

Amendment to permit restaurants and kiosks on public recreation land in Gosford LGA.

Proposal Title : **Amendment to permit restaurants and kiosks on public recreation land in Gosford LGA.**

Proposal Summary : **The proposal is to permit restaurants and kiosks on land currently zoned 6(a) Open Space (Recreation) in the Gosford Planning Scheme Ordinance or the Interim Development Order 122.**

PP Number : **PP_2012_GOSFO_008_00** Dop File No : **12/07288**

Proposal Details

Date Planning Proposal Received : **17-Apr-2012** LGA covered : **Gosford**

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

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

LEP Type : **Policy**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **6(a) zoned land across the Gosford local government area**

DoP Planning Officer Contact Details

Contact Name : **Ben Holmes**

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RPA Contact Details

Contact Name : **Annie Medicott**

Contact Number : **0243258244**

Contact Email : **Annie.Medicott@gosford.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Central Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :	Date of Release :	
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :	N/A
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 :

If No, comment :

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes : Coastal Open Space System (COSS)
The COSS is a network of largely contiguous publicly owned land with scenic/ conservation value. Under the current zoning, some COSS land is zoned 6(a) and so would be affected by this planning proposal (PP).

The zoning of COSS lands was an issue that attracted community attention when the draft comprehensive LEP was exhibited. Originally the COSS land was proposed to be zoned RE1, which amongst other uses, permitted kiosks/ restaurants/ cafes. Council now intends to zone COSS land, including those 6(a) zoned lands affected by the PP, to a new E5 zone in the draft comprehensive LEP. The proposed new E5 zone would restrict uses and resulted in part as a response to community concern that COSS land could be developed for inappropriate RE1 uses.

In terms of this PP, similar concerns could potentially arise. Council highlights that, in theory, restaurants could be developed on COSS land as a result of this PP. Council states however that this is not its intention, and that Plans of Management, coupled with Council being the consent authority/ landowner, would prevent restaurants from occurring on COSS land. This is agreed. The measures identified by Council would serve to adequately safeguard the COSS until the new E zone applies ie when the draft comprehensive LEP is made. The draft comprehensive LEP is now with the Department for finalisation.

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 concise and sets out what Council seeks to achieve. It is generally consistent with the Department's 'A guide to Preparing Local Environmental Plans'.

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

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

Comment : The explanation of provisions explicitly states how the GPSO/ IDO 122 would be amended so as to achieve the objectives of the planning proposal. It is generally consistent with the Department's 'A guide to Preparing Local Environmental Plans'.

As 'kiosk' is not a defined land use term in the Gosford Planning Scheme Ordinance (GPSO) or Interim Development Order 122 (IDO 122), a kiosk definition would need to be added to these instruments. The Explanation of Provisions should therefore be updated accordingly to note this change.

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

**1.1 Business and Industrial Zones
2.1 Environment Protection Zones
2.2 Coastal Protection
2.3 Heritage Conservation
2.4 Recreation Vehicle Areas
3.2 Caravan Parks and Manufactured Home Estates
3.4 Integrating Land Use and Transport
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
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions**

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

**SEPP No 19—Bushland in Urban Areas
SEPP No 55—Remediation of Land**

e) List any other matters that need to be considered :

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

If No, explain : Further discussion on some of the s117 directions is required. This is provided later in this report.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : The planning proposal is a change in policy and so alters the land use table for the 6(a) zone in the IDO 122 and GPSO and introduces a new definition. No changes requiring maps would result.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Community consultation is proposed but Council has not specified a timeframe. Given that the proposal could be considered to be a low-impact type proposal, a 14 day consultation period is recommended.

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 : **On the basis of the assessment provided above, the proposal is adequate for progression to a Gateway Determination.**

Proposal Assessment

Principal LEP:

Due Date : **June 2012**

Comments in relation
to Principal LEP :

The land is currently zoned 6(a) Open Space (Recreation) in the IDO 122 and GPSO with neither instrument permitting 'kiosks' or 'restaurants' in that zone. In the draft comprehensive LEP, 6(a) zoned land (other than COSS land which is to go to a new E zone) is to be converted to RE1 Public Recreation, which would permit 'kiosks' and 'restaurants or cafes'. As such, should the draft comprehensive LEP be made before this PP is finalised, the planning proposal would become redundant.

Proposed approach:

Council's proposed approach to permit 'kiosks' and 'restaurants' on public recreation land is supported. It aligns with the policy direction proposed in the draft comprehensive LEP, maintains the overall objective for the land (ie public recreation) and is the simplest means of permitting the desired uses.

