

TITLE **PLANNING PROPOSAL S55 - PART LOTS 1/3 DP 241044, PART LOT 210 DP 804011 AND PART LOT 102 DP 1090036 MANGROVE CREEK ROAD, MANGROVE CREEK/GREENGROVE APPLICANT: SATYANANDA YOGA ACADEMY (IR10515377)**

Directorate: Environment and Planning

Business Unit: Integrated Planning

Disclosure of political donations and gifts - s147 Environmental Planning and Assessment Act (EP&A Act).

"A relevant planning application means: (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site". The following item is an *initial report* to consider a request to Council to prepare a *Planning Proposal*; hence it falls under the definition of a '*relevant planning application*'

No disclosure was made by the applicant pursuant to s147 EP&A Act.

INTRODUCTION

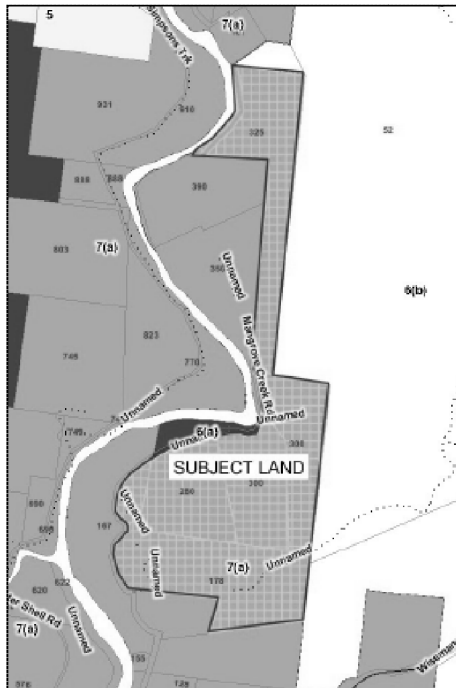
Reason for Referral to Council: This report discusses merits for Council's consideration and decision of whether or not to prepare a Planning Proposal (PP) (*which, if supported would result in an LEP*), pursuant to Section 55 Environmental Planning & Assessment Act, 1979 (State).

Application Received: 5 October 2011

Environmental Planning Instrument – Current Zone: Conservation 7(a) under Interim Development Order No 122 as amended.

Area: 66.07 hectares (approximately 20.00ha of which is proposed to be rezoned)

Map:



Background / Landuse History:

Lots 1 and 2 DP 241044 Mangrove Creek Road, Mangrove Creek/Greengrove, can be used for a recreational establishment, as permitted under LEP 93 gazetted on 7 October 1983. This allowed the development of the original Ashram and the main complex located on Lots 1 and 2 DP 241044. The main complex comprises of a large meeting/teaching building, a kitchen/dining complex, administration buildings, accommodation blocks, other ancillary buildings and structures, vegetable garden, and car parking area in a landscaped setting. The complex is now identified as Satyananda Yoga Academy (SYA).

The Ashram has been established for a number of years, and over time three adjoining properties have been acquired to facilitate its expansion, being Lot 3 DP 241044 and Lot 102 DP 1090036 (to the south) and Lot 210 DP 804011 (to the north). Some ancillary structures are erected on the southern lots (cabins for teacher accommodation on Lot 3 DP 241044 and dilapidated greenhouse and small shed, large shed and dwelling used for teacher accommodation on Lot 102 DP 1090036).

Under draft Local Environmental Plan 2009 (dLEP 2009), it is proposed to zone the land to E2 Environmental Conservation, being the "conversion zone" for 7(a). As with a number of other sites with "enabling provisions" it was not proposed to bring these provisions into Schedule 1 of dLEP 2009, however to rely on provisions of existing use rights legislation. This would allow continuance of activities that would otherwise be prohibited as a consequence of dLEP 2009. A submission was lodged by a consultant on behalf of the owner during the preparation of dLEP 2009 and a formal submission was also lodged during the exhibition period. These submissions requested that the five lots be zoned SP1 Special Activities to allow the continuation of the yoga centre and to reflect the ownership of the three additional lots by the SYA. It was outlined that the land has been used for yoga training and education for over 30 years and is an accredited Registered Training Organisation by the NSW Vocational Education and Training Accreditation Board. Information was also provided in relation to the number of visitors to the site annually (on average 65 persons/day with some peaks of 120 to 150) and the number of employees (20 full and part time staff, with a number of these from the local area, together with volunteers). The SYA outlined that it is conscious of the impact on the environment of its operations and does everything to reduce affect on local surroundings.

In consideration of these submissions, and given the number of other circumstances where existing use rights could be relied upon to allow activities to continue, it was considered appropriate to retain the land in the E2 zone due to its location in a wider area of high environmental values along the Hawkesbury River/Mangrove Creek corridor.

It is noted that at its meeting held on 31 May 2011 Council considered a number of submissions and representations in relation to dLEP 2009. The Pantanassa Monastery (Lots 401/403 DP 1079184, Lot 130 DP 755253 and Lot 177 DP 755253) located approximately 2 klms to the north of the site, is in a very similar planning circumstance and geographical situation as the SYA. The Monastery's land is currently zoned Rural 1(a) and Conservation 7(a), with the monastery located in the 1(a) zone as an existing permitted use (place of public worship). DLEP 2009, which originally proposed to prohibit places of public worship in rural and environmental zones, would have had the effect of the monastery having to rely on existing use rights legislation. The SYA, with the removal of the provisions of LEP 93 from dLEP 2009, is essentially in the same situation. Following sustained representations by the Greek Orthodox Archdiocese of Australia, Council resolved to zone the monastery site to "SP2 Monastery and associated place of public worship and cemetery conducted in relation with the Monastery", together with the Holy Cross Monastery at Holy Cross Road, Mangrove Mountain.

