

Rezoning of land at Warrah Road, Bangalee

Proposal Title : **Rezoning of land at Warrah Road, Bangalee**

Proposal Summary : **The planning proposal seeks to identify the biodiversity significance of land at Warrah Road, Bangalee and to rezone the non-high conservation value lands for residential development.**

The site consists of three rural residential lots of 2ha (Lots 21 to 23 DP 714096) and Lot 24 DP714096 (73ha), all in separate ownership and totalling a combined area of approx. 80ha.

It is proposed to rezone the land from Rural 1(d) (General Rural) to part E2 Environmental Conservation, a residential zone and RU2 Rural Landscape (corresponding to the Western Bypass Corridor).

The proposal will also involve amendments to minimum lot size maps, biodiversity maps, riparian lands maps, acid sulphate soils maps, local clauses and inclusion of the site as an urban release area.

PP Number : **PP_2016_SHOAL_002_00**

Dop File No : **13/08481**

Proposal Details

Date Planning
Proposal Received : **20-May-2016**

LGA covered : **Shoalhaven**

Region : **Southern**

RPA : **Shoalhaven City Council**

State Electorate : **KIAMA**

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

LEP Type : **Precinct**

Location Details

Street : **Warrah Road**

Suburb : **Bangalee**

City : **Nowra**

Postcode : **2541**

Land Parcel : **Lots 21-24 DP714096**

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DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	South Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	Residential
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 : **Yes**
If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**
If Yes, comment :

Supporting notes

Internal Supporting Notes : **The site is a deferred matter under the Shoalhaven LEP 2014 and as such the provisions of the Shoalhaven LEP 1985 continue to apply.**

The site is located at Bangalee, approximately 3.5 kilometres north-west of Nowra town centre. It is bordered by residential development to the north (zoned R2 Low Density Residential); the Western Bypass Corridor to the east which adjoins the western residential boundary of North Nowra (R2 Low Density Residential); and small rural holdings (combination of RU2 Rural Landscape, E2 Environmental Conservation, E3 Environmental Management) and R1 General Residential to the south and west. The two parcels of R1 General Residential to the south were recently rezoned in the Shoalhaven LEP 2014 as part of the Crams Road Urban Release Area (URA). They are yet to be developed for

residential purposes.

History of Proposal

The site is one of seven potential urban release areas in the northern area of the Crams Road URA identified in the Nowra Bomaderry Structure Plan 2008. The Structure Plan identified an area of 90 hectares for potential rezoning, subject to further investigations and studies, including a threatened species and biodiversity assessment.

In 2008, Shoalhaven Council engaged Allison Hunt and Associates (AHA) to undertake a comprehensive biodiversity assessment of the Crams Road URA in accordance with the requirements of the Structure Plan and to inform the draft zones in the draft Shoalhaven LEP 2013. This led to a significant reduction in the size of the Crams Road URA proposed to be rezoned for residential development, including an area of 6.4ha proposed as R1 General Residential on Lot 24.

During the exhibition of the draft Shoalhaven LEP 2013, approximately 12.5ha of understorey and small trees were illegally cleared on Lot 24. A s.38 Remedial Direction under the Native Vegetation Act 1993 was issued by the Office of Environment and Heritage for the illegal clearing and is in force until July 2029.

The landowner of Lot 24 made a submission during the exhibition period requesting additional areas outside the exhibited zone boundaries be considered for rezoning to R1 General Residential.

Following the exhibition of the draft Shoalhaven LEP 2013 Council resolved to defer the site from the LEP to enable further specific consideration of the most appropriate mix of environmental and urban zonings and to consider a planning proposal for the site after the completion of the investigations into the alleged illegal clearing.

In mid-2014 the landholder of Lot 24 submitted a planning proposal to Council which sought a rezoning with potential for 396 residential lots based on ecological work that was completed on the landholder's behalf in 2010 and 2011. This included a flora and fauna analysis that differed from the findings of the AHA Report.

On 7 October 2014, Council resolved to support the landholder's planning proposal in principle, pending an independent peer review (to be funded by the landholder) of the conflicting threatened species and biodiversity assessments that existed over Lot 24 and make recommendations on the biodiversity significance of the site.

The NGH Environmental, Peer Review of Biodiversity Studies, June 2015 applied the 'precautionary principle' and identified that the existing studies are sufficient to clearly define areas of High Conservation Value (HCV) based on the definitions in the South Coast Regional Conservation Plan, 2010. It determined that areas that provide good quality known habitat for threatened species should be included as areas of HCV unless it can be adequately demonstrated that the known habitat is no longer important to the relevant threatened species.

The Review recommended that areas identified as HCV be considered for Environmental Conservation (E2) zoning to protect the biodiversity values contained in these areas. The remaining areas could be considered for an appropriate level of development and a zoning that is consistent with Council's planning objectives. The Review also identified possible surveys and analysis that would need to be undertaken to allow a consideration of the area of HCV lands.

