

Planning Services

IRF19/2934

Gateway determination report

LGA	Port Stephens
PPA	Port Stephens Council
NAME	Rural-residential subdivision at 25 Castaway Close, Boat Harbour (1 dwelling, 0 jobs)
NUMBER	PP_2018_PORTS_007_00
LEP TO BE AMENDED	Port Stephens Local Environmental Plan 2013
ADDRESS	25 Castaway Close, Boat Harbour
DESCRIPTION	Lot 6 DP 1015409
RECEIVED	4 March 2019
FILE NO.	IRF19/2934
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 amend the Port Stephens Local Environmental Plan (LEP) 2013 to permit an additional dwelling and a two-lot subdivision by:

- amending the minimum lot size map from 4000m² to 2000m² over the proposed R5 Large Lot Residential-zoned portion of the lot; and
- rezoning land from R5 Large Lot Residential to part R5 Large Lot Residential and part E2 Environmental Conservation.

1.2 Site description

The site is at 25 Castaway Close, Boat Harbour. It covers an area of 5993m² and comprises a single-storey dwelling, a swimming pool and a garage (Figure 1, next page). The site is cleared of the understorey around the dwelling. However, the northern part of the site contains vegetation (Figure 2, next page).

The land slopes towards a drainage line in the north of the site. The land is bushfire prone (Figure 3, next page) due to the slope and vegetation at the rear, where it is also below the flood planning level (FPL).



Figure 1: Site location (source: Nearmap).

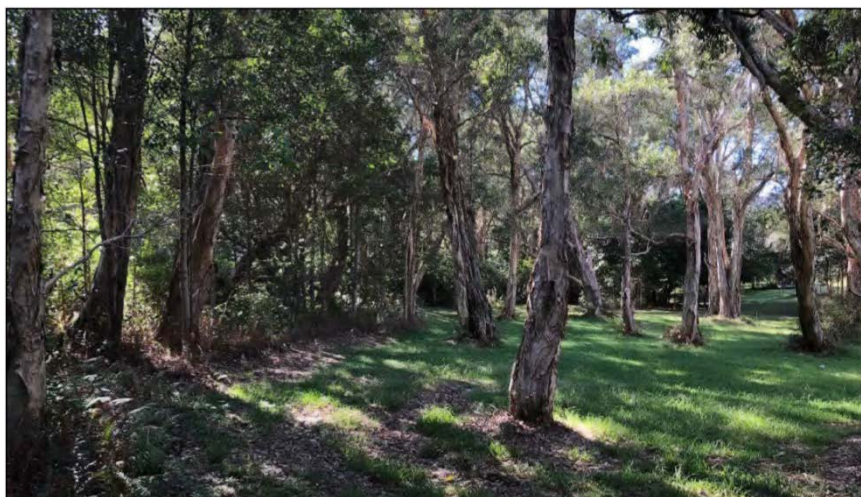


Figure 2: Vegetation on northern part of site (source: planning proposal).

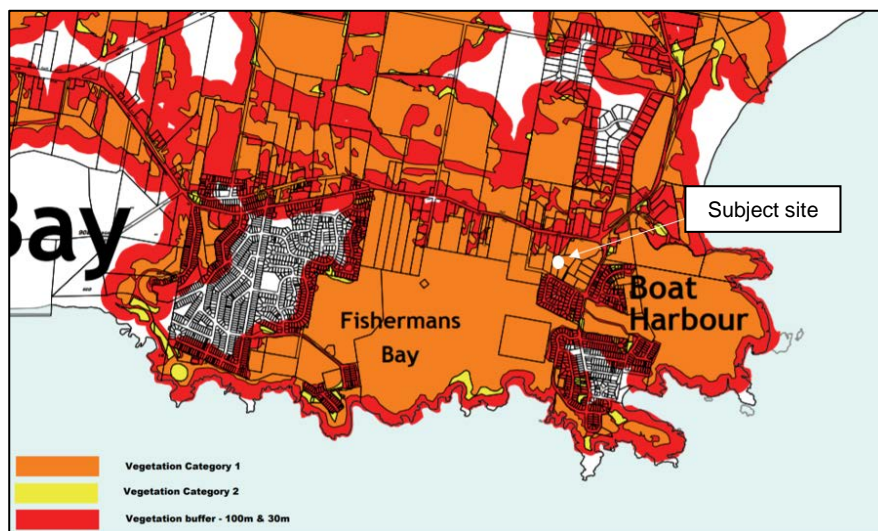


Figure 3: Port Stephens bushfire-prone land map.

1.3 Existing planning controls

Under the Port Stephens LEP 2013, the site is zoned R5 Large Lot Residential and is subject to a 4000m² minimum lot size (Figures 4 and 5).

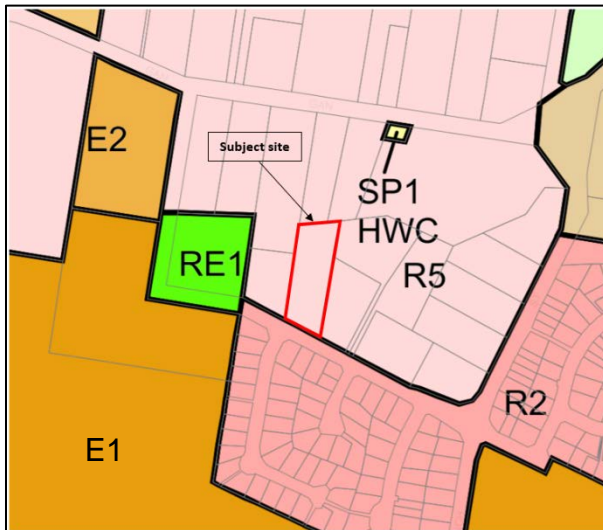


Figure 4: Existing R5 zoning.

