

# PLANNING PROPOSAL - PP012

## Shoalhaven Local Environmental Plan 2014 Review of Flood Controls

Prepared by  
Planning, Environment & Development Group  
Shoalhaven City Council

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## Introduction

This Planning Proposal Shoalhaven Local Environmental Plan (LEP) 2014 – Review of Flood Controls (PP012) explains the intent of, and justification for, an amendment to Shoalhaven LEP 2014.

The purpose of this planning proposal is to amend the current flood related development controls in Shoalhaven Local Environmental Plan (LEP) 2014 to:

- Remove the Flood Planning Area mapping from the LEP to ensure that the most accurate and up to date flood mapping is relied upon from Council’s adopted Flood Risk Management Studies and Plans (FRMSP).
- Update Clause 7.3 in Shoalhaven LEP 2014 to ensure consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
- Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

## Subject Land

The amendment applies to the Shoalhaven City Council Local Government Area – see Figure 1 below:

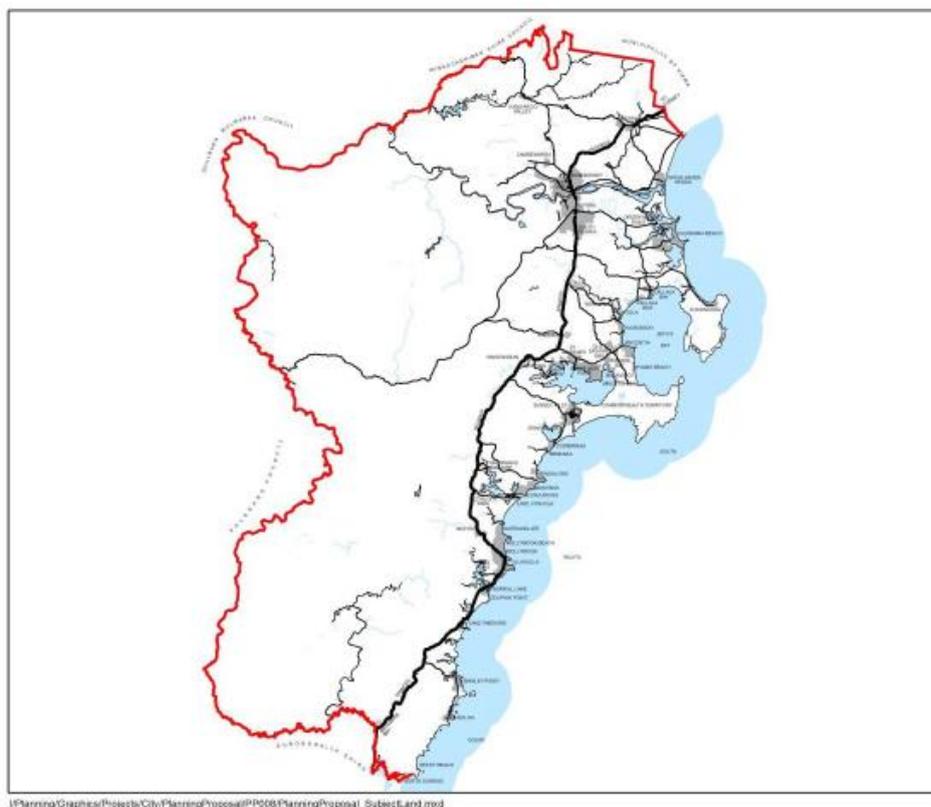


Figure 1: Subject land

## Background

Shoalhaven LEP 2014 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 LEP format.

As part of its completion, and also since 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 Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary, and delivers positive outcomes for the community.

On 3 June 2014, the Development Committee resolved (under delegation) to commence the process to make necessary housekeeping amendments to Shoalhaven LEP 2014 and report these for consideration as required.

The housekeeping amendments are now complete except for Stage 4 (PP012). The original intent of the Stage 4 Housekeeping PP (now known as PP012 – Review of Flood Controls) was to:

- Update the LEP Flood Planning Area Map with any new flood data that has been prepared and finalised since the commencement of Shoalhaven LEP 2014 on 22 April 2014;
- Add those areas of former Rural 1(g) land that are outside the scope of existing flood studies to the Flood Planning Area Map; and
- Include a provision to regulate the construction of stock mounds in flood prone areas.

