

Planning Proposal
456 Fullerton Cove, Fullerton Cove
Lot 1 DP 997897

Part 1 – Objectives or Intended Outcomes

The Planning Proposal intends to amend the provisions in the Port Stephens Local Environmental Plan 2000 (PSLEP 2000) to 'enable' the subdivision of a particular parcel of land at 456 Fullerton Cove Road, Fullerton Cove into two lots. The amendment will permit the subdivision of an existing dual occupancy development in a configuration that requires one of the existing dwellings to be contained on each lot so created.

The land is currently zoned 1(a) Rural Agriculture under the PSLEP 2000. Subdivision of land zoned 1(a) Rural Agriculture is generally prohibited under clause 12 in the PSLEP 2000. Subdivision of dual occupancy development in the 1(a) Rural Agriculture zone is also prohibited under clause 14(6) in the PSLEP 2000.

However, the PSLEP 2000 does permit subdivision by road severance under clause 12(1)(v) and a dwelling entitlement or dual occupancy on each lot created under clause 14(3). While this option is available to the applicant, it is impractical in this instance. A Locality Plan is included as **Appendix A**.

Part 2 – Explanation of Provisions

It is proposed to insert an additional item in the Table to clause 62 in the Port Stephens Local Environmental Plan 2000 to permit the subdivision as follows:

Column 1	Column 2	Column 3
Land	Purpose or kind of development	Development standards
456 Fullerton Cove Road Fullerton Cove Lot 1 DP 997897	Subdivision of the lot to create no more than 2 lots with an existing dwelling-house on each lot created.	Each lot must have a minimum area of 4 hectares.

Part 3 – Justification

Section A – Need for the planning proposal.

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

The adopted *Port Stephens Planning Strategy 2011* (PSPS) identifies a framework of development opportunities and conservation outcomes across the LGA. The PSPS does not identify any significant future development opportunities for the Fullerton Cove area.

The planning proposal is supported by Council as the intended outcome will not impact on the ability of Port Stephens Council to implement the PSPS as outlined below.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy 2011 (PSPS) was adopted by Council on 20 December 2011. The Strategy establishes a framework for growth and conservation, principally through the identification of two growth corridors:

Primary Growth Corridor: North Raymond Terrace (Kings Hill) through to Tomago in the south

Eastern Growth Corridor: Medowie to Fullerton Cove/Fern Bay.

While Fullerton Cove lies within the Eastern Growth Corridor, the PSPS does not identify any significant growth potential within this locality. Furthermore, the Strategy states that potential for growth in the medium to long term within the Eastern Growth Corridor will be re-evaluated following review of the Lower Hunter Regional Strategy and completion of the Raymond Terrace/Heatherbrae Growth Strategy.

Centres Hierarchy

The PSPS establishes a centres hierarchy across the LGA:

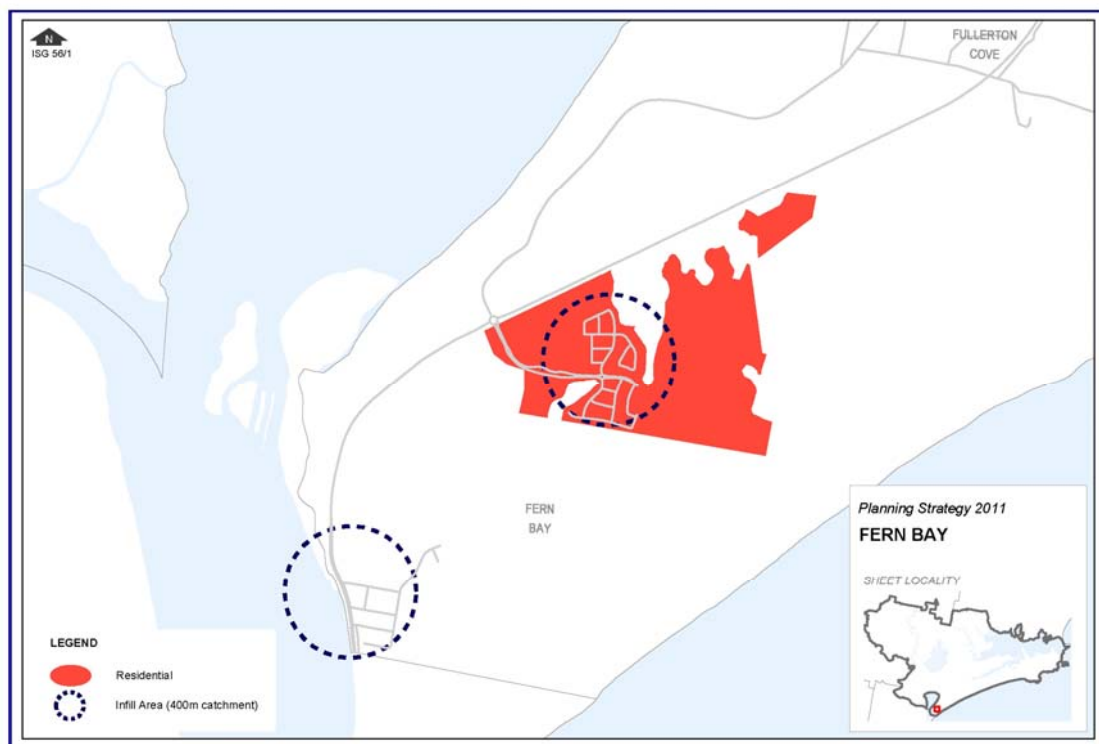
Hierarchy	Centre
Regional Centre	Raymond Terrace
Specialised Centres	Salamander Bay (stand-alone) Williamtown (air services) Heatherbrae (enterprise corridor) Nelson Bay (tourism)
Town Centres	Nelson Bay (also specialist centre) Tanilba Bay Anna Bay Meadowie Raymond Terrace Nth (Kings Hill)
Village Centres	Shoal Bay Karuah Salamander Bay (north) Raymond Terrace (Lakeside)
Smaller Village Centres	Soldiers Point Lemon Tree Passage Salt Ash Fingal Bay Nelson Bay (Austral St and Armadale Ave) Fern Bay Corlette Hinton, Woodville and Seaham
Smaller Village Centres (other/neighbourhoods)	Boat Harbour Mallabula Fullerton Cove One Mile Swan Bay Taylors Beach Wallalong

Fullerton Cove is identified in the centres hierarchy as a Smaller Village Centres (other/neighbourhoods). This sub-category is described as a centre with no commercially zoned land or occupied floor space, and may be a congregation of dwellings in a rural area. The population in these areas is very small.

The PSPS does not identify any growth opportunities for the areas identified in this sub-category, as these centres are typically located in close proximity

to a higher order centre within the hierarchy, and are precluded from more intensive development opportunities by environmental constraints (such as flooding) or proximity to land with significant environmental values.

In comparison, the neighbouring Smaller Village Centre of **Fern Bay** has been identified for growth in the PSPS. The Strategy identifies the potential for approximately 1400 additional dwellings (green field) and 42 additional dwellings as infill development. The residents of Fullerton Cove are expected to benefit from this growth with the establishment of an expanded commercial centre in the Fern Bay centre.



Source: Port Stephens Planning Strategy 2011 (Map 2 on page 108)

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

The planning proposal is considered the best means of achieving the intended outcomes, based on the merit considerations that relate particularly to this land.

The planning proposal is a temporary measure intended to provide the landowner with a window of opportunity to subdivide the land into 2 lots, consistent with the spatial land use pattern in the surrounding area and the future use of land in this locality. It is not proposed to retain this provision in the Port Stephens Local Environmental Plan 2012.

BACKGROUND

Development History

A Development Application was lodged with Council in September 2011 to subdivide the subject land into 2 lots. The proposed subdivision layout is attached at **Appendix B**. The application was supported by Council officers on the basis of merit considerations under the Environmental Planning and Assessment Act 1979. However, the subdivision is prohibited under clauses 12 and 14(6) in the Port Stephens LEP 2000 and could not be recommended for approval.

