



DEVELOPMENT AND PLANNING STANDING COMMITTEE MEETING

Monday 11 November 2024

Council Chambers

126-138 Main Road Speers Point

6.30pm

Committees will be held in the following order:

Development and Planning Standing Committee
Organisational Services Standing Committee
Built and Natural Assets Standing Committee
General Business Committee

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Meetings of Lake Macquarie City Council are conducted in accordance with the Code of Meeting Practice which supports open, accessible and accountable government.

Councillors are reminded of the oath or affirmation of office taken at the start of the Council term:

- To undertake duties in the best interests of the people of Lake Macquarie City and the Lake Macquarie City Council.
- To faithfully and impartially carry out the functions, powers, authorities and discretions under the *Local Government Act 1993* or any other Act to the best of their ability and judgment.

Councillors are also required to declare and appropriately manage conflicts of interest under the Code of Conduct.

Council meetings are streamed live on Council's website at webcast.lakemac.com.au

This allows our community greater access to Council proceedings, decisions and debate.

Development and Planning Standing Committee Meeting

Agenda

Monday 11 November 2024

6.30pm

Acknowledgement of Country:

Apologies: For the non-attendance of Councillors

Declaration of Interests:

Presentations:

Remembrance Day – Minute of silence

Recognition of your contribution to the Lake Macquarie community – Former Councillors David Belcher, Nick Jones and Luke Cubis

Development and Planning Standing Committee Meeting - Monday 11 November 2024 (4)4

24DP017	Endorsement of Planning Proposal for 1377 Hue Hue Road, Wyee and adoption of amendment to the Wyee West Precinct Area Plan.....	pg 4
24DP018	Planning Agreement - 1377 Hue Hue Road, Wyee - Conservation Land	pg 87
24DP019	Coal Point - 8 Killara Close - Dwelling house and boat shed.....	pg 131
24DP020	Redhead - 15 High Street - Demolition, dwelling house and swimming pool	pg 151

Recommendations to the Development and Planning Standing Committee Meeting

Monday 11 November 2024

24DP017	Endorsement of Planning Proposal for 1377 Hue Hue Road, Wyee and adoption of amendment to the Wyee West Precinct Area Plan
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Key focus area	4. Diverse economy
Objective	4.3 Our growing population supports a thriving local economy
File	RZ/1/2022 - D11481827
Author	Strategic Planner - Mashal Moughal
Responsible manager	Manager Integrated Planning - Wes Hain
Previous items	23DP002 - Planning Proposal to rezone land from RU2 Rural Landscape to R2 Low Density Residential and C2 Environmental Conservation at 1377 Hue Hue Road Wyee and amendment to the Wyee West Precinct Area Plan - Development and Planning Standing Committee - 13 Feb 2023 6.30pm

Executive summary

Address 1377 Hue Hue Road, Wyee, Lot 437 DP 755242
Owner Wyee Nominees Pty Ltd
Proponent TOPA Property Pty Ltd

This report details the result of State agency and public consultation and seeks Council’s endorsement to finalise the planning proposal (Attachment 2) and adopt the associated Development Control Plan (DCP) amendment to the Wyee West Area Plan (Attachment 3).

The planning proposal seeks to rezone part of 1377 Hue Hue Road, Wyee and part of the Digary Road reserve from RU2 Rural Landscape to R2 Low Density Residential and to realign the C2 Environmental Conservation zone boundary. The proposal also seeks to amend the minimum lot size to be consistent with surrounding R2 Low Density Residential zoned land.

An amendment is also required to the Wyee West Precinct Area Plan to include the subject site and facilitate future development and coordinate infrastructure delivery.

The planning proposal and the amendment to the Wyee West Area Plan were exhibited from 1 August to 28 August 2024 with three submissions received. A summary of the issues raised, and responses can be found in Attachment 1.

Recommendation

Council:

- A. notes the submissions received during the public exhibition (Attachment 1) and the outcomes of the State agency consultation,
- B. endorses the planning proposal (Attachment 2) to amend the *Lake Macquarie Local Environmental Plan 2014 (LMLEP)*,
- C. adopts the amendments to the Lake Macquarie Development Control Plan 2014 – Part 12 - Wye West Precinct Area Plan (Attachment 3),
- D. finalises the amendment to the *LMLEP 2014* under delegation granted by the Minister for Planning and Public Spaces, pursuant to section 3.36 of the *Environmental Planning and Assessment Act 1979*, and
- E. notifies those who made a submission of Council's decision.

Context

The planning proposal, initiated by the proponent (TOPA Pty Ltd), applies to 1377 Hue Hue Road, Wye and part of the Digary Road reserve. On 13 February 2023, Council resolved (23DP002) to progress the planning proposal and request Gateway Determination and publicly exhibit the proposal to rezone the site from RU2 Rural Landscape to R2 Low Density Residential, to realign the C2 Environmental Conservation zone boundary, and amend the Wye West Precinct Area Plan.

The site adjoins part of the recently developed Radcliffe housing estate and is located close to services, shops and public transport. The site has an area of approximately 4.5ha with frontage to Hue Hue Road and Digary Road, as shown in Figure 1.



Figure 1: Subject site and context

Discussion

The planning proposal seeks to rezone part of 1377 Hue Hue Road, Wyee and part of the adjoining Digary Road reserve from RU2 Rural Landscape and C2 Environmental Conservation to R2 Low Density Residential (Figure 2). The land currently zoned RU2 Rural Landscape is mostly cleared and has historically been used for agricultural and rural residential purposes. The site currently contains two dwellings and associated structures, such as sheds and horse stables.

The planning proposal also seeks to change the minimum lot size from 20ha to 450m², consistent with the adjacent R2 residential zoned land. The height of buildings map will remain unchanged, as the current 8.5m height limit is consistent with the adjacent R2 residential zoned land. The Wyee West Precinct Area Plan needs to be amended to facilitate future development and coordinate infrastructure delivery on the site.

The land zoned C2 Environmental Conservation contains native vegetation as well as a small section of Mannering Creek flowing through the far southern corner of the site. The planning proposal will result in a minor realignment of the boundary between the C2 Environmental Conservation zoned land and the proposed R2 residential zoned land to ensure the biodiversity values of the site are conserved.

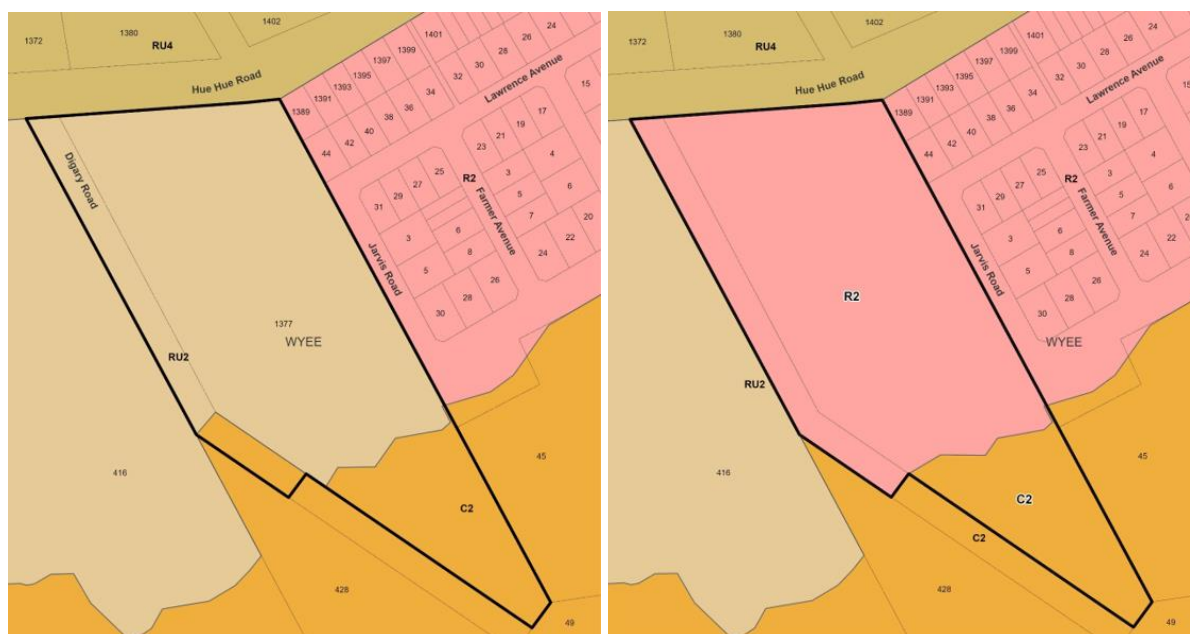


Figure 2: Existing (left) and proposed (right) zones

To resolve biodiversity impacts associated with the planning proposal and likely future development, a planning agreement (PA) has been drafted between the proponent, landowner and Council. The proposed PA provides for the rehabilitation of the C2 Environmental Conservation zoned land prior to its dedication to Council and payment of an endowment fund to Council for the management of the offset land in perpetuity. The PA is the subject of a separate Council report (24DP018) which provides more detail about the PA.

In addition to achieving a balanced environmental outcome, the planning proposal will also help achieve the housing targets for Lake Macquarie set by the NSW government as part of the National Housing Accord.

The Hunter Regional Plan 2041 identifies Morisset and its supporting centres of Cooranbong and Wyee as the largest future growth area in the Hunter. Wyee is well-located between the

main northern rail line and the M1 Motorway, which provides connections to key regional and metropolitan centres and associated jobs, health, education and recreation facilities.

The planning proposal and the amendment to the Wyee West Area Plan is consistent with the Lake Macquarie Local Strategic Planning Statement (LSPS) and broader strategic objectives of increasing supply of housing in identified growth areas. The planning proposal will contribute to addressing the current housing crisis while protecting ecological values.

The planning proposal will enable 40-50 residential lots to be created in proximity to the Wyee local centre and the Wyee train station, which provides access to a range of employment, services and facilities.

Community engagement and internal consultation

The planning proposal and the amendment to the Wyee West Precinct Area Plan were on public exhibition from 1 August to 28 August 2024 in accordance with the Gateway Determination. The planning proposal was exhibited on Council's Shape Lake Mac webpage and a total of three public submissions were received.

The main issues raised in the submissions included a lack of amenities, traffic related issues (congestion and noise) and impact on quality of life and the environment. The Wyee West Precinct Area Plan has been amended in response to a submission regarding noise and vibration impacts on future development from the M1 Motorway. A summary of all submissions and a response is presented in Attachment 1.

State agency consultation

Consultation was undertaken with State agencies in accordance with the Gateway Determination.

The Department of Primary Industries NSW (DPI) did not raise any objections, however they recommended that potential land use conflict (between rural and residential uses) be considered as part of any future development applications.

The NSW Rural Fire Service (RFS) initially raised concerns with the bushfire threat assessment. A revised bushfire report was prepared to the satisfaction of RFS who now have no objections to the proposal. The RFS advised that any future development applications for the site must demonstrate compliance with the relevant provisions of the *Planning for Bushfire Protection 2019*.

The Biodiversity Conservation and Science Division (BCS) initially raised concerns with the Integrated Water Management report that accompanied the planning proposal. An updated report was prepared to the satisfaction of BCS who now have no objections to the proposal.

Heritage NSW (HNSW) advised there were no identified items listed on the State Register that would be impacted by the planning proposal. HNSW noted that an Aboriginal Cultural Heritage Assessment Report was submitted as part of the planning proposal and raised no objections.

No objections were raised by Jemena, Hunter Water and Ausgrid.

Internal consultation

Staff from Asset Management, Property and Business Development, Environmental Systems, Development Assessment and Certification, and Community Partnerships departments provided input and advice during the assessment and preparation of the planning proposal.

Assessment of options

It is recommended that Council resolves to endorse the planning proposal and adopts the associated amendment to the Wyee West Area Plan. This will provide for much needed housing and infrastructure in this key growth area, consistent with the LSPS and the Hunter Regional Plan 2041.

Council could resolve not to proceed with the proposal. This is not recommended as the subject land has strategic and site-specific merit for future residential development and such a decision would impact the ability to meet the city's housing target set by the NSW government. Development consistent with the current RU2 Rural Landscape zone will continue to be permitted on the site if this option is pursued.

Next steps

If Council endorses the recommendation, the amendment to the *LMLEP 2014* for 1377 Hue Hue Road, Wyee will proceed through the finalisation stages. Once the amendment to the *LMLEP 2014* is finalised, the proponent can lodge a development application for a residential subdivision.

Key considerations

Economic

The planning proposal will provide for well-located residential development in an identified growth area which will encourage economic activity through construction related employment and ongoing investment in the local economy.

Environment

The planning proposal has been accompanied by technical reports that address environmental matters applicable to the site including biodiversity, water courses and stormwater management, flooding, contamination, heritage, bushfire, acid sulphate soils and geotechnical.

The planning proposal and the technical reports were also reviewed by relevant state agencies. The planning proposal complies with relevant Ministerial Directions and other relevant legislation and guidelines.

The biodiversity values within the C2 Environmental Conservation zone will be protected. This land will become a biodiversity offset site and dedicated to Council via an associated proposed planning agreement.

The loss of rural zoned land was considered by the NSW Department of Primary Industries and assessed to be of minor significance as the site was isolated from other rural land and constrained by the M1 Motorway and the conservation land to the south.

Any specific impacts of future residential development on surrounding by RU2 Rural Landscape and RU4 Primary Production Small Lot zoned land will be assessed at the development application stage.

The amended Wyee West Area Plan, along with the *LMLEP 2014*, contains provisions for vegetation management and other environmental matters (flooding, bushfire and water quality management) that will need to be considered by future development applications.

It is considered that the site is appropriate to accommodate future residential development.

Community

The planning proposal will provide further housing in an identified growth area close to Wyee local centre and Wyee train station that will provide access to a range of services (for example, health, jobs and education). The area plan amendment will ensure the coordinated delivery of infrastructure, such as roads, footpaths and stormwater, in the growth area.

Civic leadership

The planning proposal will assist Council in achieving the city's housing target set by the NSW government and is consistent with the strategic objectives in the LSPS and Hunter Regional Plan 2041.

Financial

The proponent has paid the relevant fees associated with progressing the planning proposal in accordance with Council's fees and charges.

Infrastructure

Future development on the site will provide typical infrastructure and utilities provided in new residential subdivisions (for example, roads, drainage, water, power, sewer and footpaths). Future development will also be levied development contributions in accordance with the relevant development contributions plan which will be used to deliver local infrastructure such as parks and playgrounds, sporting facilities, local traffic upgrades and shared paths.

The proposed amendment to the Wyee West Area Plan ensures the coordinated delivery of infrastructure.

Compliance

The risks associated with preparing a planning proposal and requesting finalisation of the planning proposal are minimised by following the process outlined in the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2021* and Council's procedures.

Legislative and policy considerations

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

Lake Macquarie Local Environmental Plan 2014

Hunter Regional Plan 2041

Greater Newcastle Metropolitan Plan 2036

Lake Macquarie Local Strategic Planning Statement

Lake Macquarie Development Control Plan 2014

Lake Macquarie Housing Strategy

Attachments

- | | | |
|----|--|-----------|
| 1. | Summary of submissions | D11687647 |
| 2. | Planning Proposal - 1377 Hue Hue Road Wyee | D11217465 |
| 3. | Amendment to Lake Macquarie Development Control Plan 2014 -
Wyee West Precinct Area Plan - Summary of changes | D10935814 |

Summary of submissions – public exhibition of planning proposal for 1377 Hue Hue Road, Wyee and amendment to Wyee West Precinct Area Plan

Council received three submissions which are summarised below, along with a Council staff response.

Submission	Summary of Submission	Council Response
Resident from Wyee	Submitter objects to the proposal because of the lack of facilities and services delivered by the Radcliff Estate developer.	<p>This proposal is separate from the Radcliff Estate development. The required infrastructure and facilities for this proposal will be assessed and determined through the development application (DA) process. Infrastructure like roads, drainage, water, power, sewer and footpaths will be required to be provided by the developer of this land as part of the DA process. Other community facilities to be provided are identified in the Morisset Catchment Development Contributions Plan. The developer will pay relevant development contributions as part of the DA process.</p> <p>The amendment to the Wyee West Precinct Area Plan identifies and ensures the coordinated delivery of infrastructure required by the anticipated future development of the site.</p> <p>Outcome: No change to the planning proposal and area plan amendment.</p>
Resident from Wyee	<p>Submitter objects to the proposal because of the lack of facilities and services delivered by the Radcliff Estate developer.</p> <p>The current lack of facilities and infrastructure like roads is leading to congestion and more housing could lead to more traffic issues.</p> <p>Further development will impact the environment and the quality of life and the semi-rural character of the area.</p> <p>Recommended that other areas like Jilliby be considered for residential subdivision.</p>	<p>As noted above, this proposal is separate from the Radcliff Estate development and any infrastructure required for this development, such as roads, drainage, water, power, sewer and footpaths, will be provided as part of the development.</p> <p>The Traffic Impact Assessment prepared for the planning proposal concluded that the vehicle trips generated by a future residential development on the site are able to be accommodated within the existing road network without the need for road widening or intersection upgrades. Further assessment of traffic impacts will be undertaken at the development application stage.</p> <p>Other facilities required for the area are identified in the Morisset Catchment Development Contributions Plan and will be delivered by</p>

		<p>Council based on development thresholds being met and in accordance with Council's Delivery Program and Operational Plan priorities.</p> <p>The planning proposal is consistent with the strategic direction outlined in the Local Strategic Planning Statement, which identifies Wyee for urban intensification as part of a growth area.</p> <p>The amendment to the Wyee West Precinct Area Plan will guide future development on the site to ensure it is consistent with the surrounding and desired future built form and character.</p> <p>The planning proposal has addressed environmental impacts and is informed by a Biodiversity and Riparian Assessment. The planning proposal and associated biodiversity assessments have been reviewed by the NSW Government's Biodiversity Conservation Division.</p> <p>A planning agreement has been prepared to provide offsets for the loss of some vegetation on the site and to ensure the long-term protection of conservation land. The planning agreement requires the rehabilitation and management of conservation land for 10 years before it is dedicated to Council for management and protection.</p> <p>The recommendation to provide residential development at Jilliby is not part of this proposal. Jilliby is located within the Central Coast Council Local Government Area and would need to be the subject of a separate proposal from the owner of that land.</p> <p>Outcome: No change to the planning proposal and area plan amendment.</p>
<p>Resident from Wyee</p>	<p>Submitter is concerned that the planning proposal does not consider the proximity of any future development to the M1 Motorway and that future development will be exposed to traffic noise.</p> <p>Submitter also wants to know who will be responsible for building a noise barrier if this residential area was to be built in the future.</p>	<p>A Noise and Vibration Assessment was prepared for the planning proposal, which concludes that noise and vibration levels for the site are below acceptable limits. The assessment also states that future dwellings on the lots would be able to comply with noise criteria contained in relevant standards and that only minor upgrades of the facades on the northern and western-most lots may be required.</p> <p>Potential traffic noise impacts on future development will be further considered at the development application stage.</p> <p>Outcome: A development control about noise and vibration has been added to the Wyee West Area Plan amendment to require applications</p>

		for development on the northern and western boundaries of the site to be accompanied by an acoustic report and vibration study. The development control also requires a development application to demonstrate how any required noise or vibration mitigation measures will be implemented.
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Planning Proposal
Amendment to Lake Macquarie Local Environmental Plan 2014 at
1377 Hue Hue Road, Wyee
Post- Exhibition Version

Summary	Details
Local Government Area:	Lake Macquarie City Council
Name of draft LEP:	Rezone land from RU2 Rural landscape to R2 Low-Density residential at 1377 Hue Hue Road, Wyee
Subject land:	1377 Hue Hue Road, Wyee and part of Digary Road
Proponent:	Topa Property PTY LTD
Planning portal reference:	PP-2022-3016
Council reference:	RZ/1/2022
Date:	September 2024
Version:	Post-Public Exhibition
Author:	Mashal Moughal – Strategic Land use Planner
Pre-lodgement meeting and advice:	Meeting 5 April 2022 Advice Issued 13 April 2022
Gateway Determination	Dated 25 August 2023 Issued 28 August 2023
Studies:	Aboriginal Due Diligence Assessment Aboriginal Cultural Heritage Assessment Biodiversity and Riparian Assessment Traffic Impact Assessment Bushfire Threat Assessment PMF Technical Advice Integrated Water Cycle Management Report Preliminary Site Investigation Geotech and Salinity Investigation Social Impact Assessment Traffic Noise and Vibration Assessment

Version	Date	Details



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Introduction

This planning proposal relates to land at 1377 Hue Hue Road, Wyee and the adjoining Digary Road. The northern part of the site is currently zoned RU2 Rural Landscape, and the southern part is zoned C2 Environmental Conservation. The planning proposal seeks to rezone the northern part of the RU2 Rural Landscape zoned land to R2 Low-Density Residential. The planning proposal also seeks to realign the boundaries between the existing C2 Environmental Conservation and proposed R2 Low-Density Residential zone in the southern part of the site and on Digary Road.

The boundary realignment within the site will add a buffer to two habitat trees located on the existing and proposed zone boundaries. Also, the realignment of boundaries on Digary Road will enable infrastructure (i.e., access road) for the future residential development. The planning proposal will retain the existing C2 Environmental Conservation zoned land in the southern section of the land. The C2 Environmental Conservation zoned land, through a Voluntary Planning Agreement (VPA), will be used to offset any impacts of future development on the ecological values on the subject site.

The rezoning will enable the creation of approximately 40 to 50 residential lots adjoining to the existing residential area of the Wyee West Precinct, while maintaining the environmental conservation outcomes to the southern portion of the site. The rezoning of the land presents a logical expansion to the Wyee West Precinct and will be supported by appropriate local infrastructure including augmentation of services as required, stormwater management infrastructure and local roads, including the delivery of Digary Road which is currently an unformed road. The planning proposal also seeks to amend the minimum lot size and Urban Release Area (URA) LMLEP 2014 maps for the land to be zoned R2 Low Density Residential.

The planning proposal does not change the existing Building Height Maps. The current height limit (8.5m) applied to the subject site is consistent with the neighbouring R2 Low- Density Residential development and therefore does not require further amendments. The height limit for the part of the site zoned C2 Environmental Conservation will also remain 5.5m.

Part 1 – Objectives and Intended Outcomes:

Objective

The objective of this planning proposal is to amend the *Lake Macquarie Local Environmental Plan 2014* (LMLEP 2014) to facilitate residential development on land adjoining the existing residential area of the Wyee West Precinct.

Intended Outcomes

The planning proposal would permit additional housing close to services and public transport while maintaining the environmental conservation outcomes of the southern portion of the site. The land has an area of approximately 4.5 ha with frontage to Hue Hue Road and could accommodate approximately 40 to 50 lots with a variety of smaller lots sizes under the Small Lot housing provisions in the LMLEP 2014.

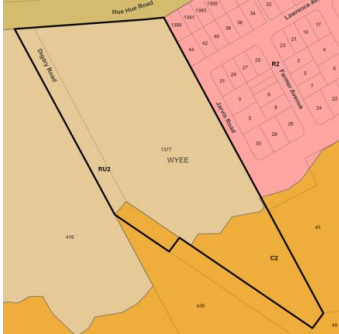
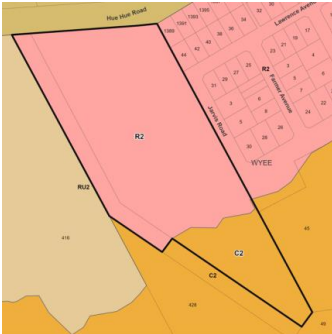
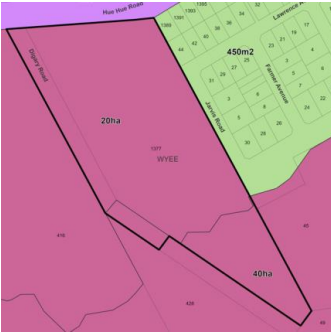
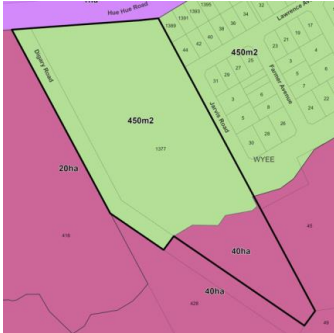
Part 2 – Explanation of Provisions

The Planning Proposal will amend the LMLEP 2014 as follows:

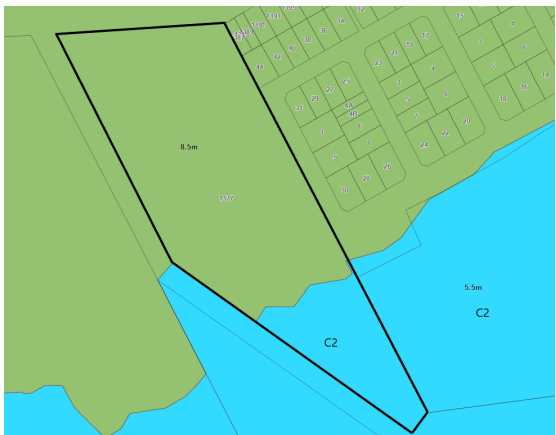

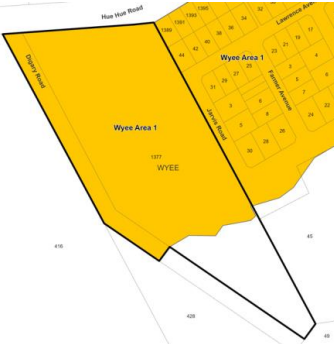
Planning Proposal – RZ/1/2022 – PP-2022-3016

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Table 1: Proposed changes to the LMLEP 2014 Map and Instrument		
Item No.	Address	Explanation of provisions
1	Sites identified on the Zoning Maps of LMLEP 2014 as shown in Part 4	<p>Zoning Map – The planning proposal seeks to amend the zoning map under the Lake Macquarie LEP 2014 from RU2 Rural Landscapes to R2 Low Density Residential and C2 Environmental Conservation and from C2 Environmental Conservation to R2 Low Density Residential.</p> <div style="display: flex; justify-content: space-around;">   </div> <p style="text-align: center;"> Figure 1 - Existing zoning Figure 2- Proposed zoning </p>
2	Changes to the Minimum Lot Sizes Maps of LMLEP 2014 as shown in Part 4	<p>Lot Size Map – The planning proposal seeks to change the minimum lot size from 20ha to 450m² for the area that is proposed to be zoned R2 Low Density Residential, which is consistent with the minimum lot size for R2 zoned land in the LGA.</p> <div style="display: flex; justify-content: space-around;">   </div> <p style="text-align: center;"> Figure 3-Existing minimum lot size Figure 4- Proposed minimum lot size </p>



<p>3</p>	<p>Building Height Maps of LMLEP 2014</p>	<p>Building Height Map – The planning proposal does not seek to change the building height for the area as the current heights are consistent with the neighbouring residential land use zones. The land that is proposed to be zoned R2 Low Density Residential will continue to have a height limit of 8.5m and the part of the site that is zoned C2 Environmental Conservation will remain 5.5m.</p>  <p><i>Figure 5- Existing Building Height to remain</i></p>
<p>4</p>	<p>Urban Release Area Map of LMLEP 2014 as shown in Part 4</p>	<p>Urban Release Area (URA) Map– The planning proposal seeks to include part of the site to be zoned R2 as an urban release area under the Urban Release Area Map.</p>  <p><i>Figure 6- Existing URA map</i></p>  <p><i>Figure 7- Proposed URA map</i></p>



Part 3 – Justification of strategic and site-specific merit

Relevant Strategies/ Considerations Instruments

Section A – need for the planning proposal

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

The planning proposal is a proponent-initiated proposal and is not a direct action of the Local Strategic Planning Statement (LSPS) or a strategic study. However, the LSPS identifies the site as being within the Wyee future growth investigation area. Moreover, the planning proposal is consistent with the specific objectives for Wyee in the LSPS, including the following objectives:

- *Additional residential areas are developed with a range of housing types, particularly near the local centre and railway station while maintaining local ecological corridors.*
- *Mannering Creek and its riparian corridors are rehabilitated and conserved*

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

The planning proposal is the best means of achieving the objectives and intended outcomes, as it seeks to rezone the land from RU2 Rural Landscape to R2 Low Density Residential and C2 Environmental Conservation, thereby enabling residential development on the site while retaining the existing biodiversity conservation outcomes in the southern section of the site. There are no other means to achieve the same outcome in this instance.

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

Hunter Regional Plan 2041 (HRP)

The Hunter Regional Plan 2041 (the HRP) builds on the previous plan which was finalised in October 2016 and resets the regional plan priorities to ensure it continues to respond to the region's needs for the next 20 years.

The site is located within the Morisset Growth Area identified in the HRP. More specifically, the HRP identifies that 'Morisset and its supporting local centres of Cooranbong and Wyee represent the largest future growth area in the Hunter and will underpin the economic diversification of the region'. The HRP further states that 'the area has the potential to accommodate an additional 12,000 to 36,000 people over the next 20 years'. The proposal is anticipated to result in approximately 40 to 50 new residential lots and will thereby contribute to the growth of Wyee.

Furthermore, the Planning Proposal is consistent with Objectives 3, 4, 5 and 6 of the HRP, as outlined below.

Objective 3: Create 15-minute neighbourhoods to support mixed, multi-modal, inclusive and vibrant communities.



Relevant Strategies/ Instruments	Considerations
	<p><u>Strategy 3.1</u> The planning proposal is not consistent with Strategy 3.1 as the rezoning does not provide opportunity for the specified commercial/ retail land uses.</p>
	<p>Refer to the assessment against objective 3 performance outcomes for compliance with strategy 3.1.</p>
	<p><u>Strategy 3.2</u>- The proposal is consistent with this objective, as the site has access to existing infrastructure, shops and services that are essential for everyday needs. In addition, the site is located in walking and cycling distance to the Wye train station, which provides public transport connections to Morisset and other areas. Furthermore, the southern section of the site, which contains remnant forest, will be conserved in a conservation zone.</p>
	<p><u>Objective 4: An inter-connected and globally-focused Hunter without car dependent communities</u></p>
	<p>The planning proposal is consistent with this objective, as the site has access to walking and cycling paths and public transport.</p>
	<p><u>Objective 5: Plan for “Nimble Neighbourhoods”, diverse housing and sequenced development</u></p>
	<p>The proposal is consistent with this objective, as it makes use of existing infrastructure and services. In addition, the site is located near the M1 and the Wye train station, which provide access to employment opportunities in Morisset and other places. Moreover, the proposal will provide a variety and choice of housing types to meet the existing and future housing needs of the community. Furthermore, the planning proposal will also help to support local businesses and public transport services. In addition, the proposal will retain the C2 Environmental Conservation zoned land in the southern section of the site, thereby protecting the environmental values of the site.</p>
	<p><u>Strategy 5.3</u> - The planning proposal is not consistent with Strategy 5.3 of the HRP 2041 as the planning proposal does not provide opportunity for developing ‘attached and multi-unit dwellings’.</p>
	<p>Refer to the assessment against objective 5 performance outcomes for compliance with strategy 5.3.</p>
	<p><u>Objective 6: Conserve heritage, landscapes, environmentally sensitive areas, waterways and drinking water catchments</u></p>
	<p>The planning proposal is consistent with this objective, as it will retain the C2 Environmental Conservation zoned land in the southern section of the site. In addition, a Vegetation Management Plan will be put in place as part of a Voluntary Planning Agreement. Together, these measures will protect areas of high environmental value and will maintain and improve the environmental value of the biodiversity network. Moreover, the</p>



Relevant Strategies/ Instruments	Considerations
	<p>Aboriginal Cultural Heritage Assessment found no items or objects of Aboriginal heritage significance on the site. Furthermore, adequate water management measures, including a stormwater detention basin, will be put in place to protect the health of Mannering Creek and other waterways.</p> <p><u>Strategy 6.3</u> - The planning proposal is consistent with strategy 5.3. The planning proposal seeks to mostly rezone the RU2 part of the subject and retain the existing C2 Environmental Conservation land use zoning on the southern part of the site to protect the biodiversity values.</p> <p><u>Strategy 6.4</u> - The planning proposal is consistent with strategy 6.4. The rezoning introduces housing on the site which will safeguard the biodiversity and scenic values by providing a separation between the biodiversity values through the application of Asset Protection Zones (APZ). The APZ will act as a buffer between the residential development whilst allowing private owners to maintain the conservation areas from elements such as weeds and other pollutants.</p> <p>The residential land use will also require developments to design and maintain on-site stormwater management systems to avoid and reduce any adverse impacts on the neighbouring waterways.</p> <p>Objective 7: Reach net zero and increase resilience and sustainable infrastructure</p> <p><u>Strategy 7.5</u> The subject site is mostly surrounded by RU2 Rural landscapes, RU4 primary production small lots and R2 Low-density residential land and there are not any known sensitive/ hazardous land uses.</p> <p>Nevertheless, any future redevelopment for sensitive land uses will be subject to the relevant planning development controls and design solutions to prevent and mitigate exposure and detrimental impacts on human health and wellbeing.</p> <p><u>Objective 9: Sustain and balance productive rural landscapes</u></p> <p>The planning proposal is inconsistent with this objective, as it seeks to rezone agricultural land to a residential land use. However, consolidation of the site with other agricultural land is constrained by conservation land, residential land and the Motorway. It is thus considered that the loss of approximately 3.2ha of rural zoned land in an isolated location will not have a significant impact on the agricultural productivity in the Hunter Region. Moreover, the land is identified as a future growth area in the Local Strategic Planning Statement and the Hunter Regional Plan. In addition, the site is strategically well located for housing, as it is situated close to existing infrastructure, services, and public transport, and adjoins an existing residential area.</p>
<p>Hunter Regional Plan (HRP) 2041-</p>	<p>Objective 3 Performance outcomes</p>



Relevant Strategies/ Instruments	Considerations
<p>Performance Outcomes</p>	<p>The planning proposal satisfies the relevant performance outcomes as follows:</p> <ul style="list-style-type: none"> • The existing urban settlement is along the key road networks such as the M1, Hue Hue Road and Wyee Road. The site is approximately 1.2 km away from the the Local Centre (Wyee Road), and approximately 1.8km away from Wyee Train Station (Wyee Road). The planning proposal is maximising the use of existing infrastructure by providing housing close to employment land (E1 Local Centre) and reducing car dependency by being close to the Wyee train station (see figure 8). • The site is located near additional land use zones that include RU4 Primary Production Small Lots, R3 Medium Density Residential and E1 Local Centre that provide opportunities for a variety of employment, retail, and health services. • The subject site is also in close proximity to recreational and conservation zones which provide opportunity for existing and future residents access to open space, sporting activities, cultural entertainment, and outdoor recreation activities. • The planning proposal will reinforce existing neighbourhood settlement scale and patterns and complement the rural village character of Wyee. • The planning proposal does not propose any public spaces as part of the rezoning. However, any future subdivision or residential development (dwelling house etc) will be required to address Council’s Urban Greening Strategy and other relevant DCP controls for private open space.

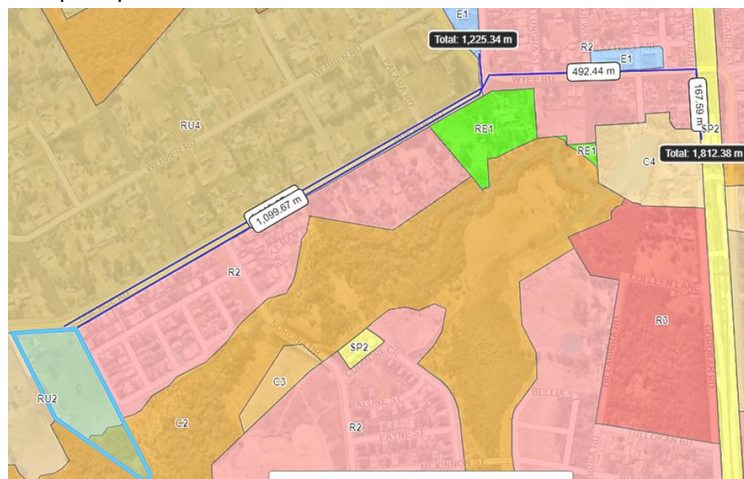


Figure 8- Map showing proximity to Local Centre and Wyee train station.



