

# PLANNING PROPOSAL

## GOSFORD CITY COUNCIL

### LOT 12 DP 263427 REEVES STREET, LOT 41 DP 771535 GOLDSMITH ROAD, LOT 3 DP 261507 DEBENHAM ROAD NORTH, 4 DP 261507 TALLARA ROAD AND LOT 2051 DEBENHAM ROAD, SOMERSBY

This Planning Proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act, 1979* and the Department of Planning and Infrastructure's *A Guide to Preparing Planning Proposals* and *Guide to Preparing Local Environmental Plans*.

A gateway determination under Section 56 of the Environmental Planning and Assessment Act is requested from the DoP&I.

#### Part 1 Objectives or Intended Outcomes

***s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument.***

The intended outcome of the Planning Proposal is to zone:

- Lot 12 DP 263427 Reeves Street and Lot 41 DP 771535 Goldsmith Road Somersby to part E2 Environmental Conservation and E3 Environmental Management, together with mapping the E3 component as having a minimum lot size of 2 hectares, with the LEP to incorporate lot averaging provisions (the northern precinct), and
- Lot 3 DP 261507 Debenham Road North, Lot 4 DP 261507 Tallara Road and Lot 2051 DP 559231 Debenham Road South, Somersby to E2 Environmental Conservation, with the minimum lot size for future subdivision to be further developed (incorporating lot averaging provisions) through the planning proposal process and to be informed by consultation with government agencies (the southern precinct).

#### Part 2 Explanation of Provisions

***s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument.***

This Planning Proposal intends to rezone the land **from** Conservation and Scenic Protection 7(b) (Scenic Protection) or RU2 Rural Landscape and Rural 1(a) (Agriculture) or RU1 Primary Production under either Interim Development Order No 122 or Gosford Local Environmental (LEP 2013) Plan 2013 **to** E2 Environmental Conservation for the southern precinct, and E2 and E3 Environmental Management for the northern precinct under LEP 2013.

For both precincts, "lot averaging provisions" are to be included to provide greater flexibility in the location of dwellings, bushfire radiation zones, effluent disposal areas etc. For land to be zoned E3 a minimum lot size of 2 hectares is to be mapped to allow further subdivision. For E2, appropriate subdivision density is to be established upon consultations as required as part of the Gateway process, with the applicant to prepare a DCP (as agreed by Council) to establish baseline minimum lot sizes (which can then be subject to averaging over the whole of the southern precinct).

These zones and minimum lot size for E3, together with further studies etc to inform the proposal post-Gateway, are considered to be appropriate given the range of constraints that are present on the land, the inappropriateness of the existing 7(b) zone as it applies to some of the characteristics of the land, its relationship to surrounding lands and to provide a transitional area for between prime agricultural lands west of the M1 and urban uses in the valley floor. The zones proposed are considered to be more appropriate for the land having regard to its environmental values than the existing/proposed rural zone.

When the 7(b) zone was first introduced, the environmental values of the land were not known nor identified, however these are now recognised and need to be reflected in contemporary planning controls.

The rezoning of land that is within the boundary of Sydney Regional Environmental Plan No 8 - Central Coast Plateau Areas (now a deemed SEPP), including some land that has been mapped as prime agricultural land (or the purposes of the SEPP) in the northern precinct, is considered justified given the segregation by the M1 to more important resource lands to the west, and the overall environmental outcomes that will be achieved through the rezoning.

Although the proposal originally was to involve Biodiversity Certification Assessment Methodology (BCAM), it is considered that through the zonings proposed and appropriate density of subdivision (by way of appropriate minimum lot sizes) there is reasonable certainty that development outcomes can be achieved within environmental constraints and environmental impacts can be appropriately managed and refined through the further studies associated with the Gateway, applicant provided/Council endorsed DCP to delineate dwelling locations in the southern precinct and future DA processes.

The 7(b)/RU2 zone is no longer considered appropriate given the known environmental constraints and unsuitability of a number of permissible landuses that are permissible in RU2.

***s.55(2)(d) If maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas, flood prone land – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.***

Land Zoning Maps and Minimum Lot Size map are contained in Attachment A Statutory Maps. Council also requests that DOP&I include lot averaging provisions for both the precincts, as these will allow opportunities to further refine appropriate development envelopes. It is noted that these provisions have been used in other local government areas Standard Instrument LEPs, including Eurobodalla, Bega Valley, Hawkesbury and, Queenbeyan.

### **Part 3 Justification for objectives & outcomes**

***s55(2)(c) The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).***

#### **Section A Need for the Planning Proposal**

##### **1 Is the Planning Proposal a result of any strategic study or report?**

Yes. The Report to Council, in response to an applicant's request for rezoning, has investigated the appropriateness of zoning in the area and determined that the 7(b)/RU2 zone is not appropriate given the known environmental and other constraints that exist in the area. A better response is to include the broader area into environmental zones and apply appropriate minimum lot sizes having regard to the unique circumstances of the land. As a consequence of fragmentation by the M1 rezoning is supported, notwithstanding that this includes a component of existing 1(a) land. It is noted that other land in the locality is also zoned 7(b)/proposed RU2

under DLEP 2013 and an investigation will be initiated into the appropriateness of this zoning, together with landowner consultation, separate to this Planning Proposal.

**2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. The Planning Proposal to rezone the land will facilitate the subdivision of the land in accordance with the E2 and E3 zones. This will ensure that environmental outcomes are achieved, within the context of permissible subdivision, and that development is at an appropriate scale/density.

**3a Does the proposal have strategic merit and is it consistent with the Regional Strategy and Metropolitan Plan, or can it otherwise demonstrate strategic merit in light of s117 Directions?**

Yes. The Planning Proposal as advocated is considered generally consistent with the Central Coast Regional Strategy, when considered in terms of protecting environmental values and ensuring environmentally sustainable outcomes given the unique situation of the land.

