



IRF22/4129

Gateway determination report – PP-2022-2522

Raffertys Resort, Cams Wharf

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	Lake Macquarie City Council
PPA	Lake Macquarie City Council
NAME	Raffertys Resort, Cams Wharf (20 homes, 51 jobs)
NUMBER	PP-2022-2522
LEP TO BE AMENDED	<i>Lake Macquarie Local Environmental Plan 2014</i>
ADDRESS	1 Wild Duck Drive and 2 Lorikeet Loop, Cams Wharf
DESCRIPTION	Lot 31 and Part Lot 30 DP270043
RECEIVED	22/11/2022
FILE NO.	IRF22/4129
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1.2 Objectives of planning proposal

The objective of the planning proposal is to amend the *Lake Macquarie Local Environmental Plan 2014* (LEP) to enable a higher density tourism development at the Raffertys Resort, Cams Wharf.

The intended outcomes of the planning proposal are:

- reinforce the tourism function of the site by enabling opportunities for re-development of an existing tourist facility;
- facilitate diversification of visitor accommodation within Lake Macquarie; and
- contribute to Lake Macquarie South East Growth Area's function as the City's tourism hub.

The focus of the increased building height will be on part of the site that will be focused on tourism uses. However, there will also be an increase in height of building on the other parts of the site that would enable increased permanent residential uses.

As such, it appears that to achieve the outcome of an international standard hotel requires both a 28-meter increase in height of building controls (329% increase on existing controls) and increased residential density.

1.3 Explanation of provisions

The planning proposal seeks to amend the *Lake Macquarie Local Environmental Plan 2014* per the changes below:

Table 2 Current and proposed controls

Control	Current	Proposed
Maximum height of buildings (See Figure 1)	Part Lot 30 – 8.5m Lot 31 – 8.5m	16m 36.5m
Additional Permitted Use Map (see Figure 2)	Included as Cams Wharf Area 1 Applies clause 7.14 of LEP to permit residential development.	Remove Lot 31 from Cams Wharf Area 1
Number of dwellings		20

The current additional permitted use on the site is for development predominantly providing a tourist destination as an integrated community containing tourist facilities and which may contain a range of accommodation types (including dwellings) and a combination of land uses including retailing, recreational and community activities appropriate to the community's needs.

The planning proposal states that an alternative option could be to amend the site-specific clause to specify a percentage of the site to be developed for tourism uses. This option was not supported by Council as it would be difficult to monitor development approvals and ensure compliance.

The alternative option could have also been to amend the site-specific clause to specify a cap on the number of rooms and permanent residential dwellings on the site. This is the approach taken to integrated tourism developments under the *Cessnock Local Environmental Plan 2011*.

Council believes this approach seems too prescriptive, create more complexity and unnecessary to meet the objectives of the tourism zone. Concerns were also expressed about the ability to consider a cap given the existing development on site.

Given the clause capping permanent residential dwellings and number of rooms already operates in other integrated tourism developments and an additional 20 dwellings are identified in the proposal, it is not clear these concerns are valid.

