

COUNCIL COMMITTEE REPORTS



ITEM NO. 1

FILE NO: PSC2011-02260

PLANNING PROPOSAL – ANNA BAY NORTH

**REPORT OF: BRUCE PETERSEN, MANAGER ENVIRONMENTAL & DEVELOPMENT
PLANNING**

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at **Attachment 1** in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 to facilitate further investigations into the rezoning of the following allotments for residential development:
 - a. Lot 21 DP 718935, Lot A DP 360150, Lot 9001 DP 1039267, Lot 10 DP 884411, Lot 50 DP 1087677, Lot 21 DP 602720, Lot 222 DP 791705, Lot 221 DP 791705, Lot 2 DP 614468, Lot 4 DP 614468, Lot 963 DP 731955, Lot 962 DP 731955 and Lot 961 DP 731955 Gan Gan Road and Old Main Road, Anna Bay.
- 2) Resolve to include in the Planning Proposal the following additional allotments:
 - a. Lot 22 in DP 718935, Lot 23 in DP 718935 and Lot 1 in DP 536350 Gan Gan Road and Lot 952 DP 519188, Lot 1 DP 614468 and Lot 3 DP 614468 Old Main Road, Anna Bay.
- 3) Resolve to report the Planning Proposal to Council prior to any public exhibition in the event of a positive "gateway" determination from the NSW Department of Planning and Infrastructure, which would require the submission of all relevant studies.

BACKGROUND

The purpose of this Report is to recommend that Council formally commence the rezoning process to facilitate investigations into the rezoning of land immediately north of Anna Bay town centre for residential development. A number of landowners in the area have combined to formally lodge a planning proposal for consideration by Council.

Planning Proposal: Refer to Attachment 1.

Subject land: Various parcels. Refer to map at Attachment 2.

Proponent: Environmental Property Services Pty Ltd (EPS) on behalf of various landowners.

Current zone: 1(a) Rural Agriculture under LEP 2000.

Proposed zones: 2(a) Residential and 6(a) General Recreation (note: the zones applied will be determined as part of the rezoning process and may be subject to change as part of that process). The 1(a) Rural Agriculture zone is proposed to be retained for all residual land.

Area for investigation: 40 hectares for detailed investigation, including approximately 27 hectares identified by the proponent for potential residential development.

Anna Bay has been the subject of recent strong development interest and the focus of numerous studies and investigations, culminating in the adoption of the Anna Bay Strategy by Council on 16th December 2008. The Anna Bay Strategy seeks to provide a local framework for the consideration of rezoning requests based on a range of planning matters.

A number of landowners immediately to the north of the existing urban area have now combined to lodge a Planning Proposal with Council that seeks to formally initiate the rezoning process, with the aim of rezoning approximately 27 hectares of land from 1(a) Rural Agriculture to 2(a) Residential primarily to enable residential development to take place.

The Planning Proposal identifies a broad 40 hectare area for further detailed investigation as part of the rezoning process. The proponent has sought to demonstrate the merits of investigating the site for rezoning at a broader strategic level prior to committing more financial resources at this early stage of the planning process. The intent of the proponent is to provide more detailed studies in the event of a positive Gateway determination from the NSW Department of Planning and Infrastructure (DoPI).

The majority of the potential development footprint identified in the submitted Planning Proposal is consistent with the Anna Bay Strategy, with the exception of approximately 10 hectares of land in the western part of the investigation area. The suitability of rezoning this land for development will need to be investigated and demonstrated in detail by the proponent in the future stages of the rezoning process, as it is known to be subject to significant constraints, including but not limited to flora and fauna and flooding and drainage.

In the event that a positive Gateway determination is made by DoPI, at minimum the following detailed studies will need to be undertaken:

- 1) Flora and Fauna;
- 2) Utilities Servicing;
- 3) Flooding, Stormwater and Drainage;
- 4) Visual Amenity;
- 5) Geotechnical (including Acid Sulphate Soils);
- 6) Bushfire;
- 7) Cultural Heritage ;
- 8) Traffic.

The findings of these studies will inform with greater certainty a suitable zoning footprint and facilitate the preparation of an updated and detailed planning proposal, to be prepared and reviewed prior to public exhibition. Furthermore, consultation with relevant government authorities will also inform the Planning Proposal.

