

Voluntary Planning Agreement

Shoalhaven City Council &
Hanson South Coast Pty Limited

Rezoning of Seascape Close & Ross
Avenue, Narrawallee

Reference: LS292
1787E
2644E

The Council of the City of Shoalhaven
Council Administrative Centre
Bridge Road
NOWRA, NSW 2541

Voluntary Planning Agreement

This Agreement is made on the date set out in **Item 1** of **Schedule 1**.

Parties

- (1) **The Council of the City of Shoalhaven** of Bridge Road, Nowra, NSW 2541 (**Council**), and
- (2) **Hanson South Coast Pty Ltd (ACN 001 079 385)** of PO Box 73, Jannali, NSW 2226 (**Hanson**).

Background

- A. Hanson is the owner of the Ross Avenue Land and the Seascape Close Land.
- B. The Seascape Close Land is currently zoned Environment Protection 7(d2) (Special Scenic) under the SLEP.
- C. The Ross Avenue Land is currently zoned part Residential 2(c) (Living Area) and part Open Space 6(c) under the SLEP.
- D. The Seascape Close Land has characteristics that would permit residential subdivision and development.
- E. The Ross Avenue Land contains Garrads Lagoon which is of high environmental significance and value to the area.
- F. On 18 July 1995 Council resolved to prepare draft local environmental plan number LP225 to rezone the Seascape Close Land to part Residential 2(a1) and part Environment Protection 7(d) (Special Scenic). The draft plan aims to allow for some residential development on the Seascape Close Land while protecting landscape values and the habitat of threatened species.
- G. The plan was prepared on the basis that Hanson had agreed to surrender the Development Consent over the Ross Avenue Land. The consent approved the residential development of the land filling of part of Garrads Lagoon.
- H. On 20 April 2002 Council resolved to prepare draft local environmental plan number LP338 to rezone the Ross Avenue Land to Environment Protection 7(a) (Ecology). The draft plan aims to protect Garrads Lagoon.
- I. Council also resolved to prepare a deed of agreement to ensure that Hanson surrendered the Development Consent and dedicated part of the Ross Avenue Land to Council (**the Subject Land**).
- J. Council has since prepared and exhibited draft local environmental plans numbers LP225 and LP338. The plans have not been gazetted.
- K. On or about 26 September 2008 Council and Hanson entered into a deed in accordance with Council's resolution. The Deed identified that:
 - (a) Hanson now intends to lodge a Part 3A major project application under the Act for the residential subdivision of the Seascape Close Land;

- (b) There is a public benefit if the Subject Land was transferred to Council for public use;
 - (c) Hanson will hold on trust the Subject Land for Council until the Minister made an amending local environmental plan in substantially the same form as the draft local environmental plans LP225 and the relevant consent authority approves residential subdivision application under the Act; and
 - (d) Hanson will then transfer the Subject Land to Council.
- L. Since entering into the deed, there have been substantial changes to the Act in respect to the process for amending local environmental plans and the Department of Planning now requires Council to submit a planning proposal for the rezoning of the Ross Avenue Land and Seascape Close Land.
- M. The parties have agreed that the deed should be updated and executed as a voluntary planning agreement in accordance with the Act.

Agreed Terms

Part A – Conditions Precedents

1. Operation of Agreement

- 1.1 This Agreement takes effect upon its execution by both parties.

Part B – Planning Proposal

2. Draft LEP – Seascape Close Land

- 2.1 Council will prepare the Planning Proposal for the Seascape Close Land in accordance with section 55 of the Act.
- 2.2 Council will forward the Planning Proposal to the Minister in accordance with section 56 of the Act and will act on any determinations made by the Minister in accordance with section 56 of the Act.
- 2.3 Council will undertake any community consultation in respect to the Planning Proposal as required by section 57 of the Act.
- 2.4 Council will use its best endeavours to ensure that the Planning Proposal is made as a local environmental plan by the Minister in accordance with section 59 of the Act and will take all reasonable steps as may be necessary to lawfully enable the Planning Proposal to be made as a local environmental plan.
- 2.5 Council reserves its discretion to vary the Planning Proposal or decide not to proceed with the Planning Proposal in accordance with section 58 of the Act.

3. LEP Clause

- 3.1 Hanson will not object to the following or similar clause being inserted into any local environmental plan by the Minister as part of any rezoning of the Seascape Close Land:

Development Consent for any subdivision of Lot 29 DP 874275 shall not be granted unless Council is satisfied that arrangements have been made for the transfer to

Council, at no cost to Council, of Lot 300 DP 792411 (except that part previously comprising Lot 473 DP 226125).

- 3.2 Hanson acknowledges that Council does not intend to recommend the inclusion of the above clause in the draft local environmental plan and the inclusion of any such clause is subject to the discretion of the Minister in accordance with the Act.

4. Restriction as to User

- 4.1 If the Minister makes a local environmental plan in substantially the same form as the Planning Proposal then immediately after the local environmental plan has been made, Hanson will register a restriction as to user under section 88E of the *Conveyancing Act 1919* (NSW) over the Seascope Close Land prohibiting subdivision until the Subject Land is transferred to Council in accordance with clause 8.

