



Ordinary Council

LATE REPORTS

Business Paper

date of meeting: Wednesday 16 August 2017

location: Council Chambers
17 Burrawan Street
Port Macquarie

time: 5.30pm

Community Vision

A sustainable high quality of life for all

Community Mission

Building the future together
People Place Health Education Technology

Council's Corporate Values

- ★ Sustainability
- ★ Excellence in Service Delivery
- ★ Consultation and Communication
- ★ Openness and Accountability
- ★ Community Advocacy

Community Themes

- ★ Leadership and Governance
- ★ Your Community Life
- ★ Your Business and Industry
- ★ Your Natural and Built Environment

How Members of the Public Can Have Their Say at Council Meetings

Council has a commitment to providing members of the public with an input into Council's decision making. The Council's Code of Meeting Practice provides two (2) avenues for members of the public to address Council on issues of interest or concern at the Ordinary Council Meeting.

These are:

- Addressing Council on an Agenda Item (if the matter **is** listed in the Council Business Paper)
- Addressing Council in the Public Forum (if the matter **is not** listed in the Council Business Paper)

You can request to address Council by completing the:

- 'Request to Speak on an Agenda Item' form
- 'Request to Speak in the Public Forum' form

These can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.

Requests can also be lodged on-line at:

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-on-an-Agenda-Item>

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-and-Committee-Meetings/Request-to-speak-in-a-Public-Forum>

Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.

- Council will permit no more than two (2) speakers 'in support of' and two (2) speakers 'in opposition to' the recommendation on any one (1) Agenda Item.
- A maximum of five (5) speakers will be heard in the Public Forum.
- There is no automatic right under legislation for the public to participate in a Meeting of Council or a Committee of Council.
- For a member of the public to be considered to address Council they must agree to strictly adhere to all relevant adopted Council Codes, Policies and Procedures at all times.
- Consideration of items for which requests to address the Council Meeting have been received will commence at 5:30pm.
- When your name is called, please proceed to the Council Table and address Council.
- Each speaker will be allocated a maximum of five (5) minutes to address Council. This time is strictly enforced.
- Councillors may ask questions of a speaker following an address. Each answer, by the speaker to a question, is limited to two (2) minutes. A speaker cannot ask questions of Council.
- An Agenda Item will be debated by Council following the address.
- Council will not determine any matter raised in the Public Forum session, however Council may resolve to call for a future report.
- If you have any documentation to support your presentation, provide two (2) copies to Council by 12 noon on the day of the Meeting.
- If a speaker has an audio visual presentation, a copy of the presentation is to be provided to Council by 12 noon on the day of the Meeting.
- The following will **not** be considered in the Public Forum (in accordance with the Code of Meeting Practice, clause 2.14.14):
 - Proposed or current development and rezoning applications and related matters.
 - A third (3rd) or subsequent application by a single member of the public to address Council on the same issue in the same calendar year. Council, at its discretion, may elect to exempt representatives or members of community groups from this restriction.
 - Any formal procurement process, contract negotiation or dispute resolution being undertaken.
 - Any matter the General Manager (or their delegate) considers inappropriate for discussion in the Public Forum.
- Council accepts no responsibility for any defamatory statements made by speakers.
- Members of the public may quietly enter and leave the Meeting at any time.

Ordinary Council Meeting

Wednesday, 16 August 2017

LATE REPORTS

Items of Business

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	Your Natural and Built Environment.....	<u>5</u>
12.09	DA2016 - 53.1 and PP2016 - 3.1 Planning Proposal and 2 into 5 Lot Subdivision, Lot 15 DP 1099742 And Lot 7 DP 1142473, No. 40 Reading Street, Port Macquarie	<u>6</u>

4 Your Natural and Built Environment

What we are trying to achieve

A connected, sustainable, accessible community and environment that is protected now and into the future.

What the result will be

We will have:

- Effective management and maintenance of essential water, waste and sewer infrastructure
- A community that is prepared for natural events and climate change
- Sustainable and environmentally sensitive development outcomes that consider the impact on the natural environment
- Accessible transport network for our communities
- Infrastructure provision and maintenance that meets community expectations and needs
- Well planned communities that are linked to encourage and manage growth
- Accessible and protected waterways, foreshores, beaches and bushlands
- An environment that is protected and conserved for future generations
- Renewable energy options that are understood and accessible by the community

How we will get there

- 4.1 Provide (appropriate) infrastructure and services including water cycle management, waste management, and sewer management
- 4.2 Aim to minimise the impact of natural events and climate change, for example, floods, bushfires and coastal erosion
- 4.3 Facilitate development that is compatible with the natural and built environment
- 4.4 Plan for integrated transport systems that help people get around and link our communities
- 4.5 Plan for integrated and connected communities across the Port Macquarie-Hastings area
- 4.6 Restore and protect natural areas
- 4.7 Provide leadership in the development of renewable energy opportunities
- 4.8 Increase awareness of issues affecting our environment, including the preservation of flora and fauna



Item: 12.09

Subject: DA2016 - 53.1 AND PP2016 - 3.1 PLANNING PROPOSAL AND 2 INTO 5 LOT SUBDIVISION, LOT 15 DP 1099742 AND LOT 7 DP 1142473, NO. 40 READING STREET, PORT MACQUARIE

Report Author: Matt Rogers

Applicant:	R G Little
Owner:	R G & A L Little, and N M Xavier
Estimated Cost:	\$70,000
Parcel no:	49486 and 58969

Alignment with Delivery Program

4.3.1 Undertake transparent and efficient development assessment in accordance with relevant legislation.

RECOMMENDATION

That Council:

1. Take the necessary steps under sections 58 and 59 of the *Environmental Planning and Assessment Act 1979* to finalise *Local Environmental Plan 2011 (Amendment No 41)* as attached.
2. Enter into the Reading Street Environmental Land Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* between Port Macquarie-Hastings Council and Ronald Gordon Little and Adele Lillian Little.
3. Having regard to the assessment in this report of DA2017-53, for a subdivision at Lot 7 DP 1142473 and Lot 15 DP 1099742 (No. 40) Reading Street, Port Macquarie, delegate to the General Manager the determination of the development application upon the commencement of *Local Environmental Plan 2011 (Amendment No 41)*.
4. Thank in writing all those who made a submission for their contribution and provide information on Council's decision on the matter.

