



Planning Proposal

Proposed Amendment to the Port Stephens Local Environmental Plan 2013

To permit a 'recreation facility (outdoor)' with development consent at 775 (Lot 223 DP 598773), 777 (Lot 26 DP 253798) and 781 Marsh Road (Lot 14 DP 1071458), Bobs Farm, NSW, 2316

11 December 2018 – Post Exhibition Report to Council

FILE NUMBERS

Council:	58-2016-2-1
NSW Department of Planning and Environment:	PP_2016_PORTS_004_00

SUMMARY

Proponent	Griffiths Investment Properties Pty Ltd (c/o Sorensen Design and Planning Pty Ltd)
Subject Land	775 Marsh Rd, Bobs Farm (Lot 223 DP598773) 777 Marsh Rd, Bobs Farm (Lot 26 DP 253798) 781 Marsh Rd, Bobs Farm (Lot 14 DP 1071458)
Total Area	22.3 hectares Existing Zoning RU2 Rural Landscape
Proposed Zoning:	RU2 Rural Landscape & E2 Environmental Conservation
Proposed Amendment:	Amend Schedule 1 Additional permitted uses of the Port Stephens Local Environmental Plan 2013 by inserting 'recreation facility (outdoor)' as an additional permitted use at 775 (Lot 223 DP 598773), 777 (Lot 26 DP 253798) and 781 (Lot 14 DP 1071458) Marsh Road, Bobs Farm.
Definition of 'recreation facility (outdoor)':	'recreation facility (outdoor)' means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

The following information is provided in support of the planning proposal. (Some relate to the previous DA 16-2013-805-1 for a wakeboard park and related uses):

Supporting Documents

- A. Proponent Planning Proposal (Sorensen Design and Planning, October 2015).
- B. Proponent Response Summary, Public Authority Consultation for PP_2016_Ports_004_00 (Sorensen Design and Planning).
- C. Archaeological Due Diligence Assessment (McCardle Cultural Heritage, 16 September 2016).
- D. Acid Sulfate Soil and Groundwater Assessment (Coffey Environments, 10 March 2014).
- E. Acid Sulfate Soil Assessment (Supplementary) (Coffey Environments, 20 November 2015).
- F. Bushfire Threat Assessment (Firebird EcoSultants, 28 September 2016).
- G. Ecological Assessment (Firebird Ecosultants, 13 August 2016).
- H. Groundwater Assessment (Coffey Environments, 20 November 2015).
- I. Noise Impact Assessment (Rodney Stevens Acoustics, 3 December 2015).
- J. Soil and Water Management Plan (Scapeify Soil and Water, March 2014).
- K. Stormwater Management Plan (Concept) (Northrop Engineering, 1 Oct. 2014).
- L. Traffic Impact Assessment (Intersect Traffic, 20 November 2014).
- M. Wastewater Management Report (BMT WBM, September 2014).

BACKGROUND

This section briefly sets out the background to the current planning proposal, which is only seeking to make a 'recreation facility (outdoor)' permissible with consent on the subject land (only).

Previous Development Application (DA 16-2013-805-1)

On 24 December 2013 the proponent made a development application for a 'wakeboard park, wavepool and tourist facility (including 21 cabins, camping ground and amenity building), two managers residences, two office and café buildings, two lot subdivision (intersection by road), boundary realignment, and three dwellings' (Development Application 16-2013-805-1). Council staff requested further information from the applicant.

Assessment of application was finalised early May 2015 and it was determined that the development was not in the public interest and that the site was not suitable for the development based upon the information provided.

Council staff identified that the development was inconsistent with the zone objectives and proposed prohibited subdivision when considered against the Port Stephens Local Environmental Plan 2000. The development was also prohibited and inconsistent with the zone provisions having regard to Port Stephens Local Environmental Plan 2013.

Most of the supporting information provided by the proponent with the current planning proposal refers to this previous concept (it is not being approved by the planning this proposal).

Port Stephens Local Environmental Plan 2000

Under the previous Port Stephens Local Environmental Plan 2000 the land was located in the 1(a) Rural Agriculture "A" Zone. A 'recreation facility (outdoor)' was not a prohibited use (i.e. the land use was permitted with development consent).

Port Stephens Local Environmental Plan 2013.

Under the 'new' Port Stephens Local Environmental Plan 2013 'recreation facilities (outdoor)' were made a prohibited use in the RU2 Rural Landscape Zone.

Port Stephens Local Environmental Plan 2013 was notified on 23 December 2013 and commenced on 22 February 2014.

The Current Planning Proposal

The proponent lodged a planning proposal with Council on 22 January 2016 seeking amendment to the Port Stephens Local Environmental Plan 2013 to make a 'recreation facility (outdoor)' permissible with consent on the subject land (only).

Council resolved to commence the preparation of a planning proposal on 14 June 2016.

A gateway determination was issued by the NSW Department of Planning and Environment on 29 July 2016 allowing investigations into the planning proposal to continue.

If the planning proposal is finalised, and the Port Stephens Local Environmental Plan 2013 is subsequently amended, a 'recreation facility (outdoor)' will be made permissible on the land (with development consent).

Future development will require a separate development application, and assessment against the heads of consideration for development applications listed in section 4.15 *Evaluation of the Environmental Planning and Assessment Act 1979 (NSW)* being:

4.15 Evaluation (cf previous s 79C)

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

It is likely that the proponent will make a future development application similar to the previous DA 16-2013-805-1; however this planning proposal is (only) seeking to make 'recreation facility (outdoor)' permissible with development consent on the site.

SITE DESCRIPTION

The subject land is:

- 775 Marsh Rd (Lot 223 DP 598773)
- 777 Marsh Rd (Lot 26 DP 253798)
- 781 Marsh Rd (Lot 14 DP 1071458)

The subject land is located in the suburb of Bobs Farm. It is primarily cleared and managed rural land. The dominant vegetation type is Grassland (cleared pastoral farm land). Vegetation in a northern portion of the site is characteristic of Swamp Mahogany – Paperbark Forest. A residential dwelling and farm buildings are situated near Marsh Rd. There is a 'paper road' dissecting the middle of 775 Marsh Road (Lot 223 DP 598773).

The subject land is identified as flood prone. The Anna Bay and Tilligerry Creek Flood Study identifies the land primarily within the category 'High Hazard Flood Storage'.

Direct access and frontage to Marsh Road is available. Marsh Road connects to Nelson Bay Road, close to the subject land. Nelson Bay Road serves as the main arterial road connecting Newcastle to the major tourism centre of Nelson Bay and Newcastle Airport and Newcastle and surrounding areas.

There are residential dwellings situated to the east, south and west of the site, on allotments of varying sizes, with small-scale rural and rural life-style activities also taking place. Surrounding nearby non-residential land uses include a go-kart track and a public school. Further along Marsh Road, to the west, is a shark and ray centre.



PART 1 – Objective of the proposed Local Environmental Plan

The objective of this proposal to enable a 'recreation facility (outdoor)' with development consent at 775 (Lot 223 DP 598773), 777 (Lot 26 DP 253798) and 781 (Lot 14 DP 1071458) Marsh Road, Bobs Farm.

PART 2 – Explanation of the provisions to be included in proposed LEP

The objective of this proposal will be achieved by amending the Port Stephens Local Environmental Plan 2013 as follows:

Schedule 1 Additional permitted uses

9 *Use of certain land at Marsh Road, Bobs Farm*

(1) This clause applies to the following land:

- (a) 775 Marsh Road, Bobs Farm, being Lot 223, DP 598773,*
- (b) 777 Marsh Rd, Bobs Farm, being Lot 26, DP 253798,*
- (c) 781 Marsh Road, Bobs Farm, being Lot 14 DP 1071458.*

(2) Development for the purpose of a recreation facility (outdoor) is permitted with development consent.

A 'recreation facility (outdoor)' is defined in the Port Stephens Local Environmental Plan 2013 as:

'Recreational facility (outdoor) means a building or place (other than a recreation area) used predominately for outdoor recreation, whether or not operational for the purposes of gain, including a golf course, gold driving range, mini-gold centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart tract, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).'

The subject land will be identified on the Port Stephens Local Environmental plan 2013 Additional Permitted Uses Map.

The existing RU2 Rural Landscape Zone will be retained. The objectives of this zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- To maintain the rural landscape character of the land.*
- To provide for a range of compatible land uses, including extensive agriculture.*

A northern part of the site comprising high value native vegetation will be rezoned to E2 Environmental Conservation.

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal

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

The planning proposal is not the direct result of any strategic land use study or report.

The Proponent lodged a planning proposal with Council requesting amendment to the Port Stephens Local Environmental Plan 2013 to make a 'recreation facility (outdoor)' permissible with development consent on the subject land.

The summary reasons why a 'recreation facility (outdoor)' can be appropriate (with development consent) on the site are:

- There is already an existing cluster of tourism-related land uses within the RU2 Rural Landscape Zone at this location;
- The potential for social and economic benefits from tourism-oriented outdoor recreation development;
- Alignment with strategic planning strategies including the Port Stephens Planning Strategy and the Hunter Regional Plan;
- Consistency with the local environmental plans of surrounding local government areas which permit a 'recreation facility (outdoor)' within the RU2 Rural Landscape Zone;
- The limitations of other locations where zoning permits the use 'recreation facilities (outdoor)' on privately owned land;
- Timing - a separate 'housekeeping' planning proposal is also seeking general amendment to the Port Stephens Local Environmental plan 2013 to permit the use with development consent in the RU2 Rural Landscape Zone - however the current planning proposal should continue to avoid any risk of delay; and
- Under the previous Port Stephens Local Environmental Plan 2000 the land was located in the 1(a) Rural Agriculture "A" Zone. A 'recreation facility (outdoor)' was not a prohibited use (i.e. the land use was permitted with development consent).

The planning proposal facilitates positive social and economic effects through the potential creation of jobs in the outdoor recreation tourism industry, particularly in proximity to the major regional tourism destination of the Tomaree Peninsula, and including Nelson Bay. There is an opportunity to provide positive employment and economic outcomes in the local tourism industry.

Stretches of land along Nelson Bay Road, leading to Nelson Bay, and in the area of the Tomaree Tourism and Lifestyle Growth Area identified by Council in the *Port Stephens Planning Strategy*, are located within the RU2 Rural Landscape Zone. A number of 'recreation facility (outdoor)' type tourism businesses are already situated to take advantage of main road exposure and proximity to Nelson Bay (e.g. the shark and ray centre, go kart track, golf driving range, horse riding and quad biking). There is already a cluster of outdoor recreation and tourism uses in the area.

From time to time, Council receives enquiries from businesses wanting to establish or expand 'recreation facilities (outdoor)', mainly along Nelson Bay Road, on the way to Nelson Bay. Examples are the previous development application for a water-ski centre on the subject land, and ancillary recreation uses at the nearby go-kart track. These uses have the potential to generate economic and employment benefits, however are currently prohibited under the Port Stephens Local Environmental Plan 2013. Council is seeking to reintroduce greater flexibility to accommodate outdoor recreation uses in the RU2 Rural Landscape Zone. This includes by proceeding with the current planning proposal, and a separate 'housekeeping' planning proposal to re-introduce 'recreation facilities (outdoor)' as permissible in the RU2 Rural Landscape Zone generally.

The zones in Port Stephens Local Environmental Plan 2013 that currently permit 'recreation facilities (outdoor)' are limited in practical terms and more suitable for other uses. They are:

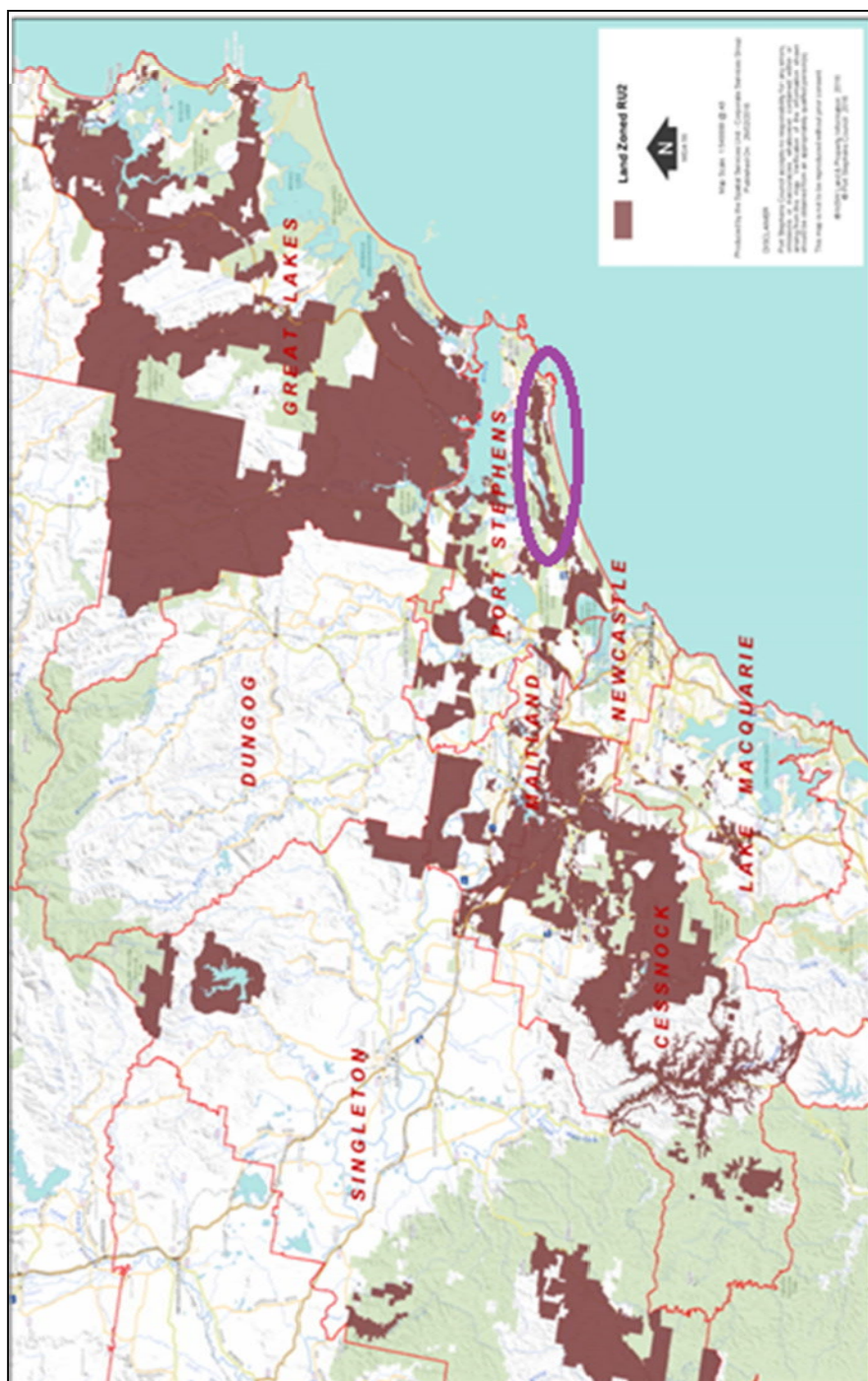
- B3 Commercial Core (suitable for offices and shops)
- B5 Business Development (suitable for general businesses)
- B7 Business Park (suitable for aerospace and Defence businesses)
- RE1 Public Recreation (public open space)
- RE2 Private Recreation (typically associated with golfcourses)

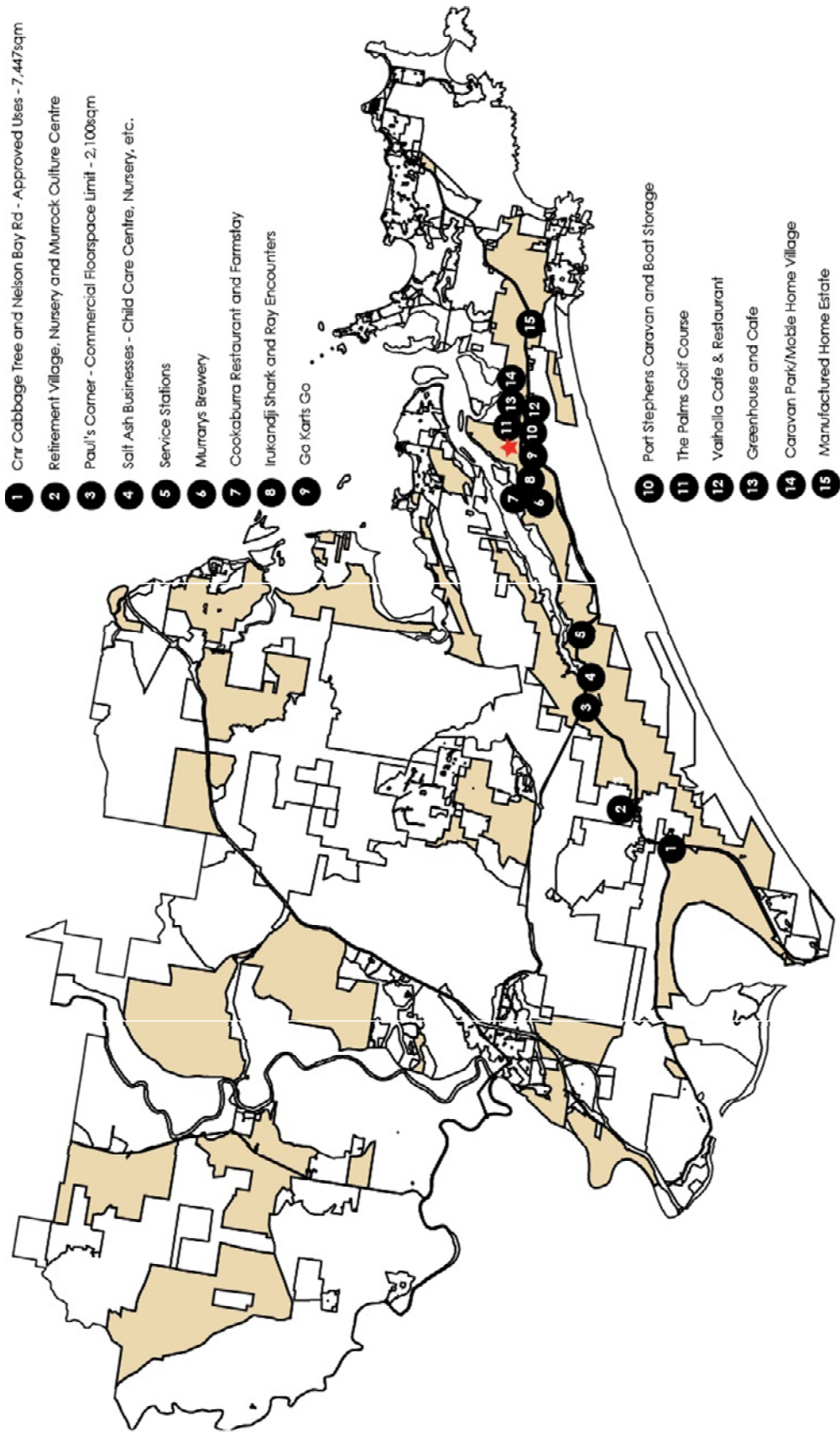
Comparison of permissibility with other local environmental plans shows that permitting 'recreation facilities (outdoor)' in the RU2 Rural Landscape Zone is consistent with a number of other plans.

Development Type	Port Stephens	Cessnock	Great Lakes	Lake Macquarie	Maitland	Singleton
Recreation facilities (outdoor)	Prohibited	Permitted with consent	Permitted with consent	Permitted with consent	Permitted with consent	Permitted with consent

Proceeding with the planning proposal will contribute towards consistency with other local environmental plans for the subject land, as an interim measure, while a separate general amendment to the Port Stephens Local Environmental Plan 2013 is considered through the separate 'housekeeping' planning proposal.

The location of the site and the RU2 Rural Landscape Zone in the wider region, and the nearby 'cluster' of existing 'recreation facility (outdoor)' uses, is shown by the figures on the following pages.





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

Proceeding with the current planning proposal is the best means of achieving the objective to enable a 'recreation facility (outdoor)' with development consent. It provides an opportunity to advance lodgement of a development application for a 'recreation facility (outdoor)' specifically for the subject land.

An alternative means to achieve the objectives of the planning proposal is to wait for an amendment to the Port Stephens Local Environmental Plan 2013 to make a 'recreation facility (outdoor)' a use that is generally permitted in the RU2 Landscape Zone across the Port Stephens local government area. The advantage of this approach is it avoids the need for any site-specific amendment to the Port Stephens Local Environmental Plan 2013. The disadvantage is it increases the potential for unnecessary delay to the proponent for the site and the potential tourism and economic benefits.

It is proposed to proceed with this current planning proposal for the subject land ahead of any separate amendment to the Port Stephens Local Environmental Plan 2013.

Note: Council has separately resolved to prepare a planning proposal to make a 'housekeeping' amendment to the Port Stephens Local Environmental Plan 2013. Its overall objective is to address administrative and minor matters that have become apparent since the commencement of the Port Stephens Local Environmental Plan 2013.

The 'housekeeping' planning proposal was granted a conditional Gateway Determination on 21 February 2018 allowing investigations and consultation to proceed. It will be placed on public exhibition and referral to public authorities at a future time.

One of the items included in the 'housekeeping' planning proposal is to add 'recreation facilities (outdoor)' as a permissible land use with consent in the RU2 Rural Landscape Zone.

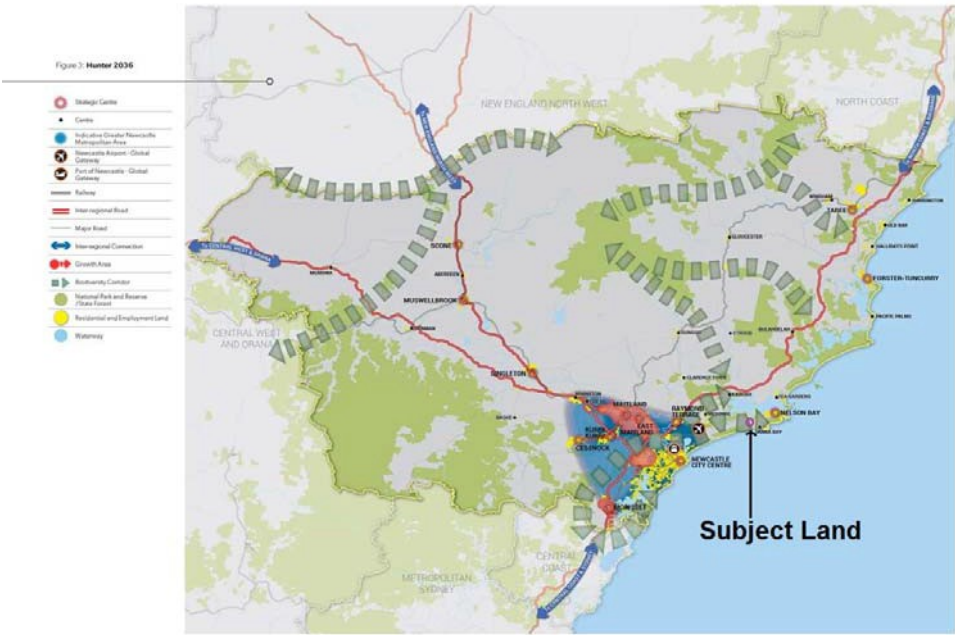
SECTION B – Relationship to Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Hunter Regional Plan

Progressing with the planning proposal aligns with the Hunter Regional Plan, which describes Port Stephens as a mix of rural land, towns, villages and coastal areas, largely focused on the Tomaree Peninsula, that are major recreational, tourist and retirement destination. A regional priority for Port Stephens is to leverage proximity to major global gateways – and its attractive and valuable natural environment and coastal and rural communities – to generate economic growth and diversity.

Nelson Bay is identified as a strategic centre in the Plan. A priority is to maintain it as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula. Permitting 'recreation facilities (outdoor)' on the subject land aligns with this description. Its potential use will reinforce Nelson Bay and the Tomaree as Peninsula as a primary tourist centre. It will provide opportunity for diversity of tourism activities. Biodiversity matters are able to be accommodated by the proposed land use.



The alignment of the planning proposal with the relevant Goals, Directions and Actions of the Regional Growth Plan, is further set out in the following table:

<i>Goal 1 The leading regional economy in Australia</i>
<i>Direction 6 Grow the economy of Port Stephens</i>
<i>Action 6.1 Enhance tourism infrastructure and connectivity, recognising the importance of local routes such as Nelson Bay Road.</i>
Response: The planning proposal is seeking to permit 'recreation facilities (outdoor)' on land within a local cluster of existing tourism attractions at or very near to Nelson Bay Road, linking to the major regional tourism hub of Nelson Bay.
<i>Action 6.3 Enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.</i>
Response: The planning proposal will facilitate economic diversity in the local tourism industry and can help reduce the seasonal nature of tourism. There are a wide range of potential tourism land uses that can be accommodated within the definition of 'recreation facility (outdoor)'.
<i>Direction 9 Grow tourism in the Region</i>
<i>Action 9.2 Encourage tourism development in natural areas that support conservation outcomes.</i>
<p>Response: This planning proposal retains the current RU2 Rural Landscape Zoning for the subject land.</p> <p>The subject land is approximately 22.3 hectares in area. The dominant vegetation type is Grassland (cleared pastoral farm land). Vegetation in a northern portion of the site is characteristic of Swamp Mahogany – Paperbark Forest.</p> <p>Permitting 'recreation facilities (outdoor)' on the subject land encourages a range of potential tourism uses that can support positive conservation outcomes or avoid the area of Swamp Mahogany Paperbark Forest, and retain, design and accommodate, or even enhance conservation outcomes.</p> <p>There may be opportunity to rezone part of the land for environmental protection and also achieve positives environmental outcomes through a suitable planned development.</p>

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Port Stephens Council Integrated Plans

The planning proposal is consistent with the strategic direction provided by the Port Stephens Council Integrated Plans 2013-2023 as set out in the following table:

<i>Focus Area: 3 Our Environment</i>
<i>Theme: 3.3 Sustainable Development – Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.</i>
<i>Delivery Program: 3.3.1 Provide Strategic Land Use Planning Services</i>
<i>Action: 3.3.1.5: Review and prepare statutory plans (Local Environmental Plan, Development Control Plan and Planning Proposals).</i>
<p>Response: Proceeding with the planning proposal is the best means of achieving the objective to enable a 'recreation facility (outdoor)' with development consent. It provides an opportunity to advance the lodgement of a development application for a 'recreation facility (outdoor)' specifically for the subjectland.</p> <p>An alternative is to wait for an amendment to the Port Stephens Local Environmental Plan 2013 to make a 'recreation facility (outdoor)' a use that is generally permitted in the RU2 Landscape Zone across the Port Stephens local government area. The advantage of this approach is it avoids the need for any site-specific amendment to the Port Stephens Local Environmental Plan 2013. The disadvantage is it increases the potential for unnecessary delay to the proponent for the site and the potential tourism and economic benefits.</p>
<i>Action 3.3.1.8: Attract and enable investment in Nelson Bay</i>
<p>Response: The planning proposal facilitates positive social and economic effects through the potential creation of jobs in the outdoor recreation tourism industry, particularly in proximity to the major regional tourism destination of the Tomaree Peninsula, and including Nelson Bay. There is an opportunity to provide positive employment and economic outcomes in the local tourism industry and a further attraction to the area, providing wider 'flow-on' benefits to other businesses.</p>
<i>Focus Area: 4 Our Economy</i>
<i>Theme 4.1: Economic Development – Port Stephens has a sustainable and diversified economy</i>
<i>Delivery Program: 4.1.2 Provide Economic Development Services to local business.</i>
<p>Response: There is an opportunity to provide positive employment and economic outcomes in the local tourism industry and a further attraction to the area, providing wider 'flow-on' benefits to other businesses.</p>

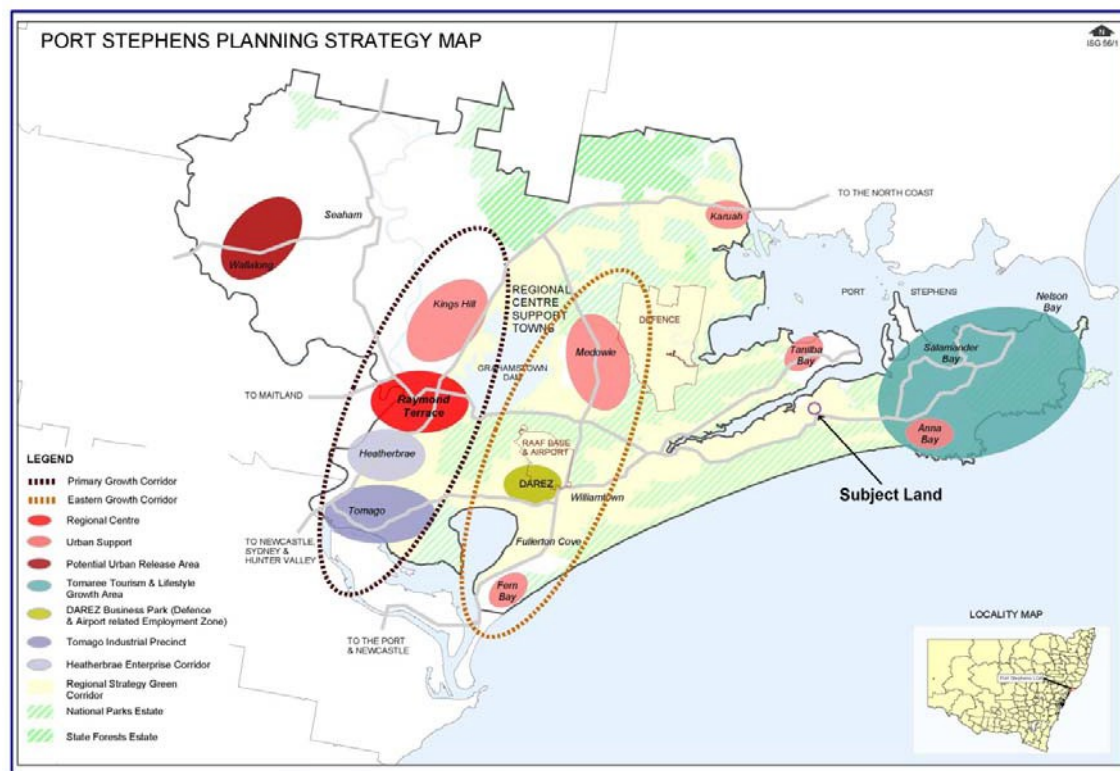
Action 4.1.2.4: Facilitate initiatives to support business growth and development and investment and job creation in Port Stephens.

Response: Response: There is an opportunity to provide positive employment and economic outcomes in the local tourism industry and a further attraction to the area, providing wider 'flow-on' benefits to other businesses.

Port Stephens Planning Strategy

The Planning Proposal aligns with the Port Stephens Strategy. The subject land is located towards the broadly identified 'Tomaree Tourism and Lifestyle Growth Area'. It is located adjacent to Nelson Bay Road, connecting Newcastle to Nelson Bay, and is on the direct route between Newcastle Airport and Nelson Bay.

A number of tourism businesses have sought to locate along Nelson Bay Road to take advantage of main road exposure and proximity to centres of tourism accommodation on the Tomaree Peninsula. Tourism is recognised as one of the 'four economies' of Port Stephens. The planning proposal will facilitate potential development, in a high profile location, to create jobs and a tourism 'draw card' for the area.



5. Is the planning proposal consistent with the applicable State Environmental Planning Policies?

An assessment of the SEPPs against the planning proposal is provided below:

SEPP 44 – Koala Habitat Protection
<p>This SEPP applies through the application of the Port Stephens Comprehensive Koala Plan of Management (CKPOM) in the Port Stephens LGA.</p> <p>Vegetation in the north of the site is mapped as Preferred Koala Habitat by the CKPOM and is also representative of Swamp Oak Flood Plain Forest Endangered Ecological Community (EEC). There is also an area of this vegetation on the western boundary.</p> <p>The E2 Environmental Conservation Zone is being applied to protect the vegetation in the north of the site. The zone is not being applied to the area of vegetation on the western boundary. Any future development should avoid these areas of high value vegetation.</p> <p>The provisions of the CKPOM will apply in the event that a 'recreation facility (outdoor)' is proposed on land that may comprise koala habitat. The degree of potential impact would depend on the siting of a proposed outdoor recreation development within the site, and the characteristics of the land. In this circumstance, a development application will need to address the performance criteria for development applications set down in Appendix 4 of the CKPOM.</p> <p>Any inconsistency of the planning proposal with this direction is of minor significance. Any potential impacts of a 'recreation facility (outdoor)' on the site are to be addressed at the development application stage.</p>
SEPP 55 – Remediation of Land
<p>The proposal is not seeking to rezone land to a land use zone that would permit sensitive land uses such as permanent human habitation. Any future development application would be required to address the provisions of this SEPP.</p> <p>Any inconsistency of the planning proposal with this direction is of minor significance. The potential impacts of a 'recreation facility (outdoor)' on the site are to be addressed at the development application stage.</p>

SEPP 62 – Sustainable Aquaculture

This SEPP applies because future development of the land, because of its characteristics and location, may have the potential to adversely affect oyster aquaculture development or a priority oyster aquaculture area.

DPI (Fisheries) has confirmed in referral advice that Priority Oyster Aquaculture Area (POAAs) are present in the estuarine waters in proximity to the proposed development.

The SEPP requires a consent authority, if it suspects that development may have that effect, to give notice of the application to the Director-General of the Department of Primary Industries (NSW DPI). The consent authority must consider any comments that are made.

The NSW DPI comment that, based on previously referred material, it has some concerns about the potential development of the land as proposed by the concept for a wakeboard park. NSW DPI comment that it would not support the development as proposed without the assessment of such a report to clearly detail how sewage will be managed and how potential adverse impacts to harvest area water quality will be mitigated.

The NSW DPI comment it is concerned regarding the potential mobilisation of acid sulfate soils oxidation products, particularly during construction phase, which would potentially drain into Tilligerry Creek, and that ASS oxidation products not only impact on the oyster industry but also impact on the aquatic environment in general.

The planning proposal response is that these concerns must be addressed and considered at the development application stage. At this time, the planning proposal is seeking to make a 'recreation facility (outdoor)' permissible with consent. It is not seeking to approve or assess a particular type of 'recreation facility (outdoor)' and there are a range of potential uses within that land use definition that may be suitable.

Any inconsistency with this direction is of minor significance. The potential impacts of a 'recreation facility (outdoor)' on the site are to be addressed at the development application stage.

SEPP (Coastal Management) 2018

This SEPP applies because the land is located within the Coastal Zone. The degree of assessment would depend on the particular type of 'recreation facility (outdoor)' that is proposed including the review and assessment of any potential environmental effects. Under this circumstance, potential inconsistency with this direction can be considered at the development application stage.

Any inconsistency with this direction is of minor significance. The potential impacts of a 'recreation facility (outdoor)' on the site are to be addressed at the development application stage.

SEPP (Rural Lands) 2008

This SEPP is relevant because certain types of outdoor recreation developments and uses have the potential to conflict with rural planning principles (under section 117 of the Act, the Minister has directed that councils exercise their functions relating to local environmental plans in accordance with the Rural Planning Principles).

The consistency of the planning proposal with the rural planning principles is discussed in the response to Ministerial Directions in the following part of this planning proposal.

In summary The potential for potential land-use conflicts can be managed through the use of appropriate mitigation measures at the development application stage and depends on the particular type of 'recreation facility (outdoor)' being applied for.

The consistency of the planning proposal with this direction is addressed in the response to section 117 Direction 1.5 Rural Lands.

6. Is the planning proposal consistent with the applicable Ministerial Directions?

The proposal does not demonstrate any major inconsistencies with the applicable Ministerial Directions. Only a number of the Directions are applicable, which is demonstrated in the following table:

Direction 1.2 - Rural Zones
<p>This direction applies when a proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</p> <p>Requirement 'a' of this direction is a planning proposal must not rezone land from a rural zone to an urban-type zone. This planning proposal does not seek to rezone any rural land; it only seeks to add an additional permitted use within the existing RU2 Landscape Zone. Requirement 'a' of this direction is not relevant.</p> <p>Requirement 'b' of this direction is a planning proposal must not contain provisions that will increase the permissible density of land within a rural zone. The planning proposal only seeks to make 'recreation facilities (outdoor)' permissible with development consent. Requirement 'b' of this direction is of limited relevance.</p> <p>The planning proposal should be considered in the context of making a 'recreation facility (outdoor)' permissible on the site.</p> <p>Ultimate development design, use, and scale, could differ from the use referred to in the submitted supporting documentation related to the previous (refused development application for the site).</p> <p>The implications of a potential future 'recreational facility (outdoor)' can be addressed at the development application stage.</p> <p>Any inconsistency of the planning proposal with this direction is of minor significance. The planning proposal is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site. However the NSW Department of Primary Industries (Agriculture) advises it maintains an objection to the planning proposal because of the increased potential for land use conflict.</p>

Direction 1.4 - Oyster Aquaculture

This direction applies because the land is within, or in proximity to, an oyster aquaculture area. The land is in the Tilligerry Creek catchment.

This SEPP applies because future development of the land, because of its nature and location, may possibly have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area.

The SEPP requires a consent authority, if it suspects that development may have that effect, to give notice of the application to the Director-General of the Department of Primary Industries (NSW DPI). The consent authority must consider any comments that are made.

NSW DPI (Fisheries) is concerned about the potential for development to impact upon the oyster industry and confirmed that a Priority Oyster Aquaculture Area is in proximity to the site, advises standards under the NSW Shellfish Program administered by the NSW Food Authority, and that the NSW oyster industry has a statutory responsibility to meet those standards. A critical issue is maintaining water quality in the area and relevant standards will need to be met with any development. NSW DPI will notify affected sectors of the oyster industry for all applications referred to it under the provisions of State Environmental Planning Policy 62 *Sustainable Aquaculture* and strongly recommends that Council classify a future development that is not connected directly to a public sewage treatment plant system as 'high risk'. If the planning proposal proceeds, NSW DPI (Fisheries) will then be in a position to provide a detailed submission on any development application which may result.

The planning proposal response is that these concerns are able to be assessed and considered at the development application stage. At this time, the planning proposal is seeking to make a 'recreation facility (outdoor)' permissible with consent on the site. A wide range of potential outdoor recreation uses is included within the relevant land use definition, and the planning proposal is not seeking to approve or assess a particular type of 'recreation facility (outdoor)'.

Any inconsistency of the planning proposal with this direction is of minor significance. The planning proposal is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site.

Direction - 1.5 Rural Lands

This direction applies because the planning proposal will affect land within the existing RU2 Rural Landscape Zone).

The rural planning principles in State Environmental Planning Policy (Rural Lands) 2008 are:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Permitting outdoor recreation facilities on the site could be assessed, in part, as inconsistent, to an extent, with rural planning principles. It may affect the promotion and protection of current and potential productive and sustainable economic activities; some types of outdoor recreation land uses may conflict with agricultural production including surrounding on lands.

Alternatively, there will be sites where agricultural production is limited, or a type of outdoor recreation use has limited or no effect and is an appropriate use of the land. Impacts can also vary between the types of use proposed within the broad definition of 'recreation facility (outdoor)'.

Any development is also required to consider the objectives of the RU2 Rural Landscape Zone being:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- To maintain the rural landscape character of the land.*
- To provide for a range of compatible land uses, including extensive agriculture.*

Notwithstanding the likely intent of the proponent to lodge a development application for a wakeboard park and associated uses, any future application will be subject to assessment under the development application process including the heads of consideration listed under section 4.15 Evaluation of the Act.

The RU2 Rural Landscape zone serves a range of functions that are not limited to agricultural production, including rural living, a range of existing approved tourist/outdoor recreation-type land uses, and scenic and environmental functions. Some outdoor recreation facilities may have the potential to impact negatively on existing rural lifestyle (for example by additional noise and traffic impacts). However, the extent and types of impacts would vary depending on site location and the type of land use proposed, and could be managed through the development application process, suitable development controls, and development design.

There are also potential economic benefits of permitting 'recreation facilities (outdoor)' in the RU2 Rural Landscape Zone. This aligns with the potential benefits to the large tourism industry in Port Stephens, particularly on the Tomaree Peninsula where the site is located, and the planning proposal's alignment with the related Goals, Directions and Actions of the Hunter Regional Plan.

Any inconsistency of the planning proposal with this direction is of minor significance and is also adequately justified by consistency with the related Goals, Directions and Actions of the Hunter Regional Plan. However the NSW Department of Primary Industries (Agriculture) advises it maintains an objection to the planning proposal because of the increased potential for land use conflict.

Direction 2.1 - Environment Protection Zones

This direction applies when a relevant planning authority prepares a planning proposal. It relevantly requires a planning proposal to 'a' include provisions that facilitate the protection and conservation of environmentally sensitive areas (requirement 'b' does not apply because the land is not zoned for environmental protection or seek to remove a development standard).

The dominant vegetation type is Grassland (cleared pastoral farm land). Vegetation in a northern portion of the site is characteristic of Swamp Mahogany – Paperbark Forest. The areas of vegetation can be seen in the aerial photograph under SITE DESCRIPTION of this planning proposal.

The E2 Environmental Conservation Zone is being applied to protect the vegetation in the north of the site. The zone is not being applied to the area of vegetation on the western boundary. Any future development should avoid these areas of high value vegetation.

Any future subsequent development application for a 'recreation facility (outdoor)' on the subject land will require the consideration and assessment of environmental effects.

The planning proposal satisfies this direction.

Direction 2.2 - Coastal Protection

This direction applies because the site is within the coastal zone.

Any future development application for a 'recreation facility (outdoor)' will be assessed at the development application stage and will be required to satisfy the requirements of *State Environmental Planning Policy (Coastal Management) 2018*.

The degree of assessment would depend on the particular type of 'recreation facility (outdoor)' that is proposed including the review and assessment of any potential environmental effects. Under this circumstance, any potential inconsistency with this direction can be considered at the development application stage.

Any inconsistency of the planning proposal with this direction is of minor significance. The proposal is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site.

Direction 2.3 - Heritage Conservation

This Direction applies to a planning authority that prepares a proposal.

The subject land site does not contain any significant European heritage items and is not situated within a heritage conservation area.

The planning proposal was been provided to the Worimi Local Aboriginal land Council for review.

This planning proposal takes the position that the general provisions of clause 5.10 *Heritage conservation* of the Port Stephens Local Environmental Plan 2013, in addition to other NSW legislation for heritage protection of heritage, are suitable to manage any risk associated with a future development application and to make the proposed land use permissible with development consent.

The proponent advises they have made direct contact with local Worimi representatives and that in principle support has been offered though engagement associated with a development application was preferred. The proponent advises a site meeting will be carried out as part of any future development application. Naming rights of the new waterbodies and educational facilities focusing on the local Aboriginal culture was also discussed.

Any potential inconsistency of the planning proposal with this direction is of minor significance. The proposal is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site and the proponent advises they have consulted with the Worimi Local Aboriginal Land Council.

Direction 3.4 - Integrating Land Use and Transport

This direction seeks to ensure that urban structures, building forms, etc. are consistent with the stated planning objectives in the SEPP to integrate land uses and transport.

This direction applies to a limited extent because the planning proposal seeks to make a 'recreation facility (outdoor)' permissible with development consent on the site. This could include a range of potential related uses. It is also worth noting the separate 'housekeeping' planning proposal to re-introduce the general use as generally permissible within the RU2 Rural Landscape Zone. Any direct impact is difficult to assess against the provisions of this SEPP, and the position is put that there would be no substantial effect on the integration of land use and transport as a result of this planning proposal.

Any inconsistency of the planning proposal with this direction is of minor significance.

Direction 4.1 - Acid Sulfate Soils

This Direction applies because the land has a probability of containing acid sulfate soils.

The site is identified as having a probability of containing Class 3 Acid Sulfate Soils.

Clause 7.1 *Acid sulfate soils* of the *Port Stephens Local Environmental Plan 2013* and the environmental management controls in the Port Stephens Development Control Plan 2014 provide sufficient requirements to enable consideration and assessment of a future development application for a 'recreation facility (outdoor)' on the subject land.

Potential for impacts or risk would vary depending on the type of activity proposed. Risk to acid sulfate soils by future development proposals for 'recreation facilities (outdoor)' is able to be managed and assessed at the development application by the existing planning controls. In any case, existing permitted land uses under the RU2 Rural Landscape Zone would also have to address the same relevant planning provisions in the PSLEP 2013.

Any inconsistency of the planning proposal with this direction is of minor significance. The proposal is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site.

Direction 4.3 - Flood Prone Land

This direction applies to a planning authority that prepares a proposal that affects flood prone land.

The subject land is identified as flood prone. The Anna Bay and Tilligerry Creek Flood Study identifies the land primarily within the category 'High Hazard Flood Storage'.

The direction applies because the planning proposal will permit a land use on land that may, in some instances, be prone to flooding. This matter is adequately addressed by other existing development assessment controls related to flood prone land including clause 7.3 *Flood planning* of the Port Stephens Local Environmental Plan 2013 and flood and drainage controls within the Port Stephens Development Control Plan 2014.

OEH raised initially raised concerns about flooding and drainage including (consistent with those raised by Council during its assessment). These concerns have been suitably resolved for the purposes of the planning proposal, with updated advice is that OEH is now satisfied that the proposal is consistent with the NSW Local Planning Direction 4.3 *Flood Prone Land* issued under section 9.1 *Directions by the Minister* of the Act and the *Floodplain Development Manual 2005* (NSW).

Assessment of flooding related to a potential 'recreation facility (outdoor)' will be assessed at the development application stage and depend on the type of outdoor recreation facility/activity proposed and its affects. Development type, design and scale, could differ from the likely use intended by the proponent.

The provisions of this direction are resolved for the purposes of this planning proposal, which is only seeking to make 'recreation facilities (outdoor)' permissible with consent on the site.

4.4 Planning for Bushfire Protection

The direction applies because the land is bushfire prone.

Any future development applications for a 'recreation facility (outdoor)' on the subject land will be subject to existing development assessment controls including as *Planning for Bushfire Protection 2006*. The NSW Rural Fire Service has reviewed the Planning Proposal and raises no concerns or issues in relation to bushfire.

The planning proposal is consistent with this direction.

5.10 Implementation of Regional Plans

This direction applies to land that is covered by the Hunter Regional Plan. The planning proposal is consistent with the relevant goals directions and actions of the Hunter Regional Plan including:

Goal 1 The leading regional economy in Australia

Direction 6 Grow the economy of Port Stephens

Action 6.1 Enhance tourism infrastructure and connectivity, recognising the importance of local routes such as Nelson Bay Road.

Action 6.3 Enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.

Direction 9 Grow tourism in the Region

Action 9.2 Encourage tourism development in natural areas that support conservation outcomes.

The consistency of the planning proposal with the above matters is described previously in this document at Section B – Relationship to Strategic Planning Framework Part 3.

The planning proposal is consistent with this direction.

6.3 Site Specific Provisions

This direction applies when a relevant planning authority prepares a proposal to allow a specific use to be carried out.

The planning proposal seeks to add 'recreation facility (outdoor)' as an additional permitted use on the subject land. It does not impose any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. Notwithstanding the intent of the proponent, this planning proposal is not approving any particular type of 'recreation facility (outdoor)', potential concept, or and development application.

It is proposed to re-introduce 'recreation facilities (outdoor)' as a permissible use (with development consent) into a rural zone within the Port Stephens Local Environmental Plan 2000. This is subject to a separate planning proposal that has also received gateway determination approval from the NSW Department of Planning and Environment and is under separate consideration. A key purpose is to provide opportunities for outdoor tourism uses to benefit and complement the tourism industry and economy.

Proceeding with the current planning proposal, for a site-specific provision, allows its consideration to proceed in advance, under the circumstances, and it may eventually no longer need to apply.

The planning proposal is consistent with this direction.

7. 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 dominant vegetation type is Grassland (cleared pastoral farm land). Vegetation in a northern portion of the site is characteristic of Swamp Mahogany – Paperbark Forest.

Vegetation in the north of the site is mapped as Preferred Koala Habitat by the CKPOM and is also representative of Swamp Oak Flood Plain Forest Endangered Ecological Community (EEC). There is also an area of this vegetation on the western boundary.

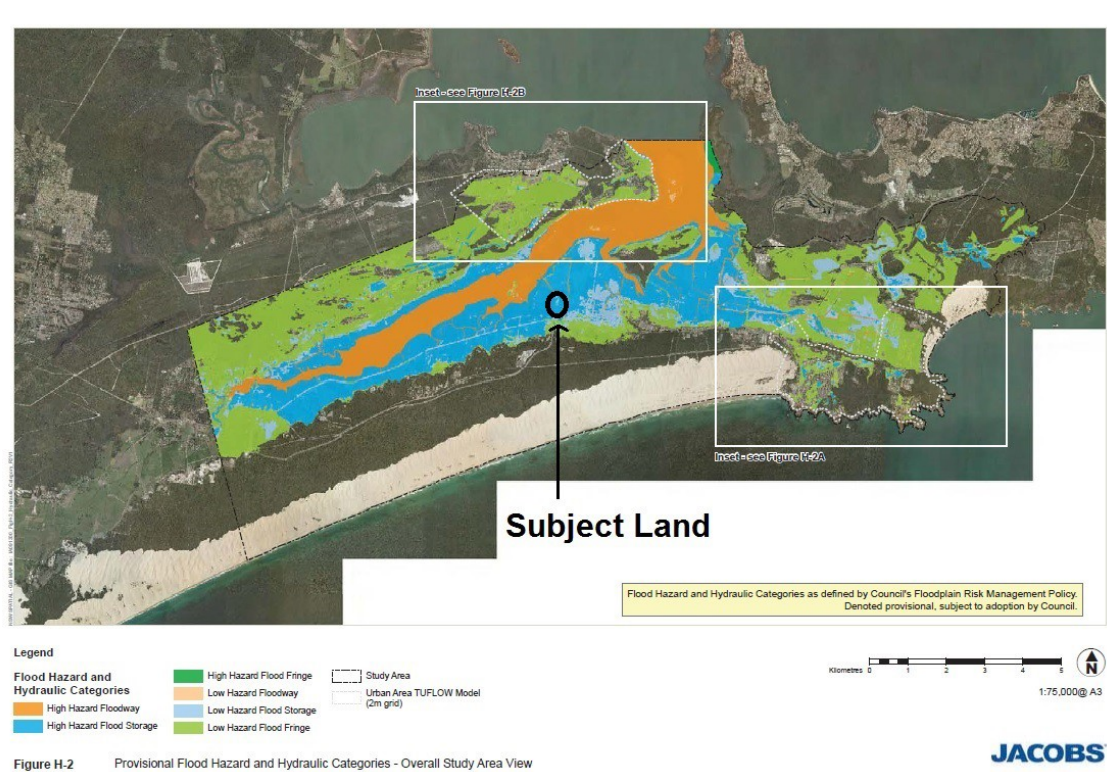
The E2 Environmental Conservation Zone is being applied to protect the vegetation in the north of the site. The zone is not being applied to the area of vegetation on the western boundary.

Any future subsequent development application will be required to address relevant legislation and regulations in relation to threatened species, populations or ecological communities or their habitats.

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

Flooding

The subject land is identified as flood prone. The Anna Bay and Tilligerry Creek Flood Study identifies the land primarily within the category 'High Hazard Flood Storage'. A mapping extract, amended to show the approximate location of the land, is provided below.



Flood management, in relation to a potential 'recreation facility (outdoor)' is able to be addressed by existing development assessment controls and required planning consideration for flood prone land. These include clause 7.3 *Flood planning* of the Port Stephens Local Environmental Plan 2013 and controls within the Port Stephens Development Control Plan 2014. Risk related to flooding is able to be assessed at the development application stage and will vary from site to site and depend on the type of 'recreation facility (outdoor)' proposed.

The site is naturally low-lying and acts as a water storage area. It is categorised as 'High Hazard Flood Storage' and is subject to natural sheet flows. There is a drainage reserve to the west of the site that is Crown Land and which has been subject to no recent maintenance. Nearby floodgates control storm water discharge and prevent back flow of waters from Tilligerry Creek and they have very limited capacity. Filling and increasing the impervious area within part of the catchment would increase inundation times.

In light of the definition 'recreation facility (outdoor)' and the existing site conditions, there are a number of uses that could be suitable for the site. Any development on the site would still need to be the subject of a subsequent development application and flooding and storm water issues would need to be addressed. If these issues cannot be appropriately managed then the proposed use of the site may not be feasible and the development application refused.

The advice also additionally noted the proponent has indicated preliminary plans for construction of a wakeboard park which would involve a substantial amount of fill and modification to existing storm water regime. Whilst this concept design does not form part of the assessment for the planning proposal, advice is this concept design in its current form is highly unlikely to address flooding and drainage issues.

Traffic

The Traffic Impact Assessment demonstrates that there would be minimal impact to the existing road network as a result of the proposed additional permitted land use. Based on the information supplied in support of the planning proposal there is no objection on traffic engineering grounds. Future site access would be required on the western boundary of the site and would be required to be constructed in accordance with Austroads guidelines and to Council requirements.

9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal has the potential to provide for positive social and economic effects through the creation of jobs in the outdoor recreation tourism industry, in proximity to the major regional tourism destination of the Tomaree Peninsula. Tourism is a key industry for the Port Stephens LGA. Its growth is supported by the Goals and Directions of the Hunter Regional Plan 2036 and the 'Tomaree Tourism and Lifestyle Growth Area' of the Port Stephens Planning Strategy.

The *Port Stephens Economic Profile 2017* provides the following summary information of tourism to the economy of the Port Stephens LGA and demonstrates the importance of the local planning system being flexible to provide for a range of tourism activities and businesses:

"The popularity of the destination to both domestic and international visitors is directly tied to the unique natural environment with local attractions including the Worimi Conservation Lands – Stockton Bight Sand Dunes, Tomaree National Park and the Port Stephens Great Lakes Marine Park. These natural assets offer visitors an extensive range of high quality tourism products and experiences such as whale watching, surfing, sailing and fishing. Attractions on land include quad bike riding, four wheel driving, mountain biking and bushwalking.

In 2015-2016 Port Stephens welcomed 1,396,345 visitors to the area with 44.3% of these domestic overnight visitors; 53.8% domestic day trippers; and 1.9% international visitors...

Tourism itself plays a significant role in terms of local employment with flow-on effects for local business, residents and the wider community. Tourism contributes \$156.59 million value added to the local economy and tourism related employment accounts for 1,669 jobs or 7.4% of the total 22,689 jobs in Port Stephens with 69.9% of this employment (1,162) in Accommodation and Food Services, and 12.4% (207 jobs) in Retail.

The Tomaree Peninsula, one of Port Stephens pristine visitor destination, attracts national and international tourists to the area with its underwater marine oasis, kilometres of coastal bushlands and the largest sand dunes in the southern hemisphere. This well-established visitor destination is easily accessible from Newcastle Airport, and home to key commercial centres at Nelson Bay and Salamander Bay.

Enhancing links between tourist hotspots and Newcastle Airport, the future cruise terminal and the M1 Motorway will drive greater tourism growth. The \$14.5 million expansion of the terminal at Newcastle Airport provides potential for future international routes and an opportunity to increase the numbers of international visitors staying in Port Stephens."

The definition of a 'recreation facility (outdoor)' includes a range of potential uses with potential social and economic benefits such as a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings). The localized potential for social and economic effects (such as amenity and traffic impacts) will need to be addressed in any subsequent development application and address the heads of consideration listed in section 4.15 of the Act.

SECTION D – State and Commonwealth Interests

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

Public infrastructure requirements for a 'recreation facility (outdoor)' on the subject land will be assessed through the development application process. Public infrastructure requirements will vary, depending on the type of 'recreation facility (outdoor)' that is proposed.

11. What are the views of the State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

The following public authorities have been consulted as required by with the Gateway Determination.

- A. NSW Office of Environment and Heritage.
- B. NSW Department of Primary Industries (Agriculture).
- C. NSW Department of Primary Industries (Fisheries).
- D. NSW Rural Fire Service.
- E. NSW Roads and Maritime Services.
- F. NSW State Emergency Service.

The planning proposal was also referred to the Worimi Local Aboriginal Land Council for review.

A summary of the comments received, at the various times during the consideration of the planning proposal by referral authorities), is provided in the following part of this proposal. The summary response is the issues raised are relevant to consider and assess at the development application stage for a 'recreation facility (outdoor)' permissible on the site. The definition of this use includes a range of potential uses that may be able to demonstrate suitability for the site (with development consent).

NSW Office of Environment and Heritage (20 October 2016)

OEH initially advised it objects to the planning proposal in relation to floodplain management and acid sulfate soil considerations. Initial comment was also provided in relation to Aboriginal cultural heritage issues and biodiversity.

Biodiversity

OEH notes the Hunter Regional Plan 2036 has been approved and published (October 2016). This supersedes the Lower Hunter Regional Strategy 2006. And therefore it is recommended that Council should consider this site's location with respect to the new plan. For example, the vegetation in the north part of the site provides an important east-west link within one of the biodiversity corridors of the new plan. As such, it is important that Council demonstrate how this vegetation will be protected from any future development over the site that may become allowable as a result of this planning proposal. One option may include removing the northern lot from the proposal to ensure it retains current protections provided to it under the current zone and permissible uses for the area. If this is not the preferred option Council should ensure the Preferred Koala Habitat and the vegetation present onsite (likely an endangered ecological community) is protected, including suitable buffer zones, as the proposal progresses.

OEH advises Council should note that in the absence of a formal Biodiversity Certification of Bio-Banking Agreement under Parts 7A and 7AA of the Threatened Species Conservation Act 1995, threatened species assessments under the Environmental Planning and Assessment Act 1979 will be required at the development application stage. If a future development application is lodged for land that is critical habitat or is likely to significantly affect threatened species, populations or endangered communities or their habitats, a Species Impact Statement will be required and OEH will have a concurrence role in the development application.

Aboriginal Cultural Heritage

OEH reviewed the Aboriginal cultural heritage information provided by the applicant to support the planning proposal. Whilst OEH has no additional concerns with respect to Aboriginal archaeological heritage at this location, OEH notes that no consultation with the Aboriginal community has occurred to date. OEH recommends that if the project were to progress, the applicant undertake Aboriginal community consultation with Aboriginal knowledge holders. This consultation, in accordance with the OEH guidelines Aboriginal cultural heritage consultation requirements for proponents 2010.

Floodplain Management and Acid Sulfate Soils

OEH reviewed the documents provided for assessment. Flooding drainage and acid sulfate soils management documents were generally prepared for a previous proposal on the site to construct a wakeboard facility. Details for the water ski centre have not been provided, however it is considered likely that the extent and type of site disturbance which would be required for such a development would be similar to the earlier proposal.

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OEH objects to the inclusion of recreational facility (outdoor) in Schedule 1. Much of the land currently zoned RU2 within the Port Stephens LGA is flood and acid sulfate soil affected. Development such as water ski parks will generally require too much site disturbance to be a suitable land use for such land. It is considered inclusion of recreational facility (outdoor) in Schedule 1 may facilitate consent of developments such as water ski parks facilities on the site without due consideration of impacts and referral to other agencies (i.e. inclusion of such activities as a permissible land use would not trigger appropriate assessment against the 117 Criteria).

OEH reviewed the matters raised by Council engineers, and the Stormwater and Drainage report (Northrop, 24 July 2014) and the draft Williamstown Salt Ash Floodplain Risk management Study and Plan which provides flood information for this locality. OEH concurs with the matters raised by Council's engineers and confirms that these matters have not been addressed by the Northrop report. Furthermore, due to the location of the subject property in the floodplain, the very low elevation, presence of acid sulfate soils, degree of site disturbance required and proximity to sensitive natural areas it is considered highly that these matters will be able to be addressed regardless of the design or modelling which is undertaken.

OEH advised the Anna Bay Flood Study is still being carried out. This flood study will inform current flood characteristics affecting the subject site. The Williamstown-Salt Ash Floodplain Risk Management Study and Plan is almost complete. Bobs Farm is located at the outer edge of the Williamstown-Salt Ash study and will be better represented in the Anna Bay Study, however, the current study is suitable for preliminary assessment. The Williamstown-Salt Ash study indicates that the Bobs Farm site is in a flood storage area.

OEH advised the NSW Floodplain Development Manual defines flood storage areas as those areas outside flood areas which if completely filled with solid material would cause peak flood levels to increase anywhere by more than 0.1m and/or would cause peak discharge anywhere downstream to increase by more than 10%. Flood storage areas form an important function within the flood plain and OEH generally does not support filling of flood storage areas without significant flood impact assessment. The Northrop report does not provide any flood impact analysis and states that impacts will be negligible due to the significant volumes of flood storage available in the vicinity of the site. The proposal however, indicates up to 1.5m of fill to be placed on the land and dam walls of a height of 2.2m AHD will be used with a development footprint extending almost to site boundaries. Placement of fill on small portions of large flood storage areas generally has minimal widespread impacts, however, the local impacts to the immediate neighbours and diversion of flows to different flow paths may be significant. In addition it is important to consider the cumulative impact of fill in the floodplain to ensure that long term impacts of similar developments are taken into account.

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OEH advised the Williamstown-Salt Ash FRMS&P has modelled the cumulative impact of fill in the floodplain. This study has indicated significant adverse effects when cumulative impact assessment is carried out.

OEH advised The precautionary principle would indicate that large volumes of fill should not be permitted in the flood plain unless it can be demonstrated that the cumulative impact of this process is not significant. The project should therefore not be further considered until such time as a FRMS&P has been able to assess the acceptable reduction in flood storage. The proposal could then be assessed in the light of the cumulative impact of it and similar potential proposals.

OEH noted the site is served by Marsh Road. The Williamstown-Salt Ash FRMS&P indicates that this road will be inundated in a 1% AEP, annual exceedance probability, flood event. There are concerns regarding the location this site with respect to evacuation and/or shelter in place especially considering the number of people who may be accommodated at any one time in the facility.

OEH reviewed the acid sulfate soil management plan provided and noted indicates that the site contains acid sulfate soils and that more than 1,000 tonne of soil will be disturbed by the proposal. A lime treatment rate is provided. The report does not indicate the total volume of soil which is likely to be disturbed or provide calculations of the ability to reuse in place or need to remove from the site. Capping is indicated for reuse of spoil on site which would require significant import of material which is likely to be of a different soil type, higher clay content, than the existing soils in order for it to be a suitable capping material. Imported soils are also likely to be required to form the walls of the proposed water ski pond. Imported soils may result in more turbid runoff to the adjacent natural areas.

OEH advised the depth of excavation required to construct ponds suitable for activities such as water skiing is likely to be significantly below existing site levels. The acid sulfate soils management report indicates that ground water is present at relatively shallow depth and no indication is given as to whether dewatering will be required or how this would be managed.

Office of Environment and Heritage (21 August 2017)

OEH reviewed its previous advice on the flooding impacts of the proposed recreational facility at Marsh Road, Bobs Farm. Guidance has been provided on information required to assess the impacts cumulative infilling of floodplain storage, tidal inundation and emergency management.

OEH commented the Anna Bay Flood Study commissioned by Port Stephens Council, provides the current flood characteristic affecting the site, and that the study identifies the site's provisional hydraulic/hazard category as predominantly High Hazard Flood Storage with some minor areas as High Hazard Flood Fringe. The area is outside of the main Tilligerry Creek flow path.

OEH advised large scale filling of the floodplain storage areas has the potential to modify flood behaviour through redistribution of flow and loss in flood storage. Consequently, the proponent is required to demonstrate that there will be no significant flood impact from a potential filling of the floodplain area. The cumulative impact assessment will need to determine how the extent and magnitude of the floodplain's peak flood inundation is impacted by the filling of its storage areas. This could be determined by modifying the available hydraulic model to simulate filling in a percentage of the available floodplain storage. In consultation with Port Stephens Council, adopting an infilling of 10% would be suitable for assessing the cumulative impacts.

OEH advised the proponent should also be aware that where Councils allows a set percentage of flood storage infilling, this percentage is typically allowed for each property and not on a 'first in best dressed' basis.

OEH advised the proponent will also be required to provide an assessment on the impact of tidal inundation due to climate change. The proposed site is on low lying terrain, at elevations of 0.8 – 2m AHD. Low-lying area of Marsh Road are currently likely to be tidally-inundated during king tides.

OEH advised the proposed camping grounds, cabins and manager's residences will provide protection for up to a 1% ARI event. In rarer events these areas will be inundated. The proponent is required to demonstrate how it will safely evacuate persons, at risk of inundation, without increased reliance upon the SES or other authorised emergency services personnel.

Office of Environment and Heritage (17 April 2018)

Flooding and Flood Risk (only)

Council requested OEH provide additional advice in relation to the above planning proposal. Council requested that:

OEH review the proponent's methodology to assess the cumulative impacts of filling floodplain storage areas on the subject site and advise (a) whether OEH has any objection to the proponent's suggested approach, which is to carry out any further studies after amendment to the Port Stephens Local Environmental Plan 2013 is made to make the land use permissible with development consent (ie. to assess the matter as part of a potential future development application).

OEH is satisfied with the proponent's proposed methodology to assess the cumulative impact of filling of the floodplain on surrounding areas. OEH accepts that this work is best undertaken as part of a future development application, when the final landform is known.

OEH previously advised Council that it did not support a planning proposal for a wakeboard facility at the subject site (OEH reference: DOC16/498810, 20 October 2016). OEH's objection was in relation to floodplain management and acid sulphate soil considerations.

NSW Office of Environment and Heritage (28 July 2018)

Biodiversity

OEH reaffirmed support for rezoning the northern woodland areas of Lot 223 DP 598773 for environmental protection and recommends the use of the E2 Environmental Conservation Zone.

Aboriginal cultural heritage

OEH commented that an Aboriginal cultural heritage assessment is needed to inform the planning proposal, and noted that a due diligence process has been undertaken in support of the planning proposal.

OEH recommended that the proponent clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people that may potentially constrain future land-use planning by undertaking an Aboriginal cultural heritage assessment.

Flooding and flood risk

OEH advised it provided comment on the planning proposal in relation to flooding and flood risk on 17 April 2018 (see above previous OEH advice).

NSW Office of Environment and Heritage (24 October 2018)

Biodiversity

OEH recommends that the environmental zone is extended to include all the vegetated areas in the north of the site and that any future development avoids the high value vegetation on the western boundary.

OEH recommends the use of the E2 Environmental Conservation Zone for the vegetated land at the northern end of Lot 223 DP 598773.

Aboriginal cultural heritage

OEH recommends that the planning authority make direct contact with the registered Aboriginal stakeholders for the Port Stephens area to clearly identify all potential Aboriginal cultural heritage values, areas, objects, places or landscapes of heritage significance to Aboriginal people that may potentially constrain future land-use planning in accordance with the relevant local planning direction issued under Section 9.1 Directions of the Act.

Flooding and flood risk

OEH undertook updated review of the proposed rezoning in relation to flooding and flood risk and is satisfied that it is consistent with the Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the Act and the Floodplain Development Manual 2005.

NSW Department of Primary Industries (Agriculture) (14 November 2016)

DPI (Agriculture) notes the zones objectives are: (a) to encourage sustainable primary industry production by maintaining and enhancing the natural resource base; (b) to maintain the rural landscape character of the land; and (c) to provide a range of compatible land uses, including extensive agriculture.

NSW DPI (Agriculture) does not consider there has been sufficient assessment to endorse a change of land use zoning to allow a water ski park at this location. No assessment of the current or surrounding agriculture of the proposed site has been undertaken. Justification for the amendment due to the wide interpretation of the RU2 Rural Landscape Zone role in other LGA areas should not provide endorsement for not meeting the zones objectives.

NSW DPI (Agriculture) recommend further assessment be undertaken to identify potential land use conflict and impact to agriculture, including assessment of resources that will be required for the new land use (ie estimated water demand and water availability/licencing) be conducted.

NSW DPI (Agriculture) included reference/link to additional documentation to assist an assessment including the *Land Use Conflict Risk Assessment Guide* and *Infrastructure Proposals on Rural Land*.

NSW Department of Primary Industries (Agriculture) (4 October 2018)

DPI (Agriculture) confirmed it does not agree to the change because it is not in keeping with the zone objectives as set out in the LEP and reinforced by previous advice that it will set a precedent and may lead to land use conflicts in the future.

DPI (Agriculture) understand that Council may still propose the change and DPI Agriculture will be commenting on any Development Applications that may be received in the future for any recreation uses.

NSW Department of Primary Industries (Water) (4 November 2016)

DPI (Water) reviewed the planning proposal and advises DPI Water issued a request for further information on 16 May 2014 in relation to Development Application 16-2013-805-1, Proposed Wakeboard Park. This stop the clock is pertinent to this planning proposal as DPI (Water) raised concerns and therefore requested further information to inform the assessment of the application.

DPI (Water) does not consider there has been sufficient assessment to endorse a change of land use zoning to allow a water ski park at this location. It also noted that the planning proposal does not address potential impacts on groundwater dependent ecosystems (mapped on the property and in the nearby vicinity) or the nearby SEPP 14 coastal wetland, which is downgradient of the property.

DPI (Water) recommends that further assessment occurs in line with the initial request for further information in order to inform assessment of the appropriateness of the proposed land use change. It should also be considered that the amended development referred to DPI (Water) via letter dated 28 January 2015 did not address this request for information resulting in DPI (water) reiterating this request for information via letter dated 13 February 2015.

For reference the additional documentation required to inform assessment, reflected in previous correspondence is:

Groundwater Assessment Re. the proposal includes excavation of a dam, which will intercept groundwater. This will create an open window into the aquifer, which will result in ongoing evaporative losses and increased risk of contamination of the groundwater source. The proponent is required to provide a Groundwater Assessment report, which addresses the following issues:

Calculation of annual volume of groundwater taken as a result of ongoing evaporative losses caused by construction of the dam and any other incidental losses.

Identification of any impacts on groundwater flow resulting from the proposal and proposed management measures to address these impacts.

Identification of any potential impacts on groundwater quality and proposed management measures to address these impacts.

Potential impacts on other groundwater users within the area as a result of modified groundwater conditions.

Proposed monitoring regime for ongoing monitoring of the groundwater resource.
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Acid Sulfate Soils Management

DPI (Water) advises the subject site is within a Potential Acid Sulfate Soils (PASS) area. Excavation of PASS materials poses a significant risk to water quality as a result of acid leachate infiltrating back into the aquifer. The large recreational pond must be constructed with an impervious liner that would prevent the direct hydrological connection between the groundwater resource and any surface water runoff and land use activities.

Compliance with Water Management Act 2000 and Water Act 1912 requirements

DPI (Water) advises surface water sources on site are managed under the Water Sharing Plan for the Karuah River Water Source. Groundwater is managed under the Water Sharing Plan for the North Coast Coastal Sands Groundwater Sources 2016.

DPI (Water) advises the proponent must clearly identify the volume of surface water and groundwater that will be taken as a result of the proposal and must demonstrate the ability to acquire the appropriate Water Access Licenses and relevant approvals under the Water Management Act 2000 and the water Act 1912 prior to project commencement.

NSW Department of Primary Industries (Fisheries) (13 February 2017)

DPI (Fisheries) identified there is not an on-site sewage management report. In consideration of the number of permanent residences, holiday cabins, camping area and numerous day visitor provisions there is the potential for offsite waste water issues. It would not support this development without the assessment of such a report to clearly detail how sewage will be managed and how potential adverse impacts to oyster harvest area water quality will be mitigated.

DPI (Fisheries) commented sewage discharges have previously impacted on the harvest classification of the lease areas in Tilligerry Creek and have human health issues related to the consumption of impacted shell fish. It is considered that the provisions of SEPP 62 Sustainable Aquaculture would apply to the development due to the scale of the development and the potential for impact on the oyster industry.

DPI (Fisheries) advised of concern regarding the mobilisation of acid sulfate soils oxidation products particularly during the construction phase, which could potentially drain into Tilligerry Creek. Acid sulfate soils oxidation products not only impact on the oyster industry but also impact on the aquatic environment in general.

DPI (Fisheries) advised any drains or surface flows exiting the proposed site would drain into a Habitat Protection Zone of the Port Stephens-Great Lakes Marine Park. In accordance with Section 56 of the Marine Park Management Act 2014 the consent authority must take into consideration the objects of this Act and any advice given to it by the relevant Ministers about the impact on the marine park of development in the locality.

NSW Department of Primary Industries (Fisheries) (7 July 2018)

DPI (Fisheries) confirmed further to correspondence 13 Feb. 2017 that Priority Oyster Aquaculture Areas (POAA) are present in the estuarine waters in proximity to the proposed development. These POAA areas are mapped and described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). This strategy also details the required water quality growing and harvest standards for the NSW oyster industry in chapters 3 & 4. OISAS can be accessed from the DPI website.

DPI (Fisheries) advised harvest standards are prescribed under the NSW Shellfish Program administered by the NSW Food Authority and the NSW oyster industry has a statutory responsibility to meet these standards. These standards also reflect the Australian standards for shellfish harvest prescribed in the Australian Shellfish Quality Assurance Program. These internationally accepted water quality standards are designed to protect the consumers of shellfish from human pathogenic bacteria and viruses that may accumulate in shellfish where shellfish growing waters are polluted by sewage or stormwater effluent.

DPI (Fisheries) advised given the sensitivity of the adjacent waters, the most critical issue for consideration in the proposed on-site treatment and/or disposal system is the ability of the system to adequately removal or inactivate human pathogenic viruses and bacteria that may be present to ensure the protection of the sanitary water quality of the adjacent oyster growing areas.

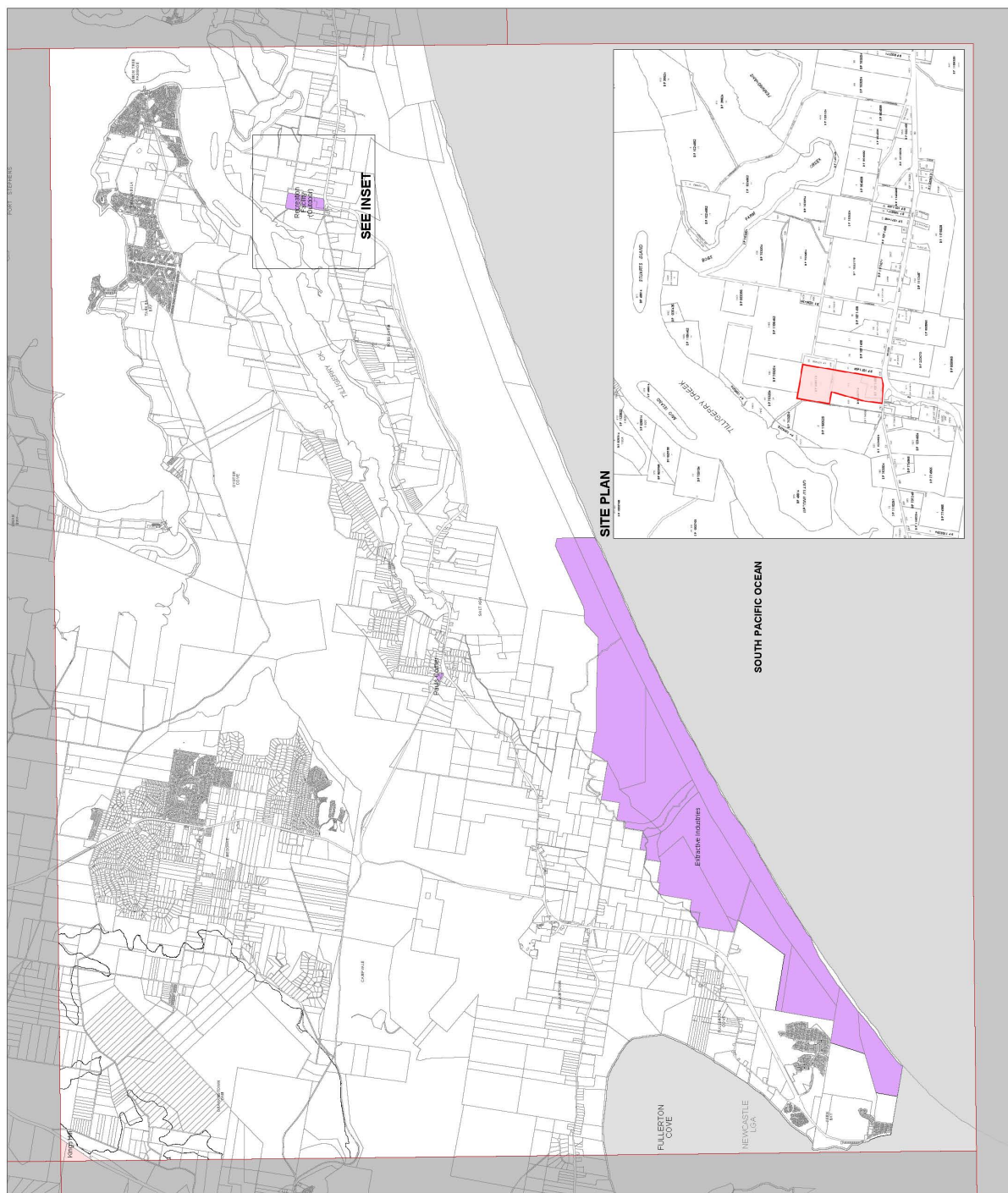
DPI (Fisheries) advised the *Healthy Estuaries for Healthy Oysters Guidelines* provides advice about how to ensure development in close proximity to estuaries is compatible with the requirements of oyster aquaculture. This document details mitigation measures for new developments including diffuse source guidelines and can be accessed at from the Department's website. It is recognised that protecting water quality in oyster growing and harvest areas is crucial to the long term future of the oyster industry and protecting water quality in oyster growing and harvest areas from incompatible development is the primary purpose of Part 3A of SEPP 62 Sustainable Aquaculture.

DPI (Fisheries) reiterated the requirement for council to ensure the proposed wastewater infrastructure for the subject development is consistent with *AS/NZS 1547:2012 On-site domestic wastewater management*. Key criteria NSW DPI requires to be enforced are: (a) appropriate setbacks from waterways; (b) avoidance of pump-out systems; (c) appropriate dispersal areas; (d) soil type is suitable to accommodate loading; (d) design components will result in mean pollutant loads meeting required levels; and (e) a regular inspection program.

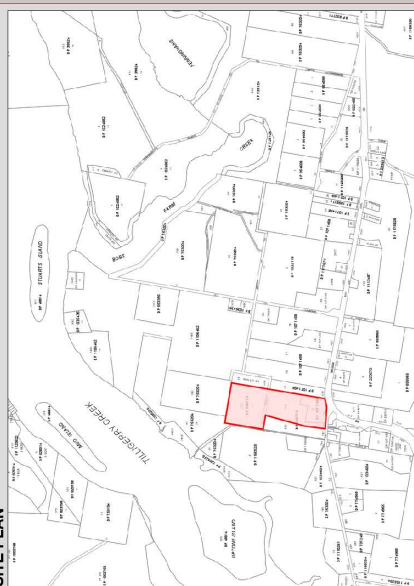
DPI Fisheries) advised, as the NSW Shellfish Program is administered by the NSW Food Authority, the agency should also be consulted as part of the development approval process and that notifies the potentially affected sectors of the oyster industry for all applications referred to NSW DPI under SEPP 62 Sustainable Aquaculture.

DPI (Fisheries) strongly recommends Council classify systems that are not connected directly to a Council operated STP as high risk under and that these systems be inspected annually for compliance.

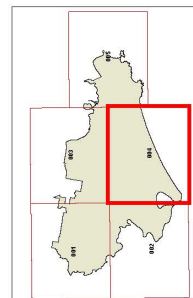
NSW Department of Primary Industries (Fisheries) (4 October 2018)
<p>NSW DPI (Fisheries) confirmed it has no further comment on the proposal to enable the proposed development to be considered as permissible (with development consent).</p> <p>DPI (Fisheries) commented that, if the planning proposal proceeds, NSW DPI will then be in a position to provide a detailed submission on the development application which may result from this process.</p>
NSW Rural Fire Service (20 October 2016)
RFS reviewed the plans and documents for the planning proposal and raises no concerns or issues in relation to bushfire.
NSW Roads and Maritime Services (22 November 2016)
<p>RMS noted it previously provided a response to DA 2013-2013-805-1 (dated 25 March 2015) in relation to a mixed development including wakeboard cable ski park, wave pool and associated facilities on the subject land.</p> <p>RMS reviewed the submitted Traffic Impact Assessment and has no objection to the planning proposal provided all previous advice dated 25 March 2015 (for the previous DA) is adhered to.</p>
NSW State Emergency Service
No referral response was received from the SES.
Worimi Local Aboriginal Land Council
The planning proposal was referred to the Worimi Local Aboriginal Land Council. The proponent advised they have made direct contact with local Worimi representatives, and that in principle support has been offered though engagement associated with a development application was preferred. The proponent advised a site meeting will be carried out as part of any future development application.



SITE PLAN



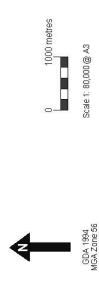
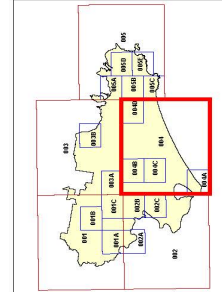
- Additional Permitted Uses**
- Additional Permitted Uses
- Precinct Areas**
- Precinct Areas
- Waste or Resource Management**
- Waste or Resource Management Facility
- Cadastral**
- Cadastral 2011/2018 © Land and Property Information (LPI)



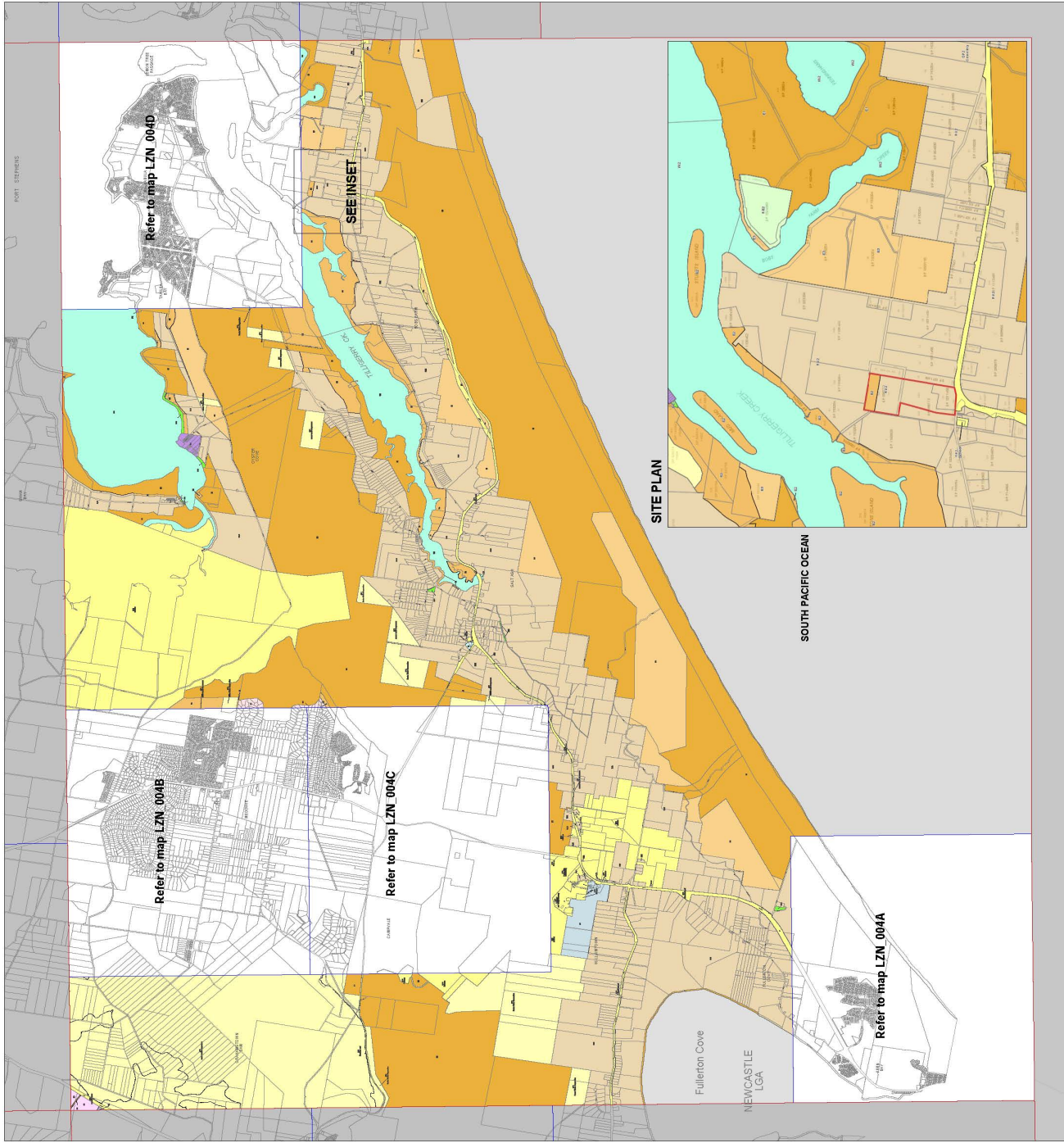
- Zone**
- | | |
|-----|------------------------------------|
| B1 | Neighbourhood Centre |
| B2 | Local Centre |
| B3 | Commercial Core |
| B4 | Mixed Use |
| B5 | Business Development |
| B7 | Business Park |
| E1 | National Parks and Nature Reserves |
| E2 | Environmental Management |
| E3 | Environmental Conservation |
| E4 | Environmental Living |
| I1 | General Industrial |
| I2 | Light Industrial |
| I4 | Working Waterfront |
| R1 | General Residential |
| R2 | Low Density Residential |
| R3 | Medium Density Residential |
| R4 | Large Lot Residential |
| RE1 | Public Recreation |
| RE2 | Private Recreation |
| RU1 | Primary Production |
| RU2 | Rural Landscape |
| RU3 | Forestry |
| RU5 | Village |
| SPT | Special Activities |
| SP2 | Infrastructure |
| WT1 | Natural Waterways |
| WT2 | Recreational Waterways |

Cadastre

 Cadastre 2011/2018 © Spatial Services



Map verification number:
 6400_CMA_LZN_004_000_2018120



PART 5 – DETAILS OF COMMUNITY CONSULTATION

The planning proposal was placed on public exhibition from 24 May to 21 June 2018.

Public notice of the planning proposal was given in the Port Stephens Examiner and adjoining landowners were notified in writing. The planning proposal and supporting material was available for viewing on the Council's website and inspection at the Tomaree Library and the Port Stephens Council Administration Building.

A total of 42 submissions were received with 24 in support of the planning proposal and 18 objecting to the planning proposal (or expressing concern about potential negative impacts from a potential future development).

Submissions in support of the planning proposal proceeding identify the potential tourism and recreation benefits of a future 'recreation facility (outdoor)' on the site.

A submission summary table is included as a separate attachment to this planning proposal.

Principal issues raised in objection to the planning proposal (or expressing concern about a future proposed development) are potential for negative flooding, drainage and acid sulphate soil impacts, and the related risk of negative impacts to other properties and the oyster industry. The potential for negative local amenity impacts is also raised (for example to nearby residents and school). Some submissions call for a public hearing on the planning proposal, however this is not recommended.

If the planning proposal is finalised, and the Port Stephens Local Environmental Plan 2013 is subsequently amended, a 'recreation facility (outdoor)' will be made permissible on the land (with development consent). The issues raised in objections to the planning proposal are important matters for consideration in a separate development application and assessment against the heads of consideration for development applications listed in section 4.15 *Evaluation of the Environmental Planning and Assessment Act 1979 (NSW)*.

PART 6 – PROJECT TIMELINE

Council resolved to prepare the planning proposal at its meeting on 14 June 2016.

- Council resolution to prepare a planning proposal 14 June 2016.
- Gateway determination on 29 July 2016.
- Pre-exhibition consideration (including referrals) between August 2016 and April 2018.
- Public exhibition from 24 May to 21 June 2018.
- Post-exhibition report to Council on 11 December 2018.
- Subject to Council resolving to proceed - forward the planning proposal to the NSW Department of Planning and Environment for finalization in December 2018.