During the background research for this planning proposal and following discussions with NSW Office of Environment and Heritage (OEH) and a number of Councils with flood controls, it became apparent that a number of Councils do not have a Flood Prone Land layer (Flood Planning Area Map) in their LEP's and rely solely on the application of LEP Clause 7.3, that relates to land that is defined as below the 'flood planning level'. This approach appears to be a sensible option for Council to follow considering the number of flood affected areas identified in Councils FRMSP which are updated and amended on a regular basis. However the Flood Planning Area maps in Shoalhaven LEP 2014 can only be amended through a planning proposal and the process for a simple planning proposal can take 6-12 months before an LEP amendment is made. As such there is a time lag and this creates a range of issues.

### Updated Flood Mapping

When Shoalhaven LEP 2014 was prepared, the most up to date flood data available was used to create the Flood Planning Area Map that forms part of the plan. Since then, new data has become available as additional flood studies and/or risk management plans have been completed and adopted by Council for the following catchments:

- Kangaroo River
- Broughton Creek
- Bomaderry Creek
- Shoalhaven River
- Nowra Creek
- Browns Creek
- Lake Wollumboola
- Currambene Creek

- Moona Moona Creek
- St Georges Basin
- Lake Conjola
- Burrill Lake
- Lake Tabourie

Further, Council resolved on 12 April 2016 that the Flood Planning Area Map in the Shoalhaven LEP 2014 be updated to include flood extents from the Lake Tabourie, Kangaroo River, Nowra and Browns Creeks, Bomaderry Creek and the Currumbene and Moona Moona Creeks Floodplain Risk Management Studies and Plans (FRMSP). Council also resolved on the 19 July 2016, to update the map in Shoalhaven LEP 2014, also to include the flood extents from the revised Broughton Creek catchment flood information and mapping.

The data for the Lake Tabourie, Nowra and Browns Creeks, Bomaderry Creek and the Currumbene and Moona Moona Creek's catchments also includes Council's resolved sea level rise benchmark of 0.36 metres (2100 sea level rise projection).

Council's adopted FRMSP's are available on Council's website, however most of the mapping is located within the documents and can be difficult for the public to locate and interpret. As part of this review, it is recommended that the data from the adopted FRMSP's be displayed on Council's interactive mapping system enabling the public to easily search and locate a property. This will also mean that the online map can be updated without delay as it sits outside the formal LEP, but is linked to it.

#### Proposed Changes - Clause 7.3 Flood Planning

Clause 7.3 Flood Planning in the Shoalhaven LEP 2014 is a 'model clause' provided by the NSW Department of Planning & Environment (DP&E) that has been slightly adapted to meet the local situation in Shoalhaven.

The clause applies to:

- 2) *(a) land that is shown as "Flood planning area" on the Flood Planning Map, and  
(b) other land at or below the flood planning level.*

DP&E's [Clause 7.3 model clause and drafting instructions](#), indicate that the wording of Clause 2 is aimed at identifying areas that are mapped as the 'flood planning area' but also applies to other areas where accurate mapping is not possible. Consequently, the wording captures land that can be accurately mapped and also land that cannot. Unmapped land includes the "flood planning area" (as defined in the *NSW Floodplain Development Manual*) up to the "flood planning level". Council's Section 149 (2) Planning Certificates currently identify properties that are mapped on the Flood Planning Area map, also areas that are not mapped in Shoalhaven LEP 2014 but that meet the definition of subclause Clause 7.3 2(b), being land at or below the 'flood planning level' in Council's adopted FRMSP's. By removing the Flood Planning Area map from the Shoalhaven LEP 2014 there is no real change to the application of Clause 7.3, it will however result in an improvement for the public accessing accurate and up to date information.

