

Planning Proposal - Administrative Amendment No. 9 to Lake Macquarie Local Environmental Plan

Part 4 - Principal Development Standards

(PP-2015-005-00)

As Published 2 October 2015

Local Government Area:	Lake Macquarie City
Name of Draft LEP:	Lake Macquarie Local Environmental Plan 2014 - Administrative Amendment No. 9 – Part 4 Principal Development Standards (PP-2015-005-00)
Applicant:	Lake Macquarie City Council
Subject Land:	The proposed changes are administrative and apply to the Lake Macquarie Local Environmental Plan 2014.
Other Attachments	Attachment 1 – Summary of Issues and Proposed Changes Attachment 2 – Evaluation Criteria for the Delegation of Plan Making Functions

Part 1 – Objective of the Planning Proposal

The objective of the planning proposal is to amend the LMLEP 2014 in relation to a number of administrative items. The planning proposal will amend clauses within Part 4 - Principal Development Standards to ensure controls within the previous LMLEP 2004 are carried over into the LMLEP 2014.

The amendments apply to community title subdivision for cluster style development, small lot housing subdivision, battle axe and corner lot subdivision, dual occupancy subdivision. The amendments will clarify the operation of the clauses within Part 4 – Principal Development Standards.

The planning proposal also includes a clause to subdivide split zone lots where part of the lot does not meet the Minimum Lot Size Map.

The original planning proposal sought to include a control to ensure that Raffertys Resort at Cams Wharf continued to operate as predominately a tourist facility through the introduction of a numerical standard. This control sought to ensure that no more than 50% of dwellings within Raffertys Resort be used for permanent residential occupation. However, following community consultation, this control is no longer included in the planning proposal. Council needs to investigate how the mix of residential and tourist uses are managed, prior to proceeding with an amendment to the LMLEP 2014. This control has now been removed from Part 2 - Explanation of Provisions.

Part 2 – Explanation of the Provisions

The amendment proposes the following changes to LMLEP 2014. Please note that the Explanation of Provisions are indicative and are subject to change. A summary of the issues and suggested changes is contained in Attachment 1. The wording of the amendment will be prepared by Parliamentary Counsel so the LEP Instrument provisions may alter.

Amendment Applies To	Explanation of the Provision
Part 4 - Principal Development Standards	
Clause 4.1AA – Minimum subdivision lot size for community title schemes	An amendment to this clause is needed to clarify that the subdivision of land in zones RU4 Primary Production Small Lots, E3 Environmental Management and E4 Environmental Living that is less than the minimum lot size map is permissible, which will allow cluster style community title subdivision.
Clause 4.1A - Exceptions to minimum subdivision lot sizes for certain residential development	<p>Amend the current clause so that it applies to the subdivision of 3 or more lots rather than 2 or more lots and also require that each lot have a direct frontage to a public or private road as part of a community scheme to increase amenity.</p> <p>There is confusion with the current wording of this clause applying to two or more lots. Council's previous LMLEP 2004 allowed small lot housing to consist of three or more lots. The intent in relation to the lot sizes and zones permitted in this clause is to allow small lot housing comprising 3 or more lots.</p> <p>Amendments to Clause 4.1A are proposed to enable small lot housing subdivision and not require a development application for dwellings, attached dwellings or semi-detached dwellings at the same time as the subdivision application. This will help in facilitating small lot housing subdivision. Small lot housing subdivision will be permitted where Council is satisfied that this development can be accommodated on the lot through the preparation of subdivision design plans and building envelope plans.</p> <p>A separate subclause is needed to allow dual occupancy subdivision within the R1 General Residential and R2 Low Density Residential zones where each dwelling is located on a separate lot with a lot size equal to or greater than 250 square metres. This is consistent with controls in Council's DCP 2014 and also the previous LMLEP 2014.</p>
Clause 4.1C - Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones	<p>Include in the clause, a control to prohibit the creation of more than 2 battle axe lots that gain access from the single access handle. This is consistent with the previous LMLEP 2004 provisions and would prevent amenity issues arising from subdivision of lots with a number of battle axe lots off a single access.</p> <p>Include the word '<i>minimum</i>' area in clause 4.1C(2) and 4.1C(4) to clarify that this is the minimum lot size area.</p> <p>Change the lot size for corner lots within the R2 Low Density Residential zone to a minimum area of 500 square metres rather than 600 square metres.</p> <p>Clarify the operation of these clauses with other clauses within Part 4.</p>
New Clause 4.1 D – Minimum subdivision lot	Council has identified that there is an inability to allow the subdivision of split zone lots where part of the lot does not meet the minimum size on Council's Lot Size Map. This is

