

Remainder of Site

Filling generally encountered to 1.15m over generally sandy and clayey soils. Clay in Pit 309 graded to clayey sand/extremely weathered sandstone below about 1.0m, and backhoe refusal was encountered at 1.8m depth. Rock was also encountered in Bores 104 and 105 with pebbly sandstone encountered below 4.2m in Bore 104, and residual clay grading to an extremely low strength conglomerate below 4m in Bore 105.

2.7.3 Acid Sulphate Soils

The site is partly located within a zone with a high probability of acid sulphate soil within 1m of the ground level, under the *Swansea Acid Sulphate Soil Risk Map* (Ed. 2). Douglas Partners investigated the site for acid sulphate soils during the preparation of the concept plan under part 3A. The results of detailed laboratory testing indicate the presence of actual and potential sulphate soils at the site.

2.7.4 Contamination

A validation report by David Lane & Associates, prepared during preparation of the concept plan under Part 3A established that the site is suitable for the proposed residential land-use under the proposed draft plan with regard to contamination.

2.8 BUSHFIRE

A northern portion of the subject site is within a bushfire hazard area based on the Bushfire Prone Land Map, see below:

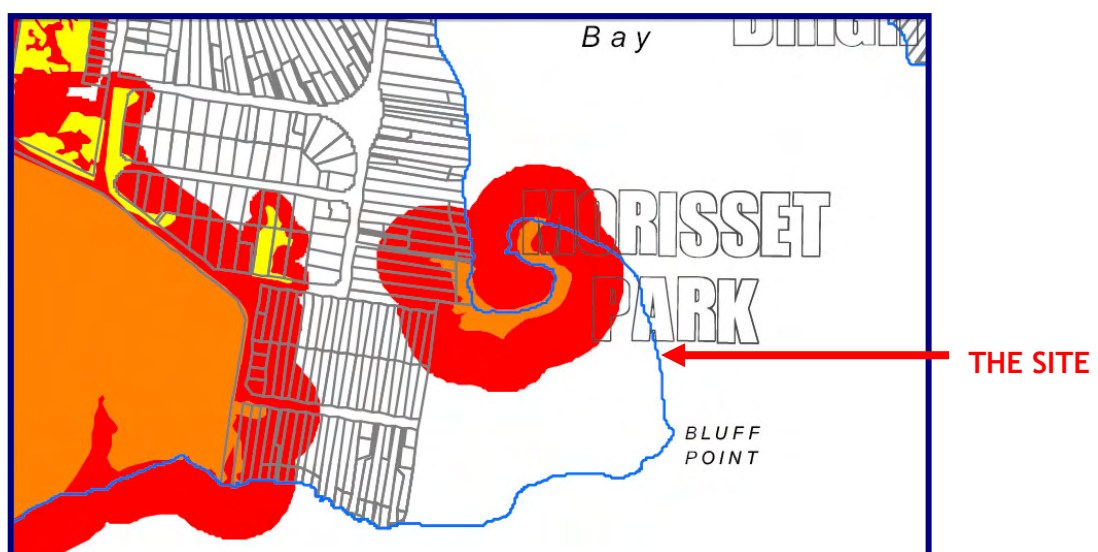


Figure 5: Extract of Lake Macquarie Bushfire Prone Land Map.

2.9 VISUAL CATCHMENT AND VIEWS

The subject site generally offers filtered views of the lake from all parts, and unimpeded views from strategic points.

LMCC Scenic Quality Guidelines classify the locality as Level 3 (low) visual accessibility with a Scenic Management Zone C (Moderate). Visual catchment of the site is limited - confined to the waterway for distances up to 4km and isolated parts of the urban foreshore of surrounding settlements. The site is not prominently located on a ridge line.

A Visual Impact Statement has been prepared as part of Part 3A documentation, and provides detailed descriptions and methodologies relating to visual catchment, views and impact assessment.

2.10 HERITAGE

A grotto, lake bathing area and sundial are historical items that have been identified in association with the site and surrounds.

Trinity Point is located within the Awabakal Aboriginal people area of interest. A registered site (stone artefact registered 45-7-0228), as well as associated sub-surface deposits are known to exist. Other parts of the site have a potential to contain deposits. A Midden has been found on top of the headland.

2.11 TRAFFIC AND ACCESS

Access to the site is via Trinity Point Drive, off Morisset Park Road, which connects to Fishery Point Road and then onto Macquarie Street (MR 133) approximately 2-3km west of the site. MR 133 provides access to Morisset Town Centre, the Northern Main Rail Line and the F3 Freeway.

2.12 UTILITIES

Service infrastructure, in terms of reticulated water and sewer, is and will be available to the site as well as electricity, gas and telecommunications.

Section 3

Statutory Planning Context

The following planning instruments and codes are relevant to the consideration of the preparation of the proposed draft LEP to amend LMLEP 2004 in respect to the subject land and provide an overview of the current statutory planning context which applies to the site.

3.1 STATE & REGIONAL PLANNING

3.1.1 Environmental Planning & Assessment Act

Planning and development in NSW is carried out under the Environmental Planning and Assessment Act 1979 (EP&A Act) and Environmental Planning and Assessment Regulation 2000. Part 3 of the EP&A Act provides provisions with respect to the preparation and amendment of Local Environmental Plans. Preparation of the draft LEP will need to comply with the relevant provisions of the EP&A Act which includes consultation and exhibition of the draft plan prior to its final determination.

3.1.2 Section 117 Ministerial Directions

Recent directions issued by the Minister pursuant to Section 117 of the EP&A Act will apply to Council's preparation of a draft LEP. Table 2 below identifies S.117 Directions and comments on whether they apply to the proposed amendment to the LMLEP 2004. Directions identified as relevant are addressed in Section 5 of this report.

Table 2: Identification of Relevant S117 Directions -

S. 117 Direction	Application of Direction (Clause 2)	Comments with respect to relevance (Clause3)	Direction applies
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1.0 Employment & Resources

1.1	Business & Industrial Zones	All Councils	The proposed LEP amendment does not effect land within or a proposed business zone nor does it propose a business zone. Note the proposed B4	No
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			mixed use zone is not a 'business' zone.	
1.2	Rural Zones	All Councils	The proposed LEP amendment does not effect land within an existing or proposed rural zone.	No
1.3	Mining, Petroleum Production and Extractive Industries	All Councils	The subject land is included in a mine subsidence district. Whilst not mined the potential for future underground mining should be considered.	Yes
1.4	Oyster Aquaculture	All Councils	The proposed LEP amendment will not effect any 'Oyster Aquaculture Area'.	No

2.0 Environment & Heritage

2.1	Environmental Protection Zones	All Councils	This direction applies when Council prepares a draft LEP.	Yes
2.2	Coastal Protection	Coastal zone	The subject land is within the coastal zone and therefore the direction applies.	Yes
2.3	Heritage Conservation	All Councils	This direction applies when Council prepares a draft LEP.	Yes
2.4	Recreation Vehicle Areas	All Councils	This direction applies when Council prepares a draft LEP.	Yes

3.0 Housing Infrastructure and Urban Development

3.1	Residential Zones	All Councils	The proposed LEP amendment permits residential development	Yes
3.2	Caravan Parks and Manufactured Home Estates	All Council's except crown land reserved or dedicated for any purpose except	This direction applies when a council prepares a draft LEP.	Yes

			for accommodation purposes.	
3.3	Home Occupations	All Councils	This direction applies when a council prepares a draft LEP.	Yes
3.4	Integrated Land Use and Transport	All Councils	The proposed LEP amendment will permit residential development on the subject land.	Yes
3.5	Development Near Licensed Aerodromes	All Councils	The proposed LEP amendment does not effect any provision relating to land in the vicinity of a licensed aerodrome.	No

