

PLANNING PROPOSAL - Lots 7 - 9, 11 - 13 and 31 - 33 DP 2180, Kerns Road, Kincumber,

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 draft Local Environmental Plan is to allow the use of the land for the purpose of a *"resource recovery facility"*. The land forms part of the existing Rexdor Kincumber Quarry landholding, which has been subject to quarrying for more than 60 years and is currently operating under "existing use rights" provisions under the EP&A. Act. Use of the land for the purpose of a *"resource recovery facility"* will be confined to existing cleared/degraded areas within the quarry and would be subject to a development application if the rezoning is made.

The objective of the existing *7(a) Conservation zone* applying to the land is to conserve and preserve areas of high environmental value and high visual and scenic quality in the natural landscape. However, the degraded quarry area within the land does not exhibit the characteristics of land to which the *7(a) Conservation and Scenic Protection (Conservation)* zone under Gosford Interim Development Order No. 122 or the *E2 Environmental Conservation Zone* under Draft Gosford Local Environmental Plan 2009, are reasonably applied. Areas of remnant native vegetation within the quarry landholding will be retained as an environmental buffer to adjoining land and are not included in the area the subject of this Planning Proposal. The rezoning of the subject land to enable its use for the purpose of a *"resource recovery facility"* would not preclude the continuance of quarrying on the land under "existing use rights" provisions.

Part 2 Explanation of Provisions

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

The Planning Proposal is to permit the resource recovery facility over that portion of the site mapped area in appendix 3. The remainder of the site will remain zoned E2 – Environmental Conservation. The use could be accommodated as an enabling clause or as a Special Activities (SP) zoning. The use would operate under the definition contained in the Standard Instrument LEP.

"Resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration."

Part 3 Justification for objectives & outcomes

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?

The Planning Proposal is not the result of any strategic study or report. The proposal is to provide an appropriate zone for the subject land in order to

provide for the development of a "resource recovery facility" to facilitate construction waste minimisation within the City of Gosford.

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

The Planning Proposal is the best means of achieving the objectives/intended outcomes, as the land needs to be appropriately enabled or zoned to permit its use as a 'resource recovery facility'.

Section B Relationship to strategic planning framework

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

The Central Coast Regional Strategy (CCRS) 2006 – 2031 is applicable to the subject land and the proposed rezoning. The Planning Proposal could assist the region meet the targets set by the Regional Strategy for resource recovery infrastructure to minimise waste streams generated by a growing population. This Planning Proposal is consistent with the following objectives/actions contained in the Regional Strategy:

- (i) Action 9.3: Councils are to identify suitably located and appropriately zoned land for new water supply, wastewater treatment and recycling, energy and waste avoidance, and resource recovery infrastructure, to support growth in major regional centres and major towns.
- (ii) Action 9.6: Councils are encouraged to promote waste avoidance and resource recovery in demolition and building work as well as in the design and occupancy of residential, commercial and industrial development.

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?

The provision of resource recovery facilities in Gosford is supported at a strategic level through the CCRS.

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.

The quarry use has been operating since the 1950's and its activities are generally known in the local community where residential development has grown near the quarry since it began operations.

The existing unauthorised use of the land for a resource recovery facility has been taking place sporadically for a number of years. The site is accessed through a residential area and as such support for the legalising of this activity could raise issues with local residents regarding the local area roads through concerns with regard to traffic and noise.

The reduction in extent of the land covered by the use under the amended Planning Proposal will improve the environmental outcomes of the proposal. Rehabilitation and ongoing management of the land which has been previously quarried and retention of the existing vegetated areas including the rainforest are considered to be important components of any future use of the land.

The land is located in the Avoca Lake catchment and sediments from the facility have the potential to impact on the lake's ecosystem. This matter is further considered under the discussion later in this report in relation to SEPP 71.

Issues relating to other impacts of the waste recycling facility such as noise, dust, traffic and road pavement conditions are discussed later in this report.

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

Community Strategic Plan - Gosford 2025: The Planning Proposal is consistent with the Community Strategic Plan - Gosford 2025 which incorporates a number of strategies for the reuse of resources and incorporating sustainability in all planning and decision making.

The Planning Proposal is consistent with the following relevant strategies: - B3.1 - Reduce resource consumption and minimise waste; - B3.4 - Increase the reuse and recycling of resources; and - D1.2 - Consider social, environmental and economic sustainability in all planning and decision making.

Biodiversity Strategy: The Biodiversity Strategy has the following principle relevant to this Planning Proposal: "*Biodiversity conservation objectives must consider and balance broader environmental, social and economic considerations*". The use of the land for the purpose of a "resource recovery facility" will be confined to that part of the site that has been degraded by historic quarrying activities, with areas of remnant native vegetation to be retained as a buffer to surrounding areas. The Planning Proposal will not result in any further loss or disturbance to remnant bushland or species diversity.

COSS Strategy: The subject land is not identified for public acquisition under the COSS Strategy and does not adversely impact the adjoining Kincumber Mountain Bushland Reserve, which is part of COSS. The subject site does adjoin on two sides the Kincumba Mountain Reserve. A previous rezoning application considered by Council in 2002 did propose the dedication of land on the western boundary of the site for inclusion in the adjoining COSS lands of Kincumba Mountain.

The applicant has advised on behalf of the owner in correspondence to Council that they are prepared to dedicate land for the COSS although the extent of the dedication has not been indicated and needs to be subject to negotiation. The applicant proposes that this would occur at development application stage.

The dedication of land cannot occur at the Development Application stage unless a Contributions Plan is in place. In this case there is no Contributions Plan incorporating dedication of the land. The dedication will need to be contained in a Voluntary Planning Agreement, which may occur at DA stage.

Draft Gosford Landuse Strategy: A priority of the Draft Gosford Landuse Strategy 2031 is to identify future activities, required resources, and expenditure and income streams necessary to attain the targets and actions of the NSW State Government's Waste Avoidance and Resource Recovery Strategy 2006. The Planning Proposal will assist the recovery of construction wastes and meeting the of targets identified by the NSW Office of Environment and Heritage outlined in the Waste Avoidance and Resource Recovery Act 2001 and the accompanying strategy.

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

The Policy requires that all draft local environmental plans must be in conformity with the objectives of the Conservation and Scenic Protection 7(a) (Conservation) Zone as prescribed within this Policy.

