

PLANNING PROPOSAL

GOSFORD CITY COUNCIL

LOT 41 DP 1046841 WISEMANS FERRY ROAD/ PEATS RIDGE ROAD SOMERSBY

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

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

Introduction

This Planning Proposal relates to land that was subject to an application to the Minister for Planning for a State Significant extractive industry (the Somersby Fields proposal). Following extensive community opposition, the Minister refused the application and listed the land in Schedule 1 of SEPP (Mining, Petroleum Resources and Extractive Industries) (SEPP Mining) as being a site on which extractive industries are prohibited. The land also accommodates the northern section of a private airstrip which is primarily located on Lot 42 DP 1046841 and this is reflected in a Section 88B Instrument with reciprocal rights of use. The legality of operations at this airstrip was the subject of an investigation relating to an unauthorised use (commercial helicopter sky-diving) and is not related to this application.

The applicant's submission is premised on the basis that the assessment for the state significant sand mine recommended its approval, however the Minister refused it. A copy of the then Department of Planning's Major Project Assessment has been included in the applicant's submission. The recommended approval incorporated various requirements in relation to biodiversity offsets. This current proposal has however been considered on its own merits having regard to the characteristics of the land, issues associated with its development in accordance with the existing RU1 zoning, consideration of its location close to a "community" hub and environmental values. It does not propose offsets, but the consequent zoning and development control provisions will incorporate on-site mechanisms to protect biodiversity and environmental values.

The applicant has sought alternative uses for the land that may be more acceptable to the community by way of this planning proposal. When the application was first lodged, it proposed to zone both HN 790/Lot 1 DP 302768 Wisemans Ferry Road and HN 812/Lot 41 DP 1046841 Wisemans Ferry/Peats Ridge Road, with the western section to be zoned RU5 Rural Village and the eastern section to be zoned E3. This was to facilitate a 9 lot rural-residential type subdivision, together with rezoning a small section of the land to SP2 to enable the excision of an existing transmission tower, and another potential second tower.

The RU5 zone was introduced in LEP 2014 to allow a range of non-rural uses that could support the rural community, including business premises, medical centres, registered clubs, tourist and visitor accommodation etc. It did not envisage creation of substantial subdivision potential or traditional "rural villages" characterised by small residential lot subdivision and local shops in a wider agricultural hinterland. Areas zoned RU5 in LEP 2014 were small discrete nodes where these non-rural support uses had historically been focused (community hall, local general store, etc). Its purpose was to provide for uses to support surrounding rural areas (e.g. medical surgeries, real estate agents, retail and commercial uses, take-away food, petrol supplies, etc) which otherwise would seek to operate within limitations of the existing statutory

planning provisions (e.g., existing use rights, home occupations, etc) or otherwise operate without consent or precipitate the need for individual amendment to planning provisions (such as the doctors surgery at Mangrove Mountain). Hence the RU5 zone would provide centrally located, suitably zoned land to accommodate these uses. Other permissible uses in RU5 include light industries, places of public worship, registered clubs, respite day care centres, schools, etc). Relatively discrete areas of RU5 zoned land exist at Somersby, Peats Ridge, Central Mangrove, Mangrove Mountain, Calga and Spencer. Hence RU5, and the uses permissible in it, were not considered appropriate for this land.

The subject land is located in close proximity to RU5 zoned land at Somersby, near the shop, school and petrol station, but it would not be considered to be part of this rural “centre”. However, it also possesses high environmental values, including an ecologically endangered community, other known threatened flora and fauna species and habitat values, in particular *Prostanthera junonis* (Somersby Mint Bush) and *Hibertia procumbens*.

Consequently, after negotiations between by Council officers and the applicant, the application was amended and the rezoning now supported comprises:

- Rezoning of the western section of Lot 41 to **E3 Environmental Management**, with the creation of 6 rural lifestyle lots, with lots ranging from 2.4 to 3.7 hectares, utilizing lot averaging provisions;
- Rezoning of eastern section of Lot 41 to **E2 Environmental Conservation**, with a dwelling envelope to be located in the western section in proximity to the E3 dwelling envelopes. This lot would form a residue E2 lot, with a dwelling entitlement and have an area of 20.75 hectares.
- Rezoning of a small section (approximately 1,800 m²) to **SP2 Infrastructure** to excise the existing tower as a separate lot, and allow another possible future tower;
- Matters subsidiary to the Planning proposal, that will form the basis for DCP controls to ensure the environmental values of the land are retained;

Part 1 Objectives or Intended Outcomes

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

The objective/intended outcome of the Planning Proposal is to rezone the land to E2 Environmental Conservation, E3 Environmental Management and SP2 Infrastructure. This will enable the subdivision of the E3 land into 6 lots (with lot sizes of between 2.4 to 3.7 hectares, at an average of 3 hectares), one residue E2 with a dwelling envelope in proximity to the other E3 dwellings, (with area of 20.75 hectares) and the excision of an area of SP2 Infrastructure of approximately 1,800 m² upon which an existing transmission tower is located.

Part 2 Explanation of Provisions

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

The objectives/intended outcomes are to be achieved by amending Local Environmental Plan 2014 to rezone the land to better reflect its environmental values, its potential unsuitability for some agricultural uses and its location. This will also allow subdivision into rural lifestyle lots, at a density appropriate to the environmental characteristics of the land. The subdivision component should also utilise lot averaging provisions (as has been supported in other instances, and which has been supported by DP&E) to provide some flexibility in location of dwelling envelopes within environmental constraints.

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

Attachment A to this report contains relevant statutory mapping to support the Planning Proposal.

Part 3 Justification for objectives & outcomes

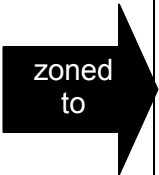
s55(2)(c) The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

Section A Need for the Planning Proposal

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

The Planning Proposal is not the result of any strategic study however the applicant has provided a report that provides information that supports the rezoning. Further review by Council officers supports the rezoning of the land from RU1.

