

Planning and Land Use Strategy

IRF22/1485

Gateway determination report

LGA	Lake Macquarie Local Government Area
PPA	Lake Macquarie City Council
NAME	Amend height and minimum lot size development standards, additional permitted uses boundaries and introduce an additional local provision for subdivision of certain developments (410 homes, 0 jobs)
NUMBER	PP-2021-5696
LEP TO BE AMENDED	<i>Lake Macquarie Local Environmental Plan 2014</i>
ADDRESS	North Wallarah Peninsula, 471 and 501 Pacific Highway, Pinny Beach. 531, 532, 551, 574, 574B, 580 and 590 Old Pacific Highway, Pinny Beach.
DESCRIPTION	Part Lot 2 DP1121576, Lot 3 DP1090495, Lot 1 DP1240365, Lot 3 DP1240365, Part Lot 2 DP1240365, Lot 5 DP1240365, Lot 1 DP1267616, Lot 6 DP1240365, and Lot 7 DP1240365.
RECEIVED	4 May 2022
FILE NO.	IRF22/1485
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Site description

The site is located in the North Wallarah Peninsula which is bounded by the Pacific Ocean to the east, Lake Macquarie to the west, with Swansea and Caves Beach urban developments to the north. The land subject to the planning proposal forms part of the 600ha North Wallarah Peninsula site (Figure 1).

The site is identified as being potentially contaminated due to historic mine activities and parts of the site being a former landfill area.

The North Wallarah area comprises three distinct sectors referred to as the Lake Sector, the Coastal Sector and the Northern Sector which includes the site.

The North Wallarah Peninsula Area Plan is Lake Macquarie City Council's development control plan which seeks to ensure the planning controls of the North Wallarah Peninsula Masterplan and North Wallarah Peninsula Conservation Land Use Management Plan continue to guide the future development of the area.

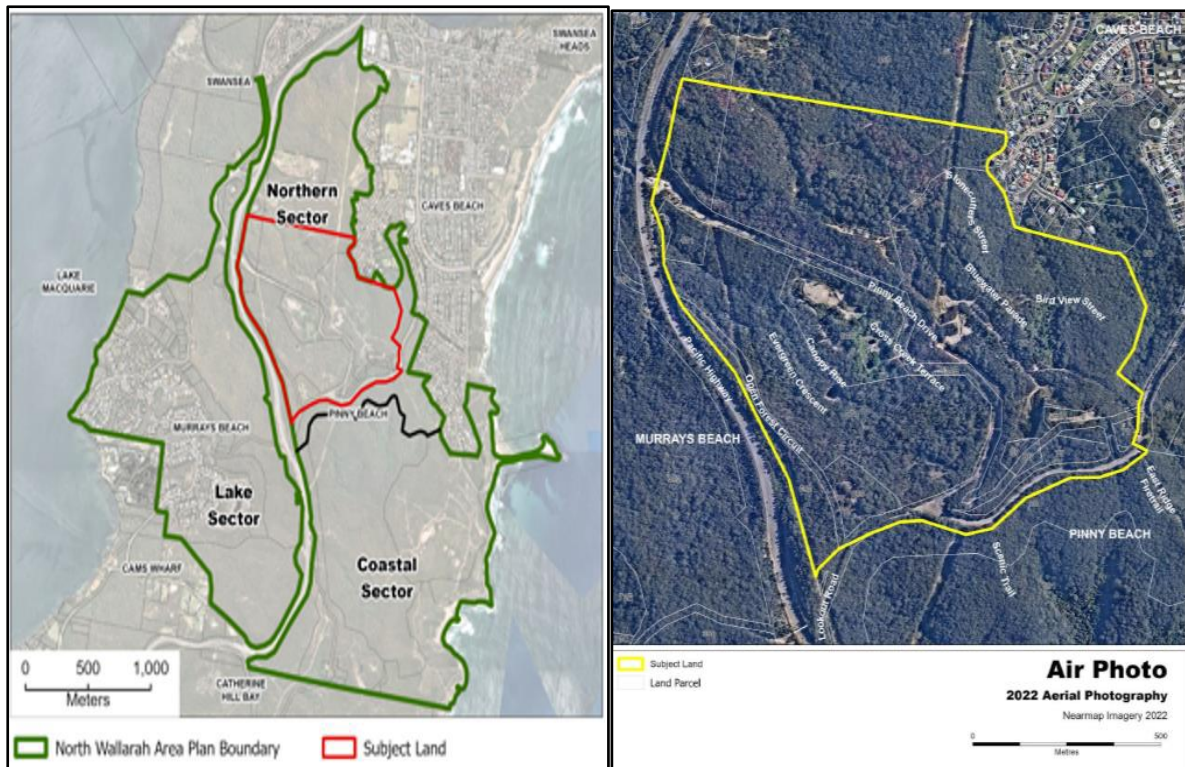


Figure 1 –Area Plan and site

The North Wallarah Peninsula site has been subject to the following planning:

- *North Wallarah Peninsula Conservation Land Use Management Plan 2000*;
- site specific Lake Macquarie Local Environmental Plan 2000 - North Wallarah Peninsula; and
- *North Wallarah Peninsula Masterplan 2003*.

Council granted development consents in 2021 to the first subdivision stages in the Northern Sector providing for some 410 residential lots in 2021 (Figure 2).

