

Amendment to enable use for a resource recovery facility at Kerns Road, Kincumber

Proposal Title : **Amendment to enable use for a resource recovery facility at Kerns Road, Kincumber**

Proposal Summary : **The proposal seeks to enable the use for a resource recovery facility by rezoning part of the site from 7(a) Conservation and Scenic Protection (Conservation) under Gosford Interim Development Order No 122 to SP1 Special Activities zone or by including an enabling clause.**

PP Number : **PP_2013_GOSFO_005_00** Dop File No : **13/16465**

Proposal Details

Date Planning Proposal Received : **21-Oct-2013** LGA covered : **Gosford**

Region : **Hunter** RPA : **Gosford City Council**

State Electorate : **TERRIGAL** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Kerns Road**

Suburb : **Kincumber** City : Postcode : **2251**

Land Parcel : **Lots 7-9, 11-13 and 31-33 DP 2180**

DoP Planning Officer Contact Details

Contact Name : **Glenn Horal**

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RPA Contact Details

Contact Name : **Brian McCourt**

Contact Number : **0243258260**

Contact Email : **brian.mccourt@gosford.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Central Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :	Date of Release :	
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots : 0	No. of Dwellings (where relevant) :	0
Gross Floor Area : 0	No of Jobs Created :	5

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **Jobs figure not provided**

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The objective is to allow the use of land for a "resource recovery facility" within the cleared or degraded areas within an existing quarry at Kerns Road, Kincumber. The area of native remnant bushland within the quarry landholding is to be retained as an environmental buffer. Council advised the quarrying activities under existing use rights would continue on the site.

The statement of objectives states that the remnant bushland 'is not included in the area the subject of this Planning Proposal'. This needs to be clarified as the maps show the site as being all of the subject lots.

The statement of objectives is generally consistent with the Department's 'A guide to preparing Planning Proposals'.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : Council has stated the planning proposal will permit the 'resource recovery facility' over a portion of the site and the remainder will 'remain' E2 Environmental Conservation. It should be noted that Council resolved on 31 May 2011 to defer 7(a) land east of the F3 from the draft Gosford Principal Plan. The subject site is affected by this resolution and therefore the land cannot 'remain' E2 as it is not part of the proposed Gosford LEP 2013.

The planning proposal needs to discuss more clearly what instruments will be amended (eg. amend IDO No 122, move part of land to Gosford LEP 2013, move all land to Gosford LEP 2013).

The use, defined under the standard instrument (SI), is proposed to be accommodated by an enabling clause or by using an SP1 - Special Activities zoning. Council should also consider whether extractive industries should be included as a use on the SP1 map or in the enabling clause.

While it is appropriate to maintain some flexibility in how the objective of the planning proposal is to be achieved, some analysis of the options would assist community understanding and would aid legal drafting. For example, under an enabling clause all other permissible uses within the zone would remain permissible whereas an SP1 zone would mean that only the uses shown on the map would be permitted. A decision will need to be made as to which method is to be used, and considering the merits of each approach will assist in identifying the preferred outcome.

In at least one section the planning proposal discusses 'the amended planning proposal' and the 'original planning proposal'. This may refer to the applicant's submissions to the Council. There is only one planning proposal and references to other documents should be amended to aid community understanding.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

2.1 Environment Protection Zones

* May need the Director General's agreement

2.2 Coastal Protection

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

Is the Director General's agreement required? **Unknown**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

e) List any other matters that need to be considered :

SEPP 44 - Koala Habitat Protection has not been identified by Council and further consideration should be given to the SEPP if it is applicable.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Further discussion on the S117 Directions and SEPPs is provided later in the report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal includes a locality map, an existing zoning map, an aerial photograph showing the proposed zone boundary, a map showing location of rainforest on the land, and a map showing the site is subject to SEPP 71.

The maps could use a title and key blocks that identify the specific attributes (e.g. zone name on the existing zoning map and a key for rainforest map showing the vegetation type). The aerial photograph showing the proposed zone boundary contains a large block of illegible text. A higher quality aerial photograph at an appropriate resolution should be provided.

The proposal would benefit from a proposed zoning map with indicative zones and/or a map showing the application of an enabling clause as it would apply to the land. It is acknowledged that to enable the use there may be options to achieve the intended outcome at legal drafting stage and it is appropriate to maintain some flexibility in how this is to be achieved, but an indicative outcome following finalisation of the planning

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proposal should be provided.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : Council has proposed a 28 day community consultation period and this is supported.

