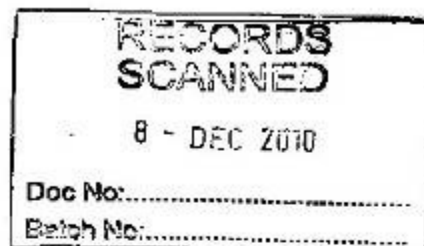


## 10.7 Joint Regional Planning Panel - Delegation of Functions



Planning

Mr Paul Hickey  
General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478



Dear Mr Hickey

I write to you on behalf of the Minister and the Chair of the Northern Joint Regional Planning Panel (Regional Panel) about the return of certain applications currently dealt with by the Regional Panel to council officers under delegation.

Under section 23(1B) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) the Minister and the Northern Regional Panel have agreed that subject to certain limitations, the determination of the following types of development applications may be delegated to Ballina Shire Council:

- 'straightforward' applications, where no objections have been received and council's assessment report recommends approval; and
- designated development with a capital investment value under \$5M.

Under section 381(1) of the *Local Government Act 1993*, the delegation is conferred on the elected Council. In order to effectively use the delegation, consistent with the common goal of depoliticising the planning system and improving determination timeframes it is important that, if it has not already occurred, the functions be delegated to the General Manager as a matter of priority, who may in turn delegate to the appropriate officer level. I note that Ballina Shire Council has previously agreed to ensure this further delegation occurs.

Please find attached the instrument of delegation for the Northern Region, including your Council.

The delegation will not apply to those applications where Council has an interest, or where the Panel Chair has advised Council that the delegation will not apply to a particular application.

It is important that Council continue to register all Regional development applications with the Panel Secretariat, and not exercise this delegation prior to registration by the Panel Secretariat.

Under the delegation, the delegated officers will still be able to refuse an application even though the assessment report recommends approval. The delegation applies to development applications and section 95(2) modification applications.

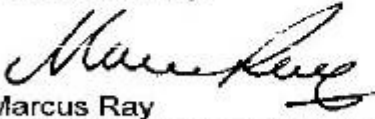
Department of Planning 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39, Sydney NSW 2001  
Phone 02 9228 6111 Fax 02 9228 6455 Website [planning.nsw.gov.au](http://planning.nsw.gov.au)

The delegation will be in operation until 30 September 2011 and the delegation cannot be used by Council after this date. Towards the end of this trial period it will be reviewed to determine what further measures may need to be put in place.

I have also attached a Guideline to provide Council with assistance on the assessment and determination of development applications under delegation. This Guideline should be read in conjunction with the Joint Regional Planning Panel's Operational Procedures (April 2010).

Should you have any further enquiries about this matter, Ms Paula Poon, Director, Panel Secretariat will be happy to assist. She can be contacted on telephone number (02) 9383 2101.

Yours sincerely



Marcus Ray 03/12/10  
Executive Director Assessment Systems, General Counsel

## **ASSESSMENT OF DEVELOPMENT APPLICATIONS UNDER DELEGATION**

The notification, exhibition and assessment of development applications (DAs) under delegation should be undertaken generally in accordance with the Regional Panel's Operational Procedures. The following general requirements are noted for Council's assistance, along with some additional requirements that will apply when acting under delegation:

### **1. Notification and exhibition**

- Within seven (7) days of receiving a DA for regional development for which the Regional Panel is the determining body, the Council must notify the Panel Secretariat via the Regional Panel's website. Council must also inform the Panel Secretariat of notification and exhibition dates.
- The Panel Secretariat in consultation with the Council and Panel Chair may still coordinate Panel briefing meetings in some circumstances.
- Submissions made in respect of the application should be lodged with Council but are to be forwarded to the Panel Secretariat at the close of the exhibition period, and may be viewed by other persons with an interest in the application.
- The Regional Panel monitors development types through the Council's Notification and Lodgement section of the website. The Panel Secretariat will be aware of DAs that may potentially satisfy the terms of the delegation, and will work with Council in ensuring that DAs are determined efficiently and at the appropriate level. Council should clearly advise the Panel Secretariat if the delegation will potentially be exercised at the earliest opportunity (either at registration or close of submissions), depending on the applicable delegation criteria and pending the finalisation of the Council officer's assessment report.

