

## Planning and Assessment

IRF19/4649

### Gateway determination report

<b>LGA</b>	Shoalhaven
<b>PPA</b>	Shoalhaven City Council
<b>NAME</b>	Subdivision and dwelling entitlements for residue lots adjoining urban release areas (8 dwellings, 0 jobs)
<b>NUMBER</b>	PP 2019 SHOAL 004 00
<b>LEP TO BE AMENDED</b>	Shoalhaven LEP 2014
<b>ADDRESS</b>	Allotments located wholly or partly within the urban release areas in the Shoalhaven LEP including Mundamia, Moss Vale Road South and Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee.
<b>DESCRIPTION</b>	46 allotments
<b>RECEIVED</b>	5 June 2019
<b>FILE NO.</b>	EF19/21282 (IRF19/4649)
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

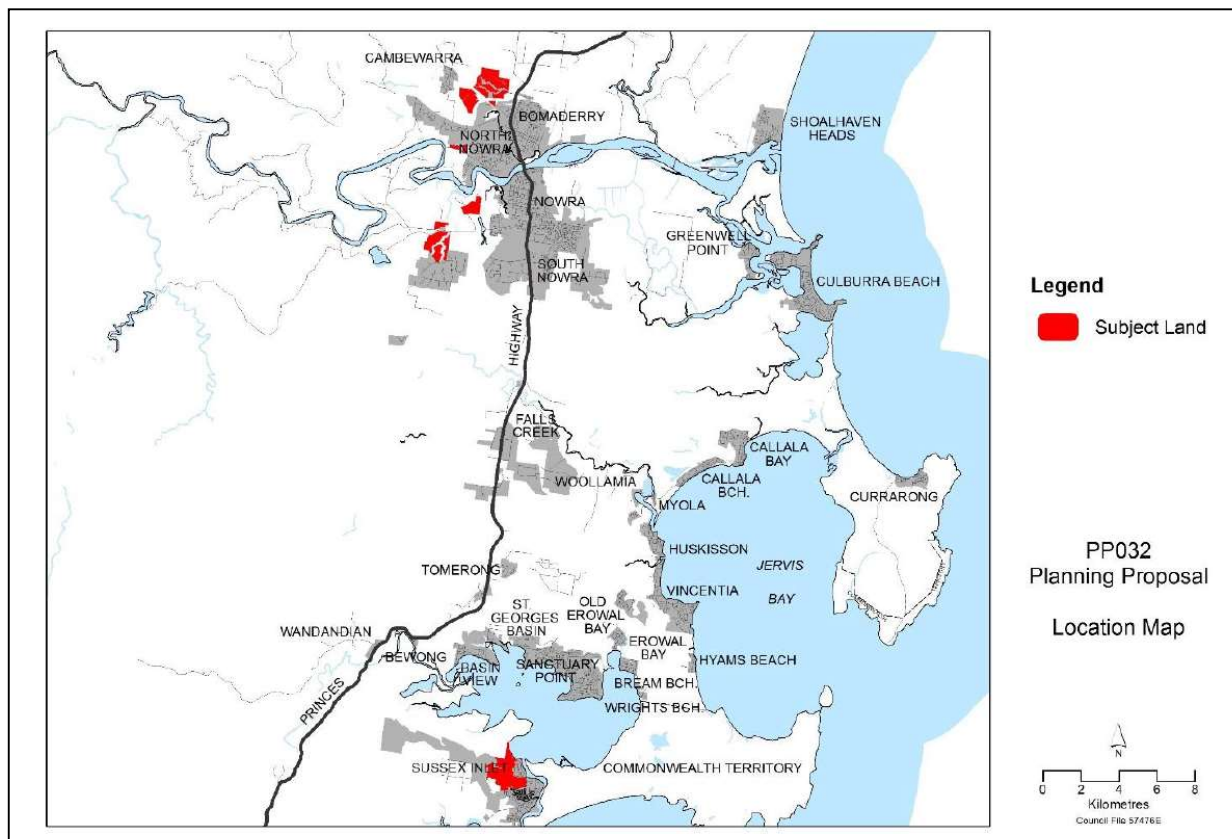
## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to enable subdivision to form residue lots for lots that have split urban/rural zoning that are either partly or wholly within a mapped urban release area. The proposal also seeks to ensure that new dwellings on residue lots meet the applicable minimum lot size standard or have an existing dwelling entitlement.

