

# PLANNING PROPOSAL – PP032

Subdivision and dwelling entitlement provisions  
for residue lots adjoining Urban Release Areas in  
Shoalhaven Local Environmental Plan 2014

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File: 57476E

Version: Version 4 - Post-Exhibition

Date: December 2019

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## 1 Introduction

This Planning Proposal (PP) seeks to amend the provisions in Clause 6.5 Urban Release Areas – *Erection of dwelling houses on residual lots in certain zones* Shoalhaven Local Environment Plan (LEP) 2014 in which an anomaly has been identified.

Legal advice on the application of the Clause has confirmed that Clause 6.5(1) has no application to the subdivision of land that is not within a mapped “urban release area”. As a result, the Clause only has effect in the Badgee Lagoon Urban Release Area, which does not accord with the intention in the recommendation made to the Special Development Committee of the Council on 17 July 2013, and subsequently resolved, and forwarded to the NSW Department of Planning and Environment (DP&E) (see below).

Issue	Recommendation
Need to include a Clause to deal with residue rural or similar land resulting from the subdivision of the URAs under the draft LEP. A number of the lots that form the new urban release areas (URA) are proposed to have a split zoning of rural and residential and subdivision will require the creation of lots smaller than the minimum lot size specified for rural land (this has been raised as a specific issue at Mundamia URA). Discussions have been held with DP&E who has advised that other councils have had this issue and have included an additional Clause in Part 6 to cover the situation.	Request that the DP&E include an additional Clause in Part 6 to deal with residue land resulting from the subdivision of the URAs under the draft LEP.

*Extract from Special Development Committee Report – 17 July 2013, Table 13.14 – Summary of Issues and Recommendation, p. 48.*

The original Planning Proposal was submitted to the DP&E on 26 February 2018. Following an initial review of the PP, DP&E consulted with NSW Office of Environment and Heritage (OEH) to seek initial comment on the proposal. OEH raised objections with the PP and were concerned that it would encourage dwellings and subdivision in environmentally constrained areas, particularly environmental zoned land and land that is flood and bushfire prone.

In response to the concerns raised by OEH, a more strategic approach was taken and the PP was amended to better reflect the original intention of the Clause as resolved in 2013. The intention of the PP was to amend the wording of the current LEP Clause to create a legal mechanism for the non-urban portion of lots that are part of an urban release area to be subdivided below the minimum lot size to create a residue lot, as originally intended.

The amended PP sought to rectify Clause 6.5 to deal with the subdivision aspect only, and for sub Clause (2) dealing with dwelling entitlements to be removed. This was due to a review of all potential residue lots which found that lots suitable for a dwelling entitlement would be able to do so under existing provisions of SLEP 2014 without any further amendments through the PP.

Council's request to be given delegation for the plan making functions for this PP was granted through the Gateway determination issued on 24 July 2019. The evaluation criteria for delegation is provided as **Attachment A**.

The PP was formally exhibited from 21 August 2019 to 6 September 2019 (inclusive). Six (6) submissions were received, which primarily raised issues around the complex wording of the proposed clause and inflexibility to facilitate subdivision occurring in a number of different ways. There was also concern that existing dwelling entitlements would be lost unless they are secured prior to subdivision.

Although there are existing mechanisms in SLEP 2014 for a dwelling to be secured on the potential residue portion, this would need to take place prior to subdivision of the lot. This could be achieved via a development application to, for example, relocate an existing dwelling from the urban to the non-urban zoned portion, or for vacant lots with a dwelling entitlement to construct the dwelling over the residue portion prior to subdivision.

In considering the submissions, the original review of all potential residue lots was updated to highlight lots that have an existing dwelling entitlement which has not been secured over the non-urban residue portion, that is not constrained or zoned E2 or E3, which may be suitable for mapping a reduced minimum lot size to facilitate a better development outcome without losing any existing dwelling entitlements as a result of subdivision. Council considered the outcomes of the public exhibition period on 3 December 2019 and resolved as follows:

That Council:

1. In response to the submission received during the public exhibition period:
  - a. Amend the exhibited Planning Proposal (PP032) by including the following changes to Shoalhaven LEP 2014 Lot Size Map Sheet (LSZ\_013D) for the RU1 (non-urban zoned) portion only of the following lots:
    - i. Lot 5 DP 618693, 202 Bells Lane – reduce the minimum lot size from 40ha to 3ha.
    - ii. Lot 7 DP 618693, Bells Lane – reduce the minimum lot size from 40ha to 7ha.
    - iii. Lot 2 DP 1134376, 112 Bells Lane – reduce the minimum lot size from 40ha to 3,000m<sup>2</sup>.
  - b. Liaise with the NSW Parliamentary Counsel's Office as part of the legal drafting process to enhance the readability of the proposed amended Clause 6.5 by potentially following a similar structure to other clauses which outline: 1) The objective of the clause; 2) Land to which the clause applies; and 3) The specific provisions of the clause.
2. Forward the revised final PP032 to the NSW Department of Planning, Industry and Environment (DPIE) for consideration.
3. If necessary, undertake a further public exhibition of the revised PP in accordance with legislative and Gateway determination requirements, and receive a further report

following the conclusion of the public exhibition period. If re-exhibition is not required, adopt PP032 as amended by part 1(a) above, and forward to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014 and make the resulting amendment to the LEP using Council's delegation.

4. Advise all affected landowners and those who made a submission of this decision

The PP has been prepared in line with '*A guide to preparing local environmental plans*' and '*A guide to preparing planning proposals*'.

## 1.1 Subject Land

The subject land includes all relevant allotments affected by the URA map layer in Shoalhaven LEP 2014 located in the Shoalhaven Local Government Area (LGA) including Mundamia, Moss Vale Road South, Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee as illustrated in **Figures 1 to 7**.

Specifically, the PP will affect allotments which are partially mapped 'URA' and partially zoned non-urban that is prescribed by Clause 6.5, including RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management.

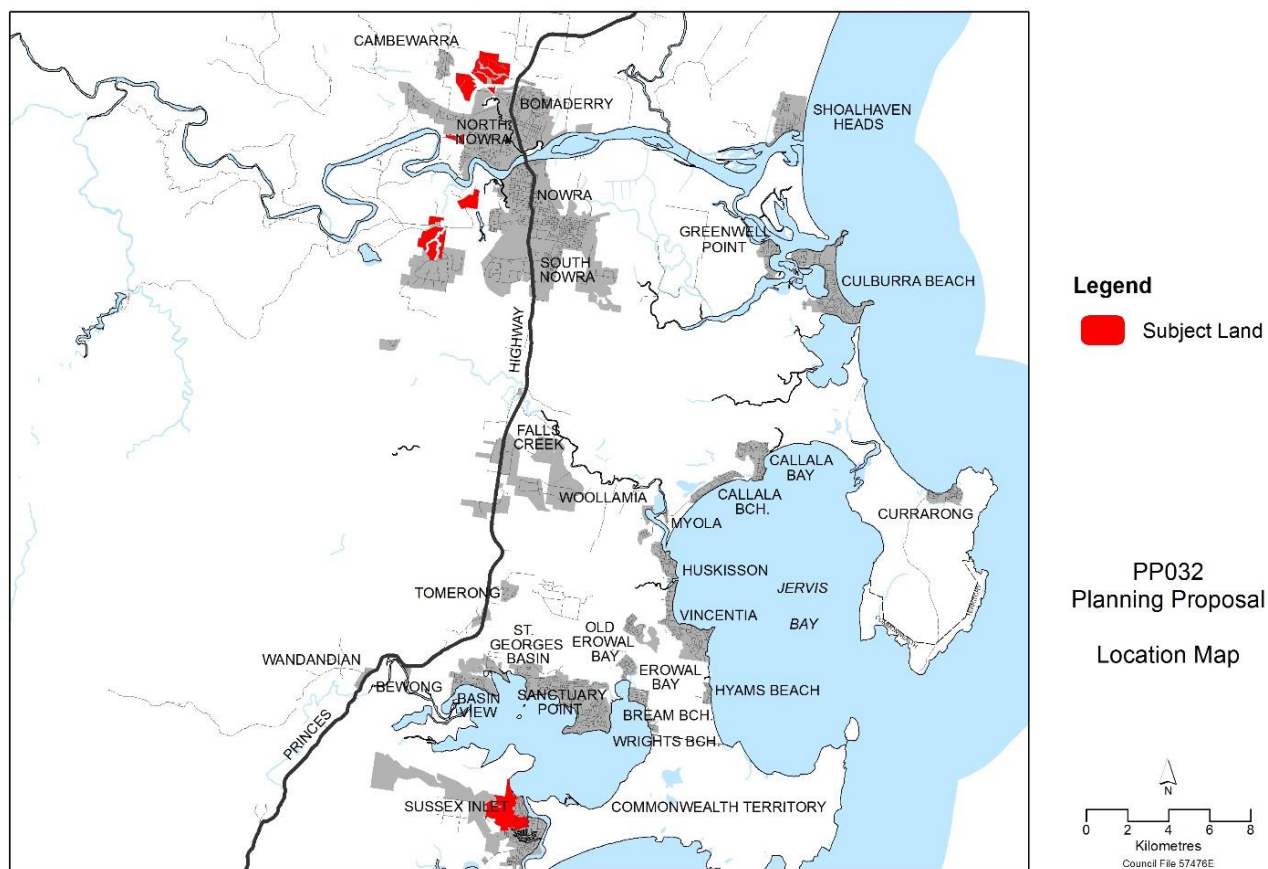
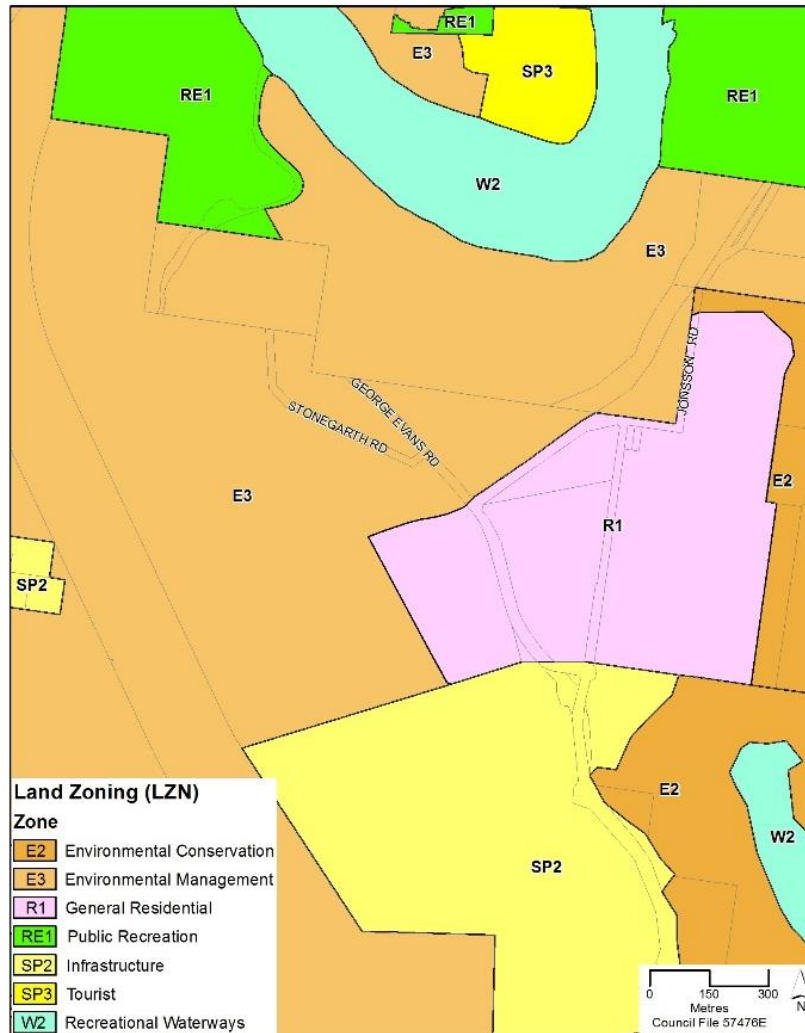


