

Draft Planning Proposal (PP015)

Shoalhaven Local Environmental Plan 2014 Housekeeping Amendment – Stage 3A

- Strata and Community Title Subdivision**
- Dual Occupancies (attached) – Rural & Environmental Protection Zones**

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1 Introduction

This Planning Proposal (PP) seeks to amend Shoalhaven Local Environmental Plan (LEP) 2014 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.

1.1 Subject Land

The PP applies to the whole of the Shoalhaven local government area.

1.2 Background

The Shoalhaven LEP 2014 was notified by the State Government on 8 April 2014 and legally commenced on 22 April 2014. The LEP consolidated previous planning controls into the one local environmental plan and also transitioned existing controls into the NSW Government's Standard Instrument Local Environmental Plan format.

As part of the completion and also since the Shoalhaven LEP 2014 has been in force, Council has identified a number of housekeeping amendments needed to improve the operation and accuracy of the plan. Council continuously reviews the Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary and delivers positive outcomes for the community.

Council has a staged approach to making these changes, however, issues have been identified that are of a pressing nature that need to be addressed in this separate PP in order to expedite the process. These issues are outlined below.

Strata and community title subdivision

As the result of a development application for a community title subdivision, Council sought legal advice on the operation of subclause 4 of *Clause 4.1 Minimum subdivision lot size* in the LEP. The legal advice concluded that the effect of Clause 4.1(4) is that 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 that the creation of 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 medium density development, such as a residential flat building, in an area with a minimum lot size (e.g. R1 zone with a 500m² minimum lot size) would be unlikely to be able to be strata or community title subdivided given the need to comply with that minimum lot size.

Dual occupancies (attached) - rural and environmental protection zones

The intent of *Clause 4.2D Erection of dwelling houses on land in certain rural, residential and environment protection zones* in the LEP is to set out when development consent may be granted for a dwelling house on land in certain zones. The clause does not, however, specifically reference 'dual occupancies (attached)' so it is not clear whether they are covered by this clause. Without the inclusion of 'dual occupancies (attached)' in the provision, there is a possibility that it could be argued that dual occupancies (attached) are not subject to the same requirements as dwelling houses as they are not explicitly referenced. Byron Local Environmental Plan 2014 Clause 4.2A sets the precedent for the proposed wording change.

2 Part 1 –Intended Outcome

The intended outcome of this PP is 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 non-urban zones (i.e. rural and environmental protection zones) under *Clause 4.2D Erection of dwelling houses on land in certain rural, residential and environment protection zones* of the LEP.

3 Part 2 – Explanation of Provisions

The proposed outcome will be achieved by amending the Instrument as per the table below.

Table 1: Proposed Amendments

No.	Clause	Proposed amendment
1.	Clause 4.1 Minimum subdivision lot size	Add an additional subclause 4A to clarify that subdivision to create new strata plan or community scheme lots must comply with the minimum lot size except for the subdivision of an existing or approved use. Suggested wording: <i>4.1 Minimum subdivision lot size</i> <i>(1) The objectives of this clause are as follows:</i>

No.	Clause	Proposed amendment
		<i>(a) to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,</i> <i>(b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,</i> <i>(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,</i> <i>(d) to ensure vacant strata and community title lots are not created.</i> <i>(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.</i> <i>(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</i> <i>(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.</i> <i>(4A). This clause does not apply in relation to subdivision to create lots in a strata plan or community title scheme for an existing or approved use.</i>
2.	4.2D Erection of dwelling houses on land in certain rural, residential and environment protection zones	<i>Amend Clause 4.2D by replacing each reference to ‘dwelling house’ with “dwelling house and dual occupancy (attached)”.</i> <i>Suggested wording:</i> <i>4.2D Erection of dwelling houses and dual occupancy (attached) on land in certain rural, residential and environment protection zones</i> <i>(1) The objectives of this clause are as follows:</i>

No.	Clause	Proposed amendment
		(a) <i>minimise unplanned rural residential development,</i> (b) <i>to enable the replacement of lawfully erected dwelling houses and dual occupancy (attached) in certain rural, residential and environment protection zones,</i> (c) <i>to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.</i> (2) <i>This clause applies to land in the following zones:</i> (a) <i>Zone RU1 Primary Production,</i> (b) <i>Zone RU2 Rural Landscape,</i> (c) <i>Zone RU4 Primary Production Small Lots,</i> (d) <i>Zone R5 Large Lot Residential,</i> (e) <i>Zone E2 Environmental Conservation,</i> (f) <i>Zone E3 Environmental Management,</i> (g) <i>Zone E4 Environmental Living.</i> (3) <i>Development consent must not be granted for the erection of a dwelling house or dual occupancy (attached) on land to which this clause applies unless the land:</i> (a) <i>is a lot that has at least the minimum lot size shown on the Lot Size Map in relation to that land, or</i> (b) <i>is a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) was permissible immediately before that commencement, or</i> (c) <i>is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) would have been permissible if the plan of subdivision had been registered before that commencement, or</i> (d) <i>would have been a lot or a holding referred to in paragraph (a), (b) or (c) had it not been affected by:</i> (i) <i>a minor realignment of its boundaries that did not create an additional lot, or</i>

