
**TITLE PLANNING PROPOSAL S55 LOT 1004 DP 793659 ASH STREET,
TERRIGAL TO REZONE FROM 2(B) TO GENERAL BUSINESS 3(A):
APPLICANT DOUG SNEDDON PLANNING PTY LTD (IR10983516)**

Directorate: Environment and Planning

Business Unit: Integrated Planning

Disclosure of political donations and gifts - s147 Environmental Planning and Assessment Act (EP&A Act).

"A relevant planning application means: (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site". The following item is an *initial report* to consider a request to Council to prepare a *Planning Proposal*; hence it falls under the definition of a '*relevant planning application*'.

No disclosure was made by the applicant pursuant to s147 EP&A Act.

INTRODUCTION

Reason for Referral to Council: This report discusses merits for Council's consideration and decision of whether or not to prepare a Planning Proposal (PP) (*which, if supported would result in an LEP*), pursuant to Section 55 Environmental Planning & Assessment Act, 1979 (State).

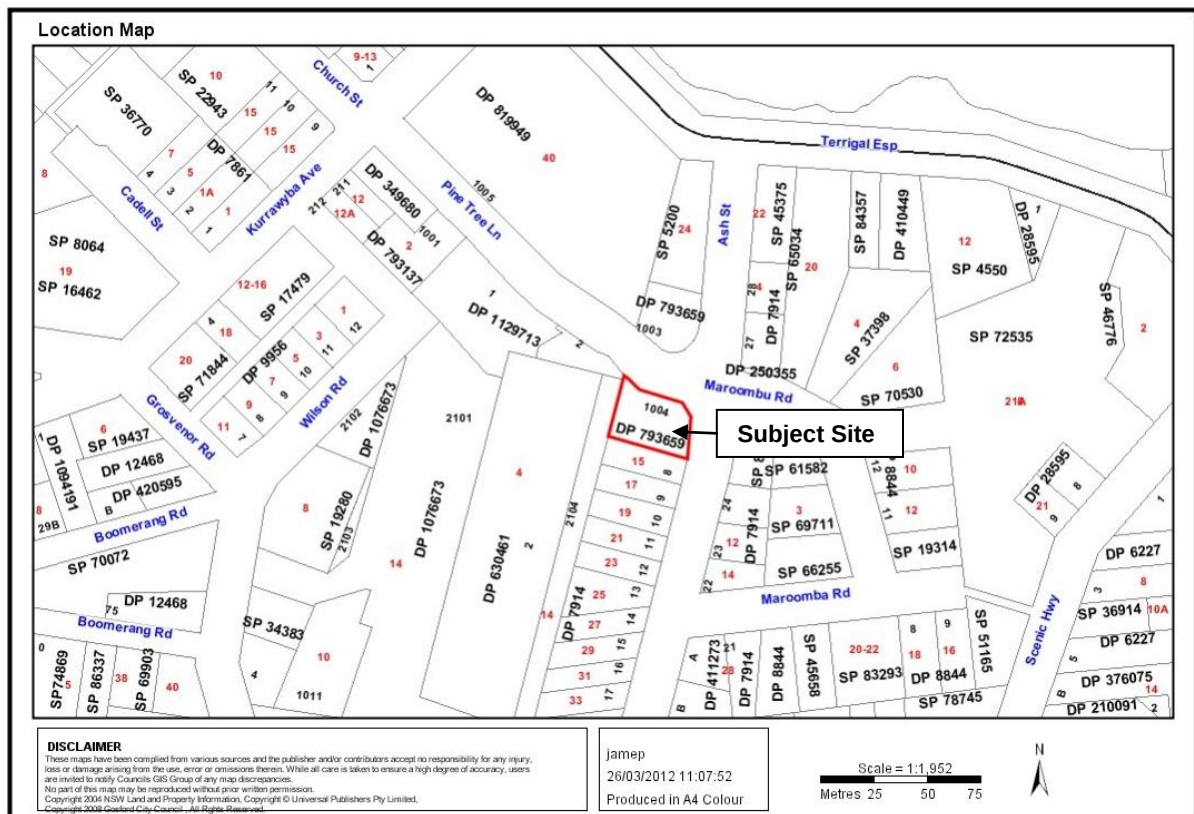
Application Received: 3 January 2012

Environmental Planning Instrument – Current Zone: Gosford Planning Scheme Ordinance 2(b) Residential

Area: 1066 m²

Background / Landuse History: The subject site is owned by Mistlake Investments Pty Ltd. It is located on the corner of Ash Street and Pine Tree Lane, Terrigal. The frontage to Pine Tree Lane is 39.44m and the Ash Street frontage is 19.935m. The site is flat and is substantially excavated below street level and developed for two commercial tennis courts, the height differential between the street frontages and the tennis courts is 2m at its highest.

Adjoining the property to its south is a dwelling house that is zoned Residential 2(b) with a site area of 493m². Adjoining the property to the west is a major drainage channel for the Terrigal Bowl, on the other side of the channel is the bowling greens associated with the Terrigal Bowling Club. To the north of the property on the opposite side of Pine Tree Lane is a vacant piece of land which is zoned General Business 3(a) and adjoins the Crowne Plaza Hotel. To the south of the property on the opposite side of Ash Street is a two storey residential flat building zoned Residential 2(b).



Applicant's Submission:

The Applicant's submission states that Council in response to a submission by the owners of the subject site regarding the Draft Gosford Local Environmental Plan (DLEP) 2009 resolved on the 31st May 2011 to adopt the DLEP subject to a number of amendments, including:

- "J. Council amend the zoning of Lot 1004 DOP 793659, Corner of Pine Tree Lane and Ash Street, Terrigal to B2 (with appropriate height and FSR development standards) and amend the Terrigal Area Strategic Plan to include the lot within its boundaries."

In discussions with the regional office of the NSW Department of Planning and Infrastructure (DoP&I) in relation to Council's resolution "J" in respect to the subject land, the Department has suggested that, as the Council's decision to rezone the land to "B2 Local Centre" was made after the public exhibition of Draft Local Environmental Plan 2009 and had not been subject to public notification, it would be preferred if the proposal to rezone the land for business purposes was publicly exhibited in order to provide the community with the opportunity to make submissions on the proposal. The Planning Proposal application would provide the opportunity for this to occur.

The landowners wish to proceed with the early development of the subject land for mixed retail/commercial/residential development. It is stated by the Applicant that the timeframe associated with finalisation and gazettal of Draft Local Environmental Plan 2009 is uncertain and has the potential to unnecessarily delay the opportunity for the economic redevelopment of the land, providing additional retail/commercial/residential activity (and employment generation) to enhance the viability of Terrigal Town Centre.

The Applicant requests that Council prepare a draft Local Environmental Plan to advance the rezoning of the land separately as a planning proposal, to rezone the subject land to 3(a) Business (General) under the Gosford Planning Scheme Ordinance. This will enable the early lodgement of a development application for development of the subject land for four storey mixed use development comprising basement car parking, street ground level retail, first floor commercial and two floors of residential apartments.