4.0 Hazard and Risk

4.1	Acid Sulfate Soils	All Councils with land having probability of containing acid sulfate soils	This direction applies when a council prepares a draft LEP on land having a probability of containing acid sulfate soils as identified on the Acid sulfate Soils Maps.	Yes
4.2	Mine Subsidence and Unstable Land	Land within a Mine Subsidence District or identified as unstable land	The subject land permits development on land within a declared Mine Subsidence District.	Yes
4.3	Flood Prone Land	All Councils that contain flood prone land	Whilst parts of the subject land are affected by the 1:100 year flood level the draft LEP does not propose to alter existing provisions relating to flooding which exist under clause 32 of LMLEP 2004.	No
4.4	Planning for Bushfire Protection	All Councils required to prepare a bush fire prone land map	Part of the subject land is within a bushfire hazard area as identified on the Lake Macquarie	Yes

5.0 Regional Planning

5.1	Implementation of Regional Strategies	This direction applies due to the Lower Hunter Regional Strategy	This direction applies when a council prepares a draft LEP	Yes
5.2	Sydney Drinking Water Catchments	This direction does not apply	NA	No
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	This Direction does not apply	NA	No
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	This direction does not apply	NA	No
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	This direction only applies to land in Cessnock LGA	NA	No
5.6	Sydney to Canberra Corridor	This direction does not apply	NA	No
5.7	Central Coast	This direction does not apply	NA	No
5.8	Second Sydney Airport: Badgerys Creek	This direction does not apply	NA	No

6.0 Local Plan Making

6.1	Approval and Referral Requirements	This direction applies to all Councils	This direction applies when a council prepares a draft LEP.	Yes
6.2	Reserving Land for Public Purposes	This direction applies to all Councils	This direction applies when a council prepares a draft LEP.	Yes
6.3	Site Specific Provisions	This direction applies to all Councils	The proposed LEP amendment does not permit a particular development to	Yes

3.1.3 State Environmental Planning Policies

State environmental planning policies (SEPPs) deal with issues significant to the state and are made by the NSW Minister for Planning. The following State Planning Policies (SEPP) have been identified as requiring consideration in respect to the proposed amendment to the LMLEP 2004:

Table 3 Relevance of SEPPs

State Environmental Planning Policy (SEPP)	Description	Relevance to preparation of the proposed draft LEP.
SEPP No. 19 - Bushland in Urban Areas	Protects and preserves bushland within certain urban areas, as part of the natural heritage or for recreational, educational and scientific purposes. The policy is designed to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared	<p>The subject land adjoins a 6(1) Open Space zone under LMLEP 2004, which runs along the foreshore of Lake Macquarie.</p> <p>Clause 9 of the SEPP requires that Council have regard to the potential effects of development on any adjoining bushland within the open space land adjoining,</p> <p>Clause 10 of the SEPP requires that the aims of the SEPP be taken into consideration when preparing a LEP.</p>
SEPP No. 44 - Koala Habitat Protection	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range. Local councils cannot approve development in an area affected by the policy without an investigation of core koala habitat.	<p>There is limited vegetation on site.</p> <p>The Terrestrial Ecological Assessment prepared for the concept plan identified that the subject site was not considered to constitute core Koala habitat under SEPP 44 and no further provisions of the SEPP 44 apply to the subject site.</p>
SEPP No. 65 - Design Quality of Residential Flat Development	Provides a series of design principles to raise quality of residential flats. Provides for the establishment of Design Review Requires the involvement of a qualified designer throughout the design, approval and	It is not envisaged that the draft plan will contain provisions relating to built form on the subject site - this being a matter for the Part 3A concept plan determination by the Minister. The provisions of this SEPP are not relevant to the preparation of a draft LEP however will require

	construction stages.	consideration at the project application including a design statement to ensure compliance with the requirements.
SEPP No. 71 - Coastal Protection	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 and to ensure there is a clear development assessment framework for the coastal zone.	Clause 8 of the SEPP provides additional matters for consideration by the Consent Authority when assessing development. The proposed draft LEP does not conflict with these heads of consideration which will need to be addressed during the determination of the concept plan under Part 3A of the EP&A Act.

SEPP (Building Sustainability Index: BASIX) 2004	The SEPP ensures consistency in the implementation of BASIX throughout the State by overriding competing provisions in other environmental planning instruments and development control plans, and specifying that SEPP 1 does not apply in relation to any development standard arising under BASIX.	The draft plan does not propose to make provisions with respect to building sustainability and therefore will not create competing provisions with BASIX. Residential development to be facilitated by the Draft plan will be required to address the water and energy requirements as provided by BASIX as part of development applications.
SEPP (Major Projects) 2005	Defines certain developments that are major projects under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. The SEPP also lists State significant sites.	In accordance with clause 6 of the SEPP, Johnson Property Group (JPG) received confirmation from the Minister for Planning that the project is of a kind to which part 3A of the Act applies.
SEPP (Infrastructure) 2007	Provides a consistent planning regime for infrastructure and the provision of services across NSW. Provides for consultation with relevant public authorities during the assessment process. The SEPP supports greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.	The concept plan will require referral to the RTA under the provisions of this SEPP.

3.1.4 Mines Subsidence & Compensation Act 1961

The Act is described as:

“An Act to make provision for and in respect of a scheme for the payment of compensation where improvements on the surface or household effects are damaged by subsidence following the extraction of coal or shale; to repeal the *Mine Subsidence Act 1928* and certain other enactments; to validate certain matters; and for purposes connected therewith.”

Compliance with the Mine Subsidence Board will be necessary as part of the concept plan under Part 3A of the EP & A Act.

3.1.5 The Standard LEP Instrument

The Standard Instrument (Local Environmental Plans) Order 2006 (standard instrument) provides standard zones for Councils to use when preparing new principle local environmental plans. LMCC is required to prepare a new principle LEP by 2011. Under the standard instrument Council may select zones as appropriate to the needs of their local areas, having regard for state and regional planning requirements. The standard instrument includes a Special Purpose Tourist zone “SP3 Tourist”. This zone is generally intended to be located where a variety of Tourist-oriented land uses are to be permitted, and includes uses such as tourist and visitor accommodation, pubs and restaurants. The Standard LEP Template provides for a range of tourist land use definitions.

Consistency with an approved Concept Plan and with this LEP amendment will need to be considered when LMCC are redrafting provisions which will relate to the subject lands.

3.1.6 Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy seeks to provide some 66,000 new jobs and dwellings for an additional 160,000 residents over the next 25 years. The strategy deals broadly with population and housing, the economy and the environment. Due to its broad scope, it does not make specific references to tourism as a land use.

Of particular note to the strategic context of Trinity Point, nearby Morisset is identified as an emerging Major Regional Centre, and Lake Macquarie is recognised as Australia’s largest saltwater lake. The inclusion of some residential as a use on this site and serviced meeting rooms would not be inconsistent with the LHRS, and would not trigger the requirement for ‘sustainability’ criteria, as the site is part of the existing urban area of Lake Macquarie.

3.1.7 Hunter Regional Environmental Plan

Part 3 (Economic Development), Division 3 (Tourism) is of direct relevance. The objectives generally seek co-ordinated development of the region as a tourist destination area, to encourage appropriate developments, recognise

natural/heritage values to improve opportunities and encourage adoption of planning controls containing incentives and flexibility for tourism development. Specifically it does not directly prohibit or discourage investigation or support for this LEP Amendment.

In addition, as the proposal includes a provision for residential, the following parts are also relevant:

- Part 2 (Social Development), Division 1 (Housing). This requires a public authority to be satisfied adequate health, education and other community facilities and services can be provided. Given the consideration of this issue as part of the creation of additional residential development throughout Morisset Peninsula, and the emerging growth of Morisset as a regional centre, this issue is unlikely to be of any real concern.
- Part 4 (Land Use and Settlement), Division 2 (Urban Land). The policies in this section specifically relate to rezoning of rural land to urban purposes, and in many respects, covers issues that were decided when the site was determined to be appropriate for the tourist zone.

In addition, as the proposal includes a provision for business use, the following parts are also relevant:

- Part 3 (Economic Development), Division 2 (Commercial Development). This requires a public authority to be satisfied that the development will not have a detrimental impact on existing or potential function of regional, subregional or district centres. The proposed commercial use is small scale and can service tourism and local needs and be complimentary to the mix of uses proposed at the tourist node, without impacting on the higher order commercial roles of Morisset Regional Centre or the commercial zoned land at Morisset Peninsula.