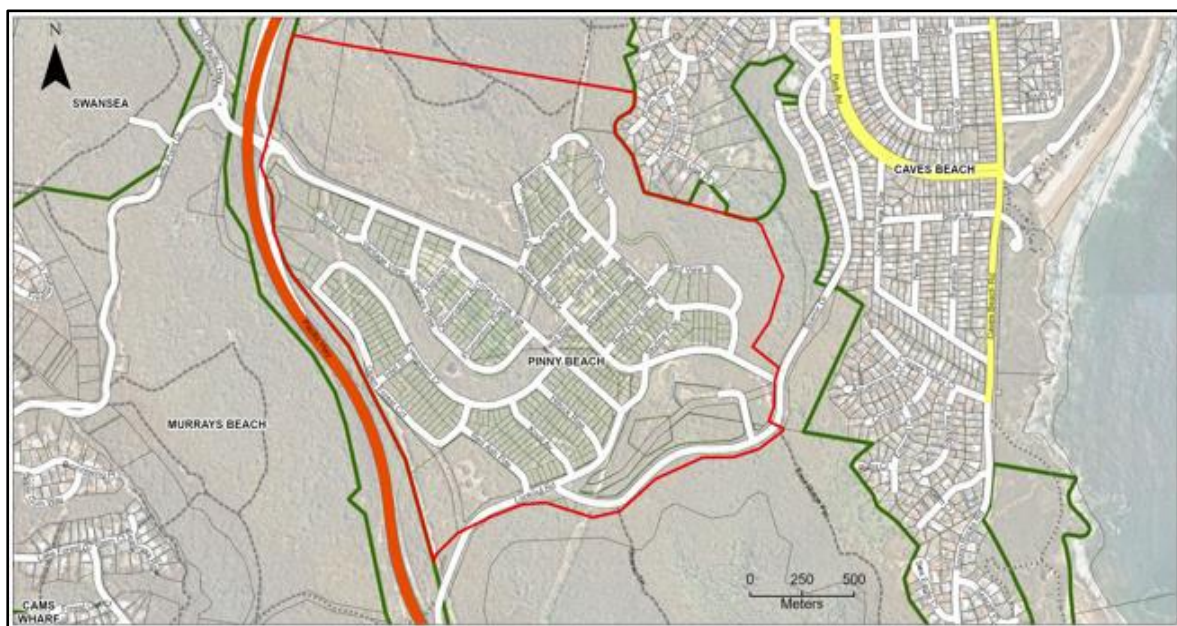


Figure 2 –Subdivision Plan

1.2 Existing planning controls

The following planning controls under the *Lake Macquarie Local Environmental Plan 2014* apply to the site:

- R1 General Residential zone (Figure 3);
- Maximum building heights of 10m, 12m and 14m.
- Minimum lot sizes of 1,250m² and 750m².
- additional permitted uses as identified as “North Wallarah Peninsula Area 1” and “North Wallarah Peninsula Area 2” on the additional permitted uses map.
- Schedule 1 of Additional permitted uses of permits with consent the following:
 - **18 Use of certain land at North Wallarah Peninsula**

This clause applies to land identified as “North Wallarah Peninsula Area 1” on the Additional Permitted Uses Map.

Development for the purposes of amusement centres, boat sheds, car parks, caravan parks, entertainment facilities, function centres, garden centres, health services facilities, landscaping material supplies, office premises, public administration buildings, recreation facilities (indoor), registered clubs, residential accommodation (being for the purposes of dwellings), retail premises (other than roadside stalls), service stations, tourist and visitor accommodation and veterinary hospitals is permitted with development consent.
 - **19 Use of certain land at North Wallarah Peninsula**

This clause applies to land identified as “North Wallarah Peninsula Area 2” on the Additional Permitted Uses Map.

Development for the purposes of residential accommodation (being for the purposes of dwellings) is permitted with development consent.
- Clause 7.13 development on certain land at Boolaroo, Buttaba and North Wallarah Peninsula identifies the land on the key sites map. The clause requires a development control plan which addresses key matters before development consent is granted. Lake Macquarie City Council’s Development Control Plan Part 12 – Area Plans –North Wallarah Peninsula applies.
- mapped as environmentally sensitive that requires prior to development consent to ensure impacts are minimised or offset and development is appropriate with regard to bush fire and flood risk and achieves biodiversity outcomes.



Figure 3 - Environmentally Sensitive Land Map

1.3 Surrounding area

The site proximate to the lakeside settlements of Cams Wharf and Murrays Beach on the western side of the peninsula and the coastal settlements of Caves Beach and Catherine Hill Bay located on the eastern side of the peninsula. The Pacific Highway runs along the central ridge of the Peninsula. Wallarah National Park is located to the south of the site (figures 5 and 6)

