

Planning Services

Gateway Determination Report

LGA	Central Coast
RPA	Central Coast Council
NAME	Central Coast LEP 2018
NUMBER	SI_2017_CCOAS_001_00
LEP TO BE AMENDED	Repeals Wyong Local Environmental Plan 2013, Gosford Local Environmental Plan 2014, Gosford Planning Scheme Ordinance and Gosford Interim Development Order 122
ADDRESS	Applies to whole local government area
RECEIVED	Amended version received 22/9/2017
FILE NO.	17/05166
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to consolidate four environmental planning instruments (Gosford Planning Scheme Ordinance, Gosford Interim Development Order 122, Gosford LEP (GLEP) 2014 and Wyong LEP (WLEP) 2013) into a single planning proposal for the amalgamated Central Coast Council local government area.

The planning proposal is primarily a consolidation and is not a comprehensive review of planning provisions.

Site Description

The planning proposal applies to the entire Central Coast local government area.

Summary of Recommendation

A conditional Gateway determination is recommended. The timeframe for finalising the plan should be set at 12 months and delegation to finalise the plan should be retained.

PROPOSAL

Objectives or Intended Outcomes

Although the objectives of the proposal are clearly stated it would be beneficial to add additional text to state that the planning proposal is not a comprehensive review of planning provisions and that this is proposed to occur through subsequent work.

Explanation of Provisions

The planning proposal contains detailed documentation of how Council has undertaken the consolidation process. The documentation of this consolidation process and explanation of

the proposed provisions is generally adequate. This report suggests several areas where Council should reconsider its approach and where documentation could be improved.

Mapping

Maps have not been provided at Gateway.

It is proposed to undertake a pilot project to use digital mapping for agency and community consultation for this planning proposal. A working group has been established with Council and DP&E representation to advance this project.

NEED FOR THE PLANNING PROPOSAL

The need for the planning proposal arises from the Council's intent to create a single Standard Instrument (SI) compliant LEP for the newly amalgamated council area. While the existing instruments can continue to operate and there has been no directive from the State to undertake consolidation, Council has resolved to prepare a consolidated plan and has already expended considerable effort in progressing to this stage. On balance Council's wish to proceed with a planning proposal for a single SI compliant LEP is supported as it signals progress towards a single unified council.

An additional need for the planning proposal arises due to the large areas of land deferred from GLEP 2014, the planning provisions for which are still contained in the deemed environmental planning instruments Gosford Planning Scheme Ordinance (PSO) and Gosford Interim Development Order (IDO) 122. These instruments could also continue to operate however the advantages of converting this land into an SI instrument include modernisation, simplification and standardisation, electronic mapping and ease of access (note that the PSO and IDO are not contained on the NSW Legislation website).

On balance Council's decision to prepare a consolidated plan is supported.

There are two key components of the consolidation exercise:

- The combination of WLEP 2013 and GLEP 2014 into one instrument; and
- The conversion of deferred matters in two old Gosford instruments into SI format.

Combining the instruments

Part 2 of the planning proposal details the methodology and principles that have guided the combination of the two existing SI LEPs into one draft instrument. The approach taken and documented by Council is generally supported and it provides a consistent record of Council's decision-making. However, Council's methodology is still to be considered by the community and the newly elected Council.

Key aspects of the process of combining the instruments are considered below.

Uses

Council's 5th principle ('Permissibility retention') for the zone tables of the proposed LEP (SI LEP Part 2) and the standard instrument requirement to avoid creating sub-zones means that in a number of cases uses will now become permissible where they previously were not. For example, dual occupancy development is proposed to now be permissible in the R2 zone in the former Gosford local government area and intensive livestock agriculture is now proposed to be permitted in the RU2 zone in the former Wyong local government area.

In several cases Council proposes to remove a use from a zone in response to the consolidation (e.g. heavy industry from former Gosford IN1, caravan parks from former Wyong R1 and former Gosford E4 and dwellings etc. from former Gosford E2).

