

## Planning Services

IRF19/4359

### Gateway determination report

<b>LGA</b>	Port Macquarie-Hastings
<b>PPA</b>	Port Macquarie-Hastings Council
<b>NAME</b>	Proposed rezoning of Lot 10 DP 615775 and Lot 1 DP 1117908, corner Houston Mitchell Drive and Ocean Drive, Bonny Hills, from RU1 to IN2, E2 and E3 and amendment of associated development standards
<b>NUMBER</b>	PP_2019_PORTM_001_00
<b>LEP TO BE AMENDED</b>	Port Macquarie-Hastings LEP 2011
<b>ADDRESS</b>	19 Houston Mitchell Drive, Bonny Hills
<b>DESCRIPTION</b>	Lot 10 DP 615775 and Lot 1 DP 1117908
<b>RECEIVED</b>	17 June 2019
<b>FILE NO.</b>	IRF19/4359
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to rezone 9.58 hectares of RU1 Primary Production zoned land on Lot 10 DP 615775 (8.96 ha) and Lot 1 DP 1117908 (0.62 ha) (Figure 1), corner Houston Mitchell Drive and Ocean Drive, Bonny Hills to part IN2 Light Industrial, part E2 Environmental Conservation and part E3 Environmental Management. Adjoining road corridors are also proposed to be rezoned (Figure 2).

Additionally, the proposal will amend associated development standards including minimum lot size and height of building controls. Approval of the proposal will enable development for light industrial purposes, conserve areas of environmental significance and provide a habitat link between areas of significance located to the east and west of the subject land.



