

Looking After Our Environment

Item: 12.02

Subject: PLANNING PROPOSAL - LOT 2 DP1091253, BEACH STREET BONNY HILLS, FOR PACIFIC DRIVE ESTATE PTY LTD.

Presented by: Development and Environment Services, Matt Rogers

Alignment with Delivery Program

4.7.1 Promote the conservation of key habitats.

RECOMMENDATION

That Council:

1. Not support the rezoning request as submitted due to the likely impact on known EEC and koala habitat.
2. Prepare a planning proposal pursuant to section 55 of the Environmental Planning and Assessment Act 1979 for the amendment of the provisions of Port Macquarie-Hastings Local Environmental Plan 2011 in respect to Lot 2 DP 1091253 Beach Street Bonny Hills to change the zoning of the land to part residential and part environmental protection, as described in this report.
3. Forward the planning proposal to the NSW Department of Planning and Environment requesting a gateway determination pursuant to section 56 of the Environmental Planning and Assessment Act 1979.
4. Request that the Secretary of the Department of Planning & Environment issue a Written Authorisation to Council to Exercise Delegation of the plan making functions under section 59 of the Act in respect of the planning proposal.
5. Delegate authority to the Director Development and Environment to make any minor amendments to the Planning Proposal prior to public exhibition of the proposal.
6. Undertake community consultation in accordance with the gateway determination.
7. Receive a report following the public exhibition period to demonstrate compliance with the Gateway Determination and to assess any submissions received.

Executive Summary

The purpose of this report is to consider a rezoning request for land in Beach Street Bonny Hills. The requested zones are not supported, and it is recommended that Council prepare a Planning Proposal to apply appropriate zones to the land.

The original rezoning request, submitted in November 2016, was in respect to Lots 1 and 2 in DP 1091253. This request was similar to an earlier request submitted in 2009 that did not proceed due to lack of support from the NSW Department of

Looking After Our Environment

Planning (DP&E) and the Office of Environment and Heritage (OEH), because of expected significant impacts on known koala and squirrel glider habitat.

The November 2016 request was for a reduction in the area of R1 General Residential Zone on Lot 1, to be more appropriately zoned as E2 Environmental Conservation, and rezoning of Lot 2 from RU1 Primary Production to part Zone R1 and part Zone E2.

The November 2016 request was assessed by Council staff and the applicant was advised that the extent of R1 requested was not supported, due to impacts on Endangered Ecological Communities (EEC), stream buffers, koala and squirrel glider habitat.

By email 18 January 2017, Council staff advised the proponent that the November 2016 rezoning request could not be supported. A suggested alternative rezoning footprint was provided to the applicant. This suggested footprint proposed some concessions for buffers to EEC, reduction in offsetting of some koala tree loss, a reduced rate for long term management of the proposed E2 zone and a suggested increase in density of the residential zone to achieve a higher yield for the developable land. These concessions were offered as a means to encourage the long term protection of important habitat areas, through zoning to E2 and public ownership of the land.

By email dated 1 February 2017, the applicant indicated the owners were not supportive of the suggested rezoning footprint, but requested an opportunity to meet to discuss the rezoning. A meeting was scheduled for 20 February 2017 and then deferred until 13 March 2017.

On or about 25 February 2017, Council became aware of clearing being undertaken on Lot 2. The owner indicated (on-site to Council's Natural Resource Officer) that the clearing was associated with proposed agricultural use of the land and that rezoning was not being pursued at this stage. The clearing was investigated by OEH and was found to be permitted under the routine agricultural management activities (RAMAs) provisions of the Native Vegetation Act.

On 1 March 2017, an email was sent to the applicant suggesting the meeting for 13 March 2017 may no longer be necessary, given the owner's indication about agricultural use of the land. On the same day, the applicant requested that the meeting go ahead, and that discussion at the meeting consider amending the rezoning request to only include Lot 2.

By email 8 March 2017, the applicant requested that the rezoning request be amended to exclude Lot 1 and only relate to Lot 2, and cancelling the meeting for 13 March 2017.

The amended rezoning request in respect to Lot 2 is not supported due to a likely significant impact on EEC and koala habitat. It is considered that Lot 2 is inappropriately zoned as RU1, as it is within an urban context and contains significant ecological values that are at risk due to the permissible clearing within the zone.

Looking After Our Environment

It is therefore recommended that Council prepare a Planning Proposal that applies appropriate zones to the land and submit the Proposal for a Gateway determination. The recommended zone boundaries are shown in figure 6 later in this report.

In the absence of agreement with the rezoning applicant and landowner in respect to the extent of residential zone on the land, the issue of ownership and long term management of the E2 zone may need to be resolved at development application stage.

Discussion

The Site

The revised site area is described as Lot 2 DP 1091253 See Figure 1), and is located in Beach St Bonny Hills.

