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**Item No:** 3.6  
**Title:** Supplementary Report - Amended Planning Proposal Request - Glenworth Valley  
**Department:** Environment and Planning

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27 April 2020 Ordinary Council Meeting

Trim Reference: F2019/00041-004 - D13899090

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### Summary

A decision of Council is required for the action to progress. The impact on project without a resolution of Council is as follows:

- A Guide to Preparing Local Environmental Plans provides guidance and information on the process for making local environmental plans (LEPs) under Part 3 of the Environmental Planning & Assessment Act, 1979 (the Act). In accordance with this guide Council has 90 days to inform the applicant as to whether the application will be supported or not.
- If the proposal is considered to have merit the application cannot be progressed for Gateway Determination in a timely manner.
- This Planning Proposal is one that has already been considered by Council on 11 November 2019. At this meeting Council resolved to "defer consideration of this item for a site inspection to be conducted and a briefing at the monthly planning workshop to be provided". The site inspection and planning workshop briefing occurred on 3 February 2020.

A proposal has been submitted to Council to amend an existing Planning Proposal to allow additional permitted uses on land at Glenworth Valley and Calga, known as Glenworth Valley Outdoor Adventures.

At its meeting held on 11 November 2019, the Council resolved as follows;

*1085/19 That Council defer consideration of this item for a site inspection to be conducted and a briefing at the monthly planning workshop to be provided.*

A site inspection was undertaken on 3 February 2020. The site inspection was attended by Council staff and the following Councillors:

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- Mayor – Councillor Lisa Matthews
- Deputy Mayor - Councillor Jane Smith
- Councillor Chris Holstein
- Councillor Jeff Sundstrom
- Councillor Richard Mehrtens

Mr Barton Lawler, proprietor of Glenworth Valley Outdoor Adventures, was also in attendance to enable a site tour to be undertaken.

The following matters were raised and discussed during the site inspection:

1 What is the main purpose of the Planning Proposal?

The land on top of the escarpment, adjacent to Cooks Road is zoned RU2 Rural Landscape and the land comprising the vegetated escarpment and the valley floor is zoned E2 Environmental Conservation. The Planning Proposal seeks to permit Additional Permitted Uses (APUs) on the site. These are summarised below and shown pictorially in Figure 5 of the original Council report (Attachment 1):

- In the RU2 zone; proposed APUs are eco-tourist facility, camping ground, tourist and visitor accommodation.
- In the E2 zone, generally; proposed APUs are eco-tourist facility, recreation facility (outdoor). Additionally:
  - In the cleared areas of the E2 zone; proposed APU is extensive agriculture.
  - In part of the cleared area of the E2 zone on the valley floor; proposed APUs are camping ground, function centre.
  - In part of the cleared area of the E2 zone adjacent to the RU2 zoned land; proposed APU is tourist and visitor accommodation.
  - In the multi-purpose building and extension; proposed APUs are function centre, entertainment facility, food and drink premises

2 What are the permissible land uses under the definition of “tourist and visitor accommodation”?

Tourist and visitor accommodation means *a building or place that provides temporary or short term accommodation on a commercial basis, and includes any of the following:*

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- (a) *backpackers' accommodation,*
- (b) *bed and breakfast accommodation,*
- (c) *farm stay accommodation,*
- (d) *hotel or motel accommodation,*
- (e) *serviced apartments,*

*but does not include:*

- (f) *camping grounds, or*
- (g) *caravan parks, or*
- (h) *eco-tourist facilities.*

The tourist and visitor accommodation definition incorporates development of a substantial nature (i.e. hotel or motel accommodation and serviced apartments) which would be potentially incompatible with the scenic quality of land within the valley. Therefore the Planning Proposal only proposes to permit tourist and visitor accommodation on land within the RU2 zone and on cleared E2 zoned land adjacent to the RU2 zoned land, not within the valley itself.

#### 3 Why permit extensive agriculture on the valley floor?

Although zoned E2 Environmental Conservation, the land on the valley floor is already cleared and used for the grazing of livestock and growing of fodder. These activities are associated with the horse riding school, a use with existing use rights.

Also prior to the Gosford Local Environmental Plan 2014 (GLEP 2014) coming into effect, the land was zoned 7(a) Conservation and Scenic Protection (Conservation) under Interim Development Order No 122 (IDO 122) which listed "agriculture" as a use permitted with consent.

