

## Planning and Assessment

IRF20/1879

### Gateway determination report

|                                 |  |
|---------------------------------|--|
| <b>LGA</b>                      | Port Stephens  |
| <b>PPA</b>                      | Port Stephens Council  |
| <b>NAME</b>                     | Planning proposal to recognise the existing approved caravan park, permit its expansion and two lot subdivision at Latitude Drive, Anna Bay (170 additional permanent sites) |
| <b>NUMBER</b>                   | PP_2019_PORTS_006_00   |
| <b>LEP TO BE AMENDED</b>        | Port Stephens Local Environmental Plan 2013  |
| <b>ADDRESS</b>                  | 70, 70A, 70B & 70C Latitude Drive and 4473 Nelson Bay Road, Anna Bay   |
| <b>DESCRIPTION</b>              | Lots 2 & 4 DP 398888, Lot 2 DP 1204319, Lot 1 DP 1225542 and Lot 25 DP 852410  |
| <b>RECEIVED</b>                 | 16 April 2020  |
| <b>FILE NO.</b>                 | EF19/30714   |
| <b>POLITICAL DONATIONS</b>      | There are no donations or gifts to disclose and a political donation disclosure is not required.   |
| <b>LOBBYIST CODE OF CONDUCT</b> | There have been no meetings or communications with registered lobbyists with respect to this proposal  |

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend the Port Stephens Local Environmental Plan (LEP) 2013 to recognise the existing approved caravan park and to permit its expansion. The existing caravan park is being operated as a seniors living lifestyle resort, known as Latitude One Lifestyle Village.

On 13 July 2010, Council approved a development application (DA16-2009- 257-1) for a caravan park on the land known as 70, 70A, 70B and 70C Latitude Drive, Anna Bay. At that time, the land was zoned 1(a) Rural Agriculture zone and caravan parks were permissible with consent under the Port Stephens Local Environmental Plan 2000.

The *Local Government Act 1993* and *Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* permits the installation of moveable dwellings in approved caravan parks. The original consent has been modified up to 12 times and on 14 June 2019, Council

approved the use of the caravan park for 270 long term sites (condition No.51.1A). Council advises that approximately 100 manufactured homes have been constructed and additional stages are under construction.

It is proposed to expand the existing caravan park by an additional 170 long term sites, subject to development consent over Lot 25 DP 852410 at 4473 Nelson Bay Road, Anna Bay.

The planning proposal also aims to facilitate the subdivision of the existing dwelling along Nelson Bay Road from the caravan park to create a separate allotment of at least 8,000m<sup>2</sup>.

## 1.2 Site description

The site has a total area of 43ha. It is located on the western side of Nelson Bay Road and located 3.2km from the Anna Bay and 6.5 km south-west of Nelson Bay. The site is accessed off Latitude Drive which extends along the northern boundary of Lot 25 DP 852410. Refer to Figure 1 for locality map, below.

The site was previously mined for mineral sands in the early 1970s. Sand mining activities generally involved vegetation stripping, the mining of sand by dredging in a moving pond, and processing of the dredged slurry. These activities have resulted in the land being heavily disturbed, however parts of the site still contain vegetation, which needs to be further assessed for its ecological value. Council has also approved further sand extraction (DA 16/2017/282) in the north-western corner of Lot 25 DP 852410 to be used for works associated with the construction of the approved caravan park.



Figure 1 Locality Map

### 1.3 Existing planning controls

The subject site is currently zoned RU2 Rural Landscape and has a minimum lot size of 20ha under the Port Stephens Local Environmental Plan 2013. Refer to Figure 2 for zoning map, below.

