

City Strategy Committee Meeting 13 July 2015

15STRAT044 Adoption of Planning Proposal - Lake Macquarie Local Environmental Plan 2014 - Administrative Amendment

Council Ref: F2015/00088 - D07388827
Report By: Strategic Landuse Planner - Angel Troke

Précis:

Council resolved on 9 March 2015 (15STRAT014) to support an amendment to the Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) to correct a number of matters that were not correctly converted to LMLEP 2014 from LMLEP 2004, or required change to provide clarification. Since the resolution, a Gateway determination has been obtained from the Department of Planning and Environment (DoPE), which issued Council with delegations to make the plan and included conditions regarding the public exhibition of the Planning Proposal. The Planning Proposal (Attachment 1) was exhibited from 20 April to 11 May 2015.

Council received three public submissions on the Planning Proposal, one in support of the amendments and two objections. This report presents the outcomes of the exhibition, changes to the Planning Proposal and recommends that Council support the use of delegations granted by the Minister for Planning to make the local environmental plan (LEP) under section 59 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*.

Recommendation:

Council:

- A. Notes the issues raised during public exhibition and endorses the revised Planning Proposal for the Administrative Amendment to Lake Macquarie Local Environmental Plan 2014, as contained in Attachment 1.
- B. Make the Local Environmental Plan under delegation granted by the Minister for Planning, pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*.
- C. Notify those who made submissions, during the exhibition period, of Council's and the Minister's decision.

Background:

During preparation of LMLEP 2014, some of the provisions in the previous LMLEP 2004 were not fully incorporated into the new LMLEP 2014. Use of LMLEP 2014 has also shown that some provisions in the LEP are not as clear as they should be.

A Planning Proposal was prepared to address these issues and to amend clauses within Part 4 - Principal Development Standards and Part 7 – Additional Local Provisions.

The amendment proposes changes that:

- Resolve issues related to minimum lot sizes when community title subdivision of cluster style development is proposed;

City Strategy Committee Meeting 13 July 2015

- Modify the exceptions to minimum lot size controls for small lot housing, battle axe and corner lot subdivision, and dual occupancy subdivision;
- Clarify the type of parcels where the erection of dwelling houses in rural and environment protection zones is permitted; and
- Introduce a numerical standard to clarify that Raffertys Resort at Cams Wharf is to continue to operate predominately as a tourist facility.

Since the Planning Proposal was presented to Council, staff have identified difficulties with subdividing split zone parcels where part of the lot does not meet the minimum subdivision lot size standards. Across the City, there are a number of single lots that contain two or more zones, usually part residential and part environmental or rural zones. Difficulties have arisen where proponents wish to subdivide these lots, as the portion of the lot containing the environmental protection or rural zones generally does not meet the minimum lot size provisions in LMLEP 2014.

This issue was raised with the DoPE and the Gateway determination conditioned that a clause be included in this amendment to address this issue. This clause was added into the Planning Proposal prior to exhibition to ensure adequate consultation occurred on this clause. No comments on this clause were made during the public exhibition process.

Proposal:

It is proposed that Council resolve to support the revised Planning Proposal contained in Attachment 1 and make the LEP on behalf of the Minister for Planning in accordance with section 59 of the *Environmental Planning and Assessment Act 1979*.

The revised planning proposal incorporates a clause to allow the subdivision of split zoned lots, and some minor wording changes have been made within the Planning Proposal, however, the intent and the objectives of the Planning Proposal remain the same as when previously reported to Council.

Consultation:

Public exhibition

Public exhibition of the Planning Proposal occurred between 20 April to 11 May 2015. Council received three submissions on the Planning Proposal. One submission supported the changes to facilitate the subdivision of small lot housing and two objected to provisions for Raffertys Resort. The submissions are summarised below and further details included in Attachment 2.

Support for controls to facilitate small lot housing

The submission supported the proposed changes to allow subdivisions for small lot housing below the mapped minimum lot size without the need for concurrent dwelling plans or a site specific DCP particularly in the R3 Medium Density Residential zone as this:

- o supports the preferred housing choice of dwellings on torrens title lots,
- o encourages increased densities within existing areas and centres and accommodates the growing population,
- o encourages developers to provide a wider range of housing choice,

City Strategy Committee Meeting 13 July 2015

- o increases the diversity and affordability of housing in the region, and
- o reduces costs and time delays.

