

Planning Proposal - Amendment to Lake Macquarie Local Environmental Plan 2014 – Biodiversity Offsets

PP_2016_LAKEM_001_00

Local Government Area:	Lake Macquarie City
Name of Draft LEP:	Planning Proposal – Biodiversity Offsets PP_2016_LAKEM_001_00
Applicant:	Lake Macquarie City Council
Subject Land:	The proposed changes are administrative and apply to the Lake Macquarie Local Environmental Plan 2014.
Attachments:	Attachment 1 – Evaluation Criteria for the Delegation of Plan Making Functions
Applicant:	LMCC
LMCC Folder Number:	F2016/00440 and RZ/4/2016

Part 1 – Objective of the Planning Proposal

The objective of the planning proposal is to amend the LMLEP 2014 to allow the subdivision of land in order to facilitate a future biodiversity offset site, where an offset site is below the minimum lot size area requirements of the LMLEP 2014.

Part 2 – Explanation of the Provisions

There are instances where land may need to be subdivided that does not meet the development standards of the minimum lot size map for the purpose of creating a biodiversity offset site. With the need for environmental offsets in rezoning and development applications, it is likely that this will increasingly become an issue.

Council has had rezoning applications requiring environmental offsets and there is a need to subdivide a portion of the E2 Environmental Conservation zoned land for an environmental offset from the remaining E2 zoned land however, this offset land does not meet the minimum lot size of the Lot Size Map and therefore the offset land cannot be subdivided.

The CODES SEPP 2008 allows for the excising from a lot land that is, or is intended to be used, for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets. If land is to be dedicated to Council or OEHL, then this clause could be used, but in a lot of instances, the land owner may want to subdivide the land and secure the offset site prior to dedicating to Council and the OEHL. However, in some instances the proponent may not wish to dedicate the land, but manage it under a management agreement as a component of development consent.

Intent statement

To enable the subdivision of land for Biodiversity Offsets for lots that do not meet the development standards of the minimum lot size map for the purpose of creating a biodiversity offset site.

Proposed Clause:

Biodiversity Offset Site

- (1) The objective of this clause is to provide flexibility in the application of standards for subdivision of land to be used for a biodiversity offset site.
- (2) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map for the purpose of creating a biodiversity offset site.
- (3) Before granting development consent to development to which this clause applies, the consent authority must be satisfied that the subdivision will be for the purpose of continued long-term protection and management of the biodiversity offset site.

In this clause, ***Biodiversity Offset Site*** is an area of land that is legally required to be managed for biodiversity conservation in accordance with a plan of management (and/or a management plan) and with sufficient resourcing available to implement the plan of management (and/or management plan), and the arrangements for managing the land are secured in-perpetuity under a legally binding conservation mechanism.

Please note the wording of the amendment will be prepared by Parliamentary Counsel so the clause provisions may alter.

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 need to allow for the subdivision of lots below the minimum lot size for the purpose of biodiversity offsets has been identified through recent development application and rezoning applications.

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

The planning proposal is considered the best way of achieving the intended outcomes. Under the current LEP and CODES SEPP 2008 provisions, subdivision is not permitted in a number of zones where the resulting lot is less than the minimum lot size area, resulting in situations where offsets smaller than the minimum lot size cannot be subdivided. Finding suitable biodiversity offsets for rezoning and development applications is a challenging process and facilitating a process where this can be achieved is needed.

B. Relationship to strategic planning framework

3. 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 planning proposal is considered consistent with the Lower Hunter Regional Strategy, the draft Hunter Region Plan and the Lower Hunter Regional Conservation Plan.

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy recognises the role of improving and maintaining the region's biodiversity and identifies the need for the Hunter Region Conservation Plan.

Draft Hunter Regional Plan (dHRP)

The dHRP includes Action 3.1.3, which identifies the need to encourage greater participation in private conservation schemes to provide more flexibility and options for investing in conservation, including biodiversity offsets. The dHRP identifies that due to the rarity of the Hunter's biological and ecological diversity, securing like for like offsets can be challenging and that these can influence the timing or viability of projects in areas that have already been identified for growth. The dHRP identifies that the NSW Government will continue working with councils and landowners to encourage greater participation in private conservation schemes. The planning proposal is consistent with the dHRP.

Lower Hunter Regional Conservation Plan (LHRCP)

The LHRCP identifies Biodiversity Banking and Offsets Scheme (BioBanking) mechanisms and planning agreements as methods for achieving offsets and identifies a number of offset principles. The LHRCP identifies future proposed developments in the Lower Hunter will be assessed against current legislation and that impacts to biodiversity should be first avoided or mitigated, but where appropriate, the Government will consider offsetting future development by entering into planning agreements with the developer. Ensuring that sites can be subdivided for biodiversity offsets is consistent with the LHRCP.

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

Lifestyle 2030 Strategy

Council's Lifestyle 2030 Strategy identifies that adequate and appropriate biodiversity offsets will be critical in offsetting the cumulative impacts of clearing and biodiversity losses associated with development proposed under the LS2030. The planning proposal is consistent with this in helping to achieve appropriate offsets identified for future development areas identified in the Lake Macquarie local government area.

Biodiversity Planning Policy and Guidelines for (LEP) Rezoning Proposals

Council has an adopted Biodiversity Planning Policy and Guidelines for (LEP) Rezoning proposals. This Policy contains a number of principles to achieve a strategic approach to biodiversity planning and contains criteria when offsets may be considered.

