

# **EXHIBITION DOCUMENTS**

## **Lake Macquarie Local Environmental Plan 2004**

### **Draft Amendment No. 10**

**Exhibition Period:** Monday 3 October 2005 to Monday 7 November 2005

**Contents:**

- Section 65 Certificate
- Public Notice of Exhibition
- Draft Amendment No. 10 (written instrument and map)
- Plain English version of Draft Amendment No. 10
- Section 66 Statement
- Relevant Council Report
- Lake Macquarie Local Environmental Plan 2004 LMLEP 2004
- Lifestyle 2020 Strategy LS 2020 Strategy
- Hunter Regional Environmental Plan 1989 Hunter REP 1989
- Relevant State Environmental Planning Policies
- Relevant s117(2) Directions
- Best Practice Guideline (Statement of Councils interest in the land)

**Submissions:** Written submissions are invited from any person in relation to the draft amendment during the exhibition period.

Submissions should be addressed to:

**Acting General Manager**  
**Lake Macquarie City Council**  
**PO Box 1906**  
**Hunter Region Mail Centre NSW 2310, or**

**Via email: [enquiries@lakemac.nsw.gov.au](mailto:enquiries@lakemac.nsw.gov.au)**

# ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

## SECTION 65 CERTIFICATE

As delegate of the Director-General of the Department of Planning and, I, Tony Farrell certify pursuant to section 65 (1) of the Environmental Planning and Assessment Act, 1979, that the draft local environmental plan referred to in the Schedule may be publicly exhibited in accordance with section 66 of the Act.

SIGNED.....

DATE: 23/9/05

NAME: Tony Farrell

POSITION: Group Manager - Strategy

as delegate of Lake Macquarie City Council which is the delegate of the Director-General of the Department of Planning and I have no notice of the revocation of either delegation.

### SCHEDULE

Draft Local Environmental Plan – draft Amendment No.10 to Lake Macquarie Local Environmental Plan, 2004 for land at the corner of Morisset Park Road and Chifley Road, Morisset Park known as Lot 9 DP 244002 and Lot 358 DP 755242. The purpose of draft Amendment No.10 to Lake Macquarie Local Environmental Plan 2004 is to rezone the site from Zone 10 Investigation Zone to Zone 2(1) Residential Zone.

**LAKE MACQUARIE CITY COUNCIL**  
**DRAFT LOCAL ENVIRONMENTAL PLAN**

Pursuant to Section 65 of the Environmental Planning and Assessment Act 1979, a certificate has been issued certifying that Draft Amendment No. 10 to Lake Macquarie Local Environmental Plan 2004, as described below is acceptable for exhibition:

**Property:**           **Draft Amendment No. 10** applies to all land to which Lake Macquarie Local Environmental Plan 2004 applies that being Lot 9 DP 244002 and Lot 358 DP 755242, Morisset Park Road Morisset.

**Proposal:**           **Draft amendment No. 10**, consists of the rezoning of land from 10 Investigation to 2 (1) Residential

**Exhibition:**       A copy of the draft amendments and other relevant information is on exhibition from Monday 3 October 2005 to Monday 7 November 2005 at:

Council's Administration Building, 126 – 138 Main Road Speers Point, 8.00am to 6.00pm weekdays and at Speers Point and Morisset libraries during opening hours. A copy of draft Amendment No. 10 associated information are available on Council's website: [www.lakemac.com.au](http://www.lakemac.com.au)

Written submissions close at: 6.00pm on Monday 7 November 2005.

Council will release all submissions received upon request, in accordance with the provisions of the Freedom of Information Act (1989).

For further information contact the Acting Principal Strategic Planner, Gabriele Calcagno on 4921 0509.

Tony Farrell  
ACTING GENERAL MANAGER  
Box 1906  
Hunter Region Mail Centre NSW 2310

# **Lake Macquarie Local Environmental Plan 2004 (Amendment No. 10)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning , make the following local environmental plan under the  
*Environmental Planning and Assessment Act 1979* (No ).

Minister for Planning.

Lake Macquarie Local Environmental Plan 2004 (Amendment No. 10)

## **Lake Macquarie Local Environmental Plan 2004 (Amendment No 10)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of plan**

This plan is *Lake Macquarie Local Environmental Plan 2004 (Amendment No 10)*.

### **2 Aims of plan**

This plan aims:

to rezone land from Zone 10 Investigation Zone to Zone 2 (1) Residential Zone to allow residential development on the land.

### **3 Land to which plan applies**

This plan applies to Lot 9 DP 244002 and Lot 358 DP 755242, as shown edged heavy black on the map marked "*Lake Macquarie Local Environmental Plan 2004 (Amendment No 10)*" deposited in the office of the Council of the City of Lake Macquarie.

### **Amendment of Lake Macquarie Local Environmental Plan 2004**

*Lake Macquarie Local Environmental Plan 2004* is amended by:

(1) Inserting in appropriate order in the definition of ***the map*** in the Dictionary the following words,

*Lake Macquarie Local Environmental Plan 2004 (Amendment No 10)*.

(2) amending the map in the following ways:

rezoning the land referred to in clause 3 above from Zone 10 Investigation Zone to Zone 2 (1) Residential Zone.

and making all necessary changes to the map to give effect to the above.

