

08STRAT056 Rezoning of land to reflect an alteration to the local government boundary near Catherine Hill Bay

Folder No: RZ/6/2008
Report By: Strategic Planner – Craig Mortell - Ext. 1623

Précis:

On 13 November 2006, Council resolved that:

Lake Macquarie City Council advises Wyong Shire Council of its agreement to the proposed alteration of the boundary between Lake Macquarie City and Wyong Shire, and that the proposal to alter the boundary be forwarded to the Department of Local Government for consideration

The boundary adjustment was gazetted on 28 September 2007 and involved approx. 5.5 square kilometres of land being transferred from the Wyong Shire Council area to the Lake Macquarie City Council area. At the time, legal advice from the City Solicitor indicated that the transferred land would be classified as unzoned land under Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004), until LMLEP 2004 was amended. Proceeding with an amendment to LMLEP 2004 was difficult while the Minister for Planning was considering a Concept Plan submitted by the Rose Group over a significant part of the transferred land.

On 2 September 2008 the Minister for Planning approved the Concept Plan and gazetted amendments to *State Environmental Planning Policy (Major Projects) 2005* (the SEPP). The decision lists land at several sites around Catherine Hill Bay and Gwandalan (Wyong Shire Council) as a State Significant Site (SSS) under Schedule 3 of the SEPP. The decision also rezones land covered by the Concept Plan to facilitate future development applications.

The rezoning of land under the SEPP relates mainly to land owned by the Rose Group and has not addressed the remainder of lands transferred to Lake Macquarie City Council from Wyong Shire Council. This distinction is shown in Appendix B attached. Council should now proceed to amend LMLEP 2004, to zone the remaining transferred land to a range of zones consistent with those that formerly applied under Wyong Local Environmental Plan 1991 (WLEP 1991).

Recommendation:

Council:

- A. Prepares a draft amendment to LMLEP2004, pursuant to Section 54 of the EP&A Act, to zone the following land (as attached in appendix B) to various zones under LMLEP 2004 consistent with the zones that formerly applied to the land under WLEP 1991:
 - (i) Lot 7 DP 774923, and
 - (ii) Lots 1 & 2 DP549905, and

- (iii) Lots 141, 145, 492, 493, Pt 146 and Pt 465 DP 755266, and
- (iv) Lot 1 DP 809795, and
- (v) The Pacific Highway south of the intersection with Montefiore Street, and
- (vi) the road reserve south of Lot 6 DP 774923 adjoining the Pacific Highway, and
- (vii) the closed road traversing Lot 1 DP 809795, and
- (viii) the coastline east of Lot 1 DP 809795; and
- B. Prepares an amendment to the LMLEP 2004 zoning map to delineate the area affected by the SEPP (Major Projects) 2005 (Amendment 26), and
- C. Notifies the NSW Department of Planning of resolution A and B, pursuant to Section 54(4) of the EP&A Act; and
- D. Consults with relevant government agencies in accordance with section 62 of the EP&A Act; and
- E. Places the draft amendment on public exhibition pursuant to Section 65 of the EP&A Act 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.
- F. Holds a division to satisfy the requirements of Section 375A of the *Local Government Act 1993* (NSW)

Background:

On 16 October 2006 a Memorandum of Understanding (MoU) was entered between the Minister for Planning, Minister for the Environment and Coastal Hamlets Pty Ltd and Lakeside Living Pty Ltd (the Rose Group of Companies). The MoU seeks to facilitate the dedication of land for environmental purposes in exchange for development of certain other land that could not previously be developed.

On 17 October 2006, the Lower Hunter Regional Strategy was released, identifying proposed urban expansion areas in Catherine Hill Bay, reflecting the MoU, but that were not previously identified in the draft Lower Hunter Regional Strategy.

A report was presented to Council on 13 November 2006 regarding a boundary adjustment with Wyong Shire Council (WSC). Reasons for the boundary adjustment involved:

- The Rose Group proposal being partly within Wyong Shire Council (WSC) and partly within the City of Lake Macquarie. If the Project was approved the result would be a township straddling local government boundaries.

- Both councils would have been required to provide a full range of services to a small population remote from other established areas, duplication of services would be inefficient.
- Different planning schemes would apply in different parts of the township.
- Moving the boundary south was preferred as there were no residents in the WSC area and 50% of the land was Crown land so disruption to residents would be minimised.
- Conversely, moving the boundary north would result in the entire population of Catherine Hill Bay becoming part of WSC.
- Moving the boundary south also meant that one water authority (Hunter Water) would be able to service the whole development.

Council resolved to agree to a boundary adjustment with WSC. The boundary adjustment was gazetted on 28 September 2007 and involved approximately 5.5 square kilometres of land (see Appendix A attached).