Figure 1 - Location Map





PP032  
Planning Proposal  
Existing SLEP2014 LZN  
Mundamia



PP032  
Planning Proposal  
Existing SLEP2014 URA  
Mundamia

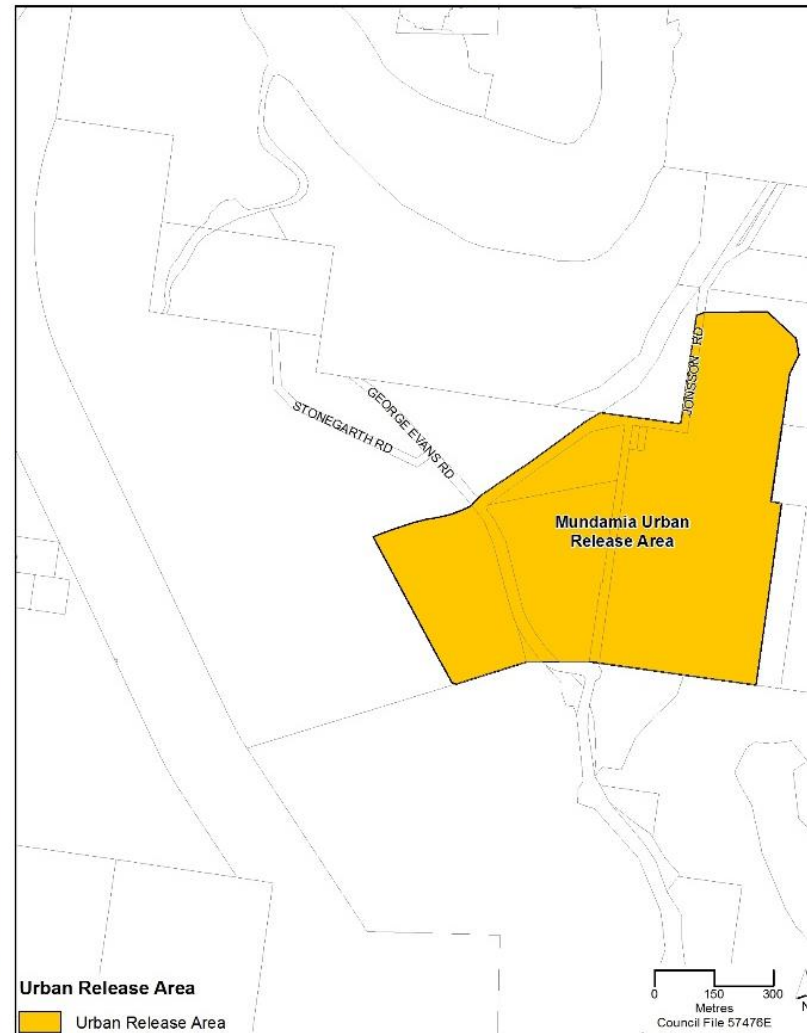


Figure 2 - Mundamia Land Use Zone and URA Map

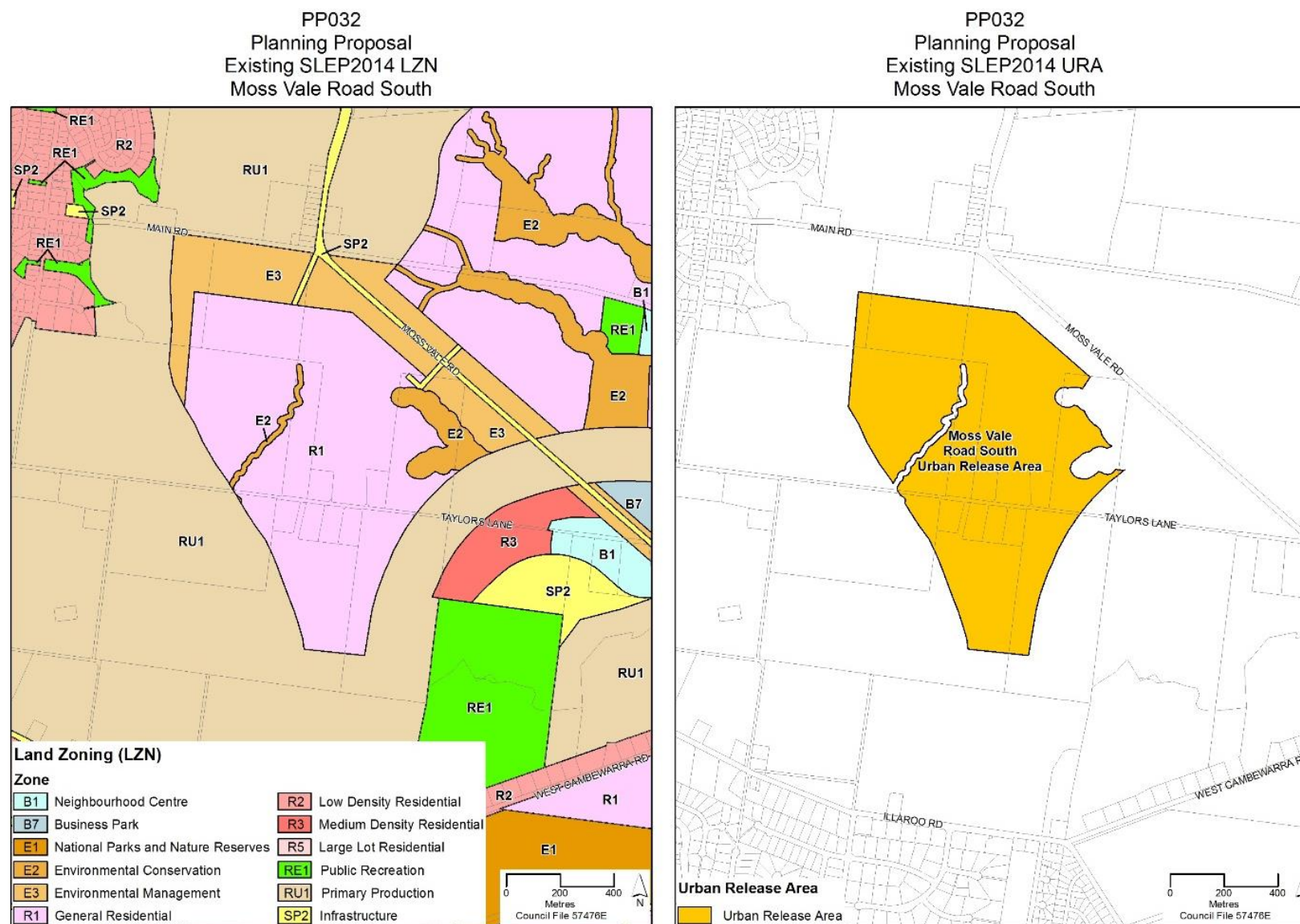


Figure 3 - Moss Vale Road South Land Use Zone and URA Map

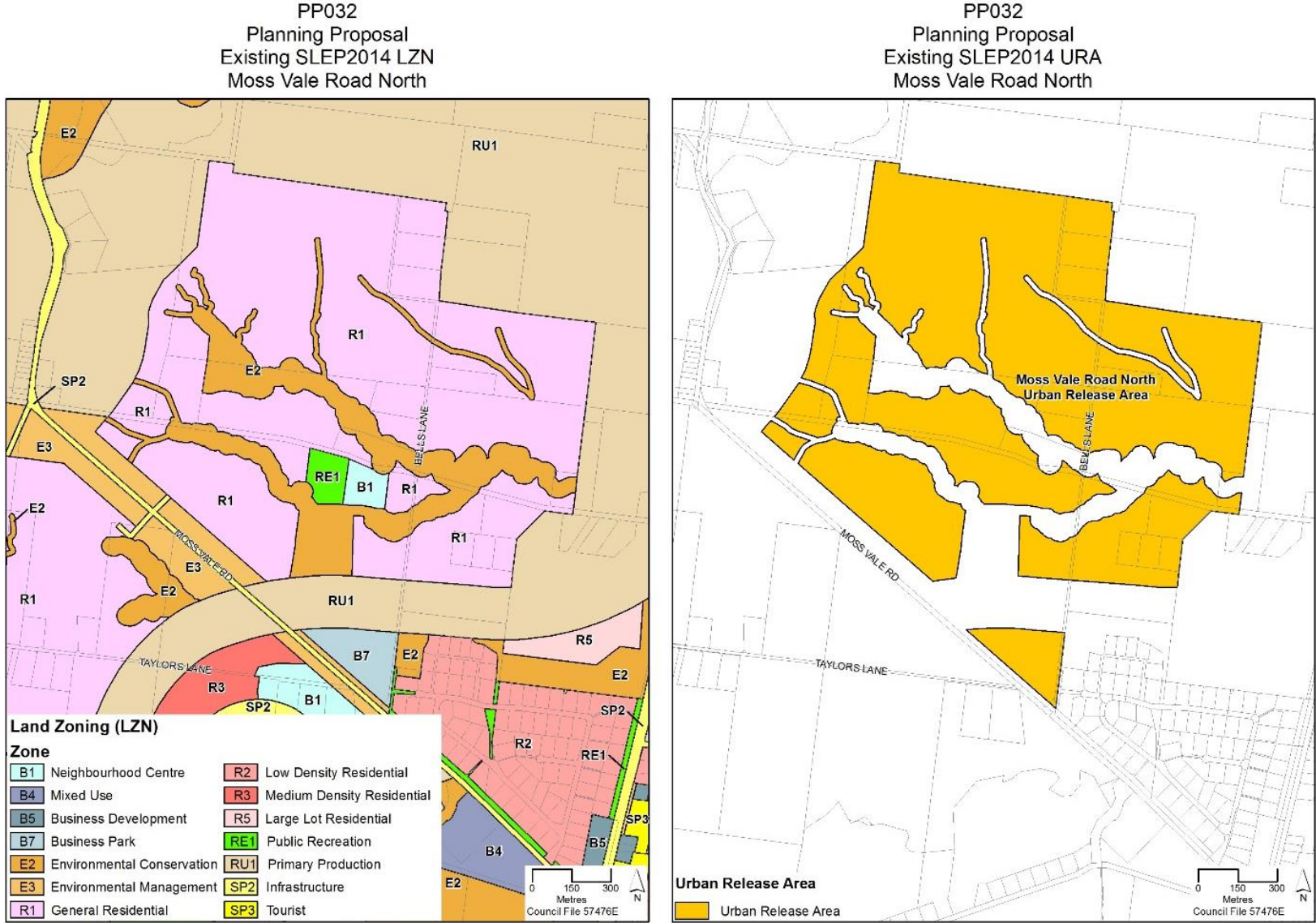


Figure 4 - Moss Vale Road North Land Use Zone and URA Map



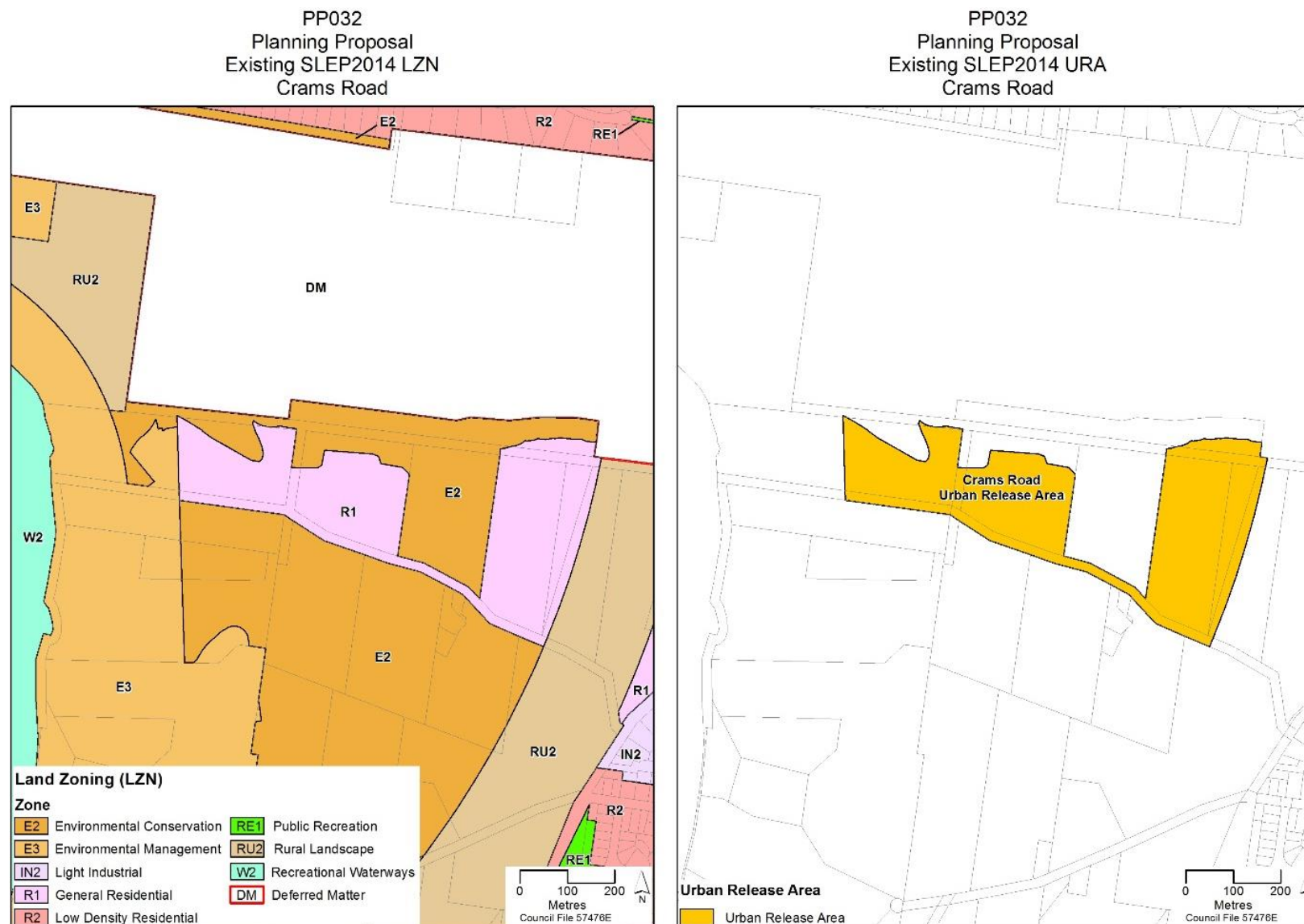


Figure 5 - Crams Road Land Use Zone and URA Map

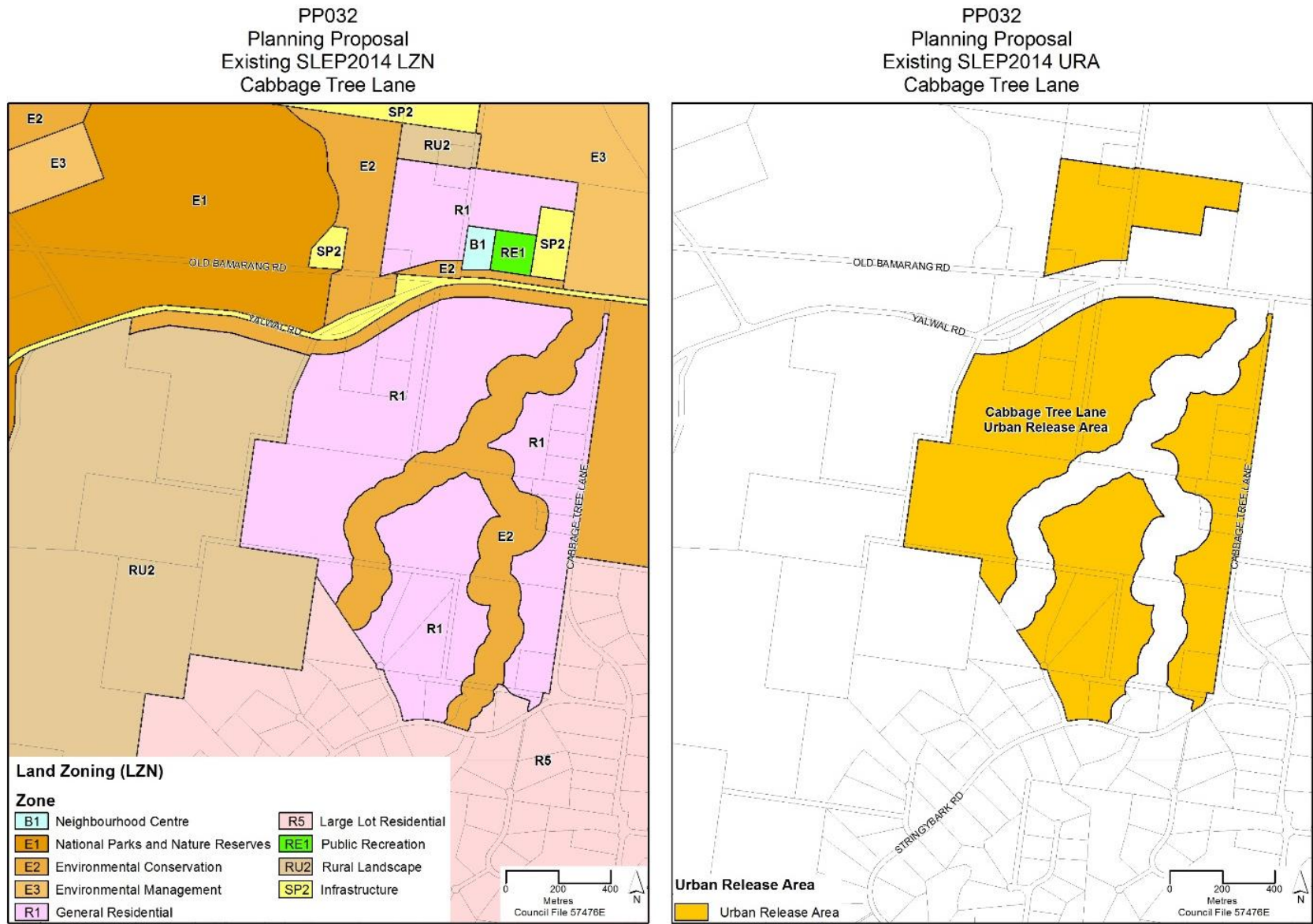


Figure 6 - Cabbage Tree Lane Land Use Zone and URA Map

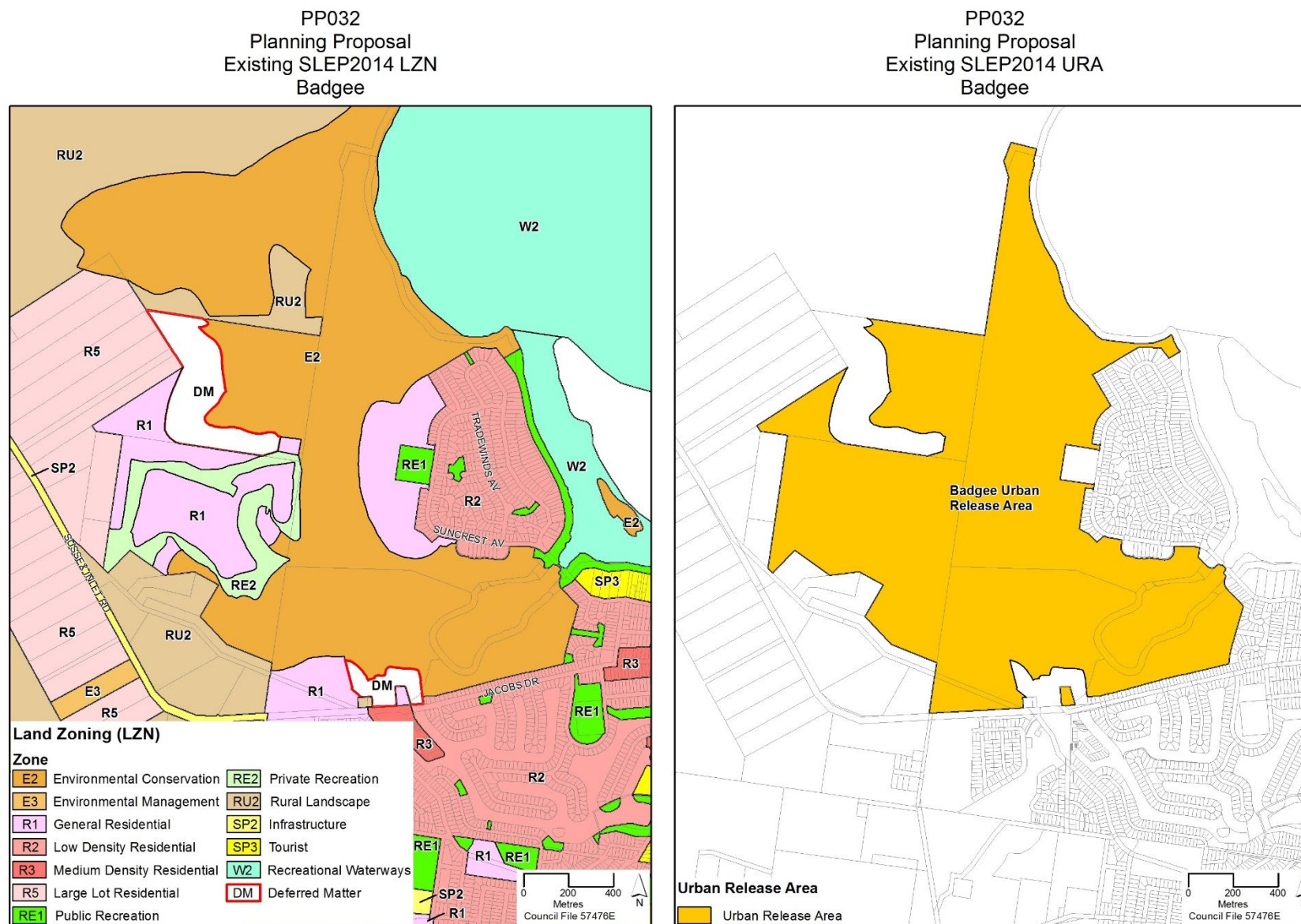


Figure 7 - Badgee Land Use Zone and URA Map



## 1.2 Background

Part 6 *Urban Release Areas* of the LEP when originally proposed was informed by a 'Model Clause' provided by the DP&E. In preparing Shoalhaven LEP 2014, an additional Clause 6.5 was added to Part 6 *Urban Release Areas* to deal with residual lots in relevant (non-urban) zones. These zones are RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management.

