

**Planning controls for land affected by a Local Government Area boundary adjustment -
Newcastle and Lake Macquarie**

Proposal Title :	Planning controls for land affected by a Local Government Area boundary adjustment - Newcastle and Lake Macquarie		
Proposal Summary :	The planning proposal (PP) transfers certain land from the Newcastle Local Environmental Plan 2012 to the Lake Macquarie Local Environmental Plan 2014, and vice versa. This is to reflect a change in Local Government Area (LGA) boundaries. Newcastle and Lake Macquarie councils have slightly different sets of planning controls, and so both councils intend to apply the nearest equivalent planning controls to those that currently apply to the land.		
PP Number :	PP_2014_NEWCA_009_00	Dop File No :	14/08610

Proposal Details

Date Planning Proposal Received :	20-Oct-2014	LGA covered :	Newcastle
Region :	Hunter	RPA :	Newcastle City Council
State Electorate :	CESSNOCK WALLSEND	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	Part of Lot 711 DP 1113237, part of Lot 712 DP 1113237, Lot 2 DP 877349, and part of Newcastle Link Road, Minmi. Part of Lot 305 DP 1107690, part of Lot 101 DP 1041014, and part of SP 69436, Glendale.		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :		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 : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **BACKGROUND - MINMI, NEWCASTLE LINK ROAD CONCEPT PLAN AND STATE SIGNIFICANT SITE (SSS)**

A large part of the land affected by this Planning Proposal is a State Significant Site (gazetted March 2013) which amended the planning controls for the land in the Newcastle LEP 2012 and Lake Macquarie LEP 2004.

The site is also subject to a Concept Plan approval (August 2013) which provides for the staged development of the site. The planning controls in the Newcastle LEP 2012 and Lake Macquarie LEP 2014 generally seek to replicate the State Significant Site and Concept Plan planning controls.

DATE RECEIVED

Council originally provided the PP to the Department on 22 May 2014. However, the Department sought legal advice (received 12/9/2014) regarding the best means of achieving the councils' desired outcome and on the timing of the amendment given the status of the boundary adjustment proclamation. Additional information was also sought from Council in October, with the final information received 20/10/2014.

At the time of preparing this report, the boundary adjustment proclamation had not occurred.

External Supporting Notes : **RELEVANT PLANNING AUTHORITY AND LGA COVERED BY THE PLANNING PROPOSAL**

Due to limitations with the LEP tracking system, only Newcastle Council has been listed as the 'Relevant Planning Authority' and Newcastle listed as the 'LGA covered' by the PP. This is incorrect.

Newcastle City Council and Lake Macquarie City Council would be a joint relevant planning authority for this PP. Similarly, the 'LGA covered' is part of both Newcastle and

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Lake Macquarie local government areas.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment : The Statement of Objectives is consistent with the Department's "A guide to preparing planning proposals".

The Objectives detail the councils' intentions to ensure that the land affected by the LGA change is given planning controls that closely match its current planning controls.

The Objectives also describe an instance where this would not neatly occur ie an area currently zoned E4 under the Newcastle LEP 2012 would become RU6 under the Lake Macquarie LEP 2014. This discussion should be expanded as there are other instances where a 'like for like' transfer would not occur.

Examples include the parcel of land adjoining the Link Road/ Minmi Road roundabout which is currently E2 under the Lake Macquarie LEP 2014 and is to be zoned E4 under the Newcastle LEP 2012, the E2 portion to go to R2 in the Newcastle LEP at Glendale, and the SSS land to be transferred to Newcastle. Under the Lake Macquarie LEP 2014 the SSS land currently has a minimum lot size, however this would not be carried over to the Newcastle LEP.

Note regarding the SSS:

Lake Macquarie Council has applied a minimum lot size under its LEP 2014 when no minimum lot size was intended under either the SSS or concept approval.

While clauses 4.1A and 4.1B of the LEP 2014 provide for lot sizes below the mapped minimum lot size, similar provisions do not exist in the Newcastle LEP 2012.

Therefore, applying no minimum lot size to this land when it comes into the Newcastle LEP 2012 (as proposed in the PP) is more appropriate than carrying over the current mapped minimum lot sizes. This would be consistent with the approach applied to the portion of the SSS already in the Newcastle LEP 2012.

Should Newcastle City Council want to apply a minimum lot size to the land through its LEP, then this could occur at a future time as a separate PP.

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

Is an explanation of provisions provided? Yes

Comment : The Explanation of Provisions is consistent with the Department's "A guide to preparing planning proposals".