Objectives of the Conservation Zone

- a The conservation and rehabilitation of areas of high environmental value.
- b The preservation and rehabilitation of areas of high visual and scenic quality in the natural landscape.
- c The provision and retention of suitable habitats for native flora and fauna.
- d The prohibition, of development on or within proximity to significant ecosystems, including rainforests, estuarine wetlands, etc.
- e The provision and retention of areas of visual contrast within the City, particularly the "backdrop" created by retention of the ridgelines in their natural state.
- f The provision of opportunities for informal recreational pursuits, such as bushwalking, picnic areas, environmental education, etc. in appropriate locations.
- g The minimisation or prohibition of development so that the environmental and or bushfire hazard visual qualities of natural areas are not emasculated by the cumulative impact of incremental, individually minor developments.
- h The minimisation or prohibition of development in areas that are unsuitable for development by virtue of soil erosion, land slip, slope instability, coastal erosion

The amended Planning Proposal has improved the potential environmental outcomes from that contained in the original Planning Proposal. The removal of the rainforest and other vegetated areas from the original Planning Proposal will result in the Planning Proposal being confined to previously disturbed areas (see below for further discussion). The improved outcomes from the amended Planning Proposal and the ongoing management of the land will result in the Planning Proposal complying with this policy.

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) SEPPs applicable

SEPP No 19 - Bushland in Urban Areas:

Aims, objectives etc. of SEPP 19 are:

- (a) Have regard to the general and specific aims of the policy (i.e. the general aim of this Policy is to protect and preserve bushland within the urban areas referred to in the SEPP).

The general aims of SEPP 19 are to protect and preserve bushland within urban areas and when preparing draft local environmental plans, Council is required to have regard to the aims of the policy and give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which will outweigh the value of the bushland.

Use of the subject land for a "resource recovery facility" will be confined to that part of the site that has been cleared/degraded by past quarrying activities. Existing areas of remnant vegetation will be retained in Conservation 7(a) zone. Consequently, the Planning Proposal is consistent with the general aims of SEPP 19.

SEPP No. 55 – Remediation of Land:

Under the provisions of SEPP 55 Council is to consider whether land which is subject to a rezoning proposal is contaminated, if it is suitable in its contaminated state or whether remediation is required from previous use of the land identified in Table 1 of the Contamination Land Planning Guidelines, one of which is "extractive industries".

As the site has been used for quarrying activities since the 1950's it is considered that the proposed use of the worked quarry area for the purpose of a "resource recovery facility" is compatible with the use of the site for quarrying.

The SEPP requires as it relates to the rezoning of land:

'Before including land in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.'

'If a person has requested the planning authority to include the land concerned in a particular zone, the planning authority may require the person to furnish the report referred to in subclause 2.'

The report has not been provided and the applicant would only be requested to provide it as part of a favourable Gateway Determination. This requirement has been included in the recommendation to Council in relation to this Planning Proposal.

SEPP 71 – Coastal Protection:

The land is located in the catchment of Avoca Lake

SEPP 71 requires the matters set out in Clause 8 of the Policy to be taken into account when it prepares a draft local environmental plan in respect to land to which the Policy applies and requires consideration of;

- (m) likely impacts of development on the water quality of coastal waterbodies,

In addition the general objectives of the Coastal Protection Act (1979) which the SEPP requires compliance with, provides the objective of;

- (a) protecting scenic qualities, protection of wildlife corridors and water quality impacts upon coastal waterbodies.

The applicant has acknowledged the need for a rehabilitation plan for the land and has stated that one is in the course of preparation to in part deal with ongoing run off issues for Avoca Lake.

The applicant has indicated existing sediment controls meet Protection of the Environment Operations Act 1997 requirements and would be sufficient to meet the needs of the resource recovery facility use. This plan would appear to address requirements of SEPP 71. If the Planning Proposal moves to a Gateway Determination it is recommended that the Environmental Protection Authority be requested to provide comment on the proposal to ascertain whether there are matters relating to downstream impacts that need to be addressed at the rezoning stage.

- (ii) **Other SEPPs:** No other SEPP has application to this Planning Proposal, although any future development application on the land will be required to consider a number of SEPPs.

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 1 September 2009. S117 Directions are only discussed where applicable. The Planning Proposal is consistent, with all other S117s Directions or they are not applicable.

Direction 2.1 - Environmental Protection Zones:

Environment Protection Zones

1 Objective

The objective of this direction is to protect and conserve environmentally sensitive areas.

2 Where this direction applies

This direction applies to all relevant planning authorities.

3 When this direction applies

This direction applies when a relevant planning authority prepares a Planning Proposal.

4 What a relevant planning authority must do if this direction applies

A Planning Proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

A Planning Proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not

reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "*Rural Lands*".

5 Consistency

A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the Planning Proposal that are inconsistent are:

- (a) justified by a strategy which:
 - i. gives consideration to the objectives of this direction,
 - ii. identifies the land which is the subject of the Planning Proposal (if the Planning Proposal relates to a particular site or sites), and
 - iii. is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the Planning Proposal which gives consideration to the objectives of this direction, or
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) is of minor significance.

The objective of this direction is to 'protect and conserve environmentally sensitive areas'. Clause (4) requires that a Planning Proposal that applies to land within an environmental protection zone must not reduce the environmental protection standards that apply to the land.

The Planning Proposal seeks to alter the boundaries of the 7(a) Conservation and Scenic Protection (Conservation) zone over land which has been extensively modified by quarrying. The intention of the Planning Proposal is to permit the use of the quarry area for the purpose of a "resource recovery facility", on land which no longer has the characteristics of 7(a) conservation zoned land.

It is considered that the Planning Proposal is consistent with Direction 2.1, as the existing 7(a) Conservation zone (IDO 122) and proposed E2 Environmental Conservation zone (DLEP 2013) are inappropriate zones to apply to the degraded quarry area.

The Planning Proposal will enable the use of the existing quarry area for the purpose of a "resource recovery facility" in a manner which would enable the retention of remaining native vegetation on the land and facilitate the rehabilitation of some areas degraded by quarrying.

The rehabilitation plan being prepared by the applicant for the land should include protection and management measures for the coastal warm temperate rainforest ecological unit.

Direction 2.2 – Coastal Protection:

1 Objective

The objective of this direction is to implement the principles in the NSW Coastal Policy.

2 Where this direction applies

This direction applies to the coastal zone, as defined in the *Coastal Protection Act 1979*.

3 When this direction applies

This direction applies when a relevant planning authority prepares a Planning Proposal that applies to land in the coastal zone.