Amendment Applies To	Explanation of the Provision
<p>sizes for certain split zones</p>	<p>mainly an issue where a split zone lot has a portion of land zoned E2 Environmental Conservation, E3 Environmental Management or RU2 Rural Landscape due to the large minimum lot size needed for these parcels.</p> <p>A new clause is required to allow the subdivision of split zone lots in order to facilitate the subdivision of land within a residential, business, industrial zone as well as land in RU4 Primary Production (Small Lots) and E4 Environmental Living. The remaining land in Zone E2 Environmental Conservation, E3 Environmental Management or RU2 Rural Landscape should be tied to one of the parcels that has been subdivided to avoid the fragmentation of these lots and ensure that they are still appropriately managed.</p> <p>A clause is also needed to allow the subdivision of environmental zoned land from a split zone lot into a single allotment for the purpose of environmental protection to allow for circumstances such as biodiversity offsets.</p>
<p>Clause 4.2A - Erection of dwelling houses on land in certain rural and environment protection zones</p>	<p>The current clause within LMLEP 2014 is ambiguous and has difficulties in interpretation. Council staff have been getting requests for dwelling houses on undersized lots that would not have had a dwelling entitlement under the former LMLEP 2004. This could result in unplanned rural and environmental development and have negative rural and environmental consequences.</p> <p>Amendments are proposed to ensure dwellings in rural and environmental zones are allowed on lots that meet the minimum subdivision standards or are classed as an existing holding.</p> <p>Amendments have also been made to apply this clause to attached dual occupancies, which is consistent with the previous LMLEP 2004 provisions.</p>

Council has been issued with delegations for the plan making functions under section 59 of the *EP&A Act 1979*. The Evaluation Criteria for the Delegation of Plan Making Functions is contained in Attachment 2.

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?

The planning proposal is not the result of a strategic study or report. The amendments are administrative and have been identified during preparation and post implementation of the conversion of the previous LMLEP 2004 into the LMLEP 2014. During the conversion, some issues have arisen which make the objectives and provisions of some of the clauses of the previous LMLEP 2004 not being incorporated into the new LMLEP 2014. These changes are needed to ensure that the LMLEP 2014 contain similar provisions relating to subdivision of community title for cluster style development, small lot housing , subdivision of corner and battle axe lots, dual occupancy, existing holdings and development of Rafferty's Resort at Cams Wharf.

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

The issues have arisen as part of the conversion of the LMLEP 2004 into the LMLEP 2014, which have resulted in inconsistency in relation to the application of planning controls. A planning proposal to amend the LMLEP 2014 is the best and only way to rectify these inconsistencies.

B. Relationship to strategic planning framework

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)?

The Lower Hunter Regional Strategy is a strategic planning framework to guide the sustainable growth of the Lower Hunter until 2031. This administrative amendment seeks to amend controls relating to the subdivision of land for dual occupancies and small lot housing and battle axe and corner lots. Council's subdivision standards facilitate increased urban densities, which is supported by the Lower Hunter Regional Strategy.

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

Council's Lifestyle 2030 Strategy provides the long-term strategic directions for the overall development of the City and is a tool for managing expected population and employment growth in Lake Macquarie. This administrative amendment to LMLEP 2014 will ensure that the instrument is consistent with the previous LMLEP 2004 and meets the objectives of this Strategy.

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

An assessment has been undertaken to determine the level of consistency the amendment has with relevant State Environmental Planning Policies (SEPPs). The administrative amendment is consistent with all relevant SEPPs.