On 1 December 2015, Council resolved to prepare a planning proposal to rezone the non-High Conservation Value areas on Lot 24, as identified in the NGH Environmental Report, to an appropriate residential zone and to include an assessment of residential land supply in the Nowra-Bomaderry Structure Plan area, particularly north of the Shoalhaven River, in the proposal.

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Council also resolved to request the Department of Planning and Environment, when considering the planning proposal for a Gateway determination, determine the appropriateness of further biodiversity investigations over the lot, to support the possible increase in residential zoned land.

The Department received Council's request for a Gateway determination on 17 March 2016. The planning proposal included a potential zoning map which identified 12ha of residential zoned land on Lot 24.

The landholder of Lot 24 advised the Department on 22 March 2016 that additional biodiversity survey work, as outlined in the NGH Peer Review, is being undertaken. This additional work (now due for completion in July) was not requested by Council, however the landholder commenced the work to ensure surveys could be completed at the appropriate times of the year.

The Department advised the landholder on 1 April 2016 that it did not need to wait for the completion of the studies to consider a Gateway determination and any further reports should be submitted to Council as the relevant planning authority.

The Office of Environment and Heritage (OEH) was consulted on the proposal and has advised that it supports the findings of the NGH Peer Review – the zoning of the high conservation value lands to E2 Environmental Conservation reflects the conservation value of the land and minimises adverse impacts associated with residential development.

OEH accepts the residential zoning on the non-high conservation value lands, except on the illegally cleared land subject to the Native Vegetation Act 1993 s.38 Remedial Direction. This area was proposed E2 under the exhibited draft Shoalhaven LEP 2013 prior to clearing and is expected to regain its pre-cleared HCV state once rehabilitated. OEH supports these cleared lands being zoned for environmental protection.

Following requests from the Department for further information and clarification, Council provided details on the strategic land use planning for the site and a revised Planning Proposal. Council and the Department met on 20 May 2016 where the final details on the planning proposal were discussed and confirmed.

External Supporting
Notes :

The planning proposal seeks to identify the biodiversity significance of land at Warrah Road, Bangalee and to rezone the non-high conservation value lands for residential development.

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment : The objectives of the planning proposal are to:

- * resolve the biodiversity significance of land at Warrah Road, Bangalee; and
- * enable the non-high conservation value land to be rezoned for residential purposes.

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

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

Comment : The explanations of provisions in the planning proposal are to amend the Shoalhaven LEP, 2014:

- * Rezone land from Rural 1(d)(General Rural) by changing the Land Zoning Map to rezone the non-HCV land to an appropriate residential zone (no specific zone was nominated by Council), the HCV land to E2 Environmental Conservation and the Western Bypass Corridor to RU2 Rural Landscape.
- * Minimum Lot Size Overlay (LSZ) to apply a minimum lot size of 40ha for land zoned E2 Environmental Conservation and RU2 Rural Landscape (no lot size has been nominated by Council for the residential land).

- * Urban Release Areas Overlay (URA) to include the subject land as an Urban Release Area so that Part 6 will apply to the land.
- * Biodiversity Overlay (BIO) (to be determined prior to public exhibition) to reflect the outcomes of biodiversity studies;
- * Riparian Lands and Watercourses Overlay (WCL)
- * Acid Sulphate Soils Overlay (ASS)
- * Clauses Overlay (CLS) (subject to change prior to public exhibition) to identify the Western Bypass Corridor.

The planning proposal includes a map of possible zone boundaries based on the outcomes of the NGH Peer Review. It identifies that 'the area of land to be rezoned for residential development may potentially increase if further biodiversity studies are completed and they determine that additional areas are suitable for residential development'.

The planning proposal intends to use the Gateway determination as "the umpire in the process and determine the appropriateness of further biodiversity investigations over Lot 24 to support a possible increase in residential zoned land. The most appropriate residential zone will depend on the size of the area being rezoned. If the Department of Planning and Environment support an increase in residential zoned land, then an R1 General Residential zone will potentially be the most appropriate, consistent with other URAs in the Nowra Bomaderry Structure Plan. However, if the Department does not support a substantial increase in the residential zone, then an R2 Low Density Residential or R5 Large Lot Residential is considered more appropriate for the site".

The Department has determined that no further biodiversity studies are required for lot 24 as the land has been the subject of several studies and a peer review.

The possible zone boundaries map has applied a residential zoning over part of Sub-remediation Area B identified in the s.38 Remedial Direction under the Native Vegetation Act 1993. This area was proposed to be zoned E2 under the exhibited draft Shoalhaven LEP 2013 prior to clearing.

Council has confirmed that an appropriate residential zoning and lot size will be influenced by whether the residential development can be connected to the sewerage system or rely on on-site effluent management. This will be determined prior to public exhibition of the proposal.

Should Council determine a R5 Large Lot Residential zone for the site, then the site will not be added to the Urban Release Area map.

