

## **Attachment E: Gateway Determination**



18 JUL 2016

File No.

49462E

Referred to:

G-Clark

Mr Russ Pigg  
General Manager  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 2541

Our ref: PP\_2016\_SHOAL\_002\_00 (13/08481)  
Your ref: 49462E(D16/71158)

Attention: Mr Gordon Clark

Dear Mr Pigg

**Planning proposal to amend Shoalhaven Local Environmental Plan 2014**

I am writing in response to Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the Warrah Road, Bangalee Planning Proposal to rezone Lots 21 to 24 DP714096, Warrah Road, Bangalee for residential development and environmental conservation.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to variations as outlined by the conditions in the attached Gateway determination.

The planning proposal requests the Gateway determination establish the appropriateness of further biodiversity investigations over Lot 24 to support a possible increase in residential zoned land. I have noted the independent Peer Review of Biodiversity Studies which identifies that the studies are sufficient to clearly define areas of High Conservation Value (HCV) as defined in the South Coast Regional Conservation Plan, 2010. Therefore, no further biodiversity studies are required at this time for Lot 24.

The planning proposal is inconsistent with the section 117 Directions 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Plans in that it seeks to rezone areas of the illegally cleared HCV lands in Sub-remediation Area B of the s38 Remedial Direction under the *Native Vegetation Act, 1993* to residential. The rezoning of the lands subject to the Remedial Direction for residential development is not supported given the lands were exhibited as E2 under the draft Shoalhaven LEP 2013 prior to clearing. As the Remedial Direction is in place until 2029 the lands may regain their pre-cleared HCV state once rehabilitated.

The planning proposal is to be revised to remove the proposed rezoning of lands subject to the Remedial Direction from rural to residential. Council should consider an appropriate environmental zoning for these lands. Council will need to revise the planning proposal to amend the explanation of provisions and update proposed zoning, floor space ratio, height of buildings and lot size maps prior to exhibition.



Any further inconsistencies with section 117 Direction 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Plans will need to be justified by Council to the satisfaction of the Secretary's delegate before the planning proposal is finalised.

I have agreed the planning proposal's inconsistency with section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands are justified by the endorsed Nowra Bomaderry Structure Plan and are of minor significance. No further approval is required in relation to these Directions.

Council is to address inconsistencies with section 117 Direction 2.3 Heritage Conservation following completion of further studies and consultation with relevant public authorities and prior to the commencement of public exhibition. Further, Council is to consult with the NSW Rural Fire Service prior to undertaking community consultation in order to satisfy section 117 Direction 4.4 Planning for Bushfire Protection and update the planning proposal accordingly.

Plan making powers were delegated to councils by the Minister in October 2012. I note that Council has requested to be issued with delegation for this planning proposal. I have considered the complex nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the Gateway determination. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made six weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Graham Towers, Team Leader of the Southern Region office to assist you. Mr Towers can be contacted on (02) 4224 9467.

Yours sincerely



**Marcus Ray**  
**Deputy Secretary**  
**Planning Services**

12/07/2016

Encl:  
Gateway Determination



## Gateway Determination

**Planning proposal (Department Ref: PP\_2016\_SHOAL\_002\_00):** to enable residential development and environmental protection on Lots 21 to 24 DP714096, Warrah Road, Bangalee to:

- rezone land from Rural 1(d) (General Rural) to part E2 Environmental Conservation, a residential zone and RU2 Rural Landscape;
- update the Minimum Lot Size Map (LSZ) to establish a minimum lot size of 40ha for land zoned E2 Environmental Conservation and RU2 Rural Landscape and an appropriate lot size for the residential zoned land;
- update the Terrestrial Biodiversity Map (BIO) to include areas of significant vegetation and/or habitat corridor if appropriate;
- update the Riparian Lands and Watercourses Map (WCL) to identify Category 1 Watercourses;
- update the Acid Sulphate Soils Map (ASS) to identify the lands as class 5 Acid Sulfate Soils;
- update the Clauses Map (CLS) to apply Clause 7.21 Development on land in the Vicinity of the Western Bypass Corridor; and
- update the Urban Release Area Map to include the subject land as an Urban Release Area if appropriate.

I, the Deputy Secretary, Planning Services, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Shoalhaven Local Environmental Plan (LEP) 2014* as described above 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 of the s.38 Remedial Direction under the *Native Vegetation Act, 1993*. An appropriate environmental zone is to be applied to this area.
2. The following studies are to be prepared (or existing studies revised) prior to exhibition of the planning proposal:
  - (a) Bushfire Hazard Study
  - (b) Aboriginal Archaeological Assessment
  - (c) Biodiversity Review of Lots 21-23
  - (d) Provision of infrastructure – water, sewerage and electricity to confirm demand and supply issues.
3. Following completion of the required studies, the planning proposal is to be revised to confirm the explanation of provisions, and update proposed zoning, floor space ratio, lot size, and height of building maps prior to public exhibition. A copy of the updated proposal is to be provided to the Department for review prior to exhibition of the proposal.



4. Council is to update its consideration of section 117 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection following consultation with the Office of Environment and Heritage and the NSW Rural Fire Service. The updated considerations are to be included in the exhibited planning proposal.
5. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **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 LEPs (Department of Planning and Environment 2013)*.
6. Consultation is required with the following government agencies prior to exhibition, in accordance with the Act and to comply with the requirements of relevant section 117 Directions:
  - NSW Rural Fire Service;
  - Office of Environment and Heritage;
  - Office of Water;
  - Endeavour Energy;
  - Shoalhaven Water; and
  - Roads and Maritime Services.

The agencies are to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal. Any agency advice received and Council's proposed response to this advice should be placed on public exhibition with the planning proposal.

7. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).
8. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 12th day of July 2016



**Marcus Ray**  
**Deputy Secretary**  
**Planning Services**  
**Delegate of the Minister for Planning**