

Planning Proposal

Amendment to Lake Macquarie Local Environmental Plan 2004

Land at West Wallsend

Local Government Area: Lake Macquarie

Name of Draft LEP: Lake Macquarie Local Environmental Plan 2004 (West Wallsend)

Part 1 – Objective of the Planning Proposal

The objective of this Planning Proposal is to amend *Lake Macquarie Local Environmental Plan 2004* (LMLEP 2004) to facilitate the appropriate conservation of a large parcel of land at West Wallsend, being Lot 103 and 105 DP 1000408, Lot 15 DP 849003 and Lot E DP 938528.

It is proposed to rezone the land from 2(1) Residential, 5 Infrastructure (with part RTA and LMCC acquisition layer) and 6(1) Open Space (with LMCC Acquisition layer) to 7(1) Conservation (Primary). Furthermore, amendments will be required to various maps in draft *Lake Macquarie Local Environmental Plan 2011*.

The areas of the existing and proposed zones are as follows:

Existing Zone	Area (ha)	Proposed Zone	Area (ha)
2(1) Residential	58	7(1) Conservation (Primary)	69.6
5 Infrastructure	0.6		
6(1) Open Space (LMCC acquisition)	11		

The proposed zones are shown in the map at Appendix 3.

Part 2 – Explanation of Provisions

The amendment proposes the following changes to LMLEP 2004 instrument and map:

Amendment Applies to:	Explanation of Provision
Map	Rezone the site from 2(1) Residential, 5 Infrastructure and 6(1) Open Space to 7(1) Conservation (Primary) and remove existing LMCC and RTA acquisition layer. Refer to Map Sheets in Appendix 1-3.

The Planning Proposal would result in the following changes to Draft *Lake Macquarie LEP 2011* (Council's Standard Instrument LEP):

Amendment Applies to:	Explanation of Provision
Land Zoning Map	Areas designated for 7(1) Conservation (Primary) will be converted to E2 Environmental Conservation.
Lot Size Map	Minimum lot sizes would correspond to proposed zoning as E2 – 20ha.

Part 3 – Justification for the Provisions

A. NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

No. The Planning Proposal has been initiated by a resolution of Council on 13 December 2010. The recommendation was as follows:

- A. Council seek advice from the Department of Planning as to whether they would accept a rezoning proposal through the LEP Gateway for land at West Wallsend subject to DA/1193/2009 (11 Robertson Street) for conservation;
- B. Council seek separate advice from the Department of Planning in response to back zoning;
- C. Pending a positive response from the Department, Council develop a Planning Proposal for the LEP Gateway to rezone the land at West Wallsend subject to DA/1193/2009.

Previous informal advice from the Department of Planning (DoP) stated that they would not be providing advice on a specific case without the submission of a Planning Proposal.

Council will be seeking separate advice from the DoP in relation to recommendation B.

Background on Land Subject to DA/1193/2007

On 14 August 2009 Hammersmith Management Pty Ltd lodged a development application (DA/1193/2009) for a 4 into 463 lot subdivision comprising of 456 residential lots, 4 drainage reserves, 1 open space lot and 2 residue lots.

As the proposed subdivision involved more than 250 lots, the Joint Regional Planning Panel (JRPP) became the approval authority. The JRPP considered the proposal on 26 August 2010 and determined refusal of the application citing a number of issues including biodiversity, heritage, and slope.

When assessing the proposal Council staff found that:

The proposal meets the objectives of providing a neighbourhood of low-density housing and sustainable water cycle management. However, the proposal does not adequately respect the character of the surrounding development (West Wallsend Heritage Precinct), in regards to heritage and scenic matters.

It is noted that the site was zoned for residential development under the 1984 Local Environmental Plan. This rezoning took place prior to the adoption of the conservation objectives of the lifestyle 2020 strategy, prior to legislation such as the Threatened Species Conservation Act 1995 and Environmental Protection and Biodiversity Conservation Act 1999, prior to Council's Native Vegetation and Corridors Maps, and prior to Councils Biodiversity Planning Policy and Guidelines for Local Environmental Plan Rezoning Proposals. The conservation values detected on the subject site during the assessment of the application are considered to be similar to land currently zoned environmental and conservation within the city. It is understood that at the time of the 2004 LEP rezoning, Council had insufficient resources to undertake ecological surveys necessary to facilitate any necessary assessment of a more appropriate zone for this site.

With regard to conflicting issues of the zone and native vegetation, it is also worth noting that in Reeve v Hume CC [2009] VCAT 65 the Tribunal said: "the zoning of the land is not the starting point in considering the suitability of a subdivision proposal. The proposition that a residential zoning carries with it an overriding or automatic expectation that conventional subdivision can or should occur, with all its subsequent consequences for loss of native vegetation, is not accepted. What is called for on such land is innovation that enables the retention of significant native vegetation on the land" (cited in HCCREMS and Bates, draft 2010).

