

Planning Services

IRF18/5327

Gateway Determination Report

LGA	Shoalhaven LGA
PPA	Shoalhaven City Council
NAME	Planning Proposal - 2017 Housekeeping Amendment Instrument Changes (unknown homes, 0 jobs)
NUMBER	PP_2018_SHOAL_010_00
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	LGA-wide
DESCRIPTION	LGA-wide
RECEIVED	18/9/2018
FILE NO.	IRF18/5327
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The 2017 Housekeeping Amendment – Instrument Changes Planning Proposal seeks to amend the Shoalhaven LEP 2014 to improve the operation and accuracy of the Plan. The amendment responds to a range of administrative issues with the LEP that have arisen during the 2017 calendar year.

Site description

The planning proposal applies to all land in the Shoalhaven Local Government Area.

Existing planning controls

The planning proposal relates to the following LEP clauses:

- Clause 1.9A Suspension of covenants, agreements and instruments.
- Land Use Tables - Zones RU1 Primary Production, RU2 Rural Landscape and E2 Environment Protection Zones
- Clause 4.1 Minimum subdivision lot size
- Clause 4.1F Minimum subdivision lot size for community scheme and strata plan lots.

- Clause 4.2B Subdivision of certain land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4.
- Clause 4.2G Boundary adjustments of land in certain rural and environmental protection zones.
- Schedule 1 – Additional Permitted Uses
- Schedule 2 – Exempt Development

Summary of recommendation

It is recommended that the planning proposal proceed as submitted.

PROPOSAL

Objectives or intended outcomes

The objectives and intended outcomes of the planning proposal are to:

1. Amend references to the Crown Lands Act 1989 in clause 1.9A(2) to reflect the repeal of that Act in June 2018.
2. Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
3. Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
4. Amend clause 4.1(4) to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.
5. Insert a new subclause to clause 4.1F to make it clear that clause 4.1F is not subservient to clause 4.1.
6. Amend clause 4.2B(2) to only apply to land in a RU1, RU2 or RU4 zone.
7. Amend clause 4.2G(4) to delete reference to permissibility of a dwelling following subdivision.
8. In relation to Schedule 1 Additional permitted uses (6) 'Use of certain land at Manyana', update the description of the land to which Schedule 1 (6) applies.
9. In relation to Schedule 2 Exempt Development 'Temporary events on public land and public roads and associated temporary structures', insert additional criteria in subclause 2 in relation to Crown land that is vested in Council, or of which Council is the Crown lands manager.
10. In relation to Schedule 2 Exempt Development, insert new exempt development criteria relating to:
 - A-frame sign boards and structures.
 - Merchandise displays.

Comment: It is considered that the objectives and outcomes are clear and don't require amendment prior to community consultation.

Explanation of provisions

The planning proposal provides detailed explanation of the provisions on pages 7-15 of the planning proposal document. It is considered that the proposed LEP amendments/provisions are clear and appropriate and do not require amendment prior to community consultation.

Mapping

The proposal does not require amendments to LEP maps as it seeks changes to the LEP clauses only.

NEED FOR THE PLANNING PROPOSAL

The planning proposal states that the proposal is needed to ensure that the LEP operates as originally intended and is improved in its operation. It states that the P planning proposal is the best and only means of achieving the intended outcomes.

Comment: It is considered that the planning proposal is needed to address the issues Council has identified during the administration of the Shoalhaven LEP 2014 during the 2017 calendar year. The planning proposal process is considered the most appropriate mechanism to facilitate the necessary housekeeping amendments to the LEP.

STRATEGIC ASSESSMENT

Regional

The planning proposal states that the proposal is consistent with the objectives and actions of the Illawarra Shoalhaven Regional Plan because the proposal will better align the Shoalhaven LEP with the aims of the aims of the Regional Plan and cater for development more effectively and efficiently.

Comment:

Protection of the Environment

The proposal to include dual occupancies (attached) as a permissible land use in the E2 Environmental Protection Zone (planning proposal item No.3) is potentially inconsistent with Direction 5.1 of the Regional Plan which requires protection of the region's environmental values by focusing development in locations with the capacity to absorb development. This is because the proposal may facilitate intensification of development in important conservation areas which are zoned E2.

Council considers that the dual occupancies (attached) will have limited additional impact above and beyond the impact of a single dwelling due to the fact they are required to be co-located and have a common roofline.