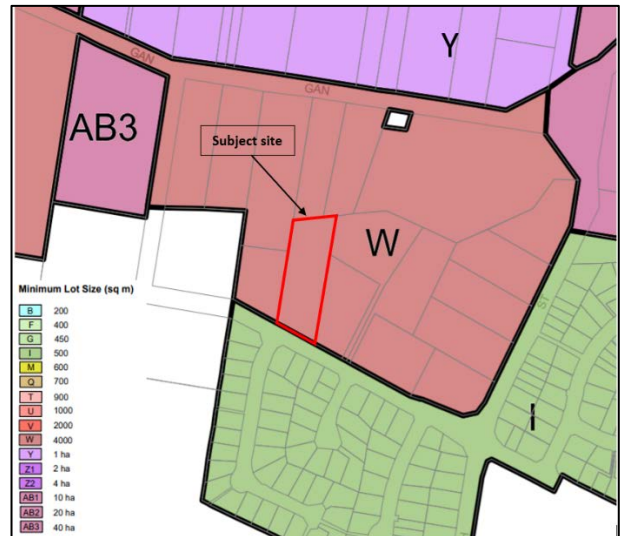


Figure 5: Minimum lot size (W = 4000m²).

1.4 Surrounding area

The site is in Boat Harbour approximately 10km from Nelson Bay and is nestled between parts of Tomaree National Park (Figure 6).

Boat Harbour is on the Tomaree Peninsula in one of three settlements along Gan Gan Road, which includes Anna Bay, Fishermans Bay and Boat Harbour. These three villages are separated by Tomaree National Park. Anna Bay is the main settlement and contains the services and facilities for this part of the peninsula.

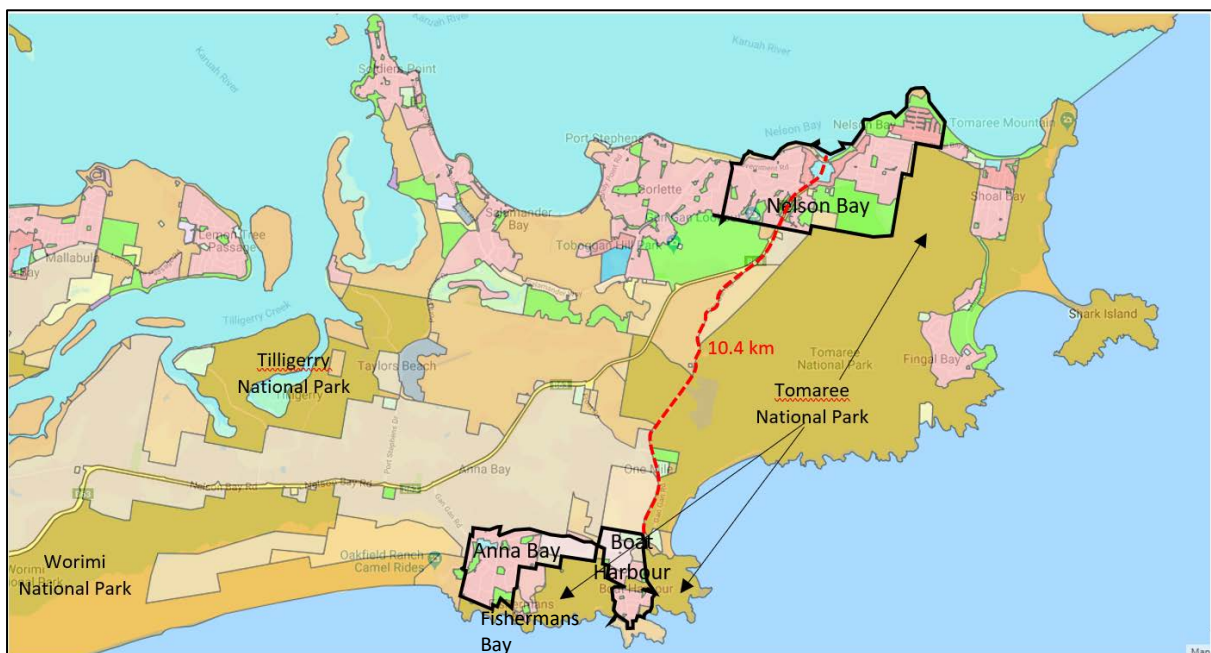


Figure 6: Locality context map.

Boat Harbour village is predominantly zoned R2 Low Density Residential and has a population of approximately 800 people. The northern part of Boat Harbour is separated from the southern part by the Tomaree National Park (Figure 7).

To the north, at the entrance to Boat Harbour village from Gan Gan Road, there is a mix of areas zoned R5 Large Lot Residential and R2 Low Density Residential. The R5 zone continues north of Gan Gan Road, which extends to One Mile Beach.

These R5 areas are characterised by detached dwellings surrounded by heavy vegetation (Figure 7).



Figure 7: Local context map (source: Nearmap).

1.5 Summary of recommendation

It is recommended that the planning proposal does not proceed as it does not meet the strategic merit requirements to support a change to the planning controls within the established R5 Large Lot Residential zone. The existing planning controls appropriately reflect the character of the area, which has developed as a larger residential lot area in a sensitive environmental setting.

