

Provide for the subdivision of split zoned lots - new clause in Shellharbour LEP 2013

Proposal Title : **Provide for the subdivision of split zoned lots - new clause in Shellharbour LEP 2013**

Proposal Summary : **Insert a new clause into the Shellharbour LEP 2013 to enable the consideration of the subdivision of land that contains at least two zones (known as split zoned land) beneath the minimum lot size.**

PP Number : **PP_2015_SHELL_003_00** Dop File No : **15/12317**

Proposal Details

Date Planning Proposal Received : **18-Aug-2015** LGA covered : **Shellharbour**

Region : **Southern** RPA : **Shellharbour City Council**

State Electorate : **SHELLHARBOUR** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **Affects the entire Local Government Area**

DoP Planning Officer Contact Details

Contact Name : **Louise Myler**

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RPA Contact Details

Contact Name : **Ian Rankine**

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DoP Project Manager Contact Details

Contact Name : **Graham Towers**

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Land Release Data

Growth Centre : Release Area Name :

Regional / Sub Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

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 :

External Supporting
Notes :

Council has identified instances where land primarily zoned for residential development that contains areas of environmentally or rural zoned land cannot be developed for residential development, or the environmental part of the land is orphaned with no residential custodian to ensure it's maintenance.

To address this situation it is proposed to insert a clause into the Shellharbour LEP 2013 to allow for the subdivision of lots that are located within more than one zone (Environmental/Rural and residential/business/industrial zone) but cannot be subdivided under clause 4.1 and Minimum Lot Size Map requirements. Council has proposed to use a clause similar to those supported by the Department in other Plans.

Adequacy Assessment

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

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

Comment : To include a clause into the Shellharbour LEP 2013 to enable the consideration of the subdivision of certain split zoned land that is currently prohibited due to the provisions of Clause 4.1 and the Lot Size Map requirements.

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

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

Comment : It is proposed to insert a new clause into the LEP as follows:

(1) The objectives of this clause are as follows:

(a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,

(b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.

(2) This clause applies to each lot (an original lot) that contains:

(a) land in a residential, business, industrial zone or in Zone E4 Environmental Living, and

(b) land in a rural zone or Zone E2 Environmental Conservation or Zone E3 Environmental

Management.

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:

(a) one of the resulting lots will contain:

(i) land in a residential, business, industrial zone or in Zone E4 Environmental Living that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and

(ii) all of the land in a rural zone, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

This clause is based on clauses included in other LEP's to address this situation.

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

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified?

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

SECTION 117 DIRECTIONS:

1.1 BUSINESS AND INDUSTRIAL ZONES: Council has not identified that this Direction applies to the planning proposal, however it does apply as it will affect land within an existing or proposed business or industrial zone.

The proposal is considered to be **CONSISTENT** with this direction.

1.2 RURAL ZONES: This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural zone.

The proposal is considered to be **CONSISTENT** with this direction.

1.5 RURAL LANDS: This Direction does apply to the planning proposal as it will affect land within an existing or proposed rural or environmental protection zone/proposes to change the existing minimum lot size on land within a rural or environmental protection zone.

The proposal is considered to be **CONSISTENT** with this direction. It will facilitate the better management of rural land by enabling a lot to be created that contains a dwelling and provides for an on-site custodian for the rural lands.

2.1 ENVIRONMENT PROTECTION ZONES: Council has not identified that this Direction applies to the planning proposal, however it does apply as it will affect land within an environment protection zone or land otherwise identified for environment protection purposes.

The proposal is considered to be **CONSISTENT** with this direction. It will facilitate the better management of environmental land by enabling a lot to be created that contains a dwelling and provides for an on-site custodian for the environmental lands.

2.2 COASTAL PROTECTION: Council has not identified that this Direction applies to the planning proposal, however it does apply as some of the subject land is within the coastal zone.

The proposal is considered to be **CONSISTENT** with this direction.

3.1 RESIDENTIAL ZONES: Council has not identified that this Direction applies to the planning proposal, however it does apply as it will affect land within an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted.

The proposal is considered to be **CONSISTENT** with this direction.

4.4 PLANNING FOR BUSHFIRE PROTECTION: Council has not identified that this Direction applies to the planning proposal, however it does apply as it will affect land mapped as bushfire prone land.

RECOMMENDATION: The Secretary will need to be satisfied that the requirements of the Direction have been met. A condition should be included in the Gateway determination that consultation should be undertaken with the Rural Fire Service in accordance with the Direction.

5.1 IMPLEMENTATION OF REGIONAL STRATEGIES: This Direction does apply to the planning proposal as the Illawarra Regional Strategy applies to the land. The proposal is considered to be **CONSISTENT** with this direction.

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

If No, explain : **There are no inconsistencies.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **It is proposed to introduce a clause only.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council acknowledges that community consultation is required for this amendment in accordance with the Gateway determination.**

It is considered that this is a policy change to the LEP and as such, it is appropriate that minor consultation (of 14 days) should be undertaken.

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 :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Shellharbour LEP 2013 is in place.**

Assessment Criteria

Need for planning proposal : **Council has identified that since notification of the Shellharbour LEP 2013, a number of lots have experienced unintended consequences of having their land zoned with more than one zone. As such, there are instances where land primarily zoned for residential development with a small area of environmentally or rural zoned land cannot be developed for residential development, or the environmental part of the land is orphaned with no residential custodian to ensure its maintenance.**

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Consistency with strategic planning framework :

The proposal is not inconsistent with the strategic planning framework.

Environmental social economic impacts :

The environmental impacts of the proposal would largely be beneficial as it provides for the most appropriate subdivision of currently zoned land and enables ownership arrangements for the ongoing management and protection of environmentally zoned land adjoining residential areas.

The proposal will have positive environmental benefits by facilitating residential development.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

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

Public Authority Consultation - 56(2) (d) :

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

No studies are required.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Shellharbour City Council_12-08-2015_Shellharbour Planning Proposal - letter.pdf	Proposal Covering Letter	Yes
Shellharbour Planning Proposal Attach 1 4 August council report and minutes.pdf	Proposal	Yes
Shellharbour Planning Proposal Attach 2 Summary of Planning Issues.pdf	Proposal	Yes
The Planning Proposal v2.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

Additional Information : **It is RECOMMENDED that the General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Shellharbour LEP 2013 to insert a clause to permit the subdivision of land subject to multiple zones should proceed subject to the following conditions:**

1. 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 14 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Planning and Infrastructure, 2013)'.**

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

*** NSW Rural Fire Service (In accordance with s117 Direction 4.4, consultation must occur prior to community consultation of the proposal)**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

3. 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).

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

5. Council be authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

6. SECTION 117 DIRECTIONS - It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 3.1 Residential Zones, 5.1 Implementation of Regional Strategies.

(b) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection, when Council has consulted with the Rural Fire Service prior to undertaking community consultation;

(d) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance; and

(e) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

7. The planning proposal is considered to be consistent with all relevant SEPPs.

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Supporting Reasons : This is considered a minor proposal aimed at facilitating better development outcomes. However, it is still a policy change that requires some community consultation and consultation with the Rural Fire Service. A short time frame has been recommended. It is appropriate for delegations to be authorised to be used in this instance.

Signature:



Printed Name:

Graham Towers

Date:

19/8/15

ENDORSED



21/8/15

Brett Whitworth
General Manager
SOUTHERN REGION