
TITLE PLANNING PROPOSAL S55 EP&A ACT IN RESPECT OF NEW CLAUSES AND OTHER MISCELLANEOUS AMENDMENTS TO DRAFT GOSFORD LEP 2013 (IR 14431515)

Directorate: Environment and Planning
Business Unit: Integrated Planning

The following item is defined as a planning matter pursuant to the Local Government Act, 1993 & Environmental Planning & Assessment Act, 1979

Disclosure of political donations and gifts - s147 Environmental Planning and Assessment Act (EP&A Act).

“A relevant planning application means: (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site”, i.e. a Planning Proposal. The object of Section 147 is to require the disclosure by a person of relevant political donations or gifts when a relevant planning application is made to Council per s147(4). The following item is not defined as '*relevant planning application*' because it is an application made by a public authority on its own behalf.

BACKGROUND

Reason for Referral to Council

This report discusses merits for Council's consideration and decision of whether or not to prepare a Planning Proposal (PP) (*which, if supported by Department of Planning and Infrastructure would result in an amending LEP*), pursuant to Section 55 Environmental Planning & Assessment Act, 1979 (State). The report also considers the COSS bonus lot clause in relation to recent media release from the Department of Planning & Infrastructure (DoP&I) that Interim Development Orders and Planning Scheme Ordinances will be sun-setted within 3 years from the commencement of the new Planning Act.

DLEP bonus lots provisions

Council is aware that 'bonus lots' provisions are available under Interim Development Order No: 122 for land zoned 7c2. The provisions have been in place for more than 3 decades. These provisions provide that an additional lot may be achievable (based upon merits and land attributes) upon subdivision in exchange for either dedication of identified land to COSS or a payment in lieu of dedication or a combination.

DoP&I has consistently advised Council since the early 1990s when Council first proposed to bring the 'bonus lots' provisions into a consolidated LGA wide LEP, that Parliamentary Counsel's (PC) advice is that such 'bonus lots' provisions contravene s94 and cannot be inserted into a LEP. This has been verified by Council through independent advice. Council sought to maintain these exact provisions in the new Standard Instrument (SI) LEP for future growth and maintenance of COSS.

Through preparation of DLEP 2009, with consistent requests from Council, discussions with DoP&I led them drafting provisions for DLEP 2009 which sought to replicate the IDO 122 'bonus lots' provisions. DLEP 2009 was exhibited with these provisions.

Before Council considered a report to adopt DLEP 2009 in mid 2011, advice was sought on the matter which stated that the DoP&I 'bonus lot' clause will not replicate the current deemed LEP 'bonus lots' provisions.

In regard to on-going concerns pertaining to the potential operation of the 'bonus lots' provisions in DLEP 2009, a further meeting was held with Parliamentary Counsel, Council staff, legal advisers and DoP&I staff in May 2011. It was agreed that the subject provisions of DLEP 2009 would not withstand legal challenge.

At the Council meeting of 31 May 2011 to adopt DLEP 2009, Council resolved to delete the new draft 'bonus lot' clauses and also resolved for:

'deferment of all privately owned lands zoned Conservation 7(a) and Scenic Protection 7(c2) located east of the F3 from draft Local Environmental Plan 2009 and retention of the operative provisions of Interim Development Order No 122 as they relate to these zones. These provisions are to remain operative for five years from the date of gazettal of draft Local Environmental Plan 2009'

In the latest media release from DoP&I, it is stated that all old LEPs, such as IDO 122, will be rolled into the Standard Instrument LEP (i.e. LEP 2013) within three (3) years of the new legislation. Hence such 'bonus lots' provisions may not exist into the longer term, once the new planning Bill is formally passed by Parliament.

It is suggested that Council may choose to alert owners of land zoned 7(c,2) which may have 'theoretical potential' to be subdivided using the 'bonus lots' provisions of the current situation in this regard.

Such a notification from Council will allow land owners to consider whether they wish to investigate the 'potential' on their land for use of 'bonus lots' provisions whilst they still exist.

A development consent 'if' granted now, after due consideration of the requirements of the EP&A Act, could last for up to 5 years.

This may obviate the need for the ongoing deferral of these lands from the LEP and bring the matter to a close.