Alternative approaches:

Alternative approaches to permit 'kiosks' and 'restaurants' on the land such as zoning specific sites (or parts of specific sites) to a business zone (that allows restaurants/ kiosks) or through a series of site specific additional permitted uses, are not supported. These approaches would not align with the policy direction in the draft comprehensive LEP and are more complex. Applying a business zone would also change the overall objective for the land (ie from public recreation to business) which is not Council's intention. Council states that a business zone approach would be inconsistent with its draft Gosford Centres Strategy and is not supported.

Another approach would be to maintain the status quo ie the kiosks/ restaurants would continue to be permitted on the sites but as ancillary uses. However, permitting the uses as separately defined uses provides greater clarity for the community and broadens the opportunity for uses to develop and in turn allows the clubs/ community associations to achieve economic/ social benefits.

Comment on proposed definitions:

Council intends to add the SI 'kiosks' definition to the IDO 122 and GPSO because it is currently not defined. In doing so, Council would amend the SI definition by including a 50 sq.m limit on a kiosk's floor space. This is to align the definition with the mandated SI clause 5.4(6) of the draft comprehensive LEP which restricts kiosks to a set floor area (in Council's case, 50 sq.m). The introduction of the amended SI 'kiosk' definition to the GPSO/ IDO 122 is therefore supported. Reference should be made in the 'Explanation of Provisions' section of the PP to the intention to introduce this definition.

Council does not however intend to adopt the 'restaurants or cafes' SI definition. Instead it intends to retain the existing 'restaurants' definition of the GPSO/ IDO 122 where 'restaurants' is defined as follows:

"...means premises, the principal purpose of which is the provision

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of food and drink to people for consumption on the premises or the provision of take away food and drink, or both."

This definition is similar to the SI definition, although it does not refer to 'cafes', 'liquor' or 'entertainment'. It is not considered however that these components would be precluded based on the Council definition. Further, while Council does not discuss the merits of adopting the SI definition, it notes that 'cafes' would fall within the existing 'restaurants' definition. On this basis, there appears minimal practical benefit in replacing the existing 'restaurants' term in the GPSO/ IDO 122 with the SI 'restaurants or cafes' term. This change will occur anyway once the draft comprehensive LEP is finalised.

Assessment Criteria

Need for planning proposal :

Council states that the need for the PP is not identified in any strategic study or report, rather it arises from representations received from not-for-profit sporting/ community associations who use 6(a) zoned land. Council states that these organisations are under increasing financial pressure and that allowing restaurants/ kiosks to occur as part of a venue (eg clubhouse/ community facility) would improve their revenue and in turn the financial viability of an association.

As already discussed, kiosks/ restaurants can currently occur but only where ancillary. Allowing the uses as separately defined terms broadens the opportunity for use to develop, thereby providing social and economic benefit to the associations that use 6(a) land and the general community.

Council has undertaken a net community benefit test which concludes that the proposal would have a positive benefit. This is attributed to the potential for better facilities, additional tourism opportunities and greater use of public reserves resulting from the restaurants/ kiosks that the proposal would potentially enable.

Council states that as it is both the owner/ trustee of the land and the consent authority, uses would only be established where supported by Council and at a scale commensurate to the facility. It is also noted that Plans of Management (under the Local Government Act 1993) would also apply which would provide a further layer of Council/ community control.

In light of the above, the need for the planning proposal is justified.

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Consistency with
strategic planning
framework :

Central Coast Regional Strategy (CCRS):

Council states that the proposal is consistent with the CCRS. Two specific actions are identified by Council as being relevant to the proposal:

- in planning for development and redevelopment of urban areas, Council are to consider the need for civic open space and access to a variety of open space and recreation opportunities...; and
- Councils are to continue to maintain or improve the provision of local open space....

These are high level actions and so the proposal could be considered to align with both. Notwithstanding this, the proposal could potentially increase local employment and result in stronger sporting/ community associations. This may serve to enhance the attractiveness of local communities, thereby aligning the PP with the liveable communities vision that underpins the CCRS. On this basis, the PP is considered to be broadly consistent with the CCRS.

Community Strategic Plan - Gosford 2025 (local strategy):

Council states that the proposal is consistent with several of this high level plan's objectives relating to open space/ recreation, lifestyle and community. This is supported.

State Environmental Planning Policies (SEPPs):

SEPP 19 Bushland in Urban Areas - Requires the Council to have regard to the general and specific aims of the Policy, and give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland. Council states that it has considered these matters and notes that any future development would be directed to cleared/ disturbed areas and so would not impact on bushland.

As Council is the owner/ trustee of the lands and consent authority, and as the land may be subject to Plans of Management, there is adequate opportunity to ensure that development does not adversely affect urban bushland. In addition to this, as part of the development application (DA) process, SEPP 19 would also need to be considered. As such, the proposal is considered consistent with SEPP 19 at this time.

