

Planning and Assessment

IRF20/1486

Gateway determination report

LGA	Lake Macquarie
PPA	Lake Macquarie City Council
NAME	Rezone E3 land to RU2 to enable cemetery expansion
NUMBER	PP_2020_LAKEM_004_00
LEP TO BE AMENDED	Lake Macquarie Local Environmental Plan 2014
ADDRESS	405 Cessnock Road, Ryhope
DESCRIPTION	Lot 1, DP833614
RECEIVED	18/03/2020
FILE NO.	IRF20/1486
POLITICAL DONATIONS	There are no donations or gifts to disclose to the Regional Team's knowledge
LOBBYIST CODE OF CONDUCT	There have been no communications with registered lobbyists to Regional Team knowledge

1. INTRODUCTION

1.1 Description of planning proposal

The Lake Macquarie Memorial Park and cemetery operates on a lot that has a split-zoning:

- western part of the lot is zoned RU2 Rural Landscape (18.8ha), where a cemetery is currently located; and
- eastern part of the lot is zoned E3 Environmental Management (8ha), in which zone cemetery use is prohibited. This part of the lot is currently vacant.

The planning proposal applies to the eastern part of the cemetery site and seeks to enable expansion of the cemetery. It seeks to rezone most of the eastern part of the lot to from E3 to RU2, except for an area of high-value habitat (discussed further in the report).

The subject site and the adjoining cemetery are both owned by InvoCare Pty Ltd.

1.2 Site description

The 8ha subject site is located at 405 Cessnock Road, Ryhope (Lot 1 DP 833614) and has a 250m frontage to Cessnock Road within the rural community of Ryhope (Figure 1). The site is 1.5km east of the M1 Pacific Motorway and 9km west of Toronto.

