
Item: 12.06

**Subject: PP2011 - 9.3 PLANNING PROPOSAL ASSESSMENT REPORT -
BLACKWOOD STREET EXTENSION, PORT MACQUARIE (VILRO
PTY LTD)**

**APPLICANT: LOVE PROJECT MANAGEMENT PTY LTD
OWNER: VILRO PTY LTD
PROPERTY: LOT 499 DP1258597, (OFF BLACKWOOD STREET,
PORT MACQUARIE).**

Presented by: Development and Environment, Melissa Watkins

Alignment with Delivery Program

4.5.1 Carry out strategic planning to manage population growth and provide for co-ordinated urban development.

RECOMMENDATION

That Council:

- 1. Note the long standing Planning Proposal P2011 - 9.3 for Lot 499, DP1258597, Blackwood St, Port Macquarie under the NSW Government's Public Spaces Legacy Program (PSLP) was not completed by 30 June 2021 as required under the funding program.**
- 2. Note there have been extended negotiations between Council staff and the Proponent to achieve a supportable development outcome on Lot 499 DP1258597 since June 2019.**
- 3. Prepare a Planning Proposal pursuant to section 3.33 of the Environmental Planning and Assessment Act 1979 for a map only amendment to the Port Macquarie-Hastings Local Environmental Plan 2011 for part Lot 499 DP1258597, Blackwood Street, Port Macquarie which rezones the subject land from RU1 Primary Production to part R1 General Residential and part E2 Environmental Conservation in accordance with Figure 2 of the report, and applies the following associated development standards to the land:**
 - a) Minimum Lot Size of 450sqm for land to be zoned R1 General Residential,**
 - b) A maximum Height of Buildings of 8.5m for land to be zoned R1 General Residential,**
 - c) A maximum Floor Space Ratio of 0.65:1 for land to be zoned R1 General Residential,**
- 4. Advise the proponent that a political disclosure in the format required under legislation, is required to be submitted prior to preparation and forwarding of a Planning Proposal to the NSW Government Gateway, if progressed.**
- 5. Upon receipt of the political disclosure referred to in point 4 above, forward the Planning Proposal described in point 3 above to the NSW Department of Planning, Industry and Environment for a Gateway**

Determination under Section 3.34 of the Environmental Planning & Assessment Act 1979, and request that the Gateway Determination authorise the Minister to be the local plan-making authority.

6. **Delegate authority to the Director Development and Environment to make any minor amendments to the Planning Proposal as a result of the issue of the Gateway Determination, prior to public exhibition of the Planning Proposal, if Council is authorised as the local plan-making authority.**

Executive Summary

This report reconsiders the assessment report presented to Council on 17 March 2021 (**Attachment 1**) on a revised Planning Proposal (PP) request for Lot 499, DP 1258597, South Blackwood Street, Port Macquarie (PP2011 - 9.3).

The March 2021 report recommended that Council note the nomination of the Planning Proposal (PP) under the *NSW Public Spaces Legacy Program* (PSLP) for completion by 30 June 2021 (now expired), and not support preparation of a Planning Proposal based on the Proponent's request on the grounds of unresolved and significant environmental issues and inconsistency with section 1.3 object (e) of the *Environmental Planning and Assessment Act, 1979*.

That report also recommended that Council advise the Proponent that a new combined application may be considered based on a limited release area of around 2 hectares, and addressing the recommendations of the NSW Biodiversity Conservation Division of the Department of Planning Industry and Environment (DPIE), and consistent with the requirements of Council's Planning Proposal Policy.

Council subsequently resolved as follows:

RESOLVED: Turner/Intemann

That Council:

- 1. Note the report.*
- 2. Defer further consideration of the matter and request the Chief Executive Officer to seek an extension of time for the finalisation of this Planning Proposal from the Department of Planning, Industry and Environment (DPIE) under the Public Spaces Legacy Program.*
- 3. Receive a further report upon receipt of a response from the Department of Planning, Industry and Environment to consider this matter.*
- 4. Request the Chief Executive Officer write to the Member for Port Macquarie, Leslie Williams MP, to seek her support, and to also seek the support of the Minister for Planning, for an extension of time for the finalisation of this Planning Proposal.*

CARRIED: 5/1

FOR: Alley, Griffiths, Hawkins, Intemann and Turner

AGAINST: Pinson

This report provides an update on Council representations to Members of Parliament consistent with points 2 and 4, and responds to point 3 of Council's resolution calling for a further report to consider the matter, and provides an update on discussions with the Proponent since March 2021.

A recommended development concept, initially presented to Council in March 2021, has been refined following recent discussions with the Proponent to provide for

conservation of important environmental values, and allow for approximately 2 hectares of land for urban development. Since reporting to Council in March, the Proponent has submitted a revised zone layout expanding their proposed environmental conservation area southwards to capture around 8 hectares of Coastal Wetland located within Lot 499. Coastal Wetland areas have conservation status under *State Environmental Planning Policy (Coastal Management) 2018*, and typically should have been zoned E2 Environmental Conservation at the time of introduction of the SEPP.

This report now recommends that Council prepare and forward a Planning Proposal (PP) to rezone the subject land from RU1 Primary Production to part R1 General Residential and part E2 Environmental Conservation to the DPIE Gateway based on the proposed development concept shown in **Figure 2** below.

Background

The subject PP aims to facilitate residential and environmental conservation outcomes on part of Lot 499, DP1258597 through a change in planning controls that:

- Amend the Land Zoning (LZN) Map to rezone the subject land from RU1 Primary Production to part R1 General Residential and part E2 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,
- Amend the LEP Koala Habitat Map to remove its application to land to be zoned R1 General Residential.

A formal planning proposal document for submission to the Department of Planning Industry and Environment (DPIE) Gateway would be prepared by Council as the first step in a rezoning process, if supported by Council.

Current zoning of the land the subject of the request is part RU1 Primary Production under *Port Macquarie-Hastings Local Environmental Plan (LEP) 2011*. Development for residential subdivision and housing is prohibited in the zone.

The planning area described in the report is partially identified for urban investigation in the *North Coast Regional Plan 2036*, and contains state nominated “proximity areas” to *Coastal Wetlands (State Environmental Planning Policy (SEPP) Coastal Management)*, known offset *Core Koala Habitat (SEPP Koala Protection)*, and *Serious and Irreversible Impact Species (Vegetation)* under the *Biodiversity and Conservation Act 2016*.

The Proponent for the application is Love Project Management Pty Ltd on behalf of landowners; Vilro Pty Ltd. Associated entity and land to the original PP, Charley Bros Pty Ltd and Lot 356 DP1263987, are no longer party to the proposal.

Disclosure

The application states that a Political Donations and Gift Disclosure Statement is not required.

However, under section 10.4(4) of the *Environmental Planning and Assessment Act 1979* ('the Act') a person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:

- a) all reportable political donations made to any local councillor of that council
- b) all gifts made to any local councillor or employee of that council.

An application to amend the local environmental plan is a relevant planning application. A reference in sections 10.4(4) and 10.4(5) of the Act to a reportable political donation made to a 'local councillor' includes a reference to a donation made at the time the person was a candidate for election to the council.

A disclosure has not been made. The report recommends that a political disclosure in the format required under legislation is required to be submitted prior to preparation and forwarding of a Planning Proposal to the NSW Government Gateway, if progressed.

Discussion

The following discussion provides an overview of events in relation to the PP since Council's consideration of an Assessment Report in March 2021 (Item 13.06) (**Attachment 1**). The March report is a formal assessment of the PP against the regulatory framework. It describes the site, provides a background and history of the PP, and should be read in conjunction with this report.

Council Meeting March 2021 - Item 13.06: Planning Proposal Request Assessment Report

Council considered an Assessment Report (**Attachment 1**) in relation to a revised PP by the Proponent dated January 2021. The revised request proposed a modified and reduced development concept involving part Lot 499 DP1258597 (Ascot Park rural zoned residue). Council resolved as follows:

RESOLVED: Turner/Intemann

That Council:

1. *Note the report.*
2. *Defer further consideration of the matter and request the Chief Executive Officer to seek an extension of time for the finalisation of this Planning Proposal from the Department of Planning, Industry and Environment (DPIE) under the Public Spaces Legacy Program.*
3. *Receive a further report upon receipt of a response from the Department of Planning, Industry and Environment to consider this matter.*
4. *Request the Chief Executive Officer write to the Member for Port Macquarie, Leslie Williams MP, to seek her support, and to also seek the support of the*

Minister for Planning, for an extension of time for the finalisation of this Planning Proposal.

CARRIED: 5/1
FOR: Alley, Griffiths, Hawkins, Intemann and Turner
AGAINST: Pinson

Council Representation to Members of Parliament

Consistent with points 2 and 4 of Council's March 2021 resolution, Council wrote to Minister Stokes and the state Member for Port Macquarie, Leslie Williams MP seeking an extension of time under the Public Spaces Legacy Program (PSLP) to progress the PP. At the time of writing this report, no response had been received to Council's representations. Council staff have however, received advice from Department staff of progression to the next stage in relation to funding agreements under the Public Spaces Legacy Program. An outcome of this program is expected in September 2021.

25 May 2021 - August 2021: Proponent Response



Figure 1: Proponent concept 25 May 2021. Note that proposed concept by the proponent does not extend to south western boundary with Crematorium to include HEV land consistent with BCD recommendations.

Following a meeting with Council staff on 17 May 2021 to discuss the status of the PP, Love Project Management submitted a written response to the matters raised by the DPIE Biodiversity Conservation Division (BCD). A copy of the Proponent response and amended zoning concept is included at **Attachment 2** and shown in **Figure 1**. The submission is dated 25 May 2021, and includes positive elements demonstrating a commitment towards a supportable development concept as shown in **Figure 3**.

Positive elements include 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 E2 Environmental Conservation.

However, there remained a number of critical differences between Council and the proponent positions, specifically:

- No change to the proposed urban footprint.
- Minimal avoidance and inconsistent buffering of native guava, a serious and irreversible impact species under the [Biodiversity Conservation Act, 2016](#).
- The absence of a buffered interface between the proposed urban footprint and the balance of the rural zoned residue land within Lot 499
- The proposed degree of change to *Port Macquarie-Hastings LEP 2011* Koala Habitat mapping series.

On 2 August 2021, Love Project Management advised Council that they anticipated their revised concept would move forward to a Council resolution to put the matter to the government Gateway, and requested reporting of the PP to the September Council Meeting. This report responds to that request. A further meeting was held with the proponent on 25 August 2021 to discuss remaining points of difference prior to reporting.

Proposed Zoning Layout

A recommended zoning layout on which the Planning Proposal is proposed be prepared by Council is shown in **Figure 2**.

The concept provides a practical development outcome for the landowner of around 2ha of residential zoned land, and protection of Native Guava, a *Serious and Irreversible Impact Species*, under the *Biodiversity Conservation Act, 2016*, core koala habitat (*State Environmental Planning Policy (SEPP) Koala Habitat Protection*), and Proximity areas to Coastal Wetlands (*State Environmental Planning Policy (SEPP) (Coastal Management) 2018*.)

The concept also minimises the potential for additional environmental studies by the Proponent and a decision by Council in relation to Serious and Irreversible Impact Species (SIIS) under the *Biodiversity Conservation Act, 2016*.