Council has recently received a letter from Minister Brad Hazzard wherein he stated that he has agreed to the additional environmental zone that Council has requested. Work is underway by the Department to provide this new zone under the Standard Instrument LEP. At the relevant time when the new zone is available a report will come back to Council on this matter. This matter is related to the above 'bonus lots' provisions in that the community in many submissions lodged to DLEP 2009 stated that the COSS lands secured to date would be better protected with a new environmental zone, rather than the exhibited Public Recreation RE1 zone.

Overview of Planning Proposal

Since the Draft Gosford LEP 2009 (now known as Draft Gosford LEP 2013) was considered by Council 31 May 2011 and subsequently referred to the Department of Planning, numerous matters have arisen that are required to be addressed or corrected. After the Draft LEP had been considered by Council it was too late in the process to make any further amendments on these particular matters.

These matters are now referred to Council for consideration and will comprise Amendment 1 to Gosford LEP 2013.

Generally the matters comprising Amendment 1 are:

- (i) Temporary Use of Land
- (ii) Temporary Use of Public Land
- (iii) Development of Closed Crown Roads
- (iv) Lots partially affected by Gosford LEP 2013
- (v) Definition of Flood Planning Level
- (vi) Un-defer land zoned 7(a) or 7(c) 2 that was exhibited as a zone other than E2 or E3.
- (vii) Re-naming of a Heritage Item
- (viii) Inclusion of Fairview Homestead as a Heritage Item
- (ix) Miscellaneous Mapping Amendments
- (x) Miscellaneous Heritage Amendments
- (xi) Miscellaneous Land Use Table Amendments

'Gateway' planning process

A Local Environmental Plan (LEP) is a legal instrument that imposes zoning of land, standards to control development and other planning controls.

A Planning Proposal application is the mechanism by which a LEP is amended.

The aim of the Gateway planning process is to enable early consideration by the Department of Planning and Infrastructure (DoP&I) and if supported then early public consultation. The Gateway process ensures that there is sufficient justification from a planning perspective to support a change to statutory planning provisions. The Gateway therefore acts as a checkpoint before significant resources are committed to carrying out technical studies, where these may be required.

Attachment A – Department of Planning and Infrastructure Planning Proposal 'Flow Chart' of processing shows the stage which this Planning Proposal has reached.

Certain plan making functions may be delegated by Department of Planning and Infrastructure to Council (see Planning Circular PS12-006).

PLANNING PROPOSAL ASSESSMENT

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 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 Draft Gosford LEP 2013 (expected to be made by the end of this year) 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 Draft LEP citation and amending mapping layers.

(i) Temporary Use of Land

Under the proposed Draft Local Environmental Plan (DLEP), 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 Amendment 1 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 are 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 DLEP in its current form are not considered suitable for the ongoing management of open space areas and are at variance with current 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 this 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 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 the Draft LEP, as this effectively reflects current appropriate practices.

The proposed wording of the amendment is set out below.

Gosford LEP 2013 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 18/2/77 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 LEP to make clear the situation in relation to such circumstances.

Gosford LEP 2013 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 2013

With the deferral of some parts of the LGA from the LEP it is possible that some lots may be affected by two planning instruments i.e. the GPSO or IDO 122 and Gosford LEP 2013. 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) "Un-defer" land zoned 7(a) or 7(c2) that was exhibited as a zone other than E2 or E3

On 31 May 2011 Council, when considering the submissions to the then Draft LEP, resolved to defer all existing privately owned land zoned 7(a) and 7(c2) east of the Freeway. The intention of deferring the 7(a) and 7(c2) zoned land from the Gosford LEP was to preserve the 'potential' to apply to land the 'COSS provisions' relating to the 'bonus lot' subdivision of 7(c2) land (i.e. the potential to allow more lots). However some lots were unintentionally caught up in Council's resolution. Such lots were those currently zoned 7(a) or 7(c2) that were exhibited as being zoned to another and more appropriate zone other than the equivalent zones of E2 and E3, and thus would be unaffected by the bonus lot provision clause anyway.

Consequently it is proposed to amend the zoning map in relation to these lands so as to reflect the zone that was shown on the exhibited plans and pursue the rezoning of these lands. The relevant mapping layers will also be amended accordingly. The lots and proposed zones are identified in Attachment B.

(vii) Re-naming of a Heritage Item

On 24 April 2012 Council adopted the recommendation of the Heritage Advisory Committee:

That the name of Item No. 174 Schedule 5 Environmental Heritage Draft LEP 2009 be changed from "Footings of Solomon Wiseman's Inn" to "Footings of Samuel Paley's Inn".