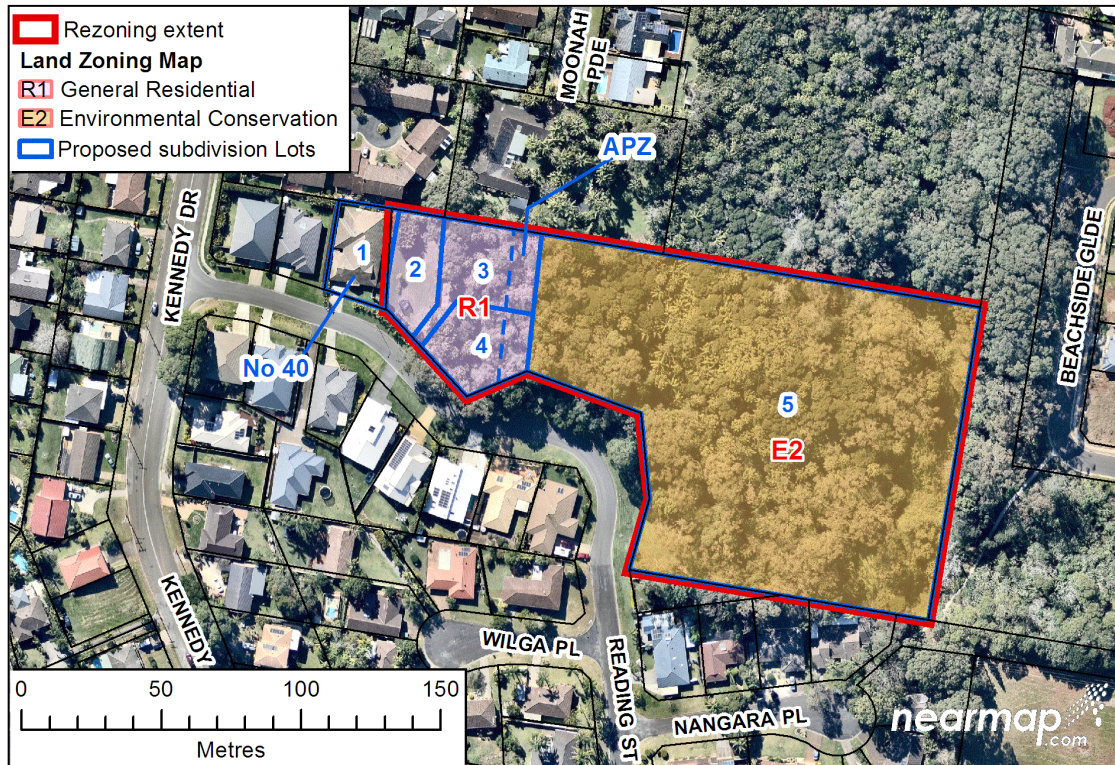
Executive Summary

This report considers:

- proposed amendments to the LEP 2011 mapping for Lot 7 Reading Street,
- an associated Voluntary Planning Agreement relating to the proposed dedication of environmental management land to Council, and

- an associated development application for a 2 into 5 lot subdivision at the subject site and provides an assessment of the applications in accordance with the Environmental Planning and Assessment Act 1979.

The proposed zonings and subdivision layout are shown on the following plan.



The proposal has been lodged as a joint Planning Proposal and Development Application in accordance with Part 3, Division 4B of the Environmental Planning and Assessment Act 1979. The subdivision proposed in the development application can only be carried out if the Port Macquarie-Hastings Local Environmental Plan 2011 (LEP) is amended as proposed in the Planning Proposal.

Council is required to determine the LEP amendments and the Voluntary Planning Agreement. The Development Assessment Panel has reviewed the development application in conjunction with those matters to provide advice to Council as part of this process.

Determination of the development application will only be possible following the commencement of the amending LEP.

Following exhibition of the Development Application, Planning Proposal, and Planning Agreement, three submissions have been received.

The key issues are:

- Protection of the current environmental lands;
- Enhancement of ecological corridors between Sea Acres National Park and Wrights Creek;
- Consequential provision of alternate land zoned R1 General Residential.

The combined application was considered by Council's Development Assessment Panel on 9 August 2017, and it was resolved:

"That it be a recommendation to Council that Council:

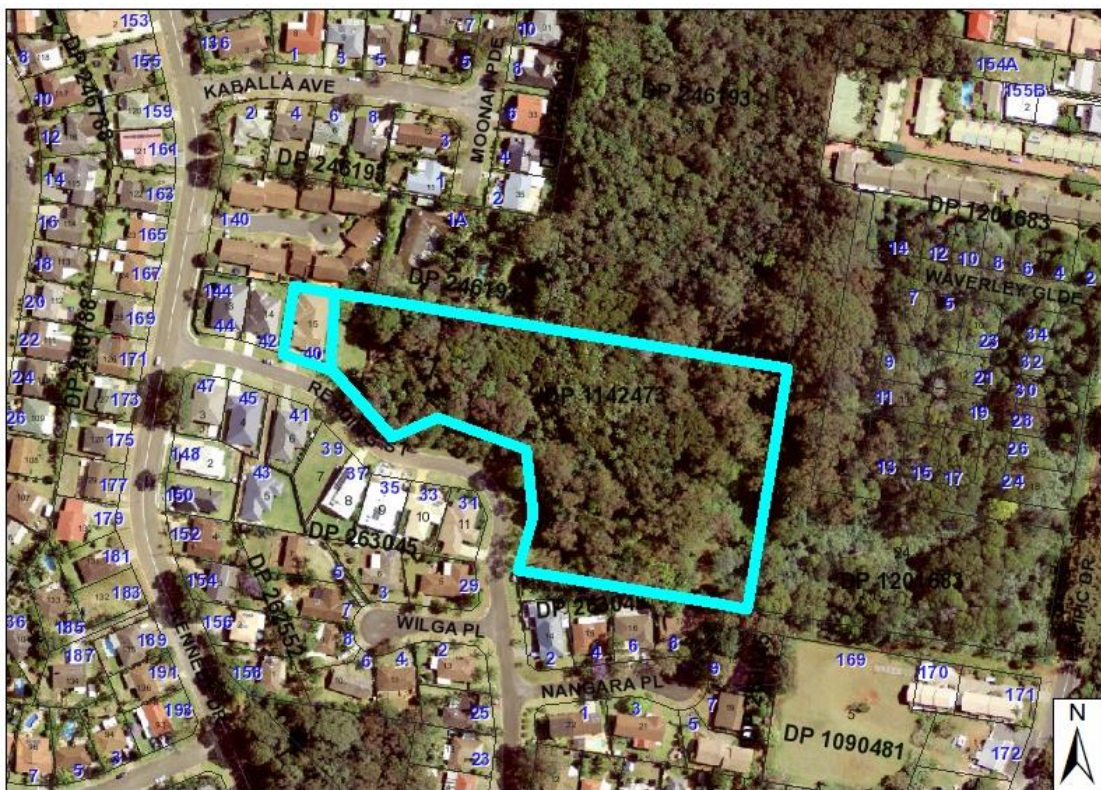
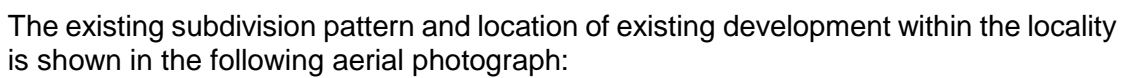
- 1. Take the necessary steps under sections 58 and 59 of the Environmental Planning and Assessment Act 1979 to finalise Local Environmental Plan 2011 (Amendment No 41) as attached.*
- 2. Enter into the Reading Street Environmental Land Planning Agreement under Section 93F of the Environmental Planning and Assessment Act 1979 between Port Macquarie-Hastings Council and Ronald Gordon Little and Adele Lillian Little.*
- 3. Having regard to the assessment in this report of DA2017-53, for a subdivision at Lot 7 DP 1142473 and Lot 15 DP 1099742 (No. 40) Reading Street, Port Macquarie, delegate to the General Manager the determination of the development application upon the commencement of Local Environmental Plan 2011 (Amendment No 41).*
- 4. Thank in writing all those who made a submission for their contribution and provide information on Council's decision on the matter."*

