

## Planning and Assessment

IRF20/5913

### Gateway determination report

<b>LGA</b>	Lake Macquarie
<b>PPA</b>	Lake Macquarie City Council
<b>NAME</b>	Introduce additional provisions to protect heritage values in Catherine Hill Bay and Middle Camp within the State Listed Catherine Hill Bay State Conservation Area (0 homes, 0 jobs)
<b>NUMBER</b>	PP_2020_LAKEM_006_00
<b>LEP TO BE AMENDED</b>	Lake Macquarie Local Environmental Plan 2014
<b>ADDRESS</b>	Various lots at Catherine Hill Bay and Middle Camp
<b>DESCRIPTION</b>	Various lots and DPs
<b>RECEIVED</b>	9 December 2020
<b>FILE NO.</b>	IRF20/5913
<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 introduce additional provisions to protect heritage values in Catherine Hill Bay and Middle Camp Village within the State Listed Catherine Hill Bay State Conservation Area.

### 1.2 Site description

The planning proposal applies to land on two sites (Figure 1) at Catherine Hill Bay Village and Middle Camp Village within the State Listed Catherine Hill Bay State Conservation Area.

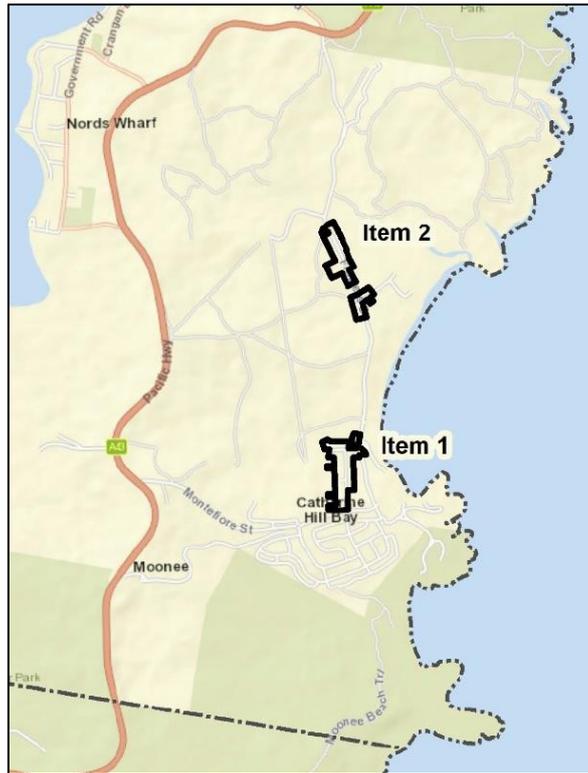


Figure 1 - Location Plan (extract)

**Catherine Hill Bay Village (Item 1)**

The Catherine Hill Bay Village site (Figure 2) comprises 56 lots along Clark Street and parts of Lindsley Street, Hale Street and Flowers Drive.

**Middle Camp Village (Item 2)**

The Middle Camp Village site (Figure 3) comprises 52 lots and is located approximately 1 kilometre north of the Catherine Hill Bay Village site and covers two precincts along Flowers Drive.



Figure 2 – Catherine Hill Bay Village

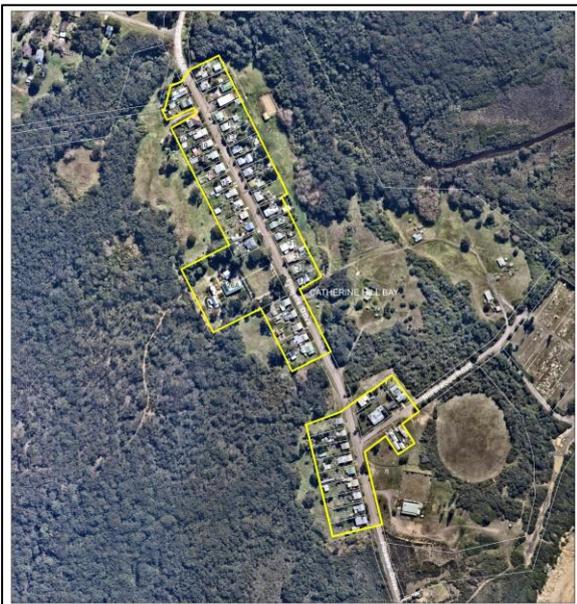


Figure 3 – Middle Camp Village

### 1.3 Existing planning controls

#### Zoning

The Catherine Hill Bay site is zoned R2 Low Density Residential and E2 Environmental Conservation and the Middle Camp Village site is zoned R2 Low Density Residential under *Lake Macquarie Local Environmental Plan 2014*.

