



**Planning Proposal
To amend Wingecarrabee Local Environment Plan 2010
to permit a Vehicle Repair Station on Lots 8 to 17
inclusive Section 40 DP 758098,
3482 Old Hume Highway, Berrima**

Planning Proposal

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND: Lots 8 to 17 inclusive Section 40 DP 758098, 3482 Old Hume Highway, Berrima.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF PLANNING PROPOSAL

The purpose of the Planning Proposal is to include a *vehicle repair station* as permissible with consent on Lots 8 to 17 inclusive Section 40 DP 758098, 3482 Old Hume Highway, Berrima.

PART 2 – EXPLANATION OF PROVISIONS

The Planning Proposal seeks to amend Wingecarribee Local Environmental Plan 2010 by inserting the following clause in Schedule 1:

Use of Certain Land Old Hume Highway, Berrima

1. This clause applies to Land at Old Hume Highway, Berrima being Lots 8-17 Section 40 DP 758098.
2. Development for the purposes of a vehicle repair station is permitted with consent.

Map to be amended	Nature of map amendment
Sheet CL1_007A	Add Schedule 1 Red Outline around Lots 8 to 17 inclusive Section 40 DP 758098, 3482 Old Hume Highway, Berrima.

PART 3 - JUSTIFICATION

Council at its Ordinary meeting of 13 March 2013, resolved as follows:

1. ***THAT Council recognises that the usage of the property Rural Number 3482 Old Hume Highway, Berrima, being Lots 8 to 17 inclusive Section 40 DP 758098 has been in operation for approximately 25 years.***
2. ***THAT Council raises no objection to the continuance of the use of the property.***
3. ***THAT Council resolves to prepare a Planning Proposal to allow a Vehicle Repair Station by amending Schedule 1 of WLEP 2010 by inserting the following:***

Use of Certain Land Old Hume Highway, Berrima

- 1. This clause applies to Land at Old Hume Highway, Berrima being Lots 8-17 Section 40 DP 758098.***
- 2. Development for the purposes of vehicle repair station is permitted with consent.***

The history behind the resolution is detailed as follows:

- The GSA Planning Proposal states that ‘Berrima Diesel Services’ commenced operating from the subject site in 1985 (Appendix 4, page 1)
- On 3rd April 1990, in response to an enquiry from the property owner, Council issued correspondence noting that the property had been used for a considerable period of time and that it had ‘existing use rights’.

Note: The advice issued in this letter by Council’s Town Planner at the time was incorrect as the use had never been approved by Council in the past by way of development consent. Further, at no stage under any Planning Instrument since 1969, has a ‘*vehicle repair station*’ been a ‘*permissible with consent*’ use on the site; i.e. all Planning Instruments since that time have prohibited such a use.

- On 26 May 2010 Council received a letter of complaint regarding the operation of the business. Council staff subsequently inspected the subject site.
- On 1 May 2012 Council served an Order, pursuant to Section 121B that required the owners to cease the use of the premises as a ‘*vehicle repair station*’ for the following reasons:
 - a. There is no development consent for that use;
 - b. That use is not an “existing use” as defined in the EPA Act; and
 - c. The land on which that use is being undertaken is in Zone E3 Environmental Management in WLEP 2010;
 - d. Under the WLEP 2010 a “*vehicle repair station*” is a prohibited use in zone E3.
- Berrima Diesel appealed the Order and the matter became one for the Land and Environment Court to determine. In an effort to resolve the matter, Council, in consultation with Berrima Diesel, negotiated a three year period for Berrima Diesel to relocate their premises. Council also discussed with Berrima Diesel various options including its ability to submit a Planning Proposal to seek spot-zoning of the land to legitimise the future use following public consultation and assessment. These efforts culminated in Council’s Resolution of 26 September 2012 as follows:

1. ***THAT in the matter of Leimroth v. Wingecarribee Shire Council, Land and Environment Court matter No 10470 of 2012, Council instruct its panel solicitors to seek from the Court a period of three (3) years from 21 September 2012 for the applicant to comply with an order requiring it to cease use of the premises known as Berrima Diesel Service, on Lots 8 to 17 inclusive, Section 40, DP 758098 at RN 3483 Old Hume Highway, Berrima, for the purpose of a “vehicle repair station”.***
2. ***THAT Council invite the owners of Lots 8 to 17 inclusive, Section 40, DP 758098, RN 3483 Old Hume Highway, Berrima, to submit a planning proposal seeking amendment of the Wingecarribee Local Environmental Plan to permit the continuing use of the property as a “vehicle repair station”.***
3. ***THAT such invitation note that the possible success of said planning proposal will be subject to Council and NSW Department of Planning approval.***
4. ***THAT such invitation encourage the owners to submit said planning proposal, as a matter of urgency.***

However Council subsequently received a submission objecting to this course of action and the terms of this proposed settlement.

- A Planning Proposal prepared by GSA Planning on behalf of Berrima Diesel was lodged with Council on 28 November 2012 and subsequently assessed by Council staff.
- A report on the Planning Proposal was presented to Council at its Ordinary meeting 13 February 2013. Council resolved at that meeting to defer the matter pending an information workshop with Council staff (Appendix 2).
- Council reconsidered the report (Appendix 1) on the Planning Proposal at its meeting of the 13 March 2013 and resolved to proceed with the Planning Proposal (Appendix 3).

The above history provides that Berrima Diesel has been established on the subject site for nearly 30-years and has been a successful operation without complaint until May 2010. The business operators claim that they have expanded the use on the site because they believed they had legitimate existing use rights resulting from a letter Council issued in April 1990. Nevertheless, the development of the site occurred without any necessary Building or Development consents required by relevant planning instruments over the past 25 years.

Notwithstanding the lack of approvals, much of the community and Council were aware of the existence of Berrima Diesel and have assumed that it was a legitimately approved

use. However, the investigations undertaken by Council following the inquiry in 2010 has discovered otherwise. Therefore it is the elected Councillor's majority view that Berrima Diesel Service should be legitimised on the site they have been operating on for the past 25-years. Hence the Council resolution of 13 March 2013 to prepare this Planning Proposal, as provided above and further detailed in Appendix 3, although Council Planning Officers recommended that the Planning Proposal not be supported.

This Planning Proposal report discusses the merits of the proposal, in relation to the subject, based upon technical planning merits, such as the current zoning of the land, the Landscape Heritage Conservation Area, the relevant S. 117 Directions, State Environmental Planning Policies and Regional Strategies. The assessment of the planning merits include justifications from GSA Planning's submission representing Berrima Diesel and Council Planning Officer's Assessment.

The technical planning merits do not in an overall sense provide a favourable view of the Planning Proposal. However it is the elected Council's resolution to proceed with the Planning Proposal to allow the continued use of Berrima Diesel Services on the subject site, as they have been operating there for 25 years until recently without complaint.

Subject Site and Locality

The subject site containing the Berrima Diesel Service business is known as "Tyacona" 3482 Old Hume Highway, Berrima, comprising Lots 8 to 17 inclusive, Section 40, DP 758098. The subject site is shown in Figures 1, 2 and 3; while images of the site are shown in Figure 4 and Figure 5 below.

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 1 - Identification of Subject Site – Large Scale



PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 2 - Aerial Photo - Small Scale



Figure 3 - Aerial Photo - Development Onsite



Figure 4 - Extract of images of Berrima Diesel Site from GSA Planning Report



Photograph 1: Vegetation to the north of the hardstanding area.



Photograph 2: Recently planted landscaping on the subject site and dense bushland on the neighbouring site.



Photograph 3: The entrance to the subject site off the Old Hume Highway.



Photograph 4: The existing dwelling on the subject site.

Further, details of the Berrima Diesel Service operations can be found at their website: <http://www.berrimadiesel.com/home/>

Figure 5 - Image of Office and Service Sheds – Source Google Images



Section A – Need for the Planning Proposal

1. Is the Planning Proposal the result of any strategic study or report?

The Planning Proposal is the result of a resolution of Council made at its Ordinary Meeting of 13 March 2013:

- 1 ***THAT Council recognises that the usage of the property Rural Number 3482 Old Hume Highway, Berrima, being Lots 8 to 17 inclusive Section 40 DP 758098 has been in operation for approximately 25 years.***
- 2 ***THAT Council raises no objection to the continuance of the use of the property.***

3. ***THAT Council resolves to prepare a Planning Proposal to allow a Vehicle Repair Station by amending Schedule 1 of WLEP 2010 by inserting the following:***

Use of Certain Land Old Hume Highway, Berrima

1. ***This clause applies to Land at Old Hume Highway, Berrima being Lots 8-17 Section 40 DP 758098.***
2. ***Development for the purposes of vehicle repair station is permitted with consent.***

The report to Council did not support the Planning Proposal. However, the Submission by GSA Planning on behalf of the Berrima Diesel Owners does support the Planning Proposal and is included as Appendix 4.

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

A Planning Proposal is the only method available to allow the use of a *vehicle repair station* on the subject site as it is currently a prohibited use. The scale of the Berrima Diesel Service operation on the site is too large to meet the definition of a *Home Occupation* which would be permitted without consent in the E3 zone.

Options available to amend the WLEP 2010 to allow the said use on the subject site are as follows:

- 1 Amend Schedule 1 of WLEP 2010 by inserting the following:

Use of certain Land Old Hume Highway, Berrima

- 1) This clause applies to Land at Old Hume Highway, Berrima being, Lots 8-17 Section 40, DP 758098
 - 2) Development for the purposes of vehicle repair station is permitted with consent.
- 2 Amend the Land Use Table under E3 Environmental Management to include *vehicle repair station* as a use that is Permissible with Consent.
 - 3 Rezone the site to any one of the following zones that allow *vehicle repair stations* as Permissible with Consent: IN1 General Industrial, IN2 Light Industrial, B2 Local Centre, B4 Mixed Use, B5 Business Development and B7 Business Park.

Option 1 is the preferred option for the following reasons:

- a) It is preferable to Option 2 because it is site specific and would limit the operation of the subject land use to the subject site rather than permitting such development elsewhere in the Shire under the E3 Environmental Management zone.
- b) It is preferable to Option 3 as other uses also not currently permitted on the subject site would then be permissible.
- c) Both Options 2 and 3 also have the potential through expanded land uses to significantly impact on the character of the Berrima Heritage Landscape Conservation Area.

Notwithstanding, a further option not involving a Planning Proposal is for the business to relocate to an appropriately zoned site, subject to the appropriate development approvals.

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 draft strategies)?

The Planning Proposal has limited consistency with a particular part of the Sydney-Canberra Corridor Regional Strategy. While the submission by GSA Planning does refer to the Strategy (page 15, Sec 16.2), it therefore does not appear to provide any significant justification addressing how the Planning Proposal relates to the Regional Strategy. The level of consistency, as assessed by Council officers, follows:

- Economic Development and Employment Growth

Consistent

The Planning Proposal is consistent with this section of the Strategy to the extent that Berrima Diesel Service, which operates from the subject site, has been a growing business for the past 30 years providing local employment and consequent multiplier benefits into the local economy. Further, as the business has both a national and international reputation, there are other economic multiplier effects within the local community from a broad based clientele. Such economic multiplier effects involve clients who live outside of the Shire utilising local tourist and visitor accommodation, visiting local business premises and tourist attractions, whilst their vehicles are being serviced.

Inconsistent

This section of the Strategy through its actions (page 27) recognises the need for strategically planned economic growth and the need to reserve appropriate Lands through Local Environmental Planning Instruments. Page 24 of the Strategy specifically discusses the Moss Vale Enterprise Corridor. The subject site is located approximately half-kilometre to the north of the north-western end of the Moss Vale Enterprise Corridor, where it would be a permissible use.

The Planning Proposal is inconsistent with this section of the Strategy in the respect that it wishes to make a use that is more suitable to being located within appropriate identified employments lands, such as the Moss Vale Enterprise Corridor, in a location (the subject site) that is much less suitable in terms of its E3 Environmental Management zone and Heritage Landscape significance.

- Rural lands and primary industry

The Planning Proposal is inconsistent with this section of the Strategy, which states as an action (page 21) that:

Councils are to ensure that strategies are prepared to manage rural lands to accommodate and protect the range of values that comprise rural lands being scenic, environmental and economic.

A *vehicle repair station* is not a use that could be considered as being in harmony with such values. Hence it is a prohibited use in both Environmental Management zones and Rural zones under the WLEP 2010, which was made in accordance with these values. The subject site is also located within a Landscape Heritage Conservation Area that has recognised scenic qualities. These are discussed later in the point below on Cultural Heritage.