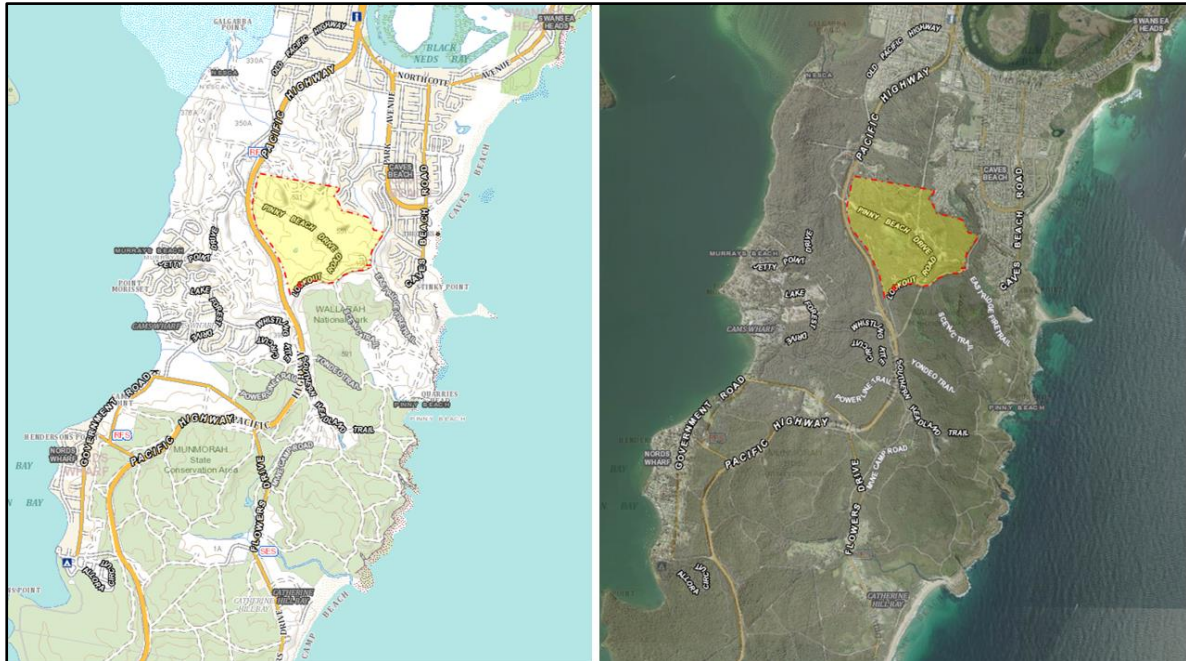


Figure 4 – Surrounding Locality

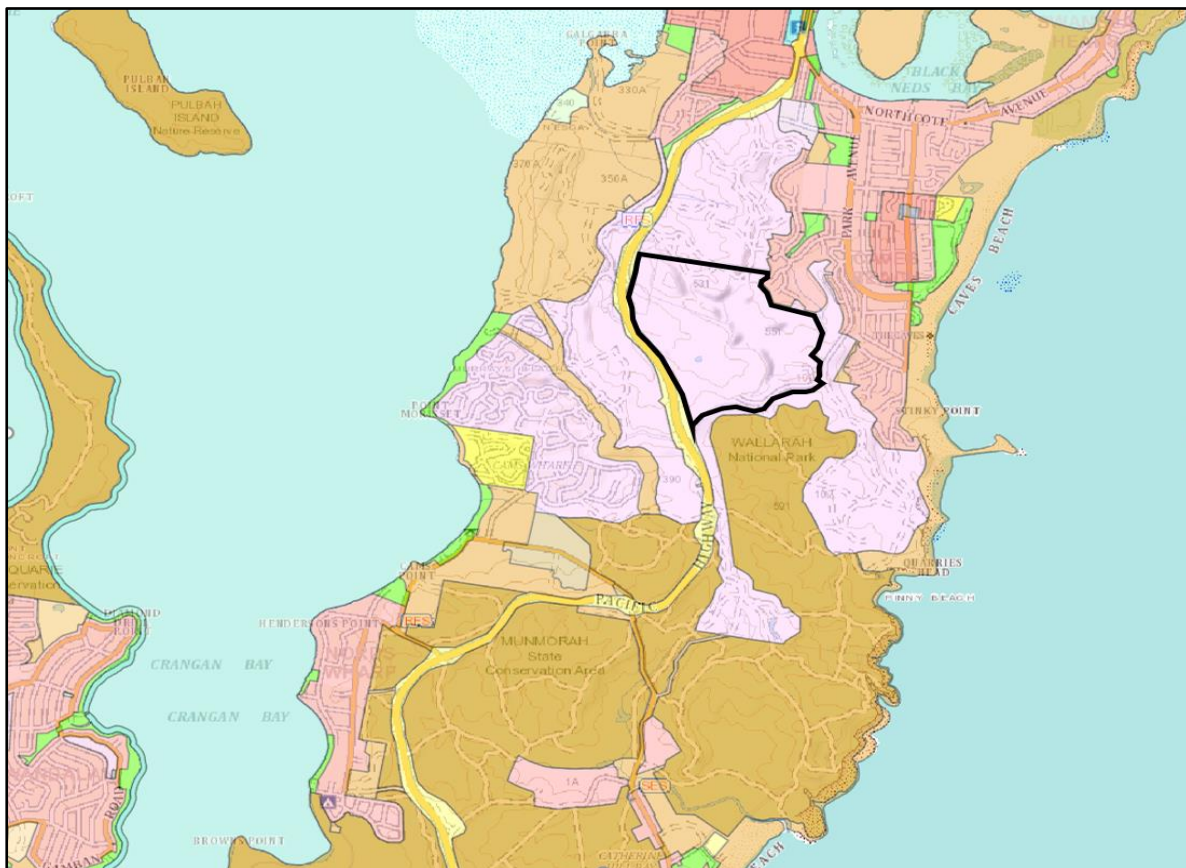


Figure 5 – Surrounding Land Use Zones

2. PLANNING PROPOSAL

2.1 Description of planning proposal

The planning proposal is proponent-initiated and seeks to facilitate revised scale of development in the northern sector of the North Wallarah Peninsula to encourage housing diversity of dual occupancies and re-subdivision to reflect a different desired character and the unique environmental and scenic attributes of the site.

The planning proposal will also give legal affect to the provisions in the adopted Part 12.6 North Wallarah Peninsula Area Plan of *Lake Macquarie Development Control Plan 2014*.

2.2 Objectives or intended outcomes

The objective of the planning proposal is to amend maximum building heights, minimum lot size development standards and introduce an additional local provision for subdivision of certain developments in the northern sector of the North Wallarah Peninsula.

The objectives of the planning proposal are clear and adequate.

2.3 Explanation of provisions

The planning proposal seeks to amend *Lake Macquarie Local Environmental Plan 2014* by:

- amending the minimum lot size map on part of the site to 450m² and 1,250m² (figures 7 & 8).

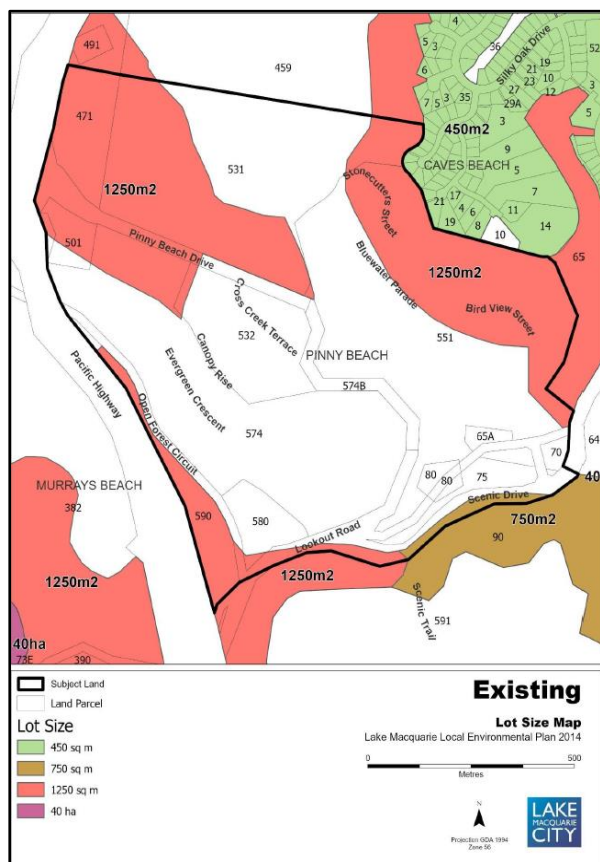


Figure 6 – Existing Lot Size

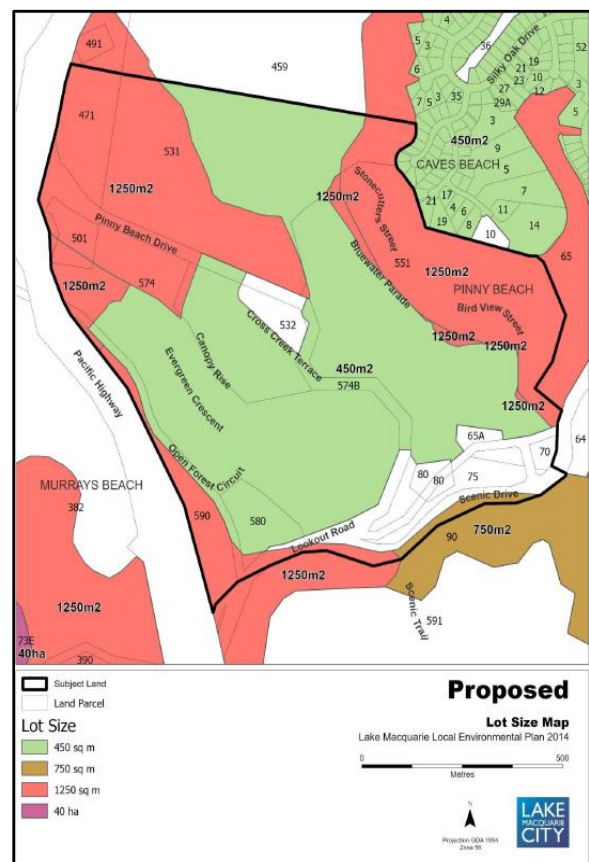


Figure 7 - Proposed Lot Size

- generally reducing the height of buildings map controls on part of the site from 10m, 12m and 14m to 5.5m and 8.5m. It will retain a limited amount of the existing 10m and 12m maximum building heights within the site.