Part C – Residential Subdivision Application

5. Preparation of Residential Subdivision Application

- 5.1 Hanson will prepare a residential subdivision application under the Act for the residential subdivision of the Seascope Close Land.
- 5.2 Hanson will submit the residential subdivision application to the appropriate consent authority within two (2) years of Council submitting the Planning Proposal to the Minister under clause 2 of this Agreement.
- 5.3 Council will notify the relevant consent authority of its commitment to recognising a maximum equivalent of 17 lots and credits equivalent to all section 94 contributions under the Act and section 64 water and sewerage charges applicable to any future residential subdivision approval.

Part D – Public Benefits

6. Subject Ross Avenue Land Held on Trust

- 6.1 Immediately upon the execution of this Agreement, Hanson agrees to hold the Subject Land on trust for Council subject to this Agreement.

7. Subdivision

- 7.1 The Subject Land must be subdivided from the Ross Avenue Land to enable the transfer of the Subject Land to Council.
- 7.2 Hanson must (at its own cost) prepare and lodge all documentation relating to the subdivision of the Subject Land from the Ross Avenue Land. This includes, but is not limited to, the development application and any subsequent construction certificate.
- 7.3 Council will not charge any application fees or section 94 contributions in relation to any development application or construction certificate application made in accordance with this clause 7 of the Agreement.
- 7.4 If development consent is granted for the development application made in accordance with this clause 7 of the Agreement, then:
- (a) Hanson must deliver the new certificate of title and transfer of the Subject Land to a firm of lawyers agreed upon by Council and Hanson; and

- (b) the certificate of title and transfer will be held in escrow until the condition precedents in clause 8.1(a) and (b) are satisfied.

8. Transfer of Subject Ross Avenue Land

8.1 If the Minister:

- (a) makes a local environmental plan in substantially the same form as the Planning Proposal; and
- (b) the relevant consent authority grants development consent to any residential subdivision application made with respect to the Seascope Close Land,

then:

- (c) Hanson must provide Council with the certificate of title and transfer for the Subject Land within 28 days of the date of gazettal of the local environmental plan or issue of the residential subdivision development consent whichever is the later; and
- (d) Upon receipt of the documentation in clause 8.1(c) Council may submit the title and transfer for the Subject Land for registration.

9. Surrender of Development Consent

9.1 If the Minister:

- (a) makes a local environmental plan in substantially the same form as the Planning Proposal; and
- (b) the relevant consent authority grants development consent to any residential subdivision application made with respect to the Seascope Close Land,

then Hanson must immediately surrender the Development Consent over the Ross Avenue Land in accordance with section 104A of the Act.

10. Lapsing of Agreement

- 10.1 If the Minister makes a local environmental plan permitting residential development of the Seascope Close Land but the relevant consent authority does not concurrently grant development consent for the residential subdivision of the Seascope Close Land, then the obligations upon Hanson in respect to the transfer of the Subject Land will remain until such time as a residential subdivision is approved in respect to the Seascope Close Land.

Part E – General

11. Planning Agreement under the Act

- 11.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

12. Scope and Application of Agreement

- 12.1 This Agreement binds the parties and applies to the Seascope Close Land and the Ross Avenue Land.

- 12.2 This Agreement partially excludes the application of section 94 of the Act to any subdivision consent granted in relation to the Seascope Close Land, only to the extent that Council has recognised a credit for the 17 allotments approved under the Development Consent.
- 12.3 This Agreement excludes the application of section 94 of the Act to any subdivision consent granted in relation to the Ross Avenue Land, only to the extent that the subdivision enables the transfer of the Subject Land to Council in accordance with this Agreement.
- 12.4 This Agreement does not exclude the application of section 94A of the Act to any subdivision consent granted in relation the Seascope Close Land, but may be considered by a consent authority when imposing a requirement to pay section 94A contributions.

13. Registration of this Agreement

13.1 Hanson must promptly:

- (a) obtain such consents to the registration of this Agreement on the titles to the Seascope Close Land and the Ross Avenue Land as are necessary for the registration of this Agreement pursuant to section 93H of the Act;
- (b) lodge the Agreement for registration with the Land & Property Management Authority and take all steps to procure registration of the Agreement pursuant to section 93H of the Act;
- (c) produce to the Council within 35 days of execution of this Agreement details of lodgement of the Agreement with the Land & Property Management Authority; and
- (d) following registration of the Agreement, notify the Council of registration by enclosing a title search of the Seascope Close Land and Ross Avenue Land confirming the registration.

14. Removal of Registration

- 14.1 Hanson may only remove this Agreement from the titles to the Seascope Close Land and the Ross Avenue Land at its own cost with the written consent of Council.
- 14.2 Council must, within 10 business days, provide its consent under clause 14.1 of this Agreement in any of the following events:
- (a) this Agreement is terminated or has lapsed for any reason; or
 - (b) all of Hanson's obligations under this Agreement have been performed.

15. Assignments & Dealings

- 15.1 This Agreement is intended by the parties to bind successors in title to the Seascope Close Land and the Ross Avenue Land.
- 15.2 Hanson must not have any Dealings with the Seascope Close Land or the Ross Avenue Land unless Hanson:
- (a) first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement;
 - (b) provides the Incoming Party with a copy of this Agreement;

- (c) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of Hanson under this Agreement;
- (d) remedies any default by Hanson, unless such default has been waived by the Council; and
- (e) pays the Council's reasonable costs in relation to the assignment and novation.

