

PLANNING & NATURAL SYSTEMS

ATTACHMENT B

**PLANNING PROPOSAL TO AMEND
GLOUCESTER LEP 2010 – GROUPED
AMENDMENT NO. 4**

ORDINARY MEETING

8 FEBRUARY 2017

MidCoast Council

Planning Proposal to amend the Gloucester LEP 2010

Draft General Amendment No. 4

Version	Purpose of Document	Author	Checked	Date
1	For Gateway Determination	AK	CM	12 August 2016
2	For Public Exhibition	AK	SC	14 November 2016
3	For Parliamentary Counsel	AK	RB	22 December 2016

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INTRODUCTION

This Planning Proposal has been prepared by the Gloucester Office of MidCoast Council in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant NSW Department of Planning and Environment Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

The Planning Proposal seeks a grouped amendment to the Gloucester Local Environmental Plan 2010 as follows:

- Part 1

Seeking to permit Eco-Tourist Facilities in the RU1 Primary Production Zone with consent and to include Standard Instrument LEP Clause 5.13 – Eco-tourist Facilities, as found in the Standard Instrument (Local Environmental Plans) Order 2006.

- Part 2

The insertion of a new Clause 6.6 which aims to clarify that development for the purposes of certain residential and tourist accommodation uses in Rural and Environmental Protection Zones is only permitted on lots where the erection of a dwelling house may be granted, pursuant to clause 4.2A of the LEP.

- Part 3

The insertion of a new Clause 4.1A which allows boundary adjustments between adjoining lots in certain Rural and Environmental Protection Zones, where one or more resultant lots are below the minimum lot size shown on the lot size map.

This Planning Proposal outlines the intended effect of, and justification for the proposed amendments to the existing planning controls provided in the *Gloucester Local Environmental Plan 2010*.

The proclamation of 12 May 2016 ratified the merger of the Local Government Areas (LGA's) of Gloucester Shire, Greater Taree and Great Lakes Council into Midcoast Council. This Planning Proposal is considered to have Strategic Merit for the Gloucester area and is consistent with the LEP provisions in both the *Greater Taree Local Environmental Plan 2014* and the *Great Lakes Local Environmental Plan 2010*.

PART 1

ECO-TOURIST FACILITIES IN THE RU1 PRIMARY PRODUCTION ZONE
AND STANDARD INSTRUMENT CLAUSE 5.13

1. Objectives and Intended Outcomes

(s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument)

The objectives or intended outcomes of this Planning Proposal are to:

- (i) correct an anomaly in the *Gloucester Local Environmental Plan 2010* by making eco-tourist facilities permissible in the RU1 Primary Production Zone, with consent; and
- (ii) ensure that eco-tourist facilities are sensitively designed to maintain the environmental and cultural values of the land, on which they are situated.

The proposed LEP amendments have all been subject to a Report to Council's Ordinary Meetings of 20 April 2016. A copy of the agenda report, which discusses the background and need for the proposed amendment, is attached as Appendix A.1. A copy of the Minutes of the meeting, including Council's resolution to prepare the Planning Proposal and seek a Gateway Determination under section 56 of the EP&A Act, is attached as Appendix B.1.

2. Explanation of Provisions

(s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument)

The *Gloucester Local Environmental Plan 2010* Dictionary contains the following definition of an eco-tourist facility:

“Eco-tourist facility means a building or place that:

- (a) provides temporary or short-term accommodation on a commercial basis, and;*
- (b) Is located in or adjacent to an area with special ecological or cultural features, and*
- (c) Is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.*

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Note. *See Clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.*

*Eco-tourist facilities are not a type of **tourist and visitor accommodation** – see the definition of that term in this Dictionary.”*

The current land use table in the *Gloucester Local Environmental Plan 2010* prohibits eco-tourist facilities in the RU1 Primary Production zone. Eco-tourist facilities are currently only permissible, with consent, in the RU5 Village and E3 Environmental Management zones.

This Planning Proposal seeks to amend the land use table by including eco-tourist facilities as development that is permissible with consent in the RU1 Primary Production zone, as follows:

“3. Permitted with consent

*Agricultural produce industries; Agriculture; Airports; Airstrips; Animal boarding or training establishments; Backpackers’ accommodation; Bed and breakfast accommodation; Boat launching ramps; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Dual occupancies; Dwelling houses; **Eco-tourist facilities**; Educational establishments; Emergency services facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Function centres; Home businesses; Home industries; Intensive livestock agriculture; Intensive plant agriculture; Kiosks; Open cut mining; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roadside stalls; Rural industries; Veterinary hospitals; Waste or resource transfer stations”*

Further to the above, the *Standard Instrument (Local Environmental Plans) Amendment Order 2011* requires that Council's insert Standard Instrument LEP Clause 5.13 – Eco-tourist facilities, where this type of development is permitted throughout the land use table. This clause is currently not included in the *Gloucester LEP 2010*, despite eco-tourist facilities already being permitted with consent in some zones. It is therefore proposed, as part of this Planning Proposal, to insert the following clause in **Part 5 Miscellaneous Provisions** of the LEP:

“5.13 Eco-tourist facilities

- (1) *The objectives of this clause are as follows:*
 - (a) *to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,*
 - (b) *to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.*
- (2) *This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.*
- (3) *The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:*
 - (a) *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*
 - (b) *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*
 - (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*
 - (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*
 - (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*
 - (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*
 - (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*

- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*
- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*
- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*
- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage,*
 - (ii) *the maintenance (or regeneration where necessary) of habitats,*
 - (iii) *efficient and minimal energy and water use and waste output,*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.”*

3. Justification

(s.55(2)(c) Justification for the objectives or intended outcomes and the process for their implementation)

Section A – Need for the Planning Proposal

3.A.1 Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not considered to be linked directly to any study or report.

Located within the foothills of Barrington Tops National Park and containing many areas of scenic quality with natural rivers and streams, the Gloucester area is a popular destination for tourists seeking a variety of accommodation types and styles.

The majority of the former Gloucester Local Government Area (LGA) is included in the RU1 Primary Production Zone. More significantly, the majority of land buffering the National Park or State forest areas is included in the RU1 Primary Production zone and this is where the majority of scenic locations are located, with easy access to rivers and streams and adjacent to ecologically significant areas.

“Tourist cabin” style developments were previously permitted with consent under the provisions of the *Gloucester Local Environmental Plan 2000* and as such, many such developments already exist within the RU1 Zone.

The current restriction on eco-tourist facilities in the RU1 Primary Production zone therefore acts as a barrier to the sustainable expansion and development of the tourism industry within the Gloucester LEP area.

Further, many surrounding LEP areas already permit eco-tourist facilities, with consent, in their rural zones.

3.A.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Recent enquiries in relation to existing development consents for “tourist cabins” in the Gloucester LEP area has highlighted an anomaly in the *Gloucester Local Environmental Plan 2010*, being that eco-tourist facilities are currently prohibited in the RU1 zone. Only Backpackers accommodation, Bed and breakfast accommodation and Farm stay accommodation are permitted with consent in this zone. Correcting this anomaly is therefore a priority for Council.

One of the objectives of the RU1 Primary Production zone is as follows:

“To encourage eco-tourism enterprises that minimise any adverse effect on primary industry production and the scenic amenity of the area.”

Quite clearly, it is not the intention of LEP 2010 to prohibit eco-tourist facilities within the RU1 zone. The objectives of the zone are to encourage eco-tourism development but the land use table prohibits such development from occurring.

Allowing eco-tourist facilities to be permitted with consent in the RU1 zone thus represents the best way of achieving the objectives of the Planning Proposal.

