

PLANNING PROPOSAL - GREAT LAKES COUNCIL

RECLASSIFICATION OF FORSTER KEYS DRAINAGE RESERVES - COMMUNITY TO OPERATIONAL

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INTRODUCTION

This is a Planning Proposal seeking to reclassify land known as the Forster Keys Drainage Reserves (Lot 50 DP 609496; Lot 104 DP 245073; Lot 248 DP 593704; Lots 160-162 DP 255648; and Lot 230 DP 261608) in the Great Lakes Local Government Area (see the locality plans in Figures No.1 & No.2).

The existing zoning of this land and the land surrounding the drainage reserves under Great Lakes Local Environmental Plan 1996 is illustrated in Figure No.3.

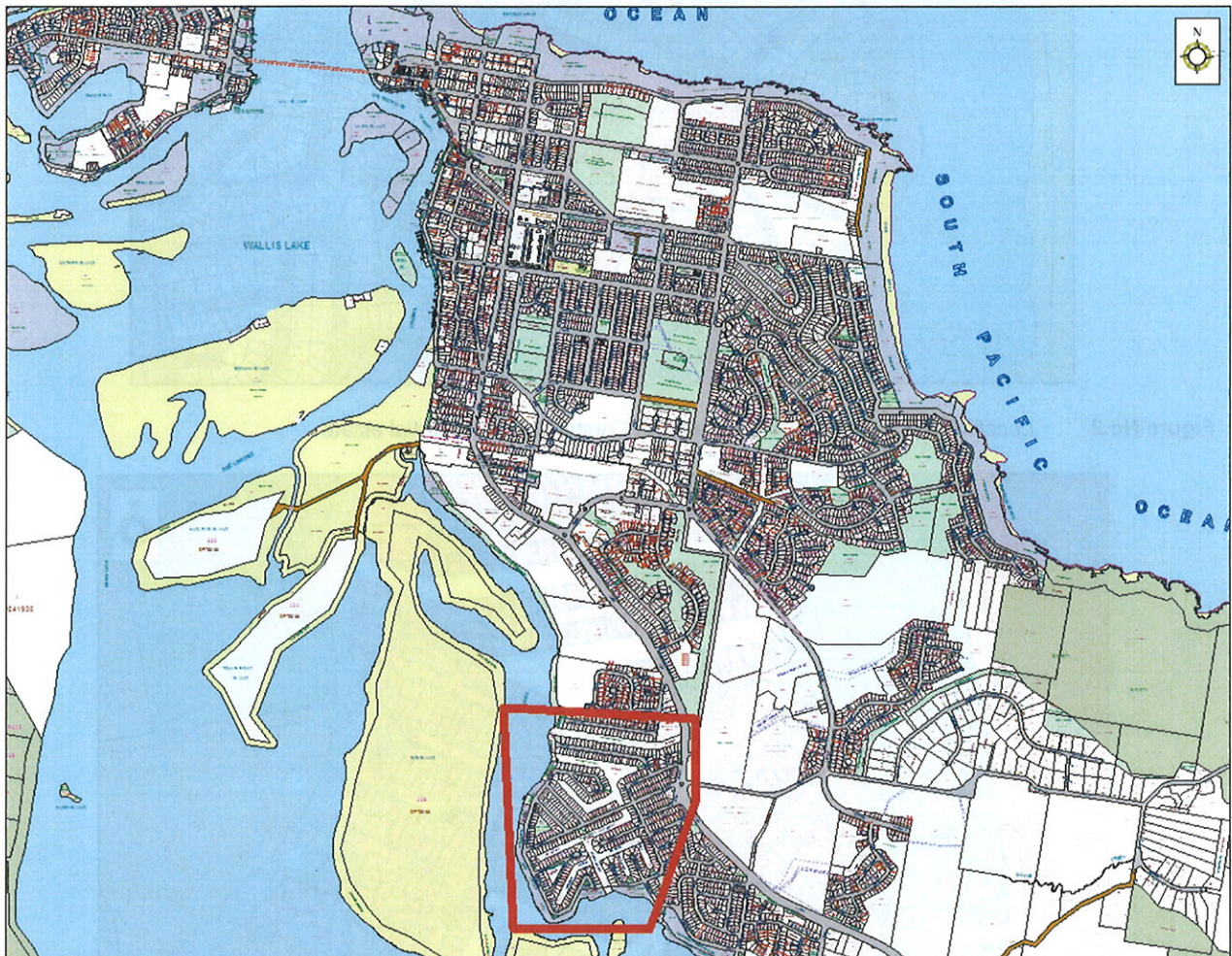


Figure No.1 Forster Keys residential estate location relative to the Forster Urban Area