The proposal also does not adequately justify the need to change the minimum lot size for a single lot. The proposal suggests that an additional dwelling will provide infill development and contribute to dwelling targets identified in the Hunter Regional Plan 2036. However, the proposal does not contribute any additional dwellings beyond what is currently permitted as dual occupancy or secondary dwellings. There is no established public benefit from reducing the minimum lot size for a single lot, and doing so may potentially set a precedent for the future character of the Boat Harbour area without being informed by a strategic investigation by Port Stephens Council. The

Port Stephens Planning Strategy states that there are limited intensification options in Boat Harbour due to a lack of services.

There are also several site constraints, including significant vegetation in the rear of the site that forms part of a broader biodiversity corridor, and bushfire hazard and flooding.

It is recommended that Council undertake further strategic work to investigate if the R5 Large Lot Residential area in Boat Harbour north is suitable for intensification in consultation with the community. The investigation should confirm if services and infrastructure are available and consider environmental constraints and the area's character before considering a new planning proposal in this area.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the planning proposal is to amend the development controls for the site to facilitate an additional dwelling through a two-lot subdivision and to protect environmental land on part of the site.

2.2 Explanation of provisions

The explanation of provisions in the planning proposal is stated incorrectly.

The planning proposal should state that the provisions will change from land 'wholly' zoned R5 Large Lot Residential. However, it states it is 'part' zoned R5 Large Lot Residential. It should also state that the minimum lot size provisions will change the site from wholly 4000m² to 2000m² across the R5 Large Lot Residential portion of the site.

2.3 Mapping

The proposal includes amendments to the following LEP maps (Figures 8 and 9):

- Land Zoning Map Sheet (LZN_005C_020); and
- Lot Size Map Sheet (LSZ_005C_020).

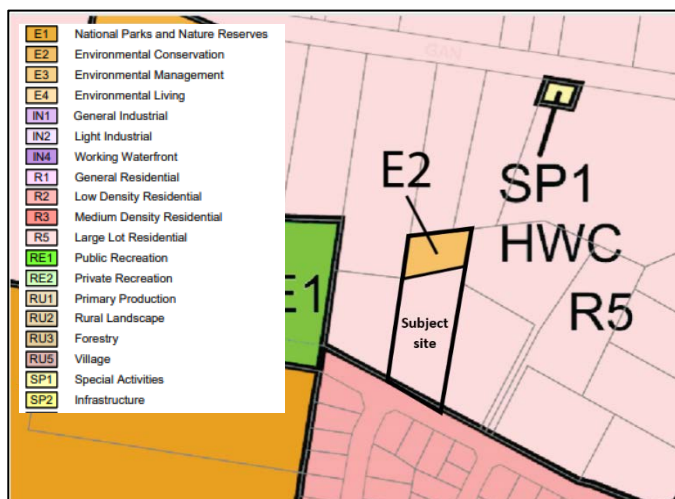


Figure 8: Proposed zoning map.

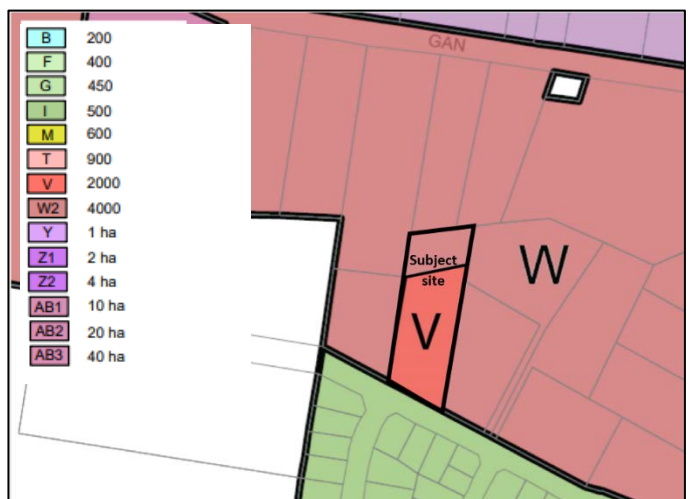


Figure 9: Proposed minimum lot size map (V = 2000m²).

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report. It was initiated by the landowner.

The planning proposal suggests the proposed change to the minimum lot size is more appropriate than rezoning the site to R2 Low Density Residential as the R2 zone would allow multi-dwelling housing, which is inappropriate and does not reflect the area's character.

The Council report (**Attachment E**) indicates that the current R5 Large Lot Residential zone and 4000m² minimum lot size are appropriate for the area's character. The zone permits opportunities for infill development, including attached dwellings, dwellings, dual occupancies and secondary dwellings. It also states there is public benefit in retaining the planning controls across the R5 zone rather than changing controls for one site. The report also expresses concerns regarding environmental constraints associated with native vegetation and flooding.

The report states that the proposed amendment is not appropriate as the existing planning controls are suitable for the area and there is minimal public benefit in changing the planning controls for one lot. The report argues that the planning proposal will set a precedent and will undermine the R5 zone objectives.

There are other opportunities in the local government area for infill housing that Council has identified in Raymond Terrace and Nelson Bay. The Council report states that the proposal will not contribute to infill targets identified in the Hunter Regional Plan 2036.

Given the above, the need for the proposal has not been adequately justified and it is therefore not supported. The planning proposal will undermine the objectives of the R5 zone and change the area's character without being informed by a strategic review for Boat Harbour.

Council is encouraged to undertake a precinct review for the R5 Large Lot Residential area in Boat Harbour before proceeding with any planning proposals in the area. The precinct review should investigate the development potential of this area and consider the orderly change of land uses, including the consideration of local character, biodiversity corridor connections, the impact on the local street network, flooding and bushfire protection.

