



Item No: 2.5
Title: Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal
Department: Environment and Planning

28 May 2024 Ordinary Council Meeting

Reference: F2021/00583 - D16193563
Author: Rianan Rush, Senior Strategic Planner Local Planning and Policy
Rodney Mergan, Senior Strategic Planner. Local Planning and Policy
Manager: Scott Duncan, Section Manager. Local Planning and Policy
Executive: Luke Sulkowski, Director Environment and Planning (Acting)

Recommendation

That Council:

- 1 Endorses the Planning Proposal for Deferred Matters Lands as amended in response to issues raised during the public exhibition in line with the changes shown in Attachment 1.***
- 2 Requests the Minister for Planning and Public Spaces to proceed with steps for drafting and making the amendment to Central Coast Local Environmental Plan 2022, as identified under the Deferred Matters Planning Proposal.***
- 3 Amends the Central Coast Development Control Plan 2022 in response to issues raised during the public exhibition in line with the changes as shown in Attachment 1.***
- 4 Resolves that the Chief Executive Officer (CEO) may make other minor post exhibition alterations to the Deferred Matters Planning Proposal and Central Coast Development Control Plan 2022 subject to advice from the Department of Planning, Housing and Infrastructure as deemed necessary to finalise the plan.***
- 5 Notifies all those who made submissions during public exhibition of Council's decision.***

Report purpose

To advise Council of the outcomes of the public consultation period for the Deferred Lands Planning Proposal and seek endorsement to proceed to Finalisation and Notification of the amending Local Environmental Plan (LEP).

Executive Summary

The Deferred Matters Lands (DM Lands) are those lands excluded from the *Central Coast Local Environmental Plan 2022* (CCLEP 2022) Land Application Map, and generally located in hinterland areas east of the M1 Pacific Motorway and south of Ourimbah. There are currently 3,440 properties within the DM area.

The DM Lands and the planning provisions associated with them, are required to be integrated into the current LEP in accordance with the *Standard Instrument (Local Environmental Plans) Order 2006*, which requires all LEPs to be standardised across NSW.

The majority of DM Lands are zoned for environmental purposes and it is proposed to retain an environmental zoning of these lands under CCLEP 2022. Lands are proposed to be converted to one or more of three standard zones; C2 Environmental Conservation; C3 Environmental Management, or C4 Environmental Living. These zones are applied where the protection of the environmental significance of the land is the primary consideration.

It is recommended that the Planning Proposal proceed to finalisation.

Background

Council resolved at the Ordinary Council Meeting of 27 April 2021 to prepare a Planning Proposal for the integration of DM Lands into CCLEP 2022.

The planning instruments that currently apply to the DM Lands are the *Gosford Planning Scheme Ordinance* (GPSO) and *Interim Development Order 122* (IDO 122). The GPSO and IDO 122 were originally gazetted in 1968 and 1979 respectively. IDO 122 is the dominant instrument in place over the DM Lands with only a small group of land parcels remaining subject to the GPSO.

Following the introduction of *The Environmental Planning and Assessment Act 1979* (EP&A Act), IDOs were progressively phased out and replaced by LEPs. IDO 122 contains provisions that allow for a financial contribution to Council to make variations to the minimum lot size of certain land. These provisions cannot be carried over into an LEP and options to retain such provisions have been extensively looked at in the past. Gosford City Council was hesitant to repeal IDO 122 given the bonus lot provisions provided valuable income source for the purchase and dedication of conservation land. Additionally, all land which is subject to IDO 122 is treated as rural land and not conservation land for the purposes of vegetation management. Therefore, the responsibility of tree removal and enforcement rests with Local Land Services (LLS) and not Council.

The Department of Planning and Environment (now known as and referred to throughout this report as the Department of Planning, Housing and Infrastructure (DPHI)) would not permit

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any modification to IDO 122 since GLEP 2014 came into force. The IDO is outdated and lists land uses that are not consistent with Standard Instrument land use definitions, exempt and complying development provisions that do not align with the rest of the State and land use zones and other terminology that do not appear under contemporary planning instruments.

The former Gosford City Council resolved to bring the IDO 122 and GPSO matters in line with the current Standard Instrument LEP within five years of the Gazettal of *Gosford LEP 2014 (GLEP 2014)*. This work was underway and scheduled prior to the amalgamation of Gosford and Wyong Councils and as such this process was rolled into the LEP Consolidation process.

Following the consideration of public submissions to the LEP Consolidation process, Council resolved at its meeting of 14 December 2020 to “defer the inclusion of lands currently identified as Deferred Matters under GLEP 2014 from CCLEP (2022)” for further consideration.

This matter was referred to the Central Coast Local Planning Panel (LPP) on the 8 April 2021. The LPP recognised the need for this work to be undertaken as a priority and supported a Planning Proposal being forwarded for a Gateway determination. On 27 April 2021, Council resolved to seek a Gateway Determination from the DPHI for the Deferred Matters Planning Proposal.

The Planning Proposal forms part of a staged program to review environmental lands across the LGA. The current stage aims to convert existing zoning provisions into the Standard Instrument format and is not a comprehensive review of environmental lands.

As reported to Council 9 March 2021, the Deferred Matters Lands and Environmental Zone Review process for the Central Coast is being undertaken in three phases:

- Phase 1: rezoning of Council owned Deferred Matters land (complete);
- Phase 2: rezoning of the remaining Deferred Matters land (underway); and
- Phase 3: standardisation of zoning for all environmental lands subject to the CCLEP 2022 (not yet commenced)

Council received a Gateway Determination from DPHI to proceed with the phase 2 Planning (rezoning) Proposal on 27 October 2022.

Current Status

Phase 1 of the Environmental Zone Review process was endorsed by Council 9 March 2021 and incorporated into CCLEP 2022, coming into force 1 August 2022. This report relates to Phase 2 of the process mentioned above.

Figure 1 identifies the stages in the Planning Proposal (LEP Amendment) Process and the current status of this Planning Proposal.

