

PLANNING PROPOSAL MISCELLANEOUS AMENDMENTS TO GOSFORD LOCAL ENVIRONMENTAL PLAN 2014 GOSFORD CITY COUNCIL

This Planning Proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act, 1979* and the Department of Planning and Infrastructure's *A Guide to Preparing Planning Proposals* and *Guide to Preparing Local Environmental Plans*.

A gateway determination under Section 56 of the Environmental Planning and Assessment Act is requested from the Department of Planning and Infrastructure (DoP&I).

Part 1 Objectives or Intended Outcomes

s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument.

The objective/intended outcome of the Planning Proposal is to address issues and rectify anomalies in the Gosford Local Environmental Plan (GLEP) 2014 that have become evident since the Draft LEP was adopted by Council on 31 May 2011.

Part 2 Explanation of Provisions

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

The objectives/intended outcomes are to be achieved by inserting new clauses in the GLEP 2014 citation.

(i) Temporary Use of Land

Under the proposed GLEP 2014, clause 2.8 *Temporary Use of Land* states that:

- 2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 14 days (whether or not consecutive days) in any period of 12 months.*

Under this Planning Proposal it is recommended that this period be extended to 28 days to provide more development opportunities to be considered by Council. Clause 2.8 would be amended as follows:

- 2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*

(ii) Temporary Use of Public Land

There are a number of temporary uses that currently occur on public open space areas which include, but are in no way limited to; hire of sporting fields by sporting groups for carnivals, passive reserve bookings such as weddings, special events such as markets, circuses and large scale one off events and licensing of commercial recreation based businesses such as personal trainers, surf schools/carnivals and the like.

The majority of special event and reserve booking approvals have been provided by Council subject to clause 45CB *Temporary Use of Land* under the Gosford Planning Scheme Ordinance (GPSO) which states that:

- 2) *Despite any provision of this Ordinance, a person may, without the consent of the Council, carry out development on land to which this clause applies for the purpose of a market, circus or auction, or for a community purpose, for a maximum of 14 days (whether consecutive or not) in any calendar year.*

The GPSO also allows for activities to occur if they are detailed in a Plan of Management under the *Local Government Act, 1993*.

The interpretation of this clause is that development consent will be required for any temporary use of open space land regardless of the scale of the activity. The conditions that will be imposed for the temporary use of open space land under the GLEP 2014 in its current form are not considered suitable for the ongoing management of open space areas and are at variance with recent processes. It is considered unreasonable to expect users that temporarily access public land to be subjected to the more onerous Development Approval process, when the current Council approval process is considered to be satisfactory.

As clause 2.8 *Temporary Use of Land* is a standard clause in the DLEP, Council does not have the ability to alter this clause to allow for a more suitable means of dealing with Council's reserves' bookings and special events. At the time the Draft Gosford LEP 2009 was prepared there was no avenue to address this issue. However since that time several councils have had LEPs gazetted which either include a new clause or add the temporary use of public land in Schedule 2 - Exempt Development.

Following consultation with all relevant Council business units it was decided that the most satisfactory option would be to include the 'temporary use of public land' in Schedule 2 Exempt Development of GLEP 2014, as this effectively reflects current appropriate practices.

The proposed wording of the amendment is set out below.

Gosford LEP 2014 is amended by:

- (a) inserting in Schedule 2 - Exempt Development in alphabetical order:

Temporary events or activities on public land or public places

- (1) Use of *public land* or *public place* for temporary events or activities including markets, exhibitions, festivals, fetes, concerts, weddings, circuses, markets, celebrations, entertainment, recreation, exercise, education or similar community, cultural or commercial purposes and the like.
- (2) A temporary event or activity does not compromise the future development of the land or have detrimental economic, social, amenity or environmental effects on the land or adjoining land.
- (3) A temporary event or activity must be consistent with any applicable Plan of Management for the land under the Local Government Act 1993 if community land or the Crown Lands Act 1989.
- (4) A temporary event or activity must be carried out in accordance with a licence, approval or hire agreement granted by the Council.

- (5) A temporary event or activity can include the erection of temporary structures. State Environmental Planning Policy (Temporary Structures) 2007 does not apply in this instance.

- (b) inserting in the Dictionary after the definition of **public land** the following:

public place has the same meaning as in the *Local Government Act 1993*.

Notes: Other approvals may be required, and must be obtained under other Acts including, but not limited to, Local Government Act 1993, Roads Act 1993, Crown Lands Act 1989, Maritime Services Act 1935. References to other Acts extends to the other Acts as in force for the time being.