Section B – Relationship to Strategic Planning Framework

3.B.1 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 2012 Upper Hunter Strategic Land Use Plan (UHSLUP) and the Upper Hunter Economic Diversification Report recognises that it is critical for region to build upon the strengths of existing industries such as tourism to diversify the regional economy to make it more resilient to change in the longer term.

The Strategy also recognises the narrow economic base and slower population growth of the Gloucester LEP area and aims to attract new industries and employment, to retain the existing population and to generate sufficient population to attract economic investment will be vital to these areas.

This Planning Proposal is consistent with the objectives of the UHSLUP, aiming to assist economic diversification and employment through the development of new and existing tourist and visitor accommodation, thus encouraging economic investment through increased tourist visitation. Gloucester will benefit both directly and indirectly from such developments.

3.B.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Gloucester Shire Council's *Community Strategic Plan 2014-2024* (CSP) is still the key strategic planning document for the Gloucester LEP Area for the next decade. It builds on the Gloucester *Community Strategic Plan 2012/22*, which was developed with wide and active community involvement. This review document revisits the aspirations and targets identified in the inaugural Plan and the new financial, social, environmental and economic challenges facing the community.

The CSP identifies five (5) key Directions and Objectives as follows:

- Direction 1: Maintaining core infrastructure;
- Direction 2: Protecting the environment;
- Direction 3: Creating a strong economy;
- Direction 4: An engaged and supportive community;
- Direction 5: Governance and partnerships.

This Planning Proposal is consistent with these Directions. All eco-tourist facilities will require a Development Application to be lodged for Council's consideration and any such Development Application will require a Section 79C Evaluation under the provisions of the *Environmental Planning and Assessment Act 1979* which will adequately assess infrastructure and environment issues. The inclusion of Standard Instrument LEP Clause 5.13 - *Eco-tourist Facilities* will ensure that any new developments will be required to meet acceptable environmental standards. The current *Gloucester Development Control Plan 2010* Tourist Development Guidelines will also provide the assessment framework for all new Applications.

This Planning Proposal will also encourage further economic development within the LEP area by providing for appropriate tourist and visitor accommodation in close proximity to areas of outstanding natural and scenic beauty further promoting Gloucester as an idyllic overnight tourist destination with direct and indirect benefits flowing on to the existing business community.

The need for the Planning Proposal derived from community enquiries and expectations in relation to the future expansion of existing eco-tourist facilities in rural zones.

3.B.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

Yes, the Planning Proposal is consistent with relevant State Environmental Planning Policies.

3.B.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

A summary of the Planning Proposal's consistency with relevant s.117 Ministerial Directions is provided in [Appendix C.1](#) of this Planning Proposal.

Section C – Environmental, Social and Economic Impact

3.C.1 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, the legislation will trigger appropriate consideration of this issue, as appropriate for any development application. Any proposed development that may impact on threatened species, populations or ecological communities and their habitats will be required to satisfy the requirements of Part 5A of the *Environmental Planning and Assessment Act 1979* (i.e. an ecological assessment will be required to be completed by a qualified ecologist).

3.C.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

Any other likely environmental effects as a result of the proposal can be appropriately managed through the detailed assessment of a Development Application, pursuant to s.79C of the EP & A Act.

3.C.3 Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal is expected to have positive social and economic effects for the Gloucester community by encouraging further economic development within the LEP area.

Section D – State and Commonwealth Interests

3.D.1 Is there adequate public infrastructure for the planning Proposal?

The Planning Proposal does not require the provision of any additional public infrastructure. The adequacy of existing infrastructure will be assessed on a case by case basis, as part of the consideration of any future Development Applications seeking consent for eco-tourist facilities.

3.D.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

The Gateway Determination dated 5 September 2016 required referral of the Planning Proposal to the New South Wales Rural Fire Service (NSW RFS). The Planning Proposal was forwarded to the NSW RFS under cover of letter dated 9 September 2016.

A response was received from the NSW RFS dated 3 November 2016. The NSW RFS advise they have no objection to the planning proposal proceeding and provide the following comment:

“Future development applications for all development on bush fire prone lands will be required to comply with either S79BA of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997, depending on the nature of the proposed development, and the relevant provisions of Planning for Bushfire Protection 2006.”

The NSW RFS comment above is noted. All proposals for Facilities in Rural Zones will require Development Consent and if located on bush fire prone land will be Integrated Development against the provisions of the EP & A Act 1979. All proposals on bush fire prone land will therefore trigger referral to the NSW RFS and will require a S100B approval under the Rural Fires Act 1997.

No other Public Agency Consultation was required as per the Gateway Determination issued for the Planning Proposal.

Proposed Gateway Planning Proposal to Amend Gloucester LEP 2010 – Eco-Tourist Facilities within the Primary Production (RU1) Zone

Report author: Urban and Regional Planner

Executive Summary

This Report seeks Council’s resolution to prepare a Planning Proposal seeking to amend the *Gloucester Local Environmental Plan 2010* to permit Eco-tourist Facilities with consent in the Primary Production (RU1) Zone.

Detailed Report

Eco-tourist Facilities which provide cabins style accommodation have historically been a distinct tourist venture in the Gloucester Shire. Typically, tourist accommodation has located in scenic areas taking advantage of their proximity to national parks and wilderness areas providing visitors with a range of accommodation options often in locations with river access.

As a result of recent enquiries and reviews of existing Development Consents for tourist “cabins”, an anomaly has recently been uncovered in the *Gloucester Local Environmental Plan (LEP) 2010* has become apparent which unintentionally prohibits Eco-Tourism facilities in Rural Zones.

In the current Gloucester LEP 2010, an eco-tourist facility means a building or place that:

- (a) provides temporary of short-term accommodation to visitors on a commercial basis, and*
- (b) is located in or adjacent to an area with special ecological or cultural feature, and*
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.”*

According to the Land Use Table of the Gloucester LEP eco-tourist facilities are prohibited in the Primary Production (RU1) Zone.

Notwithstanding, one of the objectives of the Primary Production Zone is as follows:

“To encourage eco-tourism enterprises that minimise any adverse effect on primary industry production and the scenic amenity of the area.”

Quite clearly, it is not the intention of LEP 2010 to prohibit eco-tourist facilities within the Primary Production (RU1) Zone. The land use table is contradictory in that the objectives encourage eco-tourism development in the RU1 Zone but prohibits such development from occurring.

It is therefore proposed that Council undertake an amendment to the Gloucester Local Environment Plan (LEP) 2010 to permit eco-tourist facilities with consent in the Primary Production (RU1) Zone, viz:

“2. Permitted with consent

*Agricultural produce industries; Agriculture; Airports; Airstrips; Animal boarding or training establishments; Backpackers’ accommodation; Bed and breakfast accommodation; Boat launching ramps; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Dual occupancies; Dwelling houses; **Eco-tourist facilities**, Educational establishments; Emergency services facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Function centres; Home businesses; Home industries; Intensive livestock agriculture; Intensive plant agriculture; Kiosks; Open cut mining; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roadside stalls; Rural industries; Veterinary hospitals; Waste or resource transfer stations”*

The *Amendment to the Standard Instrument (Local Environmental Plans) Order 2006* issued by the Department of Planning on 10 March 2011 (PS 11-011) requires that Council’s insert Standard Instrument LEP Clause 5.13 where eco-tourist facilities are permitted with consent in any zone. The Clause is currently not applicable despite eco-tourist facilities being permitted with consent in other Zones.

