



**Item No:** 2.2  
**Title:** Planning Proposal 81/2015 for 893 The Entrance Road, Wamberal  
**Department:** Environment and Planning

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24 June 2019 Ordinary Council Meeting

Trim Reference: F2019/00041 - D13494437

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### **Report Purpose**

The purpose of this report is for Council to consider refusal of a current Planning Proposal which cannot be progressed due to the flooding constraints on the property. The subject land, Lot 4 DP 603395 (No 893 The Entrance Road, Wamberal), is zoned part 7(a) Conservation and Scenic Protection (Conservation) and part 7(c2) Conservation and Scenic Protection (Scenic Protection – Rural Small Holdings) under *Interim Development Order No 122 – Gosford*. The Planning Proposal seeks to enable a residential care facility on the subject property.

### **Recommendation**

**That Council defer this report for consideration at a late date with the provision of additional information.**

### **Background**

At the Ordinary Meeting held on 8 December 2015, the former Gosford City Council resolved:

- 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 for Part of Lot 4 DP 603395, No. 893 The Entrance Road Wamberal to rezone the land E2 – Environmental Conservation and R2 – Low Density Residential subject to agreement to dedicate as outlined in Part G.*
  
- B *Council notify the Department of Planning & Environment of Council's resolution requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and forward the Planning Proposal and all necessary documentation according to their requirements and this report.*

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- C Council requests that the Gateway determination include a requirement to undertake the following studies prior to exhibition, which will be required to be carried out by the applicant:
- A Water & Sewer systems capacity analysis
  - A Flooding & Drainage analysis
  - Identification of EEC extent (zone boundary)
  - Bushfire Threat Analysis
- advice as to the dedication of COSS land in light of the betterment provided by the Planning Proposal.
- D After public exhibition of the Planning Proposal, should the Minister for Planning support it, if no submissions objecting to the Planning Proposal are received, the Planning Proposal is to be processed in order to make the plan.
- E The applicant be advised of Council's resolution.
- F Council seeks delegations from the Department of Planning & Environment for this Planning Proposal.
- Any delegation to Council is to be delegated to the Chief Executive Officer - Paul Anderson, per s381 of the Local Government Act 1993, who will complete the "Authorisation" on behalf of Council and submit to the Department of Planning & Environment.
- G That Council request the CEO, or his representative, to meet with the proponent of the Planning Proposal to discuss the dedication of the part of the lot proposed to be zoned E2 to Council as part of the Coastal Open Space System as a public benefit associated with the proposed rezoning of the land.

A Gateway Determination dated 23 March 2016 was issued to Council by the former Department of Planning and Environment (DP&E) for the proposal.

Council's request to rezone the site to part R2 Low Density Residential and apply a 550m<sup>2</sup> minimum lot size was not supported. It was considered appropriate to retain the existing 7(a) Conservation and Scenic Protection (Conservation) and 7(c2) Conservation and Scenic Protection (Rural Small Holdings) zones and existing development standards for subdivision on the site and to allow the proposed use for a "residential care facility" through an enabling clause in *Interim Development Order No 122 – Gosford* (IDO 122).

The Gateway Extension lapsed on 30 March 2019.

### **The Site**

The subject site has frontage to the Central Coast Highway and to Carbeen Road, Wamberal (Figure 1). The current use is a nursery and landscape supply business which is located on the