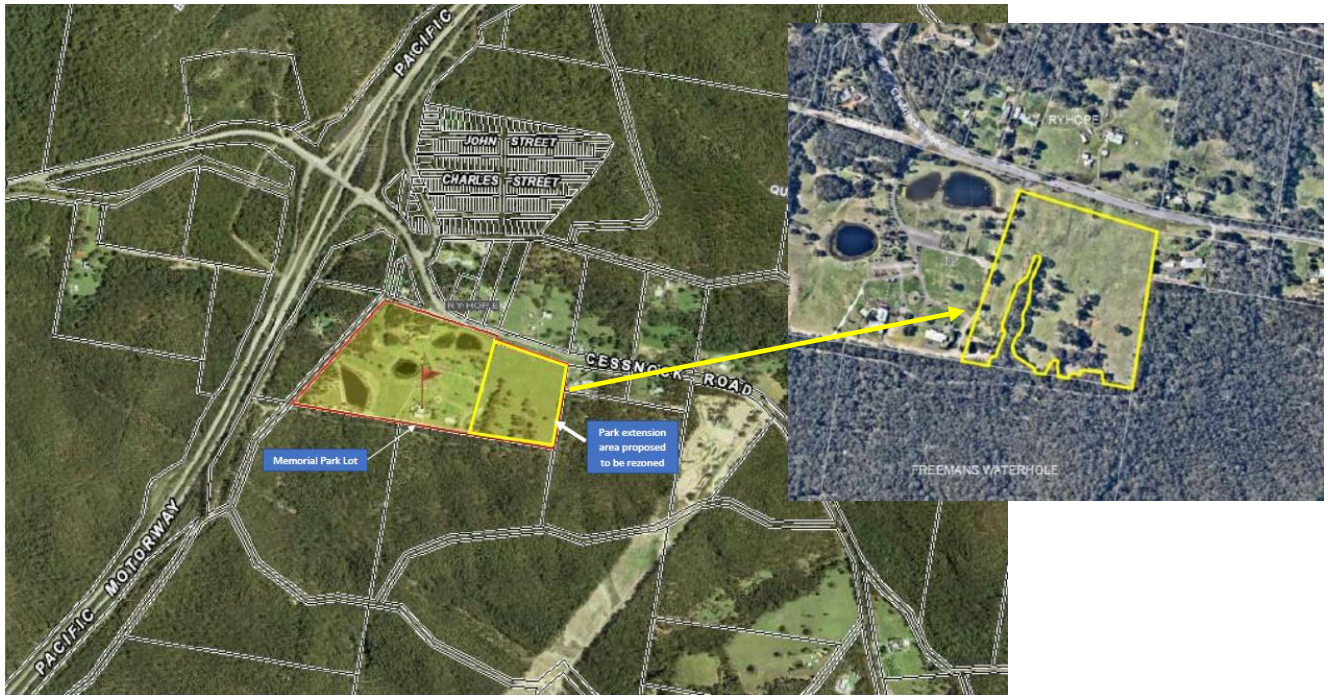


Figure 1: Site location

The site, outlined in yellow is largely cleared and has been used for grazing. The site contains two stands of remnant native vegetation extend into the site from the south. The proposal seeks to retain these areas as E3 Environmental Management as recommend by a supporting Ecological and Bushfire Assessment Report and do not form part of the rezoning proposal. The exclusion of these vegetated areas is discussed further in this report.

1.3 Existing planning controls

The site is currently zoned E3 Environmental Management in Lake Macquarie LEP 2014 as shown in Figure 2. Under the E3 zone, use of the site as a cemetery, crematorium and mortuary are currently prohibited. The zone has a 40ha minimum lot size and a maximum height of building of 5.5m.

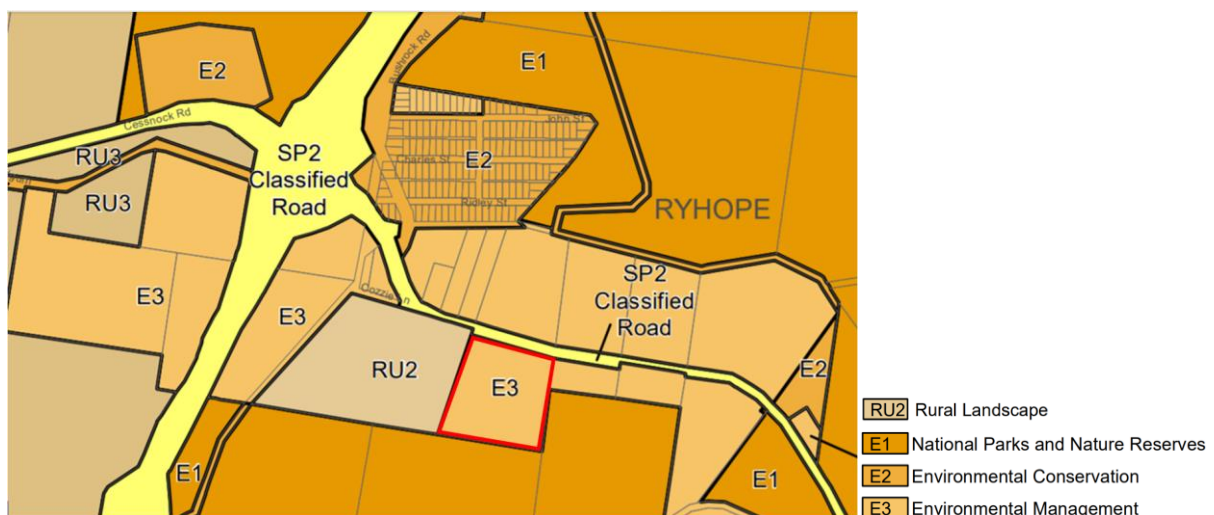


Figure 2: Existing zoning

1.4 Surrounding area

As shown in Figure 1, the site is located in a rural area, with bushland located to the south and east zoned E1 National Parks and Nature Reserves. The Sugarloaf State Conservation Area is located to the south.

There are a number of rural residential properties within proximity to the site, with the closest approximately 50m to the east and is zoned E3 Environmental Management. As identified, to the west is the Lake Macquarie Memorial Park, which is seeking to extent to the subject site.