Lot 2 is a split lot that straddles Beach St. Saltwater Creek forms the southern and south-western boundary. Adjoining to the west is the Bonny Hills Conference Centre site. To the north is undeveloped residential land fronting Beach St. To the south are the rear boundaries of residential properties fronting Rodley St. To the east is the Bonny Hills Holiday Park (Caravan Park).

The land is zoned RU1 Primary Production and depicted below.

Looking After Our Environment

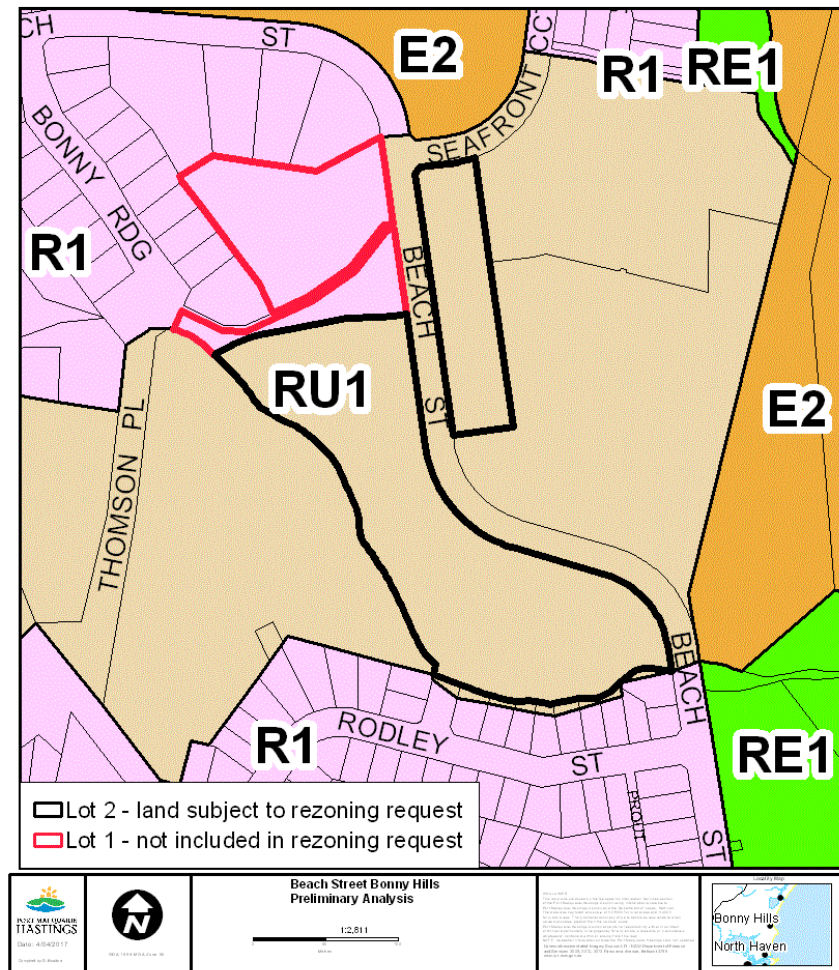


Figure 1 Current Zones

Based on an ecological assessment undertaken in 2009 (Darkheart Eco-Consultancy) the site contains Swamp Sclerophyll Forest and Swamp Mahogany Forest. The Swamp Sclerophyll Forest and lower lying portions of the Swamp Mahogany Forest are considered to be an Endangered Ecological Community (EEC). The site was also identified as containing Core Koala Habitat. A Koala Plan of Management is required pursuant to SEPP 44.

Requested Rezoning

The applicant has requested new zones as shown in Figure 2, as adapted from the November 2016 rezoning request, and deleting Lot 1.

