



NSW GOVERNMENT
Department of Planning

Office of the Director-General

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Mr David Farmer
General Manager
Wollongong City Council
Locked Bag 8821
WOLLONGONG NSW 2500

Our ref: W09/00026-1
Your ref: E08/99360

Dear Mr Farmer

Re: Section 54(4) Notification – Wollongong LEP 1990

I am writing in response to your Council's letter dated 21 January 2009 advising, under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') for the reclassification and rezoning of surplus Council owned land from 'Community' to 'Operational' land and to remove trusts, caveats and interests. The LEP also proposes to increase the FSR in relation to a site in Mercury Street, Gwynneville.

The Council may now continue with the preparation of the draft LEP, noting the following:

- Council should ensure that the requirements of the Local Government Act for a public hearing are followed.
- The exhibition of the draft LEP is to include information that the amendment will take effect on the commencement of LEP 2009 and what the nature of the amendment will be. This is to include information about the relevant equivalent land use zones in LEP 2009, a copy of the draft LEP 2009 with the changes incorporated into it marked up for identification purposes.
- Council should reconsider the proposed 'down-zoning' of the Mercury Street, Gwynneville site in the comprehensive LEP, while still seeking to retain a maximum permissible FSR of 0.75:1 for the site. The Department is of the opinion that the medium density zoning and corresponding FSR standard proposed in this draft LEP is appropriate given the nature of adjoining land uses.

I have determined that there is no need for an environmental study to be prepared for this draft LEP. Therefore sections 57 and 61 of the EP&A Act will not apply. While I have determined that an environmental study is not required, it would be appropriate for any existing studies and supporting material to be brought together for exhibition with the draft LEP, including Council's *"Open space, recreation & community facilities strategic framework"*.

Consultation with the Department under section 62 of the Act is not required for this plan.

You will be aware that an instrument of delegation for my LEP making functions was executed on 16 February 2006. Use of the delegation for a draft LEP is conditional on receipt by Council of a Written Authorisation to Exercise Delegation.

Council should ensure that relevant section 117 Directions are adequately addressed and any necessary approvals or opinions sought prior to exhibition of the draft plan.

I have now issued an Authorisation, together with guidelines on its use, which is attached. This will enable Council to certify the draft LEP once the amendments and considerations, requested above, are made. This should be done in consultation with the Department's Regional Team.

Please forward a copy of the section 65 certificate, the draft plan and any other information to be publicly exhibited with the draft LEP, to the Regional Office with advice to the Department as required under section 64 of the Act prior to the exhibition of the draft LEP.

Should you have any queries in regard to this matter please contact the Regional Office of the Department.

Yours sincerely

SHaddad
Sam Haddad
Director-General
14/4/2009.



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

This is a Written Authorisation to Exercise Delegation ('**Authorisation**') made under the instrument of delegation executed by the Director General of the Department of Planning ('**Director General**') on 16 February 2006 ('**Delegation**').

Subject to the Delegation and the terms and conditions specified in Schedule 1 to this Authorisation, the following functions are delegated to Wollongong City Council ('**Council**') for the draft local environmental plan the subject of notification by Council to the Director General under section 54(4) of the Environmental Planning and Assessment Act 1979 ('**EP&A Act**') dated 21 January 2009 to amend Wollongong Local Environmental Plan 1990 to rezone and reclassify surplus Council owned land from 'Community' to 'Operational' land in accordance with the Local Government Act 1993 and remove trusts, caveats and interests.

- Section 65(1)
- Section 69(1)

Dated *14th* day of *April* 2009

Sam Gabriel Haddad
Sam Gabriel Haddad
DIRECTOR GENERAL
Department of Planning

Schedule 1

The exercise of the function(s) under the Delegation is subject to:

1. the Draft LEP complying with any relevant Ministerial Direction issued pursuant to section 117 of the EP&A Act; and
2. the Draft LEP not being the subject of an unresolved objection by a public authority or body; and
3. the Draft LEP not containing provisions suspending laws pursuant to section 28 of the EP&A Act; and
4. compliance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 entitled, 'LEPs and Council Land - Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council'; and
5. compliance with instructions issued by the Director General with respect to the preparation and content of reports prepared pursuant to section 69 of the EP&A Act.