Whilst other divisions have some relevance, they are not specifically a concern for this LEP Amendment request and relate to issues that will be covered through development assessment of the overall project (eg. accessibility, bus transport, parking provision, bicycle and pedestrian movement, traffic impact, water quality and quantity controls, flood, bushfire and mine subsidence hazards, foreshore accessibility and management, amenity of the lake).

3.2 LOCAL PLANNING

3.2.1 Lake Macquarie Lifestyle 2020 Strategy

Lifestyle 2020 is Lake Macquarie Council's primary Strategic Planning document, setting out city wide core values and strategic directions. It establishes four core values, being sustainability, equity, efficiency and liveability.

The subject land is within the Morisset Planning District. The Lifestyle 2020 identifies the future pattern of urban settlement in the Morisset Planning District

is to encourage urban growth within larger settlements with neighbourhoods on the peninsula intended to continue to support Bonnells Bay local centre. The local centre is to be supported by mixed use and medium density housing close to its centre. Further consideration of Lifestyle 2020 is included in Section 5.3.

3.2.2 Lake Macquarie Social Plan 2005-2007

Lake Macquarie's Social Plan aims to respond to the social needs and aspirations of the community in Lake Macquarie LGA. Social Plan issues and implications for the proposed concept plan including the land uses under the proposed concept plan has been considered by a Socio-Economic Study prepared by Key Insights Pty Ltd and submitted with the Part 3A EAR. The land uses relevant to this LEP amendment, being a component of residential and serviced meeting rooms, do not in their own right present any detrimental implications to social planning.

3.2.3 Lake Macquarie Section 94 Contributions Plan-City Wide, Residential (2004)

Lake Macquarie Section 94 Contributions Plan applies to Trinity Point including the subject land. The plan identifies residential developer contributions for a range of purposes including open Space and Recreation, Community facilities, Roadworks and Traffic Management, Drainage, Stormwater and Water Control and Management.

Section 94 contributions are likely required for any residential component of the concept plan project. With a potential residential population of some 141 people based on the Part 3A concept plan, the implication on locality wide demand is minimal - considering the Morisset Planning District is anticipated to include significant growth under Council and State Government planning strategies. No additional s94 planning is considered necessary as part of this LEP Amendment.

3.2.4 Lake Macquarie Local Environmental Plan 2004

Clause 15 Land Use Table & Permissibility

The subject land is zoned 6(2) Tourism and Recreation under Lake Macquarie LEP 2004 (LM LEP 2004). The objectives of the 6(2) zone are to:

- (a) Provide land primarily for commercial recreation and tourist uses, and
- (b) Encourage good quality design within the zone, and
- (c) Provide land for good quality tourist development, and
- (d) Provide land for function and entertainment centres, and

- (e) Encourage tourism development that is sensitively designed to complements its location and minimise any adverse impacts on the environment, and
- (f) Provide for sustainable water cycle management.

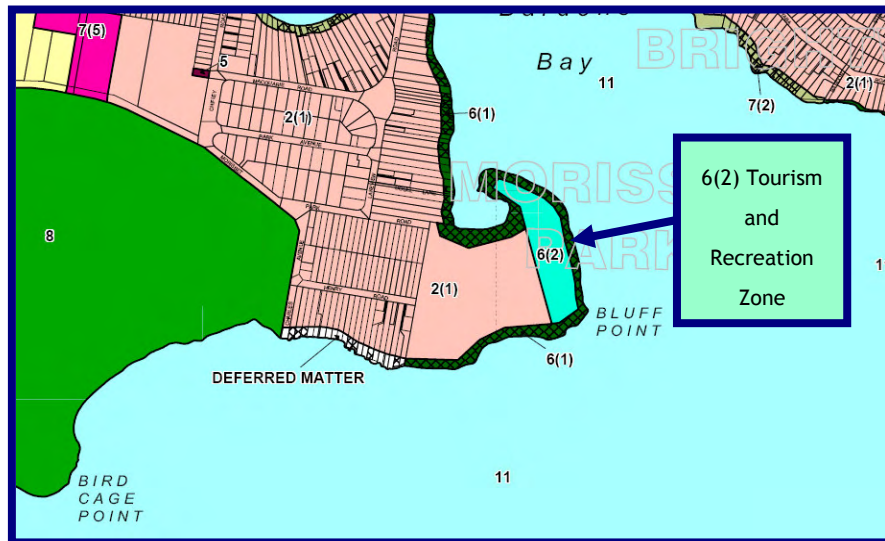


Figure 6: Lake Macquarie LEP 2004 Zone map.

A range to tourist related uses are permissible within the 6(2) zone with development consent. These uses however (other than manufactured home estates) generally do not provide for permanent residential occupancy. Small scale business uses, such as serviced meeting rooms, other than to meet the needs of tourists are also prohibited- unless 'ancillary uses'.

It is noted Lake Macquarie Council has resolved under section 54 of the EP&A Act in October 2006 to review tourist accommodation permitted within the LMLEP 2004, with the view to encourage tourism development. It is understood these do not encompass the subject land uses sought by this LEP amendment.

Clause 42 Consent to development subject to special requirements

In addition, Clause 42(1), Schedule 8 item 2 of LMLEP 2004 applies to the subject land. This clause requires a master plan to be adopted prior to consideration of a development application on the subject land and for the Council to have regard to the adopted master plan during the determination of a development application. As outlined in Section 1.1.2, the Kendall Grange Master Plan has been adopted, and it includes the subject lands. The Part 3A Concept Plan process is an opportunity to revisit the master plan relative to the subject site, in conjunction with this draft LEP amendment.

3.2.5 Lake Macquarie Development Control Plan 1

The Lake Macquarie Development Control Plan 1 is a comprehensive city wide DCP (LMDCP 1). LMDCP1 is matter for consideration during determination a development application under section 79C of the EPA&A Act. These comprehensive controls are not directly relevant to an LEP Amendment however may be taken onto consideration by the Minister during the determination of the concept plan under Part 3A of the EP&A Act.

Section 4

The Proposed Local Environmental Plan

4.1 JUSTIFICATION FOR PROPOSED LEP

The original request to Council identified that a draft plan is required to facilitate the proposed concept plan. JPG have determined that tourism is not viable as a stand alone land use on the subject land without the residential component proposed under the concept plan.

The State's "Towards 2020" Tourism Masterplan acknowledges that tourism's major return to the community is creation of employment opportunities throughout the state, and the provision of tourism experiences. Jobs such as those envisaged in "Towards 2020" will not happen as a matter of course and the strategy acknowledges that a sustained effort is required with the key to delivery being achieving conditions necessary to fulfil the potential.

JPG believe that the mix of uses, including a mix of tourist and residential occupants within the tourist site (in conjunction with the importance of strata (or similar) subdivision) would be a positive response to the challenges facing tourism development. This appears to be an emerging trend on tourist zoned land.

4.1.1 Climate for Investment

It is well documented that issues of profitability and establishment costs, and challenges to investment in tourist development is significant. The following extract from "Towards 2020" lays testament to this:

"lack of a positive climate for investment is hindering the potential of the tourism industry and will continue to do so. Towards 2020 acknowledges the need to lift private investment in the tourism sector to physically improved tourism product including accommodation, attractions and tours. Government will help to promote and facilitate a climate conducive to enhancing investor perceptions, industry image and a positive business environment. The industry, however, needs to deliver consistent profitability and a commercial return on funds invested" (pg 8).

"Towards 2020" identifies a major trend limiting growth of tourism is tourism investment potential - other sectors of the economy have been outperforming tourism in terms of competing investment dollars, and when not perceived as an attractive investment option, growth is limited. The tourism market is not necessarily stable - with the competitive position of tourism recently affected,

for example, by events such as September 11, Bali bombings, and Ansett collapse.

Following this investment dilemma, it is well known that tourism is not an asset class that banks are necessarily optimistic in financing and they adopt conservative positions and limitations. Their end considerations in deciding to finance a project are typically number and value of presales and impact on risk profile rather than the fabric of the development itself. Financiers can attribute a greater risk profile to tourism apartments than to residential. Furthermore, buyers that JPG will be seeking to attract can find that a bank will also attribute greater risk for lending purposes to a tourism apartment as compared to an apartment that is available for residential accommodation. Accordingly, a mix of stock is important.