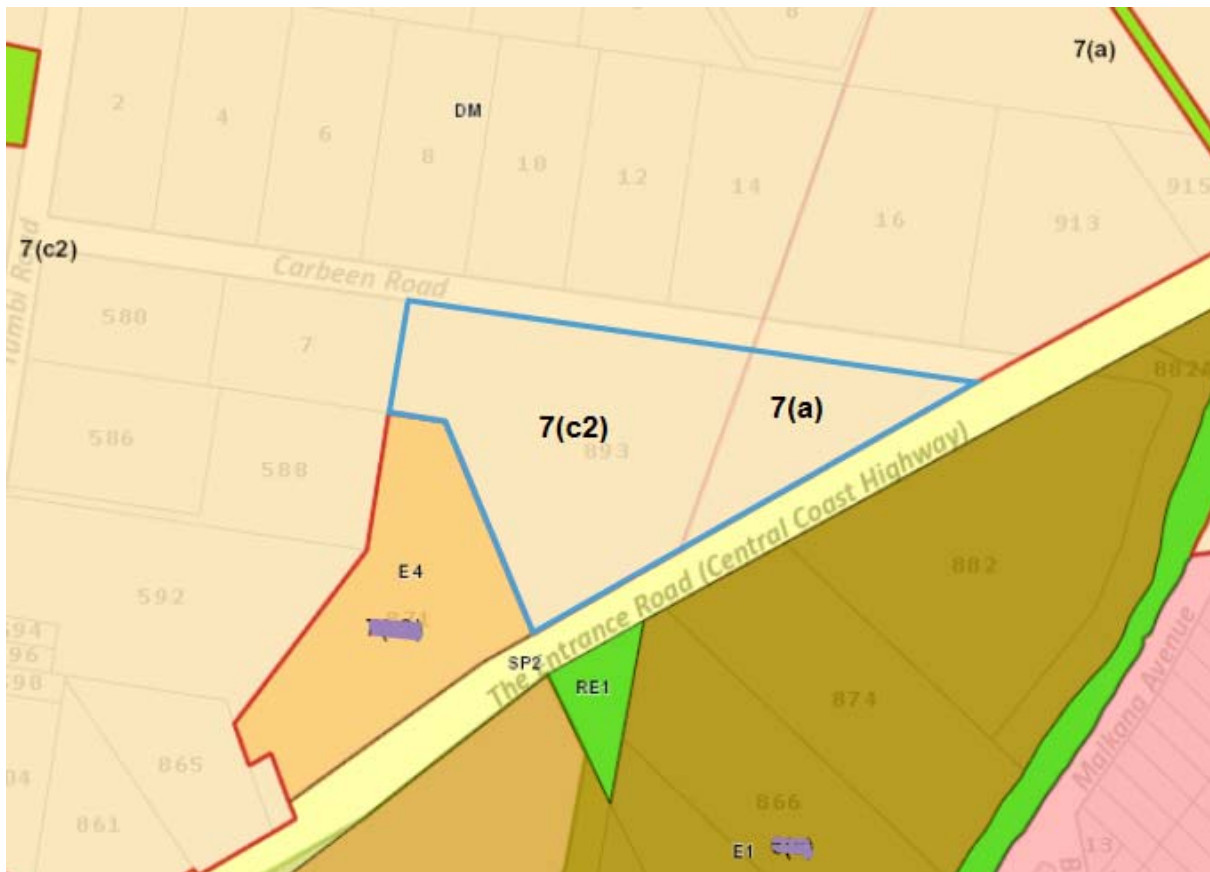
western part of the property. The eastern half of the subject land (approximately 1.6 Ha) accommodates an Endangered Ecological Community (EEC) comprising Swamp Sclerophyll Forest on Coastal Floodplains.



