



Planning Proposal

**Lot 1 DP 653396, Lot 83 753168 & Lot 427 DP 861736
Boomerang Drive, Pacific Palms**

October 2012

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1. Introduction

This is a Planning Proposal for land known as Lot 1 DP 653396, Lot 83 DP 753168 & Lot 427 DP 861736, Boomerang Dr which lies adjacent to the Palms Oasis Caravan Park (Lot 1 DP 862876) and is located within the Pacific Palms Study Area. The location of the subject site in relation to the Pacific Palms Study Area is shown in Attachment 1.

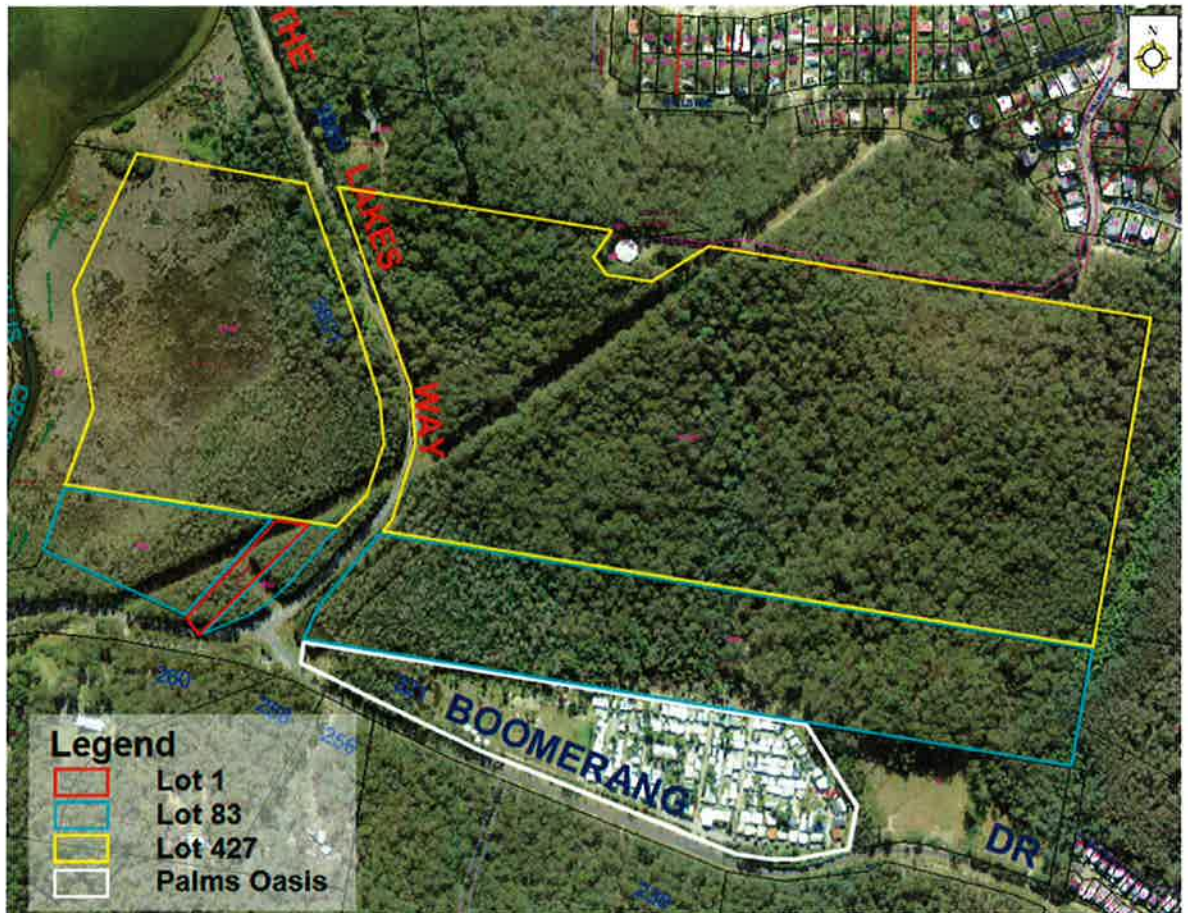


Figure. 1. Land subject to Planning Proposal

The three land parcels the subject of this proposal (as depicted in Figure 1), were to be originally included within Stage 2 of the Pacific Palms Study Area rezoning process. However a change in the ownership of the lots and failure to reach a suitable negotiated development/conservation outcome and resulted in the land being rezoned in its entirety to 7(a1) Environmental Protection.

The Planning Proposal for the Stage 2 of the Pacific Palms Study Area was delivered to the Department of Planning & Infrastructure on 7 September 2012.