The Applicant puts forward the following points to support the rezoning of the subject land for business purposes:

- The subject land is structurally and functionally part of the Terrigal Town Centre. It has its principal street frontage (39.5m) to Pine Tree Lane and provides one of the few immediate opportunities for significant redevelopment within the Town Centre, consistent with the intended function of Pine Tree Lane as one of the principal mixed use streets within the Town Centre. Land along the southern side of Pine tree Lane presents significant opportunities for development as there are no economic or land fragmentation impediments to new buildings being constructed at this location;
- The subject land, together with the vacant commercial development site located on the opposite (northern) corner of Pine Tree Lane and Ash Street, provides opportunity to give urban design emphasis to a significant street corner/entry point to the Terrigal Town Centre. Council has recently granted Development Consent No 40655/2011 for mixed use development on the opposite street corner, comprising basement car parking, two cinemas at ground level, a gymnasium at Level 1 and commercial offices at Level 2;
- Rezoning and redevelopment of the subject land for mixed use commercial/residential development is consistent with the Council's strategic directions for the Terrigal Town Centre, the Central Coast Structure Plan/Shaping the Central Coast and relevant s117 Directions;
- The land is already used for business/tourist purposes, being excavated 2 metres below street level and occupied by two tennis courts, operated in conjunction with the nearby Crown Plaza Hotel. Gosford LEP 252, Gazetted on the 3rd August 1990, applies specifically to the land, permitting its use for commercial tennis courts. This use is no longer economically viable and ownership of the land has been divested by the Crowne Plaza Hotel;
- Rezoning of the land to a business zone would reflect its existing use for business/tourist related purposes and consequently would not have the effect of unreasonably extending the existing business precinct, nor would it create a precedent for the rezoning of other lands adjacent to the town centre, owing to the site's particular circumstances;
- The site is unsuitable for medium density housing consistent with its existing 2(b) Residential zoning due to its substantial excavation below street level and adverse amenity issues (privacy, vehicle noise and headlight glare) for any street level residential development at this location. The existing residential zoning of the land is, for all practical purposes redundant and prevents the land from being developed in a manner which is consistent with the commercial/residential opportunity provided by its frontage to one of the principle commercial streets of Terrigal Village Centre;
- The proposed four storey mixed use building on the site incorporates basement car parking; 222m² retail space on the ground floor fronting Pine Tree Lane; 281m²

commercial space on level one fronting Pine Tree Lane; and 6 x 3 bedroom apartments on the upper two levels fronting Pine Tree Lane and on each of the levels fronting adjoining residential development in Ash Street;

- Rezoning application No 2005/194 lodged with the Council in March 2005 was accompanied by architectural drawings for the proposed development, demonstrating that the proposed development complied with the design guidelines and numerical controls of Development Control Plan No 55;
- The proposed development will result in additional retail/commercial/residential activity (and employment generation), enhancing the viability of Terrigal Town Centre.

The applicant requested that Gosford City Council prepare a Draft Local Environmental Plan to:

- (i) Amend the Gosford Planning Scheme Map so as to rezone Lot 1004 DP 793659 from 2(b) Residential to 3(a) Business (General); and
- (ii) Amend the map referred to in clause 49S (1) of the Gosford Planning Scheme Ordinance to apply the provisions of clause 49S to the subject land.

Council is also requested to amend the map in Schedule 1 of Development Control Plan No. 55 (Amendment No. 1) – Terrigal Town Centre so as to include Lot 1004 DP 793659 within the area to which DCP 55 applies. Consequently, it is stated that it is not necessary to prepare a site specific development control plan for future development of the subject land.

The issues raised in the applicant's submission have been considered in the assessment of the proposal.

'Gateway' planning process

A Local Environmental Plan (LEP) is a legal instrument that imposes standards to control development and it may reserve land for public purposes and protect trees and vegetation. The purpose of a LEP is to achieve the objects of the EP&A Act and they are a means to implement strategies.

The 'gateway' process allows a Planning Proposal to be reviewed at an early stage by State Government Department of Planning and Infrastructure (DoP&I) to make a decision whether to proceed further, i.e. does the PP have merit to proceed to community consultation stage. The 'gateway' determination will ensure there is sufficient justification early in the process to proceed. It is a checkpoint before significant resources are committed to carrying out technical studies.

Attachment A is a flowchart of the Planning Proposal process extracted from DoP&I documents.

PLANNING PROPOSAL GOSFORD CITY COUNCIL LOT 1004 DP 793659 ASH STREET, TERRIGAL TO REZONE FROM 2(B) TO GENERAL BUSINESS 3(A):

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*.

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

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 Lot 1004 DP 793659, Ash Street, Terrigal from 2(b) – Residential to 3(a) Business (General) under the Gosford Planning Scheme Ordinance to facilitate development of the site for mixed use business and residential purposes.

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:

- (i) Amending the Gosford Planning Scheme Map so as to rezone Lot 1004 DP 793659 from 2(b) Residential to 3(a) Business (General); and
- (ii) Amending the map referred to in clause 49S (1) of the Gosford Planning Scheme Ordinance to apply the provisions of clause 49S to the subject land.

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.

It is intended to zone the subject site to 3(a) Business (General) under the Gosford Planning Scheme Ordinance. Maps are provided in Attachment B to this report.

Part 3 Justification

s.55(2)(c) The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

Section A Need for the Planning Proposal

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

The Planning Proposal is not the result of any strategic study or report.

On the 31st May 2011, Gosford City Council resolved to amend the zoning of the subject land as exhibited under the Draft Gosford Local Environmental Plan 2009 (DLEP 2009) to B2 Local Centre. The Applicant seeks to “bring forward” the provisions of the DLEP 2009 and rezone the subject site from 2(b) Residential to 3(a) Business (General).

The Applicant argues that due to uncertainty of the timeframe for finalisation and gazettal of DLEP 2009 by DoP&I, the purpose of the Planning Proposal is to advance the rezoning of the land to facilitate the early redevelopment of the land for mixed use development and to provide opportunity for the community to comment on the proposal to include the land within the Terrigal Town Centre.

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

The planning proposal facilitates the early commencement of the development process associated with the redevelopment of the site for a mixed use retail/commercial/residential development. The Applicant argues that any delay in the process may result in a lost opportunity with regard to the development of the site.

The zoning of the land to 3(a) Business (General) is consistent with Council's resolution of 31 May 2011 for the DLEP 2009 and is considered the best means of achieving the objectives of the Planning Proposal.

3 Is there a net community benefit?

The net community benefit of the Planning Proposal is to be assessed based on answers to the following questions which show that the Planning Proposal will produce a net community benefit.

Will the LEP be compatible with agreed State and Regional strategic directions for development in the area? The Council's resolution for the DLEP 2009 of the 31 May 2011 confirms that incorporating this land in the 3(a) Business (General) zone is consistent with the Council's desired outcomes for this land.

Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy? The subject land is located within the Terrigal Centre which is identified by the Central Coast Regional Strategy 2006-31's centres hierarchy as a "village" centre.

Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landowners? No, the planning proposal will not create a precedent or change the expectations of other landowners, it seeks to "bring forward" intentions to zone the subject land for commercial purposes under the provision of the Draft Gosford Local Environmental Plan 2009.

Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations? There have been two other recent rezoning proposals for land within the Terrigal Village Centre.

Lots 9 and 10 DP 7861 Kurrawyba Ave the former church site on the corner of Church Street and Kurrawyba Ave was previously zoned 5(a) Special Uses Church under the Gosford Planning Scheme Ordinance. The DLEP 2009 recommended incorporating the site into the surrounding B2 zone, as churches are a permitted use in this zone and DoP&I had advised reducing the number of special use zones in the DLEP. Due to the uncertainty surrounding the timing of gazettal of the DLEP 2009 a planning proposal was submitted to "bring forward" the provisions of the DLEP 2009 for this site and it has now been rezoned to 3(a).

