

Planning and Assessment

IRF20/4214

Gateway determination report

LGA	Port Stephens
PPA	Port Stephens Council
NAME	Fullerton Cove neighbourhood centre (60 - 90 jobs)
NUMBER	PP_2020_PORTS_001_00
LEP TO BE AMENDED	Port Stephens LEP 2013
ADDRESS	42 Fullerton Cove Road, Fullerton Cove
DESCRIPTION	Lot 14 DP 258848
RECEIVED	28 August 2020
FILE NO.	IRF20/4214
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	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 (**Attachment A**) seeks to rezone the site from RU2 Rural Landscape to B1 Neighbourhood Centre and E2 Environment Conservation to enable the development of a neighbourhood supermarket and centre at 42 Fullerton Cove Road, Fullerton Cove. This will provide local retail services to Fern Bay and Fullerton Cove. Submissions on the Fern Bay and North Stockton Strategy raised a desire for local retail services in this area.

In 2013, a planning proposal for the site was refused at Gateway by the Department of Planning, Industry and Environment. Since then, Port Stephens Council has progressed the *Fern Bay and North Stockton Strategy*, *Local Housing Strategy* and *Local Strategic Planning Statement*. This planning proposal has addressed all the reasons for refusal of the previous planning proposal.

1.2 Site description

The site is 6.7 hectares (ha) in area and is located on the north west corner of Nelson Bay Road and Fullerton Cove Road at Fullerton Cove (figure 1). The site is currently used for residential purposes and has been largely cleared around the existing dwellings.



Figure 1 – Site context

Investigations identify the site as having the following site constraints: acid sulfate soils, onsite biodiversity and corridor functions, koala habitat, stormwater management, flooding, traffic and bushfire constraints.

The planning proposal identifies part of the site as being a future E2 Environmental Conservation zone reflecting its conservation status and existing environmental constraints.

1.3 Existing planning controls

The site is currently zoned RU2 Rural Landscape and has a minimum lot size of 20 hectares (see figure 2). There are no building height or floor space ratio planning controls over the site.