## **Plain English Version**

### **Lake Macquarie Local Environmental Plan 2004 Draft Amendment No. 10**

#### **Clause 1. Name of plan**

This clause gives a name or title to the draft plan. This draft plan is known as **Lake Macquarie City Council Local Environmental Plan 2004 (Amendment No. 10)**.

#### **Clause 2. Aims of plan**

This clause identifies what the draft plan aims to achieve. The draft plan proposes:  
To rezone the land from Zone 10 Investigation to Zone 2(1) Residential to allow for residential development on the land.

#### **Clause 3. Land to which plan applies**

This clause identifies the subject land by reference to a map (instead of land description). This plan applies to land shown by heavy black edging on the draft plan map.

#### **Clause 4. Amendment of Lake Macquarie City Council Local Environmental Plan 2004**

This clause identifies planning instruments (documents) linked to the operation of this draft plan. Draft plans seek to amend (alter or change) an existing planning instrument. When published in the NSW Government Gazette, the plan will amend the Lake Macquarie Local Environmental Plan 2004 by:

Inserting *Lake Macquarie Local Environmental Plan 2004 (Amendment 10)* in the definition of **the map** in the Dictionary of the Lake Macquarie Local Environmental Plan 2004.  
Lake Macquarie Local Environmental Plan 2004 is the plan that applies to Lake Macquarie Local Government Area, except for land to which *Lake Macquarie Local Environmental Plan 2000 – North Wallarah* applies.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**  
**SECTION 66 STATEMENT**  
**PUBLIC EXHIBITION OF DRAFT LOCAL ENVIRONMENTAL PLAN**  
**DRAFT AMENDMENT No. 10**  
**TO THE LAKE MACQUARIE LEP 2004**

Section 66 of the Environmental Planning and Assessment Act 1979, requires that Council advise those viewing this exhibition of what policies, plans or directions apply to land the subject of the draft Amendment.

The following is a list of State Environmental Planning Policies, Regional Environmental Plans, and directions under Section 117 of the Environmental Planning and Assessment Act 1979 that may apply to the Lake Macquarie Area. The highlighted policies, plans and directions apply directly to the land to which the draft is intended to apply and are included for your reference.

**DIRECTIONS UNDER SECTION 117(2)**

G20 Planning for Bushfire Protection

G22 Determination and direction under section 71 and section 117(2)

[for plans made using section 69 delegation to councils officers]

G25 Flood Liable Land

G27 Planning for Bus Services

G28 Coal, Other Mineral, Petroleum and Extractive Resources

S22 Concurrence of the Mine Subsidence Board

S25 Development Near Licensed Aerodromes

S27 Manufactured Home Estates

Unnumbered Hunter Coastal Urban Settlement Strategy

Unnumbered Coastline Management Manual

C1 Acid Sulphate Soils

**STATE ENVIRONMENTAL PLANNING POLICIES (SEPP'S)**

SEPP 1 Development Standards

SEPP 4 Development Without Consent and Miscellaneous Complying Development

SEPP 6 Number of Storeys in a Building

SEPP 8 Surplus Public Land

SEPP 9 Group Homes

SEPP 10 Retention of Low-Cost Rental Accommodation

SEPP 11 Traffic Generating Developments

SEPP 14 Coastal Wetlands

SEPP 16 Tertiary Institutions

SEPP 19 Bushland in urban Areas

SEPP 21 Caravan Parks

SEPP 22      Shops and Commercial Premises  
 SEPP 26      Littoral Rainforest  
 SEPP 30      Intensive Agriculture  
 SEPP 32      Urban Consolidation (Redevelopment of Urban Land)  
 SEPP 33      Hazardous and Offensive Development  
 SEPP 35      Maintenance Dredging Tidal Waterways  
 SEPP 36      Manufactured Home Estates  
 SEPP 37      Continued Mines and Extractive Industries  
 SEPP 44      Koala Habitat Protection  
 SEPP 45      Permissibility of Mining  
 SEPP 48      Major Putrescible Landfill Sites  
 SEPP 50      Canal Estates  
 SEPP 55      Remediation of Land  
 SEPP 64      Advertising and Signage  
 SEPP 65      Design Quality of Residential Flat Development  
 SEPP 71      Coastal Protection  
 SEPP 72      Linear Telecommunications Development - Broadband  
 SEPP (Seniors Living) 2004

SEPP Building Sustainability Index: BASIX 2004

SEPP State Significant Development

**DRAFT STATE ENVIRONMENTAL PLANNING POLICIES (SEPP's)**

DRAFT SEPP 66      Integrating Land Use and Transport

DRAFT SEPP      (Application of Development Standards) 2004

**REGIONAL ENVIRONMENTAL PLANS**

Hunter Regional Environmental Plan 1989

In accordance with section 66(1) (b) (iii) of the Environmental Planning and Assessment Act, Council is required to provide the following statement:

**“The policies, plans and directions mentioned in the above substantially govern the content and operation of this particular local environmental plan and any submission made pursuant to section 67 (Making of Submissions) should be made having regard thereto.”**

To gain an appreciation of how the policies, plans and directions apply to this land it is strongly recommended that you take the time to read these documents.



# Draft Amendment No. 10 to Lake Macquarie LEP 2004 for the rezoning of land at Morisset Park Road, Morriset Park.

Applicable Section 117 Directions, SEPP's, REP's and other matters for consideration.

