

Planning Proposal - Housekeeping Amendment- Stage 3

Proposal Title : **Planning Proposal - Housekeeping Amendment- Stage 3**

Proposal Summary : **The planning proposal (PP) is the second major housekeeping amendment that seeks to amend the Shoalhaven Local Environmental Plan 2014 (LEP) to improve the operation and accuracy of the LEP to respond to issues that have arisen over the first year of operation of the LEP.**

PP Number : **PP_2015_SHOAL_010_00**

Dop File No : **15/16443**

Proposal Details

Date Planning Proposal Received : **25-Nov-2015**

LGA covered : **Shoalhaven**

Region : **Southern**

RPA : **Shoalhaven City Council**

State Electorate : **KIAMA
SOUTH COAST**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Housekeeping**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Various land parcels across the LGA**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Graham Towers**

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Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub Regional Strategy : **South Coast Regional Strategy**

Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : It is proposed to add or amend existing provisions in the LEP to improve its operation.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The stated objectives of the PP are to:

- Add or amend provisions in the instrument to improve the operation of the LEP and address issues that have arisen through development applications; and
- Amend a number of maps and insert a new map to achieve Council's desired outcomes.

The PP also provides a specific objective for each of the 30 instrument and map changes sought.

Council has revised a number of matters in the originally lodged PP in response to issues raised by the Department identified in its 9 November 2015 letter to Council following a preliminary review of the PP, namely:

1. Matter 12 to include a subclause under Clause 7.13 short-term rental accommodation to specifically restrict weddings/functions.

The proposal was considered to be inappropriate because weddings/functions are currently prohibited uses in residential zones under the Shoalhaven LEP 2014. In response to the Department's 9 November letter, Council has revised the original PP to, subject to Parliamentary Counsel's agreement, include an advisory note in the current clause 7.13 that weddings/functions are not permitted in residential zones. Although Council has reflected this change in the explanation of the provisions provided in the revised PP, Council has not revised the corresponding statement of the objective. It is considered appropriate, to avoid potential confusion, for Council to revise the corresponding statement of the objective prior to exhibition of the PP consistent with Council's 25

November 2015 letter.

2. Matter 13 to amend the wording of Clause 7.14 Permanent occupation in mixed use developments to allow a range of housing types on land affected by this clause.

Clause 7.14 was specifically drafted by Parliamentary Counsel during the preparation of the Shoalhaven LEP 2014 to enable Council to consider a development application for a mixed use development in a B4 Mixed Use Zone or SP3 Tourist Zone that comprised a mix of residential accommodation and tourist and visitor accommodation uses. In drafting the clause, PC advised that the specific residential accommodation and tourist and visitor accommodation uses must be permissible uses in the applicable zone. Council's original PP sought to remove this requirement to provide maximum flexibility for Council to consider a range of mixed use developments. In response to concerns raised by the Department in its 9 November letter, Council has revised the PP to address the matter via an alternative mechanism, namely via a Schedule 1 'Additional permitted use' to permit mixed use developments for the applicable sites in Milton and Ulladulla. Although Council's revised PP reflects this change in the explanation of provisions, it is not reflected in the corresponding statement of the objectives. It is considered appropriate, to avoid potential for confusion, for Council to revise the statement of the objective consistent with its 25 November 2015 letter.

Recommendation: That the statements of the objectives provided for the Planning Proposal (Version 1A) concerning items 12 (short term rental accommodation) and 13 (permanent occupation in mixed use developments) are to be revised consistent with Council's 25 November 2015 letter.

With the above exceptions, it is considered that the statement of the objectives provided is appropriate and meets the Department's guide to preparing planning proposals.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The PP provides detailed explanation of the intended provisions. As previously discussed, Council has provided a revised PP and explanation of provisions to address the Department's concerns raised in relation to matters 12 Short term rental accommodation and 13 Permanent occupation in mixed use developments.

Council has also provided further explanation and justification of provisions for the proposed bonus building heights clause and Bonus Height of Building Map for the Huskisson Town Centre. Notably it has advised that the clause and map are based on a similar clause and map provided in the Ryde LEP 2014 (Amendment No 1).

