



Amendment to permit an educational establishment and recreation facility, Mangrove Creek Road, Mangrove Creek

Proposal Title : Amendment to permit an educational establishment and recreation facility, Mangrove Creek Road, Mangrove Creek

Proposal Summary : The proposal seeks to permit an educational establishment and recreation facility on land currently zoned 7(a) Conservation in the Gosford Interim Development Order 122. Council proposes that this would occur by rezoning the site to SP2 Infrastructure (Educational establishment including accommodation and associated recreational activities) in its proposed comprehensive LEP or Special Use 5 (Educational establishment including accommodation and associated recreational activities) in IDO 122.

PP Number : PP_2012_GOSFO_007_00 **Dop File No :** 12/04999

Proposal Details

Date Planning Proposal Received : 13-Mar-2012 **LGA covered :** Gosford

Region : Hunter **RPA :** Gosford City Council

State Electorate : GOSFORD **Section of the Act :** 55 - Planning Proposal

LEP Type : Spot Rezoning

Location Details

Street : 178, 280-300, 325 Mangrove Creek Road

Suburb : Mangrove Creek **City :** **Postcode :** 2250

Land Parcel : Part of lots 1-3 DP 241044, part of lot 210 DP 804011, part of lot 102 DP 1090036

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Central Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		

If No, comment :

Have there been meetings or communications with registered lobbyists? :

No

If Yes, comment :

Supporting notes

Internal Supporting Notes : **Jobs:**
The site is already being used for the purposes of an educational establishment/ recreation facility. Council states that 20 people are employed on the site. New jobs may be created should the facility expand in the future.

Use of the site:
The site is currently used as a "recreational establishment" and it is understood that the facility provides yoga instruction, yoga studies, teacher training and yoga retreats. Visits to the facility can include residential stays.

The "recreational establishment" was permitted by way of a site specific enabling clause (1983) which permitted the use on lot 1 and 2 DP 241011 (ie part of the land that forms this planning proposal). A "recreational establishment" under the Interim Development Order 122 (IDO 122) is defined as "a health farm, religious retreat house, rest home, youth camp and the like but does not include a building or place elsewhere specifically defined..."

Additional lots (adjoining) have since been acquired and while not subject to the IDO 122 enabling clause currently, have been included in this planning proposal to allow for possible future expansion. Further, Council states that the proposal would also serve to align the planning provisions with the current activities on the site ie the educational component of the facility.

Land to which the planning proposal would apply:
Council proposes that the proposal would only apply to part of five lots (ie approximately 20 of 66 hectares). Council states that the land included corresponds with that below the 60 metre AHD topographical contour line (lower slopes/ valley floor). This should be confirmed by Council, as the north-eastern portion of the site may extend higher than the 60 metre AHD contour line. The remainder of the site (which Council has not included in the PP ie the upper slopes/ ridges) would retain its existing zoning, with Council stating that this is to protect the environmental/ scenic values of that land.

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Council's environmental zone review:

This proposal relates to land which Council proposes to zone E2 Environmental Protection under its draft comprehensive LEP. Several of the options for progressing this planning proposal consider an amendment to an E zone. It is therefore worth discussing Council's E zone review as it may affect those options.

The Department required Council to undertake a review of its E zones when its comprehensive LEP was certified for public exhibition. This was because Council's draft plan was inconsistent with Practice Note "Environment Protection Zones" (PN 09-002) (note: PN 09-002 was introduced after Council had prepared its draft plan). Changes to the way the E zones have been used and permitted uses may result. It is understood that Council has commenced a scoping paper on this work, although a review completion date is yet to be determined.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives is considered broadly consistent with the Department's 'A guide to Preparing Local Environmental Plans'.**

While a large part of the statement relates more to why Council has selected the uses that would be annotated on the zoning map, this added discussion may help the community to better understand the proposal.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions is considered generally consistent with the Department's 'A guide to Preparing Local Environmental Plans'.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

- SEPP No 19—Bushland in Urban Areas**
- SEPP No 44—Koala Habitat Protection**
- SEPP (Infrastructure) 2007**
- SREP No. 20 - Hawkesbury—Nepean River (No. 2 - 1997)**
- SREP No. 8 - Central Coast Plateau Areas**

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e) List any other matters that need to be considered : - s117 direction 1.3 Mining, Petroleum Production and Extractive Industries; and - SEPP 55 Remediation of Land.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain : **Further discussion on s117 directions 1.3, 2.1, 4.1, 4.3 and 4.4 is provided in the 'Consistency with the Strategic Framework' section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Council has provided an aerial photo of the site and maps that show how the site is proposed to be zoned in both the IDO 122 or draft Gosford comprehensive LEP. These two zoning maps should be updated to show the proposed zoning of the site within the context of the zones applying in that locality.**