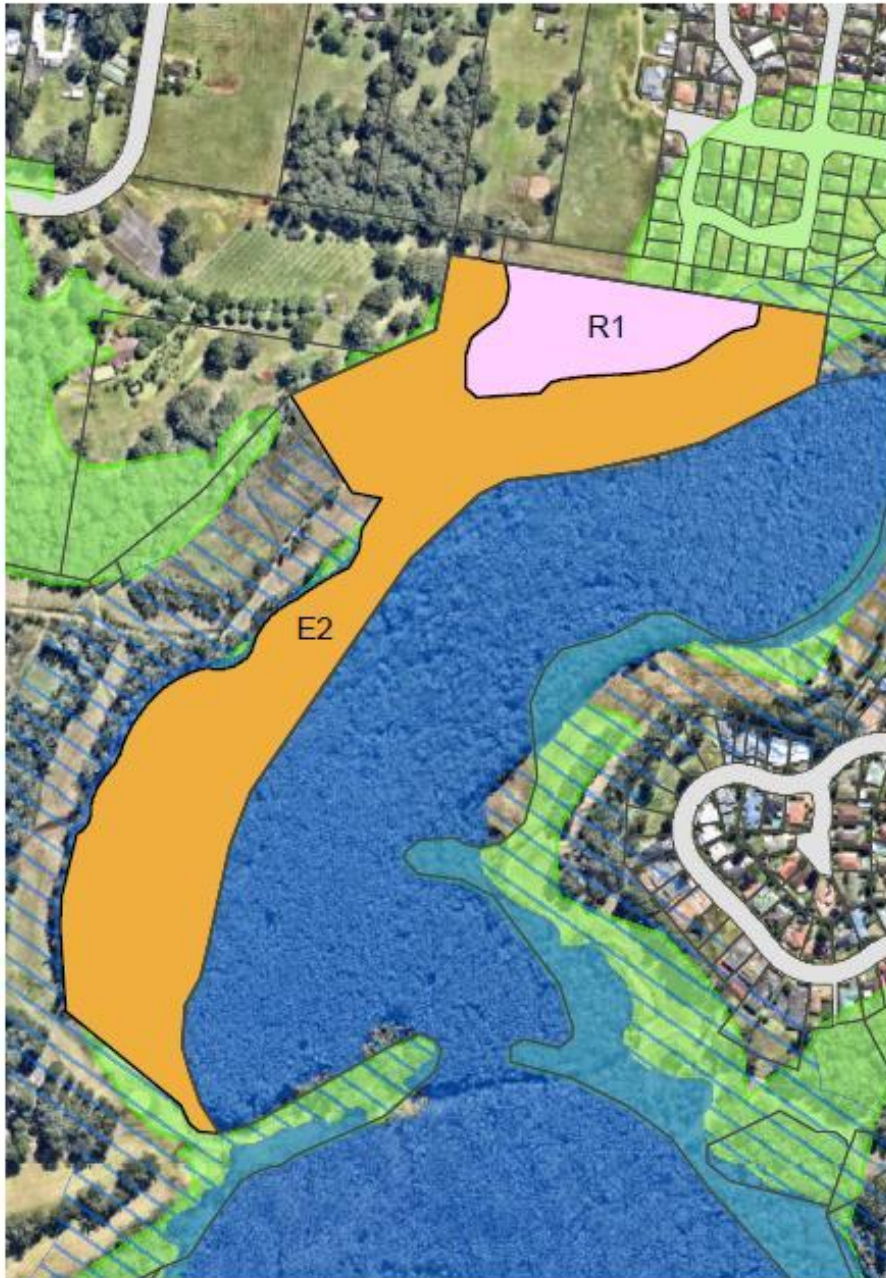


Figure 2: Proposed supportable zoning layout, capturing high environmental value land and providing for approx..2ha of residential land

Serious and Irreversible Impact Species (S/IS) (Biodiversity Conservation Act, 2016).

The concept of serious and irreversible impacts is fundamentally about protecting threatened entities that are most at risk of extinction from potential development, and that there are some types of serious and irreversible impacts that the community expects will not occur unless outweighed by the social and economic benefits that the development will deliver to the State. An approval authority (ie Council) must not grant approval if they determine the proposal is likely to have a serious and irreversible impact on biodiversity values. Decisions must be made in accordance with principles set out in clause 6.7 of the *Biodiversity Conservation Regulation 2017*.

Rhodomirtus psidioide (Native guava) has been listed as a critically engendered species under the *Biodiversity Conservation Act, 2016*, and is identified within the proposed investigation area.

The proposed zoning layout discussed in the report provides for legislated buffers (30m) to identified SIIS on site, and negates the need for further studies and a decision to be made under Clause 6.7 of the *Biodiversity Conservation Regulation 2017*.

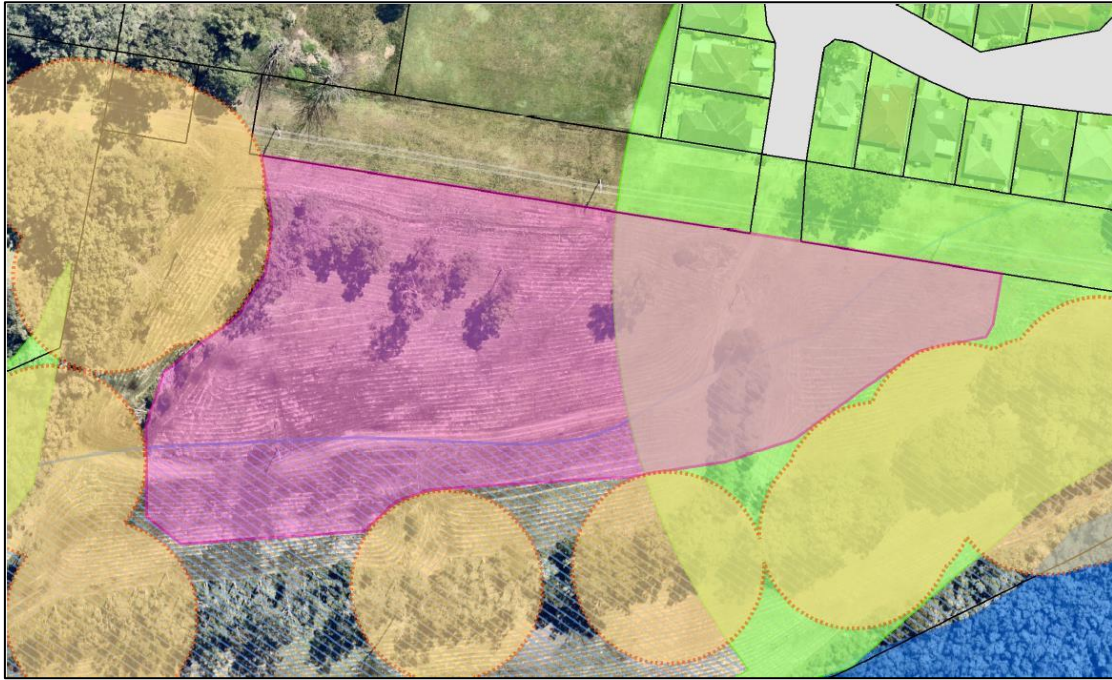


Figure 3: Serious and Irreversible Impact Species 30m and Council proposed residential zone.

NSW Biodiversity Conservation Division (BCD) Advice 25 February 2021 - Key issues

The BCD letter confirms that some limited residential development could be supported in the planning area, but that there are significant environmental issues that require careful management to avoid and minimise impacts on biodiversity values.

Key concerns and recommendations include:

- Narrow and fragmented application of environmental zoning, which is not supported.
- The need for broader application of zone E2 Environmental Conservation to incorporate and protect High Environmental Value land under the North Coast Regional Plan, which includes habitat for critically endangered native guava plants, primary koala habitat and mapped Coastal Wetlands.
- A planning agreement and vegetation management plan to commit the landholder to protecting and managing E2 Environmental Conservation zoned land.

- Rezoning only suitable land within the Urban Growth Area for residential housing.

Historical Context

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) neighbouring 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/land owner in relation to the golf course since approval in 1988. The developer advised that a reduced private course for personal use only is proposed and indicated a clear intent to develop areas of remaining residue and planned golf course areas for future housing if permitted.

Initial Planning Proposal Application 2011

In 2011 the Proponent wrote to Council seeking to rezone remaining areas of rural land separating the above residential subdivision from the adjoining reserve. Council agreed to include the request in its Strategic Land Use Planning Program pending submission of a rezoning investigation reports, payment of fees and submission of studies detailing the status of conservation outcomes in the area.

The request remained in draft form and was unable to be progressed for a long period of time due to gaps in information and concerns with environmental impacts.

Council considered a Planning Proposal Assessment report in June 2019, where it was resolved:

RESOLVED: Turner/Hawkins

That Council:

1. *Defer consideration of this item.*
2. *Request the General Manager schedule a Councillor briefing on the proposal as soon as practical.*
3. *Request the General Manager convene a meeting with the Proponent and their representatives and relevant Council staff for the purpose of working towards potential modifications to the planning proposal that seek to achieve optimal outcomes for all parties, including protection of koala habitat under SEPP 44 and other positive environmental outcomes.*
4. *Request the General Manager provide a report back to Council regarding the outcomes of this meeting and any amendments to the Planning Proposal, once Council staff are in a position to finalise this review.*

CARRIED: 8/0

FOR: Alley, Dixon, Griffiths, Hawkins, Intemann, Levido, Pinson and Turner

AGAINST: Nil

In December 2020, Council's Bi-Annual Update Report on Site Specific Planning Proposals noted a substantial amount of work having been undertaken by all parties in respect of The Ruins Way matter since June 2019. The report also noted:

- That a decision is pending in respect of the strategic and site specific merit of the long running Planning Proposal application.
- That key issues and BCD concerns remained unresolved.
- That in the event that the timeframe is not achievable, the proposal may need to be discontinued with a further report presented to Council if this is the case.
- That there is a major risk to completion by the end date due to steps in the process and uncertainty as to whether a Gateway Determination would be granted by the Department to proceed.
- That the matter to be re-presented to Council in March 2021 for a decision.

Noting that the planning proposal has been unresolved for a decade, there has been numerous legislative changes during this time that have compounded the environmental constraints required to be addressed. Unfortunately, this has impacted on the direction and progression of the application. The introduction of the *Biodiversity Conservation Act 2016* and the listing of the Native Guava (Feb 2019) are recent examples of this. *State Environmental Planning Policy (SEPP) (Coastal Management) 2018* and *SEPP (Koala habitat Protection) 2018* are other examples. Additionally, reforms within state agencies over this time has also seen a shift in focus on assessment noting the legislative amendments that have occurred.

NSW Public Open Space Legacy Program 2020 Grant

The Legacy Program is part of the State's ongoing work to protect the health of the community, provide economic and jobs stimulus in response to COVID-19 pandemic. Funding will be released from early 2021 provided performance improvements can be achieved between 1 September 2020 and 30 June 2021. As a long running and unresolved rezoning application, The Ruins Way matter is nominated for completion in Council's formal Participation Agreement with the NSW Department of Planning Industry and Environment under the Program. Under the agreement the Planning Proposal was required to be completed by 30 June 2021, however this timeframe has not been achieved.

EXISTING SITUATION

Description of the Site and Surrounds

The 2021 Planning Proposal Application seeks to rezone Part Lot 499 DP 1258597, focusing on the area shown in **Figure 2**.

Lot 499 is located at west Port Macquarie, off Blackwood Street and is approximately 320m south of John Oxley Drive Port Macquarie. The site is around 1,230m west of Lake Innes Neighbourhood Centre. Current access is via Blackwood Street.

Site characteristics include:

- Large frontage to key infrastructure easements for electricity and water supply.
- Additional transecting electricity infrastructure.
- Large site frontage to Lake Innes Nature Reserve.

- Areas of designated Coastal wetlands and Coastal Wetlands Proximity Area under SEPP Coastal Management 2018.
- Remnant vegetation strips which form key known north-south and east-west habitat corridors for threatened and vulnerable species.
- Cleared grassland strips associated with undeveloped golf course approval,
- Drainage to Lake Innes Nature Reserve;
- Developing areas as low rise, low density housing lots.
- Surrounding developing areas to the north and south west.

Land Ownership and Existing Approvals

Lot 499 is registered to Vilro Pty Ltd. Existing approvals relating to the subject planning proposal application for Lot 499 include 291 Residential Subdivision (DA2005/547), and approved golf course, residue and retained habitat (corridors) under DA1988/248. The golf course and residential subdivision are discussed in the following section of the report.

PROPONENT'S AMENDED ZONING CONCEPT - MAY 2021

On 25 May 2021, the Proponent submitted a written response to the Council outlining their response to the recommendations of the BCD. The letter included a revised zone concept. A copy of the Proponent's letter is included at **Attachment 2**, and the revised concept is shown in **Figure 4** below. The BCD's letter is included at **Attachment 3**.