SECTION 117 DIRECTIONS <u>Current s117 directions</u>		APPLICABLE YES/ NO	CONSISTENT YES/ NO
S117 directions G1 to G21, G23 and G26 have been revoked for the Hunter Region and have been replaced with the Hunter Regional Environmental Plan 1989. (See s117 directions issued Sept 2002). DIPNR informed that G20 also applies as bushfire considerations are not covered in HREP 1989.			
PART 1 GENERAL PROVISIONS		YES/ NO	YES/ NO
G20	Planning for Bushfire Protection	Yes – The land is identified as bushfire prone on the Lake Macquarie bushfire prone land map.	Yes -The NSW Rural Fire Service was contacted during Section 62 Consultation and had no objections to the draft LEP, providing <i>Planning For Bushfire 2001</i> is taken into consideration during the planning stages of development
G22	Determination and direction under s71 and s117(2) (for plans made using s69 delegation to council officers)	Yes – The direction applies as Council has section 69 delegation and the plan rezones the land to an existing zone without imposing additional development standards or requirements to those that already apply in the zone.	Yes – the DLEP shall not refer to drawings which show details of the development proposal and s71 determination made on the 17 January 1983 shall not apply.
G25	Flood liable land	No – amendment does not rezone flood liable land	N/A
G27	Planning for bus services	Yes – The draft LEP will give rise to a need for bus services or a revision of existing bus services.	Yes - The guidelines in Technical bulletin 19 of 1989 have been considered and will be incorporated into future subdivision of the area. The Ministry of Transport has offered no specific comments.
G28	Coal, other minerals, petroleum and extractive resources	No – coal, other minerals, petroleum and extractive resources were not identified on the site.	To ensure consistency with the direction, the Department of Primary Industries (Coal Advice), was consulted and had no objections to the rezoning.

C1	Acid Sulfate Soils	No – direction does not apply as the draft amendment does not apply to land having the probability of containing acid sulphate soils. Provisions relating to acid sulphate soils are contained in LMLEP 2004.	N/A
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PART 2 – SPECIFIC s117 DIRECTIONS		APPLICABLE YES/ NO	CONSISTENT YES/ NO
S22	Concurrence of Mine Subsidence Board (18 February 1986)	Yes – concurrence is required.	Yes – the Mine Subsidence Board responded to s62 consultation and indicated that there are no issues with the rezoning, however an application for subdivision or improvements on the land will require approval from the Mine Subsidence Board at the appropriate time.
S25	Development near Licensed Aerodromes	No – amendment is not in the vicinity of a licensed aerodrome	N/A
S27	Manufactured Home Estates	No – the draft amendment is not changing any provisions that allow for caravan parks and manufactured home estates	N/A
	Hunter Coastal Urban Settlement Strategy	Yes	Yes – The land to which the draft amendment applies is identified in the HCUSS as a potential future urban area.
	Coastline Management Manual (Coastal Zone as defined by the Coastal Protection Act 1979)	No - This 117 direction only applies to the Coastal Zone as defined by the Coastal Protection Act 1979. Lake Macquarie is not a part of the coastal zone.	N/A

REGIONAL ENVIRONMENTAL PLANS		APPLICABLE YES/ NO	CONSISTENT YES/ NO
	<p>Hunter Regional Environmental Plan  <u>Hunter REP 1989</u>  The Hunter REP replaces section 117  directions G1 to G21, G23 and G26.</p>	Yes	Yes – this draft amendment is capable of achieving the aims and objectives of the Hunter REP through promoting balanced development of the land that considers social, environmental and economic issues relating to the site.

STATE ENVIRONMENTAL PLANNING POLICIES SE PP	APPLICABLE	CONSISTENT
Applicable SEPP's	YES/ NO	YES/ NO
SEPP 11 – Traffic Generating Developments	Yes – The policy may apply to future subdivision of the site.	Yes – Before determining development application for the subdivision of land Council will consult with the Traffic Authority and any other appropriate agencies.
SEPP 19 – Bushland in Urban Areas	No –Pursuant to Clauses 6 and 9, SEPP 19 applies to disturbing bushland zoned or reserved for public open space purposes; and the development of land which adjoins bushland zoned or reserved for public open space purposes. As the land is not zoned for Open Space, or adjoins land zoned Open Space this SEPP does not apply. .	N/A
SEPP 32 - Urban Consolidation	No – this policy does not apply as the site is not urban and has been identified as having potential conservation uses. .	N/A
SEPP 44 – Koala Habitat Protection	No –Fauna surveys undertaken on the site indicate that no koalas were observed during the surveys and there was no indication of previous koala habitation in the area..	N/A

STATE ENVIRONMENTAL PLANNING POLICIES SE PP	APPLICABLE	CONSISTENT
Applicable SEPP's	YES/ NO	YES/ NO
SEPP 55 – Remediation of Land	No – Although minor contamination is present, the SEPP does not apply.	Yes -Prior to a Council issuing subdivision consent for the property Council will require a report from the Contaminated Land Consultant detailing the extent of contamination, and the remediation and validation strategies to allow its use for residential development
SEPP – Building Sustainability Index: BASIX 2004	Yes - this state policy may apply to future development upon the site.	Yes – All future development will be required to submit a BASIX Certificate as required by legislation.
Applicable draft SEPP's	YES/ NO	YES/ NO
Draft SEPP 66 – Integration of Land Use and Transport	No – the draft LEP will not affect the carrying out of development to which any of the planning objectives of the SEPP relate.	N/A
Draft SEPP - (Application of Development Standards) 2004	Yes – this draft SEPP may apply to future development of the site.	Yes – Future development of the site will be determined under appropriate development standards.