No.	Clause	Proposed amendment
		<i>(ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or</i> <i>(iii) a consolidation with an adjoining public road or public reserve or for another public purpose.</i> <i>Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.</i> <i>(4) Development consent must not be granted under subclause (3) unless:</i> <i>(a) no dwelling house or dual occupancy (attached) has been erected on the land, and</i> <i>(b) if a development application has been made for development for the purpose of a dwelling house or dual occupancy (attached) on the land—the application has been refused or it was withdrawn before it was determined, and</i> <i>(c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.</i> <i>(5) Development consent may be granted for the erection of a dwelling house or dual occupancy (attached) on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy (attached) on the land and the dwelling house or dual occupancy (attached) to be erected is intended only to replace the existing dwelling house or dual occupancy (attached).</i> <i>(6) In considering whether to grant consent for the erection of a dwelling house or dual occupancy (attached) in accordance with this clause on land to which clause 7.3 applies, the consent authority must:</i> <i>(a) consider whether the land is predominantly prime crop and pasture land, and</i> <i>(b) be satisfied that the dwelling house or dual occupancy (attached) is essential for the proper and efficient use of the land for agriculture (including turf farming).</i> <i>(7) In this clause:</i>

No.	Clause	Proposed amendment
		<i>holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.</i>

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?

The PP has arisen from the notification of Shoalhaven LEP 2014 which replaced Shoalhaven LEP 1985. The proposed amendments included in this PP have been identified as housekeeping issues that need to be addressed to ensure that Shoalhaven LEP 2014 operates as originally intended.

Thus, while these 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 outcomes of Shoalhaven LEP 2014.

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

A PP is the only means of amending Shoalhaven LEP 2014 to clarify the issues raised in this PP. There is no other way to achieve the required outcomes.

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)?

The PP is consistent with the objectives and actions of the South Coast Regional Strategy and the Draft Illawarra Regional Growth and Infrastructure Plan (the Draft IRGIP). Both of these plans apply to the Shoalhaven Local Government Area (LGA) and aim to grow the economy, provide affordable housing, secure agricultural land, build infrastructure and protect natural and cultural environments.

The proposed amendments will better align Shoalhaven LEP 2014 with the aims of these plans and cater for future development more effectively by way of improving

the efficiency and operational integrity of the instrument which will enable for more streamlined processes.

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

The Proposal is consistent with Council's Community Strategy Plan, Shoalhaven 2020, and the relevant objective, strategy and action is listed below:

Objective 2.4	Population and urban settlement growth that is ecologically sustainable and carefully planned and managed
Strategy 2.4.2	Develop land use and related plans for the sustainable growth of the City which use the core principles of the Growth Management Strategy and ESD principles, also carefully considering community concerns and the character of unique historic townships.
Action 2.4.2.3	Implement appropriate land use zones and planning controls that reflect endorsed strategic plans and strategies

5.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

Yes. The PP is consistent with the applicable State Environmental Planning Policies (SEPP's). Please see Attachment "B" – Checklist of State Environmental Planning Policies.

5.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

Yes. The PP is consistent with the applicable Ministerial Directions as shown in Attachment "C" – Checklist of Ministerial Directions.

5.3 Environmental, Social and Economic Impact (Section C)

5.3.1 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?

No, 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.

5.3.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No, the proposed amendments are unlikely to have any other environmental effects as the changes relate to strata and community title subdivision and dual occupancies.

5.3.3 How has the Planning Proposal adequately addressed any social and economic effects?

The PP is likely to have positive social and economic benefits as it will ensure that strata plan and community scheme subdivisions can occur as intended, which in turn increases housing diversity and development opportunities.

5.4 State and Commonwealth Interests (Section D)

5.4.1 Is there adequate public infrastructure for the Planning Proposal?

The PP does not create additional need for infrastructure.

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

As Gateway determination has not yet be granted, Council has not consulted with any State or Commonwealth public authorities. Given the minor housekeeping nature of the PP, it is unlikely that consultation with state or Commonwealth public authorities will be necessary.

6 Part 4 – Mapping

No mapping is required as the proposed amendments relate to the Instrument only.

7 Part 5 - Community Consultation

Community consultation will be undertaken in accordance with the Gateway Determination.