Looking After Our Environment

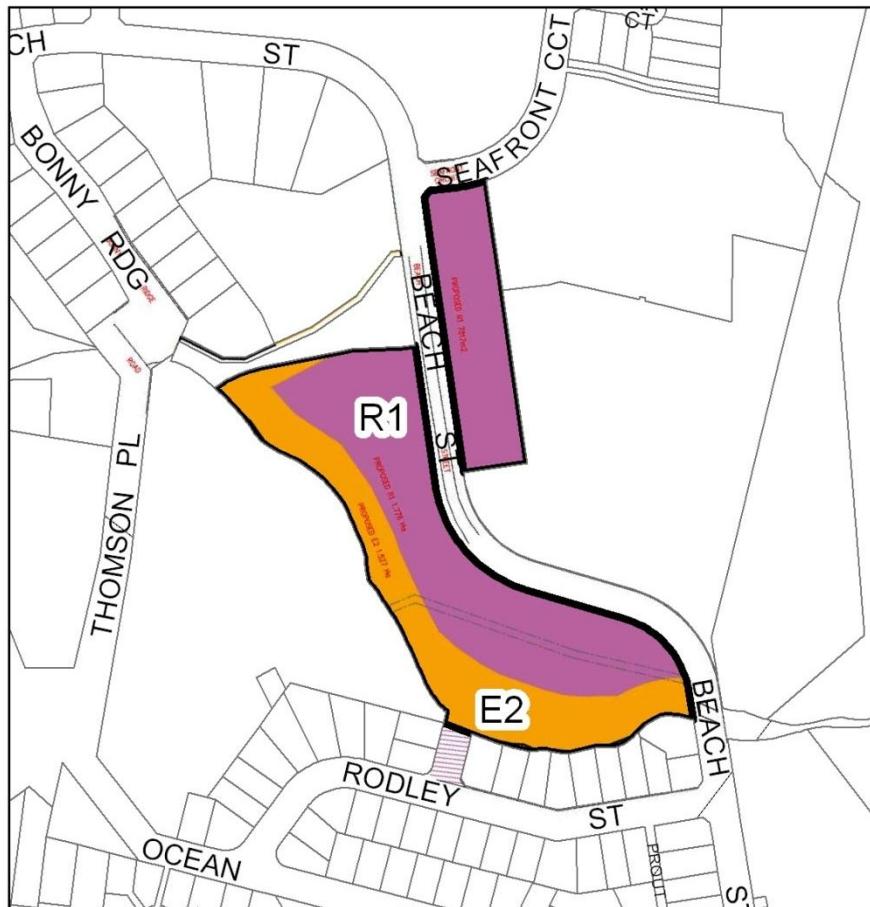


Figure 2 Revised Site Area & Proposed Zones

The intent of the rezoning is to apply the E2 Zone to a riparian corridor along Saltwater Creek. Bushfire management works and asset protection zones are indicated as being within the E2 zone.

In addition to the zone changes, the Lot Size Map, Floor Space Ratio Map and Building Heights Map would be amended consistent with residential development controls applied elsewhere in Bonny Hills and as shown in Table 1.

Table 1 Proponent Proposed Lot Size Controls

	Lot Size	Floor Space Ratio	Building Height
R1	450m ²	0.65:1	8.5m
E2	40Ha	-	8.5m

Site History

The current rezoning request relates to Lot 2 DP 1091253. The land is in the same ownership as Lot 1 DP 1091253, which immediately adjoins to the north. Lot 1 is currently zoned R1 General Residential.

There have been a number of rezoning requests for Lots 1 and 2 since the late 1990s. Due to problems with the Bonny Hills STP disposal system, a development moratorium delayed progress at that time. In 2004, when the lifting of the sewer moratorium seemed imminent, a fresh rezoning request was lodged.

Looking After Our Environment

Due to environmental constraints on Lot 1, the original rezoning requests included both Lots 1 and 2. The intention was to rezone part of Lot 1 from residential to an environmental zone in recognition of the environmental constraints and also zone a substantial proportion of Lot 2 for residential development.

From 2004 to 2008, a series of environmental investigations for the site were undertaken in pursuit of the rezoning.

Council engaged GeoLink to oversee preparation of an Local Environmental Study (LES) to inform the identification of appropriate zoning of the land. While GeoLink were engaged by Council, key components of the LES were commissioned by a planning consultant on behalf of the land owner. This process subsequently led to conflicts between development concepts submitted on behalf of the land owner and recommendations made by GeoLink. Progress on the LES stalled in early 2009.

Concurrent with the environmental investigations, a number of development applications were lodged in respect to development of Lot 1 (already zoned for residential development).

The most recent application (DA2009/0139) was for a 10 lot residential subdivision lodged in early 2009. Lot 1 contains core koala habitat and so the application was accompanied by a Koala Plan of Management (KPoM) as required by SEPP 44.

In February 2009, Council submitted a draft rezoning proposal to the Department of Planning (DoP), with a request for what is now called a Gateway determination. The DoP advised it would not support exhibition of the rezoning until:

- adoption of the draft KPoM, associated with the development application for Lot 1, and
- written support from the Department of Environment and Climate Change (DECC - now OEH), and
- the conflict between bushfire management requirements and associated impact on Koala habitat was resolved.

On 17 February 2010, Council's Development Assessment Panel (DAP) considered DA 2009/0139. The DAP declined to support approval of the KPoM and refused the development application for a number of reasons including:

1. The development was likely to have a significant impact on threatened species, in particular, koala and squirrel gliders, and no species impact statement was submitted,
2. The proposal was contrary to SEPP 44 as the development was likely to contribute to a decline of the koala population in the area and failed to secure long term habitat linkages.

As a result of the refusal, the applicant advised on 22 October 2010 of an intention to lodge an amended rezoning proposal. The 2004 rezoning proposal subsequently lapsed.

A pre-lodgement meeting was held on 19 January 2016. In summary, the Minutes of the meeting provided the following advice to the applicant:

Looking After Our Environment

- there is minimal to nil development potential on Lot 1 having regard to the identified ecological constraints, and
- the best way forward would be to investigate and pursue the rezoning of unconstrained land on adjoining Lot 2.

