

Rezoning of Lot 14 DP 773481 Moss Vale Road Kangaroo Valley

Proposal Title :	Rezoning of Lot 14 DP 773481 Moss Vale Road Kangaroo Valley		
Proposal Summary :	The planning proposal seeks to rezone land at Lot 14 DP 773481 Moss Vale Road, Kangaroo Valley to R5 Large Lot Residential Zone to allow 11 large residential lots and 1 cluster housing lot for 6 dwellings. The remainder is to be zoned E3 Environmental Management and RU1 Primary Production Zones.		
PP Number :	PP_2014_SHOAL_003_00	Dop File No :	14/03420

Proposal Details

Date Planning Proposal Received :	20-Feb-2014	LGA covered :	Shoalhaven
Region :	Southern	RPA :	Shoalhaven City Council
State Electorate :	KIAMA	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Moss Vale Road		
Suburb :	Kangaroo Valley	City :	Shoalhaven
		Postcode :	2541
Land Parcel :	Lot 14 DP 773481		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Southern Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :		Date of Release :	
Area of Release (Ha) :	13.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	17
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :			
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :			

Supporting notes

Internal Supporting Notes : **Lot 14 comprises 15.8ha cleared agricultural land located north of Hampden Bridge with a current approval for a tourist development.**

The land is identified for short term investigation for urban development in Shoalhaven City Council's adopted Shoalhaven Growth Management Strategy currently being considered for endorsement by the Director General of Planning and Infrastructure.

The proposal will contribute to housing choice (up to 17 dwellings) in Kangaroo Valley.

The Kangaroo Valley sewerage scheme has sufficient capacity for the rezoning based on the work done for the approved tourist development. However, Council is concerned that the ability to service development beyond the equivalent tenements (ET) in the subdivision approval is limited, hence Council's desire to cap the number of dwellings.

Access requirements to the site will require substantial works on Moss Vale Road, which is a State road.

The proposal will protect the existing area of intensive agriculture (currently used for the growing of grapes and olives). It will protect riparian land along Barrengarry Creek and flood prone areas via an E3 Environmental Management Zone.

Council has undertaken pre-consultation with the local community on the draft planning proposal, receiving 24 submissions, 5 in support, 1 neutral and 18 objections.

NOTE: The planning proposal raises a number of issues:

- 1. It seeks to create 6 cluster dwellings for seniors housing within an R5 Large Lot Residential Zone where it is prohibited and where SEPP Housing for Seniors or People with a Disability does not apply.**
- 2. The planning proposal uses the term 'cluster housing' which is not defined. 'Multi dwelling housing' or 'seniors housing' should be used.**
- 3. It seeks to use a local clause to cap development rather than the Lot Size Map.**
- 4. It creates an agricultural lot without a dwelling.**
- 5. It requires the surrender of a previous consent at the time consent is issued for this subdivision.**

The planning proposal has been referred to the LEP Panel as the prescriptive nature of the proposed new local clause is not considered to be consistent with the merit based

provisions of the Standard Instrument LEP. While the planning proposal is supported in concept, significant changes are being recommended as part of the Gateway determination.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : The planning proposal states that the intended outcome is to amend the Shoalhaven LEP 2014 to:

- enable the subdivision of the subject site into a maximum 11 large residential lots, 1 cluster housing lot and one residue lot (with no dwelling entitlement);
- provide a greater range of residential accommodation in Kangaroo Valley;
- protect the flood prone part of the site from residential development; and
- protect Kangaroo River, Barrengarry Creek and their riparian areas.

The statement of objectives meets the requirements of Part 1 of "A guide to preparing planning proposals".

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

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

Comment : The planning proposal will amend Shoalhaven LEP 2014 Land Zoning; Lot Size; and Height of Buildings Maps to:

- * zone land R5 Large Lot Residential; E3 Environmental Management; and RU1 Primary Production Zones;
- * identify minimum lot sizes of 40ha; 4ha; and 2,000 sq.m; and
- * identify a maximum height of buildings of 5.5m.