The **Central Coast Regional Strategy (CCRS) 2006 – 2031** is applicable to the subject land and the proposed rezoning. The CCRS acknowledges that existing rural residential development will continue to provide a choice of housing in the region, however raises concerns that increasing rural small holdings will result in a number of issues including fragmentation of agricultural lands and subsequent loss of efficiencies, conflict with other resource land uses such as extractive industries, water rights issues and higher servicing costs. The CCRS states that “*opportunities for new rural residential development will be limited to those already provided in the region*”. Although the planning proposal is inconsistent with the CCRS, having regard to the segregation of the land from the broader area of SREP 8 land to the west of the M1, the land is sufficiently annexed from these more important natural resource areas so as to substantiate a case for its rezoning. Further, with the lot sizes proposed, these lots would present as larger "rural-environmental" lifestyle lots. It would result in substantial areas of natural bushland (in the southern precinct) or smaller "environmental" lots with scope for retaining remnant vegetation, amongst low density subdivision (in the northern precinct), rather than conventional "rural residential" lots. Conventional "rural residential lots" such as are located in Matcham, Holgate and Lisarow valleys are characterised by substantial dwellings, sheds and lawn/landscaping areas, with little opportunity for other activities. Larger lots in this area will be able to better accommodate dwellings, effluent disposal areas etc, and also provide sufficient area for other activities (grazing, horse riding etc). Furthermore, remnant vegetation will be better retained together with providing sufficient separation between dwellings to ensure a high level of amenity and a balance between built form and natural landscape setting.

The land is not considered to be "fringe land" located on the edge of urban areas, given its segregation from the valley floor by a substantial tracts of E2 zoned land (which are now identified as Coastal Open Space System [COSS] lands) and Strickland State Forest, that form the edge of the escarpment to the plateau.

The CCRS shows lands to the east of the M1 as Rural and Resource lands containing significant areas of existing vegetation, and also an indicative habitat corridor. The zoning and subdivision that would result from the recommended Planning Proposal would ensure that the significance of a large part of this broader tract of vegetation is retained through the use environmental zoning rather than a rural zoning. Rural and resources lands are considered important areas that

contribute to employment, tourism, cultural and regional identity, character, biodiversity and catchment protection. This area is however alienated from the more significant rural and resource lands west of the M1 and as such a change in zoning can be substantiated.

The CCRS advocated various actions to better inform strategic planning and development, however it is noted that these have not been undertaken to inform any future strategic strategies for rural and resource land in the hinterland. Relevant actions include:

**Action 5.12** *The Department of Primary Industries, Department of Water and Energy and Department of Planning, in conjunction with Department of Environment and Climate Change, is to review planning for the Central Coast plateaux and Wyong valleys to consider agriculture, extractive resources, water supply values and tourism uses and address and conflict between these uses.*

**Action 6.1** *The Department of Primary Industries, in partnership with the Department of Planning, is to undertake mapping of regionally significant activities, including agriculture, mining, extractive industry and special uses, to identify rural activities and resource land for preservation.*

In accordance with Actions 5.12 and 6.1, NSW Trade & Investment (Resources & Energy) have recently undertaken a State-wide Resource Audit as part of an ongoing mapping program to assist Councils throughout the state in strategic planning. Together with the rest of the more level 1(a) zoned lands in the hinterland, the northern precinct has been identified as being Potential Resource Area. A significant part of the southern precinct has been identified as being a Transition Area, where development could adversely affect or be affected by current or future resource development operations. The broad nature of this mapping appears to align with land zoned for primary production and given the annexation of the land by the M1, is not considered a significant strategic basis for precluding the Planning Proposal due to its physical separation from the main body of the hinterland. The quarry site at Debenham Road (Gosford Quarries) is reaching the end of its economic life (with investigations being undertaken into a possible industrial use) and as such, this equally diminishes the need to protect strategic resources. Formal consultation with NSW Trade and Investment should be undertaken as part of the Gateway process.

**Action 6.3** *LEPs are to appropriately zone land with high state or regional environmental, agricultural, resource, vegetation, habitat, waterways, wetland or coastlines values*

**Action 6.4** *LEP's are to appropriately zone land of high landscape value (including scenic and cultural landscapes)*

**Action 6.5** *Councils, through preparation of LEP's are to incorporate appropriate land use buffers around environmentally sensitive, rural and resource lands.*

The Planning Proposal as recommended is to zone the land to E2 and E3 with a minimum lot size of 2 ha for the E3 and appropriate size for the E2 zone, together with the use of lot averaging provisions. This would result in the land being more appropriately zoned, having regard to its environmental values, in addition to its scenic value, protection of areas high in biodiversity including threatened species. This would also provide a transitional scale of development between rural and resource lands to the west and urban development in the valley floor. The land is located in a key area of environmental sensitivity which forms part of/is an adjunct to

a regional open space corridor. Appropriate minimum lot sizes are essential to ensure that development is at a sustainable and environmentally acceptable scale.

**Action 6.9** - *Ensure LEP's do not rezone rural and resource lands for urban purposes or rural residential unless agreement from the Department of Planning is first reached regarding the value of these resources.*

The Regional Manager - Department of Planning and Infrastructure has advised that a meeting was held with the applicants in relation to the original proposal and the Department would "work to resolve these matters if the proposal has Council's support". The Planning Proposal with the proposed lot sizes will result in larger lots than that traditionally associated with rural residential development. This is considered justified given the land's physical separation from more significant rural resource lands to the west. Agreement from DoP&I would form part of the Gateway Process.

