

09STRAT004 Section 54 Report – Lake Macquarie LEP 2004 Administrative Amendment

Folder No: F2007/02052
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Précis:

A review of Lake Macquarie Local Environmental Plan (LMLEP) 2004 has been undertaken to address a number of issues that have been identified by staff in the past twelve months. The majority of proposed amendments are minor in nature.

The matters that have been investigated and are nominated for inclusion in the next administrative draft LEP include:

1. Updating property descriptions in the schedules of LMLEP2004 to reflect lot consolidations, subdivisions and the implementation of rural addressing.
2. Removal of the acquisition status on properties where Council, other agencies or the Crown have already acquired the land and/or where the intended purpose of acquisition has been resolved.
3. Minor “spot” rezonings where the particular circumstances of each case indicate that normal rezoning processes may be onerous or unwarranted. The sites involved are:
 - 5 Bank Street, Cardiff
 - 122 Ocean Street, Dudley
 - Parts of 297, 311, 313 and 317 Pacific Highway, Highfields
 - 7, 7A, 7B, 7C and 7D Park Street, Belmont North
4. Clarifying the legal status, definition, and / or approval requirements of a range of land uses including:
 - Bottle shops,
 - Election campaign signs,
 - Funeral facilities,
 - Veterinary clinics,
 - Rainwater tanks,
 - Fences on corner sites,
 - Seawalls / revetment structures,
 - Pet cages and kennels,

Recommendation:

Council:

- A. Prepare a draft administrative amendment to Lake Macquarie Local Environmental Plan 2004, pursuant to section 54 of the *Environmental Planning and Assessment Act 1979*; and

- B. Include within the administrative amendment referred to in resolution A the following;
- (i) Amend Schedules 4, 7, 8 and 9 to reflect the current address and title of properties listed within the respective schedules, and (ii) Amend the Lake Macquarie Local Environmental Plan zoning map to remove the acquisition status from properties identified in Appendix B, and
 - (iii) Amend the zone map with regard to;
 - (a) Lot 12 Section 12 DP 2472 known as 5 Bank Street, Cardiff, from 6(1) Open Space Zone to 2(2) Residential (Urban Living) Zone
 - (b) Lot 11 DP 866520 known as 122 Ocean Street, Dudley, from 2(2) Residential (Urban Living) Zone to 3(2) Urban Centre (Support) Zone.
 - (c) Part of Lots 106-108 DP 218054 and part of Lot 14 DP 1019926 known as 297 – 317 Pacific Highway, Highfields, from 6(1) Open Space Zone to a mix of 2(1) Residential Zone for lots 106-108 DP218054 and 3(2) Urban Centre (Support) Zone for Lot 14 DP 1019926.
 - (d) Lots 9 – 18 DP 736660 and Lot 20 DP719213 known as 7, 7A, 7B, 7C and 7D Park Street, Belmont North, from 2(1) Residential Zone to 6 (1) Open Space Zone, and
 - (iv) Amend the land use table of clause 15 to permit bottle shops with consent in the 3(1) Urban Centre (Core), 3(2) Urban Centre (Support) and 6(2) Tourism and Recreation zones, and
 - (v) Amend schedule 1 to permit election campaign signs as exempt development subject to criteria to preserve the amenity of the urban and natural environment, and
 - (vi) Insert definitions for Funeral Chapel, Funeral Home and Mortuary within the dictionary consistent with the standard template LEP, and
 - (vii) Amend clause 15 to permit Funeral Chapels and Funeral Home with consent in the 1(1) Rural (Production), 3(1) Urban Centre (Core), 3(2) Urban Centre (Support), 4(3) Industrial (Urban Services), 5 Infrastructure and the 6(1) Open Space zones, and
 - (viii) Amend clause 15 to permit Veterinary Hospitals with consent in the 1(2) Rural (Living) Zone, and
 - (ix) Amend schedule 4 to permit rainwater tanks as exempt development across all zones subject to criteria relating to height and positioning, and
 - (x) Amend schedule 1 to require that fences on corner sites are consistent with Acceptable Solution A1.5 and not A1.4 of DCP1, and
 - (xi) Amend the definition of Foreshore Development within the dictionary to include “foreshore protection work designed to ameliorate the impact of natural or human induced processes to the land or the lake”, and
 - (xii) Amend clause 23 to require Foreshore Development to be ancillary to a permissible use and to require foreshore stabilisation works to be consistent with Council's Foreshore Stabilisation and Rehabilitation Guidelines, and that soft engineering techniques are adopted where feasible, and
 - (xiii) Amend schedule 1 to permit pet cages and kennels as exempt development

subject to criteria to preserve the amenity of the urban and natural environment.