- Natural Environment

Council's WLEP 2010 natural Resources Sensitivity Map – Sheet NRS_007 shows that a Category 3 Riparian Corridor is in close proximity to the western boundary of the subject site (Figure 9). This section of Sydney-Canberra Corridor Regional Strategy recognises the value of riparian corridors, especially those within the Sydney Drinking Water Catchment.

The subject site has access to Council's reticulated water, but it must dispose of sewer on-site. The Planning Proposal is considered inconsistent with this section of the Strategy as a *vehicle repair station* is more suited to an appropriately zoned industrial land with access to reticulated sewerage systems.

Nevertheless, the GSA Planning Proposal report is supplemented by a report (Appendix B) by SEEC (Strategic Environmental and Engineering Consulting). The

report concludes that the current septic system on site is not adequate and should be replaced by a more suitable system that is capable of being supported on the subject land.

The Report was referred to the Sydney Catchment Authority (SCA) for comment. The SCA's complete response is contained in Appendix 6, however a summary of points raised is provided as follows:

- The SCA would normally object to a proposal for a vehicle repair station on an unsewered site adjacent a watercourse, however this is an unusual situation as the vehicle repair station already exists.
- The SCA's preference would be for the use to be transferred to a sewerred site in an industrial zone.
- If the use cannot be moved to a more suitable location, the SCA supports the application of strict environmental regulation and management measures to avoid impacts on water quality.
- It is particularly recommended that the transfer and treatment of industrial wastewater off-site be considered, and that ongoing monitoring for impacts on water quality occurs.

The SCA's preferred position would be for the vehicle repair station to be transferred to a more suitable site in a designated industrial area that has connection to Council's sewerage system. However, they have also made significant recommendations should the use remain on the subject site, which are:

- The location and size of the existing absorption bed to dispose of industrial water should be shown on all plans and diagrams;
- Further investigation is required to confirm whether the absorption bed has the capacity to deal with extra stormwater flows;
- It is strongly recommended that the treatment of industrial wastewater off-site is used as an alternative to on-site land disposal.

In conclusion the SCA has emphasised that any subsequent development application, if the Planning Proposal is supported, will also require the concurrence of the SCA before any consent is issued. The SCA would assess the development in accordance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. In that case the proposal must satisfy that it has a neutral or beneficial effect (NorBE).

- Cultural Heritage

In relation to this section of the Strategy (page 49) it is stated in the opening line that:

The cultural heritage of the Region is strongly defined by its rural landscapes.

Berrima is also recognised as retaining much of its original character. Further one of the actions (page 50) states:

Local environmental plans will include appropriate provisions to protect significant towns and villages such as Braidwood and Berrima, associated with natural and cultural landscapes and curtilages. The aim will be to protect conservation values, Aboriginal cultural values, visual character and setting to reinforce the economic base for tourism.

WLEP 2010 includes the appropriate provisions, by identifying particular heritage items in and around Berrima and by the provision of a Landscape Heritage Conservation Area identified by Heritage Map – Sheet HER_007A.

The subject site is located within the Landscape Heritage Conservation Area as identified in the WLEP 2010. As such Clause 5.1 of the WLEP 2010 would apply to any subsequent development application lodged on the site if the Planning Proposal were to be successful. The objectives of Clause 5.1 are:

- (a) to conserve the environmental heritage of Wingecarribee,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Further, Clause 5.1(5) states:

(5) **Heritage assessment**

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

Therefore the Planning Proposal is considered to be inconsistent with this section of the Sydney-Canberra Corridor Regional Strategy, as it is not considered to be a compatible use within the Landscape Heritage Conservation Area; and the report by GSA Planning does not specifically address the proposal's impact on the Landscape Heritage Conservation Area.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

The Planning Proposal is inconsistent with the Wingecarribee Community Strategic Plan 2031+ (WCSP 2031+) for several reasons as addressed in the report attached as Appendix One.

Notwithstanding, the report by GSA Planning, Page 16, states the Planning Proposal is consistent with the WCSP 2031+, as it will support the diverse economy of the LGA and add to the range of job and career opportunities that are available to local residents.

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

State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP 44 applies to all land with the Wingecarribee Shire Local Government Area and the site contains an Endangered Ecological Community (EEC) consisting of Southern Highland Shale Woodland in the south-eastern corner of the site (Figure 8).

The applicant has not provided any assessment on this matter. Further the SEEC report shows that the proposed new on-site waste management system may encroach upon the EEC. As such the Planning Proposal is considered inconsistent with the SEPP until such time that other studies prove otherwise.

Further, as a Plan of Management for EEC land is likely to be required post Gateway determination (should it be determined by the Gateway to continue), but prior to the issue of any subsequent Development Consent for the use of the site for a *vehicle repair station*, it should be of interest for Council to pursue an assessment of potential Koala habitat or the presence of a population on the site or in the locality.

State Environmental Planning Policy (Rural Lands) 2008

The Rural Lands SEPP applies the subject site therefore Council must consider whether the Planning Proposal is consistent with the *Aims of the Policy* and the *Planning Principles* contained in Clause 7.

The *Aims of the Policy* are:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

- (c) to implement measures designed to reduce land use conflicts,
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

The Planning Proposal is considered to be generally inconsistent with these aims as it would allow a prohibited use within an E3 Environmental Management and Landscape Heritage Conservation Area that is essentially within a transgression area from rural residential to rural landscapes. Further, in relation to the above points the following comments are offered:

- (a) The proposed use of the site is not rural or related to rural purposes, as mechanical repairs to Diesel fuel vehicles can be achieved in appropriately zoned industrial areas;
- (b) The proposed use does not generally accord with the Rural Planning Principles contain in Clause 7, discuss later in the report;
- (c) The use is likely to increase land use conflicts (this is what brought the matter to Council's attention)
- (d) Not relevant
- (e) Not relevant

The *Clause 7 – Rural Planning Principles* are:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Note. Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to local environmental plans in accordance with the Rural Planning Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan.

GSA Planning addressed the above principles in their submission (pages 17 to 19) discussing how the proposal is consistent. Below are Council Planning Staff's comments in relation to the principles and GSA Planning's comments:

- (a) **GSA Response:** While Berrima Diesel is not an agricultural use, the owners are environmentally responsible and ensure there is no adverse environmental impact on adjoining land. The proposal will allow the continued operation of a family business that is an integral part of the local economy. In our opinion the proposal is consistent with this principle.

Council Officer Assessment: GSA's comments are not supported. A prohibited use should not be supported and protected, as it has no productive value (from the land) and is not a sustainable economic activity in a rural area, especially in an environmental management zone that also cited in a landscape heritage conservation area. Should the business continue to be successful, if permitted on the site, it is likely to continue to grow. Such growth may result in further expansion of the development on the site, that may result in the loss of further vegetation, further complaints from neighbours, greater pressure on the proposed on-site waste management system etc. If a *vehicle repair station* is considered to be a sustainable economic activity within a rural area, then it would be a *permitted with consent* use in the land use tables of environmental management and rural zones.

- (b) **GSA Response:** The subject site has been used by Berrima Diesel Services since 1985. As outlined, despite not being an agricultural use, the business has evolved and developed to incorporate best practise environmental procedures. The responsible environmental management of the use aims to ensure that nearby agricultural land is not adversely effected by the use. In our opinion the proposal is consistent with this principle.

Council Officer Assessment: GSA's comments are not supported. As no approvals have ever been sought for the current use on the site Council cannot concur that Berrima Diesel has incorporated best environmental practices, as there is no evidence at hand. Further, the SEEC report states that the current onsite waste management system requires replacing to cater for the additional load generated by the current unapproved use. Further, as no approvals have ever been sought from Council it is quite contradictory to state Berrima Diesel has incorporated best environmental practice when it is

clearly not the case, as appropriate approvals would have been sort from the relevant authorities including Council.

- (c) **GSA Response:** Berrima Diesel is an integral part of the local economy and the Berrima community. The specialised nature of the use brings customers from locations across Australia who support the local accommodation and tourism sectors. Furthermore, the continued employment of up to 13 local residents has a direct positive impact on the local economy. The Planning Proposal is to allow the positive contribution to continue. Accordingly, the continuation of the use is consistent with this principle.

Council Officer Assessment: Concur with GSA Planning's comments, although if the use where located in an appropriate industrial zone, those same benefits would continue.

- (d) **GSA Response:** As outlined in response to principle (c) above, the use benefits the local economy by providing employment benefits and encouraging visitors. This Planning Proposal has also outlined the operator's commitment to responsible environmental management. In our opinion the proposal satisfies this principle.

Council Officer Assessment: Refer to Council's resolution 13 March 2013, Appendix 3.

- (e) **GSA Response:** The owners of the subject site have retained and embellished landscaping throughout the site which contributes to biodiversity on the surrounding area. Berrima Diesel Services also takes measures to ensure that its operation does not adversely impact on natural resources, in particular the water supply catchment. Specifically a study has recently been undertaken into how the development manages stormwater and runoff to recommend measures to minimise any potential impacts. In our opinion the use satisfies this principle.

Council Officer Assessment: The Sydney Catchment Authority has commented on the Planning Proposal and their letter is included as Appendix 6. The SCA does not fully concur with GSA. The SCA's preferred position is the use be relocated to a suitable site in an industrial zone. However, if that was not possible the SCA made the following recommendations:

- The location and size of the existing absorption bed to dispose of industrial water should be shown on all plans and diagrams;
- Further investigation is required to confirm whether the absorption bed has the capacity to deal with extra stormwater flows;
- It is strongly recommended that the treatment of industrial wastewater off-site is used as an alternative to on-site land disposal.

- That the development will need to provide evidence with a subsequent Development Application that the NorBE principles of SEPP 2011 – Sydney Drinking Water Catchment can be satisfied.
- (f) **GSA Response:** The proposal is consistent with this principle as the use incorporates measures to minimise any potential impacts on neighbouring residential uses. These measures have been detailed in the Justification of this report (see Section 5.0)

Council Officer Assessment: GSA's comments are not supported. The unapproved use was brought to Council's attention via an enquiry by neighbour. Should the use be allowed to continue on the site such conflicts may continue and escalate? Such conflict is not consistent with the objective of this principle.

- (g) **GSA Response:** The site has adequate infrastructure services to cater for the needs of the development. There is no aspect of the planning proposal that will increase demand on infrastructure or infrastructure services. In our opinion the use satisfies this principle.

Council Officer Assessment: GSA's comments are supported, although the Planning Proposal seeks permission for a use that is beyond rural housing.

- (h) **GSA Response:** This Planning Proposal has considered the consistency of the use with the Sydney-Canberra Corridor Regional Plan and the Wingecarribee Community Strategic Plan. It has been determined that the continuation of the use is appropriate in this instance (see Section 6.0) and in our opinion that the use is consistent with this principle.

The subject site has been in continuous use by Berrima Diesel Services since 1985 and the use does not compromise the agricultural potential of surrounding areas. The planning proposal involves the continuation of an established use that has a good history of responsible environmental management.

It is our opinion that there will not be any adverse environmental impacts as a result of the continuation of the use and, as outlined, the proposed development is unlikely to compromise any endangered species, habitat or generally have adverse biodiversity impacts as there is no proposed building work or intensification of the use.

The site specific nature of the planning proposal will not result in widespread impacts in terms of housing provision, opportunities for rural lifestyle, nor will it result in impacts on infrastructure and services.

In summary, the proposal satisfies the objectives of S. 117 Direction 1.5 Rural Lands and is consistent with the Rural Planning Principles that are contained in the Rural Land SEPP.

Council Officer Assessment: GSA's comments are not supported. The Planning Proposal is mostly inconsistent with the Sydney-Canberra Corridor Regional Strategy as discussed previously in this report.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The Planning Proposal was referred to the Sydney Catchment Authority (SCA) for comment. The SCA's complete response is contained in Appendix 6.

In respect of the SEPP the SCA has emphasised that any subsequent development application, if the Planning Proposal is supported, will also require the concurrence of the SCA before any consent is issued. The SCA would assess the development in accordance with SEPP. In that case the proposal must satisfy that it has a neutral or beneficial effect (NorBE). Whilst the SCA has made recommendations if the use where to remain onsite, further studies are required prior to Council or the SCA being satisfied that NorBE can be achieved onsite.

