

Planning and Assessment

IRF20/1479

Gateway determination report

LGA	Lake Macquarie
PPA	Lake Macquarie City Council
NAME	Warners Bay East Munibung Hill Rezoning (32 lots)
NUMBER	PP_2020_LAKEM_003_00
LEP TO BE AMENDED	Lake Macquarie Local Environmental Plan 2014
ADDRESS	40 Rayford Street, Warners Bay 16 Daydawn Avenue, Warners Bay 17 Daydawn Avenue, Warners Bay 19 Daydawn Avenue, Warners Bay 18 Winterlake Road, Warners Bay
DESCRIPTION	Lot 6, DP 814499, Lot 100, 101 & 102 DP 1173625 and Lot 350, DP 776503,
RECEIVED	9 March 2020
FILE NO.	EF20/9194
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure has not been disclosed.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

To rezone part of the subject site from E2 Environmental Conservation to R2 Low Density Residential and E4 Environmental Living under the Lake Macquarie Local Environmental Plan 2014 (LEP).

Council proposes a new local clause in its LEP to ensure the remaining land zoned E2 Environmental Conservation will be revegetated and managed in perpetuity in accordance with a vegetation management plan.

1.2 Site description

The subject site has an area of 18 hectare. It is proposed to rezone approximately five hectares, which is mostly cleared and previously used for farming/grazing over a long period. Dwellings exist on No. 18 Winterlake Road and No. 40 Rayford Street, Warners Bay.

The land slopes towards the east, with the vegetated ridgeline of East Munibung Hill to the west. The rezoning is proposed on the part of the site that is predominantly cleared and below the 54 meter AHD contour line to protect the scenic value of the surrounding ridgeline.

The extension of Daydawn Avenue, Rayford Street and Winterlake Road will provide vehicle access to future residential allotments. The additional traffic movements generated by the development will have minimal impact on the surrounding road network.



Figure 1 - Aerial photograph with the site outlined in yellow

1.3 Existing planning controls

The site is primarily zoned E2 Environmental Management, with a small portion of land already zoned R2 Low Density Residential at the end of Rayford Street.

The land zoned E2 Environmental Protection has a minimum lot size of 40 hectare and a maximum height of 5.5 meters. The residential portion of land has a minimum lot size of 450m² and maximum height of 8.5 meters.

