

Fact Sheet

Draft Central Coast Local Environmental Plan

Central
Coast
Council

Existing Use Rights

This fact sheet provides information for landowners potentially affected by land zoning changes in the draft Central Coast Local Environmental Plan (CCLEP) to understand existing use rights.

What is an Existing Use Right?

A land use that has lawfully commenced with consent but may become a prohibited use due to a subsequent change in planning legislation (such as a new LEP) is known as an existing use. Where this occurs, the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulations 2000* (EP&A Regs.) allow previous land use rights to continue to operate on the land.

How do I know if a land use is permissible or prohibited?

You can check whether a land use will be permissible in the new zone under the draft CCLEP by:

- Referring to Part 2 of the draft CCLEP which lists the land uses that are permitted without consent, permitted with consent or are prohibited within a particular zone; and
- Referring to the Land Use Matrix provided to the draft CCLEP package.

Why is my land use now prohibited?

The CCLEP is a consolidation of four operational planning instruments, being

- *Gosford Local Environmental Plan 2014* (GLEP 2014);
- *Interim Development Order No 122 – Gosford* (IDO 122);
- *Gosford Planning Scheme Ordinance* (GPSO); and
- *Wyong Local Environmental Plan 2013* (WLEP 2013).

The consolidation process has involved the conversion of land currently subject to the GPSO and IDO 122 to zones which apply under the *Standard Instrument – Principle Local Environmental Plan* (SI LEP).

The existing GLEP 2014 and WLEP 2013 were prepared in the SI LEP format; however, both existing planning instruments have included additional permissible and prohibited land uses above those mandated in the Standard Instrument. This has resulted in the standard instrument being applied in slightly different ways by the former Gosford City Council and Wyong Shire Council when these instruments were developed.

To overcome this, Council established a general guiding principle to retain the permissibility of land uses of both GLEP 2014 and WLEP 2013 within each respective zone.

In some instances however, the application of zones and identification of permissible and prohibited land uses within GLEP 2014 and WLEP 2013 has been different. For example, the E4 Environmental Living zone in WLEP 2013 was generally applied to land characterised by larger

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lot rural/residential development in environmentally sensitive locations. While in GLEP 2014, the E4 Environmental Living zone was applied to enable tourist development in environmentally sensitive locations. Therefore, some land uses have been found to not always align, and may be inappropriate for application over the entire Central Coast Local Government Area (LGA).

Where this affects a current land use, Existing Use Rights will be applicable.

Am I allowed to continue my use?

The provisions of the EP&A Act allow lawful existing uses to continue operating without the need for further approval to be obtained from Council, provided that the nature of the use remains the same as that which existed prior to the CCLEP coming into force.

If a person is conducting an existing use on a property, and wishes to undertake any of the following, prior development consent from Council will be required:

- a. Any alteration or extension to, or rebuilding of, a building or work; or
- b. Any enlargement, expansion or intensification of the use.

Can existing use rights lapse?

Yes. If an existing use on affected land ceases for more than 12 months, it is considered that the

existing use may have been abandoned, and existing use rights may no longer apply.

What should you do if you intend to rely on existing use rights?

You do not need to do anything to secure an existing use. However, you should be aware that evidence may be needed to demonstrate the existence of an existing use if issues of compliance arise, you wish to expand the use, or you are required to prove that the existing use right has not been abandoned. Documentation may include:

- The development consent (if consent was required) or evidence that shows that the land use was lawfully occurring at the time the new LEP came into force,
- Records of activity relating to land that relies on existing/continuing use rights, such as receipts relating to operations on the affected property and written records of activities undertaken on, or in relation to, the affected property.

Note: While Council Staff can assist where possible, the onus of establishing existing use rights or demonstrating that the existing use has not been abandoned is that of the applicant. Applicants may need to seek their own Legal or Planning Advice with regard to establishing existing use rights.

Quick Links:

<https://www.yourvoiceourcoast.com/Currently-on-Exhibition>

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