Council considered the report at its meeting on 13 December 2011 and resolved to defer consideration of the report until such time as legal advice was obtained on Council's ability to approve the subdivision. The legal advice prepared by Harris Wheeler confirmed the opinion of council officers.

A report on the matter was again presented to Council at its meeting on 20 December 2011. It was resolved that Council:

- 1) receive and note the legal advice that the subdivision cannot be approved.
- 2) representations be made with the Member for Port Stephens to seek an appointment with the Director General of the Department of Planning to seek his agreement to expedite a site specific amendment to the Port Stephens Local Environmental Plan enabling this subdivision to be given consent in the future.

A meeting was subsequently held on 2 February 2012 between Council staff, Craig Baumann – Member for Port Stephens, Neil McGaffin (DoPI) and Sam Haddad (Director-General DoPI) to discuss this issue.

File notes prepared by the relevant Council officer on the discussion in the meeting indicate the Department's preference for a precinct approach that could be better justified on a strategic basis, rather than a site specific amendment.

The approach offered by the Department was the identification of a decreased minimum lot size for subdivision over a number of properties in this location to permit the subdivision to occur, rather than a schedule listing that relates to only one property. In response, the Council officer noted that, as all the other properties on the same side of the road in this location had already been subdivided and developed, there appeared little merit in preparing a locality based planning proposal.

Relevant provisions in the Port Stephens LEP 2000

Clauses 12 and 14 are relevant to the planning proposal. Clause 12 regulates subdivision in the 1(a) Rural Agriculture zone, while clause 14 regulates dwelling-houses and dual occupancies in all rural zones.

Port Stephens LEP 2000

12 Subdivision within rural zones generally

- (1) A person must not subdivide land within any rural zone except:
 - (a) for any of the following purposes:
 - (i) the opening or widening of a public road,
 - (ii) to change a common boundary with an adjoining allotment, but not so as to create additional allotments,
 - (iii) consolidation of allotments,
 - (iv) rectification of any encroachment on any existing allotments,
 - (v) the creation of allotments corresponding to the parts into which a single allotment is divided by a public road, or
 - (b) for the purpose of the creation of an allotment or allotments intended to be used for any one or more of the purposes (excluding dwelling-houses or dual occupancy housing) for which it may be used with or without the consent of the consent authority, or
 - (c) in the case of land within a Rural Small Holdings zone—as permitted by clause 13.

- (2) Subdivision of land for a purpose specified in subclause (1) (a) does not have the effect of precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as the land has been taken for a road as referred to in subclause (1) (a)).

14 Dwelling-houses and dual occupancy housing in rural zones

- (1) This clause applies to land within any rural zone.
- (2) The consent authority **shall not consent** to the erection of a dwelling-house or dual occupancy housing on an allotment of land to which this clause applies if:
 - (a) **in the case of land within Zone No 1 (a)—the allotment has an area of less than 4,000 square metres, or**
 - (b) in the case of land within Zone No 1 (c1), 1 (c2), 1 (c3) or 1 (c4)—the allotment has an area of less than 3,500 square metres, or
 - (c) in the case of land within Zone No 1 (c5)—the allotment has an area of less than 2,000 square metres, or
 - (d) in any case:
 - (i) if the allotment was created before the appointed day—the consent authority is of the opinion that the allotment was intended to be used for any one or more of the purposes (other than the purpose of a dwelling-house or dual occupancy housing) for which it could have been used (with or without the consent of the consent authority) under the environmental planning instrument under which it was created, or
 - (ii) if the allotment was created on or after the appointed day—the allotment was intended to be used for any one or more of the purposes (other than the purpose of a dwelling-house or dual occupancy housing) for which it may be used (with or without the consent of the consent authority) under this plan.
- (3) Despite subclause (2), the consent authority may consent to the erection of a dwelling-house or dual occupancy housing on any one or more of the allotments created to correspond to the parts into which a single allotment is (or was) divided by a public road.
- (4) However, the consent authority shall not consent to the erection of dual occupancy housing on land to which this clause applies unless the consent authority is satisfied that:
 - (a) the two dwellings are clustered giving the appearance of being an integrated development, and
 - (b) the two dwellings have shared infrastructure such as common driveway access, fire breaks and services, and
 - (c) any rural buildings are clustered, and
 - (d) any clearing necessary for the dwellings is minimised.
- (5) The consent authority shall not consent to the carrying out of development involving the erection of more than one dwelling-house on an allotment of land to which this clause applies unless the development is for the purpose of dual occupancy housing.
- (6) **The subdivision of any dual occupancy housing shall not be permitted unless the subdivision may be carried out in accordance with the provisions of clause 13.**
- (7) For the purposes of subclause (4) (d), **clearing** means any manner of destruction or removal of a tree, shrub or plant (otherwise than as exempted by the Council's adopted tree preservation order) and includes the severing or lopping of branches, limbs, stems or trunks of a tree, shrub or plant.

