



PP008 Planning Proposal Citywide LEP Housekeeping Amendment – Stage 1

Prepared by
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Shoalhaven City Council

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1.2 Background

The Shoalhaven LEP 2014 was notified by the State Government on 8 April 2014 and legally commenced on 22 April 2014. The new LEP is based on the State Government's Standard Instrument. As with a number of the new standard instrument LEPs in NSW, there is a need to adjust a number of matters in the notified LEP through a "housekeeping" amendment to the LEP as unintended consequences have been identified.

It is intended that the housekeeping amendment will be undertaken in a staged fashion with this PP addressing the first two priority issues. These issues have been proposed as Stage 1 ahead of the other issues as they require expedited resolution as there are potential development outcomes that are contingent on amendments being made to Shoalhaven LEP 2014.

The two issues are outlined below.

Issue 1 – B3 zone - 'shop top housing' and 'serviced apartments'

When the draft Shoalhaven LEP 2014 was adopted by Council for finalisation, 'shop top housing' was a use that was permitted with consent in the B3 Commercial Core zone. However, when the Shoalhaven LEP 2014 commenced, 'shop top housing' had inadvertently become a prohibited use in the B3 zone. It appears that this change was an unintended consequence of the NSW Department of Planning and Environment (DP&E) inserting the group term 'residential accommodation' as prohibited in the B3 zone and removing its sub terms. 'Shop top housing' should have been specifically listed as permitted with consent but this was overlooked in the final drafting of the plan.

The B3 zone applies to defined areas in the Nowra and Ulladulla CBDs. To maximise flexibility for potential development and encourage viable development in these CBDs, it is pertinent that this omission is rectified in a timely manner.

'Serviced apartments' are currently permitted with consent in the B3 zone but are not specifically listed as such given the open nature of the zone (the zone table lists prohibited uses with all other uses, including innominate uses, being permissible). To ensure that it is clear to users of Shoalhaven LEP 2014 that 'serviced apartments' are permissible in the B3 zone, the PP also proposes to insert 'serviced apartments' as a land use that is specifically listed as permissible with consent.

Issue 2 – Exception to the minimum lot size for residue lots

Under the previous Shoalhaven LEP 1985, there was a provision which allowed for the creation of a residue lot that was smaller than the minimum lot size where a parcel of land with a split zoning was subdivided. For example, where there was a parcel of land zoned partly residential and partly rural, the residential component of the land could be subdivided into residential sized allotments, leaving a residue parcel of rural land that may have been smaller than the 40ha minimum lot size for creation of a rural lot. Given the nature of the Standard Instrument template that Council was required to use to produce Shoalhaven LEP 2014, no such clause was included other than a clause in Part 6 of Shoalhaven LEP 2014 that specifically relates to subdivision of the specified urban release areas.

Since the notification of Shoalhaven LEP 2014, this issue has been raised on numerous occasions as there are a number of proposed subdivisions that cannot gain development consent as they include a residue lot smaller than the minimum lot size. It is noted that various Standard Instrument LEPs now have clauses to manage or cover this issue.

2 Part 1 –Intended Outcome

The intended outcome of this PP is to amend the Shoalhaven LEP 2014 to:

- a) list 'shop top housing' as a permitted use with consent in the B3 zone;
- b) make it explicit that 'serviced apartments' are permitted with consent in the B3 zone by inserting that land use term in the list of uses permitted with consent in that zone; and
- c) allow the subdivision of split zoned land where a parcel has a zoning split between urban and rural/environmental zones, enabling the creation of a residue lot of rural/environmental zoned land that is smaller than the minimum lot size. The intended outcome of this provision is to ensure that the residue rural lot is tied to an urban zoned lot so that the residue lot can be appropriately managed in the future and does not allow for separate rural zoned parcel of land of non-conforming size.

3 Part 2 – Explanation of Provisions

To achieve the intended outcomes outlined above, it is proposed to amend Shoalhaven LEP 2014 as outlined in the Table that follows.

