

Planning Services

Gateway Determination Report

LGA	Central Coast
PPA	Central Coast Council
NAME	Miscellaneous Housekeeping Amendments to Wyong LEP 2013 and Gosford LEP 2014 (0 homes, 0 jobs)
NUMBER	PP 2018_CCOAS_002_00
LEP TO BE AMENDED	Wyong LEP 2013 and Gosford LEP 2014 or draft Central Coast LEP
ADDRESS	Multiple sites throughout Central Coast LGA
DESCRIPTION	Multiple sites
RECEIVED	20 September 2018 and updated 7 November 2018
DATE ADEQUATE	3 December 2018
FILE NO.	EF18/43190
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 make a number of housekeeping amendments to correct errors and anomalies with Wyong LEP 2013 and Gosford LEP 2014. Depending on timing the proposed Miscellaneous Housekeeping Amendments Planning Proposal may be incorporated into the Central Coast LEP.

Site description

The planning proposal applies to various lands throughout the Central Coast LGA.

Existing planning controls

The planning proposal seeks to include, amend or remove provisions in Wyong LEP 2013 and Gosford LEP 2014. The changes proposed will affect certain land subject to boundary adjustments, minimum lot size, lot amalgamation, floor space ratio, urban release area, additional permitted uses, and environmental heritage provisions on land throughout the LGA. These specific provisions are discussed in later in the report.

Summary of recommendation

A conditional Gateway determination is recommended. The timeframe for finalising the plan should be 6 months and delegation to finalise the plan should be granted to Central Coast Council.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to amend the Wyong LEP 2013 and the Gosford LEP 2014 or depending on timing the draft Central Coast LEP to correct minor errors and anomalies.

Explanation of provisions

Council proposes the following changes to the relevant planning instruments:

Boundary adjustments

Council proposes to include a new clause to facilitate boundary adjustments on RU1, RU2 or E3 land where no additional lots or dwelling entitlements are created and the resultant lots achieve a superior outcome for either agricultural or environmental protection or management. Council has referenced a similar clause under 4.2C *Boundary adjustments in certain rural and environmental protection zones* in Lake Macquarie LEP 2014 as precedent for including the clause. It is noted Narromine LEP 2011 also has a similar clause under 4.2E. The planning proposal does not include discussion or justification for the proposed RU1, RU2 and E3 zones and it is considered the planning proposal should be updated to justify the proposed zone selection. It is noted the final drafting of the clause would be a matter for Parliamentary Counsel however given there are existing Standard Instrument LEPs that contain a similar clause there appears to be scope to include the boundary adjustment provision.

Minimum Lot Size for dual occupancies

Council proposes a new clause to apply a minimum lot size for dual occupancy development. Council has advised there is no minimum lot size for dual occupancy development in Wyong LEP 2013 however the lot size controls are contained in the Wyong DCP 2013. Council proposes a new clause to apply a 550m² minimum lot size for attached dual occupancy and 700m² for detached dual occupancy consistent with its DCP. Council has identified the reason for the change resulted from the Low Rise Medium Density Housing Code which permitted complying development for dual occupancies on lots with a minimum lot size of 400m² if no minimum lot size is specified in the LEP. Central Coast LGA is a deferred area from the Low Rise Medium Density Housing Code until 1 July 2019. Council should aim to have the planning proposal finalised before this date or the 400m² minimum lot size would apply after 1 July 2019. Council staff verbally confirmed a reduced 6 month timeframe to make the plan would be acceptable in order to progress the matter before the deferral from the Low Rise Medium Density Housing Code expires.

Lot Amalgamations

Council proposes to insert a new clause to specify that lots identified on the Lot Amalgamation Map are required to be amalgamated upon development in relation to Clause 4.2B *Erection of dual occupancies and dwelling houses on land in certain rural and environment protection zones*. Council has advised this was the intent of

the clause however there is no trigger to do this in the clause. Council proposes to include a new provision to enable this to occur.

