

**City Strategy Committee Meeting
7 March 2011**

11STRAT008 Adoption of Draft Amendment 53 to Lake Macquarie Local Environmental Plan 2004 - East Charlestown Bypass - Stage One

Council Ref: RZ/1/2007 - D02010368
Report By: Strategic Planner - Angel Troke

Précis:

Draft Amendment No. 53 seeks to amend the Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) by rezoning and removing the acquisition status of land along the East Charlestown Bypass corridor, except for land between Dudley Road and Oakdale Road. The draft Amendment was placed on public exhibition from 20 October 2010 until 30 November 2010. Council received seven submissions during exhibition.

This report outlines the outcomes of the public exhibition process and recommends that Council endorse the Amendment.

Due to changes to the *Environmental Planning and Assessment Act 1979*, the draft Amendment must be converted to a Planning Proposal, and submitted to the Department of Planning (DoP) for Gateway determination. The Gateway will advise Council on how to proceed with the Planning Proposal. Council staff will request that the Gateway Determination recognise the consultation and public exhibition that has already occurred for this amendment and request that the amendment proceed to finalisation.

Recommendation:

Council:

- A. Notes the issues raised during public exhibition and endorses the Planning Proposal – Draft Amendment No. 53 to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) – East Charlestown Bypass (Stage One), as contained in Attachment 1.
- B. Requests a Gateway Determination from the Department of Planning in relation to the Planning Proposal contained in Attachment 1.
- C. Requests the Department of Planning to recognise the consultation and exhibition process already undertaken and for the Minister to make the local environmental plan pursuant to section 59 of the *Environmental Planning and Assessment Act 1979*.
- D. Notifies those who made submissions during exhibition of draft Amendment No. 53 to LMLEP 2004 of Council's and the Minister's decision.
- E. Places a public notice of the Minister's decision in local newspapers.
- F. Notifies landowners of Council's and the Minister's decision.

Background:

The East Charlestown Bypass proposal was developed in the 1950's and was part of the planning for the Sydney-Newcastle Freeway, initially proposed for the eastern side of Lake Macquarie. Since construction of the F3 Freeway, the need for the East Charlestown Bypass was reduced. In September 2006, the Minister for Roads officially abandoned the East Charlestown Bypass. In 2007, the Roads and Traffic Authority (RTA)

City Strategy Committee Meeting 7 March 2011

advised that the corridor was not required for a state road or any other known infrastructure. The RTA and the DoP subsequently instructed Council to remove the road reservation and acquisition status from LMLEP 2004.

Draft Amendment No. 53 seeks to rezone and remove the acquisition status for Stage One of the former route of the East Charlestown Bypass. The land incorporated in Stage One consists of land north of Dudley Road, Whitebridge and south of Oakdale Road, Gateshead.

Council has not yet initiated Stage Two, which will be a separate LEP amendment and comprise the corridor between Dudley Road and Oakdale Road including a 'Deferred Matter' site south of Whitebridge. The reason for proceeding in two stages is to allow the complex issues associated with Stage Two land to be addressed in an in-depth local environmental study (LES), and to allow the remaining corridor (Stage One) to be rezoned with minimal delay.

An environmental review has been prepared for Stage One of the East Charlestown Bypass rezoning. This review determined the most appropriate land use zones for the corridor, which largely comprise conservation zones to protect native vegetation and coastal wetlands. Residential and commercial zones are proposed in the Whitebridge section of the East Charlestown Bypass. This will increase development potential in the Whitebridge area, and the zones proposed are similar to the adjoining zones. A small area of 6(2) Tourism and Recreation zone is proposed near Redhead, which is in line with the adjoining zone.

At its meeting on 11 October 2010, Council resolved to place draft Amendment No. 53 on public exhibition (10STRAT035). The draft Amendment was exhibited from 20 October 2010 until 30 November 2010. Council received seven submissions during the exhibition period. Based on the submissions received, some minor changes are proposed. As these changes are minor, re-exhibition is not considered warranted.

Proposal:

It is proposed that Council notes the issues raised during the public exhibition and endorse the Planning Proposal included as Attachment 1.

The Planning Proposal will rezone stage one of the East Charlestown Bypass corridor from 5 Infrastructure zone to 2(1) Residential, 2(2) Residential (Urban Living), 3(1) Urban Centre (Core), 6(2) Tourism and Recreation, 7(1) Conservation (Primary), 7(2) Conservation (Secondary) and 7(3) Environmental (General) zones.