- C. Notify the NSW Department of Planning of its decision in accordance with section 54(4) of the *Environmental Planning and Assessment Act 1979*; and
- D. Undertakes consultation in accordance with section 62 of the *Environmental Planning and Assessment Act 1979*, and
- E. In the event that the NSW Department of Planning issues Council with delegations to exhibit and there are no unresolved comments or concerns resulting from the section 62 consultations, places the draft amendment on public exhibition pursuant to section 65 of the EP & A Act.

Background:

Lake Macquarie Local Environmental Plan (LMLEP) 2004 is the main environmental planning instrument governing development within the City. As such, it is important to regularly review LMLEP 2004. This allows resolution of issues that have potential to effect the efficient, effective, and equitable administration of development and land use decisions within the City of Lake Macquarie.

On 15 June 2006, the NSW Department of Planning (DoP) advised all Councils to limit the number of amendments to Local Environmental Plans by grouping minor administrative changes together. Integrated Planning aims to commence an administrative review each financial year to address matters identified by staff across the organisation. Two administrative amendments have been gazetted, and a third is close to gazettal. This review will be the fourth administrative amendment.

Matters raised in the previous 12 months have been investigated and a number of amendments are considered warranted. Background information for each proposed change is provided in the proposal section of this report due to the diverse range of amendments proposed.

In addition to the amendments that are outlined in this report, Council has previously resolved to make the following administrative amendments.

1. Holiday Letting – resolution 26 November 2007:
 - A. *Prepares a draft amendment to Lake Macquarie Local Environmental Plan 2004, pursuant to section 54 of the Environmental Planning and Assessment Act (EP&A Act) 1979, to permit holiday letting without development consent, where it does not adversely impact on the amenity of the neighbourhood; and*
2. Delineation on the zoning layer and addition of a note for land at Catherine Hill Bay, covered by Amendment No. 26 to the Major Project State Environmental Planning Policy (SEPP), so that LMLEP 2004 is consistent with the SEPP - resolution 13 October 2008
 - B. *Prepares an amendment to the LMLEP 2004 zoning map to delineate the area affected by the SEPP (Major Projects) 2005 (Amendment 26),*

The two amendments above do not require further resolution at this time. Councillors are advised that they will be merged with the administrative amendments nominated in this report prior to the public notification stage.

Proposal:

Updating Property Descriptions

The schedules of the LMLEP2004 provide a method of identifying specific sites that are subject to additional or specific development controls. Over time, the correct legal descriptions of these properties may change due to subdivisions, lot consolidations, boundary adjustments, or implementation of rural addressing schemes. As these changes occur, there is a need to update the schedules to preserve the clarity of LMLEP 2004 and remove the potential for doubt or confusion.

Appendix A provides a table outlining the current and proposed listings for a range of properties where the address or legal descriptions have altered since the last administrative update to LMLEP 2004. Included in the table is a brief explanation for each change.

Removal of Acquisition Status

LMLEP 2004 identifies a number of properties across the City for future acquisition. Provisions in LMLEP 2004 mean owners of land identified for acquisition may request Council to acquire the affected land. A number of these properties have been acquired, or the purpose for which they were mapped for acquisition has been achieved by alternative means. The acquisition status on a number of properties has therefore become redundant. Removal of acquisition status does not indicate that Council should dispose of or sell any the land concerned. The land will retain the current zone, which in many cases is an environmental conservation or open space zone.

It is proposed to remove the acquisition status from properties detailed in Appendix B. Appendix B also provides a brief explanation on the reason for removing the acquisition layer for each site and contains maps showing the context of each site.

Retention of the acquisition layer in these instances is not recommended as it maintains a superfluous constraint on land in Council, Government and private ownership or may oblige Council to purchase land that is no longer required and provides no public benefit. It may have the effect of artificially constraining the ability of Council to properly administer public assets.

Minor Rezoning

A need for four minor "spot" rezonings has been identified. Each site has unusual circumstances (detailed below) that suggest it would be onerous to require the owners to instigate and fund the rezoning process and in two instances relate to Council owned land. Accordingly, it is proposed that all four spot rezonings be processed as Council initiated rezonings as part of the proposed administrative amendment to LMLEP.

5 Bank Street Cardiff

5 Bank Street is a Council owned vacant parcel (Lot 12 Section 12 DP 2472) with an area of 303.5m². In 2000, Council resolved to agree to rezone the site and the nearby properties at 1 and 3 Bank Street from Open Space 6(c) to Residential 2(b). It was left for the respective owners to initiate the rezoning process but this never occurred. As a result all three sites were zoned 6(1) Open Space Zone under LMLEP 2004.

5 Bank Street Cardiff was acquired by Council on 23 June 2005 at the request of the then owner. Section 94 contributions held for open space purposes provided the funds for the acquisition with the intention that the site be rezoned to a residential zone and sold, with proceeds returned to the Section 94 open space fund.