It is therefore proposed as part of this Planning Proposal to insert the following standard instrument Clause 5.13 in the LEP:

“5.13 Eco-tourist facilities

- (1) *The objectives of this clause are as follows:*
 - (a) *to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,*
 - (b) *to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.*
- (2) *This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.*
- (3) *The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:*
 - (a) *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*

- (b) *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*
- (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*
- (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*
- (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*
- (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*
- (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*
- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*
- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*
- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*
- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage,*
 - (ii) *the maintenance (or regeneration where necessary) of habitats,*
 - (iii) *efficient and minimal energy and water use and waste output,*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.”*

Amendments to LEP's follow the Statutory "Gateway" process which involves the preparation of a planning proposal to the New South Wales Minister for Planning. The timeframe for completion is expected to be 6 months from the submission of planning proposal.

Recommendation

- A. In accordance with Section 55 of the Environmental Planning and Assessment Act 1979 Council resolve to prepare a Planning Proposal to undertake a General Amendment to Gloucester Environmental Plan (LEP) 2010 incorporating:
- i. The insertion of eco-tourist facilities into the land use table in the Primary Production (RU1) Zone as Permitted with consent;
 - ii. The insertion of the standard instrument Clause 5.13 as it relates eco-tourist facilities.
- and once prepared, the planning proposal be submitted to the Minister for NSW Planning and Environment for a Gateway Determination.
- B. In accordance with Section 59 of the Environmental Planning and Assessment Act 1979 Council request written authorisation from NSW Planning & Environment to exercise its plan making delegations in relation to the Planning Proposal.
- C. If NSW Planning & Environment issues a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and any directions of the Gateway Determination.
-

Alignment with Strategic Plan/Program

Item 2.4.1.c of Council's Operational Plan relates to the Delivery Program Objective of *developing and maintaining an appropriate legislative and policy framework to guide and control development to meet acceptable community standards.*

Financial and Resource Implications

There are no financial resource implications for Council in regard to this matter.

Policy Implications

There are no policy implications for Council in regard to this matter.

Risk Considerations

There are no risk considerations for Council in regard to this matter.

Statutory/Regulatory Considerations

The proposed amendments need to be managed in accordance with the requirements of the *Environmental and Planning and Assessment Act 1979*. These requirements include the preparation of a Planning Proposal by Council's Regulatory and Planning Services setting out the justification and intended effect of the proposed amendment and the details of the public consultation to be carried out relating to the amendment.

Attachments

Nil.

2.5 Proposed Gateway Planning Proposal to Amend Gloucester LEP 2010 – Eco-Tourist Facilities within the Primary Production (RU1) Zone

54/16 **RESOLVED** that Council:-

A. In accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, Council resolve to prepare a Planning Proposal to undertake a General Amendment to Gloucester Environmental Plan (LEP) 2010 incorporating:

- i. The insertion of eco-tourist facilities into the land use table in the Primary Production (RU1) Zone as Permitted with consent;
- ii. The insertion of the standard instrument Clause 5.13 as it relates eco-tourist facilities.

and once prepared, the planning proposal be submitted to the Minister for NSW Planning and Environment for a Gateway Determination.

B. In accordance with Section 59 of the *Environmental Planning and Assessment Act 1979*, Council request written authorisation from NSW Planning & Environment to exercise its plan making delegations in relation to the Planning Proposal.

C. If NSW Planning & Environment issues a Gateway Determination to proceed with the Planning Proposal, consultation be undertaken with the community and government agencies in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979* and any directions of the Gateway Determination.

(Cr J Hooke/Cr J Henderson)

Appendix C.1 - Planning Proposal's Consistency with s.177 Directions

No.	Direction	Consistency
Employment and Resources		
1.1	Business and Industrial Zones	N/A
1.2	Rural Zones Aims to protect the agricultural production value of rural lands.	The Proposal is not inconsistent with this Direction. Tourist Accommodation is currently permitted within the rural zones for Farm Stay Accommodation and the like. "Eco-tourist facilities" are likely to be developed on marginal land not suitable for agricultural production.
1.3	Mining, Petroleum Production and Extractive Industries	Mining, Petroleum and Extractive industry buffers will apply to any new development applications for "Eco-tourist facilities".
1.4	Oyster Aquaculture	N/A
1.5	Rural Lands Aims to protect the agricultural production value of rural lands and facilitate orderly and economic development of rural lands for rural and related purposes.	The Proposal is not inconsistent with this Direction.
Environment and Heritage		
2.1	Environmental Protection Zones Aims to conserve and protect environmentally sensitive areas.	Development Applications submitted to Council for Eco-tourist facilities will require assessment under Section 79C

		of the EP & A Act 1979.
2.2	Coastal Protection	N/A
2.3	Heritage Conservation Aims to conserve items and places of heritage significance and indigenous heritage significance	A heritage assessment will be required for any development application impacting on known or suspected heritage places.
2.4	Recreation Vehicle Areas Aims to protect sensitive lands with significant vegetation value from the adverse impacts of recreational vehicles	The Proposal is not inconsistent with this Direction. Appropriate assessment as it relates to the impact of recreational vehicles over environmentally sensitive areas will be undertaken as part of a Development Application process.
Housing, Infrastructure and Urban Development		
3.1	Residential Zones Aims to encourage a range of housing that makes efficient use of existing infrastructure and service that does not impact on the environment or resource lands.	N/A
3.2	Caravan Parks and Manufactured Home Estates Aims to provide a variety of housing types including opportunities for caravan parks and manufactured home estates.	The Proposal is not inconsistent with this Direction.
3.3	Home Occupations Aims to encourage low impact businesses in dwelling houses.	The Proposal is not inconsistent with this Direction.

3.4	<p>Integrating Land Use & Transport</p> <p>Aims to improve access by walking, public transport and other means that reduce private car travel dependencies.</p>	The Proposal is not inconsistent with this Direction.
3.5	<p>Development Near Licensed Aerodromes</p> <p>Aims to ensure that Aerodromes operate safely and effectively and that development within the vicinity of aerodromes is suitable for occupation and does not compromise aerodrome operations.</p>	“Eco-tourist facilities” will be subject to Development Application assessment including against LEP provisions for airport noise and flight paths.
3.6	<p>Shooting Ranges</p>	N/A
<p>Hazard & Risk</p>		
4.1	<p>Acid Sulfate Soils</p>	N/A
4.2	<p>Mine Subsidence and Unstable Land</p>	N/A
4.3	<p>Flood Prone Land</p> <p>The purpose of this Direction is to ensure the provisions of the LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential of the flood impacts both on and off the subject land.</p>	Eco-Tourist facilities will be subject to a Development Application process which considers the impacts of flooding and will be assessed against Council’s DCP guidelines.

4.4	<p>Planning for Bushfire Protection</p> <p>The objectives of this Direction are to encourage the sound management of bushfire prone areas, and to protect life, property and the environment from bushfire hazards.</p>	<p>The New South Wales Rural Fire Service (NSW RFS) advice that they have no objection to this proposed amendment.</p> <p>An “Eco-tourist facility” constitutes a residential land use and will subsequently be Integrated Development if it is located in a bushfire prone area. An authorisation under Section 100B of the <i>Rural Fires Act 1997</i> will be required for any Development Application in bushfire risk areas.</p>
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Regional Planning

5.1	Implementation of Regional Strategies	The Proposal is in accord with the provisions of the 2012 Upper Hunter Strategic Land Use Plan (UHSLUP).
5.2	Sydney Drinking Water Catchments	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5	Revoked	
5.6	Revoked	
5.7	Revoked	
5.8	Second Sydney Airport: Badgerys Creek	N/A

Local Plan Making

6.1	Approval and Referral Requirements	This Proposal will not change any approval or referral requirements. The Proposal may lead to an increase in Referral requirements to the NSW RFS for Bushfire Prone development.
6.2	Reserving Land for Public Purposes	N/A
6.3	Site Specific Provisions	N/A

Metropolitan Planning

7.1	Implementation of the Metropolitan Plan for Sydney 2036	N/A
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PART 2

CLAUSE 6.6 – RESTRICTION OF CERTAIN DEVELOPMENT IN RURAL
AND ENVIRONMENTAL PROTECTION ZONES

1. Objectives and Intended Outcomes

(s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument)

The objectives or intended outcomes of this Planning Proposal are to:

- (iii) Clarify that development for the purposes of certain residential and tourism accommodation uses within the RU1 Primary Production and E3 Environmental Management zones of the *Gloucester Local Environmental Plan 2010* is only permitted on lots where the erection of a dwelling house may be granted pursuant to clause 4.2A of the LEP; and
- (iv) To ensure that land set aside for agricultural production by virtue of Zone is not unduly fragmented by non-agricultural uses.