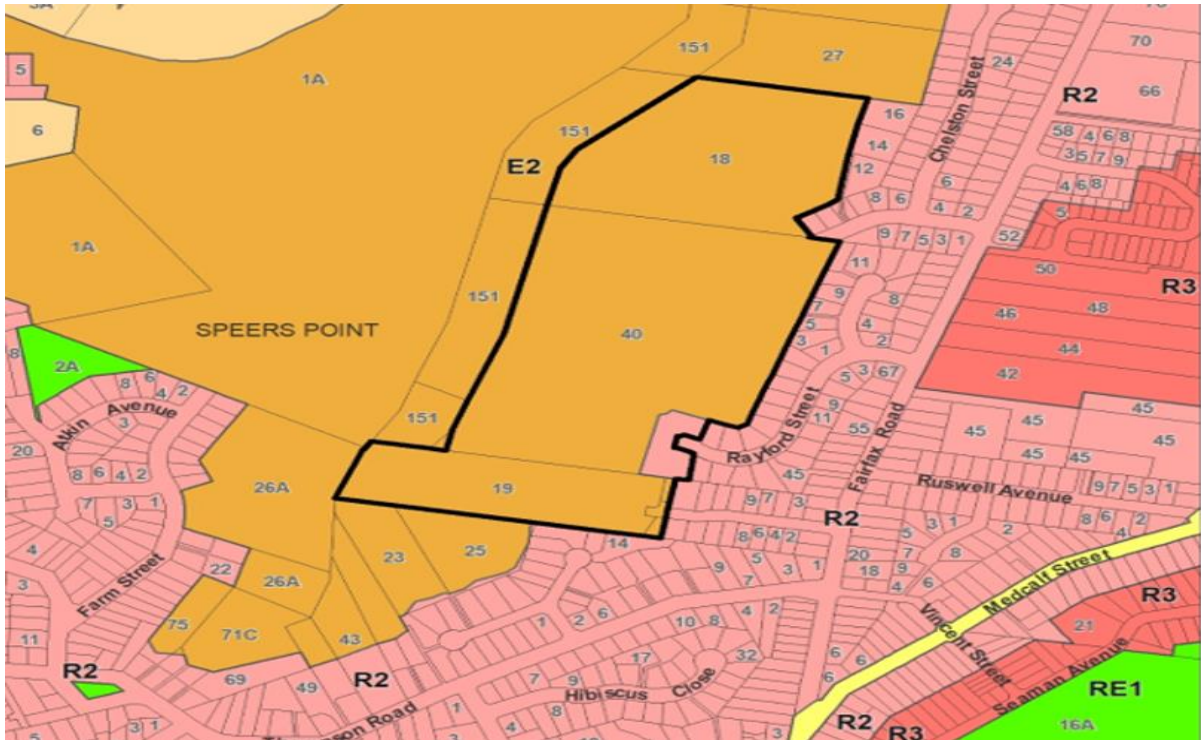


Figure 2 - LEP Zoning map with the site outlined in black

1.4 Surrounding area

The site is located to the west of the Warners Bay town centre and adjoins an established residential area consisting of primarily one and two storey dwellings. The vegetated ridgeline to the west of the site forms a backdrop to the residential areas of Warners Bay.

The site is located near the Warners Bay private hospital, sporting ovals and approximately 3km from the town centre.

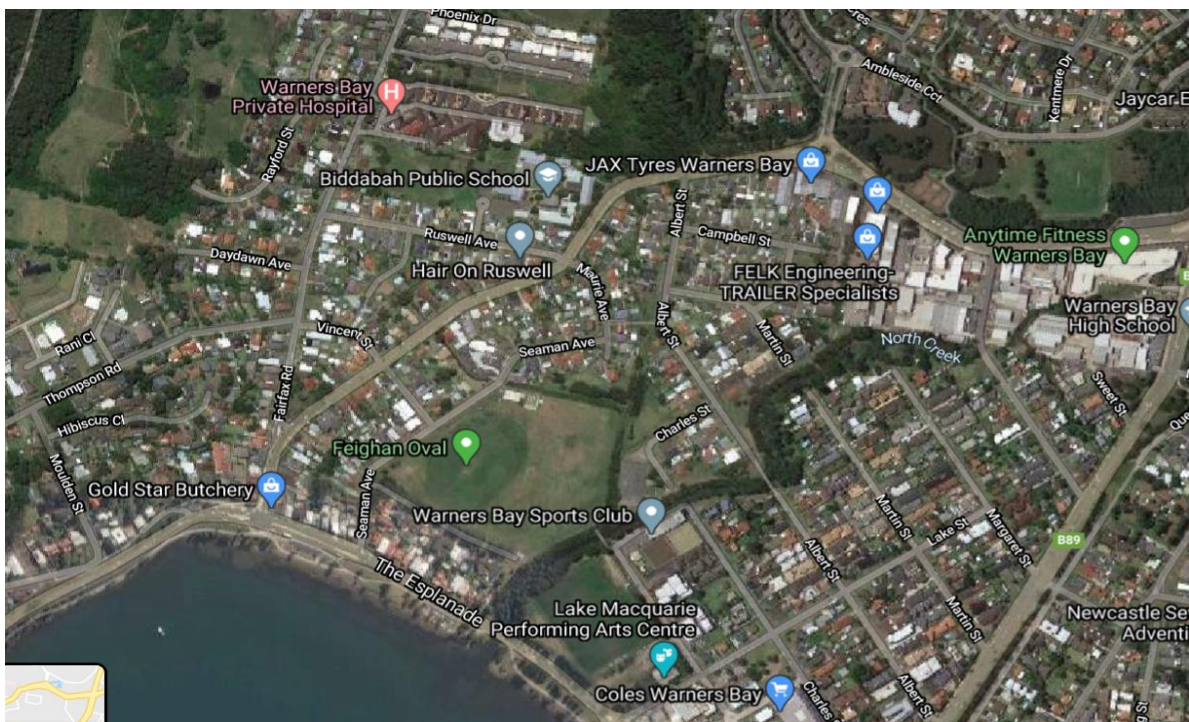


Figure 3 - Locality Map and surrounding land uses

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal aims to investigate whether the subject site is suitable for residential development in close proximity to the Warners Bay Town Centre. The proposed E4 Environmental Living zoning is intended to limit future residential development to address the recommendations of the geotechnical reports.