Council has also acquired 1 Bank Street. The adjoining parcel, Lot 11 Section 12 DP2472 known as 3 Bank Street Cardiff, is privately owned, zoned 6(1) Open Space Zone and subject to acquisition upon request.

Bank Street itself is unformed and the site relies for access on the court bulb in Mac Street. If Council were to include rezoning of 1 and 3 Bank Street in this process, consistent with the Council resolution in 2000, it may lead to requests to extend Mac Street and construct Bank Street to provide access so that residential development of 1 and 3 Bank Street could proceed. For this reason, rezoning 1 and 3 Bank Street may be inappropriate at this time. However, if Council ultimately acquires 3 Bank Street – prior to disposal of 5 Bank Street – the potential to consolidate or re-subdivide 1, 3 and 5 Bank Street to address Mac Street would then exist. In turn, this could eliminate the need to construct Bank Street.

122 Ocean Street, Dudley

The second minor rezoning relates to an existing shop located at Lot 11 DP 866520 known as 122 Ocean Street, Dudley. This shop had previously been zoned 3(c) under LMLEP1984 but was rezoned 2(2) Residential (Urban Living) Zone when LMLEP2004 was gazetted. A submission is on file requesting that the neighbouring land be rezoned to 2(2). It is believed the subject land – Lot 11 DP 866520 – was unintentionally rezoned because of the neighbour's request. The effect is that the existing shop at 122 Ocean Street, Dudley is no longer a permissible use under the zone. While the shop can continue under existing use rights, any prospective change of use is limited. It is claimed that the rezoning has caused financial hardship to the owner.

Given that the change was unintentional, Council initiated, and has had a detrimental affect on the landowner, it is considered that Council should undertake to rezone the site.

297 – 317 Pacific Highway, Highfields

The third minor rezoning relates to parts of four adjoining sites from 297 – 317 Pacific Highway, Highfields. Currently a small area of 6(1) open space zone cuts across these sites but does not cover the entirety of any.

The existing development on the sites includes a residence at 297 Pacific Highway, a bitumen car park at 317 Pacific Highway, with two vacant lots between owned by Energy Australia that has a transmission line across them. An application for a car wash at 317 Pacific Highway was approved 2 April 2008.

The 6(1) Open Space land is isolated from other recreational areas and has poor pedestrian linkage with nearby residential areas. The modest dimensions of the zoned area are insufficient for any significant recreational facility and the presence of the electricity transmission pylon further reduces potential use for any community, social or recreational use.

7 – 7D Park Street, Belmont North

This rezoning relates to 11 narrow, irregularly shaped parcels of Council owned land. The lots are residual fragments resulting from previous boundary adjustment and

acquisition circa 1987. The lots cover a stormwater drainage channel that divides residential properties to the east from a sports ground to the west. Most of the channel is zoned 6(1) Open Space consistent with the sports field, the fragments acquired from the residential properties have remained under a residential zoning and were converted to the 2(1) Residential Zone during preparation of LMLEP2004.

Given the small size, irregular shape, current use, and in most instances land locked position these parcels are seen to be unsuitable for residential development. It is therefore appropriate to rezone the 11 parcels, known as 7, 7A, 7B, 7C and 7D Park Street, Belmont North to 6(1) Open Space consistent with the adjoining Council owned sports ground to the west.

Appendix C contains maps showing the context of each site that is proposed to be rezoned.

Bottle Shops

When LMLEP 2004 Amendment No. 2 was prepared, a last minute decision was made by the Parliamentary Counsel to insert a definition of 'bottle shop' in the dictionary to the LEP. Unfortunately, the land use tables in the LEP were not updated at the same time to include the now defined use. The land use tables state that "development not listed" as permissible without consent or permissible with consent is prohibited. As a result, advice has been received that bottle shops are not a permissible use within Lake Macquarie. Established bottle shops may continue to operate legally under existing use rights, however, all applications for new bottle shops must currently be rejected as a prohibited use.

Bottle shops are consistent with the following objectives of the 3(1) Urban Centre (Core) Zone:

- (a) provide land for commercial, retail, recreational and housing uses in a central location, and
- (b) generate viable employment and economic activity,

Bottle shops are consistent with the following objectives of the 3(2) Urban Centre (Support) Zone:

- (a) provide land for development that supports the viability of Urban Centre (Core) zoned land, and
- (b) provide land for mixed use development comprising residential uses in combination with commercial and retail uses, professional services and home based businesses,

Bottle shops are also consistent with the following objectives of the 6(2) Tourism and Recreation Zone:

- (a) provide land primarily for commercial recreation and tourist uses

Additionally, each of the above zones already allow clubs, hotels and restaurants as permissible with consent. Therefore, placement of these zones across the City has occurred having regard to the appropriate location of alcohol outlets and points of service.