Under Council's internal heritage listing this heritage item is No 174, however under Gosford LEP 2013 the Heritage Item No. is A22. The wording of the item name is also different so to be consistent with the intent of the resolution "Footings of the Inn of Solomon Wiseman" is to be altered to "Footings of the Inn of Samuel Paley".

(viii) Inclusion of Fairview Homestead as a Heritage Item

On 22 June 2010 Council adopted the recommendation of the Heritage Advisory Committee:

Council consider a Planning Proposal be prepared to include Fairview to list as a heritage item of local significance.

The inclusion of Fairview Homestead in this Planning Proposal satisfies this resolution. The new Heritage Item to be included in the Gosford LEP 2013 is:

Schedule 5 Environmental Heritage

Suburb	Item Name	Address	Property Description	Significance	Item No
Upper Mangrove	Fairview Homestead	248 Ten Mile Hollow Road	Lot 38 DP 755239	Local	201

(ix) Miscellaneous Mapping Amendments

These mapping changes comprise minor amendments to rectify zoning errors, reflect a change in ownership (public to private or vice versa) or correctly align zone boundaries to cadastre. Such zone changes will require corresponding alterations to the relevant mapping layers. The amendments are set out in Attachment C.

(x) Miscellaneous Heritage Amendments

These mapping changes comprise minor amendments in relation to Schedule 5 Environmental Heritage and the Heritage mapping layer such as renaming heritage items in accordance with the Heritage studies and rectifying lot descriptions. The amendments are set out in Attachment D.

(xi) Miscellaneous Land Use table Amendments

These citation changes comprise minor amendments in relation to some uses in zones (Attachment E).

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.

Attachments B, C and D to this report contain the information that will have to be shown on maps for the purpose of public exhibition.

Part 3 Justification for objectives & outcomes

s.55(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 many minor operational and mapping issues which are not explicitly inconsistent with the outcomes or actions of the regional strategy. An individual land use or mapping layer 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 and amend the mapping to reflect current zones and land ownership.

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 (EPIs e.g. LEPs & SEPPs).

The clause relating to minimum lot size excluding accessways will ensure that lots are not over-developed and any future development is compatible with surrounding uses.

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.

The inclusion of Fairview as a heritage item will ensure its conservation within the surrounding natural environment.

The "undeferral" of certain 7(a) and 7(c2) land has site specific merit as it will ensure the zone reflects the current use of the land.

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 or mapping amendment 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 numerous mapping 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 numerous mapping 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.

As some of the land is bushfire prone the Planning Proposal will have to be referred to the Rural Fire Service (RFS) for comment as required under this Direction. Also the addition of Fairview as a new heritage item will require the RFS to be consulted.

Direction 2.3 Heritage Conservation

This direction applies when a relevant planning authority prepares a planning proposal that will affect items, areas, objects and places of environmental heritage identified in a study of the environmental heritage on the land.

Council has considered a study of the Fairview homestead and made a resolution to include this structure in the list of heritage items in Schedule 5 of the Gosford LEP.

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).

Some of the miscellaneous mapping changes relate to the rationalisation of zoning boundaries that affect National Parks and Crown Land. Hence the approval of the relevant public authority or the Director General of Planning is to be sought should a Gateway Determination be issued.

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.

- 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?**

No consultations have yet been undertaken with State and Commonwealth agencies as the gateway determination has not yet been issued.

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.

Should Council proceed with this Planning Proposal and a Gateway Determination be received, appropriate mapping will be prepared for consultation purposes.

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 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.

Attachment A outlines the planning proposal process. All mapping amendments associated with the planning proposal are outlined in Attachments B, C and D.

Conclusion

Since the Draft Gosford LEP 2009 was considered and adopted by Council 31 May 2011 and subsequently referred to the then Department of Planning in September 2011, numerous matters have arisen that are required to be addressed or corrected. These matters have been discussed in the report and generally relate to overcoming issues of concern that have arisen since the exhibition of the Draft LEP (now named DLEP 2013) and correcting mapping anomalies that have also become evident since that time. It is therefore recommended that these matters be rectified by undertaking Amendment 1 to Gosford LEP 2013.

