

## **Statement of Environmental Effects**

**Proposed Development** | Four (4) Lot Subdivision (3 Residential Lots & 1 Conservation Lot), subject to clause 4.1B

**Property Details** | 33 Dunshea Avenue TEA GARDENS NSW 2428

**Lot/DP** | Lot 1 DP 1119743

**Property Owners** | Paul and Connie Ryman

20 December 2024

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## 1. Summary

### 1.1. Overview

This proposal seeks development consent for the subdivision of land pursuant to Clause 4.1B of the Great Lakes LEP 2014. The proposal seeks to create four (4) lots, comprising three (3) lots for residential use and one (1) conservation lot.

A request to vary a development standard pursuant to clause 4.6 of the Great Lakes LEP 2014 accompanies this proposal. The request seeks a variation to the area of land required for the residential lots, being no less than 1 hectare, as prescribed in Clause 4.1B (3)(b).

It is proposed that the conservation lot be dedicated to Council. A letter of offer and draft Voluntary Planning Agreement also accompanies this proposal.

### 1.2. Scope of Report

This Statement of Environmental Effects has been prepared to accompany the development application for the proposed development and provides information as required by the *Environmental Planning and Assessment Act 1979* (EP&A Act) to assist in the assessment of the proposal. This document addresses matters that are to be considered by the consent authority under the provisions of clause 4.15 of the EP&A Act.

A description of the subject site is provided in Section 2 of this document. Details of the proposed development are contained within Section 3. An assessment against the relevant state legislation, Environmental Planning Instruments, the Great Lakes DCP and local policies are provided in Section 4.

### 1.3. Background and Pre-lodgement Advice

A concept for the proposed development was presented to MidCoast Council's Development Assessment Panel at a pre-lodgement meeting held on Tuesday 30 January 2024. The concept discussed was similar to the proposed subdivision plan, however the site areas of the concept plan ranged from 1036m<sup>2</sup> – 7676m<sup>2</sup>.

Following further investigation into the site's characteristics and constraints, particularly with regards to mature vegetation and bushfire setback requirements, the location of the proposed lot boundaries have been modified. The proposed subdivision layout and site

design seeks to maximise the retention of mature trees and minimise disturbance to the adjacent wetland. The resulting site areas of the proposed lots have therefore been reasonably reduced and range from 974m<sup>2</sup>-4614m<sup>2</sup>.

Advice received at this meeting was generally supportive of the concept and advice was provided by relevant Council Officers across a range of disciplines. This advice is summarised below:

- i. Planning – Proposal must demonstrate improvement and protection which can only be achieved through dedication of the land to Council. The concept has merit however needs to demonstrate constraints can be mitigated. A request to vary the development standard via clause 4.6 would be required due to area of the residential lots being non-compliant with Clause 4.1B.
- ii. Stormwater Water Quality - Advice provided by Council's Water Quality team at this meeting indicated that the stormwater quality provisions of the DCP do not apply.
- iii. Engineering – A flood impact and risk assessment would need to accompany the proposal to demonstrate Lots 101 and 103 are suitable to support a dwelling and are capable of evacuation during a flood event. Any stormwater easements need to be covered by an easement. The proposal needs to demonstrate compliance with Council's DCP (Subdivision).
- iv. Water and Sewer – A water and sewer servicing strategy is required to demonstrate Lots 101 and 103 are capable of being serviced.
- v. Ecology – The site contains high biodiversity value land. The proposed concept seeks to retain this land within a conservation lot. The dedication of the conservation lot to Council will demonstrate compliance with Clause 4.1 from a biodiversity perspective. A Planning Agreement is required to accompany the proposal. A Tree Survey should accompany the proposal.

The above advice has been carefully considered and all requested supporting documents and plans have been provided with this application.

#### **1.4. Site History**

Lot 1 DP 1119753 was registered on the 13 October 2008 resulting from the subdivision of Lot 550 DP 1051765 (Subdivision Certificate No. 1/2008). The subdivision created three (3) lots, including the subject allotment, Lot 1. Several easements and restrictions were placed on Lot 1 upon registration of the title including easements from sewer and stormwater drainage, restrictions to establish a building envelope, restrictions for bushfire protection purposes and for the management of domestic animals.

Upon registration of the land, Lot 2 was dedicated to Council for the purpose of a drainage reserve. Lot 3 has since been further subdivided to create an extension of the adjoining residential estate and presently contains established dwellings.

A machinery shed was constructed on Lot 1 in 2010, subject to consent DA 496/2010. In 2011 consent was granted for the construction of a two-storey dwelling, garage and swimming pool, subject to consent issued for DA296/2011. The area surrounding the dwelling has been continuously maintained for bushfire protection and comprises a modified understorey with scattered mature trees. The remainder of the site to the south has been moderately managed to reduce fuel loads, however remains undeveloped.

## 2. Site Description

<b>Property Address:</b>	33 Dunshea Avenue TEA GARDENS NSW 2423
<b>Land Description:</b>	Lot 1 DP1119743
<b>Zoning:</b>	C2 Environmental Conservation
<b>Site Area:</b>	Total 21.238 hectares
<b>Owner:</b>	Paul and Connie Ryman

### 2.1. Site Details & Description

The subject land (“the site”) comprises land described as Lot 1 DP 1119743. The site is located at 33 Dunshea Avenue Tea Gardens and is characterised as a largely undeveloped allotment adjoining the village of Tea Gardens to the south. More than 90% of the land comprises significant wetland vegetation communities.

The irregular shaped allotment is split into two portions by Limekilns Road. The northern portion is bound by Dunshea Avenue along its northern boundary from which access is obtained. An established residential estate adjoins this portion of the site to the north which contains low density housing on standard residential allotments. The local cemetery and the Tea Gardens Country Club are located on land to the east. Adjoining land to the west is a large undeveloped allotment, also comprising significant wetland vegetation communities with several similar site characteristics as the subject site.

A dwelling, garage, shed and swimming pool are located in the north-eastern corner of the northern portion of the site. A driveway extending from the southern end of Dunshea Avenue provides primary access to the dwelling. The dwelling was constructed in 2011 and contains four (4) bedrooms, three (3) bathrooms with open plan living, kitchen and dining areas. The land immediately surrounding the dwelling site is managed, with the understorey comprising predominantly grasses. Several large eucalypt trees are scattered around the dwelling site.