Clause 7.3 (4) in Shoalhaven LEP 2014 states that words or meanings used in this clause have the same meaning as in the *NSW Floodplain Development* (April 2005), unless otherwise defined in the clause. Clause 7.3 (5) goes on to provide the following single definition:

*‘Flood planning level’ means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

At the time of preparing the Shoalhaven LEP 2014, the definition of ‘flood planning level’ was one (1) definition out of four (4) possible definitions that could be used from model Clause 7.3 (see link above). To provide consistency with the *NSW Flood Plain Development Manual*, it is recommended that the planning proposal include a request to remove subclause 7.3(5) so that the definition of ‘flood planning level’ in the *NSW Floodplain Development Manual* can instead be relied. This will enable a broader approach that includes flood levels derived from significant historical flood events. The definition in the Manual is provided below:

‘Flood planning levels’ (FPLs) are the combinations of flood levels (derived from significant historical flood events or flood of specific AEPs) and freeboards selected from floodplain risk management purposes, as determined in management studies and incorporated in management plans. FPLs supersede the “standard flood event” in the 1886 manual

#### Standard Instrument LEP issues

Through the introduction of the Standard Instrument LEP and the transfer of zones from Shoalhaven LEP 1985 to Shoalhaven LEP 2014, a number of zones that provided additional restrictions for development on flood prone land were unable to be carried over and were lost. Zones including Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) were not able to be carried over. In the areas where these zones applied, a similar zone has been applied and the land has as appropriate also been identified on the Flood Planning Area – Other map in Shoalhaven LEP 2014.

#### Inclusion of zone Rural 1(g) (Flood Liable) land

The Rural 1 (g) (Flood Liable) zone under Shoalhaven LEP 1985 previously applied to land that had been identified as flood prone land. In the transfer to Shoalhaven LEP 2014, Rural 1(g) land was zoned RU1 Primary Production or RU2 Rural Landscape and also shown on the Flood Planning Area - Other Map as there was no equivalent zone in the Standard Instrument LEP. In areas where a contemporary flood study had been undertaken, it was assumed that this data would supersede the data underpinning the Rural 1(g) zone and that any properties zoned Rural 1(g) that were not identified in the flood study for that catchment were assumed to not be flood prone and therefore were not shown on the Flood Planning Area map.

It has since been found that this was an erroneous assumption as the flood study areas do not always incorporate all of a catchment. Subclause 7.3(2) does not reference land mapped as ‘other’ on the Flood Planning Area map in Shoalhaven LEP 2014 and therefore carries no legal weight.

Thus there are some instances where former Rural 1(g) land which was excluded from a flood study area, was not transferred to the Flood Planning Area map. The map below shows an example at Erowal Bay where the Flood Planning Area map (blue area) has been overlaid over the Shoalhaven LEP 1985 map. The properties zoned Rural 1(g) or Residential 2(a4) in Shoalhaven LEP 1985 within the red circle are not shown on the Flood Planning Area map in Shoalhaven LEP 2014 which was clearly ‘cut-off’ partway along the waterway that runs through Erowal Bay (**see figure 2**). As a

result, it is not readily apparent that these properties are flood prone. To rectify this, it was originally intended that properties be included on the Flood Planning Area map. Through the relevant planning proposal to remove the Flood Planning Area map, historic flood information needs to be captured through Clause 7.3 in Shoalhaven LEP 2014. As outlined earlier in this report it is recommended that Clause 7.3 be amended to remove subclause (5) to rely on the definition of ‘flood planning levels’ in the NSW Floodplain Development Manual. This will provide a consistent approach to definitions in the LEP as well as provide a broader definition to cover flood levels derived from significant historic flood events.