There are issues associated with the use of the land for permissible RU1 uses given its close proximity to the “community hub” at Somersby. Given the environmental values of the land, it may be more appropriate to zone it for its inherent environmental values rather than as a primary production zone. The following table shows the permissible landuses in RU1 and the proposed uses if the land were rezoned to E3 (for the western section) and E2 (for the eastern section):

RU1 Primary Production		E3 Environmental Management	E2 Environmental Conservation
<i>Without consent:</i> Extensive agriculture, home occupations, horticulture, viticulture		<i>Without consent:</i> Home occupations	<i>Without consent:</i> Nil
<i>With consent:</i> Animal boarding or training establishments, aquaculture, bed and breakfast accommodation, dwelling houses, environmental protection works, extractive industries, farm buildings, farm stay accommodation, forestry, garden centres, home-based child care, intensive livestock agriculture, intensive plant agriculture, landscaping material supplies, open cut mining;. Plant nurseries, recreation areas, roads, roadside stalls, rural industries, rural workers dwellings, secondary dwellings, veterinary hospitals, water storage facilities.		<i>With consent:</i> Animal boarding or training establishments, bed and breakfast accommodation, dwelling houses, environmental protection works, extensive agriculture, home based child care, home industries, roads, roadside stalls, secondary dwellings. Veterinary hospitals, water storage facilities.	<i>With consent:</i> Bed and breakfast accommodation, dwelling houses, environmental facilities, environmental protection works, home occupations, recreation areas, roads, water storage facilities.

As is evidenced from the above table, the rezoning will reduce the number of permitted uses on the land. The E3 zone, with a more limited range of landuses, better reflects the environmental values of the land and also reduces the range of potentially incompatible agricultural landuses in close proximity to the school. It would allow a clustering of rural lifestyle lots within an environmental setting, with dwelling houses located in predominately cleared areas, whilst retaining vegetation (particularly in the central section of the E3 land and along the Peats Ridge Road frontage). The residue E2 zoned lot could be developed for one dwelling house with the bulk of the vegetation on the land to be retained, with no further subdivision.

Lot sizes proposed for the E3 component range from 2.4 ha to 3.7 ha, with a total area to be zoned E3 of approximately 18 hectares. In order to provide some flexibility in the location of dwelling envelopes, it is recommended that a minimum lot size of 3 ha be mapped, together with the utilisation of lot averaging provisions (where some lots can be smaller and some larger, however the quantum new E3 lots would not exceed six [excluding the excised SP2 lot]). Lot averaging provisions have been used by both Gosford City Council and other local government areas (under the Standard Instrument LEP template) where some flexibility is desirable to better accommodate dwelling envelopes within areas of environmental sensitivity.

Given the above, the revised proposal has merit due to the environmental values of the land (presence of threatened species), its unsuitability for intensive agricultural use, relationship to surrounding community-type uses and improved landuse outcomes that can be achieved noting that the final location of access-ways and dwellings would be determined at the DA stage and subject to Part 5 of the EP&A Act in relation to threatened species.

In relation to the SP2 component, it is noted that transmission towers (as communications facilities) may be carried out by public authorities without consent or by any person with consent under SEPP (Infrastructure). In ordinary circumstances, Council should not support planning proposals that can be achieved through existing legislation and zoning frameworks. However the applicant has contended that rezoning is necessary as SEPP (Infrastructure) does not allow the separate subdivision of the land and as such any existing or future tower would then have to be leased to the owner of one of the lots. This has been cited as being cumbersome and onerous and the separate titling of land on which the existing/future tower is located raises no significant strategic landuse issues, as the new facilities can in any event be erected under SEPP (Infrastructure) and given the zoning of the land, the subdivision would not create a dwelling entitlement for this small lot. This desired rezoning would provide clarity to the planning outcome sought.

Although the rezoning to facilitate smaller rural lifestyle/environmental protection subdivision would be inconsistent with some strategic directions, and in particular requirements of SREP No 8 in relation to creation of rural residential type subdivisions, given the history of land, the improved environmental outcomes and unique circumstances of this case, it is considered that the rezoning can be supported. Relevant DCP provisions should be prepared to further guide development at the subdivision stage.

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

The Planning Proposal is the best means of achieving the objectives/intended outcomes as it is the only mechanism to change the zoning of the land.

Section B Relationship to strategic planning framework

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

Regional strategies include outcomes and specific actions for a range of different matters relevant to the region. In all cases the strategies include specific housing and employment targets also. The Central Coast Regional Strategy (CCRS) 2006 – 2031 is applicable to the subject land and the proposed rezoning. The land is identified as being located in a rural and resource area and it will result in an increased settlement pattern in this location. Increased settlement is recognised as a threat to rural and natural resource sustainability, however in this instance is considered supportable given the Minister for Planning's decision regarding the extractive industry DA and the SEPP amendment, the low density nature of the proposal, the land's relationship to surrounding landuses and its unsuitability for some agricultural activities due to its environmental values. The proposal is not significant in terms of meeting population and employment targets.

3a Does the proposal have strategic merit and is it consistent with the Regional Strategy and Metropolitan Plan, or can it otherwise demonstrate strategic merit in light of s.117 Directions?

The **Central Coast Regional Strategy (CCRS) 2006 – 2031** is applicable to the subject land and the proposed rezoning. The CCRS acknowledges that existing rural residential development will continue to provide a choice of housing in the region, however raises concerns that increasing rural small holdings will result in a number of issues including fragmentation of agricultural lands and subsequent loss of efficiencies, conflict with other resource land uses such as extractive industries, water rights issues and higher servicing costs. The CCRS states that *"opportunities for new rural residential development will be limited to those already provided in the region"*. Although the planning proposal is inconsistent with the CCRS, it is considered justifiable given that extractive industries have been specifically excluded from the land, the location of the land makes it less suitable for intensive agricultural activities, and its somewhat unique history and focus of community concern. The land is also shown in the CCRS as a Biodiversity Asset outside of Conservation areas, and as such the proposal also affords the opportunity to deliver an improved environmental outcome for the land given these values. With the lot sizes proposed (ranging from 2.4 to 3.4 ha for the E3 component), the subdivision would present as a rural lifestyle subdivision within an environmental setting with scope for retaining and improving vegetation/environmental values amongst low density subdivision, rather than conventional rural residential lots such as those located in the Matcham, Holgate and Lisarow valley areas.

The CCRS advocated various actions to better inform strategic planning and development, however some of these have not been undertaken to inform future strategies for rural and resources land in the hinterland. Relevant actions include:

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

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

In accordance with Actions 5.12 and 6.1, NSW Trade and Investment (Resources and Energy) have undertaken a State-wide Resource Audit (refer IR 12559838) as part of an

on-going mapping program to assist Councils throughout the state in strategic planning. The site is identified as a Potential Resource Area, however given the SEPP (Mining) prohibition, the land is not available for extractive industries.

