



Planning Proposal

Myall River Downs Urban Release Area, Tea Gardens

Prepared by:

RPS

PO Box 428
Hamilton NSW 2303

T: +61 2 4940 4200

F: +61 2 4961 6794

E: newcastle@rpsgroup.com.au

W: rpsgroup.com.au

Prepared for:

Great Lakes Council

Breese Parade
Forster NSW 2428

Report No: 24737

Version/Date: V2, November 2011

Document Status

<i>Version</i>	<i>Purpose of Document</i>	<i>Orig</i>	<i>Review</i>	<i>Review Date</i>	<i>Format Review</i>	<i>Approval</i>	<i>Issue Date</i>
1	24.10.11 Report for Council	SR	RD	24-10-11	BJ 09-09-11	RD	24-10-11
2	16.11.11Report to DOP	RD	RD	16-11-11	BJ 16-11-11	RD	17-11-11

Disclaimers

This document is and shall remain the property of RPS. The document may only be used for the purposes for which it was commissioned and in accordance with the Terms of Engagement for the commission. Unauthorised copying or use of this document in any form whatsoever is prohibited.

Contents

1	INTRODUCTION	4
2	PART 1 AND 2 – INTENDED OUTCOMES AND EXPLANATION OF PROVISIONS	5
3	PART 3 – JUSTIFICATION	9
3.1	Section A – Need for the planning proposal	9
3.2	Section B – Relationship to strategic planning framework	11
3.3	Section C – Environmental, social & economic impact	15
3.4	Section D – State and Commonwealth Interests	22
4	PART 4 - COMMUNITY CONSULTATION	23
5	CONCLUSION	24

Appendices

APPENDIX 1

Site Locality and Existing Zoning Plans

APPENDIX 2

Indicative Rezoning Plan

APPENDIX 3

Council Report and Minutes (to be inserted post Council meeting)

APPENDIX 4

Compliance with Section 117 Directions

APPENDIX 5

Constraints and Opportunities Plan

APPENDIX 6

Flora and Fauna Assessment

APPENDIX 7

Bushfire Threat Assessment

APPENDIX 8

Aboriginal Archaeology Assessment

APPENDIX 9

Traffic Assessment

APPENDIX 10

Water Management Report & Review

I Introduction

This Planning Proposal explains the intended effect of, and justification for the proposed amendment to Great Lakes Local Environmental Plan 1996 (Great Lakes LEP 1996) that will rezone land known as the Myall River Downs Urban Release Area, at Tea Gardens. The planning proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning (DoP) Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

The Myall River Downs site was identified within the *Tea Gardens/Hawks Nest Conservation and Development Strategy (2003)* as a potential area for future urban growth. The site has been further identified in the *Tea Gardens/Hawks Nest Housing Strategy (2006)* as a site with potential to assist in meeting the demands associated with the projected population growth for the Tea Gardens/Hawks Nest locality.

The site is identified on the Growth Areas maps contained within the *Mid North Coast Regional Strategy, 2009* and has been the subject of recent environmental investigations associated with the preparation of a draft local environmental study under the now repealed provisions of the *Environmental Planning and Assessment Act 1979*.

The subject site is located off Myall Street, Tea Gardens. Tea Gardens is located approximately 60 km north of Newcastle and 100 km south of Taree. Myall Street forms the eastern boundary of the study area and the remainder of the site is surrounded by wetlands and environmental protection lands. The Myall Rivers Downs study area is shown in Appendix 1 and has an area of approximately 403 hectares.

The study area is described in real property terms as Lot 54 DP 1039382, Lot 41 DP 1123812, Sections 6 – 10 DP 13103 and Part Lot 404 DP 1093720 and is located north of existing urban development at Tea Gardens. The site is located approximately 2km north of the Tea Gardens commercial centre and approximately 3.5km from Hawks Nest. Future access to the site will be via Myall Street in the north and Limekilns road in the south. The site is currently zoned 1(a) Rural Zone, 7(a) Wetlands and Littoral Rainforest Zone and 7(a1) Environmental Protection Zone under Great Lakes Local Environmental Plan (LEP) 1996. A current zoning plan is contained in Appendix 1.

2 Part 1 and 2 – Intended Outcomes and Explanation of Provisions

The intended outcome of the Planning Proposal and Local Environmental Plan (LEP) is to rezone the site to a combination of zones, namely Zone 2(a) Low Density Residential, Zone 2(b) Medium Density Residential, Zone 4(a) General Industrial, Zone 6(a) Open Space and Recreation and Zone 7(a1) Environmental Protection under the Great Lakes LEP 1996.

The intended outcome will enable the gazettal of the LEP as an amendment to Great Lakes Local Environmental Plan 1996 and allow for residential and industrial subdivision and development in proximity the Teas Gardens and Hawks Nest areas, as well as the Pacific Highway. The intended outcome will also allow for conservation of a significant percentage of the site through the implementation of the 7(a1) Environmental Protection zone.

The outcomes of the planning proposal are well supported by the environmental and urban capability assessments prepared for inclusion within a draft Local Environmental Study (LES) prepared but not finalised in 2008, and more recent investigations. Relevant reports and assessments have been included within the Appendices of this planning proposal. Conclusions from all reports and investigation have been incorporated into Part 3 of this proposal. The outcomes of the planning proposal are considered to be consistent with the *Mid North Coast Regional Strategy (2009)*, which identifies the site as a Proposed Future Urban Release Area.

Specific outcomes of the planning proposal and resultant Local Environmental Plan (LEP) are to rezone the site to the following zones to allow for residential, industrial, open space and conservation uses, in accordance with section 55(2) of the *Environmental Planning and Assessment Act 1979*.

- Zone 2(a) Low Density Residential
- Zone 2(b) Medium Density Residential
- Zone 4(a) General Industrial
- Zone 6(a) Open Space and Recreation
- Zone 7(a1) Environmental Protection

The key aspects of the proposed zonings are outlined below:

2(a) Low Density Residential – this zone is proposed to be applied to approximately 179 hectares of the subject site (including the rezoning of the Hermitage and Grange residential Villages - approximately 43 hectares) and will enable residential development so that buildings within the zone will consist primarily of housing that generally does not exceed a height of 2 storeys and has private gardens. Other objectives of the zone enable development which:

- (i) is compatible with a low density residential environment; and

- (ii) affords services to residents at a local level; and
- (iii) Is unlikely to adversely affect the amenity of residential development within the zone; and
- (iv) Is unlikely to place demands on services beyond the level reasonably required for low-scale housing development.

2(b) Medium Density Residential – this zone is proposed to be applied to approximately 11 hectares of the subject site and will enable residential development so that buildings within the zone will consist primarily of a range of residential buildings that generally do not exceed a height of 3 storeys. Other objectives of the zone enable development which:

- (i) is compatible with a medium density residential environment; and
- (ii) affords services to residents at a local level; and
- (iii) is unlikely to adversely affect residential amenity; and
- (iv) does not place demands on services beyond the level reasonably required for medium density residential uses.

4(a) General Industrial – this zone is proposed to be applied to approximately 10 hectares of the subject site and will enable the development of a wide range of industrial and storage activities which do not have a materially detrimental effect on the amenity of adjoining residential areas. Other objectives of the 4(a) General Industrial zone enable commercial, retail, service and other development where it does not have a materially detrimental effect on the amenity of any adjoining residential areas, and that:

- (i) is ancillary to the use of land within the zone for industrial, service and storage purposes, or
- (ii) is primarily intended to provide personal services to persons occupied or employed in carrying out development otherwise permitted in the zone, or
- (iii) is associated with an industrial environment, or
- (iv) provides for relatively low-intensity commercial and retail uses with extensive floor space requirements which, by nature of the activity conducted, require direct and easy access to motor vehicle parking areas for loading purposes,

and is unlikely to prejudice the viability of established retail and commercial centres.

The proposed industrial zone will adjoin and connect with the existing Tea Gardens industrial area which is zoned 4(a) General Industrial.

6(a) Open Space and Recreation – this zone is proposed to be applied to approximately 8 hectares of the subject site. The objective of the zone is to restrict development for the purposes of leisure and recreation to that which:

- (a) promotes worthwhile community benefits, and
- (b) does not reduce the amount and distribution of public open space areas below acceptable levels and standards which meet the needs of the community, and

- (c) does not have an unacceptable impact on the amenity of adjoining areas, and
- (d) has been identified in a plan of management for the land adopted by the Council under Part 2 of Chapter 6 of the *Local Government Act 1993*.

The location of the area to be rezoned to 6(a) Open Space has been chosen because of its close proximity to the existing Myall Quays shopping centre and the main transport route of Myall Street. Its location will also provide for separation between industrial and residential uses.

7(a1) Environmental Protection – this zone is proposed to be applied to approximately 52 hectares of the subject site. The existing Wetlands and Littoral Rainforest zone and the existing Environmental Protection zones on the site total approximately 143 hectares, thus the addition of 52 hectares of Environmental Protection land will provide a combined total of 195 hectares of land zoned 7(a) / 7(a1) across the site. The objective of the 7(a1) Environmental Protection zone is to restrict development to that which:

- (a) will protect the special ecological, scientific, educational or aesthetic values of the terrestrial or aquatic ecosystem, and
- (b) will protect areas of significant vegetation and promote the regeneration of native plant communities, and
- (c) will protect the biodiversity of the land, including threatened or migratory species and their habitat, and
- (d) will protect significant conservation nodes, conservation reserves and linking corridors, and
- (e) will protect ecological processes and systems.

Management of Environmental Protection Areas

At this stage no preferred mechanism has been identified for the ongoing protection and management of the land that is recommended to be zoned environmental protection. Options include community title subdivision, dedication to a public authority, conservation agreement, environmental management Trust or property vegetation plan.

Council is negotiating with the developers on this issue, and in particular, whether the management objectives established in a Development Control Plan and Management Plan can be practically delivered by a Trust arrangement. While these discussions are progressing the rezoning can proceed through the gateway process. Council will only submit the LEP to the Minister to be made when the environmental management mechanism is in place.

Buffer to Tea Gardens Landfill

Tea Gardens landfill immediately adjoins the land in the north western corner. The landfill component of the facility is to be decommissioned in the near future and a new waste transfer station will be established on a different site adjoining the existing Tea Gardens industrial area. Council will, however, continue concrete crushing and timber grinding operations on the landfill site after all other operations have been discontinued.

There is potential for the crushing and grinding operations to cause noise conflict with residential development on the Myall River Downs if suitable attenuation measures are not implemented or if the operations are not relocated before development occurs. Numerous options are available, including enclosure of the operations and construction of attenuation mounds. Council therefore requires a provision to be inserted in the LEP. The provisions will prescribe that an acoustic assessment to be undertaken and any necessary noise attenuation measures to be implemented, to Council's satisfaction, to avoid noise conflict before development consent is granted. Council anticipates that that the area to be subject to the provision would be depicted by hatching on the LEP map. The same provision can then be readily transferred to the comprehensive LEP as a Local Provision.

The provisions to be included in the proposed LEP are outlined below, in accordance with section 55(2) of the Environmental Planning and Assessment Act 1979.

1 Name of plan

This plan is cited as *Great Lakes Local Environmental Plan 1996 (Amendment No. XX)*.

2 Aims of the plan

This plan aims to amend *Great Lakes Local Environmental Plan 1996* to zone the land to which this plan applies as follows:

- (a) To rezone the land to which this plan applies to part Zone 2(a) Low Density Residential, 2(b) Medium Density Residential, 4(b) General Industrial, 6(a) Open Space and Recreation and 7(a1) Environmental Protection.
- (b) To require an integrated approach to development and conservation outcomes within the land to which this plan applies through the preparation and adoption of a Development Control Plan.
- (c) To ensure any development on that land incorporates the principles associated with ecologically sustainable development in its planning and design.
- (d) To ensure that there are no conflicts between residential development on the land to which this plan applies and the activities on the adjoining landfill site.