The ability to secure this investment, to draw and hold potential visitor markets, and secure financing for tourism developments, is acknowledged as a greater challenge outside Sydney, with incentive to bring these opportunities on stream perhaps required.

4.1.2 Social Vibrancy

JPG have some concern with the traditional peaks and troughs of visitation in many areas of the State, and the implications of restricting accommodation to tourism only, such that it may not sustain an 'air of activity' and surveillance and safety opportunities throughout the entire week and year, particularly given the public access routes around the lake edge and within the site.

A core strategic direction of Lifestyle 2020 is using mixed uses to reinforce and strengthen centres, provide dynamics and vibrancy, surveillance and security and economic support. This strategic approach is equally valid to apply to achieving the same outcomes within a tourist node such as Trinity Point, albeit on a smaller scale.

4.2 S.54 RESOLUTION TO PREPARE A DRAFT PLAN

In response to JPG request to permit additional land uses provided by the concept plan, LMCC at its meeting held on 4th June 2007 resolved pursuant to S.54 of the Environmental Planning and Assessment Act to prepare a draft Local Environmental Plan (draft plan) to amend the LMLEP 2004 in respect of the subject land to facilitate the additional land uses. The Department of Planning (DOP) have subsequently confirmed in their correspondence to Council dated 8th February 2008 that an Environmental Study (ES) pursuant to Section 57 of the Act is not required.

Furthermore, controls relating to building height, densities and setbacks will need to be resolved through the Part 3A concept plan process rather than attempting to include them as part of the preparation of the exhibited draft LEP. Once resolved these matters may then be included in the final version of the LEP before its gazettal, or this may not be necessary. In this regard the DOP have

requested that Council exhibit its draft LEP simultaneously with its exhibition of the concept plan proposal under Part 3A of the EP&A Act. The draft LEP therefore should be limited in its scope to address the additional land uses only, and not design parameters which may relate to the inclusion of those land uses.

4.3 THE CONCEPT PLAN & PROPOSED LAND USES

Determination of the concept plan under Part 3A of the EP&A Act is related, but a separate process to that of the proposed LEP amendment. The concept plan is relevant to the proposed LEP amendment in so far as it provides justification for the proposed LEP amendment to facilitate a viable tourist outcome. Preparation of the concept plan has also had regard to the Director-Generals Environmental Assessment Requirements (EAR) which has included consultations and relevant environmental studies to address the environmental impacts of the proposed concept plan.

Table 4 below identifies that the majority of land uses proposed under the concept plan are permissible within the zone with only the proposed residential component and potentially the use of meeting facilities by the general public which requires an amendment to the LMLEP 2004 to facilitate land uses as proposed by the concept plan.

Table 4: Concept Plan Permissibility

Component	Description	Permissibility LMLEP 2004 6(2) & 11 zone
Marina & Tourism Village	Marina (land based facilities) including hardstand and marina workshop/maintenance.	<i>Marina</i> permissible in 6(2) zone
	Marina (water based facilities) including pontoons, breakwater, travel lift and fuelling facilities and infrastructure.	<i>Marina</i> permissible in 11 Lakes & Waterways Zone and in 6(1) zone
	Helipad	<i>Helipads</i> permissible in 11 Lakes & Waterways Zone
	Village Square	Permissible as part of <i>marina / tourist resort</i> .
	Function rooms either 1x300 seat or 3x100 seat	<i>Function centre</i> permissible
	Restaurant & Café	<i>Restaurants</i> permissible
	Small convenience store to service marina and tourism needs	Permissible as part of <i>marina / tourist resort</i>
	Small scaled business centre for serviced meeting facilities	Permissible as part of <i>tourist resort / marina</i> LEP amendment may be required to allow its use by the general public.
	Gym & beauty services	Permissible as part of <i>tourist resort / marina</i>

	Reception & administration	Permissible as part of <i>tourist resort / marina</i>
	Tourism operators / tours	Permissible as part of <i>tourist resort / marina</i>
	Chandlery	Permissible as part of <i>marina</i>
	Marina Club / Lounge / Amenities	Permissible as part of <i>marina</i>
	Tourism accommodation (75 Apartments)	Permissible as part of <i>tourist resort / marina</i>
Residential	Residential units (75 dwellings plus a marina residence)	LEP amendment required

4.4 PROPOSED FORM AND CONTENT OF THE DRAFT LOCAL ENVIRONMENTAL PLAN

The aim of the draft plan is to amend the LMLEP 2004 to facilitate those uses proposed under the concept plan which are otherwise prohibited. Having regard for Table 4 only the residential component and potentially the use of meeting facilities by the general public are required to be included as a permitted land use for the purposes of facilitating the concept plan.

To ensure development is consistent with the 6(2) zone objectives it is proposed that the draft LEP limit the scale of residential development to ensure that it may only be permitted in conjunction with a tourist development and it remain a lesser component of that tourist development ie the marina and other permitted uses being the dominant land use on the site at any point in time. Accordingly a proposed form and content of the LEP amendment is provided below. This differs from that originally suggested to LMCC prior to their s54 resolution, but retains the key consideration of restricting residential use to occur in conjunction with other permitted land uses:

Aim of the proposed amendment

Amend Schedule 7 (Clause 39) of Lake Macquarie LEP 2004 to permit with consent, certain *dwellings, residential flat buildings and commercial development* within the existing 6(2) Tourism & Recreation zone that applies to the subject land.

Circumstances which the proposed land uses are permitted (Column2 Schedule 7)

Residential development:

- as part of a tourist / marina complex; and
- the number of residential dwellings on the subject land is no greater than the number of units when combined with the tourist development.

Commercial development:

- provided primarily for the tourist development and which may service the needs of the local community including serviced meeting rooms and the like.

Limitations

Having regard for advice from the DOP controls relating to building height, design densities and setbacks will need to be resolved through the Part 3A concept plan process.

Example

An example of an amendment to Schedule 7 of LMLEP 2004 as proposed is provided below:

Lake Macquarie Local Environmental Plan 2004

Schedule 7 Additional development allowed on certain land

(Clause 39)

Item No	Column 1	Column 2
15	Land at Morisset Park zoned 6(2), Tourism and Recreation zone known as Lot 31 DP 1117408, Trinity Point Drive,	Development for the purposes of a <i>dwelling, or residential flat buildings or commercial premises that:</i> <ul style="list-style-type: none">(a) <i>is constructed as part of a tourist complex; and</i>(b) <i>the number of residential dwellings on the subject land is no greater than the number of units within the tourist development; and or</i>(c) <i>the commercial premises primarily services the needs of the tourist complex which may or may not service the local community including serviced meeting rooms and the like.</i>

Section 5

Site Suitability

5.1 STATE PLANNING CONTEXT

The proposed draft LEP itself is considered to be of relatively minor planning significance in terms of State and Regional planning directives. It aims to facilitate additional land uses associated with the proposed concept plan under Part 3A within the existing zone which applies to the subject land.

A review of the planning context indicates there is no specific state or regional planning direction or policy that prevents investigation and review of permitting a component of residential use and small scaled commercial premises within an overall tourist outcome on site. The site is within the existing urban area only 6km from the emerging Major Regional Centre of Morisset (as identified in the Lower Hunter Regional Strategy). The additional residential population is minor in the context of anticipated growth in the locality and associated planning for that growth. Residential land uses is consistent with directly adjoining and nearby residential land use of the locality.

Clearly the development outlined in the Part 3A Concept Plan will provide considerable economic benefit accruing to the immediate and broader local area as a result of construction expenditure, tourism expenditure, local employment and to a lesser extent expenditure of incoming permanent residents. Considerable social benefit is also anticipated, with increased public access to the lake foreshore and to tourist facilities, creation of a destination and place, and interpretation of the sites history. Incoming permanent residents will add to the social vibrancy of the proposal.