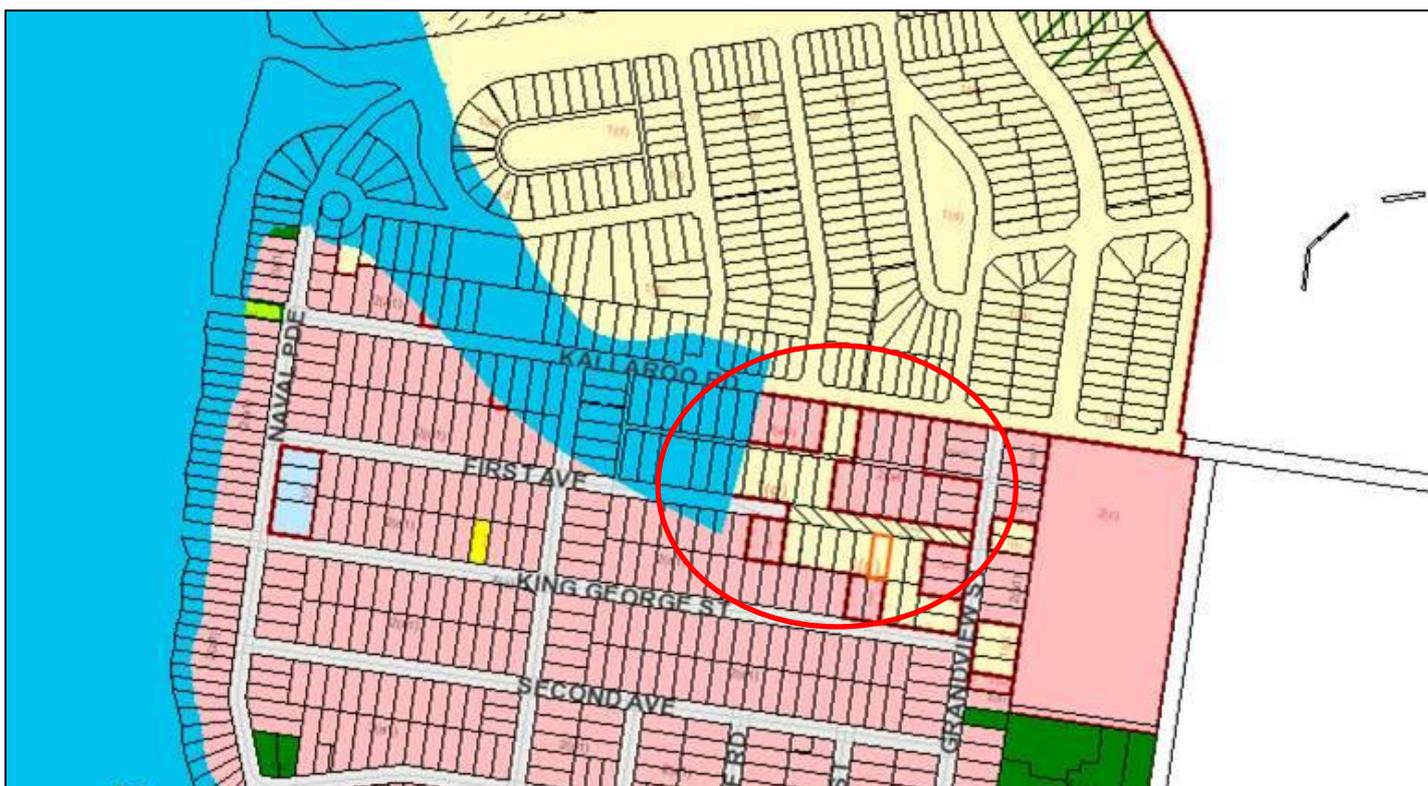


Figure 2: Flood Planning Area Map over Shoalhaven LEP 1985 map.

### Stock mounds

The function of a stock mound is to provide an elevated mound of fill to raise stock above the probable maximum flood level at a size large enough to provide suitable holding, feed and water space for the duration of the flood event (usually 14 days) where adequate flood free access/refuge is not available elsewhere on a property.

Under Shoalhaven LEP 1985, *Clause 29 Development of flood liable land* required development consent for filling in the floodplain when ancillary to agriculture. This captured stock mounds which meant that the construction of a stock mound required consent.

Shoalhaven LEP 2014 does not have a similar clause which means that stock mounds are considered ancillary to extensive agriculture and therefore are unregulated. As unregulated stock mound construction could have significant environmental and flooding relating impacts (both internal to the site and across the wider floodplain); Shoalhaven LEP 2014 should be amended to require consent for their construction to enable sufficient consideration of their potential impacts.

## Part 1 –Intended Outcome

The intended outcome of this Planning Proposal is to amend the Shoalhaven LEP 2014 to:

- a) Remove the Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
- b) Update Clause 7.3 in Shoalhaven LEP 2014 to provide consistency with the definitions in the NSW Floodplain Development Manual and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
- c) Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

## Part 2 – Explanation of Provisions

To achieve the intended outcomes outlined above, it is proposed to amend Shoalhaven LEP 2014 as outlined in the Table that follows.