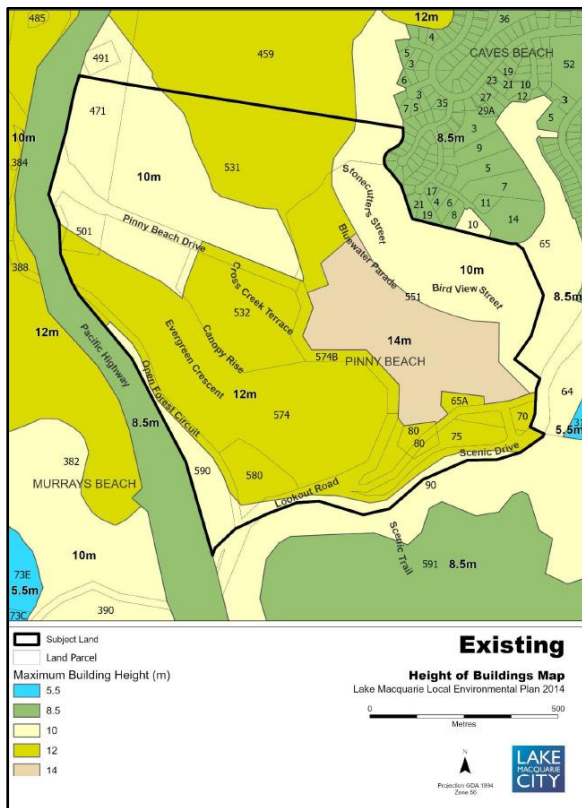


Figure 8 – Existing Maximum Building Height

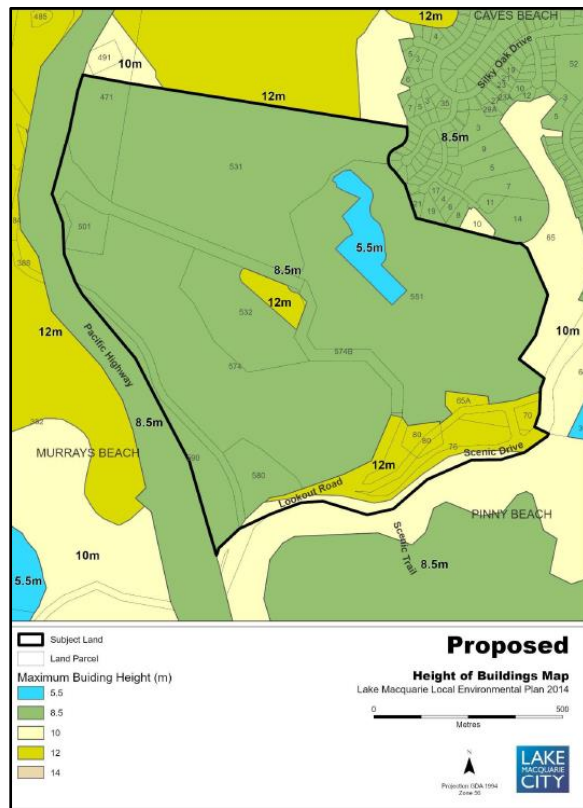


Figure 9 – Proposed Maximum Building Height

- Include an additional local provision in Part 7 which applies to part of the land at North Wallarah Peninsula Area 3 which enables:
 - development for dual occupancies in the R1 General Residential zone where:
 - the land is a corner lot with a minimum size of 620m²; or
 - the subdivision of the land into 2 lots if the size of each lot resulting from the subdivision is at least 310m².
 - development on land in R1 General Residential zone that is both:
 - the subdivision of land into 3 or more lots that each have frontage to a road and contain a building envelope.
 - the erection of a dwelling house or semi-detached dwelling on land in R1 General Residential zone if the size of each lot resulting from the subdivision is at least 300m² but no more than 450m².
 - if a subdivision of land creates a battle-axe lot in the R1 General Residential zone the lot must have an area of at least 600m².
 - if a subdivision of land creates a corner lot in R1 General Residential zone, the lot must have an area of at least 500m².

- Amend the additional permitted uses map (figure 11 & 12) to amend the boundaries of the North Wallarah Peninsula Areas 1 and 2 and introduce a new North Wallarah Peninsula Area 3.