It is recommended that if the Gateway is supportive of the application, that Direction be given requesting the provision of relevant studies to investigate if the site is capable of satisfying the NorBE principles and that the SCA review those studies.

6. Is the Planning Proposal consistent with applicable section 117 Directions?

An assessment of the 117 Directions has been undertaken in respect of the Planning Proposal. All relevant Directions are addressed as follows:

1. Employment and Resources

- 1.1. Business and Industrial Zones – Not relevant
- 1.2. Rural Zones – Not relevant
- 1.3. Mining Petroleum and Extractive Industries – Not relevant
- 1.4. Oyster Aquaculture – Not relevant

- 1.5. Rural Lands

This Direction applies as the land as it affects land within an Environmental Protection zone. The Planning Proposal is in principle considered to be inconsistent with this Direction as it does not fully satisfy the Rural Planning Principles contained in Clause 7 of the Rural Land SEPP as addressed under Item 5 previously in this report.

Further, the Planning Proposal cannot be considered to be justifiably inconsistent either as Council is unable to satisfy the Director-General (DG) of the Dept. of Planning and Infrastructure or an Officer nominated by the DG that the provisions of the Planning Proposal are justifiably inconsistent because:

- (a) There is no strategy adopted by the Council or approved by the DG that gives consideration to the objectives of this direction; and
- (b) Identifies that the subject site should contain a *vehicle repair station* as a permissible use; and
- (c) The subject use is not considered to be of minor significance due to the potential impacts on the Landscape Heritage Conservation Area.

2. Environment and Heritage

2.1. Environment Protection Zones

This Direction applies as the land is within an E3 Environmental Management zone, is within a Landscape Heritage Conservation zone and there is a community of identified EEC Southern Highlands Shale Woodland on the site.

GSA Planning's comments (page 19) are not supported. Part of the environmental protection standards contained in an LEP are the restriction of particular land uses in the Land Use Tables. A *vehicle repair station* is currently prohibited on the subject land. Therefore the Planning Proposal, by amending Schedule 1 would reduce the environmental protection standards under WLEP 2010 pertaining to the land. Therefore the Planning Proposal is inconsistent with this Direction.

Further the Planning Proposal is not considered to be justifiably inconsistent either, as Council is unable to satisfy the Director-General (DG) of the Dept. of Planning and Infrastructure or an Officer nominated by the DG that the provisions of the Planning Proposal are justifiably inconsistent because:

- (a) There is no strategy adopted by the Council or approved by the DG that gives consideration to the objectives of this direction; and
- (b) Identifies that the subject site should contain a *vehicle repair station* as a permissible use;
- (c) There is no study prepared in support of the planning proposal which gives particular consideration to the objectives of this direction;
- (d) The planning proposal is not consistent with the provisions of the Sydney-Canberra Corridor Regional Strategy 2006 to 2031; and
- (e) The subject use is not considered to be of minor significance due to the potential impacts on the Landscape Heritage Conservation Area.

2.2. Coastal Protection – Not relevant

2.3. Heritage Conservation

This Direction applies to the Planning Proposal as it is located within a Heritage Landscape Conservation Area as identified by Heritage Map – Sheet HER_007A. The submission by GSA Planning does not discuss this Direction.

This Planning Proposal is inconsistent with this Direction as it does not contain any provisions that facilitate the conservation of a precinct of environmental heritage significance to the Berrima village area in which it is located, that being the Heritage Landscape Conservation Area.

Further, the Planning Proposal cannot be considered to be justifiably inconsistent either, as Council is unable to satisfy the Director-General (DG) of the Dept. of Planning and Infrastructure or an Officer nominated by the DG that the provisions of the Planning Proposal are justifiably inconsistent because:

- (a) the proposed amendment to the WLEP 2010 (that is currently in place to conserve the significance of the Heritage Landscape Conservation Area) will amend the WLEP 2010 in a manner that is contrary to the protection of the Heritage Conservation Area by allowing what is currently a prohibited use on the subject site, and
- (b) the subject use is not considered to be of minor significance due to the potential impacts on the Landscape Heritage Conservation Area.

2.4. Recreation Vehicle Area – Not relevant

3. Housing, Infrastructure and Urban Development

3.1. Residential Zones – Not relevant

3.2. Caravan Parks and Manufactured Home Estates – Not relevant

3.3. Home Occupations

This Direction is not relevant as the unapproved use is not contained to the dwelling and is of scale that could not be considered to be a *home occupation* as defined in WLEP 2010, that is permissible in the E3 Environmental Management zone without development consent. The reasons it cannot be considered to be a home occupation are as follows:

- (a) The business operations employ other persons who do not reside at the residence;

- (b) The operations of the business have interference with the amenity of the neighbourhood by reason of the emission of noise, and has the potential to interfere by fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
- (c) Goods for sale are displayed on site;
- (d) There is the exhibition of signage other than a business identification sign on site.
- (e) The site is used for the retail sale of goods, namely the sale of and fitting D-Chips and other accessories to Diesel powered vehicles (refer to www.berrimadiesel.com/home/).

However, should the Business operations be scaled down such that they complied with a home occupation, a Planning Proposal or subsequent development application would not be required.

- 3.4. Integrated Land Use and Transport – Not relevant
- 3.5. Development Near Licensed Aerodromes – Not relevant
- 3.6. Shooting Ranges – Not relevant

4. Hazard and Risk

- 4.1. Acid Sulfate Soils – Not relevant
- 4.2. Mine Subsidence and Unstable Land – Not relevant
- 4.3. Flood Prone Land – Not relevant

4.4. Planning for Bushfire Protection

This Direction applies to the Planning Proposal as the subject land is mapped as being bushfire prone. Should a Gateway Determination be made in favour of this Planning Proposal it will need to be referred to the NSW Rural Fire Service for comment. Therefore, at this stage the Planning Proposal is considered to be inconsistent pending further studies by the applicant and referral to the NSW Rural Fire Service for comment, noting that the GSA Planning submission does not address this Direction.

5. Regional Planning

5.1. Implementation of Regional Strategies

This Direction applies to the Planning Proposal in respect of the Sydney – Canberra Corridor Regional Strategy 2006 to 2031. The Planning Proposal is considered to be mostly inconsistent with this Direction as discussed previously in this report under Section B (3).

5.2. Sydney Drinking Water Catchment

This Direction applies to the Planning Proposal as the Wingecarribee Shire local government area falls within the Sydney Drinking Water catchment. Whilst the GSA Planning submission (page 19) discusses this Direction, the Planning Proposal has been forwarded to the Sydney Catchment Authority (SCA) for comment, as required by this Direction. The SCA comments are included in full as Appendix 6, however are summarised as follows:

- The SCA would normally object to a proposal for a vehicle repair station on an unsewered site adjacent a watercourse, however this is an unusual situation as the vehicle repair station already exists.
- The SCA's preference would be for the use to be transferred to a sewered site in an industrial zone.
- If the use cannot be moved to a more suitable location, the SCA supports the application of strict environmental regulation and management measures to avoid impacts on water quality.
- It is particularly recommended that the transfer and treatment of industrial wastewater off-site be considered, and that ongoing monitoring for impacts on water quality occur.

The SCA's preferred position would be for the vehicle repair station to be transferred to a more suitable site in a designated industrial area that has connection to Council's sewerage system. However, they have also made significant recommendations should the use remain on the subject site, which are:

- The location and size of the existing absorption bed to dispose of industrial water should be shown on all plans and diagrams;
- Further investigation is required to confirm whether the absorption bed has the capacity to deal with extra stormwater flows;
- It is strongly recommended that the treatment of industrial wastewater off-site is used as an alternative to on-site land disposal.

In conclusion the SCA has emphasised that any subsequent development application, if the Planning Proposal is supported, will also require the concurrence of the SCA before any consent is issued. The SCA would assess the development in accordance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. In that case the proposal must satisfy that it has a neutral or beneficial effect (NorBE).

However, without any evidence that the proposal satisfies the NorBE principles, it can only be considered to be inconsistent with this Direction

5.3. Farmland of State and Regional Significance on the NSW Far North Coast – Not relevant

5.4. Commercial and Retail Development along the Pacific Highway – Not relevant

- 5.5. Revoked
- 5.6. Revoked
- 5.7. Revoked
- 5.8. Second Sydney Airport: Badgerys Creek – Not relevant

6. Local Plan Making

6.1. Approval and Referral Requirements

This Direction applies to all Planning Proposals. The Planning Proposal is considered to be inconsistent with this clause, as the proposed resulting development application will require concurrence, consultation or referral to several public authorities, such as NSW Rural Fire Service, Sydney Catchment Authority, Department of Environment and Heritage and any others deemed necessary during the development assessment process.

The GSA Planning submission does not address this direction.

6.2. Reserving Land for Public Purposes – Not relevant

6.3. Site Specific Provision

This Direction applies to the Planning Proposal as it amends an Environmental Planning Instrument (WLEP 2010) to allow a particular development to be carried out that is currently a prohibited use on the land that is the subject of the Planning Proposal.

The GSA Planning submission addresses this Direction (page 21). Their comments are supported in this instance as the Planning Proposal is requesting an amendment to Schedule 1 to allow a *vehicle repair station* on : Lots 8 to 17 inclusive Section 40 DP 758098, Rural No. 3482 Old Hume Highway, Berrima. No other development standards are being requested to be imposed.

The Planning Proposal is therefore considered to be consistent with this Direction.

7. Metropolitan Planning

7.1. Implementation of the Metropolitan Plan for Sydney 2036 – Not relevant

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 Planning Proposal?

It is currently unknown whether any critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Planning Proposal. There is EEC Southern Highlands Shale Woodland identified on the site. The GSA Planning submission (page 22) fails to recognise this presence. No studies have been lodged with the Planning Proposal in this respect.

Further, the current unapproved use, buildings and other ancillary structures on the site have been developed without any assessment of their impact on these matters in the past.

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

As discussed in '7.' above, there is EEC on the site. The SEEC report states that a new sewerage waste management system needs to be installed on the site as the current system is not capable. The new system is proposed in close proximity to the EEC. However, no assessment on the potential impacts to the EEC are discussed in the GSA Planning submission.

Potential impacts on the nearby Category 3 Riparian Corridor were assessed by the SCA, whose comments have previously been discussed in the report and are included in full as Appendix 6. The SCA's preference would be for the vehicle repair station to be relocated to a suitable industrial zoned site with connection to Council's reticulated sewerage system. Notwithstanding, if the use were to remain on the subject site further studies are required to confirm whether the absorption bed has the capacity to deal with extra stormwater flows and that the development can satisfy NorBE principles.

It is recommended that should the Planning Proposal be supported by the Gateway that studies be required to determine impacts on the EEC and water quality.

9. Has the Planning Proposal adequately addressed any social and economic effects?

The GSA Planning submission discusses this question on page 22 in terms of how the Berrima Diesel Service business supports the Berrima economy, which is supported by the elected Councillors. However, the GSA Planning submission does not discuss the effects on items or places of European or Aboriginal Heritage as required by 'A guide to preparing planning proposals'. As discussed elsewhere in this report the site is located with a Landscape Heritage Conservation Area and the GSA Planning submission fails to address this issue in any manner or form. As such the GSA Planning submission is

considered to be fundamentally flawed in this respect and such potential impacts on the Heritage Landscape Conservation Area and other surrounding identified heritage items cannot be adequately quantified.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Yes. However, reticulated sewerage is not available to the site. Waste generated on the site must be dealt with on-site and by waste collection services. No additional demand on current infrastructure services resulting from the Planning Proposal are foreseen.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Further public authority consultation will occur through the exhibition period as required in the Gateway Determination.

PART 4 – MAPPING

The draft maps suitable for public exhibition are attached over page. These are based on the current relevant LEP maps and have been appropriately annotated to enable the subject land to be easily identified during consultations.