For caravan parks it is proposed that existing caravan parks will be identified on the additional permitted use map and schedules. For dwellings in E2, it is proposed that a new clause and map will be prepared to show land where a dwelling is permitted subject to establishment of the existence of a dwelling entitlement.

In some situations where new uses have been added (e.g. dual occupancy in a variety of zones) the LEP will rely on minimum lot size provisions in Council's DCP. This should be stated in the planning proposal as the effect of the new provisions cannot currently be gauged from the planning proposal.

The proposed prohibition of heavy industry is considered further below.

Development standards

Some changes are also proposed to development standards (SI LEP Part 4). Council's 4th principle for this section ('flexibility') states that where choices existed Council has chosen the most flexible or "generous" approach. For example, to rationalise the minimum lot size (MLS) in the R2 Low Density Residential Development zone, Council has opted for former Wyong's 450 m² over former Gosford's 550 m². However the 'flexible/generous' approach has not been adopted in all cases as in the E3 Environmental Management zone Council has opted for former Wyong's 20 ha over former Gosford's 2 ha.

In other cases development standards have been removed such as the floor space ratio and height from the R2 zone in the former Gosford with the intention that these would now be addressed in a development control plan (DCP).

While Council has stated the amendment of MLS in the R2 from 550 m² to 450 m² is "necessary", it is not. The use of map layers in SI LEPs mean that there may be multiple development standards within a particular zone. It is also noted that in the report to Council supporting the commencement of the planning proposal (23 December 2016), a proposed outcome was to retain current development standards mapped within GLEP 2014 and WLEP 2013.

Clauses

The different means by which the two former councils crafted provisions to facilitate development standard bonuses and variations to base SI clauses led to some complicated clauses which Council now seeks to amalgamate. These remain complicated in the draft instrument (e.g. the proposed height and floor space bonus clauses) and will benefit from the proposed comprehensive planning review to follow. There are also numerous local clauses resulting from the consolidation and a comprehensive review will provide an opportunity for these to be rationalised.

Explanatory and supporting information

All land will have some change to the list of zone objectives, permissible development or development standards. Communicating these potential changes to the community will be a key factor in gaining acceptance of the plan. In addition to the discussion in Part 2 of the planning proposal, Council has prepared several documents to provide supporting information including a "Summary of Land Use Amendments Table" and a draft instrument of what a future combined LEP would look like. Several suggestions have been made to

Council on how to improve this information including adding the proposed development standard changes, including removal of development standards, to create one location where people can see the proposed changes to the planning provisions applying to their land.

The draft instrument prepared by Council is for information only and may change during drafting by the Parliamentary Counsel. Council also proposes to exhibit a draft Development Control Plan with the planning proposal.

Converting the deferred matters

The second main objective of the plan is to bring those matters deferred from Gosford LEP 2014 into the new LEP (approximately 4000 parcels). Council has prepared an Environmental and Urban Edge Zone Review (EUEZR) to support this conversion process. The methodology for the review is sound and has been the subject of community consultation over a number of years. It is noted however that the Review has not yet been adopted by Council and will be publicly exhibited for the first time with the planning proposal. Running these two processes together creates the potential for issues to be raised about the EUEZR that may lead to further changes to the planning proposal requiring additional community consultation, however the alternative, a two-step consultation process, would delay the project considerably. On balance the approach taken by Council is supported.

STRATEGIC ASSESSMENT

State

There is no identified inconsistency with the Central Coast Regional Plan (CCRP) or North Wyong Shire Structure Plan.

Local

There is no identified inconsistency with Council's local planning strategies.

Section 117(2) Ministerial Directions

Consistency with 117 directions is considered by exception.

1.1 Business and Industrial Zones

Both WLEP 2013 and GLEP 2014 have 'open' business and industrial zones with innominate uses permitted (ie. Section 3 of the land use tables 'Permitted with consent' includes 'Any other development not specified in item 2 or 4'). This has been altered in the proposed new LEP so that 'Any other development not specified in item 2 or 3' is now in Section 4 'prohibited'.

Council's approach would mean that innominate uses would be prohibited potentially requiring a planning proposal to permit a use which had not previously been considered.