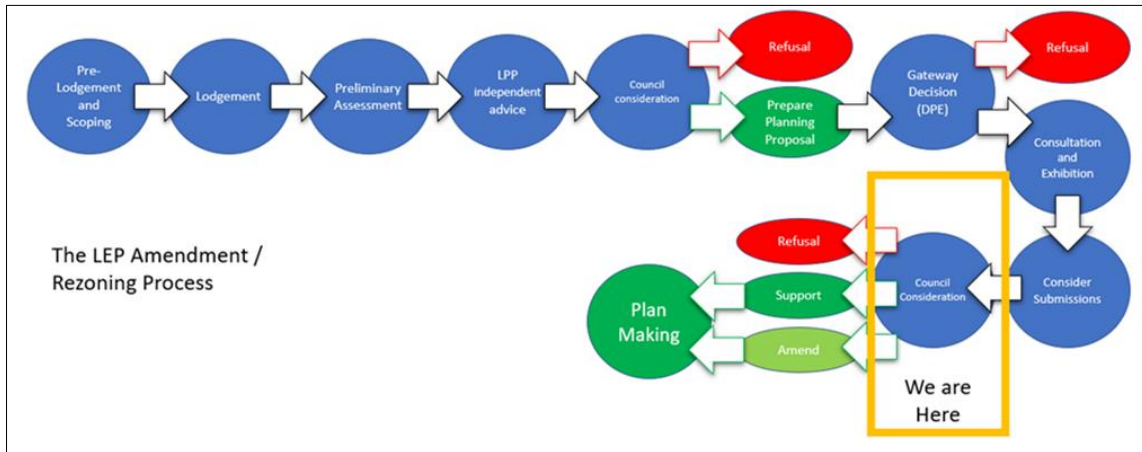


Figure 1 – LEP Amendment Process

If Council resolves to support the Planning Proposal, the process of Plan Making commences. Council has not been issued Delegation to undertake the Plan Making process for the DM Lands Planning Proposal. Therefore, the finalisation process will be undertaken by DPHI, the Minister or the Minister's Delegate.

Report

The DM Lands Planning Proposal aims to incorporate the Deferred Lands into CCLEP 2022 as required by the *Standard Instrument (Local Environmental Plans) Order 2006*, which requires all LEPs to be standardised across NSW. By incorporating the provisions from IDO 122 and GPSO into CCLEP 2022, the Planning Proposal provides a more consistent zoning framework for environmental lands across the Local Government Area (LGA).

The Planning Proposal addresses actions within the *Central Coast Regional Plan 2041* and Council's Local Strategic Planning Statement and is consistent with the Community Strategic Plan.

The Planning Proposal has been prepared in accordance with the *Local Environmental Plan Making Guideline (August 2023)*. The intended outcome of the Planning Proposal is to:

- Apply environmental protection zones to land identified as 'Deferred Lands' using standardised zones in CCLEP 2022;
- Apply minimum lot sizes to land identified as 'Deferred Lands' generally consistent with the minimum lot sizes applied under CCLEP 2022;
- Amend the Land Application Map to include the 'Deferred Lands' in the Central Coast Local Environmental Plan;
- Modify Clause 4.1F 'Exception to minimum lot size for subdivision of land that includes deferred matter' (it is intended to retain this clause in a modified format to permit excision of undersized lots where required to facilitate a conservation or similar purpose);
- Amend clause 4.1E(3)(b) to require resulting lots to have a 1ha lot size;

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- Make minor amendments to the Central Coast DCP 2022 to remove any references to Deferred Matters Zones;
- Transfer heritage listed items from Schedule 2 of IDO 122 to Schedule 5 of CCLEP 2022;
- Transfer additional permitted land uses from IDO 122 to CCLEP 2022
- Retire the bonus lot provision clause under IDO 122 (proposals to be considered under CCLEP 2022 clause 4.1E only).

Associated LEP mapping for the DM Lands has been developed and has been provided to the DPHI in a digital geodatabase. This mapping was made available on Council's Website at the commencement of the public exhibition process and remains publicly available. The zoning methodology applied to the DM Lands Planning Proposal was based on guidance from DPHI. LEP Practice Note *PN 09-002 Environment Protection Zones* provides guidance to councils on the environment protection zones in the Standard Instrument and how they should be applied in the preparation of LEPs (see Attachment 2).

The environment protection zones C2 through to C4 are applied where the protection of the environmental significance of the land is the primary consideration. The following advice is provided on each of the zones in LEP Practice Note PN 09-002 – Environmental Protection Zones as follows:

C2 Environmental Conservation

This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values. It is anticipated that many councils will generally have limited areas displaying the characteristics suitable for the application of the E2 (now C2) zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management.

C3 Environmental Management

This zone is for land where there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.

C4 Environmental Living

This zone is for land with special environmental or scenic values and accommodates low impact residential development. As with the E3 zone, any development is to be well located and designed so that it does not have an adverse effect on the environmental qualities of the land.

Zoning methodology

The methodology for reviewing the Deferred Lands was undertaken considering PN 09-002 and in three stages as follows:

1. Zone Translation
An initial 'equivalency test' which compared the current zones and zone objectives in IDO 122 and GPSO against the mandated zones and zone objectives in the standard instrument.
2. Environmental Attribute Assessment
An assessment of the environmental attributes of each site using environmental data from the digital geodatabase. A change to the zoning established under the 'equivalency test' was required for some sites at this point, including application of 'split zonings' (a lot with two or more zones) where land of higher ecological value is converted to C2 Environmental Conservation. This approach is consistent with advice provided in PN 09-002. The environmental criteria considered against each zone is provided in Attachment 2.
3. Land Fragmentation Analysis
An analysis of proposed C3 – Environmental Management and C4 – Environmental Living zones based on site constraints and hazards, existing zoning and lot size, native vegetation, and servicing arrangements with the intention of maintaining existing character and controls.

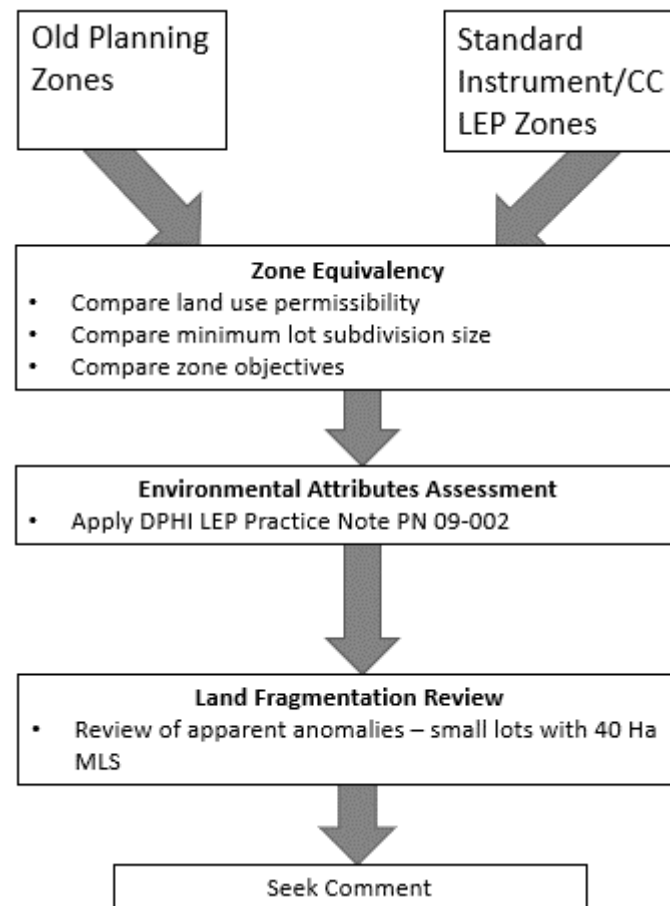


Figure 2 – Simple Methodology Flowchart

Development Control Plan (DCP)

