



PLANNING PROPOSAL

Hawks Nest village & other zoning opportunities

July 2017

Prepared by:

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in partnership with:

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Version	Purpose of Document	Author	Date
1	For Gateway Determination	RU	27 August 2015
2	For Gateway Determination. Changes including editorial amendments Re: removal of 120sqm provision	RU	11 December 2015
3	Remove references to flooding and add information in accordance with Gateway Determination and advice from OEH. Incl. minor editorial amendments.	RU	25 February 2016
4	Amendments made as a result of public exhibition.	RU	June 2017

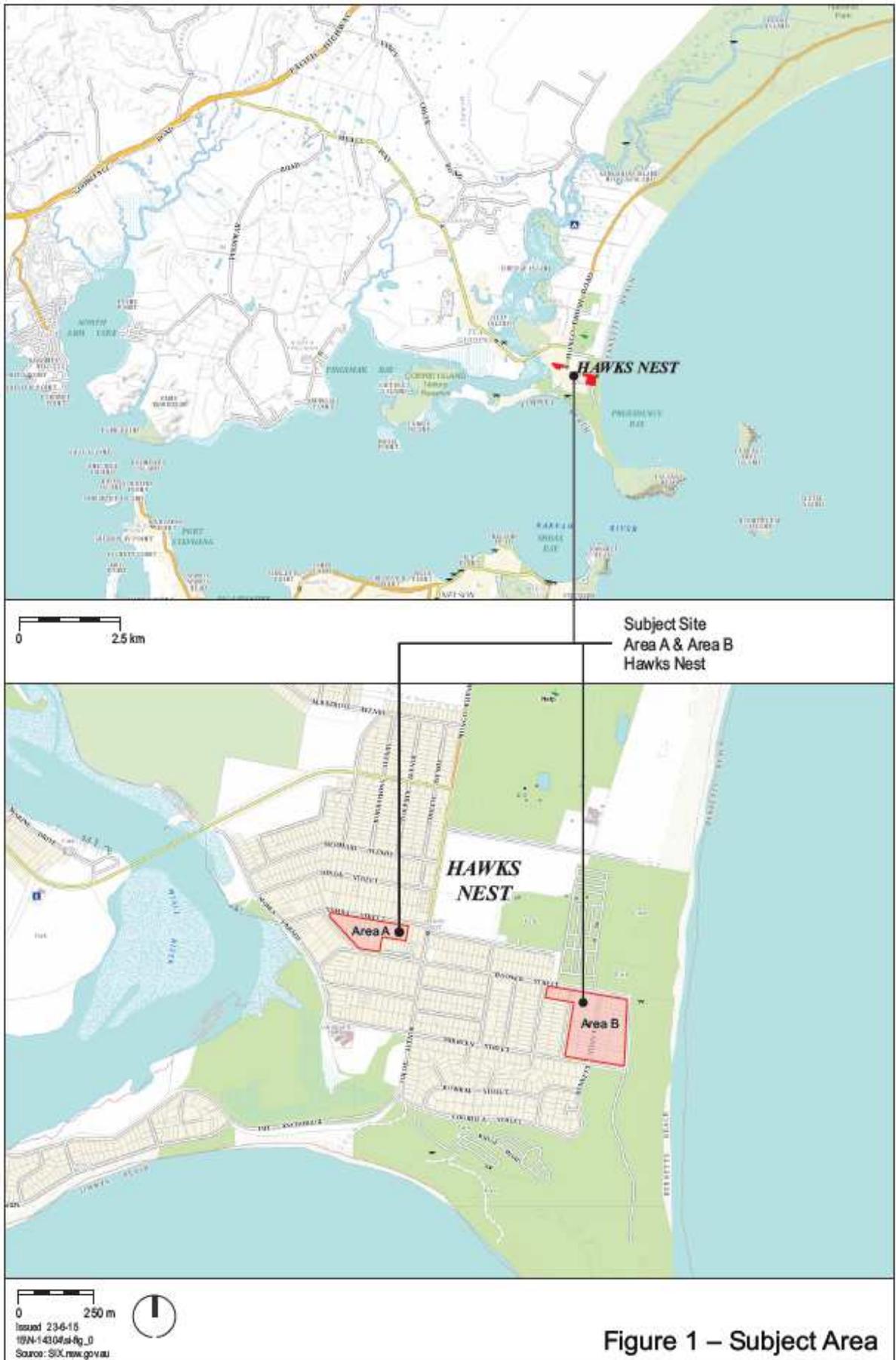


Figure 1 – Subject Area

1. Introduction

This Planning Proposal (PP) outlines proposed amendments to *Great Lakes Local Environmental 2014* (GLLEP14) as it relates to the zoning of identified land within Hawks Nest.

This draft PP will have the effect of rezoning a portion of B1 Neighbourhood Centre zoned land to a mix of R3 Medium Density Residential Zone and E2 Environmental Conservation Zone. It will also rezone a portion of beachfront land currently zoned R3 Medium Density Residential zone to B4 Mixed Use Zone, and make multi-dwelling housing permissible with consent within this area.

It is proposed to use existing *Clause 7.9 – Protection of Wildlife Corridors* to relevant areas in the existing B1 Neighbourhood Centre zoned land, see Attachment 5.

These amendments are proposed in response to a review of the existing business needs in Hawks Nest and after looking more broadly at the longer term needs of the community. They have also drawn upon community engagement regarding the revitalisation of the existing Hawks Nest commercial area.

The amendments are consistent with local and regional strategic plans for the Tea Gardens/Hawks Nest area.

Site Description

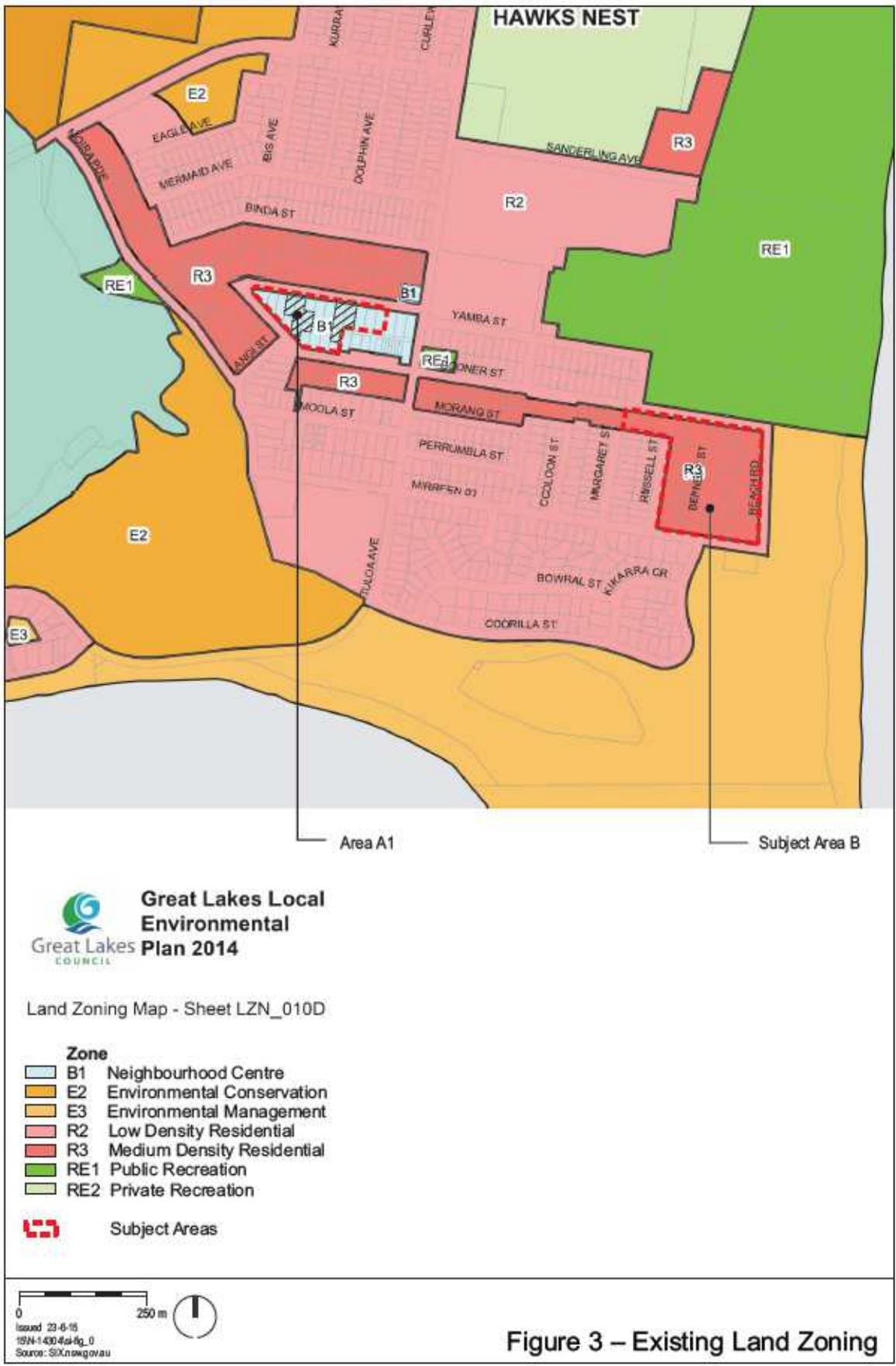
The subject site consists of 'Area A' and 'Area B' as shown in Figure 1. An aerial view of the sites is provided in Figure 2. Figure 3 indicates existing land use zoning under GLLEP14.

Gateway Determination

A Gateway Determination was received for the PP on 4 January 2016.



Figure 2 – Aerial of Subject Area



Area A comprises seventeen (17) lots varying in size between Booner and Yamba Streets. The existing commercial centre adjoins Area A to the east and residential development in the form of one (1) and two (2) storey dwellings surrounds the site to the west, south and north. There are a number of existing dwellings, disused commercial buildings, vacant land and a Council owned car park within the area. Numerous trees grow in this area, and they provide an important feeding resource and movement corridor for the listed Hawks Nest and Tea Gardens Endangered Koala population.

Area B includes thirty eight (38) lots varying in size between Beach Road, Booner Street, Russell Street and Mirreen Street. Most buildings are dwelling houses and include detached one (1) and two (2) storey dwellings and two (2) and three (3) storey apartment buildings used mainly for holiday accommodation. There is a motel on the corner of Booner and Russell Street. A large caravan park, playground, surf club and Bennetts Beach adjoin Area B to the north, east and south, with residential development to the west and southwest.

Table 1: Areas affected by the Planning Proposal

Property description:	Full list of properties provided in Attachment 1.
Street address:	Area A - Yamba Street, Tuloa Avenue, and Booner Street Area B - Mirreen Street, Russell Street, Beach Road and Booner Street
Area of land affected by Planning Proposal*:	Area A – 1.74ha Area B – 4.96ha

**land areas are approximations only.*

2. Objectives, Intended Outcomes and Explanation of Provisions

2.1. Objectives and Intended Outcomes

The primary objectives of this PP are:

- To utilise suitably located land, identified as Area A, that is surplus to business needs for well designed, affordable and low impact residential development which will support and enhance the remaining business area.
- To grow the community of Hawks Nest in a manageable and logical manner, providing additional permanent residential opportunities to support existing local business, infrastructure and services.
- To rejuvenate a non-functional commercial area and improve economic growth and local services.
- To protect and enhance the Hawks Nest and Tea Gardens Endangered Koala population including remnant vegetation, wildlife corridors and native flora and fauna habitats.
- To allow for tourism-support commercial activities to continue and grow where compatible with the land and adjoining activities.
- To broaden the range of land uses permitted in Area B so as to better meet the needs of locals and visitors and provide for more diverse economic opportunities which will also boost the local economy.

The intended outcomes of the proposed amendments are:

- To permit medium density residential development on land adjoining an existing business area (Area A), and ensure that the new development provides for protection of the Hawks Nest and Tea Gardens Endangered Koala population and is compatible with the character of the area.
- To ensure that the range of permissible uses near the beachfront supports the needs of locals and visitors to Hawks Nest.

2.2. Explanation of Provisions

The objectives of this PP will be achieved by amending GLLEP14. This part should be read in conjunction with GLLEP14.

Area A

Proposed to be rezoned from B1 – Neighbourhood Centre to a mix of R3 – Medium Density Residential and E2 – Environmental Conservation Zone as depicted in Attachment 4.

Existing zoning and development standards

The **existing** provisions applying the site are as follows:

Area A currently zoned B1 - Neighbourhood Centre Zone

- 12m maximum building height
- No floor space ratio
- 700m² minimum lot size

Area B currently R3 - Medium Density Residential Zone

- 12m maximum building height
- 1:1 maximum floor space ratio
- 1 000m² minimum lot size

Proposed zoning and development standards

Proposed standards which represent a change from **existing** standards are underlined:

Area A proposed to be rezoned to R3 - Medium Density Residential Zone

- 12m maximum building height
- 1:1 maximum floor space ratio
- 1 000m² minimum lot size

Area A proposed to be rezoned to E2 – Environmental Conservation Zone

- 8.5m maximum building height
- 0.4:1 maximum floor space ratio
- 40ha minimum lot size

A copy of the proposed zoning for Hawks Nest business area (Area A), to be refined through community consultations, is contained within Attachment 4.

Area B proposed to be rezoned to B4 - Mixed Use Zone

- 12m maximum building height
- 1:1 maximum floor space ratio
- 450m² minimum lot size

The minimum lot sizes for the proposed zones are consistent with lot sizes for similar zoned land in Hawks Nest and across the broader Great Lakes area.

A number of clauses in GLLEP14 apply to the subdivision of land. No change is proposed to the wording of any subdivision clauses.

A 1:1 floor space ratio in the proposed R3 - Medium Density Residential zoned area is proposed to manage the scale of proposed dwellings. This acts to ensure that buildings are compatible with the environmental qualities and desired future urban character of the area. The proposed floor space ratio is consistent with ratios for similar R3 - Medium Density Residential zoned land in the area.

A number of clauses in the GLLEP14 apply to the calculation of floor space ratios and allowances for taller buildings when lifts are provided for adaptable housing. No change is proposed to the wording of any relevant clause.

Other proposed amendments to Great Lakes Local Environmental Plan 2014

Proposed standards which represent a change from **existing** standards are underlined:

Area B - B4 Mixed Use Zone

- Permit multi-dwelling housing with consent

Multi-dwelling housing is recommended to be added to the permitted land uses for the proposed B4 - Mixed Use Zone in this location to reflect the current uses established in this area, and to encourage activities that bring more tourism activity to this part of Hawks Nest.

A provision within *Great Lakes Development Control Plan 2014* (DCP14) is proposed to reinforce the objectives of the B4 - Mixed Use Zone. Existing objectives of the B4 – Mixed Use Zone are:

1. *To provide a mixture of compatible land uses.*
2. *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
3. *To encourage development that does not prejudice the established business and industrial centres.*
4. *To ensure that traffic generation from development can be managed in a way that avoids conflict with the desired pedestrian environment.*
5. *To ensure the inclusion and integration of housing to promote housing diversity and community activity within the business centre.*
6. *To enable a range of tourism-related uses that support the business centre.*

A provision will be included in DCP14 which specifically relates to the proposed B4 – Mixed Use Zone in Hawks Nest. The provision will ensure that the maximum floor space ratio of any commercial development in this area does not exceed 120m². This provision supports the

existing objectives of the B4 – Mixed Use Zone, namely objective 3 above to ‘encourage development which does not prejudice the established business and industrial centres’.

Koala Corridor Protection

It is proposed that existing ‘Clause 7.9 Protection of Wildlife Corridors at Pacific Palms’ in GLLEP14 will be applied to those parts of Area A where core Koala Habitat and/or movement areas are known to exist. Refer to Attachment 5 for indicative areas where clause 7.9 will be applied. This area may be refined during the community engagement process.