The letter set out the Proponent and landowners position on environmental-related matters, and proposed a part compromise position on the extent of land for inclusion in an environmental conservation zone. While the response addressed in part the concerns and recommendations of the BCD, there continued to be key points of difference in relation to the extent of environmental conservation zoned land considered essential to progressing the matter.

Both Council and the BCD require that any amendment to planning controls in the location does not pre-empt further rezonings for urban development on Lot 499 or adjacent Lot 356 DP1263987 (located on eastern boundary of Lake Innes Nature Reserve). The remnant vegetation in this location being key to survival and dispersal of a nationally significant Koala population (pre-bushfires) located on private and public lands surrounding Lake Innes. Note the below image (**Figure 4**) does not identify property boundaries, or the full extent of the Lake Innes Nature Reserve. For reference purposes and property extent, **Figure 2** should be used.

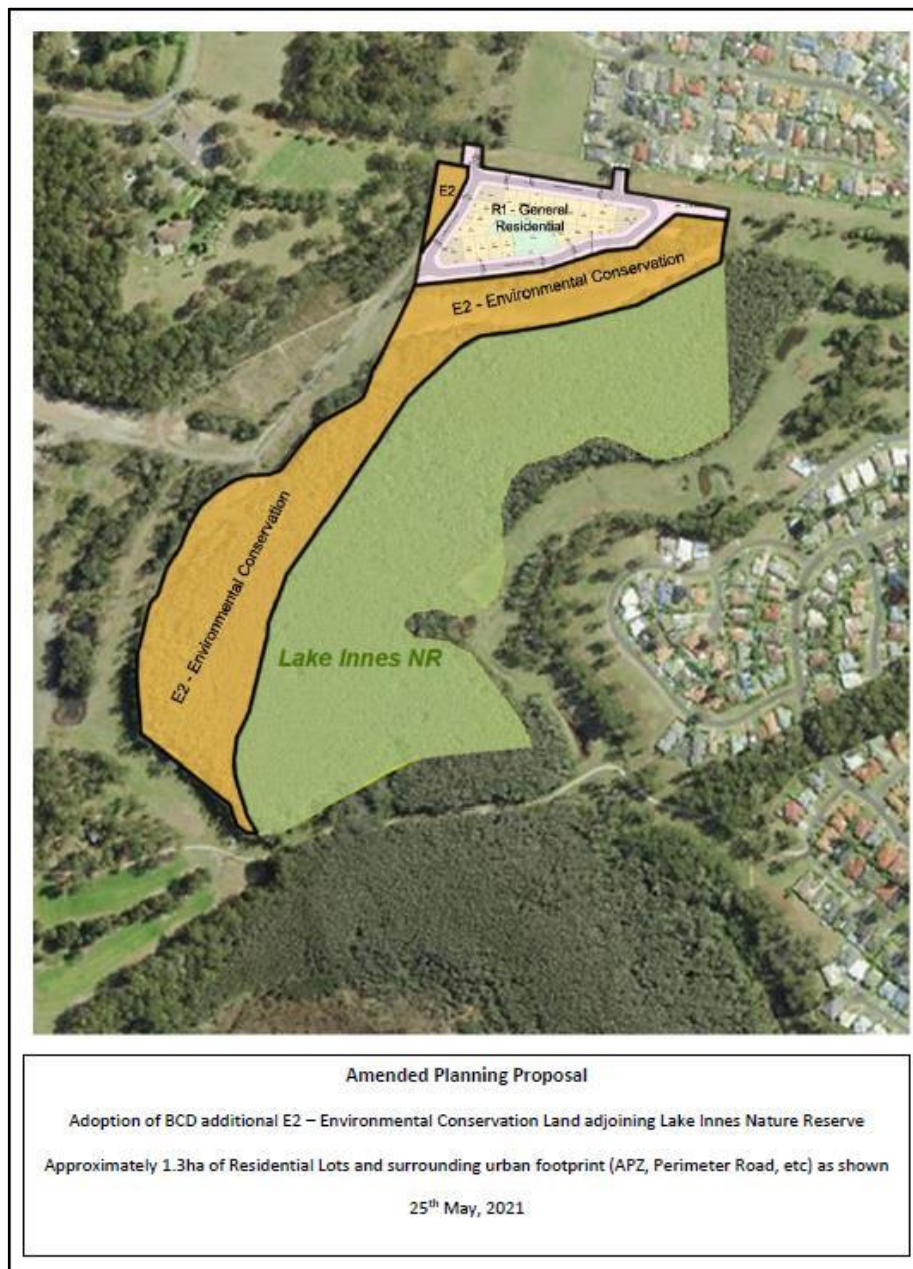


Figure 4: Proponent's revised zoning concept (May 2021)

The following table provides a comparison between the current planning controls applying to the site, controls proposed in the Proponent's previous application (March 2021) and the current development concept (May 2021):

Subject Site Area (only)	Existing	Previous Planning Proposal (March 2021)	Current zoning concept (May 2021)
Land Zoning (LZN)	RU1 Primary Production	Part R1 General Residential, Part E2 Environmental Conservation, and Part E3	Part R1 General Residential and Part E2 Environmental Conservation

Subject Site Area (only)	Existing	Previous Planning Proposal (March 2021)	Current zoning concept (May 2021)
		Environmental Management	
Minimum Lot Size (LSZ)	40 hectares	450m ²	Not specified
Maximum Height of building (HOB)	NA	8.5m	Not specified
Floor Space Ratio (FSR)	NA	1:1	Not specified
Koala Habitat Map	Yes, all of site (clause 7.5)	Retained habitat and environmental areas.	Not specified

A copy of the indicative concept provided in the previous Planning Proposal (March 2021 - **Attachment 1**) is shown in **Figure 5**. Note that consideration of subdivision design merit would occur at DA stage, should the planning proposal proceed to that point.

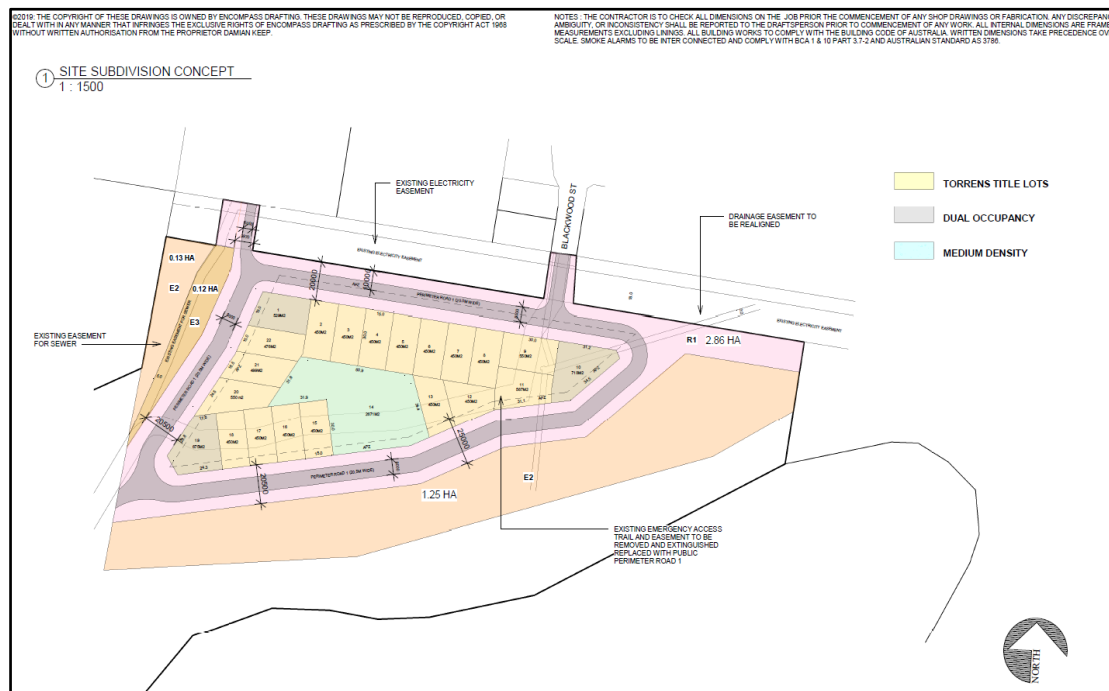


Figure 5 Subdivision and Zone Concept Plan by Love Project Management

The Proponent's proposed concept design would provide access from Blackwood St to the north, and a potential secondary access to developing land in the northwest. In addition, the design would allow future road access to undeveloped residue land to the east towards The Ruins Way, and south towards Ascot Park. This land is held by the developers.

The plans are indicative only to illustrate the type and scale of development possible on the land if the rezoning proceeded.

The Proponent submitted the following information studies in relation to the revised Planning Proposal considered by Council in March 2021 (**Attachment 1**).

- January 2021 - Supporting Studies

The submission included the following information and documents:

1. Application Form (29 January 2021).
2. Planning Proposal Amendment Report, Love Project Management Pty Ltd (29 January 2021).
3. Deposited Plan (DP1258597).
4. Property Title (LRS) Vilro Pty Ltd .
5. Concept Development Plans (29.1.2021).
6. Aboriginal heritage Report (27.4.2018).
7. Bushfire Hazard Assessment (January 2021).
8. Response to BCD Consultation - Love Project Management Pty Ltd 28 January 2021).
9. Koala Plan of Management JB Enviro (January 2021).
10. Preliminary BDAR JB Enviro (January 2021).
11. Draft Amended Zone Map.
12. Draft Amended Minimum Lot Size Map.
13. Draft Amended Koala Habitat Map.
14. Draft Amended Height of Building Map.
15. Draft Amended Floor Space Ratio Map.
16. Dwg Files; Subdivision concept and site survey (data files).

Late documents included:

- Phase 1 Environmental Site Contamination Assessment.

Omitted documents include:

- Political Disclosure

The following is a summary of the supporting studies.

January 2021	Comments
Planning Proposal Amendment Report (2021)	The report outlines the nature of the proposal, the changes to planning controls sought, and concludes that the site is suitable for future housing and subdivision based on
Aboriginal Heritage Report (2018)	The report, prepared by Birpai Local Aboriginal Land Council in 2018, and in response to a request for Charlie Bros Pty Ltd, details the results of a site survey in March 2018. The report concludes that the proposed development is not considered to impact upon or have any significance for the local Aboriginal community and

January 2021	Comments
	their cultural heritage. In addition, no site recording is considered necessary based on no material traces, evidence or expressed knowledge of Aboriginal land use on the site.
Bushfire Hazard Assessment (2021)	The report considers the NSW government requirements for Planning Proposals on bushfire prone land. A Strategic Bushfire Study is required and included. The study is premised on the assumption that future land uses will not contain 'Special Fire Protection Purposes'. Council will need to consult with the NSW Rural Fire Service in relation to the proposal as amended and must demonstrate that the objectives for draft LEPS are adequately addressed: - to protect life, property and the environment from bushfire, by discouraging the establishment of incompatible land use in bushfire prone areas, and - to encourage sound management of bushfire prone areas.
Proponent Response to BCD (2021)	The response provides a short summary response to the BCD written advice to the Proponent in September 2020, which details their concerns and outlining requirements for progressing a Planning Proposal for a small area off Blackwood Street.
Koala Plan of Management (KPOM) (2021)	The KPOM states that it has been prepared under the <i>Koala Habitat Protection State Environmental Planning Policy (SEPP) 2020</i> to accompany a planning proposal to rezone approximately 2.86ha of land in the northern corner of Lot 499 DP1258597 off Blackwood Street. The study is limited to 'the study area/site' which is described as the site, and the adjacent land within 100m. The study identifies 16 Koala Food Trees plus 4 young saplings for removal. Proposed mitigation measures including habitat retention and protection (limited to study area); specific DCP planning provisions (study area only) to ensure 10/50 clearing

January 2021	Comments
	under the NSW Rural Fires Act will not encroach into areas of retained vegetation; and offset planting as supplementary planting in retained vegetation strips.
Preliminary Biodiversity Assessment Report (BDAR) (2021)	The BDAR identifies: • High Environmental Value (HEV) elements within the 'study area' including Core Koala habitat, Native Guava and Scrub Turpentine on and adjacent to 'the site'; • Potential Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast vegetation; • Serious and Irreversible Impact Species (SAIL) - Swift Parrot, Native Guava and Scrub Turpentine - within the 'Study area'; • Core Koala Habitat; • 16 Koala Food Trees, and 4 Saplings to be removed within the proposed R1 General Residential zone; • Impact/s on Koala requiring offset/s;
Phase 1 Site contamination Assessment	The report concludes that the site is likely to be suitable for rezoning as Residential land, and specifies requirements for any exported fill material in Section 6.1.
25 May 2021	
Proponent Response to BCD Recommendations (February 2021)	The response provides a summary to the BCD written advice to Council, which details their concerns and outlines requirements for progressing a Planning Proposal for a small area off Blackwood Street of around 1.5 - 2 hectares. This response includes an amended zoning concept.