3 Land to which this plan applies

This plan applies to Land at Tea Gardens being Lot 54 DP 1039382, Lot 41 DP 1123812, Sections 6 – 10 DP 13103 and Part Lot 404 DP 1093720 Myall Street and Limekilns Road, Tea Gardens, as shown by the heavy black edging on the map marked “Great Lakes Local Environmental Plan 1996 (Amendment No. XX)” deposited in the offices of Great Lakes Council.

An indicative rezoning plan is contained in Appendix 2.

3 Part 3 – Justification

3.1 Section A – Need for the planning proposal

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

The Myall River Downs site was identified within the *Tea Gardens/Hawks Nest Conservation and Development Strategy (2003)* as a potential area for future urban growth. The site was also identified in the *Tea Gardens/Hawks Nest Housing Strategy (2006)* as a site with potential to assist in meeting the demands associated with the projected population growth for the Tea Gardens/Hawks Nest locality.

The land is identified within the *Mid North Coast Regional Strategy 2009* as a proposed future urban release area. The growth area map identifies the broad boundaries for proposed future urban release area per the subject site including as small parcel of Proposed Employment Lands to the west and east of Myall Street. As stated in Appendix 2 of the *Mid North Coast Regional Strategy 2009*, the extent of development is to be based on completion of environmental and urban capability assessment including:

- land capability
- identification and protection of high conservation values
- protection of any current or proposed Aboriginal places under the *National Parks and Wildlife Act 1974*.

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

It is considered that an amendment to Great Lakes LEP 1996 through the Gateway Determination process and preparation of this planning proposal is the most effective way to achieve the objectives for this particular site and to accommodate additional growth in the Great Lakes local government area (LGA).

Due to its proximity to existing residential development to the east and the ability to extend access and services from these areas, Myall River Downs has potential to accommodate urban and industrial development.

To facilitate further growth and provide a choice of housing locations as well as cater for the various market sectors, additional land needs to be made available in Tea Gardens. Rezoning of the land is the only way to give a sound social, economic and environmental outcome for the community and to implement a key component of the *Tea Gardens/Hawks Nest Conservation and Development Strategy*, *Great Lakes Employment Land Strategy* and *Mid North Coast Regional Strategy 2009*.

3.1.3 Existing site specific studies and reports

Under the now repealed Section 54 of the *Environmental Planning and Assessment Act 1979* Council commissioned sub-consultants to prepare a local environmental study to

investigate rezoning of the site. As part of the environment study Council commissioned sub-consultants to complete environmental and urban capability assessments. Environmental investigations commissioned by the proponent were the subject of review by Council officers in 2008-2009. The review required further investigation by the proponent with regard to water management of the site. Subsequently, a Water Management Report was completed in July 2011 and this report was reviewed extensively by consultants WBM BMT on behalf of Council. Further details of the WBM BMT review are addressed in Section C of Part 3 of this planning proposal report.

All assessments and investigations have helped inform Council of the overall extent of development possible as detailed in the planning proposal. An outline of the conclusions of the various studies and reports is contained in Section C of Part 3 of this planning proposal report. Copies of the various studies and reports undertaken are found in the Appendices of this planning proposal report. Council has formally endorsed this planning proposal and a copy of the Council report and Minutes are contained in Appendix 3.

3.1.4 Is there a net community benefit?

A net community benefit arises where the sum of all the benefits of the LEP amendment outweigh the sum of all costs.

The following matters have been considered in an assessment of net community benefit.

The public interest reasons for preparing the planning proposal include:

- In line with the *Mid North Coast Regional Strategy 2009* the proposal provides opportunity for living opportunities around the major towns in the LGA. The proposed zonings as outlined present a suitable development option.
- The nature of the proposed rezoning is unlikely to affect the development of public transport, walking and cycling. Approximately 8 hectares of the subject site is to be rezoned for open space and recreation uses.
- The proposal seeks to locate residential living opportunities adjacent to the existing urban form of Tea Gardens. Both low density and medium density residential zonings are proposed, in association with an industrial zoning providing further employment opportunities. It is likely that trip patterns, travel demand and car use will not be significantly altered as a result of the proposal.
- The proposed rezoning will increase the economic performance of the area by providing opportunities for additional local services, businesses and industries which would normally be sourced from outside the local area. Local building services will be sourced upon development of the sites. Further, economic activity in the existing Tea Gardens centres, and potentially the Hawks Nest centre, will be boosted.
- There will be minimal cost to the public sector as a result of this proposal as new services and infrastructure will be funded by the developer, s94 contributions or Planning Agreements.
- The site is within close proximity to the Pacific Highway. The location of the site provides a number of advantages, including its proximity to major transport networks and location in proximity to Tea Gardens.
- The proposed residential rezoning is intended to allow some residential development

to occur in association with industrial development, and development of formal open space areas. The remainder of the site will remain as conservation lands.

The implications of not proceeding with the planning proposal include:

- The demand that currently exists for new, varied and affordable dwellings types would not be accommodated for.
- The potential for higher order land uses for the subject site would be lost, as the land is not supporting sustainable agricultural practices.
- The desired future outcomes for further development as identified within the *Mid North Coast Regional Strategy 2009* would not be realised.
- The opportunity to provide for economic and orderly development that builds upon and reinforces urban services and infrastructure.
- The ability of Council to cater for the future recreational and cultural needs of the community.

3.2 Section B – Relationship to strategic planning framework

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

Growth Areas Map 10 (Inset 10A) of the *Mid North Coast Regional Strategy 2009* covers Great Lakes South and shows the subject site as a Proposed Future Urban Release Area. The growth area map identifies the broad boundaries for residential expansion.

Appendix 2 of the *Mid North Coast Regional Strategy 2009* identifies the growth areas with significant issues to be resolved prior to rezoning. The subject site is included in this list, stating that the extent of development at the subject site is to be based on an environmental and urban capability assessment and is to address the following issues:

- Land capability
- Identification and protection of high conservation values
- Protection of any current or proposed Aboriginal places under the National Parks and Wildlife Act 1974.

The proposal is consistent with the *Mid North Coast Regional Strategy, 2009* as the site is identified within the Growth Area Maps contained within the document as a Proposed Future Urban Release Area and the proposal has investigated the environmental and urban capabilities of the site.

3.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The proposal is consistent with the following strategies:

- *Mid North Coast Regional Strategy, 2009.*
- *Tea Gardens/Hawks Nest Conservation and Development Strategy*
- *Tea Gardens/Hawks Nest Housing Strategy*

The planning proposal is also consistent with the *Great Lakes Employment Land Strategy* and the *Great Lakes Open Space and Recreation Strategy*.

The Planning Proposal is consistent with two of the Key Directions from Council's Community Strategic Plan. The two Key Directions are "Embracing and Protecting Our Natural Environment" and "Planning for Balance".

3.2.3 Is the planning proposal consistent with applicable state environmental planning policies?

State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14)

The aim of this State Environmental Planning Policy (SEPP) is to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the State. Clause 7(1) of the SEPP notes that a person shall not clear land, construct a levee, drain or fill lands identified as SEPP 14 wetlands without the consent of the Council and the concurrence of the Director-General of the Department of Planning. SEPP 14 wetlands exist on the subject site, although the proposed development area is located well outside the wetland areas, with no development expected or proposed in the vicinity of these areas. In-direct impacts of the flow of water from the proposed linear swales into lands in the vicinity of SEPP 14 wetlands are unlikely to affect the SEPP 14 wetlands.

State Environmental Planning Policy 44 – Koala Habitat Protection (SEPP 44)

SEPP 44 will apply to the subject site. SEPP 44 does not require planning proposals to undertake the same assessment process as that of development applications that trigger the operation of Clauses 6 through to 10 of SEPP 44. However, it encourages Councils to prepare plans of management for the whole or part of a local government area. In general, where a flora and fauna survey, as part of a planning proposal, identifies core koala habitat a koala plan of management (KPoM) must be prepared before a development application can be approved.

The southern portion of the site which is south of the Hermitage Retirement village contains "Core Koala Habitat" under SEPP 44. This area will be included in the 7(a1) Environmental Protection zone and will not be affected by urban development.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 – Remediation of Land provides a Statewide planning approach to the remediation of contaminated land. SEPP 55 requires consent authorities to consider contamination and remediation before rezoning land and when determining development applications. Geotechnical investigations were carried out by Parsons Brinckerhoff in 2004 and the site is largely disturbed and / or cleared. A preliminary contamination assessment of the site should be completed prior to Council considering the planning proposal after its Gateway Determination and exhibition.

State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71)

The subject site is identified as being in the 'coastal zone' as defined under SEPP 71. SEPP 71 has been prepared to ensure development within the NSW coastal zone is appropriately and suitably located, and aims to protect and preserve sensitive parts of the

NSW coastal zone. The SEPP was prepared under the auspices of the NSW Coastal Policy. The SEPP provides a clear assessment framework for the coastal zone and ensures that coastal planning and management is undertaken through a consistent and strategic approach.

Clause 8 of SEPP 71 should be taken into account by a council, when it prepares a draft local environmental plan that applies to land to which this Policy applies. In this case sub-clause (o) states the following:

Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities

The subject site is identified within the *Tea Gardens/Hawks Nest Conservation and Development Strategy (2003)* as a potential area for future urban growth and the *Tea Gardens/Hawks Nest Housing Strategy (2006)* as a site with potential to assist in meeting the demands associated with the projected population growth for the Tea Gardens/Hawks Nest locality. It is stated within the *Tea Gardens/Hawks Nest Conservation and Development Strategy (2003)* that “To emphasise economic development and the effective (as opposed to efficient) use of public investment, urban development should be compact, and located near the periphery of existing urban development centres” The proposal is located within walking distance of an established urban centre, thereby reducing car dependency. It is therefore considered that the Planning Proposal is consistent with SEPP 71.

Furthermore, the proposed rezoning has incorporated an element of minimum density controls to further encourage compact development.

SEPP 71 will be relevant for all future development applications relating to the site including subdivision of land. Under the provisions of the SEPP the Minister will be required to adopt a master plan for the site before the consent authority grants consent.

State Environmental Planning Policy – Rural Lands (Rural Lands SEPP)

The Rural Lands SEPP was gazetted in May 2008 and applies to the site. This SEPP identifies provisions for rural subdivisions, removes concessional allotment clauses, and identifies areas of State significant agricultural land.

The aims of the SEPP are to:

- Facilitate the orderly and economic use and development of rural lands for rural related purposes
- To identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State
- To implement measures designed to reduce land use conflicts
- To identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations

- To amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

The SEPP is also complemented by a Section 117 Direction (see Appendix 4). The emphasis on the SEPP revolves around the subdivision of rural land, and minimum lot sizes, although areas of significant agricultural land are/will be identified in Schedule 2 of the SEPP. For the subject site, the majority of the SEPP does not apply. Nevertheless, under the Section 117 Direction, an LEP, and therefore this planning proposal, must consider the Rural Planning Principles identified in the SEPP. The Rural Planning Principles include:

- The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas
- Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State
- Recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development
- In planning for rural lands, to balance the social, economic and environmental interests of the community
- The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land
- The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities
- The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing
- Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

The proposal to rezone the study area for residential use is consistent with the *Mid North Coast Regional Strategy 2009*, which identifies the study area as a Proposed Future Urban Release Area. Furthermore, the study area is not recognised as valuable agricultural land, but is in close proximity to Tea Gardens and will be able to make use of existing infrastructure and services in the area. Natural resources and constrained land such as native vegetation, biodiversity and water are considered elsewhere in this planning proposal. Therefore, the proposal is in accordance with the Rural Planning Principles.

State Environmental Planning Policy – Building Sustainability Index (BASIX SEPP)

All residential dwellings on the site would have to meet the water and energy efficiency requirements of the BASIX SEPP before a development application is approved by the consent authority.

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

The Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979*, issues directions that relevant planning authorities such as local councils must follow when preparing planning proposals for new LEPs. A table addressing compliance with the section 117 Directions is contained in Appendix 4.