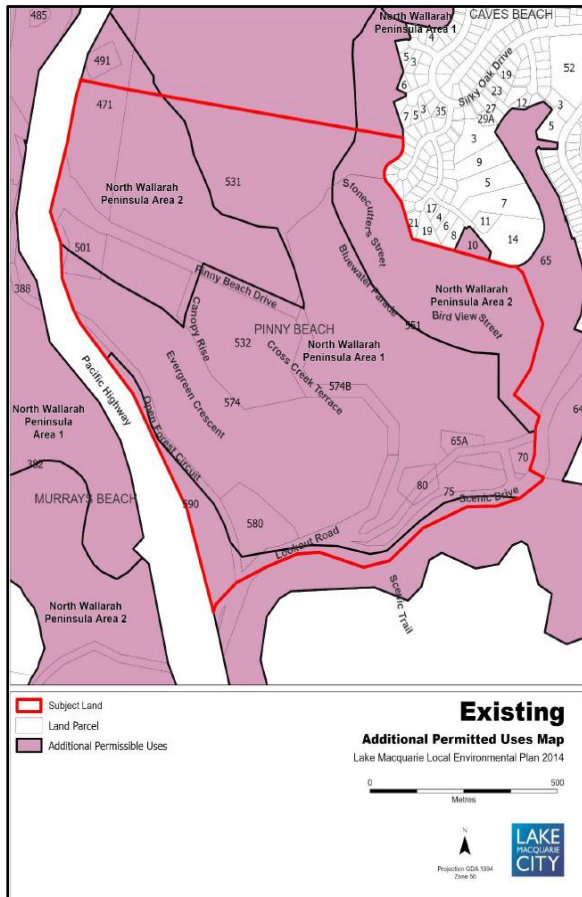


Figure 10 – Existing APU Map

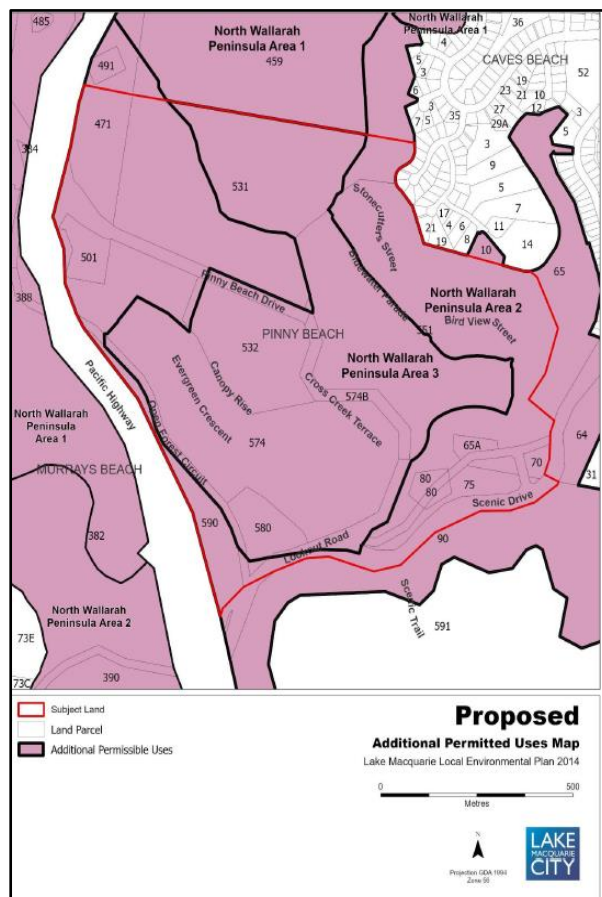


Figure 11 - Proposed APU Map

- Amend Schedule 1 additional permitted uses item 18 to identify the additional permitted uses in Area 1 also apply to Area 3.

4.1A Exceptions to minimum subdivision lot size for certain residential development

Council states provision in the R1 General Residential zone permit development that is both dual occupancies and the subdivision of land into two lots where each lot is at least 250m².

The provision is inconsistent with the North Wallarah Precinct Area Plan development control plan which prescribes minimum lots of 310m² for subdivided dual occupancies. Council seeks to correct the local environmental plan inconsistency by amending the clause or including a new additional local provision to permit:

- dual occupancies on land that is a corner lot or a lot with a minimum size of 620m².
- subdivision of land for the purpose of a dual occupancy where each lot is at least 310m².
- subdivision of land into 3 or more lots for a dwelling house or semi-detached dwelling with each resulting lot being of 300m² but no more than 450m² and must contain a road frontage and building envelope.

The effect of the clause is to restrict dual occupancies to sites of least 620m² and increase the minimum size of subdivided lots for dual occupancy development from 250m² to 310m² and include the subdivision of land into 3 lots in the R1 General Residential zone to be consistent with the North Wallarah Precinct Area Plan development control plan.

4.1C Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones

Council proposes to include battle axe and corner lot subdivision provisions of 600m² and 500m² respectively which currently do not apply in clause 4.1C in the R1 General Residential zone on the site.

The proposed amendments are site specific and respond to the site's environmental and scenic attributes and would ensure there is consistency with the existing North Wallarah Precinct Area Plan which already includes these development standards for subdivision.

Council has indicated a preference for an additional local provision under Part 7 of the local environmental plan to accommodate the site specific provisions, but has also indicated the option of amending Part 4 principal development standards to accommodate the changes.

It may be more appropriate to have a suite of site-specific development standards as an additional local provision. However, this would be determined during Parliamentary Counsel drafting.

Additional Permitted Uses

Council proposes to revise Item 18 In Schedule 1 additional permitted uses to identify the uses in Area 1 apply to a new Area 3 on the additional permitted uses map to provide a dedicated boundary area to give effect to the restricted dual occupancy and subdivision provisions within the approved subdivision.

No additional land uses terms are proposed.

2.4 Mapping

The planning proposal seeks to amend the:

- Lot Size Map – Sheet LSZ_010B and LSZ_010D.
- Height of Buildings Map - Sheet HOB_010B, HOB_010D and HOB_011.
- Additional Permitted Uses Map - Sheet APU_010B and APU_010D.

The proposed maps are suitable for community consultation.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report and has been initiated by the proponent to encourage housing diversity of dual occupancies and re-subdivision that reflect the desired character and unique environmental and scenic attributes of the subject site.

Council has advised the current subdivision provisions under Clause 4.1A exceptions to minimum subdivision lot size for certain residential development are inconsistent with the adopted Part 12.6 North Wallarah Peninsula Area Plan of *Lake Macquarie Development Control Plan 2014*.

The planning proposal seeks to align the building heights and residential density provisions in the development control plan with those in *Lake Macquarie Local Environmental Plan 2014*. This will give legal statutory effect to the provisions that currently exist in the development control plan.

The planning proposal is considered an appropriate mechanism to achieve a consistent planning framework and development controls between the *Lake Macquarie Local Environmental Plan 2014* and *Lake Macquarie Development Control Plan 2014*.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* provides high level directions for growth and change. The following relevant direction applies to the planning proposal:

- Direction 17: Create healthy built environments through good design

The site has been subject to a comprehensive planning process over two decades and the planning proposal amendments seek to give effect to the design objectives within the development control plan to ensure the environmental and scenic attributes are protected and the built form is sympathetic to reinforce the desired future character of the site.

- Direction 21: Create a compact settlement; and
- Direction 22: Promote housing diversity

The planning proposal sets provisions for a compact settlement providing a range of lot sizes and enables opportunities for housing diversity for certain dual occupancy development and re-subdivision for small lot housing within the site.

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

Draft Hunter Regional Plan 2041

The planning proposal was submitted to Council prior to the exhibition of the draft regional plan. However, there are matters that are appropriate for consideration in relation to the planning proposal.

Although the planning proposal is potentially inconsistent with the draft regional plan, the inconsistency is minor given proposal is consistent with the *Hunter Regional Plan 2036* which prevails over the inconsistency.