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 1 - Identification of Subject Site – Large Scale



PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 2 - Aerial Photo - Small Scale



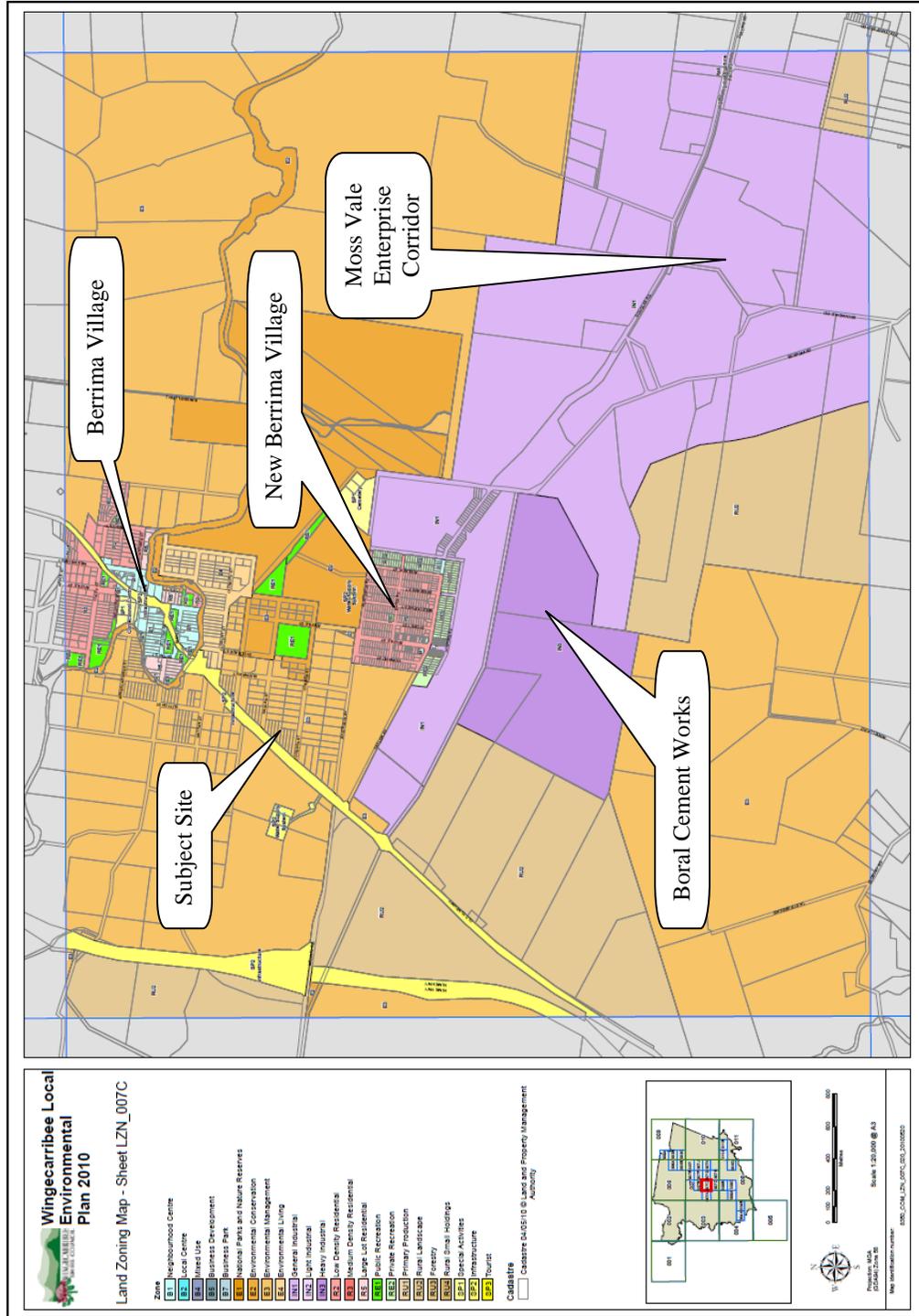
Figure 3 - Aerial Photo - Development Onsite



PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 4 - Zoning Map LZN-007C



PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 5 - Extract of Zoning Map



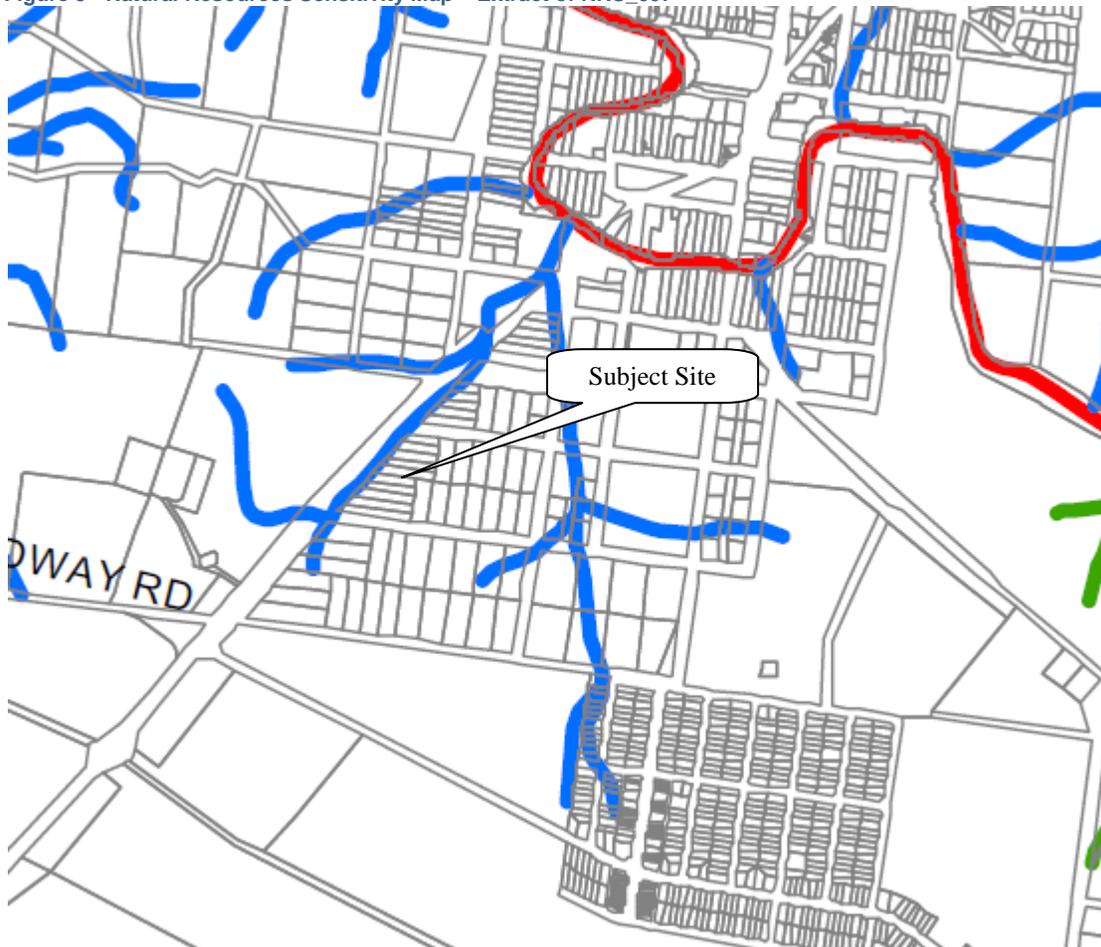
PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 8 - Vegetation Map



Figure 9 - Natural Resources Sensitivity Map – Extract of NRS_007



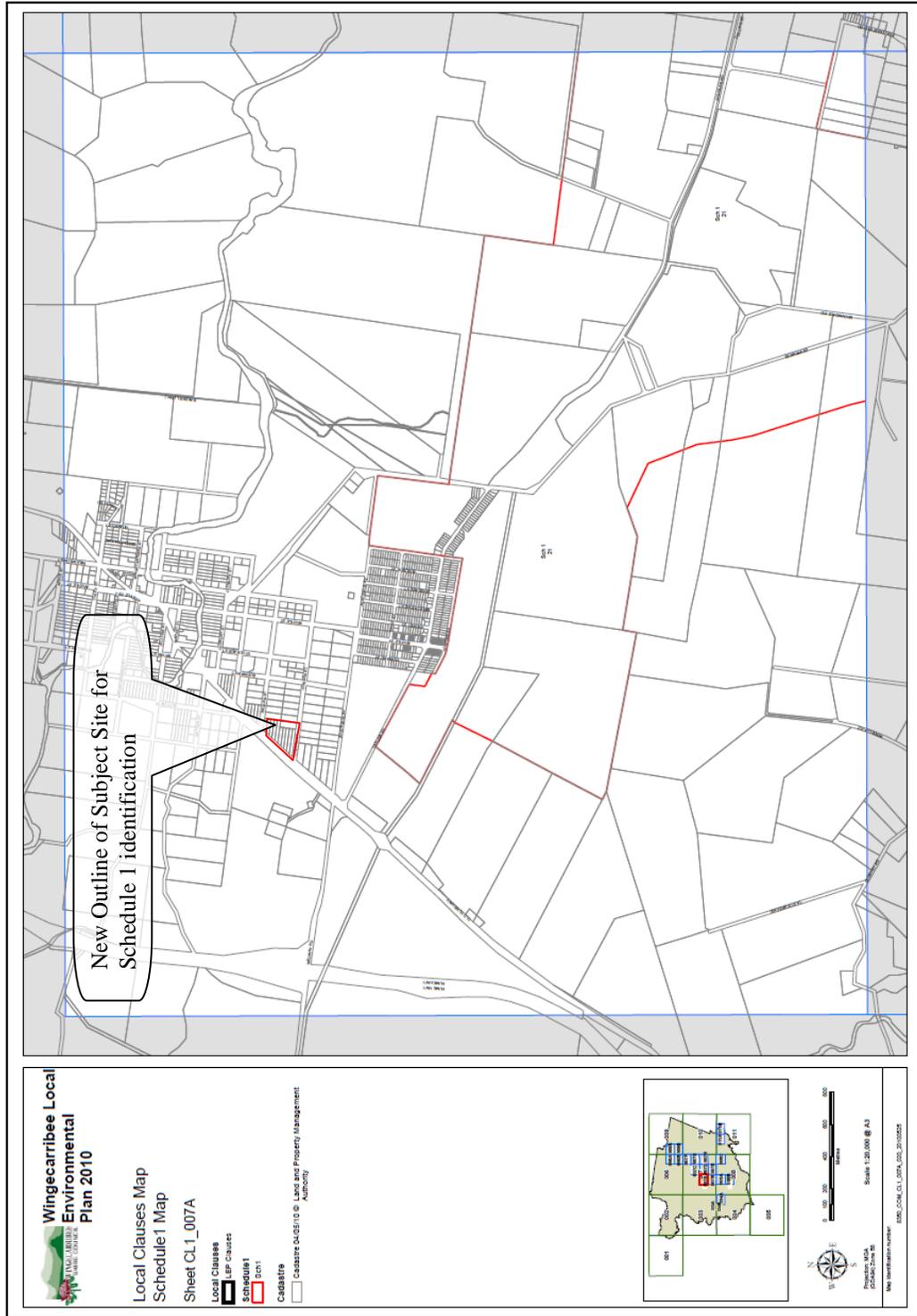
Riparian Land

- Category 1 - Environmental Corridor
(within 50 metres from the top of stream bank on each side)
- Category 2 - Aquatic & Terrestrial Habitat
(within 30 metres from the top of stream bank on each side)
- Category 3 - Bank Stability & Water Quality
(within 10 metres from the top of stream bank on each side)

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Figure 10 - Proposed Amendment to Sheet CL1_007A



PART 5 – COMMUNITY CONSULTATION

It is recommended that the Planning Proposal be publicly exhibited for a period of 28 days, should it be supported by the Gateway.

If so it is recommended that the following Government agencies be referred the Planning Proposal for comment:

- Department of Environment and Heritage
- NSW Rural Fire Service
- Any other public agency the Gateway sees fit.

Council intends to place the planning proposal on public exhibition by advertising in the local newspaper, making it available on Council's website, mail out to Berrima residents, mail to Berrima Residents Association and mail to Southern Highlands Branch of the National Trust.

Included in Appendix 5 are submissions made to Council on the Planning Proposal prior to it being considered by Council at its meetings of the 13 February and 13 March 2013.

PART 6 – PROJECT TIMELINE

The key dates for the Planning Proposal are:

- Referral to Sydney Catchment Authority – 8 April 2013
- Approximate Gateway Determination - Mid June 2013
- Completion of technical studies (if supported) - at least 3 months, thus late September 2013
- Revised/updated Planning Proposal – late October 2013
- Public Exhibition/Consultation with government agencies – November 2013
- Report to Council on exhibition/final Planning Proposal – February/March 2014
- S59 submission to DP&I – March/April 2014
- Approximate completion date – May/June 2014

DELEGATIONS

Council is not applying to use its delegations to complete this Planning Proposal due to the political nature of the proposal.