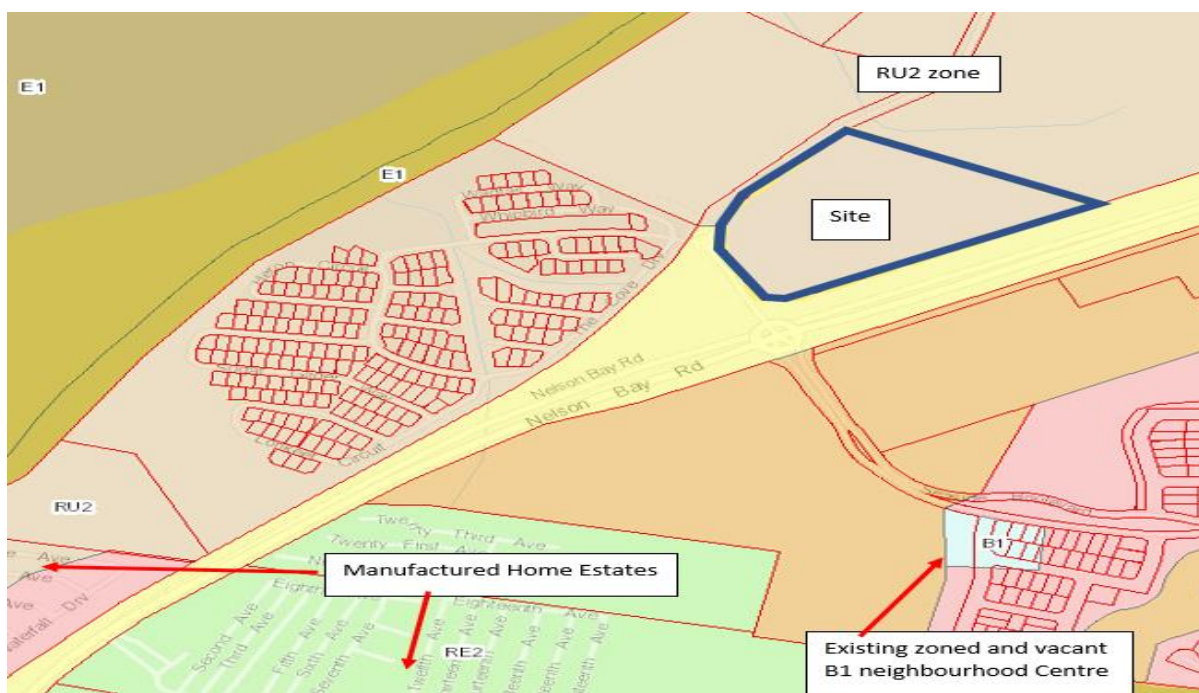


Figure 2 – Planning controls and location

1.4 Surrounding area

The site is located to the northern edge of the Fern Bay urban area where the land transitions from urban to rural and conservation purposes. Within 1km of the site to the south and east are existing dwellings and new dwellings being constructed in the 'Seaside Estate' residential release. Further south are manufactured home estates.

Approximately 600 metres south of the site is an existing zoned and vacant B1 Neighbourhood Centre located in the Seaside Estate, which permits non-retail uses of business premises, medical centres, places of public worship and community facilities. The planning proposal states there is sufficient demand for commercial development at both Seaside Estate and the site at Fullerton Cove.

The site is close to the Hunter Wetlands National Park to the west and contains low lying areas of local wetlands. Fullerton Cove is approximately 500m to the west of the site.



Figure 3 – Surrounding context

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal is to enable a neighbourhood supermarket to provide day to day local retail services for residents of Fern Bay and Fullerton Cove. The objectives are clear and do not require amendment prior to community consultation.

Port Stephens Council identified three options to achieve the objectives of the planning proposal being:

- develop land already zoned B1 Neighbourhood Centre at Seaside Estate (500-600 metres east of the site);
- rezone the Stockton Residential Centre for a new town centre; or
- rezone the subject site and back zone the B1 Neighbourhood Centre zoned land at Seaside Estate.

Council's preferred approach is to rezone the subject site, being approximately 2.5ha to B1 Neighbourhood Centre and rezone the remaining land to be zoned E2 Environmental Conservation to reflect the environmental characteristics of the site. The proposed B1 Neighbourhood Centre will support and compliment a new future local centre which will be established in the future further to the south.

2.2 Explanation of provisions

The planning proposal intends to amend the *Port Stephens Local Environmental Plan 2013* by:

- rezoning the site from RU2 Rural Landscape to part B1 Neighbourhood Centre and part E2 Environmental Conservation;
- amending the lot size map from 20ha to part 20ha and part with no specified lot size;
- amending the height of buildings map from no height to part 9m and part no specified height; and
- inserting a local provision limiting the retail gross floor area of the site to 1,500m².

The above provisions are clear. However, prior to exhibition the proposed clause relating to the retail gross floor area limit, should clarify whether the clause intends to make reference to the 'neighbourhood supermarket' definition, which under clause 5.4 of the Local Environmental Plan states that the gross floor area for a neighbourhood supermarket must not exceed 1,000m².

2.3 Mapping

The maps are clear and adequate for agency and community consultation. The following mapping changes are proposed to implement the objectives of the planning proposal:

- land zoning map;
- lot size map; and
- height of buildings map.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is consistent with the *Fern Bay and North Stockton Strategy 2020*, which has been endorsed by Newcastle City and Port Stephens Councils. This strategy was informed by the Hill PDA's *Fern Bay and North Stockton Commercial Lands Study 2017*.

The Strategy included a Commercial Lands Study (Hill PDA) to determine the retail demand, an assessment of the preferred location of a new centre, and assessment of the impacts of a new centre on the surrounding retail hierarchy. This planning proposal is one of six potential sites analysed in the strategy as the future mixed-use town centre.