Council also resolved at its meeting of 31 May 2011 to include the subject site and a second site Lot 3 DP 829025 6-8 Painters Lane Terrigal in the B2 zone as part of a "rounding off" of the centre and so the Painters Lane site could be incorporated into

the larger “Rapedo” site which was the subject of a previous site specific rezoning in 2003.

A Planning Proposal has been lodged for the Painters Lane site and this proposal has received a gateway determination and will be on public exhibition from 30 May until 13 June 2012.

All of the planning proposals are consistent with Council’s resolution of 31 May 2011 and are consistent with Council’s desired direction for the Terrigal Village Centre.

Will the LEP generate permanent employment generating activity or result in loss of employment lands? The subject site is proposed to be rezoned 3(a) Business and as such should result in employment generating activity. The Applicant states that the proposed development is to include commercial/retail space on the ground and first floors which will provide up to 55 post construction jobs.

Will the LEP impact on the supply of residential land and therefore housing supply and affordability? The LEP will remove one parcel of land that is currently zoned 2(b) Residential. The 3(c) zone however permits residential flat buildings and the Applicant has stated a mix of retail and residential (including 6 large units) is proposed for the site.

Is the existing public infrastructure (roads, rail and utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport? The site is located adjacent to the existing Terrigal Village Centre and is well located in terms of pedestrian and cycling access and public transport is available to the land.

Council’s Integrated Planning Unit raised concerns with regard to the planning proposal from a traffic and transport perspective, in particular the impacts of any proposed development on the Pine Tree Lane/Ash Street roundabout and the operation of its strategic role for the centre. These concerns are discussed in detail in Section 7(v) Direction 3.4 Integrating Land Use and Transport section of this report.

Will the proposal result in changes to car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of green house gas emissions, operating costs and road safety? No customers and employees are likely to be drawn from the surrounding area.

Are there significant Government investments in infrastructure, or services in the area whose patronage will be affected by the proposal? If so what is the expected impact? There are no significant government infrastructure investments that would be affected by the proposal.

Will the proposal impact on land that the Government has identified as needed to protect (eg land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding? The land is not identified by the Government for environmental protection. It is partly affected by the 1 in 100 year flood extent; this issue is addressed in detail in Section 7(vi) Direction 4.3 Flood Prone Land.

Will the LEP be compatible/complementary with surrounding land uses? What is the impact on the amenity in the location and wider community? Will the public domain improve?

The applicant considers that the rezoning is a natural extension of the business function of Pine Tree Lane and that the LEP will be compatible and complementary to other business premises in the locality. They argue that it will further activate the streetscape and improve amenity and the public domain at a major town centre entry point. It is also stated that the site is unsuitable for medium density housing consistent with its 2(b) Residential zoning due to its substantial excavation below street level and adverse amenity issues (privacy, vehicle noise and headlight glare) for any street level residential development at this location.

Although rezoning the site to allow business/commercial uses might resolve the amenity problems for this site, similar amenity problems are then created for surrounding residentially zoned properties, particularly for the adjoining property in Ash Street which is currently developed for a single dwelling house and has a balcony on the northern side adjoining the subject site. This adjoining site by itself is not of adequate area to be developed for the medium density use permitted by its 2(b) zoning and could possibly remain developed as a single dwelling for some time. This dwelling then has the potential therefore to be overlooked by six units, plus any commercial/retail development on the subject site and to be looking out towards the north onto a large expanse of four storey wall, this would significantly alter and negatively impact on the amenity of the adjoining property. Whilst the amenity issues for the subject site may be valid the solution is not to transfer the problem to other properties.

Further, the possible locating of retail/commercial uses on the Pinetree Lane frontage of the development with residential uses located facing the adjoining residential property, would not address the amenity issues as the residential uses could be converted in the future under the zoning of the land to retail/commercial uses.

Additionally the subject site adjoins the Terrigal Bowling club to the west and if not properly designed with appropriate setbacks a building with the height requested by the applicant has the potential to have overshadowing impacts on the adjoining bowling greens, thus impacting on the broader community who use this facility.

The Applicant also raises concerns regarding privacy, vehicle noise and headlight glare for any street level development on the subject site as a justification to rezone the site from residential to commercial/business. An initial review of the land use situation in this area would conclude that the issues raised are valid. However there are strategic concerns associated with pedestrian and access requirements for service trucks and vehicle access to the building (bins, storage, residential and commercial). The Pine Tree Lane frontage is the one which addresses the "centre" and from an urban design perspective vehicular access across this frontage is not desirable. For these reasons it is unlikely that vehicular access for the development would be approved from the Pine Tree Road frontage, thus access for the development is likely to be in the primarily residential Ash Street. The potential therefore exists for the amenity concerns relating to traffic and vehicular impacts raised by the applicant with regard to the subject site are being transferred to Ash Street properties in particular the adjoining residential dwelling.

Impact on the amenity of adjoining properties can be considered at the development applications stage.

Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area. Yes, the LEP will facilitate retail/commercial development on the land which will increase the range and number of business premises within Terrigal Village Centre.

If a stand alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future? The subject land is located adjacent to the existing Terrigal Village Centre and is not a stand alone proposal.

What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time. The LEP will facilitate additional retail/commercial and residential development which has the potential to create employment opportunities.

If the LEP were not to proceed at this time it would delay the development of the site until after the gazettal of the DLEP 2009. The planning proposal has been submitted following concerns raised by DOP&I that Council's resolution to rezone the site to B2 was made after public exhibition of the DLEP and the community had not had opportunity to comment. This planning proposal will provide the opportunity for the community to be involved and have input into the process.

Section B Relationship to strategic planning framework

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

The Central Coast Regional Strategy 2006 – 2031 is applicable to the subject land and the proposed rezoning. The Planning Proposal will assist Council in meeting the targets set by the State Government in the Regional Strategy for provision of housing and jobs.

This Planning Proposal to rezone the subject land for business purposes is consistent with the following objectives/actions contained within the Regional Strategy for the reasons specified:

- the Strategy seeks to improve employment self containment by creating more opportunities for local jobs closer to home;
- Promote economic and employment growth in the region to increase the level of employment self containment and achieve capacity for more than 45,000 new jobs on the Central Coast over the next 25 years;
- Ensure new retail and commercial development is located in centres.

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

The Planning Proposal is consistent with the *Community Strategic Plan – Continuing our journey*. The Planning Proposal will concentrate business development in the centre near public transport and increase employment opportunities, thus aligning with the Community Strategic Plan objectives and strategies, ie:

C1 - Gosford is a place that attracts people to work, live and visit.

Attracting investment and strengthening the economy responds to a high level of commuting, variability of employment, underemployment, youth unemployment, and the need for secure local jobs and senior job opportunities.

C1.1 Broaden range of business and industry sectors

C1.3 Increase and broaden the range of local jobs across existing and emerging employment sectors.

C2 - Gosford attracts and supports new and existing businesses and investment

The planning proposal will permit the site to be developed for retail/commercial/residential purposes and the Applicant states that the planning proposal will create up to fifty five post construction jobs.

Draft Gosford Centres Strategy

The Draft Gosford Centres Strategy was prepared as supporting background information for the Draft LEP 2009. The strategy raised the possibility that sites peripheral to the centre might be suitable to rezone B2 where an improved urban design outcome would result or where the lots easily integrate with existing commercial land use activities, in particular where land is surrounded by a commercial zone and physically segregated from adjoining residential zone by a road or other feature. When Council was consulting with DoP&I during the preparation of the DLEP, DoP&I was not supportive of including Lot 1004 DP 793659 Ash Street within the B2 as it was inconsistent with the Terrigal Bowl Strategic Plan adopted by Council.