The Explanation of Provisions identifies certain maps which would need to be amended (eg zone, lot size maps). However, not all the relevant maps have been identified. As the PP would add/ remove land from the respective LEPs, all maps which relate to the subject land would need to be amended.

Relevant map sheets for the Newcastle LEP include those ending in either the 002 or 002A suffix. Similarly, the Lake Macquarie maps requiring amendment include any ending in either a 008A, 008B or 008C suffix.

It is recommended that the Explanation of Provisions be updated accordingly.

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Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

2.1 Environment Protection Zones

* May need the Director General's agreement

3.1 Residential Zones

5.1 Implementation of Regional Strategies

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

N/A

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 :

Further discussion is provided in the section 117 direction discussion provided later in this report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The following changes are recommended to the PP's LEP maps:

- 1. the proposed Newcastle LEP maps be revised to include the Newcastle Link Road land which is to become part of the Newcastle LGA. Currently this land is not included in the proposed LEP maps.**
- 2. No minimum lot size should be applied to the Minmi Newcastle Link Road State Significant Site land being transferred into the Newcastle Local Government Area.**
- 3. All LEP maps (both existing and proposed) should clearly mark the site for exhibition purposes so the community can identify the land and the specific changes that would result from the PP.**
- 4. Newcastle and Lake Macquarie maps should shade grey those areas not in their current LGA boundary for existing LEP maps, and not in their new LGA boundary for each proposed LEP map.**
- 5. Lake Macquarie proposed LEP maps should show the zone/ development controls on the adjoining land in its LGA.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

A 14 day period is proposed. While the PP would transfer the land from one LEP to another, both councils intend to apply like-for-like controls to the new land. As a result, the PP is considered to be a relatively low impact PP and 14 days can be supported.

However, as there would be some differences in terms of land uses and planning controls the councils should contact all landowners directly to ensure that they are aware of the changes. The councils may wish to include a summary table comparing the difference in permitted uses between the associated zones in the exhibition material to assist with this consultation.

Additional Director General's requirements

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

If Yes, reasons :

TIMELINE

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The timeline provided suggests completion potentially within three months. Given the extent of mapping changes, a six month completion period is recommended to provide adequate time for delays associated with finalising the maps.

PLAN-MAKING DELEGATION

Both councils have specifically stated that delegation for this PP is not desired.

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Newcastle LEP 2012 commenced in 2012. The Lake Macquarie LEP 2014 commenced 10 October 2014.

Assessment Criteria

Need for planning
proposal :

In July 2009 the councils resolved to lodge a joint application with the now Office of Local Government to alter the boundary between the Newcastle and Lake Macquarie local government areas. The purpose of the adjustment is to better facilitate service delivery and ease of local government decision making associated with two urban release areas which go across the LGA border.

Should the joint application be approved then the LEPs would need to be amended to reflect the new boundaries. The need for the proposal is therefore justified. In the event the boundary adjustment does not occur then the councils may cease the PP.

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Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY

This is an administrative amendment to reflect a change in local government area boundaries. No changes in development potential are proposed. The PP is neither consistent nor inconsistent with the strategy.

LOCAL STRATEGIES

Similar to the Lower Hunter Regional Strategy, the PP is an administrative amendment which does not propose to change the land use planning outcomes for the land. It is neither consistent nor inconsistent with the councils' local planning strategies.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

As the PP results from a change to the local government area boundaries and no new development potential is proposed, there are no SEPPs relevant to the PP.

SECTION 117 DIRECTIONS (s117 directions)

The PP is consistent with the relevant s117 directions with the exception of s117 direction 2.1 Environment Protection Zones. Direction 2.1 is triggered in several instances.

- In transferring the land to the north of the Link Road, the minimum lot size for the environmental fingers would be changed from 40 ha in the Lake Macquarie LEP 2014 to no minimum lot size in the Newcastle LEP 2012. This would reduce the environmental protection standards that apply to the land and so be inconsistent with direction 2.1 (subclause 5).

The inconsistency is of minor significance because under the SSS controls and concept plan approval, no minimum lot size applied to the land. Reverting to no minimum lot size realigns the lot size controls with those determined under the SSS/ concept plan processes. The Secretary should agree that the inconsistency is of minor significance (subclause 6d).

- A 0.15 ha portion of lot 101 DP 1041014 would also be rezoned from E2 to R2. As the environmental protection standards that apply to the land would be reduced, the PP is inconsistent (subclause 5). However, the R2 zone more accurately reflects the fact that the site has already been developed for an urban use, and therefore the Secretary should agree that the PP's inconsistency is of minor significance (subclause 6d).