Figure 1 - The subject land, Lot 10 DP 615775 and Lot 1 DP 1117908

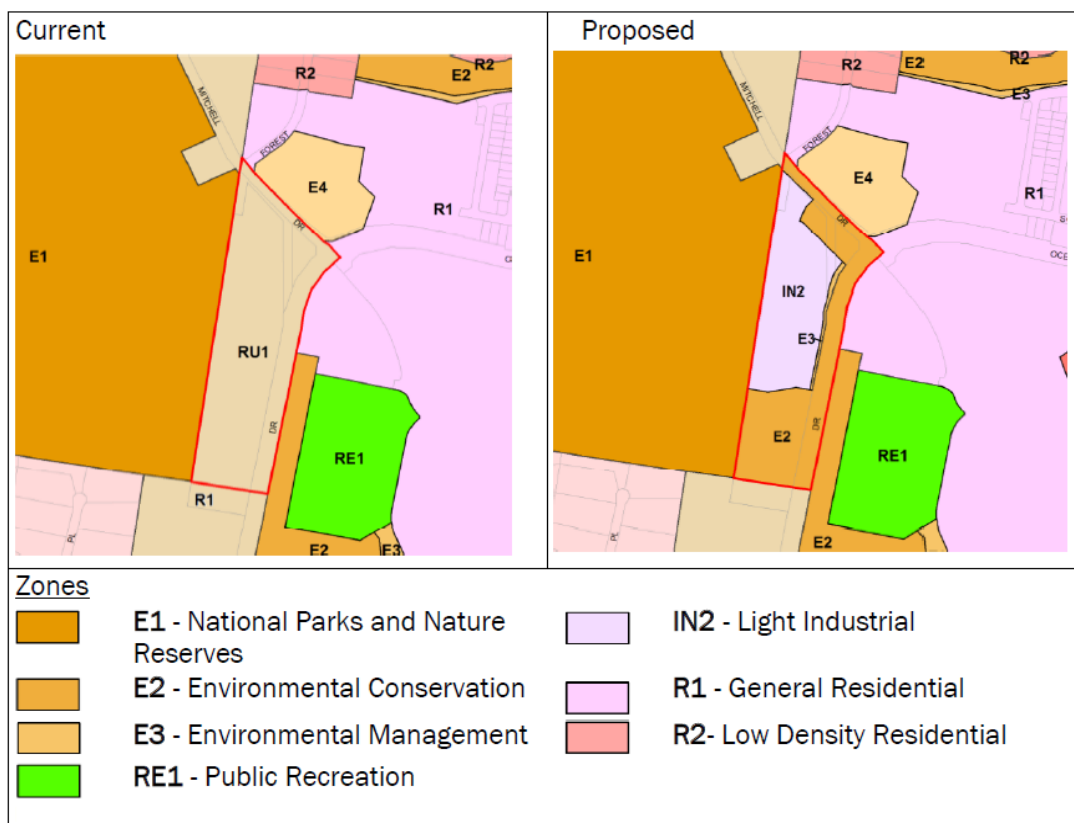


Figure 2 - Current and proposed land zoning

## 1.2 Site description

The site is currently improved by four (4) dams, one (1) dwelling house and sheds and is currently utilised as a depot. The land is classified as bushfire prone, is subject to localised flooding and is affected by Class 5 acid sulfate soils. The land is predominantly cleared, with the exception of a patch of Koala habitat in the northern portion of the site. A small amount of mapped High Environmental Value land is present in the centre of Lot 10 (Figure 3). The allotments are not identified as regionally significant farmland.

## 1.3 Existing planning controls

Lot 10 DP 615775 and Lot 1 DP 1117908 are currently zoned RU1 Primary Production with a minimum lot size of 40 hectares pursuant to the provisions of the *Port Macquarie-Hastings Local Environmental Plan 2011* (LEP).

The majority of the land is located within the urban growth area boundary included in the *North Coast Regional Plan 2036* (NCRP), with the exception of the south-western corner of the proposed IN2 land (Figures 3 and 4).