4 What a relevant planning authority must do if this direction applies

A Planning Proposal must include provisions that give effect to and are consistent with:

- (a) the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- (b) the *Coastal Design Guidelines 2003*, and
- (c) the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

5 Consistency

A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the Planning Proposal that are inconsistent are:

- (a)
 - (i) gives consideration to the objective of this direction, and
 - (ii) identifies the land which is the subject of the Planning Proposal (if the Planning Proposal relates to a particular site or sites), and
 - (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the Planning Proposal which gives consideration to the objective of this direction, or
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) of minor significance.

The Planning Proposal is located within the Coastal Zone and must give effect to and be consistent with the NSW Coastal Policy; the Coastal Design Guidelines 2003; and the NSW Coastline Management Manual 1990. The NSW Coastal Policy sets out the following goals for the Coastal Zone relevant to the Planning Proposal: - *'Protecting, rehabilitating and improving the natural environment'*; and – *'Providing for ecologically sustainable development and use of resources'*.

The Coastal Design Guidelines relate to the location of new urban settlements and the design of dwellings, neither of which are relevant to the Planning Proposal.

The NSW Coastline Management Manual 1990 has no practical application to this Planning Proposal as the subject land is not located within a coastal foreshore environment subject to coastal hazards, to which the manual principally relates.

The land is covered by the Coastal Protection Act as it is located within the catchment of Avoca Lake and is therefore within the coastal zone. The Planning Proposal needs to be in conformity with the objects of the Act including;

- (a) protecting scenic qualities, protection of wildlife corridors and water quality impacts upon coastal waterbodies.

The continual operation of the resource recovery facility in existing disturbed areas increases the opportunity for sediment charged run-off into the Avoca Lake catchment system. The applicant has indicated existing sediment controls meet Protection of the Environment Operations Act 1997 and would be sufficient to meet the needs of the resource recovery facility use. This would appear to address requirements of SEPP 71 and the Coastal Protection Act.

If the Planning Proposal moves to a Gateway Determination it is recommended that the Environmental Protection Authority be requested to provide comment on the proposal to ascertain whether there are matters relating to downstream impacts that need to be addressed at the rezoning stage.

Direction 4.4 - Planning for Bushfire Protection:

Planning for Bushfire Protection

1 Objectives

The objectives of this direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

2 Where this direction applies

This direction applies to all local government areas in which the responsible Council is required to prepare a bush fire prone land map under section 146 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.

3 When this direction applies

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.

4 What a relevant planning authority must do if this direction applies

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 under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,

A Planning Proposal must:

- (a) have regard to *Planning for Bushfire Protection 2006*,
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.

A Planning Proposal must, where development is proposed, comply with the following provisions, as appropriate:

- (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the Planning Proposal permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,

- (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- (d) contain provisions for adequate water supply for firefighting purposes,
- (e) minimise the perimeter of the area of land interfacing the hazard which may be developed,
- (f) introduce controls on the placement of combustible materials in the Inner Protection Area.

5 Consistency

A Planning Proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the Planning Proposal.

The objectives of this direction are to protect life, property and the environment from bush fire hazards by discouraging the establishment of incompatible land uses in bush fire prone areas; and to encourage the sound management of bush fire prone areas.

Clause (4) of the Direction requires that with 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 and prior to undertaking community consultation and take into account any comments so made. As the subject land is classified as bush fire prone land on the Bushfire Prone Land Map, the Planning Proposal will be referred to the Rural Fire Service for comment after the Gateway Determination by the Minister.

The proposed use of the subject land for the purpose of a "resource recovery facility" is considered to be an appropriate use of land located within a bushfire prone area. The requirements of Bushfire Protection 2006 can be addressed in the preparation and assessment of a future development application for this purpose.

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 Planning Proposal is considered to be consistent with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as indicated in the response to B1 and B4 (i) above. The Central Coast Regional Strategy requires that suitably located and appropriately zoned land for resource recovery infrastructure is required to support regional growth.

The Planning Proposal is considered to be consistent with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as indicated in the response to Section 3 above.

The provision of resource recovery facilities in Gosford is considered important to achieve the State Government's landfill diversion targets and is supported by Council. The number, location and nature of these facilities to meet future needs have not been determined. The Central Coast Regional Strategy (CCRS) has identified in Action 9.3 that;

“Councils are to identify suitably located and appropriately zoned land for resource recovery infrastructure to support growth in major regional centres and major towns.”

The proposal is considered to be consistent with this direction.

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.

This Planning Proposal is consistent with this direction as no such inclusions, or designation is proposed.

Direction 6.3 – Site Specific Provisions: A Planning Proposal is consistent with this direction if it proposes to use an: *‘existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone’*.

The applicant has proposed that the zoning/landuse be restricted to only allow for the crushing/recycling inert demolition and construction materials generated by building construction activities. This would restrict the resource recovery facility / landuse and such a restriction would be contrary to the S117 Direction. For the Planning Proposal to proceed it is necessary that the resource recovery facility as defined in the Standard Instrument LEP not be restricted.

To enable a Gateway Determination to be made and the proposal move towards public exhibition it is necessary for it to be consistent with this S117 Direction.

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?

A proportion of the land has been cleared and degraded by quarrying and associated activities. Use of the subject land for a resource recovery facility will be confined to that part of the site that has been cleared/degraded by past quarrying activities.

Existing areas of remnant vegetation will be retained to maintain scenic values of the remnant vegetation when viewed from surrounding areas.

Due to the 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 as a result of the proposal. Notwithstanding the above there is a need to provide for the management of remaining natural areas, in particular the rainforest unit that exists on the land.

An inspection of the site confirmed that the vegetation is consistent with Bell’s mapping adopted by Council.

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

The future use of the subject land as a "resource recovery facility" will require a number of potential environmental effects to be addressed in the preparation

of a Development Application (DA) / Environmental Impact Statement (EIS) for the proposed operation, identifying measures to mitigate potential environmental impacts to acceptable levels:

Soil and water quality: An existing watercourse flows through the site and exposed bedrock areas are extensively disturbed by quarrying activities. Existing sedimentation ponds are intercepting sediments before they are discharged into the downstream environment. The existing detention/sedimentation pond system was designed by Cardno NSW Pty Ltd in satisfaction of the design requirements of the Environment Protection Authority. The additional activity of a "resource recovery facility" within the existing degraded quarry area will provide the opportunity for upgraded erosion and sedimentation and stormwater control measures to be implemented within the site to mitigate off-site sedimentation and water quality impacts. The management of run-off from the site is a significant issue as well as the ongoing management of previously quarried areas of the land.