The proposed LEP amendments have all been subject to a Report to Council's Ordinary Meetings of 13 July 2016. A copy of the agenda report, which discusses the background and need for the proposed amendment, is attached as Appendix A.2. A copy of the Minutes of the meeting, including Council's resolution to prepare the Planning Proposal and seek a Gateway Determination under section 56 of the EP&A Act, is attached as Appendix B.2.

2. Explanation of Provisions

(s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument)

Clause 4.2A of the *Gloucester Local Environmental Plan 2010* currently provides clear criteria for the erection of dwelling houses on land within the RU1 Primary Production and E3 Environmental Management zones i.e. if the subject lot:

- meets the minimum lot size as prescribed in the LEP (100 hectares for Lots in the RU1, E2 and E3 Zones; or
- had a previously approved dwelling or lot that was entitled to place a dwelling which was approved before the commencement of the LEP in 2010; or
- has a previously approved subdivision consent for a lot that was entitled to place a dwelling which was approved before the commencement of the LEP in 2010; or
- is an existing holding (under the same holding since 17 October 1969).

During Council's investigations to proceed with a Planning Proposal to allow eco-tourist facilities in the RU1 Primary Production Zone, an anomaly was revealed in relation to the operation of Clause 4.2A. In particular, Clause 4.2A only applies to dwelling houses and not to other types of residential and/or tourist accommodation uses that are also permitted with consent in these zones. For example, proponents may apply for development consent for an eco-tourist facility on land which would not otherwise have a dwelling entitlement based on the criteria of clause 4.2A of the LEP.

This Planning Proposal therefore seeks to clarify when consent may be granted for residential and tourist accommodation uses within these zones. Accordingly, it is proposed to insert the following additional local provision in Part 6 of the LEP:

"6.6 Restriction of certain development in rural and environment protection zones

(1) *This clause applies to land in the following zones:*

- (a) *Zone RU1 Primary Production,*
- (b) *Zone E3 Environmental Management.*

(2) *If development for the purposes of residential accommodation, tourist and visitor accommodation or eco-tourist facilities on land to which this clause applies is permitted with development consent, consent must not be granted unless development consent for the erection of a dwelling house on that land may be granted in accordance with Clause 4.2A."*

3. Justification

(s.55(2)(c) Justification for the objectives or intended outcomes and the process for their implementation)

Section A – Need for the Planning Proposal

3.A.1 Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not linked directly to any strategic study or report.

Part 1 of this Planning Proposal includes a proposed amendment to the Gloucester LEP 2010 to permit Eco-tourist facilities in the RU1 Primary Production Zone, with consent. Permitting Eco-tourist facilities in the RU1 zone, however, could potentially create opportunities for proponents to exploit the dwelling entitlement provisions contained within Clause 4.2A of the LEP, which currently only restricts dwellings and does not specifically restrict other residential and tourist accommodation uses. Proponents could, theoretically, apply for development consent for a range of uses, including eco-tourist cabins, on rural lots without a dwelling entitlement and only complete the first stage of a development, thereby obtaining a dwelling-house by proxy. This “loophole” could potentially lead to the fragmentation of agricultural land and create undesirable land uses in isolated rural locations.

It is therefore considered appropriate that this potential “loophole” be closed by clarifying that consent must not be granted for any type of residential accommodation, tourist and visitor accommodation or eco-tourist facilities on land in the RU1 or E3 zones, unless development consent for the erection of a dwelling house on that land may be granted in accordance with Clause 4.2A of the LEP.

This restriction will not, however, extend to camping grounds. Temporary or primitive camping grounds are prevalent in the Gloucester area, particularly in the summer months and are generally located in rural scenic locations with easy access to rivers and streams. Many of these lots would not meet the requirements for the erection of a dwelling-house under the provisions of clause 4.2A. It is not Council’s intention to restrict the use of this land for this purpose, as such use is not considered incompatible with other land uses permitted in these zones. Camping grounds will still require development consent under the provisions of the LEP, as well as approval under Section 68 of the *Local Government Act 1993*.

3.A.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

It is considered that the proposed Clause represents the most appropriate response to this issue and is consistent with the approach taken by other NSW Councils.

Section B – Relationship to Strategic Planning Framework

3.B.1 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 2012 Upper Hunter Strategic Land Use Plan (UHSLUP) and the Upper Hunter Economic Diversification Report recognises that it is critical for the region to build upon and support agricultural industries including beef, dairy and cropping. This Planning Proposal is consistent with the UHSLUP as it moves towards securing the productivity of agricultural land preventing the intrusion of inconsistent development that has the potential to fragment farmland.

3.B.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Gloucester Shire Council's *Community Strategic Plan 2014-2024* (CSP) is the key strategic planning document for the Gloucester LEP Area for the next decade. It builds on the Gloucester *Community Strategic Plan 2012/22*, which was developed with wide and active community involvement. This review document revisits the aspirations and targets identified in the inaugural Plan and the new financial, social, environmental and economic challenges facing the community.

The CSP identifies five (5) key Directions and Objectives as follows:

- Direction 1: Maintaining core infrastructure;
- Direction 2: Protecting the environment;
- Direction 3: Creating a strong economy;
- Direction 4: An engaged and supportive community;
- Direction 5: Governance and partnerships.

This Planning Proposal is consistent with these Directions. The proposed Clause will not result in any specific development impacts.

3.B.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

Yes, the Planning Proposal is consistent with relevant State Environmental Planning Policies.

3.B.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

A summary of the Planning Proposal's consistency with relevant s.117 Ministerial Directions is provided in Appendix C.2 of this Planning Proposal.

Section C – Environmental, Social and Economic Impact

3.C.1 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, the proposal is unlikely to affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

3.C.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No, there are unlikely to be any other environmental effects as a result of the proposal.

3.C.3 Has the Planning Proposal adequately addressed any social and economic effects?

This Planning Proposal will have minimal social and economic effects for the Gloucester community.

Section D – State and Commonwealth Interests

3.D.1 Is there adequate public infrastructure for the planning Proposal?

The Planning Proposal, which aims to restrict, rather than encourage development in the RU1 Primary Production and E3 Environmental Management zones, will not require the provision of any additional public infrastructure.

3.D.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

The Gateway Determination dated 5 September 2016 required referral of the Planning Proposal to the New South Wales Rural Fire Service (NSW RFS). The Planning Proposal was forwarded to the NSW RFS under cover of letter dated 9 September 2016.

A response was received from the NSW RFS dated 3 November 2016. The NSW RFS advise they have no objection to the planning proposal proceeding and provide the following comment:

“Future development applications for all development on bush fire prone lands will be required to comply with either S79BA of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997, depending on the nature of the proposed development, and the relevant provisions of Planning for Bushfire Protection 2006.”