SEPP 71 Coastal Protection - Requires Council to consider a range of matters for development in the coastal zone. The PP is consistent with this SEPP at this time but it would be further addressed as part of a development application.

s117 directions:

The PP is considered consistent with the relevant s117 directions, except the following directions which need either further discussion or are inconsistent.

2.2 Coastal Protection - Requires Council to include provisions which give effect to and are consistent with the NSW Coastal Policy, the Coastal Design Guidelines 2003 and the NSW Coastline Management Manual 1990. Council states that future DAs would be subject to the Coastal Policy and so the proposal is not inconsistent with s117 direction 2.2.

Council has not considered each of these documents in its consideration of this s117 direction and so the PP is inconsistent. Given Council's statement that the Coastal Policy would apply to any future DA and that SEPP 71 would also apply, and noting that clause 5.5 'Development within the coastal zone' 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.

4.1 Acid Sulfate Soils - 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 land which Council identifies as potentially being affected by ASS, and no study has occurred (or is proposed), the PP is inconsistent with the direction. However, given that ASS provision would apply once the comprehensive LEP is made, and that it is unlikely that many DAs requiring earthworks would occur before that time, 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.

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4.3 Flood Prone Land - Council identifies the likelihood that some facilities may be situated on low-lying land that is flood-labile. Council states that DA assessments would include flooding considerations and that the proposal is not inconsistent with this direction. However, the s117 direction requires Council to not include provisions that apply to flood planning areas which would (amongst other matters) permit development in floodway areas or permit a significant increase in the development of the land. As this proposal may trigger these requirements, the PP is inconsistent with this direction.

In light of the above, it is suggested that Council should satisfy itself that the proposal is either consistent with the specific terms of this direction or inconsistent. If inconsistent, then seek the DG's agreement to an inconsistency. 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.

6.2 Reserving Land for Public Purposes - Requires that a PP must not (amongst other matters) alter existing zonings of land for public purposes without the approval of the Relevant Public Authority and the DG. While Council has not sought DG approval for amending its 6(a) zone as part of this PP, the DG has agreed to permitting the same uses in the RE1 Public Recreation zone (ie 6(a) zone equivalent) in the draft comprehensive LEP. On this basis, the PP is considered consistent with this direction.

Environmental social
economic impacts :

In terms of environmental impacts, Council states these would be examined on a case-by-case basis as part of the development application process. This is agreed, noting also that in some cases an existing structure (eg clubhouse/ facility) may already exist. In which case, the addition of a restaurant/ kiosk would either occur within the existing building or as part of a facility's redevelopment and so environmental impacts would potentially be reduced.

As discussed previously, Council has undertaken a net community benefit test which concludes that the proposal would have positive benefit as it would allow development of better facilities, tourism opportunities and greater use of public reserves. This assessment is supported, noting that local employment opportunities may also result.

As the proposal would potentially affect sports/ recreation facilities within the LGA, the Office of Communities - Sport and Recreation should be consulted with.

Assessment Process

Proposal type :	☒ Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	6 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service Other		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			

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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
Council_Letter.pdf	Proposal Covering Letter	Yes
Council_Resolution.pdf	Proposal	Yes
Planning_Proposal.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.4 Integrating Land Use and Transport**
- 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**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Additional Information : It is suggested that the following conditions could be applied in order to progress the PP:

- Council amend the 'Explanation of Provisions' to make reference to the introduction of a new 'kiosks' definition generally based on the SI definition;
- Council be satisfied that the proposal is consistent with s117 direction 4.3 and if not, seek the DG's agreement to any inconsistency;
- consult with the RFS per s117 Direction 4.4;
- consult with the Office of Communities - Sport and Recreation;
- 14 day community consultation;
- 6 month timeframe.

It is recommended that the DG agree that inconsistencies with s117 directions 2.2 Coastal Protection and 4.1 Acid Sulfate Soils are of minor significance.

Supporting Reasons : **Conditions:**

- amend Explanation of Provisions to make clear that a new kiosks definition would be created by the PP for the GPSO/ IDO 122 and generally based on the SI kiosks definition (ie would be SI definition plus the 50 sq.m floor space limit)
- confirm consistency with s117 direction 4.3 Flood Prone Land and seek DG agreement if not consistent

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- consult with RFS to satisfy s117 direction 4.4 Planning for Bushfire Protection
- consult with the Office of Communities - Sport and Recreation as the proposal would potentially affect sports/ recreation facilities
- 14 day community consultation and 6 month timeframe as the PP is low impact type proposal

DG s117 inconsistency agreement:

- refer to 'consistency with strategic framework' section of this report for discussion regarding the DG agreeing to inconsistency with s117 directions 2.2 and 4.1

Signature:



Printed Name:

ROBERT HODGKINS

Date:

27/4/2012.