### **2. Assessment**

- During the assessment process, Council must inform the Panel Secretariat of any request for additional information from the applicant.
- Council must advise the Panel Secretariat as soon as it becomes aware of any expected difficulties in assessing the application or if the assessment report will not be completed within the timeframe indicated in the referral notification. The Panel Secretariat should be notified of the reasons for the delay so that panel members can be advised accordingly.
- Councils may still be required to provide the Panel Secretariat with a pro-forma Application Status Report for all applications that have been lodged for 70 days or more, including applications that are to be determined under delegation. The Status Report will be required to detail the processing of the applications to date, and provide a commitment to a final reporting time frame. The council may be requested to provide further formal or informal updates as necessary, on the progress of the application and the resolution.
- Details of the proposed exercise of the delegation must be clearly detailed in the Council's assessment report, demonstrating how the application satisfies the delegation criteria.

### 3. Determination

- Where the terms of the delegation are satisfied, the nominated Council officer may proceed to determine an application under delegation. A copy of the Council's assessment report and Notice of Determination must be sent to the Panel Secretariat within five (5) days of the Notice being issued, and will be made available on the Regional Panel's website.
- If a Council is uncertain whether the terms of the delegation are satisfied or not, further advice should be sought from the Panel Secretariat. If the matter is unable to be resolved, the DA should be referred to the Regional Panel for determination.
- A delegate may choose not to exercise the delegation, for example due to a personal conflict of interest or any other reason. In such cases, Council must advise the Panel Secretariat of this decision and provide reasons. The Regional Panel will then determine the application.
- A Panel Chair may decide to withdraw the delegation under particular circumstances, for example for controversial projects receiving a high number of objections. Where a Panel Chair decides to withdraw a delegation, written notice will be provided to Council as soon as is practicable and no later than 5 days after the Panel Chair has received a copy of the submissions or notice that no submissions were made.
- Where a determination is made by an officer under delegation from the Regional Panel, the determination remains a decision by the Regional Panel. Any subsequent section 96(2) application must also be registered with the Panel Secretariat, although it could also be dealt with under this delegation if it meets the terms of the delegation. The Council remains the consent authority for the purposes of any subsequent appeal under the EP&A Act.
- A Panel Chair may also decide to withdraw the delegation if it becomes apparent that these procedures are not being followed.

#### Additional notes for Crown DAs

- When assessing and determining a Regional Crown DA under delegation, Council is bound by the provisions of Part 4, Division 4 of the EP&A Act. A consent authority for Crown Development cannot refuse its consent to a Crown DA, except with the approval of the Minister of Planning, or impose a condition on its consent to a Crown DA, except with the approval of the applicant or the Minister.
- Where the Council delegate seeks to impose a condition that is not agreed to by the applicant, the DA must be referred to the Regional Panel.
- Where the Council delegate considers an application should be refused (which Council's assessment report recommends for approval in accordance with the terms of the delegation) the DA must be referred to the Regional Panel.

Note: the terms of the delegation will not be satisfied if the Council's assessment report recommends refusal.


## Environmental Planning and Assessment Act 1979

### INSTRUMENT OF DELEGATION NORTHERN REGION JOINT PLANNING PANEL

Under section 23(1B) of the *Environmental Planning and Assessment Act 1979* the Northern Region Joint Planning Panel delegates its functions referred to in Schedule 1 of this Instrument of Delegation, subject to the limitations set out in Schedule 2 of this Instrument of Delegation, to the councils as specified in Schedule 3 of this Instrument of Delegation.

The functions are conferred from the date of execution of this delegation until 30 September 2011.

Dated 3<sup>rd</sup> day of December 2010

  
Chairperson  
Northern Region Joint Planning Panel

Approved:



Hon. Anthony (Tony) Kelly MLC  
Minister for Planning

**Schedule 1 - Functions under the  
Environmental Planning and Assessment Act 1979**

The functions of the Northern Region Joint Planning Panel conferred under section 23G(2)(a) of the *Environmental Planning and Assessment Act 1979* and clauses 13F and 13G of *State Environmental Planning Policy (Major Development) 2005*.