A rezoning request for Lots 1 and 2 was lodged on 21 November 2016, with rezoning fees paid on 3 January 2017. The rezoning request was not consistent with the prelodgement advice from 19 January 2016.

The applicant was advised that the rezoning request would not be supported, but that an amended request would be supported, if it proposed a reduced development footprint and addressed long term management issues of proposed environmental land.

By email dated 8 March 2017, the applicant requested that Lot 1 be deleted from the rezoning request.

Key Issues

Adopted Urban Growth Strategies

The site is not identified in the Port Macquarie-Hastings Urban Growth Management Strategy 2011-2031. However, the site immediately adjoins existing residential development and could reasonably be considered as a logical extension of existing development, subject to assessment of suitability of the site.

Landscape Setting and Environmental Corridors

The site contains significant vegetation that provides important ecological corridors within the landscape. Any rezoning proposal will need to ensure retention of these key corridors.

Endangered Ecological Community (EEC) - Swamp Sclerophyll Forests on Coastal Floodplains

Previous investigations of the extent of EEC on the site included vegetation mapping by Darkheart (Jason Berrigan, 2009) and an independent review by GeoLink ecologist, Mark Stables. The outcome of discussions, investigations and analysis resulted in Council adopting the area shown in Figure 3 as being the most accurate representation of EEC on the site.

Council policy for the protection of EECs (under DCP 2013) requires the provision of a minimum fully vegetated buffer of 35m. Figure 3 provides an indication of the extent of a 35m buffer to the EEC.

The rezoning request proposes R1 zone over some of the EEC and future development would not provide any appreciable vegetated buffer to the retained EEC.

The rezoning request is contrary to Council policy and is likely to have a significant impact on the EEC on the site.

Looking After Our Environment

It is noted that a 35m vegetated buffer to the EEC, combined with required bushfire asset protection zones (APZ) would effectively sterilise all of Lot 2 on the western side of Beach St. Any future development on the western side of Beach St will require a variation to the 35m buffer requirement.