Accordingly, it is proposed to insert *Bottle Shops* within Clause 3 ("Only with Development Consent") to each of the following zones:

3 (1) Urban Centre (Core) Zone

3 (2) Urban Centre (Support) Zone

6 (2) Tourism and Recreation Zone

Election Campaign Signs

Following enquiries by candidates for the March 2007 State Election it became apparent that election signage is not specifically dealt with under LMLEP 2004. A literal reading of the LMLEP 2004 would require a Development Application to be submitted for each electoral sign. This is impractical, may strain staff resources and hinder the democratic process. Election campaign signs are similar to real estate signs, as both are inherently temporary and at most involve minor structural elements. Real estate signs, subject to criteria, are classed as exempt development. The adoption of similar criteria for election campaign signs would be sufficient to protect the environment, preserve the general amenity of the community while also facilitating the democratic process.

It is proposed that election signage be treated in the same way as real estate signage. This would make election signage exempt for all federal, state or local elections, by-elections, referenda, plebiscites and polls providing it meets the following criteria:

In residential and conservation zones:

- Satisfy the general criteria for advertising signs.
- For land in zone 2(1) or 2(2), have a maximum area of 2.5 square metres.

In commercial , industrial, infrastructure, natural resource and investigation zones:

- Satisfy the general criteria for advertising signs.
- Have a maximum area of 4.5 square metres.

Election campaign signs in all zones:

- Must satisfy the general criteria applying to advertising signs.
- Must not be installed on private property without the consent of the owner.
- Must include the name and contact phone number of the candidate, or campaign coordinator, authorising the display.
- Upon removal the finished surface of any structure to which the sign had been attached or related is restored to its pre-campaign condition.
- In the case of State and Commonwealth elections, the sign is only displayed during the period commencing on the issue of the writ or writs for the election and is removed within 48 hours of the close of polling.
- In the case of Council elections, the sign is only displayed during the period commencing 4 weeks prior to polling day and is removed within 48 hours of the close of polling.

Funeral facilities

Currently LMLEP 2004 has no definition for funeral parlours or associated services other than a definition for cemeteries and crematoria.

Cemetery or **crematorium** means a building or place for the burying or cremation of deceased people or animals and may include a chapel, temple or other religious place for conducting funeral services.

This definition is an awkward means of catering for more conventional funeral parlours that may not involve cremations nor be a burial site. The Standard LEP Template definitions of Funeral Chapel, Funeral Home and Mortuary reproduced below, provide greater flexibility in determining which parts of the city are appropriate for different funeral and interment facilities:

Funeral Chapel means premises used to arrange, conduct and cater for funerals and memorial services, and includes facilities for the short-term storage, dressing and viewing of bodies of deceased persons, but does not include premises with mortuary facilities.

Funeral Home means premises used to arrange and conduct funerals and memorial services, and includes facilities for the short-term storage, dressing and viewing of bodies of deceased persons and premises with mortuary facilities.

Mortuary means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation.

The 1(1) Rural (Production) Zone already permits cemeteries and crematoria and the following objective is consistent with funeral facilities:

- (b) *provide for a range of compatible land uses that maintain and enhance the rural environment of the locality*

The 5 Infrastructure Zone already permits cemeteries and crematoria and the following objective is consistent with funeral facilities:

- (b) *provide land required for the expansion of existing community facilities or the development of new community facilities" is seen to be potentially consistent with funeral facilities*

The 6(1) Open Space Zone already permits cemeteries and crematoria and the following objective is consistent with funeral facilities:

- (d) *provide for the use of public land leased from the Council where community benefit can be established and the use of the land is appropriate for its location" is seen to be potentially consistent with funeral facilities.*

The 3(1) Urban Centre (Core) Zone permits commercial premises and the following objective is consistent with funeral facilities:

- (a) *provide land for commercial, retail, recreational and housing uses in a central location,*

The 3(2) Urban Centre (Support) Zone permits commercial premises and the following objective is consistent with funeral facilities:

- (a) *provide land for development that supports the viability of Urban Centre (Core) zoned land,*

The 4(3) Industrial (Urban Services) Zone permits medical centres and large scale commercial premises and the following objective is consistent with funeral facilities:

- (c) support the role of existing and future urban centres while not undermining the retail and commercial functions and general amenity of these centres,

It is proposed to:

1. Adopt the definitions of Funeral Chapel, Funeral Home and Mortuary; and
2. Add Funeral Chapel and Funeral Home to part 3 "Only with Development Consent" to the land use table for the 1(1) Rural (Production), 3(1) Urban Centre (Core), 3(2) Urban Centre (Support), 4(3) Industrial (Urban Services), 5 Infrastructure and the 6(1) Open Space Zones

Mortuary facilities are captured within the definition of Funeral Home and do not need separate listing.

Veterinary Clinics

Veterinary clinics and surgeries are defined within the LMLEP 2004 as:

Veterinary hospital means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are kept on the premises for the purpose of treatment.