As part of the Deferred Matters Exhibition process minor changes to certain Chapters of Central Coast DCP 2022 were proposed to ensure that the DCP Chapters would no longer reference Deferred Lands or land use zonings under IDO 122.

These DCP Chapters are:

- Chapter 3.5 Tree and Vegetation Management
- Chapter 5.14. Various Suburbs (specifically 5.14.6 Green Point/Erina Terrigal)
- Chapter 5.16 Yattalunga

Notably Chapter 3.5 Tree and Vegetation Management currently applies tree and vegetation approval requirements to the Central Coast and will now also apply these same requirements to the DM Lands. This coincides with Council assuming the role as the responsible authority for land clearing or similar activities on the DM Lands, once it is mapped under CCLEP 2022. This role is currently the responsibility of Local Land Services (LLS). Development applications, where vegetation removal is proposed, will continue to be rigorously assessed and dealt with on merit. The introduction of the updated land use zones does not alter this situation and does not permit the removal of vegetation within the DM Lands area without assessment.

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It is also proposed that some minor changes to other DCP Chapters be undertaken as an outcome of public exhibition and this is further discussed below.

Stakeholder Engagement

The DM Lands comprise 3,440 parcels of land. One week prior to public exhibition, letters were mailed out to all landowners of DM zoned land notifying of the upcoming consultation period. The Planning Proposal was publicly exhibited from 11 October 2023 to 15 November 2023. During the public exhibition period a total of 6,464 visits to the public exhibition webpage were recorded which also included 4,200 recorded visits from individual users. Staff conducted over 200 'one on one' meetings both online and in person with residents and other parties that were seeking additional information. Staff also took and responded to many phone calls or direct emails in relation to this project.

A total of 328 submissions were received during the public exhibition period, with a total of 230 objections to the proposal, and 79 in support.

All submissions have been reviewed, the issues summarised and addressed (attachment 3). Council received submissions from landowners, other interested members of the public and other groups and organisation. One such submission submitted by the Community Environment Network contains comments that have been reiterated in other submissions objecting to the proposal. As this submission was over 100 pages in length, the response to this submission is dealt with separately under attachment 4.

The following are key issues raised during the public consultation period.

1. Mapping Accuracy for Deferred Matters Lands - Individual landowners requesting a review of the zone boundaries, generally relating to the C2/C3 Zone boundary on proposed split zoned lots.

Staff Comment

As this Planning Proposal relates to 3,440 parcels of land it was impractical for all sites to be inspected to ensure that the mapping and other information used to inform the draft land use zones were completely accurate with regard to the actual circumstances of individual sites. Through the FAQ section of Council's Webpage and during meetings and phone conversations, landowners were invited to lodge submissions to have the proposed land use zoning reviewed.

A desktop assessment of these sites, and a series of independent site inspections were undertaken to confirm the accuracy of the data. Any inaccuracies were noted as generally related to the application of slope mapping, the extent of the NSW Government's Biodiversity Values Map and the identification of buildings located under dense vegetation cover.

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It is proposed that minor zone position adjustments be made to some 33 lots to reflect the outcome of the submission review and site inspection findings. It is considered that given that this will affect less than 1% of land parcels the overall process undertaken has been successful.

Attachment 1 contains the list of properties where zone boundary adjustments are proposed.

2. Council should re-evaluate all the existing C2 boundaries established under Wyong LEP 2013 and CCLEP 2022 to adjust for errors and other omissions made evident from more recent site-specific studies.

Staff Comment

The vegetation mapping used to inform the DM Lands boundaries is more up to date and accurate than the mapping which was used to establish zone boundaries under the CCLEP 2022 and Wyong LEP 2013. It is important that the most up to date vegetation mapping be used to inform the establishment of environmental zone boundaries across the Local Government Area.

Of the 3440 land parcels within the DM Lands, Council was requested through the public consultation process to review the zone boundaries of 29 parcels or 0.8% of parcels of land. Site inspections of this and other land has been undertaken following public exhibition to review issues identified by landowners and to ensure that the mapping being used is suitable and accurate.

Some submissions have mentioned, that detailed ecological assessments conducted with site specific development or rezoning proposals, sometimes show EEC's and other environmental constraints at a more refined level than conservation zone boundaries defined by broadscale strategic work such as the DM Planning Proposal. This is not unusual, and it would not be practical to apply extremely expensive and detailed ecological survey programmes over extensive areas of the DM Lands study area. In any case, anyone who seeks to conduct removal of native vegetation through the DA process is required to undertake detailed ecological assessments, no matter the zoning of the land.

Any proposal for rezoning or development must be supported by comprehensive studies and reports in accordance with the BC Act 2016, *National Parks and Wildlife Act 1974* and other Federal, State and Local Policies and Plans as required.

C2 and C3 Zone boundary locations will be reviewed as part of a future LGA Wide Environmental Zones Review Project for the Central Coast. When this is done the latest vegetation mapping information will be used. If there is other suitable and mappable

ecological data which can be used to better define zone boundaries it may also be used as part of any future Environmental Zones Review Project.

3. Land Use Permissibility in the C3 and C4 zones.

The conversion of land currently zoned 7(a) Conservation under IDO 122 to the C3 zone will introduce the permissibility of additional land uses as does the conversion of 7(c2) zoned land to the C4 Zone.

