

City Strategy Committee Meeting 9 July 2012

12STRAT020 Draft LEP Amendment Speers Point Quarry -1A Raymond Street, Speers Point

Council Ref: RZ/2/2008 - D02552127
Report By: Senior Strategic Planner - Gabriele Calcagno

Précis:

Council resolved at its meeting on 13 October 2008 (08STRAT054), to prepare an amendment to LMLEP 2004 to rezone the former Speers Point Quarry site from 4(1) Industrial Core, Zone 1(1) Rural (Production) and 7(2) Conservation (Secondary), to a mixture of land use zones to facilitate urban development and conservation.

Council engaged RPS Consultants to prepare a Local Environmental Study (LES), to determine the most appropriate land uses for the site. The LES recommends that the site be rezoned to a combination of a low-density residential zone and an environmental zone.

This report discusses the outcomes of the LES, and seeks a resolution from Council to support the LEP amendment and forward the Planning Proposal to the Department of Planning and Infrastructure for a Gateway determination.

Recommendation:

Council:

- A. Resolves to prepare a draft amendment to Lake Macquarie Local Environmental Plan 2004 in accordance with the provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.
- B. Forwards the Planning Proposal (Attachment 1) to the Department of Planning and Infrastructure for Gateway Determination.
- C. Resolves to place the Planning Proposal on exhibition as required by the Gateway Determination.
- D. Resolves that if no public submissions are received during the exhibition period that a report be prepared, under delegation of the General Manager, and forwarded to the Minister to make the plan.

Background:

A number of studies have been completed for the subject site and surrounding land. In 1989, Council commissioned the preparation of the Munibung Hill Development Control Study and the subsequent Munibung Hill draft Development Control Plan. In 2005, Dixon Rothschild, URS, and CM Jewell & Associates prepared an integrated land use strategy to facilitate the redevelopment of the Pasminco Cockle Creek Smelter site with future strategic land use options for lands surrounding Pasminco and Munibung Hill. This broad strategic land use strategy aimed to reflect the sustainability principles that underpin Council's Lifestyle 2020 Strategy.

Council resolved at its meeting on 13 October 2008 (08STRAT054), to prepare a draft amendment to the LMLEP 2004, to rezone the former Speers Point Quarry site.

City Strategy Committee Meeting 9 July 2012

On 16 December 2008, the Department of Planning advised Council to complete a LES for the land to determine the most suitable land use zones. Council engaged RPS Consultants to prepare the LES, which is now complete.

Due to changes in legislation which now require Planning Proposals to go through the Gateway process, the draft amendment is re-submitted to Council for its endorsement to continue with the draft amendment based on the findings of the LES and the attached Planning Proposal

Proposal:

It is proposed that Council resolve to support an amendment to LMLEP 2004 to rezone the site from 4(1) Industrial Core, 1(1) Rural (Production) and 7(2) Conservation (Secondary), to 2(1) Residential and 7(2) Conservation (Secondary). Approximately 11ha will be zoned residential and could provide up to 200 Residential lots, and approximately 69ha will be zoned for environmental purposes. A Planning Proposal outlining the proposed changes has been prepared and is provided at Attachment 1.

Consultation:

Consultation has occurred throughout the development of the LES with Council staff, the proponent, and the proponent's consultant, Coastplan.

Comments have also been received from the following State Agencies/Departments:

Office of Environment and Heritage

The Office requested the LES address matters related to the site's biodiversity values, Aboriginal heritage, industrial heritage, potential land use conflicts, contamination, flooding, climate change, and the potential impacts on threatened species.

Planning Comments:

The above matters have been assessed by the LES. The LES finds there are no outstanding matters that preclude rezoning the site.

The LES involved preparation of a Cultural Heritage Plan with recommendations that:

- Any proposed development of the Speers Point Quarry should be informed by a full and comprehensive investigation of the area's Aboriginal and European cultural heritage values.
- Consultation should occur into the gazettal of the ridgelines as an Aboriginal Place under s.84 of the National Parks and Wildlife Act 1974.
- There is the potential for European Heritage items to be found on the site.

Department of Primary Industries

The Department noted that stormwater management issues (such as drainage and treatment using best practice techniques) should be addressed at the DA stage.

Planning Comments:

The LES outlined future management options for stormwater run off, including stormwater detention.

Department of Water and Energy

City Strategy Committee Meeting 9 July 2012

The Department required that assessment take into account the *Guidelines for Controlled Activities* related to riparian corridors, watercourse crossings, outlet structures, and in-stream works. In light of the past quarrying activities, an analysis of the groundwater table level at the development site was also required, along with an assessment of potential infiltration into groundwater resources, and identification of past groundwater extraction methods; and their possible impacts on future residents, and required remedial measures.