The area of each zone is outlined below:

Proposed Zone	Area (ha)
2(1) Residential	1.48
2(2) Residential (Urban Living)	3.1
3(1) Urban Centre (Core)	0.18
6(2) Tourism and Recreation	2.7
7(1) Conservation (Primary)	13.66
7(2) Conservation (Secondary)	69.74

City Strategy Committee Meeting 7 March 2011

7 (3) Environmental (General)

30.31

Following exhibition, the Planning Proposal has been amended to allow low density residential development at 42 Lonus Avenue, Whitebridge and to increase the extent of the residential zone at 50 Lonus Avenue, Whitebridge. Site investigations revealed that the vegetation was degraded on these properties and the 2(1) Residential zone would be appropriate.

Consultation:

Internal Consultation

Consultation has taken place with staff from the following departments to assist with evaluating options and prepare a draft LEP that addresses the issues associated with the site:

- Asset Management
- Community Planning
- Development Assessment and Compliance
- Economic Development
- Sustainability

Zones were determined with the assistance of these departments and no objections were raised.

Consultation with government agencies

Consultation with key government agencies was undertaken pursuant to the former provisions of section 62 of the *EP&A Act 1979*, and during public exhibition. Comments received during the section 62 consultation phase were considered, with any issues resolved prior to the exhibition period. Authorities consulted under section 62 of the *EP&A Act 1979*, were also notified of the public exhibition period and invited to make a submission. Comments received from government agencies during exhibition are outlined below and relevant comments have been incorporated into the Planning Proposal in Attachment 1.

Roads and Traffic Authority

The RTA had no objection from an operational position. However, from a property disposal position, the RTA sought clarification that two lots owned by the RTA off Lonus Avenue, Whitebridge could be developed for a dwelling with a right of way for access coming through another RTA owned property to the north. These lots would have a Residential 2(1) zone applied over part of their area and a 7(2) Conservation (Secondary) over the majority of the remaining lot.

Planning Comment:

Council's Chief Subdivision Engineer has commented that a right of carriageway could be created over these lots and they could be developed accordingly.

Rural Fire Service (RFS)

The RFS provided advice regarding the need to ensure future development obtains good outcomes for bush fire protection and address the landowners' responsibility under the *Rural Fires Act*. The RFS advised that whilst bush fire protection measures will be

City Strategy Committee Meeting 7 March 2011

addressed at development stage, the bush fire risk needs to be considered at the rezoning stage so a realistic development expectation and concept plan can be designed.

Planning Comment:

The draft Amendment proposes to rezone areas of the East Charlestown Bypass corridor from 5 Infrastructure Zone to conservation, residential, tourism, and commercial zones. The rezoning will not increase the risk of bushfire to nearby urban areas, as the hazard already exists. Where the draft Amendment proposes to expand existing residential and commercial zones in the Whitebridge area, it is considered that sufficient land is available to accommodate asset protection zones in accordance with Planning for Bushfire Protection 2006 and further assessment would occur at the development assessment stage.

Department of Industry and Investment

The submission by the Department of Industry and Investment advised Council of contamination issues on part Lot 23 DP 709388 located south of Kalaroo Road near the Fernleigh Track Crossing. The Derelict Mines Program of Industry & Investment NSW commissioned a Radiation Survey Report of the former Mineral Sand Mine, which is now part of the Belmont Wetlands State Park and adjoins the Fernleigh track. The report found that there were elevated levels of naturally occurring radioactive material.

Planning Comment:

Assessments undertaken on behalf of the Department of Industry and Investment indicate that potential exposure from external radiation hazards for the proposed recreation use, are below the national dose limits for members of the public. The affected area is being rezoned to conservation and this will not increase the exposure to the community.

Transport NSW

Transport NSW reiterated earlier advice regarding the need to support existing transport networks and advised that areas at Whitebridge are within 400m of public transport services, and that the nature and density of the development in these areas should take advantage of, and support the public transport service.

Planning Comment:

Both low and medium density residential as well as commercial zones are proposed at Whitebridge and a small increase in the recreational and tourism zoned land at Redhead. These locations are within walking distances to bus services. Future development of these areas will support the existing public transport service.

Public Exhibition

The draft Amendment was placed on public exhibition from 20 October 2010 to 30 November 2010 with all owners and adjoining landowners notified. Council received three submissions from members of the public. A small number of mapping changes have been made based on submissions. These changes relate to the zoning for 42 Lonus Avenue and 50 Lonus Avenue, Whitebridge.