With respect to s62 consultations (summarised in Section 1.3) there are no real issues raised that preclude inclusion of a component of residential land use and serviced meeting rooms as permitted uses on the site. The Part 3A Concept Plan and associated assessment will holistically consider all land uses, proposed site design and impact assessment.

5.2 CONSISTENCY WITH RELEVANT S117 DIRECTIONS

The proposed draft LEP is consistent with relevant Section 117 directions identified in section 3 of this report as identified in **Appendix B**.

5.3 LOCAL PLANNING & SITE SUITABILITY

The aim of the draft plan is to amend Schedule 7 (Clause 39) of Lake Macquarie LEP 2004 to permit with consent, certain *dwelling*s, *residential flat buildings* and *commercial development* within the existing 6(2) Tourism & Recreation zone that

applies to the subject land. The majority of uses proposed within the Marina/Tourist Village fall under the 'marina' and 'tourist resort' definitions of LMLEP 2004.

A review of the local planning context indicates there is no specific local planning direction or policy that prevents investigation and review of permitting a component of residential use and small scaled commercial premises within an overall tourist outcome on site.

Serviced Meeting Rooms and Commercial Hierarchy

There is a restriction within the 'tourist resort' definition for the proposed small scale business centre (serviced meeting rooms), proposed under the Part 3A concept plan. Whilst permissible to satisfy the needs of tourists (and hence not 'lost' to tourism usage,) it is also intended that the proposed business facility assist the home based business and local business community needs of the local area. Council officers have indicated that up to 25% of households include some home based business function.

The provision of small scale business centre providing serviced meeting rooms in a high amenity and active location will not compete with the use or viability of commercial zoned land at Morisset Peninsula, or at Morisset, and will not alter the commercial hierarchy of centres.

Lake Macquarie Lifestyle 2020 Strategy

The Key insights Social / Economic Impact Assessment, which forms part of the Part 3A Concept Plan documentation, identifies the contribution of the concept in relation to the Lifestyle 2020 Strategic Directions.

The residential and serviced meeting room components sought to be made permissible by this LEP amendment will not erode the ability and contribution the overall project can make to sustainability, equity, efficiency and liveability and the aims of Lifestyle 2020.

The Part 3A Concept Plan, which incorporates the uses addressed by this LEP amendment, will facilitate an end total site outcome that provides a successful, viable and vibrant place and positive community identity at the lakeside location, with local employment provision, promotion of economic development and contribution to the tourism market. Broadly, it seeks to deliver many of the aims and strategic directions that Lifestyle 2020 espouse for strengthening and reinforcing of Centres, and applies them to a tourism node. Relative to this LEP amendment, many of the benefits of facilitating residential as part of the mix of uses in support of centres - to achieve vibrancy, dynamics, safety, security, identity, in compact and diverse forms - equally and validly apply to support of tourism activities and nodes.

Site Analysis - Site Analysis reveals that there are no specific site characteristics that preclude the suitability of the site to include a component of residential land use or serviced meeting rooms. Trinity Point is within an urban area, and in a planning context would otherwise be suitable for residential use in terms of adequate access to services and amenities, and without excessive servicing or infrastructure costs. It is also noted that dwelling houses in the form of Manufactured Home Estate is already a permissible form of development with the 6(2) zone. Accordingly in practical terms the proposed LEP amendment has minimal planning consequence other than to facilitate a tourism development in accordance with the vision and zone objectives set for the site.

The draft LEP amendment simply acknowledges additional land uses, as a component of overall development, that are considered suitable. It does not propose any specific urban design, built form, height, yield, character or appearance parameters for the residential land use - this being the role of the Part 3A Concept Plan and associated assessments and applications.

In terms of implications on tourism by permitting a residential component, the Part 3A Concept Plan delivers a stronger tourism outcome than that originally sought to be provided on site under the Kendall Grange Master Plan. Importantly, the tourism experience will be enhanced by the inclusion of residential use of the site - with activity, access, surveillance further enhanced - interacting with the critical public access around and through the site for all.

By inclusion of the additional permitted uses, the whole of site is not lost to tourism, and in fact, tourism investment by the proponent is facilitated, along with the increased profile for Lake Macquarie tourism and the local employment, economic and social benefits that will accrue.

5.4 CONCLUSION

The inclusion of a component of residential land use and serviced meeting rooms as permitted uses on the subject land is in itself a relatively simple request ie. an extension of the adjoining residential use. These uses are consistent with the context and analysis of the site and surrounds, with little to preclude their suitability - other than the constraints of the decision to zone the site for tourism. A component of residential within the tourist development lessens an otherwise strong distinction between the tourism site and adjacent community, and is highly compatible with public access principles for the site.

Given the zoning decision and desire for the site to provide for tourism, at an LEP level, it is deemed appropriate to link the scale of residential land use to the scale of tourism and related land uses. This is to ensure that as a land use, residential does not dominate the site and that the 6(2) zone objectives are achieved for the total site development.

The Part 3A Concept Plan, rather than the LEP amendment itself, provides the ideal process to establish site planning principles - many of which are relevant whether residential land use was included or not.

Appendix A

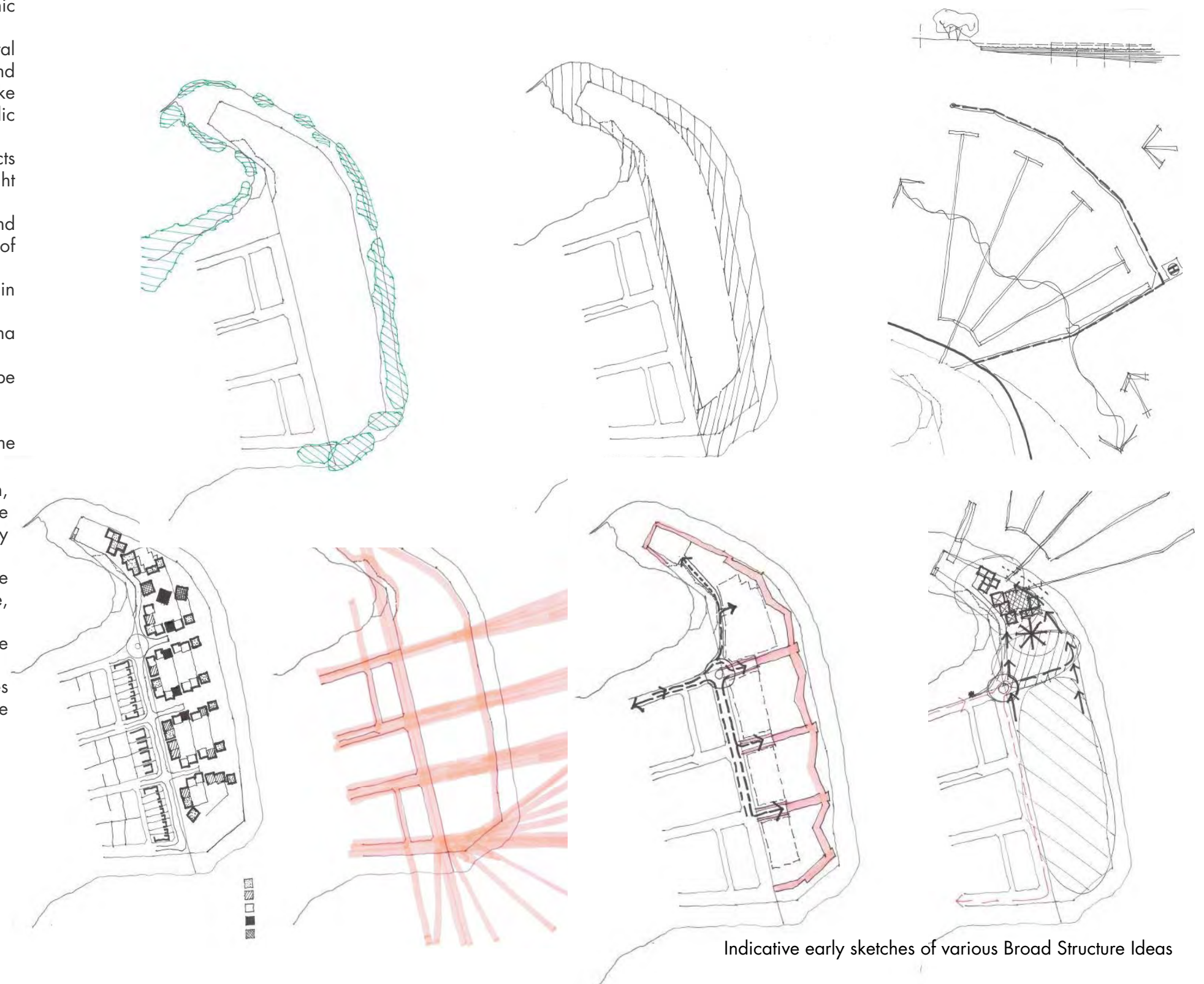
Part 3A Concept Plan

Summaries

B1 OVERVIEW – BROAD STRUCTURE PRINCIPLES

The key components of the concept plan to provide direction on achieving these principles follow in subsequent pages.