Air Quality: There is the potential for dust to be generated by the operation of the crushing plant and vehicle movements within the site. An existing irrigation system extracts water from the detention ponds for spraying onto internal roads and the existing crushing plant. Effective mitigation measures will need to be implemented to reduce site dust impacts to acceptable levels by employing appropriate ground pavements; machinery complying with legislative requirements; and other site dust suppression measures. These potential impacts will need to be addressed in DA documentation prepared for the proposed "resource recovery facility";

Noise Impacts: The existing crushing plant operating within the site is two years old and the applicant has stated that it complies with current legislative requirements in relation to noise suppression. The proposed "resource recovery facility" has the potential to generate noise impacts associated with the operation of machinery within the site and vehicle movements to and from the site. These potential impacts need to be addressed in DA documentation and appropriate measures to mitigate their impacts will be specified;

Traffic Impact: The applicant has indicated that a Traffic Impact Assessment to assess the impacts of the proposed development on the levels of service and safety of the local road network and pedestrian safety, will accompany any future development application for the use of the land as a "resource recovery facility".

Deterioration of the existing road surfaces as a result of the quarry and the illegal resource recovery use have been identified by Council as an issue. The applicant has indicated that it is not appropriate that existing road deterioration should be a matter for the current Planning Proposal. The resource recovery facility use will according to the applicant generate at least 100 heavy vehicle movements per day. Council will not be able to require repair to the roads as a result of the quarry operation. The impacts of the waste recycling facility use on the road system though should not be borne just by Council. Requirements as part of any development consent for the use should involve consideration of the need for ongoing repair by the owner to the roads that access the facility.

Council's Traffic Engineer considers that there may need to be upgrading of intersections, particularly the Avoca Drive/Ballorok Rd intersection. The RMS should be consulted as part of the public authority consultations if a positive Gateway Determination is made.

Visual Impacts: The "resource recovery facility" will be located within the floor of the quarry which forms an excavated basin and would not be visible from surrounding residential areas. Previous quarrying activities have left significant visual scarring. The applicant has indicated that a rehabilitation plan is being prepared and this plan will include revegetation of visually scarred areas

The desired future character statements contained in DCP 159 for the land identify that;

'These properties should continue to operate according to current consents and licenses, but the scenic potential of prominent backdrops to Gosford City's major tourist routes, waterways or surrounding residential areas should be restored progressively according to best-practice land management.'

'Minimise damage to the ecological or scenic values of surviving bushland, and prevent further fragmentation of the tree canopy along ridges and road frontages.'

The desired character statement that includes the land has identified the need to rehabilitate the land over the longer term and protect the bushland that has survived the quarrying activities.

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

The Planning Proposal will provide social and economic benefits to the community by providing recycled waste resources able to be put to an alternative economic use and will reduce waste streams otherwise required to be disposed of at landfill sites. The Planning Proposal promotes the principles of sustainable development through the protection of the environment through waste minimisation and resource recovery.

The social impacts of the facility in the vicinity of residential areas will be fully identified as a result of a public consultation process that takes place if a positive Gateway Determination is made by DoP&I.

Section D State and Commonwealth interests

10 Is there adequate public infrastructure for the Planning Proposal?

Applicant's Submission

Water, electricity and telephone utilities are available to the land to service existing and future business activities on the site. Sewer service is provided by way of an approved on-site waste water management system, which would be expected to accommodate any minor increase in effluent levels associated with the proposed "waste recycling facility". Vehicular access to the site is provided via Avoca Drive, Ballorok Road.

Discussion above highlighted the issues associated with roads accessing the land.

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

Part 4 Mapping

S55(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.

Attachment B to this report contains all relevant mapping to the Planning Proposal.

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 involve an exhibition period of 28 days. The community will be notified of the commencement of the exhibition period via a notice in the local newspaper and on the web-site of Gosford City Council. A letter would also be sent to the adjoining landowners. Attachment A outlines the Planning Proposal process. All mapping associated with the Planning Proposal is located in Attachment B.

Other Matters for Consideration

No other matters need consideration

Conclusion

The provision of resource recovery facilities in Gosford City is supported as a means of reducing the materials entering Council's Landfill Facilities. Council has been investigating through preparation of a waste strategy the development of a resource recovery facility at Bulls Hill Kariong.

The Central Coast Regional Strategy identifies the need for resource recovery facilities. The Planning Proposal could assist the region meet the targets set by the Regional Strategy for resource recovery infrastructure to minimise waste streams generated by a growing population

Council, through this initial step in the Planning Proposal process, can provide in-principle support for rezoning of the land for such a strategically important use. Such support acknowledges that the proposal has merit and the Planning Proposal can be supported in-principle, but there are issues that need to be resolved before full support could be provided.

The Kincumber Quarry has been operating under the existing use rights provisions of the EPA Act. The extent of the quarry use on the land is limited by the existing use rights provisions.

The applicant has indicated that quarrying activities are still taking place on the land. The quarrying activities are now reduced in scale compared to previous years and the old quarried areas are now left in a largely un-rehabilitated state. The applicant has indicated that a rehabilitation plan is being prepared for the land.

The nine (9) parcels of land owned by the quarry operators have had a Conservation 7(a) zone applied to them with the gazettal of IDO 122 in 1979. The land is proposed to be zoned E2 – Environmental Conservation under the draft Gosford LEP 2009.

The owner had requested in 2002 the rezoning of a significant portion of the land for residential purposes, this application was not supported by Council. The rezoning application included the proposed dedication to Council of land that currently adjoins COSS land in Kincumber

Mountain. The applicant on behalf of the owner has indicated that as part of this Planning Proposal they are prepared to dedicate land for the COSS, although the extent of the dedication has not been indicated and needs to be subject to negotiation. The dedication would most probably cover part or whole of lots 8 and 9DP2180. The applicant proposes that this would occur at development application stage however the dedication of land cannot occur at the Development Application stage unless a Contributions Plan is in place. In this case there is no Contributions Plan incorporating dedication of the land and the dedication will need to be contained in a Voluntary Planning Agreement.

The applicant's initial Planning Proposal involved rezoning of all the lots for the resource recovery use. This would have covered a rainforest ecological unit, which was unacceptable and triggered the proposal's non-compliance with a number of State Policies, Section 117 Directions and Council Policies. Having been advised of this situation the applicant amended the plan to apply to only those areas covered by quarrying and the current unlawful resource recovery facility use and not the rainforest and other natural areas remaining on the land.