Additional Director General's requirements

Are there any additional Director General's requirements? No

If Yes, reasons :

PROJECT TIMELINE

Council's timeline anticipates submission to the Department to finalise the planning proposal in August 2014 (approx 10 months) and does not account for the 6 week period for legal drafting and plan finalisation. It is recommended that a 12 month timeframe should be sufficient time to complete the plan and this does not prevent Council from finalising a plan in a shorter timeframe.

DELEGATION AUTHORISATION

Council has accepted plan-making delegations for planning proposals generally however Council resolved to not seek delegations for this planning proposal.

No explanation is given however Council resolved on 17 September 2013 to bring forward negotiations with the applicant concerning an offer to enter into a voluntary planning agreement (VPA) with Council to dedicate land to Council's Coastal Open Space System. The planning proposal could still be delegated to Council to finalise as the VPA, if negotiated, would need to be publicly exhibited. It is recommended Council be granted delegation to make the plan.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment : The proposal is adequate for progression to a Gateway Determination.

Proposal Assessment

Principal LEP:

Due Date : December 2013

Comments in relation to Principal LEP :

The land is proposed to be a deferred matter in the draft Gosford LEP 2013. Council resolved to defer the 7(a) land east of the freeway (including this site) from the draft Principal LEP. This will result in retention of the existing 7(a) zoning under the Gosford IDO No 122 until such time as it is incorporated into the Gosford LEP 2013.

Assessment Criteria

Need for planning proposal :

Council states the planning proposal is not the result of a strategic study or report and appears to be landowner initiated. Council has advised unauthorised use of the land for a resource recovery facility has been sporadically taking place for a number of years. The planning proposal will provide an appropriate zone/enabling clause for the development and Council state it will facilitate construction waste minimisation in Gosford.

There is no information on the role of this site within the Gosford or Central Coast waste management strategic framework or quantum of facilities needed for waste management in Gosford LGA. The planning proposal would benefit from some discussion on Council's medium to long term requirements for waste facilities in the LGA and the existing capacity of current facilities to meet current and future needs. This discussion would aid community understanding of the context and need for such facilities in the LGA.

Council has advised in the planning proposal conclusion that the site provides for the crushing/recycling of inert demolition and construction materials. Council also recognises

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that the proposed use 'resource recovery facility' is not restricted to recovered demolition and construction materials and could allow a wider range of material to be recovered.

Council has advised the landowner submitted a request in 2002 to rezone a portion of the land for residential purposes and this request was not supported by Council however there is no explanation why. The planning proposal would benefit from some discussion on alternative options for the site.

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Consistency with strategic planning framework :

CENTRAL COAST REGIONAL STRATEGY (CCRS)

The CCRS requires Council to identify suitably-located and appropriately-zoned land for new resource recovery infrastructure. The site is not currently zoned to permit the development. Consistency with the CCRS would need to be determined following studies and agency consultation to determine site suitability.

COUNCIL STRATEGIES

Council identifies a number of local strategies applicable to the proposal. A summary of Council's assessment of the planning proposal's consistency with each is provided in brackets.

Community Strategic Plan - Gosford 2025 (consistent)

Biodiversity Strategy (not inconsistent)

COSS Strategy (not inconsistent)

Draft Gosford Landuse Strategy (consistent)

Policy for Rezoning Land Zoned Rural Conservation 7(a)(consistent)

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

SEPP 19 Bushland in Urban Areas - Requires Council to give priority to retaining urban bushland. Council has identified the facility/use would be confined to the cleared/degraded areas of the site and remnant vegetation will be retained in a conservation zone and appears consistent with the SEPP. It is noted that the aerial photograph showing the proposed zone boundary overlays part of the rainforest location shown in Appendix 4. Further consideration of the SEPP may be required following consultation with OEH to confirm whether Council's approach is appropriate.

SEPP 44 Koala Habitat Protection - Council has not identified the SEPP as applicable. The site adjoins Kincumba Mountain Reserve and Council should confirm whether the SEPP is relevant and address matters, if required, in the SEPP.