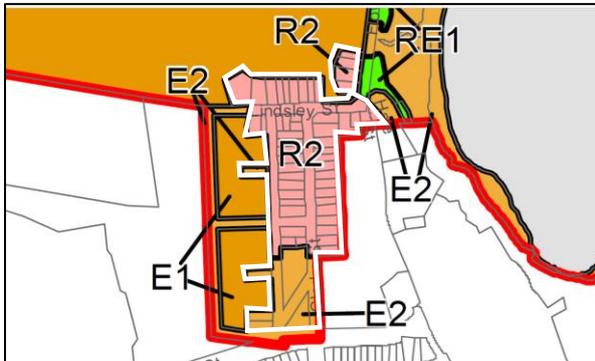


Fig. 4 - Zoning - Catherine Hill Bay (outlined white)

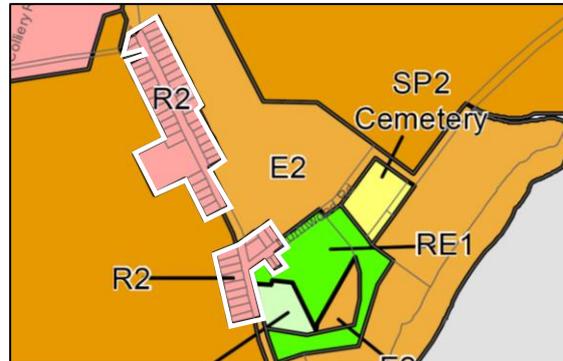


Fig. 5 - Zoning - Middle Camp Village (outlined white)

#### Maximum Building Height

An 8.5 metre maximum building height applies to the R2 Low Density Residential zoned land and a 5.5 metre maximum building height limit applies to the E2 Environmental Conservation zoned land (Figures 6 and 7 – outlined red).

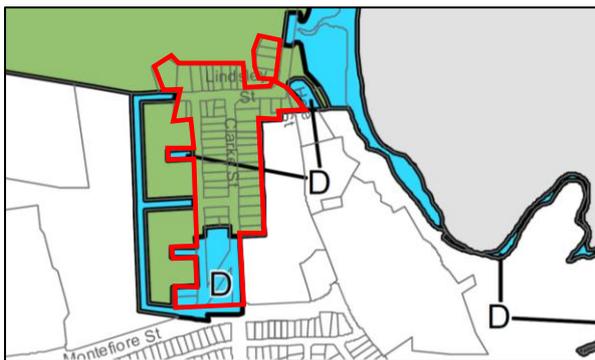


Fig. 6 - Max Building Height - Catherine Hill Bay

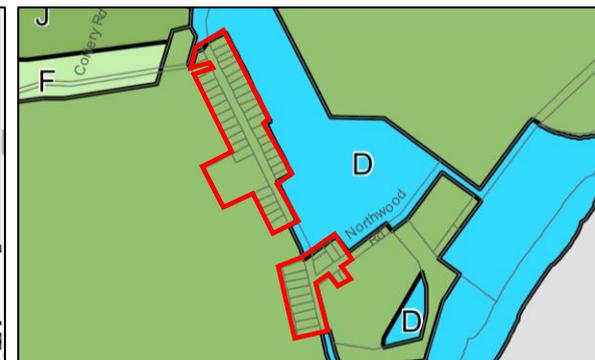


Fig. 7 - Max Building Height - Middle Camp Village

#### Minimum Lot Size

A minimum lot size of 450m<sup>2</sup> applies to the R2 Low Density Residential zoned land and 100 hectares applies to the E2 Environmental Conservation zoned land (Figures 8 and 9 – outlined red).

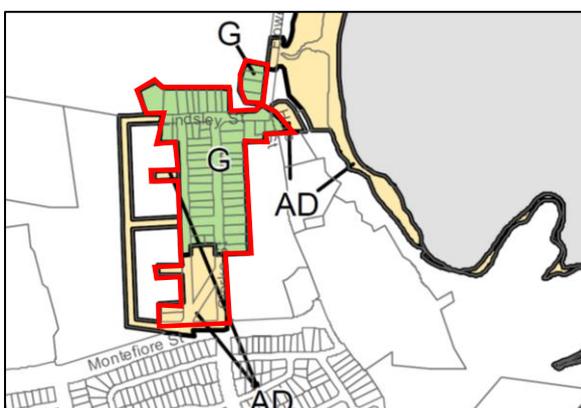


Fig. 8 - Minimum Lot Size - Catherine Hill Bay

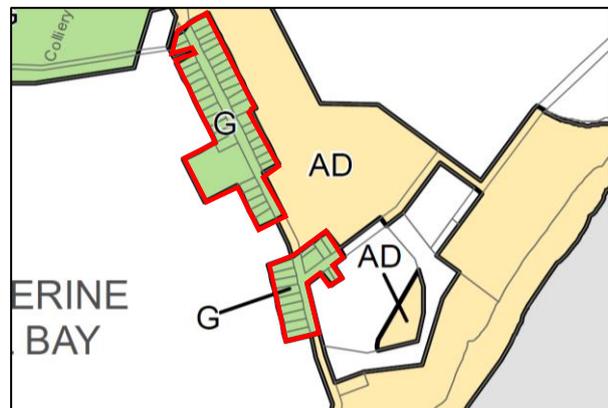


Fig. 9 - Minimum Lot Size - Middle Camp Village

## Heritage

Catherine Hill Bay and Middle Camp are located within Catherine Hill Bay State Conservation Area, an area of State significance listed in Schedule 5 of *Lake Macquarie Local Environmental Plan 2014*. Several heritage items of local significance are also listed in Schedule 1 including a house, cottages, a hall, police station and hotel (Figures 10 and 11).