**Table 1: Planning Proposal proposed changes**

No.	Provision	Proposed amendment
1	Flood Planning Area Map	Remove the full set of Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP). See Part 4 – Mapping for the proposed map amendments.
2	Clause 7.3 Flood Planning	<ul style="list-style-type: none"> <li>• Remove subclause 7.3(2)(a) to clarify that Clause 7.3 only applies to 'land at or below the flood planning level'.</li> <li>• Remove subclause 7.3(5) to delete the single specific definition of 'flood planning level'. The default definition of 'flood planning level' will become the definition of 'flood planning level' in the <i>Floodplain Development Manual</i> as per subclause 7.3(4).</li> </ul> See background for further details.
3	Clause 7.3A Exceptions to earthworks in a Flood Planning Area	Insert an additional provision in the instrument to clarify that stock mounds require consent. The objectives of such a provision are to: <ol style="list-style-type: none"> <li>1) To provide for the orderly development of a stock mound in a flood planning area.</li> <li>2) To ensure that stock mounds do not have a detrimental impact on environmental functions and processes in a flood planning area.</li> </ol> It is intended that the provision apply in the following circumstances: <ul style="list-style-type: none"> <li>• Land is zoned RU1 Primary Production and RU2 Rural Landscape; and</li> <li>• Land that is at or below the 'flood planning level' as identified in Clause 7.3 Flood Planning/or Land identified as Class 1-4 Acid Sulfate soils on the Acid Sulfate Soils Map; and</li> <li>• where the usable surface area of the stock mound is 100 square metres or greater in area.</li> </ul> See background for further details.

## Part 3 – Justification

### Need for the Planning Proposal (Section A)

#### Is the Planning Proposal a result of any strategic study or report?

The review of flood controls in Shoalhaven LEP 2014 is a result of Council's ongoing program of flood studies and flood risk management plans to ensure the LEP reflects the most up to date data, while the proposed provision for stock mounds is a result of a specific issue identified resulting from the commencement of Shoalhaven LEP 2014. The inclusion of the Rural 1(g) zoned land under Shoalhaven LEP 1985 is not the result of any strategic study or report but is to rectify an oversight that occurred in the initial preparation of the Shoalhaven LEP 2014.

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

The planning proposal is the only means of amending Shoalhaven LEP 2014 to update flood controls to reflect updated flood information, and make stock mounds permissible with consent in zones RU1 Primary Production and RU2 Rural Landscape.

### Relationship to strategic planning framework (Section B)

#### 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 planning proposal is consistent with the objectives and actions of the Illawarra Shoalhaven Regional Plan which applies to the Shoalhaven Local Government Area (LGA) and aims to grow the economy, provide affordable housing, secure agricultural land, build infrastructure and protect natural and cultural environments. The relevant Direction and Action are outlined below.

*DIRECTION 5.2 Build the Illawarra-Shoalhaven's resilience to natural hazards and climate change  
ACTION: 5.2.1 Apply contemporary risk management to coastal and other hazards*

The amendments to Shoalhaven LEP 2014 proposed through this planning proposal will ensure that the most up to date flood data is utilised in in preparing and assessing development applications which will ensure adequate consideration of the potential risks of flooding and/or acid sulfate soils within Shoalhaven.

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

The planning proposal is consistent with Council's Community Strategy Plan and the relevant objectives, strategies and actions outlined below:

- |               |  |
|---------------|--|
| Objective 2.1 | A city which Values, maintains and enhances its natural and cultural environments.                         |
| Objective 2.2 | Population and urban settlement growth that is ecologically sustainable and carefully planned and managed. |
| Objective 2.3 | Reduce global warming impacts and increased resilience to the effects and impacts of climate change.       |

Objective 2.6	Settlements that are resilient to the unexpected impacts of natural hazards.
Strategy 2.1.2	Ensure that the natural ecological and biological environments and the built and cultural heritage of the Shoalhaven are protected and valued through careful management.
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.
Strategy 2.6.1	Develop management and adaptation plans to mitigate and manage community exposure to coastal processes, natural hazards, climate change and resulting risks.

The planning proposal is not inconsistent with other local strategic plans.