16. Dispute Resolution

16.1 If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve that dispute in accordance with this clause 16.

16.2 The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause 16;
- (b) the intent to invoke this clause 16;
- (a) (if practicable) the outcomes which the notifying party wishes to achieve; and
- (b) any material impact which the dispute has upon the completion of all obligations under this Agreement.

16.3 The representatives of the parties must promptly (and in any event within 10 business days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

16.4 If:

- (a) at least one meeting has been held in accordance with clause 16.3; and
- (b) the parties have been unable to reach an outcome identified in clause 16.3(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with the process agreed under clause 16.3.

then that party may, by 10 business days written notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of the Agreement.

17. Notices

- 17.1 Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that party at its address set out in **Item 7 of Schedule 1**; or
 - (b) faxed to that party at its fax number set out in **Item 7 of Schedule 1**.
- 17.2 If a party gives the other party three business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 17.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address;
 - (b) If it is sent by post, two business days after it is posted; or
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 17.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

18. Review

- 18.1 The parties agree to review their respective obligations under this Agreement annually until such time as all obligations have been fulfilled.
- 18.2 The parties agree to:
- (a) meet at a suitable location and time;
 - (b) appoint a representative who is duly authorised to attend the meeting to review the Agreement;
 - (c) participate in the review in good faith;
 - (d) minute all matters discussed at the meeting.

19. General

19.1 Approvals & Consents

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

19.2 Legal and Administrative Costs

Hanson must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) any enforcement of Council's rights under this Agreement.

19.3 Stamp Duty

Hanson is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

19.4 Agreement

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by law.

19.5 Further Acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19.6 Governing Law & Jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

19.7 Joint & Several Liability

An obligation on two or more persons binds them separately and together.

19.8 No Fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law or under the Act, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty under the Act.

19.9 Representations & Warranties

The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

19.10 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

19.11 Modification

This Agreement may only be varied or replaced by a document in writing, which is signed by the parties.

19.12 Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

19.13 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

19.14 Counterparts

This Agreement may be signed in counterparts.

19.15 GST

- (a) In this clause 19.15:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) "GST Law" has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999; and
 - (i) any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under, or in connection with, this Agreement are exclusive of GST.
- (c) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is:
 - (i) a monetary payment; or
 - (ii) a non-monetary payment which is not a taxable supply by the recipient, the recipient will pay to the supplier an additional amount equal to the GST payable by the supplier in respect of the supply (**GST Amount**).
- (d) Subject to paragraph (g), the recipient will pay the GST Amount referred to in clause 19.15(c) in addition to and at the same time the consideration for the supply is to be provided under this Agreement.

- (e) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is a non-monetary payment which is also a taxable supply by the recipient:
 - (i) at or before the time of payment of any relevant consideration by either party, the parties agree that they will each exchange tax invoices; and
 - (ii) if the parties exchange non-monetary consideration of unequal GST-inclusive market value:
 - (A) in respect of the exchange, one party (**the First Party**) will have a GST liability on its supply (**First Party Supply**) that exceeds its entitlement to an input tax credit on its acquisition in exchange for that supply (**First Party Acquisition**);
 - (B) the other party (**Second Party**) must make a monetary payment to the First Party equal to the positive difference between the GST payable on the First Party Supply and a full input tax credit in respect of the First Party Acquisition plus any GST payable in respect of that payment (**Payment**); and
 - (C) the Payment referred to in paragraph (B) above will be made by the Second Party at the time the Second Party receives a tax invoice for the First Party Supply.
- (f) The parties will agree upon the market value of any non-monetary consideration which the recipient is required to provide under clause 19.15(e). If agreement cannot be reached prior to the time that a party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The parties will each pay one half of the costs of referral and determination by the independent expert.
- (g) The supplier must deliver a tax invoice to the recipient before the supplier is entitled to payment of the GST Amount under clause 19.15(c). The recipient can withhold payment of the GST Amount until the supplier provides a tax invoice.
- (h) If an adjustment event arises in respect of a taxable supply made by a supplier under, or in connection with, this Agreement;
 - (i) any amount payable by the recipient under clause 19.15(c) will be recalculated to reflect the adjustment event, taking into account any previous adjustments under this clause, and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires and the supplier will issue an adjustment note to the recipient; or
 - (ii) in respect of an exchange of supplies that falls within clause 19.15(e), the principle in that clause will be applied, taking into account the adjustment event and any previous adjustments under this clause 19.15(h), tax invoices or adjustment notes will be exchanged, and a further monetary payment made as required or appropriate.
- (i) Where a party is required under, or in connection with, this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled.

20. Interpretation

20.1 Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) as amended from time to time.

Dealing, in relation to the Ross Street Land or the Seascope Close Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the land.

Development Application has the same meaning as in the Act.

Development Consent means the development consent granted by Council in respect to the Ross Street Land as identified in **Item 5 of Schedule 1**.

Planning Proposal means the planning proposal for the residential rezoning of the Seascope Close Land set out in **Schedule 2**.

Ross Avenue Land means the land identified in **Item 2 of Schedule 1**.