Due to the uncertainties and the range of issues involved, the amended Planning Proposal will be reported back to Council prior to being placed on public exhibition. This will allow the proponent a degree of greater clarity of requirements to the next stage of the Planning Proposal through the Gateway determination.

Potential Additional Land

The Planning Proposal as submitted identifies a "subject site" and further focuses on a specific "investigation area" for detailed investigation.

It is a recommendation of this Report that Lot 952 DP 519188, Lot 1 DP 614468, Lot 3 DP 614468, Lot 22 DP 718935, Lot 23 DP 718935 and Lot 1 DP 536350 land are added to the "investigation area" as logical additions to the Planning Proposal due to their location immediately adjacent to the submitted land. The relevant landowners were notified in writing of the Planning Proposal on 10th and 11th October 2011. At the time of writing three landowners have so far indicated support for the inclusion of their land. Council staff will continue to liaise with relevant landowners throughout the process.

FINANCIAL/RESOURCE IMPLICATIONS

Rezoning Fees

Stage 1 rezoning fees have been in accordance with Council's Fees and Charges Schedule 2010/2011. If the Planning Proposal is supported by the DoPI Gateway determination, Stage 2 rezoning fees will be sought.

Section 94 Development Contributions

Council's Section 94 Development Contributions Plan has not been amended at this time to account for any specific additional infrastructure required in Anna Bay as a result of growth under the Anna Bay Strategy or the Planning Proposal subject of this Report. Council will need to review its Development Contributions Plan to ensure the equitable payment of contributions toward infrastructure required as a result of development. Further investigation is required to determine the appropriate timing and mechanisms for the developer to contribute towards covering the cost of any additional infrastructure that may be required as a result of the Planning Proposal.

LEGAL, POLICY AND RISK IMPLICATIONS

Lower Hunter Regional Strategy

Anna Bay is identified in the Lower Hunter Regional Strategy as a proposed urban area with boundaries to be defined through local planning. Council subsequently prepared and adopted the Anna Bay Strategy on 16th December 2008.

Draft Port Stephens Planning Strategy

The draft Port Stephens Planning Strategy (PSPS) has been prepared to replace the Port Stephens Community Settlement and Infrastructure Strategy 2007. At the time of writing this Report, the draft PSPS is intended to be reported in November 2011.

Anna Bay is identified as a new release area in the draft PSPS, with timing to be delivered from 2012 over an approximate 15 year period. The draft includes the Anna Bay Strategy at Appendix 3. The draft PSPS does not propose changes to the adopted Anna Bay Strategy.

Initiating the rezoning process will assist in delivering additional needed residential land at Anna Bay consistent with the draft PSPS, subject to detailed investigation into an appropriate development footprint.

Anna Bay Strategy

The main map of the Anna Bay Strategy (refer to **Attachment 3**) identifies appropriate land uses, based upon review of the range of relevant planning matters.

It should be noted that Council resolved to adopt the Anna Bay Strategy with the exception of land recommended to become environmental protection and the Planning Proposal as submitted does not seek to rezone any land for environmental protection.

The proposed development footprint sought by the proponent, while generally consistent with the development footprint identified in the Anna Bay Strategy, does seek to vary the extent of the development footprint, particularly to the west, by an area of approximately 10 hectares. This area is known to be subject to significant constraints particularly flora and fauna, flooding and drainage. There is uncertainty at the present time about how this land is able to be rezoned and developed.

The Planning Proposal submitted by the proponent acknowledges the variation in development footprint to the Anna Bay Strategy and the need to undertake additional studies to confirm the suitability of rezoning the land, and is seeking to undertake this work following the receipt of a positive gateway determination from the DoPI.

It is recommended that Council proceed to initiate the rezoning process to facilitate further detailed investigations into the site as sought by the submitted Planning Proposal. This will provide an opportunity for the proponent to demonstrate the suitability of the site for intensification against the range of planning requirements and how land subject to these constraints is able to be reasonably developed, if practicable.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Flora and Fauna

The site contains a mix of cleared and vegetated land that is either an Endangered Ecological Community (Swamp Sclerophyll Forest) or provides potential habitat for threatened species. Some trees are of an advanced age and would provide habitat in the form of hollows for fauna.

