



27 November 2014

Legislative Council  
Select Committee on the Planning Process in Newcastle and the broader  
Hunter Region  
Parliament House  
Macquarie Street  
SYDNEY 2000

Dear Mr Nile

**Subject: Response to questions on notice taken during Select Committee inquiry into the planning process in Newcastle and the broader Hunter Region**

I refer to the Select Committee inquiry into the planning process in Newcastle and the broader Hunter Region that was held at Newcastle on Friday 7 November 2014 at 10.30 a.m.

Please find attached the corrected transcript from the inquiry (Attachment 1).

The response to questions taken on notice during the inquiry are provided below. I also provide some additional information regarding Amendment No.53 to Lake Macquarie Local Environmental Plan 2004 along with six attachments.

### **Response to questions taken on notice**

*The Hon. LYNDA VOLTZ: You possibly do not have the details here but could you take on notice the development application and provide it to the Committee as well as the number of residences and commercial properties and the floor space ratio being used on that site?*

Please find included at Attachment 2, a copy of the amended development application package for DA/1774/2013. This package includes the plans for the development, statement of environmental effects and other supporting documentation. These documents were submitted to Council on 25 August 2014.

The amended development application includes 91 dwellings with 22 dwellings on the land zoned 3(1) Urban Centre (Core) and 69 dwellings on the land zoned 2(2) Residential (Urban Living).

The amended development application includes three retail / commercial floor spaces with a total floor space of 325m<sup>2</sup>.

Lake Macquarie Local Environmental Plan 2004, under which the application is required to be assessed does not specify a floor space ratio for the site or development. Additionally, Lake Macquarie Local Environmental 2014, which commenced on 10

ABN 81 06 027 868

"Quality Lifestyle"

Office of the General Manager - Lake Macquarie City Council

126-138 Main Road Speers Point NSW 2284 Box 1906, Hunter Region Mail Centre NSW 2310

Phone: 02 4921 0220 Fax: 02 4921 0215 Email: council@lakemac.nsw.gov.au Website: www.lakemac.com.au

October 2014, does not specify a floor space ratio for the site or development. In this regard, the floor space ratio is not calculated for this development.

**Mr DAVID SHOEBRIDGE:** *Could you provide us on notice with the rationale, if you can, about that narrow notification because it is the subject of quite strident criticism that I have received from the local community?*

Council wrote to 264 landowners to advise about the public exhibition of Amendment No. 53. A public notice was published in the Newcastle Herald on Saturday 16 October 2010 and the freely delivered "The Post" newspaper on Wednesday 20 October 2010.

It was part of Council procedure at the time, for owners of land subject to the LEP amendment and those adjoining to be notified in writing of the public exhibition.

All legislative requirements were complied with regarding the exhibition of Amendment No. 53.

Seven submissions were received, comprising of four from State Government agencies and three from members of the public. Details of submissions and a planning response were contained in the report considered by Council's City Strategy Committee Meeting on 7 March 2011 – 11STRAT008. (Attachment 3)

The Department of Planning & Environment's "Guide for preparing Local Environmental Plans" contains advice on page 24 about the public exhibition of Planning Proposals:

*"Public exhibition of the planning proposal is generally undertaken in the following manner:*

- *notification in a newspaper that circulates in the area affected by the planning proposal*
- *notification on the website of the RPA*
- *notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them."*

**Mr DAVID SHOEBRIDGE:** *Could you perhaps provide on notice a consideration of how it was you came to the figure and what information you relied upon to come to the figure? And, if possible, could you compare that with the current development application?*

There was no specific proposal/concept from the landowner at the time amendment No. 53 was being assessing. A yield estimate is provided either, based on a development outcome a landowner/proponent is seeking or, based upon an already published guide.

The estimate of a yield of 50 dwellings provided in the Planning Proposal was based on 12 dwellings per hectare, which is the figure published in Lower Hunter Regional Strategy.

The Planning Proposal was not part of the exhibition material. Due to changes to the *Environmental Planning and Assessment Act 1979*, Amendment No. 53 was converted to a Planning Proposal following public exhibition. The estimate of yield was only provided in the Planning Proposal.