Council has confirmed that the site will not be identified as 'Sch 1.5' on the Clauses Map – Shoalhaven LEP 2014, Schedule 1 Additional permitted uses or Clause 10 Use of certain land in the Nowra-Bomaderry Urban Release Area - Subclause 2 which provides that development for the purposes of office premises and service stations is permitted with development consent.

Recommendation:

The planning proposal is to be revised by Council prior to exhibition to confirm the explanation of provisions, including proposed zoning map, lot sizes and overlays. A copy of the updated proposal is to be provided to the Department prior to exhibition of the proposal.

Justification - s55 (2)(c)

- a) Has Council's strategy been agreed to by the Director General? Yes
- b) S.117 directions identified by RPA :
 - 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.3 Heritage Conservation
- * May need the Director General's agreement

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- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

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 55—Remediation of Land
SEPP (Infrastructure) 2007
SEPP (Rural Lands) 2008
Illawarra REP No. 1**

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

S117s

The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan as it is allowing some residential development and opportunity for well-located, more diverse and more affordable housing. The Plan identifies the Warrah Road, Bangalee area as one of a number of regionally significant release areas, which will continue to make a contribution to housing supply throughout the Illawarra Region. The Plan shows the smaller residential area which was originally exhibited in the draft Shoalhaven LEP 2013. The proposal is inconsistent with the Plan in that it proposes a larger area for residential development than identified in the Plan.

The Plan also addresses high conservation value lands, stating that the 'NSW Government will require councils and development proponents to apply high environmental values mapping and criteria to rezoning decisions. High environmental values mapping will be used to identify environmental assets and areas of important environmental value which need to be protected. New or more intensive developments in areas of environmental value can then be located to avoid or mitigate potential impacts on these values.'

The planning proposal is inconsistent with the Plan in that part of the high conservation value lands in the south east of Lot 24 which were illegally cleared (known as Sub-remediation Area B in the s.38 Remedial Direction) are proposed to be rezoned residential.

With the release of the Illawarra Shoalhaven Regional Plan the South Coast Regional Strategy 2006 no longer applies to the Shoalhaven local government area.

Recommendation: The planning proposal is inconsistent with the Illawarra Shoalhaven Regional Plan in that areas previously mapped as HCV lands and then illegally cleared are proposed to be zoned residential. An appropriate environmental zone is preferred for these lands.

The planning proposal is consistent with s117 Directions 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulfate Soils.

The planning proposal is facilitating residential development adjoining and adjacent to existing residential areas in North Nowra. Part 6.1 of the Shoalhaven LEP urban release areas (URAs) requires arrangements for infrastructure to be in place prior to the subdivision of land. Depending on which residential zoning is applied to the site, the site may be mapped as a URA and thus part 6.1 would apply to the site.

Traffic issues associated with developing the site, particularly vehicle movements along Illaroo Road, Princes Highway and the Shoalhaven River bridge crossing have been identified in the Nowra Bomaderry Structure Plan. The site has subsequently been

programmed for implementation/staging in 10 years+ once the broader North Nowra Bomaderry traffic issues have been resolved.

The site is not within 500 metres of land mapped as containing acid sulfate soils and hence any proposed subdivision works will not affect acid sulfate soils.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulfate Soils.

The planning proposal is justifiably inconsistent with the s117 Directions 1.2 Rural Zones and 1.5 Rural Lands. The site has not been used for agricultural purposes in the last two years and its high biodiversity values limit its ability to be cleared for agricultural uses. The proposal is rezoning high conservation value lands from a rural zone to an environmental conservation zone which will provide greater protection and conservation to these environmentally sensitive areas. The rural zone is proposed to be retained for the cleared lands within the Western Bypass Corridor.

Recommendation: The Secretary's delegate can be satisfied that the proposal's inconsistency with the s117 Directions 1.2 Rural Zones and 1.5 Rural Lands is justified by the endorsed Nowra Bomaderry Structure Plan identifying the site for urban development and environmental conservation.

It is unknown whether the planning proposal is consistent or justifiably inconsistent with the s117 Directions 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection. An Aboriginal Due Diligence Assessment has been undertaken for Lot 24 however OEH has confirmed this is a preliminary investigation only. There is one recorded Aboriginal site and potential for other unrecorded sites to be impacted upon by the proposal. An Aboriginal Archaeological Assessment will be required to adequately assess and address Aboriginal cultural heritage.

A bushfire assessment has been prepared for Lot 24 however this took into account a far greater residential zoning and subsequent subdivision development on the land than what is proposed in the planning proposal. A revised bushfire assessment is required which reflects the proposed zones and their boundaries and also covers Lots 21-23.

Recommendation: Following the completion of an archaeological assessment, any inconsistencies with the s117s Direction 2.3 Heritage Conservation will need to be justified by Council to the satisfaction of the Secretary's delegate.

Recommendation: In accordance with the s117 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the Commissioner of the NSW Rural Fire Service and to confirm that notwithstanding any non-compliance with the provisions for Planning for Bushfire Protection, the Rural Fire Service does not object to the progression of the Planning Proposal.