Add sub clause (i) to Clause 4.2B to limit subdivision to a maximum of 10 lots for the area shown as 'Locality 9' on the Lot Size Map.

In Part 7 Additional Local Provisions add a local clause to:

1. Require the surrender of the existing development consent for the tourist facility over the whole of the lot at the time of any new development consent for subdivision;
2. Enable a cluster housing lot - not to exceed 4 Equivalent Tenements (ETs);
3. Development not to exceed 11 ETs over 2,000 sq.m and 4ha area; and
4. Allow for a residue rural lot smaller than the 40ha minimum lot size (without a dwelling entitlement).

The explanation of provisions meets the requirements of Part 2 of "A guide to preparing planning proposals".

Comment:

The planning proposal raises a number of issues:

1. It seeks to create 6 dwellings for seniors housing within an R5 Large Lot Residential Zone where it is prohibited and where SEPP Housing for Seniors and People with a Disability does not apply.
2. It seeks to use local clauses to cap development rather than the Lot Size Map.
3. It creates an agricultural lot without a dwelling. The residue rural lot without a dwelling could lead to problems later if the land is sold separately from the owner's dwelling.

4. It requires the surrender of a previous consent at the time consent is issued for this subdivision.

RECOMMENDATION:

1. Council should consider using other mechanisms to limit the extent of development such as the Lot Size Map and the application of 'clause 7.11 Essential services' in the forthcoming Standard Instrument LEP to cap development. Council can also use a DCP amendment to recognise the limitations of the site from a servicing perspective.
2. If seniors housing is desired it should be permitted by way of zoning or if this expands permitted uses beyond what Council considers appropriate then the use of an enabling clause or Schedule 1 could be considered.
3. Uses proposed should use the definitions contained in the Standard Instrument Template such as 'multi dwelling housing' or 'seniors housing' instead of 'cluster housing' which is not defined.
4. Council should consider linking the agricultural lot with another lot that includes a dwelling to avoid the potential consideration of a dwelling for this land in the future if it is sold separately.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones
1.3 Mining, Petroleum Production and Extractive Industries
1.5 Rural Lands
2.1 Environment Protection Zones
2.3 Heritage Conservation
2.4 Recreation Vehicle Areas
3.1 Residential Zones
3.3 Home Occupations
3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
5.2 Sydney Drinking Water Catchments
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land
SEPP (Rural Lands) 2008
Drinking Water Catchments Regional Environmental Plan No. 1

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

The Drinking Water Catchments Regional Environmental Plan No.1 has been repealed and replaced by the SEPP (Sydney Drinking Water Catchment) 2011.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

The inconsistencies with s117 Directions 1.2 Rural Zones and 1.5 Rural Lands has been justified by Council via the Shoalhaven Growth Management Strategy (GMS) which identifies the site as a short term urban investigation area. Although the Director General has yet to formally endorse the GMS, endorsement is currently under consideration, and Planning & Infrastructure has not raised concern with the inclusion of the site as an investigation area in the Strategy.

RECOMMENDATION: That the DG agree to the inconsistencies with Directions 1.2 and 1.5 because they are justified by a study prepared in support of the planning proposal.

The inconsistency with Direction 1.3 Mining, Petroleum Production and Extractive Industries has been justified by Council as being of minor significance because the site

is less than 16 ha in size and adjoins a village and would therefore not likely be suitable for mining, petroleum and extractive industries. In addition there are no mapped resources in the immediate vicinity.

Direction 3.4 Integrating Land Use and Transport - The site is identified as an investigation area under the Shoalhaven Growth Management Strategy which is currently seeking the Director General's endorsement. A public bus service is also available for the Kangaroo Valley area. The proposal, however, indicates that the need for upgrade to access to Moss Vale Road, which is a State Road, needs to be discussed with Roads and Maritime Services.

RECOMMENDATION: Council consult with Roads and Maritime Services concerning access arrangements to Moss Vale Road.

The planning proposal will be consistent with s117 Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments when consultation has occurred with NSW Rural Fire Service and Sydney Catchment Authority respectively as proposed by Council.