3.3 Section C – Environmental, social & economic impact

A detailed assessment of the environmental issues and urban capability of the subject land has been completed by Council and was informed by site specific analysis provided to Council by consultants commissioned by the proponent, consultant information commissioned by Council as well as considerations by Council officers. These matters are considered further in the sections below and will continue to be reviewed during the Gateway Determination, agency feedback and exhibition processes. An overall vegetation and constraints plan and an opportunities plan is found in Appendix 5 and has been prepared to outline these constraints and identify a potential development footprint.

3.3.1 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?

RPS Harper Somers O'Sullivan (RPS HSO), now known as RPS, prepared a detailed flora and fauna assessment for the subject site in 2009. The assessment involved a review of existing literature relevant to the project to glean as much information as possible on the existing environment and ensure a holistic approach to ecological assessment. Notably the following flora and fauna investigations and impact assessments within the Myall River Downs site were considered:

- Conacher Travers (2007a) Species Impact Statement Proposed Rural Subdivision Part Lot 404 Spinifex Avenue Tea Gardens. A report for Myall River Downs Pty Ltd.
- Environmental Resources Management Australia (2007) Resolution of Deferred Matter – Great Lakes LEP 1996 (Amendment No. 44) and Statement of Environmental Effects, Crighton Properties Pty Ltd.
- Parsons Brinckerhoff (2003) Local Environmental Study, Myall River Downs. Great Lakes Council.

Additional references can be viewed within the RPS HSO Flora and Fauna report which is contained in Appendix 6.

The study included more recent survey works and investigations with some additional survey. Outlined below are the conclusions of the report that have been made in respect to the entire study area, however it should be noted that the recommendations were based upon the impact of a potential development footprint that included land in the southern portion of the site that is now no longer being considered for development.

- The study area provides suitable habitat for the threatened flora species *Grevillea parviflora* spp *parviflora* within the areas mapped as Open Woodland *Eucalyptus signata*;
- No EECs are present within the study area;

- The alteration of any drainage lines are to be avoided as this is likely to result in the Key Threatening Process of “Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands” which must be reduced through incorporating sediment and water management strategies into the planning, construction and occupation phases of the proposed development;
- Appropriate future development of the study area is considered unlikely to lead to a significant impact on the threatened fauna assessed, notwithstanding habitat for Koala, Squirrel Glider and Wallum Froglet. Habitat for these species will need to be carefully considered and managed;
- The study area contains some areas of “Core Koala Habitat” under SEPP 44, though these areas are contained within an area to be rezoned 7(a1) Environmental Protection and are not being considered for development.
- The study area is within close proximity to a SEPP 14 Coastal Wetland and must be protected through the implementation of a 100 metre buffer of the mapped wetland and through incorporating sediment and water management strategies into the planning, construction and occupation phases of the proposed development;
- If any proposed development adjoins lands zoned 7(a1) Environmental Protection it has the potential to be influenced by edge effects. Implementation of a 40 metre buffer has been recommended to minimise this impact.
- The minimum amount of clearing should take place as a general objective of the project, particularly within those areas that currently contain identified native vegetation communities as identified within the flora and fauna assessment.
- Map and document the hollow bearing trees within the study area and ensure that no more than 5% of hollow bearing trees are removed by the proposed development without further impact assessment. Mature and / or hollow-bearing trees should be retained wherever feasible and with regards to public safety within the development framework. However it is noted that the majority of hollow bearing trees are located within the existing and proposed 7(a1) Environmental Protection zone.
- Retain, cease slashing and fence the larger portion of the Open Woodland *Eucalyptus signata* to allow regeneration. Implement a vegetation management plan to guide rehabilitation of the community.
- Great Lakes Council rezone the Open Forest *Eucalyptus signata* vegetation community within its lands to 7(a1) Environmental Protection to conserve the population of *Grevillea parviflora* subsp. *parviflora* found therein. Targeted surveys should be undertaken within these lands to determine the size and extent of the population. Rezoning of the subject site is unlikely to impact these populations however.
- Proposed sediment retention ponds should be landscaped with fringing wetland vegetation (e.g. *Typha* sp.) to provide habitat for guilds such as frogs and waterbirds, including the threatened Wallum Froglet which inhabits the study area.
- A weed management and monitoring plan for the study area should be developed and implemented to minimise the potential for the invasion of aquatic and terrestrial weed species into the SEPP 14 wetland and buffer zones. The weed management and monitoring plan should be developed in consultation with OEH to ensure consistency with management strategies undertaken for the adjacent Myall Lakes National Park and Corrie Island Nature Reserve.

As outlined in part 2 of this planning proposal report, at this stage no mechanism has been identified for the ongoing protection and management of the land that is recommended to be zoned environmental protection. Options include community title subdivision, dedication to a public authority, conservation agreement, environmental management Trust or property vegetation plan. This will be important as an offset for the clearing that will have to be undertaken for development within the 2(a) and 2(b) zones.

In summary there is little likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Planning Proposal. As detailed in the constraints and opportunities plan the majority of the area to be rezoned for urban development is disturbed and / or cleared land.

Consequently much of the vegetation on site will be afforded protection within the 7(a1) Environmental Protection zone. At the same by allowing development to occur in the areas identified in the opportunities plan a balanced outcome will be achieved with the expansion of the existing urban form of Tea Gardens in a logical and co-ordinated manner.

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

Under the now repealed Section 54 of the Environmental Planning and Assessment Act 1979 Council commenced the preparation of an environmental study to investigate the environmental issues and urban capability of the subject land. As part of the environment study Council commissioned a number of consultants to assess such issues and a summary of their findings are provided below.

Bushfire

RPS Harper Somers O'Sullivan (RPS HSO), now known as RPS, prepared a bushfire threat assessment for the subject site in November 2008 and a copy is provided in Appendix 7.

The assessment was undertaken in accordance with relevant legislation and Planning for Bushfire Protection 2006 guidelines. The assessment is general in nature because a development footprint had not been identified at the time of its preparation. However the assessment lists the bushfire controls that would need to be incorporated into any future development area on the site. In summary, the following is recommended to enable the proposal to meet the relevant legislative requirements:

- APZ's of 60 metres will be required between future dwellings and vegetation external to any Tourist development.
- APZ's of 20 metres will be required between future dwellings and vegetation external to the proposed dwellings along the northern and southern boundary.
- Any future dwelling within the proposed development should have due regard to the specific considerations given in the BCA, which makes specific reference to the Australian Standard (AS3959 – 1999) construction of buildings in bushfire prone areas.
- Roads are to be constructed in accordance with section 4.1.3 (1), PBP 2006 as outlined in Section 7 of this report. Any lessening of these requirements will need a performance-based assessment to be undertaken.

- Any proposed development should be linked to the existing mains pressure water supply and that suitable hydrants be clearly marked and provided for the purposes of bushfire protection. Fire hydrant spacing, sizing and pressure should comply with AS2419.1, 2005.

The recommendations as outlined above will assist in developing an appropriate development footprint for the site solely contained within the 2(a) and 2(b) zone boundaries suggested in the indicative zoning plan contained in Appendix 2. However, an updated bushfire threat assessment may need to be undertaken based on a definitive development area, most likely at the development application (subdivision) stage and hence after rezoning has occurred.

Aboriginal Archaeology

RPS Harper Somers O'Sullivan (RPS HSO), now known as RPS, were commissioned to assess the cultural origin of Aboriginal cultural heritage sites at the site. A copy of the report is provided in Appendix 8. The assessment included the impact of a potential 8 lot subdivision in a portion of the site south of the Hermitage Retirement Village. This component of the overall development proposal has been withdrawn by the proponent. Key observations and recommendations provided below relate to impacts of development north of the area that was considered for the 8 lot subdivision.

The site has been the subject of a previous archaeological survey by Silcox (1999) and an archaeological assessment for a proposed eight lot subdivision on the site as identified in Figure 1-1 by Environmental Resource Management (ERM) Pty Ltd (2007). Silcox recorded ten Aboriginal cultural heritage sites (middens) during his survey, labelled M1-M10, it would appear that these were not recorded with the Department of Environment and Climate Change (DECC). A survey and subsequent report by ERM, to inform the proposed eight lot subdivision, differed in its opinion of the location and extent of the midden sites noted in the Silcox report.

RPS HSO conducted a preliminary survey and a second more detailed survey. It was found that the sites identified by Silcox were middens of Aboriginal cultural heritage origin. As required under the New South Wales National Parks and Wildlife Act 1974, S.91-Notification of Relics they were recorded during the survey for listing with the NSW Department of Conservation and Climate Change (DECC) on the Aboriginal Heritage Management Information System (AHIMS). The sites labelled as M1, M2 and M3 by Silcox have now been recorded on the AHIMS as MRD1, MRD2 and MRD3. These three sites are identified on the constraints plan contained in Appendix 5 and will not be within the development area as identified in the opportunities plan in Appendix 5 and the Indicative Rezoning Plan contained in Appendix 2. Similarly M4 to M10 identified by Silcox are already in environmental conservation zones and these have not been assessed, but remain to be assessed.

The assessment by RPS HSO recommended that consultation occurs with the local Aboriginal community to develop an Aboriginal Cultural Heritage Management Plan (ACHMP) for the Myall River Downs area. With regard to the specific sites, as identified in the constraints plan and the opportunities plan contained in Appendix 5, all sites will be contained within the environmental protection zone. MRD1 is inside the development area but not in any identified impact zone. Nevertheless, MRD1 is considered to be of

high significance and particular reference afforded it in any future ACHMP. MRD2 was found to be in a highly disturbed state and following consultation with the Aboriginal community, if development is proposed there are no considered impediments, on scientific grounds, to its destruction with a S90 application to the DECC required. MRD3 is outside the proposed development zone and should not be impacted upon, however, all care should be taken that inadvertent damage is not caused.

The RPS HSO assessment recommended:

- Should works uncover or disturb suspected archaeological material, work should cease immediately and the DECC (now Office of Environment and Heritage (OEH)) and KLALC advised so that a suitable management strategy can be determined.
- If human remains are uncovered or disturbed all activity in the specific location must immediately cease, the remains should not be disturbed or moved, and the Police and the OEH notified
- During development at locations in proximity to known archaeological sites, appropriate fencing should be erected and clearly marked as 'No Unauthorised access' area. Workplace protocols should include a description of the sites location and document appropriate work behaviour when operating near to archaeological sites.

The assessment concluded that Non-Indigenous archaeology poses no constraints across the subject area. A search of the Great Lakes Heritage Study - Draft (2003) revealed no recorded sites within the subject area. This was confirmed by Silcox in his 1999 survey which recorded no European structures or items of historical significance. In regards to non-Indigenous cultural heritage, works may progress with regard the following:

- If, during the course of clearing work, significant non-Indigenous cultural heritage material (for archaeological items it is those exceeding 50 years in age) is uncovered work should cease immediately. The NSW Heritage Office should be notified and works only recommence when an appropriate and approved management strategy instigated

Access and Traffic

Northern Transport Planning and Engineering prepared a traffic impact assessment for the site in December 2008 and a copy of the report is contained in Appendix 9. The objective of the traffic impact assessment was to examine the impact of any proposed development on the existing road network. The traffic assessment examines the impact of the existing road network for the following elements:

- 1) Up to 1500 Residential Dwellings
- 2) 106,000 sq m Light Industrial Estate (Gross Floor Area ~ 35% i.e. 37,100 sq m)
- 3) The Grange Retirement Village 100 units (existing)
- 4) The Hermitage Retirement Village 280 units

Results from the traffic assessment demonstrated that the proposed 2 lane roundabouts at two different access points off Myall Street will be able to accommodate traffic flows predicted through to year 2028. However, the existing intersection of Settlers Way and

Myall Street will fail in 2018 due to the conflict between the predicted right turn out of Settlers Way and through traffic flows on Myall Street.