The preferred location in the Hill PDA study for a local centre in the Fern Bay and North Stockton area was the site of the existing Stockton Residential Facility. This NSW Government facility has been used as a residential centre for people with disabilities. No decisions will be made on the future of the Stockton Residential Facility until all residents have transitioned to their new, contemporary group homes in the community. Given there has been no decisions on the future of this facility, it should not be considered in context of this planning proposal.

The strong community desire for a supermarket in the northern end of the urban area was expressed through a petition of over 600 residents in 2019 to the Fern Bay and North Stockton Strategy, which is included in the planning proposal.

4. STRATEGIC ASSESSMENT

4.1 State

An assessment against the following two relevant state policies is included in the consideration of Section 9.1 Ministerial direction 3.4 – Integrating Land Use and Transport:

- a) *Improving Transport Choice* – Guidelines for planning and development (DUAP 2001); and
- b) *The Right Place for Business and Services* – Planning Policy (DUAP 2001).

4.2 Regional

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* provides high level directions for growth and change in the region. The following relevant directions apply to this proposal:

Direction 14 – Protect and connect natural areas.

The planning proposal is considered consistent with the direction as it focuses development on the cleared area of the site and proposes to zone the vegetated areas E2 Environmental Conservation, reflecting the sites biodiversity characteristics, including the sites location within the Watagan to Stockton Biodiversity Corridor.

Direction 16 – Increase resilience to hazards and climate change.

Port Stephens Council recognise the planning proposal is potentially inconsistent with this direction and further studies and investigations will be required to enable an assessment against this direction.

Direction 21 – Create a compact settlement.

The site adjoins the northern boundary of the Fullerton Cove urban area and is considered consistent with the direction as it is a logical expansion for this type of development.

Direction 26 – Deliver infrastructure to support growth and communities.

The proposed development is considered consistent with the direction as it takes advantage of the existing transport infrastructure in the locality and can be connected to enabling infrastructure.

Greater Newcastle Metropolitan Plan 2036

The planning proposal is generally consistent with the following strategies and their associated actions:

- *Strategy 8 – Address change in retail consumer demand.*
- *Strategy 9 – Plan for jobs closer to homes in the metro frame.*
- *Strategy 12 – Enhance the blue and green grid and the urban tree canopy.*
- *Strategy 13 – Protect rural amenity outside urban areas.*

Consistency with *Strategy 14 – Improve resilience to natural hazards* will be undertaken following completion of the proposed drainage and flood study.

4.3 Local

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal is generally consistent with the LSPS and its stated planning priorities as it will provide business opportunities and services for the community, conserve biodiversity values of the site and create space for people to come together.

Fern Bay and North Stockton Strategy 2020

Port Stephens Council and City of Newcastle adopted the joint *Fern Bay and North Stockton Strategy 2020* (the Strategy) to guide future development and ensure sufficient community infrastructure is provided for the growing community.

The Strategy included in the structure plan allowance for the consideration of a neighbourhood centre, with a neighbourhood supermarket, in Fern Bay. The centre should be limited in area to be consistent with the Strategy's objectives to provide a mixed-use town centre in a central location with exposure to Nelson Bay Road.

The Strategy also included an action to undertake a detailed assessment of the request to amend the Port Stephens Local Environmental Plan 2013 submitted for 2 Seaside Estate, Fern Bay. The rezoning request has since been withdrawn for this site. The planning proposal states the retention of the B1 Neighbourhood Centre at 2 Seaside Estate is not considered to undermine the intended outcomes of the planning proposal.

The planning proposal to rezoning land with high environmental value to E2 Environmental Conservation is considered consistent with the principles and Precinct 6 outcomes in the Strategy.

4.4 Section 9.1 Ministerial directions

1.1 Business and Industrial Zones

The objectives of this direction are to:

- (a) Encourage employment growth in suitable locations,
- (b) Protect employment land in business and industrial zones, and

(c) Support the viability of strategic centres.

The planning proposal will provide additional employment land near residential neighbourhoods.