A zoning map which shows the current zoning of the site under the IDO 122 and exhibited draft comprehensive LEP should also be provided. Similarly, a locality map which shows the site within the context of the broader LGA would also be helpful.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has not discussed community consultation. However, this proposal could be considered to be a routine, low impact type proposal. A 14 day community consultation period is therefore proposed.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The proposal is adequate for the purpose of proceeding to a Gateway Determination.**

Proposal Assessment

Principal LEP:

Due Date : **June 2012**

Comments in relation to Principal LEP : **The comprehensive LEP is with the Department for finalisation. The draft plan would zone the land E2 Environmental Conservation which would prohibit the facility. As discussed, Council's planning proposal would rezone part of five lots.**

Council's proposed approach:
Council proposes that this land would be zoned SP2 Infrastructure (Educational establishment including accommodation and associated recreational activities) (or Special Use 5 (Educational establishment including accommodation and associated recreational activities) in the IDO 122). In terms of the SP2 uses that would be annotated on the zoning map, Council states that as the organisation is accredited under the Vocational Education and Training Act 2005, it satisfies the "Educational establishment" SI definition. The reference to "accommodation" Council states, is to capture the accommodation associated with the yoga activities. Council notes that neither of the SI terms "residential accommodation" or "tourist and visitor accommodation" capture the association with the yoga activities and the temporary nature of the accommodation. Council states that

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"...associated recreation activities" is necessary because the recreation component does not align with the SI recreation facility (indoor/ outdoor/ major) definitions.

Comment on Council's proposed approach:

Using the SP2 Infrastructure zone (or Special Use 5 zone in the IDO 122) could be supported as over half of the activities on the site are for the purpose of an "Educational establishment". DP&I's Practice Note 'Zoning for Infrastructure in LEPs' (PN 10-001) provides some guidance for zoning private infrastructure, recommending (but not requiring) that a prescribed zone be used. However, the prescribed zones in the Infrastructure SEPP compare less favourably than the SP2 zone because of the additional uses that they would permit. Of the two prescribed zones currently in Council's draft comprehensive LEP that could be considered, ie RU2 Rural Landscape or E4 Environmental Living, both would permit additional uses that may not be desired on the site by Council on the grounds of the site's remote location, lack of servicing and the site's environmental/ scenic values. For example caravan parks/ registered clubs (E4). Further discussion on RU2 and E4 is provided below.

Should an SP2 zoning approach be supported then DP&I's Practice Note 'Preparing Standard Instrument LEPs: Standard Zones' (PN 11-002) requires that the primary use be annotated on the zoning map and that the annotated use be a defined SI use. On this basis, Council's proposed wording may be problematic. Using defined SI uses only, the facility could be defined as an "educational establishment" (ie for the yoga studies and teacher training components). "Recreation facility (indoor)"/ "recreation facility (outdoor)", while not specifically referring to yoga instruction or yoga retreat, may address those yoga components. While the "accommodation" component referred to by Council would not be specifically addressed, this use could be considered ancillary to the other uses given that it is dependent on the yoga activities occurring.

Alternative approach - using E4 (7(c3) Scenic Protection - Tourist Accommodation) or RU2 (7(b) Scenic Protection) to permit the use on the site:

As discussed above, the E4 and RU2 zones would permit additional uses on the site in an area that Council states is isolated, not serviced and has environmental/ scenic values.

If RU2 was proposed then "recreation facilities (indoor)" would need to be permitted in the zone. This may be inconsistent with SREP 8 Central Coast Plateaus because it could encourage incompatible land uses in an area to be retained for agriculture/ extractive industry (note: some of SREP 8 land is proposed RU2). While it is questionable whether these uses would develop on RU2 land on the plateau, OEH may be concerned by the potential for this use (or other RU2 uses) occurring on this site given that it is currently zoned for conservation and adjoins National Park estate.

Alternatively, while the existing use of the site would not readily align with the general intent of the E4 zone (ie provide low-impact residential development in areas with some environmental value), the E4 zone approach would permit the desired range of uses without a need to change the zone. It is unclear however whether these uses would be retained following Council's E zone review. Notwithstanding this, an E4 zone approach would meet the objectives of the PP, however Council does not support this option.

