



Gateway determination report – PP-2024-1412

Rezone land (part Lot 1 DP 1205476) at Brou Lake
Road, Bodalla to SP2 Infrastructure and C2
Environmental Conservation Zone

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 PP Appendices - Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal - Brou Waste Management Facility
Appendix A Consistency with s9.1 Ministerial Directions (See Planning Proposal).
Appendix B Consistency with South East and Tablelands Regional Plan (See Planning Proposal).
Appendix C Relevant State Environmental Planning Policies (See Planning Proposal).
Appendix D Aboriginal Dure Diligence Report 2022 and Aboriginal Cultural Heritage Report 2023 (Internal Heritage).
Appendix E Biodiversity Assessment Report (BAR) Umwelt May 2024.
Appendix F Commonwealth Assessment of Significance for Swift Parrot (see chapter 9 BAR in Appendix E).
Appendix G Agency Consultation (Preliminary response from NSW Rural Fire Service).
Appendix H Geotechnical Assessment Tetra Tech Coffey November 2022.

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Eurobodalla LGA
PPA	Eurobodalla Shire Council
NAME	Rezone land at Brou Lake Road to SP2 Infrastructure Zone and C2 Environmental Conservation Zone
NUMBER	PP_2024-1412
LEP TO BE AMENDED	Eurobodalla LEP 2012
ADDRESS	Brou Lake Road, Bodalla
DESCRIPTION	Lot 1 DP 1205476
RECEIVED	9/07/2024
FILE NO.	IRF24/ 1703; EF24/9209
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

Eurobodalla Shire Council (Council) has engaged NSW Public Works to prepare a Planning Proposal for the rezoning of a portion of land adjacent to the western boundary of the existing Brou Waste Management Facility (WMF) located at Lot 1 DP 1205476, Brou Lake Road, Bodalla (the site). Council has been successful in obtaining several grants from the NSW Environment Protection Authority to assist Council in rebuilding waste management capacity and future disaster resilience.

The objective of the Planning Proposal is to facilitate the future expansion of the Brou WMF by rezoning part of Lot 1 DP 1205476 (3.75 ha on Lot 1 DP 1205476 Brou Lake Road, Bodalla) from RU3 - Forestry to SP2 – Infrastructure Zone. The rezoning will enable the proposed expansion to proceed with development consent as it is currently prohibited within the RU3 - Forestry zone.

An area of 0.64ha in the north-east of the existing facility is included in this area to be rezoned, having been used as part of the existing facility.

The proposed rezoning will facilitate the creation of an additional 240,000 cubic metres of new landfill void space and enable 220,000 cubic metres of landfill space to be utilised over the existing facility footprint. A total capacity of 460,000 cubic metres will provide for disposal of 300,000 tonnes of residual waste extending the life of the landfill from approximately 5 years to 25 years (Source: Planning proposal).

The current operation of the facility will continue without interruption throughout the expansion works. It is anticipated that the expanded waste facility will be operational by 2027, subject to gazettal of the Planning Proposal, preparation of an EIS and development approval.

It is also proposed to rezone an additional 1.15ha of land to the north of the site from RU3 - Forestry to C2 Environmental Conservation to provide long term protection to a pocket of the critically endangered ecological community of River-Flat Eucalypt on Coastal Floodplains that was identified during the biodiversity assessment.

The objectives and outcomes of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Eurobodalla LEP 2012 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU3 Forestry (Approximately 4.9 ha). See Figure 4.	SP Infrastructure (3.75 ha). C2 Environmental Conservation (1.15 ha). See Figure 5.
Public Infrastructure Buffer Map	400 metre buffer around existing SP2 Zone. See Figure 5.	400 metre around proposed SP2 Zone. See Figure 6.
Number of dwellings	N/A	N/A
Number of jobs	N/A	N/A

A change in the SP2 Infrastructure zone boundary will necessitate a change to the 400m infrastructure buffer zone in the Public Infrastructure Buffer Map as shown in Figure 5 and Figure 6. The planning proposal states that the proposed expansion of the infrastructure buffer zone will not impact on any existing or proposed development to the west of the site, as the land use in these areas is forestry (to the west and southwest) and agriculture (to the northwest).