#### 4 Why are uses not permitted in the E2 zone required?

The uses permitted within the E2 zone do not allow for the current and future uses required for this regionally significant tourist and recreation operation. The Planning Proposal does not intend to rezone the land, but rather include specific APUs on the site whilst retaining the underlying objectives of the E2 zone. This will allow the owner to grow the business to accommodate new nature based outdoor recreational opportunities.

#### 5 Why not continue to rely on existing use rights?

Reliance on existing use rights is not straight forward as it comes down to a legal interpretation of the existing use rights legislation as it relates to each proposed development. The *Environmental Planning and Assessment Regulations, 2000* states

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that an existing use "must not be changed unless the change involves only alterations or additions that are minor in nature," and "does not involve a significant intensification of the existing use". It would be far more efficient for the owner and Council staff to have a list of additional uses permitted on the site.

6 Has disposal of wastewater been considered?

The use of the multi-purpose building independently of any other uses on the site has the potential to result in additional hydraulic loading on the on-site sewage management system. To determine the impacts of this, a wastewater management report will be required to be submitted, should a Gateway Determination be issued.

7 Can a table be provided which indicates the uses currently permitted in the E2 Environmental Protection zone and the RU2 Rural Landscape zone and the additional permitted uses proposed in the Planning Proposal?

The following table provides the information requested:

| Zone                          | Gosford LEP 2014   | Proposed Additional Permitted Uses  |
|-------------------------------|--|---|
| RU2 Rural Landscape           | <p>2 Permitted without consent</p> <p>Extensive agriculture; Home occupations; Recreation areas</p> <p>3 Permitted with consent</p> <p>Agriculture; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Dwelling houses; Environmental protection works; Extractive industries; Farm buildings; Farm stay accommodation; Garden centres; Home-based child care; Home industries; Landscaping material supplies; Open cut mining; Plant nurseries; Recreation facilities (outdoor); Roads; Roadside stalls; Secondary dwellings; Veterinary hospitals; Water storage facilities</p> <p>4 Prohibited</p> <p>Any development not specified in item 2 or 3</p> | <p>Permitted with consent</p> <p>Eco-tourist facilities, camping grounds, tourist and visitor accommodation</p>   |
| E2 Environmental Conservation | <p>2 Permitted without consent</p> <p>Nil</p> <p>3 Permitted with consent</p> <p>Bed and breakfast accommodation; Dwelling houses; Environmental facilities; Environmental protection works; Home occupations; Oyster aquaculture Recreation areas; Roads; Water storage facilities</p> <p>4 Prohibited</p>  | <p>Permitted with consent:</p> <p>Eco-tourist facilities, recreation facilities (outdoor)</p> <p>In addition to the uses above:</p> <p>- Permitted with consent on cleared land:</p> <p>Extensive Agriculture</p> |

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|  | Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3 | - Permitted with consent on part of cleared land in valley:<br><br>Camping grounds, function centres<br><br>- Permitted with consent on part of cleared land adjacent to RU2 zoned land:<br><br>Tourist and visitor accommodation<br><br>- Permitted with consent in multipurpose building:<br><br>Function centres, entertainment facilities, food and drink premises |
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A briefing on the Planning Proposal was provided to Councillors at the Planning Workshop of 3 February 2020.

The following matters were raised and discussed at the briefing:

- 1 *What are the negative implications arising from having the proposal active for an extended period of time?*

If Council staff are not actively working on the proposal due to a lack of progress by the Proponent, there are no cost ramifications. The Department of Planning, Industry and Environment (DPIE) are taking a more active role in monitoring the timeframes for Planning Proposals.

- 2 *Is the recreation facility (outdoor) land use confined to the existing building?*

No, a recreation facility (outdoor) can relate to a building or place. The intent of including the proposed use is to enable the use of the site for additional recreational purposes which are not permissible under the current existing use rights provisions. All that can be done under existing use rights are minor alterations to those recreation uses that currently have development consent. There is no avenue for considering additional recreation facilities (outdoor) that may arise in the future. This Planning Proposal seeks to address this issue.

