

Planning Proposal to rezone land adjoining the Terrigal Village centre from a medium density residential zone to a business zone.

Proposal Title :	Planning Proposal to rezone land adjoining the Terrigal Village centre from a medium density residential zone to a business zone.		
Proposal Summary :	To rezone Lot 1004 DP 793659, Ash Street, Terrigal from 2(b) Residential to a business zone to facilitate the redevelopment of the site for a mixed use development.		
PP Number :	PP_2012_GOSFO_012_00	Dop File No :	12/11477

Proposal Details

Date Planning Proposal Received :	09-Jul-2012	LGA covered :	Gosford
Region :	Hunter	RPA :	Gosford City Council
State Electorate :	TERRIGAL	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Ash Street		
Suburb :	Terrigal	City :	Gosford
		Postcode :	2260
Land Parcel :	Lot 1004 DP 793659		

DoP Planning Officer Contact Details

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RPA Contact Details

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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) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 55

The NSW Government Yes

Lobbyists Code of
Conduct has been
complied with :

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

The Site and Proposal:

The Planning Proposal (PP) relates to Lot 1004 DP 793659, Ash Street, Terrigal which is a 1,066 m2 site that is currently developed for (2) tennis courts.

The PP seeks to rezone the site from Zone No. 2(b) to 3(a) Business (General) under the Gosford Planning Scheme Ordinance (GPSO). The site would also be subject to Clause 49S of the GPSO which sets height (4 storey height limit for sites with size/frontage of the subject site) and a series of urban design objectives for development.

Clause 49E of the GPSO also contains provisions that enable the development of a tennis court on the subject site. Council has advised that this provision would be removed if the current PP is supported.

History of the site and draft Standard Instrument LEP (SILEP):

Gosford City Council resolved to rezone the subject lot to 3(a) in March 2006. Since then, the LEP Review Panel has twice not supported the rezoning due to the proposal being contrary to the local Terrigal Bowl Strategy (Terrigal strategy) and Council's previous decision to maintain the existing Terrigal commercial area.

In 2009 the Department supported inclusion of the rezoning in Council's SILEP, subject to Council amending the Terrigal strategy to reflect the plan. Council subsequently removed the proposal from the SILEP so it could be reconsidered as part of a future review of the Terrigal strategy and the exhibited SILEP proposed to rezone the subject site to an equivalent medium density zone (i.e. rezone from 2(b) to R1).

When considering the SILEP, post-exhibition, and in response to a submission by several owners, Council resolved to:

- rezone three sites on the fringe of the Terrigal commercial area, including the subject site, to B2 Local Centre as part of the SILEP, and
- amend the Terrigal strategy to include these areas in the commercial area.

Since the most recent decision to include these PPs in the SILEP, separate PPs have advanced for two sites and the current application seeks to rezone the third. The benefits of this rezoning proceeding as a PP include that it can be finalised independently of the

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SILEP, the reported economic benefits are likely to be achieved more quickly and the community will have the opportunity to view and comment on the proposed zone change.

Council will be considering whether several substantial post-exhibition changes (e.g. addition of new E zone and biodiversity map overlay) mean that the SILEP needs to be re-exhibited. This rezoning could therefore be achieved via several different ways; as an amendment to the GPSO, part of a re-exhibited SILEP or an early amendment to the SILEP. The PP should allow for any of these scenarios to occur without a need for an amended gateway determination.

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 sets out what Council seeks to achieve if the PP amends the GPSO e.g. rezone the subject site from 2(b) Residential to 3(a) Business (General) to facilitate the development of the site for a mixed use business and residential development.

Given that the PP could be finalised via either the GPSO or the SILEP, the statement of objectives should be updated to reflect the key landuse change that will result from the PP i.e. to rezone to subject site from a medium density residential zone to a commercial zone that will enable it to be developed for a mixed use retail, commercial and residential development.

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

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

Comment : The explanation of provisions lists several amendments that would be required to the GPSO to achieve the objectives of the planning proposal:

1. Amend the GPSO map to rezone Lot 1004 DP 793659 from 2(b) to 3(a), and
2. Add a new subclause to Clause 49S(1) that references the amending LEP map and applies the provisions of Clause 49S to the subject site.

As previously mentioned, Council has confirmed that the enabling clause to Clause 49E that enables the development of a tennis court on the subject site would also be deleted if the PP is achieved by an amendment to the GPSO. The explanation of provisions should be updated to reflect this.