**GUIDANCE IN THE USE OF THE
WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

- The Authorisation attached means that Council is able to exercise the Director General's functions specified on the Authorisation in respect of the nominated draft LEP, and subject to the terms and conditions contained in the Authorisation.
- The Authorisation only applies to, and in respect of, the draft LEP referred to in the Authorisation.
- A copy of the Authorisation should be placed on exhibition with the section 65 certificate and other required material including relevant section 117 directions and the statement required by section 66(1)(b)(iii) of the Act, when exhibiting the draft LEP.
- Where any applicable section 117 direction requires the Director-General to form an opinion or be satisfied as to certain matters, you need to ensure that this is done before exercising functions under the delegation.
- Council is to ensure that all proper care is exercised in undertaking functions pursuant to the delegation as any invalid exercise of delegation will necessarily affect the validity of the resulting LEP. Please note that the delegation may be subject to amendment or revocation at any time (in which case the Council will be notified in writing).
- A copy of the Authorisation should be attached to Council's information when an Opinion is being sought from the Parliamentary Counsel and when sending the section 69 Report to the Minister.

LEP Review Panel Consideration

SECTION 54(4) NOTIFICATION ADVICE



NSW GOVERNMENT
Department of Planning

2 April 2009

Wollongong – W09/00026-1

Details:

Wollongong LEP 1990 – 14 Sites as outlined in Council's letter of 21 January 2009.

Reclassification of surplus Council owned land from community to operational land and to remove trusts, caveats and interests. Five sites will also be rezoned under Wollongong LEP 1990 and the FSR increased on the site in Mercury Street, Gwynneville from 0.5:1 to 0.75:1. Four of the rezonings are from 6(a) Public Recreation to various residential zones, and the other rezoning is from 6(b) Private Recreation to the 6(a) zone to reflect Council ownership.

Recommendations:

LEP should proceed?

Yes / No

Reasons

- These lands have been identified as surplus to Council's needs and the reclassification will allow the sale of the land or the granting or extension of leases or licences on the land.

Consistent with Regional/Subregional Strategy?

N/A Yes / No

Environmental Study needed:

- Not required
- Not required – address issues (List separately)
- Study required - no specifications
- Study required - with specifications (List separately)

Delegation of functions to Council for Section 65:

- a) No delegation
- b) Delegation subject to conditions (specify)
- c) Full delegation

Delegation of functions to Council for Section 69:

- a) No delegation
- b) Delegation subject to conditions (specify)
- c) Full delegation

Any s.62 consultation advice for Council?

- Nil.

Additional advice to Council:

- Council to include supporting documentation re. identification of surplus public land (ie. 'Open space, recreation & community facilities strategic framework') with the LEP exhibition material.
- Council should ensure that the requirements of the Local Government Act for a public hearing are followed.
- The exhibition of the draft LEP is to include information that the amendment will take effect on the commencement of LEP 2009 and what the nature of the amendment will be. This is to include information about the relevant equivalent land use zones in LEP 2009, a copy of the draft LEP 2009 with the changes incorporated into it marked up for identification purposes.
- Council should reconsider the proposed 'down-zoning' of the Mercury Street, Gwynneville site in the comprehensive LEP, while still seeking to retain a maximum permissible FSR of 0.75:1. The Department is of the opinion that the medium density zoning and corresponding FSR standard proposed in this LEP is appropriate given the nature of adjoining land uses.

LEP Review Panel Consideration

SECTION 54(4) NOTIFICATION ADVICE



NSW GOVERNMENT
Department of Planning

Signed: *G Connolly*
(Gail Connolly- Panel Chair)

Date: 9/4/09

Recommendation Endorsed:

S Haddad
Sam Haddad
Director General

Date: 14/4/2009

**Department of Planning
Section 54(4) Notification Advice**

Date Received: 23/01/09

Council Contact for Panel Meeting

Name: Edith Castro
Position: Strategic Project Officer
Phone Number: 4227 7616

Resolution Date: 28/10/08

New Principal LEP Due: Please tick

March 2008 March 2009 March 2011 Other agreed date

LGA: Wollongong

Name of Plan: Reclassification of surplus Council owned land from community to operational land and to remove trusts, caveats and interests (14 sites). Five of the sites are also proposed to be rezoned and the FSR applicable to one site would be increased.

Subject Land Description: There are 14 sites in total, located at Balgownie, Bellambi, Berkeley, Bulli, Dapto, Fairy Meadow, Gwynneville, Mt Keira, Thirroul, Warrawong, Windang and Woonona. The sites range in size from 55 m² to 6,000 m². Council has provided details on each of the sites in its report.

Purpose of Plan: The plan affects 14 Council owned sites that have been identified as surplus to Council needs through various studies including Council's *Open space, recreation & community facilities strategic framework* that was completed to advise the principal LEP.

Five sites would be rezoned under Wollongong LEP 1990 and the FSR increased on one site from 0.5:1 to 0.75:1. Four of these rezonings are from 6(a) Public Recreation to various residential zones, and the other rezoning is from 6(b) Private recreation to the 6(a) zone to reflect Council ownership.

The plan would also reclassify the land from Community to operational land and remove caveats and trusts from the affected land. These lands have been identified as surplus to Council's needs and the reclassification will allow the sale of the land or the granting or extension of leases or licences on the land.