The land is not considered to be buffer or fringe land for the purposes of reviewing existing urban boundaries. It is clearly separated from urban areas by the tract of COSS/Strickland State Forest, and this separation is reinforced by road access arrangements via Debenham Road or through the rural and industrial areas of Somersby (to the northern precinct).

In accordance with the more recent planning reform process, state government initiatives will now be focused on the preparation of the Central Coast Regional Growth Plan. Work has not progressed on this strategy whereby it could have any meaningful input into the Planning Proposal.

The zonings and density is considered to have demonstrable strategic merit in light of s117 Directions (see further discussion).

- 3b Does the proposal have site-specific merit and is it compatible with the surrounding land uses, having regard to the following: the natural environment (including known significant environmental values, resources or hazards) and the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.**

Yes. The subject lands are unique as they are large undeveloped parcels of land relatively close to urban areas (in the southern precinct) or otherwise are physically isolated with limited access available by an overpass over the M1 (for the northern precinct). The intensity of development however needs to be balanced with the known significant environmental values, services, facilities and infrastructure. The regime (zoning/minimum lot sizes) is aimed at delivering sustainable planning outcomes in terms of the overall situation of both the precincts, relationship to surrounding land and issues associated with the existing zones and segregation from the broader hinterland resource lands. It should be noted that although a number of lots have historically been subdivided below the minimum lot size permitted in the 7(b) zone in both the northern and southern precincts, this should not act as a determinant of future lot sizes given known constraints and strategic landuse planning considerations.

The proposal is **consistent with relevant strategic directions** and statutory considerations (as further discussed).

- 4 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

## Community Strategic Plan

The Community Strategic Plan (CSP) contains the following objectives and strategies as relevant to the recommended Planning Proposal:

*B1 Objective - Diversity of the natural environment is protected and supported*

*B1.1 Strategies – Identify and manage threats to native flora and fauna*

*B6 Objective – Landuse and development protects the value and benefits provided by the natural environment*

The proposal is consistent with the CSP in that it will recognise environmental values, whilst allowing for some rural-environmental lots at a relatively low density. Threats to native flora and fauna will be able to be effectively managed by only having limited development potential, and ensuring sufficient site areas and flexibility in allotment layout (through lot averaging provisions) to ensure effects are managed on-site. There would be sufficient land areas to balance development and environmental objectives. Further development would be subject to development specific investigations; however, these should not act as "show stoppers" or "red lights" to development at the recommended density of subdivision. It is noted that the applicant will be required to prepare a DCP for the southern precinct to further delineate dwelling potentials upon progression of the proposal and Gateway determination.

## Biodiversity Strategy

The Biodiversity Strategy seeks to protect and conserve biodiversity and maintain ecological processes. One of the stated actions to achieve this outcome is:

*“Environmental zoned lands need to be retained with current minimum lot area standards to enable the lot sizes to allow sufficient space for land uses to occur without loss of biodiversity.”*

Managing the land through both zoning and subdivision controls will ensure that there is sufficient space for dwellings to be constructed and associated activities undertaken without unacceptable loss of biodiversity, that would result if smaller lot sizes were proposed. Both direct and indirect effects should be able to be managed on site through appropriate controls and regulation of development and density of development.

## Draft Gosford Landuse Strategy

The proposal is consistent with the draft Gosford Landuse Strategy which was prepared to support DLEP 2013. It offers an appropriate development/conservation outcome and will not create a precedent for the rezoning of other rural and resource lands due to its physical separation from the bulk of the hinterland. Environmental zones are more appropriate than rural zones, given the inherent biophysical values of the land in the southern precinct and remnant values in the northern precinct. Although the northern precinct is less constrained (in terms of more cleared areas) it is still considered sensitive, given its location at headwaters of Narara Creek and the pristine quality of the downstream creek system in this part of the catchment.

## Residential Strategy and Draft Residential Strategy

Council's adopted Residential Strategy (1996) states that *“Rural Scenic Protection and Rural Conservation zoned lands are key components in creating the character*

*of the area, as well as being significant ecological elements in Gosford. These areas should not be seen as holding zones for residential subdivision or zones that allow more intense development...."*

Council Actions in the Strategy with regard to Rural and Scenic Protection zones are to "Acknowledge Rural Conservation and Scenic Protection Areas as an ...important element in the natural characteristics of Gosford and should not be seen as "future" residential land." and to "maintain existing subdivision standards... to ensure that the balance between the natural and man-made elements of the landscape are retained."

This approach is further supported by the Draft Residential Strategy which was exhibited with Draft Gosford LEP 2009, which states that:

*"Conservation, rural and resource lands are those beyond the City's urban areas. They are lands that support the natural setting or are working lands that contribute to Gosford's quality of life and are an important resource in supporting a sustainable City."*

The proposal will achieve a better development/conservation outcome than if the land were retained in the 7(b)/RU2 zone. Zones proposed are a better reflection of the overall environmental values of the land and impacts of development can be adequately managed if subdivided at recommended densities (which is to be established for the E2 component by way of a DCP).

## **5 Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The following assessment is provided of the relationship of the planning proposal to relevant State Environmental Planning Policies.

**(i) SEPP 19 – Bushland in Urban Areas** - Clause 10 of State Environment Planning Policy 19 (SEPP 19) applies to the planning proposal. Council must take into account the following factors when undertaking an assessment:

- the need to retain any bushland on the land;
- the effect of the proposed development on bushland zoned or reserved or public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland; and
- any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

The land does not adjoin land that is zoned or reserved for public open space. An assessment of the proposal in terms of bushland present on the site has been undertaken and used to inform proposed zonings. The proposal is consistent with SEPP 19.

**(ii) SEPP No 44 - Koala Habitat Protection** - This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. The applicant has not provided any information with regards to this SEPP, however the vegetation associations on the land are not associated with key feed trees and no concerns with regards to this SEPP have been raised.

