

Issue

This change did not address the minimum lot size, which was left at 2000 m².

Location details

The map displays the Herons Creek area with various land zoning designations. The central area is labeled RU1. To the west, along Bulls Ground Rd, is a RU3 zone. To the south, near Herons Creek Rd, is another RU1 zone. A small area to the east of the central RU1 is labeled RU5. Further east, along Pacific Hwy, is an SP2 zone. The map also shows the North Coast Railway and Herons Creek Rd. A scale bar at the bottom indicates distances from 0 to 800 metres.

Assessment

While there is no current expectation of subdivision of this land, it does not seem appropriate to leave the current minimum in place.

Recommendation

That for lot 1 the LEP mapping be changed as follows:

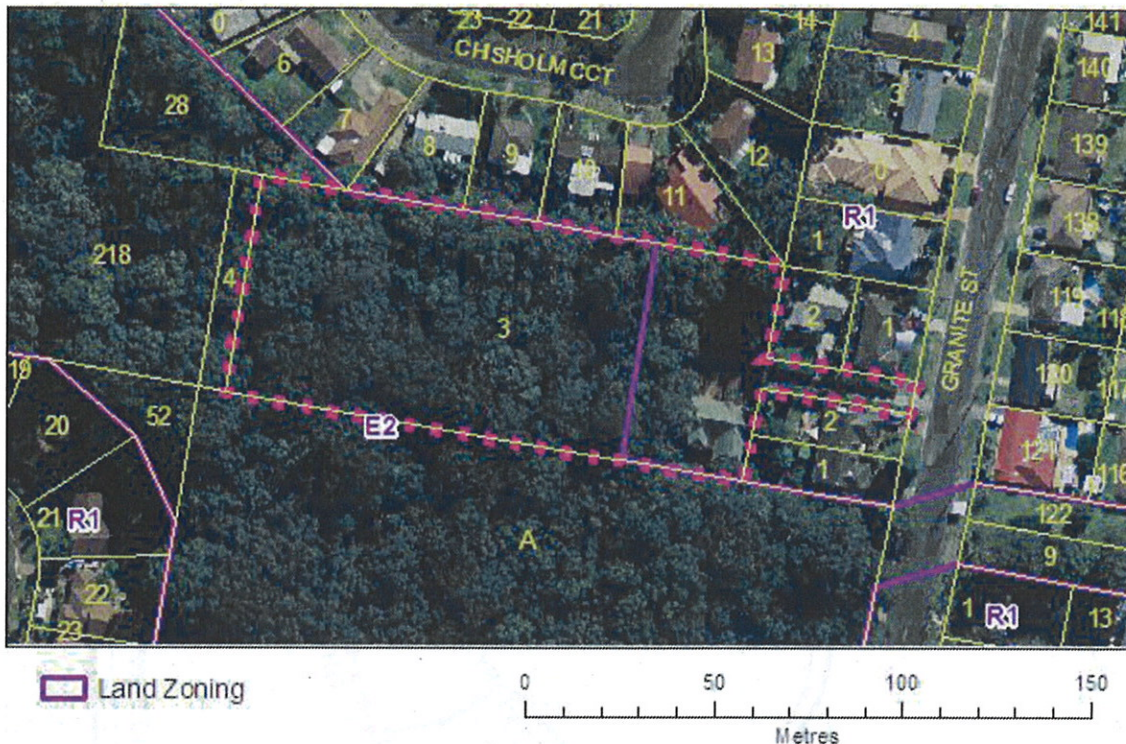
- Lot Size Map – AB2 (40 Ha).

Issue

Residential lot with large E2 Environmental Conservation area at rear has a minimum lot size of 450 m² over the whole lot.

Location details

Lot 3 DP 832089, No 147 Granite Street, Port Macquarie. Shown on LEP map grid sheet 013G. Lot 3 is 8203 m² in area.