SEPP 55 Remediation of Land - Council is required to consider whether land is contaminated as required by clause 6. Council states no preliminary investigation report has been provided however acknowledges extractive industries is a use that may cause contamination. Council has advised there has been unauthorised use of the site for a resource recovery facility over a number of years and the potential for contamination from this use would require further investigation. Council is required to address the SEPP's requirements prior to community consultation and update the planning proposal accordingly.

SEPP 71 - Coastal Protection

Council has advised the land is located in the catchment of Avoca Lake and states the applicant has indicated existing sediment control measures on site would meet the needs of the resource recovery facility and appears to address the requirements of SEPP71.

Council recommends the Environment Protection Authority should be consulted on the proposal regarding down stream impacts. Further consideration of clause 8 matters should be undertaken and the planning proposal updated following agency consultation.

S117 DIRECTIONS:

The planning proposal is considered to be consistent with all S117 Directions or they are not relevant except where discussed below:

1.3 Mining, Petroleum Production and Extractive Industries - The planning proposal would prohibit extractive industries if zoned for Special Activities. Currently, extractive industries are made permissible by the Mining SEPP which permits extractive industries in zones where agriculture is a permitted use. The 7(a) Conservation zone permits agriculture, however under the proposed Special Activities zone any use other than the use shown on the zoning map would be prohibited, including the current quarry use. Council should therefore consult with DPI as required by this direction before consistency can be

determined.

2.1 Environment Protection Zones - The proposal would remove the existing 7(a) Conservation zoning to some of the site and permit, by way of additional use provisions or SP1 zone, the resource recovery facility, and reduce the environmental protection standards that apply to the land.

Council considers the proposal is consistent with the direction as the 7(a) and E2 zones are inappropriate to apply to degraded areas of the quarry. Council has indicated the proposal would retain the remaining native vegetation and provide for some areas of the quarry to be rehabilitated. No supporting studies have been provided to support the proposed zone boundaries. Council should address consistency with the direction once zone boundaries are confirmed and following consultation with OEH, and seek the DG's agreement to any inconsistency.

2.2 Coastal Protection

The site contains a watercourse which drains into Avoca Lake. Council has indicated the resource recovery use increases the opportunity for sediment runoff into the lake system. Further information needs to be provided on downstream impacts and consultation with the EPA would need to occur before consistency with this direction can be determined.

4.2 Mine Subsidence and Unstable Land - Council has not identified this direction as applicable. However given the site has been subject to extensive quarrying for over 60 years Council should confirm whether the land is identified as unstable. If it is unstable Council will need to address the requirements of the direction and seek the DG's agreement for any inconsistency.

4.4 Planning for Bushfire Protection - The planning proposal will affect land that is bushfire prone, consultation with the RFS would need to occur before consistency with this direction can be determined.

5.1 Implementation of Regional Strategies - As discussed earlier, the planning proposal's consistency with the CCRS needs to be determined following provision of additional information (studies/consultation).

Environmental social
economic impacts :

ENVIRONMENTAL

Council has advised that due to a lack of any flora/fauna habitat within the operational quarry area no critical habitat or threatened species populations or ecological communities, or their habitats will be adversely affected. Council should confirm there are no threatened species on the disturbed land. It is noted in the Appendix 4 map that part of the rainforest unit would be included in the use of the site for a resource recovery facility. Council should confirm the appropriateness of this inclusion with OEH.

Council has advised there are a number of potential environmental effects to be addressed in the preparation of a future development application. However some of these issues should also be addressed at the rezoning stage as the special activities zoning or additional use provision will specifically allow the resource recovery facility on the site.

Soil and Water Quality. Council has advised an existing watercourse runs through the site and the existing sediment ponds intercept sediment before being discharged downstream. The provision of the additional use in addition to the existing quarry use should be confirmed as appropriate as well as any potential downstream impacts in consultation with the EPA, Hunter Central Rivers Catchment Management Authority and OEH.

Air Quality. Council has identified the potential for dust generation from crushing activities and vehicle movements within the site. An existing irrigation system is on site for the quarry use and consultation with the EPA would be required to confirm whether the additional use for a resource recovery facility is appropriate.

Noise Impacts. Council has identified noise impacts from crushing machinery and traffic movements within the site that would be addressed at the DA stage.

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Traffic Impacts. Council has identified the deterioration of local roads as an issue from the existing quarrying operations and the unauthorised use of the site for resource recovery. Council advised the applicant has stated the resource recovery facility will generate 100 vehicle movements per day and Council has considered there may be a need for upgrading of intersections and consultation with the RMS is required. No traffic study has been provided to identify or mitigate impacts and Council should address traffic impacts through consultation with the RMS.