The southern portion of the site is bound by the Myall River along its southern boundary. This portion of the site is tidal and supports protected mangrove species and wetlands vegetation communities. No access is available to this portion of the site. Adjoining land to the east and west also comprise large allotments, with similar site characteristics and vegetation communities.

The site has an area of 21.2 hectares and is zoned C2 Environmental Conservation, pursuant to the Great Lakes Local Environmental Plan 2014 (LEP 2014).

The site is classified as being bushfire prone land and flood prone land. A locality map and landuse zoning map depicting the subject land is provided in Figures 1 and 2 below.



**Figure 1 –Site Locality Plan**

*[source: Midcoast Council online mapping]*

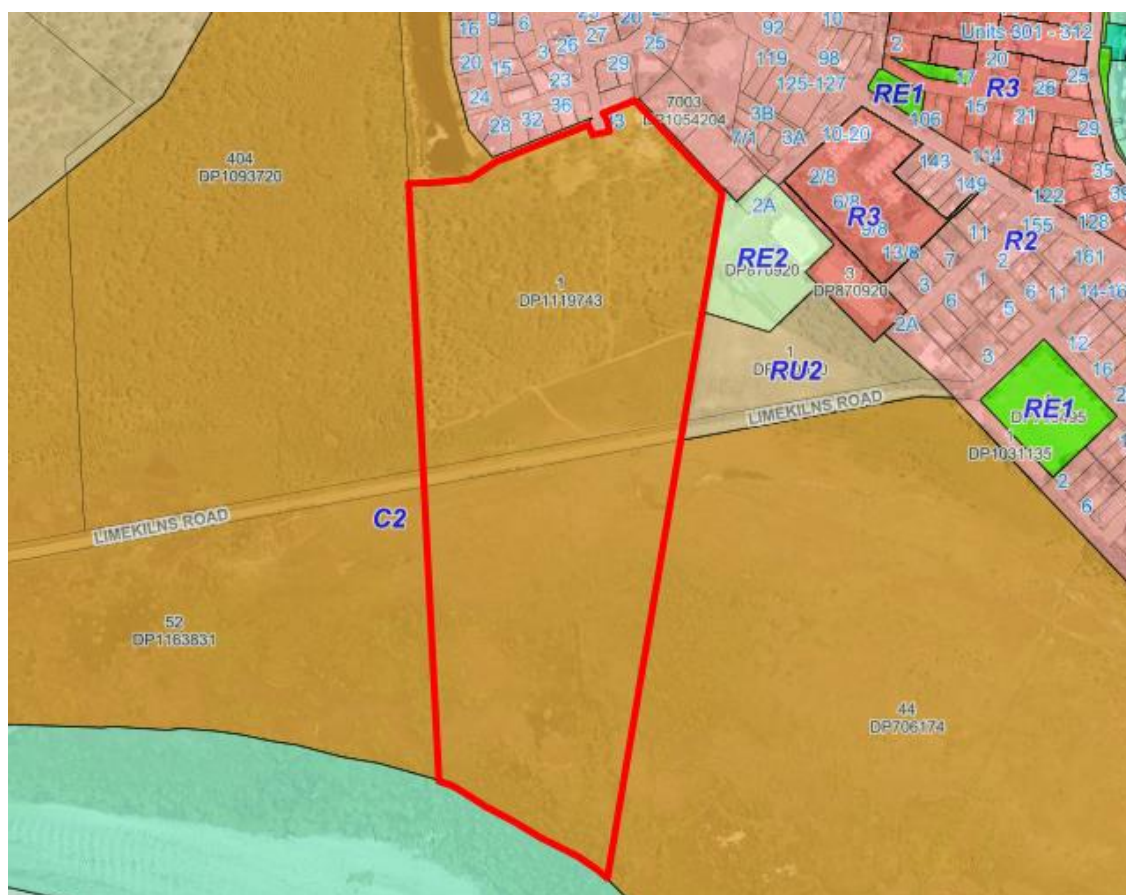
## 2.2. Site Context and Surrounding Area

Tea Gardens is a small coastal town located approximately 35 minutes' drive north of Raymond Terrace, the nearest urban centre. The site is located within the south-western part of the Tea Gardens, adjoining the south- eastern edge of the township. The site is

large predominantly undeveloped site with water frontage to the Myall River along its southern boundary

Tea Gardens is characterised by flat coastal land adjacent to the Myall River Estuary and lies approximately 3km west of the coastline. The region surrounding the small coastal community of Tea Gardens comprises rural and heavily vegetated lands.

The site is densely vegetated and comprises a significant wetland. The site contains an existing dwelling and ancillary structures in the north-eastern portion of the site. Access to the site is via Dunshea Avenue. Limekilns Road traverses through the central portion, east to west, of the site.



**Figure 2 – Site Land use Zoning Map**

**[source: MidCoast Council online mapping]**



## 2.3. Hazards

### 2.3.1. Bushfire

The site is classified as being bushfire prone land on maps held by Council and the NSW Rural Fire Service. A map depicting the subject land within the bushfire prone area map is provided in Figure 3 below.

A bushfire assessment report pertaining to the proposed development has been prepared by Bushfire and Environmental Management Consultancy (BEMC) and is contained in **Appendix B**.

### 2.3.2. Flooding

The subject land is identified as being flood prone land pursuant to the Great Lakes LEP 2014 Flood Planning map. A map depicting the subject land within the flood prone land mapped area is provided in Figure 4 below.

A Flood Impact and Risk Assessment pertaining to the proposed development has been prepared by a qualified and experience Flood Engineer, Torrent Consultancy, and is contained in **Appendix C**.

## 2.4. Topography and Soils Characteristics

The site comprises a relatively flat landform with a series of gentle undulations throughout. The land gently falls from north to south in an irregular manner across the site, extending downslope towards the Myall River.

The site is identified as containing predominately class 2 Acid Sulfate Soils, pursuant to Acid Sulfate Soils maps contained within the Great Lakes LEP 2014. A map depicting the site within the Acid Sulfate Soils mapped area is provided in Figure 5 below.