1. BACKGROUND

Existing sites features and surrounding development

The site has an area of 1.84 hectares.

The site is zoned R1 General Residential, RU6 Transition, and E2 Environmental Conservation in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:



The eastern Lot 7 is the residue of the staged subdivision of the northern section of Reading Street, Port Macquarie. It is on the upper reaches of Wrights Creek, and part of it is vulnerable to local flooding.

When residential zoning was first applied to this portion of Port Macquarie in 1980, most of what is now Lot 7 was zoned 6(b) Private Recreation. The area zoned 6(b) is now zoned E2 Environmental Conservation in *Port Macquarie-Hastings Local Environmental Plan 2011*.

The western 20m of Lot 7 provides a bushfire asset protection zone to Lot 15 (No 40), and is cleared and zoned RU6 Transition.

The south-eastern portion of Lot 7 has some flood-free land and is zoned R1 General Residential, though it does not have easy access to facilitate residential subdivision.

To the north is the vegetated Wrights Creek corridor, and to the east is a vegetated linkage to Sea Acres National Park. The vegetation on the eastern portion of Lot 7 has additional ecological value through the provision of connectivity between these 2 areas, where at present there is land zoned R1 General Residential.

The proposal seeks to preserve the vegetation on Lot 7, other than on the western side, where three residential lots are proposed.

The combined application documents are **Attachments**

- 1 Volume 1 Main Documents, including
 - Chapter 1 - LEP Amendment
 - Chapter 2 - Development Application
 - Chapter 3 - Voluntary Planning Agreement
 - Appendix A - (LEP) Gateway Determination
- 2 Volume 2, containing
 - Appendix B – (LEP) Consistency with applicable State Environmental Planning Policies
 - Appendix C – (LEP) Consistency with applicable Section 117 Ministerial Directions
 - Appendix D – Voluntary Planning Agreement document
 - Appendix E – Public Authority comments
 - Appendix F – (DA) Statement of Environmental Effects
- 3 Volume 3 Appendix G - Bush Fire Assessment
- 4 Volume 4 Appendix H - Aboriginal Cultural Heritage Assessment
- 5 Volume 4 Appendix I - Statutory Ecological Assessment

2. PROPOSED AMENDMENTS TO THE LOCAL ENVIRONMENTAL PLAN

The objectives of the LEP amendments are:

- to enhance the value of the environmental conservation land through long term protection of the ecological corridor between Sea Acres National Park and Wrights Creek, and
- to provide offset land zoned Residential.

The LEP amendments involve changes to:

- Land Zoning Map (current zoning is shown under Background, and proposed in Executive Summary)
- Lot Size Map (to align with Land Zoning Map)
- Floor Space Ratio Map (to align with Land Zoning Map).

Additional benefits are:

- a net increase in land zoned E2 Environmental Conservation of 1200m²;
- a simpler and more affordable subdivision of 3 Residential lots.

This does involve the removal of an E2 zone over 1850m² towards the western end of Lot 7, which has been raised in some submissions, though this is replaced with 3050m² of E2 zone in the southeast corner, where it is considered to enhance an ecological corridor.

The ecological assessments have given greater environmental value to the eastern area, even in a current degraded condition. This is due to its integrated location within an ecological corridor and conservation with bushland management will make the whole corridor more robust. The western area is a side offshoot of the main ecological corridor, and assessment of the species within it does not identify any grounds to favour this area over the eastern area.

3. PROPOSED VOLUNTARY PLANNING AGREEMENT

Council has received an offer to enter into a Voluntary Planning Agreement (VPA) in connection with the Development Application.

The Planning Agreement provides for dedication free of cost to Council of 1.497 hectares of environmental land as a public reserve. The land is identified as Lot 5 in the proposed plan of subdivision and dedication of the land would be required to take place on registration of the first plan of subdivision for the development.

A copy of the draft Planning Agreement is attached to this report (Attachment 2 Appendix D).

Public notification of the draft Planning Agreement was carried out jointly with the Planning Proposal and Development Application between 14 June 2017 and 12 July 2017, including a notice in the local newspaper. Following exhibition three (3) submissions were received. However, the submissions related to the Planning Proposal and Development Application and did not raise any issues in relation to the Draft VPA.

It is recommended that Council proceed to enter into the Planning Agreement.

4. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- 2 into 5 lot subdivision including 4 residential lots and a proposed public reserve.

Refer to attachments at the end of this report.

Development Application Chronology

- 4 February 2016 – Application lodged as joint Planning Proposal and Development Application.
- 6 April 2016 – Additional information requested from Applicant.
- 10 April 2016 – Additional information submitted by Applicant.
- 19 April 2016 – Owner's consent granted for proposed creation of easement to drain water over Lot 36 DP 246193.
- 19 October 2016 – Site inspected by assessing officers of Development Application and Planning Proposal with Office of Environment and Heritage.
- 28 November 2016 – Comments received from NSW Office of Environment and Heritage.
- 7 December 2016 – Bush Fire Safety Authority issued by the NSW Rural Fire Service.
- 6 June 2017 – Aboriginal culture heritage assessment received.
- 14 June 2017 to 12 July 2017 – Public exhibition of Development Application, Planning Proposal, and Planning Agreement.
- 9 August 2017 – Combined Planning Proposal and Development Application considered by Development Assessment Panel.

5. STATUTORY ASSESSMENT

Section 79C(1) Matters for Consideration

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

- (a) **The provisions (where applicable) of:**
(i) **any Environmental Planning Instrument:**

State Environmental Planning Policy No. 44 - Koala Habitat Protection

With reference to clauses 6 and 7, the subject land has is greater than 1 hectare (including any adjoining land under same ownership) and therefore the provisions of SEPP must be considered.

An Ecological Assessment prepared by Naturecall Environmental has been submitted with the application. The report includes consideration of SEPP 44 in Part 5.0. The author identified that only a single primary food tree listed in Schedule 2 of the SEPP (a Swamp Mahogany) was present on the site. Therefore, the land does not qualify as potential koala habitat, due to Schedule 2 food trees comprising less than 15% of canopy trees on the site.

The report notes that there was a koala reported to have been sighted on the property approximately 8 months earlier. However, further consideration of the SEPP is not required in accordance with clause 7(3)(a) despite this sighting.

State Environmental Planning Policy No. 55 – Remediation of Land

Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is suitable for the intended use.

State Environmental Planning Policy No. 71 – Coastal Protection and Clause 5.5 of Port Macquarie-Hastings Local Environmental Plan 2011

The site is located within a coastal zone noting clause 4 of the SEPP.

In accordance with clause 5, this SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

Having regard for clauses 2, 8 and 12 to 16 of the SEPP and clause 5.5 of the PMH LEP 2011, the proposed development will not result in any of the following:

- a) any restricted access (or opportunities for access) to the foreshore
- b) any adverse amenity impacts along the foreshore and on the scenic qualities of the coast;
- c) any adverse impacts on flora and fauna;
- d) the development being subject to any adverse coastal processes or hazards;
- e) any significant conflict between water and land based users of the area;
- f) any adverse impacts on any items of archaeological/heritage;
- g) reduction in the quality of the natural water bodies in the locality (due to effluent & stormwater disposal, construction impacts, landuse conflicts);
- h) adverse cumulative impacts on the environment;
- i) a form of development that is unsustainable in water and energy demands;
- j) development relying on flexible zone provisions.

Port Macquarie-Hastings Local Environmental Plan 2011

The proposal is consistent with the LEP as proposed to be amended having regard to the following:

- Clause 2.2, the subject site was zoned R1 General Residential, RU6 Transition, and E2 Environmental Conservation at the time of lodgement. The submitted proposal includes rezoning of the site to R1 on the western side to accommodate 4 residential lots, and E2 for the residue of approximately 1.497 hectares, which is intended to be dedicated to Council as a public reserve. This application cannot be determined until the amending LEP commences.

The objectives of the R1 and E2 zones are as follows:

R1 General Residential:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

E2 Environmental Conservation:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To protect coastal wetlands and littoral rainforests.
- To protect land affected by coastal processes and environmentally sensitive land.

- To prevent development that adversely affects, or would be adversely affected by, coastal processes.
- To enable development of public works and environmental facilities where such development would not have an overall detrimental impact on ecological, scientific, cultural or aesthetic values.

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:

- The proposal would provide additional residential lots to meet the housing needs of the community.
 - The development includes a variety of lot sizes that would provide for choice of housing type and density.
 - The development would conserve and protect ecologically significant land.
 - The proposal would improve long-term links with other habitat to the east of the site.
- Clause 4.1, the residential lot sizes within the proposed subdivision range from 694m² to 1096m². All proposed residential lots comply with the minimum lot sizes identified in the proposed amended Lot Size Map included with the Planning Proposal. Lot 5 in the proposed subdivision is intended to be dedicated to Council as a public reserve in accordance with a Planning Agreement. It is noted that the area of this lot (1.497 hectares) is slightly below the proposed 1.5 hectare minimum lot size shown on the proposed Lot Size Map. However, Clause 2.75(e) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 allows subdivision for the purpose of creating a public reserve to be carried out as Exempt Development without having regard to the LEP Lot Size Map.
 - Clause 5.5 - Development within the coastal zone - relevant objectives of this clause are addressed by SEPP 71 section (see above). Climate Change & Coastal Hazard implications addressed under Clause 7.3 below.
 - Clause 5.9 - The proposal includes removal/modification of approximately 1800m² of modified wet sclerophyll forest vegetation. See comments later in this report under Development Control Plan 2013 and Flora & Fauna sections.
 - Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
 - Clause 7.3, part of the site is land within a mapped “flood planning area” (land subject to flood discharge of 1:100 annual recurrence interval flood event, plus the applicable climate change allowance and relevant freeboard). In this regard the following comments are provided which incorporate consideration of the objectives of Clause 7.3, Council’s Flood Policy 2015, the NSW Government’s *Flood Prone Lands Policy* and the NSW Government’s *Floodplain Development Manual* (2005):
 - The proposal is compatible with the flood hazard of the land taking into account projected changes as a result of climate change;
 - The proposal will not result in a significant adverse effect on flood behaviour that would result in detrimental increases in the potential flood affectation of other development or properties;
 - The proposal incorporates measures to minimise & manage the flood risk to life and property associated with the use of land;
 - The proposal is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses;

- The proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding;

The flood affected part of the site is proposed to be located within the E2 land and all the residential allotments would be located above the flood planning level.