- Create a destination and provide social and economic opportunities;
- Locate and design marina to limit impacts on coastal processes and aquatic ecology, to provide modern facilities and environmental management; to provide for staging based on take up rates and to provide for public access and some public berthing.
- Locate helicopter landing facility to limit noise impacts associated with flight path and landing/take off, preclude night use and limit day use.
- Maximise pedestrian public access and amenity around and through the site to the lakes foreshore (apart from to the edge of the saltmarsh bay), and along marina breakwater;
- Provide visual link extending from approved roads from within the subdivision behind the site through to the lakes foreshore;
- Maximise setbacks to the lake edge other than at the marina interface;
- Maximise open space, pedestrian access and landscape opportunities;
- Enhance existing foreshore vegetation;
- Maximise the opportunity for views of the lake from both the private and public domain;
- Provide a mix of uses to generate vibrancy, social interaction, activity and surveillance and ensure building uses are appropriately located to achieve the greatest level of synergy between them;
- Ensure that the majority of buildings do not protrude past the existing tree line when viewed from east and south on the lake, with built form to break down as foreshore approaches;
- Ensure a destination and focal point is created through the incorporation of taller iconic buildings within the village square.
- Ensure a built form along Trinity Point Drive that addresses that road and transitions with the anticipated residential scale opposite;
- Ensure that the proposal can meet SEPP 65 principles (to be determined as part of future project applications) and provide a high quality residential environment including communal and private open space, solar access and daylight, visual privacy, natural ventilation, energy and water efficiency,
- Retain European historical assets (sundial, grotto) and provide for indigenous and european site interpretation and environment interpretation as part of creating a sense of place;
- Design stormwater and infrastructure to limit impacts on aquatic ecology and lake water quality;
- Design for flooding (including climate change implications) and acid sulphate soil management in the northern part of site;



Indicative early sketches of various Broad Structure Ideas

B2 PRINCIPLES, OBJECTIVES + URBAN DESIGN GUIDELINES

TRINITY POINT

INDICATIVE OUTCOME – summary figure

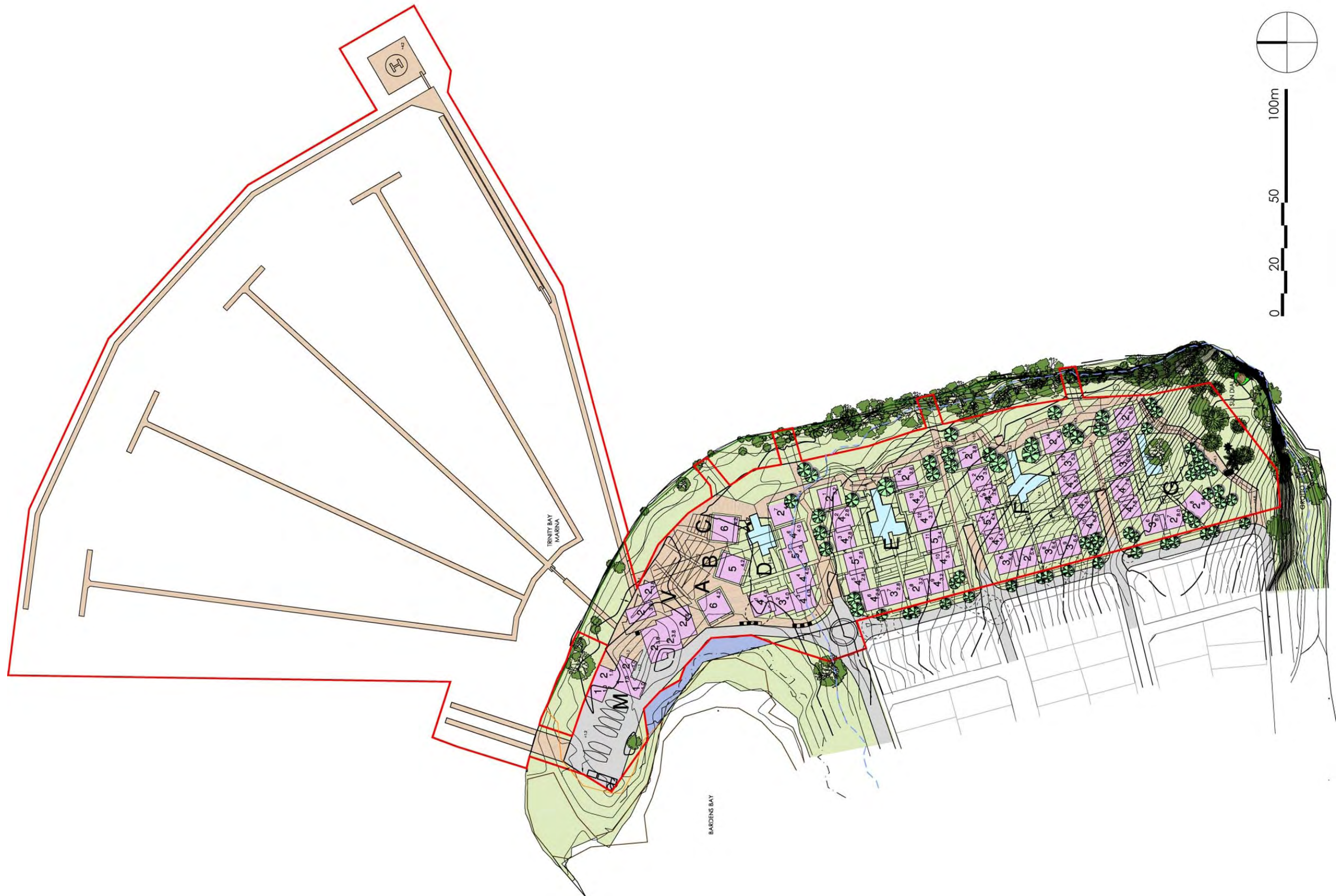
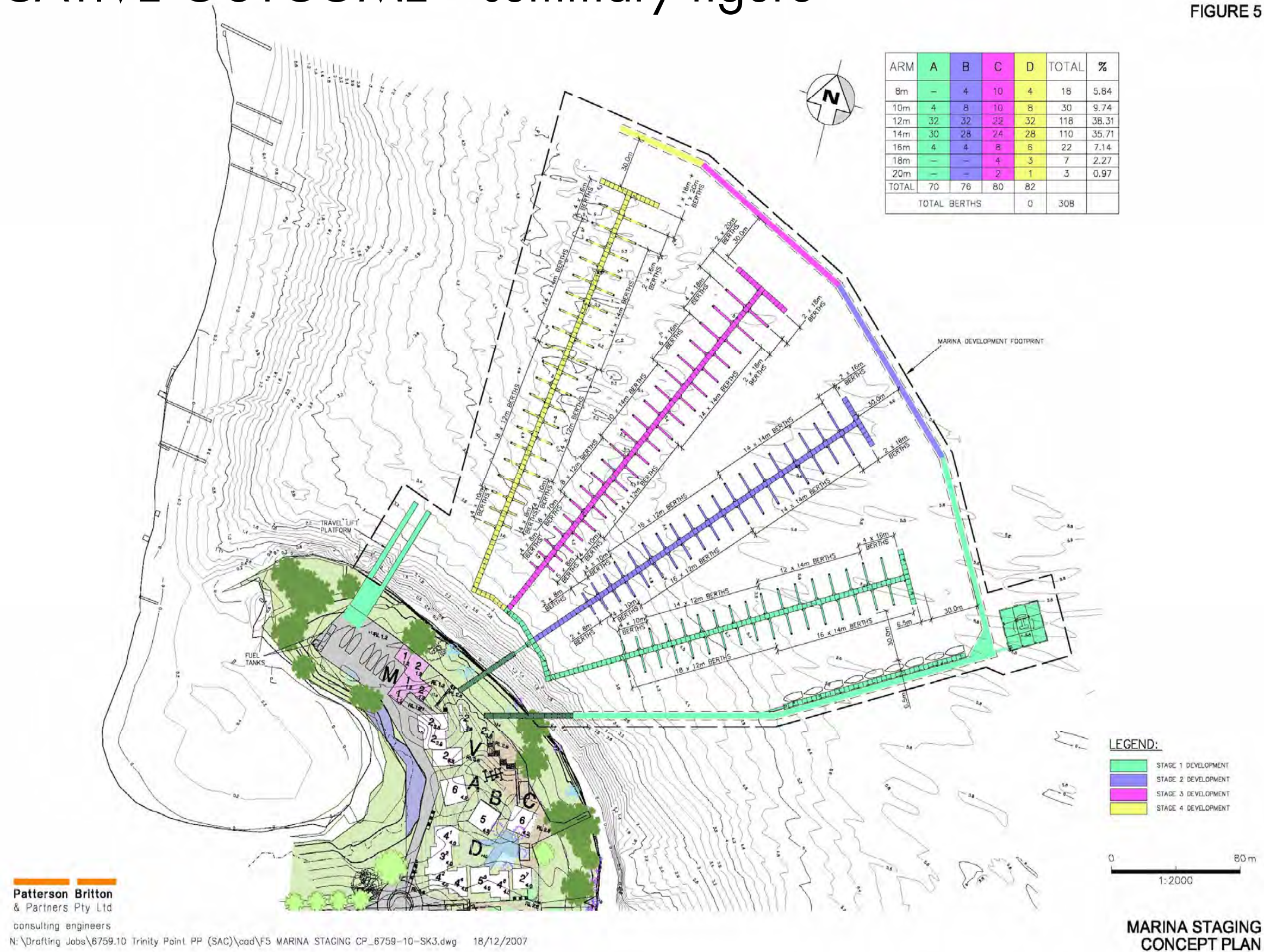