This planning proposal finalises Council's land use strategy for the Pacific Palms study area by rezoning approximately 60 ha of land to 7(a1) Environmental Protection to ensure the protection, into perpetuity, of the lands environmental values and to rezone a further 2ha to the north of the existing caravan park to 5(a) Special Uses – Caravan Park to allow for future park expansion. Protection of the 7(a1) land into perpetuity will be achieved by dedication of this land to National Park. A Planning Agreement will be executed between Council, the landowner and the Minister for Environment to ensure the land is dedicated.

Background

In 2007 a Local Environmental Plan for part of the Pacific Palms Study Area (Stage 1) was gazetted (Amendment No. 13 to Great Lakes LEP 1996) with the remainder of the area being deferred under s68(5) of the Act.

In June 2010 the Department of Planning (DoP) issued a gateway determination approving the preparation of a planning proposal for the conversion of lands included within Stage 2 of the Pacific Palms Study Area (Amendment No. 82 to Great Lakes LEP 1996).

The final planning proposal for Stage 2 was lodged with DPI on 7 September 2012. The subject land has been zoned 7(a1) Environmental Protection in the Stage 2 Pacific Palms planning proposal.

Site Description

The total area of the site is approximately 64 hectares.

The site has been the subject of extensive investigations, including an independent review of all ecological studies and an independently facilitated dispute resolution session, over the last 6 years. This Planning Proposal re-iterates the results of extensive community consultation, site investigations and the outcomes from the LES and independent reviews.

In particular, consultants SMEC Australia were engaged by Council to undertake an independent review of all ecological investigations (including Council's Local Environmental Study of the area) and to make recommendations to Council on appropriate LEP provisions. SMEC also facilitated a dispute resolution session with the main landowners in the area.

This Planning Proposal represents the position now agreed upon by the landowner, Council and the Office of Environment and Heritage.

The planning proposal involves three major components. These components are as follows:

- The retention in private ownership of an approved and commenced dwelling site on the western side of The Lakes Way on Lot 427 covering an area of approximately 1ha, which will be zoned 7(a1) Environmental Protection;
- The rezoning of approximately 2ha of land to the north of the existing caravan park to 5(a) Special Uses – Caravan Park to allow for future expansion; and
- The rezoning of approximately 61ha of land to 7(a1) Environmental Protection, which will be transferred to the Office of Environment and Heritage as National Park. This will ensure that land comprising threatened species habitat, core Koala habitat, regional fauna corridors and endangered ecological communities, will be maintained and preserved in its natural state. The land transaction will require a Planning Agreement between Council, The Minister for the Environment and the landowners to be executed to give effect to the transfer of the land to National Park.

Attachment 2 depicts the subject site, identifying preliminary future development areas and the portion of land that is to be dedicated to National Park.

2. Part 1 and 2 - Objectives or Intended Outcomes and Explanation of Provisions

The proposed objectives of the Planning Proposal are:

1. To provide for the expansion of the Palms Oasis Caravan Park and the construction of a separate dwelling whilst delivering an environmental offset that will protect significant ecological areas into perpetuity and result in the creation of regional fauna corridors to link substantial areas of National Park estate.
2. To ensure that land of high ecological value contained within the site is protected into perpetuity by transfer to the National Park estate. Attachment 2 shows the area currently proposed to be transferred to the National Park estate.
3. To provide a clear framework for the future development of the entire site by rezoning affected land parcels to appropriate land use zones.

The objectives will be achieved by:

- Expanding the existing 5(a) Special Use - Caravan Park zone to provide future tourist accommodation and affordable housing opportunities for the Palms Oasis Caravan Park.
- The application of an environmental protection zone over the part of the land which, according to the Local Environmental Study and reinforced by an independent review, is of high environmental value.
- Establishment of legally binding mechanism (Planning Agreement) to ensure that land of highest ecological value is transferred to the National Park estate.

Provisions

The proposed LEP only involves rezoning of the land and there will be no additional special provisions.

3. Part 3 - Justification

Section A – Need for the Planning Proposal

The land parcels included within this planning proposal are zoned predominantly 1(c) Future Urban Investigation, however, a large portion of the land to the west of The Lakes Way is identified as 7(a) Environmental Protection. This land forms a significant portion of a much larger Pacific Palms Study Area which covers an area of approximately 400ha and has been the subject of intensive studies for the past 20 years. In 2007 a Local Environmental Plan amendment covering about 90ha of the study area was made. The remaining land was deferred under s68 (5) of the Act for further consideration. The current zones under Great Lakes Local Environmental Plan 1996 are shown in Attachment 3.

Since the finalisation of the Stage 1 rezoning, substantial negotiations have been undertaken with the main landowners. These negotiations were completed with a view to achieving a sustainable development/conservation outcome for the area covered by

the Planning Proposal. Council and the owners reached an agreement for about 17.5ha of land to be rezoned for residential development if about 94ha is protected into perpetuity by transfer to the National Park Estate.