**Figure 1:** Subject Site Aerial Locality/Context Plan

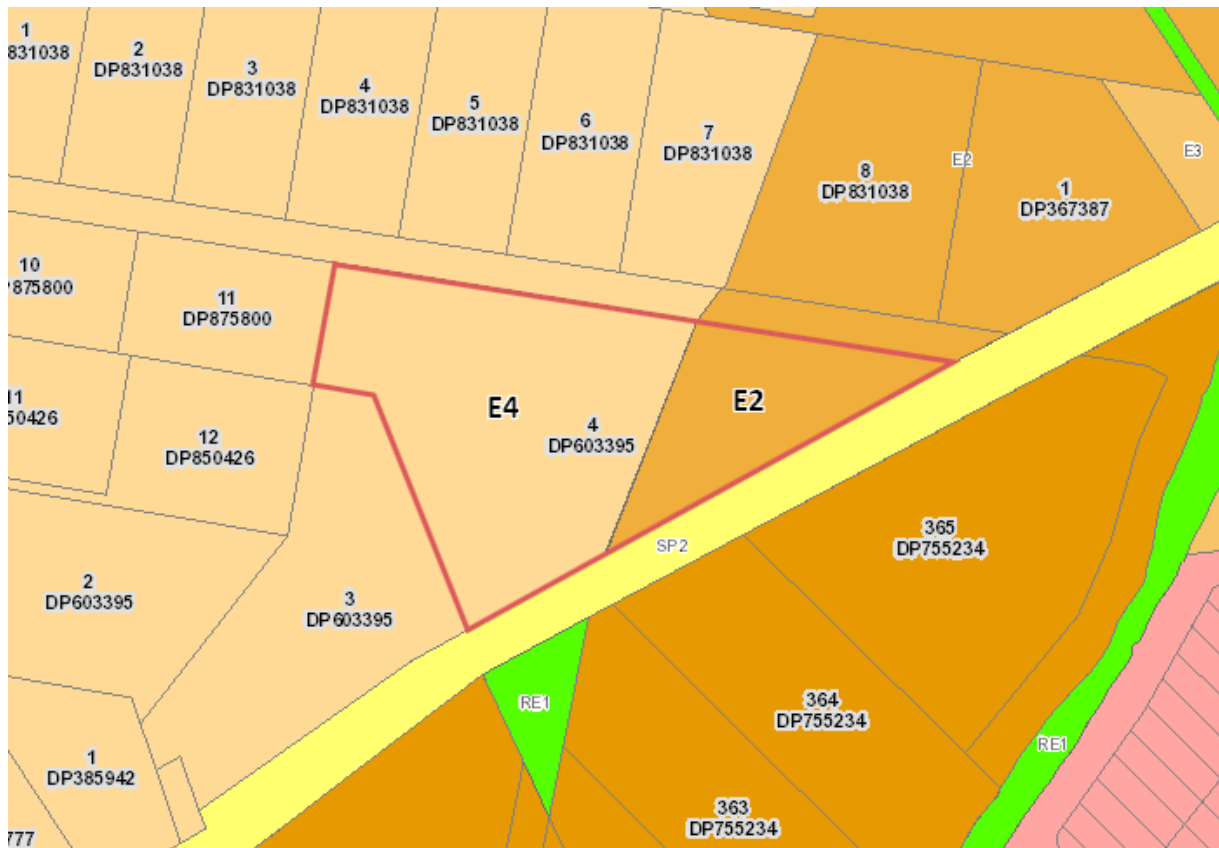
The lot has a total area of 3.715 Ha with 0.915 Ha zoned 7(a) Conservation and Scenic Protection (Conservation) and 2.8 Ha zoned 7(c2) Conservation and Scenic Protection (Scenic Protection – Rural Small Holdings) under IDO 122 (Figure 2).

That part of the site zoned 7(a) Conservation is identified as proposed Coastal Open Space System (COSS).



**Figure 2:** Existing Zoning under IDO 122

The draft Central Coast Local Environmental Plan (CCLEP) proposes to zone the land part E4 Environmental Living and part E2 Environmental Conservation (Figure 3).