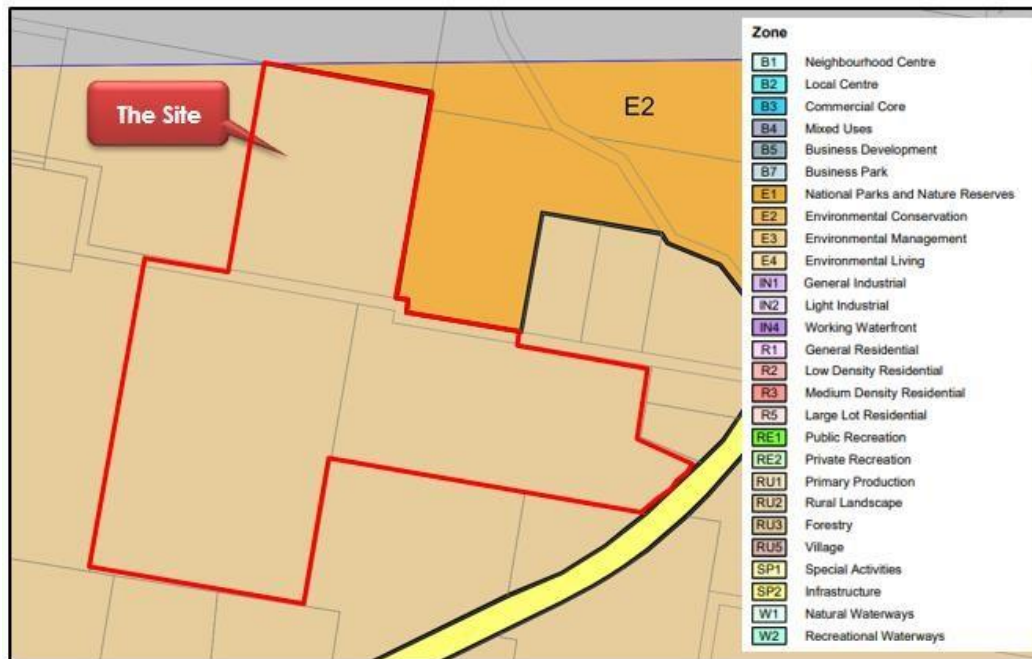


Figure 2 - Zoning Map

Land to the north of the subject site consists of vacant vegetated land zoned E2 Environmental Conservation. All other surrounding lands are zoned RU2 Rural Landscape.

### 1.4 Surrounding area

The immediate locality is predominantly rural/rural residential consisting of dwelling houses/dual occupancies. The land to the west, adjoining the existing approved caravan park, is cleared and being used for some type of rural activity. David Graham's Golf Complex, The Retreat Port Stephens accommodation, retail plant nursery and a mixture of other businesses along Nelson Bay Road are located to the south west of the subject site. Refer to Figure 3 - surrounding land uses map.



### **1.5 Summary of recommendation**

It is recommended that the planning proposal proceed subject to conditions. The expansion of the existing caravan park is generally consistent with the Hunter Regional Plan 2036 (HRP) and Council's local strategies by providing housing diversity with access to a range of community facilities and services within a lifestyle village setting.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The planning proposal seeks to achieve the following outcomes:

- to recognise the existing approved caravan park at 70, 70A, 70B and 70C Latitude Drive, Anna Bay;
- enable the extension of the existing caravan park over part of the adjoining land at Lot 25 DP852410, 4473 Nelson Bay Road in order to increase housing diversity and provide for population growth within the Port Stephens LGA;
- to facilitate the future subdivision of Lot 25 DP 852410 into two (2) lots so as to create a lot of approximately 8,000m<sup>2</sup>, with an existing dwelling, fronting Nelson Bay Road; and
- to provide suitable planning controls that facilitate the proposed development.

The objectives of the planning proposal are clear and do not require amendment prior to community consultation.

### **2.2 Explanation of provisions**

The proposal seems to amend Schedule 1 - Additional permitted uses, as outlined below, and will achieve the objectives and intended outcomes of the planning proposal.