The Planning Proposal provides that the site be used only for the crushing/recycling inert demolition and construction materials generated by building construction activities. The application of the above use to the land could allow for a wider range of materials to be recovered than just those from building and construction activities. It is unlikely that a restriction of the use in the form of a disabling provision so as to restrict the use to crushing/recycling of construction materials would be supported by the Department of Planning and Infrastructure as such a restriction would be contrary to Section 117 Direction 6.3 – Site Specific Provisions

The operation of the resource recovery facility in existing disturbed areas allows for the potential for sediment charged run-off to enter the Avoca Lake catchment system. This potential outcome means that the Planning Proposal needs to be considered against the Coastal Protection Act, SEPP 71 and Section 117 Direction 2.2 – Coastal Protection.

The applicant has indicated that a site rehabilitation plan currently in the process of preparation for the land and that existing sediment controls meet Protection of the Environment Operations Act 1997 and would be sufficient to meet the needs of the resource recovery facility use. This plan would appear to address requirements of the legislation and directions listed above. If the Planning Proposal receives a positive Gateway Determination it is recommended that the Environmental Protection Authority be requested to provide comment on the proposal to ascertain whether there are matters relating to downstream impacts that need to be addressed at the rezoning stage.

The resource recovery facility use will according to the applicant generate at least 100 heavy vehicle movements per day. Council will not be able to require repair to the roads as a result of the quarry operation. The impacts of the waste recycling facility use on the road system though should not be borne just by Council. Requirements as part of any development consent for the use should involve consideration of the need for ongoing repair by the owner to the roads that access the facility.

A Development Application that is submitted subsequent to a rezoning would require an EIS that would need to address; impacts on air quality, noise, vibration, water etc. As a result of the location of residential properties near the land and the environmental constraints the proposal could still be challenged to adequately address the significant EIS considerations.

SEPP 55 – Remediation of Land requires as it relates to the rezoning of land:

'Before including land in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.'

'If a person has requested the planning authority to include the land concerned in a particular zone, the planning authority may require the person to furnish the report referred to in subclause 2.'

The report has not been provided and the applicant would only be requested to provide it as part of a Gateway Determination. This requirement has been included in the recommendation to Council in relation to this Planning Proposal.

FINANCIAL IMPACT STATEMENT

The recommendation does not impact on Council's financial position.

Attachments: Attachment A - Department of Planning and Infrastructure Planning Proposal 'Flow chart' of processing shows the stage which this Planning Proposal has reached.
Attachment B - Planning Proposal Mapping

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 to permit with Council consent a resources recovery facility for parts of Lots 7 - 9, 11 - 13 and 31 - 33 DP 2180, Kerns Road, Kincumber
- B Council notify the Department of Planning and Infrastructure of Council's resolution requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and forward the Planning Proposal and all necessary documentation according to their requirements and this report.
- C After public exhibition of the Planning Proposal, should the Minister for Planning and Infrastructure support it, if no submissions objecting to the planning proposal are received, the Planning Proposal is to be sent to the Department of Planning and Infrastructure in order to make the plan.
- D A report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines to be provided by the applicant subsequent to receipt of a favourable Gateway Determination.
- E The RMS be consulted as part of the public authority consultations, if a favourable Gateway Determination is made and be requested to advise on the adequacy of the Avoca Drive/Ballorok Road intersection for the movement of trucks from the waste recycling facility.
- F The EPA be consulted as part of the public authority consultations, if a favourable Gateway Determination is made and be requested to advise on the adequacy of existing erosion and sediment controls to meet the needs of the proposed resource recovery facility and the existing quarry to address at the rezoning stage the Coastal Protection Act, SEPP71 and Section 117 Directions as they relate to downstream impacts
- G Council does not seek delegations from the Department of Planning and Infrastructure for this Planning Proposal.
- H Upon receipt of a favourable Gateway Determination, the applicant be advised of the Council's decision and be requested to bring forward as part of the Planning Proposal

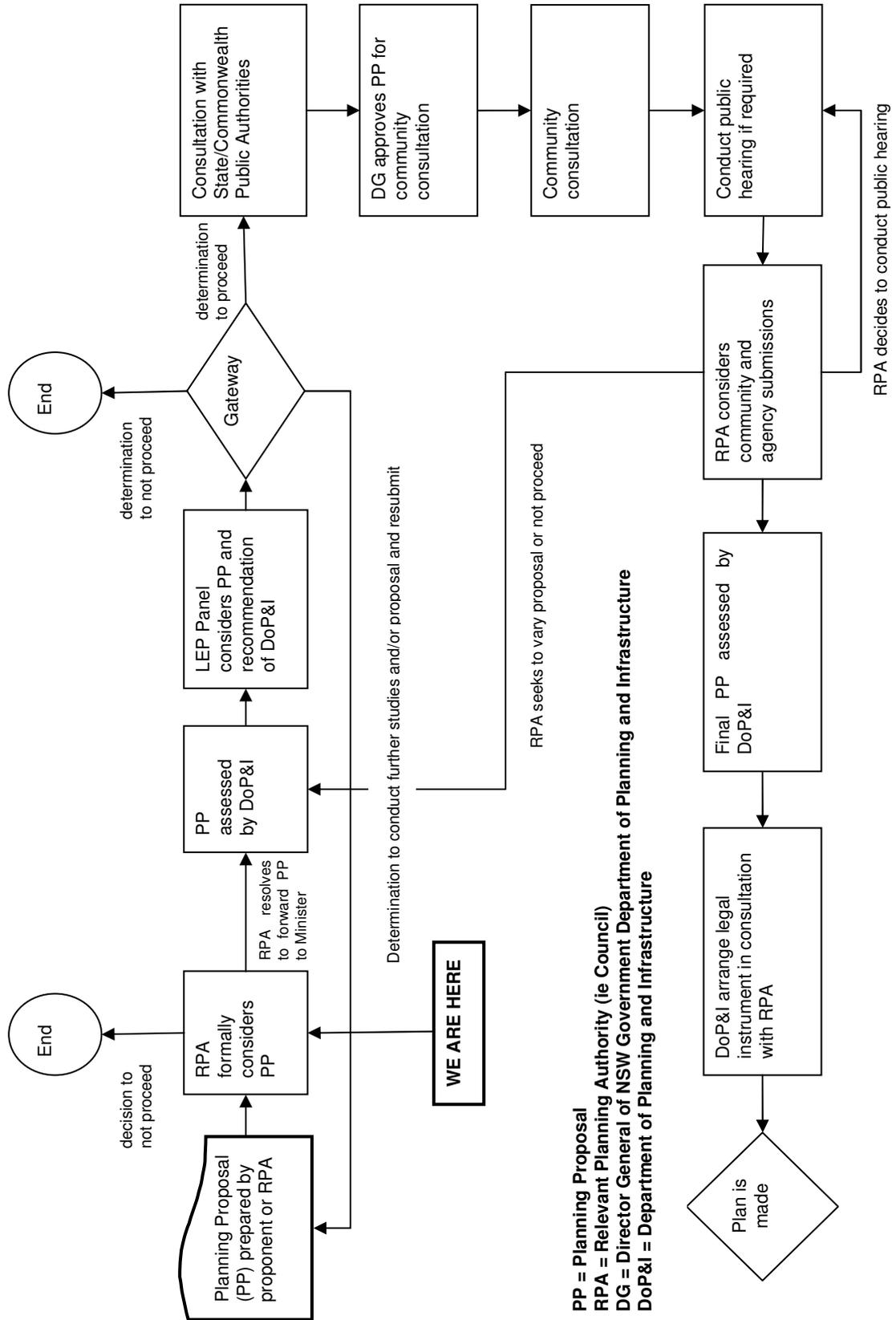
process negotiations with Council concerning his offer to enter into a Voluntary Planning Agreement to dedicate to Council land for the COSS.