Planning Comment:

The LES has addressed the above matters. Riparian corridors have been identified and will be included in the proposed conservation areas. Best practice stormwater assessment and drainage management will be required at the subdivision stage.

Hunter New England Health

Hunter New England Health raised concerns with the site's possible contamination by lead and other heavy metals given its proximity to the former Pasminco Cockle Creek Smelter.

The proposal is also required to address:

- the potential for environmental noise from adjoining light industry;
- provision of reticulated water and sewerage;
- incorporation of best practice design principles for energy water saving strategies and grey water reuse;
- a mosquito assessment and management plan for any constructed wetlands;
- a transport assessment for public transport access to neighbouring services and employment; and
- provision of public open space, safe and convenient footpaths and cycleways.

Planning Comment:

The LES has identified areas of soil contamination and has made recommendations for the management of these areas.

A drainage and stormwater assessment has been prepared - the site is not currently connected to a reticulated water supply or connected to the sewerage network however, capacity exists to do so. Details associated with the design of the reticulated systems for water and sewerage will be a component of the DA application for subdivision.

Access to public transport and services has been addressed in the LES and in the Planning Proposal.

Hunter Water Corporation

Hunter Water advises that there is no water or wastewater infrastructure servicing the site. However, capacity to supply is available and there are no objections to the proposal.

Planning Comment:

The proposed 2(1) Residential zone will be connected to the local reticulated water supply system and sewerage network. A servicing assessment report has been prepared.

Ministry of Transport

The Ministry requests that the Amendment consider increasing population density and employment within close walking distance to centres and transport corridors and include staging to facilitate this outcome.

City Strategy Committee Meeting 9 July 2012

Planning Comments:

The site is in close proximity to Town Centres and schools, but given topography and existing street network, the site is not a desirable location for medium density housing.

Mine Subsidence Board

The Mines Subsidence Board has no objections to the proposed rezoning. The site is underlain by coal reserves that may be mined in the future.

Planning Comment:

Noted.

NSW Rural Fire Service

The NSW Rural Fire Service has no objections to the proposed rezoning. However, residential development will be subject to the requirements of *Planning for Bush Fire Protection 2006*.

Planning Comment:

Noted.

Roads and Maritime Services (RMS)

RMS supports the exhibition of the proposed LEP amendment subject to a Traffic study being undertaken.

Planning Comment:

This comment was received before the LES was completed. The LES includes a traffic study in accordance with the RTA *Guide to Traffic Generating Developments*, and identified road infrastructure upgrades required as a result of the proposed rezoning. RMS will be consulted again during the exhibition process.

Consultation with the Local Aboriginal Land Councils (LALCs)

During the preparation of the LES, in accordance with the *Interim Community Consultation Guidelines*, letters were mailed out on 13 January 2010 to the Register of Aboriginal Owners and the Office of the Environment and Heritage. An advertisement was placed in the Newcastle Herald on 15 February 2010 and the Express Advocate on 16 February 2010. There were no respondents to the initial advertisement, and subsequently the Koombahtoo LALC and Awabakal Descendants Traditional Owners Aboriginal Corporation were invited to participate in the survey process to produce an Aboriginal Cultural Heritage Assessment.

During the preparation of the LES, the Koombahtoo LALC activities were transferred to the NSW Aboriginal Land Council.

The consultants, RPS, also wrote to Awabakal LALC in January 2012 to advise that a Cultural Heritage Survey and Assessment Report had been undertaken in the previous year, and that a copy was attached for information.

A comprehensive response from the Awabakal Descendants Traditional Owners Aboriginal Corporation has been incorporated into the LES.

Future use or development of the proposed 7(2) Conservation (Secondary) zoned land will require further consultation with Aboriginal stakeholders to formulate the best means to preserve cultural heritage values on the site, and help inform the process of gazettal of the ridgelines as an Aboriginal Place under s.84 of the *National Parks and Wildlife Act 1974*. The LES also recommends further consultation to inform the process of

City Strategy Committee Meeting 9 July 2012

designating the valleys (excluding the central valley and western slope) as archaeologically sensitive and requiring targeted investigation if ground works are to be carried out in these areas.

Internal Consultation

Consultation was undertaken with the following Departments during preparation of the Planning Proposal:

Asset Management

Asset Management raised concerns with the initial Traffic Report.

