

Planning Proposal

Planning Proposal to rezone Part of Lot 33
DP 751286, 1020 Tugalong Road
Canyonleigh to SP1 Cemetery under
Wingecaribee LEP 2010

Version 2 – For Gateway Determination – February 2014

Wingecaribee Council Reference: 5901/33

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ATTACHMENTS WHICH FORM PART OF THIS PLANNING PROPOSAL
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1. Planning Proposal – Version 2 for Gateway Determination.
2. Evaluation Criteria for the Delegation of Plan Making Functions.
3. Report to Council of 11 September 2013.
4. Resolution of Council 11 September 2013.
5. Comments from Sydney Catchment Authority.
6. Applicant's Submission

Planning Proposal

LOCAL GOVERNMENT AREA: WINGECARRIBEE SHIRE COUNCIL

ADDRESS OF LAND: The subject site is identified as Part of Lot 33 DP 751286. Lot 33 is known as 'Craigendrae', 1020 Tugalong Road, Canyonleigh.

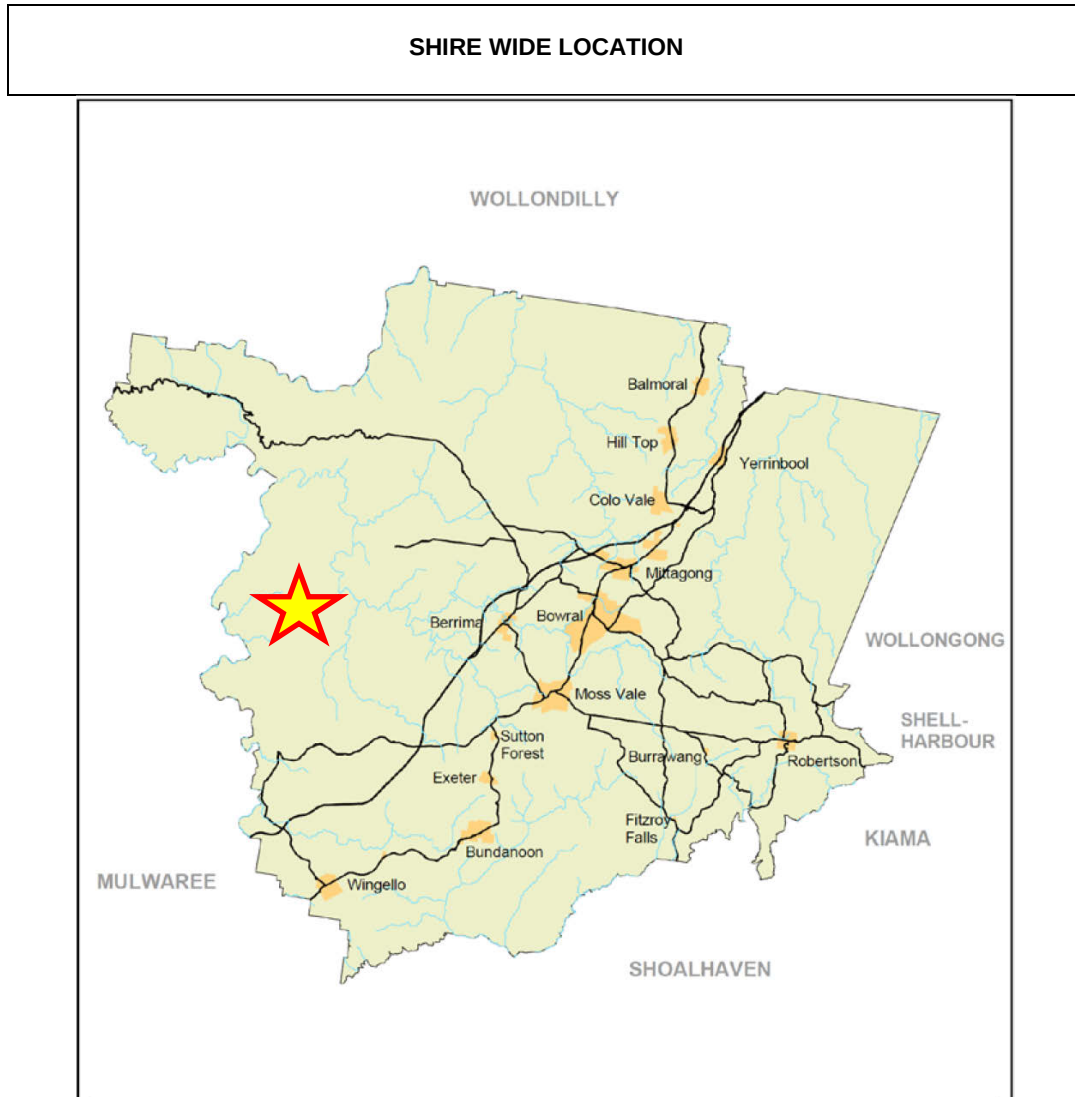


Figure 1. Locality Map

The subject property is located 14 kilometres west of Berrima and 10 kilometres north of Canyonleigh Road and covers an area of 572 Hectares (572 Ha). The site is naturally vegetated with the exception of approximately 18 Hectares around the existing residence located in the centre of the western boundary (Figure 3). The area of the

proposed burial ground will be located approximately 400 metres inside the western boundary on the southern boundary in the south western corner of the property (Figure 6) and will extend approximately 350 metres to the north. The identified area of the site will therefore be approximately 10 Hectares in area. The area is accessed by an existing unsealed road

