



# State Environmental Planning Policy (SEPP) 65 and the Apartment Design Guide (ADG) Review

## Gosford City Council submission

*Gosford City Council welcomes any policy change  
which promotes design excellence in housing*

### Executive Summary

Gosford City Council welcomes the opportunity to comment on the SEPP 65 and Apartment Design Guide review. This submission has been prepared by Council's Governance and Planning Department in association with the elected Councillors and senior staff involved in the design, development and delivery of housing.

Since the introduction of SEPP 65 and the Residential Flat Design Code (current policy document), the quality of residential buildings throughout NSW has improved and these strategies have played a significant role in improving the design of apartments in the Gosford Local Government Area (LGA).

Council has used the current policy document and code as tools for statutory planning as well as strategic planning and development of controls that align and assist in developing "rules of thumb" for developing quality housing in Gosford City Council. Our past experience has been positive and it is anticipated that some of the hurdles Council now faces in a growing region will be resolved through the proposed changes and where possible the inclusion of suggested changes that directly relate to the Gosford Experience of both development trends and the application and use of the SEPP and Design Code over the last few years. These suggestions are highlighted within the submission.

It is recognised that further improvement of the document was required to resolve some issues that both Council and the development industry were facing. However, Council does express concern that the policy documents are still Sydney-centric and that typology exploration and economic feasibility of typologies is more aligned with issues for development in Sydney, areas outside of Sydney also need to be explored.

In addition, Council also recognises that limitations of the document and its application to medium density housing (villa/townhouse) development which is characteristic of Gosford LGA development. Council does suggest that the Department work with Gosford to explore a medium density guideline, applying to villa and townhouse development that improves renewal of old housing stock with housing that not only is well designed, but enables better housing affordability through housing diversity and economic feasibility.

In summary, Gosford City Council supports the changes and hopes to have further dialogue with the Department on projects to enable a better realisation of improved housing and affordability in one of the State's Growth Capitals.

## **The Gosford Experience**

### **Trends**

While the Gosford LGA has experienced some increased activity in residential flat development (predominantly in the City Centre), the vast majority of urban consolidation is occurring in the form of medium density housing typologies such as villas and townhouses, a trend which appears relevant state wide. These typologies have not improved design in the area, rather their application in areas more suited to higher design needs (i.e. around centres and within walking distance of key social and community infrastructure) has in fact reduced opportunity to undertake meaningful and quality renewal of end of life cycle housing stock.

While SEPP 65 has been successful in improving the design of residential flat buildings, this is only part of the residential development picture. Gosford City Council has identified the design quality of medium density housing as significant to ensure that urban consolidation can continue in a more sustainable fashion and to obtain more community support for this type of development.

Gosford LGA has a mix of social demographics that expands from low socio-economic status through to relatively wealthy households. This demographic requires housing that is not only affordable but housing that enables people to grow with both household size as well as income. This means that Gosford LGA requires housing that is affordable, adaptable and aspirational.

It is acknowledged that the identification and allocation of zoning to encourage housing choice sits with Council. However, the costs associated with development in regions like Gosford can be influenced by codes such as the Apartment Design Guide. Council appreciates that the typologies that are identified in the ADG have been economically tested, however the typologies illustrated are not readily realised in the Gosford LGA due to costs. Consequently, developers continue to provide typologies such as villa and townhouse development in areas where apartment buildings would provide a better response to the urban fabric in terms of typology, built form and aesthetics.

In order to improve design outcomes for multi-unit housing below three storey, a future a code that promotes better design for these low density typologies needs to be explored by the Government.

### **Statutory Planning**

SEPP 65 has been an excellent tool for assessing development proposals, and Council's experience is that applications in general meet the design principles set out in the SEPP and the current Residential Flat Design Code. Council supports the new changes to the ADG which provide developers the opportunity to provide one of the specified "acceptable solutions" as an alternative to the relevant performance criteria. This change now resolves the issue of the earlier plan where Council and the applicants were focused on the rules of thumb, the new changes now allow architects and designers to demonstrate that an alternate solution can achieve the intent of the SEPP and ADG and as such Council is able to encourage innovative design on sites where the application of the codes do not sit comfortably.

Council supports the ADG in that it aims to return the documents focus to its original intent as a comprehensive guide rather than a set of fixed laws.

Another critical change that affects Council's Statutory Planning is the additional grounds to which a consent authority must not refuse a development application. The relevant matters are ceiling height, apartment area and the provision of car parking. The new SEPP provides that, where the applicant proposes solutions that are equal to or greater than the recommended minimum amount specified in the Apartment Design Guide, Council cannot refuse the application. This change is supported however Council does note a foreseeable issue with the application of the reduced car parking rates allowable in regional centres such as Gosford.