Alternative approach - using E2 (7(a) Conservation) to permit the use on the site:
Council does not support this approach because the proposed uses (educational establishment/ recreation facility) would not be appropriate in the E2 zone. This is agreed.

Alternative approach - using E3 (7(c2) Scenic Protection - Rural Small Holdings) to permit the use on the site:

Council states that this approach is not supported because Council has used this zone for

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'rural small holdings' land and allows development that would not be appropriate (such as "child care centres"). Another issue with this approach however would be the implications of permitting recreation facilities on E3 land in the LGA. While the E3 zone would have limited application in the LGA in the short term (as this land has largely been deferred from the draft comprehensive LEP), this could change when the deferral is reconsidered.

The deferred land has scenic value and lies in relatively close proximity to urban land. This may make it attractive for recreation facilities. Without Council having considered the possible implications of this change, it is difficult to determine whether an E3 approach would have a positive/ negative/ negligible impact on these areas. The E3 zone uses and land to which it applies may also change following Council's E zone review. In light of the above, this approach is not supported at this time (note: "educational establishments" would also need to be permitted if this option was used as E3 is not a prescribed zone for "educational establishments" in the ISEPP).

Alternative approach - using Schedule 1 (enabling clause) to permit the use on the site:
This approach would result in the site retaining its proposed E2 zoning, while permitting the use to be undertaken on the site. This could occur by listing the "educational establishment", "recreation facility (outdoor)" or "recreation facility (indoor)" in the schedule.

Preferred approach:

Of the approaches discussed, the SP2, E4 or Schedule 1 approaches would all achieve the objectives of the PP. Given that Council has indicated that it does not support an E4 approach, it is not preferred. Further, the E4 zone has been used in the Gosford LEP for sites with different characteristics. Schedule 1 is also not preferred because the Department's current position is to generally not support an additional permitted uses approach. On balance then, the SP2 approach is preferred. It aligns with Council's desired approach, avoids concerns about additional permitted uses and changes resulting from the Council's E zone review, and is not inconsistent with the Department's guidance for zoning private infrastructure.

Comment on rezoning part of the five lots or all of the five lots:

As discussed, Council has only included part of the five lots in this planning proposal ie mostly those areas below a reduced level height of 60 m AHD. Alternative locations for this zone boundary, such as a lower contour line, have not been discussed, however there appears to be agreement between Council and the landowner on 60 m AHD.

Effectively, rezoning in this manner would mean that part of the lots would be zoned SP2 Infrastructure (lower slopes and valley floor) while the other parts (upper slopes and ridges) would retain the E2 zone proposed in the draft comprehensive LEP. Council states that this is to maintain the environmental and scenic quality of the surrounding land/ publicly visible ridges.

Given Council's concerns, the adjoining national park land, possible development constraints (slope) and that the area is identified as having scenic value (local) in a deemed SEPP (SREP 20 - Hawkesbury Nepean River), the exclusion of this land from the proposal could be supported.

Assessment Criteria

Need for planning proposal :

Council states that the need for the planning proposal has not resulted from a strategic study or report. Rather, it appears to have arisen in response to a submission from the landowner on the draft Gosford comprehensive LEP.

As already discussed, the "recreational establishment" currently operating would need to depend on existing use rights once the comprehensive LEP is finalised. Further, Council states that under Council's existing controls, the "recreational establishment" use does not recognise what is now a key focus of the facility, yoga teaching. Council states that both the existing IDO 122 and draft comprehensive LEP planning controls would also prevent

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the facility from possibly expanding in the future onto the adjoining lot 3 DP 241044, lot 210 DP 804011 and lot 102 DP 1090036.

Council's net community benefit test concludes that the proposal would have a benefit - ongoing employment, social benefits (through yoga activities/ well-being) as well as adding to the cultural diversity of the region.

On this basis, the need for the planning proposal is considered justified.

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Consistency with strategic planning framework :

Central Coast Regional Strategy (CCRS):

The site is situated within the area covered by SREP 8 Central Coast Plateau Areas. The CCRS seeks to maintain these lands for their valuable agricultural, environmental, mineral and extractive resources. However, the site is not identified as high value agricultural land in SREP 8 or as a site of extractive resource importance (SREP 9). Further, as Council seeks to have the proposal only apply to the lower slopes/ valley floor, environmental impacts would be reduced.

In light of the above, it is concluded that the PP is not inconsistent with the CCRS.

Gosford 2025 - Community Strategic Plan (Local Strategy):

Council asserts that the proposal is consistent with several of this high level plan's objectives relating to jobs and business growth. This is supported.