The applicant has developed a business plan and intends to use part of the proceeds to be set aside for the ongoing management of the cemetery and the remainder of the site.

Figures 2-5 below indicated the location of Lot 33.

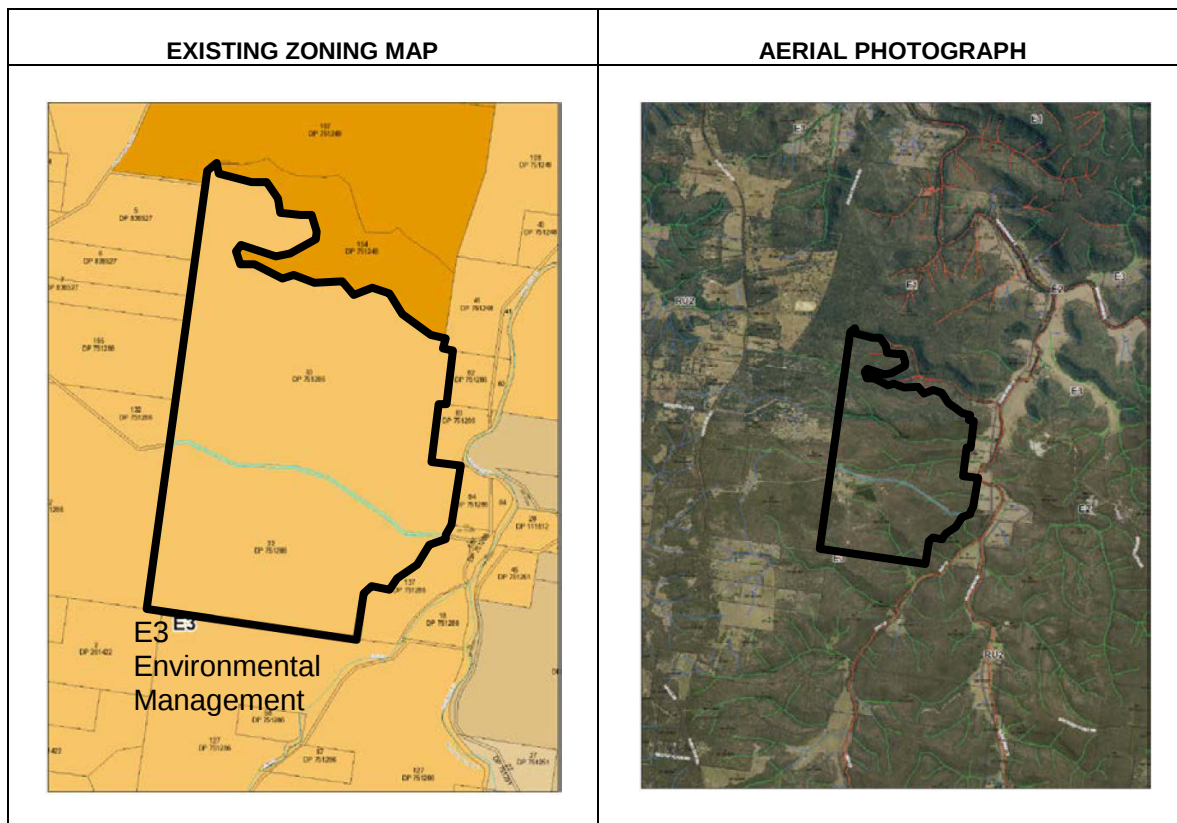


Figure 2

Figure 3

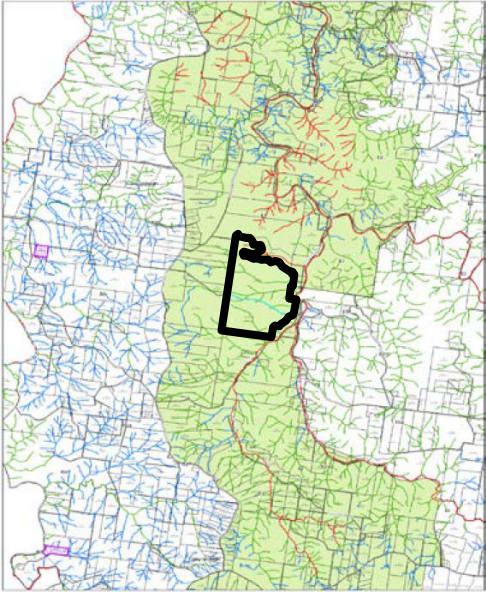
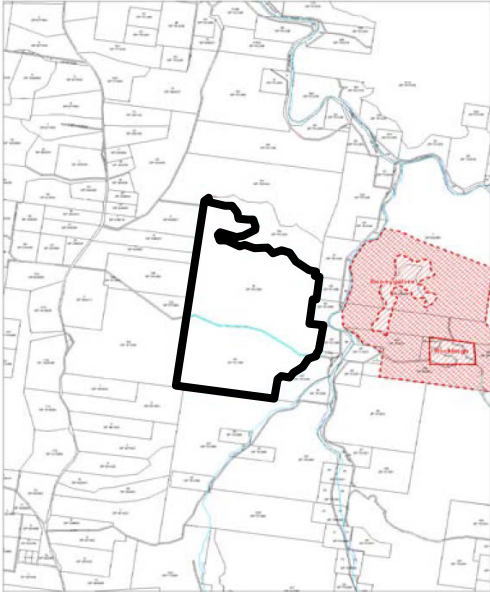
RIPARIAN LAND AND REGIONAL WILDLIFE HABITAT CORRIDOR	NEARBY EXTRACTIVE INDUSTRIES
 A topographic map showing a network of blue lines representing waterways and green shaded areas representing riparian land and wildlife habitat corridors. A specific area is outlined in black, indicating the subject of the planning proposal.	 A map showing land parcels with various zoning designations. A large area is outlined in black, and a smaller area to the right is shaded in red with a cross-hatch pattern, indicating nearby extractive industries.