Staff Comment

Interim Development Order 122 was introduced in 1979, replacing and extending the provisions of the preceding IDO 100. LEPs in general have evolved over this time to define and include more land uses in environmental zones that did not previously exist, such as Eco-tourist facilities, Environmental facilities, Environmental protection works, flood mitigation works, research stations, water supply systems and the like. Many of these additional land uses are permissible under other relevant Environmental Planning Instruments such as *State Environmental Planning Policy (SEPP) Transport and Infrastructure* or are identified under the Standard Instrument LEP as land uses that are mandatory as permissible in these land use zones.

This Planning Proposal does not introduce new permissible land uses in the C3 and C4 Zones. The permissible land uses in the C2, C3 and C4 zones were considered in the consolidation of GLEP 2014 and WLEP 2013 following consultation with the public, government agencies and DPHI. The relevant [Planning Proposal](#) as exhibited 6 December 2018 to 28 February 2019 including a section on Land Use Provisions and included information on which existing uses from the former instruments were considered for inclusion or exclusion in each zone.

Land uses that have received some attention through the public exhibition process include uses such as Animal boarding and training establishments, Community facilities, Dual occupancies, Veterinary hospitals, Home occupation (sex services), Child care facilities and the like.

Impacts of development, including amenity, noise and odour impacts are considered as part of the merit assessment process at the time a Development Application is assessed. Development remains subject to Council's Development Control Plan and the provisions of the BC Act, there is no change to the assessment of biodiversity as a result of this Planning Proposal.

A review of the CCLEP 2022 land use table will be undertaken as part of a comprehensive review of the environmental zones for all environmental lands subject to the CCLEP.

4. Additional permitted land uses will result in extensive land clearing and biodiversity loss.

Staff Response

The zoning of land to a land use zone other than C2 does not permit the removal of vegetation. As is currently the case in the 7(a) Zone (where large dwelling houses, ancillary development and other development is currently permissible), any proposal that involves the removal of vegetation in any of these land use zones requires detailed site-specific studies to be undertaken and is subject to rigorous assessment. Environmental zones are somewhat unique amongst the categories of land use zones in so far as they are applied in accordance with the Standard Instrument LEP and PN 09-002 based on the environmental qualities of the land, yet all proposals that involve vegetation removal are still subject to detailed on site studies no matter which land use zone the land falls within.

Any new application for development consent that involves the removal of vegetation or modification to an approved development under Part 4 of the EP&A Act are subject to the biodiversity assessment requirements of the BC Act. The BC Act introduced the Biodiversity Offsets Scheme (BOS). A Biodiversity Development Assessment Report (BDAR) must be submitted with applications for development which trigger entry into the scheme. The BDAR must be prepared by an Ecologist who is an Accredited Assessor under the BC Act. Accredited Assessors are listed on a public register.

The biodiversity impacts of developments that do not trigger the BOS will continue to be assessed under s.4.15 of the EP&A Act and Council's [Flora and Fauna Guidelines](#). The proponent for a development needs to determine whether the BOS applies to their proposal. Evidence that the BOS threshold is not triggered needs to be submitted with these development applications.

In April 2024 the Minister for Environment released the *Biodiversity Assessment Method 5-Year Review Report*. The report identifies groups of recommendations that will be implemented by the State Government. The BC Act and BAM process will continue to be updated and thoroughly reviewed for currency and effectiveness in the future.

5. Concerns regarding the limited use of the C2 Zone and it not being applied to all areas of native vegetation, the location of identified threatened species and aboriginal archaeological sites and other environmentally sensitive land.

Staff Response

LEP Practice Note 09-002 lists the type of land where the C2 zone can be applied, being land of 'high ecological, scientific, cultural or aesthetic value'. Where relevant reliable mapping is available suitable for consideration in the drafting of land use zones this mapping has been applied.

The location of threatened species relies on 'point data sources' (e.g. fauna sightings) and therefore does not lend itself to being applied to land use zoning. There is not adequate or systematically collected mapped areas of threatened species habitat available at this time to map areas for this purpose based on these criteria. Similarly, sites of Aboriginal cultural heritage value are point data sources and locations are often distorted or not made public. The current and proven practice is to assess this information at the Development Application stage in order to ensure that environmental legislative requirements are met.

Threatened Species Habitat and Aboriginal archaeological sites are located in the 7(a) zone of the DM Lands but can be located in any zone across the LGA. A change or update in land use zoning does not change the assessment process for the assessment of development proposals or other activities under the EP&A Act, BC Act and other relevant, Federal, State and Local Plans and Policies.

Environmental zones are somewhat unique amongst the categories of land use zones in so far as they are applied in accordance with the PN 09-002 based on the environmental qualities of the land, yet all significant proposals that involve land clearing are still subject to detailed on site studies no matter which land use zone the land falls within, as it is not possible to have this type of information for an entire LGA and to ensure it is current.

It should be noted that the main reason the DM Lands were further deferred from CCLEP 2022 was due to the unusual land use outcomes which were produced from the GIS scoring methodology under the *Environmental and Urban Edge Zone Review* 2016, which used point source and grid-like habitat mapping information. This methodology attempted to apply all criteria DPHI listed under PN-09-002 for application in applying the C2 Zone. From the outcomes of this process it was clear that the accuracy of the information used is a critical consideration.

6. Concern regarding potential additional residential development and subdivision.

Staff Comment

The Planning Proposal generally does not change minimum lot sizes and does not propose to rezone land for residential purposes.

7. Concern regarding potential impact on infrastructure due to the introduction of additional residential land uses such as secondary dwellings.

Staff Comment

The expansion of locations where secondary dwellings and detached dual occupancies are permissible with consent is not anticipated to warrant additional road and other infrastructure.

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Any impacts to existing services and infrastructure will be considered through the development application process along with other potential issues such as on-site sewer management, flooding and bushfire. Secondary dwellings in conservation or rural zones require Council consent, that is, they cannot be approved through the Complying Development process.

Though the land use is permissible, approval may not be possible due to the need for consideration of the issues mentioned above and all the relevant considerations as per s.4.15 of the EP&A Act.

With regard to secondary dwellings a large proportion of enquiries related to aging in place or provision of accommodation for extended family and supported the inclusion of these provisions. As is the case for all permissible land uses in these zones, they require development consent and consideration of potential constraints such as on-site sewer management, any vegetation removal or other issues.

8. The mapping does not account for creek lines and other environmental features in the proposed C4 zone.

Staff Comment

As per page 18 of the exhibited Planning Proposal:

- the C4 is to be applied to land currently zoned 7(c2) except in the exceptional circumstances where land is identified as having high environmental value or the land is subject to environmental hazards.
- parcels that initially met the C3 Zone criteria with a lots size less than 2 hectares are generally recommended a zone of C4 Environmental Living.