### 1.2 Site description

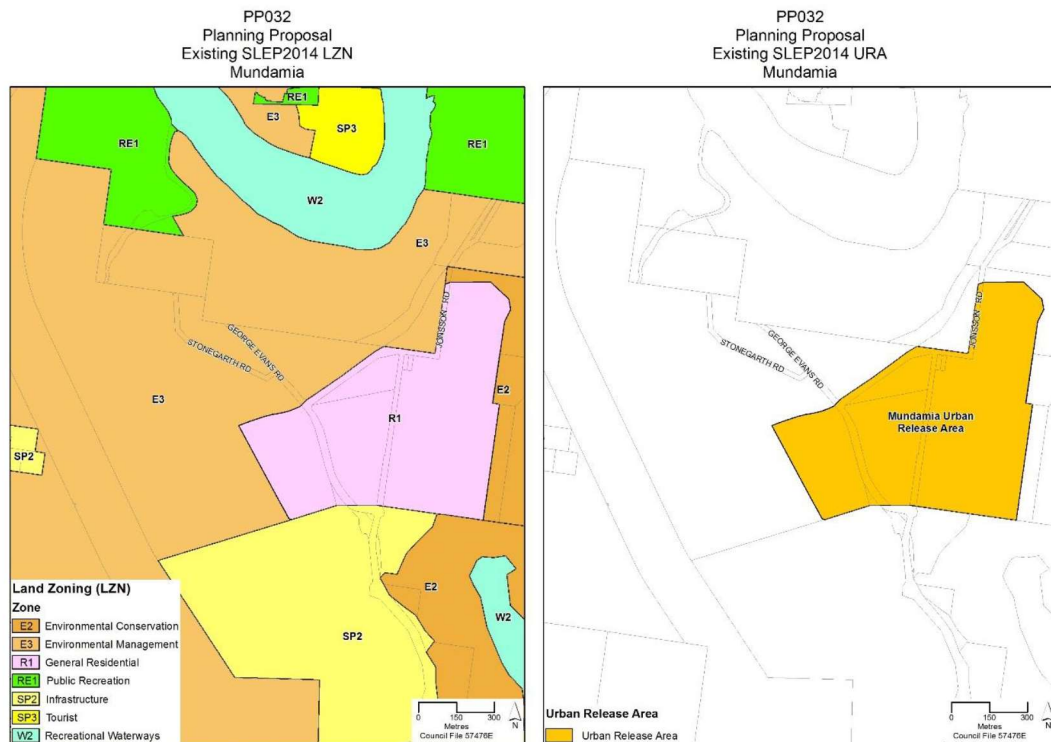
The subject land comprise 46 allotments located wholly or partly within the urban release areas in the Shoalhaven LEP including Mundamia, Moss Vale Road South and Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee (Figure 1).



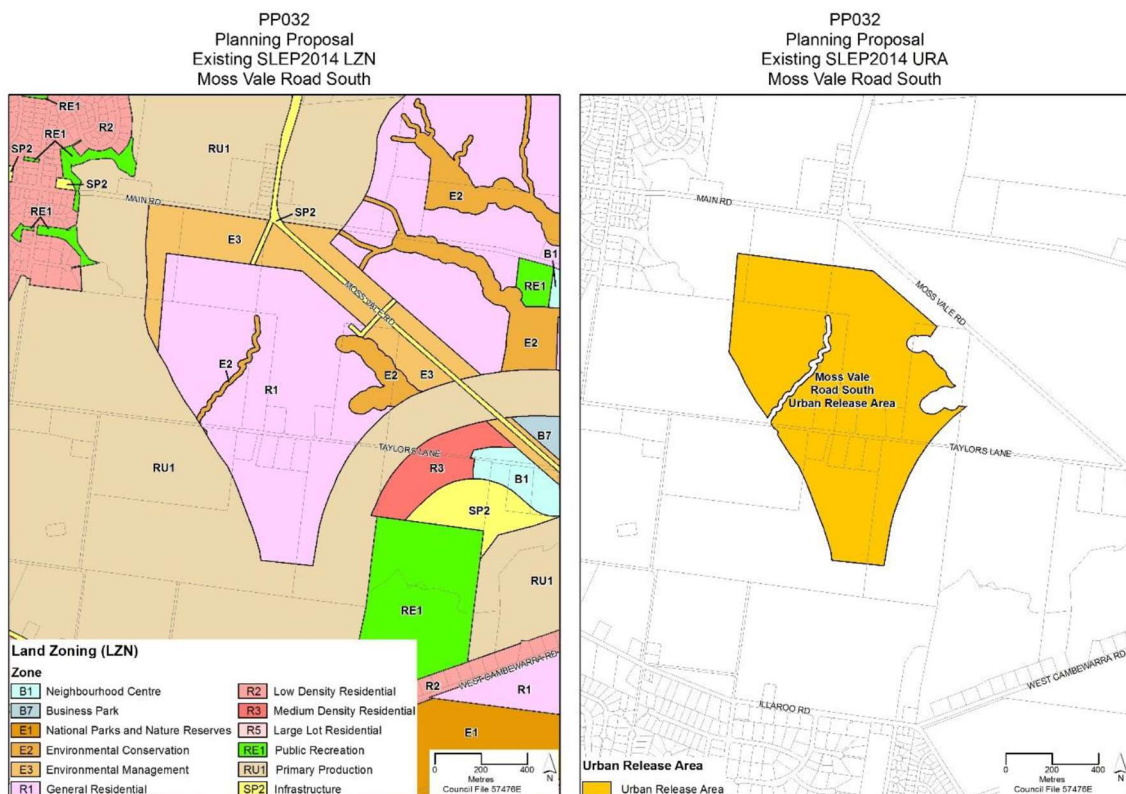
**Figure 1 – Subject land** (source: Shoalhaven City Council planning proposal document)