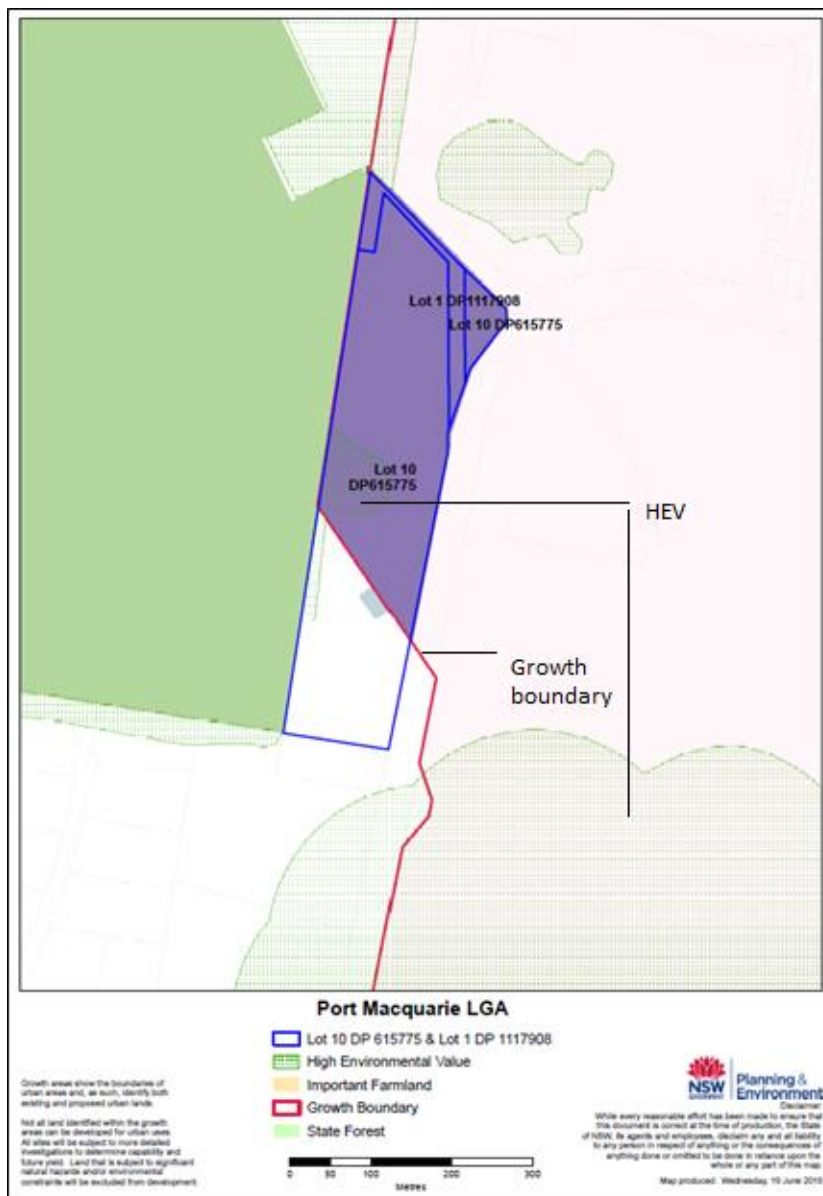


Figure 3 - NCRP Urban Growth Boundary and HEV mapping

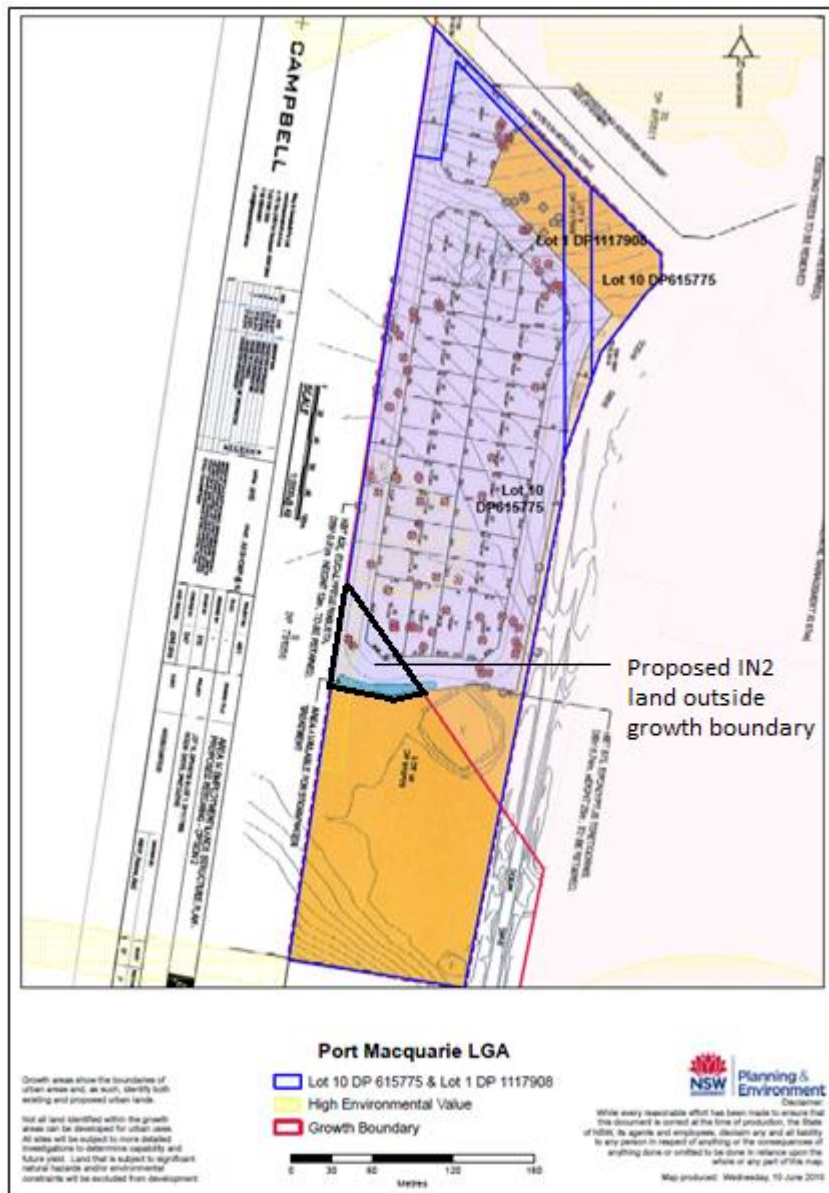


Figure 4 - Proposed subdivision layout relative to NCRP Urban Growth Boundary

#### 1.4 Surrounding area

The subject site adjoins land zoned E4 Environmental Living to the north, R1 General Residential land to the east (including the Lake Cathie Public School), Queens Lake Nature Reserve to the west zoned E1 National Parks and Nature Reserves and land zoned RU1 Primary Production to the south (identified for further investigation for light industry or school uses).

#### 1.5 Summary of recommendation

It is recommended that the proposed rezoning amendment proceed subject to conditions. The planning proposal is supported as the majority of the site was designated as employment lands in the Department's *Mid North Coast Regional Strategy 2009* and continues to be identified in the NCRP. Council has also designated the site as an investigation area for light industry in their *Urban Growth Management Strategy 2017 – 2036* (UGMS), which identified the need for approximately 8 hectares of light industrial land in the Bonny Hills / North Haven area to 2036. The subject land is likely to yield approximately 5.65 hectares for the purposes of light industrial use.



The planning proposal provides a balanced outcome for the subject site in that it facilitates future employment opportunities on predominantly cleared land, protects the environmental values of the land (including core Koala habitat) and addresses community concern relating to visual impacts via the implementation of a landscaped buffer area along the main road.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to:

- rezone Lot 10 DP 615775 and Lot 1 DP 1117908 to enable development for light industrial purposes (approximately 29 allotments);
- preserve sections of high environmental value (core habitat) by rezoning to E2 Environmental Conservation and E3 Environmental Management;
- rezone adjoining road corridors;
- amend associated development standards; and
