



Planning Proposal - Shoalhaven LEP 2014 - Housekeeping Amendment - Stage 3A

Proposal Title : Planning Proposal - Shoalhaven LEP 2014 - Housekeeping Amendment - Stage 3A

Proposal Summary : The purpose of the planning proposal is to amend Shoalhaven LEP 2014 to clarify when strata and community title subdivision must comply with the minimum lot size map and to clarify that dual occupancies (attached) are permitted in certain zones and are subject to the same provisions as dwelling houses.

PP Number : PP_2015_SHOAL_005_00

Dop File No : 15/11850

Proposal Details

Date Planning
Proposal Received : 26-Aug-2015

LGA covered : Shoalhaven

Region : Southern

RPA : Shoalhaven City Council

State Electorate : KIAMA
SOUTH COAST

Section of the Act : 55 - Planning Proposal

LEP Type : Housekeeping

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : Shoalhaven local government area - wide

DoP Planning Officer Contact Details

Contact Name : George Curtis

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RPA 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 : South Coast Regional
Strategy

Consistent with Strategy : Yes

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes :

The planning proposal was partly prepared by Council in response to a development application for a community title subdivision of vacant land below the minimum lot size.

Council sought legal advice on the operation of Clause 4.1 which concluded that it could be interpreted that applications for Community or Strata title subdivision of vacant land do not have to comply with the minimum lot size. Legal Services Branch has acknowledged that the wording of the clause is somewhat unclear and that it may be possible to interpret the provision in a number of ways.

Council also sought legal advice on the operation of subclause 4 of Clause 4.1 "Minimum subdivision lot size" of the Shoalhaven LEP 2014 which concluded that:

1) The subdivision of individual lots in a strata plan or community title scheme (i.e. lots that have already been created) do not have to comply with the relevant minimum lot size, but
2) The creation of initial strata plan or community title schemes (i.e. new strata or community lots) do have to comply with the relevant minimum lot size. This means that a permissible medium density development, such as a residential flat building, in an area with a minimum lot size (e.g. R1 Zone with a 500 sq.m minimum lot size) may be unable to be strata or community title subdivided given the need to comply with that minimum lot size.

The planning proposal seeks to clarify when strata and community title subdivision must comply with the minimum lot size map and when it does not.

The remainder of the planning proposal relates to Clause 4.2D "Erection of dwelling houses on land in certain rural, residential and environmental protection zones" in the Shoalhaven LEP 2014. Council has identified that the clause does not specifically refer to dual occupancies (attached) and considers that it is unclear whether this use is covered by the clause. The planning proposal seeks to clarify that dual occupancies (attached) in certain zones are subject to the same provisions as dwelling houses.

External Supporting Notes :

The proposal aims to clarify when strata and community title subdivision must comply with the minimum lot size map and that dual occupancies (attached) in certain zones are subject to the same provisions as dwelling houses.

Adequacy Assessment

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

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

Comment : The planning proposal indicates that the intended outcomes are to amend the Shoalhaven LEP to clarify that:

- the creation of strata title lots is subject to the minimum lot sizes on the Minimum Lot Size Map except for the subdivision of an existing or approved use;
- the creation of community title lots is subject to the minimum lot sizes on the Minimum Lot Size Map except for the subdivision of an existing or approved use;
- the creation of vacant strata and community title lots is not permitted; and
- dual occupancies (attached) are subject to the same provisions as dwelling houses in certain zones under Clause 4.2D 'Erection of dwelling houses on land in certain rural, residential and environmental protection zones' of the LEP.

It is considered that the statement of the outcomes and objectives of the planning proposal is adequate.

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

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

Comment : The planning proposal indicates that the outcomes would be achieved by amending the Shoalhaven LEP via:

- amending Clause 4.1 'Minimum subdivision lot size' by inserting an additional clause 4A to clarify that the clause does not apply in relation to subdivision to create lots in strata plan or community title schemes for an existing or approved use.

- Amending Clause 4.2D 'Erection of dwelling houses on land in certain rural, residential and environmental protection zones' by replacing each reference to 'dwelling house' with "dwelling house and dual occupancy (attached)".

The Department's legal services has advised that there is some uncertainty in the interpretation of subclause 4.1(4) of the Standard LEP Instrument as it is unclear whether the clause is intended to apply both to the subdivision of existing lots and to the subdivision of new lots in a strata plan or community title scheme. Council has proposed the addition of a clause 4.1 (4A) to clarify that the lot size maps do not apply to the subdivision of an existing strata plan or community title scheme for an existing or approved use. Legal Services has indicated that it is supportive of Council proposing to clarify this matter via a planning proposal. Parliamentary Counsel would need to agree to the exact wording of any amendment.

