

**07STRAT69 Draft Amendment to Lake Macquarie LEP 2004 – Zone 10
Investigation Zone Land at North Edgeworth**

Folder No: F2005/02401
Report By: Strategic Planner - Matthew Hill - Ext. 1498

Submission and Committee's Recommendation:

No. 4

Council:

- A. Prepares a draft amendment to Lake Macquarie Local Environmental Plan 2004 to rezone Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lots 1 & 2 DP 1011589, Lot 2 DP 1077447, Lot 40 DP 701642, Lot 27 DP 202567, Lots 1 & 2 DP 250063, part of Lot 1 DP 848856, part of Lot 3 DP 877349, and part of Lot 521 DP 749074 (see Appendix A and B) from 10 Investigation Zone and 5 Infrastructure Zone to appropriate zones to support urban development and conservation, in accordance with the Environmental Planning and Assessment (EP&A) Act 1979.
- B. Notifies the NSW Department of Planning of Council's decision in accordance with the provisions of the EP&A Act 1979.
- C. Recommends that a Local Environmental Study be prepared in order to determine the appropriate distribution of land use zones for the subject land.
- D. Undertakes consultation with State Government agencies and service authorities in accordance with Section 62 of the EP&A Act 1979.
- E. Notifies the proponents of the progress of the proposal accordingly.

ADOPTED

26 NOV 2007

**07/STRAT Draft Amendment to Lake Macquarie LEP 2004 – Zone 10
Investigation Zone Land at North Edgeworth**

Folder No: F2005/02401
Report By: Strategic Planner - Matthew Hill - Ext. 1498

Précis:

Council has received proposals from a variety of landowners seeking to rezone various lots at North Edgeworth. These allotments are adjoining, and are contained within a larger 10 Investigation Zone area under Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004). The subject land is also crossed by a 5 Infrastructure Zone corridor (see Appendix B).

To avoid fragmented land release, it is proposed that the subject area be rezoned from 10 Investigation Zone and 5 Infrastructure Zone to a variety of urban land use zones, to accommodate continued regional growth. If Council resolves to support the preparation of the draft amendment to LMLEP 2004, formal investigations of the land will be undertaken, which will inform the distribution of land use zones within the subject land area.

Recommendation:

Council:

- A. Prepares a draft amendment to Lake Macquarie Local Environmental Plan 2004 to rezone Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lots 1 & 2 DP 1011589, Lot 2 DP 1077447, Lot 40 DP 701642, Lot 27 DP 202567, Lots 1 & 2 DP 250063, part of Lot 1 DP 848856, part of Lot 3 DP 877349, and part of Lot 521 DP 749074 (see Appendix A and B) from 10 Investigation Zone and 5 Infrastructure Zone to appropriate zones to support urban development and conservation, in accordance with the Environmental Planning and Assessment (EP&A) Act 1979.
- B. Notifies the NSW Department of Planning of Council's decision in accordance with the provisions of the EP&A Act 1979.
- C. Recommends that a Local Environmental Study be prepared in order to determine the appropriate distribution of land use zones for the subject land.
- D. Undertakes consultation with State Government agencies and service authorities in accordance with Section 62 of the EP&A Act 1979.
- E. Notifies the proponents of the progress of the proposal accordingly.

Background:

Council has received rezoning proposals from Australand (on behalf of Xstrata), CSR Monier Holdings, Jubilee Projects, and Edgeworth Developments. The four proponents represent an area of 106.0 hectares. There is an additional 18.2 hectares of Zone 10 Investigation land in this area, resulting in a total subject area of 124 hectares (see Appendix A).

The rezoning of the land has been the subject of considerable discussions over recent months between the proponents, Council staff and the Department of Planning (DoP). Council staff and DoP have advised the proponents that it is not

appropriate to process rezonings for any of the sites in isolation due to the fragmented release of land that would result. It is essential that the entire land is considered together to ensure that the land use and infrastructure issues are addressed in a sound manner.

From late 2006 to early 2007 the proponents considered the merits of requesting the Minister for Planning to accept the proposal as a major project to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979). This was mainly due to the Xstrata owned land traversing two local government areas. Council staff were eventually informed in May 2007 that one of the proponents, representing the majority landholder, had withdrawn from the Part 3A proposal.

Since that time, Council staff have liaised with the proponents and DoP with a view to progressing the rezoning. This included exploring options for preparing a structure plan for the area. The DoP has advised that the most appropriate approach is to seek Council's resolution to rezone the land and incorporate the requirements of a structure plan within a detailed Local Environmental Study (LES). Each proponent has now indicated a willingness to contribute to an LES as part of a Council managed rezoning process. The contributions made by each proponent will be apportioned according to the studies required for their land. Other land owners within the Zone 10 Investigation area will also be approached to participate in the process.

The subject land is largely vegetated and is adjoined by Zone 7(2) Conservation (Secondary) land to the north, with the remainder of land being bound primarily by urban development. The land provides an opportunity for significant urban infill development, and development of the area is likely to support the emerging major centre at Glendale-Cardiff. The implementation of appropriate land use zones will provide for appropriate and sustainable development, meeting the needs of the community in terms of housing, access to services and facilities, as well as maintaining ecologically valuable land and links between conservation areas.

The subject land is located adjacent to land that is under investigation for other significant land development through the Part 3A process of the EP&A Act. Land immediately to the north forms part of the proposal by Coal & Allied to provide up to 6,000 dwelling units in the Lower Hunter. This land extends into the Newcastle Local Government Area (LGA) and includes the township of Minmi. Land immediately to the northeast, also within Newcastle LGA, is understood to be under investigation for future urban development. Whilst these proposals will not be determined by Council, the rezoning of the subject land will need to address future linkages and settlement patterns likely to result from this future development of the region. Future studies associated with the rezoning will need to assess these issues and Newcastle City Council will be a key stakeholder in the planning process.

Proposal:

The proposal seeks to rezone Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lots 1 & 2 DP 1011589, Lot 2 DP 1077447, Lot 40 DP 701642, Lot 27 DP 202567, Lots 1 & 2 DP 250063, part of Lot 1 DP 848856, part of Lot 3 DP 877349, and part of Lot 521 DP 749074, from 10 Investigation Zone and 5 Infrastructure Zone, to a mixture of land use zones that will support continued growth within the North Edgeworth area, as well as the Lake Macquarie LGA as a whole. The subject site is 124 hectares in area, with the largest allotment of land contained within the subject site extending well into the Newcastle LGA. As a result, consultation with Newcastle City Council and DoP will be required to ensure that consistent and effective land use outcomes are produced on the subject land.

An extensive study of the site and its surrounds will be required to ensure that land use zones are positioned to facilitate appropriate and sustainable development. The investigations will need to consider the relationship between land use within the Lake Macquarie and Newcastle LGAs, including consistency of land use and the effective linkage of infrastructure.

Consultation:

Council's Rezoning Assessment Panel determined that the proposals received have merit. However, to avoid fragmented land release, the rezoning process is to occur simultaneously for all of the land within the 10 Investigation Zone area. Preliminary consultation has also occurred with various Council departments including Environmental Systems, Asset Management, Community Planning, and Economic Development. As a result of this consultation, it has been determined that a detailed LES will be required to determine the appropriate distribution of land use zones, the implementation of infrastructure links, and the establishment of green corridors for conservation and water quality purposes.

In considering the preliminary proposal, DoP and Newcastle City Council have been consulted. Ongoing involvement from DoP and Newcastle City Council will be required to ensure that land use zones are positioned appropriately considering the cross-boundary nature of the site.

If Council resolves to prepare a draft amendment to LMLEP 2004, formal consultation will occur pursuant to Section 62 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979). The State government agencies and service authorities that will be consulted during this process are:

Department of Planning	NSW Rural Fire Service
Department of Lands	Mine Subsidence Board
Department of Environment and Climate Change	Department of Primary Industries
Department of Water and Energy	Ministry of Transport
Roads and Traffic Authority	Hunter Water
Heritage Office	Energy Australia
Hunter Central Rivers Catchment Management Authority	Newcastle City Council
AGL	State Member for Wallsend
Awabakal Local Aboriginal Land Council	State Member for Cessnock
Department of Education	

Neighbouring residents, community interest groups, environmental lobby groups and other community members will have the opportunity to comment on the draft amendment during the public exhibition period.

Implications:

Policy Implications:

Lake Macquarie LEP 2004

Upon gazettal, the proposed draft amendment will result in the land use zones applying to the site being changed from 10 Investigation Zone and 5 Infrastructure Zone to a variety of land use zones that will accommodate appropriate urban development as determined by the detailed investigations to be undertaken on the site.

Lifestyle 2020 Strategy

The draft amendment will provide consistency with the strategic direction set by the Lifestyle 2020 Strategy. The site is capable of supporting the establishment of urban development, including the provision of services and facilities and public open space, while also maintaining ecologically valuable land and links.

Lower Hunter Regional Strategy 2006

The Lower Hunter Regional Strategy identifies Glendale-Cardiff as an emerging major regional centre. The draft amendment will provide the release of land for urban development, which will support continued growth in the area.

Hunter Regional Environmental Plan 1989

The preparation of the draft amendment will take into consideration the provisions of the Hunter Regional Environmental Plan 1989 in terms of ensuring that balanced and sustainable development is facilitated by the distribution of land use zones, and land is utilised efficiently.

State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) that have relevance in the preparation of the draft amendment have been determined and identified below:

SEPP 11 – Traffic Generating Developments	SEPP 55 – Remediation of Land
SEPP 19 – Bushland in Urban Areas	SEPP (Housing for Seniors or People with a Disability) 2004
SEPP 44 – Koala Habitat Protection	Draft SEPP 66 – Integration of Land Use and Transport

The requirements of these SEPPs have been examined (see Appendix C).

Section 117 Directions

On 14 June 2007, the Minister for Planning made changes to the Section 117(2) Ministerial Directions that Council is required to comply with. Ministerial Directions that have relevance to the preparation of the draft amendment have been determined and identified below:

1.1 Business and Industrial Zones	3.4 Integrating Land Use and Transport
1.3 Mining, Petroleum Production and Extractive Industries	4.1 Acid Sulfate Soils
2.1 Environmental Protection Zones	4.2 Mine Subsidence and Unstable Land
2.3 Heritage Conservation	4.3 Flood Prone Land
2.4 Recreation Vehicle Areas	4.4 Planning for Bushfire Protection

3.1 Residential Zones	5.1 Implementation of Regional Strategies
3.2 Caravan Parks and Manufactured Home Estates	6.1 Approval and Referral Requirements
3.3 Home Occupations	6.2 Rezoning Land for Public Purposes

The requirements of these Ministerial Directions have been examined (see Appendix C).

Environmental Implications:

The site comprises approximately 124 hectares of land with a variety of development constraints including topographic constraints, and potential ecologically valuable areas. It is proposed that the rezoning of land will incorporate conservation of sensitive areas within the site, in order to maintain regional biodiversity. Conservation of riparian areas, ecologically valuable land, and linkages between these conserved areas will support the maintenance of biodiversity within the area, and contribute to minimising the impact of urban development on water quality.

An existing report relating to the site has identified the presence of the endangered ecological community – Lower Hunter Spotted Gum – Iron Bark Forest. As such, the Director-General of National Parks and Wildlife will be consulted to obtain requirements in relation to the rezoning proposal.

Social Implications:

The proposed land use within the site will include the supply of land for community purposes and recreation. Land use provisions will also ensure that adequate housing options and access to services and facilities are provided. Further investigations and consultation regarding the social impact of the rezoning will address matters relating to access to public transport, the provision of open space and employment opportunities, as well as access to services and facilities.

Financial Implications:

The draft amendment will be conducted in accordance with Council's adopted three-phase rezoning process. Each proponent will contribute funds towards the preparation of the draft amendment and the required studies. It is proposed that the remaining land within the subject 10 Investigation Zone area also be rezoned in order to address the entire area within a single draft amendment.

Risk and Insurance Implications:

The provisions of the EP&A Act 1979 and Council's internal procedures govern the local environmental plan amendment process. Risks associated with the preparation of a draft amendment to LMLEP 2004 will be alleviated by following these statutory and policy provisions.

Options:

The options available to Council are:

1. To support the preparation of a draft amendment to LMLEP 2004 to rezone Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lots 1 & 2 DP 1011589, Lot 2 DP 1077447, Lot 40 DP 701642, Lot 27 DP 202567, Lots 1 & 2 DP 250063, part of Lot 1 DP 848856, part of Lot 3 DP 877349, and part of Lot 521 DP 749074, from 10 Investigation Zone and 5

Infrastructure Zone to a combination of land use zones to support urban development of the land.

2. To not support the proposal and not prepare a draft amendment to LMLEP 2004 for the subject land.

Conclusion:

The site presents an opportunity to establish urban links within the North Edgeworth area, as well as to link existing urban areas within Lake Macquarie and Newcastle LGAs. The subject land is surrounded by existing and proposed future urban development. Although the site is largely vegetated, it presents an integral link in the urban fabric. The site is capable of supporting the establishment of urban development in a sustainable manner, while maintaining ecologically valuable land and ecological corridors, as well as providing public open space, and access to services and facilities.