As previously mentioned, a suitable negotiated development/conservation outcome could not be reached between Council Officers and the landowner of Lots 1, 83 and 427 during the negotiation process, with the landholder not prepared to dedicate the balance of lands to the Office of Environment and Heritage. This resulted in the land parcels being rezoned to 7(a1) Environmental Protection in the Stage 2 of the Pacific Palms Study Area as shown in Attachment 4.

However, discussions between Council Officers and the landowner continued and resulted in the landowner agreeing to enter into a Planning Agreement (PA) with Great Lakes Council and the Office of Environment and Heritage. The ensuing PA will see the transfer and dedication of approximately 61ha of high value ecological land to the OEH.

The Pacific Palms Study Area has been subject to exhaustive scientific studies and independent reviews which have clearly identified the significant environmental characteristics of the Study Area. The benefit of this Planning Proposal is that it will solidify natural linkages between the Pacific Palms area and the Booti Booti and Wallingat National Parks.

Prior to and in the early stages of the rezoning process the land was subject to numerous degrading activities. These activities were having a significant impact upon the area's sensitive ecology. Resolution of this planning proposal will curtail these activities and ensure that the ecologically sensitive land is protected into perpetuity.

The rezoning will also provide the landowner with the opportunity to expand the existing caravan park facility providing increased accommodation in a popular tourist location.

Net Community Benefit Assessment

A planning proposal must consider the net community benefit or cost of a Planning Proposal. The Net Community Benefit Criteria are identified in the NSW Government's publication *The Right Place for Business and Services*. Compliance with the Net Community Benefit Assessment Criteria is addressed in Table 1.1.

Table 1.1: Compliance with Net Community Benefit Assessment Criteria

Criteria	Compliance with Criteria
The degree to which the policy and its objectives can be satisfied.	The subject planning proposal seeks to amend the LEP to enable the expansion of an existing tourist facility and conservation of environmentally sensitive areas. The planning proposal therefore complies with the policy document <i>The Right Place for Business and Services</i> which is mainly focused on ensuring growth within existing centres.
The proposed level of accessibility to the catchment of the development by public transport, walking and cycling.	The nature of the proposed rezoning is unlikely to affect the future development of public transport, and current levels of walking and cycling.
The likely effect on trip patterns, travel demand and car use.	The proposal will result in the expansion of an existing caravan park and the protection and preservation of lands high ecological value. It will have minimal impact upon trip patterns, travel demand or car use in the surrounding area.
The likely impact on the economic	The proposal will support the economic performance of existing

performance and viability of existing centres (including the confidence of future investment in centres and the likely effects of any oversupply in commercial or office space on centres — see section B of the explanatory notes).	centres. No new commercial spaces or centres are included in this proposal.
The amount of use of public infrastructure and facilities in centres, and the direct and indirect cost of the proposal to the public sector.	There is likely to be minimal cost to the public sector as a result of this proposal. All costs associated with the expansion of the existing Palms Oasis Caravan Park and the construction of the approved dwelling will be borne by the landowner. Any necessary upgrade of infrastructure will be at the cost of the proponent and incorporates design measures to ensure waste and water services match seasonal tourist influxes.
The practicality of alternative locations, which may better achieve the outcomes the policy is seeking.	The LES has explored all constraints and opportunities and the proposal is the best way to deliver the desired results.
The ability of the proposal to adapt its format or design to more likely secure a site within or adjoining a centre or in a better location.	The development site will provide for the future expansion of the existing caravan park. This expansion will not alter the context in which the current land use fits within the surrounding environment.

Section B – Relationship to Strategic Planning Framework

Forster/Tuncurry Conservation and Development Strategy (CDS)

When the CDS was adopted by Council in 2003 a Local Environmental Study was being prepared for the Pacific Palms Study Area. Development opportunities were identified in the Strategy but there was no final resolution of the numerous environmental issues that were in dispute at the time.

The Strategy did indicate that once the LES and subsequent rezoning was finalised that future demand for urban land could not be provided in the area without significant impacts on fauna habitat. Unless significant conservation offsets are provided, as is the case with this Planning Proposal, it is unlikely that there will be any further development opportunities in the study area.

It is the intention of this Planning Proposal to finally resolve the future for development and conservation in this controversial area.

Great Lakes Community Strategic Plan

The *Great Lakes Community Strategic Plan 2010 – 2030* outlines four key directions and objectives for the Great Lakes Community. The Planning Proposal is closely linked with Key Direction 1 – Embracing and Protecting Our Natural Environment and its objective of protecting the natural environment while addressing the challenges of population growth.

Mid North Coast Regional Strategy

Parts of the Pacific Palms area have been identified on the Growth Areas Maps as a Proposed Future Urban Release Area. While the two lots are located outside the Proposed Future Urban Release Area, this departure can be justified by the substantial

environmental investigations that have been undertaken and the ecological benefits that the proposal presents by the dedication of some 61ha to National Park.