- maintain a landscaped buffer to prevent the visual prominence of future development from the road.

### **2.2 Explanation of provisions**

The explanation of the provisions adequately addresses the intended changes to Port Macquarie-Hastings LEP 2011. The planning proposal seeks to:

- amend the Land Zoning Map (LZN) to change the zoning of the site from RU1 Primary Production to part IN2 Light Industrial, part E2 Environmental Conservation and part E3 Environmental Management. Adjoining road corridors are proposed to be rezoned to E2 Environmental Conservation in accordance with Practice Note PN10-001 'Zoning for Infrastructure in LEPs';
- amend the Lot Size Map (LSZ) to permit:
  - a minimum lot size (MLS) of 1,000m<sup>2</sup> for that part of the site zoned IN2;
  - a MLS of 3 hectares for that part of the site zoned E2; and
  - a MLS of 1,800m<sup>2</sup> for that part of the site zoned E3;
- Amendment to the Height of Buildings Map (HOB) to permit a maximum building height of 11.5 metres for proposed IN2 zoned land.

### **2.3 Mapping**

The planning proposal includes current and proposed LZN, LSZ and HOB maps which adequately reflect the proposed amendments. These maps are suitable for exhibition purposes, subject to the following changes:

- a) ensure that the current land zoning map (Figure 7) references land zoned to the south of the subject site as RU1 rather than R1;
- b) ensure that the key to the land zoning map (Figure 7) includes E4 Environmental Management;
- c) ensure that the key to the minimum lot size map (Figure 8) includes 'Z2 – 3ha';

Amendments to the LZN, LSZ and HOB maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

### **3. NEED FOR THE PLANNING PROPOSAL**

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The land is identified in the NCRP as well as Council's Department approved UGMS as an investigation area for light industry. The site is centrally located, has capacity for coordinated services and available access to Houston Mitchell Drive. The planning proposal is needed to undertake the changes to Port Macquarie-Hastings LEP to facilitate the development.