Appendix One

Council Report from Ordinary Meetings of 13 February and 13 March 2013

CORPORATE & STRATEGY

v-CS1 Berrima Diesel Planning Proposal

Reference: 5901, PN 709300
Responsible Officer: Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council a Planning Proposal prepared by GSA Planning on behalf of the Owners of Berrima Diesel to amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to allow the use of a 'vehicle repair station' to be permissible upon the subject site known as Rural Number 3482 Old Hume Highway, Berrima (Lots 8 to 17 inclusive, Section 40, DP 758098).

It is recommended that Council does not prepare a Planning Proposal for Gateway Determination for the following reasons:

- A *vehicle repair station* is contrary to the objectives of the E3 Environmental Management zone under Wingecarribee Environmental Plan 2010;
- A *vehicle repair station* is contrary to the objectives of Clause 5.10 Heritage Conservation Clause and Heritage Conservation – Landscape area applying to the subject land under Wingecarribee Environmental Plan 2010

DESCRIPTION OF PROPOSAL

BACKGROUND

At its Ordinary Meeting of 26 September 2012 Council made the following resolution in Closed Council:

- “1. *THAT* in the matter of *Leimroth v. Wingecarribee Shire Council, Land and Environment Court matter No 10470 of 2012*, Council instruct its panel solicitors to seek from the Court a period of three (3) years from 21 September 2012 for the applicant to comply with an order requiring it to cease use of the premises known as *Berrima Diesel Service, on Lots 8 to 17 inclusive, Section 40, DP 758098 at RN 3483 Old Hume Highway, Berrima*, for the purpose of a “vehicle repair station”.

2. *THAT Council invite the owners of Lots 8 to 17 inclusive, Section 40, DP 758098, RN 3483 Old Hume Highway, Berrima, to submit a planning proposal seeking amendment of the Wingecarribee Local Environmental Plan to permit the continuing use of the property as a “vehicle repair station”.*
3. *THAT such invitation note that the possible success of said planning proposal will be subject to Council and NSW Department of Planning approval.*
4. *THAT such invitation encourage the owners to submit said planning proposal, as a matter of urgency.”*

On 28 November 2012 a Planning Proposal prepared by GSA Planning was submitted to Council on behalf of the owners of Berrima Diesel.

The Planning Proposal submission is the subject of this report.

Site History

- The GSA Planning Proposal states that ‘Berrima Diesel Services’ commenced operating from the subject site in 1985.
- On 3rd April 1990, in response to an enquiry from the property owner, Council issued correspondence noting that the property had been used for considerable time and that it had ‘existing use rights’.

Note: The advice issued in this letter by Council’s Town Planner at the time was incorrect as the use had never been approved by Council in the past by way of development consent. Further at no stage under any Planning Instrument since 1969, has a ‘*vehicle repair station*’ been a ‘*permissible with consent*’ use on the site; i.e. all Planning Instruments since that time have prohibited such a use.

- On 26 May 2010 Council received a letter of complaint regarding the operation of the business. Council staff subsequently inspected the subject site.
- On 1 May 2012 Council served an Order, pursuant to Sections 121B that required the owners to cease the use of the premises as a ‘*vehicle repair station*’ for the following reasons:
 - a. There is no development consent for that use;
 - b. That use is not an “existing use” as defined in the EPA Act; and
 - c. The land on which that use is being undertaken is in Zone E3 Environmental Management in WLEP 2010;
 - d. Under the WLEP 2010 a “*vehicle repair station*” is a prohibited use in zone E3.

- Berrima Diesel appealed the Order and the matter became one for the Land and Environment Court to determine. However, Council in close consultation with Berrima Diesel, negotiated a three year period for Berrima Diesel to relocate their premises and, in the meantime, have pointed out to Berrima Diesel the avenues available to it, including its ability to submit a Planning Proposal to seek spot-zoning of the land to legitimize the future use following public consultation and assessment (refer to Council resolution 26 September 2012). However a neighbour has objected to this course of action and has joined the proceedings, objecting to the terms of this proposed settlement.
- Nevertheless a Planning Proposal prepared by GSA Planning on behalf of Berrima Diesel was lodged with Council on 28 November 2012 and Council is obliged to consider the Planning Proposal regardless of the Land and Environment Court proceedings. The Planning proposal is the subject of this report.

DETAILS OF PROPOSAL

Subject Site and Locality

The subject site containing the Berrima Diesel Service business is known as “Tyacona” Rural Number 3482 Old Hume Highway, Berrima, Lots 8 to 17 inclusive, Section 40, DP 758098. The subject site is shown in Figure 1 and Figure 2 below:

Figure 1 - Extract of images of Berrima Diesel Site from GSA Planning Report



Photograph 1: Vegetation to the north of the hardstanding area.



Photograph 2: Recently planted landscaping on the subject site and dense bushland on the neighbouring site.

Figure 1 Continued...



Photograph 3: The entrance to the subject site off the Old Hume Highway.



Photograph 4: The existing dwelling on the subject site.

Existing Built form on Subject Site



Figure 2 - Aerial Photo of Site



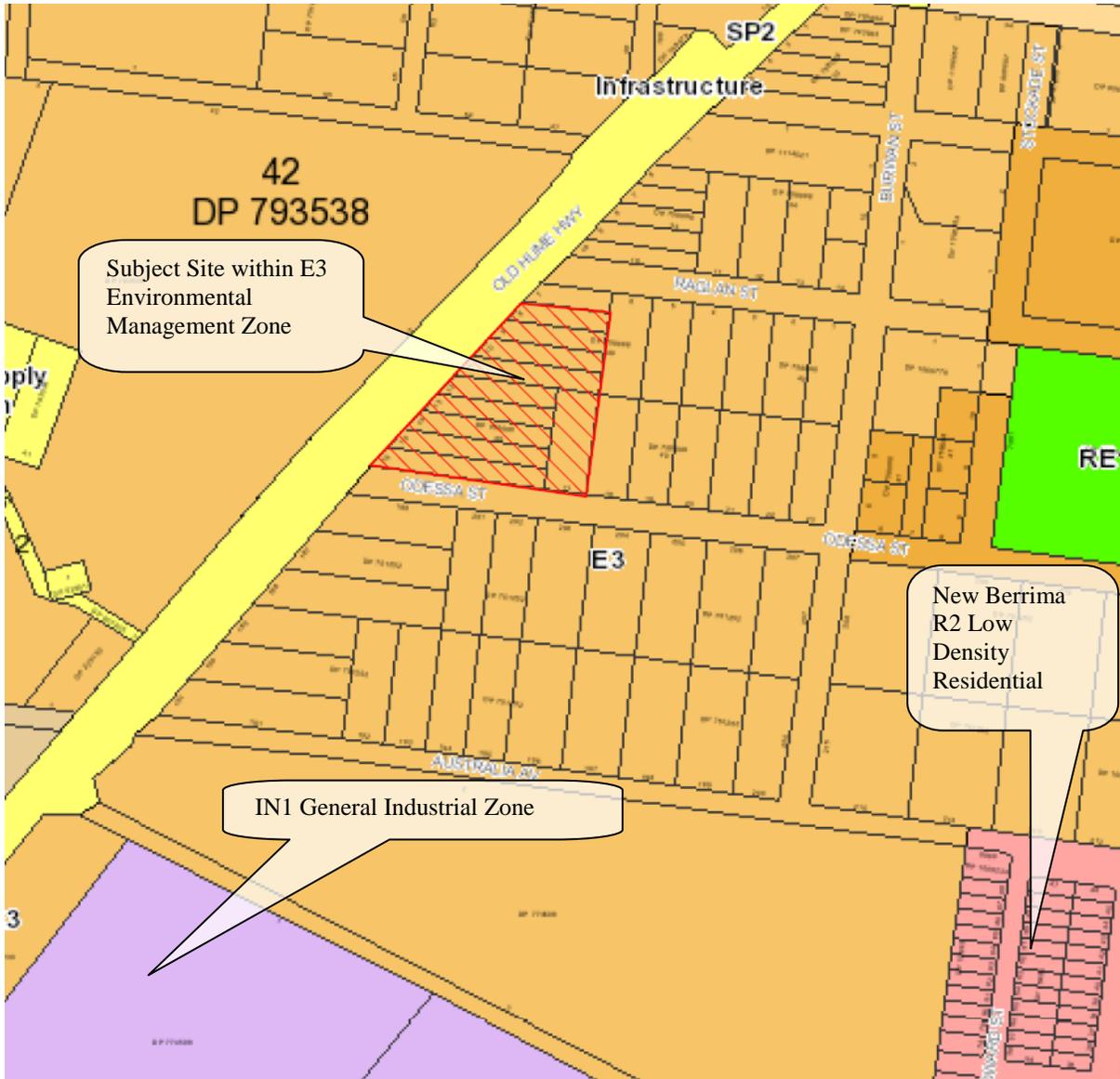
The aerial photograph demonstrates that the subject site is primarily surrounded by a rural landscape with rural residential land uses to both the immediate north and south. However, the site is also in close proximity to the residential suburb of New Berrima to the south east and Berrima to the North East

The subject site is currently zoned E3 Environmental Management as shown in Figure 3.

Figure 3 also demonstrates that there is a R2 Low Density Residential zone to the south east (New Berrima) and an IN1 General Industrial zone to the south and southeast (part of the Moss Vale Enterprise Corridor).

Further, Figure 4 demonstrates that the subject site is located within the Berrima Landscape Conservation Area and has several properties containing Heritage Items within close proximity. The heritage provisions, Clause 5.10 of the WLEP 2010, and their implications on the Planning Proposal are discussed later in the report.

Figure 3 - Zoning Map for Subject Site



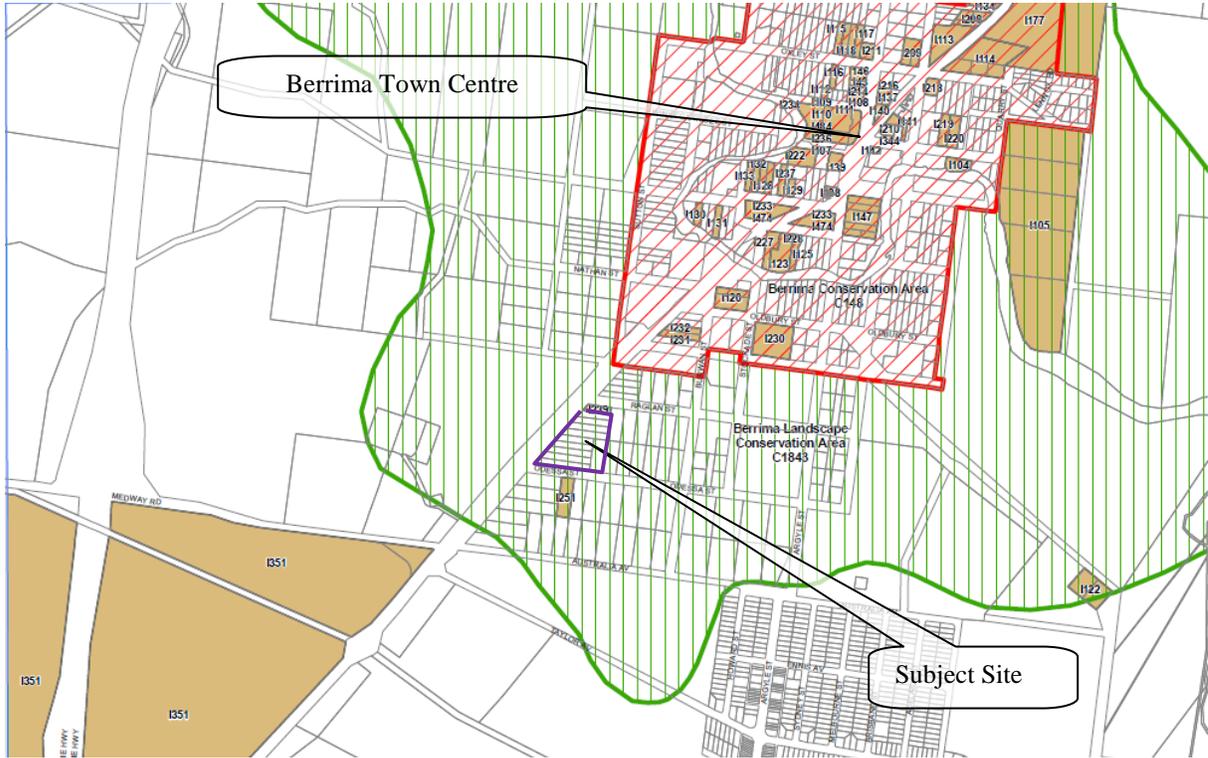
Zoning Map Key:

- E3** Environmental Management
- E2** Environmental Conservation
- IN1** General Industrial
- R2** Low Density Residential

RE1 Public Recreation

SP2 Infrastructure

Figure 4 - Heritage Map



Heritage Map - Sheet HER_007A

Heritage

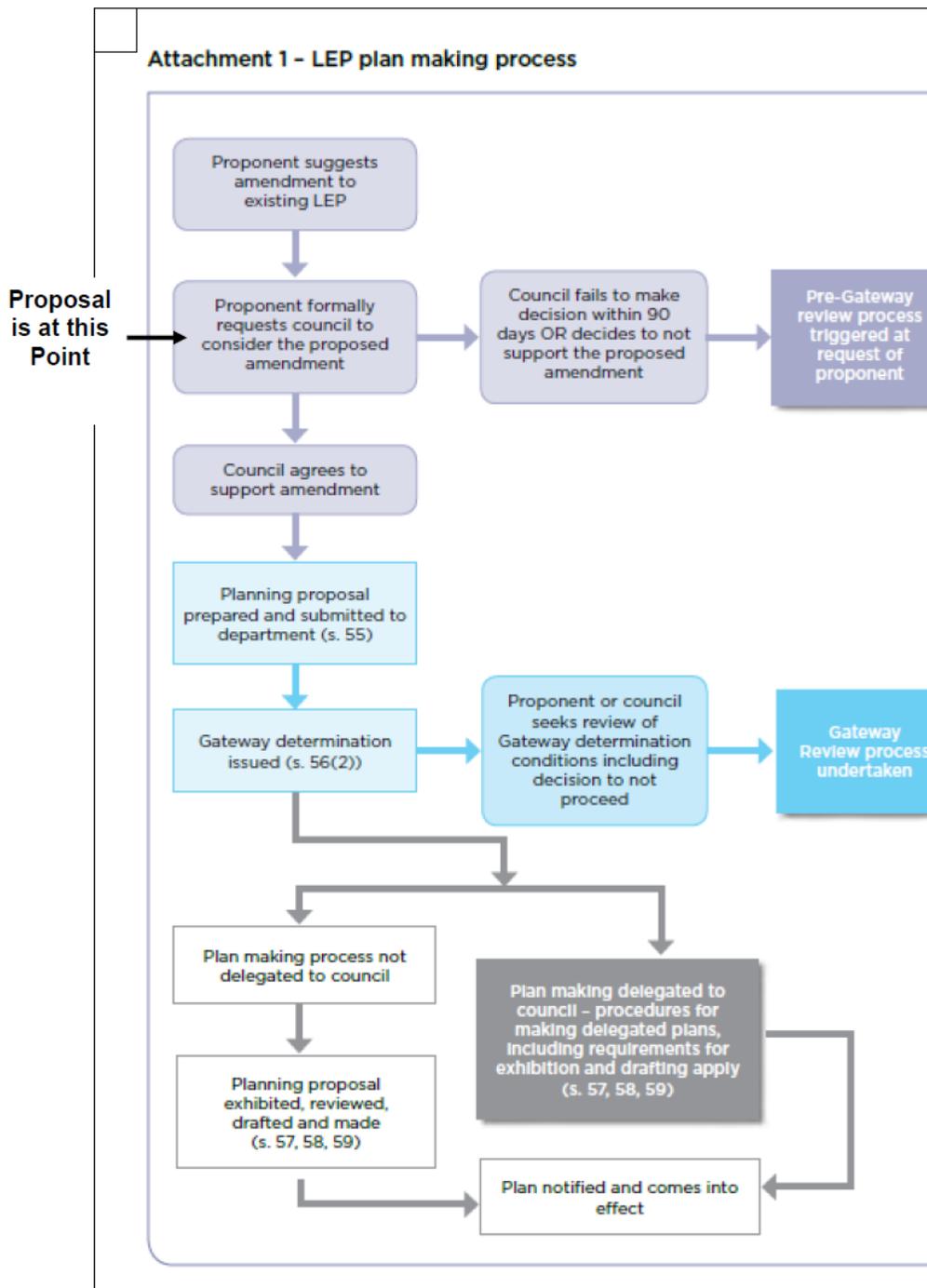
-  Conservation Area - General
-  Conservation Area - Landscape
-  Item - Archaeological
-  Item - General
-  Item - Landscape

Cadastre

-  Cadastre 04/05/10 © Land and Property Management Authority

PLANNING PROPOSAL PROCESS

A flowchart of the Planning Proposal Process is provided below:



This Planning Proposal is at the very initial stage of the process (Step 2 in flowchart), where Council considers the Planning Proposal lodged by the applicant and whether or not to proceed. If Council decides to proceed then the process will follow through to Step 5, where a Gateway determination is issued either in favour or not in favour of the Planning Proposal, which will either end it or continue the process.

Should Council or the Gateway Determination end the process, the applicant does have appeal rights that were recently introduced at the end of 2012. Those appeal rights are summarised as follows:

1. If an applicant is not satisfied with the outcome of a determination by Council with regard to the rezoning request, or if the request is not determined within 90 days, the applicant may seek a 'pre-Gateway' review through the JRPP (Joint Regional Planning Panel).
2. If Council does resolve to support the Planning Proposal, but the Gateway Determination is not supportive, or is considered too restrictive by either the Council or the applicant, a review of the Gateway Determination may be requested by the JRPP.
3. If the proponent or Council is not satisfied with the Gateway determination, a review may be requested. These reviews are informed by advice from the Planning Assessment Commission (PAC).

The *Environmental Planning & Assessment Regulation 2000* has been amended to allow the charging of certain fees for the reviews set out above.

STATUTORY PROVISIONS

ASSESSMENT - KEY ISSUES

Existing Use Rights

'Existing Use Rights' are described in Sections 106 to 109B Division 10 Part 4 of the Environmental Planning and Assessment Act 1979 (EPA Act). The Act explains that 'Existing Use Rights' come about if a lawfully approved use that was granted Development Consent by Council, as it was permissible in the zone applying to the land at the time of the approval, later becomes a prohibited use due to a change in the zoning applying to the Land or another type of amendment to the Local Environmental Plan applying to the land.

This Division of the Act therefore allows lawfully approved developments to continue operating in a zone that they may now be prohibited in. The Division also explains that any Development that has 'Existing Use Rights' is not authorised to expand/enlarge

operations or carry out any building works/alterations without the necessary approvals of Council, i.e. further Development Consents.

Council's records indicate that no development consents have ever been issued on the subject site in respect of approving a 'vehicle repair station'. Further, Council's records also indicate that no Environmental Planning Instruments in the form of Interim Development Orders (IDOs) or Local Environmental Plans (LEPs) that have applied to the land in the past have ever allowed a 'vehicle repair station' as a use permissible with consent. In fact the IDOs and LEPs that have applied to the land since the Berrima Diesel Owners claim that they have operated business, have always prohibited the use of a vehicle repair station on the site.

Therefore, as the use has always been prohibited and that no development consent has ever been given or able to be given on the site, 'Existing Use Rights' under the provisions of the EPA Act cannot be claimed by Berrima Diesel. Further, no Development Consents have ever been issued for the site in respect of any expansion of the business operations or alterations and additions to the buildings in which the Business operates.

Unfortunately Council's Town Planner at the time issued a letter dated 3 April 1990 in response to an enquiry from Berrima Diesel, stating that the Berrima Diesel operation had 'existing use rights'. Council's records show that this letter was issued in error, as the Town Planner must have made an assumption about the operation of the business and not checked Council's records. Based on this advice, Berrima Diesel has continued to operate on the site and expand its operations, although they should have lodged Development Applications for any expansion of the use and/or alterations and additions to buildings in the past.

Wingecarribee LEP2010 - Zoning

The subject site is zoned E3 Environmental Management under WLEP 2010. Below is an extract of the Land use Table contained in WLEP 2010 for the E3 zone:

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns.
- To minimise the proliferation of buildings and other structures in these sensitive landscape areas.
- To provide for a restricted range of development and land use activities that provide for rural settlement, sustainable agriculture, other types of

economic and employment development, recreation and community amenity in identified drinking water catchment areas.

- To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Wingecarribee's longer term economic sustainability.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home-based child care; Home occupations

3 Permitted with consent

Airstrips; Aquaculture; Bed and breakfast accommodation; Community facilities; Dairies (pasture-based); Dual occupancies (attached); Dwelling houses; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Health consulting rooms; Helipads; Home businesses; Horticulture; Information and education facilities; Places of public worship; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Secondary dwellings; Signage; Viticulture; Water storage facilities

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

The use of the site as 'Berrima Diesel Service' is best described by the definition of '*vehicle repair station*', as contained in WLEP 2010 in the Dictionary as follows:

vehicle repair station means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.

A vehicle repair station is clearly prohibited in the E3 zone as it is not contained in the Permitted without Consent and Permitted with Consent clauses (2 & 3) within the Land Use Table. Therefore Council is unable to accept and determine a Development Application for that type of use on the site.

The only option available to allow a Development Application to be determined on the site is to amend the WLEP 2010 in such a way that would allow a '*vehicle repair station*' to be a permissible use on the site. There are a few options available to Council to achieve such an amendment to the WLEP 2010, which are:

1. Amend Schedule 1 of WLEP 2010 by inserting the following:

Use of certain Land Old Hume Highway, Berrima

- a. This clause applies to Land at Old Hume Highway, Berrima being, Lots 8-17 Section 40, DP 758098
 - b. Development for the purposes of vehicle repair station is permitted with consent.
2. Amend the Land Use Table under E3 Environmental Management to include *vehicle repair station* as a use that is Permissible with Consent.
 3. Rezone the site to any one of the following zones that allow *vehicle repair stations* as Permissible with Consent: IN1 General Industrial, IN2 Light Industrial, B2 Local Centre, B4 Mixed Use, B5 Business Development and B7 Business Park.

Should Council resolve to amend the WLEP 2010 to allow the use on the subject site the first method is considered the most appropriate. This is due to the site specific nature of the development currently occurring onsite and the circumstances of how it came into being. The second method is not preferable as it would allow applications to be lodged for vehicle repair stations throughout the E3 Environmental Management Zone across the shire. The third method is not recommended either, as the current operations could be vacated for another use permitted in one of the optional zones that was previously not permitted in the E3 Environmental Management zone.

Essentially Option 1 is the only option that maintains the E3 Environmental Management zone and restricts the use of the site to a vehicle repair station and other uses as already permitted in the E3 Environmental Management zone.

However, Council must consider the precedent this may set for other long standing non-conforming uses within the Shire and whether or not the particular use can reasonably meet the objectives of the E3 Environment Management zone, as reproduced above. In particular a *vehicle repair station* by its very nature will have difficulty with the following *inter-alia*:

“...protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values...”

“...provide for a limited range of development that does not have an adverse effect on those values...”

“...encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns...”

“...minimise the proliferation of buildings and other structures in these sensitive landscape areas...”

“...provide for a restricted range of development and land use activities that provide for rural settlement, sustainable agriculture, other types of economic and employment development, recreation and community amenity in identified drinking water catchment areas...”

Considering these objectives, even if the use met all environmental operating requirements, i.e. collection of oils, grease traps, wash down areas etc; the current illegal use is contrary to the retention of the historic landscape and has encouraged a proliferation of buildings on the site. Notwithstanding, in respect of the objectives, GSA Planning has provided responses on behalf of Berrima Diesel on Page 7 of the submitted Planning Proposal. Those responses are summarised and addressed as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

GSA Response: Berrima Diesel has retained and embellished vegetation along the road frontage, as well as within the site, which is managing the ecological values of the area. Berrima Diesel Services also makes use of scientific processes as it is an installer of Diesel Power Chips, which increase the efficiency of diesel engines and reduce emissions.

Strategic Planning Comment: Whilst the retention and embellishment of vegetation is recognised on particular parts of the site, as the use has never sought any lawful approvals from Council as it has expanded, the impact of the Development on the site in respect of ecological, scientific, cultural or aesthetic values has never been assessed or quantified by Council or other relevant Authorities.