The NSW RFS comment above is noted. The Planning Proposal will not result in Applications for Development Consent requiring authorisation from the NSW RFS under S100B of the Rural Fires Act 1997. The proposal rather aims to restrict development in Rural and Environmental Protection Zones on lots which do not have entitlement to which to place a dwelling.

No other Public Agency Consultation was required as per the Gateway Determination issued for the Planning Proposal.

PLANNING PROPOSAL TO AMEND GLOUCESTER LEP 2010 – AMENDMENT TO CLAUSE FOR THE RESTRICTION OF CERTAIN DEVELOPMENT IN RURAL AND ENVIRONMENTAL PROTECTION ZONES

Report Author: Aaron Kelly Urban and Regional Planner

SUMMARY

This report seeks Council’s resolution to amend a previous Resolution to proceed with a Planning Proposal to amend the *Gloucester Local Environmental Plan 2010*, to clarify that camping grounds be excluded from the list of restricted uses on land within the rural and environmental protection zones, where development is only permitted on lots where the erection of a dwelling house may be granted, pursuant to clause 4.2A of the LEP.

RECOMMENDATION

That Council:

- (A) In accordance with section 55 of the *Environmental Planning and Assessment Act 1979*, resolve to prepare a Planning Proposal to undertake an amendment to the *Gloucester Environmental Plan 2010* to insert a new amended local provision restricting certain development in rural and environmental protection zones, as outlined in this report; and
- (B) Once prepared, submit the Planning Proposal to the NSW Minister for Planning and Environment for a Gateway Determination; and
- (C) In accordance with section 59 of the *Environmental Planning and Assessment Act 1979*, request written authorisation from NSW Planning & Environment to exercise its plan making delegations in relation to the Planning Proposal; and
- (D) Upon receipt of a Gateway Determination, consult with relevant community and government agencies, in accordance with any requirements of the Gateway Determination and section 57 of the *Environmental Planning and Assessment Act 1979*.

BACKGROUND

At its meeting 25 May 2016 Council resolved to prepare a Planning Proposal to undertake an amendment to the *Gloucester Local Environmental Plan 2010* to

restrict certain developments within Lots included in the Environmental Management (E3) and Primary production (RU1) Zones where no entitlement to make Application for a dwelling in accordance with Clause 4.2A exists on the land. A review of this Clause, in particular the way the Clause will affect the provision of camping throughout the Gloucester area, has resulted in proposed amended Clause.

DISCUSSION

At its meeting 25 May 2016 Council resolved to prepare a Planning Proposal to undertake an amendment to the Gloucester Local Environmental Plan 2010 by insertion of the following additional local provision in Part 6:

“6.6 Restriction of certain development in rural and environment protection zones

(1) *This clause applies to land in the following zones:*

- (b) *Zone RU1 Primary Production,*
- (b) *Zone E3 Environmental Management.*

(2) *If development for the purposes of residential accommodation, tourist and visitor accommodation, camping grounds or eco-tourist facilities on land to which this clause applies is permitted with development consent, consent must not be granted unless development consent for the erection of a dwelling house on that land may be granted in accordance with Clause 4.2A.*

(3) *In this clause, **camping ground** does not include a caravan park.”*

The current Clause resolved by Council restricts camping grounds in lots that do not have entitlement to place a dwelling.

In holiday peak periods land owners and proponents in the Gloucester area in scenic locations utilise their allotments for camping grounds. This is particularly evident in the summer months with a number of clandestine campgrounds establishing along the tourist routes to both the Barrington Tops and Gloucester Tops. These allotments are generally included in the Primary Production (RU1) Zone and many such allotments do not meet the requirements in which to gain entitlement to make Application for a dwelling.

It is not the specific intention of the original proposed Clause to seek to restrict land from the purposes of camping of which is of a temporary nature, can be associated and operate simultaneously with agricultural uses or more often than not, occurs on lots where agricultural productivity is not sustainable. Moreover, the Clause seeks to prevent proponents from utilising a loophole in the LEP that would allow other types of development that are generally more inconsistent with the purposes of the Zone and fragment agricultural uses.

Council is therefore seeking to amend the original clause by removing the reference to camping grounds from the Clause in that camping grounds are permitted with Consent in the Zone and will be encouraged on lots that do not meet the requirements of Clause 4.2A. Proponents will still be required to submit to Council Applications seeking Development Consent for camping Grounds in addition to the approval requirements set out in the *Local Government Regulation 2000*.

Accordingly, the following amended additional local provision in Part 6 of the LEP is proposed:

“6.6 Restriction of certain development in rural and environment protection zones

- (1) *This clause applies to land in the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone E3 Environmental Management.*
- (2) *If development for the purposes of residential accommodation, tourist and visitor accommodation, ~~camping grounds~~ or eco-tourist facilities on land to which this clause applies is permitted with development consent, consent must not be granted unless development consent for the erection of a dwelling house on that land may be granted in accordance with Clause 4.2A.*
- (3) *In this clause, ~~camping ground~~ does not include a caravan park.*

Amendments to LEP’s must follow the statutory “Gateway” process, which involves the preparation and submission of a Planning Proposal to the NSW Minister for Planning and Environment. The timeframe for completion of this Planning Proposal is expected to be 6 months from the issue of a Gateway Determination.

This Amendment will be packaged within a Planning Proposal which includes provisions for eco-tourist facilities in rural zones (previously resolved by Council) and provisions for allowing boundary adjustments in certain zones that do not meet the minimum lot size criteria (in this meeting agenda).

CONSULTATION

No prior community consultation has been undertaken in relation to this matter. Public Exhibition of the Planning Proposal will be required in accordance with the Conditions of any Gateway Determination.

COMMUNITY IMPACTS

There will be minimal community impacts as a result relating to the recommendation/s of this report.

ALIGNMENT WITH COMMUNITY PLAN/ OPERATIONAL PLAN

Item 2.4.1.c of the former Gloucester Shire Council's Operational Plan relates to the Delivery Program Objective of *developing and maintaining an appropriate legislative and policy framework to guide and control development to meet acceptable community standards.*

TIMEFRAME

Six (6) Months from the issue of a Gateway Determination from the NSW Planning Office.

BUDGET IMPLICATIONS

There appear to be no budget implications relating to the recommendation/s of this report.

LEGAL/ RISK CONSIDERATION

There are no legal implications relating to the recommendation/s of this report.

STATUTORY OR LEGISLATIVE REQUIREMENTS

The proposed LEP amendment needs to be managed in accordance with the requirements of the *Environmental and Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation 2000*. These requirements include the preparation of a Planning Proposal by Council's Planning & Environment Department setting out the justification and intended effect of the proposed amendment and the details of the public consultation to be carried out in relation to the amendment.

ATTACHMENTS

Nil

86/16 **4 Planning Proposal to Amend Gloucester LEP 2010 – restriction of certain development**

RESOLVED (Turner) (as per recommendation)

1. That Council In accordance with section 55 of the *Environmental Planning and Assessment Act 1979*, resolve to prepare a Planning Proposal to undertake an amendment to the *Gloucester Environmental Plan 2010* to insert a new amended local provision restricting certain development in rural and environmental protection zones, as outlined in this report; and
2. The Council once prepared, submit the Planning Proposal to the NSW Minister for Planning and Environment for a Gateway Determination; and
3. That Council in accordance with section 59 of the *Environmental Planning and Assessment Act 1979*, request written authorisation from NSW Planning & Environment to exercise its plan making delegations in relation to the Planning Proposal; and
4. The Council upon receipt of a Gateway Determination, consult with relevant community and government agencies, in accordance with any requirements of the Gateway Determination and section 57 of the *Environmental Planning and Assessment Act 1979*.