**Figure 3:** Proposed Zoning under the draft CCLEP

### The Proposal

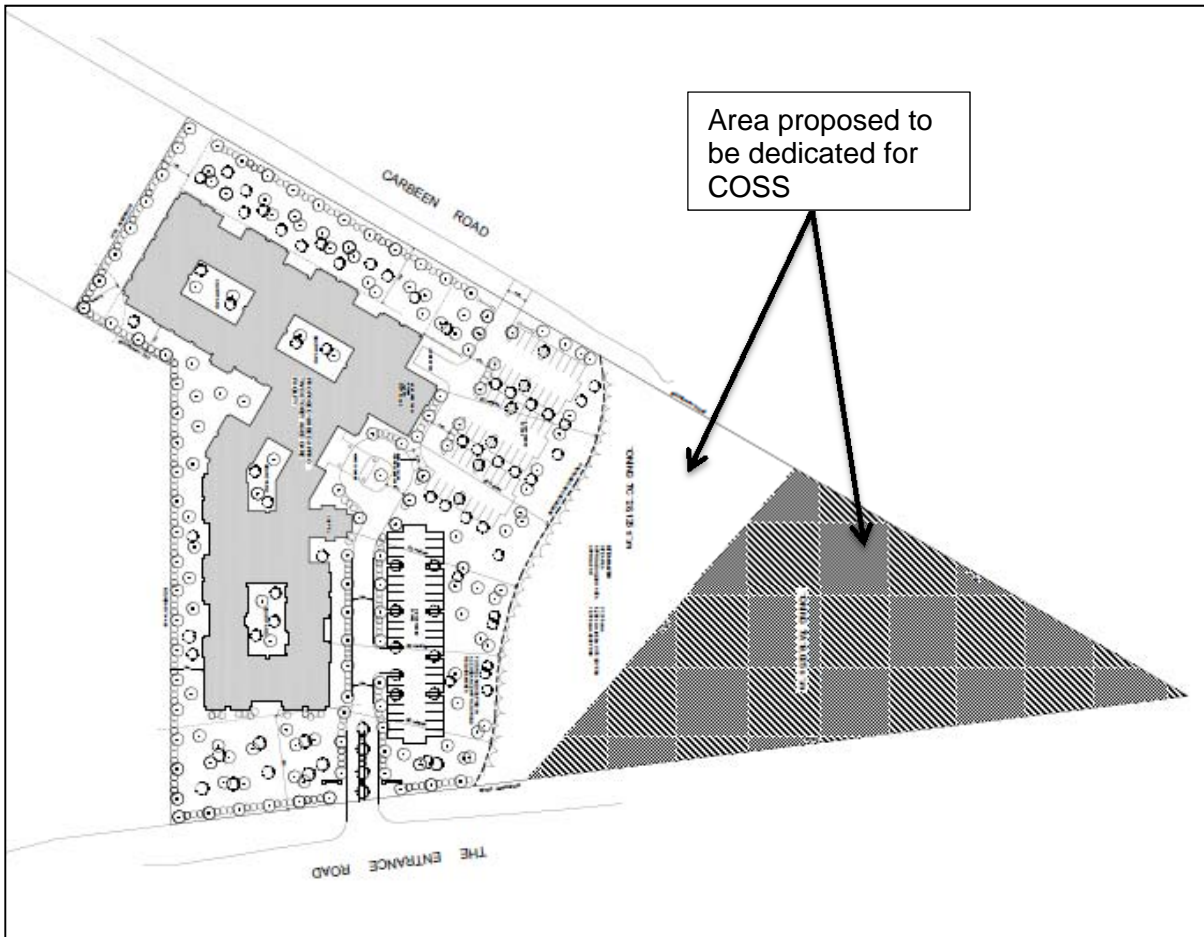
In accordance with the Gateway Determination, the proposal seeks to insert an enabling clause to IDO 122 to permit a residential care facility on Lot 4 DP 603395. The underlying zoning of 7(c) Conservation and Scenic Protection (Scenic Protection – Rural Small Holdings) and 7(a) Conservation and Scenic Protection (Conservation) would remain unchanged.

“Residential care facility” means accommodation for seniors or people with a disability that includes:

- a) meals and cleaning services, and
- b) personal care or nursing care, or both, and
- c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

but does not include a dwelling, hostel, hospital or psychiatric facility.

The eastern half of the subject land (approximately 1.6 Ha) accommodates an Endangered Ecological Community (EEC) comprising Swamp Sclerophyll Forest on Coastal Floodplains. The owner has agreed to dedicate 1.45 Ha of this land to Council under a Voluntary Planning Agreement (Figure 4).



**Figure 4:** Proposed Development

### Assessment

The proposed residential care facility is proposed to be located on the western part of the site which is generally cleared and disturbed by the existing plant nursery and landscaping uses. The eastern part of the site contains EEC vegetation and is proposed to be protected by dedication to Council for inclusion in the Coastal Open Space System (COSS).

This is a reasonable outcome and formed the basis for the resolution by the fGCC. However this resolution and the subsequent Gateway Determination required that a flood study be undertaken as part of the assessment process.

A Flood Study was undertaken by the applicant and it found that the land is affected by the Probable Maximum Flood (PMF) which is unsuitable for residential care facilities.

The applicant was subsequently advised to revise the flood study on two occasions to address concerns from Council's flooding engineer and the Office of Environment and Heritage (now part of Department of Planning and Industry).

