

APPENDIX 10: PAPER SUBDIVISION ANALYSIS REPORT

MidCoast Rural Strategy

Paper Subdivisions Analysis Report

December 2022



Table of Contents

1	INTRODUCTION	4
2	STRATEGIC AND LEGISLATIVE CONSIDERATIONS	6
2.1	Planning for Paper Subdivisions Guidelines	6
2.2	NSW RFS Planning for Bushfire Protection	8
2.3	Other legislation and policy	9
2.4	Ministerial Directions	9
2.5	Hunter Regional Plan 2036	14
2.6	MidCoast Community Strategic Plan 2022-2032	17
2.7	Infrastructure and services	18
	Roads.....	18
	Water and Sewer	19
	Telecommunications and Electricity	20
	Community facilities and services.....	20
2.8	Environmental Considerations.....	20
	Environment and Ecology.....	20
	Flood Prone Land.....	21
	Environmentally Sensitive Areas Clause 3.3	26
3	PAPER SUBDIVISIONS AND CLAUSE 4.2A	27
4	OPTIONS FOR OWNERS OF LAND IN PAPER SUBDIVISIONS	36
4.1	Option 1 Retain – land owner purchases to consolidate	38
4.2	Option 2 Transfer – transfer to Council on hardship grounds.....	40
4.3	Option 3 Pursue – satisfy or change development restrictions	42
	Option 3A – Satisfy existing zone and development standards	42
	Option 3B – Change zone and standards by Subdivision Order	45
5	PAPER SUBDIVISION ANALYSIS BY LOCATION	48
5.1	Rural Strategy Land Use Zone Principles.....	49
	Bundabah.....	50
	Carrington	55
	Coolongolook	60
	Copeland and Copeland Common	66
	Hamilton.....	71
	Krambach.....	76
	Limekilns, Tea Gardens	82
	North Arm Cove	87
	Pindimar North	98
	Pindimar South.....	105
	The Branch	112



	Wingham North (Rifle Range Road)	118
6	LAND OWNER CONTACT FORM	122
7	PLANNING FOR PAPER SUBDIVISION GUIDELINES 2013	124
8	REFERENCES	152

Table of Tables

Table 1. Values and Outcomes from MidCoast CSP 2022-2032 relevant to Paper Subdivisions	17
Table 2. Dwelling entitlement search applications in the MidCoast LGA 2016-2021	30
Table 3. Development Applications reliant upon a Clause 4.6 variation to lot size in MidCoast	32

Table of Figures

Figure 1. Paper Subdivisions adjoining Port Stephens Bay	4
Figure 2. Three options available to owners of land in a paper subdivision	37

1 Introduction

This analysis report presents the findings of a review of paper subdivisions within the rural areas of the MidCoast local government area.

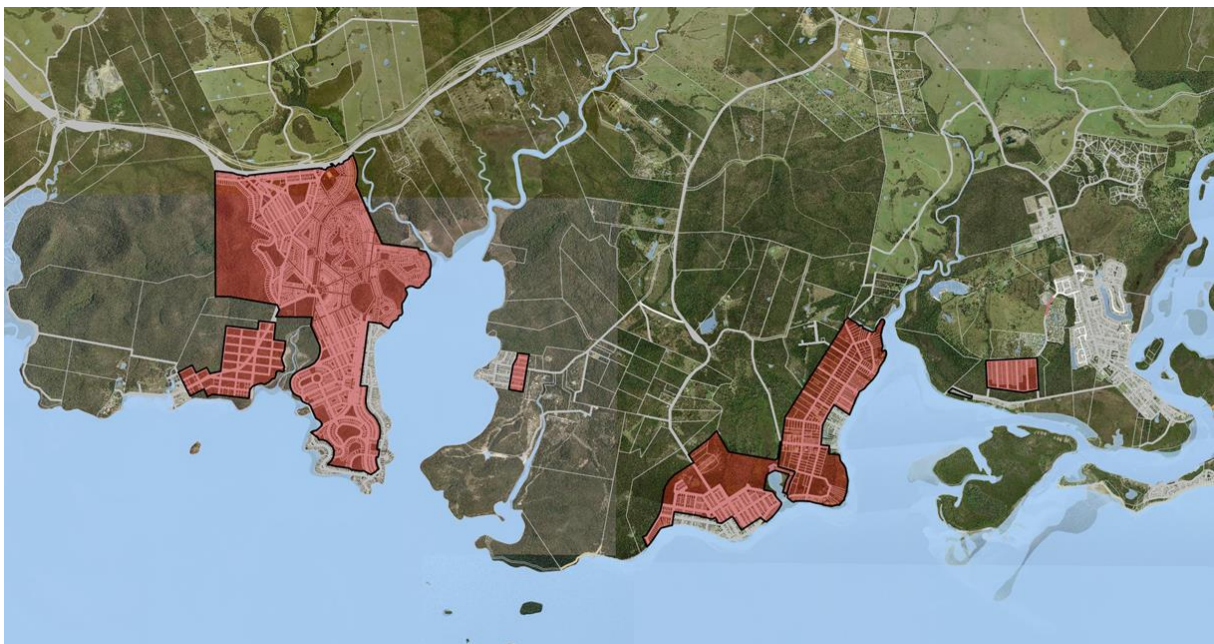
A 'paper subdivision' is a term used to describe land containing lots that only have recognition on paper and, in most cases, have no formed roads, drainage, reticulated water, sewer or electricity. Most paper subdivisions have been in existence for many years, some originating as long ago as the late 1800s or early 1900s.

Paper subdivisions exist for many reasons and can be found in various locations including but not limited to North Arm Cove, Pindimar, Bundabah, Carrington and the former gold mining town of Copeland.

Many of these locations historically formed part of large rural holdings owned by the Australian Agricultural Company.

In the early 1900s some areas were planned as towns for returned soldiers or put forward as a location for the new Australian capital. Subdivision and concept plans were prepared to reflect these aspirations, but the land remained part of the larger property holding.

Figure 1. Paper Subdivisions adjoining Port Stephens Bay



When planning legislation came into force in the 1960s, irrespective of the conceptual subdivision plans, an urban zone was generally only applied to those areas where existing development was identified.

As a result, our towns and villages were recognised in planning legislation, but the remaining areas became 'non-urban' paper subdivisions, that did not have the same development rights.

When the land in these paper subdivisions was sold by the original companies, evidence from the time shows that most lots were on-sold to mum-and-dad investors on the promise that the land would be rezoned for urban purposes to allow a dwelling on their land.

As a result, some families have owned land in paper subdivisions for several decades in the belief that the land would be rezoned.

Despite advice from Council that planning legislation does not allow urban development in these areas and that rezoning is highly unlikely due to legislative, policy and locational constraints, land owners continue to question when the land will be rezoned to allow development.

The enquiries about rezoning land in paper subdivisions have been exacerbated in recent years as a result not only of increasing property prices in metropolitan areas and a growing interest in making a sea- or tree-change to the MidCoast, but increased property pressures in regional areas as a result of the desire to relocate in response to the social and economic impacts of Covid-19.

At the commencement of the Rural Strategy program, MidCoast Council recognised that the ongoing uncertainty about the future of land in paper subdivisions must be addressed and that clear and consistent recommendations must be provided as part of the new MidCoast planning framework. This resolve has only increased with the more recent pressures, ongoing concern and interest from the owners of land within paper subdivisions about the future use of their land.

The purpose of this analysis report is to:

1. provide a transparent and consistent analysis of the constraints that apply to identified paper subdivisions;
2. provide high-level recommendations on the future conservation or development opportunities for these areas; and
3. provide clear and consistent information on the options available to land owners, based on this analysis and the State planning framework that applies.

This report provides a high-level review of the challenges and opportunities in using land within paper subdivisions. It documents three options available to land owners and potential planning controls and criteria for an assessment framework for these areas.

The report includes an analysis of several paper subdivisions within the MidCoast. However, it is acknowledged that:

- the paper subdivisions identified in the appendix are not exhaustive;
- this report does not address in detail, individual under-size rural allotments that are not within an identified paper subdivision; and
- the analysis is high-level and strategic in nature, based on information and data available at the time of writing.

The report therefore achieves two key outcomes based on the information currently available:

- A. The Paper Subdivision Analysis Report provides zone, land use and development standard recommendations consistent with the over-arching MidCoast Rural Strategy – The Way Forward, for implementation in the draft MidCoast Local Environmental Plan program; and
- B. The Paper Subdivision Analysis Report identifies the key issues and constraints that would require further investigation and resolution should land owners collectively, wish to fund and pursue a development outcome using the process outlined within the Department's [Planning for Paper Subdivisions Guideline](#).

The MidCoast Rural Strategy - The Way Forward outlines the key planning controls that are proposed in the draft MidCoast Local Environmental Plan and Development Control Plan program along with details on clauses proposed for specific issues.

2 Strategic and legislative considerations

This section outlines the strategic planning policies and legislative controls that apply specifically to land within paper subdivisions and would be considered as part of any proposal to rezone or develop these lands.

The following strategies and legislation have been reviewed and are discussed given their influence upon the current and potential use of these lands, and this is reflected in the high-level analysis of the paper subdivisions documented within this report:

- Planning legislation including [Schedule 7](#) of the Environmental Planning and Assessment Act 1979 and [Part 10](#) of the Environmental Planning & Assessment Regulations 2021;
- NSW Government Planning for Paper Subdivisions Guidelines and associated documents including frequently asked questions;
- [NSW RFS Planning for Bushfire Protection](#) – matters for planning proposals to rezone land
- [Local Planning \(Ministerial\) Directions](#) as amended in 2022– matters for planning proposals to rezone land;
- [Hunter Regional Plan 2036](#) – matters for planning proposals to rezone land;
- [MidCoast Community Strategic Plan 2022-2032](#); and
- Infrastructure and services guidelines.

2.1 Planning for Paper Subdivisions Guidelines

The [Planning for Paper Subdivisions Guidelines](#) have been prepared by the Department of Planning & Environment to supplement the Environmental Planning and Assessment (EP&A) Act 1979 and Environmental Planning and Assessment (EP&A) Regulations 2021 provisions relating to land in paper subdivisions. A complete copy of the guidelines and associated frequently asked questions is provided as an annexure to this report.

The Guidelines, in conjunction with the provisions of [Schedule 7 of the EP&A Act](#) and Part 10 of the EP&A Regulations, establish a process to develop land in an identified paper subdivision. Under Schedule 7, the Minister for Planning and Public Spaces can issue of a Subdivision Order that can empower a nominated authority to manage the development and re-subdivision of the land, but only if:

- the Minister is of the opinion that it is desirable to do so to promote and co-ordinate the orderly and economic use and development of the land affected by the order, and
- the land has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works, and
- that land is subject to an environmental planning instrument, or a planning proposal, that will facilitate the proposed planning purpose and assess land as suitable for development, and
- the Minister has consulted with relevant authorities and the Council, and
- the Minister is satisfied that a development plan for that land has been prepared by the relevant authority in accordance with Schedule 7 and the Regulations, and
- the Minister has considered any provisions of the development plan that modify or disapply the provisions of [Division 4 of Part 3 of the Land Acquisition \(Just Terms Compensation\) Act 1991](#), and

- at least 60% of the total number of owners of that land, and the owners of at least 60% of the total area of that land, have consented to the proposed development plan.

A Development Plan is an important and essential part of this process requiring the cooperation of landowners and potential financial commitment. A development plan is to contain the following matters, as specified in Schedule 7 of the EP&A Act:

- (a) *a proposed plan of subdivision for the land,*
- (b) *details of subdivision works to be undertaken for the land,*
- (c) *details of the costs of the subdivision works and of the proposed means of funding those works,*
- (c1) *details of the development plan costs,*
- (d) *details of the proportion of the costs referred to in paragraphs (c) and (c1) to be borne by the owners of the land and of the manner in which the owners may meet those costs (including details of any proposed voluntary land trading scheme or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions),*
- (e) *rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated,*
- (f) *rules as to the distribution of any surplus funds after the completion of subdivision works for the land,*
- (g) *any other matters prescribed by the regulations.*

In locations where this has occurred since the Guidelines were introduced in 2014, it is noted that the paper subdivisions are generally near other existing urban lands, able to be integrated into existing services and infrastructure, and are located in areas where the demand for urban growth has been demonstrated. These areas are also generally identified for urban expansion as part of an urban growth strategy.

Current examples of where Schedule 7 of the EP&A Act and the Guidelines are being used to realise a development outcome in NSW include:

- [Riverstone Scheduled Lands](#) - Landcom
- [Paper Subdivisions](#) - Shoalhaven City Council
- [Wye West Paper Subdivision](#) - Lake Macquarie City Council

It is important to note that, based on the existing examples of where the Guidelines are being used to transition land in a paper subdivision to urban land with infrastructure and services:

- the process of securing a rezoning, appointing a Relevant Authority, preparing a *Development Plan*, obtaining Ministerial approval and issuing the *Subdivision Order*, subdivision and development approval, finalising funding and distribution of returns may take several years;
- landowners may be required to enter into legal agreements to contribute financially to the preparation and implementation of a *Development Plan* and associated studies and investigations without a guarantee of an individual development outcome, this would include the costs of any ecological studies, traffic management plans, bushfire hazard assessments and the like required to prepare the *Development Plan*;
- the original paper subdivision plan usually requires significant changes to meet current legislation requirements for urban development including but not limited to infrastructure, services, bush fire asset protection, recreation areas, ecological off-sets and water sensitive design;

- only some land owners will achieve a development outcome and these land owners are usually required to: compensate land owners who do not, contribute to construction costs for infrastructure and services, and fund development contributions and any ecological off-set rehabilitation and management costs based on the agreements in place under the Development Plan.

2.2 NSW RFS Planning for Bushfire Protection

[Planning for Bush Fire Protection 2019](#) is considered best practice in the provision of bush fire protection standards and continues to evolve and provide improved protection for people and their properties in bush fire prone areas.

The [National Strategy for Disaster Resilience](#) (COAG 2011) emphasises the importance of the strategic planning system in contributing to the creation of safer and sustainable communities. The Strategy identifies risk-based land management and planning arrangements as a vital component in building disaster resilient communities.

Planning for Bush Fire Protection 2019 provides development standards for designing and building on bush fire prone land in New South Wales. Of relevance to the Rural Strategy, the document also provides clear standards and guidance for strategic land use planning to ensure that new development is not exposed to high bush fire risk:

2.3 Strategic planning

Strategic planning is the preparation of planning instruments and policies and includes the making of Local Environmental Plans (LEPs), Development Control Plans (DCPs), housing strategies and other planning instruments that identify proposed uses and land zonings. This also includes any associated strategic proposals and studies.

The strategic planning phase of development is particularly important in contributing to the creation of safer and sustainable communities (COAG 2011). It is an effective way of achieving bush fire protection objectives in new developments.

Strategic bush fire planning and studies are needed to avoid high risk areas, ensure that zoning is appropriate to allow for adequate emergency access, egress, and water supplies, and to ensure that future compliance with this document is achievable.

The most important objective for strategic planning is to identify whether new development is appropriate subject to the identified bush fire risk on a landscape scale. An assessment of proposed land uses and potential for development to impact on existing infrastructure is also a key element of the strategic planning process in bush fire prone areas. Land use planning policies can be introduced to limit the number of people exposed to unacceptable risk.

4.1 Strategic principles

Local land use strategies and LEPs should consider and identify land affected by natural hazards and direct development away from inappropriate and constrained lands. In a bush fire context, strategic planning must ensure that future land uses are in appropriate locations to minimise the risk to life and property from bush fire attack.

Strategic planning should provide for the exclusion of inappropriate development in bush fire prone areas as follows:

- *the development area is exposed to a high bush fire risk and should be avoided;*
- *the development is likely to be difficult to evacuate during a bush fire due to its siting in the landscape, access limitations, fire history and/or size and scale;*

- *the development will adversely affect other bush fire protection strategies or place existing development at increased risk;*
- *the development is within an area of high bush fire risk where density of existing development may cause evacuation issues for both existing and new occupants; and*
- *the development has environmental constraints to the area which cannot be overcome¹.*

For the purposes of the Rural Strategy, a strategic review of development potential across the rural landscape of the MidCoast and paper subdivisions, must therefore take into consideration:

- Bush fire landscape assessment – risk based on existing vegetation and topography;
- Land use assessment – risk profile of potential urban development;
- Access and egress – capacity of existing road networks to and within the location;
- Emergency services – availability, accessibility and capacity within the location;
- Infrastructure – availability and suitability of reticulated water systems; and
- Adjoining land – impact of new or additional development on bush fire management.

2.3 Other legislation and policy

Several other Acts and Regulations and policy initiatives are relevant and would need to be considered depending on the circumstances of each location and include:

- Biodiversity Conservation Act 2016, the biodiversity assessment methodology (including the need to apply the avoid – mitigate / minimise – offset hierarchy) and application of the biodiversity offset scheme; and
- NSW Department of Planning's new flood prone land requirements.

2.4 Ministerial Directions

In NSW Ministerial Directions issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*, must be considered when preparing a new Local Environmental Plan, proposing to rezone land, reduce a minimum lot size for subdivision, increase a height of building control or amend any other provision in an existing local environmental plan.

Most land in paper subdivisions is in a rural or conservation zone, and land owners are seeking to change to a residential zone in order to build individual dwellings on their property.

In this regard, even when land in a paper subdivision is already in an urban zone, the process of preparing a *Development Plan* could result in changes to the zone, land uses, lot sizes and density of development.

This would not only require the Relevant Authority to prepare appropriate on-site studies and reports for a development assessment process but may require amendments to an existing local environmental plan. If this is required, the following Ministerial Directions would need to be considered:

¹ [Planning for Bush Fire Protection 2019 \(nsw.gov.au\)](https://www.nsw.gov.au/planning/bush-fire-protection)

Focus area 1: Planning Systems

Implementation of Regional Plans

Objective - The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

Application - This direction applies to a relevant planning authority when preparing a planning proposal for land to which a Regional Plan has been released by the Minister for Planning.

Direction 1.1 - (1) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

Focus area 3: Biodiversity and Conservation

3.1 Conservation Zones

Objective - The objective of this direction is to protect and conserve environmentally sensitive areas.

Application - This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction 3.1 - (1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

Other Ministerial Directions may also apply to rezoning proposals on sites with identified environmental constraints:

Focus area 4: Resilience and Hazards

4.1 Flooding

Objectives - The objectives of this direction are to:

- (a) ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land. Application This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Direction 4.1

(1) A planning proposal must include provisions that give effect to and are consistent with:

- (a) the NSW Flood Prone Land Policy,
- (b) the principles of the Floodplain Development Manual 2005,
- (c) the Considering flooding in land use planning guideline 2021, and
- (d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.

- (2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.
- (3) A planning proposal must not contain provisions that apply to the flood planning area which:
- i. permit development in floodway areas,
 - ii. permit development that will result in significant flood impacts to other properties,
 - iii. permit development for the purposes of residential accommodation in high hazard areas,
 - iv. permit a significant increase in the development and/or dwelling density of that land,
 - v. permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,
 - vi. permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,
 - vii. are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or
 - viii. permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.
- (4) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:
- (a) permit development in floodway areas,
 - (b) permit development that will result in significant flood impacts to other properties,
 - (c) permit a significant increase in the dwelling density of that land,
 - (d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,
 - (e) are likely to affect the safe occupation of and efficient evacuation of the lot, or
 - (f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.
- (5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.

4.2 Coastal Management

Objective - The objective of this direction is to protect and manage coastal areas of NSW.

Application - This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Direction 4.2

- (1) A planning proposal must include provisions that give effect to and are consistent with:
 - (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
 - (b) the NSW Coastal Management Manual and associated Toolkit;
 - (c) NSW Coastal Design Guidelines 2003; and
 - (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.
- (2) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:
 - (a) within a coastal vulnerability area identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021; or
 - (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:
 - (i) by or on behalf of the relevant planning authority and the planning proposal authority, or
 - (ii) by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.
- (3) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.
- (4) A planning proposal for a local environmental plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021:
 - (a) Coastal wetlands and littoral rainforests area map;
 - (b) Coastal vulnerability area map;
 - (c) Coastal environment area map; and
 - (d) Coastal use area map.

Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or by a Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.

Note: Under section 10(2) of the Coastal Management Act 2016, any provision of an LEP that identifies a coastal management area (or part of such an area) must not be made without the recommendation of the Minister administering the Coastal Management Act 2016.

4.3 Planning for Bushfire Protection

Objectives - The objectives of this direction are to:

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

Application - This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land.

This applies where the relevant planning authority is required to prepare a bush fire prone land map under section 10.3 of the EP&A Act, or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.

Direction 4.3

- (1) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.
- (2) A planning proposal must:
 - (a) have regard to Planning for Bushfire Protection 2019,
 - (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
 - (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ).
- (3) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:
 - (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
 - (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,
 - (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
 - (d) contain provisions for adequate water supply for firefighting purposes,
 - (e) minimise the perimeter of the area of land interfacing the hazard which may be developed,

- (f) introduce controls on the placement of combustible materials in the Inner Protection Area.

2.5 Hunter Regional Plan 2036

The [Mid North Coast Regional Strategy 2006-2031](#) and subsequent [Hunter Regional Plan 2036](#) offer the following insights for rural housing and development:

- The NSW Government generally promotes a place-based approach to identify and facilitate the housing development needs relevant to a specific area. This generally directs Councils to prepare local strategies to identify and describe localities and current characteristics of areas within their jurisdiction.
- Outside of towns and villages, there is a strong emphasis on ensuring new housing does not result in the fragmentation of rural lands, particularly where lands have potential value for agricultural production or biodiversity conservation.

The MidCoast narrative in the also identified population and housing outcomes relevant to this paper as follows:

The new MidCoast Council will have to consider the needs of diverse communities within a regional setting. It will have to capitalise on the opportunities provided by urban centres, rural areas and the natural environment to form a thriving economy based on food production, tourism, manufacturing and services that meet the needs of an ageing and growing population.

Regional priorities

Provide housing, services and facilities, as well as accessible public spaces for an ageing population.

Centres and employment

Regionally significant centres and employment land clusters:

- *Strategic centres: Forster–Tuncurry, Taree*
- *Centres of local significance: Gloucester, Old Bar, Wingham, Tea Gardens–Hawks Nest, Harrington, Diamond Beach, Bulahdelah, Nambucca, Hallidays Point and Stroud.*

Housing

Future housing and urban renewal opportunities:

- *Deliver existing Urban Release Areas at Fig Trees on the Manning, Brimbin, Hallidays Point, Old Bar, Manning River Drive Business Park (employment), Tea Gardens and South Forster.*
- *Manage environmental values and residential growth in North Tuncurry.*
- *Investigate renewal and infill housing opportunities in Taree, Forster–Tuncurry, Old Bar and Tea Gardens–Hawks Nest that respond to changing demographics.²*

The narrative clearly implies that there is an expectation for residential development and housing to remain concentrated within the existing urban areas of the MidCoast through a program of urban consolidation and renewal. The NSW government also promotes a place-based approach to identify and facilitate the housing development needs relevant to a specific area which enables individual paper subdivisions to be considered on place planning principles.

² <https://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans/Hunter/Hunter-regional-plan/Local-government-narratives>

The following directions and actions are particularly relevant to the consideration of land within paper subdivisions and clarification of the future conservation or development opportunities within these areas of the rural landscape of the MidCoast.

Goal 1 – The Leading regional economy in Australia

Direction 13: Plan for greater land use compatibility

Managing the compatibility of land uses requires a whole-of-government response.

The NSW Government will continue to engage with communities, interest groups and industry around land use conflict to better understand all sides of the debate. This will assist with future policy-making and initiatives that balance the economic, social and environmental needs of the Hunter community.

Action 13.3 Amend planning controls to deliver greater certainty of land use.

Goal 3 – Thriving communities

Direction 20: Revitalise existing communities

The region is home to diverse communities located throughout the Hunter's urban areas, towns, villages and rural localities. These places have unique histories and a strong sense of identity. Concentrating development in existing areas will revitalise communities. It can reinforce and enhance the sense of community and belonging.

Action 20.1 Accelerate urban revitalisation by directing social infrastructure where there is growth.

Goal 4 – Greater housing choice and jobs

Direction 21: Create a compact settlement

Focusing development in locations with established services and infrastructure increases the appeal of these places for new residents. In locations with good access to public transport and services, it makes sense to identify new opportunities for redevelopment and renewal. Greater Newcastle, coastal areas including Nelson Bay and Forster-Tuncurry, and other towns across the region have potential for this type of development.

Action 21.4 Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values.

Action 21.7 Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.

Direction 22: Promote housing diversity

There are also discrete sectors of the community that are seeking particular types of housing; for example, students, older people, short term visitors, visitors accessing health services and low income households. Better understanding of the needs of these groups and how they differ across the region will help inform strategic and infrastructure planning and delivery.

Action 22.5 Include guidance in local land use strategies for expanding rural villages and rural-residential development so that such developments will:

- not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;
- not impact on drinking water catchments;
- not result in greater natural hazard risk;

- occur on land that is unlikely to be needed for urban development;
- contribute to the conservation of important biodiversity values or the establishment of important corridor linkages; and
- facilitate expansion of existing and new tourism development activities in agricultural or resource lands and related industries across the region.

Direction 23: Grow centres and renewal corridors

The Plan identifies regionally significant centres known as strategic centres. These and other smaller local centres operate as part of a network. Each centre provides a different service, role and/or function in the region. Strategic centres will be the focus for population and/or economic growth over the next 20 years.

There are other locally significant centres with administrative and service roles that will support surrounding communities. The capacity of these local centres to accommodate additional housing will need to be investigated where plans are not already in place.

Action 23.1 Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.
MidCoast LGA Strategic Centres - Forster-Tuncurry and Taree

Direction 26: Deliver infrastructure to support growth and communities

Growth will be supported by plans that collect contributions towards the cost of enabling and supporting infrastructure. The delivery of infrastructure and services will be aligned with the preferred staging of development. Development that occurs outside of this sequencing will be required to pay a greater proportion of infrastructure costs. Greater collaboration between the NSW Government and councils on strategic planning and sequencing will enable all infrastructure providers to plan and deliver infrastructure that responds to demand.

Action 26.1 Align land use and infrastructure planning to maximise the use and capacity of existing infrastructure and the efficiency of new infrastructure.

Action 26.2 Enable the delivery of health facilities, education, emergency services, energy production and supply, water and waste water, waste disposal areas, cemeteries and crematoria, in partnership with infrastructure providers.

Action 26.5 Ensure growth is serviced by enabling and supporting infrastructure.

2.6 MidCoast Community Strategic Plan 2022-2032

At the local-level additional policy considerations are set out in a range of documents that offer goals, directions and actions to complement, or provide more detail, than those provided in the Hunter Regional Plan 2036.³

MidCoast 2030 was the first Community Strategic Plan prepared for the new 10,000 square kilometre MidCoast local government area created in May 2016. Within this Plan we valued: our unique, diverse and culturally rich communities; a connected community; our environment; our thriving and growing economy; strong leadership and shared vision:

We strive to be recognised as a place of unique environmental and cultural significance. Our strong community connection, coupled with our innovative development and growing economy, builds the quality of life we value.

This Plan was recently reviewed and updated with the new *MidCoast Community Strategic Plan (CSP) 2022-2032* and associated *2022-2026 Delivery Program and 2022-2023 Operational Plan*.

Within these documents, we continue to recognise that balancing development and conservation is important to maintaining our environmental and economic attributes, that contribute towards a prosperous and rewarding lifestyle for residents of the MidCoast.

Council also acknowledged that by providing timely and appropriate information, our community can participate in our strategic planning programs and better understand our land use planning decisions.

Table 1. Values and Outcomes from MidCoast CSP 2022-2032 relevant to Paper Subdivisions

WE VALUE... our environment
<i>Community Outcome 2: An integrated and considered approach to managing our natural and built environments</i> <i>Our natural environment is protected and enhanced, while we maintain our growing town centres and manage our resources wisely.</i>
<i>2.1 We protect, manage and restore our natural environment and our biodiversity</i> <i>2.1.1 Protect, maintain and rehabilitate natural areas</i>
<i>2.2 We understand and manage environment and climate change risks and impacts</i> <i>2.2.1 Promote understanding of place-based risks and vulnerabilities and develop resilience and adaptation plans Provider Planner Advocate SES, residents and rate payers, Resilience NSW, Fire Management</i> <i>2.2.2 Climate change risk management planning and adaptation frameworks are applied in development proposals, infrastructure planning and land use planning</i>
<i>2.5 We balance the needs of our natural and built environment</i> <i>2.5.1 Practice integrated land use planning that balances the environmental, social and economic needs of present and future generations and our existing natural, heritage and cultural assets</i>

³ [Plans and reports - MidCoast Council \(nsw.gov.au\)](https://www.midcoastcouncil.nsw.gov.au/plans-reports)

WE VALUE... strong leadership and shared vision

Community Outcome 4: Strong leadership and good governance

Council is focused on being sustainable, well-governed, and delivering the best outcomes for the community.

4.1 The Community has confidence in Council decisions and planning for the future

4.1.1 Enable the community to participate in decisions that affect them

2.7 Infrastructure and services

A key consideration for paper subdivisions is the lack of existing infrastructure and services to most locations, and the potential cost of providing access, water, sewer, power and other infrastructure associated with urban forms of development. Noting that these costs are borne primarily by the land owner or developer and only after funding the pre-development costs associated with:

- preparing a *Development Plan* i.e. environmental studies, traffic management plans, bush fire hazard assessment reports and any associated costs;
- application fees for planning proposals to rezone land (if necessary);
- subdivision applications, any associated studies and registration;
- potential compensation for land owners without a development outcome; and
- development applications to build, and development contributions paid prior to construction.

Given these are largely unknown, Council have sought to provide some guidance on the infrastructure opportunities, constraints and costs associated with the development of land, with a focus on the additional challenges for land paper subdivisions.

Roads

Crown Roads comprise land corridors set aside for legal access and were established during the settlement of NSW, they can also be referred to as 'paper roads' or 'road reserves'. When they were first established, they provided legal access routes to parish portions and allotments established in the subdivision of the Crown estate⁴.

There are many 'paper roads' in the MidCoast, including those associated with subdivision and land use in the 1800s and early 1900s by the Australian Agricultural Company. Crown Roads were also created as 'dunny cart' laneways in many towns and villages.

Crown Roads are the management responsibility of the NSW Department of Industry – Lands and Water and are primarily managed through both the [Roads Act 1993](#) and the [Crown Land Management Act 2016](#).

Crown Roads can also be transferred to another roads authority to manage if it is considered the most suitable option. This could occur when the intended use of a Crown road has changed and by transferring the road over to another responsible authority, such as a Council, the road can be maintained to a suitable standard thereby providing access to local communities and the public.

⁴ NSW Department of Industry – Land and Water 2018(a)

The criteria for determining whether a Crown Road is suitable for transfer to Council or another roads authority are outlined in the Requirements section of Administration of Crown Roads Policy and each proposed transfer is considered on a case by case basis⁵.

Crown Roads may also be sold or closed. Roads may be sold in two ways. Firstly, the department administers Crown road sales in accordance with Section 152B of the Roads Act ('Road purchases'). Sale of a Crown road under this section is suitable when the purchaser of the road is an adjoining landholder.

Alternatively, when a person wants to purchase a Crown road does not own the adjoining land, the department may consider closing the road under Section 37 of the Roads Act before administering the sale of the land ('Road closure and purchase')⁶. The sale of a closed road would then be administered in accordance with the Crown Land Management Act 2016.

The NSW land registry guidelines also state that roads in the Australian Agricultural Company's land grant (former Shires of Gloucester and Great Lakes) may only be closed if they have been dedicated to the public as public road by means of a notice in the Government Gazette or by prescription. Roads not dedicated as public roads remain in the name of the Company.

Title to these lands may only be obtained by the preparation of a Primary Application claiming the road by possession under the *Limitations Act 1969*. That is, a landowner who has proven that they have occupied certain land under Common Law may have enough evidence of ownership. The time period for such evidence ranges from 30 to 60 years.

It is noted that in some locations the Australian Agricultural Company has also sold 'road reserves' and these lands remain in separate, private ownership. This situation is known to have occurred in a portion of the North Arm Cove paper subdivision.

The costs associated with purchasing road reserves, pursuing occupation under Common Law, are unknown. In addition, the construction costs associated with providing upgrades to major collector roads, intersection improvements and construction of new local roads providing access to individual properties would need to be costed during the preparation of any Development Plan.

Water and Sewer

In preparing this report, Council officers have sourced copies of the *NSW Reference Rates Manual Valuation of water supply, sewerage and stormwater assets (2013-2014)* and the *NSW Water Supply & Sewerage Construction Cost Indices (June 2020 Update - NSW Water Supply and Sewerage Construction Cost Indices)* and they are attached to this report for information.

For most paper subdivisions in the MidCoast, there are no water or sewer services available, therefore each location would require a full system design, with a range of options and cost estimates for each option.

Some high-level requirements to be considered in developing each option would include, but not necessarily be limited to:

- new or expanded water reservoir and all new reticulation pipework;
- new water treatment plant, pumps and transfer mains; and
- new sewer treatment plant, reticulation, manholes and sewer pump stations (depending on the topography).

⁵ NSW Department of Industry – Land and Water 2018(a)

⁶ NSW Department of Industry – Land and Water 2018(a)

Telecommunications and Electricity

Additional costs associated with the provision of power to new subdivisions and individual properties and telecommunications (if necessary), could not be sourced at the time of writing, but should be costed during the preparation of any Development Plan.

Community facilities and services

New communities, particularly if remote from existing urban centres, need to have access to a range of community facilities and services provided by all tiers of government.

2.8 Environmental Considerations

Environment and Ecology

In response to community feedback on the draft Rural Strategy and the Paper Subdivision Analysis Report, paper subdivisions throughout the MidCoast have been revisited with specific attention being paid to their ecology and biodiversity. This analysis focused on providing snapshots from publicly-available information contained within the NSW Office of Environment and Heritage (OEH) Biodiversity Map (BV Mapping) and the NSW Department of Planning and Environment BioNet Atlas Threatened Species records.

The BV Mapping is a tool managed by the NSW Office of Environment and Heritage that “identifies land with high biodiversity values that [are] particularly sensitive to impacts from development and clearing.” The Biodiversity Values Map is updated every 90 days. This map represents an up to date snapshot of identified aspects of Biodiversity Values of lands throughout NSW.

The mapping reflects attributes such as:

- coastal wetlands and littoral rainforests;
- core koala habitats as identified under a gazetted koala plan of management;
- Ramsar wetlands;
- land containing threatened species / threatened ecological communities identified as potential serious and irreversible impact entities;
- riparian land, old growth forest, rainforest; and
- declared areas of outstanding biodiversity value.

Land can be of demonstrated and scientifically recognised high biodiversity value and not be currently identified on the NSW Biodiversity Values Map.

The BioNet Atlas is a spatial database of records of sightings of plant and animal species across NSW. It is administered by the NSW Department of Planning and Environment. The BioNet Atlas includes records of plants and animals that are listed as threatened species in the NSW *Biodiversity Conservation Act 2015*.

