

**TITLE PLANNING PROPOSAL S55 EP&A ACT Lot 981 DP 862346 No 40-60
Niclins Road Mangrove Mountain. Applicant - SJH Planning and
Design (IR12779264)**

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.

BACKGROUND

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 by Department of Planning and Infrastructure would result in an amending LEP*), pursuant to Section 55 Environmental Planning & Assessment Act, 1979 (State). The request for an amending local environmental plan is as a result of legal action taken by Council in relation to illegal building works and the property's use as a medical centre which is prohibited within the zoning of the land.

Application Received: 5 December 2012

Environmental Planning Instrument – Current Zone: Interim Development Order 122 1(a)
Rural (Agriculture)

Area: 14.9 ha

Background / Landuse History:

The background to the Planning Proposal is outlined below:

- The land is zoned 1(a) Rural (Agriculture) under the provisions of Gosford Interim Development Order 122 (IDO 122) and is affected by Sydney Regional Environmental Plan No 8 – Central Coast Plateau Areas (SREP 8) (now a deemed State Environmental Planning Policy)
- The land contains an existing dwelling, shed and is used for agricultural purposes.
- 9 September 2011 - A Development Application (DA 41126/20110) was lodged for the erection of a manufactured home on the site, to be used as a manager's residence for the purposes of overseeing the grazing of beef cattle.
- 12 July 2012 – The DA was refused under delegation and the main reasons for refusal were:
 - The land did not meet the minimum size requirements of Clause 21(3) for the erection of a secondary dwelling to be used in conjunction with the use of the land for agriculture (i.e. 20 hectares) and as this is not a development standard cannot be

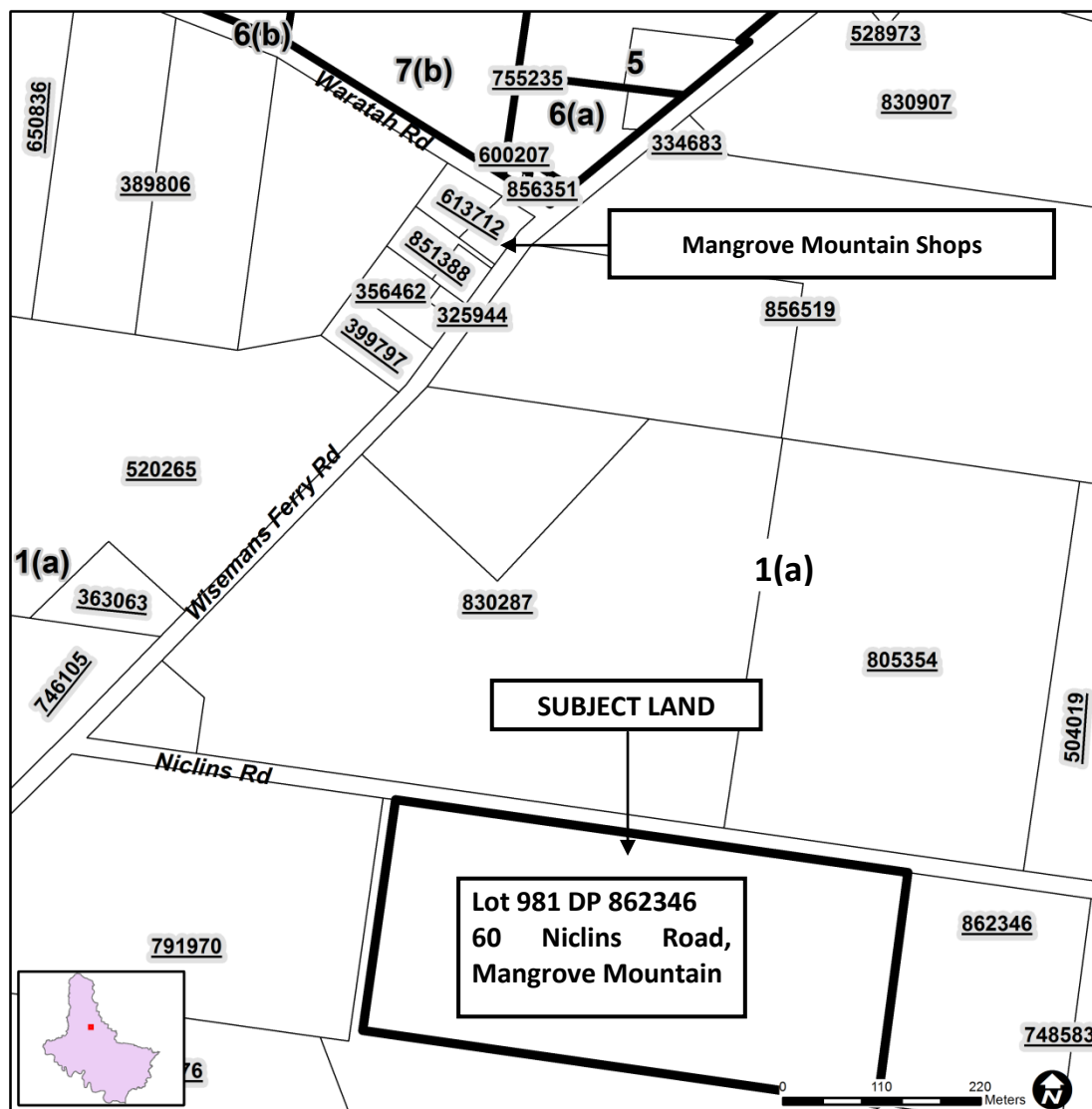
varied through the provisions of State Environmental Planning Policy No 1 – Development Standards