In relation to Action 5.12, no significant review has been undertaken, however the proposal can be considered against the merits assessment criteria in light of the requirements of SREP 8 as outlined further in this report.

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

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

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

The planning proposal as recommended to zone the land to predominately E2 and E3 will result in the land being more appropriately zoned having regard to its inherent environmental values. Approximately one third of the land possesses environmentally endangered community (E26d Somersby Plateau Forest) and other tracts of vegetation (E29 Hawkesbury Banksia Scrub) on the land, although not listed as EEC, contain a habitat values for both threatened and non-threatened species. Part of the land is also identified as containing swamp/sedgelands under SREP 8 that are recognised for their environmental values. Vegetation along the Peats Ridge Road frontage also contributes to scenic quality and amenity and also contains areas of *Prostanthera junonis* (Somersby Mint Bush), *Tetratheca glandulosa* and *Hibertia procumbens*. There are also other pockets of *Hibertia procumbens* and *prostanthera junonis* across the site. Eight vulnerable fauna species under the Threatened fauna species were also identified on the land, including Eastern pygmy-possum, Red-crowned toadlet, Eastern freetail bat, Little bent-wing bat, Grey-headed flying fox, Common Bent-wing bat, Gang-gang cockatoo and Grey-crowned Babbler.

The land is in a unique situation given the history of development, community expectations, environmental values, prohibition from extractive industry via the SEPP and its unsuitability for conventional agriculture. In this part of Somersby, there is an increasing propensity for capitally intensive horse farms and the land is relatively isolated from intensive agricultural clusters. The proposal is considered to be consistent with these actions.

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

The CCRS recognises that rural-residential small holding development will continue to provide a choice of housing however opportunities for new rural residential development should be limited to those areas already zoned. The Mountains area also holds agricultural and water supply catchments which must be protected from urban and rural residential uses. In this instance, however, given the characteristics of the land and its close proximity to community assets, development for agricultural and resource use is not appropriate. Formal support from the DP&E has not yet been requested, however would be implicit in the granting of the Gateway Determination. The development is not considered to be a traditional rural residential development, as it is seeking to better protect the environmental values of the land and the rezoning will resolve landuse uncertainty in the locality that resulted from the sand quarrying proposal.

As part of the on-going planning reforms process, the Department of Planning and Environment are required to prepare a new Regional Growth Plan (RGP) to replace CCRS. Work has not progressed on the RGP to a point where it could meaningfully inform any proposed rezoning, nor satisfactorily address competing rural, natural resource and environmental outcomes. The recommended zonings and density is considered to have demonstrable strategic merit in light of s.117 Directions (see further discussion).

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

The proposal has site specific merit. The land is located approximately 200 metres from boundary of Somersby Primary School, 150 metres from the community hall and 350 to 450 metres to the local shop and service station. A number of dwellings that are not associated with significantly scaled agricultural activities are also located nearby. The possible use of the land as a state approved sand quarry caused significant concern in the community. As part of the exhibition process of the then DLEP 2009, 135 submissions (some of which were form letters) were lodged objecting to sand extraction on this site given the uncertainty of effects, its proximity to the school and concerns regarding its impact on the community.

Although zoned RU1 Primary Production, the land is relatively poorer agricultural land, of which approximately 50% is identified as being prime agricultural land (a mix of Classes 2, 3, 3-4 and 4) and remainder as non-prime agricultural land (Class 4-5 and sedgeland). Of that part of the site which is mapped as being prime, the classes present are less productive than other higher classes, being suitable for limited cropping and grazing only, rather than horticulture or other intensive uses. The land does however contain high environmental values, areas of ecologically endangered community and other habitat values. It has significantly less cleared areas than most other lands zoned RU1 and given that the land is currently vacant, vegetation is also regenerating on the land. It is considered to be sufficiently removed from agriculturally productive areas so as to not sterilise use of land for agriculture by increasing population through further subdivision for non-agricultural uses. It is not suitable for intensive agricultural production (that is not necessarily dependent upon high quality of soils) such as poultry farming, due to its proximity to community assets and the potential or perceived impact of these more intensive uses on adjoining owners.

Other landuses in the immediate locality are community based (such as the school and hall), or smaller lots being used for rural living purposes rather than as agriculturally productive holdings. Given the land's proximity to these uses, its use for either an intensive agricultural development or an extractive industry would not only reduce its environmental values, but potentially result in incompatibility with other landuses in the immediate locality. Its rezoning would result in development (i.e. smaller rural living allotments) that would be more compatible with surrounding landuses, however not prejudice the protection of the broader rural hinterland for agricultural and natural resource uses.

As outlined in the Executive Summary, the E3 zone (to allow smaller rural lifestyle lots within an environmental setting), with a residue E2 lot with one dwelling house, together with the excision of the existing telecommunications tower on SP 2 land, would reduce potential landuse conflicts with surrounding landuses, better reflect the environmental values of the land and ensure these values are appropriately protected and managed.

There are three transmission towers (including one on the site) and a transmission pole, in the immediate locality, reflecting the desirability of the relatively higher elevation at Somersby Trig for these types of facilities. The rezoning will recognise the existence of an existing transmission tower on the land. Transmission towers are often associated with a level of community concern relating to potential adverse effects (electromagnetic radiation, aesthetics, etc). The rezoning per se will not pre-empt any additional tower, as any future tower would be subject to either Part 5 assessment (if undertaken by a public authority) or Part 4 assessment (i.e. with consent of Council) if undertaken by any other person, under the provisions of SEPP (Infrastructure). The rezoning in relation to the SP2 component acts only so far as to facilitate the excision of a separate lot to accommodate the existing and/or possible future tower. Whilst noting that two other towers and the pole are located on land zoned RE1 Public Recreation, and are crown land, the owners are seeking the SP2 zoning to recognise the existing tower's location on private land, and to excise it off presumably to dispose of to a telecommunications provider. The SP2 zone will recognise that this part of the land accommodates infrastructure. Additional telecommunications facilities are generally made permissible under SEPP (Infrastructure); however the SEPP does not provide a mechanism to facilitate excision of the tower from the larger lot.

Council's DCP provisions relating to co-location of telecommunications facilities were not brought into LEP 2014/DCP 2013, as this activity is now generally regulated through the Telecommunications Act 1997 (Federal) or SEPP (Infrastructure).