Relevant Strategies/ Instruments	Considerations
	<p data-bbox="523 477 925 504">Objective 5 Performance Outcomes</p> <p data-bbox="523 521 1260 577">The planning proposal satisfies the relevant performance outcomes as follows:</p> <ul style="list-style-type: none"> <li data-bbox="523 595 1300 701">• As assessed under <i>objective 3 performance outcomes</i> the planning proposal is maximising the use of existing infrastructure by providing housing close to employment land (E1 Local Centre) and reducing car dependency by being close to the Wyee train station. <li data-bbox="523 730 1284 835">• The site is being rezoned from C2 Environmental Conservation to R2 Low-Density Residential that provides opportunity for a variety of residential development that were not possible under the C2 Environmental Conservation zone. <li data-bbox="523 864 1300 969">• It is noted that the site is also in proximity to R3 Medium Density Residential, RU2 Rural Landscapes, RU4 Primary Production and E1 Local Centre zoned land which also provide opportunity for a variety of urban and rural residential typologies. <li data-bbox="523 999 1276 1081">• The planning proposal will provide residential development to be located close to employment/ commercial activities and thus support local businesses and transport services. <li data-bbox="523 1111 1292 1256">• The rezoning is mostly occurring on cleared part of the site and will also be subject to a planning agreement to establish and manage the protected conservation zone to the south of the site. The planning proposal will not have any known adverse impacts on the agricultural, environmental resources or industrial lands of the site. <li data-bbox="523 1285 1300 1391">• Any future residential densities resulting from the planning proposal will be of a consistent scale to the existing settlement pattern and therefore will maintain the 'rural village' scenic and recreational values of Wyee. <li data-bbox="523 1420 1284 1503">• The planning proposal will provide a variety of residential typologies that can meet the needs of diverse individuals and communities. The new housing types will include: <ul style="list-style-type: none"> <li data-bbox="560 1532 778 1561">- boarding houses <li data-bbox="560 1568 786 1597">- dual occupancies <li data-bbox="560 1603 770 1632">- dwelling houses <li data-bbox="560 1639 738 1668">- group homes <li data-bbox="560 1675 815 1704">- secondary dwellings <li data-bbox="560 1711 754 1740">- senior housing <li data-bbox="560 1747 783 1776">- shop-top housing



Relevant Strategies/ Instruments	Considerations
Greater Newcastle Metropolitan Plan 2036	<p>The proposal will contribute to the delivery of housing in an area with established services and infrastructure and close to public transit and is thus consistent with the Greater Newcastle Metropolitan Plan 2036 (GNMP) and supports its objectives to:</p> <ul style="list-style-type: none"> • Deliver housing close to jobs and services; and • improve connections to jobs, services and recreation. <p>The proposal seeks to rezone rural zoned land identified as state significant agricultural land in the draft state significant agricultural land maps and is thus inconsistent with Action 13.1, which aims to protect and preserve productive agricultural land to support the growth of agricultural industries and keep fresh food available locally. However, rezoning the land to a residential land use is justified as the site adjoins residential land and is isolated from other rural land by C2 Environmental Conservation and R2 Low Density Residential zones and by the M1 Pacific Motorway. Moreover, the site is identified as a future growth investigation area in the LSPS.</p>
<p>4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan</p>	
Lake Macquarie Local Strategic Planning Statement (LSPS)	<p>The Local Strategic Planning Statement (LSPS) locates the subject site within the South West Growth Area where Wyee is identified as an area having considerable opportunities for urban development.</p> <p>For Wyee, the LSPS specifically states:</p> <ul style="list-style-type: none"> • The service role of the local centre is reinforced with an increase in services to cater for the growing population. • Additional residential areas are developed with a range of housing types, particularly near the local centre and railway station while maintaining local ecological corridors. • High-amenity cycle and pedestrian linkages run between new residential, recreation, and commercial areas and the train station. • Mannering Creek and its riparian corridors are rehabilitated and conserved. • Quality recreational areas are provided to cater for the growing community. <p>The proposal is considered to be consistent with the above criteria for Wyee. Moreover, the planning proposal is considered consistent with the following planning priorities of the LSPS:</p> <p><u>Planning Priority 2: A City to Call Home.</u></p> <p>The proposal is consistent with this priority, as it will contribute to housing growth to accommodate Lake Macquarie's growing population.</p> <p>More specifically, the proposal is consistent with the following principles:</p>



Relevant Strategies/ Instruments	Considerations
	<ul style="list-style-type: none"> • Work with industry to unlock more housing close to jobs, services, public transport, and social and recreational spaces, within and around centres to meet residents' day-to-day needs. • Work with industry to deliver future housing growth through infill development in and around centres and train stations and new housing areas in the North-West and South-West growth areas. • Work with industry and government agencies to ensure future housing is well serviced with health services, education, active transport infrastructure and public transport. • Ensure new growth areas are highly liveable and well serviced with access to services, facilities and social opportunities by a range of transport modes. • Ensure future residential housing is located with access to jobs, shopping, services, community facilities, and public spaces by a range of transport modes and maintains important local conservation areas. <p data-bbox="518 958 1145 987"><u>Planning Priority 6: A City with a Vast Natural Environment.</u></p> <p data-bbox="518 1003 1302 1160">The proposal is considered consistent with this priority as it seeks to avoid and minimise the impact of development on areas of high ecological value, and protect important biodiversity areas by retaining the C2 Environmental Conservation zoned land in the southern section of the site and by putting in place a vegetation management plan for the C2 zoned land.</p>
<p data-bbox="277 1193 469 1272">Lake Macquarie City Housing Strategy</p>	<p data-bbox="518 1193 1278 1328">The Lake Macquarie City Housing Strategy (Housing Strategy) provides a long-term approach to the delivery of quality housing in the Lake Macquarie Local Government Area. The Housing Strategy identifies Wyee as part of the South West Growth Area and includes an objective to complete housing release areas around Wyee.</p> <p data-bbox="518 1346 1254 1402">Furthermore, the proposal is considered consistent with the following priorities and objectives of the Lake Macquarie City Housing Strategy.</p> <p data-bbox="518 1420 1158 1476"><u>Priority 1: Facilitate Efficient Housing Supply & Infrastructure Coordination</u></p> <p data-bbox="518 1494 1267 1673">The planning proposal is consistent with this priority, as it facilitates the efficient supply of housing to meet the housing demand of Lake Macquarie's growing population. Moreover, this priority includes an objective to focus new greenfield housing only where it is well located near existing centres and transport nodes. The proposal is consistent with this objective as it is located adjoining an existing residential area and in proximity to public transport and local services.</p>



Relevant Strategies/ Instruments	Considerations
Lake Macquarie Community Strategic Plan 2022-2032	<p data-bbox="523 474 1066 497"><u>Priority 2: Increase Diversity and Choice in Housing</u></p> <p data-bbox="523 519 1300 600">The proposal is considered consistent with this priority, as it provides land and housing development opportunities to meet demand for a range of housing options to meet the diverse housing needs of the community.</p> <p data-bbox="523 631 1241 712">The planning proposal is considered consistent with Council's Community Strategic Plan as it seeks to respond to the relevant key focus areas, as outlined below.</p> <p data-bbox="523 734 737 757"><u>Unique Landscapes</u></p> <p data-bbox="523 779 1279 878">The planning proposal is consistent with this key focus area, as it seeks to retain the C2 Environmental Conservation zoned land in the southern section of the site, thereby protecting an area of high environmental value.</p> <p data-bbox="523 900 715 922"><u>Diverse Economy</u></p> <p data-bbox="523 945 1300 1102">The planning proposal is consistent with this key focus area, as it helps to accommodate the growing population and support a thriving local economy. The proposal also supports the objective of having vibrant economic and neighbourhood centres and the strategy of encouraging the co-location of jobs, housing, essential services, transport options and recreational activities.</p>

Section B – relationship to the strategic planning framework

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

Housing 2041 – NSW Housing Strategy	<p data-bbox="523 1249 1300 1361">Housing 2041 represents a 20-year vision for housing in NSW. It embodies the government's goals and ambitions to deliver better housing outcomes by 2041— housing in the right locations, housing that suits diverse needs and housing that feels like home.</p> <p data-bbox="523 1370 1273 1429">The vision is reflected in the four pillars of supply, diversity, affordability and resilience of housing, as outlined below:</p> <ul data-bbox="561 1438 1300 1675" style="list-style-type: none"> • supply—housing supply delivered in the right location at the right time • diversity—housing is diverse, meeting varied and changing needs of people across their life • affordability—housing that is affordable and secure • resilience—housing that is enduring and resilient to natural and social change. <p data-bbox="523 1684 1300 1762">The planning proposal is consistent with the NSW Housing Strategy, as it seeks to deliver housing in the right location and will also allow for diverse housing to meet the varied and changing needs of the population.</p>
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Relevant Strategies/ Instruments	Considerations
6. Is the planning proposal consistent with applicable SEPPs	
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<p data-bbox="523 533 943 555"><u>Chapter 3 Koala habitat protection 2020</u></p> <p data-bbox="523 577 1305 790">Chapter 3 applies to part of the site that is zoned RU2 Rural Landscape. The Biodiversity and Riparian Assessment prepared by AEP and dated July 2022, states that approximately 16%-17% of the canopy trees within the study area consisted of listed koala feed trees and as such further surveys were undertaken to determine if the site is core koala habitat. The surveys did not result in the observation or recording of koalas within the study area. Therefore, it has been determined that the site is not core koala habitat and no further investigation is required.</p> <p data-bbox="523 813 943 835"><u>Chapter 4 Koala habitat protection 2021</u></p> <p data-bbox="523 857 1305 981">Chapter 4 applies to part of the site that is zoned C2 Environmental Conservation. The Biodiversity and Riparian Assessment (AEP, July 2022) states that site inspections identified koala use tree species listed in Schedule 3 for the relevant koala management area were located on the site.</p> <p data-bbox="523 1003 1254 1081">As koala use trees were identified on the site, additional assessments were undertaken to determine if koalas were present on site and to determine if the site was core koala habitat.</p> <p data-bbox="523 1104 1305 1261">No koalas were found during the various surveys. Local records are sparse and not within 2.5km of the site, as such the site does not fall within an area of historical occupation as defined by the SEPP guidelines. The Biodiversity and Riparian Assessment states that based on paucity of recent local records and the results of the targeted surveys, it is unlikely that koalas are present within the site.</p> <p data-bbox="523 1283 1305 1391">As it was determined that it is unlikely that koalas are present on the site, it is considered that the site does not contain core koala habitat and hence no further assessment is required. In addition, the vegetation in the southern section of the site will be preserved.</p>
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The <i>State Environmental Planning Policy (Exempt and Comply Development Codes) 2008</i> will continue to apply to the land. The planning proposal does not impede its operation over the site.
State Environmental Planning Policy (Housing) 2021	The planning proposal does not include any provisions that impede the operation of the <i>State Environmental Planning Policy (Housing) 2021</i> over the site.



Relevant Strategies/ Instruments	Considerations
State Environmental Planning Policy (Primary Production) 2021	<p>The <i>State Environmental Planning Policy (Primary Production) 2021</i> currently does not include any State significant agricultural land in Schedule 1.</p> <p>Furthermore, although the site is identified as State Significant Agricultural Land on the draft State Significant Agricultural Land Map, consolidation of the site with other agricultural land is constrained by conservation land, residential land and the Motorway. It is thus considered that the loss of approximately 3.2ha of rural zoned land in an isolated location is of minor significance. Moreover, the site is identified as a future growth investigation area in the Local Strategic Planning Statement and in the Hunter Regional Plan. In addition, the site is well located for housing, as it adjoins an existing residential area and has good access to existing infrastructure, services and public transport.</p>
State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land	<p>A Preliminary Site Investigation has been undertaken by GeoEnviro Consultancy Pty Ltd to inform the planning proposal. The investigation included a review of historical uses and limited sampling regime. The Preliminary Site Investigation Report prepared by GeoEnviro Consultancy Pty Ltd (2021) concludes that the risk of gross contamination on the site is low and that the site is suitable for the intended residential use. The planning proposal is thus consistent with Chapter 4 of the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>.</p>

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

1.1 Implementation of Regional Plans

The proposal is consistent with this direction, as it helps to achieve the objectives set out in the Greater Newcastle Metropolitan Plan 2036, as well as in the Hunter Regional Plan 2041.

The site is located within the Morisset Growth Area identified in the Hunter Regional Plan 2041. More specifically, the HRP identifies that 'Morisset and its supporting local centres of Cooranbong and Wyee represent the largest future growth area in the Hunter and will underpin the economic diversification of the region'. The HRP further states that 'the area has the potential to accommodate an additional 12,000 to 36,000 people over the next 20 years'. The proposal is anticipated to result in approximately 40 to 50 new residential lots and will thereby help to accommodate population growth in Wyee.

Moreover, the proposal will contribute to the delivery of housing in an area with established services and infrastructure and close to public transit and is thus consistent with the objectives of the Greater Newcastle Metropolitan Plan 2036 to:

- Deliver housing close to jobs and services; and
- improve connections to jobs, services and recreation.



**Relevant Strategies/ Considerations
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1.3 Approval and Referral Requirements

The proposal is consistent with this direction. It does not require concurrence, consultation or referral of development applications to a Minister or public authority and would not identify development as designated development.

1.4 Site Specific Provisions

The proposal is consistent with this Direction and does not propose restrictive site-specific planning provisions.

3.1 Conservation Zones

The proposal will retain the southern part of the site that is zoned C2 Environmental Conservation. Moreover, although the proposal will result in the rezoning of a very small part of the Digary Road reserve from C2 to R2, the proposal will rezone a small part of the RU2 zoned land to C2 and thus there will not be much, if any, reduction in C2 zoned land. In addition, the proposal will not reduce the conservation standards that apply to the land. Furthermore, the C2 zoned land will be managed in accordance with a vegetation management plan, which aims to improve biodiversity values of the remaining vegetation on the site. The proposal is therefore consistent with this direction.

3.2 Heritage Conservation
European Heritage

The site does not contain any items of European heritage significance.

Aboriginal Heritage

An Aboriginal Due Diligence Assessment (ADDA) was conducted by Biosis in 2021, which identified three areas of moderate archaeological potential within the study area. The ADDA thus recommended that an Aboriginal Cultural Heritage Assessment (ACHA) be completed to identify and assess whether the future development facilitated by the planning proposal would impact on Aboriginal heritage. An ACHA was thus undertaken by Biosis (dated 9 December 2022), which includes an assessment of Aboriginal cultural, historic and aesthetic heritage significance of the site, as well as Aboriginal community consultation, and test excavations to determine the archaeological significance of the areas of moderate archaeological potential identified in the ADDA.

The ACHA found the following:

- Cultural (social) significance: The study area holds high cultural significance to the Aboriginal people of the local region as it is part of the cultural landscape that Aboriginal people have connected with over generations.
 - Historical significance: The study area is not currently known to have any historic associations.
 - Aesthetic significance: The landscape of the study area is closely linked with Aboriginal cultural values; however, stock grazing, vegetation clearance and construction of residential dwellings and associated buildings and services has reduced the aesthetic quality of the area to moderate.
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- Archaeological (scientific) significance: The archaeological assessment undertaken has determined that the study area has low archaeological values, as no Aboriginal objects or sites were identified during the investigation.

The ACHA also includes various recommendations, including recommended management measures to be put in place before and during construction works to manage any unanticipated Aboriginal objects, historical relics or human remains.

The ACHA concludes that the proposal will not impact on any known Aboriginal heritage values.

In summary, the planning proposal is considered to be consistent with this ministerial direction.

3.5 Recreation Vehicle Areas

The proposal does not seek to enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the *Recreation Vehicles Act 1983*) and is thus consistent with this direction.

4.1 Flooding

The southern section of the site is identified as being within the flood planning area and thus this direction applies to the planning proposal.

Part of the land within the flood planning area is located on the C2 Environmental Conservation zoned land and the other part on the RU2 Rural Landscape zoned land proposed to be rezoned to R2 Low Density Residential. The proposal is thus inconsistent with this direction. However, the part of the land within the flood planning area to be rezoned to R2 is only intended to be used for a stormwater detention basin and not for residential development. There will be specific DCP controls for the site to ensure that only a stormwater basin and no residential development is allowed on land affected by the probable maximum flood.

Moreover, the proposal is consistent with the rest of the requirements under this direction, as it will not permit development in floodway areas, and will not result in flood impacts to other properties. In addition, the proposal will not permit development for the purposes of residential accommodation in a high hazard area. Furthermore, flood evacuation and egress will be considered in the DA stage. Also, the planning proposal has been reviewed by the Biodiversity Conservation and Science Division (BCS) which established that the proposal is consistent with the relevant provisions of the Flood Risk Management Manual 2023 and Ministerial Directions. Therefore, the proposal is not likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.

The planning proposal is inconsistent with this direction as it seeks to rezone land in the flood planning area from RU2 Rural Landscape to R2 Low Density Residential. However, for the reasons mentioned above, the inconsistency is considered to be of minor significance.

4.3 Planning for Bushfire

This direction applies to the planning proposal, as the site is mapped as being bushfire prone. The planning proposal has been referred to the NSW Rural Fire Service for comment. The comments received by the NSW Rural Fire Service have been addressed in the Bushfire Threat Assessment prepared by AEP and dated July 2022, which accompanies the planning proposal.

The Bushfire Threat Assessment has assessed the bushfire protection measures required by *Planning for Bushfire Protection 2019* (PBP) and the construction requirements for proposed development in accordance with the provisions of the *Building Code of Australia – Volume 2*,



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Edition 2010 and Australian Standard 3959-2009 (AS 3959) – Construction of buildings in bushfire-prone areas, to provide direction for future development planning within the site.

The Bushfire Threat Assessment concludes that the proposal can satisfactorily comply with relevant specifications and requirements of *Planning for Bush Fire Protection 2019* and *AS 3959*.

The planning proposal is therefore considered to be consistent with this direction.

4.4 Remediation of Contaminated Land

A Preliminary Site Investigation has been undertaken by GeoEnviro Consultancy Pty Ltd to inform the planning proposal. The investigation included a review of historical uses and limited sampling regime. The Preliminary Site Investigation Report prepared by GeoEnviro Consultancy Pty Ltd (2021) concludes that the risk of gross contamination on the site is low and that the site is suitable for the intended residential use. The planning proposal is thus consistent with this direction.

4.5 Acid Sulfate Soils

The site does not contain any acid sulfate soils.

4.6 Mine Subsidence and Unstable Land

The site is not within a mine subsidence district and has not been identified as unstable land.

5.1 Integrating Land Use and Transport

The site is within approximately 2km distance to the Wye railway station and neighbourhood shopping centre. Bus stops, pathways and cycleways are available in the surrounding streets. Connecting pathways and cycleways will also be part of the considerations at the DA stage. The proposal is therefore considered consistent with this direction.

6.1 Residential Zones

This direction applies to the proposal, as it seeks to rezone part of the site from RU2 Rural Landscape to R2 Low Density Residential. The planning proposal is consistent with this direction, as it encourages the provision of a variety and choice of housing types to provide for the existing and future housing needs of the community. Moreover, the proposal makes efficient use of existing infrastructure and services and ensures that new housing has appropriate access to infrastructure and services. In addition, the planning proposal includes provisions to map the site as an Urban Release Area. Clause 6.3 of the LMLEP 2014 requires that development consent must not be granted for development on land in an urban release area unless a development control plan applies to the site. The site will be included in the existing DCP Part 12 – Precinct Area Plans - Wye West and will have specific controls apply to it. Moreover, the planning proposal does not contain provisions which will reduce the permissible residential density of the land.

6.2 Caravan Parks and Manufactured Home Estates

The proposal is consistent with this direction as it will not impact the provision of caravan parks and manufactured home estates.

8.1 Mining, Petroleum Production and Extractive Industries

The proposal is considered to be consistent with this direction, as it does not propose any changes that would have an effect on mining, petroleum production and/or extractive industries.



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9.1 Rural Zones

The planning proposal is inconsistent with this direction as it aims to rezone rural zoned land (RU2 Rural Landscape) to a residential zone (R2 Low Density Residential). However, the land is identified as a future growth area in the Local Strategic Planning Statement and Hunter Regional Plan. Moreover, the site is strategically well located for housing, as it is located close to existing infrastructure, services, and public transport.

Furthermore, the site is isolated from other rural land by conservation land, residential land and the Motorway. It is therefore considered that the loss of approximately 3.2ha of rural zoned land in an isolated location is of minor significance.

Section C – environmental, social, and environmental impact
8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

A Biodiversity and Riparian Assessment Report has been prepared for the site to accompany the planning proposal. The report identifies vegetation on the site as Coastal Plains Scribbly Gum Woodland, Alluvial Riparian Blackbutt Forest and Wyong Paperbark Swamp Forest. Based on the proposed land to be rezoned and associated road construction, scattered stands of Coastal Plains Scribbly Gum Woodland and minor portion of Alluvial Riparian Blackbutt Forest will be impacted upon. These vegetation types are consistent with the Swamp Sclerophyll Forest on Coastal Floodplains, which is an Endangered Ecological Community (EEC).

While 0.05ha of EEC vegetation is proposed to be removed, 0.84ha of habitat is to be retained and managed in the existing C2 zoned land as part of the proposed rezoning. As the amount of native vegetation to be removed is small and extremely fragmented and as the proposal will not fragment or isolate the remaining vegetation within the southern section of the site, the proposal will not affect the long-term survival of the EEC in the southern section of the site or nearby areas. Moreover, the planning proposal also includes the application of a Voluntary Planning Agreement (VPA) over the southern C2 Environmental Conservation zoned land. The VPA requires the developer to rehabilitate the C2 zoned land before dedicating it to Council. The VPA also requires the developer to pay an endowment fund to Council for the ongoing management of the conservation land in perpetuity. The requirements for the rehabilitation of the C2 zoned land will be outlined in a vegetation management plan, which will ensure that the habitat values of the bushland and the quality and resilience of the EEC are increased. In addition, the VPA and vegetation management plan will also help to ensure that any remaining biodiversity impacts from the development will be adequately offset.

While the proposal will not directly impact the EEC vegetation (i.e. Swamp Sclerophyll Forest EEC and River-Flat Eucalypt Forest EEC) in the southern section of the site, there is potential for indirect impacts, such as alterations to hydrological conditions, as a result of future residential development in the northern section of the site. However, as part of future proposed development, a Stormwater Management Plan will be prepared to ensure there is no detrimental impacts on the downstream ecology caused by development of the site. Furthermore, the proposed development will be constructed with adequate subsurface drainage, runoff collection systems, and basin, in conjunction with the local street network and water sensitive urban design to manage run off volume. In addition, it is considered unlikely that the proposal will impact the existing groundwater or surface water regimes.



**Relevant Strategies/ Considerations
Instruments**

It is therefore considered that impacts to hydrological conditions and residual clearing caused by the proposed development surrounding EEC will be negligible and unlikely to place the local occurrence of this community at risk of local extinction.

Moreover, no threatened species listed within the *Environment Protection and Biodiversity Conservation Act 1999* have been detected on the site. In addition, while the small area of habitat may offer resources for species should they occur, it is unlikely that the removal of approximately 4.02ha of exotic grassland containing 0.23ha of scattered native vegetation will have any meaningful impact on the life cycle of any threatened species. The report therefore concludes that there will not be any significant impacts on any critical habitat, threatened species or endangered ecological communities.

Furthermore, the report outlines the site contains trees identified as koala feed and use tree species under Chapter 3 and Chapter 4 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. A targeted koala survey was thus undertaken over the site and surrounding area but did not identify the presence of koalas on the site or within 2.5km of the site. The site is therefore considered unlikely to contain koalas and is thus not deemed to be 'core koala habitat'.

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

Bushfire

The site is located on bushfire prone land. The planning proposal has therefore been referred to the NSW Rural Fire Service for comment. The comments received by the NSW Rural Fire Service have been addressed in the Bushfire Threat Assessment prepared by AEP and dated July 2022, which accompanies the planning proposal.

The Bushfire Threat Assessment has assessed the bushfire protection measures required by *Planning for Bushfire Protection 2019* (PBP) and the construction requirements for proposed development in accordance with the provisions of the *Building Code of Australia – Volume 2, Edition 2010 and Australian Standard 3959-2009 (AS 3959) – Construction of buildings in bushfire-prone areas*, to provide direction for future development planning within the site.

The Bushfire Threat Assessment states that 'suitable access/egress is provided off Hue Hue Road, Digary Road and via the proposed perimeter road and internal road network. It is considered that the proposed access and egress arrangements are appropriate, and no issues have been identified with evacuation, safe haven zones, or firefighting logistics'.

Moreover, the Bushfire Threat Assessment also states that 'a reticulated water supply system from established residential areas is expected to service the site, and street hydrant access will need to be delivered in accordance with AS2419.1 – 2017'.

The Bushfire Threat Assessment further states that 'it is considered that the proposed protection measures, principally APZs, perimeter roads and relevant construction standards, would comply with the relevant requirements of PBP 2019 and AS-3959. When applied, these measures should provide adequate protection to life and property within the proposed development in the event of a bushfire occurring in the immediate locality'.

It is therefore considered that the planning proposal is able to meet the required objectives and principles of PBP 2019. In addition, specific controls for bushfire management have been



**Relevant Strategies/ Considerations
Instruments**

included in the DCP for the site. DAs for the site will therefore need to comply with the DCP controls and the requirements of PBP 2019.

Flooding

The southern section of the site is identified as being within the flood planning area. Part of the land within the flood planning area is located on the C2 Environmental Conservation zoned land and the other part on the RU2 Rural Landscape zoned land proposed to be rezoned to R2 Low Density Residential. However, part of the land within the flood planning area to be rezoned to R2 is only intended to be used for a stormwater detention basin and not for residential development. Moreover, a DCP will be prepared for the site, which will include controls to ensure that only a stormwater basin and no residential development is allowed on land affected by the probable maximum flood.

Furthermore, although part of the proposed R2 zoned land is located within the flood planning area (which is based on the probable maximum flood), the 1 in 100-year flood extent plus the 0.5m freeboard is fully contained within the C2 zoned land.

In addition, a specific Flood Assessment has been prepared based on TuFLOW modelling to confirm extents of the Probable Maximum Flood (PMF). The assessment confirms that all residential lots are able to accommodate dwellings outside of the PMF and that evacuation routes along Hue Hue Road are not compromised.

Water Management

An Integrated Water Cycle Management Report has been prepared by Orion Consulting Engineers Pty Ltd (dated May 2022). The report establishes the full integrated water cycle management strategy for the proposed future residential development in accordance with the Stormwater Management controls of the Lake Macquarie Council Development Control Plan 2014. Amongst other water management measures that will be put in place is a stormwater detention and treatment basin to manage stormwater flows and quality.

Contamination

A Preliminary Site Investigation has been prepared by GeoEnviro Consultancy Pty Ltd (dated September 2021) in support of the planning proposal. The investigation includes a review of historical uses and limited sampling regime and concludes that the risk of gross contamination on the site is low and that subject to the following recommendations, the site is suitable for the intended residential purpose:

Demolition is to be carried out by a licensed contractor and if any asbestos is encountered, it has to be removed in accordance with Safework requirements;

Once the structures are demolished, validation sampling is to be undertaken to confirm the footprint of structures is not affected by contamination.

Should uncontrolled fill be encountered, it should be disposed of off-site at an approved landfill.

Geotechnical and Salinity

A Geotechnical and Salinity Investigation was undertaken over the site by GeoEnviro Consultancy Pty Ltd (dated November 2021) to support the planning proposal and to demonstrate the suitability of the land for development.



**Relevant Strategies/ Considerations
Instruments**

For the northern portion of the site that is to be developed for residential purposes, no significant constraints were identified and the investigation makes appropriate recommendations that should be implemented during earthworks to ready the site for residential development of the land.

The investigation found that the majority of the site was considered to be non to slightly saline with the southern portion of the site (to remain C2) found to be moderately saline. Despite the non to slightly saline conditions for the northern portion of the site, the soils were found to be mildly aggressive to concrete but non-aggressive to steel. To guide future residential development and ensure it responds to the soil conditions, the investigation identifies appropriate management measures to be implemented.

Residential development can be accommodated on the site subject to the implementation of the identified management measures and subject to relevant standards being met during development works.

Furthermore, the site is not identified as containing acid sulfate soils.

Road Traffic Noise

The Pacific Highway is located approximately 100m away from the site and is a source of road traffic noise that may impact on the amenity of residential development. In this regard, a Traffic Noise and Vibration Assessment has been prepared in support of the planning proposal. The assessment demonstrates that road traffic noise and vibration present a minor impact to residential amenity of the site. This impact can readily be mitigated through the treatment of dwelling facades on future lots fronting the western and northern boundary of the site. A noise and vibration control has been included in the Development Control Plan to require development to be accompanied by an acoustic report and vibration study demonstrating acceptable noise and vibration levels for the development can be met. In addition, the control also states that if the acoustic report and vibration study recommend noise and/or vibration mitigation measures to be put in place, the development application must demonstrate how these measures have been incorporated into the design of the development.

Visual Impact

The majority of the southern side of Hue Hue Road between the Pacific Motorway and Wyee Road has been developed for low density residential purposes. The continuation of this form of development for an additional 150m to the west only has an interface with one other property on the northern side of Hue Hue Road and is not considered to have a significant impact on the character or amenity of the surrounding area.

The site is located approximately 100m to the east of the Pacific Highway. Views to the site from the Pacific Highway are largely obstructed due to the batter within the road reserve and associated vegetation. Views to the site are also obstructed as the land generally falls away from the north-west to south-east.

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

Heritage

An Aboriginal Due Diligence Assessment (ADDA) was conducted by Biosis in 2021, which identified three areas of moderate archaeological potential within the study area. The ADDA thus recommended that an Aboriginal Cultural Heritage Assessment (ACHA) be completed to identify and assess whether the future development facilitated by the planning proposal would impact on



**Relevant Strategies/ Considerations
Instruments**

Aboriginal heritage. An ACHA was thus undertaken by Biosis (dated 9 December 2022), which includes an assessment of Aboriginal cultural, historic and aesthetic heritage significance of the site, as well as Aboriginal community consultation, and test excavations to determine the archaeological significance of the areas of moderate archaeological potential identified in the ADDA.

The ACHA found the following:

- Cultural (social) significance: The study area holds high cultural significance to the Aboriginal people of the local region as it is part of the cultural landscape that Aboriginal people have connected with over generations.
- Historical significance: The study area is not currently known to have any historic associations.
- Aesthetic significance: The landscape of the study area is closely linked with Aboriginal cultural values; however, stock grazing, vegetation clearance and construction of residential dwellings and associated buildings and services has reduced the aesthetic quality of the area to moderate.
- Archaeological (scientific) significance: The archaeological assessment undertaken has determined that the study area has low archaeological values, as no Aboriginal objects or sites were identified during the investigation.

The ACHA provides various recommendations, including recommended management measures to be put in place before and during construction works to manage any unanticipated Aboriginal objects, historical relics or human remains.

The ACHA also involved consultation with the Aboriginal community, including notification of the proposal, as well as presentation of information about the proposal and ACHA methodology to the Registered Aboriginal Parties (RAPs) and request for comments. The draft ACHA was also provided to the RAPs, who had 28 days to provide comments. During the final consultation stage, one comment was received, stating that the RAP had read the ACHA and Archaeological Report and that the RAP endorses the recommendations made in the ACHA.

The ACHA concludes that the proposal will not impact on any known Aboriginal heritage values.

General social and economic impacts

The planning proposal is anticipated to have positive economic and social impacts in Wyee and in the Lake Macquarie LGA. It will provide additional housing supply and choice in an area in close proximity to public transport and shopping facilities and within 30 minutes of the Strategic Centre of Morisset and associated employment opportunities. The development of the site will generate construction related employment and investment, as well as ongoing investment in the local economy.

Given the small scale of development, it is not anticipated that significant demand for new facilities will be generated nor will undue pressure be placed on existing social infrastructure as detailed in the Social Impact Assessment.

The development of the site will also provide development contributions that Council can utilise to expedite planned projects in the region or augment the embellishment of local facilities. Moreover, future development on the site will adopt a similar form of development as the completed sections of the adjoining residential area to the eastern side of the site, thereby helping to integrate the future community with the existing community.



**Relevant Strategies/ Considerations
Instruments**
Section D – Infrastructure (Local, State and Commonwealth)
11. Is there adequate public infrastructure for the planning proposal?

The site adjoins the existing Wyee West Precinct with lead in services readily able to be connected to. The proponent has commenced engagement with key utility providers to develop options and associated costs to deliver water, sewer and electricity to the site. The inclusion of the site on the Urban Release Area Map will also require arrangements to be made with the State Government for the provision of State public infrastructure.

In terms of local infrastructure, the planning proposal and associated residential lot yield is not considered to place significant additional demand on Council's infrastructure. The demand on infrastructure has been considered, as outlined below:

Traffic and Transport	A Traffic Impact Assessment has been prepared for the planning proposal. Based on the proposed residential yield of 54 lots on the site alone, an additional 38 vehicle trips per hour will be generated. This traffic volume is considered to be able to be accommodated within the existing road network without the need for road widening or intersection upgrades. On this basis, the proponent would intend to provide development contributions for the proposed development in accordance with <i>Lake Macquarie City Council Development Contributions Plan 2012 – Morisset Contributions Catchment</i> (Contributions Plan) that includes a component to go towards local traffic and transport infrastructure.
Stormwater Management	The Integrated Water Cycle Management Report prepared for the planning proposal identifies the need for a combined stormwater detention and treatment basin. The stormwater basin and other stormwater management measures will be required as part of future subdivision design and will need to meet DCP controls. Implementation of stormwater management measures will occur through future development.
Open Space and Community Facilities	Based on the relatively low residential yield, associated population and studies that informed Council's Contributions Plan, the development of the site is unlikely to generate significant demand for open space or community facilities that would warrant the provision of facilities on the site. Therefore, instead of providing open space and community facilities on the site, the proponent will pay contributions for open space and community facilities.

Section E – State and Commonwealth interests
12. What are the views of state and federal authorities and government agencies consulted in order to inform the Gateway determination?
12.1- Pre-lodgement Agency Consultation

Preliminary consultation has occurred with State authorities during the pre-lodgement phase. Referrals were sent to the following agencies during the 'pre-lodgement phase':

- NSW Rural Fire Service
- NSW Department of Planning and Environment – Biodiversity and Conservation Division
- Heritage NSW



**Relevant Strategies/ Considerations
Instruments**

- NSW Environmental Protection Authority
- Hunter Water
- Ausgrid
- Jemana
- NSW Department of Primary Industries

The following outlines comments received from agencies during the Pre-lodgement phase.

NSW Rural Fire Service

NSW Rural Fire Service requested a bushfire risk assessment report which addresses the requirements of *Planning for Bush Fire Protection (PBP) 2019*. NSW Rural Fire Service stated that the Bushfire Threat Assessment (dated August 2021) submitted at the pre-lodgement phase does not include the hazard along the south-western side boundary within the C2 zoned land. Given the hazard associated with the connectivity of the vegetation to the border, NSW Rural Fire Service recommended that it should be included in future bushfire risk assessments.

An Updated Bushfire Threat Assessment (dated July 2022), which addresses the above requirements, has been submitted with the planning proposal and has been considered in the assessment of the planning proposal.

The Updated Bushfire Threat Assessment (dated July 2022) will be provided to the NSW Rural Fire Service for review during the post-gateway agency consultation stage.

NSW Department of Planning and Environment – Biodiversity, Conservation and Science Division (BCS)

Biodiversity

1. BCS recommends that the proposal includes further assessment of impacts on Endangered Ecological Communities (EECs) and that the test of significance is updated to assess the proposed direct impacts on EEC vegetation.
 2. BCS recommends that further information is provided on the proposed delivery and possible extension of Digary Rd and potential future impacts on biodiversity values within the C2 zoned land.
 3. BCS recommends that the proposal includes further assessment of the squirrel glider and potential impacts on the species from the proposed development.
 4. BCS recommends that the proposal includes further details about the location of the stormwater detention basin. It is recommended that stormwater detention infrastructure is located outside of the proposed C2 zone.
 5. BCS recommends that the proposal includes further details on koala surveys and a minimum of three SAT survey sites undertaken within the subject area.
 6. BCS recommends the proposal includes further details on frog surveys and refer to *the NSW Survey Guide for Threatened Frogs* (DPIE, 2020) to ensure frog surveys are adequate.
-



**Relevant Strategies/ Considerations
Instruments**

Flooding and flood risk

7. BCS recommends that further information on the Probable Maximum Flood (PMF) is provided to ensure that the proposed development's potential emergency management impacts are adequately assessed.

An Updated Biodiversity and Riparian Assessment (dated October 2022), which addresses the above requirements, has been submitted with the planning proposal and has been considered in the assessment of the planning proposal.

Moreover, the proponent has provided some technical advice regarding the Probable Maximum Flood to address BCS' comments regarding flooding.

An updated report has now been prepared to the satisfaction of BCS.

Heritage NSW

An Aboriginal Cultural Heritage Due Diligence report prepared by Biosis and dated 18 August 2021 has been provided to accompany the scoping proposal and has been reviewed by Heritage NSW as part of the pre-lodgement consultation period. Heritage NSW advised Council that an assessment under the 2010 Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW is not considered an archaeological assessment or substitute for a comprehensive Aboriginal Cultural Heritage Assessment report.

Heritage NSW stated that the due diligence process does not adequately assess the impacts of this planning proposal on Aboriginal Cultural Heritage as required by Ministerial Directions issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), specifically Local Planning Direction 3.2 Heritage Conservation. This is because without Aboriginal community consultation the extent of the impacts on Aboriginal objects and heritage values through the planning proposal and future development is not known.

Heritage NSW therefore requested that a comprehensive Aboriginal Cultural Heritage Assessment that includes both Aboriginal community consultation and archaeological assessment is undertaken to inform the planning proposal and ensure it is consistent with the Ministerial Directions 3.2 Heritage Conservation.

Heritage NSW further stated that to adequately assess the Aboriginal cultural heritage significance of the land subject to the planning proposal, the proponent needs to clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people that may potentially constrain future land-use planning.

An Aboriginal Cultural Heritage Assessment (ACHA) was undertaken by Biosis (dated 9 December 2022), which involved the assessment of Aboriginal cultural heritage significance of the site, as well as Aboriginal community consultation, and test excavations to determine the archaeological significance of the areas of moderate archaeological potential identified in the Aboriginal Due Diligence Assessment.

The assessment of the Aboriginal cultural/social, historical, aesthetic and archaeological significance of the site included in the ACHA found the following:

- Cultural (social) significance: The study area holds high cultural significance to the Aboriginal people of the local region as it is part of the cultural landscape that Aboriginal people have connected with over generations.
-



**Relevant Strategies/ Considerations
Instruments**

- Historical significance: The study area is not currently known to have any historic associations.
- Aesthetic significance: The landscape of the study area is closely linked with Aboriginal cultural values; however, stock grazing, vegetation clearance and construction of residential dwellings and associated buildings and services has reduced the aesthetic quality of the area to moderate.
- Archaeological (scientific) significance: The archaeological assessment undertaken has determined that the study area has low archaeological values, as no Aboriginal objects or sites were identified during the investigation.

The ACHA was provided to Heritage NSW for review during the post-gateway agency consultation stage. However, the submitted ACHA was not reviewed as Heritage NSW only reviews ACHA's on merit in accordance with their guidelines.

NSW Environment Protection Authority (EPA)

The EPA stated that the proposal does not constitute a Scheduled Activity under Schedule 1 of the *Protection of the Environment Operations Act 1997* (POEO Act). As such, the EPA does not consider that the proposal will require an Environment Protection Licence under the POEO Act. The EPA does not require any follow-up consultation.