Clause 6.5 was prepared to enable the subdivision of the non-urban zoned land tied to a URA (generally in one ownership) to a size less than the mapped lot size on the Shoalhaven LEP 2014 Lot Size Map. The current wording of the Clause is provided below:

### **"6.5 Erection of dwelling houses on residual lots in certain zones**

- 1) *Development consent may be granted for the subdivision of land in an urban release area to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land or less than the minimum lot size permitted for the land immediately before it became, or became part of, an urban release area if the lot is comprised entirely of land in one or more of the following zones (the residual lot):*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape,*
  - (c) *Zone E2 Environmental Conservation,*
  - (d) *Zone E3 Environmental Management*
- 2) *Development consent may be granted for the erection of a dwelling house on a residual lot."*

Whilst the Clause references prescribed zones, it also specifically refers to land that is in an URA. Shoalhaven LEP 2014 defines an 'urban release area' as "*the area of land identified as 'urban release area' on the Urban Release Area Map*". Therefore, the current wording of the Clause restricts its application to land that is within a mapped URA. There are currently six (6) mapped URAs including Mundamia, Moss Vale Road South, Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee Lagoon identified in the Shoalhaven LEP 2014.

Table 1 provides an overview of the zones that make up the mapped URAs in Shoalhaven LEP 2014, demonstrating that in the majority of URAs, the referenced prescribed zones are not mapped as URA and the Clause is therefore inoperable as originally intended.

**Table 1 - URA mapped areas and their surrounding non-URA mapped lands**

URA	Zones within mapped URA	Zones part of the overall URA but not in the mapped URA
Mundamia	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road South	R1 General Residential SP2 Infrastructure (Road)	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road North	R1 General Residential SP2 Infrastructure (Road) RE1 Public Recreation B1 Local centre B7 Business Park	E2 Environmental Conservation E3 Environmental Management
Crams Road	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Cabbage Tree Lane	R1 General Residential	B1 Local centre RE1 Public Recreation E2 Environmental Conservation SP2 Infrastructure (Educational Establishment)
Badgee	R1 General Residential RE2 Private Recreation E2 Environmental Conservation*	RE1 Public Recreation

*\*Badgee is the only URA where the non-urban zones prescribed by Clause 6.5 are mapped as an URA, making it the only URA where Clause 6.5 is operable.*

The PP seeks to create a legal mechanism in Part 6 of Shoalhaven LEP 2014 to enable a residue lot subdivision for lots that have a split urban/rural zoning that are either partly or wholly within a mapped Urban Release Area. Without such a mechanism, the development of the URAs is significantly disadvantaged as there is no mechanism to legally approve subdivisions that include a residue lot that is less than the minimum lot size. Many landowners who own land in the URA are also unable to sell off the urban zoned part of their lot and continue residing in their existing dwelling on the non-urban portion of the land. Council is already in receipt of two Development Applications (DAs) for land in the Moss Vale Road South URA which would rely on this Clause to subdivide the non-urban from the urban zone (URA) and create a practical residual lot.

The PP also seeks to remove subClause (2) of Clause 6.5 as it is considered inappropriate for a dwelling house to be erected on every resultant residual lot, particularly given the environmental and agricultural sensitivities of land zoned RU1, RU2, E2 and E3. A review of all potential residue lots in the URAs found that those lots suitable for a dwelling entitlement would be able to exercise this right under Clause 4.2D(3)(a) or Clause 4.2D(5) without any further amendments through this PP. However, following exhibition, in response to concerns in the submissions that this approach does not provide flexibility for the future subdivision, Council resolved to amend the PP to map a reduced minimum lot size over three potential RU1 residue lots to enable flexibility in future subdivisions and ensure that existing dwelling entitlements are retained where they have not yet been secured over the residue portion.



From reviewing the original intent, it is clear that the Clause was intended to apply to all URAs, to enable the non-urban portion of a lot that is part of an urban release area to be subdivided to create a residue lot.

This interpretation is supported by legal advice which found that the Clause does not accord with the intention in the recommendations made by Council staff to the Special Development Committee of the Council on 17 July 2013, and that the Clause has no application to the subdivision of land that is not within an 'urban release area'. The Clause is considered to be an anomaly given that it does not operate as originally intended.

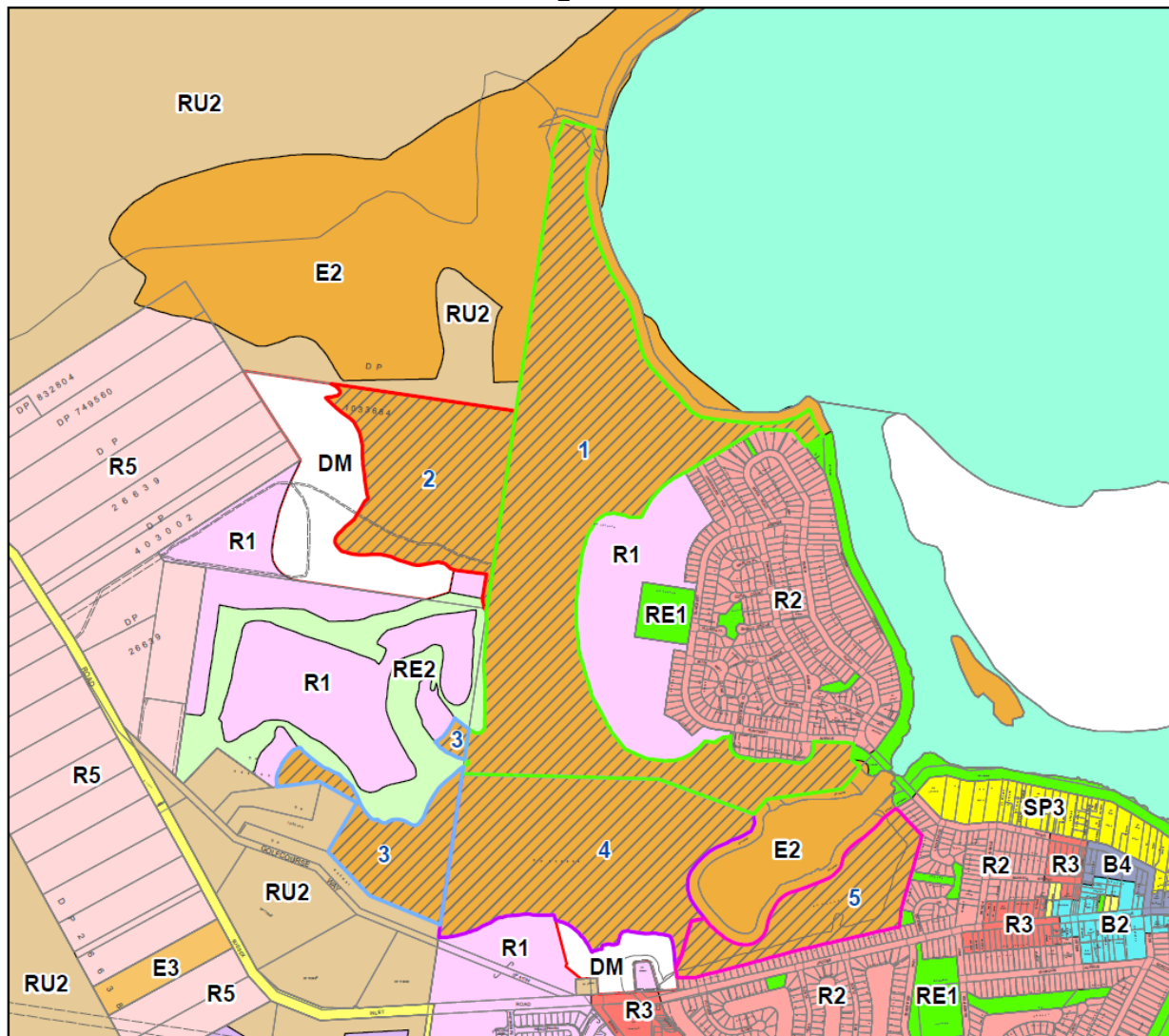
On 22 January 2018, Council's Development Committee resolved under delegation (MIN18.8) to submit the PP to the DP&E for a Gateway determination. Refer to **Attachment B** for a copy of the Council Report and Minutes.

## 2 Part 1 – Intended Outcome

- To rectify an anomaly in Clause 6.5 of Shoalhaven LEP 2014 to reflect its original intended outcome and create a legal mechanism in Part 6 of Shoalhaven LEP 2014 for a residue lot subdivision below the minimum lot size where lots have a split urban/rural zoning that are either partly or wholly within a mapped Urban Release Area.
- To remove subclause (2) and rely on existing provisions under Clause 4.2D for the erection of dwelling houses.
- Map a reduced minimum lot size for the RU1 residue portion of 3 lots with an existing dwelling entitlement that has not yet been secured over the potential residue portion.

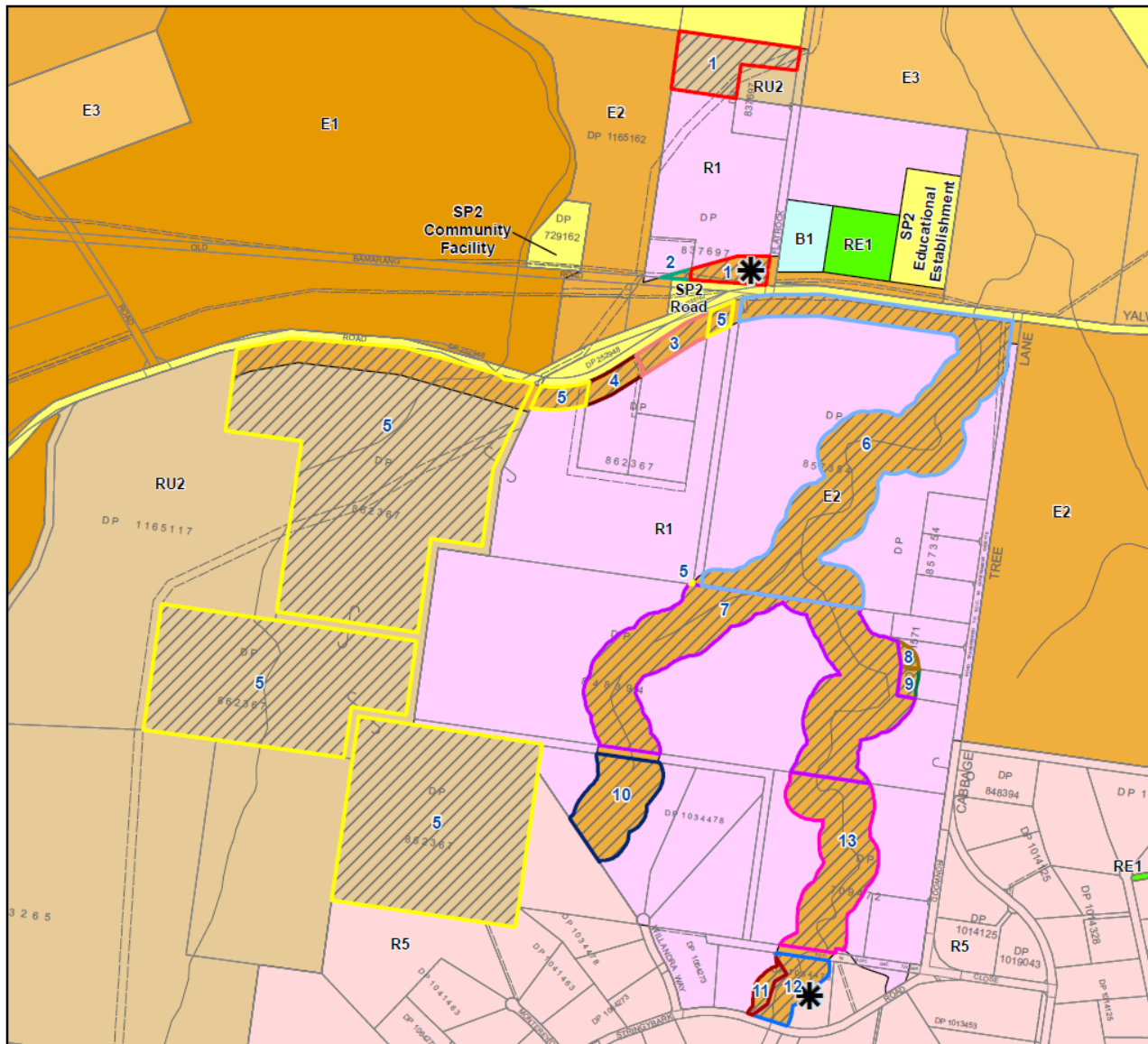
Maps and tables from the post-exhibition review of all potential residue lots, illustrating the potential outcome of the Planning Proposal, are provided below.

## Badgee URA



<b>Residue Lot (see map)</b>	<b>Parent Lot</b>	<b>Residue Zone</b>	<b>Approx. Area (m²)</b>	<b>Is there an existing dwelling on potential residue? (*)</b>	<b>Is the potential residue lot suitable for reduced MLS to facilitate DE?</b>
1	Lot 2442 DP 1074478	E2	793,686	No*	No - E2 (OEH unsupportive)
2	Lot 51 DP 1033684	E2	203,816	No	No - E2 (OEH unsupportive)
3	Lot 5 DP 568283	E2	104,483	No	No - E2 (OEH unsupportive)
4	Lot 101 DP 1239084	E2	318,765	No	No - E2 (OEH unsupportive)
5	Lot 102 DP 1239084	E2	114,213	No	No - E2 (OEH unsupportive)
*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if ≥40ha					

### Cabbage Tree Lane URA



Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m <sup>2</sup> )	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 4 DP 837697	E2 RU2	9,529.66 29,308.83	Yes <sup>^</sup>	No - dwelling entitlement has already been secured over the non-urban residue portion
2	Lot 3 DP 837697	E2	866.67	No	No - E2 (OEH unsupportive)
3	Lot 1 DP 862367	E2	9,301.31	No	No - E2 (OEH unsupportive)
4	Lot 2 DP 862367	E2	6,954.27	No	No - E2 (OEH unsupportive)
5	Lot 4 DP 862367	E2 RU2	669,478	No*	No - Potential residue meets Minimum Lot Size
6	Lot 8 DP 857354	E2	165,849.1	No	No - E2 (OEH unsupportive)
7	Lot 4 DP 848394	E2	138253	No	No - E2 (OEH unsupportive)

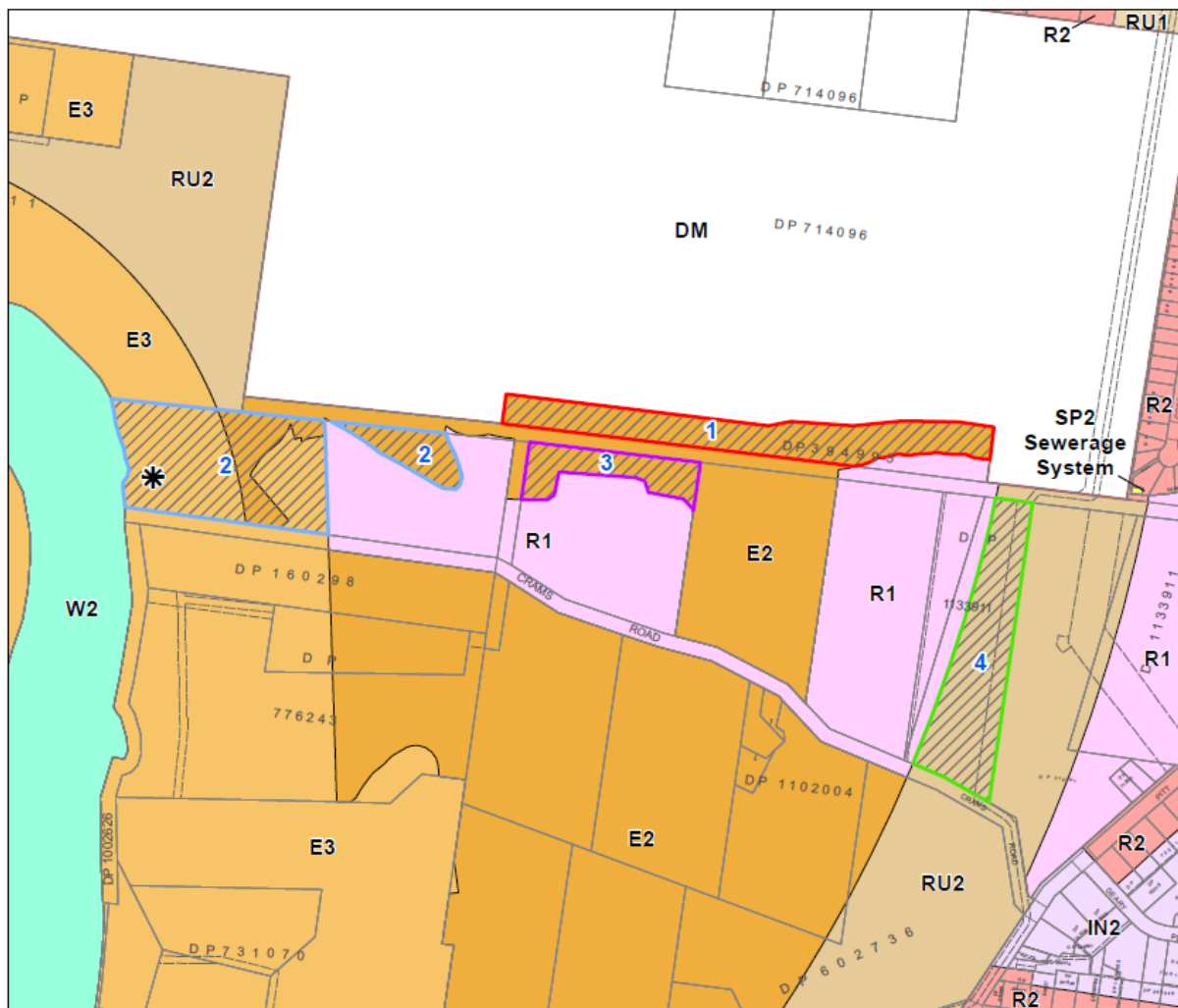
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8	Lot 2 DP 841571	E2	2046.26	No	No - E2 (OEH unsupportive)
9	Lot 3 DP 841571	E2	2938.31	No	No - E2 (OEH unsupportive)
10	Lot 313 DP 1034478	E2	32692.49	No	No - E2 (OEH unsupportive)
11	Lot 305 DP 1034478	E2	4301.6	No	No - E2 (OEH unsupportive)
12	Lot 304 DP 1034478	E2	14109.98	Yes^	No - E2 (OEH unsupportive)
13	Lot 101 DP 709472	E2	58130.04	No	No - E2 (OEH unsupportive)

