

Planning Proposal

Heritage Amendment

Eurobodalla Local Environmental Plan 2012

ELEP 2012 Amendment No. 20

Contents

EXECUTIVE SUMMARY	3
PART 1: OBJECTIVES AND INTENDED OUTCOMES	3
PART 2: EXPLANATION OF PROVISIONS	4
PART 3: JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT	5
Section A – Need for the Planning Proposal	5
1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?	5
2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	5
Section B – Relationship to Strategic Planning Framework	6
3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?	6
4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	7
5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?	8
6. Is the planning proposal consistent with applicable state environmental planning policies?	8
7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?	8
Section C – Environmental, Social and Economic Impact	11
8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	11
9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	11
10. How has the planning proposal adequately addressed any social and economic effects?	11
Section D – Infrastructure (Local, State and Commonwealth)	11
11. Is there adequate public infrastructure for the planning proposal?	11
Section E- State and Commonwealth Interest	12
12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?	12
PART 4: Maps	13
Part 5: Community Consultation	15
PART 6: Project timeline	17

EXECUTIVE SUMMARY

This planning proposal explains the intended effect of, and justification for the proposed amendment of Part 3 of Schedule 5 of the *Eurobodalla Local Environmental Plan 2012*, specifically in relation to the addition of one Aboriginal Heritage Conservation Area (HCA).

It has been prepared in accordance with Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning, Industry and Environment 'Local Environmental Plan Making Guideline' (2021).

At the ordinary meeting of Council on 12 December 2017, Council endorsed the preparation of this planning proposal which relates to an 8.3ha portion of land on the northern banks of the Moruya River, adjacent to the Moruya Airport, along Bruce Cameron Drive. The land is described as part of Lot 5 DP1264836 at Bruce Cameron Drive, Moruya. The land also extends partly into Crown Land, being the foreshore of the Moruya River. The proposed HCA is predominantly zoned C2 Environmental Conservation, with small sections zoned SP1 Airport and W1 Natural Waterways.

The proposed HCA aims to encompass the important Aboriginal cultural landscape values associated with Brierley's Boat Ramp and the former Brierley's Homestead.

Council is seeking to progress this planning proposal through the gateway determination process as an amendment to the Eurobodalla LEP 2012.

As this Planning Proposal meets the definition of a "basic" planning proposal, Council intends to be the local plan making authority.

PART 1: OBJECTIVES AND INTENDED OUTCOMES

Objective

To amend Part 3 of Schedule 5 of the *Eurobodalla Local Environmental Plan 2012* to identify a new Heritage Conservation Area (HCA).

Intended Outcomes

The intended outcomes for this item are:

- To implement the recommendations of the:
 - Moruya Regional Airport Redevelopment Intangible Aboriginal Cultural Heritage Assessment Report (Donaldson 2017)
 - Brierley's Boat Ramp, Moruya North Heads, NSW Heritage Conservation Area Nomination Report (Donaldson 2020)
- To ensure places of high Aboriginal significance and cultural sensitivity are afforded protection and acknowledgement.

PART 2: EXPLANATION OF PROVISIONS

The intended outcome is to be achieved through an amendment to Part 3 of Schedule 5 - Environmental Heritage of the Eurobodalla LEP 2012, as follows:

Description	Identification on Heritage Map	Significance
Brierley's Boat Ramp	Shown by yellow edging and labelled "AH14"	Local

The intended outcome is also to be achieved by a map amendment. An extract of the proposed amended Heritage Map showing the new HCA is provided in Figure 1 below. The full proposed map amendment is provided in Part 4.



Figure 1: Extract of proposed amendment to Heritage Map Sheet HER_012A

PART 3: JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

Section A – Need for the Planning Proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

Yes. This planning proposal is the result of a strategic study and a report.

The proposal was initiated by members of the Aboriginal community and formulated in the context of the Moruya Regional Airport Redevelopment Intangible Aboriginal Cultural Heritage Assessment Report (2017) prepared for Eurobodalla Shire Council by anthropologist Susan Dale Donaldson, at the request of the NSW Office of Environment and Heritage (now Heritage NSW).

Through the application of the ICOMOS Practice Note on Intangible cultural heritage and place [2017]; the AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies [2012] and the Heritage NSW Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW [OEH 2011], Donaldson found that an area on the north side of the Moruya River contained a complex of highly significant traditional and contemporary Aboriginal cultural values and as such recommended the following:

“Council commitment to scheduling the Brierley’s boat ramp homestead / foreshore complex a Heritage Conservation Area in the Eurobodalla Local Environment Plan and develop an associated management plan as a way to formally recognise and preserve the identified Aboriginal cultural heritage values, in conjunction with ongoing public / council use of the area” (Donaldson 2017:60).

Donaldson’s 2017 recommendation is consistent with the findings in the Eurobodalla Shire Council Aboriginal Heritage Study which found the Moruya North Head area of high cultural significance to the Aboriginal community (Goulding and Waters 2005; Donaldson 2007; Donaldson 2006; Donaldson and Barry 2008).

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

Yes. The Planning Proposal is the best means of achieving the protection and acknowledgement of the identified cultural heritage values in the long term.

Section B – Relationship to Strategic Planning Framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

Yes. The Planning Proposal will assist Council in meeting the outcomes set by the State Government in the South East and Tablelands Regional Plan 2036. Direction 23 of the South East and Tablelands Regional Plan, titled “Protect the region’s heritage” is specifically relevant to this Planning Proposal. Under this direction, the following statement is made:

“The Aboriginal community has strong links to the coastal, rural and alpine landscapes. The process of protecting and preserving Aboriginal heritage gives Aboriginal people the opportunity to be involved in and consulted about the conservation of their heritage. Heritage is irreplaceable and should be appreciated, valued and protected for the benefit of current and future generations. Harm to Aboriginal objects and places, or areas of significance to Aboriginal people, should be avoided. Where impacts on Aboriginal and historic heritage cannot be avoided, appropriate heritage management mechanisms must be implemented. Areas of high growth can have cumulative impacts on Aboriginal cultural heritage values and historic places. Early investment at the strategic planning stage can protect and preserve heritage and provide greater certainty for stakeholders during the development assessment process.”

The planning proposal gives effect to the following actions under Direction 23:

Table 1: Consistency of Planning Proposal with relevant actions of the Regional Plan

Action	Consistency of Planning Proposal
Action 23.1 Undertake and implement heritage studies, including regional Aboriginal cultural heritage studies, to inform local strategies.	This planning proposal is the direct result of heritage studies and reports, including: <ul style="list-style-type: none">• The Eurobodalla Aboriginal Cultural Heritage Study• Moruya Regional Airport Redevelopment Intangible Aboriginal Cultural Heritage Assessment Report• Brierley’s Boat Ramp, Moruya North Heads, NSW Heritage Conservation Area Nomination Report.
Action 23.2 Consult with Aboriginal people and the broader community to identify heritage values at the strategic planning stage.	Significant consultation has been undertaken with local Aboriginal people and the broader community in the development of the studies and reports referred to above. Further consultation on this planning proposal will be undertaken following receipt of a Gateway Determination.

Action 23.3 Conserve heritage assets during local strategic planning and development.	The intended outcome of this planning proposal is to facilitate the conservation of an important Aboriginal cultural heritage place.
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4. *Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?*

The Eurobodalla Local Strategic Planning Statement (LSPS) contains no planning priorities or specific actions in relation to heritage management outside of towns and villages. The LSPS is therefore not relevant to the planning proposal.

However, the Planning Proposal will assist Council in meeting the targets outlined in Eurobodalla Council's Community Strategic Plan, Heritage Strategy and Aboriginal Cultural Heritage Study.

The Community Strategic Plan – Our Eurobodalla 2024 recognises Aboriginal people as the original inhabitants and custodians of all land and water in the Eurobodalla and respects their enduring cultural and spiritual connection to it. The Walbanga people of the Yuin Nation are recognised as the first people of our region. The Dhurga speaking Walbanga people have lived in this area for thousands of years and have an enduring custodianship and connection over the land and waterways of the Eurobodalla.

This planning proposal specifically responds to the Strategy 2.1 in the Community Strategic Plan – Acknowledge our beginnings, embrace our diversity.

The Eurobodalla Heritage Strategy 2017 – 2021 aims to ensure that Council's local environmental plans include up-to-date lists of environmental heritage items and areas and its contents are a consideration in the assessment of development applications and Council works. The strategy also aims to research, interpret and conserve the significant heritage items that have shaped the history and development of Eurobodalla.

This planning proposal specifically responds to Action 7 of the Heritage Strategy – Ensure Council's local environmental plans are updated with new or amended heritage items and that property descriptions are kept up-to-date.

The Eurobodalla Aboriginal Cultural Heritage Study (4 stages) contains a number of recommendations in relation to the mapping of Aboriginal cultural heritage places and affording LEP protections to these places. While the Brierley's Boat Ramp was not specifically identified as a place to list in the LEP, the Study found the Moruya North Head area of high cultural significance to the Aboriginal community. The study also recommended ongoing research and studies to develop an Aboriginal heritage inventory.

The Moruya Regional Airport Redevelopment, Intangible Aboriginal Cultural Heritage Assessment Report specifically recommends the listing of the Brierley's Boat Ramp as a Heritage Conservation Area in the Eurobodalla Local Environmental Plan 2012.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other applicable State or regional studies or strategies.

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

An assessment of applicable State Environmental Planning Policies against the planning proposal is provided in the table below.

Table 2: Consistency of Planning Proposal with relevant SEPPs

SEPP	Consistency of Planning Proposal
SEPP (Resilience and Hazards) 2021	<p>Consistent.</p> <p>In relation to coastal management, the site is identified in two Coastal Management Areas (CMA), being the Coastal Environment Area (CMA 3) and the Coastal Use Area (CMA 4).</p> <p>As the planning proposal does not seek to facilitate development of the land, there will be no impact on coastal processes or coastal amenity. The planning proposal will have a positive impact on the Aboriginal cultural heritage values of the area. The planning proposal is therefore consistent with the SEPP provisions relating to CMA 3 and CMA 4. In relation to remediation of contaminated land, the subject land has no known history of any contaminating activities. As the planning proposal does not seek to facilitate any change of use of the land, no further assessment of potential contamination is considered warranted.</p>
SEPP (Biodiversity and Conservation) 2021	<p>Not Relevant</p> <p>As the planning proposal does not seek to facilitate any development or removal of vegetation, there are no provisions of this SEPP relevant to the planning proposal.</p>
SEPP (Planning Systems) 2021	<p>Not Relevant</p> <p>Chapter 3 of this SEPP relates to Aboriginal Land, being land owned by a Local Aboriginal Land Council. The subject land is not owned by a LALC and therefore, this SEPP is not relevant to the planning proposal.</p>

7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The proposed amendments to Eurobodalla LEP 2012 are not inconsistent with any s.9.1 Ministerial Directions. An assessment of the relevant s. 9.1 Directions against the planning proposal is provided in the table below.

Table 3: Consistency of Planning Proposal with relevant Ministerial Directions

Ministerial Direction	Aim of the Direction	Consistency and Implications
1.1 Implementation of Regional Plans	To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans	Consistent As outlined in Section B above, the planning proposal is consistent with the South East and Tablelands Regional Plan.
1.3 Approval and Referral Requirements	To ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Consistent The planning proposal does not contain provisions requiring concurrences, consultations or referrals and does not identify designated development.
3.1 Conservation Zones	To protect and conserve environmentally sensitive areas.	Consistent The planning proposal provides added heritage protection to an environmentally sensitive area and does not reduce the existing environmental protections that apply to the land.
3.2 Heritage Conservation	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Consistent The planning proposal retains the current provisions within ELEP 2012 relating to the conservation of heritage significance. The amendment to the schedule of heritage items would ensure that the existing heritage management provisions of ELEP 2012 (clause 5.10) apply to identify and conserve the heritage values of the Brierley's Boat Ramp area.
4.2 Coastal Management	To protect and manage coastal areas of NSW.	Consistent. The proposal is consistent with <i>SEPP (Resilience and Hazards) 2021</i> and the relevant coastal management areas, as described previously in this planning proposal.
4.3 Planning for Bushfire Protection	To 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.	Consistent The subject land is partly mapped as bushfire prone land. However, as the planning proposal does not seek to facilitate any development of the land, it is considered that an assessment against Planning for Bushfire Protection 2019 is not required.

4.4 Remediation of Contaminated Land	To reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.	Consistent The planning proposal does not seek to rezone the land or permit a change of use. A preliminary investigation of the potential for contamination of the land is therefore not required.
4.5 Acid Sulfate Soils	To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Consistent The subject land is mapped as containing acid sulfate soils. However, as the planning proposal does not seek to facilitate any development of the land, it is considered that an assessment against the Acid Sulphate Soils Planning Guidelines is not required.
5.3 Development near regulated airports and defence airfields	To ensure the effective and safe operation of regulated airports and defence airfields; ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.	Consistent The planning proposal is on land containing the Moruya Airport, a regulated airport. However, as the planning proposal does not seek to set controls for the development of the land (other than apply the heritage management provisions of clause 5.10(3) of the ELEG 2012), it is considered that the planning proposal will have no impact on the operation of Moruya Airport.
8.1 Mining, Petroleum Production and Extractive Industries	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.	Consistent As the planning proposal does not change the zoning of the land, there is no change to the permissibility or otherwise of mining, petroleum production or extractive industries.
9.3 Oyster Aquaculture	To ensure that 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, and protect 'Priority Oyster	Consistent As the planning proposal does not seek to change the land use or facilitate the development of the land, it is considered that there will be no adverse impacts on priority oyster aquaculture areas located across the Moruya River from the subject land, as shown in the map below.

Aquaculture Areas' and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.



Section C – Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The Planning Proposal is aimed at protecting and enhancing the existing natural environment and as such, there is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected.

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

No. There will be no adverse environmental effects as the proposal will be protecting the natural environment. There will be positive environmental benefits through the protection of the existing natural environment implemented through a Landscape Management Plan which is to be cooperatively actioned by the local Aboriginal community and Council.

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

The Planning Proposal intends to protect a place of heritage significance by amending the list of environmental heritage items within Schedule 5 – Environmental Heritage of the Eurobodalla LEP 2012. This will have positive social and economic effects through the recognition and protection of significant Aboriginal cultural heritage values.

Section D – Infrastructure (Local, State and Commonwealth)

11. Is there adequate public infrastructure for the planning proposal?

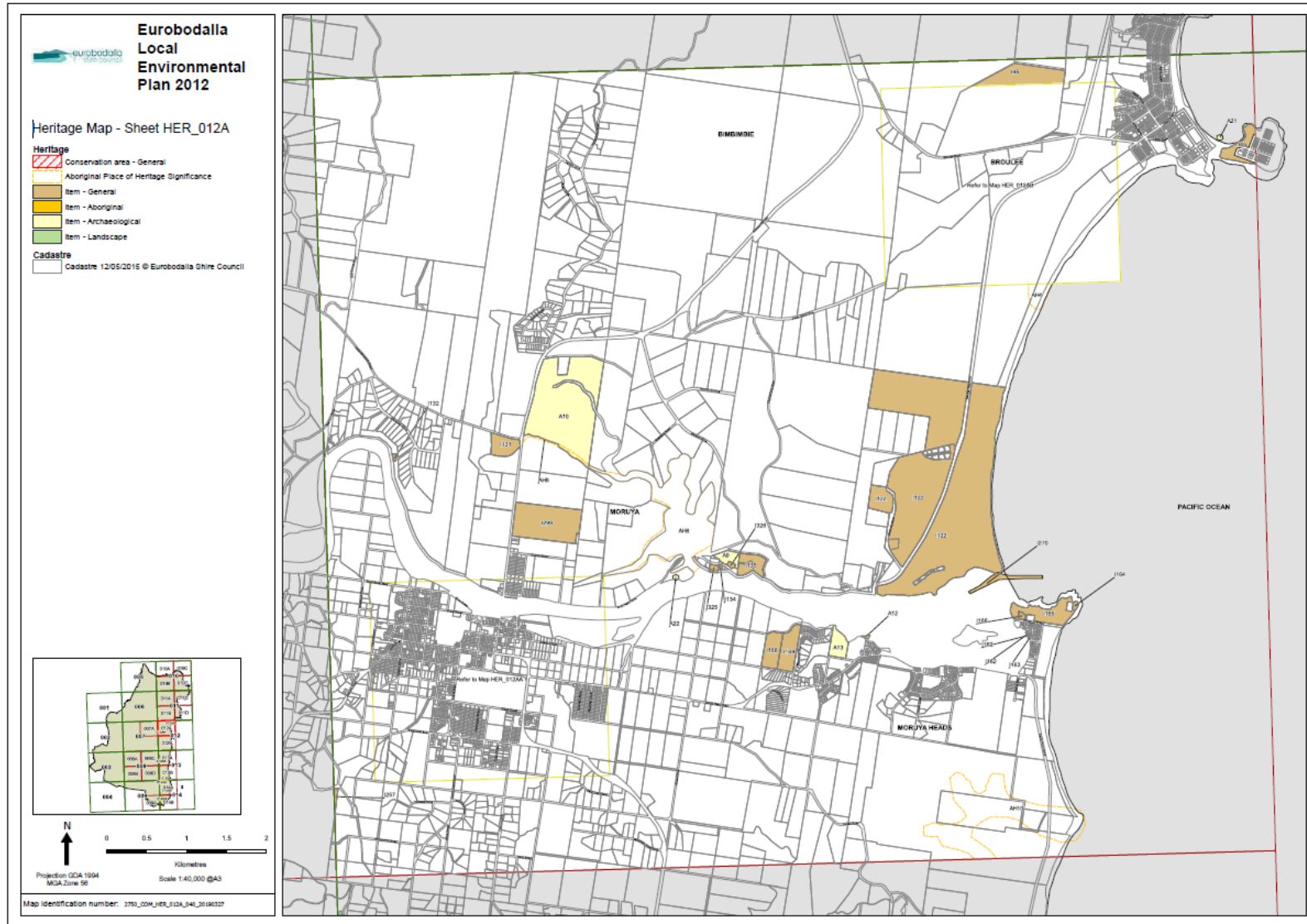
Yes. The Planning Proposal does not propose to increase the scale of development. The Planning Proposal relates only to the conservation of the heritage qualities of the existing natural environment. Accordingly, no additional public infrastructure is required.

Section E- State and Commonwealth Interest

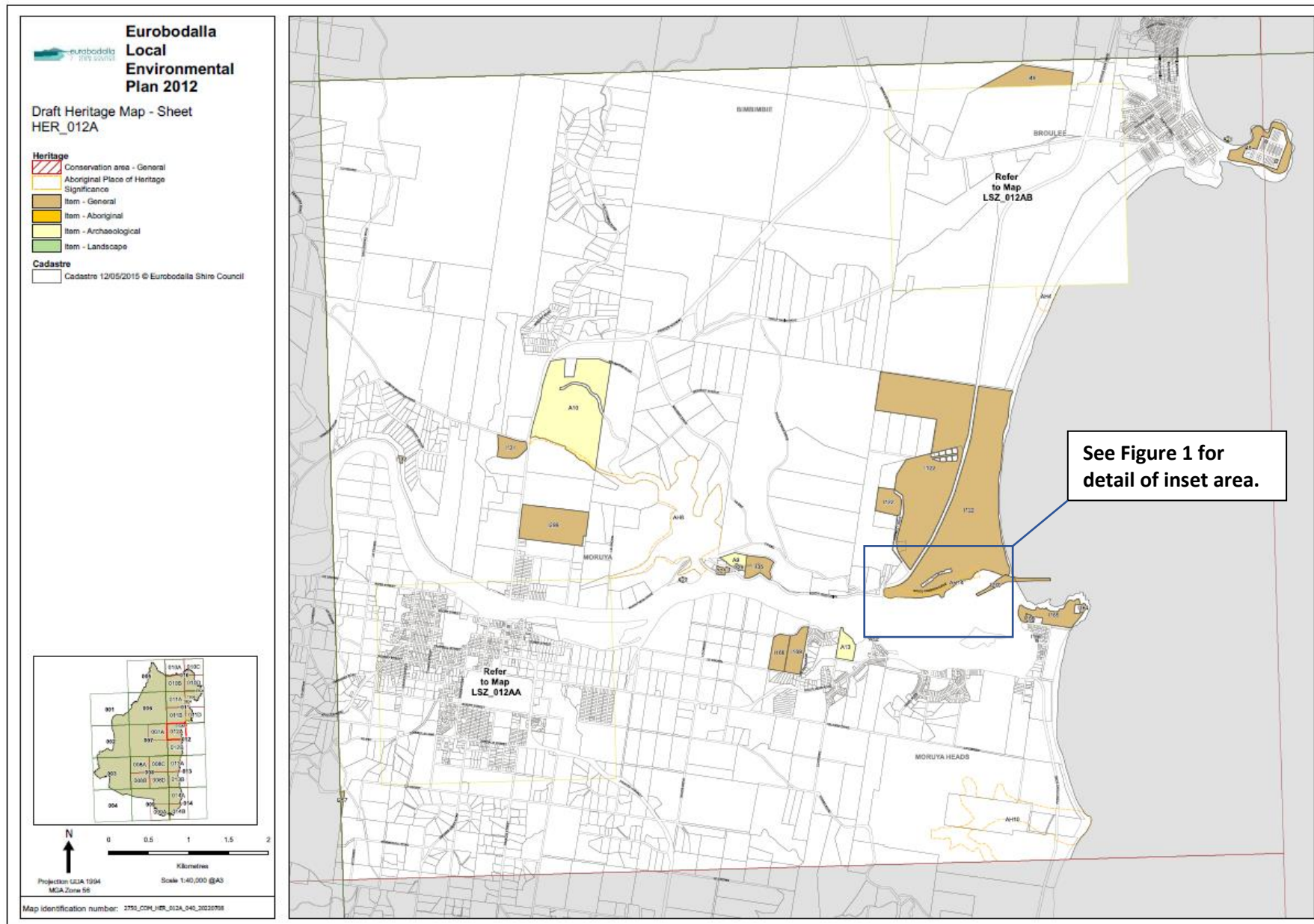
12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Preliminary discussions have taken place between Council and the NSW Department of Planning and Environment. The department indicated support for the proposal and the procedures undertaken by council leading up to the proposal. No consultation has been carried out with Commonwealth public authorities. Consultation will occur with all relevant public authorities identified as part of the Gateway Determination.

PART 4: Maps



Map 1 – Existing Heritage Map – Sheet HER_012A



Map 2 – Proposed Heritage Map – Sheet HER_012A

Part 5: Community Consultation

Between 2005 and 2008 Council undertook a shire wide Aboriginal Cultural Heritage Study, involving extensive engagement with the Aboriginal community. The study identified the Moruya North Heads – Garland Town area as an area of significant Aboriginal Heritage requiring protection and acknowledgement.

A Master Plan for Moruya airport was publicly exhibited and approved by Council in early 2015. Extensive consultation was held with the Aboriginal community as part of an Aboriginal Cultural Heritage Assessment (ACHA) prepared for the proposed airport redevelopment. Concurrent to the airport redevelopment ACHA, at the request of the Aboriginal community and OEH, Council undertook an Intangible Aboriginal Cultural Heritage Assessment to investigate the Aboriginal cultural landscape including and surrounding the Moruya Airport.

At the Ordinary meeting of Council on 12 December 2017 Council endorsed the creation of an 8.3ha Heritage Conservation Area between Birches Creek and the Moruya Heads Camping ground, adjacent to the Moruya Airport between Bruce Cameron Drive and the Moruya River.

Between April 2017 and March 2020, the proposed HCA was the subject of extensive consultation with the Aboriginal Community and saw the development of a heritage nomination report which identified cultural heritage management objectives. During this period consultations occurred with the Mogo Local Aboriginal Land Council, Cobowra Local Aboriginal Land Council, the Gadu Elders, Native Title Applicants, and members of the Brierley- Duren-Holmes family closely associated with the site.

Consultations also included the co-design of proposed upgrades to the Brierleys Boat Ramp area, within the proposed Aboriginal Heritage Conservation Area (boat ramp, toilet, cultural interpretive signage, BBQ shelter etc). Council and the Aboriginal community collaboratively developed a Landscape Management Plan for the proposed HCA which aims to maintain the identified Aboriginal values whilst ensuring public use of the site continues.

After an 18 month pause in consultation due to the bushfires, the covid-19 pandemic and deaths in the local Aboriginal community, engagement with the Aboriginal community resumed in April 2022 to confirm the HCA boundary, associated cultural values and Landscape Management Plan for the proposed HCA.

Preliminary discussions were held with the Department of Planning and Environment on the draft Planning Proposal on 19 July 2022 with no issues raised.

In accordance with Schedule 1(Part 1)(Div 1)(4) of the *Environmental Planning and Assessment Act 1979*, this planning proposal must be approved prior to community consultation undertaken by the local authority. The planning proposal is considered a “basic” proposal and therefore it is intended for this proposal to be exhibited for a fourteen (14) day period.

Consultation on the proposed amendments will be to inform and receive feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at Council’s Administration Building;
- Consultation documents to be made available on Council’s website; and
- Letters, advising of the proposed amendments and how to submit comments will be sent to adjoining landowners, Mogo, Batemans Bay and Cobowra Local Aboriginal Land Councils and other stakeholders that Council deem relevant to this planning proposal.

Additional consultation measures may be determined appropriate and added to the above as part of the gateway determination.

Council officers will consider all submissions received and present a report to Council for their endorsement of a final planning proposal.

PART 6: Project timeline

The anticipated timeline for the planning proposal is outlined in Table 4 below.

Table 4: Project Timeline

Consideration by council	February 2023
Council decision	February 2023
Gateway determination	April 2023
Pre-exhibition	May 2023
Commencement and completion of public exhibition period	July 2023
Consideration of submissions	August 2023
Post-exhibition review and additional studies (where applicable)	August 2023
Council decision	September 2023
Gazettal of LEP amendment	October 2023