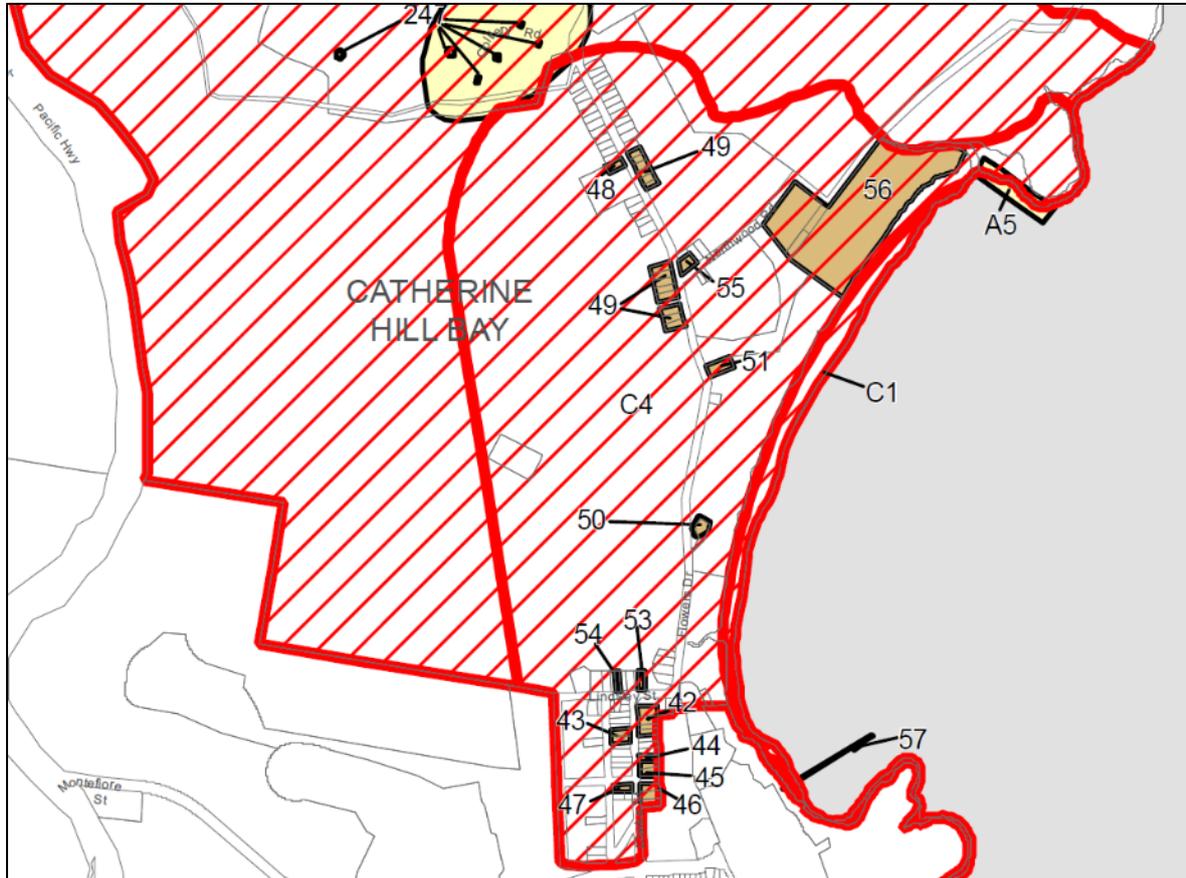


Figure 10 - Heritage Map - Catherine Hill Bay and Middle Camp Village

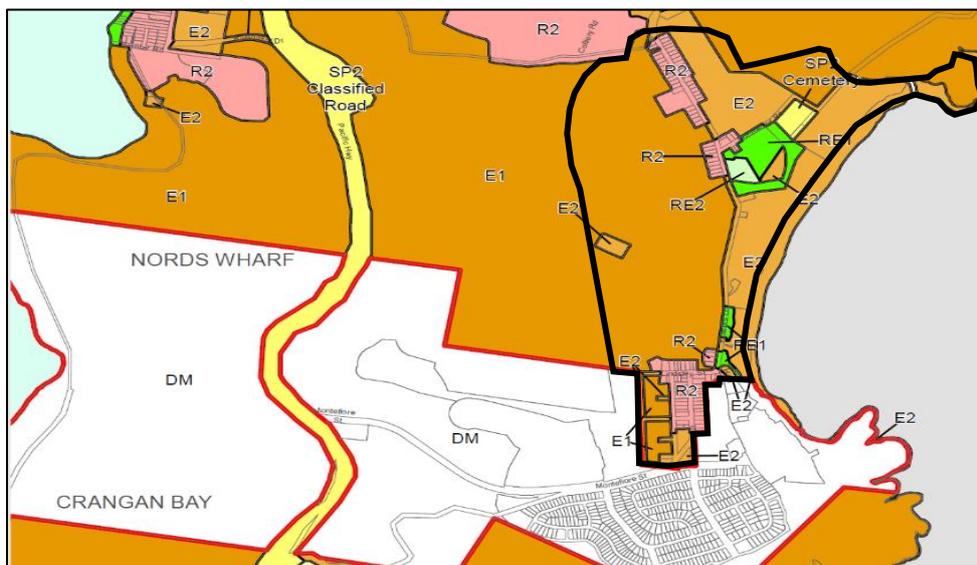


Figure 11 - Extract zoning map with Catherine Hill Bay State Conservation Area outlined black

## Other constraints

The sites are located on land mapped as Class 3 and Class 5 Acid Sulfate Soils and some parts of the Catherine Hill Bay site are identified as flood prone land and mapped as a Sensitive Aboriginal Landscape Area.

### **1.4 Surrounding area**

The Catherine Hill Bay Cultural Precinct (Figure 12 - outlined blue, listing No. 01828) is a State Listed heritage item within the Catherine Hill Bay Heritage Conservation Area which covers the villages of Catherine Hill Bay and Middle Camp (Figure 12). The Precinct adjoins E2 Environmental Conservation and E1 National Parks and Reserves land.