\*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if  $\geq 40$ ha

^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected

### Crams Road URA

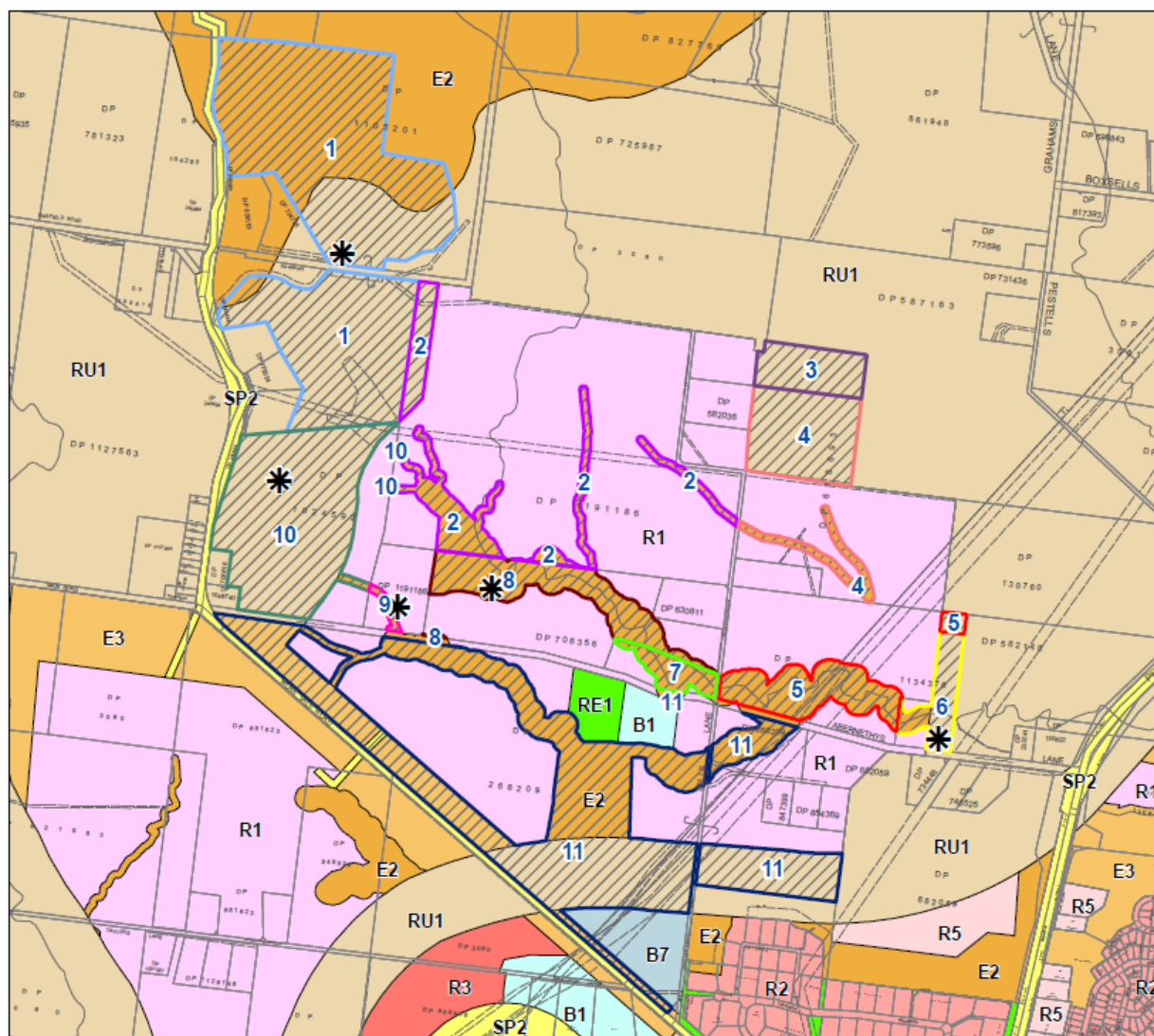




Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m <sup>2</sup> )	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 1 DP 394995	E2	28,842.73	No	No - E2 (OEI unsupportive)
2	Lot 121 DP 751273	E2/E3	48,022.66	Yes^	No - dwelling entitlement has already been secured over the non-urban residue portion
3	Lot 267 DP 751273	E2	10,784.3	No	No - E2 (OEI unsupportive)
4	Lot 292 DP 1133911	RU2	29,110.05	No	No - Entirely within future bypass corridor

^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected

### Moss Vale Road North URA

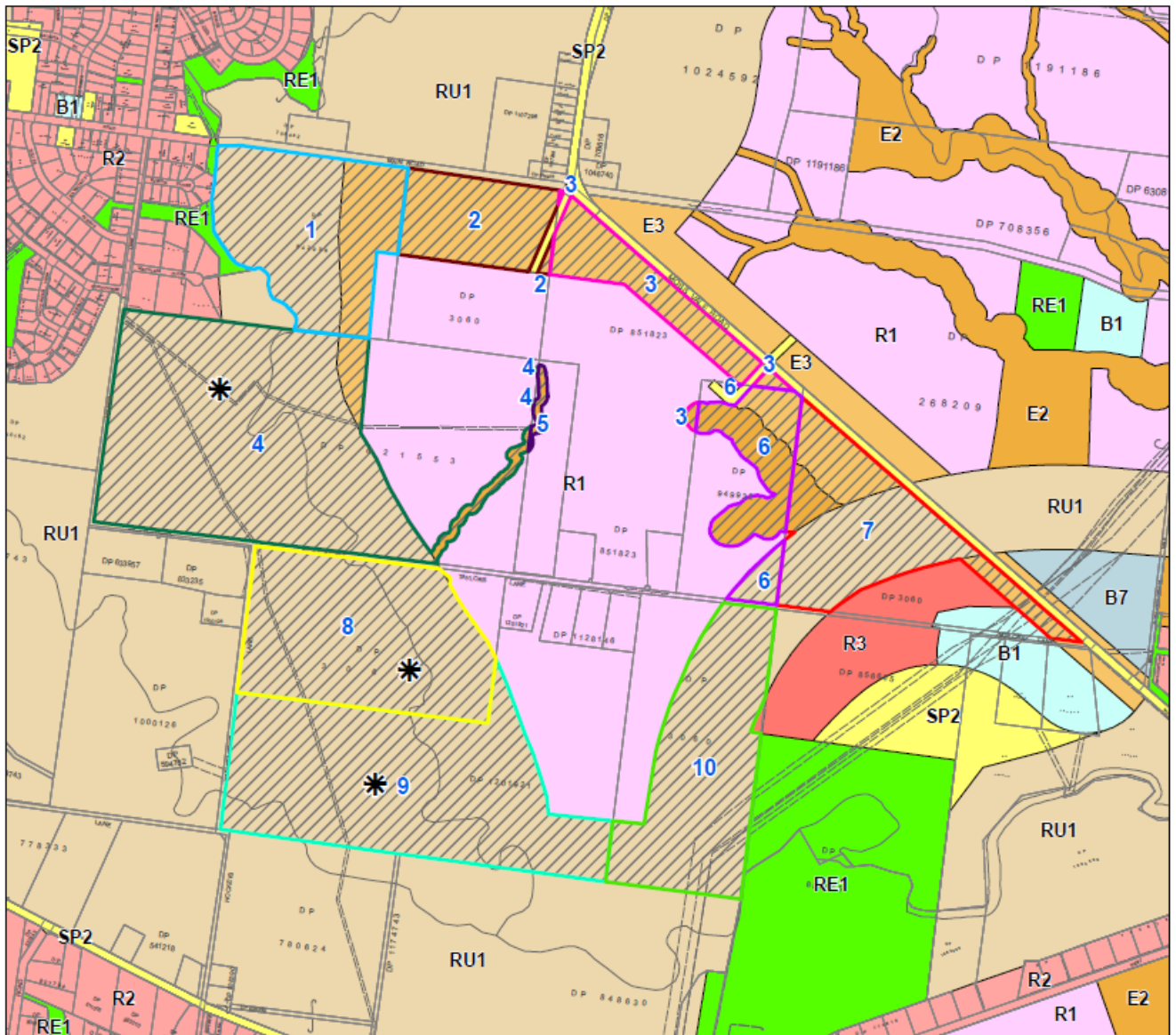


<b>Residue Lot (see map)</b>	<b>Parent Lot</b>	<b>Residue Zone</b>	<b>Approx. Area (m<sup>2</sup>)</b>	<b>Is there an existing dwelling on potential residue? (*)</b>	<b>Is the potential residue lot suitable for reduced MLS to facilitate DE?</b>
1	Lot 10 DP 1105201	RU1, E2	458,696	Yes^*	No - only 4m <sup>2</sup> is within the URA, which is proposed to be removed in a future PP
2	Lot 1 DP 1191186	RU1	20,290.34	No	No - proposed to be rezoned R1
3	Lot 5 DP 618693	RU1	39,145.62	No	<b>Yes - parent lot has dwelling entitlement which has not been secured over the non-urban residue portion and residue is unconstrained.</b>
4	Lot 7 DP 618693	RU1	75,785.96	No	<b>Yes - parent lot has unused dwelling entitlement and residue is unconstrained by E2, E3, bypass</b> No - E2 (OEH unsupportive)
		E2	14,717.27	No	
5	Lot 2 DP 1134376	E2	58,518.71	No	<b>Yes - Parent lot has dwelling entitlement which has not been secured over the non-urban residue portion and residue is unconstrained.</b>
		RU1	3,997.56	No	
6	Lot 1 DP 1134376	Part E2 Part RU1	29,708.19	Yes^	No - E2 (OEH unsupportive and existing dwelling on RU1 residue)
7	Lot 3 DP 708356	E2	18,963.02	No	No - E2 (OEH unsupportive)
8	Lot 4 DP 708356	E2	70,024.49	Yes^	No - E2 (OEH unsupportive)
9	Lot 2 DP 1191186	E2	3,334.71	Yes^	No - E2 (OEH unsupportive)
10	Lot 54 DP 1024592	E2, RU1	189,347.41	Yes^	No - existing dwelling on RU1 residue
11	Lot 4 DP 268209	E2, E3, RU1	391,268.98	No	No - E2/E3 (OEH unsupportive), RU1 located entirely within future bypass corridor

\*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if ≥40ha

^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected

### Moss Vale Road South URA

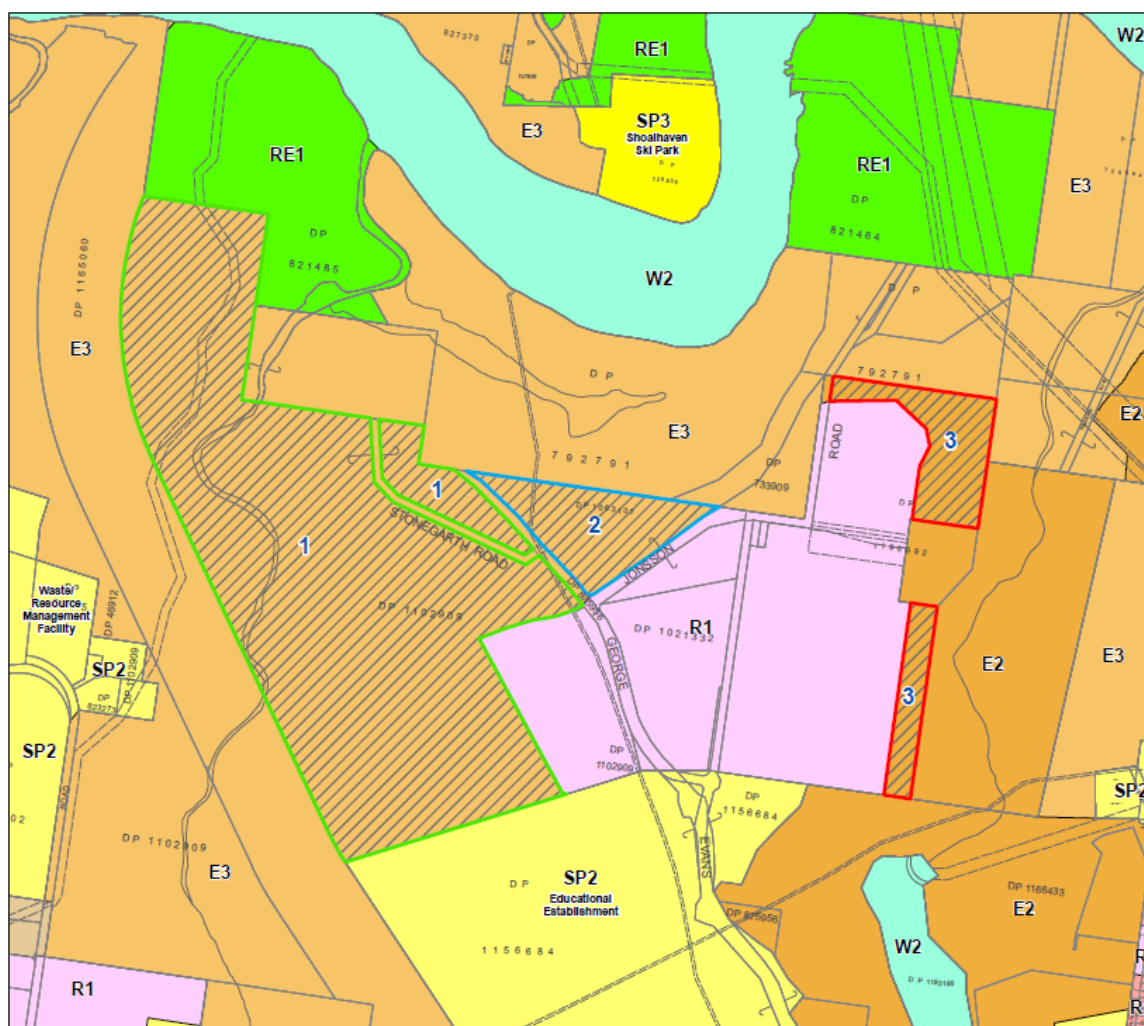


Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m <sup>2</sup> )	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
1	Lot 4 DP 542936	E3, RU1	148,446	No	No - entirely flood prone - inconsistent with Section 9.1 Directions + E3 (OEH unsupportive)
2	Lot 127 DP 3060	E3, SP2	73,583.55	No	No - E3 (OEH unsupportive)
3	Lot 3 DP 851823	E2, E3, SP2	61,060.44	No	No - E3 (OEH unsupportive)
4	Lot 2 DP 621553	E2, E3, RU1	340,093	Yes^	No - existing dwelling on RU1 residue
5	Lot 1 DP 621553	E2	3,770.72	No	No - E2 (OEH unsupportive)

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6	Lot 1 DP 949932	E2, E3, RU1	63,261.67	No	No - RU1 within bypass corridor + E2/E3 not supported by OEH
7	Lot 122 DP 3060	E2, E3, RU1	133,060.71	No	No - RU1 within bypass corridor + E2/E3 not supported by OEH
8	Lot 119 DP 3060	E2, RU1	193,369.5	Yes^	No - existing dwelling on RU1 residue
9	Lot 102 DP 1201921	RU1	274922.5	Yes^	No - existing dwelling on RU1 residue
10	Lot 116 DP 3060	RU1	162062.4	No	No - RU1 within bypass corridor + flood prone - inconsistent with Section 9.1 Directions
				^Lot has dwelling entitlement potential under Clause 4.2D(5) if the existing dwelling is lawfully erected	