SEPPs	Relevance	Implications
State Environmental Planning Policy No 1 — Development Standards	This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary	The amendment does not impact upon the operation of this SEPP.
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 administrative amendments are minor in nature and will not impact on bushland in urban areas.
State Environmental Planning Policy No 32—Urban Consolidation (Redevelopment of Urban Land)	Aims to promote the orderly and economic use and development of land by enabling urban land which is no longer required for the purpose for which it is currently zoned to be redeveloped for multi-unit housing and related development, and to implement a	The amendment is consistent with the objectives of this SEPP with the facilitation of small lot housing.

SEPPs	Relevance	Implications
	policy of urban consolidation.	
SEPP 55 – Remediation of Land	Aims to establish planning controls and provisions for the remediation of contaminated land	The administrative amendments are minor in nature and will not impact on contaminated land.
SEPP 71 – Coastal Protection	This SEPP ensures that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management.	The administrative amendments are minor in nature and will not affect the coastal zone.
SEPP (Infrastructure) 2007	Aims to provide a consistent planning regime for the delivery of infrastructure. It also provides provision for consultation and assessment.	The administrative amendments are minor in nature and will not affect the delivery of infrastructure.
SEPP (Exempt and Complying Development Codes) 2008	Aims to provide streamlined assessment processes for development that complies with specified development standards.	The administrative amendments are minor in nature and will not affect the assessment of Exempt or Complying Development.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Aims to provide for the proper management and development of mineral, petroleum and extractive material resources.	The administrative amendments are minor in nature and will not affect the management and development of mineral, petroleum and extractive industries.
State Environmental Planning Policy (Affordable Rental Housing) 2009	This policy aims to provide a consistent planning regime for the provision of affordable rental housing to facilitate the effective delivery of new affordable rental housing by providing incentives and non-discretionary development standards.	The administrative amendment will not impact on the operation of this SEPP.

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

The proposal has been assessed against relevant Ministerial Directions. The assessment is provided below. The proposal is considered consistent with all relevant section 117 Directions.

Ministerial Direction	Relevance	Implications
1.1 – Business and Industrial Zones	This direction promotes employment growth in suitable locations.	Yes. The amendment is administrative and does not propose to increase or decrease the amount of employment land available in the Lake Macquarie Local Government area.
1.2 – Rural Zones	This direction protects the agricultural production value of	Yes. The amendment is administrative and does not seek to rezone any rural

Ministerial Direction	Relevance	Implications
	rural lands.	zoned lands. The amendment does however seek to amend controls relating to the erection of dwelling houses in rural zones. The controls are consistent with the previous LMLEP 2004 provisions and the objectives of this Direction and seek to ensure unplanned rural residential development is restricted and to ensure rural areas are maintained for rural production by limiting dwellings to lots that meet the minimum lot size standards or comprise an existing holding.
1.3 – Mining, Petroleum Production and Extractive Industries	Aims to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Yes. The proposal is consistent with this direction and does not impact upon these resources.
2.1 – Environment Protection Zones	Aims to protect and conserve environmentally significant areas.	Yes. The planning proposal does not seek to rezone any environmental land. The amendment does however include controls relating to the erection of dwelling houses in environmental zones. The controls are consistent with the previous LMLEP 2004 and of this Direction and seek to ensure dwellings are minimised in environmental zones unless they meet the minimum lot size requirements or are part of an existing holding.
2.2 – Coastal Protection	This direction aims to implement the principles in the NSW Coastal Policy.	Yes. The coastal zone is not impacted by the amendments.
2.3 – Heritage Conservation	The direction requires that a draft LEP include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	The proposal does not impact on existing heritage items.
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	Yes. No changes to residential zones are proposed. However, the controls do relate to residential subdivision developments and facilitate the subdivision of dual occupancies and

Ministerial Direction	Relevance	Implications
	on the urban fringe.	small lot housing.
3.4 - Integrating Land Use and Transport	<p>The aim of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	Yes. The amendment does not make any zoning change, however will ensure that residential housing such as the subdivision of approved dual occupancies and small lot housing development applications can be approved.
4.1- Acid sulphate Soils	Aim to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Yes.
4.2 – Mine Subsidence and Unstable Land	Aims to ensure development is appropriate for the potential level of subsidence. The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	Yes.
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	Yes.