Internal Doc No: D00981921

Appendix A Subject Land – 1 page

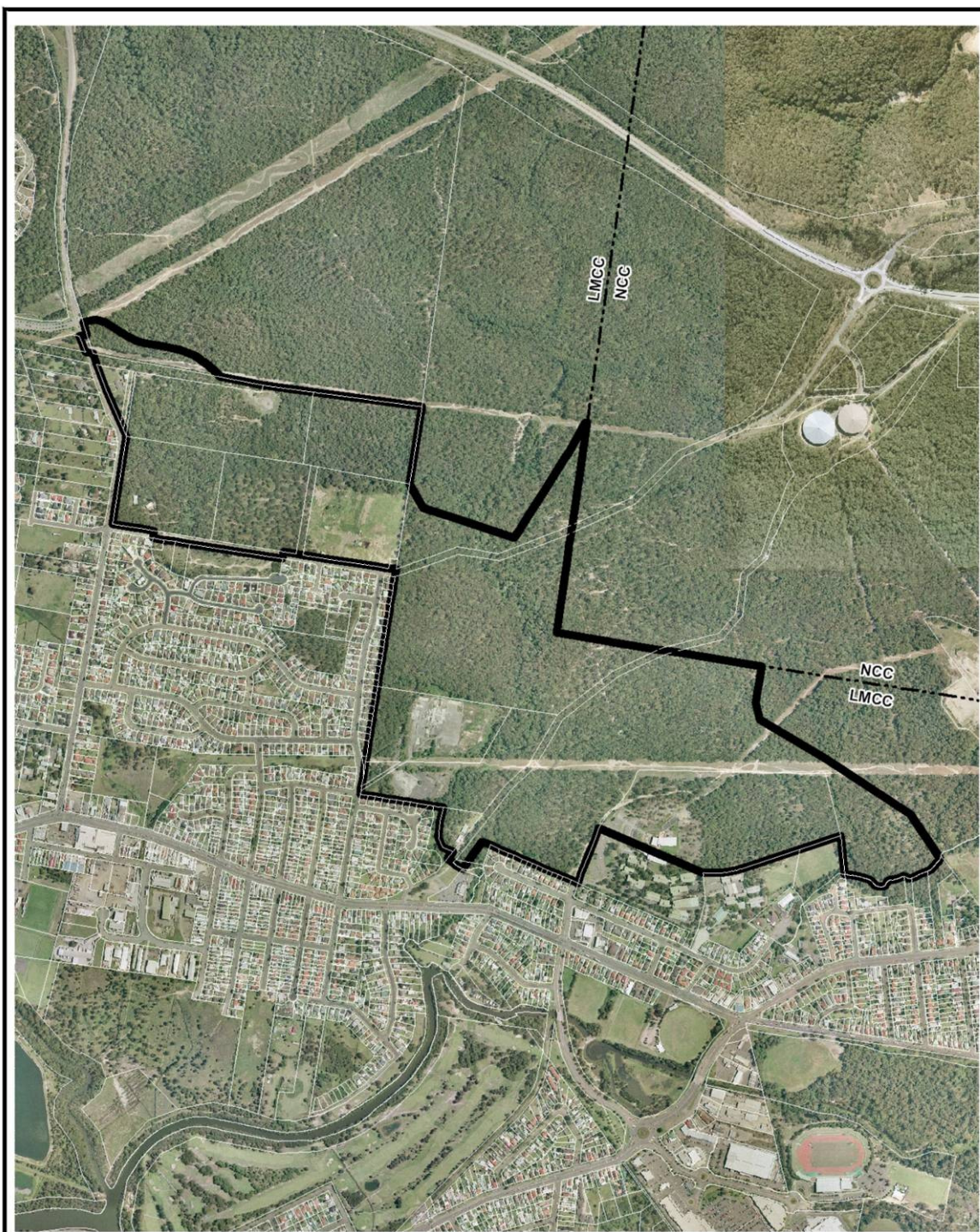
B Map and Aerial Photograph of the Subject Land – 2 pages

C SEPPs and Ministerial Directions Evaluation – 4 pages

Appendix A – Subject Land

Lot / DP	Area (Ha)	Owner	Representative
1/900356	6.25	Lyons & Fisher	Jubilee Projects
1/900357	9.14	Lyons & Fisher	Jubilee Projects
111/665948	6.81	Cahill	Jubilee Projects
1/921714	5.9	Marmulla	Jubilee Projects
1/921545	6.22	Evans	Jubilee Projects
1/1011589	6.49	CSR	CSR Monier Holdings
2/1011589	6.48	Edgeworth Developments	Edgeworth Developments
2/1077447	58.69	Xstrata Coal	Australand
40/701642	0.88	Wellings	Not Represented
27/202567	0.69	Bobeth	Not Represented
1/250063	0.17	Bobeth	Not Represented
2/250063	0.14	Bobeth	Not Represented
Part of 1/848856	13.99	Department of Education and Training	Not Represented
Part of 3/877349	2.1	Coal and Allied	Not Represented
Part of 521/749074	0.05	LMCC	Not Represented

[illegible]



CITY OF LAKE MACQUARIE
LOCALITY : EDGEWORTH



SUBJECT LAND

SKM 2007 AusImage Aerial Photography



PLANNING
OFFICER:

GH

DRAWN BY: MH

DATE: 17/10/2007

PROJECT: 2007/569

250 0 250
Metres

Appendix C – SEPPs and Ministerial Directions Evaluation

SEPP	Relevance	Implications
SEPP 11 – Traffic Generating Developments	Requires consultation with the Roads and Traffic Authority where development is deemed to be traffic generating.	The proposal is for the rezoning of land only. Despite this, the Roads and Traffic Authority will be consulted to determine infrastructure requirements.
SEPP 19 – Bushland in Urban Areas	Aims to prioritise the conservation of bushland in urban areas, and requires consideration of aims in preparing a draft amendment.	Riparian corridors and vegetated land deemed environmentally valuable will be conserved. This will be the subject of further investigations.
SEPP 44 – Koala Habitat Protection	Requires measures to be implemented where Koala habitat or potential Koala habitat is identified on the subject land.	Detailed investigations will be undertaken, which will determine the presence of Koala habitat or potential Koala habitat.
SEPP 55 – Remediation of Land	Requires the subject land to be suitable for its intended use in terms of the level of contamination, or where the land is unsuitable due to the level of contamination, remediation measures are required to ensure that the subject land is suitable for its intended use.	Investigation of contamination levels and any need for remediation of the land will occur, to inform any decision made in terms of land use.
SEPP (Housing for Seniors or People with a Disability) 2004	Enables the development of housing for seniors provided that specified criteria are met including topography, design, and access to services and facilities.	The release of land for urban purposes will result in SEPP (Housing for Seniors or People with a Disability) 2004 being relevant to much of the subject land.

Draft SEPP 66 – Integration of Land Use and Transport	Requires a draft amendment to further the aims and objectives of the policy, which include reducing travel distances, and the reliance on vehicles, as well as ensuring sufficient access to services and facilities.	A detailed environmental study will inform the suitable location of land use zones within the subject site. The site is positioned with access to the emerging regional centre of Glendale-Cardiff, as well as the centres at Edgeworth and Wallsend. The rezoning will include a variety of land use zones as deemed necessary by detailed investigations.
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Ministerial Direction	Relevance	Implications
1.1 – Business and Industrial Zones	Requires that business and industrial lands are maintained and that new zones are established in accordance with strategic policy directions.	The draft amendment may result in the establishment of new business or industrial zones within the subject area. Where this is required, it will be in accordance with the Lifestyle 2020 Strategy and Lower Hunter Regional Strategy.
1.3 – Mining, Petroleum and Extractive Industries	Requires consultation with the Director-General of the Department of Primary Industries where a draft LEP will restrict extractive resource operations.	The site has previously been subjected to mining operations. The Director-General will be consulted during the rezoning process to determine the suitability of the proposal.
2.1 – Environmental Protection Zones	The direction requires that a draft LEP contain provisions to facilitate the protection of environmentally sensitive land	Detailed investigations will be undertaken to determine areas of ecological value within the area. These areas, in conjunction with riparian corridors and ecological linkages will be conserved.
2.3 – Heritage Conservation	The direction requires that a draft LEP include provisions to facilitate the protection and conservation of aboriginal and European heritage items	Detailed investigations of the site will determine the location, and any required measures to facilitate the protection of identified heritage items.
2.4 – Recreation Vehicle	The direction restricts a draft LEP from enabling of	The draft LEP will not propose a recreation

Areas	a recreation vehicle area	vehicle area, and is consistent with the direction.
3.1 – Residential Zones	The direction requires a draft LEP to include provisions that facilitate housing choice, efficient use of infrastructure, and reduce land consumption on the urban fringe.	The site provides a link between existing urban areas. The draft amendment will meet the requirements, and will be consistent with the direction.
3.2 – Caravan Parks and Manufactured Home Estates	The direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	The proposal will not affect provisions relating to Caravan Parks or Manufactured Home Estates.
3.3 – Home Occupations	The direction requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	The amendment will not affect provisions relating to this, and will retain the provisions of the principal LEP in this regard.
3.4 – Integrating Land Use and Transport	The direction requires consistency with State policy in terms of positioning of urban land use zones.	A detailed environmental study will inform the suitable location of land use zones within the subject site. The site is positioned with access to the emerging regional centre of Glendale-Cardiff, as well as the centres at Edgeworth and Wallsend. The rezoning will include a variety of land use zones as deemed necessary by detailed investigations.
4.1 – Acid Sulfate Soils	Applies to land that has been identified as having a probability of containing acid sulfate soils, and requires that a draft amendment be consistent with the Acid Sulfate Soil component of the model Local Environmental Plan (ASS model LEP), or be supported by an environmental study.	The subject land has been identified as containing potential acid sulfate soils. However, LMLEP 2004 is consistent with the ASS model LEP, and the draft amendment will be supported by detailed investigations of the land.
4.2 – Mine Subsidence	The direction requires consultation with the Mine	The Mine Subsidence Board will be consulted

and Unstable Land	Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	pursuant to Section 62 of the Environmental Planning and Assessment Act 1979.
4.3 – Flood Prone Land	Applies where the draft amendment will effect provisions to flood prone land.	Further detailed investigations will be required to determine the level to which the site is prone to flooding. The draft amendment will not affect provisions relating to flood prone land.
4.4 – Planning for Bushfire Protection	Applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	The sites contain land identified as bushfire prone land, and Asset Protection Zones will be required. Consultation with the NSW Rural Fire Service will occur during the amendment process in this regard.
5.1 – Implementation of Regional Strategies	The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	The draft amendment is consistent with the strategic direction set by the Lower Hunter Regional Strategy.
6.1 – Approval and Referral Requirements	Prevents a draft amendment from requiring concurrence from, or referral to, the Minister or a public authority.	The draft amendment will be consistent with this requirement.
6.2 – Reserving Land for Public Purposes	The direction prevents a draft LEP from altering available land for public use.	The draft amendment will ensure that provision for public space is implemented as determined by detail investigations of the subject area, and community needs are met, locally and regionally.

Council Minute Item Action

Ordinary Council Meeting

14/09/2009

TRIM Ref: D01526294

Subject: Public Exhibition of Draft Amendment No 45 to LMLEP 2004 - Rezoning of Land at Transfield Avenue and Neilson Street Edgeworth

Date to be Completed by: 21/09/2009

Instructions to User

This TRIM action is assigned to you to complete. Record all actions taken in TRIM using InfoCouncil's process to add a note, and then complete the TRIM action via InfoCouncil.

Council Decision:

247

Moved. Cr. Johnston

Seconded. Cr. Tammekand

Council:

- A. Requests certification from the Department of Planning to place *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* on public exhibition for a period of 28 days pursuant to the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.
- B. Places *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* (see Attachment 1), and supporting documentation, on public exhibition for a period of 28 days, and notifies stakeholders and affected landowners of the exhibition.
- C. Forwards *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* to the Minister for Planning, in the event that no significant issues are raised during the public exhibition period, requesting that the Plan be made in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.

(Carried)

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

For the Motion

Cr. Birt
Cr. Coghlan
Cr. Edwards
Cr. Fraser
Cr. Johnston
Cr. Piper
Cr. Scarfe
Cr. Tammekand
Cr. Wallace
Cr. W Harrison
(carried)

Against the Motion

Cr. Gissane
Cr. Parsons

City Strategy Committee Meeting

7 September 2009

09STRAT011 Public Exhibition of Draft Amendment No 45 to LMLEP 2004 – Rezoning of Land at Transfield Avenue and Neilson Street Edgeworth

Council Ref: F2005/024021-02 – D01526294

Report By: Strategic Planner – Matthew Hill

Précis:

Council resolved on 26 November 2007 (07STRAT69) to prepare an amendment to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to investigate and rezone a large area of land north of Edgeworth and Glendale. The land is currently zoned 10 Investigation and 5 Infrastructure. Subsequent to Council's resolution, the major landholder, Xstrata, withdrew from the process. The remaining landowners were still committed to continuing the rezoning process for the remaining land. As a consequence, the LEP amendment was modified to proceed on a staged basis, with parcels located in Transfield Ave and Neilson Street, Edgeworth as stage one.

The subject land for this proposal comprises Lot 1 DP 900356, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Transfield Avenue, and Lots 1 and 2 DP 1011589, Neilson Street, Edgeworth. It is proposed that the subject land be rezoned from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone. A detailed Local Environmental Study has been prepared to inform the proposed amendment (Draft Amendment No. 45) to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004).

It is now necessary to place draft Amendment No. 45 on public exhibition pursuant to the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* to obtain public comment on the proposal. The purpose of this report is to obtain a resolution from Council to place the draft Amendment on exhibition.

Recommendation:

Council:

- A. Requests certification from the Department of Planning to place *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* on public exhibition for a period of 28 days pursuant to the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.
- B. Places *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* (see Attachment 1), and supporting documentation, on public exhibition for a period of 28 days, and notifies stakeholders and affected landowners of the exhibition.

Forwards *Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45)* to the Minister for Planning, in the event that no significant issues are raised during the public exhibition period, requesting that the Plan be made in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.

Background:

Council received proposals from Jubilee Projects in 2004 and Edgeworth Developments in 2005 to rezone part of the Edgeworth 10 Investigation Zone land. These proposals were considered by Council's Rezoning Assessment Panel (RAP) and it was determined that they had merit, but should not proceed as single parcel

rezonings due to the potential for piecemeal land release creating difficulty in coordinating infrastructure provision.

A group, comprising the main landholders, was formed in order to provide a holistic approach to rezoning the 10 Investigation Zone land to the north of Glendale and Edgeworth. Discussions regarding the rezoning of the subject land have been ongoing since that time with various options being considered, including State Government assessment of the proposal as a Major Project under Part 3A of the *EP&A Act 1979*, undertaking a cross-boundary Local Environmental Study in agreement with Newcastle City Council, and undertaking a structure planning exercise for the land to inform separate rezoning proposals.

The cross-boundary Local Environmental Study option was deemed the most practical under the circumstances. On 26 November 2007 (07STRAT69) Council resolved to prepare a draft amendment to Lake Macquarie Local Environmental Plan 2004 to rezone affected land from 10 Investigation zone and 5 Infrastructure zone to support urban development and conservation.

A brief was prepared and tenders called for the project. In September 2008 Australand (representing Xstrata, the major landowner) withdrew from the process.

The other landowners within the Lake Macquarie Local Government Area remained committed to completing the rezoning process. The brief for preparation of the LES was revised to advance investigation of parcels off Transfield Avenue and Neilson Street (being Lot 1 DP 900356, Lot 1 DP 900356, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Transfield Avenue, and Lots 1 and 2 DP 1011589, Neilson Street, Edgeworth) as stage one (see attachment 2). New tenders were called and consultants were appointed to complete investigations for the Stage 1 parcels.

A detailed Local Environmental Study (LES) has been prepared for the subject land, which has informed the distribution of draft land use zones on the land.

Proposal:

It is proposed that draft Amendment No. 45 (attachment 1) be placed on public exhibition for a period of 28 days, with comments being invited from the community during this time.

Draft Amendment No. 45 proposes to rezone the subject land from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone, and proposes that an area plan be prepared prior to development on the Transfield Avenue site. A plan showing the existing land use zones is provided at Attachment 3.

The purpose of the area plan is to ensure that subdivision outcomes are met, which include the provision of an arterial road through the site, to comprise part of a connection between Minmi Road, Edgeworth, and Frederick Street, Glendale. This road link is necessary to accommodate additional vehicle movements resulting from continuing growth in the north-western area of the City. This road link will support access to transit and service facilities proposed to be located in Glendale Regional Centre. Subsequent land release and development including the Coal and Allied proposal to the north, will provide the remaining sections of the arterial road link.