Further, it is out of context to state that fitting Diesel Power chips to diesel powered vehicles, meets this objective. This objective clearly states that E3 zone is to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. The installation of the chips maybe a scientific process, however that process could be carried out in any lawfully approved vehicle repair station and has no relationship with the natural values endemic to the site and surrounding locality. In fact the expansion of the buildings and other ancillary structures on the site that have never been lawfully approved may have damaged ecological, scientific, cultural or aesthetic values endemic to the site.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

GSA Response: The business has been in operation for 27 years and in this time, the owners have taken every available step to minimise potential impacts on adjoining properties – specifically the use is low intensity, does not generate any unreasonable noise, operates during reasonable hours and shields flood lighting. Studies for stormwater management have also been undertaken.

Strategic Planning Comment: Whilst the business may have been operating for 27-years with minimal impact upon adjoining neighbours, the intent of this objective is reflected in the uses that are permissible and prohibited in the zone due to the potential

impacts particular uses could have within the zone on the ecological, scientific, cultural or aesthetic values. A vehicle repair station is a prohibited use in the E3 Zone as these types of uses have the potential to have adverse impacts on the values discussed in the first objective. For example, fuel and chemical spills, large industrial sheds, modification to natural landscape and loss of biodiversity etc. Notwithstanding, should a Planning Proposal be supported, any subsequent Development Application lodged with Council to formalise the use would need to address such potential issues

- *To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns.*

GSA Planning Response: Although the site has no specific heritage value, the retention of the dwelling on the subject site has preserved the character and setting of the area. In addition to this, the location of the sheds to the rear of the dwelling and behind extensive screening is sympathetic to the surrounding land use pattern.

Strategic Planning Comment: It is recognised that the site has no specific heritage items; however it is located within a Heritage Landscape Conservation Area and has several heritage items located in vicinity on neighbouring sites. Therefore, there are particular responsibilities upon the owner of the site and consent authorities to ensure the Heritage Landscape Conservation Area is maintained. As the development on the site is well screened and not visible at street level, it could be argued that the character of the area has been maintained. However, with greater access to online media such as Google Map, Google Earth, and Fly-Over views for navigation applications on smart phones and tablets the streetscape is not the only visual impact to be considered. As the aerial photo shows, the development is quite discernable from other surrounding developments, and is clearly not in keeping with the land use patterns of the Heritage Landscape Conservation Area.

- *To minimise the proliferation of buildings and other structures in these sensitive landscape areas.*

GSA Planning Response: As outlined, the owners of the site have ensured that landscaping on the subject site has been maintained and embellished and that built form has been sensitively integrated with the surrounding landscape.

Strategic Planning Comment: The unlawful use of the site has resulted in the proliferation of buildings and ancillary structures on the site without any Council approval, which is contrary to the objective. As a result the owners have carried out extensive landscaping to screen these buildings from external locations. The intent of this objective is to ensure the natural landscape and aesthetic values of the locality are maintained, rather than modified to screen inappropriate placement of buildings or land uses.

- *To provide for a restricted range of development and land use activities that provide for rural settlement, sustainable agriculture, other types of*

economic and employment development, recreation and community amenity in identified drinking water catchment areas.

GSA Planning Response: Berrima Diesel has been an integral part of the Berrima economy for 27 years. 13 persons are employed and customers often travel to the region from all over Australia for specialised servicing offered. Customers therefore utilise accommodation in the area and local shops. Continued operation of the Business will continue to benefit the local economy.

Strategic Planning Response: The intent of this objective is to restrict development to particular types that will not have potentially adverse impacts on the drinking water catchment in rural locations. Whilst, Berrima Diesel is a local employer, there is no reason that this employment could not continue on a lawfully approved site in an industrial area. There is no particular economic activity carried on site that is endemic to the site, such as sustainable agriculture, farm stay accommodation, Bed and breakfast that could be carried out in the context of the Heritage Landscape Conservation Area with minimal impact of the drinking water catchment. The unlawful use of the site is contrary to this objective as the employment derived from the site is not the type of employment that is intended by the objective.

- *To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Wingecarribee's longer term economic sustainability.*

GSA Planning Response: While Berrima Diesel is not an agricultural use, the owners of the site are very environmentally responsible. As outlined, recent studies into stormwater management have been undertaken and the business is operated in a fashion that seeks to minimise potential impacts on neighbouring properties.

Strategic Planning Response: The agricultural potential of the site is limited due to its size; however the objective is to protect such resources (soil, water and vegetation). Should the Planning Proposal proceed, any subsequent development application would need to address the impact of the development on water quality, soil quality and vegetation, especially in respect of runoff from fuel and chemical storage areas.

Wingecarribee LEP2010 - Heritage

In addition to the E3 Zone objectives discussed above, Clause 5.10 Heritage Conservation applies to the land as it is located within the Berrima Landscape Conservation Area (Figure 4). The objectives of Clause 5.10 are reproduced as follows:

- (a) to conserve the environmental heritage of Wingecarribee,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The remainder of Clause 5.10 is in relation to development seeking consent, i.e. provisions that need to be taken into account when assessing a development application in a Heritage Conservation area. Those provisions would need to be considered if Council and a Gateway Determination supported the Planning Proposal and a *vehicle repair station* was made a permissible use on the site and a subsequent Development Application was lodged with Council for consideration.

In respect of the objectives of Clause 5.10 and the Planning Proposal, it is difficult to justify that a *vehicle repair station* in the Berrima Landscape Conservation zone is a use that will not adversely impact on the heritage significance of the setting, views and associated fabric of that conservation area.

However, the unlawful operation has been on site for 27-years and it could be argued that it has not been detrimental to the area. Therefore, should Council resolve to support the Planning Proposal, a Heritage Impact Report should be undertaken by the applicant and referred to the NSW Office of Environment and Heritage for comment.

Notwithstanding, should the unlawful use be made lawful by a Planning Proposal and subsequent Development Application, an unacceptable precedent could be set that would have the potential to erode the Heritage Landscape Conservation Area, as other businesses may wish to relocate to similar land, i.e. E3 and Heritage Conservation or other rural zones, from industrial and commercially zoned land due to lower land prices and overheads.

Section 117 Directions

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) issues directions that Council must follow when preparing planning proposals. The directions cover the following broad categories:

1. employment and resources
2. environment and heritage
3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

In consideration of the 117 Directions Council must address whether or not the Planning Proposal is consistent, justifiably inconsistent, inconsistent or not relevant to each of the Directions and sub parts.

Essentially, the Planning Proposal would be inconsistent with many of the relevant 117 Directions and their sub clauses listed as follows:

1.5 – Rural Lands (Employment and Resources)

- 2.1 – Environmental Protection Zones (Environment and Heritage)
- 2.3 – Heritage Conservation (Environment and Heritage)

Therefore, as the Planning Proposal would be inconsistent with the relevant Directions it would be difficult for Council to justify why the Planning Proposal should be supported by the Gateway.

Development Control Plans

The Rural Lands Development Control Plan (DCP) applies to the subject site; however it does not contain any specifics in relation to the development of *vehicle repair stations*, as they are a prohibited use in the zones that the DCP currently applies to.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

This SEPP came into force on 1 March 2011 and applies to the subject site. As such, should Council resolve to proceed with the Planning Proposal, it would be referred to the Sydney Catchment Authority, which is also required by the Section 117 Directions, prior to being sent to the DP&I for a Gateway determination.

Further should the WLEP 2010 subsequently be amended to make vehicle repair stations permissible with consent on the subject site, a Development Application would also need to be lodged with Council and referred to the SCA under the provisions of the SEPP for a final determination.

Essentially the SEPP requires that a consent authority must not grant consent to any development under Part 4 of the EPA Act unless it is satisfied that the development will have a neutral or beneficial effect on water quality.

CONSULTATION

COMMUNITY ENGAGEMENT

External Referrals

Should Council resolve to prepare a Planning Proposal, it will need to be assessed by the Department of Planning and Infrastructure (DP&I) through the Gateway Determination process. One of the outcomes from the Gateway determination is that the DP&I will advise what public consultation should occur.

Internal Referrals

No internal referrals for the Planning Proposal are required at this time. However, should it proceed to a Gateway Determination that is supportive, some of the directions given by the Gateway may require the applicant to submit specific reports that will need to be referred internally for review by specialised staff.

Neighbour Notification/Public Participation

Under Clause 57 of the Environmental Planning and Assessment Act 1979, community consultation will occur as set out in the Gateway Determination, if supported.

Media Coverage and Local Community Interests

As Council would be aware the matter with Berrima Diesel is prominent in the local newspaper (Southern Highlands News) and on social media, such as Facebook. As such, the Berrima Residents Association and the Southern Highlands Branch of the National Trust of Australia (NSW) have lodged letters to Council objecting to the Planning Proposal in advance of any formal public exhibition (Attachments 2 & 3). It is noted that the letters have not been used to influence the recommendations to this report prepared by Council Officers.

SUSTAINABILITY ASSESSMENT

• Environment

There are no environmental impacts in relation to this report, as it is recommended not to support the Planning Proposal.

However, a Gateway determination if supported, may require particular information to be prepared by the applicant in respect of environmental impacts of heritage, habitat disturbance, biodiversity, water consumption/disposal, material consumption/waste, energy consumption, transport, air quality and if the proponent has an environment policy or delivery plan.

The information required may then need to be referred to relevant government agencies for assessment and comment.

• Social

It is recommended not to support the Planning Proposal. Therefore, the potential social impacts in the community are that the employees of Berrima Diesel may become unemployed if Council subsequently pursues closure of the unlawful use on the site. An alternative option for the operators of the business is to relocate to a lawfully approved site, which may not require the unemployment of their staff.

Notwithstanding the 'Planning Arguments', Council may decide to support a Planning Proposal based on the social issues involved. The social issues are that a nationally recognized business that has been operating without complaint for nearly 30-years on the site could incur substantial costs that would result in the unemployment of staff. The unemployment of staff whether they be specialized mechanics or support/administration roles, has significant flow on effects in the community, via loss of income to individuals and families, increased demand on social support services and most importantly the well being of the persons and families who lose their occupation and income.

However, there is no guarantee that the Department of Planning and Infrastructure would support a Planning Proposal based on the social aspects alone, and may not give a favourable Gateway Determination.

Should the Planning Proposal proceed beyond the Gateway Process, with a favorable determination and the WLEP 2010 subsequently amended to allow vehicle repair stations on the site, then a Development Application would need to be submitted to formalise the use of the site. That Development Application will need to further address potential social impacts on the community of Berrima and surrounds in respect of employment creation, equity/access, health, community well-being, community support/leadership, ethical investment, quality of service delivery and occupational health and safety/risk assessment.

- **Broader Economic Implications**

Should the Planning Proposal not proceed, Council will have no option other than requiring the Berrima Diesel business to shut down on the site and seek approval to operate out of an appropriate premises, i.e. located in a zone where vehicle repair stations are permissible. This would be a costly exercise for the business, which may result in the loss of employees or closure of the business.

It should be noted that the Shire contains many other successfully operating *vehicle repair stations* located within appropriately approved premises, whereas Berrima Diesel's operations have expanded in the past without appropriate approvals from Council.

- **Culture**

The Planning Proposal does not propose any additional impact upon the Berrima Landscape Conservation Area, than what already exists on site.

- **Governance**

As it has been established that the use of the subject site for a *vehicle repair station* is a prohibited use and the current development of the site has never been approved by Council and that no existing use rights exist for the current use of the site, the only option for the owners to legitimise the current use is to seek an amendment to WLEP 2010

Should the Planning Proposal be approved by the Gateway Determination and the WLEP 2010 subsequently amended to allow a vehicle repair station on the subject site, the applicant will be able to lodge a development application to formalise the current use of the site.

Should the Planning Proposal not be supported by Council or the Gateway Determination, Council will need to pursue the closure of the use on the subject site as it will remain a prohibited use.

RELATIONSHIP TO CORPORATE PLANS

The unlawful use of the subject site is contrary to many goals of the Wingecarribee Shire Community Strategic Plan 2031+ as follows:

Leadership

Goal 1.1.1 Ensure systems and processes are in place to achieve mutual trust and collaboration

Comment: The Planning Proposal process allows applicants to put forward their arguments/justifications to Council with the purpose of amending the WLEP 2010 for any particular outcome. In this case Berrima Diesel is seeking an amendment to the WLEP 2010 to allow vehicle repair stations to be permissible with consent of their particular site. The Planning Proposal process also allows Council to consider the merits of any such proposal and whether or not to proceed with any such requested amendment. This is a legislative process that is open and transparent, which has the potential to help foster trust and collaboration.