The Planning Proposal is considered to be the best means for achieving the rezoning of the subject land.

### **4. STRATEGIC ASSESSMENT**

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#### **4.1 State**

The planning proposal does not contain any matters of State significance.

#### **4.2 Regional / District**

##### North Coast Regional Plan 2036

The majority of the subject land is located within the urban growth area boundary included in the NCRP, with the exception of the south-western corner of the proposed IN2 zone (Figure 4). The minor variation to the urban growth boundary is considered to be consistent with the NCRP Urban Growth Area Variation principles detailed at Appendix A as follows:

- Policy – the planning proposal is considered to be consistent with the Directions of the NCRP, in particular:
  - Direction 1: Deliver environmentally sustainable growth. The planning proposal includes the application of an E2 Environmental Conservation zone to areas of environmental significance.
  - Direction 3: Manage natural hazards and climate change. The planning proposal has been designed with regard to known bushfire and flooding hazards on the subject land.
  - Direction 6: Develop successful centres of employment. The planning proposal will give effect to the recommendations of strategic growth strategies which recognise the land as being suitable for light industry, due to:
    - accessibility from main roads;
    - proximity to urban release areas;
    - complementary surrounding land uses.
  - Direction 16: Collaborate and partner with Aboriginal communities. The Birpai Local Aboriginal Land Council have undertaken an assessment of the subject land and have advised that there are no known Aboriginal cultural heritage sites on the subject allotments, particularly in the area proposed to be rezoned IN2.
  - Direction 21: Coordinate local infrastructure delivery. The site can be connected to reticulated water and sewer services, while adequate road access can be provided via Houston Mitchell Drive.
- Infrastructure – Council is supportive of the ongoing provision and management of water, sewerage and utilities required in order to accommodate future industrial land uses.

- Environmental and farmland protection – the planning proposal incorporates rezoning of the least sensitive areas of the subject land for industrial development and will protect valuable areas by applying E2 Environmental Conservation and E3 Environmental Management zones. Although there is a small amount of mapped High Environmental Value land that will be rezoned to IN2 Light Industrial, environmental reports submitted in support of the proposal indicate that this land is predominantly cleared. It is noted that the subject land does not contain any mapped important farmland.
- Land use conflict – the subject site has been identified in State and local plans since 2009 as being suitable for employment lands. Considering the proposed IN2 Light Industrial zoning as well as proposed buffer areas, potential land uses are not anticipated to result in localised land use conflict.
- Avoiding risk – the subject land is classified as bushfire prone, is subject to localised flooding and is affected by Class 5 acid sulfate soils. Specialist reports in relation to bushfire and flooding have been prepared in support of the planning proposal, and these hazards are able to be managed within the confines of the allotment boundaries. Consideration of acid sulfate soils is capable of being satisfactorily undertaken as part of any future development application in accordance with clause 7.1 ‘Acid sulfate soils’ of the LEP.
- Heritage – the Birpai Local Aboriginal Land Council have undertaken an assessment of the subject land and have advised that there are no known Aboriginal cultural heritage sites on the subject allotments, particularly in the area proposed to be rezoned IN2. Furthermore, there are no items of environmental heritage listed in Schedule 5 of the LEP.
- Coastal area – the subject land is not mapped as being within a coastal area. Furthermore, it is not identified as containing coastal wetland or littoral rainforest, nor is it within the coastal use area.

It is considered that the Planning Proposal is consistent with the NCRP as it satisfies the Variation Criteria required for development outside the Urban Growth Area.

#### **4.3 Local**

The planning proposal is consistent with Council’s Department approved UGMS which identifies the site as an investigation area for light industry (Figure 5).