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

The planning proposal is consistent with the applicable State Environmental Planning Policies (SEPPs). Please see Attachment “B” – Checklist of State Environmental Planning Policies.

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

The planning proposal is consistent with the applicable Ministerial Directions as shown in Attachment “C” – Checklist of Ministerial Directions. Those that are relevant are discussed below.

**1.2 Rural Zones**

This direction applies due to the planning proposal proposing to affect land within an existing or proposed rural zone.

The planning proposal is consistent as it:

- does not propose to rezone land from a rural zone to a residential, business, industrial, village or tourist zone; and
- does not contain provisions that will increase the permissible density of land within a rural zone.

**1.5 Rural Lands**

This direction applies due to the planning proposal proposing to affect land within an existing or proposed rural or environmental zone.

The planning proposal is consistent as it:

- is consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*; and
- is consistent with the Rural Subdivision Principles listed in the *State Environmental Planning Policy (Rural Lands) 2008*

**2.1 Environmental Protection Zones**

This direction applies due to the planning proposal proposing to affect land within an environmentally sensitive area.

The planning proposals is consistent as it:

- facilitates the protection and conservation of environmentally sensitive areas; and
- does not reduce the environmental protection standards that apply to the land

## **2.2 Coastal Protection**

This direction applies due to the planning proposal proposing to affect land within an environmentally sensitive area.

The planning proposal is consistent as it:

- captures *NSW Coastal Policy: A Sustainable Future for the New South Wales 1997*, the *Coastal Design Guidelines 2003*, and the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the NSW Coastline Management Manual 1990).

## **2.3 Heritage Conservation**

This direction applies and is consistent due to the planning proposal not altering the existing provisions that facilitate the conservation of heritage value in Shoalhaven City Council.

## **3.2 Caravan Parks and Manufactured Home Estates**

This direction applies as the planning proposal proposes to affect land within Caravan Parks and Manufactured Home Estates.

This planning proposal is consistent as it:

- retains provisions that permit development for the purpose of a caravan park to be carried out on land; and
- retains the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park

## **3.3 Home Occupations**

This direction applies as the planning proposal proposes to affect land which allows Home Occupations

This planning proposal is consistent as it:

- does not propose to not permit home occupations to be carried out in dwelling houses without the need for development consent

## **4.1 Acid Sulfate Soils**

This direction applies as the planning proposal proposes to affect land where Acid Sulfate Soils apply to the land.

This Planning Proposal is consistent with this Direction as the provision proposed is requiring consent for stock mounds associated with agriculture which is consistent with the Acid Sulfate Soils Planning Guidelines which states that additional provisions should be applied to achieve improved environmental outcomes by requiring development consent for works (which may not otherwise require consent), including some agricultural-related works, in localities identified as having acid sulfate soils so as to minimise impacts on natural waterbodies and wetlands and on agricultural, fishing, aquaculture, urban and infrastructure activities.

### **4.3 Flood Prone Land**

This direction applies as the planning proposal proposes to create a provision that affects flood prone land being the provision to require consent for stock mounds on land in the RU1 and RU2 zones that is flood affected.

This planning proposal is consistent as it:

- does not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use of Special Purpose Zone;
- does not contain provisions that apply to flood planning areas which:
  - o permit development in floodway areas;
  - o permit development that will result in significant flood impacts to other properties;
  - o permit a significant increase in the development of that land;
  - o are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services; or
  - o permit development to be carried out without development consent except for the purpose of agriculture (not including dams, drainage canals, levees, buildings or structures in floodway's or high hazard areas), roads or exempt development

### **4.4 Planning for Bushfire Protection**

This direction applies as the planning proposal proposes to affect bushfire prone land.

This planning proposal is consistent as Shoalhaven LEP 2014 contains that have regard to Planning for Bushfire Protection 2006, avoid placing inappropriate developments in hazardous areas, and ensure that bushfire hazard reduction is not prohibited within the APZ and this planning proposal does not change to amend these provisions.

### **5.1 Implementation of Regional Strategies**

This direction applies as the South Coast Regional Strategy includes the Shoalhaven local government area. The planning proposal is consistent with the South Coast Regional Strategy. It is also consistent with the Illawarra-Shoalhaven Regional Plan.