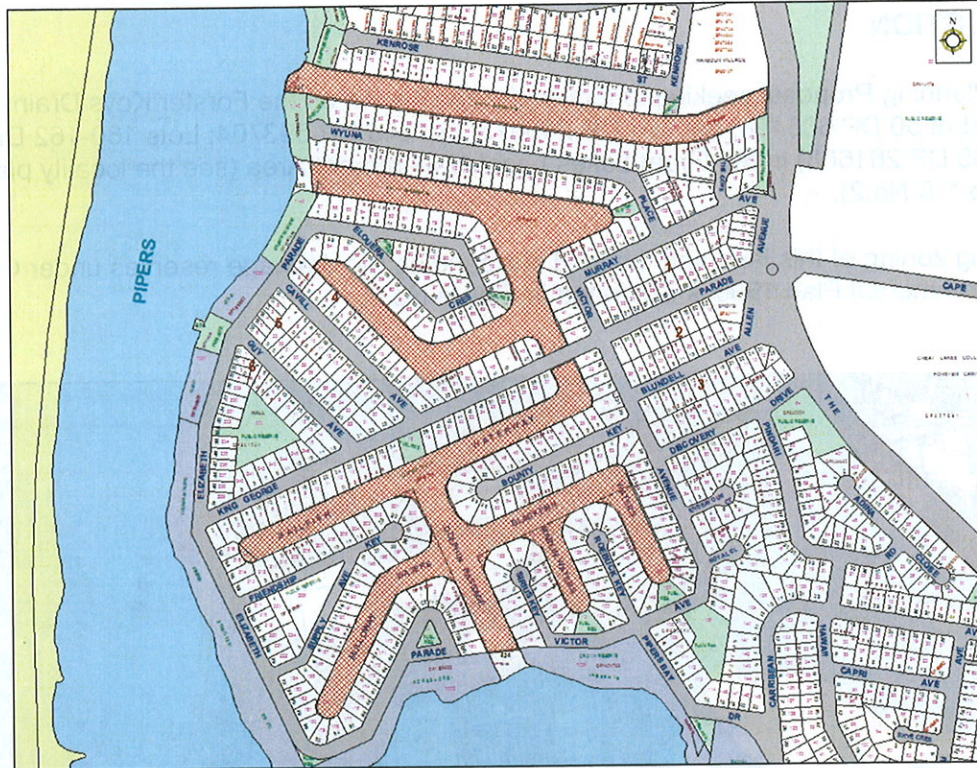


Figure No.2 Locality Map of Drainage Reserves with Forster Keys residential estate