Veterinary Hospitals are currently permitted in the 1(1) Rural Production Zone, the 3(1) Urban Centre (Core) Zone, the 3(2) Urban Centre (Support) Zone and the 5 Infrastructure Zone. However, they are currently prohibited in the 1(2) Rural (Living) Zone

Objectives 1(a) and (b) of the 1(2) zone seek to:

- (a) provide for the enjoyment of a rural lifestyle and the operation of small-scale rural and tourism activities, and
- (b) provide for a range of compatible land uses that maintain the rural environment

Vet clinics are seen to be consistent with these objectives as well as being both compatible with, and supportive of, rural lifestyles. Vet clinics are considered a low impact land use and issues of noise, odour, and waste disposal can be addressed during assessment of development applications.

It is proposed to include Veterinary Hospitals within the land use table for the 1(2) Rural (Living) Zone under Clause 3 "Only with Development Consent".

Rainwater Tanks

Currently, water tanks at or above ground are classed as exempt development, subject to appropriate criteria in almost half of the land use zones in LMLEP 2004 but requires consent in all other zones.

The following table illustrates the current distinction:

Water Tanks Currently Exempt	Water Tanks Currently Require Consent
1 (1) Rural (Production) Zone	3 (1) Urban Centre (Core) Zone
1 (2) Rural (Living) Zone	3 (2) Urban Centre (Support) Zone
2 (1) Residential Zone	4 (1) Industrial (Core) Zone
2 (2) Residential (Urban Living) Zone	4 (2) Industrial (General) Zone
7 (1) Conservation (Primary) Zone	4 (3) Industrial (Urban Services) Zone
7 (2) Conservation (Secondary) Zone	5 Infrastructure Zone
7 (3) Environmental (General) Zone	6 (1) Open Space Zone
7 (5) Environmental (Living) Zone	6 (2) Tourism and Recreation Zone
9 Natural Resources Zone	7 (4) Environmental (Coastline) Zone
10 Investigation Zone	8 National Park Zone
	11 Lakes and Waterways Zone

State Environmental Planning Policy 4 Development Without Consent and Miscellaneous Exempt and Complying Development, makes provision for 10,000 litre tanks (25,000 litres in the case of educational establishments) to be exempt development irrespective of LEP provisions.

Lifestyle 2020 core values of sustainability are consistent with the principle of supporting water wise development. Water tank provisions within the exempt development schedule have appropriate provisions for residential and rural zones to protect visual and acoustic amenity.

It is proposed to:

1. Extend the current water tank exemption by altering column 2 of Schedule 1 to exempt water tanks in all zones subject to certain criteria being met; and
2. Add criteria for non-residential and non-rural zones to require suitable location of tanks and minimise noise from pumps to preserve general amenity.

Fences on Corner Sites

Schedule 1 Exempt Development requires corner fences to comply with Acceptable Solution A1.4 in Part 2.7.8 (Fences) of *Lake Macquarie Development Control Plan No 1 – Principles of Development*. Acceptable Solution A1.4 limits the height of fences behind the building line to 1.8m and is a typical standard for side and rear residential fencing of non-corner sites.

Acceptable Solution A1.5 requires sight lines from the corner of the property to local, collector, sub arterial and arterial roads be maintained by either splaying, reduced heights or minimum transparency and is an appropriate means of ensuring that corner site fencing does not interfere with traffic safety. The acceptable solutions are reproduced below.

A1.4 Side (behind the front building line) and rear fences that may include retaining walls are limited to 1.8 metres in height from natural ground level. Where retaining is included, height is limited to 1.8 metres from the lower sides' finished ground

A1.5 Fences and walls maintain sightlines to pedestrian paths and roadways for a length of 6 metres from the corner of the property line to a Local or Collector Road, 9 metres from the corner of the property line to a Sub-Arterial or Arterial Road on corner lots by:

- Splaying the fence at 45 degrees, or
- Reducing the fence height to 1 metre, or
- Increasing the transparency of the fence to 60 percent, or
- Incorporating a mixture of these treatments.

It is proposed to replace the reference to Acceptable Solution A1.4, which is seen to be an error, with a reference to Acceptable Solution A1.5. The following table is an extract of column 3 of Schedule 1.

The boldface shows the proposed change:

Current requirement	Proposed requirement
Boundary fences on corner lots must comply with Acceptable Solution A1.4 in Part 2.7.8 (Fences) of <i>Lake Macquarie Development Control Plan No 1—Principles of Development</i> .	Boundary fences on corner lots must comply with Acceptable Solution A1.5 in Part 2.7.8 (Fences) of <i>Lake Macquarie Development Control Plan No 1—Principles of Development</i> .