Council and OEH support the proposal that has now been prepared on the basis of the substantial ecological offset that is proposed.

Section 117 Ministerial Directions

The Minister for Planning, under section 117(2) of the EP&A Act, issues directions that relevant planning authorities such as local councils must follow when preparing Planning Proposals. Table 1.2 below contains a response to each of the directions relevant to the Planning Proposal.

Table 1.2: Compliance with Section 117 Directions

Direction	Response
1.1 Business and Industrial Zones	This direction is not applicable to the Planning Proposal.
1.2 Rural Zones	The Direction states: <i>"A Planning proposal must:</i> <i>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourism zone" and</i> <i>A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director General of the Department of Planning that the provisions of the Planning Proposal that are inconsistent are:</i> <i>In accordance with the relevant Regional Strategy or sub-regional strategy prepared by the Department of Planning which gives consideration to the objectives of the direction."</i> As stated previously the site which is the subject of this Planning Proposal is not identified by the Mid Coast Regional Strategies growth areas maps as a Proposed Future Urban Release Area. This minor inconsistency can be justified by the ecological investigations that have been undertaken and the substantial ecological offset that has been negotiated
1.3 Mining, Petroleum Production and Extractive Industries	This direction is not applicable to the Planning Proposal.
1.4 Oyster Aquaculture	This direction is not applicable to the Planning Proposal.
1.5 Rural Lands	A portion of Lot 83 is identified as class 5 Agricultural capability and the rezoning will be consistent with the principles of the Rural Lands SEPP.
2.1 Environment Protection Zones	The proposal will facilitate the protection of approximately 98% of identified environmentally sensitive areas on the land, with much of this area to be added to the National Park estate. The loss of some environmentally sensitive areas is considered to be of minor significance in the broader context of substantial gains achieved for environmental protection into perpetuity, of the majority of the land.
2.2 Coastal Protection	The proposal will implement the principles of the NSW Coastal Policy.
2.3 Heritage Conservation	No heritage sites of significance will be affected by development.
2.4 Recreation Vehicle Areas	In accordance with this direction, the Environmental Protection zone lands will not permit a recreational vehicle area.
3.1 Residential Zones	This direction is not applicable to the Planning Proposal.
3.2 Caravan Parks and	The Planning Proposal is consistent with this Direction by

Manufactured Home Estates	maintaining the existing caravan park in the 5(a) Special Uses - Caravan Park zone. The proposed extension to the existing caravan park shall also be zoned 5(a) Special Uses - Caravan Park.
4.1 Acid Sulfate Soils	The direction requires consideration of the Acid Sulphate Soils (ASS) Planning Guidelines when Council prepares a Draft LEP. Council will incorporate ASS provisions in its Principle LEP.
4.2 Mine Subsidence and Unstable Land	The subject site is not located within a proclaimed mine subsidence district.
4.3 Flood Prone Land	This direction requires that a draft LEP shall have provisions consistent with the Floodplain Development Manual and the NSW Governments Flood Prone Land Policy. Restrictions apply on rezoning flood prone land. Some filling above the 1 in 100 year ARI event will be required. This can be achieved with minimal environmental impact.
4.4 Planning for Bushfire Protection	The LES has concluded that appropriate bush fire mitigation can be implemented for the 5(a) Special Use - Caravan Park zone. Bushfire management provisions are included in the adopted DCP for the land.
5.1 Implementation of Regional Strategies	As stated previously the site subject of this Planning Proposal is not identified on the growth areas maps within the Mid Coast Regional Strategy as a Proposed Future Urban Release Area. The small departure can be justified by the ecological investigations that have been undertaken, the substantial ecological offset that has been negotiated. At the time the Mid North Coast Growth Area Maps were prepared the option of a development/conservation offset arrangement was not anticipated. This now provides an opportunity for some enlarged development opportunities to be accepted while achieving significantly enhanced environmental outcomes.
6.2 Reserving Land for Public Purposes	The Planning Proposal intends on rezoning most of the land to 7(a1) Environmental Protection and for the majority of this land to be transferred to the National Park estate. This will protect the environmental/ecological values of the land into perpetuity.

Section C – Environmental, Social and Economic Impact

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?

Over the last fifteen years Council has undertaken exhaustive investigations into the ecology of the Pacific Palms Study Area (which culminated in a Local Environmental Study under the previous provisions of the Act).

In addition, Council engaged consultants, SMEC Australia, to undertake an independent review of the ecological investigations and to review submissions to the previously exhibited draft Local Environmental Plan.

SMEC was also subsequently engaged by Council to facilitate a negotiated Dispute Resolution Session in an endeavour to resolve the conflict that had arisen with the main landowners in the study area.