Ministerial Direction	Relevance	Implications
	flood impacts both on and off the subject land.	
4.4 – Planning for Bushfire Protection	Aims to encourage the sound management of bush fire prone areas and to ensure a planning proposal addresses Planning for Bushfire Protection 2006.	Yes.
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 with the relevant State strategy that applies to the Local Government Area.	The planning proposal is considered consistent with the Lower Hunter Regional Strategy. The controls will ensure small lot housing and dual occupancy development is facilitated in the Lake Macquarie LGA as well as ensuring Rafferty’s Resort at Cams Wharf continues to operate predominately as a tourist facility.

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?**

The amendment is administrative and will not impact on critical habitat, threatened species or ecological communities. The proposal will ensure that dwellings within environmental zones will only be erected on lots that meet the minimum lot size or consist of an existing holding.

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

There are no other likely environmental impacts from this planning proposal.

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

The planning proposal is administrative and will reinstate controls of the former LMLEP 2004. The amendments will facilitate the subdivision of dual occupancies and small lot housing, which will assist in promoting housing numbers and diversity and densities in urban areas, which will have positive social and economic impacts.

D. State and Commonwealth interests

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

The amendment is administrative and does not warrant changes to the delivery of public infrastructure.

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

The Gateway determination advised that no consultation is required with government agencies. As the changes are minor and administrative in nature and reinstate controls of the previous LMLEP 2004 into the LMLEP 2014, no government agency consultation is considered necessary.

Part 4 – Details of Community Consultation

The Gateway determination advised that the planning proposal should be placed on public exhibition for a period of 14 days. The planning proposal was exhibited from 20 April 2015 to 11 May 2015. The planning proposal was exhibited for an additional week, due to extensive storms and power outages experienced in the exhibition period. Council received three submissions on the Planning Proposal. Two of the submissions objected to the control that no more than 50% of dwellings be used for permanent residential use at Rafferty's Resort at Cams Wharf. The other submission supported the controls that relate to Clause 4.1A – Exceptions to minimum subdivision lot sizes for certain residential development. A summary of submissions is contained below.

Following the community consultation, Council resolved to not include the amendment at Raffertys Resort within this LEP amendment as further investigation on the issues raised is needed.

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

Council received two objections to the control that seeks to restrict the number of dwellings to be used for permanent occupation at Raffertys Resort. Issues were raised with purchasers who had brought the property under the controls that the Resort remain predominately a tourist facility being unaware that they could not live in the property on a permanent basis. Concerns were raised about

difficulties of re-sale, issues with property prices, getting guaranteed rental income from holiday usage and obtaining loans.

Planning Comment

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

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

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

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

In the current LMLEP 2014, the site is zoned SP3 Tourist and the wording to remain ‘predominately a tourist facility’ is not included due to issues raised by Parliamentary Counsel around the meaning and legal interpretation of the word ‘predominately’ in the conversion from the LMLEP 2004 to the LMLEP 2014.

The proposed change to the clause for Raffertys Resort has now been removed from this planning proposal to allow Council further time to explore issues raised during the community consultation

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

A number of issues were raised with the application of the control that would set a 50% control limit on the number of residential dwellings for permanent occupation within Raffertys Resort. Issues were raised with:

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

Planning Comment:

At the Council meeting, the clause for Raffterys Resort was removed from this planning proposal to allow Council further time to explore issues raised during the community consultation.

- *Support for controls to allow subdivision within the R2 Low Density and R3 Medium Density Residential zones (Small Lot Housing) without requirement to approve dwellings*

Supports the proposed changes to allow subdivisions to be submitted below the mapped minimum lot size without the need for concurrent dwelling plans or a site specific DCP particularly in the R3 Medium Density zone. This will support living styles consistent with the Lower Hunter market where single dwellings on Torrents Title lots are still the preferred choice for families. This will encourage increased densities within areas around centres.

By allowing subdivisions without requiring the concurrent dwelling plans, Council is encouraging developers to provide a wider range of housing choice and accommodating the growing local and regional population and increasing the diversity and affordability of housing in the region.