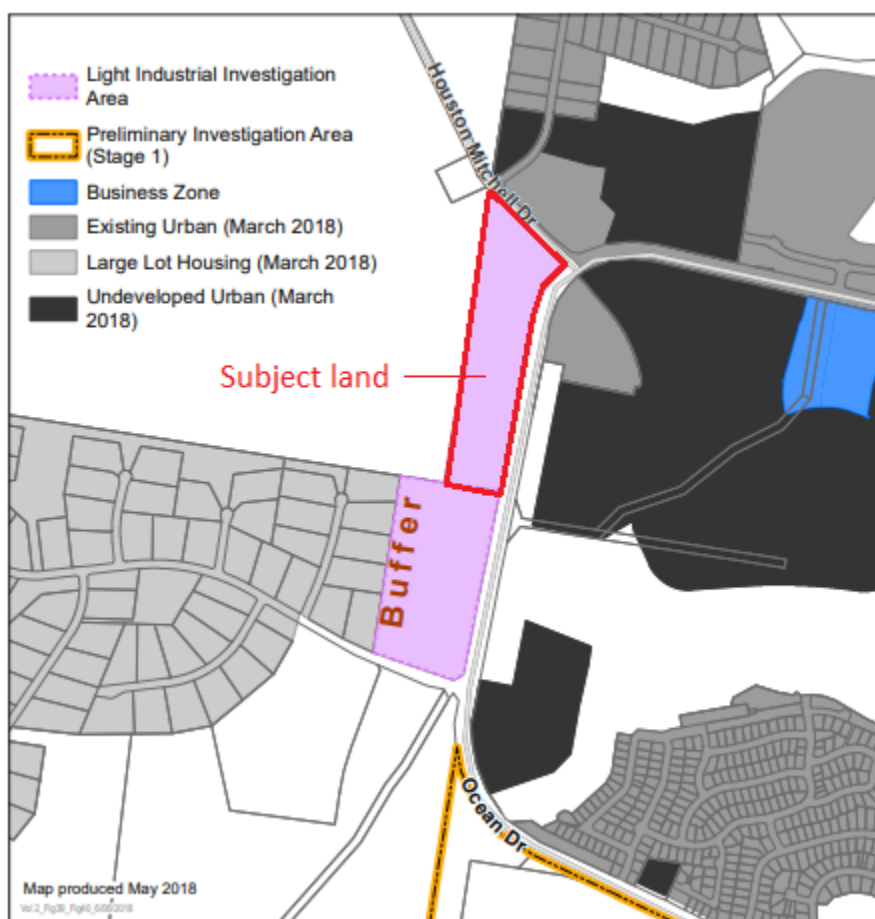


Figure 5 - Service Industry Investigation Area, Port Macquarie-Hastings UGMS 2017 - 2036

#### 4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with all relevant section 9.1 Directions with the exception of:

##### Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to industrial and environmental zones. The inconsistency is of minor significance as the subject land is identified for light industry in the Port Macquarie-Hastings UGMS (Figure 5) as well as in the NCRP (Figures 3 and 4). Although the application does propose a variation to the urban growth boundary illustrated in the NCRP, this is considered acceptable in accordance with the NCRP Urban Growth Area Variation principles detailed at Appendix A of the Plan.

##### Direction 1.5 Rural Lands

The proposal is inconsistent with this direction as it proposes to rezone rural land and reduce the minimum lot size and is unable to demonstrate compliance with all the relevant planning principles. The inconsistency is of minor significance as the subject land is identified for light industry in the Port Macquarie-Hastings UGMS (Figure 5) as well as in the NCRP (Figures 3 and 4).

The land is not identified as important farmland in the NCRP.

##### Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as it contains Class 5 acid sulfate soils and is not supported by an acid sulfate soils study. This inconsistency is of



minor significance as further consideration regarding the issue can be undertaken at the development application stage as required by the acid sulfate soil provisions of Port Macquarie Hastings LEP 2011.