Development on land to the south of Catherine Hill Bay Village is currently covered by the Catherine Hill Bay (South) Development Control Plan issued by the Department of Planning and Infrastructure in 2012. Subdivision and development of new housing for approximately 200 lots on land to the north of Middle Camp Village is subject to development consent issued by the Planning Assessment Commission on 12 July 2012 under Concept Approval - Application No. 10\_0089.

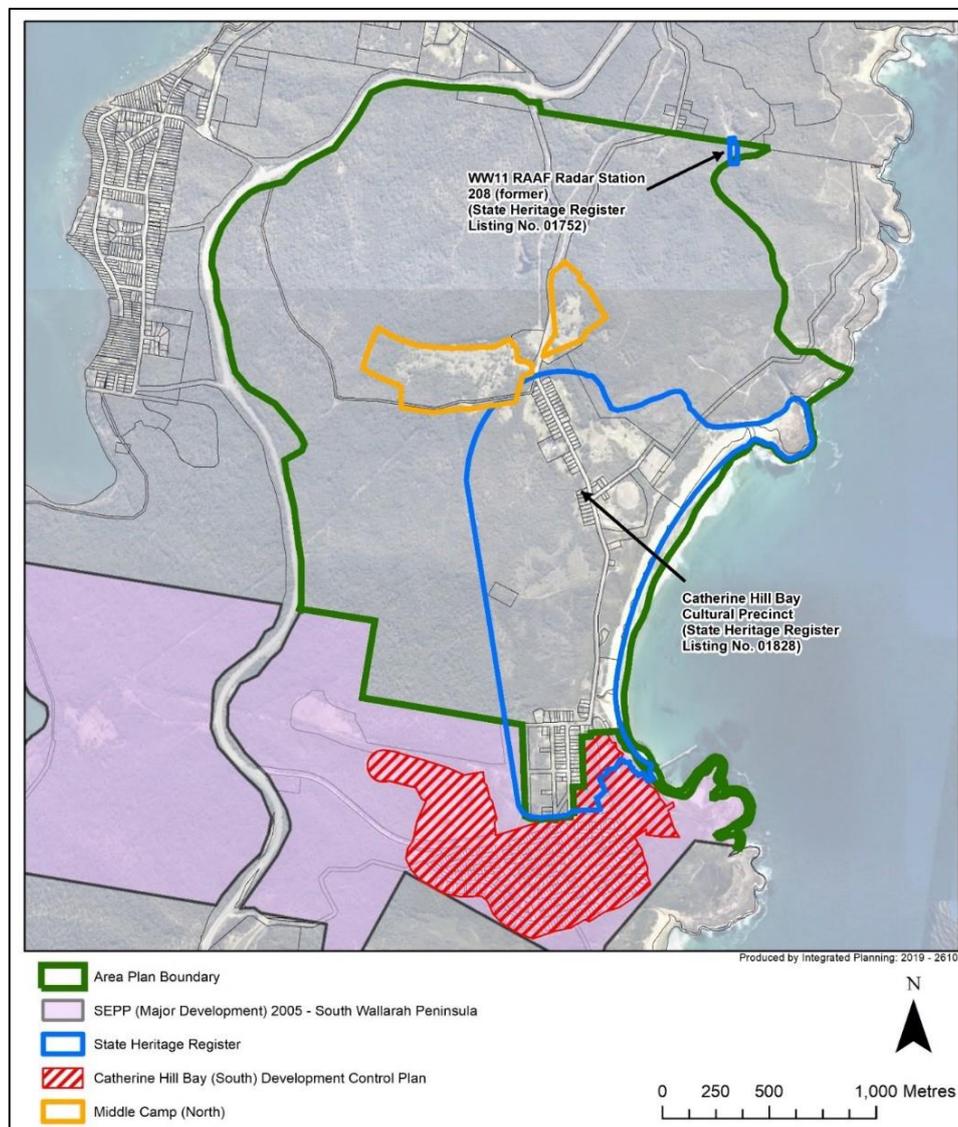


Figure 12 - Extent of the State Heritage Listings, Middle Camp (North) and SEPP (Major Development) Amendment (State Significant Sites - South Wallarah Peninsula) 2010