Despite sustained representations by SYA during the preparation and exhibition of dLEP 2009, Council did not however resolve to rezone SYA's land. The agreed approach between Council officers and SYA was to pursue a PP as a separate matter from dLEP 2009.

It is noted that the operations at the SYA site have evolved over the years, from one of a "low key" ashram offering spiritual retreat and seclusion to one that is now an accredited training establishment of both regional and national standing. As such, the original provisions of LEP 93 may not sufficiently embody or reflect the current operation of the site nor cover those activities on the additional three lots that have been acquired.

Applicant's Submission:

The applicant has lodged a submission to support the Planning Proposal.

An enabling clause for "recreational establishment" currently exists and has been in place for over 28 years. The operations at the site would be consistent with the definitions of the LEP template of a recreation facility (indoor) and a recreation facility (outdoor).

The submission details the training offered by SYA. It is a Registered Training Organisation by the NSW Vocational Education and Training Accreditation Board (VETAB) and delivers nationally accredited tertiary training within the Australian Qualifications Framework. To gain this registration SYA has to satisfy VETAB of its resource and infrastructure capability in respect of physical, financial, managerial and faculty levels. Students enrolled at the centre qualify for Austudy (financial assistance for students over 25 years of age) and VET FEE-HELP (student loan scheme for courses offered through VETAB).

SYA has also been endorsed by the Australian Tax Office (ATO) for tax concessions as a charity and as a Deductible Gift Recipient for its building fund, by virtue of its educational activities.

The objective of the proposed LEP is to provide for the rezoning of part of the subject properties to enable their continuing use and possible future development for the purposes of a recreational facility and educational establishment. The proposal is to have regard to the ecological values of the land and its locality, being neighbouring conservation and national park zones. It is proposed to retain the existing permissible uses on Lots 1 and 2 and add this use

also to the other lots, and to include "educational establishment" as a permitted use. It is intended that the SP2 Infrastructure zone over the 5 lots will be contained cohesively within the valley floor and side slopes (below RL 60) to ensure that the use and growth of the establishment is contained and the environmental and scenic quality of the surrounding land and publicly visible ridges are maintained. It is intended that the balance of the land (ridges and upper slopes) be zoned E2.

The submission makes commentary in relation to the need for the Planning Proposal and relationship to strategic planning framework and addresses relevant statutory planning considerations.

The applicant's submission has been used to inform discussion and assessment as outlined below.

'Gateway' planning process

A Local Environmental Plan (LEP) is a legal instrument that imposes zoning of land, standards to control development and other planning controls.

Council has been previously advised as to how the new 'gateway' process operates. Its aim is to enable early consideration by the Department of Planning and Infrastructure (DoP&I), early public consultation and ensure that there is sufficient justification from a planning perspective to support a change to statutory planning provisions. It also acts as a checkpoint before significant resources are committed to carrying out technical studies, where these may be required.

Attachment A – Department of Planning and Infrastructure "Planning Proposal Flow Chart of Processing" shows the stage which this Planning Proposal has reached.

PLANNING PROPOSAL GOSFORD CITY COUNCIL - PART LOTS1/3 DP 241044, PART LOT 210 DP 804011 AND PART LOT 102 DP 1090036 MANGROVE CREEK ROAD, MANGROVE CREEK/GREENGROVE

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*.

The discussion below is Council's response to the Gateway assessment process and the applicant's submission.

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 objective/intended outcome of the Planning Proposal is to allow the continued use of the SYA over the two existing lots affected by LEP 93 and to include parts of three additional lots in these provisions, to reflect their acquisition by the SYA. The PP will also allow future expansion of SYA which would be subject to detailed assessment of individual Development Applications. It is also proposed to align planning provisions with the current activities of SYA to reflect its educational component. This is to be achieved by zoning the part of the land (generally located below the 60 metre topographical contour line) to "SP2 Infrastructure (educational establishment including accommodation and associated recreational activities)".

This extended wording of the SP2 Infrastructure is proposed for the following reasons:

In relation to the **educational** component, the standard instrument definition is:

"educational establishment means a building or place used for education (including teaching) being:

- (a) a school, or*
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act."*

SYA is an accredited training provider under the Vocational Education and Training Act NSW 2005. The accreditation is to the company, not the land the company uses, however by virtue of the accreditation under this Act, the operations of SYA would comply with the definition of an Educational Establishment subject to relevant permissibility and approvals. The aim of this PP is to make an educational establishment permissible to reflect the current operations of SYA. Courses are offered by SYA both in-house and externally on-line.

In relation to the **recreation** component, a "recreation establishment" under IDO 122 includes an accommodation component, with health farms, religious retreat houses, etc being included and is defined as:

"recreation establishment means a health farm, religious retreat house, rest home, youth camp and the like but does not include a building or place used or intended for use for a purpose elsewhere specifically defined in this clause".

Under the current Standard Instrument (SI) definitions various recreational activities are defined, such as:

"recreation facility (indoor) means a building or place used predominately for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation but does not include an entertainment facility, a recreation facility (major) or registered club".

"recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks."

"recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major)".

Whilst the activities of SYA inherently contain a "recreation" component, they do not align with SI definitions and the "recreation" definitions do not include a reference to accommodation of guests as is included in the current IDO 122 definition.

In relation to the **accommodation** component, the operations of SYA would not be considered to be "residential accommodation" due to its transient and temporary nature, with "residential accommodation" being defined under the SI as:

"residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks"

By providing accommodation for yoga retreats and instruction, the accommodation component would also not be considered to be "tourist and visitor accommodation" which is defined as:

"tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities."