### **Recommendation**

- 1 ***That the Council support an amended Planning Proposal applying to:***

- ***Lots 19, 20, 21, 23, 24, 25, 30, 31, 32, 33, 37, 50, 53, 64, 65, 68, 81, 82, 85, 86, 87, 89, 91, 108, 145 DP 755221,***

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- **Lots 22, 23, 32, 73, 75, 76 DP 755253,**
- **Lots 1, 3 DP 617088,**
- **Lot 881 DP 563889,**
- **Lot 1 DP 1222754,**
- **Lot 7 DP 1230083,**
- **Lot 245 DP 48817,**
- **Lot 7012 DP 1059767,**
- **Lot 7029 DP 93603,**
- **Lot 7035 DP 1051932,**
- **Lot 7036 DP 1059768,**
- **Lot 7303 DP 1154929, Glenworth Valley, and**
- **Lot A DP 365595,**
- **Lot C DP 382358,**
- **Lot 2 DP 1139242,**
- **Lot 882 DP 563889,**
- **part of Lot 102 DP 1139060,**
- **Lot 7039 DP 1059766,**
- **Lot 7303 DP 1161109, Calga**

**to amend the Gosford Local Environmental Plan 2014 (or draft Central Coast Local Environmental Plan), whichever is in effect at the time, to permit the following additional permitted uses (if they are not included in the Central Coast Local Environmental Plan):**

- a on land zoned E2 Environmental Conservation, development for the purpose of eco-tourist facilities and recreation facilities (outdoor);**
- b on land zoned RU2 Rural Landscape, development for the purposes of eco-tourist facilities, camping grounds and tourist and visitor accommodation;**
- c on the existing cleared areas of the land zoned E2 Environmental Conservation, comprising Lots 19, 20, 21, 23, 25, 30, 32, 33, 37, 50, 53, 64, 68, 85, 86, 87, 89, 91, 108 and 145 DP 755221, Lots 22 and 32 DP 755253, Lot 3 DP 617088, Lot 245 DP 48817, Lot 7039 DP 1059766 and Lot 7303 DP 1154929, development for the purpose of extensive agriculture.**
- d on land comprising that part of Lot 89 DP 755221 which currently accommodates the multi-purpose building and its curtilage,**
  - (i) development for the purpose of function centre, entertainment facility and food and drink premises, and**
  - (ii) the total floor area for the function centre, entertainment facility and food and drink premises is to be a maximum of 1500m<sup>2</sup> with any additions being attached to, or directly adjacent to, the existing building.**

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- e on the existing cleared areas of the land zoned E2 Environmental Conservation comprising part of Lots 19, 37 and 89 DP 755221 and Lots 22 and 32 DP 755253, development for the purpose of function centre and camping ground.*
- f on the existing cleared areas of the land zoned E2 Environmental Conservation comprising part of Lots 108 and 145 DP 755221, development for the purpose of tourist and visitor accommodation.*
- 2 That Council submit a revised Planning Proposal to the Minister for Planning in accordance with Section 3.35(2) of the Environmental Planning and Assessment Act 1979, requesting an amended Gateway Determination pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979.**
- 3 That Council request delegation for Council to finalise and make the draft Local Environmental Plan, pursuant to Section 3.36 of the Environmental Planning and Assessment Act 1979.**
- 4 That Council undertake community and public authority consultation, in accordance with the Gateway Determination requirements.**
- 5 That the Council consider a further report on results of the agency and community consultation.**

**Attachments**

|          |  |                                  |           |
|----------|--|----------------------------------|-----------|
| <b>1</b> | Original report - 11 November 2019   |                                  | D13343340 |
| <b>2</b> | Planning Proposal Summary  | Provided Under<br>Separate Cover | D13841367 |
| <b>3</b> | Former Gosford City Council Resolution to Prepare Planning Proposal (17 December 2013) | Provided Under<br>Separate Cover | D13343533 |
| <b>4</b> | Former Gosford City Council Resolution to Prepare Planning Proposal (10 June 2014)     | Provided Under<br>Separate Cover | D13343536 |
| <b>5</b> | Former GCC CEO Approval under Delegated Authority - 27 June 2014 (Glenworth Valley)    | Provided Under<br>Separate Cover | D13343535 |
| <b>6</b> | Strategic Assessment   | Provided Under<br>Separate Cover | D13691401 |