

Warners Bay Town Centre

Proposal Title : **Warners Bay Town Centre**

Proposal Summary : **The proposal applies to the Warners Bay town centre which is a deferred matter from the Lake Macquarie LEP 2014. The proposal seeks to have the draft Lake Macquarie LEP 2014 apply to the site, introducing equivalent land use zones and higher maximum building heights. Heritage, minimum lot size, flood planning and acid sulfate soil provisions from existing policies will also be transferred to the LEP.**

PP Number : **PP_2014_LAKEM_001_00** Dop File No : **14/13787**

Proposal Details

Date Proposal Lodged with DOP : **14-Aug-2014** Date Proposal Uploaded to Public Website : **02-Sep-2014**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **Mine Subsidence Board
NSW Rural Fire Service
Transport for NSW - Roads and
Maritime Services**

Gateway Determination

Decision Date : **05-Sep-2014** Gateway Determination : **Passed with Conditions**
Due Date of LEP : **12-Sep-2015**

Implementation

Implementation Start Date : **12-Sep-2014** Exhibition Duration : **43**

Agency consultation consistent with recommendation : **Yes**

If No, comment : **Consultation was required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:**

- **Mine Subsidence Board (S117 Direction 4.2 - Mine Subsidence and Unstable Land)**
- **NSW Rural Fire Service (S117 Direction 4.4 - Planning for Bushfire Protection)**
- **Transport for NSW - Roads and Maritime Services**

Council undertook consultation with the above agencies consistent with the Gateway.

Responses were received from Mine Subsidence Board and Roads and Maritime Services. Council advises that no submission was received from NSW Rural Fires Service.

Agency Objections : **No**

If Yes, comment : **There were no agency objections from the Mine Subsidence Board and Roads and Maritime Services.**

The Mine Subsidence Board advised Council that consideration and approval will be required for applications at the appropriate time.

The Roads and Maritime Services provided detailed comments relating to traffic signalling, intersection, road improvements and cycleways relevant to the town centre master plan and development control plan (DCP). No comments on the proposed Local Environmental Plan controls were received from the Roads and Maritime Services.

Council advises that no submission was received from Rural Fires Service. Consultation was required by the Gateway because a small area of bushfire vegetation buffer was identified on the site which triggered consultation requirements under Section 117 Direction 4.4. However, given the site has very limited bushfire risk, the lack of response from NSW Rural Fires Service is not considered to be an issue.

Documentation consistent with Gateway : **Yes**

If No, comment : **GATEWAY DETERMINATION**

On 5 September 2014 the General Manager – Hunter and Central Coast, as delegate of the Minister of Planning, determined that an amendment to the Lake Macquarie LEP 2014 to include deferred land at Warners Bay, should proceed subject to conditions. Council has complied with the Gateway conditions as follows:

As required by Gateway condition 1, Council complied with the notice requirements for public exhibition of planning proposals and placed the proposal on public exhibition for 40 days, meeting the Gateway requirement that the plan made publicly available for a minimum of 14 days.

As required by Gateway condition 2, Council undertook consultation as required with the Mine Subsidence Board , NSW Rural Fire Service and Transport for NSW - Roads and Maritime Services

Gateway condition 3 specified that a public hearing was not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act.

As required by Gateway condition 4, Council requested completion of the planning proposal on 3 June 2015, within the 12 month timeframe which required completion by 12 September 2015.

PARLIAMENTARY COUNSEL OPINION

A final PC Opinion was issued on 16 July 2015. There has been no change to the draft instrument since the PC opinion has been issued.

Council was consulted on the draft LEP pursuant to s.59(1) of the EP&A Act on 17 July 2015. Council responded on 20 July that it was satisfied that the draft LEP met the intention of the planning proposal.

PUBLIC PARTICIPATION

Council exhibited the planning proposal with a number of other documents including Warners Bay Town Centre Planning Framework, Town Centre Area Plan and Streetscape Master Plan.

Public exhibition was undertaken between 8 September 2014 and 20 October 2014 for a period of 40 days. Council advises a comprehensive consultation program was undertaken which included public notice in newspapers, letters to owners, community drop-in sessions, delivery of 4,200 information brochures and a website being set up.