Council staff are of the opinion that a similar approach to the ruling quoted above should be applied to the subject site.

Following the determination by the JRPP, Council has received a number of letters from community groups and individuals requesting Council rezone the land from 2(1) Residential, 5 Infrastructure (part RTA and LMCC acquisition) and 6(1) Open Space (LMCC acquisition) to 7(1) Conservation (Primary).

A revised development application for a 4 into 375 lot subdivision was lodged with Council on 3 February 2011. This DA is currently under assessment.

Background on Previous and Existing Land Use Zones on the Land

The subject land was zoned non urban under the Northumberland Plan 1960, with a small number of parcels identified for residential development. It was rezoned to a combination of 2(a) Residential and 6(c) Open Space (Local Reservation) in the Lake Macquarie Local Environmental Plan 1984 (LMLEP 1984).

During the preparation of LMLEP 1984, substantial areas were rezoned with minimal studies. It is believed the 6(c) zone was chosen for this site to ensure the scenic protection of the land adjacent to George Booth Drive, and to assist in ensuring no access was provided onto the main road from any future subdivisions in the area.

The rezoning at this time took place prior to the adoption of the conservation objectives of the Lifestyle 2020 Strategy, prior to legislation such as the *Threatened Species Conservation Act 1995* and *Environmental Protection and Biodiversity Conservation Act 1999*, prior to Council's Native Vegetation and Corridors Maps, and prior to Council's Biodiversity Planning Policy and Guidelines for Local Environmental Plan Rezoning Proposals.

During the preparation of LMLEP 2004, Council had insufficient resources to undertake ecological surveys necessary to facilitate any assessment of a more appropriate zone for the site, and as a result prepared a conversion of the existing zones under LMLEP 1984.

Following studies prepared on the site for DA 1193/2009, Council considers the attributes of the site are similar to other existing conservation areas in the City and a conservation zone on this land would be a more appropriate zone.

Previous Legal Advice on "Back-zoning" Land

Over the years, Council has received previous legal advice on the issues of 'back-zoning' land. Under the *Environmental Planning and Assessment Act 1979* (EP&A Act), Council has a statutory obligation to keep its planning instruments under review (s.73).

Section 27 of the EP&A Act provides that if land is reserved exclusively for the purposes set out in section 26(c) then the environmental planning instrument must make provision for acquisition. This provision does not apply to rezoning which merely reduces development potential.

In addition, in the judgement of *Loneragans of Sydney Pty Ltd v Council of the Shire of Hornsby* [1984] NSWLEC (22 October 1984), his honour noted:

I reject the submission that it is improper for a council to rezone land for the purpose of prohibiting certain development when it is established

that its purpose is to resist what it considers to be pressure for an undesirable development that is permitted by the existing zonings.

Under Section 26 (e1) of the EP&A Act, Council may make provision for the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.

As a result, it is Council's view that a rezoning of the subject land from 2(1) Residential, 5 Infrastructure (part RTA and LMCC acquisition) and 6(1) Open Space (LMCC acquisition) to 7(1) Conservation (Primary) is legitimate and necessary in order to protect the ecological significance of the subject land.

Environmental Significance of the Subject Land

The subject land is approximately 69.5ha, with 66ha of the site covered with native vegetation. The site contains an Ecological Endangered Community, Lower Hunter Spotted Gum - Ironbark Forest, which makes up approximately 15.3ha of the subject land.

One threatened plant species, Black-eyed Susan (*Tetradlea juncea*) has been identified on site, containing around 74 clumps.

Eight threatened animal species have been recorded on site, including: Squirrel Glider (*Petaurus norfolcensis*), Koala (*Phascolarctos cinereus*) (potential scratch marks on three trees only), Grey-headed Flying-fox (*Pteropus poliocephalus*), Little Bent-wing Bat (*Miniopterus australis*), Sooty Owl (*Tyto tenebricosa*), Powerful Owl (*Ninox strenua*), Scarlet Robin (*Petroica boodang*) and Varied Sittella (*Daphoenositta chrysoptera*).

There were also 233 hollow bearing trees recorded on the site, including 14 glider den trees.

The conservation value detected on the subject site as part of the previous applications assessment is considered similar to land zoned environmental and conservation within the city. It is understood that at the time of the 2004 LEP rezoning, Council did not have sufficient resources to undertake ecological surveys necessary to facilitate any necessary assessment of a more appropriate zone for this site.