#### ***Schedule 1 – Additional permitted uses***

##### ***10 Use of certain land at Anna Bay***

*(1) This clause applies to the following land –*

- (a) 70 Latitude Drive, Anna Bay, being Lot 2, DP 398888*
- (b) 70A Latitude Drive, Anna Bay, being Lot 4, DP 39888*
- (c) 70B Latitude Drive, Anna Bay, being Lot 2, DP 1204319*
- (d) 70C Latitude Drive, Anna Bay, being Lot 1, DP 1225542*
- (e) 4473 Nelson Bay Road, Anna Bay, being Lot 25, DP 852410*

*(2) The following development is permitted with development consent—*

- (a) a caravan park on Lots 2 and 4, DP 398888, Lot 2, DP 1204319 and Lot 1, DP 1225542,*
- (b) subdivision of Lot 25, DP 852410, if that subdivision creates:*
  - i. one lot with an area of at least 8,000m<sup>2</sup> fronting Nelson Bay Road (containing the existing dwelling house), and*
  - ii. one lot of approximately 12.4 hectares,*

*(c) a caravan park on the new lot mentioned in subclause (2)(b)(ii).*

The proposed clause may require minor redrafting in consultation with the NSW Parliamentary Counsel, but it is considered clear and explains what Council are trying to achieve. It does not require adjustment before community consultation

The existing development approval (as modified) for the caravan park required buffers to the surrounding properties and the preparation of a Vegetation Management Plan (VMP) before the commencement of work. It is recommended that details of the VMP be included as part of the planning proposal.

The site is surrounded by preferred koala habitat and to compensate for the vegetation removal, it is recommended that the Gateway determination be conditioned to investigate supplementary replanting of Koala feed trees to establish a linkage between the expansion of the caravan park (eastern boundary) and the proposed rural residential allotment. Council should also consider zoning the environmental sensitive lands to E2 Environmental Protection. Further liaison with DPIE and the Biodiversity Conservation Division (BCD) should be undertaken to determine the environmental outcome before commencing community consultation. This was verbally discussed with Council staff who were supportive of this approach.

### **2.3 Mapping**

The planning proposal currently does not require a mapping amendment.

A zoning map may be required depending on the environmental outcomes negotiated between DPIE and BCD as recommended by the Gateway determination.

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

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The planning proposal is the best means of achieving the objectives and to recognise the existing caravan park and to facilitate its expansion. The provision of additional senior housing is required for an ageing population. The HRP projects that 25 percent of the regional population will be over 65 by 2036.

Council considered various planning options to achieve the intended objectives and outcomes. Relying on existing use rights for the existing caravan park is not transparent and caravan parks are currently only permissible in the RE1 Public Recreation and RE2 Private Recreation zones under the Port Stephens Local Environmental Plan 2013.

Council's decision to amend Schedule 1 - Additional permitted uses is supported because it provides certainty about ongoing land use permissibility, given the RE2 Private Recreation zone permits other forms of development, which may be unsuitable in this locality. The rezoning of land to RE2 Private Recreation should be informed by the preparation a local strategy to determine the preferred locations for caravan parks throughout the LGA.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 Regional**

#### Hunter Regional Plan 2036

The Hunter Regional Plan 2036 (HRP) sets the priorities and directions for the region to deliver a vision of 'the leading regional economy in Australia with a vibrant new metropolitan city at its heart'. The HRP estimates that approximately 11,050 additional dwellings will be needed in the Port Stephens LGA and the percentage of

people aged over 65 years will increase from 19% to 25% by the year 2036. The planning proposal is considered consistent with the vision and goals because it will make efficient use of the land and provide senior housing with access to a range of community facilities and services within a lifestyle village setting.

The planning proposal generally implements the strategic directions No. 6 Grow the economy of Port Stephens, No.21 Compact settlements and No.22 Promote housing diversity.

The expansion of the caravan park will contribute to the growth of Port Stephens and provide broader economic benefits via increased demand for goods and services as well as providing housing diversity for an ageing population.