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

Community Strategic Plan

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

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

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

B6 Objective – Land use and development protects the value and benefits provided by the natural environment

The proposal is consistent with the CSP in that it will recognise environmental values, whilst allowing for some rural living lots at a relatively low density. Threats to native flora and fauna will be able to be effectively managed by delineating the general lot layout and dwelling envelopes through site specific DCP provisions, and providing some flexibility in allotment layout (through lot averaging provisions) to ensure effects are managed on-site. There would be sufficient land areas to balance development and environmental objectives.

Biodiversity Strategy

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

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

The land is not currently within an environmental zone, however possesses environmental values which are recognised in CCRS as Biodiversity Assets. The land also has a range of threatened flora and fauna species. Managing the land through both zoning and

subdivision controls will ensure that there is sufficient space for dwellings, effluent disposal areas, bushfire radiation zones, etc to be accommodated and associated activities undertaken without unacceptable loss of biodiversity.

Draft Gosford Landuse Strategy

The proposal is consistent with the draft Gosford Landuse Strategy which was prepared to support LEP 2014. It offers an appropriate development/conservation outcome and will not create a precedent for the rezoning of other rural and resource lands due to the unique circumstances of the land, its location in proximity to key community assets and environmental values.

Residential Strategy/Draft Residential Strategy

Council adopted a Residential Strategy in 1996 that essentially supports urban containment and balancing growth with other values. The adopted Strategy was reviewed and a new Draft Strategy prepared and exhibited to support LEP 2014, which states:

“Conservation, rural and resource lands are those beyond the City’s urban areas. They are lands that support the natural setting or are working lands that contribute to Gosford’s quality of life and are an important resource in supporting a sustainable City..... The Somersby Plateau provides extractive materials essential to the Sydney Region’s building and infrastructure needs. Conservation, rural and resource lands contribute to tourism, local identity and character. They also contribute to biodiversity and water catchment protection”.

For land in the rural hinterland, the RU1 zone generally affords blanket zoning across a very broad area, however there remain pockets of remnant vegetation that are of environmental significance, notwithstanding that the RU1 zone generally would allow these lands to be used for a range of activities that may not necessarily be consistent with environmental protection. Since the removal of gravel on parts of this site some 40 years ago, the land has remained undeveloped, which has resulted in the extent of remnant vegetation and re-establishment of native vegetation. The land has not been managed to improve its agricultural potential, and nor would it be suitable for intensive agriculture due to its close proximity to key community assets. Given its environmental values, the proposal will achieve a better development/conservation outcome than if the land were retained in the RU1 zone and it were developed for uses permissible in this zone. Given that it is intended to better protect its remaining environmental values through both zoning and DCP provisions, whilst allowing low density subdivision, the proposal is considered to have merit.

The land is located in the water catchments of both Mooney Mooney and Ourimbah Creeks. Council Policy WS5.15 requires that development and landuses have zero impact on the quality of the Central Cost water supply. A report will be required, either as part of the Gateway Determination or at the future DA stage to demonstrate that there is zero impact on water quality leaving the site. It is also noted that any other use of the site would also be required to demonstrate that there is zero impact on water quality, however given the density of dwellings, it is envisaged that impacts can be satisfactorily managed.

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

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

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

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

The land adjoins land that is zoned RE1 Public Recreation, however this is crown land that has two transmission towers and a communications pole located on it, and is not being managed for its natural values. An assessment of the proposal in terms of bushland present on the site has been undertaken and used to inform proposed zonings and further identify areas to be protected through DCP/Section 88B Instrument provisions to protect environmental and bushland values. The proposal is consistent with SEPP 19.

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

(iii) SEPP 55 – Remediation of Land - SEPP 55 lists activities that may cause contamination, including agricultural or horticultural activities. There does not appear to be a history of potentially contaminating landuses and proposal may be satisfactory in this regard. Given the extended period that the land has been vacant, there may be potentially dumped materials. A Preliminary Contamination Report should be undertaken as part of the Gateway studies. This may also be necessary as a result of historic gravel quarrying activities.

(iv) Deemed SEPP - SREP No 8 - Central Coast Plateau Areas - In conjunction with the Standard Instrument LEP reform process, a number of Regional Environmental Plans were reviewed for currency and relevancy. Where still considered to be required, some REPs became deemed SEPPs on 1 July 2009, with the intention that they would eventually be reviewed by the State Government and provisions would then be embedded in local planning provisions if appropriate. SREP 8 is one of these deemed SEPPs, however any substantive actions to review it (as alluded to in the CCRS) have not been undertaken. It is envisaged that the provisions of SREP 8 would inform the new Regional Growth Plan. As a deemed SEPP, the provisions of SREP 8 still apply.

The land is within the boundary of SREP 8 and was also included in the areas where detailed agricultural land classification was undertaken. Clause 10 specifically prohibits the preparation of draft LEPs to allow smaller lot subdivision:

“ A draft local environmental plan that applies to land to which this plan applies should not contain provisions that have the effect of permitting subdivision to create a lot that is smaller than any minimum lot size prescribed for the land in *Interim Development Order No 122—Gosford* or *Wyang Local Environmental Plan 1991* at the commencement of

The minimum lot size prescribed in IDO 122 for the then 1(a) and 1(b) zones was 20 and 10 hectares respectively however this proposal will result in lot sizes of between 2.4 and 3.4 ha for the E3 component. One of the key causes of landuse conflict in rural and resource lands is where agricultural and other operations potentially affect neighbouring properties’ amenity through noise, smell, dust, etc. Although all landuse activities are required to comply with environmental legislation, there are some instances that even when best practice is employed, impacts will still occur. Hence, the greater the density of residential population (whether involved with farming or not) the greater potential for possible landuse conflicts. The minimisation of residential population that may suffer affectation is inherent in the provisions of the SREP in restricting further subdivision.

The reduction in lot sizes is considered reasonable, however, given that unique circumstances of this land, its location and unsuitability for agriculture due to threatened species.