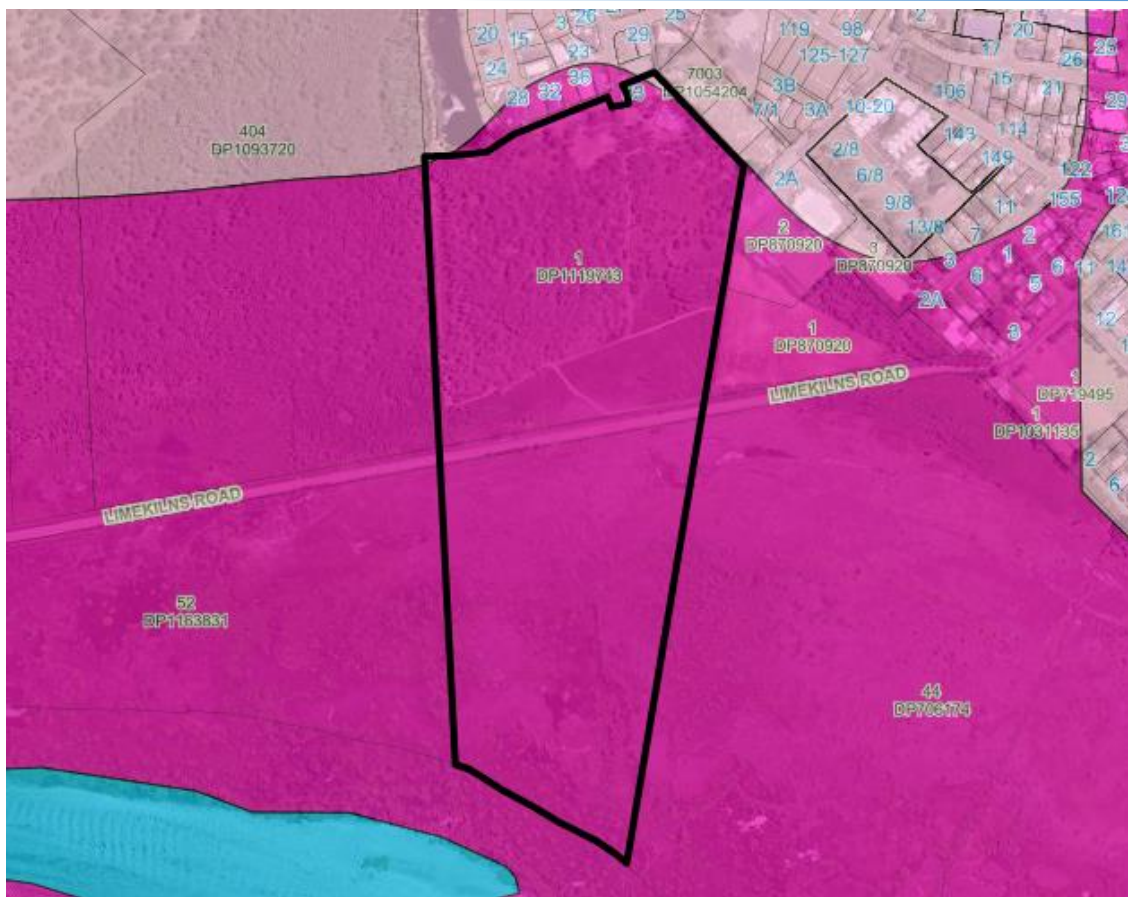
**Figure 3 – Bushfire Hazard Map**

*[source: Midcoast Council online mapping]*



**Figure 4 – Flood Hazard Map**

*[source: Midcoast Council online mapping]*



**Figure 5 – Acid Sulfate Soils Map**

*[source: Midcoast Council online mapping]*

## 2.5. Vegetation

The site comprises an extensive area of approximately 20 hectares of naturally-vegetated land. Vegetation communities on the site comprise Swamp Mahogany (*Eucalyptus robusta*) swamp forest and Broad-leaved Paperbark (*Melaleuca quinquenervia*), Swamp Oak swamp forest, Swamp Paperbark Shrubland, Coastal Saltmarsh and Mangrove Woodland Vegetation. The vegetation communities Swamp Sclerophyll Forest on Coastal Floodplain and Coastal Saltmarsh form part of the Endangered Ecological Communities which are recognised under the *Biodiversity Conservation Act 2016*.

The site comprises habitats which are in good to excellent ecological condition and which are likely to support very high value for threatened species such as koala, squirrel glider, wallum froglet and eastern curlew. The site is identified on the NSW Biodiversity Values Map as shown in Figure 6 below.





**Figure 6 – Biodiversity Values Map**

**[source: Midcoast Council online mapping]**

Vegetation within the northern part of the site, comprising approximately 1 hectare of land, has overtime been heavily modified. This portion of the site is located adjacent to an established low density residential area which comprises single dwellings on standard sized residential zoned allotments. An existing dwelling house and ancillary structures have been established in this portion of the site.

The northern portion of the site contains scattered mature trees with a heavily modified understory which predominantly comprises grasses. Plates 1 – 3 below depicts the current landscape and vegetation within the northern portion of the site.





***Plate 1 –Existing landscape looking south-east from existing driveway on proposed Lot 102***



***Plate 2 –Existing landscape looking north-east from the proposed building envelope on Lot 103***





***Plate 3 –Existing landscape looking south of the proposed building envelope on Lot 103***

## **2.6. Essential Services**

The existing dwelling within the northern portion of the site is currently serviced by reticulated water, sewer and electricity services. The site is also provisioned with a domestic waste collection service.

## **2.7. Easements and Restrictions on Title**

The site is burdened by several easements and restrictions on title. These easements were created at the time the site was registered as Lot 1 DP 1119743 and include:

- Easements to drain water in several locations
- Easement for Asset Protection Zone of 25m wide
- Restrictions on building outside designated area
- Restrictions on landscaping and storing flammable materials in designated locations on the site
- Restrictions on keeping of cats and dogs on the land



- Restrictions on filling land

## 2.8. Heritage

### 2.8.1. European Heritage

There are no items of European heritage listed as being present on the land. The subject land is not located within a heritage conservation area.

### 2.8.2. Aboriginal Heritage

An AHIMS search conducted identifies one (1) Aboriginal sites or places within 200m of Lot 1 DP 1119743, as shown below in Figure 6. The proposal does not include any physical works in the vicinity of the aboriginal site. As such the proposal will not cause any impact on the known Aboriginal Site.