- The proposal is inconsistent with the objectives of the Rural 1(a) zone and the requirements of SREP8
- The proposal is inconsistent with the NSW Department of Primary Industries (DPI) document “Beef stocking rates and farm size – Hunter Region” and “Primefacts – Rural Workers Dwellings”

The DA was subsequently withdrawn.

- July 2012 – Council officers undertook an inspection of the land which revealed that a demountable building had been erected on the land and it was being used as a medical centre.
- August 2012 – Council served notice to cease the use and remove the demountable building
- Medical centres are prohibited in the Rural 1(a) zone under the provisions of clause 5 of IDO 122.
- 5 December 2012 - A Planning Proposal was lodged with Council seeking the appropriate planning legislative amendment to enable the use of the land as a medical centre.

LOCALITY: MANGROVE MOUNTAIN MAP SHOWING SUBJECT LAND



Applicant's Submission:

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 zoning of land, standards to control development and other planning controls.

A Planning Proposal application is the mechanism by which a LEP is amended.

The aim of the Gateway planning process is to enable early consideration by the Department of Planning and Infrastructure (DoP&I) and if supported then early public consultation. The Gateway process ensures that there is sufficient justification from a planning perspective to support a change to statutory planning provisions. The Gateway therefore acts as a checkpoint before significant resources are committed to carrying out technical studies, where these may be required.

Attachment A – "Department of Planning and Infrastructure Planning Proposal 'Flow Chart' of processing shows the stage which this Planning Proposal has reached.

Since 2 November 2012 there is the ability for some plan making functions to be delegated by DoP&I to Council. In these cases Council staff would carry out these plan making functions which are currently carried out by DoP&I. DoP&I Planning Circular PS 12-006 outlines the circumstances where Council may use delegations from DoP&I.

PLANNING PROPOSAL GOSFORD CITY COUNCIL

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.

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 allow a medical centre on the land.

Part 2 Explanation of Provisions

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

Medical centres are already a defined use within IDO 122 and it is intended to rely on this definition, being:

“Medical centre” means a building or place used for the purpose of providing professional health services (including preventative care, diagnosis, medical or surgical treatment or counselling) to outpatients only”

There is a definition of medical centre under the Standard Instrument (SI) LEP which is as above plus the following words; ‘.....where such services are principally provided by health care professionals. It may include the ancillary provision of other health services’.

It is proposed to amend Clause 93 of IDO No 122 by listing in column I “Lot 981 DP 862346 Niclins Road, Mangrove Mountain” and in column II nominate “medical centre” as being an additional permitted landuse on this lot. (Clause 93 of IDO 122 is a similar mechanism akin to Schedule 1 Additional Permitted Uses of dLEP 2009).

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

Part 3 Justification

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?

No. The planning proposal is in direct response to activities that are currently unauthorised, and prohibited within the existing zoning. There is no amendment to the zone of the land proposed, other than allowing the additional use of the land as a medical 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 has been submitted in response to legal action being undertaken by Council in relation to the unauthorised building and use of a portion of the land for a prohibited use. If Council desires that the use continues operating on the land a Planning Proposal and subsequent amendment to IDO 122 is the only mechanism that will allow the operation of the medical centre on the land.

Council through the draft Gosford LEP 2009 will introduce the RU5 Village zone for a number of “village” locations in the rural areas in the western section of the LGA, including Mangrove Mountain. Historically there has been a concentration of activities at key “nodes” that contribute to and serve the needs of the rural community (general stores, schools, service stations, community halls, business services, etc); however these activities are not recognised in the current planning framework. In some instances, Council has previously amended zoning provisions to enable these uses, such as at the former Oak Milk Bar at Peats Ridge, and medical centre and video store at Mangrove Mountain.

The aim of the RU5 zone is to allow and to concentrate non-rural activities (including retail, business, and service activities) that are complementary to a rural area, however are not or should not be permitted in the 1(a) or RU1 Primary Production zone. This is to encourage a more diverse range of uses in these key areas to service the important needs of the local rural community, rather than relying on

alternate opportunities that may exist in the 1(a) zone, such as the operation of businesses as home occupations (and any compliance issues that may arise).

From a landuse planning perspective, it is considered more appropriate that all service uses for surrounding rural areas be located in central locations for ease of access to the community, which also assists in creating a sense of community. Hence, it would be preferable for the medical centre to be located within an area to be zoned RU5. This would remove the need for the current planning proposal once dLEP 2009 is gazetted.

The gazettal of the draft Gosford LEP 2009 is expected to occur during 2013.