Legal advice was received from Council's Solicitor to the effect that:

- upon gazettal the land became part of Lake Macquarie City;
- Consequently, clause 3 of WLEP 1991 prevents that LEP from having any effect; and
- Clause 2 of LMLEP 2004 subjects the area to the provisions of LMLEP 2004.

As land use zones have not been designated for the transferred land under LMLEP 2004, clause 37 of LMLEP 2004 operates. Clause 37 deals with unzoned land, stating any form of development is permitted with the consent of Council, but in reaching a decision on a development proposal Council must have regard to the objectives of the zones applying to adjoining land.

As the Minister was considering a Concept Plan covering a significant part of the transferred land, it has not been possible to amend LMLEP 2004 to zone the land.

On 2 September 2008 the Minister for Planning approved *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 26)* and granted concept approval to development at Catherine Hill Bay and Gwandalan – subject to some plan modifications, design criteria, developer contributions and other conditions. In addition the SEPP amendment rezoned the lands directly affected by the Concept Plan, being land transferred from WSC and land zoned 2(1), 7(1) and 7(4) under LMLEP 2004. The SEPP adopts a mixture of zones derived from the Standard Template LEP, and adds several permissible uses to those zones. The zones imposed by the SEPP amendment include:

- R2 Low Density Residential,
- E1 National Parks and Nature Reserves, and
- E2 Environmental Conservation.

A map of the zones from the SEPP amendment is attached in Appendix C. The Minister also amended LMLEP 2004 by inserting the clause:

2(3) This plan does not apply to the land to which *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 26)* applies.

As a result, the SEPP effectively takes the role of a Local Environmental Plan for the affected lands, while design standards and other conditions required by the concept approval provide further criteria under which to assess the hamlet and dwelling applications. A condition of the Concept Plan requires the proponent to provide design guidelines in relation to materials and finishes for the assessment of subsequent development applications. The gazetted Map for LMLEP 2004 still shows zones for this land and may create some confusion for the public and Council staff. The LMLEP 2004 Map should be amended to clarify the planning instrument that applies. The form that the amendment will take needs to be discussed further with Department of Planning staff.

Proposal:

Given the ambiguity and confusion that the unzoned land issue, and the now gazetted changes to the SEPP create, it is proposed that:

- Council prepare an amendment to the LMLEP 2004 to ensure that all land transferred from WSC, that is currently unzoned under LMLEP 2004, be zoned and administered consistently with the rest of land in the City of Lake Macquarie; and
- Council amend the zoning map to identify the area affected by the SEPP amendment.

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

Consultation:

If Council resolves to prepare a draft amendment to LMLEP 2004, formal consultation will occur pursuant to Section 62 (s62) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The State government agencies and service authorities to be consulted during this process are:

Department of Planning	AGL
Department of Lands	Awabakal Local Aboriginal Land Council
Department of Environment and Climate Change	NSW Rural Fire Service
Department of Water and Energy	Mine Subsidence Board
Department of Education	Ministry of Transport
Department of Primary Industries	Hunter Water

Roads and Traffic Authority

Energy Australia

Heritage Office

Wyong Shire Council

Hunter Central Rivers Catchment
Management Authority

State Member for Swansea

After s62 consultation is complete a draft zone map and plan would be prepared and exhibited under section 65 (s65) of the EP&A Act. Neighbouring residents, community interest groups, environmental lobby groups and other community members will have the opportunity to comment on the draft amendment during this public exhibition period.

Implications:

Policy Implications:

Lake Macquarie LEP 2004

The amendment to the Major Projects SEPP has rezoned some land within the City of Lake Macquarie to R2 Low Density Residential, E1 National Parks and Nature Reserves, and E2 Environmental Conservation. These zones are not part of LMLEP 2004, instead being derived from the Standard Template LEP. The SEPP also amended LMLEP 2004 to exclude the development site from the provisions of LMLEP 2004.

The remaining lands transferred from Wyong Shire are presently considered to be "unzoned" lands. Under the WLEP 1991 the lands were covered by a mix of zones. These are displayed below with nearest equivalents under the LMLEP2004 in the right column.