Consultation with the below State and Commonwealth public authorities has occurred in accordance with the Gateway determination.

- Rural Fire Service
 - NSW Department of Planning and Environment – Biodiversity and Conservation Division
 - Heritage NSW
 - Hunter Water
 - Australian Pipeline and Gas Authority (Jemana)
 - NSW Department of Primary Industries
-



Figure 2 – Aerial Photo of the Site





Figure 3 – Existing Land Use Map

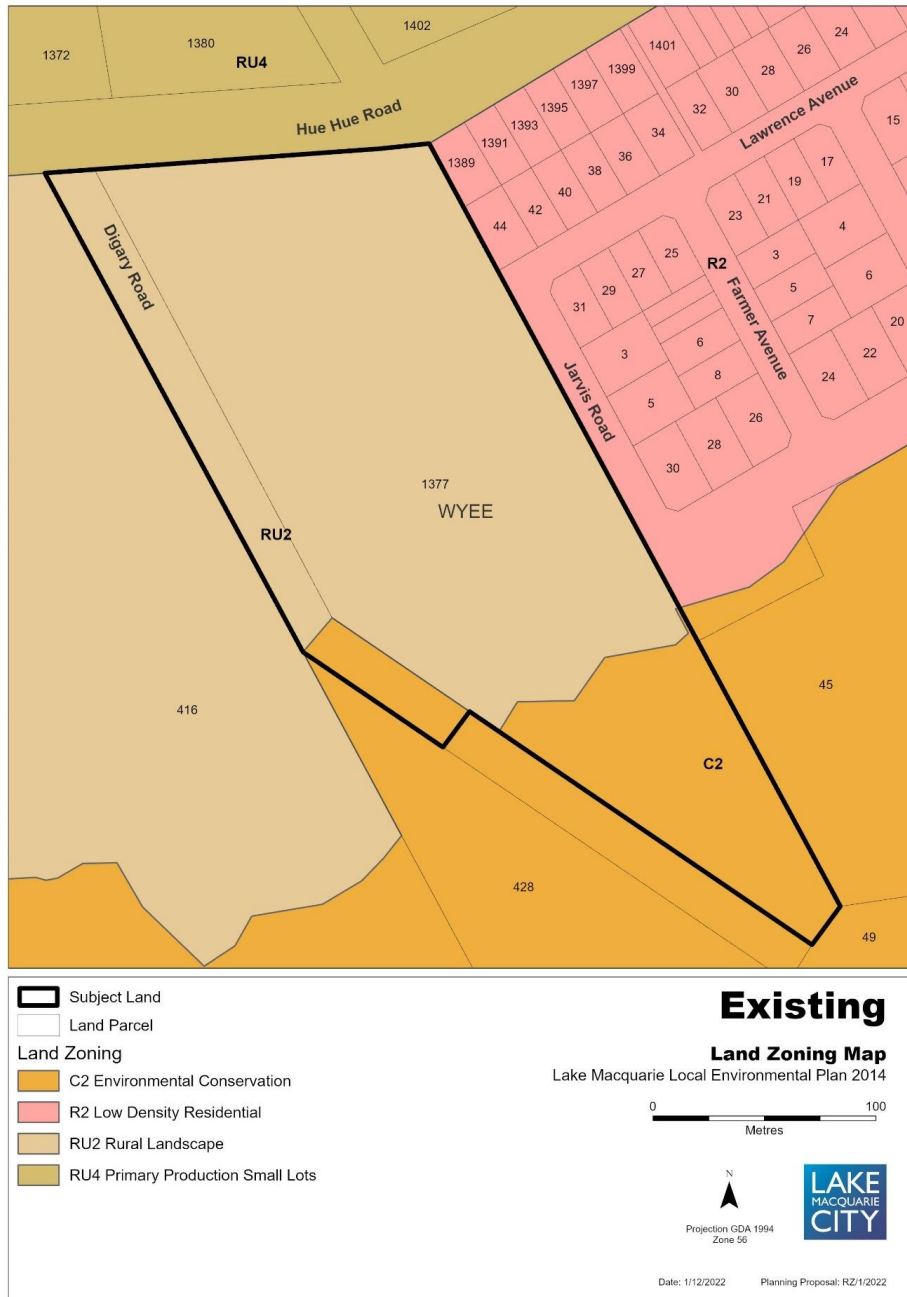




Figure 4 – Proposed Land Use Map

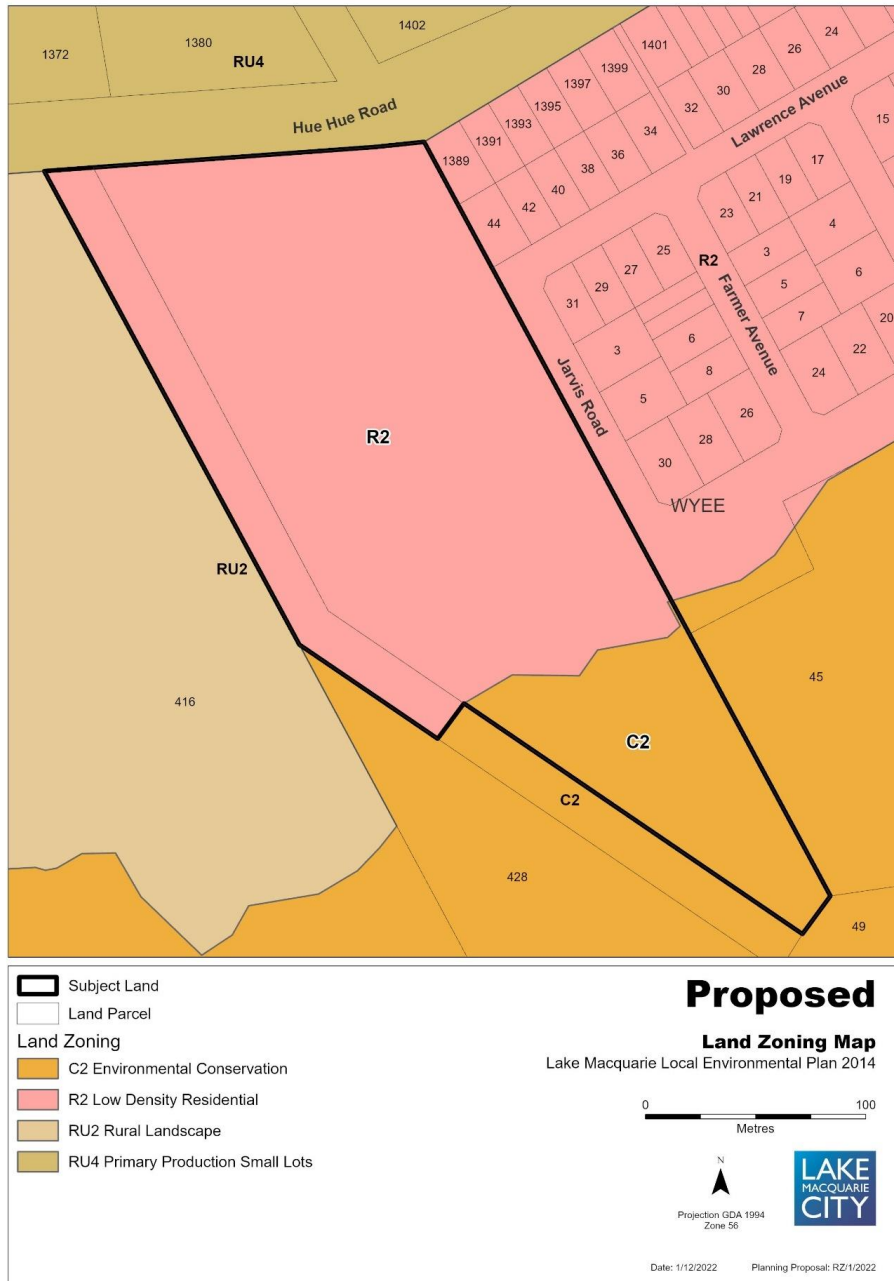




Figure 5 – Existing Minimum Lot Size Map

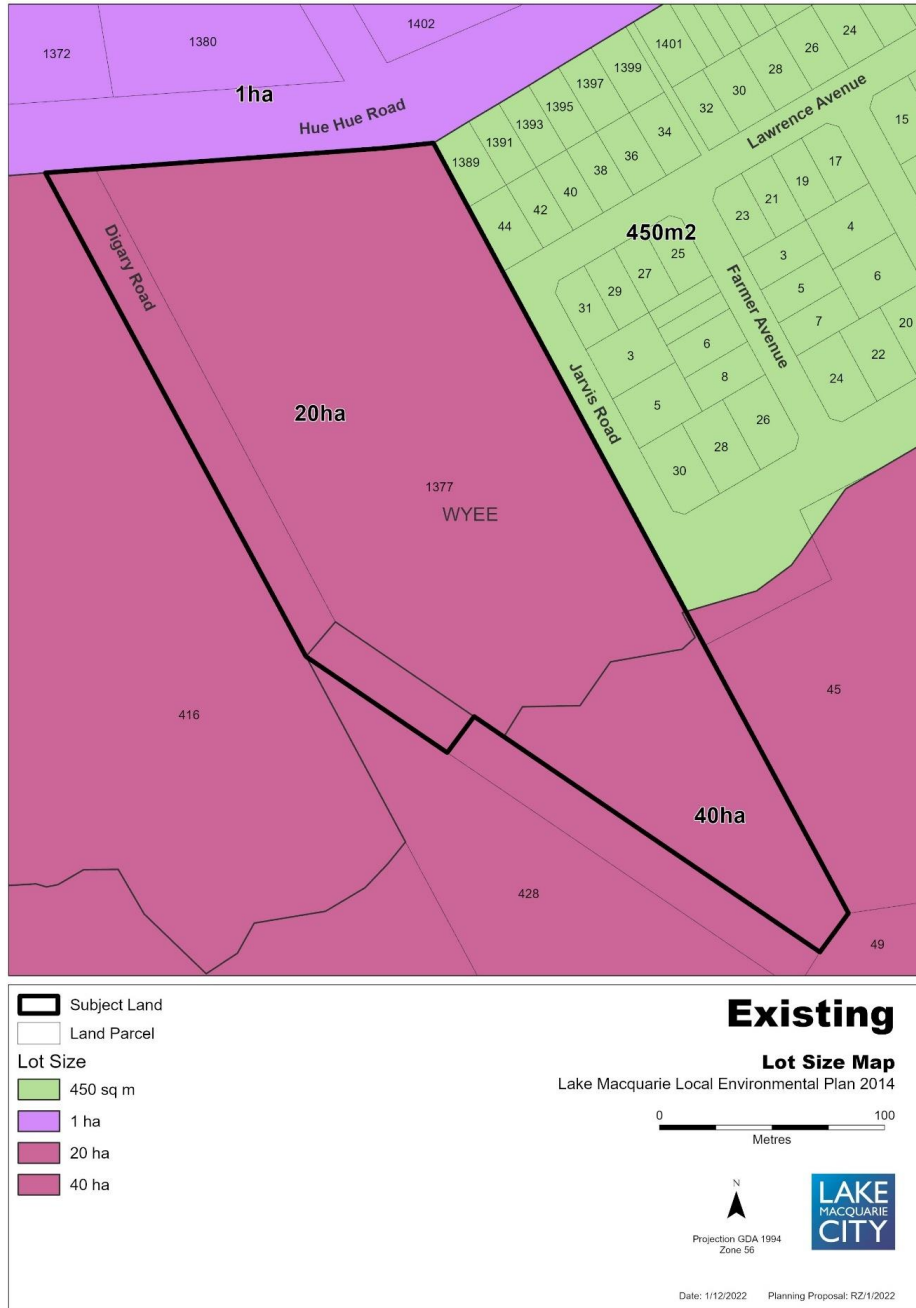




Figure 6 – Proposed Minimum Lot Size Map

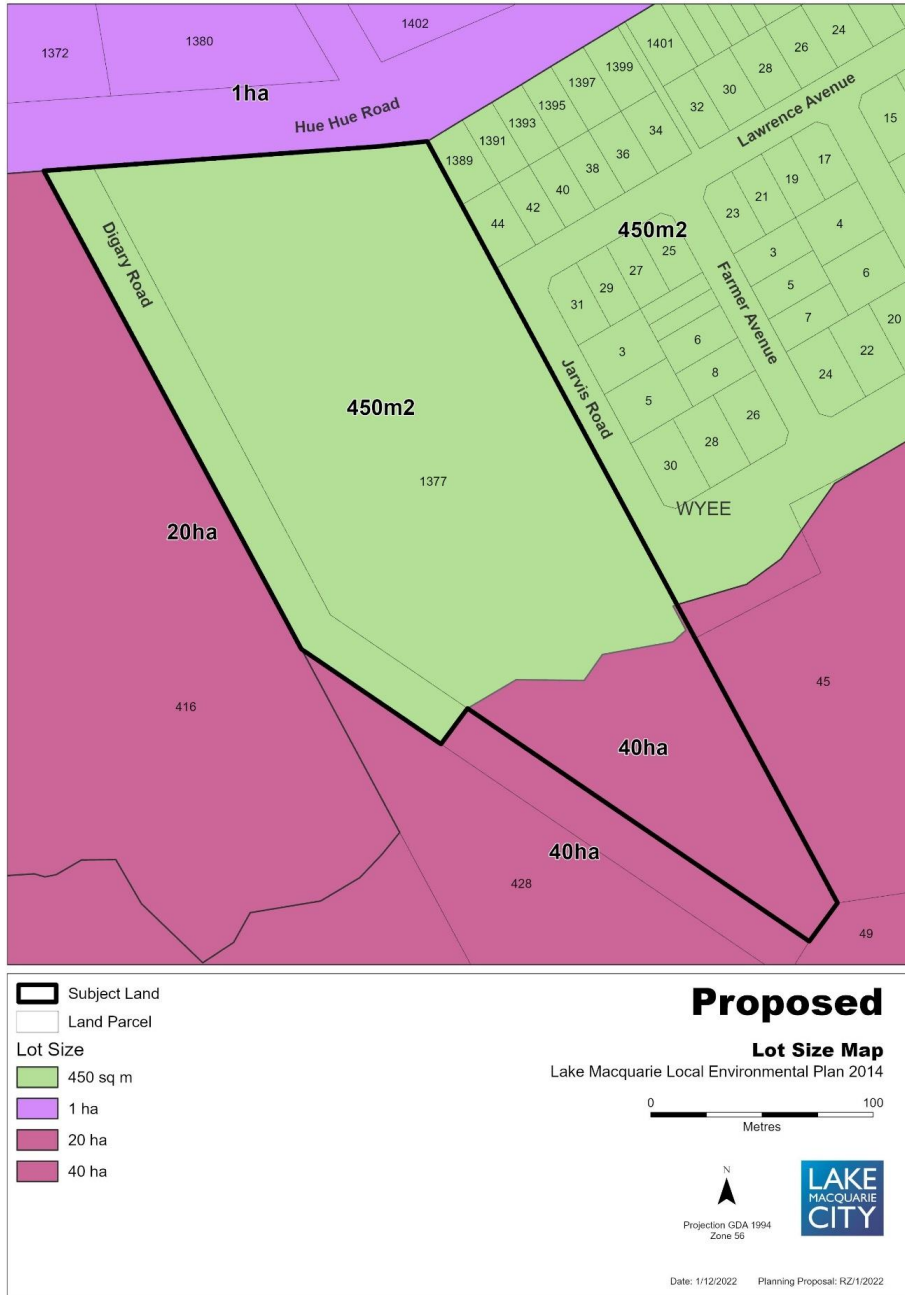


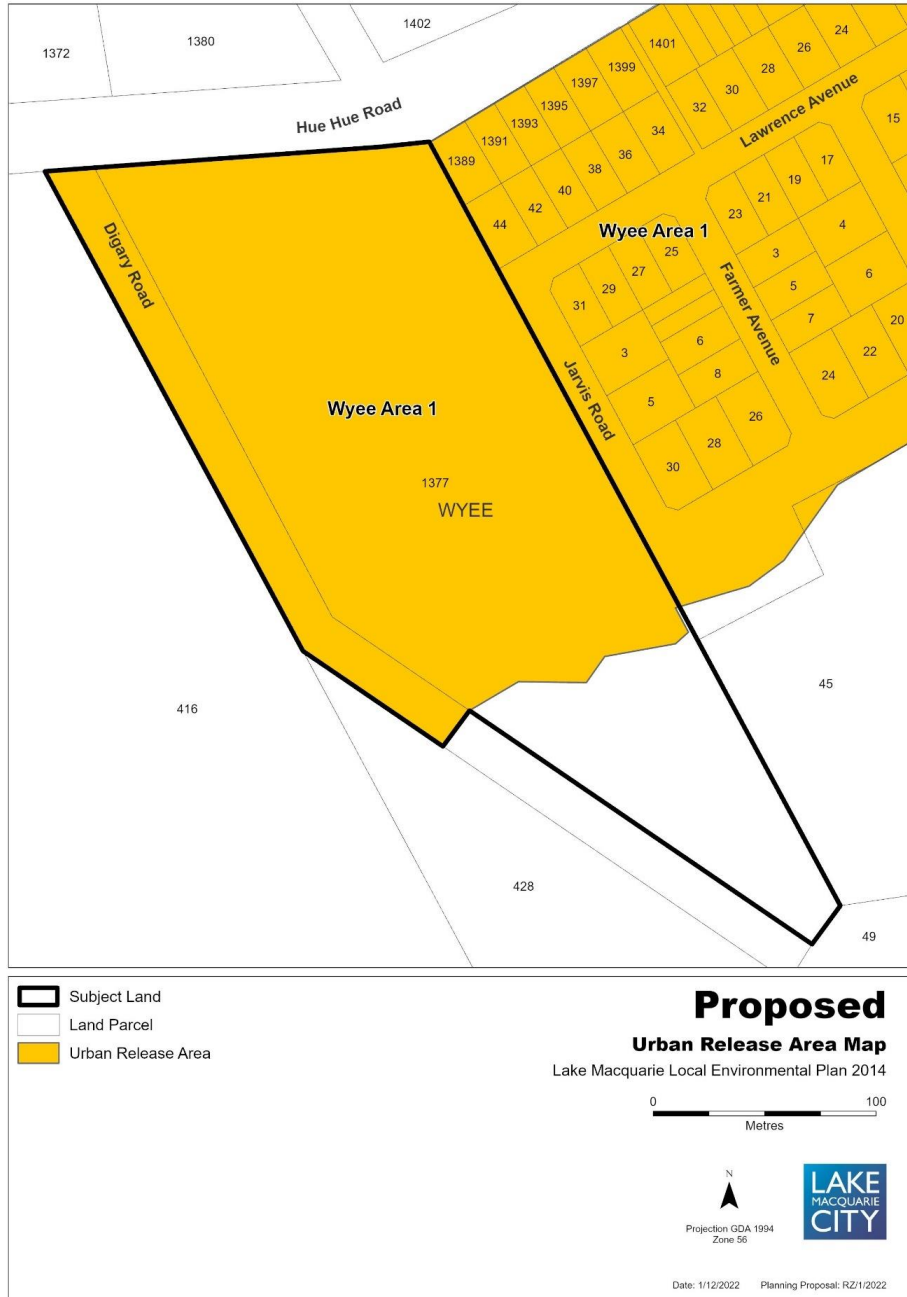


Figure 7 – Existing Urban Release Area Map





Figure 8 – Proposed Urban Release Area Map





Part 5 – Community Consultation

A Pre-Lodgement scoping proposal was considered by Council in early 2022. This included consultation with Council staff and Government agencies. A Pre-Lodgement meeting was held on 5 April 2022 followed by the issue of written advice on 13 April 2022. The advice issued contained comment from the following agencies:

- Lake Macquarie City Council
- NSW Rural Fire Service
- NSW Department of Planning and Environment – Biodiversity and Conservation Division
- Heritage NSW
- NSW Environmental Protection Authority

The following agencies were also contacted during the Pre-Lodgement stage, however no comment has been received at this stage:

- Hunter Water
- Australian Pipeline and Gas Authority
- NSW Department of Primary Industries

The proponent has also undertaken consultation with the Aboriginal community as part of the Aboriginal Cultural Heritage Assessment process.

Post-gateway Determination Community Consultation

The planning proposal and the DCP amendment were publicly exhibited from 1 May to 29 May 2024 and re-exhibited from the 1 August till 28 August 2024 in accordance with the Gateway Determination. The planning proposal was exhibited on Council's Shape Lake Mac webpage and a total of three public submissions were received. All three submissions did not support the proposal. The main concerns raised included lack of amenities, traffic related issues (congestion and noise) and impact on quality of life and the environment.

Post Gateway Agency consultation

As per the Gateway Determination conditions, Council consulted with the State agencies and Public Authorities. The following comments were received.

Department of Primary Industries NSW (DPI)

No objections were raised by the agency, however, recommended that consideration to potential land use conflict (between rural and residential) activities be considered. Also, where necessary, minimise land use conflict by physical separation of any existing rural and proposed residential land uses as per the *Land Use Conflict Risk Assessment Guide* (LUCRA).

NSW Rural Fire Service (RFS)

NSW RFS advised that the initial bushfire threat assessment was inconsistent with the conceptual layout shown in the planning proposal and needed to be amended. A revised bushfire report was prepared to the satisfaction of RFS. No objections were raised during the review of the revised report. RFS advised that any future developments on the subject site must demonstrate compliance with the relevant provisions of the *Planning for Bushfire Protection 2019*.



Biodiversity Conservation and Science Division (BCS)

BCs advised that the provided Integrated Water Management report was not consistent with the subdivision layout as shown in the planning proposal and needed to be amended. The agency also advised that the report needed to further demonstrate compliance with the *s.91 Ministerial Direction 4.1* Flooding and emergency evacuation requirements detailed in the *Flood Risk Management Manual 2023*. An updated report was prepared to the satisfaction of BCS.

Heritage NSW (HNSW)

No objections were raised. The agency noted that an Aboriginal Cultural Heritage Assessment Report (ACHAR) was submitted as part of the planning proposal and that it was not reviewed by the agency. HNSW also advised that there were no identified items listed on the State Register would be impacted by the planning proposal.

Jemana

No objections were raised. The agency noted that the proposal is unlikely to impact the high-pressure natural gas transmission pipeline is located within 70m to the subject site.

Hunter Water

No objections were raised.

Ausgrid

No objections were raised.

Part 6 – Project Timeline

Stage	Timeframe	Revised Gateway Timeframes
Gateway determination	25 working days	183 days (delayed in Department Gateway Assessment, no gateway alteration issued)
Pre-exhibition Agency Consultation	50 working days	130 days (extended via Gateway Alteration)
Commencement and completion of public exhibition period	20 working days	No changes
Consideration of submissions	10 working days	No Changes
Post-exhibition review and additional studies	10 working days	N/A
Post exhibition planning proposal consideration / preparation	55 working days	Subject to change. Additional gateway alteration required for re-exhibition and finalisation of VPA.
Submission to Department for finalisation (where applicable)	10 working days	No changes
Gazettal of LEP Amendment	45 working days	No Changes



Part 12 – Precinct Area Plans - Wye West

1 INTRODUCTION

The purpose of the Wye West Area Plan is to provide a strategic and coordinated approach to the development of land located to the west of the existing Wye township. The Area Plan will ensure that the land is developed in an efficient manner, considering environmental, social and economic issues affecting the site.

This Area Plan is to be read in conjunction with the relevant part of Lake Macquarie Development Control Plan (LM DCP) 2014. Where the provisions of this Area Plan are inconsistent with the controls in the relevant part of LM DCP 2014, the provisions of this Area Plan will prevail.

1.1 BACKGROUND

~~The development of the land subject to this area plan for residential subdivision has been made possible by the construction of a wastewater treatment plant within the site. The treatment plant was partially funded by a grant from the Australian Government's Building Better Regional Cities program. That program was designed to fund infrastructure that supported the provision of affordable housing.~~

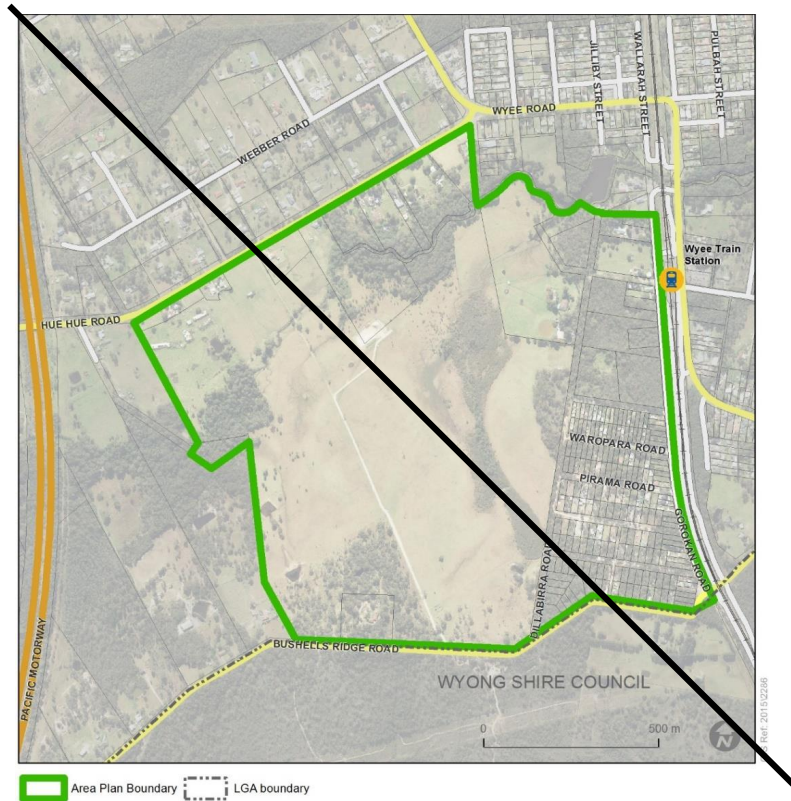
1.2 EXTENT OF AREA PLAN

This Area Plan applies to the land outlined in heavy edging as shown in Figure 1.

Justification: This section is proposed to be removed since the wastewater treatment plant has never been used and is proposed to be removed and replaced with residential development. This has been enabled by a recent rezoning of the land from SP2 to R2.



Part 12 – Precinct Area Plans - Wye West



Justification: Figure 1 has been updated to include Precinct D and to include new subdivisions and newly constructed roads.

Figure 1 – Extent of the Area Plan

Summary of changes
Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wyee West

1.3 EXISTING CHARACTER

Wyee is located adjacent to the southern boundary of Lake Macquarie Local Government Area and is on the main northern railway line and main road that links Morisset to Doyalson. The Sydney-Newcastle M1 Motorway is located to the West of the township.

The Wyee township comprises predominantly low-density residential allotments with detached housing, interspersed with rural properties and rural residential allotments. The town centre is situated on Wyee Road, and comprises a small commercial/retail centre.

Wyee is located within a rural landscape and it is physically and visually separated from the nearby urban settlements of Morisset, Wyee Point and Doyalson. Because of the small size of the settlement, and its shape and topography, glimpses of a rural landscape are frequently viewed from points within the town.

1.4 ENVIRONMENTAL ATTRIBUTES AND CONSTRAINTS

Flooding

Manning Creek is a significant landscape feature that traverses the site in addition to a tributary entering from the south. Land adjacent to Manning Creek and the tributary is flood prone and identified as a Flood Planning Area in *Lake Macquarie Local Environmental Plan 2014* (LMLEP 2014), as shown in Figure 2.

Biodiversity

The site provides a range of biodiversity values, including the general provision of habitat and connectivity, threatened species, and Ecological Endangered Communities. The key biodiversity features of the site include:

- Two riparian corridors containing Endangered Ecological Communities;
- Important Squirrel Glider corridor and habitat for denning and foraging; and
- Threatened flora species including *Tetratheca Juncea* and *Angophora Inopina*.

The high ecological value land has been mapped as ~~E2~~ C2 Environmental Conservation or identified as Environmentally Sensitive Land in LMLEP 2014, as shown in Figure 2. The retention, conservation and rehabilitation of the environmental corridors is an important priority. Vegetation within areas identified as Environmentally Sensitive Land must either be retained or, if removed, appropriately offset.

Justification: The environmental zones (i.e. E1, E2, E3 and E4) have been changed to conservation zones (i.e. C1, C2, C3 and C4). The changes reflect the updated zone names.



Part 12 – Precinct Area Plans - Wye West



Justification: Figure 2 has been updated to include Precinct D and to include new subdivisions and newly constructed roads.

Figure 2 – Environmental Attributes and Constraints

Summary of changes
Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wye West



Figure 2 – Environmental Attributes and Constraints

Summary of changes
Draft LMCC DCP 2014 – Revision XX
Page 6 – F2022/02289



Part 12 – Precinct Area Plans - Wyee West

1.5 DESIRED FUTURE CHARACTER

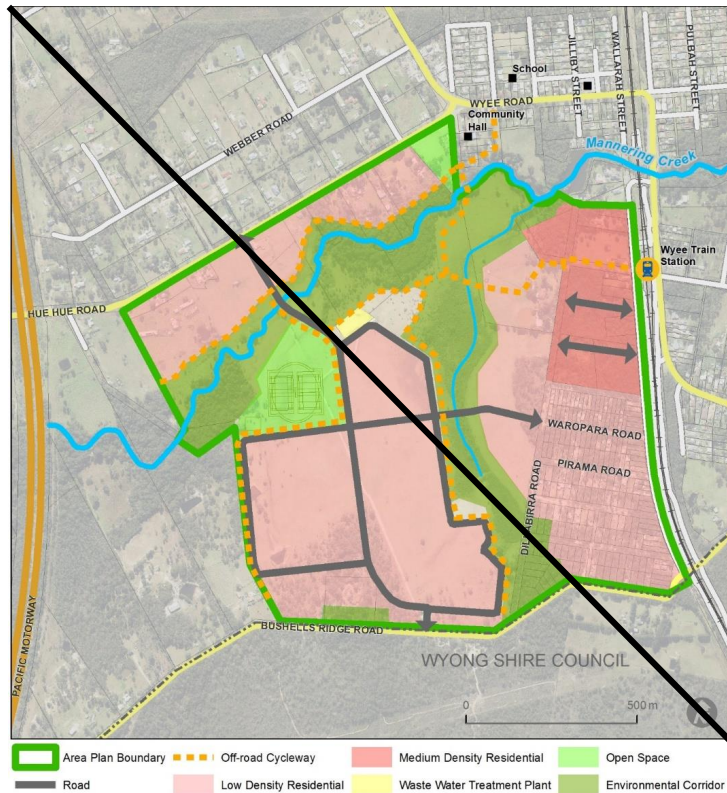
In 2010, Council adopted the Wyee Structure Plan following public exhibition. That plan provides strategic direction for the planning and future development of Wyee. Principle 1 – Desired Future Character and Urban Form of the Wyee Structure Plan states that 'Wyee will continue to exhibit the visual and aesthetic character of a rural village'.

The desired urban structure of the site is outlined in Figure 3 and aims to:

- Maintain and enhance environmental corridors,
- Establish a perimeter road to define the edge of open space and conservation areas,
- Locate roads and entries for efficient access and connectivity through the site and between the Precincts,
- Designate an area within the site for sport fields, netball courts, a local park and dog exercise area in a central location and free from environmental constraints,
- Provide safe pedestrian and cycle paths linking to the existing road network, recreation facilities and Wyee train station,
- Provide a range of lot sizes to accommodate a variety of dwelling types including affordable housing, and
- Minimise potential for risk from bushfire and flooding.



Part 12 – Precinct Area Plans - Wye West



Justification: Figure 3 has been updated to include Precinct D and to include new subdivisions and newly constructed roads.

Figure 3 – Wye West Structure Plan

Summary of changes
 Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wye West



Figure 3 – Wye West Structure Plan

Summary of changes
Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wye West

1.6 PRECINCTS

Three distinctive precinct areas have been identified within the land to which this Area Plan applies, as outlined in Figure 4. Each precinct has its own specific development controls.



Part 12 – Precinct Area Plans - Wye West



Justification: Figure 4 has been updated to include Precinct D and to include new subdivisions and newly constructed roads.

Figure 4 – Precinct Boundaries

Summary of changes
Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wye West



Figure 4 - Precinct Boundaries

Summary of changes
Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wyee West

Precinct A – Low Density Residential

This land comprises approximately 120 hectares of mostly cleared grazing land and also contains important ecological corridors and communities. Precinct A is the largest of the three precincts and will comprise predominantly low density housing on a range of lot sizes, including a component of affordable housing. Precinct A will contain new recreation facilities including sport fields and amenities, a local park, netball courts, dog exercise area and shared pathways. The enhancement of the riparian corridors will contribute to the visual amenity and bushland setting of the site by providing a natural backdrop to the residential area.

Precinct B – Medium Density Residential

Precinct B is located within 400 metres of the train station and is envisaged to contain predominantly medium density housing, such as town houses and villas. Medium density development is suitable in this location due to its accessibility to the Wyee train station and village centre. Single dwellings will only be permitted on small lots (between 200m² and 450m²).

Precinct B contains habitat that forms part of an existing conceptual Squirrel Glider corridor through the site.

Precinct C – Paper Subdivision

Precinct C, located adjacent to the railway line, comprises 199 existing residential sized lots in Deposited Plan 7506. The land is known as the Wyee West Paper Subdivision and was created in 1914. The subdivision pre-dates the legislative requirements for anyone subdividing land to construct essential infrastructure. Until recently the land had limited development prospects due to its former rural zoning and lack of infrastructure. The land has generally remained undeveloped and un-serviced. Precinct C also contains habitat that forms part of an existing conceptual Squirrel Glider corridor through the site.

In 2013, the majority of lots within the paper subdivision were rezoned from rural to residential. Despite the residential zoning, the paper subdivision still lacks the essential infrastructure to enable Council to grant consent to dwellings on these allotments. The paper subdivision will require sealed roads, drainage, reticulated water and sewerage, electricity and telecommunications. Landowners are responsible for the cost of the infrastructure.

Fifteen (15) lots are zoned E2 C2 Environmental Conservation under the LMLEP 2014 to conserve and enhance the high ecological value of this land which forms part of an important Squirrel Glider corridor. These lots are not suitable for residential development and accordingly will not require essential infrastructure.

Justification: The environmental zones (i.e. E1, E2, E3 and E4) have been changed to conservation zones (i.e. C1, C2, C3 and C4). The changes reflect the updated zone names.



Part 12 – Precinct Area Plans - Wyee West

Precinct D – Low Density Residential

Precinct D is located west of Precinct A and comprises the property known as 1377 Hue Hue Road, Wyee, as well as part of Digary Road. This land has an area of approximately 4.5 hectares and mostly contains cleared grazing land in the northern section of the site, as well as some remnant forest with important ecological communities in the southern section. Precinct D will comprise predominantly low-density housing on a range of lot sizes in the northern section of the site and will retain the C2 zoned land in the southern section.

Justification: This section has been included in the DCP to provide an overview of Precinct D.



Part 12 – Precinct Area Plans - Wye West

2 DEVELOPER CONTRIBUTIONS

Several items need to be provided to achieve the environmental and development objectives of the site: These include:

- Pedestrian/cycleway links;
- Road and traffic infrastructure;
- Stormwater management infrastructure;
- Native vegetation and riparian corridor rehabilitation and ongoing management in environmental zoned land; and
- Provision of land for new sports fields, netball courts, local park and dog exercise area.

Public community facilities that will be required as a result of population growth in Wye are specified in Lake Macquarie City Council Development Contributions Plan 2012 - Morisset Contributions Catchment.

There are several options available to deliver these items that may be used in combination, including:

- Conditions of consent for future development applications;
- Section 7.11 contributions;
- Dedication of land to Council;
- Works in kind; and
- Voluntary planning agreements.



Part 12 – Precinct Area Plans - Wye West

3 PRECINCT A – LOW DENSITY RESIDENTIAL



Justification: Figure 5 has been updated to include the indicative roads adjacent to Precinct A.

Figure 5 – Precinct A: Subdivision Design and Layout Plan

Summary of changes
 Draft LMCC DCP 2014 – Revision XX
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Part 12 – Precinct Area Plans - Wye West

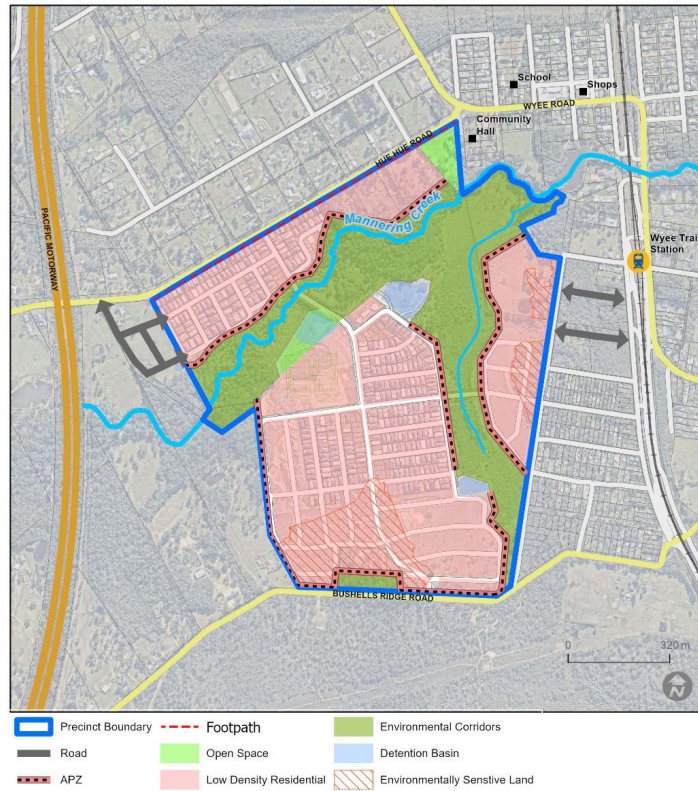


Figure 5 – Precinct A: Subdivision Design and Layout Plan

Summary of changes
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3.1 DEVELOPMENT STAGING

Objectives

- a. To ensure the subdivision of the land is undertaken according to a logical sequence, having regard to the provision of infrastructure and identified community facilities.
- b. To ensure the timely establishment of environmental rehabilitation works required in accordance with Section 3.40 3.9 of this Area Plan.