The existing protection of wildlife corridors clause as contained within GLLEP14 is as follows:

Clause 7.9 Protection of Wildlife Corridors

- (1) The objective of this clause is to ensure that proper regard is given to wildlife corridors in carrying out development on land to which this clause applies.*
- (2) This clause applies to land identified as “Protection Corridor” on the Protection of Wildlife Corridors Map.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - a) any wildlife corridors will be maintained (or regenerated where necessary) to ensure their continued protection, and*
 - b) the development will not negatively impact on any wildlife corridor (whether directly or indirectly).*

GLLEP14 will be amended by adding those parts of Area A where Core Koala Habitat and/or Movement Areas are known to occur (Attachment 5) to the existing ‘Protection of Wildlife Corridors Map’.

Removal of 120m² provision

The PP which was lodged with the Department of Planning & Environment (DP&E) for a Gateway Determination on 7 August 2015 proposed a new local clause within GLLEP14.

The intent of the new local clause was to limit the gross floor area of any commercial development in the proposed B4 - Mixed Use Zone near Hawks Nest Beach to 120m².

DP&E were not supportive of the new clause. Alternately they suggested Council develop a new zone objective for the proposed B4 – Mixed Use Zone. The intent of the objective would address the issue of commercial development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach competing with the existing Hawks Nest business area.

This issue was considered by Council at two separate Strategic Committee meetings. Details of each report and corresponding resolutions regarding this matter are contained within Attachments 11 and 12.

After considering the issue at length Council has resolved not to include a new local clause within GLEP14 to limit the size of any commercial development in the proposed B4 - Mixed Use Zone near Hawks Nest Beach to 120m². It also resolved not to include a new zone objective for the B4 – Mixed Use Zone.

Alternately, Council resolved to include the provision to limit gross floor area in the proposed B4 – Mixed Use Zone in DCP14. Reasoning and justification for including the provision within DCP14 is included within the Council reports in Attachments 11 and 12.

Removal of references to flooding

Since preparing the PP Council's Engineering section have been updating Council's Flood Planning Area maps. Tea Gardens and Hawks Nest flood extents are now based on a Current 1% AEP Level of RL 1.4m AHD compared to that from the 'old PWD study' of RL 2.1m AHD. As a result the extent and the number of affected properties have reduced considerably.

Consequently, the area subject to the PP is no longer affected by flood related development controls. As a result, Condition 2. of the Gateway Determination as it relates to the inconsistency with Clause (4) of Section 117 Direction 4.3 Flood Prone Land no longer applies.

This PP has been amended to remove references to flooding over the land to which the PP applies in accordance with the changes to Council's Flood Planning Area maps.

3. Justification

3.1. Need for the Planning Proposal

Is the Planning Proposal a result of any strategic study or report?

Yes. The *Tea Gardens Hawks Nest Conservation and Development Strategy* (2003) (TGHN CDS) reported business zone vacancies, retail competition, biodiversity conservation and an aging population in Hawks Nest. The Strategy identified as a priority action, a retail study to examine retail trading in the Tea Gardens/Hawks Nest study area and the rationalisation of retail land use controls.

As a follow on from the TGHN CDS, the *Hawks Nest 3(A) Business Zone Review and Strategy* (Attachment 8) by Andrews Neil (2004) assessed the retail, parking and conservation needs of the business zone and recommended conservation and rezoning provisions.

Hawks Nest Town Centre Review

Consultants, City Plan Strategy and Development & Place Partners were engaged by Council in July 2014 to review the previous reports and prepare a master plan for the Hawks Nest Town Centre to reflect the findings and recommendations of the TGHN CDS & Andrews Neil Report.

The review had the following specific aims:

- Confirm whether there is a surplus of land zoned B1 Neighbourhood Centre in Hawks Nest;
- Determine the appropriate zone for any surplus B1 Neighbourhood Centre zoned land;
- Identify planning solutions to ensure the koala movement corridors are protected;
- Determine car parking requirements for the town centre;
- Investigate commercial rezoning opportunities to provide for future development; and community needs, including beachfront or riverfront locations and potential for a marina site.

The project methodology included:

- Land Use Inventory of existing business zoned land;
- Analysis of population and market factors affecting the business area;
- Review of existing planning controls;
- Assessment of car parking requirements based on existing and future business needs;
- Review of Koala habitat mapping;
- Community engagement (letterbox drop, community workshop, newsletter and face to face interviews); and

- Preparation of a master plan including a Place Making Strategy (Attachment 7.1).

The investigations identified the following key findings:

- There is an excess supply of business zoned land in Hawks Nest;
- There is an excess of off-street car parking in the business zone;
- There is an opportunity for boutique businesses optimising the natural assets of the area (i.e. the beachfront and waterfront), rather than compete with the 'convenience' shopping experience offered by the nearby shopping centres;
- The demography of Hawks Nest limits the business growth with fixed incomes and transient population. More permanent residents are required to improve local business success;
- The local koala population is both a tourist opportunity and a development constraint. Development must ensure protection of the identified key koala habitat; and
- Current section 94 contributions for local car parking are in excess of requirements and should be reviewed.

The key recommendations from the study were presented to Council on 14 July 2015 where Council resolved to*:

- 1. Proceed with preparation of a planning proposal for the rezoning of part of the existing B1 Neighbourhood Centre zone to R3 Medium Density Residential Zone and E2 – Environmental Conservation Zone and local clauses for the land proposed for rezoning from R3 – Medium Density Residential Zone to B4 Mixed Use Zone near the beachfront.*
- 2. Prepare a Development Control Plan for the proposed B4 Mixed Use Zone and R3 – Medium Density Residential Zone/E2 - Environmental Conservation Zone to guide development in these areas, protect koala habitat and to encourage development that attracts permanent residents to support the local business zone.*
- 3. Amend clause 7.9 (Protection of Wildlife Corridors) so that it applies to the land that contains trees bounded by Boona, Yamba and Tuloa streets (currently B1 Neighbourhood Centre Zone) in the Hawks Nest Town Centre (see Attachment 5).*

**For the full terms of the Council report and resolution refer to Attachment 6.*

Community Consultation

As part of the Hawks Nest Town Centre Review, consultants City Plan Services and Place Partners Place Making consultancy undertook considerable engagement with the local

community. Consultation with landowners, residents, business and service providers was undertaken to identify the opportunities and challenges for the future development and renewal of commercial activities in Hawks Nest. Over three hundred and thirty (330) engagement contacts were made to an online survey, community workshops and stakeholder interviews.

Further community engagement was undertaken with the preparation and distribution of the Hawks Nest Business Revitalisation Update Brochure. The brochure contained information about the progress of the Hawks Town Centre Review, the outcomes of community consultation and provided ideas about how to get involved in revitalising the village centre.

The findings from the community consultations were brought together in the Integrated Engagement Strategy, see Attachment 7. This strategy has been used to inform the PP.

Proposed B4 – Mixed Use Zone (Area B)

Based on feedback from the community during the consultation period for the Hawks Nest Town Centre Review a B4 Mixed Use Zone close to Bennetts Beach (refer to Figure 3, Area B) is proposed. This area has been proposed to provide an opportunity for specialised commercial tourism in an area considered to be well suited to this type of development. Attachment 9 provides an aerial view of the proposed B4 Mixed Use Zone including surrounding land uses.

The purpose of the proposed B4 – Mixed Use Zone would not be to compete with the existing Hawks Nest business centre but to provide an opportunity for low-scale complimentary boutique tourist type development. By facilitating this type of tourist based commercial activity there is an opportunity to attract visitors to the area and activate the Hawks Nest beach front.

The location of the proposed B4 – Mixed Use Zone has been put forth in response to the existing and potential commercial opportunities in this area. It is also based on community feedback for Council to allow flexibility close to the beach to facilitate suitable business opportunities.

Extending along Beach Street and continuing along west along Booner Street up until Margaret Street, the proposed B4 Mixed Use Zone will be located adjacent to the Hawks Nest Caravan Park, Surf Club, Bennetts Beach and playground and will incorporate an existing motel on the corner of Booner and Russell Streets. It is anticipated that the proposed B4 Mixed Use Zone will build upon the patronage associated with these existing activity nodes and provide further tourist related business opportunities.

The existing built form within the proposed B4 – Mixed Use Zone is predominately one (1) & two (2) storey dwellings and two (2) and three (3) storey apartment buildings used for holiday accommodation. A vacant parcel of land with an area of approximately 3,000m² is located to the south of the existing hotel on Booner and Russell Streets and provides an opportunity for tourist type development.

The proposed B4 – Mixed Use Zone represents a mid to long term strategic plan for the Hawks Nest beach area. By building on existing infrastructure and taking advantage of the intrinsic natural values of the area the proposed B4 Mixed Use Zone will facilitate tourist related business opportunities as market demand dictates, in turn creating a point of difference for Hawks Nest.

Clause 7.9 (Protection of Wildlife Corridors)

It is proposed to modify existing Clause 7.9 of *Great Lakes Local Environmental 2014* to include an area of identified Koala Habitat Corridor in Hawks Nest. The location of the area to be included is depicted in Attachment 5.

As requested by Department of Planning & Environment (DP&E), below is justification for the use of clause 7.9 in Hawks Nest. Responses to questions raised by DP&E are provided below.

What is the current situation?

In 2004, the *Hawks Nest 3(A) Business Zone Review and Strategy* by Andrews Neil identified Core Koala Habitat and Movement Areas in Hawks Nest for the Tea Gardens/Hawks Nest Endangered Koala Population see Attachment 8.

The majority of vegetation that forms part of the key movement corridor for koalas in Hawks Nest is not 'core' koala habitat pursuant to State Environmental Planning Policy 44 Koala Habitat Protection (SEPP44) and therefore is not protected under the State Planning Policy.

The koala corridor extends over existing residential and business areas, as well as some environmental protection land. Most of the residential land is developed however, koala habitat trees and a movement corridors have been identified over some of this land.

Investigations into the business area of Hawks Nest have recommended that some undeveloped commercially zoned land be rezoned for residential purposes, and some for environmental protection purposes (particularly for the protection of the koala habitat and movement corridor) see Attachment 4.

Why does Council want to use this Clause?

Clause 7.9 was introduced into GLLEP14 for a priority wildlife corridor at Pacific Palms. It has been operating effectively in this area to ensure that proper regard is given to mapped wildlife corridors during the assessment of development applications.

Within the existing Hawks Nest B1 Neighbourhood Centre Zone there are numerous individual trees and one clump of trees that, from a practical point of view, have not been included in the land proposed to be zoned E2 - Environmental Conservation. These, however, all form part of the Koala habitat and should be given some statutory recognition under GLLEP14.

It is therefore proposed to remove the words 'in Pacific Palms' from the clause title and extend the use of this local clause to those parts of Area A where Core Koala Habitat and/or Movement Areas are known to exist. Refer to Attachment 5.

What existing provisions are there in Hawks Nest for the protection of trees?

- *Threatened Species Conservation Act 1995 (TSC Act)*

The Hawks Nest Koala population is listed as endangered under the *Threatened Species Conservation Act 1995* (TSC Act). A section 91 licence from Office of Environment and Heritage (OEH) is required to damage habitat of a threatened population being:

“habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component.”

Under the Koala Recovery Plan prepared for the endangered population, a number of objectives and actions identify government agencies and the community as having responsibility for management and protection of Koala habitat. A key objective action for Council is set out below.

Objective 4: To incorporate Koala conservation into planning processes

Performance Criterion: Koala conservation is effectively incorporated into Great Lakes Council's planning processes; Koala habitat is protected with appropriate environmental zoning in the Great Lakes Local Environmental Plan (now Great Lakes Local Environmental 2014); preparation of a Kola Plan of Management or a Kola Plan of Management is considered and underway if necessary.

- *Great Lakes Local Environmental 2014– E2 - Environmental Conservation zone*

Part of the movement corridor for the Hawks Nest and Tea Gardens Endangered Koala Population is zoned/proposed to be zoned E2 - Environmental Conservation. The E2 zone is the highest level of private environmental zoning within the standard instrument Local Environmental Plan, however a range of uses including dwellings houses and eco-tourist facilities are permissible with consent. E2 – Environmental Conservation zoning alone would not ensure protection of the movement corridor and associated habitat trees.

- *Great Lakes Local Environmental 2014 – cl 5.9 Preservation of trees or vegetation*

Requires development consent to harm a species of tree or other vegetation prescribed in a development control plan.

- *Development Control Plan 2014 Section 12.5 requires:*

- development consent to harm 'koala feed and habitat trees within those areas identified in Tea Gardens and Hawks Nest'.
- permanent protection under s88B for 'primary Koala food trees', "habitat" and "home range" secondary food or significant shelter trees.

- *Development Control Plan 2014 Section 12.2- Requirements for consent:*

Requires development consent to harm any tree within the mapped tree preservation areas (i.e. all of Hawks Nest). The Development Control Plan relates to the removal of individual trees and does not provide for a strategic assessment of the overall impact of a development, including opportunities for offsetting and environmental enhancement.

Summary of Existing Provisions

1. The highest level of conservation zoning apply to part of the corridor, however a range of development types are permitted in the zone.
2. Damage to any tree in Hawks Nest requires development consent from Council.
3. Damage to Koala habitat trees also requires a Section 91 licence from OEH.
4. Damage to Koala trees in Hawks Nest requires development consent.
5. Development areas must permanently protect Koala trees with a s88B covenant

Why are the existing provisions insufficient? Why Council's TPO would not be sufficient in providing an adequate level of protection?

Council's existing Tree Preservation Order (TPO) under Clause 5.9 of the GLLEP14 does not prohibit tree clearing, but requires development consent for harm to trees identified in Council's DCP14. GLLEP14 does not specify the assessment criteria.

This tree provisions relate to the removal of individual trees and does not provide for a strategic assessment of the overall impact of a development, including opportunities for offsetting and environmental enhancement.

GLLEP14 (section 12.5) is overly complicated, inconsistent and ineffective in ensuring important trees are retained. Technical references and mapping required for assessment and compliance with the section are not available at Council. Trees identified for protection (Primary Koala food trees, habitat, home range, secondary food or significant shelter trees) are not adequately defined, requiring assessment by applicants on a case by case basis.

DCP14 does not apply to trees less than 3m high or less than 300mm diameter. Therefore, important components of the corridor are not protected. The assemblage of trees is not considered in assessing an application– the combination of trees, shrubs, grasses and obstacles is an important factor in the suitability of an area as a Koala movement corridor. The significance of individual trees is not sufficient to protect the corridor function.

The local Koala movement corridor and habitat area has not been formally defined in the Endangered Population listing and therefore there is uncertainty about the application of section 91 of the TSC Act to some areas in Hawks Nest.

A measure of protection would be provided to the Koala habitat should Council acquire land, however the majority of the corridor is privately owned and occupied.

Future application of the Clause

There are broader areas across Hawks Nest outside of the current B1 Neighbourhood Centre Zone which form important Koala habitat. These areas have been formally identified in the *Hawks Nest 3A Business Zone Review & Strategy* (Andrews Neil, 2004). See Attachment 10 for an overview of the existing koala corridor and movement areas.

It is apparent from the Movement Corridors map contained within the Andrews Neil report that the Hawks Nest town centre forms a crucial part of the Koala habitat corridor. To ensure a strategic approach is taken to the protection of the Hawks Nest/Tea Gardens Endangered Koala Population, eventually, Councils intention is to apply clause 7.9 over the Hawks Nest town centre in accordance with the Movement Corridors map contained within the Andrews Neil report.

However, before this can occur Council will need to refine the maps to ensure a high degree of accuracy. A separate planning proposal will be prepared and publicly exhibited for the broader application of the fauna corridor protection clause across Hawks Nest

Other relevant Strategies

There are a number of local strategies applying to the Hawks Nest area, including:

- Tea Gardens/ Hawks Nest Housing Strategy
- Tea Gardens/ Hawks Nest Community Plan

The findings and recommendations of these strategies have been reaffirmed with the recent review of the business area. The proposed zoning amendments respond to the visions and strategies outlined in these local plans, and support the revitalisation of Hawks Nest whilst conserving its significant environmental character.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amendments to GLLEP14 are proposed as the best means of achieving the outcomes for the site, as proposed residential (Area A) and proposed specialised tourism commercial (Area B) development cannot be achieved within the current zonings.