It is impractical to alter the land use zone for very small areas of environmentally sensitive land on relatively small land parcels which are generally between 1-2 ha in size. Ecological impacts of development are considered at the development assessment phase for individual sites and are subject to the provisions of the BC Act 2016. There is no change to the assessment of biodiversity issues as a result of this Planning Proposal.

9. The proposal is not a like for like conversion of land use zones.

Staff Comment

Any reference to the words "like for like" in the information Council provided in support of this Planning Proposal relate to moving from one set of historic conservation/environmental zones to the most appropriate equivalent Standard Instrument Zone available. It is acknowledged that the permissible uses within available zones in the standard instrument do not exactly align with the uses provided for existing DM lands. No conversion to residential,

commercial or other categories are being considered in this process. It is not possible to make no change to current zones and meet the Standard Instrument LEP criteria.

10. Request for residential zone or 'upzone'.

Staff Comment

The intention of this Planning Proposal is to phase out the provisions under IDO 122 and GPSO and replace these with the modern Standard Instrument zoning provisions that currently apply under the CCLEP 2022. This Planning Proposal is unable to consider a change in zoning that is outside this objective; such proposals would need to be pursued separately through the LEP process and would most likely be done through landowner-initiated Planning Proposals.

11. Determination under Administration.

Defer the Planning Proposal until an elected Council is in place.

Staff Comment:

Council must continue to resolve planning matters in the absence of an elected Council and proceed with resolutions of Council to meet its obligations under the Local Government Act 1993.

Council Resolved 27 April 2021 as follows:

- *That Council prepare a Planning Proposal for the integration of Deferred Matters land under Central Coast Local Environmental Plan into Central Coast Local Environmental Plan*
- *That Council submit the Planning Proposal to the Minister for Planning and Public Places, in accordance with Section 3.35(2) of the Environmental Planning and Assessment Act 1979, requesting a Gateway Determination, pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979.*

The Gateway Determination issued by the Minister for Planning requires the Planning Proposal process to be completed by 2 September 2024. Tasks that must be undertaken following Council endorsement includes, Council's submission and DPHI's acceptance of the Planning Proposal for Finalisation, Ministerial Consideration and Approval, completion and approval of new digital LEP mapping and legal review of the changes to the Planning Instrument (CCLEP2022). This process has been allocated 3 months to complete. Council is obliged to follow this condition of the Gateway Determination.

12. Zone methodology – promote direct conversion of 7(a) to C2 and 7(c2) to C3 as was used under Gosford LEP 2014.

Staff Comment:

The way the zoning for the E2, E3 and E4 zones (now known as C2, C3, C4) were applied under Draft GLEP 2009 and what was eventually Gazetted as GLEP 2014 did not change and pre-dated the introduction of DPHI Practice Note PN 09-002 as a consideration. There was no review undertaken by Council or DPHI against PN 09-002 in the interim.

This approach, while appropriate at the time without any further guidance, does not investigate the current environmental characteristics of the land. Within the DM lands study area there is only 1 lot entirely zoned 7(a) which is above the 40 Ha minimum lot size. The remaining 1037 lots within the Deferred Matters area that are currently zoned 7(a) (i.e. not split zoned) are all below the 40 Ha minimum lot size. A breakdown is provided below:

- 258 lots have an area of less than 550 m² or
- 599 have an area of less than 2Ha or
- 838 are less than 3Ha or
- 901 are less than 4 Ha

The creation of these undersized lots is a product of:

- historical subdivisions made prior to the introduction of planning provisions which created the 40 Ha minimum lot size provision.
- provisions available under IDO 122 and its predecessor IDO 100 which allowed 7(a) zoned land to be subdivided into small lots. These provisions were abandoned in 1980.
- enabling clauses inserted into IDO 122 which permitted smaller lot sizes via site-specific LEP amendments.

All these circumstances have markedly diluted the intent of the 40 Ha minimum lot size for 7(a) zoned land to a point where now the characteristics of land within this zone vary significantly. As such it is considered appropriate for any Planning Proposal to investigate the characteristics of the land which also needs to consider land fragmentation contained within the 7(a) Zone and would recommend changes to the current provisions in place under IDO 122 (1979).

The zone recommendations in this Planning Proposal have been established using environmental mapping that reflects the environmental attributes on the site in accordance with LEP Practice Note 09-002. Generally, areas mapped as C2 Environmental Conservation are identified as having Endangered Ecological Communities and/or other ecologically significant attributes; dwelling houses are prohibited in the C2 zone in areas outside of the deferred lands.

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For many years the former Gosford Council pursued the introduction of an additional E5 zone to better protect COSS lands. DPHI denied this request and has supported the appropriate application of the C2 zone to protect these lands.

13. Unsuitable buffer to National Parks, COSS land and land containing Endangered Ecological Communities and C3 Environmental Management zone should not be used as a buffer to National Parks, COSS land and land containing EEC.

Staff Comment:

The Department of Planning Practice Note PN 09-002 describes the C3 Environmental Management zone as a suitable transition zone between C1 (National Park) or C2 (includes COSS) Zones and other land. As is the case for the 7(a) Zone (where development is currently permissible), any development of C3 zoned land is subject to the provisions of the BC Act 2016 and the EP&A Act 1979, and other relevant Acts, Plans and Policies, with consideration given to scenic and amenity impacts and environmental impacts.

Where a development proposal adjoins such land considerations such as Council's Flora and Fauna Guidelines and the BC Act will apply and require buffers and other protections for any development permitted in the vicinity of sensitive lands.

14. Flooding

Concern over introducing additional land uses to flood affected areas.

Staff Comment:

Development on flood affected land is subject to the flood controls in Council's Development Control Plan, CCLEP 2022 Cl. 5.21 Flood Planning, Cl. 5.22 Special Flood Considerations and Guidance under the NSW Flood Risk Management Manual Changes to considerations in relation to flooding and development proposals have been introduced following the *NSW Flood Inquiry 2022*. This includes Cl 5.22 which restricts development in high risk areas and requires rigorous consideration of issues such as evacuation and safety before consent for any proposal can be issued.

15. Removal of Permitted Land Uses – Place of public worship is currently permissible in the 7(c2) zone under IDO 122 but not under the C4 Zone.

Staff Comment

The land use Place of Public Worship is currently prohibited in the C4 Zone under Central Coast LEP 2022 and was previously prohibited development in the C4 Zone under Wyong LEP 2013 and Gosford LEP 2014. Any lawful place of public worship within these zones currently operates under existing use rights dating back to when zones such as 7(c2) applied to this

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land and the land use was permissible. This Planning Proposal seeks to align the DM Lands with the LEP that applies to the rest of the Central Coast.