Planning Comment:

A revised Traffic Report was submitted by RPS. The report found that the existing transport network has sufficient capacity to accommodate a change in zone and subsequent redevelopment of the site.

Development Assessment and Compliance

DAC raised no objection to the proposal. Council's Heritage staff were satisfied that appropriate preliminary consultation has occurred with Awabakal LALC and Traditional Owners. Further consultation will occur during the exhibition period. The LES also adequately addresses European Heritage on the site.

Community Planning

Community Planning raised no objection to the proposal. The revised LES adequately addresses the recreational potential of Munibung Hill.

Sustainability

Have no objections to the proposal. There were initial concerns with compensatory habitat or offsets requirements, future management and ownership of the environmental land and that the Proposal be consistent with Council's *Biodiversity Planning Policy and Guidelines*.

Planning Comment:

The above issues were adequately dealt with in the final LES.

Waste, Environment and Rangers

Concerns were raised about Council potentially owning lead affected contaminated land if environmental zoned land is dedicated to Council.

Planning Comment:

The LES has identified areas of soil contamination and has made recommendations for the management of these areas.

City Design

City Design has no objections to the proposal.

Implications:

Policy Implications:

Lake Macquarie Local Environmental Plan 2004

The Planning Proposal aims to change the land use zones for the site under LMLEP 2004. The current industrial zone is not considered compatible with the existing residential uses in the locality. Approximately 11 hectares of land on the site will be

City Strategy Committee Meeting 9 July 2012

available for residential development, and approximately 69 Hectares of the site zoned for environmental protection.

Draft Lake Macquarie Local Environmental Plan (draft LMLEP 2012)

Under the draft Lake Macquarie Local Environmental Plan (LMLEP) 2012, the proposed 2(1) Residential Zone would convert to R2 Low Density Residential and the 7(2) Conservation (Secondary) Zone to E2 Environmental Conservation Zone.

Permitted building heights will not alter as the current and proposed LEPs both enable a two storey dwellings on the site.

Lifestyle 2020 Strategy and Draft Lifestyle 2030 Strategy

The draft amendment is consistent with the aims and objectives of the Lifestyle 2020 Strategy and draft Lifestyle 2030 in that it will provide infill residential housing within an urban context to achieve the long term strategic directions of the Strategy.

Community Plan

The draft amendment is consistent with the aims and objectives of the Lake Macquarie Community Plan 2008-2018.

Lake Macquarie Development Control Plan No. 1 (DCP No. 1)

The draft amendment is consistent with DCP No.1 in terms of any future development on the land. The preparation of an Area Plan for the future development of the site will ensure environmental and visual constraints have been adequately and effectively considered, and appropriately managed. Appropriate landscaping and strict built form requirements will be necessary to ensure future development responds appropriately to the site within its environmental context.

Biodiversity Planning Policy & Guidelines

The proposal is consistent with the Policy.

LMCC Policy on Managing Contaminated or Potentially Contaminated Land

This Policy applies to the whole of Lake Macquarie City Council and provides for the identification and ongoing management of contaminated land in LMCC. The LES concludes that a Detailed Contamination Site Investigation would be required for the site, however, it is considered that remediation of the site for residential and recreation purposes is possible.

Lower Hunter Regional Strategy (LHRS)

The draft amendment will not be inconsistent with the objectives of the LHRS.

State Environmental Planning Policies

The draft amendment is generally consistent with relevant State Environmental Planning Policies, outlined within the Planning Proposal in Attachment 1. Where any inconsistencies are evident, justification has been provided within the Planning Proposal.

Section 117 Directions

The draft amendment is generally consistent with relevant Section 117 Directions as outlined within the Planning Proposal in Attachment 1. Where any inconsistencies are evident, justification has been provided within the Planning Proposal.

Environmental Implications:

City Strategy Committee Meeting 9 July 2012

Potential environmental impacts have been assessed by the LES. The LES notes that:

- There is an opportunity to create an expanded Munibung Hill park including a network of pedestrian trails over the greater Munibung Hill area accessible from the east, west, and south which has not been possible previously.
- Future development will require further geotechnical, drainage, cultural heritage, and visual investigations to ensure all future impacts are identified and managed.
- The on-going management of the conservation areas will require investigation.
- Given the elevation of the subject site there are micro climate considerations for the design of the future dwellings but these are no more significant than for other locations within the LGA and can be managed as required.
- Three threatened fauna species occur on the site – Grey Headed Flying Fox, Little Bentwing-Bat and Common Bentwing-Bat - as well as potentially suitable habitat for a further 20 threatened species. It is noted that the proposed draft amendment footprint is not within the areas where the threatened species may occur.