For further clarity on the car parking issue, as well as other key issues affecting application of the SEPP and ADG in Gosford, please refer to the Policy Review section of our submission

### **Design Review Panel**

Since mid-2014, Council has not been using a Design Review Panel, the primary reasons being the requirement for three members to have a quorum and the fact that there were only three active panel members on the Central Coast Design Review Panel and the panel members has remained unchanged for several years. The cost to Council has also been a consideration in the decision not to use the Panel as the prescribed fee in the regulation has no relevance to the actual operating costs of a Design Review Panel.

The changes to the Design Review Panel endeavour to make it more functional. It includes the ability for councils to set up the design review panels and amend fees that Council could collect. This change alone enables Council to manage and appoint its own panel. Secondly, the issue of role clarity, reporting templates and standardised times for feedback to Council and architects has been resolved. This will provide a level of consistency across councils and ensure that Council receives comments in a short time period. Council supports any proposal to increase the maximum fee payable for applications referred to the design review panels and considers that Council should be able to operate a design review panel on a cost recovery basis. In particular, a council should be able to require a fee for each time a development proposal is reviewed by the DRP.

### **Relationship between the Apartment Design Code and DCPs**

It is recognised that amendments have been made to both the SEPP and the Apartment Design Guide with the aim of clarifying the relationship between the ADG and Council's DCP. The ADG now clearly outlines its role as a guide and the SEPP identifies the parts of the ADG that must be applied when assessing a development application. However further clarification about how councils should use and rely on the ADG when drafting DCPs and about the relationship between these documents is required. The Land and Environment Court has had to consider conflicts between DCPs and the previous RFDC document, both are matters for consideration when assessing a development application under s79C(1) of the Environmental Planning and Assessment Act 1979. Similarly the ADG will be a matter for consideration under s79C (1). Although it is proposed that the SEPP outlines eight matters where it prevails over a DCP, in the absence of clear instruction on other matters covered by the ADG there may be an argument that it should prevail on matters that it specifically addresses – but this is not always appropriate. Such a finding potentially weakens a council's DCP or, conversely, could affect the weight to be given to the Guide. Further clarification on this matter could be provided in the "About this Guide" section of the ADG.

It is Council's view that where a council has an adopted DCP concerning the design and development of RFBs, shop top housing or mixed use development, which has been prepared having regard to the guide, those controls should be the primary development standards to be considered during assessment of applications. Whilst a DCP should work with the ADG by providing a complementary numerical standard where it is necessary and justifiable, where a DCP is made after the ADG is updated and provides a control that is inconsistent with a control or performance criteria (excluding those covered by 6A of the SEPP) in the ADG then the DCP should prevail. The ADG should provide supplementary guidelines.

## **Policy Review - Key Issues for Gosford**

Council provides the following specific comments with regards to the proposed amendments to SEPP 65 and the new Apartment Design Guide.

### **Amendments to SEPP 65**

#### **Clause 2 Aims, objectives etc**

Amendments to the SEPP include an additional aim of the SEPP being

*(h) to facilitate the timely and efficient assessment of applications for residential flat development.*

Whilst Council supports the timely and efficient assessment of development applications it is considered that this aim should not be included under aims and objectives. The aims of the SEPP should remain focused on its purpose for which it was developed which was to improve the design quality of residential flat buildings not reduce the assessment time for development.

The Gosford LGA has a large aging population it is therefore appropriate that medium density housing which is attractive to this demographic is designed to allow "aging in place" to occur. The SEPP should include an aim which specifically addresses the issue of Adaptable Housing or the proposed aim "f" should be amended to specifically include reference to Adaptable Housing which can be linked with the concept of universal design addressed in the Apartment Design Guide.

#### **Clause 4 Application of SEPP 65**

The SEPP previously applied to development defined as follows:

***residential flat building*** means a building that comprises or includes:

*(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*

*(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),*

*but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.*

#### **Note.**

*Class 1a and Class 1b buildings are commonly referred to as **town houses** or **villas** where the dwelling units are side by side, rather than on top of each other.*

In order to achieve consistency with the Standard Instrument Definition of a residential flat building it is proposed to amend the wording of the SEPP as follows:

#### **4 Application of Policy**

*This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*

- (a) the development consists of any of the following:*
  - (i) the erection of a new building*
  - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
  - (iii) the conversion of an existing building for use as a residential flat building, shop top housing or mixed development with a residential component, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below the ground level (existing) providing for car parking, and*
- (c) the building concerned contains at least 4 or more dwellings.*