### 1.3 Existing planning controls

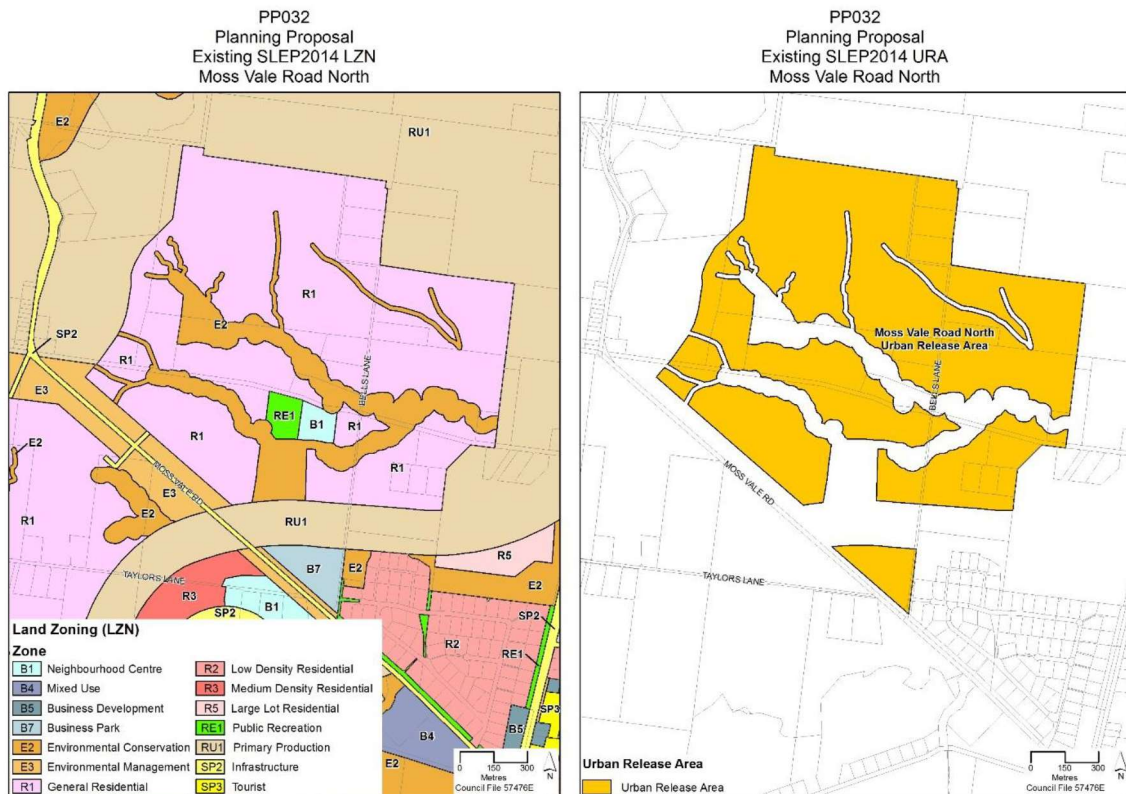
The subject land comprises allotments partially mapped as Urban Release Area and partially zoned non-urban including RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management under the Shoalhaven LEP 2014 (Figure 2 – Zoning and URA maps).