It is noted that a Planning Proposal for land east of the M1 to rezone the land to E3/E2 was supported by Council primarily on the basis of its segregation from the majority of SREP 8 land by the M1. This land is however located west of the M1 and hence is not physically separated from the bulk of SREP 8 land. It is considered however that this application is in unique circumstances given the environmental values of the land, community concerns regarding the use of the site and its relationship to other lands. As such, it could not be used as a precedent for the rezoning and subdivision of other SREP 8 land. The PP would need to be assessed against the provisions of Clause 11 of SREP 8 as outlined below:

11 Special provisions—draft local environmental plan applications

In preparing any draft local environmental plan applying to land to which this plan applies, the council should have regard to the objective that any development allowed by the plan should:

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

Comment: There are no intensive agricultural activities being undertaken in proximity to the land, with the majority of holdings being used for rural living purposes/livestock grazing. It is considered unlikely that intensive agricultural activities (chicken farming, intensive horticulture etc) would be undertaken in proximity to the site due to the relatively small size of the lots not being viable for contemporary agricultural practices. The majority of lots in this area are already below the 20 ha minimum lot size, which has resulted in a density of dwelling houses that would not be conducive to the establishment of agricultural uses that may potentially affect neighbouring properties. The presence of the school would also act as a deterrent to the establishment of future agricultural production. Although this lot has a large area (39 ha) that may make it conducive for contemporary agricultural production (that are increasingly reliant on larger farms), its development for agriculture is considered unlikely given the combination of its close location to the school, less productive soils and impediments as a result of ecological values.

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

Comment: The proposal will result in an increased settlement pattern as it will be subdivided into seven rural lifestyle lots. However, given that the proposal will better protect the environmental values of the land and given the uniqueness of this situation it is not considered to undermine regional strategic planning directions (as encapsulated in SREP 8) and is considered to have merit. There are no other occurrences of land in proximity to other RU5 areas in the rural hinterland that are similarly constrained by the extent of EEC on-site, has relatively large lot size, history of not being able to be used for a permissible development (i.e. the state significant sand extraction proposal) and with a heightened community interest in the outcomes for this land.

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

Comment: The proposal would have a limited positive economic contribution and employment generation, other than through the construction of dwellings.

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

Comment: For the new dwellings, environmental effects can be managed on-site. The rezoning better reflects the environmental values of the land. Environmental effects of any future tower would be considered at the time of any proposal (as either a Part 4 or Part 5 proposal).

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

Comment: Detailed consideration of individual water cycle management systems would be considered as part of the DA process and it is expected that effects can be managed on-site without adverse environmental effects.

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

Comment: It is proposed through the DCP to create an environmental buffer to protect threatened species along the Peats Ridge Road frontage. This will also contribute to the maintenance of scenic qualities along the roadway. The proposal will be consistent with the amenity of area, as a hub for community activities. Scenic impacts of any future tower would be considered at the time of assessment.

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

Comment: The rezoning is to achieve environmental outcomes and will not result in residential, commercial or industrial land uses.

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

Comment: No reticulated services are available to the land and no additional public infrastructure is to be provided, other than that which would be paid for by the developer (such as electricity, etc)

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

Comment: This is not considered relevant as the rezoning is to zone the land for environmental purposes, rather than for agricultural activities.

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

The Mineral Resource Audit of Gosford City (ECM IR 12559838) undertaken by NSW Trade and Investment (Resources and Energy) identifies the land as a Potential Resource Area containing potential mineral, petroleum and/or extractive resources. The Audit identifies that any zoning changes which may prohibit or restrict potential future operations should be referred to Resources and Energy Division of NSW Trade and Investment. The proposal would restrict theoretical potential extraction by subdividing the land in to smaller lots and allow additional dwellings to be erected. However, the land is specifically listed in SEPP (Mining) as being a site on which extractive industries are prohibited. The proposal can be referred to the Resources and Energy Division; however any comment made by this agency would need to be considered in the context of the prohibition.

The land was identified as a clay shale resource under SREP 9 in 1994. The refused development application in 2009 was for an extractive industry for sand. The prohibition of extractive industries on the land under SEPP (Mining) occurred in 2010. This effectively supersedes SREP 9 and as such its listing in SREP 9 is not relevant to consideration of the proposal.

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

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

The following assessment is provided addressing the consistency of the Planning Proposal with relevant Section 117 Directions that came into effect on 1 September 2009. Directions are only discussed where applicable. The Planning Proposal is consistent with all other s.117s Directions or they are not applicable.

(i) Direction 1.2 Rural Zones - This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). A Planning Proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, nor contain provisions that will increase the permissible density of land within a rural zone. The planning proposal seeks to rezone land that is zoned RU1 under LEP 2014 and the land is also identified as rural and resource land under CCRS. It will also increase density by allowing subdivision below the current minimum lot size of 20 hectares.

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

Given that extractive industries are now prohibited on the land and the inappropriateness of some RU1 permitted uses having regard to close proximity to the school, the presence of threatened species, together with the unique circumstances that have led to the planning proposal, the inconsistency with this direction can be justified. It is also justifiable on the basis that environmental values will be better recognised by including the land in environmental zones, and impacts can be managed due to lot sizes providing flexibility in relation to location of dwellings and works together with opportunities for better ongoing management and rehabilitation of environmental values.

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

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

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

The Planning Proposal would have the effect of the land not being available for extractive resources. Given that the Minister specifically prohibited extractive industries by way of an amendment to SEPP (Mining), the inconsistency with this direction can be justified.

(iii) Direction 1.5 Rural Lands – this Direction applies to land to which State Environmental Planning Policy (Rural Lands) 2008 applies. The Gosford Local Government Area is not included in the SEPP and hence this Direction does not apply.

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

The rezoning will better facilitate the retention of areas of known threatened species, and their habitat. It is noted that future development applications will still be required to undertake Part 5A Assessments under the *EP&A Act* in relation to threatened species, however ecological constraints associated with the land could be adequately addressed through the creation of a site specific DCP and future development assessment controls.

The E3 zone for the more disturbed western section and E2 zone for the less disturbed eastern section better reflect the environmental values of the land than the RU1 zone. The Planning Proposal is therefore consistent with this planning direction.

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

environmental heritage of the area. This includes items, areas, objects and places of indigenous heritage significance.

The applicant has advised that as part of the quarry application, the Office of Environment and Heritage, Darkinjung Local Aboriginal Land Council (DLALC) and the then Department of Planning and Infrastructure were satisfied that the sand extraction area was unlikely to have any significant affect on aboriginal heritage values provided a 30 metre buffer were retained along the eastern boundary to protect an archaeologically sensitive area identified in a 1995/6 survey. This part of the land is to be zoned E2, however the buffer proposed along Peats Ridge Road could also be extended to the eastern boundary to protect the site. An updated Aboriginal Heritage Information Management System (AHIMS) search indicates there are no recorded aboriginal sites in or near the land.