Table 1 - Planning Proposal Proposed Changes

Part of Instrument to be amended	Proposed control
Land Use Table B3 Commercial Core	➤ Insert 'shop top housing' in 3 <i>Permitted with consent</i>. ➤ Insert 'serviced apartments' in 3 <i>Permitted with consent</i>.
Part 7 Additional local provisions	➤ Insert a provision as Clause 7.25 to: - o apply to land that has a split of urban (R, B & IN) and rural/environmental (RU & E) zones; - o allow the subdivision of the urban zoned part of the land and enable the creation of a residue parcel of rural/environmental zoned land that is smaller than the minimum lot size for that part of the land' and

Part of Instrument to be amended	Proposed control
	o allow for the erection of a dwelling house on the residual lot with no further subdivision permitted on the residual lot, or require the residual lot be tied to one or more urban zoned subdivided lots.

4 Part 3 – Justification

4.1 Need for the planning proposal (Section A)

4.1.1 Is the planning proposal a result of any strategic study or report?

No, but this PP has arisen from the recent notification of the Shoalhaven LEP 2014 which replaced Shoalhaven LEP 1985. The proposed amendments included in this PP have been identified as housekeeping issues to be tidied up to ensure that the Shoalhaven LEP 2014 operates as originally intended.

The prohibition of ‘shop top housing’ in the B3 zone is an unintended consequence of the inclusion of the group term ‘residential accommodation’ in the B3 zone in the finalisation of the plan. ‘Serviced apartments’ are currently permissible in the B3 zone; however, the ‘open’ nature of this zone means that this is not explicit. Given that this is a land use that Council wishes to encourage as part of the revitalisation of the Nowra and Ulladulla CBDs, it is desirable to list ‘serviced apartments’ as a specific permissible use to make it clear that this use can be considered.

Subdivision of split zoned land was permissible under Shoalhaven LEP 1985 but this provision was not carried over to Shoalhaven LEP 2014. This was an oversight in the preparation of the plan. As such, the inclusion of such a provision does not represent a departure from Council’s policy position and it is noted that other contemporary Standard Instrument LEPs now include a provision of this nature.

Thus, while these amendments are not the result of a strategic study or report, they are consistent with Council’s policy position and will help achieve the expected outcomes of Council’s new LEP.

4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A PP is the only means of amending the land use table and incorporating a local provision to allow an exception to the minimum lot size set in Shoalhaven LEP 2014. There is no other way to achieve the required outcomes.

4.2 Relationship to strategic planning framework (Section B)

4.2.1 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 draft strategies)?

➤ South Coast Regional Strategy

The South Coast Regional Strategy (SCRS) applies to the Shoalhaven Local Government Area (LGA) and aims to support economic growth in the region, including tourism, while limiting development constrained by coastal processes, flooding, wetlands and significant and cultural landscapes. The proposed amendments have the potential to enable economic growth without compromising environmental values. The proposed amendments facilitate development of land already zoned for commercial or residential development.

The SCRS identifies Nowra as a *major regional centre* and Ulladulla as a *major town*. Both Nowra and Ulladulla CBDs are zoned B3 under Shoalhaven LEP 2014. The proposed amendments to the B3 zone encourage appropriate development in these CBDs. The split zoning provision will enable the subdivision of land already zoned for urban development in our towns and villages. This is consistent with stated outcomes in the SCRS for urban development to be prioritised to support infill housing and to focus development on existing settlements.

The proposed amendment to the B3 zone to permit 'shop top housing' assists with achieving the following action from the SCRS by allowing medium density housing in the Nowra and Ulladulla CBD:

- Planning provisions will ensure that the appropriate housing mix targets can be achieved, in particular the need to provide medium-density housing in and around major regional centres and major towns.

➤ draft Illawarra Regional Growth and Infrastructure Plan

The draft Illawarra Regional Growth and Infrastructure Plan (IRGIP) was released by the State Government on 9 October 2014 and is currently on exhibition for comment until 7 December 2014. The draft IRGIP applies to Shoalhaven LGA.