Heritage Significance of the Land

There is one local European heritage item, the West Wallsend Steam Tram Line, that is within the subject land and is listed in Schedule 4 of LMLEP 2004. The subject land is also within the direct vicinity of listed local heritage item WW-02 West Wallsend (No 1) Colliery to the north and abuts a set of cottages at the Carrington Street entry into town, listed as provisional heritage item WW-03, 6 & 8 & 10 Carrington Street.

The subject land is also located within the West Wallsend /Holmesville Heritage Precinct under Development Control Plan No.1 (DCP1). DCP1 states:

West Wallsend is a good example of a nineteenth century mining town planned and developed by the mining company West Wallsend Coal Company to house its own workers... West Wallsend/Holmesville is regarded as the best preserved of all the settlements in Lake Macquarie City.

The intent of the heritage provisions in this area is to safeguard the heritage values of West Wallsend and Holmesville to ensure future development maintains and enhances identified significant characteristics.

The subject land also contains identified indigenous sites including a potential archaeological deposit and shelter and three potential scar trees.

It is considered that rezoning the land to a conservation zone will achieve the outcome of the DCP provisions in relation to the heritage precinct by reducing the development footprint and preserving the heritage value of the area.

- 2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The Council resolution seeks to ensure the entire site is identified for future conservation land uses only. It is considered that rezoning the land to conservation is the best means to achieve this outcome.

Is there a net community benefit?

Net Community Benefit Test

Criteria	Planning Comment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	The Lower Hunter Regional Strategy (LHRS) identifies the subject land as an existing urban area due to its existing 2(1) Residential zoning. The LHRS states that existing trends highlight 75% of all new housing is being built in new release areas and 25% in existing urban areas. The LHRS aims to provide 60% of new dwellings in new release areas and 40% in existing urban areas. West Wallsend would be classified under the LHRS as an existing urban area. The Newcastle-Lake Macquarie Western Corridor Planning Strategy (NLMWCPS) identifies the subject land as being an existing urban area available to provide for housing, although a green entry statement should be maintained along this section of George Booth Drive by retention of vegetation along the road corridor. The NLMWCPS also shows significant residential and employment lands for investigation to the west and south, south-west of West Wallsend. It is acknowledged that the existing residential zone on the subject land could support these identified employment lands, however the cumulative loss of vegetation in this area promotes the need to conserve the subject land for its high conservation values and to protect the unique heritage values of West Wallsend. Under Council's Urban Development Program, there are around 11,740 residential lots currently undeveloped. There are a further 3,800 lots currently in the process of being rezoned residential. The recent review of the Lifestyle 2020 Strategy indicated that there is insufficient land to accommodate the projected increase in detached dwellings required to meet LHRS targets in existing urban areas. However due to the environmental values of the land, it is considered more appropriate that the land be rezoned to conservation.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	The LEP is located within West Wallsend, which has been identified in the LHRS as an existing urban area.
Is the LEP likely to create a precedent, or create or change the expectations of the landowner or other landholders?	It is considered that the LEP will change the expectations of the landowner as the land will be zoned from a 2(1) Residential zone, 5 Infrastructure and 6(1) Open Space (LMCC

	acquisition) zone to a 7(1) Conservation (Primary) zone. It is possible that the proposal may set a precedent by rezoning a large parcel of land from a residential zone to a conservation zone. Information on the legalities of the proposal is discussed in section Part 3, Section A above.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Only one other rezoning proposal is in the locality, to the south of the subject land. It is approximately 95ha. An LES is currently being prepared on this site to inform the future zones of the land. This proposal will not have a cumulative effect on this rezoning.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The LEP will not facilitate a permanent employment generating activity or result in the loss of employment lands. The proposal will facilitate the protection of a large parcel of vegetated land with high environmental values through the adoption of a conservation zone on the land.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	The proposal will reduce the amount of land available for residential development by rezoning the land from its existing residential zone to a conservation zone. It is considered that the conservation zone better aligns with the characteristics of the site, rather than the existing residential zone.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	The site adjoins George Booth Drive, a major arterial road to the east, and the existing urban area of West Wallsend to the west. As the site is not proposed to be developed, no future public infrastructure is required for the proposal.
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	The subject proposal seeks to change the existing residential zoning of the land to a conservation zone. As a result, there will be no immediate changes to the car distances travelled by customers, employees or suppliers.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	There are no significant Government investments in infrastructure or services in the area.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	The subject land is approximately 95% covered with native vegetation. The site contains an Ecological Endangered Community, Lower Hunter Spotted Gum - Ironbark Forest which makes up approximately 22% of the subject land. One threatened plant species has been identified on site, and eight threatened animal