It is intended that the area plan will maintain the values of the riparian corridor within the Transfield Avenue site, by restricting the development of any roads through the corridor. This will result in the north-eastern part of the site being inaccessible for development until the Link Road South stage of the Coal and Allied proposal occurs. The biodiversity value of this part of the site was examined by the Local Environmental Study, and it was determined that development of the Coal and Allied proposal would make this area less viable for conservation, and could accommodate

residential development. Should the Coal and Allied proposal not proceed for any reason, the north-eastern part of the site would be more viable for conservation purposes. In this case, the area plan would restrict accessibility, and therefore development in the north-eastern part of the site.

The Local Environmental Study identified contaminants on part of the Transfield Avenue site. The area plan will ensure that these areas are remediated effectively prior to any development taking place.

Consultation:

The proposal has been considered by Council's Rezoning Assessment Panel, with supplementary advice being sought from internal departments at various times throughout the process.

While exploring options to rezone the 10 Investigation Zone land as a whole, extensive consultation occurred between Council staff, the proponents, the Department of Planning, and Newcastle City Council staff. Since the withdrawal of Xstrata from the process, cross-boundary issues have been removed, and the process has become relatively straightforward.

Pursuant to the *EP&A Act 1979*, consultation has taken place with State Government agencies, service authorities, and other relevant stakeholders, with the following responses being received:

Stakeholder Comments	Planning Response
<i>Mine Subsidence Board</i> Approval should be sought prior to subdivision or development.	The applicant will be required to consult with the Mine Subsidence Board prior to subdivision or development occurring.
<i>Awabakal Local Aboriginal Land Council</i> Required an archaeological survey to be conducted on the subject land.	The Local Environmental Study for the subject land included a detailed archaeological survey conducted with Aboriginal stakeholders.
<i>Heritage Council</i> Required a heritage and archaeological study to be conducted on the subject land.	The Local Environmental Study included a heritage and archaeological study of the subject land.
<i>Department of Primary Industries</i> Indicated that contact should be made with Sydney Gas Operations Pty Ltd as the holder of Petroleum Exploration Licence No. 267.	Sydney Gas Operations Pty Ltd was contacted and did not raise an objection to the rezoning proposal.
<i>Rural Fire Service</i> Any future development is to comply with the Planning for Bushfire Protection Guidelines.	All future development on the site will be required to comply with the Planning for bushfire Protection Guidelines.
<i>Department of Environment and Climate Change (DECC)</i> Requested consideration of native vegetation and the 'improve or maintain' principle, potential land use conflicts, threatened species, Aboriginal cultural heritage assessment and consultation,	A detailed Local Environmental Study has been conducted on the subject land, which has assessed potential impacts, and informed appropriate land use zones for the land. Where biodiversity values will be lost by development, offsets will be necessary to meet the 'improve or

potential impacts on areas of high conservation value, contaminated land, and stormwater management.	maintain' principle. The proponents for the rezoning will need to consult with DECC on this matter before the LEP is finalised.
Department of Water and Energy Identified relevant legislation and policy for consideration and requested consideration of ground water systems and watercourses including the protection of riparian areas.	A detailed Local Environmental Study considered hydraulic systems on the subject land, and identified the areas required to be conserved as core riparian zones.
Hunter Water Corporation Indicated existing capacity and timeframes for upgrades where they will be required to support future development of the subject land.	The identified upgrades will be necessary to facilitate future development of the subject land. The developer will be required to undertake further discussions with Hunter Water Corporation following rezoning of the land and prior to development approvals being issued.
Ministry of Transport Requested the completion of a Transport Management and Accessibility Plan for the subject land.	A detailed Local Environmental Study of the subject land which has informed the proposed land use zones, included transport, traffic, and social impact assessments.
Roads and Traffic Authority Requested a detailed traffic assessment for the area.	A detailed traffic assessment has been completed in accordance with RTA requirements as part of the Local Environmental Study for the proposal.

Responses were not received from other stakeholders. If Council resolves to place the draft amendment on public exhibition, comments will be invited from the community. Any comments received will be considered in the preparation of the amendment.

Implications:

Policy Implications:

Lake Macquarie Local Environmental Plan 2004

The completion of the proposed amendment will result in the land use zones applying to the subject land changing from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone. These zones will accommodate residential development, as well as conservation of environmentally valuable land and riparian corridors.

Lifestyle 2020 Strategy

The Lifestyle 2020 Strategy encourages development to be located with access to services and facilities, as well as ensuring alternative transport options are available to the community. The Strategy further identifies the need for consideration of environmental protection measures in developing the City. The proposed release of land is consistent with the policy direction as the land is located with access to services and facilities at the emerging Glendale/Cardiff major regional centre, as well as the Edgeworth town centre and Edgeworth urban renewal corridor. Land that has high ecological values will be conserved; however, offsets will be required where the loss of biodiversity values is unavoidable in implementing effective urban development.

Lower Hunter Regional Strategy

The proposed rezoning of land is consistent with the Lower Hunter Regional Strategy, which identifies the subject land for future urban growth. The site will accommodate continuing population growth in the region contributing to support of the emerging major regional centre at Glendale/Cardiff and the proposed transport hub at Glendale, as well as the urban renewal corridor extending along Main Road, Edgeworth.

State Environmental Planning Policies

Relevant SEPPs have been considered during the preparation of the Environmental Review for the subject sites. It has been determined that the draft Amendment is consistent with the relevant SEPPs, and no issues have been identified that would prevent the draft amendment being placed on public exhibition (see Attachment 2).

Ministerial Directions

Pursuant to Section 117 of the *EP&A Act 1979*, relevant Ministerial Directions have been considered in preparing the draft Amendment. The draft Amendment is consistent with the Ministerial Directions (see Attachment 4).

Environmental Implications:

The impacts of the proposed rezoning on the environmental attributes of the site were considered as part of the detailed LES. The biodiversity component of the LES recommended that a conservation zone be established to protect riparian corridors on both the Transfield Avenue and Neilson Street sites. The rezoning land to support residential development will result in a loss of vegetation on the Transfield Avenue site, and some loss of vegetation on the Neilson Street site. The Transfield Avenue site contains Lower Hunter Spotted Gum – Ironbark Forest, which is an Endangered Ecological Community. The proponents are required to negotiate biodiversity offsets with the Department of Environment, Climate Change and Water (DECCW) for the site prior to development occurring. Information on preliminary consultation between the proponents and DECCW will be sought by Council staff prior to a report to Council on the outcomes of exhibition of the draft LEP.

Asset Protection Zones (APZs) required to mitigate the impact of bushfire on future development will be required to be established within the residential zone, and will not be permitted to encroach on conservation land.

A hydrological assessment identified the extent of a 100-year ARI flood event on each site. Most of the land subject to flooding in a 100-year ARI event is contained within the proposed conservation area. Development proposed within the vicinity of the small section of land that has been identified as being subject to a 100 year ARI event, but has not been proposed to be zoned for conservation purposes, will require a plan of management prior to development in accordance with DECCW policy.

Contamination assessments undertaken on each site have determined that the land is capable of supporting residential development. Some parts of the subject land have been used for agricultural and industrial purposes. Remediation work will be required prior to development on these sites.

Social Implications:

The release of land for residential purposes will accommodate population growth in an area identified for urban growth, and in proximity to services and facilities including:

- The Edgeworth town centre;
- The Edgeworth renewal corridor; and

- The emerging major regional centre at Glendale/Cardiff.

Consultation has found that existing facilities and infrastructure are suitable to meet the needs of the additional population generated by this land release.

Financial Implications:

There will be no specific financial implications for Council apart from use of staff resources in processing the rezoning proposal in accordance with Council's three-phase rezoning process. The proponents have paid the appropriate rezoning fees.

Risk and Insurance Implications:

The preparation and public exhibition of a draft amendments to LMLEP 2004 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and *Environmental Planning and Assessment Regulation 2000 (EP&A Reg. 2000)*. Consultation with Government agencies and other stakeholders has occurred in accordance with Section 62 of the *EP&A Act 1979*. Placing the draft Amendment on public exhibition will ensure that the community has the opportunity to comment on the draft plan, and any submissions made during the public exhibition period will be given appropriate consideration.

Options:

The options available to Council are:

1. Resolve to place the draft Amendment No. 45, provided in attachment 1, on public exhibition for a period of at least 28 days in accordance with the *EP&A Act 1979* and the *EP&A Reg. 2000*. This is the recommended option.
2. Resolve to amend the draft Amendment No. 45 and place the amendment on public exhibition for a period of at least 28 days in accordance with the *EP&A Act 1979* and the *EP&A Reg. 2000*.
3. Resolve not to place draft Amendment No. 45 on public exhibition, cease the preparation of the draft amendment, and inform the proponent and relevant government agencies of its decision. This is not recommended as the LES prepare for the land indicates the land is suitable and capable of accommodating urban development.

Conclusion:

Public exhibition of the draft amendment will satisfy legislative requirements and allow the community to comment on the proposal. Consultation with Government agencies has been undertaken, and opportunities and constraints of each site have been investigated to inform the proposed distribution of land use zones on the subject land. It is recommended that Council resolve to place draft Amendment No. 45 on public exhibition.

Manager Integrated Planning – Sharon Pope

Attachments:

- | | |
|---|-----------|
| 1. Draft Amendment No 45 to Lake Macquarie Local Environmental Plan 2004 | D01534871 |
| 2. Locality Map – Draft Amendment No 45 – Land at Transfield Avenue and Neilson Street Edgeworth | D01578367 |
| 3. Existing Land Use Zones – Draft Amendment No 45 – Land at Transfield Avenue and Neilson Street Edgeworth | D01578362 |
| 4. SEPPs and 117 Directions – Exhibition of Draft Amendment No 45 | D01531469 |

**Attachment 1 – Draft Amendment No 45 to Lake Macquarie Local
Environmental Plan 2004**

Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No 45)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979.

Minister for Planning

Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)*.

2 Aim of plan

The aims of the plan are as follows:

- (a) to rezone land referred to in clause 3 (1) from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone under *Lake Macquarie Local Environmental Plan 2004*,
- (b) to rezone land referred to in clause 3 (2) from 10 Investigation Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone under *Lake Macquarie Local Environmental Plan 2004*,

3 Land to which plan applies

- (1) With respect to the aims referred to in clause 2 (a), this plan applies to Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lot 27 DP 202567, Lots 1 and 2 DP 250063, and part of Lot 3 DP 877349, Transfield Avenue, Edgeworth, as shown edged heavy black and lettered “2(1)” and “7(1)” on Sheet 1 of the map marked “Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)” deposited in the office of the Council of the City of Lake Macquarie.
- (2) With respect to the aims referred to in clause 2 (b), this plan applies to Lots 1 and 2 DP 1011589, and Lot 40 DP 701642, Neilson Street, Edgeworth, as shown edged heavy black and lettered “2(1)” and “7(1)” on Sheet 2 of the map marked “Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)” deposited in the office of the Council of the City of Lake Macquarie.

4 Amendment of Lake Macquarie Local Environmental Plan 2004

Lake Macquarie Local Environmental Plan 2004 is amended as set out in Schedule 1.

Schedule 1 Amendments

[1] Dictionary, definition of “the map”

Insert in appropriate order “*Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)*”.

[2] Schedule 8 Land subject to special development requirements

Insert at the end of Schedule 8 the following:

Item No	Column 1	Column 2
10	Land at Edgeworth, being Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lot 27 DP 202567, Lots 1 and 2 DP 250063, and part of Lot 3 DP 877349, Transfield Avenue, Edgeworth, as shown edged heavy black on Sheet 1 of the map marked “ <i>Lake Macquarie Local Environmental Plan 2004 (Amendment No 45)</i> ” deposited in the office of the Council of the City of Lake Macquarie.	Development control plan provisions specifically applying to the land must have been adopted by the Council before consent is granted for development. These provisions are to include, but not be limited to, the following matters: - traffic and transport infrastructure, - habitat corridors and biodiversity offsets, - remediation of contaminated land, - drainage and water quality management.



ENVIRONMENTAL PLANNING & ASSESSMENT ACT , 1979

CITY OF LAKE MACQUARIE

SHEET 1 of 2



**LAKE MACQUARIE LOCAL ENVIRONMENTAL
PLAN 2004 DRAFT (AMENDMENT NO 45)**

DRAWN BY J.B.

DATE 21/08/2009

PLANNING
OFFICER M.H.

FILE NO. COUNCIL

DEPT. of
PLANNING

CERTIFICATE ISSUED
UNDER SEC. 65 EPA ACT

DATE

STATEMENT OF RELATIONSHIP WITH OTHER PLANS
*AMENDS THE LAKE MACQUARIE
LOCAL ENVIRONMENTAL PLAN 2004*

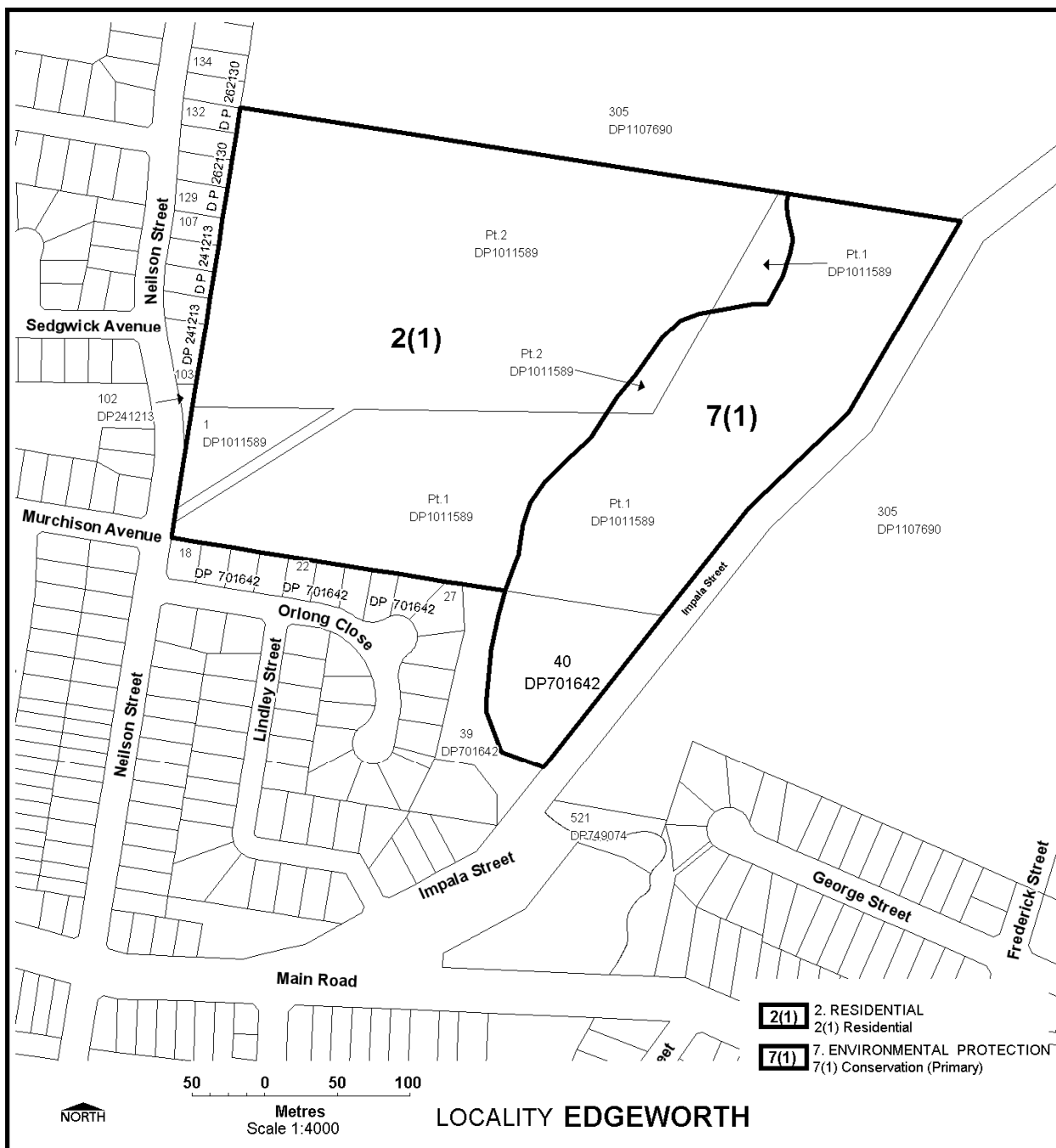
CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT ACT
1979, AND REGULATIONS.