Council has received a large amount of correspondence supporting the need for retention of medical services in the Mountains area. From a social/economic and community perspective, Council supports in principle the provision of medical and other activities that are complementary to the rural population area to service the needs of this relatively isolated community. However, these services should be located in appropriate areas and Council has planned to make further extensive provision for this by introducing the RU5 zone in certain areas upon gazettal of dLEP 2009.

Notwithstanding this, the owner of Lot 981 DP 862346 is a medical practitioner who seeks to operate the medical centre from this land. Due to the operational needs and scale of the practice, it is not possible for this to operate as a home occupation and hence the owner is pursuing this planning proposal.

Section B Relationship to strategic planning framework

4 Is the Planning Proposal consistent with the objectives and actions of 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. The Central Coast Regional Strategy (CCRS) 2006 – 2031 is applicable to the subject land and the proposed rezoning. The Mountains' area is identified as being rural and resource land. The introduction of a medical centre on to one lot, although in itself not significant from a regional perspective, could lead to speculation for other landuse activities that could collectively undermine the rural and resource values endorsed in CCRS and in SREP No 8. The Planning Proposal will not assist Council in meeting the targets set by the State Government in the Regional Strategy for provision of housing; however some jobs are created within the operation of the Medical Centre.

This Planning Proposal is inconsistent with the CCRS as it does not relate to activities associated with rural and resource use. The location of a medical centre in an area zoned for agricultural production and recognised for its natural resource values raises the potential for landuse conflicts.

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

The proposal is consistent with the identified aspirational objectives of the Gosford Strategic Plan, Gosford 2025; a "living document" which speaks generally and generically to society and culture, environment, economy, governance and

leadership and identifying variously (and throughout the document) the need for a type of facility contemplated in this Planning Proposal as fulfilling the “community wellness” aspirations.

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.

- (i) **Sydney Regional Environmental Plan No 8 - Central Coast Plateau Areas** is now a deemed SEPP and contains specific provisions in relation to draft LEP/PP proposals. The planning proposal is inconsistent with the Special Provisions of SREP 8 as discussed in detail below
- (ii) **Sydney Regional Environmental Plan No 9 (Amendment 2) – Extractive Industries** is also a deemed SEPP, but the land is not directly affected by its provisions. However, the site is located within the Somersby Plateau Southern Potential Sand Resource Area which has been identified by NSW Trade and Investment – Resources and Energy Division as an area with high potential for hosting economic sand resources. The Gateway Determination will specify what consultation is to be undertaken with Government Departments, however it would be recommended that the Resources and Energy Division be consulted having regard to potential landuse conflicts and SREP 9 consultation requirements.
- (iii) **Other SEPPs:** No other SEPP has application to this planning proposal. Any future development application on the land will be required to consider a number of SEPPs, including **SREP 20 - Hawkesbury Nepean River (No 2 - 1997)** which is also now a deemed SEPP. It is noted that **State Environmental Planning Policy (Rural Lands) 2008** establishes planning principles for rural lands; however, this SEPP does not apply to the Gosford Local Government area.

SREP 8 - Central Coast Plateau Areas

As outlined above, the land is within the boundary of SREP 8 - Central Coast Plateau Areas. The land comprises of Soil Classes 1B, 3 and 4 which are *prime agricultural land* for the purposes of the SREP.

SREP 8 (11) Special Provisions – draft local environmental plan applications sets out criteria for consideration of draft LEP applications/planning proposals as outlined in *italics* below. Any proposal is to have regard to and be consistent with these objectives as discussed below.

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

Comment: Land in proximity to the site is being used for a mixture of grazing, orcharding and other horticultural activities. The location of a medical centre in a predominately agricultural area may impact upon the operation of farms in the vicinity of the land due to potential complaints in relation to odours, agricultural practices, noise and the like (noting that farming practices are also required to comply with relevant legislation). Potentially, landuse conflict may be generated between the operations of the medical centre and nearby farming operations. It could also sterilise the future use of adjoining lands for future agricultural use as it is considered likely that any future agricultural operator would not seek to locate next to land that is being used by a

potentially significant number of different people seeking medical attention. Should the proposal be supported, it would be recommended that the proponent undertake a **Land Use Conflict Risk Assessment** as outlined in the NSW Department of Primary Industries Factsheet dated October 2011.

The addition of a non-agricultural related use for the land could potentially increase the value of the land making it more difficult to be subsequently sold for purely agricultural or rural purposes.

(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 medical centre, although serving rural clients, is essentially a “service” activity associated with settlement and is more appropriately located on land to be zoned to accommodate these services, i.e., the proposed RU5 areas under dLEP 2009.

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

Comment: The medical centre would result in limited employment opportunities for health and allied professionals and have some positive economic benefits as an operational business with some multiplier effects.

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

Comment: Provided that on-site water management and disposal of medical waste is undertaken in an appropriate manner, it is not envisaged that there would be any adverse environmental effects on or off the site.

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

Comment: These strategic directions require that new developments do not increase nutrients or water flows leaving a site and are essentially encapsulated in SREP 20 (No 2). Future development may need to be supported by an Integrated Water Management Plan or on-site waste water disposal plan, however it is not considered that there would be any physical impediments to being able to satisfy these objectives. The land is not located within a drinking water catchment.