Applications for dual occupancies (attached) would be required to meet the 40ha minimum lot size standard which applies to the E2 Zone, satisfy the zone objectives (including protection of the environment) as well as address matters such as access, slope, bushfire and environmental impacts.

It is also noted that several other comprehensive LEPs permit dual occupancies in their E2 zones, namely Nambucca LEP 2010, Tweed City Centre LEP 2012, Port Stephens LEP 2013 and Lake Macquarie LEP 2014. There is merit in Council quantifying the number of potential additional dwellings resulting from the proposal.

Council should be required to consult with the Office of Environment and Heritage in relation to this matter during the exhibition of the planning proposal.

Recommendation: That Council be required to quantify the number of potential additional dwellings arising from this aspect of the proposal prior to consultation.

Protection of Agricultural Land

The proposed amendment of clause 4.2B(2) of the SLEP2014 to only apply to land in a RU1, RU2, and RU4 zone (planning proposal Item No.6) is potentially inconsistent with the Regional Plan Direction 4.1 which requires the protection of regionally important agricultural lands. This is because clause 4.2B(2) requires that any subdivision of land mapped as “prime crop and pasture land must retain at least 10ha of prime crop and pasture land”. The planning proposal proposes to remove reference to the R5 and E4 zones from clause 4.2B(2) because Council considers that the character and form of the subject areas are more suited to lifestyle living rather than to small scale agricultural production. Council considers that the requirement to retain 10ha prime crop and pasture land for the subdivision of land zoned R5 or E4 is unreasonable and is preventing the subdivision of a number of sites identified in subclause (3) such as at Bundewallah Road, Berry. The proposed amendment to the clause will facilitate subdivision of land mapped as prime crop and pasture land.

It is considered that the area of prime crop and pasture land zoned E4 or R5 potentially affected by the proposed amendment would be relatively small compared to the total area of prime crop and pasture land zoned rural throughout the LGA. Additionally, these lands have been strategically identified for housing. Any inconsistency with the Regional Plan is considered to be of a minor significance. It is recommended that Council consult with the Department of Primary Industries (Agriculture) during the exhibition of the planning proposal.

Recommendation: That Council consult with the Department of Primary Industries (Agriculture) and the Office of Environment and Heritage (OEH) during the exhibition of the planning proposal.

Local

The planning proposal states that the proposal is consistent with Shoalhaven City Council's Community Strategic Plan (CSP), particularly the following themes and actions:

Theme 2 – Sustainable, liveable environments.

Action 2.2 Plan and manage appropriate and sustainable development.

Action 2.3 Protect and showcase the natural environment.

Theme 3 – Prosperous communities.

Action 3.1 Maintain and grow a robust economy with vibrant towns and villages.

Comment: It is considered that the planning proposal is consistent with Council's CSP because it will facilitate improved operation/administration of the Shoalhaven LEP which will help deliver the relevant themes and actions of the CSP.

It is also considered that the planning proposal is consistent with Council's other local strategic plans, namely the Shoalhaven Growth Management Strategy, Nowra Bomaderry Structure Plan, Jervis Bay Settlement Strategy, Sussex Inlet Settlement Strategy and Milton Ulladulla Structure Plan as it will, via improvements to the Shoalhaven LEP, assist the implementation of these local strategic plans.

Section 9.1 Ministerial Directions

The planning proposal identifies that the proposal is inconsistent with the following Directions:

Direction 1.5 Rural Lands

Council's view that the planning proposal is consistent with Direction 1.5 Rural Lands is supported because the proposed amendment to clause 4.2B of the SLEP2014 to remove the 10ha requirement to retain prime crop and pasture land during the subdivision of land zoned E4 (planning proposal item no.6) is consistent with the Rural Planning Principles, particularly the following principles:

- (a) The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas.
- (d) The planning for rural lands to balance the social, economic and environmental interests of the community.
- (f) The provision of opportunities for rural lifestyle settlement and housing that contribute to the social and economic welfare of rural communities.

Direction 2.1 Environment Protection Zones:

As previously discussed, the proposed introduction of dual occupancies (attached) as a land use permitted with consent in the E2 Environmental Conservation Zone (planning proposal item 3) is potentially inconsistent with the Direction as it could be considered to reduce the environmental protection standards that apply to the land by intensifying development within the zone.

