘high’ acquisition priority. Council subsequently removed all the ‘low’ priority waterfront acquisition land from LMLEP 2004, via amendment 39.

The above review of waterfront acquisition land identified the subject land as 'high' acquisition priority, due to its ability to link with existing public waterfront land to the north and south, and the environmental quality of the land. However, as the value of the subject land had been assessed at almost \$11 million, and as Ausgrid (then Energy Australia) would likely resist acquisition in any case, it was decided that Council officers should commence negotiations to achieve public access without the need for acquisition. These negotiations have resulted in an MOU being signed between the two organisations, which will permit a public ROW over the land, subject to Council's acquisition obligations being removed.

This loss of potential public foreshore land is justified on the following basis:

- Over 110 kms, or 56%, of the Lake Macquarie foreshore in the City is currently in public ownership (with more to be acquired); and
- Almost \$11 million of ratepayers money can be saved on acquiring land, and redirected for other community purposes, while still achieving public access over the subject land.

Under the circumstances, there is no inconsistency with this direction, and the removal of the Council's acquisition obligations, under LMLEP 2004, is entirely justified.

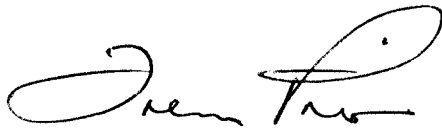
Change of Land Use.

- **Likely impacts from rezoning the land to 6(2) Tourism and Recreation.** The area to be rezoned to 6(2) is largely cleared, and separated from the areas of high conservation value. Any future DA, would be assessed on its merits in accordance with the requirements of LMLEP 2004.
- **Likely impacts on critical habitats etc.** Again, this is a DA matter, which will be assessed at the appropriate time. However, as far as the proposed access way is concerned, this will involve appropriate studies of the proposed access route to ensure no critical habitat etc is affected. This intent is reflected in the signed MOU (clause 6.7) that states that LMCC will be responsible for *"locating, designing, and constructing the public access way to minimise adverse environmental impacts, by avoiding unnecessary removal of 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."* A similar requirement will be included in the proposed Legal Agreement.
- **Environmental or Heritage Studies for proposed 6(2) land.** Council is not aware of any environmental or heritage studies relating to the proposed 6(2) land. Council's Sustainability Department's comments regarding "securing the biodiversity values of the land," relate to the existing 7(1) and 7(2) zones, and not the proposed 6(2) area. In this regard, Council considered that the existing environmental zones adequately protect the biodiversity values of the site. In addition, acquiring land for environmental purposes is more the role of the State government, rather than Local Government, which has limited funds to spend on such acquisitions.
- **Adequacy of Public Infrastructure.** Again, this is a DA matter. Firstly, there is no proposed development within the proposed 6(2) land associated with this Planning Proposal. The only proposed development associated with this Planning Proposal is the proposed public access way, and this requires no public infrastructure.

- **Site Inspection.** If you wish to inspect the subject site, you will need to make arrangements with Paul McDonald (Ausgrid's Facilities Manager, North) at pmcdonald@energy.com.au. Please let me know if you would like me to attend the site inspection with you.