Party means a party to this agreement, including their successors and assigns.

Public Benefits means the public benefits identified in **Item 6 of Schedule 1** which are to be provided as a result of this Agreement.

Seascope Close Land means the land identified in **Item 4 of Schedule 1**.

SLEP means the Shoalhaven Local Environmental Plan 1985.

Subject Land means the land identified in **Item 3 of Schedule 1**.

20.2 Construction

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than Saturday or Sunday on which banks are open for business generally in the Shoalhaven local government area.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.
- (n) The Explanatory Note for this Agreement is not to be used to assist in construing this Agreement.

Executed by the parties as an Agreement:

Signed for and on behalf of the)
COUNCIL OF THE CITY OF)
SHOALHAVEN by its duly authorised)
officer in the presence of:)

Shae Boag

Witness:

SHAE-MARIE HALL-BOAG

Name (printed):

SIGNED by HANSON SOUTH COAST)
PTY LIMITED, ACN 001 079 385, in)
accordance with its Constitution (Section)
127 of the Corporations Act 2001):)

Carole Ruth Hanson

Signature:

CAROLE RUTH HANSON

Name:

SECRETARY.

Position:

R.T. Donaldson

Signature: R.T. DONALDSON

ALAN

General Manager:

Allan James Hanson

Signature:

ALLAN JAMES HANSON.

Name:

DIRECTOR.

Position:

Schedule 1 Reference Schedule

Item	Name	Description
1	Date	
2	Ross Avenue Land	Lot 300 DP 792411
3	Subject Land	Lot 300 DP 792411 (except that part previously comprising Lot 473 DP 226125) shown in blue on the map attached as Attachment A .
4	Seascape Close Land	Lot 29 DP 874275 shown in yellow on the map attached as Attachment A .
5	Development Consent	The development consent SF5052 for the major staged subdivision which was granted by Council on 19 September 1989. (Ross Ave, Narrawallee stage – 17 Lots)
6	Public Benefits	The Subject Land contains Garrads Lagoon which is of high environmental value. The Subject Land also contains an Endangered Ecological Community identified as Swamp Sclerophyll Forest on Coastal Floodplains (EEC). This EEC is of high value and is a wildlife corridor. The South Coast Regional Strategy identifies Garrads Lagoon as having high conservation values. The Department of Environment Climate Change and Water have also confirmed the environmental significance of the Subject Land. As such, there is a public benefit in transferring this land to public ownership.
7	<p>Notices</p> <p>Council Attention</p> <p>Address</p> <p>Fax Number</p> <p>Hanson Attention</p> <p>Address</p> <p>Fax Number</p>	<p>General Manager</p> <p>Administrative Building Bridge Road Nowra NSW 2541</p> <p>02 4422 1816</p> <p>Mr Allan Hanson</p> <p>PO Box 73 Jannali NSW 2226</p> <p>02 9589 1118</p>

Schedule 2 Planning Proposal

Planning Proposal

LOCAL GOVERNMENT AREA: Shoalhaven

ADDRESS OF LAND: Lot 29 DP 874275, Seaspray Street, Narrawallee

MAPS

- Location map showing the land affected by the proposed draft plan in the context of the LGA (titled "Location Map")
- Existing zoning map showing the existing zoning of the site and surrounding land (titled "Zoning Map")
- Proposed zoning map (titled "Draft LEP Map Sheet 1")
- Proposed scenic protection hatching map (titled "Draft LEP Map Sheet 2")

Part 1: OBJECTIVES OR INTENDED OUTCOMES OF PROPOSED LEP:

- To rezone part of the land from Environment Protection 7(d2) (Special Scenic) to Residential 2(a1) under Shoalhaven Local Environmental Plan 1985.
- To permit a small residential subdivision in the vicinity of Seaspray Street.
- To recognise and protect landscape values.
- To ensure that the habitat of the Powerful Owl is generally protected.
- To ensure that the risk to life and property from bushfire is minimised.
- To ensure that the visual impact of development is reduced through the protection and establishment of appropriate landscaping.
- To provide sites with sufficient area to accommodate a dwelling house, effluent disposal, vehicular access, water quality control and drainage via the Residential 2(a1) zone.

Part 2: EXPLANATION OF THE PROVISIONS OF PROPOSED LEP:

- Amendment to Shoalhaven Local Environmental Plan 1985 in accordance with the proposed zoning map (Draft LEP Map Sheet 1).
- Amendment to Shoalhaven Local Environmental Plan 1985 to include Scenic Preservation Hatching in accordance with the map (Draft LEP Map Sheet 2).