The submitted Planning Proposal identified that there are no known threatened flora species on site, but given that an ecological assessment has not been undertaken in more than seven years this statement is premature. Since the last ecological assessment in 2004 the plant Rough Double Tail *Diruris praecox* identified as 'vulnerable' at a State and National level has been found in the vicinity of the site and the site does provide habitat to other threatened fauna.

A full ecological report in line with the Lower Hunter Central Coast Regional Environmental Management System guidelines will need to be submitted, and an assessment of significance under Section 5A of the Environmental Planning and Assessment Act 1979 of any threatened species known or likely to occur.

Comprehensive Koala Plan of Management (CKPoM)

As the CKPoM is given legal status under State Environmental Planning Policy 44 Koala Habitat Protection this aligns to the applicant's requirement to address it as outlined in the DoPI guideline for preparing planning proposals.

The Planning Proposal has discussed the location of Koala habitat and the CKPoM in broad terms but has not addressed the performance criteria for rezoning. As stated above the applicant has identified the need for further studies beyond those submitted, however have sought a Gateway determination prior to expending additional funds. In the interim a brief assessment against the criteria for rezoning at Appendix 2 of the CKPoM is as follows:

Council should be satisfied that the rezoning would:

A) Not result in development within areas of Preferred Koala Habitat or Defined Habitat Buffers;

It is difficult to tell from the quality of the map provided however it appears as though Preferred Koala Habitat will be affected and at the very least habitat buffers will be affected and as such this performance criterion has not been met.

B) Allow for only low impact development within areas of Supplementary Koala Habitat and Habitat linking areas;

No detail on the level of development has been provided and as such this criteria has not been met. It is possible that the criteria could be met if further detail was provided.

C) Minimise the removal of any individuals of preferred koala feed trees, wherever they occur on the site; and

As per criteria A) and B) this has not been met.

D) Not result in development which would sever koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.

The submitted Planning Proposal makes no reference to restoring or retaining Koala corridors across the site.

Essentially Anna Bay is known to be an important area for Koalas and as such any loss of preferred Koala habitat is not supported. The Proposal's impact on Koala habitat could be reduced by excluding all areas of Preferred Koala Habitat from the proposed residential zoning and zoning these areas to environmental protection.

Sections of the site would benefit from rehabilitation and this could assist to meet the NSW Office of Environment and Heritage (OEH) 'improve or maintain' biodiversity offset principles. Appropriate buffers to the Preferred Koala Habitat should also be considered in additional studies.

Biodiversity Offsets

Although not required for the Gateway process the proponent should be aware that it is likely that they will need to offset any vegetation loss. Any proposal should seek to meet the offsetting principles identified in the Principles for the Use of Biodiversity Offsets in NSW document which is part of the State's Guidelines for the Biodiversity Certification of Environmental Planning Instruments. This biodiversity offset assessment report should demonstrate that the development proposal and its offsets meet the 'improve or maintain' test for biodiversity values.

Based upon the preliminary information provided by the proponent, the following conclusions are drawn:

- The site appears to have development potential if ecological constraints are recognised and the planning done accordingly;
- A current flora and fauna report is needed to properly assess the proposal;
- The CKPoM performance criteria need to be addressed;
- The Planning Proposal should be amended to avoid affecting Preferred Koala Habitat;
- It is likely that biodiversity offsets will be required;
- All Preferred Koala Habitat should be rezoned to Environmental Protection;

It is acknowledged that the information is limited due to the early investigations stage of the rezoning proposal.

These matters will need to be addressed in detail by the proponent with an appropriate zone footprint identified as part of the rezoning process following direction received via the DoPI Gateway determination.

Flooding and Drainage

The Anna Bay Strategy provides an overview of flood prone land and drainage in Anna Bay based upon previous studies. It advises that large areas of Anna Bay are mapped as flood prone and this represents a significant constraint to the expansion of the town, including the land subject of the Planning Proposal. A significant portion of the low-lying area to the north of the town centre and natural ridge is inundated during the 100 year average recurrence interval storm event. Some limited new development in this area was identified and assessed in past drainage studies. To date, flood modelling showed that a limited amount of development would not worsen existing flood levels in this northern area.