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

2.2 Explanation of provisions

To rezone part of the subject site from E2 Environmental Conservation to R2 Low Density Residential and E4 Environmental Living under the LEP 2014.

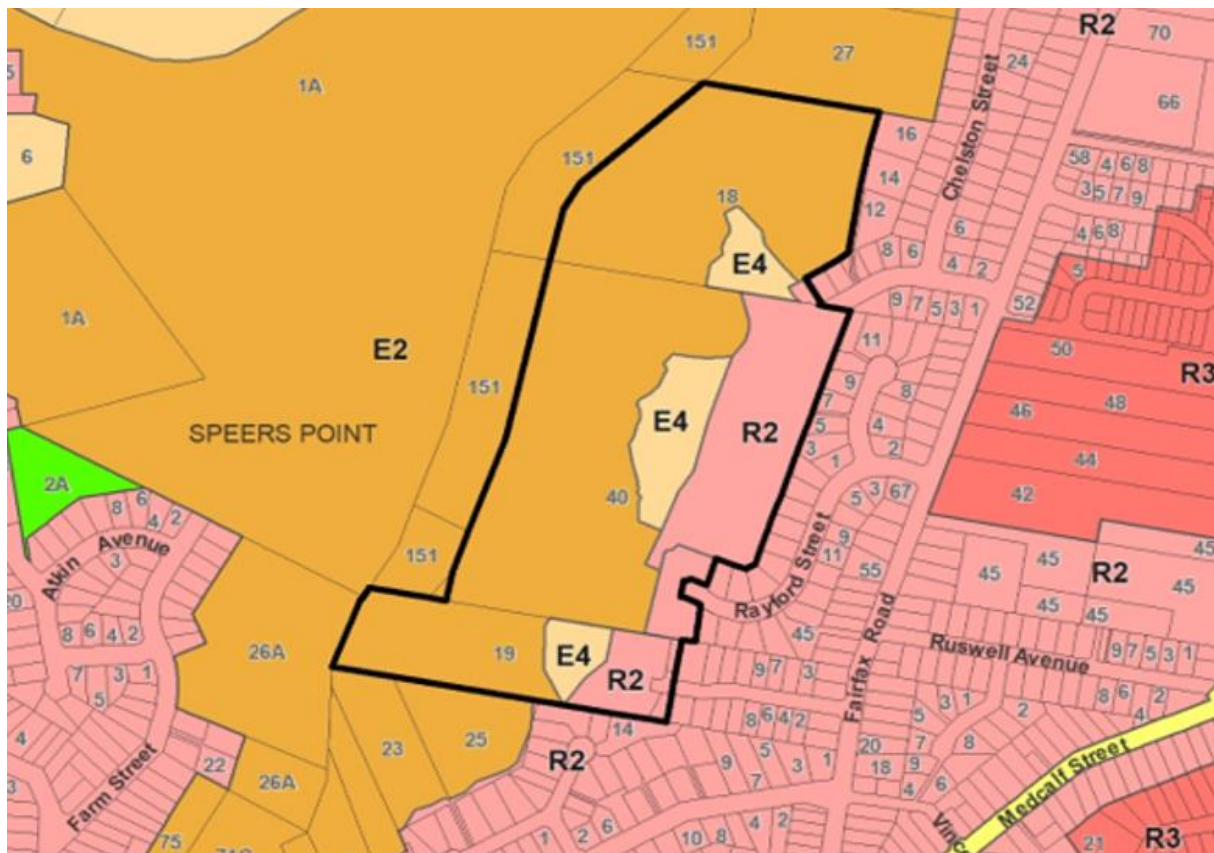


Figure 4 - Proposed zoning map

Site	Proposed minimum lot size	Proposed maximum heights
R2 Low Density Residential	450m ²	8.5 meters
E4 Environmental Management zone at No.19 Daydown Avenue	750m ²	8.5 meters
E4 Environmental Management zone at No.40 Rayford Street and 18 Winterlake Road	1500m ²	8.5 meters
E2 Environmental Protection	40 hectares	5.5 meters