Appendix C.2 - Planning Proposal's Consistency with s.177 Directions

No.	Direction	Consistency
Employment and Resources		
1.1	Business and Industrial Zones	N/A
1.2	Rural Zones Aims to protect the agricultural production value of rural lands.	The Proposal is not inconsistent with this Direction. The restriction of development on rural lots without a dwelling entitlement will further prevent rural fragmentation consistent with the objectives of Rural Zones.
1.3	Mining, Petroleum Production and Extractive Industries	N/A
1.4	Oyster Aquaculture	N/A
1.5	Rural Lands Aims to protect the agricultural production value of rural lands and facilitate orderly and economic development of rural lands for rural and related purposes.	The Proposal is not inconsistent with this Direction. The restriction of development on rural lots without a dwelling entitlement will further prevent rural fragmentation and maintain viable agricultural productivity.
Environment and Heritage		
2.1	Environmental Protection Zones Aims to conserve and protect environmentally sensitive areas.	The Proposal is not inconsistent with this Direction. The proposed Clause aims to prevent inappropriate development of lands in

		Environmental Management Zones.
2.2	Coastal Protection	N/A
2.3	Heritage Conservation Aims to conserve items and places of heritage significance and indigenous heritage significance	The Proposal is not inconsistent with this Direction.
2.4	Recreation Vehicle Areas Aims to protect sensitive lands with significant vegetation value from the adverse impacts of recreational vehicles	The Proposal is not inconsistent with this Direction.
Housing, Infrastructure and Urban Development		
3.1	Residential Zones Aims to encourage a range of housing that makes efficient use of existing infrastructure and service that does not impact on the environment or resource lands.	N/A
3.2	Caravan Parks and Manufactured Home Estates Aims to provide a variety of housing types including opportunities for caravan parks and manufactured home estates.	The Proposal is not inconsistent with this Direction.
3.3	Home Occupations Aims to encourage low impact businesses in dwelling houses.	The Proposal is not inconsistent with this Direction.
3.4	Integrating Land Use & Transport Aims to improve access by walking, public transport and other means that reduce private car travel dependencies.	The Proposal is not inconsistent with this Direction.

3.5	<p>Development Near Licensed Aerodromes</p> <p>Aims to ensure that Aerodromes operate safely and effectively and that development within the vicinity of aerodromes is suitable for occupation and does not compromise aerodrome operations.</p>	N/A
3.6	Shooting Ranges	N/A
Hazard & Risk		
4.1	Acid Sulfate Soils	N/A
4.2	Mine Subsidence and Unstable Land	N/A
4.3	<p>Flood Prone Land</p> <p>The purpose of this Direction is to ensure the provisions of the LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential of the flood impacts both on and off the subject land.</p>	This Clause effectively restricts undesirable development and will not be inconsistent with this direction.
4.4	<p>Planning for Bushfire Protection</p> <p>The objectives of this Direction are to encourage the sound management of bushfire prone areas, and to protect life, property and the environment from bushfire hazards.</p>	<p>The New South Wales Rural Fire Service (NSW RFS) advice that they have no objection to this proposed amendment.</p> <p>The aim of the Clause is to restrict development in rural and environmental protection zones where there is no entitlement to place a dwelling and hence the proposed Clause will not result in any additional development.</p>

Regional Planning

5.1	Implementation of Regional Strategies	The Proposal is in accord with the provisions of the 2012 Upper Hunter Strategic Land Use Plan (UHSLUP).
5.2	Sydney Drinking Water Catchments	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5	Revoked	
5.6	Revoked	
5.7	Revoked	
5.8	Second Sydney Airport: Badgerys Creek	N/A

Local Plan Making

6.1	Approval and Referral Requirements	This Proposal will not change any approval or referral requirements.
6.2	Reserving Land for Public Purposes	N/A
6.3	Site Specific Provisions	N/A

Metropolitan Planning

7.1	Implementation of the Metropolitan Plan for Sydney 2036	N/A
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PART 3

CLAUSE 4.1A – BOUNDARY ADJUSTMENTS IN CERTAIN RURAL AND ENVIRONMENTAL PROTECTION ZONES

1. Objectives and Intended Outcomes

(s.55(2)(a) A statement of the objectives or intended outcomes of the proposed instrument)

The objectives or intended outcomes of this Planning Proposal are to:

- (a) Facilitate minor boundary adjustments between adjoining lots in the RU1 Primary Production and E3 Environmental Management zones, *where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map*; and
- (b) Allow flexibility for minor boundary adjustments to occur, where such boundary adjustments accord with the objectives of the relevant zone and do not create any additional lots or dwelling entitlements.

The proposed LEP amendment has been subject to a Report to Council's Ordinary Meetings of 13 July 2016. A copy of the agenda report, which discusses the background and need for the proposed amendment, is attached as [Appendix A.3](#). A copy of the Minutes of the meeting, including Council's resolution to prepare the Planning Proposal and seek a Gateway Determination under section 56 of the EP&A Act, is attached as [Appendix B.3](#).

2. Explanation of Provisions

(s.55(2)(b) An explanation of the provisions that are to be included in the proposed instrument)

Clause 4.1 of the *Gloucester Local Environmental Plan 2010* sets out the principal development standards in relation to minimum subdivision lot sizes. In particular, Clause 4.1 prevents Council from granting development consent for any subdivision, including boundary adjustments, where the resultant lots do not meet the minimum lots size shown on the LEP Lot Size Map in relation to that land. For the RU1 Primary Production and E3 Environmental Management zones, the Lot Size Map specifies a minimum lot size of 100 hectares.

The current LEP provisions provide little or no flexibility for Council to approve the subdivision of lots below the minimum lot area specified by the development standard, even where the existing lots are already below the minimum 100ha lot size.

Clause 4.6 – Exceptions to Development Standards provides Council with a degree of flexibility in applying certain development standards to particular development. However, clause 4.6(6) of the LEP, states that development consent must not be granted for a subdivision of land in the RU1 zone or E3 zone if that subdivision:

- (a) will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Council has received a number of recent enquiries whereby adjoining property owners are seeking to transfer a portion of their land to the adjoining lot, which is currently used, or will be used for, agricultural production. These proposals seek legitimate arrangements to increase the agricultural viability of lots and rationalise existing under-sized lots into bigger parcels suitable for such agricultural activities. It is considered that it is not the intention of the LEP to prevent such boundary adjustments, which accord with the objectives of the relevant zone and which do not create any additional lots or dwelling entitlements.

In order to facilitate such boundary adjustments, Council is seeking to insert the following Clause 4.1A in Part 4 of the LEP:

“4.1A Boundary adjustments of land in certain zones

- (1) *The objective of this clause is to facilitate boundary adjustments between lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.*

- (2) *This clause applies to land in the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone E3 Environmental Management,*

- (3) *Despite clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that:*
 - (a) *the subdivision will not create additional lots or the opportunity for additional dwellings, and*
 - (b) *the number of dwellings or opportunities for dwellings on each lot after subdivision will be the same as before the subdivision, and*
 - (c) *the potential for land use conflict will not be increased as a result of the subdivision, and*
 - (d) *if the land is in a rural zone, the agricultural viability of the land will not be adversely affected as a result of the subdivision.”*

The proposed Clause is consistent with similar clauses within both the *Great Lakes Local Environmental Plan 2014* and the *Greater Taree Local Environmental Plan 2010* as they apply within the Midcoast Council LGA.

3. Justification

(s.55(2)(c) Justification for the objectives or intended outcomes and the process for their implementation)

Section A – Need for the Planning Proposal

3.A.1 Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not considered to be linked directly to any study or report.

Agriculture is the largest industry sector of employment within the Gloucester region. Current agriculture in the region is dominated by beef cattle, dairy and non-cereal broad acre crops.