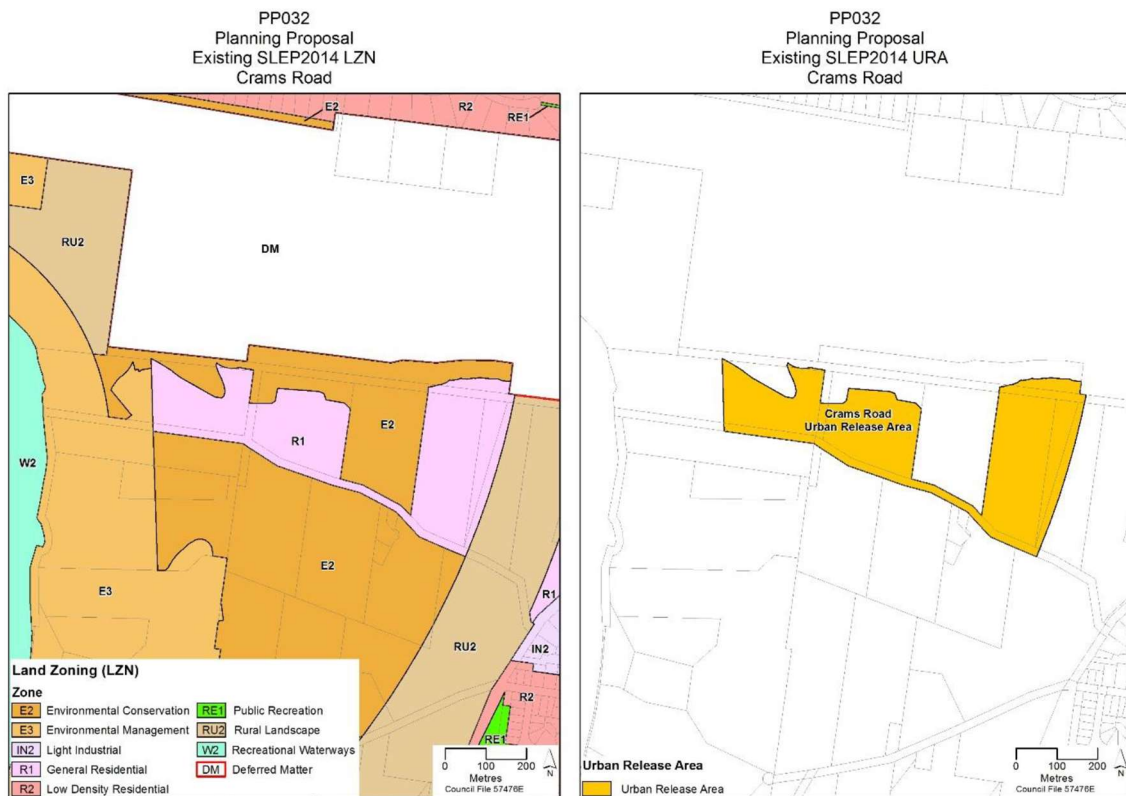
**Figure 2a – Mundamia zoning and URA map** (source: Shoalhaven City Council planning proposal document)



**Figure 2b – Moss Vale Road South zoning and URA map** (source: Shoalhaven City Council planning proposal document)

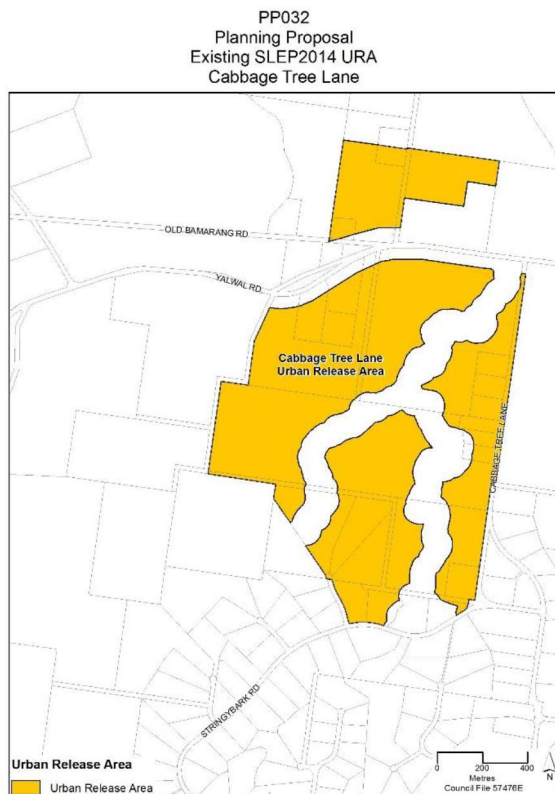
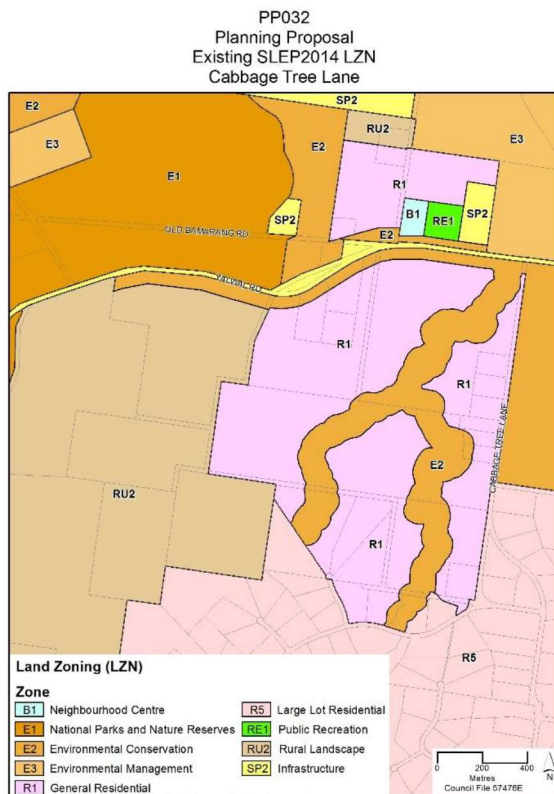