4. STRATEGIC ASSESSMENT

4.1 Regional

Hunter Regional Plan 2036

The Hunter Regional Plan applies to the planning proposal. Boat Harbour is not referred to in the plan; however, Anna Bay is identified as an area of local significance. There are several directions and actions that are relevant to the planning proposal:

- Direction 14 – Protect and connect natural areas
- Action 14.4 – Protect biodiversity by maintaining and, where possible, enhancing the existing protection of high environmental value areas; implementing appropriate measures to conserve validated high environmental value areas; developing local strategies to avoid and minimise the impacts of development on

areas of high environmental value and biodiversity corridors; and identifying offsets or other mitigation measures for unavoidable impacts

The vegetation at the rear of the site forms part of a broader biodiversity corridor that provides connectivity to the Anna Bay koala hub as identified in Council's ecologist report (**Attachment G**). The vegetation on-site provides local habitat connectivity between parts of Tomaree National Park at Anna Bay and Boat Harbour.

Reducing the minimum lot size on the site may set a precedent that would be contrary to Action 14.4 of the regional plan as it will not minimise the impact of development on areas of high environmental value and biodiversity corridors. The planning proposal attempts to reduce the potential impacts by zoning the rear part of the site E2 Environmental Conservation. However, the proposed E2 zoning has not been strategically considered by the Office of Environment and Heritage (OEH), and without agency consultation and advice on the suitability of the proposed E2 zone, consistency with this Direction cannot be determined.

- Direction 16 – Increase resilience to hazards and climate change
- Action 16.1 Manage the risks of climate change and improve the region's resilience to flooding

Part of the site is identified as flood-prone land subject to further investigation on the Port Stephens flood hazard map. 'Further investigation' refers to the area of land susceptible to flooding where a comprehensive technical investigation of flood behaviour has not been undertaken.

Until further investigations are undertaken to determine the potential impacts on flood-prone land, it cannot be determined that the proposed amendment will result in acceptable impacts on flooding.

- Direction 21 – Create a compact settlement
- Action 21.5 – Promote small-scale renewal in existing urban areas, in consultation with the community and industry to ensure that this occurs in the right locations.

The proposed change to planning controls is not the result of a local planning strategy or strategic investigation that has been subject to community consultation. The additional dwelling would result in the loss of vegetation of high environmental value due to the asset protection zones (APZs) required (see section 5.2 of this report). The proposed amendment is likely to set a precedence for this large lot residential area. The proposal is inconsistent with this Direction as it is not informed by a local planning strategy.

4.2 Local

Port Stephens Planning Strategy 2011 (PSPS)

Council's Port Stephens Planning Strategy identifies Boat Harbour as a 'smaller village centre or other neighbourhood'. The locality has no local services, has limited intensification options and is generally isolated from other settlements (See Figure 10).

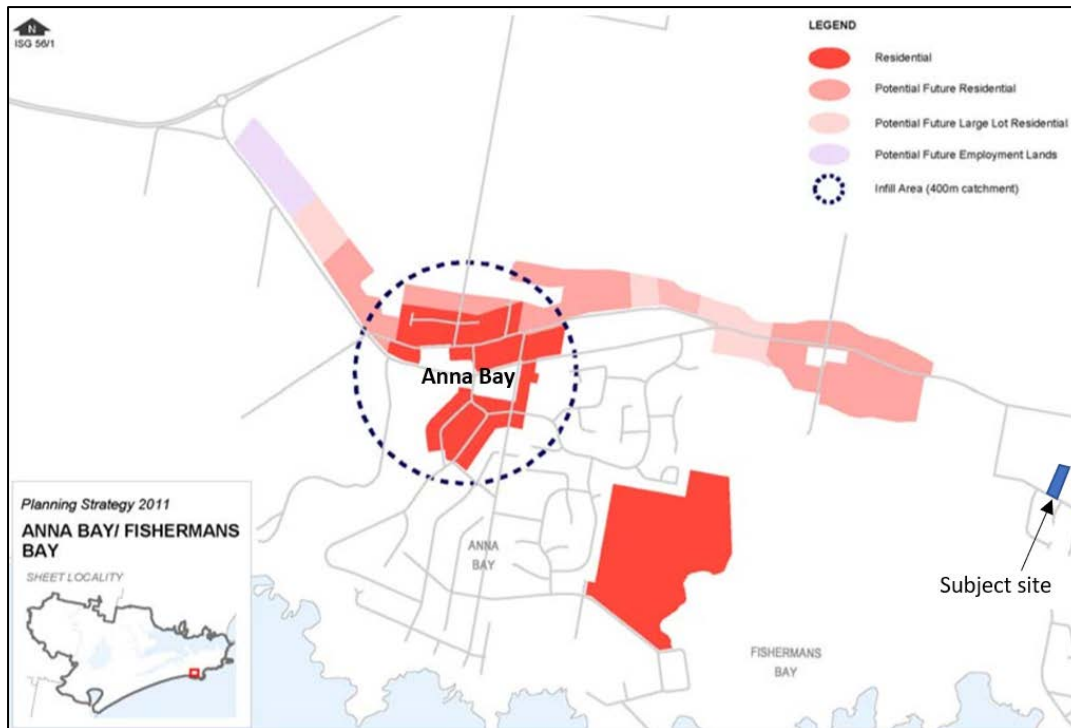


Figure 10: Anna Bay Future Growth Areas (source PSPS) NEW MAP

The planning strategy stipulates that infill opportunities should take place in established urban areas by increasing residential density or small-scale subdivision. It identifies an infill area in Anna Bay. Boat Harbour is not identified as a potential infill area and therefore the proposal is not supported by the strategy.