Floor Space Ratio

Council proposes to include Area 1 of the Height of Buildings Map on the Floor Space Ratio Map at The Entrance to enable bonus FSR provisions to apply to consolidated sites with a site area of 1,500m² or more permitting a bonus FSR of between 7.5% to 20% above the mapped FSR in the Wyong LEP 2013. Council seeks to exclude 77 Oakland Avenue and 6, 8, 15A, 17, 19 and 21 Ashton Avenue from Area 1 as these sites already have their own specific FSR provisions. Council has advised the bonus FSR had previously applied under its DCP 2005 however when the provision was included in the WLEP 2013 the provision did not include The Entrance area and appears to have been an error. Council seeks to apply Area 1 to correct the error as show in Figure 1 below.

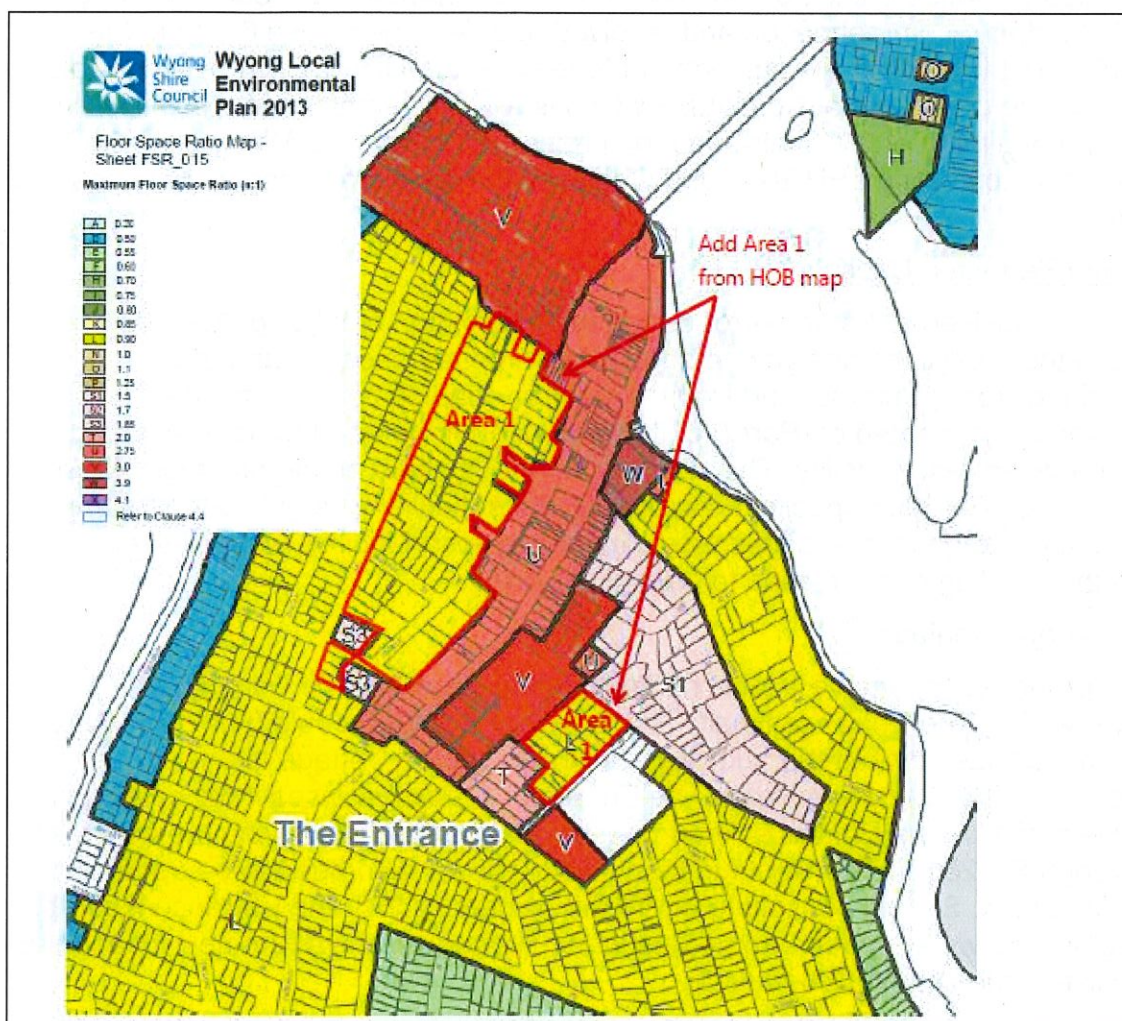


Figure 1 – FSR The Entrance

Urban Release Areas

Council proposes to remove a clause 6.3 Development Control Plans from Part 6 Urban Release Areas from both WLEP 2013 and Gosford LEP 2014. The clause requires the preparation of a DCP for development within an Urban Release Area. Council has advised this control restricts development as most of the URA are quite

small and the provisions of existing DCPs are adequate to guide development on these sites. Council has advised for larger URAs the provisions under clauses 6.1 and 6.2 still address infrastructure and staging requirements. Council has advised The Hills LEP 2012 and Hawksbury LEP 2012 do not contain the clause 6.3 the DCP provision however do include the clause 6.1 and 6.2 provisions related to satisfactory arrangements for State public infrastructure and public utility infrastructure. It is noted the Department settled model clause for URAs indicates all the provisions should be used as a package however given the precedent of not including the DCP requirements in some Standard Instrument LEPs there appears to be scope to justify its removal.