- A portion of land on the northern exit of the Link Road/ Minmi Road roundabout is currently zoned E2 and would be converted to E4 in the Newcastle LEP 2012. This would reduce the environmental protection standard applying to the land (subclause 5) by giving the land a zone with lesser environmental status.

The land was formerly zoned 7(2) Conservation (Secondary) in the Lake Macquarie LEP 2004 and does not form part of the SSS land. Land with this zone was converted to E2 in the Lake Macquarie LEP 2014. However, Newcastle City Council proposes to zone it E4 because only land supported by appropriate environmental studies was zoned E2 in its LEP 2012.

In proposing to zone the site E4, the PP is inconsistent with the direction and therefore Council needs to seek the Secretary's agreement to the inconsistency. Alternatively, Council may choose to modify the PP such that the site would retain its current E2 zone, thereby being consistent with the direction.

- Part of lot 305 DP 1107690 is currently zoned E4 and is to be converted to RU6 in the Lake Macquarie LEP 2014. In doing so, the environmental protection standards applying to the land would be reduced (subclause 5).

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Council states the RU6 zone is to be applied because the land has historically been within an investigation zone, and the RU6 zone serves this purpose in the Lake Macquarie LEP 2014. Council notes the E4 zone in the Newcastle LEP 2012 serves a similar function and so in this respect the conversion from E4 to RU6 is a like-for-like change. A 200 hectare minimum lot size would also apply, helping limit its capacity to be developed.

Given the above, the Secretary should agree that the inconsistency is of minor significance (subclause 6d).

Environmental social
economic impacts :

As the PP is an administrative amendment and no change in development potential is proposed, no environmental, social or economic impacts are anticipated.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation : **DDG**

Public Authority
Consultation - 56(2)
(d) :

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 :

Identify any internal consultations, if required :

Legal Services

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Lake Macquarie Council Report.pdf	Study	Yes
Lake Macquarie Council Minutes.pdf	Study	Yes
Newcastle Council Report.pdf	Study	Yes
Newcastle Council Minutes.pdf	Study	Yes
Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones**
 2.1 Environment Protection Zones
 3.1 Residential Zones
 5.1 Implementation of Regional Strategies

Additional Information : **1. Prior to undertaking public exhibition, Council is to make the following changes to the maps included in Part 4 of the Planning Proposal:**
 (a) the proposed Newcastle LEP 2012 maps be revised to ensure all of the land which is to become part of the Newcastle LGA is included;
 (b) no minimum lot size should be applied to the Minmi Newcastle Link Road State Significant Site land to be transferred into the Newcastle LGA;
 (c) all maps (both existing and proposed) in the planning proposal should clearly outline the site for public exhibition purposes, and shade grey and label those areas that are in a different LGA; and
 (d) Lake Macquarie proposed maps should show the zone/ development standards that apply to land within its LGA that adjoin the subject land.

2. Prior to undertaking public exhibition, Council is to amend the Explanation of Provisions of the Planning Proposal to note that in addition to the maps sheets already identified, all map sheets which relate to the subject land are to be amended. This is to reflect either the inclusion or exclusion of land from the LGA.

3. Prior to undertaking public exhibition, Council is to amend the Objectives of the Planning Proposal to expand on the instances where a 'like for like' application of provisions would not occur. Instances include:
 (a) the minimum lot size for the Minmi Newcastle Link Road State Significant Site land to be transferred to Newcastle;
 (b) the portion of land on the northern exit of the Newcastle Link Road/ Minmi Road roundabout currently zoned E2 which is proposed to be zoned E4 in the Newcastle LEP 2012; and
 (c) the E2 zoned land at Glendale to be zoned R2.

4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 (a) the planning proposal must be made publicly available for 14 days; and
 (b) the relevant planning 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 and Infrastructure 2013).

5. 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 (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway Determination.

The Secretary's delegate should agree that the PP's inconsistency with s117 direction 2.1 Environment Protection Zones is of minor significance. However, this agreement should not extend to the portion of land on the northern exit of the Newcastle Link Road/ Minmi Road roundabout zoned E2 and proposed to be zoned E4. Council will need to seek the Secretary's agreement to the inconsistency or modify the PP such that the site would retain its current E2 zone.

Supporting Reasons : **Per this report.**

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Signature:

K. O'Flaherty

Printed Name:

KOFLAHERTY

Date:

23/10/14