#### Direction 4.3 Flood Prone Land

The subject site is not classified as flood prone land by the maps that accompany the LEP. A flood impact assessment was however undertaken in support of the application which determined that there is a potential for an increase in stormwater runoff and a possible reduction in flood storage as a result of future development of the site. The inconsistency with this direction is of minor significance as flood planning matters can be further considered at the development application stage in accordance with the flood planning provisions of Port Macquarie Hastings LEP 2011.

#### Direction 4.4 Planning for Bushfire Protection

The planning proposal applies to land that has been mapped as bushfire prone.

This direction requires Council as the relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this direction will remain unresolved.

#### **4.5 State environmental planning policies (SEPPs)**

The proposal is consistent with all applicable SEPPs with the exception of:

- *State Environmental Planning Policy No. 55 Remediation of Land*. A preliminary contaminated land assessment will be required to be undertaken prior to public exhibition in order to address the provisions of this Policy. This matter has been included as a condition of the gateway approval.
- *State Environmental Planning Policy (Primary Production and Rural Development) 2019*. While it is inconsistent with the aims of this Policy, the proposal is considered to be appropriate as discussed in Section 4.4 of this report, above.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social**

Positive social impacts are expected as a result of the proposal through the provision of additional employment lands in the Lake Cathie / Bonny Hills area.

To address community concern regarding the visual impact of the proposed development on an important gateway to Lake Cathie and Bonny Hills, the planning proposal incorporates a vegetated strip of E3 Environmental Management land parallel to Ocean Drive. It is also noted that Council intends to implement development control plan provisions for visual appearance and maintenance of the landscape buffer due to the prominence of the gateway site. It is intended that these controls will be exhibited in conjunction with the planning proposal. This approach is considered appropriate.

No adverse impact to Aboriginal cultural heritage is anticipated. An Aboriginal cultural assessment has been prepared by the Birpai Local Aboriginal Land Council. This assessment found no issues of significance and concluded that there was no reason that the proposed rezoning could not proceed due to Aboriginal cultural and heritage issues.

Schedule 5 of the Port Macquarie-Hastings LEP 2011 does not identify any items of environmental heritage on the subject land.

Considering the above, it is not anticipated that any detrimental social impacts will arise from the planning proposal.

## **5.2 Environmental**

The land is generally cleared of native vegetation and is maintained as managed grassland with retained 'paddock' trees. A remnant patch of native vegetation in the northern aspect of the site is classified by Council to be core Koala habitat and is proposed to be retained by the rezoning. Two hollow-bearing trees will also be retained. Although there is a small amount of mapped High Environmental Value land that will be rezoned to IN2 Light Industrial, specialist reports lodged in support of the development confirm that there are no endangered ecological communities on the land, and a credit summary report calculated for the development indicates that there is sufficient land to provide necessary offsets onsite. It is noted that this matter can be further considered and appropriately addressed through the Biodiversity Assessment Method at the development application stage.

The land is bushfire prone and further consultation with the NSW Rural Fires Service will be necessary to confirm the suitability of the site for development. The indicative industrial subdivision layout submitted with the planning proposal accommodates adequate defensible space, appropriate road design and access. Proposed development control plan provisions will ensure the implementation of these matters.

Council states that the site is not listed on the contaminated lands register. While the land is currently utilised as a depot, this land use is not expected to preclude future light industrial uses. Nevertheless, a condition has been included as part of the gateway approval, requiring the preparation of a preliminary contaminated land assessment prior to public exhibition in order to address the requirements of *State Environmental Planning Policy No. 55 Remediation of Land*.

The LEP does not identify the site as subject to inundation by flooding. Nevertheless, a specialist report was prepared in support of the proposal due to an increase in potential stormwater runoff and the likelihood of reduced flood storage as the result of fill required to accommodate the proposal. Council intends to prepare development control plan provisions to address water quality matters relating to stormwater on the subject site.