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The Brou waste management facility services the southern part of the shire including Narooma, southern coastal villages and surrounding rural districts.

The site is located on Brou Lake Road, Bodalla. It is located approximately 3.4 km north-west of the village of Dalmeny and approximately 8.7 kilometres north-west of the town of Narooma. The site is an irregular shaped lot, bounded by State Forest to the east and south (Bodalla State Forest), rural zoned land to the north and the Princes Highway to the west. A Crown Road Reserve to be rezoned SP2 Zone dissects the proposal's western area (See Figure 1 and Figure 2).

Therefore, it is recommended that Forestry Corporation of NSW is consulted on the impacts to the Bodalla State Forest and NSW Crown Lands is consulted in relation to the potential closure of the Crown Road.



Figure 1 Subject site - red outline and yellow shading (source: Planning Proposal)



Figure 2 Site context (source: Planning Proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning and Public Infrastructure Buffer maps, which are suitable for community consultation.

Maps to be amended:

- Land Zoning Map: 2750_LZN_013B_040_20191213
- Public Infrastructure Buffer Map: 2750_COM_INF_13B_040_20190307



Figure 3 Current zoning map



Figure 4 Proposed zoning map (Source: Planning Proposal)

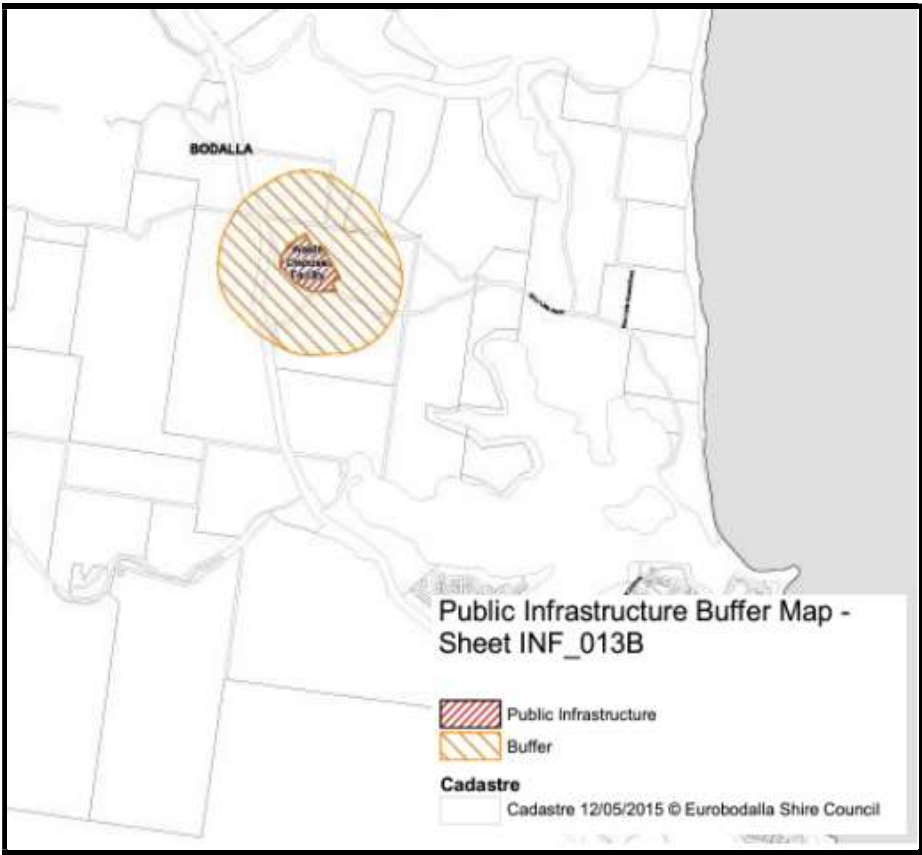


Figure 5 Existing Public Infrastructure Buffer Map (source: Planning Proposal)

