



Planning Proposal

Amendment No.

Great Lakes Local Environmental Plan 2014

Lot 22 DP 843479 - The Southern Parkway, South Forster

GREAT LAKES COUNCIL

Breese Parade

FORSTER NSW 2428

September 2014

Contents

Introduction.....	3
PART 1. Objectives and Intended Outcomes of Planning Proposal	7
PART 2. Explanation of Provisions	8
PART 3. Justification	9
Section A - Need for the Planning Proposal	9
Section B - Relationship to Strategic Planning Framework.....	20
Section C - Environmental, Social and Economic Impact	30
Section D - State and Commonwealth Interests	31
PART 4 - Mapping	32
PART 5 - Community Consultation	36
Part 6 – Project Timeline.....	37
Conclusion and Recommendations	38

Figures:

Figure 1: Aerial showing the location of the land.....	5
Figure 2: Zoning of Lot 22 and surrounding land.....	6
Figures 3: Land subject of community rezoning requests.....	10
Figure 4: Aerial of land subject of community rezoning requests.....	10
Figure 5: Squirrel Glider Survey Sites	13
Figure 6: Location of Wildlife Corridors requiring maintenance and enhancement	16
to facilitate dispersal and population viability of the Squirrel Glider near Forster	16
Figure 7: Pipers Creek Catchment.....	19
Figure 8: Aerial Image from Forster and Tuncurry Conservation and Development Strategy Showing Nominated Growth Precincts for South Forster Release Area	24
Figure 9: Map from Forster and Tuncurry Conservation and Development Strategy Showing Nominated Growth Areas for South Forster	25
Figure 10: South Forster Structure Plan Showing Northern Part of South Forster Release Area.....	26
Figure 11: Lot 22 in the Context of the Surrounding Conservation and Open Space Framework.....	27
Figure 12: Great Lakes LEP 2014 Flood Planning Area.....	30
Figure 13: Mapping Amendment to Great Lakes LEP 2014	33
Figure 14: Mapping Amendment to Great Lakes LEP 2014	34
Figure 15: Mapping Amendment to Great Lakes LEP 2014	35

Attachments:

Attachment 1	40
Recommendations to the Minister from the Hunter and Central Coast Joint Regional Planning Panel	40
And	40
Determination by the Minister's Delegate on the JRPP Recommendations	40
Attachment 2	45
Key Directions and Strategies from Great Lakes 2030 Plan	45
Attachment 3	49
Report to Council's Strategic Committee Meeting of 10 February 2015 and Council's Resolution	49

Introduction

The purpose of this Planning Proposal (PP) is to outline a proposed zoning change of Lot 22 DP 843479, The Southern Parkway, Forster from the RU2 Rural Landscape zone to the E2 Environmental Conservation zone.

Studies have conclusively and consistently indicated that the land is of very high ecological value and that it serves a crucial water quality treatment function for Wallis Lake. The current RU2 Rural Landscape zone does not afford the necessary environmental protection to the land and Council wants to resolve the long term use of the land by applying the most appropriate zone.

Lot 22 comprises one of the properties contained in a previous Planning Proposal for various parcels in Forster owned by Lampo Group Holdings (LGH) (referred to as Site 8). A Planning Proposal was formally lodged with Council in September 2012 by LGH for the rezoning of all their properties to a combination of urban and environmental protection. Council did not progress to the point of Council making a decision on whether to support the proposal because LGH sought a review of the PP by the Minister under Section 5.1 of the Department's *A guide to preparing LEPs*. In the LGH proposal all of Lot 22 was proposed to be rezoned for residential development.

The Minister appointed the Hunter and Central Coast Joint Regional Planning Panel (JRPP) to review the Planning Proposal and to make recommendations to the Minister. On 27 June 2013 the JRPP met at Great Lakes Council offices where all issues associated with the LGH proposals were thoroughly explored and the sites were inspected. At the meeting, considerable attention was given to the planning and environmental context of Lot 22.

In August 2013, after considering the recommendations of the JRPP, Richard Pearson, Deputy Director General Planning Operations and Regional Delivery (as delegate for the Minister for Planning and Infrastructure), issued a determination on the Planning Proposal.

Mr Pearson determined that once the Planning Proposal was revised, in accordance with the JRPP's recommendations, the Planning Proposal should proceed to a Gateway determination.

The recommendation from the JRPP to the Minister on the pre-gateway review and the subsequent Determination by the delegate for the Minister are contained in Attachment 1.

In relation to Lot 22 DP 843479 the JRPP recommended:

- Site 8 should proceed, but only with an environmental conservation zoning. The site has very high ecological and water management qualities and the Panel is of the view that rezoning of the site for urban development would be inappropriate, and is therefore not supported.
- The Panel is concerned about the potential for clearing of Site 8 under the proposed RU2 zoning under the draft Great Lakes LEP 2013, and recommends that the Department review the appropriateness of this zoning in its assessment of the draft LEP.

In considering the determination by the Minister's delegate Council, in October 2013, resolved to rezone Site 8, in the Lampo Group Holdings planning proposal, to E2 Environmental Conservation in the first set of amendments to Local Environmental Plan 2013.

Council, at its meeting of 10 June 2014, in considering how to proceed with the many projects on its Strategic Planning work program (including the rezoning of Lot 22), resolved, in accordance

with Section 55 of the Environmental Planning and Assessment Act 1979 to submit a planning proposal for the rezoning of Lot 22 to E2 Environmental Conservation for a gateway determination once it had been prepared.

This Planning Proposal is consistent with the recommendation from the JRPP and the determination by the Minister.

Lot 22 DP 843479 is no longer owned by Lampo Pty Ltd and is currently owned by Southern Parkway Developments Pty Ltd.

The Site

Lot 22 DP 843479 has an area of 11.75 ha is generally flat and heavily vegetated. Minor topographic variations are only apparent by different vegetation communities.

There are no improvements on the land. Aerial imagery from 1952 shows there were also no improvements on the land and at that time it was heavily vegetated.

The land does not have direct frontage to a constructed public road with access being provided via a right-of-carriageway approximately 20m wide to The Southern Parkway. Undeveloped land zoned RU2 adjoins the land on the eastern side and the land adjoining to the south and west is owned by Council and is zoned E3 Environmental Management. A narrow strip of land in private ownership zoned R2 Low Density Residential separates Lot 22 from The Southern Parkway to the north. Figure 1 shows the location of the land and Figure 2 shows the zoning of the land and surrounding land.

Council recently purchased a 1.7 ha nearby block of land to the west (Lot 141 DP 1043081) of Lot 22 for environmental protection because of its high ecological value and its importance for the protection of water quality in Wallis Lake. At the time of purchase Council resolved to rezone Lot 141 to E2 Environmental Conservation.

Lot 22 is situated within the Flood Planning Area of Great Lakes LEP 2014 which means that filling would be required for any development of the land for residential purposes.

Figure 1: Aerial showing the location of the land

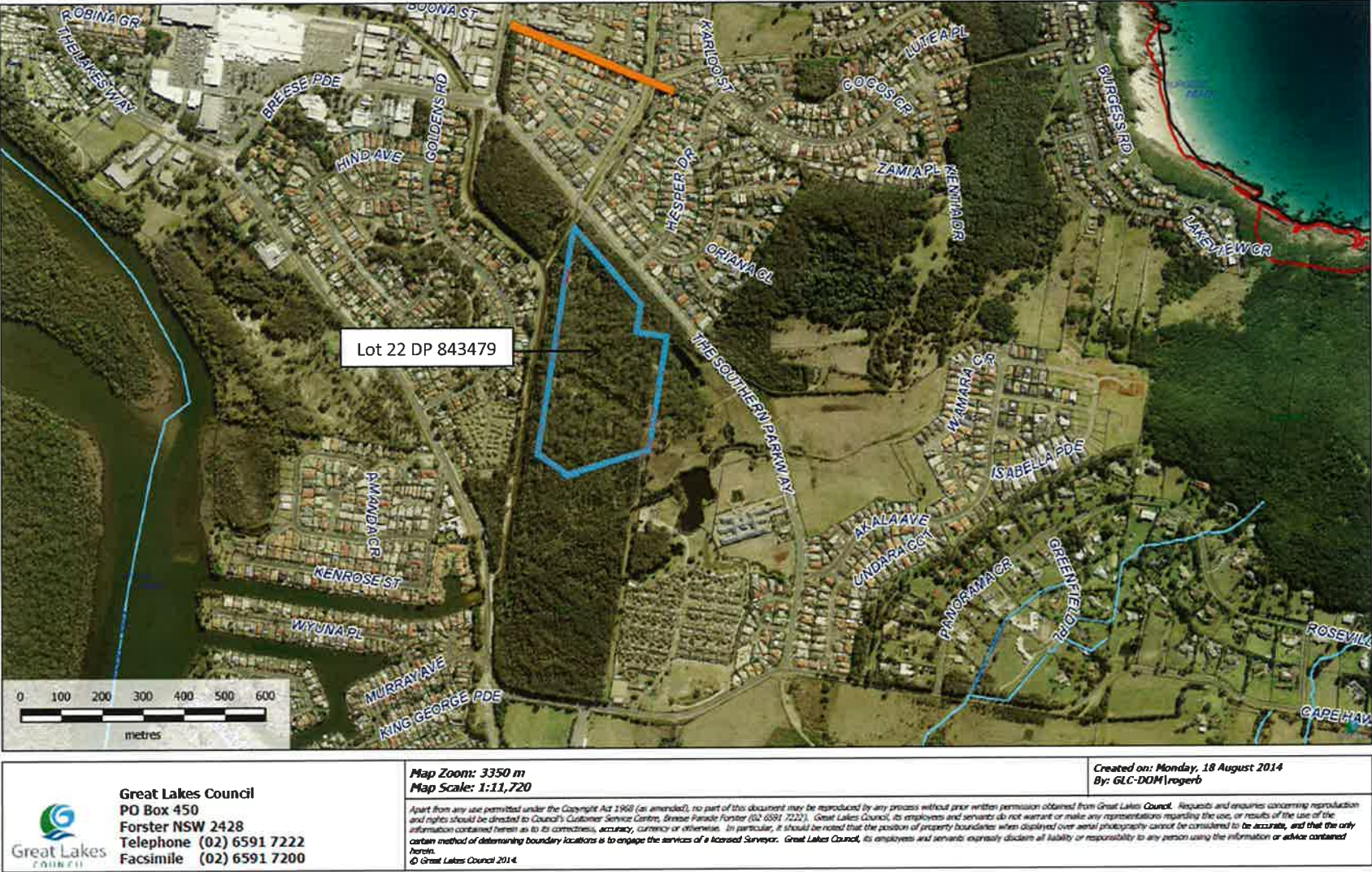
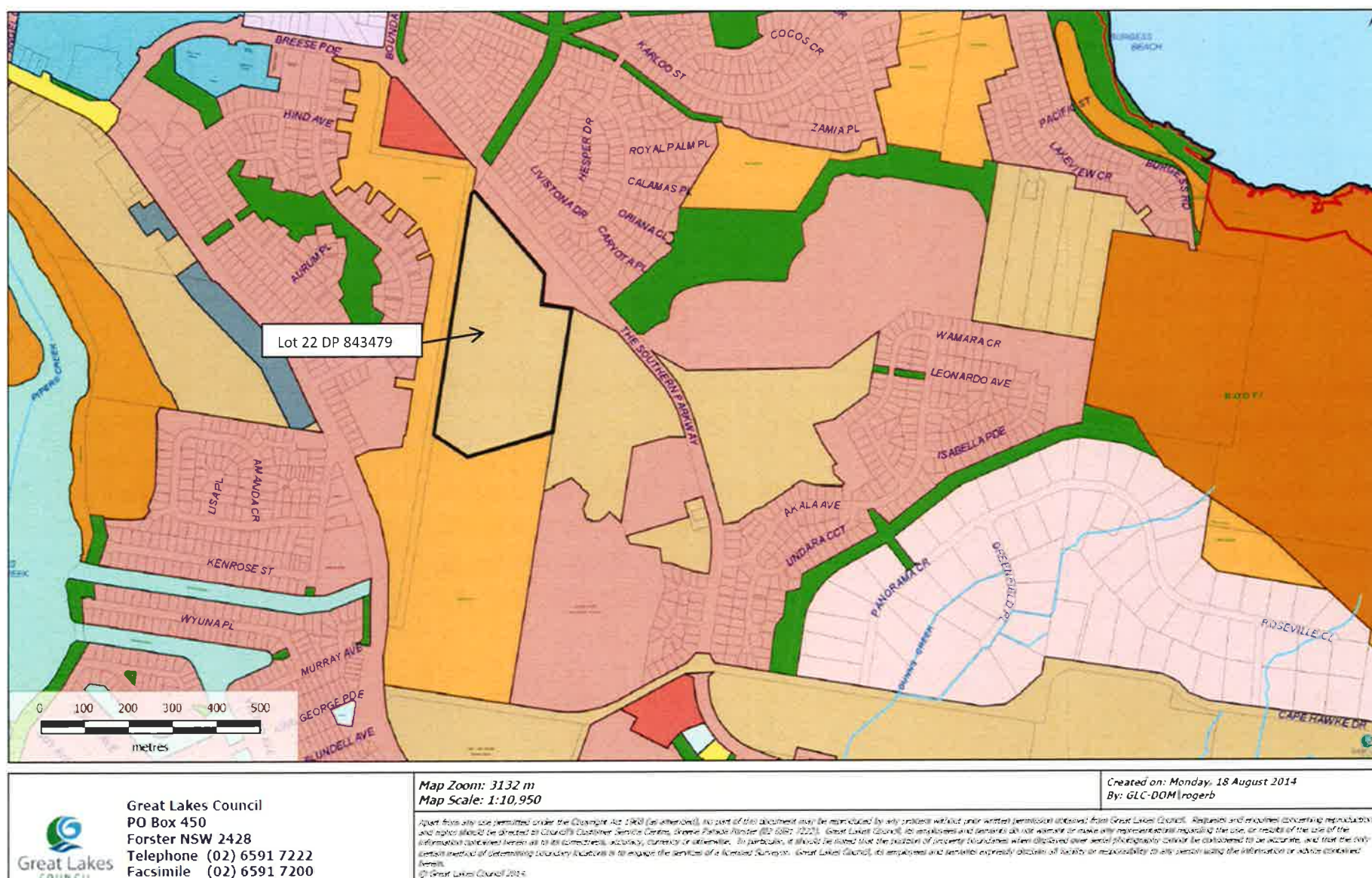


Figure 2: Zoning of Lot 22 and surrounding land



PART 1. Objectives and Intended Outcomes of Planning Proposal

The objective of this Planning Proposal is:

To afford a high level of protection to Lot 22 DP 8434479, The Southern Parkway, Forster, because of the inherent high ecological values of the land and its importance to the preservation of water quality in Wallis Lake.

Lot 22 is an outstanding example of land that demonstrates very high natural values in a predominantly urban landscape. Council believes that these features make it worthy of conservation. Photos 1 and 2 show the context of Lot 22.

The best way to achieve this outcome is to zone the land appropriately under the Environmental Planning and Assessment Act, 1979. In recognition of its high environmental value, the most appropriate zone is the E2 Environmental Conservation zone. Limited development is permitted in this zone and this, combined with the minimum Lot Size of 40ha, will afford the necessary protection.

Photo 1: Lot 22 in the context of the surrounding landscape looking south east



PART 2. Explanation of Provisions

The protection of the land, as stated in the objective, is to be achieved by changing the current RU2 Rural Landscape Zone of Lot 22 DP 843479 by amending Land Zoning Map LZN_11E so as to apply the E2 Environmental Conservation Zone under Great Lakes Local Environmental Plan 2014 to Lot 22 DP 843479. Application of the E2 zone will restrict land uses to those that are considered to be compatible with the high environmental value of the land.

No other map layers will be changed as the controls for Minimum Lot Size, Floor Space Ratio and Height of Buildings are the same for both the RU2 and E2 zones. The current lot size of 40ha, floor space ratio of 0.4:1 and building height of 8.5m will therefore continue to apply to the land.

The rezoning of a parcel of land from rural to environmental protection is not unusual as Council did this for various properties in Amendment No. 62 to Great Lakes LEP 1996. Amendment No. 62 rezoned various properties to the then 7(a1) Environmental Protection Zone under Great Lakes LEP 1996 in and around Forster, Tuncurry and Hawks Nest and was gazetted in February 2010. Lot 22 was initially included in Amendment No. 62 for rezoning to Environmental Protection but it was deferred from this LEP at the request of the then landowner.

Photo 2: Lot 22 in the context of surrounding landscape looking south west



PART 3. Justification

Is the planning proposal a result of any strategic study or report?

This section discusses the basis for the change in planning controls sought in the Planning Proposal.