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The planning proposal seeks to introduce additional provisions to protect heritage values in Catherine Hill Bay and Middle Camp Villages within the State Listed Catherine Hill Bay Heritage Conservation Area.

### 2.2 Explanation of provisions

Land Macquarie City Council seeks to make the following amendments to *Lake Macquarie Local Environmental Plan 2014*:

- Include a new additional local provision under Part 7 which includes new objectives and heads of consideration for dual occupancies, secondary dwellings or semi-detached dwellings on certain land in Catherine Hill Bay State Conservation Area.
- Insert additional wording in clause 4.1 Minimum subdivision lot size to ensure that the cultural heritage, and conservation heritage status of the heritage area is considered.
- Insert additional wording in Clause 4.1A - Exceptions to minimum subdivision lot size for certain residential development including dual occupancy, 3 lot or more subdivisions for dwellings and semi-detached dwellings to ensure current exemptions do not apply to the State Listed Heritage Conservation Area
- Insert additional Clause 4.1C - Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones to protect the current subdivision pattern of the Heritage Conservation Area.
- Amend the maximum building height controls from:
  - 8.5 metres to 4.5 metres in Catherine Hill Bay and 5 metres at Middle Camp on land zoned R2 Low Density Residential.
  - 5.5 metres to 4.5 metres on land zoned E2 Environmental Conservation.
- Alter the minimum lot size from 450m<sup>2</sup> to 1000m<sup>2</sup> in the R2 Low Density Residential zone.

#### Additional local provisions and clauses clarification

Additional clarification was sought from Lake Macquarie City Council (Council) regarding the application of certain clauses. For example, as lodged the proposed changes to clause 4.1 Minimum subdivision lot size would apply across the Lake Macquarie Local Government Area (LGA) in addition to the mapped Catherine Hill Bay State Conservation Area.

Council's intention is to protect heritage values in Catherine Hill Bay and Middle Camp within the Catherine Hill Bay State Conservation Area. Expanding this clause to apply to all proposed subdivisions in the LGA is considered unnecessary and the clause should be amended to apply only to the Catherine Hill Bay State Conservation Area. Council has advised it has no objection to this as a condition of the Gateway determination.

Additional information was provided by Council that confirmed the following:

- The proposed additional local provision clause in Part 7 should specify that it applies to only the Catherine Hill Bay and Middle Camp Village Precincts within Catherine Hill Bay State Conservation Area “C4”.
- The proposed changes to clause 4.1 Minimum subdivision lot size identify the cultural heritage, and conservation heritage status apply to development in the Catherine Hill Bay State Conservation Area “C4”.
- Clause 4.1A and 4.1C applies to the Catherine Hill Bay and Middle Camp Village Precincts within the Catherine Hill Bay State Conservation Area “C4”.

These changes should be included in an updated planning proposal prior to community consultation.

#### Dual occupancy, semi-detached and battle axe and corner lots

The planning proposal seeks to remove the exception requirements to minimum lot sizes which apply allowing dual occupancy, semi-detached dwellings, battle-axe, corner lots and the associated subdivision to be developed below the minimum lot size. The exception will only apply to the Catherine Hill Bay and Middle Camp Village Precincts within the Catherine Hill Bay State Conservation Area “C4”. Council considers these types of development and subdivision would conflict with the current subdivision pattern of the Heritage Conservation Area however, it could be viewed as a loss of potential development opportunities by existing landowners.

#### Lot sizes and loss of subdivision potential

There are currently 102 residential zoned lots in Catherine Hill Bay and Middle Camp Villages with a minimum lot size of 450m<sup>2</sup>. The majority of lots have a site area below 900m<sup>2</sup> and could not be subdivided under existing controls however, 38 lots have a site area greater than 900m<sup>2</sup>. These lots would lose the subdivision potential under the proposed lot size change. The planning proposal seeks to increase the minimum lot size to avoid further subdivision to maintain the heritage character and historic subdivision pattern of the area however, it could be viewed as a loss of potential development opportunities by existing landowners.

### **2.3 Mapping**

Existing and proposed maximum building height and minimum lot size maps are included in the planning proposal and are considered acceptable for community consultation. The planning proposal will require amendments to Height of Buildings Map Sheet HOB\_011 and Lot Size Map Sheet LSZ\_011 when finalised.