8 Part 6 – Project Timeline

The following milestone timeframes are anticipated; they will be revised if any significant delays are encountered.

Table 2 - Planning Proposal Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	August 2015
Completion of Gateway determination requirements	September 2015
Public exhibition	September 2015
Consideration of submissions	October 2015
Post exhibition consideration of Planning Proposal	November 2015
Finalisation and notification of Plan	December 2015

Attachment A – Council Resolution

Attachment B – Checklist of State Environmental Planning PoliciesDraft LEP Checklist – State Environmental Planning Policies – Stage 2 -
Housekeeping Amendment (Check)

SEPP	Date	Name	Applicable	Not inconsistent
1	17.05.02	Development Standards	✓	✓
14	12.12.85	Coastal wetlands	✗	n/a
15	14.01.11	Rural Land sharing Communities	✗	n/a
19	22.02.14	Bushland in Urban Areas	✗	n/a
21	24.04.92	Caravan parks	✓	✓
26	05.02.88	Littoral rainforests	✗	n/a
30	08.12.89	Intensive agriculture	✗	n/a
32	15.11.91	Urban consolidation (Redevelopment of urban land)	✓	✓
33	13.03.92	Hazardous and Offensive development	✓	✓
36	16.07.93	Manufactured home estates	✗	n/a
44	06.01.95	Koala habitat protection	✓	✓
50	10.11.97	Canal estate development	✗	n/a
52	22.02.14	Farm Dams and Other Works in Land and Water Management Plan Areas	✗	n/a
55	28.08.98	Remediation of land	✓	✓
62	25.09.00	Sustainable aquaculture	✗	n/a
64	16.03.01	Advertising and signage	✗	n/a
65	26.07.02	Design quality of residential flat development	✗	n/a
70	31.07.09	Affordable Housing (Revised Provisions)	✓	✓
71	01.11.02	Coastal protection	✗	n/a
--	31.03.04	Housing for Seniors or People with a Disability 2004	✓	✓
--	25.06.04	BASIX : 2004	✓	✓
--	01.08.05	Major Development 2005	✗	n/a
--	16.02.07	<u>Mining, Petroleum Production and Extractive Industries 2007</u>	✗	n/a
--	26.10.07	Miscellaneous Consent Provisions 2007	✓	✓
--	01.01.08	Infrastructure 2007	✓	✓
--	09.05.08	Rural Lands 2008	✓	✓
--	12.12.08	Exempt and Complying Development Codes 2008	✓	✓
--	31.07.09	Affordable Rental Housing 2009	✓	✓
--	15.12.10	Urban Renewal 2010	✗	n/a
--	21.01.11	Sydney Drinking Water Catchment 2011	✓	✓

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--	28.09.11	State and Regional Development 2011	✓	✓
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Attachment C – Checklist of Ministerial Directions**Draft LEP Checklist – Section 117(2) Directions – Stage 2 - Housekeeping Amendment**

Direction		Applicable	Relevant	Not inconsistent
1 Employment and Resources				
1.1	Business and Industrial Zones	✓	✓	✓
1.2	Rural Zones	✓	✓	✓
1.3	Mining, Petroleum Production and Extractive Industries	✓	✗	n/a
1.4	Oyster Aquaculture	✓	✗	n/a
1.5	Rural lands	✓	✓	✓
2 Environment and Heritage				
2.1	Environmental Protection Zones	✓	✓	✓
2.2	Coastal Protection	✓	✗	n/a
2.3	Heritage Conservation	✓	✗	n/a
2.4	Recreation Vehicle Area	✓	✗	n/a
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	✓
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.3	Home Occupations	✓	✗	n/a
3.4	Integrating Land Use and Transport	✓	✗	n/a
3.5	Development Near Licensed Aerodromes	✗	n/a	n/a
3.6	Shooting Ranges	✗	n/a	n/a
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✓	✗	n/a
4.2	Mine Subsidence and Unstable Land	✗	n/a	n/a
4.3	Flood Prone Land	✓	✗	n/a
4.4	Planning for Bushfire Protection	✓	✗	n/a
5 Regional Planning				
5.1	Implementation of Regional Strategies	✓	✓	✓
5.2	Sydney Drinking Water Catchments	✓	✗	n/a
5.3	Farmland of State & Regional Significance Far North Coast	✗	n/a	n/a
5.4	Commercial & Retail Development Far North Coast	✗	n/a	n/a
5.8	2 nd Sydney Airport: Badgerys Creek	✗	n/a	n/a
5.9	North West Rail Link Corridor Strategy	✗	n/a	n/a
6 Local Plan Making				
6.1	Approval and Referral Requirements	✓	✗	n/a
6.2	Reserving Land for Public Purposes	✓	✗	n/a
6.3	Site Specific Provisions	✗	n/a	n/a