OTHER MATTERS FOR CONSIDERATIONS	APPLICABLE YES/ NO	CONSISTENT YES/ NO
Planning for Bushfire Protection 2001 <u>Planning for bushfire protection document</u>	Yes – This guide may be applicable to the rezoning and future development of the site as the site is vegetated and located adjacent to bushland.	Yes – The NSW Rural Fire Service has indicated that they have no objections to the draft LEP being placed on exhibition as long as <i>Planning For Bushfire</i> is considered during the planning stages of development.

OTHER MATTERS FOR CONSIDERATIONS	APPLICABLE YES/ NO	CONSISTENT YES/ NO
Lifestyle 2020 Strategy <u>Lifestyle 2020 Strategy</u>	Yes	Yes – The draft Amendment to LMLEP 2004 is consistent with the aims and objectives of the <i>Lifestyle 2020 Strategy</i> . The ultimate development of the site will strengthen and reinforce the Bonnell's Bay Local Centre, and provide additional housing choices that are environmentally responsible. The site is a logical extension of residential development in the Morisset Park area. .
Threatened Species Conservation Act, 1996 <u>TSC Act</u>	Yes – this Act may apply to the rezoning of the site. A Flora and Fauna study that has been carried out reveals that while there are no species listed in the Threatened Species Conservation Act, 1995 have been identified on the site they in the vicinity	Yes – the draft Amendment to LMLEP 2004 is capable of being consistent with the requirements of the Threatened Species Conservation, Act 1996.
Commonwealth Environment Protection and Biodiversity Conservation Act, 1999 <u>EPBC Act</u>	No – This Act does not apply to the site. A Flora and Fauna study that has been carried out states that species listed in schedules of the EPBC Act 1999 have not been identified in the vicinity.	N/A
Local Government Act, 1993 for Council Owned Operational And Community Land <u>LG Act</u>	No – the site is not Council owned or classified as community land.	N/A
Plans of Management	No – a PoM has not been prepared for this site. A PoM may be required for the future development of the site.	N/A

**Exhibition of draft Amendment NO.10 to Lake Macquarie Local Environmental Plan 2004.**

**SECTION 64 REPORT TO THE DELEGATE**

FOLDER NO: F2005/10321

REPORT BY: Acting Principal Strategic Planner – Gabriele Calcagno – Ext. 509

**INTRODUCTION:**

Council resolved to prepare a draft Amendment to the Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) on March 14 2005. The Council resolution agreed to consider the rezoning of land at Morisset Park Road, Morisset Park from 10 Investigation Zone to 2(1) Residential Zone and to begin consultation with public authorities. This report considers submissions made during the consultation period and seeks to have Council's Delegate issue a Section 65 Certificate to allow the plan to be placed on public exhibition.

**BACKGROUND:**

During the community consultation process associated with the preparation of LMLEP 2004, the applicant made various submissions to Council to have the land rezoned to 2(1) Residential. Council officers considered that it was not appropriate to rezone the land without rigorous assessment of the capability and suitability of the land.

In July 2004, Council accepted a submission for the rezoning of the site from 10 Investigation (Urban/Conservation) to 2(1) Residential.

After consultation with various Council Departments, a Section 54 Report to Council recommended preparation of a draft amendment to LMLEP 2004 for the site. On 14 March 2005, Council resolved to prepare a draft Amendment to LMLEP 2004 the rezoning of the land to 2(1) Residential Zone. Pursuant to the *Environmental Planning and Assessment (EPA) Act, 1979*, Section 62 consultations with State Government agencies occurred, and the then Department of Infrastructure, Planning, and Natural Resources (DIPNR) was informed on 31 March 2005 of Council's intention to prepare a draft amendment to LMLEP 2004 for the site.

**PROPOSAL:**

The proposal is to publicly exhibit the draft amendment to LMLEP 2004 to rezone the land from 10 *Investigation* to 2(1) *Residential*. Written submissions will be invited during the advertised period. Affected landowners will also be notified of the draft amendment. A report to Council will be prepared on the outcome of public exhibition.

**CONSULTATION:**

Prior to the section 54 report going to Council, consultation occurred with several Council departments in order to determine if there were any issues preventing a draft LEP from being prepared. Council officers raised no significant issues with the rezoning of the site.

Council sought comments from relevant government authorities and some community interest groups pursuant to Section 62 of the *Environmental Planning and Assessment Act, 1979*. Comments were sought from Mine Subsidence Board, Total Environment Centre, Roads and Traffic Authority, Department of Primary Industries, Department of Environment and Conservation (DEC), Rural Fire Services, DIPNR, Department of Education and Training, Department of Land, Department of Community Services, Department of Housing, Ambulance Service of NSW, Hunter Water, Energy Australia, NSW Health, and the Lake Macquarie Catchment Co-ordinator.