**Figure 2c – Moss Vale Road North zoning and URA map (source: Shoalhaven City Council planning proposal document)**

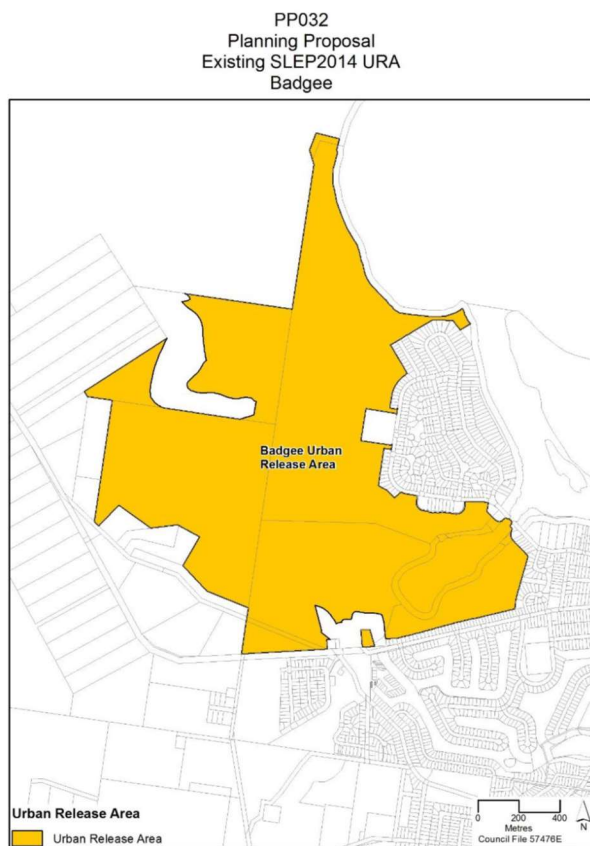
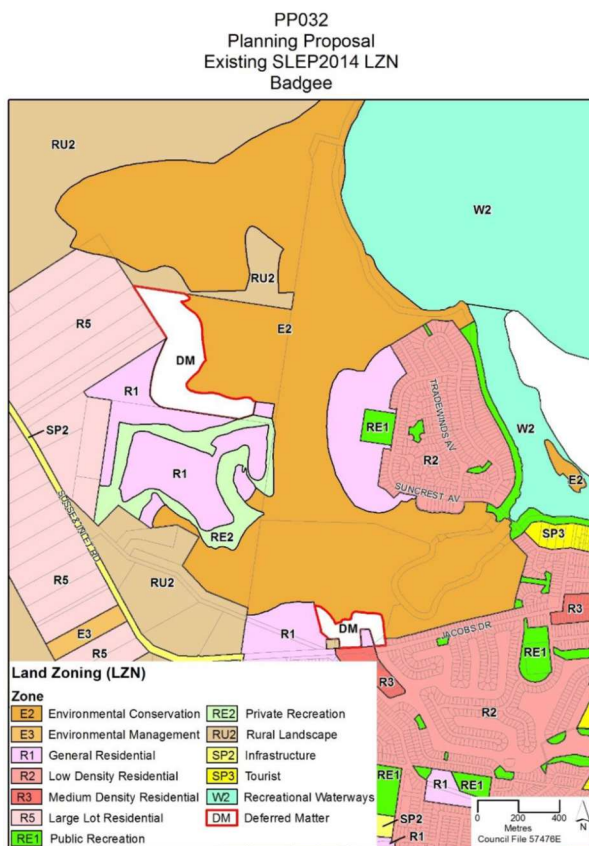


**Figure 2d – Crams Road zoning and URA map (source: Shoalhaven City Council planning proposal document)**





**Figure 2e – Cabbage Tree Lane zoning and URA map** (source: Shoalhaven City Council planning proposal document)



**Figure 2f – Badgee zoning and URA map** (source: Shoalhaven City Council planning proposal document)

## **1.4 Surrounding area**

The Nowra Bomaderry urban release areas are not currently developed. The URAs are surrounded by rural, rural residential and/or environmental uses.

The Badgee URA adjoins rural land to the north, rural residential development to the west, the Sussex Inlet urban area to the south/south east and St Georges Basin to the east/north east.