GENERAL MANAGER

DATE

PUBLISHED IN GOVT GAZETTE NO.

OF



ENVIRONMENTAL PLANNING & ASSESSMENT ACT , 1979

CITY OF LAKE MACQUARIE

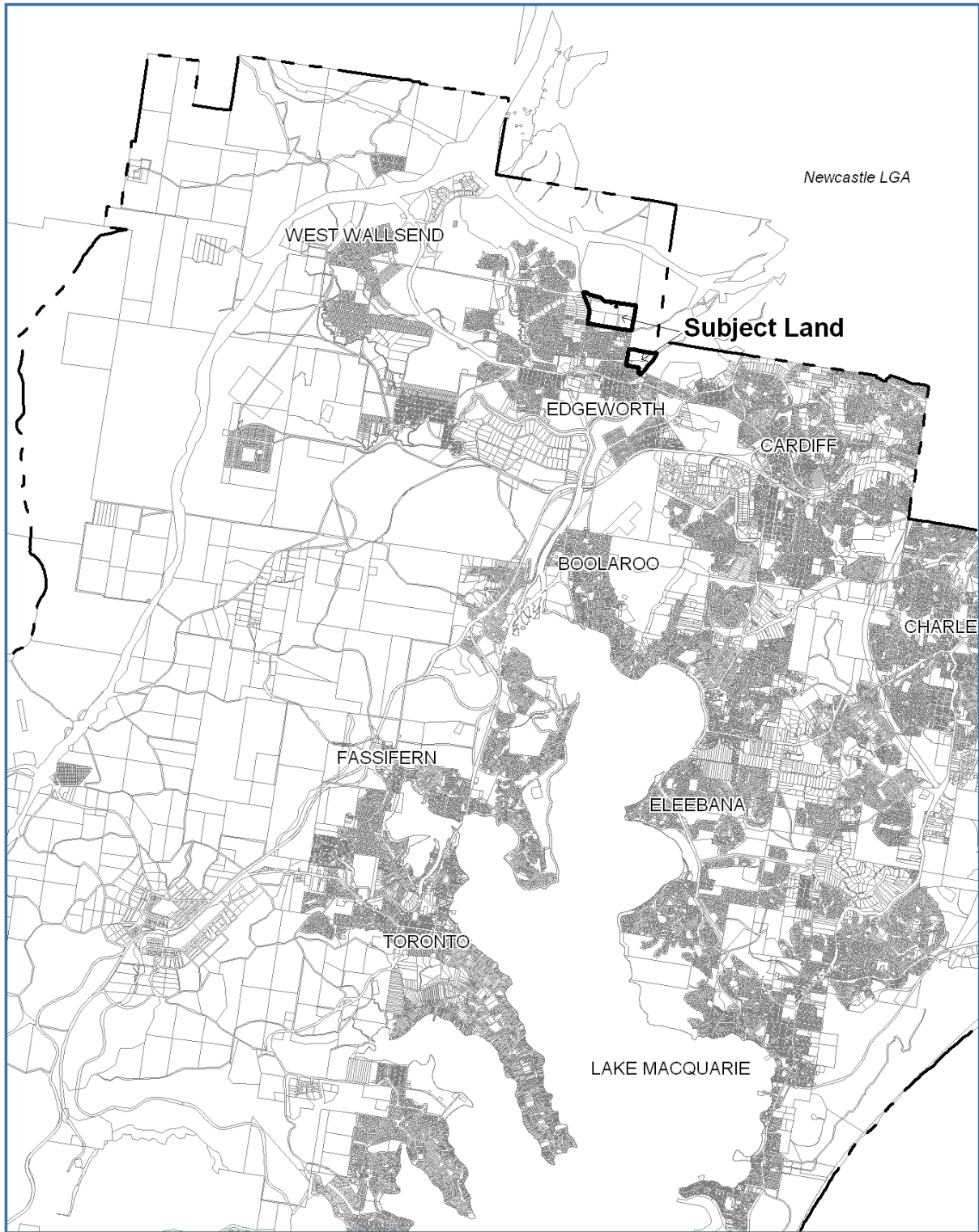
SHEET 2 of 2



**LAKE MACQUARIE LOCAL ENVIRONMENTAL
PLAN 2004 DRAFT (AMENDMENT NO 45)**

DRAWN BY J.B.	DATE 21/08/2009	STATEMENT OF RELATIONSHIP WITH OTHER PLANS <i>AMENDS THE LAKE MACQUARIE LOCAL ENVIRONMENTAL PLAN 2004</i>	
PLANNING OFFICER M.H.			
FILE NO. COUNCIL	DEPT. of PLANNING	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS.	GENERAL MANAGER
CERTIFICATE ISSUED UNDER SEC. 65 EPA ACT	DATE		DATE
		PUBLISHED IN GOVT GAZETTE NO.	OF

Attachment 2 – Locality Map – Draft Amendment No 45 – Land at Transfield Avenue and Neilson Street Edgeworth



2/09/2009 Project: Draft Amendment 45

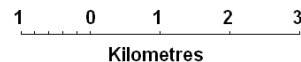


Produced by Integrated Planning

Edgeworth



Subject Land



Attachment 3 – Existing Land Use Zones – Draft Amendment No 45 – Land at Transfield Avenue and Neilson Street Edgeworth



CITY OF LAKE MACQUARIE
LOCALITY EDGEWORTH

EXTRACT FROM EXISTING LMCC LEP2004 ZONINGS
SKM AusImage 2007 Aerial Photography

 **SUBJECT LAND**

100 0 100 200
 Metres
 Scale 1:10,000

PLANNING
 OFFICER

MH

DRAWN BY JB

16/04/07

PROJECT: 2007/346

 **NORTH**

Attachment 4 – SEPPs and 117 Directions – Exhibition of Draft Amendment No 45

SEPPs	Relevance	Implications
19 – Bushland in Urban Areas	Aims to protect and preserve bushland in urban areas.	The draft LEP proposes to implement conservation zones to protect areas of high biodiversity value including riparian corridors. Any loss of biodiversity values resulting from development of the site will need to be offset to meet the 'improve or maintain' principle.
32 – Urban Consolidation (Redevelopment of Urban Land)	Aims to facilitate multi-unit housing on urban sites that are no longer appropriate for their existing or former use.	The subject land is currently zoned 10 Investigation Zone; however, the Neilson Street site has previously been used for industrial purposes. The proposed residential zone for the subject land will facilitate additional housing stock to support continuing population growth in the area, with suitable access to services and facilities.
44 – Koala Habitat Protection	Aims to protect actual and potential Koala habitat.	The detailed LES for the subject land determined that neither site is likely to contain Koala habitat.
55 – Remediation of Land	Requires Council to be satisfied that the proposed use is appropriate on the	Lot 1 DP 921545 within the Transfield Avenue site will require remediation works in order for the site to accommodate residential development. The Neilson Street site contains fill, which will require further investigation prior to development, to ensure that appropriate design measures are implemented.
Draft 66 – Integration of Land Use and Transport	Requires urban land to be suitably located with access to services and facilities, and to be supported by transport	The subject land is positioned suitably to facilitate access to the Edgeworth town centre and urban renewal

	options.	corridor, as well as the Glendale/Cardiff emerging major regional centre. The LES has identified cycle routes and future public transport options, which will provide additional accessibility to services and facilities in the area.
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Ministerial Direction	Relevance	Implications
1.3 – Mining, Petroleum and Extractive Industries	Aims to protect extractive resources by requiring consultation with the Director-General of the Department of Primary Industries where a draft LEP may directly, or indirectly, restrict existing or future extractive resource operations.	On the advice of the Department of Primary Industries, Sydney Gas Operations Pty Ltd, as holder of Petroleum Exploration Licence 267, was consulted with no objections to the proposal being received.
2.1 – Environmental Protection Zones	Aims to protect and conserve environmentally sensitive land by requiring appropriate provisions in a draft LEP and no reduction in environmental protection standards.	The subject land currently does not contain any environmental protection zones. The amending LEP will introduce a conservation zone to protect riparian vegetation.
2.3 – Heritage Conservation	Aims to conserve items of environmental heritage by requiring a draft LEP to include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	The detailed LES for the land contained a European and Aboriginal heritage assessment including consideration of the significance of archaeological finds on the land, which has informed land use zone distribution.
2.4 – Recreation Vehicle Areas	Aims to protect sensitive land or land with significant conservation values from adverse impacts of recreation vehicles by prohibiting a draft LEP from enabling of a recreation vehicle area in environmentally sensitive locations, and requiring certain matters to be considered in other	The draft LEP does not propose a recreation vehicle area, and is consistent with this direction.

	locations.	
3.1 – Residential Zones	Aims to facilitate housing choice, efficient use of infrastructure, and reduce land consumption on the urban fringe by requiring certain provisions in a draft LEP.	The subject land adjoins urban development and is considered to be an infill land release. This land release will provide additional housing stock that is located close to established services and facilities.
3.2 – Caravan Parks and Manufactured Home Estates	Aims to provide opportunities for caravan parks and manufactured home estates by requiring a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks, and to take into account SEPP 36 when identifying zones and locations for Manufactured Home Estates.	The draft LEP does not propose to make any changes regarding Caravan Parks or Manufactured Home Estates. Neither the existing or the proposed zones permit Caravan Parks or Manufactured Home Estates.
3.3 – Home Occupations	Aims to encourage low impact small businesses in dwelling houses by requiring a draft LEP to permit home occupations without consent.	The draft LEP does not propose to change existing provisions relating to home occupations within the proposed residential zone.
3.4 – Integrating Land Use and Transport	Aims to improve access to housing, jobs and services, increase transport choice and reduce motor vehicle use by requiring a draft LEP to be consistent with <i>Improving Transport Choice- Guidelines for Planning and Development</i> , and <i>The Right Place for Business- Planning Policy</i> .	The land release is positioned with access to services and facilities at the Edgeworth town centre and renewal corridor, as well as the Glendale/Cardiff emerging major regional centre. The LES completed for the land identifies planned cycle routes that will contribute to connectivity and will support alternative transport options to surrounding facilities. The need for an arterial road through the Transfield Avenue site is intended to support a bus route through the area as demand becomes sufficient to support the

		service.
4.1 – Acid Sulfate Soils	Aims to manage adverse impacts arising from the presence of acid sulfate soils by ensuring that Council considers the affect of development on land identified as having a probability of containing acid sulfate soils; and requiring that a draft LEP be consistent with the Acid Sulfate Soils Model Local Environmental Plan; and a range of other matters.	The Neilson Street site has been identified as potentially being affected by Acid Sulfate Soils. The existing LMLEP 2004 is consistent with the ASS Model LEP, and the amending draft LEP does not propose to alter this.
4.2 – Mine Subsidence and Unstable Land	Aims to ensure development is appropriate for the potential level of subsidence. The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	The Mine Subsidence Board has been consulted with no objections being received. Further consultation will be required prior to any subdivision or development of the subject land.
4.3 – Flood Prone Land	Aims to ensure that LEP provisions are commensurate with flood risk and consistent with the NSW Flood Prone Land Policy and Floodplain Development Manual. Applies where the draft LEP will affect provisions to flood prone land.	The detailed LES conducted on the site has identified the extent of flooding on the subject land. Development is not to be permitted on land that is subject to a 100 year ARI flood event.
4.4 – Planning for Bushfire Protection	Aims to reduce risk to life and property from bushfire. Requires an LEP to have regard for <i>Planning for Bushfire Protection</i> , amongst other matters. Applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	The sites contain land identified as bushfire prone land. Consultation with the RFS has identified the need for Asset Protection Zones (APZs). APZs will be established within the residential zone and will not encroach on conservation land.
5.1 – Implementation of	Aims to give legal effect to	The subject land is

Regional Strategies	regional strategies, by requiring draft LEPs to be consistent with relevant strategies. The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	identified as future urban land by the Lower Hunter Regional Strategy. As such, the draft LEP is consistent with the strategic direction set by the Strategy.
6.1 – Approval and Referral Requirements	Prevents a draft LEP from requiring concurrence from, or referral to, the Minister or a public authority unless approval is obtained from the Minister and public authority concerned. Also restricts the ability of a Council to identify development as designated development without the Director General's agreement.	The draft LEP does not propose to require concurrence from, or referral to the Minister or a public authority, and is consistent with this direction.
6.2 – Reserving Land for Public Purposes	Aims to facilitate the reservation of land for public purposes, and to facilitate the removal of such reservations where the land is no longer required for acquisition. A Council must seek the Minister's or public authority's agreement to create, alter or reduce existing zonings or reservations in an LEP. A Council can also be requested to rezone or remove a reservation by the above.	The detailed LES completed for the subject land has determined that existing facilities are adequate to cater for additional growth facilitated by the proposed draft LEP. Contributions will be sought to ensure that facilities can be upgraded in alignment with ongoing growth in the area.

Recommendation No. 1

11STRAT016 Adoption of Draft Amendment No. 59 to LMLEP 2004 - Rezone land at Transfield Avenue Edgeworth

Folder No: RZ/16/2007

Report By: Strategic Planner - Matthew Hill

Error! Bookmark not defined.