- Clause 7.13, satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development. Provision of electricity will be subject to obtaining satisfactory arrangements certification prior to the issue of a Subdivision Certificate as recommended by a condition of consent.

(ii) Any draft instruments that apply to the site or are on exhibition:

Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 41)

The Planning Proposal for LEP Amendment No 41 was publicly exhibited between 14 June 2017 and 12 July 2017.

In relation to the subject site, the draft instrument proposes the following changes, as detailed in the Figures 5 - 10 of the Planning Proposal:

- Change zoning applying to Lots 1 - 4 from RU6 and E2 to R1;
- Change zoning applying to Lot 5 from E2 and R1 to E2;
- Change minimum lot size applying to Lots 1 - 4 from 1800m² to 450m²;
- Change minimum lot size applying to Lot 5 from part 1800m² and part 450m² to 1.5 hectares;
- Change maximum floor space ratio applying to Lots 1 - 4 from no maximum to 0.65:1;
- Change maximum floor space ratio applying to Lot 5 from part 0.65:1 to no maximum.

1.

2. The submitted application is consistent with the draft LEP and relies upon the proposed amendments to zoning and the Lot Size Map. The Development Application cannot be determined until commencement of the amending LEP.

(iii) any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
3.6.3.2	Torrens title lots minimum width of 15m when measured at a distance of 5.5m from front property boundary.	Minimum 18m width for Lots 1, 2, 4, and 5. Lot 3 is a battleaxe lot and achieves minimum 15m width at distance of 5.5m from the end of the battleaxe handle.	Yes
	Minimum width of 7m when boundaries are extended to kerb line.	Lots 1, 2, 4, and 5 achieve minimum width of 7m. Lot 3 is a battleaxe lot with a 4.55m width at the kerb line. See further comments	Yes

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
		below regarding battleaxe lot.	
	Minimum depth of 25m.	Lot 4 has a minimum 23.4m depth on one side. All other lots achieve minimum depth.	No*
3.6.3.3	<p>Council may consider permitting Torrens Title battleaxe allotments for —infill development where it is demonstrated that;</p> <ul style="list-style-type: none"> • a Torrens Title lot, that is <i>not</i> a battleaxe lot, <i>cannot</i> be achieved; and • the number of crossovers do not reduce the amenity of the street or on street parking; and • the impact of noise, dust and headlights on the land owners adjoining the driveway is addressed by the construction of an acoustic fence for the full length of the driveway; and • addresses privacy between the rear lot and the rear open space of the front lot by the provision of adequate screening, larger lot size and setbacks; and • extends utilities to the end of the axe handle; and • there is sufficient space for garbage collection on the frontage. 	<p>It is not considered that an alternative lot layout could avoid a battleaxe lot, give the road geometry and environmental constraints at the site. The number of future crossovers in the frontage of the residential lots is considered reasonable and unlikely to significantly impact on street parking.</p> <p>Adequate privacy between the front and rear lot for future dwellings in achievable.</p> <p>Conditions recommended regarding acoustic fencing and services along battleaxe handle.</p>	Yes
3.6.3.4	Lots are to be designed to allow the construction of a dwelling, which does not involve more than 1m cut, or fill, measured from natural ground level, outside the dwellings external walls.	The land has minimal slope and future dwelling construction involving less than 1m of cut or fill is achievable.	Yes

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
	Lot sizes increased for sloping sites in accordance with Table 3.6.1.	The development complies with the minimum lot size and width requirements of slope Category A.	Yes
	Additional information provided for slope categories in accordance with Table 3.6.2.	No retaining walls proposed at subdivision stage.	Yes
3.6.3.6	Kerb and guttering, associated street drainage, pavement construction and foot paving across the street frontages should be constructed as part of the subdivision works where these do not exist (may be varied subject to criteria in this clause)	Existing kerb and gutter across street frontage. Condition recommended requiring concrete footpath for the full frontage of the residential lots.	Yes
3.6.3.20	Water supply to meet Council's design specifications.	See comments later in this report under Water Supply Connection.	Yes
3.6.3.21	All lots connected to reclaimed water if available.	Reclaimed water not currently connected to the site.	Yes
3.6.3.24	Separate sewer junction provided for each lot.	See comments later in this report under Sewer Connection.	Yes
3.6.3.27	Erosion and sediment control plan to be provided.	Condition recommended requiring erosion and sediment control plan as part of infrastructure Construction Certificate.	Yes
3.6.3.34	All service infrastructure should be underground unless otherwise approved by Council.	Condition recommended requiring certification of satisfactory arrangements for provision of utility services.	Yes
	All service infrastructure should be installed in a common trench.		
	Conduits for the main technology network system should be provided in all streets.		
	Conduits are to be installed in accordance with the National Broadband Network Company Limited's		

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
	<p><i>'Guidelines for Fibre to the Premises Underground Deployment'.</i></p> <p>Access pits are to be installed at appropriate intervals along all streets.</p>		
3.6.3.51	Street trees should be provided along all road frontages generally at a rate of 1 per 20m interval.	Condition recommended requiring details of landscaping (including street trees) on the construction plans.	Yes
	Street trees should not affect solar access.	Street trees would be located on the southern frontage of the lots and would not affect solar access.	Yes
3.6.3.52	Street trees from Council's list.	Condition recommended requiring details of landscaping (including street trees) on the construction plans.	Yes

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
2.7.2.2	<p>Design addresses generic principles of Crime Prevention Through Environmental Design guideline:</p> <ul style="list-style-type: none"> • Casual surveillance and sightlines • Land use mix and activity generators • Definition of use and ownership • Lighting • Way finding • Predictable routes and entrapment locations 	Development would create additional residential allotments, which would contribute to passive surveillance of the street.	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	None proposed.	Yes
2.3.3.6	Vegetated buffer for watercourses	The site includes first and second order streams. The streams have existing vegetated buffers, which would be preserved within the E2 zone.	Yes

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
2.3.3.8 onwards	Removal of hollow bearing trees (HBTs)	<p>The ecological assessment prepared by Naturecall Environmental identifies a total of 11 HBTs on the site, 4 of which are located on or adjacent to the proposed residential lots. The remainder of the 7 trees are located on the E2 land intended to be dedicated to Council.</p> <p>The ecological assessment scored the 4 trees potentially affected by the development 8-12 in accordance with Council's HBT assessment protocol. Therefore the trees may be considered for removal if management measures are 'impractical to allow retention' (determined by an arborist) subject to compensatory measures.</p> <p>The report indicates that trees H1 - H4 inclusive are intended to be retained and offsets are therefore not proposed.</p> <p>However, advice received from OEH during the agency consultation for the Planning Proposal, indicated that they considered the HBT assessment to be incorrect due to the location of the trees within habitat or linkages. The OEH assessment considers that trees H1-H4 should be scored between 12.5 and 14.</p> <p>On this basis the DCP requires that the four trees</p>	No, but acceptable

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
		<p>be retained and afforded a development exclusion buffer (radius 1.25 times the height of the tree) or located in environmental lands. The layout of the proposed subdivision does not provide for a development exclusion buffer and proposed Lots 3 and 4 would effectively be sterilised if such a buffer was applied.</p> <p>Appendix I of the Planning Proposal addresses the consistency of the proposal with objectives of this control. Variation of the development provision is considered satisfactory in this instance.</p> <p>It is noted that OEH have further recommended that the four HBT's be offset in accordance with 2.3.3.9 of the DCP. A condition is recommended requiring the developer to engage an arborist to remove all hollows from existing HBT's prior to felling the trees. The removed hollows are to be installed in suitable locations within the proposed public reserve in consultation with an ecologist and as agreed by Council.</p>	
2.6.3.1	Tree removal (3m or higher with 100m diameter trunk and 3m outside dwelling footprint)	<p>Approximately 1800m² of vegetation is proposed to be removed. None of the trees proposed to be removed are koala food trees listed in Table 2.6.1.</p> <p>Potential ecological impacts of the tree removal are</p>	Yes

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
		addressed later in this report under Flora and Fauna.	
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	
2.5.3.2	New accesses not permitted from arterial or distributor roads. Existing accesses rationalised or removed where practical	Access from local road.	Yes
2.5.3.11	Section 94 contributions	Refer to main body of report.	

The proposal seeks to vary Development Provision 3.6.3.2 in relation to the minimum lot depth.

The objectives of the provision are:

- To provide a range of lot sizes to suit a variety of dwelling and household types.
- To ensure the lot layout plan reflects the site's opportunities and constraints.

The proposal is considered to be consistent with the objectives for the following reasons:

- The lot is of irregular shape and essentially has two rear boundaries. The depth of the lot is variable, but it provides a minimum 15m wide section with at least 25m depth which would comply with the lot dimension requirements.
- The minor non-compliance at the side boundary alignment is not considered to compromise the suitability of the lot to accommodate a variety of dwelling types.

Based on the above assessment, the variations proposed to the provisions of the DCP are considered acceptable and the relevant objectives have been satisfied. Cumulatively, the variations do not amount to an adverse impact or a significance that would justify refusal of the application.

(iiia) any planning agreement that has been entered into under Section 93f or any draft planning agreement that a developer has offered to enter into under Section 93f:

Council has received an offer to enter into a Voluntary Planning Agreement (VPA) in connection with the Development Application.

The Planning Agreement provides for dedication free of cost to Council of 1.497 hectares of environmental land as a public reserve. The land is identified as Lot 5 in the proposed plan of subdivision and dedication of the land would be required to take place on registration of the first plan of subdivision for the development.

The submitted proposal is consistent with the terms of the offer and a condition is recommended confirming the requirement for the development to comply with the provisions of the Planning Agreement.

iv) any matters prescribed by the Regulations:

New South Wales Coastal Policy:

The proposed development is consistent with the objectives and strategic actions of this policy. See comments earlier under SEPP No. 71 - Coastal Protection.

v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)), that apply to the land to which the development application relates:

No Coastal Zone Management Plan applies to the subject site.

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

The site has a general southerly street frontage orientation to Reading Street.

Adjoining the site to the north is residential development and a public reserve. Adjoining the site to the east is a public reserve. Adjoining the site to the south and west are residential dwellings.

The proposal is considered to be compatible with other development in the locality and adequately addresses planning controls for the area.

The proposal does not have a significant adverse impact on existing view sharing.

The proposal does not have significant adverse lighting impacts.

There are no significant adverse privacy impacts. The proposed lot layout would allow for future dwellings to be constructed with adequate privacy.

There are no adverse overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.

Roads

The site has road frontage to Reading Street. Adjacent to the site, Reading Street is a sealed public road under the care and control of Council.

Traffic and Transport

This development proposes to create four residential allotments (one of which contains an existing dwelling) and is expected to generate an additional 27 daily trips. The addition in traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Site Frontage & Access

Due to the type and size of development, additional works are required to include concrete footpath paving (minimum 1.2m wide) along the full frontage. Refer to relevant conditions of consent.

Water Supply Connection

Council records indicate that the proposed development site has two existing metered water services from the 100mm PVC water main on the opposite side of Reading Street. The proposed servicing strategy is acceptable in principal.

A new metered water service will be required for each allotment as part of the Torrens Title Subdivision.

Sewer Connection

Council records indicate that the development site is connected to Sewer via a junction to a manhole located on the southern property boundary. The proposed servicing strategy is acceptable in principal. Detailed engineering plans are to be provided and owners consent is to be provided if applicable.

A separate sewer connection to Council's main is required for each Torrens Title lot.

Stormwater

The part of the site proposed for residential development naturally grades towards an existing stormwater detention basin to the south-east of proposed Lot 4.

A detailed site stormwater management plan will be required to be submitted for assessment with the S.68 application and prior to the issue of a CC. In accordance with Councils AUSPEC requirements, the following must be incorporated into the stormwater drainage plan:

- a) The legal point of discharge for the proposed development is defined as an interallotment drainage system.
- b) The design is to be generally in accordance with the stormwater drainage concept plan on Drawing No 9830 prepared by Frank O'Rourke & Associates Pty Ltd and dated 28 January 2016.
- c) All allotments must be provided with a direct point of connection to the piped drainage system. Kerb outlets are not permitted.
- d) The design requires the provision of interallotment drainage in accordance with AUSPEC D5. In this regard, the proposal to divert the existing interallotment drainage system around existing landscaping within proposed Lot 2 is an inefficient solution in that the proposal results in an unnecessary extent of encumbrance within the yard of that lot and a hydraulically inefficient solution. The proposed system should be realigned such that it runs parallel to the northern property boundary of Lot 2.
- e) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to pre development flow rates for all storm events up to and including the 100 year ARI event. Note that pre development discharge shall be calculated assuming that the site is a 'greenfield' development site as per AUSPEC requirements. As an alternative, where a single end of line solution is not considered feasible, on-site stormwater detention facilities may be incorporated into the design of the future dwellings to be constructed on each of the proposed allotments.

In this regard, if OSD facilities are proposed to be constructed as part of a future dwelling construction, a restriction / covenant must be placed on the title of each allotment at the time of subdivision requiring that OSD facilities be constructed

as part of any future building development to achieve site specific targets that comply with the above.

In this instance the CC plans must nominate the maximum permissible site discharge for each allotment.

- f) Where works are staged, a plan is to be provided which demonstrates which treatment measure/s is/are to be constructed with which civil works stage. Separate plans are required for any temporary treatment (where applicable e.g. for building phase when a staged construction methodology is adopted) and ultimate design.
- g) The design is to make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- h) The design shall provide details of any components of the existing stormwater drainage system servicing the site that are to be retained.

Other Utilities

Telecommunication and electricity services are available to the site.

Evidence of satisfactory arrangements with the relevant utility authorities for provision to each proposed lot will be required prior to Subdivision Certificate approval.

Heritage

No known items of European heritage significance exist on the property.

An Aboriginal cultural heritage assessment for the land has been prepared by J P Collins of Adise Pty Ltd.

The assessment considered heritage register searches, literature review, and cultural information disclosed by the senior sites officer of Birpai Local Aboriginal Land Council (LALC). On the basis of this review the study area does not contain registered or otherwise reported Aboriginal objects, nor is it known to contain or impinge upon any specific sites/places of special traditional, historic or contemporary social/cultural significance. No Aboriginal sites/objects were detected during the field survey.

The report concludes that on the basis of Aboriginal consultation, background information and the nil field survey result, it is concluded that the proposed rezoning and associated residential development on Lot 7 DP 1142473 should be allowed to proceed without further Aboriginal cultural heritage constraints, providing the following management recommendations are fully implemented.

- 1) *As part of the pre-start induction, all personnel engaged for initial development-related earthworks (including tree clearing) on proposed lots 2, 3 and 4 should be informed of their legal obligations with respect to Aboriginal objects, including 'stop-work' conditions applicable in the event that any identified or suspected Aboriginal objects are discovered at any time (Recommendation 3).*
- 2) *All personnel (including volunteers) engaged to undertake vegetation rehabilitation works on proposed lot 5 should be informed of their legal obligations with respect to Aboriginal objects, including 'stop-work' conditions*

applicable in the event that any identified or suspected Aboriginal objects are discovered at any time (Recommendation 3).

- 3) *In the event that any identified or suspected Aboriginal objects are detected at any time, all disturbance works should immediately cease within 20m of the find and temporary protective fencing erected around this 'no-go zone' pending further management advice from the OEH and the Birpai LALC. If the find consists of or includes human remains, the NSW Police Department and the OEH Environmental Line (ph 131 555) should also be notified as soon as practicable.*

Works may not recommence within the designated 'no-go zone' until formal written clearance to do so has been provided by the OEH and the Birpai LALC.

Conditions are proposed to incorporate the above requirements.

Other land resources

The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.

Water cycle

The proposed development will be unlikely to have any adverse impacts on water resources and the water cycle.

Soils

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction.

Air and microclimate

The construction and/or operations of the proposed development will be unlikely to result in any adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

Flora and fauna

The applicant has submitted an ecological assessment report prepared by Naturecall Environmental and dated August 2015. The report details the following impact that the proposal is likely to have:

- Loss/modification of approximately 1800m² of vegetation;
- Removal of threatened *Melaleuca biconvexa*;
- Direct mortality via clearing and habitat destruction;
- Erosion and sedimentation;
- Edge effects;
- Noise, vibration and anthropogenic disturbances;
- Fencing;
- Introduction of feral/introduced species.

The report addresses the requirements of the '7 part test' under Section 5A of the Act. The Naturecall Environmental report concludes that the proposal is unlikely to have any significant adverse impacts on flora and fauna subject to the following conditions which are recommended to form part of the consent.

- Clear identification of vegetation to be removed and protection of retained trees during construction.
- Educational signage in the APZs of proposed Lots 3 and 4 discouraging new residents from dumping garden clippings in the APZ area or public reserve.
- Restriction on access to the residual habitat including dense Lomandra planting and educational signage.
- Suitable erosion and sedimentation control measures to be implemented.
- Preparation of a Vegetation Management Plan.
- Koala proof fencing for new residential lots.

The Vegetation Management Plan recommended in the ecological assessment will not be required in this instance as the proposed public reserve would be subject to ongoing management by Council's Bushland Management Team.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

The proposed lot layout would provide for the construction of energy efficient dwellings.

Noise and vibration

No adverse impacts anticipated. Condition recommended restricting construction to standard construction hours.

Bushfire

The site is identified as being bushfire prone.

In accordance with Section 100B of the Rural Fires Act 1997 the application proposes subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes.

The applicant has submitted a bushfire report prepared by Krisann Johnson.

The Commissioner has assessed the development and has issued a Bushfire Safety Authority dated 7 December 2016. A condition is recommended incorporating the RFS requirements.

Safety, security and crime prevention

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The increase in housing density will improve natural surveillance within the locality.

Social impacts in the locality

Given the nature of the proposed development and its' location the proposal is unlikely to result in any adverse social impacts.

Economic impact in the locality

No adverse impacts. A likely positive impact is that the development will maintain employment in the construction industry, which will lead to flow impacts such as expenditure in the area.

Site design and internal design

The proposed development design satisfactorily responds to the site attributes and will fit into the locality. No adverse impacts likely.

Construction

No potential adverse impacts identified to neighbouring properties with the construction of the proposal.

Cumulative impacts

The proposed development is not expected to have any adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

Natural Hazards

See comments earlier in this report regarding flooding and bushfire hazards.

(c) The suitability of the site for the development:

The proposal will fit into the locality and the site attributes are conducive to the proposed development.

Site constraints have been adequately addressed and appropriate conditions of consent recommended.