The total area of the development site at 142 to 146 Dudley Road Whitebridge and 2 to 4 Kopa Street Whitebridge is approximately 24,500m<sup>2</sup>, which is broken down per zone as follows:

- Land zoned 2(2) Residential (Urban Living) is approximately 19,000m<sup>2</sup>
- Land zoned 3(1) Urban Centre (Core) is approximately 1,820m<sup>2</sup>
- Land zoned 7(2) Conservation (Secondary) is approximately 4,000m<sup>2</sup>.

With 22 dwellings proposed on the land zoned 3(1) Urban Centre (Core) the site density is equal to 120 dwellings per hectare, for that land zoned 3(1). For the 69 dwellings on the land zoned 2(2) Residential (Urban Living) the site density is equal to 36 dwellings per hectare, for that land zoned 2(2).

The overall gross density of the development, which includes half the width of the roads fronting the development site and the 7(2) zoned lands, is 34 dwellings per hectare.

Council's SEPP 65 panel have considered the application, in particular the recent amended proposal, and have specifically commented on, and supported the density of the development.

The application is being assessed under the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000. Section 79C of the Act requires the consent authority to take into consideration, as is relevant to the development application:

*(a) the provisions of:*

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*

*that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

As such, Section 79C(a)(i) requires consideration of Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) which zones the land 2(2) Residential, 3(1) Urban Centre and 7(2) Conservation. LMLEP 2004 does not prescribe a density within any of the zones. The zone objectives for land zoned 2(2) is, in part, to *"provide for medium and high density housing"*. Density is not nominated within any of the zones nor within any other provision or control within LMLEP 2004, as is required to be considered under the Environmental Planning and Assessment Act, 1979.

The development is being assessed by Council officers, but has not, to date, been determined. The application will be determined by the Hunter and Central Coast Joint Regional Planning Panel.

**Mr DAVID SHOEBRIDGE:** *Could you provide the Committee on notice with what advice your environmental experts provided.*

An Environmental Review was prepared for Amendment No. 53 instead of a Local Environmental Study (LES) based on advice from the NSW Department of Planning advising that a LES was not required. The Environmental Review identifies opportunities and constraints of the subject land, considers the broad range of social, environmental and economic matters that inform the rezoning process, and addresses strategic and statutory planning considerations.

Council's Environmental Planner was consulted during the preparation of the Environmental Review, undertook a site inspection and recommended that *"the following buffers be applied:*

- *Where vegetation adjoins a creekline - 40m buffer either side of embankments,*
- *In other areas - 20m buffer to support vegetation health, species movement and visual amenity."* (Attachment 4)

The width of the 7(2) Conservation (Secondary) Zone along the edge of the Fernleigh Track at Whitebridge is 20m, which reflects the advice of Council's Environmental Planner.

Additionally, during public exhibition of draft Amendment No. 53, Council's Environmental Planners considered the proposed zones and advised that *"the proposed zones look OK"* and *"I had discussions about this, and inspected some of the sites. I am reasonably comfortable with what is proposed."* (Attachment 5)

**Additional Information regarding Amendment No. 53.**

Amendment No 53 to Lake Macquarie Local Environmental Plan 2004 (LEP 2004) rezoned a proposed state road corridor, which was abandoned by the Minister for Roads in June 2006. The corridor covered approximately 121 Ha and traversed approximately 10 km of land from the local government area boundary at Highfields to Dudley Road, Whitebridge and from Oakdale Road, Gateshead to Belmont.

Amendment No. 53 rezoned land from 5 Infrastructure Zone to various zones as outlined in the table below.

<b>Zone</b>	<b>Area (ha)</b>
2(1) Residential	1.48
2(2) Residential (Urban Living)	3.1
3(1) Urban Centre (Core)	0.18
6(2) Tourism and Recreation	2.7
7(1) Conservation (Primary)	13.66
7(2) Conservation (Secondary)	69.74
7 (3) Environmental (General)	30.31

The zones were determined based on an Environmental Review (Attachment 6) undertaken by Council staff, advice from various staff specialists, an assessment of the objectives of Council's Lifestyle 2020 Strategy and the Lower Hunter Regional Strategy and an assessment of the characteristics and suitability of the land. The land use zones identified in Amendment No. 53 are predominantly the same as the land use zones of adjoining land.

Should you require further information, please contact Council's Principal Strategic Planner,

Yours sincerely

**Brian Bell**  
**General Manager**