Accordingly, this PP is considered the most appropriate way to achieve the objectives stated in Part 1 of this PP.

3.2. Relationship to Strategic Planning Framework

Is the planning proposal consistent with the objectives and actions contained within the applicable regional strategy?

The Mid North Coast Regional Strategy (MNCRS) is the strategy applicable to the Mid North Coast region, which includes the subject site. The subject site is identified as being in the town centre of Tea Gardens/Hawks Nest.

The PP is consistent with the following Actions contained within the MNCRS:

Settlement and Housing Actions:

"...local environmental plans ...will....contain the spread of urban development, efficiently utilise existing services and infrastructure, and protect areas of high conservation value" (p 19).

"Councils will plan for a range of housing types of appropriate density, location and suitability that are capable of adapting and responding to the ageing of the population."(p 20).

"Councils will consider a range of affordable housing strategies, including forms of low cost housing, suitable zonings and development controls to improve housing affordability and choice..." (p 20).

The PP is consistent with the Settlement and Housing Actions above as it will result in a range of housing types at suitable densities that are well located to existing services and infrastructure.

Settlement and Design Character Actions:

"Commercial centres in villages will be multifunctional, mixed use areas (including residential) catering for diverse community needs." (p 23).

The PP is consistent with the Settlement and Design Character Action above as it will create an opportunity for residential development in close proximity to an existing business area. It will also create a Mixed Use Zone in a location which is well located to existing infrastructure and services. Multi-dwelling houses will be permitted in the proposed Mixed Use Zone, which will promote a multifunctional area facilitating shop-top housing to cater for community needs.

Environment and Natural Resources Actions:

"Local environmental plans will protect and zone land with high environmental, vegetation, habitat, riparian, aquatic, coastal or corridor values for environmental protection."

"Local environmental plans will include provisions to encourage habitat and corridor establishment in future zoning of land with environmental and rural values"

The PP is consistent with the Environmental and Natural Resource Actions above as it proposes to rezone land of high conservation value which has been identified as a habitat and movement corridor for an endangered population, to environmental protection.

The PP is also consistent with the broad aims of the MNCS to “...Protect high value environments including threatened species, vegetation communities and habitat corridors...” (p11).

It is considered that the PP is consistent with the aims and objectives of the MNCRS.

Is the planning proposal consistent with the local council’s local strategic plan?

Council’s Community Strategic Plan 2010-2030 (Great Lakes 2030) is the community's plan for the future. It represents the long term aspirations for the area and encompasses an overarching vision developed by the community and objectives and strategies to achieve community goals. Great Lakes 2030 identifies a number of Key Directions. The PP is consistent with the following directions:

Key Direction 1: Our Environment.

The objectives of this direction are to protect and maintain the natural environment so that it is healthy, diverse and to ensure that development is sensitive to the environment.

The PP is consistent with this Key Direction as it will rezone areas of significant habitat utilised by the Hawks Nest and Tea Gardens Endangered Koala Population for environmental protection. The PP will also apply existing Clause 7.9 (Protection of Wildlife Corridors) in *Great Lakes Local Environmental 2014* to significant koala habitat areas as identified in Attachment 5. A DCP will also be prepared for the proposed B4 Mixed Use Zone and R3 – Medium Density Residential Zone/E2 - Environmental Conservation Zone which will include provisions to protect koalas and their habitat in Hawks Nest.

Key Direction 2: Strong Local Economies

Objectives of this direction are to promote Great Lakes as an attractive area for residents and visitors which encourages a supportive business environment, job opportunities and that provides transport and infrastructure that meets future needs.

The PP will encourage businesses to Hawks Nest through the application of the proposed B4 – Mixed Use Zone. It is anticipated that the B4 – Mixed Use Zone will increase opportunities for tourism-support commercial activities in this area, thereby also providing additional local jobs.

The reduction in the existing B1 – Neighbourhood Centre and associated rezoning for residential development will aid in revitalising the dilapidated Hawks Nest Town Centre and create a more attractive public realm.

The PP is consistent with this key direction.

Key Direction 3: Vibrant and Connected Communities

The objectives of this direction encourage the provision of the ‘right places and spaces’, supporting positive and safe communities which promote education, sustainable growth and connectivity.

The PP promotes sustainable growth in locations suitable for residential development in an area which is located in close proximity to existing infrastructure and community facilities.

The PP is consistent with this key direction.

Key Direction 4: Local Leadership

The objectives of this direction are to deliver council services which are effective and efficient, to strengthen community participation and to represent the community’s interest through local leadership.

The PP is consistent with this direction as it will deliver logical planning outcomes which have come out of community consultations.

Is the planning proposal consistent with applicable State Environmental Planning Policies?

Two State Environmental Planning Policies (SEPPs) are relevant to this PP. They are addressed below. The Proposal is consistent with the objectives and provision of these SEPPs.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

This SEPP aims to encourage the proper conservation and management of koala habitat areas in order to maintain the viability of koala populations.

Koala habitats have been identified in Area A. Whilst the study area provides important shelter, foraging and feeding habitat as part of the movement corridor for the local Koala population, it does not constitute ‘core’ or ‘potential core’ koala habitat under the SEPP.

State Environmental Planning Policy No. 55 – Remediation of Land

This SEPP aims to promote the remediation of contaminated land for the purpose of reducing risks to people and the environment. Relevant to this proposal, Clause 6 of the SEPP provides that the Council must not allow the rezoning of land for residential or environmental conservation purposes unless:

- a. *the planning authority has considered whether the land is contaminated, and*

- b. *if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- c. *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

The sites proposed for rezoning have been (and continue to be) used for residential and commercial activities. It is considered unlikely that any of the subject sites are affected by contamination.

It is highly unlikely that the proposed objectives and proposed amendments would need to be revised following further investigation into site contamination and that any remediation required would be capable of ensuring the site is suitable for residential and recreational use.

This approach is consistent with the requirements of SEPP 55 – Remediation of land.

Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Section 117 of the Act enables the Minister to issue directions regarding the content of Local Environmental Plans, by outlining objectives and policies that must be taken into consideration and achieved. The Directions relevant to the PP are addressed in Table 2 below.

Table 2: Assessment of the proposal against s.117 Directions

s.117 Direction Summary	Consistency
Employment & Resources	
1.1 <u>Business and Industrial Zones</u>	<p>This Direction applies as the PP proposes changes to existing business zoning, namely by:</p> <ul style="list-style-type: none"> • Reducing the amount of B1 Neighbourhood Centre (Area A) in Hawks Nest and rezoning it to a mix of R3 – Medium Density Residential and E2 – Environmental Conservation; and • Creating an additional business zone (B4 – Mixed Use Zone) in the vicinity of Bennetts Beach (Area B). <p>While the changing of business zoned land in Area A is inconsistent with this Direction because it reduces the amount of business zoned land, the subject land is considered excessive to Hawks Nest current and future needs in accordance with findings from the <i>Hawks Nest 3A Business Zone Review and Strategy (2003)</i>. Current population figures and land use audits reinforce this situation.</p> <p>Based on the permanent resident population of Hawks Nest, there is</p>

s.117 Direction Summary	Consistency
	<p>demand for approximately 450m² of gross retail floor space in a neighbourhood centre. This would increase to around 1,200m² in peak season if more visitors shopped locally.</p> <p>There is, however, over 2,800m² of built floor space within the existing Hawks Nest town centre. The oversupply of floor space is reflected in the high vacancy rate. In August 2014 only 13 of 25 shops were tenanted.</p> <p>Much of the existing zoned commercial land (in total 2.6ha) is undeveloped for commercial purposes. If all the existing zoned land was occupied, there is potential for up to 26,000m² of retail floor space.</p> <p>The change from B1 – Neighbourhood Centre to R3 – Medium Density Residential and E2 – Environmental Conservation over part of the existing business zone is considered desirable as it will encourage consolidation of the existing B1 Neighbourhood Centre and ensure that new and existing businesses are concentrated in one central, defined locality as opposed to the existing fragmented situation.</p> <p>Further, by increasing the dwelling density adjoining the Hawks Nest B1 Neighbourhood Centre Zone, there is an opportunity to attract a more permanent residential population to this area. The flow on effects would support existing local businesses through increased patronage and activation of the area.</p> <p>Increasing the permanent residential population in Hawks Nest was one of the main issues raised by the community during consultations for the Hawks Nest Town Centre Review. This is summarised and reflected in the Integrated Engagement Strategy (Attachment 7).</p> <p>It is considered that any net loss in business zone by reducing the size of the existing B1 Neighbourhood Centre will be offset by other business opportunities provided by the proposed B4 – Mixed Use Zone (Area B). While it is not the intent of the proposed B4 – Mixed Use Zone to compete with the ‘convenience’ shopping experience offered by nearby shopping centres it will provide another opportunity for boutique tourist related businesses optimising the natural assets of the area (i.e. the beachfront).</p> <p>The location of the proposed B4 – Mixed Use Zone (Figure 3, Area B) has been put forth in response to the existing and potential commercial opportunities in this area. It is also based on community feedback for Council to allow flexibility close to the beach to facilitate suitable business opportunities.</p> <p>Extending along Beach Street and continuing along west along Booner Street up until Margaret Street the proposed B4 Mixed Use Zone will be located adjacent to the Hawks Nest Caravan Park, surf club, Bennetts Beach and playground and incorporate an existing motel on the corner of Booner and Russell Streets. It is anticipated that the proposed B4 Mixed Use Zone will build upon the patronage associated with these existing activity nodes and provide further tourist related business opportunities for locals and visitors.</p> <p>The inconsistency with the Direction is considered to be minor and consistent with recommendations from the <i>Hawks Nest 3A Business Zone Review and Strategy (2003)</i>.</p>
Environment & Heritage	

s.117 Direction Summary	Consistency
<p>2.1 <u>Environmental Protection Zones</u></p> <p>The objective of this Direction is to protect and conserve environmentally sensitive areas.</p>	<p>The PP is consistent with this Direction as it will include provisions for the protection of land used by the Hawks Nest Endangered Koala Population.</p>
<p>2.2 <u>Coastal Protection</u></p> <p>The objectives of this Direction are to implement the principles in the NSW Coastal Policy.</p>	<p>This Direction is relevant as both Area A and B are located within the coastal zone.</p> <p>The PP includes provisions that give effect to the objectives of this Direction and are consistent with the following:</p> <ul style="list-style-type: none"> • 2.2(4)(a) - provisions to give effect to the NSW Coastal Policy are included in the Great Lakes Local Environmental Plan 2014, and will apply to the land in this proposal. • 2.2(4)(b) - a Development Control Plan will be prepared for Area A and include provisions relating to environmental protection and reinforce the existing dwelling structure that is consistent with the Coastal Design Guidelines 2003. The proposal consolidates and reinforces the existing commercial centre. • 2.2(4)(c) – The site does not include any coastline, and there is no development or activities proposed in the coastal zone of this site. <p>This PP is consistent with this Direction.</p>
<p>2.3 <u>Heritage Conservation</u></p> <p>This Direction aims to conserve items and places of heritage and indigenous heritage significance.</p>	<p>A search of the Aboriginal Heritage Information Management System (AHIMS) has shown that no Aboriginal sites or Aboriginal places have been recorded or declared in or near the area to which the PP applies.</p> <p>Further work will be undertaken to establish whether the PP includes landscape features indicate the likely presence of Aboriginal objects.</p>
Housing, Infrastructure and Urban Development	
<p>3.1 <u>Residential Zones</u></p> <p>This Direction aims to encourage a range of housing that makes use of existing infrastructure and services that do not impact on environment and resource lands.</p>	<p>The PP includes objectives and provisions to provide for higher density housing in a suitable location that can be serviced by existing infrastructure. The rezoning will allow a greater variety of housing development to occur on individual lots, which will help to increase patronage and support local businesses.</p> <p>This PP is consistent with this Direction.</p>
<p>3.3 <u>Home Occupations</u></p> <p>The objective of this direction is to</p>	<p>Home occupations will be permitted without consent within both the proposed R3 Medium Density Residential and B4 Mixed Use Zones which does not represent a change to the existing situation.</p>

s.117 Direction Summary	Consistency
<p>encourage the carrying out of low-impact small businesses in dwelling houses.</p>	<p>This PP is consistent with this Direction.</p>
<p>3.4 <u>Integrating Land Use and Transport</u></p> <p>The purpose of this Direction is to ensure that development achieves objectives with regard to the improvement of access by walking, public transport and other means that reduce dependence on private car travel.</p>	<p>Development associated with the subject site will aim to implement the objectives of the relevant guidelines through detailed site design and management (e.g. street networks will allow permeability for buses and pedestrians etc). These principles are anticipated to be implemented via a future development control plan for Area A. Council’s local strategy has considered a hierarchy of centres and development precincts that gives effect to the principles of integration of land use and transport.</p> <p>As the proposal is consistent with the local strategy, this PP is consistent with this Direction.</p>
Hazard and Risk	
<p>4.1 <u>Acid Sulfate Soils</u></p> <p>The purpose of the Direction is to avoid significant adverse environmental impact from the use of land that has a probability of containing acid sulphate soils.</p>	<p>This Direction applies as both sites have been mapped as containing class 4 acid sulphate soils. The model provisions for acid sulphate soils are included in GLLEP14, which outlines that consent is required for certain earthworks or watertable-lowering activities. An acid sulphate soils management plan must be prepared for these developments at the development application stage.</p> <p>Given that there is unlikely to be deep earthworks on the sites within the Class 4 area, or watertable-lowering activities and that the model provisions are included in GLLEP14, it is considered unnecessary to prepare an acid sulphate soil study for this site at this point, and that this inconsistency with clause 6 of this Direction is of minor significance.</p>
<p>4.3 <u>Flood Prone Land</u></p> <p>The purpose of this Direction is to ensure the provisions of the LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential of the flood impacts both on and off the subject land.</p>	<p>No longer applicable.</p>
<p>4.4 <u>Planning for Bushfire Protection</u></p> <p>The objectives of this Direction are to encourage the sound management of bushfire prone areas, and to protect life,</p>	<p>A small part of Area B is identified as a ‘Buffer’ to bushfire prone land see Attachment 3. In accordance with this Direction, consultation with the Commissioner of the NSW Rural Fire Service will take place after a Gateway determination, and any matters raised by the Commissioner will be considered and incorporated into the PP.</p>

s.117 Direction Summary	Consistency
property and the environment from bushfire hazards.	
Regional Planning	
<p>5.1 <u>Implementation of Regional Strategies</u></p> <p>This Direction provides that a draft LEP should be consistent with the applicable Regional Strategy.</p>	<p>The proposal is consistent with the provisions of the MNCRS, as discussed throughout this PP (refer to Section 3, consistency with regional strategy), and is therefore consistent with this Direction.</p>

3.3. Environmental, Social and Economic Impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The Hawks Nest and Tea Gardens Koala Population is listed as an Endangered Population under the *Threatened Species Conservation Act 1995*.

A number of studies have been undertaken on the subject site in recent years including:

- Tea Gardens Hawks Nest Endangered Koala Population Determination (NSW Scientific Committee, 1999);
- Koala Plan of Management (Payne, 2001);
- Hawks Nest and Tea Gardens Endangered Koala Population Recovery Plan (Department of Environment and Conservation, July 2003);
- Hawks Nest 3(A) Business Zone Review and Strategy (Andrews Neil, 2004);
- Species Impact Statement and various ecological assessments associated with Lot 1 DP546852 Kingfisher Avenue, Hawks Nest;
- Land and Environment Court Expert Witness Statement of Evidence dated 22nd October 2008 (Attachment 2); and
- Myall Koala and Environment Support Group (a community organisation that has monitored sightings of local koalas since 1989).