Threatened species are those species that are at risk of extinction in the wild, unless the threatening forces are alleviated or managed. There are almost 1,000 plant or animal species in NSW that are listed as threatened.

The BioNet Atlas is not a comprehensive inventory of all species, nor of all locations of species in NSW. Except in areas where detailed survey information has been incorporated into the database, the search results for an area are based on a mix of reported sightings. Further,

some species are not publicly identified on the BioNet Atlas due to their sensitivity to disturbance.

As such, because a locality is identified as not containing records of certain threatened plants or animals, it does not mean that such threatened species are absent from that area. BioNet records are always obtained as part of the first phase of any biodiversity examination of land and are a useful guide to the presence of threatened plant and animal populations.

BioNet also illustrates wildlife corridors. A wildlife corridor is a link that joins two or more larger areas of wildlife habitats. They are critical for the maintenance of ecological processes; as they allow for the movement of animals and the continuation of viable populations.

The Department of Environment and Conservation has mapped key regional and sub-regional corridors and key regional habitats across NSW to provide a framework of key fauna habitats and linking corridors. The key habitats and corridors mapping is regionally based and not absolute at a property scale. Whilst subject to limitations, it does provide a spatially complete, integrated planning framework for strategic landscape conservation considerations.

Flood Prone Land

Recent flood events across NSW have resulted in significant changes to how flood prone land is considered in land use strategies and environmental planning instruments. In particular, the Local Planning Directions that must be complied with when preparing a new Local Environmental Plan include the following requirements:

Local Planning Direction 4.1 Flooding (commenced 1 March 2022)

Objectives

The objectives of this direction are to:

- (a) ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.*

Application

This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Direction 4.1

- (1) A planning proposal must include provisions that give effect to and are consistent with:*
 - (a) the NSW Flood Prone Land Policy,*
 - (b) the principles of the Floodplain Development Manual 2005,*
 - (c) the Considering flooding in land use planning guideline 2021, and*
 - (d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.*

- (2) *A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.*
- (3) *A planning proposal must not contain provisions that apply to the flood planning area which:*
- (a) permit development in floodway areas,*
 - (b) permit development that will result in significant flood impacts to other properties,*
 - (c) permit development for the purposes of residential accommodation in high hazard areas,*
 - (d) permit a significant increase in the development and/or dwelling density of that land,*
 - (e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,*
 - (f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,*
 - (g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or*
 - (h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.*
- (4) *A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:*
- (a) permit development in floodway areas,*
 - (b) permit development that will result in significant flood impacts to other properties,*
 - (c) permit a significant increase in the dwelling density of that land,*
 - (d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,*
 - (e) are likely to affect the safe occupation of and efficient evacuation of the lot, or*
 - (f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.*
- (5) *For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council*

Within the context of the whole of the MidCoast, it is noted that there are significant areas of flood-prone land and land subject to flood related development controls. Many of these areas are already within a development zone.

However, it is also recognised that in certain locations where there is a likelihood of additional or intensification of development within a high-risk flood area, there may be an opportunity to

change the land use zone to reflect the flood risk and limit future risks to life and property. Any rezoning of land for this purpose would have to be consistent with a risk-based assessment and review program, consistent with State policy requirements.

In this regard it is also important to note recent changes to the Standard Instrument LEP have also included amendments to the assessment of development on flood prone land under *Clause 5.21 Flood planning* and *Clause 5.22 Special flood considerations*, directly aimed at the protection of life and property within the parameters of the land use planning framework:

5.21 Flood planning [compulsory]

(1) The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(4) A word or expression used in this clause has the same meaning as it has in the *Considering Flooding in Land Use Planning Guideline* unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the *Considering Flooding in Land Use Planning Guideline* published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the *Floodplain Development Manual*.

Floodplain Development Manual means the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

5.22 Special flood considerations [optional]

(1) The objectives of this clause are as follows—

- (a) to enable the safe occupation and evacuation of people subject to flooding
- (b) to ensure development on land is compatible with the land's flood behaviour in the event of a flood,
- (c) to avoid adverse or cumulative impacts on flood behaviour,
- (d) to protect the operational capacity of emergency response facilities and critical infrastructure during flood events,
- (e) to avoid adverse effects of hazardous development on the environment during flood events.

(2) This clause applies to—

- (a) for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and
- (b) for development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may—
 - (i) cause a particular risk to life, and
 - (ii) require the evacuation of people or other safety considerations.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) will not affect the safe occupation and efficient evacuation of people in the event of a flood, and
- (b) incorporates appropriate measures to manage risk to life in the event of a flood, and
- (c) will not adversely affect the environment in the event of a flood.

(4) A word or expression used in this clause has the same meaning as it has in the *Considering Flooding in Land Use Planning Guideline* unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline—see clause 5.21(5).

flood planning area—see clause 5.21(5).

Floodplain Development Manual—see clause 5.21(5).

probable maximum flood has the same meaning as it has in the Floodplain Development Manual.

sensitive and hazardous development means development for the following purposes—

(a) [list land uses]

Direction — Only the following land uses are permitted to be included in the list—

- (a) boarding houses,
- (b) caravan parks,
- (c) correctional centres,
- (d) early education and care facilities,
- (e) eco-tourist facilities,
- (f) educational establishments,
- (g) emergency services facilities,
- (h) group homes,
- (i) hazardous industries,
- (j) hazardous storage establishments,
- (k) hospitals,
- (l) hostels,
- (m) information and education facilities,
- (n) respite day care centres,
- (o) seniors housing,
- (p) sewerage systems,
- (q) tourist and visitor accommodation,
- (r) water supply systems.

Land use zone recommendations in the Rural Strategy or this Paper Subdivision Analysis Report do not change the flood prone status of land or the application of insurance premiums to flood prone land.

Council is however, required to undertake flood studies which may identify flood hazards and potential risks to life and property. Council is also required to provide information on flood prone land and the application of flood-related development controls in good faith, within planning instruments and planning certificates where this information is available.

Environmentally Sensitive Areas Clause 3.3

Standard Instrument LEP Clause 3.3 does not determine if land is environmentally sensitive but provides clear guidance on land where exempt and complying development is not allowed, due to environmental criteria:

Clause 3.3 Environmentally sensitive areas excluded [compulsory]

(1) *Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development.*

(2) *For the purposes of this clause—*

environmentally sensitive area for exempt or complying development means any of the following—

- (a) *the coastal waters of the State,*
- (b) *a coastal lake,*
- (c) *land within the coastal wetlands and littoral rainforests area (within the meaning of the Coastal Management Act 2016),*
- (d) *land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997,*
- (e) *land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,*
- (f) *land within 100 metres of land to which paragraph (c), (d) or (e) applies,*
- (g) *land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,*
- (h) *land reserved under the National Parks and Wildlife Act 1974 or land acquired under Part 11 of that Act,*
- (i) *land reserved or dedicated under the Crown Land Management Act 2016 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,*
- (j) *land that is a declared area of outstanding biodiversity value under the Biodiversity Conservation Act 2016 or declared critical habitat under Part 7A of the Fisheries Management Act 1994.*

Direction — *Additional areas may be added to this list.*

Within this clause there is also an option for each Council to include additional criteria, and this is illustrated by the additional criteria in Great Lakes Local Environmental Plan 2014 to exclude areas within 100m from coastal waters and coastal lakes.

3 Paper Subdivisions and Clause 4.2A

A 'paper subdivision' is a term used to describe land containing lots that only have recognition on paper and, in most cases, have no formed roads, drainage, reticulated water, sewer or electricity. Most paper subdivisions have been in existence for many years, some originating as long ago as the late 1800s or early 1900s.

Land in paper subdivisions may have a wide variety of owners, who have purchased the lots as an investment with the hope that one day they may be zoned to enable development to occur. Land may also be owned by companies or public authorities. The fragmented, diverse ownership is often one of the barriers to development.

While the subdivision pattern of many paper subdivisions may reflect an urban form of development, the land use zoning and lot sizes are often not compatible with current standards or requirements for urban development. In addition, there is usually limited or no infrastructure to enable urban development on this land.

Across the MidCoast the provisions of *Clause 4.2A Erection of dwelling houses on land in certain rural and environmental protection zones*, determine the use and occupation of land within paper subdivisions.

This clause is based on a Model Clause prepared by the Department of Planning, Industry and Environment and limits not only the potential subdivision of rural and environmental land, but the development potential of allotments that are less than the existing minimum lot size specified for rural and conservation zones.

The [Model Clause 4.2A](#) and explanatory information is provided below:

This model clause has been drafted to reflect most dwelling house provisions in existing LEPs. The clause should be used by all councils that currently permit dwelling houses in rural and/or environment protection zones or intend to in the new comprehensive SI LEPs.

The model clause introduces a definition for "existing holding" for the purpose of this provision only. Where a council currently has a provision in an EPI that permits the erection of a dwelling house on an existing holding/parcel or like provisions, then the existing date that appears in the current planning controls must be used in the new SI LEP. The date cannot be changed. A council may also choose to sunset this provision within a specified time period.

One of the objectives is to enable the replacement of lawful dwelling houses, e.g. due to destruction (fire), or where the land no longer enjoys a dwelling entitlement due to changes to the planning provisions applying to the land.

If it is proposed to allow dual occupancies to be detached the following controls may be included in the clause:

- the second dwelling should be located on the same parcel of land as the existing dwelling, or*
- if the second dwelling is not located on the same parcel as the existing dwelling the clause should require, by condition of consent, the lots to be consolidated.*

Clause 4.2A Erection of dwelling houses on land in certain rural and environmental protection zones

(1) The objectives of this clause are as follows:

- (a) to minimise unplanned rural residential development, and*
- (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.*

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*

- (c) Zone RU3 Forestry,
- (d) Zone RU4 Primary Production Small Lots,
- (e) Zone RU6 Transition,
- (f) Zone C2 Environmental Conservation,
- (g) Zone C3 Environmental Management.
- (h) Zone C4 Environmental Living

Drafting direction. If any of the above rural or environmental protection zones are zones in the Plan but are excluded from the application of this clause, they should be omitted from subclause (2). Zones where dwellings are prohibited are not to be included (e.g. C1 National Parks and Nature Reserves).

(3) Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:

- (a) a lot that is at least the minimum lot size specified for that lot by the Lot Size Map, or
- (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
- (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
- (d) an existing holding.

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

Drafting direction. If the intention is to permit secondary dwellings or dual occupancies as well as dwelling houses, then the specific types of dwellings for which the clause is to apply should be listed and the heading of the clause altered. Paragraph (d) should be included only if the council's current planning controls contain a provision for the erection of dwellings on an existing holding/parcel or a like provision in an existing EPI that relates to land ownership being held at a certain date. The Council may choose to sunset this provision within a specified time period.

(4) Land ceases to be an existing holding for the purposes of subclause (3)(d), if an application for development consent referred to in that subclause is not made in relation to that land before [insert date]

Drafting direction. The intention of this subclause is to provide a sunset on when applications in relating to existing holdings may be made so that dwellings can no longer be erected on existing holdings after the date specified in this subclause. (This subclause may be omitted if a sunset provision is not required and if so, the following subclauses should be renumbered.)

(5) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:

- (a) there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or
- (b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road, public reserve or for another public purpose, or
 - (iii) a consolidation with adjoining public road, a public reserve or for another public purpose.

Drafting direction. If subclause (3) (d) is not adopted, "or a holding" should be removed from subclause (5) (b).

(6) In this clause: existing holding means all adjoining land, even if separated by a road or railway, held in the same ownership:

(a) on [insert date], and

(b) at the time of lodging a development application for the erection of a dwelling house under this clause and includes any other land adjoining that land acquired by the owner since [insert date].

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

Drafting directions. If subclause (3) (d) is not adopted, subclause (6) is not required. If subclause (6) is required, the date to be inserted in paragraph (a) is the date that currently appears in the current planning controls applying to the land. It is optional for the Council to include or exclude the words below subclause (6) (b). A paragraph (c) may be included in subclause (6) to limit the definition of existing holdings to a specific part of the LGA.⁷

The Greater Taree, Great Lakes and Gloucester Local Environmental Plans all contain a variation of this clause and additional, related restrictions on other forms of residential, tourist and visitor accommodation on land without a dwelling entitlement.

One of the key challenges associated with replacing the three existing local environmental plans with one clear and consistent MidCoast Local Environmental Plan is to address the inconsistencies associated with existing holdings/dwelling entitlements and the resolution of long-standing issues associated with paper subdivisions. In this regard, it is noted that the plans specify different dates, related to when dwelling entitlement controls first appeared:

Gloucester LEP 2010	Great Lakes LEP 2014	Greater Taree LEP 2010
17 October 1969	15 May 1964	2 June 1967

A recent proposed amendment to the Junee local environmental plan removed the clause relating to dwelling entitlements by introducing a sunset provision. The proposal was supported by evidence that very few applications were submitted each year for dwelling entitlement searches. Within the proposal it was stated:

The average number of requests per year is 3.7 requests regarding the existing holding status of land.

Potentially, multiple requests are submitted regarding the same land, when particular parcels are offered for sale. From these requests, one or two development applications are lodged per year trying to take advantage of the existing holding provisions in Clause 4.2A.

Due to the small number of applications and requests for status of existing holdings, and the intended strategic direction and protection for rural lands, it has been decided to completely remove all reference to existing holdings in Clause 4.2A. Insertion of 'sunset clause' for existing holdings - giving a period of time prior to the expiry of the existing holding provisions - will be included for a period of 12 months after the making of the plan.⁸

Similar research was undertaken within the MidCoast local government area during preparation of this report to determine if this was also a reasonable option in this location.

⁷ 4.2A Erection of dwelling houses in rural and enviro zones FINAL WEB tds (nsw.gov.au)

⁸ Removal of Existing Holdings Provisions from Clause 4.2A of the Junee LEP 2012 | Planning Portal - Department of Planning and Environment (nsw.gov.au)

Noting that the data has been sourced from four separate property information systems, the information in Table 2 below, gives a clear indication of the dwelling entitlement search trends across the MidCoast since merger in May 2016.

The data has been gathered across the former Gloucester, Great Lakes and Greater Taree Local Government Areas and the new MidCoast Local Government Area. A single property and information system for the MidCoast was established in December 2020 and data for the 2020-21 financial year is representative up to April 2021 only.

Table 2. Dwelling entitlement search applications in the MidCoast LGA 2016-2021

Financial Year	Gloucester	Great Lakes	Greater Taree	MidCoast	Total/Year
2020-21	4	27*	53*	38	122
2019-20	12	33	58		103
2018-19	13	39	54		106
2017-18	3	44	68		115
2016-17	9	65	65		139
Average number of dwelling entitlement searches per financial year					117

**The above figures are based on receipt of Dwelling Entitlement Applications only. They do not include searches performed as part of a development application assessment i.e. a search may also be required if the lot size is less than the minimum development standard, and the application has been lodged without evidence of a prior dwelling entitlement search.*

The consistent number of applications indicate that the dwelling entitlement searches may not only be for land within paper subdivisions, but on other, under-sized rural allotments that also have limited development potential but are not readily identifiable across the rural landscape.

As a result, development applications for dwellings on individual under-sized rural allotments may also be lodged with a request to vary the minimum lot size requirement, using the provisions of Clause 4.6 of the local environmental plan.

4.6 Exceptions to development standards [compulsory]

(1) *The objectives of this clause are as follows—*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Direction— Additional exclusions may be added.

The data on the number of development applications reliant upon a Clause 4.6 variation to the minimum lot size development standard, is of significantly less consequence, with less than 10 recorded per year based on available records.

Table 3. Development Applications reliant upon a Clause 4.6 variation to lot size in MidCoast⁹

2018	2019	2020	2021
7	2	1	1

Note: the data on Clause 4.6 variations is recorded by calendar year, based on the date of approval of the development application, and the 2021 data is correct at the time of writing.

A significant number of Clause 4.2A Dwelling Entitlement Searches and small number of development applications reliant upon Clause 4.6 variations are received.

In addition to the proposed clauses, Council should also provide clarity on:

- the location and extent of the known paper subdivisions, and where possible, information on the anticipated future conservation or development outcomes for these lands; and
- additional criteria for assessment of development applications on under-sized allotments across the rural landscape that are otherwise reliant upon the provisions of Clause 4.6.

The following draft clauses are recommended:

Clause 4.2A Erection of dwelling houses on land in certain rural and conservation zones

- (1) *The objectives of this clause are as follows:*
 - (a) *to minimise unplanned rural residential development, and*
 - (b) *to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.*
- (2) *This clause applies to land in the following zones:*
 - (a) *Zone RU1 Primary Production*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone RU4 Primary Production Small Lots,*
 - (d) *Zone C2 Environmental Conservation,*
 - (e) *Zone C3 Environmental Management.*
 - (f) *Zone C4 Environmental Living*
- (3) *Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:*
 - (a) *a lot that is at least the minimum lot size specified for that lot by the Lot Size Map,*
or
 - (b) *a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
 - (c) *a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) *an existing holding.*

Note. *A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.*

- (4) *Land ceases to be an existing holding for the purposes of subclause (3)(d), if an application for development consent referred to in that subclause is not made in relation to that land before [insert date]*

⁹ [Development Standards Variations Register - MidCoast Council \(nsw.gov.au\)](https://www.nsw.gov.au/development-standards-variations-register)

- (5) *Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:*
- (a) *there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or*
 - (b) *the land would have been a lot referred to in subclause (3) had it not been affected by:*
 - (i) *a minor realignment of its boundaries that did not create an additional lot, or*
 - (ii) *a subdivision creating or widening a public road, public reserve or for another public purpose, or*
 - (iii) *a consolidation with adjoining public road, a public reserve or for another public purpose.*
- (6) *Despite any other provision of this clause, deferred development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:*
- (a) *the dwelling house is to be located on a lot that can be consolidated to achieve the minimum lot size specified for that land by the Lot Size Map*
- (7) *In this clause:*
- existing holding means all adjoining land, even if separated by a road or railway, held in the same ownership:*
 - (a) *on [insert date], and*
 - (b) *at the time of lodging a development application for the erection of a dwelling house under this clause and includes any other land adjoining that land acquired by the owner since [insert date].*

Note. *The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.*

Clause 4.6 Exceptions to development standards [compulsory]

- (1) *The objectives of this clause are as follows—*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*

- (a) *the consent authority is satisfied that—*
 - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
 - (c) *the subdivision does not satisfy the requirements of the Site responsive subdivision clause (number unknown at this time)*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*
 - (ca) *clause 6.1, 6.2 or 6.3. (urban release areas)*
 - (cb) *Clause 4.2A (houses on land in certain rural and conservation zones)*
 - (cc) *local clauses relating to land within identified paper subdivisions (number unknown at this time)*

It is noted that lodgement of a development application on land that does have a dwelling entitlement under Clause 4.2A or is based on a Clause 4.6 variation to the minimum lot size standard, does not guarantee approval to build.

Development applications that have been refused are not recorded on the Clause 4.6 Register.

In paper subdivisions and across the rural landscape significant site constraints can preclude development, including but not limited to a lack of legal and constructed access, insufficient land area to build and provide on-site sewage disposal, bushfire risks and evacuation strategies, flooding and other environmental constraints.

4 Options for Owners of land in Paper Subdivisions

This analysis report aims to provide additional guidance and information to land owners so that they can make an informed decision about the development potential of their land if it is located within a paper subdivision.

Therefore, the purpose of the recommended planning framework and locational analysis is to:

1. provide a transparent and consistent analysis of the existing known constraints affecting development potential of land within identified paper subdivisions;
2. provide high-level recommendations on the future conservation or development opportunities for these areas based on this preliminary analysis; and
3. provide clear and consistent information on the options available to land owners, based on this analysis.

In order to provide consistent information and clear potential development or conservation outcomes across the identified paper subdivisions, a high-level desktop analysis has been undertaken and is contained in Section 5.

This has been undertaken in good faith by Council as a first step to provide a consistent approach to the identification of constraints and opportunities that may affect the development potential of land within a paper subdivision.

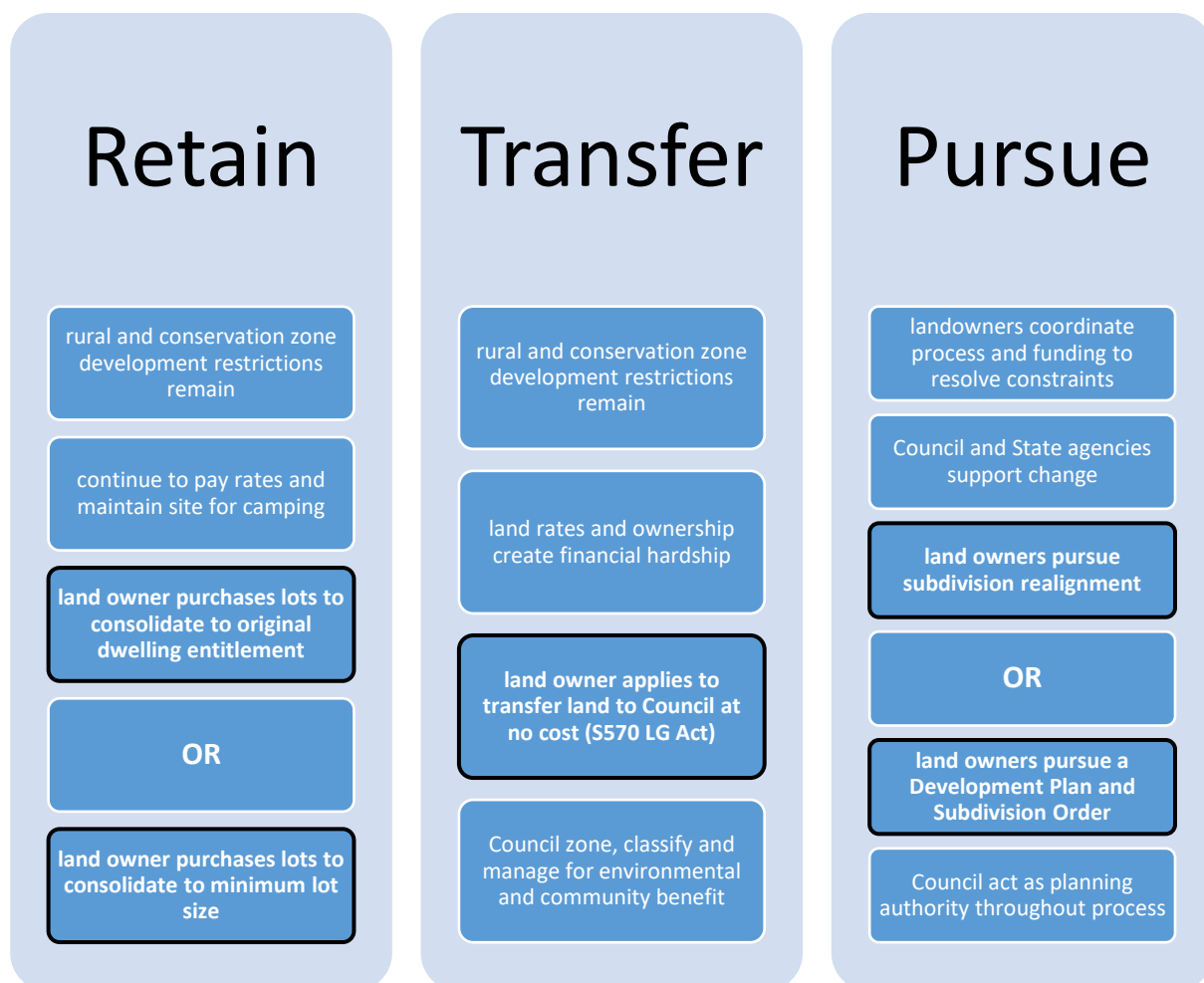
This analysis has been undertaken irrespective of any known or existing dwelling entitlements i.e. in some locations the dwelling entitlement provisions of Clause 4.2A may already be extinguished, by existing development or the transfer of individual allotments Council.

The options discussed below, and the recommendations in Section 5 are based on the information available at the time of writing and should not be taken as an exhaustive identification of potential constraints or an exhaustive identification of locations where paper subdivisions exist in the MidCoast.

A place-based approach has been taken in considering the matters identified in Section 5 and any other considerations relevant to a particular place.

Within the parameters of existing legislation and restrictions to development in paper subdivisions it is noted that three primary options are available to land owners, as summarised in Figure 2 below.

Figure 2. Three options available to owners of land in a paper subdivision



4.1 Option 1 Retain – land owner purchases to consolidate

Under this scenario, landowners can continue to use their land as a [temporary camping site](#) and are responsible for the ongoing payment of rates and management of the site while they aim to consolidate.

There are two consolidation options available to land owners to establish the right to apply to build on land within a paper subdivision:

- The land owner can pursue the purchase of allotments until the configuration matches an original 'existing holding' as at the date in Clause 4.2A; or
- The land owner can purchase adjoining allotments until the minimum lot size of generally 40ha or 100ha, is achieved.

It should be noted that the consolidation of lots to achieve either of these outcomes still does not guarantee development consent for a dwelling if the site is not suitable for development after a consideration of all matters required to be taken into consideration in determining a development application under Section 4.15 of the EP&A Act.

Examples are available in existing local environmental plans as to how both individual lots and lots within paper subdivisions can be addressed through consolidation requirements, supplementary to Clause 4.2A and Clause 4.6 objectives and criteria.

Pittwater Local Environmental Plan 2014

7.9 Residual lots

- (1) *The objective of this clause is to ensure undersized and constrained lots are not developed in isolation.*
- (2) *This clause applies to land at—*
 - (a) 159A McCarrs Creek Road, Church Point, being Lot 17, DP 243387, and
 - (b) 171A McCarrs Creek Road, Church Point, being Lot 1, DP 114169, and
 - (c) 183 McCarrs Creek Road, Church Point, being Lot 102, DP 839311.
- (3) *Development consent must not be granted for development on land to which this clause applies, unless—*
 - (a) *the lot is, or has been, consolidated with one or more adjoining lots to form a registered Torrens title lot, and*
 - (b) *the size of any lot resulting from such consolidation is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

Blue Mountains Local Environmental Plan 2015

4.1G Lot consolidation in certain industrial and environment protection zones

- (1) *The objectives of this clause are as follows—*
 - (a) *to require the consolidation of certain lots on environmentally sensitive land,*
 - (b) *to manage premature subdivisions on the urban and bushland interface,*
 - (c) *to protect and manage areas of high ecological or scenic landscape value by preventing development on parcels of an inadequate size that may compromise those values.*
- (2) *This clause applies to land shown edged blue on the [Lot Size Map](#) that is in Zone IN1 General Industrial, Zone C3 Environmental Management or Zone C4 Environmental Living.*

- (2A) *Development consent must not be granted to development on land to which this clause applies that is in Zone IN1 General Industrial unless the land (including drainage reserves and unformed roads adjoining any lots) has been, or will be consolidated to create a lot that has an area of land that is at least the minimum lot size shown for the land in Zone IN1 General Industrial on the [Lot Size Map](#).*
- (3) *Development consent must not be granted to development on land to which this clause applies that is in Zone C3 Environmental Management unless the land (including drainage reserves and unformed roads adjoining any lots) has been, or will be consolidated to create a lot that has an area of land that is at least the minimum lot size shown for the land in Zone C3 Environmental Management on the [Lot Size Map](#).*
- (4) *Development consent must not be granted for the erection of a dwelling house on land to which this clause applies that is in Zone C4 Environmental Living unless the land has been, or will be consolidated to create a lot that has an area of land that is at least the minimum lot size shown for the land in Zone C4 Environmental Living on the [Lot Size Map](#).*
- (4A) *If a lot contains land in 2 or more zones, including land in Zone C2 Environmental Conservation, the area of land that is in Zone C2 Environmental Conservation is to be included in calculating the lot size for the purposes of this clause.*
- (5) *Development consent must not be granted under subclause (3) or (4) unless—*
- (a) no dwelling house has been erected on the land, or*
 - (b) if a development application has been made for development for the purpose of a dwelling house on the land—the application has been refused or it was withdrawn before it was determined, or*
 - (c) if development consent has been granted in relation to any such application—the consent has been surrendered or it has lapsed.*
- (6) *Despite subclauses (2A)–(5), development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.*
- (7) *Despite subclauses (2A)–(6), development consent may be granted to the subdivision of land to which this clause applies if the subdivision—*
- (a) is a realignment of boundaries that does not create an additional lot, or*
 - (b) is for the purpose of creating or widening a public road or public reserve or for another public purpose.*

The Blue Mountains clause has been included in the Rural Strategy and may be considered for inclusion in the MidCoast Local Environmental Plan.

4.2 Option 2 Transfer – transfer to Council on hardship grounds

Land that is in paper subdivisions or undersized that does not have a dwelling entitlement cannot be developed for residential or other urban purposes.

While many land owners believe that this creates an obligation on Council to either rezone the land or undertake some buy-back or compensation scheme, this is not the case.

In some instances land owners stop paying rates to Council and this anecdotally may be in protest for the lack of action taken to rezone, develop or compensate for costs incurred to date. In turn this creates a situation where Council must take action to recoup these costs.

As a result, it is not uncommon for owners to request that Council accept the transfer of their land as payment for rates, charges or accrued interest to remove the ongoing financial burden and liability of these properties.

Section 570 of the Local Government Act, 1993 and Clause 129 of the Local Government (General) Regulation, 2005 provides this mechanism:

The former Great Lakes Council area had a large number of these lots which were found in the North Arm Cove, Pindimar, Bundabah, Carrington, The Branch and Hamilton localities.

Non-urban lands in North Arm Cove are generally heavily vegetated areas with little or no constructed infrastructure or services to support development. Many of the roads were not dedicated as public roads at the time the subdivision was registered, and they remain in private ownership, outside of Council's care and control.

Council has previously considered future settlement opportunities in these areas during the preparation of the Tea Gardens/ Hawks Nest Conservation and Development Strategy in 2003 and the State Government's Mid-North Coast Regional Strategy in 2009. Neither of these documents identified areas of non-urban land as being suitable for future urban growth. As a result of these strategies Council has no plans for rezoning such lands in the foreseeable future.

The State Government has also concluded that all future urban growth in the south-eastern part of the Council area shall be concentrated around Tea Gardens/Hawks Nest in order to make use of the existing developable land, services and infrastructure.

Despite these restrictions on the development potential of these lots the Local Government Act requires that Council must levy rates on all land irrespective of whether it can be built on. Furthermore, the land does not fall within the various categories of land that are exempt from rates and charges under the Act.

This has led to a situation whereby ratepayers after many years of ownership (in many cases) and with no reasonable expectation of being able to build on their land in the future and limited opportunities to sell the land, approach Council seeking to transfer the land to Council in payment of rates, charges and accrued interest.

As mentioned above Council generally receives around 10-15 applications per year. These applications are reported to Council for consideration in the Closed part of the meeting. This is because the business or report relates to a matter that concerns the personal hardship of a resident or ratepayer.

The Act has a general presumption that these matters will be considered in the Closed section of the meeting (Section 10A (2) (b)). Should Council decide to accept the application the details are referred to Council's Solicitors who act for both Council and the ratepayer. The legal fees usually amount to approximately \$1,000 and the process takes around 8 weeks to complete.

Council does budget for the legal fees associated with these transfers and for the rates, charges and accrued interest that is to be paid at settlement as well as for the future rates that will be levied on the land. As part of the resolution accepting the transfer Council generally classifies the land as 'operational' land.

Council will be required to pay existing outstanding rates and future rates as they become due. Council has on-going funds to meet payment of rates. Council has previously met its own costs in such transfers as well as the reasonable costs of the current owner.¹⁰

While much of this information remains relevant, it is noted that:

- while the area of the local government area has increased (Great Lakes compared to MidCoast), the number of paper subdivisions and allotments has not significantly increased. This is due to the significant number of allotments at North Arm Cove and surrounding areas in the former Great Lakes LGA; and
- the costs of transferring the land has increased to approximately \$2000 per allotment, at the time of writing; and
- Council can classify lands to community or operational purposes but will not on-sell this land; and
- in some locations, these areas may be suitable conservation or stewardship sites, which may provide environmental or financial off-sets to the ongoing costs of transfer and management.

The provisions of the Local Government Act and Regulation will continue to be relevant to the ongoing ownership and management of land within paper subdivisions across the MidCoast and should be considered as an opportunity to resolve these issues in the future.

¹⁰ [Meeting Agendas and Minutes - MidCoast Council \(nsw.gov.au\)](#)

4.3 Option 3 Pursue – satisfy or change development restrictions

Alternatively, land owners must seek to change the existing development restrictions on the land within the paper subdivision. In order to consider the viability of this as an option Council has commenced consideration of the key issues that would determine a development or conservation outcome for land within paper subdivisions.

To this end, this report commences but does not resolve, consideration of environmental constraints, infrastructure and service limitations, Council policy requirements and State assessment matters.

These criteria provide a preliminary recommendation that development options could only be considered for certain land within paper subdivisions where:

- Legal and constructed public road access is available to each potential allotment
- Land within the paper subdivision is capable of being developed in accordance with the Planning for Bushfire Protection Guidelines 2019 (or as amended)
- Preliminary environmental constraint assessment demonstrates that potential allotments are not affected by:
 - known environmentally sensitive vegetation (Cl.3.3 of SI LEP) such as wetlands, endangered ecological communities (EEC), threatened species, commonwealth protected flora or fauna;
 - steep land of 18% (32 degrees);
 - identified flooding or coastal hazards, including sea level rise
- Potential allotments have access to reticulated water and sewer services; or

Within the MidCoast, based on the high-level analysis undertaken and documented in the appendix of this report, this option has two potential pathways:

- A. to satisfy the recommended zone and minimum lot size provisions; or
- B. pursue a *Development Plan* and *Subdivision Order* using the Planning for Paper Subdivision Guidelines.

Option 3A – Satisfy existing zone and development standards

Where the number of land owners is low, it may be possible to pursue a subdivision and development application process, utilising the recommended zone and minimum lot size provisions to reconfigure existing subdivision patterns.