- I The applicant be advised of the Council's decision.

ATTACHMENT A – Planning Proposal process - extract from, DoP&I documents (RPA = Relevant Planning Authority, i.e. Council)

**Extract from “A Guide to Preparing Local Environmental Plans”,
Department of Planning and Infrastructure**

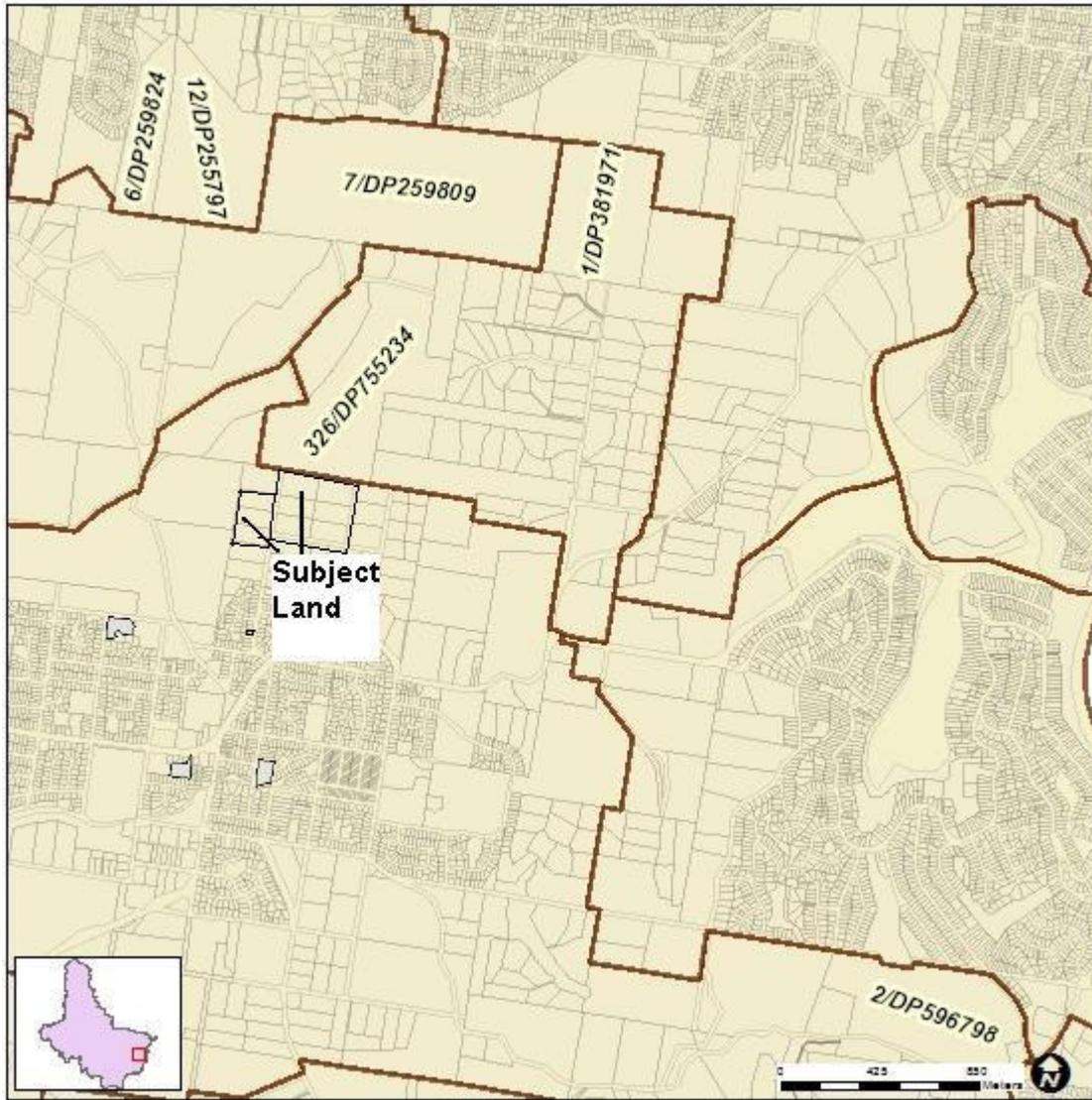
Process to make a local environmental plan