Figure 4

Figure 5

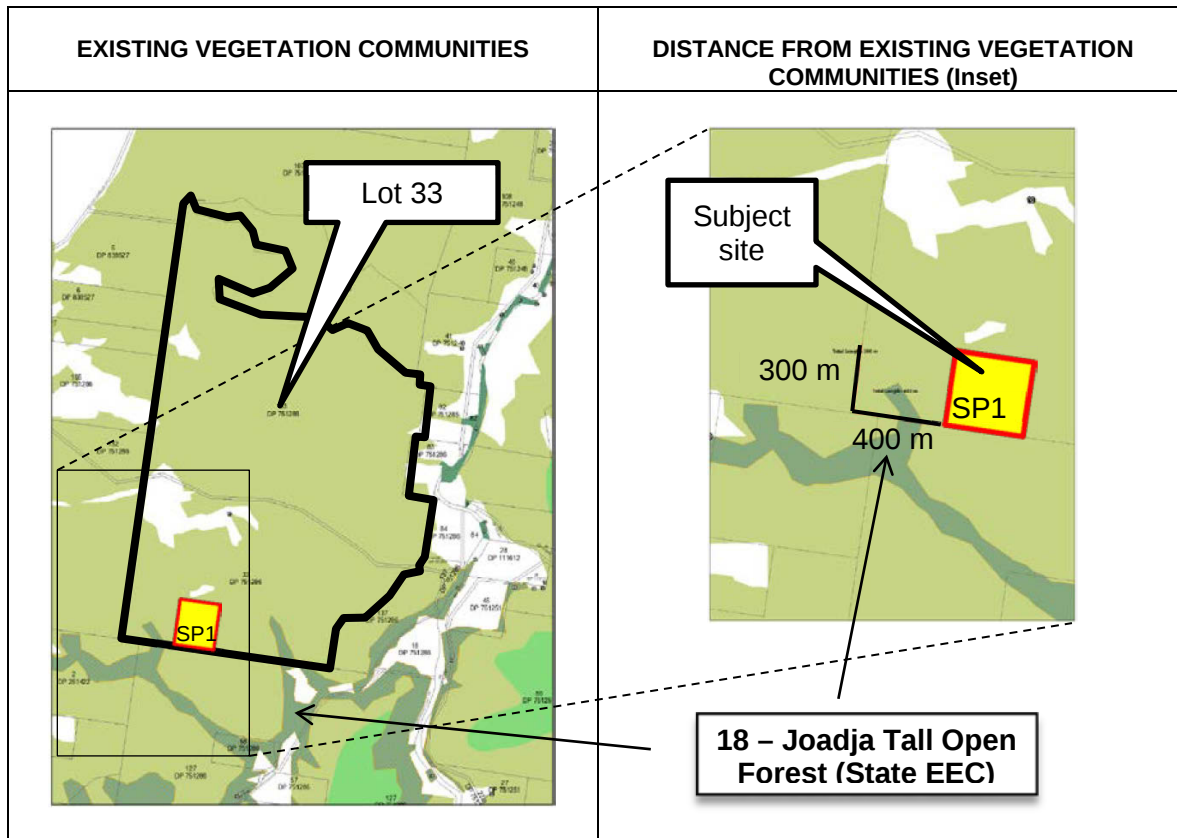


Figure 6

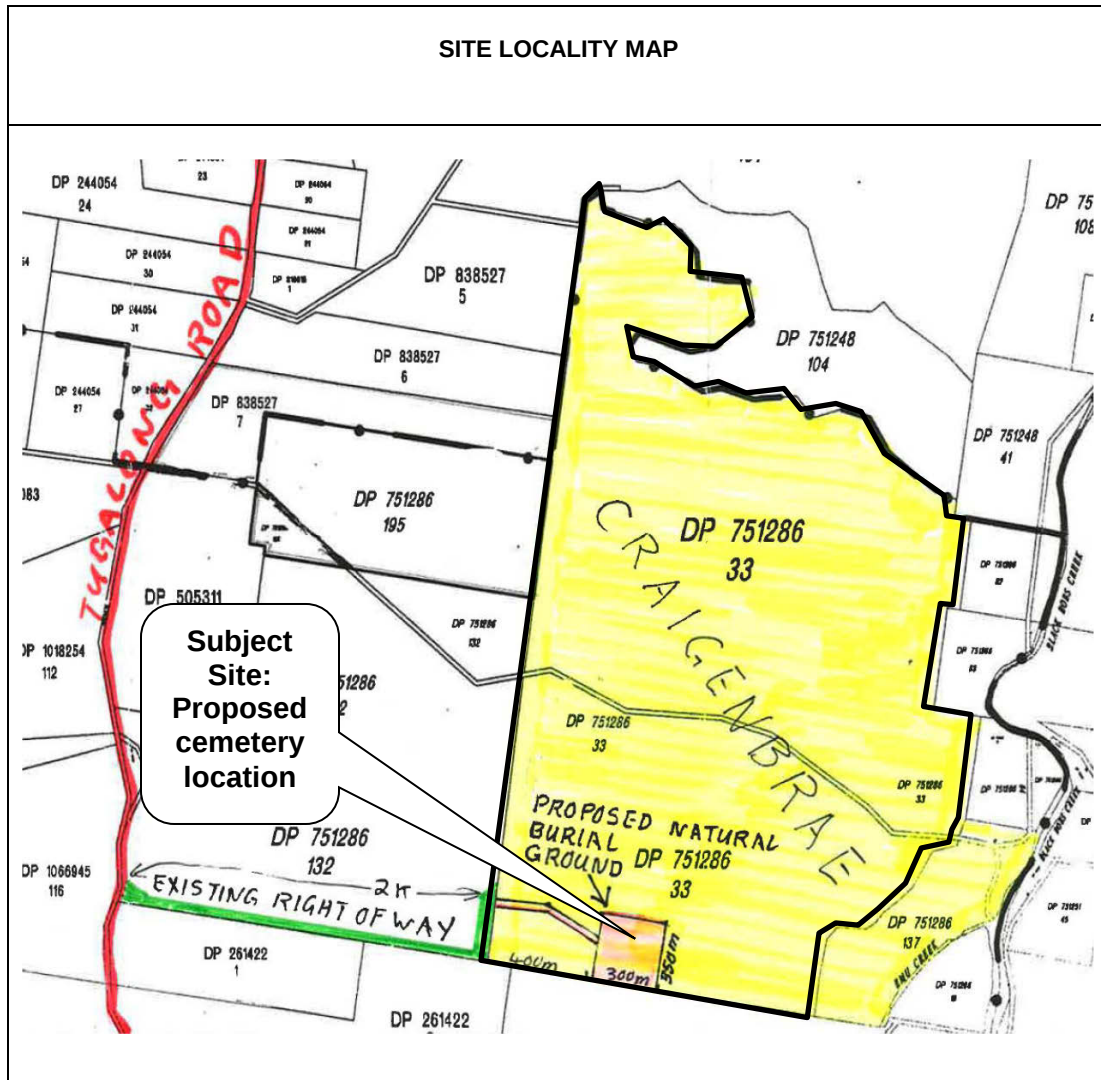


Figure 7

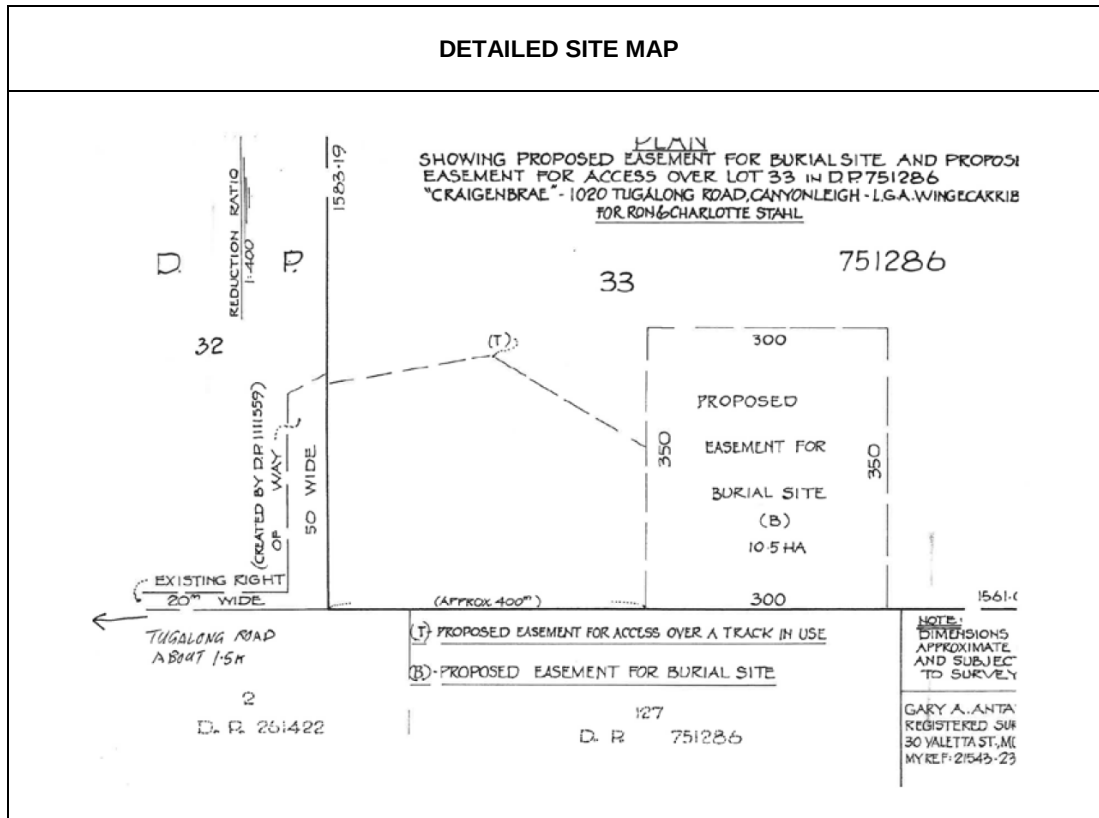


Figure 8

PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF PLANNING PROPOSAL

The purpose of the Planning Proposal is to enable Council to consider a development application for the use of the subject site for the purpose of a public natural burial ground, or *cemetery*, at 1020 Tugalong Road, Canyonleigh.

Please note that the attached Council Report of 11 September 2013 proposes to rezone the subject site SP2. This Planning Proposal revises the intended zoning of the site to SP1 Cemetery under Wingecarribee LEP 2010 as most other publicly accessible cemeteries in Wingecarribee Shire are zoned SP1 Cemetery.

PART 2 – EXPLANATION OF PROVISIONS

The provisions of the Planning Proposal will amend the existing zoning of the identified area of the subject site (Figure 7) from E3 Environmental Management (Figure 2) to SP1 Cemetery under Wingecarribee Local Environmental Plan 2010.