In a recent case study undertaken by Landcom, it was found that by forcing developers to lodge housing plans with subdivisions, they not only remove this design choice from future home owners but it adds up to \$40,000 to the cost of the end product through additional stamp duty, holding costs and builder margins. Requiring a site specific DCP for such an application not only adds cost and time to a development (with these costs passed on through to the end sale price and subsequent affordability), but they repeat controls which can simply be assessed during the development application stage.

The requirement to lodge Building Envelope Plans or Subdivision Design Plans gives Council assurance that once created, each allotment will be able to accommodate a complying dwelling, whilst still allowing the future property owner to construct a dwelling of their choice at their time.

Planning Comment:

The controls have been prepared based on similar developer industry feedback that Council has been receiving in relation to barriers in facilitating medium density housing. Facilitating this type of development is consistent with the objectives of Council's Lifestyle 2030 Strategy and the Lower Hunter Regional Strategy 2006 by supporting infill residential development close to existing services and centres. This type of housing also provides a more affordable housing option due to reduced land sizes.

Attachment 1: Summary of Issues and Proposed Changes to Lake Macquarie LEP 2014 – Administrative Amendment – Part 4 Principal Development Standards

Background:

During the preparation and following the commencement of LMLEP 2014, some issues have been raised with cluster style community title subdivision (Clause 4.1AA), small lot housing clause (Clause 4.1A), subdivision of corner and battle axe lots (Clause 4.1C), dual occupancy subdivision, rural land holdings (Clause 4.2A) and the local provisions clause for Rafferty's Resort at Cams Wharf (Clause 7.14).

A summary of the issues and the proposed solutions are outlined below. Text marked with ~~strike through~~ is suggested to be deleted and text marked **bold highlighted** is suggested to be inserted into the LMLEP 2014.

Please note, the final wording for the amendment will be prepared by Parliamentary Counsel, however the same intent should be achieved to address the issue raised.

Clause 4.1AA - Minimum subdivision lot size for community title schemes

Issue:

This clause requires that lots created under a community title scheme to comply with the minimum lot size provisions for certain zones. Cluster style community subdivision was previously permitted under the LMLEP 2004 and Council's DCP 2014 allows this type of development in certain rural and environmental zones, with lot sizes that don't meet the minimum lot size provisions. Misunderstanding of this clause has led to the view that all lots created by this clause must comply with the minimum lot size map associated with the land and that "clustering" of lots in the E3 Environmental Management Zone, E4 Environmental Living Zone and RU4 Primary Production Small Lots Zone, as supported in DCP 2014, is not permissible.

Suggested Solution:

An amendment to this clause is needed to clarify that the subdivision of land in zones RU4 Primary Production Small Lots, E3 Environmental Management and E4 Environmental Living can be less than the minimum lot size map to allow cluster community title subdivision consistent with Council's DCP 2014 controls.

4.1AA Minimum subdivision lot size for community title schemes

(1) The objectives of this clause are as follows:

(a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements or result in lots that would be unsuitable for their intended use.

(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 ~~or land in any of the following zones:~~

(3) **In the following zones**, the size of any lot resulting from a subdivision of land (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land:

- (a) Zone RU2 Rural Landscape,
- (b) Zone RU6 Transition,

- (c) Zone R1 General Residential,
- (d) Zone R2 Low Density Residential,
- (e) Zone R3 Medium Density Residential,
- (f) Zone B7 Business Park,
- (g) Zone IN1 General Industrial,
- (h) Zone IN2 Light Industrial,
- (i) Zone E2 Environmental Conservation.

(4) In all zones not referred to in subclause (3) above, the size of any lot resulting from a subdivision of land to which this clause applies, may be less than the minimum size shown on the Lot Size Map in relation to that land.

(5) In granting consent to a subdivision of land under subclause (4) the consent authority must be satisfied that the development is consistent with the objectives of the relevant zone, and that the size and arrangement of the proposed lots is suitable for their intended purpose.

(6) The provisions of clause 4.6 (6) do not apply to a subdivision of land referred to subclause (4) of this clause.