### Mundamia URA



Residue Lot (see map)	Parent Lot	Residue Zone	Approx. Area (m <sup>2</sup> )	Is there an existing dwelling on potential residue? (*)	Is the potential residue lot suitable for reduced MLS to facilitate DE?
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1	Lot 473 DP 1102909	E3	820,625	No*	No - Potential residue meets Minimum Lot Size
2	Lot 458 DP 1063107	E3	75,714.33	No	No - E3 (OEH unsupportive)
3	Lot 30 DP 1198692	E2	61,978.28	No	No - E2 (OEH unsupportive)
				*Lot has dwelling entitlement potential under Clause 4.2D(3)(a) if $\geq 40$ ha	

### 3 Part 2 – Explanation of Provisions

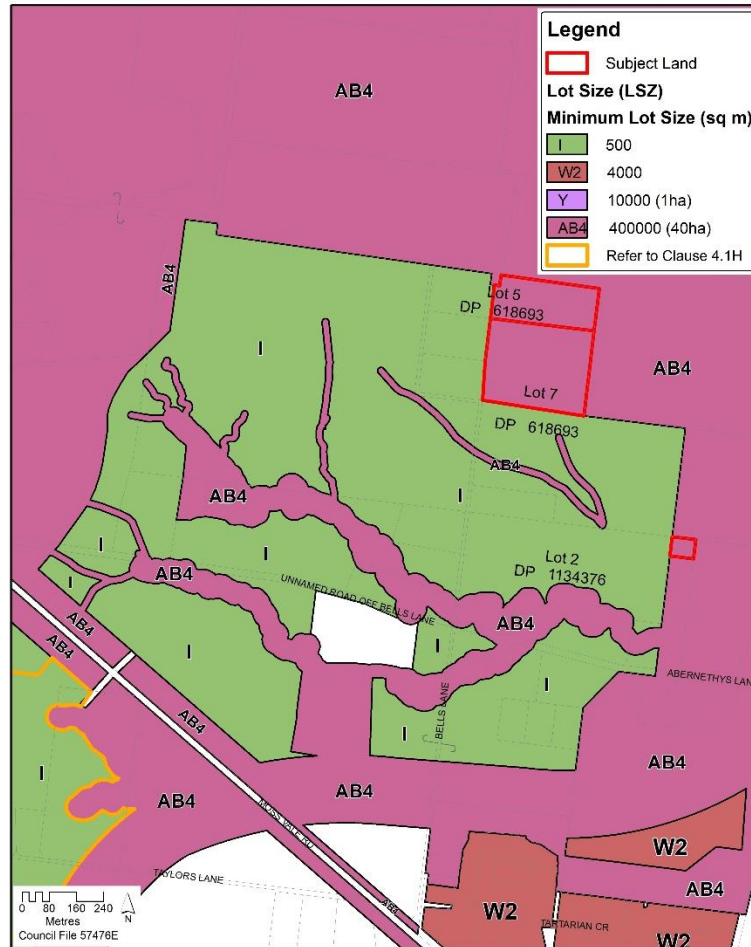
Based on legal advice in respect of the operation of the Clause, it is proposed that Clause 6.5 be amended to insert the wording as drafted in Table 2 below.

**Table 2 - Planning Proposal Proposed Instrument Changes**

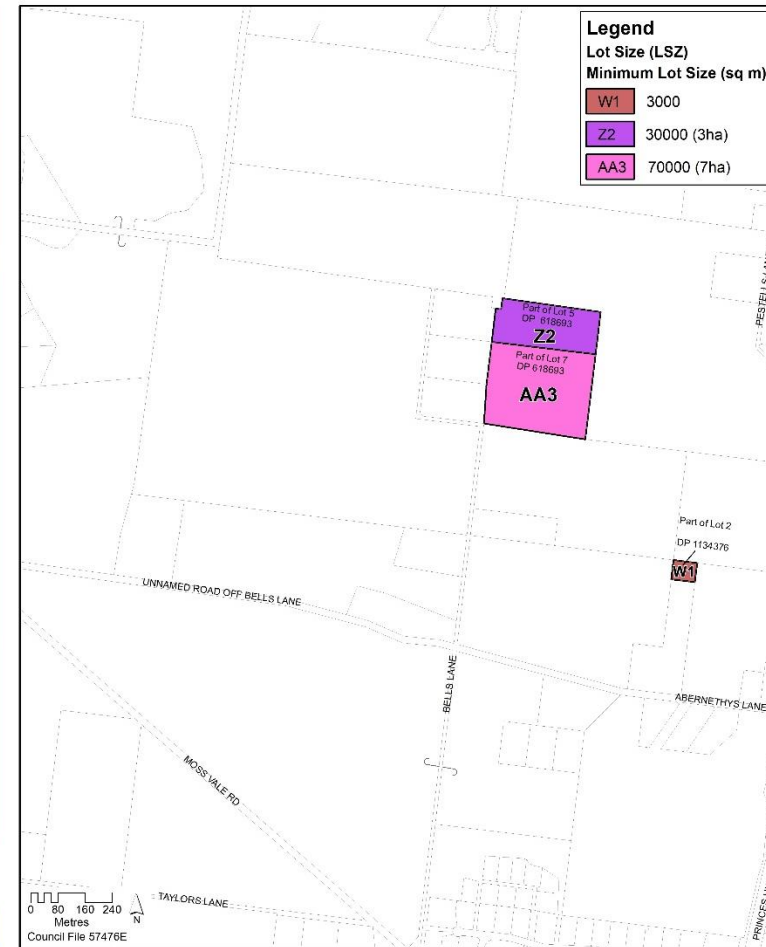
Provision	Proposed amendment
Part 6 Urban release areas - 6.5 Erection of dwelling houses on residual lots in certain zones	<p><b>6.5 Subdivision of residual lots in certain zones</b></p> <p>1) <i>Despite any other provision of this Plan, the size of a lot created in a subdivision of land that is partly or wholly within an urban release area may be less than the minimum lot size shown on the Lot Size Map in relation to the land if the lot:</i></p> <p><i>(a) contains only land that is within the urban release area, or land that is within the urban release area and land immediately adjoining that land; and</i></p> <p><i>(b) contains only land that is within one or more of the following zones (the residual lot):</i></p> <p style="padding-left: 40px;">(a) Zone RU1 Primary Production,  (b) Zone RU2 Rural Landscape,  (c) Zone E2 Environmental Conservation,  (d) Zone E3 Environmental Management</p> <p>It is proposed that Clause 6.5(2) be deleted since potential residue lots that are considered suitable for a dwelling entitlement would be able to satisfy existing provisions in Clause 4.2D(3)(a) or Clause 4.2D(5) or are proposed to have a reduced minimum lot size as shown below.</p>

**Figure 8 - Planning Proposal Proposed Map Changes**

PP032  
Planning proposal  
Existing SLEP2014 LSZ



PP032  
Planning Proposal  
Proposed LSZ Changes



## 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. This PP is not a result of any strategic study or report. This PP seeks to rectify an anomaly in Clause 6.5 of Shoalhaven LEP 2014 to reflect its original intended outcome and create a legal mechanism for the creation of a ‘residue lot’ containing land zoned RU1, RU2, E2 or E3, where a lot is either wholly or partly within an URA in Shoalhaven LEP 2014. The PP is consistent with Council’s policy position and will help achieve the expected outcomes of the Shoalhaven LEP 2014 and delivery of the Nowra-Bomaderry URAs.

It should be noted that although this specific PP is not a result of any strategic study or report, the Nowra-Bomaderry URAs were the direct result of the Nowra-Bomaderry Structure Plan 2005, a Council and NSW Government endorsed strategy, which ultimately led to the provision of Part 6 in Shoalhaven LEP 2014, including Clause 6.5.

#### 4.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The PP is the best and only means of achieving the intended outcome. A similar provision exists in Clause 4.1E *Minimum lot size for certain split zone lots*, however Part 6 *Urban release areas* prevents the subdivision or development of land affected by the URA map prior to Part 6 requirements being completed.

The provisions in Part 6 prevail over any other provision of Shoalhaven LEP 2014 to the extent of any inconsistency.

There is no other means of achieving the proposed change of wording to Clause 6.5 other than a PP.

### 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)?

##### Illawarra-Shoalhaven Regional Plan (ISRP)

One of the goals of the ISRP is to provide sufficient housing supply and choice to meet the Regions changing housing demands over the next 20 years. The ISRP specifically identifies the Nowra-Bomaderry URAs as regionally significant and priority release areas.

The PP is consistent with multiple directions in the ISRP including Direction 2.1 *Provide sufficient housing supply to suit the changing demands of the region* and Direction 2.3 *Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact* as it will rectify an anomaly in Part 6 of Shoalhaven LEP 2014 to enable the subdivision of residue lots. Without such a mechanism, housing supply in the Nowra-Bomaderry URAs is significantly hindered as there is no legal mechanism to approve subdivisions that include a residue lot less than the 40ha minimum lot size.

The PP is consistent with the ISRP.

#### **4.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

##### Shoalhaven Community Strategic Plan (CSP)

The Shoalhaven CSP identifies objectives and strategies for a prosperous Shoalhaven where sustainable urban growth is supported. The PP is consistent with the Shoalhaven CSP and the relevant theme and action:

- Theme 2. Sustainable, liveable environments
  - 2.2 Plan and manage appropriate and sustainable development

#### **4.2.3 Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The PP is consistent with all applicable State Environmental Planning Policies (SEPPs). A full list of the SEPPs is provided in **Attachment C**.

#### **4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (Section 9.1 directions)?**

Ministerial Directions are considered in **Attachment D** and those that are most relevant are discussed below.

##### 1.2 Rural Zones

The direction applies as the PP affects land within an existing rural zone.

The PP is consistent with the terms of the Direction as the PP does not seek to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

##### 1.5 Rural Lands

The Direction applies as the PP affects land within an existing rural or environment protection zone (Clause 3(a)) and it proposes to change the existing minimum lot size on land within a rural zone (Clause 3(b)).

The PP is considered minor in nature as it seeks to rectify an identified anomaly and enable the original intent of the Clause to have effect. The reduction in the minimum lot size over

the potential residue portion of 3 properties is also considered minor in nature as these properties already have a dwelling entitlement which could be secured over that rural land, via a development application to, for example, relocate an existing dwelling from the urban to the non-urban zoned portion, or for vacant lots with a dwelling entitlement to construct the dwelling over the residue portion prior to any subdivision taking place. This approach has been identified as inflexible, therefore the reduced MLS will facilitate greater flexibility rather than any additional dwelling entitlements. Future dwellings on residue lots would also be subject to further consideration at the development application stage.

The PP is consistent with the Direction.

## 2.1 Environmental Protection Zones

This Direction applies to all PPs. The PP does not remove any existing provisions that facilitate the protection and conservation of environmentally sensitive areas (Clause 4). The PP does not reduce the environmental protection standards that apply to the land (Clause 5).

The PP seeks to create a legal mechanism in Part 6 of Shoalhaven LEP 2014 to enable a residue lot subdivision for lots that have a split urban/rural zoning that are either partly or wholly within a mapped URA. Without such a mechanism, the development of URAs is hindered as there is no mechanism to legally approve subdivisions that include a residue lot that is less than the minimum lot size.

The original intent of the Clause has not been carried through in the wording of the Clause, as it has no application to the subdivision of land that is not within a URA, even if part of the lot is mapped as a URA.

The PP is considered minor in nature as it seeks to rectify this anomaly and enable the original intent of the Clause to have effect.

The PP is consistent with the Direction.

## 2.2 Coastal Protection

This Direction applies as the PP affects land within the coastal zone, specifically the Mundamia, Crams Road and Badgee URA.

The PP does not seek to amend any coastal management controls that already relate to the land, including maps under the SEPP (Coastal Management) 2018. The PP does not seek to rezone land that would enable increased development or more intensive land use on land within a coastal vulnerability area or coastal hazard area.

The PP is consistent with the Direction.

## 2.3 Heritage Conservation

This Direction applies to all PPs. The PP does not remove any existing heritage conservation provisions.

The PP is consistent with the Direction.

### 3.1 Residential Zones

This Direction applies as the PP affects land within an existing residential zone in which significant residential development is permitted. The PP affects land that is recognised as a regionally significant urban release area.

The PP seeks to create a legal mechanism in Part 6 of Shoalhaven LEP 2014 to enable a residue lot subdivision for lots that have a split urban/rural zoning that are either partly or wholly within a mapped URA. Without such a mechanism, the development of URAs is hindered as there is no mechanism to legally approve subdivisions that include a residue lot that is less than the minimum lot size. The original intent of the Clause has not been carried through in the wording of the Clause, as it has no application to the subdivision of land that is not within a URA, even if part of the lot is mapped as a URA.

The PP is consistent with the Direction.

### 3.3 Home Occupations

This direction applies to all PPs. The PP does not alter any existing provisions that enable home occupations to be carried out in dwelling houses without the need for development consent.

The PP is consistent with the Direction.

### 4.1 Acid Sulfate Soils

This Direction applies as the PP affects land with a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps. The PP does not seek to remove any provisions controlling development on Acid Sulfate Soils.

The PP is consistent with the Direction.

### 4.3 Flood Prone Lands

This Direction applies as the PP affects land identified as being flood prone. The PP does not seek to remove or alter any existing flood controls in relation to flood prone land, and does not seek to rezone land. It does not impose flood related development controls above the residential flood planning level.

The PP is consistent with the Direction.

### 4.4 Planning for Bushfire Protection

This direction applies as the PP affects land that is mapped as being Bushfire Prone. The PP does not seek to remove or alter any provisions relating to Bushfire Prone Land.

The PP seeks to create a legal mechanism in Part 6 of Shoalhaven LEP 2014 to enable a residue lot subdivision for lots that have a split urban/rural zoning that are either partly or wholly within a mapped URA. Without such a mechanism, the development of URAs is hindered as there is no mechanism to legally approve subdivisions that include a residue lot that is less than the minimum lot size. The original intent of the Clause has not been carried

through in the wording of the Clause, as it has no application to the subdivision of land that is not within a URA, even if part of the lot is mapped as a URA.

The PP is considered minor in nature as it seeks to rectify this anomaly and enable the original intent of the Clause to have effect.

Consultation will be undertaken with the NSW Rural Fire Service following receipt of a Gateway determination, and prior to undertaking community consultation as required by this Direction.

The PP is consistent with the Direction.

#### 5.10 Implementation of Regional Plans

This Direction applies to all PPs.

The PP is consistent with the aims, directions and actions of the Illawarra-Shoalhaven Regional Plan (ISRP) as it seeks to create a legal mechanism in Part 6 of Shoalhaven LEP 2014 to enable a residue lot subdivision for lots that have a split urban/rural zoning that are either partly or wholly within a mapped URA.

The Nowra-Bomaderry URAs are recognised as being regionally significant in the ISRP. Without a mechanism to create a residue lot as originally intended by the Clause, the development of the URAs is at risk as there is no legal mechanism for the relevant planning authority to approve a subdivision that includes a residue lot comprised entirely of land zoned RU1, RU2, E2 or E3 that is less than the minimum lot size. At present, Clause 6.5 has no application to the subdivision of land that is not within a mapped URA, even if part of the lot is mapped as a URA. The PP is considered minor in nature as it seeks to rectify this anomaly and enable the original intent of the Clause to have effect.

The PP is consistent with the Direction.

### **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 PP is not considered to impact any critical habitat or threatened species, populations or ecological communities, or their habitats as it involves amending a wording anomaly in Clause 6.5 of Shoalhaven LEP 2014. The intent of the Clause is to enable the subdivision of land that is partly within a URA and is also partly zoned a prescribed non-urban zone to create a residue lot where the non-urban zoned portion may be subdivided to a size less than the mapped minimum lot size (generally 40ha). The updated Clause will also prevent dwellings from being situated in unsuitable locations such as rural or environmentally sensitive land and enable the erection of dwelling houses with development consent in certain circumstances where they either meet the minimum lot size or have an existing lawfully approved dwelling house on the land.



Any future subdivision / development may require further flora and fauna investigations as part of the DA process.

#### **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?**

Other environmental impacts are not anticipated specifically as a result of this PP. Any future development would require consideration of environmental impacts as part of the DA process.

#### **4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?**

The social and economic impacts are considered minimal. Additional housing opportunities may increase housing choice and improve the viability of the resultant residual lots by enabling the potential for dwelling houses to be erected subject to development consent.

### **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 need for infrastructure as the impacts are considered minimal. Further, the amendment will better utilise existing or proposed infrastructure with the potential for the small number of additional dwellings being created by the amendment.

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

Council has already been in contact with the DP&E and they have concurred that the wording of Clause 6.5 does not enable the intended outcome to be achieved. Council will further consult with other relevant State and Commonwealth authorities (e.g. NSW Rural Fire Service as per Section 117 Direction 4.4 Planning for Bushfire Protection) in accordance with the conditions of the Gateway determination. The PP will be updated prior to public exhibition, if required, to incorporate the view of the any public authority.