Map to be amended	Nature of map amendment
LZN_003	Rezone Part of Lot 33 DP751286 from E3 Environmental Management to SP1 Cemetery

PART 3 - JUSTIFICATION

The subject Planning Proposal is in response to a request from the owner to use part of Lot 33 for the defined purpose of a *Cemetery* (specifically a natural burial ground). A cemetery is defined under Wingecarribee LEP 2010 as '*a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services*'. It is not the applicant's intent to provide facilities for memorial services.

The applicant seeks to establish a cemetery in the form of a natural burial ground on the southern boundary of Lot 33 as indicated in Figure 7. The specific development intends to function in an environmentally sound way because of both the underlying approach of the operators and because the site is located in a Regional Wildlife Habitat Corridor (RWHC) and the Sydney Drinking Water Catchment area.

A natural burial ground is a type of cemetery in which burials occur with minimal disturbance to the natural ground. Any plaque would be horizontal to the ground and discrete. It is intended to limit works to an improved access road, car park and facilities block. These aspects are important due to the nature of the existing landscape and the location of the site in the RWHC.

A Planning Proposal is necessary to amend the Wingecarribee LEP 2010 (WLEP 2010) because WLEP 2010 currently prohibits cemeteries in the E3 Environmental Management zone. It is considered that the most expeditious way of amending WLEP 2010 to enable consideration of a Land Use Application for a cemetery would be to rezone the designated area of the site to SP1 Cemetery.

Section A – Need for the Planning Proposal

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

The proposal is in response to a site specific request from the property owner for Council to amend the Wingecarribee LEP 2010.