SMEC, after completing the review of the LES, concluded that "although the LES and ecological studies supporting it are not flawless, it is more than adequate for its purpose and gives a good and accurate indication of the ecological nature and value of the study area".

SMEC further commented that the peer review endorsed the suitability of the LES to underpin the draft LEP and that a thorough review of concerns raised by landowners, individuals and others does not alter the basis on which their recommendation is made.

This endorsement by SMEC gave Council the confidence to progress to a Dispute Resolution Session with the main landowners (including the then owner of lots 83 and 427) The session was facilitated by Dr Carleton of SMEC who was a Commissioner with the Office of Commissioners of Inquiry for Environment and Planning.

Dr Carleton prepared a report on the Dispute Resolution session which made recommendations on each of the properties involved. In essence, Dr Carleton concluded that notwithstanding the environmental constraints some development could occur if the balance of the land was protected into perpetuity. Council was of the view that protection into perpetuity could only be ensured if lands were dedicated to the National Park estate.

Considerable negotiations then occurred between Council and the Office of Environment and Heritage as to whether OEH would accept the land and, if so, the mechanism to ensure the transfer occurred. OEH, in submissions to the draft LEP, expressed the view that much of the Pacific Palms area was of high habitat value and was a crucial regional fauna movement corridor between Booti Booti and Wallingat National Parks. Consequently OEH agreed to accept the land if it was offered to them as part of a development/conservation arrangement.

Ecological investigations undertaken by SMEC identified that the subject site has a high biodiversity value. The lots contain a number regionally significant vegetation communities which incorporate primary koala habitat and endangered ecological communities, supports threatened species and provides fauna movement corridors.

The SMEC dispute resolution report takes into account the sites development potential and considers all limiting environmental factors. The resulting recommendation was that a portion of Lot 83 immediately adjacent the Palms Oasis Caravan Park be rezoned to 2(a) – Low Density Residential, with the remainder of the land to be zoned 7(a1) – Environmental Protection.

The planning proposal makes only minor variations to the recommendations made by the SMEC dispute resolution report. The Council has (after receiving a submission from the landowner) agreed to extend the development envelope located on Lot 83 in an easterly direction a further 1-1.5ha, resulting in a development area of approximately 2ha.

This concession has been granted as the proponent proposes to provide and maintain an adequate bushfire separation zone for the caravan park in accordance with NSW Rural Fire Service Guidelines *Planning for Bushfire Protection 2006*.

Council have also agreed to allow the landowner to retain a portion of Lot 427 over which a current planning approval exists for a residential dwelling. It should be noted that the footprint of the area to be retained shown within report attachments is indicative only at this stage.

Council ecologists, when considering the expanded retention of lands, concluded that the additional clearing of the lands is unlikely to result in a significant or unreasonable ecological impact beyond that which SMEC had identified in the dispute resolution report.

The parties agreed that a Planning Agreement, under s93F of the Act, was the best mechanism to ensure that the transfer occurs once the LEP is made by the Minister. To these ends a Planning Agreement will be prepared which will require signing by the landowner, Council and finally the Minister for the Environment to legitimise the transfer of lands. The Planning Agreement was jointly drafted by Council and the legal branch of OEH.

Council and OEH acknowledge that the rezoning will result in the loss of approximately 2ha of endangered ecological community, threatened species habitat and koala habitat from development of the site proposed to be rezoned to 5(a) Special Use - Caravan Park.

Mapping of all EECs and ecological constraints is available if required. Rezoning of approximately 61ha of the 64ha site to environmental protection and the dedication of nearly 61ha of this area to National Park will, in Council's and OEH's opinion, offset the impact of this loss.

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

The planning proposal will result in the rezoning of a portion of land to 5(a) Special Use - Caravan Park. This will allow for the future expansion of the Palms Oasis Caravan Park. The expansion of the Caravan Park facility may result in the destruction of approximately 2ha of vegetation within Lot 427.

A small portion of vegetation on Lot 83 shall also be removed to accommodate the approved dwelling and necessary building protection zones, which covers an area of approximately 1ha.

However, it has been identified by Councils' senior ecologist that the offsets measures identified within the planning proposal are appropriate and represent a reasonable outcome, balancing development and conservation. The proposed offsets will result in the development of approximately 3ha of land with the majority of the remaining balance of 61ha of very high conservation land being transferred to public conservation estate.

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

The Planning Proposal will provide for enhanced social and economic outcomes by providing for a greater range of housing types. In particular, the proposal to rezone lands adjacent to the existing Palms Oasis Caravan Park to 5(a) Special Uses - Caravan Park will allow the future expansion of the facility, providing increased tourist accommodation and potential affordable housing options. This is consistent with the following recommendation from the Forster/Tuncurry Housing Strategy that was adopted by Council in 2005:

"With the intent of preserving affordable housing options, consider rezoning caravan parks in key locations to a Special Uses zone."