While subdivision as proposed in the subdivision plan (at Appendix B) is clearly prohibited under clause 12 in the LEP, subdivision by road severance

is permissible under clause 12(1)(v). Similarly, a dwelling-house or dual occupancy is permissible on both lots created by a road severance subdivision under clause 14(3) in the LEP. Therefore, the land is capable of being subdivided under the provisions of the LEP to create two lots. However, it is not practical to subdivide the land in this way, as no physical access is achievable off Nelson Bay Road on the eastern side of the road reserve.

Relevant provisions in the draft Port Stephens LEP 2012

The draft Port Stephens Local Environmental Plan 2012 (draft LEP 2012) has been prepared but not yet been adopted by Council in order to facilitate a Gateway Determination. Nonetheless, some comment on the provisions in the draft LEP 2012 is relevant as it seeks to implement the adopted PSPS 2011.

The draft LEP 2012 confirms that no additional development potential is supported in this area, by proposing to rezone the Fullerton Cove locality to RU2 Rural Landscape and identifying a 20ha minimum lot size for subdivision for all lands in this zone.

Furthermore, the draft LEP 2012 does not recognise the disparity between the ability to subdivide the land and the dwelling entitlement provisions in the Port Stephens LEP 2000, other than provisions contained in clause 4.2C in the draft LEP 2012.

As a result, land within the Fullerton Cove area has already been developed for more intensive purposes than is provided for in the draft LEP 2012.

JUSTIFICATION FOR A SITE-SPECIFIC PROPOSAL

Site Description

The land has a total site area of 14.41 ha and is severed by Nelson Bay Road. No built development exists on that part of the land east of Nelson Bay Road.

Land on the western side of Nelson Bay Road contains a detached dual occupancy development that fronts Fullerton Cove Road and a telecommunications tower fronting Nelson Bay Road.

Vehicular access is not achievable off Nelson Bay Road onto the land on either side, due to the raised level of the road in this location. Vehicular access is currently provided to the subject land for the dual occupancy development and the telecommunications tower off Fullerton Cove Road. To access the land to the east of Nelson Bay Road, vehicular access is provided via an existing concrete underpass on the northern boundary of the land, which is shared with the adjoining property to the north of the site. An aerial photo of the subject land and immediate locality is included at **Appendix C**.

Much of the Fullerton Cove area is also affected by flooding. A map showing the extent of the flood prone land in this locality is included at **Appendix D**.

Existing lot sizes in the Fullerton Cove area

Rural areas within the Port Stephens LGA are heavily fragmented, driven primarily by generous dwelling entitlement provisions for rural lands. As a result, a significant number of smaller rural lots within the Port Stephens LGA have been developed for housing, either as ribbon development along main roads or clustered to form de facto village areas.

Land within the Fullerton Cove locality is no exception. Fullerton Cove is located on the main road between Newcastle, Newcastle Airport and Port Stephens. A de facto village area has evolved from a combination of clustered housing and ribbon development in this location.