The explanation of provisions should also be updated to:

- Identify the amendments required (e.g. changes to zoning, height of building and Floor Space Ratio (FSR) maps etc.) if the rezoning proceeds via the SILEP (2(b) to B2) or as an early amendment to the SILEP (R1 to B2).
- Provide a comparison between the key development controls (e.g. height and FSR) that apply to the site now and the new controls that would apply once it is rezoned under either the GPSO or SILEP.

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
2.2 Coastal Protection
2.3 Heritage Conservation
3.1 Residential Zones

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3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
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 55—Remediation of Land
SEPP No 65—Design Quality of Residential Flat Development
SEPP No 71—Coastal Protection

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 the s.117 Directions is required and is provided later in the report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Council has provided a package of maps to support the PP. The supporting package should be updated by inclusion of:

- a. A map that shows the proposed zoning of the subject site under the GPSO. This map should also included a notation identifying that, 'depending on timing, it could also be zoned B2 under the Gosford comprehensive LEP'.**
- b. Adding a 'Subject Site' notation to both the Existing Zoning map (Appendix 1 to PP) and Aerial Photograph (Appendix 3 to the PP).**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Community consultation is proposed by the Council for a period of 28 days which is an appropriate consultation period for a proposal such as this.

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 above assessment, the proposal is adequate for progression to a Gateway Determination.

Proposal Assessment

Principal LEP:

Due Date : **December 2012**

Comments in relation to Principal LEP :

As previously mentioned, Council resolved to rezone the subject site from 2(b) (R1 in exhibited SILEP) to B2 via the SILEP as a post-exhibition change. This approach would have avoided the need for a separate PP but meant that the proposed change would not have been exhibited.

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As previously discussed, Council will be considering whether the SILEP needs to be re-exhibited. The PP does not identify Council's intentions should the SILEP be finalised ahead of this PP (with or without re-exhibition). To avoid a need for an amended Gateway Determination, the PP should highlight that the site could be rezoned via one of several possible ways:

- rezoned from 2(b) to 3(a) under the GPSO (current PP),
- rezoned from 2(b) to B2 under a re-exhibited SILEP, or
- rezoned from R1 to B2 as an early amendment to the SILEP (assuming if the site is rezoned from a 2(b) or the equivalent R1 under the SILEP).

If the site is rezoned via a re-exhibited SILEP then s.58 of the Environmental Planning and Assessment Act provides the ability for Council to request the Minister to determine that the matter not proceed.

Council states that, if the PP is supported, the applicant intends to submit a Development Application (DA) for a 4 storey mixed-use (retail, commercial and residential) development with basement parking. Notwithstanding the above scenarios, if the PP does amend the GPSO the provisions of clause 49S should apply to the site so that the future development is subject to the same controls as similar sites in the Terrigal Village centre. Clause 49S relates to the Terrigal retail and commercial area and establishes maximum heights for development and objectives for urban design.

The proposed approach, subject to clarification regarding the different ways that the PP could be achieved, is supported. This is on the basis that the PP will enable the proposal to proceed in a timely fashion, will ensure that the community is consulted on the proposed landuse change and is consistent with the planning for other areas within the Terrigal Village centre.

Design related issues:

Rezoning the subject site will result in greater height and FSR limits being applied to the subject site. While this could potentially lead to amenity impacts on the adjoining sites, Council has controls in place (in the GPSO and DCP55) to preserve the amenity of adjoining residential development and highlighted that these issues can be adequately addressed at the DA stage. Providing a comparison between the existing and proposed controls will allow the community to fully understand the implications of the rezoning.

The applicant has submitted a set of plans that relate to a previous (2005) development application for a 4 storey (plus basement car parking) mixed use development on the subject site. No indication is provided whether this development would meet the height and FSR requirements that will apply to the site after the site is rezoned (to 3(a) or B2) or whether it will maintain an acceptable level of amenity for the adjoining sites. It is therefore recommended that the Gateway letter confirm that support for this PP does not mean that the development plans provided by the applicant are supported by the Department.

Alternative approaches:

An alternative to progressing the PP is to require that Council progress the rezoning as part of the SILEP. If the dLEP is not re-exhibited this would mean that the community will not be able to view and comment on the proposed rezoning of this site. While this concern would be overcome if the SILEP is re-exhibited this could take longer than a separate PP thereby delaying the rezoning and redevelopment of the site. The rezoning should be allowed to progress as a separate PP which is likely to be finalised before a re-exhibited SILEP.

Another approach would be to not proceed with the rezoning and for the site to remain

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zoned for medium density residential development (i.e. 2(b)/R1). Given the applicant's assertion that the use as a tennis court is uneconomic, it is likely that the site would be redeveloped for medium density residential development if it is not rezoned. If this occurred, the reported economic and employment benefits (including 55 jobs post-construction) from the proposed mixed use development would not be realised and this option is therefore not supported.