Should Council wish to reconsider the matter after public exhibition where no submissions objecting to the matter have been received, Part C of the recommendation should be amended to include the words: **“After public exhibition of the Planning Proposal a report is referred to Council on the matter.”**

FINANCIAL IMPACT STATEMENT

The direct cost to Council is the preparation of the Planning Proposal.

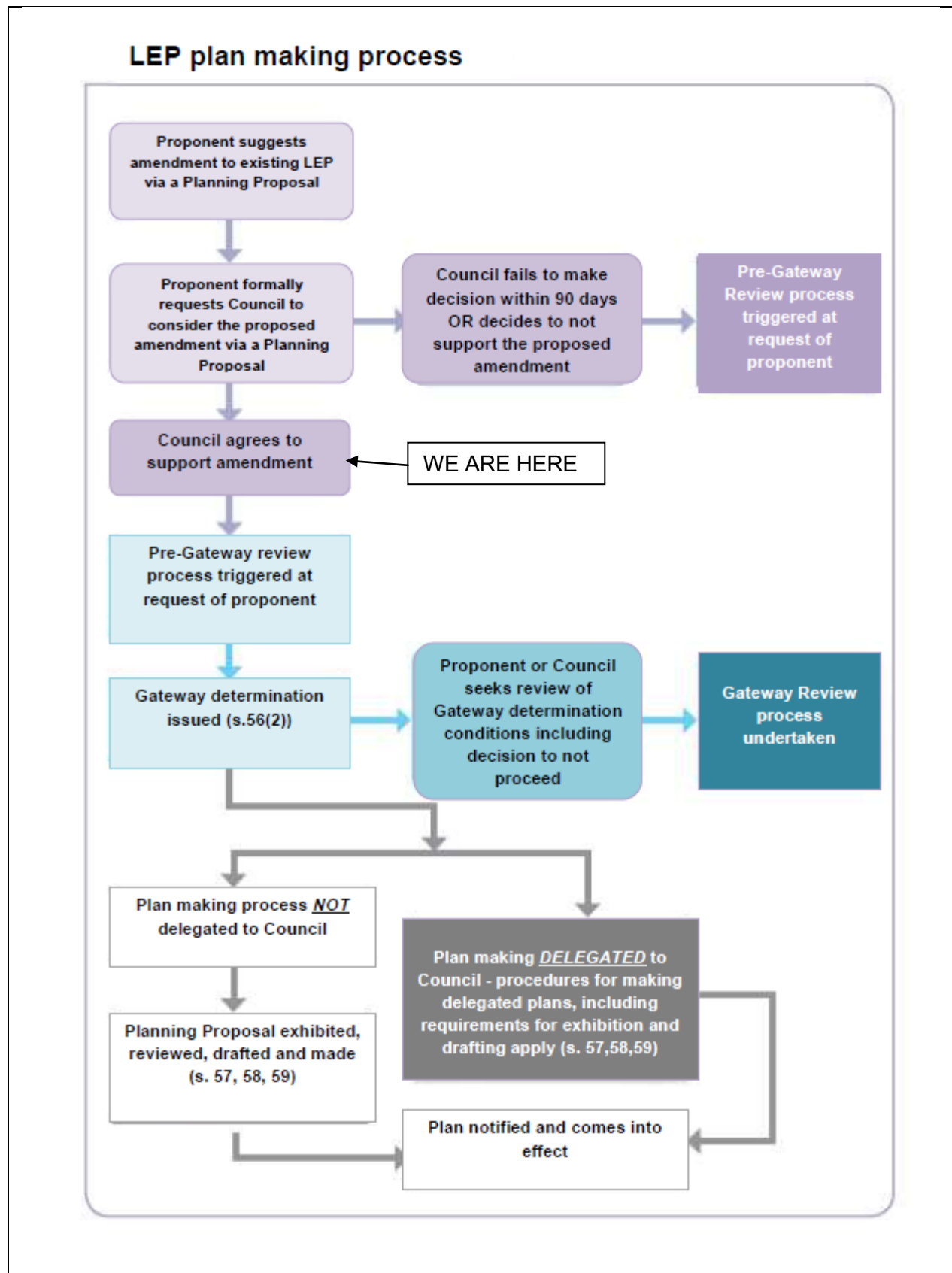
Attachments: Attachment A - Planning Proposal Process
Attachment B – Mapping Amendments Deferred 7(a) & 7(c2) land to proceed that was exhibited as a zone other than E2 or E3
Attachment C - Miscellaneous Mapping Amendments
Attachment D - Miscellaneous Heritage and Mapping Amendments
Attachment E – Land use table Amendments