1.5 Summary of recommendation

It is recommended that the proposal proceed subject to conditions. Conditions are recommended to ensure consistency with relevant 9.1 Ministerial directions and the Greater Newcastle Metropolitan Plan are addressed relating to bushfire risk, contaminated land, mine subsidence and biodiversity. The matters are discussed further in the report.

2. PROPOSAL

2.1 Objectives or intended outcomes

The proposal aims to rezone part of the site to enable the extension of the Lake Macquarie Memorial Park to ensure there is adequate supply of land for cemetery uses in the Lake Macquarie local government area. The objectives are clear and no further changes are required.

2.2 Explanation of provisions

The planning proposal clearly sets out the proposed amendments to the LEP for the site including:

- rezoning part of the site from E3 Environmental Management to RU2 Rural Landscape (see Figure 3);
- reducing the minimum lot size from 40ha to 20ha for the area to be rezoned; and
- increase the maximum height of building from 5.5m to 8.5m for the area to be rezoned.

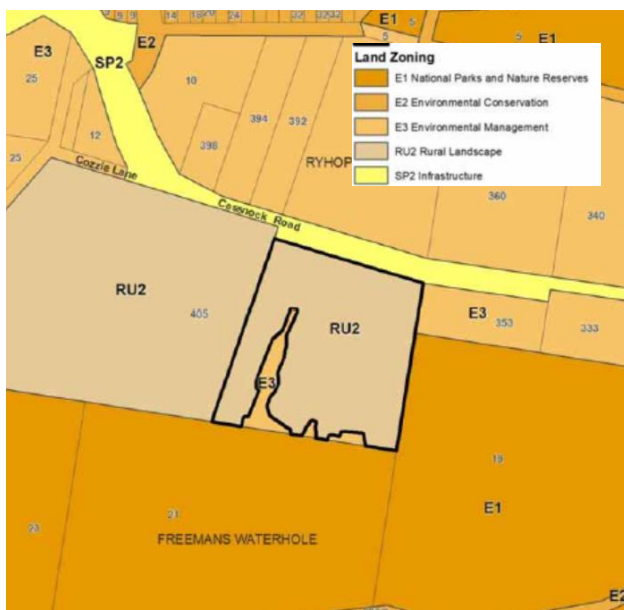


Figure 3: Proposed zoning

2.3 Mapping

The planning proposal seeks to amend the following LEP maps:

- land use zone;
- lot size; and
- maximum building height.

The maps included in the proposal show the current and proposed controls and are suitable for exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report and aims to ensure there is adequate supply of land for cemetery uses at the Lake Macquarie Memorial Park into the long-term.

Due to the split zoning of the site, a planning proposal is required for the portion of the site zoned E3 Environmental Management. Council investigated a number of options including developing a cemetery elsewhere in the local government area. However, there were limitations in identifying suitable sites as cemeteries are only permissible in industrial or rural zones.

The need for the planning proposal is justified and the proposal is considered the most appropriate way to achieve the desired objectives. The need for the proposal is therefore supported.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal makes reference to the Cemeteries and Crematoria NSW Strategic Plan 2015-2020 and subsequent Metropolitan Sydney Cemetery Capacity Report 2017. The Strategic Plan identifies the need for future cemetery and crematorium land to meet future projected demand. By providing for long term demand, the proposal is considered consistent with the Strategic Plan.

4.2 Regional

Hunter Regional Plan 2036

The Hunter Regional Plan applies to the proposal, and in particular *Direction 26 – Deliver infrastructure to support growth and communities* is relevant. The proposal is consistent with this direction as it proposed to expand an existing cemetery, which would equate to an increase in cemetery supply up to a 100-year timeframe. The supply will support the needs of a growing and ageing population.

Greater Newcastle Metropolitan Plan (GNMP) 2036

The GNMP also applies to the proposal, in particular *Strategy 4 - Grow health precincts and connect the health network* and *Strategy 13 - Protect rural amenity outside urban areas*.