**(iii) SEPP 55 – Remediation of Land** - SEPP 55 lists activities that may cause contamination, including agricultural or horticultural activities. Council's aerial photographs show that some areas have been used for agricultural purposes and other site disturbances including derelict buildings, potentially containing asbestos. The applicant has not provided any information with regards to this SEPP, previous uses or possible contamination of the site. Future developments may need to be supported by a Preliminary Contamination Report based on the location of specific proposals and history of site use.

**(iv) Deemed SEPP - SREP No 8 - Central Coast Plateau Areas** - In conjunction with the Standard Instrument LEP reform process, a number of Regional Environmental Plans were reviewed for currency and relevancy. Where still considered to be required, some REPs became deemed SEPPs, with the intention that they would eventually be reviewed by the State Government and provisions would then be embedded in local planning provisions as may be appropriate. SREP 8 is one of these deemed SEPPs, however any substantive actions to review it (as alluded to in the CCRS) have not been undertaken.

A minor review of SREP 8 was undertaken in 2001 that had the effect of making some prime agricultural lands available for extractive resources (which were previously excluded as a result of the REP), allowing some minor and ancillary tourist related activities and rural tourist units (to foster a diversity of uses that may contribute to tourist and an alternative income stream for working farms) and setting further criteria for the consideration of draft LEPs.

As a deemed SEPP, the provisions of SREP 8 still apply.

All of the 1(a) and 7(b) zoned lots in the area are within the boundary of SREP 8. The southern precinct has not been the subject of detailed soil mapping undertaken to inform the REP and to map "prime agricultural land". In the northern precinct, soils have been the subject of detailed mapping, with soil classes being a mix of Class 3 (coloured in pink - prime agricultural land) and Class 4-5 which are not prime agricultural land.

One of the objectives of the Plan is to discourage the preparation of draft local environmental plans designed to permit rural residential development. Clause 10 of the REP requires that draft local environmental plans should not contain provisions to create a lot that is smaller than any minimum lot size prescribed for the land (that is, in the case of both 1(a) and 7(b), 20 hectares). One of the key causes of landuse conflict in rural and resource lands is where agricultural and other operations adversely impact upon the surrounding amenity through noise, smell, dust, etc. The greater the density of residential population (whether involved with farming or not) the greater potential for possible landuse conflicts. This principle is inherent in the provisions of the SREP in relation to draft LEPs that would create smaller lots, and hence increase residential population that could be adversely affected by rural and resource activities.

The planning proposal is inconsistent with the plan, in that it will create lot sizes less than 20 hectares, and as small as 2 ha in the northern precinct. The planning proposal is also however removing the land from the 1(a) and 7(b) zone and rezoning them into environmental zones, which is a better reflection of the overall value of the land. In particular, the southern precinct has no agricultural value, other than as adjunct land to more significant rural areas in the hinterland. Further, as there is only very limited agriculture undertaken and only in the northern precinct, significant rural and resource activities are not being undertaken could be impacted by increased residential population that would emanate from further subdivision. When SREP 8 was gazetted in August 1986, the F3 from Calga to Somersby was

still under construction, and hence the divisive impact of this roadway was not considered in relation to planning and protection of agricultural lands in the hinterland. Clearing for agricultural purposes would result in significant environmental effect in terms of impacts on native vegetation and fauna habitat including threatened species. The M1 effectively acts as a fixed barrier to delineate between rural/natural resources land that should be protected for their on-going sustainable use. Conversely, this land has been marginalised by its physical separation and isolation by the M1. For this reason, the planning proposal is a unique situation and if supported, could not be used as a precedent for other rezonings of land affected by SREP 8.

**(v) Deemed SEPP - SREP No 9 - Extractive Industry (No 2 - 1995)** - This is also a deemed SEPP. The objective of this SEPP is to minimise reciprocal impacts between extractive industries and surrounding developments, to ensure that extractive resources are not sterilised in areas where they are important. Consultation requirements with extractive resource operators and state government are also provided for in the SEPP. For the rural hinterland, some specific and potential resource sites and adjoining lands that fall within the zone of influence of extractive operations are nominated in the SEPP.

The Gosford Quarries site located on the corner of Debenham and Acacia Roads is listed in SREP 9 and its operations would impact on any future development that may occur in the locality. In this respect, however, Council has received advice from the quarry operator that this resource is reaching the end of its economic life and the future zoning of the land is being considered as part of a possible expansion to Somersby Business Park.

As such, the planning proposal, that may have the effect of increasing the number of dwellings subject to the affects of the quarry, is considered reasonable given that continued operations of the quarry are not expected in the short to medium term.

**(vi) Other SEPPs** - No other SEPP has application to this planning proposal. It is noted that SEPP (Rural Lands) 2008 sets out a number of rural planning principles; however, this SEPP does not have application to the Gosford local government area, and therefore is not required to be considered.

## **6 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?**

The following assessment is provided of the consistency of the Planning Proposal with relevant Section 117 Directions applying to planning proposals lodged after 1st September 2009. Directions are only discussed where applicable. The Planning Proposal is consistent with all other S117s Directions or they are not applicable.

**(i) Direction 1.2 Rural Zones** - This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). A Planning Proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, nor contain provisions that will increase the permissible density of land within a rural zone. The planning proposal seeks to rezone land that is zoned 1(a) and proposed to be zoned RU1 under LEP 2013 (Lot 12 DP 263427 Reeves Street), with the remainder of the land to be zoned also to rural zone (RU2) under LEP 2013, the gazettal of which is expected in the short term. The land is also identified as rural and resource land under CCRS. It will also increase density by allowing subdivision below the current minimum lot size of 20 hectares.