Similar to the South Coast Regional Strategy, the draft IRGIP aims to address complex issues key to the Illawarra Region over a 20 year period including housing, jobs, the economy, infrastructure, natural environment/resources and heritage, to name a few. Nowra Centre is identified as a *major regional centre* and one of six 'transformative places' that have the potential to play a significant role in the growth of the region. Ulladulla is identified as a *major town*. The proposed amendments to the B3 zone that applies to Nowra and Ulladulla CBDs will encourage appropriate development in these CBDs.

A key focus of the draft Plan is to increase growth through the supply of appropriate housing. The proposed split zone clause ensures that development outcomes can be

achieved for subdivision of land with a split zone and split minimum lot size in Shoalhaven LEP 2014.

The proposed amendments facilitate development for land already zoned for commercial and residential development without compromising environmental values.

4.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

➤ Shoalhaven City Council's Community Strategic Plan, Shoalhaven 2023

The PP is consistent with Council's Community Strategy Plan and the relevant objective and strategy below:

Objective 2.2 Population and urban settlement growth that is ecologically sustainable and carefully planned and managed.

Strategy 2.4.2 Develop land use and related plans for the sustainable growth of the City which use the core principles of the Growth Management Strategy and ESD principles, also carefully considering community concerns and the character of unique historic townships.

4.2.3 Is the planning proposal consistent with applicable state environmental planning policies?

The PP is consistent with the applicable state environmental planning policies (SEPPs). Please see Attachment "B" – Checklist of State Environmental Planning Policies.

4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The PP is consistent with the applicable Ministerial Directions as shown in Attachment 'C' – Checklist of Ministerial Directions. Those that are relevant are discussed below.

1.12 Business and Industrial Zones

The PP is consistent with this Direction as although this PP is proposing to allow a residential use in the B3 zone, it is in the form of 'shop top housing' which requires the residential use to be above commercial uses. Clause 7.16 of Shoalhaven LEP 2014 will continue to apply to land zoned B3 to ensure active uses at ground floor developments are provided to encourage the presence and movement of people. Therefore, it is likely to encourage development of employment lands and support the viability of identified strategic centres, being Nowra and Ulladulla.

1.5 Rural Lands

The PP is consistent with this Direction as it conforms to the Rural Planning Principles and the Rural Subdivision Principles. While the PP does allow for subdivision of rural land, this subdivision only allows for rural subdivision where the land is split zoned with an urban zone. The area of the rural zoned part of the parcel will not be reduced under this provision so there is no increase in rural land fragmentation. Further, the PP proposes to tie the rural residue component to one or more of the urban lots to allow the appropriate management of the residue parcel.

3.1 Residential Zones

The PP is consistent with this Direction as it will allow for a specific form of housing in the Nowra and Ulladulla CBDs, being shop top housing, which will broaden the choice of locations available in the housing market and make more efficient use of existing infrastructure and services.

3.3 Home Occupations

The PP is consistent with this Direction, as although it does not contain provisions relating to 'home occupations', it will amend the principle LEP which includes relevant provisions. The B3 zone does not permit 'home occupations', however, the form of 'residential accommodation' that this PP proposes is 'shop top housing' which is considered to be a 'dwelling' rather than a 'dwelling house'; the direction requires PPs to permit 'home occupations' in 'dwelling houses'.

5.1 Implementation of Regional Strategies

The PP is consistent with the South Coast Regional Strategy as discussed in Section 4.2.1 above.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The likelihood that critical or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal is very low. The PP proposes changes to the B3 zone which only applies to the Nowra and Ulladulla CBDs which are already intensively developed, and an additional subdivision provision to facilitate subdivision of land already zoned for urban development.

4.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other likely environmental effects as a result of the PP.

4.3.3 How has the planning proposal adequately addressed any social and economic effects?

The PP is likely to have positive social and economic effects through the additional supply of housing and a broader choice in location and type of housing.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the planning proposal?

The PP does not create additional requirements for public infrastructure. It facilitates development in areas that already have an urban zone; the public infrastructure requirements have or will be considered as these areas are considered for development.

4.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council has not consulted with any State or Commonwealth public authorities in relation to this PP. Council does not propose to consult with any public authorities due to the minor nature of the changes proposed and these were intended outcomes that were expected to arise from the finalisation of Shoalhaven LEP2014.