Controls

1. Any application for subdivision must be accompanied by a staging plan, indicating the number of residential lots and infrastructure included in each stage.
2. The staging plan must clearly indicate the extent of environmental rehabilitation work to occur as part of each stage of the subdivision and the proposed management regime for conservation areas.

Justification: This change just seeks to correct a mistake (i.e. the text relates to section 3.9 and not 3.10).

3.2 SUBDIVISION DESIGN AND LAYOUT

Objectives

- a. To ensure the subdivision layout is designed to integrate with the surrounding neighbourhood and the natural environment.
- b. To ensure the ecological attributes of the site are protected and enhanced.
- c. To provide a highly accessible network of pedestrian and shared pathways that encourage walking and cycling to local destinations, including, shops, sporting and community facilities and public transport.
- d. To ensure the subdivision of the subject land provides adequate protection from hazards such as flooding and bushfire.
- e. To mitigate adverse impacts of new intersections on the amenity of existing residents and to maintain safe access to existing residences.

Controls

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1. The subdivision layout should generally be consistent with Figure 5.
2. The subdivision layout must be designed to ensure passive surveillance of open space and recreation facilities.
3. The developer of Precinct A shall determine the impact of the proposed intersection of the new collector road with Hue Hue Road on the ability of residents of 1432 and 1434 Hue Hue Road to safely access their properties from both directions. Where necessary, the developer shall, in consultation with the respective landowners, meet the reasonable expense of relocating the driveways of these properties to allow safe access to and from Hue Hue Road. Additionally, the developer shall construct a solid wall along the front boundary of 1432 Hue Hue Road to the extent necessary to mitigate the effect of headlights of vehicles exiting the proposed collector road on the existing dwelling.

3.3 SITE BENCHING

Objectives

- a. To ensure that subdivision design and layout responds to the site's characteristics.
- b. To maintain site stability.
- c. To avoid unnecessary clearing and reshaping of land at subdivision stage.
- d. To ensure that cut and fill does not significantly alter the flow of water or exacerbate flooding.

Controls

1. Benching of allotments created under Clause 4.1B of LMLEP 2014 is permitted at subdivision stage if:
 - i. The height of any retaining walls does not exceed 1.5 metres;
 - ii. All retaining wall designs include a sub-soil drainage system;
 - iii. Retaining walls are permitted near lot boundaries but must be located entirely on the lot being retained, including all necessary sub-soil drainage;
 - iv. Retaining walls are designed to accommodate the surcharge loading of future dwellings, or a restriction will be placed on the lots to ensure that buildings are not built within the influence zone of the retaining wall;
 - v. Retaining walls are constructed of decorative masonry or similar high-quality materials;



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- vi. The side-to-side cross fall on the resulting benched lots does not exceed 5%.

Notes:

1. Benching is excavation and / or filling of the natural slope of land to create flat building sites. The earthworks are held in place by a retaining wall.
2. Section 3.27 of Part 3 – Development within the Residential Zones of LM DCP 2014 contains controls for cut and fill that apply in addition to those provided above. Where benching is undertaken at the subdivision stage, retaining walls may be near the allotment boundary as long as the structure and associated drainage is located entirely on one lot. Where retaining walls are proposed at the development application stage for an individual lot, only the provisions under Section 3.27 of Part 3 of the DCP apply and the retaining wall must be offset from the allotment boundary.

3.4 OPEN SPACE AND RECREATION

Objectives

- a. To ensure that public open space provided is of the appropriate quantity and quality to meet the recreational and social needs of the community.

Controls

1. Open space shall be provided onsite in accordance with the requirements of Table 1.

Table 1 – Open Space Requirements

Open Space Type	Number	Minimum Area Required (m2)
Sportsground (2 playing fields)	1	32,500
Netball Courts	2	1,750 (combined area)
Local Park	1	5,000
Dog Exercise Area	1	5,000



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Note: The location and configuration of open space as shown in Figure 5 is indicative and subject to final survey and design.

3.5 PEDESTRIAN AND BICYCLE LINKS

Objectives

- a. To ensure the development provides a pedestrian and cycle network with access to key destinations within the site and surrounding area, including the existing and proposed recreation areas, shops, Wyee Public School and Wyee train station.

Controls

1. Pedestrian and cycle routes must be conveniently linked to recreation and community facilities, the Wyee train station, and the external road network, as shown in Figure 3.
2. Where practical, shared pedestrian/cycle pathways should be incorporated into the road reserve on the undeveloped side of perimeter roads, thereby contributing to Asset Protection Zones and providing a 'hard edge' to conservation land.

3.6 FRONTAGE TO EXISTING ROADS

Objectives

- a. To ensure new dwellings are orientated towards existing roads in order to:
 - integrate with the existing township,
 - make efficient use of existing infrastructure, and
 - provide better streetscape amenity along existing roads

Controls

1. Where practical, lots along Hue Hue Road and Bushells Ridge Road should be orientated towards the existing road.

Note:

1. If orientating lots towards Bushells Ridge Road cannot be practically achieved due to minimum Asset Protection Requirements and building setbacks, Council may consider a variation to the above control. The onus is on the applicant to demonstrate (supported by a Bushfire Report) why a variation to the control is required.



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2. If, prior to residential subdivision of the relevant stage adjacent to Bushells Ridge Road, land adjacent to and south of Bushells Ridge Road, located within the Wyong Local Government Area, is developed for a use considered unsuitable to be faced by residential dwellings, Council will consider a variation to the above control. In this circumstance, a vegetated buffer area may be necessary between Bushells Ridge Road and residential allotments.
3. Where lots are not orientated towards Bushells Ridge Road, one consistent fence (using timber palings or similar) must be erected along the rear of all lots adjacent to Bushells Ridge Road and screened with landscaping to the satisfaction of Council. Fencing and landscaping details are to be submitted with the Development Application for the relevant stage of subdivision and the works shall be completed prior to release of the Subdivision Certificate.

3.7 WATER QUALITY MANAGEMENT

Objectives

- a. To ensure ecologically valuable land and associated watercourses are protected.
- b. To rehabilitate creek banks that have been subject to damage from erosion
- c. To ensure the stormwater drainage system is designed to maintain the natural watercourse and to minimise future environmental impacts.

Controls

1. Stormwater from developed areas should be treated prior to discharging into a natural watercourse.
2. Eroded sections of the bank of Mannering Creek (including and upstream of Lot 1 DP 785709) are to be rehabilitated and stabilised by revegetation with suitable native species for the width of the ~~E2~~ **C2** zone in conjunction with construction of the proposed road link crossing the creek.
3. Stormwater and water quality facilities should be primarily located within the R2 Low Density Residential zoned part of the site. If any stormwater and water quality structures are positioned within the ~~E3~~ **C3** zoned land, these facilities must be designed to integrate with revegetation works and ensure adequate flow paths are maintained. No facilities are to be located in the ~~E2~~ **C2** zone.

Justification: The environmental zones (i.e. E1, E2, E3 and E4) have been changed to conservation zones (i.e. C1, C2, C3 and C4). The changes reflect the updated zone names.



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3.8 BUSHFIRE

Objectives

- a. To minimise any risks to life and property from bushfire hazards.
- b. To ensure that any risks associated with bushfire are appropriately managed.

Controls

1. The subdivision plan should provide for a perimeter road between the bushfire prone land and the development lots.
2. Asset Protection Zones must be established within the residential zoned part of the site and require minimal maintenance (i.e. incorporate perimeter road).

3.9 VEGETATION MANAGEMENT

Objectives

- a. To protect and enhance biodiversity values within land zoned for conservation.
- b. To ensure the riparian and wildlife corridors associated with Mannering Creek and its tributaries are rehabilitated and appropriately managed, including establishing habitat suitable for arboreal fauna.
- c. To ensure that the loss of biodiversity arising from development of the land is offset to mitigate the impact of that development.
- d. To provide for the long-term rehabilitation and management of land zoned for conservation.

Controls

1. A Vegetation Management Plan must be prepared for the Precinct in accordance with Council's Vegetation Management Plan Guidelines prior to subdivision.



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2. Secure tenure of the E2 C2 Environmental Conservation Land is necessary to ensure the long-term protection, rehabilitation and management of the E2 C2 land. This may be achieved by:
 - i. Dedication of E2 C2 land to Council or an acceptable management agency following implementation of the Vegetation Management Plan for a period of 10 years;
 - ii. Entering into a legally binding agreement (e.g. Planning Agreement) to establish a mechanism to provide ongoing management of E2 C2 land (e.g. an endowment fund);
3. All required on-site biodiversity offsets must be planted and functioning to the satisfaction of Council, prior to removal of any vegetation identified as Environmentally Sensitive Land in LMLEP 2014 (Clause 7.20).
4. Rehabilitated conservation lands should be protected by adequate drainage and weed controls, as well as fencing to deter unauthorised vehicular access.

Justification: The environmental zones (i.e. E1, E2, E3 and E4) have been changed to conservation zones (i.e. C1, C2, C3 and C4). The changes reflect the updated zone names.

Note:

- i. Preparation of the Vegetation Management Plan (VMP) may be carried out in stages corresponding with stages in subdivision of the site. For example, subdivision of that part of Precinct A between Hue Hue Road and Mannering Creek must include a VMP for land zoned E2 C2 adjacent to the proposed subdivision up to the northern bank of the creek [excluding land likely to be disturbed during construction of the proposed road crossing of the creek]. The final VMP must provide for, but not be limited to:
 - a. Re-establishment of native vegetation along riparian corridors, in endangered ecological communities and in fauna movement corridors (including removal of rubbish, weeds and planting with suitable native species);
 - b. Stabilisation of creek and drainage lines within the site using soft engineering (i.e. mimic natural systems such as properly constructed bed controls, pools and riffles);
 - c. Rehabilitation of habitat suitable for squirrel gliders, including establishment of a continuous canopy of preferred habitat trees such as Swamp Mahogany (*Eucalyptus Robusta*) augmented with artificial structures where necessary to allow movement through the site and for habitat augmentation (e.g. installing nest boxes to compensate for loss of hollows).
 - d. Details of the number and location of *Angophora Inopina* to be replanted in the E2 C2 land to compensate for loss of individuals for development (replanting of *Angophora Inopina* must be provided at a ratio of 5:1);
 - e. Future management arrangements for the E2 C2 land including funding, monitoring and timeframes;

Justification: The environmental zones (i.e. E1, E2, E3 and E4) have been changed to conservation zones (i.e. C1, C2, C3 and C4). The changes reflect the updated zone names.



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- f. The standard of rehabilitation to be achieved should result in a weed free, self-maintaining ecosystem to ensure minimal maintenance is required over the long term; and
- g. Inclusion of the treatment of the interface between the land to be conserved and areas to be developed as urban.
- ii. If any offset land is to be managed by or dedicated to any other organisation or trust other than Lake Macquarie City Council, suitable documentation is to be provided to Council to provide certainty that:
 - a. The criteria and arrangements in the section are satisfied, and
 - b. Adequate financial resources have been secured in perpetuity of the subject land.
- iii. In determining these controls, no seven-part test has been undertaken. Should Council's assessment of the seven-part test conclude that a significant impact will result from development of the land, then development and offset arrangements will require concurrence from the NSW Office of Environment and Heritage.



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4 PRECINCT B – MEDIUM DENSITY RESIDENTIAL

Objectives

- a. To ensure development within the precinct integrates (or provides for future integration) with the remainder of the precinct
- b. To ensure that medium density development provides for a sympathetic transition to the low density housing.
- c. To provide a mix of medium density housing such as town houses and residential flat buildings.
- d. To recognise potential impacts of the rail corridor on new development.

Controls

1. A structure plan for the whole of Precinct B must be prepared to Council's satisfaction prior to consent being granted to any residential development within the precinct. The structure plan must have involved consultation with other landowners within the precinct, including with the relevant Aboriginal Land Council for any parcels subject to Aboriginal Land Claims.
2. Roads must be provided generally in accordance with Figure 6.
3. Development consent must not be granted for development unless Council is satisfied that the cumulative impact from residential development on the biodiversity values is minimal, or has been appropriately mitigated or offset.
4. Reticulated water and sewerage must be available, or adequate arrangements have been made to make them available, prior to Council granting consent for residential development.
5. Proposed development fronting Gorokan Road must have regard to "Development Near Rail Corridors and Busy Roads – Interim Guidelines" (released by the NSW Department of Planning).



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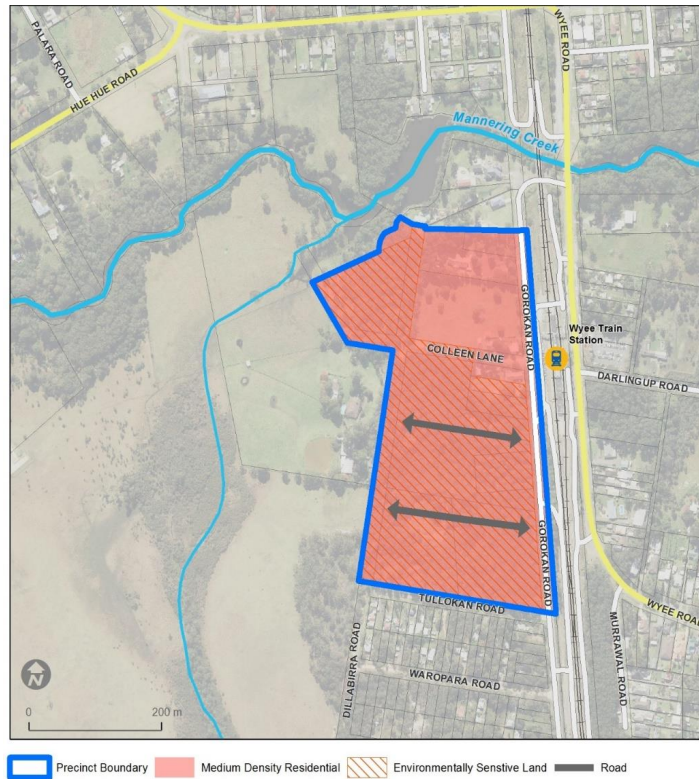


Figure 6 - Precinct B: Indicative Roads

Summary of changes
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5 PRECINCT C – PAPER SUBDIVISION

Objectives

- a. To ensure that essential infrastructure is in place prior to dwellings being constructed.
- b. To ensure that infrastructure is provided in a logical and coordinated manner.
- c. To ensure that adverse impacts of development on environmentally sensitive land are minimised or offset in a coordinated manner.

Controls

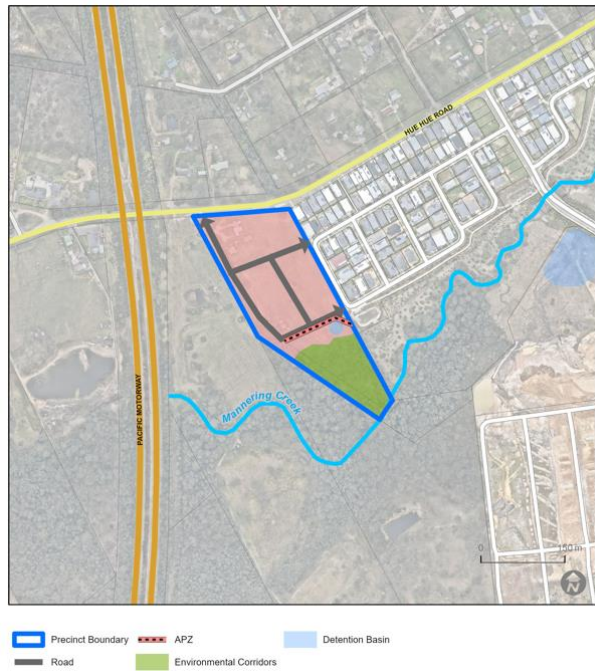
1. Dwellings must not be approved until essential infrastructure is in place, or adequate arrangements have been made to make them available. Essential infrastructure includes:
 - i. Reticulated water,
 - ii. Reticulated sewerage,
 - iii. Properly constructed roads,
 - iv. Stormwater drainage,
 - v. Electricity, and
 - vi. Telecommunications.
2. All landowners of land zoned residential will need to contribute to the cost of infrastructure through an agreed scheme.
3. Development consent for dwellings should not be granted unless Council is satisfied that the cumulative impact from residential development on biodiversity values is minimal, or has been appropriately offset.

Note: The investigation and resolution of biodiversity matters should be undertaken as part of preparing an agreed scheme to provide essential infrastructure to the land.



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6 PRECINCT D – LOW DENSITY RESIDENTIAL



Justification: Figure 7 has been included to show the location of indicative roads, APZ's, stormwater basin and environmental corridor for Precinct D.

Figure 7 - Precinct D: Indicative Roads, APZs, stormwater basin and environmental corridor



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6.1 SUBDIVISION DESIGN AND LAYOUT

Objectives

- a. To ensure the subdivision layout is designed to integrate with the surrounding neighbourhood and the natural environment.
- b. To ensure the ecological attributes of the site are protected and enhanced.
- c. To provide a highly accessible network of pedestrian and shared pathways that encourage walking and cycling to local destinations, including, shops, sporting and community facilities and public transport.
- d. To ensure the subdivision of the subject land provides adequate protection from hazards such as flooding and bushfire.
- e. To mitigate adverse impacts of new intersections on the amenity of existing residents and to maintain safe access to existing residences.

Justification: These objectives and control have been added to provide guidance in regard to the subdivision layout of Precinct D.

Controls

1. The subdivision layout should generally be consistent with Figure 7.

6.2 FRONTAGE TO EXISTING ROADS

Objectives

- a. To ensure new dwellings are orientated towards existing roads in order to:
 - i) integrate with the existing township,
 - ii) make efficient use of existing infrastructure, and
 - iii) provide better streetscape amenity along existing roads

Justification: These objectives and control have been added to ensure that new residential lots face existing roads (i.e. Hue Hue Road and Jarvis Road).

Controls

1. Where practical, lots along Hue Hue Road and Jarvis Road should be orientated towards the existing road.



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6.3 NOISE AND VIBRATION

Objectives

- a. To ensure development achieves acceptable levels of amenity in relation to road noise and vibration.

Controls

1. Development within the red hatched area as shown in Figure 8 must be accompanied by an acoustic report and vibration study demonstrating acceptable noise and vibration levels for the development can be met. If the acoustic report and vibration study recommend noise and/or vibration mitigation measures to be put in place, the development application must demonstrate how these measures have been incorporated into the design of the development.

Justification: The noise and vibration objective and control have been added to address concerns raised in a submission in relation to noise impacts from the M1 on future development on the site. The control seeks to ensure that potential noise and vibration matters are considered and assessed at the DA stage and that appropriate noise and vibration mitigation measures are put in place if required.



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Justification: Figure 8 has been included to show where future development will require to undertake an acoustic report and vibration study.

Figure 8 - Precinct D: Map showing properties requiring an acoustic report and vibration study as shown in the red hatched area.



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6.4 PEDESTRIAN AND BICYCLE LINKS

Objectives

- a. To ensure the development provides a shared path that links with the existing shared path to provide access to key destinations within the surrounding area, including the existing and proposed recreation areas, shops, Wyee Public School and Wyee train station.

Controls

1. The shared path must be conveniently linked to the existing shared path which provide access to recreation and community facilities, the Wyee train station, and the external road network.
2. Where practical, the shared path should be incorporated into the road reserve on the undeveloped side of perimeter roads, thereby contributing to Asset Protection Zones and providing a 'hard edge' to conservation land.

Justification: These objectives and controls have been added to ensure that the new shared path will connect to the existing one and to ensure that, where practical, the shared path will be incorporated into the road reserve to contribute to a 'hard edge' Asset Protection Zone, which will help to minimise bushfire related risks.

6.5 BUSHFIRE

Objectives

- a. To minimise any risks to life and property from bushfire hazards.
- b. To ensure that any risks associated with bushfire are appropriately managed.

Controls

1. The subdivision plan should provide for a perimeter road between the bushfire prone land and the development lots.
2. Asset Protection Zones must be established within the residential zoned part of the site and require minimal maintenance (i.e. incorporate perimeter road) and should be to the satisfaction of Council and the NSW Rural Fire Service.

Justification: These objectives and controls have been added to ensure that there is a perimeter road between the bushfire prone land and the development lots to reduce the bushfire related risks and to ensure that Asset Protection Zones comply with bushfire standards.



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6.6 FLOODING

Objectives

- a. To minimise any risks to life and property from flooding hazards.
- b. To ensure that any risks associated with flooding are appropriately managed.

Controls

1. Land in the R2 zone and affected by the probable maximum flood can only be used for stormwater management.
2. Residential development is to be located outside of land affected by the probable maximum flood.
3. Proposed roads and residential lot levels to be designed to provide safe egress from flood waters.

Justification: These objectives and controls have been added to ensure that residential development is not allowed on land affected by the probable maximum flood in order to reduce flood related risks but that infrastructure like stormwater management basin can be located in the probable maximum flood area.

6.7 STORMWATER AND WATER QUALITY MANAGEMENT

Objectives

- a. To ensure ecologically valuable land and associated watercourses are protected.
- b. To ensure the stormwater drainage system is designed to maintain the natural watercourse and to minimise future environmental impacts.

Controls

1. Stormwater from developed areas must be treated prior to discharging into a natural watercourse.
2. Stormwater and water quality facilities must only be located within the R2 Low Density Residential zoned part of the site as shown in figure 7.

Justification: These objectives and controls have been added to ensure that stormwater is located outside of C2 Environmental Conservation zoned land and is treated before entering Mannering Creek to protect the water quality. In addition, the objectives and controls also seek to ensure that stormwater management and water quality facilities do not have adverse impacts on the environment.

6.8 VEGETATION MANAGEMENT

Objectives

- a. To protect and enhance biodiversity values within land zoned for conservation.
- b. To ensure the riparian and wildlife corridors associated with Mannering Creek and its tributaries are rehabilitated and appropriately managed, including establishing habitat suitable for arboreal fauna.



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- c. To ensure that the loss of biodiversity arising from development of the land is offset to mitigate the impact of that development.
- d. To provide for the long-term rehabilitation and management of land zoned for conservation.

Controls

1. A Vegetation Management Plan must be prepared for the Precinct in accordance with Council's Vegetation Management Plan Guidelines prior to subdivision.
2. Secure tenure of the C2 Environmental Conservation Land is necessary to ensure the long-term protection, rehabilitation and management of the C2 land. This may be achieved by:
 - i. dedication of C2 land to Council or an acceptable management agency following implementation of the Vegetation Management Plan for a period of 10 years;
 - ii. entering into a legally binding agreement (e.g. Planning Agreement) to establish a mechanism to provide ongoing management of C2 land (e.g. an endowment fund);
3. Rehabilitated conservation lands should be protected by adequate controls to:
 - i. maintain hydrological regime and water quality as close as practical to predevelopment,
 - ii. manage access,
 - iii. manage impacts over the long term, and
 - iv. prevent damage during construction.

Justification: These objectives and controls have been added to ensure that the environmental values of the site are retained and protected.

Note:

1. The Vegetation Management Plan (VMP) must provide for, but not be limited to:
 - a. Enhancement of native vegetation along riparian corridors, in endangered ecological communities and in fauna movement corridors (including removal of rubbish, weeds and planting with suitable native species as required);
 - b. Removal of foreign material from creek;
 - c. Rehabilitation of habitat suitable for squirrel gliders, including enhancement and habitat augmentation (e.g. installing nest boxes to compensate for loss of hollows).



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- d. Future management arrangements for the C2 land including funding, monitoring and timeframes;
 - e. The standard of rehabilitation to be achieved should result in a weed free, self-maintaining ecosystem to ensure minimal maintenance is required over the long term; and
 - f. The treatment of the interface between the land to be conserved and areas to be developed for urban use.
2. If any offset land is to be managed by or dedicated to any other organisation or trust other than Lake Macquarie City Council, suitable documentation is to be provided to Council to provide certainty that:
- a. The criteria and arrangements in the section are satisfied, and
 - b. Adequate financial resources have been secured in perpetuity of the subject land.
 - c. These controls are based on the understanding that the biodiversity offset scheme is not triggered.

24DP018	Planning Agreement - 1377 Hue Hue Road, Wyee - Conservation Land
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Key focus area	1. Unique landscape
Objective	1.1 Natural environments are protected and enhanced
File	F2023/02369/05 - D11666864
Author	Coordinator Developer Contributions - Deborah Scott
Responsible manager	Manager Integrated Planning - Wes Hain

Executive summary

Address	1337 Hue Hue Road, Wyee, Lot 437 DP 755242
Owners	Wyee Nominees Pty Limited
Proponent	TOPA Property Pty Ltd

A planning agreement (PA) is an agreement between a council or the state government and a developer for the provision of infrastructure, services or other public benefit required to support a development.

Wyee Nominees Pty Limited owns 1377 Hue Hue Road, Wyee and is associated with TOPA Pty Ltd (TOPA Property). TOPA Property have lodged a planning proposal to rezone part of 1377 Hue Hue Road, Wyee and part of adjoining Digary Road, Wyee from RU2 Rural Landscape and C2 Environmental Conservation to R2 Low Density Residential.

A PA has been prepared between Wyee Nominees, TOPA Property and Council to dedicate conservation land at the rear of 1377 Hue Hue Road, Wyee to Council to address the biodiversity offsets required for the expected future development on the proposed R2 Low-Density Residential land.

The draft PA was exhibited from 17 September to 16 October 2024, with no submissions received by Council. This report recommends endorsement of the PA between Council, Wyee Nominees Pty Limited, and TOPA Property Pty Ltd, as contained in Attachment 1.

Recommendation

Council authorises the affixing of the Common Seal to the Planning Agreement between Council and Wyee Nominees Pty Limited and TOPA Property Pty Ltd, as contained in Attachment 1.

Context

TOPA Property initiated a planning proposal at 1377 Hue Hue Road, Wyee and part of adjoining Digary Road, Wyee. On 13 February 2023, Council resolved (23DP002) to progress the planning proposal and request Gateway Determination and publicly exhibit the proposal to rezone the site from RU2 Rural Landscape to R2 Low Density Residential and to

realign the C2 Environmental Conservation zone boundary. Figure 1 shows the planning proposal site and its context and Figure 2 shows the existing and proposed zones.

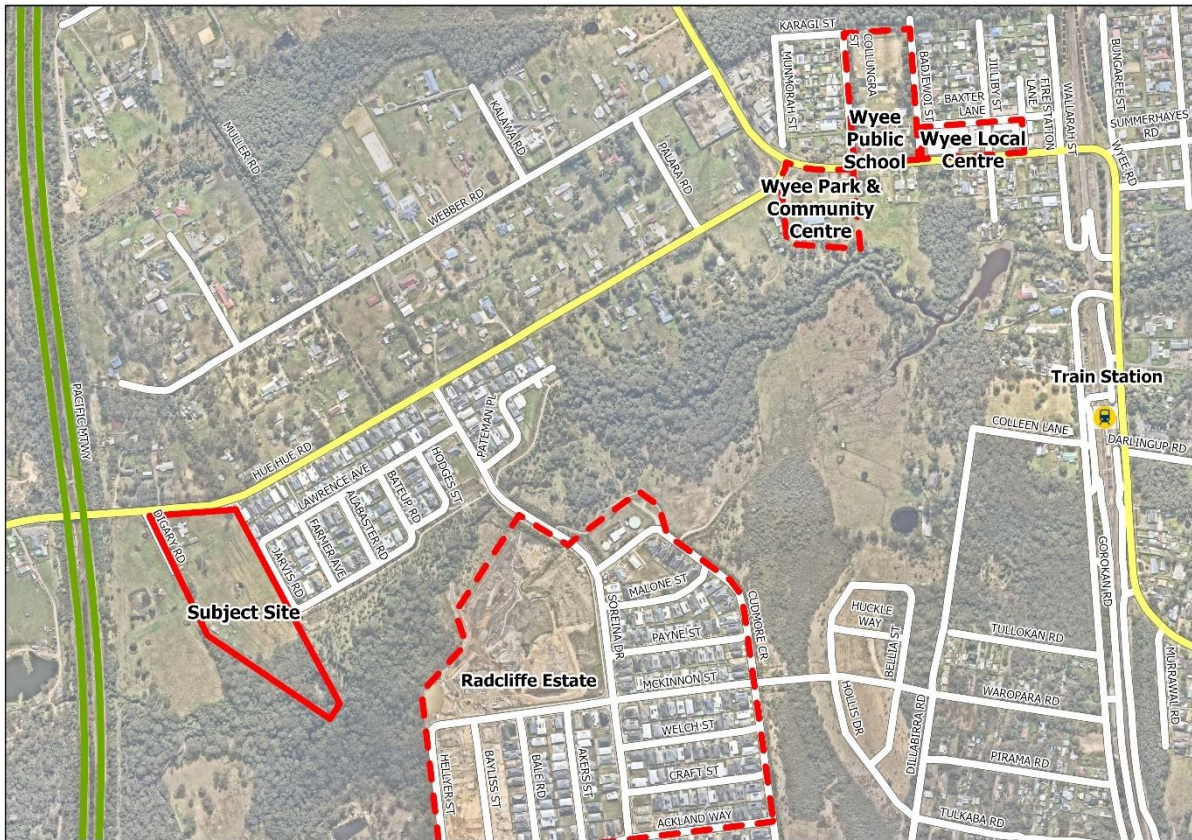


Figure 1: Subject site and context

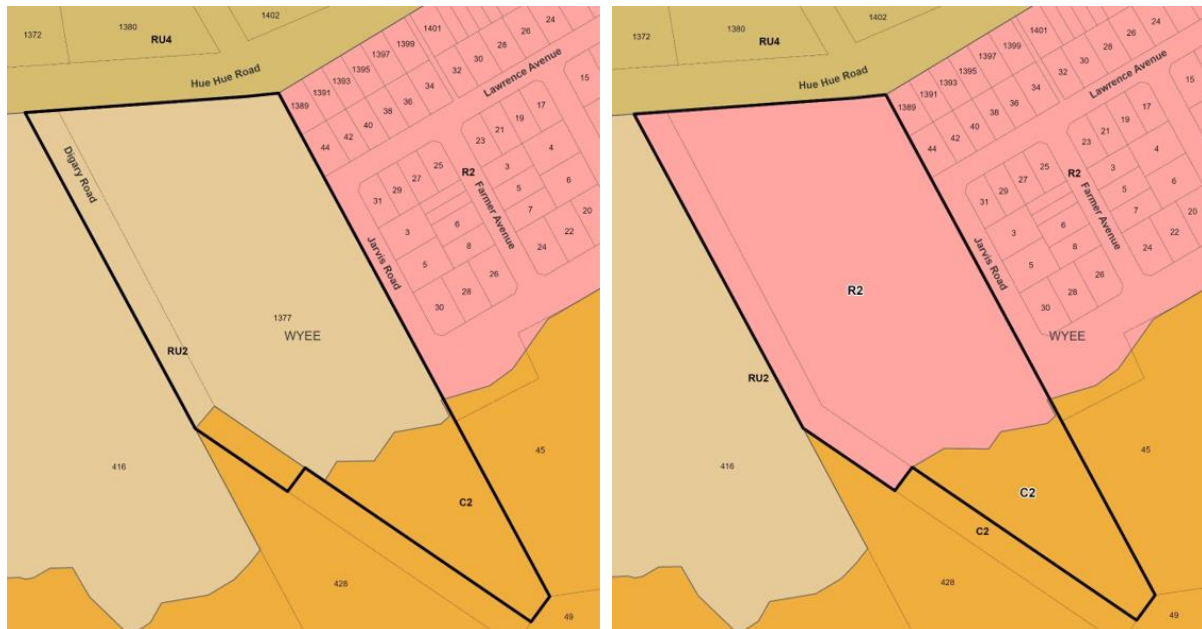


Figure 2: Existing (left) and proposed (right) zones on the subject site

TOPA Property and the owner seek to enter into a PA with Council to rehabilitate, maintain and dedicate conservation land to Council at 1377 Hue Hue Road, Wyee to offset vegetation

loss on the proposed R2 Low-Density Residential land. The PA also requires Wyee Nominees and TOPA Property to pay an endowment fund to Council.

The land labelled C2b in Figure 3 is part of the unformed Digary Road reserve which is currently owned by the Crown. This section of road reserve is part of the conservation land required to offset the vegetation loss on the proposed R2 Low-Density Residential land. Council staff are currently undertaking the process to transfer ownership of the Digary Road reserve from the Crown to Council.

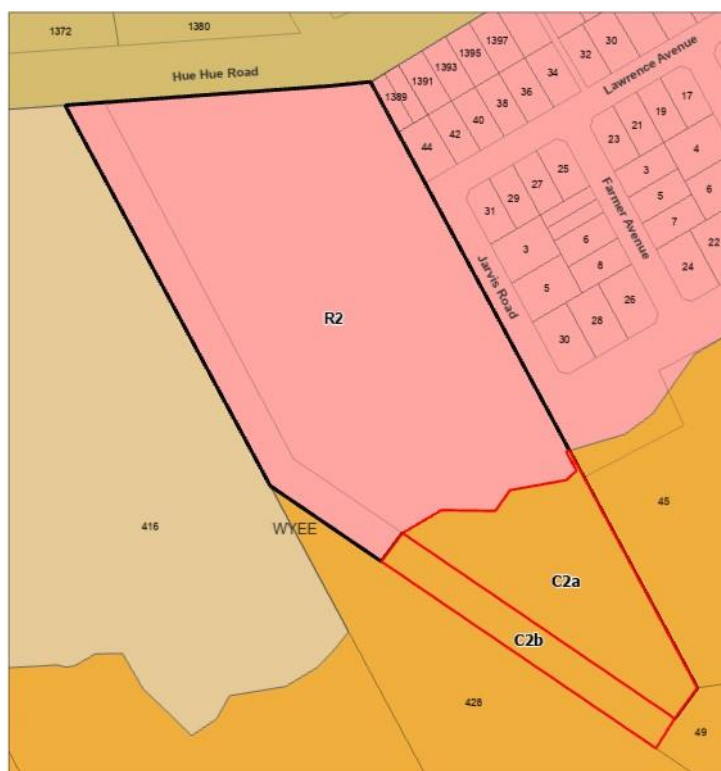


Figure 3: Offset Land – red border and labelled C2a and C2b

Discussion

A PA has been prepared between the owner, TOPA Property and Council to dedicate conservation land to Council and to address the biodiversity offsets required for any future development on the proposed R2 Low-Density Residential land.

Council's technical specialist has advised that the land shown as C2a and C2b in Figure 3 is suitable for the purpose of offsetting the impacts of the expected future development on the proposed R2 Low-Density Residential land. The conservation land will form a contiguous environmental corridor with adjoining conservation land which will be dedicated to Council in the future, as part of the nearby Radcliff Estate development.

The PA requires that Wyee Nominees and TOPA Property rehabilitate and maintain the conservation land for 10 years in accordance with a vegetation management plan. The maintenance period will commence prior to the subdivision or any development works being undertaken on the proposed R2 Low-Density Residential zoned land, whatever occurs first.

The PA also requires the conservation land to be dedicated to Council at the same time as the first subdivision of the proposed residential zoned land.

The endowment fund of \$100,111 (subject to indexation) will be used by Council to maintain and manage the land as a biodiversity offset site in perpetuity. The endowment fund will be paid to Council once the vegetation management plan works have been completed.

The endowment fund amount has been determined based on the ongoing management requirements of the land to be dedicated and in accordance with the State Government’s biodiversity offsets calculator.

Community engagement and internal consultation

Staff from Council’s Integrated Planning, Environmental Systems, and Property and Business Development departments assisted in the preparation of the proposed PA.

The draft PA was exhibited on Council’s Shape Lake Mac webpage for 30 days from 17 September to 16 October 2024, with no submissions received by Council.

There were 817 visits to the Shape Lake Mac project webpage to view further details about the project, and the draft PA was downloaded 122 times.

Assessment of options

It is recommended Council enters into the PA provided in Attachment 1. This is recommended as the PA provides for the dedication of conservation land and address the biodiversity offsets required for any future development on the proposed R2 Low-Density Residential land. It is preferable that biodiversity offsets are resolved at the planning proposal stage.

Alternatively, Council may resolve to not enter the proposed PA included in Attachment 1. This is not recommended as it would require the developer to seek alternate arrangements to offset the biodiversity impacts that may not be as suitable as what is proposed in the PA.

Key considerations

Economic

The PA supports the future development of land at Wyee which will provide benefits to the local economy through construction activity and new homes.

Environment

The proposed PA provides for the rehabilitation, maintenance, and dedication of conservation land to Council, and the payment of an endowment fund of \$100,111 (subject to indexation) to Council to fund the management of the conservation land in perpetuity.

The PA requires the developer to rehabilitate and maintain the conservation land for a 10-year period to ensure the land is in an acceptable and self-sustaining condition by the time Council is responsible for managing the conservation land.

Community

Restoring the conservation land to a self-sustaining native ecosystem, and dedication of this land to Council, offsets and mitigates the environmental impacts of housing development. The provision of ecological offsets achieves a balance between protecting and enhancing the environment and making land available for housing.

Civic leadership

The dedication of conservation land to Council under the PA ensures the protection of the natural environment.

Financial

TOPA Property has covered Council's legal costs associated with the negotiation of the proposed PA.

Infrastructure

The developer will pay \$100,111 (subject to indexation) to Council to fund the maintenance and management of the conservation land in perpetuity.

Compliance

The PA has been prepared by Council's legal representative and meets all legislative requirements. The PA includes security arrangements to minimise risks associated with the conservation land rehabilitation and maintenance works, and payment of the endowment fund to Council.

Legislative and policy considerations

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

Attachments

- | | | |
|----|---|-----------|
| 1. | Planning Agreement - 1377 Hue Hue Road Wyee - Conservation Land | D11744508 |
|----|---|-----------|

12/09/2024

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

1377 Hue Hue Road, Wyee NSW 2259

[INSERT DATE OF EXECUTION]

Council of the City of Lake Macquarie
ABN 81 065 027 868

Wyee Nominees Pty Limited
ACN 666 005 358

TOPA Property Pty Ltd
ACN 622 113 133

12/09/2024

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This Planning Agreement is dated **[INSERT]**

Parties

Council

Council of the City of Lake Macquarie
ABN 81 065 027 868

Developer

Wyee Nominees Pty Limited (**Wyee Nominees**)
ACN 666 005 358

TOPA Property Pty Ltd (**TOPA Property**)
ACN 622 113 133

Introduction

- A** Wyee Nominees owns the Land and is associated with TOPA Property.
- B** TOPA Property has sought a change to an environmental planning instrument to rezone the Development Land, as set out in the Planning Proposal.
- C** The Crown Land is vested in the Crown and is managed in accordance with the *Crown Lands Management Act 2016* (NSW).
- D** The Developer proposes to make development applications for the Development.
- E** Wyee Nominees and TOPA Property have offered to enter into this deed with Council to undertake works to rehabilitate and maintain the Conservation Works Land, to dedicate the Dedication Land free of cost and to provide the Endowment Fund Contribution as a material public benefit to be used or applied towards a public purpose in connection with the Planning Proposal and Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

Capitalised terms in this deed have the meaning given to them in Schedule 5.

1.2 Interpretation

The provisions at Schedule 6 apply in interpreting this deed.

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2. Operation and application of this agreement

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

- (a) This deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (b) The parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land;
- (b) Digary Road;
- (c) the Crown Land; and
- (d) the Planning Proposal.

2.4 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

3. Development Contributions

3.1 Requirement to provide Development Contribution

The Developer agrees to provide the Development Contribution in the manner and at the times set out in Schedule 3.

3.2 Use of Contributions

The Developer agrees that subject to section 7.3 of the Act, Council has no obligation to use or expend the Endowment Fund Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay any amounts to the Developer in connection with this deed.

3.3 Dedication of Crown Land

- (a) The parties acknowledge that:
 - (i) the Crown Land is 'Crown land' as defined under the *Crown Land Management Act 2016*;
 - (ii) Conservation Works on the Crown Land, being part of the Conservation Works Land, are part of the Development Contribution; and
 - (iii) dedication of the Crown Land to Council is required to meet environmental offset requirements in the context of the Planning Proposal and Development, but is not part of the Development Contribution.

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- (b) Council agrees to use its best endeavours to provide for the dedication of the Crown Land to Council.
- (c) The Developer agrees to pay all associated costs incurred by Council in connection with dedicating the Crown Land to Council.

4. Enforcement, Indemnity and Remediation

4.1 Enforcement of this agreement

The Developer agrees to the mechanisms for enforcement of this deed, in the event of a breach of this deed by the Developer, in accordance with the terms and procedures set out in:

- (a) clause 4 of Item 2 of Schedule 3 entitled 'Security for VMP works and other actions'; and
- (b) clause 2 of Item 4 of Schedule 3 entitled 'Endowment Fund Bond'.

4.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise in connection with the performance of the Developer's obligations under this deed but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

4.3 Remediation

- (a) Council may notify the Developer under this clause:
 - (i) at any time if Council becomes aware or reasonably suspects that any part of the Dedication Land is not free from Contamination; or
 - (ii) at any time, provided that the Council owns the Crown Land, and Council becomes aware or reasonably suspects that the Crown Land is not free from Contamination.
- (b) Upon receipt of a notice under clause 4.3(a) the Developer must procure an investigation report to enable the parties to be informed of the nature and extent of the Contamination in, on, under, entering, or leaving the Dedication Land or the Crown Land as the case may be ('**Investigation Report**') and provide the Investigation Report to Council.
- (c) After receipt by Council of the Investigation Report, the parties must meet:
 - (i) to discuss in good faith the method by which the relevant part of the Dedication Land or the Crown Land, as the case may be, might be dealt with so that it will be free from Contamination; and
 - (ii) to agree a standard to which the Developer must remediate the relevant part of the Dedication Land or the Crown Land as the case may be.
- (d) The Developer must at its own cost undertake all reasonable measures to ensure that the relevant part of the Dedication Land or the Crown Land, as the case may be, is remediated to the standard agreed under clause 4.3(c).

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5. Registration on Title

5.1 Interest in Land

- (a) Wyee Nominees represents and warrants that it is the owner of the Land and represents and warrants that it is legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.2(b) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 5.
- (b) Wyee Nominees represents and warrants that unregistered dealing 'DP1307735' affecting the Land does not materially or substantially alter the boundaries of the Land as defined in the Crown Plan.

5.2 Registration of deed

- (a) The Developer agrees to register this deed on title to the Land in accordance with this clause.
- (b) The Developer at its own cost must take all practical steps and otherwise do anything to procure items 1 to 6 in the 'Item' column of the table below, in accordance with the timing for that Item set out in the 'Timing' column in the table below:

Ref.	Item	Timing
Consent to and lodgement for registration of deed		
1.	Consent to the registration of this deed on the title to the Land, and to the terms of this deed, from each person as required by the Registrar-General, who: <ul style="list-style-type: none"> (i) has an estate or interest in the Land registered under the Real Property Act; or (ii) is seized or possessed of an estate or interest in the Land. 	Within 10 Business Days of receiving a copy of this deed executed by Council.
2.	The electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.	Within 10 Business Days of receiving a copy of this deed executed by Council.
3.	The execution of any documents to effect clause 5.2(a) and clause 5.2(b) above.	Within 10 Business Days of receiving a copy of this deed executed by Council.
Registration of deed		
4.	The registration of this deed in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the	Within three months of the date of this deed.

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	Registrar-General in respect of this deed and/or any ancillary documents.	
Evidence of registration		
5.	Provide Council with evidence of the lodgement of this deed pursuant to clause 5.2.	Within 10 Business Days of such lodgement.
6.	Provide Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed.	Within 10 Business Days of registration of this deed.

5.3 Right to lodge caveat

- (a) Until this deed is registered on title in accordance with clause 5.2, this deed confers on Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) Council may exercise its right to lodge a caveat in accordance with clause 5.3 if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- (c) If Council lodges a caveat in accordance with clause 5.3(b):
 - (i) Council will do all things reasonably necessary:
 - (A) to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
 - (B) to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
 - (ii) the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a bill of costs from Council following withdrawal of the caveat.

5.4 Release and discharge of deed

If the Developer satisfies all of its obligations under this deed, Council agrees to do all things reasonably required to release and discharge this deed with respect to that part of the Land.

6. Dispute resolution

6.1 Parties not to commence Court proceedings without complying with dispute resolution procedures

- (a) A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- (b) Clause 6.3 does not prevent, or prejudice the right of a party to institute, court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

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6.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute ('**Dispute Notice**').

6.3 Attempt to resolve through informal dispute resolution

After a Dispute Notice is received, the parties must endeavour in good faith:

- (a) to resolve the dispute expeditiously; and
- (b) to agree:
 - (i) an informal dispute resolution technique;
 - (ii) an independent person required to guide the parties to resolve the matters in the Dispute Notice using the informal dispute resolution technique; and
 - (iii) procedures and a timetable for the carrying out of the agreed informal dispute resolution technique.

6.4 Mediation if dispute not resolved through informal dispute resolution

If the parties do not agree to the matters in clause 6.3(b) within 7 Business Days of receipt of a Dispute Notice (or any further period agreed to by the parties in writing), the parties must:

- (a) mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW; and
- (b) in preparing for this mediation, jointly request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

6.5 When Court proceedings may be commenced

If the dispute is not resolved through mediation in accordance with clause 6.4, then any party which has complied with the provisions of this clause 6 may:

- (a) terminate the dispute resolution process undertaken under clause 6; and
- (b) following termination, commence court proceedings in relation to the matter set out in the Dispute Notice.

6.6 Parties not to use dispute resolution information for other purposes

- (a) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the matter set out in the Dispute Notice.
- (b) No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 for any purpose other than in an attempt to settle the matter set out in the Dispute Notice.

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7. Assignment and Transfer

7.1 Right to assign or novate

- (a) The Developer must not assign this deed to any person except in accordance with this clause 7.1.
- (b) If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Development must:
 - (i) satisfy Council that the person to whom the Developer's rights or obligations are to be assigned or novated (**'Incoming Party'**) has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
 - (ii) procure the execution of a deed by the Incoming Party with Council on terms satisfactory to Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
 - (iii) satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
 - (iv) obtain Council's written notice that:
 - (A) Council is satisfied that the requirements in clauses 7.1(b)(i) to 7.1(b)(iii); and
 - (B) that Council consents to the proposed assignment or novation.
- (c) The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.1(b)(iv).
- (d) Provided that:
 - (i) the Developer has complied with clause 7.1; and
 - (ii) the Incoming Party has provided Council with a replacement Security in accordance with the requirements of Schedule 3 and on terms acceptable to Council,Council will promptly return the Security to the Developer.

7.2 Right to transfer Land

- (a) Subject to clause 7.2(b), Wyee Nominees must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) The Developer may sell or transfer the whole or any part of the Land to the Transferee if, before the sale or transfer, the Developer:
 - (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations

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of the Developer under this deed or satisfies Council, acting reasonably, that Council will continue to be bound by the terms of this deed after the transfer has been effected;

- (ii) procures the execution of a deed by the Transferee with the Council on terms satisfactory to Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer, which may include the provision of a replacement Security;
- (iii) satisfies Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
- (iv) obtains Council's written notice that:
 - (A) Council is satisfied that the requirements in clauses 7.2(b)(i) to 7.2(b)(iii); and
 - (B) that Council consents to the proposed sale or transfer.
- (c) The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.2 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.2(b)(iv).
- (d) Provided that:
 - (i) the Developer has complied with clause 7.2; and
 - (ii) the Transferee has provided Council with a replacement Security on terms acceptable to Council,

Council will promptly return the Security to the Developer.

8. Capacity and relationship

8.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

8.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

8.3 Assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

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8.4 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

9. GST**9.1 Definitions**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

- (a) To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount.
- (b) Clause 9.5 applies to non-monetary consideration.

9.6 No merger

This clause will not merge on completion or termination of this deed.

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10. Termination

10.1 Termination

This deed terminates if:

- (a) the parties agree in writing to terminate the deed;
- (b) the Developer has satisfied all of the obligations imposed on it under this deed in full and Council has issued written notice to the Developer stating that Council agrees that the Developer has satisfied all of the obligations imposed on it under this deed in full;
- (c) the Local Environmental Plan has not been amended in accordance with the Planning Proposal within 2 years after the date of this deed; and/or
- (d) the Local Environmental Plan has been amended in accordance with the Planning Proposal and is declared by a Court to be invalid.

10.2 Consequences of termination

If this deed terminates:

- (a) all future rights and obligations of the parties under this document are discharged; and
- (b) all rights and obligations of the parties existing at the time of termination including the right for Council to retain any Development Contributions provided before termination, continue.

11. General provisions

11.1 Entire deed

This deed constitutes the entire deed between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Notices and time for doing acts

- (a) The provisions relating to the time for doing acts at Item 2 of Schedule 4 apply.
- (b) The notice provisions at Item 3 of Schedule 4 apply.

11.3 Variation

This deed must not be varied except by a later written document executed by all parties.

11.4 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

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11.5 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.6 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.7 No fetter

Nothing in this deed will be construed as requiring Council, to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11.8 Costs

The Developer must pay Council's reasonable Costs incurred in preparing and executing this deed promptly after receiving a bill of costs from Council following commencement of the deed.

11.9 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this deed by email constitutes an effective mode of delivery.

11.10 Electronic execution and electronic exchange

- (a) Each party consents to this deed being executed by a party by way of Electronic Signature using an Approved Signing Method.
- (b) Where this deed is Electronically Signed by a party, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature.

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Schedule 1 – Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application; and</p> <p>(c) entered into a deed with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes.</p> <p>(b) Yes.</p> <p>(c) Yes, in that Wye Nominees and TOPA Properties are associated entities.</p>
<p>Description of land to which this deed applies – (section 7.4(3)(a))</p>	The land listed in Item 1 of Schedule 2.
<p>Description of development to which this deed applies – (section 7.4 (3)(b))</p>	See description at Item 2 of Schedule 2.
<p>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</p>	See description at Item 3 of Schedule 2.
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</p>	See Schedule 3.
<p>Applicability of sections 7.11 of the Act – (section 7.4 (3)(d)(i))</p>	This deed does not exclude the application of section 7.11 of the Act in respect of the Development or any other development of the Land.
<p>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</p>	No.
<p>Applicability of section 7.12 of the Act – (section 7.4 (3)(d)(ii))</p>	This deed does not exclude the application of section 7.12 of the Act in respect of the Development or any other development of the Land.
<p>Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4 (3)(d)(iii))</p>	This deed does not exclude the application of Division 7.1, Subdivision 4 of the Act in respect of

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Requirement under the Act	This deed
	the Development or any other development of the Land.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 6.
Enforcement of this deed – (section 7.4(3)(g))	See clause 4.
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 11.7.
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 5).
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	Yes.

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Schedule 2 – Land and Development

Item 1 Land to which deed applies

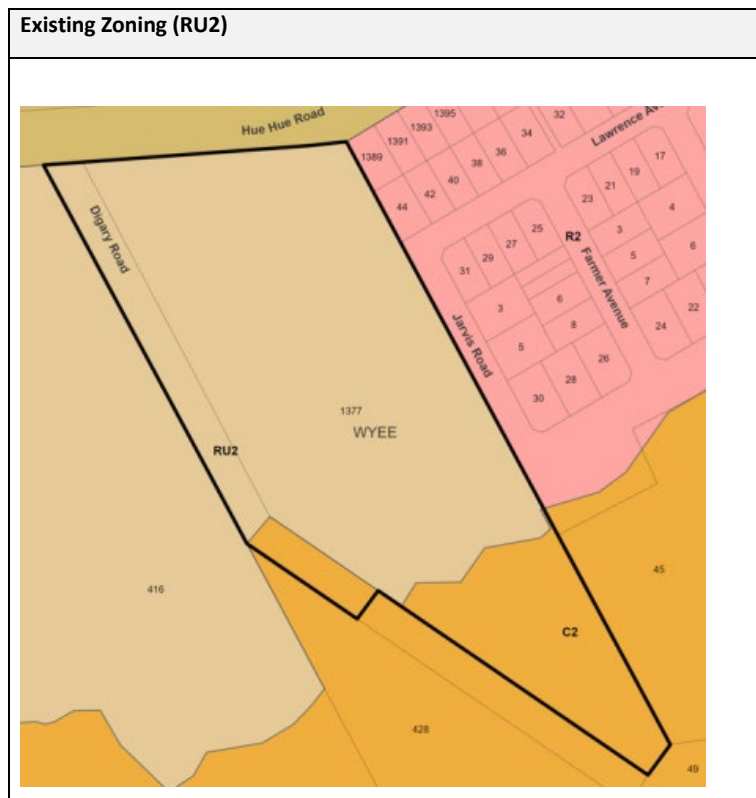
- (a) The Land, being Lot 437 DP 755242, in respect of which Wyee Nominees Pty. Limited is the registered proprietor.
- (b) Digary Road
- (c) The Crown Land.

Item 2 Development

Any development of the Development Land, excluding subdivision of the Land that is solely for the purpose of subdividing the Dedication Land into a separate allotment for dedication to Council in accordance with this deed.

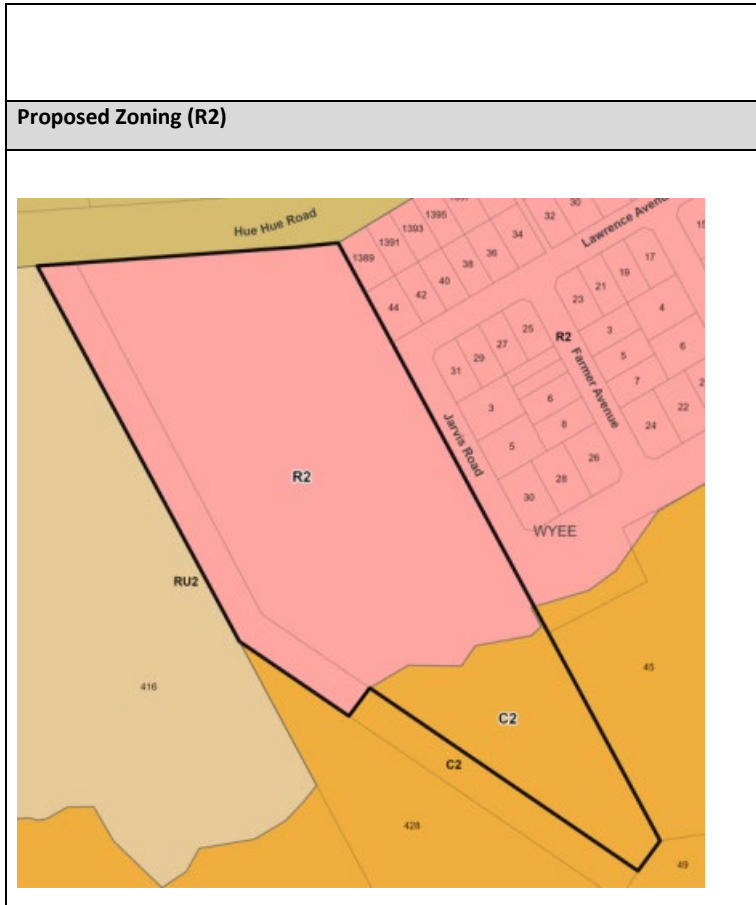
Item 3 Change to environmental planning instrument

As described in the definition of Planning Proposal in Schedule 5, in respect of which the existing zoning and proposed zoning of the Development Land is shown in the diagrams below:



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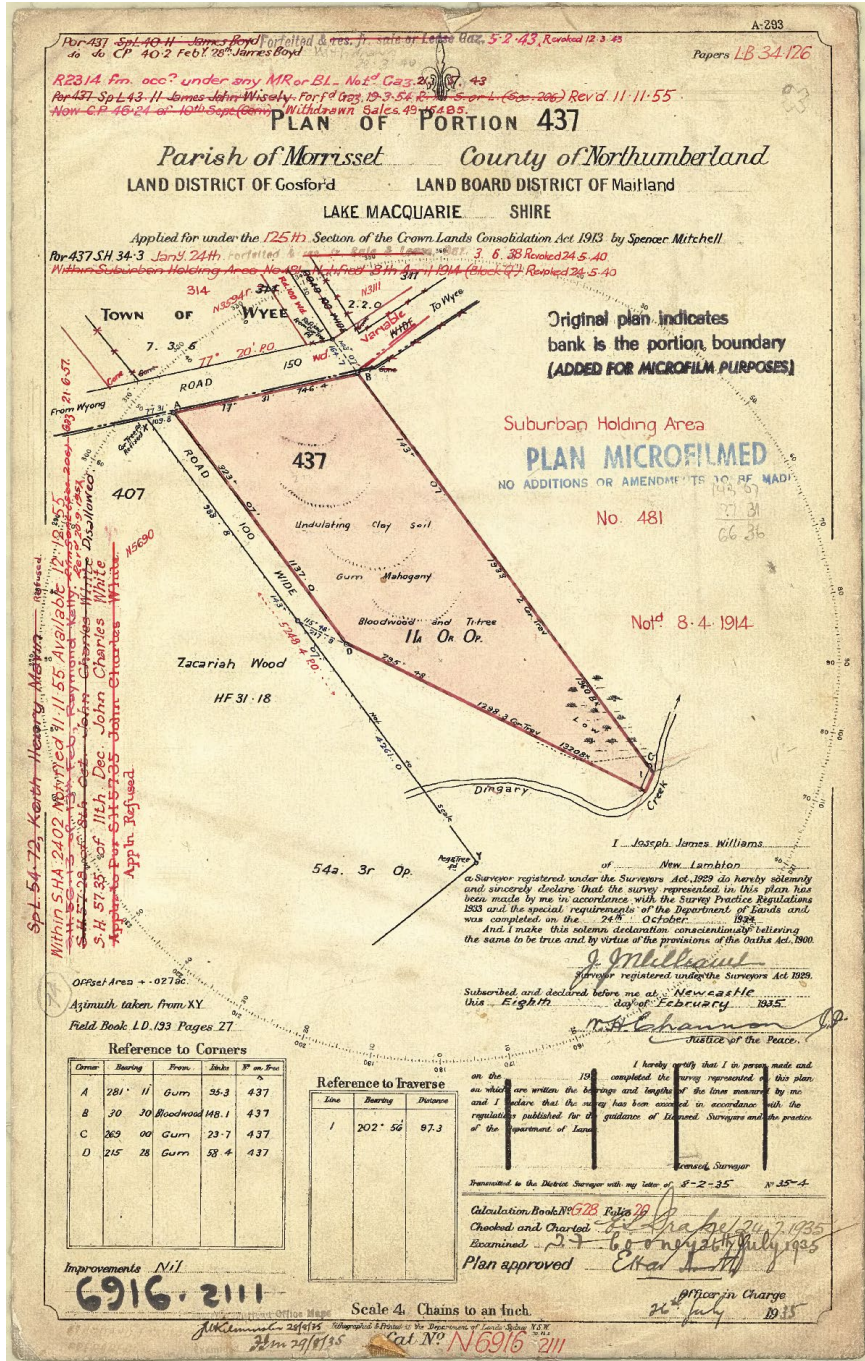
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Item 5 Crown Plan 06916-2111



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Schedule 3 – Development Contribution

Item 1 Development Contribution

- (a) The Development Contribution which the Developer agrees to provide comprises the:
 - (i) Conservation Works;
 - (ii) Land Contribution; and
 - (iii) Endowment Fund Contribution.
- (b) The Developer must provide the Development Contribution in accordance with this Schedule 3.

Item 2 Conservation Works

1. Carrying out of Conservation Works in accordance with approved VMP

Regardless of the identity of the owner of the Conservation Works Land or any part of it, the Developer agrees to carry out the Conservation Works on the Conservation Works Land during the Maintenance Period in accordance with:

- (a) the VMP approved by Council under clause 3 of Item 2 of this Schedule 3; and
- (b) the requirements of Item 2 of this Schedule 3.

2. Content requirements for the VMP

The VMP must:

- (a) relate to the Conservation Works Land;
- (b) be prepared in accordance with the relevant Council Vegetation Management Plan Guidelines and / or other guidelines as notified by Council acting reasonably to the Developer;
- (c) set out the overall short, medium and long term objectives of the VMP, including:
 - (i) the maintenance and enhancement of the Conservation Works Land to achieve a stable state with low weed infestation and good condition by the end of the Maintenance Period; and
 - (ii) the criteria for assessing whether the Conservation Works Land is suitable for handover of management to Council at the end of the Maintenance Period;
- (d) provide for the following works and actions at a minimum to be undertaken during the Maintenance Period:
 - (i) removal of internal fencing if required;
 - (ii) removal of rubbish;
 - (iii) management of waste dumping;
 - (iv) installation of gates, associated posts and cable fencing to manage access to and use of the Conservation Works Land;
 - (v) management of access and use of the Conservation Works Land;
 - (vi) construction, rehabilitation and maintenance of trails;

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- (vii) boundary demarcation including installation of boundary posts on boundary or fencing;
 - (viii) means of excluding domestic animals including signage;
 - (ix) interpretative and other signage;
 - (x) bush regeneration, including primary and secondary weeding and ongoing maintenance;
 - (xi) revegetation, supplementary planting of trees, shrubs and ground cover with local endemic species characteristic of the Lake Macquarie native vegetation communities onsite;
 - (xii) fire management;
 - (xiii) pest management;
 - (xiv) management of edge effects from the Development Land including containment of batters, fencing and landscaping species;
 - (xv) installation of nest boxes and monitoring;
 - (xvi) erosion control and/or restoration of land;
 - (xvii) preparation and submission to Council of monitoring surveys and annual reports; and
 - (xviii) milestones and timing of works and actions; and
- (e) be submitted to Council for approval in accordance with clause 3 of Item 2 of this Schedule 3 below.

3. **Approval of VMP**

Following submission of a draft VMP prepared in accordance with the content requirements in clause 2 of Item 2 of this Schedule 3 above, Council will consider the draft VMP, and the draft VMP is taken to be the approved when:

- (a) Council issues written notice to the Developer to that effect; and/or
- (b) Council approves a development application for the Development and that consent approves the VMP.

4. **Security for VMP works and other actions**

- (a) Prior to commencement of the Maintenance Period, the Developer must:
 - (i) procure a quantity surveying report which contains advice from a suitably qualified ecologist and bush regenerator on the costs of any incomplete works and other actions required under the VMP at the time the Security is provided (**Costing Report**);
 - (ii) obtain approval from Council on the value of the outstanding works and other actions required under the VMP, which may be informed by the costings in the Costing Report (**Agreed Value**);
 - (iii) procure Security which:
 - (A) names Council as the beneficiary of the Security;
 - (B) has a face value equal to 170% of the Agreed Value to secure the delivery of any incomplete works and other actions required under the VMP (**Security Value**);

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- (C) entitles Council to retain the Security from the commencement of the Maintenance Period until the end of the Maintenance Period; and
 - (D) entitles Council to call on the Security to be applied towards the delivery of works and other actions under the VMP if the Developer fails to deliver them.
 - (b) Notwithstanding clause 4(a)(iii)(B) of Item 2 of this Schedule 3 above, the Security may be reduced (**Reduced Security**) with Council's consent after the end of:
 - (i) the fifth year of the Maintenance Period to a face value which equals 130% of the amount required to secure the delivery of any incomplete works and other actions required under the VMP at that time; and
 - (ii) the eighth year of the Maintenance Period to a face value which equals 111% of the amount required to secure the delivery of any incomplete works and other actions required under the VMP at that time.
 - (c) If Council receives a request to reduce the Security in accordance with clause 4(b) above, Council may:
 - (i) request that the Developer procures a further Costing Report to inform the value any incomplete works and other actions required under the VMP at the time a request is made; and
 - (ii) in its absolute discretion, determine the value of any Reduced Security to be provided at the end of the fifth and/or eighth year of the Maintenance Period.
- 5. **Carrying out of Conservation Works – implementation of VMP**
 - (a) The Developer must, at its cost, obtain any necessary Approvals for the Conservation Works including any licence or other Approval required to carry out the VMP on the Crown Land.
 - (b) The Developer must carry out the Conservation Works:
 - (i) in accordance with:
 - (A) this deed, including for the avoidance of doubt clause 6 of Item 2 of Schedule 3;
 - (B) the VMP; and
 - (C) any relevant Development Consent or other Approvals obtained for the Contribution Works; and
 - (ii) in such a manner that the Developer:
 - (A) takes all necessary measures to protect people, property, and the environment;
 - (B) avoids unnecessary interference with the passage of people and vehicles;
 - (C) prevents nuisances and unreasonable noise and disturbances; and
 - (D) complies with all relevant Laws and regulations; and
 - (iii) in a proper and workmanlike manner complying with current industry practice and standards.

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- (c) The Developer must permit Council, its officers, employees, agents and contractors to enter the Conservation Works Land at any time, upon giving at least one (1) Business Day's prior notice, in order to inspect the Contribution Works.
- (d) The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

6. Access to Dedication Land to carry out remaining VMP works and other actions

- (a) If the Dedication Land is dedicated before the completion of the Maintenance Period, Council permits the Developer to access, use and occupy the Dedication Land to undertake the activities and works required under the VMP.
- (b) Permission to access the Dedication Land does not confer any rights on the Developer to the exclusive possession of the Dedication Land, nor any tenancy, estate, proprietary interest or exclusive possession in the Dedication Land.
- (c) If the Developer relies on this clause to access the Dedication Land to fulfil its obligations under the VMP and this deed:
 - (i) the Developer must procure and maintain current insurance policies in connection with the Dedication Land covering:
 - (A) public liability for an amount of \$20 million; and
 - (B) any other risks the Developer reasonably considers may materialise in carrying out the works and other actions under the VMP; and
 - (ii) the Developer:
 - (A) releases Council from any Claim that it may have against the Developer; and
 - (B) indemnifies the Council from any Claim that may be brought against Council, arising from the Developer's carrying out the works and other actions under the VMP in reliance on this clause.

7. Annual reporting on VMP compliance

By 8 July of each year after the commencement of the Maintenance Period, the Developer must provide Council with an annual report which must include the following content at a minimum:

- (a) the Developer's progress in achieving the objectives of the VMP;
- (b) works undertaken during the reporting period;
- (c) documentation of the condition of Conservation Works Land before and after rehabilitation actions are undertaken in accordance with the VMP
- (d) numbers and species of plantings and success of plantings;
- (e) photographic records of progress in implementing the VMP, including growth of any revegetation works;
- (f) condition and use of any nest boxes;
- (g) results of flora and fauna monitoring;

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- (h) information in relation to weeding areas and activity, including extent and intensity of weed infestations, areas treated, type of treatment, and monitoring over the reporting period;
- (i) progress of any rehabilitation work including treatments, location, spatial extent area treated, and monitoring over time;
- (j) any matters that affect the successful implementation of the VMP; and
- (k) a comparison of the above matters against the baseline data.

8. **Final report on VMP compliance**

- (a) 60 days before the end of the Maintenance Period, the Developer must:
 - (i) prepare and submit a final report to Council which:
 - (A) includes all the content required for the annual report under clause 7 of Item 2 of this Schedule 3 for the preceding year;
 - (B) compiles and presents the results of all monitoring and works over the Maintenance Period for the matters included in each annual report under clause 7 of Item 2 of this Schedule 3;
 - (C) assess in detail the condition of the Conservation Works Land at the end of the Maintenance Period and the degree to which the objectives of the management plan VMP have been met;
 - (D) assesses and reports on the suitability for handover of management of the Conservation Works Land to Council;
 - (E) documents any outstanding works i.e. works not completed or where progress has not been sufficient to meet objectives and reasons for this; and
 - (F) make recommendations for the management actions into the future (in perpetuity).

9. **Completion of Conservation Works**

The Conservation Works are taken to be completed when, after receipt of the report required under clause 8 of Item 2 of this Schedule 3 above, Council provides written notice to the Developer that the Conservation Works have been fulfilled.

Item 3 Land Contribution

1. **Subdivision of the Land to provide for the Land Contribution**

The Developer must, at its cost:

- (a) obtain Development Consent and any other Approvals necessary to create one or more separate lots for the Dedication Land; and
- (b) prepare a proposed Plan of Subdivision to create one or more separate lot(s) for the Dedication Land (**Proposed Plan of Subdivision**).

2. **Preconditions to dedication of the Dedication Land**

Prior to the dedication or transfer of the Dedication Land, the Developer:

- (a) must, at its own cost, procure:

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- (i) a survey of the boundaries of the Land which are bounded by a river, lake, creek, waterway and the like to ascertain the boundaries of the Land in respect of any river or lake, noting that the Land is affected by section 235A of the former *Crown Lands Consolidation Act 1913* (NSW); and
- (ii) in conjunction with the survey, a letter from a surveyor registered with the Board of Surveying and Spatial Information to confirm that the area marked for dedication is consistent with the Dedication Land;
- (b) must provide Council with the Proposed Plan of Subdivision for the approval of Council to its satisfaction;
- (c) if required by Council, must deliver to Council for approval a form of transfer that, on registration, will dedicate the Dedication Land to Council;
- (d) must deliver to Council a Contaminated Land Report and Contaminated Land Statement addressed to Council from a Contaminated Land Consultant in respect of the Dedication Land which states that the Dedication Land is suitable or will be suitable for use for its intended use at the date of on which the Dedication Land is dedicated to Council; and
- (e) if the Developer will rely on clause 6 of Item 2 of Schedule 3 to access the Dedication Land after its dedication, must effect the insurance policies required under that clause 6.

3. Dedication or transfer of the Dedication Land

- (a) The Developer must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances prior to or in conjunction with the issue of the first Subdivision Certificate relating to the Development.
- (b) The parties acknowledge and agree that the requirement to dedicate the Dedication Land in accordance with Item 3 of Schedule 3 is a restriction on the issue of the relevant Subdivision Certificate for the Development within the meaning of section 6.15(1)(d) of the Act.
- (c) Upon receipt of Council's approval for the purposes of clause 2 of Item 3 of this Schedule 3 above, the Developer must:
 - (i) lodge the Proposed Plan of Subdivision at the NSW Land Registry Services for registration; or
 - (ii) provide evidence that a form of transfer has been lodged for registration through an ELNO; and
 - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication or transfer of the Dedication Land.
- (d) The Developer must meet all costs associated with the dedication required for the Land Contribution including any administrative and legal costs incurred by Council in relation to that dedication.
- (e) The Developer will pay all rates and taxes owing in respect of the Dedication Land up to and including the date that the Developer dedicates the Dedication Land to Council.

4. Condition of Dedication Land

- (a) The Developer:

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- (i) warrants that as far as it is aware, and other than as disclosed to Council, the Dedication Land is free from Contamination on the date that the Dedication Land is dedicated to Council; and
- (ii) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under, or emanating from the Dedication Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of relevant Authorities;
- (b) If Council is required by an Authority to Remediate any Contamination over the whole or any part of:
 - (i) the Dedication Land; or
 - (ii) the Crown Land, to the extent that the Contamination originates from the Dedication Land,

the Developer will be responsible for any Costs incurred by Council associated with the Remediation required, but only in relation to Contamination that existed on or before the dedication of the Dedication Land to Council.

5. **Acquisition of Dedication Land**

- (a) The Developer must act in good faith to provide the Land Contribution.
- (b) If the Developer does not provide the Land Contribution by the time required, Council in its discretion may acquire, and the Developer consents to Council acquiring, the Dedication Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991*.
- (c) Clause 5(b) in Item 3 of this Schedule 3 constitutes an agreement for the purposes of s 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* and the Parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause 5(b) in Item 3 of this Schedule 3, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council that amount within 10 Business Days of receiving that written request.
- (e) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Dedication Land or any interest in the Dedication Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to Council doing all things necessary, to give effect to this clause, without limitation.

6. **Completion of obligation to dedicate the Dedication Land**

The Dedication Land is taken to be dedicated to Council for the purposes of fulfilling the Land Contribution requirement under this deed:

- (a) if the relevant land is dedicated in a plan registered at the Land Registry Services of NSW; or
- (b) otherwise when the Developer delivers to Council:
 - (i) a transfer of the relevant land in registrable form;

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- (ii) the original Certificate of Title for the relevant land; and
- (iii) any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in Council’s opinion, acting reasonably, impede the intended use of all or any part of the Dedication Land including but not limited to easements and covenants for services and drainage.

Item 4 Endowment Fund Contribution

1. Endowment Fund Contribution

- (a) The Developer agrees to provide the Endowment Fund Contribution to Council in accordance with the value (**Endowment Fund Contribution Amount**) and timing set out in the table below:

Endowment Fund Contribution Amount	Timing
The base sum of \$100,111 indexed in accordance with clause 3 of Item 4 of Schedule 3.	Within 7 days of receipt of written notice from Council under clause 9 in Item 2 of Schedule 3.

2. Endowment Fund Bond

- (a) To secure the performance of the Endowment Fund Contribution, the Developer must provide Security prior to the issue of the first Subdivision Certificate for the Development.
- (b) The amount of Security required to be provided to Council is 170% of the face value of the Endowment Fund Contribution Amount.
- (c) All Security must:
 - (i) name Council as the relevant beneficiary; and
 - (ii) not have an expiry date.
- (d) From the date of execution of this deed until the date that the Developer has provided the Development Contribution in full, Council is entitled to retain the Security.
- (e) Council may call upon the Security immediately if the Developer does not pay the Endowment Fund Contribution on or after the date for payment for the Endowment Fund Contribution.
- (f) If the Developer has satisfied all of its obligations under this deed secured by the Security, Council will promptly return the Security (less any costs, charges, duties and taxes payable) or the remainder of the monies secured (as the case may be), to the Developer.

3. Indexation of Endowment Fund Contribution Amount

- (a) The Endowment Fund Contribution Amount is to be adjusted, at time of payment, by multiplying the base sum of \$100,111 by an amount equal to the Current CPI divided by the Base CPI.

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- (b) For the purposes of this clause 3 of Item 4 of Schedule 3, the Current CPI is the CPI for the calendar year quarter which precedes the payment of the Endowment Fund Contribution Amount.

4. **Interest for late payment of Endowment Fund Contribution Amount**

- (a) If the Developer fails to pay the Endowment Fund Contribution Amount (as indexed in accordance with clause 3 of Item 4 of Schedule 3) in accordance with the timing set out in the table at clause 1 of Item 4 of Schedule 3, the Developer must also pay to Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to Council.

5. **Completion of obligation to pay Endowment Fund Contribution**

The obligation under this deed to pay the Endowment Contribution Fund is taken to be completed when Council provides written notice to the Developer that the Endowment Contribution Fund Amount payable has been received to Council's satisfaction.

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Schedule 4 – Address for Service and Notices

Item 1 Address for Service

Council	
Contact:	Developer Contributions Coordinator
Address:	126-138 Main Rd, Speers Point NSW 2284
Email:	council@lakemac.nsw.gov.au
Wyee Nominees	
Contact:	George Rounis & Olga Masella
Address:	Suite 7 114 Majors Bay Road, Concord NSW 2137
Email:	olga@topaproperty.com.au
Topa Property	
Contact:	George Rounis & Olga Masella
Address:	Suite 7 114 Majors Bay Road, Concord NSW 2137
Email:	olga@topaproperty.com.au

Item 2 Time for doing acts

1. If:
 - (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
2. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

1. Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (a) hand delivered;
 - (b) sent by prepaid ordinary mail within Australia; or
 - (c) sent by email.
2. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

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Ref.	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time or a day that is not a Business Day,	The next Business Day.
		If delivery occurs before 5pm New South Wales time on a Business Day,	On the date of delivery.
2	Prepaid ordinary mail within Australia	N/A	On the date that is 7 Business Days after the date of posting.
3	Email	If the email is sent before 5 pm on a Business Day, and the sender does not receive a delivery failure notice,	On the date of sending.
		If the email is sent after 5 pm on a Business Day or on a day that is not a Business Day.	On the next Business Day after the email is sent.

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Schedule 5 – Definitions

(clause 1.1)

In this deed, unless the context clearly indicates otherwise:

- Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- Address for Service** means the address of each party appearing in Item 1 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
- Approvals** means any approvals, consents, certificates, permits, licences, conditions or permissions (and any modifications or variations to them) which may be required by Law or by any Authority exercising its functions and powers, for the commencement and carrying out of any works required under this deed or the Development and includes a Development Consent, assessment of an Activity under Part 5 of the Act, or other approval under the Act.
- Approved Signing Method** means signing electronically by:
- (a) the person including a statement on the Deed near or above their electronic signature to the following effect: Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]; or
 - (b) using a digital platform that indicates on the Deed that a digital signature was applied, and the date and time that this occurred.
- Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council constituted under the *Local Government Act 1993* (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
- Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand (being such amount as is required under this Deed) issued by:
- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
 - (b) any other financial institution approved by Council in its absolute discretion.

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Base CPI	means the CPI number for the quarter ending 30 June 2024.
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.
Claim	includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Commencement Date	means the date that this deed comes into operation in accordance with clause 2.1.
Conservation Works	means the works detailed in the VMP required to be implemented under this deed on the Conservation Works Land.
Conservation Works Land	means the area comprising the Dedication Land and the Crown Land.
Construction Certificate	has the same meaning as in the Act.
Contaminated Land Consultant	means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.
Contaminated Land Report	means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.
Contaminated Land Statement	means a statement from the Contaminated Land Consultant with the content required in clause 2(d) of Item 3 of Schedule 3.
Contamination	has the same meaning as in the <i>Contaminated Land Management Act 1997</i> (NSW).
Cost	means any cost, charge, expense, outgoing, payment, fee and other expenditure, and " Costs " has a corresponding meaning.
Contamination	means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land: <ul style="list-style-type: none"> (a) result in an Authority issuing a notice, direction or order under an Environmental Law; or (b) which would constitute a violation of contribution of contravention of any Environmental Law.
Council	means the Council of the City of Lake Macquarie ABN 81 065 027 868.

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CPI	means the Consumer Price Index (Sydney) released by the Australian Bureau of Statistics, Catalogue Number 6401.
Crown Land	means the parcel of land at the southern end of Digary Road identified as "C2(B)" and shaded brown in the diagram at Item 4 of Schedule 2.
Crown Plan	means Crown plan 06916-2111 which is annexed to this deed at Item 5 of Schedule 2.
Current CPI	means the CPI number as provided in clause 3(b) of Item 4 of Schedule 3.
Dealing	means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.
Dedication Land	means the area of land identified as "C2(A)" in Item 4 of Schedule 2 of this deed, being an area which is consistent with the area denoted as 'C2' within the Land in the 'Proposed Zoning' diagram in the table at Item 3 of Schedule 2, which for the purpose of making the Land Contribution is to be defined in the Plan of Proposed Subdivision under Item 3 of Schedule 3.
Developer	means Wyee Nominees and TOPA Property.
Development	means the development described at Item 2 of Schedule 2.
Development Application	has the same meaning as in the Act.
Development Consent	has the same meaning as in the Act.
Development Contribution	means the contributions which the Developer agrees to provide under this deed as set out in Schedule 3 .
Development Land	means the land comprising Digary Road and the Land, where part of the Land shown in the 'Proposed Zoning' diagram in the table at Item 3 of Schedule 2 is proposed to be rezoned "R2 – Low Density Residential" under the Planning Proposal.
Digary Road	means the parcel of land as shown in white and labelled 'Digary Road' in the diagram at Item 4 of Schedule 2 which was transferred to Council as the Roads Authority under the <i>Roads Act 1993</i> under NSW Government Gazette 2 February 2024 page n2024-0174 and as described therein.
Electronic Signature	means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this Deed by using: <ul style="list-style-type: none"> (a) the DocuSign platform made available by DocuSign, Inc; or (b) any other electronic or mechanical means which is either: <ul style="list-style-type: none"> (i) as reliable as appropriate for the purpose for which this Deed is generated or communicated, in light of all the circumstances, including any relevant agreement; or

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	(ii) proven in fact to have fulfilled the functions described in paragraph (c)(ii)(B), by itself or together with further evidence, and “ Electronically Signed ” has a corresponding meaning;
ELNO	has the same meaning as in the <i>Electronic Conveyancing National Law (NSW)</i> .
Encumbrance	means an interest or power: <ul style="list-style-type: none"> (a) reserved in or over an interest in any asset; (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation, and “ Encumbrances ” has a corresponding meaning.
Endowment Fund Bond	means the Security required to be paid by the Developer under Item 4 of Schedule 3.
Endowment Fund Contribution	means the contributions which the Developer agrees to provide under this deed as set out in Schedule 3 for the ongoing maintenance and improvement of biodiversity values of the Conservation Works Land after the end of the Maintenance Period.
Endowment Fund Contribution Amount	means the endowment fund contribution amount described in the table at clause 1 of Item 4 of Schedule 3.
Environmental Law	means all planning, environmental or pollution Laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those Laws or instruments.
General Register of Deeds	means the land register maintained under the <i>Conveyancing Act 1919 (NSW)</i> .
GST	means any form of goods and services tax payable under the GST Law.
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Land	means Lot 437 in DP755242 described in Schedule 2 and shown in the Crown Plan.
Land Contribution	means the dedication of the Dedication Land to Council in the manner set out in Item 3 of Schedule 3.
Local Environmental Plan	means the <i>Lake Macquarie Local Environmental Plan 2014</i> .

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Law	means any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation.
Maintenance Period	means a period of 10 years, commencing on the earlier of: <ul style="list-style-type: none"> (a) the issue of the first Construction Certificate for any Development; (b) the issue of the first Subdivision Works Certificate for any Development; (c) the issue of the first Subdivision Certificate for any Development; or (d) the clearing of any native vegetation in connection with any Development.
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Plan of Subdivision	means a registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW).
Planning Proposal	means the planning proposal, with Planning portal reference PP-2022-3016 and Council reference RZ/1/2022, for the rezoning of the Development Land from RU2 Rural Landscape to R2 Low-Density Residential, as shown in the diagram at Item 3 of Schedule 2 to this deed, extracted from the Planning Proposal documents, by way of amendment to the Local Environmental Plan.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Register	means the Torrens Title register maintained under the Real Property Act.
Remediate	has the meaning given to 'remediation' in the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> , and " Remediation " has a corresponding meaning.
Security	means a Bank Guarantee in the amounts required: <ul style="list-style-type: none"> (a) in respect of the VMP – as set out in clause 4 of Item 2 of Schedule 3; and/or (b) In respect of the Endowment Fund Contribution Amount – as set out in clause 2 of Item 4 of Schedule 3.
Subdivision Certificate	has the same meaning as in the Act.
Subdivision Works Certificate	has the same meaning as in the Act.
VMP	means the vegetation management plan required to be prepared, approved, and implemented in accordance with the provisions of Schedule 3.

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Schedule 6 – Interpretation

- (a) Neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (b) The Explanatory Note must not be used to assist in construing this deed.
- (c) If any clause or part of any clause in this deed is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- (d) In this deed unless the context clearly indicates otherwise:
 - (i) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
 - (ii) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
 - (iii) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
 - (iv) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
 - (v) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
 - (vi) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this deed;
 - (vii) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;
 - (viii) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
 - (ix) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
 - (x) a reference to a **corporation** includes its successors and permitted assigns;
 - (xi) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
 - (xii) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;

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- (xiii) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (xiv) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (xv) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (xvi) **including** and **includes** are not words of limitation;
- (xvii) the words **at any time** mean at any time and from time to time;
- (xviii) a reference to a time is to that time in New South Wales;
- (xix) a word that is derived from a defined word has a corresponding meaning;
- (xx) **monetary amounts** are expressed in Australian dollars;
- (xxi) the singular includes the plural and vice-versa;
- (xxii) words importing one gender include all other genders; and
- (xxiii) a reference to a thing includes each part of that thing.

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Execution page

Executed as a deed

Signed, sealed and delivered
by Lake Macquarie City Council by its
authorised delegate pursuant to s 377 of the
Local Government Act 1993 (NSW), in the
presence of:

.....
Signature of Witness

.....
Signature of

.....
Name of Witness

.....
Name of delegate

Signed, sealed and delivered by Wye
Nominees Pty Limited ACN 666 005 358 in
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Signature of

.....
Signature of

.....
Name of Director/Secretary

.....
Name of Director

Signed, sealed and delivered by TOPA Property
Pty Ltd ACN 622 113 133in accordance with
section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of

.....
Signature of

.....
Name of Director/Secretary

.....
Name of Director

24DP019	Coal Point - 8 Killara Close - Dwelling house and boat shed
----------------	---

Key focus area	4. Diverse economy
Objective	4.5 New development and growth complement our unique character and sense of place, now and into the future
File	DA/732/2024 - D11726227
Author	Building Surveyor - James Baker
Responsible manager	Manager Development Assessment and Certification - Steven Masia

Address 8 Killara Close, Coal Point

Owner Troy and Linda Taylor

Applicant Montgomery Homes

Executive summary

The application seeks consent for construction of a two-storey split level dwelling and boat shed at 8 Killara Close, Coal Point.

The development proposes a maximum height of 10.73m. This comprises a 2.23m or 26.23 per cent variation to the maximum building height development standard of 8.5m and as such, is required to be reported to Council for determination.

The Department of Planning and Environment's Guide to Varying Development Standards specifies the elected Council as the determining authority for development applications where the variation to a numerical standard is greater than 10 per cent.

A detailed assessment of the application has been undertaken with the proposal deemed to meet the objectives of the *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)* and the *Environmental Planning and Assessment Act 1979*.

The development application is considered acceptable on merit and is recommended for approval, subject to conditions of consent.

Recommendation

Council:

- A. endorses the development standard variation under clause 4.6 of the *Lake Macquarie Local Environmental Plan 2014*, providing a maximum height of 10.73m, exceeding the 8.5m development standard by 2.23m or 26.23 per cent, and
- B. approves development application DA/732/2024 for construction of a two-storey split level dwelling and boat shed at 8 Killara Close, Coal Point, subject to conditions of consent.

Context

The property is located on the northern side of Killara Close, Coal Point in an area characterised by residential dwellings varying from one to three storeys in height. The site context is shown in Figure 1.

The land is zoned R2 Low Density Residential under the *LMLEP 2014* and has an area of 1030m², with lake views to the west, and has direct lake frontage.

The site falls approximately 14m from east to west.



Figure 1 – Site context, including zoning (site outlined in blue)

Discussion

The proposal includes the construction of a two-storey split level dwelling and boat shed at 8 Killara Close, Coal Point. Plans of the proposal are provided in Attachment 1.

Clause 4.3 of the *LMLEP 2014* provides a maximum building height for this site of 8.5m. The development proposes an overall height of 10.73m. This comprises a 2.23m or 26.23 per cent variation to the maximum building height development standard. The exceedance is limited to a portion of the roof (see Figures 2 and 3).

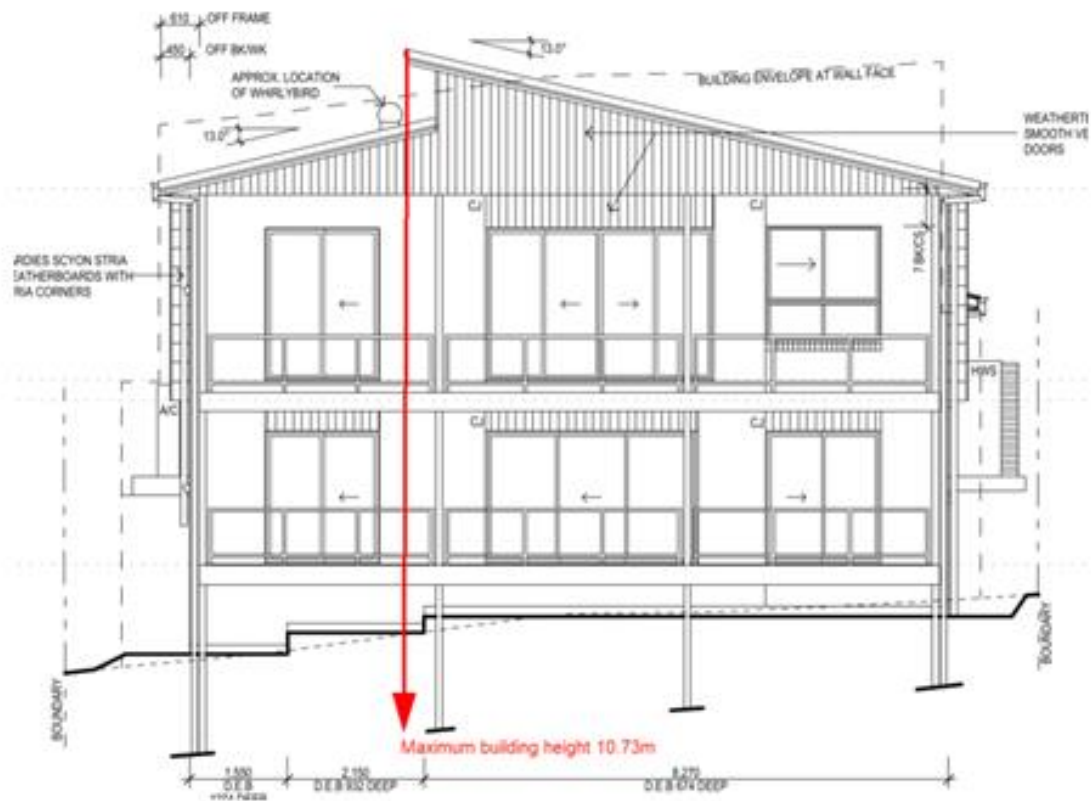


Figure 2 – Rear elevation demonstrating extent of development above 8.5m height limit

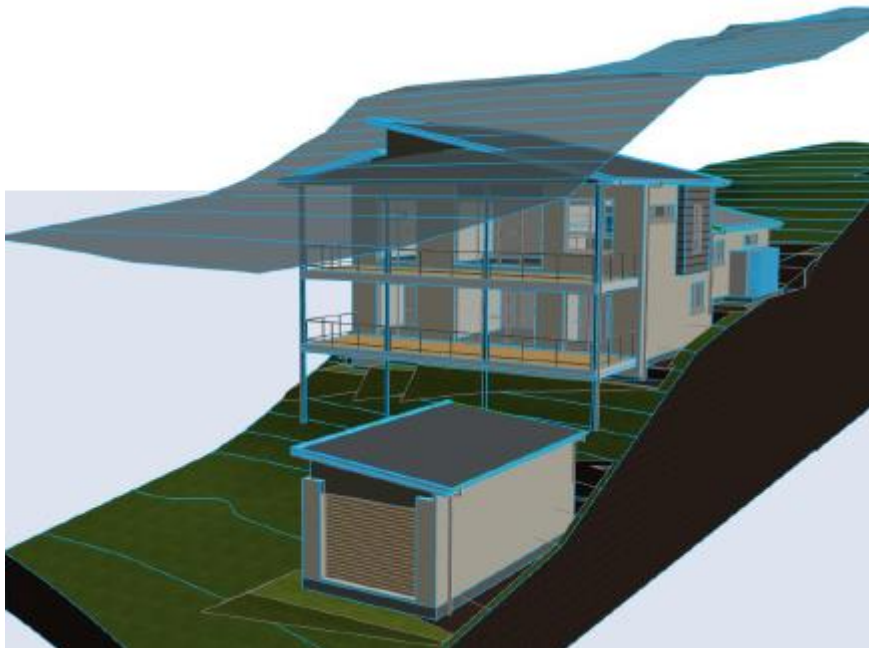


Figure 3 - Diagram demonstrating extent of development above 8.5m height limit

A written submission under clause 4.6 of the *LMLEP 2014* has been submitted by the applicant requesting a variation to the maximum height (Attachment 2). The written submission demonstrates why the development standard is unreasonable or unnecessary:

- The topography of the site falls substantially from east to west and the design develops longitudinally across that fall. The design places the most elevated portions towards the rear of the development footprint, such that elevation follows the sloping nature of the site topography.
- There are examples of dwellings within the immediate vicinity of the site that exceed the 8.5m height and therefore the proposal would not be out of context. It should be noted that a southern adjoining lot features a previously approved dwelling with a similar height (10.2m).
- The objectives of the zone and development standard are achieved despite the building height variation and there are not unreasonable amenity or environmental impacts.

Assessment of the submitted variation has been undertaken and it is considered that the applicant has satisfactorily demonstrated that the additional height is appropriate for the site, having minimal adverse impact, noting the southern elevation that would create shadowing impacts is compliant with the height limit.

The application demonstrates strict adherence to the development standard in the circumstance of this case is unreasonable and unnecessary as the development is consistent with the purpose of the standards. There are sufficient environmental planning grounds to justify departing from the development standard.

Given there are no adverse impacts from the height exceedance in this instance, the variation is able to be supported.

Community engagement and internal consultation

The development application was notified in accordance with the Lake Macquarie Community Engagement Strategy from 17 July to 8 August 2024, and 26 September to 14 October 2024. One submission was received. Detailed assessment of the matters raised is provided in Attachment 3.

Assessment of options

This report recommends Council approves development application DA/732/2024 for construction of a two-storey split level dwelling and boat shed, subject to conditions.

This is recommended as the proposal is consistent with the objectives of the R2 Low Density Residential zone and will have minimal impacts on the amenity of neighbours because of the height variation or any other aspect of the development.

Should Council determine to refuse the development application, the reasons for refusal should be noted in the motion for refusal. Alternatively, Councillors may determine to refer the development application to the assessing officer to address specific issues identified.

Next steps

If Council approves the height exceedance and approves the development, the notice of determination will be finalised with conditions of consent.

Should Council refuse the application, a notice of refusal stating the reasons will be issued. The applicant reserves the right to appeal the decision in the Land and Environment Court in this instance.

Key considerations

Economic

The development will provide employment in construction and other related industries.

Environment

The application has been assessed in detail and deemed satisfactory under the *Environmental Planning and Assessment Act 1979*.

The proposed improvements are consistent with the current and emerging context of the area.

The proposed dwelling is consistent with neighbouring developments within the local area as noted above.

No trees are proposed to be removed.

The environmental impacts of the development are considered acceptable.

Community

Community consultation has been undertaken in accordance with the Lake Macquarie Community Engagement Strategy. One submission was received.

Civic leadership

Civic leadership is shown through Council's implementation of planning controls, including use of clause 4.6 of the *LMLEP 2014*, which enables variation to development standards.

Financial

None.

Infrastructure

None.

Compliance

The application has been assessed by staff and is reported to Council for determination in accordance with the Department of Planning and Environment's Guide to Varying Development Standards.

Legislative and policy considerations

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Lake Macquarie Local Environmental Plan 2014

Lake Macquarie Development Control Plan 2014

Lake Macquarie Community Engagement Strategy

Attachments

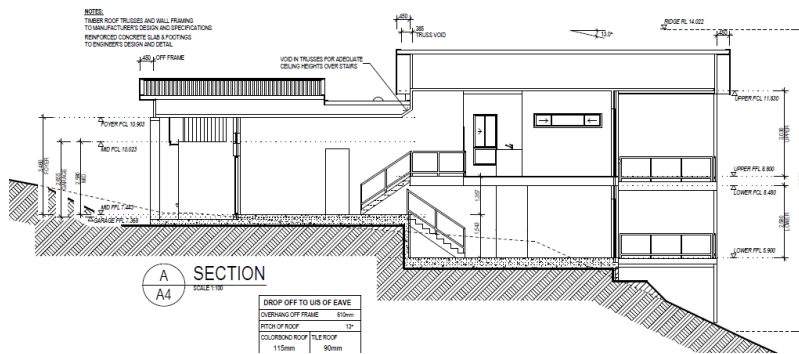
- | | | |
|----|---|-----------|
| 1. | Clause 4.6 Variation Report - DA/732/2024 - 8 Killara Close, Coal Point | D11748521 |
| 2. | Architectural Plans - DA/732/2024 - 8 Killara Close, Coal Point | D11773212 |
| 3. | Submission table - DA/732/2024 - 8 Killara Close, Coal Point | D11757373 |



Request to vary a Development Standard Clause 4.3 Height of Building

Lake Macquarie Local Environmental Plan 2014 Clause 4.6 Exceptions to Development Standards

8 Killara Close, Coal Point NSW 2283



This submission seeks a variation to Clause 4.3 of the Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014), which prescribes a maximum height of building of 8.5 m to the subject premise.

The proposed dwelling displays a maximum building height of 10.735m. As such the proposal displays an exceedance to the maximum building height limit of the site.

Introduction

This submission is made under Clause 4.6 of the LMCCLEP 2014 – Exceptions to development standards. Clause 4.6 states the following:

Clause 4.6 Exceptions to Development Standards

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note - The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).





- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) (Repealed)
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note - When this Plan was made it did not include all of these zones.
- (7) (Repealed)
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following-
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 2.8 or 6.2.

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority should be satisfied that all requirements of the Clause have been suitably addressed via the content in this formal request.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a Local Environmental Plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

4.6(3)(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The Environmental Planning Instrument to which these variations relate to is the Lake Macquarie Local Environmental Plan 2014. The development standard to which this variation relates to is Clause 4.3 – Height of buildings, which reads as follows:

Clause 4.3 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to ensure the height of buildings are appropriate for their location,
 - (b) to permit building heights that encourage high quality urban form.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

A maximum Building Height of 8.5m applies to the subject site.

Written justification for the proposed variation to the height of buildings standard development standard in accordance with Clause 4.6 of the Lake Macquarie LEP 2014 is required.

Extent of Non-Compliance

As noted above, Clause 4.3 of the LMLEP 2014 states that the subject land is subject to a maximum building height of 8.5 metres. Referring to the architectural plans incorporated to the DA package, it is noted that the maximum building height from existing ground level is displayed by the dwelling which is 10.735 m at the rear portion of the



dwelling. The building height noted as 10.735 m, being approximately 2.235 m exceedance to the Development Standard.

We submit that the variation to the standard is minor. The proposed design seeks to provide a specific architectural form appropriate to the dwelling context. Essentially, the roof massing is a specific proportion to the dwelling façade scale. This is intrinsic to the architecture of the dwelling and achieves a balanced outcome. The locality displays excessive sloping topography and as a function of that topography, elevation of building forms are readily evident.

The progression of the roof line forward results in an increased overall height due to the fall in topography towards the rear of the site, as evident to the marked building height limit line on the development plans/ elevations.

We note that the height remains entirely consistent to the predominant elevation displayed by building forms in the immediate surrounding context. Within that context, the development is entirely appropriate.

It is our submission that the breach will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the character of the area. As such, a degree of flexibility is considered reasonable in this instance and anticipate under the LEP where justification is made.

Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

We note the decision of Commissioner Morris in *Randwick City Council versus Micaul Holdings Pty Ltd (2016) NSWLEC 7*. In that case, it was recognised that the Commissioner did not have to be directly satisfied that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicants written request has adequately addressed the matter that compliances with each development standard was unreasonable or unnecessary.

Further assistance on the approach to justifying a contravention was also taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015.

We submit the following analysis to the relevant measures in determining the unreasonableness of the standard in this particular circumstance.

The proposed variation from the development standard is assessed against the accepted “5 Part Test” for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out on the following page:

First

The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Second

Another mechanism is to determine whether the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

**Third**

It may also be that the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Fourth

The development standard may have been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Fifth

Another means is to establish that the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The following discussion is provided in response to each of the above:

First

The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The objectives supporting the height of buildings control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental planning impacts, would demonstrate that strict compliance with Clause 4.3 would be unreasonable in this instance.

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.3), which are as follows:

- (1) The objectives of this clause are as follows:
 - (a) to ensure the height of buildings are appropriate for their location,
 - (b) to permit building heights that encourage high quality design
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

The maximum height proposed is 10.735m, resulting in a numerical breach of approximately 2.235m.

The design of the structure is considered appropriate in terms of its architectural form. Building orientation and placement utilise geographical features and will present a high quality/high amenity outcome. We submit that in view of these matters, the design provides a high-quality urban form/ design. The minor breach in height will not result in adverse impact to adjoining properties access to sunlight and views.

The overall design of the dwelling, being presented as a single storey dwelling to the streetscape due to the stepping of the slope and design, will ensure the overall development has no overbearing qualities to the streetscape. To the rear where the dwelling elevates, will be consistent to its neighbouring dwellings overlooking the lake.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard through adherence to the objectives of the development standard. As demonstrated, the objectives of the standard have been achieved.

Second

The underlying objective or the purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined above. Therefore, this provision is not applicable.

**Third**

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objective or purpose would not be defeated or thwarted if compliance was required. However, on balance the proposed development provides a better outcome.

Restricting development forms via the development standard may be overly restrictive and could result in architectural outcomes that are both inappropriate to the locality and lesser or poor architectural quality. The proposal has not disregarded the development standard, however looks for a level of flexibility tailored to the specific unique setting.

As noted earlier, the roof massing is a specific proportion to the dwelling façade scale. This is intrinsic to the architecture of the dwelling and achieves a balanced outcome. The locality displays excessive sloping topography and as a function of that topography, elevation of building forms are readily evident.

The progression of the roof line forward results in an increased overall height due to the fall in topography towards the rear of the site, as evident to the marked building height limit line on the development plans/ elevations.

We note that the height remains entirely consistent to the predominant elevation displayed by building forms in the immediate surrounding context. Within that context, the development is entirely appropriate.

Fourth

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard hence compliance with the standard is unnecessary and unreasonable; and

This particular aspect is not applicable in this instance.

Fifth

The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable as the zoning of the site is appropriate.

Are there Sufficient Environmental Planning Grounds?

The assessment above and shown throughout the Statement of Environmental Effects demonstrates that the resultant environmental impacts of the proposal will be satisfactory. The proposal addresses the site constraints and relevant objectives of both the standards and the zone.

The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the submitted reports. The proposed variation to the development standard is approximately 393mm. Notwithstanding the proposed works represent a well- considered development that addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will maintain high levels of amenity within the development and to the surrounding context. The proposal seeks to make a positive contribution to the existing streetscape.

The proposal enables a better environmental planning outcome as the development responds to the site setting, whilst achieving a quality architectural outcome within the built form context. A compliant outcome would display limited or lesser architectural qualities.

In this case, we submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.



Is the Variation Well Founded?

It is considered that this has been adequately addressed in this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the LMLEP 2014 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (Height of Building) and objectives of the R2 Low Density Residential zoning of the land; and
- The development submitted aligns with the development expectations for the surrounding area.

Based on the above, the proposed variation is considered well founded.

General

Clause 4.6 also states that:

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include all of these zones

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
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- (ca) clause 2.8 or 6.2.*

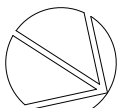
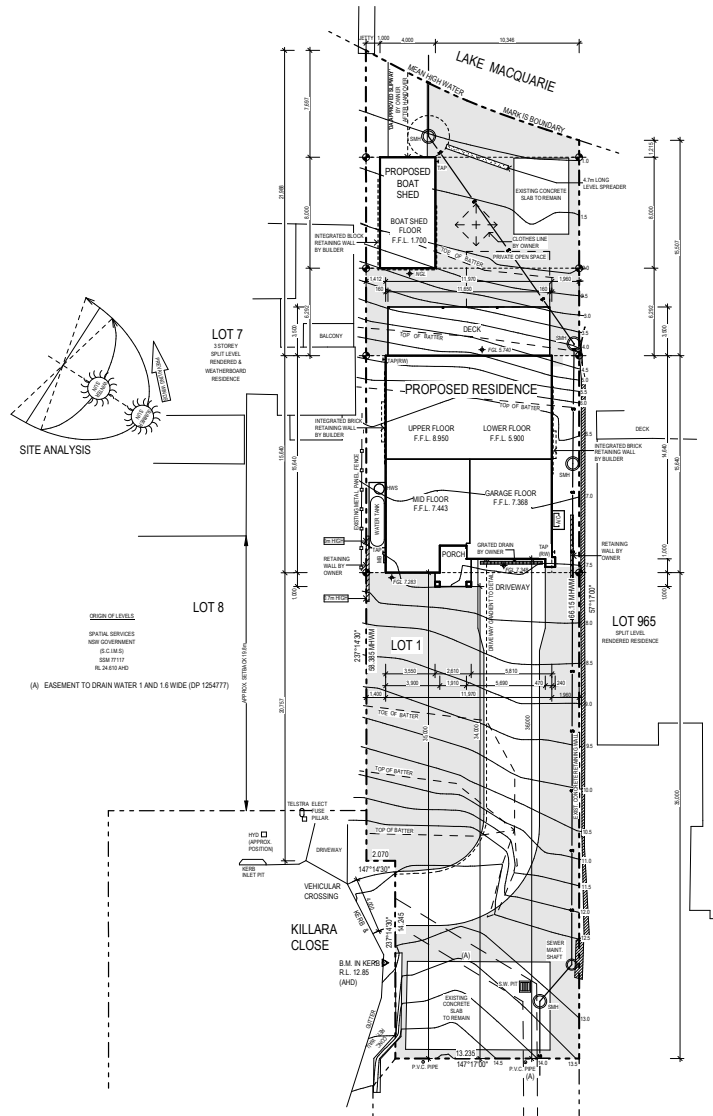
This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6). Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development. A BASIX certificate is included within the DA documentation. The development is not affected by clause 5.4.

**Conclusion**

The proposal does not comply with the building height control prescribed by Clause 4.3 of the LMLEP 2014. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the LMLEP 2014 are satisfied as the breach to the height of buildings does not create any adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of Clause 4.6 of the LMLEP 2014 to vary this development control is appropriate in this instance. Based on the above, it is sensible to conclude that strict compliance with the maximum Building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.



OVERALL SITE PLAN
 SCALE 1:300 LOT 1 DP 1254777 AREA 1030.00m²
 SURVEY INFORMATION OBTAINED FROM TATTERSALL SURVEYORS. REF # 222548/1

NOTE: DEMOLITION BY OWNER
 THE OWNER IS RESPONSIBLE FOR DEMOLITION OF EXISTING HOUSE, INCLUDING REMOVAL OF ALL BUILDING DEBRIS & DISCONNECTION OF SERVICES (IE. POWER, WATER, SEWER, STORMWATER & GAS)

NOTE: FINISHED GROUND & FLOOR LEVELS
 FINISHED GROUND & FLOOR LEVELS INDICATIVE TO A TOLERANCE OF +/- 100mm. THEREFORE EXTENT OF CUT / FILL BATTERS IS TO BE DETERMINED ON SITE IN CONJUNCTION WITH VOLUME / DENSITY OF SOIL MATERIALS.

NOTE: SURPLUS SOIL
 ANY SURPLUS SOIL FROM FOOTING TRENCHES, PIER HOLES AND/OR SERVICE TRENCHES (IF APPLICABLE) ARE TO BE STOCKPILED & REMAIN ON SITE. IF ANY SURPLUS SOIL IS UNABLE TO BE STOCKPILED ON SITE DUE TO SITE LIMITATIONS, ADDITIONAL COSTS WILL APPLY TO REMOVE THE SURPLUS SOIL.

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SITE PLAN LEGEND

MARK	DESCRIPTION
	SURVEY SETOUT PEG
	METER BOX
	TOWNWATER TAP
	RECYCLED / RAINWATER TAP
	ALL RETAINING WALLS BY OWNER U.N.O.
	APPROXIMATE SEWER LOCATION
	PROPOSED FINISHED GROUND LEVELS BY OWNER PRIOR TO OCCUPATION CERTIFICATE

SOIL CLASSIFICATION: H1
WIND CLASSIFICATION: N3
GAS TYPE: N/A

SITE AREA TABLE

AREA	m ²	AREA	m ²
SITE	1030.00	UPPER FLOOR	90.16
LANDSCAPED (SOFT)	463.25	LOWER FLOOR	134.62
DRIVEWAY	128.30	GARAGE	43.16
FOOTPRINT	192.15	DECK	81.54
PRIVATE OPEN SPACE	24.00	PORCH	6.68
TOTAL FLOOR AREA:	267.94	ROOF AREA	275.36
SITE COVERAGE:	34.2%	BOAT SHED	32.00

NOTE: PROPOSED DRIVEWAY / BOAT SLIPWAY BY OWNER
 WATER TANK - 1 x 6,000 LITRE (3.6m LONG x 1.1m WIDE x 1.5m HIGH)
 - SEPARATE WATER LINES / PIPING TO ALL TOILETS, WASHING MACHINE & 2 YARD TAPS

CERTIFYING AUTHORITY: DA - LAKE MACQUARIE

ST	2A	RE-ISSUE TO COUNCIL	28/08/2024
BM	2	ISSUE TO BASIX & ENGINEER	04/06/2024
BM	1	ISSUE TO SALES	19/04/2024

Drawn By: Issue: Description: Date:

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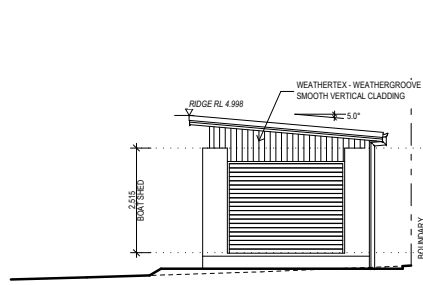
Client Name:
TAYLOR, T & L

Job Address:
**PROPOSED RESIDENCE
 Lot 1, No.8 Killara Close
 COAL POINT**

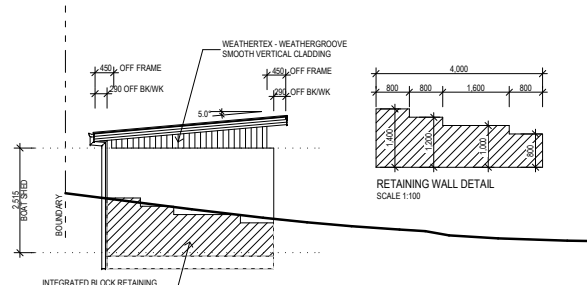
Design: the CAROLINA 1 - 268 - Retro 2024

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Job No:	Tender No:	Drp No:
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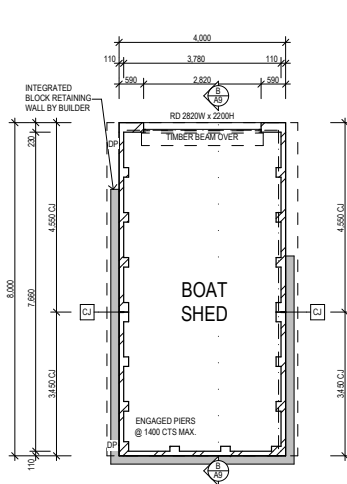
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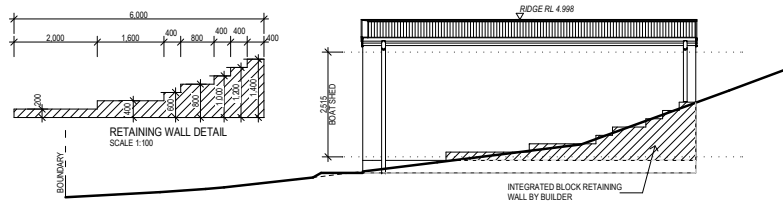
SOUTH-WEST ELEVATION
SCALE 1:100



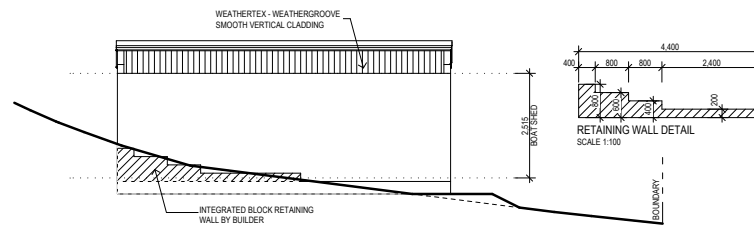
NORTH-EAST ELEVATION
SCALE 1:100



BOAT SHED FLOOR PLAN
SCALE 1:100



SOUTH-EAST ELEVATION
SCALE 1:100



NORTH-WEST ELEVATION
SCALE 1:100

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FLOOR / FOUNDATION PLAN LEGEND

MARK	DESCRIPTION	MARK	DESCRIPTION
GENERAL		GENERAL	
A/C	AIR-CONDITIONING UNIT	SS	SPACE SAVER (SHOWER)
BB	BREAKFAST BAR	SV	SERVICE VOID
CJ	CONTROL JOINT	UBO	UNDERBENCH OVEN
CU	CONTROL UNIT	VFS	VENTILATED FRIDGE SPACE
C/O	C/O	WH	WALL-HUNG
DW	DISHWASHER	WM	WASHING MACHINE
DP	DOWNPIPE	WO	WALL OVEN
DPS	DOWNPIPE WITH SPREADER	WINDOWS & DOORS	
D.E.B.	DROPPED EDGE BEAM	AA	AWNING WINDOW
EPG	EXPOSED PAINT GRADE BEAM	ABF	BI-FOLD DOORS
EV	EAVE VENT	AD	DOUBLE HUNG WINDOW
FM	FLOXIMMER	AF	FIXED WINDOW
FOO	FOOT-CUT OUTLET	AK	SERVERY SLIDING WINDOW
FSD	FREE STANDING OVEN	ALV	LOUIRE WINDOW
FW	FLOOR WASTE	AS	SLIDING WINDOW
HR	HANDRAIL	ASD	SLIDING DOOR
HWS	HOT WATER SYSTEM	ASSD	STACKING SLIDING DOOR
HP/HWS	HEAT PUMP HOT WATER SYSTEM	OBS	OBSCURE GLASS
LP	LOAD POINT	SAL	SASH LOCK
LW	LOW WALL	VEL	VENT LOCK
MB	METER BOX	ROOM NAMES	
MRO	MANUAL ROLLER DOOR	BR	BROOM CLIPBOARD
MW	MICROWAVE CLIPBOARD	ENS	ENSUITE
OBS	OBSCURE GLASS	LDRY	LAUNDRY
PLD	PANEL LIFT DOOR	PAN	PANTRY
PD	PIVOT DOOR (SHOWER)	POW	POWDER ROOM
RBB	RAISED BREAKFAST BAR	WC	WATER CLOSET
RD	ROLLER DOOR	WIL	WALK IN LINEN
REC	SQUARE SET RECESS	WIP	WALK IN PANTRY
REF	REFRIGERATOR	WIR	WALK IN ROBE
RLW	RAKING LOW WALL		
SA	SMOKE ALARM (LOCATIONS TO BE DETERMINED ON SITE)		
SL	SLIDING DOOR (SHOWER)		

EX	EXCAVATION LINE
[Symbol]	DENOTES 250 BRICK VENEER/WEATHERBOARD WALL (REFER TO DETAIL)
[Symbol]	SHOWS EXTENT OF T & G FLOORING
[Symbol]	SHOWS EXTENT OF WET AREA FLOOR TILES
[Symbol]	SHOWS EXTENT OF FLOOR TILES

ST	2A	RE-ISSUE TO COUNCIL	28/08/2024
BM	2	ISSUE TO BASIX & ENGINEER	04/06/2024
BM	1	ISSUE TO SALES	19/04/2024

Drawn By: Issue: Description: Date:

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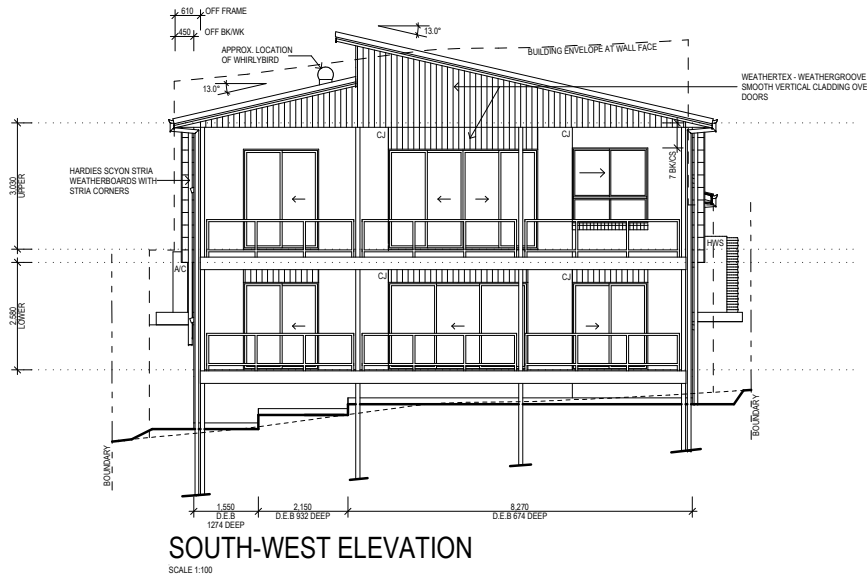
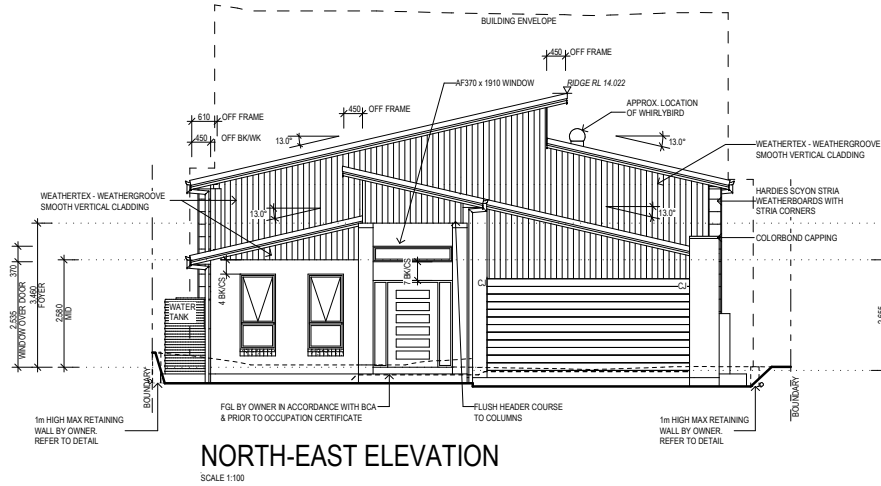
Client Name:
TAYLOR, T & L

Job Address:
**PROPOSED RESIDENCE
 Lot 1, No.8 Killara Close
 COAL POINT**

Design: the CAROLINA 1 - 268 - Retro 2024

Current Drafter:	Scale:	Plot Date:
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		Revision:
		2A

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ELEVATION / SECTION LEGEND

MARK	DESCRIPTION
GENERAL	
A/C	AIR-CONDITIONING UNIT
C	COMMUNICATIONS BOX
CJ	CONTROL JOINT
CU	CONTROL UNIT
D.E.B.	DROPPED EDGE BEAM
E	EARTHSTAKE
FC	FIBRE CEMENT
FCL	FINISHED CEILING LEVEL
FFL	FINISHED FLOOR LEVEL
FGL	FINISHED GROUND LEVEL
HWS	HOT WATER SYSTEM
HP HWS	HEAT PUMP HOT WATER SYSTEM
MB	METER BOX

LEVEL OF EXTERNAL FINISH

EXTERNAL WALLS
(NOTE: SEE ELEVATIONS FOR APPLICABLE FINISH)

	FACE BRICKWORK		STACKED STONE
	MOROKA BAG & PAINT		
	RENDER		
	RENDERED HEBEL		

PLEASE NOTE:
SILL ANGLE WILL VARY. ANGLE OF SILL IS SUBJECT TO WINDOW HEIGHT AND GAUGE OF BRICKWORK

ROOF CLADDING

	TILES
	COLORBOND

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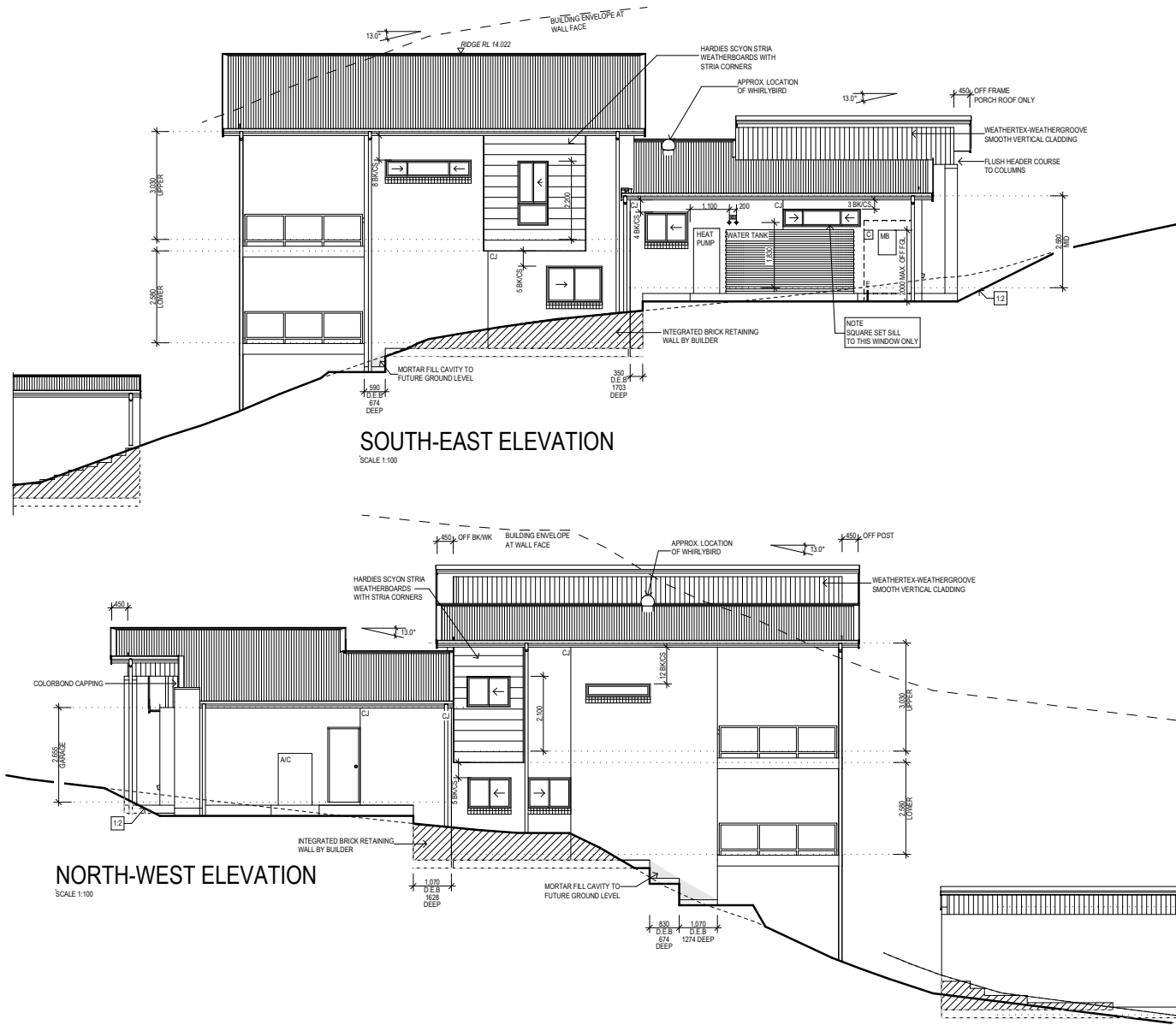
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Client Name:
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Job Address:
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Lot 1, No.8 Killara Close
COAL POINT**

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B.M/ST	SM	1:100 U.N.O.	28/08/2024
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ELEVATION / SECTION LEGEND	
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MB	METER BOX
LEVEL OF EXTERNAL FINISH	
EXTERNAL WALLS (NOTE: SEE ELEVATIONS FOR APPLICABLE FINISH)	
	FACE BRICKWORK
	STACKED STONE
	MOROKA BAG & PAINT
	RENDER
	RENDERED HEBEL
PLEASE NOTE: SILL ANGLE WILL VARY. ANGLE OF SILL IS SUBJECT TO WINDOW HEIGHT AND GAUGE OF BRICKWORK	
ROOF CLADDING	
	TILES
	COLORBOND

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Job No:	Tender No:	Drg No:	Revision:
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Summary of submissions received

Submission from resident	Summary of submission	Comments
Coal Point	<p>Privacy The proposed dwelling will have two decks that will overlook the adjoining dwelling deck area. The addition of privacy screens to the southern edge of each deck would help to provide some level of privacy for both parties.</p>	<p>The application features decks to the rear of the proposed dwelling house on both levels with boundary setbacks of 1.4m and 1.9m from the allotment boundaries. As a result, privacy screens to the upper and lower-level decks are required by way of condition of consent.</p> <p>Outcome: Condition of consent requiring privacy screens will be included.</p>
	<p>Overshadowing The proposed dwelling will overshadow adjoining deck areas and living area.</p>	<p>The provisions of the Lake Macquarie Development Control Plan (LMDCP) 2014 states that a minimum of three hours of sunlight be provided between the hours of 9am and 3pm on June 21 to 50 per cent of habitable rooms and required areas of private open space. The LMDCP also states that Council may accept a reduction in solar access if the topography and lot orientation is such that the three hour standard is considered unreasonable.</p> <p>The subject site falls 14m from east to west with a flat pad to the centre of the site where a previous dwelling stood. The proposed dwelling is sited largely on the existing flat pad to the centre of the lot with a rear setback being an average of the two adjoining neighbouring dwellings. The proposed siting of the new dwelling is considered an appropriate design response to integrate the new built form within the context. While the proposal involves an exceedance to the height limit, this is restricted to the peak of the rear roof. The southern elevation that would cast shadow on the neighbouring property complies with the height limit.</p> <p>Due to the subject site currently being vacant, the proposed dwelling will have an increased impact on overshadowing of the neighbouring dwelling to the south.</p>

Submission from resident	Summary of submission	Comments
		<p>The southern neighbouring dwelling does not feature any windows to habitable rooms to the northern facade with windows to an integrated boatshed only.</p> <p>The principal private open space to the neighbouring dwelling takes the form of a wraparound deck to the north and west which is accessed directly from the primary living space. It is noted that parts of this deck would be overshadowed from the walls, roof and decks of that dwelling itself.</p> <p>The proposed dwelling will result in partial overshadowing of the northern most section of the wraparound deck but on balance will not unreasonably impact the solar access to this total open space area. In addition, there are areas of open space on the adjoining property at ground that would have access to direct sunlight. Solar access to the southern adjoining property is therefore considered to be acceptable against the provisions of the LMDCP 2014 when having regards to the circumstances.</p> <p>Outcome: No further action required.</p>
	<p>Boatshed The proposed boatshed is forward of other boatsheds along this section of waterfront which doesn't seem to be in keeping with the look of the area.</p>	<p>The application features a boatshed measuring 4m wide x 8m long with a skillion roof. Clause 7.6 'Limited development on foreshore area' has been considered, as the boatshed is located within the identified foreshore area. The clause specifically allows for boatsheds within the foreshore area and the siting and design of the boatshed is acceptable against the objectives of the clause in that it would not impact on the natural foreshore processes or affect the significance and amenity of the area. It is also consistent with the provisions of the clause, including that the appearance of the structure will be compatible with the surrounding area, noting there are similarly sited boatsheds within the immediate vicinity.</p>

Submission from resident	Summary of submission	Comments
		<p>Council staff have also reviewed the proposed boatshed location and assessed the proposal against the DCP 2014 (Part 9.7 Foreshore and Waterway Development) and are satisfied that the provisions were addressed. A development application for the slipway was previously approved under DA/1500/2022.</p> <p>Outcome: No further action required.</p>

24DP020	Redhead - 15 High Street - Demolition, dwelling house and swimming pool
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Key focus area	4. Diverse economy
Objective	4.5 New development and growth complement our unique character and sense of place, now and into the future
File	DA/2196/2023 - D11732892
Author	Building Surveyor - Joshua Brockbank
Responsible manager	Manager Development Assessment and Certification - Steven Masia

Address 15 High Street, Redhead
Owner Mr Jonathon Robert Stephenson
Applicant Drake Development Solutions

Executive summary

The application seeks consent for demolition of existing structures on the site and construction of a three-storey dwelling house and swimming pool at 15 High Street, Redhead.

The development proposes a maximum height of 10.55m, which comprises a 2.05m or 24.12 per cent variation to the maximum building height development standard of 8.5m and as such, is required to be reported to Council for determination.

The Department of Planning and Environment’s Guide to Varying Development Standards specifies the elected Council as the determining authority for development applications where a variation to a numerical standard is greater than 10 per cent.

A detailed assessment of the application has been undertaken with the proposal deemed to meet the objectives of the *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)* and the *Environmental Planning and Assessment Act 1979*.

The development application is considered acceptable on merit and is therefore recommended for approval, subject to conditions of consent.

Recommendation

Council:

- A. endorses the development standard variation under clause 4.6 of the *Lake Macquarie Local Environmental Plan 2014*, providing a maximum height of 10.55m, exceeding the 8.5m development standard by 2.05m or 24.12 per cent, and
- B. approves DA/2196/2023 for demolition, dwelling house and swimming pool at 15 High Street, Redhead, subject to conditions of consent.

Context

The site is a rectangular lot located near the southern end of High Street. Its location is in an area characterised by residential dwellings of varying scale and architectural style. The site context is shown in Figure 1.

The land is zoned R2 Low Density Residential under the *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)* and has an area of 715m².

The site is bound by Henery Lane to its rear with existing dwellings on each side.

The site has a crossfall of over 6m from north-east to the south-west.



Figure 1 – Site context with development site outlined blue

Discussion

The proposal includes demolition of all existing structures on the land and the construction of a new three-storey dwelling, incorporating associated earthworks, driveway construction, landscaping, swimming pool and retaining walls.

The area surrounding the site contains a mix of residential dwellings, mostly consisting of split-level design, ranging from single storey up to three storeys.

The dwelling has been designed to respond to the topography of the site and orientated to use High Street for vehicular and pedestrian access. The bulk of the dwelling follows the

slope of the lot towards the south, consistent with the neighbouring properties. Figure 2 below shows the existing dwelling and large cross fall. Figures 3 and 4 depict the exceedance of the roof line above the 8.5 metre building height.



Figure 2 – Development site viewed from High Street, showing existing dwelling house and cross fall

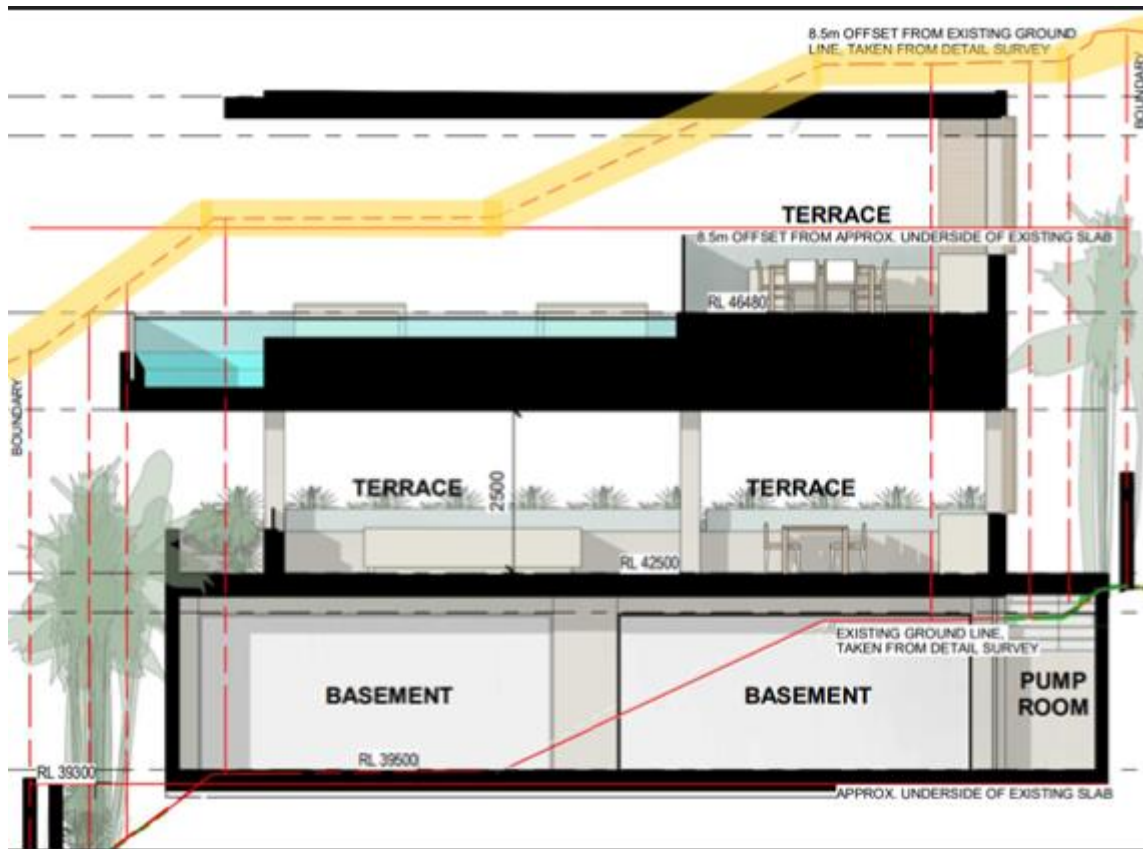


Figure 3 – Section through the dwelling house showing the extent of height exceedance

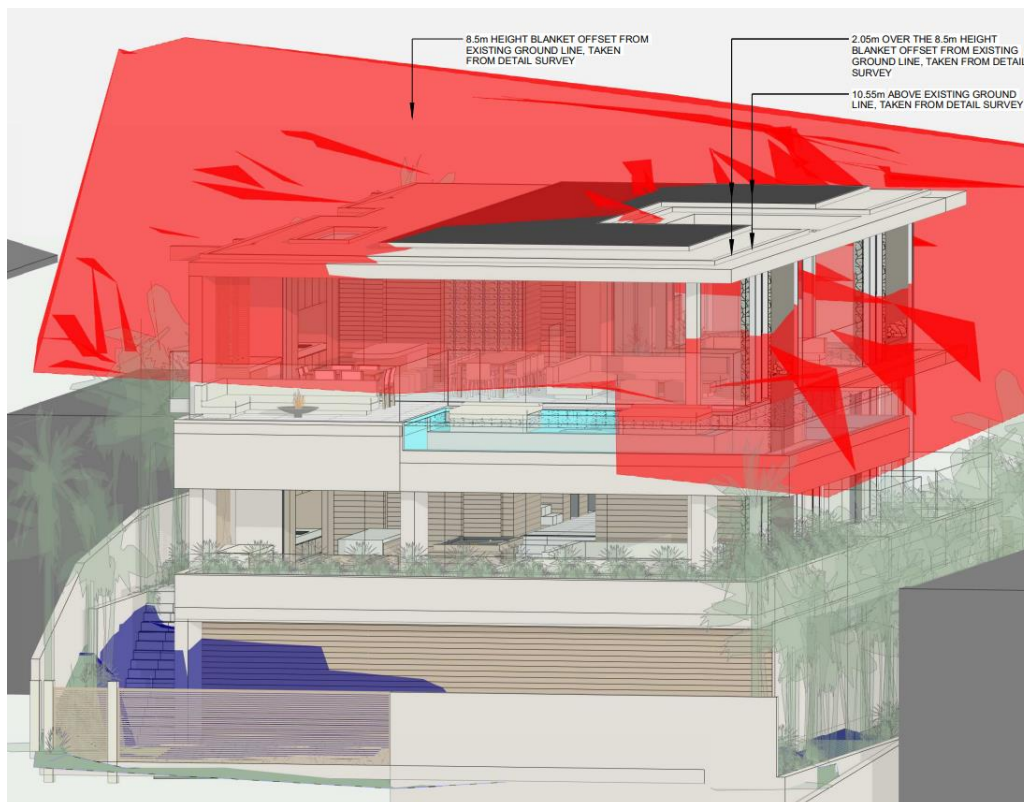


Figure 4 – Architectural image of the dwelling house from the rear lane (west) showing the extent of height exceedance

The roof is flat, reducing bulk and minimising impact on neighbouring properties.

Height of buildings

Clause 4.3 of the *LMLEP 2014* provides a maximum building height for this site of 8.5m. The development proposes an overall height of 10.55m. This comprises a 2.05m or 24.12 per cent variation to the building height development standard.

A written submission under clause 4.6 of the *LMLEP 2014* has been received from the applicant requesting a variation to the maximum height (Attachment 2).

The written submission provides justification as to why the development standard is unreasonable or unnecessary with key points summarised as follows:

- The variation is localised to the southern elevation. Considering the context of the property, the exceedance does not adversely impact adjoining lands and is compatible with the locality and would be unreasonable to require strict compliance with the 8.5m height.
- The proposed design allows for a dwelling that better uses the slope while appearing less dominant from the street.
- The design is consistent with dwellings in the direct vicinity of the site.
- Increased setbacks from the street and side setbacks have been utilised to offset the increased height of the building.
- Objectives of the zone and development standard are achieved despite the building height variation.

Assessment of the submitted variation has been undertaken. The additional height is appropriate for the site, with the development having minimal adverse impact, including view loss, overshadowing or compatibility with the scale of buildings in the locality. The application demonstrates that strict adherence to the development standard in the circumstance of this case is unreasonable and unnecessary. The development is consistent with the underlying purpose of the standards and there are sufficient environmental planning grounds to justify contravening the development standard.

Given there are no adverse impacts from the height exceedance or any other aspect of the development, the variation is able to be supported.

Community engagement and internal consultation

The development application was notified in accordance with the Lake Macquarie Community Engagement Strategy from 5 January to 1 February 2024. Two submissions were received and have been addressed during assessment of the application. Detailed assessment of the matters raised is provided in Attachment 3.

Assessment of options

This report recommends Council approves development application DA/2196/2023 for demolition of existing structures and construction of a dwelling house and swimming pool, subject to conditions. This is recommended as the proposal is consistent with the objectives of the R2 Low Density Residential zone and will have minimal impacts on the amenity of neighbours because of the height variation or any other aspect of the development.

Should Council determine to refuse the development application, the reasons for refusal should be noted in the motion for refusal. Alternatively, Councillors may determine to refer the development application to the assessing officer to address specific issues identified.

Next steps

If Council approves the height exceedance and approves the development, the notice of determination will be finalised with conditions of consent.

Should Council refuse the application, a notice of refusal stating the reasons will be issued. The applicant reserves the right to appeal the decision in the Land and Environment Court in this instance.

Key considerations

Economic

The development will provide employment in construction and other related industries.

Environment

The application has been assessed in detail and deemed satisfactory under the *Environmental Planning and Assessment Act 1979*.

The proposed improvements are consistent with the current and emerging context of the area.

The proposed dwelling is located generally over the existing building footprint and consistent with neighbouring developments within the local area.

No trees are proposed to be removed.

The environmental impacts of the development are considered acceptable.

Community

Community consultation has been undertaken in accordance with the Lake Macquarie Community Engagement Strategy. Two submissions were received which have been addressed during assessment of the application.

Civic leadership

Civic leadership is shown through Council's implementation of planning controls, including use of clause 4.6 of the *LMLEP 2014*, which enables variation to development standards.

Financial

None.

Infrastructure

None.

Compliance

The application has been assessed by staff and is reported to Council for determination in accordance with the Department of Planning and Environment's Guide to Varying Development Standard.

Legislative and policy considerations

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Resilience and Hazards) 2021

Lake Macquarie Local Environmental Plan 2014

Lake Macquarie Development Control Plan 2014

Lake Macquarie Community Engagement Strategy

Attachments

- | | | |
|----|--|-----------|
| 1. | 4.6 Variation Request - DA/2196/2023 - 15 High Street, Redhead | D11348646 |
| 2. | Architectural Plans - DA/2196/2023 - 15 High Street, Redhead | D11754508 |
| 3. | Submission table - DA/2196/2023 - 15 High Street, Redhead | D11742241 |

DEVELOPMENT SOLUTIONS

This request has been prepared in accordance with the provisions of Clause 4.6 - Exceptions to Development Standards. The request seeks a variation to the Height of buildings development standard adopted under clause 4.3 of the Lake Macquarie Local Environmental Plan 2014 (LEP). The extent of the proposed variation is outlined in the table below:

Development Standard	Maximum Height	Proposed Height	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Buildings	8.5m	10.55m	2.05m	24.11%

Objectives of the Zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Objectives of the Development Standard

(1) *The objectives of this clause are as follows—*

- (a) *to ensure the height of buildings are appropriate for their location,*
- (b) *to permit building heights that encourage high quality urban form*

How is strict compliance with the development standard unreasonable or unnecessary in this particular case (4.6 (3)(a))

The proposed height exceedance is limited to the Southern elevation of the proposed dwelling directly above the portion of the site that drops away at a dramatic rate when compared to the rest of the site. The height variation is a direct result of the topography of the land and the steep drop that occurs central to the development site. It would be unreasonable to expect that strict compliance be enforced on the proposal when it is of common occurrence to allow flexibility when designing a building on a sloping land, particularly when the slope occurs central to the lot and at a crossfall.

Consideration of the proposal as a whole, better illustrates a building that has been skilfully designed to incorporate the natural site limitations, streetscape, and relevant objectives of both the development standards and the zone. When visualised amongst similar buildings within and around Redhead, it can be considered that the development is suitable for the site given flexibility has been exercised in similar circumstances particular to this case.

- The variation is limited to the southern elevation portion of the roof. Strict compliance with the maximum height of buildings would not likely yield a better outcome for the subject site. Nor would such compliance grossly change the overall impacts of the proposal as a whole, particularly on the adjoining lands to the south.
- The building height complies on the same horizontal axis at the Northern elevation of the building for its entirety,
- Increased building setbacks at the front, rear and southern boundaries has provided for visual amenity well beyond the minimum requirements, significantly reducing the bulk of the building when viewed from the streetscape.
- The proposal, including the variation, remains consistent with the objectives of the zone and the development standard, and is considered a good use of the site.
- The portion of the dwelling which exceeds the height limit is contained to a portion of the site that is not immediately visible to the public domain, nor does it alter the impact currently experienced by the adjoining dwelling to the South.
- The proposed development in its current form is not considered to be out of context with the immediate vicinity, with numerous examples of dwellings of a similar bulk and scale existing within the area.
- The proposed variation does not result in any detrimental impact or a built form outcome which differs from that which is expected on the site. Therefore, it is considered that there is an appropriate contextual fit of the proposed building, which provides adequate environmental planning grounds to support the proposed variation.

Are there sufficient environmental planning grounds to justify contravening the development standard (4.6 (3)(b))

The request refers to *Wehbe v Pittwater Council* (2007) LEC 827. In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston outlined the rationale for development standards, and the ways by which a standard might be considered unnecessary and/or unreasonable.

Wehbe v Pittwater [2007] NSW LEC 827 also established the 'five-part test' to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- 1. Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives;*
- 2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary*
- 3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
- 4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or*
- 5. Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

With regard to the first test outlined in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure the height of buildings is appropriate for the context and character of the area and that building heights reflect the hierarchy of centres and land use structure.

The proposed development in its current form is not considered to be out of context with the existing, and desired future character of the immediate vicinity, and the surrounding area features numerous examples of dwellings of a similar bulk and scale. Further to this, the existing dwelling position and location of adjoining dwelling to the south being positioned much lower as a result of the slope, shall not likely be further impacted by the height.

The portion of the dwelling which exceeds the height limit has been contained to southern elevation. It is at this point the building employs an increased setback and is of an area that is not visually obtrusive to any adjoining lands. The roof of the dwelling to the south is currently aligned below the finished floor of the living room of the existing dwelling. This circumstance will be consistent with the newly proposed development.

The building height measured above ground (existing) to the northern elevation is compliant with the numerical controls and does not exceed 8.5m. The flat roof is designed to seamlessly transition from North to South to ensure height can be reduced as much as possible.

The design includes architectural fenestration and articulation of elevations. Wide use of varied materials, finishes and soft landscaping contribute to a site responsive design and positive impact on bulk and scale.

The proposed dwelling house is permissible as identified within the R2 Low Density Residential Land Use Table of the Lake Macquarie LEP. The residential built-form context of the surrounding area is predominantly single dwelling houses, generally two and three storeys in height, supporting the nature of this proposal with regard to land use.

In addition to the above, the proposed development provides and maintains an acceptable level of privacy and solar access to neighbouring properties. The privacy and solar access is substantially the same as the existing circumstances. It is considered that strict compliance with the height limit would not result in a material increase to privacy or solar access, and as such the variation is not considered inappropriate.

The second, third, fourth and fifth tests set down in Wehbe are not considered relevant to the proposal, for the following reasons:

- The underlying purpose and objective of the development standard (being height of buildings) is still relevant to the proposal.
- The objective or purpose of the development standard would not be defeated or thwarted were compliance required.
- Council has not abandoned or destroyed the development standard through other approvals in the area.
- The zoning of the subject site is not considered to be unreasonable or inappropriate.

Conclusion

In consideration of this variation request, it is evident that the proposed built form outcome is in keeping with the context of the existing streetscape and the immediate locality. The variation does not result in any detrimental impact which differs from that which is expected on this site, typical of significantly sloping lands.

Therefore, it is considered that there is an appropriate contextual fit of the proposed building, which provides adequate environmental planning grounds to support the proposed variation. The variation will not impact on the adjoining sites or on the existing and desired future character of the streetscape. It is evident through recent similar approvals of dwelling houses and contemporary upgrades of existing dwellings in the area, that consistency with the objectives of the controls is maintained.

Strict compliance with Clause 4.6 of the Lake Macquarie LEP is considered to be unreasonable in this instance, it is requested that Council apply flexibility in this particular circumstance.

The proposed development is considered to be consistent with the objectives of Clause 4.6 given the application of flexibility to Clause 4.3 will achieve better outcomes for and from the development. With regard to this proposal, the objectives of Clause 4.3 are achieved notwithstanding non-compliance in that, the building height is appropriate for its location, and a high quality urban form is achieved.

The development would also promote the ‘orderly and economic use and development of land’ in accordance with the objects of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) through investing in valuable improvement of the quality and improved condition of dwellings and infrastructure within the local area.