The Department has not endorsed the strategy.

4.3 Section 9.1 Ministerial Directions

The proposal is either inconsistent with the following Directions or further work is required before consistency can be determined.

2.1 Environment Protection Zones

The proposal contains provisions that will facilitate the protection of some environmentally sensitive land by zoning part of the site E2 Environmental Conservation. However, the proposal will result in the loss of other environmentally sensitive areas, including 1265m² of Blackbutt Forest and hollow-bearing trees on the remaining R5-zoned land.

The proposal is inconsistent with Direction 2.1 clause (4) as it would not facilitate the protection and conservation of known environmentally sensitive areas as it results in the loss of vegetation. In addition, consultation with OEH would also be required to confirm the adequacy of the proposed environmental protection measures.

4.3 Flood Prone Land

The planning proposal will alter a planning control that affects flood-prone land. It is considered that the planning proposal is consistent with subclause 6(c) of this Direction, which requires that a planning proposal must not contain provisions that will permit a significant increase in the development of the land. The proposal does not represent a significant increase in the development of the land as an additional

dwelling is already permitted under current planning controls. Therefore, the planning proposal is consistent with this Direction.

4.4 Planning for Bushfire Protection

The proposal affects land mapped as bushfire prone and consultation with the NSW Rural Fire Service will need to occur before consistency with this Direction can be determined.

5.10 Implementation of Regional Plans

The proposal is inconsistent with Direction 5.10 as it is inconsistent with Direction 21 of the Hunter Regional Plan 2036 and further investigation and consultation with government agencies are required to confirm consistency with Directions 14 and 16. It will not protect natural areas or increase resilience to hazards, and it has the potential to set a precedent that does not represent a well-planned outcome and result in changes to future character without community consultation. It is considered that the proposal's inconsistency with Direction 5.10 has not been justified.

4.4 State environmental planning policies (SEPPs)

SEPP No 44–Koala Habitat Protection

The Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) applies for the purposes of implementing SEPP 44 (Figure 11, next page). The proposal indicates the site has supplementary koala habitat and this has been observed and mapped in the independent ecological assessment report (Figure 12, next page and **Attachment F**).

The proposal indicates the CKPoM guidelines require an assessment of significant impacts because there is supplementary habitat on-site and there are a high number of records of koalas in the Boat Harbour area. The assessment provided with the proposal determined that the site contains 'critical koala habitat' as defined under the *Environment Protection and Biodiversity Conservation Act 1999*. No referral under the Act is required.

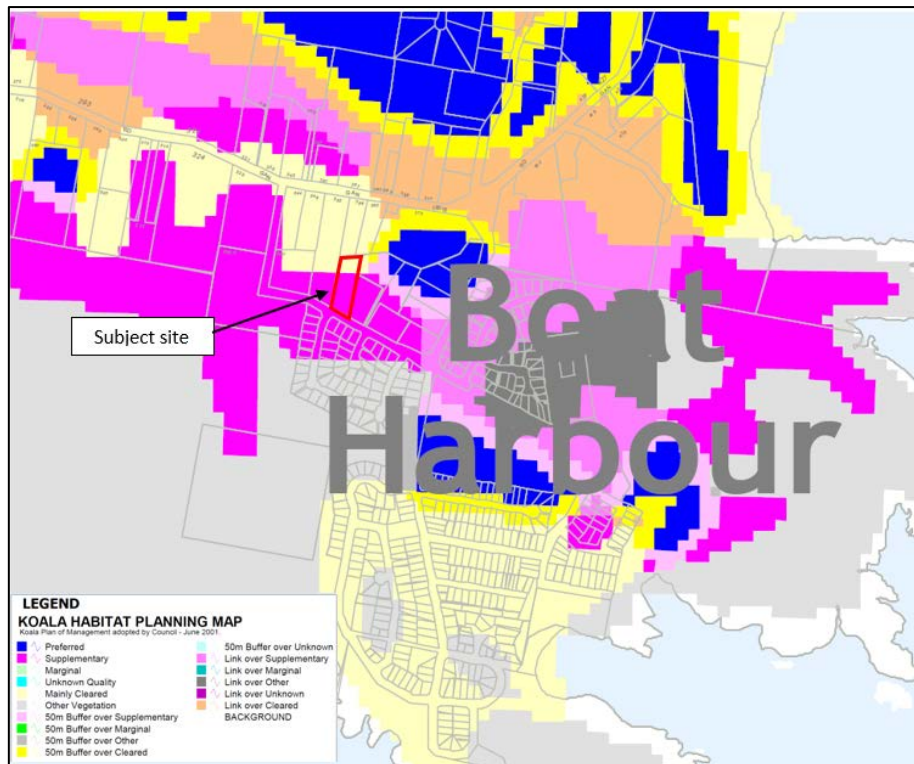


Figure 11: Koala habitat (source: Port Stephens Council CKPoM).