**Assessment**

Other adjoining land zoned E2 is in public ownership, and the minimum lot size was left over this land for simplicity in mapping. However, the 450 m² minimum lot size for the privately owned land is not appropriate. The area of lot 3 zoned E2 is around 6300 m².

Recommendation

That for lot 3 the LEP mapping be changed as follows:

- Lot Size Map – X1 (5000 m²).

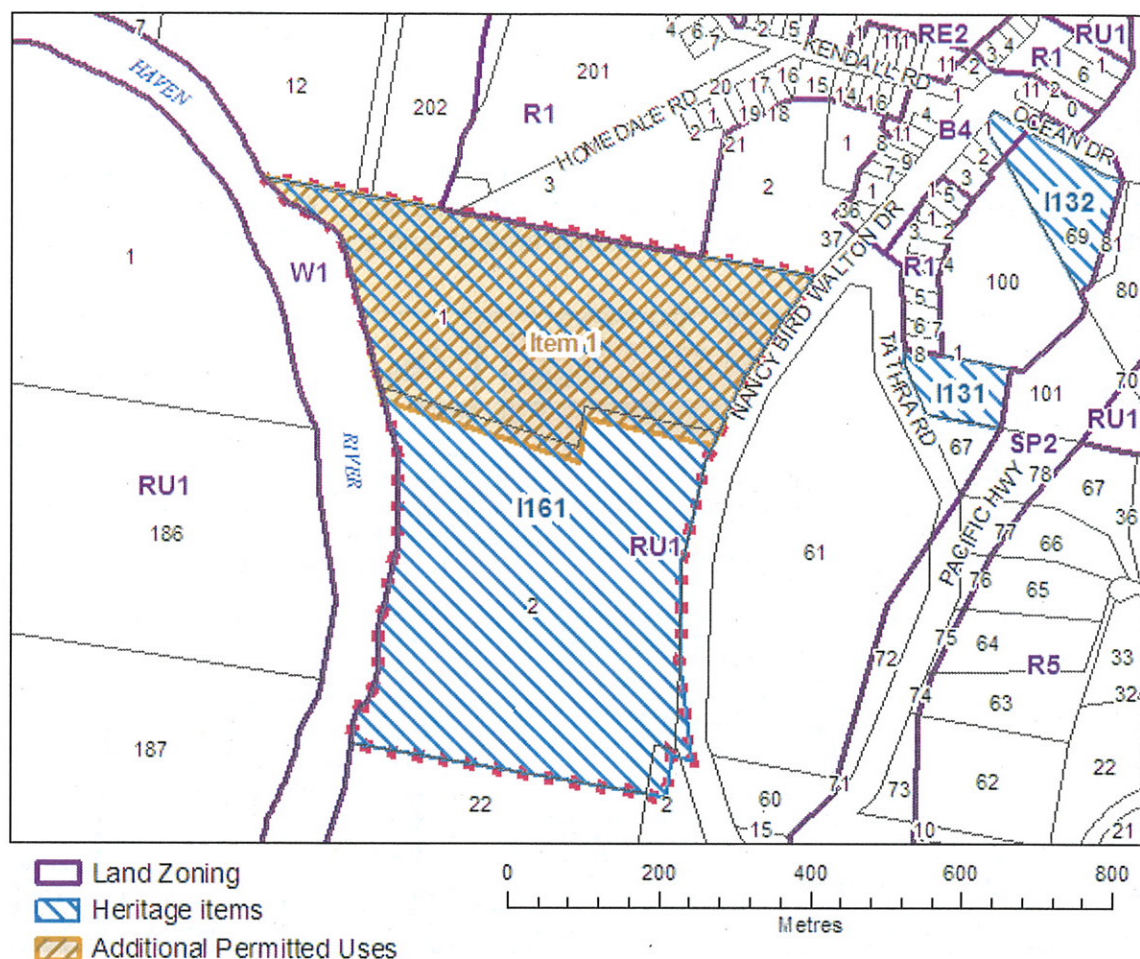
Item No 6**Issue**

A recent subdivision clouds interpretation of provisions (including mapping) of an additional permitted use and a heritage item, and it would be appropriate to clarify the land affected.