Tabled Items: Nil

RECOMMENDATION

- A Council initiate the Local Environmental Plan 'Gateway' process pursuant to Section 55 Environmental Planning and Assessment Act by endorsing the preparation of a Planning Proposal which incorporates the following amendments to Gosford LEP 2013:
- (i) amend clause 2.8 Temporary Use of Land from 14 to 28 days in any period of 12 months
 - (ii) insert in Schedule 2 Exempt Development, an item relating to temporary events and activities on public land and public places;
 - (iii) insert a new clause relating to development of closed Crown roads in rural and environmental zones;
 - (iv) insert an additional sub-clause addressing development of lots partially affected by Gosford LEP 2013;
 - (v) omit the definition of "flood planning level" from the Dictionary;
 - (vi) include on the LEP maps the exhibited zone of existing 7(a) or 7(c2) land that was exhibited as a zone other than the equivalent zones of E2 or E3;
 - (vii) amend the item name of heritage item no. 174 in Schedule 5 Environmental Heritage to "Footings of Samuel Paley's Inn";
 - (viii) insert in Schedule 5 Environmental Heritage a new heritage item named "Fairview homestead";
 - (ix) amend the LEP maps as set out in Attachments B and C;
 - (x) amend Schedule 5 Environmental Heritage and maps as set out in Attachment D; and
 - (xi) amend Zone IN1 General Industrial Landuse Table as set out in Attachment E;
- as outlined in this report.
- B Council notify the Department of Planning and Infrastructure of Council's resolution requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and forward the Planning Proposal and all necessary documentation according to their requirements and this report.
- C After public exhibition of the Planning Proposal, should the Minister for Planning and Infrastructure support it, if no submissions objecting to the planning proposal are received, the Planning Proposal is to be sent to the Department of Planning and Infrastructure in order to make the plan.
- D Council does not seek delegations from the Department of Planning and Infrastructure for this Planning Proposal.
- E As part of Council's communication with the community it alert owners of land zoned 7(c,2) which may have theoretical potential to be subdivided using the 'bonus lots' provisions that these provisions may not exist in the future due to the new Planning Act, hence they may wish to investigate the potential on their land for use of such provisions,

noting that a development consent for subdivision, if granted after due consideration of the requirements of the EP&A Act, could last for up to 5 years

ATTACHMENT A – Planning Proposal process - extract from, DoP&I documents

ATTACHMENT B – Mapping Amendments Deferred 7(a) & 7(c2) land to proceed that was exhibited as a zone other than E2 or E3

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Lot 2 DP 843038 and Lot 3 DP 866734 Bundaleer Cres, Bensville	7(c2)	SP2 Educational Establishment	SP2 Educational Establishment	Zone reflects the use of the land as a school.
12 Lots fronting Avoca Drive, Erina	7(c2)	R2 (with min lot size of 1850 sqm)	R2 (with min lot size of 1850 sqm)	The R2 lots are in an urban location, residential in size and isolated from other E3 zoned land.
Lot 1 DP 625529 corner CC Hwy and Avoca Drive Erina	4(a)/7(c2)	IN1	IN1	Rationalise the zone of the single industrial lot.
Lot 11 DP 1045814 Serpentine Road, Erina Heights	7(c2)	SP2 Educational Establishment	SP2 Educational Establishment	Zone reflects the use of the land as a school
Lot 239 DP 755251 Dandaloo Road, Kariong and road reserve	2(a)/7(c2)	R2	R2	Land is cleared, level and serviced. Realigning zone boundary will enable regular subdivision to occur.
Lot 2 DP 710418 Kincumber Street, Kincumber	2(a)/7(a)	SP2/E2	SP2/E2	Realignment of the E2/SP2 Educational Establishment zone boundary to reflect the current school development.
Lots 420 & 421 DP 1055817 Narara Creek Road, Narara	2(a)/7(a)	R2	R2	Rationalise R2 zone boundary so split zone is not perpetuated.
Lot 102 DP 832279 Narara Creek Road, Narara	2(a)/7(a)	SP2/E2	SP2/E2	Realignment of the E2/SP2 Educational Establishment zone boundary to reflect the current school development.
Lot 6 DP 3944 Nells Road, West Gosford	7(a)	IN1/E2	IN1/E2	This was a Rezoning Application that was incorporated into the DLEP. The south-eastern corner of the site is flat and suitable for industrial development and will round off the industrial subdivision.