While there may be some impact of proposal on the already zoned B1 Neighbourhood Centre at Seaside Estate. This site is not an 'identified centre' in the *Hunter Regional Plan 2036* or *Greater Newcastle Metropolitan Plan 2036*. The planning proposal is generally in accordance with these relevant strategies.

As stated in the *Greater Newcastle Metropolitan Plan 2036*, a planning proposal may be inconsistent with this direction if it is in accordance with the actions in the plan.

1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land. The direction applies as it proposes to rezone land from a rural zone to a business zone.

The planning proposal states the site is not used for agricultural purposes, nor is it suitable due to its size, nearby low-density housing and environmental constraints. The inconsistency with the direction is considered of minor significance.

As stated in the *Greater Newcastle Metropolitan Plan 2036*, a planning proposal may be inconsistent with this direction if it is in accordance with the actions in the plan.

1.5 Rural Lands

Port Stephens Council considers the planning proposal to be consistent with the *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036*. The site is currently used for residential purposes and the planning proposal states that the proposed rezoning will not impact on the rights of neighbouring rural properties. This site is also not mapped as prime agricultural land. This assessment is considered adequate and justifies the inconsistency as of minor significance.

As stated in the *Greater Newcastle Metropolitan Plan 2036*, a planning proposal may be inconsistent with this direction if it is in accordance with the actions in the plan.

2.1 Environmental Protection Zones

The planning proposal includes rezoning part of the site to E2 Environmental Conservation reflecting the biodiversity characteristics of the site. The proposed boundary of the E2 Environmental Conservation zoned land was informed by an ecological assessment. The final boundaries will be informed by a biodiversity development assessment report.

Consultation with the Biodiversity Conservation Division should be undertaken following the preparation of the biodiversity development assessment report to confirm the suitability of the proposed mitigation measures and E2 Environmental Conservation zone.

This is required prior to considering consistency with this direction.

2.2 Coastal Management

The site is mapped as a coastal environmental area, and not as coastal use area, under the *State Environmental Planning Policy (Coastal Management) 2018*.

As outlined in the planning proposal, the direction provides that a land in these areas should not be rezoned to enable increased development or more intensive land use.

The *Fern Bay and North Stockton Strategy 2020* did consider the need to protect the coast and increase resilience to natural hazards.

The site does not have direct access to the coastal foreshore. The planning proposal is unlikely to cause an increased risk of coastal hazards or exacerbate potential impact of coastal processes.

As stated in the *Greater Newcastle Metropolitan Plan 2036*, a planning proposal may be inconsistent with this direction if it is in accordance with the actions in the plan.

2.3 Heritage Conservation

While the site does not contain any listed items of heritage significance, there are listed items in the locality, including Stanley Park House and the sites associated with the Stockton Beach Dune System.

Consultation with the Worimi Local Aboriginal Land Council and the Environment, Energy and Science Group is required prior to considering consistency with the direction.

2.6 Remediation of contaminated land

The site has no known likely contamination sources. However, the site is mapped within the broader 'Per- and Polyfluoroalkyl Substances' (PFAS) Management Zone.

When a Stage 1 Contamination Report is received (as proposed), consistency with direction can then be considered.

3.4 Integrating Land Use and Transport.

A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and
- (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).

Improving Transport Choice

This policy provides advice on how to better integrate land use and transport planning and development and provide transport choice. The policy introduces accessible development principles and location and design guidelines for specific land uses, including centres, commercial and retail.

Port Stephens Council provide an assessment against the policy based on the information available at the time, which is adequate.

The Right Place for Business

The general aim of this policy is to reduce travel demand, increase public transport use and walking and cycling by locating businesses in the right locations. The site is in walking distance of nearby residents who are currently underservice by the local retail services.

The planning proposal is considered to be consistent with the direction.

3.5 Development Near Regulated Airports and Defence Airfields

The site is mapped in the RAAF Base Obstacle Limitations or Operations Surface Map and Height Trigger Map. The proposed building height provisions will not trigger the requirement to refer the matter to the Department of Defence. Despite this, Port

Stephens Council has indicated it will be undertaking consultation with the Department of Defence.