No adverse comments arose from the section 62 consultation with public authorities. Specific comments relating to the subject amendment are provided as follows:

**Department of Environment and Conservation (NSW)**

The DEC suggested Council consider alternative arrangements to the ecological management of the site and commented on some inadequacies in the proponents supporting information. In particular DEC suggested that Council maintain Lot 358 as a wildlife corridor. The retention of part of this land in a natural condition can be considered at the subdivision stage, and no conservation zoning of part of the land is appropriate.

**NSW Rural Fire Service**

The NSW Rural Fire Service advised that the requirements for Planning For Bushfire 2001 should be considered during the planning stages of development.  
Hunter Water

Hunter Water mentioned that there is limited capacity available in wastewater until 2008/2009 with the upgrade of Dora Creek wastewater treatment works.

**Roads and Traffic Authority**

The RTA encouraged Council to develop a S94 Contribution Plan for new development areas with particular attention given to the Fishery Point Road / Macquarie St intersection. Transport considerations should be broadened to incorporate all modes consistent with draft SEPP 66 - Integrating Land Use and Transport. Council Officers will be further investigating the need for a S94 Contributions Plan prior to the finalisation of this matter.

**Total Environmental Centre**

A community interest group, the Total Environmental Centre objected to the rezoning of the land based upon a number of environmental implications. Issues raised include concerns that the ecological reports were not undertaken by an independent source and a number of conclusions made by these reports made are questioned.

**Appendix A** contains a summary of all submissions received from Government Authorities during section 62 consultations and Council's response in relation to the proposed draft amendment.

**IMPLICATIONS:**

**Statutory/Policy Implications:**

Public exhibition of the draft amendment to LMLEP 2004 will occur for a minimum period of 28 days in accordance with section 66, 67 and 68 of the *Environmental Planning and Assessment, Act 1979* and clause 13 of the *Environmental Planning and Assessment Regulations, 2000*.

DIPNR advised Council on 27 April 2005 that it has delegated authority to exhibit the draft amendment in accordance with section 66 and section 69 of the EPA Act 1979.

**Lifestyle 2020**

The draft Amendment is consistent with the aims and objectives of the *Lifestyle 2020 Strategy*. The ultimate development of the site will strengthen and reinforce the Bonnell's Bay Local Centre, and provide additional housing choices. The site is considered a logical extension of residential development in the Morisset Park area.

#### Local Environmental Plan, 2004

The draft amendment is consistent with the objectives of Zone 10 Investigation as listed by LMLEP 2004. The subject land has been thoroughly assessed to substantiate the capability and suitability of the land for residential development. The supporting information, reviewed by Council Officers, indicates residential development is the best future use of this land. The rezoning will allow the land to be released in a strategic and efficient manner consistent with the aims and objectives of the *Lifestyle 2020 Strategy*.

#### Regional Planning Framework

The draft amendment is consistent with the objectives, principles and policies of the *Hunter Regional Environmental Plan, 1989*, and *Lower Hunter Coastal Settlement Strategy, 1994*. Residential development on the land is capable of being consistent with the *Hunter Regional Environmental Plan's* strategies concerning housing. The rezoning of the land should allow for the release of urban land in an orderly and efficient manner. The *Hunter Coastal Urban Settlement Strategy* identified the land as having potential for future urban development.

#### State Regional Planning Policies and Section 117 Directions

Relevant State Environmental Planning Policies and section 117 directions have been considered during the section 62 consultation. No significant issues or areas of concern were identified that would prevent the draft Amendment to the LMLEP 2004, being exhibited (refer to Appendix B).

#### **CONCLUSION:**

Public exhibition of the draft Amendment to the Lake Macquarie Local Environmental Plan, 2004, will satisfy legislative requirements and provide an opportunity for the community to comment on the proposed draft Amendment. Consultation with government agencies pursuant to section 62 of the EP&A Act 1979, consideration of relevant SEPP's, 117 directions and investigations undertaken during the Lifestyle 2020 Strategy analysis and documentation have shown that there are no issues that prevent the public exhibition from proceeding.

#### **RECOMMENDATION:**

It is recommended that the delegate sign the attached section 65 Certificate (as tagged).



## Appendix A: Details of issues raised during Section 62 Consultation.

Government Agency	Date Responded	Agency Submission	Council Response
Mine Subsidence Board	8/04/2005	No Objections	None required
Total Environment Centre		Concerned that the only supporting information was prepared by the proponent's consultants. Suggests that Council carries out independent studies.	Council staff undertook independent assessment of the supporting information prepared by the proponent's consultants and had no concerns or raised no further issues to the preparation of a draft LEP for the site.
		Concerned that the rezoning of the site will set a precedent for the rezoning 10 Investigation land to allow for residential development.	The rezoning of the site to 2(1) Residential is the most suitable use of land for this site. Rezoning of 10 Investigations sites are assessed on their merits and the rezoning of this land to 2(1) Residential will not set a precedent for other rezonings. The objectives of the 10 Investigation Zone, under LMLEP 2004, ensure that all land Zoned accordingly are assessed for the suitability and capability of future development before any decision on future land uses are made.
		Concerned that the justification for the rezoning was the need for residential land, suggests this is not an adequate reason. Believes that population growth can be better accommodated by increasing densities closer to the Morisset Town Centre, as envisaged in the Lifestyle 2020 Strategy and in LEP 2004.	The rezoning of the land as 2(1) Residential Zone is the most appropriate use because the site adjoins urban development, is close to infrastructure and services, and is a logical extension of the existing urban land area. Advice received indicates that alternative Zones attempting to retain any of the remaining native vegetation for environmental conservation purposes are not manageable in the long term.
		Concerned that flora and fauna impacts have not been adequately dealt with in the consultants report.	The supporting flora and fauna information supplied with the rezoning is sufficient to allow determination of an appropriate Zoning of the site. Council may request additional assessment of flora and fauna impacts for the site, if it is determined that further information is required to support any further development application.