In terms of the Draft Gosford Centres Strategy the inclusion of the subject site within the Terrigal Village Centre is dependent on an improved urban design outcome or easy integration of lots within the existing commercial land use activities. The Applicant has stated that the planning proposal will result in an improved urban design outcome for the centre, whilst this argument has some merit in terms of the sites ability to integrate with the existing commercial land use activities, there is no evidence that the urban design outcome for the surrounding residential development will be improved. Depending on the permitted height and setbacks for the site the proposal has the potential to have amenity impacts such as overshadowing and overlooking of the immediately adjoining properties.

Council however resolved at its meeting of 31 May to:

amend the zoning of Lot 1004 DP793659 Pinetree Lane, Terrigal, to B2 (with appropriate height and FSR development standards) and amend the Terrigal Area Strategic Plan to include the lot within the boundaries of the Terrigal Town Centre Strategic Plan.

The dLEP was therefore amended and the subject land rezoned to B2 - Local Centre with a proposed floor space ratio (FSR) of 1.8:1 and a building height set at RL18.5m.

Terrigal Bowl Strategic Plan

Council in 2002, adopted the Terrigal Bowl Strategic Plan, this plan formed the basis for the preparation of an LEP/DCP for the Terrigal Village Centre. The Strategic Plan provided for increased height and floor space opportunities so that much needed redevelopment of the existing retail/commercial buildings in the centre could occur.

At the time Council resolved not to extend the existing business zoned area of the Terrigal Village Centre as it wished to support redevelopment of the existing sites within Terrigal Town Centre and ensure that commercial/retail development does not create incompatibility issues with existing residential development.

As indicated in the applicant's submission the proposed rezoning will extend the business zoned land in the Terrigal Village Centre, this is contrary to the adopted Terrigal Bowl Strategic Plan. Council however resolved at its meeting of 31 May 2011 to:

amend the zoning of Lot 1004 DP793659 Pinetree Lane, Terrigal, to B2 (with appropriate height and FSR development standards) and amend the Terrigal Area Strategic Plan to include the lot within the boundaries of the Terrigal Town Centre Strategic Plan.

In order to progress the planning proposal in accordance with Council's resolution it is considered appropriate that if the Gateway Determination supports the planning proposal then the land be subject to DCP 55 development controls which meet and comply with the objectives and intent of the Terrigal Bowl Strategic Plan and subsequent LEP, and ensure the amenity of adjoining development is protected. These controls would supplement the zoning provisions, FSR and building height which are already contained with dLEP 2009.

Council's resolution also amended the Terrigal Town Centre Strategic Plan to include the subject site.

6 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: SEPPs are only discussed where applicable. The Planning Proposal is consistent with all other SEPPs or they are not applicable.

(i) SEPP 55 – Remediation of Land

Clause 6 of this instrument requires contamination and remediation to be considered in a proposal. In this case, the issues raised in Clause 6 of SEPP 55 do not arise as the subject land has not previously been used for a purpose referred to in "Table 1 Some Activities that may Cause Contamination".

(ii) SEPP 65 – Design Quality of Residential Flat Development

Clause 28 of this instrument requires that any person who prepares an environmental planning instrument "make provision with respect to residential flat development should include provisions in the instrument or plan to ensure the achievement of design quality in accordance with the design quality principles and have regard to the publication *Residential Flat Design Code* (a publication of the Department of Planning, September 2002)."

The planning proposal is to rezone the site to 3(a) Business General and residential flat buildings are permitted in this zone. The Applicant has states that it is proposed that the site be developed for a mixed use development which incorporates two floors of residential apartments. The planning proposal is considered to be **consistent** with this requirement as it is intended that any development controls applying to the site will be incorporated into clause 49S of the GPSO and DCP 55 Terrigal Town Centre both of which are consistent with the SEPP and have been considered by the SEPP 65 Panel.

Detailed design matters can be considered at the development assessment stage.

(iii) SEPP 71 – Coastal Protection

Clause 8 of State Environmental Planning Policy 71 identifies “matters for consideration” with the most relevant being the relationship of this site to the surrounding area and any negative impacts in relation to the coastal foreshore; views, overshadowing and access to, from and along the foreshore, the suitability of development given its type, location and design and relationship with the surrounding area.

The planning proposal is seen to **satisfy and be consistent** with the relevant matters for consideration under this instrument. Detailed matters of design, overshadowing etc to address SEPP 71 are able to be dealt with at the development consent stage.

- (iv) Other SEPPs:** No other SEPP has application to this planning proposal, although any future development application on the land will be required to consider any relevant SEPPs.

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

The following assessment is provided of the consistency of the Planning Proposal with relevant Section 117 Directions applying to planning proposals lodged after 1st September 2009. S117 Directions are only discussed where applicable. The Planning Proposal is consistent, with all other S117 Directions or they are not applicable.

(i) Direction 1.1 Business and Industrial Zones

The direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone. The objectives of the Direction are to :-

- encourage employment growth in suitable locations;
- protect employment land in business and industrial zones; and
- support the viability of identified strategic centres.

The change from 2(b) – Residential to the proposed 3(a) – Business (General) zone is **consistent** with the Direction and will meet the objectives, encouraging employment growth by permitting business uses on the site.

(ii) Direction 2.2 Coastal Protection

The subject site is located within the Coastal Zone. It must therefore include provisions that give effect to and are consistent with:-

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

The NSW Coastal Policy sets out the following goals relevant to the Planning Proposal:-

- Protecting, rehabilitating and improving the natural environment of the coastal zone; and
- Providing for ecologically sustainable development and use of resources.

The Applicant argues that the zoning of the subject site will result in a more efficient use of the property and is consistent with the Council's adopted directions for the Terrigal Centre in the DLEP. It does not prevent or inhibit the protection, rehabilitation and improvement of the natural environment of the coastal zone as the subject site is located within a well established residential/commercial precinct.

The Coastal Design Guidelines relate to the design and location of new settlements and the design of development in the coastal zone. The subject site is located adjacent to an existing village centre, however the design of any future development on the site will need to have consideration to these guidelines. It should be noted that the Coastal Design Guidelines recommend heights of generally up to 4 storeys for Coastal Towns and three storeys for coastal villages. The guidelines also state that:

"Heights are subject to place-specific urban design studies. New development is appropriate to the predominant form and scale of surrounding development (either present or future), surrounding landforms and the visual setting of the settlement. Buildings avoid overshadowing of public open spaces, the foreshore and beaches in town centres before 3pm midwinter and 6.30pm Summer Daylight Saving Time. Elsewhere avoid overshadowing of public open spaces, the foreshores and beaches before 4pm midwinter and 7pm Summer Daylight Saving Time."

The height requested by the Applicant to allow a four storey development is similar to the building heights recommended for the rest of the Terrigal Village Centre in the Terrigal Bowl Strategic Plan and subsequently adopted for the centre in LEP 442. However these heights were developed as a result of detailed strategic work that considered the potential impacts of the heights on surrounding residential development, the subject site was not included in this detailed analysis as it was not part of the Terrigal Village Centre at the time. The potential impacts of four storey development (as requested by the Applicant) on the site on surrounding development are therefore unknown in particular the impacts on the adjoining residential property and the adjoining bowling club which due to its use could be considered a "public" open space.

The requested heights for the subject site are not the subject of a place specific urban design study, they do however comply with the generally recommended heights for centres of this scale. In this regard the planning proposal could be considered in some way **consistent** with this direction.

As mentioned earlier, amenity issues can be considered at the development application stage.