An existing example of how the development potential of land within a paper subdivision may be reflected in a local environmental plan is available in the Lake Macquarie LEP, as it relates to land at South Buttaba Hills:

7.13 Development on certain land at Boolaroo, Buttaba and North Wallarah Peninsula

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that the redevelopment of the former Pasminco Cockle Creek Smelter site, the former Incitec Pivot Fertilizer site at Boolaroo and the South Buttaba Hills paper subdivision site is developed in accordance with sound planning principles that recognise the site constraints and the requirement for integration with adjoining urban areas,*

- (b) *to ensure that North Wallarah Peninsula is developed in accordance with sound planning principles and the development takes into account the environmentally sensitive area.*
- (2) *This clause applies to the following land—*
 - (a) *land identified as “Former Pasminco and Incitec sites” on the [Key Sites Map](#), being the former Pasminco Cockle Creek Smelter site and the former Incitec Pivot Fertilizer site, Boolaroo,*
 - (b) *land identified as “Buttaba Hills” on the [Key Sites Map](#), being the South Buttaba Hills paper subdivision site,*
 - (c) *land identified as “North Wallarah” on the [Key Sites Map](#).*
- (3) *Development consent must not be granted for development on land to which this clause applies unless a development control plan that provides for the matters specified in subclause (4) has been prepared for the land.*
- (4) *The development control plan must provide for all of the following—*
 - (a) *a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
 - (b) *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
 - (c) *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
 - (d) *a network of active and passive recreation areas,*
 - (e) *stormwater and water quality management controls,*
 - (f) *amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
 - (g) *detailed urban design controls for significant development sites,*
 - (h) *measures to encourage higher density living around transport, open space and service nodes,*
 - (i) *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
 - (j) *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
- (5) *Subclause (3) does not apply to development for any of the following purposes—*
 - (a) *a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
 - (b) *a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environment protection purpose,*
 - (c) *a subdivision of land in a zone in which the erection of structures is prohibited,*
 - (d) *development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated.*
- (6) *In addition to subclause (3), development consent must not be granted to development on land referred to in subclause (2) (a) unless the consent authority is satisfied that—*

- (a) *provision has been, or will be, made for vehicle access between Munibung Road, Cardiff and T C Frith Avenue, Boolaroo, and*
- (b) *there are no significant land use conflicts between the proposed development and the remediation of the remainder of the site.*¹¹

Noting that the matters in the local clause must be addressed, in addition to the land zone and minimum lot size provisions, which are also identified within the LEP. A version of this clause has been included in the Rural Strategy and may be considered for inclusion in the MidCoast local environmental plan.

¹¹ [Lake Macquarie Local Environmental Plan 2014 - NSW Legislation](#)

Option 3B – Change zone and standards by Subdivision Order

In pursuing Option 3B, additional consideration must also be given to the potential challenges associated with lot configurations and ownership patterns as these constraints may significantly impact on the ability of landowners to achieve the necessary agreements and funding arrangements required to commence and pursue the requirements of the State guidelines.

In this regard, the guidelines established a process that enables the Minister for Planning to make a Subdivision Order to appoint a Relevant Authority and provide that Authority with the powers and functions to implement a Development Plan for the benefit of the landowners. While there is no fee for seeking a Subdivision Order, there will be costs associated with preparing the required Development Plan.

Land owners would be responsible for the costs associated with on-site investigations and reports required to inform preparation of a conceptual Development Plan that complies with current legislation and requirements, and the plan may not provide a development outcome for all land owners.

Noting this, under the provisions in the Act, the Minister may only make a Subdivision Order if at least 60 percent of the landowners, and the owners of at least 60 per cent of the land area, have given their consent to the proposed Development Plan.

Consent to a Development Plan must be obtained through a postal ballot. The proposed regulation provides that the ballot may be conducted by the Relevant Authority or by another body with appropriate expertise, such as the Australian Electoral Commission, on behalf of the Authority. It also provides further detail about the procedure for holding the ballot.

Landowners seeking to use this process are therefore encouraged to hold early discussions with prospective Subdivision Authorities to ensure relevant costs are identified as early as possible, a funding mechanism is established, and a suitable Relevant Authority is available to progress the project. This will reduce the likelihood of incurring costs where the project is unlikely to gain enough land owner support for a Development Plan or not be suitable for a Subdivision Order.

Once a Subdivision Order is issued, the Relevant Authority would then need to work with the landowners to facilitate the development of the land in accordance with the Development Plan. This is likely to involve a range of development activities such as rezoning, obtaining development consents and subdivision works which must also be funded.

Schedule 7 of the Environmental Planning & Assessment Act 1979 states:

development plan costs means the following—

- (a) *the costs of obtaining or preparing any reports,*
- (b) *the amount of any levies, fees or other charges applicable to the proposed subdivision or subdivision works,*
- (c) *administrative costs of the relevant authority relating to the development plan,*
- (d) *any other costs prescribed by the regulations for the purposes of this definition.*

subdivision works means works for the following purposes—

- (a) *roads,*
- (b) *water supply, sewerage services and drainage,*
- (c) *telecommunications,*

- (d) electricity supply,
- (e) any other purpose prescribed by the regulations for the purposes of this definition.

(2) The Minister may make a subdivision order only if—

- (a) the Minister is of the opinion that it is desirable to do so to promote and co-ordinate the orderly and economic use and development of the land affected by the order, and
- (b) the land has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works, and
- (c) that land is subject to an environmental planning instrument, or a planning proposal, that will facilitate the proposed planning purpose, and
- (d) the Minister has consulted with the proposed relevant authority, any other Minister responsible for that authority and the council of the area in which that land is situated, and
- (e) the Minister is satisfied that a development plan for that land has been prepared by the relevant authority in accordance with this Schedule, and
- (f) the Minister has considered any provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), and
- (g) at least 60% of the total number of owners of that land, and the owners of at least 60% of the total area of that land, have consented to the proposed development plan.

(2) A development plan is to contain the following matters—

- (a) a proposed plan of subdivision for the land,
- (b) details of subdivision works to be undertaken for the land,
- (c) details of the costs of the subdivision works and of the proposed means of funding those works,
- (c1) details of the development plan costs,
- (d) details of the proportion of the costs referred to in paragraphs (c) and (c1) to be borne by the owners of the land and of the manner in which the owners may meet those costs (including details of any proposed voluntary land trading scheme or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions),
- (e) rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated,
- (f) rules as to the distribution of any surplus funds after the completion of subdivision works for the land,
- (g) any other matters prescribed by the regulations.¹²

¹² [Environmental Planning and Assessment Act 1979 No 203 - NSW Legislation](#)

Based on the Lake Macquarie examples, following this process in the MidCoast could involve the following stages:

Stage	Key process available in MidCoast local government area
Investigation	Council staff investigate options for allowing development of the paper subdivision (for example this Analysis Report for the nominated paper subdivisions discussed in Section 5)
Options	Council consults with landowners regarding options (Rural Strategy exhibition) <ol style="list-style-type: none"> 1. No change, keep land for temporary camping 2. No change, transfer land in lieu of outstanding rates and charges 3. Potential development (use of Paper Subdivisions Legislation).
Committee	Landowners support recommended option and establish committee to progress. Committee confirms potential <i>Relevant Authority</i> and funding is available to prepare <i>Development Plan</i> and associated reports
Report	Report to elected Council. Resolution to support potential development outcome, otherwise end here.
Resolution	Minister advised of Council resolution and committee request to appoint a <i>Relevant Authority</i> (in accordance with Paper Subdivisions Legislation).
Plan	<i>Development Plan</i> and funding model prepared by <i>Relevant Authority</i>
Ballot	Formal Landowner Ballot to determine support for <i>Development Plan</i> and funding model (in accordance with Paper Subdivisions Legislation).
Determination	60% of landowners and 60% land area in favour of Plan, otherwise end here.
Minister	Apply to the Minister for Planning for a Subdivision Order
Order	Minister for Planning issues Subdivision Order and appoints Relevant Authority, otherwise end here.
Agreement	Landowners enter into a Voluntary Contributions Agreement, or have their land acquired by Relevant Authority
Application	Development application for subdivision prepared in accordance with <i>Development Plan</i> assessed and approved
Approval	Subdivision approval issued, otherwise end here.
Infrastructure	Subdivision works carried out in accordance with <i>Development Plan</i> .
Development	Land traded to (or acquired by) Relevant Authority, sold and surplus returned to original landowner. All residential zoned lots available for development subject to relevant approvals

5 Paper Subdivision Analysis by location

As stated in the introduction of this report, Council has prepared the following information in good faith, for owners of land within paper subdivisions in order to:

1. provide a transparent and consistent analysis of the evidence-based constraints that apply to identified paper subdivisions;
2. provide high-level recommendations on the future conservation or development opportunities for these areas; and
3. provide clear and consistent information on the options available to land owners, based on this analysis and the State planning framework that applies.

To this end, this report commences but does not resolve, consideration of environmental constraints, infrastructure and service limitations, Council policy requirements and State assessment matters. The criteria that have been identified previously in this report and documented in this analysis, provide a high-level analysis only, based on key development principles that would be considered in both planning proposals to rezone land and development applications:

- Legal and constructed public road access is available to each potential allotment
- Land within the paper subdivision is capable of being developed in accordance with the Planning for Bushfire Protection Guidelines 2019 (or as amended)
- Preliminary environmental constraint assessment demonstrates that potential allotments are not affected by:
 - environmentally sensitive vegetation (Cl.3.3 of SI LEP) such as wetlands, endangered ecological communities (EEC), threatened species, commonwealth protected flora or fauna, land identified on the NSW Biodiversity Values map and / or BioNet Atlas Threatened Species Mapping;
 - steep land of 18% (32 degrees), consistent with rural land sharing exclusions;
 - identified flooding or coastal hazards, including sea level rise;
- Potential allotments:
 - have access reticulated water and sewer services; or
 - classified as Low Hazard within the draft MidCoast On-Site Sewage Management Development Assessment Framework Hazard Classification mapping.

Additional consideration is also given to identifying the extent of each paper subdivision, lot configurations and ownership patterns. These factors are unique to each location and may also significantly impact on the ability of landowners to achieve the agreements and funding arrangements required to pursue a development outcome using the State guidelines.

Note: Paper subdivisions that are in public ownership (Council, Crown or another department of the NSW Government), within or identified as suitable for an conservation zone, are not discussed within this analysis.

Note: The Real Property Act, 1862 established a system whereby owners could convert land granted prior to 1863 to Real Property Act title, this was done by what is called a **Primary Application**.

5.1 Rural Strategy Land Use Zone Principles

The application of these zones is guided by the recommendations of the MidCoast Rural Strategy -The Way Forward, in conjunction with the Urban Zoning In program zone review and strategy documents.

Based on this information and the locational analysis that follows, the following table provides a summary of the recommended zone and development standard (minimum lot size) provisions for implementation in the MidCoast local environmental plan:

Location:	Current Zone:	Proposed Zone:	Current Minimum Lot Size (MLS):	Proposed Minimum Lot Size (MLS):
Bundabah	Rural Landscape	Environmental Living	40ha	10ha
Carrington	Rural Landscape	Environmental Management	40ha	20ha
Coolongolook	Rural Landscape	Environmental Living	40ha	10ha
Copeland and Copeland Common	Primary Production	Primary Production Environmental Management	100ha	60ha
Hamilton	Rural Landscape	Environmental Management	40ha	40ha
Krambach	Primary Production	Environmental Living	40ha	10ha
Limekilns, Tea Gardens	Rural Landscape	Environmental Management	40ha	40ha
North Arm Cove	Rural Landscape	Environmental Management	40ha	20ha
Pindimar North	Rural Landscape	Environmental Management	40ha	20ha
Pindimar South	Rural Landscape	Environmental Management	40ha	40ha
The Branch	Rural Landscape	Environmental Management Environmental Living	40ha	40ha on riverfront land 10ha other allotments
Wingham North	Primary Production	Environmental Living	40ha	10ha

Bundabah

Paper Subdivision summary	
Deposited Plan Numbers	10915
Number of lots	75
Area	10 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Bundabah - Paper Subdivision Extent



Description and Context

The Bundabah paper subdivision in the RU2 Rural Landscape zone, is located to the east of the existing Bundabah RU5 Village zoned area. Second Avenue represents the boundary between the paper subdivision and RU5 Village zoned land.

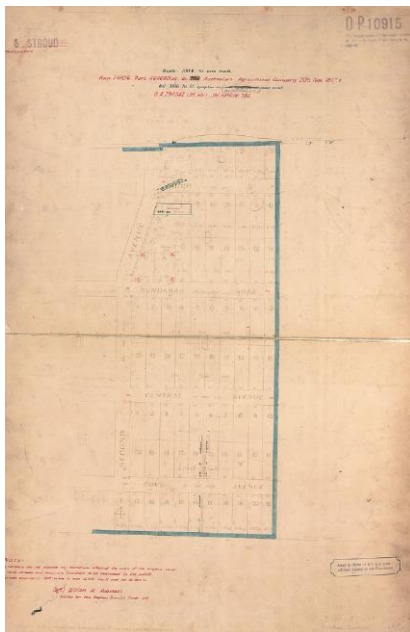
The paper subdivision section of Bundabah is of a uniform grid pattern subdivision with allotments ranging from 670 square metres to 1,214 square metres. The paper subdivision area of Bundabah is generally heavily vegetated with no steep land.

Vehicle access to Bundabah is provided from The Pacific Highway Tea Gardens interchange, via Myall Way, Pindimar Road and Bundabah Road.

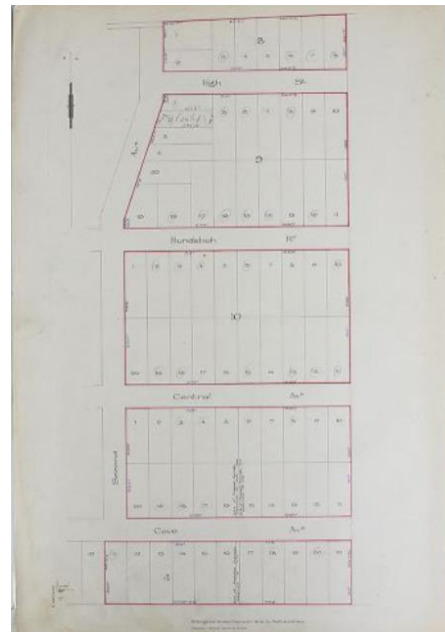
Bundabah - Historic mapping



Primary Application 21806 "A" within Application 18610, being part of the 464,640 acre grant to the Australian Agricultural Company in 1847



Deposited Plan 10915
Date of Survey: 19 November 1920



Certificate of Title 22 July 1922
Port Stephens Bundabah Estate Limited -
Sections 4, 8, 9, 10 and 11

Ownership Pattern of Non-urban Land

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



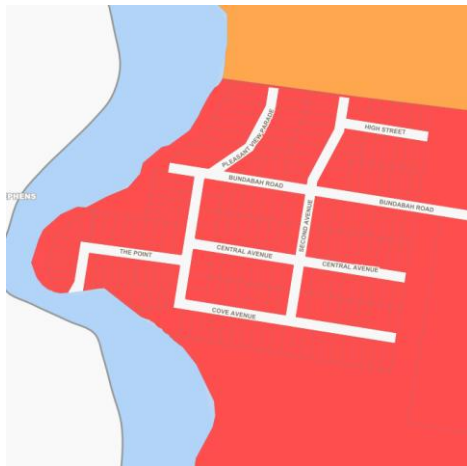
Road Condition and Public Land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



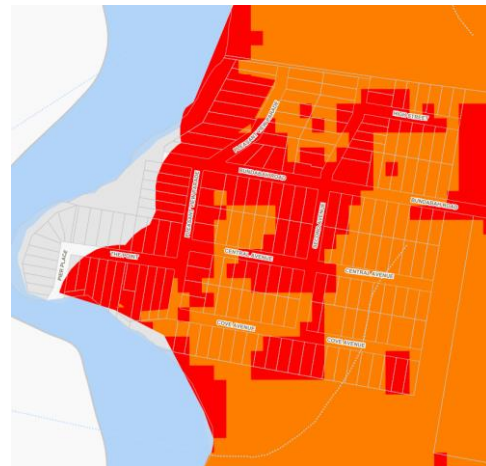
OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High



Bushfire Prone Land Classification

- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2



Port Stephens-Great Lakes Marine Park

- PSGLMP_2007_100mBuffer



Vegetation Cover (NearMaps 2020)



OEH Biodiversity Values Map NSW



Bio-Net Threatened Species Mapping



Biodiversity & Environment

The paper subdivision lots east of the village of Bundabah, are partially mapped on the OEH Biodiversity Values Map as containing “threatened species or communities with potential for serious and irreversible impacts.” Of the 75 paper subdivision lots, 42 lots (56%) are identified on the Biodiversity Values Map. The Bundabah paper subdivision lots form part of a key regional wildlife corridor and immediately adjoin an area where there have been many sightings of threatened plant and animal species.

Infrastructure

The paper subdivision section of Bundabah is accessed via Bundabah Road and Second Avenue. The remaining roads are not maintained by Council. High Street and Central Avenue are unformed providing limited access to allotments. Cove Avenue has been constructed

privately with an asphalt seal as part of a development consent for a wholesale plant nursery in 2003. Bundabah has no reticulated water or sewerage services.

Tenure and subdivision holding pattern

The paper subdivision extent of Bundabah has a very high degree of fragmentation with the existing 75 lots being held by 67 separate owners at the time of writing. Four lots have been transferred to Council in lieu of outstanding rates, fees and charges. The total area of the paper subdivision is approximately 10 hectares and all private property holdings are less than 2 hectares.

Constraints analysis

LOW	MEDIUM	HIGH
Flooding or coastal hazards	Legal and constructed public road access	Planning for Bushfire Protection
Steep land of 18% (32 degrees)	Configuration and ownership	Reticulated water and sewer services
	Environmentally sensitive vegetation/ Biodiversity	OSSM mapping

Recommendation

The paper subdivision of Bundabah has **medium constraints**. It has vegetation cover, high biodiversity values, **high bushfire risks associated with isolation and evacuation**, and allotments would have to achieve high levels of management of on-site sewerage disposal given proximity to the Port Stephens-Great Lakes Marine Park.

However, there is a relatively high number of land owners which may limit any potential development outcome. It is therefore recommended that:

- the paper subdivision extent of Bundabah be identified in the local environmental plan
- land in Crown and Council ownership be identified in an appropriate conservation zone;
- all other land is to be included in an C4 Environmental Living Zone and be allocated a minimum lot size of 10 hectares at this time, to reflect the environmental constraints and management requirements.

Resolution of ownership and environmental constraints within this paper subdivision may make the area suitable for a higher level of development, with the application of an R5 Large Lot Residential zone and minimum lot size of 1hectares.

Key principles that would require resolution as part of a Development Plan for Bundabah would include but not necessarily be limited to:

- a) site constraints such as bushfire, including safe occupation and evacuation
- b) protection and management of environmentally sensitive areas and sites with high ecological value or threatened species habitat
- c) on-site sewage, stormwater and water quality management controls.

Carrington

Paper Subdivision summary	
Deposited Plan Numbers	95448
Number of lots	65
Area	90 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Carrington – Paper Subdivision extent



Description and Context

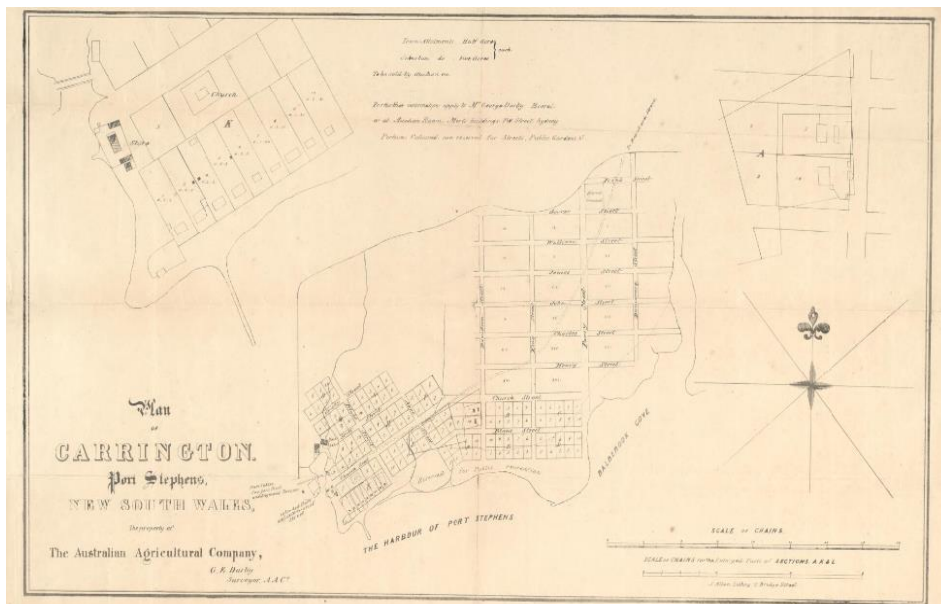
The Carrington paper subdivision in the RU2 Rural Landscape Zone, is located to the east of the existing Carrington RU5 Village zoned area. The land is located on the northern side of Port Stephens and follows a conventional grid pattern subdivision, with lot sizes ranging between 2,000 square metres and 2 hectares. Land within the paper subdivision is heavily vegetated, adjoining coastal wetlands and waterways that form part of the Port Stephens estuary.

Carrington is accessed via Carrington Road, through the adjoining paper subdivision of North Arm Cove, directly from Gooreengi Road, located adjacent to the Pacific Highway.

Carrington, adjacent to Tahlee, the first headquarters of the AA Company in 1826, is described as one of the first planned community towns in Australia. The original Carrington village initially had a 26 man military barracks made of brick, a row of 11 substantial cottages, a surgery, a permanent shearing shed, a butcher shop, offices, workshops, a brick kiln, a timber yard, a jail and two wharves.¹³

¹³ Scanlon 2008 - Tahlee Bible College | NSW Environment, Energy and Science

Carrington - Historic mapping



Plan of Carrington, Port Stephens – Circa 1830



DP 95448 – Sheets 1 & 2 of Map dated June 1903

Ownership Pattern of Non-urban Land

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



Road Condition and Public Land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High



Bushfire Prone Land Classification

- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2



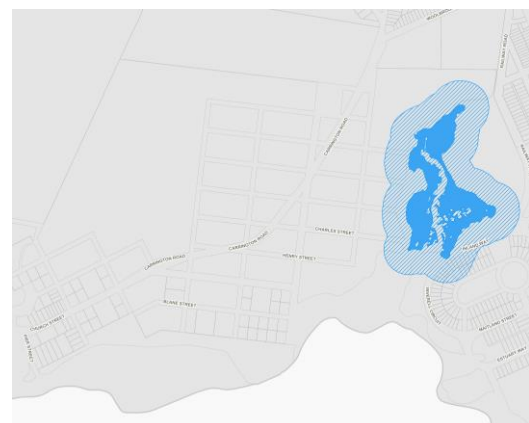
Flood Prone Land and Port Stephens-Great Lakes Marine Park Buffer

- PSGLMP_2007_100mBuffer



Resilience & Hazards SEPP - Coastal Wetlands & Buffer

- Coastal Wetlands
- Coastal Wetland Proximity Area



OEH Biodiversity Values Map NSW



Bio-Net Threatened Species Mapping



Biodiversity & Environment

The majority of the Carrington paper subdivision is covered by the OEH Biodiversity Values Mapping which indicates that the area contains “threatened species or communities with potential for serious and irreversible impacts” The area also forms part of a mapped key regional wildlife corridor and contains known sightings of threatened species.

Infrastructure

The paper subdivision section of Carrington is dissected by Carrington Road, which provides access to the existing village and Tahlee. This is the only road that is constructed and maintained by Council. Carrington has no reticulated water or sewerage services.

Tenure and subdivision holding pattern

Most of the land within the Carrington paper subdivision and surrounding area is in the same ownership. Less than 20 separate individuals own the smaller lots near the village, in holdings generally less than 2 hectares.

Constraints analysis

LOW	MEDIUM	HIGH
Configuration and ownership		Legal and constructed public road access
Flooding or coastal hazards		Planning for Bushfire Protection
Steep land of 18% (32 degrees)		Reticulated water and sewer services
		Environmentally sensitive vegetation/ Biodiversity
		OSSM mapping

Recommendations

The paper subdivision of Carrington is **highly constrained**, with lack of access, limited water and sewage management options and biodiversity values / environmental constraints that would severely restrict development across the paper subdivision. The single road access also represents a significant issue relating to **isolation and evacuation on bushfire prone land**.

However, there is a very **small number of land owners** and potential for the primary land owner to pursue a (clustered / consolidated) development outcome (with concurrent conservation outcomes) in this location. It is therefore recommended that:

- the paper subdivision extent of Carrington be identified in the local environmental plan;
- land affected by coastal wetlands be rezoned C2 Environmental Conservation;
- all other land is to be included in an C3 Environmental Management Zone and retain a minimum lot size of 20 hectares at this time, to reflect the environmental constraints and management requirements.

Key principles that would require resolution as part of a Development Plan for Carrington would include but not necessarily be limited to:

- a) reflecting the historic character of the location;
- b) site constraints and hazards such as fire, flood, coastal erosion and inundation, including safe occupation and evacuation;
- c) integrated provision of services, facilities and infrastructure;
- d) protection and management of environmentally sensitive areas and sites with high ecological or scenic landscape value; and
- e) stormwater and water quality management controls.

Coolongolook

Paper Subdivision summary	
Deposited Plan Numbers	758278
Number of lots	56
Area	55 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Coolongolook – Defined Paper Subdivision Extent



Description and Context

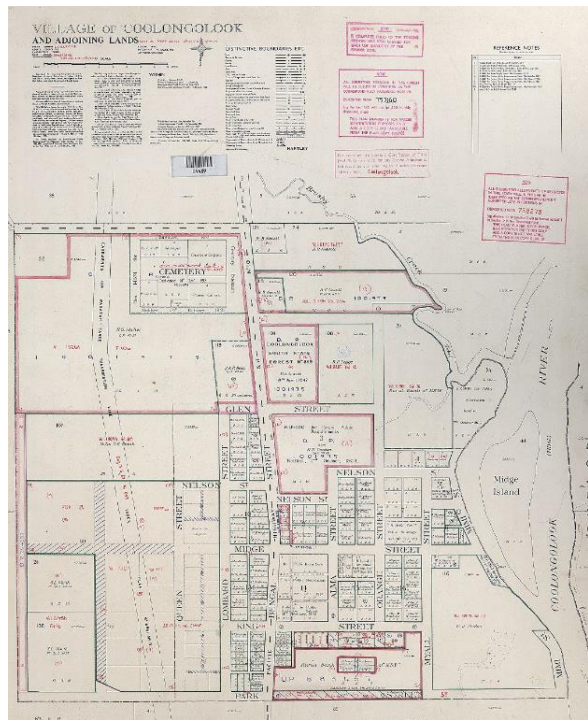
The Coolongolook paper subdivision in the RU2 Rural Landscape Zone is located between the Coolongolook River and the RU5 Village zoned section of Coolongolook. The paper subdivision has a standard grid layout with lot sizes from 2,000 square metres to large lots reserved for public purposes.

Coolongolook - Historic mapping



Coolongolook (Sheet 1 & 2)

Date of Map: 21 December 1891



DP 758278

Date of Map: 7 August 1968

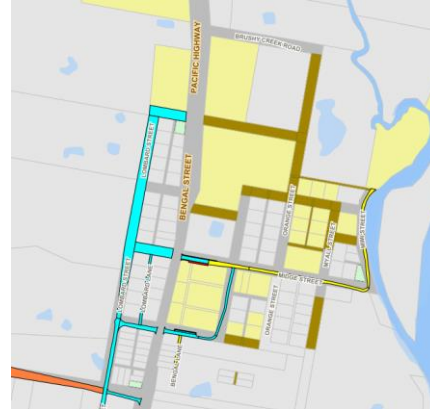
Existing Holdings Pattern

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



Road Condition and Council owned land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



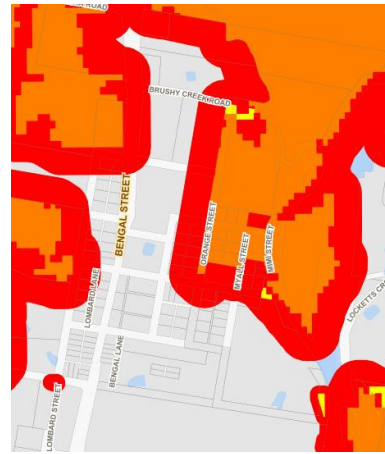
OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High



Bushfire Prone Land

- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2



Flood Prone Land (Great Lakes LEP 2014)

- Flood Prone Area (FLD)



Vegetation Cover (NearMaps 2020)





Bio-Net Threatened Species Mapping



Biodiversity and Environment

None of the Coolongolook paper subdivision is mapped on the OEH Biodiversity Map. This does not mean that there are no ecological or environmental concerns that need to be considered in relation to Coolongolook. The proximity of the land to the Coolongolook River means that the habitats are important for riverine biodiversity and water quality protection and threatened species have been recorded in the vicinity.

Infrastructure

The paper subdivision sections of Coolongolook, where there are a limited number of dwellings, are primarily accessed via Midge and Mill Street. All other roads are Crown roads that are not constructed, are unformed or not maintained by Council. Coolongolook does not have reticulated water or sewerage services.

Tenure and subdivision holding pattern

There is reasonable fragmentation of ownership within the Coolongolook paper subdivision, however, the limited area of the paper subdivision and large number of allotments in Crown ownership mean there are only a small number of land owners.

Overall, there are 18 lots in public ownership. While many holdings do not exceed 2 hectares, there are larger holdings in the vicinity, and these are generally owned by the Crown.

Constraints analysis

LOW	MEDIUM	HIGH
Configuration and ownership	Flooding or coastal hazards	Legal and constructed public road access
Steep land of 18% (32 degrees)	Planning for Bushfire Protection	Reticulated water and sewer services
	Environmentally sensitive vegetation/ Biodiversity	OSSM mapping

Recommendations

The paper subdivision of Coolongolook is ***moderately constrained*** in some areas and ***highly constrained*** in others, closer to the river. Environmental constraints exacerbate the challenges of providing on-site sewerage management within this area.

However, there are a very ***small number of land owners*** and potential to pursue a development outcome in the less constrained areas of this paper subdivision.

It is therefore recommended that land in Crown and Council ownership be identified in an appropriate conservation zone; remaining land is included in an C4 Environmental Living Zone and minimum lot size of 10 hectares, to reflect the environmental constraints and management requirements

It is noted that within this location, the extent of flood-free land within this paper subdivision may make the area suitable for a higher level of development, with the application of an R5 Large Lot Residential zone and minimum lot size of 1.5 hectares.

However, planning provisions prohibit the rezoning of flood prone land to a residential zone

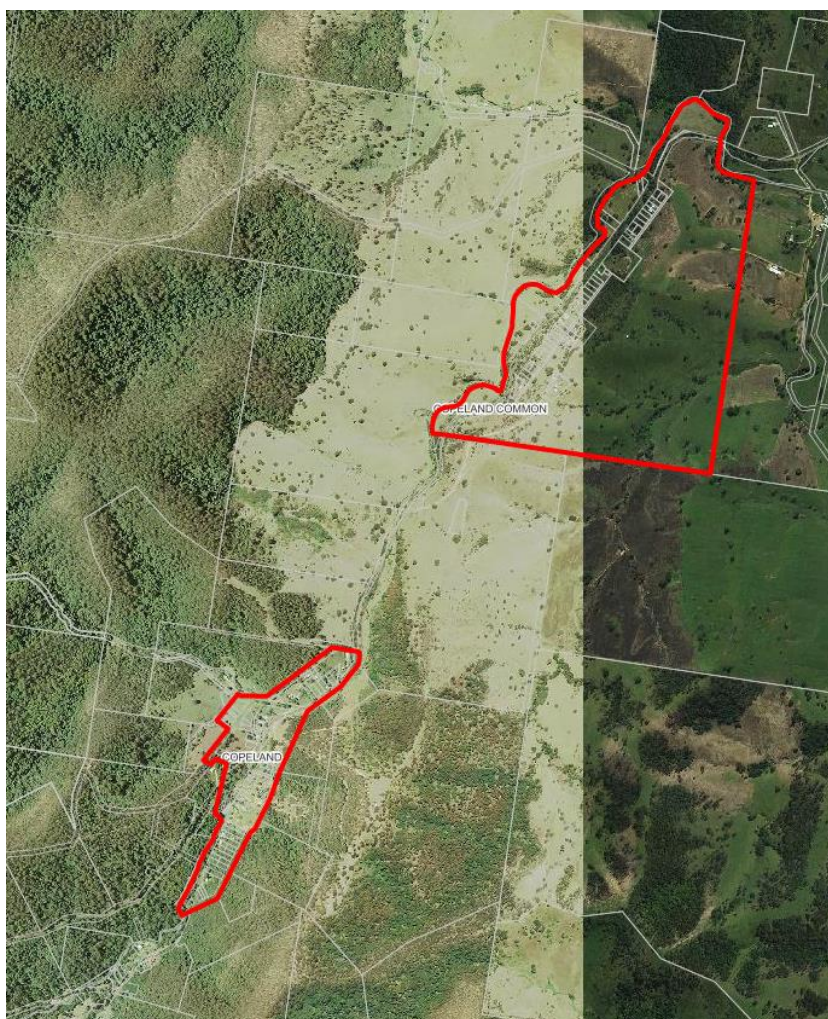
Key principles that would require resolution as part of a Development Plan for Coolongolook would include but not necessarily be limited to:

- a) ensuring any consolidated allotments for development have flood-free access, building envelopes and on-site sewage disposal areas;
- b) site constraints such as bushfire, including safe occupation and evacuation;
- c) protection and management of environmentally sensitive areas and sites with high ecological value or threatened species habitat; and
- d) stormwater and water quality management controls.

Copeland and Copeland Common

Paper Subdivision summary	
Deposited Plan Numbers	753147 and 753167
Number of lots	80
Area	52 hectares
Land Use Zone	RU1 Primary Production (GSC LEP 2010)
Minimum Lot Size for Dwelling Entitlement	100 hectares

Copeland - Defined Paper Subdivision Extent



Description and Context

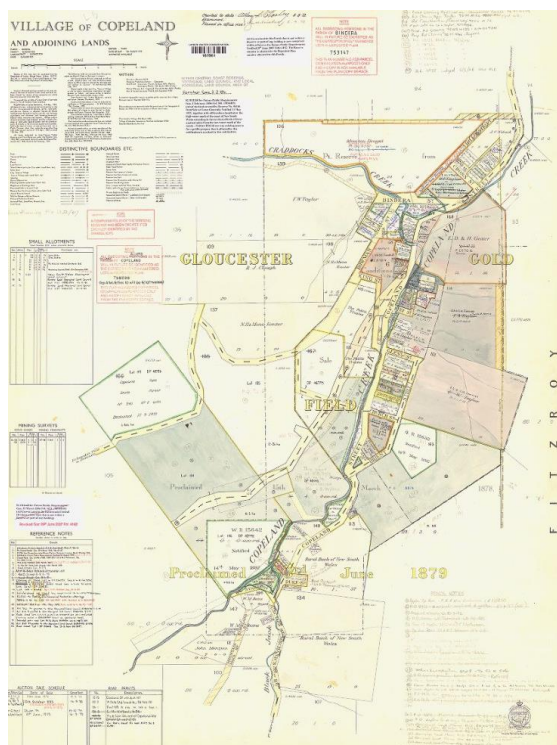
The Copeland paper subdivision, in the RU1 Primary Production zone, is approximately 20 kilometres west of Gloucester on Scone Road. Copeland consists of two sections, Copeland in the south and Copeland Common to the north. These areas have an unconventional subdivision layout characteristic of its historic growth and decline as a gold mining town.

Gold was first discovered in Back Creek (now named Copeland Creek) by a party of cedar getters in 1874 leading to a gold rush soon after. In 1878, surveyors had laid out a new town

named after the Secretary of Mines Henry Copeland. During 1880-1890 Copeland was a thriving community with a population of over 1,200 people with shops, hotels, school and post office. Like many gold rush towns, at the end of the 1890's the gold rush resulted in a decline and most buildings were demolished.