Objection - Proposed 2(2) Residential (Urban Living) zone at Whitebridge

An adjoining landowner objected to the proposed 2(2) Residential (Urban Living) zone at Whitebridge believing that this zoning was disadvantageous to the community and objected to the density of development proposed by Council. They requested Council

City Strategy Committee Meeting 7 March 2011

consider rezoning this area to 7(2) Conservation (Secondary) to protect the vegetation and preserve this corridor.

Planning Comment:

The proposal aims to balance conservation with the need to accommodate additional residential development in existing urban areas that have access to services, employment, transport, and infrastructure.

The draft Amendment proposes to rezone the majority of land in the former East Charlestown Bypass Corridor to a conservation zone, with only small areas zoned for low and medium density residential development close to the Whitebridge local shops.

The land south-east of the objector's property is proposed to be rezoned 7(2) Conservation (Secondary) Zone and 2(2) Residential (Urban Living) Zone. The proposed 7(2) Zone has a width of at least 20 metres and will act as a vegetation corridor and ensure a continued high level of amenity to current and future residents and users of the Fernleigh Track. The proposed 2(2) Residential (Urban Living) Zone is an extension of the current zone for properties fronting Lonus Avenue.

The proposed 2(2) Residential (Urban Living) zone is within walking distance to shops, medical services, transport, recreation, and education facilities. The area is therefore ideal for accommodating additional residential development. 'Infill' development such as this reduces the pressure on 'greenfield' areas where land clearing is often required and access to services is poor. The proposal is consistent with Council's Lifestyle 2020 Strategy and the Department of Planning's Lower Hunter Regional Strategy.

Objection - Proposed 3(1) Urban Centre (Core) zone at Whitebridge

The owner of the Food Works business objected to the proposed 3(1) Urban Centre (Core) zone to the east of the existing 3(1) Urban Centre (Core) zoned area on the basis that the proposed commercial area is too large. Concerns were raised that more development will worsen car parking and traffic access/egress issues with the area to be rezoned currently being utilised for informal car parking. The objection noted that there is a need for a small council car park of approximately 30 spaces to cater for the demand of the Whitebridge local shops as well as those utilising the Fernleigh track. It was also noted in the submission that there is currently undeveloped commercial space in the area and questioned the demand for further commercial land given the current developments in Charlestown. The submission suggested alternative uses such as a conservation zone or the creation of a park in this area.

Planning Comment:

The proposed 3(1) Urban Centre (Core) zone was identified in consultation with the Manager of Economic Development and is relatively small (0.18ha). The Manager of Economic Development commented that: "Whitebridge plays a vital role as a local shopping centre and is adjacent to the Fernleigh track which will play an increasingly important role from a tourism and recreational tourism perspective and may in the long term also create demand for other commercial outlets."

Any new commercial development will need to include car parking spaces in accordance with DCP No.1. Car parking for the Fernleigh Track is currently provided off Station Street on the northern side of the track with direct access to the track.

City Strategy Committee Meeting 7 March 2011

Objection to 7(2) Conservation (Secondary) zoning

The owners of 42 and 50 Lonus Avenue, Whitebridge had concerns in relation to the proposed 7(2) Conservation (Secondary) zone on their land and requested a residential zone instead. The landowner of 42 Lonus Avenue has sought to construct a dwelling on the site but cannot due to the current and exhibited zones.

Planning Comment:

After reviewing the submission and undertaking a site inspection with Council's Environmental Planner, a 2(1) Residential Zone is considered appropriate for 42 Lonus Avenue, as the vegetation on this property is degraded, and historical aerial photography indicates clearing dates back to before 1960.

The site inspection of 50 Lonus Avenue revealed that the residential zone was located further east than the actual vegetation. The zone boundary has been changed to allow an extra 7m of 2(1) residential zone to the rear of 50 Lonus Avenue to better reflect the location of the vegetation.

Implications:

Policy Implications:

Lake Macquarie LEP 2004

The draft Amendment seeks to rezone land from 5 Infrastructure Zone to conservation, residential, commercial and tourism and recreational zones as indicated in Attachment 1. It also removes the RTA's acquisition liability from land within the East Charlestown Bypass corridor.