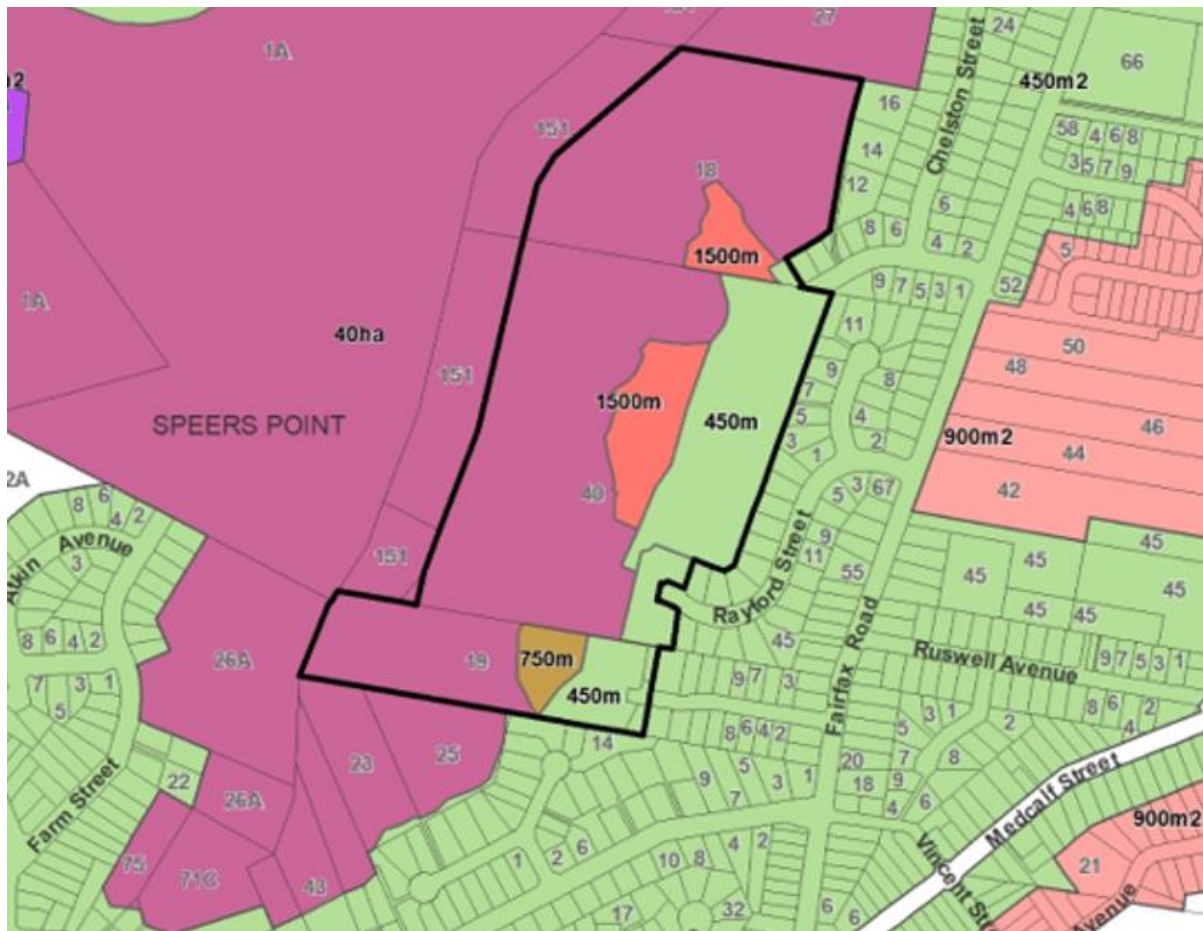


Figure 5 - Proposed minimum lot size map

Council proposes an additional local clause in its local environmental plan to ensure *“that development consent must not be granted on the subject land unless the consent authority is satisfied that the remaining E2 zoned land on the site will be revegetated and managed in perpetuity in accordance with a vegetation management plan.”*

It is recommended the Gateway determination be conditioned to update the planning proposal to include a draft vegetation management plan, which outlines the management and revegetation requirements for the lands zoned E2 Environmental Conservation.

The subject site will be mapped as an Urban Release Area, thereby requiring a contribution towards provision of State Infrastructure and preparation of a comprehensive Development Control Plan before any development application is approved.

2.3 Mapping

The planning proposal involves amendments to the zoning, minimum lot size, height, and urban release area maps. The mapping provided clearly identifies the proposed LEP amendments. No mapping updates are required prior to community consultation.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is the best means of achieving the objectives and intended outcomes for the land, being the provision of additional housing opportunities, while continuing to protect those parts of the land which contain high biodiversity and scenic values.