Whilst Council supports definitions within the SEPP being consistent with those included in the Standard Instrument, land within the Gosford LGA currently zoned R1 General Residential where medium density development is permitted frequently involves sloping sites. Although the 8.5m height limit in these areas is intended to result in a 2 storey development, due to the slope the development may result in a sub or part basement parking area protruding above “ground level existing”. Additionally to encourage increased densities around particular centres, in other R1 zoned areas within the LGA, Council has promoted a two storey “garden apartment” form of development encouraging site amalgamation through bonus FSR for the provision of a partial basement and an apartment/residential flat building style building. As a result of the deletion of the wording (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level) and the definitions included in the Standard Instrument of “storey” and “ground level existing” it would appear that these “sub or part basement” would now be considered a “storey” and these developments would now be captured by the SEPP, even though they are essentially a two storey development.

For Gosford City Council, the impact of the amended wording of the “Application of the Policy” section of the SEPP has the potential to significantly increase the development to which it applies. Whilst Council supports the improved design that results from the SEPP, Council is concerned that the application of the SEPP to these areas will deter developers from taking up Council’s preferred development form of “garden apartment” and revert to a villa/townhouse form of development which would not be covered by the SEPP and which have historically been of poor design quality. As previously stated, Council would support either a broadening of the SEPP to include villa and town house style development (possibly within its own section of the SEPP) or the Department preparing a guideline similar to SEPP 65 and the ADG for the villa and townhouse form of development.

Council requests that the Department review the wording of Clause 4 of the SEPP to clarify whether it intends that a “sub or partial” basement is intended to be included as a “storey” under the SEPP. Further it is suggested that the wording (not including levels below the ground level (existing) providing for car parking, be amended to (not including storeys below the ground level (existing) providing for carparking),. As the use of the term “level” in this clause adds to further confusion and there is no definition of the term level in either the SEPP or the standard instrument.

Also the word “use” has been omitted from “mixed use development” in clause 4(a)(iii).

## **Apartment Design Guide (ADG)**

### **Part 4 Clause 30 of SEPP 65 and Section 3J Bicycle and car parking**

Proposed amendments to the SEPP outline that a development proposal cannot be refused on the following grounds ceiling height, apartment area and carparking if the development meets the requirements set out in the Apartment Design Guide.

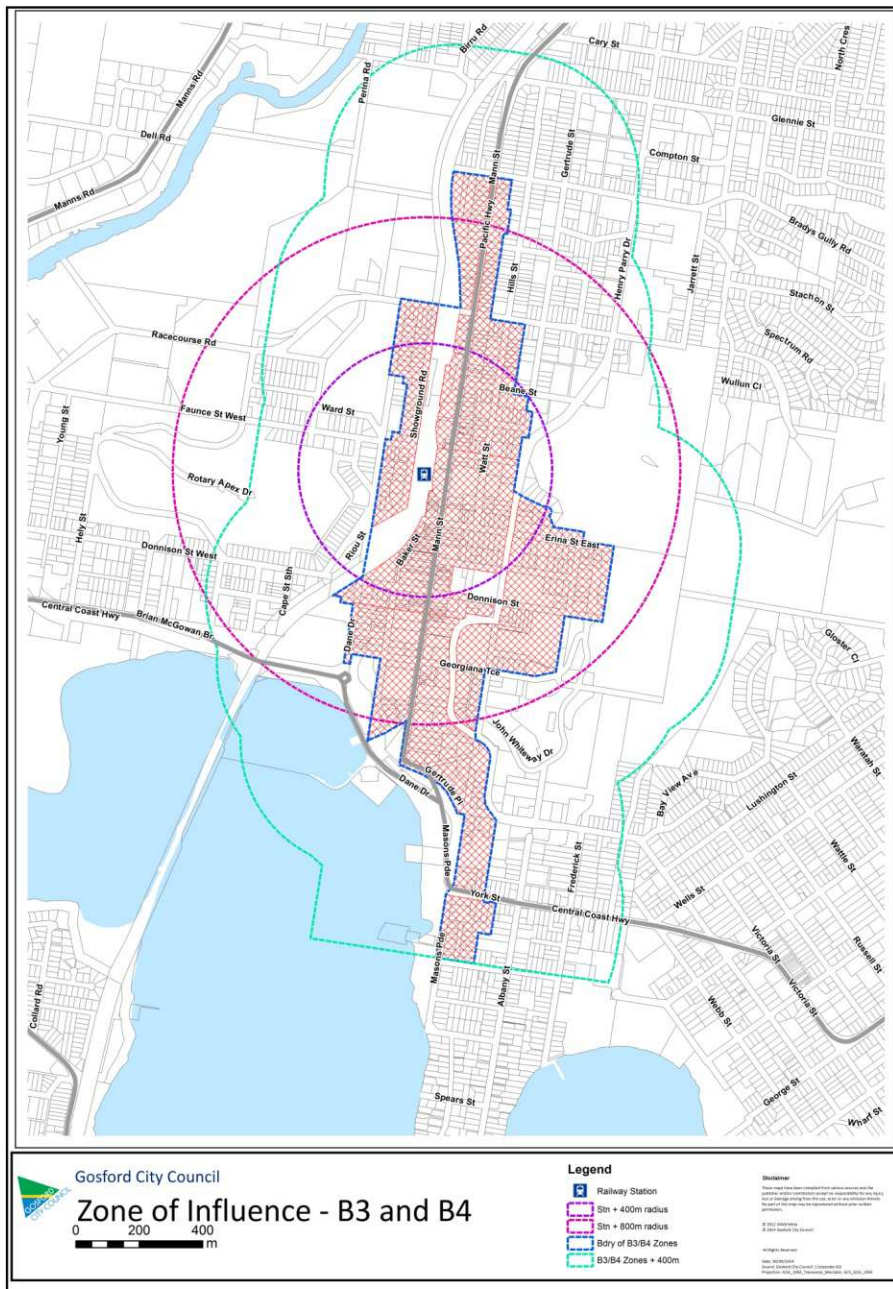
Section 3J Bicycle and car parking of the ADG nominates Gosford City Centre as a regional centre. It outlines the minimum requirement as follows:

<b>Nominated Regional Centre</b>	
<b>Location</b>	<b>Minimum Requirement</b>
Land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre	The relevant requirement set out in the RMS Guide to Traffic Generating Development or the car parking requirement prescribed by the relevant council, whichever is less.

The aim of this amendment is to reduce the parking requirement in centres in close proximity to public transport and the RMS Guide to Traffic Generating Development has parking requirements significantly less than Council’s current parking requirements. Council does not object to the principal behind this requirement however Gosford City Centre is comprised of land zoned B3 Commercial Core and this is surrounded by an area of land zoned B4 Mixed Use. The clause above appears to indicate that for Gosford City the 400m is measured from the outer zone boundary of B4 zoning (see map below).

In Gosford City Centre this would result in the discounted parking rate applying to land approximately 1.7km away from the train station and covering steep topography which would make walking into either the Gosford Centre or the train station unlikely. Much greater than the 800m from a railway station or light rail stop for Metropolitan Sydney to which the discounted parking rate applies.

Council recognises that the application of this control is important in providing transitional multi unit housing on the edge of centre zoned land with opportunity for reduced parking, however this should only occur where the development is still within a walkable distance to the train station or other primary transit hub. Consequently it is recommended that the department review this control and apply a limitation of 800 metres from a transit hub to the wording in the clause.



Another matter relating to Clause 4 of the SEPP and Section 3J of the ADG which requires clarification relates to the carparking and the Standard Instrument LEP definition of “gross floor area”.

The Standard Instrument LEP Definition of “gross floor area” states that it excludes “carparking” to meet any requirements of the consent authority (including access to that carparking)”. SEPP65 states that a Council cannot refuse a development if it complies with the carparking requirement outlined in the ADG it could therefore be argued that the SEPP/ADG rates become the “requirements of the consent authority”. However, if due to market demand an Applicant chooses to provide carparking in excess of the rates required by the SEPP/ADG then according to the Standard Instrument LEP Definition of “gross floor area” any parking in excess of the SEPP/ADG requirement would be included in the calculation of “gross floor area”. If a council’s DCP carparking rates are greater than those required by the ADG it would be preferable to an Applicant for the council’s carparking rate to be considered the “requirements of the consent authority”, then the difference between the SEPP/ADG rate and the council rate would not be included in the gross floor area calculation. To avoid any confusion or argument, Council requests that the ADG clearly identify which carparking rate would be considered the “requirements of the consent authority” for the purposes of the calculation of “gross floor area” as defined by the Standard Template LEP.

#### **Appendix 4 - Apartment Building Types**

Case studies are a useful tool to demonstrate how the guidelines can be applied in a practical sense. However most of the case studies provided give examples of developments with basement parking on flat sites. Case studies should be included demonstrating best practice dealing with specific site constraints such as steep topography and narrow sites, sites where full yield may not be possible etc.

### **Other Matters:**

#### **Promoting Better Outcomes**

The RFDC has been sometimes seen by some as a road block to development. There is little understanding of the purpose of the RFDC in the general community. The introduction of the new ADG provides the opportunity for better promotion of the advantages of design quality. Education for building professionals and the wider community could address the following:

- The importance of the new Apartment Design Guide in adding value to a project.
- How the ADG provides better amenity for residents.
- The importance of amenity and aesthetics for the long term value and sustainability of a building.
- How good design contributes to the streetscape and to the long term improvement of the public domain.

