

Miscellaneous Amendments to Gosford LEP 2014

Proposal Title : **Miscellaneous Amendments to Gosford LEP 2014**

Proposal Summary : **The planning proposal seeks to either amend or introduce provisions in Gosford Local Environmental Plan (LEP) 2014 related to:**

- Temporary Use of Land;
- Temporary Use of Public Land;
- Development of Closed Crown Roads;
- Lots partially affected by Gosford LEP 2014;
- Definition of 'flood planning level'; and
- Permit 'storage premises' in the IN1 Land Use Table.

PP Number : **PP_2014_GOSFO_002_00**

Dop File No :

14/04325

Proposal Details

Date Planning : **18-Mar-2014**

Proposal Received :

LGA covered :

Gosford

Region : **Hunter**

RPA :

Gosford City Council

State Electorate : **GOSFORD
TERRIGAL
THE ENTRANCE**

Section of the Act :

55 - Planning Proposal

LEP Type : **Housekeeping**

Location Details

Street : **Various**

Suburb :

City :

Postcode :

Land Parcel : **LGA wide application**

DoP Planning Officer Contact Details

Contact Name : **Glenn Hornal**

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RPA Contact Details

Contact Name : **Bruce Ronan**

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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) :	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 : **Yes**

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

REFERRAL TO LEP REVIEW PANEL

The inclusion of the clause 'Lots partially affected by Gosford LEP 2014' is not supported and although the matters in the planning proposal are considered to be of a local level of significance the removal of the clause would not be consistent with the position of Council and therefore requires referral to LEP Panel.

ADDITIONAL INFORMATION

Council was requested to provide additional information related to the project timeline and clarification regarding the inclusion of lots partially affected by Gosford LEP 2014 clause. This information was provided on 18 March 2014 and 26 March 2014.

External Supporting Notes :

Adequacy Assessment

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

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

Comment : Council has stated in the planning proposal that it seeks to address issues and rectify anomalies in Gosford LEP 2014.

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

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

Comment : Council has identified the provisions it seeks to amend or include as follows:

- Clause 2.8 Temporary Use of Land; Council seeks to increase maximum period development consent may be granted for the temporary use of land from 14 to 28 days. Council has stated this will provide more development opportunities.

The increase in time is supported however the planning proposal should include some discussion on why 28 days is the preferred number of days as opposed to other alternative timeframes given it is Council's intention to provide more development opportunities.

- Temporary Use of Public Land; Council proposes to introduce a new clause to Schedule 2 Exempt Development for 'Temporary events or activities on public land or public spaces' and include in the dictionary of Gosford LEP 2014 the definition "public place has the same meaning as in the Local Government Act 1993".

Council's clause identifies the type of event, activities and criteria as exempt development however it does not impose a time constraint on the temporary use of public land. Council should identify an appropriate maximum timeframe in order for the community to reasonably expect uses on public land would be limited under exempt development or require development consent for longer periods.

The inclusion in the dictionary is not necessary and the definition of public place could be included in the exempt development clause i.e. public place in this clause has the same meaning under the Local Government Act 1993. However this matter can be addressed during legal drafting of the instrument.

Other examples of provisions to achieve similar objectives are found in Hornsby LEP 2013 (where temporary use of public lands is exempt development) and Newcastle LEP 2012 (where temporary use of public land is development without consent (clause 6.6)).

Council has included a reference to SEPP Temporary Structures 2007 as not to apply to the clause. The SEPP Temporary Structures 2007 is now known as SEPP(Miscellaneous Consent Provisions) 2007. Council should update the planning proposal for exhibition with the correct reference to SEPP(Miscellaneous Consent Provisions) 2007.

- Development of Closed Crown Roads;
Council seeks to introduce a new provision "Crown Road Closures in certain rural and environmental zones".