- Council has provided clarification/further justification, in response to concerns raised by the Department, on the intent of the proposed change to clause 4.2E 'Exceptions to minimum subdivision lot sizes for certain rural and environmental protection zones' of the Shoalhaven LEP 2014. Specifically the Department sought clarification why the current clause 4.2E does not achieve the intent of the planning proposal, including the relevant land uses included as exempt development within the affected zones that Council wants to permit to be subdivided under clause 4.2E. Council's 25 November 2015 letter provides further explanation and justification for the proposal which is considered satisfactory. Council's revised PP does not, however, reflect the additional information provided in Council's letter in the explanation of provisions. It is considered appropriate, to assist with the later drafting of the amendment to the clause, for Council to include this information in the PP prior to its exhibition.

Recommendation: That the explanation of the provision concerning item 9 'Clause 4.2E Exceptions to minimum subdivision lot sizes for certain rural and environmental protection zones' is revised to include the additional explanation provided in Council's 25 November 2015 letter.

It is considered that, with the exception of the above matter, the explanation of provisions

provided are generally appropriate and consistent with Part 2 of the Department's guide to preparing planning proposals.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 5.2 Sydney Drinking Water Catchments**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

- SEPP No 1—Development Standards**
- SEPP No 14—Coastal Wetlands**
- SEPP No 21—Caravan Parks**
- SEPP No 26—Littoral Rainforests**
- SEPP No 30—Intensive Agriculture**
- SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)**
- SEPP No 33—Hazardous and Offensive Development**
- SEPP No 36—Manufactured Home Estates**
- SEPP No 44—Koala Habitat Protection**
- SEPP No 50—Canal Estate Development**
- SEPP No 55—Remediation of Land**
- SEPP No 62—Sustainable Aquaculture**
- SEPP No 64—Advertising and Signage**
- SEPP No 65—Design Quality of Residential Flat Development**
- SEPP No 71—Coastal Protection**
- SEPP (Building Sustainability Index: BASIX) 2004**
- SEPP (Exempt and Complying Development Codes) 2008**
- SEPP (Housing for Seniors or People with a Disability) 2004**
- SEPP (Infrastructure) 2007**
- SEPP (Major Projects) 2005**
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007**
- SEPP (Rural Lands) 2008**
- Drinking Water Catchments Regional Environmental Plan No. 1**

e) List any other matters that need to be considered :

Council has requested the use of the Minister's plan making delegations.

The General Manager Shoalhaven City Council has declared a pecuniary interest in the matter as he is a land owner in Woorin Close, Bomaderry (Map change item 1) that is affected by the planning proposal. The General Manager has consulted with the Mayor and determined that the Director, Planning and Development Services needs to deal with the matter.

Council owns land at Lot 2 DP 571682, 59 Owen Street Huskisson that would be affected by the proposed bonus 3 metre height clause. Council could be perceived as having a conflict of interest concerning the planning proposal in relation to this site. It is noted, however, that the proposed bonus building height for the subject land is consistent with the adopted height control for the site provided in Council's Shoalhaven Development

Control Plan 2014.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Standard LEP Instrument Order:

As previously discussed, The Department's 9 November letter raised concern with matters including proposed clause 7.13 'Short-term rental accommodation' of the Shoalhaven LEP 2014 to include a subclause to specifically prohibit wedding functions from being undertaken in dwellings used as part of short term rental accommodation, the proposed change to clause 7.14 'Permanent occupation in mixed use developments' of the Shoalhaven LEP 2014

Council has revised the PP in response to the Department's concerns.

Section 117 Directions:

The PP indicates that it is inconsistent with the following s117 Directions:

2.1 Environmental Protection Zones:

The PP states that map change 10 Mollymook Golf Club to rezone a closed road from E2 Environmental Conservation Zone to B4 Mixed Use Zone to enable the Club to use the land as asset protection zone for any development of the Club's land to the west, is inconsistent with the Direction. The PP, however, states that the inconsistency is justified because it is of minor significance because the area proposed to be rezoned is only a narrow area that forms part of a road reserve and it has already been significantly disturbed. Council's view that any inconsistency with the Direction is of minor significance is agreed for the reasons provided.

Recommendation: The Secretary's delegate can be satisfied that the PP's inconsistency with the Direction is of minor significance.