As suggested by traffic consultants ROADNET in their Traffic Management Plan for Tea Gardens prepared in 2007 the intersection of Settlers Way and Myall Street will require an upgrade to Traffic Control Signals (TCS) to accommodate predicted future traffic. The analysis reported above indicates that the provision of TCS at the intersection of Myall Street and Settlers Way will perform adequately at LOS C in year 2028.

The report recommends that based on the assessment of the concept plan that the proposed development can be accommodated within the existing road network based on appropriate upgrades being provided. It is therefore recommended that the proposal can proceed through the rezoning process.

Water Management

The Myall River Downs site has a complex drainage regime traversing a very flat topography. It includes man-made channels that do not always follow the natural topography of the site. Sub-surface groundwater flow is a dominant process across the site during periods of dry weather. The interaction of surface water after heavy rain with natural high water tables adds to be complex hydrology of the site.

As part of a Draft LES prepared in 2003 Parson Brinckerhoff conducted an assessment of flooding, surface hydrology and drainage, water quality and groundwater on the Myall River Downs site. In 2006 a Water Management Strategy for the subject site was prepared by Patterson Britton, on behalf of the landowner.

More recently, the proponent engaged Worley Parsons, in-conjunction with Martens Consulting Engineers, to prepare a Water Management Report in consideration of the proposed rezoning of the site. A copy of the Water Management Report is contained in Appendix 10.

According to the Water Management Report the proposed development and storm water drainage concept plan and system has been formulated to:

- Minimise the quantity of fill required over the site. The fill quantity required has been reduced markedly from the estimated 900,000 m³ in previous concepts to an estimated 230,000m³;
- Provide adequate grade to runoff;
- Accommodate flows from the external catchment;
- Accommodate 100 year ARI flows in the proposed drainage channels;
- Accommodate a 0.9 metre rise in sea level by 2100;
- Maintain the distribution of storm water flows in accordance with existing conditions;
- Not significantly change the groundwater flow or quality; and
- Have a minimum invert level of the drainage channels at RL 1.4 m AHD. The minimum channel invert has been adopted to restrict the incursion of seawater to

above the mean high tide level after a 0.9 metre sea level rise.

In broad terms the drainage concept system consists of a series of primary and secondary channels across the site. The secondary drainage channels will drain to the primary drainage channel running generally north – south. Parts of both the primary and secondary channels will intersect with the groundwater. In the higher parts of these channels bio-retention areas will be incorporated to treat runoff sufficiently to have a water quality better than the groundwater. A variety of landscape treatments including wetlands is proposed in the lower sections of these channels in order to a runoff pollutant load reduction. These will ensure that the surface water is treated to the expected standard.

Linear perimeter swales and/or wetlands located outside the perimeter road (which delineates developable land to the north and west from lands with environmental attributes) are proposed to disperse flows. The primary objective of the flow dispersal is to ensure that current flow regimes are preserved as much as possible so that water dependent ecosystems are not adversely affected. This soft engineering infrastructure will direct flows into storm water dissipation zones with the purpose of reducing runoff volumes. Some areas will be re-vegetated to aid in the evapotranspiration of runoff from the development.

The earlier and most recent studies were subsequently reviewed by BMT WBM who were engaged by Council to provide independent expert advice on the matters and recommendations of the reports. A copy of the independent advice is contained in Appendix 11.

BMT WBM consider the final water management report (Appendix 10) to adequately address the points raised during the necessary meetings between the proponents consultants and Councils'. Water quantity and quality issues have been broadly characterised and the predicted impacts of the development, including the assessment of the impact of a predicted sea level rise, are considered reasonable. However, BMT WBM has stated that the level of detail in surface and groundwater modelling is limited. As such, there are some remaining issues that BMT WBM recommend be resolved at the development application stage. There are also two remaining issues that have not been addressed by studies, that should be considered during the rezoning phase, which include:

- 1) The ability of the proposed linear constructed wetland within the Climate Change Transition Zone (area south and west of the perimeter road) to manage the impacts of increase site discharge on the natural wetland/ecosystem health; and
- 2) The need or appropriateness of the proposal to form unlined constructed wetlands in the base of the main channel.

In summary, the concept water quality management strategy adequately addresses concerns regarding the impact on groundwater quality and flows to the wetlands. The concept involves considerably less fill than contemplated in earlier studies and investigations and has factored in a predicted sea level rise. At this stage it considered that sufficient information has been provided to enable a Gateway Determination and

further investigation of the matters outlined by Council's water management consultants can be investigated once a Gateway Determination has been given.

A Development Control Plan is being prepared for the land. The DCP will reinforce the requirement for the matters identified by BMT WBM to be addressed in detail at the development application stage.

Existing Sand Quarry

A small portion of the study area is currently used for a sand mining operation refer to Appendix 5 Vegetation and Constraints plan. Approval to carry out sand mining activities on the site was issued over 20 years ago and is still current. Currently the quarry is partly zoned 1(a) Rural and 7(a) Wetlands and Littoral Rainforest. The Planning Proposal will rezone the 1(a) Rural component of the quarry to 7(a1) Environmental Protection but will not affect the existing use rights of the quarry itself. Any urban development near the quarry site will be in the later stages of the development of the urban release area. Quarrying operations are likely to be exhausted by the time development is being contemplated in the vicinity. Nevertheless, operations of the quarry should be reviewed when development in the vicinity is being planned to ensure there will be no land use conflicts.

3.4 Section D – State and Commonwealth Interests

3.4.1 Is there adequate public infrastructure for the planning proposal?

Reticulated sewer and water, electricity and telecommunications infrastructure are available to the subject site and hence it is considered that there is adequate public infrastructure available or suitable capacity for upgrading at the proponents expense.

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

As part of the environmental study process, Council consulted with a number of government agencies. However, only some of the nominate authorities responded and many of the responses that were received are now over 2 years ago. Hence it is anticipated that post Gateway Determination, Council undertake further consultation with the relevant public authorities.

However, in developing the concept water quality management strategy the proponents' consultants, as well as consultants engaged by Council, consulted with the NSW Office of Water. The NSW Office of Water requirements were that the development should not have a significant adverse impact on groundwater quality and flows to the wetlands on the site boundary. Any runoff from the development entering wetlands or channels which extend into the groundwater, the runoff quality should be equal to or better than the quality of the groundwater.

This advice has been considered within the concept water quality management strategy and in its' independent review.

4 Part 4 - Community Consultation

In accordance with Section 57 (2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved prior to community consultation being undertaken. The planning proposal does not meet the criteria and definition of being a low impact planning proposal given the fact that some 190 hectares of land could be developed for residential purposes and 10 hectares for industrial purposes. Therefore it is intended that this proposal be exhibited for a minimum period of twenty-eight (28) days. To engage the local community the following will be undertaken:

- Notice in the local newspaper
- Exhibition material and relevant consultation documents to be made available at Councils Administration Buildings at Tea Gardens and Forster;
- Consultation documents to be made available on Councils website; and
- Letters, advising of the proposed rezoning and how to submit comments will be sent to adjoining landowners and other stakeholders that Council deem relevant to this planning proposal.
- Community presentation by Council staff.

At the close of the consultation process, Council officers will consider all submissions and present a report to Council for endorsement before proceeding to finalisation of the Planning Proposal and draft LEP amendment.

5 Conclusion

The subject site was identified in the *Tea Gardens/Hawks Nest Housing Strategy (2006)* as a site with potential to assist in meeting the demands associated with the projected population growth for the Tea Gardens/Hawks Nest locality. It is therefore considered that rezoning is consistent with the Strategy. Rezoning of the site is also consistent with the *Mid North Coast Regional Strategy, 2009* which identifies the site as a Potential Future Urban Release Area.

The intended outcome will allow for residential and industrial subdivision and development in proximity to Tea Gardens and Hawks Nest urban centres. The intended outcome will also allow for conservation of a significant percentage of the site through the implementation of the 7(a1) Environmental Protection zone.

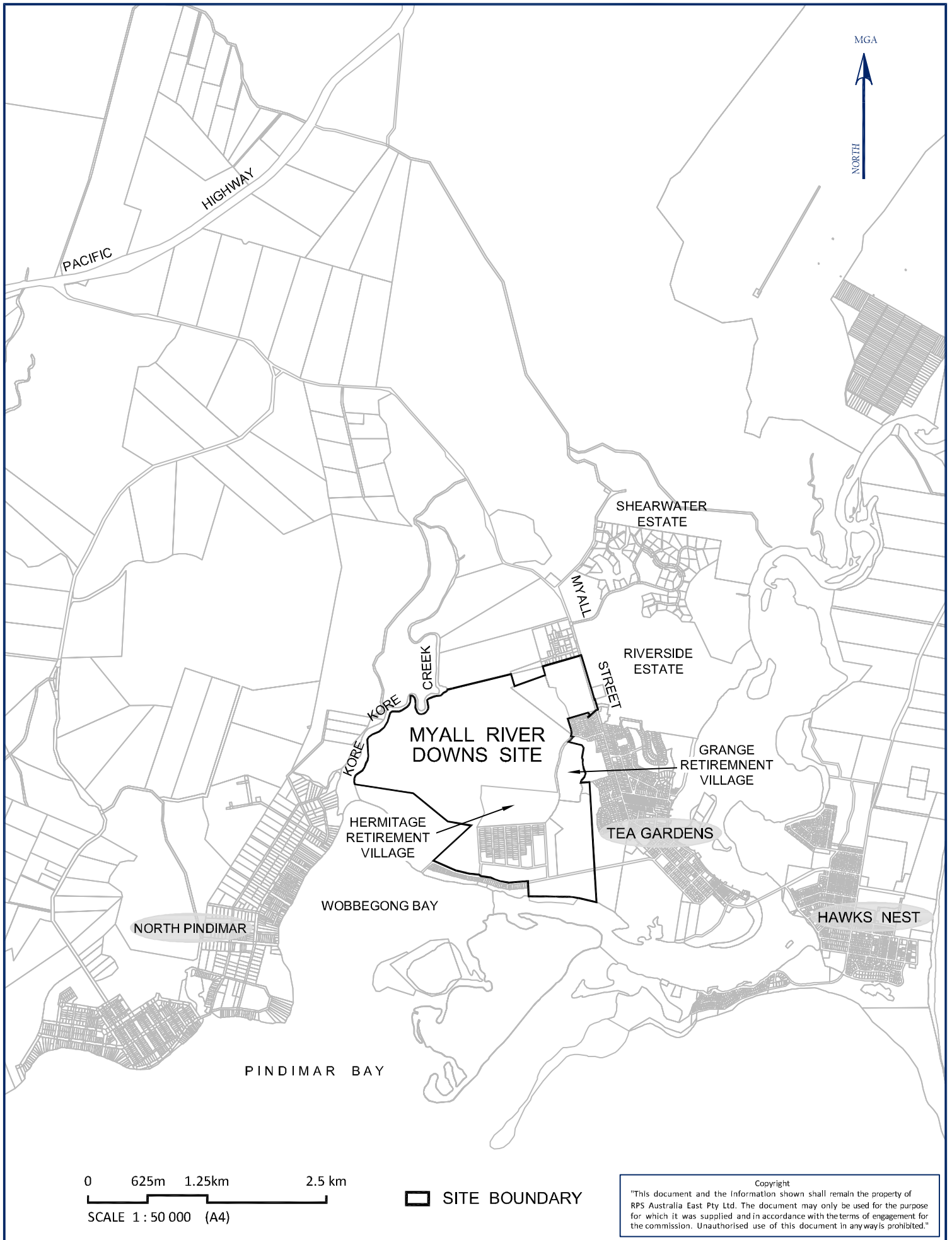
The outcomes of the planning proposal are well supported by the environmental and urban capability assessments contained within the Appendices of this planning proposal.

Having regard for the studies already undertaken it is recommended that the planning proposal be endorsed by Council and subsequently submitted to the NSW Department of Planning for a gateway determination.