The NSW Coastline Management Manual has no direct application due to the fact that the site does not fall within the inter-tidal area where coastal processes are most prevalent.

(iii) Direction 2.3 Heritage Conservation

This direction applies when a relevant planning authority prepares a planning proposal. 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;
- Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

Having regard to the cleared and disturbed nature of the site due to its long term usage as a tennis court, it is unlikely that there are any remaining aboriginal relics if they existed in the first place. Council records do not indicate the presence of Aboriginal relics on the land.

(iv) Direction 3.1 Residential Zones

This direction applies to all relevant planning authorities and to when that relevant planning authority prepares a planning proposal that will affect land within:-

- an existing proposed residential zone (including the alteration of any existing residential zone boundary);
- any other zone in which significant residential development is permitted or proposed to be permitted.

The Planning Proposal initially appears to be inconsistent with this direction as it intends to remove land from the residential zone. The proposed business zone however permits residential flat buildings and the Applicant states that the planning proposal will be developed for a mixed use development which includes residential development. Therefore the impact on residential development will be minimised and it is considered that inconsistency with this direction can be justified.

(v) Direction 3.4 Integrating Land Use and Transport

Clause 4 of the Direction requires a planning proposal to locate zones for urban purposes and include provisions that give effect to and are consistent with the aims,

objectives and principles of *Improving Transport Choice – Guidelines for Planning and Development 2001* and *The Right Place for Business and Services – Planning Policy 2001*.

The proposal is consistent with this direction in that it locates business uses adjacent to an existing centre which is located on a major bus route. It has the potential if developed as stated to improve the services available to the residents of Terrigal and has the opportunity to reduce car dependence and distances travelled by car for both residents and tourists.

There are concerns about the strategic impact of the proposal on the Pine Tree Lane - Ash Street roundabout. These are outlined below:

A rough comparison has been undertaken between the traffic generation potential of the current land use 2(b) Residential and the proposed B2 Local Centre zones, enabling a basic assessment of the traffic generation implications. If the planning proposal proceeded then the potential traffic flows are predicted to double as a result. However this doubling of traffic is considered to have a negligible impact on the existing traffic conditions in Ash Street and the Pine Tree Lane/Ash Street roundabout. Of concern though is the close proximity of the vehicular access to the off street parking area via Ash Street to the roundabout, considering that:

- *Pine Tree Lane/Ash Street roundabout is a strategically important part of a preferred access route to the Wilson Road off street public car park due to its higher capacity and lower pedestrian activity environment. In addition to the expected traffic increases along Ash Street, options to increase the public car park capacity and linkages to Ash Street are likely to be investigated in the future.*
- *The planning proposal is not supported due to the unavoidable likelihood of increased risk and congestion levels on the footway area associated with pedestrian conflicts and access requirements for service trucks and vehicle access to the building (bins, storage, residential and commercial).*

Should Council resolve to support the proposal and the Gateway Determination supports the progression of the planning proposal then a traffic study should be prepared to consider the issues above.

This study can be prepared at the development application stage.

(vi) Direction 4.3 Flood Prone Land

The Direction requires the following to be addressed.

- (4) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*
- (5) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*

- (6) *A planning proposal must not contain provisions that apply to the flood planning areas which:*
 - (a) *permit development in floodway areas,*
 - (b) *permit development that will result in significant flood impacts to other properties,*
 - (c) *permit a significant increase in the development of that land,*
 - (d) *are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
 - (e) *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.*
- (8) *For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*

The proposed site is partly located within an identified flood prone ponding area of the Terrigal Bowl and which will be worsened with increase in height of sea levels.

Following the completion of the Terrigal Trunk Drainage Study, Council has to date completed a large majority of trunk drainage works which have alleviated flooding to the area, however the full extent of the works have not as yet been completed. These remaining collection (including kerb & gutter) and trunk drainage works are important to ensure that all stormwater is collected and loaded into the drainage system which will then lower flood ponding levels in the Terrigal Bowl Area.

The drainage system for this area of the Terrigal Bowl discharges into the Pacific Ocean via the southern end of Terrigal Beach. This system was designed many years ago following flooding events experienced in the early 1990's. The design however did not consider rises in sea level of 0.9m by 2100 which Council is now required to address. Any increases in sea level will affect the capacity of the drainage system and will have the adverse affect of raising flood ponding levels in the Terrigal Bowl area. This will result in higher ponding levels across the subject site. Any development of the site could address increases in flood levels from sea level rise by applying a higher Flood Planning Level, however the site would be further inundated with flood waters and may become an important part of flood storage for the ponding area.

A detailed flood study to address the above issues is required from the applicant to define the current flood ponding level and hazards based on the existing drainage system and which should include a rise in sea level of 0.9m. This assessment is required to comply with DCP 115 Building in Flood Liable Areas and DCP 165 Water Cycle Management.

Given the above, a flood study would need to be prepared for the site should the Gateway Determination support the planning proposal. Flooding affectation will be a head of consideration at the development application stage.

- (vii) **Direction 5.1 Implementation of Regional Strategies:** Clause (4) of the Direction requires Planning Proposals to be consistent with a Regional Strategy released by the Minister for Planning and Infrastructure.

The Planning Proposal is considered to be **consistent** with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as indicated in the response to B4 above.

- (viii) **Direction 6.1 – Approval and Referral Requirements:** Clause (4) of the Direction requires a Planning Proposal to minimise the inclusion of concurrence/consultation provisions and not identify development as designated development.

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

- (ix) **Direction 6.3 – Site Specific Provisions:** The objective of this direction is to discourage unnecessarily restrictive site specific planning controls and applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.

The Direction states that a planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- (a) allow that land use to be carried out in the zone the land is situated on, or
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing development standards or requirements in addition to those already contained in that zone, or
- (c) allow the land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

The Applicant is requesting controls that are **consistent** with the remainder of Terrigal Village Centre. As discussed above in the report urban design analysis should be carried out for the site to determine appropriate height and development controls for the site to ensure protection of the amenity of surrounding development.

This analysis can form the basis of development controls that can be incorporated into clause 49S of the GPSO and any development control plan applying to the Terrigal Centre. The Planning Proposal would then be **consistent** with this Direction.

Section C Environmental, social and economic

- 8 **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?**

The land has been developed for urban purposes for a number of years and has been cleared for development purposes. Council's vegetation mapping does not indicate any vegetation on the site. An inspection of the site confirmed that the vegetation is **consistent** with Bells mapping adopted by Council.

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

The rezoning of the land to 3(a) will not result in any other significant environmental effects.

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

There are no concerns with regard to the planning proposal provided the community received adequate consultation with regards to the planning proposal.

Should any development resulting from the planning proposal be of a height to overshadow the adjoining bowling club greens it could be argued that the development this could have a social impact on the broader community who use this facility. This can be dealt with at the development application stage.

The proposal could be expected to have **beneficial economic effects** of the centre through the provision of additional retail and commercial space.

Section D State and Commonwealth interests

11 Is there adequate public infrastructure for the Planning Proposal?

Conventional urban services are available to the land.

Water and sewer are available to the site and Council's Water and Sewer section raised no concerns with regard to the planning proposal.

Traffic issues have been discussed above in section 7(v) Direction 3.4 Integrating Land Use and Transport. Should the Gateway Determination support the planning proposal a traffic study should be prepared to accompany the lodgement of any future development application for the site.