S117 Direction 3.1 Residential Zones:

The PP states that the proposed change of minimum lot size for 27 properties at Woorin Close and Lyndhurst Drive, Bomaderry from 500sq.m to 1000sq.m is inconsistent with the Direction. The subject lots are larger residential properties which range in size from 1,399sq.m to 1,923sq.m. The residents want to protect the large lot residential character of the area by preventing any future subdivision of the lots. The PP states that the inconsistency with the Direction is justified by the endorsed Nowra Bomaderry Structure Plan which provides the future desired character for the Bomaderry area. Notably the NBSP does not identify the area for higher density development, rather it encourages greater residential densities in close proximity to the Merroo Street and Lyndhurst Drive shopping centres.

The proposed zone change of a 20m strip of Crown Land at Lot 468 DP 755923 Cypress Street and Lot 7317 DP 1168554 North Bendalong Road, Bendalong from R2 Low Density Residential Zone to E2 Environmental Conservation Zone (map change 9) is also inconsistent with the Direction. The 20m strip was to enable the possible construction of a perimeter road to connect back up to Cypress Street. This was to achieve the intent of the 2006 Sensitive Urban Lands Review findings, including providing better protection against bushfire risk. However, the subdivision of the adjoining land was approved with a different configuration and as a result the 20m strip zoned R2 was not required for a perimeter road. It is considered that any inconsistency with the Direction is justified by the South Coast Regional Strategy which incorporates the Panel's recommendations for the land.

Recommendation: The Secretary's delegate can be satisfied that the PP's inconsistency with the Direction is justified by an endorsed strategy (namely the Nowra Bomaderry Structure Plan and the South Coast Regional Strategy).

Direction 4.4 Planning for Bushfire Protection:

The PP states that the Direction applies because the PP affects land across the LGA that is (or is in proximity to) land mapped as bushfire prone land. In particular, the proposed rezoning of land at Maisie Williams Drive Mollymook, to provide an asset protection zone for proposed development at the Mollymook Golf Course, is located within or in proximity to bushfire prone land. At this stage of the PP, it is neither consistent nor inconsistent as the Direction requires consultation with the Rural Fire Service post Gateway determination and prior to exhibition.

Recommendation: The Secretary can be satisfied that the requirements of the Direction have been met. A condition should be included in the Gateway determination that consultation should be undertaken with the Rural Fire Service in accordance with the Direction.

The proposal is considered to be consistent with all other relevant S117 Directions for the reasons provided by Council. It is also consistent with relevant SEPP's.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The PP includes site maps, lot size, zoning and other relevant LEP maps which are considered suitable for the purpose of public exhibition. Council will need to prepare LEP maps to meet the requirements of the Department's standard technical requirements for LEP maps prior to the finalisation of the PP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The PP states that a 28 day exhibition period is intended. This is considered appropriate given the number of proposed changes and complexity. The PP states that notification of the exhibition would occur via local newspapers and on the Council's website. Hard copies of the PP would be made available at Council's administrative buildings in Nowra and Ulladulla. The community consultation proposed is considered appropriate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : With the exception of the issues raised concerning Parts 1 'Statement of the objectives' and Part 2 'Explanation of the provisions', the PP meets each of the required parts of a PP in accordance with the Department's guide to preparing PPs.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Shoalhaven LEP was notified in 2014. The PP is one of a number of 'housekeeping' PPs currently being prepared by Shoalhaven City Council to make a number of minor administrative corrections to the Shoalhaven LEP 2014, namely:

Housekeeping PP (Stage 1) – corrects errors in the B3 Commercial Core Zone and inserts a provision to enable the subdivision of split zoned land. The Shoalhaven LEP (Amendment No 6) was notified on 13 November 2015.

Housekeeping PP (Stage 2) – corrects errors in heritage and other maps and land use tables. Gateway determination provided in June 2015. Council is currently liaising with Parliamentary Counsel on the drafting of an LEP.

Housekeeping PP (Stage 3A) – to clarify when strata and community title subdivision must comply with the minimum lot size map and that dual occupancies (attached) in certain zones are subject to the same provisions as dwelling houses. Gateway determination was provided on 19 October 2015. Council placed the PP on public exhibition in November 2015 and is currently considering submissions.