**Figure 6 – AHIMS Search Result Map for Lot 1 DP1119743 [source: AHIMS Web Services]**

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## 2.9. Site Access

Legal and physical access is available directly from Dunshea Avenue frontage which provides suitable sight distances for vehicle egress.

Legal access is also available to the site from Limekilns Road however no physical access has been created by way of a formal driveway crossover extending from Limekilns Road.

### 3. Proposed Development

#### 3.1. Proposal Overview

Consent is sought for a four (4) lot torrens title subdivision of the site under the provisions of Clause 4.1B of the Great Lake LEP 2014. The proposal seeks to create three (3) large residential allotments in the north-eastern corner of the site and with one (1) conservation lot containing the residual portion of the land.

The site contains high ecological value given the wetland vegetation communities. Development on the site is significantly constrained over much of the site. An area around the existing dwelling, comprising approximately 1 hectare, has been disturbed and deemed suitable for additional residential development.

Plans for the proposed subdivision of the land are provided in **Appendix A**.

Table 1 below provides a summary of the parameters of the proposed subdivision.

**Table 1: Proposed Subdivision Lot Summary**

Proposed Lot No.	Proposed Area	Proposed Use
Lot 101	974.9m <sup>2</sup>	Residential lot
Lot 102	4614m <sup>2</sup>	Residential lot
Lot 103	4382m <sup>2</sup>	Residential lot
Lot 104	20.24 ha	Conservation Lot

##### 3.1.1. Residential Lots (Lots 101, 102, and 103)

The proposed residential allotments are located in the northern portion of the site, adjacent to the established residential area. Each lot contains a building envelope which confines all existing and future development to within these areas. All buildings envelopes have been located to enable future dwellings to achieve a BAL 29 construction level.

##### Proposed Lot 101

Proposed Lot 101 is located in the north-eastern corner of the allotment and is the smallest of the proposed lots, comprising a site area of 974.9m<sup>2</sup>. This site will contain an existing shed, previously approved subject to DA496/2010. It is proposed that a restriction be placed on the title of Lot 101 which ensures the existing shed is not used for habitable purposes or converted to a dwelling.

The proposed lot contains a building envelope which will be filled to achieve a finished service level of 2.9m AHD. No filling will be permitted outside the building envelope.

This site contains a large mature banksia tree located adjacent to the front boundary. To preserve and protect this unique tree, it is proposed that site access will be obtained via a right of carriageway placed over the existing driveway on proposed Lot 102. A restriction will also be placed on the lot to prohibit the removal of the mature banksia tree.

### Proposed Lot 102

Proposed Lot 102 adjoins Lot 101 to the south and comprises a site area of 4614m<sup>2</sup>. This lot contains the existing dwelling, garage and swimming pool, approved subject to DA 296/2011, which will be wholly located within the proposed building envelope on the site.

It is proposed that a positive covenant be placed on the title for a 17m wide APZ, adjacent to the lot's southern boundary. Six (6) trees are proposed to be removed to establish the AP as shown in the Landscaping Plan in **Appendix D**.

A right of carriageway over the existing driveway will be created to provide legal access to Lot 101. No physical change is required to the existing driveway to enable it to service both lots 101 and 102.

### Proposed Lot 103

Lot 103 adjoins Lot 102 to the west and will comprise a site area of 4382m<sup>2</sup>. The proposed lot contains a building envelope which will be filled to achieve a finished service level of 2.9m AHD. No filling will be permitted outside the building envelope.

The existing gravel access road will be removed, and a new driveway access will be constructed as shown on the plans in **Appendix A**. The proposed driveway will be established to a suitable finished surface level to facilitate evacuation of the site's occupants during a flood event.

It is proposed that a positive covenant be placed on the title for a 17m wide APZ, adjacent to the lot's southern boundary. Eleven (11) trees are proposed to be removed to establish the APZ as shown on the Landscaping Plan in **Appendix D**.

### 3.1.2. Conservation Lot (Lot 104)

The residual land will comprise Lot 104 and have a site area of 20.24 hectares. The proposed conservation provides linkages to adjoining vegetated areas on neighbouring properties. Proposed Lot 104 will wholly contain the wetland and land identified as having high ecological value.

To facilitate improved protection and enhancement of the land, it is proposed that this allotment be dedicated to Council as a public reserve for ecological conservation. A Letter of Offer by the landowners, Connie and Paul Ryman, and draft Planning Agreement is provided in **Appendix F**.

A restriction will also be placed on the title of proposed Lot 104 to ensure no future development is carried out on this land.

### 3.2. Access

Legal and physical access will be provided to each of the three (3) proposed residential allotments from Dunshea Avenue. The northern part of the site is located at the cul-de-sac head of Dunshea Avenue. The existing dwelling obtains access from a driveway extending from the street frontage.

This proposal seeks to retain the existing driveway access in its current form for proposed Lots 101 and 102. A right of carriageway over the existing driveway will be created to provide legal access to Lot 101.

A new driveway will be constructed for proposed lot 103, extending from the western side of the cul-de-sac head. Sewer services will be located adjacent to this driveway, as per the sewer servicing plan in **Appendix E**.

### 3.3. Proposed Easements and Restrictions on Title

The proposed subdivision seeks to rationalise the existing easements and restrictions on the land. As described in Section 2.7 above, the site is burdened by several easements and restrictions on title. It is proposed that the following easements, restrictions and covenants be created on the proposed lots as shown in Appendix A. This includes:

- i. Residential Lots (Lot 101,102,103):
  - Easement for Asset Protection Zone of 17m wide (Lot 102 and 103)
  - Restrictions on building outside designated area

- 
- Restrictions on keeping cats on the land
  - Restrictions on filling land outside building envelopes
  - Right of Carriageway (burdening Lot 102 to benefit Lot 101).
  - Restriction on the removal of a mature banksia adjacent to the front boundary (Lot 101)
- ii. Conservation Lot (Lot 104):
- No development permissible on land
  - Easement for Asset Protection Zone 25m wide (Northern portion of Lot 104 – Existing)



## 4. Planning Controls & Environmental Assessment

### 4.1 Rural Fires Act 1997

The site is mapped as bushfire prone. Section 100B of the Rural Fires Act 1997 requires that a bushfire safety authority must be obtained before undertaking development of bushfire prone land resulting in the subdivision of land.