## **5 Part 4 – Mapping**

The PP will require an amendment to the following map sheet within Shoalhaven LEP 2014, as shown in Figure 8:

- Shoalhaven Local Environmental Plan 2014 – Lot Size Map Sheet LSZ\_013D

## **6 Part 5 - Community Consultation**

Council exhibited the PP in accordance with the requirements of Schedule 1 cl 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the requirements of the Gateway determination from 21 August to 6 September 2019 (inclusive).

Public notification of the exhibition included notification in the local newspaper, and a notice on Council's website. The statutory exhibition was at Council's City Administration Centre in Nowra. Copies of the PP were also available for viewing at Council's Administrative Building in Ulladulla and on Council's website.



Six (6) submissions were received from affected landowners or their consultants during the exhibition period. The majority acknowledged the need to amend the clause but raised concerns about its readability, how it would work with dwelling entitlements, and whether it is flexible enough to facilitate subdivision occurring in a number of different ways. A report of the Exhibition Outcomes was presented to Council's Development and Environment Committee Meeting on 3 December 2019 and can be viewed as **Attachment E** and at <https://shoalhaven.nsw.gov.au/My-Council/Council-meetings/Agendas-and-minutes>

Further consultation will be carried out if required by an altered Gateway determination.

## 7 Part 6 – Project Timeline

Task	Anticipated Timeframe
Submission of original PP to DP&E	February 2018
Resolution of pre-gateway issues with DP&E and OEH	March – December 2018
Preparation of mapping and provision of further information to the DP&E	February 2019
Resubmission of Revised PP	May 2019
Gateway determination	June 2019
Completion of Gateway determination requirements	July 2019
Public exhibition	August/September 2019
Consideration of submissions	October 2019
Post exhibition consideration of PP	December 2019
Finalisation and notification of Plan	February 2020

## Attachments

### Attachment A - Evaluation Criteria for the Delegation of Plan Making Functions

**Local Government Area:**

Shoalhaven City Council

**Name of draft LEP:**

Shoalhaven Local Environmental Plan 2014  
PP032

**Address of Land (if applicable):**

The PP applies to land that is partly in URAs located in the Shoalhaven LGA including Mundamia, Moss Vale Road South, Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee.

**Intent of draft LEP:**

The PP seeks to make an amendment to the wording of Clause 6.5 in Shoalhaven LEP 2014 to include rectify an anomaly in Shoalhaven LEP 2014 to reflect its original intended outcome and create a legal mechanism in Part 6 of Shoalhaven LEP 2014 for a residue lot subdivision below the minimum lot size where lots have a split urban/rural zoning that are either partly or wholly within a mapped Urban Release Area.

It is intended to achieve this by rewording the clause, removing subclause (2) and relying on existing provisions under Clause 4.2D for the erection of dwelling houses, and mapping a reduced minimum lot size for the non-urban/residue portion of 3 lots with an existing dwelling entitlement that has not yet been secured over the residue.

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)				
Is the PP consistent with the Standard Instrument Order, 2006?	Y			
Does the PP contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the PP contain details related to proposed consultation?	Y			

Is the PP compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the PP adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the PP consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
Does the PP seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NR		
<b>Heritage LEPs</b>				
Does the PP seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?		NR		
Does the PP include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NR		
Does the PP potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NR		
<b>Reclassifications</b>				
Is there an associated spot rezoning with the reclassification?		NR		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		NR		
Is the PP proposed to rectify an anomaly in a classification?		NR		
Will the PP be consistent with an adopted POM or other strategy related to the site?		NR		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		NR		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the PP?		NR		
Has the council identified that it will exhibit the PP in accordance with the DP&E Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?		NR		
Has council acknowledged in its PP that a Public Hearing will be required and agree to hold one as part of its documentation?		NR		
<b>Spot Rezonings</b>				

Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		NR		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		NR		
Will the PP deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NR		
If yes, does the PP contain sufficient documented justification to enable the matter to proceed?		NR		
Does the PP create an exception to a mapped development standard?		NR		
<b>Section 73A matters</b>				
<p>Does the proposed instrument:</p> <p>a. Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary works or a formatting error?;</p> <p>b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;</p> <p>c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>	Y			

## **Attachment B - Council Development Committee Report and Minute (22 January 2018)**

**DE18.4** Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014

**HPERM Ref:** D17/424832

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

### **Purpose / Summary**

To obtain the required resolution to prepare and submit a Planning Proposal (PP) to amend Clause 6.5 of Shoalhaven Local Environmental Plan (LEP) 2014 to rectify an anomaly that has been identified.

Clause 6.5 deals with the erection of a dwelling on residue lots associated with identified Urban Release Areas (URAs).

#### **Recommendation (Item to be determined under delegated authority)**

That the Committee:

1. Support the preparation and submission of a Planning Proposal for Gateway determination to amend Clause 6.5 of Shoalhaven Local Environmental Plan 2014 to include reference to land associated with Urban Release Areas to rectify the identified anomaly.
2. If Gateway determination is received, proceed to public exhibition to at least the requirement specified in the Gateway determination

### **Options**

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable this anomaly to be rectified in a timely manner, consistent with Council's Planning Proposal Guidelines and related DP&E Guidelines.

Council is currently in receipt of two development applications for land in the Moss Vale Road South Urban Release Area (URA). On review the current Clause does not allow for the subdivision of the part of the land that has a non-urban zone and that is less than the general mapped minimum lot size. Unless the anomaly is rectified, the significant variations to the minimum lot size exceed Council's delegation to approve variations under Clause 4.6, and as such concurrence may need to be sought from DP&E for these development applications and subsequent other ones within the URAs.

2. Adopt an alternative recommendation to amend the URA maps to include the Environment Protection zones contained within URAs (i.e. those generally associated with buffers and riparian corridors).

Implications: This is not preferred as it would still not resolve the current issue for land on the periphery of URAs where existing lots are partly in the URA and a residue will be created.

3. Not support the preparation of a PP to rectify this anomaly.

Implications: This would leave the identified matter unresolved and this will create ongoing problems as land within and associated with the URAs is subdivided.

## Background and Issue Overview

Part 6 Urban Release Areas of the LEP when drafted was informed by a 'Model Clause' provided by DP&E. Model Clauses were provided for Councils to use to reduce the time required to amend Standard Instrument LEP's given that the wording was settled by the Parliamentary Counsel's Office and they address common topics raised by Councils in the preparation of their new LEP's.

In preparing Shoalhaven LEP 2014, an additional Clause 6.5 was added to Part 6 Urban Release Areas to deal with the erection of dwelling houses on residual lots in relevant zones. The relevant zones are RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management.

The Clause in question was prepared to enable the subdivision of the non-urban zoned land tied to a URA (generally in one ownership) to a size less than the lot size map generally specifies. It also enables development consent to be granted for the erection of a dwelling house on the newly created non-urban zoned lot (the residual lot).

The current wording of Clause 6.5 is as follows:

### **6.5 Erection of dwelling houses on residual lots in certain zones**

- 1) *Development consent may be granted for the subdivision of land in an urban release area to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land or less than the minimum lot size permitted for the land immediately before it became, or became part of, an urban release area if the lot is comprised entirely of land in one or more of the following zones (the residual lot):*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape,*
  - (c) *Zone E2 Environmental Conservation,*
  - (d) *Zone E3 Environmental Management*
- 2) *Development consent may be granted for the erection of a dwelling house on a residual lot.*

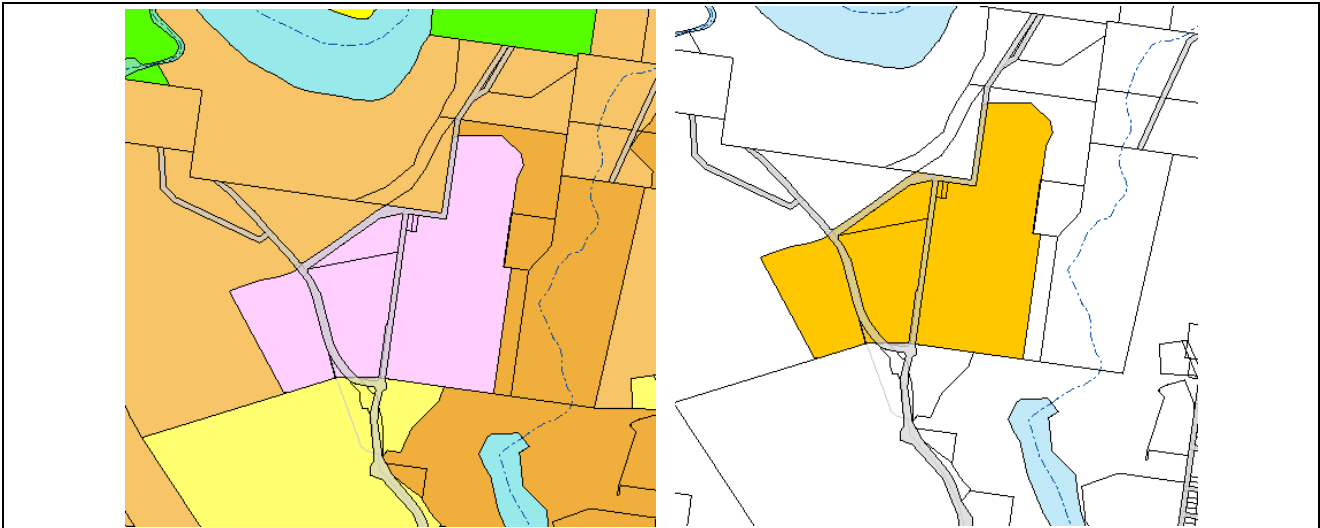
Whilst the above Clause references prescribed zones, it also specifically refers to land that is in an URA. Shoalhaven LEP 2014 defines an "urban release area" as "*the area of land identified as "Urban Release Area" on the [Urban Release Area Map](#).*" Therefore, it appears that the current wording of the Clause restricts its application to the land that is within a mapped URA. This interpretation has been discussed with DP&E and concurred with.

Within Shoalhaven LEP 2014 there are currently six mapped URAs including Mundamia, Moss Vale Road South, Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee.

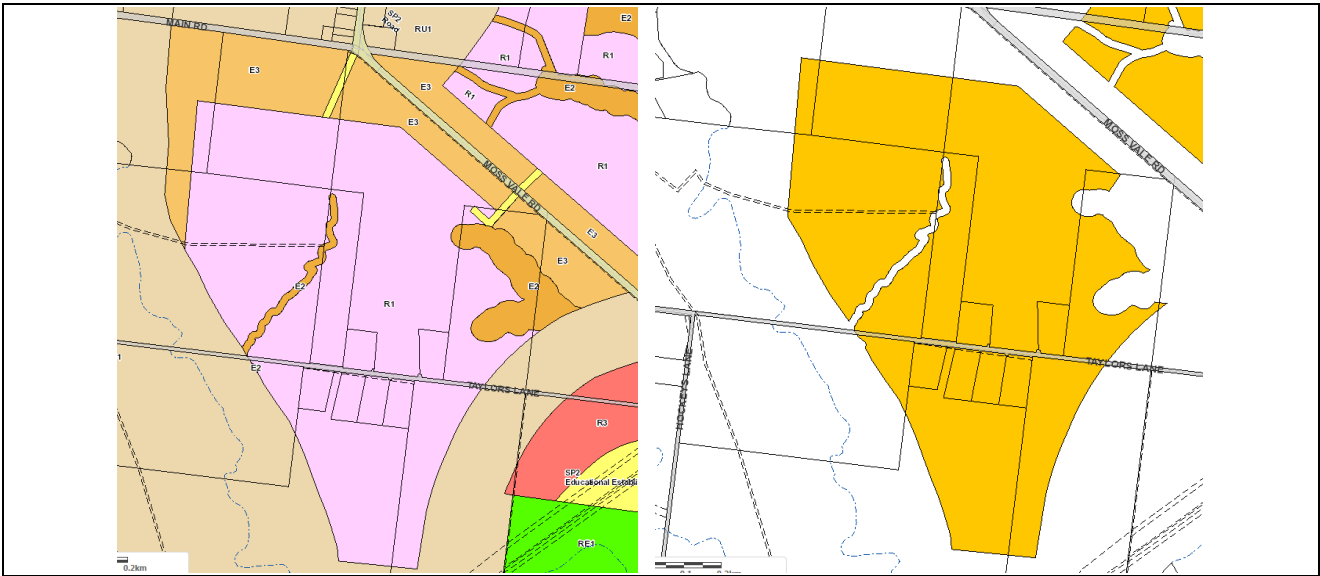
The following table and supporting maps identify the six URAs and provide an overview of the zones of the area mapped as URA, and land that is ‘within’ the overall URA but excluded from the URA map in Shoalhaven LEP 2014.

<b>URA</b>	<b>Zones within mapped URA</b>	<b>Zones part of the overall URA but not in the mapped URA</b>
Mundamia	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road South	R1 General Residential SP2 Infrastructure (Road)	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road North	R1 General Residential RE1 Public Recreation B1 Local Centre B7 Business Park SP2 Infrastructure (Road)	E2 Environmental Conservation E3 Environmental Management
Crams Road	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Cabbage Tree Lane	R1 General Residential	B1 Local Centre RE1 Public Recreation E2 Environmental Conservation SP2 Infrastructure (Educational Establishment)
Badgee	R1 General Residential RE2 Private Recreation E2 Environmental Conservation	RE1 Public Recreation