FIGURE 5



Appendix B

S117 Directions

Consistency with relevant S117 Directions

S. 117 Direction	What Council Must Do	Consistency	Comment regarding consistency	Consistent Yes/No
1.0 Employment & Resources				
1.3 Mining, Petroleum Production and Extractive Industries	<p>(4) In the preparation of a draft LEP affected by this direction, the council shall:</p> <p>(a) consult the Director-General of the Department of Primary Industries (DPI) to identify any:</p> <p>(i) resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and</p> <p>(ii) existing mines, petroleum production operations or extractive industries occurring in the area subject to the draft LEP, and</p> <p>(b) seek advice from the Director-General of DPI on the development potential of resources identified under (4)(a)(i), and</p> <p>(c) identify and take into consideration issues likely to lead to land use conflict between other land uses and :</p> <p>(i) development of resources identified under (4)(a)(i), or</p>	<p>(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the provisions of the draft LEP that are inconsistent are of minor significance.</p>	<p>The Department of Primary Industry DPI was consulted under s.62 during preparation of the draft plan, and no issues were raised relating to natural resources and operations.</p> <p>The draft LEP is therefore consistent with this direction.</p>	Yes

- (ii) existing development identified under (4)(a)(ii).
- (5) Where a draft LEP prohibits or restricts development of resources identified under (4)(a)(i), or proposes land uses that may create land use conflicts identified under (4)(c), council shall:
 - (a) provide the Director-General of DPI with a copy of the draft LEP and notification of the relevant provisions,
 - (b) allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the draft LEP, and
 - (c) include a copy of any objection and supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) under section 64 of the *Environmental Planning and Assessment Act 1979*.

2.0 Environment & Heritage

2.1	Environmental Protection Zones	(4) A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas. (5) A draft LEP that applies to land within an existing environmental protection	(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the	The draft LEP is limited to existing 6(2) zoned lands, which are not required for the protection of any environmentally sensitive lands. The draft LEP does not propose to amend or alter any existing provisions of the Lake Macquarie LEP 2004 in respect of environmental protection	Yes
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zone or land otherwise identified for environmental protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying any development standards or subdivision controls that apply to the land).

Director-General) that the provisions of the draft LEP that are inconsistent are:

(a) justified by a strategy which:

- (i) gives consideration to the objective of this direction, and
- (ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and
- (iii) is approved by the Director-General of the Department of Planning, or

(b) justified by an environmental study prepared in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* which gives consideration to the objective of this direction, or

(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or

(d) of minor significance.

standards contained within part 5 of the LEP.

The draft LEP is therefore consistent with this direction.

2.2	Coastal Protection	<p>(4) A draft LEP shall include provisions that give effect to and are consistent with:</p> <p>(a) the <i>NSW Coastal Policy: A Sustainable Future for the New</i></p>	<p>(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the</p>	<p>Having regard for the aims of the proposed draft LEP it is of a minor planning significance in the context of this direction.</p> <p>The introduction of a provision to give effect to the NSW Coastal Policy should be considered within a</p>	Yes
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		<p><i>South Wales Coast 1997</i>, and</p> <p>(b) the <i>Coastal Design Guidelines 2003</i>, and</p> <p>(c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).</p>	<p>Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and</p> <p>(iii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>(C) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>	<p>City wide LEP at which time the matter can be dealt with in a comprehensive manner.</p>	
2.3	Heritage Conservation	<p>(4) A draft LEP shall contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the</p>	<p>(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the draft LEP</p>	<p>Having regard for the aim of the proposed draft LEP and the heritage provisions within the Lake Macquarie LEP 2004 the draft plan is considered to be of minor planning significance in the context of this direction.</p> <p>The draft plan does not amend the heritage</p>	Yes

	<p>historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the council, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>complies with Part 5 of the <i>Heritage Act 1977</i>, and</p> <p>(a) the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or</p> <p>(b) the provisions of the draft LEP that are inconsistent are of minor significance.</p>	provisions of the Lake Macquarie LEP 2004.	
2.4	<p>Recreation Vehicle Areas</p> <p>(4) A draft LEP shall not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <p>(a) where the land is within an environmental protection zone,</p> <p>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</p> <p>(c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the council has taken into consideration:</p>	<p>(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular</p>	The draft LEP does not introduce any provisions with respect to the development of land for recreational vehicle areas.	Yes

	<p>(i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September, 1985</i>, and</p> <p>(ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>.</p>	<p>site or sites), and</p> <p>(iii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>
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3.0 Housing Infrastructure and Urban Development

3.1	Residential Zones	<p>(4) A draft LEP shall include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p>	<p>(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the</p>	<p>Having regard for the aims of the draft plan it is of minor planning significance in the context of this direction. Broader provisions with respect to provision of housing are more appropriately introduced by way of a city wide LEP.</p> <p>The draft plan applies to land which can be serviced and provide for the efficient use of existing infrastructure and therefore not inconsistent with this direction.</p>	Yes
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		<p>(d) be of good design.</p> <p>(5) A draft LEP shall, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	<p>subject of the draft LEP (if the draft LEP relates to a particular site or sites), and</p> <p>(iii) 'is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>		
3.2	Caravan Parks & Manufactured Home Estates	<p>(4) In identifying suitable zones, locations and provisions for caravan parks in a draft LEP, council shall:</p> <p>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</p> <p>(b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would</p>	<p>(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular</p>	This draft LEP does not alter the status quo relating to caravan parks and manufactured home estates.	Yes