The Planning Proposal is considered consistent with Council's Community Strategic Plan 2031+ (see item 4) and is essentially required because the current schedule of permitted uses for the E3 Environmental Management zone prohibits the use of the property for the intended purpose.

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

The options available are due to the nature of the operation.

There are two broad categories of cemetery in Wingecarribee Shire: Private and Public.

Private Cemeteries are restricted use (not publicly available) and generally populated by specific families. These are not zoned SP1 Cemetery under Wingecarribee LEP 2010. They are usually zoned the same as the rest of the property or surrounding properties.

Public Cemeteries are operated by religious, private and government (local) organisations. These are open to the public however access to these is sometimes restricted (based on religious affiliations). These are zoned either SP1 Cemetery (operated by Council) or the same zone (eg, R2 Low Density Residential or E3 Environmental Management) as the residue of the property.

All existing zonings (except SP1 Cemetery) of the Wingecarribee LEP 2010 now prohibit the use of any land for the purpose of a cemetery (the definition of a Place of Public Worship also excludes cemeteries). Therefore existing cemeteries have existing use rights however the prohibition prevents the establishment of a new cemetery.

There are therefore four (4) options available to achieve the intended outcome.

Option 1

The preferred option is to rezone the identified area of the property to SP1 Cemetery under Wingecarribee LEP 2010 thereby allowing the use of this particular area of the site solely for the proposed use to be permissible with consent. The nominated use (Cemetery) would be stated on the WLEP 2010 Map therefore the identified use only (and development ancillary to that use) would be permitted with

consent. A subsequent development application would be required for the use of the site for the intended purpose, any ancillary development, and to subdivide the specific area from the remainder of the site.

There will be a requirement to register a future plan of subdivision and to register any easements required over the subject and adjoining lands to facilitate the proposed development (eg, access).

Option 2

The second option would be to amend the land use table of the E3 Environmental Management zone (the existing zoning of the subject site) under WLEP 2010 to include 'Cemeteries' as permissible with consent. The impact of this is that all E3 Environmental Management zoned land across the Shire would then permit this type of development. This option would result in the continued prohibition of cemeteries in all but the E3 zone on the basis of this specific request and not on any assessment of the suitability of the E3 zone for such a land use.

With respect to the objectives of the E3 Environmental Management zone, it is considered that the proposed use (for the purpose of a natural burial ground) would be consistent with the objectives of the zone under Wingecarribee LEP 2010 as it is a low impact development. However the definition of 'cemeteries' (including crypts, funeral vaults and crematoria) could result in development applications that may be inconsistent with the objectives of the zone.

Option 3

The third option is to register an easement over the land by way of Section 88B of the Conveyancing Act 1919, as suggested by the land owner's surveyor. This is an option that would not satisfy the operational requirements of the business, the ongoing use of the land for the intended purpose or the permissibility of the proposed use. There will however be a requirement to establish access easements with any development consent.

Option 4

The fourth option is to include the subject land and proposed use under Schedule 1 Additional Permitted Uses under WLEP 2010. The Department of Planning & Infrastructure has previously advised their reluctance to pursue the use of Schedule 1 as an option.

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)?

Although not a land use easily transposed to the Sydney Canberra Corridor Regional Strategy, the proposed use can be considered part of the natural attributes, cultural heritage and environmental sustainability objectives. The

proposed development can create a strong sense of place with the locality and the region and enables a sense of connection and belonging. It is considered that the subject Planning Proposal is consistent with the intentions of the SCCRS.

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

The following Goals and/or Strategies from the Wingecarribee 2031+ Community Strategic Plan can be met through the development of the site for a natural burial ground:

Goal 4.4.2 – Encourage residents and businesses to source goods locally

There are currently no natural burial ground type cemeteries within Wingecarribee and this development would offer residents the opportunity to be buried locally in an alternative environment to that currently offered.

Goal 5.4 – Sustainable business thrives in Wingecarribee.

It is the intention of the applicants that the cemetery operates as a viable business with the potential for economic benefits within the broader community.

Goal 5.5.6 – If the Shire is to “*turn grey into gold by attracting more retirees to the Shire*”, then alternative burial options should be of interest to the ageing sector of the community.

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

Several SEPPs apply to the subject site as follows:

SEPP 44 Koala Habitat Protection

All land within the Wingecarribee Shire Local Government Area is covered by the provisions of SEPP 44. The proposed development which this Planning Proposal would permit is specifically intended to have a minimum impact on the landscape. Therefore, it is considered to be consistent with the SEPP.

SEPP Sydney Drinking Water Catchment 2011

The Sydney Drinking Water SEPP applies to the site as it is located within the Sydney Drinking Water Catchment and all Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I. The Sydney Catchment Authority has provided comments (attached) regarding the subject proposal.