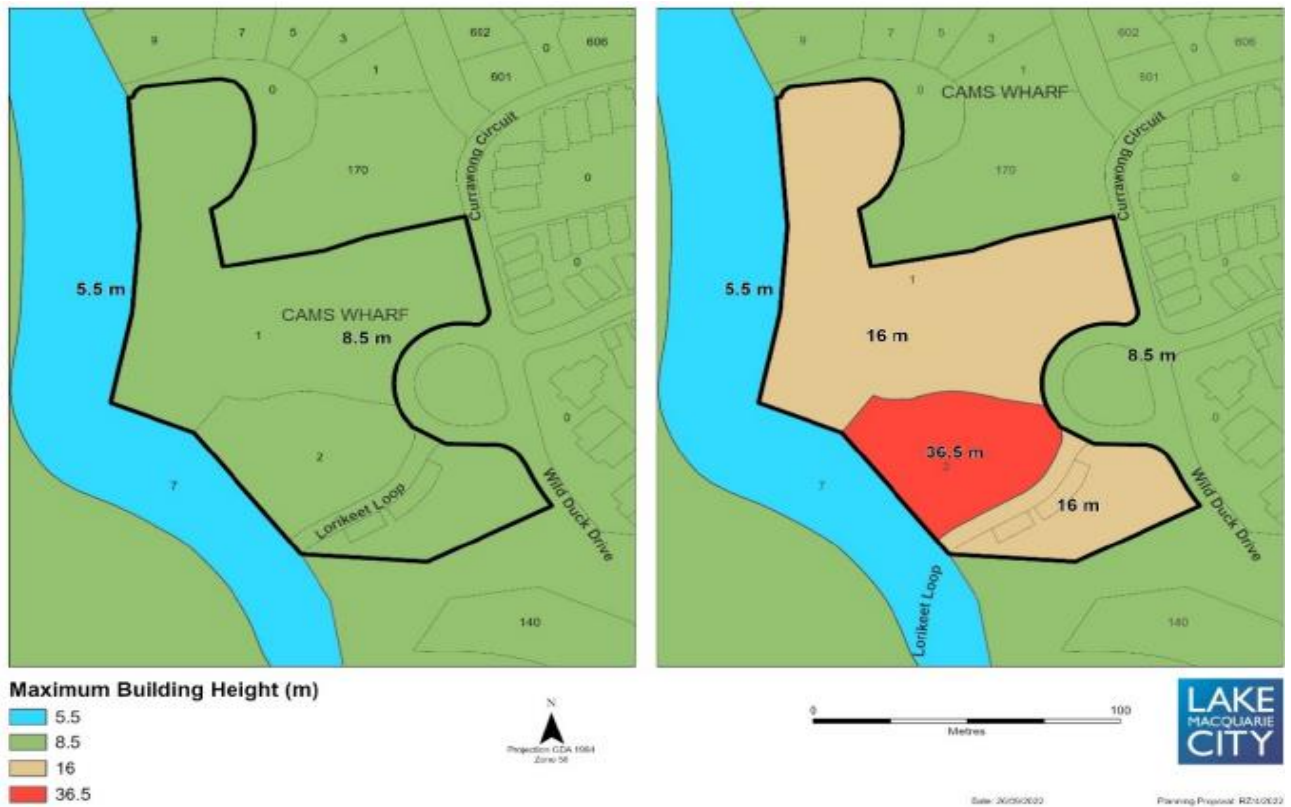


Figure 1: Existing building height left and proposed building height right.