Council forwarded the Housing Strategy to the Department in June 2005.

The retention of the 5(a) Special Use - Caravan Park zone is also consistent with s117 Direction 3.2 by facilitating the retention of the caravan park. Over the longer term it is likely the caravan park would be redeveloped to standard residential purposes if an urban zone was applied. This is not the preferred outcome for Council.

SECTION D – STATE AND COMMONWEALTH INTERESTS

Council will undertake further consultation with key Government Agencies upon receipt of a gateway determination

4. Part 4 - Community Consultation

The planning proposal which covers Lots 1, 83 and 427, Pacific Palms will require exhibition to allow for public comment. The exhibition will include the planning proposal and planning agreement and will last for at least the minimum period nominated by the Department of Planning and Infrastructure.

The community consultation process will include notifications in the local newspaper, letters to all potentially affected landowners and the exhibition of the following documents at Council's offices:

- Planning Proposal and associated proposed zoning plan;
- Relevant background environmental studies, reviews and reports; and
- Proposed Planning Agreement in connection with rezoning of lot 1 DP 653396, lot 83 DP 753168 and lot 427 DP 861736.

In addition, Council will refer the matter to the relevant State Government Agencies, requesting comment provided with regard to the proposal.

5. Conclusion

This Planning Proposal seeks to amend Great Lakes Local Environmental Plan 1996 by finalising the rezoning of an area at Pacific Palms that was deferred from LEP Amendment No. 13 to Great Lakes Local Environmental Plan 1996.

The lots which are the subject of this proposal form a significant portion of the Pacific Palms Study Area, covering an area of approximately 64ha. The lots contain significant environmental attributes including endangered ecological communities, koala habitat, regionally significant vegetation communities and fauna movement corridors.

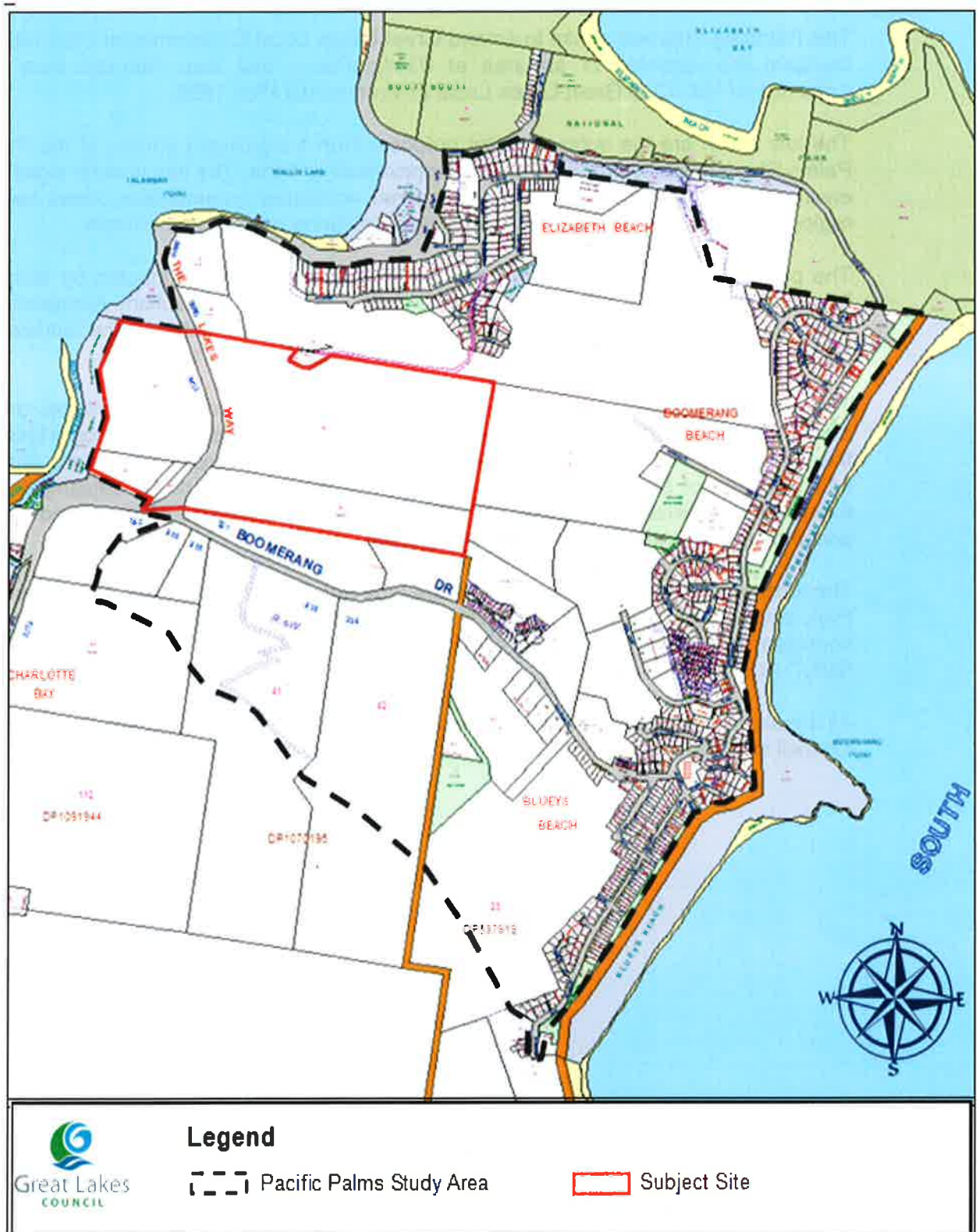
The proposal will provide for the protection of these ecological attributes by rezoning the majority of Lots 1, 83 and 427 to 7(a1) Environmental Protection. Approximately 59ha of these lands will then, through a Planning Agreement between the landowners and the Minister for the Environment, be added to the National Park estate.