Hence the use of a special use zone and the wording as proposed (being educational establishment including accommodation and associated recreational activities) is considered the most suitable planning mechanism to encompass the overall activities of SYA on the lots. It is only intended to rezone the lower slopes and valley floor (below the 60 metre contour line) to a special use zone, whilst retaining the upper slopes and ridgelines in the existing 7(a)/proposed E2 zone to ensure these more sensitive areas remain protected. This will result in the rezoning of approximately 20 hectares (out of a total site area of 66 hectares), or a third of the site.

It is noted that future developments would be subject to detailed consideration of development applications. Due to the relatively limited area of SP2, its irregular configuration and constraints imposed by flooding, bushfire, existing building works etc it is not practical to delineate developable areas through Development Control Plan (DCP) provisions. By keeping the rezoned area below the 60 metre contour line, the SYA has shown a commitment to protect the

environmental and scenic values of the land. Mostly, development will be contained in the valley floor and lower side slopes, with some infrastructure works (eg water tanks) being located towards the 60 metre contour line.

Part 2 Explanation of Provisions

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

The objectives/intended outcomes are to be achieved by amending Interim Development Order No 122 or Gosford draft Local Environmental Plan 2009 (dLEP 2009) to zone part of the five lots (being Lots 1/3 DP 241044, Lot 210 DP 804011 and Lot 102 DP 1090036 Mangrove Creek Road, Mangrove Creek/Greengrove) to either Special Use 5 (educational establishment including accommodation and associated recreational activities) or SP2 Infrastructure (educational establishment including accommodation and associated recreational activities) respectively. The change in the zoning is to be effected through amendment to the relevant zoning map.

s.55(2)(d) Maps to support the Planning Proposal

Proposed LEP maps are shown in Attachment B to this report - Proposed Zoning Maps under IDO 122 and dLEP 2009. A map showing the extent of the proposed SP2 zone in relation to the features of the site (aerial photo) is shown in Attachment C. It is noted that no change in zoning maps under this Planning Proposal is required for that part of the site that will remain in the existing Conservation 7(a) zone. The zoning to the residue does not require amendment to IDO 122, and the rezoning to E2 will come into effect with the gazettal of dLEP 2009.

Part 3 Justification

s.55(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?

No. The Planning Proposal has however been promoted by Council's actions in relation to dLEP 2009. The land is currently zoned Conservation 7(a) and is proposed to be zoned E2 Environmental Conservation under dLEP 2009. In common with a number of other "enabling clauses" the provisions of LEP 93 that allow a recreation establishment on Lots 1 and 2 only are proposed to be removed and the use would then rely on existing use rights provisions.

This approach however would not recognise that the activities of SYA has evolved over time, with a primary focus now on yoga education, along with its more traditional recreational/retreat components. Existing use rights would also not apply to the other three lots upon which some structures now associated with SYA are located and which may be developed in the future. It is considered more appropriate for planning provisions to encompass the whole of SYA's activities and land holdings. Future expansion will be limited to the valley floor and lower side slopes, and would be subject to future DA assessment.

Other submissions had also been received in relation to landuses within the Hawkesbury River corridor, in particular in relation to some lands that are currently

zoned Conservation and Scenic Protection 7(c5) (Scenic Protection - Tourist). Council undertook a Review of Recreational Parks located on the Hawkesbury River System to determine an appropriate planning response in relation to this issue and the submissions received. Several other submissions also requested land to be zoned to reflect existing horse establishments and agricultural uses. In general terms, the E2 zone is considered the most appropriate for the wider river corridor, including Mangrove Creek, given its range of environmental and water resource values, visual significance (including areas of state and regional significance), its isolation, lack of conventional services, etc. Whilst a strategic investigation into landuses within the river corridor would ideally further inform landuse zonings, and in particular having regard to the broader objectives of SREP 20- Hawkesbury Nepean River (No 2 1997) (now a deemed SEPP), no resources have been sought as yet for this purpose as any study would also be a lesser priority given the competing range of investigations and higher priority work directly associated with dLEP 2009 and DoP&I requirements (for example, review of E zones, centres reviews etc).

The land falls within the boundary of SREP 8 - Central Coast Plateau Areas, which is also now a deemed SEPP. The Central Coast Regional Strategy (CCRS) Action 5.12 requires a review of planning for the Central Coast Plateau and Wyong valleys to consider agriculture, extractive resources, water supply values and tourism. This would inform future strategic planning for the plateau, however would be unlikely to extend to the Mangrove Creek valley. There are also a number of other broad actions of the CCRS that would align with appropriate management of the Hawkesbury River, however no direct strategic investigation has been identified that could inform future planning for the river corridor and its tributaries. This is the main reason why Council has taken a conservative approach to zoning along the river corridor, and generally applied "conversion" zones where this has been possible.

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 is the best means of achieving the objectives/intended outcomes as it will allow the continued use of part Lots 1 and 2 and recognises ownership and use of the other three lots by SYA. It removes any ambiguity associated with existing use rights provisions in relation to the "recreation establishment", which would in any event only apply to Lots 1 and 2.

Additionally, SYA wishes to correctly establish the permissibility of the "educational establishment" component of SYA's operations, which is not reflected in the existing enabling provisions.