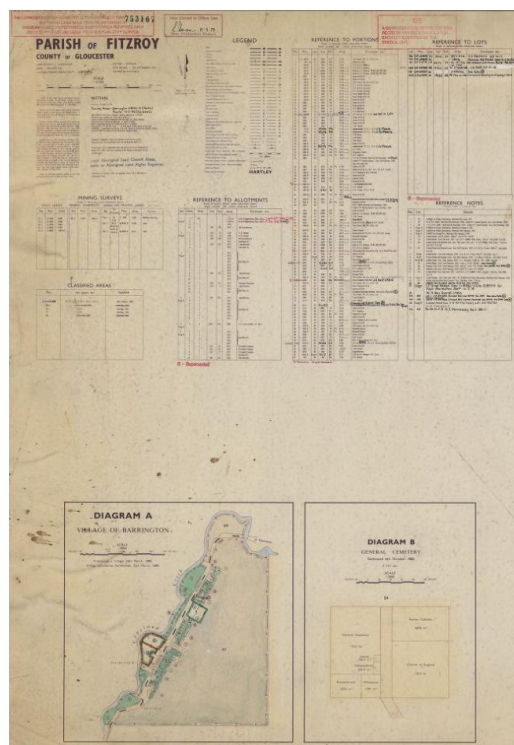
The lot sizes in Copeland range from 2,000 square metres to 2 hectares.

Copeland and Copeland Common - Historic mapping



Copeland – DP 753147

Date of Map: 10 August 1970



Barrington (Copeland Common) – DP 753167

Date of Map: 12 September 1978

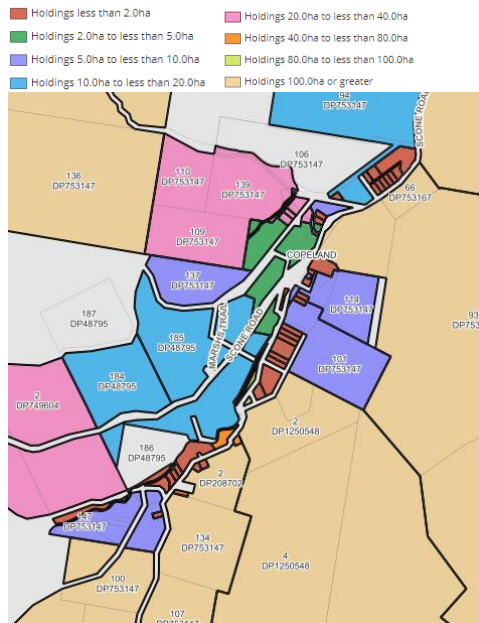


Most land parcels within Copeland Common are in Council's care, control and ownership. These lands will be included in an appropriate conservation zone.

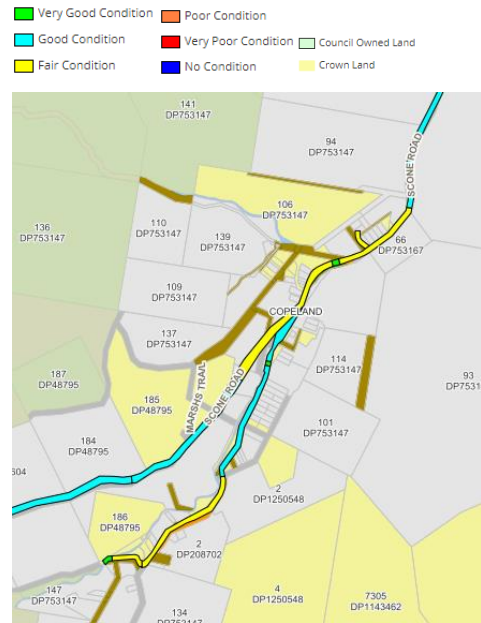
Large private holdings which are partially within the paper subdivision, will be retained in a rural zone.

Copeland Common is therefore not suitable for a Development Plan and will not be considered any further.

Ownership Pattern of Non-urban Land



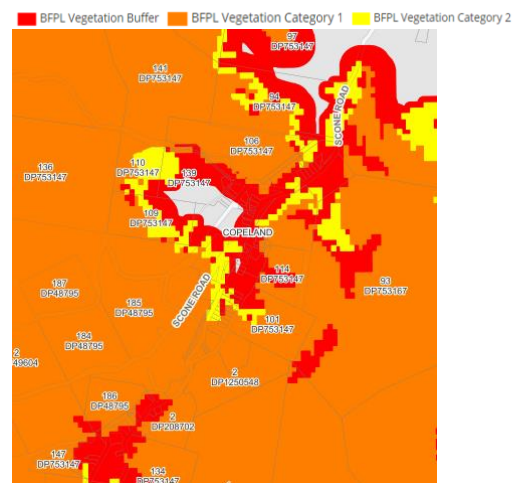
Road Condition and Public Land



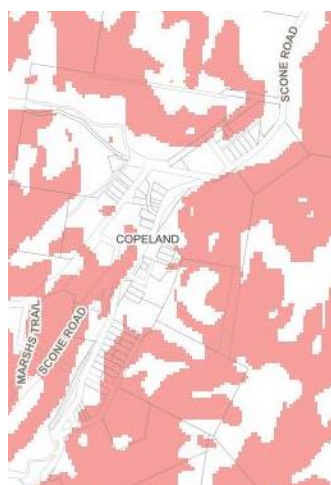
OSSM Single Lot Hazard Classification



Bushfire Prone Land



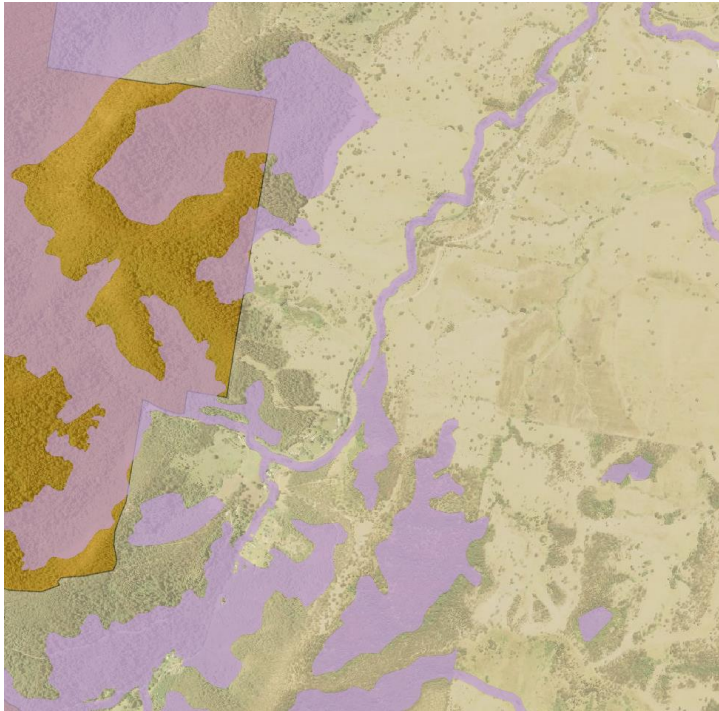
Steep Land – >18% (32 degrees)



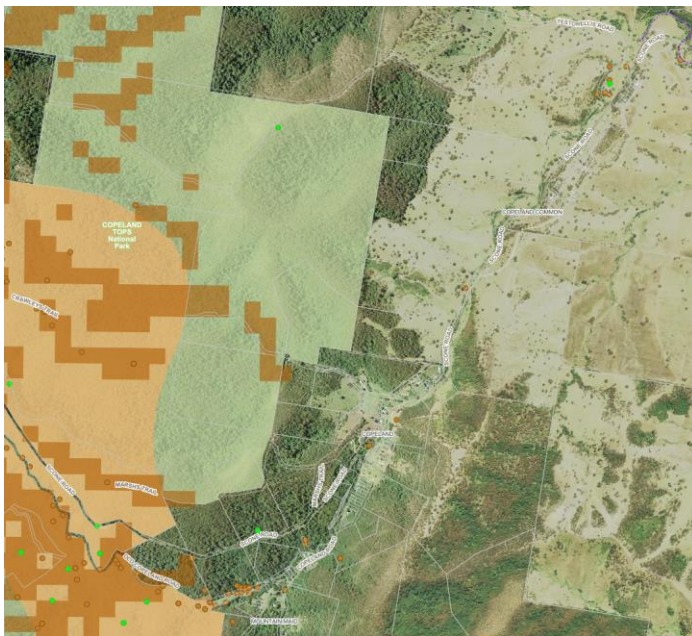
Vegetation Cover



OEH Biodiversity Values Map NSW



Bio-Net Threatened Species Mapping



Biodiversity and Environment

Copeland and the Copeland Common paper subdivision are partially mapped on the OEH Biodiversity Map. Copeland Common to the North is affected along Copeland Creek, while Copeland to the South is covered almost entirely. Copeland sits at the foot of the Copeland Tops National Park and is within an area of mapped koala significance.

Infrastructure

The paper subdivision sections of Copeland are primarily accessed via Copeland Road and Scone Road. All other roads are Crown roads and are for the most part unconstructed and unformed. Neither Copeland or Copeland Common have reticulated water or sewerage services.

Tenure and subdivision holding pattern

Most parcels in the Copeland paper subdivision are in private ownership, many have existing dwellings and an area of less than 2 hectares.

Constraints analysis

LOW	MEDIUM	HIGH
Flooding or coastal hazards	Environmentally sensitive vegetation/ Biodiversity	Legal and constructed public road access
		Configuration and ownership
		Steep land of 18% (32 degrees)
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The paper subdivision extent of Copeland has a **very high level** of constraints. Large parts of the paper subdivision area are subject to high bushfire risk, being heavily vegetated and on steep land. There are restrictions to access and land application areas suitable for on-site sewerage management.

Given the historic pattern of development and existing dwellings in Copeland, rezoning and resolution of the paper subdivision is considered unnecessary. It will remain in the appropriate rural zone and will not be subject to any additional local provisions or clauses that would allow for additional development in this relatively isolated location.

It is recommended that the Copeland paper subdivision be:

- the land in Council ownership is to be identified in an appropriate conservation zone;
- included in the C3 Environmental Management zone and retain the minimum lot size of 60 hectares, in recognition of its significant constraints; and
- the paper subdivision area be identified in the local environmental plan.

The Copeland paper subdivision is **very highly constrained** and not suitable for the preparation of a Development Plan.

Hamilton

Paper Subdivision summary	
Deposited Plan Numbers	118006
Number of lots	97
Area	39 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

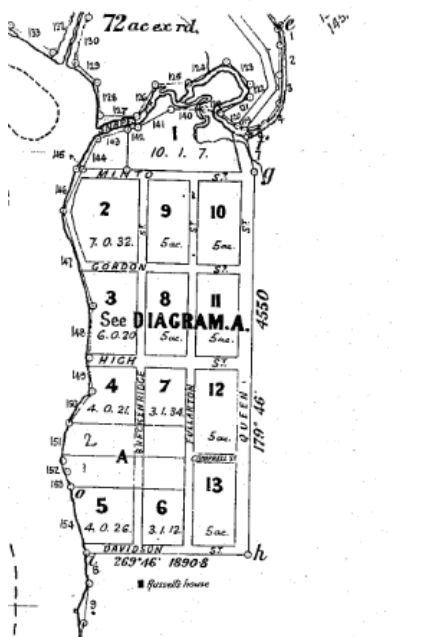


Description and Context

The Hamilton paper subdivision is located on the eastern side of the Karuah River, opposite the village of Allworth. This historic grid pattern subdivision is characterised by lots ranging in size between 2,000 and 4,500 square metres, with a limited number of larger properties.

The area is predominantly in the RU2 Rural Landscape Zone, with some allotments already transferred to Council in lieu of outstanding rates, fees and charges having been included in an C3 Environmental Management zone.

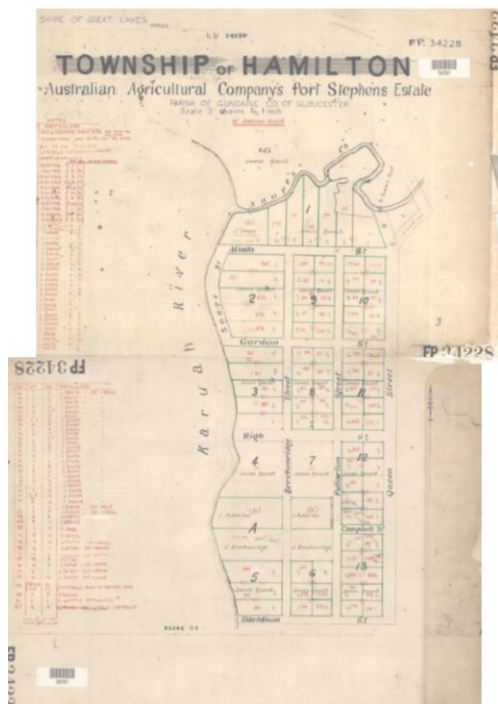
Hamilton - Historic Mapping



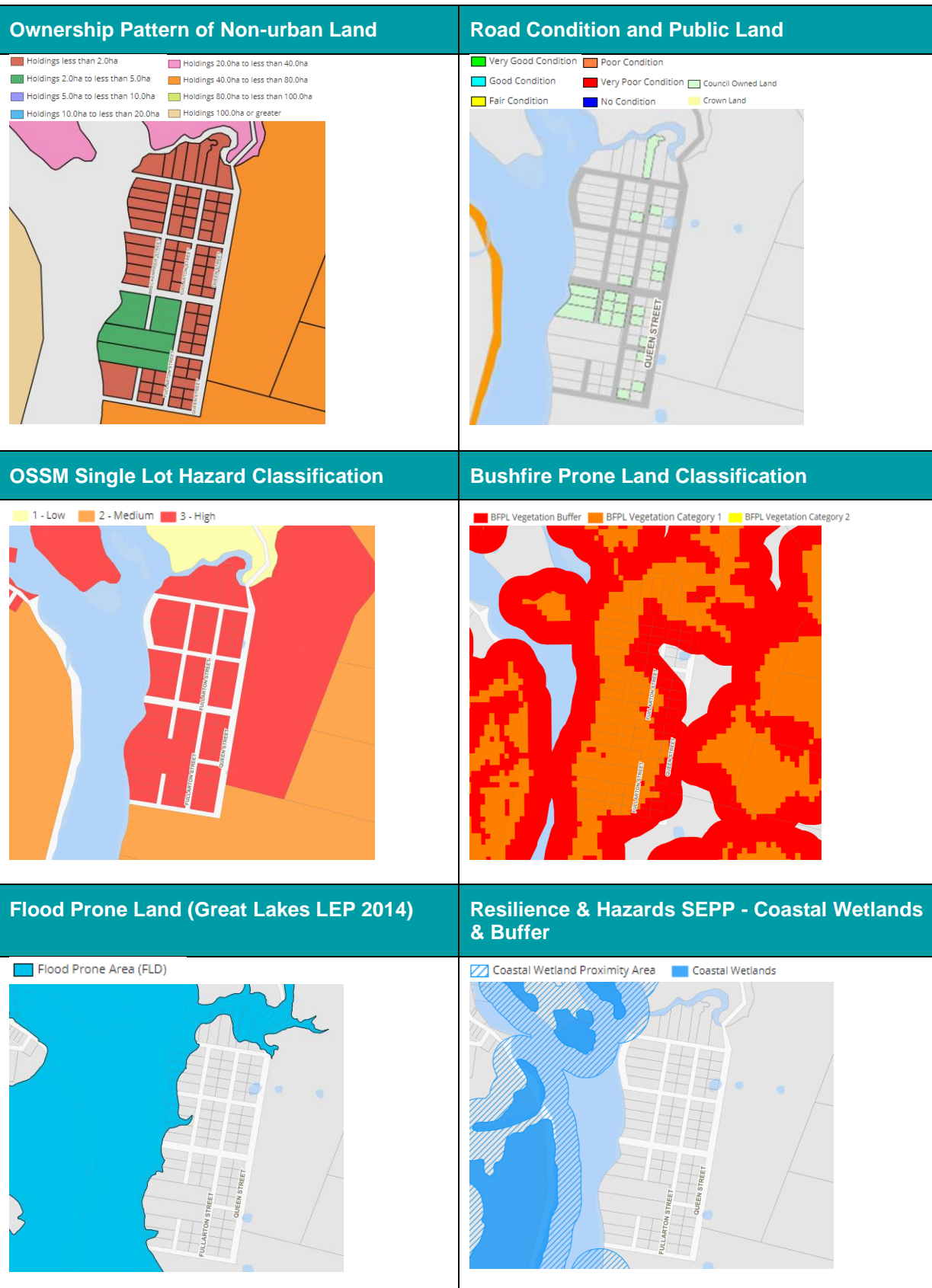
Plan of Sections 1 to 13 Village of Hamilton
(Frame 2) Date of map - October 1905

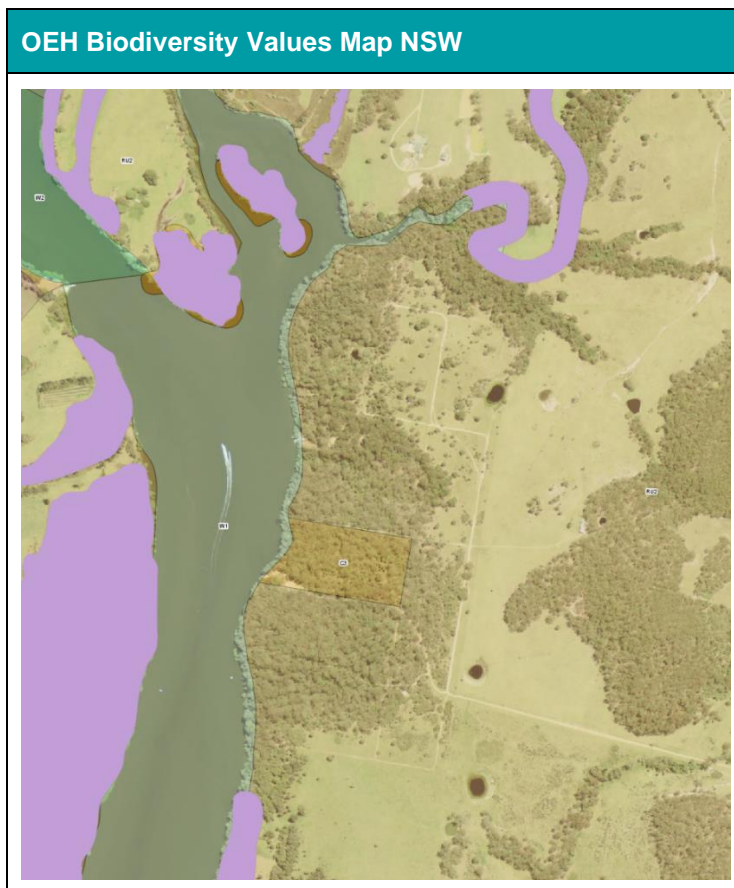


Plan of Sections 1 to 13 – Village of Hamilton
(Frames 3 & 4) Date of map – Oct. 1905



Township of Hamilton
(Sheets 1 & 2) Date of Map: unknown





Environment and Biodiversity

The paper subdivision of Hamilton is not mapped on the OEH Biodiversity Values Map except for the North Eastern corner bordering Snapes Creek. This does not mean that there are no ecological or environmental concerns that need to consider in relation to Hamilton. The proximity of the land to the Karuah River means that the habitats are important for riverine biodiversity and water quality protection.

Tenure and subdivision holding pattern

The paper subdivision extent of Hamilton has experienced minimal consolidation and has very high fragmentation of holdings with the majority of lots being held in separate ownership, many of the properties have an area of less than two hectares.

Given the isolation and environmental constraints approximately twenty lots have already been transferred to Council in lieu of outstanding rates, fees and charges and some are already in a conservation zone, reflecting the environmental value of the location and site constraints.

Infrastructure

The area has very limited access via Warraba Road or River Road, off The Branch Lane. Hamilton does not have reticulated water or sewerage services.

Constraints analysis:

LOW	MEDIUM	HIGH
Flooding or coastal hazards	Environmentally sensitive vegetation/ Biodiversity	Legal and constructed public road access

Steep land of 18% (32 degrees)		Configuration and ownership
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The paper subdivision extent of Hamilton is **very highly constrained** given its isolation, lack of constructed public access, heavily vegetated sites with high bushfire and on-site sewerage management classifications.

It is recommended that the Hamilton paper subdivision be:

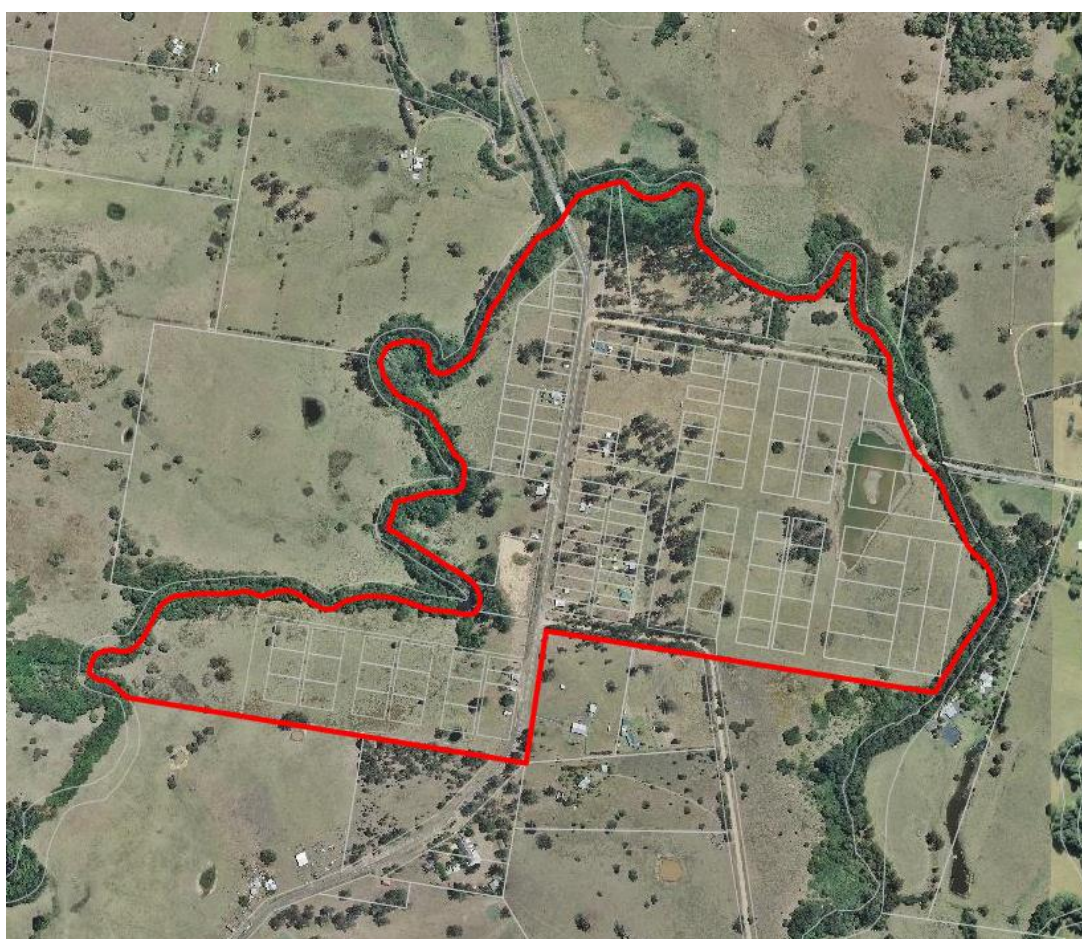
- the land in Council ownership is to be identified in an appropriate conservation zone;
- land affected by coastal wetlands is to be rezoned C2 Environmental Conservation;
- included in the C3 Environmental Management zone and retain the minimum lot size of 40 hectares, in recognition of its significant constraints; and
- the paper subdivision area be identified in the local environmental plan.

The Hamilton paper subdivision is **very highly constrained** and not suitable for the preparation of a Development Plan.

Krambach

Paper Subdivision summary	
Deposited Plan Numbers	753182
Number of lots	125
Area	60 hectares
Land Use Zone	RU1 Primary Production (GT LEP 2010)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Krambach – Defined Paper Subdivision Extent

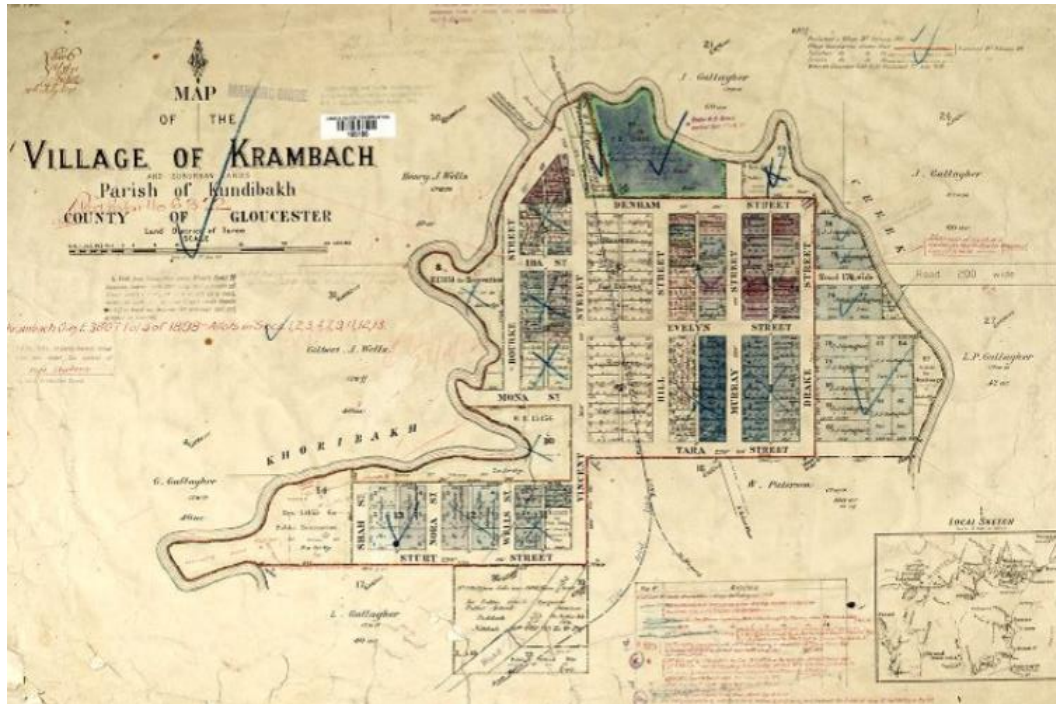


Description and Context

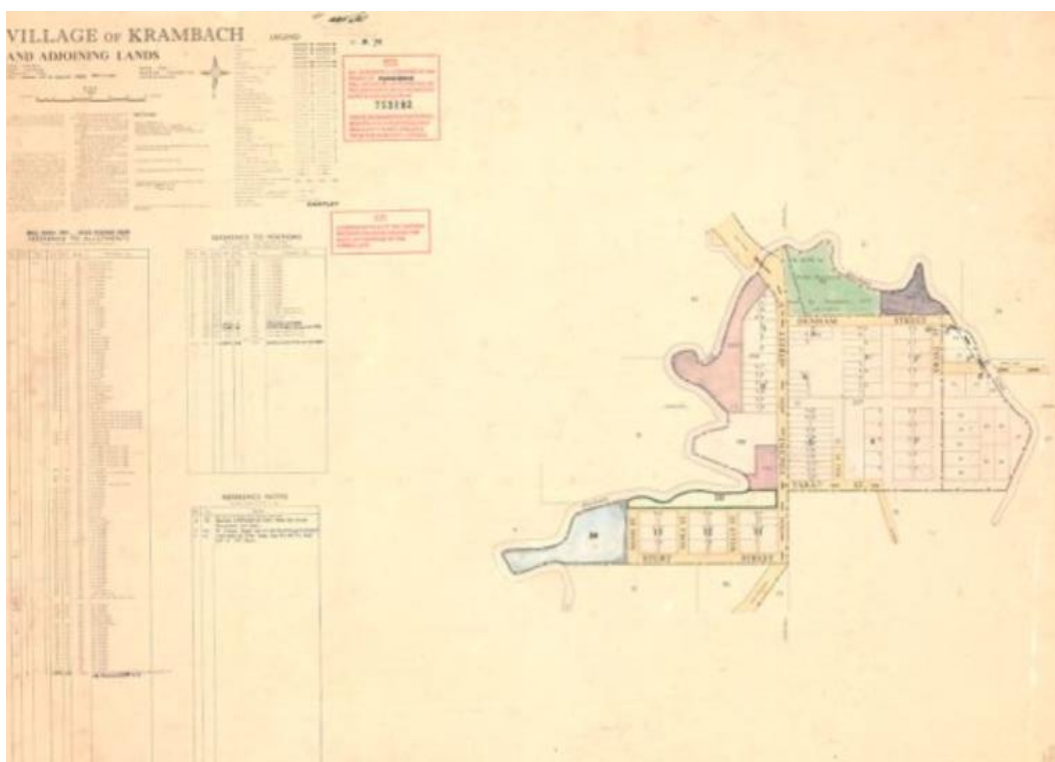
The Krambach paper subdivision in the RU1 Primary Production Zone is separate from the RU5 Village zoned section of Krambach to the west. The Krambach paper subdivision has a conventional grid pattern with most parcels having a lot size between 1,000 and 2,000 square metres.

The paper subdivision area is mostly cleared of vegetation and a relatively flat topography that is potentially affected by flooding from the adjoining waterway. The land is primarily used for farming purposes although several dwellings exist on lots with direct access to The Bucketts Way East.

Krambach - Historic mapping



Village of Krambach Date of Map: 16 July 1891



DP753182 Date of Map: 11 August 1972

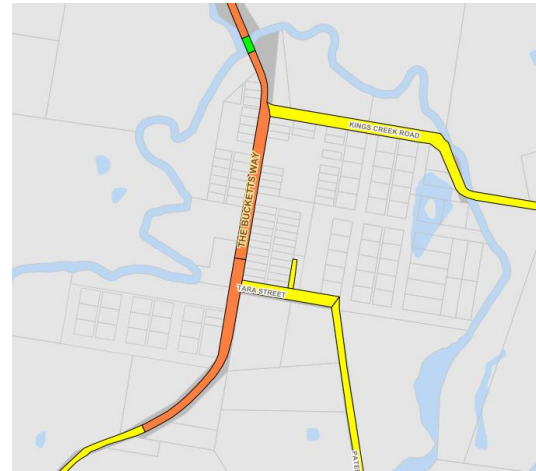
Ownership Pattern of Non-urban Land

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



Road Condition and Public Land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High



Bushfire Prone Land Classification

- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2



Vegetation cover (NearMaps 2020)



OEH Biodiversity Values Map NSW



Bio-Net Threatened Species Mapping



Environment and Biodiversity

The paper subdivision of Krambach is not mapped on the OEH Biodiversity Values Map other than along Khoribakh Creek and there is little vegetation cover over the paper subdivision. This

does not mean that there are no ecological or environmental concerns that need to be considered in relation to the Krumbach paper subdivision, which may provide habitat for threatened species, such as the koala.

Infrastructure

The paper subdivision of Krumbach is located on either side of The Bucketts Way East, while Tara Street and King Creek Road also provide limited access. All other roads are unconstructed and unformed Crown roads. Krumbach does not have reticulated sewerage services. Reticulated water is connected to several lots with frontages to The Bucketts Way East.

Tenure and subdivision holding pattern

There is minimal fragmentation of holdings within the existing paper subdivision. There are less than ten owners of the land, with some parcels of less than 2 hectares being occupied by individual owners and the majority being in one freehold title.

LOW	MEDIUM	HIGH
Configuration and ownership	Legal and constructed public road access	
Steep land of 18% (32 degrees)	Planning for Bushfire Protection	
Reticulated water and sewer services	Flooding or coastal hazards	
	OSSM mapping	
	Environmentally sensitive vegetation/ Biodiversity	

Recommendations

The paper subdivision extent of Krumbach has a ***moderate level of constraint*** and ***small number of land owners***. While part of the paper subdivision area is subject to bushfire risk, the extend of flood prone land is unknown.

It is recommended that:

- The paper subdivision extent of Krumbach be identified in the local environmental plan,
- the area is to be included in the C4 Environmental Living zone with a minimum lot size of 10 hectares.

Confirmation of the extent of flood-free land within this paper subdivision may make the area suitable for a higher level of development, with the application of an R5 Large Lot Residential zone and minimum lot size of 1.5hectares.

However, planning provisions prohibit the rezoning of flood prone land to a residential zone.

Key principles that would require resolution as part of a Development Plan for Krumbach would include but not necessarily be limited to:

- a) ensuring any consolidated allotments for development have flood-free access, building envelopes and on-site sewage disposal areas;
- b) site constraints such as bushfire, including safe occupation and evacuation;

Limekilns, Tea Gardens

Paper Subdivision summary	
Deposited Plan Numbers	753182
Number of lots	130
Area	35 hectares
Land Use Zone	RU2 Rural Landscape and C2 Environmental Conservation (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Limekilns – Defined Paper Subdivision Extent

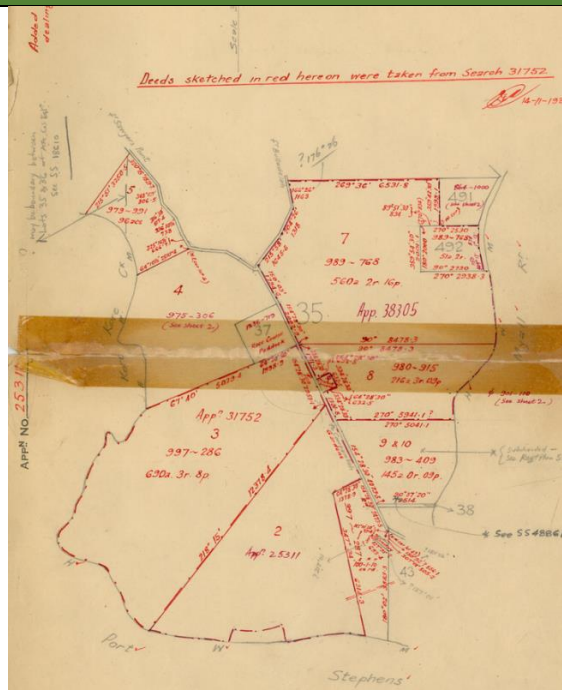


Description and Context

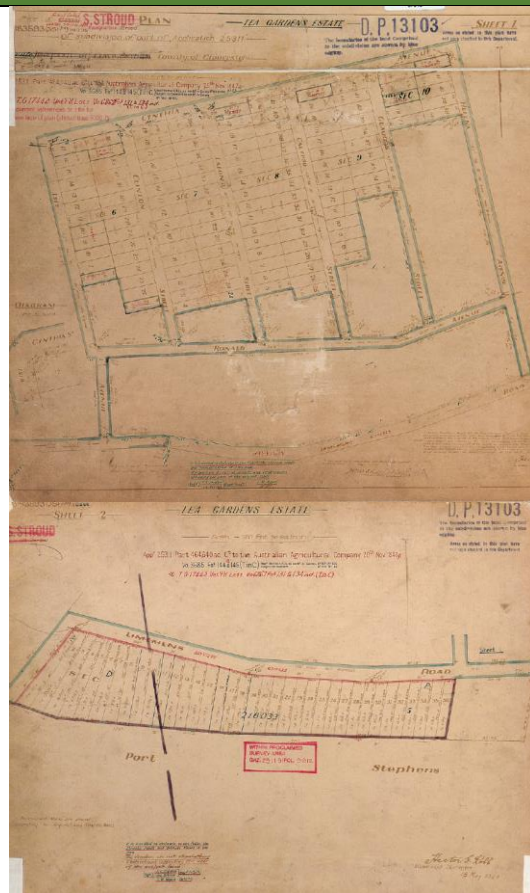
The Limekilns paper subdivision, in the RU2 Rural Landscape and C2 Environmental Conservation zones, is located to the west of Tea Gardens on the northern side of Port Stephens. Limekilns is predominately a grid pattern subdivision with lot sizes from 1,200 square metres.

