



IRF23/3306

Gateway determination report – PP-2023-2340

250 Reeves Street, Somersby (+14 dwellings)

December 23



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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A - Planning proposal, November 2023
Attachment B - Regional Planning Panel Record of Decision, 5 October 2022
Attachment C - Aboriginal Cultural Heritage Assessment Report, September 2023
Attachment D - Strategic Bushfire Study, July 2023
Attachment E - Traffic Impact Assessment, June 2023
Attachment F - Preliminary Contamination Assessment, July 2023
Attachment G - Preliminary Stormwater and Servicing Report, July 2023
Attachment H - Flora and Fauna Report, August 2023
Attachment I - Supplementary brief, November 2023

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Central Coast
PPA	Hunter and Central Coast Regional Planning Panel
NAME	Reeves Street, Somersby (up to 14 lots, 0 jobs)
NUMBER	PP-2023-2340
LEP TO BE AMENDED	Central Coast Local Environmental Plan 2022
ADDRESS	250 Reeves Street, Somersby
DESCRIPTION	Lot 481 DP 1184693
RECEIVED	24/11/2023
FILE NO.	IRF23/3306
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- enable limited low impact residential development on the site
- protect culturally significant land
- protect environmentally significant land that has high conservation values as part of a regional biodiversity corridor
- support the economic self-determination of the Darkinjung Local Aboriginal Land Council (LALC) and community.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Central Coast LEP 2022 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU2 Rural Landscape	C2 Environmental Conservation (104.35ha) C4 Environmental Living (19.48ha)
	C2 Environmental Conservation	C4 Environmental Living (0.27ha)
Minimum lot size (MLS)	20 hectares (RU2 Rural Landscape) 40 hectares (C2 Environmental Conservation)	Apply 1 hectare MLS to new C4 Environmental Living zoned areas on the site Apply existing 40ha MLS to new C2 Environmental Conservation zoned areas on the site
Number of dwellings	0	8-14

The proposal seeks to rezone 19.48ha of the site from RU2 Rural Landscape to C4 Environmental Living and 104.35ha to C2 Environmental Conservation respectively, and 0.27ha from C2 Environmental Conservation to C4 Environmental Living. The remaining 54.4ha of the site is not subject to change and will remain as C2 Environmental Conservation.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The site is located to the south of Reeves Street, Somersby and is legally described as Lot 481 DP 1184693. Part of the site (Figure 1, outlined orange) was rezoned C2 Environmental Conservation by Council as part of the consolidation of the Gosford Local Environmental Plan 2014 and the Wyong Local Environmental Plan 2013. The rezoning was in accordance with the vision for the site and therefore no changes are proposed to this portion of the site.



Figure 1 Site (Source: Planning Proposal, November 2023)

The site is owned by Darkinjung Local Aboriginal Land Council (DLALC) and has a total area of 178.5 hectares. The site is bound by Reeves Street (north), the M1 Pacific Motorway (west), and bushland (south and east). There are a small number of large residential lots and the RSPCA NSW Central Coast Shelter to the north of Reeves Street and a small cluster of residential lots north-east of the site. The site is approximately 4.5km north-west of the Gosford City Centre, which contains Gosford Railway Station.

The site drains to the east through a centralised network of gullies which contain Fountain Creek. The highest points of the site are located at the north-western and south-western corners. The gradient of the slope increases from 4% to 12% in the eastern half of the site, with land surrounding Fountain Creek having a moderate to steep slope. Fountain Creek is a tributary of Narara Creek located further east of the site, which flows into Brisbane Water. The site is highly vegetated and contains a variety of native flora and fauna habitats.

The Aboriginal Heritage Information Management System (AHIMS) records two sites of significance within the subject site, including an Axe Grinding Groove and an Engraving Site.

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning map and Minimum Lot Size map, which are suitable for community consultation.

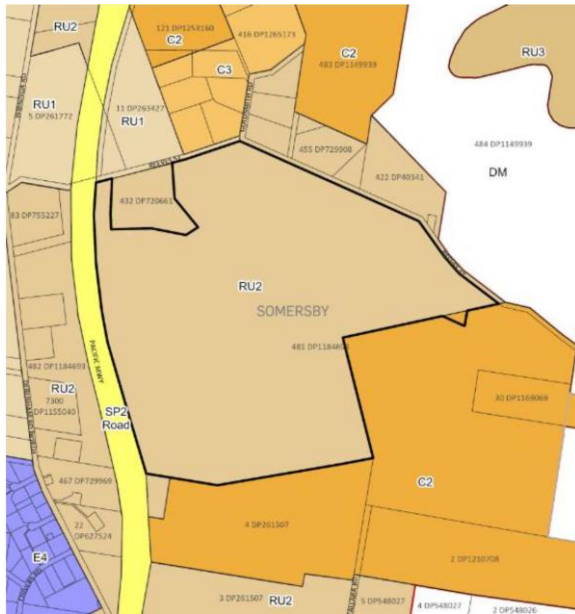


Figure 2 Current zoning map (Source: Planning Proposal, November 2023)

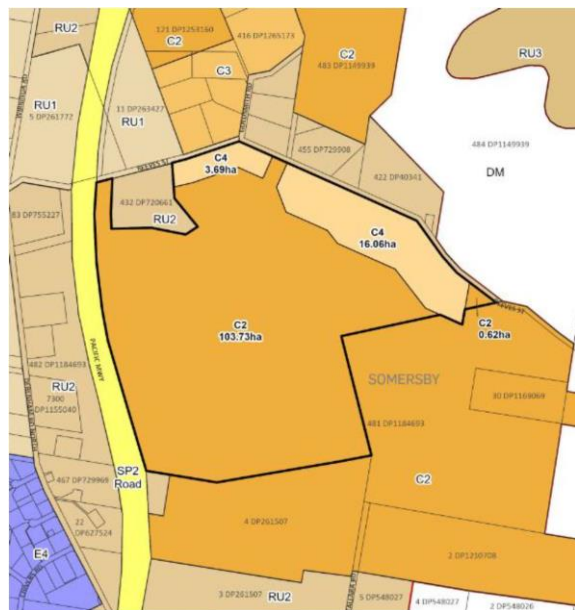


Figure 3 Proposed zoning map (Source: Planning Proposal, November 2023)