Has Council provided the relevant information: (see checklist)

- | | |
|---|-----|
| a) Section 54(4) Notification Advice Cover Sheet and supporting documentation | Yes |
| b) Adequate information in relation to clause 9 of the EP&A Regulation | Yes |
| c) LEP Proforma Evaluation Criteria | Yes |

Is Council's s.62 consultation procedure for the draft LEP adequate: Yes

Council's proposed consultation is considered reasonable.

Background: These sites were proposed to be reclassified and/or rezoned by the former Council. The Administrators on 24/06/08 resolved to remove all reclassifications from the draft Wollongong LEP 2009 (the Principal LEP) and to progress these reclassifications separately. The subject LEP deals with the reclassifications and rezonings removed from the Principal LEP.

Been to Panel Before: No *If Yes* - Panel Date:

Part 3A Applicable No

Comment:

Heritage Applicable No

Comment: No heritage items are affected.

Coastal Zone Applicable Yes

Comment: Some sites are within the coastal zone, however the reclassification from Community to Operational is not likely to have a major impact.

Is the proposed draft LEP consistent with:

- | | |
|---|-----|
| m) Metropolitan/Subregional/Regional Strategies (<i>Relevant extracts tagged</i>) | N/A |
| n) Council's planning strategies | N/A |
| o) S.117 directions | Yes |
| - Is the Director-General's agreement required? | No |
| p) Standard Instrument (LEPs) Order 2006 | No |
| q) State Environmental Planning Policies | Yes |
| r) REPs | N/A |

If **No** to any of the above, explain: The proposal is to amend LEP 1990 which is not a Standard Instrument.

Advice:

If consistency not known at this point, are there any particular matters for Council's consideration in preparing the draft LEP? No.

Is the provision and funding of state infrastructure relevant to this plan

No

Explain:

RECOMMENDATION:

Preparation of draft LEP supported at this stage: It is considered reasonable to allow the rezoning, reclassifications and the removal of trusts etc. to proceed at this stage. These seem appropriate, have been in train for some time and are now supported by the Administrators.

It is Council's intention to exhibit an amendment to the Wollongong LEP 1990 and then to include these changes in the draft Wollongong Principal LEP (LEP 2009) under s.68(3) prior to its gazettal, without exhibiting these changes under the 2009 LEP.

An opinion from Legal Services has been obtained that this approach is satisfactory and this is attached. If this approach is used Council should ensure that:

- The requirements of the Local Government Act for a public hearing must be followed
- The exhibition of the draft LEP includes information that the amendment will take effect on the commencement of LEP 2009 and what the effect of the amendment will be. This could include the equivalent land use zones in LEP 2009, the draft LEP 2009 and changes made to the draft LEP marked up for easy identification.
- The s.69 report includes the reasons for amending LEP 2009 without re-exhibition.

Alternatively, the LEP could be prepared as an amendment to LEP 2009, which would be exhibited, made and gazetted at the same time as LEP 2009. The subject draft LEP would take effect as an amended LEP. This is not preferred by the Region as it is considered to be confusing to amend a draft LEP.

If Yes, explain the compelling reasons for this draft LEP to proceed at this stage:

- The reclassifications and removal of covenants etc. have been proposed by Council since 2006. Some started as separate LEP's which the Department asked to be consolidated into the Principal LEP. However the Administrators removed them from the Principal LEP to prevent them from being 'hidden'. It is not desirable to further delay the reclassifications.

Environmental Study needed: Please tick

- | | |
|--|-------------------------------------|
| • Not required | <input checked="" type="checkbox"/> |
| • Not required - address issues (List separately) | <input type="checkbox"/> |
| • Study required - no specifications | <input type="checkbox"/> |
| • Study required - with specifications (List separately) | <input type="checkbox"/> |

Delegation:

Delegation of functions to Council for Section 65:

- | | |
|---|-------------------------------------|
| a) no delegation | <input type="checkbox"/> |
| b) delegation subject to conditions (specify) | <input type="checkbox"/> |
| c) full delegation | <input checked="" type="checkbox"/> |

Delegation of functions to Council for Section 69:

- | | |
|---|-------------------------------------|
| a) no delegation | <input type="checkbox"/> |
| b) delegation subject to conditions (specify) | <input type="checkbox"/> |
| c) full delegation | <input checked="" type="checkbox"/> |

LEP Tracking System Doc ID

Signed: G. Towers
(Action Officer)

Print Name: Graham Towers

Phone Number: 4224 9467.

Endorsed: M. Parker

Date: 3/9/2009

MARK PARKER
Local Planning Manager

*Please contact Graham Towers in 1st instance.
Alternatively Mark Parker 4224 9468 or 0428 251347*