Location details

Originally Lot 1 DP 564615, Homedale Road, Kew, although the additional permitted use related to only part of Lot 1, as shown on the Additional Permitted Use Map. In addition, on the Heritage Map Item No 1161 mapping in error includes part of Nancy Bird Walton Drive and part of Lot 2 DP 564817.

This lot has been subdivided, and the relevant lot is Lot 1 DP 1161722, Homedale Road, Kew. However, the Additional Permitted Uses Map shows the affected land as including part of Lot 2. Shown on LEP map grid sheet 011B.



Assessment

Retention of the current provisions will mean that the heritage item and the additional permitted use will needlessly continue to apply to Lot 2 in relation to Planning Certificates and determination of development applications.

Recommendation

1. That on map sheet 011B the LEP mapping be changed as follows:
 - Additional Permitted Uses Map – Item 1 relates to Lot 1 only,
 - Heritage Map – Heritage Item No. I161 relates to Lot 1 only.
2. That the LEP text be changed as follows:
 - Schedule 1 Additional permitted uses – clause 1 (1) be changed by replacing “part of Lot 1, DP 564615” with “Lot 1, DP 1161722”,
 - Schedule 5 Environmental heritage, Part 1 Heritage items – the property description for the entry at Kew relating to Item No. I161 be changed to “Lot 1, DP 1161722”.