Wyong LEP 1991

LMLEP 2004

Zone No 6 (a) (Open Space and Recreation Zone)

Zone 6(1) Open Space Zone

Zone No 7 (a) (Conservation Zone)

Zone 7(1) Conservation (Primary) Zone

Zone No 7 (b) (Scenic Protection Zone)

Zone 7(1) Conservation (Primary) Zone

Zone No 7 (e) (Coastal Lands Acquisition Zone)

Zone 7(4) Environmental (Coastline) Zone

Zone No 7 (g) (Wetlands Management Zone)

Zone 7(1) Conservation (Primary) Zone

Zone No 8 (a) (National Parks Zone)

Zone 8 National Park Zone

The transition from the former WLEP 1991 zones to LMLEP 2004 zones can occur readily and is likely to reduce the total number of zones that previously applied to the area. Preparation of the draft amendment to the LMLEP 2004 will need to consider differences in objectives and permissible uses between the different WLEP 1991 zones as well as comparison with LMLEP 2004 provisions. A Local Environmental Study should not be required.

Lifestyle 2020 Strategy

Catherine Hill Bay and Middle Camp are included within the Belmont Planning District of the strategy wherein the stated intention (page 62) is that

'Nords Wharf, Cams Wharf and Catherine Hill Bay will remain as unique "hideaway" villages on the lake and ocean'

The additional population resulting from the development approved by the Minister is likely to require reassessment of the expanded communities' infrastructure, transport, service and facility requirements. While the planning district is anticipated to grow by 3800 residents by 2020 it was planned that this growth will be focussed on existing centres, primarily Belmont, Swansea and surrounding centres.

The relative isolation of the unzoned land and its inherent ecological and scenic values mean that a direct conversion between the WLEP 1991 zones and the LMLEP 2004 zones would be consistent with Lifestyle 2020 and limit any further intensification of development in the area.

Regional Planning Framework

- The Hunter Regional Environmental Plan 1989

Section 61 provides policies for Local Environmental Plan making that require the retention of existing environmental protection zoning and controls, unless a detailed analysis confirms there will be no adverse environmental effects.

Section 63(2) states:

"The Department should further investigate the feasibility of maintaining a buffer zone between the urban areas in the Lower Hunter subregion and the Wyong local government area, particularly in relation to the reservation of appropriate public lands"

Accordingly, zoning the transferred lands to zone 7(1) Conservation (Primary) and Zone 8 National Park under LMLEP 2004 would be consistent with the Plan.

- The Lower Hunter Regional Strategy

The strategy identifies land owned by Coal and Allied and Coastal Hamlets (the Rose Group) as potential urban areas with the remaining former Wyong Shire lands indicated as either National Park, State Forest or "Proposed Conservation Lands (Dedications)". This would be achieved by the suggested conversion to similar LMLEP 2004 zones.

State Environmental Planning Policies and Section 117(2) Directions

- *State Environmental Planning Policy 14 Coastal Wetlands* was developed to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the State. The policy requires development proposals be assessed on their likely impact on the growth of native plants, survival of native

wildlife populations and protection of surface and groundwater characteristics. Appropriate zoning under the LMLEP 2004 will further the aims of this policy.

- *State Environmental Planning Policy 19 Bushland in Urban Areas* seeks to preserve natural heritage, aesthetic values, recreational, educational and scientific resources in a range of bushland areas. The policy applies to Lake Macquarie but not to Wyong Shire. The proposal is consistent with this Policy.
- *State Environmental Planning Policy 44 Koala Habitat Protection* seeks to encourage proper conservation and management of natural vegetation that provides Koala habitat. The proposal is consistent with this policy.
- *State Environmental Planning Policy 71 Coastal Protection* has application to coastal areas and has a range of objectives for appropriate public access and the preservation and management of natural and Aboriginal cultural heritage values. Appropriate zoning under the LMLEP 2004 will complement this policy.
- *State Environmental Planning Policy (Major Projects) 2005* has been amended by the Minister for Planning to declare the development site owned by Coastal Hamlets (the Rose Group) as a 'State Significant Site' in order to give effect to the Memorandum of Understanding for the residential development. As a result of this amendment the Minister has rezoned the affected development site and excluded the site from the provisions of LMLEP 2004. The proposal is to include some form of annotation on the maps of LMLEP 2004 to clarify the land affected by this change.

Environment Protection and Biodiversity Conservation (EPBC) Act (Commonwealth)

The Commonwealth Department of Environment and Water Resources determined the proposed residential development by the Rose Group to be a 'controlled action' under the EPBC Act. By appropriately rezoning the remaining transferred lands Council will assist the aims of the EPBC Act.

Environmental Implications:

The former Minister's decision has the effect of permitting greater urban development in the vicinity of Catherine Hill Bay than Council previously envisaged. Increased population is likely to add to disturbance of surrounding areas. Appropriately zoning the transferred lands under LMLEP 2004 will limit future impacts on those lands.

Social Implications:

The former Minister's decision raises social implications for both existing Catherine Hill Bay residents and potential new residents resulting from the development. Zoning the remaining transferred lands to appropriate zones under LMLEP 2004 will limit the extent of the implications.