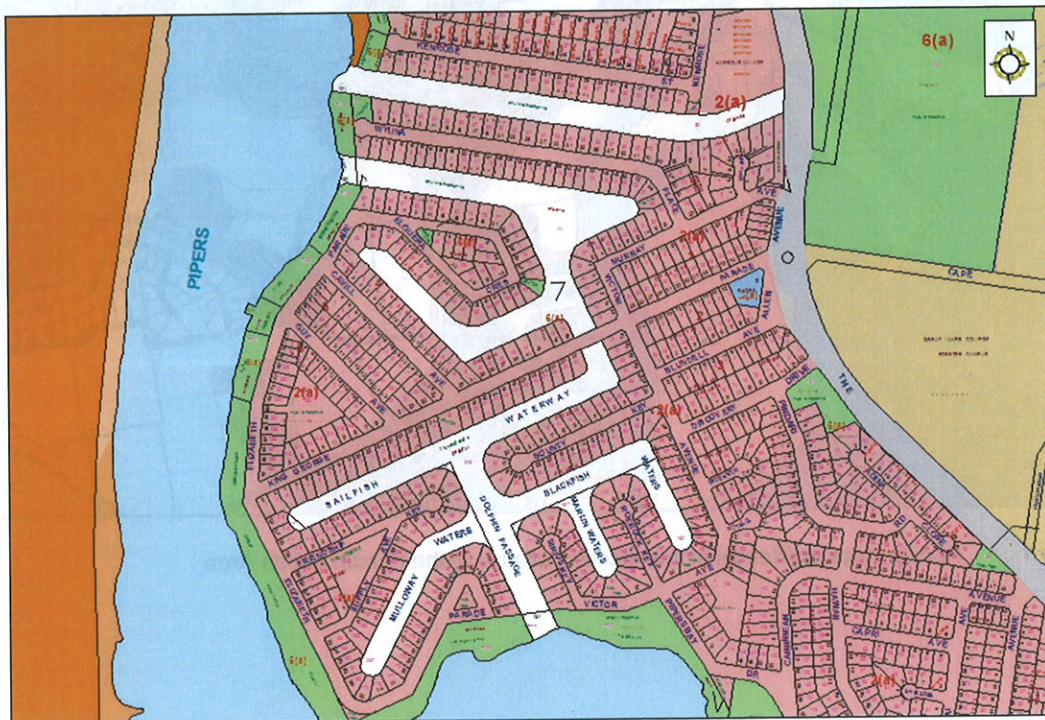


Figure No.3 The Forster Keys drainage reserves are currently unzoned and classified as community land. Adjacent residential allotments are zoned 2(a) Low Density Residential.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES

A statement of the objectives or intended outcomes of the proposed local environmental plan

The primary objective of the planning proposal is to reclassify each drainage reserve from community land to operational land under the *Local Government Act 1993*. The reclassification is proposed to allow the licensing of private structures within the drainage reserves to protect the stability of adjoining private land.

Great Lakes Council ("Council") has prepared a Management Plan detailing the outcomes that are sought for the drainage reserves. A copy of the draft Management Plan is provided in Annexure A to this Planning Proposal.

The land has drainage functions and is permanently inundated by water. The proposed reclassification is not proposed to allow the sale of the reserves by Council.

PART 2 - EXPLANATION OF PROVISIONS

An explanation of the provisions that are to be included in the proposed local environmental plan

The proposal will amend *Great Lakes Local Environmental Plan 1996* by reclassifying the identified community land to operational land.

Specifically, Clause 35 of Great Lakes LEP 1996 will be amended with the addition of the following rows to the Table within that clause:

Table

Column 1	Column 2	Column 3
Lot 50 DP 609496	Community Land	Operational Land
Lot 104 DP 245073 Lot 248 DP 593704 Lots 160-162 DP 255648 Lot 230 DP 261608	Community Land	Operational Land

PART 3 - JUSTIFICATION

Section A - Need for the planning proposal.

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

The need for the Planning Proposal has arisen following Council's actions to implement the findings of a report prepared for Council into the hydrodynamics of the Forster Keys drainage reserves (*Forster Keys Hydrodynamics and Revetment Wall Investigation* – BMT-WBM, 2008). A copy of the report is provided in Annexure D to this Planning Proposal.

The report was prepared to look at the issue of failure of revetment walls on the private land/drainage reserve interface, and concluded that the most effective way to resolve the issue is to allow private land owners to construct new revetment walls within Council's drainage reserve adjacent to the private land. The process to allow this relies upon reclassification of the land to permit this to occur so that private structures can be licensed by Council.

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

The proposed revetment walls will be private structures on public land. Council is not able to license these structures on community land and cannot accept the construction, maintenance and liability costs of constructing and maintaining revetment walls which have the function to protect private property. As such, Council proposes a Management Plan which will allow permissive occupancy and licence/lease agreements within the reserve for private structures. Council has received legal advice that to allow this to occur the land must be reclassified from community land to operational land.

The land cannot be reclassified under the provisions of the *Local Government Act 1993* as the land was not acquired by Council after 1 July 1993 and is not land which has been dedicated under Section 94 of the *Environmental Planning and Assessment Act 1979*. Accordingly, the land can only be reclassified using the provisions of the *Environmental Planning and Assessment Act 1979*.