Part 3: JUSTIFICATION OF OBJECTIVES, OUTCOMES AND PROVISIONS AND PROCESSES FOR THEIR IMPLEMENTATION:

Section A – Need for the planning proposal

<p>1. Is the planning proposal a result of any strategic study or report?</p> <p>IF YES</p> <ul style="list-style-type: none"> • Briefly explain the nature of the study or report and its key terms of explaining the rationale for the proposal • Submit a copy of the study or report with the planning proposal 	<p>The draft LEP is indirectly consistent with the findings of the Milton Ulladulla Structure Plan (which is identified in the South Coast Regional Strategy).</p> <p>Council agreed to prepare the draft LEP to enable the landowner to dedicate/ transfer Lot 300 DP 792441 (Garrads Lagoon, which is also in their ownership) to Council and the surrendering of an existing consent for 17 residential lots that sits over Lot 300.</p>
<p>2. Is the planning proposal the best means of achieving the intended</p>	<p>Yes. The only way of achieving the objective of permitting a small residential subdivision in the</p>

<p>outcomes, or is there a better way? (alternatives to changing controls on development might include community education and new administrative processes such as pre application meetings)</p>	<p>vicinity of Seaspray Street is to rezone the land to allow for residential land use. The rezoning also facilitates the overall land transfer referred to in Point 1.</p>
<p>3. Is there net community benefit? The Net Community Benefit Test: an assessment should be prepared by the proponent to be submitted to Council for endorsement prior to submitting of DoP as part of the Gateway process. The level of detail and analysis should be proportionate to the size and likely impact of the rezoning</p>	<p>A Net Community Benefit Test has not been undertaken for this draft plan and is not considered appropriate as this planning proposal is being prepared to ensure the continuation of a Draft LEP that has been issued with a Section 65 certificate and that for a number of reasons did not meet the deadlines for "old system" LEP's.</p> <p>Three (3) submissions were received from the community during the draft LEP exhibition period.</p> <p>A Deed of Agreement exists between Council and the land owner to ensure the dedication/ transfer of Lot 300 DP 792441 to Council. The Deed was also exhibited with the Draft LEP, however, due to changes to SEPP (Major Development) this Deed of Agreement will need to be amended, possibly to take the form of a Voluntary Planning Agreement should the rezoning proceed.</p>

Section B – Relationship to strategic planning framework

<p>4. 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 plan?</p> <ul style="list-style-type: none"> Describe regional or sub regional strategy outcomes or actions directly relevant to the planning proposal Where is the case, include reasons why the planning proposal is either explicitly consistent with, or explicitly inconsistent with, or outline or actions contained in the regional or sub regional strategy. Sustainability criteria included in regional strategies should be addressed in the planning proposal. 	<p>An action of The South Coast Regional Strategy is:</p> <ul style="list-style-type: none"> Infill housing and new residential land located adjacent to well serviced centres and town will be given priority in land release planning <p>The draft LEP is consistent with the action as the site is immediately adjacent to existing residential development.</p> <p>An Action of the South Coast Regional Strategy is:</p> <ul style="list-style-type: none"> Only urban areas which are/will be identified in the final versions of the following documents are supported: Milton Ulladulla Structure Plan. <p>The draft Plan is somewhat inconsistent with this action as the Milton Ulladulla Structure Plan identifies the site for Bushland Conservation. As Council resolved to prepare the original draft LEP in 1995 (many years prior to the release of the South Coast Regional Strategy), and as this Draft LEP has been prepared to implement a transfer of environmentally sensitive land to Council, then this inconsistency is minor and not considered</p>
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	to be sufficient justification for not proceeding with the Draft LEP.
5. Is the Planning Proposal consistent with the local Councils Community Strategic Plan or other local Strategic Plan.	The proposal is broadly consistent with Council's draft Community Strategic Plan.
6. Is the planning proposal consistent with applicable state environmental policies?	The draft LEP is consistent with State Environmental Planning Policies.
7. Is the planning proposal consistent with applicable Ministerial directions? <ul style="list-style-type: none"> Each Planning proposal must identify, if any; Section 117 Directions are relevant to the Planning Proposal. Where the Planning Proposal inconsistent, those inconsistencies must be specifically justified. Certain directions require consultation with government agencies – if such a direction is relevant, this should be identified however should not take place until the gateway determination is issued, confirming the public authorities to be consulted 	<p>The draft plan is inconsistent with Ministerial directions:</p> <p>No 2.1 – Environmental Protection Zones. This plan is being prepared to enable the landowner to surrender an existing subdivision, also in an environmentally sensitive location and transfer of land into Council's ownership.</p> <p>The Draft Plan is not inconsistent with Ministerial Directions:</p> <p>1.5 Rural lands. 2.2 Coastal Protection. 2.3 Heritage Conservation. 2.4 Recreational Zones. 3.1 Residential Zones. 3.2 Caravan Parks and Manufactured home estates. 3.3 Home Occupations. 3.4 Integrating Land use and transport. 4.4 Planning for bushfire protection. 5.1 Implementation of Regional Strategies. 6.1 Approval and referral requirements. 6.2 Reserving land for public purposes. 6.3 Site Specific Provisions.</p>

