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Environment

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Gateway determination report – PP-2021-6399

Rezoning part of Lot 499 DP 1258597, 10 Wonga Crescent, Port Macquarie (Blackwood Street Extension) for residential and conservation purposes

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning proposal – Blackwood St Extension: Council Ref PP2011 - 9.3 (18 October 2021 and Appendices A - H)
Ordinary Council Report – Consideration of Planning proposal (pages 98-137)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Port Macquarie-Hastings
PPA	Port Macquarie-Hastings Council
NAME	Rezoning part of Lot 499 DP 1258597, 10 Wonga Crescent, Port Macquarie (Blackwood Street Extension) for residential and conservation purposes
NUMBER	PP-2021-6399
LEP TO BE AMENDED	Port Macquarie-Hastings LEP 2011
ADDRESS	10 Wonga Crescent (Blackwood Street ext) Port Macquarie
DESCRIPTION	Part Lot 499 DP 1258597
RECEIVED	18/11/2021
FILE NO.	IRF21/ 15497
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

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to facilitate future housing and protection of important environmental values. The proposed planning mechanisms to achieve the intended outcomes are:

- amend the Land Zoning (LZN) Map to rezone part of Lot 499 DP 1258597 from RU1 Primary Production to part R1 General Residential (<2ha) and part C2 Environmental Conservation;
- amend the Lot Size (LSZ) Map to introduce a minimum lot size of 450m² for land to be zoned R1 General Residential;
- amend the Floor Space Ratio (FSR) Map to introduce a FSR of 0.65:1 for land to be zoned R1 General Residential;
- amend the Height of Building (HOB) Map to introduce a maximum HOB of 8.5m for land to be zoned R1 General Residential; and
- retain application of the LEP Koala Habitat Map to land to be zoned R1 General Residential and C2 Environmental Conservation.

Council believe that the rezoning and subdivision concept provides a practical development outcome of around 2 hectares (ha) of residential zoned land. It will also enable the application of a C2 Environmental Conservation zone and protection of Native Guava (a *Serious and Irreversible*

Impact Species, under the *Biodiversity Conservation Act, 2016*), core Koala Habitat and Coastal Wetlands and Proximity Areas to Coastal Wetlands.

The objectives of the planning proposal are considered clear and adequate. However, the NSW Government has renamed the 'environment zones' to 'conservation zones' under clause 2.1 Land use zones of the Standard Instrument – Principal Local Environmental Plans. The change commenced on 1 December 2021. Therefore, the E2 Environmental Conservation zone references contained within the planning proposal are to be updated to reference C2 Environmental Conservation prior to community consultation.

1.3 Explanation of provisions

The planning proposal seeks to amend the Port Macquarie-Hastings LEP 2011 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU1	C2 R1
Maximum height of the building	Nil	C2 – Nil R1 – 8.5m
Floor space ratio	Nil	C2 – Nil R1 – 0.65:1
Minimum lot size	RU1 – 40ha	C2 – 40ha R1 – 450m ²
Number of dwellings	0	20 (approximate)

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The subject site currently comprises a single allotment of land known as Lot 499 DP 1258597, 10 Wonga Crescent, Port Macquarie (Blackwood Street extension) (Figure 1). The planning proposal relates to a section in the north eastern part of this lot only (Figure 2). Residential development, subject to rezoning, is proposed for an approximate 2ha area in the northern most part of the rezoning footprint area. This area is located within the Urban Growth Area boundary of the North Coast Regional Plan 2036 (Figure 3). The subject site is situated approximately 5.5km to the southwest of the Port Macquarie CBD.

The character of the locality is that of an urban fringe area with residential development expanding into the undeveloped but residentially zoned parcels of land that exist in the Lake Innes and Lindfield residential areas. Surrounding zonings include C1 National Parks and Nature Reserves and R1 General Residential to the east, SP2 Crematorium directly adjoining to the west and C2 Environmental Conservation and R1 to the north (Figure 4).

Vegetation on the subject site consists of grasslands with scattered small clusters of trees with a narrow band of remnant forest vegetation fringing the southern boundary. Vegetation on adjoining and adjacent land also consists of Dry Sclerophyll Forest to the northwest whilst grasslands with

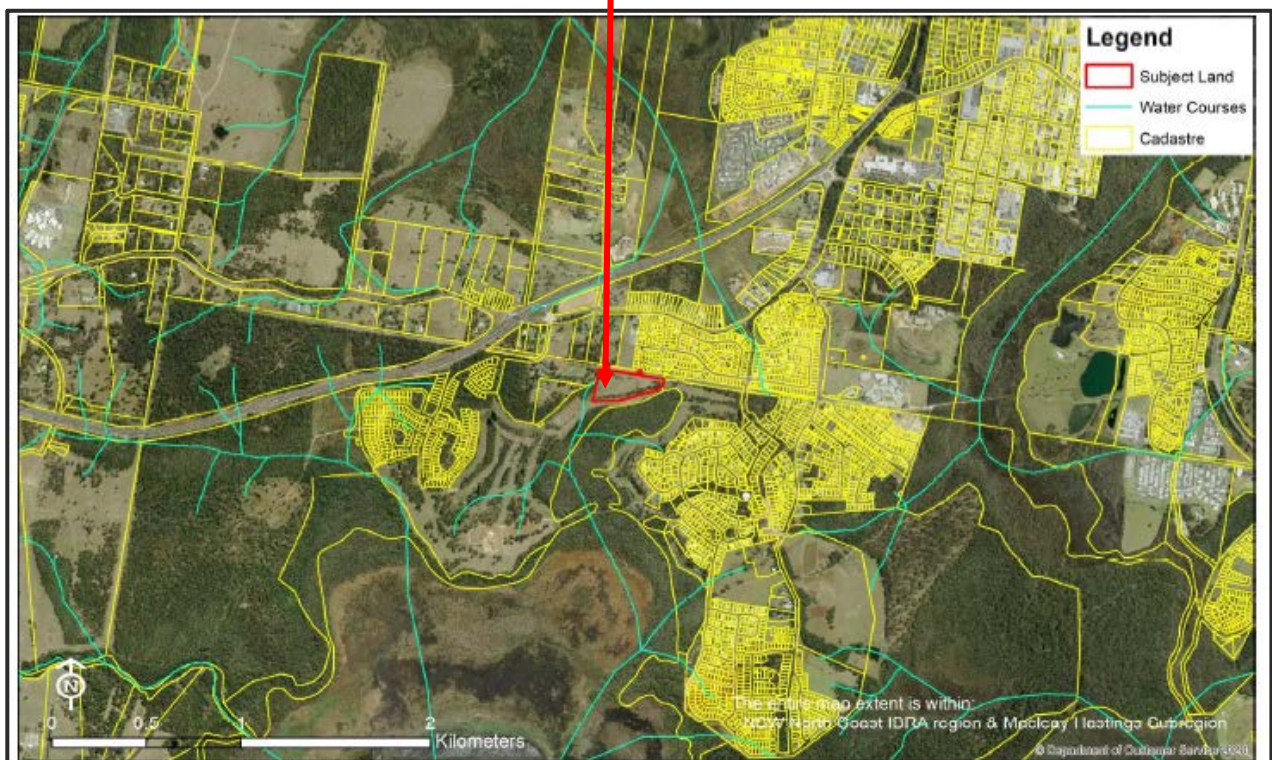
scattered small clusters of trees are present to the north, south and east. A narrow area of remnant forest vegetation is present to the west and separates the subject site from the managed vegetation within the Port Macquarie Crematorium and Lawn Cemetery. At distance to the south are Forested Wetland vegetation associated with the Lake Innes Nature Reserve.