An alternative approach would be to not allow owners of adjoining private residential properties to build their revetment walls within the drainage reserves, and instead require them to rebuild their revetment walls within their existing boundaries. While this was considered by Council, the likely outcome would result in greater levels of land disturbance on the bank and, quite likely, involve greater environmental impact.

3 Is there a net community benefit?

The proposal is of benefit to the landowners who will be able to protect their properties. The proposal also reduces public costs to Council who will have no need to construct or maintain public infrastructure to protect private properties. The community benefit is that the intended interface between public and private land can be effectively managed with minimal expenditure of public funds.

Section B - Relationship to strategic planning framework

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

The proposal is consistent with the aims and objectives of the Mid North Coast Regional Strategy, allowing protection of existing residential land from a natural hazard (erosion).

The outcomes of the Planning Proposal will maintain existing housing opportunities and settlement character and will not detrimentally affect economic development or natural resources. The outcomes address an existing hazard (erosion), are unlikely to impact on cultural heritage, and do not result in any significant effect on water and energy resources.

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

In 2003, Council adopted the Forster Tuncurry Conservation and Development Strategy to guide growth in the Forster and Tuncurry locality. The Strategy did not provide any significant analysis of land at Forster Keys (being established residential land).

The Strategy does however acknowledge the shortage of suitable urban land in the Strategy study area. Protection of existing residential land is considered to be consistent with the outcomes and recommendations of the Strategy.

6 Is the planning proposal consistent with applicable environmental planning policies?

State Environmental Planning Policy Number 14 – Coastal Wetlands

The drainage reserves do not include any land which is identified/mapped as State Environmental Planning Policy 14 – Coastal Wetlands. There are SEPP 14 lands in the Wallis Lake and in Pipers Creek to which the drainage reserves connect. The outcomes facilitated in the drainage reserves are unlikely to have any detrimental impact on any the SEPP 14 wetland areas.

State Environmental Planning Policy Number 26 – Littoral Rainforest

There are no areas within or adjoining the drainage reserves which are mapped State Environmental Planning Policy 26 – Littoral Rainforest.

State Environmental Planning Policy Number 50 – Canal Estate Development

State Environmental Planning Policy Number 50 (SEPP 50) deals with Canal Estate Development and provides that canal estate development is prohibited on land within the State. The existing Forster Keys and Kenrose Canal areas, as established, would meet the definition of *canal estate development*.

The outcomes proposed by this Planning Proposal would not involve *canal estate development* and would not be prohibited by the provisions of SEPP 50. Specifically, the definition for canal estate development provided in SEPP 50 is:

canal estate development means development that:

- (a) *incorporates wholly or in part a constructed canal, or other waterway or waterbody, that is inundated by or drains to a natural waterway or natural waterbody by surface water or groundwater movement (not being works of drainage, or for the supply or treatment of water, that are constructed by or with the authority of a person or body responsible for those functions and that are limited to the minimal reasonable size and capacity to meet a demonstrated need for the works), and*
- (b) *includes the construction of dwellings (which may include tourist accommodation) of a kind other than, or in addition to:*
 - (i) *dwellings that are permitted on rural land, and*
 - (ii) *dwellings that are used for caretaker or staff purposes, and*
- (c) *requires or includes:*
 - (i) *the use of a sufficient depth of fill material to raise the level of all or part of that land on which the dwellings are (or are proposed to be) located in order to comply with requirements relating to residential development on flood prone land, or*
 - (ii) *excavation to create waterways primarily for the purposes of providing water access to dwellings,**or both.*

The construction of replacement revetment walls within the drainage reserve is considered to be maintenance of the existing drainage channels. The outcomes facilitated by this Planning Proposal do not:

- involve or further facilitate the construction of dwellings; or
- involve filling for the part of the land on which dwellings are (or are to be) located; or
- involve excavation to create waterways.

State Environmental Planning Policy Number 71 – Coastal Protection

The land is located within the Coastal Zone and the provisions of State Environmental Planning Policy Number 71 (SEPP 71) – Coastal Protection are relevant to the land. The Planning Proposal is consistent with the aims of SEPP 71.