Council has advised the sale of Closed Crown Roads by the Department of Trade and Investment as an individual lot with its own title are generally being bought by adjoining land owners. The boundaries of the closed roads are being realigned with the adjoining lot through the development application process to obtain 2 usable lots. Council wishes to prevent the creation of undersized lots with a dwelling entitlement and proposes to prohibit residential accommodation on a lot created from the closure of crown roads.

Although Council's position is supported, the proposal should state it would apply only to undersized lots below the MLS created by the boundary adjustment otherwise it would prohibit all lots created from the closure of crown roads even if it met the minimum lot size. Council should update the explanation of provisions accordingly.

Council's proposed clause is a variation of the model clause "Erection of dwelling houses on land in certain rural and environmental protection zones." While the intent is supported the clause may be varied during legal drafting.

- Lots partially affected by Gosford LEP 2014;
Due to the deferral of some parts of the LGA from Gosford LEP 2014 some lots are partially affected by 2 planning instruments i.e. Gosford LEP 2014 and IDO No 122.

Council has advised there is potential for landowners to subdivide these lots along the instrument boundary and comply with the minimum lot size in Gosford LEP 2014 but the residual lot will be below the minimum lot size in the IDO No 122. Council has stated

provisions in the IDO No 122 create legal rights and enable Council to approve a dwelling on the undersized lot for 7(a) land.

Council's approach seeks to include a provision which applies to partially affected lots and states:

"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."

This clause however would only limit development on undersized lots in the Gosford LEP 2014 not in the other instrument and it is not clear how this would limit undersized lots on 7(a) land in IDO No 122 resulting from the subdivision.

Council was asked to clarify the need for and the practicality of the clause's inclusion however is yet to provide satisfactory justification for its inclusion in the Gosford LEP 2014. It is unclear how undersized lots in IDO No 122 can be created and if they can it would be more appropriate to limit undersized lots with a dwelling entitlement via a provision in IDO No 122 rather than Gosford LEP 2014. Council should remove the clause from the planning proposal.

• Definition of 'flood planning level';

Council has advised it seeks to rely on the definition of 'flood planning levels' under the Floodplain Development Manual 2005 and would prefer to delete the reference to 'flood planning level' (means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard) in the dictionary of Gosford LEP 2014.

There is no objection on policy grounds provided Council does not provide flood related development controls beyond the 1:100 flood level plus freeboard. Council should clarify this is the case and update the planning proposal accordingly to ensure consistency with S117 Direction Flood Prone Land.

• IN1 Land Use Table

Council has advised that under the previous equivalent zone 4(a) Industrial (General) zone 'storage premises' were a permitted use subject to consent.

There was no definition of 'storage premises' in the Gosford Planning Scheme Ordinance however warehouses were permitted with consent in the 4(a) Industrial (General) land use table.

Storage premises and warehouses are separately defined under the standard instrument and Gosford LEP 2014 prohibited storage premises in the IN1 zone. Council seek to correct this inconsistency and include 'storage premises' as a permissible use in the IN1 zone.

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

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? Unknown

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

d) Which SEPPs have the RPA identified?

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

Council hasn't listed the SEPP (Miscellaneous Consent Provisions) 2007 but as discussed earlier, it will be affected by the proposed temporary use of public land provision.

Have inconsistencies with items a), b) and d) being adequately justified? **Unknown**

If No, explain :

Discussion on the S117 Directions and SEPPs is provided later in the report.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

Council has advised there are no maps required for the proposed amendments.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has advised the proposal will involve an exhibition period of 14 or 28 days. A 14 day exhibition period is considered sufficient.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

PROJECT TIMELINE

Council's timeline anticipates finalisation of the planning proposal in July 2014. Council has advised it seeks to expedite the planning proposal within 3 months due to the operational importance of the temporary use of public land clause. It is recommended Council's request for a 3 month timeframe to complete the plan be supported.

DELEGATION AUTHORISATION

Council has accepted plan-making delegations for planning proposals generally however resolved to not seek delegations to make this plan. The proposal relates to minor local matters and it is recommended Council be granted delegation to make the plan.