Amongst other constraints, C4 zoned land on the Central Coast is generally not serviced by sewer, is not located on major public transport routes and are located on road networks not designed to accommodate significant traffic. At the time IDO 122 came into effect the nature and scale of places of worship were not at the scale they are now, as they have since evolved. It is considered appropriate that this land use remain prohibited in the C4 zone and existing places of public worship continue to operate under existing use rights or that a Planning (rezoning) Proposal be pursued where it is considered a rezoning to an appropriate zone for this land use can be justified and supported. Similar circumstances apply to Seniors Housing and some isolated historic agricultural uses (as listed under the Planning Proposal) previously permissible in the 7(c2) Zone but not listed as a permissible land use in the C4 Zone under CCLEP 2022.

16. Support for Planning Proposal

Staff Comment

A significant number of submissions were received in support for the Planning Proposal. In addition, it is noted that many individuals have viewed the supporting information provided on Councils Website and have not commented on/objected to the proposal. While many of the submissions in support do not provide additional comment it is noted that general themes were support for completion of this process after many years and support for the permissibility of secondary dwellings through the adoption of the current provisions under CCLEP 2022 for the C3 and C4 zones.

With regard to secondary dwellings, a large proportion of enquiries related to aging in place or provision of accommodation for extended family. As is the case for all permissible land uses in these zones they require development consent on site sewer management, any vegetation removal or other constraints.

17. Location of Dual Occupancy Development - Placing a nominal distance from primary dwelling of 50 metres for a dual occupancy does not allow for the most appropriate placement with regards to individual blocks e.g. use of cleared sites, location from neighbours, impact on water ways, native fauna as well as not being keeping with local aesthetics.

Staff Comment

With the introduction of the C3 and C4 zones under CCLEP 2022 into the Deferred Matters area, secondary dwelling and detached dual occupancy would now be permissible with consent. This has generally been supported through submissions and agency consultation given it will introduce the possibility of additional housing choice opportunities, affordable

rental accommodation, the ability for those looking to downsize to age in place and the regularisation of existing land uses.

Submissions have identified some issues with Councils existing controls relating to these land uses within rural and conservation zones most notably a 50 m requirement for co-location of dual occupancy development. It is understood that this control is consistently varied to ensure the most appropriate environmental outcome i.e. – already cleared land or land that is not sloped and requires significant earthworks etc. The DCP will retain a control that requires that 'each building is to be accessed from a common driveway. Additional separate access crossings will not be supported for dual occupancy development'.

Attachment 1 contains the list of proposed post exhibition DCP changes.

18. Access for Secondary Dwellings - For secondary dwellings in residential areas, there is a requirement for a common access location, for the principal dwelling and secondary dwelling to restrict additional exclusive access from laneways or similar. This is consistent with the requirements for dual occupancy. No such control is currently identified for secondary dwellings proposed on rural and conservation lands.

Staff Comment

It is agreed for consistency and to curtail potential environmental impacts this control should be introduced for secondary dwellings for secondary dwellings in rural or environmental zones.

Attachment 1 contains the list of proposed post exhibition DCP changes.

19. Landowners concerned existing lot has an area of less than the minimum lot size proposed. Concerned about how this can occur and what are the impacts.

Staff Comment

The term 'minimum lot size' can often be misinterpreted by the general public. Another way of referring to this control is 'minimum subdivision lot size'. For example, if land has a minimum lot size of 2Ha (such as the C4 or 7(c2) zones) then a lot would need to be at least 4Ha or more in size to allow for land subdivision to be considered.

Many land parcels within the Deferred Matters area have a lot size below the current minimum lot size. This is due to various historical controls that have been in place at different times over many years that have allowed subdivision to occur.

There is generally no change in minimum lot sizes (for subdivision) proposed as part of this Planning Proposal. In the vast majority of instances, the 40 Ha minimum lot size of the 7(a)

2.5 Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

zone is transferred to the C2 and C3 Zones and the 2Ha minimum lot size of the 7(c2) zone is transferred to the C4 Zone.

There is no impact for landowners whose land does not meet the current or proposed minimum lot size and they will be able to continue to use their land as they currently do.

20. The expansion of COSS is undermined by the Planning Proposal through inflating the value of proposed COSS and not providing a mechanism for the funding to purchase more COSS lands.

Staff Comment

Privately owned land that has been previously identified as proposed COSS is generally proposed to be zoned C2 or C3 depending on the environmental qualities of the land. Proposed COSS land is not identified for future acquisition under Council's LEP and must be treated the same as other privately owned land. The land use zoning applied is based on the land's environmental value and Council cannot zone land based on prospective purchase.

IDO 122 contains provisions that allow for a financial contribution to Council to permit variations to the minimum lot size of certain land. This provision cannot be carried over into an LEP. Funds that have previously been collected for the purchase of COSS Lands in the former Gosford LGA and also through previous similar provisions that were in place in the former Wyong LGA, are to be used for these purposes only. Moving forward, the Central Coast Conservation Fund will use contemporary mechanisms such as Biodiversity Stewardship Agreements to allow Council to add to its property portfolio where it is considered appropriate.

21. Council should preserve the "bonus" subdivision opportunities contained in IDO 122 to allow landowners to subdivide and to allow for the expansion of COSS land through the continuation of permitting funds to be collected through this process.

Staff Comment

IDO 122 contains 'bonus lot' provisions that allows a variation in minimum lot size of 7(c2) zoned land from 2 Ha to 1 Ha subject to the dedication or conservation of a set amount of 7(a) zoned land that is contained on the existing parcel or a cash contribution to allow Council to purchase and maintain similar land. While the possibility of dedication of land within the existing parcel can and is being retained through Cl. 4.1E of CCLEP 2022, a cash contribution in lieu of land dedication on-site cannot be carried over into contemporary Planning Instruments such as CCLEP 2022.

22. Retention of Enabling Clauses/Additional Permitted Uses

Several submissions were received from landowners whose properties were subject to enabling clauses under IDO 122 that allow additional permitted land uses and were seeking to ensure that these provisions remain in place.

Staff Comment

The term 'enabling clause', used under historic planning instruments, was generally replaced with the term 'additional permitted use' under LEPs. An additional permitted use is a provision that allows development to occur (or in this case continue) where it would normally be prohibited in the relevant land use zone.