An updated Heritage Map Sheet HER\_011 will need to be prepared as the planning proposal identifies Catherine Hill Bay and Middle Camp Village Precincts within the Catherine Hill Bay State Conservation Area “C4”.

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

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The *Heritage Assessment Conservation Plan for Catherine Hill Bay* was prepared in 1996. In discussion with the Department and Heritage NSW it was identified that a gap analysis and review of this Conservation Plan would be an acceptable approach in lieu of a current heritage study for the areas of Catherine Hill Bay and Middle Camp. The gap analysis and review is included in Attachment 12 of the planning proposal.

In June 2020, Heritage NSW provided comment on the gap analysis and amendments proposed to the *Lake Macquarie Local Environmental Plan 2014* and draft DCP for Catherine Hill Bay Heritage Conservation Area. In summary, Heritage NSW supported:

- use of updated terminology in the DCP;
- the proposed increase/ decrease of the significance grading of nine buildings within the heritage conservation area;
- clarifying the local heritage items definition;
- including a DCP map which identified the level of contribution for individual buildings; and
- the proposed amendments to *Lake Macquarie Local Environmental Plan 2014* and considered they would have a positive heritage outcome.

Council has advised that a Local Environmental Plan amendment is required to give effect to the draft Lake Macquarie DCP – ‘Catherine Hill Bay Heritage Conservation Area Plan’. ensure that certain development standards and uses are amended. The amendments proposed are consistent with retaining the heritage character of Catherine Hill Bay and Middle Camp Villages.

## **4. STRATEGIC ASSESSMENT**

### **4.1 State**

Catherine Hill Bay Cultural Precinct is a State Listed heritage item (listing no. 01828) within the Catherine Hill Bay Heritage Conservation Area which covers the Catherine Hill Bay and Middle Camp Village (Figure 12).

A site-specific exemption applied to the Catherine Hill Bay Cultural Precinct which permitted council assessment of minor development applications. The exemption relied on the provisions of the Lake Macquarie Development Control Plan No. 1 which was superseded by Lake Macquarie Development Control Plan 2014.

The former Office of Environment and Heritage confirmed that as Lake Macquarie DCP No. 1 has been superseded the exemptions for Catherine Hill Bay Cultural Precinct under the *Heritage Act 1997* have been rescinded and Lake Macquarie City Council does not have delegation to assess development applications.

Development applications within the Catherine Hill Bay Cultural Precinct are currently assessed as Integrated Development and require referral to Heritage NSW, resulting in longer approval processes and additional costs for applicants.

The planning proposal and revised draft Catherine Hill Bay Area Plan presents an opportunity to reinstate the exemption given it was developed in accordance with the Heritage Council’s approved methodology and addresses concerns raised about particular development types. Reinstatement of the site-specific exemption also removes the need for an Integrated Development approval process and referral to Heritage NSW.

### **4.2 Regional / District**

Hunter Regional Plan 2036

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

*Direction 19: Identify and protect the region's heritage.*

The planning proposal seeks to recognise and protect areas that have been identified as having cultural heritage values. The planning proposal will enable the appropriate re-use of existing heritage buildings, attract tourism, help sustain local economies and enhance the main street of the two villages of Catherine Hill Bay and Middle Camp. The proposal is consistent with the direction.

#### Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* (GNMP) sets out strategies and actions that will drive sustainable growth and helps to achieve the vision set in the *Hunter Regional Plan 2036*. The Catherine Hill Bay area is part of the Metro Frame and is supported by the relevant following Strategies:

*Strategy 10 - Create better buildings and great places*

Action 10.1 in part promotes innovative approaches to the creative re-use of heritage places, ensuring good urban design preserves and renews historic buildings and places.

*Strategy 11 - Create more great public spaces where people come together*

Action 11.1 in part seeks to identify, protect and celebrate Aboriginal cultural heritage, historic heritage and maritime heritage.

The proposal will introduce additional heritage protection to Catherine Hill Bay and Middle Camp and is consistent with the relevant strategies and actions identified in the GNMP.

### **4.3 Local**

#### Lake Macquarie Local Strategic Planning Statement

The *Lake Macquarie Local Strategic Planning Statement* includes the following action that supports the planning proposal:

*Action 5.3 Complete an amendment of the Lake Macquarie Local Environmental Plan and Development Control Plan for the Catherine Hill Bay Heritage Conservation Area to manage development in the historic Catherine Hill Bay and Middle Camp.*

The planning proposal is consistent with the Lake Macquarie Local Strategic Planning Statement.

#### The Lake Macquarie Housing Strategy 2020

The *Lake Macquarie Housing Strategy 2020* (Local Housing Strategy) was conditionally endorsed by the Department on 23 November 2020. The endorsement noted additional investigation is required before site-specific or policy-related planning proposals can be prepared and cannot be used to justify any inconsistency with section 9.1 Ministerial directions.