It is noted the Council report dated 13 August 2018 included a staff recommendation to retain clause 6.3 and for Council to prepare site specific DCPs for existing urban release areas as a response to the requirements of clause 6.3. The report concluded the deletion of clause 6.3 is not required and not recommended. Council did not accept the staff recommendation and resolved to delete the clause 6.3 from the relevant LEPs. It is noted the amendment to remove the URA DCP provision is also included in the draft Central Coast LEP which is about to commence exhibition and depending on timing of the finalisation the provision in proposed Miscellaneous Amendments to Wyong LEP 2013 and Gosford LEP 2014 may become unnecessary to progress.

Additional Permitted Uses

Council has advised a drafting error during the finalisation of Wyong LEP 2013 amended the provisions applying to additional permitted uses on land at 50 Summerland Road, Summerland Point. The error enabled community title subdivision to be created on Part A of the land without the need to be associated with a managed resort facility. This was not Council's intent as the previous clause under Wyong LEP 1991 specified community title subdivision is only permitted on Part A of the site if it is associated with a managed resort facility. Council seeks to amend the wording of the clause to correct the error.

Environmental Heritage

Council proposes to remove a local heritage listing, Item 87 'The Ferry Master's Cottage', at 101 The Entrance Road, The Entrance from Schedule 5 of Wyong LEP 2013. Council has advised the address is incorrect as the Cottage is physically located at 113 The Entrance Road, The Entrance. Council advises it will consult with the owners of 113 The Entrance Road to consider correctly identifying the Cottage in the Wyong LEP 2013. The Heritage Map HER_015 will also need to be updated to remove the item. Should consultation with the owners of 113 The Entrance Road be satisfactory this would require an update to the Heritage Maps at the new location as well as listing the item in Schedule 5.

Lot Size

Council has advised an error in mapping during the finalisation of Wyong LEP 2013 applied a minimum lot size of 40ha to part of Lot 1149 DP840180 at 38 Woodbury Park Drive, Mardi. A further mistake during the finalisation of Wyong LEP 2013 Amendment No 3 altered the label to apply a 20ha lot size to that part of the site. The land is Council owned and zoned RE1. No minimum lot size applies to RE1 zoned land in the Wyong LEP 2013. Council proposes to remove the 20ha minimum lot size to correct the error.