ASSESSMENT OF THE PLANNING PROPOSAL

Summary

The following assessment of the Planning Proposal application has been updated to include the amended zoning concept provided on 25 May 2021 and also references the revised PP considered by Council in March 2021.

The planning proposal application is assessed against the Department of Planning Industry and Environment document 'A Guide to Preparing Planning Proposals' and 'A Guide to Preparing Local Environmental Plans'. The following sections address the Assessment Criteria established by the NSW Government to assist in determining the strategic merit and justification for a planning proposal application:

Part 1 Objectives and Intended Outcomes

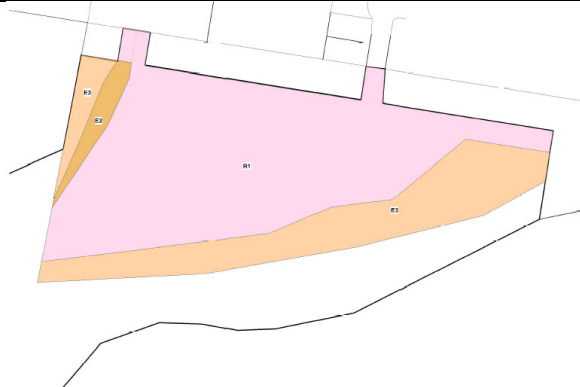
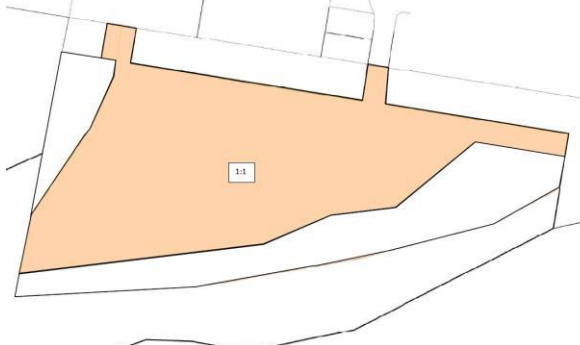
Part 2 Explanation of the Proposed Provisions

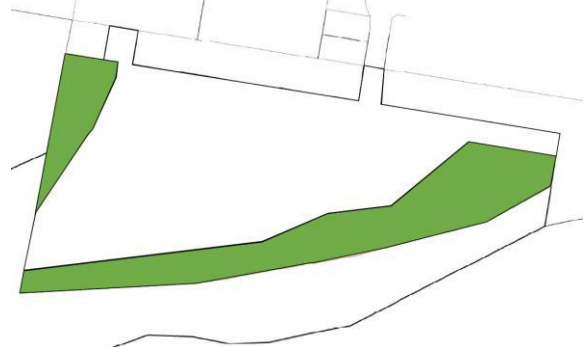
Part 3 Justification

- The need for the planning proposal
 - Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?*
 - Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*
- Relationship to Strategic Planning Framework (Assessment Criteria)
 - Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?*
 - Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?*
 - Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?*
 - Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?*
- Environmental, social and economic considerations
 - Q7. 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?*
 - Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*
 - Q9. Has the planning proposal adequately addressed any social and economic effects?*
- Commonwealth and State interests
 - Q10. Is there adequate public infrastructure for the planning proposal?*
 - Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?*

Part 1 Objectives and Intended Outcomes

The proposed amendments sought to *Port Macquarie-Hastings Local Environmental Plan 2011* are mapping changes as follows:

Map Change	Revised Planning Proposal (March 2021)	Amended Zoning Concept 25 May 2021
Amendment to the Land Zone Map		
Amendment to Minimum Lot Size Map		Not provided. Recommend: 450m2
Amendment to Height of Building Map		Not provided. Recommend: 8.5m
Amendment to Floor Space Ratio Map		Not provided. Recommend: 0.65:1

Map Change	Revised Planning Proposal (March 2021)	Amended Zoning Concept 25 May 2021
Amendment to Koala Habitat Map		Not provided. Recommend: That the existing Koala Habitat Map be retained over Lot 499 to ensure consideration at the time of future DAs of all relevant KPOMs.

The intended outcome of the application as stated by the Proponent is *“urban development and habitat management across the subject land that is:*

- *Able to be serviced with essential infrastructure;*
- *Compatible with the local environment;*
- *Well designed to facilitate social wellbeing; and*
- *Compatible with surrounding land uses”.*

The Proponent’s objective is to *“provide planning based controls which enable urban development to undertaken whilst achieving the above outcomes. The Proponent further contends that a Planning Proposal for the land in question will facilitate the long term management of urban bushland. Portions of the land have been identified as suitable and capable of being developed to provide additional residential accommodation, and areas of the land have been identified as suitable for environmental management. The proposal has been assessed as being able to provide a sustainable outcome”.*

The principal reasons provided by the Proponent for the application are *“to provide additional housing opportunities for a residential growing population”* and *“to assist in the long term management of land surrounded by urban zoned land”*. A brief assessment response is:

1. It is agreed that the provision of additional housing in this location will make a positive contribution towards housing opportunities for a growing population,
2. It is agreed that the proposal would provide some partial protection for a small component of land surrounding the proposed residential footprint. However, it continues to discount elements of BCD and Council advice provided to the Proponent from September 2020 onwards that retaining a rural zoning over remaining habitat within the larger rural zoned and un-subdivided residue on Lot 499 is not supportable due to the High Environmental Value of the vegetation and importantly that protection and retention of these areas were the basis for past subdivision approvals for the land.
3. The environmental constraints of the land have not been adequately resolved at this point in time. The following concerns are raised with the current proposal:

- The proposal focuses on a small site area of 4.36 hectares, without addressing the broader context, and environmental value of a much larger rural residue of around 30 hectares as consistently advised by Council and BCD from 2019 onwards.
- BCD advice for compensatory protection of important environmental values located within the balance of the rural residue is not addressed.
- The potential impact of the proposal on *Coastal Wetlands* and *Proximity Area* to *Coastal Wetlands* under *SEPP Coastal Management 2018* needs to be supported with appropriate environmentally zoned buffers.
- The proposal does not adequately address *serious and Irreversible Impact Species (SAIIS)* under the *Biodiversity Conservation Act*, including Native Guava (*Rhodomyrtus psidioides*), and Scrub Turpentine (*Rhodamnia rubescens*), and Biconvex Paperbark (*Melaleuca biconvexa*) which is listed as *Vulnerable* under the *BC Act* and *EPBC Act*.
- The proposal appears to abandon approved golf course fairways and habit linkages under DA1988/248.
- The proposal appears to discount endorsed commitments for habitat retention under koala plans of management and vegetation management plans for east - west, and north-south koala and fauna movement/s under DA2005/547.
- The proposal does not adequately consider or address potential amendments to existing and approved koala plans of management affecting this location.

Part 3 Justification

A. The Need for the Planning Proposal

Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

The planning proposal application is not the result of the endorsed local strategic planning statement for Port Macquarie-Hastings - Shaping Our Future 2040. It does however propose development of an identified urban investigation area, included and mapped in the *North Coast Regional plan 2036* and *Port Macquarie-Hastings Urban Growth Management Strategy 2036*.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Preparation and completion of a planning proposal for the subject planning area is the only mechanism to achieve a change to existing planning controls.

B. Relationship to the Strategic Planning Framework

Q3. Will the planning proposal give effect to the North Coast Regional Plan 2036?

The North Coast Regional Plan 2036 identifies three (3) Principles for guiding growth on the North Coast.

Principle 1: Direct Growth to identified Urban Growth Areas (UGA)

To achieve a balance between urban expansion and conservation of natural and environmental assets, the regional plan identifies the limits to urban growth for each local government area. The UGAs help to maintain the distinctive character of our local communities; direct growth away from significant farmland and sensitive ecosystems, and enable efficient planning for infrastructure and services.

Comment:

Lot 499 contains a small portion of land in the North West extent that is mapped and defined for urban investigation as part of the Urban Growth Area (UGA) for Port Macquarie-Hastings. Importantly, the included area is also mapped in the plan as 'Coastal Strip' and 'Potential High Environmental Values' (PHEV).

Principle 2: Manage the Sensitive Coastal Strip.

The coastal strip (or Zone) comprises land east of the Pacific Highway. The area is ecologically diverse, with wetlands, estuaries, significant farmland and areas of local, state and National significance. The area is also exposed to natural hazards and risks such as flooding, coastal inundation, erosion and recession. To safeguard the strip, the regional plan limits development in this area, and only minor and contiguous variations to the boundary will be considered by the State government.

Comment:

Lot 499 is located within the Coastal Strip as defined in the Regional Plan. Lot 499 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 2 hectares within the UGA is considered suitable for future urban release.

Principle 3: Provide Great Places to Live and Work in a Unique Environment.

The regional plan emphasises the need for cities and centres to be the focus for housing diversity, jobs and activities to reduce pressure on the environment and maximise the advantages of the North Coast's unique environment.

Comment:

As noted above, a small area of land in the North West extent of Lot 499 is identified in the regional plan for investigation to determine its suitability for future housing. An assessment of the suitability of the site is the purpose of this report.

Q4. Will the planning proposal give effect to a relevant local strategic planning statement/strategy that has been endorsed by the department (i.e. Port Macquarie-Hastings Shaping Our Future 2040 and Port Macquarie-Hastings Urban Growth Management Strategy 2017-2036)?

Towards 2030 Community Strategic Plan

Towards 2030 Community Strategic Plan is an overarching 10-year plan prepared by Council and the community, and based on community priorities. The plan outlines the community's objectives for each of the themes identified in the plan:

- Leadership and Governance
- Your Community Life
- Your Business and Industry
- Your Natural and Built Environment

Proceeding with a rezoning for a small modified footprint to R1 General Residential could implement the objectives and community aspirations expressed in the plan.

Shaping our Future 2040

A Local Strategic Planning Statement (LSPS) for Port Macquarie-Hastings was published on the NSW legislation website on 30 September 2020. Shaping Our Future sets out a 20-year vision for Port Macquarie-Hastings, and its role is to:

- Identify the special characteristics that contribute to local identity and make our area special.
- Recognise our shared community values and how they will be maintained or enhanced.
- Direct how we manage future change.
- Identify and give effect to relevant directions located within the North Coast Regional Plan.
- Identify gaps of knowledge where further strategic planning work is needed.
- Link Council's strategies and plans to the implementation of the NSW Government's Strategic Plans.
- Shape planning controls to facilitate future planning directions.