The Local Environmental Study identifies options that would provide an offset to removal of an artificial wetland, located at Pit B to facilitate the residential development on the site. Further investigation of the options will be made as the proposal progresses to exhibition. These matters will also need to be reflected in an Area Plan for the site.

Visual Assessment

The site has a 'high' classification for visual assessment.

The LES provides a number of recommendations to limit the visibility of the proposed residential zone. These include:

- retaining existing vegetation on steeply sloping areas;
- limiting the height and location of development below tops of ridges on northern and eastern site boundaries;
- installing buffer screening to the west and south of former Pits A and B;
- designing street lighting to prevent light spill and glare in the wider landscape;
- requiring development to be in keeping with adjacent land uses and styles of buildings in Boolaroo and Speers Point.

The LES reduced the footprint of potential development to limit the overall visual impact as well as introducing a vegetated buffer to the eastern, southern and western edges of the residential areas.

Social Implications:

The LES finds that a change in zone and subsequent redevelopment of the site would not have a detrimental social or economic impact on the local community. Sufficient capacity exists at schools, parks, and recreation areas in neighbouring areas, to cater for the increase in population that may result from this development.

City Strategy Committee Meeting 9 July 2012

There are no foreseeable social implications, apart from the shortage of general practitioners available for the area. Council is well aware of the current shortfall and is working with State agencies to help rectify the issue.

Financial Implications:

Potential financial implications exist for Council should the 7(2) Conservation Zoned land be dedicated to Council. However, a Plan of Management, and rehabilitation, would be required for any land proposed to be dedicated to Council.

The Local Environmental Study provides various options for the management of conservation lands as a result of the proposed rezoning of the site.

These options are as follows:

- Council ownership and management.
- Council ownership but with management by a private operator, possibly as part of a commercial enterprise on part of the site.
- Ownership by the residential development within the subject site as Community Title with management by a Community Association.
- Ownership and ongoing management and maintenance of the conservation land undertaken by a Trust. Council would require certainty that the management and maintenance responsibilities would not become a financial burden on Council in the event the Trust fails.
- The land remains under the ownership and control of the current owner(s).

Given that it is proposed to provide walking track access and other recreational facilities, over time, in the Munibung Hill area, dedication to Council appears to be an appropriate option.

Discussions with the Proponent indicate that dedication to Council is an acceptable consideration. Dedication could be for either the whole of the Conservation land parcel, or those parts that would provide both a visual, aesthetic, and ecological backdrop to the City's skyline. Any such consideration of dedication of land to Council would be the subject of further investigation to identify any risks or hazards.

There are no specific implications associated with exhibiting the draft amendment apart from staff resources in processing the rezoning proposal. In accordance with the LEP Amendments and Reclassification System, a user-pays system allows recovery of Council costs through the rezoning proposal.

Risk and Insurance Implications:

There is minimal risk or insurance implications to Council with the processing of this Amendment. The preparation of an amendment to LMLEP 2004 is a standard statutory process undertaken by Council officers and is governed by the provisions of the *EP&A Act*. The level of risk is diminished by following the process incorporated into the *EP&A Act*, the *Environmental Planning and Assessment Regulation* and Council's procedure for amending a Local Environmental Plan.

Options:

1. Resolve to proceed with the draft Amendment and forward the Planning Proposal to the Department of Planning for Gateway Determination. This is the recommended option.

City Strategy Committee Meeting 9 July 2012

2. Resolve to change the Planning Proposal prior to forwarding to the Department of Planning for Gateway Determination. This is not recommended as the Proposal has been prepared based on the LES for the site, and consultation with the proponent and Council staff, and is considered consistent with the requirements of *the EP&A Act 1979*.
3. Resolve not to proceed with the Amendment. This is not recommended, as the land would continue to be zoned for industrial purposes, which is inconsistent with the broader strategic vision in Council's Lifestyle 2020 Strategy, the Lower Hunter Regional Strategy and the neighbouring residential land uses.

Conclusion:

Based on the findings of the LES, and consultation with various agencies and Council staff, it is recommended that Council support the preparation of an Amendment to LMLEP 2004 as set out in the Planning Proposal in attachment 1. Once a Gateway determination is received the Planning Proposal would be exhibited for broader community comment prior to Council making a final decision on the zoning of the land.

Manager - Integrated Planning - Sharon Pope

Attachments:

1. Planning Proposal Speers Point Quarry - 1A Raymond Street Speers Point D02580420