	species have also been recorded. There are also 233 hollow bearing trees, including 14 glider den trees. The conservation value detected on the subject site is considered similar to land zoned environmental and conservation within the city. It is understood that at the time of the 2004 LEP rezoning, Council did not have sufficient resources to undertake ecological surveys necessary to facilitate any necessary assessment of a more appropriate zone for this site.
Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The LEP will be compatible with the surrounding land uses, being the existing West Wallsend and Holmesville heritage precinct, by limiting future development potential in appropriate locations. As a result, it will improve the amenity of the location, the wider community and the public domain. There is a strong community spirit in this area. The local community have expressed their support in rezoning the land to a conservation zone.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	The LEP amendment seeks to rezone the subject property for future conservation. It will not affect the number of retail and commercial premises operating in the area.
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	The proposal will not have the potential to develop into a centre in the future.
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	The LEP amendment is being prepared following a Council resolution to have the land rezoned to a conservation zone. The community in the area have been supportive of this decision, including submitting an 8 page petition to Council requesting the land be rezoned to conservation. During the notification period for DA 1193/2009, 240 submissions were received including petitions containing over 500 signatures. Heritage and ecological issues were the main concerns.

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

The following LEP Pro-forma Evaluation Criteria demonstrates consistency with State Policies

- 1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

Lower Hunter Regional Strategy (LHRS)

The LHR Strategy sets the strategic direction for sustainable growth in the Region. It identifies the subject land as an existing urban area, which would be due to its existing 2(1) Residential zoning.

The LHRS promotes a more compact housing settlement by providing new dwellings within existing zoned, but undeveloped, urban areas within close proximity to centres. The subject land is identified as residential – undeveloped land in Council's Urban Development Program.

The LHRS also states that existing trends highlight 75% of all new housing is being built in new release areas and 25% in existing urban areas. The Strategy aims to provide 60% of new dwellings in new release areas and 40% in existing urban areas. West Wallsend would be classified under the Strategy as an existing urban area.

As a result, under the LHRS, the subject land has been identified to possibly provide for some additional housing opportunities (subject to further study).

The Newcastle-Lake Macquarie Western Corridor Planning Strategy

The broad objective of this study is to identify key planning principles and prepare a broad land use framework to guide future urban expansion and conservation outcomes in the area from Black Hill to Killingworth and east across to Lake Road. The planning principles and infrastructure requirements in the Strategy are required to be key considerations in the preparation of environmental studies that support rezoning proposals.

Under the Western corridor Strategy, the subject land is noted as being an existing urban area available to provide for housing, although a green entry statement should be maintained along this section of George Booth Drive by retention of vegetation along the road corridor.

2. Is the planning proposal consistent with the local council's Community Strategic plan, or other local strategic plan?

Council's Lifestyle 2020 Strategy provides the long-term direction for the overall development of the City.

West Wallsend is identified in the 'Urban Structure Map' as a neighbourhood centre that predominantly serves a local business and residential community by providing retail and business services and opportunities for employment. Neighbourhood centres also express the character of the local area.

The subject land has been identified as both 'remnant vegetation' and 'high value habitat' in the Strategy's 'Green System Map', which intends to enhance long-term biodiversity, scenic amenity, and liveability of the city. It is the intent of the Strategy to ensure that these elements are valued, retained, and managed as part of an integrated system

It should also be noted, under Figure 6 (Projected Growth and Housing Provisions for 2020) of the *draft Lifestyle 2020 Strategy – A Strategy for Our Future*, the site is identified as vacant zoned residential land.

Under Lifestyle 2020, it is apparent that the land holds environmental value, but also acknowledges its existing zoning and capacity to provide a small level of increased growth.

3. Is the planning proposal consistent with applicable state environmental planning policies?

An assessment has been undertaken to determine the level of consistency the proposal has with relevant State Environmental Planning Policies (SEPPs). The assessment is provided below.

SEPP	Relevance	Implications	Consistent
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SEPP 19 – Bushland in Urban Areas	Aims to prioritise the conservation of bushland in urban areas, and requires consideration of aims in preparing a draft amendment.	The proposal identifies the protection of the entire site to conserve bushland in the vicinity of the existing West Wallsend township.	Yes
SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)	This policy aims to implement urban consolidation and promote social and economic welfare by locating housing in areas where there is existing public infrastructure.	The land is currently an urban use zone, however the land has not previously been used for residential purposes. The characteristics of the land are comparable to land typically zoned for conservation. As a result, it is considered that the land is unsuitable for multi-unit housing and related development.	No
SEPP 44 – Koala Habitat Protection	Aims to encourage the proper conservation and management of areas of natural vegetation that provide koala habitat.	Koalas are known to occur in this area. There was a record within the environmental assessment report for the Part 3A Minmi /Edgeworth application for Coal and Allied land. There is also another record at Cameron Park Drive where an injured koala was taken into care and other unconfirmed reports in the Northlakes area as well as a more recent record along the F3 Freeway within proximity to West Wallsend in January 2010. The proposal will ensure the proper conservation and management of the area which contains suitable habitat for koalas.	Yes
SEPP 55 – Remediation of Land	Establishes planning controls and provisions for the remediation of contaminated land.	As there is no development proposed on the land, no further consideration is needed regarding provisions to remediate the subject land.	Yes
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	The SEPP aims to manage the development of land for mining, petroleum, and extractive development in a manner that provides social and economic welfare of the State, and provides controls to promote ecologically sustainable development.	The subject land is partly within the Killingworth-West Wallsend Mine Subsidence District and the Lake Macquarie Mine Subsidence District. The proposed conservation zone will not impact upon any future extractive resource opportunities on the land. Further consultations should occur with the DPI at the appropriate stage.	Yes