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

Comment: Additional building structures, car parking areas etc would not be entirely consistent with rural amenity, however given the rural landscape, could be managed through appropriate landscaping, etc.

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

Comment: The use is more appropriately located within areas proposed to be zoned RU5 Rural Village where “urban” type developments (businesses, services, etc) to serve the local rural population are to be accommodated within dLEP 2009.

(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: It is not proposed to connect the site to water and sewer services.

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

Comment: Building works will be located on Class 4 soils under SREP 8. Although this is still classified as prime agricultural land for the purposes of SREP 8, this is a low class of agricultural land.

Having regard to the potential impacts on rural and agricultural lands, NSW Department of Primary Industries should also be formally consulted to further inform the planning process.

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 S117s Directions or they are not applicable

- (i) **Direction 1.2 Rural Zones** - this direction requires that planning proposals must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone or increase the permissible density unless any such inconsistency is justified by a relevant strategy or study prepared to support such a proposal, is in accordance with the relevant regional strategy or is of minor significance

Comment: In this instance, the land is zoned for rural-agricultural purposes and the Planning Proposal is considered to be not in accordance with the objective of this Direction. Allowing a medical centre will increase the range of uses permissible on the land and is not justified by a strategy or study. It will also potentially increase the overall value of the land through the addition of a further business use, therefore making it potentially more expensive to purchase and operate as an agricultural business in the future. Supporting the proposal could also lead to land use speculation for other uses not aligned with rural activities on other lands.

- (ii) **Direction 3.4 Integrating Land Use and Transport:** The objective of this direction is to ensure that land uses are appropriately located in terms of improved accessibility, increasing choice of available transport, reducing travel demand, supporting public transport and providing for the efficient movement of freight.

Comment: The site is isolated from other services (e.g. the shop, petrol supplies, community hall etc) in the area and it is envisaged that it would only be accessible by private vehicle. The medical centre does not integrate landuse planning with transport and accessibility. It is noted that the overall area is characterised by relatively dispersed settlement pattern, typical of non-urban areas, however Council is seeking to concentrate supporting landuses in centralised areas on land proposed to be zoned RU5 in the forthcoming dLEP 2009 upon gazettal.

- (iii) **Direction 4.4 Planning for Bushfire Protection:** This direction applies where a planning proposal will affect, or is in proximity to, land mapped as bushfire prone land.

Comment: The land is mapped as Category 1 and 2 and buffer with a very limited area that is not mapped as bushfire prone. This Direction requires that

Council consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination, and also requires certain design considerations are considered, that would be assessed as part of a future development application. Consultation with RFS will occur if required by DoP&I as part of the gateway determination.

- (iv) **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.

Comment: The Planning Proposal is considered to be inconsistent with the objectives and actions contained in the Central Coast Regional Strategy 2006-2031, as outlined above.

- (v) **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.

Comment: The Planning Proposal is consistent with this direction as no such inclusions, or designation is proposed. Consultation will be undertaken with relevant government authorities as required by the Gateway Determination if issued.

- (vi) **Direction 6.3 Site Specific Provisions:** The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. If a planning proposal is to amend an environmental planning instrument to allow a particular development, the use should be authorised by allowing it as a permitted use within the current zoning of the land, or changing the zoning of the land to a zone where the use is already permitted, or alternatively allowing the use on the relevant land without imposing additional development standards or requirements to those already contained in the principal environmental planning instrument (i.e. LEP) being amended. It also requires that a planning proposal must not contain or refer to drawings that show details of the development proposal.

Comment: It is not appropriate to zone one isolated lot to a zone where a medical centre is a permitted use, primarily due to the agricultural nature of the area. For example, if zoned RU5, subdivision potential would be created that would have the unforeseen consequences of isolated non-serviced small "rural residential" sized lots. Council has established a strategic position in relation to the extent and location of lands to be zoned RU5 under the draft Centres Strategy that was prepared to inform dLEP 2009. This site is not located at major "node" or road intersection, and it would be an isolated area of RU5 land located away from other activities that support the rural population.

Section C Environmental, social and economic impact

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?

There is no critical habitat or threatened species, populations or ecological communities, or their habitats, that 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.

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

The subject land is affected by bushfire hazard. Consultation with the RFS could take place as part of a Gateway Determination to ascertain if the Planning Proposal is acceptable from a bushfire protection perspective.

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

The ongoing provision of medical services in the Mountains area is an important social benefit for the community with limited economic multiplier effects. The information provided to Council to support the Planning Proposal has adequately addressed the importance of these benefits and there appears to be considerable community support for the retention of these medical services in the area.

There is a medical centre located in the township of Wisemans Ferry. There is a Doctor operating in Nurses Road, Central Mangrove as a Home Occupation. There is also a community Health Centre in Nurses Road. Dr Wade operates a medical centre in Niclins Road.

Section D State and Commonwealth interests

11 Is there adequate public infrastructure for the Planning Proposal?

Adequate infrastructure exists to service the use, although it is considered that concentration of such services in village areas would be more appropriate.