Moved. Cr. Gissane

Seconded. Cr. Parsons

Council:

- A. Resolves to prepare and support the Planning Proposal contained in Attachment 1 to amend LMLEP 2004 pursuant to the *Environmental Planning and Assessment Act 1979*;
- B. Resolves to prepare a Voluntary Planning Agreement for the establishment of biodiversity offsets; and
- C. Forwards the proposal to the NSW Department of Planning and Infrastructure for determination following finalisation of the voluntary planning agreement.

(Lost)

606

Moved. Cr. Wallace

Seconded. Cr. Johnston

- A. Resolves to prepare and support the Planning Proposal contained in Attachment 1 to amend LMLEP 2004 pursuant to the *Environmental Planning and Assessment Act 1979*;
- B. Forward the amended proposal to the NSW Department of Planning and Infrastructure for determination.

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>
Cr. Coghlan	Cr. Gissane
Cr. J Harrison	Cr. Parsons
Cr. Piper	
Cr. Scarfe	
Cr. W Harrison	
Cr. Wallace	
Cr. Johnston	
(carried)	

(Carried)

11STRAT016 Adoption of Draft Amendment No. 59 to LMLEP 2004 – Rezone Land at Transfield Avenue Edgeworth

Council Ref: RZ/16/2007 – D02120111

Report By: Strategic Planner - Matthew Hill

Précis:

Council previously considered a report regarding Lake Macquarie Local Environmental Plan 2004 Draft (Amendment No. 45) on 24 May 2010 (10STRAT012). Council resolved to adopt a modified version of the Plan, which led to the rezoning of land at Transfield Avenue Edgeworth being deferred pending further development of a biodiversity policy.

The proponent has approached Council to have the proposal reconsidered, and has highlighted difficulties in addressing biodiversity offsetting provisions established by the Office of Environment and Heritage (OEH) [formerly the Department of Environment, Climate Change and Water (DECCW)].

Council's Sustainability department has prepared a draft Biodiversity Offsets Policy to assist in guiding the identification and attainment of biodiversity offsets. It is recommended that the rezoning process continue in a manner that is consistent with the draft Biodiversity Offsets Policy, including providing landholders with the opportunity to enter a Voluntary Planning Agreement, which would defer the delivery of biodiversity offsets until the land has been rezoned, but prior to development occurring.

Due to changes to the *Environmental Planning & Assessment Act 1979*, the draft Amendment is now formatted as a Planning Proposal.

Recommendation:

Council:

- A. Resolves to prepare and support the Planning Proposal contained in Attachment 1 to amend LMLEP 2004 pursuant to the *Environmental Planning and Assessment Act 1979*;
- B. Resolves to prepare a Voluntary Planning Agreement for the establishment of biodiversity offsets; and
- C. Forwards the proposal to the NSW Department of Planning and Infrastructure for determination following finalisation of the voluntary planning agreement.

Background:

The subject land comprises Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lot 27 DP 202567, Lots 1 and 2 DP 250063, Transfield Avenue Edgeworth. A detailed Local Environmental Study (LES) was prepared that determined that the majority of the site is well-located, and suitable for residential development.

The draft Amendment, to rezone the land from 10 Investigation and 5 Infrastructure to 2(1) Residential and 7(1) Conservation (Primary), was publicly exhibited between 14 November 2009 and 11 December 2009. Two submissions were received.

Prior to the public exhibition, the Office of Environment and Heritage (OEH) indicated that the proposal was to meet the 'improve or maintain' policy in terms of biodiversity. The NSW

Department of Planning and Infrastructure (DoPI) (formerly NSW Department of Planning) subsequently approved public exhibition of the draft Amendment, on the condition that biodiversity offsets be negotiated to the satisfaction of OEH before the draft Amendment was returned to DoPI for finalisation.

Discussions have taken place between Council, landholders, and the OEH, since November 2009. Discussions have failed to resolve biodiversity offsets for the subject land to the satisfaction of the OEH. The proponent has indicated that as the subject land is in multiple ownership, it will be extremely difficult to deliver biodiversity offsets acceptable to OEH at the rezoning stage (Attachment 2 & 3).

In instances where Council believes a rezoning should proceed, but there is an unresolved objection from another government agency, it is normal to refer the issue to DoPI for resolution. It is necessary for Council to be able to justify support for the rezoning.

The resolution of biodiversity issues, to the satisfaction of OEH, is proving difficult for many rezoning proposals currently being considered by Council. To identify the biodiversity offsetting outcomes that are acceptable to Council, the Sustainability Department has prepared a draft Biodiversity Offsets Policy. This Policy was considered at Council's REPOL Committee on 23 May 2011 (11RE007), where it resolved that the Policy should be exhibited for public comment.

Proposal:

It is proposed that Council:

- Advise the proponents that the Planning Proposal in Attachment 1, which zones the land to 2(1) Residential to accommodate residential development, and 7(1) Conservation (Primary) to conserve a riparian corridor which traverses the site, is supported, provided that satisfactory arrangements are made with Council regarding biodiversity offsets;
- Advise the proponents that Council would accept a Voluntary Planning Agreement (VPA), with provisions in accordance with Council's draft Biodiversity Offsets Policy, as a satisfactory arrangement on biodiversity offsets; and
- Authorise referral of the draft Amendment to DoPI for finalisation once a VPA is negotiated.

The subject land is well-positioned for housing, being close to services and facilities provided at Edgeworth and Glendale. Development of the subject land will contribute towards supporting these nearby centres. The Lower Hunter Regional Strategy identifies Main Road Edgeworth as an urban renewal corridor, and the Newcastle – Lake Macquarie Western Corridor Strategy identifies that the land should be investigated for residential purposes.

The purpose of the VPA is to enable progression of the rezoning on the basis that the proponents agree to deliver biodiversity offsets at the time of lodging subdivision applications.

Ownership of the land subject to the draft Amendment is fragmented, with six separate, long-term owners, not land developers. These owners advise they do not have the financial resources to secure biodiversity offsets at this time. The rezoning reflects the preferred urban pattern for the area, and would allow current landholders to sell the land to a developer who is in a better position to deliver biodiversity offsets. In addition, by deferring the actual purchase and delivery of offsets to the subdivision stage, "holding costs" are minimised and the eventual residential lots could be delivered for sale at a more affordable price.

Due to recent planning reforms, the draft Amendment has been modified to take on the Planning Proposal format.

Consultation:

The proposed rezoning was publicly exhibited between 14 November and 11 December 2009 with two submissions being received.

The Roads and Traffic Authority (RTA), indicated that the land should be identified as an urban release area and be subject to clause 62 of LMLEP 2004. This request has been accommodated, and the Planning Proposal amended. The application of clause 62 will enable the State Government to negotiate with the developer for infrastructure establishment and upgrades.

A submission was received from the adjoining landowner, Coal and Allied, requesting that land included in the Part 3A – State Significant Site listing, which will be considered under State Environmental Planning Policy (Major Development) 2005, be removed from inclusion within the draft Amendment. The proposal has been amended to reflect this request.

Negotiation of satisfactory biodiversity offsets for the subject land has been unsuccessful to date. The multiple ownership of the site presents difficulties for agreement on the provision of biodiversity offsets. The landholders made an offer of land for biodiversity offsets but this was rejected by OEH as it was not 'like for like' vegetation and was not in the immediate area.

Council staff also put forward options including retaining more of the land in a conservation zone despite the land being suitable for residential development. However, OEH did not support this option as a suitable long term biodiversity outcome, or a good urban planning outcome.

The proposed option to prepare a VPA to deliver biodiversity offsets was also put forward by Council staff. The VPA would include an offset ratio, identification of the type of vegetation community required for the offset, as well as the process and timing for delivery of biodiversity offsets, which would be calculated in accordance with Council's draft Biodiversity Offsets Policy. However, this was not supported by OEH as it defers the delivery of offsets until after the rezoning has occurred. Despite this, it is believed that the current proposal is the best available option to progress the land release while also achieving satisfactory biodiversity outcomes in the long-term.

Implications:

Policy Implications:

Lake Macquarie Local Environmental Plan 2004

The completion of the proposed amendment will result in the land use zones applying to the land changing from 10 Investigation and 5 Infrastructure to 2(1) Residential and 7(1) Conservation (Primary). These zones will accommodate residential development, as well as conservation of riparian corridors. The amendment will also include provision for an Area Plan, which will address:

- Provision of traffic and transport infrastructure including implementation of an arterial road linking Frederick Street with Minmi Road Edgeworth;
- Remediation of contaminated land;
- Management of stormwater, flooding, and water quality; and
- Management of habitat corridors and biodiversity.

The area plan will become part of Council's Development Control Plan.

Draft Lake Macquarie Local Environmental Plan – Standard Instrument

The proposed 2(1) Residential Zone will become Zone R2 Low Density Residential under the Standard Instrument LEP, while the proposed 7(1) Conservation (Primary) Zone will become Zone E2 Environmental Conservation.

Lifestyle 2020 Strategy

A City Responsive to its Environment

The rezoning is likely to result in a loss of vegetation on the site as development for residential purposes occurs, however, a VPA will require biodiversity offsets to be delivered prior to development occurring. Achievement of these offsets will deliver biodiversity improvement on a Citywide scale.

A Well-Serviced and Equitable City

The subject land adjoins existing residential development and is located in close proximity to urban services and facilities. Employment opportunities are also provided by the nearby Edgeworth town centre and the emerging major centre at Glendale/Cardiff. The site is also close to open space, schools, and Glendale TAFE.

A Well-Designed and Liveable City

The proposed rezoning represents an extension of the existing urban environment. The Area Plan required for the site will ensure that subdivision design provides connectivity and will support public transport, as well as encouraging walking and cycling to nearby services and facilities. A detailed LES has been undertaken to identify the appropriate distribution of land use zones on the site.

A City of Progress and Prosperity

Existing services and facilities at Edgeworth and Glendale will support the establishment of additional residential development, and the additional population will provide an economic contribution to these centres, and to the identified Main Road renewal corridor.

An Easily Accessible City

The proximity of the subject land to services and facilities will minimise vehicle dependence. Infrastructure is in place in the adjoining established residential area to support access to nearby centres, and this is likely to be improved further as development occurs.

Biodiversity Planning Policy and Guidelines for LEP Rezoning

The Policy items have been addressed as follows:

Policy	Planning Response
<i>Objective:</i> Retain important natural ecosystems and biodiversity, and maintain landscape connectivity.	A loss of vegetation on the site is expected if the rezoning proceeds, however, provision for biodiversity offsets will be incorporated into a VPA for the site prior to development occurring, which will deliver an improved biodiversity outcome on a Citywide scale.
<i>Principles:</i> No removal of native vegetation or habitat that will result in complete loss of local populations of threatened species, or loss of endangered ecological communities.	The rezoning of land will result in eventual vegetation loss, however, offset provisions will be implemented in a VPA. The benefit of providing housing in a strategically well-located position outweighs the potential loss of vegetation, particularly given the provisions being implemented for the establishment of biodiversity offsets.
Maintain quality, condition, connectivity, and extent of high quality threatened	Although some vegetation loss is expected on the site, the impact of any future

species habitat, and area of endangered ecological communities on the site.	development will be considered during the assessment of an application for subdivision. This will be dependant on the subdivision design, which is unknown at this time.
Accept loss of non-significant vegetation communities that are widespread within LGA, provided that >70% native vegetation cover of each of these communities is retained in the whole LGA, as mapped on LMCC 2004 vegetation mapping.	The implementation of biodiversity offsets will facilitate the efficient and appropriate use of a site well-located for urban development, while ensuring that a positive biodiversity outcome will be achieved on a whole of LGA scale.
Maintain existing landscape scale connectivity of native vegetation in corridors with suitable characteristics e.g. width, habitat quality, and area, by implementing adequate long-term security e.g. zoning, dedication to LMCC, covenant, or acquisition.	Riparian corridors will be maintained through the site, and the primary conservation corridor in the area is located to the east of the site.
Use of offsets (including protected areas or rehabilitation) may be considered where appropriate.	The implementation of offsets will be required prior to development occurring. This will result allow the well-located site to be developed.

Draft Biodiversity Offsets Policy

Council, in this instance, has prepared a draft Biodiversity Offsets Policy to assist in guiding the delivery of biodiversity offsets. Although the draft Policy is not the preferred approach for OEH, it is believed to be a reasonable approach to facilitating growth in the City, while providing acceptable biodiversity outcomes. The preparation of the VPA will occur in accordance with the draft Policy.

Lower Hunter Regional Strategy

The proposed rezoning is consistent with the Lower Hunter Regional Strategy, which identifies the subject land for future urban growth. The site will accommodate housing for population growth in the region, with approximately 300 new residential lots possible. New housing in this location will support the Edgeworth town centre, emerging major regional centre at Glendale/Cardiff and the proposed transport hub at Glendale, as well as the urban renewal corridor extending along Main Road, Edgeworth.

Lower Hunter Regional Conservation Plan

The subject land is not identified as being within a conservation corridor in the Lower Hunter Regional Conservation Plan.

Integrating Land Use and Transport

Although public transport improvements would assist with mobility in the area, the location of the subject land meets the key transport planning concepts contained within the State Government guideline. The proximity of the site to services and facilities at Edgeworth and Glendale, which are linked by the Main Road renewal corridor, provide choice of destination and variety of transport modes, with direct access routes. The proposed rezoning is unique in the high level of access to services and facilities.

State Environmental Planning Policies

The draft amendment is consistent with the relevant SEPPs, and no issues have been identified that would prevent the draft amendment proceeding. A full assessment of the proposal against the SEPPs is contained in the Planning Proposal (Attachment 1).

Ministerial Directions

The draft amendment is consistent with relevant Ministerial Directions. A full assessment of the proposal against the Ministerial Directions is contained in the Planning Proposal (Attachment 1).

Environmental Implications:

The impacts of the proposed rezoning on the environmental attributes of the site were considered as part of the detailed LES. The LES recommended that riparian corridors be protected through the establishment of a conservation zone over that land. This recommendation has been implemented in the Planning Proposal.

To manage flood risks and minimise water quality impacts, the LES has recommended that riparian corridors be contained within a conservation zone. In accordance with advice from the then Department of Water and Energy. A plan of management will be required to ensure that any development proposed near drainage lines is appropriate. This will be managed through development controls contained within the area plan for the site.

Contamination assessments undertaken on the site have determined that the land is capable of supporting residential development. Part of the site contains a knackery, and there have been rural uses in other parts of the site. Preparation of a remediation action plan and associated remediation work will be required prior to development on this land. This will be reflected in the area plan for the site.

An Aboriginal artefact scatter site identified on the site will be contained within the proposed conservation zone.

The subject land contains the Lower Hunter Spotted Gum Iron Bark Endangered Ecological Community (EEC) in the north western corner of the site. The LES undertaken for the site does not recommend that the EEC be conserved due to its small size and the area being likely to become isolated in relation to connectivity to other areas of vegetation.