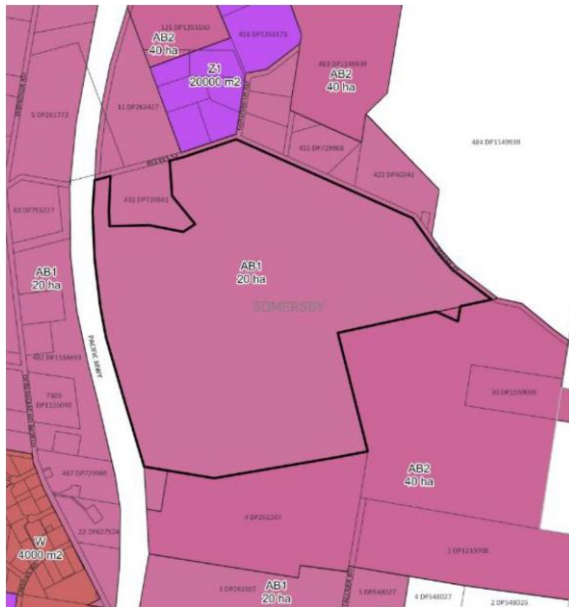


Figure 4 Current lot size map (Source: Planning Proposal, November 2023)

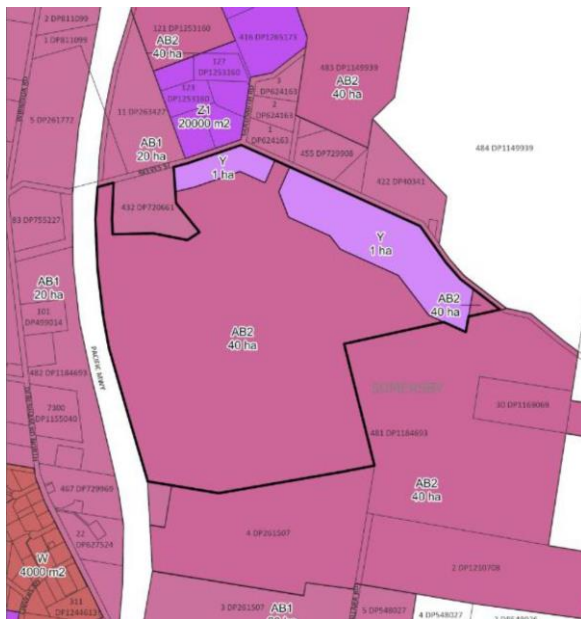


Figure 5 Proposed lot size map (Source: Planning Proposal, November 2023)

1.6 Background

Darkinjung Local Aboriginal Land Council (DLALC)

The DLALC is a not-for-profit entity that focuses on improving the health and wellbeing of the community. The DLALC operates in accordance with the *Aboriginal Land Rights Act 1983* (ALR Act) by utilising its land assets to meet the needs of the Aboriginal community. As per the ALR Act, The DLALC's primary objectives are "improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are members of the Council".

The DLALC is located on the Central Coast with boundaries stretching from Catherine Hill Bay to the north, Hawkesbury River to the south, the Pacific Ocean to the east and Watagan Mountains to the west. It is the largest private landowner in the Central Coast LGA.

State Environmental Planning Policy (Planning Systems) 2021 and Development Delivery Plan

In March 2022, State Environmental Planning Policy (Aboriginal Land) 2019 (Aboriginal Land SEPP) was consolidated into State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP). Chapter 3 'Aboriginal Land' in the consolidated Planning Systems SEPP includes the former provisions of the Aboriginal Land SEPP including provisions relating to the preparation of a Development Delivery Plan (DDP) and criteria for regionally significant development.

In 2022, amendments to Planning Systems SEPP and the introduction of the DDP established a framework to consider the development potential of 31 sites owned by the DLALC in the Central Coast LGA, including the Somersby Reeves Street site (site 3).

The Planning Systems SEPP identifies sites which are considered to have potential for further investigation as part of a planning proposal or development application process. The Planning Systems SEPP, in association with the DDP, enables the first stage of the planning process. It should be noted that while the DDP establishes a pathway for this investigation, it does not mandate a particular development outcome. Individual planning proposals are required to establish the strategic and site-specific merit of a particular site.

Previous planning proposal (PP-2021-526)

An earlier version of the planning proposal (PP-2021-526) for the site was lodged by the DLALC in 2019. The proposal sought a site-specific amendment to the now repealed Gosford Local Environmental Plan 2014 to vary zoning and minimum lot size controls. On 2 October 2019, the Hunter and Central Coast Regional Planning Panel (the Panel) determined the proposal should be submitted for Gateway determination. A Gateway determination was issued on 21 May 2020.

The Central Coast Strategic Conservation Plan, led by the Department, aimed to attain biodiversity certification through the *Biodiversity Conservation Act 2016* and included several sites, including the subject site. The project was intended to be finalised by 2023, however, the project has been delayed. Planning proposal PP-2021-526 was put on hold while the Department's project was progressing and at the request of the Panel has now been withdrawn.