Councils such as Bega Valley Shire have inserted a specific clause (4.1AA "Minimum subdivision lot size for community title schemes") in the Bega Valley LEP 2013 to provide specific minimum lot size controls for subdivision under community title schemes in order to prevent subdivision below the minimum lot size. There would be merit inserting a similar provision in the Shoalhaven LEP 2014 to address the intended outcomes proposed by Council. Shoalhaven City Council has advised that they would be supportive of this option which could be required via a Gateway condition.

The proposed amendment to clause 4.2D is consistent with the approach taken in the Byron LEP 2014 (Clause 4.2A). Attached dual occupancies are permitted in all zones listed by Council (except the E2 zone in which dwellings are permitted) and the amendment will help to clarify that they may be erected in the same circumstances as dwellings.

With the exception of the proposed additional provision in relation to minimum subdivision lot size for community title schemes, it is considered that the explanation of the provisions provided in the planning proposal is adequate.

Recommendation: That an additional provision is included in the explanation of provisions to insert a clause to provide controls for the subdivision of community title schemes

similar to clause 4.1AA of the Bega Valley LEP 2013.

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

1.1 Business and Industrial Zones

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

3.1 Residential Zones

5.1 Implementation of Regional Strategies

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

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

d) Which SEPPs have the RPA identified?

SEPP No 1—Development Standards

SEPP No 21—Caravan Parks

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 33—Hazardous and Offensive Development

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 70—Affordable Housing (Revised Schemes)

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

SEPP (Rural Lands) 2008

Drinking Water Catchments Regional Environmental Plan No. 1

SEPP (Affordable Rental Housing) 2009

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

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

If No, explain :

Local strategy:

The planning proposal states that while the proposed amendments are not the result of a strategic study or report, they are consistent with Council's policy position and will help achieve the intended and expected outcome of the Shoalhaven LEP.

Section 117 Directions:

1.1 BUSINESS AND INDUSTRIAL ZONES: Although Identified in the planning proposal as relevant, it is considered that the Direction does not apply because it does not affect land within an existing or proposed business or industrial zone.

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

Although not identified in the planning proposal, the proposal is considered to be **INCONSISTENT** with this Direction as it contains provisions that may increase the permissible density of land within a rural zone (other than an existing town or village). This is because the proposed amendments to clause 4.1 Minimum subdivision lot size could allow subdivision to create lots in a strata plan or community title scheme only for existing or approved uses in rural zones such as tourist and visitor accommodation developments.

Although the proposed provision could increase the number of lots, it will not increase the number of dwellings or other development as these must be existing or approved. It is therefore considered that any inconsistency with the Direction is likely to be of minor

significance.

The proposed amendment to clause 4.2D 'Erection of dwelling houses on land in certain rural, residential and environmental protection zones' to include dual occupancy (attached) could also increase the permissible density of land within rural zones in the LGA. It is considered that any increase in density would be minor as it applies only to the replacement of lawfully erected dual occupancy (attached) dwellings.

RECOMMENDATION: The Secretary can be satisfied that the inconsistency is of minor significance.

Direction 1.5 RURAL LANDS: This Direction applies to the planning proposal as it will affect land within an existing or proposed rural or environmental protection zone.

The proposal is considered to be **CONSISTENT** with this Direction because it is considered consistent with the Rural Planning Principles listed in SEPP (Rural Lands) 2008.

RECOMMENDATION: The Secretary can be satisfied that the planning proposal is consistent with the Direction or any inconsistency is of minor significance.

2.1 ENVIRONMENT PROTECTION ZONES: This Direction applies to the planning proposal 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 as it is unlikely to reduce the environmental protection standards that apply to the land.

RECOMMENDATION: The Secretary can be satisfied that the planning proposal is consistent with the Direction or any inconsistency is of minor significance.

Direction 3.1 RESIDENTIAL ZONES: This Direction applies to the planning proposal 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.

RECOMMENDATION: The Secretary can be satisfied that the planning proposal is consistent with the Direction

Direction 5.1 IMPLEMENTATION OF REGIONAL STRATEGIES: This Direction applies to the planning proposal as the South Coast Regional Strategy applies to the land.

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

RECOMMENDATION: The Secretary can be satisfied that the planning proposal is consistent with the Direction

State Environmental Planning Policies: It is not considered that the planning proposal is inconsistent with any of the SEPPs identified by Council.