RECOMMENDATION: The Director General can be satisfied that the planning proposal will be consistent with these Directions once consultation has occurred with NSW Rural Fire Service and Sydney Catchment Authority.

S117 Direction 5.1 Implementation of Regional Strategies. The key requirements of the South Coast Regional Strategy that are relevant to the proposal are that:

- "Limited areas for additional rural residential must be located on cleared land unsuitable for urban or agricultural uses and will only be agreed to by the Department as part of an endorsed growth management strategy (GMS) or structure plan" (p.29). and

- 'Local environmental plans will include appropriate provisions to protect towns and villages such as Kangaroo Valley along with associated natural and cultural landscapes and curtilages. The aim will be to protect conservation values, Aboriginal cultural values and visual character, and reinforce their economic value for tourism' (p.33).

The proposal is generally consistent with this requirement because:

- No items of local or State heritage listing will be impacted.

- The area proposed to be rezoned via the planning proposal is set back from Moss Vale Road behind a rural zoned buffer which assists in maintaining the visual character of the area.

- it will not affect the identification of the site as a Scenic Protection Area under the draft Shoalhaven LEP 2014.

- the proposal includes a 5.5m building height control to minimise visual impacts of future development.

RECOMMENDATION: The Director General can be satisfied that any inconsistency with this Direction is justified subject to the endorsement of the Shoalhaven GMS.

The inconsistency with Direction 6.3 'Site Specific Provisions' has been justified by Council as being of minor significance as the Council considers the additional local provision will ensure that the resulting development can be adequately serviced and that Council does not consider this to be unduly restrictive. However, the ability to service the site is a matter for consideration when assessing a development application. The level of development can be managed through the Lot Size Map, Zoning and/or Schedule 1. There is no necessity for a local clause to limit development as there are other mechanisms available to Council. Clause 4.2B in Council's Principal LEP, due for notification in March 2014, was included to manage a number of areas where a specific level of rural residential development had previously been 'capped' as a result of preparation of the Shoalhaven Rural Lands LEP. It is not appropriate to continue to add to this list in this way.

It is also important to note that Council's new SILEP contains the local model clause '7.11 Essential services' requiring Council to be satisfied services are available for new development. Council can rely on this consideration to ensure that servicing constraints are addressed during development assessment.

RECOMMENDATION: Council is to consider other mechanisms for limiting development

such as Lot Size Map and/or zoning. If zoning broadens the range of land uses too much then an allowance clause or addition to Schedule 1 could be considered for multi dwelling housing if this site is considered appropriate for that form of development.

State Environmental Planning Policies:

While Council has identified SEPP Sydney Drinking Water Catchments it is not relevant as it only applies when a development application is lodged.

SEPP Rural Lands - Council has assessed the proposal against the Rural Planning Principles contained in the SEPP in justifying any inconsistency with s117 Direction 1.5 Rural Lands. The significance of the impact on agricultural land, is also likely to be minor, because:

- The subject site is relatively small (approx 16ha) and is located on the outskirts of Kangaroo Village.
- The area proposed to be zoned R5 Large Lot Residential is approximately 6ha and contains primarily Class 3 agriculture land. Extensive agriculture is a permissible use in the R5 Zone.
- The remaining 10ha of the site, which includes the small existing area of grape and olive production and floodprone land adjoining Barrengarry Creek, will be zoned RU1 Primary Production and E3 Environmental Management Zone respectively. These areas will continue to be available for agricultural use.

SEPP 55 Remediation of Land - Council has considered the potential for the land to be contaminated as a result of past agricultural activities. It proposes to require a preliminary contamination report for the land under clause 6 of the SEPP to be provided by the applicant and included in the exhibition materials.

RECOMMENDATION: That a preliminary contamination report for the land is required to be provided by the applicant and included in the exhibition materials.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : Draft Land Zoning, Lot Size and Height of Buildings Maps are provided. The maps do not meet the requirements of the 'Standard technical requirements for LEP maps' but are adequate for exhibition purposes.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : A 28 day public exhibition period is proposed.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : The proposal meets the requirements of section 55(2) of the Act, namely:

- Part 1: Statement of objectives and intended outcomes is provided.
- Part 2: An explanation of the provisions is provided.
- Part 3: Justification for those objectives, outcomes and the process for their implementation are provided.
- Part 4: Maps to identify the intent of the planning proposal and the area to which it applies are provided.
- Part 5: details of the community consultation to be undertaken are provided.
- Part 6: A project timeline is provided.