**Schedule 2 – Limitations on the exercise of the delegated functions**

1. The delegated functions may not be exercised by the relevant council in respect of development if:
  - a. a council for the area in which the development is to be carried out is the applicant for development consent or the applicant for an application to modify development consent, or
  - b. the council is the owner of any land on which the proposed development is to be carried out, or
  - c. the development is to be carried out by the council, or
  - d. the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).
2. Subject to paragraph 1, the delegated functions may only be exercised by the relevant council in respect of development that is:
  - a. development identified in clauses 13B(1) or 13C of *State Environmental Planning Policy (Major Development) 2005* that that is the subject of a development application or, of a development consent to which a modification application relates, where:
    - i. no submissions were made by way of objection during the submission period for the application; and
    - ii. the council's assessment report recommends that the application be approved (either with or without conditions).
  - b. development identified in clause 13B(1)(e) of *State Environmental Planning Policy (Major Development) 2005* that:
    - i. has a capital investment value of \$5 million or less; and
    - ii. is the subject of a development application or, of a development consent to which a modification application relates, where the council's assessment report recommends that the application be approved (either with or without conditions).
3. Subject to paragraph 1, and despite anything to the contrary in paragraph 2, the delegated functions may also be exercised by the relevant council only in respect of development that:
  - a. is the subject of an application where the council's assessment report recommends that the application be approved (either with or without conditions); and



- b. is located wholly within any of the following areas:
- i. Town Beach Precinct within the Port Macquarie-Hastings local government area, identified by the areas marked with a broken red edge and identified as "TOWN BEACH", "CBD FRINGE", "OXLEY OVAL" and "GORDON ST. CIVIC" on the map labelled "Annexure A" to this Instrument of Delegation;
  - ii. Flynn's Beach Precinct within the Port Macquarie-Hastings local government area, identified by the area marked with a heavy black edge on the map labelled "Annexure B" to this Instrument of Delegation;
  - iii. Westport Precinct within the Port Macquarie Hastings local government area, identified by the area marked with a broken red edge and shaded white on the aerial photo labelled "Annexure C" to this Instrument of Delegation being the area generally bounded by Kooloonbung Creek to the east, Buller Street and Warlters Street to the north, Aston Street to the west, Hastings River Drive to the south-west and the mid block section between Gordon Street and Bridge Street to the south-east;
  - iv. Settlement City Precinct, within the Port Macquarie Hastings local government area, identified by the area marked with a heavy red edge and shaded white on the aerial photograph labelled "Annexure D" to this Instrument of Delegation;
  - v. Thrumster (Area 13) Precinct within the Port Macquarie-Hastings local government area, identified by the area marked with a heavy black edge (but excluding the area marked with a heavy red edge) on the map labelled "Annexure E" to this Instrument of Delegation;
  - vi. Port Macquarie Town Centre within the Port Macquarie-Hastings local government area, identified by the area marked with a broken red edge on the map labelled "Annexure F" to this Instrument of Delegation;
  - vii. South West Rocks Town Centre within the Kempsey Shire local government area, identified by the area marked with a heavy black edge and shaded grey on the map labelled "Annexure G" to this Instrument of Delegation being the area generally bounded by Landsborough Street to the south, Mitchell Street to the east, Back Creek to the west and the coastline to the north.
4. Each council may only exercise the delegated functions in respect of development that is located within its local government area.

**Note:** Section 23(4) of the *Environmental Planning and Assessment Act 1979* provides that, notwithstanding this delegation, the Northern Region Joint Planning Panel may continue to exercise all or any of the functions delegated by this instrument.

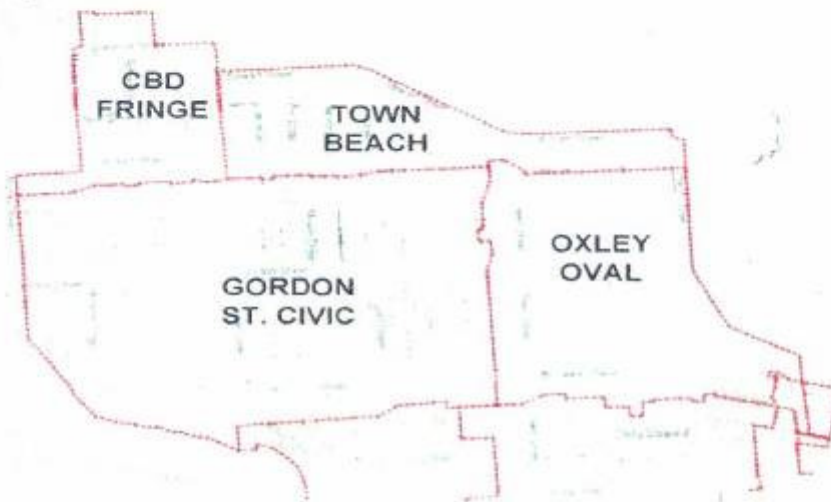
**Schedule 3 – Councils to whom functions set out in Schedule 1 of this  
Instrument of Delegation are delegated**