Since 2001, various studies and investigations have been done over Lot 22, and adjoining land, in conjunction with various development proposals and as a consequence of action in the Land and Environment Court. These studies have enabled Council to create a solid understanding of the ecological values of the land. Sufficient information is now available to demonstrate that the rezoning of Lot 22 to E2 Environmental Conservation is justified.

Section A - Need for the Planning Proposal

The community, in 2012, identified a need for four properties, including Lot 22 DP 843479, along The Southern Parkway, Forster to be protected by lodging 807 submissions requesting that the land be rezoned from the then 1(c) Future Investigation Zone, 2(a) Low Density Residential Zone and 2(b) Medium Density Residential Zone to an environmental protection zone (refer to Figure 2 for the current zoning of these properties under GLLEP 2014). Figures 3 and 4 show the land the subject of the rezoning requests.

The main reasons given in the submissions for the rezoning were:

- Community value from protection of the land.
- The importance of the land for protection of water quality in Pipers Creek and hence Wallis Lake.
- Land contains an Endangered Ecological Community and is habitat for numerous species of fauna, including threatened species.
- The land functions as a carbon sink.
- In a strategic context the land contributes to the amenity and scenic quality of The Southern Parkway and South Forster and makes this road an attractive boulevard.
- Presence of acid sulphate soils.

In considering the rezoning requests, Council resolved that any rezoning should be on a strategic basis and should include all the properties nominated in the submissions. Rezoning of the four properties is progressing as information becomes available. Council has already resolved to rezone Lot 141 DP 1043081 to E2 Environmental Conservation and sufficient justification is now available to rezone Lot 22 DP 843479 to Environmental Conservation.

Council also resolved, in considering the 807 submissions, that there are grounds to further consider the rezoning of the land to environmental protection and that there be liaison with the Office of Environment and Heritage on a study of the Booti Booti and Forster Squirrel Glider population. This study was to be funded by the penalty imposed by the Land and Environment Court for clearing on lot 22 DP 843479. Council was of the view that the study would assist in deciding whether there were grounds to rezone the land to environmental protection. The study Squirrel Glider has now been completed.

Figures 3: Land subject of community rezoning requests

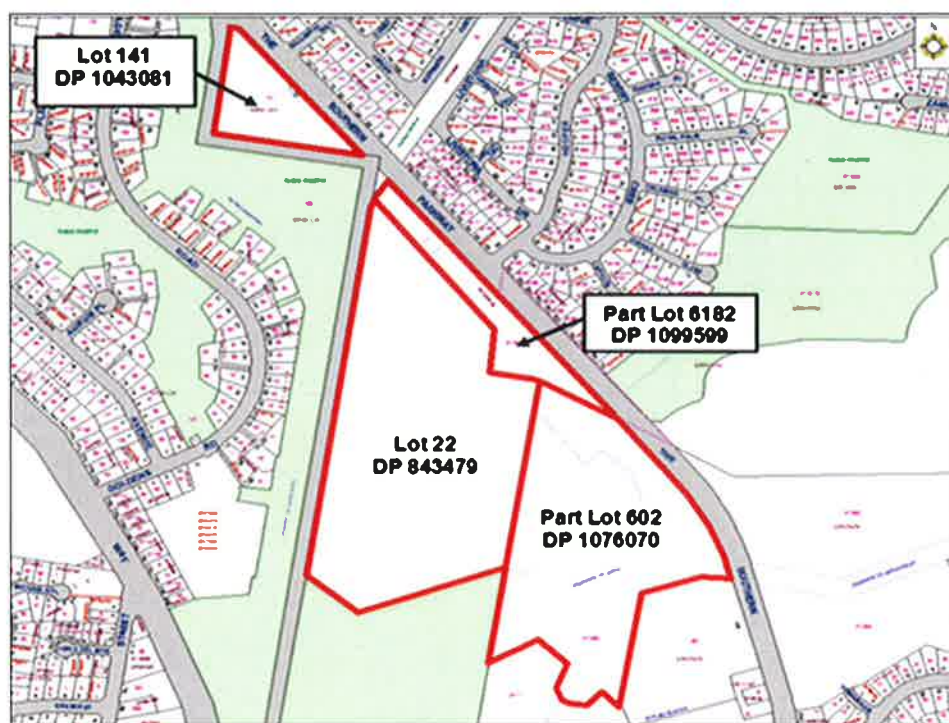


Figure 4: Aerial of land subject of community rezoning requests



Ecological Investigations to justify Environmental Conservation Zone

The Squirrel Glider (Threatened Species under the Threatened Species Conservation Act, 1995)

Land and Environment Court

In April 2012 hearings were held in the Land and Environment Court in relation to four (4) acts of clearing in Forster; two of the areas cleared were on Lot 22 DP 843479. In all cases the defendant pleaded guilty to the offence of *"causing damage to habitat, not being critical habitat, of a threatened species (Squirrel Glider) knowing that the land was habitat of that kind."*

Evidence was presented to the court in relation to ecological significance of the Lot 22 and, in particular, to the importance of the land to the local Squirrel Glider population. Some of the key statements from the judgement are cited below:

- Squirrel gliders were observed within the study area feeding in the flowers of *Melaleuca quinquenervia* (common name broad-leaved paperbark). A study also documented the presence of three (3) other species which would provide nectar and pollen to feed squirrel gliders over many months of the year. The study concluded that the area of 34 hectares, including and surrounding lot 22, could support the order of 7 - 31 individual squirrel gliders. This is a small but not insubstantial number that is likely to be of considerable significance to the broader local population.
- In 2006, consultants Conacher Travers documented squirrel gliders using for their den sites a number of hollow-bearing trees within the study area such as blackbutt, broad-leaved paperbark and swamp mahogany.
- Lot 22 is located close to several other remnants of squirrel glider habitat which have tenuous links to Booti Booti National Park, which is located less than three (3) kilometres from the subject property. There are more than ten (10) remnants of habitat around the Forster residential area and collectively these remnants may contain a local population of about 40 - 60 squirrel gliders. Such a population will have a high probability of extinction over the longer term, but may be able to persist for several decades, or longer if active land management was applied.
- Continued loss of pieces of habitat here and there (cumulative impact) will eventually push the population over a tipping point that make extinction inevitable. A further concern for squirrel gliders in Forster is the close proximity of residential development to lot 22. It is possible that domestic cats may hunt in these remnants at night and prey on squirrel gliders. House cats are known to regularly prey on sugar gliders and so it is likely they would also take squirrel gliders. Such predation will exacerbate other impacts.
- A regional biodiversity conservation officer of the Office of Environment and Heritage identified the kind of plant specimens in the area that was cleared and concluded that the vegetation was "Swamp Mahogany - Paperbark (+/- Swamp Oak) Forest" as the dominant species. He also is of the opinion that this vegetation floristically matched the determination for swamp sclerophyll forest endangered ecological community as listed in Sch 1, Pt 3 of the Threatened Species Conservation Act.

In issuing its judgement, the court imposed a fine of \$53,000.00 which was to specifically be used by the NSW Office of Environment and Heritage (OEH) for *"mapping and study of the squirrel glider populations in Booti Booti National Park and any Crown land or council controlled land in the Forster area along with the study of the connectivity of these areas within the urban landscape of the Forster area"*.

Squirrel Glider Study - Forster

Consultants, Niche Environment and Heritage Pty Ltd (Niche), were engaged by OEH to undertake a study of the Squirrel Glider at Forster as per the court judgement. The study would provide information to assist in the conservation and management of this species. Figure 5 shows the broad survey sites for Gliders from the study.

The aims of the study were to describe the distribution, habitat associations and genetic structure of the Squirrel Glider population in the Forster area, and to place this information in a regional context. Niche also provided recommendations for the conservation of the Squirrel Glider within the urban areas of Forster-Tuncurry.

The study involved surveys of the Squirrel Glider population on public land broadly across the Forster urban area and surrounding areas. It also collated information on the Squirrel Glider population from all other sources that could be located.

Specifically, the study investigated the heavily vegetated Council land immediately to the south and west of Lot 22.

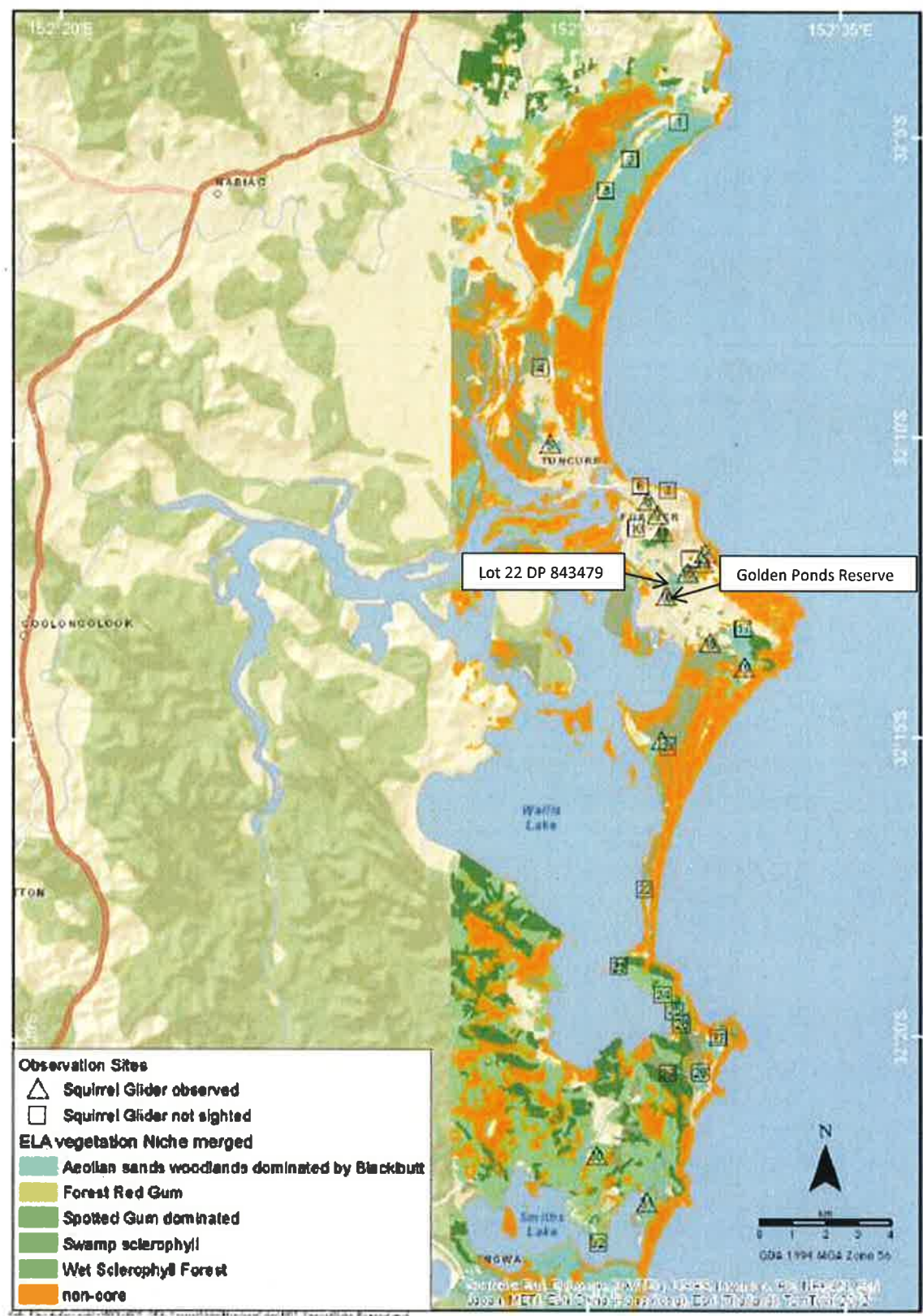
In relation to the distribution of Squirrel Gliders in the Forster locality and wider sub-region, the Squirrel Glider Study reported that:

- Squirrel Gliders were recorded in a number of council reserves in Forster;
- The population in and around the Golden Ponds reserve (adjoining Lot 22) through to the Zamia Place/ Karloo street reserves (refer to Figures 5 and 6) formed the major stronghold of the squirrel glider in Forster, with high numbers of animals present;
- Squirrel Gliders were also well-represented around Sweet Pea Road and seven mile beach, but connectivity between this area and the golden ponds area is currently poor;
- Squirrel Gliders are known from Pipers Creek and from Big Island;
- No squirrel gliders were observed in the area south from Green Point to Sandbar during the study. No squirrel gliders were positively recorded at Pacific Palms, but sugar gliders were recorded;
- The Squirrel Gliders at Tuncurry are not connected with the Forster population; and
- Squirrel Gliders appeared to be infrequent in the blackbutt forests and heaths of north Tuncurry and Darawank.

In relation to the habitat of Squirrel Gliders, the study reported that:

- Squirrel Gliders were in moderate to high densities within most forested habitats in Forster. High density populations are important as this species has a patchy distribution across its range;
- Squirrel Gliders achieved their highest densities in habitats that were comprised of, or were connected to, swamp sclerophyll forests (much of Lot 22 comprises swamp sclerophyll forest). They were also routinely associated with moist forest types and spotted gum-associated forests; and
- Only the smallest patches of forest remnants (<2-hectares) appeared to be unoccupied by the squirrel glider (but these patches may be used for dispersal).

Figure 5: Squirrel Glider Survey Sites



(Source: Niche Environmental and Heritage, Distribution, Habitat Requirements and Conservation Status of the Squirrel Glider Near Forster, NSW, June 2103)

In relation to the conservation and management, the study reported that:

- The particular landscape features and vegetation types in Forster and Tuncurry really do constitute important habitat for the Squirrel Glider;
- There may be justification to seek the listing of the Forster Squirrel Glider population as an Endangered Population under the Threatened Species Conservation Act 1995;
- Increasing urbanisation will need to be carefully managed if this population is to survive beyond the next few decades;
- A loss of the core sub-populations of Squirrel Gliders in Forster (including the Golden Ponds – Southern Parkway – Zamia Place sub-population) could result in the decline of the species and contribute to its local extinction;
- Planning authorities need to protect core areas of habitat and re-connect sub-populations through roadside plantings; and
- Six (6) kinds of general conservation actions are necessary for a strategic approach to conservation of local Squirrel Gliders, namely:
 - Protect and expand the amount of habitat;
 - Enhance the quality of habitats;
 - Manage the species across the entire landscape;
 - Increase landscape connectivity;
 - Plan for the long-term; and
 - Learn from conservation actions.

The Study then concluded with specific actions or issues that were recommended for the conservation and management of this species in the study area. Those of most relevance to Lot 22, included:

- Nominate the Forster Squirrel Glider population (north of Green Point) as an Endangered Population under the Threatened Species Conservation Act 1995;
- Maintain and enhance connectivity (using a combination of techniques include installing gliding poles, planting suitable trees, preserving wildlife corridors, protecting den trees and targeted revegetation) between the main vegetated areas that support population of the animal (see Figure 6).

Main Conclusions on Lot 22 DP 843479 and Squirrel Glider Population (threatened species)

In combining and distilling the information from the Land and Environment Court hearing and the Niche Environmental Report, as well as other sources of knowledge on the Squirrel Glider the following key conclusions can be drawn:

- There may be justification to seek the listing of the Forster Squirrel Glider population as an Endangered Population under the Threatened Species Conservation Act 1995
- There is a small but not insubstantial population of animals on Lot 22 which is likely to be of considerable significance to the broader local population
- Lot 22 lies in the centre of clear fauna movement corridor
- Lot 22 and the surrounding Council land is core habitat
- The Forster landscape constitutes an important habitat for the animal

- A loss of the core sub-populations of Squirrel Gliders in Forster (including the Golden Ponds – Southern Parkway – Zamia Place sub-population, including Lot 22) could result in the decline of the species and contribute to its local extinction

There is scientific information available that confirms that the Squirrel Glider population that occurs in the habitats of Forster in the connected habitats of Lot 22, Golden Ponds Reserve, Zamia Place Reserve, Karloo Street Reserve and Reservoir Hill Reserve (and connected vegetated private lands - refer to Figure 6) is viable and that Lot 22 is a critical component of the habitat of this local population.

- Firstly, the Court judgment for the prosecution of clearing Squirrel Glider habitat on Lot 22 recognised that Squirrel Gliders existed on the land and that the land and its immediate surrounds could support 7 – 31 individuals. It said that vegetation remnants in urban Forster could contain 40 to 60 animals. It said that the species may persist for several decades or longer with active management, but warned that continued loss of habitat will result in a high probability of extinction.

- Secondly, it has been calculated that there is at least 87-hectares of suitable habitat within the connected areas centred around Lot 22. Dr Andrew Smith's study of Squirrel Gliders in Wyong Shire indicated that the probability of extinction of a Squirrel Glider population increases rapidly when they fall below a certain minimum size or minimum habitat area. At 87-hectares, the Forster Squirrel Glider population around Lot 22 is considered viable, but it relies on an "appropriate level of management intervention" through protective actions by the relevant agencies.