The planning proposal is potentially inconsistent with s117 Directions 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Plans in that it is proposing to rezone the illegally cleared HCV lands in Sub-remediation Area B of the s.38 Remedial Direction under the Native Vegetation Act 1993 to residential. This inconsistency can be removed by applying an environmental zoning to these lands. This would reduce the amount of residential land by approximately 1 hectare.

Recommendation: The planning proposal is potentially inconsistent with the s117 Directions 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Plans. The lands covered by the Native Vegetation Act, 1993 s.38 Remedial Direction should be rezoned to an appropriate environmental zone.

SEPPs

The planning proposal identifies that the Illawarra Regional Environmental Plan No. 1;

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SEPP44 – Koala Habitat Protection; SEPP 55 Remediation, SEPP (Infrastructure) 2007 and SEPP (Rural Lands) 2008 apply to the proposal.

SEPP44 – Koala Habitat Protection and SEPP (Infrastructure) 2007 are considered during the assessment of development applications not rezoning investigations. Council is proposing to consult with the Roads and Maritime Services during the agency consultation period to determine whether the planning proposal and subsequent subdivision development will result in the levels of traffic generating development identified in SEPP (Infrastructure) 2007.

As the site is a deferred matter subject to the Shoalhaven LEP 1985 it is still affected by the Illawarra REP No.1. The IREP requires urban expansion to be orderly and efficient; only occur where adequate services are available or may be provided; avoid hazards including bushfire; and provide for a range of lot sizes and dwelling types. Council has a staging program for the development of the URAs and Part 6 of the Shoalhaven LEP, 2014 requires the provision of infrastructure prior to the development of the land. The preparation of a bushfire management report and consultation with the NSW Rural Fire Services will confirm any bushfire issues and appropriate management options.

Various areas of Lot 24 have been used for grazing, as an abattoir, and illegal dumping. In accordance with SEPP55 Remediation of Land, a Stage 1 Preliminary Contamination Assessment has been prepared for the Lot. The Assessment found the Lot to be of low to medium risk of contamination in the areas of illegal dumping of rubbish and the abattoir. The majority of the Lot was assessed to be 'greenfield'. The assessment concluded that a targeted Stage 2 Contamination Assessment is required for the proposed subdivision of the land.

The planning proposal is consistent with SEPP Rural Lands and Rural Planning Principles. The site's biodiversity values prevent the land from being used for productive and sustainable agriculture. The high conservation value lands are to be conserved. The remaining rural lands are to be either used for residential development as per the Nowra Bomaderry Structure Plan or retained for rural uses as part of the Western Bypass Corridor.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the Illawarra REP No.1, SEPP55 Remediation of Land and SEPP Rural Lands.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The planning proposal is supported by draft maps for possible zone boundaries; riparian lands and watercourse overlay; acid sulfate soils overlay; and local clause overlay. Additional maps are required for lot size, biodiversity and urban release areas.

The maps will need to be finalised and confirm appropriate land zonings, minimum lot size and URA status following the completion of further studies and prior to public exhibition.

Recommendation: Council is to finalise the draft maps following the completion of further studies and prior to exhibition of the planning proposal. The maps will be prepared in accordance with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps, 2015.'

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council proposes to exhibit the planning proposal for a minimum of 28 days in accordance with the Environmental Planning and Assessment Act and/or any other requirements as determined by the gateway process. Public notification of the exhibition will include local newspaper notifications, notice on Council's website and

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hard copies will be available at Council's administration buildings.

Council has received representations from a number of landowners in the Warrah Road/Bangalee area to the north of the site and it is intended that all surrounding landowners would be notified of the public exhibition.

The proposed exhibition arrangements are considered satisfactory.

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 :

The planning proposal is not a simple spot rezoning consistent with an endorsed strategy. The proposal is relying on the Gateway determination to be the umpire in the process and determine the appropriateness of further biodiversity investigations over the site to support a possible increase in residential zoned land. The planning proposal is not definitive on the proposed residential zone or minimum lot size.

The planning proposal addresses the Department's "A guide to preparing planning proposals" and is considered adequate for a Gateway determination with conditions.

Council has a project timeframe of six months to complete the rezoning process. Due to the need to complete further studies and negotiate anticipated outcomes a timeframe of 12 months is recommended.

Council should ensure that the exhibited planning proposal clearly articulates the proposed changes to the Shoalhaven LEP 2014 and includes the technical studies to support the changes.

Council has requested an Authorisation to exercise delegation for the planning proposal. The complexity of the proposal suggests the matter should not be delegated to Council.

The Member for Kiama has made representations on behalf of the landholder of Lot 24 to the Minister for Planning concerning the biodiversity and rezoning investigations.

Recommendation: The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

Recommendation: Council is to complete any further studies and update the planning proposal to reflect the studies prior to its public exhibition. A copy of the updated proposal is to be provided to the Department for review prior to exhibition of the proposal.