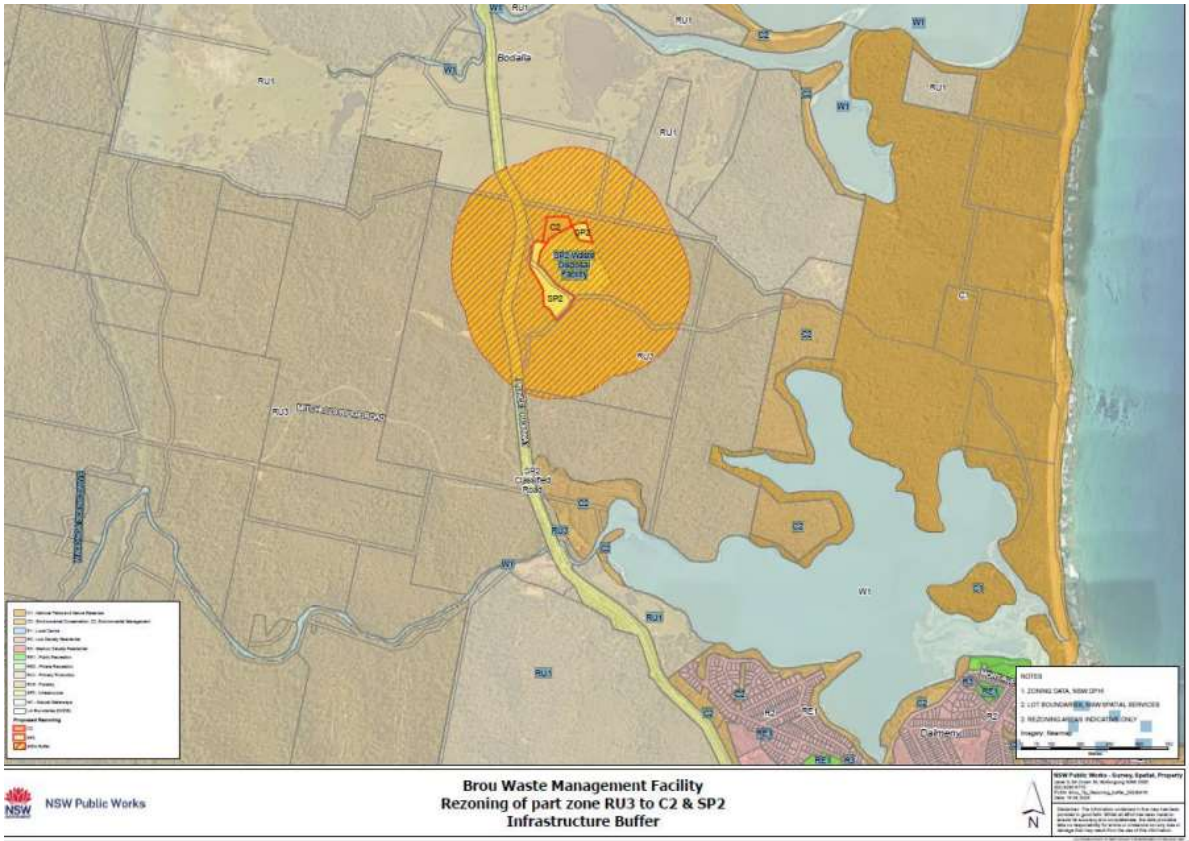


Figure 6 Proposed Public Infrastructure Buffer Map (source: Planning Proposal)

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The proposal states that it is not the result of any strategic plan or study. The existing facility serves as both a recycling centre, and as a landfill for the final disposal of domestic, commercial, construction and demolition wastes. Approximately 17,000 tonnes of waste are managed at the site each year, with 12,000 tonnes being landfilled. Approximately 5,000 tonnes of garden waste, scrap metal, e-waste and other recyclables are collected at the site for recycling each year.

Council has been successful in obtaining grants from the NSW Environment Protection Authority to assist Council in rebuilding waste management capacity and future disaster resilience. There is a critical shortage of remaining landfill space at Brou facility and Council plans to expand this facility to provide additional landfill capacity and upgraded resource recovery and recycling facilities.