The majority of agriculture in the Gloucester area is carried out on land in the RU1 Primary Production Zone or the E3 Environmental Management zone, both of which have a minimum lot size of 100 Hectares. Many such lots have an existing dwelling entitlement.

The transition of the Gloucester agricultural industry sector to more land intensive forms of farming, as well as the need to rationalise rural land holdings, requires a degree of flexibility, as landowners negotiate to transfer land between adjacent properties in an effort to increase agricultural viability. The proposed Clause provides this flexibility.

3.A.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposed Boundary Adjustment Clause 4.1A is consistent with the flexibility sought by many other Local Government Planning Instruments. The recent gazettal of similar Clauses in many other Councils LEP's illustrates that the proposed Clause is the generally accepted method of achieving the intended outcome.

Section B – Relationship to Strategic Planning Framework

3.B.1 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 2012 Upper Hunter Strategic Land Use Plan (UHSLUP) and the Upper Hunter Economic Diversification Report recognises that it is critical for the region to build upon and support agricultural industries including beef, dairy and cropping. This Planning Proposal is

consistent with the UHSLUP as it moves towards securing the productivity of agricultural land preventing the intrusion of inconsistent development that has the potential to fragment farmland.

3.B.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Gloucester Shire Council's *Community Strategic Plan 2014-2024* (CSP) is the key strategic planning document for the Gloucester LEP Area for the next decade. It builds on the Gloucester *Community Strategic Plan 2012/22*, which was developed with wide and active community involvement. This review document revisits the aspirations and targets identified in the inaugural Plan and the new financial, social, environmental and economic challenges facing the community.

The CSP identifies five (5) key Directions and Objectives as follows:

- Direction 1: Maintaining core infrastructure;
- Direction 2: Protecting the environment;
- Direction 3: Creating a strong economy;
- Direction 4: An engaged and supportive community;
- Direction 5: Governance and partnerships.

The Planning Proposal adequately satisfies the Directions of the CSP. The proposal seeks to allow minor rural boundary adjustments that do not create additional dwelling entitlements and hence will have minimal effects on infrastructure and the environment. The proposed Clause will provide the necessary flexibility for rationalisation of rural land holdings, which will improve agricultural viability and therefore benefit the economy.

3.B.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

Yes, the Planning Proposal is consistent with relevant State Environmental Planning Policies.

3.B.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

A summary of the Planning Proposal's consistency with relevant s.117 Ministerial Directions is provided in [Appendix C.3](#) of this Planning Proposal.

Section C – Environmental, Social and Economic Impact

3.C.1 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, the existing legislation will trigger appropriate consideration of this issue, as appropriate for any development application.

3.C.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

NO, any other likely environmental effects as a result of the proposal can be appropriately managed through the detailed assessment of a Development Application, pursuant to s.79C of the EP & A Act.

3.C.3 Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal is expected to have minimal social and economic effects for the Gloucester community.

Section D – State and Commonwealth Interests

3.D.1 Is there adequate public infrastructure for the planning Proposal?

The Planning Proposal does not require the provision of any additional public infrastructure. No new lots or new dwelling entitlements will result from any Boundary Adjustment proposals under this Clause.

3.D.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

The Gateway Determination dated 5 September 2016 required referral of the Planning Proposal to the New South Wales Rural Fire Service (NSW RFS). The Planning Proposal was forwarded to the NSW RFS under cover of letter dated 9 September 2016.

A response was received from the NSW RFS dated 3 November 2016. The NSW RFS advise they have no objection to the planning proposal proceeding and provide the following comment:

“Future development applications for all development on bush fire prone lands will be required to comply with either S79BA of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997, depending on the nature of the proposed development, and the relevant provisions of Planning for Bushfire Protection 2006.”

The NSW RFS comment above is noted. The Planning Proposal will not result in Applications for Development Consent requiring authorisation from the NSW RFS under S100B of the Rural Fires Act 1997. Boundary Adjustment proposals under this proposed Clause will not result in the creation of any new lots with additional Dwelling Entitlements.

No other Public Agency Consultation was required as per the Gateway Determination issued for the Planning Proposal.

PLANNING PROPOSAL TO AMEND GLOUCESTER LEP 2010 – BOUNDARY ADJUSTMENTS IN CERTAIN RURAL AND ENVIRONMENTAL PROTECTION ZONES

Report Author: **Aaron Kelly** **Urban and Regional Planner**

SUMMARY

This report seeks Council’s resolution to proceed with a Planning Proposal to amend the *Gloucester Local Environmental Plan 2010* to facilitate boundary adjustments between adjoining lots in both the RU1 Primary Production and E3 Environmental Management zones, where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map.

RECOMMENDATION

That:

- (A) In accordance with section 55 of the *Environmental Planning and Assessment Act 1979*, Council resolve to prepare a Planning Proposal to amend the *Gloucester Environmental Plan 2010* by inserting a new clause that allows boundary adjustments between adjoining lots in certain rural and environmental protection zones, where one or more resultant lots are below the minimum lot size shown on the Lot Size Map;
- (B) Pursuant to section 56 of the *Environmental Planning and Assessment Act 1979*, Council forward the Planning Proposal to the NSW Minister for Planning and Environment for a Gateway Determination;
- (C) In accordance with section 59 of the *Environmental Planning and Assessment Act 1979*, Council request authorisation to exercise its local plan making delegations in relation to the Planning Proposal; and
- (D) Upon receipt of a Gateway Determination, Council consult with relevant community and government agencies, in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* and any requirements of the Gateway Determination.

BACKGROUND

Nil.

DISCUSSION

Clause 4.1 of the *Gloucester Local Environmental Plan 2010* sets out the principal development standards in relation to minimum subdivision lot sizes. In particular, Clause 4.1 prevents Council from granting development consent for any subdivision, including boundary adjustments, where the resultant lots do not meet the minimum lots size shown on the LEP Lot Size Map in relation to that land. For the RU1 Primary Production and E3 Environmental Management zones, the Lot Size Map specifies a minimum lot size of 100 hectares.

The current LEP provisions provide little or no flexibility for Council to approve the subdivision of lots below the minimum lot area specified by the development standard, even where the existing lots are already below the minimum 100ha lot size.

Clause 4.6 – Exceptions to Development Standards provides Council with a degree of flexibility in applying certain development standards to particular development. However, clause 4.6(6) of the LEP, states that development consent must not be granted for a subdivision of land in the RU1 zone or E3 zone if that subdivision:

- (a) will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Council has received a number of recent enquiries whereby adjoining property owners are seeking to transfer a portion of their land to the adjoining lot, which is currently used, or will be used for, agricultural production. These proposals seek legitimate arrangements to increase the agricultural viability of lots and rationalise existing under-sized lots into bigger parcels suitable for such agricultural activities. It is considered that it is not the intention of the LEP to prevent such boundary adjustments, which accord with the objectives of the relevant zone and which do not create any additional lots or dwelling entitlements.

Therefore, in order to facilitate such boundary adjustments, Council is seeking to insert the following Clause 4.1A in Part 4 of the LEP, Principal Development Standards:

“4.1A Boundary adjustments of land in certain zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.*
- (2) This clause applies to land in the following zones:*

- (a) Zone RU1 Primary Production,
 - (b) Zone E3 Environmental Management,
- (3) *Despite clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that:*
- (a) *the subdivision will not create additional lots or the opportunity for additional dwellings, and*
 - (b) *the number of dwellings or opportunities for dwellings on each lot after subdivision will be the same as before the subdivision, and*
 - (c) *the potential for land use conflict will not be increased as a result of the subdivision, and*
 - (d) *if the land is in a rural zone, the agricultural viability of the land will not be adversely affected as a result of the subdivision.”*

Amendments to LEP's must follow the statutory "Gateway" process, which involves the preparation and submission of a Planning Proposal to the NSW Minister for Planning and Environment. The timeframe for completion of this Planning Proposal is expected to be 6 months from the issue of a Gateway Determination.