The submission noted that the requirement to lodge Building Envelope Plans and Subdivision Design Plans gives assurance that once created, each lot will be able to accommodate a complying dwelling.

Planning Comment:

The controls were prepared based on similar industry feedback. Facilitating this type of development is consistent with the objectives of Council's Lifestyle 2030 Strategy and the Lower Hunter Regional Strategy 2006 by supporting infill residential development close to existing services and centres.

Objection to no more than 50% of dwellings at Raffertys Resort at Cams Wharf to be used for permanent residential use

Council received two objections to the control that seeks to restrict the number of dwellings to be used for permanent occupation at Raffertys Resort. Issues were raised with purchasers of the original development being unaware that they could not live in the property on a permanent basis. One objection was from an owner within Raffertys Resort and the other objection was from the Strata Manager on behalf of the Executive Committee of Raffertys Resort and owners. Concerns were raised about difficulties of re-sale, issues with property prices, problems with guaranteed rental income from holiday usage and difficulties in obtaining loans.

Planning Comment

Initially, Raffertys Resort was never intended to allow any permanent residential accommodation. In the LMLEP 1984, the site was zoned 3(b) Special Business (Tourist Development) and 7(a) Environmental Protection (Scenic). The initial consent for the Resort stipulated that the tourist facility be *"only utilised for holiday accommodation and recreation. No permanent residents other than a Manager and operational staff may permanently reside on the site. All sites and units being held in common ownership."*

In 1991, Council supported an amendment to the LMLEP 1984. This amendment inserted a provision into the LEP that allowed dwellings, though the Resort was to remain predominately a tourist destination as an integrated community containing tourist facility. The provision allowed development on the site as follows:

"Development predominately providing a tourist destination as an integrated community containing tourist facilities and which may contain a range of accommodation types (including dwellings) and a combination of land uses including retailing, recreation and community activities appropriate to the community's needs"

In the LMLEP 2004, Raffertys Resort was zoned 6(2) Tourism and Recreation zone and the same clause listed above, to remain predominately a tourist destination, was included.

In the current LMLEP 2014, the site is zoned SP3 Tourist, however the DoPE had concerns with clause wording using the phrase 'predominately a tourist facility' due to possible dispute over the legal interpretation of the word 'predominately'. However, they wouldn't approve a change to nominate a value of 50%, without re-

City Strategy Committee Meeting 13 July 2015

exhibition, and this was likely to cause ongoing delays to publication of LMLEP 2014. So a decision was made to deal with changes to clause wording as an amendment to LMLEP 2014.

The zoning of Raffertys Resort has consistently remained a tourist zone and the intention is that this property continues to operate predominately as a tourist facility, whilst still permitting dwellings. To ensure that Raffertys Resort continues to operate in this way, it is recommended that there is provision in the LMLEP 2014 that no more than 50% of dwellings are to be used for permanent residential accommodation. This is consistent with the zoning and controls of Raffertys Resort that have been in place since its establishment.

There are limited lakeside opportunities for tourist development within the City. The site's lakeside location is an ideal opportunity for tourism and this use should be maintained as the predominate use of the site. Preserving these opportunities is important for providing tourism employment opportunities and allowing visitors to explore Lake Macquarie.

Issues relating to the application of the requirement that no more 50% of dwellings be used for permanent occupation.

A number of issues were raised with the application of the control that would set a 50% control limit on the number of residential dwellings for permanent occupation within Raffertys Resort. The issues and a planning response are detailed in Attachment 2. Issues were raised with:

- The calculation of the 50% ratio and to which properties it would apply to,
- The enforcement of this control,
- Difficulties in accurate record keeping,
- The spatial spread of tourist and residential dwellings,
- Section 94 contributions and how these would be applied,
- Change of use and application of development standards, and
- Equity considerations.

Planning Comment:

Prior to LMLEP 2014, controls were in place to ensure that Raffertys Resort operated predominately as a tourist facility. The use of the word 'predominately' is not as clear in interpretation as the requirement that 'no more than 50% of dwellings be used for permanent residential occupation.'