Seawalls / Revetment Structures

In *Bizon S v Lake Macquarie City Council* [2004] NSWLEC 129 Council's refusal of a seawall at 108A-110 Sky Point Road, Coal Point was upheld on basis of lack of merit, however, the Land and Environment Court took the view that seawalls are permissible development within the 2(1) and 2(2) zones of LMLEP 2004. This is believed to be by way of operation of clause 23 of LMLEP2004 and interpretation of the current definition, reproduced below.

Foreshore development means a boatshed, jetty, slipway, boat ramp, in-ground swimming pool, inclinor, landscaping, barbeques, or other similar structures.

The open form of the definition and the disparate range of structures contained within it allow a broader interpretation of "similarity", as evidenced in this court case, than had previously been assumed by Council staff. Consequently, while seawalls are distinct from any of the structures listed they could be seen to be within the scope of the definition.

Ultimately, the decision in the *Bizon* case related to whether the seawall was required for protection of property or simply for aesthetic reasons. The site was found to be at low risk and the necessity for the structure was not demonstrated to the Courts satisfaction.

On 30 January 2006, Council adopted Foreshore Stabilisation and Rehabilitation Guidelines. The guidelines distinguish between hard engineering methods and soft engineering methods of stabilisation. Hard engineering methods include seawalls, revetments, groynes, breakwaters, and sills and are described as a last resort option.

On 12 May 2008, Council resolved to adopt the use of a figure of 0.91m for sea level rise by the year 2100 for planning purposes. One possible consequence of this may be to strengthen the argument for sea walls by proponents in the future. Individual sea wall developments may create minor and localised impacts, but the cumulative effect over time has the potential to degrade the ecological and aesthetic values of both the Lake and Coastline.

It is important to ensure that Council's planning controls continue to direct protection efforts towards soft engineering approaches such as vegetation establishment, beach, and dune nourishment. While soft engineering approaches will not always be possible, hard engineering techniques should remain a last resort option.

It is proposed to:

- alter the definition of "foreshore development" within the LMLEP dictionary to read (changes shown underlined):

Foreshore development means a boatshed, jetty, slipway, boat ramp, in-ground swimming pool, inclinor, landscaping, barbeques, foreshore protection work designed to ameliorate the impact of natural or human induced erosion to the land or the lake, or similar structures or works

- Amend clause 23 foreshore development and development below DP high water mark to read (changes shown in bold):

23 Foreshore development and development below DP high water mark

- (1) Foreshore development, **which is ancillary to a use permissible under clause 15**, and development for the purpose of utility installations may be carried out only with development consent between a foreshore building line that is fixed with respect to a DP high water mark and the DP high water mark.
- (2) Development below DP high water mark may be carried out only with development consent which must not be granted unless the consent authority is satisfied:
 - (a) that all existing structures and works on the land below DP high water mark will be removed before or within a reasonable time after development is carried out, or
 - (b) that it is unreasonable or unnecessary in the circumstances of the case for that removal to occur, having regard to the objectives of clause 22 and the provisions of any relevant development control plan.
- (3) **Notwithstanding subclause (1) Council must not grant consent to development comprising foreshore stabilisation unless it is satisfied that the design is consistent with Lake Macquarie City Council Foreshore Stabilisation and Rehabilitation Guidelines – Revision 01 as adopted by Council 30 January 2006**

Pet Cages and Kennels

In 2006 the *Companion Animals (CA) Act 1998* was amended to the effect that the following dog breeds are now classified as “restricted dogs” for the purposes of the CA Act:

- American Pit Bull Terrier or Pit Bull Terrier;
- Japanese Tosa;
- Dogo Argentina;
- Fila Brasileiro;
- Any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the *Customs Act 1901* of the Commonwealth;
- Any dog declared by a Council to be a restricted dog; and
- Any other dog of a breed, kind or description prescribed by the regulations.

As indicated above, authorised Council officers may declare any individual dog, of any breed, to be a Dangerous Dog. Once a dog is declared dangerous it has the same status as a restricted dog breed. Furthermore, the declaration is not limited to the boundaries of Council’s area and has effect throughout the State of NSW.

Owners of a Restricted Dog or Dangerous Dog must obey a range of control requirements that include keeping the dog in an enclosure that meets the standards prescribed by the *Companion Animals Regulation 2008*. The Regulations seek to ensure both public safety and humane standards of care by stipulating minimum requirements and dimensions for the enclosure.

Currently, in order to comply with the above an owner of a restricted or dangerous dog must obtain development consent to erect the required enclosure. This places owners of restricted or dangerous dogs in a difficult position, since on the one hand failure to house the animal in a compliant enclosure represents a breach of the CA Act 1998 while on the other hand erecting the enclosure before consent is granted represents a breach of the EP&A Act 1979. The CA Act provides a 3 month period for owners to comply with enclosure requirements. However, where Council officers have declared a dog dangerous it appears unreasonable to require a development application that delays a safety measure intended to protect the public from the perceived threat.