4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment has been undertaken to determine the level of consistency the proposal has with relevant Ministerial Directions. The assessment is provided below.

Ministerial Direction	Relevance	Consistent
1.3 – Mining, Petroleum Production and Extractive Industries	This direction aims to protect the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials and requires consultation with the Department of Primary Industries.	Yes. The subject land is within two Mine Subsidence Districts, Killingworth-Wallsend and Lake Macquarie. Further consultation with DPI will occur at the relevant stages.
2.1 – Environmental Protection Zones	This direction aims to protect and conserve environmentally sensitive land by requiring appropriate provisions in a draft LEP and no reduction in environmental protection standards.	Yes. As stated above, the subject land is approximately 95% covered with native vegetation. The site contains an Ecological Endangered Community, Lower Hunter Spotted Gum - Ironbark Forest which makes up approximately 22% of the subject land. One threatened plant species has been identified on site, and eight threatened animal species have also been recorded. There are 233 hollow bearing trees on the site, including 14 glider den trees. The conservation zone proposed will protect and conserve the environmentally sensitive values of this land.
2.3 – Heritage Conservation	Aims to conserve items of environmental heritage by requiring a draft LEP to include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	Yes. There is one local European heritage item, the West Wallsend Steam Tram Line, that is within the subject land and is listed in Schedule 4 of LMLEP 2004. The subject land is also within the direct vicinity of listed local heritage item WW-02 West Wallsend (No 1) Colliery to the north and abuts a set of cottages at the Carrington Street entry into town, listed as provisional heritage item WW-03, 6 & 8 & 10 Carrington Street. The subject land is also located within the West Wallsend /Holmesville Heritage Precinct under Development Control Plan No.1 (DCP1) and the Hunter Regional Environmental Plan (Heritage). The intent of the heritage provisions in this area is to safeguard the heritage values of West Wallsend and Holmesville to ensure future development

Ministerial Direction	Relevance	Consistent
		maintains and enhances identified significant characteristics. The subject land contains identified indigenous sites including a potential archaeological deposit and shelter and three potential scar trees. Rezoning the land to a conservation zone will assist in the conservation of these items.
2.4 – Recreation Vehicle Areas	The direction restricts a draft LEP from enabling land to be developed for a recreation vehicle area.	Yes. This Planning Proposal does not propose any recreation vehicle areas and is consistent with this Direction.
3.1 – Residential Zones	The direction requires a draft LEP to include provisions that facilitate housing choice, efficient use of infrastructure, and reduce land consumption on the urban fringe.	Yes and No. In summary, it is considered that the Planning Proposal is not consistent with the objectives of this Direction as it reduces the amount of existing 2 (1) Residential land by 58 ha. As a result, it reduces the opportunity to encourage a variety of housing types. However, the Planning Proposal is also consistent with a number of other objectives of the direction by minimising the impact of residential development on the environment through identifying the high biodiversity values of the land. The Planning Proposal also reduces the consumption of housing on the urban fringe. As stated above, under Council's Urban Development Program, there are around 11,740 residential lots currently undeveloped. There are a further 3,800 lots currently in the process of being rezoned residential. Due to the environmental values of the land, it is considered more appropriate that the land be rezoned to conservation.
3.2 – Caravan Parks and Manufactured Home Estates	The direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	Yes. This proposal will not affect provisions relating to Caravan Parks or Manufactured Home Estates.