The proposal will also result in the landowner retaining development privileges over a portion of Lot 427 (for approved residential dwelling), and the rezoning of some lands to the north of the Palms Oasis Caravan Park to allow for future park expansions and the establishment of bushfire protection measures. The expansion of the existing park is expected to deliver community benefits through the provision of increased tourist accommodation and affordable housing options.

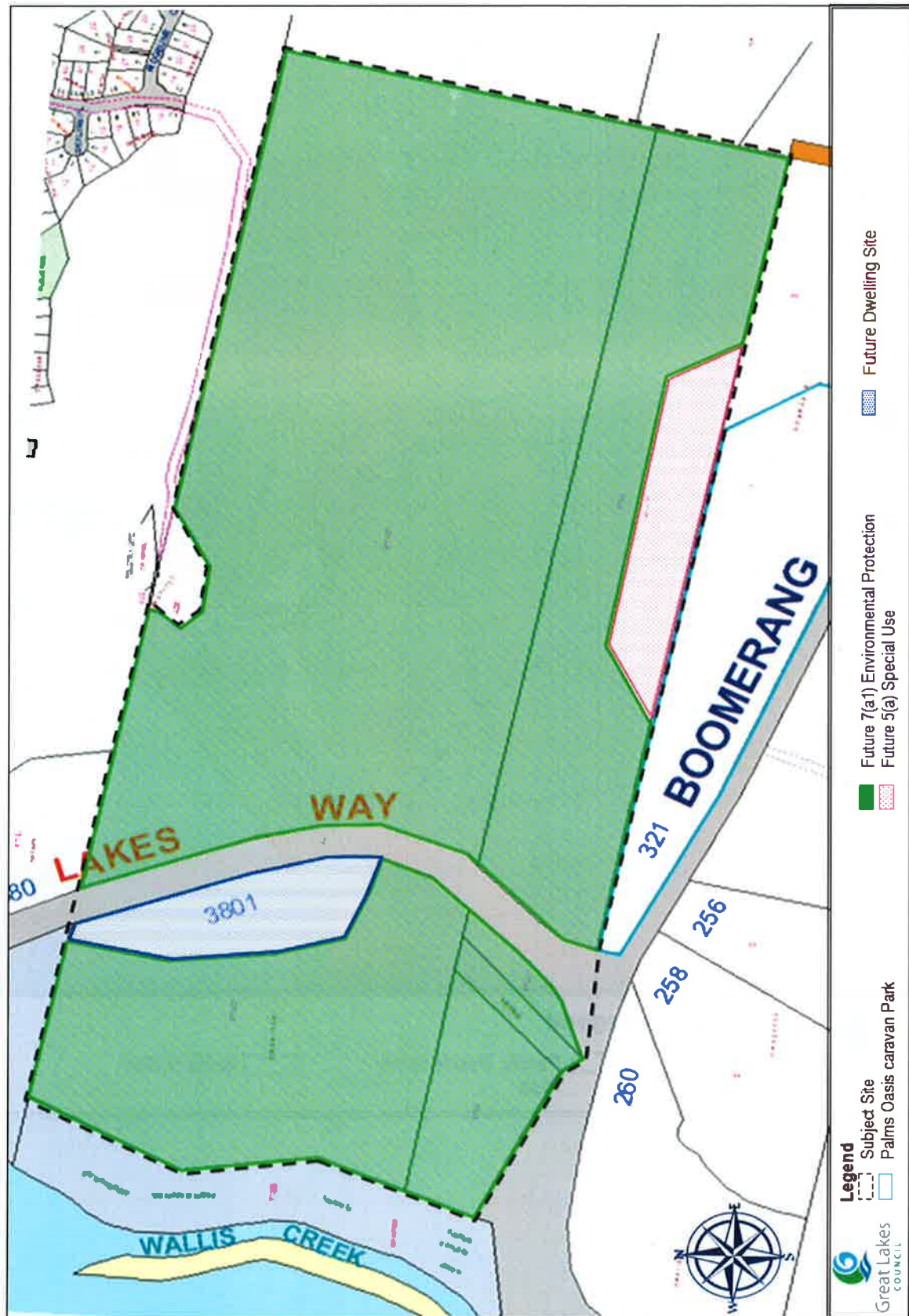
The location and extent of the development footprint adjacent the Palms Oasis Caravan Park and the environmental protection zone is a result of extensive investigations and considerations which culminated in an independent review of the LES by consultants SMEC Australia.