Mapping

The maps provided are considered sufficient for assessment purposes.

NEED FOR THE PLANNING PROPOSAL

Council has advised the proposal is not the result of specific studies or reports and is primarily a housekeeping exercise to resolve mapping errors and insert additional provisions to clarify the intent of a number of clauses in Wyong LEP 2013 and Gosford LEP 2014 or depending on timing the draft Central Coast LEP.

STRATEGIC ASSESSMENT

State

The planning proposal is not inconsistent with the state strategic planning framework.

Regional / District

Central Coast Regional Plan (CCRP)

The matters are generally minor in nature to resolve mapping errors and clarify the intent of clauses in Wyong LEP 2013 and Gosford LEP 2014. The proposal is not considered to be inconsistent with the CCRP.

North Wyong Shire Structure Plan 2012 (NWSSP)

The proposed amendments have application throughout the LGA including the NWSSP area. The amendments are mostly administrative in nature and is consistent with the NWSSP.

Local

Council has provided an assessment and advised the proposal is consistent against the five focus areas of *One – Central Coast, Community Strategic Plan 2018-2028*.

Section 9.1 Ministerial Directions

The proposal is consistent with all relevant S9.1 Directions, except as identified below.

1.2 Rural Zones

The proposed boundary adjustment provisions apply to RU1 RU2 and E3 land and is potentially consistent with the direction as it proposes provisions where no additional dwellings or dwelling entitlements are created and must result in superior agricultural protection or management before consent could be issued. Consultation should occur with the Department of Primary Industries - Agriculture to confirm consistency with the direction.

2.1 Environment Protection Zones

The proposed boundary adjustment provision is potentially consistent with the direction as it proposes provisions where no additional dwellings or dwelling entitlements are created and must result in superior environmental protection or management before consent could be issued. Consultation should occur with the Office of Environment and Heritage to confirm consistency with the direction.

4.2 Mine Subsidence and Unstable Land

The planning proposal permits development within Mine Subsidence Districts and Council should consult with Subsidence NSW before consistency with the direction can be determined.

4.3 Flood Prone Land

Council has identified the direction applies as the proposal includes provisions that affect flood prone land however considers any inconsistencies with the direction is of minor significance as Council has existing clauses within its relevant LEPs that address flood planning and floodplain risk management. The proposed amendments apply to some land that is flood prone however the provisions do not rezone land within flood planning areas or permit any significant increase in flood planning areas or result in significant flood impacts to other properties. The proposal is considered to be consistent with the terms of the direction.

4.4 Planning for Bushfire Protection

The planning proposal will affect land that is identified as being bushfire prone. Consultation with NSW Rural Fire Service is required before consistency with the direction can be determined.

6.2 Reserving Land for Public Purposes

The proposal seeks to remove a 20ha minimum lot size that applies to a small part of RE1 zoned land at 38 Woodbury Park Drive, Mardi. The lot size was applied in error during the finalisation of Wyong LEP 2013 and Council seeks to remove the lot size from the land. Council provided clarification that the land is Council owned and given Council is the relevant public authority and has requested the lot size be removed the Secretary should agree and approve the removal of the lot size on land reserved for public purposes given it was applied in error.

6.3 Site Specific Provisions

Council has identified an additional permitted use clause in Schedule 1 Item 5 at 50 Summerland Road, Summerland Point contains a drafting error. The clause enables community title subdivision to be created on Part A of the land without the need to be associated with a managed resort facility and was not the intent of the clause. Council seeks to correct the clause to ensure subdivision is only permitted on Part A of the site if it is associated with a managed resort facility.

The amendment proposed is inconsistent with the direction as it imposes requirements in addition to those already contained in the Wyong LEP 2013. Given the additional permitted use provision is an existing provision and Council seeks to correct an anomaly introduced when the LEP was originally drafted, the Secretary should agree any inconsistency with the direction is of minor significance.