## **1.5 Summary of recommendation**

Proceed as per submitted proposal for the following reasons:

- The proposal is needed to clarify the original intent of Clause 6.5 of the Shoalhaven LEP 2014 to enable the subdivision of land, having a split urban/non-urban zone, that is either wholly or partially within an URA.
- The proposal will provide positive social and economic benefits because of additional housing opportunities and improved viability of the residential lots in the URAs.
- The planning proposal will protect residual rural and environmental zoned land by ensuring that dwellings meet the applicable minimum lot size standard.
- The proposal is consistent with the adopted local and regional strategic planning.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The planning proposal states that the intended outcomes of the proposal are:

- 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 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 sub Clause (2) and rely on existing provisions under Clause 4.2D(3)(a) or Clause 4.2D(3)(5) for the erection of dwelling houses on residual lots.

It is considered that the intended outcomes of the planning proposal are clear and do not require amendment prior to community consultation.

### **2.2 Explanation of provisions**

The explanation of provisions provided in the planning proposal are that it seeks to:

- amend clause 6.5 of the Shoalhaven LEP 2014 to clarify that the clause applies to land that is partly or wholly within an urban release area; and
- Delete clause 6.5(2) and rely on existing dwelling entitlement provisions in clause 4.2D(3)(a) and clause 4.2D(3)(5) of the Shoalhaven LEP 2014.

Comment: It is considered that the explanation of provisions provided is clear and doesn't require amendment prior to community consultation.

## 2.3 Mapping

The planning proposal does not involve any amendments to LEP maps. It proposes changes to the LEP instrument only.

## 3. NEED FOR THE PLANNING PROPOSAL

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Council has legal advice on the application of Clause 6.5 of the Shoalhaven LEP 2014 which has confirmed that the clause has no application to the subdivision of land that is not located wholly within a mapped urban release area. Therefore, the clause as currently worded does not achieve its original intent to enable the creation of a 'residue lot' containing land zoned RU1, RU2, E2 or E3, where a lot is either wholly or partially within an URA.

The planning proposal states that the proposal 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" of the LEP, 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.

Comment: It is considered that the planning proposal is needed to clarify the original intent of Clause 6.5 so that land, having a split urban/non-urban zone, that is either wholly or partially within an URA can be subdivided regardless of the applicable minimum lot size for the land. The proposal is also needed to ensure that any new dwelling on residue lots is required to meet the applicable minimum lot size standard or have a legal dwelling entitlement. The proposal is the best means for achieving the intended outcomes to facilitate the required amendments to the Shoalhaven LEP 2014. The proposal will assist development within the URA's.

## 4. STRATEGIC ASSESSMENT

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### 4.2 Regional

#### Illawarra Shoalhaven Regional Plan

The planning proposal states that it is consistent with the Illawarra Shoalhaven Regional Plan, notably:

- Goal 2 – "provide sufficient housing supply and choice to meet the Region's changing housing demands over the next twenty years".
- Direction 2.1 – "provide sufficient housing supply to suit the changing demands of the region".
- Direction 2.3 – "deliver housing in new release areas best suited to building new communities, provide housing choice and avoid environmental impact".

Comment: It is considered that the planning proposal is consistent with Goal 2 and Directions 2.1 and 2.3 of the Regional Plan because planning proposal will facilitate the subdivision and development of regionally significant priority release areas.

The proposal is also consistent with the following goals of the Regional Plan:

Goal 1 – "A prosperous Illawarra-Shoalhaven".

The proposal will support the local housing market, local economy and jobs.

Goal 3 – "A region with communities that are strong, healthy and well connected".

The proposal will help facilitate planned growth of the Nowra Bomaderry and Badgee (Sussex Inlet) URAs consistent with adopted strategic planning.

Goal 4 – “A region that makes appropriate use of agriculture and resource lands”.

Goal 5 – “A region that protects and enhances the natural environment”.

The proposal will protect residual environmental and rural zoned lands located within/adjoining URAs by ensuring that new dwellings on residual lots must meet the applicable minimum lot size standard or have an existing dwelling entitlement.

#### **4.3 Local**

##### **Shoalhaven Community Strategic Plan**

The planning proposal states that it is consistent with the Shoalhaven Community Strategic Plan, namely Theme 2 – “Sustainable liveable environments” and Action 2.2 – “Plan and manage appropriate sustainable development”.

Comment: It is considered that the proposal is consistent with Council’s CSP as it will facilitate the development of Shoalhaven’s urban release areas by providing a mechanism for the subdivision of residual lots.

Although not identified in the planning proposal, it is considered that the planning proposal is also consistent with the endorsed Shoalhaven Growth Management Strategy, Nowra Bomaderry Structure Plan and Sussex Inlet Settlement Strategy because the proposal will facilitate the development of urban release areas identified in these local strategies.

