

21 June 2011

James Shelton
Department of Planning
PO Box 1226
NEWCASTLE NSW 2300

Dear James

Subject: Planning Proposal – Transfield Avenue Edgeworth - Draft Amendment No. 59 to Lake Macquarie Local Environmental Plan 2004 – Gateway Determination

I write to request a Gateway determination for a Planning Proposal for the rezoning of land at Transfield Avenue Edgeworth. The Planning Proposal will rezone the subject land from 10 Investigation Zone and 5 Infrastructure Zone to 2(1) Residential Zone and 7(1) Conservation (Primary) Zone. This Planning Proposal has arisen from a Local Environmental Plan amendment that commenced under the former plan-making provision of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*.

Council received a proposal from Jubilee Projects in 2004 to rezone part of the Edgeworth 10 Investigation Zone land. The proposal was considered by Council, and it was determined that it should proceed in alignment with rezoning proposals for adjoining 10 Investigation Zone land to avoid piecemeal land release, and to facilitate the coordination of infrastructure delivery.

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 occurred 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 (LES) in agreement with Newcastle City Council, and undertaking a structure planning exercise for the land to inform separate rezoning proposals.

The cross-boundary LES option was deemed the most practical under the circumstances. On 26 November 2007, 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, however, 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). New tenders

were called and consultants were appointed to complete investigations for the subject parcels. A detailed LES has been prepared for the subject land, which has informed the distribution of draft land use zones.

Prior to the public exhibition, the Office of Environment and Heritage (OEH) (formerly Department of Environment and Climate Change) 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 Department of Planning) subsequently approved public exhibition of the draft amendment, on the condition that biodiversity offsets be negotiated for the Transfield Avenue site to the satisfaction of OEH before the draft amendment was returned to DoPI for finalisation. The draft amendment was publicly exhibited between 14 November 2009 and 11 December 2009.

During public exhibition, 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. As a result of the difficulties in providing biodiversity offsets for the Transfield Avenue site, the Neilson Street site was progressed under a separate process.

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.

Following all options for biodiversity offsets being explored and exhausted, Council resolved on 14 June 2011 to support the proposed rezoning and forward the matter to DoPI for the draft amendment to be made due to the strategically desirable location of the site for development.

The draft amendment has fulfilled all the requirements under the former provisions of the *EP&A Act 1979* in respect to the preparation of an LES, consultation with government agencies and the community. Given this, it is recommended that the Department of Planning's Gateway determination recognise all the work already undertaken and forward the Planning Proposal to the Minister for the plan to be made pursuant to section 59 of the *EP&A Act 1979*. A draft instrument is attached to assist Parliamentary Counsel in drafting the amendment.

Should you require further information, please do not hesitate to contact me on 4921 0498.

Yours faithfully

Matthew Hill
Senior Strategic Planner
Integrated Planning Department

Attachments:

- ***Planning Proposal***
- ***Draft Instrument – Amendment No. 59 – Lake Macquarie Local Environmental Plan 2004***
- ***Council Report and Resolution (14 June 2011)***
- ***CD including:***
 - ***Planning Proposal***
 - ***Council Resolutions and Reports***
 - ***Draft Instrument***
 - ***Section 62 Consultation Responses***
 - ***Public Exhibition Responses***