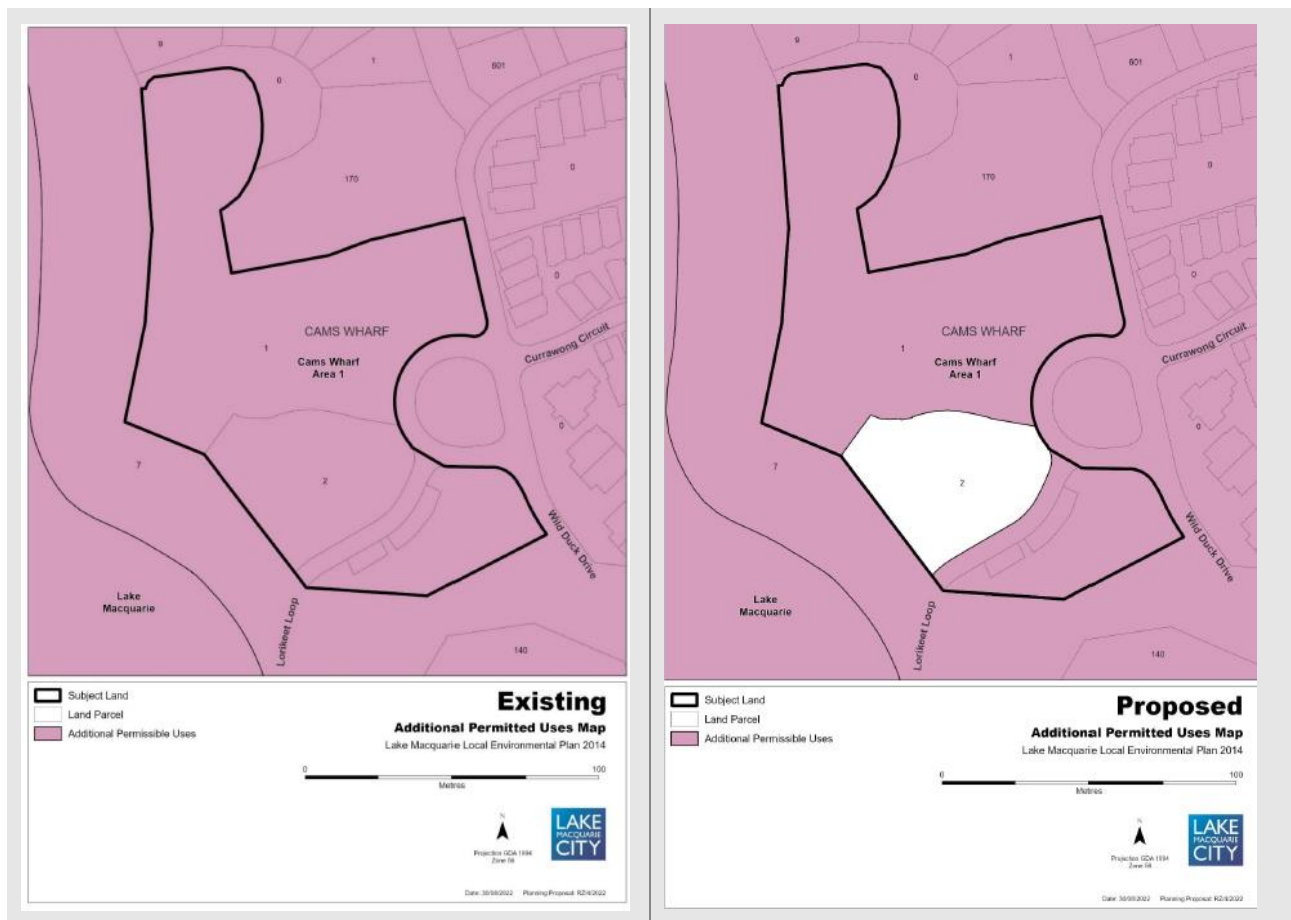


Figure 2: Existing Additional Permitted Uses and proposed Additional Permitted Uses

1.3.1 Integrated tourism development on the foreshore

There is another current planning proposal (PP-2022-1990) that seeks to facilitate tourism development in a foreshore location at Trinity Point. This would enable residential buildings, hotels, restaurant and function centre.

The planning proposal seeks to replace an existing provision in Part 7 Additional Local Provisions Clause 7.16 'development on certain land at Trinity Point, Morisset Park' with a new provision to allow:

- residential accommodation and associated uses provided it is part of a mix of uses that include tourism accommodation and associated uses;
- provide additional permitted uses that support the tourism use of the site; and
- allow additional height of buildings where the development exhibits design excellence.

This would facilitate a maximum height of building between 34-meters to 42-meters.

The proposed clause relies on the consent authority to be satisfied the proposed development exhibits design excellence before development consent can be granted. The design excellence provision is essentially the trigger to enable the development to access the additional local provisions controls.

Council believe that this provision is not needed for this planning proposal as the height of building increase will only apply to smaller area (0.2 hectares), it adjoins tourism zoned land (not residential), the site is somewhat sheltered by the surrounding topography and vegetation and it will only permit tourism uses. Council does not consider the additional height a reason to change approaches.

Council believes the mechanisms under the Coastal Management State Environmental Planning Policy are sufficient to manage the impacts associated with this proposal.

1.4 Site description and surrounding area

Raffertys Resort is partially developed for tourism in a lake foreshore setting located at Cams Wharf. It is surrounded by a mix of tourist and residential accommodation. Adjoining to the north is the residential area of Murrays Beach, Swansea is 4km to the north, Nords Wharf 2km to the south and Gwandalan is 2km across Lake Macquarie to the south west.