The planning proposal is the only means to rezone the land to SP2 Infrastructure to enable consideration of a proposal for the expansion of the facility.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The rezoning to SP2 Infrastructure Zone will enable the proposed expansion of the waste management facility to proceed with development consent because it is currently prohibited under the RU3 Forestry zone.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the South East and Tablelands Regional Plan and draft South East and Tablelands Regional Plan.

The proposal is consistent with the NSW Waste and Sustainable Materials Strategy 2041. Grants from the NSW Environment Protection Authority will assist Council in rebuilding waste management capacity and future disaster resilience for the growing population of Eurobodalla Shire Council. It will ensure Council has waste management facilities in place to deal with waste safely. Currently there is a critical shortage of landfill space at Brou facility and Council plans to expand this facility to provide additional landfill capacity and upgraded resource recovery and recycling facilities.

The Biodiversity Assessment Report (see Appendix E) acknowledges that areas of high environmental value and threatened species are potentially impacted by the proposal. Mitigation measures include project design to avoid impacts, pre-clearing assessments for threatened species, cleaning vehicles, conducting clearing works outside breeding times and adding nest boxes.

The proposal is therefore potentially inconsistent with the following Actions under *Direction 14 Protect important environmental assets*;

- Action 14.2 *Protect the validated high environmental value lands in local environmental plans* and
- 14.3 *Minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependant ecosystems and aquatic habitats, and implement the 'avoid. Minimise and offset hierarchy.*

It is recommended that Council be required to consult with DCCEEW Biodiversity, Conservation and Science (BCS) to determine if the proposed mitigation measures address a potential inconsistency with *Direction 14 Protect important environmental assets and Actions 14.2 and 14.3*.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The Eurobodalla LSPS recognises the need to align local infrastructure delivery with planned growth and promotes collaboration with the NSW State Government to deliver infrastructure and services. The proposal is consistent with the LSPS because it seeks to rebuild the Brou waste management facility with funding assistance from the NSW Government.


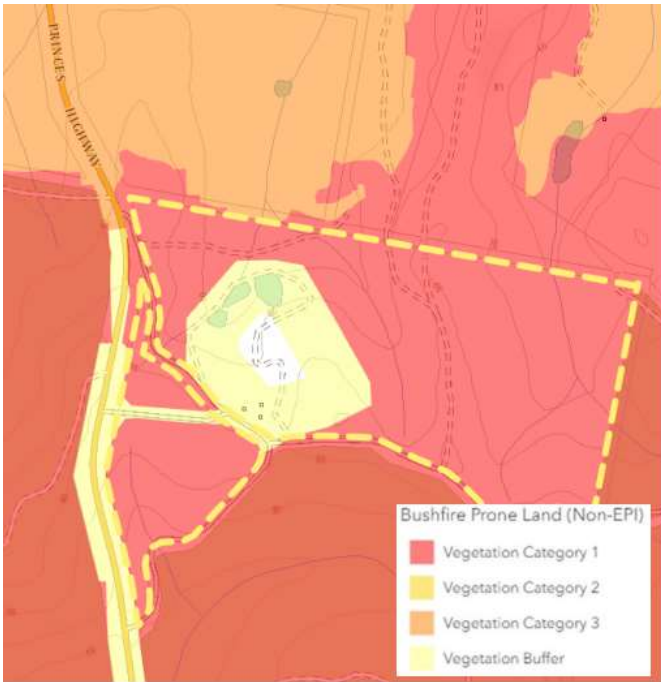
3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Unknown	<p>The proposal is potentially inconsistent with the following Actions under Actions 14.2 and 14.3 under <i>Direction 14 Protect important environmental assets</i>. See Section 3.1 above. Recommend consultation with DCCEEW Biodiversity, Conservation and Science to determine if inconsistent or justified inconsistency.</p> <p>The Secretary's approval for any inconsistency will need to be considered before the plan is made and after consultation with DCCEEW Biodiversity, Conservation and Science.</p>
1.3 Approval and Referral Requirements	Yes	Planning proposal indicates it is inconsistent with this Direction because the waste management facility constitutes designated development under the EP&A Act 1979. However, the planning proposal does not seek to identify development as designated development and is therefore consistent with section (1) (c) of the Direction.
3.1 Conservation Zones	Unknown	<p>The Biodiversity Assessment Report (Appendix E of the Planning proposal) acknowledges that the proposal will affect areas of high environmental value and threatened species are potentially impacted by the proposal. See Figures 9 Plant Communities, 10 Ecosystem Species and 11 Species Credits under Section 4.1 Environment. The proposal is therefore inconsistent with section (1) of Direction 3.1.</p> <p>It is recommended that Council be required to consult with DCCEEW</p>