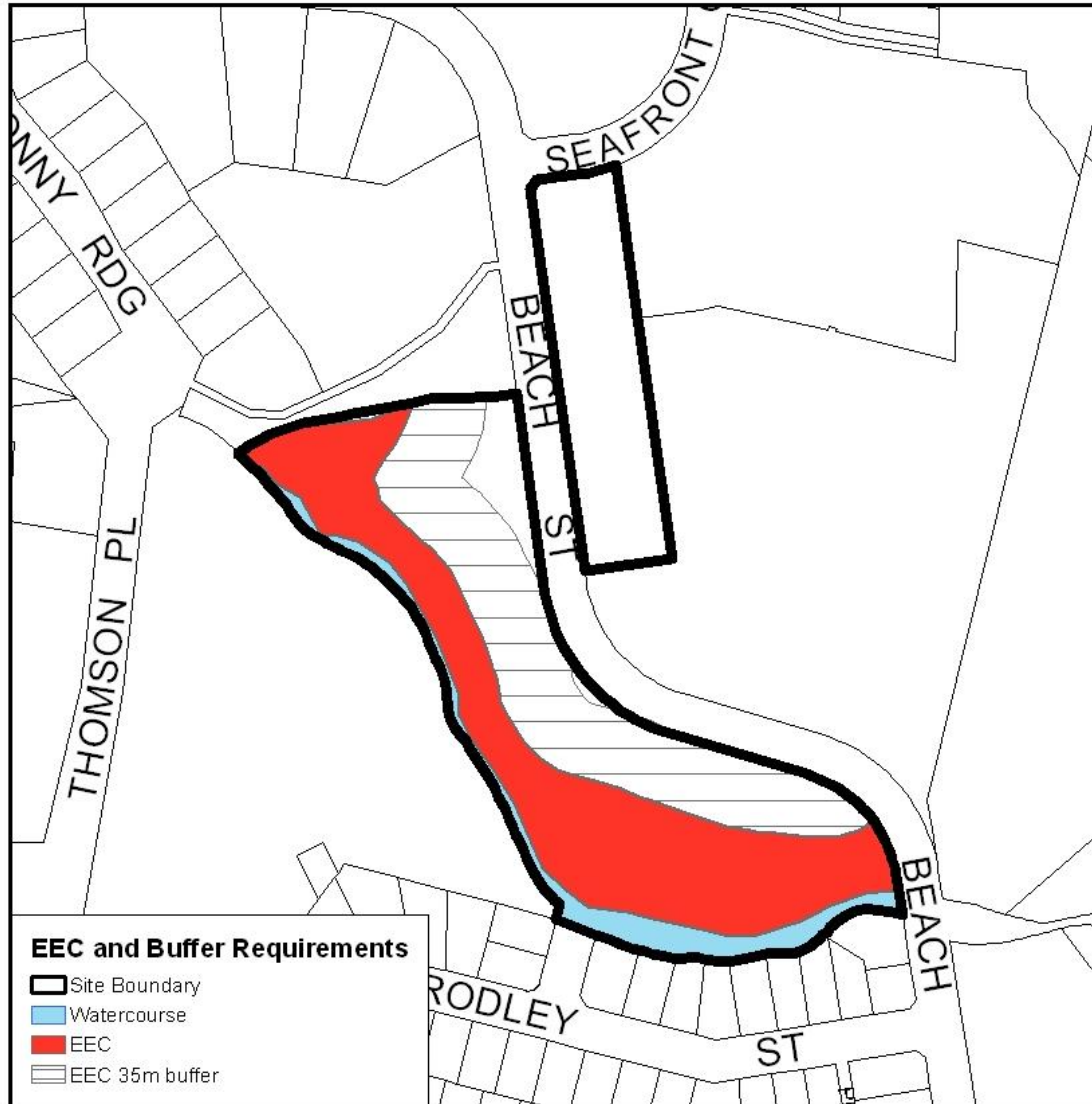


Figure 3 EEC and Buffer Requirements

Core Koala Habitat and Senescent Trees

Previous investigations of core koala habitat on the site by Darkheart (Jason Berrigan, 2009) revealed extensive use of the site by koalas. Trees identified as being used actively by koalas (due to the presence of scats) are shown in Figure 6.

A detailed survey of trees on the site (Doug Gow, 2004) identified over 1,000 trees (defined as more than 3m in height) on Lots 1 and 2. The survey then recorded trees with a diameter at breast height (DBH) of 0.3m or more.

Looking After Our Environment

Figure 4 identifies trees that were recorded (in 2004) as having a DBH of 0.6m or more. In the absence of a more detailed assessment of trees, Figure 4 is considered to provide a surrogate representation of trees likely to contain hollows. The extent of proposed R1 zone shown in the rezoning request is not supported due to potential impact on koala habitat.