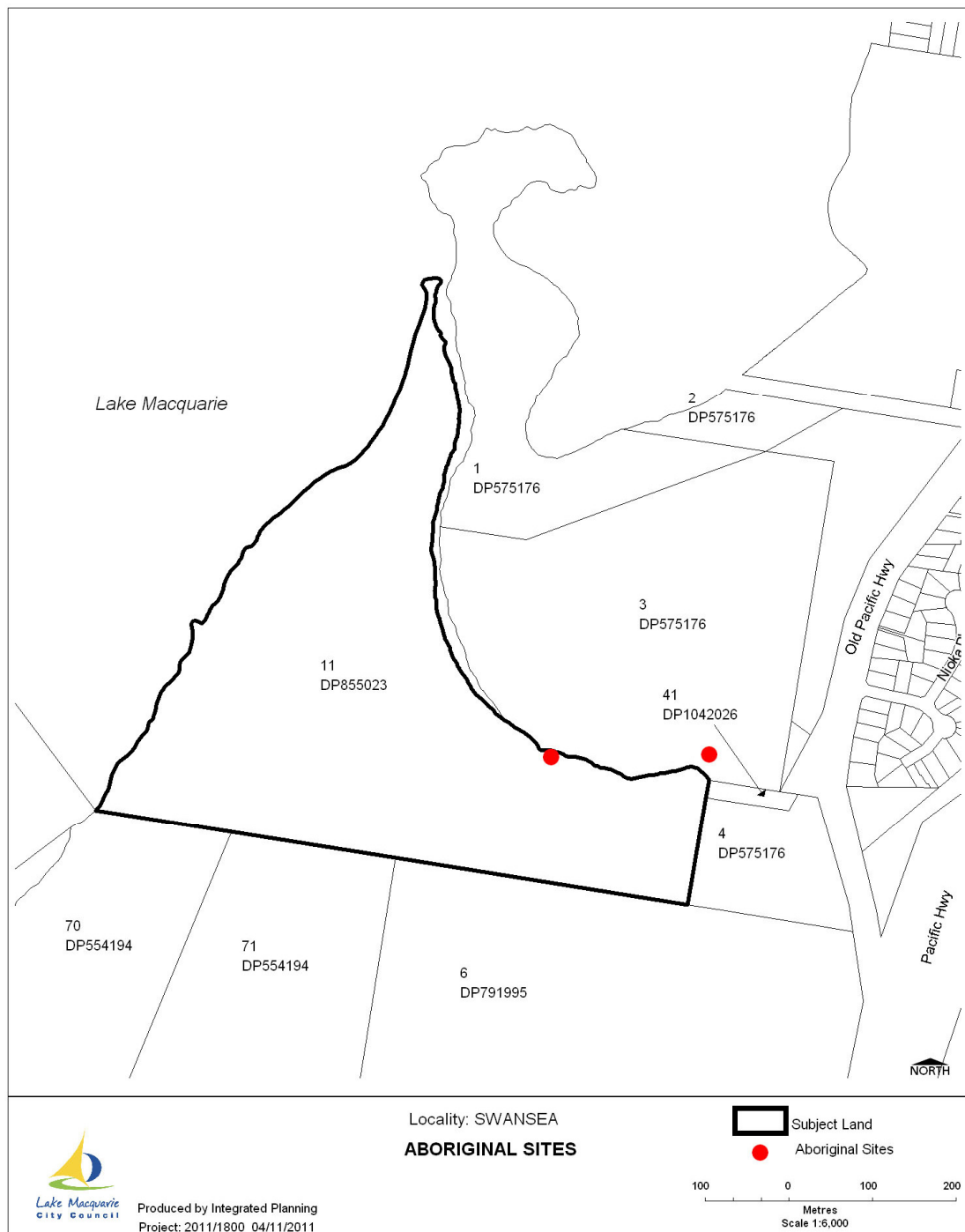
I trust that the above information adequately addresses your concerns. However, should you require further information, please contact me on 4921 0715.