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 would be undertaken in accordance with the Gateway's requirements and Council's procedures to ensure the community is informed about the Planning Proposal. 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.

Additional Matters for Consideration

The owner of the land has been operating the medical centre use without Council consent, being a prohibited use, in a demountable building that does not have Council consent for its placement on the land. Council has commenced legal action to cease the medical centre use and require the building to be removed.

The owner/operator of the medical centre use has sought to have the use permitted by lodging the subject Planning Proposal for Council's consideration.

The provision of medical services in rural locations is a highly desirable social outcome supported by Council. Council has been requested to support a Planning Proposal to create an enabling clause to permit a single additional non-agricultural related use on the land. Such a request is not supported from a strategic planning perspective due to landuse incompatibility and conflict, inconsistency with the merits assessment criteria of SREP 8 – Central Coast Plateau Areas, relevant Section 117 Directions and the Central Coast Regional Strategy. These plans and strategies do not support the proposal in this location. In addition, the Planning Proposal could result in the land itself having a higher value than just for agricultural purposes making it difficult to be sold and used as agricultural land potentially sterilizing an important land resource.

Council's consideration of the Planning Proposal though, is complicated by the social/economic benefit of maintaining medical services in the Mountains area. To satisfy the need for medical services and address the potential landuse conflicts it is considered that the service should be located in a village centre in the Mountains district.

As previously stated, a Doctor currently operates a practice in Nurses Road, Central Mangrove.

It is noted though that existing opportunities to locate services for the rural communities in village centres are limited by a lack of appropriately zoned land. This situation will be rectified through the making of draft Gosford LEP 2009 which will include the RU5 Village zone for a number of the Mountains' localities. The making of the plan is not expected to take place until the second half of 2013. It is acknowledged that there could be a time gap between the closing of the existing service and the opening of a new service on a RU5 site. Council may not wish to see the temporary (or possibly even permanent) closure of the medical service.

It is also noted that the Director-General - Department of Planning and Infrastructure has advised Council recently of its concerns in relation to the use by Council of "enabling provisions" as outlined below:

"I am concerned about Council's ongoing reliance on 'additional permitted uses' in its LEP and rezoning proposals, and advise that such proposals will only be

supported in exceptional circumstances in the future. The preferred approach is for land to be included within an appropriate zone, as 'additional permitted uses' lack transparency and inevitably lead to uses that are inconsistent with underlying zone objectives" (DoP&I letter to Gosford Council dated 12/7/2012)

Subsequently DoP&I exhibited a new draft Practice Note to guide the use of Schedule 1 of a SI LEP. Schedule 1 is the equivalent of the current *enabling clause* 93 of the IDO No 122. The draft Practice Note says that for reasons of clarity, land use permissibility should preferably be controlled by the zones and the Land Use Table. Where this is not possible and the intended outcome is adequately justified by council, the use of Schedule 1 may be acceptable. Additional listings in the LEP Schedule 1 should be minimised and should only proceed where council can demonstrate that there is no other acceptable solution to progress the matter.

It is unknown whether the DoP&I would support the subject planning proposal. This assessment can only be made once the attached report and planning proposal are before it.

The owner/medical practitioner at Lot 981 DP 862346 asserts that they have explored all opportunities to relocate to land that is proposed to be zoned RU5, however no alternate sites are available.

The premises in which Dr Wade's medical centre was previously located in Waratah Road remains vacant. This medical centre operated under existing use rights.

Conclusion

Draft Gosford LEP 2009 is expected to be gazetted this year and will introduce the RU5 Village zone for a number of "village" locations in the rural areas, including Mangrove Mountain. From a landuse planning perspective, it is considered more appropriate that all service uses e.g. non-rural activities including retail and business, be located in central locations. A central location provides for ease of access to the community and also assists in creating a sense of community. These uses are complementary to surrounding rural areas' community needs. The introduction of a medical centre onto one lot in Niclins Rd, although in itself not significant from a regional perspective, could lead to speculation for other landuse activities that could collectively undermine the rural and resource values endorsed in CCRS and in SREP No 8.

The subject Medical Centre could be located in the premises where it previously operated from in Waratah Rd, which is currently vacant and will be zoned under dLEP 2009 to RU5 Village, which is likely to occur this year.

Council has received a large amount of correspondence supporting the need for retention of medical services in the Mountains area. From a social/economic and community perspective, Council supports in principle the provision of medical and other activities that are complementary to the rural population area to service the needs of this relatively isolated community. If on balance Council ascribes the greatest weight in this planning proposal's consideration to an overriding need to preserve this unauthorised medical centre within an unauthorised structure on an isolated rural lot, then the following planning option is offered.

Council could support the planning proposal; however limit its time for a set period, for example a maximum of 5 years. If this approach is taken and development consent approved and built within the time period of the LEP, the building and its use could continue to operate lawfully, even if the time period of the LEP had lapsed. It is Council's understanding that there is currently no legislative provision for *time limited* development consents, once the development is built.

Council could investigate whether options including those associated with the current legal action before the Land and Environment Court could set a time limit of 5 years for the operation of the subject Medical Centre. If this is possible, the LEP could use “sunset provisions” which would expire 5 years after consent is granted.