Visual Impacts

Council has stated the applicant is preparing a rehabilitation plan to revegetate visually scarred areas.

SOCIAL & ECONOMIC

Council has identified social and economic benefits to the community by providing recycling of waste resources for an alternative economic use and reduction of waste streams required to be disposed at landfill sites.

Council considers the social impacts of the facility on adjoining residential areas will be identified during public consultation however some discussion should be included in the planning proposal on the potential social impacts on the adjoining residential areas prior to public exhibition.

INFRASTRUCTURE

Water, electricity and telephone utilities are available on site. Sewer facilities are accommodated by an existing waste water management system and Council expects any increase in effluent levels could be accommodated by the existing system.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	12 months	Delegation :	RPA
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Public Authority Consultation - 56(2) (d) :	Hunter - Central Rivers Catchment Management Authority Office of Environment and Heritage NSW Department of Primary Industries - Minerals and Petroleum NSW Rural Fire Service Transport for NSW - Roads and Maritime Services Other
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal.pdf	Proposal	Yes
Council Resolution No 1.pdf	Proposal	Yes
Council Resolution No 2.pdf	Proposal	Yes
Timeline.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.1 Environment Protection Zones**
2.2 Coastal Protection
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Additional Information : **1. Council update the planning proposal to include discussion and information on the following matters:**

a) The local waste management framework and the capacity of current and proposed future facilities to meet needs.

b) The statement of objectives and other parts of the planning proposal as relevant (eg. maps) should be updated to clarify whether the planning proposal applies to all of the subject lots.

c) Include analysis of options (which instruments will be amended and what mechanism will be used) including consideration of whether extractive industries should be included as a use on the SP1 map or in an enabling clause. Also ensure references to zones are correct (eg. land cannot 'remain E2' if it is within IDO 122).

d) Update references to other "planning proposals" (there is only one planning proposal and the other references may be to information submitted by the applicant)

e) The planning proposal include discussion in the need section of alternative options for the site.

f) Council is to confirm there are no threatened species on the disturbed land.

g) Further discussion be included in the planning proposal on the potential social impacts of the development on the adjoining residential areas prior to public exhibition.

h) The maps be updated/amended with:

- title and key blocks that identify the specific attributes (e.g. , zone name on the existing zoning map and a key for rainforest map showing the vegetation type);
- the aerial photograph containing the block of illegible text be updated at an appropriate resolution.
- A proposed zoning map with indicative zones and/or a map showing the application of an enabling clause as it applies to the land.

2. Council is to be satisfied that sufficient information/studies have been provided to demonstrate that the planning proposal adequately addresses the capability of the site to accommodate the uses proposed by considering:

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- a) the impacts of noise;
- b) air quality (including dust and potential odour);
- c) soil and water quality (surface, groundwater, down stream impacts, flooding and drainage, and on site sewer facilities);
- d) impact on existing and rehabilitated vegetation;
- e) land contamination;
- f) land stability;
- g) bushfire;
- h) traffic (including impacts on the local road network);

3. Following agency consultation with OEH review consistency with SEPP 19 Bushland in Urban Areas.

4. Council should confirm whether SEPP 44 - Koala Habitat Protection is relevant and address the requirements of the SEPP, if required, and update the planning proposal accordingly.

5. Following provision of land contamination information review consistency with SEPP 55 - Remediation of Land.

6. Following agency consultation with the EPA, review consistency with SEPP 71 - Coastal Protection.

7. Council update the planning proposal's consistency with the following Section 117 Directions once supporting information has been obtained and following agency consultation:

- 1.3 Mining, Petroleum Production and Extractive Industries
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

8. Consultation is required with the following public authorities:

- Hunter - Central Rivers Catchment Management Authority
- Office of Environment and Heritage
- NSW Department of Primary Industries - Minerals and Petroleum
- NSW Office of Water
- NSW Rural Fire Service
- Transport for NSW - Roads and Maritime Services
- Environment Protection Authority

9. 28 days community consultation period.

10. 12 month timeframe to make the plan.

11. It is recommended Council be granted delegation to make the plan.

Supporting Reasons : *

Signature:



Printed Name:

J HOPKINS

Date:

8.11.2013