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Lot 1 DP 726253 Kalawarra Road, Wyoming and road reserve	7(a)	R2	R2	The Lot accommodates part of a seniors' housing development and the road is a residential street.
Lot 2 DP 509011 and Lot 1 DP 409291 Old Tumbi Road, Wamberal and road reserve	7(c2)	R2	R2	The R2 lots are in an urban location, residential in size and isolated from other E3 zoned land
Lot 1 DP 1189881 Belar Ave Terrigal	2(a)/7(c2)	R2/E3	R2	Realign residential boundary with lot boundary at rear, which then aligns with zones boundary immediately north for consistency
Lot 1 DP 311853 Wagstaffe Avenue, Wagstaffe	2(a)/7(a)	R2	R2	Rationalise split zoned parcel as 7(a) zoned area is only 208sqm.
Lot 69A DP 374229 Bourke Avenue, Yattalunga	7(a)	R2	R2	The Lot is residential in size and adjoins similar sized lots in the R2 zone.
Part of Lot 21 DP 732601 and part of Lot 52 DP 868717 Chamberlain Road, Wyoming	7(a)	R2	R2	Align zone with property boundary and rationalise the zone boundary.
Lot 1 DP 1155519, Lot 1 DP 1030674, Lot 46 DP 1976, Lot 12 DP 847114 Central Coast Highway, Erina Heights	7(c2)	SP2 Educational Establishment	SP2 Educational Establishment	Reflects current school development.
Lot 234 DP 1108146 Avoca Drive, Green Point	5(a)/7(c2)	SP2 Educational Establishment and Place of Public Worship	SP2 Educational Establishment and Place of Public Worship	Reflects current school and church development

ATTACHMENT C - Miscellaneous Mapping Amendments

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Triangle Island, Spencer	6(a)	W2	RE1	The island is not identified by a cadastre so is generally part of Mangrove Creek. However the island is substantial and should be zoned the equivalent zone to 6(a) which is RE1.
Lot 7300 DP 1160924 Oyster Shell Road, Mangrove Creek	7(a)	W2	E2	The W2 zone extends onto adjoining land. The W2 zone should be contained in the actual waterway. The lot should be zoned the equivalent zone to 7(a) which is E2.
Bedlam Creek, Greengrove	Unzoned	SP2	E2	Bedlam Creek is a small waterway that should be zoned E2 as is the surrounding land.
Lot 270 DP 755251 Mullet Creek, Wondabyne	6(a)	RE1	E1	This lot is part of Brisbane Water National Park so should be zoned E1.
Lot 265 DP 755251 Mullet Creek, Wondabyne	6(a)	E1	RE1	This lot is not part of Brisbane Water National Park so should retain the equivalent zone to 6(a) which is RE1.
Lot 7329 DP 1166146 Northern Arm of Avoca Lake	Part 6(a) and part unzoned	Part RE1 and part W2	RE1	Where possible split-zoned land parcels are avoided. The lot is Crown Land so to be consistent with the approach taken in the DLEP, the whole lot should be zoned RE1.
Lot 1 DP 348158, Phegans Bay Road, Phegans Bay	2(a)	RE1	R2	Land is 31 sqm in area and in private ownership so should be zoned R2.
Lot 15 Sec 9 DP 1905 Showground Road, Narara	2(a)	E2	RE1	Land was in private ownership but is now Council owned and part of Council's Reserve.
Lot 102 DP 747829 Kathleen Street, Woy Woy	5(a)	R2	SP2	This lot is part of the Woy Woy Hospital site. The lot should be zoned SP2 Health Services Facility as is the rest of the site.
Lot 7001 DP 1021271 Wisemans Ferry Road, Central Mangrove	6(b)	RU1	RE1	The land is Crown Land and should be zoned RE1 as is adjoining Crown Land to the south.