As no serious or irreversible flora, fauna or environmental impacts are anticipated, it is considered appropriate that the proposal proceed subject to further consultation with the Office of Environment and Heritage.

## **5.3 Economic**

Positive economic impacts can be expected from the proposal through the provision of approximately 5.65 hectares of industrial zoned land and subsequent employment opportunities. The subject land is well serviced, is provided with suitable access and is located in proximity to the Area 14 Urban Growth Area. Rezoning of the site is consistent with the aims of Council's UGMS.

## **5.4 Infrastructure**

The provision and funding of State infrastructure is not necessary for this proposal.

In terms of local infrastructure, road access, stormwater drainage and the disposal of sewage can all be accommodated. In this regard, suitable infrastructure is available to service future light industrial development on the subject land.

## **5.5 Heritage**

The Birpai Local Aboriginal Land Council have undertaken an assessment of the subject land and have advised that there are no known Aboriginal cultural heritage sites on the subject allotments, particularly in the area proposed to be rezoned IN2.

Furthermore, there are no items of environmental heritage listed in Schedule 5 of the LEP.

## **6. CONSULTATION**

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### **6.1 Community**

Council have not specifically identified a timeframe for community consultation. Given the low impact nature of the proposal, a 14 day timeframe is considered appropriate.

### **6.2 Agencies**

It is recommended that consultation be undertaken with the following agencies:

- NSW Roads and Maritime Services;
- NSW Rural Fire Service; and
- Office of Environment and Heritage.

## **7. TIME FRAME**

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Council have proposed a 7 month timeframe to complete the proposal. Due to the level of consultation that will be required with State agencies, a 9 month timeframe is considered appropriate.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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The proposal is consistent, or justifiably inconsistent, with the State, regional and local planning framework and deals primarily with matters of local significance. It is considered appropriate that Council be provided authorisation to act as the local plan-making authority for this matter.

## **9. CONCLUSION**

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The preparation of the rezoning planning proposal is supported as it:

- meets the adequacy criteria by providing: appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; appropriate community consultation; a suitable project timeline; and an evaluation for the delegation of plan making functions;
- is consistent or justifiably inconsistent with all relevant 9.1 directions and SEPPs apart from 4.4 Planning for Bushfire Protection (which can only be determined after consultation with the NSW Rural Fire Service);
- is consistent with the *North Coast Regional Plan 2036*;
- is consistent with the local planning framework, including the *Port Macquarie-Hastings Urban Growth Management Strategy 2017 – 2036*;
- is unlikely to have any detrimental impact on the socio-economic welfare of the Local Government Area;
- will provide important industrial land in the Lake Cathie / Bonny Hills area; and
- will facilitate future employment opportunities on predominantly cleared land, protects the environmental values of the land (including core Koala habitat) and addresses community concern relating to visual impacts via the implementation of a landscaped buffer area along the main road.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

- d) The planning proposal should be made available for community consultation for a minimum of 14 days.
- e) Consultation is required with the following public authorities:
  - NSW Roads and Maritime Services
  - NSW Rural Fire Service
  - Office of Environment and Heritage
- f) The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
- g) Given the nature of the planning proposal, Council should be the local plan-making authority.
- h) Prior to public exhibition, the planning proposal shall be amended to:
  - (a) include a preliminary contaminated land assessment;
  - (b) include specific justification for the variation to the urban growth area boundary detailed in the *North Coast Regional Plan 2036* in accordance with Appendix A of the Plan;
  - (c) update Figure 7 to;
    - i. correctly reference land zoned to the south of the subject site as RU1 rather than R1; and
    - ii. include E4 Environmental Management in the key;
  - (d) update Figure 8 to include 'Z2 – 3ha' in the key.



**Gina Davis**  
Acting Team Leader, Northern



9-7-2019

**Jeremy Gray**  
Director Regions, Northern  
Planning Services

Assessment officer: Kate Campbell  
Planning Officer, Northern  
Phone: 5778 1401