Goal 1.1.3 Change our paradigm from self-interest to mutual benefit

Comment: There is significant self interest on behalf of the Berrima Diesel operators to continue unlawful operations on the subject site, by making them lawful. However, should those operations be made lawful on the site, there would be a significant precedent set for allowing other similar uses currently prohibited in the zone to seek exceptions as well. If this were to occur the significance of Heritage Landscape Conservation Area surrounding Berrima and the E3 Environmental Management zone Shirewide would be jeopardised. This would not be to the benefit of the Berrima or Wingecarribee Shire's community, as Berrima and the Shire as a whole is a peak tourist destination based on its heritage and landscape values. The formalisation of the Berrima Diesel in its current location has the potential to erode the Heritage and Landscape significance across the Shire, which has no benefits to the wider community.

People

Goal 2.1.2 Foster community participation

Comment: Should Council support the Planning Proposal and a Gateway Determination is favourable (from the Department of Planning and Infrastructure) a direction will be issued via the Gateway Determination specifying a public consultation period.

Places

Goal 3.2.1 Retain the rural landscape between towns and villages

Goal 3.2.2 Retain and make more distinctive the special qualities that make each town or village unique.

Goal 3.2.3 Ensure growth of towns and villages does not compromise separation distance between those towns and villages.

Comment: Should WLEP 2010 be amended to allow a vehicle repair station on the subject site, which is in an E3 Environmental Management zone and within the Berrima Landscape Conservation Area, a precedent could be set that would encourage other developments prohibited in such locations to seek exceptions. This could potentially put at risk Council's goal of retaining rural landscapes between the towns and villages by the proliferation of in appropriate development in these locations.

Goal 3.3.4 Encourage responsible compact development and usable community space within the current urban growth boundary of each town and village

Comment: Should the WLEP 2010 be amended to allow the vehicle repair station on the site, it would be contrary to promoting such development within the existing town boundaries and identified growth areas. An appropriate identified growth area for such development is located only a few kilometres to the south east of site, being the Moss Vale Enterprise Corridor.

Goal 3.5.2 Ensure that the unique heritage qualities of towns and special areas are protected.

Goal 3.5.3 Recognise where the Shire's cultural heritage contributes to its character and manage change appropriately to reinforce local distinctiveness.

Comment: An amendment to the WLEP 2010 to allow the unlawful use in the particular zone could set an unacceptable precedent that could potential erode the Heritage Landscape qualities of the location.

Environment

Goal 4.1.1 Conserve the key natural resources of the Shire water catchments, arable land, key wildlife corridors, vegetation and scenic landscapes.

Comment: An amendment to the WLEP 2010 to allow the unlawful use in the particular zone could set an unacceptable precedent that could potential erode the scenic landscape qualities of the location. Further, the use of the site for its current unlawful purpose has not been assessed by the Sydney Catchment Authority (SCA). The SCA's comments will need to be sought should Council decide to support the Planning Proposal.

BUDGET IMPLICATIONS

The Planning Proposal, if supported, does not propose any budget implications for Council as it will be carried out by Council Staff and the Department of Planning does

not impose fees on the Gateway Process. However, the applicant will have to pay an application fee to Council should Council resolve to proceed with a Planning Proposal. Should Council not support the Planning Proposal, it will need to pursue the closure of the business on the subject site, which may result in costly legal proceedings.

RELATED COUNCIL POLICY

There are no related Council Policies other than those discussed in this report related to the proposal.

OPTIONS

There are only two options available to Council in regards to the Planning Proposal:

Option 1

Proceed to prepare a Planning Proposal for lodgement with the Department of Planning for a Gateway Determination requesting amendment to Schedule 1 of WLEP 2010 by inserting:

Use of certain Land Old Hume Highway, Berrima

1. This clause applies to Land at Old Hume Highway, Berrima being, Lots 8-17 Section 40, DP 758098
2. Development for the purposes of vehicle repair station is permitted with consent.

Or

Option 2

Do not proceed to prepare a Planning Proposal.

Option 2 is recommended as a *vehicle repair station* is contrary to the objectives of the E3 Environmental Management zone and the Berrima Landscape Conservation Area; and would set an unacceptable precedent.

ATTACHMENTS

There are three (3) attachments to this report which have been circulated under separate cover:

1. Planning Proposal by GSA Planning on behalf of Berrima Diesel
2. Letter of objection from Berrima Residents Association
3. Letter of objection from Southern Highlands Branch National Trust of Australia (NSW)

RECOMMENDATION

1. THAT Council resolves **not** to prepare a Planning Proposal for Lots 8 to 17 inclusive, Section 40, DP 758098, Rural Number 3482 Old Hume Highway, Berrima to allow a vehicle repair station as a permissible use on the site.
 2. THAT the applicant be informed of Council's decision.
-

(Voting on the Motion)

Ann Prendergast
Deputy General Manager Corporate & Strategy

8 May 2013

Appendix Two

Council Resolution of 13 February 2013

CORPORATE & STRATEGY

v-CS1 Berrima Diesel Planning Proposal

Reference: 5901, PN 709300
Responsible Officer: Manager Strategic and Assets

PURPOSE

The purpose of this report is to present to Council a Planning Proposal prepared by GSA Planning on behalf of the Owners of Berrima Diesel to amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to allow the use of a 'vehicle repair station' to be permissible upon the subject site known as Rural Number 3482 Old Hume Highway, Berrima (Lots 8 to 17 inclusive, Section 40, DP 758098).

Ms Mary Cawood, President, Berrima Residents Association, representing the Objectors, addressed Council on this matter.

Mr Gary Shields from GSA Planning, representing the Applicant, addressed Council on this matter.

The Manager Strategic and Assets, Manager Governance and Legal and Manager Environmental Assessment addressed Council on this matter.

CW 03/13

The Committee on a **MOTION** moved by Clr T D Gair and seconded by Clr G M Turland **RECOMMENDED:**

THAT the Berrima Diesel Planning Proposal be deferred subject to the holding of an information session for Councillors with the view of making a Schedule 1 Application on the proposal AND THAT a report be brought back to a future Meeting of Council following the holding of such information session.

The Committee on an **AMENDMENT** moved by Clr J Uliana and seconded by Clr I M Scandrett **RECOMMENDED:**

THAT Council proceed to prepare a Planning Proposal for lodgement with the Department of Planning for a Gateway Determination requesting amendment to Schedule 1 of WLEP2010 be amended by inserting the following:

Use of Certain Land Old Hume Highway, Berrima

1. This clause applies to Land at Old Hume Highway, Berrima being Lots 8-17 Section 40 DP 758098.
2. Development for the purpose of vehicle repair station is permitted with consent.

LOST

The Committee on a **FORESHADOWED AMENDMENT** moved by Clr L A C Whipper and seconded by Clr J R Clark **RECOMMENDED:**

1. THAT Council resolves not to prepare a Planning Proposal for Lots 8 to 17 inclusive, Section 40, DP 758098, Rural Number 3482 Old Hume Highway, Berrima to allow a vehicle repair station as a permissible use on the site.
2. THAT the applicant be informed of Council's decision.

LOST

VOTING ON THE AMENDMENT

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

Councillor	For	Against
Clr J G Arkwright		x
Clr H R Campbell		x
Clr J R Clark		x
Clr T D Gair		x
Clr G McLaughlin		x
Clr I M Scandrett	x	
Clr G M Turland	x	
Clr J Uliana	x	
Clr L A C Whipper		x

VOTING ON THE FORESHADOWED AMENDMENT

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

Councillor	For	Against
Clr J G Arkwright		x
Clr H R Campbell		x
Clr J R Clark	x	
Clr T D Gair		x

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

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Clr G McLaughlin		X
Clr I M Scandrett		X
Clr G M Turland		X
Clr J Uliana		X
Clr L A C Whipper	X	

MOTION PASSED

VOTING ON THE MOTION

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor’s vote in relation to this matter.

Councillor	For	Against
Clr J G Arkwright	X	
Clr H R Campbell	X	
Clr J R Clark		X
Clr T D Gair	X	
Clr G McLaughlin	X	
Clr I M Scandrett	X	
Clr G M Turland	X	
Clr J Uliana	X	
Clr L A C Whipper	X	

Appendix Three

Council Resolution of 13 March 2013

VISITOR ITEM

CORPORATE & STRATEGY

THE FOLLOWING REPORT WAS DEFERRED FROM THE COUNCIL MEETING HELD ON WEDNESDAY, 13 FEBRUARY 2013

v-CS1 Berrima Diesel Planning Proposal

Reference: 5901, PN 709300
Responsible Officer: Manager Strategic and Assets

THIS REPORT WAS DEFERRED FROM THE COUNCIL MEETING HELD ON WEDNESDAY, 13 FEBRUARY 2013

PURPOSE

The purpose of this report is to present to Council a Planning Proposal prepared by GSA Planning on behalf of the Owners of Berrima Diesel to amend Schedule 1 of Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to allow the use of a 'vehicle repair station' to be permissible upon the subject site known as Rural Number 3482 Old Hume Highway, Berrima (Lots 8 to 17 inclusive, Section 40, DP 758098).

Ms Mary Cawood, President, Berrima Residents Association, representing the Objectors, addressed Council on this matter.

Mr Gary Shields from GSA Planning, representing the Applicant, addressed Council on this matter.

The Manager Strategic & Assets and Environmental Assessment addressed Council on this matter.

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The Committee on a **MOTION** moved by Clr I M Scandrett and seconded by Clr G M Turland **RECOMMENDED**:

1. THAT Council resolves to prepare a Planning Proposal for Lots 8 to 17 inclusive, Section 40, DP 758098, Rural Number 3482 Old Hume Highway, Berrima to allow a vehicle repair station as a permissible use on the site.
2. THAT the applicant be informed of Council's decision.

CW 26/13

The Committee on an **AMENDMENT** moved by Clr J Uliana and seconded by Clr H R Campbell **RECOMMENDED**:

- 3 **THAT Council recognises that the usage of the property Rural Number 3482 Old Hume Highway, Berrima, being Lots 8 to 17 inclusive Section 40 DP 758098 has been in operation for approximately 25 years.**
- 4 **THAT Council raises no objection to the continuance of the use of the property.**
3. **THAT Council resolves to prepare a Planning Proposal to allow a Vehicle Repair Station by amending Schedule 1 of WLEP 2010 by inserting the following:**

Use of Certain Land Old Hume Highway, Berrima

1. ***This clause applies to Land at Old Hume Highway, Berrima being Lots 8-17 Section 40 DP 758098.***
2. ***Development for the purposes of vehicle repair station is permitted with consent.***

--

The Committee on a **FORESHADOWED MOTION** moved by Clr J R Clark and seconded by Clr L A C Whipper **RECOMMENDED**:

1. THAT Council resolves not to prepare a Planning Proposal for Lots 8 to 17 inclusive, Section 40, DP 758098, Rural Number 3482 Old Hume Highway, Berrima to allow a vehicle repair station as a permissible use on the site.
2. THAT the applicant be informed of Council's decision.

VOTING ON THE AMENDMENT

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Councillor	For	Against
Clr J G Arkwright	x	
Clr H R Campbell	x	
Clr J R Clark		x
Clr T D Gair	x	
Clr G McLaughlin		x
Clr I M Scandrett	x	
Clr G M Turland	x	
Clr J Uliana	x	
Clr L A C Whipper		x

AMENDMENT BECAME THE MOTION

MOTION PASSED

VOTING ON THE MOTION

In accordance with the Local Government Act (section 375A – Recording of voting on planning matters) Council must record the Councillor’s vote in relation to this matter.

Councillor	For	Against
Clr J G Arkwright	x	
Clr H R Campbell	x	
Clr J R Clark		x
Clr T D Gair	x	
Clr G McLaughlin		x
Clr I M Scandrett	x	
Clr G M Turland	x	
Clr J Uliana	x	
Clr L A C Whipper		x

Appendix Four

GSA Planning Submission for Planning Proposal

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Appendix Five

Submissions regarding Planning Proposal received by Council prior to Report being considered by Council on 13 February 2013

PLANNING PROPOSAL TO AMEND WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010 TO PERMIT A VEHICLE REPAIR STATION ON LOTS 8 TO 17 INCLUSIVE SECTION 40 DP 758098, HUME HIGHWAY, BERRIMA

Version 2 for Gateway Determination

Appendix Six

Sydney Catchment Authority Comments