The Department's practice note, *Preparing LEPs using the Standard Instrument: standard zones* PN 11-002 discusses open and closed zones and suggests justification should be provided. Given the proposed change to both former LEPs, Council should reconsider the proposal to make business and industrial zones 'closed' zones and provide justification/or retain as 'open' zones.

The planning proposal also does not permit the use 'heavy industry' in any zone (previously permitted in IN1 in Gosford). The effect of this is that any proposal falling within this

description seeking to establish on the Central Coast would require a planning proposal to make the use permissible. The alternative is to maintain the use as permissible.

Council should include analysis and justification of this decision. Council should also examine the land use table and justify any other situations where a named use is not permitted in any zone.

Following above actions the 117 direction should be reconsidered.

1.3 Mining, Petroleum Production and Extractive Industries

Council should consider the provisions of SREP 9 – Extractive Industry and confirm the planning proposal is consistent, consult with NSW Resources and Energy and reconsider the 117 direction.

2.1 Environment Protection Zones

Council should update the assessment against SEPP 19 – Bushland in Urban Areas, consult with Office of Environment and Heritage and reconsider the 117 direction.

3.1 Residential Zones

Council's proposal could see an increase in density in certain urban areas (eg. R2 in Gosford where potentially 2859 lots have subdivision potential due to the proposed reduction in minimum lot size). The planning proposal states that assessment of infrastructure capacity would occur at development application stage however some assessment should occur now, particularly in areas where there are significant opportunities for such development.

Council also proposes to reduce the permissibility of caravan parks (see direction 3.2 for required action).

3.2 Caravan Parks and Manufactured Home Estates

The planning proposal proposes to reduce the areas where caravan parks would be permitted (would no longer be permitted in former Wyong R1 or former Gosford E4). There is no strategic basis for this change and further consideration should be given on the adequacy of the remaining opportunities for this form of low cost housing.

3.5 Development Near Licensed Aerodromes

The 117 direction requires consultation with the relevant Commonwealth department and the lessee of the aerodrome. Given Council has lengthened the runway at Warnervale it should confirm the obstacle limitation surface and noise maps referred to by the LEP are up-to-date.

4.2 Mine Subsidence and Unstable Land

Consult with Subsidence Advisory NSW and reconsider the 117 direction.

4.4 Planning for Bushfire Protection

Consult with Rural Fire Service and reconsider the 117 direction.

6.2 Reserving Land for Public Purposes

The planning proposal discusses amendments to the land acquisition layer based on a request from Roads and Maritime Services but it is unclear what will change. (Advice from Council on 23/10/2017 is that this may be an error and no change will be made). Council should provide further discussion in the planning proposal and reconsider the 117 direction.

State Environmental Planning Policies

SEPP 19 – Bushland in Urban Areas

Clause 10(b) of the SEPP requires a Council to give priority to retaining urban bushland. The assessment in the planning proposal needs to be updated to consider this given proposals relating to minimum lot sizes in the low density zone in former Gosford which could see loss of urban bushland.

SEPP 55 – Remediation of Land

The assessment needs to be updated to confirm that changes to land use tables are consistent with the terms of the SEPP.

SREP 9 – Extractive Industry

Undertake assessment (eg. cli. 14 and 15 relate to the making of local environmental plans).

SEPP (Vegetation in Non-Rural Areas)

The SEPP has now been finalised and references to 'draft' should be updated.

SITE SPECIFIC ASSESSMENT

Social

The objective of one single planning instrument for the Central Coast with modernised controls will have social and economic benefits.

The restriction in the permissibility of caravan parks requires further consideration (considered above).

Environmental

The planning proposal will see large areas of the former Gosford zoned to an SI E zone for the first time. The EUEZR documents the process by which Council has undertaken this conversion and this is considered to be sound, subject to review by the elected Council, agencies and the community.

The conversion of deferred areas will end the Gosford bonus lot provisions which have provided for augmentation of the Coastal Open Space System (COSS) over several decades. These provisions pre-date the Environmental Planning and Assessment Act, 1979 and cannot be transferred into an environmental planning instrument made under the Act.