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

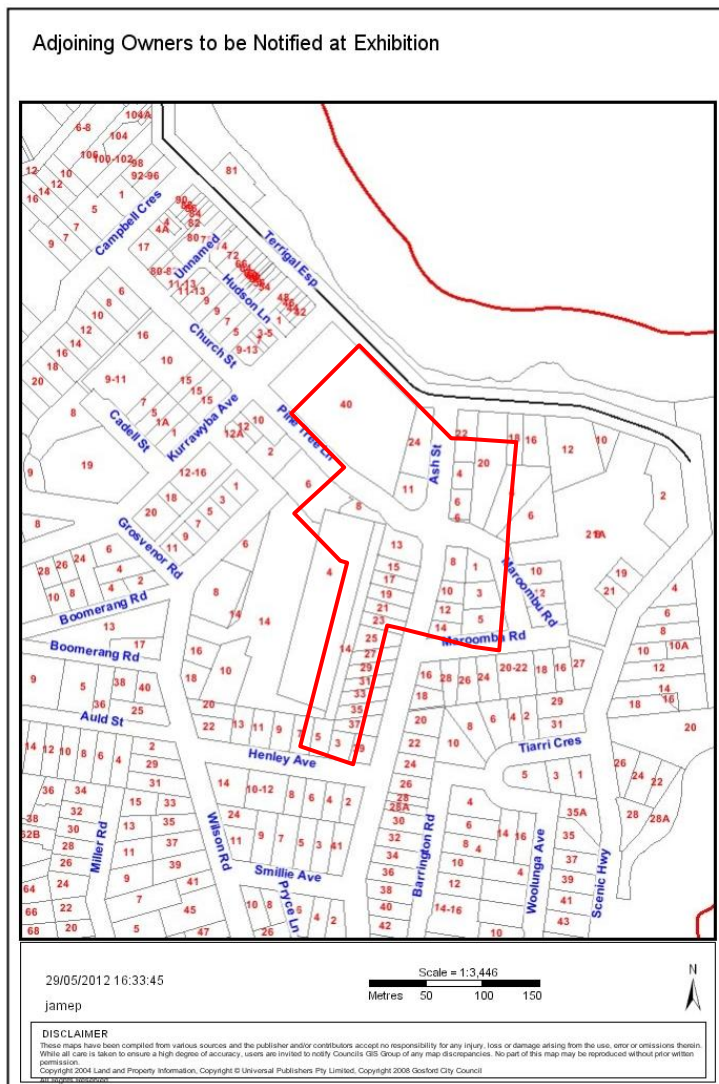
No consultations have yet been undertaken with State and Commonwealth agencies as the gateway determination has not yet been issued.

Part 4 Community Consultation that is to be undertaken

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 likely involve an exhibition period of 28 days. The community will be notified of the commencement of the exhibition period via a notice

in the local newspaper and on the web-site of Gosford City Council. A letter 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.

Attachment A outlines the Planning Proposal process. All mapping associated with the Planning Proposal is located in Attachment B.

Other Matters for Consideration

No other matters need to be considered for the Planning Proposal.

Conclusion

The planning proposal is intending to implement the provisions of the draft Gosford LEP 2009 as they would apply to the subject site by “bringing forward” the DLEP provisions contained in Council’s resolution of 31 May 2011 to rezone the site for business purposes “*(with appropriate height and FSR development standards) and amend the Terrigal Area Strategic Plan to include the lot within the boundaries of the Terrigal Town Centre Strategic Plan.*”

The applicant has argued that “bringing forward” the DLEP controls will facilitate the development of the site for the purposes of a commercial/retail/residential and that this will have economic and employment benefits for the area enhancing the viability of Terrigal Village Centre.

Even though the Planning Proposal has merit, the bulk and scale of any future building may impact on the amenity of surrounding development, particularly the adjoining single dwelling and bowling club in terms of overshadowing and overlooking. Traffic and flooding concerns have also been raised with regard to the site. It is however expected that these issues can be satisfactorily addressed at the development application stage.

Should Council wish to reconsider the matter after public exhibition where no submissions have been received, the following resolution should be adopted. “After public exhibition of the Planning Proposal a report be referred to Council on the matter.”

Attachments: A Planning Proposal Process
B Planning Proposal Mapping

FINANCIAL IMPACT STATEMENT

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

Tabled Items: Nil

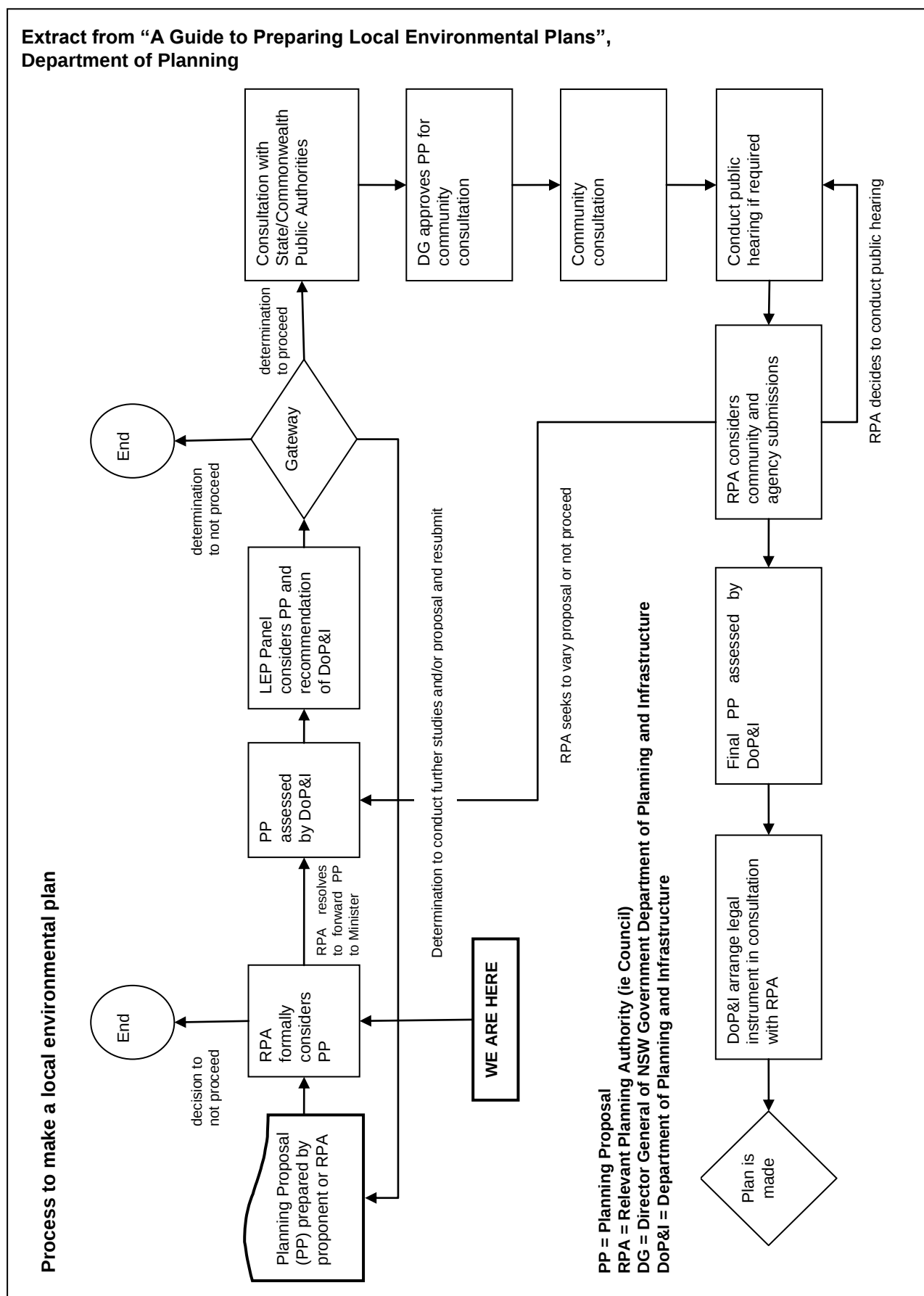
RECOMMENDATION

- A Council initiate the Local Environmental Plan 'Gateway' process pursuant to Section 55 Environmental Planning and Assessment Act by endorsing the preparation of a Planning Proposal as outlined in this report to:
 - i Amend the Gosford Planning Scheme Map so as to rezone Lot 1004 DP 793659 Ash Street, Terrigal from Residential 2(b) to General Business 3(a);
 - ii Amend the map as referred to in clause 49S (1) of the Gosford Planning Scheme ordinance to apply the provisions of clause 49s to the subject land.
- B Council notify the Department of Planning and Infrastructure of Council’s resolution and