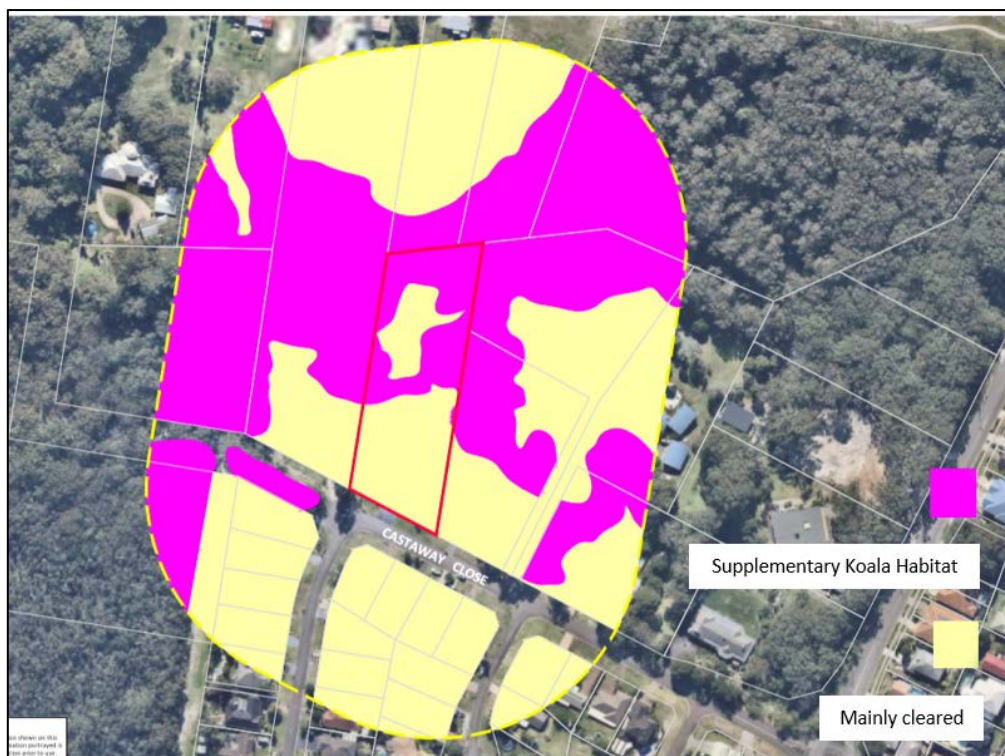


Figure 12: Koala habitat map – site outlined in red (source: Firebird ecological assessment).

Assessment under the CKPoM indicates that the impact on koala habitat would be low as the proposal would result in only one additional dwelling, which is already permitted under the existing zone, and the rear portion of the site is to be zoned E2 Environmental Conservation. The proposal concludes that it meets the CKPoM performance criteria for rezoning requests.

However, due to the loss of potential habitat trees, consultation with OEH is required to understand the impact of the loss of the preferred koala habitat and determine the consistency with the SEPP.

SEPP No 55—Remediation of Land

The proposal undertakes to prepare a preliminary contamination report subject to a Gateway determination being issued. The proposal indicates that before the existing dwelling was constructed, the site contained native vegetation and is unlikely to be contaminated. An additional dwelling is permitted in the existing zone.

SEPP No 55 does not require a preliminary investigation report to be carried out on land that contains native vegetation.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and economic

The proposal states the social and economic impacts would be minor given the scale of the proposal. One additional lot would not in itself have an adverse impact on the social fabric of the area as an additional dwelling is already permitted in the zone.

However, the proposal has the potential to set a precedence for the large lot residential area. The character of the northern side of Castaway Close has developed as a large-lot residential area due to its sensitive environmental setting. By amending the planning controls to reduce the minimum lot size, this may undermine certainty for landowners in this zone regarding the future character and development of the area.

5.2 Environmental

The proposal identifies that the site is subject to a range of environmental constraints. Further studies and consultation with the relevant agencies are required before environmental impacts and mitigation measures can be fully evaluated.

Biodiversity

The ecological assessment prepared as part of the proposal concludes that the site has some biodiversity values and seeks to protect these values by zoning the rear of the site E2 Environmental Conservation (**Attachment F**). However, the proposal indicates that 1265m² of Blackbutt Forest will have to be removed to achieve the 'potential building envelope' and APZs. Figure 13 (next page) illustrates the vegetation on-site. The ecological assessment states that any future development application would seek to minimise the removal of hollow-bearing trees.

Council's ecological assessment states that the existing planning controls are appropriate considering the area's environmental attributes and there is a risk of detrimental environmental effects from potential clearing (**Attachment G**). Council's report recommends additional assessment, including:

- an assessment of clause 7.9 (wetlands) of the Port Stephens LEP 2013 to ensure the protection of wetlands from development impacts; and

- a hollow-bearing tree assessment as the site contains five hollow-bearing trees outside the proposed E2 zone. The trees are potential habitat for threatened or endangered species.

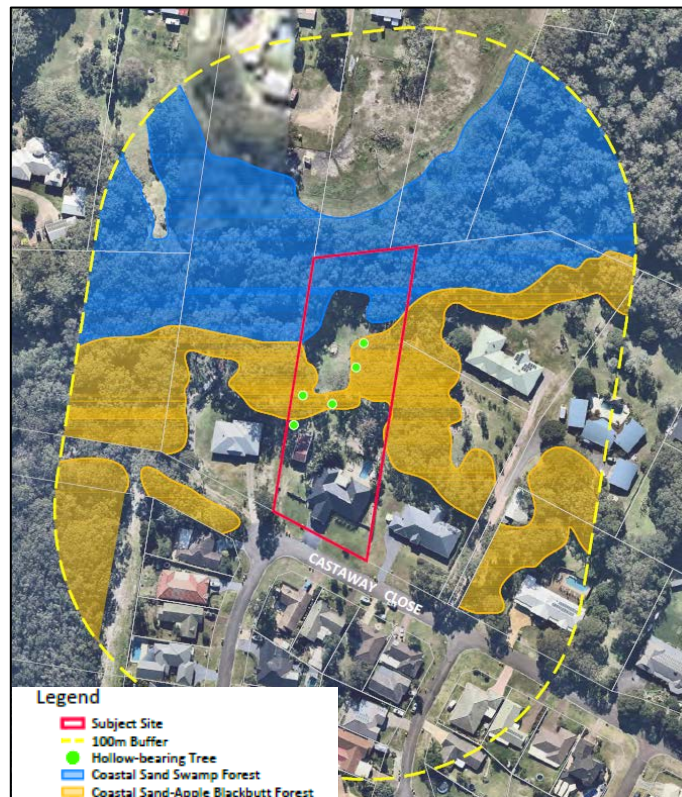


Figure 13: Existing vegetation map (source: Firebird ecological assessment).