New planning proposal (PP-2023-2340)

A new planning proposal (as a refinement from the original) was submitted on 7 July 2023 by DLALC and endorsed with recommended amendments on 5 October 2023 by the Panel. Updates include a reduced development footprint which more successfully achieves the objectives of the proposal to construct a low impact residential development whilst protecting environmentally significant land.

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

Yes. The planning proposal implements the Darkinjung Development Delivery Plan (DDP). The planning proposal delivers on objective 17 of the DDP, which is to progress and deliver Darkinjung's four key priority projects including the Somersby rural residential development and conservation lands.

The proposal clearly outlines the strategic merit identified in existing policies that are consistent with the objectives of this proposal.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A planning proposal is the only mechanism to amend the zoning and minimum lot size.

3 Strategic assessment

3.1 Regional Plan

The planning proposal appropriately responds to the Central Coast Regional Plan 2041 (regional plan), as detailed in Table 4 below.

Table 4 Regional Plan assessment

Regional plan strategy	Justification
Strategy 6.4 Planning proposals must ensure the biodiversity network is protected within an appropriate conservation zone unless an alternate zone is justified following application of the avoid, minimise, offset hierarchy.	The regional plan identifies the site as a biodiversity corridor. The proposal will rezone approximately 120ha of land from RU2 Rural Landscape to conservation zones. The application of C2 and C4 zones is appropriate to provide protection to the existing biodiversity and allow low impact residential development. The proposal satisfies the intent of the strategy.

Regional plan strategy	Justification
<p>Strategy 6.5 Planning proposals should promote enterprises, housing and other uses that complement the biodiversity, scenic and water quality outcomes of biodiversity corridors. Particularly, where they can help safeguard and care for natural areas on privately owned land.</p>	<p>The regional plan identifies the site as a biodiversity corridor. Approximately 20ha of the site is proposed to be zoned C4 which under the Central Coast LEP (CCLEP) 2022 permits residential accommodation. In accordance with the CCLEP the objectives of the C4 Environmental Living zone are:</p> <ul style="list-style-type: none"> • To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. • To ensure that residential development does not have an adverse effect on those values. • To allow additional land uses that will not have an adverse impact on those values. <p>The proposed zones appropriately responds to the priorities of providing housing and protecting biodiversity and satisfies the intent of the strategy.</p>
<p>Strategy 7.5 Planning proposals must protect sensitive land uses from sources of air pollution, such as major roads, railway lines and designated freight routes, using appropriate planning and development controls and design solutions to prevent and mitigate exposure and detrimental impacts on human health and wellbeing.</p>	<p>The proposal identifies two sources of air pollution, the M1 Motorway located approximately 300m from the proposed C4 zone and the Somersby Industrial Park located approximately 1.4km from the C4 zone. As dense bushland is located between the proposed residential lots and the sources of air pollution, the proposal satisfies the intent of the strategy.</p>
<p>Strategy 9.1 Planning proposals will consider the location of mineral and energy resources, mines and quarries and ensure sensitive land uses would not encroach on those operations. A noise study may be required to demonstrate impacts on the operations can be avoided or mitigated.</p>	<p>The site is located approximately 600m north of the blasting transition zone of the Debenham Road Quarry. This is the closest extractive operation. The proposal notes that advice received from the NSW Department of Regional NSW – Mining, Exploration & Geoscience (MEG) – Geological Survey of NSW (GSNSW), outlined that GSNSW had no objections to the proposal and no concerns regarding resource sterilisation. There are no concerns raised regarding noise given the great distance between the two land uses. The proposal satisfies the intent of the strategy.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 5 Local strategic planning assessment

Local Strategies	Justification
Central Coast Local Strategic Planning Statement 2020 (LSPS)	<p>The Planning proposal seeks to convert 104.35ha of land to C2 Environmental Conservation Zone, which will ensure the ongoing protection of areas of important biodiversity and Aboriginal heritage. This aligns with the following planning priorities of the LSPS:</p> <ul style="list-style-type: none"> • #20 – recognise and protect the natural, built and cultural heritage of the Central Coast • #22 – create sustainable and resilient communities • #24 – map, protect and cherish natural areas and ecosystems • #29 – preserve environmental, scenic, heritage and cultural landscapes <p>The planning proposal also seeks to develop a small portion of land for residential uses which aligns with:</p> <ul style="list-style-type: none"> • The mapping of the site as 'Aboriginal Land SEPP' in the LSPS Housing Precincts Map and; • Planning Priority #28 – minimise rural residential sprawl and support rural tourism <p>The proposal is aligned with the planning priorities of the Central Coast LSPS.</p>
Draft Central Coast Local Housing Strategy 2023	<p>The Draft Central Coast Local Housing Strategy (LHS) 2023 was prepared in response to the Central Coast LSPS to manage the supply of housing in the region. The LHS was publicly exhibited from 15 March until 3 May 2023 and a stakeholder forum was held on 27 May 2023. The LHS is yet to be formally adopted by Council but is still a matter of consideration for this planning proposal.</p> <p>The planning proposal will support the DLALC in developing housing opportunities for their community and delivers aspects of the DDP. This satisfies the following actions outlined in the LHS:</p> <ul style="list-style-type: none"> • Action 8.1: Encourage Aboriginal expression in housing through active participation in housing discussions to help contribute to a living culture through engagement with housing opportunities and achieve self-determination. • Action 8.2: Engage with the Darkinjung LALC to establish the role that the DDP has in increasing housing supply and housing opportunities for Indigenous residents. <p>The Department is satisfied that the proposal is consistent with the actions outlined in the LHS, however the planning proposal should be updated to include commentary on the LHS. The Gateway will include a condition to this effect.</p>
Development Delivery Plan: Darkinjung Local Aboriginal Land Council	<p>Goal 3 of the DLALC's Community, Land and Business Plan 2020-2024, is to ensure the prosperity of the Aboriginal community through effective management of current and future assets. The planning proposal seeks to deliver housing on land under the ownership of DLALC. The site is identified as 'Site 3' and the merits of the site are detailed in the DDP.</p> <p>The planning proposal specifically delivers on objective 17 of the DDP which is to progress and deliver Darkinjung's four key priority projects, including the Somersby rural residential development and conservation lands.</p>