The subject site is not located in an identified or emerging growth area recognised in the HRP. The land is not located in a centre but some external services such as shops for day-to-day needs are a short drive away in nearby Anna Bay, Salamander Bay and Nelson Bay. The approved caravan park is required to provide a community bus to transport residents to surrounding retail centres (including public transport connections) as well as providing organised day trips for recreational activities and entertainment. The location of nearby centres is shown in Figure 4, below

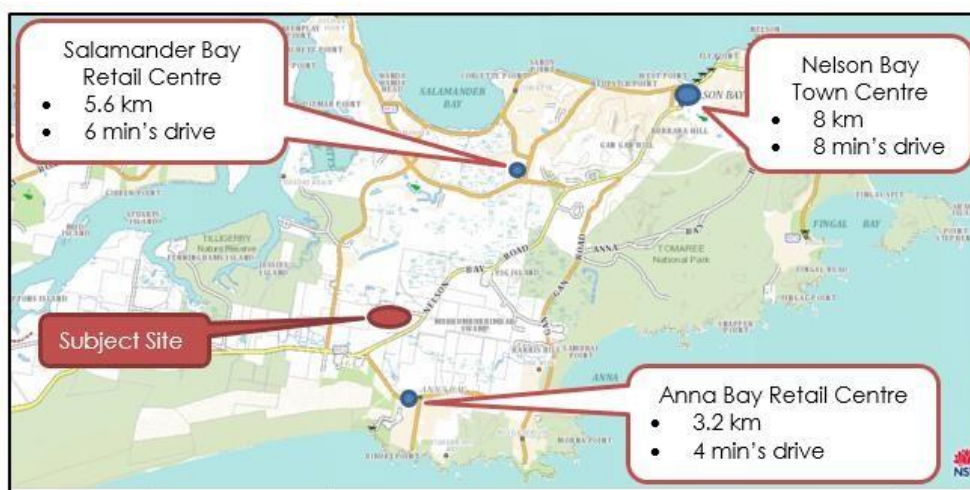


Figure 4 – Nearby Centres

In conclusion, the expansion of the caravan park will provide additional senior housing opportunities, support local businesses and maximising the use of existing infrastructure and services.

#### Greater Newcastle Metropolitan Plan 2036 (GNMP)

The subject site may be located outside the GNMP boundaries, but it will contribute towards meeting housing targets.

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## **4.2 Local**

### Draft Port Stephens Local Strategic Planning Statement (LSPS)

The draft LSPS identifies the 20-year vision for land use in Port Stephens and sets out social, economic, and environmental planning priorities for the future.

The planning proposal is consistent with Priority No.5 to increase diversity of housing choice, such as retirement villages and lifestyle communities.

#### Draft Port Stephens Local Housing Strategy (LHS)

The LHS is the overarching strategy to guide land use planning decisions for new housing in Port Stephens.

Priority 3.3 recognises lifestyle villages, where residents share communal recreation and other facilities, as a popular type of housing development to occur in Port Stephens. These villages can offer residents convenient, attractive and potentially more affordable housing options.

The LHS provides the following locational criteria to determine site suitability:

- 5 minute walk (400m) of a town or neighbourhood centre zoned B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core or B4 Mixed Use; or
- 5 minute walk (400m) of bus stops with frequent services to local centres; or
- 10 minute walk (800m) of local centres.

However, if this criteria cannot be met, lifestyle villages and communities may be located where the village or community will have:

- reticulated water and sewer;
- indoor and outdoor recreation facilities adequate for the number of proposed residents such as bowling greens, tennis courts, golf course, swimming pool, or off leash dog park;
- community facilities that promote gathering and social connections such as a restaurant, community hall, or community garden; and
- access to bus services providing frequent trips to local centres and shops.

The planning proposal satisfies the locational criteria of the LHS, albeit very generous provided the site is connected to reticulated water and sewer. The Department is currently reviewing the LHS and it is expected that these locational criteria will continue to evolve and become more stringent.