- Objective 3 – Create a 15-minute region made up of mixed, multi-modal, inclusive and vibrant communities

The site is located close to Swansea, Caves Beach and Nords Wharf villages with transport services located on the Pacific Highway. Google maps indicates it would be a 34 minute walk and 8 minute cycle from the site to the Swansea Shopping Village. Access would be via an on-road connection with no dedicated cycle lane.

The draft plan also seeks for development controls to permit a greater variety of land uses within neighbourhoods, streets and blocks, even if such uses are not initially proposed by developers within developments, so that neighbourhoods can continue to evolve unencumbered over time to achieve greater local mix.

The benefit of R1 General Residential under the local environmental plan is the clear zone objective to enable other land uses that provide facilities or services to meet the day to day needs of residents. This include centre-based child care facilities, markets, neighbourhood shops and restaurants and cafes as permissible with consent.

The approved subdivision plan accommodates a lot in the centre of the site for a village centre for commercial and retail purposes. It is not clear the proposed amendments to the residential densities that would be permissible on the site would be sufficient to successfully support such proposed uses, and Council is not proposing to employ mechanisms, including phasing controls, to ensure such centres and uses are constructed and delivered.

- Objective 4 - Plan for “Nimble Neighbourhoods”, diverse housing and sequenced development

The draft regional plan recognises that in order to achieve the many public interest intentions of the draft plan there needs to be greater diversity of housing to improve affordability.

The site will have a variety of minimum lot sizes of 450m², 750m², 1,250m² and areas with no mapped minimum lot size across the R1 General Residential zone as well as provisions enabling small lot subdivision and dual occupancy.

Unfortunately, the reduction in the maximum height of building will limit the ability for some more diverse housing choices to be provided in future as the community may evolve over time. This would limit the ability for these future neighbourhoods to become more nimble to accommodate different demographics. Neighbourhoods should support people to grow older in communities they know and allow people to stay in communities they grew up in as kids. Rigid and difficult to change planning controls limit these choices.

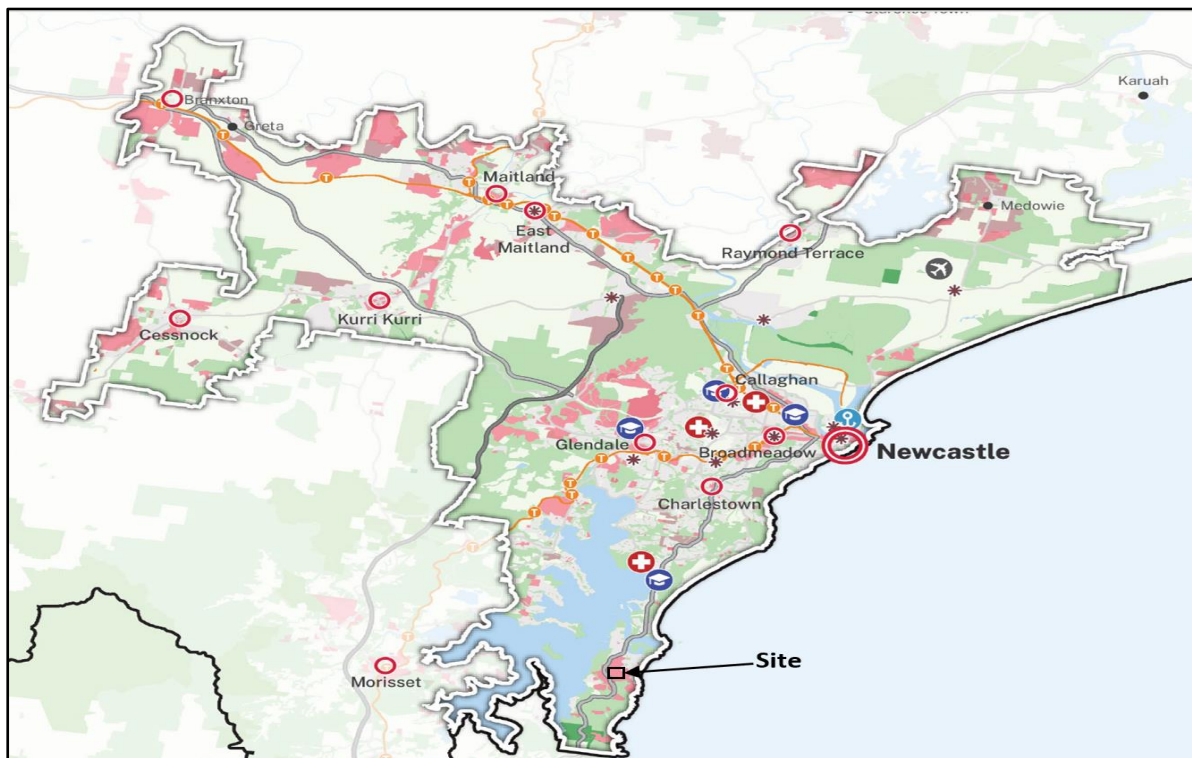


Figure 12 – Greater Newcastle district in Draft Hunter Regional Plan 2041

Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* helps to achieve the vision outlined in the *Hunter Regional Plan 2036* and sets out strategies and actions that will drive sustainable growth across Greater Newcastle.

The proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

- Outcome 2 – Strategy 10: Create better buildings and great place

The site has been subject to extensive planning over the years and the planning proposal amendments provisions to give affect to the development control plan desired future character provisions with alternating heights to be sympathetic to the visual amenity of the surrounding landscape.

- Outcome 2 - Strategy 12 Enhance the Blue and Green Grid and the urban tree canopy

The site is located within a biodiversity corridor and assessment under previous development applications has ensured that biodiversity links are preserved and enhanced running north to south across the site in particular along the Pacific Highway to the east and Mawson's Lookout to the west.

- Outcome 3 – Deliver Housing close to jobs and services

The planning proposal is located in the Metro Frame and is identified as a Housing Release Area. Council has advised the planning proposal has infrastructure provisions in place due to consent conditions of previous development applications.

Additionally, the approved 410 residential lot subdivision has been designed with a range of lot sizes to enable further densification to achieve the 15 dwellings per hectare in housing release areas, with 25% of lots capable of providing small lot or multi-dwelling housing types.