The majority of lots within the paper subdivision are identified as coastal wetlands and are already in the C2 Environmental Conservation zone, reflecting a high level of environmental constraint.

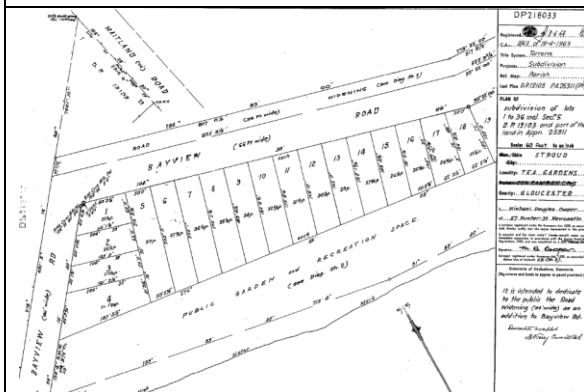
Limekilns - Historic mapping



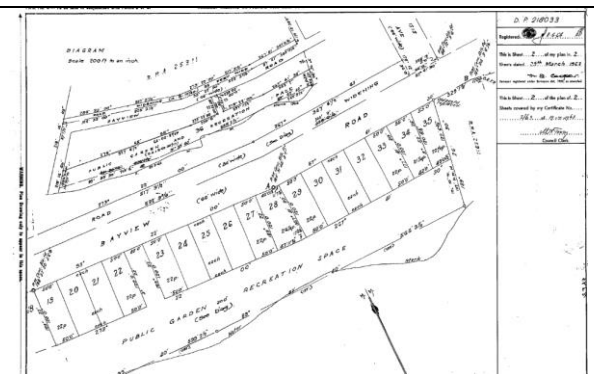
Primary Application 25311, being part of the 464,640 acre grant to the Australian Agricultural Company in 1847.
Date of Map: 14 January 1925



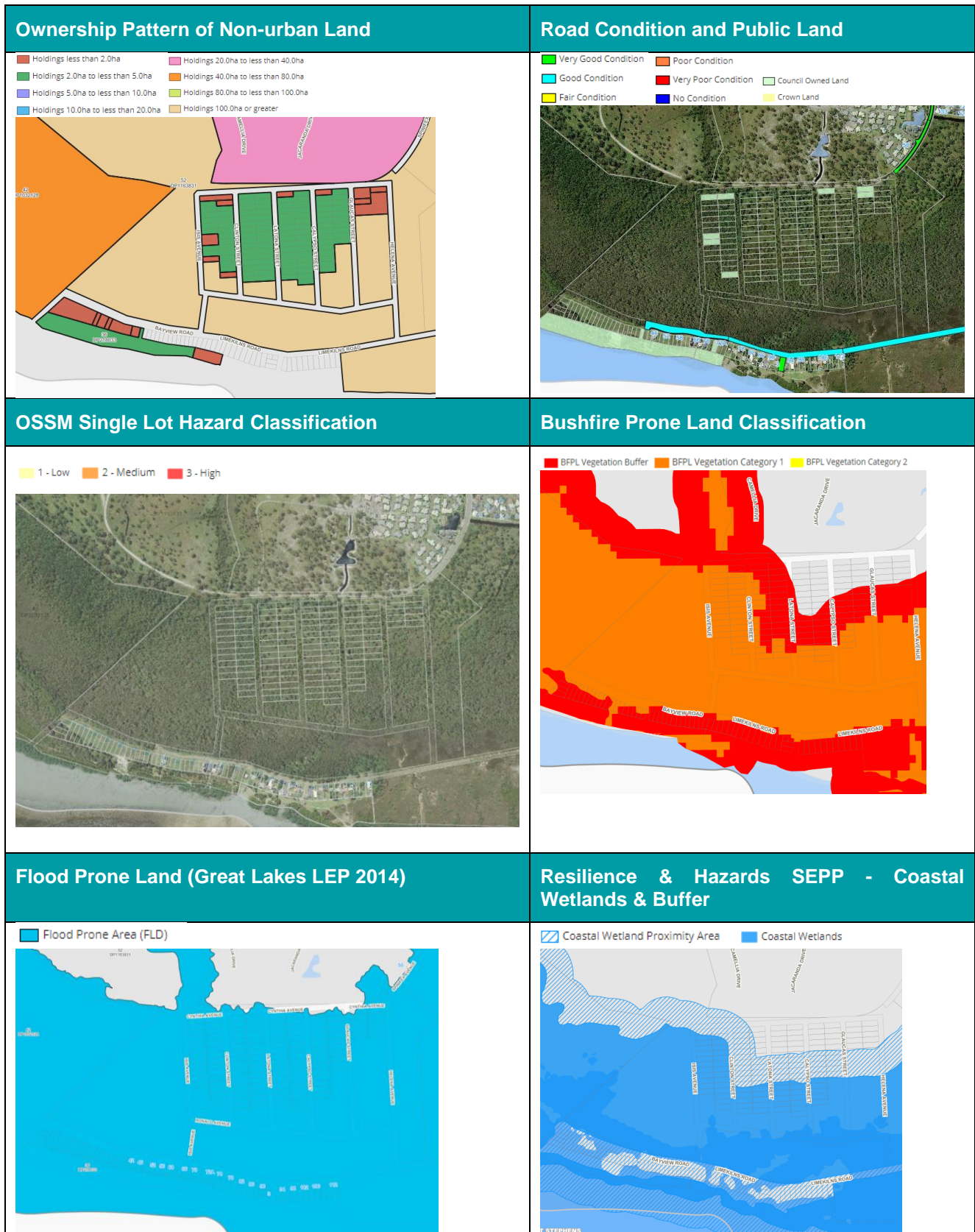
DP 13103 (Sheets 1 & 2)
Date of Map: 15 May 1924



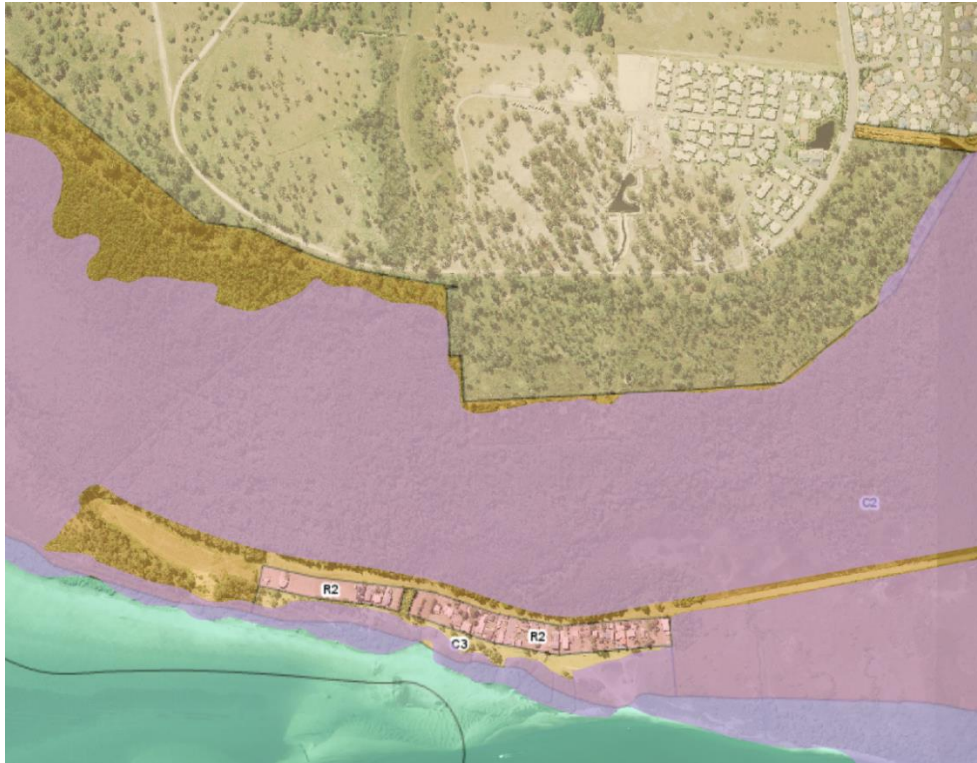
DP 218033 – Sheet 1
Date of Map: 19 April 1963



DP 218033 – Sheet 2
Date of Map: 19 April 1963



OEH Biodiversity Values Map NSW



Bio-Net Threatened Species Mapping



Environment and Biodiversity

A substantial portion of the Limekilns paper subdivision is covered by the OEH Biodiversity Values Map. Of the total 130 lots, 61 are mapped as having “high biodiversity values

particularly sensitive to impacts from development and clearing.” The land contains recorded sightings of threatened species and is mapped as a key regional corridor. The Limekilns paper subdivision also includes areas identified core squirrel glider habitat, managed via a management plan within a nearby development consent.

Infrastructure

The paper subdivision sections of Limekilns are not accessed by publicly constructed roads.

The reticulated water and sewerage services in this location do not extend to the paper subdivision sections.

Tenure and subdivision holding pattern

The paper subdivision extent of Limekilns has experienced almost no consolidation and eight landowners own over 125 parcels, most of which have a lot size of less than two hectares.

A small number of lots have been transferred to Council in lieu of outstanding rates, fees and charges, and where these lands are not already in the C2 Environmental Conservation zone, will be transitioned into the appropriate conservation zone, reflecting the high level of constraint over these sites.

Constraints analysis

LOW	MEDIUM	HIGH
Configuration and ownership		Flooding or coastal hazards
Steep land of 18% (32 degrees)		Environmentally sensitive vegetation/ Biodiversity
		Legal and constructed public road access
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The two sections of the Limekilns paper subdivision are **highly constrained**. Despite the low number of land owners, large portions are flood affected, heavily vegetated, bushfire prone, contain threatened species habitat, identified as significant coastal wetlands and adjoin the Marine Park. These constraints represent significant restrictions to development.

The majority of the paper subdivision is already included in the C2 Environmental Conservation Zone and it is recommended that the remaining areas be included in the C3 Environmental Management Zone and continue to be subject to a minimum lot size of 40 hectares, in recognition of its high level of constraints.

The Limekilns paper subdivision is **very highly constrained** and not suitable for the preparation of a Development Plan.

North Arm Cove

Paper Subdivision summary	
Deposited Plan Numbers	9938, 9939, 9940, 12275, 12276, 12277, 13357 13358 and 13400
Approximate number of lots	3,500
Area	740 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

North Arm Cove - Paper Subdivision Extent



Description and Context

The North Arm Cover paper subdivision is primarily zoned RU2 Rural Landscape with a minimum lot size of 40 hectares under Great Lakes LEP 2014. The area extends from the northern side of Port Stephens to the Pacific Highway.

The location forms part of the Australian Agricultural Company's original land grant in 1826 and between 1826 and 1850 the company headquarters were at Carrington, before being relocated to Stroud. During World War 1 the deep waters for Port Stephens were considered suitable for military and commercial shipping, with development anticipated on the northern foreshores to accommodate returned servicemen.

In 1918 the AA Company holding was transferred to a land development company and Walter Burley Griffin was engaged to prepare a concept plan of 'Port Stephens City'. The subdivision pattern reflects this history and lot sizes are extremely variable, ranging from 328 square metres to over ten hectares.

In 1920 this concept plan of approximately 3200 lots of varying sizes and shapes, was registered by the Registrar General's Department. However, no roads or open space were dedicated in these subdivisions. A similar plan was prepared by W S Griffiths in 1920 at Pindimar and resulted in approximately 2100 lots being registered.

The land has historically been owned by large company holdings and either remained in a natural state or were modified for agricultural activities including pine plantations. The lands were formally zoned rural on 15 May 1964, with limited village zones applied along the coast of Port Stephens bay to the area now known as North Arm Cove village.

This change also saw the introduction of a 40ha minimum lot size for the construction of a dwelling house, except when: related to a 'legitimate intensive agricultural occupancy', or for owners at the appointed day. For land owners with an 'existing holding', there was also a requirement to address vehicle access and adequacy of utility and other services.

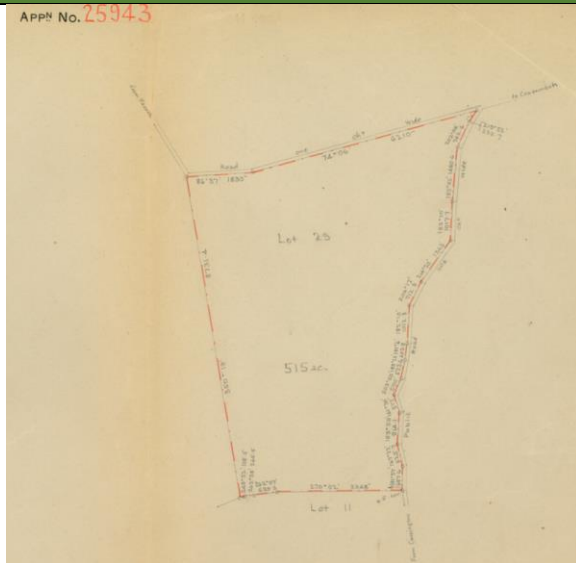
The use and management of the land appears to have changed after a bushfire damaged most of the pine plantation in 1980. Significant speculative land sale campaigns throughout the 1980s diversified ownership across these rural areas, as shown in the promotional information on the following page.

The Hunter Regional Plan No.1 (1982) strategies indicated support for protection of these areas; and growth in more suitable locations at Tea Gardens-Hawks Nest, where infrastructure including public water and sewer systems were available. The Plan also recognised that the oyster industry within Port Stephens may be jeopardised by any significant clearing and development within this area.

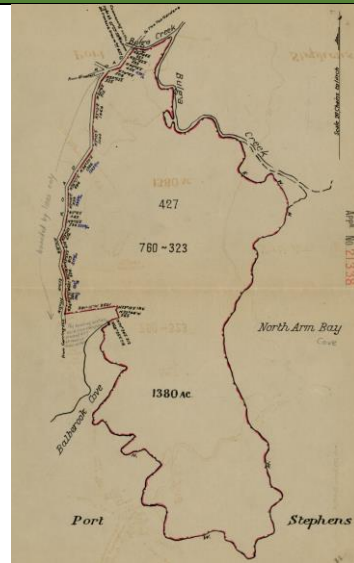
Since the 1980s Council and the Department of Planning have received enquiries regarding the potential rezoning and development of land within the paper subdivision of North Arm Cove. Some enquiries have been submitted with commitments to provide infrastructure, services and facilities to the resulting development and environmental studies undertaken by the companies in partnership with other landowners, but none have come to fruition.

These enquiries were not supported or encouraged by Council or the Department given the lack of strategic merit and unreasonable expectations that funding such investigations and applications may give individual land owners.

North Arm Cove - Historic mapping



Primary Application 25943 – Lot 25
Date of Map: unknown



Primary Application 21388 – Lot 427 being part of the 464,640 acre grant to the Australian Agricultural Company in 1847
Date of Map: unknown



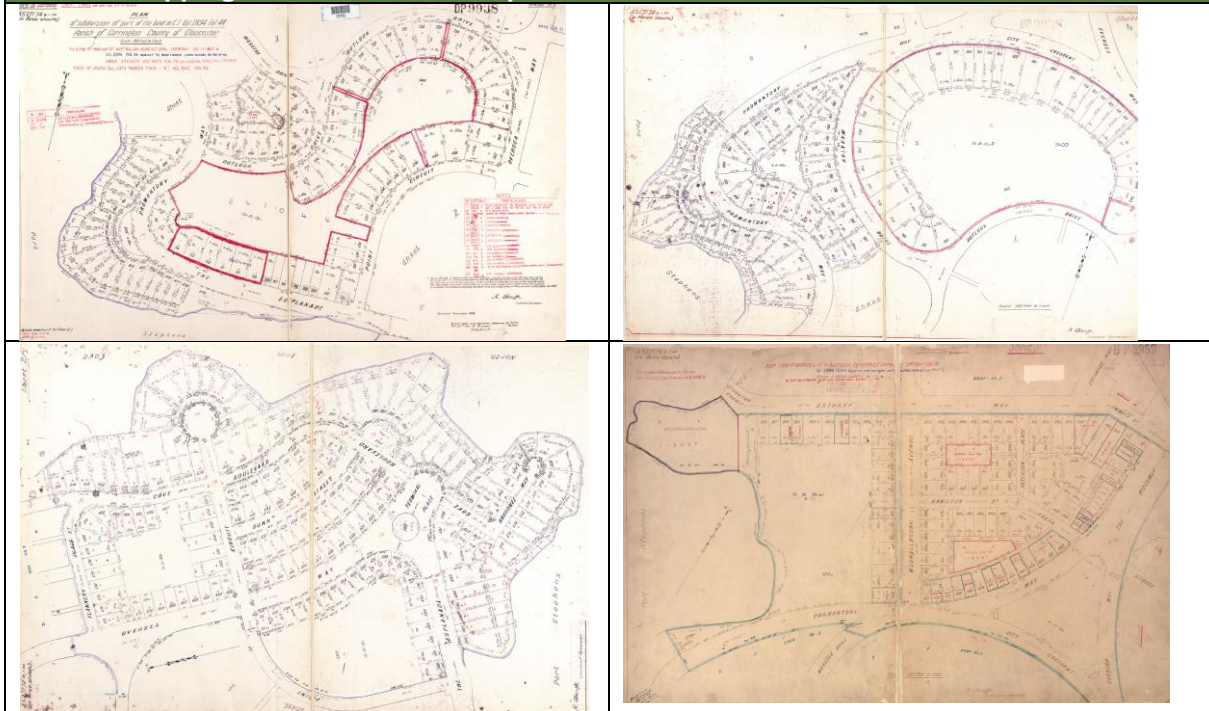
Walter Burley Griffin "Port Stephens City Site"



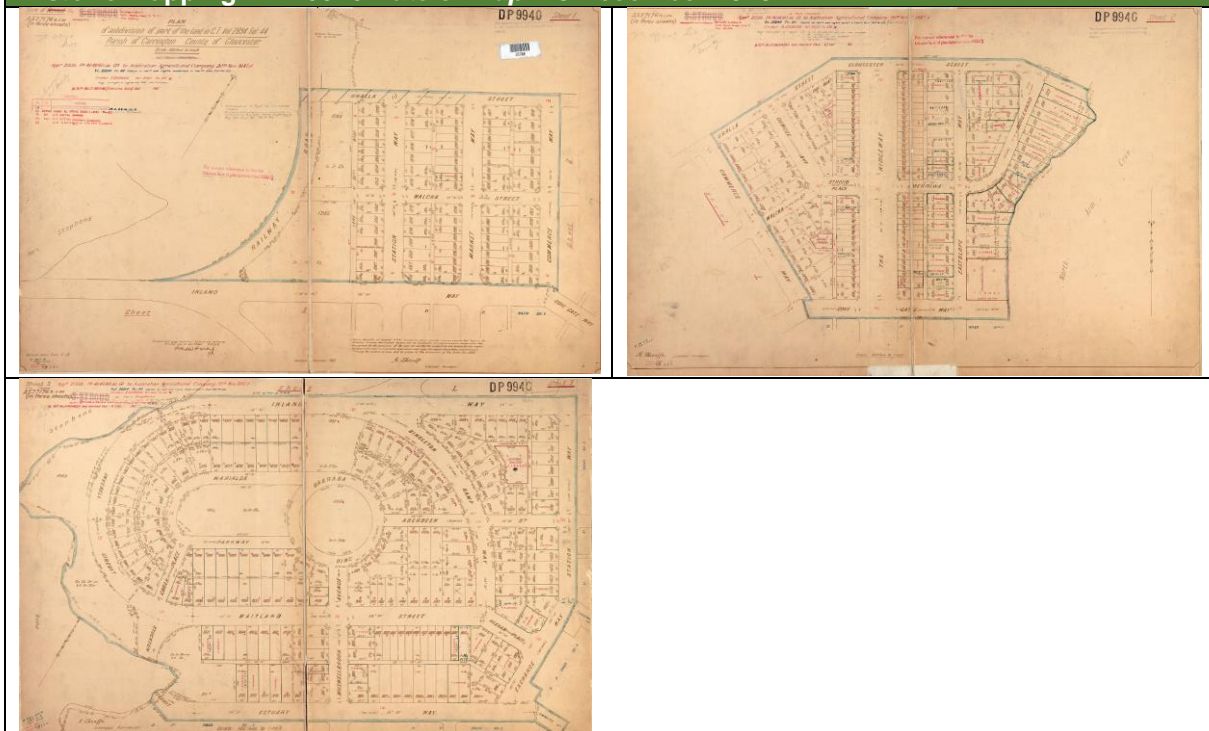
"Port Stephens City" with DP records and Village zone identified "V"

¹⁵ [nla.obj-231550473-e \(1000x1798\)](https://nla.obj-231550473-e (1000x1798))

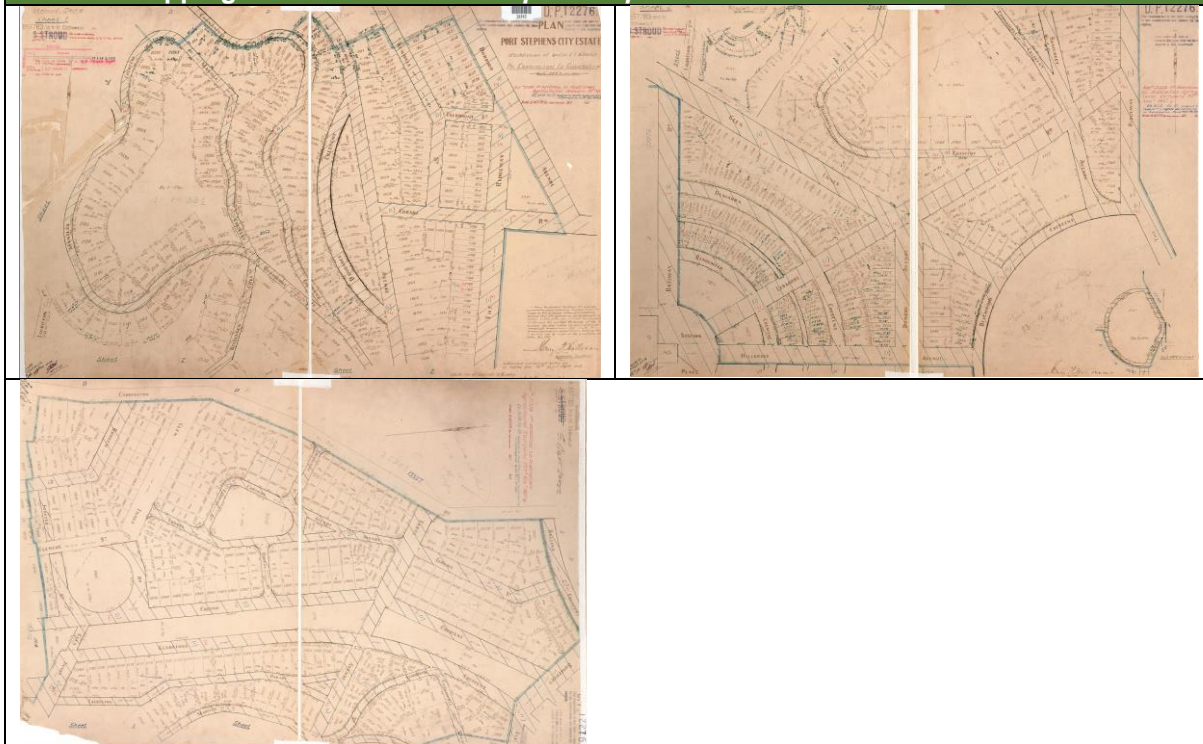
Historic mapping - DP 9938 Date of maps: 23 December 1919



Historic mapping - DP 9940 Date of map: 23 December 1919



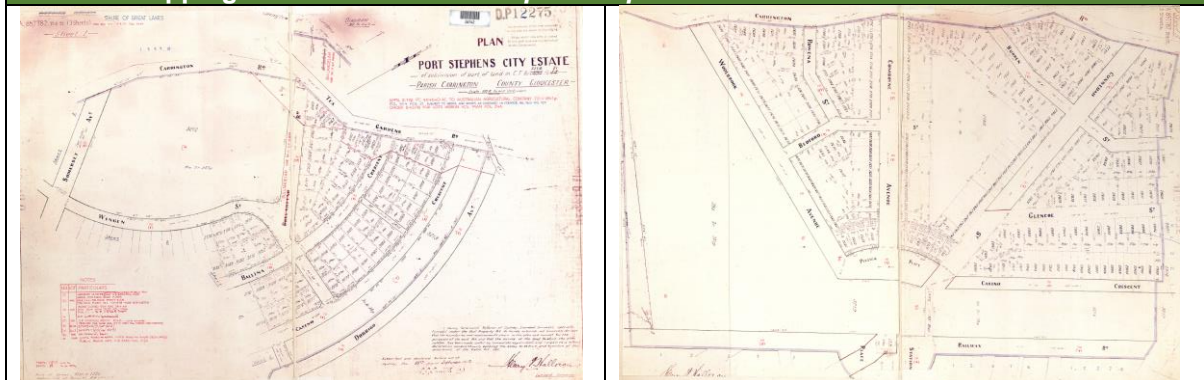
Historic mapping - DP 12276 Date of map: 15 September 1922



Historic mapping - DP 12277 Date of map: 15 September 1922



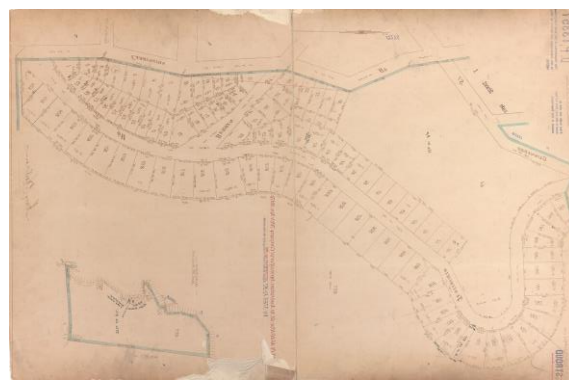
Historic mapping - DP 12275 Date of map: 17 September 1922



Historic mapping - DP 13357 Date of map: 2 October 1922



DP 13357 – Port Stephens City Estate (Sheet 1)
Date of map: 5 October 1922



DP 13357 – Port Stephens City Estate (Sheet 2)
Date of map: 5 October 1922

Historic mapping - DP 13358 Date of map: 5 October 1922



Ownership Pattern of Non-urban Land

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



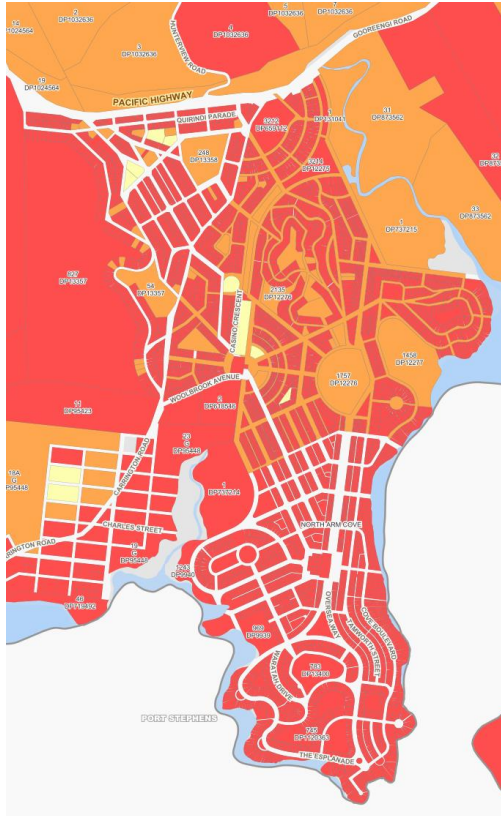
Road Condition and Public land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



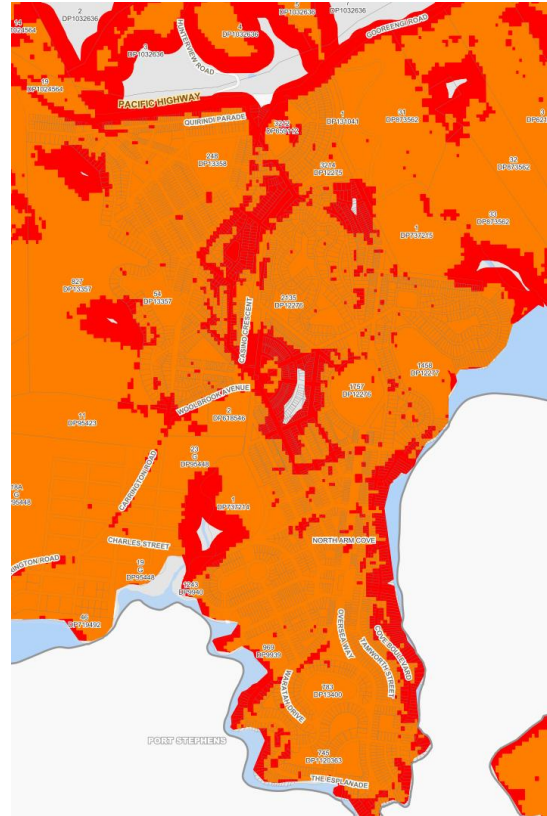
OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High

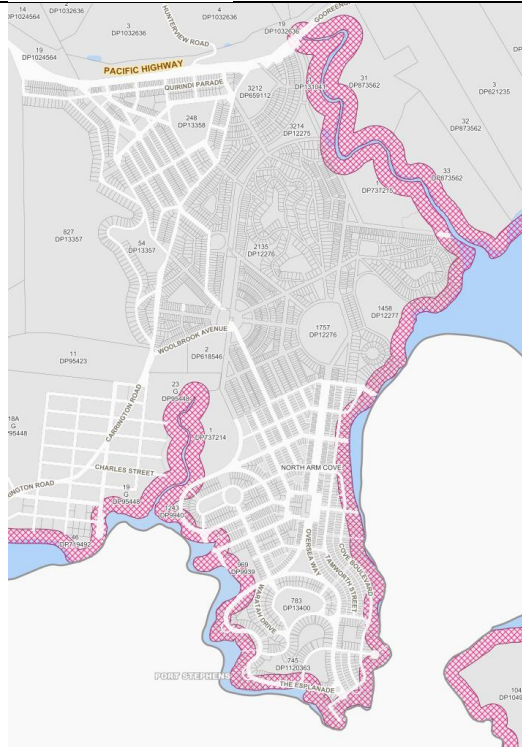


Bushfire Prone Land Classification

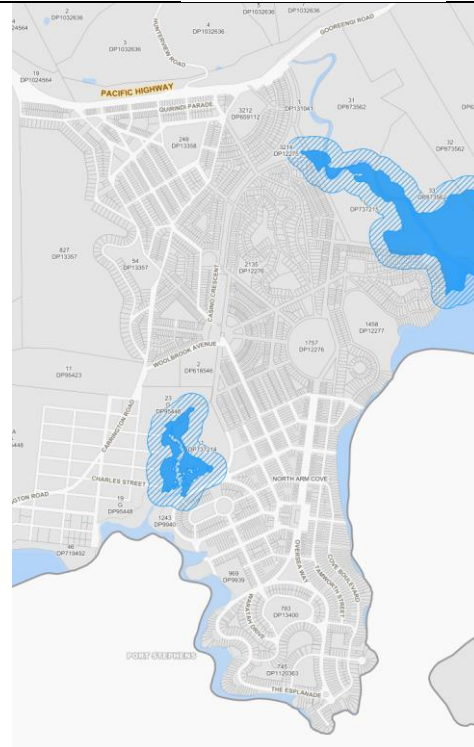
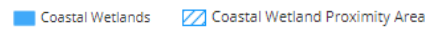
- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2



Port Stephens-Great Lakes Marine Park



Resilience & Hazards SEPP - Coastal Wetlands & Buffer

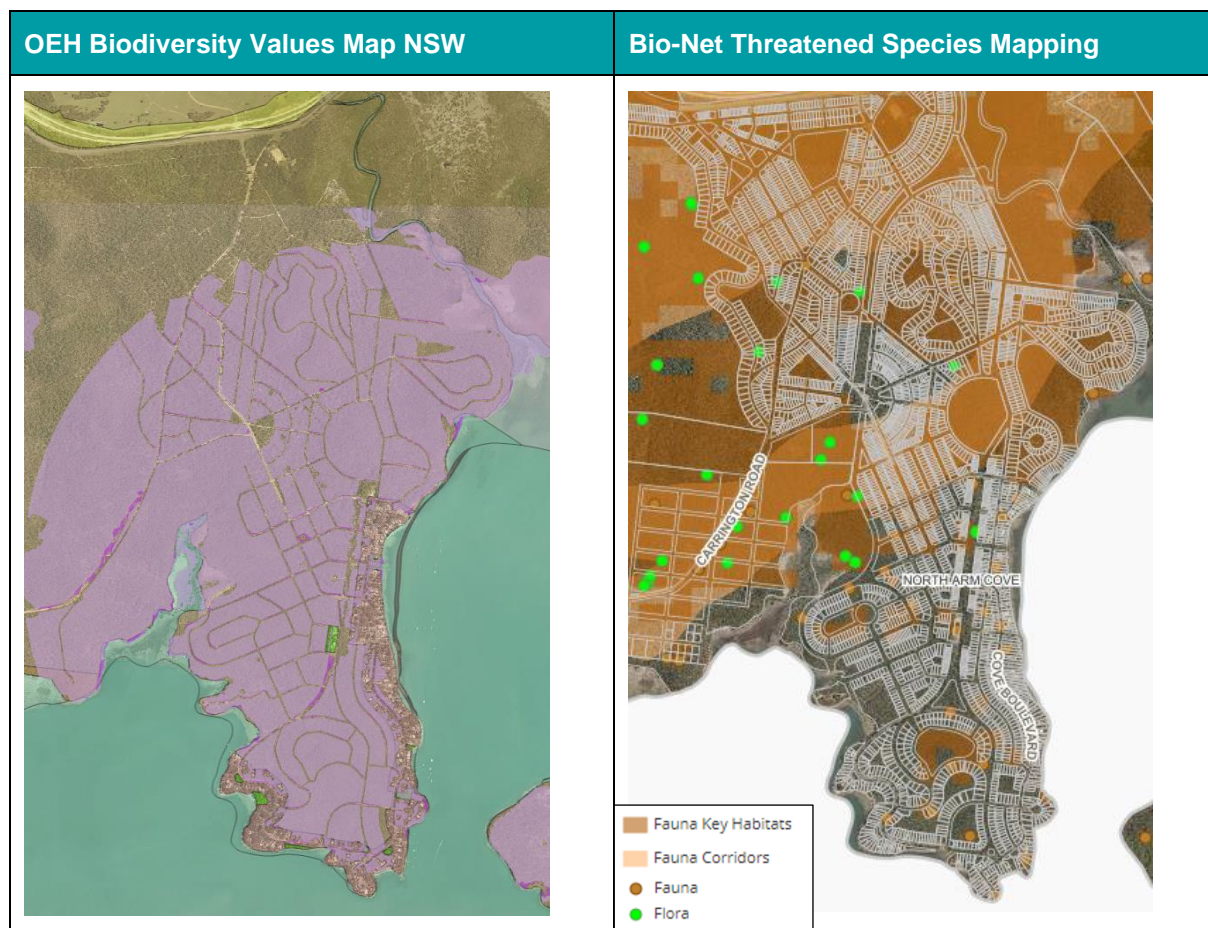


Flood Prone Land (Great Lakes LEP 2014)



Vegetation Cover (NearMaps 2020)





Environment and Biodiversity

A substantial portion of the North Arm Cove paper subdivision is covered by the OEH Biodiversity Map. This indicates that the area has “high biodiversity values particularly sensitive to impacts from development and clearing”, contains many threatened species sighting records, and is part of a key regional corridor.