Local Strategies	Justification
	The proposal is directly affiliated with the DDP and this is demonstrated in the planning proposal.
Coastal Open Space System Strategy (COSSS) 2010	<p>The COSSS is a network of reserves that supports native flora and fauna. Several private properties have been identified for inclusion in the COSSS, including the subject site. These properties have been assessed as having values that are consistent with the COSSS.</p> <p>The proposal is consistent with the COSSS given it will protect significant biodiversity through the application of the C2 Environmental Conservation zone. Consistency with the strategy has been demonstrated through the planning proposal.</p>

3.3 Regional planning panel (RPP) recommendation

On 5 October 2022 the Panel endorsed the planning proposal to be submitted for a Gateway determination, given the proposal has demonstrated strategic and site-specific merit (**Attachment B**).

The proposed development is located near watercourses and sensitive ecological environment. The Panel therefore determined additional investigation in the form of soil analysis, geotechnical conditions and groundwater is required to determine the capacity of the site. The Panel made the following recommendations:

1. *The Planning Proposal can proceed to Gateway determination however is to be informed by further technical reports relating to:*
 - (i) *Soil Analysis*
 - (ii) *Geotechnical Investigation*
 - (iii) *Groundwater Investigation*
2. *The BCAR work be progressed as a matter of urgency and is to be finalised and Bio Certification measures in place at the finalisation of the Planning Proposal.*

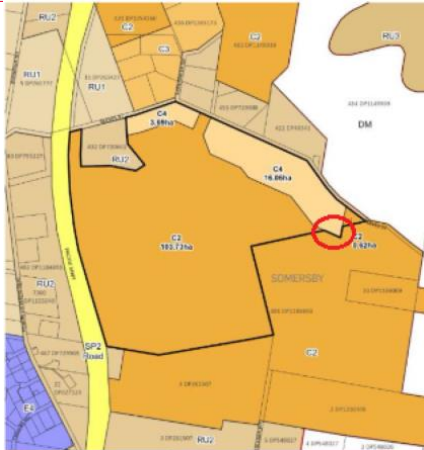
3.4 Section 9.1 Ministerial Directions

Table 3: Assessment against Ministerial Directions should be updated to quote the objectives of each relevant direction addressed in the table prior to exhibition. The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	<p>The objective of this Direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>The proposal has provided a detailed assessment of the proposal against the Central Coast Regional Plan 2041.</p> <p>The Department considers the proposal consistent with this Direction.</p>

Directions	Consistent	Reasons for Consistency or Inconsistency
1.2 Development of Aboriginal Land Council land	Consistent	<p>The objective of this Direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.</p> <p>The planning proposal (identified as site 3 in the DDP) specifically delivers objective 17 of the DDP which is to progress and deliver Darkinjung's four key priority projects including the Somersby rural residential development and conservation lands.</p> <p>The Department is satisfied that the proposal is consistent with the Direction.</p>
3.1 Conservation Zones	Inconsistency justified	<p>The objective of this Direction is to protect and conserve environmentally sensitive areas.</p> <p>The Direction requires that a proposal must contain provisions to facilitate the protection and conservation of environmentally sensitive areas or reduce existing conservation controls.</p> <p>The planning proposal considers that the proposal is partially inconsistent with this Direction, and considers the inconsistency justified as the majority of the proposal seeks to contribute to regional biodiversity and conservation outcomes.</p> <p>The proposal seeks to rezone 104.35ha of RU2 Rural Landscape land to C2 Environmental Conservation, thereby ensuring the protection of a significant portion of environmentally significant land. The objectives of the C2 zone, are to protect, manage and restore areas of high ecological and cultural value, and to prevent development that would have a detrimental impact on these areas.</p> <p>This portion of the planning proposal is consistent with the Direction as it facilitates protection and conservation of environmentally sensitive areas and does not reduce any conservation standards applying to the land.</p> <p>The proposal also seeks to rezone 0.27ha of existing C2 Environmental Conservation land to C4 Environmental Living (Figure 6). Furthermore, the proposal will facilitate the subdivision and future development of ~15 lots in an area with confirmed presence of Threatened Ecological Communities, which will result in their clearing. This aspect of the proposal is inconsistent with the Direction as it does not include provisions to facilitate the protection of all environmentally sensitive areas and reduces existing conservation standards.</p>

Directions	Consistent	Reasons for Consistency or Inconsistency
		 <p>Figure 6 Proposed C2 Environmental Conservation Zone to C4 Environmental Living map (area circled in red) (Source: Planning Proposal, November, 2023)</p> <p>The Department agrees that the that the partial inconsistency with this Direction is justified as being of 'minor significance', because:</p> <ul style="list-style-type: none"> The rezoning from C2 Environmental Conservation to C4 Environmental Living relates to a minor area (representing 0.2% of the planning proposal area). The proposal will deliver significant conservation benefits including 54.40ha of existing and 104.35ha of new C2 zoned land) resulting in 158.75ha, or 89% of the entire site being zoned C2 Environmental Conservation.
3.2 Heritage Conservation	Consistency yet to be demonstrated	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The Direction requires that a proposal contain provisions to facilitate the conservation of heritage items, including Aboriginal objects or places, areas or landscapes identified as being significant.</p> <p>An Aboriginal Cultural Heritage Assessment Report (ACHAR) (Heritage Now, September 2023) (Attachment C) was submitted with the planning proposal to facilitate the conservation of Aboriginal heritage. It identified two items of Aboriginal significance, AHIMS #45-3-0042 and AHIMS #45-3-0049. Of the two items, only AHIMS #45-3-0049 (which is of high Aboriginal cultural significance, with a low-moderate archaeological significance) is located in the proposed C4 Environmental Living zone and would be impacted by future development.</p> <p>The ACHAR includes several recommendations in relation to the protection of the item in the proposed C4 zone, including</p>