Council advises that the East Munibung Hill Area Plan (Part 12) recognises that *'further development may be possible, subject to suitable geotechnical and scenic quality investigations being prepared to the satisfaction of Council'*.

The planning proposal will investigate whether the site is suitable for urban development taking into consideration the visual assessment, bushfire assessment, flora and fauna assessment, slope stability assessment and other supporting studies.

4. STRATEGIC ASSESSMENT

4.1 State/Regional

4.1.1 Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* 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 planning proposal is consistent with the regional plan's strategic directions, specifically Direction No.21 Create a Compact Settlement, by investigating an opportunity for an urban release area where it can maximise the use of existing infrastructure and services in Warners Bay.

The proposal also achieves one of the regional priorities for Lake Macquarie Council under the regional plan's Local Narratives to *"revitalise existing suburbs and explore opportunities for new infill and greenfield release areas"*.

4.1.2 Greater Newcastle Metropolitan Plan 2036

The metropolitan plan sets out strategies and actions that will drive sustainable growth across the Greater Newcastle Metropolitan area, including the northern areas of Lake Macquarie City Council. The planning proposal is consistent with the metropolitan plan as it delivers housing within an existing urban area close to jobs and services.

4.2 Local

4.2.1 Community Strategic Plan

The *Lake Macquarie City Community Strategic Plan (2017-2027)* is a plan for the community to outline how the goals in the City's vision can be achieved. The subject proposal supports the following objectives of the Community Strategic Plan:

- *'New development and growth complements our unique character and sense of place'*
- *'Natural environments are protected and enhanced'*

4.2.2 *Imagine Lake Mac: 2050 and Beyond*

Imagine Lake Mac: 2050 and Beyond is a high-level, long-term strategy that guides the growth and change of the City. Its intention is to influence public and private investment so that it enhances the wellbeing of people and the environment - making Lake Macquarie City one of the most appealing, liveable and sustainable places in the country.

The subject proposal is consistent with the aspirations in *Imagine Lake Mac: 2050 and Beyond* as it will provide for new housing opportunities closer to an existing centre, improve connectivity in the immediate area and provide clear ongoing protection for the remaining E2 land.

4.2.3 Lake Macquarie Local Strategic Planning Statement (LSPS)

The LSPS describes how Lake Macquarie City Council will achieve the City's vision and uphold the community's values, through strategic planning.

The subject proposal is consistent with the Local strategic planning statement as it will provide for new housing opportunities in an identified urban intensification area.

4.3 Section 9.1 Ministerial Directions

The planning proposal is considered consistent with Directions 2.2 Coastal Management, 2.6 Remediation of Contaminated Lands, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulphate Soils, 4.2 Mine Subsidence and Unstable Land, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans

4.3.1 Direction 2.6 Remediation of Contaminated Lands

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

A Phase 1 Contamination Assessment has been carried out by the proponent to identify any potential contamination issues on the subject land and recommend potential remediation measures. It states that the historical use of the site and surrounding area is unlikely to have resulted in the presence of significant contamination at the site. All soil laboratory results were within residential thresholds and from a contamination perspective, the site is suitable for residential use. Council is satisfied that the subject land is suitable for urban uses and is consistent with the provisions of *State Environmental Planning Policy No 55—Remediation of Land*.

4.3.2 Direction 4.2 Mine Subsidence

Regarding Direction 4.2, the subject site is not within a proclaimed Mine Subsidence District pursuant to section 15 of the *Mine Subsidence Compensation Act 1961*. However, it has been identified as having previous instabilities, which has been addressed in the accompanying geotechnical reports. The planning proposal does not permit development on areas that may have ongoing instability. Council's decision to zone part of the site E4 Environmental Living zone is intended to limit urban development to single dwellings rather than other forms of residential housing.

4.3.3 Direction 1.3 – Mining, Petroleum Production and Extractive Industries

This Ministerial 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 is situated within lease area CCL730. Consultation with the NSW Department of Planning, Industry and Environment (Geoscience Division) will determine consistency with this Direction.

4.3.4 Direction 2.1 - Environment Protection Zones

This Direction aims to protect and conserve environmentally sensitive areas. The planning proposal is inconsistent with this direction because it proposes to rezone environmental lands to residential and environmental living.

The rezoning requires minimal clearing and it proposes some revegetation as part of the vegetation management plan over the remaining land zoned E2 Environmental Conservation lands.