Council received 58 written submissions. The following issues were raised as part of the community consultation process:

Issue: Building Height (46 submissions)

Building heights were the public's greatest interest, with 18 submissions specifically regarding John Street building heights. The remainder of the submissions raised general concerns such as the increase in building heights impacting on views and overshadowing, preference for taller buildings to be further away from the foreshore, and the possible change of character in the town centre.

Council advises that the proposed building heights in the area are consistent with the Lower Hunter Regional Strategy (LHRS) and Council's Lifestyle 2030 Strategy (LS2030). Both strategies aim to facilitate more housing within centres. Council advises that concerns of overshadowing were addressed by requiring levels to be 'stepped' to allow for increased solar access. Heights were also reduced to accommodate the market square concept. The proposed building height has been reduced to three storeys at 54 Charles Street in response to submissions. Building heights are only permitted up to 8 storeys in the lower northern end of the John Street Car Park due to its large central location.

Issue: Transport (40 submissions)

The community raised issues regarding loss of car parking, changes to traffic and intersections, and a need for attention to public transport and cycling facilities. In response, Council updated the town centre area to allow for improved bus facilities, improved cycling and pedestrian opportunities, and timed parallel parking along The Esplanade. No changes were made to the planning proposal.

Issue: Recreation (17 submissions)

Council advises that a majority of the submissions agreed with proposed footpath improvements, and a number of submissions were received suggesting ideas to improve the foreshore domain. Council advises that additional upgrades and improvements are outside the scope of the Warners Bay Foreshore Master Plan, but are covered in the Plan of Management adopted by Council in 2012. No changes were made to the planning proposal.

Issue: Changing Character (45 submissions)

Submissions raised concerns that increased development permitted would result in the town centres village character being changed or destroyed. Submissions also suggested that part of the current John Street car park, be turned into an open plaza.

Council revised the final planning proposal makes provisions to include a new Market Square plaza on part of the John Street car park.

Issue: Process (16 submissions)

Some submissions indicated that the consultation process was inadequate and/or that suggestions were being disregarded. It is considered that Council undertook a consultation process that far exceeded requirements of the Gateway determination.

In addition to public notification, Council also undertook three community drop in sessions, launched a dedicated website, and distributed 4,200 information

brochures.

PUBLIC HEARING

The Gateway Determination did not require a public hearing to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act.

PLAN MAKING DELEGATIONS

On 5 September 2014, Lake Macquarie City Council was issued with authorisation to exercise the Minister's functions under section 59.

Due to a post exhibition change, Council requested the Department review the amended planning proposal prior to using its section 59 delegations. The Department advised on 1 June 2015 that the changes to the planning proposal PP_2014_LAKEM_001_00 were not considered substantial. However, as Council owned part of the land, to avoid any perceived conflicts of interest, it should not to exercise functions under section 59 and request the Department make the plan. Council were also advised that it should consider re-exhibition of the proposal in the event it elected to use its section 59 delegations.

Lake Macquarie City Council advised on 2 June 2015 that it will not exercise delegation under section 59 as authorised by the Department. Council forwarded the final planning proposal to the Department, and requested that the Minister make the plan.

CHANGES MADE TO THE PLANNING PROPOSAL AFTER EXHIBITION

Lake Macquarie City Council revised the maximum height of buildings in the planning proposal PP_2014_LAKEM_001_00 after public exhibition. The changes in building heights mainly affect the Council owned part of the John Street car park where maximum heights were reduced down from 22m most areas to accommodate a concept for a market square. Maximum building heights were increased for one area of the car park from 22m to 33m.

The changes to the maximum building heights for most areas of the town centre were in response to public submissions regarding building heights and to incorporate a market square. Many submission raised concern with the impact that increases in height for this part of Warners Bay town centre would have on street amenity in the John Street car park area. 12 responses also suggested a market square could activate the edges John Street car park.

In response to these submissions, Council identified part of the John Street car park as suitable for a market square. Council advises the location was identified to support efficient pedestrian linkages and to maximise solar access. Council is the owner of part of this site. The maximum building heights of adjoining sites were also reduced to allow increased solar access into the market square.

The maximum building heights were increased in one area from 22m to 33m. This change occurred after Council discussed the economic feasibility with the Urban Development Institute of Australia and the Department's Research and Analysis Branch (using information derived from the urban feasibility model). The Research and Analysis Branch advised that planning controls and market factors were right for development in the R3 Medium Density Zone surrounding the centre, but current market sales are too low to encourage redevelopment within the town centre B2 zone.