	<b>DELEGATE</b>	<b>LOCAL GOVERNMENT AREA</b>
1.	Ballina Shire Council	Ballina Shire local government area
2.	Bellingen Shire Council	Bellingen Shire local government area
3.	Clarence Valley Council	Clarence Valley local government area
4.	Coffs Harbour City Council	Coffs Harbour City local government area
5.	Gunnedah Shire Council	Gunnedah local government area
6.	Inverell Shire Council	Inverell Shire local government area
7.	Kempsey Shire Council	Kempsey Shire local government area
8.	Liverpool Plains Shire Council	Liverpool Plains Shire local government area
9.	Port Macquarie-Hastings Council	Port Macquarie-Hastings local government area
10.	Richmond Valley Council	Richmond Valley local government area
11.	Tamworth Regional Council	Tamworth Regional local government area



## 3.3 Town Beach Precincts

The Town Beach Study Area has been considered as a series of precincts, with a statement of desired future character established for each. For each precinct, a range of recommended building types which will appropriately contribute to the character of that area has been included.



Annexure B

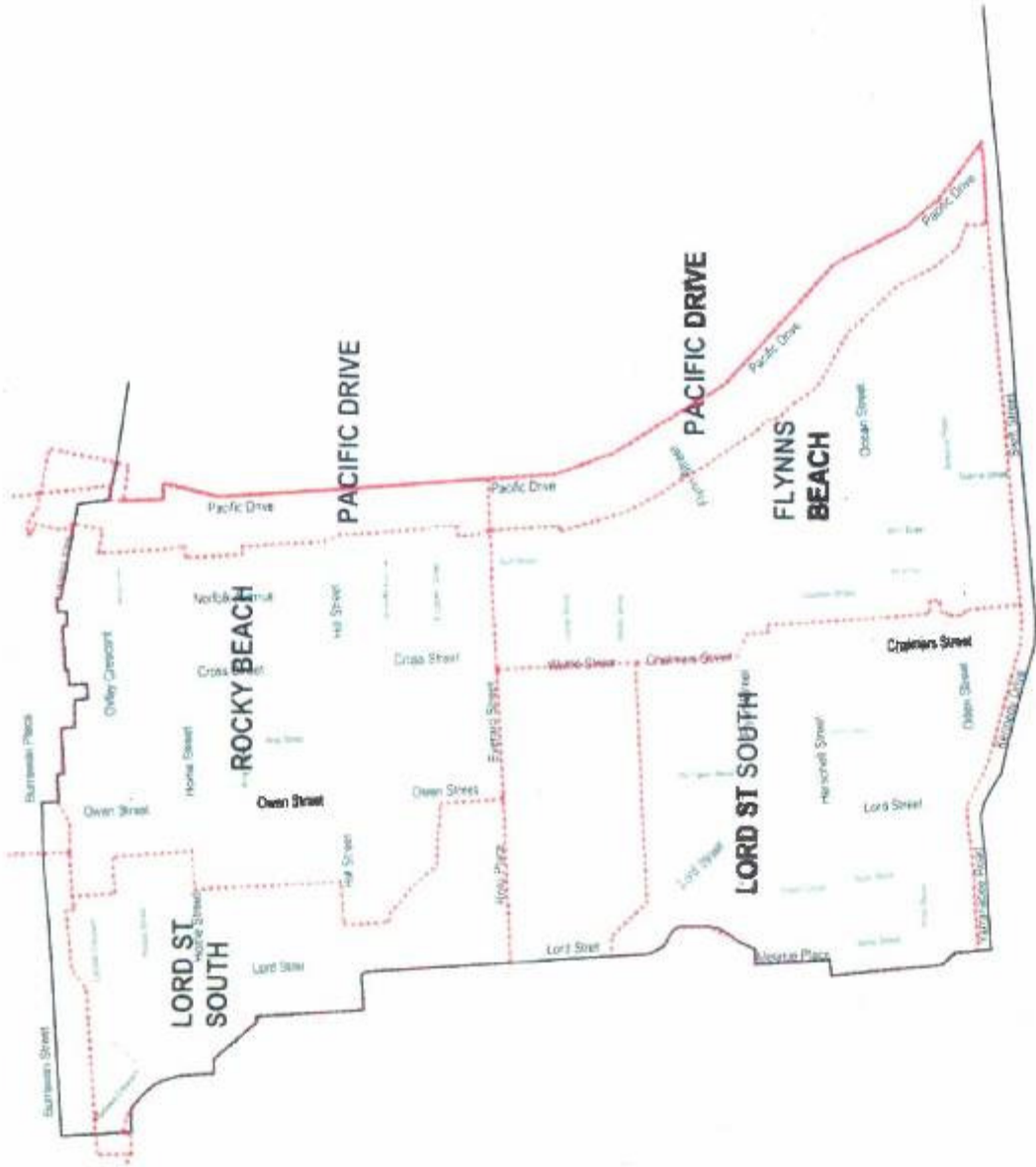


Figure 48: Flynn's Beach Precinct and Sub-Precincts/Areas.

# Annexure C

## PART I PRELIMINARIES STUDY AREA



THE STUDY AREA



MARCH 2006

DEVELOPMENT CONTROL PLAN NO. 49  
Westport Precinct

5

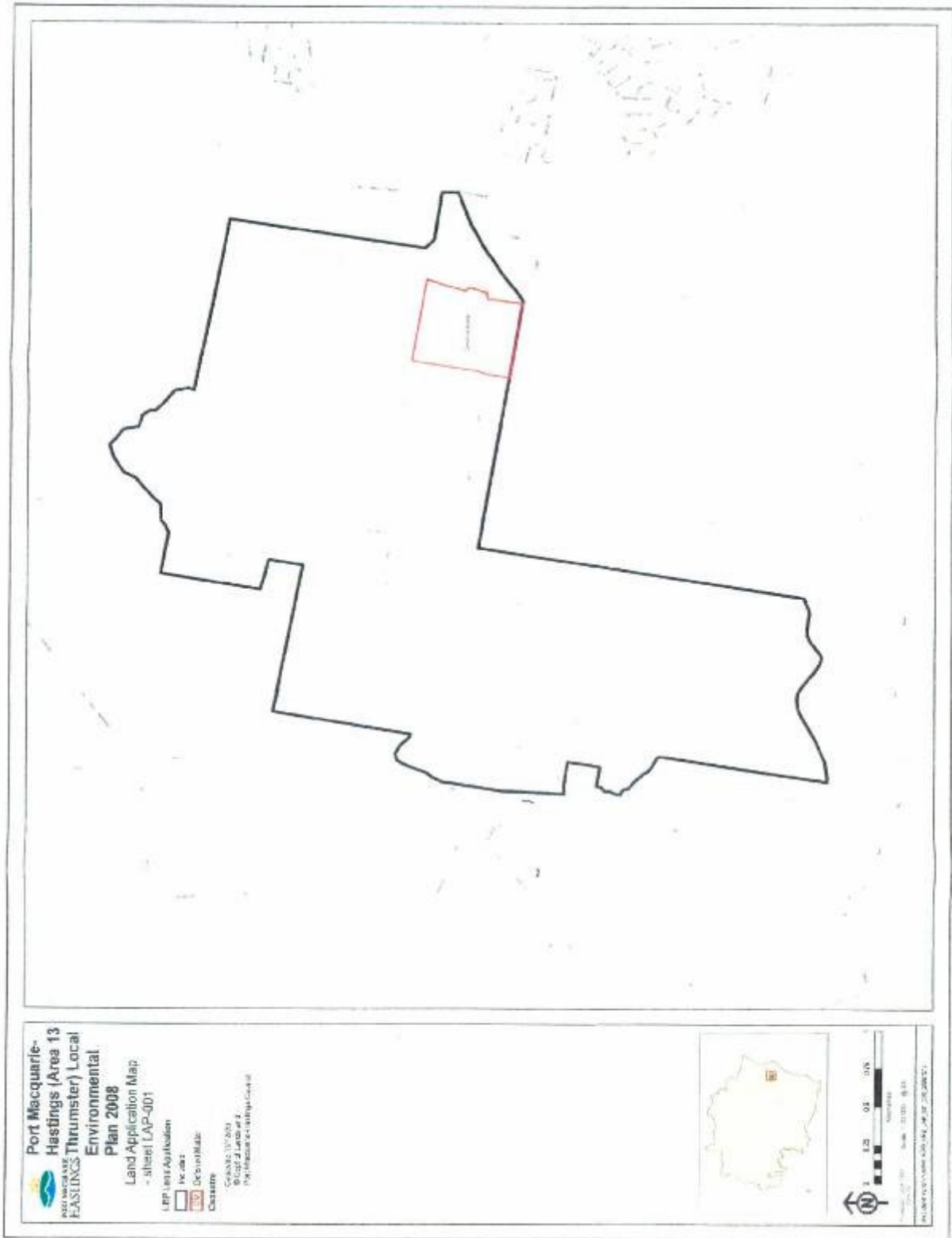
Figure 1. Site location plan for the Settlement City Precinct



Source: GML, Port Macquarie Hastings Council, MacroPlan (2008), Google Earth (2008)



# Annexure E



# Annexure F

Port Macquarie-Hastings Development Control Plan DRAFT

Council's intention is to maintain and enhance the distinct character of each of these precincts and to clarify future roles as outlined on the following pages and their extent shown on the adjacent plan.