State Environmental Planning Policies (SEPPs):

SEPP 19 Bushland in Urban Areas - Despite the site being located some distance from an urban area, this SEPP appears to apply to the site. Council acknowledges that while significant areas of bushland would be retained, the proposal would likely result in the loss of vegetation should the facility expand. However, Council states that it is possible through future design to minimise impacts. On this basis, Council concludes that the proposal is consistent with the intentions of the SEPP.

Council's intention to exclude the upper slopes/ ridges of the lots from this proposal is evidence of Council's intention to give priority to retaining bushland. Further, the land that would be rezoned (20 of 66 hectares) is sufficiently large to allow bushland impacts to be minimised through appropriate development siting and design should the facility expand. On this basis, the proposal is not considered to be inconsistent with the SEPP at this time.

SEPP 44 Koala Habitat Protection - Council states that the proposal does not significantly modify Koala Habitat Protection and that future development proposals would be required to address this policy (and undertake relevant ecological studies).

The SEPP provides that the Director will consider the need for a specific study to be undertaken if land that is potential koala habitat or core koala habitat is to be rezoned to a zone other than environmental protection. It is unclear from the information provided by Council whether core or potential habitat exists on the site. Given that the facility is already operating on part of the site, and that any expansion would be subject to a development application and the SEPP, a case could be made that a specific study is not necessary at this time. However, this decision should be informed by consultation with OEH and Council would then be in a position to satisfy itself that a study is not required at the planning proposal stage.

SEPP 55 Remediation of Land - SEPP 55 is not discussed by Council. If a proposal includes land in a zone that would permit a change of use of the land, the Council needs to consider whether the land is contaminated. Further, if the permitted use is educational or recreational, a contaminated land study may be required. While it is noted that the use is currently occurring on the site, Council should consider the PP in terms of clause 6 of the SEPP.

SEPP Infrastructure - Council identifies that this SEPP may apply at the development application stage. This is agreed. The proposal is not considered to be inconsistent with this SEPP at this time.

SREP 8 Central Coast Plateau Areas - Council has considered the proposal against the objectives set out in cl. 11 of SREP 8 for draft local environmental plans. Council concludes that the proposal satisfies the requirements of the SREP. The proposal is not inconsistent with the deemed SEPP.

SREP 20 Hawkesbury Nepean River - Sets out a number of issue specific matters which

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must be considered by Council when determining a development application or preparing a planning proposal. Council states that the proposal is broadly consistent because the proposal is limited to the valley floor/ lower slopes and subject to on-going environmental management. A number of specific matters are set out for consideration and assessment against these should occur. Council should therefore consider the PP against cl. 5 and 6 of the SREP and update the PP accordingly. Consultation with the CMA could inform this assessment.

s117 directions:

The planning proposal is consistent with the relevant planning directions, except the following which require further discussion.

1.3 Mining Petroleum Production and Extractive Industries - The PP would prohibit extractive industries. Currently, extractive industries are made permissible by the Mining SEPP which permits extractive industries in zones where agriculture is a permitted use. The 7(a) Conservation zone permits agriculture, however the proposed infrastructure zone would not. Council should therefore consult with DPI as required by this direction.

2.1 Environment Protection Zones - As the PP would remove the existing 7(a) Conservation zoning, it is inconsistent with this direction. Council states that the inconsistency is minor given that the use is already occurring and that future expansion on the site, should it occur, would be limited due to constraints (flooding, bushfire, slope).

Council's comments are noted, however it is difficult to determine the extent of developable land within the 20 ha site from the information provided. Further, while Council acknowledges that threatened fauna species and regionally significant vegetation exist on the site, no study is provided or proposed to confirm the conservation value of the land. In light of this, and given the site's close proximity to National Park land, consultation with OEH should occur. On considering OEH comments, Council could then reconsider consistency with this direction, including the need for any studies, and seek DG agreement to an inconsistency at that time if required. The PP would need to be updated to reflect this process/ outcome.

4.1 Acid Sulphate Soils - Council states that a small portion of one of the lots is affected by Acid Sulphate Soils (ASS). As this area is unlikely to be developed due to flooding constraints, Council states that ASS issues are not likely to be exacerbated and so the PP is consistent with the direction.

The direction requires that Council must not prepare a PP which proposes to intensify land uses on land affected by ASS unless an ASS study has been undertaken. As the PP may intensify uses on a lot partly affected by ASS, and no study has occurred (or is proposed), the PP is inconsistent with the direction. However, given that the affected lands are a small portion of the 20 ha site, Council's comments regarding flooding constraints, and noting that an ASS provision would apply once the comprehensive LEP is made, the DG could agree that the PP's inconsistency with this direction is of minor significance. If the DG agrees to the inconsistency, the PP should be updated accordingly.