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or habitats that will be adversely affected as a result of the proposal? <p>IF Yes: it will be necessary to carry out an assessment of significance accordance with Section 5A of the EP&A act and the "Threaten species Assessment Guidelines" issued by the department of climate change. Any adverse impact will trigger the requirement under section 34A to consult with the director general of the department of climate change – such consultation if required does not take place until after the issuing of the initial gateway determination.</p>	<p>No. The draft LEP is unlikely to adversely affect critical habitat, threatened species populations, endangered ecological communities or habitat.</p> <p>Environmental studies of the potential impact of residential development on the existing environment have been undertaken.</p> <p>Proposed zone boundaries have been delineated through consultation with DECCW. Residential development is confined to the lowers parts of the site to protect the treed ridgeline.</p>
9. Are there any other likely	Yes. The planning proposal will permit

environmental effects as a result of the planning proposal and how are they proposed to be managed	development in a location that is currently remnant bushland, zoned for environment protection . Future development has the potential create a visual impact for existing properties that border the site. The visual impact of future development will be managed through controls on the extent of the residential zoned land and the inclusion of Scenic Preservation Hatching on the Draft LEP map that aims to maintain a vegetated buffer between existing and future development.
10. How has the planning proposal adequately addressed any social and economic effects?	The possible social effects are positive in that a piece of land with environmental value will be dedicated/ transferred into public ownership as supported by the local community in "exchange" for the subject rezoning. The possible economic effects relate to cost implications of maintaining the Ross Ave land/ Garrads Lagoon if and when dedicated/ transferred to Council. The draft LEP addresses these likely social and economic effects via related Deed of Agreement, strategic plans including the Milton Ulladulla Structure Plan and an existing Plan of Management.

Section D – State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?	Yes. This draft LEP rezones a relatively small area of land from an environmental to a residential zone, and public infrastructure exists to enable the residential land to be developed.
12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?	<p>The views of public authorities were ascertained via the recent exhibition of the draft LEP. The main state agency with an interest in this draft LEP is DECCW and they support the proposed rezoning.</p> <p>The only state agencies (other than DECCW) to provide comments during the exhibition period were RTA and RFS, both of whom did not object to the draft LEP.</p> <p>No Commonwealth agencies have provided their views regarding this matter.</p>

Part 4 – Community Consultation

As per the requirements of the EP&A Act, Draft LEP LP 225 was placed on public exhibition between 10 September 2009 and 16 October 2009 along with Draft LP 338 and the 'Deed of Agreement' between Council and Hanson South Coast Pty Ltd. Although this proposal could be considered as "low impact" under the *"Guide to Preparing Local Environmental Plans"* it was exhibited for 28 days, rather than 14 days, as per the LEP system that the draft LEP was being processed under until now.

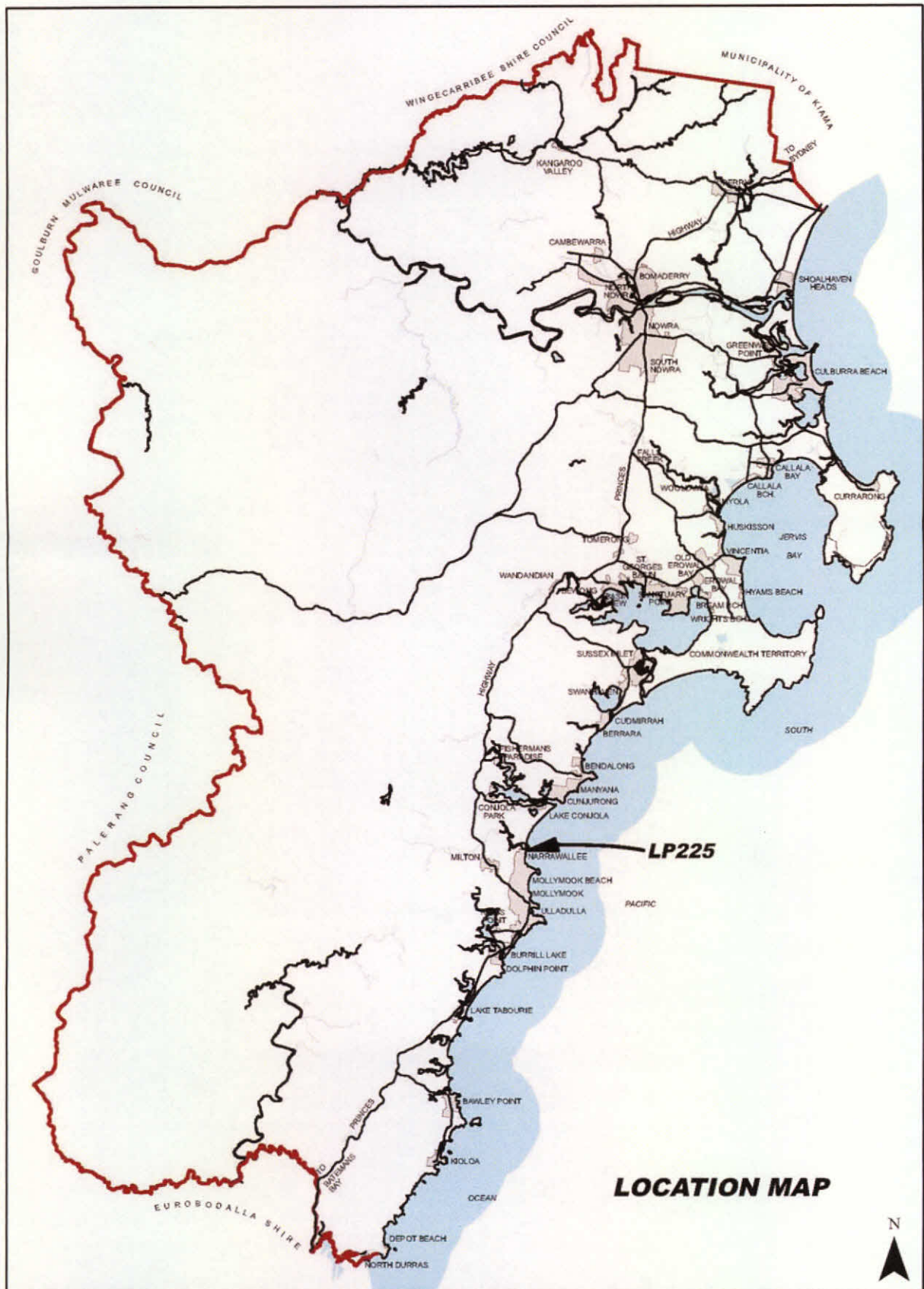
In excess of 100 adjoining or nearby landowners were formally notified in writing of the exhibition of the draft LEP. Notification of the exhibition was placed in the South Coast