State environmental planning policies

Council has provided an assessment against the relevant State Environmental Planning Policies(SEPPs) and identified the proposal is consistent with the relevant SEPPs.

SITE-SPECIFIC ASSESSMENT

Environmental

Council has advised the planning proposal will have no detrimental effects upon critical habitats, threatened species or ecological communities. This is acknowledged however some land affected by the planning proposal includes E3 zoned lands and the appropriateness of the proposed changes should be reviewed by OEH during agency consultation.

Social and Economic

Council has advised the planning proposal will provide some certainty for affected landowners as a result of correcting anomalies in the Wyong LEP 2013 and Gosford LEP 2014. It is considered the amendments proposed would provide some economic benefit particularly the application of bonus FSR provisions at The Entrance which will provide for additional infill housing in an identified local centre.

Infrastructure

The planning proposal does not impact on the provision and funding of state infrastructure.

CONSULTATION

Community

Council proposes a community consultation period of 28 days. Given the amendments proposed are generally of local significance it is considered the planning proposal should be publicly exhibited for a minimum of 14 days.

Agencies

Council proposes to consult with the following:

- Department of Planning of Environment,
- Subsidence Advisory NSW
- NSW Department of Industry – Resources and Energy
- NSW Rural Fire Service
- Office of Environment and Heritage

Consultation with the NSW Department of Industry – Resources and Energy and the Department of Planning and Environment is not considered necessary to be conditioned as part of the Gateway determination given the proposed amendments are generally administrative in nature or correct and clarify existing provisions. It is recommended Council consult with the following agencies to address section 9.1 Directions:

- Subsidence Advisory NSW
- NSW Department of Industry – Agriculture
- NSW Rural Fire Service
- Office of Environment and Heritage

TIME FRAME

Council proposes a 12-month timeframe to complete the planning proposal however Central Coast LGA is a deferred area from the Low Rise Medium Density Housing Code until 1 July 2019. In discussion with Council a reduced timeframe to make the plan is proposed to ensure the plan is made before this date. Given the matters are generally minor housekeeping amendments with limited mapping changes and there is a need to expedite the proposal a 6-month timeframe is recommended.

LOCAL PLAN-MAKING AUTHORITY

Council has resolved to request plan making delegations to finalise the planning proposal. Council's request is supported as the matters in the planning proposal are generally administrative changes or matters of local significance.

CONCLUSION

The planning proposal is supported to proceed with conditions and resolves identified anomalies and proposes instrument changes in the existing local planning instruments.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 6.3 Site Specific Provisions is of minor significance;
2. agree in relation to 6.2 Reserving Land for Public Purposes to the removal of the minimum lot size provisions on land reserved for public purposes; and
3. note that the consistency with section 9.1 Directions 1.2 Rural Zones, 2.1 Environment Protection Zones, 4.2 Mine Subsidence and Unstable Land, 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. Council should update the planning proposal to:
 - include discussion and justification for the proposed zones to enable boundary adjustments in certain rural and environmental zones.
 - amend the project timeline to reflect the 6 month timeframe to make the plan.
2. Council is to update the planning proposal to include sufficient additional information to adequately address consistency (following consultation or further investigation) with the following S9.1 Directions:
 - 1.2 Rural Zones,
 - 2.1 Environment Protection Zones,
 - 4.2 Mine Subsidence and Unstable Land
 - 4.4 Planning for Bushfire Protection
3. The planning proposal should be made available for community consultation for a minimum of 14 days.
4. Consultation is required with the following public authorities:

- NSW Department of Industry – Agriculture regarding consistency with section 9.1 Direction 1.2 Rural Zones;
 - Office of Environment and Heritage regarding consistency with 2.1 Environment Protection Zones;
 - Subsidence Advisory NSW regarding consistency with 4.2 Mine Subsidence and Unstable Land.
 - NSW Rural Fire Service regarding consistency with 4.4 Planning for Bushfire Protection.
5. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
 6. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



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