A review of submissions and IDO 122 has been undertaken to identify any additional permissible uses still relevant. It is proposed that these land uses, where not permissible under the revised land use zones be added to the list of additional permitted uses under CCLEP 2022. These generally relate to commercial operations that are already operating or have received approval to operate.

Attachment 1 contains the list of proposed additional permitted uses/local controls.

23. The C2 Environmental Conservation Zone should be applied to land that is subject to a Conservation Agreement with Biodiversity Conservation Trust.

Staff Comment

Agreed. This was not a consideration in the Methodology applied and therefore land subject to a Conservation Agreement may be split zoned C3/C2 depending on its particular environmental qualities. While a Conservation Agreement is a superior instrument to ensure land is not developed it is appropriate that this be reinforced with a C2 Zoning.

Attachment 1 contains identifies land subject to a Conservation Agreement that are proposed to be zoned C2.

24. Proposed Zoning of 30 Blythe St Killcare – neighbours requesting site to be zoned C2.

Staff Comment

Adjoining landowners have requested that the eastern area of this site be zoned C2 due to environmental impact concerns and potential for view loss if a dwelling is constructed near a common property boundary. There is a dwelling house located to the west of the site and is accessed from the west. The site was inspected to review the accuracy of the zone boundaries. The area of the site in question, that adjoins the neighbours to the east does not meet the criteria for the C2 Zone. It is noted that dwelling houses are permissible under the

2.5 Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

current land use zone. It is noted that Council's DCP does not permit multiple access locations for dual occupancy or secondary dwellings.

Agency Comments

Council has addressed the matters raised in the Gateway Determination and sought agency feedback during public exhibition. The following agency comments were made during public exhibition:

Agency	Exhibition	Council Response
Department of Primary Industries – Agriculture (DPI-Ag)	<ol style="list-style-type: none"> 1. Much of the deferred land is subject to historical environmental zones and a translation to a new conservation zone will be appropriate in most instances. 2. Extensive agriculture and horticulture are not permissible in the C4 zone and these uses will rely on existing use rights. NSW DPI Agriculture strongly recommends that Council contact those landowners whose agricultural, horticultural or plant nursery land use is to become prohibited and determine if they intend to continue or expand their operations. If the landowners indicate an intention to continue and/or expand their operations, then it is requested that Council consider supporting the continuation of these land uses by listing them as additional permitted uses in Schedule 1 of the Central Coast LEP 2022. 	<ol style="list-style-type: none"> 1. There are very few sites in the deferred lands area where agricultural uses are still being conducted. 2. In providing for an additional permitted use, Council would need to be satisfied that the use does not contravene current planning legislation, and this would require a number of studies to be undertaken for each site. This falls outside the scope of the conversion PP, and it is preferable that land-owners seek an additional permitted use for their land through an owner-initiated planning proposal where they consider existing use rights are not sufficient.
Transport for NSW (TfNSW)	TfNSW advice has not changed from previous correspondence which indicated that given the proposed rezonings are to a conservation zoning, it is unlikely to generate a significant additional traffic impact on our network	Noted.
Mining Exploring and Geoscience	MEG has reviewed the Gateway Determination Report and has no resource sterilisation concerns regarding the planning proposal and	Noted.

2.5

Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

(MEG-GSNSW)	section 9.1(2) of the Environmental Planning and Assessment Act 1979, Direction 8.1 Mining, Petroleum Production and Extractive Industries.	
Environmental Protection Authority (EPA)	Based on number of land parcels, their coverage and permissible use, the proposed integration has the potential to locate residential receivers within proximity to existing industrial facilities that hold an environment protection licence. Thus, we recommend when approving future development applications, Central Coast Council consider the potential for land use conflict. A search of environment protection licences located within a specific suburb can be completed using the NSW EPA POEO public register.	Noted.
Rural Fire Services (RFS)	The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.	Noted.
Crown Lands	Provided a response during pre-exhibition consultation and indicated no objection.	No comment
Local Land Services (LLS)	No comment provided during pre-exhibition consultation or exhibition consultation	No comment
Federal Department of Environment & Energy	No comment provided during pre-exhibition consultation or exhibition consultation.	No comment
Darkinjung LALC	No comment provided during pre-exhibition consultation or exhibition consultation.	No comment
Biodiversity Conservation and Science (BCS)	BCS (formerly BCD) were extensively consulted through the preparation and exhibition of the DM Lands Planning Proposal. In a letter to Council of 24 April 2024 BCS identified some concerns, many of which are addressed in Council's response to the submission from the CEN or in the submission responses above.	

	<p>In summary these issues included:</p> <ul style="list-style-type: none"> Existing land uses in the C2, C3 & C4 Zones under CCLEP 2022 Limited area of C2 zoning – not using additional mapping or criteria. Irregular shaping of split zones boundaries Zoning of proposed COSS Convert 7(a) directly to C2 Existing C2 Mapping misalignments Zoning of land adjacent to National Parks Zoning of land at Somersby (outside of DM) C4 zoning over 7(c2) land that is subject to potential flooding <p>Additional issues not dealt with elsewhere are:</p> <p>1. The PP is inconsistent with Ministerial Direction 3.1 issued under Section 9.1(2) of the <i>Environmental Planning and Assessment Act 1979</i> as it reduces the environmental protection of the land.</p> <p>2. This PP includes lots within the area covered by the proposed Central Coast Strategic Conservation Plan.</p>	<p>1. There are inherent conflicts between this Direction 3.1 and PN-09-002, the Practice Note which Council must apply with moving old land use zones to Standard Instrument Zones.</p> <p>As per PN-09-002 'it is anticipated that many councils will generally have limited areas displaying the characteristics suitable for the application of the E2(C2) zone'. The outcome of the Deferred Matters Planning Proposal study reflects the required application of the Practice Note.</p> <p>Direction 3.1 deals with 'land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP' but does not deal with the conversion of planning instruments that pre-date the introductions of LEPs under the EP&A Act in 1979 and where circumstances have changed markedly in the interim.</p> <p>2.If reliably mapped land is identified as having characteristics of the C2 zone consistent with PN-09-002 Council has no</p>
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	Any reduction in conservation outcomes, including additional permissibilities, will be difficult to reverse in the future when conservation priorities for the Plan have been established.	option but to recommend the land be zoned C2 in the future LGA wide review.
3.	Deferred lands should be assessed for HEV as described in the Regional Plan 2041 in order to be compliant with current planning policy.	<p>3.CCRP states than 'Local Strategic Planning and Planning Proposals should ground truth data layers using the listed high environmental values (HEV) criteria'.</p> <p>Such an undertaking is impractical for the DM Lands Planning Proposal.</p> <p>Where reliable mapping is available that meets the HEV criteria, listed under the CCRP, it would also meet the C2 Zone criteria.</p>
4.	Alternatively (to zoning all 7(a) land C2) an ecological site assessment should be provided. BCS normally request a Stage 1 BAM assessment be provided where biodiversity has the potential to be affected.	4.It is impractical for a Stage 1 BAM Assessment to be undertaken for over 4000 parcels of land.
5.	New zones do not follow the vegetation boundaries. In this case BCS request that all the vegetation is zoned C2(using straight lines) and it to be up to the landowner to justify why this should not be the case.	5.The proposed C2 zone boundary is established in accordance with the Methodology described within the Planning Proposal. It is unclear how vegetation (not always in a straight line) can be zoned using straight lines and if estimated, how this could be practically applied. It is also impractical to zone land C2 and prohibit development on land that has not been accurately mapped given that if development is proposed appropriate studies would need to be provided at the proponent's cost.
6.	Contrary to p.56 of the PP all land adjacent to National Parks should be considered 'sensitive land.	6.The commentary on pg. 56 of the Planning Proposal regarding 'sensitive land uses' in the