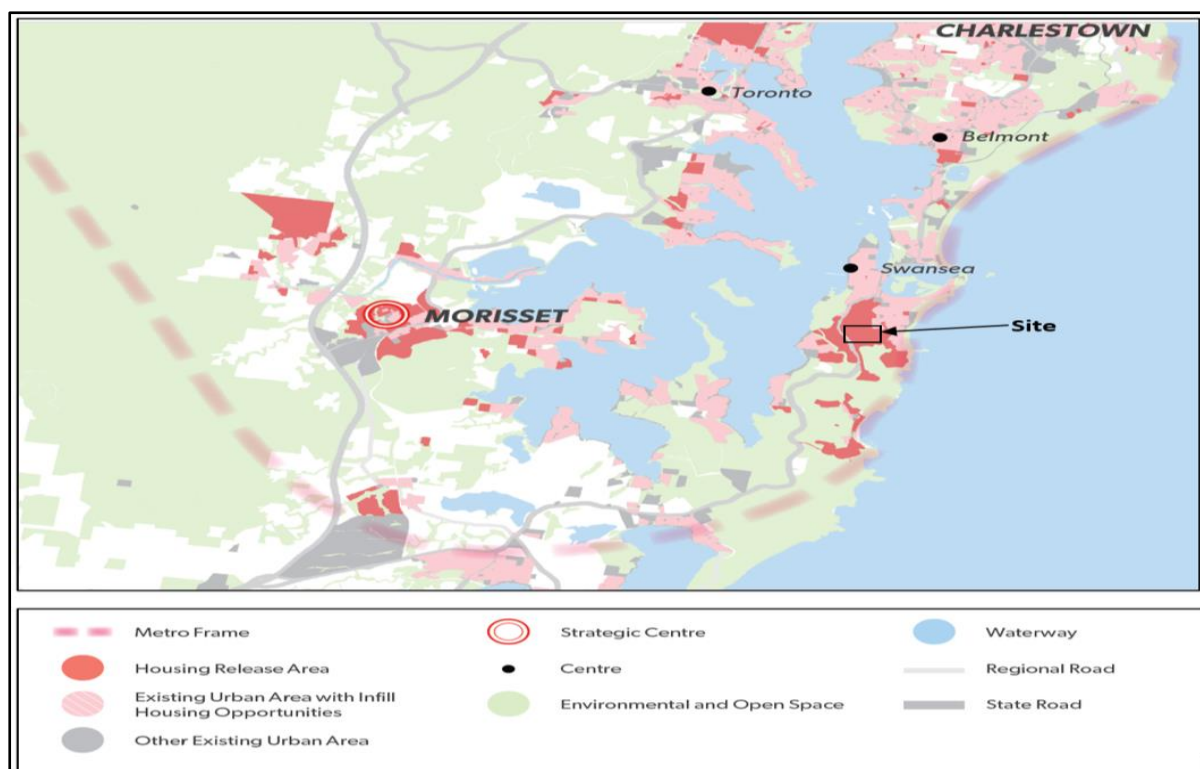


Figure 13 - Extract of Housing opportunities map – GNMP 2036

4.2 Local

Lake Macquarie Local Strategic Planning Statement

The planning proposal is also located within an Urban Intensification Area identified in the Lake Macquarie Local Strategic Planning Statement and the relevant planning priorities are:

- Planning priority 2: A city to call home – where diverse housing options cater to everyone's needs
- Planning priority 5: A city of progress and play – where people come together in natural and vibrant public spaces
- Planning priority 6: A city with a vast natural environment – That is valued, protected and enhanced;

The planning proposal caters for the desired future character and built form of the residential subdivision by enabling housing diversity that is sympathetic to the surrounding scenic amenity and natural environment.

The planning proposal is consistent with the Lake Macquarie Local Strategic Planning Statement.

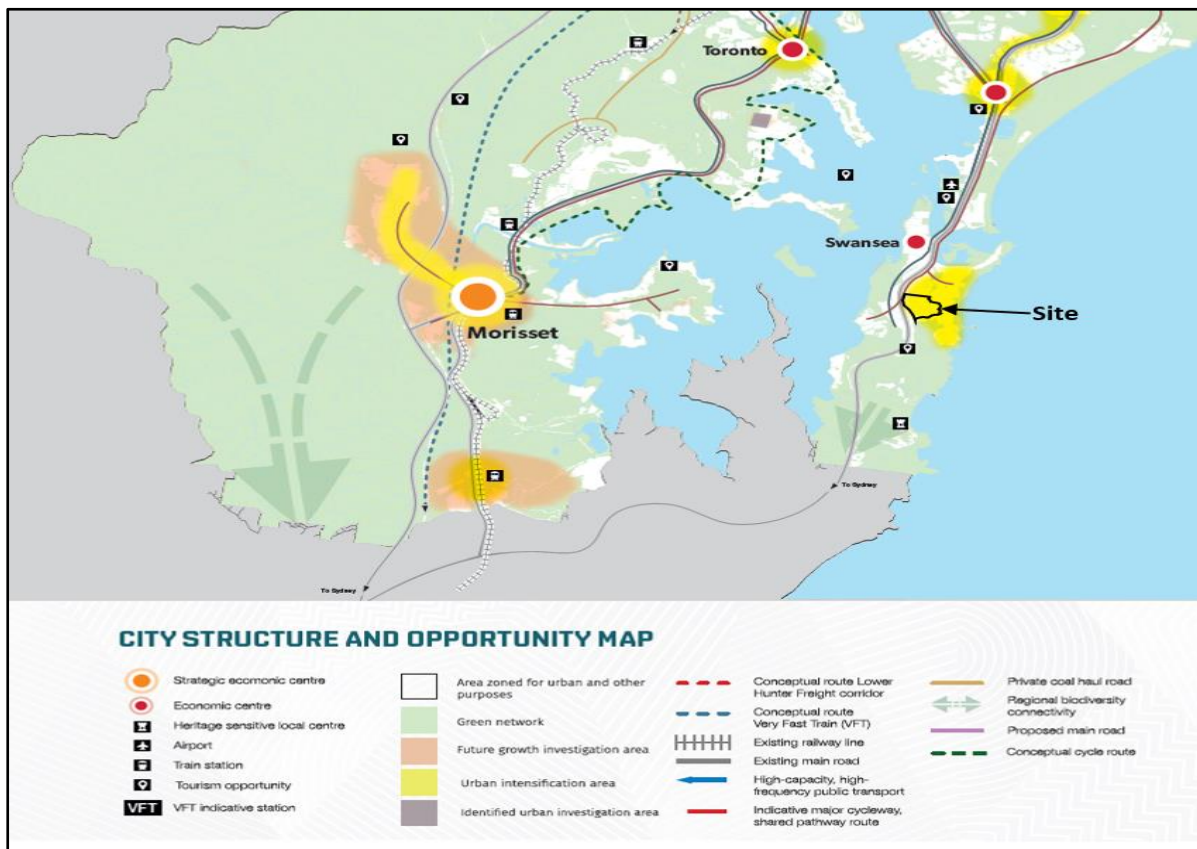


Figure 14 –LSPS City Structure and Opportunity Map

Lake Macquarie Housing Strategy 2020

The *Lake Macquarie Housing Strategy 2020* was conditionally endorsed by the Department on 23 November 2020. The endorsement noted additional investigation is required before site-specific or policy-related planning proposals can be prepared and cannot be used to justify any inconsistency with section 9.1 Ministerial directions.