A well-documented koala corridor exists through Area A and regular sightings are recorded by the Myall Koala and Environment Support Group. This PP aims to protect this corridor by rezoning certain land within Area A to E2 – Environmental Conservation Zone and applying existing Clause 7.9 (Protection of Wildlife Corridors) of GLLEP14 to land within Area A that contains known koala movement corridors and habitat trees.

The proposed E2 – Environmental Conservation zoned land may be dedicated to Council under a Voluntary Planning Agreement (VPA). In this instance, a Plan of Management (PoM) would also be prepared for the land.

Provisions will be included in DCP14 for the rezoned residential area (Area A) to include measures such as vegetation management, road crossings and appropriate fencing to ensure Koala safe passage through the site etc.

Are there any other likely environmental, social or economic effects as a result of the planning proposal and how are they proposed to be managed?

No.

3.4. State and Commonwealth Interests

Is there adequate public infrastructure for the planning proposal?

It is considered that existing public infrastructure is adequate to meet the needs of the PP.

What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

A Gateway Determination was issued on 4 January 2016. In accordance with the determination Council will consult with the NSW Rural Fire Service.

Consultation was taken with the Office of Environment and Heritage (OEH) prior to the exhibition period as directed by the Gateway Determination. Specifically, Council sought advice:

'.....in regards to the date and methodology of the 'Hawks Nest 3A Business Zone Review and Strategy (2004)' and any other studies used to inform the boundaries of the proposed E2 Environmental Conservation Zone'.

OEH provided the following advice:

'OEH is aware that one of the reports relating to the koala population in the area is very dated (2004). However, it is clear that Council has not relied solely on this source for the preparation of the plan. OEH is satisfied at this level of investigation of the biodiversity values for the rezoning process. OEH recommends that Council continues investigations into this population to ensure information is kept up to date.'

Aboriginal Cultural Heritage

OEH originally advised that further investigations would need to be undertaken in regards to Aboriginal Cultural Heritage.

In accordance with the advice from OEH Council has undertaken a search of the Aboriginal Heritage Information Management System (AHIMS) database over the areas to which the PP

applies. The search has shown that no Aboriginal sites or Aboriginal places have been recorded or declared in or near the area to which the PP applies.

During the exhibition period the Office of Environment and Heritage indicated that further detailed investigations into Aboriginal heritage would need to be undertaken as part of the Planning Proposal. At this time Council questioned the level of detail required given the land was already highly disturbed and zoned for development. The Office of Environment and Heritage maintained that the information would still need to be provided.

In order to meet the Aboriginal heritage requirements additional consultations were undertaken with the Office of Environment and Heritage and the Karuah Local Aboriginal Land Council (KLALC). As a result of extensive consultations the issues have now been resolved to the satisfaction of all parties.

The appropriate level of Aboriginal heritage assessment has been undertaken. No outstanding Aboriginal heritage issues now exist for this PP.

Any Aboriginal Cultural Heritage management issues which do arise at as part of the future development of Areas A and B can be addressed at the Development Application stage.

A full copy of the response provided by OEH is provided in Attachment 13.

4. Mapping

As outlined in **Part 2**, amendments are proposed to the following maps in GLLEP14 over the land known as Area A and Area B:

- Land Zoning
- Floor Space Ratio
- Height of Buildings
- Lot Size Map.

Other maps, figures and photographs are included in this PP to assist in the interpretation and understanding.

5. Community Consultation

Community consultation prior to exhibition

Extensive community consultation has already been undertaken as part of the Hawks Nest Town Centre Review in order to inform this PP. Engagement included:

- Letterbox drop;
- Newspaper advertisement ;
- Website project page;
- Online survey – 229 respondents;
- Two community workshops – 100 attendees in total;
- Stakeholder telephone interviews – Held with four key stakeholders;
- Meeting with Hawks Nest Progress Association; and
- ‘Community Update’ Brochure

Community feedback included:

- Support for rationalising the existing business zoned land;
- Support for residential development to increase permanent population;
- Support opportunity for boutique businesses optimising the natural assets of the area (i.e. the beachfront and waterfront), rather than compete with the ‘convenience’ shopping experience offered by the nearby shopping centres; and
- Support protection of the identified key koala habitat.

A summary of the community engagement undertaken prior to the exhibition period, which was used to inform this PP, is included in the Integrated Engagement Strategy contained within Attachment 7.

Community consultation during exhibition

Community consultation for this PP was undertaken in accordance with the conditions of the Gateway Determination.

The Gateway Determination has indicated that the PP is considered low impact as described in *A Guide to Preparing LEPs* (Department of Planning & Environment 2013) and was to be made publically available for a minimum of fourteen (14) days.

Council placed the PP and supporting information on public exhibition for a period of thirty six (36) days from **Thursday 17 March until Friday 22 April 2016** to allow adequate time for public feedback.

All affected and adjoining landowners were notified in writing of the public exhibition and wider notice was made in print and electronic media.

Information was made available in a variety of formats including hard copies, CDs, and downloadable documents.

Council also held a public Information Session during the exhibition period. The session provided a further opportunity to inform the public about the proposal.

A public hearing was not required in relation to this proposal, pursuant to section 56(2)(e) of the Act.

6. Project Timeline

In accordance with DP&E guidelines the following timeline is provided as an estimate to complete the usual tasks for the making of a local environmental plan.

Table 3: Estimated project timeline

TASK	RESPONSIBILITY	TIMEFRAME	DATE (approximate)
Lodgement of PP for Gateway Determination	Great Lakes Council	-	December 2015
Gateway Determination	Minister for Planning and Environment	6 – 8 weeks	January/February 2016
Consultation with public authorities	Great Lakes Council	1 month	February/March 2016
Public exhibition	Great Lakes Council	3 months	March to June 2016
Review of submissions and amendment to PP	Great Lakes Council	1 year	June 2017
Making of local environmental plan	Minister for Planning and Environment	6 – 8 weeks	August/September 2017*

** Extended consultation with the Office of Environment and Heritage and a private land holder have significantly delayed the completion of this Planning Proposal.*

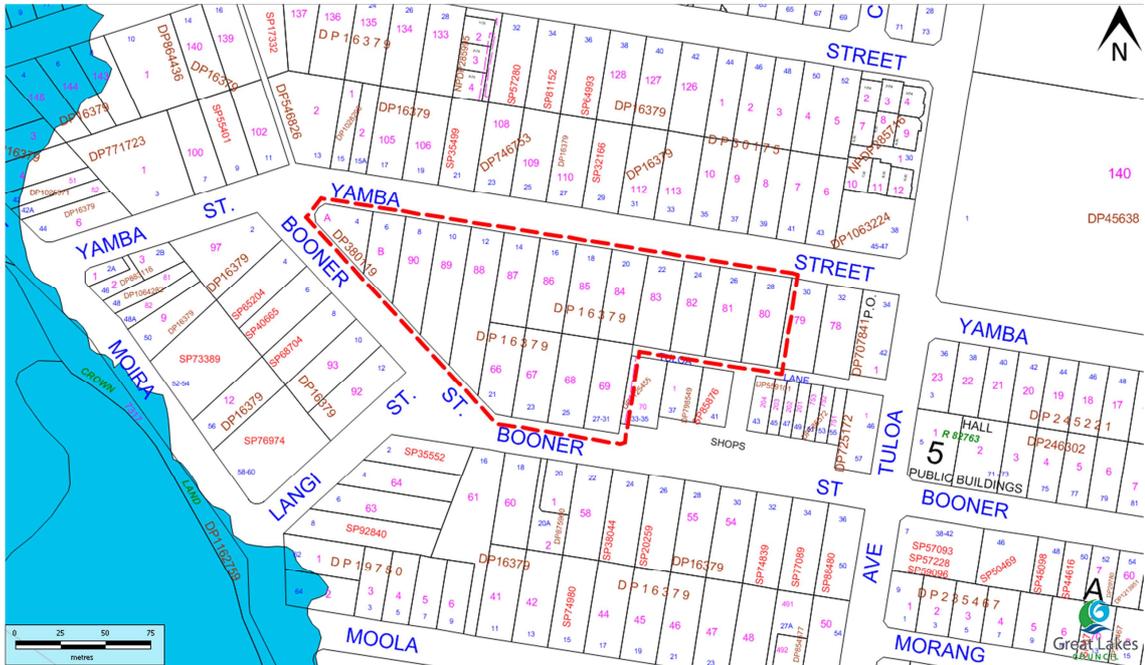
Attachment 1

Lot Description of areas affected by Planning Proposal

Area A	Lots A and B in DP380119, Lots 67 and 68 in DP1125455, Part Lots 66 and 69 in DP1125455, Lots 80 – 82, 85, 86 and 90 in DP16379 & Part Lots 87 and 89 in DP16379
Area B	SP34479, SP38529, SP22389, SP67542, SP48858, SP46669, SP42243, SP72893, SP38151, SP65045, SP82361, SP21057, SP55988, SP58396, SP54635, SP77721, SP19308, SP78343, SP39723, SP19308, SP18307, Lot 2 in DP1036383 Lot 1 in DP834977 Lots 2, 4, 17, 18, 23 – 25 & 27, 39, 41, 48 – 50 in DP18915, Lots 423 and 424 in DP519122 and Lot 1 in DP1045581.

Attachment 2

Great Lakes Local Environmental Plan 2014 - Flood Planning Area Map (Area A)



Flood Planning Area map indicating Area A which is no longer affected by flood planning development controls

Attachment 4

Indicative zoning – Area A (to be refined during community engagement)

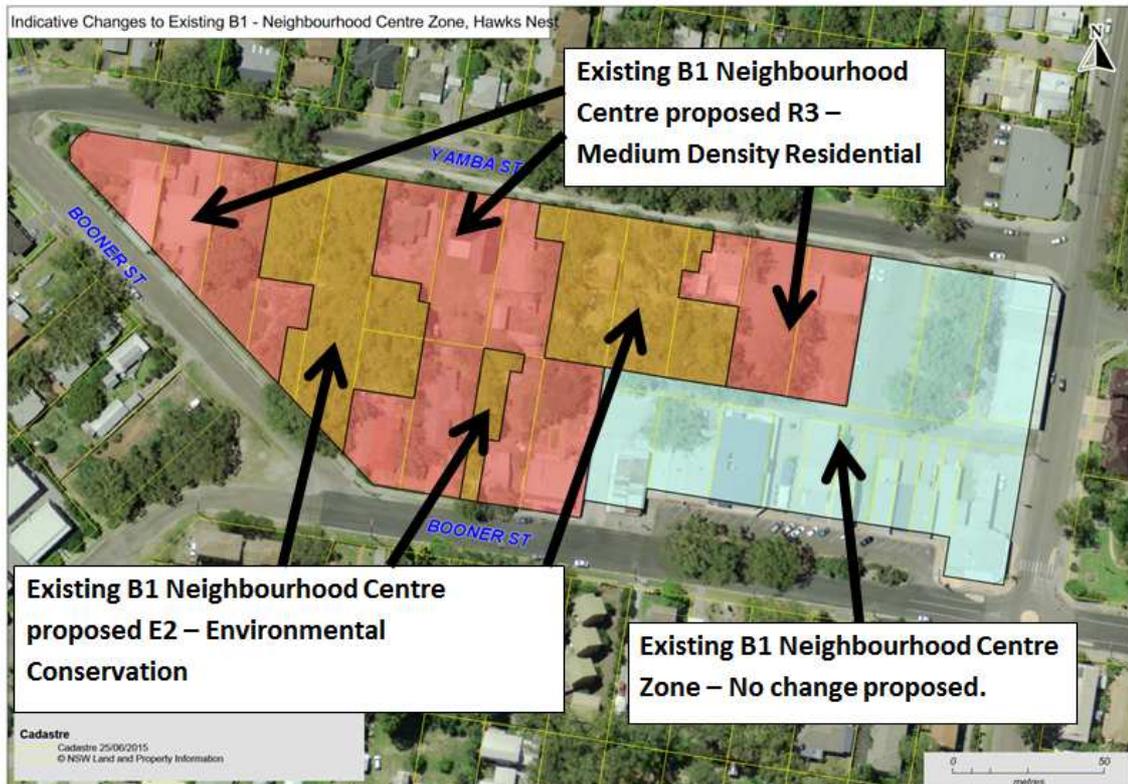


Figure 1: Indicative zoning showing Area A. Exact boundaries of proposed R3 – Medium Density Residential and E2 – Environmental Conservation Zone to be refined after community consultation.

Proposed zoning final – Area A (amended as a result of community engagement)

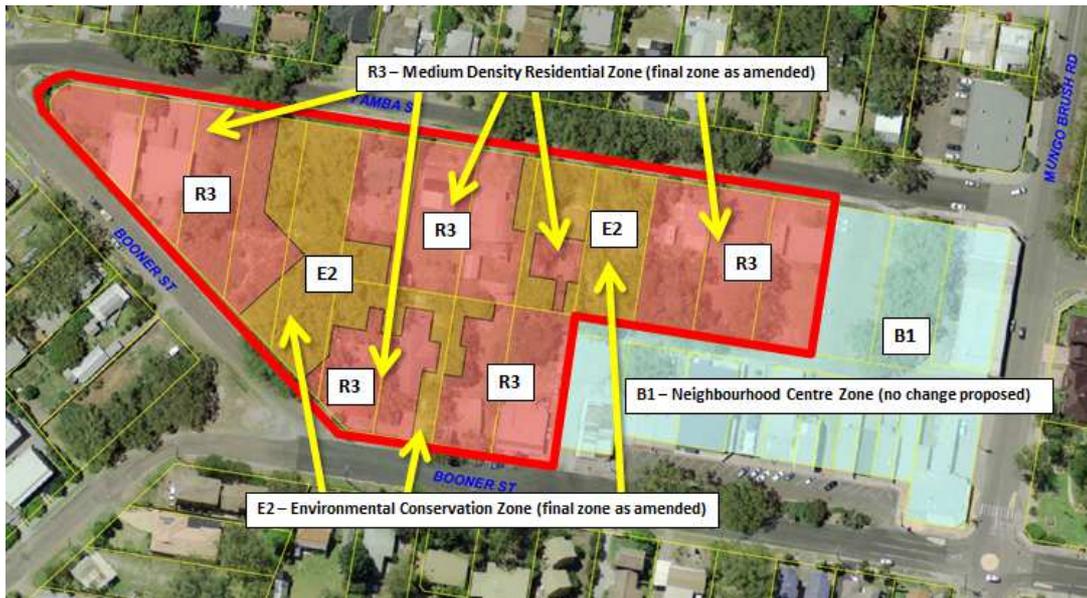
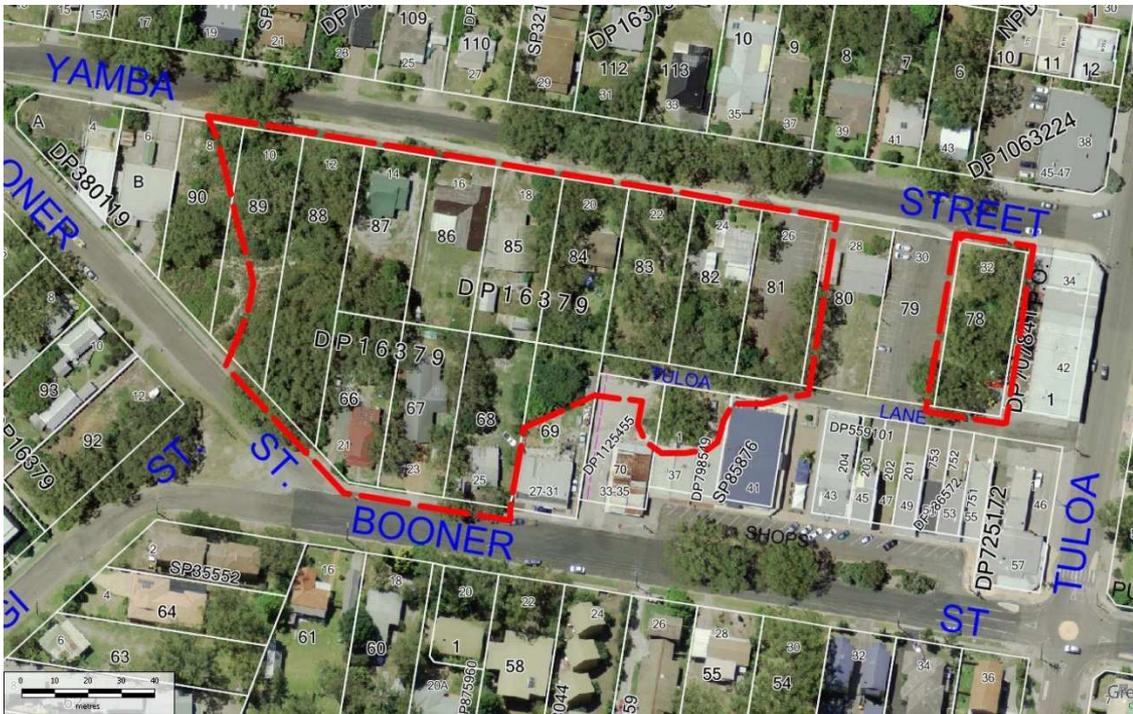


Figure 2: Area A – Proposed land use zones as amended as a result of feedback received during community consultation

Attachment 5

Indicative area for inclusion in Clause 7.9 (Protection of Wildlife Corridors)



Parts of Area A proposed for inclusion in Clause 7.9 (Protection of Habitat Corridors) in GLLEP2014

Attachment 6

Council report and resolution (prepare Planning Proposal)

Subject: PES - Planning Proposal - Hawks Nest Village Centre & LEP Amendments
Index: SP-PP-13
Author: Monica Gibson - Consultant, City Plan Services
Rebecca Underwood - Strategic Planner
Strategic Committee Meeting: 14 July 2015

SUMMARY OF REPORT:

This report outlines proposed amendments to *Great Lakes Local Environmental 2014* (GLLEP14) to implement the town centre review.