		<p>context of the assessment undertaken in response to Ministerial Direction 8.1 Mining, Petroleum Production and Extractive Industries relates to potential impacts of residential or similar land uses by extractive industries</p>
	<p>7. Flooding- The C4 zone has been applied to lots that are constrained by flooding. it is considered that C2 or C3 zoning is more appropriate for the flood planning area, noting the objective of the C3 zone is "to provide a buffer to ... land that has environmental constraints or hazards".</p>	<p>7. The C4 Zone is closely matched to the 7(c2) Zone. There are similar residential land uses permissible in the C3 and C4 Zone under CCLEP 2022, though these two zones have significantly different minimum lot size for subdivision, being 40Ha and 2Ha respectively. That being said, there is little opportunity for subdivision of C4 land and there will be an actual reduction in subdivision potential from the current 7(c2) provisions(from 96 lots to 6 lots) under CCLEP 2022, so the potential for intensification by land subdivision is reduced. Split zoning has been avoided in general on smaller lots such as those zoned 7(c2) where development proposals can be more practically considered against other controls.</p> <p>As per the response to public submissions regarding this issue, development on flood affected land is subject to the flood controls in Council's Development Control Plan, CCLEP 2022 Cl. 5.21 Flood Planning, Cl. 5.22 Special Flood Considerations and Guidance under the <i>NSW Flood Risk Management Manual</i> Changes to considerations in relation to flooding and development proposals have been introduced following the <i>NSW Flood Inquiry 2022</i>. This includes Cl. 5.22 which restricts development in high risk areas and requires rigorous consideration of issues such as evacuation and safety before consent for any proposal can be issued.</p>

Outcomes of consultation – Proposed Post-Exhibition Changes

2.5 Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

In accordance with s.3.35 of the EP&A Act Council may 'vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason' but must forward the revised Planning Proposal to the Minister for consideration.

Proposed post exhibition changes as a result of the review of submissions are identified within the submission review staff comments are summarised below:

- Adjustment to zone boundaries for identified sites.
- Conservation Agreement sites to be zoned C2.
- Carrying over of Additional Permitted Uses from IDO 122
- A recently approved State Heritage item located within the DM Lands to be identified under CCLEP 2022 maps and instrument.
- Minor DCP Changes – secondary dwellings and dual occupancies

These proposed post-exhibition changes are shown in Attachment 1 as identified under the draft Council Resolutions. Should Council choose to support this Planning Proposal a revised Planning Proposal reflecting these post-exhibition changes will be forwarded to the Minister of Planning and Public Spaces or Delegate for consideration. It is considered that these proposed post exhibition amendments do not result in a significant change to the proposal or result in any increased impacts, The scope of changes post exhibition changes proposed have been discussed with DPHI.

Financial Considerations

At its meeting held 19 October 2020, Council resolved the following:

1108/20 That any motions put before Council for the remainder of this term of Council that have financial implications require the Chief Executive Officer to provide a report on how those additional costs will be met.

The following statement is provided in response to this resolution of Council.

The process is proposed to be undertaken using Council resources and will lead to consistency and certainty of planning controls for the Central Coast as well as organisational efficiencies.

Link to Community Strategic Plan

Theme 3: Green

Goal E: Environmental resources for the future

2.5 Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

G-F1: Protect our rich environmental heritage by conserving beaches, waterways, bushland, wildlife corridors and inland areas, and the diversity of local native species.

Risk Management

The adoption of the DM Lands LEP will provide for a reduction in inconsistencies in environmental zones and reduce ambiguity in the application of planning controls. Council will also have met its obligations under the Standard Instrument (Local Environmental Plans) Order 2006, and the Operational Plan.

Options





- 1 Proceed as per the Environment and Planning Recommendation. The resolution of the DM lands is critical to completing a harmonised zoning framework for the environmental lands across the Central Coast LGA. **(This is the recommended option).**
- 2 Do not endorse the Recommendations and undertake Phase 3 - Standardisation of zoning for Environmental Lands subject to the CCLEP through Central Coast (This is not the recommended option).

Critical Dates or Timeframes

The Gateway Determination requires that the LEP be completed on or by 2 September 2024. Tasks that must be undertaken following Council endorsement include, Council's submission and DPHI's acceptance of the Planning Proposal for Finalisation, Ministerial Consideration and Approval, completion and approval of new digital LEP mapping and legal review of the changes to the Planning Instrument (CCLEP2022). This process has been allocated 3 months to complete. Council is obliged to follow this condition of the Gateway Determination.

Attachments

2.5 Outcomes of Public Exhibition for the Deferred Matters Lands Planning Proposal (cont'd)

1	Attachment 1 - DM Lands Planning Proposal -  Proposed Post Exhibition Changes	Provided Under Separate Cover	D16205867
2	Attachment 2 - DM Lands Planning Proposal - DPHI  Practice-Note-PN-09-002-Environment-Protection-Zones	Provided Under Separate Cover	D16173086
3	Attachment 3 - DM Lands Submission Summary  Table and Responses	Provided Under Separate Cover	D16196394
4	Attachment 4 - DM Lands Planning Proposal - CEN  Submission Review	Provided Under Separate Cover	D16173069