The Anna Bay Strategy goes on to state that an engineered floodway immediately to the north of the town centre is suggested as an option for further investigation to determine whether flood levels could be improved. A preliminary estimation for this floodway suggested a small reduction in the flood level may be achievable with further detailed design calculations, and any rezoning and filling of the floodplain area would require a developer to further investigate the flooding and drainage study and implement works as required.

The proposal includes land that has already been identified as flood prone; a study carried out by Sinclair Knight Merz for Council in 1995 investigated the local flood environment. As such it is considered that this study is in need of being updated given the NSW Government has since introduced a policy on climate change and sea level rise. Council has carried out some preliminary mapping on the impacts of sea level rise on tidal inundation, the results of which suggest some parts of the subject area are likely to be affected by tidal inundation by 2100 should sea level rise continue as predicted. Therefore by 2100 more land within the Planning Proposal area is likely to be affected by flooding.

For these reasons the identification of flood prone land in this area as shown on Council's maps is not considered accurate enough and a flood study of the Anna Bay area should be included.

Should the proponent receive a Gateway determination to proceed the Planning Proposal will require the following matters to be addressed:

- 1) Sea level rise of 0.4m by 2050 and 0.9m by 2100.
- 2) Climate change impacts from increased rainfall for at least 10% and 20% increase in rainfall.
- 3) Identification of hydraulic and hazard categories within the catchment in accordance with the NSW Government's Floodplain Development Manual.
- 4) Flood levels, depths and velocities for the 1%, 5% and PMF events.

In considering a future assessment of a more detailed Planning Proposal, any filling or development within a floodway will not be supported. To address the issue of the

cumulative impacts of filling, filling will be restricted to no more than 20% of the total area of any flood storage areas within the Planning Proposal site. No objection would be raised to filling of flood fringe areas subject to the filling not impeding or directing any overland flows on or onto adjoining properties.

In addition to the above, and because of the low-lying nature of much of the land, the proponent will be required to provide details concerning the amount and type of fill required, its intended source, its suitability for supporting residential development, timing and implementation mechanisms for its placement and preparation. This is important as Council has a duty of care to ensure that it will not be rezoning land for residential development that may be unable to be delivered in a reasonable and practicable manner.

Social and Economic Implications

The Planning Proposal has positive social and economic implications by providing additional land for housing on the Tomaree Peninsula. The proponent has identified 27 hectares for potential rezoning for residential use. Under the Anna Bay Strategy development in the Town Neighbourhood and School Neighbourhood can deliver up to approximately 100 dwellings. The dwelling yield can only be approximate until detailed investigations have taken place.

CONSULTATION

If the proposal proceeds to public exhibition, it is recommended that it be placed on exhibition for a minimum period of 28 days in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

Adjoining landowners will be notified in writing of the Planning Proposal during exhibition and may make a submission during this period.

OPTIONS

- 1) Adopt the recommendations of this Report and resolve to initiate the rezoning process for the subject and additional lands. This is the recommended option;
- 2) Amend the recommendations of this Report and resolve to initiate the rezoning process for the subject land only. This is not the recommended option;
- 3) Reject the recommendations of this Report and not initiate the rezoning process. This is not the recommended option.

ATTACHMENTS

- 1) Planning Proposal;
- 2) Location Map;
- 3) Anna Bay Strategy – Main Map.

COUNCILLORS ROOM

- 1) Planning Proposal.