The amendments propose to rezone a portion of the excess B1 Neighbourhood Centre zoned land in Hawks Nest to a mix of R3 Medium Density Residential and E2 Environmental Conservation and a portion of beachfront R3 Medium Density Residential land to B4 Mixed Use.

A site specific clause is proposed for the beachfront business zone to limit the size of commercial development in this area. It is also proposed to expand clause 7.9 (Wildlife Corridors) of *Great Lakes Local Environmental Plan 2014* to the part of the Hawks Nest Koala corridor that passes through the town centre.

A Development Control Plan (DCP) is also proposed to guide development in the proposed R3 Medium Density Residential zone to protect identified Koala habitat and to establish development controls.

The purpose of this report is to explain the content and implications of the Planning Proposal (PP) and the key principles of the Draft Development Control Plan (DCP).

SUMMARY OF RECOMMENDATION:

That:

1. In accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* Council resolve to prepare a Planning Proposal to:
 - a) Rezone about two thirds of the current Hawks Nest B1 Neighbourhood Centre Zone to a mix of R3 Medium Density Residential and E2 Environmental Conservation Zone as shown on the figure contained in Annexure A to this report.
 - b) Amend clause 7.9 (fauna corridors) of *Great Lakes Local Environmental Plan 2014* so that it can be applied to the Koala corridor on the land that contains trees bounded by Boona, Yamba and Tuloa streets (current B1 Neighbourhood Centre Zone) in the town centre.
 - c) Rezone about 4.9 ha of land close to the beach to B4 Mixed Use Zone as shown in the figure contained in Annexure C and to make Multi Dwelling Housing permissible in this area.
 - d) Add a new local clause to *Great Lakes Local Environmental Plan 2014* which will limit the size of any commercial development in the new proposed B4 Mixed Use Zone at Hawks Nest to 120m².
2. Once prepared, submit the Planning Proposal to the Minister of NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.

3. In accordance with Section 59 of the *Environmental Planning and Assessment Act 1979* Council request written authorisation from the Minister of NSW Planning & Environment to exercise its plan making delegations for the Planning Proposal.
4. In the event that NSW Planning & Environment issue a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979* and any directions of the Gateway Determination.
5. Council resolve to prepare Development Control Plan controls for the proposed R3 Medium Density Residential land between Booner and Yamba Streets and the proposed B4 Mixed Use Zone.
6. A separate report be submitted to Council on the application of clause 7.9 of *Local Environmental Plan 2014* more broadly across Hawks Nest.

FINANCIAL/RESOURCE IMPLICATIONS:

This project is proceeding within existing financial and resource allocations. The recommendations will not result in additional expenditure or resources.

POLICY IMPLICATIONS:

The amendments to the planning controls are consistent with Council's adopted principles for the revitalisation of the Hawks Nest area.

LEGAL IMPLICATIONS:

Nil.

LIST OF ANNEXURES:

- A: Map depicting land in Hawks Nest currently zoned B1 Neighbourhood Centre Zone proposed to be rezoned to a mix of R3 Medium Density Residential and E2 Environmental Conservation.
- B: Map showing indicative area for future inclusion in existing Protection of Wildlife Corridor Clause 7.9.
- C: Map of current R3 - Medium Density Residential Zone proposed for B4 Mixed Use Zone.
- D: Map of Hawks Nest depicting areas that can be cleared using the 10:50 Vegetation Clearing Rule.

LIST OF ATTACHMENTS:

Nil.

REPORT:

Background

City Plan Strategy and Development & Place Partners were engaged by Council in July 2014 to review the Hawks Nest Town Centre, with the following specific aims:

- Confirm whether there is a surplus of land zoned B1 Neighbourhood Centre in Hawks Nest;
- Determine the appropriate zone for any surplus B1 zoned land;
- Identify planning solutions to ensure the koala movement corridors are protected;
- Determine car parking requirements for the town centre; and

- Investigate other rezoning opportunities to provide for future development and community needs, including beachfront or riverfront locations and potential for a marina site.

The study made the following key findings:

1. That there is an excess supply of business zoned land and off-street car parking in the business zone.
2. That there is an opportunity for boutique businesses optimising the natural assets of the area (i.e. the beachfront and waterfront), that does not compete with the 'convenience' shopping experience offered by nearby shopping centres.
3. That the demography of Hawks Nest limits the business growth with fixed incomes and transient population. More permanent residents are required to improve local business success.
4. The local koala population is both a tourist opportunity and a development constraint. Development must ensure protection of the identified key koala habitat.
5. The current section 94 contributions for local car parking are in excess of requirements and should be reviewed.

Consultation with landowners, residents, business and service providers has been undertaken to identify the opportunities and challenges for the future development and renewal of commercial activities in Hawks Nest. Over 330 engagement contacts were made to an online survey, community workshops and stakeholder interviews.

The key recommendations from the study were presented to Council on 2 December 2014 where it was resolved to:

1. *Note the Integrated Engagement Report for the Hawks Nest Town Centre Review contained in Attachment A and The Hawks Nest Centre Review - Place Making Strategy - Draft for discussion contained in Attachment B to this report.*
2. *Note the Key Principles for the Hawks Nest Masterplan contained in Annexure A to this report.*
3. *Undertake further community engagement be undertaken on the findings of the Integrated Engagement Report and the Key Principles for the Hawks Nest Masterplan.*
4. *Following the further community engagement a further report be presented to Council for consideration of the Hawks Nest Masterplan, including recommendations for implementation.*
5. *The Integrated Engagement Report contained in Attachment A to this report by City Plan Services and Place Partners on the Community engagement for the Hawks Nest Review be made available to the community on Council's website.*
6. *That Council seek discussions with Crown Lands in relation to their land.*

In accordance with item 3 above, further community engagement was undertaken with the preparation and distribution of the Hawks Nest Business Revitalisation Update Brochure. The brochure contained information about the progress of the Hawks Town Centre Review, the outcomes of community consultation and provided ideas about how to get involved in revitalising the town centre.

The Integrated Engagement report and supporting documents were placed on Council's website for members of the public to view.

Cityplan are currently preparing a detailed Masterplan. The Planning Proposal which sets out the proposed zoning changes will be an important step in the preparation of the Masterplan. Other aspects of the Masterplan currently being prepared are a set of principles and how each of these

will be put into effect along with a prioritised implementation plan. The draft Masterplan and resulting DCP will be reported back to Council for consideration once they have been completed.

In regards to the Crown Land specified in the resolution, Council will consult with NSW Trade and Investment regarding any opportunities for this land during consultations with Government Agencies.

Proposed Planning Changes

The following is a summary of the proposed planning changes which will result from the Planning Proposal:

B1 Neighbourhood Centre to R3 Medium Density Residential and E2 Environmental Conservation

The existing Hawks Nest B1 Neighbourhood Centre Zone (2.6ha) is under-developed with many of the existing commercial buildings vacant, and a large area either not developed or developed for residential purposes. Based on the permanent resident population of Hawks Nest, there is demand for approximately 450m² of gross retail floor space in a neighbourhood centre. This would increase to around 1,200m² in peak season, if visitors shopped locally.

There is, however, over 2,800m² of built floor space within the existing Hawks Nest town centre. The oversupply of floor space is reflected in the high vacancy rate. In August 2014 only 13 of 25 shops were tenanted.

If all the existing B1 Neighbourhood Centre zoned land was occupied, there is potential for up to 26,000m² of retail floor space.

The permanent population is also of a size and demographic providing limited opportunity for business growth in the existing neighbourhood centre. Rezoning would allow the opportunity for more permanent residents who would benefit the local economy.

Based on this, and taking into consideration areas of the existing Hawks Nest B1 Neighbourhood Centre land that are ecologically constrained, it is recommended that the existing Hawks Nest B1 Neighbourhood Centre land be rezoned to a mix of R3 Medium Density Residential Zone and E2 Environmental Conservation Zone as shown in Annexure A.

The Hawks Nest Koala Population is listed as an endangered population under the *Threatened Species Conservation Act 1995* (TSC). Some areas within the existing B1 Neighbourhood Centre have been identified as part of a key Koala movement corridor, providing feed trees and shelter for the local koala population. The E2 Environmental Conservation Zone is proposed over the parts of the existing B1 Neighbourhood Centre zoned land that are considered to be the most important Koala habitat.

Retention of this Koala corridor within the existing B1 Neighbourhood Centre zone or inclusion in the proposed R3 Medium Residential zone would expose the habitat to threats from clearing for development.

Rezoning to E2 Environmental Conservation would also be consistent with the rezoning of other crucial Koala habitat on the southern side of Kingfisher Ave at the eastern end of the bridge over the Myall River (Brancourt land).

Therefore it is recommended that the environmentally constrained sections of the B1 Neighbourhood Centre zoned land as identified in Annexure A to this report be rezoned to E2 Environmental Conservation, with the following planning controls:

- maximum height of 8m (no change)
- floor space ratio of 0.4:1 (no change) and

- minimum lot size of 40,000sqm (no change).

Based on the oversupply of B1 Neighbourhood Centre zoned land in Hawks Nest it is recommended that the sections of the Hawks Nest B1 Neighbourhood Centre land as shown in Annexure A to this report be rezoned to R3 Medium Density Residential, with the following planning controls:

- maximum building height of 12m (no change)
- floor space ratio of 1:1 (new) and
- minimum lot size of 1,000sqm (increased from 700sqm).

Inclusion of a Koala Habitat Corridor Clause

The Hawks Nest Koala population is covered by a Koala Recovery Plan under the Threatened Species Conservation Act. Under the Recovery Plan, a number of objectives and actions identify government agencies and the community as having responsibility for management and protection of Koala habitat. A key objective action for Council is set out below.

Objective 4: To incorporate Koala conservation into planning processes

Performance Criterion: Koala conservation is effectively incorporated into GLC planning processes; Koala habitat is protected with appropriate environmental zoning in the GLC LEP; preparation of a KPOM or a CKPoM is considered and underway if necessary.

The presence and movement patterns of the local Hawks Nest koala population have been extensively studied and reported. Koalas are a key tourist attraction to the area.

Within the existing Hawks Nest B1 Neighbourhood Centre Zone there are numerous individual trees and one clump of trees that, from a practical point of view, have not been included in the land proposed to be zoned E2 Environmental Conservation. These, however, all form part of the Koala habitat and should be given some statutory recognition under GLLEP 2014. It is therefore recommended that all of the land in the current Hawks Nest town centre that contains trees be linked to the existing fauna corridor clause of GLLEP 2014.

Presently, the fauna corridor clause of GLLEP 2014 only applies to certain land mapped at Pacific Palms but it would be simple to amend the clause so that it can be applied to the Koala corridor at Hawks Nest.

The following is clause 7.9 taken from *Great Lakes Local Environmental Plan 2014* which currently applies to Pacific Palms:

Great Lakes Local Environmental Plan 2014 - Part 7 Additional Local Provisions

7.9 Protection of wildlife corridors at Pacific Palms

1. *The objective of this clause is to ensure that proper regard is given to wildlife corridors in carrying out development on land to which this clause applies.*
2. *This clause applies to land identified as "Protection Corridor" on the Protection of Wildlife Corridors Map.*
3. *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - a) *any wildlife corridors will be maintained (or regenerated where necessary) to ensure their continued protection, and*
 - b) *the development will not negatively impact on any wildlife corridor (whether directly or indirectly).*

There are broader areas across Hawks Nest outside of the current B1 Neighbourhood Centre zone that are important Koala habitat. These should also be mapped and linked to clause 7.9. Whilst indicative mapping, contained in Annexure B, has been prepared for the broader Koala habitat it still needs some refinement and should be considered by Council separate to this planning proposal. A further report can be submitted to Council when the refined mapping has been prepared.

It is apparent from Annexure B that the town centre is a crucial part of the Koala corridor. This justifies application of clause 7.9 over the town centre in advance to it being considered for wider application across Hawks Nest.

The reason the clause should be applied broadly across the Hawks Nest area is because a strategic approach should be taken to managing Koala habitat.

R3 Medium Density Residential to B4 Mixed Use

Hawks Nest needs to compete with larger centres on points of difference rather than convenience. It has unique opportunities for businesses utilising the natural features of the area. To give greater opportunity for business and tourist uses to evolve close to the one of the main natural features it is recommended that a B4 Mixed Use zone replace the current R3 Medium Density zone over some land near the beach (see Annexure C).

The B4 Mixed Use zone is proposed to enable beachfront cafes, restaurants, boutique tourist shops, hotels and tourist accommodation that optimise the natural asset.

Currently, under GLLEP 2014 Multi-dwelling housing is prohibited in the R3 Medium Density zone. It is recommended that this use be added to the permitted land uses for the proposed B4 zone in this location, to reflect the current uses established in this area, and to encourage activities that bring more tourism activity to this part of Hawks Nest.

It is recommended that 4.9ha of R3 Medium Density Residential land as shown in Annexure C be rezoned to B4 Mixed Use, with the following planning controls:

- a maximum height of 12m (no change)
- floor space ratio of 1:1 (no change) and
- a minimum lot size of 1,000sqm (no change).

New Local Clause Applicable to the proposed B4 Mixed Use Zone

The role and function of the area which is to remain in the B1 Neighbourhood Centre zone and the proposed B4 Mixed Use zone are very different. The proposed B4 Mixed Use area is intended to be a precinct with a mix of residential and commercial uses, with a preference for tourist-oriented development. The remaining B1 Neighbourhood Centre zone is intended to service the needs of the community who live and work in the immediate area.

These differences are reflected in the permissible uses and objectives of the B4 Mixed Use and B1 Neighbourhood Centre zones. Development proposals must demonstrate how they meet the objectives of the zone.

One of the objectives of the B4 Mixed Use zone is:

To encourage development that does not prejudice the established business and industrial centres.