		<p>Biodiversity, Conservation and Science and NSW Fisheries to determine if the proposed mitigation measures justify the potential inconsistency with section (1) of the Direction “<i>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas</i>”.</p> <p>The Secretary’s approval for any justification for an inconsistency will need to be considered before the plan is made and after consultation with DCCEEW Biodiversity, Conservation and Science and NSW Fisheries.</p>
3.2 Heritage Conservation	Unknown	<p>An Aboriginal Cultural Heritage Report (Appendix D of the Planning Proposal) concluded that future works would be unlikely to result in any impacts on Aboriginal artefacts or cultural heritage values and recommended that the proposed activity could proceed with caution.</p> <p>It is recommended that Council be required to consult with NSW Heritage and Bodalla Aboriginal Land Council (LALC) to determine if the assessment justifies the proposals consistency with the Direction.</p> <p>The Secretary’s approval for any justification for an inconsistency will need to be considered before the plan is made after consultation with NSW Heritage and the Bodalla Local Aboriginal Land Council.</p>
4.1 Flooding	Unknown	<p>Although the planning proposal indicates that the site is not identified as flood prone land in any Council flood studies it acknowledges that a minor watercourse traverses the site flowing from the south west to the north. (See watercourse in Figure 3). The site is therefore may potentially be affected by flooding.</p> <p>The Secretary’s approval for justification for any inconsistency will need to be considered before the plan is made after consultation with DCCEEW Biodiversity, Conservation and Science.</p>
4.2 Coastal Management	Yes	<p>The planning proposal acknowledges that part of the site is within an area mapped as Coastal Environment Area under SEPP (Resilience and Hazards) 2021 (See Figure 7). The PP states that there are no provisions in the SEPP that are relevant to the proposal.</p> <p>It is recommended that Council consult with DCCEEW Biodiversity, Conservation and Science, NSW Fisheries and Water NSW to obtain feedback on the potential environmental impacts on land within the area mapped as Coastal Environment Area.</p>

		<div data-bbox="662 185 1340 743"></div> <div data-bbox="588 768 1356 799" data-label="Caption"><p>Figure 7 Coastal Environment Area (Source: Planning Proposal).</p></div>
<div data-bbox="148 835 376 898"><p>4.3 Planning for Bushfire Protection</p></div>	<div data-bbox="413 835 526 864"><p>Unknown</p></div>	<div data-bbox="588 835 1409 1243"><p>The site is mapped as bushfire prone land (Figure 8) and therefore triggers consultation with the NSW Rural Fire Service. The proposal states that the new waste management facility will be designed to comply with the requirements of the Planning for Bushfire Protection 2019.</p><p>Consultation with the NSW Rural Fire Service will confirm if there are any outstanding issues to be addressed to justify any inconsistency with the Direction.</p><p>The Secretary’s approval for any justification for an inconsistency will need to be considered before the plan is made after consultation with the NSW Rural Fire Service.</p></div> <div data-bbox="668 1256 1332 1935"></div> <div data-bbox="588 1960 1279 1991" data-label="Caption"><p>Figure 8 Bushfire Prone Map (Source: Planning Proposal).</p></div>