Item No 7

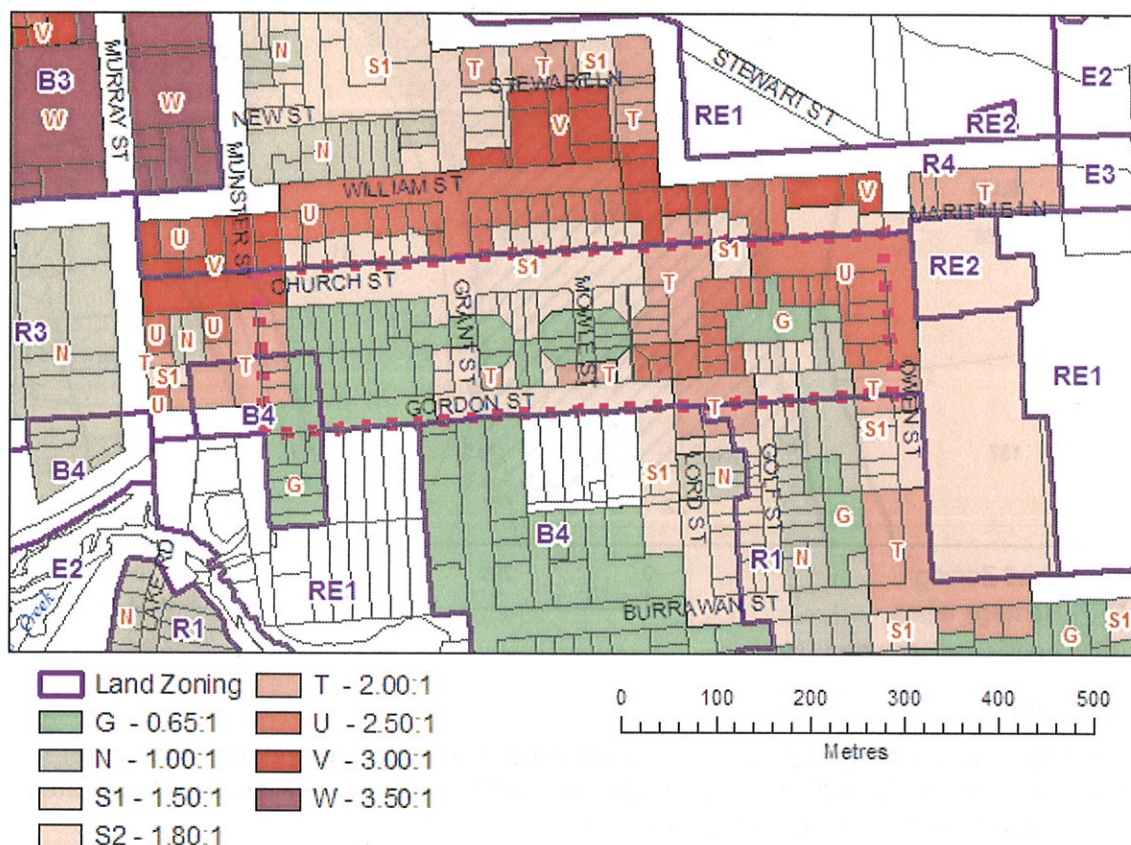
Issue

Based on the relevant DCP, the drafting of the minimum Floor Space Ratio for an area zoned R3 Medium Density Residential had proposed 1:1, but an error during map editing changed

this to 0.65 to 1. The draft LEP included this for public exhibition, and the approved LEP includes this error.

Location details

Land enclosed by Gordon Street, Munster Street, Church Street and Owen Street, Port Macquarie, and which has a maximum floor space ratio of 0.65:1. This is mostly zoned R3 Medium Density Residential, but includes a small area of land zoned B4 Mixed Use. Shown on LEP map grid sheet 013FA.



Assessment

Given the expectation of medium density development in the area, it is not appropriate to retain the low maximum floor space ratio that was applied in error.

It is noted that the preparation of LEP 2011 was a like for like conversion (as far as feasible), and that a systematic review of the medium and high density development controls is warranted. There could be a basis for a higher FSR than recommended, but it is considered this should arise from such a review, rather than an ad hoc decision.

Recommendation

That the LEP Floor Space Ratio Map (on sheet FSR_013FA) be changed so that any maximum FSR of 0.65:1 (Code G) is changed to 1.00:1 (Code N) within the following area:

- Land enclosed by Gordon Street, Munster Street, Church Street and Owen Street, Port Macquarie.

Item No 8

Issue

Clauses 8 and 9 of *SEPP No 30 – Intensive Agriculture* contain provisions that are redundant now that LEP 2011 is in operation.

Location details

Has no specific location.

Assessment

Clause 8 of the SEPP states that rural industry is to be taken to include “composting facilities and works, including facilities and works for the production of mushroom substrate”. The mandatory definition of rural industry in the LEP covers this.

Clause 9 of the SEPP states that a reference to an industry does not include a reference to a rural industry. The mandatory definitions of industry and rural industry (and associated Note) in the LEP cover this.

Clause 1.9 of the LEP includes a list of SEPPs (or provisions) that do not apply where the LEP applies. It could be amended to exclude the duplication by the two clauses above.

Recommendation

That the LEP text be amended by inserting at the end of clause 1.9 the following:

Clauses 8 and 9 of *State Environmental Planning Policy No 30—Intensive Agriculture*

Item No 9

Issue

There is concern with the Zone R3 Medium Density Residential Land Use Table provisions relating to dual occupancies and shop top housing.

Location details

Relates to all land zoned R3 Medium Density Residential, which applies to certain land in Town Beach, West Port, Flynn's Beach and Lighthouse Beach.

Assessment

The Land Use table permits dual occupancies and neighbourhood shops with consent, yet prohibits shop top housing.

It is suggested that dual occupancy should be prohibited as it is incompatible with the mandatory zone objectives:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

If neighbourhood shops are permissible with consent, it is considered reasonable for shop top housing to also be permissible with consent.

Recommendation

That the Land Use Table for R3 Medium Density Residential be amended:

- By prohibiting Dual occupancies,
- By permitting with consent Shop top housing.