Infrastructure

North Arm Cove is accessed by Carrington Road, Glen Innes Road, Glencoe Street, Market Street and The Ridgeway. Only these roads provide constructed public road access to any properties in the paper subdivision or village. Remaining roads, including privately owned roads within the paper subdivision, are not constructed and may consist of basic bush tracks. Neither the village or paper subdivision areas of North Arm Cove have reticulated water or sewerage services.

Tenure and subdivision holding pattern

The paper subdivision of North Arm Cove has a highly fragmented pattern of ownership, with approximately 2,850 lots being owned by 2,550 separate owners, and most having a land area of less than two hectares. Most allotments, including larger holdings, do not have public or constructed access and are heavily vegetated.

Nearly 1000 original allotments in North Arm Cove have been transferred into Council ownership in lieu of outstanding rates, fees and charges. Some of these sites are already in a conservation zone, reflecting their environmental value. The Council ownership pattern is also extremely fragmented.

Constraints analysis

LOW	MEDIUM	HIGH
Flooding or coastal hazards	Planning for Bushfire Protection	Legal and constructed public road access
Steep land of 18% (32 degrees)		Configuration and ownership
		reticulated water and sewer services
		OSSM mapping
		Environmentally sensitive vegetation/ Biodiversity

Recommendations

The paper subdivision of North Arm Cove has a **high level of constraint**. Primarily these constraints relate to the **number of allotments, very high number of land owners**, lack of access to allotments, limited water and sewage management options and biodiversity values / environmental constraints that would severely restrict development across the paper subdivision. In addition, the single road access represents a significant issue relating to **isolation and evacuation on bushfire prone land**.

North Arm Cove is reliant on the provisions of the State Guidelines to achieve a Development Plan with appropriate consolidation and compensation mechanisms. It is therefore recommended that:

- the paper subdivision be identified in the local environmental plan;
- the land in Crown and Council ownership be identified in an appropriate conservation zone;
- land affected by coastal wetlands be rezoned C2 Environmental Conservation;
- remaining areas are to be allocated an C3 Environmental Management zone and minimum lot size of 20 hectares, to reflect the environmental constraints and management requirements.

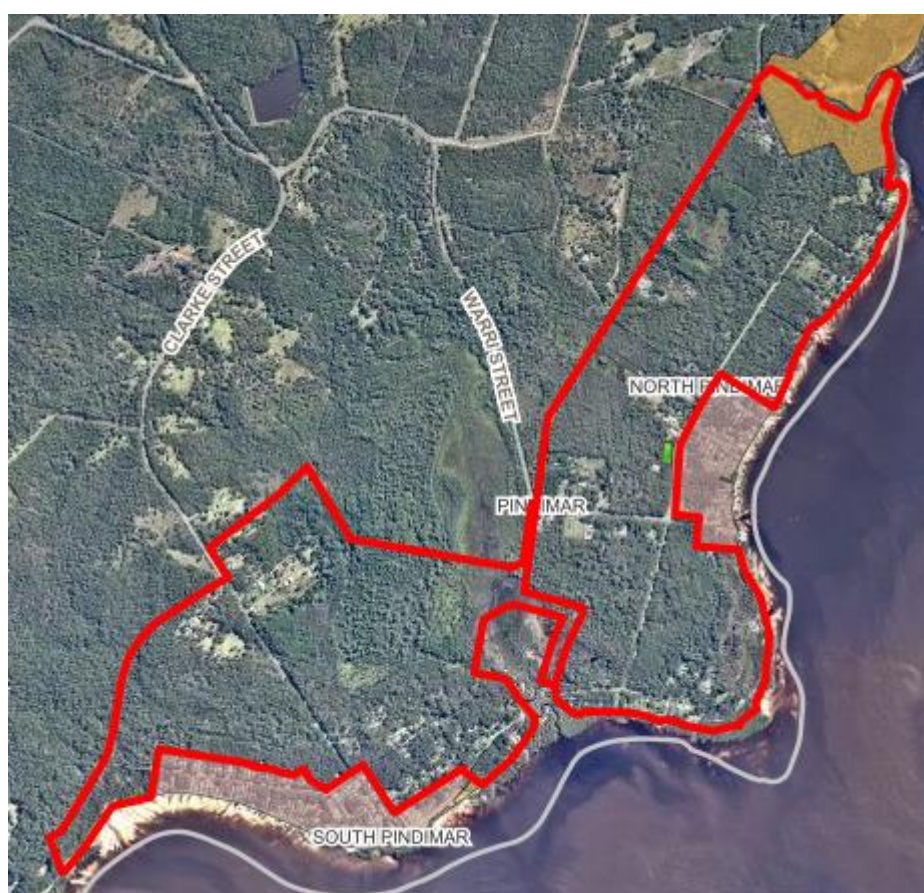
Key principles that would require resolution as part of a Development Plan for North Arm Cove would include but not necessarily be limited to:

- a) reflecting the historic subdivision layout and character of the location;
- b) site constraints and hazards such as fire, flood, coastal erosion and inundation, including safe occupation and evacuation;
- c) integrated provision of services, facilities and infrastructure;
- d) protection and management of environmentally sensitive areas and sites with high ecological or scenic landscape value;
- e) a staging plan for the timely and efficient release of land, making provision for the provision and sequencing of necessary infrastructure and services;
- f) an overall transport plan to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists;
- g) a network of active and passive recreation areas;
- h) stormwater and water quality management controls;
- i) detailed urban design controls for significant development sites; and
- j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.

Pindimar North

Paper Subdivision summary	
Deposited Plan Numbers	8287
Number of lots	300 North Pindimar
Area	200ha North Pindimar
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Pindimar North & South – Defined Paper Subdivision Extent



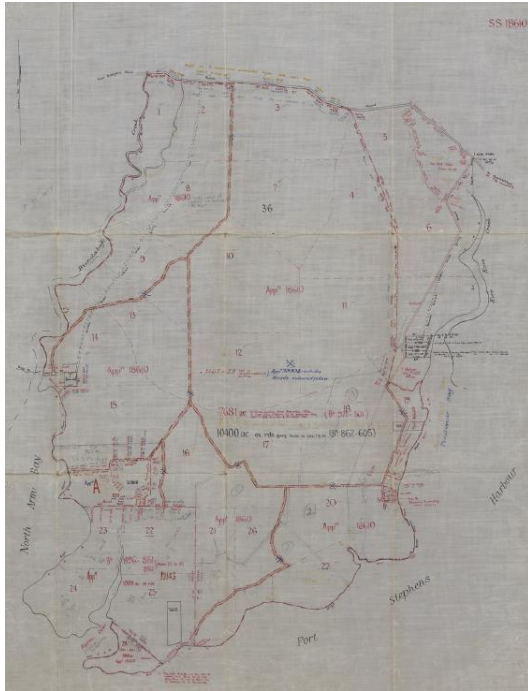
Description and Context

Pindimar was originally identified as a section of a Primary Application land grant of 464,640 acres to the Australian Agricultural Company in 1847. Surveys exist for North Pindimar from December 1913 and South Pindimar from July 1920.

The Pindimar paper subdivision must therefore be considered as having two distinct parts, both are predominantly located in the RU2 Rural Landscape Zone, with a 40 hectare minimum lot size under Great Lakes LEP 2014.

The grid pattern subdivisions do generally follow the orientation of the coastline. Lots range from 730 to 4,000 square metres, with larger lots in North Pindimar compared to South Pindimar.

Pindimar - Historic mapping



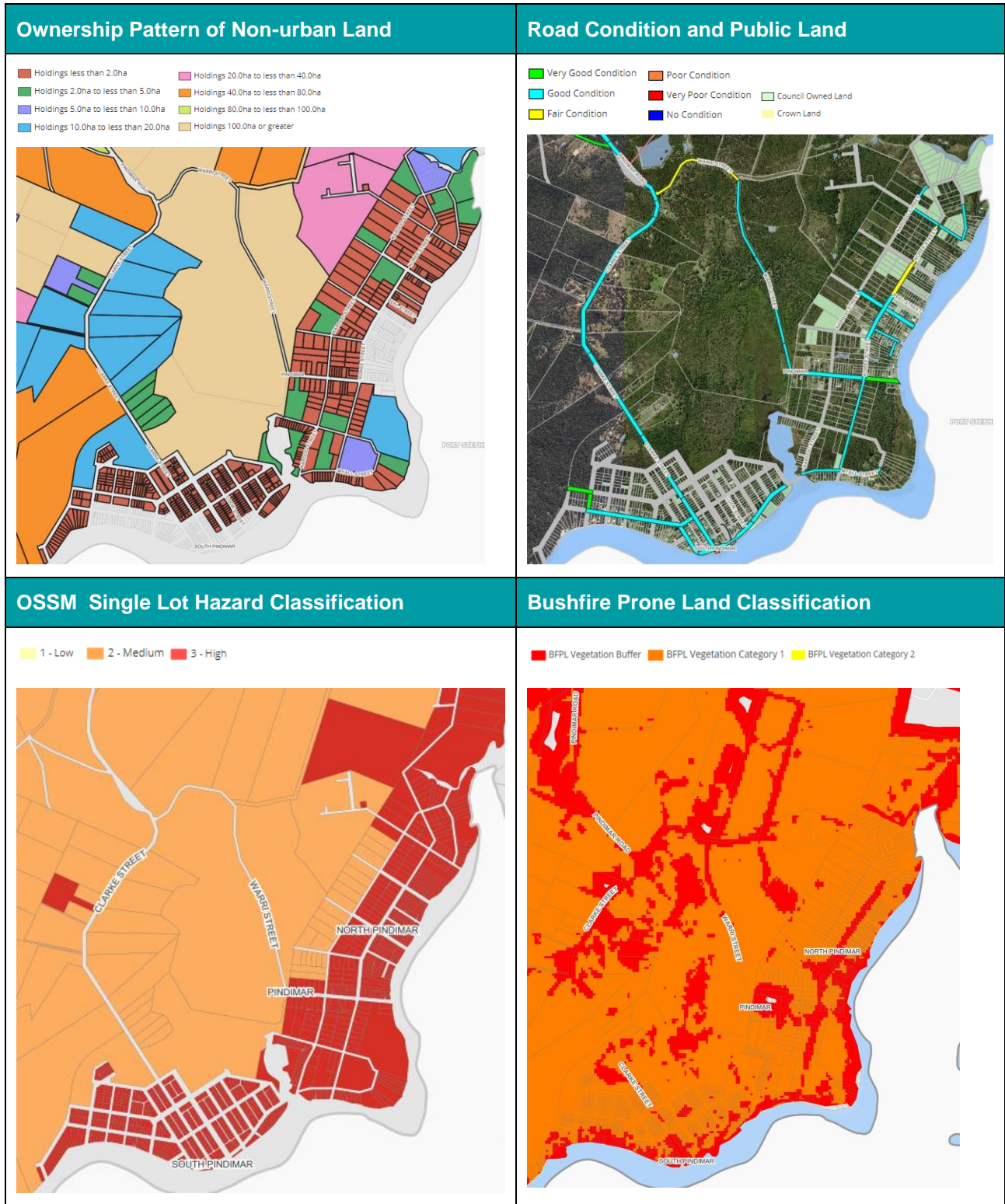
Primary Application 25311, Date of Map: 1847, being part of the 464,640 acre grant to the Australian Agricultural Company in 1847



*South Pindimar DP 10869 (Sheets 1 & 2)
Date of map: 15 July 1920*

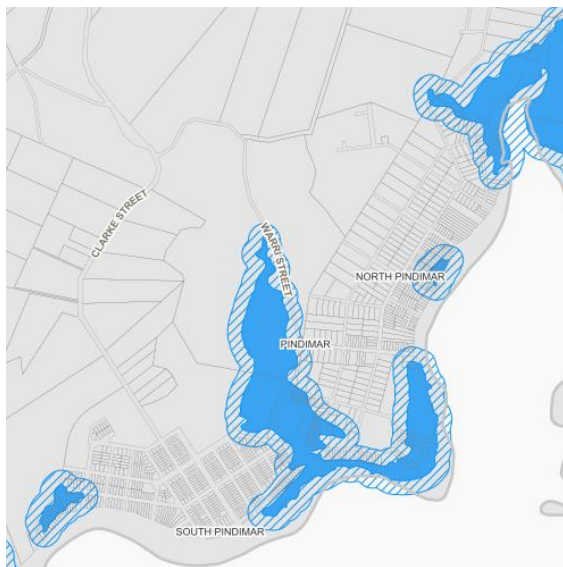


*North Pindimar DP 8287 (Sheets 1 & 2)
Date of map: December 1913*



Resilience & Hazards SEPP - Coastal Wetlands & Buffer

■ Coastal Wetlands ▨ Coastal Wetland Proximity Area



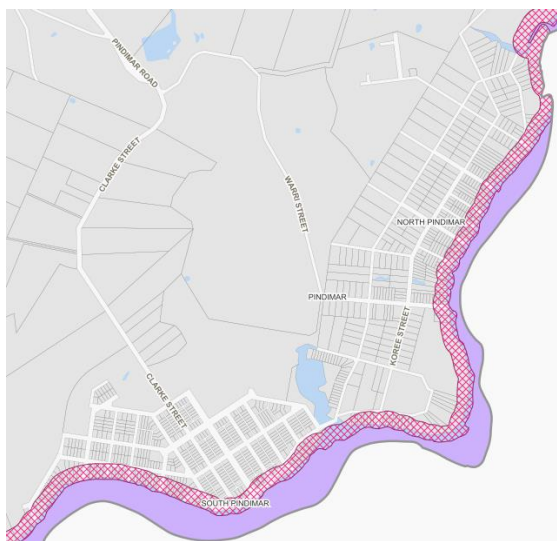
Flood Prone Land (Great Lakes LEP 2014)

■ Flood Prone Area (FLD)



Port Stephens-Great Lakes Marine Park

▨ PSGLMP_2007_100mBuffer



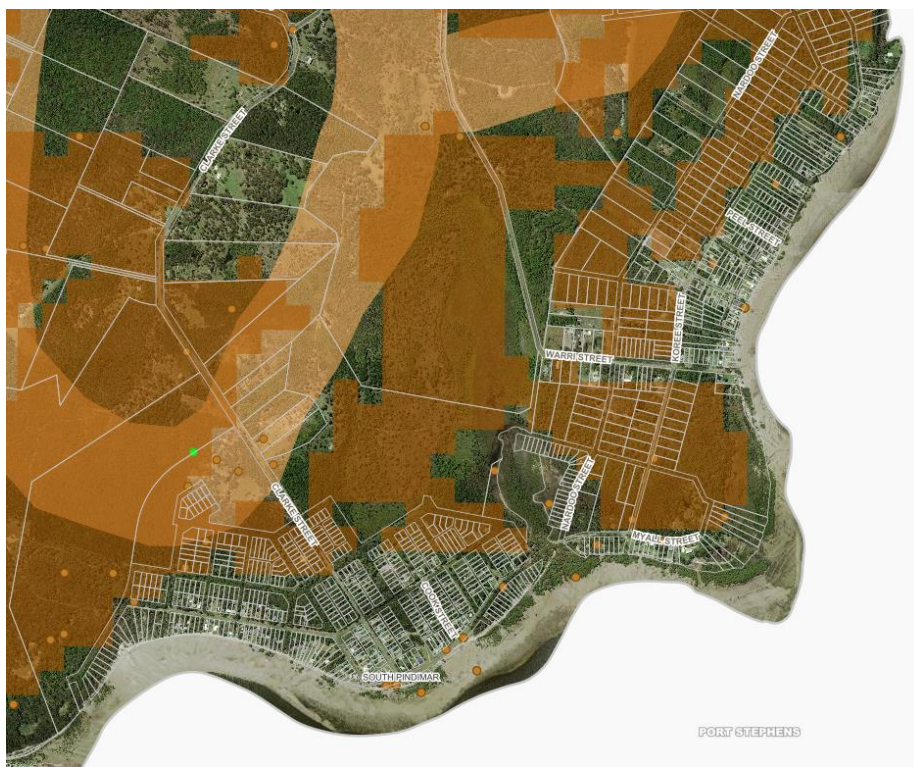
Vegetation Cover (NearMaps 2020)



OEH Biodiversity Values Map NSW



South Pindimar Wildlife Reserve



- Fauna Key Habitats
- Fauna Corridors
- Fauna
- Flora

Environment and Biodiversity

North Pindimar is partly covered by the OEH Biodiversity Map and flagged as having “high biodiversity values particularly sensitive to impacts from development and clearing.” The North Pindimar area contains many threatened species records and areas of mapped Coastal

Wetlands / Coastal Wetland Proximity Area which comprise areas of endangered ecological communities.

Infrastructure

Pindimar Road, Warri Street and Koree Streets provide primary access to sections of North Pindimar, with the remaining only consisting of unconstructed bush tracks. North Pindimar has no reticulated water or sewerage services.

Tenure and subdivision holding pattern

The paper subdivision extent of Pindimar has experienced minimal consolidation and has a high fragmentation of holdings with most having an area of less than two hectares.

More than 80 lots in North Pindimar have been transferred to Council in lieu of outstanding rates, fees and charges and some of these lots are already within an conservation zone, reflecting the constraints and environmental value of these areas.

Constraints analysis – North Pindimar

LOW	MEDIUM	HIGH
Steep land of 18% (32 degrees)		Legal and constructed public road access
		Flooding or coastal hazards
		Configuration and ownership
		Environmentally sensitive vegetation/ Biodiversity
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The North Pindimar paper subdivision is **highly constrained**, with **significant areas of flood prone land** including the existing village area, limited access, high fragmentation, significant areas bushfire prone land and sensitive coastal wetlands.

All public land in North Pindimar will be transitioned to the most appropriate conservation zone and any land affected by coastal wetlands will be included in the C2 Environmental Conservation zone.

The North Pindimar paper subdivision has **limited development potential** given the extent of flood prone land and potential impacts of this constraint on access, occupation and sewage management. It is therefore recommended that:

- land in Crown and Council ownership be identified in an appropriate conservation zone;
- land affected by coastal wetlands be rezoned C2 Environmental Conservation; and

- remaining areas are to be allocated an C3 Environmental Management Zone and minimum lot size of 20 hectares, to reflect the environmental constraints and management requirements.

the paper subdivision area be identified in the local environmental plan.

Key principles that would require resolution as part of a Development Plan for North Pindimar would include but not necessarily be limited to:

- a) ensuring any consolidated allotments for development have flood-free access, building envelopes and on-site sewage disposal areas;
- b) site constraints and hazards such as fire, coastal erosion and inundation, including safe occupation and evacuation;
- c) protection and management of environmentally sensitive areas and sites with high ecological value;
- d) a staging plan for the timely and efficient release of land, making provision for the provision and sequencing of necessary infrastructure and services;
- e) stormwater and water quality management controls; and
- f) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.

Pindimar South

Paper Subdivision summary	
Deposited Plan Numbers	10869
Number of lots	400 South Pindimar
Area	70ha South Pindimar
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

Pindimar – Defined Paper Subdivision Extent



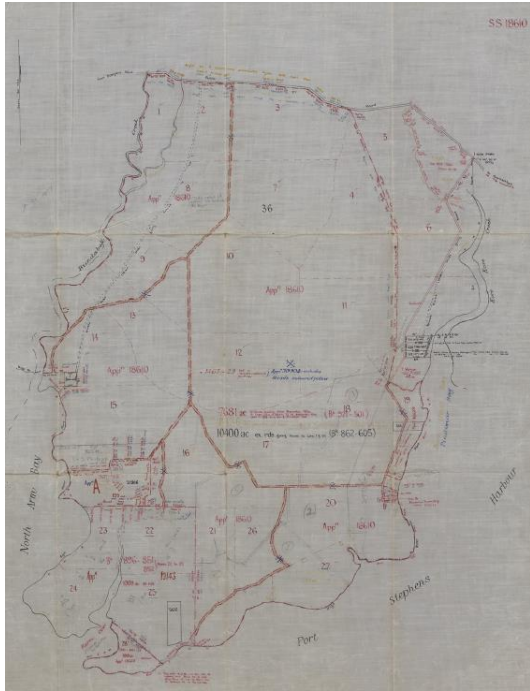
Description and Context

Pindimar was originally identified as a section of a Primary Application land grant of 464,640 acres to the Australian Agricultural Company in 1847. Surveys exist for North Pindimar from December 1913 and South Pindimar from July 1920.

The Pindimar paper subdivision must therefore be considered as having two distinct parts, both are predominantly located in the RU2 Rural Landscape Zone, with a 40 hectare minimum lot size under Great Lakes LEP 2014.

The grid pattern subdivisions do generally follow the orientation of the coastline. Lots range from 730 to 4,000 square metres, with larger lots in North Pindimar compared to South Pindimar.

Pindimar - Historic mapping



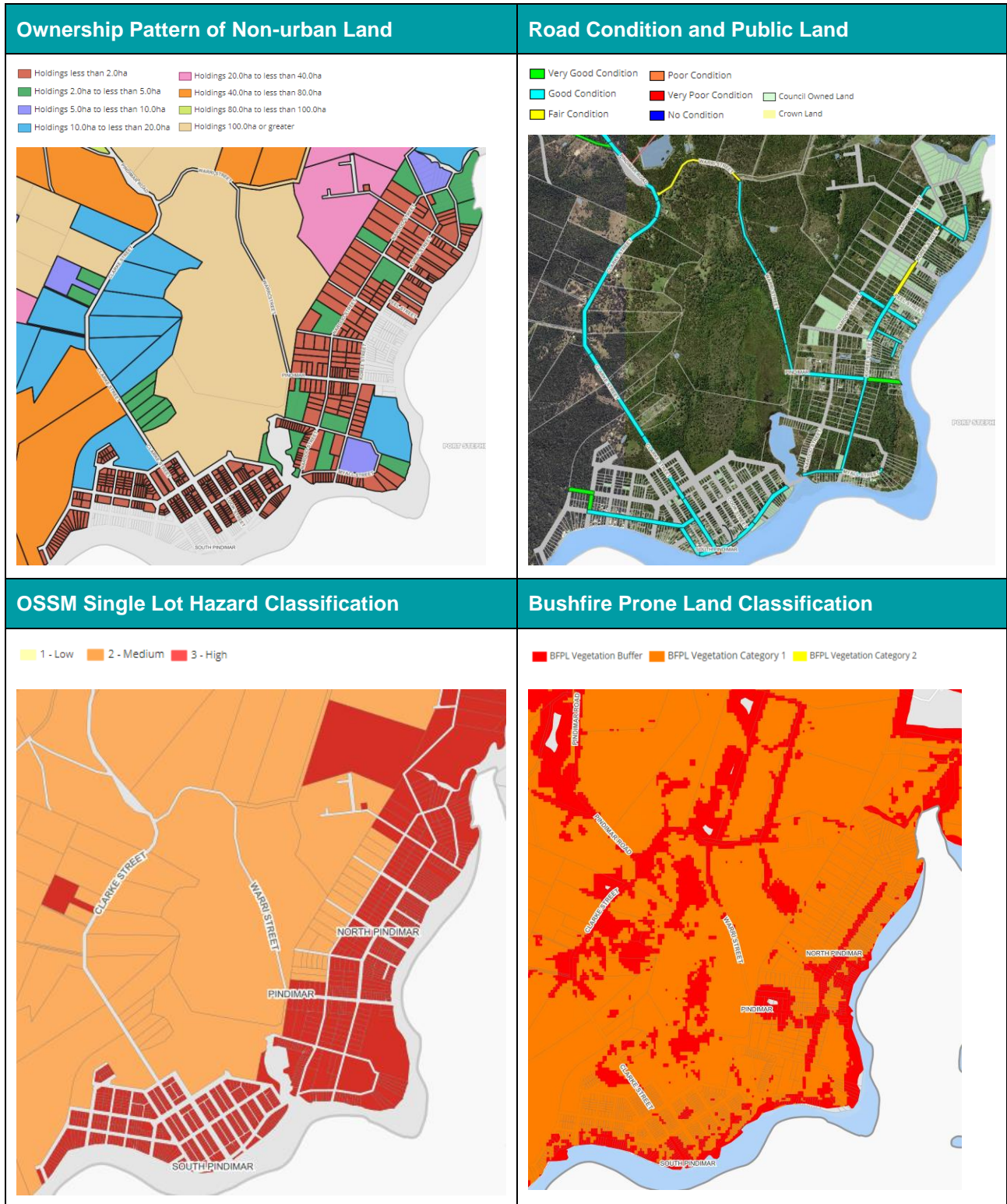
Primary Application 25311, Date of Map: 1847, being part of the 464,640 acre grant to the Australian Agricultural Company in 1847



*South Pindimar DP 10869 (Sheets 1 & 2)
Date of map: 15 July 1920*

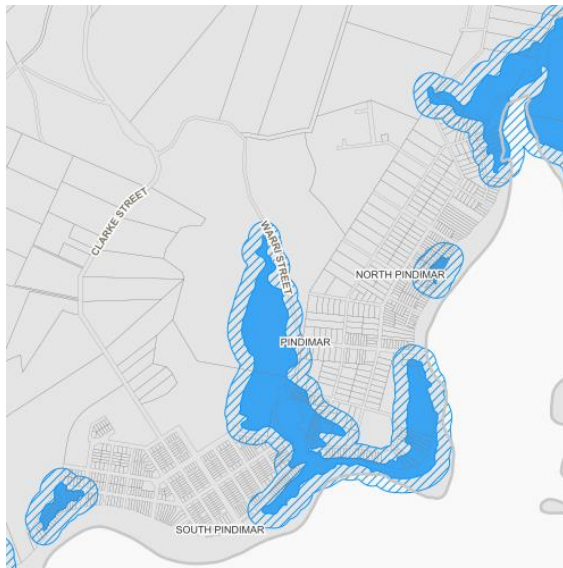


*North Pindimar DP 8287 (Sheets 1 & 2)
Date of map: December 1913*



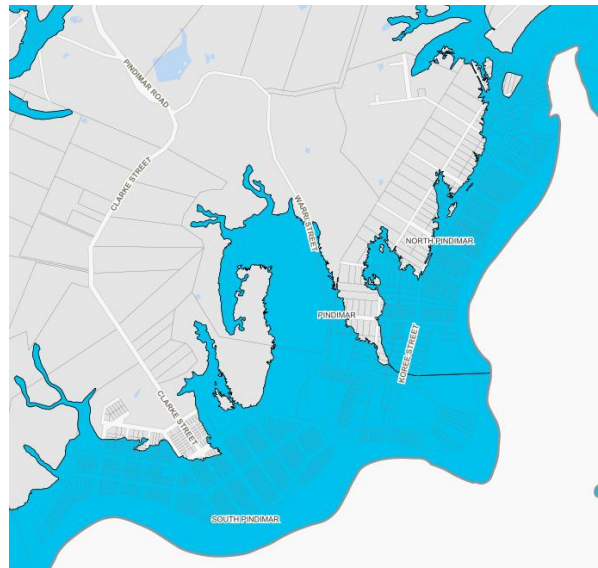
Resilience & Hazards SEPP - Coastal Wetlands & Buffer

Coastal Wetlands Coastal Wetland Proximity Area



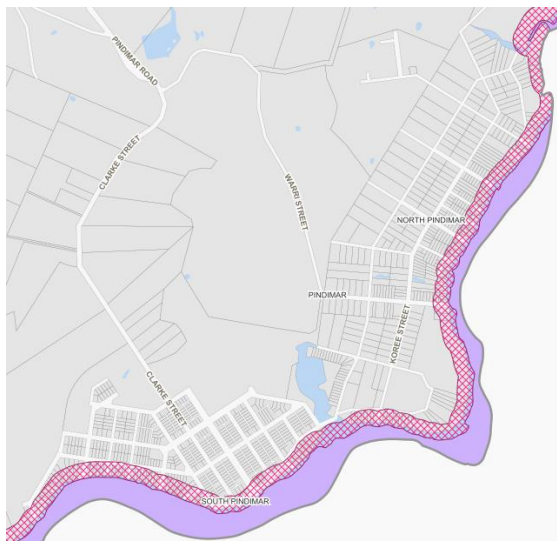
Flood Prone Land (Great Lakes LEP 2014)

Flood Prone Area (FLD)



Port Stephens-Great Lakes Marine Park

PSGLMP_2007_100mBuffer



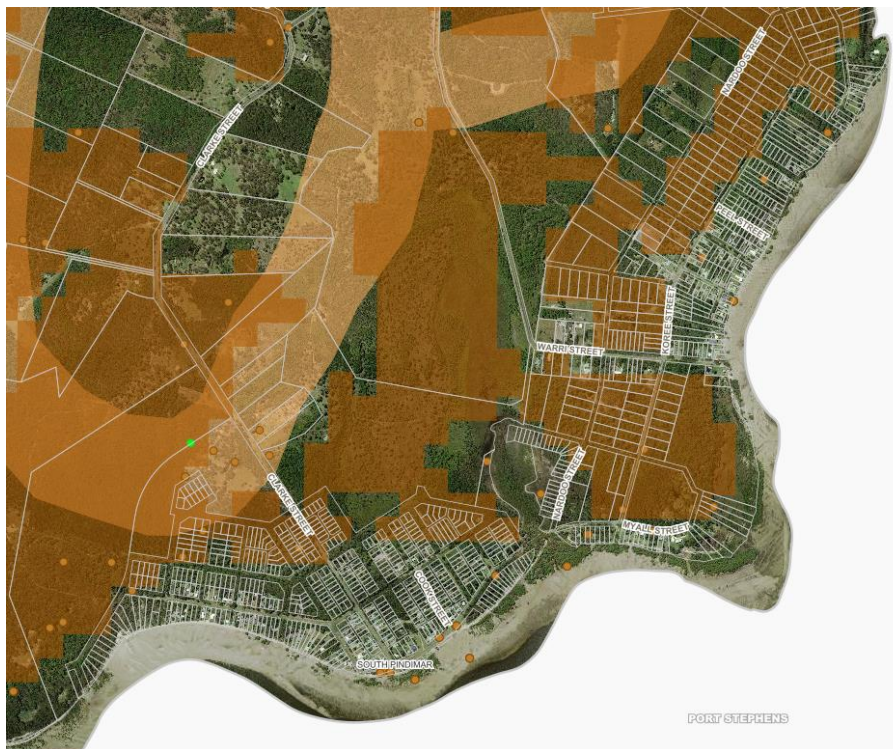
Vegetation Cover (NearMaps 2020)



OEH Biodiversity Values Map NSW



South Pindimar Wildlife Reserve



- Fauna Key Habitats
- Fauna Corridors
- Fauna
- Flora

Environment and Biodiversity

The South Pindimar paper subdivision is partly covered by the OEH Biodiversity Map and flagged as having “high biodiversity values particularly sensitive to impacts from development and clearing.” The South Pindimar area contains many threatened species records and areas

of mapped Coastal Wetlands / Coastal Wetland Proximity Area which comprise areas of endangered ecological communities.

Infrastructure

Pindimar Road, Clarke Street and Cambage Street provide primary access to the sections of South Pindimar, with many remaining access areas only consisting of unconstructed bush tracks. South Pindimar has no reticulated water or sewerage services.

Tenure and subdivision holding pattern

The paper subdivision extent of South Pindimar has experienced minimal consolidation and has a high fragmentation of holdings with most lots having an area of less than two hectares.

Nearly 20 lots in Pindimar have been transferred to Council in lieu of outstanding rates, fees and charges, and some of these lots are already within a conservation zone, reflecting the constraints and environmental value of these areas.

Constraints analysis – South Pindimar

LOW	MEDIUM	HIGH
Steep land of 18% (32 degrees)		Legal and constructed public road access
		Configuration and ownership
		Flooding or coastal hazards
		Environmentally sensitive vegetation/ Biodiversity
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The South Pindimar paper subdivision is **highly constrained**, with **significant areas of flood prone land** including the existing village area, limited access, high fragmentation, significant areas bushfire prone land and sensitive coastal wetlands.

All public land in South Pindimar will be transitioned to the most appropriate conservation zone and any land affected by coastal wetlands will be included in the C2 Environmental Conservation zone.

The South Pindimar paper subdivision has **very limited development potential** given the extent of flood prone land and potential impacts of this constraint on access, occupation and sewage management. It is therefore recommended that:

- land in Crown and Council ownership be identified in an appropriate conservation zone;
- land affected by coastal wetlands be rezoned C2 Environmental Conservation;

- remaining areas are to be allocated an C3 Environmental Management Zone and minimum lot size of 40 hectares, to reflect the environmental constraints and management requirements; and
- the paper subdivision area be identified in the local environmental plan.

Key principles that would require resolution as part of a Development Plan for South Pindimar would include but not necessarily be limited to:

- a) ensuring any consolidated allotments for development have flood-free access, building envelopes and on-site sewage disposal areas;
- b) site constraints and hazards such as fire, coastal erosion and inundation, including safe occupation and evacuation;
- c) protection and management of environmentally sensitive areas and sites with high ecological value;
- d) a staging plan for the timely and efficient release of land, making provision for the provision and sequencing of necessary infrastructure and services; and
- e) stormwater and water quality management controls.