The subject land forms part of a much larger holding, of which a significant portion has been previously excised to join the Lake Innes Nature Reserve, including the peninsular of Forested Wetland vegetation which is located to the south of the subject site. For most of its time, the property has been used for rural pursuits including cattle grazing and timber production.

There are no improvements to the planning proposal area other than some property fencing and dams.



Figure 1 – Subject lot and planning proposal area (source: Planning proposal)



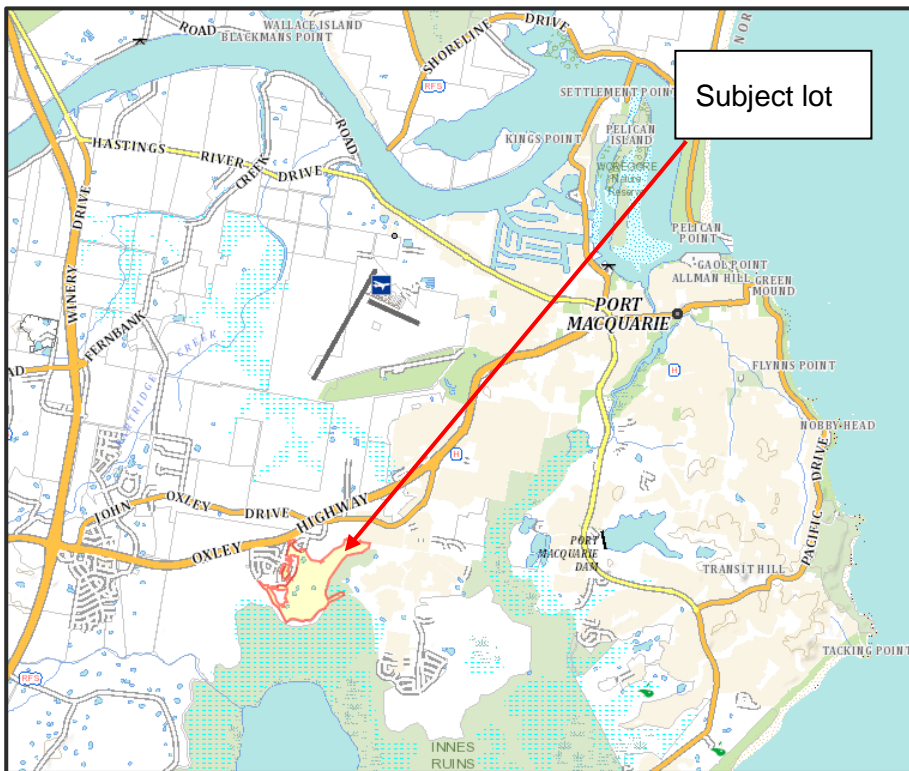


Figure 2 - Site context (source: Six Maps)