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Lot 12 & 13 DP 1126998 Research Road, Narara	6(b)/7(c2)	RU3/E3	RU3/E3	The Narara Research Station land has been subdivided with the common cadastral boundary not aligning with the zone boundary. To enable future development the zone should align with the cadastre in this part of the site. Other zones on Lot 13 are unaffected.
Lot 3 DP 786052 Newcastle Street, Springfield	2(a)	R2	RE1	The lot fronts Erina Creek and is Council owned. To be consistent with the way other reserves fronting waterways have been treated the land should be zoned RE1.
Lot 32 DP 717084 Myola Road, Umina	9(c)/Reserve	R2/RE1	R2	The lot has had its cadastre corrected which means part of the private lot is zoned RE1. The R2 zone needs to be aligned with the new cadastre.
Lots 32 & 34 Sec 11 DP 2163 Hammersmith Road, Erina	9(a)	E2	RE1	These lots are now in Council ownership. Therefore they should be zoned RE1 as are the surrounding Council owned lots.
Lot 130 DP 9508 Jacaranda Avenue, Patonga	7(a)/6(a)	E2	E2/RE1	The lot is shown as being in private ownership however there is a strip of land 100 foot wide along Patonga Creek which is Crown Reserve. Therefore the Reserve should be zoned RE1.
Lot 1 DP 107391 Pacific Hwy, Mooney Mooney	5(a) PMG	SP2 Hospital	SP2 Public Utility Undertaking	The land is owned by Telstra so should be zoned a Special Purpose zone which reflects the use.
Wamberal Lagoon	6(a)/unzoned	W1	E1	The actual lagoon is part of the Wamberal Lagoon Nature Reserve. Under the Standard Instrument LEP it should be zoned E1.
Lot 11 DP 1157280 Peats Ferry Road, Mooney Mooney	5(a)/Unzoned	SP2/RE1	RE1	Since the exhibition of the DLEP the Crown Land subdivision has been registered resulting in the zone boundary not aligning with the cadastre. Align zone to the cadastre.
Lot 2 DP 431999 Peats Ferry Road, Mooney Mooney	5(a)/Unzoned	SP2/RE1	SP2 Hospital	Since the exhibition of the DLEP the Crown Land subdivision has been registered resulting in the zone boundary not aligning with the cadastre. Align zone to the cadastre.

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Lot 102 DP 1171317 Carrak Road Kincumber	2(a)/9(a)	R2/E2	RE1	Council now owns this waterfront land. The DP shows the land as Public Reserve so should be zoned the same as the Reserves on either side.
Lot 2501 DP 801107 Bambara Road, Kariong	7(a)	E2	E1	On 13 September 2013 the land was gazetted as part of Brisbane Water National Park, so should be zoned to reflect this.
Road widening along the Central Coast Highway, Erina Heights and Wamberal	7(c2), 7(a)	E3, E2	SP2	Since the DLEP was exhibited the CC Highway has been widened. Consequently the existing SP2 zone is required to be widened to reflect the new road width.
Lot 1 DP 1170178 Mundoora Rd Yattalunga	6(d)	RE1	E2	The land is in private ownership so cannot be zoned RE1. Due to its environmental characteristics the most suitable zone is E2.
Great Northern Railway	5(b)	SP2	SP2	Align the SP2 zone to the cadastre for the length of the railway line.
Rileys Island	6(b)	E1	E1	There is no change to the zone of the island, only to the outline of the island. The current island outline does not correlate with reality. Amend the E1 zone to the current shape of the island.
Lot 110 DP 755224 Wisemans Ferry Road, Central Mangrove	7(a)	E1/RU3	E1	Land is wholly owned by NPWS so should be zoned E1.
Lots 1-3 DP 104216, Lot 1 DP 104190, Lot 30 DP 1169069 Reeves St, Narara	5(b)	E2 Minimum Lot Size not specified	E2 Specify Minimum Lot Size of AB2 (40 ha)	These lots are the old railway dams at Narara. They were exhibited as zoned E2 but did not have the relevant Minimum Lot Size mapped. As with other E2 zoned land the minimum lot size should be mapped as AB2 (40ha).
Lot 1 DP 106066 Glenrock Parade, Koolewong	5(b)	E2	E2 Specify Minimum Building Height of 1 (8.5m)	This lot is owned by Railcorp. It was exhibited as E2 but did not have the relevant Height of Building mapped. As with other E2 zoned land, the Height of Building should be mapped as 1 (8.5m).