A small planning area would be broadly in keeping with the direction for strategic planning decisions outlined in the LSPS if rezoned. A brief summary assessment of the Proponent's proposal against the following Strategic Planning Principles of the LSPS is outlined in the following Table:

No.	Planning Principle	Comment
1.	Result in sustainable outcomes for our community now and into the future; considering Environmental, Social, and Economic factors and risks;	Subject to satisfying the views of government agencies as discussed in the report, up to approximately 2 hectares within the UGA may be suitable for future housing development.
2.	Work in an adaptive management framework that allows the review and amendment of Council's planning policies to ensure that our unique scenic landscape qualities, ecological and biodiversity values are recognised;	The proposal would complete planning for urban housing with some positive environmental outcomes in this location, if rezoned as discussed in the report. It is noted that conservation of the northern habitat linkages on Lot 499 is consistent with the original planned and promoted environmental outcomes for sustainable housing development at Innes Lake and Ascot Park residential estates under DAs 1988/248 and 2005/547.
3.	Positively contribute to our built environment;	A minor 2ha extension of residential release at South Lindfield for future housing is in keeping with previous strategic planning for this area. No

		further expansion of the UGA in the area is supported due to the known environmental sensitivity of the precinct, and its importance to the persistence of a viable local koala population. Refer comments relating to environmental impacts elsewhere in the report.
4.	Enhance equity, social inclusion and community participation;	It is proposed to ensure that the community is involved in decision making for the precinct from the outset.
5.	Be robust, future-focused and evidence based;	Investigation of the broader rural residue land in this location now provides an evidence base for limiting further expanded development in the area.
6.	Facilitate transparent collaboration processes and involve stakeholders and the community early.	Community consultation would occur as early in the process as practical. In this case to notify landholders of a report to council considering options for commencement of planning investigations if supported for the northern extent of Lot 499.

Port Macquarie-Hastings Urban Growth Management Strategy (UGMS) 2036

Council's policy in the UGMS for future residential development is to promote housing in the right locations; ensure efficient use of infrastructure; avoid environmental impacts; and enhance the character and natural qualities of the location; and in the public interest.

The environmental aims of the Strategy are to accommodate a growing population while avoiding areas of high environmental value; concentrate growth to within existing centres; protect and manage native vegetation; plan for climate change; and incorporate measures to such as buffers to protect environmental values and avoid land use conflict.

If modified to reduce the residential component, conserve High Environmental Value land on Lot 499 with an appropriate Environmental Conservation zone, and increase the separation distance between residential development and adjoining and adjacent environmental values, the proposal could attain broad consistency with these principles. Enhancement of the character and natural qualities of the location could be attained through a combined rezoning and development application process to secure housing, environmental, urban design and character outcomes.

Q5. Is the planning proposal application consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policies relevant to the Planning Proposal application are as follows:

SEPP No. 36 Manufactured Housing Estate

The SEPP aims to facilitate manufactured housing on certain land on which caravan parks are permitted as a contemporary form of medium density housing.

A change of zone will affect permissibility of MHE development under the SEPP. If zoned to R1 General Residential MHE development will be permitted with consent.

However, MHE development is likely unachievable on the site based on designated 'Special purpose development' requirements under NSW Rural Fire Service Guidelines. The designation imposes additional APZ and mitigation requirements for vulnerable forms of development, which cannot be achieved on the site without impacting on important environmental features.

SEPP (Coastal Management) 2018.

The aim of this Policy is to manage development in the coastal zone and protect the environmental assets of the coast. The subject land is identified as being located within the 'Coastal Zone'.

Lot 499 is affected by identified 'Coastal Wetlands' and 'Proximity Area for Coastal Wetlands'. The following controls, are relevant:

Division 1 – Coastal wetlands and littoral rainforests area

Clause 10 – Development on certain land within coastal wetlands and littoral rainforests area. The proposed development footprint is not within a mapped coastal wetland area.

Clause 11 – Development on land in proximity to coastal wetlands or littoral rainforest. The site area is located within the mapped proximity area to mapped 'Coastal Wetlands'. An assessment of the impact in regard to the provisions of this policy will apply at the time of future development applications for the land.

Future development must avoid impacts on the biophysical, hydrological or ecological integrity of the adjacent wetland, and ensure quantity and quality of surface and ground water flows to and from the adjacent coastal wetland is acceptable. It is considered that any planning proposal should provide adequate buffers to sensitive coastal wetlands. This still requires resolution.

SEPP Koala Habitat Protection 2020

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline—

- a. by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- b. by encouraging the identification of areas of core koala habitat, and*
- c. by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

The planning proposal application is supported by a draft Koala Plan of Management. The Plan is dated January 2021 and does not reflect the Proponent's revised layouts submitted 25 January and May 2021 as discussed in the report. If progressed, the plan will need to be updated.

While the BCD has not undertaken a thorough review of the plan, Council's Natural Resources Team have reviewed the draft document and note that an approved

KPOM under DA 2005/547 applies to Lot 499. Also noted are multiple modifications to DA2005/547 and numerous instances of noncompliance with the approved KPOM.

Under the approved KPOM, the Proponents planning area is identified, mapped and described as containing *core koala habitat* under the SEPP with direct connectivity to Lake Innes Nature Reserve. The plan suggests a resident population of up to 20 koalas.

It is the view of Council's Natural Resources staff that the entirety of retained vegetation within and adjacent the Proponent's planning area, and in fact all vegetation across Lot 499 DP1258597 is of High Environmental Value.

Based on this assessment, Natural Resources staff do not support a partial rezoning of Lot 499 and will only support a rezoning based on conservation of all existing habitat corridors. The Proponent's revised zoning concept (May 2021) has extended the proposed E2 Environment Conservation zone to the south to take in the coastal wetland up to the Lake Innes Nature Reserve boundary and the privately owned mapped coastal wetland in accordance with the BCD's advice.

1. The urban investigation area of Lot 499 DP 1258597 is supported for rezoning as R1 under the following conditions;
 - 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 proposed development area with Environmental Conservation zoning across the ecological buffer to be managed as above.
 - 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.

SEPP 55 Remediation of Land

This policy specifies that the consent authority must not consent to the carrying out of any development unless it has considered whether the land on which the development is proposed is contaminated and/or is required to be remediated for its intended use. The site is not mapped as being subject to potential contamination from past land uses.

A Preliminary Phase 1 Geotechnical and Contamination Assessment undertaken on behalf of the developer concludes that the site is likely to be suitable for rezoning as Residential land. Should contamination be discovered during future subdivision works, the type of contamination is likely to be of a sort /type that will be able to be remediated on site or taken away for appropriate disposal.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

There are some minor inconsistencies, which require the agreement of an authorised officer of the Department of Planning, Industry and Environment prior to completing a planning proposal for the land in question. The minor inconsistencies with the Local Planning Directions issued under section 9.1 of the EP&A Act are as follows:

2.6 Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. Council has obtained a Preliminary Site Contamination Assessment indicating that the site area in question is suitable for all permitted purposes if rezoned.

4.4 Planning for Bushfire Protection

The objective of this direction are:

- a. to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- b. to encourage sound management of bush fire prone areas.

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. As referenced in the report, the site is designated bushfire prone land and bushfire prone land 'buffer'. There are three technical inconsistencies with the requirements of this Direction, relating to subclauses (4) to (6) of the Direction:

Subclause (4) requires consultation with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination and prior to undertaking community consultation. Preliminary consultation with the NSW RFS has occurred. However, no formal response has been received by Council at the time of writing of the report. Further consultation with the RFS will occur if any Gateway Determination for a Planning Proposal in relation to the site is granted by DPIE.

Subclause (5) requires that the Planning Proposal introduce controls that avoid planning inappropriate developments in hazardous areas. The subject proposal relies on the current controls and assessment process, and technically is inconsistent by not introducing further controls.

Depending on the interpretation of subclause (6), it is required that the planning proposal contain development application details. If this is the case, then this is a further inconsistency.

5.10 Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans. A Planning Proposal must be consistent with a regional plan.

In this case, proceeding with a Planning Proposal for a small defined area could achieve consistency with the intent of the regional plan, its vision, goals and directions, or actions.

C. Environmental, Social and Economic Considerations

Q7. 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?

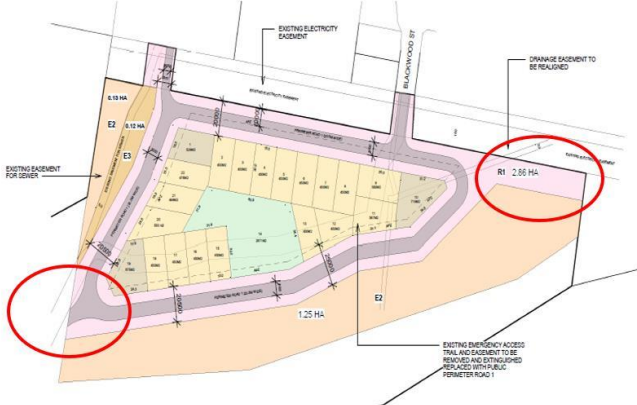
Biodiversity Conservation Act 2016

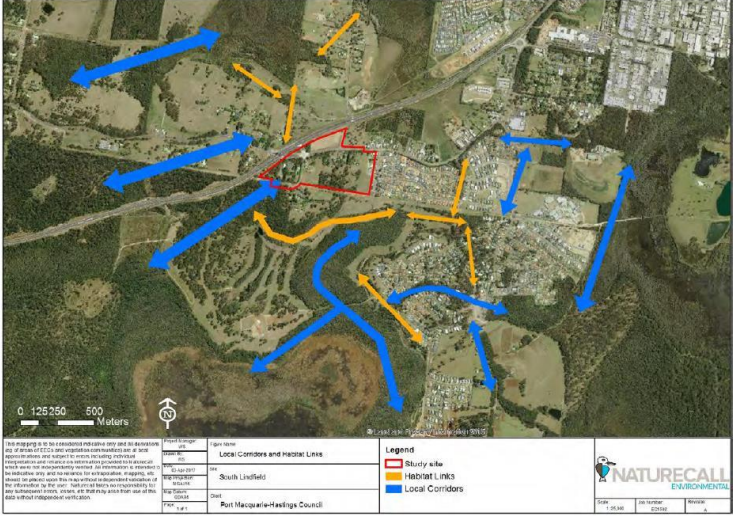
The *Biodiversity Conservation Act 2016* applies and is relevant to this proposal and any future development applications resulting from a rezoning of the subject land. As part of the Act, lands are identified on a values map and threshold tool. This tool provides information that triggers the Biodiversity Offsets Scheme threshold and more relevant in this context it exemplifies areas of high biodiversity significance.

a. Revised Planning Proposal - March 2021

The Proponent received detailed requirements from the Biodiversity Conservation Division (BCD) of DPIE for progressing a supportable planning proposal for the planning area off Blackwood Street in September 2020. The matters raised by BCD have not been satisfactorily addressed by the Proponent. The BCD conclude that there is a limited scope for residential development in the Proponent's planning area as described in earlier sections of the report, and as confirmed to the Proponent in their 25 September 2020 letter to Love Project Management. It is the view of the BCD that there are significant environmental issues that require careful management to avoid and minimize impacts on biodiversity values. The issues are detailed in the following Table:

Issue	BCD comment
Extent of Urban Investigation Area	The amended planning proposal application applies to a study area of 4.36 ha. It proposes to rezone approximately 2.86 ha of land to R1 General Residential, 1.38 ha to E2 Environmental Conservation and 0.12 ha to E3 Environmental Management under the Port Macquarie-Hastings Local Environmental Plan (LEP) 2011 and to amend the minimum lot size map to 450 m² for the R1 zoning. Most of the land identified in the planning area is mapped as <i>Investigation Area – Urban Land</i> in the North Coast Regional Plan 2036, as shown in Figure 1 below.  Figure 1. Mapped Investigation Area – Urban Land in the North Coast Regional Plan 2036 BCD support the planning area being expanded to include the land to the south of the mapped urban land investigation area. However, the Division does not support land that was not mapped for urban investigation land being rezoned to R1 without adequate justification.
Proposed subdivision	The proposed subdivision layout provided with the planning proposal shows a road network extending toward the east, as shown in Figure 2 below.