- The Niche (2012) study confirmed the viability of the local Squirrel Glider population and strongly argued for controls on further habitat loss and positive actions to re-connect habitats, improve habitat condition and manage threatening processes.

Lot 22 is thus central and critical to the Forster Squirrel Glider population. This has been hypothesized and speculated since the rezoning of Lot 22 to E2 (7a1 at that time) was first proposed in 2008. The recently compiled further scientific evidence now confirms that an unreasonable loss of even a small area of habitat on Lot 22 is likely to trigger the decline of a viable local population of the Squirrel Glider to towards extinction and Planning authorities need to protect core areas of habitat and re-connect sub-populations.

The main findings of the Squirrel Glider Study were reported to the Hunter Central Coast Joint Regional Planning Panel (JRPP), when it attended Council on the 27 June 2013 in relation to the Lampo Group Holdings planning proposal review.

Biodiversity and Other Threatened Species on Lot 22 DP 843479

Over the years a number of ecological studies have been prepared for the land and surrounding land and these have made the following findings:

- EcoPro (2001), provided an ecological evaluation and SEPP - Koala Habitat assessment for drainage sediment ponds on Lot 22 and the closed road reserve to the west of Lot 22

Although no maps were provided, the report appeared to classify the land as Paperbark Swamp Forest. The report also provided a discussion on the faunal investigation of the land and identified five (5) threatened species, namely the Squirrel Glider, Grey-headed Flying Fox and

Masked Owl (tentative record) and citing ERM, the Wallum Froglet and Black Bittern. The report identified a total of 81 flora species on the land of which 65 were native and indigenous (80.2%).

Figure 6: Location of Wildlife Corridors requiring maintenance and enhancement to facilitate dispersal and population viability of the Squirrel Glider near Forster



(Source: Niche Environmental and Heritage, Distribution, Habitat Requirements and Conservation Status of the Squirrel Glider Near Forster, NSW, June 2103)

- Conacher Travers Pty Ltd (2006) in a draft report “Lot 22 DP843479, The Southern Parkway, Forster” considered a broader area of land beyond Lot 22 comprising a total area of 34ha. Relevantly, the report found one threatened flora species (*Lindernia alsinoides*), 5 threatened fauna species (species not listed) and an endangered ecological community (swamp oak floodplain forest) on Lot 22.

Squirrel Glider radio-tracking captured a significant number of individuals of Squirrel Gliders on and near Lot 22. Three individuals had been captured on Lot 22, with a further 8 individuals captured across the investigation area. The report noted a high number of tree hollows were present in the vegetation communities of Lot 22.

The report's author expressed an opinion that greater than 30% reduction in the habitat on Lot 22 would be likely to result in a significant impact on the local Squirrel Glider population.

- Travers Bushfire & Ecology Pty Ltd (2011) prepared a report that was submitted with a development application for Lot 141 DP1043081, The Southern Parkway, Forster. Lot 141 is immediately to the north west of Lot 22 (refer to Figure 3). This report included results of field surveys conducted over Lot 141 and the surrounding land. Pertinently the report indicated that:

- One-hundred and one (101) flora species were recorded
- Three (3) vegetation communities occur namely: *Melaleuca quinquenervia* Open Forest, *Eucalyptus robusta*/ *Melaleuca quinquenervia* Open Forest and *Eucalyptus signata*/ *Angophora costata* Open Forest/ Woodland
- Five (5) threatened flora species were considered to be potential inhabitants of the site (*Cryptostylis hunteriana*, *Syzygium paniculatum*, *Asperula asthenes*, *Lindernia alsinoides* and *Maundia triglochinoides*)
- Six threatened fauna species were identified on the site during the surveys, namely Eastern Bentwing-bat, Eastern False Pipistrelle, Greater Broad-nosed Bat, Grey-headed Flying-fox, Little Bentwing-bat and Squirrel Glider.
- The results of Squirrel Glider radio-tracking study were also presented. Two (2) Squirrel Gliders were captured and observed foraging on the site and one additional individual had been captured in December 2005. A total of 17 individual Squirrel Gliders were trapped in the broader investigation area and 4 individuals were radio-tracked over one three - week period.

These tracked individuals utilised seven (7) den sites, including three (3) den sites, two (2) den sites on the adjoining Council Reserve and two (2) den sites on adjoining land to the south. The study identified that a high number of hollow-trees occurred in the investigation area. The Blackbutt/ *Angophora* Forest was recognised as providing a large number of potential den sites across the broader investigation area. The radio-tracking identified that individuals did not move long distances to forage. Individuals were recorded to glide across the drainage channel (8 – 15-metres), but were not recorded to traverse the Southern Parkway. Gliders were observed feeding on Swamp Mahogany, Blackbutt and Broad-leaved Paperbark. Evidence was recorded of successful breeding by Squirrel Gliders on the broader investigation area.

- One endangered ecological community (EEC) was identified, namely Swamp Sclerophyll Forest on Coastal Floodplains. This EEC was formed of the *Melaleuca quinquenervia* Open

Forest and Eucalyptus robusta/ Melaleuca quinquenervia Open Forest vegetation communities. Both of the Melaleuca quinquenervia Open Forest and Eucalyptus robusta/ Melaleuca quinquenervia Open Forest vegetation communities are considered to be regionally “vulnerable” and of special ecological value.

- The fauna habitats of Lot 141 included open forest with seasonally flowering trees, nectar-producing trees, sparse to dense shrub-layers, moderate to dense groundcovers, small to medium-sized tree hollows, fallen logs, loose soil, aquatic habitats, a small deep wet depression, litter layers and refuse.

Water Quality

Lot 22 is located in the Pipers Creek sub-catchment of Wallis Lake (refer to Figure 7). The Great Lakes Water Quality Improvement Plan (2009) identified Pipers Creek as the most stressed waterway within Wallis Lake. Council's Great Lakes Water Quality Improvement Plan (2009) and Wallis Lake Estuary Management Plan (2005) and the Forster/Tuncurry Stormwater Management Plan (2000) establish a neutral or beneficial effect objective (no net change in pollutants) for greenfield development within the Wallis Lake catchment.

Lot 22 is entirely heavily vegetated and as such the neutral or beneficial effect water quality objective requires that any post development stage achieves a pollutant export equal or less than a forest pollutant export. In practice for this site the objective will not be able to be achieved. The implication of any urban development of Lot 22 would mean an increase in pollutants into Pipers Creek.

The Great Lakes WQIP established a short term target of a 14% reduction in chlorophyll-a within Pipers Creek. Council has not only capped pollutant (Nutrient and sediment) loading to Pipers Creek since 2009 through the neutral or beneficial effect water quality objective but also through application of load reduction water quality objectives to redevelopment and infill development plus retrofitting water quality treatment facilities within the catchment has improved water quality.

Council has invested over \$2 M in water quality retrofits in this catchment since 2004. Development of lot 22 would result in these improvements being undermined as a result of the pollutant export from the developed area even with full treatment. This is because the nutrient export from the site in its vegetated form is less than from urban with full water quality treatment. The significant water quality sensitivity of the site and adjacent estuary and water quality dependent downstream industries (tourism, oyster and fishing) requires that the site needs to be set in a strategic catchment framework. As such, Council has for some time recognised the importance of lot 22 for its ecosystem service value (clean water) and that retention in its natural state far outweighs any limited development potential. Council has advocated for urban development upstream on existing cleared land where the water quality objectives can be achieved.

In addition due to the flushing of Pipers Creek into the wider Wallis Lake, any increase in pollutant loads to Pipers Creek will degrade not only Pipers Creek but will be detrimental to the health of the wider lake system.

Background to Great Lakes Water Quality Improvement Plan 2009

Great Lakes Council adopted the Great Lakes Water Quality Improvement plan in 2009. The plan is underpinned by rigorous science relating to the functioning of the coastal lakes that aims to maintain and improve water quality. Guided by this science, water quality objectives were established in order

to protect the lake system from Greenfield development and redevelopment and achieve agreed community established targets for pollutant reduction.

The model for improvement of water quality from the urban catchment includes:

- Implementing a no change policy (neutral or beneficial effect test) for all new Greenfield developments
- Applying load reduction targets for infill development and redevelopment
- Retrofitting existing urban areas that have no or minimal water quality treatment where possible and feasible.

Council's experience is that through smart water quality objectives that relate to ecosystem health, further degradation can be avoided and improvements progressively achieved for existing urban areas constructed in a time prior to water sensitive urban design. Ecosystem health condition assessment, quantification and modelling of existing catchment pollutant loads (N,P and sediments (turbidity) and hydrodynamic modelling identified that in Wallis Lake the contribution of nutrients from the catchment was unsustainable and that the lake was on a trajectory towards a turbid algal dominated estuary. Parts of the lake were ranked in the bottom 40% of estuaries in the state.

What was clear was the nutrient load into the lake needed to be capped. No further decline was acceptable. Overwhelmingly the community and industry groups dependent on good water quality expected that areas currently in good condition should be protected or secured from further decline and to improve areas in poor health. The strategy to achieve this goal was to apply a neutral or beneficial effect test for new Greenfield development so that downstream receiving waters did not deteriorate any further. In this way existing pollutant exports from Greenfield sites that were previously cleared and lightly grazed land is maintained.

Figure 7: Pipers Creek Catchment



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

Rezoning of the land is the best way to make it clear that the land is important habitat, is an integral part of environmental corridor and serves crucial a water quality function for Wallis Lake. By showing the environmental conservation zone on the LEP map it will be clear to the community that the best use of the land is for environmental protection. The limited range of uses permissible in the conservation zone and the low intensity of development permitted will protect the natural integrity of the land.

Section B - Relationship to Strategic Planning Framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Is the planning proposal consistent with a council's local strategy or other local strategic plan?

In 2000 Council embarked on a major strategic planning process for the broader Forster/Tuncurry region by establishing a land use planning framework to guide the future growth and conservation for the area. This process culminated in the adoption by Council, in 2003, of the Forster/Tuncurry Conservation and Development Strategy (FTCDS) which was then supplemented, in 2007, by the adoption of the South Forster Structure Plan (SFSP). Lot 22 and surrounding land is covered by both of these key strategic documents.

Higher level strategic direction was then given by the Mid North Coast Regional Strategy (MNCRS) that was produced by the Department of Planning in 2009. The MNCRS essentially carried through the majority of Council's nominated release areas into the Growth Area Maps that accompanied the strategy.

In summary, the following demonstrates how the rezoning of Lot 22 DP 843479 is entirely consistent with the adopted strategic planning framework.

Great Lakes Community Strategic Plan

As a result of legislation enacted in October 2009 local councils across NSW were required by the Local Government Act to develop a Community Strategic Plan as part of the Integrated Planning and Reporting Framework (IP&R).

The purpose of the Community Strategic Plan is to plan ahead for the community. The Plan (now known as Great Lakes 2030) is the community's primary forward planning document and aligns the community's vision with a clear strategic direction for the Great Lakes' long term future. A key feature of the Plan is that it is owned by the Great Lakes community. It is not a Council plan, but Council has accepted the important responsibility of being the community's agent in adopting and updating the Plan, overseeing its implementation and then reporting back to the community on progress.

An integral component of the preparation of Great Lakes 2030 was the engagement of the community. Council developed an engagement strategy outlining how it would effectively capture the shared aspiration of the community. The purpose of the engagement strategy was to involve the community in activities that allowed them to express their thoughts on their needs and expectations now and in the future as well as how this might be achieved.

During November 2009 broad community consultation events were held with over 300 people participating in workshops in local towns and villages and 800 people submitting ideas through a community survey. Workshops were also held with various State authorities to ensure an integrated approach to relevant needs and aspirations expressed by the community.

Council had input from families, individuals, business groups, community groups, young people, older residents, government agencies, farmers and community leaders in development of the Plan.

At the end of the consultation on the development of the community's first Plan, four Key Directions emerged and these formed the basis of Great Lakes 2030. A series of objectives and strategies then underpin each of the Key Directions. It is important to test Council's decisions and actions, including rezoning decisions and actions, against the Key Directions, objectives and strategies.

Council is satisfied that, as result of the significant community input, the Great Lakes 2030 accurately reflects the aspirations of the community.

Extracts from the Great Lakes 2030 Plan, setting out the Key Directions, full set of Objectives and Strategies are contained in Attachment 2.

The table below demonstrates how the proposed rezoning of Lot 22 is entirely consistent with community's aspirations as articulated in the Community Strategic Plan.

Table 1: Consistency with Great Lakes Community Plan

Key Direction	Relevant Objectives	Comment
Our environment	- Protect and maintain the natural environment so it is healthy and diverse - Ensure that development is sensitive to our natural environment - Prepare for the impact of sea level rise and climate change	The rezoning of Lot 22 will deliver on this Key Direction and the objectives by affording the highest level of protection to an area of land that has been demonstrated to be of exceptionally high environmental value. This will ensure the natural environment remains healthy and diverse.
Strong local economies	- Promote the Great Lakes as an area that is attractive for residents and visitors - Establish and maintain a supportive business environment that encourages job opportunities - Provide transport infrastructure that meets current and future needs	Great Lakes is attractive to visitors because of its exceptional natural values, namely water quality, vegetation retention and biodiversity. Rezoning of an area of high biodiversity, including known habitat for 15 threatened species of flora and fauna will promote this Key Direction.
Vibrant and connected communities	Plan for sustainable growth and development	The rezoning of Lot 22 will deliver a sustainable outcome by balancing the rezoning for growth and development with rezoning of valuable natural areas for environmental conservation.
Local leadership	- Deliver Council services which are effective and efficient - Strengthen community participation	The rezoning will not compromise the provision of effective and effective services. The proposed rezoning is also consistent with the community's participation, as expressed in over 800 submissions, for the land to be rezoned to conservation.

Mid North Coast Regional Strategy (MNCRS).

The purpose of the MNCRS was to provide the State Government's 25 year land use planning strategy for the high growth Mid North Coast Region. To assist Councils in preparing for their own growth the strategy introduced Growth Area Maps to identify growth areas in each of the effected Local Government Areas.

Lot 22 is not identified as a growth area on the Growth Area Maps that accompany the MNCRS.

The MNCRS identifies the various themes associated with catering for growth in the region. Section 7 of the strategy specifically focusses on the *Environment and Natural Resources*. At the end of

Section 7, numerous Actions are identified to give effect to the main outcomes sought for the environment and natural resources. Relevantly for this PP, the following Actions are stated:

- *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 identify and zone land of landscape value (including scenic and cultural landscapes) to protect those values.*
- *Local environmental plans will include provisions to encourage habitat and corridor establishment in future zoning of land with environmental and rural values.*
- *Local environmental plans will include provisions to encourage habitat and corridor establishment in future zoning of land with environmental and rural values.*

The proposed rezoning of Lot 22 to Environmental Conservation will deliver on the above Actions.

Forster/Tuncurry Conservation and Development Strategy (FTCDS).

This strategy was adopted by Council in 2003 and covered the northern part of the LGA, generally east of the Pacific Highway and extended from the northern boundary of the LGA south to Smiths Lake village.

The main purpose of this strategy was to set the blueprint for growth and conservation for the Forster, Tuncurry, Nahiab and Smiths Lake region.

The following were the Aims of the adopted strategy:

- To identify and protect significant environmental assets (the Conservation Framework);
- To identify land suitable for future urban growth (Urban Development Strategy); and
- To provide a framework for orderly, efficient and qualitative growth.

As stated in the strategy, *"the outcomes of the Aims must be consistent with the stated vision of the Strategy: to be a sustainable community. That is, we must live within regional environmental carrying capacity, we must fully value and consider the costs and benefits of our actions and we must seek to improve the quality of life of the community. The last point must not be confused with 'quantity of life', but must be considered more in terms of social equity and the right of all residents and visitors to live in a healthy environment"*.

The FTCDS identified sufficient land to provide about 4,300 urban lots. At a density of 15 dwellings/ha (which allows for some higher density residential development) this equates to at least 6,500 dwellings or about 40 years of land supply. Figures 8 and 9 show the maps from the FTCDS for the South Forster Release Area.

Lot 22 has been specifically identified in the strategy as potentially being suitable for conservation as it is important habitat and forms part of a fauna linkage.

South Forster Structure Plan.

One of the main urban Release Areas identified in the Forster and Tuncurry Conservation and Development Strategy was at South Forster. To ensure that growth occurred in a sustainable manner in this area, Council prepared a precinct based Structure Plan to guide future development.

The purpose of the Structure Plan was to:

- To identify the needs of the future population of the South Forster Release Area with regard to existing services and facilities in the broader urban context, and
- To co-ordinate the location of services and facilities such as shopping, open space, community facilities, road layout, residential densities, landscaping and pedestrian and cyclist routes for the South Forster Release Area.