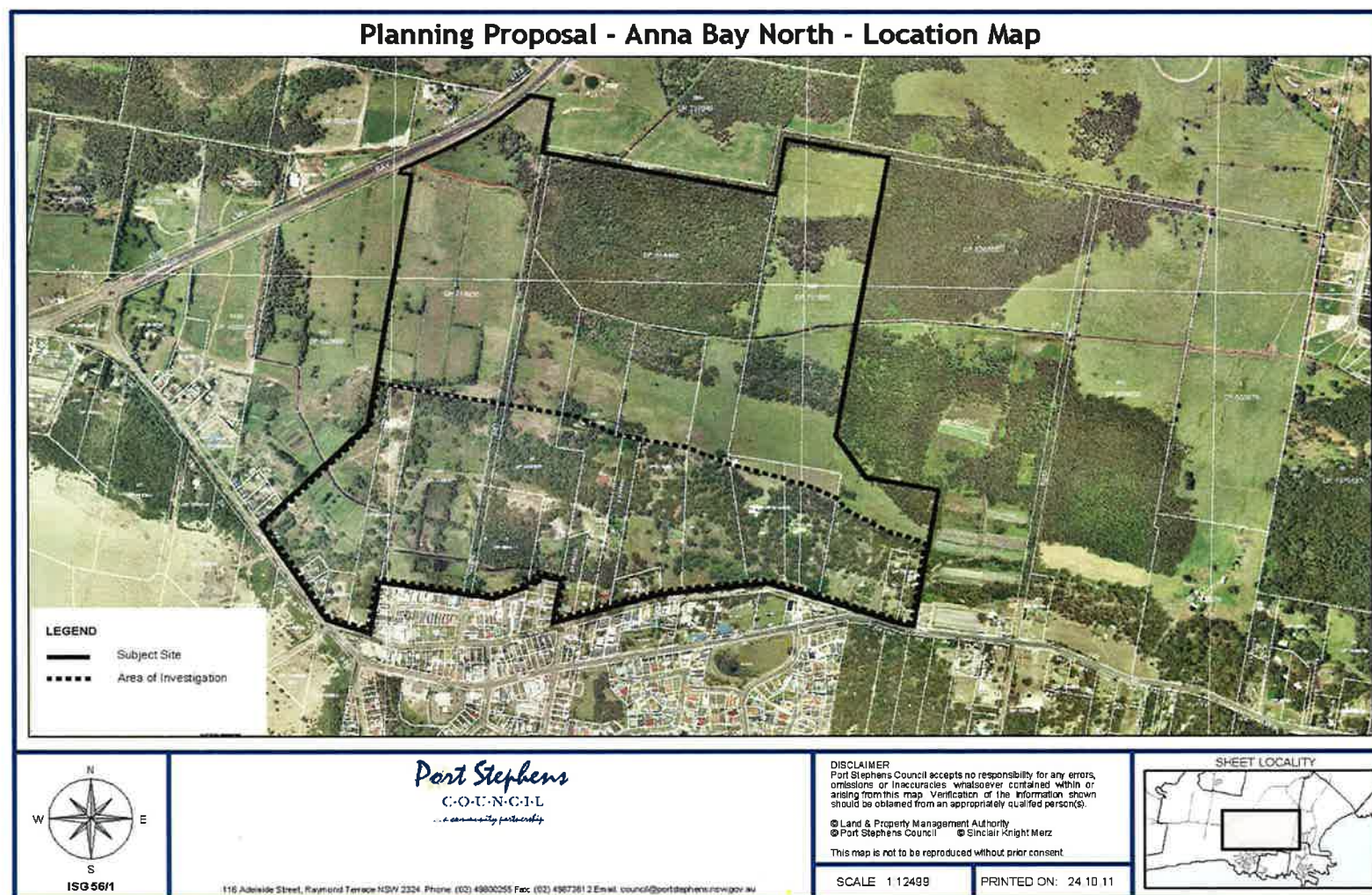
TABLED DOCUMENTS

Nil.