#### Port Stephens Community Strategic Plan 2013-2023 (PSCSP)

The PSCSP identifies the community's vision for 'a great lifestyle in a treasured environment'. It outlines the long-term goals agreed with the community of the Port Stephens LGA.

The planning proposal is consistent with the objectives of the PSCSP.

#### Port Stephens Planning Strategy 2011-2036

The Strategy identifies that medium density housing areas should be located where residents have good access to services and not in isolated locations to avoid the creation of social disadvantage.

Council acknowledges that the planning proposal is inconsistent with some of the principles and directions in the PSPS relating to medium density housing, however it has formed the opinion that the caravan park provides high quality community facilities for residents, such as community bus, club house, outdoor swimming pool,

lawn bowls facility, croquet area, pocket parks, and walking areas to avoid residents becoming socially disadvantaged.

#### Anna Bay Strategy and Town Plan

The Anna Bay Strategy and Town Plan establishes a context and policy direction for future rezoning requests and development controls in the Anna Bay area.

The vision set out in the strategy for Anna Bay is a small and vibrant town offering a mix of dwelling types and business opportunities and a quality natural environment. It will have a pleasant main street with a mix of retail and office space for local and visitor patronage and shop top housing or tourist accommodation.

The subject site is not located within the Anna Bay Town Centre and therefore many of the key strategic directions outlined in the strategy are not directly relevant to the site or proposed development. Notwithstanding, the proposed development will contribute to the vision established for Anna Bay by providing additional residents within the proximity of the Anna Bay Town Centre, to support the town centre.

#### **4.3 Section 9.1 Ministerial Directions**

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

##### Direction 1.2 Rural Zones

This Direction aims to protect the agricultural production value of rural land. The planning proposal does not rezone rural land but increases residential density in a rural zone.

The inconsistency with this direction is considered of minor significance because the existing approved caravan park is required to maintain a 30m buffer from the western boundary to separate the development from the adjoining agricultural land activity and the proposed expansion onto Lot 25 only has limited agricultural potential because it has been subject to sand mining activities and is surrounded by rural residential development. In the circumstances, consultation with the Department of Primary Industries is not required.

It is recommended that the Minister's delegate approve this inconsistency as a matter of minor significance.

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

This Direction aims 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.

The subject site has been previously sand mined and it is unclear whether any existing approvals/leases still cover the subject or adjoining lands. Consultation with the NSW Department of Planning, Industry and Environment and Geoscience Division will determine consistency with this Direction.

##### Direction 1.5 Rural Lands

This Direction applies because the planning proposal affects land within an existing rural zone, and proposes the subdivision of Lot 25 DP 852410 into two (2) lots so as to create a lot of approximately 8,000m<sup>2</sup>, with an existing dwelling, fronting Nelson Bay Road.



The site has minimal agricultural value and the proposed subdivision does not result in the adverse fragmentation of rural lands and satisfies the rural subdivision principles of clause 5.16 of the Port Stephens LEP 2013.

It is recommended that the Minister's delegate approve this inconsistency as a matter of minor significance.

#### Direction 2.1 Environmental Protection Zones

This Direction aims to protect and conserve environmentally sensitive areas.

The subject site contains preferred koala habitat and its associated buffer. Council advises that an assessment of Koala habitat will be undertaken post Gateway. Also, the approved caravan park (Condition 43.6) required the preparation of a Vegetation Management Plan before the commencement of work. There is also an opportunity to create a vegetation linkage between the expansion of the caravan park (eastern boundary) and the rural residential allotments along Nelson Bay Road to improve the environmental outcome.

It is recommended that the Gateway determination be conditioned to investigate replanting Koala feed trees and rezoning parts of the lands not being developed as a caravan park to E2 Environmental Protection. Consultation with the Biodiversity Conservation Division will determine consistency with this Direction.