The planning proposal is considered to be consistent with the direction.

4.1 Acid Sulfate Soils

The land contains Class 2 and 4 acid sulfate soils. An acid sulfate soils study will be required to determine consistency with this direction.

4.3 Flood Prone Land

This direction applies as the subject site is identified as flood prone land within the flood planning area.

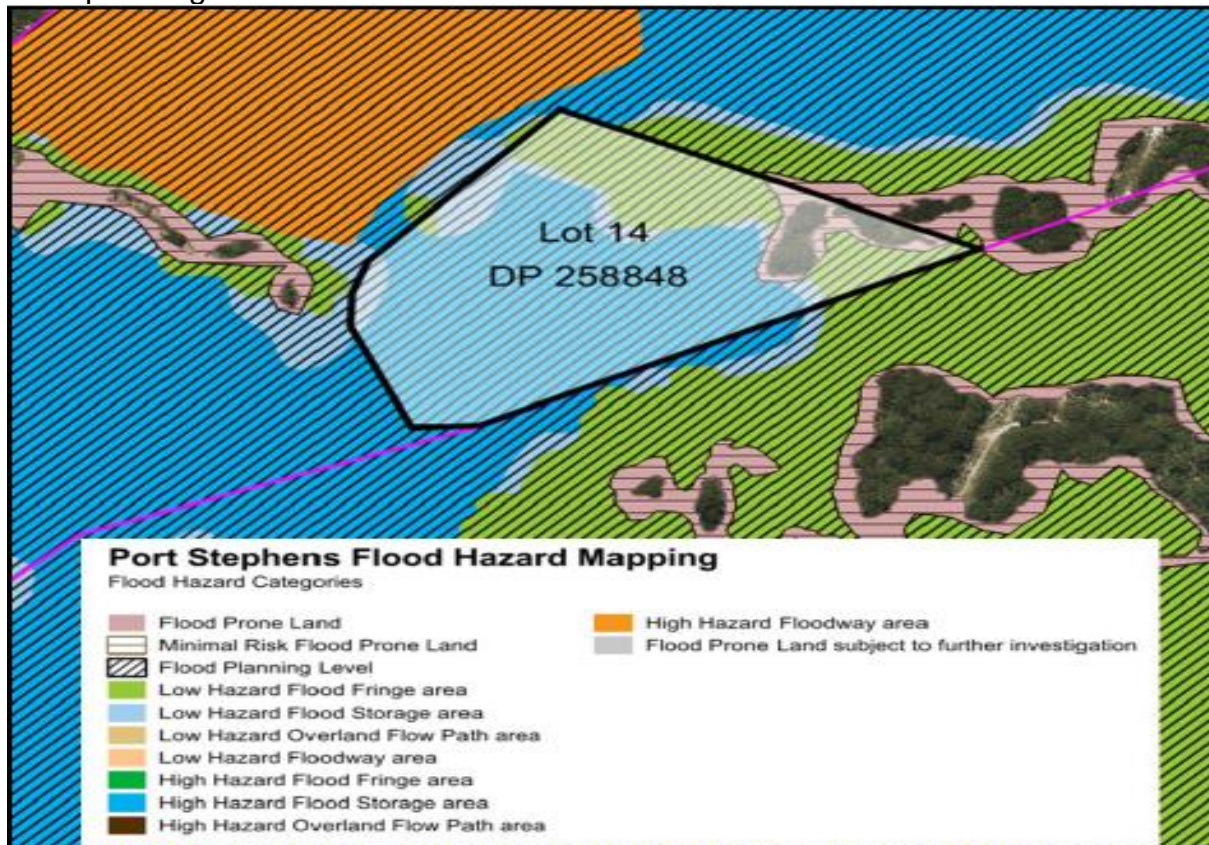


Figure 4 - Flood Mapping

The planning proposal is potentially inconsistent with this direction as it may be inconsistent with the direction's objective to ensure that the provisions of an LEP on flood prone land are commensurate with flood hazard and includes consideration of the potential impacts both on and off the subject land.