5. 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
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.
SEPP 71 – Coastal	This SEPP ensures that development in the NSW coastal zone is appropriate and suitably	The administrative amendments are minor in nature and will not affect the coastal zone.

SEPPs	Relevance	Implications
Protection	located, to ensure that there is a consistent and strategic approach to coastal planning and management.	

6. 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.	Nil. No changes proposed to business or industrial zones.
1.2 – Rural Zones	This direction protects the agricultural production value of rural lands.	Nil. No changes proposed to rural zones.
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.	The planning proposal will allow for the creation of offsets for biodiversity. Considerations of impacts on mining, petroleum production and extractive industries would need to be considered when establishing a biodiversity offset site. However, the planning proposal will not restrict the potential development of resources.
2.1 – Environment Protection Zones	Aims to protect and conserve environmentally significant areas.	The planning proposal will allow for the creation of biodiversity offset sites, which will seek to protect and conserve environmentally sensitive areas.
2.2 – Coastal Protection	This direction aims to implement the principles in the NSW Coastal Policy.	Nil. The planning proposal does not impact on the coastal zone. In some instances, a proposed biodiversity offset site may conserve areas within a coastal zone.
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.	Nil. The planning proposal will not impact on European and Aboriginal heritage.
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	The planning proposal will not impact on residential zones, however may help in facilitating future residential areas consistent with Council's Lifestyle 2030 Strategy and the Lower

Ministerial Direction	Relevance	Implications
	on the urban fringe.	Hunter Regional Strategy by facilitating mechanisms to achieve biodiversity offsets..
3.4 - Integrating Land Use and Transport	The aim of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the integration of land use and transport.	The amendment does not make any zoning change.
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.	The planning proposal does not have direct impacts on acid sulphate soils.
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.	The planning proposal will not allow development on mine subsidence land. However, it is noted that the Lake Macquarie LGA is within a Mine Subsidence District.
4.3 - Flood prone land	Aims to ensure that development of flood prone land is consistent with the NSW Government Flood Prone Land Policy and the Principles of the Floodplain Development Manual 2005, and to ensure that the provision of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	The planning proposal will not allow development of flood prone areas. However, biodiversity offsets may be established on flood prone land. The proposal is consistent with the Flood Prone Land Policy and the <i>Floodplain Development Manual 2005</i> .
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.	The planning proposal will not allow development on bushfire prone land, however biodiversity offset sites will likely be established on bushfire prone land. The planning proposal is consistent with these provisions.
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	The planning proposal is considered consistent with the Lower Hunter Regional Strategy. The Lower Hunter Regional Strategy recognises the need for offsets and the Lower Hunter Regional Conservation Plan.

Ministerial Direction	Relevance	Implications
	with the relevant State strategy that applies to the Local Government Area.	

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 planning proposal will not negatively impact on habitat, threatened species, population or ecological community. The planning proposal will allow for the subdivision of biodiversity offsets needed to mitigate the impacts from rezoning and development applications in accordance with the regulatory framework governing biodiversity offsets. Biodiversity offsets help achieve long-term conservation outcomes where development and infrastructure projects are likely to impact biodiversity.

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

No other environmental effects are anticipated.

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

The planning proposal will facilitate rezoning, subdivision and development on land through the creation of biodiversity offset sites and satisfying relevant legislative provisions.

D. State and Commonwealth interests

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

The planning proposal does not impact on public infrastructure as it only relates to biodiversity offsets.

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

The planning proposal was referred to the Office of Environment and Heritage, the Rural Fire Service and the Department of Industries for comment. A summary of the responses are provided below, along with a relevant planning comment:

- Office of Environment and Heritage*

OEH supported the objectives of the planning proposal to facilitate offsets as part of rezoning and development applications. OEH supported the amendment, which seeks to provide greater flexibility for subdivision where this results in a biodiversity offset site which will be managed in perpetuity under an approved conservation mechanism.

- Department of Industry Resources and Energy – Geological Survey of NSW (GSNSW)*

All planning proposals within the vicinity of state or regional significant mineral resources under coal, mineral or petroleum title, or identified in the Mineral Resource Audit - Lake Macquarie City should be referred to GSNSW.

While GSNSW does not have concerns with the proposal in general, each proposed offset would require site specific assessment by GSNSW. GSNSW also recommend the use of the Biobank scheme, or equivalent under the Biodiversity Conservation Bill, as the preferred offset mechanism.

Planning Comment:

Consultation would occur when biodiversity offset sites are proposed in accordance with requirements of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*.

- NSW Rural Fire Service

No objection to the proposal. *Planning for Bushfire Protection 2006* should be considered in any subsequent development application, especially in regard to:

- The provision of asset protection zones and consideration given to regeneration works and bush fire hazards within the offset site and future buildings.
- Consideration should be given to the incorporation of perimeter roads where development will face onto the bush fire prone vegetation

Planning Comment:

Future development applications will address *Planning for Bushfire Protection 2006*.

Part 4 – Details of Community Consultation

The planning proposal was exhibited from 14 May to 30 May in accordance with the Gateway determination. No public submissions were received.

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

Local Government Area: Lake Macquarie City

Name of draft LEP: Planning Proposal – Biodiversity Offsets

Address of Land (if applicable): Not applicable

Intent of draft LEP: The intent of the planning proposal is to amend the LMLEP 2014 to allow the subdivision of land in order to facilitate a future biodiversity offset site, where an offset site is below the minimum lot size area requirements of the LMLEP 2014.

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.