A Development Control Plan is being prepared for the land and will reinforce the requirement for the matters identified in the various environmental and urban capability assessments to be addressed in detail at the development application stage.

Appendix I

Site Locality and Existing Zoning Plans



TITLE: SITE LOCALITY PLAN

LOCATION: MYALL RIVER DOWNS
TEA GARDENS

DATUM:
PROJECTION:

DATE: 20TH OCT 2011
PURPOSE: PLANNING
PROPOSAL

CAD REF: 24737 - 2C
VERSION (PLAN BY): LOCALITY A4 B&W

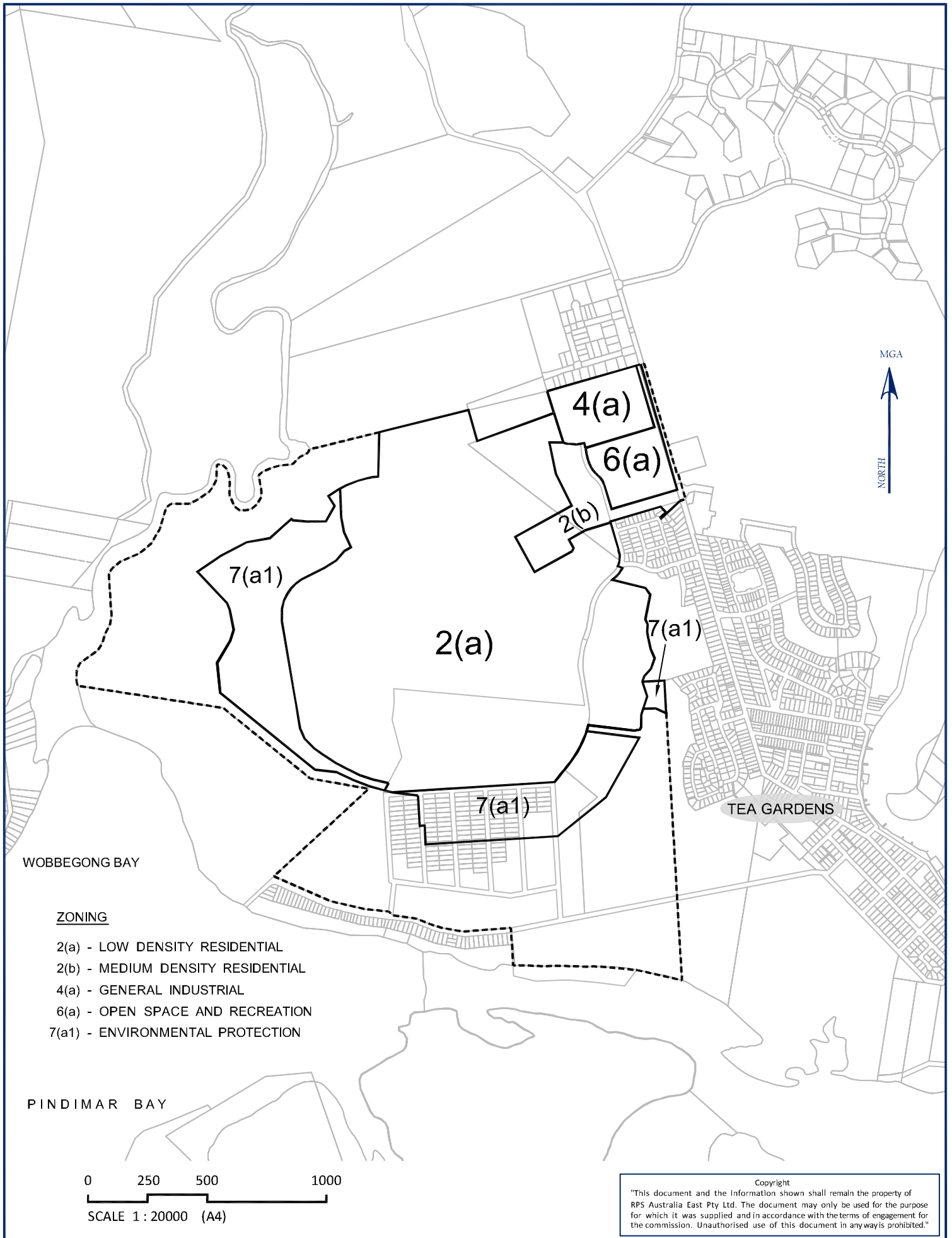
CLIENT: GREAT LAKES COUNCIL
JOB REF: 24737

RPS AUSTRALIA EAST PTY LTD (ABN 44 140 292 762)
241 DENISON STREET BROADMEADOW PO BOX 428 HAMILTON NSW 2303
T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au

RPS

Appendix 2

Indicative Rezoning Plan



TITLE: INDICATIVE ZONING PLAN

LOCATION: MYALL RIVER DOWNS
TEA GARDENS

DATUM:
PROJECTION:

DATE: 20TH OCT 2011
PURPOSE: PLANNING
PROPOSAL

CAD REF: 24737 - 2C
VERSION (PLAN BY): INDICATIVE ZONING

CLIENT: GREAT LAKES COUNCIL
JOB REF: 24737

RPS AUSTRALIA EAST PTY LTD (ABN 44 140 292 762)
241 DENISON STREET BROADMEADOW - PO BOX 428 HAMILTON NSW 2303
T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au

RPS

Appendix 3

Council Report and Minutes

Subject: PES - Planning Proposal for Residential Rezoning at Myall River Downs
Index: SP-LEP-23
Author: Manager Strategic Planning - Roger Busby
Release Area Co-ordinator - Rob Dwyer (RPS)
Strategic Committee Meeting: 8 November 2011

Mr Rob Dwyer, RPS Australia East Pty Ltd provided a presentation to the Committee on the Myall River Downs Rezoning proposal.

Mr Peter Childs, Creighton Properties, presented to the Committee in relation to the proposed management model for the conservation areas.

RECOMMENDATION:

In relation to the Release Area referred to as Myall River Downs it is recommended that:

- A. Council endorse the planning proposal as contained in Attachment A to this Business Paper and submit it to the NSW Department of Planning and Infrastructure in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979.
- B. In the event the planning proposal is given a gateway determination to proceed, consult with the community and government agencies in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and the directions of the gateway determination.
- C. A further report be presented to Council following the public exhibition process, to demonstrate compliance with the gateway determination and to provide details of any submissions received.
- D. The planning proposal only be finalised after exhibition when a legally binding mechanism is in place for the ongoing management of the conservation areas, stormwater management infrastructure and associated land required for drainage that does not impose an unreasonable cost burden upon Council.

RESOLUTION

(Moved K Hutchinson/Seconded M Tuffy)

That the above recommendation be adopted.

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

FOR VOTE - Cllr J McWilliams, Cllr M Tuffy, Cllr J Stephens, Cllr K Hutchinson, Cllr L Vaughan, Cllr J Weate

ABSENT. DID NOT VOTE - Cllr C McCaskie, Cllr L Roberts, Cllr L Gill

Subject: PES - Planning Proposal for Residential Rezoning at Myall River Downs
Index: SP-LEP-23
Author: Manager Strategic Planning - Roger Busby
Release Area Co-ordinator - Rob Dwyer (RPS)
Strategic Committee Meeting: 8 November 2011

SUMMARY OF REPORT:

This report provides an overview of the planning proposal for the rezoning of land north of Tea Gardens known as the Myall River Downs Urban Release Area. The land is located immediately north west of the Tea Gardens urban on the western side of Myall Street. The site has been identified within the Mid North Coast Regional Strategy as a proposed future urban release area subject to the completion of environmental investigations. This report recommends the endorsement of the planning proposal and its submission to the Department of Planning and Infrastructure for consideration.

SUMMARY OF RECOMMENDATION:

In relation to the Release Area referred to as Myall River Downs it is recommended that:

- A. Council endorse the planning proposal as contained in Attachment A to this Business Paper and submit it to the NSW Department of Planning and Infrastructure in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979.
- B. In the event the planning proposal is given a gateway determination to proceed, consult with the community and government agencies in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and the directions of the gateway determination.
- C. A further report be presented to Council following the public exhibition process, to demonstrate compliance with the gateway determination and to provide details of any submissions received.
- D. The planning proposal only be finalised after exhibition when a legally binding mechanism is in place for the ongoing management of the conservation areas, stormwater management infrastructure and associated land required for drainage that does not impose an unreasonable cost burden upon Council.

FINANCIAL/RESOURCE IMPLICATIONS:

The planning proposal and rezoning was included in the Release Area program is continuing on a "user pays" basis.

POLICY IMPLICATIONS:

Endorsement of the planning proposal will establish Council's land use policy for the development and conservation of the Myall River Downs release area.

LEGAL IMPLICATIONS:

There is always the possibility that a gazetted Local Environmental Plan could be legally challenged.

LIST OF ANNEXURES:

- A: Site location plan.
- B: Summary constraints and opportunities plan.
- C: Indicative rezoning plan.

LIST OF ATTACHMENTS:

- A: Planning Proposal – Myall River Downs Urban Release Area, Tea Gardens.

Due to its large size, Attachment A has been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.

REPORT:

The purpose of this report is to provide a summary of the planning proposal for the subject land for submission to the NSW Department of Planning and Infrastructure.

BACKGROUND

The process of rezoning the land to date has been:

- In 1994 the owners of the Myall River Downs (MRD) site commissioned EDAW to prepare the Myall River Downs Strategic Options Plan. This study identified opportunities and constraints for the development of the study area at that time. The Strategic Options Plan proposed 740 residential allotments ranging in size between 450 and 800 square metres, 180 rural residential allotments, a 240 dwelling manufactured home estate, a plant nursery, equestrian centre and associated open space.
- As the work on the rezoning of the MRD site progressed legislative changes meant Great Lakes Council required the preparation of an updated environmental study. Parsons Brinckerhoff (PB) were subsequently engaged by Council to prepare a local environmental study (LES) for the site which was submitted to Council in 2003. The Draft LES was placed on public exhibition between 3 November 2003 and 19 January 2004. At that stage the Myall River Downs site was approximately 460 hectares in size, of which 150 hectares (33%) was identified as developable by PB.
- Following the exhibition of the draft LES, a number of issues arose that delayed the finalisation of the draft LES. These included the approval by the Land and Environment Court of the 281 dwelling Hermitage Retirement Village on the Myall River Downs site, as well as a number of legislative changes to the Environmental Planning and Assessment Act (EP&A Act), Environmental Planning and Assessment Regulations and State Environmental Planning Policies (SEPPs). The site was also affected by the introduction of the Major Projects SEPP, and subsequently Part 3A of the EP&A Act introduced in 2005. Concerns were also raised by the proponent that took some time to resolve.
- The introduction by the State Government of Climate Change Policies relating to potential Sea Level Rise resulted in a review of the flood characteristics of the site. Worst case scenarios, which include a potential 0.9m rise in sea levels by 2090, had to be assessed as well as the potential for increased intensity and frequency of storm events.
- Detailed studies have been undertaken to gain an understanding of the inter-relationship between surface water and groundwater on the site. The water quality of the groundwater aquifer has been assessed and surface water quality monitoring and modelling has been carried out to gain an understanding of water management issues related to the site.

These studies have been peer reviewed to provide high confidence levels in relation to the information upon which future decisions are based.

The studies and investigations have now reached the stage where Council can prepare a Planning Proposal. Based on these studies Council can have a high of confidence that the proposed zones represent a sustainable development and conservation outcome.

THE LAND

The planning proposal relates to Lot 54 DP 1039382, Lot 41 DP 1123812, Sections 6 – 10 DP 13103 and Part Lot 404 DP 1093720 located to the immediate north west of the existing Tea Gardens urban area, as shown in the site location plan in Annexure A. The overall study area is approximately 460 ha in area.