Lot 22 has been nominated on the Structure Plan maps as a conservation/environmental protection area. Figure 10 shows the map for the South Forster Release Area.

Over the last ten years Council has been progressively implementing its growth and conservation framework for South Forster by rezoning land strictly in accordance with the adopted strategies.

Since 2004 seven sites have now been rezoned in accordance with the principles set out in the Forster/Tuncurry Conservation Strategy and the South Forster Structure Plan. These sites have been rezoned for residential, open space, community, employment and environmental conservation purposes. Lot 22 is a crucial piece in the open space/conservation framework.

Wallis Lake Wetland Strategy

Parts of the land would meet the criteria for classification as a wetland under this strategy. According to the strategy these areas should be protected because of their high ecological value and importance to maintenance of water quality in Wallis Lake.

Figure 8: Aerial Image from Forster and Tuncurry Conservation and Development
| Strategy Showing Nominated Growth Precincts for South Forster Release Area



Figure 9: Map from Forster and Tuncurry Conservation and Development Strategy Showing Nominated Growth Areas for South Forster

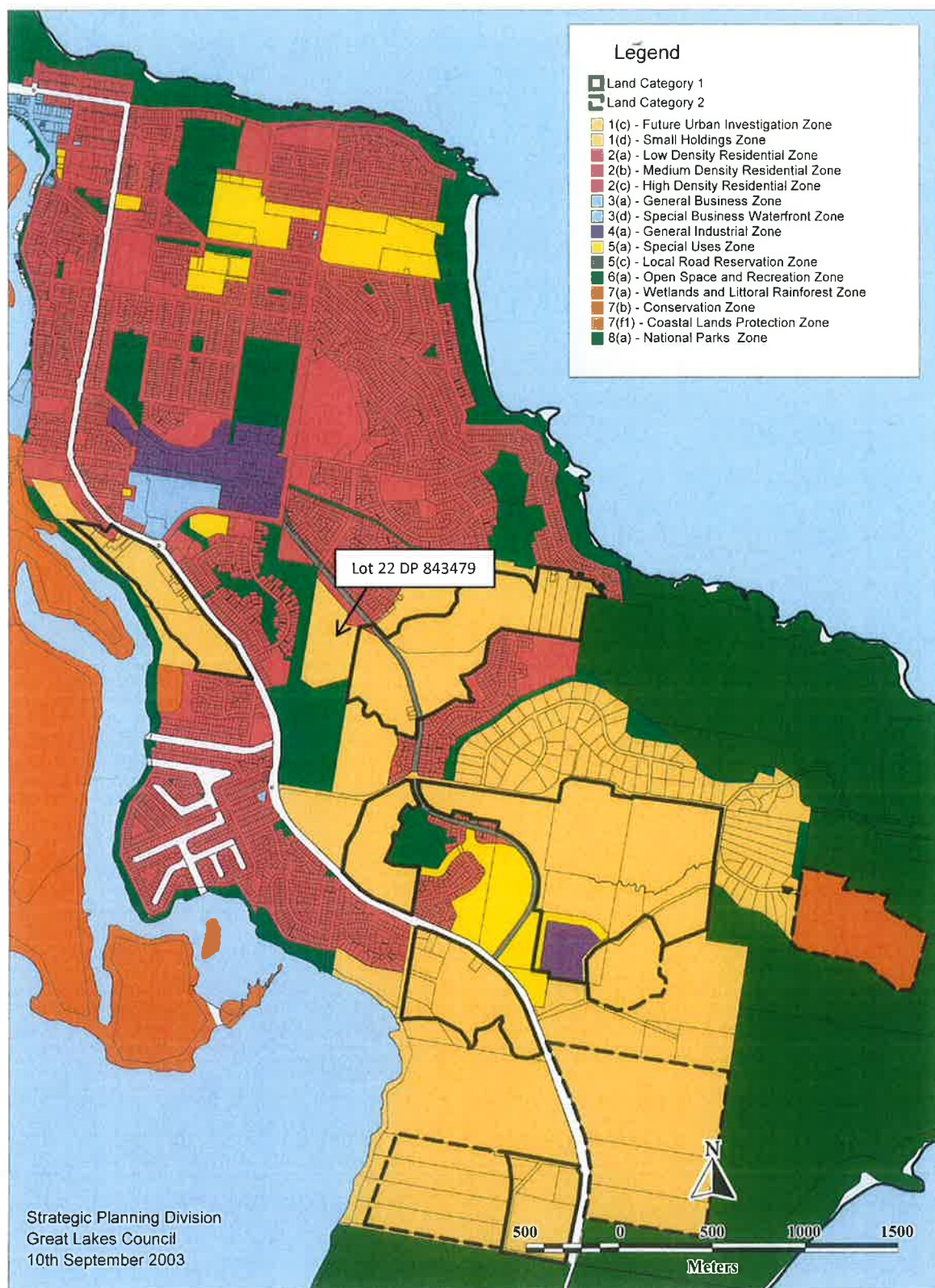


Figure 10: South Forster Structure Plan Showing Northern Part of South Forster Release Area

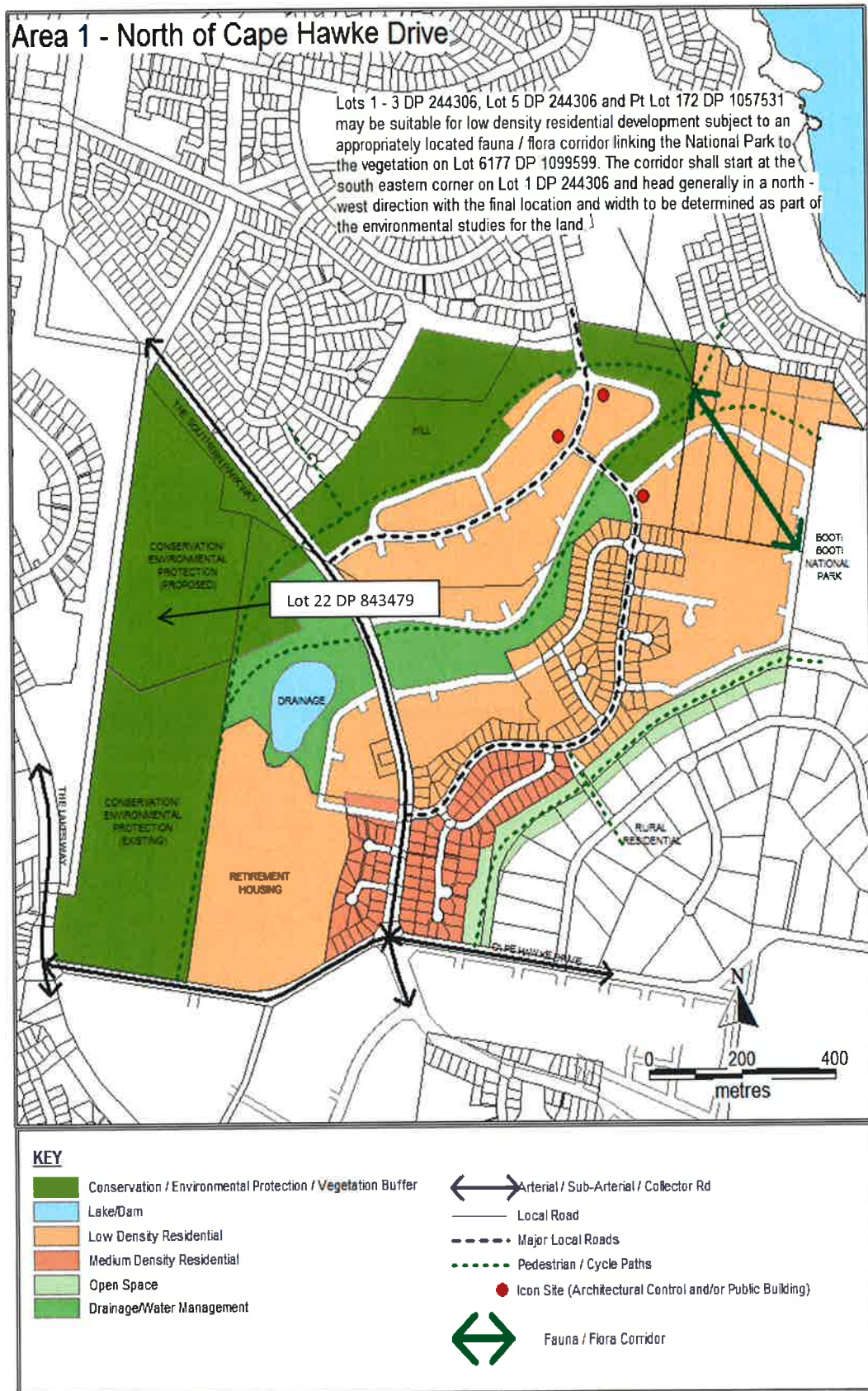


Figure 11: Lot 22 in the Context of the Surrounding Conservation and Open Space Framework



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

The relevant State Environmental Planning Policies are addressed in the following table.

Relevant SEPP	Requirement	Consistency
<i>No. 44 – Koala Habitat Protection</i>	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	None of the studies of the land have identified Koalas as being present.
<i>No. 55 – Remediation of Land</i>	Introduces state-wide planning controls for the remediation of contaminated land. If the land is unsuitable, remediation must take place before the land is developed. Clause 6 of the SEPP requires consideration of contamination in any change of use that may permit residential use.	There is no evidence of contamination from past land uses
<i>No.71 – Coastal Protection</i>	The object of this policy is to provide for the protection and management of sensitive and significant areas within the coastal zone.	Rezoning of the land to environmental conservation will be consistent with the object of protecting sensitive and significant coastal areas.

Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

The relevant s117 Directions are addressed in the following table.

s. 117 Direction	Aims/Objectives	Consistency
<i>Mining, Petroleum Production and Extractive Industries</i>	The objective is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development	Mining and extractive industries on the Lot 22 would not practically be possible given the nearby residential development and because of the high environmental constraints on the land. Rezoning to E2 Environmental Conservation, which would prohibit these activities, will not change the current situation.
<i>Rural Lands</i>	The objectives of this direction are to protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.	Lot 22 is not of any significant agricultural value.
<i>Environment Protection Zones</i>	The objective of this direction is to protect and conserve environmentally sensitive areas.	The planning proposal is consistent with this Direction as the intention is to protect land environmentally sensitive land.
<i>Coastal Protection</i>	The objective of this direction	The planning proposal is consistent with this Direction as the

	is to implement the principles in the NSW Coastal Policy.	intention is to protect land of high environmental value in the coastal zone and to protect a crucial link in an urban open space network.
<i>Flood Prone Land</i>	The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	The planning proposal will reduce the susceptibility of development to flooding by applying an environmental conservation zone that will restrict development to less than that currently permitted.
<i>Planning for Bushfire Protection</i>	The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	The planning proposal will reduce the susceptibility of development to bushfire by applying an environmental conservation zone that will restrict development to less than currently permitted.
<i>Implementation of Regional Strategies</i>	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	The planning proposal is consistent with this Direction as Lot 22 DP 843479 is not identified as a growth area in the Mid North Coast Regional Strategy Growth Area Maps.

Conclusion - Strategic Planning Framework

The various studies that have been done of Lot 22 and surrounding land have informed and reinforced the strategic planning framework that Council has put in place for the broader South Forster area. It is apparent that Lot 22 is a crucial "building block" to achieving a sustainable planning outcome for growth and environmental management in South Forster.

Figure 11 clearly shows that Lot 22 lies in the centre of the vegetated habitat and fauna corridor network, much of which comprises land in Council ownership. As can be seen from the figure, it is Council's intention to establish a fauna movement corridor that will link the vegetated areas in South Forster to Booti Booti National Park. This will increase the likelihood of the survival of the threatened species that are known to exist in the area and will assist in the retention of the rich biodiversity in a predominantly urban landscape.

This PP is also consistent with NSW state strategic planning framework by giving effect to relevant SEPPs and s117 Directions relating to protection of land of high environmental value.

Section C - 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?

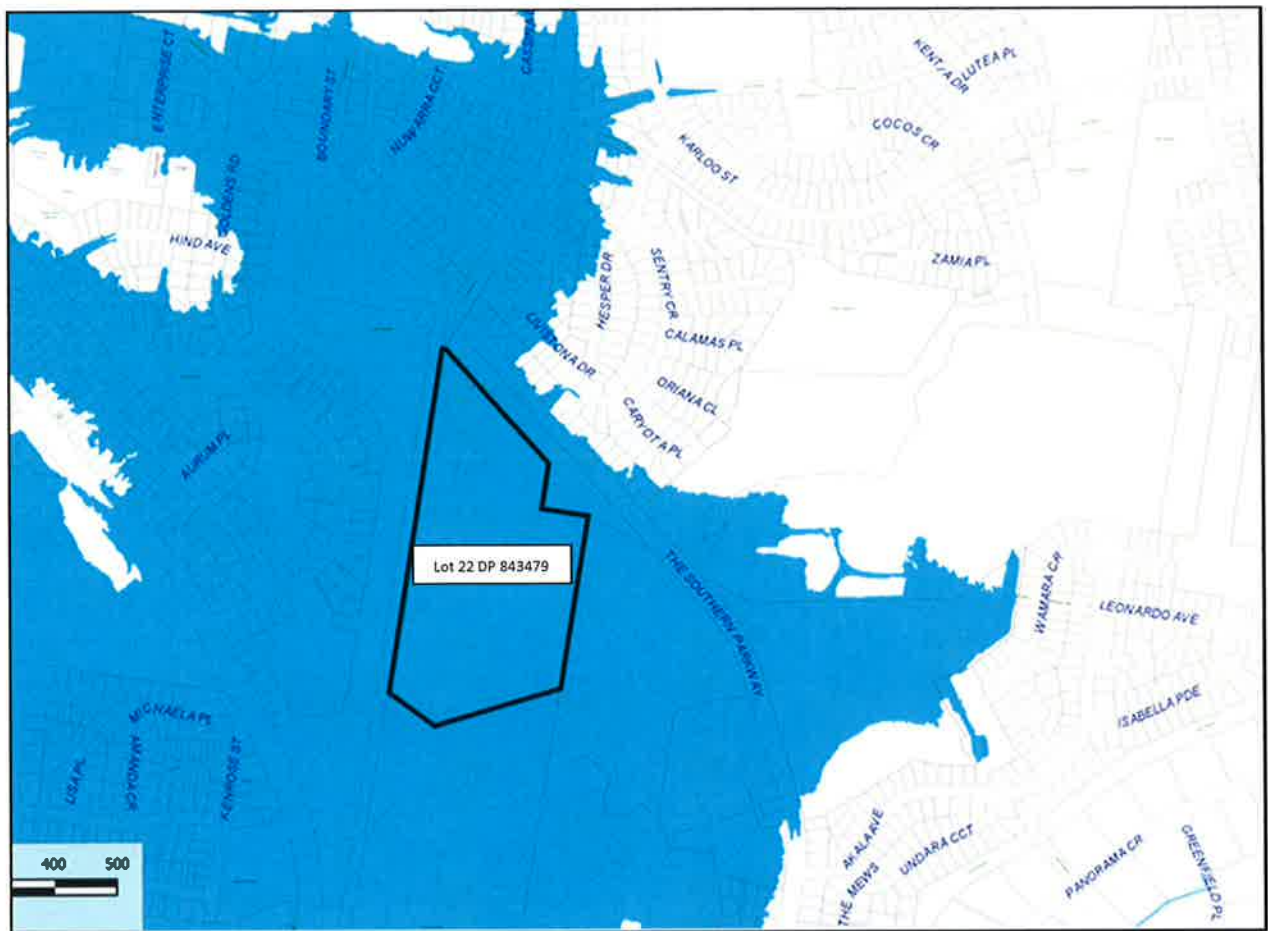
This has been addressed previously.

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

Flooding

Lot 22 is entirely contained in the Flood Planning Area mapped under Great Lakes LEP2014 (refer to Figure 12) The flood planning area has been derived from the 1% EAP ARI plus 2100 sea level rise of 0.9m plus 500mm freeboard. Any development of the land would therefore have to be raised to the appropriate level which would necessitate clearing.

Figure 12: Great Lakes LEP 2014 Flood Planning Area



Bushfire

In the event that the land were not to be rezoned to environmental conservation and development were to occur, there would be significant environmental impact because of the need to clear not just the development envelope but also to meet the requirements of *The Planning for Bushfire Protection 2006* and the new 10/50 Code. That is, not only would there be clearing for the actual development but there would also have to be clearing to comply with the requisite Asset Protection Zones and other fire protection measures, such as fire trails. In addition, a person would be able to clear in the vicinity of all habitable buildings, without any form of approval, within the parameters of the *10/50 Vegetation Clearing Code of Practice*.

Social and economic effects?

The only social and economic impacts relate to the use of the land for environmental conservation purposes rather than for residential development.