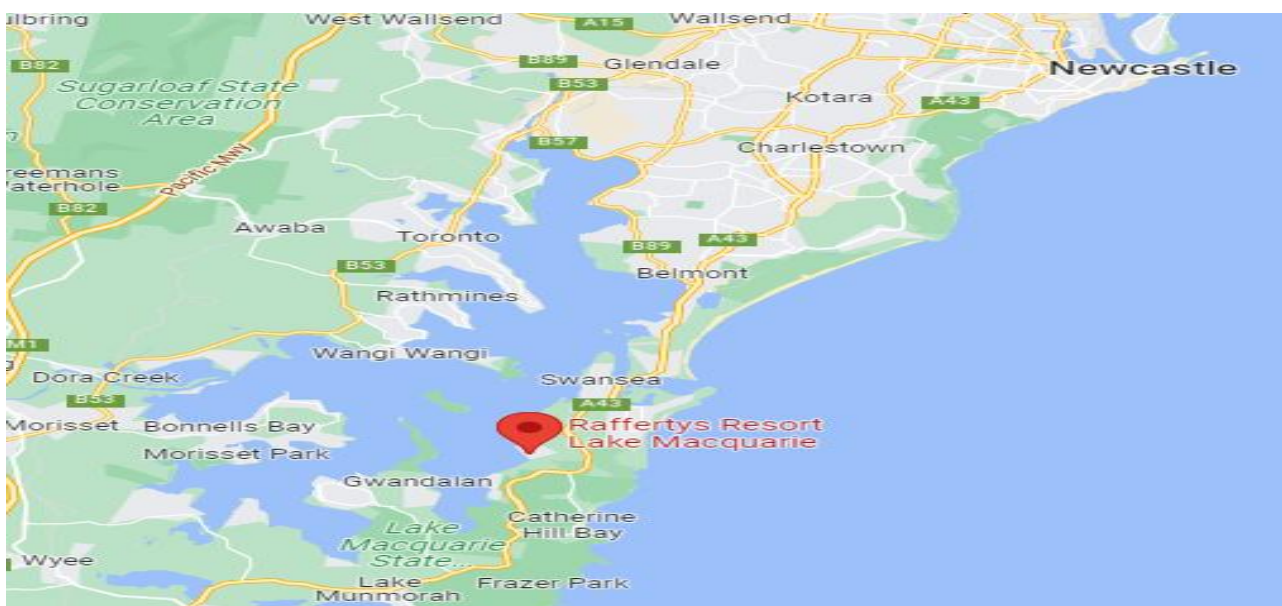


Figure 3 Location (source: google maps)



Figure 4 Current site development (source: planning proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Height of Buildings and Additional Permitted Uses Maps (see Figures 1 and 2), which are suitable for community consultation.

1.6 Background

Raffertys Resort was constructed in 1993 as a community title subdivision for a tourist destination. It is a mix of tourist and permanent residential accommodation. The owners are now seeking to amend development controls to enable development of five-star hotel to attract a broader range of visitors.

2 Need for the planning proposal

The planning proposal has been led by the owner, Iris Capital, seeking to expand tourist accommodation and supporting development on the site. Additional permanent residential development of part of the site will be enabled by increased height and will support the viability of the tourism component of the site. However, the hotel part of the site will not include permanent residential accommodation.

3 Strategic assessment

3.1 Hunter Regional Plan 2041

The *Hunter Regional Plan 2041* acknowledges the Hunter contains many different communities across various urban, rural and coastal contexts, each of which will see the 15-minute neighbourhood take a different shape. The site's suburban setting means it has a general suburban context and is identified as new residential land in the plan.

Table 3 Hunter Regional Plan 2041 assessment

Hunter Regional Plan 2041 section	Justification
Strategy 8.2: Planning proposals will accommodate new commercial activity in existing centres and main streets unless it forms part of a proposed new community or is an activity that supports a 15-minute neighbourhood.	<p>The site is already zoned SP3 Tourist and includes commercial operations.</p> <p>The planning proposal is consistent with the strategy.</p>

Strategy 8.5: Planning proposals to facilitate tourism activities will:

- demonstrate that the scale and type of tourism land use proposed can be supported by the transport network and complements the landscape setting
- be compatible with the characteristics of the site and existing and likely future land uses in the vicinity of the site
- demonstrate that the tourism land use would support the function of nearby tourism gateways or nodes
- be supported by an assessment prepared in accordance with the Department of Primary Industries' Land Use Conflict Risk Assessment Guide if the use is proposed on or in the vicinity of rural zoned lands.