#### Direction 2.3 Heritage Conservation

The results of an Aboriginal Heritage Information Management System (AHIMS) search for the subject site indicate that there are no Aboriginal sites or Aboriginal places recorded or declared in or near the subject site.

Consultation with the Biodiversity Conservation Division will determine consistency with this Direction and whether further investigations are required.

#### Direction 2.6 Remediation of Contaminated Lands

This Direction requires the planning proposal authority to be satisfied that the site is suitable for development taking into consideration any contamination or remediation works.

Previous assessment of contamination across the site indicates that there is potential for contamination due to historic sand mining activities. Council advises that further assessment of contamination across the site will be undertaken post Gateway, then consistency with this Direction can be determined.

#### Direction 4.4 Planning for Bushfire Protection

This Direction applies to planning proposals that will affect, or are in proximity to land mapped as bushfire prone land.

The subject land is identified as Bushfire Prone. Consultation with the NSW Rural Fire Service will determine consistency with this Direction.

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

#### 4.4.1 SEPP No 21 –Caravan Parks

This planning proposal seeks to amend the LEP to regularise the existing approved caravan park and allow for its expansion. The proposal is considered to be consistent with the objectives of SEPP 21 and any future development

applications on the subject site will need to consider the requirements of SEPP 21.

#### 4.4.2 SEPP No 36 – Manufactured Home Estates

SEPP 36 does not apply to Port Stephens as it is excluded by clause 7 of Schedule 2 to the SEPP.

#### 4.4.3 SEPP 44 – Koala Habitat Protection

The subject site contains preferred koala habitat and its associated buffer. Refer to Figure 5, below.

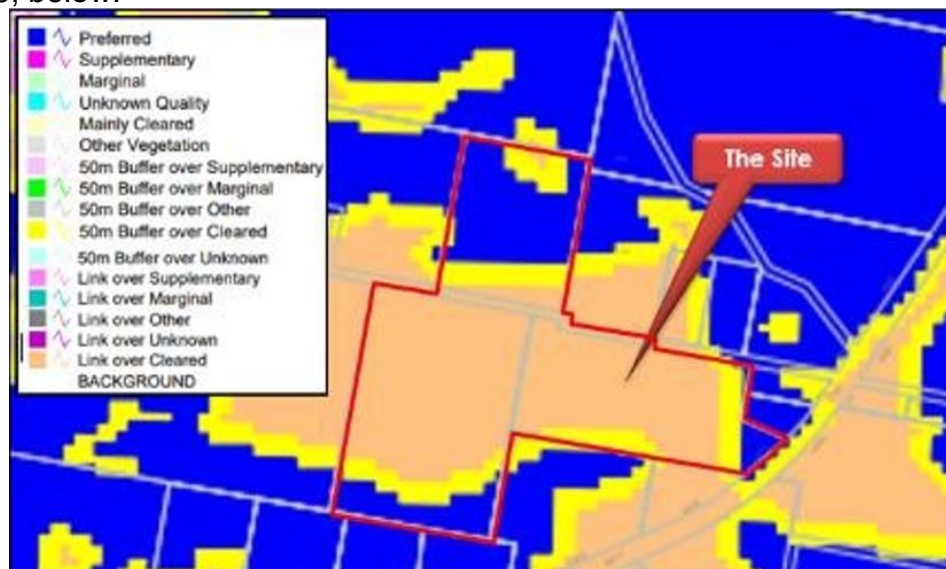


Figure 5 – Extract from Port Stephens Council Comprehensive Koala Plan of Management (CKPOM)

Council advises that an assessment of Koala habitat in accordance with the CKPOM performance criteria will be undertaken post Gateway.

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

### **5.1 Social**

The planning proposal should have positive social benefits by providing seniors housing opportunities and maximising the use of existing infrastructure.

### **5.2 Environmental**

The site contains preferred Koala habitat and other Environmental Ecological Communities which require further investigation to determine environmental significance post Gateway.