PLANNING PROPOSAL

The intended outcome of the Planning Proposal and LEP is to rezone the site to Zone 2(a) Low Density Residential, Zone 2(b) Medium Density Residential, Zone 4(a) General Industrial, 6(a) Open Space and Recreation, and 7(a1) Environmental Protection under the Great Lakes LEP 1996.

This outcome will provide opportunities for urban expansion in close proximity the Teas Gardens and Hawks Nest areas, as well as the Pacific Highway. The outcome will also allow for conservation of a significant percentage of the site through the implementation of the 7(a1) Environmental Protection zone.

These outcomes are well supported by the environmental and urban capability assessments prepared for inclusion within the 2008 Local Environmental Study (LES) and more recent investigations, conclusions from which have been incorporated into the Planning Proposal contained in Attachment A. The Planning Proposal is considered to be consistent with the Mid North Coast Regional Strategy (2009), which identifies the site as a Proposed Future Urban Release Area.

The key aspects of the planning proposal are outlined in the following section.

ENVIRONMENTAL AND URBAN CAPABILITY ASSESSMENT

A detailed assessment of the environmental issues and urban capability of the subject land has been completed by Council and documented in the planning proposal contained in Attachment A. The assessment was informed by site specific analysis provided to Council by the consultants commissioned by the proponent, consultants commissioned by Council as well as considerations by Council officers.

The following matters were identified as the constraints to development of the subject land:

- Tea Gardens landfill. This adjoins the land in the north western corner. The landfill component of the facility is to be decommissioned in the near future and a new waste transfer station will be established on a different site adjoining the existing Tea Gardens industrial area. Council will, however, continue concrete crushing and timber grinding operations on the landfill site after all other operations have been discontinued.

There is potential for the crushing and grinding operations to cause noise conflict with residential development on the Myall River Downs if suitable attenuation measures are not implemented or if the operations are not relocated before development occurs. Options to overcome any potential conflict are available, including enclosure of the operations and construction of attenuation mounds.

Council should therefore require provisions to be inserted in the LEP. The provisions should prescribe that an acoustic assessment to be undertaken and any necessary noise attenuation measures to be implemented, to Council's satisfaction, to avoid noise conflict before development consent is granted. Council anticipates that the area to be subject to the provision would be depicted by hatching on the LEP map. The same provision can then be readily transferred to the comprehensive LEP as a Local Provision.

- Flooding, drainage and the implications of sea level rise.
- Water quality.
- Preservation of current stormwater flow patterns and quantities so as to ensure environmental flows to downstream ecosystems are maintained.
- The study area is within close proximity to a SEPP 14 Coastal Wetland and must be protected through the implementation of a 100 metre buffer of the mapped wetland and through incorporating sediment and water management strategies into the planning, construction and occupation phases of the proposed development.
- Ecological issues, including core Koala habitat" under SEPP 44, threatened species habitat, important vegetation communities and overall high biodiversity.
- Preservation of fauna movement corridors
- A number of Aboriginal archaeological middens are located within the study area, although not within the part of the site now identified for development.
- Existence of a sand quarry and the need to ensure there is no conflict with future residential development.

A constraints and opportunities plan is contained in Appendix 5 in the Planning Proposal contained Attachment A. The constraints plan has enabled Council to identify a potential development footprint. A summary constraints and opportunities plan is contained in Annexure B to this report.

Opportunities for the site include the provision of both low density and medium density residential zonings and an industrial zoning adjacent to the existing Tea Gardens industrial area. This is also an ideal opportunity for Council to make a strategic decision to provide for the long term open space and community needs of the area by providing for a central focus node for such activities. Such a node, of approximately 8ha, would be close to the entry road to Tea Gardens and Hawks Nest and would be close to the main future shopping area for the sub region.

The majority of the area to be rezoned for urban development is disturbed and / or cleared land. The remaining land of high ecological value is proposed to be zoned 7(a1) Environmental Protection.

All environmental issues and urban capability assessment matters will continue to be reviewed during the Gateway Determination, agency feedback and exhibition processes.

The main issues identified above matters are addressed in detail within the Planning Proposal contained in Attachment A to this report.

An indicative rezoning plan based upon these constraints and opportunities is contained in Annexure C. The indicative rezoning plan shows approximately 179ha to be rezoned to Zone 2(a) Low Density Residential, 11ha to be rezoned to 2(b) Medium Density Residential, 10ha to be rezoned to 4(a) General Industrial, 8ha to be rezoned to 6(a) Open Space and Recreation, and 52ha to 7(a1) Environmental Protection.

OTHER ISSUES

1. *Maintenance and Management of Conservation Areas and Drainage Infrastructure*

At this stage no preferred mechanism has been identified for the ongoing protection and management of the land that is recommended to be zoned environmental protection. Options include community title subdivision, dedication to a public authority, conservation agreement, environmental management Trust or property vegetation plan.

There will also be substantial land allocated to drainage facilities within the site as well significant water quality and drainage infrastructure that will have to be provided. Ongoing ownership and the cost of maintenance of the drainage infrastructure is a major issue that will have to be resolved before the rezoning is finalised.

Council is negotiating with the developers on this issue, and in particular, whether the ownership and ongoing management and maintenance of the conservation land and drainage infrastructure could be practically undertaken by a Trust arrangement. The developers concept is for the conservation areas and drainage land and infrastructure to be managed by a Trust in accordance with a Development Control Plan and comprehensive management plan.

Preliminary documentation to outline the Trust concept has been submitted and is being reviewed. This is an entirely new concept for Great Lakes Council and will be evaluated in consultation with legal advisers. There are two overriding issues with this concept. Firstly, a certainty that Council will not be left with the management and maintenance responsibilities in the event the Trust is abandoned or fails and, secondly, that sufficient funds are available for the necessary works. A Planning Agreement is likely to be a key legal mechanism to give effect to the concept.

While these discussions are progressing the rezoning can continue through the gateway process. Council should only submit the LEP to the Minister to be made when the environmental management mechanism is in place.

2 *Need for a Development Control Plan*

There are numerous matters that will have to be included in a DCP for the land so as to guide the future form of development and to outline the main development considerations and development controls. The matters to be included in the DCP are:

- Stormwater management and additional information that will have to be submitted with the development application. These requirements have been identified by Council's water quality consultants.
- Concept development layout, including primary road pattern and form of development.
- Management of the conservation areas and environmental enhancements.
- Built form controls, where not covered by Council's existing DCPs.

A draft DCP will be submitted to Council for endorsement for exhibition when it has been prepared.

INTENDED OUTCOMES OF THE PLANNING PROPOSAL

The main aims of the Planning proposal are:

- a) To rezone the land to part Zone 2(a) Low Density Residential, 2(b) Medium Density Residential, 4(a) General Industrial, 6(a) Open Space and Recreation and 7(a1) Environmental Protection.

- b) To ensure any development on the land incorporates the principles associated with ecologically sustainable development in its planning and design.
- c) To ensure that there are no conflicts between residential development on the land and the activities on Council's adjoining landfill site.

CONSULTATION WITH AGENCIES

Advice has been sought from government agencies, albeit when Council was preparing a environmental study under the now repealed provisions of the EPA Act. Council will commence consultation with agencies once the Planning Proposal is endorsed by Council, and comments will be considered in-conjunction with comments from the Department of Planning after the Gateway Determination has been made.

NEXT STEPS

If endorsed by Council, the planning proposal will be submitted to the NSW Department of Planning for gateway approval to proceed with an LEP amendment. The Gateway Determination will either allow exhibition of the planning proposal with or without change, or will refuse the planning proposal. A positive gateway determination will make direction about the public consultation required for the LEP and provide a timeframe by which the LEP is to be completed.

The planning proposal will then be exhibited in accordance with the directions of the Gateway Determination and the requirements of Section 57 of the EPA 1979. Formal submissions to the planning proposal will be invited and accepted during the exhibition period.

A further report that considers the submissions and any proposed changes to the planning proposal will then be presented to Council.

CONCLUSION

The planning proposal provides a detailed assessment of the environmental issues and urban capability of the subject land. The outcomes of the planning proposal are consistent with the objectives of the Mid North Coast Regional Strategy (2009).

The planning proposal needs to be endorsed by Council and submitted to the Department of Planning for consideration to allow commencement of the rezoning process for the subject site.

Accordingly it is recommended that the planning proposal be endorsed by Council and subsequently submitted to the NSW Department of Planning for a gateway determination.

RECOMMENDATION:

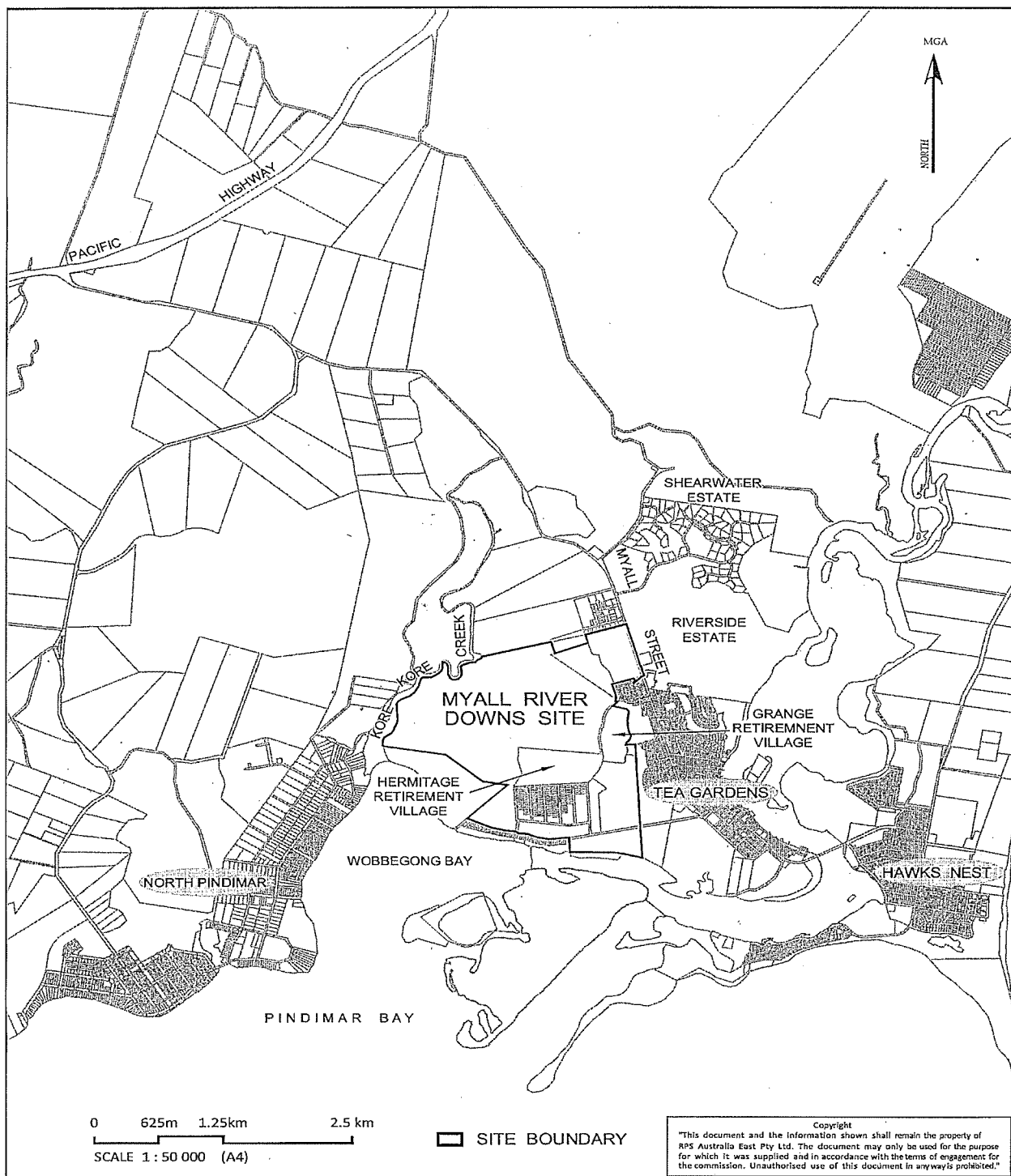
In relation to the Release Area referred to as Myall River Downs it is recommended that:

- A. Council endorse the planning proposal as contained in Attachment A to this Business Paper and submit it to the NSW Department of Planning and Infrastructure in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979.
- B. In the event the planning proposal is given a gateway determination to proceed, consult with the community and government agencies in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and the directions of the gateway determination.
- C. A further report be presented to Council following the public exhibition process, to demonstrate compliance with the gateway determination and to provide details of any submissions received.