### **5.2 Sydney Drinking Water Catchment**

This direction applies as the planning proposal applies to land within the Sydney drinking water catchment and is consistent as it captures provisions under LEP that were prepared in accordance with the:

- general principle that water quality within the Sydney drinking water catchment must be protected;
- specific principle of new development must have a neutral or beneficial effect on water quality; and
- specific principle of future land use in the Sydney drinking water catchment should be matched to land and water capability

## **Environmental, Social and Economic Impact (Section C)**

### **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?**

The likelihood of the proposed amendments impacting on any critical habitat or threatened species, populations or ecological communities, or their habitats is very low as the amendments relate to updating the flood controls in Shoalhaven LEP 2014 and adding a provision to regulate stock mounds.

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

The proposed amendments are unlikely to have any other environmental effects as the changes relate to updating the flood controls in Shoalhaven LEP 2014 and adding a provision to regulate stock mounds. The provision to regulate stock mounds may have positive environmental effects in requiring development applications for stock mounds located on acid sulfate soils.

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

The planning proposal is likely to have positive social and economic effects due to the Shoalhaven LEP 2014 operating in a more efficient manner by way of the flood controls to reflect accurate and up to date flood data, and in requiring development applications for stock mounds meaning that the risk of damage caused by flooding impacts and acid sulfate soils is mitigated.

**State and Commonwealth Interests (Section D)**

**Is there adequate public infrastructure for the Planning Proposal?**

The planning proposal does not create additional need for infrastructure.

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

Council has not yet formally consulted with any State or Commonwealth public authorities. It is intended to consult with the following State agencies during the exhibition of the planning proposal:

- NSW Office of Environment and Heritage – in relation to the review of flood controls
- NSW Department of Primary Industries – Agriculture in relation to the stock mounds provision

## Part 4 – Mapping

This planning proposal intends to remove the Flood Planning Area map sheet sets from Shoalhaven LEP 2014 to rely on the definition of ‘flood planning level’ as defined in the *NSW Floodplain Development Manual* to capture land that meets the definition based on Council’s flood information.

## Part 5 - Community Consultation

Council proposes to exhibit the planning proposal in accordance with the requirements of Section 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and any other requirements as determined by the Gateway process. It is intended that the minimum exhibition period of 28 days apply, acknowledging the exhibition/consultation that is involved in the flood study and flood risk management plan process.

Public notification of the exhibition would include notification in the local newspapers, and a notice on Council’s website. Hard copies of the planning proposal would be made available at Council’s Administrative Buildings in Nowra and Ulladulla.

## Part 6 – Project Timeline

The following milestone timeframes are anticipated; they will be revised if any significant delays are encountered. A 12 month gateway determination in order to meet the requirements of a Gateway Determination and finalise the Plan in an appropriate timeframe.

**Table 2: Planning Proposal Project Timeline**

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	July 2017
Completion of Gateway determination requirements	August 2017
Public exhibition and Agency Consultation	September 2017
Consideration of submissions	October 2017
Post exhibition consideration of Planning Proposal	November 2017
Submission to the Department to finalise the LEP	January 2018
Finalisation and notification of Plan	February 2018

## Attachment A – Council Resolutions

### Development Committee 6 December 2016

**RESOLVED** (Clr Guile / Clr Levett) MIN16.946

That the Committee:

1. Prepare a Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven LEP 2014 as follows:
  - a. Remove the Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
  - b. Update Clause 7.3 in Shoalhaven LEP 2014 to provide consistency with the definitions in the NSW Floodplain Development Manual and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
  - c. Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.
2. Consider a further report to adopt PP012 – Review of Flood Controls for submission to the NSW Department of Planning of Environment for Gateway determination.
3. Endorse the preparation of an online Flood Planning map to provide a publicly accessible and interactive display of adopted Flood Study mapping and historic flooding information.