		<p>facilitate the retention of the existing caravan park.</p> <p>(5) In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a draft LEP, council shall:</p> <p>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</p> <p>(b) take into account the principles listed in clause 9 of SEPP 36 (which councils are required to consider when assessing and determining the development and subdivision proposals), and</p> <p>(c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.</p>	<p>site or sites), and</p> <p>(iii) 'is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>		
3.3	Home Occupations	<p>(4) Draft LEPs shall permit home occupations to be carried out in dwelling houses without the need for development consent.</p>	<p>(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent with the terms of this direction are of minor significance.</p>	<p>Schedule 1 of Lake Macquarie LEP 2004 provides that Home Occupations may be carried out in all zones as "exempt" development". The draft LEP does not alter this provision. Accordingly the draft LEP is not inconsistent with this direction.</p>	Yes

3.4	Integrated Land Use and Transport	<p>(4) A draft LEP shall locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) <i>Improving Transport Choice - Guidelines for planning and development</i> (DUAP 2001), and</p> <p>(b) <i>The Right Place for Business and Services - Planning Policy</i> (DUAP 2001).</p>	<p>(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <ul style="list-style-type: none"> (i) gives consideration to the objective of this direction, and (ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and (iii) is approved by the Director-General of the Department of Planning, or <p>(b) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>	<p>The site is part of the existing urban area and directly adjoins a new residential estate. The introduction of residential land use via the draft plan is consistent with the immediate locality and is of minor planning significance relative to this direction.</p>	Yes
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4.0 Hazard and Risk

4.1	Acid Sulfate Soils	<p>(4) Council shall consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a draft LEP that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.</p> <p>(5) When a council is preparing a draft LEP to introduce provisions to regulate works in acid sulfate soils, those provisions shall be consistent with:</p> <ul style="list-style-type: none">(a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or(b) such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines. <p>(6) A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence</p>	<p>(8) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <ul style="list-style-type: none">(a) justified by an environmental study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or(b) of minor significance.	<p>Part of the subject land is identified as being within the Acid Sulfate Soils Planning maps. An acid sulphate assessment and management plan has been prepared as part of Part 3A Concept Plan documentation. The draft LEP does not in itself intensify land uses relative to acid sulphate soils, given the sites current zoning.</p> <p>Clause 35 of LMLEP 2004 provides provisions to regulate works in acid sulfate soils. The draft LEP does not propose to alter these provisions.</p>	YES
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of acid sulfate soils. Council shall provide a copy of any such study with its statement to the Director-General of the Department of Planning under section 64 of the EP&A Act.

- (7) Where provisions referred to under paragraph (5) of this direction have not been introduced and council is preparing a draft LEP that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the draft LEP must contain provisions consistent with paragraph (5).

4.2	Mine Subsidence and Unstable Land	<p>(4) When preparing a draft LEP that would permit development on land that is within a Mine Subsidence District a council shall:</p> <p>(a) consult the Mine Subsidence Board to ascertain:</p> <p>(i) if the Mine Subsidence Board has any objection to the draft Local Environmental Plan, and the reason for such an objection, and</p> <p>(ii) the scale, density and type of development that is appropriate for the potential level of subsidence, and</p> <p>(a) incorporate provisions into the draft Local Environmental Plan that are consistent with the recommended scale, density and type of development recommended</p>	<p>(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and</p> <p>(ii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by an environmental</p>	<p>Consultation has occurred with the Mine Subsidence Board during preparation of the draft concept plan. The Mine Subsidence Board, through s62 consultations, has no objection to the draft LEP.</p>	Yes
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	<p>under (4)(a)(ii), and</p> <p>(b) include a copy of any information received from the Mine Subsidence Board with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) under section 64 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>A draft LEP shall not permit development on unstable land referred to in paragraph 3(b).</p>	<p>study prepared in accordance with section 57 of the <i>Environmental Planning and Assessment Act 1979</i> which gives consideration to the objective of this direction, or</p> <p>© in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>		
4.4	<p>Planning for Bushfire Protection</p> <p>(4) In the preparation of a draft LEP a Council shall consult with the Commissioner of the NSW Rural Fire Service under section 62 of the EP&A Act, and take into account any comments so made,</p> <p>(5) A draft LEP shall:</p> <p>(a) have regard to <i>Planning for Bushfire Protection 2006</i>,</p> <p>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</p> <p>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</p> <p>(a) A draft LEP shall, where development</p>	<p>(7) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the draft LEP.</p>	<p>Part of the land is bushfire prone land. The inclusion of proposed uses by the draft LEP is not precluded by consideration of Planning for Bushfire Protection. A Rural Fire Service opinion should be sought by Council, as they are not listed in the s62 consultations undertaken to date.</p>	Yes

is proposed, comply with the following provisions, as appropriate:

- (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
 - (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the draft LEP permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,
 - (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
 - (d) contain provisions for adequate water supply for firefighting purposes,
 - (e) minimise the perimeter of the area of land interfacing the hazard which may
-

- be developed,
- (f) introduce controls on the placement of combustible materials in the Inner Protection Area.

5.0 Regional Planning

5.1	Implementation of Regional Strategies	(4) Draft LEPs shall be consistent with a regional strategy released by the Minister for Planning.	(5) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy: (a) is of minor significance, and (b) the draft LEP achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.	The Lower Hunter Regional Strategy is a land use planning document that outlines the provision of sufficient, appropriately placed housing and employment land to cater for the Region's predicted growth over the next 25 years. Having regard for the aims of the draft plan it is not inconsistent with the regional strategy and supports the local and regional centres.	Yes
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6.0 Local Plan Making

6.1	Approval and Referral Requirements	(4) A draft LEP shall: (a) minimise the inclusion of provisions that require the concurrence, consultation or	(5) A draft LEP must be substantially consistent with the terms of this direction.	The draft plan does not contain provisions requiring concurrence, consultation or referral of a Minister or public authority.	Yes
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referral of development
applications to a Minister or public
authority, and

(b) not contain provisions requiring
concurrence, consultation or
referral of a Minister or public
authority unless the council has
obtained the approval of:

(i) the appropriate Minister or
public authority, and

(ii) the Director-General of the
Department of Planning (or an
officer of the Department
nominated by the Director-
General),

prior to a certificate under section
65 of the Act being issued, and

(c) not identify development as
designated development unless the
council:

(i) can satisfy the Director-General of the
Department of Planning (or an officer
of the Department nominated by the
Director-General) that the class of
development is likely to have a
significant impact on the
environment, and

(ii) has obtained the approval of the
Director-General of the Department
of Planning (or an officer of the
Department nominated by the
Director-General) prior to a
certificate being issued under section
65 of the Environmental Planning and
Assessment Act 1979.

6.2	Reserving Land for Public Purposes	<p>(4) A draft LEP shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).</p> <p>(5) When a Minister or public authority requests a council to reserve land for a public purpose in a draft LEP and the land would be required to be acquired under Division 3 of Part 2 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>, the council shall:</p> <p>(a) reserve the land in accordance with the request, and</p> <p>(b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and</p> <p>(c) identify the relevant acquiring authority for the land.</p> <p>(6) When a Minister or public authority requests a council to include provisions in a draft LEP relating to the use of any land reserved for a public purpose before that land is acquired, the council shall:</p> <p>(a) include the requested provisions,</p>	<p>(8) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:</p> <p>(c) with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or</p> <p>(d) the provisions of the draft LEP that are inconsistent with the terms of this direction are of minor significance.</p>	The draft LEP does not create, alter or reduce existing zonings or reservations of land for public purposes	Yes
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or

(b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.

(7) When a Minister or public authority requests a council to include provisions in a draft LEP to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the council shall rezone and/or remove the relevant reservation in accordance with the request.

6.3 Site Specific Provisions

A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- (a) allow that land use to be carried out in the zone the land is situated on, or
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are of minor significance.

The draft LEP is inconsistent with this direction in so far as it provides additional requirement relating to the proposed addition land uses under schedule 7 of LMLEP. This inconsistency is justified having regard for the minor planning significance of the proposed draft plan, and the limited additional requirements imposed.

No / Justification appropriate given the minor significance of the proposed draft plan

any development standards or requirements in addition to those already contained in that zone, or

- (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A draft LEP shall not contain or refer to drawings that show details of the development proposal.