No threatened flora species were identified on the site, however, three threatened fauna species were identified on the fringe of the site. This area of land, known as the Coal and Allied land, has since been removed from the subject area, as it is part of a Major Project Concept Plan currently being assessed by the State Government.

The development outcome for the Coal and Allied land will not be known until the proposal is determined, however, it is likely that the site will be substantially developed. This would reduce the ecological value of the Transfield Avenue site, and would leave the site poorly connected to conservation corridors in the area. The proposal is considered appropriate given the strategic position of the site for urban growth, high level of access to services and facilities, and the delivery of biodiversity offsets through a VPA.

It is likely that the proposal will lead to a loss of vegetation on the subject land, however, a VPA will require biodiversity offsets to be provided prior to development occurring. Although biodiversity offsets have not been resolved to the satisfaction of the OEH, it is believed the proposed approach is reasonable, and the rezoning should be referred to DoPI for finalisation, including resolution of the objection from the OEH.

Social Implications:

The proposal will provide additional housing, and is positioned with good access and close proximity to a range of services and facilities. It is estimated that the subject land will yield approximately 300 residential lots, which will contribute to meeting housing needs of the projected population of the region. New housing in this location will support the Edgeworth town centre, emerging major regional centre at Glendale/Cardiff and the proposed transport

hub at Glendale, as well as the urban renewal corridor extending along Main Road, Edgeworth.

A knackery operates on part of the subject land, generating regular complaints to Council. Rezoning of the land would facilitate the removal of the knackery and allow development that is more sympathetic to surrounding residential land uses.

The need for an arterial road through the subject land has been identified to facilitate traffic movement in the area, and an alternative route to Newcastle Link Road, as the Main Road/Minmi Road intersection is approaching capacity. The establishment of this road would provide a public transport route into future urban areas. The development of an Area Plan for the site will enable the location of this road to be determined through subdivision design.

Financial Implications:

There will be no specific financial implications for Council apart from staff resources used in processing the rezoning proposal in accordance with Council's rezoning process. The proponents have paid the appropriate rezoning fees.

Risk and Insurance Implications:

The preparation of a draft amendment to LMLEP 2004 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and *Environmental Planning and Assessment Regulation 2000 (EP&A Reg. 2000)* as well as Council procedure.

Options:

1. Council resolves to support the proposal, including the preparation of a VPA for the delivery of biodiversity offsets, and forward the matter to the Department of Planning and Infrastructure (DoPI) for consideration pursuant to the provisions of the *EP&A Act 1979*. This is the recommended option.
2. Council resolves to not support the proposal and does not progress the rezoning. The proponent, landowners, and those that made submissions will be notified of Council's decision.
3. Council resolves to support the rezoning of land without biodiversity offsets due to the strategically desirable location of the site, and resolves to forward the matter to the DoPI for consideration pursuant to the provisions of the *EP&A Act 1979*. This approach is not likely to be accepted by DoPI. This approach would also be inconsistent with adopted Council Policies, with the draft Biodiversity Offsets Policy, and the approach taken for other sites in the City, where developers have sought land to provide biodiversity offsets.

Conclusion:

It is recommended that the landholders be asked to enter into a VPA, to provide biodiversity offset prior to development of the site occurring. This would enable the rezoning to proceed, giving landholders the ability to gain a return on their investment by selling to larger developer who has the ability to meet the offsetting requirements. It should be noted that the OEH prefer the offsets to be delivered at the rezoning stage, however, the recommended option is believed to provide a reasonable approach in resolving the matter.

Manager – Integrated Planning – Sharon Pope

Attachment 1 – Planning Proposal

Planning Proposal

Amendment to Lake Macquarie Local Environmental Plan 2004

Rezoning of Land at Transfield Avenue Edgeworth

Local Government Area:	Lake Macquarie
Name of Draft LEP:	Lake Macquarie Local Environmental Plan 2004 (Amendment No 59)

Part 1 – Objective of the Planning Proposal

The objective of the Planning Proposal is to amend *Lake Macquarie Local Environmental Plan 2004* (LMLEP 2004) to rezone the subject land from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone in accordance with the attached map (Figure 3). The proposed 2(1) Residential Zone and 7(1) Conservation (Primary) Zone will become R2 Low Density Residential and E2 Environmental Conservation zones respectively under the new standard Citywide LEP.

Part 2 – Explanation of the Provisions

The amendment proposes the following changes to the LMLEP 2004 map and instrument:

Amendment Applies To	Explanation of the Provision
Map	It is proposed that the subject land, comprising Lot 1 DP 900356, Lot 1 DP 900357, Lot 111 DP 665948, Lot 1 DP 921714, Lot 1 DP 921545, Lot 27 DP 202567, Lots 1 and 2 DP 250063, Transfield Avenue, Edgeworth will be rezoned from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone.
Schedule 8 land subject to special development requirements	It is proposed that the subject land will be added as an additional item to Schedule 8, with a requirement that a site specific development control plan be prepared and adopted by Council prior to subdivision of the land. The development control plan is to address traffic and transport infrastructure, including provision for an arterial road linking Frederick Street with Minmi Road Edgeworth, remediation of contaminated land, management of stormwater, flooding, and water quality, as well as habitat corridors.

Part 3 – Justification for the Provisions

A. Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The subject land is zoned 10 Investigation Zone under LMLEP 2004, which is an interim zone pending further site investigations to determine the preferred land use. A comprehensive Local Environmental Study (LES) has been completed for the site,

which considered a range of land use opportunities and constraints, and led to the recommended zone distribution applied to the amendment proposal.

The release of the subject land for urban development is consistent with the Lower Hunter Regional Strategy (LHRS), and the Newcastle – Lake Macquarie Western Corridor Planning Strategy, which identify the site as proposed urban land and an urban investigation area respectively. The proposal is also consistent with Council's Lifestyle 2020 Strategy, which identifies the site for urban use.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An amendment to LMLEP 2004 is the most appropriate mechanism for rezoning the subject land and enabling the site to be developed in accordance with the Planning Proposal.

LEP Pro-forma Evaluation Criteria Category 1: Spot Rezoning LEP

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?	The subject land is identified in the LHRS as proposed urban land. The site is approximately 800m from the Edgeworth town centre and the Main Road urban renewal corridor identified in the LHRS. The site is also approximately 2.2km from the Glendale retail centre, which contains a bus interchange. A new train station and transport interchange is also proposed for Glendale.
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions?	The proposed rezoning of land is consistent with the SEPPs and Ministerial Directions as shown in section B3 of this report.
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?	The subject land is located close to the Glendale/Cardiff emerging major regional centre, as well as the Main Road urban renewal corridor, which extends from Glendale to Edgeworth.
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The LES indicates that development of the site will result in economic stimulus to the local economy of \$80 million. The rezoning will also provide an increased population catchment for local businesses and contribute to urban renewal.
5.	Will the LEP be compatible/complementary with surrounding land uses?	The site has residential development to the south and west, and a Major Project is currently being considered by DoPI land owned by Coal and Allied, immediately to the north. In this respect, the proposal is consistent with surrounding land uses.
6.	Is the LEP likely to create a precedent, or create or change the expectations of the landowner or other landholders?	The subject land is zoned 10 Investigation and is positioned within close proximity to a range of services and facilities. The proposal is well justified, and is not likely to create a precedent or change expectations of other landholders.

7.	Will the LEP deal with a deferred matter in an existing LEP?	No.
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Other land in the vicinity with rezoning potential are classified as a State Significant Site (Coal and Allied), or will be the subject of another precinct level rezoning process (Xstrata).

3. Is there a net community benefit?

The proposal will provide additional land for housing to meet the demand of a growing regional population. Given the location of the site and the accessibility provided by the location to a range of services and facilities, the proposal will deliver a net community benefit. A Net Community Benefit Test has been undertaken and is provided below:

Net Community Benefit Test

Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	The subject land is identified in the LHRS as future urban land. The site is approximately 800m from the Edgeworth town centre and identified Main Road urban renewal corridor. The site is also approximately 2.2km from the Glendale retail centre, which contains a bus interchange. A new train station and transport interchange is also proposed.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	Yes – see above.
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	No – see above.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Yes – acceptable – see above.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The rezoning will provide an increased population catchment for local businesses and contribute to urban renewal.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	The proposal will deliver additional land for housing within close proximity to services and facilities, as well as employment opportunities that are provided by the nearby Edgeworth town centre and the emerging major regional centre at Glendale/Cardiff. The site is also close to open space, schools, and Glendale TAFE.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport	The subject land is positioned immediately adjacent to existing residential development, however, some upgrades to infrastructure will be necessary to support

currently available or is there infrastructure capacity to support future public transport?	development of the site. The site specific development control plan to be prepared for the site will enable the precise location of the proposed arterial road to be determined. The proposed road is planned to link Frederick Street with Minmi Road, Edgeworth. This road will enable buses to gain better access to residential areas, and provide improved traffic flow in the area.
Will the proposal result in changes to the car distances travelled by customers, employees, and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs, and road safety?	The close proximity of the site to an emerging major regional centre, and public transport, allows people to minimise the impact of travel by private vehicle.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	There are no known Government investments or infrastructure in the area that will be affected by the proposal.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	Development of the site will lead to a loss of vegetation, however, riparian corridors have been included in a conservation zone. The land has been identified as a proposed urban area in the LHRS and residential investigation area in the Newcastle-Lake Macquarie Western Corridor Planning Strategy.
Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	Part of the subject land is currently used as a knackery, which generates complaints to Council. The rezoning will provide for residential development that is more sympathetic to the surrounding, predominantly low-density, residential land use.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	The proposed residential land release will provide a greater population catchment, which will support business growth.
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	N/A.
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	The proposal will deliver additional land for housing with a high level of accessibility to a range of services and facilities, and will support nearby centres and the Main Rd renewal corridor.

B. Relationship to strategic planning framework

1. 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)?

The LHRS indicates an expected population of 160,000 people by 2031. The subject land is identified as proposed urban land and a residential investigation area in the LHRS and Newcastle – Lake Macquarie Western Corridor Planning Strategy respectively. The site will accommodate housing for population growth in the region, with approximately 300 new residential lots possible. New housing in this location will support the Edgeworth town centre, emerging major regional centre at Glendale/Cardiff, and the proposed transport hub at Glendale, as well as the urban renewal corridor extending along Main Road, Edgeworth.

2. Is the planning proposal consistent with the local council's Community Strategic plan, or other local strategic plan?

The following assessment of the proposal has been undertaken against the Strategic Directions of Council's Lifestyle 2020 Strategy:

A City Responsive to its Environment

The rezoning is likely to result in a loss of vegetation on the site as development for residential purposes occurs, however, the site is strategically well located, with access to services and facilities, and development will contribute to the nearby Edgeworth town centre, Glendale/Cardiff emerging major regional centre, and the Main Road urban renewal corridor. This is consistent with providing housing near centres to reduce travel distances, and to use infrastructure efficiently. This approach also reduces the pressure to release land on the urban fringe, which would result in larger infrastructure delivery costs and greater motor vehicle dependence.

A Well-Serviced and Equitable City

The subject land adjoins existing residential development and is located within close proximity of services and facilities, as well as employment opportunities that are provided by the nearby Edgeworth town centre and the emerging major regional centre at Glendale/Cardiff. The site is also close to open space, Schools, and Glendale TAFE.

A Well-Designed and Liveable City

The proposed rezoning of land is an extension of the existing urban environment. The site specific DCP required for the site will ensure that subdivision design provides connectivity and will support public transport, as well as encouraging walking and cycling to nearby services and facilities. A detailed LES has been undertaken to identify the appropriate distribution of land use zones on the site.

A City of Progress and Prosperity

Existing services and facilities at Edgeworth and Glendale/Cardiff will support the establishment of additional residential development, and the additional population will provide an economic contribution to these centres, and to the identified Main Road renewal corridor.

An Easily Accessible City

The proximity of the subject land to services and facilities will minimise vehicle dependence. Infrastructure is in place in the adjoining established residential area to support access to nearby centres, and this is likely to be improved further as development occurs.

3. Is the planning proposal consistent with applicable State Environmental Planning Policies?

An assessment has been undertaken to determine the level of consistency the proposal has with relevant State Environmental Planning Policies (SEPPs). The assessment is provided below:

SEPP	Relevance	Implications
SEPP 19 – Bushland in Urban Areas	Aims to prioritise the conservation of bushland in urban areas, and requires consideration of aims in preparing a draft amendment.	Development of the site will lead to a loss of vegetation in the proposed residential area, however, development of this well serviced site is likely to reduce pressure to develop less appropriate land further from services and facilities. Riparian corridors will be maintained in a conservation zone.
SEPP 44 – Koala Habitat Protection	Requires measures be implemented where koala habitat or potential koala habitat is identified on the subject land.	Detailed investigations did not identify koala habitat on the subject land.
SEPP 55 – Remediation of Land	Requires the subject land to be suitable for its intended use in terms of the level of contamination, or where the land is unsuitable due to the level of contamination, remediation measures are required to ensure that the subject land is suitable for its intended use.	Investigation of contamination and the need for remediation has informed the decision to rezone the land. A remediation action plan will need to be prepared and implemented prior to development occurring.
SEPP (Housing for Seniors or People with a Disability) 2004	Enables the development of housing for seniors provided specified criteria are met including topography, design, and access to services and facilities.	The release of land for urban purposes will result in SEPP (Housing for Seniors or People with a Disability) 2004 being relevant to much of the subject land. The site is well located to support such development.