The planning proposal includes the importing of fill on around 2.5ha of the site to enable the development to occur. The amount of fill may cause flooding impacts on other land.

A flood and drainage study will be required to enable the consideration of whether inconsistency against this direction is considered minor, as well as consultation with Biodiversity Conservation Division to ensure measures proposed are appropriate.

4.4 Planning for Bushfire Protection

The site is mapped as bushfire prone and will require consultation with the NSW Rural Fire Service to determine consistency with this direction.

5.10 Implementation of Regional Strategies

The planning proposal is potentially inconsistent with direction 16 of the *Hunter Regional Plan 2036* and Strategy 14 of the *Greater Newcastle Metropolitan Plan 2036*.

4.5 State environmental planning policies (SEPPs)

SEPP (Coastal Management) 2018

The site is mapped as a coastal environmental area, and not as coastal use area, under the *Coastal Management Act 2016*. Under the SEPP, development consent must not be granted to develop on land in the coastal environmental area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the ecological environment, coastal environmental values, water quality, marine and native vegetation and fauna and their habitats.

These matters will need to be considered at the development application stage. Port Stephens Council has indicated the need to undertake a flooding and drainage study. This analysis and consultation with the Biodiversity Conservation Division is required prior to considering consistency with the SEPP.

SEPP (Koala Habitat Protection) 2019

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) has been prepared in accordance with Part 3 of the Koala Habitat Protection SEPP. The proposed B1 Neighbourhood Centre zone does not contain land mapped as preferred koala habitat or supplementary habitat. No preferred koala feed trees will be removed as a result of this rezoning. The planning proposal includes an assessment against the CKPoM performance criteria.

The planning proposal is considered consistent with this SEPP.

SEPP (Primary Production and Rural Development) 2019

The planning proposal includes an assessment against the SEPP and notes that the site is not used for agricultural purposes, nor is it suitable due to its size and the environmental constraints. Preliminary consideration has been given to the potential impacts on oyster aquaculture. Further investigations of flooding and drainage will be undertaken. The planning proposal is considered consistent with this SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Port Stephens Council identify many positive social effects from the planning proposal, including, local employment, expenditure capture with the local government area, decreased travel times for shopping and a place where the community can come together.

Council have also included details of a community petition identifying the communities' desire for a shopping centre in the northern part of the Fern Bay general area.

5.2 Environmental

There are four potentially significant environmental impacts, being biodiversity, Koala habitat, stormwater management and flooding.

Biodiversity

The planning proposal recognises the need for a biodiversity development assessment report (BCAR) to assess the impacts of land clearing to accommodate the proposal. The full impacts on biodiversity will not be known until the BCAR is undertaken and assessed by the Biodiversity Conservation Division. The outcomes of the BCAR assessment should be made available for the public consultation stage of the planning proposal.

The site is also close to the general area identified as a biodiversity corridor for the Metropolitan area in the *Greater Newcastle Metropolitan Plan 2036*.

A 2011 ecological assessment report (see [Figure 5](#)) while now out of date identified areas of Endangered Ecological Communities (EEC) and threatened fauna species. The 2011 study has been used to guide the development footprint. The planning proposal also includes zoning part of the site as E2 Environmental Conservation, which may align with the outcomes of the BCAR.

Koala habitat

The previous ecological assessment report identified areas of preferred and supplementary Koala habitat, which coincide with the areas of EEC's. The BCAR will also considered these habitats.

Stormwater

The site is close to the Hunter Wetlands National Park, hence confirmation that the development will not have detrimental impacts on the National Park will be necessary. The planning proposal recognises further stormwater modelling should be undertaken post Gateway determination.

Flooding

A preliminary flooding and stormwater management study found Port Stephens Council's policies regarding water quality and detention for the development can be achieved. The planning proposal identifies that it will require approximately 2ha of fill to enable the development of the neighbourhood business centre. Much of the Fullerton Cove area is significantly flood affected. Any change in flood characteristics (such as significant filling) could have an impact on flood heights and characteristics in the flood catchment.