It is intended for Council to consider other potential means of achieving similar results in the forthcoming comprehensive planning review and the Central Coast Regional Plan also recognises the value of the COSS and its extension.

Council has previously written to owners of land where the bonus lot provisions could be used however it is recommended that specific contact with these owners be made to confirm that the ability to subdivide under the minimum lot size provisions will expire on the making of the consolidating LEP. It is also proposed to change the minimum lot size for subdivision within the former Gosford E3 zone to 20 hectares. Council should consider contacting landholders who will lose subdivision potential once the plan is made (ie. Those with lots in the Gosford 7(c2) and E3 zones above say 3.5 ha)

The E2 zoning of publicly owned COSS land is supported. During the preparation of Gosford LEP 2014 this land was to be converted to RE1. After concerns raised by the

community the then Gosford City Council resolved to pursue a separate new zone for this land and the land was deferred from GLEP 2014. An amendment to the SI Order was exhibited in 2012 but the amendment (exhibited as E5 but changed to E2A in response to submissions) was never made.

The consolidating LEP has allowed Central Coast Council to review environmental zones with the result that it is now proposed to zone publicly zoned COSS land as E2. This is supported and avoids the need for a new zone.

There is potential impact on urban bushland from intensification in the R2 zone in former Gosford (considered above).

The planning proposal includes some expansion of uses with potential environmental impacts, such as intensive livestock agriculture in former Wyong RU2 Rural Landscape zone and horticulture in the former Gosford E3 Environmental Management zone. Council considers these matters can be considered at development application stage.

Economic

Council considers economic benefits include greater certainty from harmonised planning controls and the potential new development opportunities from increased subdivision potential in the R2 zone.

Several potential economic impacts have been identified (e.g. the permissibility of heavy industry and on the 'closed' business and industrial zones) and the Gateway is conditioned accordingly.

Infrastructure

The planning proposal carries over existing urban release area mapping and satisfactory arrangements provisions. Council proposes to change Part 6 of the LEP to remove Part 6.3 which requires a DCP for all mapped urban release areas regardless of size. This same change to Part 6 exists in Hawkesbury and Hills LEPs.

Council proposes to bring Wyong's clause 7.10 Council infrastructure development into the consolidated LEP. This clause makes proposals carried out by or on behalf of Council with a value less than \$5,000,000 development without consent. Review of other LEPs with these provisions has determined that all other Councils have a value of \$1,000,000 in the clause. The Gateway determination recommends that Council provide justification for why its clause should be different than other councils or else change the clause.

CONSULTATION

Community

The planning proposal proposes 28 days community consultation however Council has verbally advised a 6 week period is being considered. The Gateway recommends 28 days as a minimum but nothing prevents Council from extending this period.

Some improvements to the draft supporting material will be separately communicated to the Council as discussed above.

Council also proposes to exhibit a draft Development Control Plan with the planning proposal.

A pilot project for digital mapping is underway and this will aid community and agency consultation.

Agencies

Agency consultation proposed by Council is generally considered adequate. Council proposes to consult with several additional agencies that are not specified in the Gateway determination (Fisheries, Lands, Local Land Services, Water, Forestry). Council can consult with these agencies but it is not a statutory requirement of the Gateway determination.

An additional body to consult is Guringai Tribal Link.

TIMEFRAME

Council proposes a ten month timeframe from Gateway determination until the plan is finalised by the Minister. This is an optimistic timeframe and underestimates the time required for drafting.

A 12 month period is considered feasible provided the plan remains a priority for the Council.

Council and the Department will need to manage the finalisation of all planning proposals currently underway to ensure their staging considers the status of the consolidated plan and the move to digital mapping. Planning proposals finalised before the consolidated plan will need to be reflected in the consolidated plan and those finalised after the consolidated plan will need to amend the consolidated plan, rather than the existing LEPs, when they are finalised.

DELEGATION

Delegation to make the plan should remain with the Department.

CONCLUSION

The planning proposal is supported to proceed with conditions.