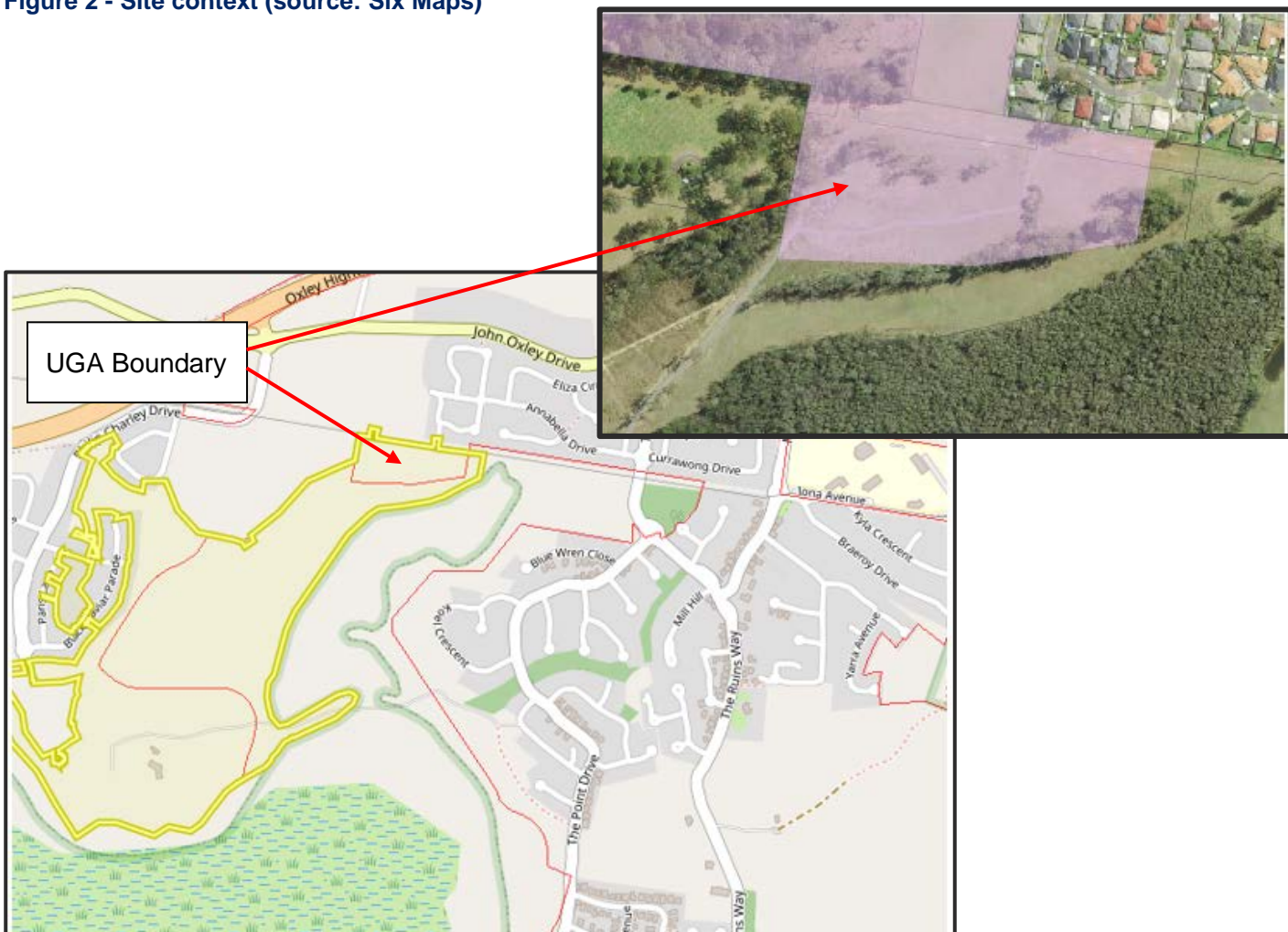


Figure 3 - Subject lot showing area within UGA - North Coast Regional Plan

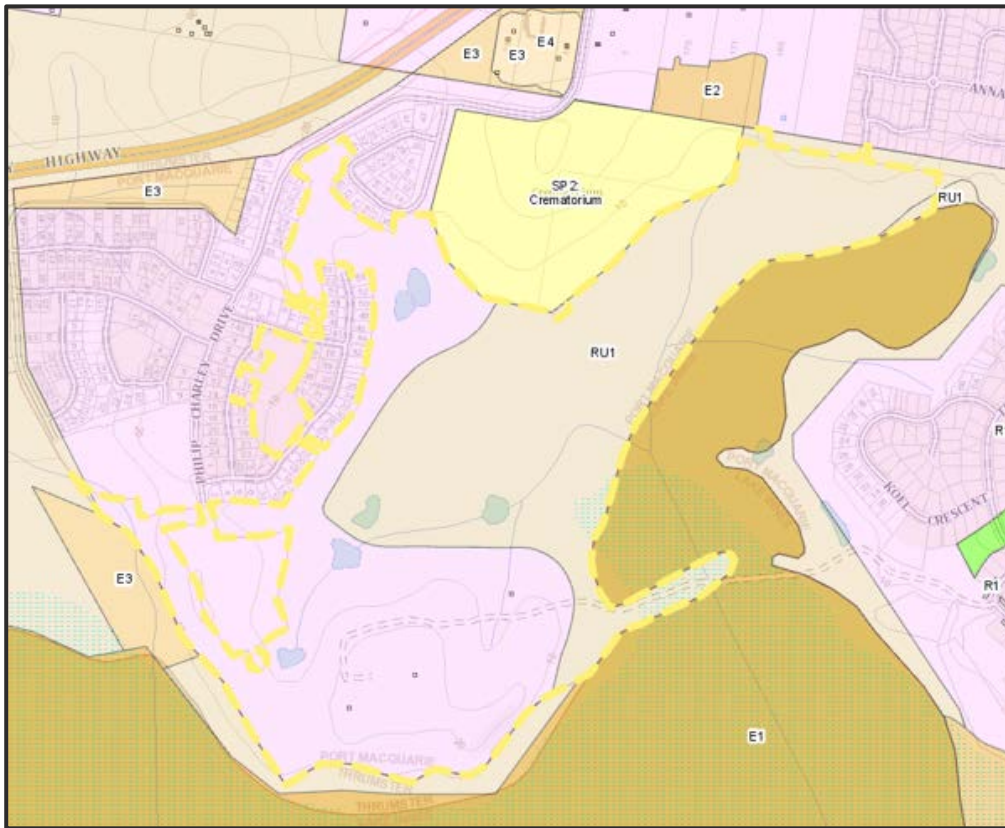


Figure 4 - Zoning of Subject land (source: Port Macquarie-Hastings LEP 2011)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Port Macquarie-Hastings LEP 2011 maps, which are considered suitable for community consultation.

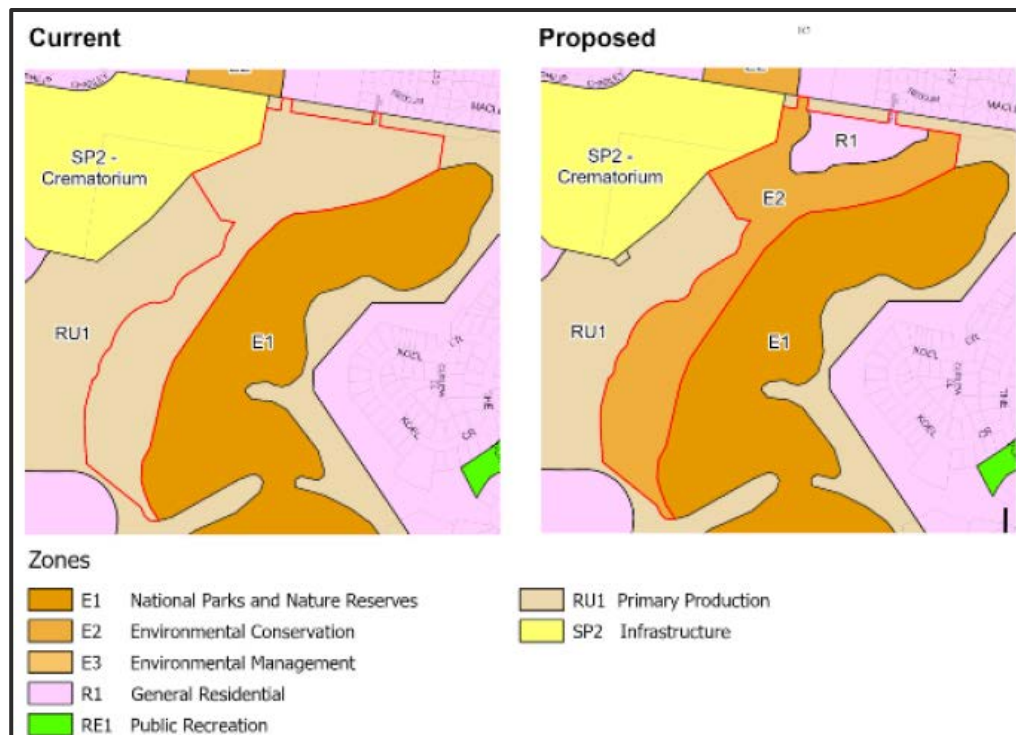


Figure 5 - Current and proposed zoning map (source: Planning proposal)