The site is mapped as containing high biodiversity value lands as defined by the NSW Biodiversity Conservation Regulation 2017, and a future development application would require a biodiversity development assessment report and potential offsets. It is uncertain that the loss of habitat would be adequately offset by the proposed E2 zoning. An offset strategy considering the new NSW Biodiversity Offsets Scheme may be required to determine whether the proposed E2 zone achieves the requirements or biodiversity credits on another site. Consultation with OEH is recommended.

The proposal would likely have an impact on biodiversity corridors of high environmental value and these impacts would need to be considered as part of any future development application for a dwelling.

Bushfire

A bushfire threat assessment report (**Attachment H**) was prepared as part of the proposal to evaluate the bushfire risks and management measures, including proposed APZs on the site (Figure 14, next page). These measures will result in a clearing impact of 1265m² of vegetation.

The amendment to the minimum lot size on the site is proposed in an area that is identified as a very high fire Bushfire Attack Level (BAL-40) to the north and high BAL-29 to the east (Figure 14). However, as a dwelling is permitted under the existing zoning, reducing the minimum lot size is not considered to lead to an increased bushfire risk.

As noted earlier in this report, the proposal affects land mapped as bushfire prone and consultation with RFS will need to occur.



Figure 14: APZ map – site outlined in red (source: Firebird bushfire threat assessment report).

Flooding

Part of the site is identified as flood-prone land subject to further investigation on the Port Stephens flood hazard map (Figure 15, next page). The site is also partly below the FPL in Council's flood planning map (Figure 16, next page). 'Further investigation' refers to the area of land susceptible to flooding where a comprehensive technical investigation of flood behaviour has not been undertaken.

Further investigation for the site would be required to define the variation over time of flood levels, extent, velocity, flood hazard and the FPL up to and including the probable maximum flood.

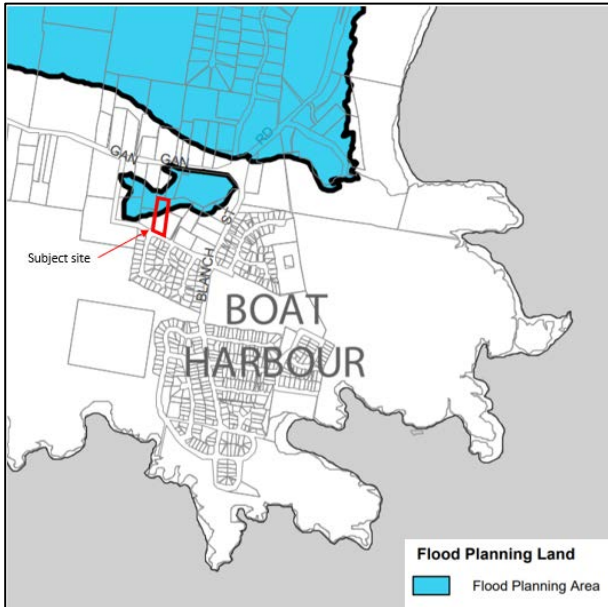


Figure 15 (L): Flood planning map (source: Port Stephens LEP 2013).

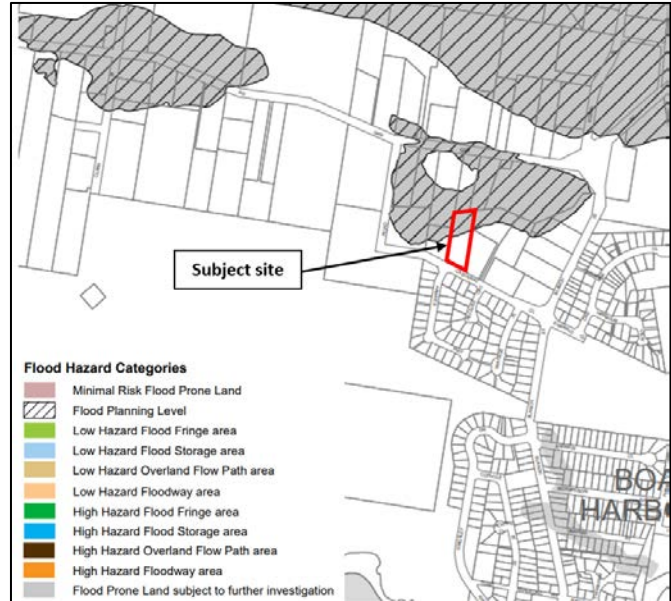


Figure 16 (R): Flood hazard map extract (source: Port Stephens Flood Hazard Mapping 2016).

The analysis to inform Council's flood hazard map was based on a more comprehensive study undertaken by Council, the Anna Bay and Tilligerry Creek Flood Study. This study identified potential flood issues for the vegetated area between Gan Gan Road and the subject site, with the area collecting water up to 2m in depth during certain flood events and subject to drainage issues.

The planning proposal indicates there is sufficient building envelope above the FPL to construct a dwelling. However, the proposal seeks to amend the minimum lot size approximately 25m beyond the FPL (Figure 17).