Directions	Consistent	Reasons for Consistency or Inconsistency
		<p>the preparation of a Heritage Management Plan and a 20m buffer zone around the item, both of which would be prepared/implemented at the DA and construction stage. While no site specific planning provisions have been proposed (e.g. listing the sites as heritage items) the ACHAR identifies other legislation covering the protection of this item, including the <i>National Parks and Wildlife Act 1974</i>.</p> <p>To demonstrate consistency with the Direction, a Gateway condition is recommended requiring the planning proposal to confirm if the Aboriginal Heritage site/s identified should be listed and mapped in the CCLEP 2022, or if not, identify any appropriate provisions currently in place for their protection.</p>
4.3 Planning for Bushfire Protection	Consistent	<p>The objectives of this Direction are to:</p> <ol style="list-style-type: none"> protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas; and encourage sound management of bush fire prone areas. <p>This Direction applies as the proposal affects land mapped as being bushfire prone.</p> <p>A Strategic Bushfire Study (Clarke Dowdle & Associates, July 2023) (Attachment D) and Traffic Impact Assessment (Intersect Traffic, June 2023) (Attachment E) address the requirements of this Direction, by including appropriate provisions, for example:</p> <ul style="list-style-type: none"> Asset protection zones, including inner and outer protection areas; Appropriate access roads. The planning proposal notes that the study has been prepared in accordance with the requirements of the Planning For Bushfire Protection 2019 (PBP), and that the NSW Rural Fire Service (NSW RFS) have been consulted with and not objected the planning proposal, provided that the recommendations in the study are implemented. The study finds that by implementing bushfire management mitigation measures the proposed land uses can safely coexist within the bushland setting. <p>It forms a condition of the Gateway that the NSW RFS comments are exhibited with the planning proposal.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>A Preliminary Contamination Assessment (Qualtest, July 2023) (Attachment F) has been prepared in support of the planning proposal. A preliminary site investigation of the land was carried out in accordance with the contaminated land planning guidelines (2005). The report identified all previous land uses at the site and unearthed two Areas of</p>

Directions	Consistent	Reasons for Consistency or Inconsistency
		<p>Environmental Concern (AECs). These areas are located outside of the proposed residential development footprint.</p> <p>The report concluded that no further assessment was recommended in the area proposed for residential land use, unless waste materials that may cause contamination are identified.</p> <p>The planning proposal and accompanying contamination assessment satisfy the requirements of the Direction.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Consistency yet to be demonstrated	<p>The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</p> <p>This Direction applies as the proposal seeks to rezone RU2 Rural Landscape land to C2 Environmental Conservation and C4 Environmental Living, and therefore prohibit extractive industries.</p> <p>The planning proposal argues that it is consistent with this Direction as it does not conflict with future resource extraction. This is based on a referral to Geological Survey of NSW, Division of Resources and Geoscience for the (now withdrawn) PP-2021-526. The proposal notes that the agency raised no objections to the proposal and advised that coal extraction is unlikely at the site due to the depth and existing surface constraints. No concerns were raised regarding resource sterilisation.</p> <p>The Department's assessment is that the proposal has not yet demonstrated consistency with the Direction as no consultation has been undertaken with the Department of Primary Industries to determine the state significance of potential resources on site. However, the comments provided by NSW Geological Survey relating to the previous proposal have been taken into consideration. The Gateway will be conditioned to require consultation with the Department of Primary Industries.</p>
9.1 Rural Zones	Consistent	<p>The objective of this Direction is to protect the agricultural production value of rural land, and applies to planning proposals that affect land in an existing or proposed rural zone.</p> <p>The planning proposal considers that the proposal is partially consistent with the Direction, and that any inconsistency is minor and justified.</p> <p>The Department considers that as per Direction 1(a), the planning proposal seeks to rezone land from a RU1 Primary Production zone and C4 Environmental Living to C2 Environmental Conservation and C4 Environmental Living (i.e. conservation zones) and the proposal is therefore consistent.</p> <p>Direction 1(b) lists a range of LGAs to which the provision relating to minimising density applies. While Central Coast is not specifically listed, it is considered to apply in this instance as it is an amalgamation of two listed LGAs (namely, Gosford and Wyong).</p>