Government Agency	Date Responded	Agency Submission	Council Response
		Does not agree with the statement that the site is 'disturbed and predominately developed for rural residential purposes' and believes, after viewing aerial photographs, that a substantial portion of the site is vegetated with large tree cover.	Review of the site by Council Officers concluded that the majority of the site's vegetation is significantly disturbed, although Lot 358 DP 755242 does contain some intact native vegetation. However, retention of this vegetation would not facilitate good residential design, and would provide a continuing bushfire and management hazard.
		Questions the adequacy of measures proposed to minimise flora and fauna impacts.	Detailed measures designed to minimise flora and fauna impacts are not required to support a rezoning submission at this stage. Further investigations on the impact of flora and fauna may be required for any future development application for subdivision, should the draft Amendment be approved.
		Believes there is no mechanism that future landscaping will consist of local species as stated in the submission.	Descriptions of mechanisms designed to ensure local species used are not required to support a rezoning submission at this stage. Further information regarding proposed mechanisms may be required for any future development application for subdivision, should the draft Amendment be approved.
Department of Primary Industries	26/04/2005	No Objections	No response required
Department of Environment and Conservation	9/05/2005	It may be prudent to conduct ecological surveys during the flowering period of Tetratheca juncea and after the understorey has had a chance to recover from grazing pressure, to ensure the threatened species is not affected.	If the species is present, the area and condition of the site is not adequate to maintain the population. It is not expected that a site this size would be capable of maintaining a significant population of the species. Further assessment of the plants presence will occur with any future development application for the site, should the draft Amendment be approved.
		It appears that due to the lot layout very few of the identified significant (hollow bearing) trees can be retained. A vegetation management plan and/or other tree protection mechanisms would be required to encourage short term protection of these assets.	The indicative lot layout included with the rezoning application is irrelevant at this stage of the rezoning process. A proposed lot layout will be required to be included with any future subdivision submission, and it is expected during this process adequate tree protection measure will occur.

Government Agency	Date Responded	Agency Submission	Council Response
		A regionally significant plant species <i>Bossiaea stephensonii</i> is known from the west of the site, and although the plant was stated as being common, there was no demonstration in the supporting information, of how many plants are in the local area.	Council can confirm that the species is common in the local area. Conservation of the vegetation containing the species would not significantly affect its population.
		Council should consider maintaining Lot 358 as a wildlife corridor.	The width of the neighbouring 7(5) Zone is considered adequate to facilitate a functioning corridor. Retention of Lot 358 will not significantly add to this corridor's function.
Rural Fire Services	18/05/2005	Supports the rezoning, but advises that the requirements for Planning For Bushfire 2001 should be considered during the planning stages of development.	Planning for Bushfire 2001 will be considered if an application is made for the future subdivision of land.
Hunter New England Area Health	20/05/2005	Do not foresee any environmental health issues with the rezoning.	No response required
Department of Lands	19/05/2005	The department suggests that Chifley Road be transferred to Council pursuant to Section 151 of the Roads Act 1993	This advice has been referred to Council's Asset Management Department for action.
Department of Infrastructure, Planning and Natural Resources	30/04/2005	Indicated that Council can exercise its s56 and 69 delegations	No response required
Hunter Water	12/06/2005	No objections to the rezoning, however, mention that there is limited capacity available in wastewater until 2008/2009 with the upgrade of Dora Creek wastewater treatment works	The rezoning of the land to 2(1) Residential may have timing implications for the future development of the site. Council staff are to meet with Hunter Water staff to discuss wider implications for rezonings to allow for residential development in the Morisset area. The submission will not affect the exhibition of the site.
RTA	12/04/2005	The RTA encourages Council to develop a S94 Contribution Plan for new development areas. Particular attention should be given to the Fishery Pt Rd / Macquarie St intersection.	The additional demand generated from this rezoning will be considered in the context of the overall additional demand predicted in the Citywide s.94 contributions plan.

Government Agency	Date Responded	Agency Submission	Council Response
		<p>Transport considerations should be broadened to incorporate all modes consistent with SEPP 66 - Integrating Land Use and Transport</p>	<p>SEPP 66 is in draft form and does not apply to residential development under 500 lots, and thus does not apply to this rezoning. However, the site is considered to integrate transport and land use effectively as it is within 400m of an existing bus route that connects to a CityRail Station.</p>

# LEPs and Council Land

**BEST  
PRACTICE  
GUIDELINE**

**January  
1997**

## **KEY ISSUES IN THIS GUIDELINE**

- status of this guideline
- requirements for exhibition
- notification of outcome
- withdrawal of delegation

Guideline for  
councils using  
delegated powers to  
prepare LEPs  
involving land that is  
or was previously  
owned or controlled  
by council.