Register and the Milton Ulladulla Times on 3 separate occasions and State Government agencies, Councils Internal Community Consultative bodies (CCB's) were also referred the draft LEP's for comment.

Nine submissions were received during the exhibition period, as follows:

- Four from the community;
- Three from state agencies; and,
- Two from internal Council Groups.

Three of the four community submissions were letters of support. The state agency comments are included under Point 12 above. The Council Group comments related to operational matters should the Ross Ave land/ Garrads Lagoon be dedicated/ transferred to Council.



AERIAL PHOTO

 SUBJECT LAND

Locality : Narawallee
Parish : Ulladulla
Scale: NTS



All dimensions are in metres

Strategy Planning

Planner : M-L Foley

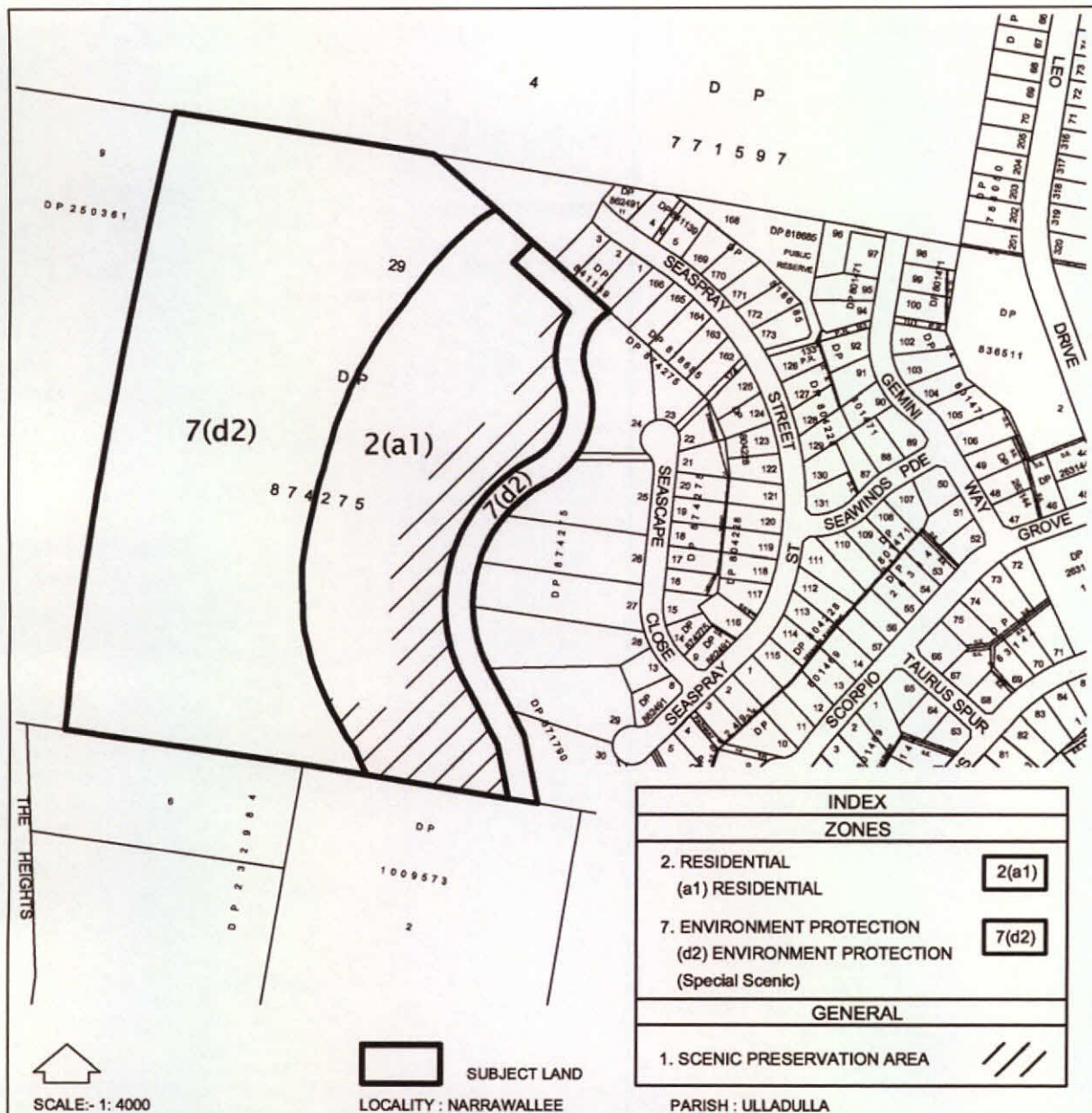