RECOMMENDATION

Detailed recommendation to include requirements for community consultation, requirements for consultation with other public agencies, time frame for completing the LEP, recommendation regarding delegation to Council to finalise the plan, relevant section 117 Directions and any other conditions. Note that the Gateway Determination will set out the formal conditions which refer to the relevant sections of the Act.

It is recommended that the delegate of the Secretary:

1. Note that the consistency with the following section 117 Directions is unresolved and will require further information/justification:
 - 1.1 Business and Industrial Zones
 - 1.3 Mining, Petroleum Production and Extractive Industries
 - 2.1 Environment Protection Zones
 - 3.1 Residential Zones
 - 3.2 Caravan Parks and Manufactured Home Estates

- 3.5 Development Near Licensed Aerodromes
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 6.2 Reserving Land for Public Purpose

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, Council is to update the planning proposal to:
 - Add additional text to Statement of Objectives to clearly identify this is a consolidation of existing planning instruments and not a comprehensive review of planning controls;
 - With regard to increased potential for subdivision in the R2 Low density zone in the former Gosford:
 - include a map of lots where the change in minimum lot size creates increased potential for subdivision in the R2 zone in the former Gosford; and
 - provide a strategic assessment of infrastructure capacity in areas of increased potential for subdivision in the R2 zone in the former Gosford;
 - Include discussion of minimum site area DCP requirements eg. for dual occupancy development, to assist understanding of the effect of newly permitted uses;
 - Reconsider proposal to make business and industrial zones 'closed' zones and provided justification or change back to 'open' zones (refer *Preparing LEPs using the Standard Instrument: standard zones PN 11-002*);
 - Consider consequences of and justify decision to make any uses prohibited throughout the local government area (eg. heavy industry);
 - Provide justification for reducing potential areas where caravan parks are permissible;
 - Determine if updated obstacle and noise mapping is required to reflect the lengthened runway at Warnervale; and
 - Amend the value in Council infrastructure development clause to be consistent with other local government areas where this clause is used or provide justification for why the clause should be different for the Central Coast.
2. Council is to update the planning proposal to include sufficient additional information to adequately demonstrate consistency (following consultation or further investigation) with the following section 117 Directions:
 - 1.1 Business and Industrial Zones
 - 1.3 Mining, Petroleum Production and Extractive Industries
 - 2.1 Environment Protection Zones
 - 3.1 Residential Zones
 - 3.2 Caravan Parks and Manufactured Home Estates
 - 3.5 Development Near Licensed Aerodromes
 - 4.2 Mine Subsidence and Unstable Land
 - 4.4 Planning for Bushfire Protection
 - 6.2 Reserving Land for Public Purpose
3. Council is to update the planning proposal prior to community consultation, to include sufficient information to address the following State Environmental Planning Policies (SEPP):
 - SEPP 19 – Bushland in Urban Areas - particularly as it relates to increased potential for subdivision in the R2 zone in the former Gosford

- SEPP 55 – Remediation of Land - confirm that changes to land use tables are consistent with the terms of the SEPP
 - SREP 9 – Extractive Industry
 - SEPP (Vegetation in Non-Rural Areas) – update references
4. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
- (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
5. Consultation is required with the following public authorities and / organisations under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:
- Department of Planning and Environment – Resources and Energy
 - Primary Industries – Agriculture
 - NSW Rural Fire Service
 - NSW Office of Environment and Heritage
 - NSW Roads and Maritime Services
 - Transport for NSW
 - Subsidence Advisory NSW
 - Darkinjung Local Aboriginal Land Council
 - Guringai Tribal Link Aboriginal Corporation
 - Commonwealth agency and airport lessee referred to in s.117 direction 3.5

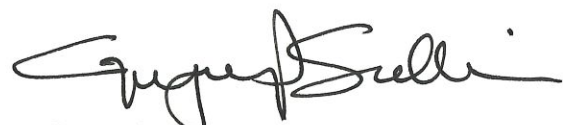
Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is to be **12 months** from the date of the Gateway determination.



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25/10/2017



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26/10/2017