SEPP 55 – Remediation of Land

SEPP 55 requires that any Planning Proposal consider whether the subject land is contaminated, and if so, how it is to be remediated. Initial investigations indicated that there are no contamination issues on the subject site, but this will be confirmed at the Land Use Application stage should the Planning Proposal be supported and the LEP amendment subsequently made.

State Environmental Planning Policy (Infrastructure) 2007

The subject Planning Proposal is not one which is considered would generate a need for additional infrastructure as, for example 'traffic generating' development.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

It is anticipated that the proposed use of the site for the purpose of a natural burial ground is not a use that would be assessable under the Codes SEPP 2008.

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

Direction	Assessment
1. Employment and Resources	
1.1 Business and Industrial Zones	Not Relevant
1.2 Rural Zones	Not Relevant
1.3 Mining, Petroleum Production and Extractive Industries	Not Relevant
1.4 Oyster Aquaculture	Not Relevant
1.5 Rural Lands	Not Relevant
2. Environment and Heritage	
2.1 Environment Protection Zones	This Direction applies as the subject land is zoned E3 Environmental Management. Council must ensure that the environmental protection standards that apply to the land will not be reduced. Any Land Use Application (LUA) received as a result of this Planning Proposal must ensure that there are no adverse impacts on the locality or the environment.
2.2 Coastal Protection	Not Relevant
2.3 Heritage Conservation	Not Relevant
2.4 Recreation Vehicle Areas	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	Not Relevant
3.4 Integrating 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 requires that, following Gateway Determination, the Planning Proposal is to be referred to the NSW Rural Fire Service (NSW RFS) for comment. It is noted that the subject land is substantially bushfire prone.
5. Regional Planning	
5.1 Implementation of Regional Strategies NB: This Direction has been revised to include previous Directions 5.6 and 5.7.	The subject Planning Proposal is considered consistent with the Objectives and Actions contained in the Sydney Canberra Corridor Regional Strategy (SCCRS) and Sub-Regional Strategies as described in Section 3..
5.2 Sydney Drinking Water Catchments	This Direction applies as the subject land is located within the Sydney drinking water catchment. The subject planning proposal has been referred to the SCA as part of the Section 117 Directions. Comments received from the SCA are attached.
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, North Coast	Not Relevant
5.8 Second Sydney Airport: Badgerys Creek	Not Relevant
5.9 North West Rail Link Corridor Strategy	Not Relevant
6. Local Plan Making	

6.1 Approval and Referral Requirements	This Direction applies to all Planning Proposals. The Planning Proposal is considered consistent with this Direction as the intended Land Use Application will not generate concurrence, consultation or referral to the Minister of Planning and Infrastructure as for example traffic generating development under the SEPP (Infrastructure) 2007.
6.2 Reserving Land for Public Purposes	
6.3 Site Specific Provisions	This Direction requires that a Planning Proposal must not require further development standards under the environmental planning instrument to be imposed on the site that is the subject of the planning proposal. As the Planning Proposal will not amend any development standards on the subject site, it is 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?

A stand of Joadja Tall Open Forest (EEC) is located in the south eastern corner of the subject site however it is considered that due to the existing access path being located 100 metres from the identified area (see figure 6 and inset above), the proposed development will have minimal impact on this community. The remainder of the subject site is populated by the vegetation community of Wingecarribee Woodland. This is not a listed community. The low impact nature of a natural burial ground is not considered to create any adverse environmental impacts. Assessment at the LUA stage is able to mitigate any impacts.

Further, the unobtrusive nature of the proposed development will not obstruct movement of fauna through the identified Regional Wildlife Habitat Corridor.

The subject site is currently under a Property Vegetation Plan (PVP). This information has been requested from the applicant however it is considered that there will not be any impact of this Plan of Management for the site on the subject area or the proposed development.

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

There are considered to be minimal environmental impacts as a result of the Planning Proposal that could not be managed at the development application stage.

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

Based on the information provided, the proposed development will generate minimal social and environmental effects that could not be addressed at the development application stage.

Section D – State and Commonwealth interests

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

This proposal is not considered to be of a scale that would affect public infrastructure and any additional infrastructure would not be consistent with the approach of the proponents.

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

The Sydney Catchment Authority has already provided PreGateway comments (attached) regarding the subject application. Further public authority consultation will occur prior to the public exhibition period as required in the Gateway Determination. Any comments provided State and Commonwealth authorities will be included in the exhibition documentation where necessary by the conditions of the Gateway Determination.

PART 4 – MAPPING

Figure 9 below shows the anticipated amendment to the Wingecarribee LEP 2010. This is based on the preferred option to process the application (to rezone the identified area to SP1 Cemetery), current WLEP 2010 maps have been appropriately annotated to enable the subject land to be easily identified during consultations.