As noted above, the use does not fall easily within one particular SI defined landuse type and as such is considered unique. Even if it could fall within one of the above landuses, (ie educational establishment, tourist and visitor accommodation, recreation facility), it would not be appropriate to introduce these types of uses into the E2 Environmental Protection zone given the overall objectives for environmental protection. An alternate zone, such as E4 Environmental Living, could be contemplated, however this zone allows uses such as caravan parks and registered clubs which would be inappropriate for the land given its isolation, environmental values and lack of services. The E3 zone would also not be appropriate as this zone is to be used for rural small holdings located in the valleys of Matcham and Holgate and other areas and also allows some developments which would be inappropriate (child care centres, educational establishments etc). An SP3 Tourist zone is equally inappropriate as Council has previously aligned this zone to a more

urbanised scale of development. None of these zoning options acknowledge the isolation of the land and its setting in the broader Hawkesbury River and its tributaries. The land could also be listed in Schedule 1 with those parts of the lots proposed to be SP2 mapped, and the use listed as "educational establishment including accommodation and associated recreational activities". This however would not be consistent with the approach taken by Council in relation to the nearby Pantanassa Monastery. As a general planning principle listing land in Schedule 1 should be avoided, particularly where a Standard Instrument zone may be available that achieves the same outcome, as in this case with the special use/SP2 zone.

As such, a PP to rezone part of the land to a special use zone is the most appropriate means of achieving the intended planning outcomes.

3 Is there a net community benefit?

An assessment against the criteria for net community benefit has been undertaken as outlined below.

Will the LEP be compatible with agreed State and Regional strategic directions for development in the area?

The land is shown as being rural and resource land and Mangrove Creek (directly opposite the land) is shown as being an indicative habitat corridor under the CCRS. Due to the isolation of the site and its environmental values it would not be suitable for resource extraction. SYA has demonstrated its commitment to the environment by playing a key role in the rehabilitation of the adjoining Richard Woodbury Reserve. The peaceful surroundings and high environmental values of the site and its surrounds are integral to the practice and teaching of yoga. Its activities would not detract from the value of the indicative habitat corridor. The PP would not be inconsistent with any State or Regional strategic directions.

Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?

The land is not located in a strategic centre or urban corridor.

Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landowners?

No. The site is unique in its location and operation. It is possibly the largest provider of qualified yoga teachers in the southern hemisphere. Its operations are unlikely to change expectations of other landowners and the PP to some extent will reflect existing development.

Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?

There are no other spot rezoning proposals in the locality.

Will the LEP generate permanent employment generating activity or result in a loss of employment lands?

The SYA currently has both on-site and off-site employees from the local community. The continued operation and possible future expansion will equally enable continued employment and future growth of skilled positions needed to run the facility and its educational and recreational programs, including teaching, administration, management, information technology, cooking, maintenance of grounds etc.

Will the LEP impact on the supply of residential land and therefore housing supply and affordability?

No, the LEP does not relate to residential land.

Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?

The site is isolated from public infrastructure. Mangrove Creek Road is unsealed, however is capable of accommodating traffic generated by the proposal. The location of the land is not conducive to public accessibility, however SYA makes arrangements to met bus/rail services for visitors to the site. The PP would not create an imposition on public infrastructure.

Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of green house gas emissions, operating costs and road safety?

No. The site is isolated with access essentially via private transport. The PP will not change the status quo in relation to greenhouse gas emissions, operating costs and road safety.

Are there significant Government investments in infrastructure, or services in the area whose patronage will be affected by the proposal? If so what is the expected impact?

There are no significant government infrastructure investments or services in the area.

Will the proposal impact on land that the Government has identified as needed to protect (eg land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?

Land proposed to be zoned E1 National Parks and Nature Reserves is located to the immediate east of the land and threatened fauna species have been identified on the more elevated parts of the site. The retention of the upper slopes and ridgeline in the 7(a)/E2 zone will provide a sufficient buffer to the adjoining Reserve and adequately protect threatened species on the land.

The valley floor is subject to flooding however there are no adopted Flood Planning levels for the area. It is noted that a Hydrological and Hydraulic Flood Study was undertaken to support a previous DA for expansion of the kitchen area (DA32797 refers). Although flooding may present a constraint to future development, this would be addressed through the assessment process and supported by appropriate investigations.

Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?

The LEP is complementary to surrounding landuses and environmental values. The isolation, environmental quality and amenity are integral to the retreat experience. It is consistent with land having high environmental values and the operations of the SYA are reliant on a peaceful and contemplative setting.

Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?

Not relevant.

If a stand alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?

Not relevant.

What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?

The SYA has a significant role in the region through the promotion of yoga practices by educating teachers and offering retreats. It is attended by local, national and international students and guests. It is a unique facility that significantly adds to the social capital, community well-being and cultural diversity of the region.

By not proceeding with the PP, the use would need to rely on existing use rights, which would only apply to the original two lots, and would also not satisfactorily recognise the educational component. This would place undue limitations on the continuing operations of SYA and deny the region of a significant facility in terms of its environmental, economic and social contribution to the region.

Section B Relationship to strategic planning framework

4 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including exhibited draft strategies)?

The CCRS is applicable to the subject land and the proposed rezoning. The Planning Proposal is consistent with the general principles of CCRS in that it promotes sustainable development, protects environmentally sensitive land, promotes an alternative form of tourism (spiritual retreat), and provides educational opportunities.

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

The Planning Proposal is consistent with the *Community Strategic Plan – Continuing our journey* in a number of ways. It will help build and maintain connections and relationships in the community (A1.3), promote opportunities for a range of local cultural and recreational activities (A2.3), considers the diversity of people in our community (A3.1), provides services and activities to support a balanced lifestyle (A3.2), adds to the range of opportunities to enhance community wellness (A5.2) and offers a range of learning opportunities (A5.4). It is also consistent with a number of strategies in relation to the natural environment and economy.

6 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: SEPPs are only discussed where applicable. The Planning Proposal is consistent with all other SEPPs or they are not applicable.