Ministerial Direction	Relevance	Consistent
3.4 – Integrating Land Use and Transport	The direction requires consistency with State policy in terms of positioning of urban land use zones.	Yes. The Planning Proposal is to provide for the adequate protection of environmentally sensitive land. As a result, there is no proposal for any urban structures, building forms or subdivision layouts. The identification of the land for conservation, rather than residential land on the urban fringe will reduce car dependence and travel demand in this locality. However, car dependence and travel demand in other locations in the LGA may become an issue if the employment lands identified in the NLMWCPS are developed.
4.1- Acid sulphate Soils	Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Yes. The Planning Proposal is for the subject land to be rezoned to a conservation zone and therefore will not adversely affect any probability of acid sulphate soils. Notwithstanding this, previous studies on the land have concluded that there are no signs of acid sulphate conditions on the site due to the lands elevation.
4.3- Flood prone land	Aims to ensure that development of flood prone land is consistent with the NSW Government Flood Prone Land Policy and the Principles of the Floodplain Development Manual 2005 and to ensure that the provision of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	N/A. The proposal is not creating, removing or altering a zone or a provision that affects flood prone land. The land is not within identified 1:100 Annual Exceedance Probability flood areas, nor is it affected by sea level rise due to climate change.
4.4 – Planning for Bushfire Protection	Aims to reduce risk to life and property from bushfire. Requires an LEP to have regard for <i>Planning for Bushfire Protection</i> , amongst other matters. Applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	Yes. The proposal to zone the land to conservation will ensure that no further development is identified on the subject land, reducing the potential for any increased bushfire risk.
5.1 – Implementation of Regional Strategies	Aims to give legal effect to regional strategies, by requiring draft LEPs to be consistent with relevant strategies. The direction requires a draft amendment to be consistent	No. The Lower Hunter Regional Strategy sets the strategic direction for sustainable growth in the

Ministerial Direction	Relevance	Consistent
	with the relevant State strategy that applies to the Local Government Area.	Region. It identifies the subject land as an existing urban area, which would be due to its existing 2(1) Residential zoning. As a result, under the Lower Hunter Regional Strategy, the subject land has been identified to possibly provide for some additional housing opportunities (subject to further study). The Planning Proposal is considered justified to be inconsistent with this direction due to the subsequent identification of the high biodiversity values of the land through additional studies on the land.
6.1 – Approval and Referral Requirements	Prevents a draft LEP from requiring concurrence from, or referral to, the Minister or a public authority unless approval is obtained from the Minister and public authority concerned. Also restricts the ability of a Council to identify development as designated development without the Director General's agreement.	Yes. The draft amendment does not contain any provisions that require concurrence from, or referral to, the Minister or a public authority. The planning proposal is consistent with this Direction.
6.2 – Reserving Land for Public Purposes	Aims to facilitate the reservation of land for public purposes, and to facilitate the removal of such reservations where the land is no longer required for acquisition. A Council must seek the Minister's or public authority's agreement to create, alter, or reduce existing zonings or reservations in an LEP. A Council can also be requested to rezone or remove a reservation by the above.	Yes. The proposal recommends the removal of approximately 11ha of existing 6(1) Open Space land for LMCC acquisition to be altered to a conservation zone. The existing 6(1) zone is over 17 years old and was converted over from Lake Macquarie LEP 1984 to LMLEP 2004. It is believed that the zone was placed on the land to provide scenic protection and discourage access to George Booth Drive from any future subdivisions in the area. It is now considered that a conservation zone best reflects the characteristics of the land. Under this direction, agreement is required by the Minister to reduce the existing zonings.
6.3 – Site Specific Provisions	Aims to reduce restrictive site-specific planning controls where a draft LEP amends another environmental planning instrument in order to allow a particular development proposal to proceed. Draft LEPs are encouraged to use	Yes. The amendment does not propose site-specific zones or planning provisions. The proposal is consistent with this Direction.

Ministerial Direction	Relevance	Consistent
	existing zones rather than have site-specific exceptions.	

C. Environmental, social and economic impact

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. In fact, the Planning Proposal will ensure the protection of approximately 66ha of native vegetation which accounts for approximately 95% of the subject land. This includes protecting 15.3ha of Lower Hunter Spotted Gum - Ironbark Forest, an Ecological Endangered Community.

The site also contains one threatened plant species, Black-eyed Susan (*Tetratheca juncea*), of around 74 clumps.

Eight threatened animal species have also been recorded on site, including: Squirrel Glider (*Petaurus norfolcensis*), Koala (*Phascolarctos cinereus*) (potential scratch marks on three trees only), Grey-headed Flying-fox (*Pteropus poliocephalus*), Little Bent-wing Bat (*Miniopterus australis*), Sooty Owl (*Tyto tenebricosa*), Powerful Owl (*Ninox strenua*), Scarlet Robin (*Petroica boodang*) and Varied Sittella (*Daphoenositta chrysoptera*).

There were also 233 hollow bearing trees recorded on the site, including 14 glider den trees.

The conservation value detected on the subject site, as part of previous assessments on development applications, is considered similar to land zoned environmental and conservation within the city. It is understood that at the time of the 2004 LEP rezoning, Council did not have sufficient resources to undertake ecological surveys necessary to facilitate any necessary assessment of a more appropriate zone for this site.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. There are no environmental effects as a result of the Planning Proposal.