A Bushfire Assessment Report, prepared by Bushfire and Environmental Management Consultants, is provided in **Appendix B**. This report addresses Clause 44 of the *Rural Fires Regulation 2013* to obtain a bushfire safety authority for the development. The report provides the following recommendations for the proposed development:

- i. At the commencement of building works and in perpetuity the property around the proposed development shall be maintained in accordance with the landscaping plan dated 23rd October 2024.
- ii. A building envelope is provided on all residential lots for which construction shall achieve a BAL 29 or lower construction level.
- iii. The existing dwelling on proposed Lot 102 is to remain and shall be upgraded to improve ember protection.
- iv. Any future development proposed on the lots shall be subject to further assessment and a Bushfire Assessment Report prepared in accordance with PBP 2019

### 4.1. Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016*, together with the *Biodiversity Conservation Regulation 2017*, outlines the framework for addressing impacts on biodiversity from development and clearing. It establishes a framework to avoid, minimise and offset impacts on biodiversity from development through the Biodiversity Offsets Scheme (BOS).

Thresholds for entry into the scheme include

- i. whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment; or
- ii. whether the amount of native vegetation being cleared exceeds a threshold area (see below); or
- iii. whether the proposal would have a significant impact on threatened communities or species – determined by the “5-part test”.

A review of the biodiversity values map confirms the site is mapped as containing important biodiversity values. The proposed development seeks to conserve these values in perpetuity through the creation of a conservation lot to be dedicated to Council.

The proposal requires some selective tree removal within the proposed residential lots to establish suitable Asset Protection Zones for building envelopes. A Landscape Plan is provided in **Appendix D** which identifies trees to be removed. Tree removal will not exceed the threshold and will not result in adverse impacts to any mapped biodiversity values. Therefore the Biodiversity Offset Scheme would not be triggered by this proposal.

## 4.2 Environmental Planning and Assessment (EP&A) Act 1979

The objects of the EP&A Act are:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed development is consistent with the objects of the EP&A Act, and will promote good design that is undertaken with careful consideration of the environmental values of the site. The assessment below provides justification for the development against the relevant matters that must be taken into consideration by the determining authority.

## 4.3 State Environmental Planning Policies

### 4.3.1 State Environmental Planning Policy (Resilience and Hazards) 2021

The *State Environmental Planning Policy (Resilience and Hazards) 2021* is applicable to the proposal. The site is identified as being located within a “coastal use area”, “coastal environment area”, “coastal wetlands area” and “coastal wetland proximity area”. A map depicting the site within the SEPP Coastal Management mapping area is provided in Figure 7 below.



**Figure 7 – SEPP (Resilience & Hazards) 2021 Coastal Management Mapping**  
[source: Midcoast Council online mapping]

The proposed development is for a subdivision. Future development will be contained to Lots 101, 102 and 103 which comprises land that has been previously disturbed and substantially cleared of vegetation. The proposed development is consistent with the

provisions contained within the SEPP. Detailed consideration of all relevant provisions of the SEPP is provided below:

Clause 2.09 Development on land within the <u>coastal wetland</u> area	
Consideration	Comment
Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> unless the consent authority is satisfied that the proposed development will not significantly impact on:	
(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or	The proposed subdivision will have no adverse impact on the ecological integrity of the site or upon the health of the adjacent wetland.
(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.	The proposed subdivision will have no significant impact on the quantity or quality of surface or ground water flows to and from the adjacent wetland.
Clause 2.10 Development on land within the <u>coastal environment</u> area	
Consideration	Comment
Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	The proposal is unlikely to impact on ecological or hydrological values in the area. The majority of the site will be conserved to ensure the wetland is conserved and protected from future development.
(b) coastal environmental values and natural coastal processes,	The proposal is unlikely to impact coastal environmental values or coastal processes.

(c) the water quality of the marine estate (within the meaning of the <i>Marine Estate Management Act 2014</i> ), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	The proposal will not impact on water quality in any marine estate.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	The proposal will not have any adverse impacts on native vegetation, fauna or their habitats, headlands or rock platforms.
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The proposal will not have any adverse impacts any existing public space, or access to or along foreshores.
(f) Aboriginal cultural heritage, practices and places,	An AHIMs search has identified one (1) known within 200m of the site however no physical works will be undertaken in the vicinity of the aboriginal site.
(g) the use of the surf zone	The proposal will not impact on the use of any surf zone.
Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The proposed development is suitably sited to avoid adverse impacts on the coastal environment.
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal will not have a significant impact on the coastal environment.
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	The proposal will not have a significant impact on the coastal environment.
<b>Clause 2.11 Development on land within the <u>coastal use area</u></b>	
<b>Consideration</b>	<b>Comment</b>
Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:	

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:	
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The proposal will not have any adverse impacts on any existing access to foreshores, beaches or headlands.
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The proposal will not impact views, overshadowing or wind funnelling of public places or foreshores.
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposed subdivision will not affect adjoining coastal foreshore lands and will not impact on visual amenity or scenic qualities of the coast, including coastal headlands.
(iv) Aboriginal cultural heritage, practices and places,	An AHIMs search has identified one (1) known within 200m of the site however no physical works will be undertaken in the vicinity of the aboriginal site.
(v) cultural and built environment heritage, and	The proposal does not affect any cultural or built environmental heritage
(b) is satisfied that—	
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	The proposed subdivision will not create any adverse impacts on the coastal environment.
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal will not have a significant impact on the coastal environment.
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The proposal will not have a significant impact on the coastal environment.
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The proposal will not impact the coastal built environment and desired character of the area pursuant to Council's planning



	controls and future land use strategies.
<b>Division 5 General-Clause 2.12– Development not to increase risk of coastal hazards</b>	
<b>Consideration</b>	<b>Comment</b>
Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.	The proposed development is located outside the coastal risk areas identified by Council's DCP and coastal hazard assessments.

## 4.4 Local Environmental Plan

### 4.4.1 Great Lakes Local Environmental Plan 2014

The land subject to this proposal is zoned C2 Environmental Conservation Zone pursuant to the provisions of the Great Lakes Local Environmental Plan 2014 (LEP). The proposed development is consistent with the relevant objectives of the zone and demonstrates compatibility with the predominant land use in the surrounding area.