Inconsistency with this Direction can be considered where the provisions of the draft LEP are justified by a strategy, an environmental study, is in accordance with the Regional Strategy or is of minor significance.

Given the inappropriateness of landuses that are/will be permitted in RU1 and RU2 and the significance of the environmental characteristics of the land overall (including the EEC on the one lot currently zoned 1(a)), and in the acknowledgement that some discrete areas constitute prime agricultural land, the inconsistency with this direction can be justified. This is on the basis that the land is physically separated from the bulk of rural and resource lands in the hinterland by the M1, which represents a fixed physical barrier isolating the land from other core rural and resource lands. It is also justifiable on the basis that environmental values will be better recognised by including the land environmental zones, and impacts can be managed due to lot sizes providing flexibility in relation to location of dwellings and works, particularly as achievable through lot sizes and lot averaging provisions.

**(ii) Direction 1.3 Mining, Petroleum Production and Extractive Industries -**

The objective of this direction is to prevent the sterilisation of important mineral, petroleum and extractive resources from inappropriate development through appropriate zoning. The Direction applies when a council prepares a Planning Proposal that would have the effect of:

- (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or
- (b) restricting the potential development of resources of coal, other minerals, petroleum which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

Mineral Resource Audit mapping issued by NSW Trade & Investment (Resources & Energy) shows an area of land in the Northern Precinct as being Potential Resource Area (generally consistent with the existing 1(a) zone), and a large area of the southern precinct as being a Transition Area (where development could adversely affect or be affected by current or future resource development operations).

Zoning the land to E2 and E3 would have the effect of extractive industries no longer being permissible. Given the overall environmental values, the existing number of dwellings in the area that would be impacted upon by quarrying activities together with adverse effects on scenic quality, it is considered unlikely that any future extraction industries could be supported, even if permitted in the zone.

The Direction requires Council to consult with NSW Department of Trade & Investment, Regional Infrastructure and Services when preparing a Planning Proposal. Whether formal consultation is required would be determined at the Gateway stage.

The inconsistency with this direction can be justified.

**(iii) Direction 2.1 Environment Protection Zones -** The objective of this Direction is to protect and conserve environmentally sensitive areas. The Direction requires that a planning proposal include provisions that facilitate this and that any proposal should not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).

The rezoning will incorporate the retention of large areas of native vegetation (that are known to have existing and potential threatened species, a high propensity to

contain other threatened species/archaeological sites) and provide connectivity to other areas of native vegetation through zoning, in particular through the use of the E2 zone in the southern precinct. In the northern precinct, the E3 zoning recognises the values of remnant vegetation and the E2 zone recognises the EEC (Somersby Plateau Forest) on the rear section of Lot 12.

The Planning Proposal is therefore consistent with this planning direction.

**(iv) Direction 2.3 Heritage Conservation** - This direction applies when a Planning Proposal is prepared. A planning proposal must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area. This includes items, areas, objects and places of indigenous heritage significance.

The applicant has submitted a Preliminary Indigenous Heritage Assessment to support the application. It identifies some items of Aboriginal heritage and purports that any subdivision application and dwelling approval would be subject to the protection of heritage conservation. The relatively large lot sizes for the two areas will allow flexibility in the location of building/works so as to avoid/minimise impacts on any archaeological sites of significance. Further consultation and input from Aboriginal stakeholders would inform further progression of the Planning Proposal and future DA assessment.

**(v) Direction 4.4 Planning for Bushfire Protection** - This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

The land is classified as Rural Fire Service Bushfire Categories 1, 2 and Buffer. The applicant has provided a Preliminary Bushfire Assessment Report to support the proposal. This report recommends a range of measures to ensure asset protection, including Asset Protection Zones ranging from 35-43m, access and construction standards for all future dwellings, maintenance and dedicated water supply requirements. The reduced subdivision yield than that originally proposed will provide greater scope to minimise as much as possible clearing works that would be required for bushfire mitigation. Although not a statutory requirement at this point, Council forwarded the proposal to the NSW Rural Fire Service (RFS) who have not provided comments to-date.

Formal consultation should be undertaken with the RFS as part of the Gateway determination.

**(vi) Direction 5.1 Implementation of Regional Strategies** - Planning Proposals are required to be consistent with a Regional Strategy released by the Minister for Planning and Infrastructure. The Planning Proposal is considered to be consistent with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as discussed in Section 3.

**(vii) Direction 6.1 – Approval and Referral Requirements** - Planning Proposals are to minimise the inclusion of concurrence/consultation provisions and not identify development as designated development. The proposal does not have concurrence provisions and development will not be designated.

**(viii) Direction 6.3 – Site Specific Provisions** - This direction applies to the Planning Proposal as the Planning Proposal seeks to rezone the land. The Planning Proposal is consistent with this direction as it proposes to use zones as contained within LEP 2013 and the standardised approach allows mapping of different development standards where substantiated on a localised basis. Lot averaging provisions have been used by other LGAs in SI LEPs. It will not contain or refer to drawings/concept plans showing details of the proposed development.

**Section C Environmental, social and economic impact**

**7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

An inspection of the site confirmed that the vegetation is consistent with Bells mapping adopted by Council. The land contains areas of Ecologically Endangered Communities (being Somersby Plateau Forest in the northern precinct and Sandstone Hanging Swamp in the southern precinct) together with Exposed Hawkesbury Woodland and Hawkesbury Banksia Scrub. There are also a number of threatened species identified as being present, and significant tracts of habitat exist particularly for the Eastern Pygmy possums. The following threatened species have been identified:

Fauna	Flora
Giant burrowing frog	Somersby Mintbush
Red-Crowned Toadlet	Small Guinea Flower
Glossy Black-cockatoo	Leafless Tongue-orchid
Eastern Pygmy-possum	
Microbats	

Vegetation also provides suitable habitat for non-threatened flora and fauna species. It is currently unknown to what extent or if threatened species, populations or ecological communities, or their habitats, will be adversely or significantly affected as a result of the proposal. The extent of impacts will be contingent upon the level of development that occurs and mitigation measures. The planning proposal may need to be further supported by information as part of the Gateway process and in consultation with the Office of Environment and Heritage (OEH). Future DAs will also be required to comply with the TSC Act.