The flooding information suggests an increase in surrounding flood levels of 20mm as a result of this fill. Further flood modelling is required to include the impacts from nearby future development and the proposed significant fill associated airport related development.

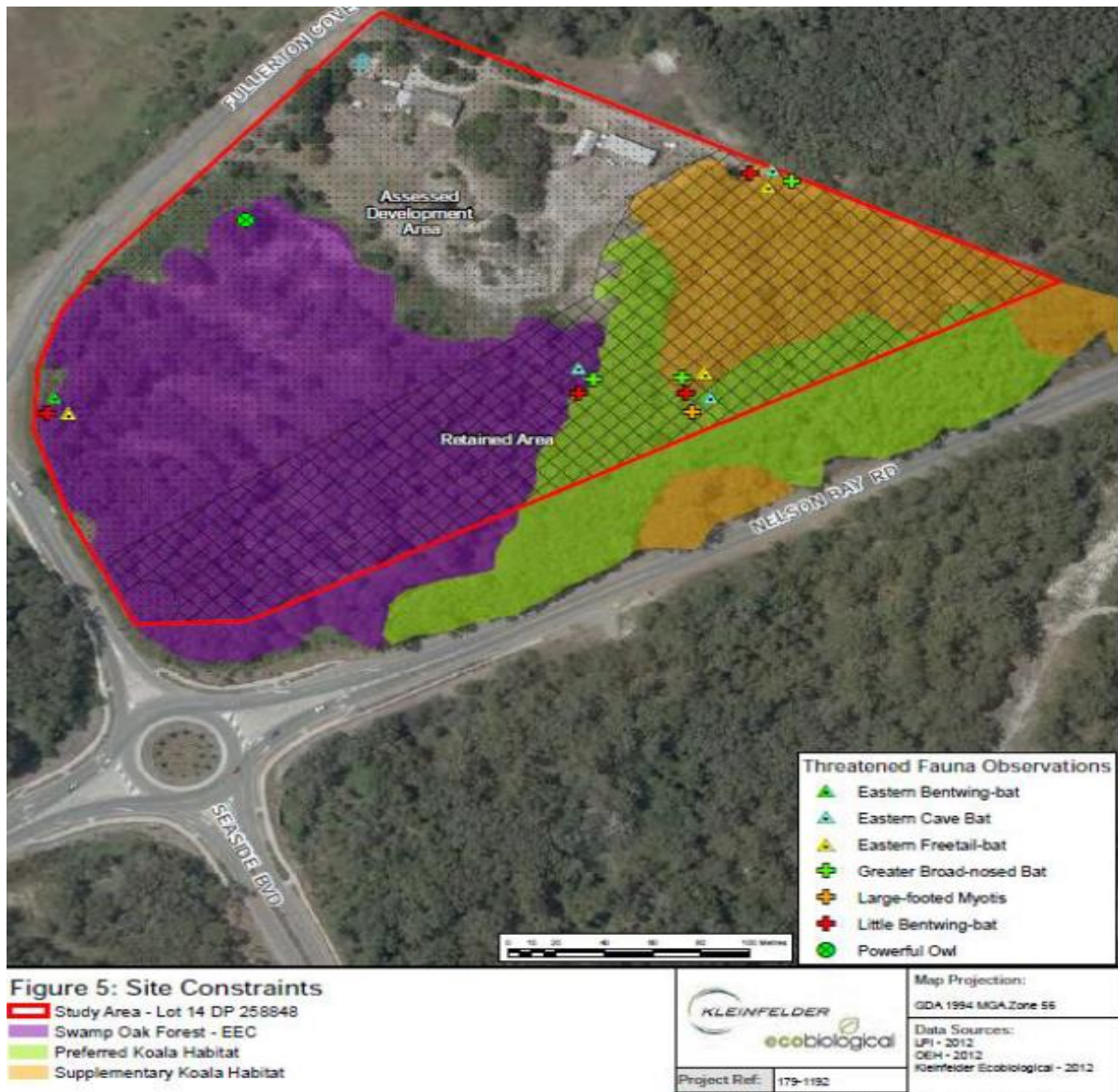


Figure 5 – previous Ecological Assessment report (2011)

5.3 Economic

The existing Seaside Estate B1 Neighbourhood Business zone is around 500-600 metres to the east with similar levels of visibility from Nelson Bay Road. The impacts on viability of both neighbourhood shopping areas operating concurrently is currently unknown.