The existing lot sizes in this locality range from < 4000m² to > 20 hectares with a dispersed distribution pattern. Smaller lots < 1 hectare are generally concentrated along Fullerton Cove Road and George Street. A Lot Size Analysis Plan is included at **Appendix E**. Dwelling-houses exist on the

majority of lots within this locality, as can be seen on the aerial photo at Appendix C.

The proposed subdivision is consistent with the spatial land use pattern in this locality and will not result in a change to the existing land use pattern. The land can be subdivided under the provisions in the PS LEP 2000 by road severance but this outcome is impractical.

Is there any merit in preparing a locality based planning proposal?

Land within the Fullerton Cove area has already been developed at a higher density generally than provided for in the draft LEP 2012. The majority of lots in this locality are less than the minimum lot size for subdivision proposed in the draft LEP 2012. Dwelling-houses or dual occupancies have already been developed on these smaller lots in the majority of cases. Future development in this area will be restricted to the more limiting provisions in the draft LEP 2012.

Lot Size Map

The recommendation from the Department to consider preparing a planning proposal on a locality or precinct basis was considered. Specifically, it was investigated whether amending the minimum lot size for subdivision over a broader area within the locality would be a better way to achieve the outcomes of the planning proposal, rather than a schedule listing.

However, the existing subdivision pattern in this locality is so randomly distributed in lot size configuration (as demonstrated in Appendix E) that applying a reduced lot size for subdivision would be either ineffectual, depending on the minimum lot size selected, or could lead to further opportunities for subdivision in this area that would not be supported by council staff.

It is concluded that a site-specific amendment to enable the subdivision to occur represents the best way to achieve the intended outcomes of this planning proposal.

Is there a net community benefit?

The planning proposal does not warrant the consideration of whether there is a net community benefit. The intended outcome is unlikely to create a precedent as the planning proposal has demonstrated merit considerations for the subdivision of the particular land in question that could not be replicated under general circumstances.

Section B – Relationship to strategic planning framework.

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Lower Hunter Regional Strategy

While the Lower Hunter Regional Strategy (LHRS) is applicable to the Port Stephens LGA, this Strategy does not address issues to this localised level. However, on a broad strategic level, the LHRS promotes a compact urban form with development opportunities proportioned between green field sites and infill development. The planning proposal supports this process, by acknowledging that any development in the Fullerton Cove area will be small-scale infill development and, as such, the proposed subdivision of land does not compromise the potential of the land to be developed for more intensive purposes.

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

The planning proposal is consistent with the Port Stephens Planning Strategy 2011.

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

There are no provisions in applicable state environmental planning policies that would warrant consideration with regard to this planning proposal. The proposed subdivision does not alter the existing land use.

Is the planning proposal consistent with applicable Ministerial Directions?

There are no provisions in applicable Ministerial Directions that are relevant to the planning proposal. Subdivision of the land will not alter the existing land use pattern. The land is not used for agriculture on a commercial scale that would warrant protection under the Rural Lands Ministerial Direction.

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?

No. The intended outcome will not alter the current land uses on the subject land.

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

No. The intended outcome will not alter the current land uses on the subject land.

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

There are no relevant social or economic effects in relation to this planning proposal. The intended outcome will not alter the current land uses on the subject land.

Section D – State and Commonwealth interests.

Is there adequate public infrastructure for the planning proposal?

Not applicable. The proposed subdivision does not alter the requirements for public infrastructure.

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

The planning proposal does not warrant consultation with any State or Commonwealth public authorities.

Part 4 – Community Consultation

Community consultation will be conducted in accordance with the publication "A guide to preparing local environmental plans" issued by the Department of Planning (2009). Based on the instructions in this publication, the Planning Proposal is considered to be a "low impact" planning proposal with an exhibition period of 14 days.