Council has already approved a number of development applications within the Raffertys Resort complex that allow dwellings to be used for permanent occupation. As part of the development assessment process, Council has considered whether the Resort has been operating predominately as a tourist facility. Similar assessment would need to occur at development application stage for new development applications under the proposed controls.

Applications that seek a change of use from tourist facility to residential use would be subject to development standards that apply to residential dwellings in line with requirements of the Environmental Planning and Assessment Regulation 2000 and

City Strategy Committee Meeting 13 July 2015

the Building Code of Australia and additional section 94 contributions may be applicable.

Government Agency Consultation

DoPE advised in the Gateway Determination that government agency consultation was not required.

Internal Consultation

Consultation has occurred with Council's Development Assessment and Compliance (DAC) staff over the proposed amendments. This amendment seeks to address issues raised by DAC staff.

Implications:

Policy Implications:

Implications relating to Council's Lifestyle 2030 Strategy, State Planning Policies and Directions are detailed in the Planning Proposal (Attachment 1). The Planning Proposal is consistent with all relevant policies and planning strategies.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

The Planning Proposal will amend LMLEP 2014 as outlined in the *Background and Proposal* section of this report and as outlined in the Planning Proposal contained in Attachment 1.

Lake Macquarie Development Control Plan 2014 (DCP 2014)

There are currently some difficulties in interpretation of clauses relating to community title subdivision for cluster style development in the E3 Environmental Management, E4 Environmental Living and RU4 Primary Production Small Lots zones, dual occupancy subdivision and the erection of dwelling houses in rural and environmental zones using existing holdings. The Planning Proposal will clarify the controls within LMLEP 2014 allowing the provisions in DCP 2014 to be applied correctly.

Lifestyle 2030 Strategy

Council's Lifestyle 2030 Strategy provides the long-term strategic directions for the overall development of the City and is a tool for managing expected population and employment growth in Lake Macquarie. This administrative amendment to LMLEP 2014 is consistent with the objectives of this Strategy. The proposal will facilitate housing choice and incremental increases in urban densities.

Lower Hunter Regional Strategy

This amendment will help facilitate housing targets of this Strategy by containing provisions, which allow the subdivision of approved dual occupancies, and small lot housing.

State Environmental Planning Policies (SEPPs)

An assessment of the proposal against relevant SEPPs is included in the Planning Proposal in Attachment 1. The proposal is consistent with the provisions of relevant SEPPs.

Section 117 Ministerial Directions

City Strategy Committee Meeting 13 July 2015

An assessment of the proposal against relevant Ministerial Directions is included in the Planning Proposal in Attachment 1. The proposal is consistent with all the relevant Ministerial Directions.

Environmental Implications:

The amendment is administrative and is unlikely to result in any negative environmental impacts.

Social Implications:

The Planning Proposal is considered to be administrative and will reinstate controls that applied in LMLEP 2004. The amendments relate to subdivision, which will assist in promoting housing densities and more affordable housing in urban areas, as well as ensuring relevant controls for amenity are incorporated.

Infrastructure Asset Implications:

There will be no infrastructure asset implications, as the amendments to the LEP are administrative.

Financial Implications:

There will be no specific financial implications for Council apart from staff resources involved in the processing of the LEP amendment in accordance with Council's LEP amendment process.

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 2014 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and Environmental Planning and Assessment Regulation 2000 as well as Council's Amending Local Environmental Plan Procedure and Policy.

Options:

- 1 Council supports the revised Planning Proposal and exercises delegation from DoPE to make the LEP on behalf of the Minister for Planning. This will ensure that issues addressed as part of the consultation process are addressed. This is the recommended option.
- 2 Council resolves not to support the Planning Proposal. This will result in continued difficulties with the interpretation and application of the LEP. This is not the preferred option.

Conclusion:

It is recommended that Council endorse the revised Planning Proposal as contained in Attachment 1 to finalise the amendment so the plan can be made. This will address some priority issues that have been identified with the LMLEP 2014 resulting from the conversion process of the LEP.

Manager - Integrated Planning - Sharon Pope

Attachments:

City Strategy Committee Meeting 13 July 2015

1. Planning Proposal D07448791
2. Summary of Submissions D07448794