Clause 4.1A Exceptions to minimum subdivision lot sizes for certain residential development

Issue:

There is confusion with the current wording of this clause applying to the subdivision of two or more lots as this effectively allows dual occupancy development in both the R2 Low Density Residential and R3 Medium Density Residential zones, which is not the intent of this clause. The intent of the clause is to allow small lot housing comprising three or more lots. Dual occupancy was previously only allowed in the low density residential zone in LMLEP 2014 and the lot sizes do not correspond with the lot sizes within Council's DCP 2014.

The requirement to have frontage for small lot housing to a public or private road has not been carried over from the LMLEP 2004 resulting in potential amenity impacts.

LMLEP 2014 does not allow small lot housing subdivision unless consent is also issued for the erection of the dwellings. This results in difficulties in facilitating small lot housing subdivision and the development industry have requested that provisions be included to allow small lot housing without the need to build the actual dwellings.

Given the changes to Clause 4.1A, a subclause is also needed to allow the subdivision of dual occupancy in the R1 General Residential and R2 Low Density Residential zones with each resulting lot having an area of 250 square metres or greater. This is consistent with previous controls of the LMLEP 2004, which allowed dual occupancy subdivision in the low density residential zone and is also consistent with Council's DCP 2014.

Suggested Solution:

Amend the clause so it applies to the subdivision of 3 or more lots for the R2 Low Density Residential and R3 Medium Density Residential zones to allow small lot housing rather than 2 or more lots and also require that each lot have a direct frontage to a public or private road.

Amendments to Clause 4.1A are proposed to enable small lot housing subdivision provided that it can be appropriately accommodated on the proposed lot and in accordance with a subdivision

design plan and building envelope plan. This will enable Council to approve small lot housing subdivision and not require a development application for dwellings, attached dwellings or semi-detached dwellings at the same time as the subdivision application. This will help in facilitating small lot housing subdivision and increased urban residential densities. Council's DCP 2014 in a separate amendment is proposing to include small lot housing design controls such as requirements for these subdivision design and building envelope plans. This will ensure that amenity issues associated with small lot housing can be addressed.

Include a new subclause within this clause to allow for dual occupancies and dual occupancy subdivision within the R1 General Residential and R2 Low Density Residential Zones, where each dwelling is located on a separate lot of 250m² or more.

4.1A Exceptions to minimum subdivision lot sizes for certain residential development

(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.

~~(2) This clause applies to development on land in the following zones:~~

~~(a) Zone R2 Low Density Residential,~~

~~(b) Zone R3 Medium Density Residential.~~

~~(23) Development consent may be granted to development to which this clause applies that is both of the following:~~

(a) the subdivision of land into ~~2~~ **3** or more lots **each having direct frontage to a public road or private road established as part of a community scheme, and**

(b) the erection of:

(i) a dwelling house or an attached dwelling on land in Zone R3 Medium Density Residential if the size of each lot is equal to or greater than 200 square metres but no greater than 450 square metres, or

(ii) a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential if the size of each lot is equal to or greater than 300 square metres but no greater than 450 square metres.

(3) Despite subclause ~~(23)~~, development consent may be granted for subdivision under subclause ~~(23)~~ (a), but only if the consent authority is satisfied that the development:

(i) can be appropriately accommodated on the proposed lot in accordance with a subdivision design plan and building envelope plan; or

(ii) would be consistent with a development control plan prepared specifically for the site.

(4) Development consent may be granted to a development application for a dual occupancy development and/or dual occupancy subdivision in zones R1 General Residential and R2 Low Density Residential into 2 lots if the size of each resulting lot is equal to or greater than 250 square metres.

Clause 4.1C Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones

Issue:

Council's previous LEP 2004 did not allow the creation of more than 2 battle axe lots that would gain access from the single access handle due to resulting amenity issues.

Corner lots are suited to offer dual occupancy development due to having two street frontages. Given that dual occupancy can be subdivided on two lots each with a minimum area of 250 square metres, 500 square metres is the minimum area that could be utilised for dual occupancy. The current controls require a minimum area of 600 square metres for a corner lot.