Recommendation: Delegation for plan making is to remain with the Department.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The planning proposal is an amendment to Shoalhaven LEP 2014 to address the deferred matter status of the land. The land was deferred from the LEP due to a dispute over the most appropriate mix of environmental and urban zonings for Lot 24.

Assessment Criteria

Need for planning
proposal :

Council deferred the zoning of the site as part of the finalisation of Shoalhaven LEP 2014 in order to consider a site specific planning proposal which resolves the differences between biodiversity studies for Lot 24 and allows some form of residential development.

An independent peer review of the biodiversity studies has been undertaken. Council has submitted the planning proposal for the Gateway to make a decision on the recommendations of the review.

A planning proposal is the appropriate way to amend the Shoalhaven LEP 2014 and resolve the long standing issues associated with the conservation values and development potential of the land.

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Consistency with strategic planning framework :

The planning proposal is generally consistent with the Illawarra Shoalhaven Regional Plan. Confirmation of the proposed zones will confirm whether the proposal is consistent with the actions to develop new greenfield sites where infrastructure and services are available and to protect high conservation lands.

The site is part of one of seven new living areas identified in the Nowra Bomaderry Structure Plan, 2006 (endorsed by the Department in 2008). The Plan identified the Crams Road URA where 'in order to determine the future residential area, further studies are required to address but not limited to threatened species and biodiversity assessment, Aboriginal archaeological assessment, bushfire management, infrastructure provision and subdivision staging'. The Plan identifies a notional yield of 1080 dwellings for the URA but notes that residential capacity will be determined at the completion of the studies.

The Structure Plan also identified a possible development phasing plan for the new living areas. The phasing recognises that the Shoalhaven River bridge crossing when combined with development requiring access from Illaroo Road, is a key constraint on the development of new living areas north of the River. The Crams Road URA has thus been listed in phase 4 of 5 phases when it is assumed that the river crossing issue would have been resolved. Council has since confirmed that the site is not an immediate priority for urban release, it is a longer term priority of 10+ years.

Land Supply

Council's Growth Management Strategy, 2012 (endorsed by the Department in 2014) identifies that "the development of new living areas will be staged in order to capitalise on the pattern and form of the existing urban fabric and to avoid prematurely crossing infrastructure cost thresholds". The Growth Strategy identifies a projected housing supply of 350 dwellings for the Crams Road URA.

The projected 350 dwellings figure has been adopted in the 2014 forecast.id ultimate dwelling yields. This figure is currently being used by Council and the Roads and Maritime Services in their TRACKS model for vehicular movements on the local road network.

The planning proposal identifies that in theory there is an existing capacity for an additional 10,165 residential lots in the NBSP area. Currently zoned residential land has the potential to yield 4,086 lots and designated URAs have a notational yield of 6,079 lots. It is noted that the actual capacity of the URA sites is proving to be lower than anticipated due to constraints such as biodiversity conservation, bushfire hazard, flood inundation, and land tenure issues. Council's records indicate a need for between 200 and 300 dwelling completions per year in the Nowra Bomaderry area.

The planning proposal includes a Residential Yield Assessment for North Nowra/Bomaderry prepared by Urbis for the landholder of Lot 24. However, the proposal makes no comment on, or reference to, this Assessment.

The Assessment covers 16 undeveloped residential zoned sites (comprising 412ha) within North Nowra and Bomaderry. It estimates that although the sites have the capacity to produce a residential yield of 4,040 lots, there is a potential residential yield of 2,920 lots having regard to the constraints on future development. The existing constraints are seen to be extensive vegetation coverage; threatened flora and/or fauna; bushfire prone land and fragmented ownership. The Assessment considers that these sites have a low likelihood and unknown timeframe for release.

The Assessment concludes that the previously identified development yield for the North Nowra/Bomaderry area in the Nowra Bomaderry Structure Plan has been significantly reduced and future anticipated land supply and dwelling projections will continue to be limited by environmental and non-environmental constraints.

The planning proposal identifies that it is broadly consistent with Council's Community Strategic Plan in that it meets the Objectives 2.2 Population and urban settlement growth that is ecologically sustainable and carefully planned and managed; and 2.6 Settlements

Environmental social
economic impacts :

that are resilient to the unexpected impacts of natural hazards. It also addresses Strategy 2.4.2 to 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.

Lots 21-23 are three concessional lots of 2 ha each which were excised in the early 1980's and resulted in the residual Lot 24. The lots have been developed for rural residential with cleared areas for dwellings and associated curtilage. The remainder of the lots have retained their native vegetation.

Lot 24 is vacant but has been used in the past for grazing and as an abattoir. It is vegetated in the south and west and cleared in the north-east and along the eastern boundary for a 45m wide electricity easement. There are a number of fire and access trails across the Lot.