Detailed consideration of the relevant provisions of the LEP is provided below:

<b>Development standard</b>	<b>Comments</b>
4.1 Minimum Subdivision Lot Size	Allowable: C2 zone= 40ha Proposed: 974m <sup>2</sup> -4614m <sup>2</sup> <b>See comments relevant to LEP clause 4.1B</b>
4.1B Exceptions to minimum lot sizes for ecological protection	All four (4) existing lots are currently less than the minimum lot size prescribed under clause 4.1. The proposed subdivision seeks consent pursuant to clause 4.1B and will result in all four (4) lots being less than the minimum lot size. <b>Further discussion on compliance with the provisions of Clause 4.1B is provided in Section 5.4.1.1 below.</b> The proposal is considered to be predominately compliant with these provisions.
4.6 Variation to Development Standards	The proposed development seeks a variation to the clause 4.1B, subclause 3b. <b>See Appendix G- Clause 4.6 Variation to Development Standards</b>

<p>5.16 Subdivision of land in certain rural, residential or conservations zones</p>	<p>The proposed subdivision is associated with C2 Environmental Conservation zoned lands. The proposed development will result in three (3) residential allotments. One (1) of these allotments contains an existing dwelling.</p> <p>The proposal is located adjacent to an establish low density residential area. The proposed lots are suitably sized and include building envelopes which are suitably setback from boundaries to preserve the amenity of the surrounding area.</p> <p>The proposal will not adversely impact upon the existing and approved land uses in the vicinity, and will not have any adverse impacts on the preferred and predominate land uses of the area.</p> <p>The proposed development is considered compatible with the surrounding land uses.</p>
<p>5.21 Flood Planning</p>	<p>The subject land is identified as being flood prone however the proposed subdivision has been designed to ensure each residential lot will not result in any increased risk of flooding or risk to the safety of people or property.</p> <p>A Flood Impact and Risk Assessment prepared by a qualified and experienced Flood Engineer is provided in <b>Appendix C</b>. This report recommends the ground surface of the proposed building envelopes with lots 101 and 103 be filled to 2.9m AHD.</p> <p>The development presents a low residual flood risk exposure, and the risk to property and risk to life from flooding of the proposed subdivision are managed to a satisfactory standard, in line with Council's LEP, DCP, and NSW Flood Risk Management Manual (2023).</p>
<p>7.1 Acid sulfate soils</p>	<p>The site is mapped as containing potential Class 2 Acid Sulfate Soils. The proposal will result in minor excavation works associated with the extension of services to lots 101 and 103. Details of ASS mitigation measures will be provided prior to the issue of the subdivision construction certificate. The proposal is capable of ensuring no exposure of potential Acid Sulfate Soils will occur.</p>
<p>7.2 Earthworks</p>	<p>Earthworks are required for the extension of services and filling proposed lots 101 and 103 to establish a building pad to achieve a minimum habitable floor level above the flood planning level. The proposed</p>

	<p>earthworks will import only clean fill (VENM) and include suitable ESC mitigation measures to restrict the movement of soil to the surrounding environment during construction.</p>
7.5 Stormwater management	<p>Each residential lot is capable of connecting stormwater to Council's existing stormwater infrastructure in Dunshea Avenue. As per advice received from Council during the pre-lodgement, the development does not required compliance for WSD or OSD.</p> <p>Given the small scale of the development and large site areas, the proposed subdivision will have minimal impact on stormwater.</p>
7.7 Riparian Land and Watercourses	<p>The subject land is identified as being a wetland with direct frontage to the Myall River. The proposed subdivision does not require any physical works within 40m of the waterway.</p> <p>The proposal seeks to contain the wetland with a separate conservation lot (Lot 104) which will be dedicated to Council for conservation. The proposal will not result in any impacts on water quality, aquatic ecosystems or stability of the foreshore area.</p>
7.21 Essential services	<p>Proposed Lot 102 is currently serviced by all essential services including reticulated sewer, electricity and water services.</p> <p>A sewer and water servicing strategy prepared by a qualified and experienced Civil Engineer is provided in <b>Appendix E</b>. This Strategy demonstrates that proposed lots 101 and 103 are capable of connecting to Council's reticulated services.</p> <p>The proposed lots are also capable of connecting to the existing reticulated electricity infrastructure (underground) located in Dunshea Ave.</p>

#### **4.4.1.1 Clause 4.1B - Exceptions to minimum lot sizes for ecological protection**

*Clause 4.1B of the Great Lake LEP 2014 currently states:*

*(1) The objective of this clause is to facilitate subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes.*

*(2) This clause applies to each lot (an original lot) that contains any of the following land—*

*(a) an environmentally sensitive area,*

*(b) land identified as “Wetland” on the Wetlands Map,*

*(c) land the subject of a planning agreement that makes provision for the conservation or enhancement of the natural environment.*

*(3) Despite clause 4.1, development consent may be granted for the subdivision of an original lot to create other lots (the resulting lots) if the consent authority is satisfied that—*

*(a) one of the resulting lots will contain all of the land referred to in subclause (2) (a), (b) or (c) that was in the original lot, and*

*(b) all other resulting lots will contain land that has an area that is not less than 1 hectare.*

*(4) Development consent must not be granted under subclause (3) unless the consent authority is satisfied that suitable arrangements have been, or will be, made for the conservation and management of the land referred to in subclause (3) (a).*

*(4A) Despite any other provision of this Plan, the erection of a dwelling house—*

*(a) is prohibited on any resulting lot referred to in subclause (3) (a), and*

*(b) is permitted with development consent on any resulting lot referred to in subclause (3) (b).*

#### **Comments:**

The objective of Clause 4.1B is to ‘facilitate subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes’. This clause specifically allows for the subdivision of land that will result in the improvement and protection of land for ecological purposes, and which will result in lots below the minimum size. The proposed development will create three (3) residential lots,

less than the minimum lot size prescribed for the land, and a residue parcel for conservation purposes. This proposal is considered consistent with the intent of this clause.

The site contains a wetland identified on state mapping pursuant to the *SEPP (Resilience & Hazards) 2021*. The site contains high conservation value land, and the proposed subdivision is considered permissible subject to subclause (2)(b) above. Additionally, the proposal seeks to demonstrate the improvement and protection of the conservation values on the land, consistent with the objectives of Clause 4.1B, through the dedication of the proposed conservation lot to Council. The Letter of Offer and draft Planning Agreement in **Appendix F** will facilitate a legal mechanism for the protection and enhancement of the land and is consistent with subclause (2)(c) above.