The Local Housing Strategy identifies that there is sufficient capacity from greenfield and infill housing supply to meet housing demand until 2040 including greenfield supply at Catherine Hill Bay, Nords Wharf and North Wallarah.

The planning proposal introduces additional provisions to protect heritage values by limiting some forms of development and development standards within the Catherine

Hill Bay State Conservation Area. The planning proposal is consistent with the *Lake Macquarie Housing Strategy 2020*.

#### **4.4 Section 9.1 Ministerial Directions**

The following 9.1 Directions are inconsistent with the planning proposal.

##### 1.3 Mining, Petroleum Production and Extractive Industries

Part of the land in the north east corner of the Catherine Hill Bay Cultural Precinct is subject to a consolidated coal lease (Figure 13). The lease is held by Great Southern Energy Pty Ltd and covers 566 hectares of land which is due to expire on 29 April 2022. Consultation with Mining, Exploration and Geoscience should be undertaken before consistency with this direction can be determined.



Figure 13 - Consolidated Coal Lease (Source: Minview – Resources and Geoscience)

##### 3.1 Residential Zones

The proposal is inconsistent with the direction as it does not broaden the choice of building types and locations available in the housing market and it contains provisions that reduce the permissible residential density. Council identifies in its Local Housing Strategy there is sufficient capacity from greenfield and infill housing supply to meet housing demand in the LGA until 2040. The reduction of development opportunities in Catherine Hill Bay and Middle Camp Villages is of minor significance given the existing and future capacity within the LGA to provide additional housing choice and increased densities.

##### 4.2 Mine Subsidence and Unstable Land

The site is located within a proclaimed mine subsidence district. Subsidence Advisory NSW should be consulted before consistency can be determined as the planning proposal will continue to enable development on land subject to potential mine subsidence.

##### 4.3 Flood Prone Land

Part of the land is identified as flood prone on Council's flood prone land maps (Figure 14). The proposal introduces additional provisions to protect heritage values by limiting some forms of development and development standards within the Catherine Hill Bay State Conservation Area. Given the proposal will result in less intensive forms of potential development it is considered any inconsistency with the terms of the direction are of minor significance.

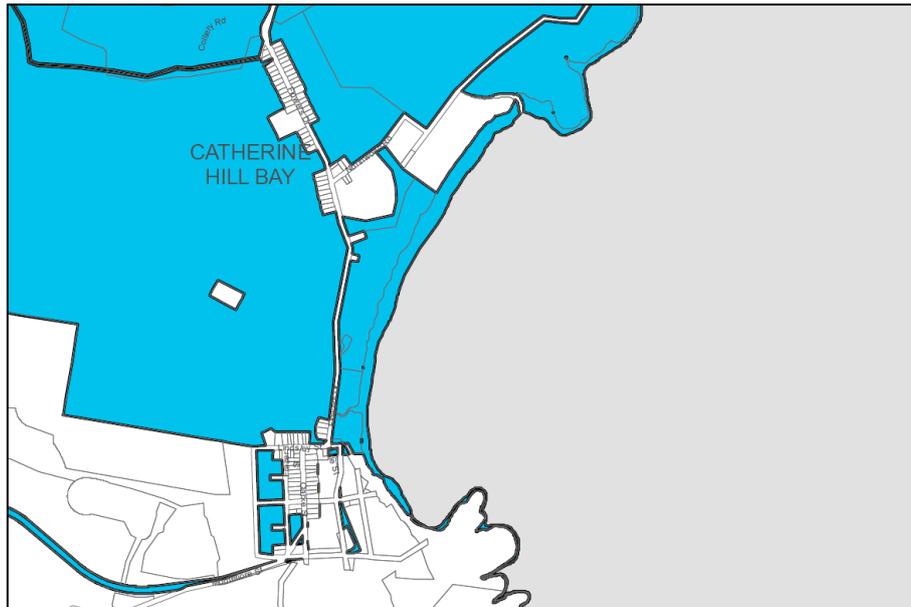


Figure 14 – Extract flood prone land map

#### 4.4 Planning for Bushfire Protection

The sites are identified as being bushfire prone. Consultation with the NSW Rural Fire Service should occur under the terms of the Direction before consistency can be determined.

#### 6.3 Site Specific Provisions

The planning proposal introduces several site-specific provisions within Catherine Hill Bay and Middle Camp Villages to protect cultural heritage values and is inconsistent with the terms of the direction. Lake Macquarie City Council has provided a gap analysis of the *Heritage Assessment Conservation Plan for Catherine Hill Bay* which has been reviewed by Heritage NSW. The proposed amendments are supported by Heritage NSW due to the positive heritage outcomes. The inconsistency with the direction is justified.

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

Lake Macquarie City Council has identified the relevant SEPPs as applicable:

- SEPP 19 - Bushland in Urban Areas;
- SEPP 44 - Koala Habitat Protection (now superseded);
- SEPP (Affordable Rental Housing) 2009;
- SEPP 70 - Affordable Housing (revised schemes);
- SEPP - (Coastal Management) 2018; and
- SEPP - (Exempt and Complying Development Codes) 2008.