The strategy identifies that there is sufficient capacity from greenfield and infill housing supply to meet housing demand until 2040, including urban intensification supply Caves Beach, Nords Wharf and North Wallarah. The following priorities are relevant for the planning proposal:

- Priority 1: Facilitate efficient housing supply and infrastructure coordination

The proposal will supply residential housing over a 5 – 10-year period for the south-east of the city. The eventual development of the commercial village within the site will allow residents to access services in a walkable neighbourhood.

- Priority 2: Increase diversity and choice in housing

The strategy also seeks to achieve a minimum residential density of 15 dwellings per hectare in housing release areas, while delivering 25 per cent of lots for small lot or multi-dwelling housing. The site would accommodate over the 15 dwelling per hectare range and 25 per cent small or multi-dwelling housing if 60% of these lots were developed to be dual occupancies or were re-subdivided.

The planning proposal is consistent with the *Lake Macquarie Housing Strategy 2020*.

4.3 State environmental planning policies (SEPPs)

Lake Macquarie City Council has identified the relevant SEPPs as applicable:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 4 – Koala habitat protection 2021
 - Chapter 6 – Bushland in urban areas
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 2 – Coastal management
 - Chapter 4 – Remediation of land
- State Environmental Planning Policy (Transport and Infrastructure) 2021
 - Chapter 2 – Infrastructure

The planning proposal seeks to amend development standards, subdivision controls and the application of additional permitted uses to certain areas within the site with reduced impacts than the historical planning framework and consented development applications that apply to the site.

The planning proposal is consistent with the relevant SEPPs.

4.4 Section 9.1 Ministerial directions

The planning proposal is consistent with 1.1 Implementation of Regional Plans; 3.1 Conservation Zones; 4.2 Coastal Management; 4.5 Acid Sulfate Soils; 5.1 Integrating Land Use and Transport and 6.1 Residential Zones.

4.4 Remediation of Contaminated Land

The site has been identified as being potentially contaminated and has undergone a number of contamination assessments and remediation plans due to historic mining activities.

Council has advised 531 Old Pacific Highway, Pinny Beach was not incorporated into previous contamination assessments for approved development applications and is likely to have undergone historic mining activities resulting in potential contamination.

Council has advised mining contamination constraints were assessed at a high level for entire North Wallarah Peninsula and strategies for remediation were outlined in a physical infrastructure management plan under the approved Masterplan in 2003. Council proposes to address contamination through future development assessment and this is considered appropriate given the existing residential zoning on the site.



Figure 15 – Location of future DA

1.4 Site Specific Provisions

The planning proposal introduces site-specific provisions that imposes development standards in addition to those already contained in the local environmental plan and is inconsistent with the terms of the direction.

The local provision seek to enable flexibility for urban density in the form of re-subdivision and dual occupancy development that is sympathetic to the visual and environmental attributes to the site. The proposed provisions have been developed to ensure there is consistency with the existing development control plan created through the historic planning framework that applies to the site.

The inconsistency with the terms of the direction are of minor significance.

3.1 Conservation Zones

The site is identified as containing native remnant vegetation that contributes significantly to movement and viability of fauna and flora within Council's vegetation mapping. The site has undergone extensive environmental assessment under the historical planning framework of the broader North Wallarah Peninsula, which included an ecological site management plan under the masterplan of 2003.

An environmentally sensitive land mapping layer under Clause 7.20 of *Lake Macquarie Local Environmental Plan 2014* applies to the site. The planning proposal will not impact any additional environmental lands. The planning proposal provisions as proposed are not considered to affect critical habitat, threatened species, populations or ecological communities, or their habitats.

4.3 Planning for Bushfire Protection

The site is identified as being bushfire prone. The site has undergone previous bushfire assessments under the historic planning framework and consented development applications and has received general terms of approval.

Council has advised a section of the 531 Old Pacific Highway, Pinny Beach was not incorporated into previous bushfire assessments. However, it is already zoned for residential purposes.

Consultation with the NSW Rural Fire Service should occur under the terms of the Direction before consistency can be determined.

4.6 Mine Subsidence and Unstable Land

The land is identified as being within the Swansea North Entrance Mine Subsidence District. The planning proposal is not anticipated to result in more intensive development on the site.

The direction requires consultation with the Subsidence Advisory NSW before consistency can be determined.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Social impacts are considered to be positive and will provide diverse housing in an identified urban intensification area.

5.2 Environmental

Visual and amenity impact

Building heights, colours and form, canopy re-establishment works, retention and protection of existing vegetation were incorporated into the revised development control plan and consented development applications. The planning proposal supports the building height and density provisions in the development control plan by giving them legal effect in *Lake Macquarie Local Environmental Plan 2014*.

5.3 Economic

The land is already zoned and servicing requirements for water, sewer, gas, electricity and telecommunications and are conditioned under existing development applications on the site or future development applications.

5.4 Infrastructure

The site is already zoned for residential purposes and Council has advised the site has an active development application under DA1656/2019 that conditions that the site be provided public infrastructure, such as internal roads and two access points on to the Pacific Highway before the delivery of the residential subdivision.

6. CONSULTATION

6.1 Community

Council proposes a community consultation for a 28-day period. This is considered appropriate.

6.2 Agencies

Council proposes to consult with the following agencies, and these are supported to address section 9.1 Ministerial directions on the planning proposal:

- Subsidence Advisory NSW; and
- NSW Rural Fire Service.

7. TIME FRAME

Council has proposed a 7 month timeframe to make the plan. The planning proposal is categorised as 'standard' which has an end-to-end timeframe of 320 days. The local environmental plan is to be made by 27 May 2023.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. The planning proposal is considered to be a minor local planning matter and Council should be authorised to be the local plan-making authority.

9. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial directions 1.4 Site Specific Provisions are minor; and
2. note the consistency with section 9.1 Ministerial directions: 4.3 Planning for Bushfire Protection; and 4.6 Mine Subsidence and Unstable Land are unresolved and will require justification.

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

1. Update the planning proposal to include consideration of the draft Hunter Regional Plan 2041.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - Subsidence Advisory NSW; and
 - NSW Rural Fire Service.
4. The time frame for completing the LEP is to be on or before 27 May 2023.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



11/10/2022

Dan Simpkins

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