Proposal Assessment

Principal LEP:

Due Date : March 2014

Comments in
relation to Principal
LEP :

The Shoalhaven LEP 2014 is with Parliamentary Counsel's Office awaiting an Opinion and is considered imminent in terms of notification. The site is proposed to be zoned RU1 Primary Production Zone under the LEP.

Assessment Criteria

Need for planning
proposal :

The planning proposal is needed to facilitate the rezoning of a 15.8ha rural site to allow the development of the site for large lot residential development, cluster housing and protection of flood prone and riparian land.

Consistency with
strategic planning
framework :

Environmental social
economic impacts :

The proposal has a number of environmental, social and economic impacts, namely:

Environmental impacts:

The site is primarily cleared agricultural land and has a low likelihood of containing threatened species habitat. The proposal has the following environmental benefits:

- flood prone and riparian area will be protected in an E3 Environmental Management Zone.

Social and economic impacts:

The main social and economic benefits of the proposal are that it:

- provides additional housing choice (11 large residential lots and 1 cluster housing lot) in the local area;
- facilitates the dedication of land adjoining Barrengarry Creek, via a suitable Voluntary Planning Agreement, as a public pathway; and
- supports the local economy and jobs by providing additional demand for goods and services.

The proposal is contentious within the local community. Notably, following preliminary consultations undertaken by Council in late 2013, it received 18 submissions objecting to the proposal and 5 supporting the proposal. The key reasons provided in the submissions in support of the proposal were:

- residential subdivision is desperately needed in Kangaroo Valley, particularly seniors living,
- the land is not flood prone and not used for agriculture.
- there is an opportunity to provide a walking track around the perimeter of the lot.
- the land is flat and makes for a comfortable flat walk into town.

Key reasons provided in submissions against the proposal were:

- the area is located outside the township.
- proposed development is too close to Barrengarry Creek.
- Access and traffic issues associated with Hampden Bridge.
- Impact on heritage nature of the area and native fauna, particularly wombats.
- the site was exhibited in the draft Growth Management Strategy as a long term (10-15 year) investigation area.
- There is already land zoned for residential development in the village.

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- No evidence is provided of a need for further residential land in Kangaroo Valley.
- continues ribbon development along Moss Vale Road.
- inconsistent with South Coast Regional Strategy.

The exhibition of the proposal will provide further opportunity for community consultation and resolution of the issues that have been raised to date.

Assessment Process

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

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Sydney Catchment Authority
NSW Department of Primary Industries - Agriculture
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services**

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

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

If no, provide reasons : **The planning proposal should proceed to exhibition as it will facilitate the rezoning of a 15.8ha rural site, that adjoins the Kangaroo Valley Village that is identified for investigation in Council's adopted Shoalhaven Growth Management Strategy, to provide for the development of 11 large residential lots and 1 cluster housing lot to accommodate 6 possible dwellings.**

Although the planning proposal has merit, the proposed provisions are overly prescriptive and not consistent with the SILEP merit based approach. As the key issue driving the cap on dwellings can be addressed through the Lot Size Map and clause '7.11 Essential services', it is recommended that the proposal be amended via the Gateway conditions. This approach has been discussed with Council in broad terms.

Council has not requested the DG's delegations to prepare the LEP. Council has, however, accepted the DG's delegations for plan making. Although the Shoalhaven GMS has yet to be endorsed by the DG, it is expected to be considered for endorsement in coming weeks. The planning proposal is therefore considered appropriate to be delegated to Council.

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Access arrangements to Moss Vale Road, which is a State Road, should be discussed with Roads and Maritime Service.