It is proposed to amend schedule 1 (Exempt Development) of LMLEP 2004 to enable the erection of an enclosure sufficient to accommodate 1 dangerous or restricted dog in accordance with the Companion Animals Act and Regulation. This would require a structure 1.8m high with a maximum floor area of 10m². It is further proposed to limit such structures to the rear yard only and be located a minimum of 900mm from any property boundary.

In circumstances where multiple restricted or dangerous dogs are located on the same property a Development Application would still be required for the larger enclosure. If the owner is unable to comply with the enclosure requirements, the CA Act provides that a Council officer may seize the dog(s) and deliver them to the pound or authorise the destruction of the dog(s).

Councillors are reminded that to satisfy the requirements of the Local Government Act 1993, s375A, once the Committee/Council has passed a resolution of this matter a division of Council is required.

Consultation:

The review that has resulted in the changes recommended by this report has involved consultation with staff from across Council. Further consultation will occur if Council resolves to prepare a draft amendment to LMLEP 2004.

Consultation will also 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 will be determined on advice from the Department of Planning and are likely to include:

Department of Planning	Department of Lands
Department of Environment and Climate Change	Department of Water and Energy
Department of Education	Department of Primary Industries
Roads and Traffic Authority	Heritage Office
Hunter Central Rivers Catchment Management Authority	Jemena Gas Networks
Awabakal Local Aboriginal Land Council	Bahtabah Local Aboriginal Land Council
Koompahtoo Local Aboriginal Land Council	Darkinjung Local Aboriginal Land Council
NSW Rural Fire Service	Mine Subsidence Board
Ministry of Transport	Maritime NSW
Hunter Water	Energy Australia
Newcastle City Council	Wyong Shire Council
Cessnock City Council	State Member for Charlestown
State Member for Swansea	State Member for Wallsend
State Member for Lake Macquarie	State Member for Cessnock

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:

The provisions contained in LMLEP 2004 indicate when a proposed development is permitted or prohibited or when a property is identified for acquisition. If the proposed amendments are adopted a number of identified anomalies will be corrected. The

proposed amendments are considered to be consistent with State Government policies and directions. Further detail is provided in the proposal section of this report and in Appendix D.

Environmental Implications:

Some of the proposed amendments seek to clarify requirements related to matters that influence environmental processes and environmental management controls. The proposed amendments will provide greater certainty for effective environmental management and protection.

The location, small dimensions and existing development located on the sites proposed for rezoning limits the extent of environmental and ecological effects likely from the rezonings.

Establishing appropriate criteria to exempt election campaign signs from requiring development consent will provide campaign managers and candidates with clear guidance on the responsible display, maintenance, and removal of campaign signs.

Increasing the area within which rainwater tanks are classed as exempt development will enhance sustainable water cycle management, reduce the extent of stormwater runoff, and reduce demand on mass storage and delivery systems.

Social Implications:

Changes proposed to LMLEP 2004 have been prepared to create more certainty for development outcomes in the City and to correct a number of anomalies that have been identified. A neutral to positive social outcome is expected from the proposed amendments.

Restoring permissibility of bottle shops in appropriate zones will have negligible social implications. Potential anti-social behaviour associated with alcohol outlets will remain a matter for consideration in the assessment of development applications.

Allowing funeral chapels and funeral homes in certain zones across the City provides more flexibility in the location of these services.

Financial Implications:

The financial implications that would result from the proposed amendments are likely to be negligible. Correcting the identification and description of properties in LMLEP2004 reduces the risk of accidental non-compliance with planning controls or errors in development decisions.

Risk and Insurance Implications:

RISKS:

The level of risk attached to the preparation of a draft LEP is minimised through following due process as established by the EP&A Act, and Environmental Planning and Assessment Regulation 2000. Council's procedures for amending local environmental plans reinforce the statutory process. Consultation with government agencies and other stakeholders will occur in accordance with section 62 of the EP&A Act.

INSURANCE:

Council's professional indemnity insurance coverage includes draft LEP preparation as a standard activity. Each of the proposed amendments are seen to have no impact on premiums or other requirements of Council's insurance policies.

Options:

The options available to Council are:

Option 1

Prepare a draft administrative amendment to Lake Macquarie Local Environmental Plan 2004, pursuant to section 54 of the *Environmental Planning and Assessment Act 1979*; as provided in the proposal section of this report. This is the recommended option as it would result in the correction of a number of anomalies in LMLEP 2004 identified by staff.

Option 2

Council resolves not to proceed with any of the proposed amendments presented in this report. This is not the preferred option as it would maintain the current anomalies.

Conclusion:

The recommended changes to LMLEP 2004 will clarify the intentions and requirements of the LEP for future applicants. The amendment will do this by removing potential for ambiguity, by facilitating the orderly management of Council assets, rectifying identified zoning anomalies and clarifies the legal status, definition and approval requirements of a range of land uses.