The high value conservation land is proposed to be wholly contained within Lot 104. This lot comprises an area of 20.24 hectares and will include a restriction on title preventing future development from occurring on the land. The proposal ensures the protection of the ecological values of the land and their conservation in perpetuity. The proposal demonstrates compliance with requirements of subclause (3)(a).

To minimise disturbance to the wetland and maximise the retention of mature trees within the northern portion of the site area, the proposed residential lots will each be less than 1 hectare. As such the proposal does not comply with the requirements of subclause (3)(b). A request to vary this development standard, pursuant to Clause 4.6 of the LEP, is provided in **Appendix G**. This request demonstrates that the numerical value imposed by the development standard in subclause (3)(b) is unnecessary to achieve the objective of Clause 4.1B.

Pursuant to Clause (4) above the consent authority cannot grant development consent pursuant to clause 4.1B unless the consent authority is *'satisfied that suitable arrangements have been, or will be, made for the conservation and management of the high conservation value land'*. The proposed development makes an offer to Council for public reservation and conservation management. The protection and enhancement of high value vegetation communities such as wetlands, saltmarsh and mangroves is recognised as a priority area for Council.

## 4.5 Development Control Plan

### 4.5.1 Great Lakes Development Control Plan 2014

The Great Lakes Development Control Plan 2014 (DCP) makes detailed provisions which are applicable to the proposed development. The proposed development is consistent with the objectives of the DCP and is generally compliant with relevant provisions.

Detailed consideration of the relevant provisions of the DCP is provided below:

#### 4.5.1.1 Section 4 - Environmental Considerations

DCP Section	Comments
4.1 Ecological Impacts	<p>The proposal seeks to protect and enhance the high value ecological vegetation communities and landscapes existing on the site. Approximately 20ha of the site will be conserved and dedicated to Council for ecological purposes.</p> <p>The proposal involves some tree removal within the northern portion of the site to establish APZ's for each building envelope. This portion of the site has been substantially modified overtime.</p> <p>The proposed subdivision will not result in any significant adverse ecological impacts.</p>
4.2 Flooding	<p>The subject land is identified as being flood prone however the proposed subdivision has been designed to ensure each residential lot will not result in any increased risk of flooding or risk to the safety of people or property.</p> <p>A Flood Impact and Risk Assessment prepared by a qualified and experienced Flood Engineer is provided in <b>Appendix C</b>.</p> <p>The development presents a low residual flood risk exposure, and the risk to property and risk to life from flooding of the proposed subdivision are managed to a satisfactory standard, in line with Council's LEP, DCP, and NSW Flood Risk Management Manual (2023).</p>
4.3 Coastal Planning Areas	N/A -The subject land is not identified as being land within a coastal planning area.
4.4 Effluent Disposal	The proposed development is capable of connecting to Council's reticulate sewage system.
4.5 Poultry Farms	N/A – The subject land is not located within the vicinity of a poultry facility.
4.6 Contaminated lands	N/A – The subject land is not identified as being contaminated land. Historical land use does not indicate any evidence of likely contamination.
4.7 Bushfire	The subject land is identified as being prone to bushfire. A bushfire assessment for the proposed development is provided in <b>Appendix B</b> .



#### 4.5.1.2 Section 9 – Subdivision

DCP Section	Comments
<b>9.2.1 Design Principles</b>	
<b>Hazards and Constraints</b> Consider hazards such as flooding, bushfire, contamination, and sea level rise.	The land is subject to flooding and is identified as bushfire prone land. The proposed subdivision has been carefully designed following detailed assessment of the site's characteristics, constraints and planning controls. The recommendations of Flooding and Bushfire Assessments (contained in <b>Appendix B and C</b> ) have been incorporated into the proposed subdivision plan.
<b>Protection and enhancement of natural features</b> Impact of subdivision on threatened species, ridgelines, waterways and heritage areas.	The proposed subdivision will not impact on any special environmental qualities, ridgelines, waterways or heritage areas.
<b>Infrastructure and surrounding development</b> Consider availability of utilities, road design, site drainage, relationship to adjacent land	The proposed subdivision has been designed to ensure each lot is fully serviced and capable of connecting to existing infrastructure. The proposed lots will be capable of supporting future dwellings.
<b>9.2.2 Site Design</b>	
(1) Site works and landscaping shall be designed to enhance the natural features of the site and adjoining areas. Existing landscape elements such as rock formations, vegetation or watercourses should be preserved. (2) Subdivisions should incorporate existing vegetation, landforms and contours wherever possible, rather than completely reshaping the site. (3) Subdivision design should maintain existing mature trees and consideration should be given to the objectives and controls contained in the Tree and Vegetation Preservation chapter of this plan. (4) Council will encourage the location of boundaries along natural features where appropriate, in order to minimise the likelihood of soil erosion.	The proposal has taken into consideration site design matters including landform, land constraints and existing natural elements on the site. The proposed subdivision has been designed to maximise the retention of mature trees and minimise disturbance to the adjacent wetlands. No heritage items are located on the site or in the vicinity of the site. Some tree removal will be required to facilitate the establishment of APZ's for each residential lot. A large mature banksia is located on proposed Lot 101. It is proposed that a special restriction be included on the title to prohibit the future removal of this tree.

However, allotment boundaries should not follow watercourses. (7) Consideration will also be given to the likely effects of flooding.	
<b>9.2.3 Services</b>	
	The northern portion of the site currently has access to reticulated services. All proposed lots are capable of connection to reticulated sewer, water, phone and electricity services.
<b>9.2.4 Landscaping</b>	
	The proposed subdivision requires the removal of several trees with proposed Lots 102 and 103 to establish suitable APZ's for the proposed building envelopes. Landscaping within the residential allotments will need to be compliant with the requirements of PBP. No compensatory plantings are proposed.
<b>9.2.5 Drainage</b>	
	The proposed subdivision will retain the existing arrangement for stormwater disposal associate with proposed Lot 102, which is currently conveyed to the Council reserve located to the east. It is likely that proposed Lot 101 will convey stormwater to the Dunshea Avenue frontage. Proposed lot 103 will dispose of stormwater on site disposal, away from the building envelope.
<b>9.2.6 Road Design and Construction</b>	
	NA- No new roads will be created as part of the proposed subdivision.
<b>9.5 Large Lot Residential, Rural and Environmental zones</b>	
	The proposed subdivision is unique in its ability to be fully serviced by reticulated infrastructure. The proposed lots do not require dedicated areas for disposal of wastewater.  The proposed subdivision boundaries have been carefully located, and the layout of each lot carefully designed, to minimise the clearing of land.  The subdivision has been designed with consideration of bushfire and flooding constraints.  Building envelopes are well setback from boundaries to ensure the amenity and privacy of existing dwellings on adjoining lands is maintained.