Appendices

- A: Locality Plan
- B: Proposed Subdivision (from DA file)
- C: Aerial photo
- D: Flood prone Land Map
- E: Lot Size Analysis Map

Fullerton Cove

LOCALITY MAP

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SHEET LOCALITY

LOCALITY MAP

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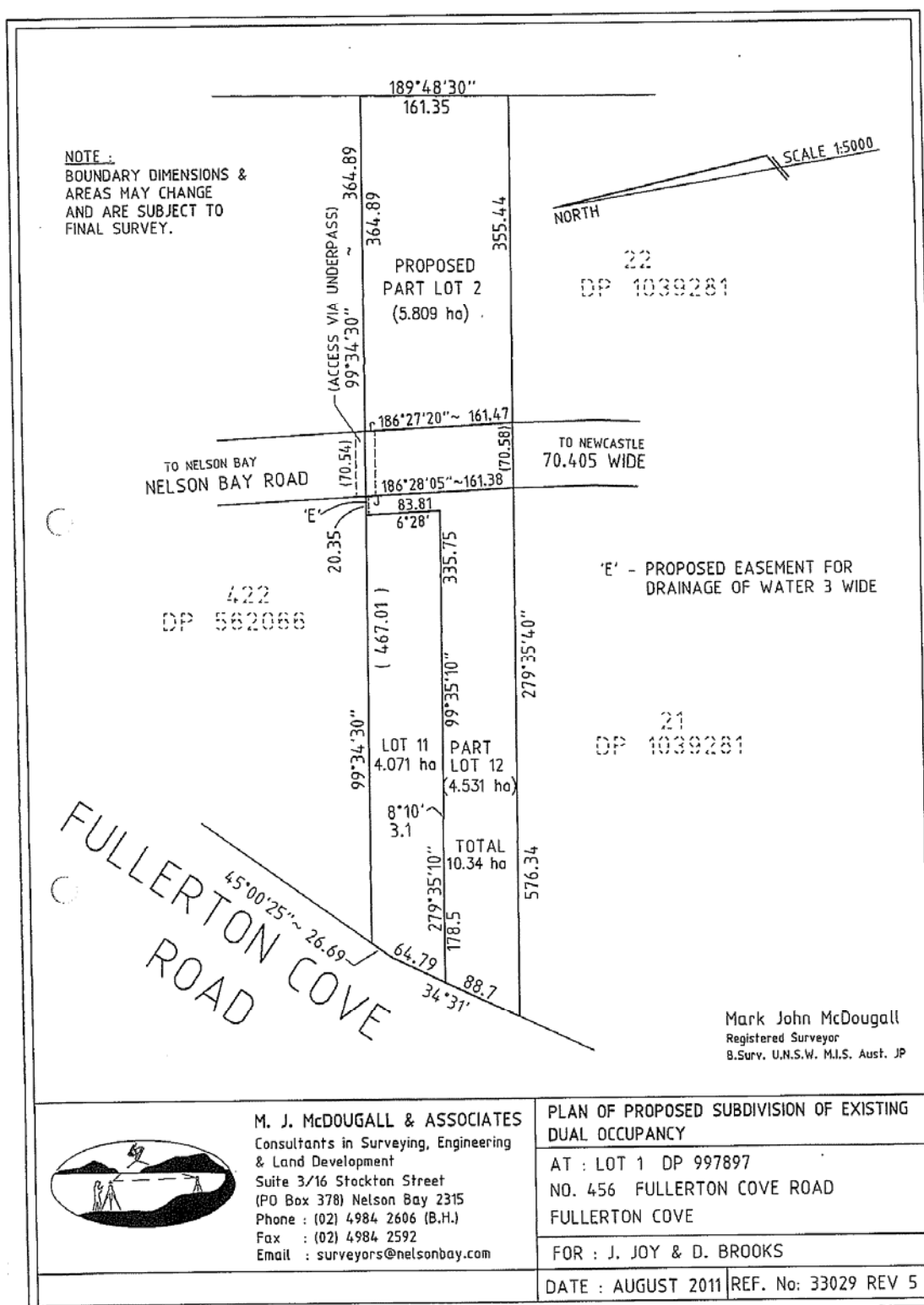
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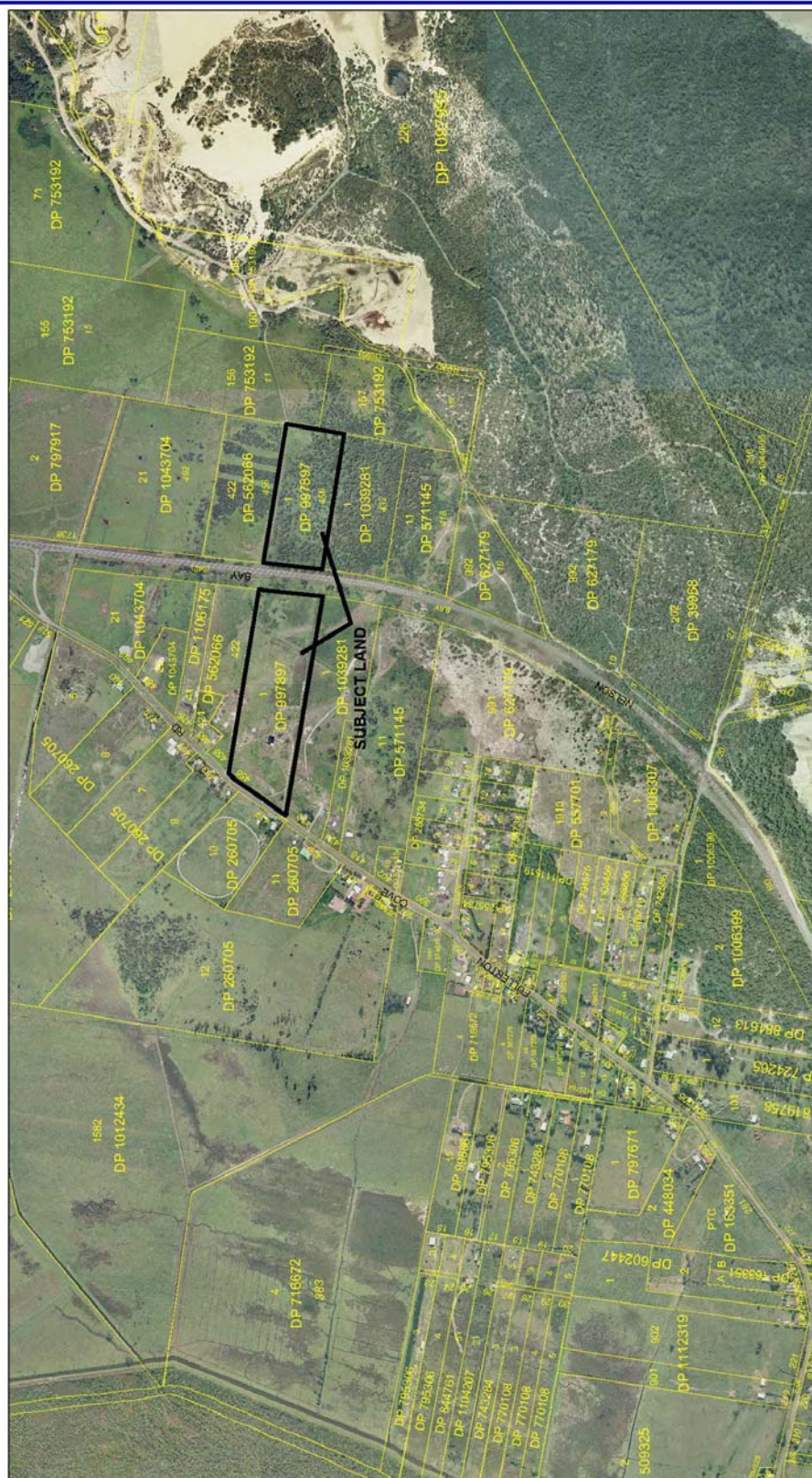
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Appendix B: Proposed Subdivision