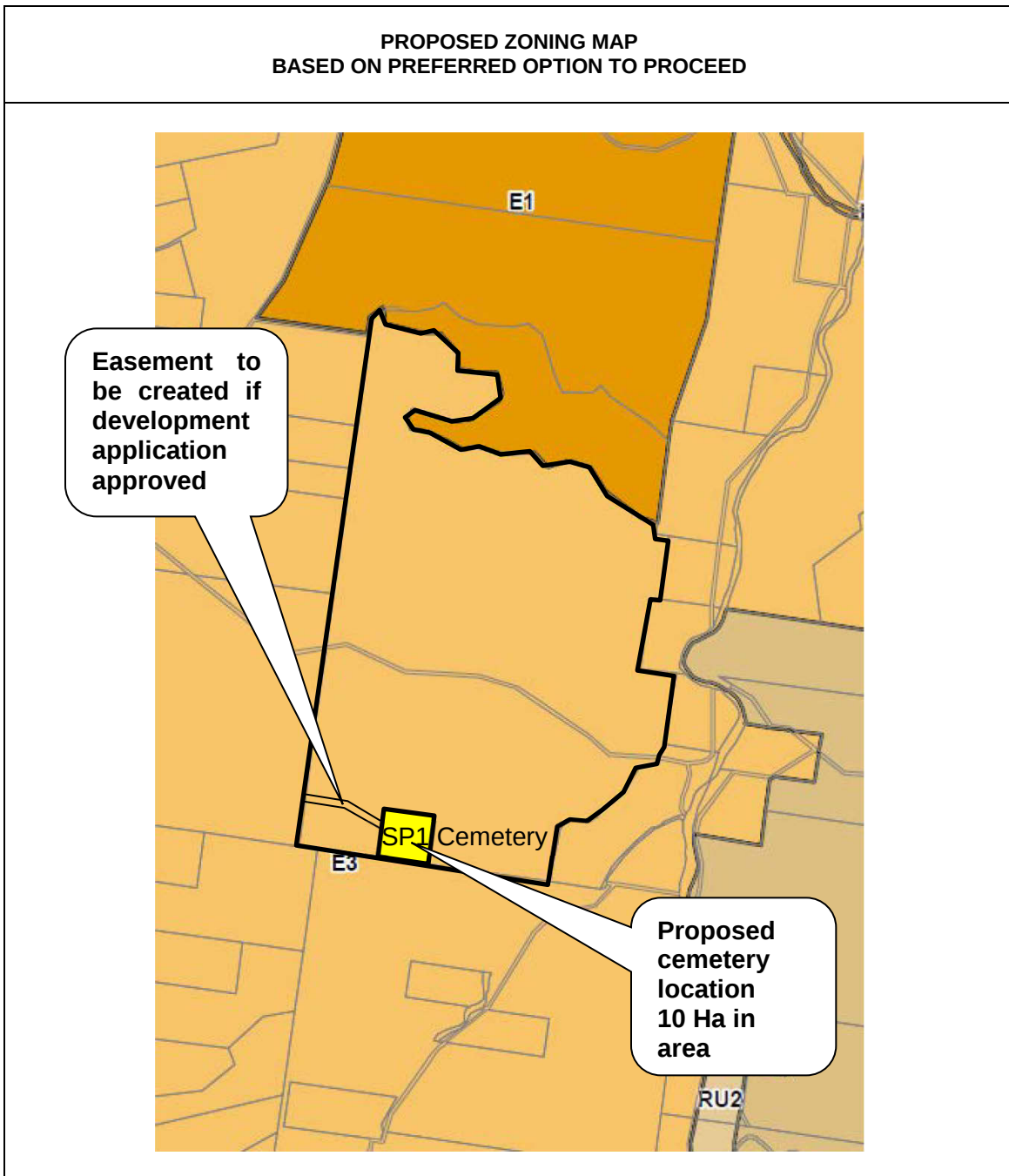


Figure 9 (approximate dimensions)

PART 5 – COMMUNITY CONSULTATION

It is recommended that the Planning Proposal be publicly exhibited for a period of 28 days.

Council proposes to consult with the following Government agencies:

- Sydney Catchment Authority
- Rural Fire Service
- Hawkesbury Nepean Catchment Management Authority

Council intends to place the planning proposal on public exhibition by advertising in the local newspaper, making it available on Council's website, and notifying adjoining owners.

PART 6 – PROJECT TIMELINE

ACTION	INDICATIVE DATE
Gateway Determination	7 March 2014
Completion of technical studies if required	28 March 2014
Revised/updated Planning Proposal (if required)	11 April 2014
Public Exhibition/Consultation with government agencies.	30 April – 28 May 2014
Public hearing – if required (if not exclude)]	
Report to Council on exhibition of Planning Proposal.	9 Jul 2014
Documents to DP&I & PCO.	23 July 2014
Approximate completion date	3 Sept 2014

DELEGATIONS

Council is applying to use its delegation to complete this proposal and an Evaluation Form has been attached for consideration.