	The proposed subdivision will assist in providing future orderly development of this land.
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## 4.6 Other Council Policies

### 4.6.1 Interim Policy - Clause 4.1B of Great Lakes Local Environmental Plan 2014

The proposal is generally consistent with the requirements of the Interim Policy pertaining to the application of Clause 4.1B. Detailed consideration of the relevant provisions and justification for any variations to the policy is provided below:

***That one bonus lot will be considered for every 30 hectares of land that will be protected under clause 4.1B, and***

***A maximum of two bonus lots will be considered for any development application submitted under clause 4.1B.***

The existing area of the parent lot comprises approximately 21.2 ha. The proposed conservation lot will conserve 20.2 hectares of land (95% of the total site area) which currently supports significant vegetation communities, comprising endangered ecological communities and threatened species habitat. These communities would be permanently and publicly conserved in perpetuity by this proposal.

The proposal demonstrates exceptional environmental outcomes for Council and the community and will not unreasonably burden existing services and infrastructure in the local area. The variation to allow three (3) concessional residential allotments is considered reasonable and will ensure the economic viability of the project for the landholder, thus securing the transfer of a large portion of the land to Council for conservation.

***The area to which clause 4.1B applies be limited to a distance of 15km by a continuous Council maintained road from the service towns of Forster and Tuncurry, Nahiach, Bulahdelah, Tea Gardens, Hawks Nest, Pacific Palms and Bulahdelah.***

The site subject to this proposal sits immediately adjacent to the coastal township of Tea Gardens. The site is accessible via an existing sealed local road, Dunshea Avenue.

***That the access to the nearest service town, as set out in 3 above, is to be of a satisfactory standard to support the additional traffic that will be generated.***

The site is located in Tea Gardens and has direct access to service within the township. The road network to access the site is of a suitable standard to support the development.

***That Council will generally not accept responsibility for the management of the conservation land.***

The proposal is accompanied by a letter of offer and draft planning agreement (**Appendix E**) which facilitates the transfer of the land to Council. This includes a cash contribution from the landholder to Council for management of the conservation land for a period of 20-years. The dedication of the conservation of land to Council allows of the effective and feasible mechanism in this particular context. Should the Planning Agreement not be supported by Council, the landholder will pursue alternative options for conservation via the NSW Biodiversity Trust.

## 5 Likely Impacts

### 5.1 Environmental, Social and Economic

The proposed development seeks consent for the subdivision of the land to create three (3) residential Torrens title allotments and one (1) large conservation allotment in Tea Gardens. The proposal requires the removal of several tree within the proposed residential lots to establish suitable Asset Protection Zones. Remaining trees will be protected during construction.

The proposal also requires earthworks to establish a building pad which achieves a minimum habitable floor level above the flood planning level for proposed lots 101 and 103. The proposed earthworks will import only clean fill (VENM) and include suitable Erosion and Sediment Control mitigation measures to restrict the movement of soil to the surrounding area.

The proposal seeks to conserve 95% of the land in its current natural state, which supports endangered ecological communities and threatened species habitats. The proposal is unlikely to have any significant adverse impacts on threatened species or endangered ecological communities.

There are no significant adverse social or economic impacts associated with the proposed development.

## 5.2 Traffic & Noise

The proposal will result in two (2) additional lots with dwelling entitlements. Additional traffic movements will be generated by the future dwellings expected to be constructed on Lots 101 and 103. This proposal will generate low traffic volumes with negligible impact on the surrounding road network.

The proposed driveway to Lot 103 has adequate site distances at the property boundary.

The proposed development will not contribute to any significant long term noise generating aspects to the surrounding area, with the exception of temporary noise during the construction of the building pads and future dwellings on Lots 101 and 103.

## 6 Site Suitability & Public Interest

As demonstrated above, the site is considered suitable to support the proposed subdivision. The proposal will not impact upon the environment or amenity of adjoining lands.

The proposal will result in two (2) new lots with dwelling entitlements. The proposed subdivision is consistent with the objectives and provisions of the Great Lakes LEP 2014 and will facilitate orderly future development of the land.

The proposal is considered to be within the public interest.

## 7 Conclusion

Consent is sought for the subdivision of land in Tea Gardens pursuant to Clause 4.1B of the Great Lakes LEP 2014. The proposal seeks to create four (4) lots, comprising three (3) lots for residential use and one (1) conservation lot. The proposal seeks to ensure the long-term protection of the ecological values of the land through the dedication of the conservation lot to Council.

The proposal is compliant with the objectives of the Great Lakes LEP 2014 and generally compliant with the relevant provisions. The proposed subdivision has been designed to retain mature trees and minimise disturbance to the existing wetland on the site. A variation to Clause 4.1B pursuant Clause 4.6, is requested to allow the residential lots to comprise an area less than 1 hectare.

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The proposal is compliant with the objectives and provisions of the Great Lakes Development Control Plan 2014 and generally conforms to Council's Interim Policy for Clause 4.1B. The proposal is compatible with the character of the local area and is unlikely to result in any adverse effects on adjoining lands.

The proposal provides a unique opportunity for the conservation and enhancement of the land containing unique and vulnerable ecosystems.

As demonstrated by this document, the proposed development is unlikely to have any significant environmental impacts with regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

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## **Appendix A      Plan of Subdivision**

See Attached



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## Appendix B

## Bushfire Assessment Report

See Attached

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## Appendix C

## Flood Impact and Risk Assessment

See Attached

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**Appendix D      Landscaping Plan (Tree Survey)**  
See Attached

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**Appendix E      Sewer and Water Servicing Strategy**  
See Attached

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## Appendix F

## Letter of Offer & Planning Agreement

See Attached

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**Appendix G****Clause 4.6 Report (Request to Vary a Development Standard)**

See Attached