The planning proposal seeks to expand tourist development in an existing SP3 Tourist zone. Surrounding future uses are constrained to within this site and will also be a mix of permanent residential and tourist accommodation.

A Visual Impact Assessment to accompany the planning proposal identified a high visual impact from Cams Wharf and within 750m.

The assessment recommends a range of mitigation measures including:

- retention of existing vegetation;
- replacement and additional plantings including along the foreshore taking into consideration potential overshadowing of the foreshore; and
- building design features including colours, non-reflective materials and building articulation.

Council has not indicated it intends to prepare a site-specific development control plan to ensure the development is compatible with characteristics of the site and land uses in the vicinity. It is noted that the *Lake Macquarie Development Control Plan 2014* includes parts dealing with development in tourism zones and foreshore and waterway development. These parts set out controls regarding scenic values, visual impacts, views, solar access, building design, setbacks and a requirement for a masterplan for greater than 50 tourism units.

The local transport road network can support the increased development proposed. Transport for NSW has identified the need to upgrade some intersections with the Pacific Highway. However, the public transport system would need to be embellished or supported by additional community transport provided by the tourist development to be fully consistent with this strategy.

The site is identified in Lake Macquarie City Council's *draft Destination Management Plan 2022-2026* as an important resort offering access to Lake Macquarie. The plan also identifies the need to increase access to the foreshore of the lake and provide additional 5 star accommodation which is achieved by this proposal.

Council's Local Strategic Planning Statement identifies this area as part of the South East Growth Area and the prime position to become the City's tourism hub. There are few areas of the lake foreshore zoned for tourism with the opportunity to expand. Building on an existing tourism development reduces the cumulative impacts on the lake foreshore.

The site is not located in the vicinity of rural zoned lands.

Table 4 Greater Newcastle Metropolitan Plan 2036 assessment

Greater Newcastle Metropolitan Plan 2036 section	Justification
<p>Strategy 6: Promote tourism, major events and sporting teams on the national and international stage</p> <p>Action 6.3: Greater Newcastle councils will align local plans to:</p> <ul style="list-style-type: none"> increase flexibility for new tourism proposals (buildings, hotels, spaces, and activities) within strategic centres, throughout the metro core including Stockton, and rural and environmental areas in the metro frame that do not affect the environmental features, viticulture or other agricultural industries, or natural amenity enable major events in strategic centres and other suitable locations along with the development of hotels, event and conference capacity support the live music and performance sector by identifying and protecting areas with strong traditions of live music and performance, and by supporting areas where urban and cultural amenity can be improved by live music and performance activity. 	<p>The planning proposal lies within the metro frame and seeks to increase flexibility for increased tourism at Raffertys Resort.</p> <p>A Visual Impact Assessment to accompany the planning proposal identified a high visual impact from Cams Wharf and within 750m. Measures are recommended to minimise this impact including retaining existing vegetation, additional screen plantings and design features including colours, materials and articulation of buildings.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

Table 5 Local strategic planning assessment

Local Strategies	Justification
Lake Macquarie City Local Strategic Planning Statement	<p>The planning proposal enables redevelopment within the current footprint and using available infrastructure. Redevelopment of the site will attract national and international tourists and conference market.</p> <p>The local strategic planning statement identifies Cams Wharf within the South Eastern Growth Area and as the prime position to become the City's tourist hub. This planning proposal will help achieve that goal.</p>
Draft Lake Macquarie City Council Destination Management Plan	<p>The draft destination management plan acknowledges Raffertys Resort as providing resort style tourist accommodation and recognises the outcome of a range of projects currently proposed will result in:</p> <ul style="list-style-type: none"> increased use of the lake foreshores; provide much needed four and five star accommodation and corporate hotels; and increase in tourist attraction activities, accessible accommodation and infrastructure and services. <p>The planning proposal will upgrade outdated accommodation and attract a broader range of visitors to help fully utilise the lake's potential.</p>