Land, such as Lot 22, which is close to services and facilities within a predominantly urban context would, absent environmental constraints, often be rezoned for urban purposes. In this instance, the retention of the environmental values of the land is considered to be of greater benefit to the community than the benefit and consequences that would arise from the development of the land.

Lot 22 has an area of 11.75ha and could alternatively provide some development. Any yield could only be determined when the land take for engineered water quality management solutions is known after comprehensive water quality modelling.

To assess the social and economic impact of rezoning the land to environmental conservation rather than for residential development it is necessary to consider the potential loss in yield in the context of Council's adopted growth strategies for Forster and Tuncurry.

At this point in time, and excluding Lot 22, there is estimated to be a yield of approximately 4,100 lots from the growth areas nominated in Council's Forster and Tuncurry strategy. The 4,100 lots comprise those areas that have been rezoned but which are undeveloped and those which have not, as yet, been rezoned. Presently there are about 300 vacant lots in Forster and Tuncurry so this brings the total lot yield to about 4,400 lots.

Land that has been rezoned in the last six years and which can be brought onto the market in the short term when demand increases will yield about 1,000 lots. At a take up rate of about 50 lots per year this equates to a land supply of about 20 years. Even if the lot take up rate increases to 100 lots per year there would still be a supply of about ten years from land that is currently zoned but unsubdivided.

Given the future land supply and the take up rate of lots, there is little justification for expanding into areas that are highly environmentally constrained and which have not been nominated in growth strategies. Development of Lot 22 could be only achieved at an unacceptable ecological, social and water quality cost to the community.

Section D - State and Commonwealth Interests

The only State and Commonwealth interests relate to the presence of Threatened species on the land identified under the NSW *Threatened Species Conservation Act (TSC)* and the Commonwealth *Environmental Protection and Biodiversity Conservation Act (EP&BC)*.

The following species and communities under the TSC Act and EP&BC Act have been identified on the land:

Fauna

- Squirrel Glider
- *Grey Headed Flying Fox
- Eastern Bentwing-bat
- Eastern False Pipistrelle
- Greater Broad-nosed Bat
- Little Bentwing-bat
- Masked Owl (tentative record)
- Wallum Froglet
- Black Bittern.

* Vulnerable species under EP&BC Act

Flora

- Swamp Sclerophyll Forest on Coastal Floodplains - Endangered Ecological Community

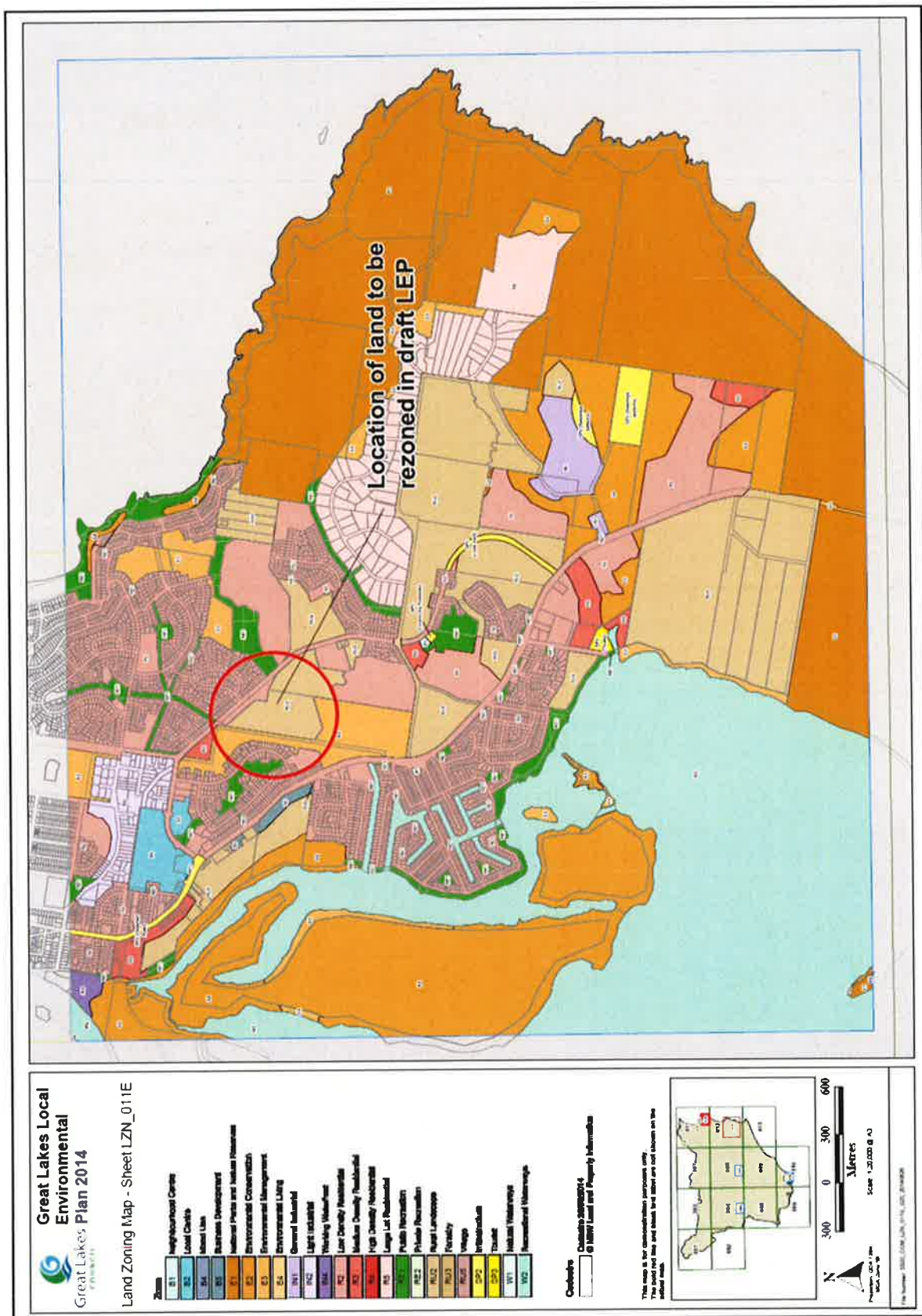
- *Lindernia alsinoides*

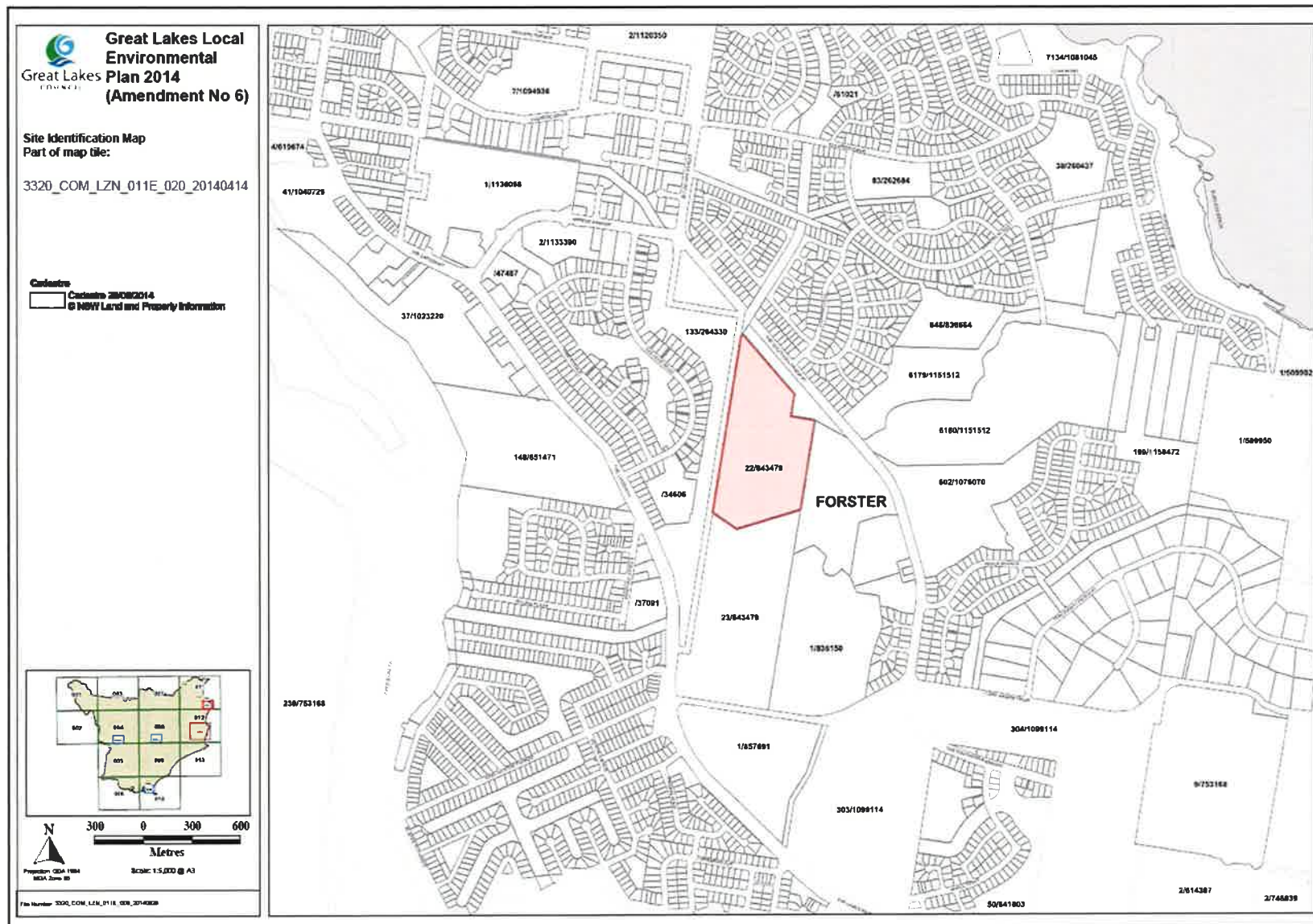
As per the Gateway Determination, Council consulted the NSW Office of Environment and Heritage. In their reply OEH noted that the planning proposal is consistent with the recommendations of the Hunter and Central Coast Joint Regional Planning Panel and advised that they support the rezoning as it will contribute to the conservation of the significant biodiversity values of the site.

PART 4 - Mapping

Mapping for the proposed LEP amendment is shown in Figures 13, 14 and 15.

Figure 13: Mapping Amendment to Great Lakes LEP 2014





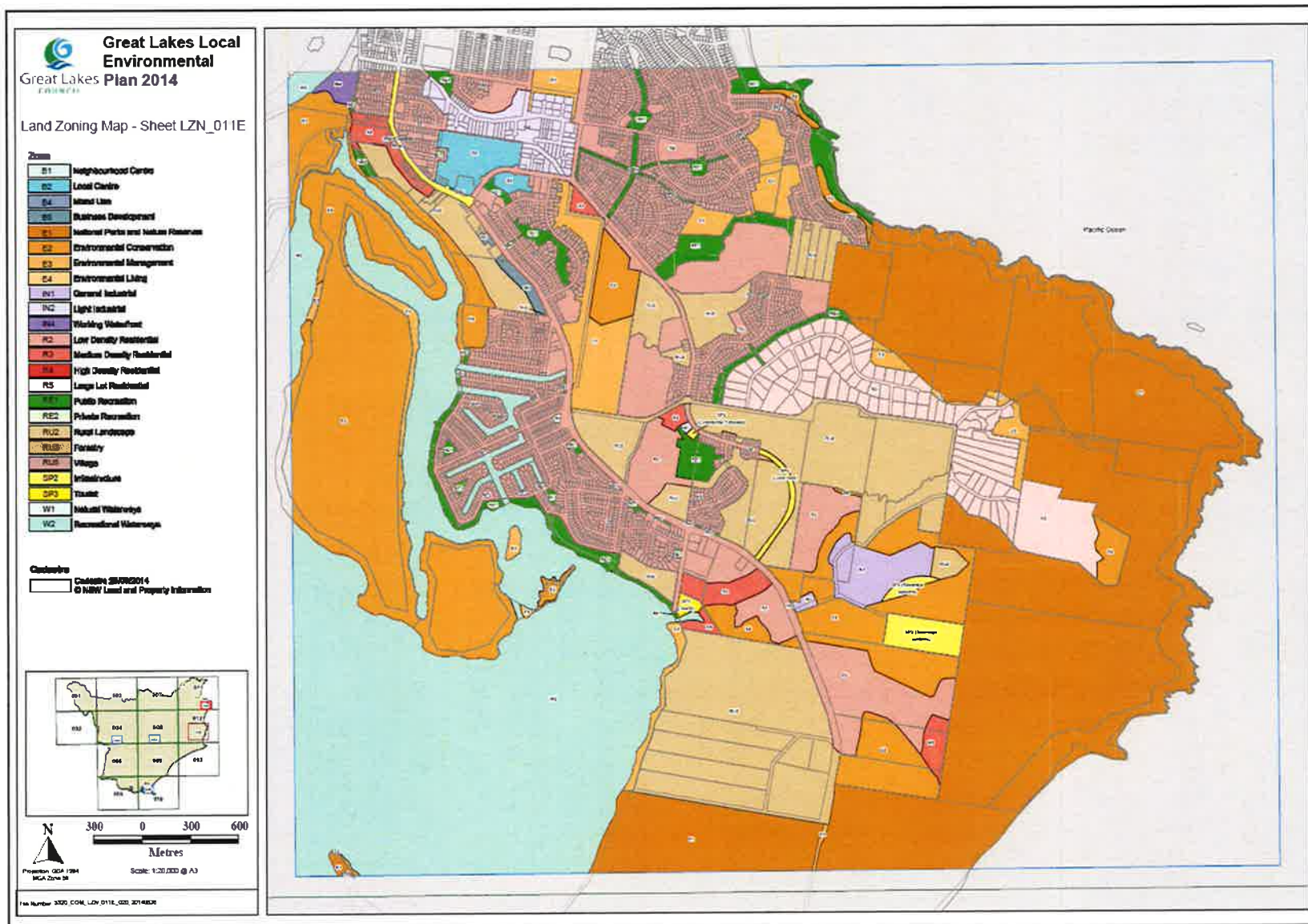


Figure 15: Mapping Amendment to Great Lakes LEP 2014

PART 5 - Community Consultation

Exhibition of the planning proposal occurred from 29 October to 26 November 2014. Over 300 letters were sent to landowners in the vicinity of Lot 22, two (2) advertisements were placed in Great Lakes Advocate and an interview was held with the media.

Submissions

In response to the exhibition and notification of the planning proposal thirteen submissions were received by Council; twelve in support of the proposal and one (1) against.

The main reasons for support, as stated in the submissions were:

- The land is of high environmental value from an ecological and water quality perspective.
- The land forms and ideal corridor to link with Lot 141 adjoining to the west. Lot 141 was recently purchased by Council for environmental protection.
- The rezoning of Lot 22 will complement the action taken by Council with Lot 141.
- Lot 22 is an important fauna corridor.
- Lot 22 is especially important for the Squirrel Glider population that is known to exist in South Forster.

An objection by Stacks, solicitors acting for the landowners, was submitted. The objection merely stated that the basis for the objection is a Deed of Agreement between the then landowner, Mrs A Toohey, and Council that was entered into in 1992. No grounds have been given as to why they consider the Agreement prevents Council from proceeding with the rezoning.

The objection states the following:

1. *We act for Southern Parkway Developments Pty Limited the registered proprietor of 22/843479.*
2. *This submission is an objection to the Planning Proposal.*
3. *The Planning Proposal cannot be given effect unless and until the registered proprietor agrees.*
4. *The continuing basis of the objection is the agreement between Council and the previous owner.*
5. *Council has already acted with some bravado and imprudently in considering the proposal and will, in our view, be acting illegally if the proposal is further considered.*

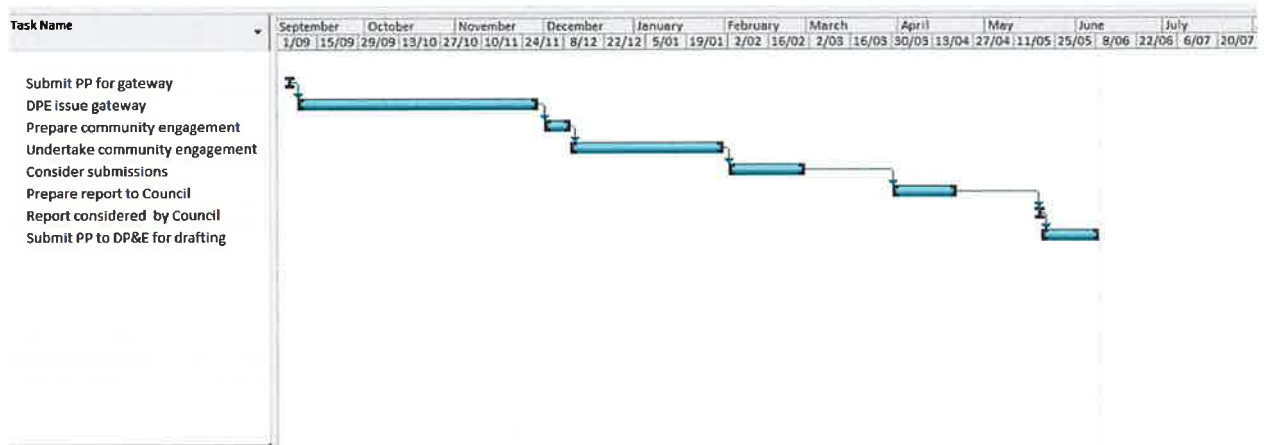
The statement in point 3 that the planning proposal cannot be given effect unless the registered proprietor agrees is incorrect. Council, under the Environmental Planning and Assessment Act, is empowered to act in the community's interest and may rezone land without the consent of the landowner.