- D. The planning proposal only be finalised after exhibition when a legally binding mechanism is in place for the ongoing management of the conservation areas, stormwater management infrastructure and associated land required for drainage that does not impose an unreasonable cost burden upon Council.

ANNEXURES:

A: Site location plan



TITLE: SITE LOCALITY PLAN

LOCATION: MYALL RIVER DOWNS
TEA GARDENS

DATUM:
PROJECTION:

DATE: 20TH OCT 2011
PURPOSE: PLANNING
PROPOSAL

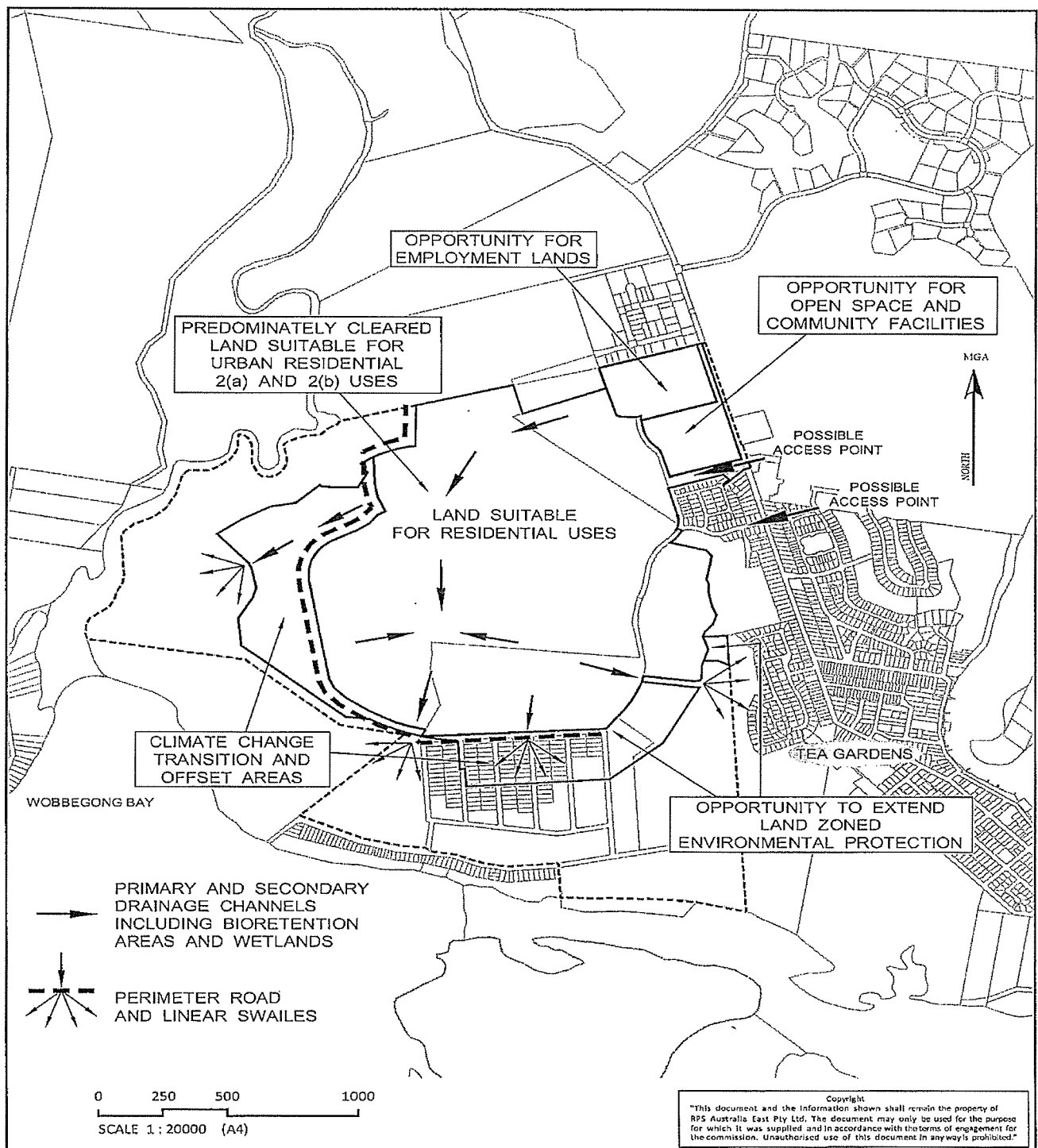
CAD REF: 24737-2C
VERSION (PLAN BY): LOCALITY A4 B&W

CLIENT: GREAT LAKES COUNCIL
JOB REF: 24737

RPS AUSTRALIA EAST PTY LTD (ABN 44 140 292 762)
241 DENISON STREET BROADMEADOW PO BOX 428 HAMILTON NSW 2303
T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au

RPS

Summary constraints and opportunities plan.



TITLE: OPPORTUNITIES PLAN

LOCATION: MYALL RIVER DOWNS
TEA GARDENS

DATUM:
PROJECTION:

DATE: 20TH OCT 2011

CAD REF:

24737 - 2C

PURPOSE: PLANNING
PROPOSAL

VERSION (PLAN BY): OPPORTUNITIES A4

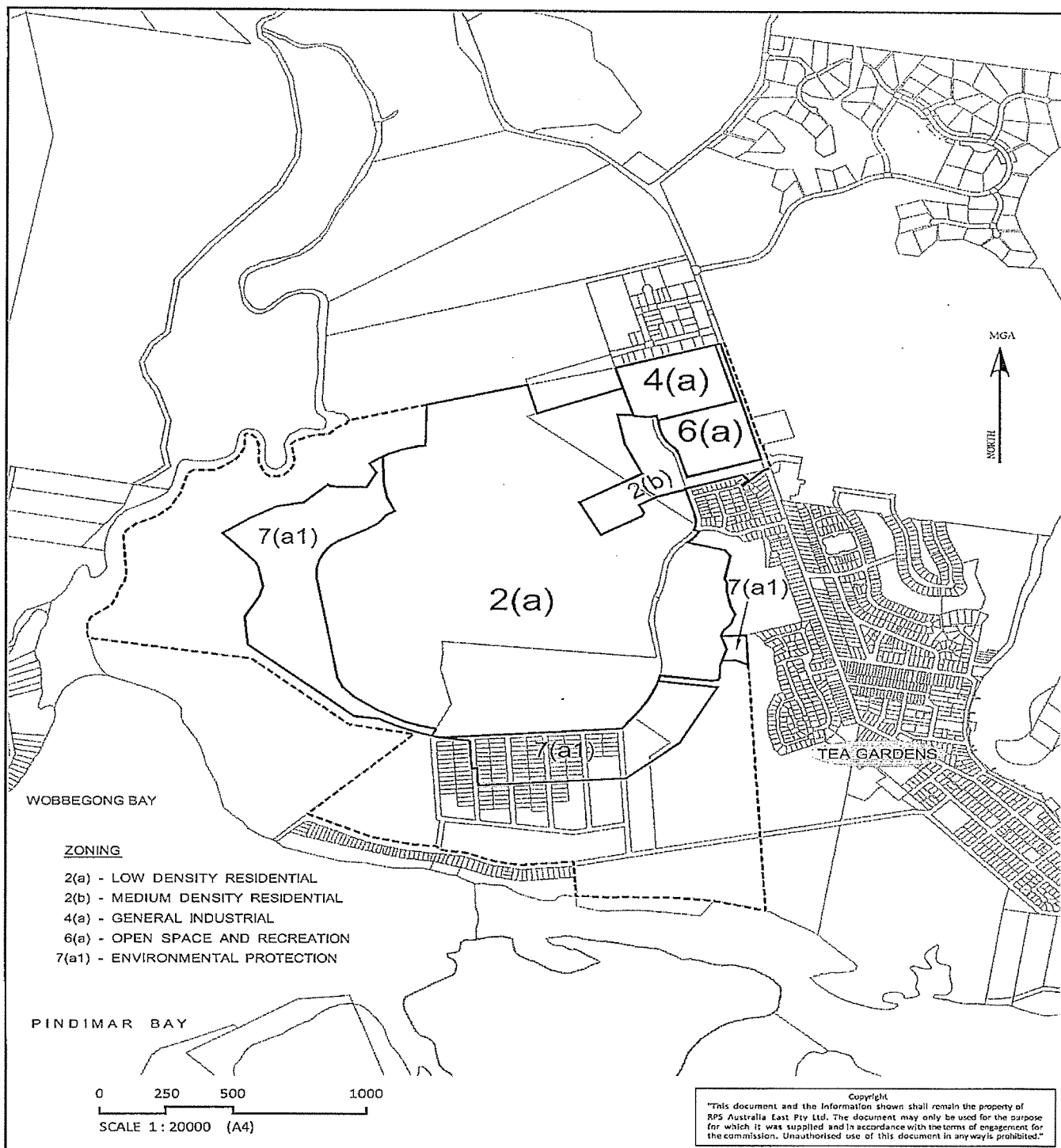
CLIENT: GREAT LAKES COUNCIL
JOB REF: 24737

RPS AUSTRALIA EAST PTY LTD
241 DENISON STREET, BROADMEADOW
T: 02 4940 4200

(ABN 44 140 292 762)
PO BOX 428 HAMILTON NSW 2303
F: 02 4961 6794
www.rpsgroup.com.au

RPS

Indicative rezoning plan.



TITLE: INDICATIVE ZONING PLAN	LOCATION: MYALL RIVER DOWNS TEA GARDENS	DATUM: PROJECTION:	DATE: 20TH OCT 2011	CAD REF: 24737 - 2C
CLIENT: GREAT LAKES COUNCIL	JOB REF: 24737	RPS AUSTRALIA EAST PTY LTD 241 DENISON STREET BROADMEADOW T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au	PURPOSE: PLANNING PROPOSAL	VERSION (PLAN BY): INDICATIVE ZONING
			RPS	