(iii) Development of Closed Crown Roads

The current practice by the Department of Trade and Investment is to offer for sale closed roads that are not required by the State. Although Council does not oppose the sale of closed roads, the Department is selling the road as an individual lot with its own certificate of title. Such lots are in non-urban areas, are narrow (road width) and generally unsuitable for most uses, hence purchasers are often the adjoining land owners. Development Applications are being lodged with Council to realign the boundaries between the closed road lot and the non-urban lot to obtain two usable lots. Interim Development Order No: 122 provides in clause 18 for subdivision of land zoned Rural 1(a) down to a minimum area of 20 hectares and land zoned 7(a) Conservation down to a minimum area of 40 hectares. Clause 20(b) allows for '*making an adjustment to a boundary between allotments being an adjustment that does not involve the creation of any additional allotment*'. In coastal areas, such surplus crown road lots are usually in areas zoned 7(a) Conservation and clause 22 permits lots to be considered to be created below the minimum lot area where it existed before 18 February 1977 or was created other than via clause 20. Such development proposals generally raise issues associated with:

- i Fragmentation of agricultural land;
- ii Degradation of the rural or scenic landscape of the locality;
- iii Potential SEPP No 1 objection being used as a "de facto" rezoning proposal;
- iv Consistency with the planning objectives of the locality and the zone;
- v Consistency with the aims and objectives of Regional Plans, in particular SREP No 8 - Central Coast Plateau Areas;
- vi Potential land use conflicts with establishment of non-agricultural uses;
- vii Bush fire hazards, particularly for coastal lands.

If the closed road is consolidated into the existing adjoining holding under one (1) certificate of title these concerns would be eliminated.

The following proposed new clause is suggested to be inserted in the GLEP 2014 to make clear the situation in relation to such circumstances.

Gosford LEP 2014 is amended by inserting after clause 4.2 the following:

4.2A Crown road closures in certain rural and environmental protection zones

- (1) The objectives of this clause are as follows:

- (a) to prevent undersized lots created by the closure of Crown roads being developed for residential accommodation, and
- (b) to enable the retention of the rural and environmental landscape by permitting the land subject of a Crown road closure to be amalgamated with an adjoining land parcel.

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone E2 Environmental Conservation,
- (d) Zone E3 Environmental Management.
- (e) Zone E4 Environmental Living

(3) Residential accommodation is prohibited on a lot / an extra lot created, otherwise than under Clause 4.2, from the closure of a Crown road.

(4) Nothing in this clause prevents the land the subject of a Crown road closure from being amalgamated with a lot directly abutting the closed Crown road land.

(5) In this clause **Crown road** has the same meaning as in the Roads Act, 1993.

(iv) Lots partially affected by Gosford LEP 2014

With the deferral of some parts of the LGA from GLEP 2014 it is possible that some lots may be affected by two planning instruments i.e. the GPSO or IDO 122 and Gosford LEP 2014. As planning instruments do not "talk" to each other it is possible that owners could seek to subdivide their land along the boundary of the planning instruments. The result being that a 'residue' lot may be created that does not meet the minimum requirements of the other instrument, thereby creating legal rights which would not otherwise have existed. This is not Council's intention in deferring land from the LEP; hence there is a requirement to address this matter by adding the following subclause in clause 4.1 Minimum subdivision lot size.

4.1 Minimum subdivision lot size

(5) Where a parcel of land, partially affected by this Plan, is subdivided; the lot resulting from this subdivision is not able to be developed if the size of the lot is less than the minimum lot size shown on the Lot Size Map.

(v) Definition of Flood Planning Level

Council inserted a definition of "flood planning level" in the Draft LEP which was based on best practice at the time.

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

This definition was the subject of debate across various state government departments and local government.

In addition Council has acquired in recent times more information with regards to flood levels and overland flow flooding from studies. In certain localities, such as the Peninsula, the above flood planning level definition would apply to the whole locality and implementing the requirement for 0.5m freeboard would be impractical.

A more practical solution would be to delete the definition of **flood planning level** from the LEP and rely on the definition used in the NSW State Government's *Floodplain Development Manual 2005*. This then allows the inclusion of any freeboard standards that are required within the Gosford DCP 2013, where they can be more easily tailored to local conditions and specific localities. Such an approach would be consistent with that taken in other gazetted Standard Instrument LEPs.

Under the *Floodplain Development Manual 2005* the definition of flood planning levels is:

flood planning levels are the combinations of flood levels (derived from significant historical flood events or floods of specific AEPs) and freeboards selected for floodplain risk management purposes, as determined in management studies and incorporated in management plans.

(vi) IN1 Land Use Table

Under GLEP 2014 the land use table for the IN1 General Industrial zone indicates that 'storage premises' are a prohibited use.

Under the previous equivalent zone of 4(a) General Industrial, storage premises were a permitted use subject to consent. Therefore to ensure consistency with the previous General Industrial zone the use is to be made permissible in IN1 zone within GLEP 2014.

s.55(2)(d) If maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas, flood prone land – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.

No maps are required for the proposed amendments.

Part 3 Justification for objectives & outcomes

s55(2)(c) The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

Section A Need for the Planning Proposal

1 Is the Planning Proposal a result of any strategic study or report?

This Planning Proposal is not the result of a specific strategic study or report. It merely seeks to address numerous matters that have arisen since the exhibition of the Draft Gosford LEP 2009 in early 2010 and to make the necessary amendments.