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **February 2014**

Comments in relation to Principal LEP :

Gosford Local Environmental Plan 2014 (Gosford LEP) was notified on 11 February 2014.

Assessment Criteria

Need for planning proposal :

Council has advised the planning proposal is not the result of a specific strategic study or report and seeks to address matters that have arisen since the Gosford LEP 2014 was exhibited.

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Consistency with strategic planning framework :

CENTRAL COAST REGIONAL STRATEGY (CCRS)

Council has advised the amendments proposed relate to minor operational issues and do not consider the proposal to be inconsistent with the intent and purpose of the CCRS.

LOCAL STRATEGIES

Council has advised The Community Strategic Plan - Gosford 2025 applies to the subject land however is not specifically inconsistent with this Plan.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

Council has advised no SEPPs have application to the planning proposal. There are no particular SEPPs that are considered to be inconsistent with the amendments proposed however matters requiring consideration may occur at the development application stage for some future developments i.e. SEPP 71 Coastal Protection.

S117 DIRECTIONS

The planning proposal is consistent with all relevant directions except where discussed below.

4.3 Flood Prone Land - The direction applies as the planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land. Council should clarify the change to the definition of 'flood planning level' is consistent with the requirements of the direction and will not result in development controls above the flood planning levels.

4.4 Planning for Bushfire Protection

The planning proposal has LGA wide application and will affect land mapped as bushfire prone. Council has indicated there is no need for consultation however the direction requires the RPA must consult with the NSW Rural Fire Service following receipt of a Gateway Determination. Consistency with the direction will need to be determined following consultation with NSW Rural Fire Service.

Environmental social economic impacts :

Environmental

Council has advised as the provisions are generic they do not impact on areas of environmental significance.

Social and Economic.

There may be some increase in economic activity and employment opportunities that will result from additional development opportunities from the increased timeframe of temporary uses and the additional permissibility of 'storage premises' in the IN1 zone.

Assessment Process

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

Timeframe to make LEP : **3 months** Delegation : **RPA**

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
Planning Proposal.pdf	Proposal	Yes
Council Resolution.pdf	Proposal	Yes
Council Report.pdf	Proposal	Yes
Timeline.pdf	Proposal	Yes
Flooding Policy Position Email.pdf	Study	No
Additional information - Lots Partially affected by Gosford LEP 2014.pdf	Proposal	No

Planning Team Recommendation

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

S.117 directions: **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 considered the planning proposal should proceed subject to the following:**

1. Council update the 'explanation of provisions' and the planning proposal to:
-include discussion on why 28 days is the preferred number of days as opposed to other timeframes in relation to Clause 2.8 Temporary Use of Land;
-include discussion on limiting the number of days for Temporary Use of Public land;
-delete the reference to SEPP Temporary Structures 2007 and replace with SEPP (Miscellaneous Consent Provisions) 2007;
-in regard to Development of Closed Crown Roads the proposal should state that residential accommodation would be prohibited on undersized lots that are below the MLS created by the boundary adjustment.
-Council remove the clause 'Lots partially affected by Gosford LEP 2014' from the planning proposal.
- Council include a statement explaining the clauses identified in the explanation of provisions may be modified during legal drafting of the instrument.

2. Council is required to demonstrate consistency with the following S117 Directions after supporting information has been obtained and/or following agency consultation and update the planning proposal accordingly:
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection - NSW Rural Fire Service

3. Consultation is required with the following public authorities:

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- NSW Rural Fire Service
- Department of Trade & Investment - Crown Lands

4. The planning proposal must be made publicly available for a minimum of 14 days.

5. The timeframe for completing the LEP is to be 3 months from the week following the date of the Gateway determination.

6. Council be granted delegation to make the plan.

Supporting Reasons : *

Signature:



Printed Name:

G HOPKINS

Date:

28.3.2014