**8 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

Environmental effects have been considered elsewhere in this Report. If the planning proposal is supported as recommended, future development/subdivision could be substantiated subject to site/development specific information to further support the planning proposal and/or at the time of development.

**9 How has the Planning Proposal adequately addressed any social and economic effects?**

The applicant purports that the proposal will provide a net community benefit in particular through the provision of additional lands for dwellings close to jobs and infrastructure and the conservation of a large area of land. The creation of lots at the density proposed in the applicant's revised submission is not supported as this would have significant adverse environmental impacts and there is considerable uncertainty as to affects on threatened fauna and fauna. The recommended

planning proposal, however, that seeks to achieve a more appropriate development/conservation outcome, would not raise any specific social or economic effects. This is as a result of it not creating a precedent for the rezoning of other rural resource lands due to the segregation of the area from the bulk of rural and resource lands in the rural hinterland and an improved outcome with zonings that are more reflective of the values of the land.

## **Section D State and Commonwealth interests**

### **10 Is there adequate public infrastructure for the Planning Proposal?**

The subject sites are accessible from existing roads. Limited public transport is available to the only to the southern precinct. Standard phone and electricity services are available in the area.

The land is not located within Council's defined water or sewer service areas, however Lot 2051 DP 559231 Debenham Road South is connected to the water supply system on a conditional basis. The land to which the planning proposal applies is not capable of being serviced by Council's existing water supply or sewerage reticulation systems due to location and system capacity/pressure issues. Servicing limitations for water and sewer are acknowledged and it is proposed that water and sewerage systems will be managed on site on a case by case basis.

### **11 What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning Proposal?**

No formal consultations have yet been undertaken with State and Commonwealth agencies as the gateway determination has not yet been issued. It is recommended that consultation be undertaken with the following agencies:

- NSW Rural Fire Service
- Office of Environment and Heritage
- NSW Trade and Investment (Resources and Energy)
- NSW Trade and Investment (Primary Industries)
- Hunter Central Rivers Catchment Management Authority
- Local Aboriginal Land Councils (Darkinjung and Guringai)

## **Part 4 Mapping**

***S55(2)(d) If maps are to be adopted by the proposed instrument, such as maps for proposed landuse zones, heritage areas, flood prone land – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.***

Preliminary maps have been prepared to show the proposed zoning of the land and minimum lot size where established and these are contained in Attachment A Statutory Maps. Various maps used to inform the assessment of the proposal are also contained in Attachment B.

## **Part 5 Community Consultation**

***S55(2)(e) Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.***

Subject to Gateway support, community consultation would be undertaken in accordance with Council's standard practice, with the period specified in the Gateway Determination.

## Part 6 Project Timeline

The timeframe for the completion of the planning proposal is envisaged to be:

Date of Gateway Determination	February 2014
Completion of technical studies required by Gateway	May 2014
Preparation of DCP	July 2014
Government agency consultation	September 2014
Public exhibition of PP and DCP	October 2014
Consideration of submissions	November 2014
Consideration of submissions by Council	December 2014
Submission to Department to finalise	January 2015

### Other Matters for Consideration

The consultation in relation to a proposed local environmental plan is to commence after a decision under section 56 (Gateway determination) that the matter should proceed, unless regulations otherwise provide.

Given the proposal's inconsistency with deemed SEPP, Sydney Regional Environmental Plan No 8 - Central Coast Plateau areas, and the possible need for state agency input into further consideration of the planning proposal, Council would not seek delegations for this planning proposal.

### Conclusion

Some detailed specialist studies to address potential impacts of the proposal have been undertaken. The proposal intends to zone the land to environmental zones which is a better reflection of the known and potential extent of threatened species, archaeological sites, and broader environmental values.

Given the unique circumstances of the land and its segregation by the M1 it is considered that rezoning can be supported as addressed in this report. This would represent a better outcome for the overall values of the land, ensure landuse is more reflective and responsive to the land's inherent values and provide some development that achieves an overall development/conservation outcome. This proposal is also supportable having regard to strategic policy framework, Section 117 Directions and gateway planning assessment provisions. It is noted that future development would need to be assessed in terms of the *Threatened Species Act*, however it is more likely that a sustainable and supportable development would result particularly if lot sizes as proposed contain some inherent flexibility for the location of dwellings, effluent disposal areas and the like.

An appropriate statutory planning framework be crafted to accommodate subdivision in the southern precinct, being Lot 3 DP 261507 HN 239 Debenham Road North, Lot 4 DP 261507 HN 45 Tallara Road and Lot 2051 DP 559231 HN 252 Debenham Road South, Somersby upon further studies and determination of appropriate lot sizes.