The planning proposal will need to be updated prior to public exhibition to refer to State Environment Environmental Planning Policy (Koala Habitat Protection) 2021 (Koala SEPP 2021). Consistency with Koala SEPP 2021 will need to be determined following update of the planning proposal.

There are no inconsistencies with the other identified State Environmental Planning Policies.

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

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### **5.1 Social**

The introduction of additional planning provisions will assist in managing inappropriate development in the heritage conservation area for Catherine Hill Bay and contribute to the social and economic wellbeing of the area.

### **5.2 Environmental**

The proposal will not affect land which contains any significant habitat or threatened species habitat. The planning proposal will help to ensure that the landscape qualities and design of the former mining villages will not be compromised by new contemporary building forms which are not in keeping with the heritage qualities of the area.

### **5.3 Economic**

The proposed provisions that will apply to the Catherine Hill Bay and Middle Camp villages will protect the social and economic wellbeing of the area and its residents. The provisions reduce opportunities for development on some lots but will result in additional protection for the heritage character of the area.

Formal community consultation would be beneficial and allow landowners to evaluate the impacts of the proposed provisions on their land including the proposed DCP. The Gateway determination should be conditioned to require concurrent exhibition of the planning proposal and proposed DCP to provide the community with a clear understanding of the proposed amendments.

### **5.4 Infrastructure**

There is no sewer or water infrastructure connected to the Catherine Hill Bay or Middle Camp villages and the introduction of additional heritage protection provisions will not create additional demand for water or sewer infrastructure.

## **6. CONSULTATION**

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### **6.1 Community**

Council proposes a minimum community consultation period of 28 days. This is supported as the proposed provisions will reduce development opportunities for some landowners.

Given the planning proposal is to be updated to confirm the application of the proposed causes, map amendments and consistency with the Koala SEPP 2021, Council should seek approval from the Department of Planning, Industry and Environment prior to undertaking community consultation.

### **6.2 Agencies**

Council proposes to consult with the following agencies, and these are supported to address 9.1 Directions or undertake formal consultation on the planning proposal:

- NSW Rural Fire Service;
- Subsidence Advisory NSW;
- Heritage NSW; and
- Mining, Exploration and Geoscience.

Council also proposes to consult with National Parks and Wildlife Services, Hunter Water Corporation and Roads and Maritime Services. There is no objection to

Council undertaking consultation with these agencies however there is no requirement to do so to address any section 9.1 Directions.

## **7. TIME FRAME**

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Council proposes a 12 month timeframe to make the plan. However, Heritage NSW has provided preliminary feedback on the planning proposal and the DCP which should enable council to progress the planning proposal in a shorter timeframe. A 9 month timeframe is reasonable and achievable in this instance.

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

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Council resolved to request use of its delegations to make the plan. Given the proposal alters several development standards and limits future development potential, the Department should retain delegations in this instance. The matter can be reconsidered following the outcomes of community consultation.

## **9. CONCLUSION**

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The progression of the planning proposal is supported as it is consistent with heritage outcomes identified in the *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036*, *Lake Macquarie Local Strategic Planning Statement* and the *Lake Macquarie Housing Strategy 2020*.

The gap analysis of *Heritage Assessment Conservation Plan for Catherine Hill Bay* resulted in additional provisions and a development control plan that is supported by preliminary comments by Heritage NSW. The planning proposal should proceed subject to the conditions in the Gateway determination.

## **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 3.1 Residential Zones, 4.3 Flood Prone Land and 6.3 Site Specific Provisions are minor or justified; and
2. note that the consistency with section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 4.2 Mine Subsidence and Unstable Land 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:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - Subsidence Advisory NSW
  - Heritage NSW
  - Mining, Exploration and Geoscience
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.

4. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make the plan at this stage. The Department will review delegation of the plan on request following public exhibition.
5. Council should exhibit the planning proposal and proposed DCP concurrently.
6. Update the planning proposal prior to community consultation to:
  - (a) Reference and demonstrate consistency with State Environmental Planning Policy (Koala Habitat Protection) 2021.
  - (b) Clarify that the proposed additional local provision in Part 7 only applies to the Middle Camp and Catherine Hill Bay Village Precincts within the Catherine Hill Bay State Conservation Area "C4".
  - (c) Clarify that the proposed changes to Clause 4.1 Minimum subdivision lot size only applies to development in the Catherine Hill Bay State Conservation Area "C4".
  - (d) Clarify that Clauses 4.1A and 4.1C apply only to the Middle Camp and Catherine Hill Bay Village Precincts within the Catherine Hill Bay State Conservation Area "C4".
  - (e) Include an updated Heritage Map - Sheet HER\_011 which identifies the Middle Camp and Catherine Hill Bay Village Precincts within the Catherine Hill Bay State Conservation Area "C4".

Council is to update the planning proposal to address the conditions and seek approval from the Department of Planning, Industry and Environment prior to undertaking community consultation.



04/05/2021  
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05/05/2021  
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