New South Wales  
**DEPARTMENT OF URBAN AFFAIRS  
AND PLANNING**

New South Wales  
Department of Urban Affairs and Planning

## SECTION ONE - INTRODUCTION

### 1.1 REASON FOR THIS GUIDELINE

Instances where a council proposes to change the planning controls that apply to land in which it has or has had an interest present an unusual situation. In many cases Council will be both regulator acting in the interest of the community, and entrepreneur seeking to maximise the benefit realised from a community asset.

These dual roles may give rise to a real conflict of interest or the appearance that council is affording itself special treatment. While both roles are legitimate, council must make sure that its decisions as regulator are not biased by its financial interests in property.

The mere fact that council is both applicant and decision maker is sufficient to create an appearance of unfairness and to erode the community's confidence in the planning process.

Council has a responsibility to ensure that any proposal is objectively assessed. It is important that the community sees proper procedures being followed and balanced, consistent assessment of environmental, social and economic considerations in these situations.

As a hypothetical example, consider the following:

*Ten years ago council carried out and published a retail centre study. The study identified key sites which should be held for major development or re-development in the future.*

*Two years after the study was adopted, council bought one of the key vacant sites and made it*

*temporarily available to address a shortfall in public car parking.*

*The time is now right for the site to be developed for retail/residential use and council has entered into an agreement with a developer which ensures public car parking will be provided as part of a new development.*

*Council prepares a draft LEP to rezone the land from its original residential zone to the mixed use zone in place throughout the retail centre. The controls and urban design principles covering adjoining sites will apply to council's land.*

*Even based on this brief description, the council's actions appear reasonable. A different impression may be gained by local residents who hear through 'the grapevine' that council is going to rezone the community's land, close the public car park, sell the land to a big developer to build a retail/residential tower and make \$1.3 million profit.*

The aim of this guideline is to make the planning process open to public scrutiny by ensuring that all relevant information is available in situations such as the one described above. Through this the community can develop confidence that fair, proper processes have been followed and that council has managed its conflicting interests satisfactorily.

### 1.2 DELEGATION

Section 23 of the Environmental Planning and Assessment Act 1979 (the Act) allows the Director-General of the Department of Urban Affairs and Planning to delegate certain planning powers to councils. At present the Director-General delegates to some councils the ability to exercise local environmental plan (LEP) preparation powers under s.65 and s.69 of the Act.

A report released by the Independent

highlighted several instances where with a Commission Against Corruption in 1992 highlighted several instances where councils did not satisfactorily deal with a conflict of interest between their roles as regulator and developer. This prompted the Director-General to withdraw delegated powers for LEPs involving land that is owned or controlled by a council or was owned or controlled by a council where any aspect of the LEP was the subject of an undertaking between council and the purchaser.

The Director-General has now reinstated delegated powers, confident that this guideline will assist councils to administer the LEP making process in a fair and responsible manner. This guideline is intended to assist by ensuring that conflicts of interest are disclosed and resolved in an accountable and open manner. Where councils' actions are fair and reasonable, the decision process will be seen to be impartial.

In exceptional circumstances a council or the Director-General still may decide that it is not appropriate for a council to exercise delegated LEP making powers (further information in Section 3).

### 1.3 STATUS OF THIS GUIDELINE

This guideline is referred to in the instrument of delegation issued by the Director-General regarding powers under s.65 and s.69 of the Act. Councils are allowed to exercise these powers in the preparation of LEPs that apply to land that is owned or controlled by Council, or was owned or controlled by Council and is the subject of an undertaking between council and the purchaser (referred to from here on as council land), if they comply with this guideline.

This guideline does not replace the requirements in the Act concerning the

preparation and exhibition of LEPs. The guideline adds detail and specifies several additional requirements where a council wishes to use its delegated powers to prepare an LEP that applies to council land.

On 22 November 1990 the Department issued Department of Planning Circular No. C18 titled *Processes for the Rezoning of Council Assets for Disposal*. That Circular addresses rezoning of council owned land generally and is advisory only.

This guideline has a focus on matters concerning the exercise of delegated powers and must be followed when delegation is used. Both provide consistent advice on a number of common issues, and the additional information in the earlier Circular still may be of assistance to councils in some cases.

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## SECTION 2 - REQUIREMENTS

### 2.1 EXHIBITION

When a council exhibits a draft LEP (in accordance with s.66 of the Act) that applies to council land this guideline requires additional information to be included.

The aim of this is to make clear Council's interest in the land and the reasons why the draft plan is being prepared. This makes the plan preparation process more open and allows the community to assess proposals with a full appreciation of all relevant information.

Consistent with this aim, information must be exhibited in a clear manner. Information must be detailed enough to be informative, without being overwhelming.

The following information must be included in the material displayed during exhibition:

#### 2.1.1 Statement of Council's Interest

A written statement must be provided which describes Council's interest in the land. This should include information such as:

- the nature of Council's interest in the land (e.g. Council has a 30 year lease over the site, Council owns the land freehold);
- when Council first acquired an interest in the land;
- why Council acquired an interest in the land (e.g. for an extension to the adjoining park, Council was given responsibility for the land by a State authority);

- how Council acquired its interest in the land (e.g. the land was purchased, through s.94); and
- for land previously owned or controlled by Council, whether any aspect of the LEP formed part of the agreement to dispose of the land, and the terms of any such agreement

#### 2.1.2 Purpose of the draft LEP:

A written statement must be provided explaining why Council is preparing the draft plan. A statement such as "to rezone the land" is not sufficient. The following must be addressed:

- why the draft LEP is being prepared (e.g. to facilitate growth of a commercial centre, to provide opportunities for higher density residential development near a railway station, to allow a child care centre in an open space zone);
- how the draft plan will affect planning controls (e.g. change a residential zoning to commercial, introduce heritage controls); and
- what prompted preparation of the draft LEP (e.g. the findings of a residential development strategy, a request from an affected land owner, Council's intention to dispose of the land).