3. How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal has been prepared following a resolution of Council to rezone the land to conservation. The community in the West Wallsend and Holmesville area have expressed a keen interest in the Council recognising the land for its environmental values by rezoning this land to conservation, this included the submission of a petition.

During the notification period for DA 1193/2009, 240 submissions were received including petitions containing over 500 signatures. Heritage and ecological issues were the main concerns.

It is considered the rezoning of the land to a conservation zone will provide a positive social benefit to the community.

Under Council's Urban Development Program, there are around 11,740 residential lots currently undeveloped. There are a further 3,800 lots currently in the process of being rezoned residential. The recent review of the Lifestyle 2020 Strategy indicated that there is insufficient land to accommodate the projected increase in detached dwellings required to meet LHRS targets in existing urban areas.

As stated above, there has been significant residential and employment lands identified for investigation to the west and south, south-west of West Wallsend in the NLMWCPS. It is acknowledged that the existing residential zone on the subject land could support these identified employment lands, however the cumulative loss of vegetation in this area promotes

the need to conserve the subject land for its high conservation values and to protect the unique heritage values of West Wallsend.

There will obviously be a negative impact economically for the landowner of the subject land.

D. State and Commonwealth interests

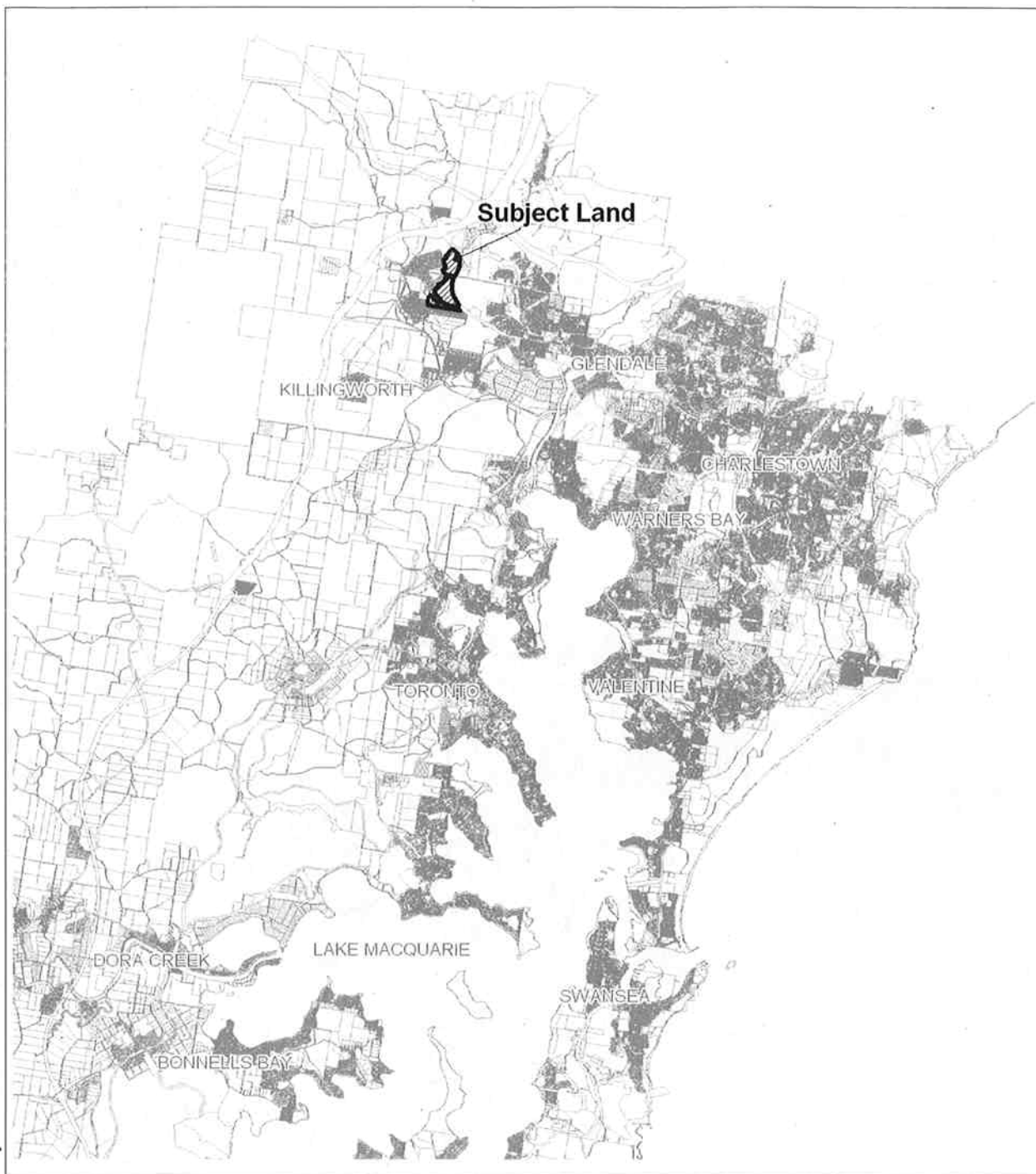
1. Is there adequate public infrastructure for the planning proposal?