Buildings which achieve a higher level of design quality should be recognised and rewarded. A successful example of this is the Greenstar sustainability rating system. Such a system would recognise the skill and experience of the architect and the design team in providing good outcomes rather than technical compliance with a “rule of thumb” or a control.



## **A Research Based Approach**

Studies of the long term benefits of the SEPP guidelines should be considered. This would enable continual improvement of existing and proposed numeric controls. A qualitative analysis on improvements in amenity impact for compliant developments would help to inform the SEPP into the future. For example:

- Post occupancy satisfaction studies.
- The impact of reduced car parking on suburban town centres
- Establishing a relationship between residential amenity and long term property values.

## **Conclusion**

Since its introduction SEPP 65 and the RFDC have successfully improved the overall design qualities of residential flat buildings. Gosford City Council is generally supportive of the proposed amendments to the SEPP. However the submission raises a number of concerns which Council requests that the Department address prior to adoption of the SEPP and Apartment Design Guide. In particular matters relating to the Application of the SEPP and Carparking requirements as they relate to regional centres such as Gosford.

Council also requests that the Department engage in ongoing dialogue with councils regarding the preparation of a code or guide to enable the design improvement and affordability of the villa and townhouse typology of medium density development which currently represents the vast majority of urban consolidation across the state.

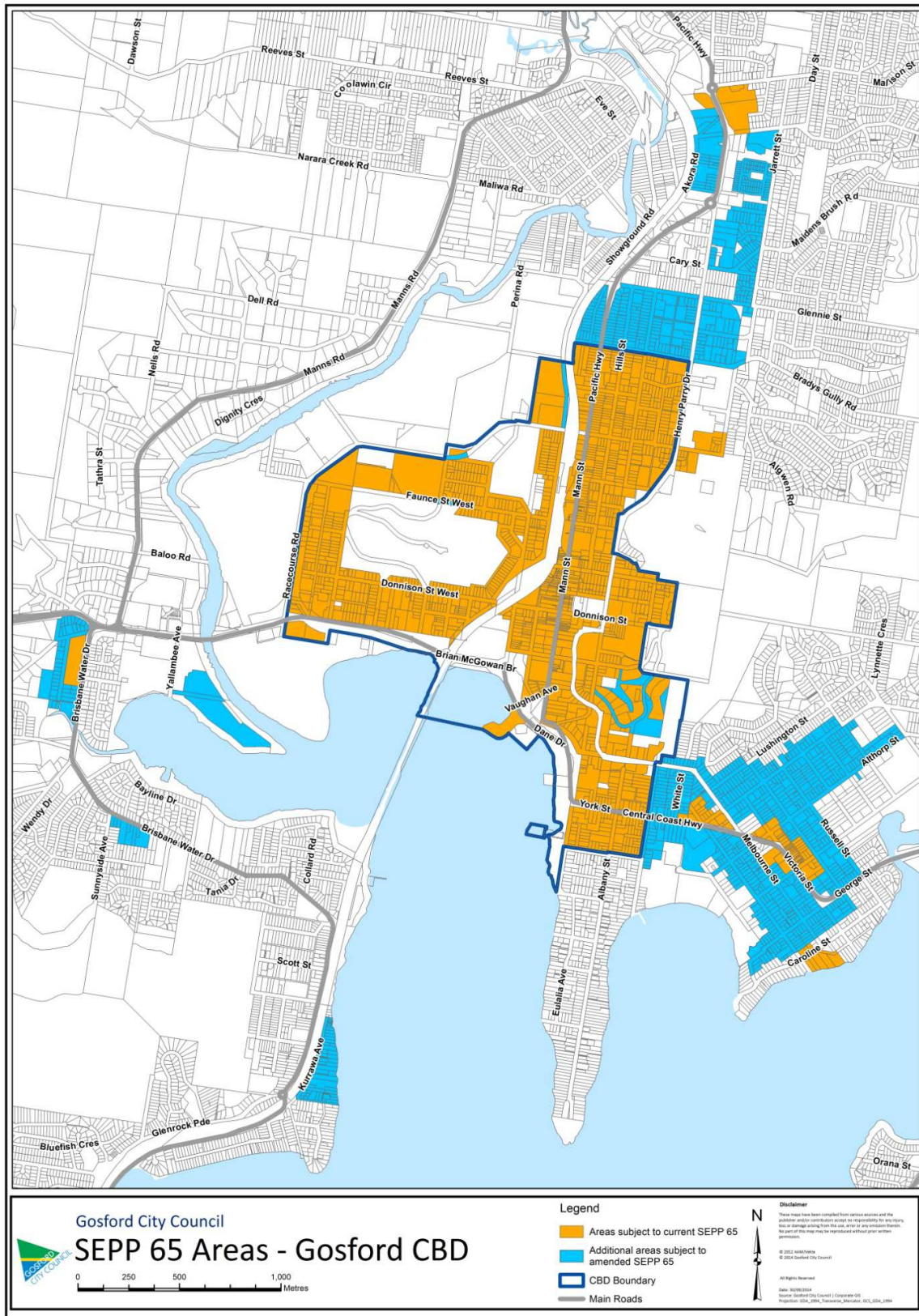
## **Areas in Gosford LGA where SEPP 65 is Applicable (Information for Council)**