Directions	Consistent	Reasons for Consistency or Inconsistency
		<p>The reduction of the minimum lot size from 20ha to 1ha will increase the development potential of the site. However, the proposal is consistent with this provision as it seeks to apply a minimum lot size control to the proposed C4 Environmental Living zone, not the RU2 Rural Landscape zone.</p> <p>A Gateway condition is recommended to update the name of Direction 9.1 from Primary Production to Rural Zones.</p>
9.2 Rural Lands	Consistency yet to be demonstrated	<p>The objectives of this direction are to protect the value and use of rural land, ensure appropriate protections are in place. The objectives, generally, are to protect the agricultural production, ensure appropriate use and development of rural lands</p> <ul style="list-style-type: none"> a) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State, b) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses, c) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land, d) support the delivery of the actions outlined in the NSW Right to Farm Policy <p>This Direction applies to all planning proposals in the Central Coast LGA that affect land with existing or proposed rural or conservation zones, and seek to amend the minimum lot size within these zones.</p> <p>The planning proposal considers that it is consistent with this Direction as the proposal will not limits on capacity for farming, impact on primary producers right to farm, fragment rural land or increase land use conflicts.</p> <p>The Department considers that the proposal has adequately demonstrated consistency with provision 1, with particular consideration to (a), (c), (d) and (i) as the proposal seeks to apply the C2 Environmental Conservation Zone to the majority of the site to protect the environmental interests and values. The site is not currently used for farming, is not identified as being an area of significant agricultural value and has significant constraints that would limit any opportunities for such use.</p> <p>The planning proposal has adequately addressed this part of the Direction.</p> <p>Direction 9.2(2) requires that a change to the minimum lot size on land within a rural or conservation zone must demonstrate:</p> <ul style="list-style-type: none"> a) consistency with the priority to minimise rural land fragmentation and conflict b) that it does not affect the operation of land uses and enterprises

Directions	Consistent	Reasons for Consistency or Inconsistency
		<p>c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</p> <p>ii. is necessary, taking account of existing and future demand and supply of rural residential land</p> <p>The planning proposal has not addressed 9.2(2) of the Direction.</p> <p>The Department notes that the proposed rural residential development has demonstrated it is located in proximity to Gosford City Centre and that the Preliminary Stormwater and Servicing Report (PSSP) (Northrop, July 2023) (Attachment G) confirms the availability and capacity of water, sewer, gas, electrical and communication infrastructure to support future residential dwellings.</p> <p>The LSPS identifies the site as 'Aboriginal Land SEPP' in the Housing Precincts Map. This SEPP empowers the DDP, which under objective 17 outlines the Somersby rural residential development and conservation lands. This highlights there is future demand for the proposed housing that would be delivered through the planning proposal.</p> <p>The Department's assessment is that the information provided demonstrates that the proposal is capable of consistency with this Direction.</p> <p>A Gateway condition is recommended to require the planning proposal be updated to address all considerations under Direction 9.2.</p>

3.5 State environmental planning policies (SEPPs)

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

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Inconsistent	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Planning Systems) 2021 (the SEPP) – Chapter 3 Aboriginal land	Chapter 3 aims to provide for consideration of development delivery plans relating to land owned by Aboriginal Land Councils, and to declare specified development on Aboriginal Land Council owned land to be	Consistent	<p>The SEPP gives power to the Darkinjung Development Delivery Plan (DDP) 2022, under which this planning proposal has been prepared.</p> <p>The planning proposal area (identified as site 3 in the DDP) specifically delivers on objective 17 of the DDP, which is to progress and deliver Darkinjung's four key priority projects, including the Somersby rural residential development and conservation lands.</p>

SEPPs	Requirement	Consistent/ Inconsistent	Reasons for Consistency or Inconsistency
	regionally significant development.		
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<p>The Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.</p> <p>Chapter 4, section 4.4, 3c states this Chapter does not apply if biodiversity certification has been conferred and is in force.</p> <p>Chapter 4 outlines numerous requirements to be met as part of the development application process.</p>	Consistent	<p>The FFA did not detect any signs of koala habits being located on the proposed development area along the Reeves Street frontage. Surveying included tree cameras, vegetation assessments, nocturnal spotlight searches and call playbacks.</p> <p>However, the FFA considers that there is potential for koalas to exist in low densities, noting that koala feed and shelter trees exist on site.</p> <p>The proposal does not impact on the operation of the SEPP. However, the provisions of Chapter 4 will cease to apply to the site if bio-certification is conferred.</p>

4 Site-specific assessment

4.1 Environmental

Biodiversity

The planning proposal area covers 124.1ha of undeveloped land that is covered by dense vegetation. While the majority of the site (104.35ha) is proposed be rezoned to C2 Environmental Conservation (thereby securing regional biodiversity corridors within a more appropriate conservation zone), a small portion of the site (19ha) is proposed to be zoned C4 Environmental Living.

To support the proposed residential portion of the site, a Flora and Fauna Assessment (EMM, August 2023) (**Attachment H**) was prepared. The report identified that the following threatened ecological communities and species are located on the site:

- Coastal Upland Swamp
- Somersby Mintbush (assumed)
- Glossy Black Cockatoo
- Giant Burrowing Frog
- Squirrel Glider
- Red-crowned Toadlet

Furthermore, a supplementary report by EMM (November 2023) (**Attachment I**) noted that the proposed clearing rates, as detailed in the FFA report, have been overestimated, and that where possible, retention of native vegetation will be facilitated.



Stormwater Impacts on Coastal Upland Swamp

Additional information was prepared by EMM in to confirm the suitability of the site for residential purposes, with consideration to potential impacts on Coastal Upland Swamp (CUS) areas in both the proposed C2 Environmental Conservation and C4 Environmental Living zones.

With regards to stormwater run-off, prevention from future residential development into intact vegetation will be critical to ensure the wellbeing of the existing CUS ecosystems. To protect these ecosystems, stormwater management measures will be implemented on-site, including on-site collection and reuse and controlled 'sheet flow' run off.

The report considers that stormwater runoff will have negligible impacts on CUS within the C4 Environmental Living zoned land and as such, no impacts (as a result of water quantity) are anticipated on CUS in the C2 Environmental Conservation zoned land.

On-Site Sewage Management System Impacts on Coastal Upland Swamp

The OSSM systems may result in increased nutrient levels in CUS in the C4 Environmental Living zone. This is likely to occur close to building envelopes, which increases opportunities for invasive species. The EMM supplementary (November 2023) report considers that measures such as ensuring that OSSM systems are maintained within cleared APZ areas and allowing for appropriate buffer distances from CUS areas to OSSM systems. To further mitigate the risk of impact, the EMM report advises that CUS within the C2 Environmental zoned land can be actively managed and monitored under a Biodiversity Stewardship Agreement (BSA).