A specific local clause is proposed for the proposed B4 Mixed Use Zone to reinforce the above objective. The new proposed local clause will set a 120m² maximum gross floor area for any commercial premises in the proposed B4 Mixed Use Zone. This maximum size is in keeping with

Council's existing provision for "neighbourhood shops" and is intended to only permit small commercial premises. This is considered desirable for the proposed B4 Mixed Use Zone, where the small shops and commercial premises are for speciality and tourist uses, rather than larger shops like supermarkets or pharmacies.

There is no maximum area proposed for commercial premises in the B1 Neighbourhood Centre zone.

Views of the main landowner

Council has been in negotiations with the consultant (Tattersall Lander Pty Ltd) for the main owner (CJHA) of the existing B1 Neighbourhood Centre which is proposed to be rezoned. In response to Council's proposed rezoning and LEP provisions Tattersall Lander have advised:

"Further to our meeting on the 19th March 2015, I can confirm that CJHA Pty Limited has been kept in the loop and can confirm the following advice:

1. *CJHA Pty Limited confirms that is in agreement with Council's Master Plan modifications.*
2. *The areas of Open space to the west can be zoned E2 and transferred to Council at the Subdivision Certificate date as part of a contribution after the reserve is rehabilitated and a Plan of Management is developed as part of the Development Application documentation for the CJHA lands.*
3. *Other Open Space lands need not to be identified at this time for zoning to E2 as CJHA are at least 2 years from formalising any development concept for the land but it is considering this particular matter and timing further. It is noted that the location being sought by Council coincide with our initial designs, so it would be more appropriate to have the general Protection of Wildlife Corridors provisions control these more isolated and individual areas.*
4. *As the development of the western part of the Commercial area is proposed to be rezoned to R3 zoning it is requested that the following matters be incorporated within the zone attributes for this site. It is suggested that perhaps this site can be added to Schedule 1 of the GLCLEP 2014 Additional Permitted Uses with the following additional attributes:*
 - a. *Subdivision into lots <400m².*
 - b. *Zero lot lines for side boundaries.*
 - c. *Zero to 2m lot lines for rear and front boundaries.*
 - d. *Density levels to be consistent with what we can produce for this site, given ecological constraints.*

In this regard, it is intended that the Hawks Nest project will be an integrated Application that will propose a fully consistent but final built form development that will justify the relevant location of all dwellings and boundary lines that will be sought...."

The main landowner has provided in-principle support for the proposed rezoning and fauna corridor provisions over their land. The precise boundary for each of the proposed zones can be resolved through the community engagement process.

The request in item 4a above is already possible under clause 4.1A of LEP 2014 as integrated development. The other requests for Council to enable some flexibility relate to DCP controls and will be addressed in the DCP that will be prepared for this area.

Development Control Plan

The proposed R3 Medium Density Residential area between Booner and Yamba Streets is part of the corridor used by the endangered population of koalas in Hawks Nest. It contains several mature koala feed trees and provides an important feeding resource and movement corridor. A

preliminary subdivision layout for this area has been prepared which will protect the majority of the Koala trees. This preliminary layout can be included in the DCP.

Community support for the changes to the existing business area was contingent on new residential development fitting with the character of the area and bringing a permanent population.

It is important that these issues are addressed in the development guidelines that apply to the site through the Great Lakes Development Control Plan 2014 (GDGP14).

Recommended matters to be included in the GDGP14 are:

1. Good design principles relating to building heights and setbacks, densities, materials, colours, form and scale, that are compatible with the adjoining areas.
2. An overall landscaping strategy for the protection and enhancement of a local koala population including remnant vegetation, wildlife corridors and native flora and fauna habitats, including visually prominent locations, and detailed landscaping requirements for both the public and private domain.
3. An in-principle lot layout that integrates with the Koala trees.
4. Stormwater and water quality management controls.
5. Principles for commercial development in the area proposed to be zoned B4 mixed use.

It is recommended that the DCP be concurrently exhibited with the Planning Proposal. The draft DCP controls can be prepared and reported to Council while the Department of Planning and Environment is considering Council's request for a Gateway Determination.

Bushfire considerations

The intent of the Protection of Wildlife Corridors clause is to ensure that regard is given to wildlife corridors when carrying out development. However, it may be argued that with the introduction of the 10:50 Vegetation Clearing rule there is an opportunity for landowners to clear trees in wildlife corridors anyway if they meet the criteria under 10:50.

Fortunately the majority of the B1 Neighbourhood Centre zone lies outside the area where the 10:50 could be used for legitimate tree removal for bushfire protection.

CONCLUSION

To deliver the aims of the project as set out at the beginning of this report it is recommended that a Planning Proposal be prepared which:

- Rezones about two thirds of the current B1 Neighbourhood Centre zone to R3 Medium Density Residential and E2 Environmental Conservation as shown in Annexure A.
- Applies the existing fauna corridor clause of GLLEP 2014 to the Koala habitat in the town centre.
- Rezones about 4.9 ha of land close to the beach to B4 Mixed Use as shown in Annexure C and which makes Multi Dwelling Housing permissible with consent within this area.
- Adds a new local clause to GLLEP14 which will limit the size of any commercial development in the new B4 Mixed Use to 120m².

It is also recommended that DCP provisions be created to give further guidance to development in the two areas.

Subject: PES - Planning Proposal - Hawks Nest Village Centre & LEP Amendments
Index: SP-PP-13
Author: Monica Gibson - Consultant, City Plan Services
Rebecca Underwood - Strategic Planner
Strategic Committee Meeting: 14 July 2015

RECOMMENDATION:

That:

1. In accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* Council resolve to prepare a Planning Proposal to:
 - a. Rezone about two thirds of the current Hawks Nest B1 Neighbourhood Centre Zone to R3 Medium Density Residential and E2 Environmental Conservation Zone as shown on the figure contained in Annexure A to this report.
 - b. Amend clause 7.9 (fauna corridors) of *Great Lakes Local Environmental Plan 2014* so that it can be applied to the Koala corridor on the land that contains trees bounded by Boona, Yamba and Tuloa streets (current B1 Neighbourhood Centre Zone) in the town centre.
 - c. Rezone about 4.9 ha of land close to the beach to B4 Mixed Use Zone as shown on the figure contained in Annexure C to this report and to make Multi Dwelling Housing permissible in this area.
 - d. Add a new local clause to *Great Lakes Local Environmental Plan 2014* which will limit the size of any commercial development in the new proposed B4 Mixed Use Zone at Hawks Nest to 120m².
2. Once prepared, submit the Planning Proposal to the Minister of NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
3. In accordance with Section 59 of the *Environmental Planning and Assessment Act 1979* Council request written authorisation from the Minister of NSW Planning & Environment to exercise its plan making delegations for the Planning Proposal.
4. In the event that NSW Planning & Environment issue a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979* and any directions of the Gateway Determination.

5. Council resolve to prepare Development Control Plan controls for the proposed R3 Medium Density Residential land between Booner and Yamba Streets and the proposed B4 Mixed Use Zone.
6. A separate report be submitted to Council on the application of clause 7.9 of *Great Lakes Local Environmental Plan 2014* more broadly across Hawks Nest.

RESOLUTION

(Moved C McCaskie/Seconded A Summers)

That the above recommendation be adopted.

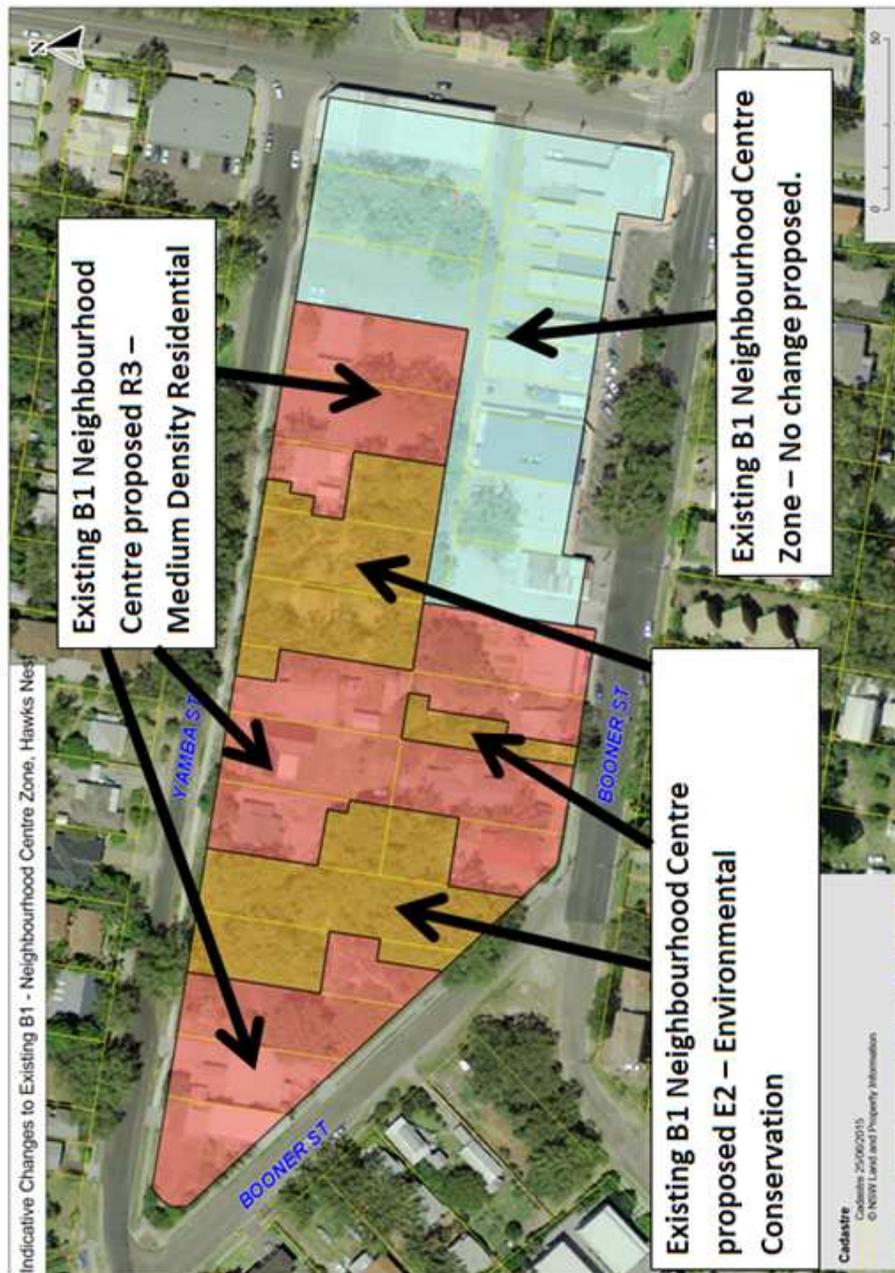
In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the **motion**, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr J Morwitch, Cr C McCaskie, Cr A Summers, Cr L Gill, Cr L Vaughan, Cr J Weate

ABSENT. DID NOT VOTE - Cr L Roberts, Cr K Hutchinson

ANNEXURES:

- A: Map depicting land in Hawks Nest currently zoned B1 Neighbourhood Centre Zone proposed to be rezoned to a mix of R3 Medium Density Residential and E2 Environmental Conservation.



B: Map showing indicative area for future inclusion in existing Protection of Wildlife Corridor Clause 7.9.



C: Map of current R3 - Medium Density Residential Zone proposed for B4 Mixed Use Zone.



D: Map of Hawks Nest depicting areas currently able to clear using the 10:50 Vegetation Clearing Rule.



Attachment 7

Draft Integrated Engagement Strategy (Place Partners – Place Making Consultancy 2014)

Attachment 7.1

Draft Place Making Strategy (Place Partners – Place Making Consultancy 2014)



PLACE PARTNERS

Place Making Consultancy

HAWKS NEST TOWN CENTRE REVIEW PLACE MAKING STRATEGY – DRAFT FOR DISCUSSION

4 November 2014

PROJECT DRIVERS

There are a number of internal and external forces that have contributed to the deterioration of the Hawks Nest business centre. These include increased competition, declining permanent population, and the global decline in bricks and mortar retail. Changing a land zoning or even government investment in civic improvements will not guarantee an improvement in the Hawks Nest business centre.

This Strategy has been developed based on the following Project Drivers:

- a community and Council committed to supporting local business
- limited financial resources available from Council
- opportunity to catalyse external investment

PLACE CHARACTER

Hawks Nest
Celebrate our creative nature

Celebrate – be positive, share good stories
Creative – be creative in thought and deed
Nature – focus on integration of the natural environment

PLACE MAKING DIRECTIONS

- 1. Create a framework for collaborative decision making and delivery**
Great Lakes Council and the Hawks Nest business and resident community need to work together to improve the business centre. Clear delineation of tasks and the sharing of responsibilities will allow for the positive change needed both in terms of process and outcomes.
- 2. Focus resources and investment in concentrated areas that will return the most benefit**
Hawks Nest activity zones cover a large area including the business centre, beach front and river's edge as well a variety of public spaces. It is necessary to define focussed areas of public investment that have the best chance of catalysing private investment and development. Spreading resources too thinly will not achieve the desired change. New investment should have multiple benefits and benefit multiple groups.

www.placepartners.com.au

PO Box 1271, Bondi Junction 1555 NSW Australia
Tel +61 (0) 2066 7101 ARN 67 124 260 279

3. **Develop a plan for incremental improvements with a common long term goal**
 The long term goal for Hawks Nest is to retain successful businesses that allow for socialisation and key grocery purchases. Small changes and improvements can be made over a longer period of time to achieve this goal. There needs to be a shared responsibility for delivering these improvements from the community, Council, business and landowners. The benefit of enhancing the business centre environment will be felt by all.

PLACE MAKING RECOMMENDATIONS

The following actions have been developed from both the onsite visit and community engagement findings. The purpose of these actions is to capture and catalyse the interest of the community to work collaboratively in improving the existing business centre for all.