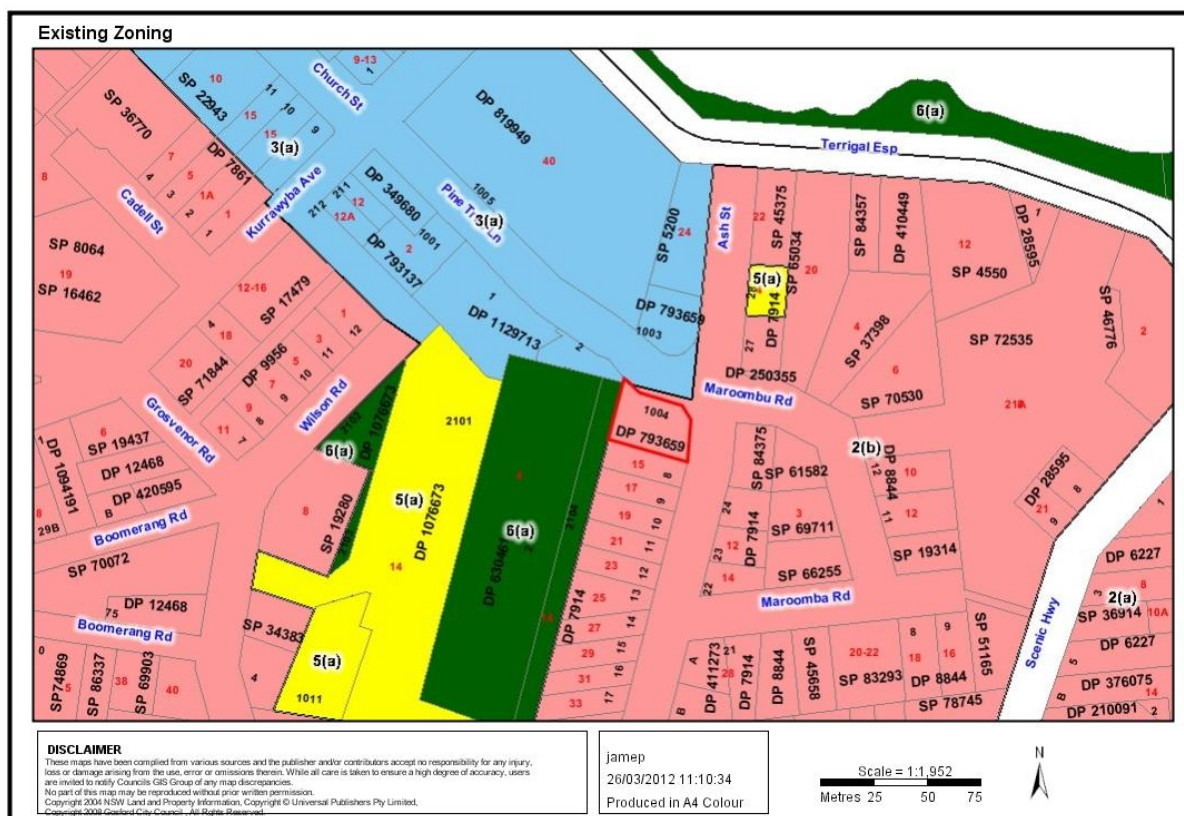
request a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and that Council staff prepare all necessary documentation and process the matter according to the Department directives and this report.

- C Council amend Development Control Plan No. 55 (Amendment No. 1) – Terrigal Town Centre so as to include Lot 1004 DP 793659 within the area to which DCP 55 applies and this plan be placed on exhibition with any draft LEP prepared for this land.
- D After public exhibition of the Planning Proposal, should the Minister for Planning and Infrastructure support it, if no submissions are received, the Planning Proposal is to be sent to the Department of Planning in order to make the plan.
- E The applicant be advised of Council's resolution.

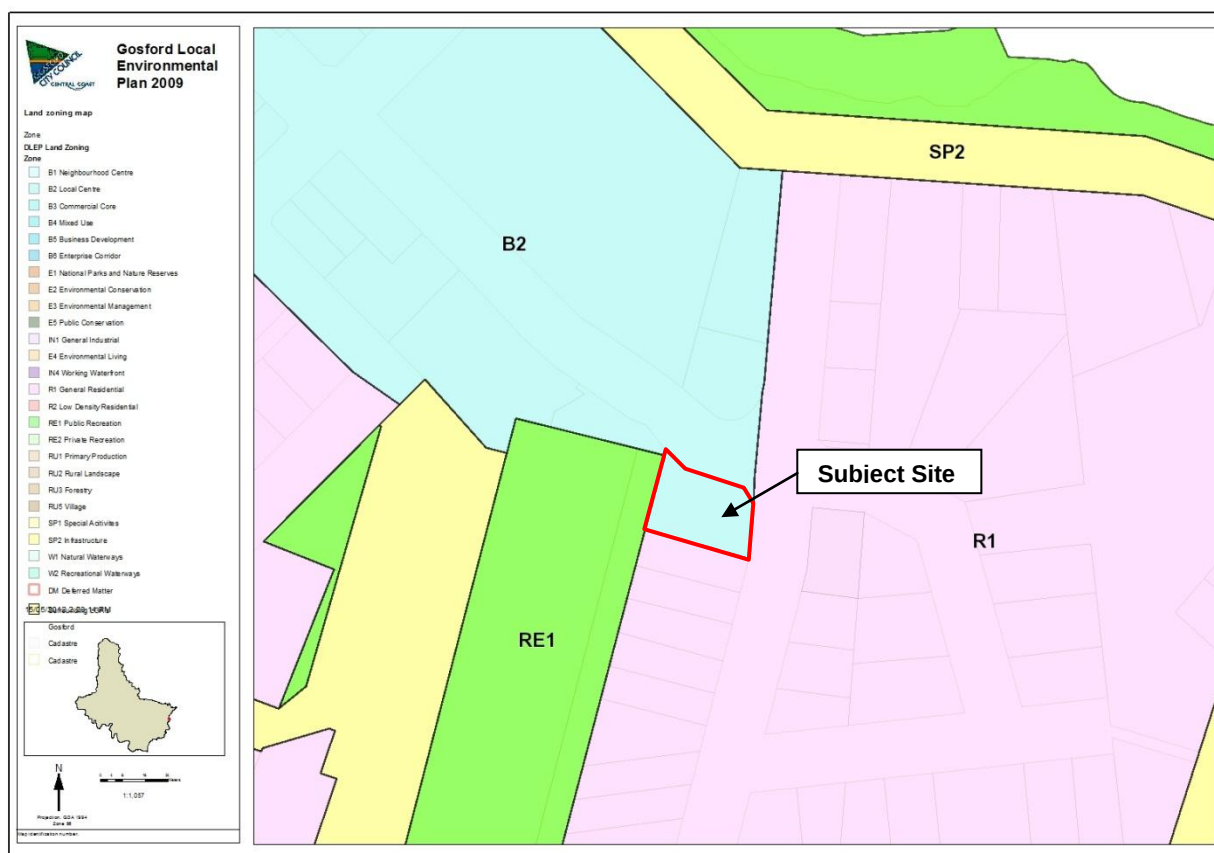
ATTACHMENT A – Planning Proposal process - extract from, DoP&I documents (RPA = Relevant Planning Authority, i.e. Council)