5 Part 4 – Mapping

No mapping is required for this PP as it proposes to amend the instrument only.

6 Part 5 - Community Consultation

Council proposes to exhibit the PP in accordance with the requirements of Section 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and any other requirements as determined by the Gateway process. Given the relatively minor administrative nature of this amendment, it is intended that the minimum exhibition period of 14 days apply, acknowledging the extensive exhibition/consultation that went into Shoalhaven LEP2014, out of which the outcomes should have arisen.

Public notification of the exhibition would include notification in the local newspapers, and a notice on Council's website. Hard copies of the PP would be made available at Council's Administrative Buildings in Nowra and Ulladulla.

7 Part 6 – Project Timeline

The following milestone timeframes are anticipated; they will be revised if any significant delays are encountered.

Table 2 - Planning Proposal Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	January/February 2015
Completion of Gateway determination requirements e.g. studies, government agency consultation	February/March 2015
Public exhibition	March/April 2015
Consideration of submissions	April 2015
Post exhibition consideration of Planning Proposal	June 2015
Finalisation and notification of Plan	July 2015

Attachment A –Council report and resolution

Development Committee Council report and resolution to prepare a Planning Proposal (refer to Attachment)

Attachment B – Checklist of State Environmental Planning Policies

Draft LEP Checklist – State Environmental Planning Policies (SEPPs) – Stage 1 Housekeeping Amendment

Draft LEP Checklist State Environmental Planning Policies					
SEPP	Date	Name	Inconsistent	Not Inconsistent	Not Applicable
14	12.12.85	Coastal wetlands		✓	
21	24.4.92	Caravan parks		✓	
26	5.2.88	Littoral rainforests		✓	
30	8.12.89	Intensive agriculture		✓	
32	15.11.91	Urban consolidation (Redevelopment of urban land)		✓	
33	13.3.92	Hazardous and Offensive development		✓	
36	16.7.93	Manufactured home estates		✓	
44	6.1.95	Koala habitat protection		✓	
50	10.11.97	Canal estate development		✓	
55	28.8.98	Remediation of land		✓	
62	25.9.00	Sustainable aquaculture		✓	
64	16.3.01	Advertising and signage		✓	
65	26.7.02	Design quality of residential flat development			✓
71	1.11.02	Coastal protection		✓	
--	31.3.04	Housing for Seniors or People with a Disability 2004		✓	
--	25.6.04	BASIX : 2004			✓
--	1.8.05	Major Development 2005		✓	
--	16.2.07	Mining, Petroleum Production and Extractive Industries 2007		✓	
--	26.10.07	Miscellaneous Consent Provisions 2007		✓	
--	1.1.08	Infrastructure 2007		✓	
--	9.5.08	Rural Lands 2008		✓	
--	12.12.08	Exempt and Complying Development Codes 2008		✓	
--	31.7.09	Affordable Rental Housing 2009		✓	
--	15.12.10	Urban Renewal 2010			✓
--	21.1.11	Sydney Drinking Water Catchment 2011		✓	
--	28.9.11	State and Regional Development 2011		✓	

Attachment C – Checklist of Ministerial Directions**Draft LEP Checklist – Section 117(2) Directions – Stage 1 – Housekeeping Amendment**