Further commentary on the Deed of Agreement referred to in the submission from the landowner's solicitors is contained in the report to Council in Attachment 3. Council's resolution is also contained in this attachment.

Part 6 – Project Timeline

An indicative timeline is shown below which suggests the PP may be submitted to the Minister for the LEP to be drafted and made by late June 2015, some ten months after lodgement of the PP with the department for a gateway determination.

At this stage it is difficult to determine how many submissions will be made and the complexity of issues that may be raised. Council requests that a period of 12 months be allowed for the processing of the Planning Proposal.



Conclusion and Recommendations

The assessment of the most appropriate zoning of Lot 22 DP 843479 commenced in June 2012 when Council considered a report on the receipt of 807 submissions from the community. These submissions requested that four parcels of land, including Lot 22, along The Southern Parkway in South Forster be rezoned for protection.

At the time of the submissions, substantial information on the environmental value of the land was available. This knowledge base increased with the completion of a study by independent consultants of the Squirrel Glider population on public land in and near South Forster. The study found that the vegetated areas in South Forster support a viable population of the animals and are crucial to its survival. Significantly, the study concluded that there are grounds for the population to be declared an endangered population under the *Threatened Species Conservation Act*.

The studies of Lot 22 over the years have identified that the land is rich in biodiversity value and contains 10 flora and fauna species identified as threatened under the NSW threatened species legislation. One of the species is also listed as vulnerable under the Commonwealth EP&BC Act. One endangered ecological community is also present on the land.

Water quality is also a major issue for Lot 22. One of the critical protection measures for the protection of water quality is the retention of high quality native vegetation, particularly low lying swamp forests, in the lake's catchment. Development of such areas cannot compensate for the natural filtering effects of native forests.

Lot 22 drains to a part of Wallis Lake where water quality is known to be under stress from urban runoff and the retention of the vegetation on the land will considerably contribute the maintenance of water quality in Wallis Lake.

An independent planning authority, the Hunter and Central Coast Joint Regional Planning Panel (JRPP), was appointed by the then Minister for Planning and Infrastructure to review a planning proposal to rezone the Lot 22, and other land in Forster, to residential. The rezoning request was submitted to Council by the then landowners as a planning proposal in September 2012. Council did not reach the point of making a gateway determination on the proposal as the then landowners requested an independent review of the planning proposal by the Minister.

After reviewing all of the information on the land, the independent JRPP was of the view that the land is of very high environmental significance, from an ecological and water quality perspective, and recommended to the Minister that Lot 22 be rezoned to E2 Environmental Conservation.

The Minister endorsed the Panel's recommendation for Lot 22.

In considering the Panel's recommendation and Minister's subsequent advice, Council resolved to rezone Lot 22 to E2 Environmental Conservation.

Lot 22 has not been identified for growth in any State, Regional or Local strategies. In Council's strategies the land has been nominated for conservation/open space.

This Planning Proposal is for the rezoning of the land consistent with recommendations of the JRPP and the advice from the Minister and Council requests that a gateway determination be issued to enable the Planning Proposal to proceed.

Attachment 1

Recommendations to the Minister from the Hunter and Central Coast Joint Regional Planning Panel And

Determination by the Minister's Delegate on the JRPP Recommendations

**Joint Regional Planning Panel
Pre-Gateway Review**

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) has considered the request for a review of the proposed instrument as detailed below.

The Pre-Gateway Review:

Date of Review:	27 June 2013
Dept. Ref. No:	PGR_2013_GLAKE_001
LGA:	Great Lakes
LEP to be Amended:	Draft Great Lakes LEP 2013, however the Planning Proposal as submitted indicates an amendment to the existing Great Lakes LEP 1996
Address / Location:	Various locations within the Forster area Sites 3 and 4: Big Island, Lot 239 and Lot 242 DP 753168 Site 6: Lakes Way, Part of Lot 37 DP 1023220, Lot 148 DP 651471, Lot 34 DP 850018, Lot 1 DP 2263, Lot 2 DP 654559, Lot 3 DP 657314 and Lot 4 DP 657315 Site 8: Southern Parkway West, Lot 22 DP 843479 Site 10: Southern Parkway East, Part of Lot 602 DP 1076070 Site 11: Cape Hawk West, Part of Lot 602 DP 1076070 Site 14: Bennetts Head, Lot 1 DP 1014466
Proposed Instrument:	Site 3 & 4 Big Island – No change, to retain environmental zoning and proposed to be used to offset development on other sites. Although no zone boundaries are identified, for all other sites the proposal seeks to rezone land for residential development and environmental conservation. Specifically; Site 6 Lakes Way – Rezone from 1c Future Urban Investigation, B6 Enterprise Corridor and 7a1 Environmental Protection to 2c High Density Residential and 7a1 Environmental Protection Zone. 14.5 hectares are proposed to be developed, no additional land is to be protected. Site 8 Southern Parkway West – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential to allow for 11.75 hectares to be developed. Site 10 Southern Parkway East – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential. 5.65 hectares to be developed. Site 11 Cape Hawk West – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential to allow 10.26 hectares to be developed.

Joint Regional Planning Panels
Panel Secretariat | 23-33 Bridge Street, Sydney NSW 2000 | GPO Box 39, Sydney NSW 2001 | Phone 02 9228 2060 | Fax 02 9228 2066 |
www.planning.nsw.gov.au

	Site 14 Bennetts Head – Amended the existing zoning of 2a Low Density Residential, 2b Medium Density Residential and 7a1 Environmental Protection Zone, to allow for an additional 0.5 – 0.8 hectares to be developed.
Panel Chair:	Garry Fielding
Panel Members:	Jason Perica Kara Krason Karen Hutchinson Len Roberts

Reason for review:	☐	The council has notified the proponent that the request to prepare a planning proposal has not been supported
	☒	The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal

In considering the request, the JRPP has reviewed all relevant information provided by the proponent as well as the views and position of the Department and the relevant local government authority. Based on this review the JRPP recommends the following:

JRPP RECOMMENDATION:	☒	The proposed planning proposal should be submitted for a Gateway determination
	☐	The proposed instrument should not be submitted for a Gateway determination
Composition of Recommendation:	☒ Unanimous ☐ Not unanimous	Comments:

JRPP Advice and Justification for Recommendation:

1. The Panel has considered the supporting information provided for the proposal, as well as the views of the Council, the proponent and the Department of Planning & Infrastructure, and has visited the sites. The Panel notes the Forster locality contains regionally significant waterways for the oyster industry and other areas with high ecological values. The Panel also notes the proposed sites are well located in relation to the Forster urban area, and some less constrained sites are likely to have some development potential subject to more detailed investigation which could be carried out post Gateway.
2. The Panel's recommendation is that the planning proposal to rezone 7 sites in Forster be submitted, in part and as modified below, for a gateway determination under s56 of the *Environmental Planning and Assessment Act 1979*.
3. The Panel supports sites 6, 10 and 11 proceeding as part of a planning proposal with Council as the Relevant Planning Authority (and upon payment of any adopted fee) subject to the following comments;
 - a. Site 6 is adjacent to Pipers Creek and has important habitat and vegetation links, and requires careful water management. There may be potential for some employment uses on this site, and Council should also consider zoning the other sites in this area fronting The Lakes Way, however this could occur through a separate planning proposal.

- b. Site 11 and part site 10 (eastern portion) appear less constrained, but require an integrated water management solution in combination with the remainder of site 10 (western portion).
 - c. Part site 10 (western portion) is constrained, but some development may be possible, noting that a water management solution for development to the north-east has already been provided (detention) and drainage easements exist on the site.
 - d. The planning proposal prepared for the Gateway should include a preliminary structural constraints map(s), in light of the regionally important water quality, flooding and ecological constraints.
 - e. The studies required to more precisely determine zone boundaries and development controls can be undertaken post Gateway. The need for a site specific development control plan(s) should be considered if relevant considerations are not addressed through a current development control plan. Any development control plan(s) could possibly be exhibited with the planning proposal, however if the work would delay exhibition of the planning proposal, and is not required to determine zone boundaries, it could be established as a requirement prior to subdivision.
 - f. The Planning Proposal should be reviewed to correct errors and provide assessment of the proposals against all relevant state and local legislation and policy.
- 4. The eastern part of Site 14, outside of the rainforest area, may proceed as part of the planning proposal but would require further evidence of its development potential and potential impacts, including ecological and bushfire considerations, pre Gateway. If this work would delay the larger planning proposal, progression of this site should occur through a separate planning proposal.
 - 5. Sites 3 and 4 should be removed from the planning proposal because they do not require any zoning change. The Panel notes that exclusion of these sites will not limit their ability to form part of an offset arrangement, and this is a Voluntary Planning Agreement matter between the proponent and Council.
 - 6. Site 8 should proceed, but only with an environmental conservation zoning. The site has very high ecological and water management qualities and the Panel is of the view that rezoning of the site for urban development would be inappropriate, and is therefore not supported.
 - 7. The Panel is concerned about the potential for clearing of Site 8 under the proposed RU2 zoning under the draft Great Lakes LEP 2013, and recommends that the Department review the appropriateness of this zoning in its assessment of the draft LEP.



Planning & Infrastructure

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

Our ref: PGR_2013_GLAKES_001

Att: Roger Busby

Dear Mr Handford

Re: Request for Pre-Gateway Review – (JRPP Recommendation)

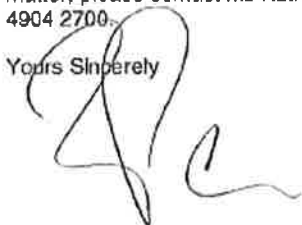
I refer to the request for pre-gateway review, PGR_2013_GLAKES_001, for a proposal to amend the Great Lakes LEP 1996 for seven sites known as Lampo Group Holdings, to facilitate residential development and environmental protection.

I have considered the request for review, together with the recommendations of the Hunter and Central Coast Joint Regional Planning Panel, advice provided by council, and other relevant considerations of the proposal. As delegate of the Minister for Planning and Infrastructure, I have determined that, once revised in accordance with the JRPP's recommendations, the Planning Proposal should proceed to Gateway determination.

Council is asked to arrange the preparation of a planning proposal under section 55 of the *Environmental Planning and Assessment Act 1979*, (the Act) and submit it for a Gateway determination within 40 days of the date of this letter. I am aware that Council may request the payment of a fee for the completion of this work as per a fees and charges policy. If Council does not wish to progress this matter, an alternate Relevant Planning Authority (RPA) may be appointed to prepare a Planning Proposal. Should Council not wish to be the RPA for this proposal, please contact the Mr Michael Leavey Hunter & Central Coast Regional Director, to discuss this matter further.

You can check the progress of this request for review on the LEP Tracking System at www.leptracking.planning.nsw.gov.au/default.aspx/. Please also find attached a copy of the Panels decision to view for convenience. If you have any questions in regard to this matter, please contact Ms Katrine O'Flaherty of the Department's Newcastle office on (02) 4904 2700.

Yours Sincerely



7/8/13

Richard Pearson
Deputy Director General
Planning Operations and Regional Delivery

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6455 Website planning.nsw.gov.au

Attachment 2

Key Directions and Strategies from Great Lakes 2030 Plan

key direction one

our environment

Objective 1: Protect and maintain the natural environment so it is healthy and diverse

Strategies

- 1.1 Undertake an active management program to support a healthy environment that also provides for economic, recreational and cultural opportunities
- 1.2 Encourage and support the community to embrace environmentally-friendly behaviours and sustainable business practices
- 1.3 Manage the balance between natural siltation in our lakes and the provision of access for recreation and economic purposes
- 1.4 Reduce the impact of noxious weeds and invasive species on our environment through strategic management and education
- 1.5 Monitor and report on the health, productivity and diversity of the Great Lakes environment

Objective 2: Ensure that development is sensitive to our natural environment

Strategies

- 2.1 Base strategic land use planning on ecologically sustainable principles

Objective 3: Prepare for the impact of sea level rise and climate change

Strategies

- 3.1 Establish a risk based adaptation response to sea level rise and climate change

Objective 4: Sustainably manage our waste

Strategies

- 4.1 Seek to reduce, reuse or recycle all waste
- 4.2 Manage residual waste to minimise impact on the environment
- 4.3 Implement waste minimisation programs throughout the community

strong local economies



Objective 5: Promote the Great Lakes as an area that is attractive for residents and visitors

Strategies

- 5.1 Market the Great Lakes as an area that offers a range of opportunities for all
- 5.2 Explore new and emerging opportunities to promote the Great Lakes

Objective 6: Establish and maintain a supportive business environment that encourages job opportunities

Strategies

- 6.1 Support our existing business community and encourage the development of new business
- 6.2 Pursue improved and equitable access to telecommunication services
- 6.3 Encourage skill development that reflects local business needs

Objective 7: Provide transport infrastructure that meets current and future needs

Strategies

- 7.1 Identify transport network needs based on recognised asset management processes
- 7.2 Maintain transport network infrastructure to current service standard
- 7.3 Develop facilities that provide for safe pedestrian and cycle traffic

key direction two

29

vibrant and connected communities

Objective 8: Provide the right places and spaces	
Strategies	
8.1	Ensure community, sporting, recreational and cultural facilities and services reflect current and future needs
8.2	Maintain community infrastructure to current service standard
Objective 9: Plan for sustainable growth and development	
Strategies	
9.1	Manage growth to reflect current and future needs
9.2	Manage urban development and ensure it respects the character of the area in which it is located
Objective 10: Increase and improve access to education for all ages	
Strategies	
10.1	Enable opportunities to experience lifelong learning through improved access to educational facilities
Objective 11: Encourage a positive and supportive place for young people to thrive	
Strategies	
11.1	Provide activities and opportunities for young people
Objective 12: Develop and support healthy and safe communities	
Strategies	
12.1	Improve access to health services that meet local needs
12.2	Encourage and promote healthy lifestyle choices
12.3	Promote community safety as a shared responsibility
Objective 13: Build on the character of our local communities and promote the connection between them	
Strategies	
13.1	Increase community inclusion, cohesion and social interaction
13.2	Attract new events, activities and exhibitions that are respectful of local community character

local leadership

Objective 14: Deliver Council services which are effective and efficient

Strategies

- 14.1 Set a strategic direction for Council that focuses on current and future customer needs and deploy plans to achieve those strategies
- 14.2 Develop an organisational culture that applies resources effectively to deliver quality outcomes
- 14.3 Provide good governance
- 14.4 Apply structured continuous improvement methods to achieve effectiveness and efficiencies
- 14.5 Assess organisational performance against strategic objectives and use information to ensure sustainability

Objective 15: Strengthen community participation

Strategies

- 15.1 Encourage an informed community to enable meaningful participation

Objective 16: Represent the community's interests through regional leadership

Strategies

- 16.1 Advocate local interests with State and Federal government
- 16.2 Actively contribute to regional initiatives that benefit the local area



key direction four

31

Attachment 3

Report to Council's Strategic Committee Meeting of 10 February 2015 and Council's Resolution

Subject:

Index: SP-PP-18
Author: Manager Strategic Planning - Roger Busby
Strategic Committee Meeting: 10 February 2015

SUMMARY OF REPORT:

A Planning Proposal for the rezoning of Lot 22 DP 843479, The Southern Parkway, South Forster to E2 Environmental Conservation was formally exhibited under the Environmental Planning and Assessment Act for four (4) weeks in October/November 2014.

This report presents the submissions made during the exhibition period.

SUMMARY OF RECOMMENDATION:

That the Planning Proposal be adopted by Council and submitted to the Minister for Planning and Environment for the Local Environmental Plan to be drafted and made:

FINANCIAL/RESOURCE IMPLICATIONS:

The rezoning is included in Council's Strategic Planning work program.

POLICY IMPLICATIONS:

The rezoning will establish Council's policy for the future use of the land.