Council considers that dual occupancies (attached) have limited additional impact above and beyond the impact of a single dwelling because they are required to be co-located on the same lot and have a common roofline. Council's assessment of the Direction is that should the planning proposal be inconsistent with the Direction, then the inconsistency is of minor significance.

It is also noted that several other comprehensive LEPs permit dual occupancies in their E2 zones, namely Nambucca LEP 2010, Tweed City Centre LEP 2012, Port Stephens LEP 2013 and Lake Macquarie LEP 2014.

To be better informed of the likely impacts of the proposal, Council should be required to quantify the number of potential additional dwellings prior to exhibition.

Comment: It is considered that any inconsistency with the Direction is of a minor inconsistency for the reasons provided in the planning proposal document. It is also noted that applications for dual occupancies (attached) would be required to meet the 40ha minimum lot size standard which applies to the E2 Zone, satisfy the zone objectives (including protection of the environment) as well as address matters such as access, slope, bushfire and environmental impacts.

Direction 4.1 Acid Sulfate Soils

The planning proposal states that land subject to the proposal is mapped as potentially containing acid sulfate soils. The Proposal identifies that the proposal to insert artisan food and drink industry as permitted with consent in the RU1 and RU2 zones as well as the proposal to insert dual occupancies (attached) as a permissible land use in the E2 Zone could increase the permissible density of development on the subject land. Council, however, considers that any inconsistency with the Direction is likely to be of a minor significance given the minor nature of the proposed amendments.

Comment: It is considered that any inconsistency with the Direction is of a minor inconsistency for the reasons provided in the planning proposal document. It is also noted that any dual occupancies (attached) would be required to meet the minimum lot size standard and satisfy the zone objectives to protect the environment and address the requirements of clause 7.1 Acid Sulfate Soils of the Shoalhaven LEP 2014. Similarly, any development application for artisan food and drink industry would need to address the acid sulfate soils clause if applicable.

Direction 4.4 Planning for Bushfire Protection

The planning proposal states that the Direction applies as the proposal affects land that is, or is in proximity to, land mapped as being bushfire prone. The planning proposal indicates that consultation will be undertaken with the NSW Rural Fire Service (RFS) following receipt of a Gateway determination and prior to undertaking community consultation. The planning proposal states that the proposal is therefore not inconsistent with the Direction.

Comment: It is considered that the planning proposal will be consistent with the Direction when Council has referred the proposal to the RFS prior to public exhibition and has reflected RFS's comments in the planning proposal.

Direction 5.2 Sydney Drinking Water Catchments

The planning proposal states that the proposal applies to land located at Kangaroo Valley and Sassafras which are within the Sydney drinking water catchment area mapped under the SEPP (Sydney Drinking Water) 2011. The planning proposal, however, does not consider that the proposal will adversely impact on water quality in the catchment due to the minor significance of the proposed amendments. Council has therefore not referred the planning proposal to WaterNSW, however, proposes to do so following receipt of a Gateway determination and prior to public exhibition. Council considers that the planning proposal is consistent with the Direction.

Comment: It is considered that, at this stage, the planning proposal is inconsistent with the Direction because Council has not yet referred the proposal to WaterNSW for comment as required by the Direction. It is considered that the planning proposal will be consistent with the Direction once this task has been undertaken and any comment provided by WaterNSW has been reflected in the planning proposal.

Direction 5.10 Implementation of Regional Plans

As previously discussed, Council considers that the planning proposal is consistent with the Regional Plan. It is, however, considered that the planning proposal (specifically the proposed amendment to clause 4.2B (planning proposal item no.6)) is potentially inconsistent with the Regional Plan requirement to protect important agricultural land. As previously discussed, it is considered that any inconsistency is of a minor significance.

Recommendations:

That the Secretary's delegate can be satisfied that:

1. Any inconsistency with Directions 2.1 Environmental Protection Zones, 4.1 Acid Sulfate Soils and 5.10 Implementation of Regional Plans is of a minor significance.
2. The planning proposal will be consistent with Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments once Council has referred the planning proposal to the NSW RFS and WaterNSW respectively and any comment provided by NSW RFS and WaterNSW is reflected in the planning proposal.
3. The planning proposal is consistent with all other relevant Directions or any inconsistency is of a minor significance.