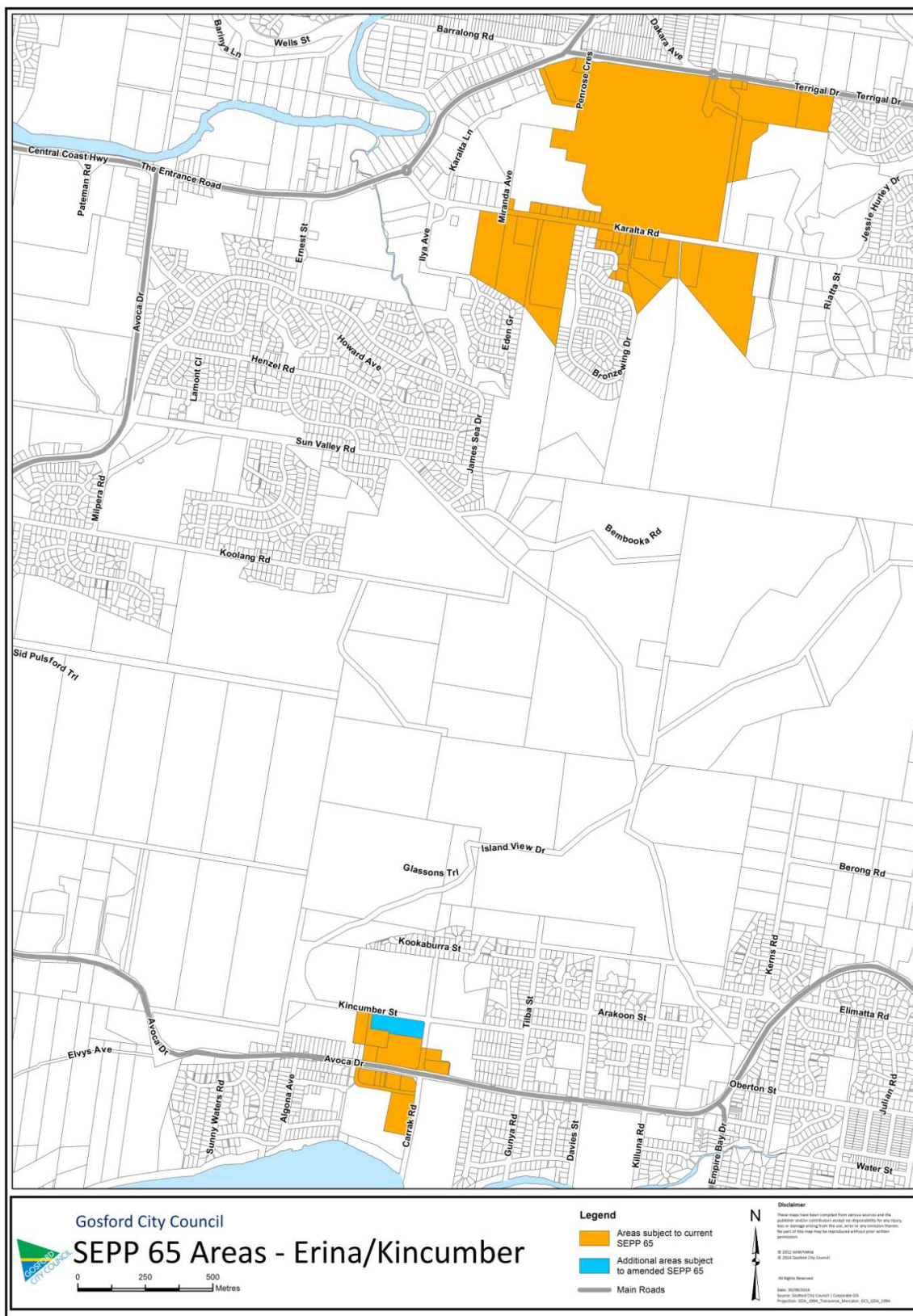
SEPP 65 applies to areas within the LGA where the GLEP2014 permits building heights of 3 storeys or more, and where residential flat buildings, shop top housing & mixed use development with a residential component are permitted. Areas where the SEPP previously applied are indicated in orange on the attached maps and include areas within Gosford City Centre, certain areas within Erina and the centres of Woy Woy, Umina, Ettalong, Terrigal, East Gosford, Lisarow, West Gosford, Niagara Park, Avoca and Kincumber.