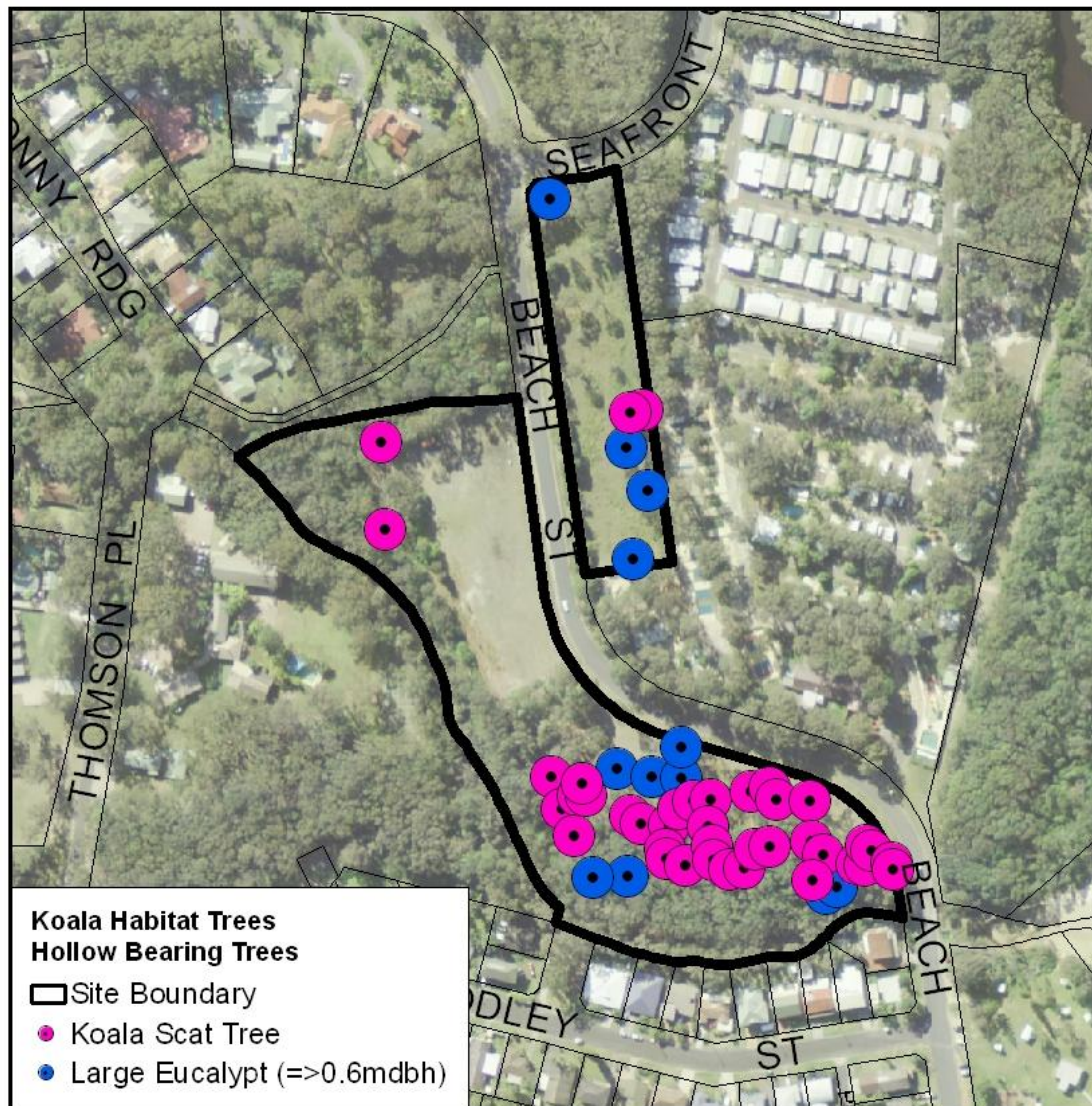


Figure 4 Koala Scat Trees and Potential Hollow Bearing Trees

State Environmental Planning Policy No.14 Coastal Wetlands (SEPP14)

SEPP14 identifies and protects significant coastal wetlands. Mapping of wetlands was originally undertaken in the early 1980s, with subsequent modifications during the 1990s. Historical development approvals and issues with mapping accuracy has resulted in anomalous situations in many areas of mapped SEPP14 wetlands.

The current requirement for assessment of the effect of SEPP14 requires on site inspection to determine if there is remnant community species of coastal wetlands within the mapped area. Where wetlands are found to exist, the rezoning process

Looking After Our Environment

requires the area of wetlands to be zoned E2, consistent with the objectives of SEPP14.

Figure 5 shows the area of mapped SEPP14 Wetlands. Site inspection reveals a small patch of remnant wetland species within the mapped area.