- (i) **SEPP 19 - Bushland in Urban Areas** - Clause 10 of SEPP19 applies to the preparation of dLEPs. Council's Environmental Officer has advised:

"It is acknowledged that the proposal will result in the retention of a significant area of natural bushland. Notwithstanding this, rezoning the land would give rise to the removal of vegetation to make way for future

structures as well as their associated infrastructure and bushfire protection. It is attainable for future proposals to protect wildlife corridors and vegetation links with nearby bushland and protect natural drainage lines. It is possible for future designs to be sympathetic and therefore result in minimal impact.

It is possible for the proposed rezoning application to be consistent with the general and specific aims of SEPP 19 to protect and preserve bushland for its value to the community for its natural heritage and aesthetic value. The Planning Proposal is able to adequately protect remnant plant communities, retain bushland parcels in a suitable configuration, strengthen its connectivity with adjoining 6(a) zoned land, protect regionally significant vegetation and habitats for native/threatened fauna species and protect the scenic values of the land in its unique visual identity of the landscape."

It is considered that the proposal is consistent with the intentions of SEPP 19.

- (ii) **SEPP 44 - Koala Habitat Protection** - parts of the lower slopes and floodplain are cleared of native vegetation, with the remaining vegetation types constituting E8 Sheltered Blue Gum Forest and E20 Dhurag Footslopes Apple Redgum Forest. The proposed rezoning application complies with the aims and objectives of the Policy and does not significantly modify koala habitat. Future development proposals would be required to address this State Policy with ecological assessments and the proposal is considered satisfactory in this respect.
- (iii) **SEPP (Infrastructure) 2007** - Division 3 Educational Establishments sets out prescribed zones where educational establishments may be undertaken regardless of permissibility under an LEP and where additions to existing educational establishments can be undertaken. It also establishes criteria for exempt and complying development. Some elements of the SEPP may be applicable to future development proposals and the proposal is satisfactory in this regard as future DAs would be assessed on their merits.
- (iv) **SREP 20 Hawkesbury Nepean River (No 2 1997)** - the land is located within the boundary of SREP 20 which is now a deemed SEPP and is identified as being of local visual significance. By limiting development to the valley floor and lower slopes, and subject to on-going environmental management, the proposal is consistent with the broader objectives of the SREP.
- (v) **SREP 8 Central Coast Plateau Areas** is a now a deemed SEPP and contains specific provisions in relation to draft LEP/PP proposals. The Planning Proposal is consistent with the Special Provisions of SREP 8 as discussed in detail further in this report.

No other SEPPs are considered to have application to this Planning Proposal, although any future development applications on the land may need to consider SEPP provisions.

7 **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. S117 Directions are only discussed where applicable.

- (i) **Direction 2.1 Environmental Protection Zones:** This direction requires that Planning Proposals must include provisions that facilitate the protection and conservation of environmentally sensitive areas and must not reduce the environmental protection standards that apply to land. A PP may be inconsistent with the terms of this direction but only where justified by a strategy or study, or is accordance with a regional strategy or is of minor significance. The PP is to more accurately reflect SYA's activities as it is currently operating (ie the educational establishment component) over part of the five lots and to ensure an appropriate zoning response to remove uncertainty and/or ambiguity in relation to the "recreation establishment". It is noted that the structures on the three lots not currently included in LEP 93 would be uses that were permissible with consent (eg, shed, dwelling house, etc) however are now used as part of SYA. Developable areas on the land are relatively constrained due to flooding, bushfire requirements, slope and existing improvements. As such, future additional works would be of a minor nature and ancillary to the main approved SYA complex on Lots 1 and 2. Future uses would also be subject to environmental assessment and development approval. As such, environmental impacts would be of a minor nature and any inconsistency is considered to be of minor significance and is justifiable.
- (ii) **Direction 2.3 Heritage Conservation:** This direction applies when a relevant planning authority (Council) prepares a Planning Proposal and requires that the Planning Proposal contain provisions that facilitate the conservation of heritage items, aboriginal objects, places and landscapes either protected by the *National Parks and Wildlife Act* or identified through an aboriginal survey. No survey was undertaken for aboriginal items. However, given that PP may not necessarily result in additional building works, and if any future works are proposed they would be subject to DA assessment, the proposal is satisfactory in this respect. It is noted that rocky outcrops and cliffs on the upper slopes and ridgeline will be protected in the E2 zone.
- (iii) **Direction 4.1 Acid Sulfate Soils:** This direction contains a number of considerations in relation to acid sulphate soils (ASS) and requires that where there is an intensification of land use that an acid sulfate soils study has been undertaken. A small area of Lot 1 is identified as Class 4 ASS where works below the ground surface or where the water table is likely to be lowered by more than 2 metres could affect ASS. This area generally aligns with the open recreation area/vegetable garden beds at the entrance to the site. Given the flood affectation on this part of the site, it is unlikely that future building works would be sited in this location. The PP will not further exacerbate issues associated with ASS and is consistent with this direction.
- (iv) **Direction 4.3 Flood Prone Land:** This direction requires that a Planning Proposal must be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. The land is subject to both over land flow affects and inundation from rising waters from Mangrove Creek, however a Floodplain Planning level has not been adopted by Council. Effects of flooding could be satisfactorily addressed at the Development Application stage and through appropriate siting and design of buildings. The PP is satisfactory in this respect.