The preliminary ecological assessment indicates that no threatened flora species were recorded within the subject lands and such species are unlikely to occur given the extent of previous vegetation clearing and anthropogenic disturbance. Fauna species recorded were typical of those found in this habitat and those commonly associated with cleared lands and semi-isolated, disturbed remnant vegetation. One threatened microbat species, *Miniopterus australis* (Little Bent-winged Bat) was recorded during fieldwork, and there is potential for other threatened species to utilise the subject site as part of a larger home range.

Assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* (the '7 part test') found that the proposal was highly unlikely to result in a significant impact upon listed threatened entities, and consideration of the EPBC Act revealed that no impacts on Matters of National Environmental Significance are expected.

Council should consult NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division about the adequacy of the vegetation management plan and whether the rezoning proposal needs to satisfy any other requirements of the *Biodiversity Conservation Act 2016*.

4.3.5 Direction 2.3 – Heritage Conservation

This Ministerial direction aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

No local or State Heritage items adjoin the site. The Aboriginal Heritage Due Diligence Assessment prepared by RPS dated 8 June 2017 did not identify Aboriginal objects or places within the Project Area.

Consultation with the NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division will confirm consistency with this Direction.

4.3.6 Direction 4.4 Planning for Bushfire Protection

This Ministerial 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 and mapped as containing Vegetation Category 2, Vegetation Category 3 and Vegetation Buffer.

The Bushfire Threat Assessment, prepared by Anderson Environment & Planning, concludes that through the implementation of fire protection measures (Asset Protection Zones and relevant construction standards) the future residential development of the subject land can comply with the relevant requirements of PBP and AS-3959-2009.

Consultation with the NSW Rural Fire Service will determine consistency with this Direction.

4.4 State environmental planning policies (SEPPs)

4.4.1 SEPP 19 – Bushland in Urban Areas

The rezoning is proposed on the part of the site, which is predominantly cleared and revegetation of part of the site in accordance with the vegetation management plan is consistent with the aims of the SEPP.

4.4.2 SEPP – Koala Habitat Protection 2019

The planning proposal needs to be updated to consider the provisions of the new SEPP.

The ecological survey identified a small number of koala feed trees. The site does not constitute core koala habitat under the provisions SEPP. Council needs to review the ecological assessment under the provisions of the new SEPP to determine whether the planning proposal remains consistent.

4.4.4 SEPP (Coastal Management) 2018

The southern portion of the subject site (19 Daydawn Ave) is identified as a Coastal Environment Area within the “Coastal Zone” as per the NSW *Coastal Protection Act 1979* Coastal Zone Map.

The Flooding, Stormwater and the Ecological reports conclude that the proposal will not have an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.

The planning proposal is considered consistent with the SEPP.

4.4.5 SEPP (Mining, Petroleum Production and Extractive Industries) 2007

As discussed above, the planning proposal will be referred to the Department of Planning - Resources and Geoscience Division as part of the Gateway process. This should ensure the proper management and development of land containing mineral, petroleum and extractive material resources and consistency with this SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal should have positive social benefits by providing housing opportunities and increasing supply in close proximity to the Warners Bay town centre.

5.2 Environmental

Council advises that the proposed urban footprint is generally cleared, however approximately 4.55 hectares of disturbed remnant vegetation remains, of which up to 0.98 hectares is likely to be removed or modified as part of any future development

of the site. Remnant vegetation within the study area is deemed to constitute a highly disturbed variant of Hunter Valley Moist Forest. This community is not listed as a threatened community under either the *Biodiversity Conservation Act 2016*, or Commonwealth EPBC Act.

As discussed above, Council will be required to consult with the Biodiversity Conservation Division about the adequacy of the vegetation management plan and whether the rezoning proposal needs to satisfy any other requirements of the *Biodiversity Conservation Act 2016*.

5.3 Economic

The rezoning should have a positive multiplier effect on the local economy through employment opportunities in the construction of the subdivision and future residential dwellings. There will also be ongoing associated economic benefits through population growth/expansion.

5.4 Infrastructure

All required services like water, sewer, electricity, and telecommunications can be augmented for the proposed development. The local roads can be extended for the proposed residential subdivision and it is considered that the network has sufficient capacity to accommodate the increase in vehicle traffic.

The rezoning proposal will be mapped as an Urban Release Area, thereby requiring a contribution towards the provision of State Infrastructure.