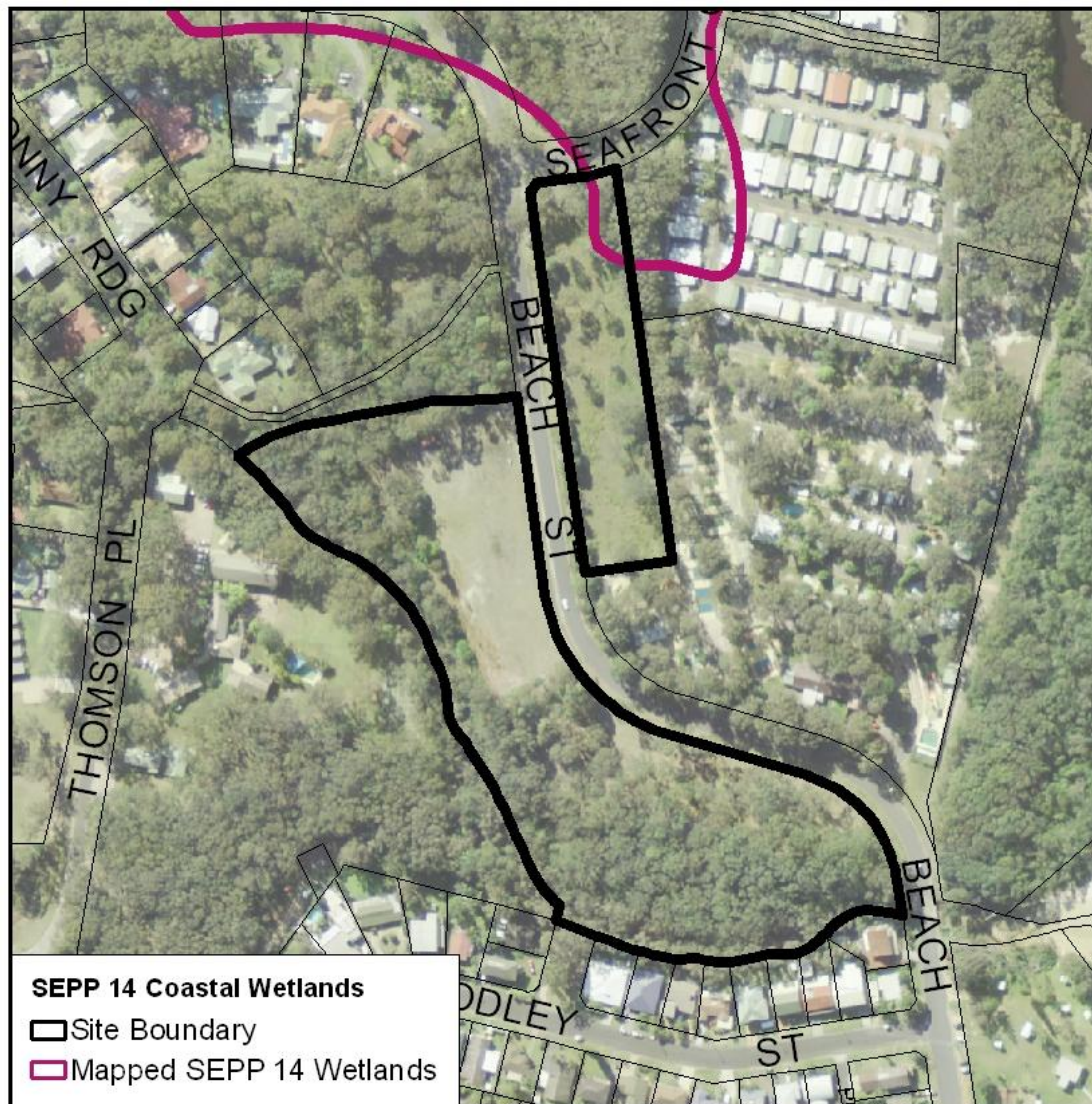


Figure 5 SEPP 14 Coastal Wetlands

Bushfire Hazard

The site is mapped as bushfire prone land. The rezoning request included a bushfire hazard risk assessment (Building Code & Bushfire Hazard Solutions Pty Ltd, October 2016). The assessment recommends Asset Protection Zones (APZs) of between 8m and 16m, depending on aspect and adjoining vegetation.

The assessment relies on a degree of clearing to enable assumptions to be made about vegetation remnant patch size and consequent reduction in the required width of Asset Protection Zones.

Looking After Our Environment

The underlying assumptions have not been justified in terms of ecological impacts, and are considered to be contrary to achievement of ecological outcomes associated with the EEC, and koala habitat on the site.

Based on an assumed Forest Vegetation Class, with the hazard being upslope or flat, an APZ of 20m, consisting of a 10m IPA and 10m OPA, is required under Planning for Bushfire Protection 2006. Based on a downslope of between 0 and 5 degrees, the APZ remains 20m, made up of a 15m IPA and 5m OPA.

Stormwater and Water Quality Management

Development of the site will require careful design of stormwater and water quality management due to proximity to the watercourse and associated EEC. Water treatment facilities will likely impact on the available development footprint.

Ongoing Management and Maintenance of E2 Zone

The rezoning request intends to dedicate the E2 zone land to Council, which will include asset protection zones and fire trails. Responsibility for the ongoing costs of maintenance of these would be passed onto Council.

Options

Options for Council include:

1. Do nothing (the land would remain as residual rural land).
2. To resolve to prepare a Planning Proposal based on the information submitted by the proponent and send it to the NSW Department of Planning and Environmental to request a Gateway Determination.
3. Resolve to prepare a Planning Proposal for the land that applies appropriate zones to the land.

Option 1

The do nothing option is not pursuing rezoning of the land at this time. This would result in the land remaining zoned as RU1 Primary Production. It is considered that Lot 2 is inappropriately zoned as RU1, as it is within an urban context and contains significant ecological values that are at risk due to the permissible clearing within the zone. Maintaining the current rural zoning is not recommended.

Option 2

Based on a review of historical studies of the site, the proponent's submitted information and the significant environmental values of the land, the rezoning is not supported as proposed.

Having regard to previous studies of the site, it is considered that pursuit of Option 2 would involve a series of costly studies, with a likely conclusion that the extent of proposed R1 zone cannot be justified.

On this basis, Option 2 is not supported.

Looking After Our Environment

Option 3

It is recommended that Council resolve to prepare a Planning Proposal that zones the land based on the following principles:

1. EECs and wetlands within the SEPP14 mapped area be zoned E2.
2. Apply a minimum 20m APZ to the EEC and a minimum 4.5m building setback to Beach St.
3. Assume a building setback from the edge of the EEC of 27m to achieve BAL29.
4. Where the width of available land between the 27m setback to EEC and the 4.5m street setback is less than 8m, zone the land E2 as it is considered impractical to develop.
5. On the western side of Beach St, zone active koala food trees E2.
6. On the eastern side of Beach St, apply the E2 zone to the large hollow bearing tree located near the intersection with Seafront Circuit, as it is considered contributory habitat for squirrel gliders on Lot 1.
7. Allow other koala food trees on the eastern side of Beach Street to be zoned R1 with future development providing offset planting in existing cleared areas on the western side recommended to be zoned E2.

The recommended zones are shown in Figure 6.