Note: This will involve inserting and omitting, respectively, these terms under "4 Prohibited".

Item No 10

Issue

There is concern with the Zone R4 High Density Residential Land Use Table provisions relating to dual occupancies and multi dwelling housing.

Location details

Relates to all land zoned R4 High Density Residential, which applies to certain land in East Port and West Port.

Assessment

The Land Use Table permits dual occupancies and multi dwelling housing with consent.

It is considered that these uses are incompatible with the mandatory zone objectives:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Recommendation

That the Land Use Table for R4 High Density Residential be amended:

- By prohibiting Dual occupancies and Multi dwelling housing.

Note: This will involve inserting both terms under "4 Prohibited".

Item No 11

Issue

Business identification signs are prohibited in Zone R5 Large Lot Residential.

Location details

Relates to all land zoned R5 Large Lot Residential, which applies to land previously described as rural residential.

Assessment

The Land Use Table permits with consent some types of businesses. While a small ancillary identification sign may be permissible, it is considered that such signs should be specified as permissible with consent, to cover cases where consent may be required.

Recommendation

That the Land Use Table for R5 Large Lot Residential be amended:

- By permitting with consent Business identification signs.

Note: this will involve inserting this term under "3 Permitted with consent".

Item No 12

Issue

The B7 Business Park zone applies to land adjoining the Port Macquarie airport, but does not permit uses such as Freight transport facilities and Transport depots.

Location details

Relates to land adjoining the Port Macquarie airport.

Assessment

Land uses adjoining the airport include freight forwarding, and it would be reasonable to make Freight transport facilities permissible with consent. A Transport depot can relate to parking and servicing in connection with Freight transport facilities, and could also be made permissible with consent.

Recommendation

That the Land Use Table for B7 Business Park be amended:

- By permitting with consent Freight transport facilities and Transport depots.

Note: this will involve omitting these terms from under "4 Prohibited".

Item No 13

Issue

The IN2 Light Industry zone permits Business premises (other than Funeral homes), but prohibits Office premises and Retail premises (except for selected subtypes).

Location details

Applies to all land zoned IN2.

Assessment

It would seem appropriate to prohibit Business premises, to avoid loss of industrial land for purposes that belong in the business zones.

Recommendation

That the Land Use Table for B7 Business Park be amended:

- By prohibiting Business premises.

Note: for consistency this will involve inserting under "4 Prohibited" the term *Commercial premises*; and omitting the terms *Funeral homes*; *Office premises*; and *Retail premises*;

Item No 14

Issue

Clause 4.1B *Minimum subdivision lot sizes for certain split zones* contains provisions that preclude outcomes that have previously been Council's preference for dealing with certain land with split zones.

Location details

Relates to (potential subdivision of) any land containing both:

- (a) land in a residential, business or industrial zone, and
- (b) land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU6 Transition, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

Assessment

The clause currently requires that in any subdivision all the lots are contain land which are within the residential, business or industrial zones and must comply with the relevant minimum lot sizes. One lot only is to contain all of the land within the zones referred to in paragraph (b) above.

This can create a lot which has a highly irregular shape, potentially with difficulties in access to all areas. This will create difficulties in management of the lot (including bush fire hazard reduction), making this lot probably unsellable.

Previously Council has allowed split zones for multiple residential lots which the minimum area of each residential lot is augmented by additional area within one of the zones listed in paragraph (b). This can be land which is not suitable for erection of dwellings (usually due to hazards), but which can provide a larger lot size. At King Creek this has been used to allow preservation of corridors of significant vegetation throughout the rural residential area.

One option would be to omit the clause. This would leave the LEP silent on the management of subdivision of split zoned land, though this could be supplemented by DCP provisions.

Alternatively the clause could be modified to permit the previous approach, either as an alternative, or as the only choice.