The Branch

Paper Subdivision summary	
Deposited Plan Numbers	12013
Number of lots	125
Area	Approximately 140 hectares
Land Use Zone	RU2 Rural Landscape (GL LEP 2014)
Minimum Lot Size for Dwelling Entitlement	40 hectares

The Branch – Defined Paper Subdivision Extent

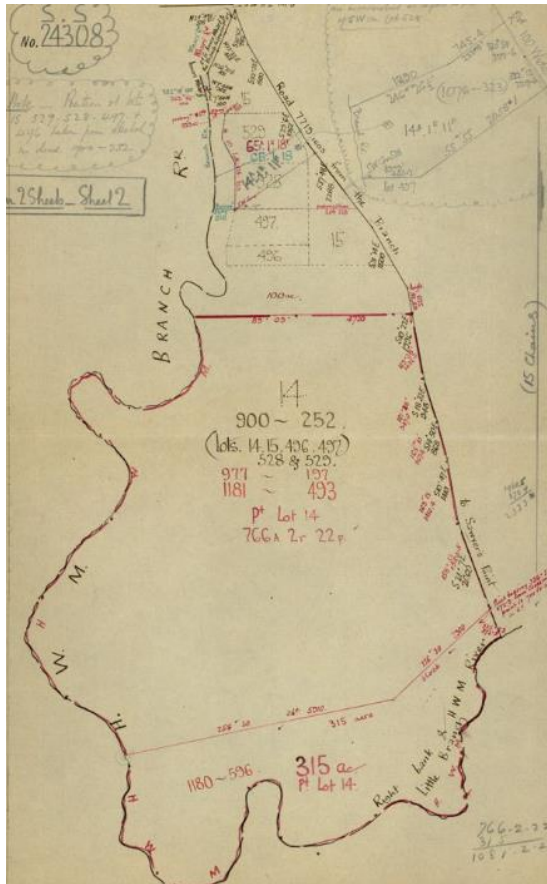


Description and Context

The Branch paper subdivision is located on the eastern side of The Branch River and accessed via The Branch Lane which connects Booral Road to the Pacific Highway.

The grid pattern subdivision extends from The Branch Lane along Larpent Avenue into a peninsula of The Branch River. The allotments on the peninsula consist of low-lying swamp and identified coastal wetlands. The lot sizes ranges from 2,000 in the peninsula to over 4,500 square metres towards The Branch Lane.

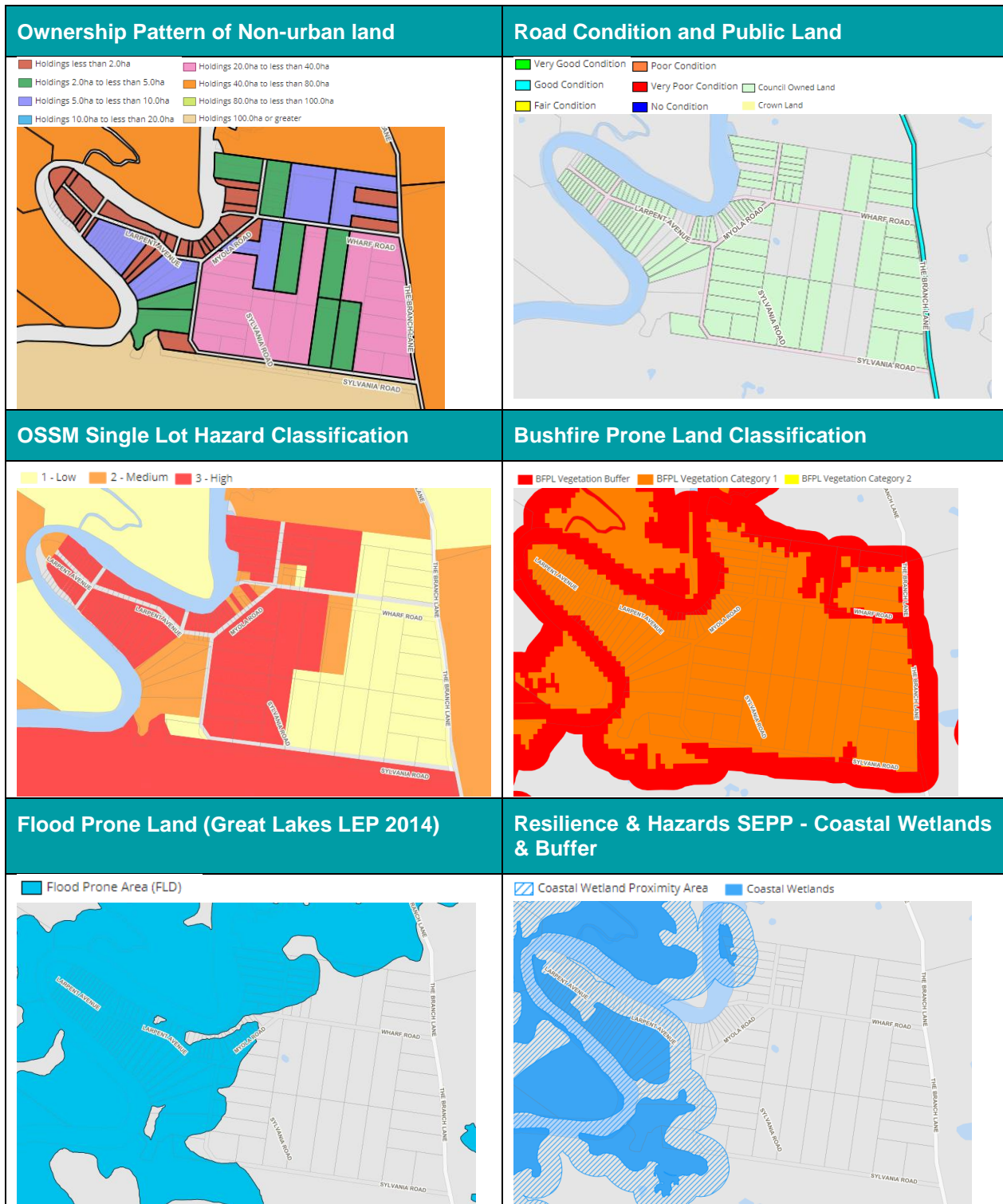
The Branch - Historic Mapping



Primary Application 24308 being part of the 464,640 acre grant to the Australian Agricultural Company in 1847

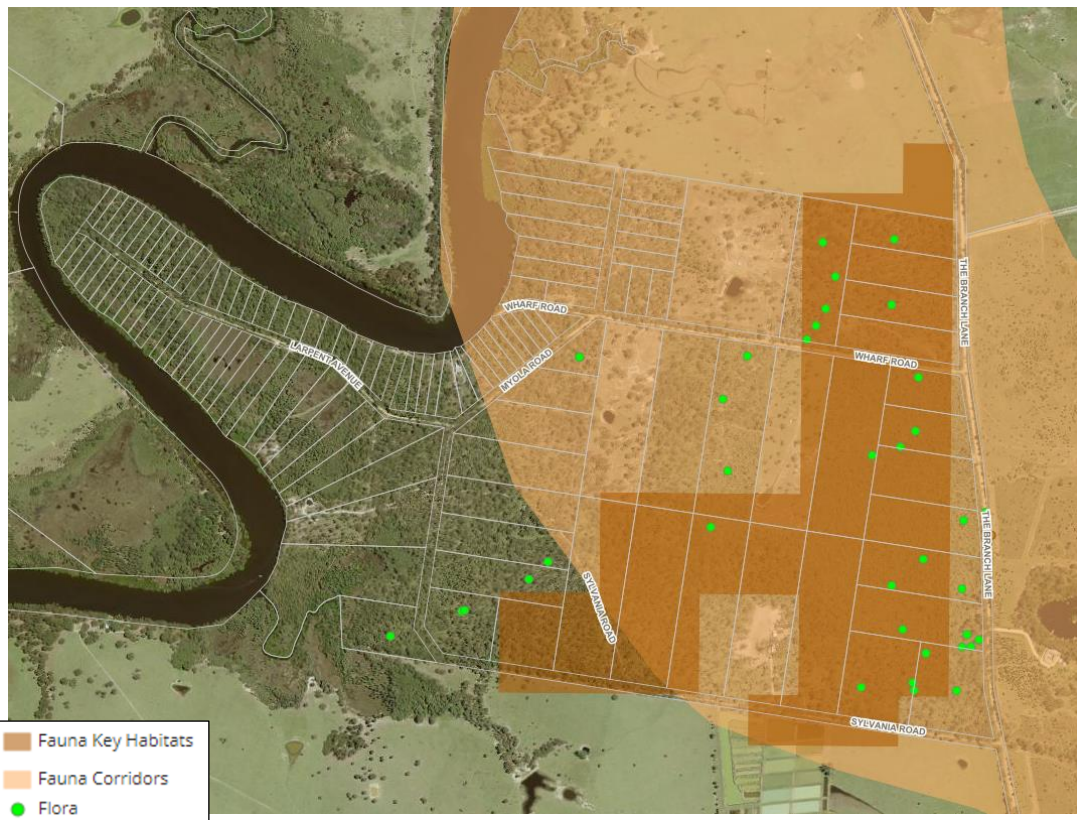


DP 12013 – The Branch (Sheets 1, 2 and 3)
Date of map: 23 February 1923





Bio-Net Threatened Species Mapping



Environment and Biodiversity

Sections of The Branch paper subdivision are covered by the OEH Biodiversity Map and are flagged as having “high biodiversity values particularly sensitive to impacts from development and clearing.” There are many threatened species records and endangered ecological

communities have been observed. The proximity of the land to the Branch River means that the habitats are important for riverine biodiversity and water quality protection.

Infrastructure

The Branch is only accessible via The Branch Lane and Wharf Road, Sylvania Street, Myola Road and Larpent Avenue are not maintained by Council. The Branch does not have reticulated water or sewerage services.

Tenure and subdivision holding pattern

The paper subdivision has experienced minimal consolidation or development as a result of its isolated location and environmental constraints.

Over 95 lots in The Branch have transitioned to Council ownership and are identified as suitable for an C2 Environmental Conservation zone due to the extent of coastal wetlands in this location. There are less than 30 privately owned lots in The Branch, many with site areas of less than two hectares, in coastal wetlands and flood affected.

Constraints analysis

LOW	MEDIUM	HIGH
Steep land of 18% (32 degrees)	Configuration and ownership	Flooding or coastal hazards
		Environmentally sensitive vegetation/ Biodiversity
		Legal and constructed public road access
		Planning for Bushfire Protection
		Reticulated water and sewer services
		OSSM mapping

Recommendations

The Branch paper subdivision is **highly constrained**. Large parts of the paper subdivision contain or are buffers to sensitive coastal wetlands, are bushfire prone, and have very limited vehicular access.

There are a limited number of existing allotments over 4 hectares in size with existing dwellings. This level of development, coupled with the **extensive areas of Council owned** and environmentally constrained lands, makes additional development in this location unlikely. Therefore:

- the land in Council ownership is to be identified in an appropriate conservation zone;
- land affected by coastal wetlands is to be rezoned C2 Environmental Conservation;
- those allotments with existing dwellings and access from The Branch Lane, Wharf Road and Sylvania Road, are to be included in an C4 Environmental Living zone, with a minimum lot size of 10 hectares, to reflect the environmental constraints and management requirements in this location; and

- The Branch paper subdivision is ***very highly constrained*** and not suitable for the preparation of a Development Plan.

The Branch paper subdivision is ***very highly constrained*** and not suitable for the preparation of a Development Plan.

Wingham North (Rifle Range Road)

Paper Subdivision summary	
Deposited Plan Numbers	DP 8150
Number of lots	21
Area	4 hectares
Land Use Zone	RU1 Primary Production (GT LEP 2010)
Minimum Lot Size for Dwelling Entitlement	40 hectares

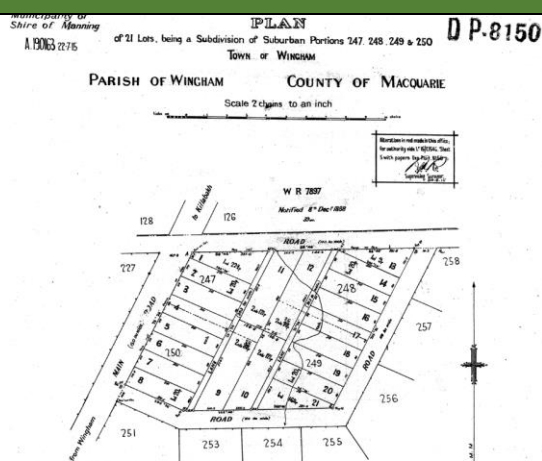
Description and Context

The Wingham North paper subdivision, in the RU1 Primary Production Zone, is located on the south-eastern corner of Comboyne Road and Rifle Range Road, on the northern fringe of Wingham. The subdivision lot sizes range from 1,500 to 2,300 square metres

Wingham North – Paper Subdivision Extent



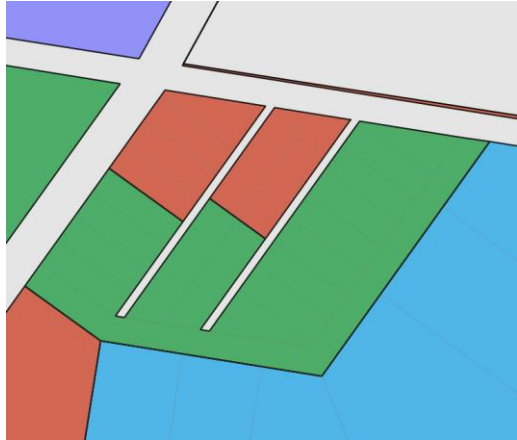
Wingham North – Historic mapping



DP 8150 Date of map: 21 June 1915

Ownership Pattern of Non-urban Land

- Holdings less than 2.0ha
- Holdings 2.0ha to less than 5.0ha
- Holdings 5.0ha to less than 10.0ha
- Holdings 10.0ha to less than 20.0ha
- Holdings 20.0ha to less than 40.0ha
- Holdings 40.0ha to less than 80.0ha
- Holdings 80.0ha to less than 100.0ha
- Holdings 100.0ha or greater



Road Condition and Public Land

- Very Good Condition
- Good Condition
- Fair Condition
- Poor Condition
- Very Poor Condition
- No Condition
- Council Owned Land
- Crown Land



OSSM Single Lot Hazard Classification

- 1 - Low
- 2 - Medium
- 3 - High



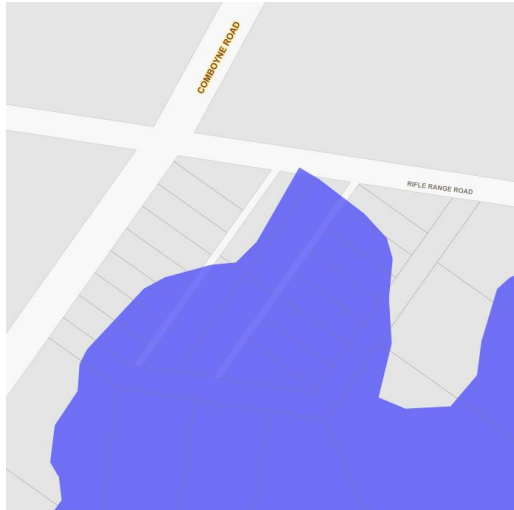
Bushfire Prone Land Classification

- BFPL Vegetation Buffer
- BFPL Vegetation Category 1
- BFPL Vegetation Category 2

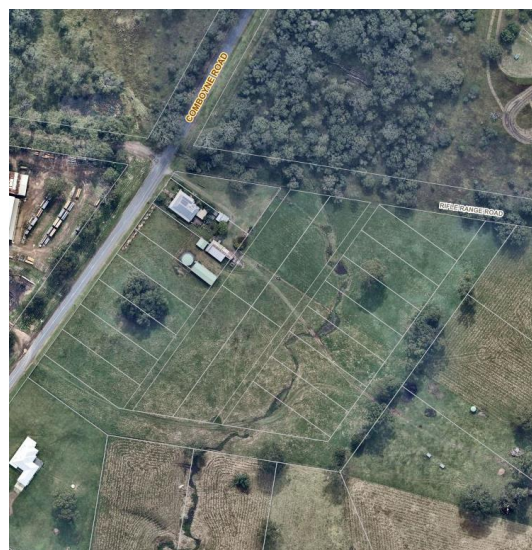


Flood Prone Land (Greater Taree DCP)

- FPL3 - 2100 1% plus 0.5m freeboard



Vegetation Cover (NearMaps 2020)





Environmental and Biodiversity

The Paper subdivision of Wingham North is not mapped on the OEH Biodiversity Values map and there is little vegetation cover over the paper subdivision layout. This does not mean that there are no ecological or environmental concerns that need to be considered in relation to any future development of the Wingham North paper subdivision as the land may contain transient koala occupation based on nearby records.

Infrastructure

North Wingham is accessible via Comboyne Road. All other roads, including Rifle Range Road are not maintained by Council. Wingham North has access to water services but not reticulated sewerage.

Tenure and subdivision holding pattern

The paper subdivision of Wingham North has experienced limited fragmentation, with all lots being held in two holdings.

Constraints analysis

LOW	MEDIUM	HIGH
Configuration and ownership	Legal and constructed public road access	Flooding or coastal hazards
Steep land of 18% (32 degrees)	Reticulated water and sewer services	

Environmentally sensitive vegetation/ Biodiversity	OSSM mapping	
Planning for Bushfire Protection		

Recommendations

The paper subdivision extent of Wingham North has a small area and is ***moderately constrained***, with a significant section affected by flooding from Cedar Party Creek.

The paper subdivision therefore has ***limited development potential*** and is reliant on consolidation to achieve development and on-site sewage disposal areas outside the flood area.

It is therefore recommended that:

- the area is included in the an C4 Environmental Living Zone with a minimum lot size of 10 hectares, to reflect the environmental constraints and management requirements; and
- the paper subdivision area be identified in the Local Environmental Plan.

6 Land Owner Contact Form

Council is unable to provide land owner information, but can assist in initiating contact between adjoining property owners. The form below is available on Council's website in the Forms Library: <https://www.midcoast.nsw.gov.au/Council/Forms-Library>.



Request to initiate contact with adjoining property owner

Council is generally unable to release personal information. Property owners wishing to contact adjoining owners may complete this form and Council will forward it to the adjoining owners. The onus is on the adjoining owner to reply to your request and Council has no control over the process.

1. Applicant Details

Applicant Company / Organisation

Applicant's postal address

Property address (if different to above)

I wish to be contacted by the following method (please select at least one):

☐ Email ☐ Mobile/Phone ☐ Post

Purpose of the request

I/We confirm ownership of the above mentioned property that adjoins the property/ies identified below and affirm that the information provided will only be used for the stated purpose.

Please sign declaration overleaf.

Owners Consent

If the applicant is not the owner (or an authorised representative eg Real Estate, Strata Manager, etc) of the above property, please provide owners consent with request.

2. Adjoining Property Details

- ☐ I require owner contact details for **all** adjoining properties (go to section 3)
OR
☐ I only require owner contact details for the adjoining property/ies listed below

Address details for each property (eg 2 Smith Street, Taree)

3. Declaration

I/We confirm ownership of the above mentioned property that adjoins the property/ies identified below and affirm that the information provided will only be used for the stated purpose.

Signature (Type name if submitting by email)

Date

4. How to lodge this form

Completed form can be:

- Emailed (select the submit button below); or
- Forwarded by post; or
- Lodged at our Customer Service Counters - Monday to Friday (excluding public holidays).

Please Note

If Council has received your request, you will receive an email notification confirming so.
If you do not receive an email confirmation, then Council has not received your application.
Please contact Council by telephoning 6591 7222 or try saving this form to your computer and attaching it to an email, addressed to council@midcoast.nsw.gov.au.

Council use only when hardcopy received

I confirm that the properties are adjoining and the applicant is the adjoining owner.

Council officer name

Date

Privacy: This information is required to process your request and will not be used for any other purpose without seeking your consent, or as required by law. Your application will be retained in Council's Records Management System and disposed of in accordance with current legislation. Your personal information can be accessed and corrected at any time by contacting Council.

Forster | 4 Breese Parade | PO Box 450 Forster 2428 | 6591 7222
Gloucester | 89 King Street | PO Box 11 Gloucester 2422 | 6538 5250
Taree | 2 Pulteney Street | PO Box 482 Taree 2430 | 6592 5399

www.midcoast.nsw.gov.au

7 Planning for Paper Subdivision Guidelines 2013

Council prepared the draft Report in good faith. However, to ensure complete transparency about the NSW Government process for dealing with land in paper subdivisions, the guideline is produced in full in this section of the final Paper Subdivisions Analysis Report.



PLANNING FOR PAPER SUBDIVISIONS GUIDELINES 2013



© Crown copyright 2013
Department of Planning & Infrastructure
23-33 Bridge Street
Sydney, NSW, Australia 2000
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

ISBN 978-0-7313-3583-1

© State of New South Wales through the Department of Planning and Infrastructure, 2013

CONTENTS

1. INTRODUCTION.....	1
2. WHAT ARE PAPER SUBDIVISIONS?.....	1
3. PAPER SUBDIVISIONS LEGISLATIVE PROVISIONS.....	2
3.1 Subdivision Orders and the relevant authority.....	2
3.2 Making a Subdivision Order.....	3
4. PREPARATION OF DEVELOPMENT PLANS.....	5
4.1 Decision to prepare a Development Plan.....	5
4.2 Advising the Minister of a decision to prepare a Development Plan.....	5
4.3 Content of a Development Plan.....	6
4.4 Preliminary consultation with land owners.....	6
4.5 Rules disapplying or modifying certain requirements of Land Acquisition (Just Terms Compensation) Act 1991 (NSW).....	7
4.6 Notice of proposal to adopt a Development Plan and consent ballot.....	7
4.7 Adoption of a Development Plan.....	8
4.8 Amendment of a Development Plan.....	8
5. THE CONSENT BALLOT.....	9
5.1 Purpose of the consent ballot.....	9
5.2 Requirements of the Act and Regulation and best practice.....	10
6. ACCOUNTING ISSUES.....	11
6.1 Accounts that should be kept.....	11
6.2 Distribution of surplus funds after implementation of Development Plan.....	12
6.3 Some additional considerations.....	12
APPENDIX A: DEFINITIONS.....	14
APPENDIX B: DEVELOPMENT PLAN PROCESS DIAGRAMS.....	16
APPENDIX C: CHECK VOTE COUNTING METHOD.....	18
APPENDIX D: EXAMPLE BALLOT PAPER.....	21

1. INTRODUCTION

The *Planning for Paper Subdivisions Guidelines* ('the guidelines') are intended to assist stakeholders involved in the development of land held in paper subdivisions, using the process set out in Schedule 5 to the *Environmental Planning and Assessment Act 1979* NSW ('the EP&A Act').

The provisions in Schedule 5 to the EP&A Act establish a mechanism to overcome longstanding barriers to realise the development potential of paper subdivisions. The mechanism will be of use primarily where land has been zoned or is subject to a planning proposal under the EP&A Act to enable development, but where fragmented ownership and owners' lack of funding and development expertise make the development process difficult.

The use of this mechanism will only be appropriate in certain circumstances: where the land is held as a paper subdivision and it has been demonstrated to have development potential by an environmental planning instrument or planning proposal which facilitates development. The mechanism does not change the process required to rezone land or the merit assessment process for rezoning and development assessment of subdivision and construction development applications.

The guidelines should be read together with Schedule 5 to the EP&A Act and Part 16C (Paper Subdivisions) of the *Environmental Planning and Assessment Regulation 2000* ('the Regulation') which are available at www.legislation.nsw.gov.au

The guidelines outline the following key issues:

- What are paper subdivisions.
- Legislative provisions for paper subdivisions.
- Development plans including guidance on preparation, content, adoption and amendment.
- Ballot procedures.
- Accounting practices, including the administration, collection and use of funds for a development plan.
- Key acronyms and definitions.

2. WHAT ARE PAPER SUBDIVISIONS?

'Paper subdivisions' denotes land comprising lots that have recognition only on paper and, in most cases, with no formed roads, drainage, reticulated water, sewer or electricity. Most paper subdivisions have existed for many years, some originating as long ago as the late 1800s or early 1900s. The land is likely to be largely undeveloped, often with little or no development potential under existing land use zonings. Lots typically range in size from 200m² to 20,000m² and are usually held in separate titles by multiple land owners.

Locations of paper subdivisions in NSW include:

- Riverstone and Marsden Park – in Blacktown City Local Government Area (LGA);
- Parts of Jervis Bay – Shoalhaven LGA; and
- South Buttaba Hills Estate – Lake Macquarie LGA.

Land use zoning and a lack of services have often prevented or limited development of paper subdivision land. However, land owners may have the expectation that, over time, their land will be rezoned for residential development. They may also assume that the infrastructure to facilitate rezoning and housing construction will be funded by government.

Normally, for land to become available for development, it needs to be appropriately zoned with a plan of subdivision and details of necessary infrastructure and subdivision works in place, and infrastructure and associated works funded and programmed for provision. For new development proposals, this work is normally coordinated by, or on behalf of land owners. The main difficulty in achieving the development of paper subdivisions is the large and diverse number of land owners involved who frequently have limited development expertise and access to funding to re-subdivide land to meet current subdivision standards.

The provisions in the EP&A Act and Regulation dealing with paper subdivisions have been introduced to provide a potential mechanism to help overcome these barriers to development.

3. PAPER SUBDIVISIONS LEGISLATIVE PROVISIONS

Schedule 5 to the EP&A Act and the supporting provisions in the Regulation set out a mechanism which may be used for paper subdivision land. The current legislation can be viewed at the New South Wales Government NSW Legislation website at <http://www.legislation.nsw.gov.au>

3.1 Subdivision Orders and the relevant authority

The provisions in the EP&A Act provide a mechanism for the Minister for Planning and Infrastructure ('the Minister') to make a Subdivision Order. The Subdivision Order confers upon an authority specified functions to enable it to implement a Development Plan for land held in a paper subdivision.

Under clause 2, Schedule 5 to the EP&A Act, the Minister may designate in a Subdivision Order any of the following authorities as the relevant authority for the subdivision land:

- the corporation (meaning the corporation sole established under section 8 of the EP&A Act), or
- a local council, or
- UrbanGrowth NSW, or
- a development corporation established under the *Growth Centres (Development Corporations) Act 1974 NSW*, or
- any other body prescribed by the Regulation (Note: Currently, none are prescribed).

A Subdivision Order can empower the authority to manage the development and resubdivision of the land. Where the land can be developed using the existing lot pattern, a Subdivision Order will not normally be necessary or available.

3.2 Making a Subdivision Order

There are several key requirements, set out in clause 3(2) Schedule 5 to the EP&A Act, that must be met before the Minister may make a Subdivision Order, including the following:

- The land must be the subject of an environmental planning instrument or planning proposal that will facilitate the proposed planning purpose.
- A Development Plan must have been prepared for the land and contain matters specified in clause 6 of Schedule 5 of the EP&A Act.
- At least 60% of the land owners, and the owners of at least 60% of the total area of land the subject of the Subdivision Order, must have consented to the Development Plan.

An authority may request the Minister to make a Subdivision Order. A submission to the Minister requesting the making of a Subdivision Order should provide the following details:

- Title particulars of the subject land.
- Any studies prepared to inform the planning purpose and the development plan.
- Details of the planning purpose.
- Consultation with land owners and the local council.
- Reasons why the land cannot be developed for the planning purpose using the existing lot pattern.

The Minister will consider the following matters in making a Subdivision Order:

- The planning purpose.
- Details of the functions sought to be conferred and how they relate to the planning purpose.
- Proposed subdivision works to be undertaken by the relevant authority.
- Any conditions proposed to be attached to the exercise of the functions.
- Whether and how the planning purpose will promote and co-ordinate the orderly and economic use and development of the land.
- Whether the land has been subdivided and is held by more than one owner.
- Whether there is currently no or inadequate provision for subdivision works.
- Particulars of the environmental planning instrument or planning proposal applicable to the land and how it will facilitate the proposed planning purpose.
- Consultation undertaken with the relevant council.
- Details of a development plan prepared for the land.
- Any provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- Whether the requisite land owners' consents to the proposed development plan have been obtained.

The functions that may be conferred on an authority by a Subdivision Order may include powers to:

- Carry out subdivision works.
- Enter and deal with land (including to acquire land by agreement or compulsory process, or to dispose of land).
- Require payment of contributions.

The Regulation includes provisions for:

- The preparation, notification, adoption and amendment of Development Plans.
- Conducting ballots to seek land owners' consent to a proposed Development Plan.

- Reporting requirements to the Minister and councils.
- Information to be specified on planning certificates.

The Minister's issue of a Subdivision Order does not affect any other legal requirement to lodge a Development Application (DA) and obtain development consent under the EP&A Act for development of the land, or for the land to be rezoned to enable the development to proceed. Applicants need to address relevant environmental assessment matters under the EP&A Act through the rezoning and DA process, for example, biodiversity, bush fire, flooding, heritage, contamination, and compliance with relevant Commonwealth, State and local planning controls.

The following case study (source: UrbanGrowth NSW) of the Riverstone Scheduled Lands and UrbanGrowth NSW highlights the difficulties of ownership and development of paper subdivision land, and the potential benefits of the guidelines and associated legislative provisions.

Case Study: Riverstone Scheduled Lands and UrbanGrowth NSW

The Riverstone Scheduled Lands ('the scheduled lands') were originally subdivided in the late 19th century in a terrace style grid pattern following the establishment of the railway line to Richmond. Each lot is about 550 square metres, about 9m wide and 61m deep. The area was subdivided to support the Riverstone meat works.

Until the gazettal of the *County of Cumberland Planning Scheme* (June, 1951), there were no planning controls applicable to the area. Under the *County of Cumberland Planning Scheme*, the land was zoned for rural use and required a minimum area of 5 acres (2 hectares) for dwelling construction.

On 17 May 2010, the NSW Government finalised the rezoning of the Riverstone Precinct of the North West Growth Centre by amending *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

As a result, the majority of land within the precinct, including the scheduled lands in Riverstone and Vineyard, has been rezoned from general rural purposes to permit future urban development. The new zonings mean that Blacktown City Council can consider Development Applications for subdivision and housing, subject to the availability of urban services such as water, sewer and electricity.

A new Development Control Plan for the precinct, *Blacktown City Council Growth Centre Precincts Development Control Plan 2010*, was adopted by the Department of Planning and Infrastructure and came into effect on 19 May 2010.

An estimated 550 land owners share ownership of almost 3,600 narrow and small lots at Riverstone – creating a challenging task to plan and deliver services to develop the area. Although most of the scheduled lands have been rezoned to allow residential development, land owners face challenges before being able to build, including:

- The land ownership pattern is fragmented, making the coordination of urban infrastructure difficult. Orderly development of the area is unlikely to occur unless a large number of land owners work together to develop and build.
- Many of the existing lots are too narrow to accommodate standard homes.
- The area is mainly unserviced, without infrastructure such as water, sewer, underground electricity and urban roads needed for a new community.

UrbanGrowth NSW is working with local land owners to enable the development of a new residential community for the scheduled lands. Although UrbanGrowth NSW is not a landowner, it is acting as development manager to master plan and assist with the future development of the scheduled lands. UrbanGrowth NSW is working with the local landowner group, the Department of Planning and Infrastructure and Blacktown City Council to identify a model to facilitate the coordinated and viable development of the scheduled lands.

4. PREPARATION OF DEVELOPMENT PLANS

4.1 Decision to prepare a Development Plan

Under clause 6(1) of Schedule 5 to the EP&A Act a relevant authority must prepare a Development Plan for subdivision land or proposed subdivision land if requested to do so by the Minister or, may of its own initiative, decide to prepare a Development Plan.

The Regulation requires that:

- When an authority decides to prepare a Development Plan on its own initiative, it must give the Minister written notice of the decision (clause 268ZA(1)).
- When an authority decides to prepare a Development Plan, it must consult with any public authorities likely to be affected by the proposed Development Plan and the local council(s) for the area in which the land is situated (clause 268ZA(2)).
- The authority must consider any submissions made by public authorities when it prepares the Development Plan (clause 268ZA(3)).

Figure 1 at Appendix B illustrates the process for preparing a Development Plan.

4.2 Advising the Minister of a decision to prepare a Development Plan

An authority is to provide the following information in its written notice to the Minister of its decision to prepare a Development Plan:

- Land to which the proposed Development Plan will relate.
- History of use of the land.
- Current use(s) of the land and a brief description of any improvements on the land.
- Proposed future uses.
- What (if any) services (e.g. reticulated water, sewerage, electricity etc) are available for the land.
- Any environmental planning instrument or planning proposal currently applying or proposed to apply to the land.
- Existing subdivision pattern of the land, total number of land owners, and how many (if any) existing lots are owned by a public authority.
- Types and extent of subdivision works expected to be required and (if possible) indicative costs for those works.
- The outcome of any preliminary consultation with land owners and occupants
- Indicative timetable for preparation of a Development Plan.

Development Plans – adoption timing in relation to Subdivision Orders

The Minister, in making a Subdivision Order (see section 3.2 above) will consider whether a Development Plan has been prepared for the land by the relevant authority (clause 3(2)(e) of Schedule 5 to the EP&A Act).

The relevant authority is responsible for preparing and adopting a Development Plan (clause 268ZJ Regulation and clause 6(1) of Schedule 5 to EP&A Act). A Development Plan is likely to be at the point of adoption (that is, still a draft if approved by landowners) when the relevant authority requests the Minister to make a Subdivision Order.

4.3 Content of a Development Plan

The content of a Development Plan may vary depending on the authority proposing to implement it and the needs of the land to which it relates. Nonetheless, clause 6, Schedule 5 to the EP&A Act outlines the following requirements for a Development Plan:

- Proposed plan of subdivision for the land.
- Details of subdivision works to be undertaken for the land.
- Details of the costs of the subdivision works and the proposed means of funding those works.
- Details of development plan costs.
- Details of the proportion of costs to be borne by owners of the land and the manner in which the owners may meet those costs, (including details of any proposed voluntary land trading scheme, or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions).
- Rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated.
- Rules as to the distribution of any surplus funds after the completion of subdivision works for the land.
- Any other matters prescribed by the Regulation.

The Regulation (clause 268Z) also requires that the Development Plan include:

- The land value of the land as determined by the Valuer-General under the *Valuation of Land Act 1916*.
- If the development is to be staged, a description of the proposed stages.
- A proposed time table for subdivision of the land and the carrying out of subdivision works.

In respect of proposed future uses of the land, it is recommended that the relevant authority considers key assessment issues for future DAs for the land when preparing the Development Plan.

4.4 Preliminary consultation with land owners

An authority that proposes, or is requested by the Minister, to prepare a Development Plan, should undertake preliminary consultation with the owners of paper subdivision land to which the Plan will apply as early as possible.

As a minimum, an authority should provide the following information to the land owners:

- What the paper subdivision legislation does and expected benefits of making a Subdivision Order and a Development Plan for the land.
- Roles of the relevant authority and land owners in the process.
- Estimated timeframes for preparing and implementing a Development Plan.
- Means of funding proposed subdivision works.
- Amounts to be paid by land owners.
- Timing of payments and possible mechanisms to compel payment.