However the latest revision is still unacceptable. With an objection from a public authority the planning proposal is unlikely to progress, so it serves no purpose to proceed to public exhibition. Hence it is being referred to Council for consideration.

### **Statutory Compliance and Strategic Justification**

The proposal has been assessed having regard for all State Environmental Planning Policies, Ministerial Directions and relevant guidelines set out within the Central Coast Regional Plan 2036 as detailed in Attachment 2.

The proposal is considered to be inconsistent with Direction 4.3 Flood Prone Land, therefore is unsuitable to proceed.

### **Internal Consultation**

Internal consultation for the current Planning Proposal has been undertaken as summarised below.

#### *Waterways*

The proposal is inconsistent with the NSW Government's Flood Prone Land policy and the principles of the NSW Floodplain Development Manual for the following reasons:

- In the PMF event, the proposed site is at risk of Intermediate to High Provisional Flood Hazard conditions in the vicinity of most of the proposed building footprint. An open channel has been proposed to convey flooding away from the site. This not only does not reduce the risk on the lot but also poses the associated risk of a potential high hazard (Hazard Vulnerability classification H5) open channel to people. It is noted that the in proposed flood mitigation channel, in the PMF event the floodwaters reach depths in excess of 1.5 m and velocities in excess of 2 metres per second with the flows extending the eastern side of the site and potential for further blockage under the Central Coast Highway.
- Those parts of the site which are not assumed to be filled or part of the flood mitigation drain are inundated to depths up to 1.2 m. These depths are not safe for children or for elderly.
- The Planning Proposal will significantly affect properties located in the western end of Carbeen Road. The flood report notes an increase from Hazard Vulnerability classification H3 to H4 on the eastern boundary of No 7 Carbeen Road, adjoining the subject property.
- Site access is lost during the PMF, as Carbeen Road and The Entrance Road are cut by floodwaters with Hazard Vulnerability classification of H3 and above.

- The report justifies by explaining that since the PMF Hazard Vulnerability classification of H4 to H5 in the pre- and post-development scenarios has not changed, the proposed development does not materially impact on the flood affectation of Carbeen Road. The Planning Proposal does not reduce the vulnerable nature of the proposed facility and the risks associated with that.

### *Environmental Strategies*

The Ecological Assessment indicates that the proposed aged care facility is likely to require clearing of 0.15ha of Swamp Sclerophyll Forest EEC. This was estimated to equate to 0.03% of the local occurrence of this vegetation community and approx. 1.45ha of EEC is proposed for retention within the subject site. The threatened species assessment concluded that this would not likely have a significant impact on the EEC and this conclusion is generally supported.

The proposed aged care facility will be located primarily in the existing disturbed and cleared areas of the site. The impacts to the EEC vegetation will be limited to the edge between the cleared area and the vegetated area in order to accommodate a bushfire Asset Protection Zone (APZ). It is considered that many trees can be retained in this edge area whilst still meeting APZ standards. The remainder of the vegetation is proposed for dedication to Council's COSS Reserve. The condition of the EEC vegetation is not currently suitable for Council to accept.

### *Transport Planning*

From a transport planning perspective there is no objection to the Planning Proposal. The proposed access arrangements to the site via Tumbi Road and the Central Coast Highway would result in minimal overall impact on the road network.

The site is accessible by public transport as a bus service is available along the Central Coast Highway with a bus stop in front of the subject site.

### *Water and Sewer*

Water is available to the land. The property is located within Councils defined water service area and a 100mm water supply main is located adjacent to the property in Carbeen Road. Connection to the water supply trunk main located within The Entrance Road will not be permitted.

Sewer is not available to the land. Lot 4 DP603395 is located outside Councils defined sewer service area. Council's sewer reticulation system is located within existing developed residentially zoned land located approximately 600 metres to the south of Lot 4 DP603395. Council undertook a preliminary assessment of the capacity of the existing sewer pump station SPS C15 into which development loads shall be discharged.



The analysis identified the SPS C15 as having reached capacity and any additional loads from this and other Planning Proposal sites would require augmentation of the Sewer Pumping Station and other sewer infrastructure.