Recommendation

That the following subclause be added to the end of clause 4.1B:

- (4) Despite subclause (3), development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:
 - (a) the area, within each of the resulting lots which is within a residential, business or industrial zone, is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - (b) the shape of the resulting lots, including land referred to in subclause (2)(b), provides for a practical layout for long-term management of the land in accordance with the relevant zone objectives.

Item No 15

Issue

Clause 4.2A *Erection of dwelling houses and dual occupancies in certain rural and environmental protection zones* does not contain any provisions relating to dual occupancies,

although should provisions had been in the draft LEP as exhibited and subsequently submitted for approval.

Location details

Relates to land within zones RU1 Primary Production, RU2 Rural Landscape, Zone RU6 Transition, E3 Environmental Management, and E4 Environmental Living.

Assessment

The clause imposes some restrictions on whether dwelling houses can be erected upon land within the relevant zones. The approved clause has no restrictions in relation to dual occupancies, though the Land Use Table prohibits dual occupancies (detached). (And dual occupancies (attached) are not permissible in Zone E3.)

The draft clause (as exhibited and as submitted for approval) included a subclause that required a dual occupancy (attached) had to satisfy the same restrictions and be at least 2 hectares in land area. The Department of Planning objected to the second requirement, yet removed the whole subclause.

It is considered essential that the restrictions applying to dwelling houses should also apply to dual occupancies. Arguably dual occupancies should not be permitted on the small rural lots shown on the Dwelling Opportunity Map – this is the last category listed in the clause in relation to dwelling houses.

The minimum lot size requirement can be addressed in the standards for on-site effluent treatment and disposal.

Recommendation

That clause 4.2A be amended to apply the restrictions (relating to dwelling houses) to dual occupancies (attached).

Item No 16

Issue

Clause 7.7 *Airspace operations* refers to "Limitation or the Operations Surface" five times, but in the clause definitions refers to "Limitation or Operations Surface".

Location details

Relates to land covered by the "Limitation or [the] Operations Surface".

Assessment

For consistency, it is considered that where occurring twice in subclause (5) the words "Limitation of Operations Surface" should be changed to "Limitation or the Operations Surface".

Recommendation

That clause 7.7 (5) be amended by omitting wherever occurring the words "Limitation or Operations Surface", and inserting instead the words "Limitation or the Operations Surface".

Note: this is also relevant to Item 19.

Item No 17

Issue

A Deposited Plan number has digits transposed in clause 2 (1) of Schedule 1 *Additional permitted uses*.

Location details

Relates to Lot 1 DP 798086, No 8 Hayward Street, Port Macquarie, which is one of two lots shown in Item 2 on the Additional Permitted Uses Map.

Assessment

This is a minor correction.

Recommendation

That in clause 2 (1) of Schedule 1 *Additional permitted uses* omit "DP 798068" and replace with "DP 798086".

Item No 18

Issue

Schedule 2 *Exempt development* has an entry relating to *Tennis courts* that is now superseded by similar provisions in the Codes SEPP.

Location details

Relates to land within Zone R5 Large Lot residential

Assessment

SEPP (Exempt and Complying Development Codes) 2008 [the Codes SEPP] was amended on 25 February 2011 to list as exempt development tennis courts on rural zoned land or land within Zone R5 – refer to clauses 2.78C and 2.78D.

The Codes SEPP provisions override the LEP provisions, and to avoid confusion it would be desirable to remove these provisions.

Recommendation

That in Schedule 2 *Exempt development* omit the matter relating to Tennis courts.

Item No 19

Issue

In the Schedule 2 *Exempt development* entry relating to *Wind energy generating works (other than in Zone RU1, RU2, RU3 or RU4)* there is wording relating to an Obstacle Limitation Surface Map, which was part of the exhibited draft LEP, but not the final approved LEP.

Location details

Potentially relates to land subject to the Obstacle Limitation Surface Map, or the Limitation or the Operations Surface.