4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment has been undertaken to determine the level of consistency the proposal has with relevant Ministerial Directions. The assessment is provided below:

Ministerial Direction	Relevance	Implications
2.1 – Environmental Protection Zones	The direction requires that a draft LEP contain provisions to facilitate the protection of environmentally sensitive land.	Development of the site will lead to a loss of vegetation in the proposed residential area, however, development of this well serviced site is likely to reduce pressure to develop less appropriate land further from services and facilities. Riparian corridors will be maintained in a conservation zone.
2.3 – Heritage Conservation	The direction requires that a draft LEP include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	Items of heritage significance will be contained within a conservation zone.
2.4 – Recreation Vehicle Areas	The direction restricts a draft LEP from enabling a recreation vehicle area.	A recreation vehicle area is not proposed.
3.1 – Residential Zones	The direction requires a draft LEP to include provisions that facilitate housing choice, efficient use of infrastructure, and reduce land consumption on the urban fringe.	The site adjoins existing urban areas. The draft amendment will be consistent with this direction.
3.2 – Caravan Parks and Manufactured Home Estates	The direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	The proposal will not affect provisions relating to Caravan Parks or Manufactured Home Estates.
3.3 – Home Occupations	The direction requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	The amendment will retain the provisions of the principal LEP in this regard.
3.4 – Integrating Land Use and Transport	The direction requires consistency with State policy in terms of positioning of urban land use zones.	The site is positioned with access to the emerging major regional centre of Glendale/Cardiff, as well as the Edgeworth town centre and Main Road

Ministerial Direction	Relevance	Implications
		urban renewal corridor.
4.1 – Acid Sulfate Soils	Applies to land that has been identified as having a probability of containing acid sulfate soils, and requires that a draft amendment be consistent with the Acid Sulfate Soil component of the model Local Environmental Plan (ASS model LEP), or be supported by an environmental study.	The subject land has not been identified as containing potential acid sulfate soils. LMLEP 2004 is also consistent with the ASS model LEP, and the draft amendment has been supported by detailed investigations of the land.
4.2 – Mine Subsidence and Unstable Land	The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	The Mine Subsidence Board has been consulted with no objection to the rezoning proposal being received.
4.3 – Flood Prone Land	Applies where the draft amendment will affect provisions to flood prone land.	Areas prone to flooding will be contained within a conservation zone or will be required to have a management plan put in place for management of the relevant watercourse and adjoining land.
4.4 – Planning for Bushfire Protection	Applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	The sites contain land identified as bushfire prone land, and Asset Protection Zones will be required within the residential zone. Consultation with the NSW Rural Fire Service has occurred with no objection to the rezoning proposal.
5.1 – Implementation of Regional Strategies	The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	The draft amendment is consistent with the strategic direction set by the Lower Hunter Regional Strategy and Newcastle – Lake Macquarie Western Corridor Planning Strategy.
6.1 – Approval and Referral Requirements	Prevents a draft amendment from requiring concurrence from, or	The draft amendment will be consistent with this

Ministerial Direction	Relevance	Implications
	referral to, the Minister or a public authority.	requirement.
6.2 – Reserving Land for Public Purposes	The direction prevents a draft LEP from altering available land for public use.	The draft amendment does not propose to alter the provision of land available for public use.

C. Environmental, social and economic impact

1. 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?

The LES included a peer review of vegetation communities identified in a previous study by Conacher Travers. The Conacher Travers report did not identify any Endangered Ecological Communities (EEC) on the site, however, the LES concluded that vegetation in the north western corner of the site forms the Lower Hunter Spotted Gum Iron Bark Endangered Ecological Community. Despite this difference in reporting, the LES does not recommend that the EEC be conserved due to its small size and the area being likely to become isolated in relation to connectivity to other areas of vegetation. No threatened flora or fauna species were identified on the site.

A Major Project is currently being considered by the State Government for development of the Coal and Allied site to the north of the subject land. The development outcome for the Coal and Allied land will not be known until the proposal is determined, however, it is likely that the site will be substantially developed. This would reduce the ecological value of the Transfield Avenue site, and would leave the site poorly connected to conservation corridors in the area.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The impacts of the proposed rezoning on the environmental attributes of the site were considered as part of the detailed LES. The LES recommended that riparian corridors be protected through the establishment of a conservation zone over that land. This recommendation has been implemented in the Planning Proposal.

To manage flood risks and minimise water quality impacts, the LES has recommended that riparian corridors be contained within a conservation zone. In accordance with advice from the then named Department of Water and Energy, a plan of management will be required to ensure that any development proposed near drainage lines is appropriate. This will be managed through a site specific Development Control Plan (DCP) for the site.

Contamination assessments undertaken on the site have determined that the land is capable of supporting residential development. Part of the site contains a knacker, and there have been rural uses in other parts of the site. Remediation work will be required prior to development on this land.

An Aboriginal artefact scatter site was identified on the site, and will be contained within the proposed conservation zone.

In consultation with the Department of Environment and Climate Change (now Office of Environment and Heritage (OEH)) Council was asked to consider the 'improve or maintain' threshold for biodiversity values. Subsequent discussions with OEH indicated that the 'improve or maintain' threshold could be met by providing

biodiversity offsets for the area of vegetated land to be zoned for residential use. This was raised with landholders and further consultation occurred with OEH and DoPI, however, biodiversity offsets were proving difficult to determine and deliver because of the multiple ownership of the site and the inability of the landholders to fund offset purchases.

During public exhibition of the draft amendment, staff and the landholders pursued options to achieve offsets to the satisfaction of OEH, which included an offer of land by the landholders. However, OEH determined that this offer was not of an acceptable land area and did not comprise 'like for like' vegetation communities.

Council's draft Biodiversity Offsets Policy was prepared to assist in determining biodiversity offsets and a clear process for their delivery. Staff put forward an option to provide offsets within the site (i.e. a reduced development area), which was not supported by OEH as it was thought that it would not deliver a quality long term biodiversity outcome or connectivity due to the likely development of the surrounding area.

The remaining option was to prepare a Voluntary Planning Agreement (VPA) to secure the delivery of offsets after the rezoning, but prior to development of the site. This was not favoured by OEH as offsets would be deferred until after the rezoning had occurred. Council and landholders also did not favour this option as all landholders would need to agree to enable a holistic planning outcome, and to avoid development on a lot-by-lot basis which would result in a poor built outcome and poor connectivity.

The development outcome for the Coal and Allied land will not be known until the proposal is determined, however, it is likely that the site will be substantially developed. Similarly, a proposal is likely to be received shortly to release the Xstrata land to the east of the subject site for urban development. These developments would reduce the ecological value of the Transfield Avenue site, and would leave the site poorly connected to conservation corridors in the area. The proposal is considered appropriate given that efforts to provide biodiversity offsets have been exhausted, the site is strategically well located for urban growth, and the site has a high level of access to services and facilities.

3. How has the planning proposal adequately addressed any social and economic effects?

The proposal will provide additional housing to meet the needs of the growing population and is positioned with good access and close proximity to a range of services and facilities. A knackery operates on part of the subject land, which is currently held by the Public Trustee. Rezoning of the land would facilitate the removal of the knackery, which generates complaints to Council, and allow development that is more sympathetic to adjoining residential land use.

The need for an arterial road through the subject land has been identified to facilitate effective traffic movement and an alternative route to Newcastle Link Road, as the Main Road/Minmi Road intersection is approaching capacity. The establishment of this road would also provide for a public transport route into future urban areas. The implementation of a site specific DCP associated with progression of the rezoning and subsequent development will enable the precise location of this road to be determined through subdivision design, and allow the achievement of the arterial road.

It is estimated that development of the site would contribute approximately \$80 million to the local economy and produce approximately 1365 temporary full time jobs. In addition to this, the LES identifies that development of the site will provide an

increased population catchment for local businesses, providing an economic contribution to the centres at Edgeworth and Glendale/Cardiff, as well as the identified Main Road renewal corridor. The LES also indicates that the proposal provides an opportunity to provide more affordable homes.

D. State and Commonwealth interests

1. Is there adequate public infrastructure for the planning proposal?

Consultation undertaken with service authorities has determined that the land can be adequately serviced to accommodate the proposed development of the subject land, although some upgrades will be necessary. The site specific DCP to be prepared for the site will enable the precise location of the proposed arterial road to be determined. The proposed road is planned to link Frederick Street with Minmi Road, Edgeworth. This road will enable buses to gain better access to residential areas, and provide improved traffic flow in the area.

2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Ten responses were received from public agencies as a result of the consultation process, and are outlined below:

Mine Subsidence Board

The Mine Subsidence Board indicated that approval should be sought prior to any subsequent subdivision or development consent being issued. The applicant will be required to consult with the Mine Subsidence Board prior to subdivision or development occurring.

Awabakal Local Aboriginal Land Council

The Awabakal Local Aboriginal Land Council required that an archaeological survey be conducted on the subject land. A detailed LES for the subject land included a detailed archaeological survey conducted with Aboriginal stakeholders. An identified scatter site will have a conservation zone applied.

Heritage Council

The Heritage Council required that a heritage and archaeological study be conducted on the subject land. The LES included a heritage and archaeological study of the subject land, which identified a scatter site within the area proposed for conservation zoning.

Department of Primary Industries

The Department of Primary Industries indicated that contact should be made with Sydney Gas Operations Pty Ltd as the holder of Petroleum Exploration Licence No. 267. Sydney Gas Operations Pty Ltd was contacted and no objections were raised to the rezoning proposal.

Rural Fire Service

The Rural Fire Service indicated that any future development is to comply with the Planning for Bushfire Protection Guidelines. All future development on the site will be required to comply with the Planning for Bushfire Protection Guidelines.

Department of Environment and Climate Change

The Department of Environment and Climate Change requested that consideration be given to native vegetation and the 'improve or maintain' principle, potential land use conflicts, threatened species, Aboriginal cultural heritage assessment and consultation, potential impacts on areas of high conservation value, contaminated land, and stormwater management. A detailed LES has been conducted on the

subject land and has assessed potential impacts and informed appropriate land use zones for the land. A discussion of biodiversity offsetting efforts has been provided in section C.2. above.

Department of Water and Energy

The Department of Water and Energy identified relevant legislation and policy for consideration and requested consideration of ground water systems and watercourses including the protection of riparian areas. A detailed LES considered hydraulic systems on the subject land and identified the areas required to be conserved as core riparian zones.

Hunter Water Corporation

Hunter Water provided details of existing capacity and timeframes for upgrades where they will be required to support future development of the subject land. The identified upgrades will be necessary to facilitate future development of the subject land and the developer will be required to undertake further discussions with Hunter Water Corporation following rezoning of the land and prior to development approvals being issued.

Ministry of Transport

The Ministry of Transport requested the completion of a Transport Management and Accessibility Plan for the subject land. A detailed LES of the subject land included transport, traffic, and social impact assessments and has informed the proposed land use zones.

Roads and Traffic Authority

The Roads and Traffic Authority requested a detailed traffic assessment for the area. A detailed traffic assessment has been completed in accordance with RTA requirements as part of the LES for the proposal. Subsequent consultation led to a request for clause 62 to be applied to the land to enable the State Government to negotiate with the developer for the establishment of infrastructure and upgrades.

Part 4 – Details of Community Consultation

The draft amendment to LMLEP 2004 was publicly exhibited for a period of 28 days from 14 November 2009 to 11 December 2009. The submissions received and Council's responses are outlined below:

Matters Raised	Town Planning Response
The Roads and Traffic Authority (RTA) indicated that the land should be identified as an urban release area and be subject to clause 62 of LMLEP 2004.	This request has been accommodated and the proposal amended as necessary. The application of clause 62 will enable the State Government to negotiate with the developer for the establishment of infrastructure and upgrades.
A submission was received from Coal and Allied requesting that land included in the Part 3A – Major Project be removed from inclusion within the draft plan, as it will be rezoned as part of the Major Project assessment and determination.	The proposal has been amended to reflect this request.