This scenario would allow the owner/operator sufficient time to find an alternate location in the new RU5 Village zone (once the dLEP is made) to establish the practice, presumably by moving the relocatable building. This is not a conventional planning outcome and is not advocated.

If Council chooses this approach the following resolution is provided for consideration:

- A Council initiate immediately 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 for Lot 981 DP 862346, 60 Niclins Road Mangrove Mountain, to enable a Medical Centre to be permitted on the land for a maximum five year period from the date of a development consent for the use of the land for a Medical Centre or until a medical centre operated by the same Doctor/operator is established elsewhere in the district, whichever is the sooner.
- B Council investigate concurrently with Part A proceeding, an enforceable method of setting a time limit of five years for the operation of the subject Medical Centre on Lot 981 DP 862346, 60 Niclins Road Mangrove Mountain, should a LEP be made which enables a Medical Centre to be permitted with Council consent on the land for a five year period from the date of a development consent, and should development consent be granted for such, and to also require that the subject Doctor/operator demolish or remove all buildings, structures and works associated with a Medical Centre before five years expire from the date of development consent, or, when a Medical Centre operated by the same Doctor/operator is established elsewhere in the district, whichever is the sooner.
- C Should a Gateway determination to proceed with the planning proposal be issued by the Minister/delegate and all Gateway actions have been carried out by council to a point where public exhibition can be arranged, if Part A is not concluded satisfactorily then the matter is to be referred back to council for consideration.
- D Council notify the Department of Planning and Infrastructure of Council's resolution requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and that Council does not seek delegations from the Department of Planning and Infrastructure for this Planning Proposal and forward the Planning Proposal and all necessary documentation according to their requirements and this report.
- E After public exhibition of the Planning Proposal, should the Minister for Planning and Infrastructure support it, if no submissions objecting to the planning proposal are received, the Planning Proposal is to be sent to the Department of Planning and Infrastructure in order to make the plan.
- F That the Department of Planning and Infrastructure be requested in the Gateway Determination inclusion of the need for referral for comment to the Rural Fire Service, NSW Trade and Investment – Resources and Energy Division and NSW Department of Primary Industries.
- G The applicant be advised of Council's resolution and advised of the requirement to prepare a **Land Use Conflict Risk Assessment** as outlined in the NSW Department of Primary Industries Factsheet dated October 2011 to be lodged prior to the public consultation period.

FINANCIAL IMPACT STATEMENT

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

Attachments: Attachment A - Planning Proposal Process
Attachment B - Planning Proposal Mapping