Whilst the GNMP does not specifically address the provision for cemeteries and crematorium development, the proposal is consistent with the above two strategies which are considered relevant. The proposal states that it will maintain the rural character of the locality.

In terms of *Direction 14 – Protect and connect natural areas*, the proposal includes an Ecological and Bushfire Assessment Report that identifies the site as containing remnant native vegetation in the south of the site.

The site is identified as containing native remnant vegetation along the southern boundary. The vegetation is identified as containing Freemans Peppermint Apple Bloodwood Forest under Council's vegetation mapping. The Ecological and Bushfire Assessment Report has also highlighted that this remnant vegetation contained a number of hollow bearing trees that could support habitat for a number of threatened fauna species. In accordance with the recommendation of this study, Council is retaining the E3 zone to allow for the ongoing conservation of the ecological values and native vegetation, whilst also maintaining connectivity to the Sugarloaf State Conservation Area to the south.

This area is to retain the existing E3 Environmental Management zone, however given the rezoning of the majority of the site from and environmental to rural zone and the site adjoins land zoned E1, Council's proposal to consult with the Biodiversity Conservation Division (formerly OEH) in DPIE is supported.

Direction 16 – increase resilience to hazards and climate change is also relevant. The site is identified as being bushfire prone and contains vegetation categories 1, 2 and 3. Any future development would require appropriate Asset Protection Zones and have been accommodated into the proposed zoning boundary. Consultation with the Rural Fire Service is required to evaluate the suitability of the measures proposed.

4.3 Local

Lake Macquarie Local Strategic Planning Statement (LSPS)

When Council submitted the planning proposal to the Department, the LSPS was a draft, it has since been adopted on 9 March 2020.

Cemetery space may be regarded as essential infrastructure, however, unlike the Hunter Regional Plan 2036, the LSPS does not specifically refer to cemeteries. The proposal is considered consistent with the LSPS as it seeks to provide essential infrastructure for the local government area.

4.4 Section 9.1 Ministerial Directions

The planning proposal is either inconsistent or further work is required before consistency can be determined with the following Section 9.1 directions:

2.1 Environment Protection Zones

This direction requires provisions in LEP's to protect environmentally sensitive areas. This Direction is applicable as the site is zoned E3 Environmental Management and the proposal includes provisions which facilitate the protection and conservation of the environmentally sensitive land located on the site. Consultation with the BCD of DPIE should occur as previously discussed, to confirm the suitability of measures proposed. Consistency with this direction may then be determined.

2.3 Heritage Conservation

The proposal identifies that the site is identified as containing 'Sensitive Aboriginal Landscape mapping' within the Aboriginal Due Diligence Report (see *Attachment A*) and identified 2 archaeological sites and an area of low-moderate archaeological potential. The proposal indicates that these areas are not likely to be impacted by the proposed rezoning. However, the Department recommends consultation with the BCD branch of DPIE occur and then consistency with this direction may then be determined.

2.6 Remediation of Contaminated Land

This direction came into effect on 17 April 2020, and is discussed further in Section 4.5. The planning proposal is required to be updated to address this direction and then consistency may be determined.

4.2 Mine Subsidence and Unstable Land

The site lies within the West Lake Mine Subsidence District and so should be referred for advice to NSW Subsidence Advisory. Following consultation, consistency with this direction may then be determined.

4.4 Planning for Bushfire Protection

The planning proposal affects land mapped as bushfire prone and consultation with NSW RFS needs to occur before consistency with this direction can be determined.

5.10 Implementation of Regional Plans

The proposal is potentially inconsistent with Direction 5.10 as it is contrary to the Greater Newcastle Metropolitan Plan as discussed previously. Conditions are recommended to address these matters.

4.5 State environmental planning policies (SEPPs)

The following SEPP's are identified by Council as being relevant:

SEPP Koala Habitat Protection 2019

The property is identified within the 'Koala Development Application Map'. The Ecology and Bushfire Assessment Report identifies the koala feed-tree species on the site however, Koalas were not observed on the site.