*Mundamia URA*

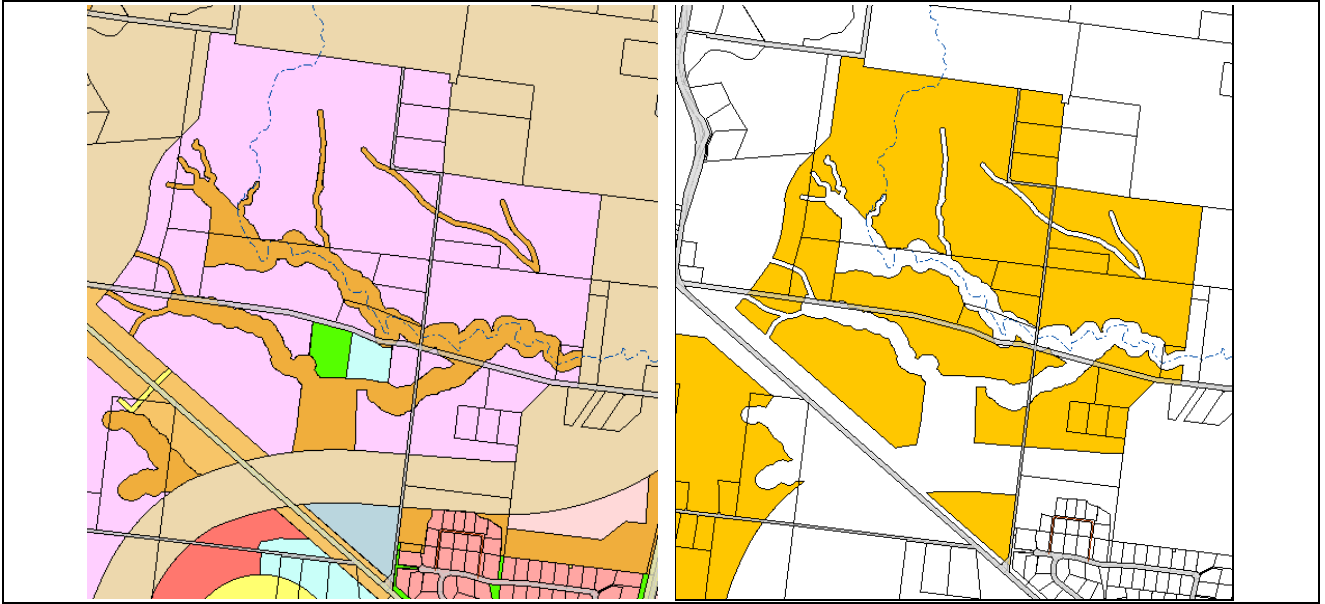


*Moss Vale Road South URA*

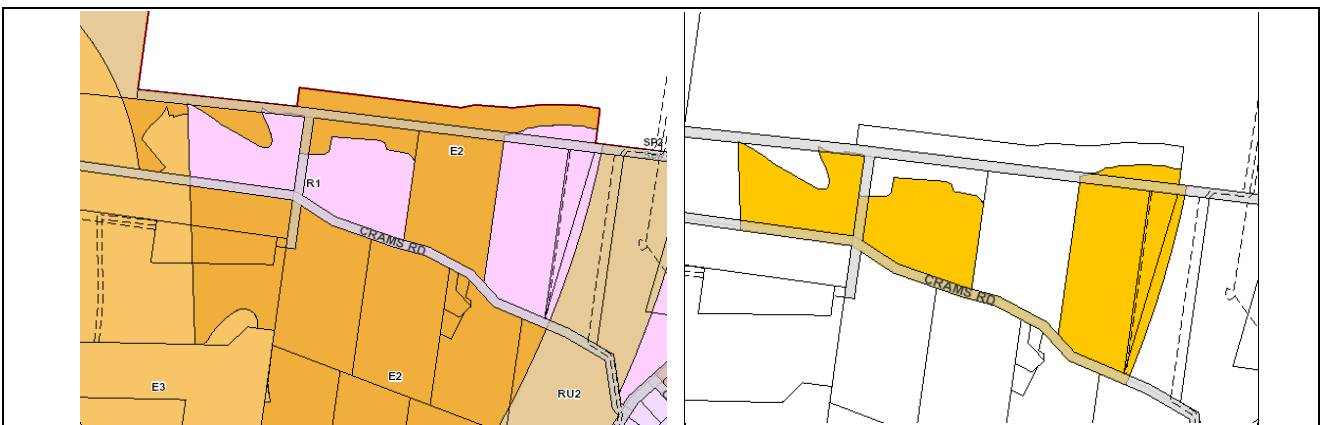




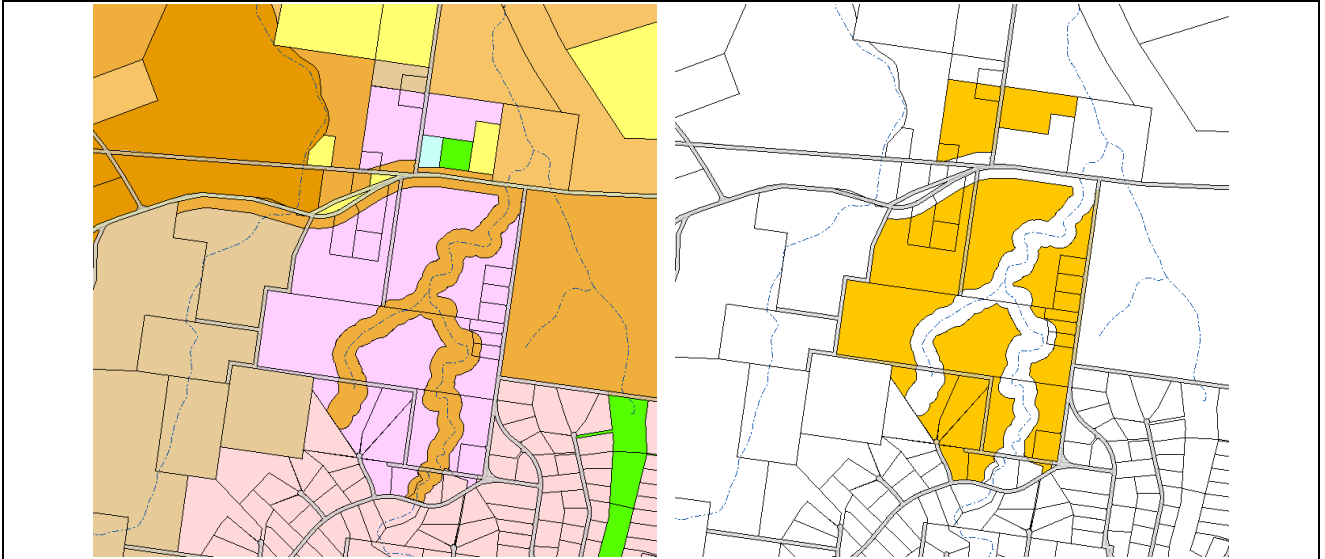
*Moss Vale Road North URA*



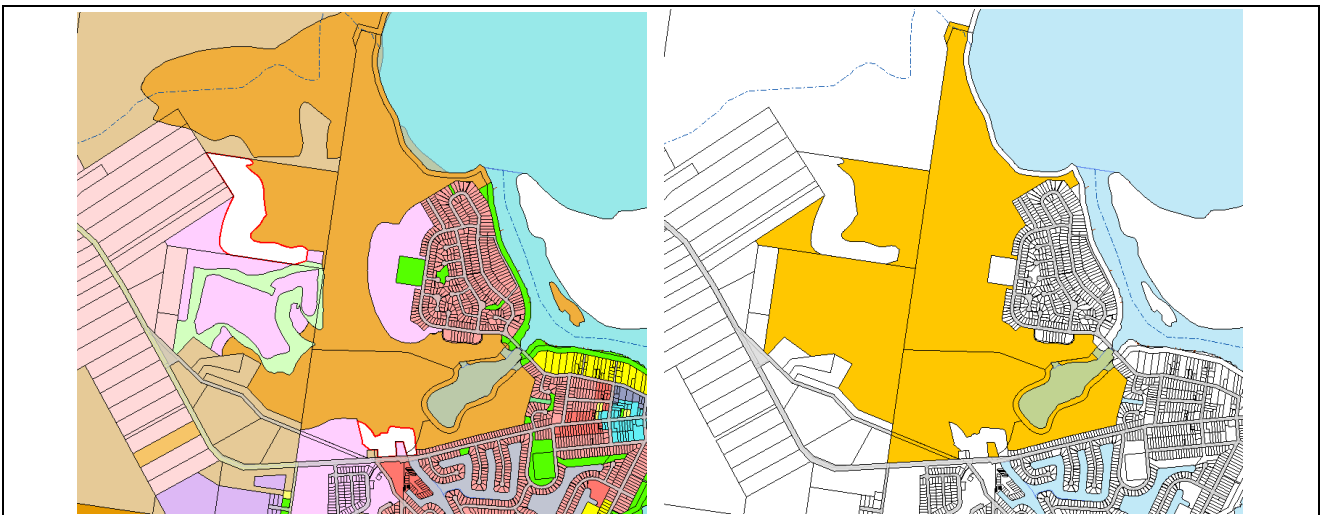
*Crams Road URA*



*Cabbage Tree Lane URA*



*Badgee URA*



In addition to the information contained in the above table and maps, it is noted that land on the periphery of the Moss Vale Road South and North URAs, where only part of the existing lots are within the mapped URA, is zoned RU1 Primary Production. Council is currently in receipt of two development applications for land in the Moss Vale Road South URA which would rely on this Clause to subdivide the non-urban zone from the urban zone and create a practical residual lot.

When considering the prescribed zones currently listed in Clause 6.5, the actual zones within the mapped URA and the land that is 'within' the overall URA but excluded from the mapped URA, it is clear that the Clause can only really apply to Badgee URA and has no effect to the Nowra-Bomaderry URAs.

## **Conclusion**

As such, in simple terms, the current clause does not enable residue parcels to be dealt with as originally envisaged or intended.

Unless the clause is amended to improve its usability, there are likely to be problems with the future URA subdivisions. Thus, it is recommended that a PP be prepared in accordance with DP&E Guidelines and submitted for Gateway determination to rectify this anomaly. The two options available are:

*Option 1: Amend Clause 6.5 to reference all land associated with the URA.*

This is the preferred option as it enables all land that is wholly or partly mapped (including allotments on the periphery) as a URA to utilise the provisions of the Clause if required. Residual lots which are created from subdivisions under this Clause may also be granted development consent for the erection of a dwelling house.

*Option 2: Amend the URA maps to include the Environment Protection zones contained within URAs (i.e. those generally associated with buffers and riparian corridors).*

This is not preferred as it would really only deal with land that is essentially within the URAs and it would not assist with land that is on their periphery.

The above options will be discussed with DP&E prior to submission of the PP for the required Gateway determination, but Option 1 is the preferred approach.

### **Community Engagement**

Should the proposed PP receive a Gateway determination, it will be publicly exhibited in accordance with the requirements of the determination and the Environmental Planning & Assessment Regulations 2000.

### **Policy Implications**

The PP will amend Clause 6.5 of Shoalhaven LEP 2014 to rectify an anomaly and clarify future URA subdivisions.

### **Financial Implications**

The PP will be prepared within the existing Strategic Planning budget.

### **Risk Implications**

Clause 6.5 is intended to allow for situations where lots that are partly mapped as a URA and are partially a non-urban zone (RU1, RU2, E2 and E3) can be subdivided to a size that is less than specified general minimum lot size (40ha) for those zones. The clause also enables development consent to be granted for the erection of a dwelling house on the residual lot. However, on review, if the current Clause remains unchanged, it appears that this will be prohibited. Thus, to achieve the original intent there is a need to amend the Clause.

## INFORMATION ONLY

### DEVELOPMENT COMMITTEE

22/01/2018

**TO:** Strategic Planning Manager (Gordon Clark)

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**Subject:** Planning Proposal - Shoalhaven LEP 2014 - Clause 6.5 amendment  
- Preparation - Gateway determination - Public exhibition  
**Target Date:** 21/02/2018  
**Notes:** This item has been assigned to Jessica Volkanovski for action.  
Please finalise your 'Information only' action in Infocouncil to  
acknowledge receipt.  
**HPERM** 38647E D17/424832  
**Reference**

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**RESOLVED** (Clr Findley / Clr Wells)

MIN18.8

That Council:

1. Support the preparation and submission of a Planning Proposal for Gateway determination to amend Clause 6.5 of Shoalhaven Local Environmental Plan 2014 to include reference to land associated with Urban Release Areas to rectify the identified anomaly.
2. If Gateway determination is received, proceed to public exhibition to at least the requirement specified in the Gateway determination.

**FOR:** Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Carmel Krogh

**AGAINST:** Nil

**CARRIED**

## Attachment C – SEPP Checklist

SEPP	Name	Applicable	Not inconsistent
1	Development Standards	✓	✓
19	Bushland in Urban Areas	✗	n/a
21	Caravan parks	✗	n/a
33	Hazardous and Offensive development	✗	n/a
36	Manufactured home estates	✗	n/a
44	Koala habitat protection	✓	✓
47	Moore Park Showground	✗	n/a
50	Canal estate development	✗	n/a
55	Remediation of land	✓	✓
64	Advertising and signage	✗	n/a
65	Design quality of residential apartment development	✗	n/a
70	Affordable Housing (Revised Schemes)	✗	n/a
--	Aboriginal Land 2019	✗	n/a
--	Affordable Rental Housing 2009	✗	n/a
--	BASIX : 2004	✓	✓
--	Coastal Management 2018	✓	✓
--	Concurrences 2018	✓	✓
--	Educational Establishments and Child Care Facilities 2017	✗	n/a
--	Exempt and Complying Development Codes 2008	✓	✓
--	Gosford City Centre 2018	✗	n/a
--	Housing for Seniors or People with a Disability 2004	✗	n/a
--	Infrastructure 2007	✗	n/a
--	Kosciuszko National Park—Alpine Resorts 2007	✗	n/a
--	Kurnell Peninsula 1989	✗	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	✗	n/a
--	Miscellaneous Consent Provisions 2007	✗	n/a
--	Penrith Lakes Scheme 1989	✗	n/a
--	Primary Production and Rural Development 2019	✓	✓
--	State and Regional Development 2011	✗	n/a
--	State Significant Precincts 2005	✗	n/a
--	Sydney Drinking Water Catchment 2011	✗	n/a
--	Sydney Region Growth Centres 2006	✗	n/a
--	Three Ports 2013	✗	n/a
--	Urban Renewal 2010	✗	n/a
--	Vegetation in Non-Rural Areas 2017	✗	n/a
--	Western Sydney Employment Area 2009	✗	n/a
--	Western Sydney Parklands 2009	✗	n/a

## Attachment D – S9.1 Directions Checklist

Direction		Applicable	Relevant	Not inconsistent
<b>1 Employment and Resources</b>				
1.1	Business and Industrial Zones	x	x	n/a
1.2	Rural Zones	✓	✓	✓
1.3	Mining, Petroleum Production and Extractive Industries	✓	x	n/a
1.4	Oyster Aquaculture	x	x	n/a
1.5	Rural lands	✓	✓	✓
<b>2 Environment and Heritage</b>				
2.1	Environmental Protection Zones	✓	✓	✓
2.2	Coastal Protection	✓	✓	✓
2.3	Heritage Conservation	✓	✓	✓
2.4	Recreation Vehicle Area	x	x	n/a
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	x	x	n/a
<b>3 Housing, Infrastructure and Urban Development</b>				
3.1	Residential Zones	✓	x	✓
3.2	Caravan Parks and Manufactured Home Estates	x	x	n/a
3.3	Home Occupations	✓	✓	✓
3.4	Integrating Land Use and Transport	✓	x	✓
3.5	Development Near Licensed Aerodromes	x	x	n/a
3.6	Shooting Ranges	x	x	n/a
3.7	Reduction in non-hosted short term rental accommodation period	x	x	n/a
<b>4 Hazard and Risk</b>				
4.1	Acid Sulfate Soils	✓	✓	✓
4.2	Mine Subsidence and Unstable Land	x	x	n/a
4.3	Flood Prone Land	✓	✓	✓
4.4	Planning for Bushfire Protection	✓	✓	✓
<b>5 Regional Planning</b>				
5.1	Implementation of Regional Strategies	x	x	n/a

Planning Proposal – Shoalhaven LEP 2014 – Subdivision and dwelling entitlement provisions for residue lots adjoining Urban Release Areas in Shoalhaven Local Environmental Plan 2014

5.2	Sydney Drinking Water Catchments	x	x	n/a
5.3	Farmland of State & Regional Significance Far North Coast	x	x	n/a
5.4	Commercial & Retail Development Far North Coast	x	x	n/a
5.8	Second Sydney Airport: Badgerys Creek	x	x	n/a
5.9	North West Rail Link Corridor Strategy	x	x	n/a
5.10	Implementation of Regional Plans	✓	✓	✓
5.11	Development of Aboriginal Land Council land	x	x	n/a
<b>6 Local Plan Making</b>				
6.1	Approval and Referral Requirements	✓	✓	✓
6.2	Reserving Land for Public Purposes	x	x	n/a
6.3	Site Specific Provisions	x	x	n/a

## **Attachment E - Council Development Committee Report and Minute (3 December 2019))**

### **DE19.126 Exhibition Outcomes and Proposed Finalisation - Planning Proposal: LEP Clause 6.5 Amendment**

**HPERM Ref:** D19/419099

**Section:** Strategic Planning

**Approver:** Phil Costello, Director Planning Environment & Development Group

**Attachments:** 1. Submission Summary (under separate cover) [⇒](#)  
2. Potential Residue Lots Review - Post Exhibition Version [↓](#)

#### **Reason for Report**

- Report the outcomes of the public exhibition of Planning Proposal (PP032) to amend Clause 6.5 of Shoalhaven Local Environmental Plan (LEP) 2014, relating to subdivision and dwelling entitlement provisions for residue lots adjoining Urban Release Areas.
- Detail proposed changes to the exhibited PP in response to submissions received and obtain agreement to revise/finalise the PP accordingly.

#### **Recommendation (Item to be determined under delegated authority)**

That Council:

1. In response to the submission received during the public exhibition period:
  - a. Amend the exhibited Planning Proposal (PP032) by including the following changes to Shoalhaven LEP 2014 Lot Size Map Sheet (LSZ\_013D) for the RU1 (non-urban zoned) portion only of the following lots:
    - i. Lot 5 DP 618693, 202 Bells Lane – reduce the minimum lot size from 40ha to 3ha.
    - ii. Lot 7 DP 618693, Bells Lane – reduce the minimum lot size from 40ha to 7ha.
    - iii. Lot 2 DP 1134376, 112 Bells Lane – reduce the minimum lot size from 40ha to 3,000m<sup>2</sup>.
  - b. Liaise with the NSW Parliamentary Counsel's Office as part of the legal drafting process to enhance the readability of the proposed amended Clause 6.5 by potentially following a similar structure to other clauses which outline: 1) The objective of the clause; 2) Land to which the clause applies; and 3) The specific provisions of the clause.
2. Forward the revised final PP032 to the NSW Department of Planning, Industry and Environment (DPIE) for consideration.
3. If necessary, undertake a further public exhibition of the revised PP in accordance with legislative and Gateway determination requirements, and receive a further report following the conclusion of the public exhibition period. If re-exhibition is not required, adopt PP032 as amended by part 1(a) above, and forward to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014 and make the resulting amendment to the LEP using Council's delegation.
4. Advise all affected landowners and those who made a submission of this decision.

#### **Options**



1. As recommended.

Implications: This is the preferred option as the issues raised in the submissions will be appropriately addressed and responded to. This will require the PP to be resubmitted to the NSW Department of Planning, Industry and Environment (DPIE) and may require a revised Gateway determination. This could also require the PP to be re-exhibited and delay the PP's completion and the approval of any development applications that are waiting on the amended clause 6.5.

This option is the most robust as it will ensure that issues are resolved now. The risk however is that the PP may need to be re-exhibited, however this will not be confirmed until it has been reviewed by DPIE. The best outcome is that the changes are viewed as within the intent of the exhibited PP and it can proceed to finalisation. The recommendation provides for both outcomes.

2. Not adopt the recommendation and proceed to finalising the PP as exhibited.

Implications: This would rectify the anomaly in the current clause 6.5 and enable subdivisions that propose a residual lot less than the minimum lot size to be approved. There are at least three (3) applications under assessment for Moss Vale Road South URA at the moment that will need the clause to be amended to enable their approval, as there is currently no legal mechanism in the LEP for them to create a residual lot less than the 40ha minimum lot size.