Housekeeping PP (Reclassification) – to correct errors in the classification of a number of sites. A Gateway determination was provided in September 2015. Council has exhibited the PP and considered submissions. Council provided a report on submissions to the Department in November 2015 with a request that an LEP is prepared and notified. The Department is currently liaising with Parliamentary Counsel to arrange for the drafting of an LEP.

Assessment Criteria

Need for planning proposal :	The PP is needed to facilitate a number of amendments to the Shoalhaven LEP 2014 to improve the operation and accuracy of the LEP to respond to issues that have arisen over the first year of operation of the LEP.
Consistency with strategic planning framework :	The PP is consistent with the Illawarra and Shoalhaven Regional Plan, South Coast Regional Strategy, Shoalhaven City Council's Community Strategic Plan, Shoalhaven 2023, and relevant SEPPs and s117 Directions.
Environmental social economic impacts :	The PP states that it will have a very low likelihood of having any adverse environmental impacts. As previously discussed the proposed rezoning of a portion of closed road located at Maisie Williams Drive Mollymook from E2 Environmental Conservation to B4 Mixed Use is likely to be of minor impact because of the small area of land affected and the vegetation on the lot is disturbed due to the ongoing informal use of a gravel track running along the former road reserve. The PP will have positive environmental impacts by including eleven sites which have a voluntary conservation or bio-banking agreement over them on the relevant Shoalhaven LEP 2014 Terrestrial Biodiversity Maps (Map change 15). It would be appropriate for Council to consult with the Office of Environment and Heritage, post Gateway determination, concerning this matter. The PP states that it 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.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Rural Fire Service Other		

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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **The PP should proceed to enable a number of housekeeping corrections to be made to the Shoalhaven LEP 2014.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

No further studies are required

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal Revised Version 1A- Shoalhaven LEP 2014 - Stage 3 - Housekeeping Amendment.pdf	Proposal	Yes
Council letter 9 November 2015.pdf	Proposal Covering Letter	Yes
Department letter 19 November 2015 to Council.pdf	Proposal Covering Letter	Yes
Council letter 25 November 2015.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 5.2 Sydney Drinking Water Catchments**

Additional Information : **It is RECOMMENDED that the Acting General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Shoalhaven LEP 2014 to undertake a number of housekeeping amendments (stage 3) to improve the operation and accuracy of the Shoalhaven LEP 2014 should proceed subject to the following conditions:**

1. The Planning Proposal is to be revised consistent with Council's 25 November 2015, letter prior to community consultation. The statement of the objectives provided for the Planning Proposal (Version 1A) concerning items 12 (short term rental accommodation)

and 13 (permanent occupation in mixed use developments) and the explanation of the provisions concerning item 9 (exceptions to minimum subdivision lot sizes for certain rural and environmental protection zones) are to be updated.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure, 2013)'.

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- * NSW Rural Fire Service (prior to exhibition under s117 Direction 4.4)
- * Office of Environment and Heritage
- * Crown Lands Office

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

6. Council be authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

7. SECTION 117 DIRECTIONS - It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 2.4 Recreational Vehicle Area
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulphate Soils
- 4.3 Flood Prone Land
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchment

(b) The Secretary's delegate can be satisfied that the planning proposal's inconsistency with s117 Direction 2.1 Environment Protection Zones is of minor significance.

(c) The Secretary's delegate can be satisfied that the planning proposal's inconsistency with s117 Direction 3.1 Residential Zones is justified by the Nowra Bomaderry Structure Plan and the South Coast Regional Strategy.

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(d) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection, when Council has consulted with the Rural Fire Service prior to undertaking community consultation;

(e) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance; and

(f) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

8. The planning proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :

Consultation with the OEH is recommended because a number of affected sites have an existing environmental zoning (eg closed road at Maisie Williams Drive Mollymook) or are affected by voluntary conservation or biobanking agreements. Consultation with Crown Lands Office is recommended because it owns land at North Bendalong which is affected by the PP.

The proposal will address issues that have arisen since the LEP has been in place.

Signature:

Graham Towers Team Leader

Printed Name:

Graham Towers Date: 3/12/15