State environmental planning policies (SEPPs)

The planning proposal states that the proposal is consistent with the applicable state environmental planning policies and has identified that the following SEPPs are particularly relevant:

- SEPP (Rural Lands) 2008
- SEPP (Sydney Drinking Water Catchment) 2011
- SEPP (Vegetation in Non-Rural Areas) 2017

Comment: Council's view that the planning proposal is consistent with the applicable SEPPs is supported.

In relation to the proposal to amend Schedule 2 – Exempt Development of the Shoalhaven LEP 2014 to include 'A-frame sign boards and structures' and 'merchandise displays' (planning proposal item no.10), Council's view that these items are not covered by the SEPP (Exempt and Complying Development Codes) 2008 has been confirmed.

SITE-SPECIFIC ASSESSMENT

Social and economic

The planning proposal states that the proposal is likely to have positive social and economic effects due to the LEP operating in a more efficient manner which will better align the objectives of the instrument with appropriate development.

Comment: Council's view that the planning proposal is likely to have positive social and economic effects is supported. It is considered that the proposal to include artisan food and drink industry as a permissible land use in the RU1 and RU2 zones (planning proposal item 2) will support local tourism and jobs. The proposal to permit attached dual occupancies in the E2 Zone (planning proposal item 3) will contribute to housing supply/diversity in the LGA without significantly compromising environmental outcomes. The proposal amendment of clause 4.2B of the SLEP2014 (item no 6) will facilitate the provision of rural lifestyle and environmental living lots.

Environmental

The planning proposal states that the likelihood that critical or threatened species, populations or ecological communities, or their habitats or any other environmental

issues will be adversely affected because of the proposal is very low because the proposed amendments are of a housekeeping nature.

Comment: Council's view that the planning proposal is unlikely to have an impact on the environment is supported. As previously discussed, the proposal to permit attached dual occupancies in the E2 Zone is unlikely to have a significant environmental impact because the dwellings would be attached and applications will need to meet the minimum lot size and address impacts on the environment and hazards.

CONSULTATION

Community

Council proposes to exhibit the planning proposal for a 28 day period and to provide public notification of the exhibition in the local newspapers, notice on Council's website and provide a hard copy of the planning proposal at Council's administration buildings in Nowra and Ulladulla.

Comment: It is considered that Council's community consultation on the planning proposal is appropriate.

Agencies

Council proposes to consult with the NSW RFS and the NSW Department of Industry - Natural Resources Regulator on the planning proposal.

Comment: It is considered appropriate for Council to consult with the NSW RFS to satisfy the requirements of the Section 9.1 Direction Planning for Bushfire Protection. It is not considered necessary for Council to consult with the NSW Department of Industry – Natural Resources Regulator because this agency is responsible for enforcing compliance with water regulations which is not a relevant matter to the planning proposal. Rather, Council should consult with WaterNSW on the planning proposal as it is this agency's responsibility to providing advice on water quality and Sydney drinking water catchment issues under the SEPP (Sydney Drinking Water Catchment) and Section 9.1 Direction 5.2 Sydney Drinking Water Catchments. It is also considered appropriate for Council to consult with OEH and the Department of Primary Resources (Agriculture).

Recommendation: That Council consult with the NSW RFS, WaterNSW, OEH and the Department of Primary Resources (Agriculture) on the planning proposal.

TIME FRAME

Council proposes to prepare and complete an LEP by June/July 2019 (18 month timeframe). Given the nature of the planning proposal, 12 months is considered to be an adequate timeframe to prepare and complete an LEP.

Recommendation: That a 12 month timeframe is provided to prepare and complete an LEP.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority for the planning proposal. Given the minor/local nature of the planning proposal it is considered that Council's request is worthy of support.

Recommendation: That Council's request to be the local plan-making authority is supported.

CONCLUSION

The preparation of the planning proposal is supported to proceed for the following reasons:

- The planning proposal will improve the operation and accuracy of the Shoalhaven LEP 2014 which will have positive social, economic and environmental benefits.
- The planning proposal is generally consistent with applicable State, regional and local strategic planning.
- The planning proposal will facilitate the development of artisan food and drink industries and support local tourism and jobs.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 4.1 Acid Sulfate Soils and 5.10 Implementation of Regional Plans are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushire Protection and 5.2 Sydney Drinking Water Catchments is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to consultation to quantify the number of potential additional dwellings as a result of permitting dual occupancies (attached) with consent in the E2 zone.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - WaterNSW
 - Office of Environment and Heritage
 - Department of Primary Industries (Agriculture)
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



2/11/18

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