- (v) **Direction 4.4 Planning for Bushfire Protection:** This direction applies where a Planning Proposal will affect, or is in proximity to, land mapped as bushfire prone land. The majority of the site is mapped as Category 1, with some small areas of Category 2 and bushfire buffer. This Direction requires that Council consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination, and also requires certain design considerations are considered. Consultation with RFS will occur if required by DoP&I as part of the gateway determination. It is noted that the PP in itself will not have the effect of locating additional people in an isolated, bushfire prone area, in that it seeks to redress the existing situation with respect to the evolution of activities on the site and recognise the inclusion of the additional three lots in the overall operations of SYA. Future DAs would be subject to consent.
- (vi) **Direction 5.1 Implementation of Regional Strategies:** Clause (4) of the Direction requires Planning Proposals to be consistent with a Regional Strategy released by the Minister for Planning and Infrastructure. The proposal is consistent with the CCRS.
- (vii) **Direction 6.1 Approval and Referral Requirements:** Clause (4) of the Direction requires a Planning Proposal to minimise the inclusion of concurrence/consultation provisions and not identify development as designated development. The Planning Proposal is consistent with this direction as no such inclusions, or designation, is proposed.
- (viii) **Direction 6.3 Site Specific Provisions:** The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. If a Planning Proposal is to amend an environmental planning instrument to allow a particular development, the use should be allowed by allowing it as a permitted use within the current zoning of the land, or changing the zoning of the land to a zone where the use is already permitted, or alternatively allowing the use on the relevant land without imposing additional development standards or requirements to those already contained in the principal environmental planning instrument being amended. It also requires that a Planning Proposal must not contain or refer to drawings that show details of the development proposal.

The inclusion of the land within SP2 Infrastructure (educational establishment including accommodation and ancillary recreational activities) is considered the most appropriate planning response to facilitate the proposal as discussed in Section 2 above.

The proposal is considered satisfactory in terms of the requirements of all S117 Directions.

Section C Environmental, social and economic impact

8 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?

Vegetation east of the existing kitchen has been mapped as E2 Sandstone Ranges Gully Rainforest. As this vegetation is regionally significant future development should avoid this vegetation community. Threatened fauna species are also known to occur on the land. Given that PP is to reflect existing approved

structures/activities on the site, and that any future works would be subject to DA assessment, the PP is satisfactory and additional studies not warranted at this point in time.

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

The existing on-site sewage management system is operating under Approval to Operate No 918/1999 and Waste Services have advised that there are no current issues with the operation of the on-site sewage management system.

Waste Services further advise that any alteration of existing service facilities and/or intensification of use of the land would require to be supported by an On-site Wastewater Disposal Report prepared by a recognised on-site wastewater disposal specialist experienced in the design and operation of commercial on-site wastewater disposal systems in environmentally constrained sites.

The proposal would not be inconsistent with Council's policy for Rezoning Conservation 7(a) land, as this policy is more aligned to consideration of rezoning proposals to allow rural residential development. The PP is to recognise the role of existing developments (that is for education and retreat/recreational purposes) in the operation of SYA. The more sensitive parts of the site are to remain in a conservation zoning.

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

Yes. SYA is a key provider of yoga training and retreat that promotes community well-being and social capital. It also has economic benefits in attracting yoga students and practitioners to the region.

Section D State and Commonwealth interests

11 Is there adequate public infrastructure for the Planning Proposal?

The site is isolated from public infrastructure and relies on on-site water reticulation and effluent disposal. No additional public infrastructure is required.

12 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 consultations have yet been undertaken with State and Commonwealth agencies as the gateway determination has not yet been issued.

Part 4 Community Consultation that is to be undertaken

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

SREP 8 - Central Coast Plateau Areas

The site is located within the far western boundary of SREP 8 - Central Coast Plateau Areas, which is now a deemed State Environmental Planning Policy (SEPP). The land is however outside of areas mapped in detail shown in the Classes of Agricultural Land maps. As the land

is affected by this plan, consideration must be given to Clause 11 which sets out criteria for consideration of draft LEP applications/Planning Proposals as outlined in italics and discussed below.

- (a) *not impact upon the current or future use of adjoining land for existing or future agricultural uses*

Comment: The site is located on Mangrove Creek and removed from agriculturally productive areas on the plateau. It will not impact on the future use of agricultural land.

- (b) *not result in an increased settlement pattern (by way of urban development, rural residential development, residential accommodation of a permanent or semi-permanent nature, community titles subdivisions or any other features that would facilitate increased settlement)*

Comment: The SYA offers accommodation for retreats and for on-site staff, however this is of a transient nature and would not be considered to facilitate increased settlement, other than that associated with the existing recreation establishment.

- (c) *have a significant positive economic contribution to the area and result in employment generation*

Comment: The operations of SYA have a positive economic contribution and generate employment.

- (d) *not result in any adverse environmental effect on or off the site,*

Comment: Provided that on-site water management is continued to be undertaken in an appropriate manner, there should not be any adverse environmental effects on or off the site. Impacts of additional future works would be subject to DA assessment to ensure adverse environmental effects do not occur.

- (e) *be consistent with the strategic direction for water quality standards and river flow objectives developed through the State Government's water reform process*

Comment: These strategic directions require that new developments do not increase nutrients or water flows leaving a site and are essentially encapsulated in SREP 20 (No 2). Future development would need to be supported by appropriate documentation to ensure strategic directions for water quality and river flow continue to be satisfied.

- (f) *be consistent with rural amenity (including rural industries) and not detract significantly from scenic quality,*

Comment: The existing complex is designed to be compatible with the environmental and scenic values of the area and any future works would also need to be consistent with these values and the amenity of the existing complex.

- (g) *not encourage urban (residential, commercial or industrial) land uses*

Comment: The use is not an urban landuse. Its scale is commensurate with its environment values and inherent requirements of a retreat.

- (h) *not require augmentation of the existing public infrastructure (except public infrastructure that is satisfactory to the council concerned and is provided without cost to public authorities*

Comment: It is not proposed to connect the site to water and sewer services.

- (i) *result in building works being directed to lesser class soils.*

Comment: The land is outside of the area of detailed soil mapping that forms part of SREP 8 and the land is in a conservation rather than rural zone. The land has little agricultural value, other than for domestic food production associated with the ashram.