Criteria for actions:

- Attract shoppers or new businesses to the centre
- Engage local residents and businesses in improving their centre
- Reflect local values and creativity in the centre
- Low cost and short term wins

Action	Description	Lead	Partners
Business opportunity mapping	Create a map of lettable properties, currently approved uses, consent requirements and rents. Work with landlords and real estate agents to develop incentives, short term leases for trial businesses and summer pop ups. Distribute to TAFE, local market stall holders, desirable businesses in other areas.	Council	Landowners Real estate agents Local businesses
Creative Village	Work with local landowners and to identify sites for community enhancement through yarn bombing, temporary art installations or murals. Crowd fund activities through Pozible (http://www.pozible.com/) or Kickstarter. Rewards could include working with the artists to going into the draw to win a free weekend stay at Hawks Nest. Develop a community skills audit managed by the Hawks Nest Progress Association. This involves a register of the skills community members have that could help in improving Hawks Nest e.g. social media, photography, event management, design etc. It will then encourage skilled residents to donate their time.	Local creative residents	Landowners Real estate agents Hawks Nest Progress Association
Village Art Store	Work with local landowners and real estate agents to identify low rent retail store to set up boutique business selling local handicrafts and art. (See http://dynamicbusiness.com.au/entrepreneur-profile/new-business-concept-to-help-aussie-artists-25072014.html) Local creatives can work on a roster system to give everyone the opportunity to both buy and sell local creativity.	Local creative residents	Landowners Real estate agents

Corner Pocket Play Space	Work with the owners of the old IGA site to set up a temporary agreement to activate the corner as a summer pop up community space. Clean up and paint the space; call for donations of furniture (and paint it bright colours), ping pong/pool tables, games etc that can be set up for use by locals and visitors. Work with local traders to help manage and maintain the space.	Progress Association	Landowners
Village Green	Work together to deliver the short term planting enhancements in new planters in mall and also in other Council owned vacant areas. Consider bright colourful plants that bring colour and life to the area throughout the year. Get a gardening group together to have planting days.	Council Progress Association Local gardeners	

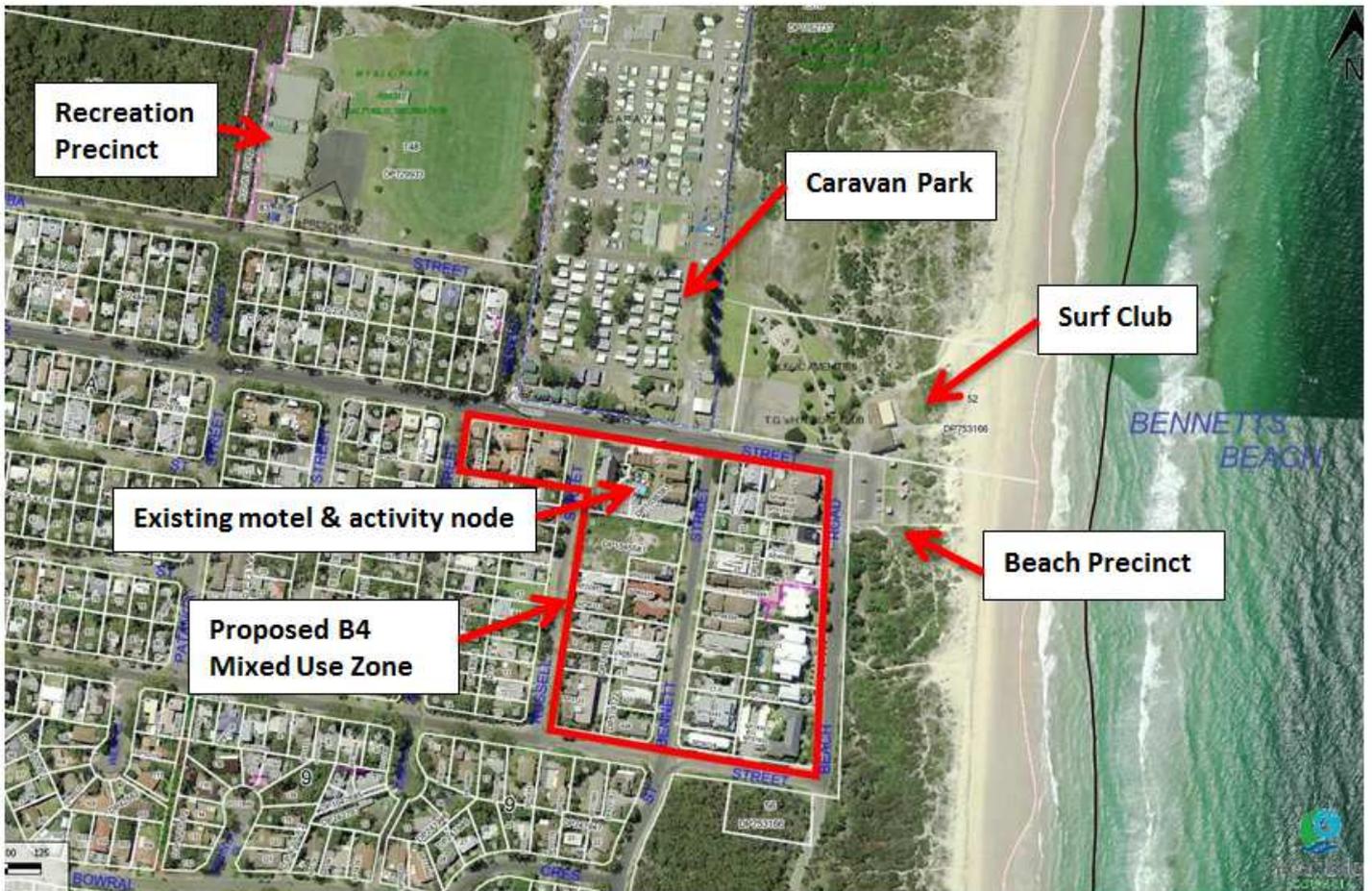


Attachment 8

Hawks Nest 3A Business Zone Review and Strategy (Andrew's Neil, 2003)

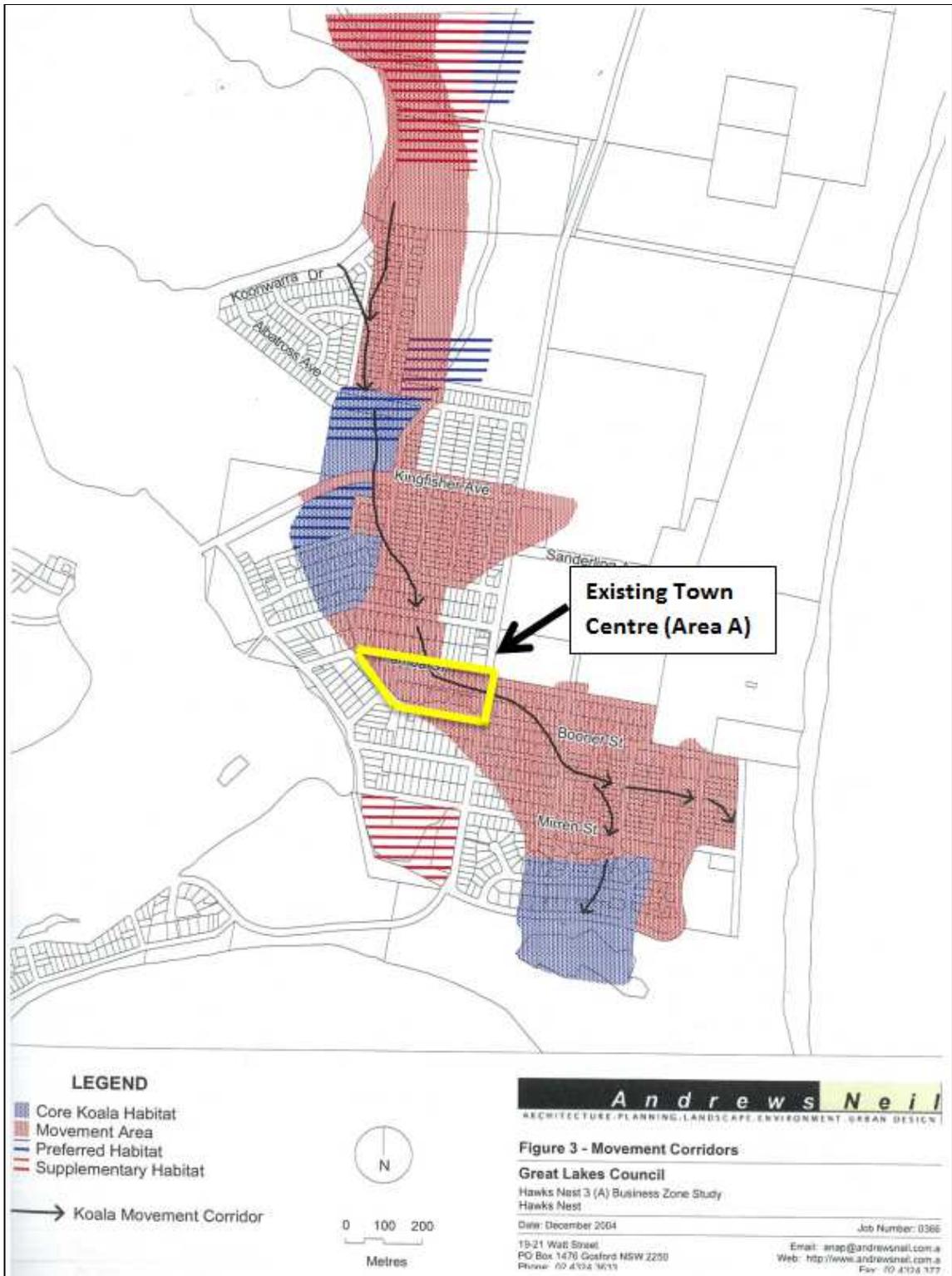
Attachment 9

Location of proposed B4 – Mixed Use Zone in context with surrounding land uses



Attachment 10

Hawks Nest Koala Habitat and Movement Corridor*



Hawks Nest Koala Habitat and Movement Corridor showing location existing business area as it relates to the broader habitat corridor.

* taken from "Hawks Nest 3A Business Zone Review & Strategy (Andrew's Neil, 2003)", Attachment 8

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Attachment 11

Council report and resolution (120sqm Issue)

Subject: PES - Hawks Nest 120 Variation
Index: SP-PP-13
Author: Strategic Planner - Rebecca Underwood
Strategic Committee Meeting: 6 October 2015

SUMMARY OF REPORT:

This report presents a request for Council to make an amendment to the Hawks Nest Town Centre Planning Proposal (PP).

Council submitted the PP in question to the Department of Planning and Environment (DP&E) on 27 August 2015 for a Gateway Determination. DP&E have requested that Council remove the proposed new local clause which would limit the size of any commercial development in the proposed B4 - Mixed Use Zone near the Hawks Nest Beach to 120m² (Attachment A).

Alternatively, DP&E have recommended that Council develop a new zone objective for the proposed B4 – Mixed Use Zone. The new zone objective would specifically address the issue of commercial development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach competing with the existing Hawks Nest business area (Attachment B).

SUMMARY OF RECOMMENDATION:

That Council:

1. Remove the proposed new local clause within the Planning Proposal for the Hawks Nest Town Centre which will limit the size of any commercial development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach to 120m².
2. Include within the Planning Proposal for the Hawks Nest Town Centre a new zone objective for the proposed B4 - Mixed Use Zone near Hawks Nest Beach which will ensure that any new commercial development within this area complements and does not detract from the viability of the existing Hawks Nest business area.
3. Resubmit the amended Planning Proposal to the Minister for NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
4. Include provisions within the Development Control Plan, currently being prepared as part of the Planning Proposal, to reinforce the new zone objective and encourage development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach which does not compete with the existing Hawks Nest business area.

FINANCIAL/RESOURCE IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

LEGAL IMPLICATIONS:

Nil

LIST OF ANNEXURES:

Nil

LIST OF ATTACHMENTS:

- A: Map of proposed B4 - Mixed Use Zone near Hawks Nest Beach
- B: Map illustrating proposed Hawks Nest Beach B4 - Mixed Use Zone as it relates to the existing Hawks Nest business area.

Due to their large size, Attachments A & B have been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, the Attachments are publicly available on Council's Website, copies are available at Council offices and copies are available on request.

REPORT:

At its Strategic Committee Meeting of 14 July 2015, Council resolved to prepare a PP for Hawks Nest to give effect to the recommendations of the Hawks Nest Town Centre Review. The resolution included the following recommendations which are relevant to this report:

- Rezone about 4.9 ha of land close to the beach at Hawks Nest to B4 - Mixed Use Zone (and make Multi Dwelling Housing permissible in this area);
- Add a new local clause to *Great Lakes Local Environmental Plan 2014* which will limit the size of any commercial development in the new proposed B4 Mixed Use Zone at Hawks Nest to 120m².

The intention behind the 120m² limit, was to ensure larger business such as supermarkets and newsagents would not be able to start up in the proposed B4 – Mixed Use Zone. It was felt that this type of development, in this area, would jeopardise the existing Hawks Nest business area. Rather, the intention was to encourage boutique tourist-type businesses suited to this location that would complement the existing Hawks Nest business centre.

In accordance with Council's resolution, the 'Hawks Nest Village Centre and other Rezoning Opportunities' PP was prepared and submitted to the Department of Planning and Environment (DP&E) for a Gateway Determination on 27 August 2015. The department has since provided feedback on the PP specifically regarding the new local provision to limit commercial development in the proposed B4 - Mixed Use Zone near Hawks Nest Beach to 120m².

DP&E have raised concerns that by including provisions to limit the size of commercial development in the proposed B4 – Mixed Use Zone near Hawks Nest Beach Council may be seen to be creating a 'sub zone'. Basically, this means that Council would be creating another zone within the B4 – Mixed Use Zone. Further DP&E indicated that Council could be perceived as stifling uses in this area.

".... The proposed new local provision could have the unintended consequence of stifling uses that may be appropriate in the beachfront that perhaps require say 130m² or 150m² or 175m² of floor space to be commercial viable. It may also raise concerns about anti-competitive planning provisions/ practices..."

Alternately, DP&E have recommended Council develop a new zone objective for the proposed B4 – Mixed Use Zone near Hawks Nest Beach. The new zone objective would be specifically tailored to address the issue of competition between the new proposed B4 – Mixed Use Zone and the existing Hawks Nest Business area.

“....Rather than seeking to include such a special local clause provision it is suggested that Council give consideration to including, if considered necessary, a B4 Mixed Use Zone objective in support of the outcomes Council is trying to achieve at Hawks Nest...”

Since receiving the advice from DP&E, Council has been in discussions with the department in an attempt to work through the issues. Council staff have considered the options available and considers that a new local clause for the proposed B4 – Mixed Use Zone near Hawks Nest Beach would be able to deliver the planning outcomes Council has envisaged this area. It is also felt, that the new zone objective will enable Council to assist in refusing applications, if necessary where they could jeopardise businesses in the existing Hawks Nest business area.

Options

Council has two options in this matter. It can either keep the new local clause in the PP to limit development within the proposed Hawks Nest B4 – Mixed Use Zone to 120m² or, it can decide to remove the new local clause and develop a new zone objective for the Hawks Nest proposed B4 – Mixed Use Zone near Hawks Nest Beach to address the competition issue. The options, including a brief explanation of each is provided below:

New Local Clause

As indicated, the proposed new local clause within Great Lakes Local Environmental Plan 2014 will limit the size of any commercial development within the proposed B4 – Mixed Use Zone near Hawks Nest Beach to 120m². DP&E is not supportive of the new local clause. However, if Council would still like to include the clause within the PP it will have to provide justification for inconsistencies with section 117 Direction 6.3 – Site Specific Provisions. The department has provided the following advice in this regard:

“...If Council is seeking to impose a site specific local clause provision limiting the size of any commercial development on a specific B4 Mixed Use Zone site in Hawks Nest. The inconsistency with section 117 Direction 6.3 – Site Specific Provisions needs to be addressed and adequately justified in the Planning Proposal...”

Council will also have to provide advice to DP&E, to their satisfaction that Council is not creating a sub zone or an anti-competitive planning scenario as previously indicated. However, even if Council provides the requested information DP&E have advised that the PP may get ‘held up’ down the track by Parliamentary Counsel once it is at the legal drafting stage due to the issues outlined.

It is recommended that Council remove new local clause from the PP for the reasons as described.

New Zone Objective

Alternately, Council could develop a new zone objective for the proposed B4 – Mixed Use Zone at Hawks Nest in accordance with advice from DP&E. The new zone objective would need to be specially tailored to the area and contain clear guidance about the kinds of development Council has in mind for this area.

Current objectives in the B4 – Mixed Use Zone do already require consideration of the impact on the viability of the existing business centres as indicated below:

“....To encourage development that does not prejudice the established business and industrial centres”

For example if a Development Application for a chemist, newsagency or grocery store was lodged in the proposed Hawks Nest proposed B4 – Mixed Use Zone, this would not meet the objective of the zone and could be refused by Council under section 79C of the *Environmental Planning & Assessment Act 1979*.

The new zone objective could be strengthened by provisions within the Development Control Plan (DCP) for Hawks Nest with details for preferred uses in this area. The DCP would supplement the new zone objective and enforce the hierarchy and role of the proposed beachfront B4 – Mixed Use Zone as distinct from the established Hawks Nest B1 - Neighbourhood Centre Zone. A new objective could take the form of something like:

To ensure that the type and scale of commercial premises in the B4 zone at Hawks Nest complements and does not detract from the viability of the of the B1 Neighbourhood zone at Hawks Nest.

The final wording would be resolved in conjunction with the Department's legal branch.

CONCLUSION:

For the reasons outlined above, it is recommended that Council remove the proposed new local clause from the Hawks Nest PP which would limit commercial development in the proposed B4 – Mixed Use Zone near Hawks Nest Beach to 120m². Instead a new zone objective should be inserted for the proposed B4 – Mixed Use Zone near Hawks Nest Beach which would address competition issues between the centres.