Any application for development in the Port Macquarie Town Centre is required to demonstrate how that development contributes to the desired future character of that precinct.

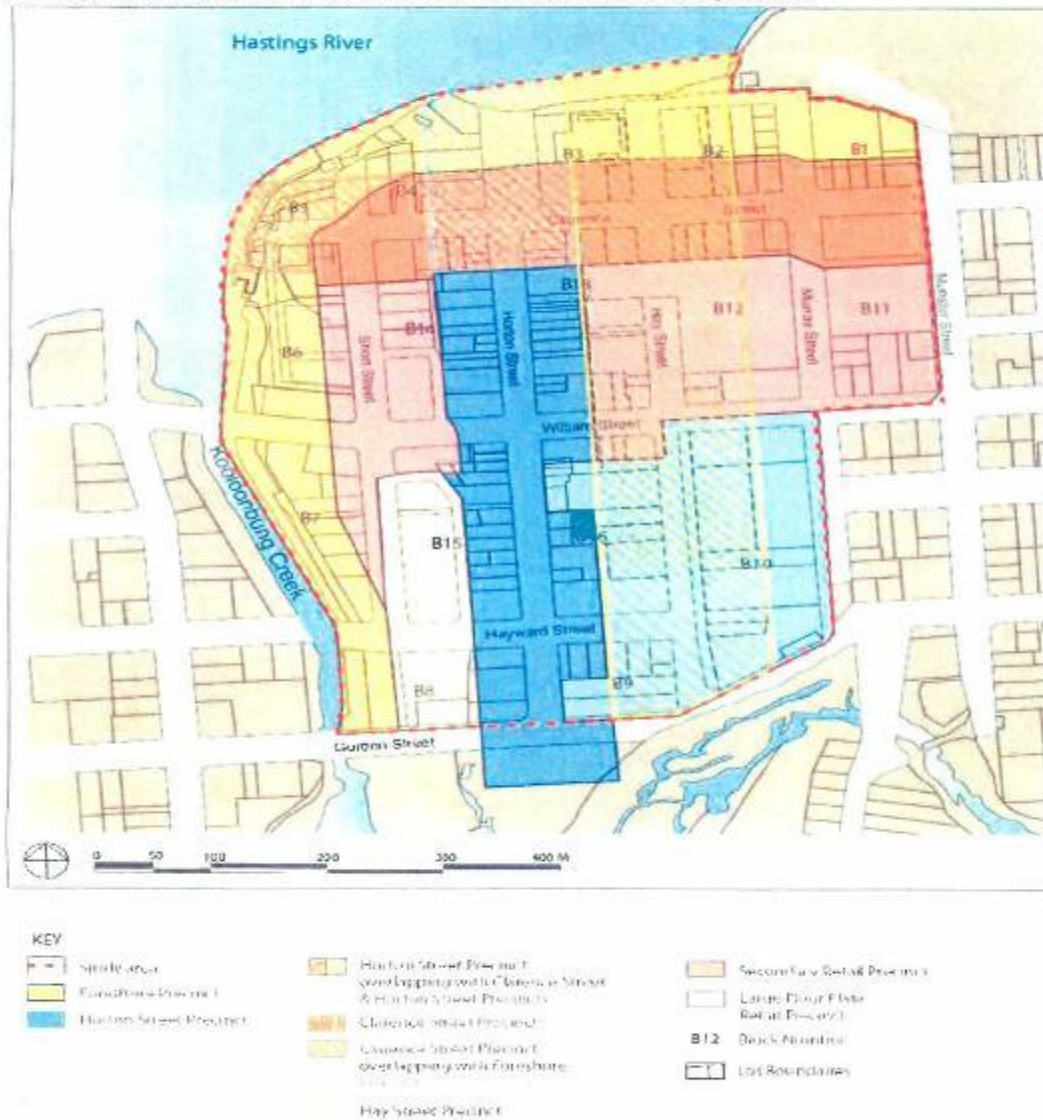


Figure 25: Port Macquarie Town Centre Precincts.