# Southern Precinct - Land Zoning Map

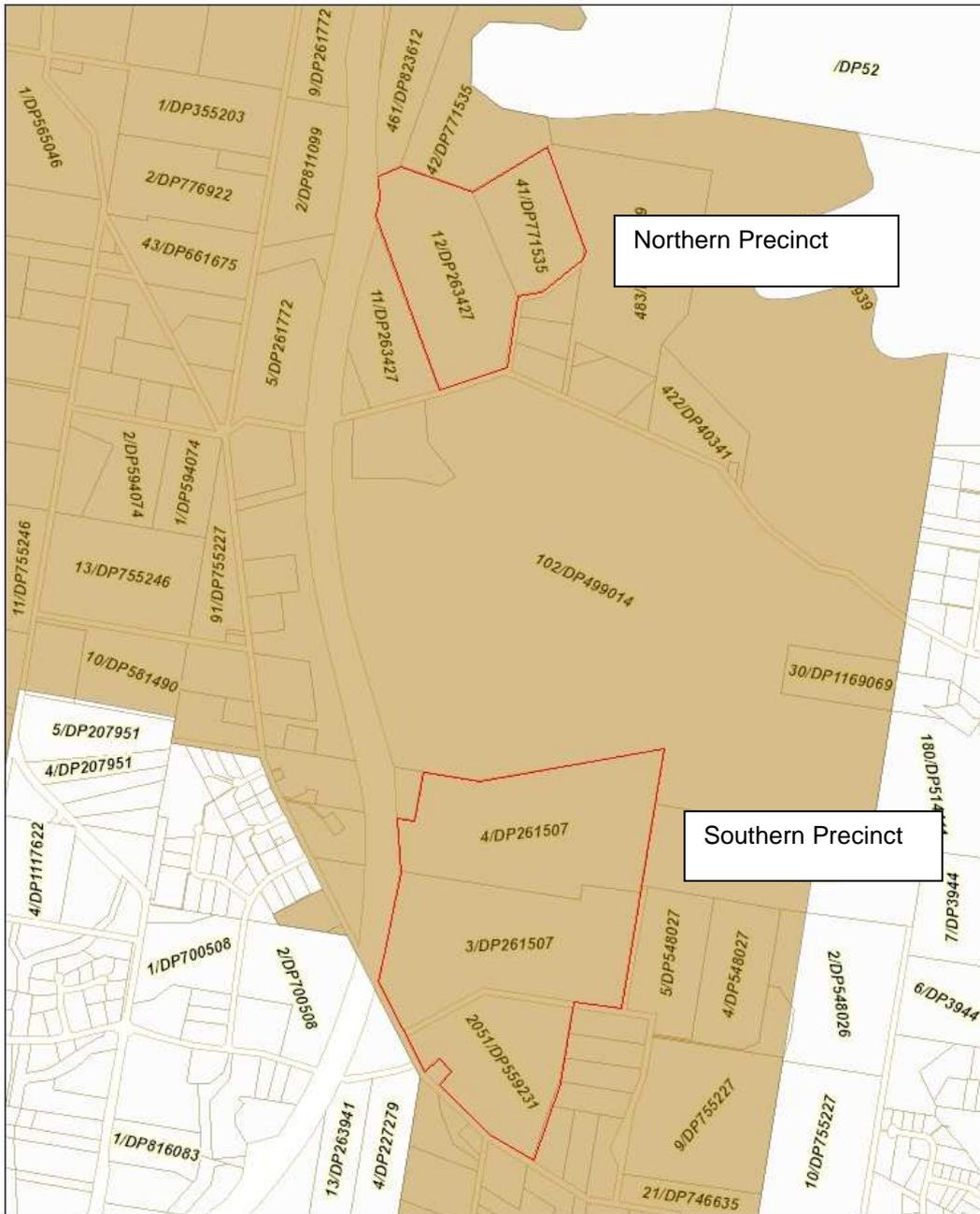






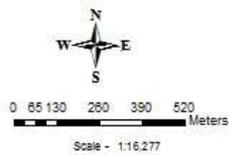


# Map 4 Sydney Regional Environmental Plan No 8 Boundary (deemed SEPP)



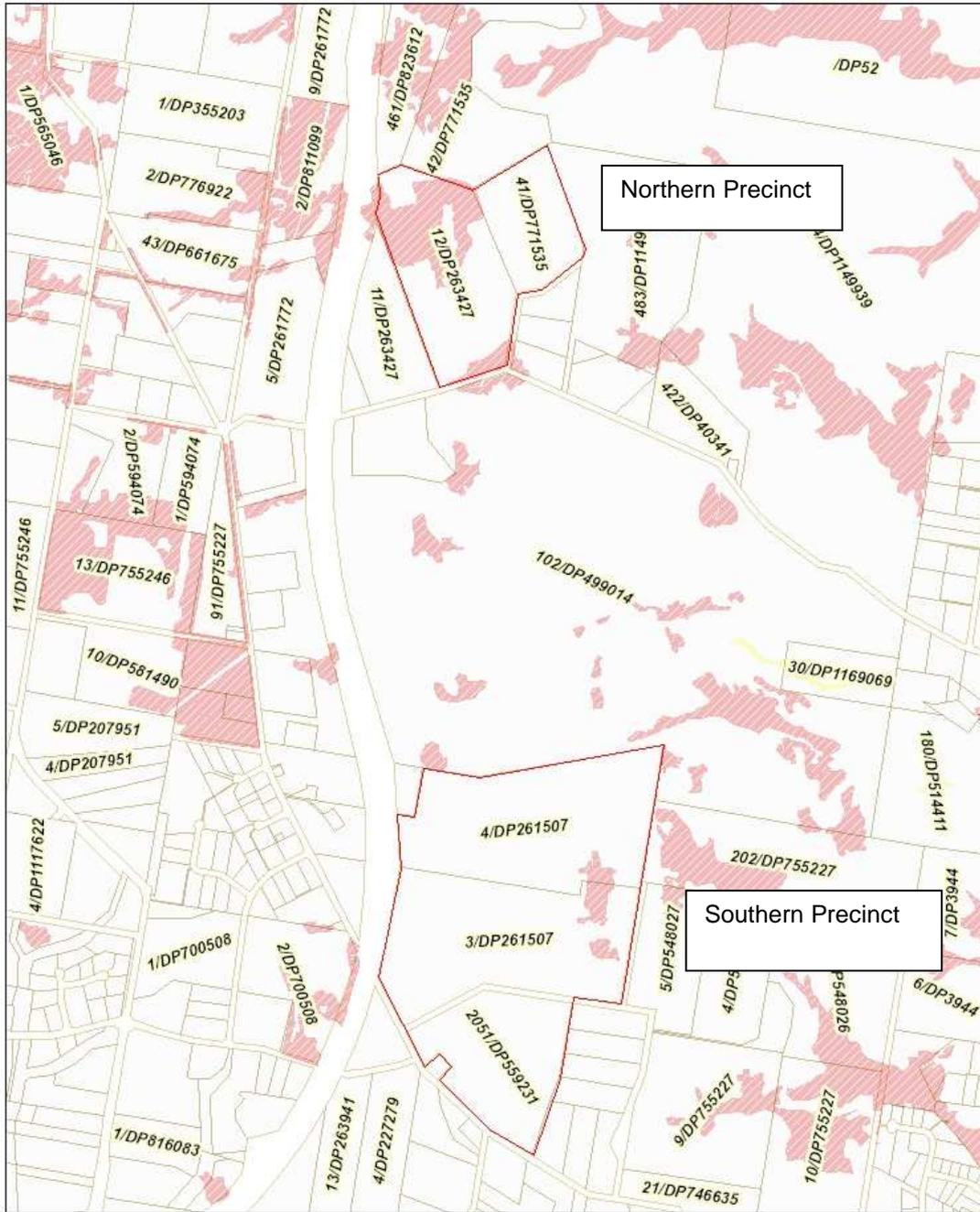
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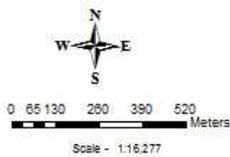