RECOMMENDATION:

That Council:

1. Remove the proposed new local clause within the Planning Proposal for the Hawks Nest Town Centre which will limit the size of any commercial development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach to 120m².
2. Include within the Planning Proposal for the Hawks Nest Town Centre a new zone objective for the proposed B4 - Mixed Use Zone near Hawks Nest Beach which will ensure that any new commercial development within this area complements and does not detract from the viability of the existing Hawks Nest business area.
3. Resubmit the amended Planning Proposal to the Minister for NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
4. Include provisions within the Development Control Plan, currently being prepared as part of the Planning Proposal, to reinforce the new zone objective and encourage development within the proposed B4 - Mixed Use Zone near Hawks Nest Beach which does not compete with the existing Hawks Nest business area.

Subject: PES - Hawks Nest 120 Variation
Index: SP-PP-13
Author: Strategic Planner - Rebecca Underwood
Strategic Committee Meeting: 6 October 2015

RESOLUTION

(Moved C McCaskie/Seconded K Hutchinson)

That the matter be deferred to enable the Director of Planning & Environmental Services to hold further discussions with the NSW Department of Planning.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr J Morwitch, Cr L Roberts, Cr C McCaskie, Cr A Summers, Cr K Hutchinson, Cr L Gill, Cr J Weate
ABSENT. DID NOT VOTE - Cr L Vaughan

Attachment 12

Council report and resolution (120sqm Issue)

Subject: PES - Planning Proposal - Hawks Nest Village Centre
Index: SP-PP-13
Author: Strategic Landuse|Planner - Rebecca Underwood
Strategic Committee Meeting: 1 December 2015

SUMMARY OF REPORT:

This report follows on from the report presented to the October Strategic Committee Meeting (2015) regarding the Hawks Nest (Village Centre) Planning Proposal.

It presents Council with two options relating to the issue of the proposed 120sqm floor space limit for commercial development in the proposed B4 Mixed Use Zone at Hawks Nest (Annexure A).

Council will need to decide which option it wishes to pursue in order to progress the PP.

SUMMARY OF RECOMMENDATION:

That Council:

1. Remove the proposed new local clause within the Planning Proposal for the Hawks Nest Village Centre which would limit the size of any commercial development within the proposed B4 - Mixed Use Zone to 120sqm.
2. Resubmit the amended Planning Proposal to the Minister for NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
3. Once a Gateway Determination has been received place the Planning Proposal on public exhibition in accordance with the Gateway Determination.
4. Include provisions within the Development Control Plan, currently being prepared as part of the Planning Proposal, to limit the maximum floor gross floor area for any retail or business premises in the proposed Hawks Nest B4 - Mixed Use Zone to 120sqm.

FINANCIAL/RESOURCE IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

LEGAL IMPLICATIONS:

Nil.

LIST OF ANNEXURES:

A: Hawks Nest proposed B4 - Mixed Use Zone

LIST OF ATTACHMENTS:

Nil.

REPORT:

At the 6 October 2015 Strategic Committee Meeting Council considered a report on the Hawks Nest Village Centre Planning Proposal (PP). The report recommended that Council make an amendment to the PP to remove the provision which would limit the size of any commercial development in the new proposed B4 Mixed Use Zone at Hawks Nest to 120m² as shown in Attachment A.

Council resolved that the matter be deferred to enable the Director of Planning & Environmental Services to hold further discussions with the NSW Department of Planning and Environment (DP&E).

The Director of Planning & Environmental Services has been in discussions with DP&E who have advised that they are still strongly opposed to a new local clause within *Great Lakes Local Environmental Plan 2014* to limit the size of any commercial development within the proposed B4 Mixed Use Zone at Hawks Nest to 120sqm.

The reasons DP&E do not support the inclusion of the new local clause is detailed within the report to the October Strategic Committee Meeting.

In order to resolve this matter Council has two options:

1. Continue to pursue the inclusion of a new local clause within *Great Lakes Local Environmental Plan 2014*; or
2. Rely on the existing zone objectives of the B4 – Mixed Use Zone and include the 120sqm standard in *Great Lakes Development Control Plan 2014* (DCP).

Option #1 – Continue to pursue new local clause

Council can decide to pursue a new local clause within *Great Lakes Local Environmental Plan 2014*. As indicated, the intent of the clause would be to limit the gross floor area in proposed B4 – Mixed Use Zone near Hawks Nest Beach to 120sqm.

As Council is aware, DP&E are not supportive of this option. However, if Council would still like to pursue the inclusion of the new local clause it will need to do the following:

- justify inconsistencies to DP&E with section 117 Direction 6.3 – Site Specific Provisions
- provide advice to DP&E and Parliamentary Counsel to their satisfaction that Council is not creating a sub zone or an anti-competitive planning scenario

Even if Council provides the information above there is no guarantee that DP&E will support the addition of a new local clause. To this point in time DP&E have been strongly opposed to the addition of a new local clause and have advised Council they should come up with an alternative solution to this issue.

Option #2 – Rely on existing B4 objectives & Include the 120sqm standard in the DCP

An alternative available to Council would be to rely on the existing objectives of the B4 – Mixed Use Zone and include the 120sqm standard in the DCP.

The current objectives of the B4 – Mixed Use Zone are:

1. *To provide a mixture of compatible land uses.*

2. *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
3. *To encourage development that does not prejudice the established business and industrial centres.*
4. *To ensure that traffic generation from development can be managed in a way that avoids conflict with the desired pedestrian environment.*
5. *To ensure the inclusion and integration of housing to promote housing diversity and community activity within the business centre.*
6. *To enable a range of tourism-related uses that support the business centre.*

As stated above, the current objectives of the B4 – Mixed Use Zone do already require consideration of the impact on existing business centres. For the Hawks Nest scenario, this could be further reinforced by including the 120sqm standard within the DCP.

Consultants working on the project for Council, City Plan Services, have been in discussions with Council on this issue. They have advised that one of the key reasons for preparing a DCP (as outlined in Section 74BA of the *Environmental Planning & Environment Act 1979*) is to provide guidance on how to achieve the objectives of a land use zone. By including the development standard to limit the gross floor area of the proposed B4 – Mixed Use Zone within a DCP it would be reinforcing the objectives of the B4 – Mixed Use Zone, namely objective number three as underlined above.

The DCP could also specify preferred uses in this area and include provisions which enforce the hierarchy and role of the proposed beachfront B4 – Mixed Use Zone as distinct from the established Hawks Nest B1 - Neighbourhood Centre Zone.

Council has had discussions with DP&E about this approach to the issue and they have provided their in-principle support for this option.

It is recommended that Council rely on the existing objectives of the B4 – Mixed Use Zone and include the 120sqm standard in the DCP in accordance with this option. The draft DCP will include numerous other provisions and will be submitted to Council for endorsement for exhibition.

CONCLUSION:

For the reasons outlined above, it is recommended that Council resolve to remove the proposed new local clause from the Hawks Nest PP which would limit the gross floor area of commercial development in the proposed B4 – Mixed Use Zone near Hawks Nest Beach to 120sqm.

Alternately, it is recommended that Council rely on the existing objectives of the B4 – Mixed Use Zone to guide development in the proposed B4 – Mixed Use Zone near Hawk Nest Beach and include the provision to limit the gross floor area of any commercial development in this area to 120sqm within the DCP.

This will reinforce the existing objectives of the B4 – Mixed Use Zone objectives and assist to differentiate between the roles of any existing and future commercial centres within Hawks Nest.

RECOMMENDATION:

That Council:

1. Remove the proposed new local clause within the Planning Proposal for the Hawks Nest Village Centre which would limit the size of any commercial development within the proposed B4 - Mixed Use Zone to 120sqm.

2. Resubmit the amended Planning Proposal to the Minister for NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
3. Once a Gateway Determination has been received place the Planning Proposal on public exhibition in accordance with the Gateway Determination.
4. Include provisions within the Development Control Plan, currently being prepared, to limit the maximum floor gross floor area for any retail or business premises in the proposed Hawks Nest B4 - Mixed Use Zone to 120sqm.

ANNEXURES:

A: Hawks Nest proposed B4 - Mixed Use Zone



Subject: PES - Planning Proposal - Hawks Nest Village Centre
Index: SP-PP-13
Author: Strategic Landuse Planner - Rebecca Underwood
Strategic Committee Meeting: 1 December 2015

RECOMMENDATION:

That Council:

1. Remove the proposed new local clause within the Planning Proposal for the Hawks Nest Village Centre which would limit the size of any commercial development within the proposed B4 - Mixed Use Zone to 120sqm.
2. Resubmit the amended Planning Proposal to the Minister for NSW Planning and Environment for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*.
3. Once a Gateway Determination has been received place the Planning Proposal on public exhibition in accordance with the Gateway Determination.
4. Include provisions within the Development Control Plan, currently being prepared, to limit the maximum floor gross floor area for any retail or business premises in the proposed Hawks Nest B4 - Mixed Use Zone to 120sqm.

RESOLUTION

(Moved K Hutchinson/Seconded L Gill)

That the above recommendation be adopted.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the **motion**, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr J Morwitch, Cr L Roberts, Cr C McCaskie, Cr A Summers, Cr K Hutchinson, Cr L Gill, Cr L Vaughan, Cr J Weate

Attachment 13

Preliminary Advice OEH



Our reference: DOC16/25417-1
Contact: Karen Thumm, 4927 3153

Mr Glenn Handford
General Manager
Great Lakes Council
PO Box 450
FORSTER NSW 2428

Attention: Rebecca Underwood

Dear Mr Handford

RE: PRELIMINARY ADVICE ON PLANNING PROPOSAL TO REZONE LAND IN HAWKS NEST – BUSINESS ZONE

I refer to your e-mail dated 15 January 2016 seeking preliminary advice on the Planning Proposal for the business zone between Booner and Yamba Streets Hawks Nest. The Gateway determination requires that prior to exhibition, Council must consult with the Office of Environment and Heritage (OEH) in regards to the date and methodology of the 'Hawks Nest 3A Business Zone Review and Strategy (2004)' and any other studies used to inform the boundaries of the proposed E2 Conservation Zone.

OEH notes that the Hawks Nest and Tea Gardens Koala population is listed as an Endangered Population under the *Threatened Species Conservation Act 1995*. The planning proposal makes it clear that the presence of potential feed and habitat trees within the subject site is important and that these trees facilitate movement between habitat remnants within the Hawks nest area. It was identified that there are still stable koala ranges, important feeding habitats and movement areas within urban Hawks Nest in general. It is also evident from the planning mechanisms which have been put in place to date that Council is aware of its obligations under the *Threatened Species Conservation Act 1995*.

Koala movement corridors through the town centre (Andrews Neil 2003) indicated use of 'Area A' within the corridor, with eight feed trees and other trees used for movement across this area in the area in 2004. It is understood that it is unlikely that the subject site constitutes an important food resource for the population but rather acts as a movement corridor. It is also noted that this area is not affected by SEPP 44 as it does not qualify as 'core' Koala habitat, however, other planning instruments, such as Clause 7.9 of the Great Lakes Local Environmental Plan 2014 and Clause 5.9 (a tree preservation clause) provide for consideration and protection of trees and vegetation including Koala feed trees. It is also understood that the planning proposal will include the area for rezoning into the Koala corridor mapping which accompanies the Great Lakes Local Environmental Plan 2014 and that this will help to define the endangered population.

OEH is aware that any damage to a tree in Hawks Nest presently requires development consent from Council and tree removal in the area covered by Clause 7.9 requires a licence from OEH under Section 91 of the *Threatened Species Conservation Act 1995*. In addition there will be positive covenants attached to the title deeds for all trees in the area and a tree preservation order. It is understood that the NSW Rural Fire Service '10/50 Vegetation Clearing Code of Practice for New South Wales (10/50 Code)' applies to part of the subject area, but that positive covenants are not extinguished by the 10/50 Code. It is clear that the effectiveness of the legislation and planning instruments aimed at protecting koala feed and movement trees will need to be

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monitored to check their effectiveness and adaptive management provided if losses are observed. On-going monitoring and constant reinforcement of the corridors and feed trees will be required if this planning proposal is going to be effective for both town revitalisation and for the protection of the Koala habitat.

OEH generally supports the recommendations provided in the planning proposal to dedicate Koala corridor areas to Council, to zone these areas to E2 Environmental Conservation, to provide for traffic calming, provide underground electricity and to retain / replant trees wherever possible. Road crossings and fencing will also need to be planned carefully to prevent any losses to this Koala population. OEH recommends that Council consider how to connect the E2 areas, as there appear to be gaps in connectivity between these areas. Further, it is recommended that the connections between the area bounded by Booner, Tuloa and Yamba Streets and the surrounding area, are reinforced and that areas of degraded habitat are rehabilitated to increase the area of high quality habitat. OEH is concerned about the lag between any tree removal and the provision of food trees, or trees for movement, while the plantings are maturing and suggests that Council investigates ways of overcoming this problem.

OEH is aware that one of the reports relating to the koala population in the area is very dated (2004). However, it is clear that Council has not relied solely on this source for the preparation of the plan. OEH is satisfied at this level of investigation of the biodiversity values for the rezoning process. OEH recommends that Council continues investigations into this population to ensure information is kept up to date.

Flooding

OEH notes that the planning proposal includes an extract from the Great Lakes Local Environmental Plan 2014 - Flood Planning Area Map that shows the subject land to be partially affected by flooding. Since the preparation of the planning proposal, Council has received the Lower Myall River and Myall Lakes Flood Study (June 2015). On the basis of this more recent study, the land is no longer considered to be flood affected. As Council has since updated its Flood Planning Area map to reflect this more recent assessment there are now no flood-related constraints for this proposal.

Aboriginal cultural heritage

OEH notes that no Aboriginal cultural heritage assessment was provided for this planning proposal. The importance of identifying and protecting Aboriginal cultural heritage in planning proposals is reflected in Local Planning (section 117) Direction 2.3 Heritage Conservation which states that a planning proposal must contain provisions that facilitate the conservation of Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes.

As a minimum, an assessment of whether Aboriginal cultural heritage values are known or are likely to occur in the area of the planning proposal should be undertaken by a suitably qualified person. The initial assessment of the likelihood of Aboriginal cultural heritage values should include the following:

- a search the Aboriginal Heritage Information Management System (AHIMS) database and any other sources of information available
- determination of whether the planning proposal includes landscape features that indicate the likely presence of Aboriginal objects
- a site inspection
- consultation with the Aboriginal community.

Note: *The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010) should not be used to support a planning proposal. Due diligence is a voluntary process that provides a person with a defence against prosecution for the strict liability offence if they later unknowingly harm an Aboriginal object without an Aboriginal Heritage Impact Permit. Due diligence is not an assessment of Aboriginal cultural heritage values.

Where Aboriginal objects are known or are likely to occur in the area of the planning proposal, further investigation should be undertaken by a suitably qualified person. The identification of cultural heritage values

should be in consultation with OEH regional officers and guided by the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (DECCW, 2011) available at: www.environment.nsw.gov.au/licences/investassessreport.htm.

Consultation with Aboriginal people should be undertaken and documented in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW, 2010) available at: www.environment.nsw.gov.au/licences/consultation.htm.

The significance of cultural heritage values for Aboriginal people who have a cultural association with the land should be documented in the planning proposal. These results should be considered in addition to any archaeological values that the land may retain.

Impacts to Aboriginal cultural heritage should be avoided. Where impacts cannot be completely avoided, they should be minimised and managed and an Aboriginal Heritage Impact Permit sought for any impact to occur. The planning proposal must include provisions to facilitate the conservation of Aboriginal cultural heritage values. Such provisions may include:

- appropriate land use zoning (e.g. E2 conservation)
- redesign of future development to avoid harm
- incorporating areas into passive open space
- recommendations for a Development Control Plan.

If you require any further information regarding this matter please contact Karen Thumm, Regional Biodiversity Conservation Officer, on 4927 3153.

Yours sincerely



5 FEB 2016

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations