

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
22 AUGUST 2023



PORT STEPHENS
C O U N C I L

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DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2023-39-1
Development Description	Boundary realignment (14 into 14 lot subdivision)
Applicant	LE MOTTEE GROUP PTY LIMITED
Land owner	AD, JC, TD and DA Vollmer
Date of Lodgement	03/02/2023
Value of Works	\$218,000.00
Submissions	Seven (7)

PROPERTY DETAILS

Property Address	430 Clarence Town Road WOODVILLE, 392 Clarence Town Road WOODVILLE, 60 Wallalong Road WALLALONG, 56 Wallalong Road WALLALONG, 52 Wallalong Road WALLALONG, 48 Wallalong Road WALLALONG, 44 Wallalong Road WALLALONG, 40 Wallalong Road WALLALONG, 36 Wallalong Road WALLALONG, 32 Wallalong Road WALLALONG, 28 Wallalong Road WALLALONG, 24 Wallalong Road WALLALONG, 83 Clarence Street WALLALONG, 70 Wallalong Road WALLALONG
Lot and DP	LOT: 4 DP: 10074, LOT: 7 DP: 10074, LOT: 2 DP: 12579, LOT: 3 DP: 12579, LOT: 4 DP: 12579, LOT: 5 DP: 12579, LOT: 6 DP: 12579, LOT: 7 DP: 12579, LOT: 8 DP: 12579, LOT: 9 DP: 12579, LOT: 10 DP: 12579, LOT: 11 DP: 12579, LOT: 580 DP: 1160616, LOT: 579 DP: 1209777
88B Restrictions on Title	Yes – rights of way, water supply and electricity
Current Use	Agricultural land containing scattered dwellings, farms buildings and sheds.
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire - Vegetation Category 3 Coastal Environment and Coastal Use Area Heritage Items Adjacent

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	<ul style="list-style-type: none"> - I107 – “Wallalong House”, including stables, outbuildings, gardens and landscape setting (local significance) - I105 “Wallalong/Bowthrone War Memorial” (local significance). <p>Flooding</p> <ul style="list-style-type: none"> - Lots 2-11 in DP12579 – High Hazard Floodway - Lot 4 & 6 in SP10074 – Partially located in High Hazard Floodway - Lot 579 of DP1209777 – Majority of allotment in High Hazard Floodway <p>Acid Sulfate Soils</p> <ul style="list-style-type: none"> - The site contain Class 1, 2, 3,4 and 5 Acid Sulfate Soils. <p>Drinking water catchment</p> <p>Wetlands – partly affected</p> <p>Williams River Catchment</p> <p>Koala Habitat in southernmost corner of the site.</p> <p>Priority Weed – Alligator Use</p>
State Environmental Planning Policies	<p>State Environmental Planning Policy (Resilience and Hazards) 2021</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p> <p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p>

ITEM 1 - ATTACHMENT 4 PLANNERS ASSESSMENT REPORT.

PLANNERS PRE-ASSESSMENT CHECKLIST	
OWNERS CONSENT	YES / N/A
Land owners consent	Yes
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	N/A
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	N/A
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	Yes
REFERRALS	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days section 42(2) EPA Regs 2021	Yes
Call applicant and send email acknowledgement.	Yes

The proposed development seeks to undertake a boundary adjustment between Lots 4 and 7 in DP1007, Lot 2 to Lot 11 in DP1257, Lot 579 in DP1209777 and Lot 580 in DP1160616. A plan of the proposed boundary lot adjustment is provided at **Figure 1**. The adjustment seeks to create the following allotments:

-
- The map shows a section of land with the following details:
- Roads:** CLARENCE TOWN ROAD, BUTTERWICK ROAD, CLARENCE STREET, MORPETH VIEWS, MORPETH STREET, WALLALONG ROAD, PATERSON RIVER.
 - Lots and Dimensions:**
 - LOT 10: 40.90 m (BY DEPTH)
 - LOT 11: 51.13 m (BY DEPTH)
 - LOT 12: 40.70 m (BY DEPTH)
 - LOT 13: 40.90 m (BY DEPTH)
 - LOT 14: 43.7 m (BY DEPTH)
 - Other Labels:** SHEET 5, SEE, LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10, LOT 11, LOT 12, LOT 13, LOT 14, LOT 15, LOT 16, LOT 17, LOT 18, LOT 19, LOT 20, LOT 21, LOT 22, LOT 23, LOT 24, LOT 25, LOT 26, LOT 27, LOT 28, LOT 29, LOT 30, LOT 31, LOT 32, LOT 33, LOT 34, LOT 35, LOT 36, LOT 37, LOT 38, LOT 39, LOT 40, LOT 41, LOT 42, LOT 43, LOT 44, LOT 45, LOT 46, LOT 47, LOT 48, LOT 49, LOT 50, LOT 51, LOT 52, LOT 53, LOT 54, LOT 55, LOT 56, LOT 57, LOT 58, LOT 59, LOT 60, LOT 61, LOT 62, LOT 63, LOT 64, LOT 65, LOT 66, LOT 67, LOT 68, LOT 69, LOT 70, LOT 71, LOT 72, LOT 73, LOT 74, LOT 75, LOT 76, LOT 77, LOT 78, LOT 79, LOT 80, LOT 81, LOT 82, LOT 83, LOT 84, LOT 85, LOT 86, LOT 87, LOT 88, LOT 89, LOT 90, LOT 91, LOT 92, LOT 93, LOT 94, LOT 95, LOT 96, LOT 97, LOT 98, LOT 99, LOT 100.

Figure 1 - Proposed Boundary Adjustment

ITEM 1 - ATTACHMENT 4 PLANNERS ASSESSMENT REPORT.**SITE DESCRIPTION**

The subject site is located in the suburb of Woodville, within Port Stephens LGA. The subject site comprises a total of fourteen (14) allotments, which are legally identified at the time of lodgement as Lots 4 and 7 in DP 1007, Lots 2 to 11 in DP 1257, Lot 579 in DP 1209777 and Lot 580 in DP 1160616. The lots are known as 392-430 Clarence Town Road, 24-70 Wallalong Road and 83 Clarence Street Wallalong.

The lots will be referred to as 'the site' in the remainder of the assessment report. The entire site comprises an area of approximately 255.7468 hectares, and the individual lots are generally irregular in shape.

The site is zoned RU1 Primary Production. Land immediately adjoining the site to the north, south and west is RU1 zoned land. Land immediately adjoining Lot 579 to the east of the site is zoned RE1 Public Recreation, and R2 Low Density Residential.

Lot 4 and Lot 7 of DP 10074, and Lot 579 of DP1209777 contain existing residential dwellings, farm buildings, sheds and outbuildings. The remainder of the lots do not contain development and are primarily utilised for agricultural purposes.

The majority of the overall site is heavily constrained by flooding, and the eastern area of the site is in close proximity to the heritage listed 'Wallalong House'.

SITE HISTORY

The following provides a summary of previous Development Applications approved on the various lots.

Application	Applicable Properties	Proposal	Determination
DA 16-2012-115-1	392 Clarence Town Road, Woodville (Lot 7 DP 10074)	Storage Shed	Approved with Conditions 09/03/2012
DA 16-2019-742-1	392 Clarence Town Road, Woodville (Lot 7 DP 10074)	Swimming Pool and Safety Barriers	Approved with Conditions 11/12/2019
BA/DA 7-1984-2497-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Dwelling	Approved with Conditions 8/10/1984
DA 16-2002-294-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Machinery Shed	Approved with Conditions 22/03/2002
DA 16-2003-968-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Land Fill	Approved with Conditions 16/04/2004
DA 16-2006-776-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Farm Building – intensive agriculture	Approved with Conditions 11/10/2006
DA 16-2009-130-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Farm Building	Approved with Conditions 10/03/2009

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DA 16-2010-439-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Farm Building	Approved with Conditions 12/08/2010
DA 16-2014-734-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Extension to Managers Residence	Approved with Conditions 23/01/2015
CDC 9-2023-39-1	430 Clarence Town Road Woodville (Lot 4 DP 10074)	Swimming Pool	Approved by PCA
DA 16-2014-6008-1	32 Wallalong Road, Wallalong (Lot 9 DP 12579) 36 Wallalong Road, Wallalong (Lot 8 DP 12579) 40 Wallalong Road, Wallalong (Lot 7 DP 12579) 44 Wallalong Road, Wallalong (Lot 6 DP 12579) 48 Wallalong Road, Wallalong (Lot 5 DP 12579) 52 Wallalong Road, Wallalong (Lot 4 DP 12579)	Boundary Realignment	Withdrawn 11/12/2014
BA/DA 7-1994- 1398-1	40 Wallalong Road, Wallalong (Lot 7 DP 12579) 44 Wallalong Road, Wallalong (Lot 6 DP 12579) 48 Wallalong Road, Wallalong (Lot 5 DP 12579) 52 Wallalong Road, Wallalong (Lot 4 DP 12579) 56 Wallalong Road, Wallalong (Lot 3 DP 12579) 60 Wallalong Road, Wallalong (Lot 2 DP 12579) 70 Wallalong Road, Wallalong (Lot 579 DP 120977)	Restoration of river banks and adjacent lands	Approved 23/08/1994

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	83 Clarence Street, Wallalong (Lot 580 DP 1160616)		
DA 16-2019-366-1	52 Wallalong Road, Wallalong (Lot 4 DP 12579) 70 Wallalong Road, Wallalong (Lot 579 DP 120977)	Boundary adjustment	Approved with Condition 02/09/2019
DA 16-2013-714-1	56 Wallalong Road, Wallalong (Lot 3 DP 12579) 60 Wallalong Road, Wallalong (Lot 2 DP 12579) 70 Wallalong Road, Wallalong (Lot 579 DP 120977) 83 Clarence Street, Wallalong (Lot 580 DP 1160616)	Subdivision and Boundary Realignment (six lots into eight lots)	Approved with Conditions 22/05/2014
DA 16-2013-728-1	56 Wallalong Road, Wallalong (Lot 3 DP 12579)	Single storey dwelling, storage shed and earth mound	Withdrawn 03/07/2014
16-2013-714-2	56 Wallalong Road, Wallalong (Lot 3 DP 12579) 60 Wallalong Road, Wallalong (Lot 2 DP 12579) 70 Wallalong Road, Wallalong (Lot 579 DP 120977) 83 Clarence Street, Wallalong (Lot 580 DP 1160616)	S4.55(1A) to amend conditions	Approved with Conditions 24/11/2014
DA 16-2013-727-1	60 Wallalong Road, Wallalong (Lot 2 DP 12579)	Single storey dwelling, shed and earth mound	Refused by Staff 15/05/2014
BA/DA 7-1995- 41121-1	70 Wallalong Road, Wallalong (Lot 579 DP 120977)	Two lot subdivision	Approved 20/09/1995
DA 16-2009-950-1	70 Wallalong Road, Wallalong (Lot 579 DP 120977) 83 Clarence Street, Wallalong (Lot 580 DP 1160616)	Boundary adjustment	Approved with Conditions 17/06/2010

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DA 16-2014-166-1	70 Wallalong Road, Wallalong (Lot 579 DP 120977)	Additions to dwelling and garage (demolish existing shed)	Approved with Conditions 04/12/2014
DA 16-2014-166-2	70 Wallalong Road, Wallalong (Lot 579 DP 120977)	S4.55(1A) Reduction in garage size and internal layout changes to dwelling	Approved with Condition 06/09/2017
DA 16-2014-166-3	70 Wallalong Road, Wallalong (Lot 579 DP 120977)	S4.55(1A) internal layout changes	Approved with Conditions 15/05/2020

The subject site can be seen in Figures 2 and 3 below:



Figure 2 - Site Aerial

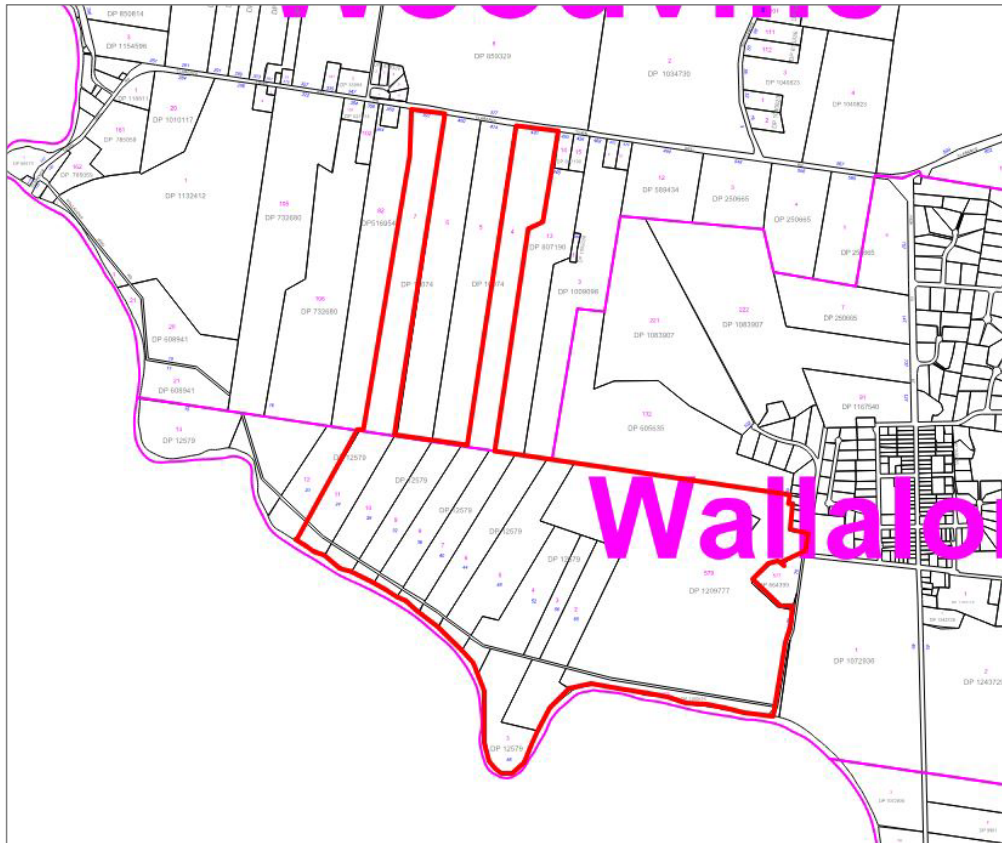


Figure 3 - Cadastral Plan

SITE INSPECTION

A site inspection was carried out on 20 July 2023. The subject site can be seen in the photographs below.



Photograph 1: View from Wallalong Road (Location of proposed Lots 1-9)



Photograph 2: View from Wallalong Road (proposed lot 10)



Photograph 3: View of Wallalong House from Wallalong Road



Photograph 4: View of 392 Clarence Town Road, Woodville (proposed lot 14)

ITEM 1 - ATTACHMENT 4 PLANNERS ASSESSMENT REPORT.**PLANNING ASSESSMENT**

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

Internal

Development Engineer - The application was referred to Council's Development Engineering team to review the proposed access, drainage and water quality, flooding and subdivision. The Development Engineer did not support the application in its current form for the following reasons:

- Inappropriately categorised as a boundary adjustment.
- The proposal does not satisfy Clause 4.1E of Council's LEP, in relation to impacts on agricultural viability.
- Insufficient information on proposed drainage, no plan has been supplied to detail how each lot will meet Council's requirements.
Insufficient information has been provided in relation to location of easements, water supply and electricity.
- Insufficient information has been provided in relation to the appropriateness of the proposed battle-axe lots and whether the road is to be dedicated to Council or remain a private right of way.
- The site is mapped as flood affected High Hazard Flood way with the smaller 'rural residential' lots not affected by any flood restrictions. This is suitable as the access proposed is free from any flood requirements. All other lots are existing with access proposed as per existing arrangements.

The matters noted were provided in detail to the applicant, and the requested additional information was not provided at the date of writing this report.

Natural Resources

The application was referred to Council's Natural Resources team to assess the proposals impact to biodiversity, including acid sulfate soils, weeds, koala management, wetlands and coastal management. Council's Natural Resources Officer supported the application subject to recommended conditions for weed management. It was found there were no records of koalas on site and the land had been subject to agricultural activities for a significant amount of time. There are two grassed swales proposed to divert water away from the site, but no water quality treatment is proposed. There is also no water capture from the proposed subdivided lots. The Paterson River is mapped as coastal use and coastal environment. Water quality was requested to be addressed. Street tree planting was also requested to be provided as per Section C1.B of the PSDCP.

The matters requiring additional information were provided in detail to the applicant, and the requested additional information was not provided at the date of writing this report.

Environmental Health

The application was referred to Council's Environmental Health Officer to assess the sites on-site sewage management systems, wastewater management and site contamination. Council's Environmental Health Officer did not support the application in its current form and requested additional information to complete the assessment of the application. The Council's Environmental Health Officer requested a Wastewater Management Report and a Preliminary Site Investigation. The matters requiring additional information were provided in detail to the applicant, and the requested additional information was not provided at the date of writing this report.

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The application was referred to Council's Development Contributions Officer. It was found that s7.12 contributions do not apply as the proposal will not create any additional allotments.

ExternalRural Fire Service

The application was referred to the NSW Rural Fire Service under Clause 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The proposal requires authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes.

RFS noted the application could not be supported in its current form, and additional information was requested relating to the appropriateness of the increased residential density in the area, and details of emergency vehicle access. The information requested is summarised below.

Please submit further information which outlines how the proposal meets the requirements of:

- a. Table 5.3b of Planning for Bush Fire Protection (PBP), 2019;*
- b. Section 8.2.1 Increased residential densities of PBP, 2019*

The matters requiring additional information were provided in detail to the applicant, and the requested additional information was not provided at the date of writing this report. Accordingly, the subdivision has not been issued a Bushfire Safety Authority.

Ausgrid / Transgrid

The application was referred to Ausgrid due the proposed connection to the Ausgrid network. Ausgrid provided advice in relation to the electricity connection, underground mains and electricity easements.

Environmental Planning and Assessment Act 1979**Section 4.46 – Integrated development**

Section 4.46 of the EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals.

Rural Fires Act 1997

The proposal is considered integrated development, and was lodged by the applicant in this manner, seeking approval in accordance with Section 100B of the Rural Fires Act 1997. On 5 April 2023, the NSW Rural Fire Service, being the Authority body for this approval, advised Council in writing that they cannot support the applicant in its current form, requesting additional information. The matters requiring additional information were provided in detail to the applicant, and the requested additional information was not provided at the date of writing this report. Accordingly, the subdivision has not been issued a Bushfire Safety Authority.

In accordance with *Section 4.47 Development that is integrated development* of the EP&A Act:

- (4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.*

Accordingly, the application cannot be approved in its current form.

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National Parks and Wildlife Act 1974 (NP&W Act)

There is currently insufficient information to determine whether the proposal is integrated development in accordance with the NP&W Act. Section 90 requires that development requiring the grant of Aboriginal heritage impact permit is integrated development.

An Aboriginal Heritage Information Management System (AHIMS) search complete on 20 March 2023 found one (1) Aboriginal site recorded in or near the site location. The applicant was requested to provide an Aboriginal Due Diligence to demonstrate no impact to an Aboriginal Site or Aboriginal Place will result from the proposal, and further consider whether the DA should be integrated development in this regard.

In accordance with Section 4.46 of the EP&A Act:

Development is not integrated development in respect of an Aboriginal heritage impact permit required under Part 6 of the National Parks and Wildlife Act 1974 unless—

(a) an Aboriginal object referred to in that Part is known, immediately before the development application is made, to exist on the land to which the development application applies, or

(b) the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.

As the AHIMS search has found an identified Aboriginal Site, it is considered likely that an integrated development approval will be required in this instance.

Section 4.14 – Consultation and development consent (certain bushfire prone land)

The proposed development is mapped as bushfire prone land, Category 3 (buffer) and as such triggers assessment under the NSW RFS Planning for Bushfire Protection 2019.

The application included the submission of a Bushfire Threat Assessment (BTA) prepared by Le Mottee Group. The Bushfire Threat Assessment included an assessment against Planning for Bushfire Protection 2019 and recommends future construction to consider AS3959 – 2018 Construction in Bushfire Prone Areas. The BAL's for each lot are shown in the figure below.

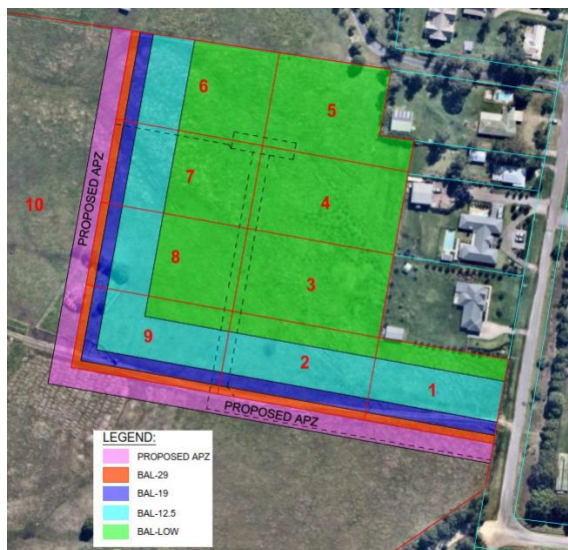


Figure 4 - BAL Diagram Lots 1-9

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As mentioned above, the application was not supported in its current form by NSW RFS.

Section 4.15 - Matters for consideration

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)**Chapter 2 Vegetation in Non-Rural Areas**

Chapter 2 Vegetation in Non-Rural Areas of the Biodiversity and Conservation SEPP aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The chapter works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 2.3 of the chapter contains provisions similar to those contained in the former (now repealed) clause 5.9 of Port Stephens Local Environmental Plan 2013 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The application does not include the removal of any vegetation, therefore assessment against this chapter is not required.

Chapter 3 Koala Habitat Protection 2020

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

There are several koala records within the locality. There are no koala records on site, according to Council records. The land appears to have been subject to agricultural activities for some time. The southernmost boundary of the site (along the Paterson River) is mapped as preferred koala habitat. The rest of the site is mapped as mostly cleared. Given the nature of the proposed subdivision, it is considered unlikely that koala habitat would be impacted. The development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala population.

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards)**Chapter 2 Coastal Management**

The subject land is located with the Coastal Environment Area and Coastal Use Area on the southern boundary, along the Paterson River. Small areas are mapped as wetlands and numerous waterways occur on site; as such, the requirements of the SEPP Resilience and Hazards must be considered when determining an application.

The Paterson River is mapped as coastal use and coastal environment therefore, Clause 2.8, Clause 2.10 and Clause 2.11 of the Resilience and Hazards SEPP are relevant to the proposal.

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As per Clause 2.8 of the SEPP, development consent must not be granted to development on land identified as 'proximity area for coastal wetlands' unless the consent authority (Council) is satisfied that the proposed development will not significantly impact the biophysical or ecological integrity of the adjacent coastal wetland of the quantity/quality of surface and ground water flows to and from the adjacent wetland. Clause 2.10 of the SEPP states development consent must not be granted to development on land that is within the coast environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the coastal environmental values and natural coastal processes and the water quality of the marine estate. Clause 2.11 states development consent must not be granted for development on land in a coastal use area unless the consent authority is satisfied the development avoids adverse impact to the coastal use area.

The submitted application has not sufficiently addressed the relevant provisions of this SEPP in relation to coastal considerations, including:

- Sufficient information has not been provided within the development application to address Wastewater Management and water quality management (Clause 2.10(1)(a) or (b)).
- As previously noted, the application does not include sufficient information in relation to the identified Aboriginal site within the project area, or in close proximity to the site, which is required to be considered in accordance with the provisions of this SEPP (Clause 2.10(1)(f), 2.11(1)(a)(iv) and Clause 2.11(1)(a)(v)).
- Visual Impacts, in relation to potential visual impacts of future dwellings to Wallalong House and its curtilage and the river (Clause 2.11 (1)(a)(ii), Clause (1)(a)(iii), Clause 2.11 (1)(a)(v), and Clause 2.11 (1)(b)).

Therefore, based on the available information the proposal does not satisfy the requirements of the Resilience and Hazards SEPP.

Chapter 4 Remediation of Land

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development. Council has to consider its planning obligations under *SEPP (Resilience and Hazards) 2021*. Section 4.6 requires that consent not be granted to a development application until Council has considered whether the land is contaminated.

The site is currently zoned as RU1 Primary Production. The submitted application confirms the land is primarily used for agricultural purposes. Agriculture is listed as a potentially contaminating activity. Further, Council records show there is an existing On-Site Sewerage Management (OSSM) system located at 83 Clarence St Wallalong. Old dwellings may contain asbestos and lead paint, and historical septic tanks and absorption areas are a source of potential contamination.

Council's Environmental Health Team requested additional information from the applicant, including a Preliminary Contaminated Site Investigation. The applicant was advised that depending on the outcome of the PSI, further contaminated land investigations and subsequent reporting may be required.

The request for additional information was made to the applicant, and the requested additional information was not provided at the date of writing this report. Accordingly, insufficient information is available to complete the assessment of the application and confirm the suitability of the site for the proposal.

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The proposal was referred to Ausgrid in accordance with Clause 2.48 of the SEPP. A response outlining the future connection requirements for the proposed allotments was provided by Ausgrid.

Port Stephens Local Environmental Plan 2013 (LEP)Clause 2.3 – Zone Objectives and Land Use Table

The proposal seeks a boundary adjustment for land in the RU1: Primary Production zone. In accordance with Clause 4.1E, the application must demonstrate the boundary adjustments achieve the zone objectives.

The Zone RU1 Primary Production zone objectives are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To facilitate a variety of tourist and visitor-orientated land uses that complement and promote a stronger rural sector appropriate for the area.*

It is not considered that the current application has demonstrated that the proposal will not create land use conflicts between rural and rural residential uses, or that the proposal would not impact agricultural viability.

The applicant was requested to provide further information in relation to these matters, which has not been provided. Based on available information, it is concluded that the proposed development does not adequately consider the impacts on the rural landscape character of the site and surrounding context. The proposal does not consider the potential to fragment rural land and the land use conflicts that may arise as a result of the proposal and the future intention of the land. This matter is further discussed under Clause 4.1E below.

Clause 2.6 – Subdivision

Clause 2.6 requires development consent for land proposed to be subdivided. The development application is proposing a boundary adjustment, which constitutes a subdivision.

Clause 4.1 – Minimum Subdivision Lot Size

Clause 4.1 outlines the minimum lot size applicable to the subject sites, as identified on the minimum lot size map, to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls.

The subject site includes a minimum lot size of 20 hectares.

The proposed allotment sizes as a result of the proposal are as follows:

- Proposed Lot 1 – 4,000m²
- Proposed Lot 2 – 4,500m²
- Proposed Lot 3 – 4,500m²
- Proposed Lot 4 – 4,500m²
- Proposed Lot 5 – 4,313m²
- Proposed Lot 6 – 4,939m²
- Proposed Lot 7 – 4,516m²
- Proposed Lot 8 – 4,509m²
- Proposed Lot 9 – 4,503m²

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- Proposed Lot 10 – 60.06 hectares (ha)
- Proposed Lot 11 – 57.12 ha
- Proposed Lot 12 – 48.76 ha
- Proposed Lot 13 – 42.58 ha
- Proposed Lot 14 – 43.7 ha

The proposed lot size of Lots 1-9 as a result of the boundary adjustment are under the minimum lot size requirement. Lots 10-14 exceed the minimum lot size. Accordingly, the proposed boundary adjustment therefore does not meet the objectives and requirements of this clause. The applicant has proposed a 'boundary adjustment' in accordance with Clause 4.1E of the Port Stephens Local Environmental Plan 2013 (LEP2013), which is discussed below.

Clause 4.1E Boundary Adjustment of land in certain rural, residential and conservation zones

The objective of this clause is to facilitate boundary adjustments between lots where one or more resulting lots do not meet the minimum lot size requirement of Clause 4.1, but where the objectives of the relevant zone can be achieved. Should the applicant satisfy the consent authority, that the proposal constitutes a 'boundary adjustment', the applicant must then satisfy the consent authority that the requirements of Clause 4.1E(3) can be met by the proposal.

Prior to considering the provisions of the Clause, firstly it must be considered whether the proposal is a 'boundary adjustment', and accordingly whether the provisions of this Clause are applicable and available to this proposal. There is no definition of boundary adjustment in the LEP or EP&A Act, however there are many relevant Land and Environment Court decisions in this regard, including:

- Barnes v Dungog Shire Council [2012] NSWLEC 1021
- McCabe & Others v Blue Mountains City Council (2006) 145 LGERA 86; [2006] NSWLEC 176
- Ousley Pty Ltd v Warringah Shire Council [1999] NSWLEC 143
- Johnson v Coffs Harbour City Council [2018] NSWLEC 1094 (28 February 2018)

Based on these decisions, it is considered that the proposal is not likely a 'boundary adjustment'. For example, in Johnson, there is the following excerpt:

Is the proposal a subdivision "by adjusting the boundary between adjoining lots"?

However, in considering the degree of the alteration required to achieve this alignment, it is in my view out of scope of a subdivision "by adjusting the boundary", for three reasons. The first is that the change to the boundary is so significant that I do not accept it can be considered "adjusting". The alteration requires moving the northern boundary of Lot 200 to the creek, and the southern boundary of Lot 200 to the road. The western and eastern boundaries are then increased in length to accommodate that alteration, so that the entire northern portion of the site becomes Lot 200. In the context of the site as a whole, that degree of alteration to the boundaries of Lot 200 is so substantial that it cannot be considered to fall within the ordinary meaning of "adjusting" the boundary.

The second reason that I am of the view that it is out of the scope of a subdivision "by adjusting the boundary" is that the two resulting lots do not bear sufficient resemblance to the lots currently in existence. In this respect, I accept the submission of the Council that the result is that the existing Lot 200 effectively disappears. The current configuration is of one lot with another narrow lot running through it, and the proposed configuration does not bear a resemblance to this. Accordingly, I accept that the description of the proposal is more akin to a consolidation of the two lots and subsequent subdivision, consistent with the submissions of the Council.

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The third reason that I form the view that it is not a subdivision “by adjusting the boundary” is that the size of lot 200 is increased through the proposal so significantly that it is more than simply a slight or marginal adjustment to boundaries. Lot 200 would go from comprising 6.6% of the total site area to 50% of the total site area.

If the application cannot meet the test of ‘boundary adjustment’ there does not appear to be any avenues to pursue the application. As noted in this report, there remains a number of other significant matters that have resulted in a recommendation not to support the application, including the considerations of Clause 4.1E as discussed below.

The provisions of the clause are (underlining used for emphasis):

(3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resulting lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that—

(a) the subdivision will not create additional lots or the opportunity for additional dwellings, and

(b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will remain the same as before the subdivision, and

(c) the potential for land use conflict will not be increased as a result of the subdivision...

The applicant was requested to provide additional justification in relation to this clause. The applicant’s response relates to existing ‘dwelling entitlements’. This terminology is not used in Clause 4.1E, but rather ‘the opportunity for additional dwellings’. The inference to a dwelling entitlement from the applicant relates to Clause 4.2B, which would facilitate a dwelling on the future allotments if created. It is noted that should the proposed lots be created, that Clause 4.2B may facilitate future dwellings. However the test of Clause 4.1E is reiterated – whether the boundary adjustment will create the opportunity for additional dwellings.

In order to consider this test, an analysis of whether the existing allotments currently have the opportunity for future dwellings, particularly noting that the existing allotments have significant flood constraints. This has been detailed further below in Table 2.

Table 2: Summary of existing allotment flooding status

<u>LOT REFERENCE</u>	<u>EXISTING CONSTRUCTED DWELLING</u>	<u>FLOOD STATUS</u>
Lot 2 in DP 12579	No	<p>Completely impacted by ‘High Hazard Floodway Area’.</p> <p>Council previously refused a development application for a dwelling on this allotment (DA 16-2013-727-1). The dwelling was refused as the subject land is located entirely in the Floodway and Excessive Depth Floodplain Management Zone. Due to the risk associated with velocities and/or depth which pose a risk to structures and/or the safety of persons the land was deemed unsuitable for residential development.</p>

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Lot 3 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 4 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 5 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 6 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 7 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 8 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 9 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 10 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 11 in DP 12579	No	Completely impacted by 'High Hazard Floodway Area'
Lot 4 in DP10074	Yes	Majority of allotment impacted by 'High Hazard Floodway Area'. Existing dwelling appears to be located outside of the floodway area.
Lot 7 in DP10074 –	Yes	Majority of allotment impacted by 'High Hazard Floodway Area'. Existing dwelling appears to be located outside of the floodway area.
Lot 579 in DP 1209777	No	Majority of allotment impacted by 'High Hazard Floodway Area'.
Lot 580 in DP 1160616	Yes	Lot appears to be outside of the flooding mapping.

As detailed above, 10 of the existing lots are completely impacted by 'High Hazard Floodway Area'. B5.6 of the Port Stephens Development Control Plan (DCP) 2013 states the following:

B5.16 Development other than farm buildings and/or fill is not supported on land identified as either low hazard floodway or high hazard floodway.

Therefore, if a development application was lodged for these existing allotments, a dwelling would not be supported on flooding grounds. In this regard, at least 10 existing lots appear to not have any existing opportunity for a dwelling. The proposal by virtue of creating additional flood free

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allotments therefore creates the 'opportunity for additional dwellings', and therefore does not satisfy the test for Clause 4.1E (3)(a) and (3)(b).

Notwithstanding that the proposal is not considered to meet the above test, the remaining provisions of Clause 4.1E (3) and (4) are also responded to below in Table 3.

Table 3: Consideration of Clause 4.1E of the LEP

CLAUSE REFERENCE	ASSESSMENT COMMENT
<i>4.1E(3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resulting lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that—</i>	
<i>(c) the potential for land use conflict will not be increased as a result of the subdivision, and</i>	The proposal has not satisfactorily demonstrated that this test is satisfied. Land use conflict between rural and rural residential uses may occur with the creation of additional dwelling opportunities. This is elaborated further throughout this assessment.
<i>(d) in relation to land in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone RU3 Forestry—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and</i>	The proposal has not provided sufficient information that this test is satisfied. Land use conflict between rural and rural residential uses may occur with the creation of additional dwelling opportunities, which may impact on the ability for the adjoining lands to be used agriculturally. Additionally, the footprint of the smaller proposed allotments is located on land which currently can be used for agricultural purposes. This is elaborated further throughout this assessment.
<i>(e) in relation to land in Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living—the subdivision will result in the continued protection and long-term maintenance of the land.</i>	Not applicable to RU1 zoned land.

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4.1E(4) In determining a development application for the subdivision of land under this clause, the consent authority must consider the following—	
<p>a) <i>the existing uses and approved uses of other land in the vicinity of the subdivision,</i></p>	<p>The proposal has not provided sufficient information to satisfy the requirements of Clause 4.1E(4). The proposal has not adequately considered existing surrounding uses and the compatibility with adjoining land. As discussed throughout this assessment, the proposal is not within the character of the land and is considered likely to result in land use conflict between the existing rural lands used for agricultural purposes, and the envisaged residential development. Furthermore, given the existing natural constraints for the site and surroundings, the proposal is not considered compatible with the land.</p> <p>The proposal has not provided sufficient information to satisfy the requirements of Clause 4.1E(4)(a). The applicant was requested to provide a Land Use Conflict Risk Assessment (LUCRA), but to date this study has not been provided. Potential land use conflicts that would need further consideration include:</p> <ul style="list-style-type: none"> - Air quality due to agricultural and rural industry (odour, pesticides, dust, smoke and particulates) - Use and enjoyment of neighbouring land e.g. Noise from machinery - Visual amenity associated with rural industry - Harassment of livestock from domestic animals - Impacts between future dwellings and Wallalong House <p>Based on the available information, it is considered likely that the proposal will result in the fragmentation of rural land and will result in detrimental impact to the existing surrounding agricultural uses.</p> <p>This is elaborated further throughout this report.</p>
<p>b) <i>whether the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,</i></p>	<p>The proposal has not provided sufficient information to satisfy the requirements of Clause 4.1E(4)(b). As above, the predominant and preferred land use in the vicinity is rural in nature.</p>

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	<p>The land proposed for Lots 1-9 is non-flood affected land which can currently be utilised in times of flooding and heavy rainfall to provide refuge for livestock. In this regard, the proposal may have significant impacts on the agricultural viability of surrounding rural land.</p> <p>This is elaborated further throughout this report.</p>
c) <i>whether the subdivision is likely to be incompatible with a land use on any adjoining land,</i>	<p>The proposal has not provided sufficient information to satisfy the requirements of Clause 4.1E(4)(c). As above, the predominant and preferred land use in the vicinity is rural in nature. The applicant has also been requested to provide a Heritage Impact Assessment in relation to the potential additional dwellings to be facilitated on Lots 1-9, and the impacts on Wallalong House.</p> <p>This is elaborated further throughout this report.</p>
d) <i>whether the subdivision is appropriate having regard to the natural and physical constraints affecting the land,</i>	<p>As noted above, the proposed subdivision is likely to have impacts on flood refuge for livestock.</p>
e) <i>whether the subdivision will alienate water resources or access to water for agriculture,</i>	<p>No known impacts are envisaged, however it is noted that the requested LUCRA would provide further information for consideration.</p>
f) <i>whether the subdivision is likely to have a significant adverse impact on the environmental values of the land.</i>	<p>The proposal has not provided sufficient information to satisfy the requirements of Clause 4.1E(4)(f). The applicant has been requested to provide a Heritage Impact Assessment, visual impact assessment and additional information in relation wastewater management.</p>

Clause 4.3 – Height of Buildings

There is no maximum height of building provision applicable to the site under the PSLEP.

Clause 5.10 – Heritage conservation

The site is located immediately adjacent to Lot 577 of DP864399 (76 Wallalong Road, Wallalong), which is identified in LEP 2013 as a Heritage item of local significance, namely I107 - “Wallalong House”, including stables, outbuildings, gardens and landscape setting’. Located further east is heritage item I105 “Wallalong/Bowthorne War Memorial” which is of local significance. An Aboriginal Heritage Information Management System (AHIMS) search complete on 20 March 2023 found one (1) Aboriginal site recorded in or near the site location.

The applicant was requested to provide a Heritage Impact Assessment and Visual Impact Assessment for the proposed development to identify potential impacts of the proposal on nearby items of significance. Specifically, consideration of the impact of future dwellings on proposed allotments 1-9 was requested, noting that these lots are located in close proximity to Wallalong House. The location of these allotments, and their future dwellings are anticipated to have

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significant visual impacts to the rural outlook currently available to Wallalong House and associated curtilage. The rural vistas and views to the river are anticipated to form part of the heritage significance of Wallalong House. However, as noted, there is insufficient information included in the application to undertake more of a detailed assessment in this regard.

As previously noted in this report, an Aboriginal Due Diligence Assessment was requested to assess the potential impact to Aboriginal sites surrounding the proposal area. This information has also not been provided at the date of writing this report.

Insufficient information has been provided, and therefore impacts to Aboriginal archaeology, heritage items and curtilage cannot be appropriately assessed. Subsequently, the development is not considered to have met the objectives and requirements of this clause.

Clause 5.21 – Flood Planning

The objectives of this clause are to minimise flood risk to life and property and avoid significant adverse impacts on flood behaviour and the environment, while allowing development on land that is compatible with the flood hazard.

Flooding constraints in relation to the existing allotments have been previously detailed in this report, in relation to the interpretation of Clause 4.1E.

It is noted that in relation to the proposed subdivision design, it is the applicant's intent to redesign the existing subdivision pattern to create flood free 'rural residential' lots for future dwellings. In this regard, the smaller 'rural residential' lots (Proposed Lots 1-9) are not affected by any flood restrictions and the accesses proposed are also free from any flood requirements.

In relation to the larger proposed allotments, proposed Lot 11 and 12 will be wholly identified as a 'High Hazard Flood Area' and the majority of proposed Allotment 10. Accordingly, there appears to be no reasonable potential for residential use of these allotments, and the intent of these allotments is unknown. To give further weight to the flood hazard constraints of the site, Council previously refused a development application for a dwelling on existing Lot 2 DP12579 (DA 16-2013-727-1). The dwelling was refused as the subject land is located entirely in the Floodway and Excessive Depth Floodplain Management Zone. Due to the risk associated with velocities and/or depth which pose a risk to structures and/or the safety of persons the land was deemed unsuitable for residential development. It was determined that a residential mound and dwellings on this site cannot be supported as it increases exposure of property and life to flood risk and add to a cumulative negative social impact due to the additional pressure (and risk) placed on emergency services during flooding events.

Significantly, in relation to flooding and the future agricultural viability of the overall land holdings, it is noted that the proposed 'rural residential' lots would significantly reduce the flood free area of the existing holdings, therefore removing flood refuge for livestock.

Additionally, the proposal has potential to create flooding impacts to existing surrounding lots given that insufficient water management arrangements have been provided.

Requests for additional information were made to the applicant, and the requested additional information was not provided at the date of writing this report. Accordingly, insufficient information is available to complete the assessment of the application and confirm the suitability of the site for the proposal.

Clause 7.1 – Acid Sulfate Soils

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject land is mapped as containing potential Class 1, 3, 4 and 5 acid sulfate soils. The majority of impact as a result of the proposal are anticipated to occur in the Category 5 area. However works may be required on other areas of the

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site, including potentially Class 3 land, wherein any works more than 1 metre below the natural ground surface requires additional consideration.

The development application does not consider ASS in detail, stating 'no earthworks are proposed'. The applicant was requested to provide further clarification in relation to required earthworks, associated with the construction of the driveway and drainage, in addition to any servicing upgrades that may need to occur as a result of the subdivision. Insufficient information was provided by the applicant, therefore the requirements of Clause 7.1 have not been satisfied. Based on the available information, it cannot be determined whether the proposed development will disturb, expose or drain acid sulfate soils and cause environmental damage.

Clause 7.2 – Earthworks

The objectives of Clause 7.2 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The creation of Lots 1-9 requires the construction of the driveway and drainage works, in addition to any servicing upgrades that may need to occur as a result of the subdivision. Additional clarification in relation to servicing and water management on the site was requested from the applicant, and would need further consideration, if provided by the applicant.

An Aboriginal Due Diligence Assessment was requested to assess the potential impact to Aboriginal sites surrounding the proposal area. This information has also not been provided at the date of writing this report.

Based on the available information, it cannot be determined whether the proposed development will create the potential for adverse impacts on drainage patterns or waterways, or whether it will disturb relics, therefore the requirements of Clause 7.2 have not been satisfied.

Clause 7.6 Essential Services

The objective of Clause 7.6 is to ensure essential services are available, or that adequate arrangement have been made to make them available when required. Development consent must not be granted to development unless the consent authority is satisfied that adequate arrangements have been made for services, including the disposal and management of sewage and stormwater drainage.

Based on available information, it is likely that the proposal could satisfy the provisions of this clause, however additional clarification in relation to servicing, water management and OSSM on the site was requested from the applicant, and requires further consideration. As insufficient information has been provided by the applicant, the requirements of Clause 7.6 have not been satisfied.

Clause 7.8 – Drinking Water Catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

The proposed development is located within a drinking water catchment and accordingly the requirements of this clause apply. Numerous waterways are contained within the site, which drain to the Paterson River. The development proposal currently includes insufficient information to demonstrate acceptable impacts to water quality, therefore it cannot currently be deemed to satisfy the objectives of this clause.

Clause 7.9 – Wetlands

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The proposal is located on land partially mapped as wetland. The application has been assessed by Councils Natural Resources Officer who has determined that the development is unlikely to impact the flora and fauna of the wetland. However, the development proposal currently includes insufficient information to demonstrate acceptable impacts to water quality and potential impacts to wetland functions and processes, therefore it cannot currently be deemed to satisfy the objectives of this clause.

Clause 7.10 – Williams River Catchment

The proposed development is located on land within the Williams River Catchment. The proposal includes an on-site stormwater quality management system and the use of erosion and sedimentation controls to protect the environmental quality of the Williams River. However, the development proposal currently includes insufficient information to demonstrate impacts to water quality are acceptable, therefore it cannot currently be deemed to satisfy the objectives of this clause.

Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft EPI's relevant to the proposed development.

Section 4.15(a)(iii) – any development control plan**Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter B1 Tree Management

This part of the DCP applies to the removal or pruning of trees or other vegetation within non-rural areas. It is noted in the submitted Statement of Environmental Effects states all mature trees on site are to be retained. The applicant was requested to provide further information in relation to servicing and wastewater management, which if received would need to be considered in relation to any potential associated tree removal.

Chapter B2 – Natural Resources

The site contains land mapped as wetlands. No koalas are recorded on site. The development proposal currently includes insufficient information to demonstrate acceptable impacts to water quality and potential impacts to wetland functions, therefore it cannot currently be deemed to satisfy the objectives of this chapter.

Chapter B3 – Environmental Management**Acid Sulfate Soils**

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed site contains Clause 1, 3, 4 and 5 Acid Sulfate Soils and insufficient information was provided by the applicant to satisfy the requirements of this Chapter.

Noise

Future applications for dwelling houses in close proximity to Wallalong House may need to consider noise attenuation, noting the use of the site as an event venue. The impacts of the

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development during construction could be limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regard to noise management.

Chapter B4 – Drainage and Water Quality

Engineering Plans were submitted with the application. Two grassed swales are proposed to divert water away from the site, but no water quality treatment is proposed. There is also no water capture from the proposed subdivided lots. The Paterson River is mapped as coastal use and coastal environment areas. Water quality was requested to be addressed; however, detail on water quality management has not been provided at the date of writing this report.

Public scale drainage is not adequate for this development type and further details in accordance with B4 Drainage and Water Quality requirements are required. The system will need to detail how each lot will drain through to public network or inter-allotment arrangements where a lot does not drain directly to the road kerb and how the proposed system will cater for 1% AEP events. The requested additional detail on site drainage was not provided.

The proposal has provided insufficient information to address Chapter B4 of the PSDCP and accordingly, has not satisfied the requirements of this Chapter.

Chapter B5 – Flooding

Lots 2-11 of DP12579, the majority of Lot 4 & 7 of DP10074 and the majority of Lot 579 in DP1209777 are located in a High Hazard Floodway Area. Lot 580 of DP1160616 appears to be outside of flood mapping.

Flooding has been previously discussed in this report. It is reiterated that B5.16 of the Port Stephens Development Control Plan (DCP) 2013 states the following:

B5.16 Development other than farm buildings and/or fill is not supported on land identified as either low hazard floodway or high hazard floodway.

Noting the above, a dwelling would not be supported by Council on the existing lots identified as High Hazard Floodway Area.

Chapter B7 – Heritage

Heritage considerations have been previously discussed in this report under Clause 5.10 of the PSLEP. As noted, potential impacts to heritage items and curtilage have not been adequately addressed to enable a detailed assessment to be undertaken.

Chapter B8 – Road Network and Parking

Proposed Lots 1-9 are to be designed to have direct access from Clarence Street, while the remaining lots will have access from Clarence Town Road and Wallalong Road. The proposed access is considered satisfactory, subject to further details relating to detailed design.

The proposal is intended to facilitate future dwellings on proposed lots 1-9, which would create additional traffic movements, however it is anticipated that the existing road network will be able to accommodate the additional traffic. Notwithstanding, the applicant has not provided any information or traffic modelling to demonstrate if additional impacts will occur to the surrounding road network.

Chapter C – Development Types

Chapter C1 of the PSDCP is applicable, and is addressed below.

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Chapter C1 – Subdivision

Reference	Control	Assessment
Objective C1.A Requirement C1.1-C1.4	<p>All subdivision – lot size and dimensions</p> <ul style="list-style-type: none"> To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements. <p>All lots provide direct street frontage</p> <ul style="list-style-type: none"> Battle-axe lots are only considered when there is no practical way to provide direct street frontage Right of carriageway is constructed prior to the issuing of a subdivision certificate and is provided in accordance with Figure CB <ul style="list-style-type: none"> Alternative solutions are to be considered for lots created prior to the Local Environmental Plan, but only where safety is not impeded 	<p>Proposed Lots 1-9 do not meet the minimum subdivision lot size applicable to the site, and are relying on Clause 4.1E of the LEP.</p> <p>Existing easements exist across the site for right of way, water supply and electricity, however these are not identified on the proposed subdivision plan. A revised plan of subdivision was requested; however this detail was not provided at the date of writing this report.</p> <p>Under this chapter, battle-axe lots are only considered when there is no practical way to provide a direct street frontage..</p> <p>The proposed layout does not comply with the requirements of the maximum length of permitted battle-axe length. The proposal involves a battle-axe of approximately 317m, which exceeds the 200m maximum. In addition, the DCP specifies that a maximum of three rural lots are permitted in a battle-axe arrangement, and the proposal exceeds this, with 8 allotments only achieving street access via the proposed battle-axe.</p> <p>The applicant has not advised if the proposed access road is to be dedicated to Council or remain a private right of way. Clarification was sought from the applicant, however this information was not provided at the date of writing this report.</p> <p>At this stage it is not clear if garbage collection can be facilitated through the subdivision. It is assumed that future residents would need to transport bins to Wallalong Road, which is fails to provide suitable amenity for future residents and not a supported approach to waste management.</p>
Objective C1.B	All subdivision – street trees	Councils Natural Resources Officer requested a street tree planting plan be

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Requirement C1.5–C1.6	<ul style="list-style-type: none"> To ensure street tree planting is of an appropriate species and undertaken in accordance with Council's guidelines. 	provided as per Section C1.B of the DCP. Details of street tree planting have not been provided at the date of writing this report.
Objective C1.C Requirement C1.7	All subdivision - Solar Access <ul style="list-style-type: none"> To maximise solar access for residential dwellings 	No residential dwellings are proposed under the application. Noting the size of the proposed allotments, compliance with this requirement can be achieved.
Objectives C1.D Requirement C1.8-C1.10	All subdivision - Public Open Space <ul style="list-style-type: none"> To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the infrastructure specification – design (where relevant) 	Insufficient information regarding water quality treatment and water capture was provided. The requirements under this control have not been satisfied.
Objectives C1.E Requirement C1.11-C1.14	Major subdivision – block and street layout <ul style="list-style-type: none"> To ensure local streets are well-connected to the street network with obvious pedestrian and cycle links to higher order streets To ensure priority is provided to residents' needs when designing local streets to encourage usability. To ensure pathways follow desire lines 	<p>The DCP requires that all street components are integrated, such as kerbing, pavement type, width, street tree planting, footpaths, on road cycleway, shared paths, lighting and seating are provided. In addition, road widths need to accommodate the necessary movements of service and emergency vehicles.</p> <p>The proposed subdivision does not currently provide any footpaths or street trees.</p> <p>The number of allotments proposed to be accessed from a battle-axe arrangement is not a supported design having regard to the DCP requirements.</p>
Objective C1.F Requirement C1.15-C1.19	Major subdivision – public open space <ul style="list-style-type: none"> To provide a hierarchy of public open space in accordance with public open space hierarchy To provide parks that are multi-functional To ensure parks achieve centrality by being located near transport nodes, public buildings, waterfronts, libraries or places of public worship To ensure public open space meets the demands of the local community to encourage usability and critical mass 	Due to the nature of the proposed subdivision, it is unlikely that a public open space area would be required.

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Objective C1.G	Major subdivision – infrastructure	Additional information has been requested from the applicant, in relation to the provision of infrastructure.
Requirement C1.20 – C1.22	<ul style="list-style-type: none"> To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure 	Insufficient information is available for consideration in relation to stormwater drainage or the provision of footpaths and street trees.

Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no relevant regulations for prescribed matters that relate to the proposed development.

Section 4.15 (1)(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

Aboriginal Archaeology

An Aboriginal Heritage Information Management System (AHIMS) search complete on 20 March 2023 found one (1) Aboriginal site recorded in or near the site location. An Aboriginal Due Diligence Assessment has not been completed, therefore there is insufficient information to confirm potential impact to the significance of the identified site.

The Public Submissions also raised concern in relation to the potential significance of the land in this regard.

While the AHIMS search identifies an Aboriginal Site, it is noted there is no detailed information available to confirm that the remaining land would not have Aboriginal Items or Places of significance. In this regard, it is not considered acceptable to grant consent without the requested Due Diligence assessment and associated consultation with Registered Aboriginal Parties.

Fragmentation of rural land and future land use conflicts

No detailed consideration in relation to the potential impacts on rural land has been included in the submitted application. The proposal has the potential to fragment rural land, but also to create land use conflicts between future residential dwellings and agricultural uses.

The site is identified as State Significant Agricultural Land (SSAL) on the Draft SSAL Map prepared by the NSW Department of Primary Industries (see Figure 5). This includes the area proposed for Lots 1-9, see excerpt below. Accordingly, around 4 hectares of potential SSAL is impacted by the proposed subdivision. In addition, it appears that the proposal would result in the smaller lots being located on a flood free area of the existing holdings, therefore creating implications including the removal flood refuge area for livestock.