Applying alternative residential or business zoning to those discussed above (i.e. 2(b)/R1 and 3(a)/B2) is also not supported as the proposed zones are consistent with zones in and around the Terrigal Village centre.

An alternative approach would have been for Council to progress the 3 rezonings on the fringe of the Terrigal Village centre together in one PP. However Council has not chosen to do this and of the two PPs that have already progressed, one PP (PP_2011_GOSFO_001_00) has been gazetted and another (PP_2012_GOSFO_001_00) is underway.

Assessment Criteria

Need for planning proposal :

Need for Planning Proposal:

Council states that the PP is not the result of any strategic study or report.

The applicant has stated that, given Council's resolution to include the rezoning in the SILEP and the uncertain timeframe to finalise the SILEP, the PP seeks to 'bring forward' Council's intended rezoning of the site from medium density residential to a retail/commercial zone.

Council has prepared a net community benefit test that concludes that the PP will produce a net community benefit. This conclusion is based on it being consistent with Council's desired direction for the Terrigal Village centre, its expected positive post-construction employment benefits (e.g. up to 55 jobs) and the PP process allowing the community to review and comment on this proposed change.

As the proposed zone change was not exhibited as part of the SILEP, its advancement as a separate PP would provide the community with the opportunity to review and comment on the proposed zone change.

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

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Consistency with strategic planning framework :

Consistency with Strategic Planning Framework:

Council states the PP is consistent with the Central Coast Regional Strategy (CCRS) and will help Council to meet the regional housing and employment capacity targets. Consistency with the CCRS is based on the fact that it will provide more local employment opportunities, support economic and employment growth (Action 5.1) and ensure that new retail and commercial development is located in centres (Action 5.11).

The proposed zone change could be considered as a logical extension to the retail/commercial component of Terrigal and could support the development of the centre in line with its designation as a Village centre in the CCRS Centres Hierarchy. Council also states that the PP is consistent with its desired direction for the Terrigal Village centre.

Council also state that the PP is consistent with its Community Strategic Plan – Gosford 2025 (local strategy) as it will concentrate business development in the centre near public transport and increase local employment opportunities.

Council has also resolved to amend the Terrigal strategy (local strategy, not endorsed by the DG) to include the subject site in the centre area. Council states that the PP's consistency with the draft Gosford Centres Strategy is dependent on there either being an improved urban design outcome or where the lots easily integrate with existing commercial landuse activities. Council intend to ensure that the site will be subject to the development controls within their current DCP No. 55 – Terrigal Town Centre which implements the Terrigal strategy. Council's report acknowledges that the proposal has merit in terms of the site's ability to integrate with the existing commercial landuse activities but raises concerns about its relationship with the adjoining residential and Bowling Club developments. Council has subsequently confirmed (17 July 2012) that these concerns should be addressed at the Development Application (DA) stage.

The PP is considered consistent with the relevant State Environmental Planning Policies (SEPPs) and s.117 directions. Several SEPPs and Directions require either additional discussion or justification.

SEPPs:

SEPP 65 – Design Quality of Residential Flat Development requires that persons preparing an EPI that makes provision for residential flat development should include provisions in the instrument or plan to ensure the achievement of design quality in accordance with the SEPP design quality principles and the publication Residential Flat Design Code. Council reports that the PP is consistent with this requirement as both clause 49S of the GPSO and DCP 55 have regard for these documents and have been considered by the SEPP 65 Panel. The PP is not considered to be inconsistent with this SEPP at this time.

SEPP 71 Coastal Protection – requires council to consider a range of matters for development within the coastal zone. The PP is not inconsistent with the SEPP at this stage however the SEPP would need to be considered as part of the assessment of any future development applications, particularly in relation to the impact of the development of this site on the surrounding area.

s.117 Directions:

Council has advised that the PP is inconsistent with the Direction 3.1 Residential Zones as it proposes to rezone land zoned for residential development and it is not the result of a DG endorsed strategy. As residential flat buildings are permissible in the 3(a) zone (and are likely also likely to be permissible in a B2 zone) it is not clear whether rezoning this site to a commercial zone will reduce the permissible residential density on this site. Notwithstanding this, it is recommended that the DG agree that the inconsistency is minor on the basis that residential flat buildings will be permissible in the new commercial zone and the site could also be developed for a mixed use development that includes a residential component.

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In its discussion of Direction 3.4 Integrating Land Use and Transport Council states that the PP is consistent as it locates business uses adjacent to an existing centre which is located on a major bus route. While Council's report identifies concern for potential conflicts between pedestrian and service vehicles accessing the future development, it concludes that these issues can also be addressed at the DA stage.