3.3 Section 9.1 Ministerial directions

The planning proposal's consistency with relevant section 9.1 Ministerial directions is discussed below:

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistency yet to be demonstrated	<p>The objective of this direction is to give legal effect to the vision, objectives and strategies in the <i>Hunter Regional Plans 2041</i>.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036 and the draft regional plan.</p> <p>An assessment against the relevant strategies and Objective performance outcomes has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency with direction.</p>
1.4 Site Specific Provisions	Yes	<p>The planning proposal removes the application of an existing additional permitted uses clause from part of the site that allows permanent residential accommodation so that the focus remains tourism development.</p> <p>The existing local provision under local environmental plan already permits tourist development on the site. The provisions are considered necessary to control future development on the site.</p>
3.2 Heritage Conservation	Yes	<p>The site does not contain any heritage items.</p> <p>There are five Aboriginal sites within 1km of the location. The local environmental plan contains standard heritage provisions to ensure these matters are addressed at the development application stage.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Consistency yet to be demonstrated	<p>Part of the land is affected by the flood planning area and a high hazard floodway. A flood management report prepared for the planning proposal (allowing for 0.4m sea level rise and climate change factor of 9%) and concept master plans show that development will be outside these areas.</p> <p>Part of the site is cut off from evacuation during a 1% AEP flood event, however, the flood management report recommends evacuation on site.</p> <p>The planning proposal was prepared prior to the release of the 2022 NSW Flood Inquiry report. The inquiry made a number of recommendations to minimise the risk of flooding, which have been adopted by the NSW Government.</p> <p>The Department is not in a position to determine consistency with this direction until the proposal has been updated to consider the findings of the 2022 NSW Flood Inquiry.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.2 Coastal Management	Consistency yet to be demonstrated	<p>The site lies within the coastal use and coastal environment areas.</p> <p>The SEPP prohibits granting consent to development that will cause adverse impact on the ecological and coastal environment and processes.</p> <p>Under the SEPP, development consent must not be granted to development unless the consent authority:</p> <ul style="list-style-type: none"> • has considered whether the proposed development is likely to cause an adverse impact on access, overshadowing of the foreshore, visual amenity and scenic qualities of the coast; • is satisfied if the impact cannot be avoided – the development is designed, sited and will be managed to minimise that impact; and • has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. <p>Council is not seeking to include a design excellence provision as part of the proposed increased development, nor is there a precinct plan under the development control plan that applies to the site.</p> <p>It is noted that the <i>Lake Macquarie Development Control Plan 2014</i> includes parts dealing with development in tourism zones and foreshore and waterway development. These parts set out controls regarding scenic values, visual impacts, views, solar access, building design, setbacks and a requirement for a masterplan for greater than 50 tourism units.</p>
4.3 Planning for Bushfire Protection	Consistency yet to be demonstrated	<p>The site is able to comply with the requirements of <i>Planning for Bush Fire Protection 2019</i> and pre-lodgement consultation with NSW Rural Fire Service has raised no objections.</p> <p>It is considered appropriate to further consult with NSW Rural Fire Service.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.5 Acid Sulfate Soils	Yes	<p>The lands are classified as class 5 on the Acid Sulfate Soils Map. This indicates they do not contain acid sulfate soils but are within 500m of land with a probability of containing acid sulfate soils.</p> <p>The local environmental plan contains standard acid sulfate soils provisions for how development applications need to address this issue.</p>
4.6 Mine Subsidence and Unstable Land	Consistency yet to be determined	<p>The site is within the Swansea North Entrance Mine Subsidence District.</p> <p>Subsidence Advisory NSW has been consulted and it raised no objection to the planning proposal. Formal consultation is recommended to confirm consistency with the direction.</p>
5.1 Transport and Infrastructure	Consistency yet to be determined	<p>Public transport opportunities are limited.</p> <p>The traffic impact assessment for the planning proposal states the development does not constitute traffic generating development.</p> <p>Further consultation with Transport for NSW is proposed which has raised the potential for upgrades of intersections with the Pacific Highway.</p>
6.1 Residential Zones	Yes	<p>The planning proposal will enable an increase in permanent dwellings on-site. It is consistent in that it will broaden housing choice, make efficient use of existing infrastructure and be of good design.</p>