#### **4.4 Section 9.1 Ministerial Directions**

The planning proposal identifies that the proposal is consistent with applicable Ministerial directions, namely:

##### **Direction 1.2 Rural Zones**

The planning proposal states that it is consistent with the Direction because it does not seek to rezone land from a rural zone to a residential, business, industrial, village or tourist zone.

Council’s view that the proposal is consistent with the Direction is supported because the proposal does not seek to rezone rural zoned land.

##### **Direction 1.5 Rural Lands**

The planning proposal states that the Direction applies because it affects land within an existing rural or environmental zone. Council considers that the proposal is consistent with the Direction because the proposal is minor in nature.

Comment: It is considered that the planning proposal is consistent with the Direction because it meets most of the requirements of subclause 4 of the Direction, namely:

a. **Consistency with the applicable local and regional strategic plan.**

As discussed in section 4.2 and 4.3 of this report, the planning proposal is consistent with the Illawarra Shoalhaven Regional Plan, the Nowra Bomaderry Structure Plan and the Sussex Inlet Settlement Strategy.

b. **Considers the significance of agriculture and primary production to the State and rural communities.**



The urban release areas were identified through a strategic planning process via the preparation of the Nowra Bomaderry Structure Plan and Sussex Inlet Settlement Strategy that considered the significance of agricultural land in the area.

- c. Identifies and protects environmental values.
- d. Considers the natural and physical constraints of the land.
- e. Minimises the fragmentation of rural land and reduces land use conflict between residential and rural land uses.

The proposal seeks to ensure that dwellings on residual lots must meet the applicable minimum lot sizes specified in the LEP which will minimise fragmentation, protect the environment and minimise land use conflict.

#### Direction 2.1 Environmental Protection Zones

The planning proposal states that it is consistent with the Direction because it is minor in nature. Council revised the planning proposal to address concerns raised by the Department's environment and conservation division on an earlier version of the proposal that it would encourage dwellings and subdivision in environmentally constrained areas. These areas included environmentally zoned land and land that is flood and bushfire prone. The current proposal seeks to require that new dwellings on residual lots must meet the applicable minimum lot size standard.

Comment: It is considered that the planning proposal is consistent with the Direction. The changes Council has made to the planning proposal to address concerns raised by Department's environment and conservation division will protect the environment and avoid bushfire risks by limiting new dwellings to lots that meet the minimum lot size identified on the applicable Lot Size Maps or where there is an existing dwelling entitlement. Further consultation on the planning proposal with the Department's environment and conservation division is recommended.

Recommendation: That the Department's environment and conservation division is consulted on the planning proposal during the exhibition of the proposal.

#### Direction 2.2 Coastal Management

The planning proposal states that the Direction applies because the proposal affects land within the coastal zone, specifically the Mundamia, Crams Road and Badgee URAs. The proposal states that it is consistent with the Direction because it does not seek to amend any coastal management controls, maps or seeks to rezone land to enable increased development within a coastal vulnerability or coastal hazard area.

It is considered that the planning proposal is consistent with the Direction or any inconsistency is minor.

#### 2.3 Heritage Conservation

The planning proposal states that it is consistent with the Direction because it does not seek to remove any existing heritage conservation provisions.

It is considered that the proposal is consistent with the Direction because any items, areas, objects and places of environmental and indigenous heritage significance will be protected via existing provisions of the LEP which will not be affected by the planning proposal.

### 3.1 Residential Zones

The planning proposal states that it is consistent with the Direction because it seeks to clarify the original intent of clause 6.5 of the LEP to enable residue lot subdivisions for lots that have a split urban/rural zoning that are partly or wholly within a mapped URA.

It is considered that the proposal is consistent with the Direction because it will support housing in the planned Nowra Bomaderry and Badgee URAs.

### 3.3 Home Occupations

The planning proposal states that it is consistent with the Direction because the proposal does not seek to alter existing provisions that enable home occupations to be carried out in a dwelling house.

It is considered that the proposal is consistent with the Direction because it does not seek to change the current permissibility of home occupations in the residential zones under the Shoalhaven LEP 2014.

### Direction 4.1 Acid Sulfate Soils

The planning proposal states that it is consistent with the Direction because the proposal does not seek to remove provisions controlling development on acid sulfate soils under the Shoalhaven LEP 2014.

It is considered that the proposal is consistent with the Direction for the reasons provided by Council in the planning proposal.

### Direction 4.3 Flood Prone Land

The planning proposal states that it is consistent with the Direction because the proposal 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 is considered that the planning proposal is consistent with the Direction for the reasons provided by Council in the planning proposal.