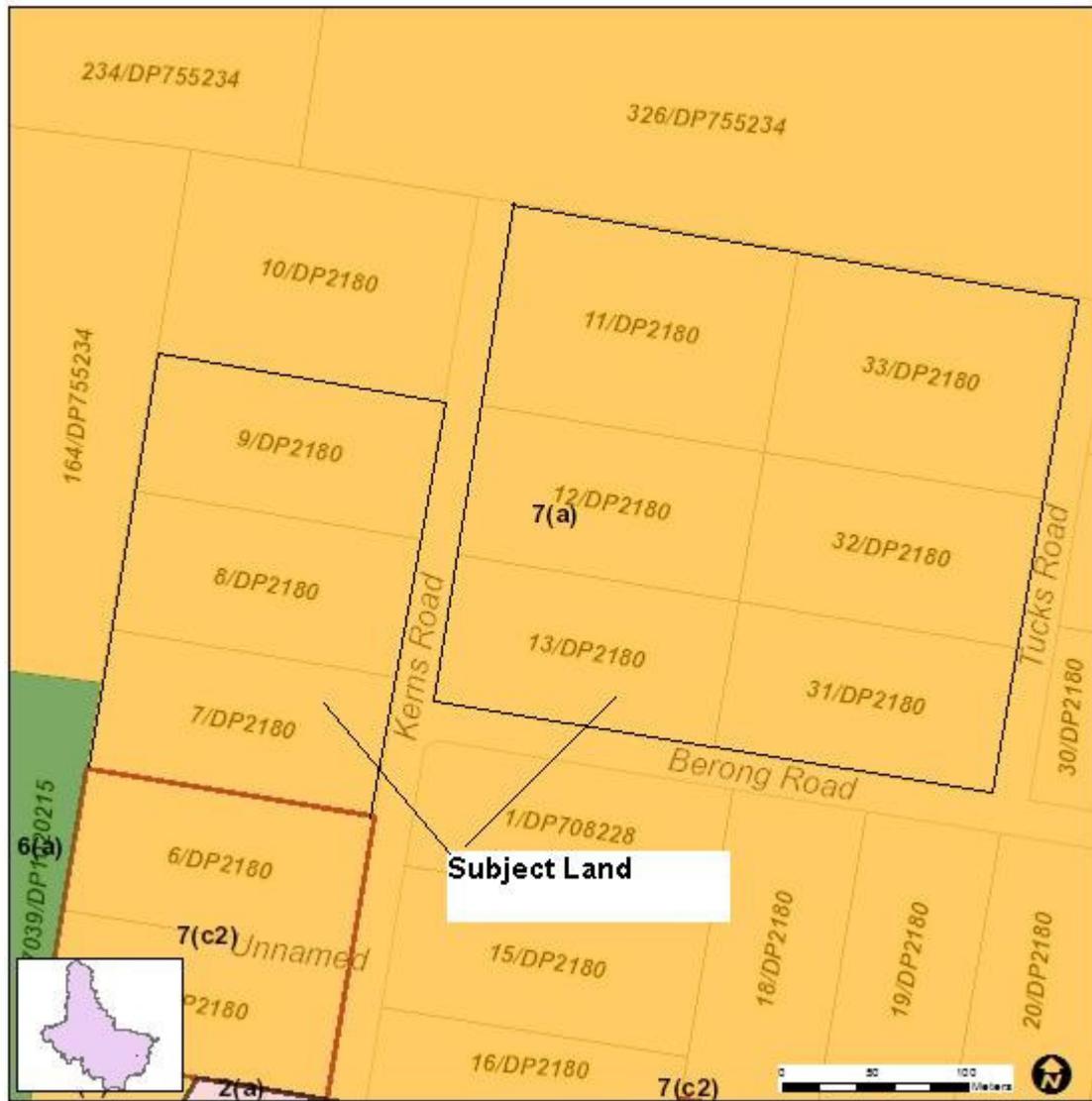
PP = Planning Proposal
 RPA = Relevant Planning Authority (ie Council)
 DG = Director General of NSW Government Department of Planning and Infrastructure
 DoP&I = Department of Planning and Infrastructure