Drawn by : Graphics Section

Date : 5th August, 2009

Cad File : Dlep225/SubjectLand

/AirPhoto

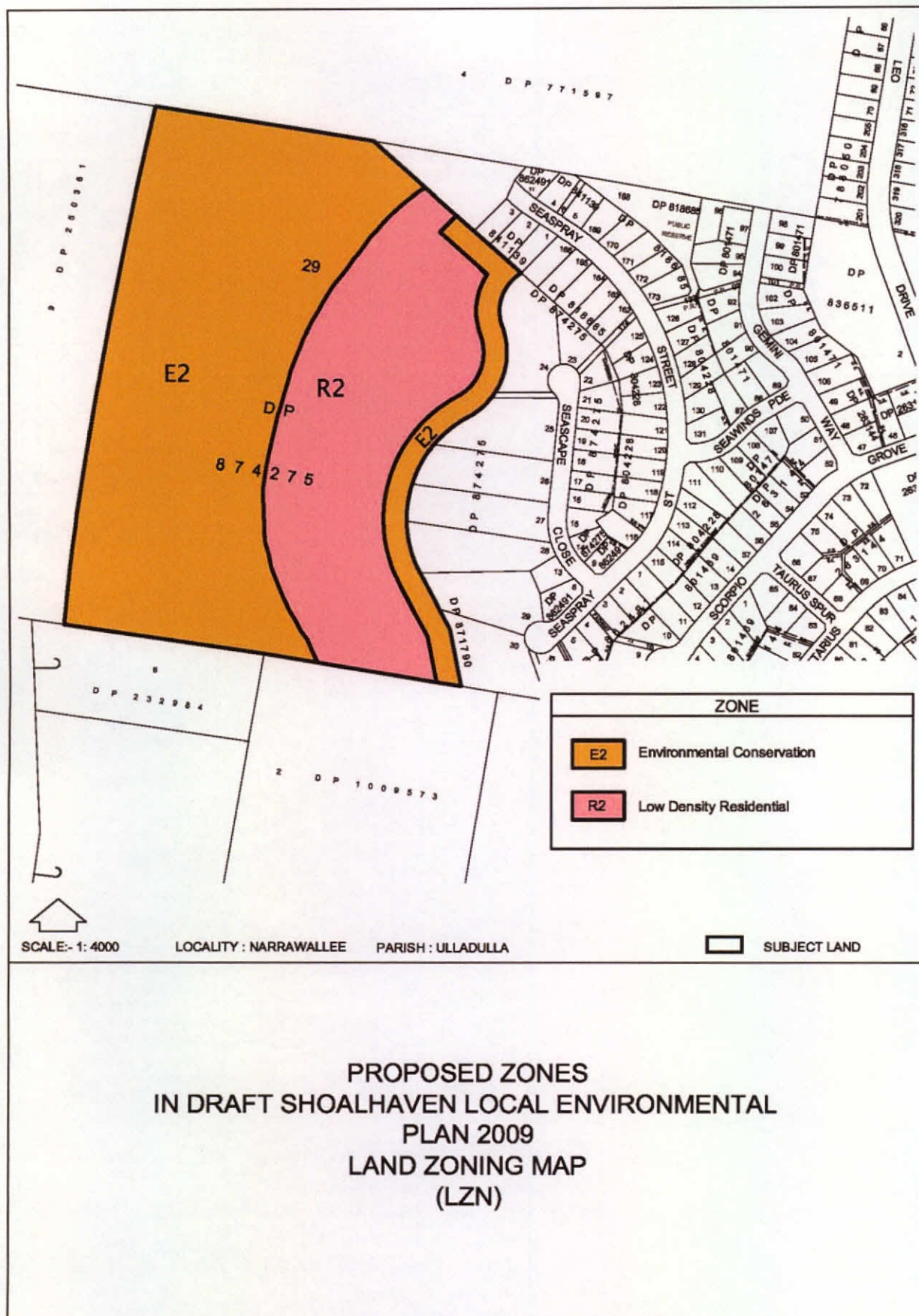




ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

CITY OF SHOALHAVEN
DRAFT LOCAL ENVIRONMENTAL PLAN

DRAWN BY : J. GRANT & D. J. ADAMS	DATE : 03/04/2002	STATEMENT OF RELATIONSHIPS WITH OTHER PLANS
SUPERVISING DRAFTSPERSON	<i>[Signature]</i>	THIS PLAN AMENDS LOCAL ENVIRONMENTAL PLAN 1985.
PLANNING OFFICER	<i>[Signature]</i>	
CERTIFICATE PLAN NO. LP225		
COUNCIL FILE NO. 1787		
AUTOCAD FILE \\P:\Graphics\Projects\City\LEP\LEP\Draft\LP225		CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, & REGULATIONS.
DEPT. FILE NO.		<i>[Signature]</i> GENERAL MANAGER
CERTIFICATE ISSUED UNDER SEC.65 E.P.A. ACT DATE		
		20.8.09 DATE



Attachment A Map