Part 5 – Attachments

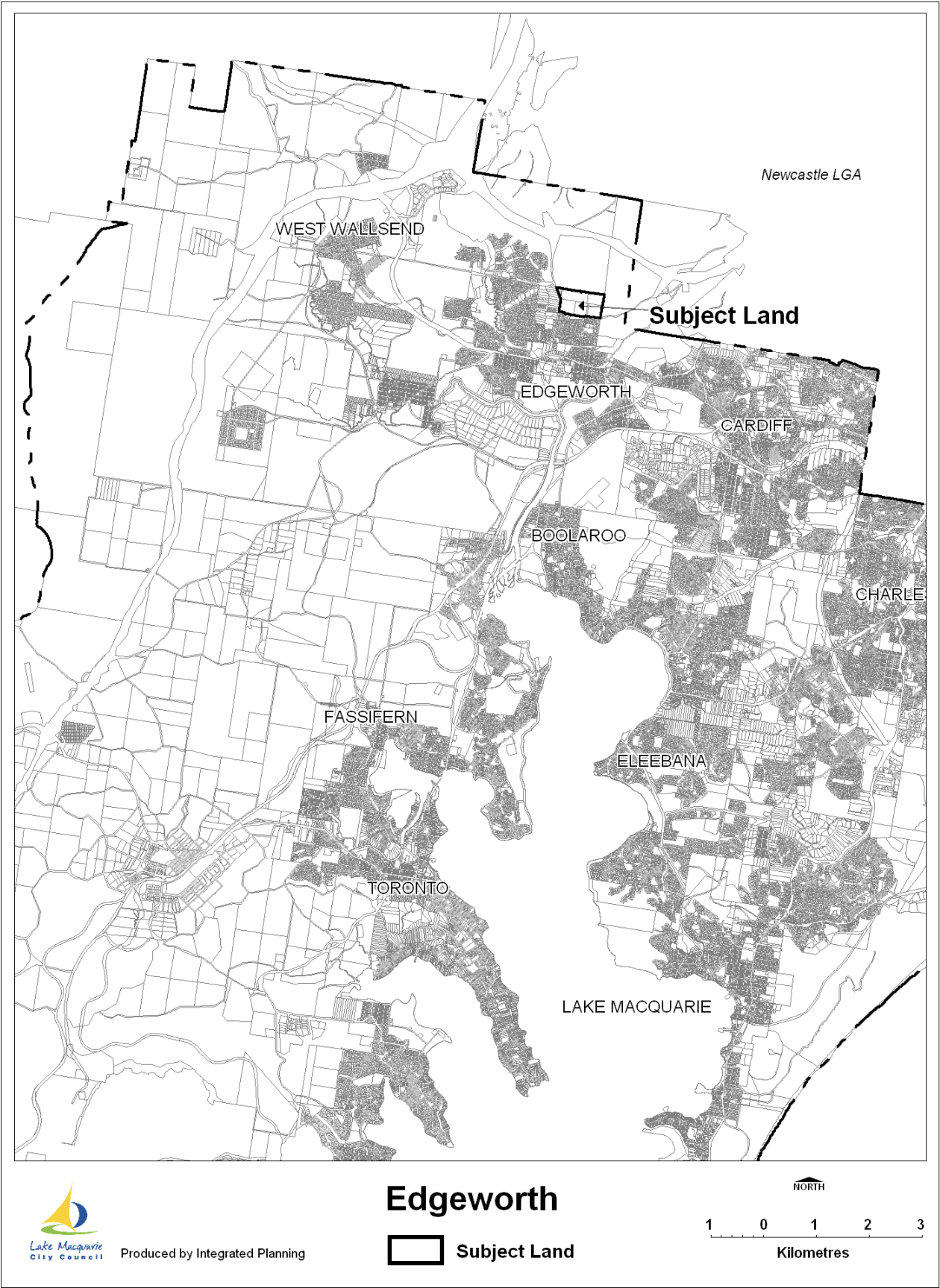


Figure 1: Subject Land Locality Map



Figure 2: Aerial Photograph and Existing Zone Distribution LMLEP 2004

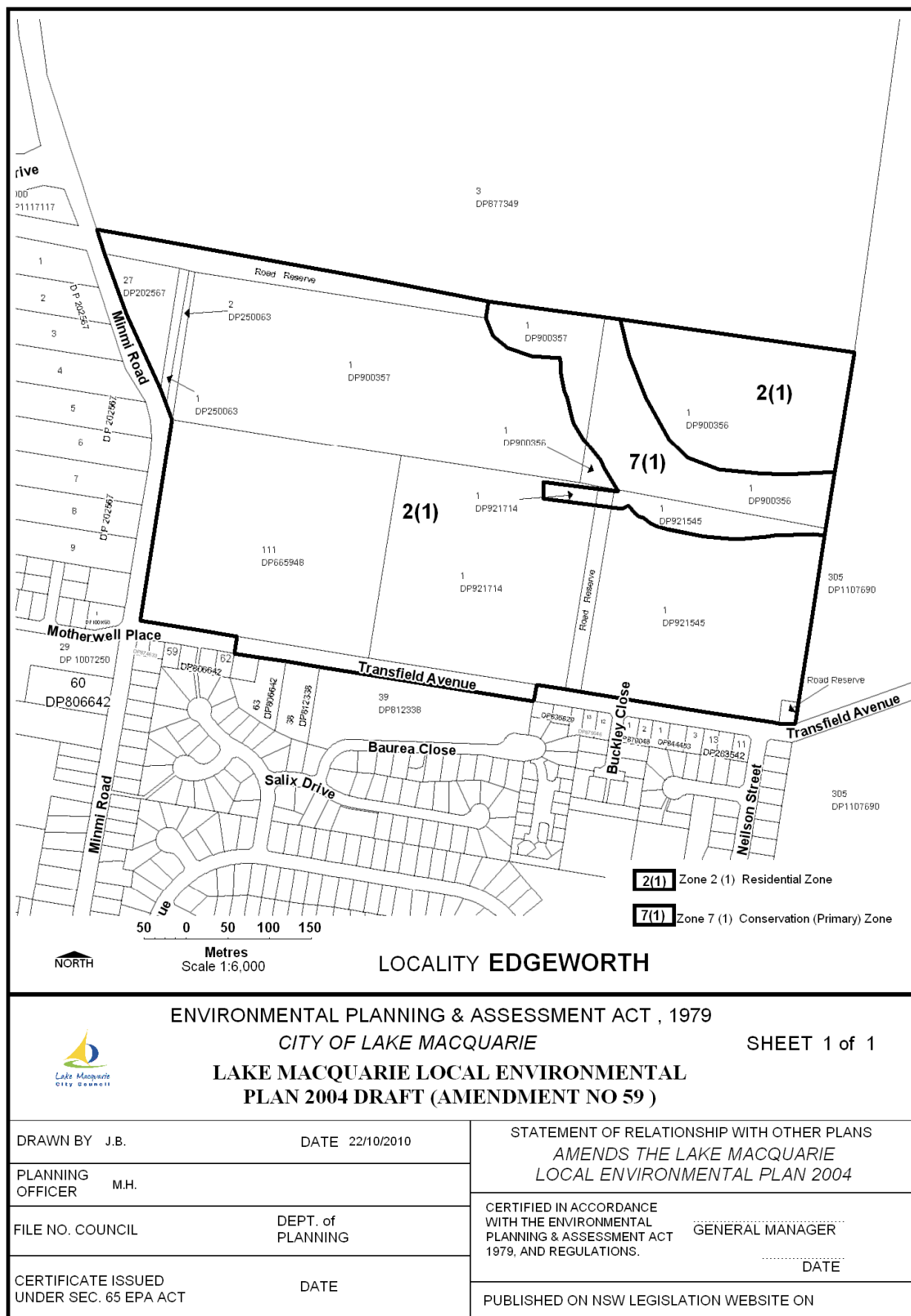


Figure 3: Proposed Zone Distribution LMLEP 2004

Attachment 2 – Letter from Twin Rivers Developments September 2010

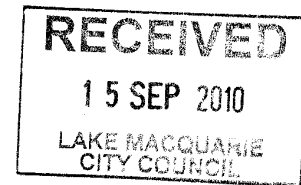
**TWIN RIVERS DEVELOPMENTS PTY LIMITED
ACN 065 087 292**

**PO Box 533
RAYMOND TERRACE NSW 2324**

**Telephone (02) 4988 6634
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e-mail gmcahill@exemail.com.au**

TRD Reference: 10trd008

10 September 2010



Lake Macquarie City Council
PO Box 1906
HUNTER REGION MAIL CENTRE NSW 2310

Attention: Tony Farrell – Director City Strategy

Dear Tony

**Re : Unresolved Matter - Draft Amendment No 45 to LEP
Land off Transfield Ave, Edgeworth**

Twin Rivers Developments Pty Limited ("TRD") represents four of the owners of the six adjoining properties which are the subject of the abovementioned rezoning proposal.

I am writing to request that Council Staff refer the abovementioned 'unresolved matter' to Council with a recommendation that the proposed LEP Amendment be forwarded to the Planning NSW.

I seek this action as the property owners believe that the 'unresolved matter' in question ('biodiversity offsets') is unable to be resolved by either the property owners or Council. The property owners are therefore of the view that this matter should be referred to the Planning NSW as a catalyst for high level discussions to be commenced between Planning NSW and the Department of Environmental, Climate Change and Water ("DECCW") on this matter.

TRD provides the following background information and comments in support of this request :

10 September 2010

1 - Background

The properties concerned were identified for future residential use in Council's 'Lifestyle 2020 Plan', and were rezoned to '10 Investigation' in the Council's LEP 2004.

The properties have subsequently also been identified for future residential use in Planning NSW's 'Lower Hunter Strategy' and the draft 'Newcastle Lake Macquarie Western Planning Strategy'.

I note that the property owners lodged a rezoning application covering these properties in December 2004, and that unfortunately this matter has progressed at a snails pace over the last six years. I do not believe that there would be any great purpose served at this time by examining the reasons for this slow rate of progress, however I think it would be fair to say that neither the property owners nor Council would be happy with the time that it has taken to progress this rezoning.

In accordance with a resolution of Council, Draft Amendment No 45 was placed on public exhibition in late 2009, and TRD's understanding is that other than the issue of 'biodiversity offsets' there were no issues of any great substance arising from the public exhibition.

A report on the public exhibition was considered by Council's City Strategy Committee meeting on 17 May 2010. In that report, Council Staff advised Council that ...

... "the Department of Environment, Climate Change and Water (DECCW) indicated that it would object to the proposal unless biodiversity offsets were provided for the land at Transfield Avenue. Meetings have occurred between Council, landowners and DECCW in an attempt to resolve biodiversity offsets for the Transfield Avenue site that would be acceptable to all parties. Negotiations between the landowners and DECCW were unsuccessful and a solution is currently not available. It is proposed that progress on the Transfield Avenue site be deferred while a strategy direction is established to deal effectively with accommodating growth and managing biodiversity conservation in the Local Government Area."

Council resolved to accept the recommendation of Council Staff contained within the report, and sadly this matter has not progressed any further since that time.

10 September 2010

2 - The Question of Biodiversity Offsets

The requirement for biodiversity offsets arises from provisions contained within the Native Vegetation Act, which is administered by DECCW.

By way of brief overview, the biodiversity offset provisions as administered by DECCW effectively require a property owner who is seeking to rezone / develop a parcel of land containing native vegetation to conserve 'other' parcels of land having similar biodiversity attributes so as to 'offset' the eventual loss of native vegetation and habitat on the land to be developed.

The method used by DECCW to calculate the area of land required for such an offset involves a computer based assessment of the biodiversity attributes of the land to be rezoned/developed, and a calculation of the area of land required as an 'offset'. Generally, the amount of land required as an 'offset' is a multiple of the area of land to be rezoned/developed. From TRD's experience and research, the 'multiple' commences at around four times the land area, increasing in some cases to twenty or more times the area.

From the quite detailed discussions which have taken place between the property owners and DECCW, and with the owner's environmental consultants, it has become apparent to the owners that the owners will be unable to meet DECCW's offset requirements. It has also become apparent that the only way to meet DECCW's requirements would be for the owners to purchase additional land nearby and then dedicate this additional land for conservation purposes. This is problematic as virtually all of the nearby land of sufficient area to meet the offset requirements is owned by international mining companies (ie; Rio/Coal & Allied and Xstrata), who typically are either unwilling or unable to subdivide and sell small sections of their landholdings.

Even if suitable land was available for purchase, the owners believe that it is simply ludicrous for them to be required to purchase additional land nearby in order for them to rezone/develop the relatively small parcel of land they already own. Several of the property owners are retirees who simply do not have the capacity to acquire additional land in any event.

It would seem that whilst the biodiversity offset provisions are perhaps fine in theory, they are extremely difficult to implement in practice, **particularly in connection with the rezoning of a group of relatively small parcels of land with multiple owners**, each having varying biodiversity attributes. It would also seem that the biodiversity offset provisions are only practical for extremely large parcels of land owned by a single property owner (for example, rezonings for 'master planned communities by the likes of Stockland, Lend Lease or Mirvac, or the eventual future rezoning and development of the adjoining former coal mining lands).

This assessment has led the owners to conclude that there is a 'problem' in the rezoning process at State Department / State Government level, which can only be addressed at that level.

10 September 2010

3 - An Issue for State Government / State Department Consideration

It is perhaps stating the obvious that the success of Planning NSW's 'Lower Hunter Strategy' and the draft 'Newcastle Lake Macquarie Western Planning Strategy', as well as Council's own 'Lifestyle 202 Plan' relies to a very large extent upon the identification of land for future urban use, and the timely rezoning and release of such land to meet the employment and housing needs of the community into the future.

As noted in Section 2 above, **the land in question has been identified for future residential use in all three plans**. To now move forward and make this land available for urban use, **ALL** parties who have a role in the process need to be actively involved and committed to achieving outcomes.

The owners believe that in initially preparing the rezoning application and undertaking a full suite of studies for the land, and then subsequently in meeting the cost of a Council managed Local Environmental Study, the owners have undertaken their part in the process. As stated above, the owners do not have the capacity to resolve the biodiversity offset impasse.

I would suggest to you that in progressing the rezoning to the current position of impasse, Council has played its part in this process. From discussions with Council Staff, it is apparent that Council has no policy, mechanism or process available to facilitate the securing of biodiversity offsets for this (or for that matter any other) rezoning proposal, and therefore it is apparent that Council has very limited ability to either resolve or assist in resolving the current biodiversity offset impasse.

TRD would be most surprised if Council has not encountered this same problem with other rezoning proposals. Therefore to put it quite bluntly, TRD believes that the biodiversity offset 'problem' is a major barrier to Council implementing the Lifestyle 2020 Strategic Plan not only for this land, but city wide.

The 'problem' arises from an obvious 'conflict' between the strategic direction and goals of the State Government and Planning NSW as embodied in the Lower Hunter Strategy, and the conservation goals of the State Government as being implemented by DECCW. Therefore to again put it bluntly, this is a 'problem' created at State Government / State Department level, which the owners believe can only be resolved at the level.

However, the owners are also very firmly of the view that for Council to simply decide to defer any further action on this matter until someone else resolves the 'problem' is simply not good enough. This merely results in this State wide 'problem' being concealed at local government level, whereas it should be constantly highlighted at Department / State Government level.

10 September 2010

4 - Request for Draft LEP Amendment to be Forwarded to Planning NSW

With respect, the owners believe that Council needs to take a more proactive role in finding a solution to this problem. The owners believe that one option with merit available to Council is that notwithstanding the unresolved biodiversity offset issue, to forward Draft LEP Amendment No 45 to Planning NSW. TRD has recently informally discussed such a course of action with a senior officer of Planning NSW who acknowledged the biodiversity 'problem' and agreed that 'unresolved referral' was an option available to Council.

The property owners believe that referral of this matter to Planning NSW will be a catalyst for high level discussions to be commenced between Planning NSW and DECCW on this matter. The owners are hopeful that this may in turn facilitate a solution being found not only for the Edgeworth owners, but for the biodiversity offset 'problem' across the State.

The owners hereby request that this matter be referred back to Council for consideration. The owners seek the support of Council Staff in recommending that notwithstanding the unresolved biodiversity issue, the draft LEP amendment be forwarded to Planning NSW.

As a final note, the owners would like to point that there is an added urgency for Council to consider such a course of action. TRD understands that Planning NSW has issued a directive to all Council's to the effect that all outstanding LEP amendment proposals must be submitted to Planning NSW by 31 December 2010 or else outstanding LEP amendments will 'lapse'. If an LEP amendment lapses, Council would then need to apply to Planning NSW to re-commence the rezoning process. From the owner's perspective, this would be a most unsatisfactory outcome after six years effort and a considerable cost. I would imagine that from Council's perspective, this would also be a less than desirable outcome as it would result in further delay and consume further Staff resources.

I await your response to the owner's request. In the meantime, please do not hesitate to contact me should you require further information or wish to discuss this matter.

Yours sincerely,

Gregory Cahill

Gregory Cahill
Managing Director

Attachment 3 – Letter from Twin Rivers Developments May 2011

**TWIN RIVERS DEVELOPMENTS PTY LIMITED
ACN 065 087 292**

PO Box 533	Telephone (02) 4988 6634
RAYMOND TERRACE NSW 2324	Facsimile (02) 8003 9151
	e-mail gmcahill@exemail.com.au

TRD Reference: 11trd003

17 May 2011

Lake Macquarie City Council
PO Box 1906
HUNTER REGION MAIL CENTRE NSW 2310

Attention: Tony Farrell – Director City Strategy

Dear Tony

**Re : Unresolved Matter - Draft Amendment No 45 to LEP
Land off Transfield Ave, Edgeworth**

I refer to Twin Rivers Developments Pty Limited's ("TRD") letter to you dated 10 September 2010 wherein TRD requested that Council Staff refer the abovementioned 'unresolved matter' to Council.

I note that since that time there has been some discussion between Council and property owners regarding this matter, including a meeting with Council Officers on 12 May 2011. I understand that during this time there has also been considerable discussion between Council, Planning NSW, and the Office of Environment and Heritage ("OEH") (formerly the Department of Environment Climate Change and Water) regarding the issue of 'bio-diversity offsets'.

Unfortunately, it is quite apparent to the property owners that despite Council's best endeavours over the last eight months, Council has (once again) been unable to progress this matter.

Subsequent to the abovementioned recent meeting between Council Staff and property owners, I can advise that the property owners discussed this matter and re-affirmed their long held view that the 'unresolved matter' in question ('biodiversity offsets') is unable to be resolved by either the property owners or Council. The property owners also re-affirmed their long held view that this matter should be referred to Planning NSW as a catalyst for high level discussions to be commenced between Planning NSW, the OEH, and the Office of the Premier and Cabinet on this matter.

17 May 2011

At the request and direction of the property owners, TRD hereby re-affirms the property owner's previous request for Council Staff to refer this 'unresolved matter' to Council with a recommendation that the proposed LEP Amendment to be forwarded to Planning NSW. The property owners further request that this letter, together with TRD's letter dated 10 September 2010 be included in the report to Council.

I await your response to the owner's request. In the meantime, please do not hesitate to contact me should you require further information or wish to discuss this matter.

Yours sincerely,



Gregory Cahill
Managing Director