LEGAL IMPLICATIONS:

The landowner could challenge the rezoning of the land.

LIST OF ANNEXURES:

- A: Plan showing the location of Location of Lot 22 DP 843479
- B: Recommendations from Hunter Central Coast Joint Regional Planning Panel and Determination by the Minister on independent review of planning proposal for Lampo Group Holdings.
- C: Map showing proposed rezoning of Lot 22 DP 843479, The Southern Parkway.
- D: Map showing rezoning of Lot 51 DP 738442 completed in 1993.

LIST OF ATTACHMENTS:

- A: Exhibited Planning Proposal

Due to its large size, Attachment A is publicly available on Council's Website and copies are available upon request.

REPORT:

Background to the Planning Proposal

The purpose of planning proposal (PP) is to outline a proposed zoning change of Lot 22 DP 843479, The Southern Parkway, Forster from the RU2 Rural Landscape zone to the E2 Environmental Conservation zone. Annexure A contains a plan showing the location of Lot 22.

Studies have conclusively and consistently indicated that the land is of very high ecological value and that it serves a crucial water quality treatment function for Wallis Lake. The current RU2 Rural Landscape zone does not afford the necessary environmental protection to the land and the long term use of the land needs to be resolved by applying the most appropriate zone.

Lot 22 comprises one (1) of the properties contained in a previous Planning Proposal for various parcels in Forster owned by Lampo Group Holdings (LGH) (referred to as Site 8). A planning proposal was formally lodged with Council in September 2012 by LGH for the rezoning of all their properties to a combination of urban and environmental protection. Council did not progress to the point of Council making a decision on whether to support the proposal because LGH sought a review of the planning proposal by the Minister under Section 5.1 of the Department of Planning and Environment's *A guide to preparing LEPs*. In the LGH proposal all of Lot 22 (site 8) was proposed to be rezoned for residential development.

The Minister appointed the Hunter and Central Coast Joint Regional Planning Panel (JRPP) to independently review the planning proposal and to make recommendations to the Minister. On 27 June 2013 the JRPP met at Great Lakes Council offices where all issues associated with the LGH proposals were thoroughly explored and the sites were inspected. At the meeting, considerable attention was given to the planning and environmental context of Lot 22.

In August 2013, after considering the recommendations of the JRPP, the Deputy Director General Planning Operations and Regional Delivery (as delegate for the Minister for Planning and Infrastructure), issued a Determination on the Planning Proposal.

The Determination advised that once the Planning Proposal was modified, in accordance with the JRPP's recommendations, the planning proposal should proceed to a Gateway determination.

The recommendation from the JRPP to the Minister on the pre-gateway review and the subsequent Determination by the delegate for the Minister are contained in Annexure B.

In relation to Lot 22 DP 843479, the JRPP in items 6 and 7 recommended:

- Site 8 should proceed, but only with an environmental conservation zoning. The site has very high ecological and water management qualities and the Panel is of the view that rezoning of the site for urban development would be inappropriate, and is therefore not supported.
- The Panel is concerned about the potential for clearing of Site 8 under the proposed RU2 zoning under the draft Great Lakes LEP 2013, and recommends that the Department review the appropriateness of this zoning in its assessment of the draft LEP.

Council, in considering the determination by the Minister's delegate, in October 2013, resolved to rezone Site 8 (Lot 22), in the Lampo Group Holdings planning proposal, to E2 Environmental Conservation in the first set of amendments to Local Environmental Plan 2013.

Council, at its meeting of 10 June 2014, considered a report on how to proceed with the many projects on its Strategic Planning work program (including the rezoning of Lot 22). At the meeting, Council resolved to submit a planning proposal for the rezoning of Lot 22 to E2 Environmental Conservation to the Department of Planning & Environment for a gateway determination once the proposal had been prepared.

This planning proposal that was exhibited is consistent with the recommendation from the JRPP and the determination by the Minister. The exhibited Planning Proposal is contained in Attachment A.

Lot 22 DP 843479 is no longer owned by Lampo Pty Ltd and is currently owned by Southern Parkway Developments Pty Ltd. According to discussions with consultants the new owners were aware of the rezoning proposals when they bought the land.

The following is a brief summary of the main actions and events relevant to Lot 22:

1. 2003 - Forster/Tuncurry Conservation and Development Strategy – identified Lot 22 as being reviewed for conservation.
2. 2005-2009 – Lot 22 was proposed for zoning to environmental protection in LEP 62. The land was deferred for further discussions with the landowner.
3. 2007 - South Forster Structure Plan - identified Lot 22 for conservation or environmental protection.
4. 2009 - Lot 22 was not identified as a Growth Area in the Mid North Regional Strategy Growth Area Maps.
5. 2010 – 2013 - Subsequent studies and court case identified that Lot 22 was of high environmental value for ecological and water quality reasons.
6. 2012 – Council in considering over 800 submissions resolved that there are grounds to further consider the rezoning of Lot 22 to environmental protection and the Squirrel Glider Study by Office of Environment and Heritage be used to assist Council with making a decision.
7. June 2013 – Council considered a report on the progress with the Squirrel Glider Study and resolved that a final report be submitted to Council when the study is completed.
8. June 2013 – Final Squirrel Study received.
9. 2013 – Hunter Central Coast Joint Regional Planning Panel recommended to the Minister that Lot 22 proceed to a rezoning but only with an environmental conservation zoning because of water quality and ecological issues.
10. 7 August 2013 - the Minister's delegate notified Council of the Minister's Determination to support the recommendations of the JRPP.

Exhibition of the Planning Proposal

A gateway determination was issued to Council by the delegate for the Minister for Planning and Environment on 25 September 2014 to enable the planning proposal for the rezoning of Lot 22 to E2 Environmental Conservation to proceed to exhibition. The only conditions of the gateway determination were that Council had to consult the Office of Environment and Heritage and the proposal had to be exhibited in accordance with the Department's guideline for the preparation of LEPs.

Exhibition of the planning proposal occurred from 29 October to 26 November 2014. Letters were sent to landowners in the vicinity of Lot 22, two (2) advertisements were placed in Great Lakes Advocate and an interview was held with the media.

The map from the planning proposal showing the change in zone is contained in Annexure C.

Submissions

In response to the exhibition and notification of the planning proposal thirteen submissions were received by Council; twelve in support of the proposal and one (1) against.

The main reasons for support, as stated in the submissions were:

- The land is of high environmental value from an ecological and water quality perspective.
- The land forms and ideal corridor to link with Lot 141 adjoining to the west. Lot 141 was recently purchased by Council for environmental protection.
- The rezoning of Lot 22 will complement the action taken by Council with Lot 141.
- Lot 22 is an important fauna corridor.
- Lot 22 is especially important for the Squirrel Glider population that is known to exist in South Forster.

The NSW Office of Environment and Heritage notes that the planning proposal is consistent with the recommendations of the Hunter and Central Coast Joint Regional Planning Panel and supports the rezoning as it will contribute to the conservation of the significant biodiversity values of the site.

An objection by Stacks, solicitors acting for the landowners, has been submitted. The objection merely states that the basis for the objection is a Deed of Agreement between the then landowner, Mrs A Toohey, and Council that was entered into in 1992. No grounds have been given as to why they consider the Agreement prevents Council from proceeding with the rezoning.

The objection states the following:

6. *We act for Southern Parkway Developments Pty Limited the registered proprietor of 22/843479.*
7. *This submission is an objection to the Planning Proposal.*
8. *The Planning Proposal cannot be given effect unless and until the registered proprietor agrees.*
9. *The continuing basis of the objection is the agreement between Council and the previous owner.*
10. *Council has already acted with some bravado and imprudently in considering the proposal and will, in our view, be acting illegally if the proposal is further considered.*

The statement in point 3 that the planning proposal cannot be given effect unless the registered proprietor agrees is incorrect. Council, under the Environmental Planning and Assessment Act, is empowered to act in the community's interest and may rezone land without the consent of the landowner.

Deed of Agreement Between Great Lakes Council and Toohey

In June 1992 Council entered into a Deed of Agreement specifically with Mrs A Toohey, the then owner of Lot 51 738442, Boundary Street, South Forster. Subsequent subdivisions of Lot 51 resulted in the creation of Lot 22 DP 843479.

In summary, the deed placed the following obligations upon the parties.

1. Council agreed to take all necessary actions to enable the Minister to approve the rezoning of Lot 51 DP 738442 in accordance with the plan contained in Annexure D.

Comment

The rezoning specifically referred to in the deed was completed in 1993. It rezoned Lot 51 to a combination of 1(f) Future Residential, 2(b1) Medium Density Residential, 2(c) High Density Residential and 6(a) Open Space - Public Recreation.

2. The owner agreed to provide to Council, at no cost, the land shown as 6(a) Open Space on the plan contained in Annexure A.

Comment

The land was dedicated to Council in 1994.

3. Council agreed to reduce, by \$100,000.00 the Section 94 acquisition contributions within Precinct 4 upon its rezoning.

Comment

Precinct 4 was an area shown in the 1992 South Forster Planning Study and corresponds to what is now Lot 22 DP 843479.

Council's solicitors are of the view that this part of the Agreement "*commits to a s.94 credit of \$100,000.00 if, and when, a further rezoning of what is now Lot 22 to residential occurred followed by a residential subdivision. The deed is silent as to what would happen if there was no such future rezoning and subdivision. No issue of a s.94 credit arises at present, and seems unlikely to arise in the foreseeable future. If such a rezoning and subdivision never occurs, the right to a credit under the deed is in effect lost.*"

Council has sought legal advice on the deed on four (4) occasions. On all occasions the advice has consistently been that the rezoning of the land to E2 Environmental Conservation is not constrained in any way by the deed and that the benefit of any s94 credit has been lost.

Since the Agreement was entered into in 1992 there have been two (2) changes in ownership of Lot 22. Council's solicitors have advised that "*the current owners of Lot 22 are not a party to the deed, and there is no evidence of the deed having been assigned in law or equity to the current owner.*"

In the various advices given by Council's solicitors the following key points have been made:

1. *There is an assertion in the letter from solicitors acting for Lampo (the previous owners of Lot 22) dated 11 July 2007 that the land is "the subject of a deed dated 9 June 1992 between the council and our client (as an assignee of the previous owner Mrs Toohey)". The assertion does not indicate whether a legal or equitable assignment is asserted and no evidence was provided with that letter to support either interpretation of the assertion. One would have thought that in the circumstances and with the passage of a number of years since the current owner acquired the land, appropriate evidence would have been provided to back up such an assertion.*
2. *The Agreement relates to a notional Section 94 credit that can only be applied to Lot 22 if it were to be rezoned and developed for residential purposes. However, Council has no financial obligation in respect of s94 credits should no future development eventuate on the site. More importantly, the Agreement imposes no obligation on Council to rezone Lot 22 to enable residential development.*
3. Council's solicitors were specifically asked whether there is anything in the deed that would prevent Council from rezoning the land to E2 Environmental? Their response was:

No. The 1992 deed did not expressly bind the Council to never rezone Lot 22 following its rezoning to "Future Residential" in 1993. Nor could such a restriction on the Council be implied into the deed. Such a fetter on Council's statutory functions in relation to the future zoning of land would probably not be valid whether express or implied.

The main conclusions that can be drawn from the legal advice are that Council is not prevented from the rezoning of Lot 22 to E2 Environmental Conservation and is not obliged to grant s94 credits unless Lot 22 is rezoned for residential development.

CONCLUSION:

The question of rezoning of Lot 22 to environmental protection has been ongoing for some years, having commenced in 2007 when the land was proposed for a conservation zoning in conjunction with other land of high environmental value at Forster/Tuncurry and Hawks Nest. Most of the properties nominated for protection were rezoned to the then 7(a1) Environmental Protection zone but Lot 22 was deferred for further discussions with the landowners. The ensuing discussions did not reach any conclusion and the question of rezoning culminated in the matter being independently considered by the Hunter Central Coast Joint Regional Planning Panel and the Minister.

The outcome of these independent assessments was a recommendation that an environmental conservation zone be applied to Lot 22. This recommendation was on the basis of the comprehensive studies that been undertaken, and the information that come forward, on Lot 22 and immediately surrounding land since 2007.

The current and previous landowners have objected to the rezoning on the basis of a Deed of Agreement, dated 1992, between Council and Mrs A Toohey. Legal advice has been sought on four (4) occasions on whether Council is obligated, under the deed, to rezone the land to allow residential development and whether the deed prevents Council from rezoning the land to conservation. The advice has consistently been that the deed does not, and cannot, commit Council to rezoning the land for development and that Council is not prevented from rezoning the land for conservation.

It is now appropriate for the rezoning of the land to be finalised in accordance with findings of environmental investigations and recommendations of independent bodies.

Council has not been granted authority by the Minister to exercise its delegations to finalise the rezoning. Consequently, the LEP will have to be submitted to the Minister to be made.

RECOMMENDATION:

That Council, under Section 59 of the Environmental Planning and Assessment Act, 1979:

- A. Request the Secretary of the Department of Planning and Environment to make arrangements for the drafting of the local environmental plan to give effect to the planning proposal (contained in Attachment A) for the rezoning of Lot 22 DP843479, The Southern Parkway to E2 Environmental Conservation.
- B. Request the Minister to make the plan once it has been drafted in accordance with A above.

ANNEXURES:

A: Plan showing the location of Location of Lot 22



B: Recommendations from Hunter Central Coast Joint Regional Planning Panel and Determination by the Minister on independent review of planning proposal for Lampo Group Holdings.

Joint Regional Planning Panel Pre-Gateway Review

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) has considered the request for a review of the proposed instrument as detailed below.

The Pre-Gateway Review:

Date of Review:	27 June 2013
Dept. Ref. No:	PGR_2013_GLAKE_001
LGA:	Great Lakes
LEP to be Amended:	Draft Great Lakes LEP 2013, however the Planning Proposal as submitted indicates an amendment to the existing Great Lakes LEP 1996
Address / Location:	Various locations within the Forster area Sites 3 and 4: Big Island, Lot 239 and Lot 242 DP 753168 Site 6: Lakes Way, Part of Lot 37 DP 1023220, Lot 148 DP 651471, Lot 34 DP 850018, Lot 1 DP 2263, Lot 2 DP 654559, Lot 3 DP 657314 and Lot 4 DP 657315 Site 8: Southern Parkway West, Lot 22 DP 843479 Site 10: Southern Parkway East, Part of Lot 602 DP 1076070 Site 11: Cape Hawk West, Part of Lot 602 DP 1076070 Site 14: Bennetts Head, Lot 1 DP 1014466
Proposed Instrument:	Site 3 & 4 Big Island – No change, to retain environmental zoning and proposed to be used to offset development on other sites. Although no zone boundaries are identified, for all other sites the proposal seeks to rezone land for residential development and environmental conservation. Specifically; Site 6 Lakes Way – Rezone from 1c Future Urban Investigation, B6 Enterprise Corridor and 7a1 Environmental Protection to 2c High Density Residential and 7a1 Environmental Protection Zone. 14.5 hectares are proposed to be developed, no additional land is to be protected. Site 8 Southern Parkway West – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential to allow for 11.75 hectares to be developed. Site 10 Southern Parkway East – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential. 5.65 hectares to be developed. Site 11 Cape Hawk West – Rezone from 1c Future Urban Investigation to 2a Low Density Residential and 2b Medium Density Residential to allow 10.26 hectares to be developed.

Joint Regional Planning Panels
Panel Secretariat | 23-33 Bridge Street, Sydney NSW 2000 | GPO Box 39, Sydney NSW 2001 | Phone 02 9228 2060 | Fax 02 9228 2066 | www.planning.nsw.gov.au

	Site 14 Bennetts Head – Amended the existing zoning of 2a Low Density Residential, 2b Medium Density Residential and 7a1 Environmental Protection Zone, to allow for an additional 0.5 – 0.8 hectares to be developed.	
Panel Chair:	Garry Fielding	
Panel Members:	Jason Perica Kara Krason Karen Hutchinson Len Roberts	
Reason for review:	☐	The council has notified the proponent that the request to prepare a planning proposal has not been supported
	☒	The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal

In considering the request, the JRPP has reviewed all relevant information provided by the proponent as well as the views and position of the Department and the relevant local government authority. Based on this review the JRPP recommends the following:

JRPP RECOMMENDATION:	☒	The proposed planning proposal should be submitted for a Gateway determination
	☐	The proposed instrument should not be submitted for a Gateway determination
Composition of Recommendation:	☒ Unanimous ☐ Not unanimous	Comments:

JRPP Advice and Justification for Recommendation:

1. The Panel has considered the supporting information provided for the proposal, as well as the views of the Council, the proponent and the Department of Planning & Infrastructure, and has visited the sites. The Panel notes the Forster locality contains regionally significant waterways for the oyster industry and other areas with high ecological values. The Panel also notes the proposed sites are well located in relation to the Forster urban area, and some less constrained sites are likely to have some development potential subject to more detailed investigation which could be carried out post Gateway.
2. The Panel's recommendation is that the planning proposal to rezone 7 sites in Forster be submitted, in part and as modified below, for a gateway determination under s56 of the *Environmental Planning and Assessment Act 1979*.
3. The Panel supports sites 6, 10 and 11 proceeding as part of a planning proposal with Council as the Relevant Planning Authority (and upon payment of any adopted fee) subject to the following comments;
 - a. Site 6 is adjacent to Pipers Creek and has important habitat and vegetation links, and requires careful water management. There may be potential for some employment uses on this site, and Council should also consider zoning the other sites in this area fronting The Lakes Way, however this could occur through a separate planning proposal.