Approximately 12.5ha of understorey and small trees were illegally cleared on Lot 24 during 2011. A Native Vegetation Act 1993 s38 Remedial Direction was issued by the Office of Environment and Heritage for the illegal clearing and is in force until July 2029. The Direction requires the revegetation of the cleared areas to their pre-clearing conservation values.

The site slopes from north east to south west and is traversed by three watercourses. A fourth watercourse flows to the west along the southern boundary. The Nowra Bomaderry Structure Plan requires that the watercourses will be protected and enhanced. It also identifies opportunities for east-west habitat corridors to link with riparian corridors and enhance the environmental values of the site.

The majority of the site is considered constrained due to the extensive native vegetation cover and the presence of the watercourses, threatened species and threatened species habitat.

Five biodiversity studies have been conducted over Lot 24 which have provided conflicting advice on threatened species and areas of high conservation value. The NGH Peer Review of Biodiversity Studies was undertaken to make recommendations on the biodiversity significance of Lot 24 as presented in these studies.

The NGH Peer Review applied the 'precautionary principle' and identified the existing studies are sufficient to clearly define areas of High Conservation Value (HCV) based on the definitions in the South Coast Regional Conservation Plan, 2010. The Review determined that areas that provide good quality known habitat for threatened species should be included as areas of HCV unless it can be adequately demonstrated that the known habitat is no longer important to the relevant threatened species. Council's proposed E2 zone is based on the findings of the peer review.

The Review also identified possible surveys and analysis that would need to be undertaken to allow a consideration of the area of HCV lands. As part of the planning proposal Council is seeking direction from the Gateway determination about the most appropriate way to progress the biodiversity issues and appropriateness of further biodiversity studies to possibly increase the residential zoned land.

The Review confirmed that from the five biodiversity studies no Endangered Ecological Communities listed under the NSW Threatened Species Conservation Act (TSC Act), Commonwealth Environmental Protection Biodiversity Conservation Act (EPBC Act) or NSW Fisheries Management Act are considered to occur on Lot 24.

Lot 24 provides verified habitat for a number of threatened species under the TSC Act. The existing studies recorded eight threatened fauna species - 6 mammal (Yellow-bellied glider, Squirrel glider, Grey-headed Flying Fox and 3 other forest microbats) and 2 bird (Glossy Black Cockatoo and Powerful Owl) species. Based on habitat assessments, the presence of key indicator habitat elements and the number and distribution of previous records, there is a moderate to high probability of a further 15 species occurring within the Lot.

No threatened flora species, plant populations or ecological communities were recorded on Lot 24 however on the basis of habitat assessments and the number and distribution of previous records there is a medium to high likelihood for six threatened plant species to occur in the area including the Leafless Tongue Orchid and Bauer's Midge Orchid.

A total of 412 hollow-bearing trees containing 1,106 hollows were recorded on Lot 24.

Threatened species records from the Office of Environment and Heritage identify the presence of Albatross Mallee, Bomaderry Zieria, Eucalyptus langleyi population and Yellow bellied Glider on Lots 21-23.

The majority of the site is identified as bushfire prone vegetation on the Shoalhaven Bushfire Prone Land Map. A bushfire constraints assessment for Lot 24 was included in the planning proposal. The assessment is based on the landholder's proposed residential development and recommends a number of mitigation measure to ensure development is consistent with the s117 direction and the Planning for Bushfire Guidelines. As the area of residential development in the planning proposal has been significantly reduced to that used for the bushfire assessment, a revised report is required.

An Aboriginal Due Diligence Assessment for Lot 24 has identified a Registered site of a surface scatter of five stone artefacts and other unrecorded sites (including grinding grooves). It indicates that the recorded site will be impacted, and that there is potential for the unrecorded sites to be impacted. OEH has advised that these impacts must be appropriately managed by ensuring that the impact to the area is either avoided or the potential determined through further archaeological investigation. Indirect impacts to an open campsite within the cleared area of the electricity line easement must also be considered.

The planning proposal states that consultation with the community after gateway determination will identify and consider social and economic issues. Visual and traffic issues have already been raised by the adjoining community in the Warrah Road subdivision. Residents are concerned with the visual impact of having a higher density residential development adjoining their larger, landscaped lots.

They are also concerned with only having one access point via Warrah Road into and out of the development and the impact of increased traffic on the local roads within the existing Warrah Road subdivision. A traffic assessment has been prepared by the landholder of Lot 24 for his proposed development of Lot 24. This assessment is included in the planning proposal however Council has identified a number of issues with the report.

Council concurs with the Warrah Road residents' concerns as well as traffic impacts on Illaroo Road's intersection with the Princes Highway and the Shoalhaven River crossing and the low household vehicle trip generation rates used in the traffic modelling. The planning proposal also identified that consideration will need to be given to the creation of an additional point of access and the proposed development would need to take into account the anticipated timing of road proposals to improve access into and out of North Nowra.

The application of an E2 zoning for the HCV lands is consistent with the Northern Councils' Environmental Zone Review and Section 117 direction. The primary use of the land is environmental conservation and this has been based on validated ecological evidence.