Further investigation is recommended to determine the potential impacts on flood-prone land, as required by the flood hazard map, prior to amending planning controls to allow for increased development.

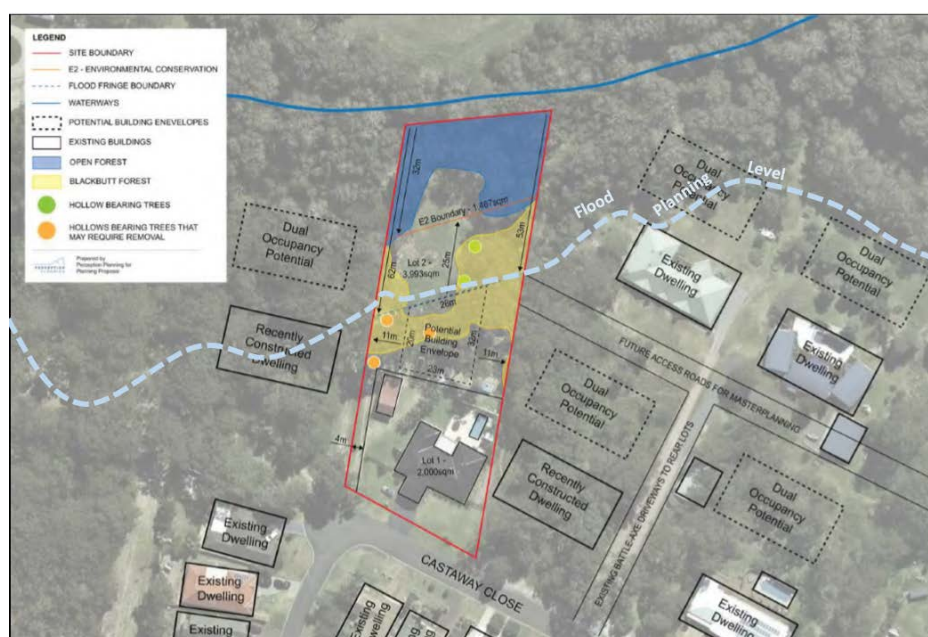


Figure 17: Potential building envelope – site outlined in red (source: planning proposal).

5.3 Infrastructure

The proposal states that adequate infrastructure (water and sewer) is available to support the additional dwelling. Traffic impacts on the local road network from the proposal are likely to be minimal.

6. CONSULTATION

6.1 Community

The planning proposal is not supported to proceed to public exhibition.

6.2 Agencies

The planning proposal is not supported; therefore, no further agency consultation is required.

7. TIME FRAME

No time frame is required as the planning proposal is recommended not to proceed.

8. LOCAL PLAN-MAKING AUTHORITY

There is no requirement to appoint a local plan-making authority as the proposal is recommended to not proceed

9. CONCLUSION

It is recommended that the planning proposal should not proceed and that a Gateway determination be issued that details the reasons why the proposal is not supported, including:

- there is no strategic justification for amending the minimum lot size as:
 - an additional dwelling is permitted on the site under existing planning controls;
 - the proposal will not contribute towards the Hunter Regional Plan 2036 dwelling and infill housing targets;
- the proposal is inconsistent with Direction 21 of the regional plan and further investigation and consultation with government agencies are required to confirm consistency with Directions 14 and 16;
- the proposal is inconsistent with section 9.1 Direction 5.10 Implementation of Regional Plans;
- the proposal has not been informed by a local study or strategic investigation;
- the proposal is likely to set an undesirable precedent for the R5 Large Lot Residential area in Boat Harbour north without an analysis to understand if the area is suitable for intensification;
- the planning proposal does not seek the orderly economic development of land, but rather represents an ad hoc approach without established public benefit; and
- the site is subject to several site-specific environmental constraints, including significant vegetation, linkages to biodiversity corridors, bushfire risk and flooding, which require further investigation and consultation with agencies.

It is recommended that Council undertake further strategic work to understand if the area is suitable for increased development before considering any future proposal in

the area. Future strategic analysis should investigate the development potential of this area and consider the orderly change of land uses, including the desired future character, improved biodiversity corridor connections, the impact on the local street network, flooding and bushfire protection.

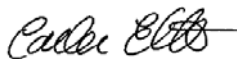
10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

- note that the consistencies with section 9.1 Directions 2.1 Environment Protection Zones, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed because:

- there is no strategic justification for amending the minimum lot size as:
 - the proposal will not contribute towards the Hunter Regional Plan 2036 dwelling and infill housing targets as an additional dwelling is already permissible by the current planning controls;
 - the proposal is inconsistent with Direction 21 of the Hunter Regional Plan 2036 and the inconsistency is not justified;
 - the proposal is inconsistent with section 9.1 Directions 2.1 Environment Protection Zones, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans and the inconsistencies are not justified;
 - the proposal is likely to set an undesirable precedent for the R5 Large Lot Residential area in Boat Harbour north without an analysis to understand if the area is suitable for intensification;
 - the planning proposal does not seek the orderly economic development of land, but rather represents an ad hoc approach without established public benefit; and
- there is no site-specific justification for amending the minimum lot size as:
 - the site is subject to several site-specific environmental constraints, including significant vegetation, linkages to biodiversity corridors, bushfire risk and flooding, which require further investigation and consultation with agencies.



Caitlin Elliott
Team Leader, Hunter



Monica Gibson
Director Regions, Hunter
Planning Services

Assessment officer: Paul Maher
Planning Officer, Hunter
Phone: 4904 2719