Clause 8 of SEPP 71 provides matters that must be considered where Council proposes to prepare a draft local environmental plan. These matters are discussed in the following table:

Clause 8 matters SEPP 71	
(a) the aims of this Policy set out in clause 2,	Consistent with the aims of SEPP 71.
b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability	Existing Foreshore Access Arrangements will be maintained.

Clause 8 matters SEPP 71	
should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	The existing drainage reserve frontages are a private interface and there is minimal opportunity to provide public access to this interface.
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The outcomes facilitated by the Planning Proposal maintain the context of existing development in the surrounding area.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The outcomes facilitated by the Planning Proposal will not cause overshadowing or impact on views from coastal foreshores.
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The outcomes facilitated by the Planning Proposal and maintenance of existing reserves will maintain the existing scenic qualities of the New South Wales coast.
(g) measures to conserve animals within the meaning of the (<i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats,	The outcomes facilitated by the Planning Proposal will not impact on terrestrial habitats or Threatened Species.
(h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats,	The outcomes facilitated by the Planning Proposal will result in minor changes to the existing aquatic habitats. There is no impact on any known areas of significance (seagrass beds/wetlands). Comments from the NSW Department of Industry and Investment have been incorporated within the Management Plan and opportunities to improve fish habitats will be pursued.
(i) existing wildlife corridors and the impact of development on these corridors,	The subject lands are not part of a wildlife corridor.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	The existing revetment walls are affected by coastal erosion. The outcomes of this Planning Proposal are to allow landowners to repair their structures in the most efficient manner and with minimal environmental impact. The Plan(s) of Management for these areas will ensure that new structures do not increase erosion in other areas.
(k) measures to reduce the potential for conflict	The drainage reserves that are the subject of this

Clause 8 matters SEPP 71	
between land-based and water-based coastal activities,	Planning Proposal are navigable waterways. The outcomes facilitated by this Planning Proposal are subject to management of the waterways to control water based activities and reduce conflict.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	The drainage reserves are constructed lands and there is little likelihood of in-situ Aboriginal archaeological material being present.
(m) likely impacts of development on the water quality of coastal waterbodies,	The outcomes facilitated by this Planning Proposal will make minimal change to water quality. Controls for construction have been included within the Management Plan to protect coastal water quality.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	The subject lands do not contain any known items of heritage significance.
(o) 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 outcomes of the Planning Proposal provide for the maintenance of existing urban land within the existing Forster township.

7 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The following Ministerial Directions are applicable to the Planning Proposal:

Ministerial Direction	Objective	Consistent?	Discussion
1.4 Oyster Aquaculture	The direction aims to ensure that effects to oyster aquaculture areas are considered in Planning Proposals.	Yes	Parts of Wallis Lake are identified as Priority Aquaculture Areas. The outcomes facilitated by the Planning Proposal will not result in adverse impacts to aquaculture areas. ✓
2.1 Environmental Protection Zones	This direction requires that a draft LEP contain provisions to facilitate protection of any environmentally sensitive land.	Yes	The LEP effects man made drainage reserves and does not involve environmentally sensitive lands. X
2.2 Coastal Protection	This direction applies to any Planning Proposal within the coastal zone. The direction requires provisions to give effect to Government policies and guidelines relating to Coastal protection.	Yes	The Planning Proposal is consistent with the provisions of the NSW Coastline management Manual, providing for protection of development from erosion and reducing future impositions on public funds to protect development. ✓
2.3 Heritage	This direction applies to any Planning Proposal and	Yes	No identified items of heritage conservation significance have been Y