The Planning Proposal is considered to be satisfactory in terms of the requirements of Clause 11 of SREP 8.

Conclusion

The SYA is an important educational and recreational facility that contributes to social capital and community well-being of the region. It is also compatible with the environmental and scenic values of the land and consistent with broader environmental objectives. Given the unique circumstances of the land, the contribution that SYA makes to the region and the contemporary operations of SYA, it is considered appropriate to support the Planning Proposal. This will have the effect of zoning parts of the land currently covered by enabling provisions and part of the additional lots now owned by SYA (that are not covered by enabling provisions) within a special use/infrastructure zone under contemporary planning provisions.

Should Council wish to reconsider the matter after public exhibition where no submissions have been received, the following resolution should be adopted: "After public exhibition of the Planning Proposal a further report is to be referred to Council on the matter."

FINANCIAL IMPACT STATEMENT

The direct cost to Council is the preparation of the Planning Proposal and Council's fee has been paid for this service.

Attachments: A - Planning Proposal Process Flowchart of Processing (DOP&I extract)
B - Proposed Zoning Maps
C - Approximate Area to be Rezoned

Tabled Items: Nil

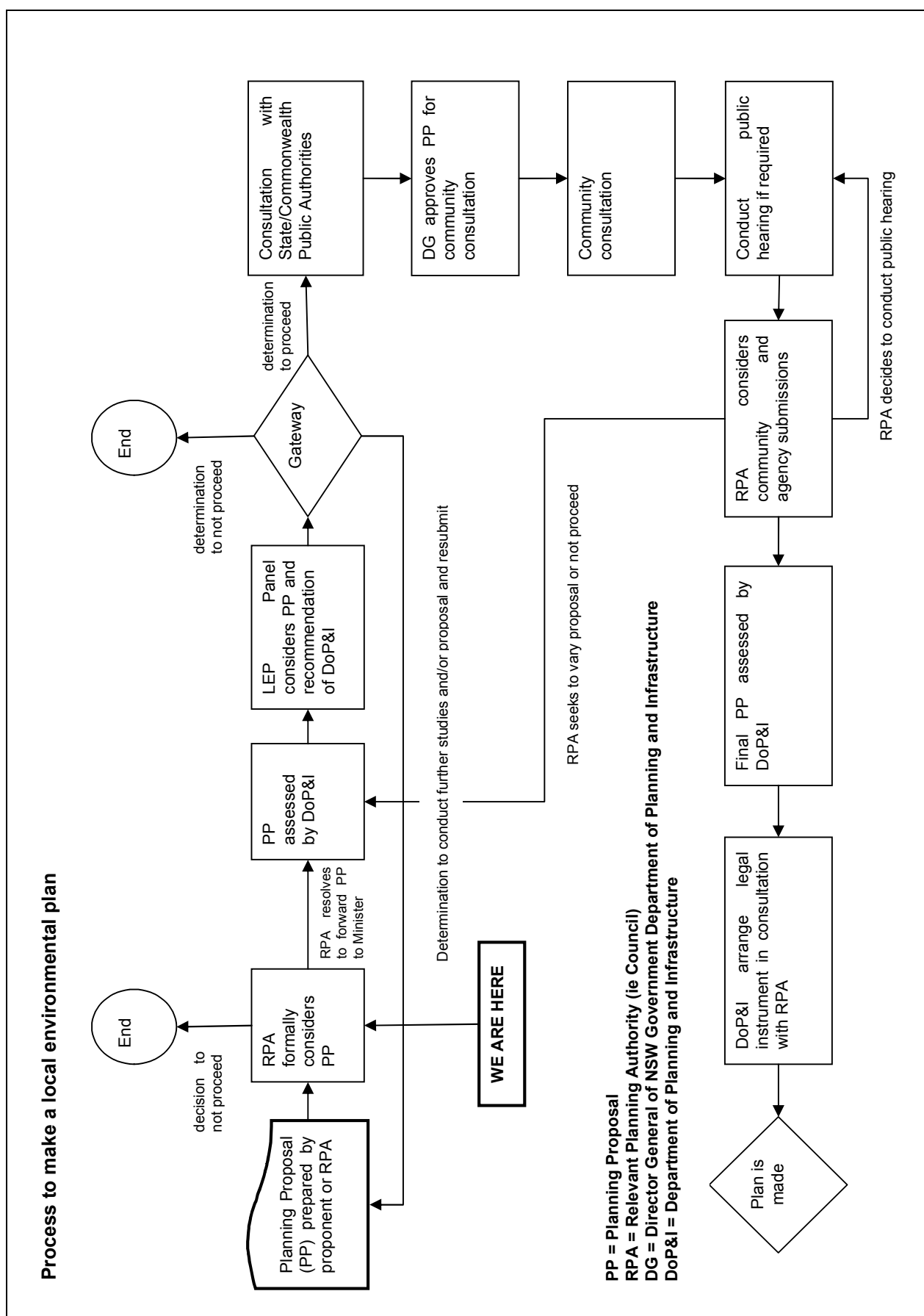
RECOMMENDATION

- A Council initiate the Local Environmental Plan 'Gateway' process pursuant to Section 55 Environmental Planning and Assessment Act by endorsing the preparation of a Planning Proposal for Satyananda Yoga Academy (SYA) as outlined in this report for part of Lots 1/3 DP 241044, part of Lot 210 DP 804011 and part of Lot 102 DP 1090036 Mangrove Creek Road, Mangrove Creek/Greengrove to rezone the land to either Zone No 5 Special Use or SP2- Infrastructure (depending on the timing of draft Local Environmental Plan 2009). The special use/infrastructure designation is to be "educational establishment including accommodation and associated recreational activities". Once prepared, Council forward the Planning Proposal to the Department of Planning and Infrastructure