Suggested Solution:

Include control to ensure that no more than 2 battle axe lots are created with a single access handle.

Change the lot size for corner lots within the R2 Low Density Residential zone to a minimum area of 500 square metres rather than 600 square metres to allow dual occupancies on corner lots of 250 square metres each.

Include a control in clause to clarify that this clause does not apply to applications made under:

- clause 4.1A - Exceptions to minimum subdivision lot sizes for certain residential development
- clause 4.1B – Exceptions to minimum subdivision lot sizes for certain residential development in urban release areas

4.1C Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones

(1) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

(2) **Notwithstanding the provisions of clause 4.1**, if a subdivision of land creates a battle-axe lot, the lot must have a **minimum** area of:

- (a) if the lot is in Zone R2 Low Density Residential—600 square metres, or
- (b) if the lot is in Zone R3 Medium Density Residential—1,500 square metres.

(3) A subdivision of land that creates a battle-axe lot shall not create more than 2 battle-axe lots that gain access from the same access handle.

(4) **Notwithstanding the provisions of clause 4.1**, if a subdivision of land creates a corner lot, the lot must have a **minimum** area of:

- (a) if the lot is in Zone R2 Low Density Residential ~~600~~ **500** square metres, or
- (b) if the lot is in Zone R3 Medium Density Residential—1,200 square metres.

(5) This clause does not apply to applications made under Clauses 4.1A and 4.1B.

New Clause 4.1 D – Minimum subdivision lot sizes for certain split zones

Issue:

Council has identified that there is an inability to allow the subdivision of split zone lots where part of the lot does not meet the minimum size on Council's Lot Size Map. This is despite the subdivision not seeking to further subdivide the portion of the lot that does not meet the minimum size on the Lot Size Map.

Council is aware that a number of other Council's are adopting a clause in their LEP that relates to split zones in order to rectify this issue and allow the subdivision of split zone lots.

Suggested Solution:

Insert new clause to allow the subdivision of lots that are within more than one zone, similar to clause below:

(1) The objectives of this clause are:

- (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,**
- (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development while protecting the rural and/or environmental attributes of the land,**
- (c) to allow for the subdivision of conservation land for environmental protection**

(2) This clause applies to each lot (an *original lot*) that contains:

- (a) land in a residential, business, industrial zone, RU4 Primary Production Small Lots zone or in E4 Environmental Living zone and**
- (b) land in Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone RU2 Rural Landscape.**

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the *resulting lots*) if:

(a) one of the resulting lots will contain:

- (i) land in a residential, business, industrial, RU4 Primary Production Small Lots or E4 Environmental Living zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and**
- (ii) all of the land in Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone RU2 Rural Landscape that was in the original lot, and,**

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

(4) Despite subclause 3, development consent may be granted to subdivide an original lot to separate the land in an environmental zone into its own lot provided the consent authority is satisfied that the subdivision is for the purpose of and will enhance the continued protection and maintenance of this land.

(5) Before granting development consent to development to which this clause applies, the consent authority must be satisfied that the subdivision:

- (i) will have minimal environmental impact,**
- (ii) will enhance the continued protection and long-term maintenance of any land in an environmental zone,**
- (iii) the agricultural viability of land within a rural zone will not be adversely affected.**

Clause 4.2A Erection of dwelling houses on land in certain rural and environment protection zones

Issue:

The current clause within LMLEP 2014 is ambiguous and has difficulties in interpretation. Council staff have been getting requests for dwelling houses on undersized lots that would not have had a dwelling entitlement under the former LMLEP 2004. The current clause, depending on interpretation may allow dwelling houses in a large number of instances in rural and environmental zones in undersized lots as the wording of clause 4.2A 3(b) requires that the lot was created before the LEP

and that a dwelling was permissible before the LEP. There is uncertainty around the word 'permissible' as to whether this means permissible under the zone or also permissible taking into account the development and subdivision standards applicable at the time.

LMLEP 2004 previously referred to dwelling houses and dual occupancy attached in the existing holding clause, however the inclusion of dual occupancy attached was not converted over into the LMLEP 2014 Clause 4.2A due to a conversion error.