This Amendment will be packaged within a Planning Proposal which includes provisions for eco-tourist facilities in rural zones (previously resolved by Council) and provisions for prohibiting development within lots without dwelling entitlement both of which have been previously resolved by Council (in this meeting agenda).

CONSULTATION

No prior community consultation has been undertaken in relation to this matter. Public Exhibition of the Planning Proposal will be required in accordance with the Conditions of any Gateway Determination.

COMMUNITY IMPACTS

Any community impacts (positive and negative) and proposed mitigating action for negative.

ALIGNMENT WITH COMMUNITY PLAN/ OPERATIONAL PLAN

Item 2.4.1.c of the former Gloucester Shire Council's Operational Plan relates to the Delivery Program Objective of *developing and maintaining an appropriate legislative and policy framework to guide and control development to meet acceptable community standards.*

TIMEFRAME

Six (6) Months from the issue of a Gateway Determination from the NSW Planning Office.

BUDGET IMPLICATIONS

There appear to be no budget implications relating to the recommendation/s of this report.

LEGAL/ RISK CONSIDERATION

There are no legal implications relating to the recommendation/s of this report.

STATUTORY OR LEGISLATIVE REQUIREMENTS

The proposed LEP amendment needs to be managed in accordance with the requirements of the *Environmental and Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation 2000*. These requirements include the preparation of a Planning Proposal by Council's Planning & Environment Department setting out the justification and intended effect of the proposed amendment and the details of the public consultation to be carried out in relation to the amendment.

ATTACHMENTS

Nil

87/16 **5 Planning Proposal to Amend Gloucester LEP 2010 – Boundary Adjustments**

RESOLVED (Turner) (as per recommendation)

1. That Council In accordance with section 55 of the *Environmental Planning and Assessment Act 1979*, Council resolve to prepare a Planning Proposal to amend the *Gloucester Environmental Plan 2010* by inserting a new clause that allows boundary adjustments between adjoining lots in certain rural and environmental protection zones, where one or more resultant lots are below the minimum lot size shown on the Lot Size Map;
2. Pursuant to section 56 of the *Environmental Planning and Assessment Act 1979*, Council forward the Planning Proposal to the NSW Minister for Planning and Environment for a Gateway Determination;
3. In accordance with section 59 of the *Environmental Planning and Assessment Act 1979*, Council request authorisation to exercise its local plan making delegations in relation to the Planning Proposal; and
4. Upon receipt of a Gateway Determination, Council consult with relevant community and government agencies, in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* and any requirements of the Gateway Determination.

Appendix C.3 - Planning Proposal's Consistency with s.177 Directions

No.	Direction	Consistency
Employment and Resources		
1.1	Business and Industrial Zones	N/A
1.2	Rural Zones Aims to protect the agricultural production value of rural lands.	The Proposal is not inconsistent with this Direction. The main objective of the new Boundary Adjustment Clause will be to provide flexibility for agricultural land uses to increase land size. The proposal will aim to consolidate existing fragmentation in rural areas and increase rural land sizes.
1.3	Mining, Petroleum Production and Extractive Industries	The Proposal is not inconsistent with this Direction.
1.4	Oyster Aquaculture	N/A
1.5	Rural Lands Aims to protect the agricultural production value of rural lands and facilitate orderly and economic development of rural lands for rural and related purposes.	The Proposal is not inconsistent with this Direction.
Environment and Heritage		
2.1	Environmental Protection Zones Aims to conserve and protect environmentally sensitive areas.	N/A

2.2	Coastal Protection	N/A
2.3	Heritage Conservation Aims to conserve items and places of heritage significance and indigenous heritage significance	A heritage assessment will be required for any development application impacting on known or suspected heritage places.
2.4	Recreation Vehicle Areas Aims to protect sensitive lands with significant vegetation value from the adverse impacts of recreational vehicles	The Proposal is not inconsistent with this Direction.

Housing, Infrastructure and Urban Development

3.1	Residential Zones Aims to encourage a range of housing that makes efficient use of existing infrastructure and service that does not impact on the environment or resource lands.	N/A
3.2	Caravan Parks and Manufactured Home Estates Aims to provide a variety of housing types including opportunities for caravan parks and manufactured home estates.	The Proposal is not inconsistent with this Direction.
3.3	Home Occupations Aims to encourage low impact businesses in dwelling houses.	The Proposal is not inconsistent with this Direction.
3.4	Integrating Land Use & Transport Aims to improve access by walking, public transport and other means that reduce private car travel dependencies.	The Proposal is not inconsistent with this Direction.

3.5	<p>Development Near Licensed Aerodromes</p> <p>Aims to ensure that Aerodromes operate safely and effectively and that development within the vicinity of aerodromes is suitable for occupation and does not compromise aerodrome operations.</p>	N/A
3.6	Shooting Ranges	N/A
Hazard & Risk		
4.1	Acid Sulfate Soils	N/A
4.2	Mine Subsidence and Unstable Land	N/A
4.3	<p>Flood Prone Land</p> <p>The purpose of this Direction is to ensure the provisions of the LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential of the flood impacts both on and off the subject land.</p>	Boundary Adjustment proposals under the proposed Clause will not increase the flood impacts for land.
4.4	<p>Planning for Bushfire Protection</p> <p>The objectives of this Direction are to encourage the sound management of bushfire prone areas, and to protect life, property and the environment from bushfire hazards.</p>	<p>The New South Wales Rural Fire Service (NSW RFS) advice that they have no objection to this proposed amendment.</p> <p>Boundary Adjustments resulting from the proposed clause will not create any new dwelling entitlements and as such, are not considered to be development for the purposes of section 100B of the <i>Rural Fires Act 1997</i>.</p>

Regional Planning

5.1	Implementation of Regional Strategies	The Proposal is in accord with the provisions of the 2012 Upper Hunter Strategic Land Use Plan (UHSLUP).
5.2	Sydney Drinking Water Catchments	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5	Revoked	
5.6	Revoked	
5.7	Revoked	
5.8	Second Sydney Airport: Badgerys Creek	N/A

Local Plan Making

6.1	Approval and Referral Requirements	This Proposal will not change any approval or referral requirements. The Proposal may lead to an increase in Applications seeking Consent for Boundary Adjustments.
6.2	Reserving Land for Public Purposes	N/A

6.3	Site Specific Provisions	N/A
Metropolitan Planning		
7.1	Implementation of the Metropolitan Plan for Sydney 2036	N/A

MAPPING

(s.55(2)(d) Maps to be adopted by the proposed instrument)

The Planning Proposal will not require the creation of any new maps or map layers within the *Gloucester Local Environmental Plan 2010*.

COMMUNITY CONSULTATION

In accordance with Condition 1 of the 4 Gateway Determination dated 5 September 2016 and Section 56(2)(c) and 57 of the *Environmental Planning and Assessment Act 1979*, this Planning Proposal was placed on Public Exhibition.

The Public Exhibition included:

- Notices in the local newspaper (The Gloucester Advocate);
- Exhibition material and all relevant documents to be made available at Midcoast Council's Gloucester Office and the Midcoast Council website; and
- A number of media releases on the Midcoast Council website and other public forums.

As a result of Public Exhibition of this Planning Proposal no (nil) submissions were received.

PROJECT TIMELINE

In accordance with the Department of Planning and Environment guidelines, the following timeline is provided, which includes the tasks deemed necessary for the making of this local environmental plan.