Issue	BCD comment
n and road network	 Figure 2 Proposed subdivision layout showing road network to the east and southwest (circled in red). BCD do not consider these roads should be enabled as a result of the planning proposal as there is no broader strategic plan for adjoining residential development, and as we have previously commented there are significant environmental constraints in the adjoining lands that should preclude further residential development. The proposed layout also indicates that a more substantial road network to the west is proposed. There is currently only an access track in this location. The planning proposal report indicates that there is a requirement for emergency bushfire access for Ascot Park to the west. BCD would not support a rezoning that enabled any further extension of residential development in the southern Charley Brothers/Vilro land, as no further areas have been identified as urban growth areas, and there has been no strategic plan to support this. Also, as discussed below this could sever a north-south habitat link.
Primary koala habitat	The planning proposal identifies vegetation within the area to be zoned R1 as primary koala habitat. Residential development in this area will directly impact on koalas through the loss of such habitat and will likely introduce threats to koalas including dogs and vehicular traffic; possibly making them more stressed and susceptible to disease such as chlamydia. BCD have not reviewed the draft Koala Plan of Management (KPoM) in detail as this would be required at a future development application stage and is not required as part of a planning proposal. BCD note that the KPoM discusses the importance of habitat linkages and provides a map that shows the extent of koala habitat areas that were burnt in the catastrophic 2019/2020 fires. The only map to describe koala habitat linkages is a regional corridors map prepared in 2002 by Scotts. BCD recommend the KPOM be updated to include a map that describes the local linkages that are described in the KPOM text, if rezoned.
Local habitat linkages	A previous draft KPOM (May 2017) identified an east-west habitat link south of the planning area, as shown in Figure 3 below.

Issue	BCD comment
	 Figure 3. Earlier draft KPOM by Naturecall dated May 2017 with habitat links and corridor mapping As the planning proposal report states, the vegetation retained on the western side creates a habitat linkage to the retained habitat area location on the adjoining northern residential area recently approved by the Port Macquarie Hastings Council. The planning proposal report states that no road will bisect habitat. However, a constructed road network to Ascot Park south of the planning area would bisect this habitat linkage. The BCD has long maintained the importance of a north south corridor linkage along the western boundary of the Vilro land. BCD letter dated 21 September 2016 discussed the status of the cemetery land and the recommendation for a configuration that included a habitat link for native wildlife. This would connect habitat from the Lake Innes Nature Reserve to koala habitat in the north, such as within the E2 land in South Lindfield that will become a council reserve. Such linkages are not only important in enabling koalas to access feed trees but also to allow for fauna movements if for example there are bushfires. BCD note the recent sale of the cemetery land and this will become a private crematorium. There is no certainty for how native vegetation will be managed in the future in this adjoining land. A viable north south linkage is needed and should not be bisected by a fully formed road.
Threatened species and BDAR requirements	BCD previously recommended (September 2020) targeted surveys be undertaken on land that has not been identified as High Environmental Value (HEV) land for other reasons, but that could provide habitat for species-credit species such as <i>Petaurus norfolcensis</i> (squirrel glider) and <i>Litoria aurea</i> (green and golden bell frog). We also recommended a further and systematic targeted threatened plant survey for native guava (<i>Rhodomyrtus psioides</i>). The BDAR outlines the fauna and flora surveys and these appear to have been done in accordance with the Biodiversity Assessment Method (BAM) and relevant survey guidelines. However, we have not reviewed the BDAR in detail and note that we could provide such advice at development assessment stage if requested. BCD note the surveys for the squirrel glider involved the use of five cameras over four weeks, with a total effort of 140 trap nights, but it is not clear if there was regular spraying of the tree trunks and fresh baits provided which are

Issue	BCD comment
	needed to attract the animals and would demonstrate sufficient survey effort rather than the recommended Elliot traps. While we accept that the surveys that have been undertaken are adequate to determine the likely presence of HEV in the planning area, the BDAR should be updated at the development application stage to clarify how the surveys for squirrel glider were undertaken. Figure 15 in the BDAR maps a koala habitat polygon. The BCD has been advised that a BAM Koala Survey guide is being prepared. It is expected this will be available soon, and, if so, it should be referenced in the BDAR. Until this time, the BCD advises that connectivity between PCTs with confirmed koala presence must be considered in the overall extent of the species polygon, with justification for decisions provided in the BDAR. The koala species polygon in the BDAR should be updated at the development application stage. BCD do not consider the BDAR assessment of Serious and Irreversible Impacts (SAILs) provides sufficient advice for the decision maker in accordance with Section 9.1 and 9.1.2 of the BAM 2020, particularly actions and measures taken to avoid indirect impacts on the species at risk of an SAIL. The SAIL assessment in the BDAR should be updated at the development application stage.
Extending E2 zonings	BCD support the proposed rezoning of land to E2 in the southern and western parts of the planning area. However, both areas are narrow and have a large perimeter to surface area ratio with greater threat exposure and which could become isolated. As stated previously, the BCD's preference would be that all land currently zoned RU1 Primary Production across the broader area is assessed to identify and confirm HEV land. Such areas would then be zoned E2, given RU1 is no longer an appropriate zone in this location. While we accept that this is not occurring for this planning proposal, the E2 zone area proposed in the south should be extended to the coastal wetland / Lake Innes Nature Reserve (LINR) boundary as shown in Figure 4 below.  Figure 4. Approximate boundary for land that should be rezoned to E2 (outlined in yellow) which includes both the Coastal Management SEPP

Issue	BCD comment
	coastal wetland (blue polygon) and a cleared area to the Lake Innes NR that is within the wetland proximity area (blue hatched area). Although this area is currently slashed it could be rehabilitated to form a vegetation buffer to the wetland and LINR and would be a suitable area to establish the koala feed trees that are proposed to offset the loss of primary koala habitat. Studies have shown that koalas need to vary their habitat and feeding requirements seasonally (Ellis et al 1995). The future development to be enabled by the planning proposal would effectively reduce the diversity of koala habitat (and concomitantly feed trees) available in the area, by reducing the available Wet Sclerophyll Forests (Grassy Sub-formation) leaving predominantly Coastal Swamp Forest. While individual Tallowwood, Forest Red Gum and Swamp Mahogany primary koala feed trees, together with other secondary feed trees, are present in the Coastal Swamp Forest community, habitat diversity and availability of koala browse trees across a broader area will be reduced by this future development. Furthermore, the future development to be enabled by the planning proposal is likely to remove areas of koala habitat situated in areas outside drainage lines, leaving only lower lying areas. Cold air drainage is a significant issue for koalas, particularly in winter when energy requirements are higher (see Ellis et al 1995) and indeed, was used as a predictor in the NSW Government Koala Habitat Suitability Model. Hence, maintaining and promoting habitat in areas outside low-lying Coastal Wetlands is an important element of protecting the variety of koala habitat present. Replanting the proposed E2 buffer with a variety of koala feed tree species would therefore assist with ensuring diversity of koala habitat for seasonal habitat partitioning. The Department has produced koala habitat revegetation guidelines available at https://www.environment.nsw.gov.au/research-and-publications/publications-search/koala-habitat-revegetation-guidelines. These provide evidence-based recommendations including tree planting (8-10 metres apart) and optimal sizes and locations for koala feed tree planting. Any revegetation to create koala habitat should reference these guidelines and other supporting information on the local government resources for koala conservation on the Department's website. This planning proposal offers an opportunity to appropriately zone the coastal wetland as it has high environmental conservation values, is mapped as coastal wetland in the Coastal Management SEPP, adjoins the LINR and is not appropriate to remain as RU1 zoned land. The planning area should be expanded to include the privately owned coastal wetland south of the existing planning area so that this is also zoned E2 (see Figure 3 above). The area proposed to be zoned E3 in the western part of the planning area would be better zoned E2 to better protect habitat including for the critically endangered native guava. This is however a matter for the council given there is an existing sewer easement located in this area that we understand may need to be maintained from time to time. The relocation of the existing electricity easement and location of any stormwater management infrastructure associated with the residential development should not be located within the land to be zoned E2.

Issue	BCD comment
Threatened ecological communities	The consultant has concluded in the BDAR that no threatened ecological communities (TECs) occur in the study area as the areas do not meet the geomorphological criteria and the soil profile tests have demonstrated no evidence of sorting or layering associated with alluvial processes. The consultant supports his position by drawing on a review of papers by Preston and Adam (2004a, 2004b) and states this is the current accepted and adopted industry and current NSW government approach, and the approach followed by the NSW Land and Environment Court. There are however more recent guidelines dated 2018 prepared by the NSW Threatened Species Scientific Committee (TSSC) to assist interpretation of the concepts and terms in the listing criteria given in the Biodiversity Conservation (BC) Regulation 2017, which discuss the current format of the NSW Threatened Species Scientific Determinations. The guidelines are available at https://www.environment.nsw.gov.au/resources/threatenedspecies/1AGuidelines20180302.pdf. These guidelines state that the NSW TSSC “has developed a format for listing of threatened ecological communities that contains the following elements: <i>Parts 1 & 2: Section 1.6 of the Act defines an ecological community as “an assemblage of species occupying a particular area”. These features of an ecological community are described in Parts 1 and 2 of this Determination, respectively.</i> <i>Part 3: Part 3 of the Determination describes the eligibility for listing of the ecological community in Schedule 2 of the Act according to criteria as prescribed by the Biodiversity Conservation Regulation 2017.</i> <i>Part 4: Part 4 of the Determination provides additional information <u>intended to aid recognition of this community in the field. Rather than being diagnostic, information in Part 4 is a guide to assist recognition and given natural variability, along with disturbance history, the ecological community may sometimes occur outside the typical range of variation in the features described in Part 4</u>”. (added underlining)</i> As the TSSC has expressed a clear intention to revise the coastal floodplain threatened ecological community (TEC) determinations to accord with the new format, the BCD continues to advise that all coastal floodplain vegetation (including regenerating areas) within the study area should be considered as a TEC despite any underlying geology. The definition of an ecological community is discussed under 4.1 of the guidelines, which state that. <i>“The BC Act (section 1.6) defines an ecological community as ‘an assemblage of species occupying a particular area’. This definition closely follows modern scientific texts (e.g. Begon et al. 2006) and embodies three requirements (Preston & Adam 2004a):</i> <i>i) the constituents of a community must be species;</i> <i>ii) the species need to be brought together into an assemblage; and</i> <i>iii) the assemblage of species must occupy a particular area.”</i> The consultant has also advised that:

Issue	BCD comment
	<i>"It is these fundamental ecological attributes and their interaction (eg. Abiotic and biotic interactions) which define the overwhelming majority of EECs via their particular area e.g. the edaphic situation where it has evolved, and hence developed to match the defining assemblage... The bioregion is not such a critical influence, as demonstrated by EECs which stretch over more than one bioregion. It is a high level location descriptor (i.e. the range of the EEC), with subsequent criteria provided to refine the definition of the 'particular area' that causes the 'assemblage of species' (e.g. LGA, elevations, landforms, and soil landscapes) to separate EECs from non-EECs e.g. Coastal sandplain swamp forest from alluvial floodplain swamp forest. This is fundamental ecology. "</i> Under Section 4.2.2, the guidelines discuss the 'particular area' and state that: <i>"In NSW, the Land and Environment Court and the Court of Appeal have held that it is sufficient to specify the bioregions in which a community occurs and the local government areas in which it has been recorded (Preston & Adam 2004a). Consequently, for most ecological communities listed in NSW, the 'particular area' is defined by one or more bioregions"</i> The guidelines also state: <i>"The question of whether supplementary descriptors can be determinative regarding the occurrence of a listed community at a given location has been controversial. Some environmental consultants have argued that a listed community cannot be present at a site if the features of the site do not match the supplementary descriptors in the Final Determination, irrespective of whether the assemblage of species and particular area match those described in the Final Determination (e.g. NSWLEC 1022).</i> <u><i>This determinative interpretation is rarely consistent with the NSW TSSC's intent in providing information about supplementary descriptors to assist identification of a community. Courts have generally taken a broad (non-determinative) interpretation of supplementary descriptors (e.g. NSWLEC 2971 - VAW Kurri Kurri vs Scientific Committee 2003, NSWLEC 7703). Preston & Adam (2004b) stress that supplementary descriptors... "cannot be used as a substitute for a description of the assemblage of species and the particular area in which the community is located. Rather they should be seen as a valuable adjunct."</i></u> This reasoning stems from the statutory definition of an ecological community. Nonetheless determinative interpretations of supplementary descriptors continue to be presented (e.g. NSWLEC 1022), and it is important that wording of Determinations gives guidance as to whether a broad interpretation is intended." (added underlining) Accordingly, the consultant's argument that the bioregion is not a critical influence in determining the criteria for a TEC, cannot be accepted nor can the definitions that the consultant has used to describe the particular area (e.g. edaphic criteria, LGA, elevations, landforms, and soil landscapes). As discussed above, these supplementary descriptors are important additional information but are not key to defining an ecological community according to the definition in the BC Act.