ATTACHMENT 1

**Planning Proposal
(Under Separate Cover)**

ATTACHMENT 2



ATTACHMENT 3

Anna Bay Strategy and Town Plan

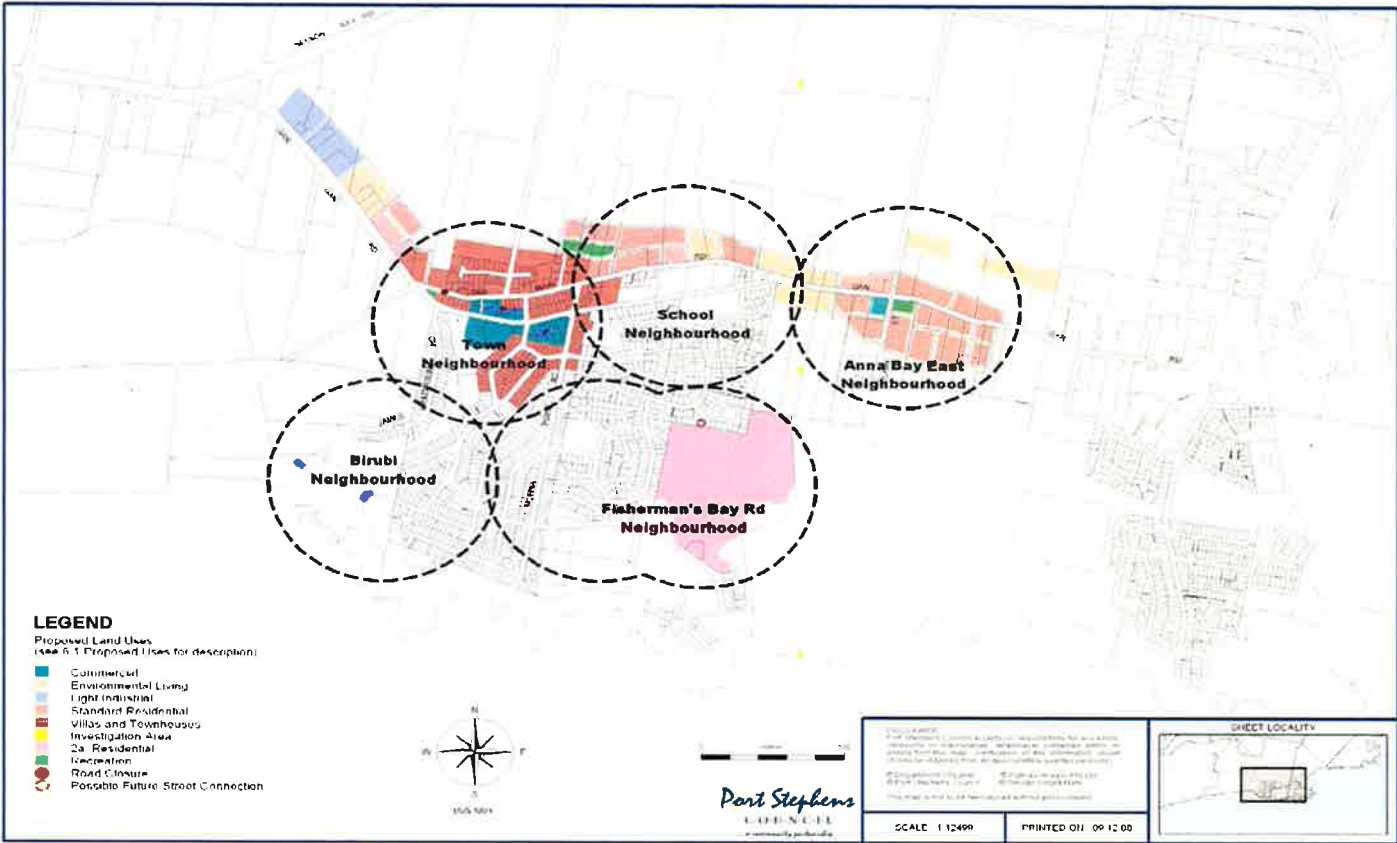


Figure 15 Anna Bay Town Plan – Land Uses

COUNCIL COMMITTEE RECOMMENDATIONS

ITEM NO. 1**FILE NO: PSC2011-02260****PLANNING PROPOSAL – ANNA BAY NORTH****REPORT OF: BRUCE PETERSEN, MANAGER ENVIRONMENTAL & DEVELOPMENT
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COUNCIL COMMITTEE MEETING 8 NOVEMBER 2011

	Councillor Sally Dover Councillor Ken Jordan
	That the recommendation be adopted.

ORDINARY COUNCIL MEETING 22 NOVEMBER 2011

Cr Peter Kafer left the meeting at 6.11pm prior to voting.

Cr Peter Kafer returned to the meeting at 6.12pm prior to voting.

395	Councillor Bruce MacKenzie Councillor Ken Jordan
	It was resolved that the recommendation be adopted.

MINUTES ORDINARY COUNCIL – 22 NOVEMBER 2011
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bob Westbury, Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward and Sally Dover.

Those against the Motion: Nil.