The assemblage of a diverse range of changes into a single amendment is consistent with Department of Planning's requirement that Council group "housekeeping" administrative changes together in order to streamline the processing of minor amendments.

Manager Integrated Planning - Sharon Pope

Internal Doc *No:*

<i>Appendix</i>	<i>A:</i>	<i>Updated property descriptions – 4 pages</i>
	<i>B</i>	<i>Removal of acquisition status – 22 pages</i>
	<i>C</i>	<i>Spot rezonings – 5 pages</i>
	<i>D</i>	<i>Policy Implications – 4 pages</i>

09STRAT004 Section 54 Report – Lake Macquarie LEP 2004 Administrative Amendment

Folder No: F2007/02052
Report By: Strategic Land Use Planner - Craig Mortell - Ext. 1623

Submission and Committee's Recommendation:

No. 4

Council:

- A. Prepare a draft administrative amendment to Lake Macquarie Local Environmental Plan 2004, pursuant to section 54 of the *Environmental Planning and Assessment Act 1979*; and
- B. Include within the administrative amendment referred to in resolution A the following;
 - (i) Amend Schedules 4, 7, 8 and 9 to reflect the current address and title of properties listed within the respective schedules, and (ii) Amend the Lake Macquarie Local Environmental Plan zoning map to remove the acquisition status from properties identified in Appendix B, and
 - (iii) Amend the zone map with regard to;
 - (a) Lot 12 Section 12 DP 2472 known as 5 Bank Street, Cardiff, from 6(1) Open Space Zone to 2(2) Residential (Urban Living) Zone
 - (b) Lot 11 DP 866520 known as 122 Ocean Street, Dudley, from 2(2) Residential (Urban Living) Zone to 3(2) Urban Centre (Support) Zone.
 - (c) Part of Lots 106-108 DP 218054 and part of Lot 14 DP 1019926 known as 297 – 317 Pacific Highway, Highfields, from 6(1) Open Space Zone to a mix of 2(1) Residential Zone for lots 106-108 DP218054 and 3(2) Urban Centre (Support) Zone for Lot 14 DP 1019926.
 - (d) Lots 9 – 18 DP 736660 and Lot 20 DP719213 known as 7, 7A, 7B, 7C and 7D Park Street, Belmont North, from 2(1) Residential Zone to 6 (1) Open Space Zone, and
 - (iv) Amend the land use table of clause 15 to permit bottle shops with consent in the 3(1) Urban Centre (Core), 3(2) Urban Centre (Support) and 6(2) Tourism and Recreation zones, and
 - (v) Amend schedule 1 to permit election campaign signs as exempt development subject to criteria to preserve the amenity of the urban and natural environment, and
 - (vi) Insert definitions for Funeral Chapel, Funeral Home and Mortuary within the dictionary consistent with the standard template LEP, and
 - (vii) Amend clause 15 to permit Funeral Chapels and Funeral Home with consent in the 1(1) Rural (Production), 3(1) Urban Centre (Core), 3(2) Urban Centre (Support), 4(3) Industrial (Urban Services), 5 Infrastructure and the 6(1) Open Space zones, and
 - (viii) Amend clause 15 to permit Veterinary Hospitals with consent in the 1(2) Rural (Living) Zone, and
 - (ix) Amend schedule 4 to permit rainwater tanks as exempt development across

- all zones subject to criteria relating to height and positioning, and
- (x) Amend schedule 1 to require that fences on corner sites are consistent with Acceptable Solution A1.5 and not A1.4 of DCP1, and
 - (xi) Amend the definition of Foreshore Development within the dictionary to include “foreshore protection work designed to ameliorate the impact of natural or human induced processes to the land or the lake”, and
 - (xii) Amend clause 23 to require Foreshore Development to be ancillary to a permissible use and to require foreshore stabilisation works to be consistent with Council's Foreshore Stabilisation and Rehabilitation Guidelines, and that soft engineering techniques are adopted where feasible, and
 - (xiii) Amend schedule 1 to permit pet cages and kennels as exempt development subject to criteria to preserve the amenity of the urban and natural environment.
- C. Notify the NSW Department of Planning of its decision in accordance with section 54(4) of the *Environmental Planning and Assessment Act 1979*; and
- D. Undertakes consultation in accordance with section 62 of the *Environmental Planning and Assessment Act 1979*, and
- E. In the event that the NSW Department of Planning issues Council with delegations to exhibit and there are no unresolved comments or concerns resulting from the section 62 consultations, places the draft amendment on public exhibition pursuant to section 65 of the EP & A Act.

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

For the Motion

Cr. J Harrison
Cr. Scarfe
Cr. Johnston
Cr. Gissane
Cr. W Harrison
Cr Tammekand
Cr. Wallace
Cr. Birt
Cr. Parsons
Cr. Coghlan
Cr. Fraser
Cr. Edwards
Cr. Piper

Against the Motion