Tabled Items: Nil

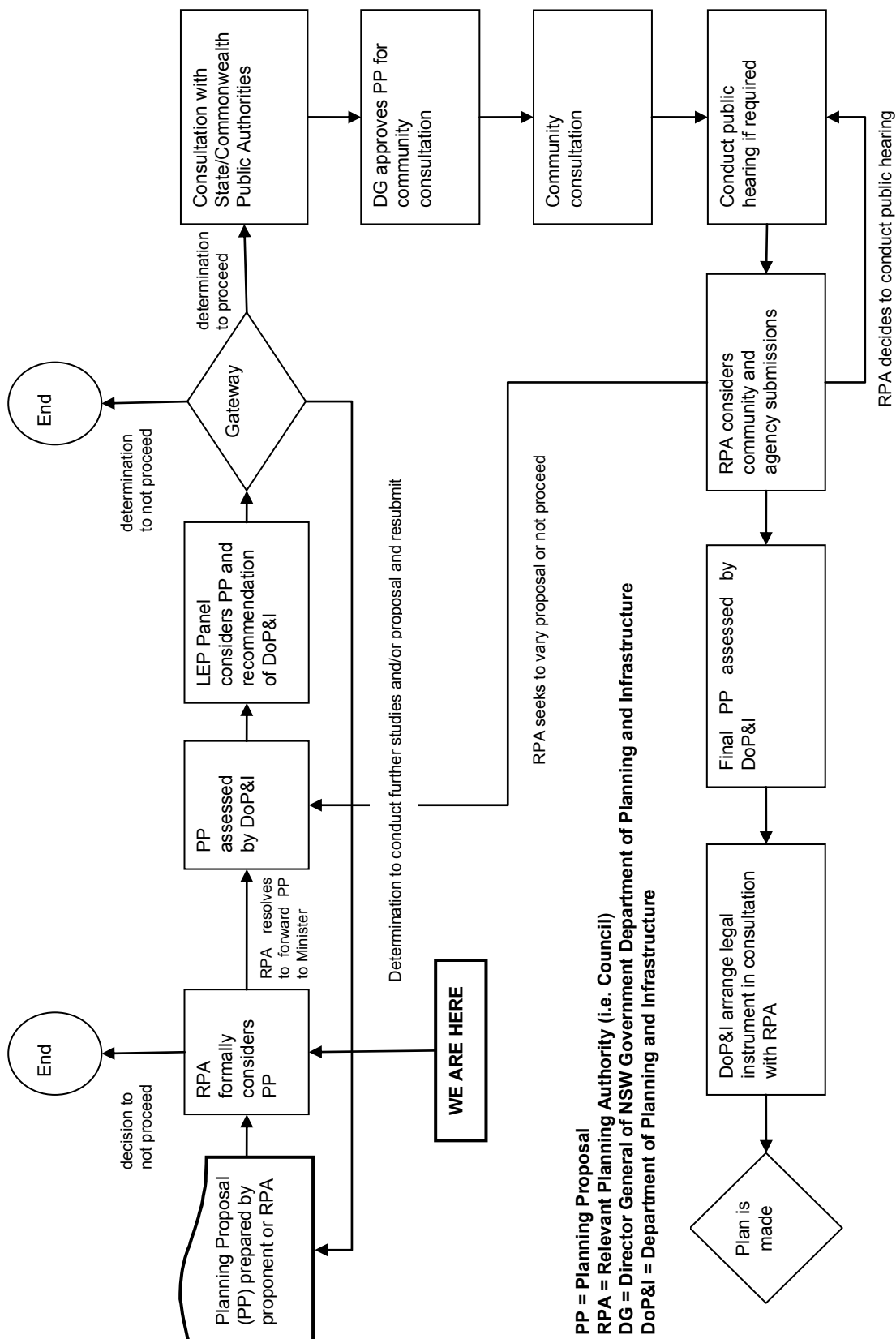
RECOMMENDATION

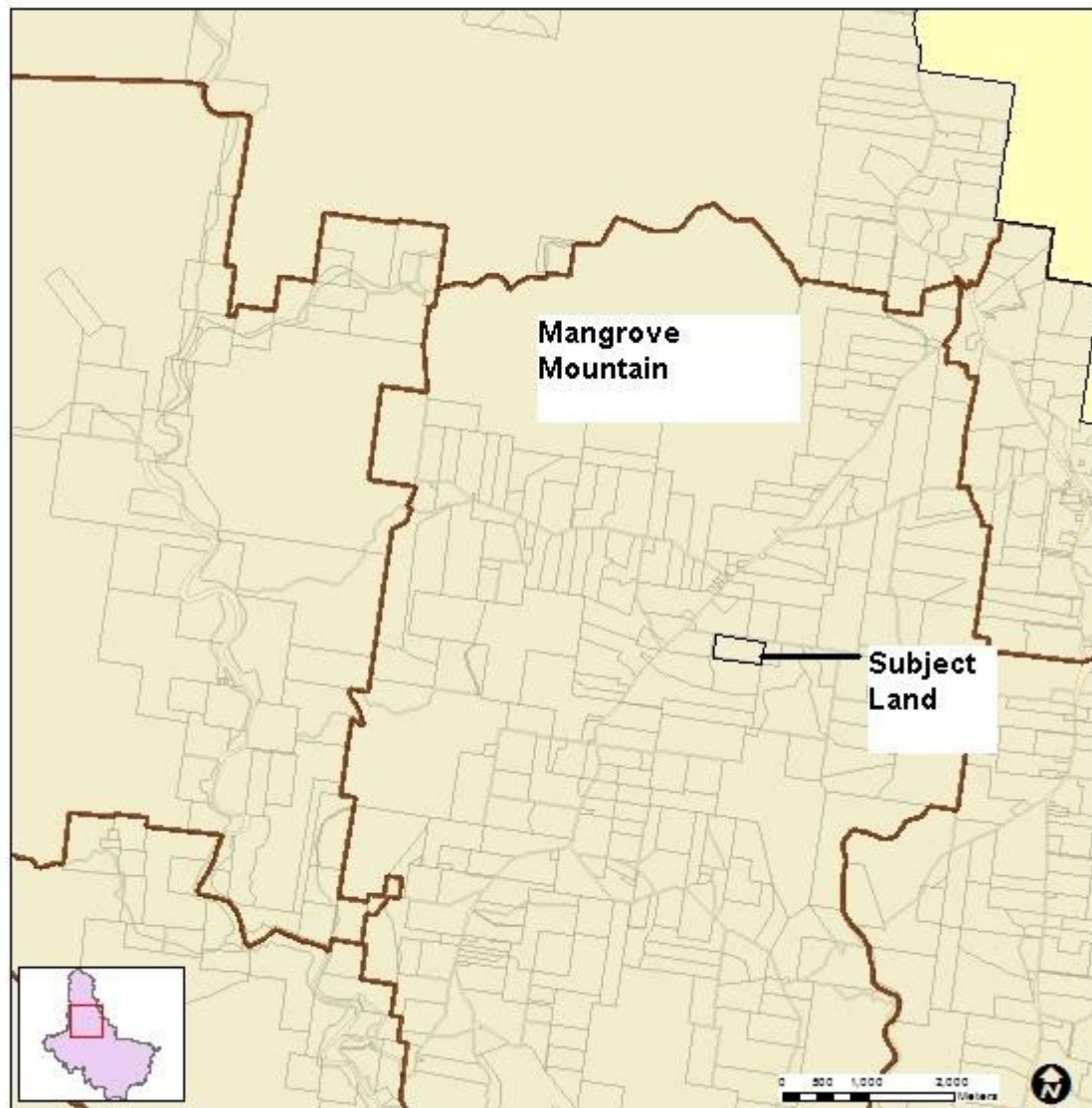
- A Council decline to support the Planning Proposal to prepare an enabling clause for Lot 981 DP 862346, 60 Niclins Road Mangrove Mountain to enable a medical centre to be permitted on the land for the following reasons;
- (i) The Planning Proposal is inconsistent with:
 - SREP 8 – Central Coast Plateau Areas Clause 11 Special provisions – draft local environmental plan applications
 - Section 117 Direction 1.2 Rural Zones
 - Section 117 Direction 5.1 Implementation of Regional Strategies
 - Central Coast Regional Strategy
 - (ii) Existing medical services and premises are currently available in the area.
- B The applicant be advised of the Council's resolution.