4.3 Flood Prone Land - The PP would rezone flood affected land from an environmental zone to an infrastructure zone and so the PP is inconsistent with this direction. Council notes that a flood planning level has not been adopted for the land. Notwithstanding this, Council states that flooding issues could be addressed through a development application and so the PP satisfies the direction. Council should satisfy itself that the proposal is either consistent or inconsistent with the specific terms of the direction. If inconsistent, DG agreement to an inconsistency should be sought per the terms of the direction. The PP should then be updated accordingly.

4.4 Planning for Bushfire Protection - As the proposal would affect land that is bushfire prone, consultation with the RFS would need to occur before consistency with this direction can be determined.

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Environmental social economic impacts :

Environmental:

Flooding - Part of the site is flood affected, although the extent of land affected is not indicated. The facility is already operating on site and Council states that should the facility expand in the future, then impacts could be satisfactorily addressed through the DA stage. Presumably a flooding study would be undertaken as part of a future DA. This approach could be supported, provided Council satisfies the terms of s117 direction 4.3.

Ecology - As discussed in relation to s117 direction 2.1, the land adjoins National Park land and Council notes that threatened fauna species and regionally significant vegetation exist on the site. No study has been undertaken or is proposed to be undertaken to confirm the value of the vegetation. Given that the use is already occurring on the site, and the process proposed for satisfying s117 direction 2.1, ecology issues should be able to be satisfactorily addressed.

Social/ Economic:

Additional employment may result should the facility expand in the future. Social benefits (through yoga activities/ well-being) may also result.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 Month** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **Hawkesbury - Nepean Catchment Management Authority
Office of Environment and Heritage
NSW Department of Primary Industries - Minerals and Petroleum
Office of Environment and Heritage - NSW National Parks and Wildlife Service
NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
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Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

- S.117 directions:
- 2.1 Environment Protection Zones**
 - 2.3 Heritage Conservation**
 - 4.1 Acid Sulfate Soils**
 - 4.3 Flood Prone Land**
 - 4.4 Planning for Bushfire Protection**
 - 5.1 Implementation of Regional Strategies**
 - 6.1 Approval and Referral Requirements**
 - 6.3 Site Specific Provisions**

- Additional Information :
- The following conditions are suggested in order to progress the PP:**
- amend references in the PP and the SP2 map notation to 'Educational establishments, recreation facilities (indoor) and recreation facilities (outdoor);
 - the two zoning maps should be updated to show the proposed zoning of the site within the context of the zones applying in that locality;
 - two zoning maps should also be provided which show the current zoning of the site under the IDO 122 and exhibited draft comprehensive LEP;
 - a locality map which shows the site within the context of the broader LGA should be provided;
 - confirm that the proposed 60 m AHD topographical contour zone boundary covers all the land proposed to be rezoned;
 - consider cl. 6 of SEPP 55;
 - consult with the CMA and consider PP consistency in terms of cl. 5 and 6 of SREP 20;
 - consult with DPI per s117 direction 1.3 to determine consistency;
 - consult with OEH and once Council is satisfied that ecological issues are adequately addressed, either confirm consistency with the terms of s117 direction 2.1 or seek DG agreement to an inconsistency;
 - confirm consistency with the terms of s117 direction 4.3 and if inconsistent, DG agreement to an inconsistency should be sought per the terms of the direction;
 - consult with RFS per s117 direction 4.4;
 - 14 day community consultation;
 - 6 month timeframe to complete the PP.

It is recommended that the DG agree to the inconsistency with s117 direction 4.1 Acid Sulphate Soils.

- Supporting Reasons :
- update SP2 notations to be consistent with the Standard Instrument;
 - updates to maps and additional maps would make the proposal clearer to the community;
 - SEPP 55 needs to be considered;
 - consultation with CMA to inform SREP 20 assessment;
 - consultation with DPI to satisfy s117 direction 1.3;
 - consultation with OEH to inform consistency with s117 direction 2.1;
 - further consideration of s117 direction 4.3 is to align the assessment with the terms of the direction;
 - consultation with RFS to satisfy s117 direction 4.4;
 - 14 day community consultation and 6 month completion timeframe as the PP could be considered to be a routine, low impact type PP.

Signature:



Printed Name:

GARRY HOPKINS

Date:

30 March 2012