# Map 6 Ecologically Endangered Vegetation Communities



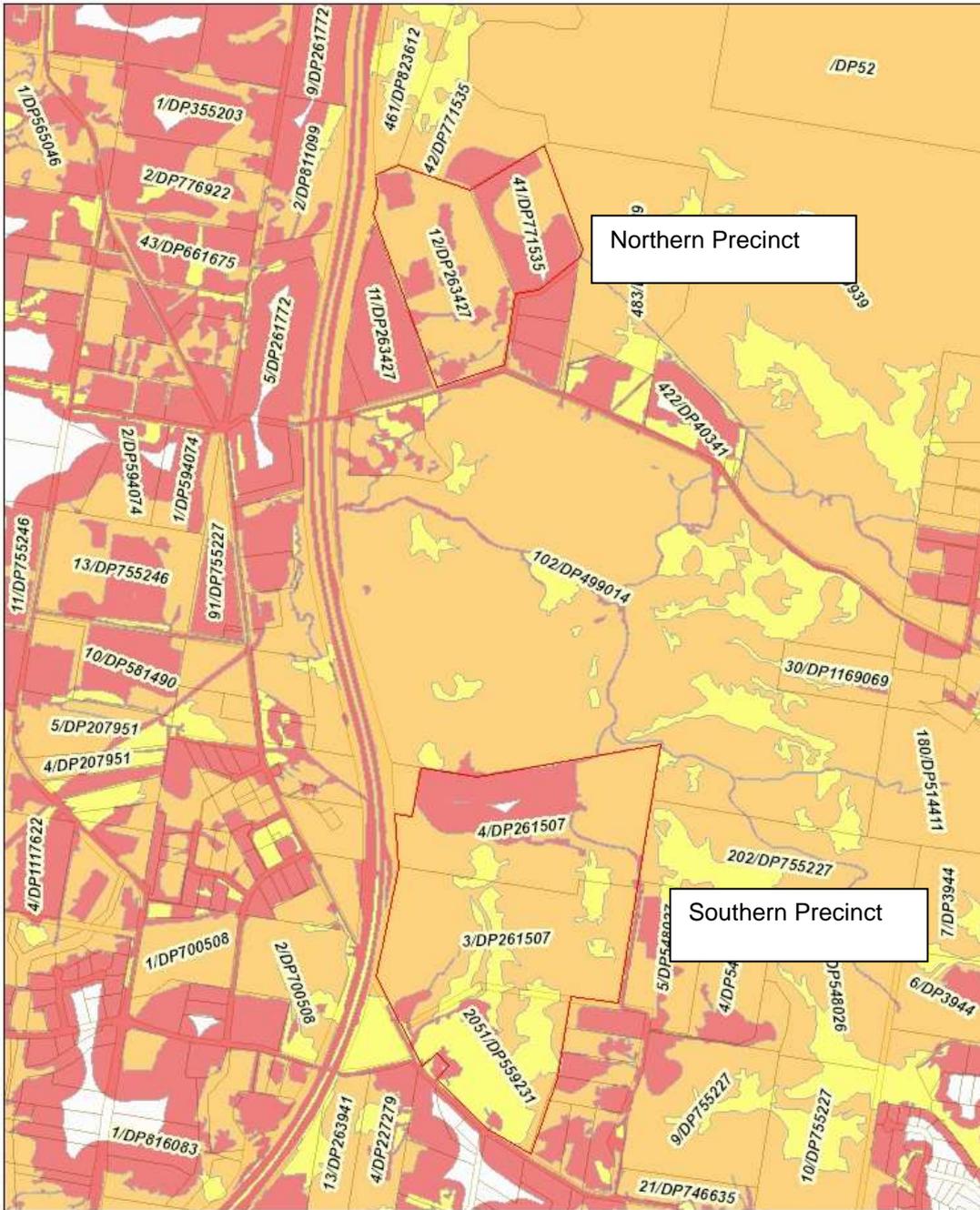
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# Map 8 Bushfire Mapping



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