Issue	BCD comment
Impacts on the adjoining Lake Innes Nature Reserve	The planning proposal does not consider the Department's <i>Guidelines for development adjoining land managed by the Office of Environment and Heritage</i> as previously recommended. If the planning proposal proceeds and is placed on public exhibition, we will seek the advice of the NSW National Parks and Wildlife Service (NPWS) about the potential impacts arising from the proposed rezoning to provide a consolidated response. The guidelines (see https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Development-guidelines/guidelines-for-developments-adjoining-land-managed-by-OEH-130122.pdf) cover issues such as stormwater runoff, wastewater, management implications relating to pests, weeds and edge effects, fire and the location of asset protection zones, boundary encroachments and access through NPWS estate lands, visual, odour, noise, vibration, air quality and amenity impacts, threats to ecological connectivity and groundwater dependent ecosystems and cultural heritage. While the guidelines are for considering impacts at the development assessment stage, a planning proposal should consider how the rezoning to enable a residential subdivision could negatively impact on the LINR and how these impacts could be minimised and mitigated at the planning proposal stage. For example, issues such as access into the LINR and stormwater management should be considered.
Planning Agreement	The planning proposal report refers to a Vegetation Management Plan (VMP) that will guide the management of the reserves including that no public access (e.g. footpath or road) will pass through them. The planning proposal should be supported by a planning agreement between the council and the landholder that commits the landholder to protecting and managing the E2 zoned land through the preparation and implementation of a VMP. This should include a sub-plan containing specific measures for the protection and management for threatened entities such as the native guava, including consideration of whether the area should be fenced to restrict access from the reserve areas into the residential area to reduce injury and mortality risks for koalas.

b. Amended zone layout - May 2021

On 25 May 2021, the Proponent provided a written response to the BCD letter of 24 February 2021 (**refer Attachment 2**). The response noted that BCD provided comment and recommendations in relation to the Planning Proposal request and possible future development applications. However, the submitted response references only those recommendations considered applicable to the request to rezone Lot 499. The details of the Proponent's response are provided below together with staff comment.

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
a. <i>The R1 General Residential zone should only be applied to suitable land within the planning area mapped for urban investigation.</i>	Agreed. The BCD correspondence provided the below image referenced as being from the North Coast Regional Plan 2036. It is noted that the plan included in the BCD	The Council position aligns with BCD. A limited urban footprint wholly within the mapped Urban Growth Area (UGA) under the Regional is supported.

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
	correspondence shows a shaded area of 4.2ha (excluding the neighbouring property to the north which has already been rezoned). The amended Planning Proposal identifies an area of 1.3ha for residential lots, and a total urban footprint of 2.86ha. The urban footprint includes perimeter roads and Asset Protection Zones. Therefore, the amended Planning Proposal has identified a smaller area of land for urban development than was identified in the North Coast Regional Plan 2036. The subject land has been investigated by two different ecologists who both reported that the proposed urban footprint was suitable land for that purpose. The amended Planning Proposal identifies some 8ha of land to be zoned E2 – Environmental Conservation. This 8ha of land will not be impacted by any urban footprint, meaning the land will be managed for conservation purposes only, and the E2 land does not include any asset protection zones, perimeter roads, etc. Thus, the land to be managed and protected for environmental conservation purposes far exceeds the urban footprint. Therefore, it is considered that the Planning Proposal is consistent with the North Coast Regional Plan 2036. The amended Planning Proposal will, in fact, provide for a higher level of environmental protection and management than was ever envisaged in the North Coast Regional Plan 2036.	The site is constrained by Koala habitat and Serious and Irreversible Impact Species (native guava, scrub turpentine and swift parrot). Council considers that adequate buffering of identified plant species is essential to their longer term viability and survival. Council does not support an urban zone, road or other infrastructure hard up against identified species, even if protected within an environmental zone. Minimum buffers are considered part of a SIIS impact area. Additionally, the Proponent has not demonstrated any evidence based justification for a variation to the UGA and none is supported by Council based on the significant environmental sensitivity of the site, including the presence of critically endangered native guava and scrub turpentine. Noted also is that supporting ecology reports do not adequately address Serious and Irreversible Impact Species (SIIS), by relying on protection of native guava and scrub turpentine only within environmental zones. Adequate buffering of a minimum of 30m, and preferably 50m, is fundamental to supporting a zone layout through the PP process. The difference between Council supported layout for between 1.3ha and 2ha relates to whether or not a 30m or 50m buffer is applied to Serious and Irreversible Impact Species.
b. <i>The area to be zoned E3 should instead be zoned E2 given it is</i>	Agreed. The E3 zone was only proposed to apply to the land which contains	Council supports merging of the western area into zone E2 Environmental

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
<i>habitat for the critically endangered native guava (Rhodomyrtus psidioides) pending the Council's advice on the maintenance requirements for the sewer easement.</i>	existing Council infrastructure. The E2 – Environmental Conservation zone can be applied to this area if Council, as the owner and manager of the infrastructure asset, considers the E2 zoning to be appropriate for future management. The Planning Proposal has been amended to identify all of that land as E2 – Environmental Conservation.	Conservation. Council does not intend that the proposed zoning will facilitate future road infrastructure. Only that existing easements and fire trail may continue as existing.
c. <i>The E2 zone should be extended along the length of the western side of the planning area to provide a secure and viable north-south corridor linkage.</i>	Noted. The Planning Proposal has been amended such that the E2 zone will include the Council infrastructure on the western portion of the land (subject to Council). This amendment will result in an E2 zone over the western area of the land. This provides a connection to the known koala habitat located in the adjoining crematorium land (west of the subject land), as well as the koala habitat being protected in the South Lindfield area (north-west of the subject land). It is noted that the south-western corner of the subject land shows a vehicular linkage which forms part of the consent for the residential development of Ascot Park Estate. The vehicular linkage is required as a bushfire escape and access for fire fighting vehicles. Any such emergency access needs to be maintained as a clear vehicular access for the safety of those who may need evacuation as well as the safety and protection of those who are volunteering to fight fires. For this reason, the Planning Proposal cannot zone this land E2 – Environmental	The Council position aligns with the BCD. All remnant vegetation along the entire eastern and south-eastern boundary of Lot 499 should be encompassed within zone E2 Environmental Conservation. In relation to existing easements, zone E2 Environmental Conservation will not erode existing easements. However, Council does support construction of a road in this area.

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
	Conservation, and the Planning Proposal remains consistent with the existing development consent and required access for emergency egress.	
d. <i>The proposed E2 zone area in the south should be extended to the coastal wetland / Lake Innes Nature Reserve (LINR) boundary and be revegetated, including with plantings of koala feed trees, to form a vegetated buffer to the wetland and LINR.</i>	Agreed. Refer to response to (e) below.	Council agrees with the Proponent's offer to extend a conservation zoning to include areas of Coastal Wetland within Lot 499. However, it is noted that the offer is for partial inclusion only, and there will remain other areas of State Wetland which should be included and rezoned from RU1 Primary Production to E2 Environmental Conservation - as encouraged by State agencies.
e. <i>The planning area should be expanded to include the privately owned mapped coastal wetland south of the existing planning area so that this is also zoned E2.</i>	Agreed. Parts (d) and (e) refer to the cleared land south of the proposed residential area which BCD recommends should be revegetated to create koala habitat, and also refers to the coastal wetland vegetation up to the (Lake Innes Nature Reserve) LINR boundary. BCD provided a map of the area they were referring to as shown in the above extract from the BCD correspondence (Figure 4 in the BCD correspondence). The BCD recommended that the area outlined in yellow should be zoned E2 – Environmental Conservation, being the cleared area south of the proposed residential area, as well as the coastal wetland vegetation to the LINR boundary. The Planning Proposal has been amended to include all of the land outlined in yellow by BCD, within an E2 – Environmental Conservation zone, as shown on the amended Planning Proposal map attached to this correspondence.	As per above.

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
f. <i>Suitable land use zones and minimum lot sizes should be applied to minimise and mitigate the impacts on the LINR that could arise from the future residential subdivision of the planning area.</i>	Noted. The Planning Proposal has identified a residential zone and lot size consistent with the standards applied to residential areas in Port Macquarie. It is noted that part of the neighbouring land to the north has a height limit of 11.5m and a floor space ratio of 1:1. If BCD were concerned that this would be applied to the subject land, then it should be clarified that such higher density residential development is not proposed for the subject land. This Planning Proposal is for residential development, and does not include any proposal to permit the higher density and heights identified for the northern neighbouring property. It is also noted that the LINR will be approximately 70m from future dwellings. In addition, the perimeter road, stormwater systems and revegetation works, will provide a significant and substantial buffer to the LINR. The property owner is also zoning 8ha of land for Environmental Conservation, and this includes land between the proposed residential lots and the LINR, as well as existing privately owned land further south which borders the LINR. This should clarify the matter for BCD that the Planning Proposal is not to facilitate high density residential developments and that the amended Planning Proposal will zone the land adjoining the LINR, as identified by BCD (outlined in yellow on their plan) to E2 – Environmental Conservation.	Council proposes a height of building limit of 8.5m, and a floor space ratio of 0:65:1 consistent with the low density nature of the surrounding residential areas. A supportable development footprint as proposed by Council provides for protection of existing remnant vegetation, does not rely or support on lots extending into zone E2 Environmental Conservation and is premised on the basis of a perimeter road for fire protection purposes.

BCD recommendations for the Planning Proposal	Proponent Response 25 May 2021	Planning Comment
<i>g. A planning agreement should be executed between the council and the landholder that commits the landholder to:</i> <i>i. protecting and managing the E2 zoned land through the preparation and implementation of a Vegetation Management Plan (VMP).</i> <i>ii. Preparing and implementing a sub-plan to the VMP containing specific measures for the protection and management for threatened entities such as the native guava, including consideration of whether the area should be fenced to restrict access from the reserve areas into the residential area to reduce injury and mortality risks for koalas.</i>	Agreed. The Planning Proposal documentation lodged with Council includes reference to a Vegetation Management Plan (VMP). A VMP will form part of any future development application.	Noted. Council is not supportive of entering into a Planning Agreement (PA) and Vegetation Management Plan (VMP) at the Planning Proposal stage. However, the need for a Vegetation Management Plan to formalise matters relating to preservation and management of vegetation will be considered later as part of a future development application.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Bushfire and Flooding

A significant bushfire risk exists for the planning area due to its proximity to the Lake Innes Nature Reserve and retained habitat. A Bushfire Hazard Analysis by David Pensini Pty Ltd supports the Proponent's revised application. Due to the long running and revised nature of the application together with the sensitivity of the planning area, Council has sought preliminary feedback from the NSW Rural Fire Service. At the time of writing of the report, a response had not been received. However, all requirements of the RFS, particularly in relation to vegetation removal for asset protection purpose will need to be balanced against environmental values and requirements.

Future subdivision and housing development will be required to comply with the NSW Rural Fire Service Guide for councils, planners, fire authorities and developers

(*Planning for Bushfire Protection 2019*), potentially limiting the extent of achievable development.

Council has discussed the bushfire risk with the Proponent, noting that any form of residential development will need to satisfy the requirements for containment of APZs within the residential footprint. A decision by Council in support of proceeding with a Planning Proposal will require further consultation with the NSW Rural Fire Service, and based on provision of a perimeter road to protect future dwellings, provide for ease of access for emergency services, and adequately conserve and protect significant vegetation.

Flooding up to and including the PMF must be considered when undertaking strategic land use planning for environmental planning instruments and planning proposals.

The adjoining Lake Innes Nature Reserve and 'Proximity Area to Coastal Wetlands (affecting the site) is mapped as *Flood Planning* and *Probable Maximum Flood* land subject to Clause 7.3 and 7.4 of Port Macquarie-Hastings Local Environmental plan 2011.