Fullerton Cove



SHEET LOCALITY

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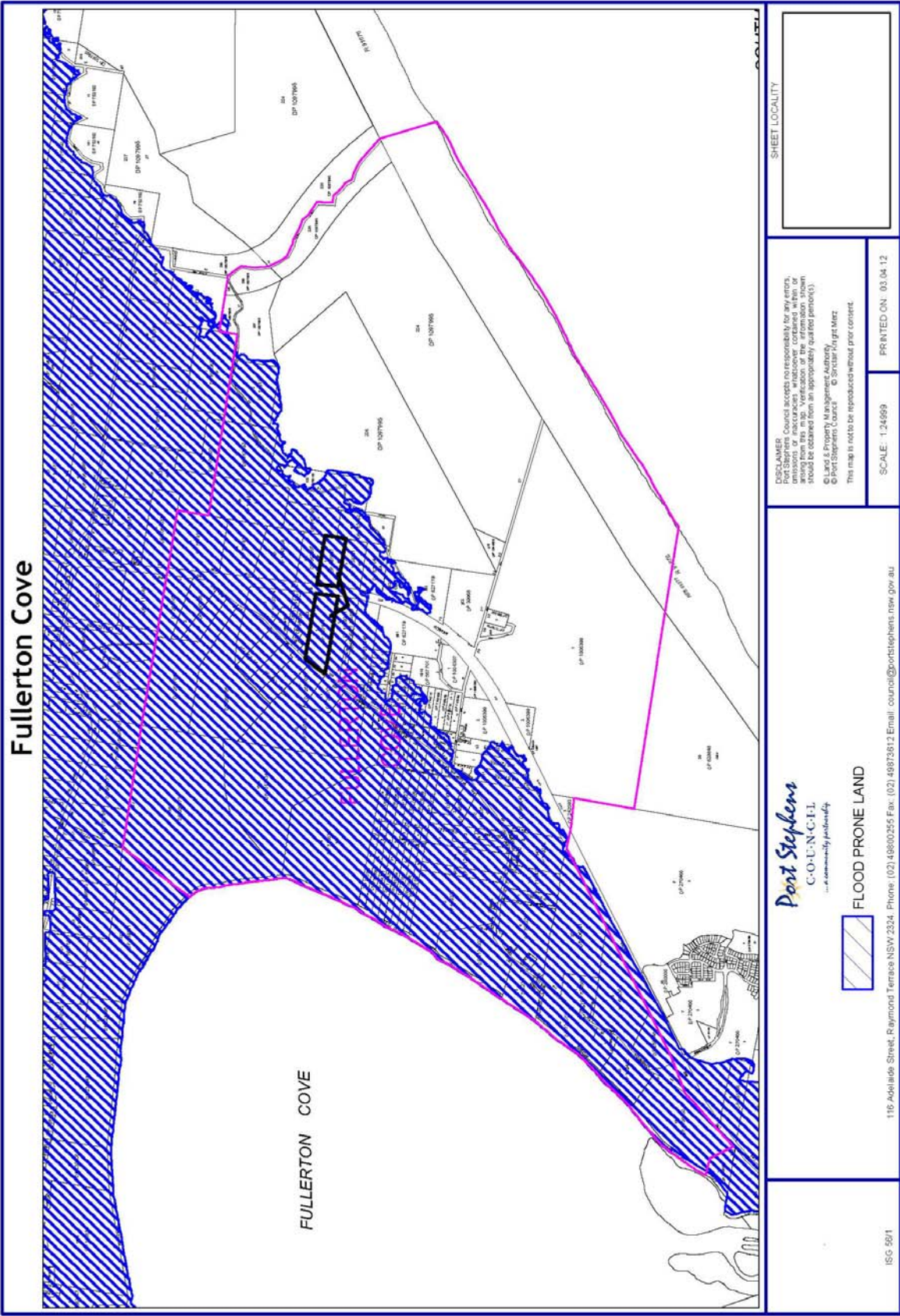
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Appendix D: Flood Prone Land Map



Appendix E: Lot Size Analysis Map