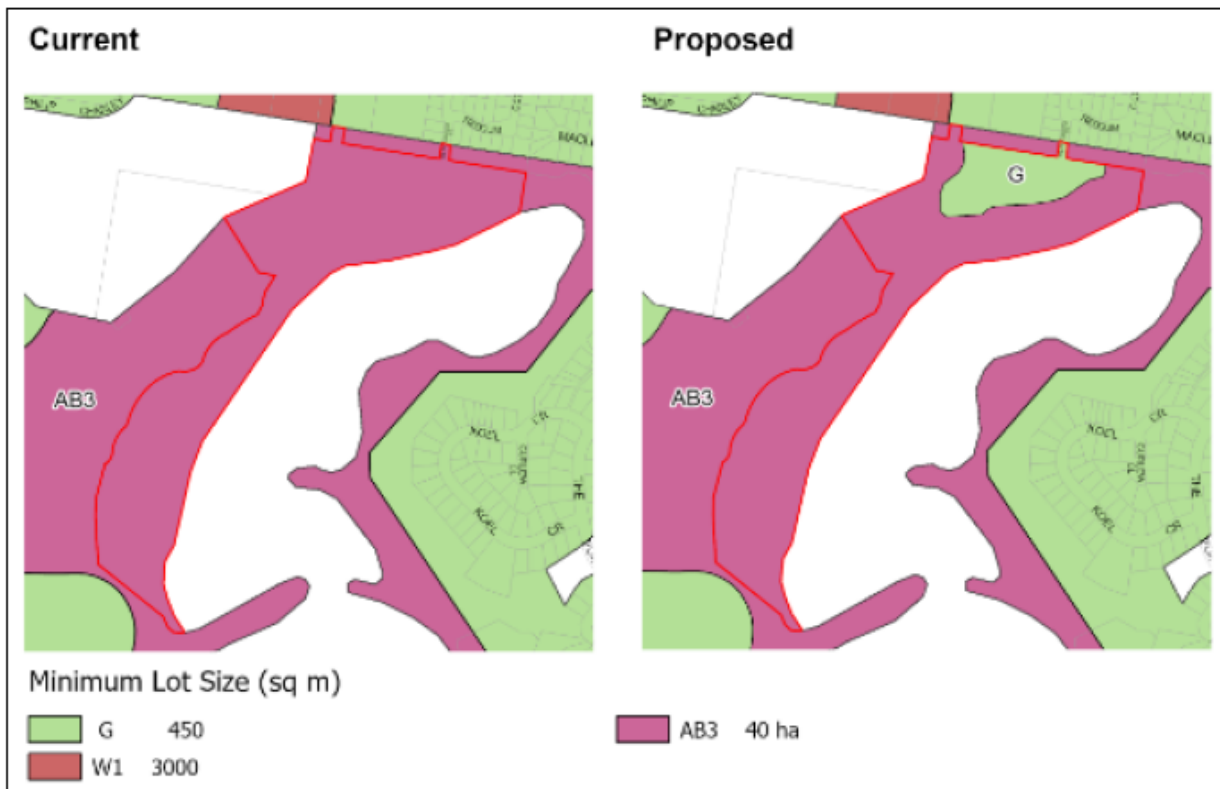


Figure 6 - Current and proposed Minimum lot size map (source: Planning proposal)



Figure 7 – Current and proposed Floor space Ratio map (source: Planning proposal)



Figure 8 Current and proposed Maximum building height map (source: Planning proposal)

2 Background

Current Planning Proposal

At the Ordinary Council Meeting on 15 September 2021, Council re-considered a report (from 17 March 2021) dealing with a private landowner request to rezone part of Lot 499 DP 1258597, 10 Wonga Crescent, Port Macquarie (Blackwood Street extension) from RU1 Primary Production to R1 General Residential.

The report considered the proponent's request (with supporting information) for a new urban release area in the northern extent of Lot 499. Upon consideration, Council resolved to prepare a Planning Proposal for a map only amendment to the Port Macquarie-Hastings Local Environmental Plan 2011 that rezoned part of the site from RU1 to R1 and C2 and amend the related development standards that apply.

NSW Public Open Space Legacy Program 2020

As a long running and unresolved rezoning application, the matter was captured in Council's formal Participation Agreement with the NSW Department of Planning Industry and Environment under the NSW Public Open Space Legacy Program. Under the agreement the Planning Proposal was required to be completed by 30 June 2021, which has now expired.

Golf Course and Residential subdivision 1988 (DA1988/248)

In September 1988, Council approved an 18-Hole Golf Course and 231 lot residential subdivision (DA1988/248 - Innes Peninsular) neighbouring the Lake Innes Nature Reserve. A series of modifications to the development consent since that time increased the number of lots from 230 to over 250 lots, and re-oriented the subdivision layout (including bushfire and stormwater measures) closer to, and in some instances over the planned golf course and adjoining Nature Reserve. Apart from initial clearing for fairways and greens in the late 1980's, there has been no substantive works undertaken by the developer/landowner in relation to the golf course since approval in 1988.

A separate application for land clearing and 290+ lot subdivision was approved by Council in 2005 (DA2005/547 - Ascot Park).

Advice from the landowner to Council in 2020 indicated that a reduced private golf course for personal use only is now intended. Further housing development is planned within remaining residue and planned golf course areas where currently permitted.

DA2005/547 - Ascot Park

In September 2009, Council approved a large 291 lot residential subdivision and Koala Plan of Management at Mahers Headland (SW of Innes Gardens Crematorium). A series of modifications to the consent increased the number of lots to over 340. Lot 499 DP 1258597, the subject of this Planning Proposal is the current residue lot. It is zoned part Zone R1 General Residential and part RU1 Primary Production and contains associated and carryover commitments relating to DA1988/248, DA2005/547 and their respective linked Koala Plans of Management.

Initial Planning Proposal Application

In 2011 the proponent wrote to Council seeking to rezone un-subdivided and rural zoned residue land (now described as Lot 499 DP 1258597 and Lot 356 DP 1263987) relating to Ascot Park and Innes Peninsular housing estates and golf course. The request sought to rezone a stretch of land from east of the Ruins Way to the Innes Gardens Memorial Crematorium. The request remained in draft form and unable to be progressed for over a decade due to crossovers with retained and approved Koala habitat linked to Ascot Park and Innes Peninsular residential subdivisions and endorsed KPOMs, gaps in information and Council and State agency concerns regarding environmental impacts.

Interim legislative changes from 2011 onwards have necessitated a change in the direction and progression of the application due to environmental constraints. The introduction of the *Biodiversity Conservation Act 2016* and the listing of the Native Guava as a Serious and Irreversible Impact Species – SIIS (Feb 2019), *State Environmental Planning Policy (SEPP) (Coastal Management) 2018* and *SEPP (Koala habitat Protection) 2020* have necessitated a significantly smaller potential development area as described in this planning proposal document. This smaller potential development area is also a response to comments made during preliminary consultation with the Biodiversity and Conservation Division (BCD). This is discussed in more detail later in the report.

3 Need for the planning proposal

The planning proposal is not the result of any strategic study or report. The proposal is a site-specific rezoning request initiated by the landowner of Lot 499 DP 1258597. However, it is supported by the NCRP 2036 which identifies the proposed R1 rezoning footprint as an Investigation Area - Urban. The footprint is also mapped within the Urban Growth Area (UGA) boundary of the NCRP and the Port Macquarie Urban Growth Management Strategy 2011-2031 (UGMS).

The planning proposal is supported by the following additional studies that identify the proposed residential land as being relatively unconstrained and suitable for the proposed development (subject to agency and community consultation):

- Bushfire Hazard Assessment;
- Preliminary Biodiversity Development Assessment Report (PBDAR);
- Preliminary Site Contamination Investigation; and
- Aboriginal Heritage Report.

The planning proposal is considered to be the most appropriate means of rezoning the subject land.

4 Strategic assessment

4.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan (NCRP).

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1 – Deliver environmentally sustainable growth	The proposed R1 rezoning footprint is identified as an Investigation Area - Urban and located within the UGA boundary as mapped in the NCRP. Residential growth on this site and within the UGA will ensure (subject to specialist studies) that new land release avoids sensitive coastal areas. In this respect, the planning proposal will achieve Action 1.1 - Focus future urban developments to mapped urban growth areas.
Direction 2 – enhance biodiversity, coastal and aquatic habitats and water catchments	Lot 499 is located within the Coastal Strip as defined in the NCRP and is known to contain areas of High Environmental Value (HEV), core Koala habitat, legislated coastal wetlands, and is exposed to natural hazards, including bushfire and flooding. Only a small and clearly defined area of around 2ha within the UGA is considered suitable for future urban release. The planning proposal reflects this area.
Direction 11 – Protect and Enhance productive agricultural lands	Whilst the planning proposal area is zoned RU1 Primary Production, it is not mapped as either state or regionally significant farmland under the NCRP. The land is currently used for grazing purposes, but is considered to have limited agricultural value given the proximity to surrounding residential land uses and verified environmental attributes. The remainder of the lot outside the planning proposal area will remain RU1.
Direction 22 – Deliver greater housing supply	<p>The NCRP estimates that the Port Macquarie - Hastings LGA will need to deliver an additional 8,800 dwellings to meet the regions projected housing needs.</p> <p>The R1 footprint area is identified in both the NCRP and Council's UGMS as an urban investigation area and is located within the UGA boundaries. Therefore, the use of the land is strategically justified, and subject to further studies, suitable for residential development.</p> <p>The proposal is consistent with Action 22.1 – Deliver an appropriate supply of residential land within local growth management strategies and local plans to meet the regions projected housing needs.</p>
Direction 23 – Increase housing diversity and choice	The planning proposal will result in a small-scale residential development creating approximately 20 lots. Despite this small scale, it is expected that the proposed development will enable further housing diversity and choice within the LGA.