No public infrastructure is required for the Planning Proposal.

2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Proposal has not previously been to Gateway for determination. Consultation with the relevant State and Commonwealth agencies will be undertaken following the gateway determination.

Appendix 1 – Locality Map



Locality: WEST WALLSEND

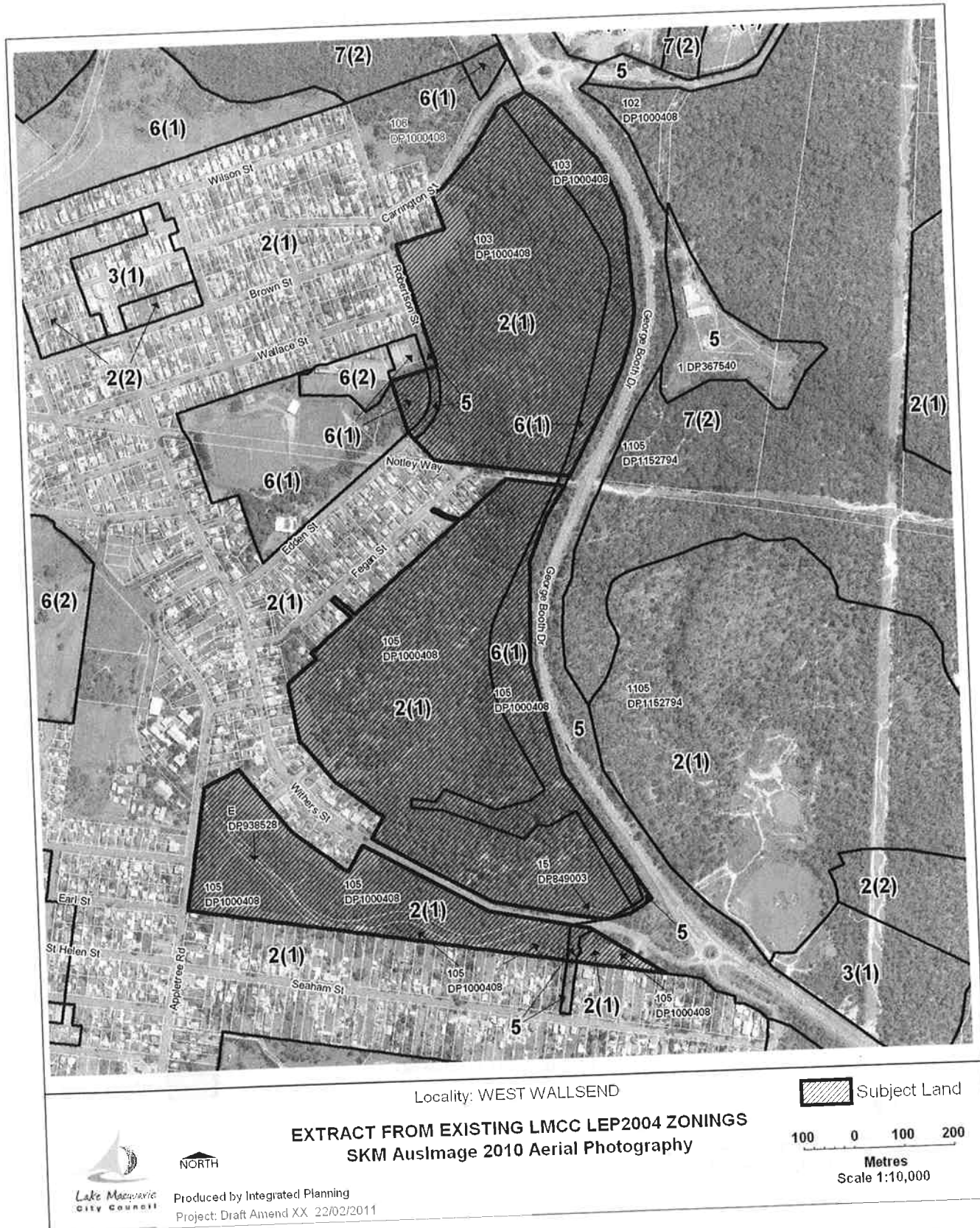
 Subject Land



Produced by Integrated Planning
Project: Draft Amend XX 22/02/2011



Appendix 2 – Existing Zoning



Appendix 3 – Proposed Zoning