Q9. Has the planning proposal adequately addressed any social and economic effects?

Staff have noted the developing nature of land to the north and north-west of the planning area and the Proponent's statement that development of the planning area will provide new opportunities for a diversity of housing types. Apart from noting the accessibility of reticulated services, no further discussion in relation to the social and economic impact of the proposal is discussed in the revised application. These considerations should be included in new applications for the land in the future.

Q10. Is there adequate public infrastructure for the planning proposal?

Access to the site is available via Blackwood Street and the existing road network in Annabella Downs.

Council's Infrastructure Section advise that Blackwood Street is able to service only the number of lots shown in the "Subdivision Concept" plan and should not be the first stage of a through road to Ascot Park. The road width (Blackwood Street) is acceptable only for the likely volume of traffic generated by the conceptual layout. It is noted that extension of the road network south and eastward from the conceptual layout is also not supported on environmental grounds as discussed in earlier sections of the report.

Sewerage and Water Supply is available to the site. Registered plans of subdivision relating to Lot 499 DP1258597 show various easements for access and services, fire trail, water and sewer supply, and drainage bisecting the development site. Detailed investigation for infrastructure servicing arrangements has not been made at this stage due to the significant and unresolved environmental issues discussed on the report. An existing transmission line is proposed to be relocated clear of future development lots by the Proponent, and must be clear of future environmental protection zones. Consultation with relevant Authorities on the planning proposal application is required, if progressed.

Extension of, or upgrade to existing services and existing infrastructure to service future development if rezoned, will be at full cost to the developer in addition to applicable monetary contributions, and charges for water and sewer servicing.

Preparation of a Planning Agreements and Vegetation Management Plan if required, will be at full cost to the developer, and include provisions for payment of costs to Council for acquisition and maintenance of assets and services. Ongoing Management fees will also apply.

Asset Protection Zones to protect future development are required to be wholly contained within a residential zone footprint, exclusive of lot boundaries and in accordance with the requirements of the NSW Rural Fire Service.

D. Commonwealth and State Interests

Q11. What are the views of state and Commonwealth public authorities?

At this stage, Council has sought preliminary feedback from the Grafton Office of the Department Planning Industry and Environment (DPIE), the NSW Rural Fire Service, the Biodiversity and Conservation Division (DPIE) in relation to the amended planning proposal application.

The views of the Grafton Office of DPIE and the BCD are discussed in the report.

Conclusion

The staff assessment, and agency advice, is that the proposal cannot be supported in the form submitted in January 2021, or as amended by the Proponent's revised layout submitted 25 May 2021 due to the expected impact on High Environmental Value land.

This assessment considers the Proponent's revisions in May 2021 and provides an evidence base for revising the proposed developable area of approximately 2 hectares area of land for future residential development only.

Based on the long running nature of the current application, the supportable zone concept put forward by Council (**Figure 2**) is considered a workable compromise between the positions of the two parties and in keeping with recommendations of the BCD.

Options

Council's options are:

1. Do nothing. The subject land and adjoining rural residue land would remain zoned rural.
2. Resolve to prepare a Planning Proposal to rezone part Lot 499 DP DP1258597 to R1 General Residential and E2 Environmental Conservation on the basis of the Proponent's amended application of January 2021 and revised concept dated 25 May 2021. There is a risk that any planning proposal submitted on the basis of current information may be refused by the

State Government if planning and environmental issues are not satisfactorily addressed.

3. Resolve to prepare and forward a Planning Proposal based on the concept zone layout shown in **Figure 2** for a Gateway determination, and notify the Proponent.

Option 1 does not provide any scope for development of the land.

Option 2 is not recommended for the reasons outlined in this and previous assessment report to Council in relation to the PP (**Attachment 1**), and on the basis that Council has insufficient information and justification on which to base a decision to proceed with preparation of a planning proposal to rezone the land as proposed by the Proponent. There is also a major risk that the Department of Planning Industry and Environment will not grant a Gateway Determination and authorisation to proceed.

Option 3 is recommended. This would allow for development outcomes which are in keeping with the environmental sensitivity of the location, the regulatory framework, and Council's June 2019 resolution for optimal development and environmental outcomes.

The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires councils to notify a proponent when the council decides not to prepare a planning proposal. The proponent then has 42 days from notification to request a review of the council's decision. The review process is administered by the DPIE.

A planning proposal request which has been amended after Council has resolved to not support the matter is not eligible for a Rezoning Review. Any subsequent revised planning proposal request would need to be submitted to Council as a new planning proposal request.

Community Engagement and Internal Consultation

If progressed, community engagement in relation to a Planning Proposal prepared in relation to Lot 499, will need to be carried out consistent with a Gateway Determination issued by the NSW Government and Council's Community Participation Plan (2019).

There has been internal consultation involving Development and Environment staff, Infrastructure Staff and Strategy and Growth staff. Discussions have been undertaken with BCD, NSW Rural Fire Service and the Grafton Office of the DPIE.

Planning and Policy Implications

The planning process for making an amending local environmental plan (LEP) to alter or make changes to land use zones or development controls involves preparation of a Planning Proposal document that explains the intended effect of a proposed amending LEP.

A LEP is a legal instrument, and a statutory document. The plan must give effect to the objectives of the EP&A Act, the *North Coast Regional Plan 2036*, the council and community derived Community Strategic Plan (CSP) and Council's Local Strategic Planning Statement.

The Department of Planning Guidelines for planning proposals and local environmental plans emphasise the importance of strategic planning in determining whether the land is appropriate for the identified future use, providing certainty for future landowners and investors, and ensuring that future users are not exposed to unexpected or unreasonable development costs.

Under the Guidelines, Council has a responsibility to provide a level of certainty to the Government Gateway. This means ensuring that the land is suitable and acceptable for the proposed use and that the identified land can be reasonably and practically developed for its intended purpose. It is not appropriate to accede assessment of relevant environmental, social, economic and other site specific merit considerations, or obligations to later development applications under Part 4 of the EP&A Act.

Formal notification of any application for the preparation of a Planning Proposal that is not supported by the Council is regulated under the Environmental Planning and Assessment Regulation 2000. Council is required to notify a proponent in writing as soon as practicable after a decision not to proceed.

The proponent then has 42 days, if desired, to request that the relevant Planning Panel or the Commission review the proposal. A guide to preparing local environmental plans sets out lodgement requirements, including fees and information a proponent must provide to the Department in order for a review to be undertaken.

Only the same application that was initially presented to Council will be reviewed by the Planning Panel or Commission. The Planning Panel or Commission will undertake a strategic and site specific merit assessment of the rezoning review proposal.

Financial and Economic Implications

A Stage 1 rezoning fee of \$6,700 was paid in 2011 consistent with Council's Fees and Charges at the time.

The fee is significantly less than the current rezoning fee, and resources expended in pre-lodgement discussions, further review and re-assessment of the amended application, staff-proponent negotiations, and reporting requirements since 2011 has expended the fee paid by the landowner.

In the event that Council does not support Option 3, and/ or requests further revisions of the PP (requiring reassessment), full payment of fees by the Proponent is considered appropriate on the basis of resources expended, a positive uplift in the value of the land if rezoned, and in view of the expense of progressing any subsequent application through a rezoning process. The *Environmental Planning & Assessment Regulation 2000* contains provisions whereby Council may enter into a agreement for the payment of costs and expenses incurred in undertaking studies and other matters required to progress a planning proposal. This would include for example, addressing the conditions of a Gateway determination requiring further work to be undertake before a PP can proceed to the next stage.

There are no changes proposed to Council's Section 7.11 or Section 7.12 Development Contributions Plans, or Development Servicing Plans for Water and Sewer, in connection with the planning proposal. Development contributions will apply to the future development of the land.

The up-front cost of extension of services to the land including a suitable extension of all roads and utilities to serve future development will be at the expense of the developer. Preparation and establishment of any voluntary planning agreement and vegetation management plan will be at full cost to the developer, if progressed.

Costs associated with establishment and management of any E2 zoned land will be at the expense of the developer/landowner.

Long-term maintenance and replacement of developer provided assets as a consequence of the rezoning and development of the land for residential purposes (for example roads, water mains, sewerage, stormwater, footpaths and street lighting, fire trails if acquired) will be an ongoing expense to Council.

Attachments

1.  Attachment 1: OC 17 March 2021 - Agenda & Minute - Planning Proposal 2011 - 9.3 Assessment Report
2.  Attachment 2: Proponent response to BCD requirements and amended zoning layout - 25 May 2021
3.  Attachment 3: NSW Biodiversity Conservation Division - Response to revised Planning Proposal - 24 February 2021

Subject: CONFIDENTIAL SESSION

RECOMMENDATION

1. That Council move into Confidential Session to receive and consider the following items:
 - Item 14.01 T-21-13 Water and Sewer Client Side Engineering Support Services and T-21-14 Water and Sewer Design Services Panel

This item is considered confidential under Section 10A(2)(d(i)) of the Local Government Act 1993, as it contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
 - Item 14.02 IRONMAN Australia and 70.3 - Contract Extension

This item is considered confidential under Section 10A(2)(d(ii)) of the Local Government Act 1993, as it contains commercial information of a confidential nature that would, if disclosed, confer a commercial advantage on a competitor of the Council.
 - Item 14.03 T-21-33 Rawdon Island Barge Operations

This item is considered confidential under Section 10A(2)(d(i)) of the Local Government Act 1993, as it contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
2. That pursuant to Section 10A subsections 2 & 3 and 10B of the Local Government Act 1993 (as amended), the press and public be excluded from the proceedings of the Confidential Session of Council on the basis that the items to be considered are of a confidential nature.
3. That the resolutions made by Council in Confidential Session be made public as soon as practicable after the conclusion of the Confidential Session and such resolutions be recorded in the Minutes of the Council Meeting.

**12.06 PP2011 - 9.3 PLANNING PROPOSAL ASSESSMENT REPORT -
BLACKWOOD STREET EXTENSION, PORT MACQUARIE (VILRO PTY
LTD)**

APPLICANT: LOVE PROJECT MANAGEMENT PTY LTD
OWNER: VILRO PTY LTD
**PROPERTY: LOT 499 DP1258597, (OFF BLACKWOOD STREET, PORT
MACQUARIE).**

RESOLVED: Intemann/Hawkins

That Council:

1. Note the long standing Planning Proposal P2011 - 9.3 for Lot 499, DP1258597, Blackwood St, Port Macquarie under the NSW Government's Public Spaces Legacy Program (PSLP) was not completed by 30 June 2021 as required under the funding program.
2. Note there have been extended negotiations between Council staff and the Proponent to achieve a supportable development outcome on Lot 499 DP1258597 since June 2019.
3. Prepare a Planning Proposal pursuant to section 3.33 of the Environmental Planning and Assessment Act 1979 for a map only amendment to the Port Macquarie-Hastings Local Environmental Plan 2011 for part Lot 499 DP1258597, Blackwood Street, Port Macquarie which rezones the subject land from RU1 Primary Production to part R1 General Residential and part E2 Environmental Conservation in accordance with Figure 2 of the report, and applies the following associated development standards to the land:
 - a) Minimum Lot Size of 450sqm for land to be zoned R1 General Residential,
 - b) A maximum Height of Buildings of 8.5m for land to be zoned R1 General Residential,
 - c) A maximum Floor Space Ratio of 0.65:1 for land to be zoned R1 General Residential,
4. Forward the Planning Proposal described in point 3 above to the NSW Department of Planning, Industry and Environment for a Gateway Determination under Section 3.34 of the Environmental Planning & Assessment Act 1979, and request that the Gateway Determination authorise the Minister to be the local plan-making authority.
5. Delegate authority to the Director Development and Environment to make any minor amendments to the Planning Proposal as a result of the issue of the Gateway Determination, prior to public exhibition of the Planning Proposal, if Council is authorised as the local plan-making authority.

CARRIED: 6/0

FOR: Alley, Griffiths, Hawkins, Intemann, Pinson and Turner

AGAINST: Nil