4.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is considered to be consistent with the themes and planning priorities contained within the LSPS. In particular, the planning proposal will assist in achieving the following planning priorities:</p> <ul style="list-style-type: none"> • PP1 - Protect, conserve and enhance our biodiversity, areas of high environmental value and our scenic & cultural landscapes while cultivating sustainable growth and development; • PP2 - Manage growth sustainably; and • PP 7 - Provide for a diversity of housing in the right locations
Port Macquarie-Hastings Urban Growth Management Strategy	<p>The Port Macquarie - Hastings UGMS was endorsed by the Department in November 2018. The Strategy does not specifically identify the subject lot, but the proposed R1 area is mapped within the UGA and hence can be considered for urban development subject to further studies.</p>

4.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with all relevant section 9.1 Directions except those discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.2 Rural Zone	Justifiably inconsistent	<p>The proposal is inconsistent with this Direction as it rezones land from RU1 Primary Production to R1 General Residential.</p> <p>The inconsistency with this Direction is considered to be of minor significance as the subject land is mapped as being within the UGA boundary identified in the NCRP and Council's UGMS.</p>
1.5 Rural Land	Justifiably inconsistent	<p>The proposal is inconsistent with this Direction as it will affect land within a rural zone and is unable to satisfy all the requirements of the Direction.</p> <p>The inconsistency with this Direction is considered to be of minor significance as that part of the subject site to be rezoned R1:</p> <ul style="list-style-type: none"> • is mapped within the UGA boundary of the NCRP; • comprises only 2 ha of land which is adjacent to urban land uses and is unlikely

		<p>to be able to sustain an agricultural land use; and</p> <ul style="list-style-type: none"> the proposed residential use is consistent with adjoining residential land use. <p>Consultation with DPI – Agriculture is recommended</p>
2.1 Environment Protection Zones	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as it affects land mapped as containing Potential High Environmental Values in the NCRP and Biodiversity Values as mapped on the Biodiversity Values Map.</p> <p>BCD has provided preliminary comments on two previous versions of the planning proposal. In response to the 2020 version of the planning proposal, it concluded that there was limited scope for residential development in the proponent's planning area due to significant environmental issues over the whole of Lot 499.</p> <p>In June 2021, BCD provided further comment on an amended version of the PP which included the addition of the northern Coastal Wetland areas on Lot 499 in an expanded environmental conservation zone and proposing to zone all of the land in the North West corner adjacent the Crematorium to C2 Environmental Conservation.</p> <p>In response to this BCD acknowledged that while the amended planning proposal addresses most of the issues previously raised, it still identified land outside the mapped UGA. Council were also concerned that the amended planning proposal proposed:</p> <ul style="list-style-type: none"> no change to the proposed urban footprint. minimal avoidance and inconsistent buffering of native guava, a serious and irreversible impact species under the <i>Biodiversity Conservation Act, 2016</i>. the absence of a buffered interface between the proposed urban footprint and the balance of the rural zoned residue land within Lot 499; and the proposed degree of change to <i>Port Macquarie-Hastings LEP 2011</i> Koala Habitat mapping series <p>In order to progress the planning proposal, Council has proposed a revised concept which reduces the R1 footprint area to less than 2ha whilst enlarging the area of land to be zoned C2. The C2 zone which surrounds the R1 land and extends to the south to take in areas of the coastal wetland on private property up to the Lake Innes Nature</p>

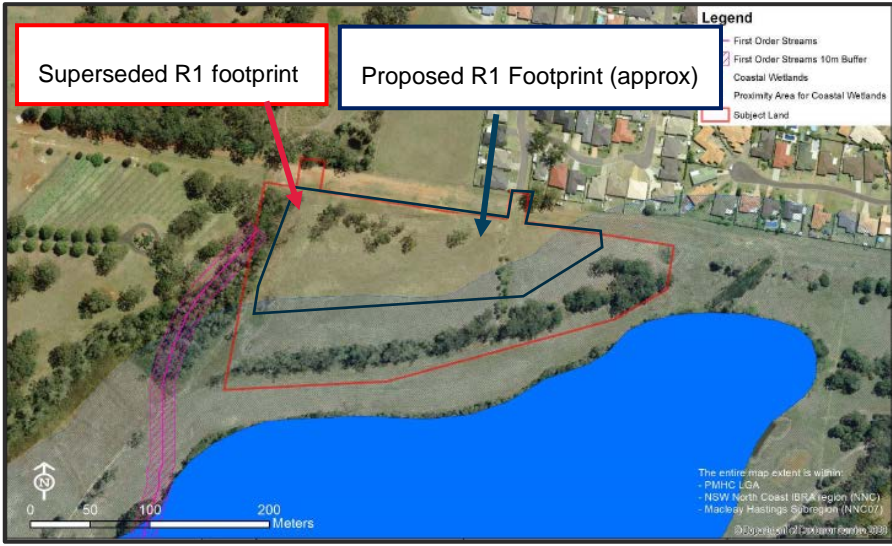
		<p>Reserve boundary will facilitate the protection of existing Koala habitat and high environmental values, including SIIS vegetation (Native Guava) and state legislated Coastal Wetland and proximity area. Council have also proposed that the existing Koala Habitat Map be retained over Lot 499 to ensure consideration at the time of future DAs of all relevant KPOMs.</p> <p>Whilst some of the issues raised by BCD remain outstanding, it is considered that these issues can be appropriately addressed through further consultation following a Gateway determination.</p> <p>Inconsistency with the Direction is justified as minor significance as:</p> <ul style="list-style-type: none"> the planning proposal is supported by an ecological assessment (PBDAR) which has found that the proposed R1 area contains no EEC's; the revised R1 footprint avoids coastal wetlands, SIIS (native guava) and core koala habitat; land mapped as containing HEV largely corresponds with the Proximity Area to Coastal wetlands whilst the existing vegetation will be protected under a C2 zoning; and the proposed R1 area is wholly located within the UGA as mapped in the NCRP. <p>It will be necessary to update the BDAR to align with the new proposed zoning layout and therefore further consultation with BCD is necessary.</p>
2.2 Coastal management	Justifiably inconsistent	<p>This Direction is relevant to the planning proposal as the subject land contains land mapped as Coastal Wetlands and Proximity Area to Coastal Wetlands as identified by the SEPP (Coastal Management) 2018 and the planning proposal does not contain provisions which give effect to NSW Coastal policies.</p> <p>Inconsistency with this Direction is considered to be of minor significance for the following reasons:</p> <ul style="list-style-type: none"> the proposed R1 footprint will not directly impact on Coastal Wetlands; the proposed C2 zone surrounding the R1 area will act as a buffer to protect sensitive Coastal Wetlands; and the rezoning area is physically and spatially separated from any foreshore area or watercourses and is unlikely to impact on any coastal land or foreshore area.