(vi) Direction 3.5 Development Near Licensed Aerodromes – this direction applies when a planning proposal is prepared for land in the vicinity of a licensed aerodrome. It is noted that part of the airstrip which is predominately located on Lot 42 DP 1046841 Lackersteens Road extends onto Lot 41. A Section 88B instrument (under the Conveyancing Act) exists and sets out conditions between the two lots in relation to its on-going use and maintenance. The airstrip is not listed as a Certified Aerodrome or Registered Aerodrome under the Civil Aviation Safety Authority register.

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

The land is classified as Rural Fire Service Bushfire Categories 1, 2 and Buffer. The dwelling envelopes provided on the concept plan make provision for fire radiation zones that are generally clear of vegetation. In order to comply with bushfire requirements, it may be necessary to provide an emergency egress point onto Peats Ridge Road. The location of this would be determined as part of the DA process to minimise effects on threatened species. It is anticipated that the Gateway will require formal consultation with the RFS and further detailed assessment may be required as the proposal progresses.

(viii) Direction 5.1 Implementation of Regional Strategies - Planning Proposals are required to be consistent with a Regional Strategy released by the Minister for Planning. The Planning Proposal is considered to be consistent or the inconsistencies are substantiated or minor with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as discussed in Section 3, particularly as it will better protect the environmental values of the land and known threatened species.

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

(x) Direction 6.3 – Site Specific Provisions - This direction applies to the Planning Proposal as the Planning Proposal seeks to rezone the land. The Planning Proposal is consistent with this direction as it proposes to use zones as contained within LEP 2014 and the standardised approach allows mapping of different development standards where substantiated on a localised basis. Lot

averaging provisions have been used by other LGAs in SI LEPs. It will not contain or refer to drawings/concept plans showing details of the proposed development.

Section C Environmental, social and economic impact

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

An inspection of the site confirmed that the vegetation is consistent with Bells mapping adopted by Council. The land contains areas of an Ecologically Endangered Community (being Somersby Plateau Forest). The flora and fauna investigations to support the extractive industry proposal identified a number of threatened fauna and flora, as shown in the table:

Fauna	Flora
Eastern Pygmy-possum Red-crowned Toadlet Eastern Freetail Bat Little Bent-wing Bat Grey-headed Flying Fox Common Bent-wing Bat Gang-gang Cockatoo Grey-crowned Babbler	Somersby Mintbush (Prostanthera junonis) Black-eyed Susan (Tetratheca glandulosa) Hibbertia procumbens

Given the revised proposal, it is considered that ecological constraints associated with the land could be adequately addressed through the creation of site specific DCP controls (that restricts development on some parts of the land) and future development assessment subject to merit assessment based on detailed ecologically assessment that addresses Section 5A of the *EP&A Act 1979*.

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

Environmental effects have been considered and are acceptable, given that the zoning of the land will better reflect its environmental values, and further subdivision controls through the DCP/DA assessment processes to protect the more sensitive environmental areas. Any additional transmission tower would be subject to relevant environmental assessments.

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

The proposal will provide a small number of rural lifestyle lots within an environmental setting in close proximity to a clustering of “community” activities at Somersby. The proposal is a unique situation and as such will not create a precedent or speculation for the rezoning of other rural and resource lands to allow further subdivision. Social and economic effects are considered satisfactory

Section D State and Commonwealth interests

10 Is there adequate public infrastructure for the Planning Proposal?

The land is accessible from existing roads. Access to the subdivision onto Wisemans Ferry Road may be via Marabunga Road, which currently only serves one existing dwelling. Road upgrading, suitable access point to the subdivision and intersection improvements would be considered at the DA stage and any upgrading conditional upon development consent.

It is proposed that water and sewerage systems will be managed on-site on a case by case basis and this will be the subject of further investigations at the DA stage. The proposed report is to assess the site capability for effluent disposal for proposed future dwellings. It should be prepared by a practising geotechnical engineer/wastewater consultant experienced in on-site wastewater management in accordance with the methodology recommended in the Environment and Health Protection Guidelines – On-site Sewage Management for Single Households. The report should include:

- an overview of the soil and landscape (topography, geology, groundwater, vegetation, rock outcrops) features across the area, taking into account the degree and location of constraints that could affect the siting, design, sizing, installation and maintenance of on-site sewage management systems
- a description of the extent and nature of any environmentally sensitive areas, including endangered ecological communities, creeks, bores and dams, and the potential for impacts upon these
- collection of information on groundwater vulnerability, the nature of any aquifers, the location of bores, watertable heights, and the nature and extent of any groundwater quality and use
- an assessment of potential impacts and cumulative impacts over time of establishing on-site sewage management systems within the planning proposal area
- a recommendation for the most appropriate sewage treatment system and disposal method

There may be some constraints to on-site disposal, given depth and types of soils, and previous disturbance from quarrying operations (removal of gravel in the 1960s) with parts of the land shown as being subject to immediate land slip. Specialist geotechnical engineering investigations may be required for both the erection of dwellings and on-site waste water systems, depending on the location of buildings. With the lot sizes proposed, it is considered that on-site waste water disposal is not an impediment to rezoning however will need to be addressed to Council's satisfaction at the DA stage. Specific information requirements can be contained in the DCP provisions.

It should be noted that the northernmost part of the site is part of the Ourimbah Creek Catchment, and the westernmost part of the site is part of the Mooney Dam Catchment, and Council Policy WS5.15 requires that development and land uses have zero impact on the quality of the Central Cost water supply. Information can be incorporated into an overall water cycle and nutrient management plan, inclusive of waste water to support the DA.

A garbage service is available to the land and servicing requirements/bin collection points determined as part of the DA.

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

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

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

Part 4 Mapping

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

A Land Zoning Map, Height of Buildings Map and Lot Size Map are contained in **Attachment A**. Other supporting maps that are not part of the Planning Proposal are included in **Attachment B**. The Minimum lot size map should provide for a 3 hectare minimum lot size for the E3 component (with lot averaging provisions incorporated into the LEP via a special provision to ensure the total number of E3 lots does not exceed 6), and 20 hectares for the residual E2 lot, to reflect its approximate size. There is no need to map a minimum lot size for the SP2 lot as the rezoning itself will allow the excision of this land from the remainder of the site.

Part 5 Community Consultation

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

Subject to Gateway support, community consultation will involve an exhibition period which will be specified by the Gateway. The community will be notified of the commencement of the exhibition period via a notice in the local newspaper and on the web-site of Gosford City Council. A letter will also be sent to the adjoining landowners.