3.4 State environmental planning policies (SEPPs)

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

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	Chapter 2 – Coastal Management	Yes	<p>The site lies within the coastal use and coastal environment areas.</p> <p>The SEPP prohibits granting consent to development that will cause adverse impact on the ecological and coastal environment and processes.</p> <p>Under the SEPP, development consent must not be granted to development unless the consent authority:</p> <ul style="list-style-type: none"> • has considered whether the proposed development is likely to cause an adverse impact on access, overshadowing of the foreshore, visual amenity and scenic qualities of the coast; • is satisfied if the impact cannot be avoided – the development is designed, sited and will be managed to minimise that impact; and • has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. <p>Council is not seeking to include a design excellence provision as part of the proposed increased development, nor is there a precinct plan under the development control plan that applies to the site.</p> <p>It is noted that the <i>Lake Macquarie Development Control Plan 2014</i> includes parts dealing with development in tourism zones and foreshore and waterway development. These parts set out controls regarding scenic values, visual impacts, views, solar access, building design, setbacks and a requirement for a masterplan for greater than 50 tourism units.</p>

4 Site-specific assessment

4.1 Environmental

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

Table 8 Environmental impact assessment

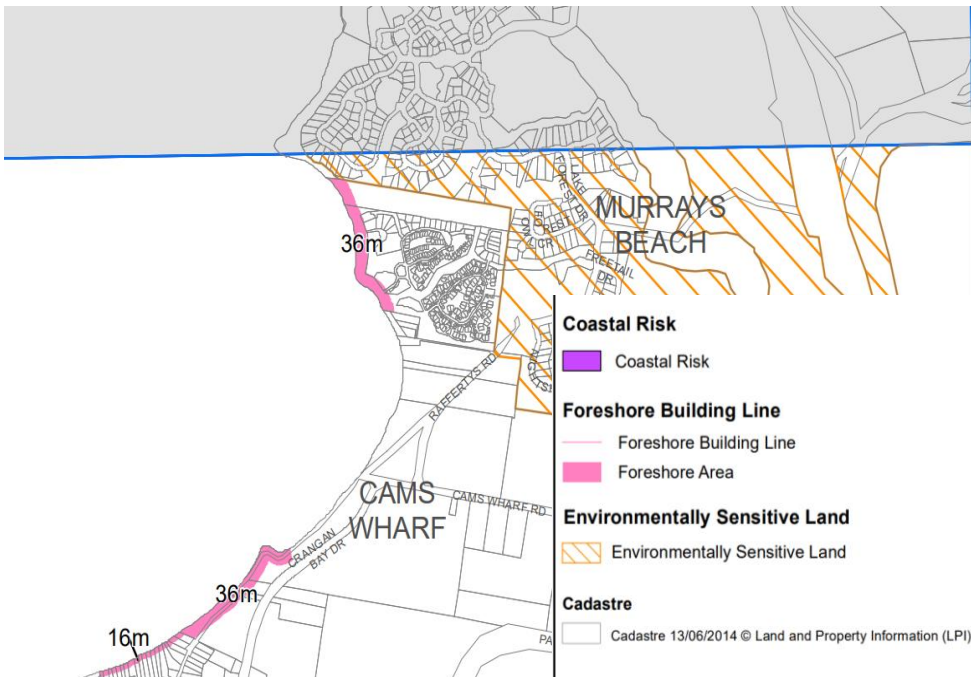
Environmental Impact	Assessment
Vegetation, habitat and threatened species.	<p>The proposed additional height of buildings is on part of the site that have been previously developed and any disturbance of additional vegetation can be minimised.</p> <p>Council has identified threatened ecological communities on part of the site and any future development application would require a flora and fauna assessment.</p>
Foreshore Area	<p>Clause 7.6 of the local environmental plan seeks to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area. It sets the types of development and requirements for consent in the foreshore area.</p> <p>The planning proposal should confirm that none of the proposed development will occur in the foreshore area. Particularly, given the visual impact analysis identified an impact on the waterway and surrounding area.</p> <p>This would also confirm that the proposed development will not generate conflict between people using open space areas or the waterway and opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised.</p>  <p>Coastal Risk</p> <ul style="list-style-type: none"> Coastal Risk <p>Foreshore Building Line</p> <ul style="list-style-type: none"> Foreshore Building Line Foreshore Area <p>Environmentally Sensitive Land</p> <ul style="list-style-type: none"> Environmentally Sensitive Land <p>Cadastre</p> <ul style="list-style-type: none"> Cadastre 13/06/2014 © Land and Property Information (LPI)