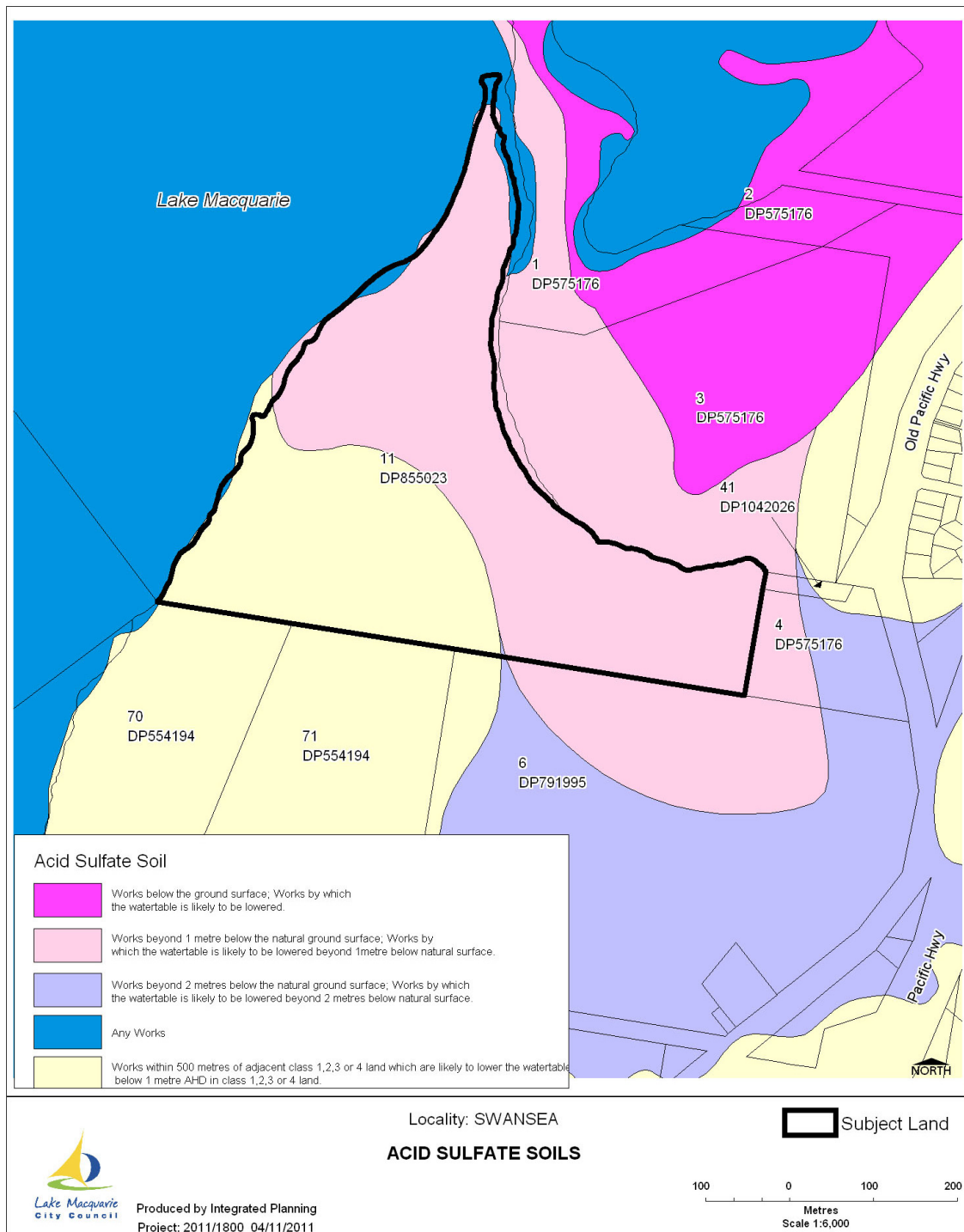
Yours faithfully

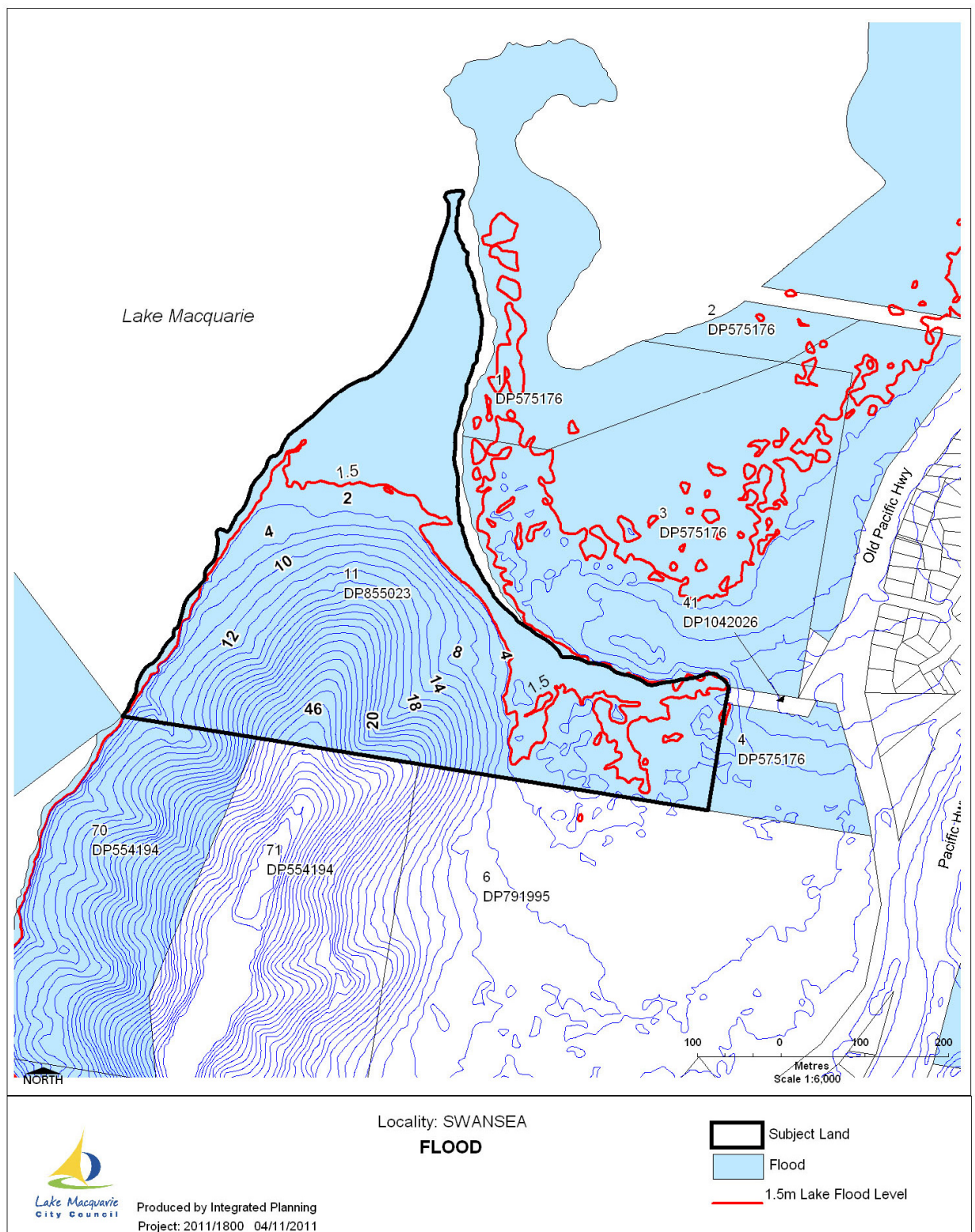
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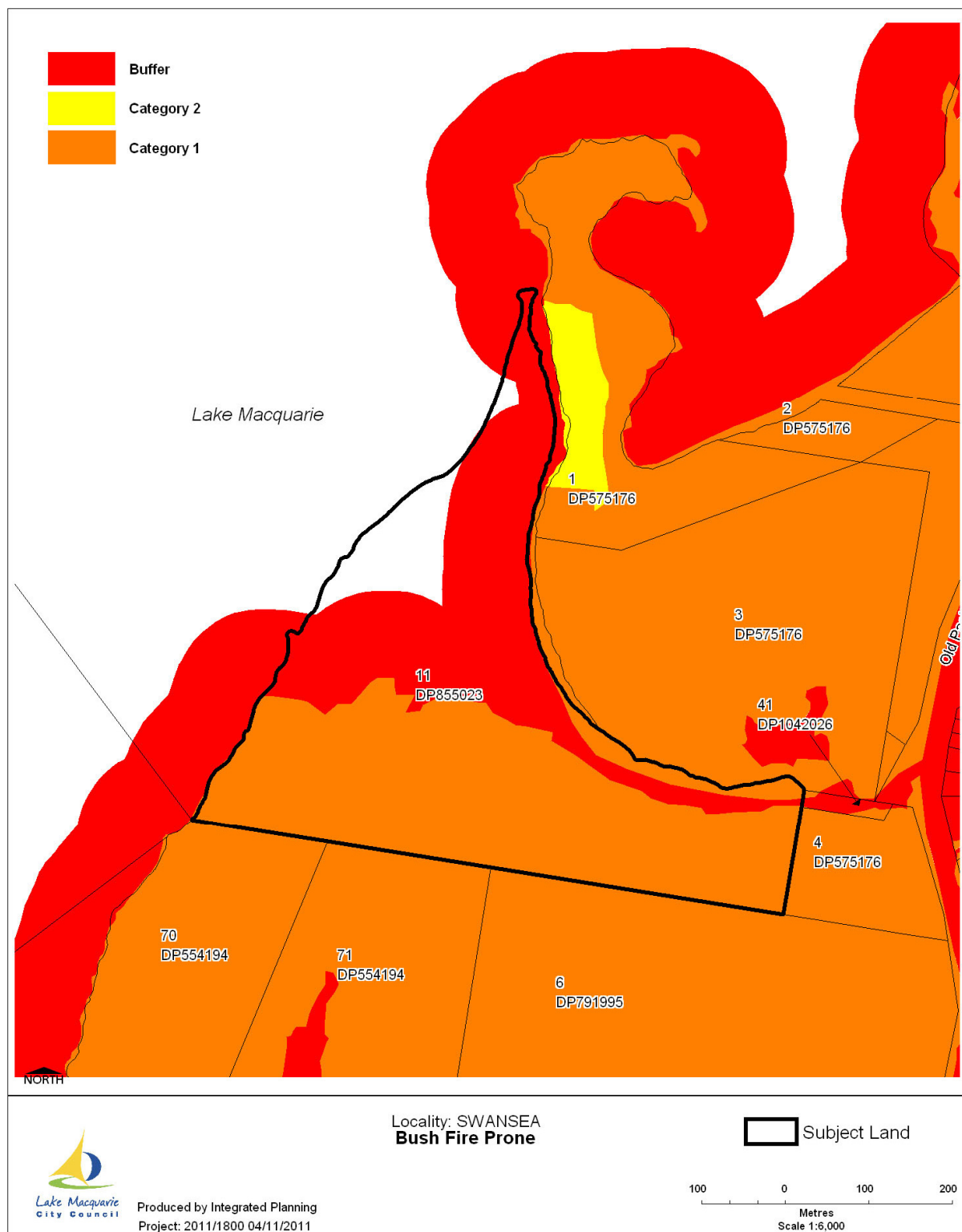
Trevor Prior

**Special Projects Planner
Integrated Planning Department**









Should you require further information, please contact me.

Yours faithfully

Trevor Prior
Special Projects Planner
Integrated Planning Department