As discussed in the submission above the proposed amended wording of Clause 4 Application of the SEPP in conjunction with definitions in GLEP 2014 (as a result of the Standard LEP Instrument) could result in the SEPP applying to areas shown on the maps in blue if the development form is a “residential flat building” as defined in GLEP 2004 and includes a partial or sub basement.

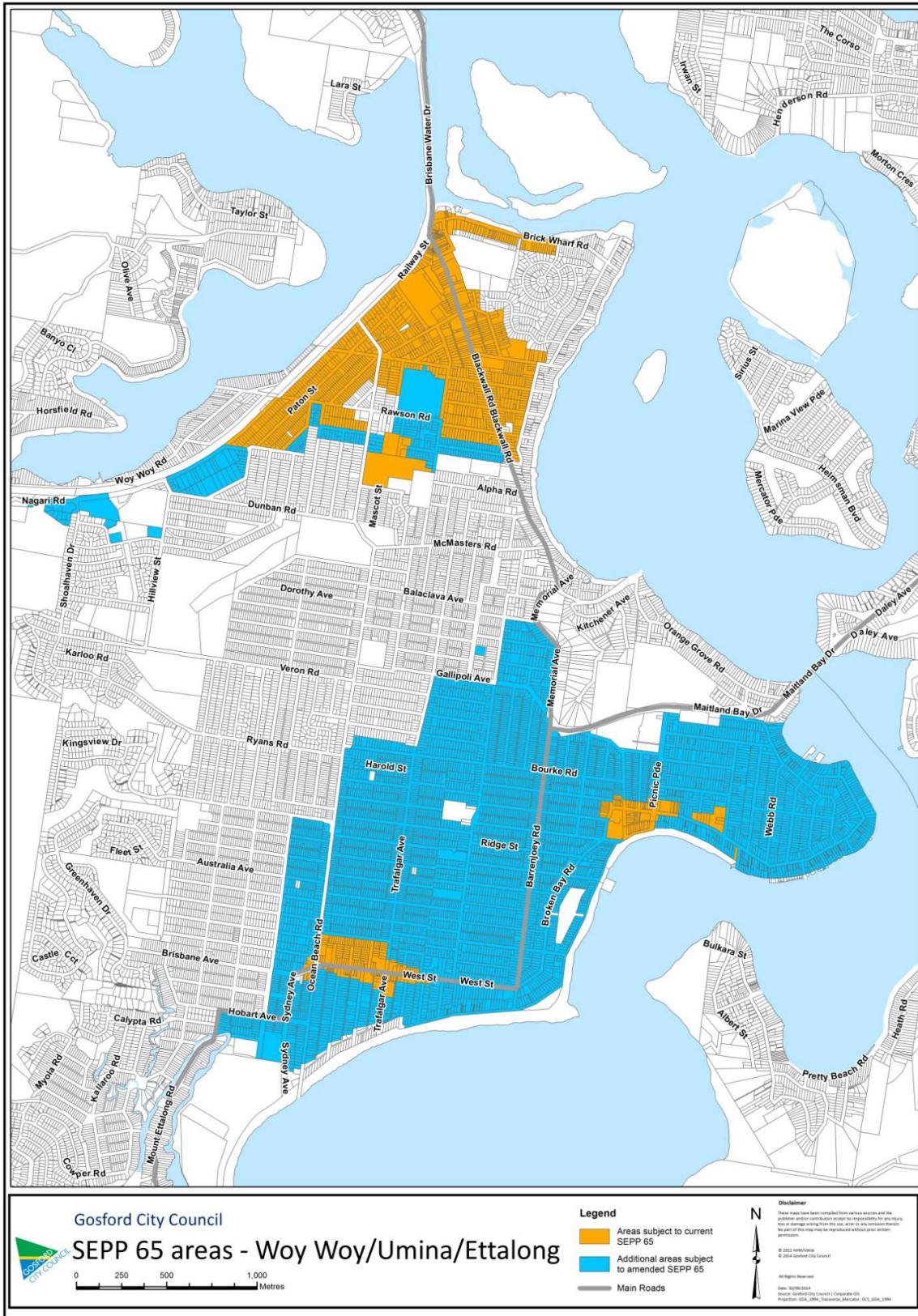
***residential flat building*** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing

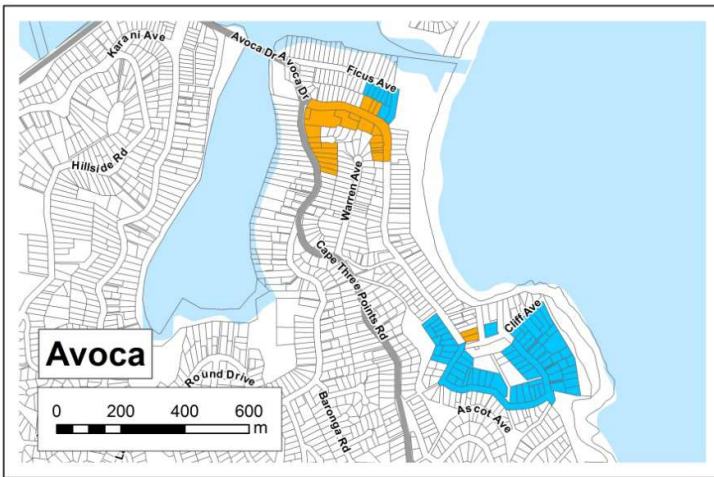
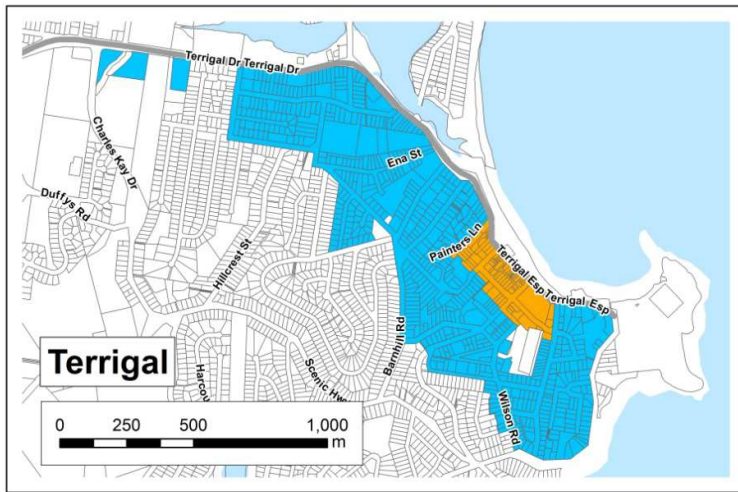
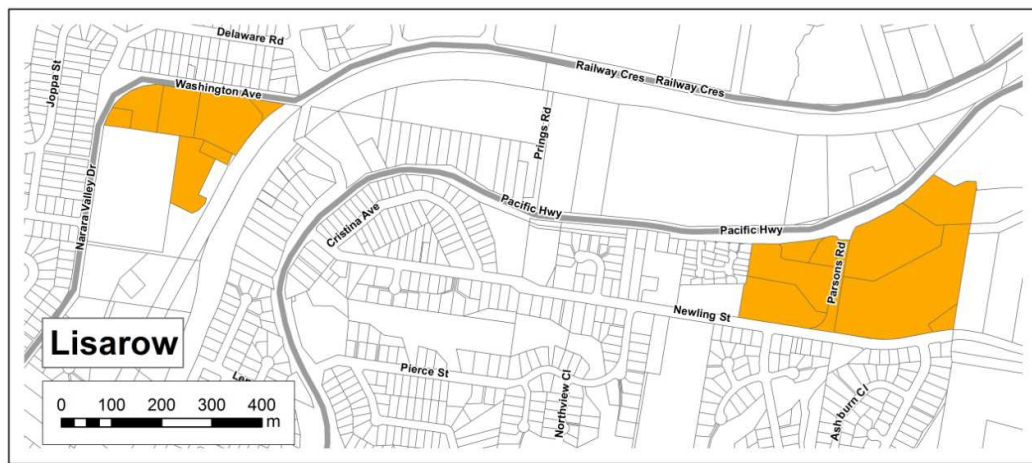
(Note: Multi dwelling housing is generally a villa or townhouse building form)













**Gosford City Council**

**SEPP 65 Areas - Various**

0 250 500 1,000 Metres

**Legend**

Areas subject to current SEPP 65

Additional areas subject to amended SEPP 65

Main Roads

**Disclaimer**

These maps have been compiled from various sources and the publisher accepts no responsibility for any errors, loss or damage arising from the use, error or any omission therein. No part of this map may be reproduced without prior written permission.

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Date: 30/09/2014  
Source: Gosford City Council | Corporate GIS  
Projection: GDA\_94, Transverse Mercator, 30S, 200, 2000