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| 19DP006 | s.3.22 Administrative Amendment to LMLEP 2014 - removal of expired clause relating to development for the purpose of seniors housing |
| Council Ref: | F2015/00090/02 - D08926441 |
| Report By: | Senior Strategic Planner - Gabriele Calcagno |

Précis:

This proposal is for an administrative amendment to remove an expired clause from *Lake Macquarie Local Environmental Plan (LMLEP) 2014*. The expired clause relates to development for the purpose of seniors housing.

A resolution of Council is required to prepare the amendment in accordance with Section 3.22 “Expedited amendments of environmental planning instruments” of the *Environmental Planning and Assessment Act, 1979* (*EP&A Act 1979*).

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| **Recommendation:**  Council:   1. Supports the proposed amendment to remove the expired Clause 7.12 “*Development for the purpose of seniors housing”* from *Lake Macquarie Local Environmental Plan 2014*, as outlined in Attachment 1. 2. Submits a request to the Department of Planning and Environment to make the Local Environmental Plan, in accordance with the provisions of Section 3.22 of the *Environmental Planning and Assessment Act, 1979*, as outlined in Attachment 1. |

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Background:

Section 3.22 of the *EP&A Act 1979* provides a simplified process for minor LEP amendments. This allows an amendment to occur without the need for public exhibition or further reports to Council.

*Clause 7.12 Development for the purpose of seniors housing,* was included in LMLEP 2014 to maintain, for a certain period of time, the opportunity for seniors housing to be developed in certain locations. This clause expired on 10 October 2016.

During preparation of *LMLEP 2014* the Department of Planning and Environment (DoPE) requested a review of where seniors housing could be located in Lake Macquarie Local Government Area (LGA). A report prepared by Council staff was provided to the DoPE in 2013 to enable gazettal of the *LMLEP 2014*. The report findings confirmed that there was a significant amount of land available for seniors housing in Lake Macquarie LGA without the need for any additional local clause in *LMLEP 2014* dealing with seniors housing.

Despite the report findings*,* the DoPE’s requested that *Clause 7.12* be included, with an expiry date, so that planning provisions from LMLEP 2004 would be maintained to ensure that any existing or soon to be submitted DA’s for seniors housing could be lodged and determined prior to the expiration of *Clause 7.12*.

The *State Environmental Planning Policy Housing for Seniors or People with a Disability* *(SEPP HSPD)* nowsupersedes the provisions of *Clause 7.12* and Seniors Housing is a permitted use in *LMLEP 2014* for all residential and business landuse zones, except the B7 Business Park zone. *Clause 7.12* is provided in full in Attachment 2.

Although *Clause 7.12* of *LMLEP 2014* has expired, numerous DA’s for Seniors Living and Retirement Villages have been determined by Council. These applications have been submitted under the provisions of *SEPP HSPD* or because they were a permitted use in *LMLEP 2014.*

Below are relevant statistics for DA’s determined for Seniors Living, Seniors Housing or Retirement Villages, both before and after *Clause 7.12* expired.

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| Seniors Housing DA’s | From 10 October 2014 (*LMLEP 2014* commencement date), to 10 October 2016 (Clause 7.12 expiry) | 11 October 2016 to 14 January 2019 |
| Approved | 6 | 13 |
| Modifications/amendments to existing DA | 12 | 23 |
| Withdrawn | 2 | 2 |
| Refused | 0 | 1 (Regional Planning Panel decision) |

Based on the above data, it can be observed that there has been no negative impact on the availability of land for, or development of, seniors housing in the City due to the expiration of Clause 7.12.

Proposal:

It is proposed to remove Clause 7.12 from *LMLEP 2014* as it no longer has statutory effect and that Council requests the Department of Planning and Environment to make the administrative amendment to *LMLEP 2014* remove clause 7.12 as submitted in Attachment 1 to this report.

Consultation:

Consultation has occurred with Development Assessment and Certification, Community Services and Integrated Planning departments. Feedback confirmed that there is no benefit of retaining or amending *Clause 7.12* in LMLEP 2014.

Implications:

Policy Implications:

As the LEP amendment is for minor corrections only, it is able to be processed under the provisions of Section 3.22 of the *EP&A Act 1979*. The LEP amendment will assist to ensure *LMLEP 2014* is up-to-date and continues to provide relevant and current direction for development in the City.

The proposed amendment is consistent with all relevant policies, planning strategies and directions. There are no implications relating to Council’s Lifestyle 2030 Strategy, draft Lake Mac 2050 Strategy, State Environmental Planning Policies, or Ministerial Directions.

Environmental Implications:

There are no environmental impacts associated with the removal of the expired clause from *LMLEP 2014* as it currently has no statutory effect.

Social Implications:

There are no social impacts associated with the removal of the expired clause from *LMLEP 2014* as it currently has no statutory effect.

Infrastructure Asset Implications:

There are no asset or infrastructure impacts associated with the removal of the expired clause from *LMLEP 2014* as it currently has no statutory effect.

Financial Implications:

There are no financial impacts associated with the removal of the expired clause from *LMLEP 2014* as it currently has no statutory effect.

Risk and Insurance Implications:

The preparation of an LEP amendment is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity has been minimised by following processes established by the *EP&A Act 1979,* the Department of Planning and Environment, and Council’s established processes and procedures.

Options:

1. Council resolves to submit a request to the Department of Planning and Environment to amend *LMLEP 2014* under Section 3.22 of the *EP&A Act 1979* to remove an expired clause from LMLEP 2014 as outlined in Attachment 1 to this report. This is the recommended option.
2. Council resolves to not support the request to amend *LMLEP 2014*. This will result in an LEP that is not current, by continuing to have a clause that is expired and is not reflective of development that Council can consider on merit assessment.

Conclusion:

It is proposed to use a simplified process under Section 3.22 of the *EP&A Act 1979* to remove the expired *Clause 7.12* from LMLEP 2014. The amendment will ensure *LMLEP 2014* is up-to-date and continues to provide relevant and current direction for development in the City.

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Manager Integrated Planning - Wes Hain

Attachments:

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| 1. | NSW Planning and Environment Section 3.22 (former 73A) submission |  | D08938692 |
| 2. | Extract of expired clause in LMLEP 2014 |  | D08991961 |