Based on these discussions, Council commissioned a feasibility report by consultants to provide specific advice about the proposed planning controls for Warner's Bay town centre. The report made suggestions on a number of planning

controls relevant to Council's Development Control Plan, but also identified that allowing an additional two storeys for residential development in the B2 zone could result in greater redevelopment feasibility in the short to medium term.

The post exhibition changes balance the need to have short to medium term redevelopment feasibility with the community concerns regarding heights and desire for a market square. The redevelopment potential of the John Street car park has been reduced overall, and in this context it is considered that the changes to the planning proposal PP_2014_LAKEM_001_00 are not substantial to warrant re-exhibition. Although the increase in heights for one development site from 22m to 33m (6 to 8 storeys) which Council owns creates a perceived conflict of interest, the perceived conflict of interest is removed by the Department undertaken final assessment of the planning proposal.

Community concerns regarding heights and overshadowing for areas of the site with the remaining higher building heights are addressed by a range of controls. This includes maintaining setbacks for upper levels which will reduce bulk and scale of buildings. It is also considered that SEPP 65 can adequately control issues surrounding building amenity and form. Council's DCP 'Warners Bay Town Centre Area Plan' contains extensive controls to ensure high the amenity of Warners Bay is increased, and clear visual connections with the lake are maintained.

The post exhibition changes are also considered minimal, in that the main intent of the proposal is to have the draft Lake Macquarie LEP 2014 apply to the deferred site, by introducing equivalent land use zones and higher maximum building heights, as well as transferring heritage, minimum lot size, flood planning and acid sulfate soil provisions from existing policies.

The recent Land and Environment Court Case decision on the invalidity of the Department's Northern Region North Lismore Plateau amendment (Ryan v The Minister for Planning [2015] NSWLEC 88) was considered when determining if further exhibition should be required. Warners Bay town centre is considered different in two important aspects to the North Lismore Plateau amendment in that:

- 1) the Department has drafted the plan as adopted by Council, and
- 2) the objective of the planning proposal to 'to amend Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) to bring the Warners Bay Town Centre "Deferred Matter" into the operation of LMLEP 2014' including to 'establishing appropriate building heights for development in the town centre ranging from 13 meters to 22 meters' has not substantially changed since Gateway determination and exhibition.

CONSISTENCY WITH STATE POLICIES AND S.117 DIRECTIONS

Direction 4.2 - Mine Subsidence and Unstable Land and Direction 4.4 - Planning for Bushfire Protection

Council undertook consultation with the Mine Subsidence Board (S117 Direction 4.2 - Mine Subsidence and Unstable Land) and NSW Rural Fire Service (S117 Direction 4.4 - Planning for Bushfire Protection) as required by the respective Section 117 Directions. As no objection or comments requiring changes to the proposal were received, the planning proposal is considered consistent with Section 117 Directions 4.2 - Mine Subsidence and Unstable Land and 4.4 - Planning for Bushfire Protection.

Direction 4.3 Flood Prone Land

Council was advised as part of the Gateway determination on 5 September 2014 that further approval may be required in relation to Direction 4.3 Flood Prone

Land. Council were also requested to update the planning proposal prior to exhibition to explain to the community how expected increases in flood could be managed given parts of Warners Bay were identified as being subject to sea level rise.

Council updated the planning proposal to provide further explanation that only one lot that is identified as being subject to flooding will be rezoned, and that other flood identified areas will be subject to maximum height of building changes from 4 to 6 storeys. Council argues that the changes in heights are minimal, and will enable redevelopment of buildings that will meet minimum floor requirements.

The NSW Government's 2005 Floodplain Development Manual seeks to allow new development in flood affected areas, provided the risk is adequately assessed and managed. Clause 7.3 Flood Planning of the Lake Macquarie LEP 2014 applies to the sites affected by flooding. It is considered that any flood risk can be adequately assessed and managed during development assessment consistent with the Floodplain Development Manual.

After the considering the above, the General Manager - Hunter and Central Coast determined on 1 June 2015 that the planning proposal's inconsistency with Section 117 Direction 4.3 Flood Prone is of minor significance.

LEP Assessment

Date Received from RPA : **03-Jun-2015**

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : **14-Jul-2015**

Determination Date :

Determination Decision :

Notification Date :