The written notice will:

- give a brief description of the objectives or intended outcomes of the planning proposal;
- indicate the land affected by the planning proposal;
- state where and when the planning proposal can be inspected;
- give the name and address of Gosford City Council for receipt of submissions; and
- indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- the planning proposal, in the form approved for community consultation by the Director-General of Planning;
- the gateway determination; and
- any studies relied upon by the planning proposal.

Following community consultation, a further report may be referred back to Council for consideration of any submissions.

Part 6 Project Timeline

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

Date of Gateway Determination	October 2014
Completion of technical studies required by Gateway	December 2014
Preparation of DCP	March 2015
Government agency consultation	April 2015
Public exhibition of PP and DCP	June 2015
Consideration of submissions	August 2015
Consideration of submissions by Council	October 2015
Submission to Department to finalise	November 2015

Conclusion

The current zoning of the land is generally not appropriate given the known extent of threatened species and the impacts that would occur if the land were developed for primary production purposes. Given the land's sensitive location close to a "hub" for community-orientated activities, and the unique circumstances associated with the extractive industry proposal (now prohibited under the SEPP), its rezoning to environmental zones is considered appropriate. The subdivision of the E3 component into six lots, with one residue E2 lot and the excision of the land proposed to be zoned SP2 can occur in a manner that respects the environmental characteristics of the site and is complementary to the characteristic of the area. Further development can be informed by DCP provisions and consideration of specific matters at the DA stage, and may be accommodated within the inherent constraints.

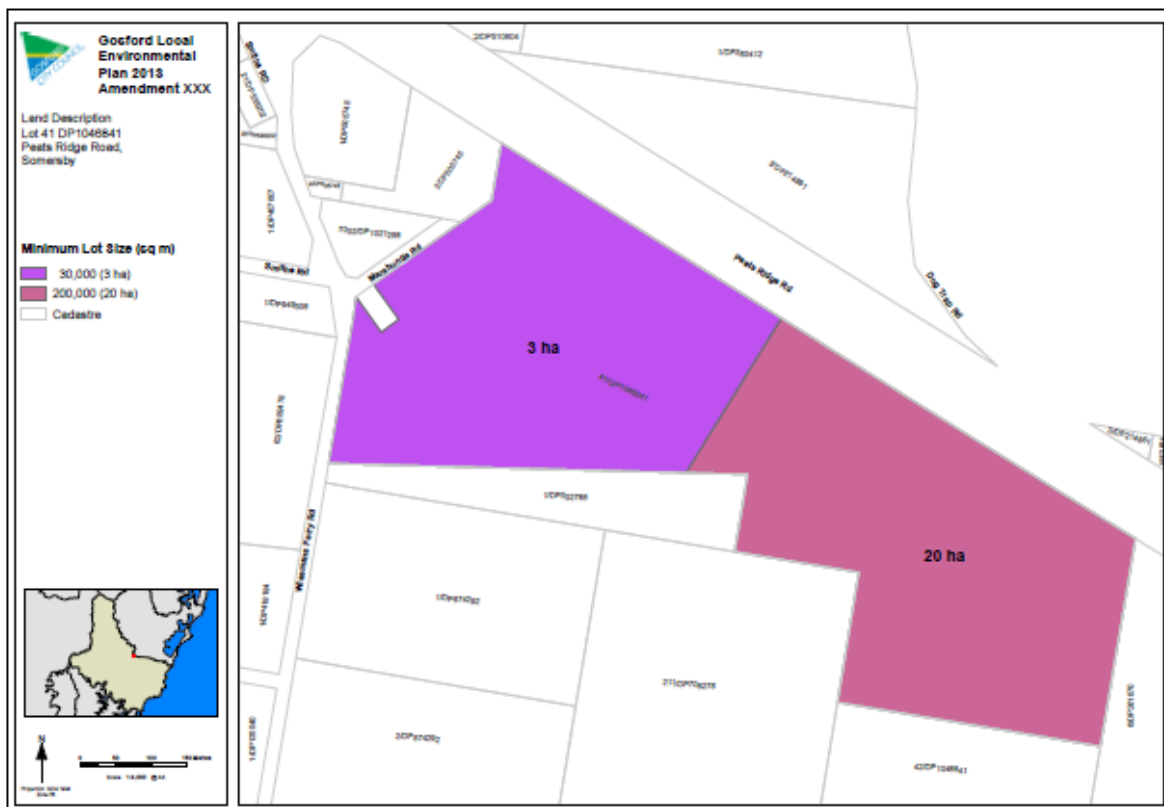
The rezoning would represent a better outcome for the overall environmental values of the land, ensure activities that are compatible with the surrounding community and rural landuses.