As already discussed, it is recommended that further liaison with DPIE and the Biodiversity Conservation Division be undertaken to determine the environmental outcomes for the site before commencing community consultation.

### **5.3 Economic**

The rezoning should have a positive multiplier effect on the local economy through employment opportunities in the construction industry. The provision of additional housing for an ageing population will provide broader economic benefits via increased demand for goods and services.

## 5.4 Contamination

Contamination investigations previously undertaken across the site indicate that the site was mined for mineral sands in the early 1970's. Due to former sand mining activities on the site, there is potential for contamination to occur across the site.

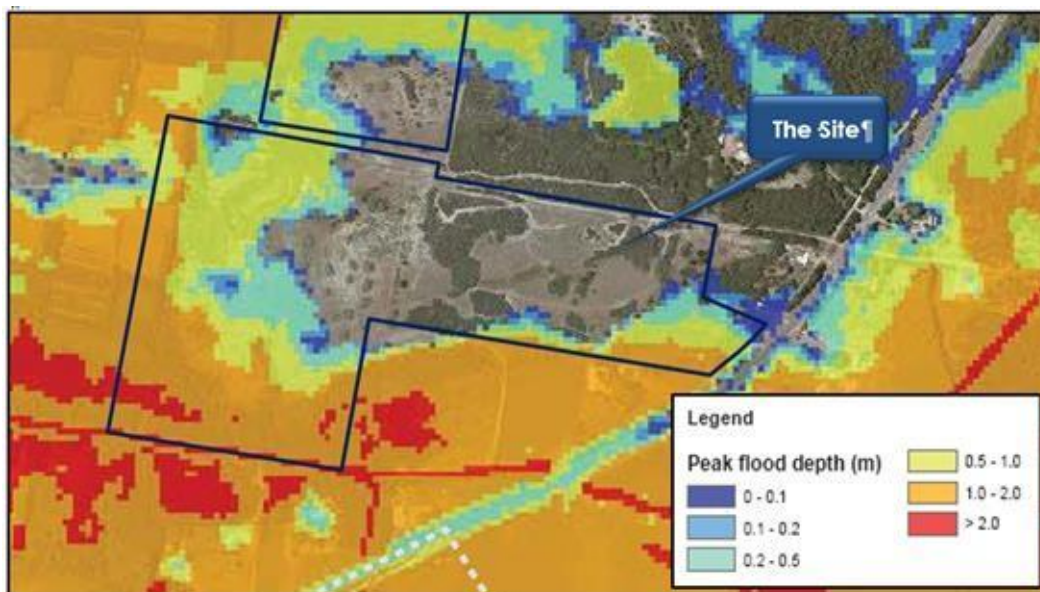
Contamination across Lots 2 and 4 DP 398888, Lot 2 DP 1204319 and Lot 1 DP 1225542 has been assessed as part of the approval (DA 16/2009/257; as amended) and is considered to have been appropriately dealt with via conditions of consent for the relevant approvals.

An assessment of contamination across Lot 25 DP 852410 will be undertaken and provided to accompany the planning proposal at the post-Gateway stage. It is expected that contamination across Lot 25 DP 852410 can be appropriately dealt with in a similar manner to which it was controlled over Lots 2 and 4 DP 852410, Lot 2 DP 1204319 and Lot 1 DP 1225542.

## 5.5 Flooding

The Anna Bay and Tilligerry Creek Flood Study (2017) applies to the subject site. The caravan park under construction is being filled to provide appropriate flood free levels.

The flood study indicates that the south east portion of Lot 25 is subject to the 2100 flood level. Refer to Figure 6, below.



As the proposed development footprint within Lot 25 sits above the projected peak flood depth, it is anticipated future development is considered likely to be compliant with the NSW Floodplain Development Manual 2005. Council advises that a detailed flood study will be prepared for the rezoning proposal post Gateway.