5.5 Slope Stability

A Slope Stability Assessment was prepared by Regional Geotechnical Solutions, to assess the feasibility of undertaking future residential development on 19 Daydawn Avenue and 40 Rayford Street, which are situated in an area with a history of slope instability. The assessment provides recommendations for remedial measures and concludes that residential development on the lower slopes would be feasible from a geotechnical perspective.

The proposed zonings of R2 Low Density Residential and E4 Environmental Living take these recommendations into account and have proposed areas closer to the RL54 level or areas of previous instability to be E4 Environmental Living.

Further Geotechnical reporting for 18 Winterlake Road is being undertaken and is anticipated to be completed prior to public exhibition.

5.6 Visual Impact

The *Lake Macquarie Development Control Plan 2014* - Part 12 – Precinct Area Plans - East Munibung Hill aims to provide a strategic approach to future development in the East Munibung Hill Area.

The western boundary of the rezoning footprint follows the 54m AHD contour height limitation to minimise potential visual impacts. The preliminary visual impact analysis concludes that the proposed rezoning is likely to have a low visual impact on the existing surrounding environment in terms of landscape and scenic values.

The *Lake Macquarie Scenic Management Guidelines 2013* requires that future development in Warners Bay respect:

- view corridors to the lake and western ranges along streets, within public reserves and from town centres are retained and enhanced where possible; and
- buildings are of a scale that does not dominate views from the lake nor breach the tree-line of surrounding ridgelines.

The visual impact assessment found the study area is not likely to be visible from Lake Macquarie foreshore. The planning proposal should be compatible with the existing residential character of Warners Bay and when viewed from surrounding vantage points be seen as an extension to the residential area.

6. CONSULTATION

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

Council proposes consultation with the following agencies:

- NSW Rural Fire Service
- NSW Department of Planning, Industry and Environment
- Transport for NSW
- Hunter Water Corporation
- NSW Subsidence

In addition to the above agencies, the Gateway determination has been conditioned to consult the NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD) for advice about the adequacy of the vegetation management plan; 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. TIME FRAME

Council's project timeline suggests a 9-month completion timeframe. This is achievable. However, in the circumstances, a 12-month completion timeframe is recommended to provide sufficient time to respond to any issues raised by Government agencies and the community.

8. LOCAL PLAN-MAKING AUTHORITY

The project timeline recognises Council as potentially receiving the Minister's plan making delegations but it has not been clearly requested. In the circumstances, it is recommended that Council be given the Minister's plan making delegations to complete this planning proposal.

9. CONCLUSION

The planning proposal is supported to proceed with conditions.

The planning proposal is consistent with the *Hunter Regional Plan 2036* strategic directions, specifically Direction No.21 - Create a compact settlement. Investigating the suitability of the site for residential expansion has strategic merit.

10. RECOMMENDATION

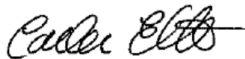
It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, Council is to amend the planning proposal as follows:
 - a) update the relevant sections after receiving any outstanding technical studies, including the additional geotechnical assessment for No.18 Winterlake Road, Warners Bay;
 - b) update Part 3 B Section 3 assessment of relevant Statement Environmental Planning Policies (SEPP) to consider the new SEPP (Koala Habitat Protection 2019) and update considerations of SEPP 55 given clause 6 has been deleted;
 - c) update Part 3 B Section 4 assessment of the section 9.1 Ministerial directions to address the new Direction 2.6 Remediation of Contaminated Land;
 - d) update Part 6 Project timeline to reflect a 12-month completion timeframe;
 - e) include a draft vegetation management plan which outlines the management and revegetation requirements for the lands zoned E2 Environmental Conservation.
2. Council needs to consult with the NSW Department of Planning, Industry and Environment - Biodiversity Conservation Division about the adequacy of the draft vegetation management plan and whether the rezoning proposal needs to satisfy any other requirements of the *Biodiversity Conservation Act 2016*. This should be done prior to undertaking community consultation.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and to comply with the requirements of relevant section 9.1 Directions:
 - Department of Planning, Industry and Environment - Geoscience Division
 - Department of Planning, Industry and Environment - Biodiversity Conservation Division

- NSW Rural Fire Service
- Subsidence Advisory NSW
- Hunter Water Corporation

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
7. The time frame for completing the LEP is to be **12 Months** following the date of the Gateway determination.



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22/06/2020
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