All the studies, investigations and consultation have informed the planning proposal and Council submits that this proposal delivers a sustainable outcome.

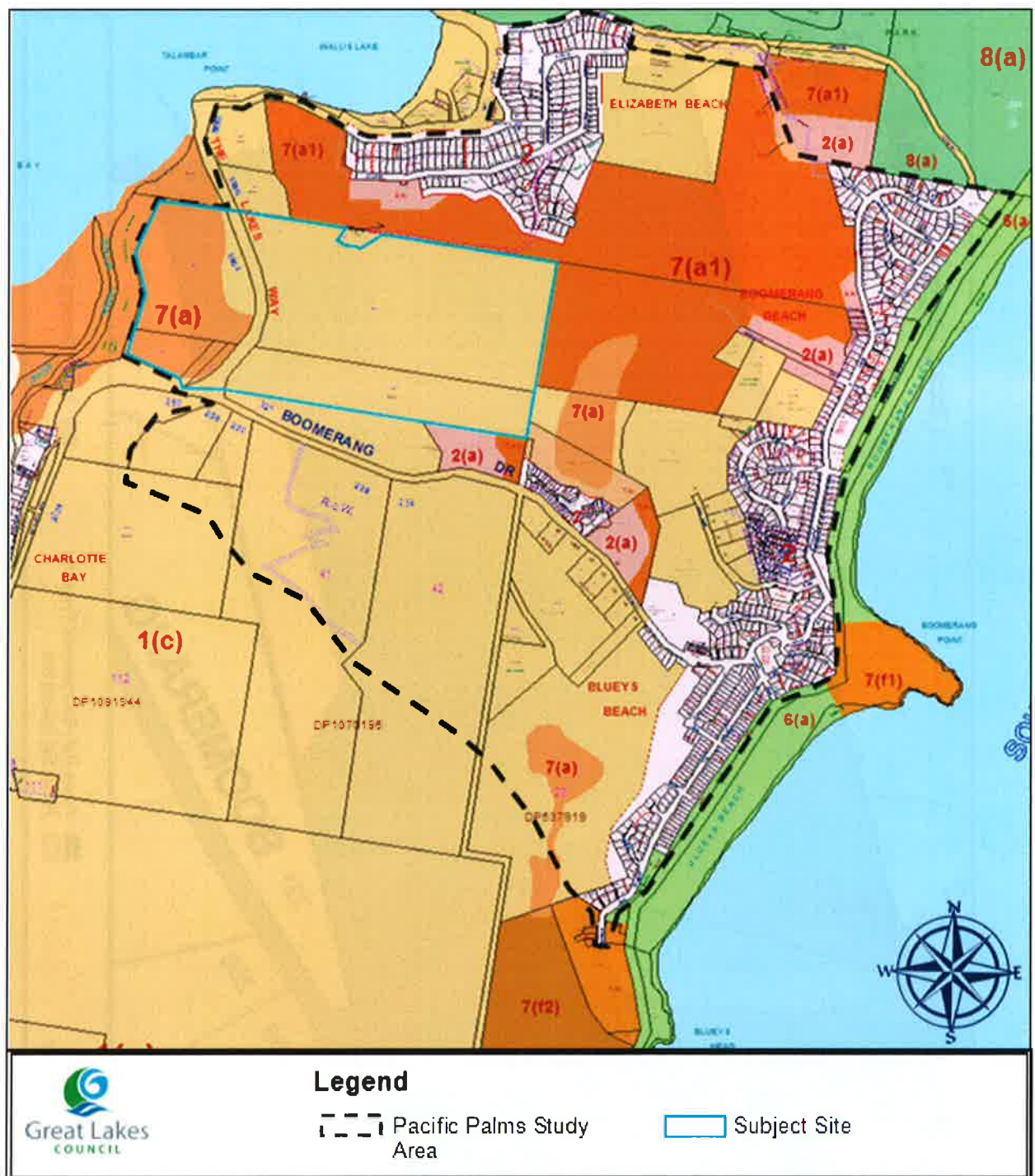
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ATTACHMENT C: Current Landuse Zoning Map



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