Aboriginal Heritage Implications:

The Department of Environment and Climate Change has previously expressed concern for potential impacts on Aboriginal heritage and cultural values in the Wallarah Peninsula

area. Appropriate zoning under the LMLEP 2004 will serve to boost protection of Aboriginal heritage values in the remaining lands.

Financial Implications:

Section 37(3) of the LMLEP 2004 applies to unzoned lands and requires consideration of the zones applying to adjoining lands when assessing development applications. Given the Minister has rezoned the adjoining land for urban purposes this may create an expectation that the remaining transferred, but unzoned lands, may be suitable for an urban form of development. Applications to take advantage of that circumstance are likely to be inconsistent with the former Wyong zones and Lake Macquarie strategic objectives for the locality, potentially giving rise to litigation. Confirmation of Council's intent for the subject land through a draft LEP will mitigate that risk.

Rezoning the unzoned transferred lands is not expected to involve costs for Council beyond the staff time and resources in processing a draft amendment to LMLEP 2004.

Risk and Insurance Implications:

RISK: Zoning the transferred lands to reflect the capabilities of the land would reduce the likelihood of inappropriate development applications being lodged with Council.

The current ambiguity in administration of the unzoned lands has the potential to create expectations of development potential among landowners. Clarification of the status of unzoned lands, by way of rezoning in accordance with the LMLEP 2004, will remove this uncertainty.

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.

Options:

As stated previously the Minister has excluded the proposed residential development on land owned by Coastal Hamlets (the Rose Group) from the provisions of LMLEP 2004. The options for consideration relate to the remainder of the lands not affected by the SEPP.

Option 1 – Council resolves to rezone the remaining “unzoned” parcels as recommended in this report.

This is the preferred option because it removes ambiguity in land use administration, clarifies the capability of the land involved and provides assurance to the local community that the future use of the land will be consistent with environmental and ecological constraints. This option also provides general continuity of land use controls, consistent with the previous relevant Wyong LEP.

Option 2 – Council resolves to retain the land as unzoned land.

This option is not preferred as it perpetuates ambiguity in land use administration. Applications would need to be assessed in accordance with clause 37 of LMLEP 2004 relating to unzoned lands. This requires that Council consider the objectives of the zones of adjoining lands. Clause 37 is broadly phrased implying that all adjoining zones may be applicable. This could invoke zones 5, 7(1), 7(4) or 9 under LMLEP 2004, alternatively, zones E1 (National Parks) and R2 (Residential) under the SEPP. The combined range of permissible uses is extensive.

Conclusion:

The Minister for Planning has amended State Environmental Planning Policy (Major Projects) 2005 declaring sites around Catherine Hill Bay, Middle Camp and Gwandalan (Wyong Shire) as State Significant Sites. The decision also rezoned some land to facilitate the residential development in accordance with a Memorandum of Understanding entered into by the State Government and the Rose Group.

The Minister has not rezoned the remainder of lands transferred from Wyong Shire to the City of Lake Macquarie in 2007 and a level of land use planning ambiguity persists. It is recommended that Council resolve to prepare an LEP amendment to rezone these lands to fall under the provisions of LMLEP 2004.

Manager Integrated Planning - Sharon Pope

Internal Doc *No:*

<i>Appendix</i>	<i>A:</i>	<i>Council boundary adjustment map – 1 page</i>
<i>Appendix</i>	<i>B</i>	<i>Locality map of unzoned land– 1 page</i>
<i>Appendix</i>	<i>C</i>	<i>Amendment of State Environmental Planning Policy (Major Projects) 2005 map only – 2 pages</i>

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government boundary near Catherine Hill Bay**

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Report By: Strategic Planner – Craig Mortell - Ext. 1623

Submission and Committee's Recommendation

No. 3

Council:

- A. Prepares a draft amendment to LMLEP2004, pursuant to Section 54 of the EP&A Act, to zone the following land (as attached in appendix B) to various zones under LMLEP 2004 consistent with the zones that formerly applied to the land under WLEP 1991:
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- E. Places the draft amendment on public exhibition pursuant to Section 65 of the EP&A Act 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.
- F. Holds a division to satisfy the requirements of Section 375A of the *Local Government Act 1993* (NSW)

In accordance with Section 375A of the Local Government Act 1993 (NSW) the Mayor called for a division.

In accordance with Section 375A of the Local Government Act 1993 (NSW) the division took place immediately and identified that Councillors Jodie Harrison, Barry Johnston, Hannah Gissane, Wendy Harrison, Arnold Tammekand, Daniel Wallace, Anthony Birt, Phillipa Parsons, Laurie Coghlan, Kay Fraser, Garry Edwards and Greg Piper unanimously voted 'yes'.