The recommended Height of Building, Minimum Lot Size and Floor Space Ratio controls are as follows:

Table 2 Recommended Development Standards

	Lot Size	Floor Space Ratio	Building Height
R1	450m ²	0.65:1	8.5m
E2	To be based on the extent of land zoned for environmental conservation and necessary to prevent further subdivision.	-	8.5m

Looking After Our Environment

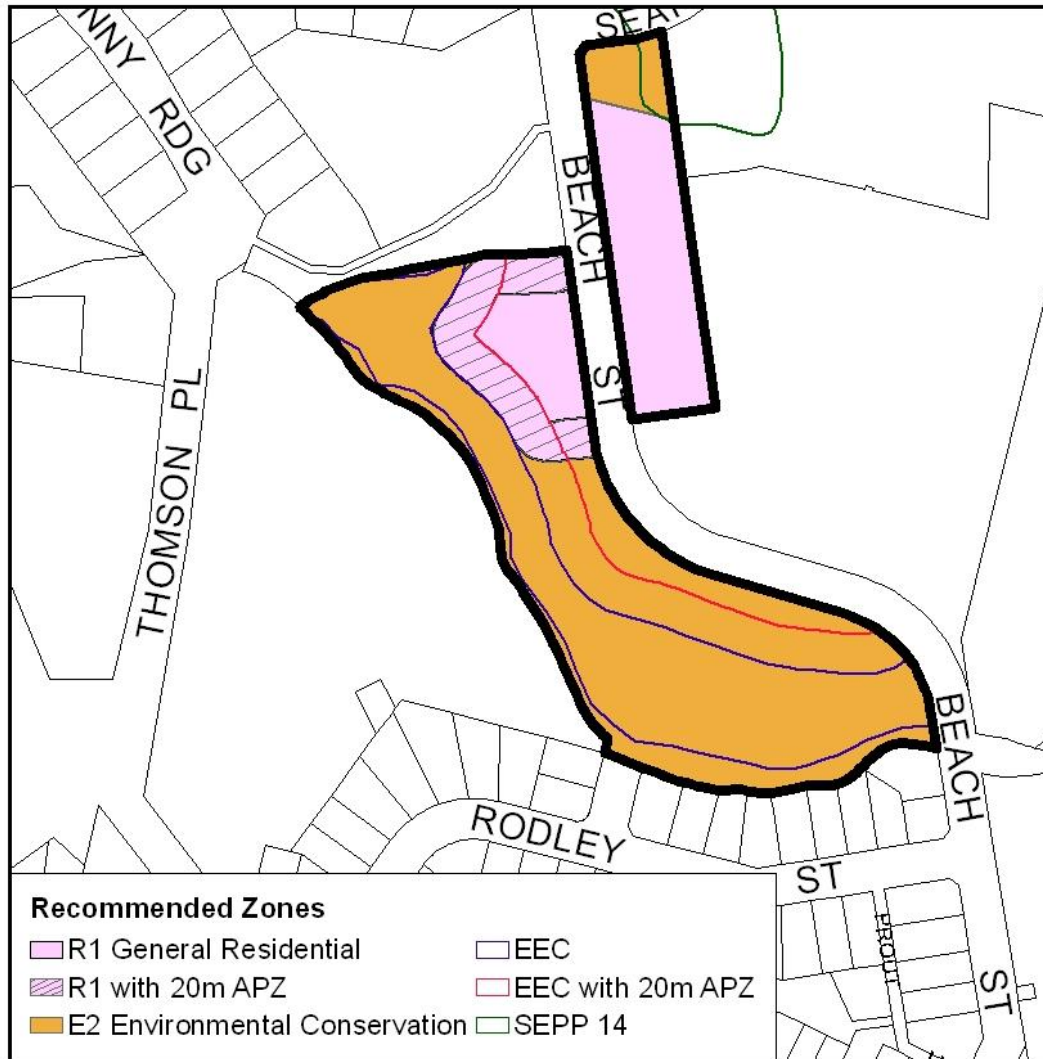


Figure 3 Recommended Zones

Long term management of the E2 zone would normally be addressed through a planning agreement at the rezoning stage. However, having regard to the land owner's opposition to Council's requested zoning, it is likely that long term management of the E2 zone will need to be resolved at the development application stage, following finalisation of the rezoning.

Community Engagement & Internal Consultation

Consultation has been undertaken with relevant Council staff in preparing this report. Extensive negotiations have been undertaken with the applicant but agreement was not able to be reached on the proposed rezoning of the land.

Planning & Policy Implications

Subject to appropriate modifications, rezoning of land in Beach St Bonny Hills is considered to be consistent with the Port Macquarie-Hastings Urban Growth Management Strategy as an infill proposal representing minor amendments to the residential zone in this location.

Looking After Our Environment

Financial & Economic Implications

There has been no offer from the proponent to dedicate the proposed environmental land to Council. This is an option that may be considered by Council if a request is received and, in this case, given the location of the environmental land in central Bonny Hills, the proponent has been advised that Council may consider discounting or waiving the normal environmental management contributions normally paid by proponents for ongoing environmental management by Council.

If the land is proposed to be dedicated to Council, the ongoing costs will need to be investigated and reported to Council, either in conjunction with the planning proposal or at the development application stage.

The alternative for the proponent is to retain the environmental land in private ownership and demonstrate how the long term management of these areas is to be achieved.

Attachments

Nil