(d) Any submissions made in accordance with this Act or the Regulations:

Three written submissions have been received following public exhibition of the application.

Key issues raised in the submissions received and comments in response to these issues are provided as follows:

Submission Issue/Summary	Planning Comment/Response
The loss of all biodiversity on the three created residential lots including the loss of 36% of the hollow bearing trees on the existing Lot 7. Proposed Zone R1 land contains suitable habitat for threatened species, and shouldn't be lost.	<p>The Statutory Ecological Assessment prepared by Naturecall Environmental includes a 7 Part Test as required under Section 5A of the <i>Environmental Planning and Assessment Act 1979</i> addressing the potential biodiversity impacts of the development. The assessment concludes that the proposal is not likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.</p> <p>The loss of hollow bearing trees is considered earlier in this report under</p>

Submission Issue/Summary	Planning Comment/Response
	the DCP provisions. The proposal is considered to be consistent with the DCP objectives in this instance, and conditions are recommended to ensure that the loss of habitat is satisfactorily offset.
Current Zone R1 land is constrained by poor access, is partial flood liable & degraded - poor exchange for western area.	<p>The constraints applying to the current R1 land are acknowledged. The current quality of habitat on this land is also agreed to be lower than that of the existing RU6 and E2 land on the western side of the site that is proposed to be developed.</p> <p>However, the higher value of the current R1 land is its connectivity to other habitat in the Sea Acres National Park to the east, which cannot be offered by the western area. The proposed public reserve is intended to be actively managed by Council's Bushland Management Team to restore its biodiversity values.</p> <p>Over time the ecological value of this land would outweigh that of the land intended to be developed on the eastern side of the site.</p>
Development of current Zone R1 land not economic to develop, so zoning change not necessary. Developer gets a free kick to realise commercial gain.	<p>The limitations of the current R1 land for development are noted. However, the current R1 zoning also provides opportunity for other types of development with and without consent, as well as private use and vegetation management opportunities that would prevent the land from naturally regenerating or serving any long-term function as a viable habitat corridor.</p> <p>While it is acknowledged that there is likely to be a financial benefit to the land owner from any rezoning and development consent for subdivision of the land on the eastern side of the site, the overall public benefit of securing an important environmental corridor is also considered significant.</p>
Loss of threatened Flora – Biconvex Paperbark (<i>Melaleuca biconvex</i>)	The Statutory Ecological Assessment prepared by Naturecall Environmental includes a 7 Part Test for this threatened flora as required under

Submission Issue/Summary	Planning Comment/Response
	Section 5A of the <i>Environmental Planning and Assessment Act 1979</i> . The assessment concludes that the proposed development would not adversely affect the viability of the local population or place the long-term survival of the local population at risk of extinction.
Not unusual to see koalas in the trees as they travel between habitat areas. Koala Hospital also releases koalas here. The loss of this vegetation will result in less refuge from dogs and cats.	It is understood that the Koala Hospital use the land as a release area for koalas due to its accessibility and connection to koala habitat in the Wrights Creek corridor. However, the site itself does not qualify as 'potential koala habitat' under SEPP 44 due to the type of vegetation present. The vegetation proposed to be removed adjoins residential land uses to the north, west, and south. It is considered that rehabilitation of the current R1 land on the eastern side of the site would provide better opportunities for koalas to take refuge from cats and dogs given the connection on two sides to other vegetation.
OEH found that the Ecological Assessment incorrectly failed to identify 4 Hollow-bearing trees that under Council's DCP should be retained in situ.	See comments under DCP section earlier in this report.
Council has not used the Biometric Assessment Tool (BET) as recommended by OEH.	Use of BET is optional, and would simply identify the amount of offset required. In this case, from experience, the area proposed to be conserved and managed by Council in perpetuity exceeds what BET would propose.
Informed when purchasing their land that the reserve would never be rezoned for building blocks.	It is not clear from the submission whether the advice was claimed to be provided by Council or a real estate agent. Zoning advice can only be provided based on existing or proposed environmental planning instruments, and it is noted that these can change over time.
Area proposed for development can be extremely damp.	See comments under Stormwater earlier in this report. The developer will be required to provide a detailed stormwater management plan as part of

Submission Issue/Summary	Planning Comment/Response
	the Construction Certificate/Section 68 applications.
<p>As a professional ecologist, over 12 years have undertaken detailed assessments of the importance of this Regional Corridor that represents the last remaining link between Wrights Creek Bushland Reserve and the Sea Acres National Park. (Survey data supplied)</p> <ul style="list-style-type: none"> The genetic integrity and long-term viability of both reserves is integrally linked through the eastern portion of Lot 7. The LEP amendment will complete and protect the corridor. Can confirm 17 NSW TSC Act and/or Federally listed EPBC Act species have been recorded using the corridor. 	Noted. The assessment agrees that there is significant value in securing this link.

(e) The Public Interest:

The proposed development satisfies relevant planning controls and is unlikely to impact on the wider public interest.

The Planning Agreement associated with the proposal would secure important environmental land linking the Wrights Creek corridor and the Sea Acres National Park as a public reserve, which is considered to be in the wider public interest.

6. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- Development contributions will be required towards augmentation of town water supply and sewerage system head works under Section 64 of the Local Government Act 1993.
- Development contributions will be required under Section 94 of the Environmental Planning and Assessment Act 1979 towards roads, open space, community cultural services, emergency services and administration buildings.

7. CONCLUSION

The application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.

The site is suitable for the proposed development, is not contrary to the public's interest and will not have a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended conditions of consent provided in the attachment section of this report.

Attachments

- 1 [View](#). DA2016 - 53.1 Recommended DA Conditions
- 2 [View](#). DA2016 - 53.1 Submission - Clingeffer
- 3 [View](#). DA2016 - 53.1 Submission - Glawson
- 4 [View](#). DA2016 - 53.1 Submission Peel
- 5 [View](#). Combined Application Vol 1 Main Documents (Subdivision Plan on p25)
- 6 [View](#). Combined Application Vol 2 Appendices B-F Assessments
- 7 [View](#). Combined Application Vol 3 Bush Fire Assessment
- 8 [View](#). Combined Application Vol 4 Aboriginal Cultural Heritage Assessment
- 9 [View](#). Combined Application Vol 5 Statutory Ecological Assessment