### Direction 4.4 Planning for Bushfire Protection

The planning proposal states that it is consistent with the Direction because the proposal is of a minor nature and consultation on the proposal will be undertaken with the NSW Rural Fire Service following receipt of a Gateway determination.

It is considered that further information is required to be provided by council to demonstrate compliance with the Direction.

Recommendation: That the NSW Rural Fire Service is consulted on the planning proposal during the exhibition of the proposal, and that further information be required to demonstrate compliance with the Direction.

### Direction 5.10 Implementation of Regional Plans

The planning proposal states that it is consistent with the Direction because the Nowra Bomaderry URAs are identified in the Illawarra Shoalhaven Regional Plan as regionally significant.

As discussed in section 4.2 of this report it is considered that the proposal is consistent with the Illawarra Shoalhaven Regional Plan.

Recommendations: That the Secretary's delegate:

1. can be satisfied that the planning proposal is consistent with all relevant Directions or any inconsistency is minor.
2. request that the Department's environment and conservation division and NSW Rural Fire Service is consulted on the planning proposal during the exhibition of the proposal.
3. request further information from Shoalhaven City Council to demonstrate compliance with Direction 4.4 Planning for Bushfire Protection.

#### **4.5 State environmental planning policies (SEPPs)**

The planning proposal states that it is consistent with the following SEPPs:

- SEPP 1 Development Standards
- SEPP 14 Coastal Wetlands
- SEPP 44 Koala Habitat Protection
- SEPP 55 Remediation of Land
- SEPP 71 Coastal Protection
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP Coastal Management 2018

Council's view that the planning proposal is consistent with applicable SEPPs is supported. Council has identified a few SEPPs in Attachment C of the planning proposal that have been repealed namely SEPP 14 and SEPP 71. It is recommended that the planning proposal is updated prior to public exhibition.

Recommendation: That Council update the list of applicable SEPPs provided in the planning proposal prior to exhibition.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social**

The planning proposal states that the social impacts will be 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.

Comment: It is considered that there will minimal social impacts because of the proposal. There will, however, be positive social impacts by facilitating the original intent of the clause 6.5 of the LEP to provide a legal mechanism for the subdivision of residual split zoned lots located wholly or partly within a URA.

#### **5.2 Environmental**

The planning proposal states that the proposal will not impact any critical habitat or threatened species, populations or ecological communities or their habitats as it involves correcting a wording anomaly in an LEP clause. The proposal seeks to protect residual lots zoned E2 Environmental Conservation by requiring that new dwellings meet the applicable minimum lot size standard for the land. This will also facilitate management of environmental lands.

It is considered that the proposal will have positive environmental benefits.

### **5.3 Economic**

The planning proposal states that it will have positive economic impacts because of additional housing opportunities and improved viability of the residential lots in the URAs.

Council's view that the proposal will have positive economic impacts is supported. The proposal will correct an anomaly in the wording of clause 6.5 of the LEP which is preventing it from achieving its original intent.

## **6. CONSULTATION**

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### **6.1 Community**

Council intends to exhibit the planning proposal over a 14 day period as it is considered a low/minor impact in nature. The exhibition is proposed to be notified in the local newspaper and via Council's website and be made available for viewing at Council's administration centre in Nowra.

It is considered that the community consultation proposed for the planning proposal is appropriate.

### **6.2 Agencies**

Council intends to consult with relevant government agencies, e.g the NSW Rural Fire Service, as required by the Gateway determination.

It is considered that consultation with the NSW Rural Fire Service and the Department's Environment and Conservation Division on the planning proposal is appropriate.

## **7. TIME FRAME**

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Council proposes to finalise and notify an LEP by October 2019. It is considered that a six month timeframe (by January 2020) may be too short and a nine month timeframe is appropriate for completing an LEP.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested to be the local plan-making authority. Given the local nature of the planning proposal it is considered that Council's request has merit and should be supported.

## **9. CONCLUSION**

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The planning proposal is supported to proceed for the following reasons:

- The proposal is needed to clarify the original intent of Clause 6.5 of the Shoalhaven LEP 2014 to enable the subdivision of land, having a split urban/non-urban zone, that is either wholly or partially within an URA.
- The proposal will provide positive social and economic benefits because of additional housing opportunities and improved viability of the residential lots in the URAs.
- The planning proposal will protect residual rural and environmental zoned land by ensuring that dwellings meet the applicable minimum lot size standard.
- The proposal is consistent with the adopted local and regional strategic plans.



## 10. RECOMMENDATION

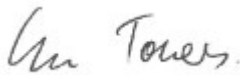
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It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
  - Department of Planning, Industry and Environment – Environment and Conservation Division; and
  - NSW Rural Fire Service.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Attachment C - "SEPP Checklist" in the planning proposal is to be revised to provide an updated list of relevant SEPPs prior to public consultation.



22/7/19

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24/7/19

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