The authority may consider providing land owners with conceptual alternatives for subdivision, including a preferred concept for the proposed subdivision land, to explain the implications of the proposed Development Plan and seek land owners' support. Any concepts should address and explain the environmental, hazard and urban design factors influencing the proposed subdivision design.

The authority should inform land owners of the environmental planning instrument or planning proposal applying to, or proposed to apply to the land, to facilitate the proposed planning purpose. Contact details for the local council or any other body responsible for the instrument or planning proposal should also be provided.

Where possible, the authority should conduct face-to-face meetings with land owners to discuss relevant matters. It is also important to remember that land owners may live some distance from the land. Owners should be given adequate time after meetings to provide feedback to the authority on the subdivision concepts, proposals for subdivision works and potential funding mechanisms for those works.

4.5 Rules disapplying or modifying certain requirements of Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

Clause 7(4) Schedule 5 to the EP&A Act allows the rules in a Development Plan in respect of land acquisition powers to provide that any or all of the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) ('the Just Terms Act') do not apply to the determination of compensation under a Development Plan, or apply with modification as set out in the Development Plan.

This will enable a Development Plan to allow for the possibility of non-monetary compensation to a land owner for the compulsory acquisition of subdivision land (such as works-in-kind or other benefits accruing to other land held by the land owner) in lieu of monetary compensation only under the Just Terms Act. If the rules in a Development Plan provide for non-monetary compensation, the authority should explain how the relevant rules may affect the land owners' interests.

If the rules in a Development Plan disapply or modify application of the Just Terms Act, those rules must apply fairly to all land owners and be comprehensive enough to replace the relevant provisions of the Just Terms Act. The rules will need to identify the forms of compensation which may be provided (such as works in-kind or other benefits accruing to land held by the land owner) and the method of calculation of compensation.

It is important to note that the provisions of the Just Terms Act will be varied only if the Minister makes a Subdivision Order. In making a Subdivision Order, the Minister is specifically obliged to consider any provisions of the Development Plan that modify or disapply the provisions of Division 4 of Part 3 of the Just Terms Act (clause 3(2)(f) of Schedule 5 to the EP&A Act).

An authority may also consider the following when proposing rules that disapply or modify application of (part or the whole of) Division 4 of Part 3 of the Just Terms Act:

- How private agreements for acquiring land will be negotiated.
- How a voluntary land trading scheme may operate under the Development Plan.

4.6 Notice of proposal to adopt a Development Plan and consent ballot

If an authority proposes to adopt a Development Plan, the Regulation (clause 268ZB) requires that it must:

- Give a minimum 14 days notice before ballot papers are issued for the consent ballot.
- Publish a notice in a local newspaper and a daily newspaper circulating generally in NSW.
- Give written notice to the local council and display a notice on or in the vicinity of the land to which the Development Plan will apply, for not less than 28 days before the ballot closes.

- Make the proposed Development Plan publicly available.

4.7 Adoption of a Development Plan

Clause 268ZJ of the Regulation provides that a Development Plan is adopted if:

- the authority resolves to adopt the plan or takes such other action as is necessary to take the decision to adopt the plan, and
- the authority causes a notice of the adoption to be published in a local newspaper and a daily newspaper circulating generally in NSW within 28 days after the decision of the authority to adopt the plan.

Clause 3(2) of Schedule 5 to the EP&A Act requires that at least 60% of the total number of owners of the land, and owners of at least 60% of the total area of that land, consent to the Development Plan. A Development Plan cannot be adopted unless the authority is satisfied such consent has been obtained (clause 268ZJ(2)).

Once a Development Plan is adopted it may be gazetted. If a Development Plan is gazetted its validity cannot be questioned in legal proceedings unless they are commenced within 3 months of gazettal under clause 6(4) Schedule 5 to the EP&A Act.

Under clause 268ZJ of the Regulation, once a Development Plan is adopted by the relevant authority, the Development Plan will be "in force" for the purposes of clause 4(5) of Schedule 5 to the EP&A Act.

The Minister can make a Subdivision Order in accordance with clause 3 of Schedule 5. This does not require the Development Plan to have been adopted - only for it to have been prepared (clause 3(2)(e)), and for the Minister to have considered any provisions of the Development Plan which modify or disapply the Just Terms Act (clause 3(2)(f)), and for 60% of the total number of owners and for the owners of at least 60% of the total area of the land to have consented to the Development Plan (clause 3(2)(g)).

The adoption of the Development Plan is up to the relevant authority. The Development Plan can be adopted before or after a Subdivision Order is made and the timing of this will be a matter for the Minister and relevant authority. The timing of these processes will depend upon the circumstances relevant to the particular case.

Figure 2 in Appendix B illustrates an indicative process for implementing a Development Plan.

4.8 Amendment of a Development Plan

The Regulation (clauses 268ZK and 268ZL) sets out a process for the making of three different classes of amendment to a Development Plan: major amendments; minor amendments; and amendments which are neither, major nor minor.

Major amendment means an amendment to a Development Plan that is not a minor development and that:

- (a) in the opinion of the Minister, if adopted, would require an amendment to be made to the Subdivision Order relating to the land to which the Development Plan applies, or
- (b) amends provisions of the Development Plan that modify or disapply the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Minor amendment means an amendment to a Development Plan that:

- (a) corrects an error or misdescription, or
- (b) consists of a minor realignment of the boundaries of lots in the proposed plan of subdivision that will not create additional lots or the opportunity for additional dwellings, or
- (c) alters to a minor extent the location of roads or services to be provided, or
- (d) varies the proportion of costs to be borne by one or more owners of the land by not more than 5% in any particular case.

Clause 268ZK of the Regulation sets out the process for the adoption of amendments to a Development Plan as follows:

A proposed amendment to a Development Plan is adopted by the relevant authority and comes into force (clause 268ZK), if:

- (a) the authority resolves to adopt the amendment or takes such other action as is necessary to take the decision to adopt the amendment, and
- (b) the authority gives written notice of the amendment to the Minister, the owners of the land to which the Development Plan applies, and each council in whose area the land is situated, within 28 days after the decision of the authority to adopt the amendment.

Additional requirements for major amendments include:

- Notice must be given in accordance with the requirements of clause 268ZB of the Regulation.
- The consent of at least 60% of the land owners, and the owners of at least 60% of the total area of land to which the Development Plan applies, must have consented to the amendment.

Amendments other than major and minor amendments:

For other amendments that are not major or minor, an authority must comply with the requirements of clause 268ZL, as follows:

- (a) Publish a notice in a local newspaper and a daily newspaper circulating generally in NSW.
- (b) Give written notice to any council in whose area the land is situated.
- (c) Display a notice on, or in the vicinity of the land to which the Development Plan applies during the submission period specified in the notice.
- (d) Make the proposed amendment publicly available.
- (e) Before adopting the amendment, consider any submissions received within the submission period specified in a notice given in accordance with the clause.

A notice under clause 268ZL(3) must specify the following:

1. The place, date and time at which the proposed amendment is available for inspection or the address of a website where it may be found.
2. The period (being not less than 28 days) during which submissions may be made to the authority about the proposed amendment.
3. The name, contact phone number and email address of the authority.

5. THE CONSENT BALLOT

5.1 Purpose of the consent ballot

The purpose of the consent ballot is for the authority to seek land owners' consent to the proposed Development Plan. Under clause 3(2)(g) of Schedule 5 to the EP&A Act, the

Minister may not make a Subdivision Order unless at least 60% of the total number of owners of the land the subject of the proposed Development Plan, and the owners of at least 60% of the total area of that land, have consented to the proposed Development Plan.

Appendix C provides a check sheet method which may be used by a returning officer in the counting of votes to enable straightforward calculation of 60% requirements. A ballot paper is required to list all land owned by the landowner. A landowner's vote is to be counted in accordance with the Regulation.

The consent ballot may be conducted by the authority or by an independent body (such as the Australian Electoral Commission) on behalf of the authority. Division 3 of Part 16C of the Regulation sets out detailed requirements for the ballot.

5.2 Requirements of the Act and Regulation and best practice

The Regulation requires the relevant authority to appoint a returning officer to conduct a consent ballot. A consent ballot is then required to be held to determine consent to a proposed development plan by owners of the land. The returning officer is required to prepare a voting roll.

The minimum voting period for a ballot of land owners on a proposed Development Plan is 28 days. Notification of the holding of the consent ballot should be published on the authority's website for the duration of the ballot and for at least 14 days preceding the despatch of ballot papers.

The Regulation requires the form of the ballot paper to be as determined by the authority and approved by the Director-General. An example of a possible form of ballot paper is at Appendix D of the guideline.

A ballot paper must be sent by mail to each person who owns land within the area covered by the Development Plan along with a statement about the place, date and time at which the proposed Development Plan is available for inspection or, the address of the website where it may be found. A statement relating to the ballot in the form approved by the Director-General must also be included. An envelope addressed to the returning officer should also be included. The reverse side of the envelope should be noted or printed with the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates together with a small envelope in which the ballot paper is to be enclosed.

Clause 3(3) of Schedule 5 to the EP&A Act provides that for the purposes of counting the votes and calculating whether the required percentage of owners consent to the Development Plan, that two or more owners of the same lot are to be treated as one owner. The Regulation also prescribes the method for vote counting and preparation by the returning officer of a statement relating to the ballot result.

A voting period longer than 28 days may be considered by the authority if it is likely a number of the people entitled to vote will take some time to receive their ballot papers (for example, those who may live overseas), if the number of people entitled to vote is large, if many of the lots are in multiple ownership or if there has recently been a high turnover of ownership. Similarly, in such circumstances, the authority may wish to give more than the 14 days notice required by the Regulation of a proposed ballot.

Explanatory material accompanying the ballot paper should outline the ballot process, including making clear that ballot papers received by the returning officer after the closing date for the ballot cannot be accepted. Inclusion of a summary sheet with the ballot paper material regarding the content and purpose of the proposed Development Plan may assist voters.

The explanatory material should also explain that a proposed Development Plan cannot be adopted unless at least 60% of the total number of owners of the land, and the owners of at least 60% of that land consent to the proposed plan. The Regulation prescribes a specific method for vote counting where a lot is owned by a group of co-owners depending upon whether all or a majority of the co-owners cast a formal vote in favour of the development plan.

Relevant authorities may provide general information to individuals on the Development Plan but they should also advise people (including potential buyers) to seek independent advice as to how the provisions of the Development Plan may specifically affect them and their land holding(s).

In the material despatched with the ballot paper, the authority should include its contact details for any enquiries about the proposed Development Plan, and of the returning officer for queries regarding the ballot process. It should be made clear that votes are to be returned by post and cannot be returned on-line.

The Regulation requires scrutineers are required to observe the ballot counting process. Scrutineers should not be a landowner or a relative of a landowner and it is appropriate to require scrutineers to sign a statutory declaration to this effect.

The authority must report the result of the consent ballot to the Director-General under clause 268ZH(1) of the Regulation, and should do so as soon as possible after the results are known.

If a consent ballot does not achieve the required (60%/60%) consent to a proposed Development Plan, the authority may carry out further consultation with land owners on options for amendments for a further ballot.

6. ACCOUNTING ISSUES

6.1 *Accounts that should be kept*

The following guidance is provided on accounting matters:

- Purchase and sale by the authority of subdivision land or proposed subdivision land.
- Contributions land owners are required to make, and have made or not made, to meeting the costs of subdivision works.
- Payments made by the relevant authority from funds received for the carrying out of subdivision works.
- Compensation paid by the relevant authority for subdivision land it compulsorily acquires.
- Distribution of any surplus funds after the completion of subdivision works or immediately prior to withdrawal of an implemented Development Plan.
- Any other matter specified in writing by the Minister to the relevant authority.

The above matters should be included in end of financial year annual reports by the relevant authority to the Minister on implementation of the Development Plan. Clause 268ZP of the Regulation sets out reporting requirements.

The annual report should include details of the progress of land owners in meeting their share of subdivision works costs, and details of subdivision land compulsorily acquired in the preceding financial year, (including compensation paid for that land).

Under clause 10(1) of Schedule 5 to the EP&A Act the following are to be paid by the authority to a fund or funds approved by the Minister:

- A monetary contribution paid to a relevant authority by the owner of subdivision land for subdivision works and the Development Plan costs.
- Any money paid by the relevant authority to meet contribution amounts under the Development Plan in respect of land acquired by the authority.
- The proceeds of the disposal by the relevant authority of land acquired.

Under clause 10(2) of Schedule 5 to the EP&A Act, the following may be paid from any fund to which contributions or amounts are paid under that clause:

- Payments to persons or bodies for the provision of subdivision works.
- Payments in connection with the exercise of functions by the relevant authority for the planning purpose specified in the subdivision order.
- Payments for the whole or part of compensation payable under clause 7, Schedule 5 to the Act and any payments required to be made under the Just Terms Act.
- Payments for the distribution of any surplus funds after the completion of subdivision works and any other payments under clause 10, Schedule 5 to the Act.
- Any money required to meet the administrative expenses of the relevant authority in relation to its functions under the Subdivision Order.

6.2 Distribution of surplus funds after implementation of Development Plan

Surplus funds comprise unspent and uncommitted money after the completion of subdivision works.

In establishing matters for consideration for distribution of surplus funds, the relevant authority should consider the entitlements of land owners to different amounts. Factors to consider include the proportions of total funding contributed by a landowner and the extent to which a landowner has benefited from the carrying out of the work to fulfil that purpose.

6.3 Some additional considerations

Additional suggestions for good accounting practice by a relevant authority are:

- Establish accounts for each Development Plan, rather than part of a plan or two or more plans.
- Promptly record changes in land title and land descriptions as property transactions occur to ensure records are accurate.
- Obtain agreed sums for subdivision works from all relevant land owners before works commence, to avoid reallocation of funds committed for other purposes.
- Incorporate construction and approval costs (including contributions and levies payable under Division 6 of Part 4 of the EP&A Act) when preparing a budget for implementation of a Development Plan.
- Provide for contingency for costs variation.

- Distribute surplus funds on a per-square metre basis not a per-lot basis, as the lots may be of various sizes.
- Create separate accounts for any reimbursement of surplus funds after completion of subdivision works.

Note: Construction costs for subdivision works should be indexed against a recognised price indexing mechanism, such as the Consumer Price Index Implicit Price Deflator (For more information on that mechanism see *Australian National Accounts: Concepts*, Australian Bureau of Statistics, Cat. No. 5216.0, www.abs.gov.au).

APPENDIX A: DEFINITIONS

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Department means the Department of Planning and Infrastructure.

Development plan means a development plan for subdivision land or proposed subdivision land.

Director-General means the Director-General of the Department of Planning and Infrastructure.

Environmental planning instrument means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

Minister means the Minister for Planning and Infrastructure.

Paper subdivision is not defined in the provisions. However, the provisions are only available to land that has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works.

Planning proposal means a document that explains the intended effect of a proposed environmental planning instrument and sets out the justification for making the proposed instrument under Part 3 Division 4 of the EP&A Act.

Planning purpose means the purpose for which a subdivision order is made.

Relevant authority for subdivision land means the authority designated by a subdivision order as the relevant authority for the land.

Subdivision land means land subject to a subdivision order.

Subdivision order means an order by the Minister, which may be gazetted, that does all of the following:

- (a) declares specified land to be subdivision land.
- (b) specifies the relevant authority for the subdivision land.
- (c) specifies the purpose for which the order is made (the *planning purpose*).
- (d) specifies the functions (if any) under Schedule 5 to the EP&A Act conferred on the relevant authority.
- (e) specifies the conditions (if any) to which the exercise of those functions are subject.
- (f) specifies the subdivision works (if any) to be undertaken by the relevant authority in respect of the subdivision land.

Subdivision works means works for the following purposes:

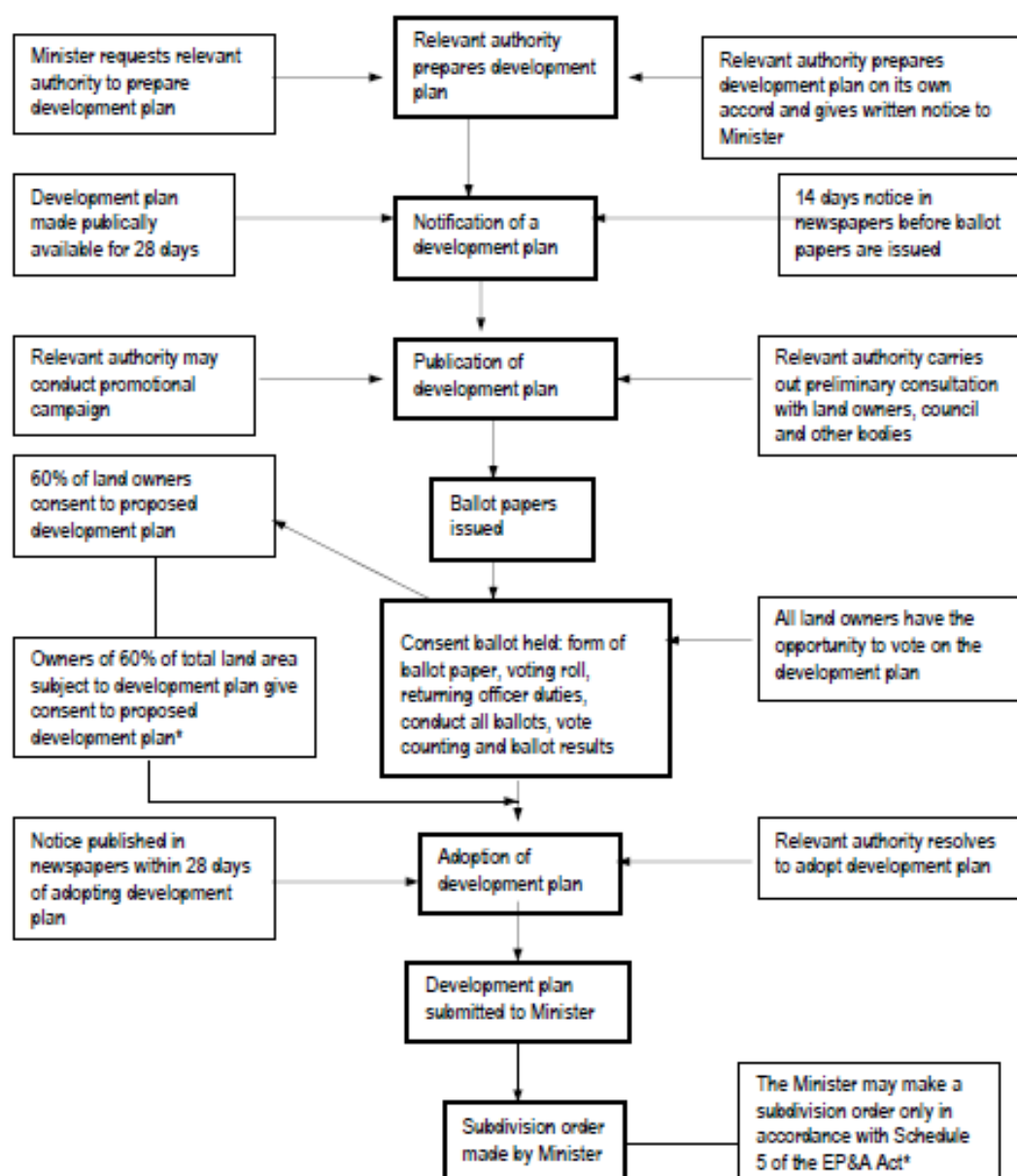
- a) roads.
- b) water supply, sewerage services and drainage.
- c) telecommunications.
- d) electricity supply.

Voluntary contributions agreement means a voluntary agreement between a relevant authority and a person who owns subdivision land under which the owner is required to pay a monetary contribution to be used for or applied for subdivision works.

APPENDIX B: DEVELOPMENT PLAN PROCESS DIAGRAMS

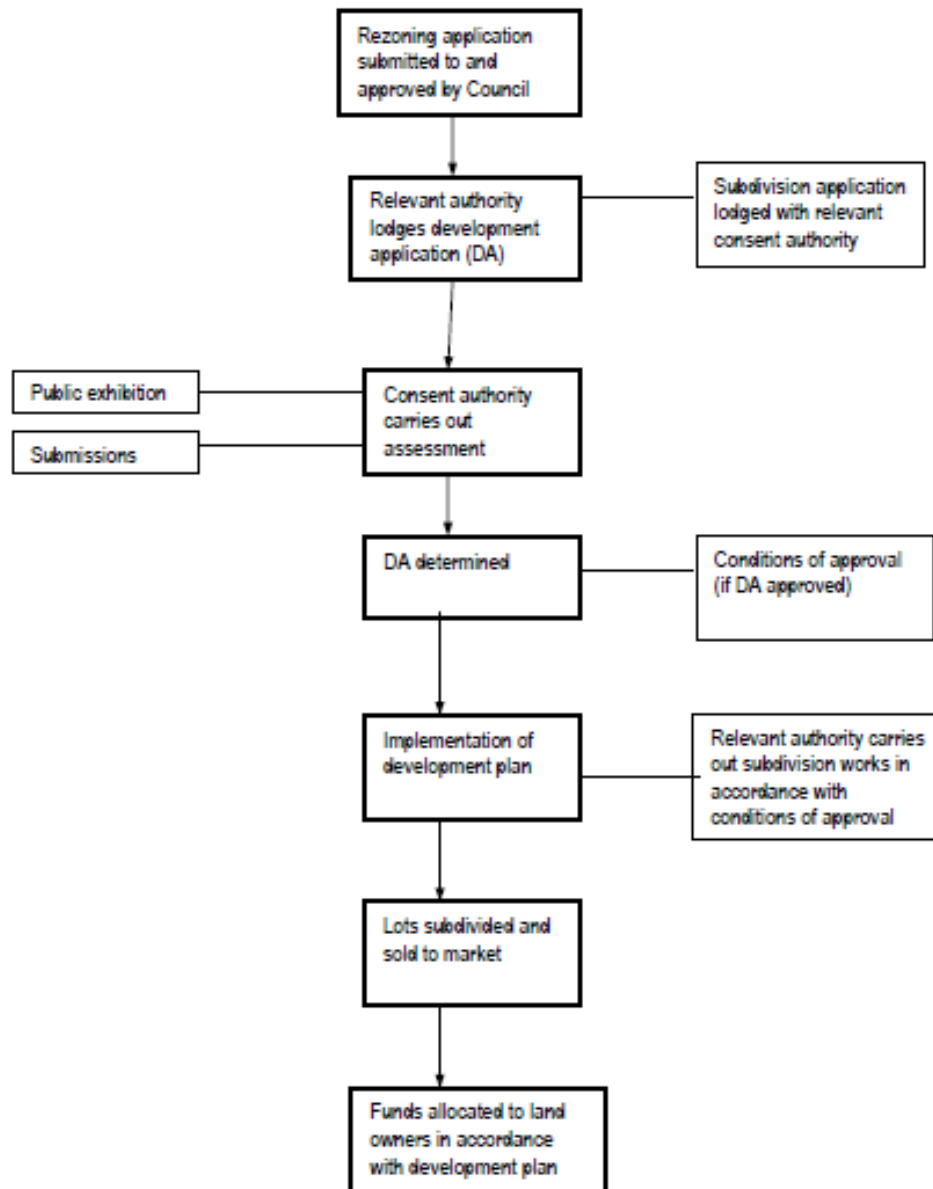
This appendix contains details on relevant aspects of a Development Plan. Figure 1 illustrates the process for preparing a Development Plan for submission to the Minister. Figure 2 provides an indicative guide for the implementation of a Development Plan.

Figure 1: Process for preparing a Development Plan



* Note: the Minister cannot make a subdivision order unless at least 60% of the total number of owners of the land and the owners of at least 60% of the total area of that land have consented to the proposed development plan.

Figure 2: Indicative guide for implementation of a Development Plan



APPENDIX C: CHECK VOTE COUNTING METHOD

The following tables provide an example counting method for use by returning officers, when counting votes made for consent ballots.

Voting roll (under cl.268ZD(1)(c)&(d)):

Owner	Lots	Lot Area	Total Area
Person A	Lot 1	100 m ²	500 m ²
	Lot 4	400 m ²	
Person B	Lot 2	500 m ²	500 m ²
Person C	Lot 5	1425 m ²	2485 m ²
	Lot 18	160 m ²	
	Lot 19	900 m ²	
Person E	Lot 7	1500 m ²	1500 m ²
Company G	Lot 8	600 m ²	600 m ²
Company H	Lot 9	300 m ²	300 m ²
Person I	Lot 11	400 m ²	400 m ²
Person J	Lot 12	700 m ²	2000 m ²
	Lot 13	700 m ²	
	Lot 14	600 m ²	
Local Council	Lot 20	2000 m ²	2000 m ²
Co-owner Group CG1 Being Person A and Person B jointly	Lot 3	1600 m ²	1600 m ²
Co-owner Group CG2 Being Person D and Person E and Person F jointly	Lot 6	500 m ²	500 m ²
Co-owner Group CG3 Being Person D and Company H jointly	Lot 10	450 m ²	450 m ²
Co-owner Group CG4 Being Person J and Person A jointly	Lot 15	1900 m ²	1900 m ²
Co-owner Group CG5 Being Person K, Person L, Person M and Person N	Lot 16	1700 m ²	3500 m ²
	Lot 17	1800 m ²	

Owner voting:

Number	Owner	Vote cast		Vote counted
1	Person A	Yes		Yes
2	Person B	No		No
3	Person C	Yes		Yes
4	Person E	None – informal		-
5	Company G	No		No
6	Company H	Yes		Yes
7	Person I	Yes		Yes
8	Person J	Yes		Yes
9	CG1	Person A	Yes	No
		Person B	No	
10	CG2	Person D	Yes	Yes
		Person E	None – informal	
		Person F	Yes	
11	CG3	Person D	Yes	Yes
		Company H	Yes	
12	CG4	Person J	Yes	Yes
		Person A	Yes	
13	CG5	Person K	No	No
		Person L	No vote received	
		Person M	No	
		Person N	Yes	
14	Local Council	Yes		Yes

Total eligible voters: 14

Total yes votes counted: 8

Proportion: $8/14 = 57.8\%$

Land area voting:

Number	Owner	Vote counted	Lots	Lot Area	Total area Yes votes
1	Person A	Yes	Lot 1	100 m ²	500 m ²
			Lot 4	400m ²	
2	Person B	No	Lot 2	500 m ²	-
3	Person C	Yes	Lot 5	1425 m ²	2485 m ²
			Lot 18	160 m ²	
			Lot 19	900 m ²	
4	Person E	-	Lot 7	1500 m ²	-
5	Company G	No	Lot 8	600 m ²	-
6	Company H	Yes	Lot 9	300 m ²	300 m ²
7	Person I	Yes	Lot 11	400 m ²	400 m ²
8	Person J	Yes	Lot 12	700 m ²	2000 m ²
			Lot 13	700 m ²	
			Lot 14	600 m ²	
9	CG1	No	Lot 3	1600 m ²	-
10	CG2	Yes	Lot 6	500 m ²	500 m ²
11	CG3	Yes	Lot 10	450 m ²	450 m ²
12	CG4	Yes	Lot 15	1900 m ²	1900 m ²
13	CG5	No	Lot 16	1700 m ²	-
			Lot 17	1800 m ²	
14	Local Council	Yes	Lot 20	2000 m ²	2000 m ²
Total				18235 m ²	10535 m ²

Total proportion of land area owned by consenting voters: 57.7%.

APPENDIX D: EXAMPLE BALLOT PAPER

EXAMPLE BALLOT PAPER

Proposed Development Plan Name and No. [to be completed by the relevant authority] _____

In black or blue ink, please clearly mark an 'X' in the relevant box.

☐ YES – consent granted to Development Plan

☐ NO – consent refused to Development Plan

Land owner's name [to be completed by the relevant owner] _____

Lot and Deposited Plan numbers [to be completed by the relevant authority] _____

Name of any other co-owner of a Lot/Deposited Plan listed above [this is mandatory information] _____

Signature _____

NOTE: If voting as a proxy or under a Power of Attorney, please attach details.

Planning for paper subdivisions



Frequently Asked Questions

June 2014

WHAT ARE PAPER SUBDIVISIONS?

- A “paper subdivision” is a term used to describe land containing lots that only have recognition on paper and, in most cases, have no formed roads, drainage, reticulated water, sewer or electricity.
- Most paper subdivisions have been in existence for many years, some originating as long ago as the late 1800s or early 1900s.

WHERE DO PAPER SUBDIVISIONS EXIST?

- Paper subdivisions are known to exist in the following local government areas across NSW and other councils may also have records of paper subdivisions:
 - Blacktown
 - Shoalhaven
 - Wollongong
 - Eurobodalla
 - Queanbeyan
 - Port Stephens
 - Lake Macquarie City
 - Great Lakes
 - Wyong
 - Maitland and
 - Sutherland

WHO OWNS THE LAND IN PAPER SUBDIVISIONS?

- Land in paper subdivisions may have a wide variety of owners, such as ‘mum and dad’ investors, who have purchased the lots as an investment with the hope that one day they may be zoned to enable development to occur.
- Land may also be owned by companies or public authorities. The fragmented, diverse ownership is often one of the barriers to development.

WHY CAN'T LANDOWNERS JUST BUILD ON THE LOTS THEY OWN?

- While the subdivision pattern of many paper subdivisions may reflect an urban form of development, the land use zoning and lot sizes are often not compatible with urban development. In addition, there is usually limited or no infrastructure to enable urban development on this land.
- For urban development of paper subdivisions to be achieved, the land must be appropriately zoned, typically from rural or other non-urban zones. Even if the land is zoned to enable development, it is necessary for the landowners to work together to bring forward a suitable development proposal.
- This often presents significant challenges as the landowners may not always have the expertise and funding needed to implement a development proposal.

June 2014 | Page 1

Planning for paper subdivisions



Frequently Asked Questions

WHAT CHANGES HAS THE GOVERNMENT MADE TO OVERCOME THE PROBLEMS WHICH HAVE RESTRICTED DEVELOPMENT OF PAPER SUBDIVISION LAND?

- The NSW Government has established a process that facilitates the development of those paper subdivisions which are suitable for urban development.
- This process enables the Minister for Planning to make a Subdivision Order to appoint a Subdivision Authority and provide that Authority with the powers and functions to implement a Development Plan for the benefit of the landowners.

WHAT ARE THE KEY ELEMENTS OF THE REGULATION?

- The key elements of the Regulation include:
 - What matters need to be included in a Development Plan for land that is to be the subject of a Subdivision Order;
 - The requirements for the preparation, notification, adoption and amendment of Development Plans;
 - Ballot procedures for determining whether the required number of landowners consent to the Development Plan being made;
 - Matters relating to contributions by owners of the land;
 - Circumstances when the land which is subject to a proposed Development Plan may be entered without the owner's consent;
 - A requirement to give the local council notice of a Subdivision Order and the completion of subdivision works on land within their area, as well as a requirement for certain information to be specified on planning certificates.

HOW WILL LANDOWNERS GIVE CONSENT TO IMPLEMENT THE DEVELOPMENT PLAN?

- Under the provisions in the Act, the Minister may only make a Subdivision Order if at least 60 per cent of the landowners, and the owners of at least 60 per cent of the land area, have given their consent to the proposed Development Plan.
- Consent to a Development Plan must be obtained through a postal ballot. The proposed regulation provides that the ballot may be conducted by the Subdivision Authority or by another body with appropriate expertise, such as the Australian Electoral Commission, on behalf of the Authority. It also provides further detail about the procedure for holding the ballot.

WHICH BODIES CAN BE APPOINTED AS A SUBDIVISION AUTHORITY?

- Under the provisions in the Act, a Subdivision Order may designate any of the following bodies as the relevant Subdivision Authority for developing paper subdivision land:
 - The Ministerial corporation established under the *Environmental Planning and Assessment Act 1979*;
 - Local councils;

June 2014 | Page 2

Planning for paper subdivisions



Frequently Asked Questions

- UrbanGrowth NSW; or
- A development corporation established under the *Growth Centres (Development Corporations) Act 1974*.

HOW CAN A LANDHOLDER IN A PAPER SUBDIVISION INITIATE THE PROCESS?

- A landowner would need to obtain the support of a potential Subdivision Authority to work with the landowners to prepare a Development Plan.

WHAT IS URBANGROWTH NSW'S ROLE IN THE RIVERSTONE SCHEDULED LANDS?

- UrbanGrowth NSW has been working with Blacktown City Council and Riverstone landowners since 2005 to facilitate the orderly development of the paper subdivision known as the Riverstone Scheduled Lands.
- There is potential for UrbanGrowth NSW to seek approval to use this paper subdivision process in the Riverstone Scheduled Lands.
- Further information on UrbanGrowth NSW's role is available at <http://www.riverstonelands.com.au/>

WHAT HAPPENS IF BOTH 60 PER CENT THRESHOLDS ARE REACHED? HOW SOON CAN LAND DEVELOPED?

- Achieving 60 per cent support (both the number of landowners and area of land) satisfies just one of several conditions that have to be met for a Subdivision Order to be made by the Minister.
- Once all the relevant conditions are met, the prospective Subdivision Authority may request the Minister make a Subdivision Order to enable the implementation of the Development Plan.
- The Subdivision Authority would then need to work with the landowners to facilitate the development of the land in accordance with the Development Plan. This is likely to involve a range of development activities such as rezoning, obtaining development consents and subdivision works.

WHAT HAPPENS IF A CLEAR MAJORITY VOTE FOR THE PLAN, BUT THE REQUIRED 60 PER CENT THRESHOLD IS NOT REACHED IN ONE OR BOTH CATEGORIES?

- A Subdivision Order could not be made because the required 60 per cent land owner consent would not have been reached.

Planning for paper subdivisions



Frequently Asked Questions

WHAT COSTS ARE INVOLVED FOR LANDOWNERS?

- There is no fee for seeking a Subdivision Order. However, there will be costs associated with implementing a Development Plan.
- Landowners seeking to use this process are encouraged to hold early discussions with prospective Subdivision Authorities to ensure relevant costs are identified as early as possible. This will reduce the likelihood of incurring costs where the project is not suitable for a Subdivision Order.

FURTHER INFORMATION

- Further information can be found on the Department of Planning & Environment's website: www.planning.nsw.gov.au
- For further inquiries, phone: (02) 9228 6111 or email us at housingpolicy@planning.nsw.gov.au

8 References

NSW Department of Planning (2009), Mid North Coast Regional Strategy. Available: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Strategy-documents/mid-north-coast-regional-strategy-2006-to-2031-2009-03.ashx>.

NSW Department of Planning and Environment (2016), Hunter Regional Plan 2036. Available: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Plans-and-policies/hunter-regional-plan-2036-2016-10-18.pdf>.

NSW Department of Planning and Infrastructure (2013), Planning for Paper Subdivisions Guidelines. Available: <https://www.landcom.com.au/assets/Projects/Riverstone/Publications/PaperSubdivisions-Guideline-1.pdf>.

NSW Department of Premier and Cabinet (2018), A 20-Year Economic Vision for Regional NSW. Available: <https://www.nsw.gov.au/improving-nsw/regional-nsw/a-20-year-economic-vision-for-regional-nsw/>.

NSW Environment and Heritage, Biodiversity Values Map
<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map>