Land Description	Existing Zone	Exhibited Zone	Proposed Zone	Reason for Amendment
Road widening of Pacific Hwy, Wyoming	5(d)	SP2	SP2	On the Land Reservation Acquisition the road widening is shown as Local Road Widening. As the Pacific Highway is a State Road, it should be Classified Road.
Road widening of Pacific Hwy, Lisarow	5(d)	SP2	SP2	On the Land Reservation Acquisition the road widening is shown as Local Road Widening. As the Pacific Highway is a State Road, it should be Classified Road.

ATTACHMENT D - Heritage and Mapping Amendments

Land Description	Item Name	Item No	Reason for Amendment
Adjacent to Lot 7040 DP 1030914, Kincumber Creek	Site of former public wharf	A14	The map shows Lot 7040 as the location of the heritage item, whereas the site of the former wharf is adjacent to the Lot i.e. in Kincumber Creek.
Adjacent to Lot 207 DP 755253 Mangrove Creek at the mouth of Bedlam Creek	Former public wharf remains	A10	The map shows Lot 207 as the location of the heritage item, whereas the site of the former wharf is adjacent to the Lot i.e. in Mangrove Creek.
Adjacent to Lot 121 DP 755253 Mangrove Creek Road	Site of Pemberton's Wharf	A16	The map shows Lot 121 as the location of the heritage item, whereas the site of the former wharf is adjacent to the Lot i.e. in Mangrove Creek.
Lot 37 DP 755239 Ten Mile Hollow Road, Upper Mangrove	Site of John Ferguson's Inn	A23	Lot 37 is divided by road reserves and is in 3 parts. Only 2 of the parts are identified on the Heritage Map whereas all 3 parts of the lot should be identified.
Lot 1 DP 564021 Mann Street, Gosford	Gosford City Council Administration Building	39	A sliver of land fronting Henry Parry Drive (Lot 1 DP 251476) is part of the Council Administration Building site so should be included in the property description of the heritage item.
Lot 4 DP 599807 and Lot 118 DP 755257 Wisemans Ferry Road Gunderman	Lower Hawkesbury Wesleyan Chapel and site	56	The heritage item is shown as being of State significance. Only Lot 4 DP 599807 is listed on the State Heritage Register. Although Lot 118 DP 755257 is listed in SREP 20 it is of local significance. Amend Schedule 5 to reflect this.
Lot 1 DP 123370 corner Mann St and Georgiana Terrace, Gosford	Former School of Arts	36	The heritage item is for the School of Arts building whereas the map identifies the whole of Lot 1 DP 123370. Map to be amended to show the building only.
Lot 3 DP 861482 Cedar Crescent, Blackwall	Former house, now part of Orange Grove Private Hospital	2	The house is no longer part of Orange Grove Private Hospital. As it is the house of Rock Davis the item should be named "House of Rock Davis" as it was identified in the Heritage Study.
Road Reserve adjacent to Lot 1 DP 24303 Wisemans Ferry Road Gunderman	Timber and steel bridge over Mill Creek and ruins of Bailey's Mill	58	These are two separate heritage items so should be included in Schedule 5 as two separate items. "Ruins of Bailey's Mill" will become Item No 202.
Lot 412 DP 833320 Lara Street, Koolewong	Two houses	100	One of these houses has burnt down so the Item Name in Schedule 5 should be amended to "House".
Lot A DP 420450 Pearson Street Narara	House	117	The Item Name should be described as "House, Everinghams" as it was identified in the Heritage Study.

Land Description	Item Name	Item No	Reason for Amendment
Lot 1 DP 348393 Terrigal Drive, Terrigal	House, "Seville"	164	Lot 1 DP 348393 has been subdivided with the heritage item now located on Lot 21 DP 1178742. Land Description in Schedule 5 is to be amended.
Part of Lot 105 DP 1184403 and part of Lot 106 DP 1184501 Woy Woy Road	Woy Woy Railway Tunnel	203	The Woy Woy Railway Tunnel was included in the State Heritage Register on 28 June 2013. Therefore it is to be included as an item of State significance in Schedule 5.
Lot 16 DP 570400 Frederick St, East Gosford	House "Mona Vale"	8	The heritage item is for the House whereas the map identifies the whole of Lot 16 DP 570400 which includes all of St Edward's school. Map to be amended to show the House only.

ATTACHMENT E – Land Use Table Amendments

The exhibited DLEP 2009 contained;

- IN1 General Industrial zone with 'storage premises' as being a prohibited use.
 - Comment - Storage premises are currently permitted in the equivalent zone, therefore the use should be made permissible in IN1 zone within LEP 2013