ATTACHMENT A - Statutory Mapping

Land Zoning Map



Minimum Lot Size Map

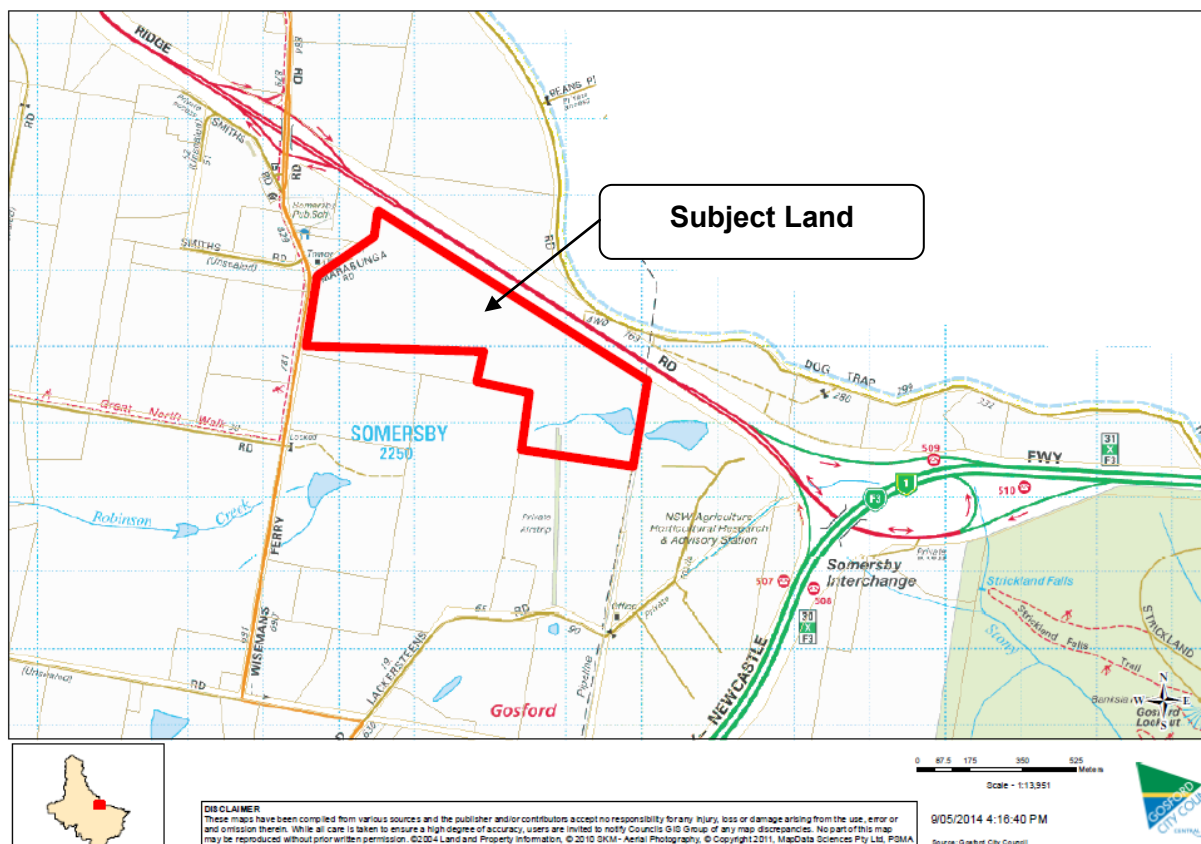


Height of Buildings Map

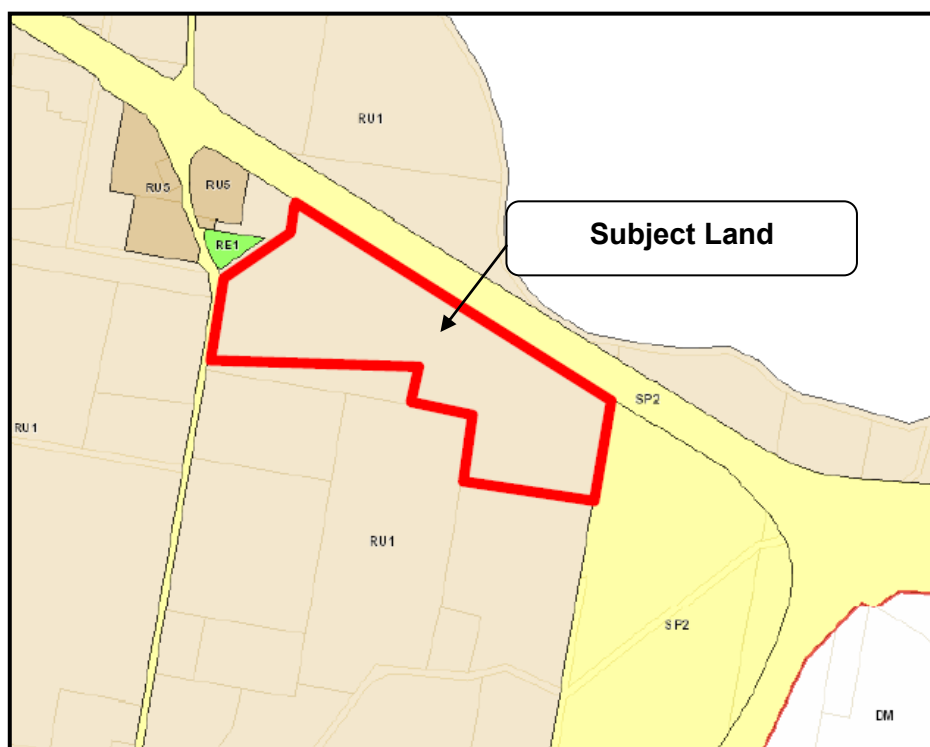


ATTACHMENT B: Other Supporting Mapping

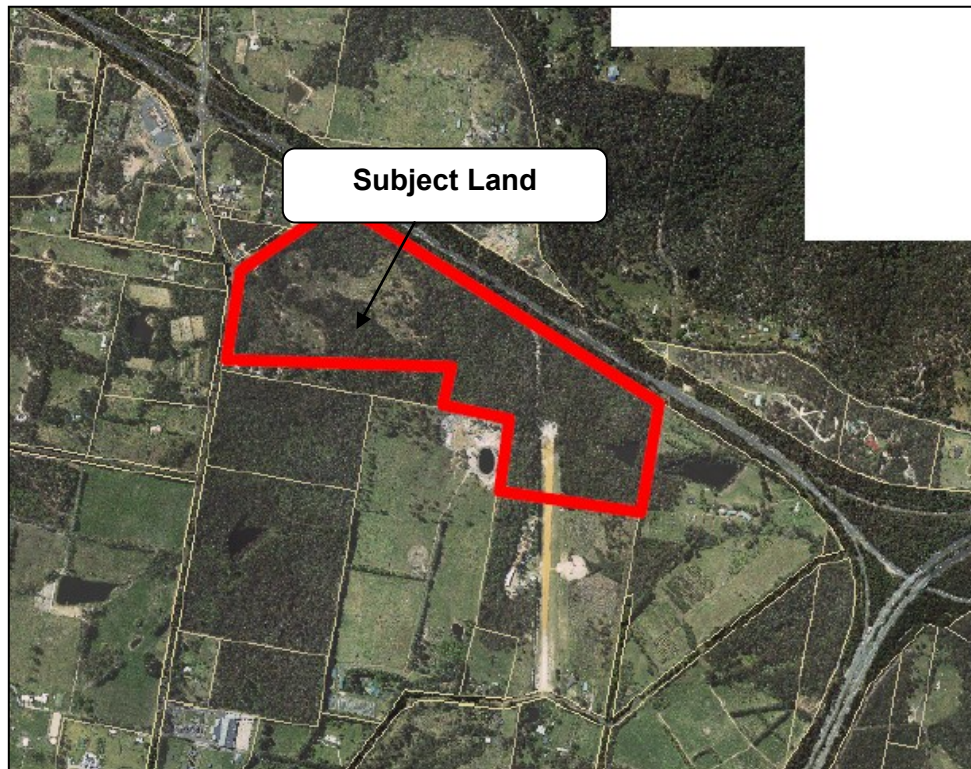
Location Plan



Existing Zoning Map



Aerial Photograph



Ecologically Endangered Community (shown red hatch)