Figure 1 – Height Blanket modelled over existing ground – Western Aspect

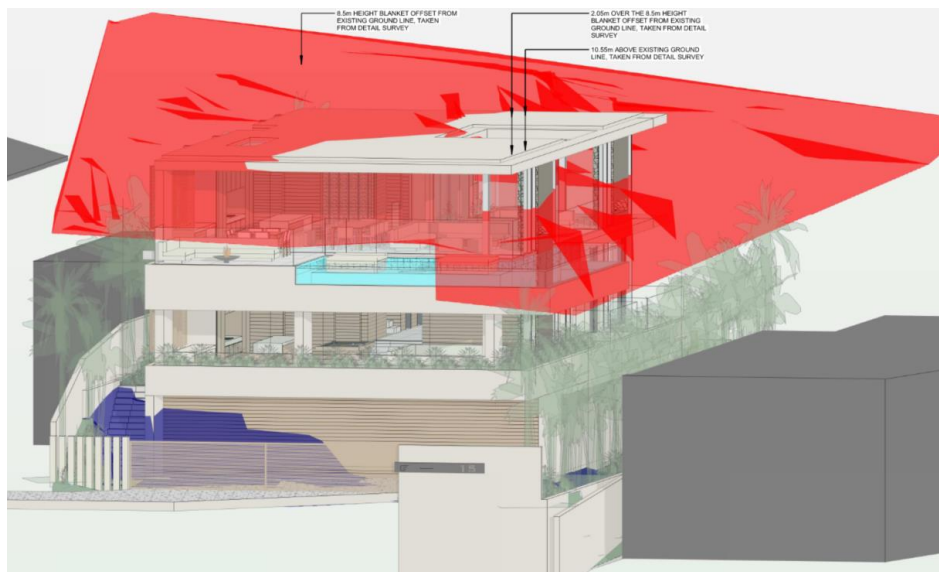


Figure 2 – 3D Perspective of Height Blanket

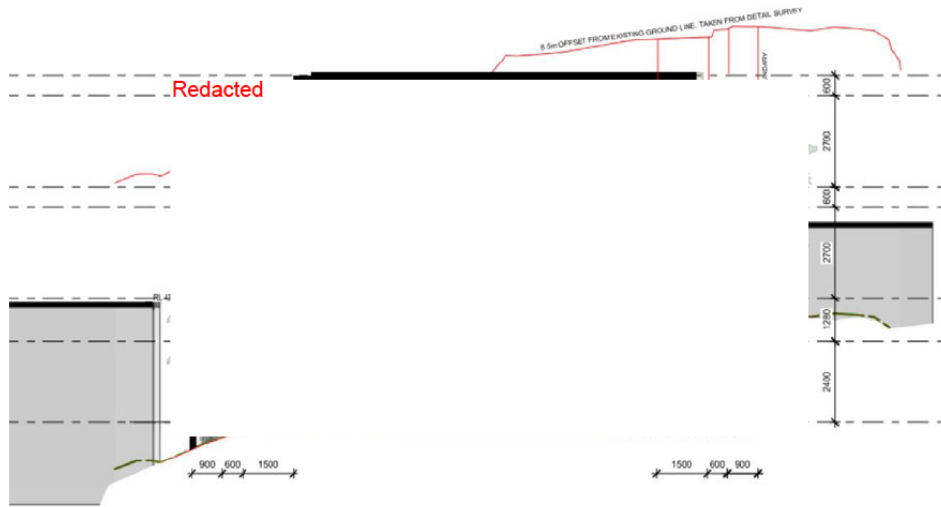


Figure 3 – Section illustrating the steep drop located central to the development site

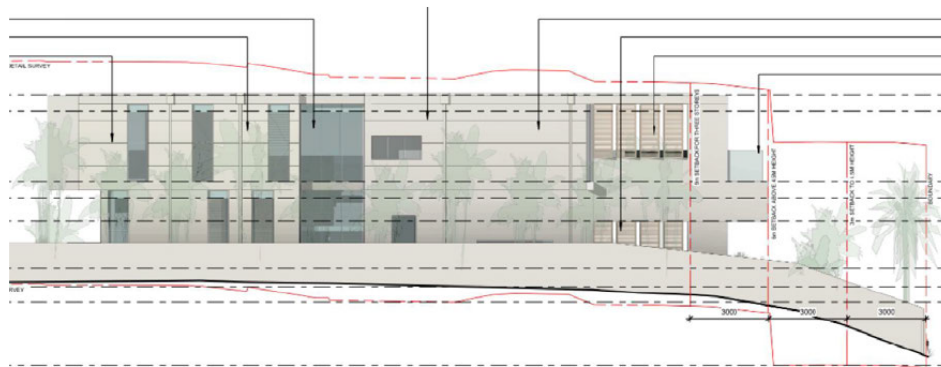


Figure 4 - Northern elevation showing compliance with height control

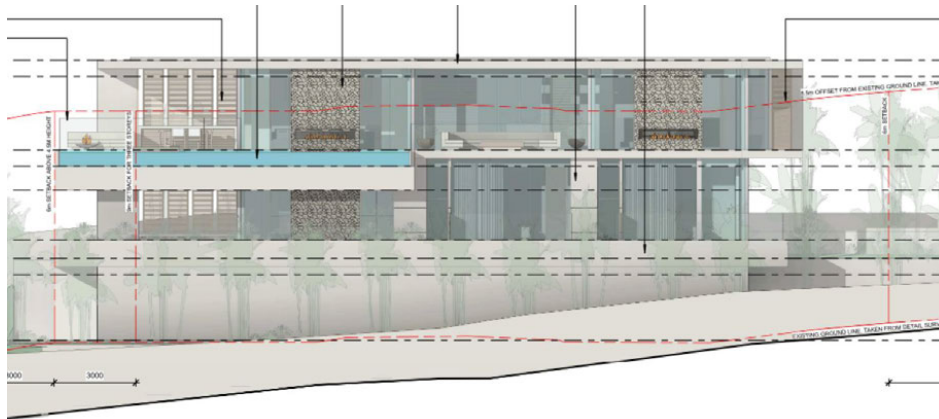


Figure 5 - Southern Elevation

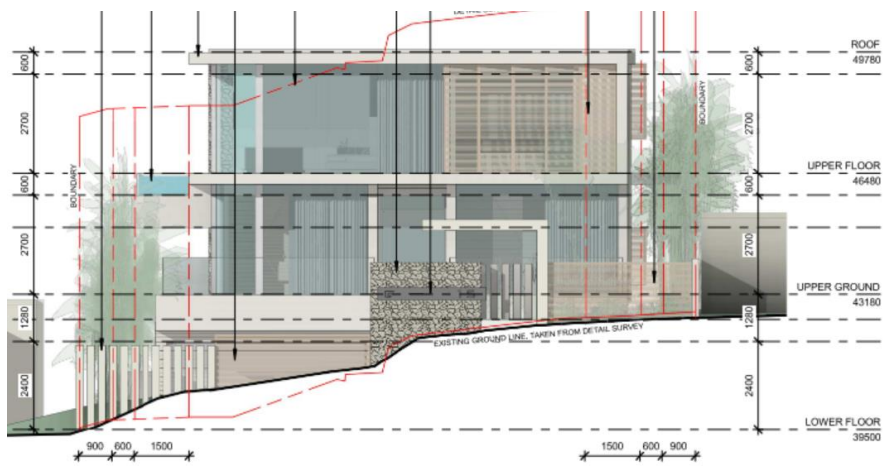


Figure 6 – Streetscape Elevation



COASTAL VIEW HOUSE

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CLIENT: Jonathon Stephenson PROJECT: COASTAL VIEW HOUSE

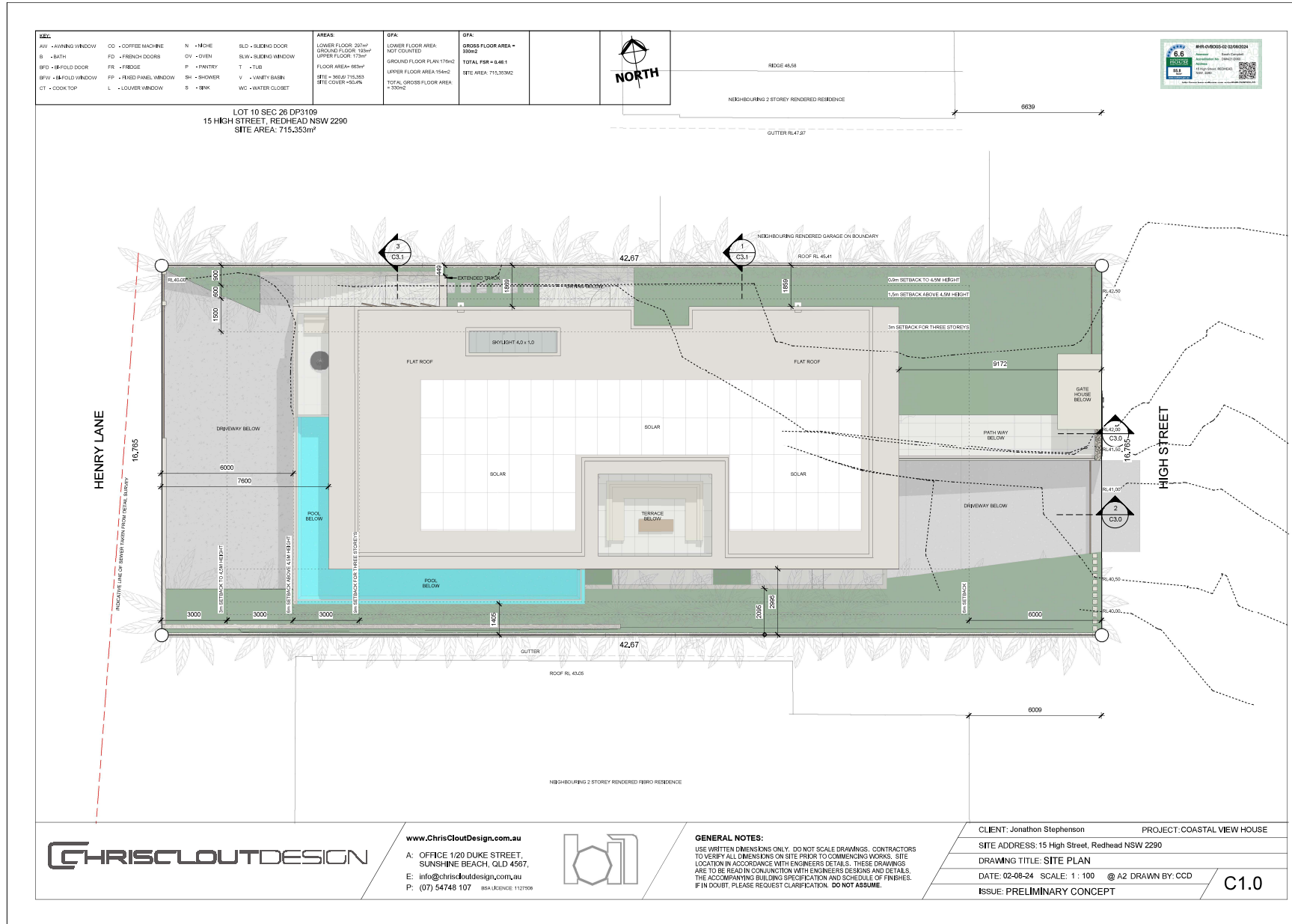
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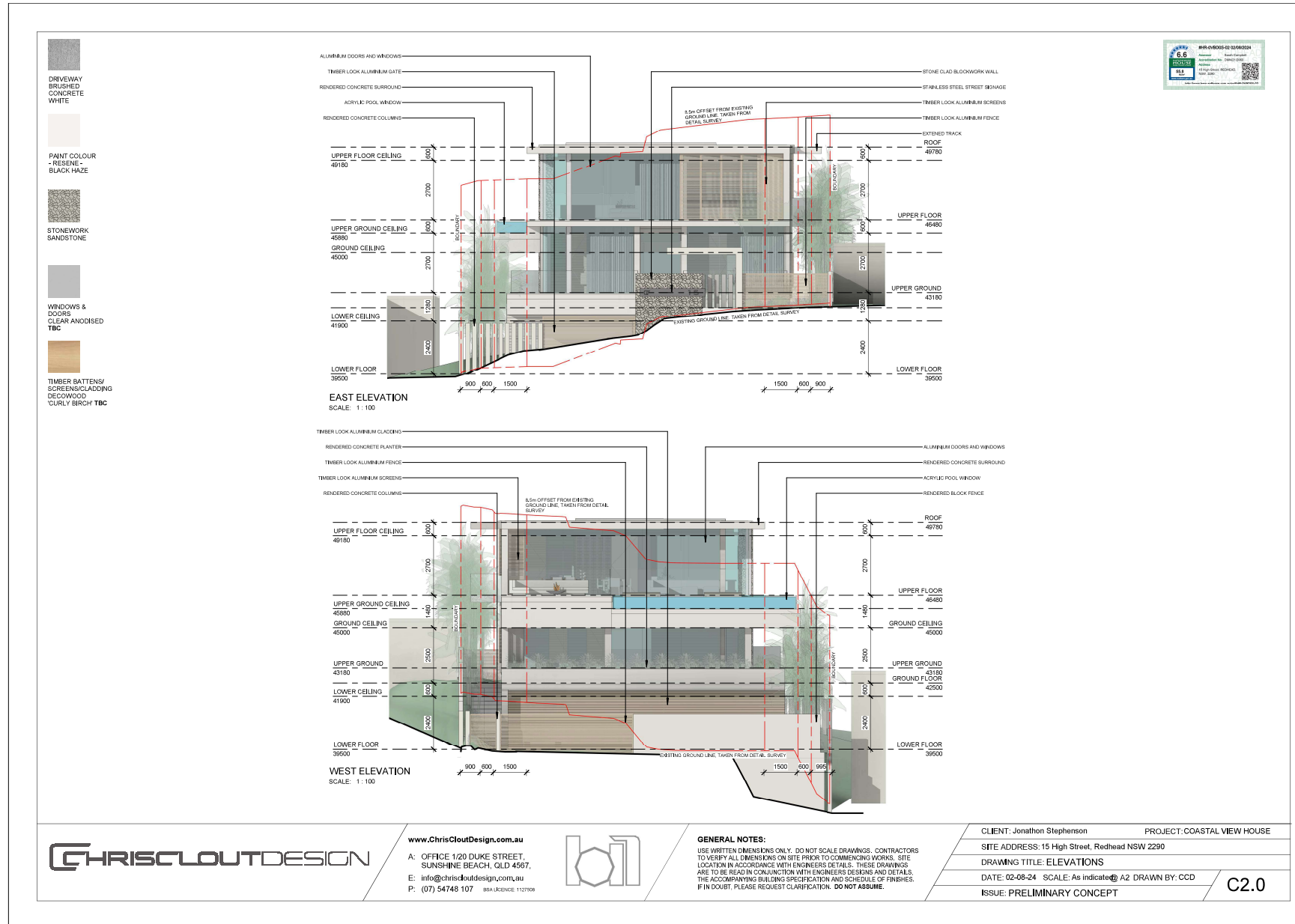
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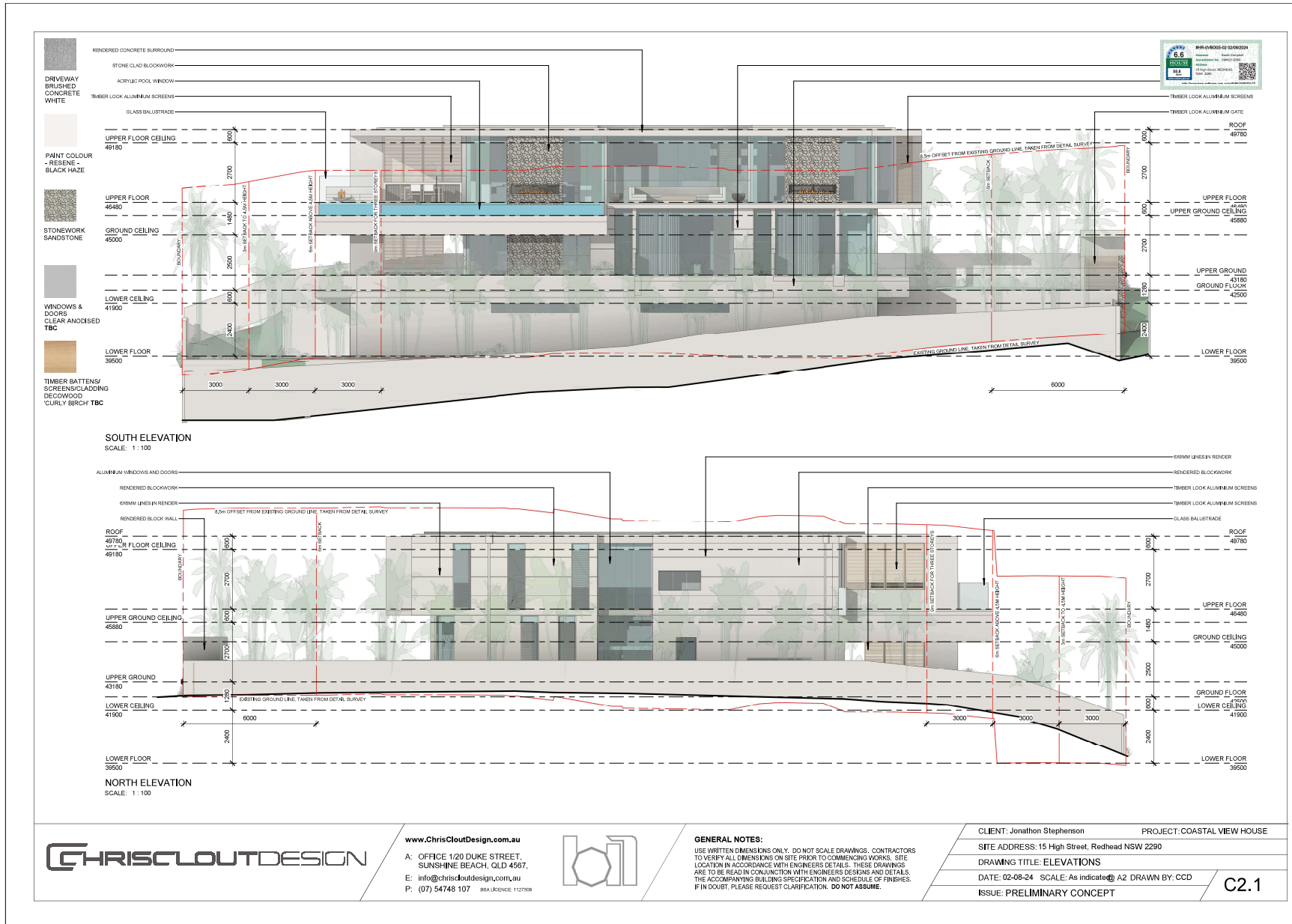
DATE: 02-08-24 SCALE: @ A2 DRAWN BY: CCD

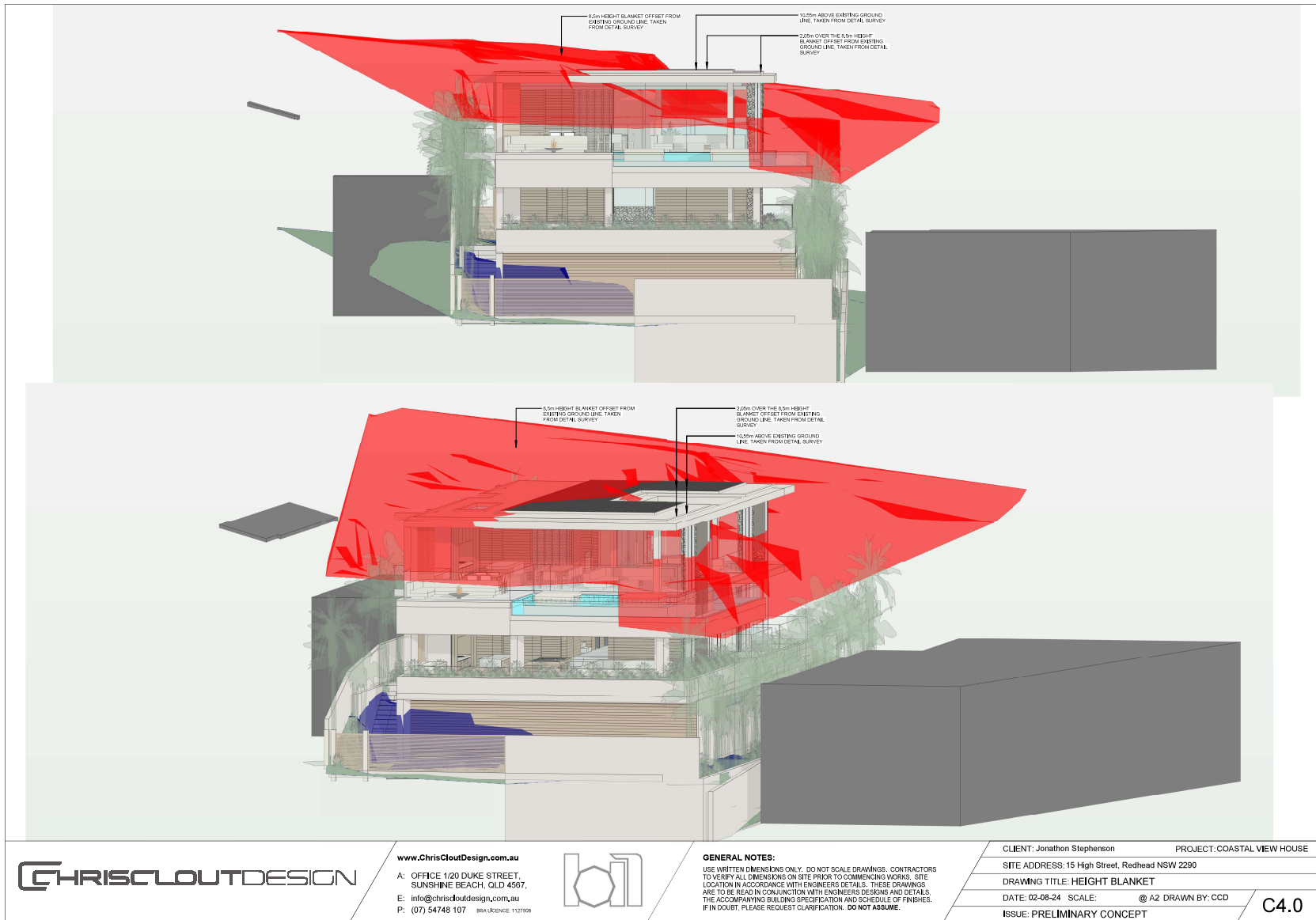
ISSUE: PRELIMINARY CONCEPT

C0.0









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CLIENT: Jonathon Stephenson PROJECT: COASTAL VIEW HOUSE

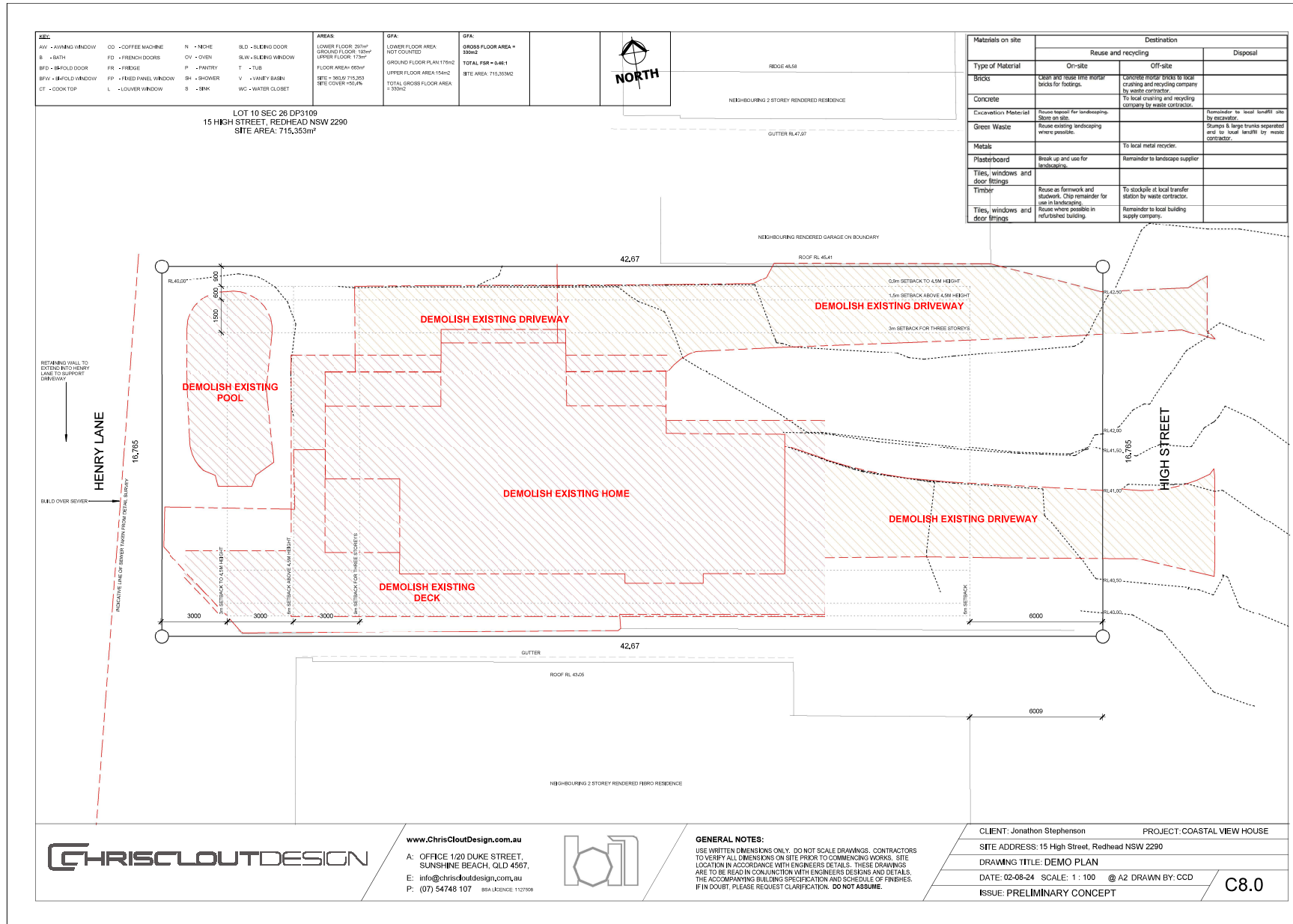
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DRAWING TITLE: HEIGHT BLANKET

DATE: 02-08-24 SCALE: @ A2 DRAWN BY: CCD

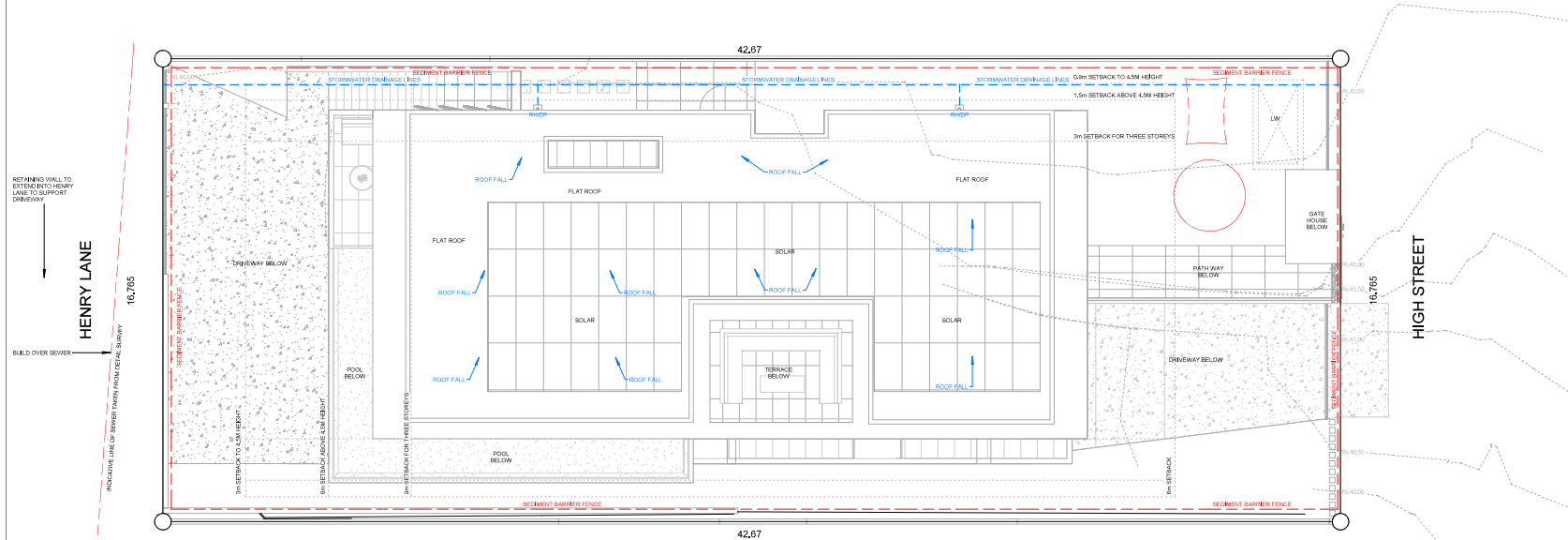
ISSUE: PRELIMINARY CONCEPT

C4.0



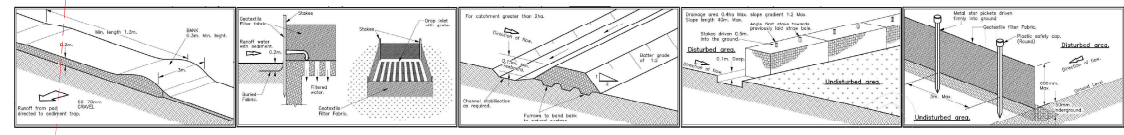
KEY	AV - AWWING WINDOW B - BATH BFD - BIFOLD DOOR BFW - BIFOLD WINDOW CT - COOK TOP	CO - COFFEE MACHINE FD - FRENCH DOORS FR - FRIEDGE FP - FIXED PANEL WINDOW L - LOUVER WINDOW	N - NICHE OV - OVEN P - PANTRY SH - SHOWER S - SINK	SLD - SLIDING DOOR SLW - SLIDING WINDOW T - TUB V - VANITY BASIN WC - WATER CLOSET	AREAS LOWER FLOOR: 207m ² GROUND FLOOR: 1289m ² UPPER FLOOR: 173m ² FLOOR AREA: 853m ² SITE: 360.9 715.563 SITE COVER: 65.0%	OFA: LOWER FLOOR AREA: HOT COVERED GROUND FLOOR PLAN: 118m ² UPPER FLOOR AREA: 154m ² TOTAL GROSS FLOOR AREA: + 330m ²	OFA: GROSS FLOOR AREA + 330m ² TOTAL FSR + 0.46 1 SITE AREA: 715.336m ²	CONTING BOUNDARY ENCLOSURE AND EROSION CONTROL LEGEND NORTH 1 SAND AND SOIL STOCKPILES 2 CONCRETE WASTE AND WASHING 3 LITTER AND WASTE CONTROL	CONSTRUCTION MANAGEMENT NOTES 1. NO VEGETATION OR GRASS COVERS TO BE REMOVED EXCEPT WITHIN AREAS OF NEW CONSTRUCTION. 2. INSTALL HAY BALES OR SEGMENT CONTROL FENCING AS NECESSARY TO ENSURE THAT SILT FROM ANY UNDESIRABLE AREAS IS TRAPPED ON SITE. 3. PROVIDE BARRIERS AROUND ALL CONSTRUCTION WORK ON THE FOOTPATH AREA TO PROVIDE SAFE ALTERNATE ACCESS FOR PEDESTRIANS. 4. ALL WASTE MATERIALS ARE TO BE REMOVED FROM SITE OR STOCKPILED WITHIN THE SITE PRIOR TO REMOVAL. 5. ALL CONSTRUCTION MATERIALS AND SITE SHEETS ARE TO BE KEPT WITHIN THE SITE AT ALL TIMES.	SOIL AND WATER MANAGEMENT NOTES 1. WHEREVER POSSIBLE EXISTING VEGETATION AND GRASS COVERS TO BE LEFT UNDISTURBED. 2. REMOVAL OR DISTURBANCE OF VEGETATION AND TOP SOIL SHALL BE CONFINED TO WITHIN 9M OF THE APPROVED GULLIES AREA. 3. STORMWATER SILT FENCE (AS SHOWN) TO BE INSTALLED PRIOR TO THE COMMENCEMENT OF ANY EARTHWORK AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD, AND TO REMAIN AFTER STORE EVENTS. 4. ALL SITE STORMWATER DURING CONSTRUCTION SHALL BE DEPOSITED ACCORDING TO THE SITE'S MANAGEMENT OF URBAN STORMWATER FOR CONSTRUCTION ACTIVITIES. 5. SUSCEPTIBLE AND VULNERABLE AREAS SHALL BE PLACED TO ALLUVIDE THE WRA, ACCORDINGLY, BARE SURFACES SHALL BE KEPT SHORT TO MINIMIZE DUST LEVELS.	CONCRETE PUMPING, DELIVERY OF MATERIAL, LOADING AND UNLOADING OF MATERIAL TO BE DONE WITHIN THE CONFINES OF THE PROPERTY VEHICLES TO BE HOUSED DOWN TO PREVENT SOIL/ EXCAVATED MATERIAL BEING DEPOSITED ON ROADWAY OPERATIONAL WASTE MANAGEMENT THE PROPOSED WASTE MANAGEMENT SYSTEM FOR THE OPERATIONAL STAGE OF THE DEVELOPMENT IS AS FOLLOWS RESIDENTS OF THE DEVELOPMENT WILL BE ABLE TO STORE WASTE WITHIN A DEDICATED WASTE CUPBOARD IN THE BASEMENT AREA OF THE BUILDING. THEY WILL THEN TRAFFER WASTE AND RECYCLABLES TO ANIMAL WASTE STORAGE AREA. #BRO WILL BE ALLOWED ALONG THE WRA ON COLLECTION DAY TO BE SHIPPED BY INCLUDING CITY COUNCIL'S WASTE COLLECTION AND RECYCLING SERVICES.
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LOT 10 SEC 26 DP3109
15 HIGH STREET, REDHEAD NSW 2290
SITE AREA: 715.336m²



RETAINING WALL TO EXTEND INTO HENRY LANE TO SUPPORT DRIVEWAY
BUILD OVER SEWER
HENRY LANE
16,765
INDICATIVE LINE OF SEWER FROM RETAINING WALL
3M SETBACK TO DRIVEWAY
4M SETBACK ABOVE DRIVEWAY
3M SETBACK FOR THREE STOREYS
3M SETBACK

Materials on site	Destination	
	Reuse and recycling	Disposal
Type of Material	On-site	Off-site
Bricks	Clean and reuse with mortar backs for footings.	Concrete mixer trucks to local crushing and recycling company by waste contractor.
Concrete		To local crushing and recycling company by waste contractor.
Excavation Material	Reuse topsoil for landscaping.	Remainder to local landfill site by contractor.
Green Waste	Reuse existing landscaping where possible.	Stumps & large trunks separated and to local landfill by waste contractor.
Metals		To local metal recycler.
Plasterboard	Break up and use for landscaping.	Remainder to landscape supplier.
Tiles, windows and door fittings		
Timber	Reuse as formwork and scaffold. Chip remainder for use in landscaping.	To stockpile at local transfer station by waste contractor.
Tiles, windows and door fittings	Reuse where possible in refurbishing building.	Remainder to local building supply company.



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CLIENT: Jonathon Stephenson PROJECT: COASTAL VIEW HOUSE
SITE ADDRESS: 15 High Street, Redhead NSW 2290
DRAWING TITLE: WASTE MANAGEMENT PLAN
DATE: 02-08-24 SCALE: 1 : 100 @ A2 DRAWN BY: CCD
ISSUE: PRELIMINARY CONCEPT

C9.0

Summary of submissions received

Submission from resident	Summary of submission	Comments
Redhead	<p>Height of buildings</p> <p>Concern that the clause 4.6 variation request for the variation is a significant departure from maximum height of buildings</p>	<p>Clause 4.3 of the <i>LMLEP 2014</i> provides a maximum building height for this site of 8.5m. The development proposes an overall height of 10.55m. This comprises a 2.05m or 24.12 per cent variation to the maximum building height development standard.</p> <p>The height variation of the proposal exceeds 10 per cent, which means the variation is required to be determined by the elected Council.</p> <p>A clause 4.6 variation to the maximum building height has been submitted with the development application. Council staff have assessed the variation submission and the proposed development and are supportive of the building height variation. The information contained in the variation submission meets the requirements of clause 4.6 of the <i>LMLEP 2014</i>.</p> <p>There is no numerical limitation on the variation sought. The variation is considered on the merits of the case having regards to site context and impacts.</p> <p>It is considered that strict compliance with the height control in this instance is unreasonable and unnecessary.</p> <p>Outcome: No further action required.</p>
	<p>Geotechnical impacts</p> <p>The site has been impacted by significant erosion and landslip events in the past</p>	<p>A report on slope stability assessment has been received from the applicant and assessed by Council's engineers as adequately mitigating slope instability.</p> <p>Outcome: A condition of consent will be imposed requiring compliance with the geotechnical report.</p>
	<p>Coastal management areas</p> <p>The site is within the Coastal Use Area and Coastal Environment Area pursuant to <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> and no assessment has been provided</p>	<p>Clause 2.10 'Development on land within the coastal environment area' and clause 2.11 'Development on land within the coastal use area' of the SEPP have been considered by the assessing officer, including consideration of the submitted Visual Impact Assessment. All matters that are referenced in clause 2.10 and 2.11 have been addressed in the 4.15 assessment report.</p> <p>The proposal does not adversely impact the marine environment, access to the foreshore or use of the surf zone. The proposed development is acceptable in relation to overshadowing, wind funnelling, and view impacts from public spaces. The visual amenity and scenic qualities of the coast would not be adversely</p>

Submission from resident	Summary of submission	Comments
		<p>impacted. The proposal is acceptable in relation to Aboriginal culture. The visual impact, bulk, scale and size of the development is appropriate in the context.</p> <p>Outcome: No further action required.</p>
	<p>Earthworks</p> <p>Application information did not adequately assess the relevant matters for consideration as outlined by clause 7.2 'Earthworks' of the <i>LMLEP 2014</i></p>	<p>A slope stability report, engineer's endorsement and stormwater management plan have been provided in support of the application. Council's engineers have reviewed the documentation and determined the development has adequately addressed clause 7.2 of the <i>LMLEP 2014</i> with regards to impacts of the earthworks, including slope stability and drainage.</p> <p>Outcome: A condition of consent will be imposed requiring compliance with the geotechnical report.</p>
	<p>Landscape and visual impact</p> <p>The site is less than 300m from the coastal edge, has a height equivalent to three or more storeys and is located on a sloping site. In accordance with section 2.2 of the Lake Macquarie Development Control Plan (LMDCP) 2014, a visual impact assessment is required.</p>	<p>A visual impact assessment (VIA) has been provided by the applicant and assessed as satisfactory.</p> <p>The aim of the VIA is to assess the impact of the scenic quality of the coastal area of Redhead, demonstrate that the plans have considered the Lake Macquarie scenic management guidelines and to ensure the desired characteristics of the locality have been considered. The proposal is satisfactory in relation to these matters and appropriate for the context.</p> <p>The existing area consists of dwelling houses of similar building proportions, and the proposed plans are consistent with the emerging character of the Redhead area.</p> <p>The architecturally designed dwelling incorporates minimalist façade with flat roof and muted tones to blend to the landscape.</p> <p>Outcome: No further action required.</p>
	<p>Visual privacy</p> <p>The third storey has a living room that looks into the neighbours' adjacent front courtyard</p>	<p>The room in question is a bedroom and is suitable for a room with infrequent use.</p> <p>Outcome: No further action required.</p>
	<p>Retaining wall</p> <p>Existing deteriorated retaining wall is of concern</p>	<p>The proposal includes a new reinforced concrete retaining wall to replace the existing timber retaining wall.</p> <p>Outcome: No further action required.</p>

Submission from resident	Summary of submission	Comments
	<p>Driveway design</p> <p>The plans propose the construction of driveways into the site from both High Street and Henery Lane. This does not comply with the LMDCP 2014 which permits one driveway per lot.</p>	<p>During assessment of the application, revised plans were submitted showing vehicle access from the lane is no longer part of the application. The internal driveway area adjacent to the western boundary (Henery Lane) is required for manoeuvring to enable vehicles to turn and exit the site in a forward direction.</p> <p>Outcome: A condition will be included stating that no vehicular access from Henery Lane is permitted.</p>
	<p>Cut and fill</p> <p>The earthworks on site do not comply with the LMDCP 2014 as the retaining walls exceed one metre in height and are within one metre of the boundary</p>	<p>The earthworks on the site are predominately existing. The proposed heights and setbacks of retaining walls are considered suitable departures from the DCP numerical provisions, particularly given the steepness of the site. The objectives of the LMDCP 2014 will be achieved in that the development will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p> <p>Outcome: No further action required.</p>
	<p>Subsidence Advisory NSW</p> <p>The plans have not been endorsed by Subsidence Advisory NSW</p>	<p>A set of plans endorsed by Subsidence Advisory NSW have been provided to Council by the applicant.</p> <p>Outcome: No further action required.</p>
	<p>Stormwater management</p> <p>A stormwater management plan has not been provided</p>	<p>A stormwater management plan has been received from the applicant and assessed by Council's engineering team and considered acceptable.</p> <p>Outcome: Condition of consent will be imposed requiring compliance with the geotechnical report.</p>
Redhead	<p>Height of buildings</p> <p>Concern the clause 4.6 variation request for the variation is a significant departure from maximum height of buildings</p>	<p>This issue has been addressed above in response to the first submission.</p> <p>Outcome: No further action required.</p>
	<p>Overshadowing</p>	<p>Overshadowing will not affect the existing premises to the north as identified on the shadow diagrams submitted with the application.</p> <p>The proposed dwelling will not unreasonably increase overshadowing impacts to the dwelling premises to the south.</p>

Submission from resident	Summary of submission	Comments
		<p>The habitable rooms of the dwelling to the south are currently impacted by an existing boundary retaining wall, which has varying heights up to three metres and also shadowing from the existing dwelling. Shadow diagrams indicate overshadowing will be generally similar to the existing situation.</p> <p>Solar access to all adjoining properties will be acceptable in accordance with the LMDCP 2014.</p> <p>Outcome: No further action required.</p>
	<p>View loss</p> <p>The height of the building will impact views</p>	<p>The proposed dwelling has a generous setback from the street frontage of approximately 10m. The adjoining dwellings are set forward of this alignment. Views across the front of the property towards the ocean are thereby facilitated by the design. The section of building that exceeds the height limit is to the southern elevation and therefore does not unreasonably alter views taken from the north towards the ocean.</p> <p>Outcome: No further action required.</p>
	<p>Privacy</p> <p>Concern the dwelling house will view directly into neighbouring pool areas</p>	<p>The rear decks are elevated well-above the adjoining pool area and have either a planter box or pool around the perimeter of the decks which would restrict views to a more horizontal outlook. The overlooking impacts would therefore be minimised and are considered acceptable against the LMDCP 2014 provisions.</p> <p>Outcome: No further action required.</p>