4.3 Flood Prone Land	Justifiably inconsistent	<p>The proposal is inconsistent with this Direction as it seeks to create, remove or alter a zone or a provision that affects flood prone land with Lot 499 being affected by flooding and a probable maximum flood event.</p> <p>The inconsistency with this Direction is considered to be of minor significance as:</p> <ul style="list-style-type: none"> the proposed R1 zone footprint is not subject to the Flood Planning Area but may, in part be subject to the (PMF) only depending on the final design layout. The final subdivision design can be altered if necessary at the development application stage to avoid the PMF; and Council's LEP has suitable flood planning provisions that mean this issue is able to be adequately considered further at the development application stage.
4.4 Planning for Bushfire Protection	Justifiably inconsistent	<p>The planning proposal is potentially inconsistent with this Direction because the land is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination and prior to community consultation. Consultation with the RFS is required following receipt of a Gateway determination and prior to undertaking community consultation. Until this consultation has occurred the inconsistency with the Direction is unresolved</p>
5.10 Implementation of Regional Plans	Justifiably inconsistent	<p>The planning proposal is considered to be inconsistent with this Direction as it enables residential development of land mapped under the NCRP as containing potential HEV land.</p> <p>The inconsistency with this Direction is considered to be of minor significance as:</p> <ul style="list-style-type: none"> the development footprint (proposed R1 land) is located within the UGA boundary of the NCRP and Council's Urban Growth Management Strategy; the planning proposal is supported by an ecological assessment (PBDAR) which has found that the proposed R1 area contains no EEC's; the revised R1 footprint avoids coastal wetlands, SIIS (native guava) and core koala habitat; and areas of high environmental value will be protected through a proposed C2 zoning.

4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP Koala Habitat Protection 2020	Yes	<p>The planning proposal is supported by a draft Koala Plan of Management. The Plan is dated January 2021 and does not reflect the amended zoning layout supported by Council. An updated KPOM will need to be considered by Council and approved by DPIE before the land can be rezoned because pursuant to clause 14 of the SEPP, a plan of management prepared by a person other than a council has no effect unless it is approved by the council for the relevant local government area and by the Planning Secretary.</p> <p>An approved KPOM under DA 2005/547 applies to all of Lot 499. Under the approved KPOM, Lot 499 is identified, mapped and described as containing <i>core koala habitat</i> with direct connectivity to Lake Innes Nature Reserve.</p> <p>The planning proposal aims to retain the strip of vegetation on the southern extent of the R1 area as core koala habitat linked to approvals and commitments associated with DPIE approved KPOMs over the Vilro / Charley land (Figure 10).</p> <p>Further detail in regard to Koala habitat is provided in Table 9 of this report.</p>
SEPP (Coastal Management) 2018	Yes	<p>Lot 499 is affected by identified 'Coastal Wetlands' and 'Proximity Area for Coastal Wetlands' (Figure 9).</p>  <p>Figure 9 - Coastal Wetlands and Proximity Area to Coastal Wetlands development (source: PBDAR – JB Enviro)</p> <p>It is not anticipated that the area proposed for residential use will directly impact on Coastal Wetlands but may potentially include land mapped as Proximity Area to Coastal Wetlands depending on the</p>

		<p>final subdivision layout. The planning proposal also proposes an C2 zone surrounding the R1 area which will act as a buffer to protect sensitive Coastal Wetlands. The rezoning area is physically and spatially separated from any foreshore area or watercourses and is unlikely to impact on any coastal land or foreshore area.</p> <p>It is considered adequate that this matter can be adequately addressed at the development application stage of the proposal (and subject to consultation with BCD)</p>
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5 Site-specific assessment

5.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
First Order Stream	<p>There is a first order stream running in a north-south direction within the proposed C2 zone, and located to the west of the proposed R1 zone. As this stream is within the planning proposal footprint, it is recommended that consultation is undertaken with the Natural Resource Access Regulator (NRAR) to confirm the suitability of the proposal.</p>
Koala	<p>An approved KPOM under DA 2005/547, to which there have been multiple modifications, applies to all of Lot 499. Lot 499 DP1258597, the subject of this Planning Proposal contains associated and carryover commitments relating to DA1988/248 (subdivision and golf course), DA2005/547 (Ascot Park) and their respective linked Koala Plans of Management.</p> <p>Under the approved KPOM, Lot 499 is identified, mapped and described as containing core koala habitat with direct connectivity to Lake Innes Nature Reserve. The plan suggested a resident population of up to 20 koalas (pre bushfire and flood events).</p> <p>The draft KPOM accompanying this planning proposal assesses Koala activity and habitat on the site under the original rezoning layout concept.</p> <p>A Koala Habitat Assessment was undertaken in 2021 determining that three Schedule 2 browse species are present on the site: Tallowood, Forest Red Gum and Swamp Mahogany and as such the site meets the 15% threshold requirements for 'potential koala habitat' (Figure 10).</p>



Figure 10 - Koala habitat on site (source: PBDAR - JB Enviro)

In regard to core koala habitat, no Koala scats were observed within the proposed (now superseded) development envelope over the most recent survey period, or directly adjacent, but Koala scratches were identified on the smooth bark of Forest Red Gums.

Due to the presence of female Koalas with joeys and a breeding male in adjoining lands previously, and ongoing records of Koalas on site and within associated habitats, the site was considered to form part of a larger area of Core Koala Habitat.

The subject site does not fall within a regional or sub-regional corridor. A regional corridor is mapped to the south of the site within Lake Innes Nature Reserve, and a sub-regional corridor is mapped well to the west (Figure 11).