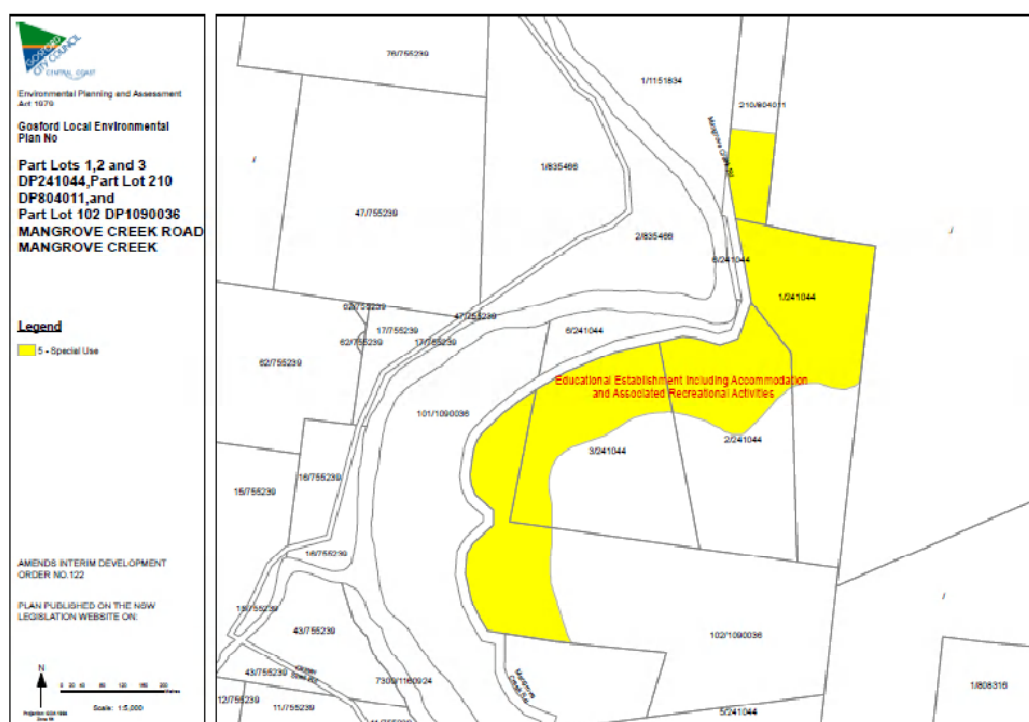
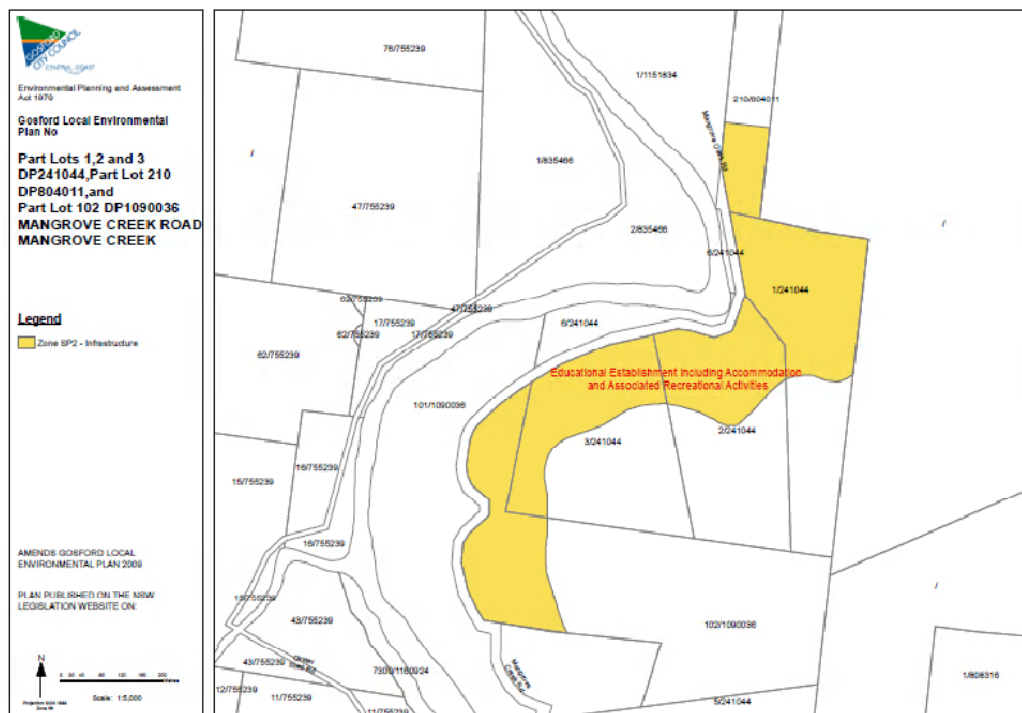
requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act. Council staff prepare all necessary documentation and process the matter according to the Department of Planning and Infrastructure directives and this report.

- B After public exhibition of the Planning Proposal, should the Minister for Planning and Infrastructure support it, and if no submissions are received, the Planning Proposal be sent to the Department of Planning and Infrastructure in order to make the plan.
- C The applicant be advised of Council's resolution.

**ATTACHMENT A – Planning Proposal Flow Chart of Processing - extract from DoP&I documents
(RPA = Relevant)**



ATTACHMENT B – Proposed Zoning Maps under IDO 122 and Draft Gosford LEP 2009



ATTACHMENT C - Approximate Area to be rezoned