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Assessment Process

Proposal type : Precinct Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority **Office of Environment and Heritage**
Consultation - 56(2)(d) **NSW Rural Fire Service**
: **Transport for NSW - Roads and Maritime Services**
 Other

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

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

If no, provide reasons : **Council is proposing to consult with OEH, Office of Water, NSW Rural Fire Services and Road and Maritime Services.**

Consultation should also include Shoalhaven Water and Endeavour Energy as providers of water, sewer and electricity infrastructure.

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

If Yes, reasons : **Appropriate zones, zone boundaries and lot sizes need to be confirmed by Council following further studies. The planning proposal needs to be resubmitted for the Department's review and approval prior to public exhibition.**

Identify any additional studies, if required. :

Flora

Fauna

Heritage

Bushfire

Other - provide details below

If Other, provide reasons :

There are no specific studies for the land covered by Lots 21-23.

The planning proposal includes as attachments the 'Planning Proposal Warrah Road, North Nowra' Urbis, June 2014 (commissioned by the landholder of Lot 24 and only covering Lot 24), the 'Peer Review of Biodiversity Studies', nigh environmental June 2015 and Residential Yield Assessment North Nowra and Bomaderry, October 2015 Urbis.

The 'Planning Proposal Warrah Road, North Nowra' includes supporting reports as Appendices:

- * Appendix B – Flora and Fauna Assessment and Constraints Analysis Lot 24 DP714096, North Nowra Biosis Research, September 2010**
- * Appendix C – Traffic Impact Statement Lot 24 DP714096 Warrah Road, North Nowra Residential Subdivision Planning Proposal, traffic, June 2014**
- * Appendix D - Stage 1 Contamination Assessment, Network Geotechnics, November 2013**
- * Appendix E - Bushfire Constraints Assessment for the proposed rezoning of Lot 24 in DP714096, Warrah Road, Bangalee, Australian Bushfire Protection Planners Pty Ltd, 16 June 2014.**
- * Appendix F - Preliminary Aboriginal Archaeological Due Diligence Assessment, Mary Dallas consulting Archaeologists, 13 December 2013**

Council has not endorsed the reports prepared on behalf of the landholder of Lot 24.

No further studies are required to resolve the biodiversity status of Lot 24.

The Peer Review of Biodiversity Studies (for Lot 24) identifies Lots 21-23 as a mix of low and moderate constraints, having threatened flora records - Albatross mallee, Bomaderry Zieria and Eucalyptus langleyi population on Lot

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23, threatened fauna records - Yellow-bellied Glider on Lot 21 and high hollow bearing trees on Lot 21. An assessment of the biological values of Lots 21-23 and potential impacts of increasing the residential development on these lots is required.

The Bushfire Constraints Assessment is based on the landholder's proposed residential development of Lot 24 which is a much larger area than proposed in the planning proposal. A revised bushfire assessment is required to cover all lots included in the planning proposal and to address the residential development footprint identified by the proposed zones and their boundaries.

OEH has advised that the Preliminary Aboriginal Archaeological Due Diligence Assessment for Lot 24 is not sufficient for a planning proposal and an Aboriginal Archaeological Assessment covering all four lots is required to adequately assess and address Aboriginal cultural heritage.

The planning proposal identifies that the Traffic Impact Statement has a number of inadequacies. Due to the proposed development area being smaller than what was investigated in the traffic study and traffic issues along Illaroo Road and the Princes Highway being managed through other processes and programs, a revised traffic study is not required. Consultation with RMS will provide an opportunity for traffic issues to be raised and investigated if necessary.

Confirmation of the provision of infrastructure – water supply, sewerage management and electricity demand and supply, is required.

Recommendation:

The following studies are to be prepared for the site prior to exhibition of the planning proposal:

- Bushfire Hazard Study
- Aboriginal Archaeological Assessment
- Biodiversity Review of Lots 21-23
- Provision of infrastructure – water, sewerage and electricity

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **The planning proposal identifies that there are impediments to the provision of infrastructure for the site. Council has concerns regarding traffic flows along Illaroo Road, in particular its intersection with the Princes Highway and the consequences for the Shoalhaven River bridge crossing.**

Council has confirmed that it has undertaken consultation on the provision of water, sewerage and electricity and will include the documentation in the planning proposal.