#### 2.1.3 Anticipated development

Knowing what type of development may result from a change in planning controls helps everyone interested in the draft LEP understand how they will be affected in real life. This allows people to make more constructive comments than they otherwise might. The following must be addressed:

- what actual physical or operational changes may result? A change to the maximum floor space ratio, for example, may not mean very much to most people. It would be more helpful to



explain that the change will create an opportunity for several additional storeys of development on the site, subject to assessment and approval in accordance with Council's controls and policies;

- is the draft LEP being prepared to permit a particular proposal? If so, any available details of the proposal should be included in the exhibition.

#### 2.1.4 Financial Implications

While any change in planning controls will have some effect on land values, there will be instances where Council or another party stands to make a substantial financial gain or loss as a result of making an LEP.

In some cases the increase in land value resulting from an LEP may be one of the reasons why council has decided to prepare the LEP. Council may have even made an agreement for the sale or lease of the land conditional on the controls being changed.

The community should be aware of the financial implications of a change in planning controls, especially when they are more than a minor consequence of the change. While it may be inappropriate to make known all financial details (in the interest of protecting commercial advantage) Council must at least provide an indication of the magnitude of any financial gains or losses.

Council could indicate the magnitude of value that will be added to the land by comparing current and likely future land value (e.g. the land is currently valued at \$100 m<sup>2</sup>, nearby land zoned for commercial development is valued at between \$200 and \$250 m<sup>2</sup>).

Where an agreement for lease or sale of the land has been made, council must at least state that this is the case and provide basic details of the agreement. Information on

the terms of the agreement should be made available where possible.

#### 2.1.5 Guideline

A copy of this guideline must be included in the exhibition. This helps the public understand why certain information has been exhibited and to check that all relevant information has been made available.

### 2.2 NOTIFICATION

After the LEP has been made or a decision taken not to proceed with the draft LEP, everyone who made a written submission must be notified in writing. Notification must be sent within 14 days of the decision and must include an explanation of how the issues raised in the submission were addressed and the reasons for council's decision.

### 2.3 MONITORING

Although the Director-General has delegated certain powers to councils, she retains a responsibility to make sure that the LEP making system operates satisfactorily. To provide for monitoring, the following is required of councils:

- a copy of all written material to be exhibited must be included with Council's s.64 submission;
- where LEPs are prepared using s.69 delegated powers: a section must be added to the s.69 report to the Minister briefly setting out Council's interest in the land, any conflict of interest, issues raised in any relevant submissions, and an explanation of how these issues have been addressed or resolved;

- where the s.69 report will be prepared by the Director-General : a copy of the final report submitted to Council (or where this report does not include the matters listed in the previous point - a report dealing with these matters) must be included in the s.68(4) submission.

Regional Managers will monitor councils' compliance on an ongoing basis. A full review of the operation of this guideline will be carried out 12 months after delegation is reinstated, with the involvement of the Local Government Liaison Committee.

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## **SECTION 3 - OTHER MATTERS**

### **3.1 WITHDRAWAL OF DELEGATION BY THE DIRECTOR-GENERAL**

The option of the Director-General withdrawing delegation for a particular LEP (or from a particular council) is always available. This option may be exercised in circumstances where it is unlikely that, or unreasonable to expect that a council will be able to deal with a LEP in an objective and impartial way.

While it is not possible to envisage every such situation, the following provides an indication of possible circumstances:

- where controversial events precede the decision to prepare a LEP;
- where the community has strong feelings or an emotional attachment to the land or buildings involved;
- where the magnitude of the benefits (financial or otherwise) that Council may obtain as a result of making the LEP is significant;
- where strong community opposition to the LEP is shown by submissions during exhibition, letters to the Director-General or Minister, or extensive media coverage;
- where an unreasonably short, poorly timed (ie. during a holiday period) or uninformative exhibition is held by Council; or
- where Council's consideration of relevant issues is prejudiced and a biased or unfair outcome is likely.

If experience shows that a particular council is not able to exercise delegated LEP-making powers in a responsible way, the Director-General may withdraw delegation for future LEPs in the interest of

maintaining the integrity of the planning system.

### **3.2 WHERE COUNCIL DECIDES NOT TO USE DELEGATION**

There may be occasions on which the nature of a conflict of interest or the sensitivity of a proposal make it very difficult for Council to impartially prepare an LEP. While councils are encouraged to use their delegated powers whenever possible, there may be cases where it would be best for the Department to process an LEP.

Where a council believes that it is in this situation, contact should be made with the local Regional Manager from the Department to discuss possible alternative arrangements. If the Department feels that a conflict can be satisfactorily managed by council, it will not become involved in the preparation of a draft LEP.

### **3.3 FURTHER INFORMATION**

If you would like to discuss any aspect of this guideline please contact your regional office of the Department.

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