Direction No:	Subject	Applies?	Relevant?	Consistent?	Comment
1	Employment and Resources				
1.1	Business and Industrial Zones	Y	Y	Y	The PP is consistent with this Direction as although this PP is proposing to allow a residential use in the B3 zone, it is in the form of shop top housing which requires the residential use to be above commercial uses. Therefore, it is likely to encourage development of employment lands and support the viability of identified strategic centres, being Nowra and Ulladulla.
1.2	Rural Zones	Y	N	Y	This PP does not propose to rezone land from a rural zone to a residential, industrial, village or tourist zone.
1.3	Mining, Petroleum Production and Extractive Industries	Y	N	Y	This PP does not prohibit mining or extractive industries or the potential development of mining or extractive industries.
1.4	Oyster Aquaculture	Y	N	Y	This PP will not result in adverse impacts on any Priority Oyster Aquaculture Areas or create incompatible land uses.
1.5	Rural lands	Y	Y	Y	The PP is consistent with this Direction as it conforms to the Rural Planning Principles and the Rural Subdivision Principles. While the PP does allow for subdivision of rural land, this subdivision only allows for rural subdivision where the land is split zoned with an urban zone. The area of the rural zoned part of the parcel will not be reduced under this provision so there is no increase in rural land fragmentation. Further, the PP proposes to tie the rural residue component to one or more of the urban lots to allow the appropriate management of the residue parcel.
2					
2.1	Environmental Protection Zones	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that facilitate the protection and conservation of environmentally sensitive areas, it will amend the principle LEP which includes relevant provisions.
2.2	Coastal Protection	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that give effect to and are consistent with the NSW Coastal Policy, the Coastal Design Guidelines 2003 and the NSW Coastal Management Manual, it will amend the principle LEP which includes relevant provisions.
2.3	Heritage Conservation	Y	N	Y	The PP is consistent, as although it does not contain provisions for conservation of heritage items etc., it will amend the principle LEP which includes relevant provisions.
2.4	Recreation Vehicle Area	Y	N	Y	The PP will not enable the land to be developed for the purpose of a recreation vehicle area.
3	Housing, Infrastructure and Urban Development				
3.1	Residential Zones	Y	Y	Y	The PP is consistent with this Direction as it will allow for a specific form of housing in the Nowra and Ulladulla CBDs, being 'shop top housing', which will broaden the choice of locations available in the housing market and make more efficient use of existing infrastructure and services. It also has the potential to reduce demand for of land for housing on the

					urban fringe.
3.2	Caravan Parks and Manufactured Home Estates	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions relating to caravan parks and manufactured home estates etc., it will amend the principle LEP which includes relevant provisions.
3.3	Home Occupations	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions relating to 'home occupations', it will amend the principle LEP which includes relevant provisions. The B3 zone does not permit home occupations, however, the form of 'residential accommodation' that this PP proposes is shop top housing which is considered to be a 'dwelling' rather than a 'dwelling house'; the direction requires PPs to permit 'home occupations' in 'dwelling houses'.
3.4	Integrating Land Use and Transport	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that give effect to and are consistent with the aims, objectives and principles of integrated land use and transport, it will amend the principle LEP which includes relevant provisions.
3.5	Development Near Licensed Aerodromes	N			
3.6	Shooting Ranges	N			
4	Hazard and Risk				
4.1	Acid Sulfate Soils	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that relate to acid sulphate soils, it will amend the principle LEP which includes relevant provisions.
4.2	Mine Subsidence and Unstable Land	N			
4.3	Flood Prone Land	Y	N	Y	The PP is consistent, as although it does not contain provisions that apply to flood planning areas, it will amend the principle LEP which includes relevant provisions.
4.4	Planning for Bushfire Protection	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that apply to bush fire prone land, it will amend the principle LEP which includes relevant provisions. Council will consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway Determination as per this direction.
5	Regional Planning				
5.1	Implementation of Regional Strategies	Y	Y	Y	The PP is consistent with the South Coast Regional Strategy. Please see 4.2.1 of this document for details.
5.2	Sydney Drinking Water Catchments	Y	N	Y	The PP is consistent with this Direction, as although it does not contain provisions that apply to the Sydney Drinking Water Catchment, it will amend the principle LEP which is consistent with the principles of the SEPP Sydney Drinking Water Catchment.
5.3	Farmland of State & Regional Significance on Far North Coast	N			
5.4	Commercial & Retail Development, Pacific Hwy	N			
5.8	2 nd Sydney Airport: Badgerys Creek	N			
5.9	North West Rail	N			

	Link Corridor Strategy				
6	Local Plan Making				
6.1	Approval and Referral Requirements	Y	N	Y	The PP does not include provisions related to the concurrence, consultation or referral of development applications or identify development as designated development.
6.2	Reserving Land for Public Purposes	Y	N	Y	The PP does not create, alter, or reduce existing zonings or reservations of land for public purposes. Council has not been requested by a Minister or public authority to include provisions to reserve land for a public purpose.
6.3	Site Specific Provisions	N			