### **External Consultation**

Government agency consultation was undertaken in relation to the current Planning Proposal. The Gateway Determination required consultation with the Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS), the Rural Fire Service (RFS), Transport for NSW and National Parks and Wildlife Service (NPWS).

*Office of Environment and Heritage (now Department of Planning and Industry)*

The Planning Proposal is inconsistent with the Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as it proposes to rezone land located within the flood planning area to a more intense land use.

The information provided in the Flood Study (by ACOR Consultants) indicates that most of the site is below the design 1% AEP (annual exceedance probability) level and that the entire site is at or below the flood planning level. The proponent has indicated that up to two metres of fill would be required on site to facilitate this development and achieve flood free developable areas. Therefore the planning proposal is inconsistent with Direction 4.3 Flood Prone Land under Section 9.1 of the EP&A Act.

Council should satisfy itself that the Planning Proposal will not result in an intensification of land use within the flood prone area to ensure consistency with Direction 4.3 Flood Prone Land.

*National Parks and Wildlife Service (now Department of Planning and Industry)*

All impacts of the development must be contained within the development footprint (i.e. measures should be put in place to ensure that there are no indirect impacts on the Wamberal Lagoon Nature Reserve). For example, NPWS requests that all fire mitigation measures are contained within the development footprint, and that no on-going requirements for fire mitigation beyond present requirements are given to NPWS. Furthermore there should be no changes to the hydrology, nor quality of water entering the reserve.

*Roads and Maritime Services (now Department of Transport)*

Roads and Maritime has reviewed the information and requests that the following matters be considered by Council and addressed by the proponent within a future development application:

- Future development be designed to provide vehicular access for all traffic generated by the development from Carbeen Road, consistent with the objectives of Clause 101 of *State Environmental Planning Policy (infrastructure) 2007*. As the subject land benefits from practical access to a local road connection, the vehicular access to the land via Carbeen Road should be provided as the primary access. Any existing access to the Central Coast Highway, a classified road, should be removed.
- Future development should ensure that discharged stormwater does not exceed the capacity of the stormwater drainage system on The Entrance Road.
- Take into account Ministerial Direction 3.4 Integrating Land Use Development and Transport in relation to the provision of adequate access to public transport and opportunities for pedestrian and cyclist connection to the surrounding area.
- Be aware of potential for road traffic noise generated by The Entrance Road to impact the development.

*Rural Fire Service (now Department of Family and Community Services and Justice)*

Based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future development of the land complies with *Planning for Bush Fire Protection 2006*.

*Transport for NSW (now Department of Transport)*

Transport for NSW has reviewed the documentation presented in support of the Planning Proposal and has no further comments on this proposal.

### **Financial Impact**

The direct cost to Council is the preparation of the Planning Proposal and Council's fee has been paid for this service.

### **Social Impacts**

The Planning Proposal for the residential care facility provides the type of facility that is required to meet the needs of an aging population. However the potential creation of a residential care facility in this location could result in an adverse impact on residents in a flood event.

### **Environmental Impacts**

These have been outlined in the body of the report.

**Link to Community Strategic Plan**

Theme 1: Belonging

Goal A: Our community spirit is our strength

B-A4: Enhance community safety within neighbourhoods, public spaces and places.

Theme 3: Green

Goal F: Cherished and protected natural beauty

G-F2: Promote greening and the wellbeing of communities through the protection of local bushland, urban trees, and expansion of the Coastal Open Space System (COSS).

Theme 4: Responsible

Goal I: Balanced and sustainable development

R-I3: Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management.

**Risk Management**

There have been risks identified to the natural and built environment if this Planning Proposal is supported by Council as previously discussed in this report.

**Conclusion**

The Planning Proposal to enable the additional use of a residential care facility on the land does not have strategic planning merit as it does not comply with the relevant Ministerial Direction 4.3 Flood Prone Land or the NSW Government's Flood Prone Land policy or the principles of the NSW Floodplain Development Manual.

It is recommended that the Council not proceed with the preparation of a planning proposal for this site.

**Attachments**

- 1** Proposal Summary           D13519506
- 2** Strategic Assessment       D13519508