4.4 Remediation of Contaminated Land	Yes	<p>The Direction is triggered because land that is, or is to be used for, a land fill site is listed in Table 1 of the contaminated land planning guidelines.</p> <p>However the planning proposal does not trigger any inconsistency with section (c) of Direction because it is not intended to rezone rural land to residential, educational, recreational, childcare purposes or hospital.</p> <p>The planning proposal states that consideration of SEPP Resilience and Hazards 2021 will be necessary in the preparation of an EIS to support a future development application for the expansion of the Waste Management Facility.</p> <p>Although the Direction does not trigger an inconsistency with Direction 4.4 it is recommended that Council be required to consult with the Environmental Protection Authority (EPA) because the project is being funded by grants from the EPA.</p>
9.1 Rural Zones	Yes	<p>The planning proposal is consistent with the Direction because it does not seek to rezone the land to residential, business, industrial, village or tourist zone and does not contain provisions to increase the permissible density of land within a rural zone. It is assumed this part of the Direction relates the housing density and the change to SP2 and C2 Zones will not increase housing density.</p>
9.2 Rural Land	No	<p>The planning proposal is inconsistent with section (1) (a), (c) of the Direction that states that a planning proposal must be consistent with a regional plan (see comments on Direction 1.1) and must protect environmental values (see comments on Direction 3.1).</p> <p>The Secretary's approval for any justification for an inconsistency will need to be considered before the plan is made after consultation with DCCEEW Biodiversity, Conservation and Science, NSW Fisheries and Water NSW.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal states that there are no provisions in any SEPPs that are relevant to the planning proposal.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	See Section 3.3 and response to Direction 3.1 Conservation Zones. A Biodiversity



Figure 11 Species Credits (Source: Biodiversity Assessment Report – Appendix E).

Flooding	A minor watercourse traverses the site flowing from the south west to the north. The site is therefore potentially be affected by flooding. (See section 3.3 and response to Direction 4.1 Flooding). It is recommended that consultation be undertaken with DCCEEW Biodiversity, Conservation and Science.
Contaminated Land	The planning proposal seeks to expand the existing Waste Management Facility at Brou with funding from the EPA. See response under Section 3.3 for Direction 4.4 Remediation of Contaminated Land. It is recommended that consultation be undertaken with NSW EPA.
Bushfire Prone Land	The site is mapped as bushfire prone land. See Section 3.3 and response to Direction 4.3 Planning for Bushfire Protection. The Direction triggers consultation with the NSW Rural Fire Service.
Groundwater and water quality	<p>The planning proposal states that the site is not affected by the LEP Acid Soil Mapping or LEP Groundwater Vulnerability Map. The planning proposal acknowledges the headwaters of a watercourse flow through the northern portion of the site and north into Brou Lake (see Figure 3).</p> <p>The proposal further states that water quality monitoring data collected as a condition of the environmental protection licence indicates that the current landfill is not impacting local groundwater or surface water, however further water quality assessments will be conducted as part of the proposed environmental impact assessment (designated development).</p> <p>It is recommended that Council be required to consult with Water NSW and NSW Fisheries for comments on the potential impacts on groundwater, water quality and aquatic habitats.</p>

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Social and Economic Impacts	<p>The proposed rezoning will extend the life of the existing waste management facility and retain six staff positions providing positive socio-economic benefits to the local community and economy.</p> <p>The planning proposal states that closing the Brou waste management facility would have a significant impact on the local building industry because average of 5,000 tonnes per year of building waste is disposed of to landfill at Brou WMF. The additional costs borne by the local construction sector to take waste to another facility will be in the order of \$1 million per year and this will have a significant impact on the local building industry.</p> <p>The closure of the landfill facility at Brou facility would have considerable impacts on the local economy that cannot be offset by providing a waste transfer station. The total cost to the community in the southern Eurobodalla will be approximately \$3 million per annum. Additional impacts of closing the landfill include more rapid consumption of landfill capacity at Surf Beach waste management facility, greater transport emissions, more trucks on the Princes Highway, and a reduction in emergency management capability (such as managing waste disposal) and disaster resilience for the Eurobodalla community.</p> <p>Council would also relinquish its entitlement to a significant remaining portion of grant funding (\$1.08M) provided by the EPA for the purpose of planning expansion of the Brou facility.</p> <p>The nearest dwelling is approximately 800 metres from the northern boundary of the Lot 1. Community consultation will provide feedback to Council on potential economic and social impacts of the proposal to extend the existing waste management facility.</p>