Documents

Document File Name	DocumentType Name	Is Public
160317 Warrah Road Bangalee Planning proposal letter SCC to DoPE request for gateway determination1.pdf	Proposal Covering Letter	Yes
160420 Warrah Road Bangalee Planning Proposal Updated.pdf	Proposal	Yes
160420 Warrah Road Bangalee planning proposal Lot 24 Planning Proposal Urbis 150601.pdf	Proposal	Yes
160420 Warrah Road Bangalee Planning proposal Lot 24 Planning proposal Urbis Appendix A - subdivision lot layout.pdf	Proposal	Yes
160420 Warrah Road bangalee Planning proposal Lot 24 planning proposal Urbis Appendix B - Flora and Fauna Assessment 100901.pdf	Proposal	Yes

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160420 Warrah Road bangalee Planning proposal Lot 24 planning proposal Urbis Appendix B - hollow bearing trees survey 130411.pdf	Proposal	Yes
160420 Warrah Road Bangalee Planning proposal Lot 24 Planning proposal Urbis Appendix B - OMVI photographs.pdf	Proposal	Yes
160420 Warrah Road bangalee Planning proposal Lot 24 planning proposal Urbis Appendix B - review of hollow bearing trees assessment 110506.pdf	Proposal	Yes
160420 Warrah Road bangalee Planning proposal Lot 24 planning proposal Urbis Appendix C - Traffic Impact Assessment 140601.pdf	Proposal	Yes
160420 Warrah Road Bangalee Planning proposal Lot 24 Planning proposal Urbis Appendix D - Stage 1 contamination report Network 131101.pdf	Proposal	Yes
160420 Warrah Road bangalee Planning proposal Lot 24 planning proposal Urbis Appendix E - Bushfire Assessment 140616.pdf	Proposal	Yes
160420 Warrah Road Bangalee Planning proposal Lot 24 planning proposal Urbis Appendix F - Aboriginal Archeological 131213.pdf	Proposal	Yes
160317 Warrah Road Bangalee Planning Proposal Attachment E Peer Review of Biodiversity Studies ngh environmental 150601.pdf	Proposal	Yes
151001 Residential Yield Assessment North Nowra & Bomaderry urbis.pdf	Study	Yes
160411 Warrah Road Bangalee Planning proposal letter OEH to DoPE HCV lands.pdf	Study	No

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : The Deputy Secretary, Planning Services as delegate of the Minister for Planning, determines under section 56(2) of the EP&A Act that an amendment to the Shoalhaven Local Environmental Plan 2014 to enable residential development and environmental protection of lands at Lots 21- 24 DP714096 Warrah Road, Bangalee should proceed subject to the following conditions:

1. The planning proposal is to be revised to remove the proposed residential zoning over the lands in Sub-remediation Area B in the s.38 Remedial Direction under the Native Vegetation Act 1993. An environmental zoning shall be applied to these lands.

2. The following studies are to be prepared prior to exhibition of the planning proposal:

- Bushfire Hazard Study
- Aboriginal Archaeological Assessment
- Biodiversity Review of Lots 21-23
- Provision of infrastructure – water, sewerage and electricity to confirm demand and supply issues.

3. Following the completion of the required studies, the planning proposal is to be revised to confirm the explanation of provisions, including the proposed zoning

arrangements and development controls prior to exhibition.

A copy of the updated proposal is to be provided to the Department for review prior to exhibition of the proposal.

The maps will be prepared in accordance with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps, 2015.'

4. 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 is to 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 (Department of Planning and Infrastructure 2012).

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

- * NSW Rural Fire Service;
- * Office of Environment and Heritage;
- * Office of Water
- * Endeavour Energy;
- * Shoalhaven Water; and
- * Roads and Maritime Services

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 it 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.

6. 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).

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

8. The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Directions 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulfate Soils.

9. The Secretary's delegate can be satisfied that the proposal's inconsistency with the s117 Directions 1.2 Rural Zones and 1.5 Rural Lands is justified by the endorsed Nowra Bomaderry Structure Plan identifying the site for urban development and environmental conservation.

10. Following the completion of an archaeological assessment, any inconsistencies with the s117s Direction 2.3 Heritage Conservation will need to be justified by Council to the satisfaction of the Secretary's delegate.

11. The planning proposal is potentially inconsistent with the s117 Directions 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Strategies. Rezoning the lands covered by the s.38 Remedial Direction to an appropriate environmental zone should address this inconsistency. Any inconsistencies will need to be justified by Council to the satisfaction of the Secretary's delegate.

12. In accordance with s117 Direction 4.4 Planning for Bushfire Protection, Council is to

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consult with the Commissioner of the NSW Rural Fire Service and to confirm that notwithstanding any non-compliance with the provisions for Planning for Bushfire Protection, the Rural Fire Service does not object to the progression of the Planning Proposal.

13. The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions and SEPPs or that any inconsistencies are only of minor significance.

Supporting Reasons :

The proposal will allow some residential development while conserving environmental values.

The conditions are necessary to ensure that the:

- * long and contentious history of the rezoning and biodiversity investigations are reviewed and finalised;
- * proposed land uses are achievable without environmental impacts or the need to obtain further approvals under the TSC Act;
- * planning proposal meets the requirements in the Department's guidelines 'A guide to preparing a planning proposal'; and
- * planning proposal includes concise and detailed information which allows the community to provide informed comments on the proposal during its public exhibition.

Signature:



Printed Name:

LINDA DAVIS

Date:

23/6/16