The Biodiversity Certification process (further discussed below) will provide further analysis of the impact of the on-site sewer management system on the swamps. This will examine off-lot discharge and modelling utilising site-specific soils to determine the impacts of the development on the existing ecosystems. This information will be detailed in the Biodiversity Certification Assessment Report which is occurring parallel to the planning proposal.

The Department considers that biodiversity considerations have been adequately addressed. However, a Gateway condition is recommended to require DPE Environment and Heritage Group be consulted on the planning proposal.

Biodiversity certification

Biodiversity certification (bio-certification) is an assessment of threatened species prior to the development application process for development that requires consent under Part 4 or activities under Part 5 of the Environmental Planning and Assessment Act 1979. This process avoids the need to submit a species impact statement at the development application stage and creates a streamlined and efficient process by resolving biodiversity concerns at the strategic planning stage.

Bio-certification identifies areas that can be developed and identifies measures to offset the impacts of the development using the Biodiversity Assessment Method (also used for the Biodiversity Offsets Scheme). The application must be accompanied by a Biodiversity Certification Assessment Report and the process involves public exhibition. The decision to bio-certify an area is ultimately determined by the Minister for the Environment.

Darkinjung LALC is seeking bio-certification for the subject site. Through this, DLALC can implement an Offset Strategy using one or more of the following:

- the establishment and retirement of credits within a stewardship site
- securing required credits through the open credit market and/or
- payments to the Biodiversity Conservation Fund.

Should the bio-certification process not proceed, the applicant has the option to submit a species impact statement at the development application stage.

Given the available offset options, The Department does not consider it essential for bio-certification to be completed prior to finalisation.

Water

Stormwater Management

The Preliminary Stormwater and Servicing (PSS) report (Northrop, July 2023) (**Attachment G**) has been prepared to support the proposal. A preliminary hydrological assessment of the contributing catchment using the Runoff Analysis and Flow Training Simulation software was undertaken to establish the existing catchment hydrology during a specific storm event. The results demonstrated that the proposed development would not be affected by flooding.

The PSS considers that stormwater management of the future individual allotments can be appropriately managed through such measures as harvesting roof water runoff and planting/protecting vegetated buffers which will remove suspended pollutants before run-off enters Fountain Creek.

While no modelling of this has been undertaken to confirm its efficacy on this site, the Department notes that this approach has been supported in the FFA report as appropriate protection for CUS.

The Department is satisfied that with the level of information provided at this stage however recommends that the proposal is referred to the Environment and Heritage Group.

Water Quality

the FFA report outlines measures such as vegetation buffers which will reduce stormwater run-off and remove pollutants and concludes that the development would result in negligible impacts on water quality outside the development footprint.

To manage sewerage, all dwellings will be required to provide an on-site wastewater treatment system. The PSS report notes a preliminary on-site wastewater disposal assessment has been undertaken to identify anticipated effluent disposal rates, suitable treatment and disposal mechanisms and typical application areas required for effluent disposal and considers that the proposal meets the Department of Environment and Conservation Environmental Guideline 'On-site sewage Management for Single Households'.

The Department is satisfied with the information provided and further assessment will be undertaken on water quality at the development application stage.

Bushfire

A Strategic Bushfire Study (Clarke Dowdle & Associates, July 2023) (**Attachment D**) was prepared to address the requirements of Planning for Bush Fire Protection 2019 (PBP).

The Strategic Bushfire Study states that the proposed rezoning does not present any substantial issues and considers that the risks can be mitigated through measures such as evacuation and asset protection zones. It confirms that the proposal is capable of satisfying the statutory bush fire protection measures outlined in the PBP. The bushfire study also indicates that adequate infrastructure will be provided to support firefighting operations, including fire trails and access tracks (Figure 9).

The Asset Protection Zone (APZ) is the distance between the proposed development and the bushland. The bushfire study recommends APZs surround the C4 Environmental Living zone between a range of 40m to 49m, given the bushland setting. This exceeds the 29m to 36m APZ requirements of the PBP due to the one-way in/one-way out design of Reeves Street. Figure 9 demonstrates a 49m APZ can be accommodated on the site.



The Department is satisfied the planning proposal has demonstrated that the requirements of the PBP can be accommodated. The evacuation routes, APZs and fire trails are acceptable responses to the level of bushfire risk.

A Preliminary Contamination Assessment (Qualtest, July 2023) (**Attachment F**) was prepared to support the planning proposal and assess the likelihood of contamination on the site from previous land uses and activities.

The Qualtest assessment of these areas demonstrated a low to medium risk of potential contamination but recommended no further investigation was required in the areas proposed for residential land use unless any dumped waste materials are identified to have caused contamination.

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4.2 Social and economic

The planning proposal will facilitate social and economic outcomes for the Darkinjung Aboriginal Community. This planning proposal creates opportunities for economic development through the delivery of a small number of homes in an environmental setting that will deliver on the DDP.

Aboriginal Cultural Heritage

An Aboriginal Cultural Heritage Assessment (ACHAR) (Heritage Now, September 2023) (**Attachment C**), was prepared to support the proposal. It found that the site contains Aboriginal cultural values as a resource gathering area and, more broadly, played a role in the wider cultural landscape of the Somersby plateau.

An Aboriginal heritage item of significance (AHIMS#45-3-0049- rock engraving of a kangaroo) was recorded within the study area (i.e., area being rezoned to C4 Environmental Living). It has high local and Aboriginal cultural significance and moderate regional significance as an archaeology item. Sandstone sheets that were obscured by vegetation may reveal further items located within the development footprint.