5.4 Infrastructure

The planning proposal does not include residential or industrial land, hence will not be mapped as an urban release area requiring a potential contribution towards state public infrastructure.

Port Stephens Council propose to undertake a traffic impact study which may inform any upgrades to infrastructure. These traffic matters and any upgrades to utility infrastructure can be addressed at development application stage.

6. CONSULTATION

6.1 Community

Port Stephens Council does not specify the length of time for the exhibition period. The planning proposal is considered to have significant community interest and therefore a 28-day consultation period is recommended.

6.2 Agencies

Port Stephens Council propose to consult with the following agencies:

- NSW Rural Fire Service
- Department of Primary Industries
- Commonwealth Department of Defence
- Transport for NSW
- Environment, Energy and Science Group
- Worimi Aboriginal Land Council

The Gateway determination identifies consultation with agencies considered essential in progressing this proposal.

7. TIME FRAME

Port Stephens Council has proposed a 13-month time frame to progress the planning proposal. Given additional studies are proposed by Council and required by the Gateway prior to finalisation of proposal, including a BCAR which typically requires seasonal surveys and then considering approval time as well as community interest.

A 24-month timeframe is recommended to reflect the requirement for the additional studies.

8. LOCAL PLAN-MAKING AUTHORITY

Port Stephens Council has requested to be the local plan-making authority. Given the complexity of the issues associated with this proposal and need for further studies, Council should not be authorised to be the local plan-making authority.

9. CONCLUSION

The site has local strategic merit being a recognised option for a local and/or neighbourhood centre in the *Fern Bay and North Stockton Strategy 2020*. The site will cater to an unmet planning and social need for local retail needs in the catchment.

The site has complex site constraints that will need to be further investigated to ensure that impacts can be satisfactorily ameliorated or addressed at development application stage. These impacts include biodiversity, koala habitat, stormwater management, flooding and traffic.

The recommended approach is to issue a Gateway determination with specific conditions to undertake further analysis on site constraints to better understand the site-specific merits of the proposal.

10. RECOMMENDATION


It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with the following section 9.1 Ministerial directions are minor;
 - 1.1 Business and Industrial Zones
 - 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.2 Coastal Management
2. note consistency with following section 9.1 Ministerial directions is unresolved and will require justification:
 - 2.6 Remediation of Contaminated Land
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection.
 - 5.10 Implementation of Regional Plans

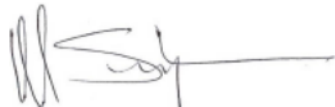
It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Prior to public exhibition, the planning proposal should be updated to identify if the proposed local provision limiting the retail gross floor area intends to refer to the 'neighbourhood supermarket' definition under clause 5.4 of the *Port Stephens Local Environment Plan 2013*.
3. Update the planning proposal to include:
 - (a) biodiversity development assessment report;
 - (b) traffic impact assessment;
 - (c) Stage 1 contamination report;
 - (d) flood and drainage study to assess the impact of the proposed fill on flood heights and characteristics in the flood catchment and potential impacts on the Hunter Wetlands National Park;
 - (e) acid sulfate soils study; and
 - (f) bushfire risk assessment.
4. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Department of Primary Industries;
 - Transport for NSW;
 - Biodiversity Conservation Division; and

- Worimi Aboriginal Land Council.
5. The time frame for completing the LEP is to be 24 months from the date of the Gateway determination.
 6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



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12/10/2020
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