Conservation	requires provisions to protect and conserve heritage items.		identified in or near the subject drainage reserves.
4.1 Acid Sulfate Soils	This direction applies to land that has been identified as having a probability of containing acid sulfate soils. The direction requires consideration and incorporation of relevant Acid Sulfate Soils guidelines.	Yes	While the land is identified as having a probability of containing Acid Sulfate Soils, the proposal does not involve an intensification of land uses and allows maintenance of the existing land uses. The Management Plan prepared for the drainage reserves provides for suitable management of acid sulfate soils.
4.4 Planning for Bush fire Protection	This direction applies when a Planning Proposal affects land that is mapped as Bushfire Prone. The direction requires consultation with the NSW Rural Fires Service and consideration of guidelines.	Yes	Only small areas of the land are mapped as bushfire prone land. No relevant controls would apply to the drainage reserves which are permanent water. Consultation with the Rural Fire Service can occur.
5.1 Implementation of Regional Strategy	This direction requires a Planning Proposal to be consistent with the relevant regional strategy applying to the Local Government Area.	Yes	The Planning Proposal has outcomes allowing the maintenance of existing residential land and is consistent with the Mid North Coast regional Strategy.
6.1 Approval and referral Requirements	This direction prevents a Planning Proposal from introducing requirements for concurrence or approval of a Minister or public authority.	Yes	The Planning Proposal will not introduce any concurrence or approval requirements.
6.2 Reserving Land for Public Purposes	This direction states that a Planning Proposal shall not create, alter or reduce zonings or reservations of land for public purposes unless it has the approval of the relevant authority and the Director General.	Yes	The Planning Proposal involves a change in classification of the drainage reserve to operational land. Council as the public authority has approved the reclassification of the land to operational and the Planning Proposal seeks approval from the Director-General to change the classification of the drainage reserves.

Section C - Environmental, social and economic impact.

- 8 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?**

The Planning Proposal relates to man-made drainage channels and involves minimal change to those reserves. The outcomes of the Planning Proposal are unlikely to impact upon threatened species, populations or ecological communities and the land is not critical habitat.

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

The proposed change facilitated within the drainage reserves by the Planning Proposal is minor. There are limited environmental impacts associated with the outcomes of the Planning Proposal in terms of hydrodynamics of the channels, acid sulfate soils and erosions and sedimentation. The Management Plan for the reserves provides appropriate controls for management of these impacts, which would be minimal regardless of mitigation.

- 10 How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal provides for outcomes which allow for private property owners to protect and maintain their assets and access within the reserve. This allows for effective management and use of the drainage reserves with minimal economic cost to Council.

Section D - State and Commonwealth interests.

- 11 Is there adequate public infrastructure for the planning proposal?**

The outcomes for the Planning Proposal do not impact on or generate additional loads for public infrastructure.

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

Further consultation will occur with public authorities as required by the gateway determination.

Consultation has occurred previously with the NSW Office of Water, NSW Department of Industry & Investment and NSW Maritime in the preparation of the draft Management Plan for the drainage reserves. The NSW Office of Water advised that they had no comments in relation to the Management Plan. The NSW Department of Industry & Investment and NSW Maritime advised support for the preparation of the Management Plan and made suggestions for issues to be addressed.

PART 4 - COMMUNITY CONSULTATION

Details of the community consultation that is to be undertaken on the planning proposal.

No community consultation has been undertaken at this stage, although proposals for management of the drainage reserves have been the subject of ongoing discussions between Council and the Forster Keys Ratepayers Association for some time.

Subject to gateway determination and, in accordance with the relevant provisions of the Act, a suitable exhibition period will be adopted and a public hearing held in relation to reclassification of the land.

CONCLUSION

This is a Planning Proposal seeking to reclassify land known as the Forster Keys Drainage Reserves (Lot 50 DP 609496; Lot 104 DP 245073; Lot 248 DP 593704; Lots 160-162 DP 255648; and Lot 230 DP 261608) in the Great Lakes Local Government Area.

The primary objective of the planning proposal is to reclassify each drainage reserve from community land to operational land under the *Local Government Act 1993*. The reclassification is proposed to allow the licensing of private structures within the drainage reserves to protect the stability of adjoining private land.

Great Lakes Council ("Council") has prepared a Management Plan detailing the outcomes that are sought for the drainage reserves. The land has drainage functions and is permanently inundated by water. The proposed reclassification is not proposed to allow the sale of the reserves by Council.

The proposal is consistent with the relevant regional and local strategic plans for the site and surrounding areas, namely the *Mid-North Coast Regional Strategy (2009)* and *Forster / Tuncurry Conservation and Development Strategy (2003)*.

ANNEXURES