The ACHAR also identifies that another engraving site (AHIMS#45-3-0042) located on the subject site, and maps both of these on page 4. However, the report also explains that this site is a duplicate recording of AHIMS #45-3-3661, which is located further south outside the project area. To ensure consistency, the Department recommends a Gateway condition requiring clarification of the number of Aboriginal heritage sites within the planning proposal area, and that all relevant documentation be updated as relevant.

The ACHAR provides recommendations for the ongoing management of the heritage item/s. This includes creating a 40m buffer zone and preparation of a Heritage Management Plan around the item in the proposed C4 Environmental Living area. While the masterplan and subdivision pattern plan is indicative only, the building footprint is in close proximity to AHIMS #45-3-0049 (**refer Figures 7 and 9**). Further information is required to determine whether a buffer and Heritage Management Plan is satisfactory protection for an item of such significance, and a condition to this effect is recommended as part of the Gateway. Consultation with NSW Heritage is also recommended.

4.3 Infrastructure

Utilities and servicing

A Preliminary Stormwater and Servicing (PSS) report (Northrop, July 2023) (**Attachment G**) has been prepared to support the proposal. The report has assessed the stormwater and flood management requirements for the site as well as the availability of water, sewer, gas, electrical and communication infrastructure.

The north of Reeves Street has existing electrical and communication infrastructure and the PSS report notes that there is capacity to cater for the proposed new dwellings from existing infrastructure.

Other services and utilities are less readily available to the site (including gas, potable water and sewage). As such, each dwelling will be required to provide rainwater tanks to maximise on-site harvesting potential and all dwellings will be required to provide an on-site wastewater treatment system. The general site topography is considered appropriate for on-site application of treated wastewater as slope, flooding, land area availability, buffer distances to downstream watercourses or sensitive environments, permeability and fill are not limiting factors.

The site currently has limited access to infrastructure, however, given the small number of dwellings anticipated by the proposal, the report has indicated this can be overcome. The Department is satisfied with the information provided, however recommends a Gateway be

conditioned to require consultation with relevant utility providers, including Hunter Water Corporation.

Roads and Traffic

A Traffic Impact Assessment (Intersect Traffic, June 2023) (**Attachment E**) was submitted in support of the planning proposal. The estimated traffic generation is based on the indicative subdivision plan which assumes the proposal will result in 14 residential lots.

The site is located on Reeves Street which is a no through road. All lots that result from the rezoning will have direct vehicular access to Reeves Street. The assessment found that the local road network is currently operating well within its technical mid-block capacity and estimated that the proposal would generate up to 12 trips in the AM peak and 13 trips in the PM peak. The assessment concludes that the planning proposal will not adversely impact the operation of local and state road network intersections. The traffic assessment also recommends upgrades to the shoulder and verges of Reeves Street along the frontage of the proposed development area and including onsite parking at the development application stage.

The Department considers that the assessment adequately supports the proposal. Noting the site's location next to the M1 Highway (SP2 Infrastructure zoned land), the Department recommends the Gateway be conditioned to require consultation with Transport for NSW.

5 Consultation

5.1 Community

The planning proposal is categorised as complex under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 30 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 40 working days to comment:

- NSW Environment and Heritage
- Heritage NSW
- Transport for NSW
- NSW Department of Primary Industries
- Hunter Water Corporation
- Central Coast Council
- Relevant utility providers

6 Timeframe

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a complex

The Department recommends an LEP completion date of 20 January 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

As Council have declined the offer of delegation to be the planning proposal authority, and in accordance with Planning Circular PS 22-001 – Independent review of planning proposals for identified Aboriginal land (the Planning Circular), the Hunter and Central Coast Regional Planning Panel are the planning proposal authority.

As per the LEP Making Guidelines (2022), any proposal progressed under the Aboriginal Land SEPP is considered complex. As such, the Department recommends the Minister's delegate be the local plan-making authority for this proposal.

8 Recommendation

It is recommended the delegate of the Secretary:

- Note that any inconsistencies with section 9.1 Directions 3.1 Conservation Zones; Primary Industries are minor and justified.
- Note the consistency with section 9.1 Directions 3.2 Heritage Conservation; 8.1 Mining, Petroleum Production and Extractive Industries; and 9.2 Rural Lands are not yet demonstrated.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to community consultation to:
 - a) Confirm the number of Aboriginal Heritage site/s affected by the planning proposal and if they should be listed and mapped in the CCLEP 2022. If not, identify any appropriate provisions currently in place for their protection, and update Ministerial Direction 3.2 as appropriate.
 - b) Include an assessment of the proposal against the Draft Central Coast Local Housing Strategy (January 2023).
 - c) Update the name of Ministerial Direction 9.1 from Primary Production to Rural Zones.
 - d) Provide additional information against Ministerial Direction 9.2 Rural lands to confirm consistency with the Direction.
 - e) Include the NSW RFS comments (July 2023) as part of the exhibition material.
2. Consultation is required with the following public authorities:
 - NSW Environment and Heritage
 - Heritage NSW
 - Transport for NSW
 - Hunter Water Corporation
 - Central Coast Council
 - Relevant utility providers
 - Department of Primary Industries
3. The planning proposal should be made available for community consultation for a minimum of 30 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise the Department of Planning and Environment to be the local plan-making authority on behalf of the Hunter and Central Coast Regional Planning Panel and that an LEP completion date of 20 January 2025 be included on the Gateway.

The timeframe for the LEP to be completed is on or before 20 January 2025.

Commented [AvdN1]: To be included in the Gateway determination



12 December 2023

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