Lifestyle 2020 Strategy

The draft Amendment is consistent with the aims and objectives of Council's Lifestyle 2020 Strategy. The draft Amendment will protect valuable environmental assets including native vegetation and wetlands. Council's Lifestyle 2020 also encourages development in existing urban areas close to transport services and employment centres. The draft Amendment facilitates additional low and medium density housing and commercial development in Whitebridge close to existing community services and infrastructure.

Biodiversity Planning Policy

Council adopted the Biodiversity Planning Policy for LEP amendments on 27 July 2009 (08STRAT067). It is considered that the proposed zones are consistent with this policy. The zone boundaries will provide areas that will sufficiently maintain the ecological function of the area and ensure important natural ecosystems and biodiversity are maintained, with the majority of the corridor being zoned for conservation purposes.

Lower Hunter Regional Strategy (LHRS)

The draft Amendment is consistent with the LHRS as it will provide additional low and medium density residential development opportunities in the existing urban area of Whitebridge, thereby helping to achieve the State Government's target for infill development. In accordance with the LHRS, the draft Amendment protects native vegetation for its biodiversity and conservation value.

State Environmental Planning Policies (SEPPs)

Relevant SEPPs have been considered in the preparation of the draft Amendment (refer to Attachment 1). The draft Amendment is consistent with all relevant SEPPs.

City Strategy Committee Meeting 7 March 2011

Section 117(2) Ministerial Directions

Pursuant to section 117(2) of the *EP&A Act 1979*, relevant Ministerial Directions have been considered in the preparation of the draft Amendment (refer to Attachment 1). The draft Amendment is consistent with the relevant Ministerial Directions.

Environmental Implications:

The environmental impacts of the draft Amendment have been examined through the preparation of an environmental review.

The draft Amendment will provide greater protection to parts of Glenrock State Conservation Area and will have positive outcomes for the Belmont Wetlands State Park and Council's proposed Coastal Wetlands Park. Jewells and Redhead wetlands, which are located within the East Charlestown Bypass corridor, are key elements of the proposed Coastal Wetlands Park. No environmental issues were raised during the exhibition stage.

Social Implications:

Rezoning of the East Charlestown Bypass corridor will provide greater certainty to affected landowners, particularly those in the Whitebridge area. It will protect the amenity of the Fernleigh Track, having positive implications for the lifestyle of Lake Macquarie residents.

Some concerns were raised in the exhibition period regarding the proposed increase in commercial and medium density residential zoned land adjoining the Whitebridge neighbourhood shops. However, increased development around an existing local centre is supported by the principles of Council's Lifestyle 2020 Strategy and the Lower Hunter Regional Strategy, which encourages infill development close to existing services and infrastructure.

Financial Implications:

There will be no specific financial implications for Council apart from use of staff resources in finalising the draft Amendment. The Planning Proposal will remove the RTA's liability to acquire land that is no longer required for the purpose of a road.

Risk and Insurance Implications:

The level of risk attached to the preparation of a draft LEP is minimised through following due process as established by the *EP&A Act 1979*, and the *Environmental Planning and Assessment Regulation 2000*. Council's procedure for amending local environmental plans reinforce the statutory process. Consultation with government agencies and other stakeholders has occurred in accordance the *EP&A Act 1979*, and the public has had the opportunity to comment on the draft LEP. Council's professional indemnity insurance coverage includes draft LEP preparation as a standard activity.

Options:

1. Council resolves to endorse the Planning Proposal (draft Amendment No. 53 of LMLEP 2004), including the amendments following the exhibition as contained in Attachment 1 and undertake the necessary steps for the plan to be finalised. This is the recommended option.
2. Council resolve to not continue with the Planning Proposal (draft Amendment No. 53 of LMLEP 2004). This option is not recommended, as the Roads and Traffic Authority and the Department of Planning have requested that Council rezone the corridor and remove the acquisition requirement.

**City Strategy Committee Meeting
7 March 2011**

Conclusion:

Draft Amendment No. 53 to LMLEP 2004 seeks to rezone and remove the acquisition requirements for part of the former East Charlestown Bypass corridor. Seven submissions were received during the exhibition period and a minor change to increase the 2(1) Residential zone at two properties at Whitebridge is proposed. It is recommended that Council resolve to continue support draft Amendment No. 53 and request a Gateway Determination and finalisation of the plan by the Minister for Planning.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. Planning Proposal - Amendment 53 to LMLEP 2004 - East
Charlestown Bypass | D02043224 |
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