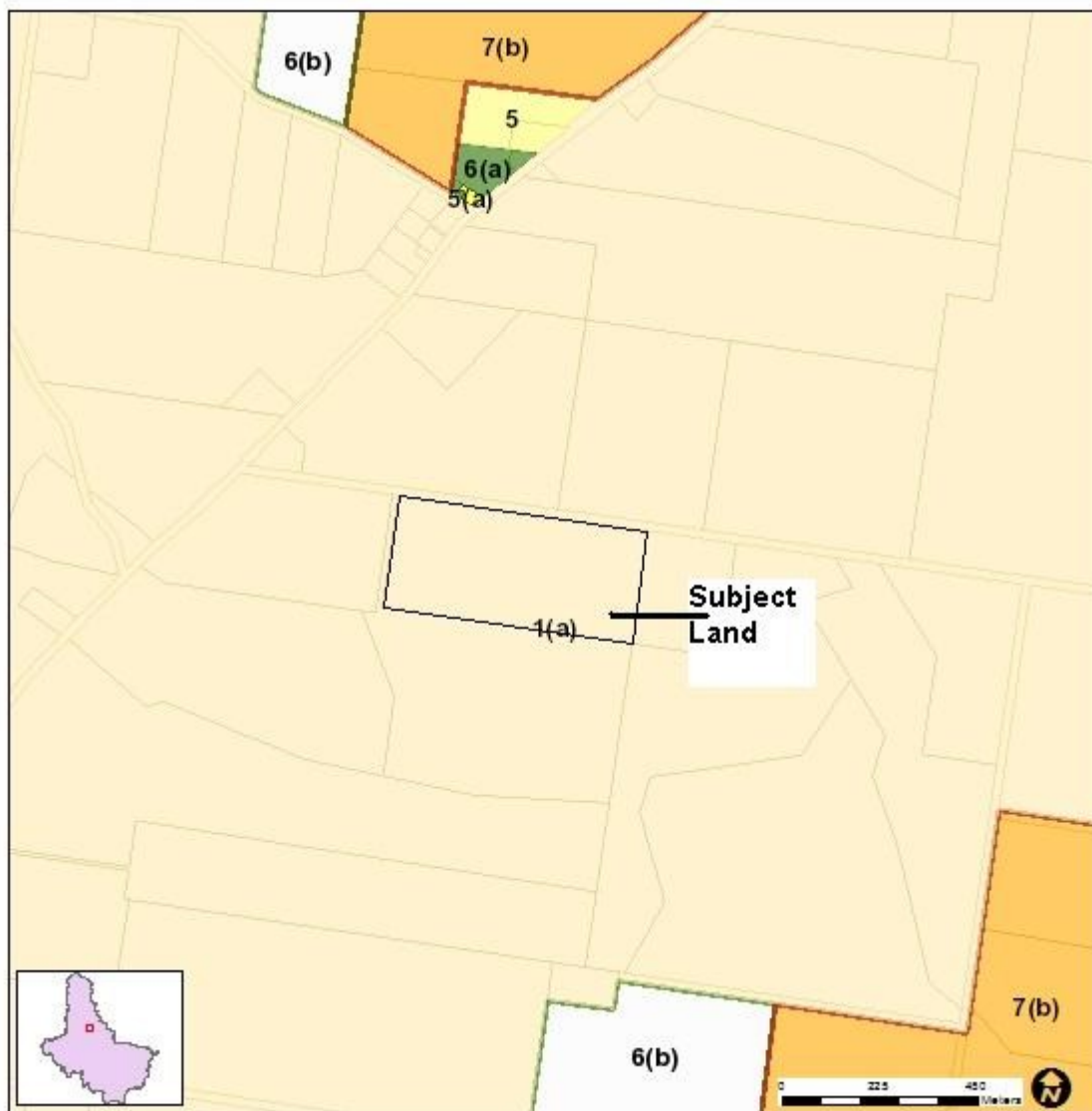
ATTACHMENT A – Planning Proposal process - extract from, DoP&I documents (RPA = Relevant Planning Authority, i.e. Council)

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

Process to make a local environmental plan



ATTACHMENT B – Planning Proposal Mapping**APPENDIX 1 Locality Map**

APPENDIX 2 Existing Zoning Map

APPENDIX 4 Aerial Photograph