## 5.6 Infrastructure

### Roads

Consultation with Transport for NSW will determine the adequacy of the recently upgraded intersection of Latitude Drive and Nelson Bay Road for the entire development.

## Reticulated water and sewer

The site will be connected to reticulated water and sewer.

## **6. CONSULTATION**

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### **6.1 Community**

Council proposes that the planning proposal be placed on exhibition for 28 days. The level of community consultation proposed is considered appropriate for this planning proposal.

### **6.2 Agencies**

It is recommended that Council consult with the following agencies:

- NSW Rural Fire Service
- Transport for NSW
- NSW Department of Planning, Industry and Environment
  - Biodiversity Conservation Division
  - Geoscience Division
- Worimi Local Aboriginal Land Council

Council recommended consulting with the Department of Primary Industries, in the circumstances, consultation with the Department of Primary Industries is not required.

The Gateway determination has been conditioned to consult the NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division for advice about whether the rezoning proposal needs to satisfy any other requirements of the *Biodiversity Conservation Act 2016* and the adequacy of the aboriginal heritage assessment.

## **7. TIMEFRAME**

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Council's project timeframe suggests a 12-month completion timeframe. This is reasonable but, in the circumstances, an 18-month completion timeframe is recommended to provide sufficient time to negotiate the environmental outcome, prepare the supporting technical studies and to respond to any issues raised by government agencies.

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

Council's project timeframe indicates that they wish to be the local plan-making authority. It is recommended that Council be given plan making delegations to complete this planning proposal.

## **9. CONCLUSION**

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The planning proposal to expand the existing caravan park by an additional 170 permanent sites is supported to proceed with conditions.

The provision of additional senior housing to accommodate an ageing population and to maximise the use of existing infrastructure and services is generally consistent with the strategic directions of the HRP and local strategies.

If the site had not already been approved and being developed as a caravan park, it would be recommended that Council prepare a local strategy to determine the preferred locations for caravan parks throughout the LGA before any Gateway determination being issued. Council would also be required to adopt an appropriate zoning to make caravan parks permissible rather than relying on a Schedule 1 - Additional permitted use.

## **10. RECOMMENDATION**

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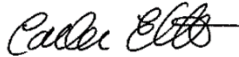
It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands are of minor significance; and
2. note that the consistency with section 9.1 Directions 1.3 – Mining, Petroleum Production and Extractive Industries, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.6 Remediation of Contaminated Lands and 4.4 Planning for Bushfire Protection are unresolved and will require consultation with agencies to determine consistency.

It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation Council is to amend the planning proposal as follows:
  - a) update the relevant sections after completing the supporting technical studies, such as flora and fauna, contamination analysis, flooding, bushfire and acid sulfate soils assessments;
  - b) update Table 4 the assessment of relevant Statement Environmental Planning Policies (SEPP) to update the considerations of SEPP 55 (clause 6) and SEPP (Rural Lands) which no longer exists;
  - c) update Table 5 the assessment of the Minister's Directions to justify the inconsistency with Direction 1.2 Rural Zones and 1.5 Rural Lands and address the new Direction 2.6 Remediation of Contaminated Land; and
  - d) include a copy of the Vegetation Management Plan prepared for the existing caravan park before the commencement of works as required by condition No.43.6.
2. The expansion of the caravan park requires the removal of preferred koala habitat. An environmental outcome needs to be identified in consultation with BCD, the Regional Team at DPIE and Council before commencing community consultation. Council should consider the replanting of Koala feed trees to establish a linkage between the expansion of the caravan park (eastern boundary) and the proposed rural residential allotment and zoning the environmental sensitive lands to E2 Environmental Protection.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authorities:

- NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division;
  - NSW Department of Planning, Industry and Environment - Geoscience Division;
  - NSW Rural Fire Service;
  - Transport NSW; and
  - Worimi Local Aboriginal Land Council.
5. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
  6. Given the nature of the planning proposal, Council should be the local plan-making authority.



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11/05/2020

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