Figure 5 Foreshore area (source: local environmental plan)

4.2 Social and economic

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

Table 9 Social and economic impact assessment

Social and Economic Impact	Assessment
Open space	<p>The increase in housing will result in an increased permanent population of up to 50 residents above the current 775 people at Murrays Beach and Cams Wharf.</p> <p>Council has planned the delivery of a new park, playground and tennis courts for a public reserve 700m from this site. This will cater for the total population.</p>
Social impacts	<p>A social impact assessment accompanying the planning proposal identifies that impacts will be limited to the residents of Murrays Beach and Cams Wharf.</p> <p>There is some local concern that due to the increased population and visitor numbers there may be difficulty in the community's ability to gain equitable access to community assets. The social impact assessment has recommended actions to mitigate any impacts including preparation of a plan of management for access to community assets.</p>

4.3 Infrastructure

The site is already developed as a tourist resort with permanent housing included. There is adequate provision of infrastructure and open space and the area is subject to a development contributions plan. In addition, consultation with Transport for NSW will identify upgrades required with the Pacific Highway to accommodate increased traffic due to the increased population and visitation.

5 Consultation

5.1 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- NSW Rural Fire Service;
- Subsidence Advisory NSW;
- Biodiversity Conservation Division; and
- Transport for NSW.

6 Timeframe

Under the *Local Environmental Plan Making Guide (September 2022)*, a standard planning proposal is to achieve the following timeframes:

Stage	Actions	Working Days
Post-Gateway	Review gateway, action conditions, prepare relevant studies and consult with government agencies prior to exhibition.	70 days
Public exhibition and assessment	Undertake public exhibition and consultation with authorities, review of submissions and endorsement of proposal by the planning proposal authority.	115 days
Finalisation	Finalisation of the local environmental plan, including legal drafting and gazettal.	70 days
Total days		255 days

Accordingly, the Department recommends a timeframe of 12 months to ensure it is completed in line with the guide.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is standard the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Recommendation

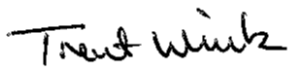
It is recommended the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial direction 4.5 Acid Sulfate Soils is justified;
2. note the consistency with section 9.1 Ministerial directions 1.1 Implementation of Regional Plans; 4.1 Flooding; 4.2 Coastal Management; 4.3 Planning for Bushfire Protection; 4.6 Mine Subsidence and Unstable Land; and 5.1 Integrating Land Use and Transport are unresolved and require justification.

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

1. The planning proposal is to be updated to:
 - a) remove assessment against the Hunter Regional Plan 2036 and replace it with assessment against the *Hunter Regional Plan 2041*;
 - b) add to the planning proposal outcomes that the additional permitted use on part of the site to allow dwellings is to be removed so that the focus is tourism;
2. Prior to approving for finalisation, the planning proposal should clarify the probable maximum flood event peak flood depths and level contours as well as peak flood velocities and volumetric check analysis of potential loss of flood storage where fill is proposed.

3. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* and must be made publicly available for a minimum of 30 working days; and
 - b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines*.
4. Consultation is required with the following public authorities:
 - Biodiversity Conservation Division;
 - NSW Rural Fire Service;
 - Subsidence Advisory NSW; and
 - Transport for NSW.
5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.

 28/2/2023

(Signature)

Trent Wink

A/Manager, Central Coast and Hunter



(Signature)

24 March 2023 (Date)

Dan Simpkins

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