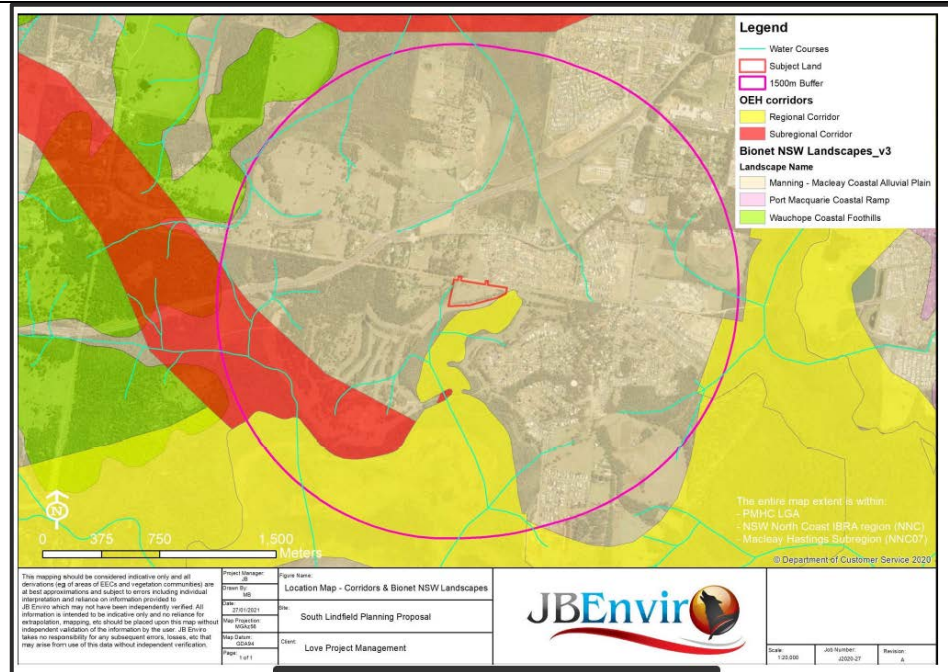


Figure 11 - Regional and sub-regional corridors

The study area and immediate locality has a high level of fragmentation by urban development and historical rural land uses. Koalas occurring in this local matrix are also increasingly threatened by further fragmentation and gradual attrition of habitat via residential development, increased exposure to predators (wild and domestic dogs), and the introduction of barriers/mortality threats posed by local roads which may all contribute to the decline of the local population.

In the local context, appraisal of the site's and adjacent land's limited remnant habitat combined with the wooded road reserves form part of a larger matrix of remnants amongst mostly developed land in the John Oxley Drive/Ruins Way/Major Innes Drive area.

Koalas occurring on site thus form part of the local sub-population within the larger population which use the site as part of their range. This range is likely to extend over the adjacent private lands, the crematorium, northern extent of Lake Innes Nature Reserve, and possibly west to Ascot Park and east to the Ruins Way area.

The proposed development footprint has attempted, within consideration of all constraints, to minimise loss of habitat via retaining all of the southern and western strips of forest which contain KFTs. Connectivity will be retained via retention and augmentation of the southern and western strips and these reserves will be managed under a Vegetation Management Plan (VMP).

An updated KPoM based on the proposed R1 zoning footprint will need to be approved by both Council and the Department before the land can be formally rezoned to ensure all relevant issues under the previously approved KPoMs are also adequately addressed.

Contamination

The planning proposal is accompanied by a Preliminary Site Contamination assessment (PSI). This assessment relates to the northern portion of the subject site only being the area to be rezoned to R1 (since revised).

	<p>The assessment found that based on the results obtained in the investigation, the site is considered likely to be suitable for the proposed residential land use with regard to the presence of soil contamination provided the recommendations and advice of this report are adopted, and site preparation works are conducted in accordance with appropriate site management protocols and legislative requirements.</p>
Coastal wetlands	<p>SEPP (Coastal Management) 2018 mapping identifies the subject lot as being subject to Coastal Wetlands and Proximity Area to Coastal Wetlands. The proposed R1 footprint is subject to Proximity Area to Coastal Wetlands only (Figure 9). Development is not precluded from the mapped area but rather will be required to illustrate that no negative impacts on coastal wetlands will result.</p> <p>It is considered that the planning proposal has adequately addressed the issue of Coastal wetlands and Proximity Area to Coastal Wetlands with mitigation measures able to be implemented at the Development application stage of the proposal.</p>
Biodiversity	<p>The planning proposal is supported by a preliminary Biodiversity Development Assessment Report (PBDAR). It must be noted however that this report is not based on the amended zoning layout and development footprint but a previous proposal that sought to rezone 2.86ha of land located in the northern part of the subject lot to R1 General Residential. An updated BDAR that assess any potential impacts within the amended layout will be required prior to community/agency consultation.</p> <p>The BDAR is prepared to provide a provisional assessment of the NSW <i>Biodiversity Conservation (BC) Act 2016</i> and <i>Koala Habitat Protection SEPP 2020</i>, and the Commonwealth <i>Environment Protection and Biodiversity Conservation (EPBCA) Act 1999</i> - Matters of National Environmental Significance, to a standard that a Planning Proposal can be supported. A final BDAR assessing a formal development proposal and all of its ancillary infrastructure will be provided at the Development Application stage.</p> <p>Soil profile examinations and a review of the Final Determinations in line with legal precedents and current accepted practice determined no EECs occur on site or in the study area under NSW or Commonwealth legislation.</p> <p>Assessment of the site has also detected only one credit fauna species: the Koala which appears to have limited use of the site as part of a larger Core Koala Habitat landscape. The site is not located within a regional corridor, and local corridors are limited to the western remnant and southern strips, which are limited by edge effects.</p> <p>The Critically Endangered Native Guava was previously recorded as common in the western strip, southern strip and edges where a tall shrub layer is present. Myrtle Rust infection however has since been catastrophic, with many dead trees and shrubs found. The plants that remain are either just shrubs 1-4m high or (predominantly) seedlings/root suckers. Most of the shrubs are distressed, though two plants flowered in the last season. Most of the seedlings/root suckers are <30cm tall and can be found at the base or within 2-3m of a dead shrub or tree, with a few true seedlings dispersed within 5m of an adult</p>

plant in the eastern end of the southern strip. Survivorship is however likely to be low, as evident by Myrtle Rust often occurring on the small plants (Figure 12).



Figure 12 - Planning proposal area showing legislative buffer to Native Guava (50m pink dotted line and 30m green circles) (source: PMHC Ordinary Council Report 202)

A single Scrub Turpentine (Critically Endangered) was found on the boundary of the crematorium in the western strip. The young plant currently has a light Myrtle Rust infection hence its long-term survival is uncertain.

The proposed development envelope has thus been largely restricted to the most modified/degraded vegetation on the subject land and avoids all Native Guava and Scrub Turpentine. These are to be protected permanently under a C2 zoning.

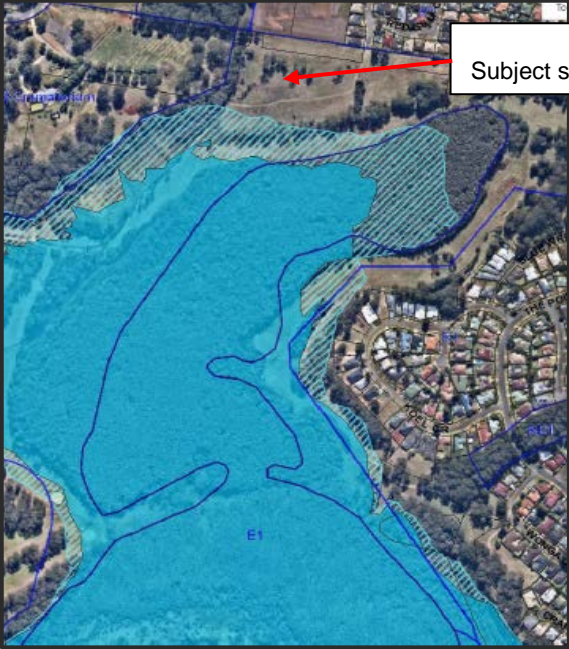
Indirect impacts are expected to be pre-existing (e.g. edge effects) or relatively localized and can be mitigated by standard measures.


A range of mitigation measures are proposed including protection measures during construction, dog restrictions, fauna welfare during vegetation removal and control of secondary impacts such as erosion and sedimentation.