4.3 Infrastructure

Access and Transport

The planning proposal states that the site is accessed via Brou Lake Road which intersects with the Princes Highway approximately 450m to the south-west of the Site. The intersection is comprised of channelised right and left turning lanes which is considered adequate for the existing and proposed volumes of traffic using the intersection. Sight-distance exceeds 250m to the north and south which is in considered acceptable for the 100km/h speed environment.

Except for temporary additional vehicle movements associated with construction works, the proposed expansion will not create additional traffic impacts.

It is recommended that Council be required to consult with Transport for NSW to consider traffic impacts on the Princes Highway.

Utilities

The planning proposal states that the site is not serviced by reticulated water, however static water supplies (tanks and dams) are on-site to service the facility and may also be used in the event of a bushfire.

Electricity and telecommunications are available to the existing facility and will be extended to the expanded facility. The planning proposal has recommended consultation with Endeavour Energy.

5 Consultation

5.1 Community

Council proposes a community consultation period of 30 days.

The exhibition period proposed is considered appropriate, and forms to the conditions of the Gateway determination.

5.2 Agencies

Council has nominated public agencies to be consulted about the planning proposal.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- DEECW Biodiversity, Conservation and Science
- NSW Heritage
- NSW Environmental Protection Authority
- Crown Land NSW (Close Crown Road Reserve)
- Forestry Corporation of NSW (adjoining landowner)
- Transport for NSW
- Water NSW
- NSW Rural Fire Service
- DPI NSW Fisheries

It is also recommended that Council consult with the following other groups identified in the planning proposal:

- Bodalla Local Aboriginal Council
- Endeavour Energy

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

The Department recommends an LEP completion date of 9 months from the date of the Gateway determination in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has not mentioned in either the Council report or Council minutes that it seeks authorisation to use its delegation for local plan making.

As the planning proposal is a standard planning proposal and the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- There is a critical shortage of remaining landfill space at Brou facility and the planning proposal seeks to facilitate the expansion of the Brow waste management facility to provide additional landfill capacity and to upgrade the resource recovery and recycling facilities.
- The proposal seeks to use funding from the Environmental Protection Authority to facilitate future disaster resilience in the Shire.
- The planning proposal is the only means to rezone the land to SP2 Infrastructure to enable consideration of a proposal for the expansion of the facility.
- Consultation with relevant state agencies and groups on the planning proposal will provide valuable feedback to Council on the proposed expansion of the existing waste management facility and the proposed mitigation measures that seek to ameliorate the environmental impacts.

9 Recommendation

It is recommended the delegate of the Secretary:

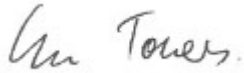
- Note that the Secretary's approval for any inconsistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 4.3 Planning for Bushfire Protection and, 9.2 Rural Lands will need to be considered before the plan is made and after consultation with relevant state agencies.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

1. Prior to public exhibition, the NSW Rural Fire Service is to be consulted in relation to the Local Planning Direction 4.3 Planning for Bushfire Protection and take into account any comments made.
2. Consultation is required with the following public authorities:
 - Department of Climate Change Energy and Environment – Biodiversity, Conservation and Science Group
 - Environmental Protection Authority
 - Forestry Corporation of NSW (impact on Bodalla State Forest)
 - NSW Crown Lands (Crown Road closure)
 - NSW Water
 - Heritage NSW
 - Transport for NSW
 - NSW Fisheries
3. Consultation is required with the following groups:
 - Bodalla Local Aboriginal Land Council

- Endeavour Energy

4. The planning proposal should be made available for community consultation for a minimum of 20 working days.
5. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 16 May 2025 be included on the Gateway.



8 August 2024

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14/8/2024

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