Mapping Provided - s55(2)(d)

Is mapping provided? No

Comment : The planning proposal does not require any mapping as it seeks to amend LEP clauses only.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : The planning proposal indicates that community consultation will be undertaken in

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accordance with the Gateway determination. It is considered that a 14 day public exhibition period would be appropriate given that it is a minor housekeeping matter aimed at clarification.

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 Planning proposal addresses each of the six parts of a planning proposal as required in the Department's guide to preparing planning proposals.

Proposal Assessment

Principal LEP:

Due Date : April 2014

Comments in relation to Principal LEP :

The planning proposal is one of four housekeeping planning proposals currently being prepared by Shoalhaven City Council to make minor administrative corrections and changes to the Shoalhaven LEP 2014, namely:

Housekeeping Amendment - Stage 1: seeks to insert 'shop top housing' as a permissible use in the B3 Commercial Core Zone and also to insert a provision to enable the subdivision of split zoned land. Gateway determination provided on 9 January 2015.

Housekeeping amendment - Stage 2: seeks to correct a number of errors in the heritage mapping overlay; Schedule 5 Environment Heritage, and in land use tables. Gateway determination provided on 16 June 2015.

Housekeeping amendment (PP010) Council Land Reclassification: seeks to extinguish Council's interest in land at Shoalhaven Heads, Coolangatta, St Georges Basin and part of land at Vincentia. The subject land was incorrectly classified during the finalisation of the Shoalhaven LEP 2014. Council has lodged the planning proposal for Gateway determination in 17 August 2015.

Assessment Criteria

Need for planning proposal :

The planning proposal is needed to facilitate the amendment of the Shoalhaven LEP 2014 to clarify the issues raised in the planning proposal. The Department's Legal Services has advised that there is some uncertainty concerning the interpretation of clause 4.1 of the Standard Instrument in relation to strata and community title subdivision and that there would be merit in clarifying this matter via a planning proposal. From a policy perspective the changes are supported as they reflect the Department's intent and are aimed at preventing misinterpretation.

Consistency with strategic planning framework :

The planning proposal is consistent with the intent of the Shoalhaven LEP 2014 and Standard Instrument (Local Environmental Plans) Order 2006 and Shoalhaven City Council policy. The planning proposal is not inconsistent with relevant SEPPs, Section 117 Directions and the South Coast Regional Strategy.

Environmental social economic impacts :

The planning proposal states that the proposed amendments are unlikely to impact on any critical habitat or threatened species, populations or ecological communities, or their habitats as the changes relate to strata and community title subdivision and dual occupancies.

It is considered that the proposal is likely to have positive social and economic benefits as a result of the clarification of when strata and community title subdivision must comply

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with the minimum lot size map and that dual occupancies (attached) in certain zones are subject to the same provisions as dwelling houses.

Assessment Process

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

Timeframe to make LEP : **12 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
Cover letter_ Housekeeping Amendment - Stage 3A .pdf	Proposal Covering Letter	Yes
PLANNING PROPOSAL_Stage 3a Housekeeping Amendment.pdf	Proposal	Yes
BV LEP Clause 4.1AA.pdf	Determination Document	Yes

Planning Team Recommendation

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

S.117 directions: **1.1 Business and Industrial Zones
1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones
3.1 Residential Zones
5.1 Implementation of Regional Strategies**

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 Shoalhaven LEP 2014 to clarify when strata and community title subdivision must comply with the**

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minimum lot size map and that dual occupancies (attached) in certain zones are subject to the same provisions as dwelling houses should proceed subject to the following:

1. Council is to revise the explanation of the provisions in the planning proposal prior to community consultation to include an additional provision to provide minimum lot size controls for the subdivision of community title schemes similar to the approach taken in the Bega Valley LEP 2013 - clause 4.1AA. This condition is included to address the intended outcomes of the proposal.

2. 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)'.

3. Consultation is not required with any public authorities under section 56(2)(d) of the EP&A Act.

4. 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).

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

6. 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.

7. SECTION 117 DIRECTIONS - It is recommended that:

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

(b) The Secretary's delegate can be satisfied that any inconsistency of the planning proposal with Direction 1.2 Rural Zones is of a minor significance.

(c) 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

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

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

Supporting Reasons :

The planning proposal seeks to clarify a number of provisions in the plan.

Signature:



Printed Name:

MATTHEW JONES

Date:

19/10/15