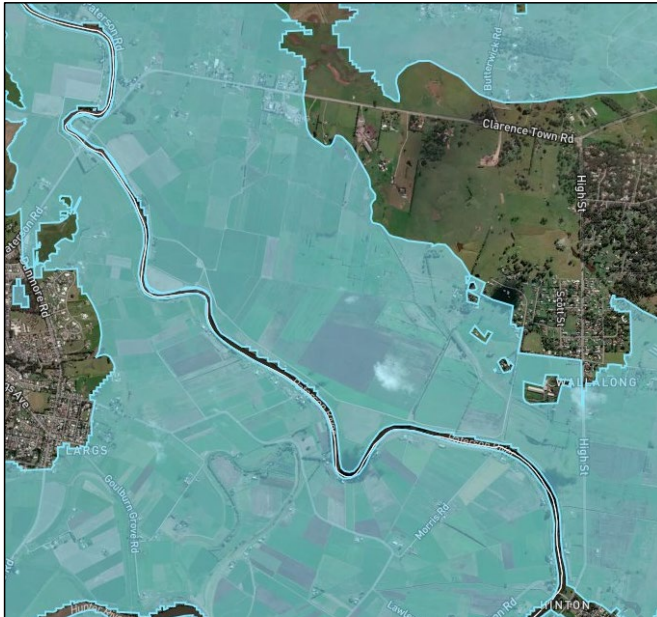


Figure 5 - Draft SSAL Map (Source: NSW Department of Primary Industries)

As noted previously, based on flooding, it is not considered likely that the majority of existing allotments would gain consent for a dwelling, due to the flooding constraints. Accordingly, the proposal will have the effect of creating additional dwellings in the locality, which has the potential to create land use conflicts. The Department of Industry and Investment Farm subdivision assessment guidelines provide detailed context in relation to the protection of agricultural land, and the applicant was requested to provide a response in this regard. No additional information has been provided by the applicant at the time of writing this report.

A Land Use Conflict Risk Assessment (LUCRA) was also requested, but to date has not been provided. Potential land use conflicts that would need further consideration include:

- Air quality due to agricultural and rural industry (odour, pesticides, dust, smoke and particulates)
- Use and enjoyment of neighbouring land e.g. noise from machinery
- Visual amenity associated with rural industry
- Harassment of livestock from domestic animals
- Impacts between future dwellings and Wallalong House

Based on the available information, it is considered likely that the proposal will result in the fragmentation of rural land and will result in detrimental impact to the existing surrounding agricultural uses.

It is noted that these matters were also raised in the Public Submissions.

Visual Impact

Any future development (i.e. dwellings) on Lots 1-9 have potential to result in visual impacts to:

- The adjoining heritage item (as noted above);
- Existing adjoining residents to the northeast/ east; and
- The rural character of the area when viewed from public spaces and roads.

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As previously noted in this report, insufficient information was provided to assess the potential visual impacts of the intended future development on Lots 1-9. Visual impacts of intended future development are anticipated to have significant impact to the existing visual amenity and rural character of the site and surrounding locality.

Social and Economic Impacts

Future dwellings on proposed Lots 1-9 are likely to be out of character with the area and would not adequately meet the objectives of the zone. As noted in the report, insufficient information is available to undertake a detailed assessment. In addition, the proposed development is likely to result in the fragmentation of rural lands. The future dwellings intended on Lots 1-9 have the potential to result in creating land use conflict between the existing agricultural use and future residential use. This therefore has the potential for adverse social and economic impact to existing surrounding agricultural uses.

Impacts on the Built Environment

The proposal does not involve the development of dwellings however, the intended future development of Lots 1-9 is for residential uses. The proposal has the potential to result in visual impacts to the existing adjoining heritage item, existing adjoining residents and the rural character of the area that have not been addressed in the application.

The proposal has not provided sufficient detail regarding works required for site access and servicing arrangements for the intended residential use of Lots 1-9. Council's Environmental Health Team requested further wastewater management details to confirm the proposed Lots (specifically 1-9) are adequately sized to treat and dispose of wastewater from residential dwellings. Insufficient information was provided and therefore the suitability of these arrangements could not be adequately assessed.

Impacts on the Natural Environment

The proposal would result in the smaller lots being located on a flood free area of the existing holdings, therefore creating implications including the removal flood refuge area for livestock.

Contaminated land investigations have not been provided, therefore it has not been determined whether the land is contaminated and suitable for the intended use.

Details of water quality treatment have not been provided. Numerous waterways occur on site which drain to Paterson River, therefore this detail is required to demonstrate there will be no adverse impacts on nearby waterways or marine ecosystems.

Section 4.15(1)(c) the suitability of the site for the development

The proposed development fails to satisfy the objectives contained of RU1 zoned land within the PSLEP. The proposal is out of character with the large rural lots currently located on site, has the potential to result in the fragmentation of rural land, and results in the loss of land currently utilised for agricultural purposes. The proposed sizes of Lots 1-9 do not meet the minimum requirements for subdivision applicable to the site under the PSLEP. The proposal may result in land use conflict between the existing rural land and proposed rural residential lots (Lots 1-9). The residential development is not considered compatible given the current circumstances of the land and surrounding areas, and may result in unacceptable impacts to the current agricultural use of the land. This directly contradicts the objectives of the zone to minimise conflict of land uses within the zone.

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In addition, insufficient information has been provided to assess potential impacts to surrounding heritage items and curtilage including an assessment against potential impacts to the Aboriginal site recorded near the site area and Wallalong House.

The applicant has failed to provide sufficient information to justify the proposed suitability of the proposal on the site, and how potential impacts to the existing character of the land will be reduced. In this regard, the site is not deemed suitable for the proposal.

Section 4.15(1)(d) any submissions made in accordance with this act or the regulations

Public Submissions

The application was exhibited from 29 March 2023 to 12 April 2023 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. Seven (7) objections were received during this time. The matters raised during the exhibition period have been detailed in the table below.

No.	Author of submission	Comment	Council response
1	Resident	Proposal out of character with the area.	The proposed development has the potential to create land use between future residential dwellings and existing agricultural uses.
2	Resident	Fragmentation and alienation of the rural land ('Pup lots')	Proposed Lots 1-9 have the potential to fragment the surrounding rural lands, as noted in this assessment report.
3	Resident	Increased flooding impacts/ stormwater runoff to existing development	The proposal has not adequately provided stormwater management strategies to reduce impact to existing development.
4	Resident	Biodiversity Impacts/ Loss of Habitat	Councils Natural Resources Officer found impact to existing biodiversity and wetlands is expected to be minimal.
5	Resident	Impact to Aboriginal Site or Place	The proposal is located in proximity Aboriginal and European heritage areas of significance. An adequate assessment against potential impact to heritage items or curtilage, including potential visual impact has not been provided.
6	Resident	Impact of increased Traffic Generation	Given the intent of the proposal is for residential use, the likely traffic generation is expected to be minimal.
7	Resident	Amenity Impacts (views and privacy) on existing nearby residential dwellings.	The proposal has the potential to impact views for existing surrounding residential development, the adjacent

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			heritage item and surrounding rural lands.
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Section 4.15(1)(e) the public interest

Matters pertaining to the public interest have been discussed within this report with refusal of the application considered to be in the public interest.

The development has not adequately justified the proposal is within the public interest, particularly in accordance with the applicable planning provisions and strategies. The proposal does not sufficiently consider the impacts on the rural landscape character of the site and surrounding context. The proposal results in smaller residential lots within an area characterised by large rural lots, which is inconsistent with the character of the area and may result in the fragmentation of rural land. This adversely impacts the surrounding agricultural land and may detrimentally impact the character and future use of this land.

As such, the objectives of the zone have not been met under the proposal. Furthermore, as the potential impacts to the identified Aboriginal Place and existing heritage items and curtilage has not been adequately considered by the applicant, it is unknown if the impacts will be detrimental in this regard.

Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)

Contributions do not apply as the subdivision will not create any additional allotments.

DETERMINATION

The application is recommended to be refused under delegated authority, subject to reasons for refusal provided as contained in the notice of determination.