Previous consultation with BCD (based on the now superseded zoning layout) concluded that there was limited scope for residential development as there are significant environmental issues that require careful management to avoid and minimise impacts on biodiversity values. Further, BCD detailed the conditions under which they would support the rezoning of the R1 area:

- a. All the Coastal SEPP wetland area must include an appropriate ecological buffer from the proposed development area;
- b. All Native Guava is to be identified across the entire Lot and a 30m ecological buffer applied to the

	<p>proposed development area with Environmental Conservation zoning across the ecological buffer to be managed as above; and</p> <p>c. The remainder of the Lot currently zoned RU1 of 499 DP 1258597 is to be zoned as Environmental Conservation under the Port Macquarie-Hastings LEP 2011 and managed accordingly.</p> <p>BCD also provided a further response to another version of the PP on 24 June 2021 that sought to address some of the issues raised. Further details regarding this response are in Table 7.</p> <p>In response to the outstanding objections/conditions raised by BCD, Council has supported a mediated rezoning concept based on its preference for an appropriate C2 Environmental Conservation buffer around the proposed release area and an extended C2 Environment Conservation zone to the south to take in areas of the coastal wetland on private property up to the Lake Innes Nature Reserve boundary. The R1 area has also been restricted to lie wholly within the UGA boundary.</p> <p>The amended concept provides a practical development outcome for the landowner of around 2ha of residential zoned land and protection of Native Guava, a <i>Serious and Irreversible Impact Species</i>, core Koala Habitat and Coastal Wetlands and Proximity Areas to Coastal Wetlands.</p> <p>Further consultation with BCD is recommended.</p>
Flooding	<p>The adjoining Lake Innes Nature Reserve and 'Proximity Area to Coastal Wetlands (affecting the site) is mapped as <i>Flood Planning</i> and <i>Probable Maximum Flood</i> land subject to Clause 7.3 and 7.4 of Port Macquarie-Hastings Local Environmental plan 2011. The proposed R1 zone footprint is not subject to the Flood Planning Area but may be in part subject to the Probable Maximum Flood (PMF) depending on the final design layout (Figure 13).</p> <p>Council's LEP has suitable flood planning provisions that mean this issue is able to be adequately considered further at the development application stage.</p>

	 <p>Subject site (proposed R1 land)</p> <p>Flood Planning Area (cl 7.3)</p> <p>Level of Probable Maximum Flood (cl 7.4)</p> <p>Figure 13 - Port Macquarie-Hastings Council Flood Policy 2018 (source: Planning proposal)</p>
Bushfire	<p>The subject land is mapped as containing bushfire prone land and is accompanied by a Bushfire Hazard Assessment (Figure 14).</p> <p>The subject site contains Category 3, (Grassland), hazard vegetation. Areas of Category 3 (Grassland) hazard vegetation is present to the north, south and east although a narrow band of Category 1 hazard vegetation adjoins the southern boundary of the subject site.</p> <p>The subject site is also affected by the 100m buffer zone surrounding Category 1 bushfire hazard vegetation which is contained within the Lake Innes Nature Reserve.</p> <p>The Bushfire Hazard Assessment has concluded that the proposed rezoning of the subject site is at risk of bushfire attack, however, with the implementation of the bushfire threat reduction measures and consideration of the recommendations of the report, the bushfire risk is manageable for the proposed rezoning subject to design and construction and compliance with the relevant requirements of NSW Rural Fire Service.</p> <p>Consultation with NSW Rural Fire Service is recommended.</p>

	 <p>Figure 15 - Bushfire Prone Land (source: E-planning Spatial Viewer)</p>
Aboriginal cultural heritage	<p>The planning proposal is supported by an Aboriginal Cultural Assessment undertaken by the Birpai Local Aboriginal Land Council. This assessment was undertaken in 2018 and whilst it relates to the entirety of Lot 499, focuses on that part of the site to be rezoned for residential use.</p> <p>Survey of the site concluded that no evidence of Aboriginal activity was located on the site.</p>

5.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>It is expected that the proposed development will provide a positive contribution to the Port Macquarie-Hastings LGA. Benefits will include:</p> <ul style="list-style-type: none"> • additional housing stock to cater for anticipated population growth (with the NCRP estimating an additional 8800 houses will be needed to cater for population increase to 2036); • housing that will be able to cater for a range of household types; • flow on community/social benefits to the wider LGA,

	<ul style="list-style-type: none"> • a new residential area that is relatively unconstrained in regard to environmental impacts; and • the continued protection of land mapped as having high environmental value.
Economic	It is expected that the proposed development will provide a positive economic contribution to the local economy directly as a result of the construction of new dwellings and indirectly through a greater population base to support local business.

5.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Local	Local infrastructure upgrades will be required to identify site specific requirements at the development application stage.
State	There will be no impact on State or regional infrastructure or the requirement for additional funding.

6 Consultation

6.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms to the conditions of the Gateway determination.

6.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Natural Resource Access Regulator (NRAR)
- NSW Rural Fire Service (RFS)
- Department of Planning, Industry and Environment - Biodiversity Conservation Division – (BCD)
- Transport for NSW (TfNSW)
- Department of Primary Industries – Agriculture (DPI - Agriculture)

7 Timeframe

Council proposes a 11 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to enable Council adequate time to complete the planning proposal. This timeframe will also ensure the planning proposal is completed in line with the Department's commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

8 Local plan-making authority

Council has advised that it does not wish to exercise its delegation to be the Local Plan-Making authority due to the complicated and long running nature of development negotiations associated with the subject site.

The Department recommends that Council not be authorised to be the local plan-making authority for this proposal to align with the Minister for Planning and Public Spaces announcement to issue a new section 9.1 Direction which will allow only the Minister to rezone land from a rural zone to an environmental zone.

9 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposed R1 General Residential area is located wholly within the UGA boundary as mapped in the NCRP and Council's UGMS;
- it will assist in delivering a key Direction of the NCRP that aims to deliver greater housing supply;
- it is consistent with Council's LSPS and will assist in achieving key deliverables such protecting areas of high environmental value whilst cultivating sustainable growth and providing housing diversity in the right locations; and
- the proposed development will have positive social and economic impacts both from a housing supply, diversity and choice perspective but also an increased population base to support local business.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- include supporting documents and studies that accurately reflect the revised zoning layout, specifically Bushfire Hazard Assessment and ecological and biodiversity.

10 Recommendation

It is recommended the delegate of the Secretary:

1. **Agree** that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Management, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans are minor or justified; and
2. **Note** that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. Prior to community consultation, the planning proposal is to be updated to:
 - a) include supporting documents and studies that accurately reflect the revised zoning layout; and
 - b) all E2 Environmental Conservation zone references contained within the planning proposal are to be updated to reference C2 Environmental Conservation.

2. Consultation is required with the following public authorities:

- Natural Resource Access Regulator (NRAR)
- NSW Rural Fire Service (RFS)
- DPIE (Biodiversity Conservation Division – (BCD)
- Transport for NSW (TfNSW)
- Department of Primary Industries – Agriculture (DPI - Agriculture)

3. The planning proposal should be made available for community consultation for a minimum of 28 days.

4. Prior to finalisation of the plan an approved Koala Plan of Management is to be completed to support the proposal.

5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



13/12/2021

(Signature)

(Date)

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15/12/2021

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