Council does not state whether the PP is consistent with Direction 4.3 Flood Prone Land. Council identifies that the rear of the site is flood affected (i.e. ponding) and raises concerns regarding the potential future flood impacts associated with a 0.9m rise in sea level by 2100. While Council's current development control plans (e.g. DCP 115 Building in Flood Liable Areas and DCP 165 Water Cycle Management) requires these issues to be addressed at the DA stage. Council still needs to satisfy itself whether the PP is consistent with Direction and, if inconsistent, seek the Director General's concurrence. The PP should be updated to confirm Council's position.

In discussing Direction 6.3 Site Specific Provisions Council states that the applicant is seeking to have the same development controls applied to the site as apply to the majority of the Terrigal Village centre. On this basis, the PP is consistent with this direction.

However, the PP also states that the PP will only be consistent with Direction 6.3 if further urban design analysis is undertaken to form the basis for development controls to be applied through Clause 49S of the GPSO and the relevant DCP. Further discussions with Council (17 July 2012) have clarified that it supports the site having the same controls as nearby and adjoining 3(a) areas. The PP should be updated to confirm Council's position.

Environmental social
economic impacts :

While overall supportive of the proposal, Council's report raises several concerns about the applicant's intended retail, commercial and residential development of the site. These include:

- potential amenity and overshadowing impacts on the dwelling to the immediate south and the bowling club to the immediate west,
- flooding issues associated with a small portion of the rear of the site being affected by the 1% AEP flood extent and possible additional future impacts due to projected sea level rise, and
- potential for traffic related impacts associated with service access to future retail and commercial development on the site and pedestrians.

Council's report states that these issues should be considered at the DA stage and the PP refers to several DCPs that require issues to be addressed. While resolution of these issues may affect the applicant's ability to achieve their desired development outcome, it is expected that the site could still support a mixed-use retail, commercial and residential development. On this basis it is unnecessary to delay the current PP to allow additional investigation on these issues to be undertaken.

Council's report concludes that overall the PP will have beneficial economic impacts through the provision of additional retail and commercial space and the applicant has advised that the proposal will create 55 post-construction jobs.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 Month** Delegation : **DDG**

Public Authority Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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
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Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **It is suggested that the PP be allowed to progress with the following conditions:**

- Council to amend the Statement of Objectives to reflect the key landuse change that will result from the PP i.e. to rezone the subject site from a medium density residential**

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zone to a commercial zone that will enable it to be developed for a mixed use retail, commercial and residential development.

- Council to amend the Explanation of Provisions to:

1. Acknowledge that the PP could proceed as an amendment to the GPSO, as part of a re-exhibited SILEP or as an early amendment to the SILEP,
2. State that, if the PP amends the GPSO, provisions in the table to Clause 49E that enable a tennis court on the subject site are to be deleted,
3. Identify how the PP could be achieved through the SILEP, and
4. Provide a comparison between the key development controls (e.g. height and FSR) that apply to the site now and that would apply under a commercial (i.e. either 3(a) or B2) zoning.

- Council to update the mapping package to include:

- a. A map that shows the proposed zoning of the subject site under the GPSO. This map should also included a notation identifying that, 'depending on timing, it could also be zoned B2 under the Gosford comprehensive LEP'.
- b. Adding a 'Subject Site' notation to both the Existing Zoning map (Appendix 1 to PP) and Aerial Photograph (Appendix 3 to the PP).

- Council is to satisfy itself that the proposal is consistent with Directions 4.3 Flood Prone Land and 6.3 Site Specific Provisions and update the PP accordingly.

- 28 day community consultation, 9 month timeframe.

It also recommended that:

- The DG agree that the inconsistency with s.117 Direction 3.1 is of minor significance.
- The Gateway letter to Council confirm that support for this PP should not be interpreted as being support for the development plans provided by the applicant.

Supporting Reasons :

Justification:

- To reflect the fact that Council is yet to make a decision on whether to re-exhibit the dLEP and to allow the PP to be finalised via one of several ways.
- Assist the community to understand the outcome of the PP and the height and scale of development that could potentially occur on the site.
- The current PP is not clear on whether it is consistent or inconsistent with these directions (4.3 and 6.3).
- Community consultation and LEP timeframes suggested are appropriate for a PP such as this.
- The PP is inconsistent with s.117 Direction 3.1.
- The PP will provide a zone and development standards for the site but any future DA would be subject to merit assessment against all relevant controls.

Signature:

G P HOPKINS

Printed Name:

GARRY HOPKINS

Date:

26.7.2012