Suggested Solution:

Amend Clause 4.2A 3(b) by including wording to the effect that a dwelling house was permissible and the lot complies with the development or subdivision standard applicable at that time. Another alternative would be to delete clause 4.2A 3(b).

Include reference to dual occupancy attached in Clause 4.2A.

4.2A Erection of dwelling houses and dual occupancy (attached) on land in certain rural and environment protection zones

(1) The objectives of this clause are as follows:

- (a) to minimise unplanned rural residential development,
- (b) to enable the replacement of lawfully erected dwelling houses in rural and environment protection zones.

(2) This clause applies to land in the following zones:

- (a) Zone RU2 Rural Landscape,
- (b) Zone RU4 Primary Production Small Lots,
- (c) Zone RU6 Transition,
- (d) Zone E2 Environmental Conservation,
- (e) Zone E3 Environmental Management,
- (f) Zone E4 Environmental Living.

(3) Development consent must not be granted for the erection of a dwelling house **or dual occupancy attached** on land to which this clause applies unless the land:

- (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or
- (b) is a lot created before this Plan commenced and on which the erection of a dwelling house **or dual occupancy attached** was permissible immediately before that commencement, **and the lot complies with the development and/or subdivision standard applicable at that time**, or

(c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house **or dual occupancy attached** would have been permissible if the plan of subdivision had been registered before that commencement, or

(d) is an existing holding; or

(e) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) had it not been affected by:

- (i) a minor realignment of its boundaries that did not create an additional lot, or
- (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or
- (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (4) Development consent must not be granted under subclause (3) unless:
 - (a) no dwelling house **or dual occupancy attached** has been erected on the land, and
 - (b) if a development application has been made for development for the purpose of a dwelling house **or dual occupancy attached** on the land—the application has been refused or it was withdrawn before it was determined, and
 - (c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.
- (5) Development consent may be granted for the erection of a dwelling house or **dual occupancy attached** on land to which this clause applies if there is a lawfully erected dwelling house **or dual occupancy attached** on the land and the dwelling house **or the dual occupancy attached** to be erected is intended only to replace the existing dwelling house **or dual occupancy attached**.
- (6) Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land before 31 December 2016.

(7) In this clause:

existing holding means land that:

- (a) was a holding on 21 August 1981, and
- (b) is a holding at the time the application for development consent referred to in subclause (3) is lodged,

whether or not there has been a change in the ownership of the holding since 21 August 1981, and includes any other land adjoining that land acquired by the owner since 21 August 1981.

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

ATTACHMENT 2 – Evaluation Criteria for the Delegation of Plan Making Functions

Local Government Area: Lake Macquarie City

Name of draft LEP: Lake Macquarie Local Environmental Plan 2014 – Administrative Amendment - Part 4 Principal Development Standards

Address of Land (if applicable): Not applicable

Intent of draft LEP: The intent of the planning proposal is to amend the LMLEP 2014 in relation to a number of administrative items. The planning proposal will amend clauses within Part 4 Principal Development Standards to ensure controls within the previous LMLEP 2004 are carried over into LMLEP 2014.

The amendments apply to community title subdivision for cluster style development, small lot housing subdivision, battle axe and corner lot subdivision, dual occupancy subdivision, ensure the provisions relating to dwelling entitlements for rural and environmental protection zones are consistent. The amendments will also clarify the operation of the clauses within Part 4 – Principal Development Standards.

Additional Supporting Points/Information:

- Planning Proposal prepared by Lake Macquarie City Council

Evaluation criteria for the issuing of an Authorisation	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been				
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		NA		
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	YIN			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	YIN			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NA		

Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NA		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		NA		
Is the planning proposal proposed to rectify an anomaly in a classification?	N			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		NA		
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?		NA		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		NA		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		NA		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	N			
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	Y			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			

If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		NA		
Does the planning proposal create an exception to a mapped development standard?	N			
Section 73A matters				
<p>Does the proposed instrument</p> <p>a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;</p> <p>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</p> <p>c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>	N			

NOTES

- Where a council responds ‘yes’ or can demonstrate that the matter is ‘not relevant’, in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.