Appendix 4

Compliance with Section 117 Directions

Compliance with Section 117 Directions

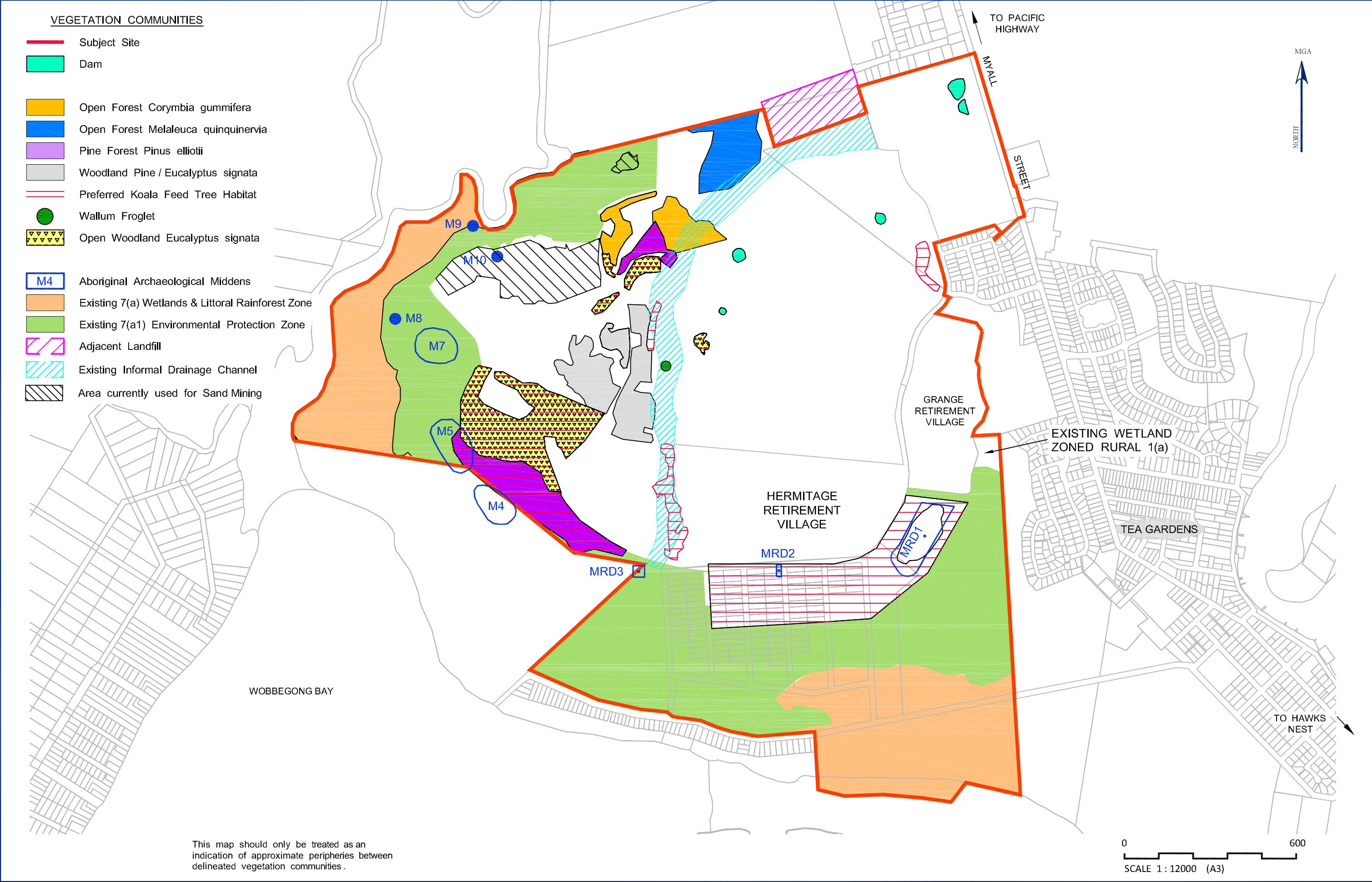
Relevant S 117 direction	Response
1.1 Business and Industrial Zones	This direction applies to all Council's who are preparing a draft LEP that affects land within an existing or proposed business or industrial zone. Of specific relevance to this LES is the requirement for Council's to ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning. It is proposed to develop a small industrial precinct adjacent to the existing industrial estate on Myall Road, thereby increasing employment land in the area.
1.2 Rural Zones	This direction outlines strict objectives Councils must abide before rezoning land from residential zone to a residential, business, industrial, village or tourist zone. This planning proposal gives consideration to the objectives of this direction and demonstrates the suitability of the area for the proposed use. The Myall River Downs site is identified in Council's Tea Gardens/Hawks Nest Conservation and Development Strategy (2003) as a site with potential for future urban development. A Community Profile was prepared for the LES to investigate demand for urban development within the Tea Gardens / Hawks Nest area. The proposed rezoning is also consistent with Mid-North Coast Regional Strategy. The subject site is not prime agricultural and has been identified as a future urban area in strategic planning documents.
Direction 1.3 Mining, Petroleum and Extractive Industries	The objective of this Direction 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. This Direction applies when a Council prepares a Draft LEP that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development. An approved sand mining operation currently exists in the north-west corner of the site. It is understood that the mine will cease to exist upon rezoning of the subject site. Consultations may need to occur with the Department of Primary Industries in relation to this matter.
1.5 Rural Lands	This direction applies to all councils to which State Environmental Planning Policy (Rural Lands) 2008 applies which includes the Great Lakes LGA. As stated in the guidelines for directions "a planning proposal may be inconsistent with the terms of a direction only if the planning authority can satisfy the Director General of DoP that the provisions of the planning proposal that are inconsistent are: c) justified by a strategy which: i) gives consideration to the objectives of this direction." As mentioned previously within this document the site is nominated within the Tea Gardens/Hawks Nest Conservation and Development Strategy (2003). The Department of Planning has confirmed that the minor inconsistency with Section 117 Direction 1.5 (Rural Lands) is justified.
2.1 Environment Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas. The proposed rezoning includes the creation of a large

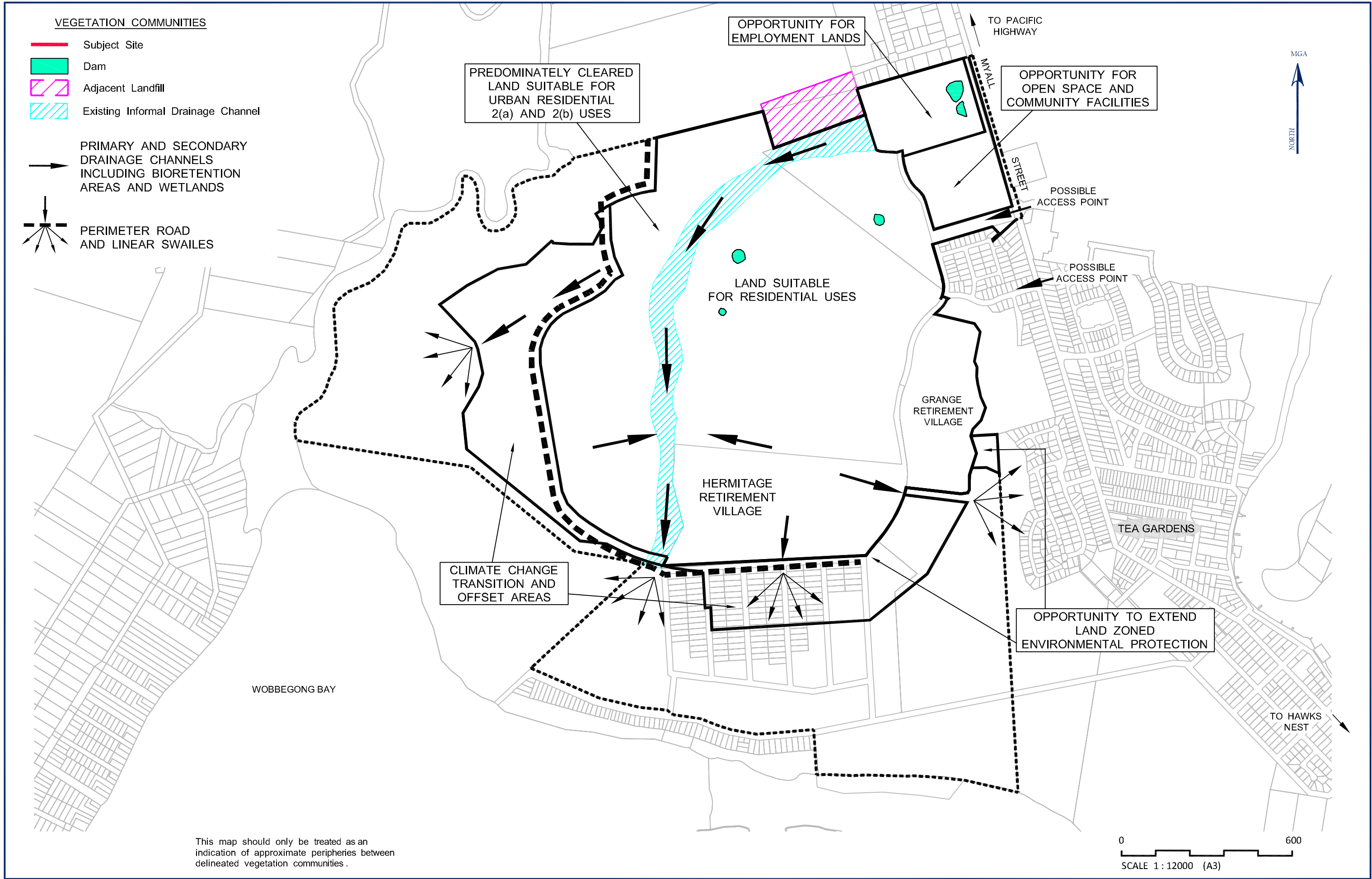
Relevant S 117 direction	Response
	area proposed to be rezoned for environmental protection. This environmental protection area is discussed, assessed and justified within the ecological assessment prepared for the LES. The assessment recommends that this land be conserved under an environmental protection zone. The proposed development proposes no development with conservation zones.
2.2 Coastal Protection	This direction requires Council to consider the provisions of the NSW Coastal Policy; the Coastal Design Guidelines 2003; and NSW Coastline Management Manual 1990, when preparing a draft LEP that creates, removes or alters a zone or a provision relating to land in the coastal zone. The provisions of the prescribed documents have been considered in the preparation of the Draft LEP. Proposed development is not inconsistent with the objectives and principles of the NSW Coastal Policy.
2.3 Heritage Conservation	The objective of this direction is to conserve items, places and precincts of environmental heritage and to conserve places of Aboriginal heritage significance. This direction applies when a council prepares a draft LEP that applies to an Aboriginal object or place protected under the National Parks and Wildlife Act 1974. Aboriginal and European heritage assessments for the study area were carried out by ERM and RPS HSO and details of which are addressed in Part 3 of the Planning Proposal. The search and surveys undertaken revealed middens of Aboriginal cultural heritage origin, however all are outside the proposed development area.
3.1 Residential Zones	Consideration has been given to the objectives of this Direction in preparing this study, and in developing the preferred land use strategy for the subject site. The site is identified in the Draft Mid North Coast Regional Strategy and the Tea Gardens/ Hawks Nest Conservation and Development Strategy and complementary Housing Strategy.
3.4 Integrating Land Use Transport	Consideration has been given to the objectives of this Direction and the Department of Planning's policy documents in relation to the proposal. The subject site adjoins the existing Tea Gardens township, and existing transport services can be provided to the site. Traffic and access issues have been addressed by a Traffic Study undertaken as part the LES.
4.1 Acid Sulphate Soils	Upon future development of the sites, Council will assess proposals against the Acid Sulfate Soils Planning Guidelines (EPA 1998). Should any development take place in areas identified as containing acid sulphate soils, an Acid Sulphate Soil Management Plan would also be required.
4.3 Flood Prone Land	This direction requires Council 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 when preparing a draft LEP. Flooding occurs within the site due to the proximity of Myall River. The flooding constraints can be managed by undertaken various mitigation measures as identified within Appendix 10. Filling will be required in some areas to minimise the impact of flooding and sea level rise.
4.4 Planning for Bushfire Protection	The study area is mapped as bush fire prone on the Great Lakes Bush Fire Prone Land Map. It is considered that the bushfire assessment prepared for the subject site meets the requirements of Planning for

Relevant S 117 direction	Response
	Bushfire Protection. Further details on bushfire protection and assessment are provided in Part 3 of the Planning Proposal.
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the provisions contained in regional strategies. Draft LEPs are required to be consistent with the vision, land use strategy, policies, outcomes and actions contained in regional strategies. <i>The Mid North Coast Regional Strategy 2009</i> is listed in this Direction and it applies to the subject site. The provision, principles and objectives of the <i>Mid North Coast Regional Strategy 2009</i> have been considered in assessing this proposal.
6.1 Approval and Referral Requirements	This Direction is not applicable.
6.3 Site Specific Provisions	This Direction does not apply.

Appendix 5

Constraints and Opportunities Plan





Appendix 6

Flora and Fauna Assessment

Appendix 7

Bushfire Threat Assessment

Appendix 8

Aboriginal Archaeology Assessment

Appendix 9

Traffic Assessment

Appendix 10

Water Management Report & Review