ATTACHMENT B – Planning Proposal Mapping

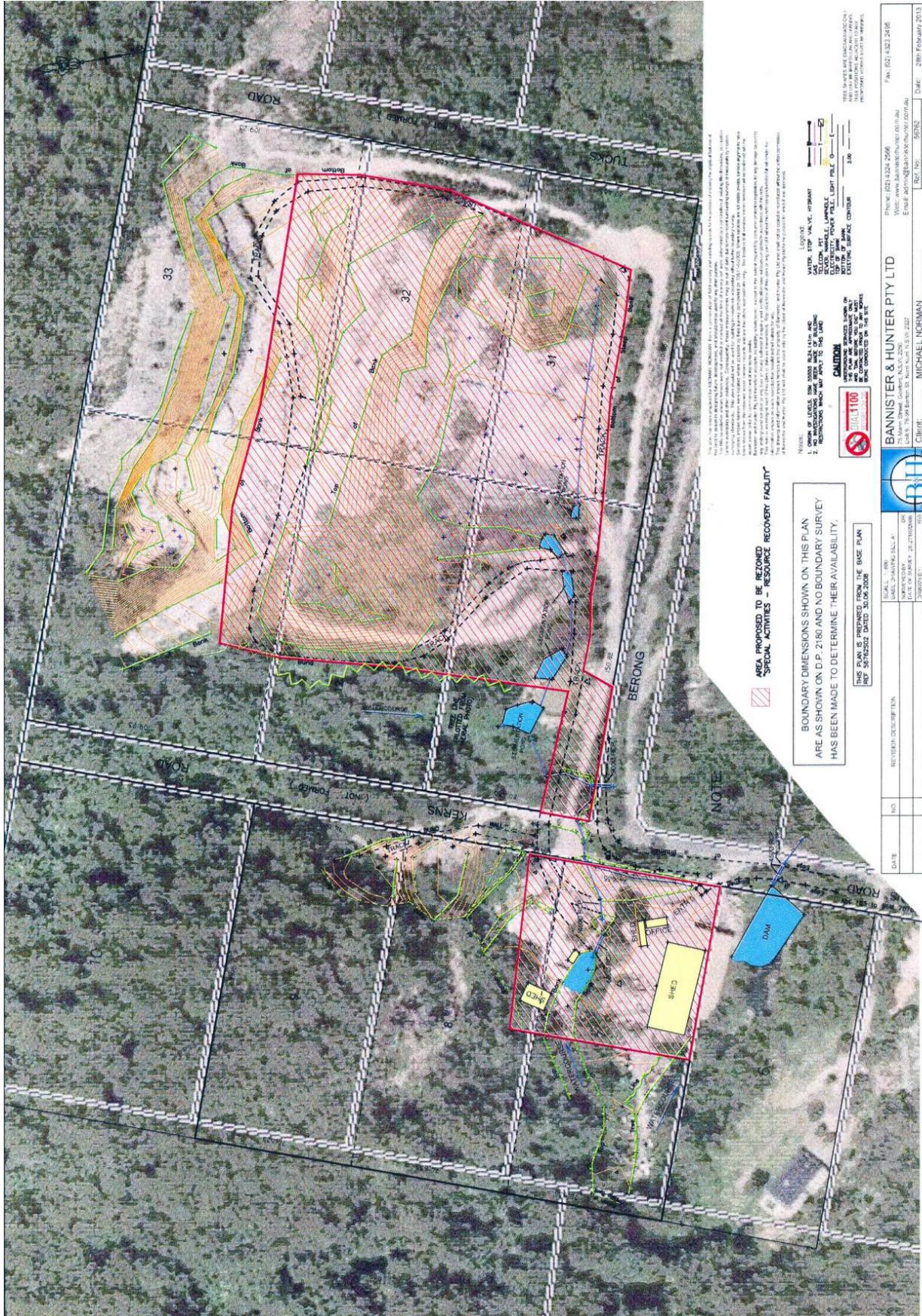
APPENDIX 1 Locality Map



APPENDIX 2 Existing Zoning Map



APPENDIX 3 Aerial Photograph – RED LINE - PROPOSED ZONE BOUNDARY



NOTE:
 1. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER ACTION.
 2. THE DIMENSIONS SHOWN ON THIS PLAN ARE AS SHOWN ON D.P. 2180 AND NO BOUNDARY SURVEY HAS BEEN MADE TO DETERMINE THEIR AVAILABILITY.
 3. THE DIMENSIONS SHOWN ON THIS PLAN ARE AS SHOWN ON D.P. 2180 AND NO BOUNDARY SURVEY HAS BEEN MADE TO DETERMINE THEIR AVAILABILITY.
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 9. THE DIMENSIONS SHOWN ON THIS PLAN ARE AS SHOWN ON D.P. 2180 AND NO BOUNDARY SURVEY HAS BEEN MADE TO DETERMINE THEIR AVAILABILITY.
 10. THE DIMENSIONS SHOWN ON THIS PLAN ARE AS SHOWN ON D.P. 2180 AND NO BOUNDARY SURVEY HAS BEEN MADE TO DETERMINE THEIR AVAILABILITY.

AREA PROPOSED TO BE REZONED SPECIAL ACTIVITIES - RESOURCE RECOVERY FACILITY

NOTE:
 BOUNDARY DIMENSIONS SHOWN ON THIS PLAN ARE AS SHOWN ON D.P. 2180 AND NO BOUNDARY SURVEY HAS BEEN MADE TO DETERMINE THEIR AVAILABILITY.

CAUTION
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DATE	08.03.13	REVISION	A	NOTES
NO.		REVISION DESCRIPTION		

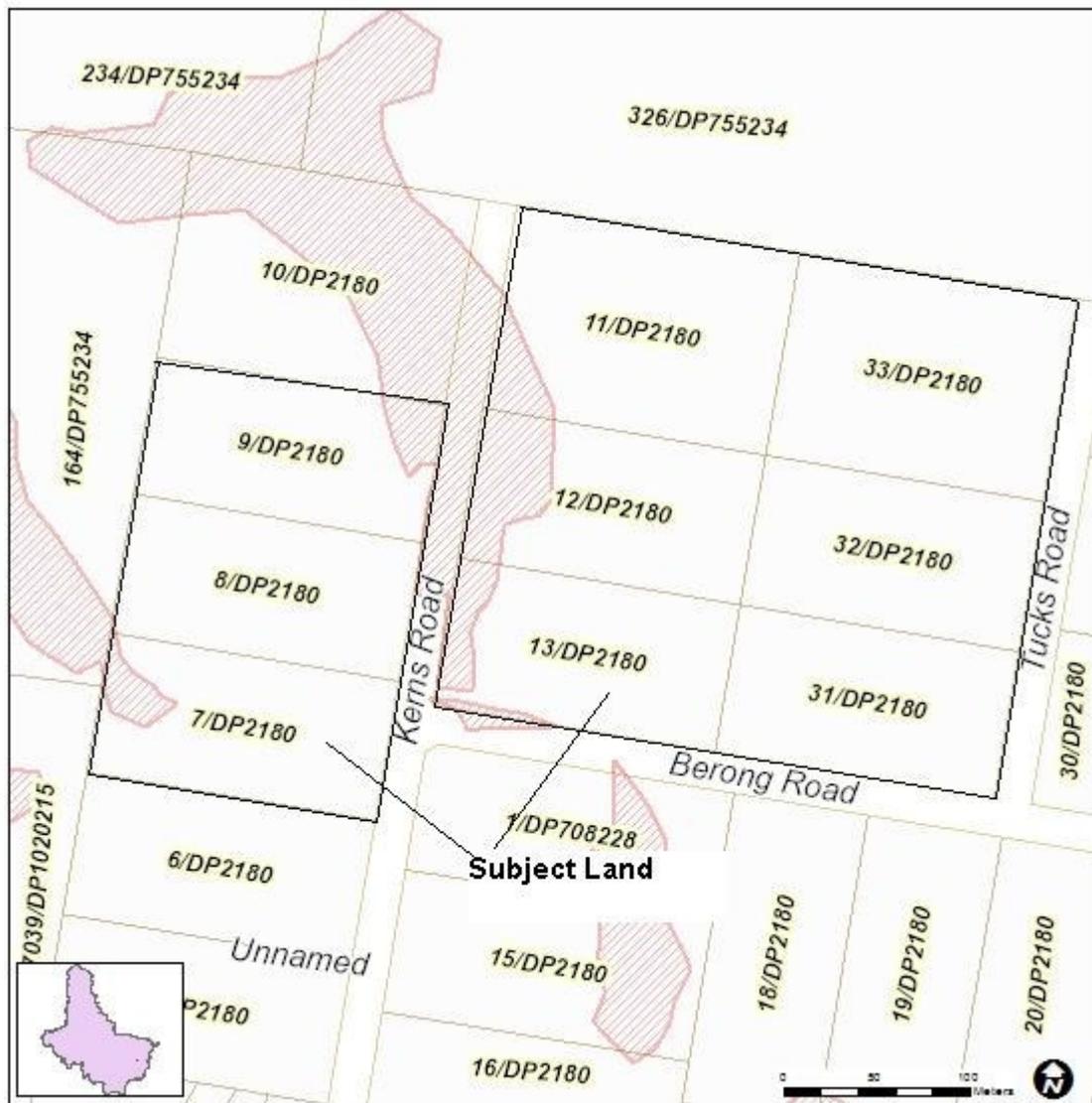
DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE OF SURVEY: 28 FEBRUARY 2013
 PROJECT NO.: 58192303
 CLIENT: MICHAEL LOCKMAN
 PROJECT: SP1 SPECIAL ACTIVITIES - RESOURCE RECOVERY FACILITY
 PART LOTS 79, 11-13, 31-33, D.P. 2180 AT PROBUWER,

BANNISTER & HUNTER PTY LTD
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SHEET NO.: 1 OF 1
 REVISION: B

APPENDIX 4 Relevant Council Dekho mapping layers

Location of Rainforest on Subject Land



SEPP71 Application