2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is the only means of achieving the objectives/intended outcomes.

Section B Relationship to strategic planning framework

3 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Central Coast Regional Strategy (CCRS) applies to the subject lands. The Planning Proposal consists of minor operational issues which are not explicitly inconsistent with the outcomes or actions of the regional strategy. An individual land use or provision is unable to be specifically planned for in a document such as a regional strategy.

3a Does the proposal have strategic merit and is it consistent with the Regional Strategy and Metropolitan Plan, or can it otherwise demonstrate strategic merit in light of s117 Directions?

The CCRS has been addressed in Question 3 and Section 117 Directions are addressed in Question 6.

- 3b Does the proposal have site-specific merit and is it compatible with the surrounding land uses, having regard to the following: the natural environment (including known significant environmental values, resources or hazards) and the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.**

The Planning Proposal addresses issues of land use which are not currently addressed in the LEP.

The clause relating to the temporary use of public land will allow the current process of approving uses to continue within the equivalent process under the Standard Instrument LEP. Such a process already ensures such temporary uses are compatible with the existing and surrounding uses of the land and this is to continue.

The clause relating to the sale of closed Crown roads will ensure that undersized rural lots cannot be developed solely for residential accommodation. This will ensure that the future use of such land will be compatible with the surrounding rural uses and various environmental planning instruments (e.g. LEPs & SEPPs).

The clause relating to lots partially affected by the LEP will ensure undersized lots are not created and that any future development is compatible with surrounding uses.

The deletion of the flood planning level definition will allow future development proposals to be assessed on their merits with freeboards applicable to the specific site.

- 4 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

The *Community Strategic Plan – Gosford 2025* applies to the subject land. The Planning Proposal is not explicitly inconsistent with the strategies outlined in the Community Strategic Plan. An individual planning provision is unable to be specifically accounted for in a document such as this; nor in any of Council's other strategic documents.

- 5 Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The proposed additional clauses and amendments do not increase the development potential of any land above what is either permitted now or that was exhibited in the Draft LEP. Consequently no SEPP has application to these parts of the Planning Proposal.

- 6 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?**

The proposed additional clauses and amendments do not increase the development potential of any land above what is either permitted now or that was exhibited in the Draft LEP. Consequently the Planning Proposal complies with all Section 117 Directions.

Direction 4.4 - Planning for Bushfire Protection

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.

Even though some of the land affected by these new provisions is bushfire prone they are generic and will not result in an increase in development density. As such the Planning Proposal will not have to be referred to the Rural Fire Service (RFS) for comment

Direction 5.1 Implementation of Regional Strategies

Clause (4) of the Direction requires Planning Proposals to be consistent with a Regional Strategy released by the Minister for Planning and Infrastructure.

The Planning Proposal is considered to be consistent with the objectives and actions contained in the Central Coast Regional Strategy 2006 – 2031 as indicated in the response to Question 3 above.

Direction 6.1 – Approval and Referral Requirements

Clause (4) of the Direction requires a Planning Proposal to minimise the inclusion of concurrence/consultation provisions and not identify development as designated development.

This Planning Proposal is consistent with this direction as no such inclusions, or designation is proposed.

Direction 6.2 - Reserving Land for Public Purposes

A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

No zones or reservations are proposed to be created, altered or reduced as part of this Planning Proposal.

Direction 6.3 – Site Specific Provisions

The Planning Proposal is consistent with this Direction as no site specific provisions are included.

Section C Environmental, social and economic impact

7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The proposed provisions are generic and do not specifically impact on areas of significant environmental significance.

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

No. The proposed amendments seek to reflect the existing environmental characteristics of the land or seek to ensure these characteristics are retained.

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

The proposed amendments will ensure that social and economic benefits to the community will be enhanced.

Section D State and Commonwealth interests

10 Is there adequate public infrastructure for the Planning Proposal?

The Planning Proposal will have no effect on public infrastructure.

11 What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning Proposal?

It is considered that no consultations will be required with State and Commonwealth agencies as the proposed provisions are generic and will not specifically affect public interests.

Part 4 Mapping

S55(2)(d) If maps are to be adopted by the proposed instrument, such as maps for proposed land use zones, heritage areas, flood prone land - a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.

There are no maps required for the proposed amendments.

Part 5 Community Consultation

S55(2)(e) Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Subject to Gateway support community consultation will involve an exhibition period of 14 or 28 days. The community will be notified of the commencement of the exhibition period via a notice in the local newspaper and on the web-site of Gosford City Council.

The written notice will:

- give a brief description of the objectives or intended outcomes of the planning proposal;
- indicate the land affected by the planning proposal;
- state where and when the planning proposal can be inspected;
- give the name and address of Gosford City Council for receipt of submissions; and
- indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- the planning proposal, in the form approved for community consultation by the Director-General of Planning;
- the gateway determination and any studies relied upon by the planning proposal.