The proposal may result in the removal of a small portion of remnant vegetation. Council is of the view that the rezoning would have minimal impact on the retention of such vegetation as it will be protected within the reduced E3 Environmental Management zone. Council will be required to consult with BCD, and after consultation consistency with this SEPP may then be determined.

SEPP 55 - Remediation of land

On 17 April 2020, the Minister for Planning and Public Spaces approved the removal clause 6 from SEPP 55 and transfer the requirements to a 9.1 Ministerial direction 2.6. When the proposal was submitted, the proposal was required to consider clause 6, however this clause has since been removed. As such, as a condition of Gateway it is recommended that the proposal is updated to consider direction 2.6 prior to exhibition. Council will be required to consider contamination and remediation prior to finalisation, this may include the preparation of a Phase 1 Contamination Assessment.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal aims to ensure there is adequate supply of land for cemetery uses in the Lake Macquarie local government area in the long term and forms a logical extension to the existing Lake Macquarie Memorial Park. The proposal also has the potential to create a very small number of jobs for the local area.

Council advises that the proposal may have an adverse impact on the local amenity due to the expansion of the existing Memorial Park, most likely on the surrounding rural residential properties. The site also adjoins a conservation area to the south. Council considers this impact as minor due to the existing rural character and the low development footprint proposed. Any future development application would be required to consider visual amenity and proposed landscaping measures to mitigate any potential impact.

5.2 Environmental

The proposal identifies that the site is subject to a number of environmental constraints including biodiversity and bushfire constraints. These constraints have been discussed previously in this report. Further consultation with the relevant agencies is required before environmental impacts (and measures proposed to mitigate those impacts) can be fully evaluated.

5.3 Economic

Council advises that the proposal would create a positive economic outcome as the proposal will generally create a small number of short and long term local jobs during construction and operation.

5.4 Infrastructure

A Traffic Study was included as part of the proposal and advises that the proposal would have a negligible impact on the existing road network and there is adequate capacity available. The proposal will maintain access from the current sealed access road that intersects with Cessnock Road. It is recommended that Council consult with RMS regarding the potential impact on the road network.

The site is currently serviced by reticulated water infrastructure and contains an on-site sewage management system.

6. CONSULTATION

6.1 Community

Council intends to exhibit the proposal for 28 days, which is considered appropriate.

6.2 Agencies

Consultation is required with the following Government agencies:

- NSW Rural Fire Service (bushfire);

- Biodiversity Conservation Division, DPIE (biodiversity, Aboriginal heritage);
- Roads and Maritime Services (traffic);
- NSW Subsidence Advisory (subsidence);
- NSW Cemeteries and Crematoria.

The Gateway determination has been conditioned accordingly.

7. TIME FRAME

The time frame for completing the LEP as proposed by Council is November 2020. It is recommended that the proposal be finalised within 12 months given agency consultation required.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. The Department supports this request and has authorised Council as the local plan making authority.

9. CONCLUSION

It is considered that the proposal should proceed subject to conditions because:

- the proposal ensures there is adequate supply of land for cemeteries in the long term; and
- the proposal forms a logical extension to the existing Memorial Park and any potential impacts can be appropriately managed.

10. RECOMMENDATION


It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions; 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.6 Remediation of Contaminated Land, 4.2 Mines Subsidence and Unstable Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans are unresolved and will require justification and/or consultation.

It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. The proposal should be updated to address consistency with section 9.1 direction 2.6 - Remediation of contaminated land.
2. The planning proposal should be made available for community consultation for a minimum of 28 days,
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service (bushfire);
 - Biodiversity Conservation Division, DPIE (biodiversity, Aboriginal heritage);
 - Roads and Maritime Services (traffic);
 - NSW Subsidence Advisory (subsidence); and
 - NSW Cemeteries and Crematoria.

4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Council be authorised to exercise its delegation as local plan-making authority to make this plan.



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