- b. Site 11 and part site 10 (eastern portion) appear less constrained, but require an integrated water management solution in combination with the remainder of site 10 (western portion).
 - c. Part site 10 (western portion) is constrained, but some development may be possible, noting that a water management solution for development to the north-east has already been provided (detention) and drainage easements exist on the site.
 - d. The planning proposal prepared for the Gateway should include a preliminary structural constraints map(s), in light of the regionally important water quality, flooding and ecological constraints.
 - e. The studies required to more precisely determine zone boundaries and development controls can be undertaken post Gateway. The need for a site specific development control plan(s) should be considered if relevant considerations are not addressed through a current development control plan. Any development control plan(s) could possibly be exhibited with the planning proposal, however if the work would delay exhibition of the planning proposal, and is not required to determine zone boundaries, it could be established as a requirement prior to subdivision.
 - f. The Planning Proposal should be reviewed to correct errors and provide assessment of the proposals against all relevant state and local legislation and policy.
4. The eastern part of Site 14, outside of the rainforest area, may proceed as part of the planning proposal but would require further evidence of its development potential and potential impacts, including ecological and bushfire considerations, pre Gateway. If this work would delay the larger planning proposal, progression of this site should occur through a separate planning proposal.
 5. Sites 3 and 4 should be removed from the planning proposal because they do not require any zoning change. The Panel notes that exclusion of these sites will not limit their ability to form part of an offset arrangement, and this is a Voluntary Planning Agreement matter between the proponent and Council.
 6. Site 8 should proceed, but only with an environmental conservation zoning. The site has very high ecological and water management qualities and the Panel is of the view that rezoning of the site for urban development would be inappropriate, and is therefore not supported.
 7. The Panel is concerned about the potential for clearing of Site 8 under the proposed RU2 zoning under the draft Great Lakes LEP 2013, and recommends that the Department review the appropriateness of this zoning in its assessment of the draft LEP.



**Planning &
Infrastructure**

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

Our ref: PGR_2013_GLAKES_001

Att: Roger Busby

Dear Mr Handford

Re: Request for Pre-Gateway Review – (JRPP Recommendation)

I refer to the request for pre-gateway review, PGR_2013_GLAKES_001, for a proposal to amend the Great Lakes LEP 1996 for seven sites known as Lampo Group Holdings, to facilitate residential development and environmental protection.

I have considered the request for review, together with the recommendations of the Hunter and Central Coast Joint Regional Planning Panel, advice provided by council, and other relevant considerations of the proposal. As delegate of the Minister for Planning and Infrastructure, I have determined that, once revised in accordance with the JRPP's recommendations, the Planning Proposal should proceed to Gateway determination.

Council is asked to arrange the preparation of a planning proposal under section 55 of the *Environmental Planning and Assessment Act 1979*, (the Act) and submit it for a Gateway determination within 40 days of the date of this letter. I am aware that Council may request the payment of a fee for the completion of this work as per a fees and charges policy. If Council does not wish to progress this matter, an alternate Relevant Planning Authority (RPA) may be appointed to prepare a Planning Proposal. Should Council not wish to be the RPA for this proposal, please contact the Mr Michael Leavey Hunter & Central Coast Regional Director, to discuss this matter further.

You can check the progress of this request for review on the LEP Tracking System at www.leptracking.planning.nsw.gov.au/default.aspx. Please also find attached a copy of the Panels decision to view for convenience. If you have any questions in regard to this matter, please contact Ms Katrine O'Flaherty of the Department's Newcastle office on (02) 4904 2700.

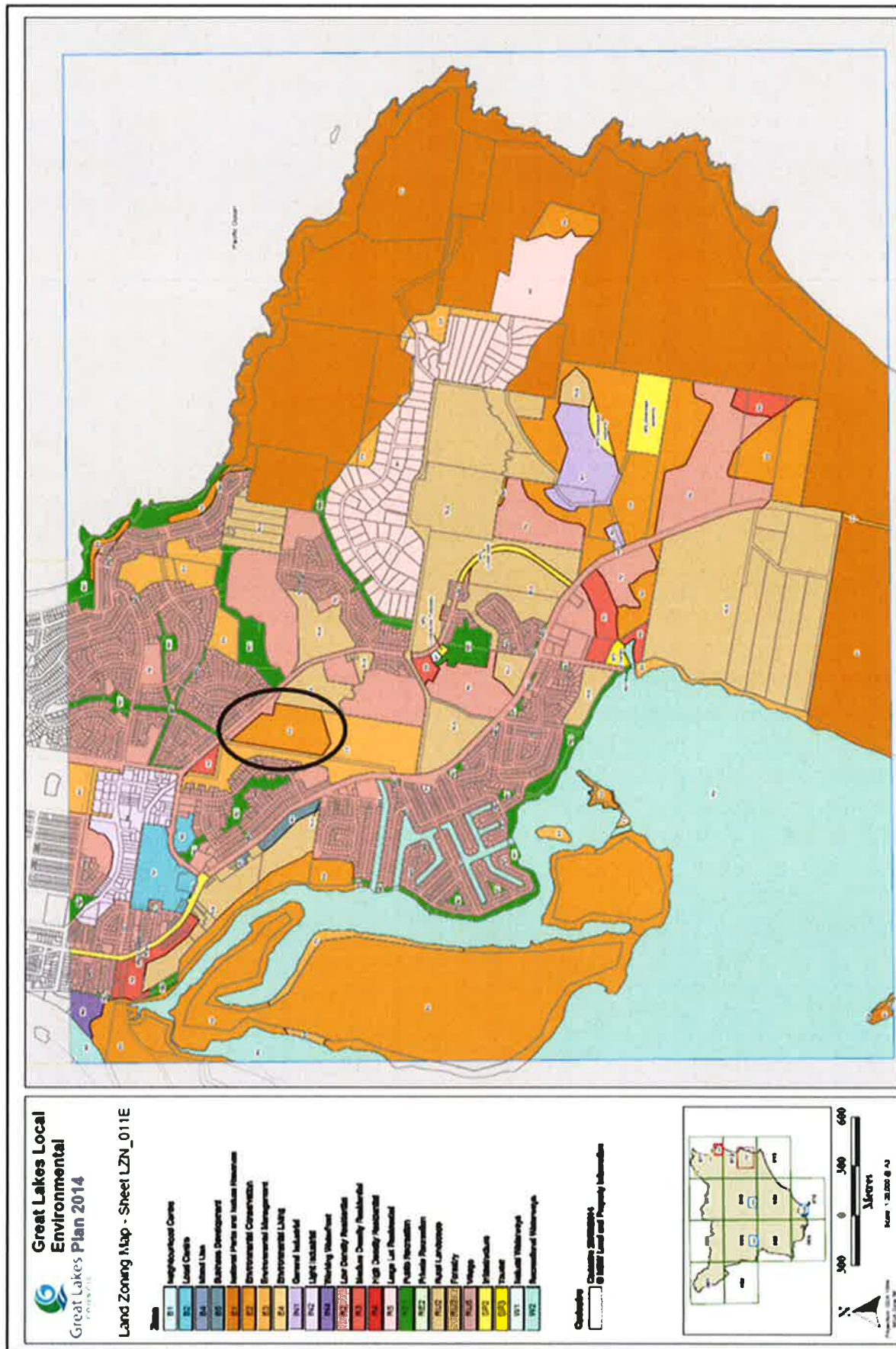
Yours Sincerely

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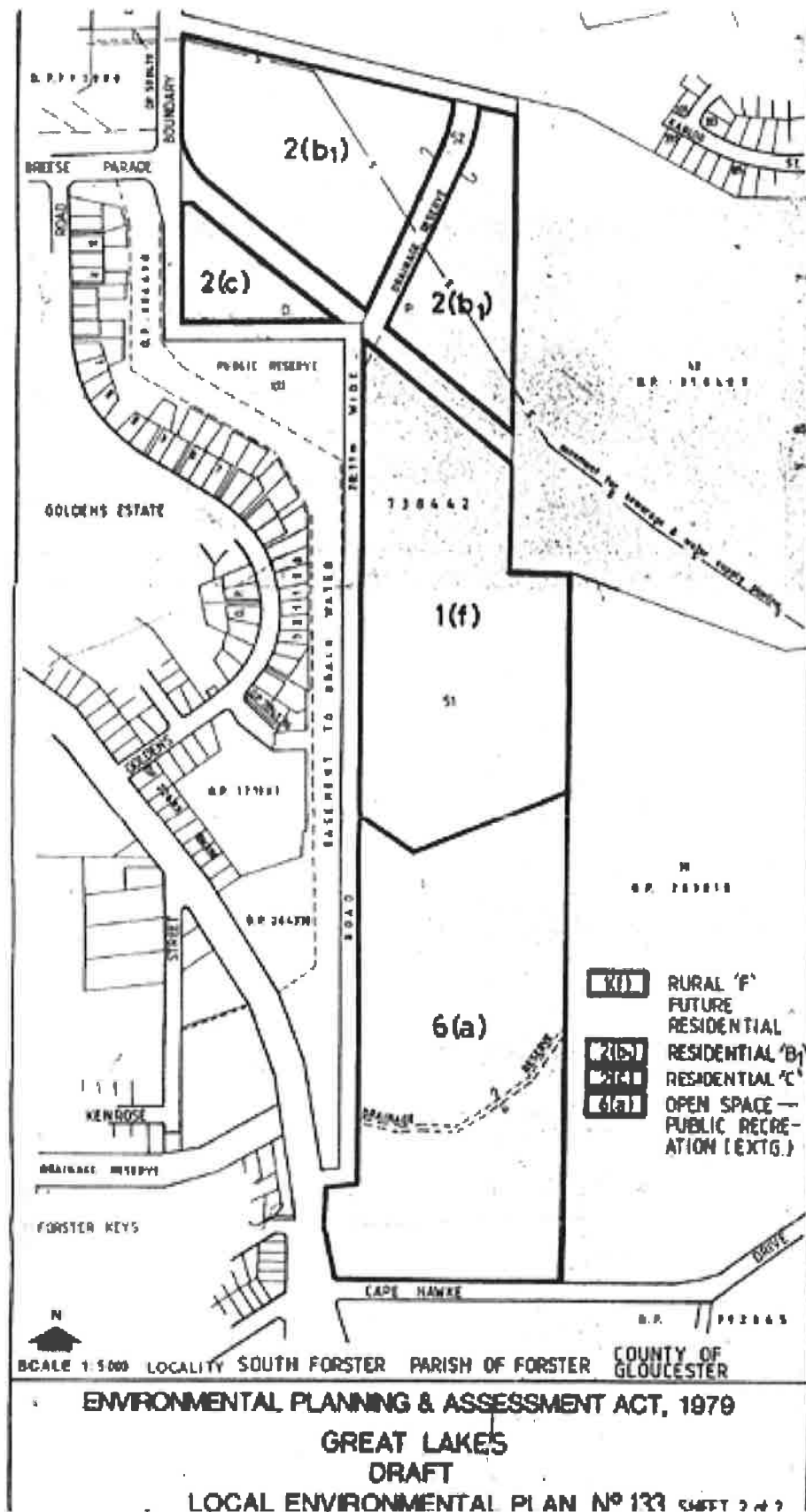
Richard Pearson
Deputy Director General
Planning Operations and Regional Delivery

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6455 Website planning.nsw.gov.au

C: Map showing proposed rezoning of Lot 22 DP 843479, The Southern Parkway.



B: Map showing rezoning of Lot 51 DP 738442 completed in 1993.



Subject:

Index: SP-PP-18

Author: Manager Strategic Planning - Roger Busby

Strategic Committee Meeting: 10 February 2015

RECOMMENDATION:

That Council, under Section 59 of the Environmental Planning and Assessment Act, 1979:

- A. Request the Secretary of the Department of Planning and Environment to make arrangements for the drafting of the local environmental plan to give effect to the planning proposal (contained in Attachment A) for the rezoning of Lot 22 DP843479, The Southern Parkway to E2 Environmental Conservation.
- B. Request the Minister to make the plan once it has been drafted in accordance with A above.

RESOLUTION

(Moved L Gill/Seconded J Weate)

That Council, under Section 59 of the Environmental Planning and Assessment Act, 1979:

- A. Request the Secretary of the Department of Planning and Environment to make arrangements for the drafting of the local environmental plan to give effect to the planning proposal (contained in Attachment A) for the rezoning of Lot 22 DP843479, The Southern Parkway to E2 Environmental Conservation.
- B. Request the Minister to make the plan once it has been drafted in accordance with A above.
- C. Advise the Minister of the following:
 - 1. Legal advice received on the Deed of Agreement between Council and Toohey.
 - 2. Objections of the Landowner
 - 3. That Council based on Environmental Sustainability and legal advice has formed the view that the rezoning is appropriate.

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:

The results of this division were as follows:

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

Cr Morwitch returned to the meeting.

STACKS // THE LAW FIRM

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Our Reference: WJA:LS:MM:140507
Your Reference: SP-PP-18

26 November 2014

The General Manager
Great Lakes Council
PO Box 450
FORSTER NSW 2428

FAXED

Dear General Manager or Roger Busby

Planning Proposal for Rezoning of Lot 22 DP 843479 The Southern Parkway, Forster to E2 Environmental Conservation

1. We act for Southern Parkway Development Pty Limited the registered proprietor of 22/843479.
2. This submission is an objection to the Planning Proposal.
3. The Proposal cannot be given effect unless and until the registered proprietor agrees.
4. The continuing basis of the objection is the agreement between Council and a previous owner.
5. Council has already acted with some bravado and imprudently in considering the proposal and will, in our view, be acting illegally if the proposal is further considered.

Yours faithfully

STACKS/THE LAW FIRM



Bill Akhurst

371494

FORSTER

Directors: Bill Akhurst LL B., Accredited Specialist (Property Law); Digby Dunn B.A., LL B., Master of Environmental & Local Government Law
Consultant: Michael Laurence B.Sc., LL B., Accredited Specialist (Personal Injury Law), Accredited Specialist (Family Law)

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STACKS/FORSTER P/L ABN 12 104 832 886

11 FEB 2015

RECORDS

RE: PROPOSED RE-ZONING OF LOT 22 DP 843479 TO E2 AND OBJECTION BY SOUTHERN PARKWAY DEVELOPMENT PTY LTD (THE OWNER OF LOT 22)

In the objection made on 26 November 2014 on behalf of the company reference was made to an agreement between Council and a previous owner of Lot 22. When this agreement was made in June 1992 it was clear that residential subdivision of Lot 22 was anticipated by the owners and Council. It was in the expectation of approximately 90 residential lots that a credit for section 94 contributions was made by Council in return for the creation of Lot 23 of 15 ½ hectares as a public reserve.

This dedication occurred in September 1994. Greater emphasis on ecological awareness has led to the current proposal to rezone Lot 22 to environmental conservation. This action has been taken in spite of the original expectations and agreement. Council received its public reserve in Lot 23 and now is proceeding to nullify any economic value of Lot 22.

Southern Parkway has received written advice from an experienced senior counsel which states that:

- (i) The agreement runs with the land.
- (ii) The section 94 credits are alive.
- (iii) Re-zoning to E2 would provide the basis for an enforceable application by Southern Parkway for the acquisition of Lot 22 by Great Lakes Council pursuant to the hardship provisions of the Just Terms Act.

We are not so placed as to be able to donate Lot 22 to the Council.

Lot 22 was bought with a view to its proper development. The proposed down-zoning will have an adverse if not catastrophic effect on the reasonable economic use of the land. This will trigger recourse to the hardship provisions and give rise to valuation arguments which, in the end, are surely to be made at the cost of Council.

The principal author of a recent relevant report is Dr Rod Kavanagh, a leading specialist in top order predators and their prey such as glider populations. He has the reputation of being cautious and conservative. His research has established that, contrary to popular belief, some otherwise forest-dependent species are able to survive in urban or modified landscapes.

This is just another matter to be borne in mind in the context of valuation.

And of course it is simply unreasonable that Lot 22 be offered in sacrifice to Council's acquired ecological scruples when other surrounding lands have been developed for residential purposes.

We would be prepared to sit down with Council to agree on a way forward suitable to both parties.