This option would however mean that recommended changes to the PP would need to be deferred or not adopted. There are existing provisions within SLEP 2014 to enable dwelling houses on, or attached to, residual lots, however these require dwelling entitlements to be secured prior to any subdivision taking place, which has been raised in the submissions as an inflexible approach and one that would not achieve the optimal or envisaged planning outcome for relevant sites.

The following suggested alternate wording is provided should the committee be of a mind to finalise the PP as exhibited:

1. *Adopt and finalise the Planning Proposal (PP032) as exhibited.*
2. *Forward PP032 to the NSW Parliamentary Counsel Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.*
3. *Make the resulting amendment to Shoalhaven Local Environmental Plan 2014 using Council's delegation.*
4. *Advise relevant stakeholders of this decision and when the LEP amendment will be made effective.*
5. *Liaise with Parliamentary Counsel as part of the legal drafting process to enhance the readability of the proposed Clause, potentially following a similar structure to other clauses which outline: 1) The objective of the clause; 2) Land to which the clause applies; and 3) The specific provisions of the clause.*

3. Not adopt the recommendation.

Implications: This is not preferred as it would delay the completion of this PP and the timing to rectify the identified anomaly. This could result in some development applications in URAs being unable to be approved where they propose a 'residue' lot containing land zoned RU1, RU2, E2 or E3, as there is currently no legal mechanism to approve a lot in these circumstances that is less than the minimum lot size (generally 40ha in these locations).

## Background

Part 6 of the NSW Standard LEP Instrument contains a range of provisions related to Urban Release Areas and their servicing and development.

Clause 6.5 *Erection of dwelling houses on residual lots in certain zones*, was initially inserted into Shoalhaven Local Environmental Plan (SLEP) 2014 to deal with residue rural or similar land resulting from the subdivision of land in an Urban Release Area (URA) that has a split zoning of a residential and a rural/environment zone.

An anomaly was however identified with the current wording of the Clause in that it has no application to the subdivision of land that is not actually within a mapped 'urban release area' boundary. In most existing URAs within Shoalhaven, the mapped 'urban release area' only includes the urban zoned portion and excludes the remaining rural/environmental zoned portion to which the clause is actually intended to apply.

On 22 January 2018, Council's Development Committee considered a report in relation to the identified anomaly and it was resolved to:

1. *Support the preparation and submission of a Planning Proposal for Gateway determination to amend Clause 6.5 of Shoalhaven Local Environmental Plan 2014 to include reference to land associated with Urban Release Areas to rectify the identified anomaly.*
2. *If Gateway determination is received, proceed to public exhibition to at least the requirement specified in the Gateway determination.*

### Original PP

The PP was originally submitted to the then NSW Department of Planning and Environment (DP&E) on 26 February 2018 requesting a Gateway determination.

The PP sought to resolve the anomaly to allow subdivision to create a 'residual' lot made up of the non-urban zone, and the potential to obtain development approval to erect a dwelling on the residual lot.

As part of DP&E's review of the PP, consultation was undertaken with the NSW Office of Environment and Heritage (OEH). On 3 May 2018 OEH objected to the submitted PP as they were concerned it would potentially permit the erection of dwelling houses on land already recognised with non-urban attributes such as high biodiversity sensitivity, flood affectation, visual or other buffers or within future road corridors. OEH also considered E2 and E3 zoned lands inappropriate for additional dwelling entitlements and requested that these be excluded from the proposed PP. It was requested that Council take a more strategic approach to managing any residual lands and this triggered a review of all possible residual lots under the proposed Clause.

### Review of PP

The strategic review of all potential residue lots was subsequently completed considering OEH's comments in relation to flood prone and biodiversity constrained land and the exclusion of the E2 and E3 zones. This review also considered whether the potential residue lot would be within the future bypass corridor and whether the potential residue lot could be appropriately managed under existing provisions of the LEP - for example clause 4.1E (split zones clause) which would enable land in the urban zone to be within the same lot as the non-urban residue lands.

The review found that all potential residue lots would either:

- Have an existing dwelling entitlement, were constrained by high hazard floodway/future bypass corridor and therefore inappropriate for a future dwelling house, or
- Could be managed via the existing split zones clause, and additional provisions for dwelling entitlement within the PP were not required.

As part of the review, Council staff also investigated the original intent of the current clause when the LEP was being drafted given that it is not a standard clause under the Standard Instrument LEP. It was found that the original intent of the clause was identified in the Development Committee Report of 17 July 2013 as follows:

*“Need to include a Clause to deal with residue rural or similar land resulting from the subdivision of the URAs under the draft LEP.”*

It was subsequently resolved to:

*“Request that DP&E include an additional Clause in part 6 to deal with residue land resulting from the subdivision of the URAs under the draft LEP”.*

### Revised PP

Following the requested investigation work, a revised PP was submitted to the NSW Department of Planning, Industry and Environment (DPIE) on 5 June 2019.

The revised PP sought to reword Clause 6.5 as below to permit the subdivision of residue lots in URAs below the minimum lot size and to delete the current subclause 2 relating to the erection of dwelling houses on residual lots, with the intention of relying on existing provisions within LEP 2014 to enable dwelling houses on, or attached to, residual lots:

Current wording	Proposed amendment
<p><b>6.5 Erection of dwelling houses on residual lots in certain zones</b></p> <p>1) <i>Development consent may be granted for the subdivision of land in an urban release area to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land or less than the minimum lot size permitted for the land immediately before it became, or became part of, an urban release area if the lot is comprised entirely of land in one or more of the following zones (the residual lot):</i></p> <p>(a) <i>Zone RU1 Primary Production,</i>  (b) <i>Zone RU2 Rural Landscape,</i>  (c) <i>Zone E2 Environmental Conservation,</i>  (d) <i>Zone E3 Environmental Management</i></p> <p>2) <i>Development consent may be granted for the erection of a dwelling house on a residual lot.</i></p>	<p><b>6.5 Subdivision of residual lots in certain zones</b></p> <p>1) <i>Despite any other provision of this Plan, the size of a lot created in a subdivision of land that is partly or wholly within an urban release area may be less than the minimum lot size shown on the Lot Size Map in relation to the land if the lot:</i></p> <p>a) <i>contains only land that is within the urban release area, or land that is within the urban release area and land immediately adjoining that land; and</i></p> <p>b) <i>contains only land that is within one or more of the following zones (the residual lot):</i></p> <p>(a) <i>Zone RU1 Primary Production,</i>  (b) <i>Zone RU2 Rural Landscape,</i>  (c) <i>Zone E2 Environmental Conservation,</i>  (d) <i>Zone E3 Environmental Management</i></p> <p>It is proposed that the current Clause 6.5(2) be deleted since potential residue lots that are considered suitable for a dwelling entitlement would be able to satisfy existing provisions in Clause 4.2D(3)(a) or Clause 4.2D(5).</p>

A Gateway determination was subsequently received on 24 July 2019 which determined that the PP could proceed subject to conditions (updated SEPP information, agency consultation and 9 months completion timeframe). The plan making functions for the subsequent LEP Amendment were also delegated to Council.

### **Public Exhibition**

In accordance with the conditions of the Gateway determination, the PP was formally exhibited from Wednesday 21 August to Friday 6 September 2019 (inclusive). The exhibition included:

- Advertisement in the local newspaper;
- Exhibition of the proposed PP and related documentation at the Nowra and Ulladulla Administrative Buildings and on Council's website.

The exhibition material is provided is still available for viewing on Councils internet site at the following link under the 'Planning Documents on Exhibition' heading:

<http://www.shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>

- Notification to affected landholders;
- Notification to Development Industry Representatives and Community Consultative Bodies (CCBs).

### Government Agency Feedback

Prior to the formal public exhibition, the PP was referred to the NSW Rural Fire Service (RFS) and DPIE – Environment and Conservation Division as required by the Gateway determination. The comments these agencies are summarised below.

Agency	Summary	Staff Comment
NSW Rural Fire Service	Raises no objections to the PP subject to a requirement that any future subdivision of any Urban Release Area includes a building envelope on residue land that retains a dwelling entitlement to demonstrate compliance with <i>Planning for Bushfire Protection 2018/19</i> . This includes, but is not limited to, the provision of asset protection zones, access and water supply in accordance with Table 7.4a.	Noted. Any future subdivision of sites that are 'bushfire prone' will be required at the development application stage to be assessed against and comply with the provisions of <i>Planning for Bushfire Protection 2018/19</i> .
DPIE – Environment and Conservation Division	PP generally addresses the concerns initially raised by OEHL through clarifying the intended operation of the revised clause and the extent of dwelling entitlements. Supportive of the PP in that it does not create a new dwelling entitlement unless the residue lot comprises an existing lawful dwelling or meets the minimum lot size, as per the existing provisions under Clause 4.2D. The final amended wording of the clause should ensure this. Future dwelling DA's on lots with a new dwelling entitlement should ensure that flood-related planning provisions, particularly in areas with no flood studies, and the "avoid, minimise, offset" provisions of the BC Act, are adhered to.	Noted. Any future subdivision that seeks to create a residue lot will be required to consider the future intended use of the land and applicable constraints.

### Community Engagement

As a result of the formal public exhibition, six (6) submissions were received from affected landowners or their consultants.

The submissions received are summarised in **Attachment 1**. Copies of actual submissions will be available for viewing in the **Councillors' Room** prior to the meeting.

The primary issues arising from the submissions are identified below, along with comment from Council staff:

1) Concern about the wording of the proposed clause leading to undesirable outcomes.

*Staff comment:*

- *The current proposed wording has been prepared through legal advice and staff are comfortable that it will achieve its intended outcome and purpose of enabling the subdivision of required residue lot/s below the minimum lot size.*
- *It is however acknowledged that the wording is complex and is unlikely to be understood upon first reading.*

*Recommendation:*

- To address this concern, Council staff will liaise with the NSW Parliamentary Counsel as part of the legal drafting process for the resulting LEP amendment to better structure the clause and improve its readability.

2) Concerned the clause is not flexible enough to facilitate subdivision occurring in a number of different ways and concern that existing dwelling entitlements may be lost.

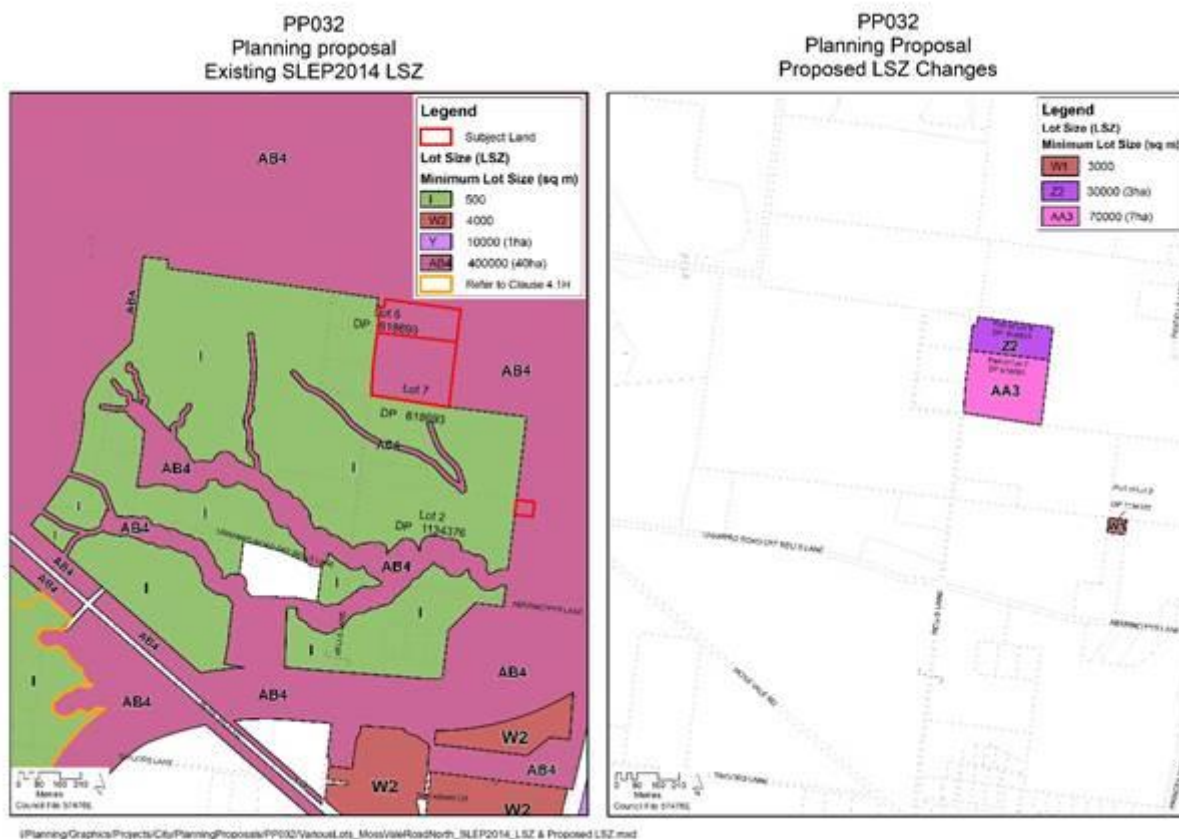
*Staff comment:*

- *It is the intention that the majority of the development scenarios presented in the submissions would be able to be carried out under the proposed clause, and the clause does permit multiple residue lots to be created as long as they contain only land that is within one or more of the following zones: RU1, RU2, E2, E3.*
- *It is acknowledged that when it comes to securing existing dwelling entitlements, the clause does require any dwelling entitlement to be secured over the non-urban/residue portion prior to any subdivision taking place. This could be achieved via a development application to, for example, relocate an existing dwelling from the urban to the non-urban zoned portion; or for vacant lots with an existing dwelling entitlement, obtaining consent for a new dwelling over the non-urban portion prior to any subdivision taking place.*
- *Although there are existing mechanisms to enable dwelling houses on, or attached to, residual lots, it is noted that these do not provide flexibility for development occurring in a number of different ways.*
- *In considering this concern, informal advice was sought from DPIE where it was suggested that the best approach for dealing with relevant lots may be to map a reduced minimum lot size applying to suitable residue lots.*
- *Lots considered suitable for a reduced minimum lot size should meet the following criteria:*
  1. *Must not be zoned E2 or E3 (OEH were unsupportive of this approach in the original PP and there may be inconsistencies with 9.1 Ministerial Directions);*
  2. *Must not be flood prone (inconsistency with 9.1 Directions);*
  3. *Must not be within future bypass corridor;*
  4. *Parent lot must have an existing dwelling entitlement under Clause 4.2D which has not been secured over the non-urban residue portion;*
  5. *Must not result in more than one dwelling entitlement for the non-urban zoned portion (residue lot/s); and*
  6. *Must not be proposed to be dealt with through another rezoning, i.e. forming part of the future Moss Vale Road North Planning Proposal.*

- *The original review of all potential residue lots has been updated and modified to highlight which lots may be suitable for or require mapping of a reduced minimum lot size to facilitate a dwelling entitlement - see **Attachment 2**.*
- *Based on this, three (3) lots adjacent to the Moss Vale Road North URA (see figure 1 below) may need a reduced mapped minimum lot size:*
  1. Lot 5 DP 618693, 202 Bells Lane, Meroo Meadow;
  2. Lot 7 DP 618693, Bells Lane, Meroo Meadow; and
  3. Lot 2 DP 1134376, 112 Bells Lane, Meroo Meadow.

**Recommendation:**

- Amend the PP to provide a reduced minimum lot size (from 40 ha) for the non-urban RU1 zoned portion only of the above lots as shown in Figure 1:
  1. Lot 5 DP 618693, 202 Bells Lane – reduce minimum lot size to 3ha.
  2. Lot 7 DP 618693, Bells Lane – reduce minimum lot size to 7ha.
  3. Lot 2 DP 1134376, 112 Bells Lane – reduce minimum lot size to 3,000m<sup>2</sup>.



**Figure 1 – Potential residue lots - reduced MLS to enable dwelling entitlement**  
(Left – lots identified with red outline. Right – proposed mapped lot size)

- 3) Concerned that the clause will not provide dwelling entitlement provisions for small acre residue lots and would require them to be attached to the residential component of the URA.

**Staff comment:**

- *Under the current proposed clause, potential smaller residue lots that do not have a dwelling entitlement secured over the non-urban portion would need to use Clause 4.1E (split zones clause) to ensure the residual land can be attached to a dwelling house within the urban zone for ongoing management purposes.*



**Recommendation:**

- This issue would be resolved where relevant/appropriate through the recommendations to amending the minimum lot size that are discussed above.

**Conclusions**

The recommendations outlined above aim to address relevant matters raised in submissions and if accepted by Council can be included in the final PP and this matter can then proceed to finalisation and the required LEP amendment.

**Policy Implications**

The LEP amendment proposed via this PP will enable the subdivision of certain residue lots that are part of an Urban Release Area in Shoalhaven LEP 2014.

**Financial Implications**

The PP is being resourced within the existing Strategic Planning budget.

**Risk Implications**

If the PP does not proceed, some subdivisions in URAs (where the land has a split urban/non-urban zoning and a non-urban residue lot is proposed less than the mapped minimum lot size) will be unable to be approved.