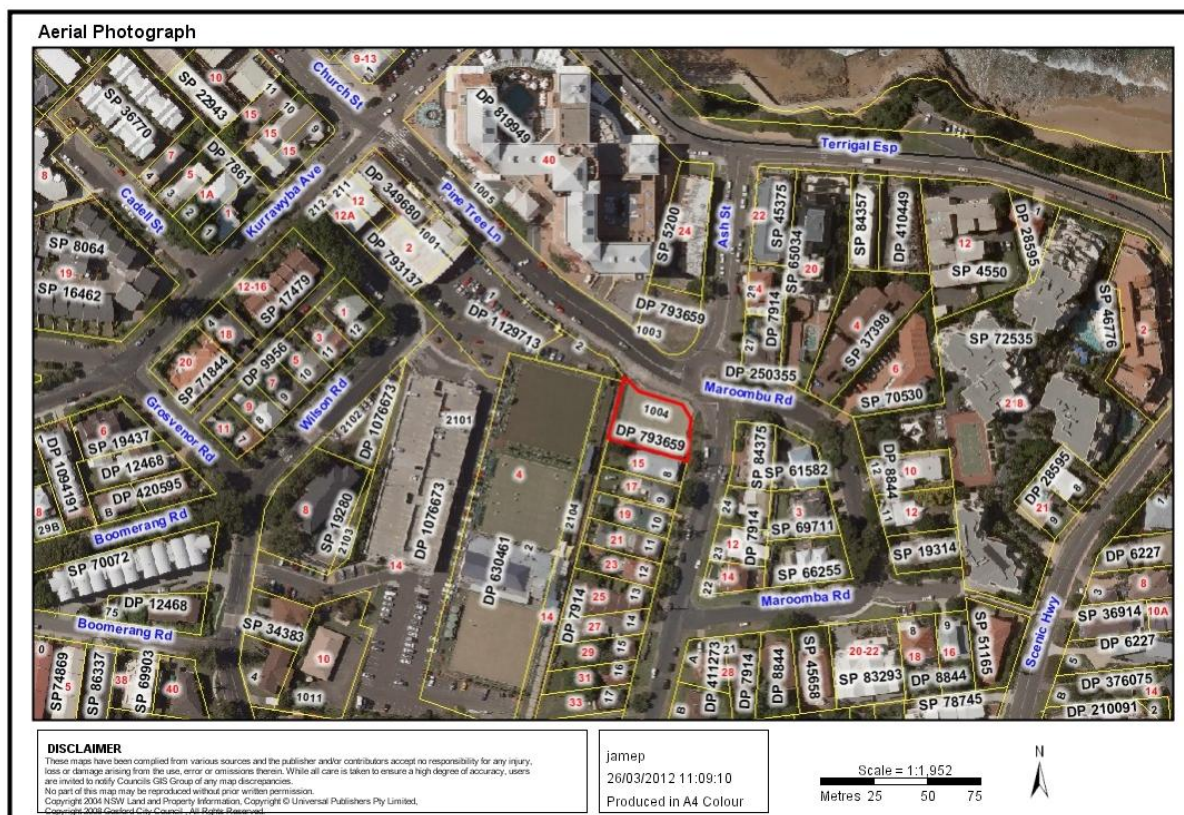
APPENDIX 1 Existing Zoning Map



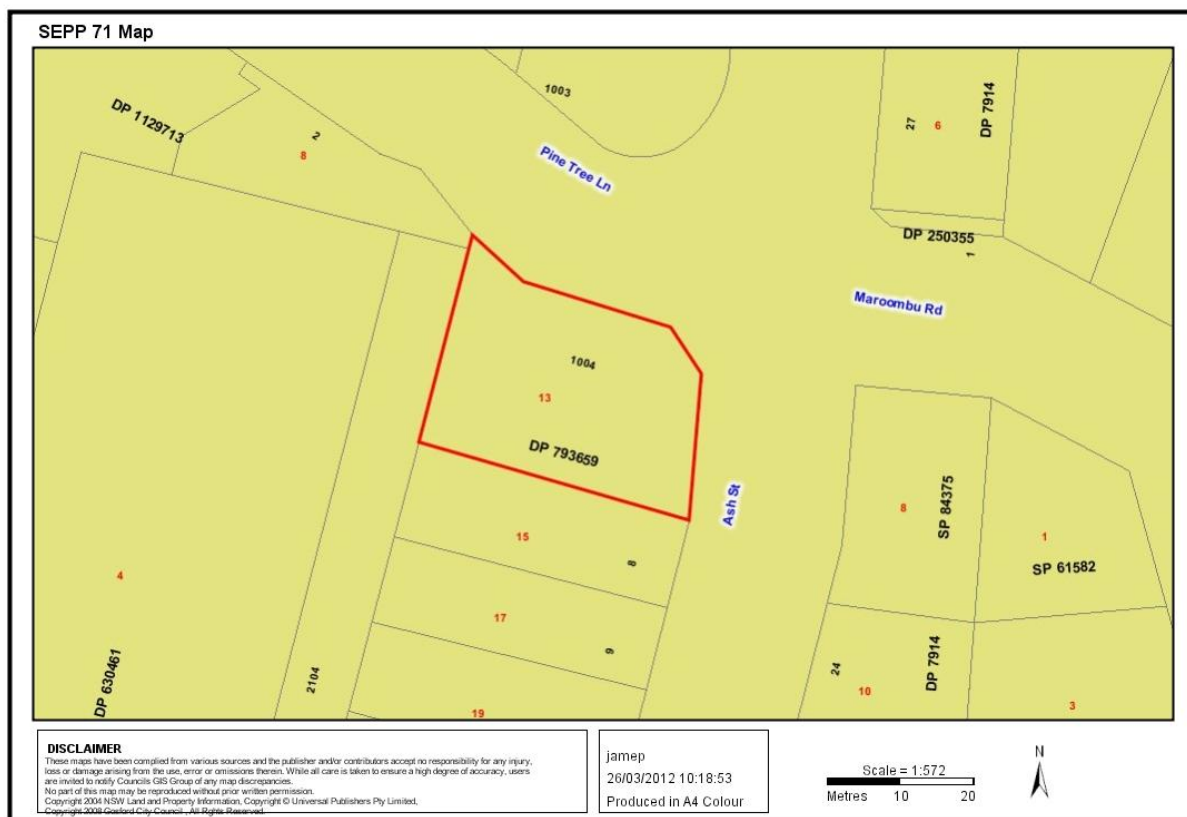
APPENDIX 2 Proposed Zoning under Draft Gosford LEP



APPENDIX 3 Aerial Photograph



APPENDIX 4 – SEPP 71



APPENDIX 5 – 100 Year Flood Extent