Assessment

References in the draft LEP to a Obstacle Limitation Surface Map (as part of the LEP) were changed, where used in clause 7.7 to the Limitation or the Operations Surface.

This exempt development matter includes the following restriction:

- (1) Maximum height above ground level (existing)—2.7m, or the maximum height specified on the Obstacle Limitation Surface Map, whichever is less.

The wording needs to be changed to refer to the Limitation or the Operations Surface defined in clause 7.7.

Recommendation

That in the Schedule 2 *Exempt development* entry relating to *Wind energy generating works (other than in Zone RU1, RU2, RU3 or RU4)* subclause (1) be replaced by the following:

- (1) Maximum height above ground level (existing)—2.7m, or the maximum height permitted under the Limitation or the Operations Surface (as referred to in clause 7.7), whichever is less.

Note: see also Item 16.

Item No 20**Issue**

In Schedule 5 *Environmental heritage* Part 1 *Heritage items* there are typographic errors with two Deposited Plan numbers, and a heritage significance classification has been omitted.

Location details

The error relate to:

- Lot 61 DP 754407 No 3763 Wingham Road, Comboyne – Item no I162, Former school house and school master's residence,
- Lot 2 DP 838179, No 48 Comboyne Road, Kendall – Item no I163, Former school master's house, and
- Lot 1 Sec 7 DP 758852 et al Hay Street, Port Macquarie – Item no I004, St Thomas The Apostle Anglican complex.

Assessment

The first and third items have typographical errors to be rectified, while for the second does not have the *Local* Significance listed.

Recommendation

That in Schedule 5 *Environmental heritage* Part 1 *Heritage items* the following changes be made:

- (a) in relation to Item no I162, No 3763 Wingham Road, Comboyne, in the Property description change "DP 7454407" to "DP 754407".
- (b) in relation to Item no I163, No 48 Comboyne Road, Kendall, in the Significance insert "Local".
- (c) in relation to Item no I004, Hay Street, Port Macquarie, in the Property description change "DP 785852" to "DP 758852".

Item No 21

Issue

The recent changes to the Standard Instrument template definitions, and hence from 25 June 2011 to LEP 2011, no longer class *places of Aboriginal heritage significance* as a type of *heritage conservation area*. There is a separate category of *Aboriginal place of heritage significance*.

This is relevant to the 4 *places of Aboriginal heritage significance* listed in Schedule 5 *Environmental heritage Part 2 Heritage conservation areas*. There are no other entries under Heritage conservation areas.

Location details

The 4 *Aboriginal places of heritage significance* are located at Thrumster and at Crosslands.

Assessment

To avoid confusion, it is proposed that these places are moved to a new Part 4 *Aboriginal places of heritage significance* in Schedule 5.

Recommendation

That in Schedule 5 *Environmental heritage*:

- (a) the content under Part 2 Heritage conservation areas be omitted, and
- (b) a new Part 4 *Aboriginal places of heritage significance* be inserted:

Part 4 Aboriginal places of heritage significance

Name of Aboriginal place	Identification on Heritage Map	Item No
Crosslands Conservation Area	Shown by a yellow outline and identified as "C04"	C04
Karikeree 1 Thrumster Conservation Area	Shown by a yellow outline and identified as "C01"	C01
Thrumster Knoll Site	Shown by a yellow outline and identified as "C03"	C03
Watoo 7 Thrumster Conservation Area	Shown by a yellow outline and identified as "C02"	C02

Item No 22

Issue

Following public exhibition of the draft LEP it was established that a heritage item had been located on the wrong land in the LEP text and Heritage Map. This was corrected in the final LEP, but the initial wrong description has remained in the LEP text.

Location details

The wrong location is Lot 14 DP 815360 and Lot 2 DP 868132 (north side of Oxley Highway only). (Note the LEP text has the first DP incorrectly described as DP 7815360.) Shown on LEP map grid sheet 006.