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons : **As mentioned above**

Documents

Rezoning of Lot 14 DP 773481 Moss Vale Road Kangaroo Valley

Document File Name	DocumentType Name	Is Public
LP411_PlanningProposal_KangarooValley.pdf	Proposal	Yes
CouncilMinute.pdf	Proposal Covering Letter	Yes
CouncilReport_KangarooValley.pdf	Proposal Covering Letter	Yes
Shoalhaven City Council letter.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.2 Sydney Drinking Water Catchments
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

Additional Information :

The Deputy Director General, Growth Planning & Delivery, as delegate of the Minister for Planning and Infrastructure, determine under section 56(2) of the EP&A Act that an amendment to Shoalhaven Local Environmental Plan 2014 to rezone Lot 14 DP 773481 Moss Vale Road, Kangaroo Valley from RU1 Primary Production Zone to R5 Large Lot Residential Zone and E3 Environmental Management Zone to allow for subdivision and development into 11 large residential lots, 1 cluster housing lot (to accommodate 6 possible dwellings) and an agricultural residue lot should proceed subject to the following conditions:

1. The proposed additional local clause not be supported and Council instead use the Lot Size Map to define the appropriate density that meets the cap on dwellings required by servicing limitations.
2. The other site specific requirements be incorporated in a DCP amendment that is identified in the planning proposal and if practicable the DCP amendment be exhibited concurrently with the planning proposal.
3. Council consider the use of an allowance clause or Schedule 1 to permit multi dwelling housing on the 'cluster housing' lot.
4. Council shall arrange for a preliminary contamination report under clause 6 of SEPP 55 - Remediation of Land to be included in the exhibition materials.
5. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure 2013)'.
6. Consultation is required with the following public authorities under section 56(2)(d) of

the EP&A Act:

- (a) Roads and Maritime Services (access to Moss Vale Road);
- (b) Sydney Catchment Authority (s117 Direction 5.2); and
- (c) NSW Rural Fire Service (s117 Direction 4.4).

7. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

8. The timeframe for completing the LEP is to be made within 6 months from the week following the date of the Gateway determination.

9. Council is to be authorised to use its delegation of the Minister's plan making functions.

s117 Directions

10. The Director General can be satisfied that the inconsistencies of the planning proposal with Directions 1.2 Rural Zones, 1.5 Rural Lands, 3.4 Integrating Land Use and Transport and 5.1 Implementing Regional Strategies are justified by the Shoalhaven Growth Management Strategy which supports the planning proposal and is currently being considered for endorsement by the Director General.

11. The Director General can be satisfied that the planning proposal will be consistent with s117 Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments when the Council has consulted with the NSW Rural Fire Service and the Sydney Catchment Authority respectively.

12. The Director General notes that the planning proposal is not consistent with s117 Direction 6.3 Site Specific Provisions in that it seeks to cap development in relation to sewerage capacity. The amendment to clause 4.2B and the inclusion of a local clause are not supported. Clause 4.2B was developed to bring forward into Council's new Principal LEP a number of sites which had been zoned for specifically limited development through the Shoalhaven Rural Lands LEP. It is not considered appropriate to add to this list under the new LEP. Council should address these matters through the Lot Size Map and in its consideration of subsequent development applications for the land. The surrender of the existing consent should similarly dealt with when new development applications are considered.

13. The Director General can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance.

14. The creation of an agricultural lot without a dwelling is not supported. Council should consider either attaching this land to a lot with a dwelling or allowing a dwelling on that land.

Supporting Reasons :

While the planning proposal can be supported for public consultation, there are a number of concerns raised by the provisions Council proposes to use to achieve the outcomes.

1. It seeks to create 6 dwellings for seniors housing within an R5 Large Lot Residential Zone where it is prohibited and where SEPP Housing for Seniors or People with a Disability does not apply.
2. The planning proposal uses the term 'cluster housing' which is not defined. 'Multi dwelling housing' or 'seniors housing' should be used.
3. It seeks to use a local clause to cap development rather than the Lot Size Map.
4. It creates an agricultural lot without a dwelling.
5. It requires the surrender of a previous consent at the time consent is issued for this subdivision.

Signature:



Printed Name:

MARK PARKER
Local Planning Manager

Date:

21st March 2014