FOR: Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

Against: Nil

CARRIED

### Development Committee 9 May 2017

**RESOLVED** (Clr Findley / Clr Gartner) MIN17.380

That Council:

1. Endorse the Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven Local Environmental Plan (LEP) 2014 for lodgement with the NSW Department of Planning & Environment (DP&E) to request Gateway determination.
2. Amend Chapter G9: Development on Flood Prone Land and Chapter G10: Caravan Parks in Flood Prone Areas in Shoalhaven Development Control Plan 2014 as part of a future review of these chapters to ensure consistency with any proposed changes to Shoalhaven LEP 2014.
3. Support the preparation of an online Flood Planning map to provide publicly accessible information and interactive display of adopted Flood Study mapping and historic flooding information.

FOR: Clr White, Clr Gash, Clr Wells, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

Against: Nil

CARRIED

## Attachment B – Checklist of State Environmental Planning Policies

### Shoalhaven Local Environmental Plan 2014 – Review of Flood Controls (PP012)

SEPP	Date	Name	Applicable	Not inconsistent
14	12.12.85	Coastal wetlands	✓	✓
21	24.04.92	Caravan parks	✓	✓
26	05.02.88	Littoral rainforests	✗	n/a
30	08.12.89	Intensive agriculture	✓	
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	✓	✓
39	09.09.94	Spit Island Bird Habitat	✗	n/a
44	06.01.95	Koala habitat protection	✓	✓
47	22.02.14	Moore Park Showground	✗	n/a
50	10.11.97	Canal estate development	✓	✓
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	✓	✓
59	07.07.15	Central Western Sydney regional Open Space and Residential	✗	n/a
62	25.09.00	Sustainable aquaculture	✓	✓
64	16.03.01	Advertising and signage	✓	✓
65	26.07.02	Design quality of residential flat development	✗	n/a
70	31.07.09	Affordable Housing (Revised Provisions)	✗	n/a
71	01.11.02	Coastal protection	✓	✓
--	31.07.09	Affordable Rental Housing 2009	✓	✓
--	25.06.04	Building Sustainability Index: BASIX 2004	✓	✓
--	12.12.08	Exempt and Complying Development Codes 2008	✓	✓
--	31.03.04	Housing for Seniors or People with a Disability 2004	✓	✓
--	01.01.08	Infrastructure 2007	✓	✓
--	17.07.15	Kosciuszko National Park – Alpine Resorts 2007	✗	n/a
--	27.08.10	Kurnell Peninsula 1989	✗	n/a
--	01.08.05	Major Development 2005	✓	✓
--	16.02.07	Mining, Petroleum Production and Extractive Industries 2007	✓	✓
--	26.10.07	Miscellaneous Consent Provisions 2007	✓	✓
--	24.02.12	Penrith Lakes Scheme 1989	✗	n/a
--	09.05.08	Rural Lands 2008	✓	✓
--	15.07.11	SEPP 53 Transitional Provisions 2011	✗	n/a
--	28.09.11	State and Regional Development 2011	✓	✓

--	21.01.11	Sydney Drinking Water Catchment 2011	✓	✓
--	26.06.15	Sydney Region Growth Centres 2006	✗	n/a
--	04.07.14	Three Ports 2013	✗	n/a
--	15.12.10	Urban Renewal 2010	✗	n/a
--	16.01.15	Western Sydney Employment Area 2009	✗	n/a
--	01.01.15	Western Sydney Parklands 2009	✗	n/a

## Attachment C – Checklist of Ministerial Directions

Section 117(2) Directions: Shoalhaven Local Environmental Plan 2014 – Review of Flood Controls (PP012)

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

6.3	Site Specific Provisions	x	n/a	n/a
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## **Attachment D - Evaluation Criteria for the Delegation of Plan Making Functions**

### **Checklist for the review of a request for delegation of plan making functions to Councils**

**Local Government Area:**

Shoalhaven City Council

**Name of draft LEP:**

Shoalhaven Local Environmental Plan 2014 PP012 – Review of Flood Controls

**Address of Land (if applicable):**

The subject land the entire Shoalhaven City Council Local Government Area

**Intent of draft LEP:**

The Planning Proposal seeks to review flood controls in Shoalhaven LEP 2014 to:

- Remove the Flood Planning Area mapping to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
- Update Clause 7.3 in Shoalhaven LEP 2014 to ensure consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
- Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

**Additional Supporting Points/Information:**

Evaluation criteria for the issuing of an Authorisation  (Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the Planning Proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NR		
<b>Heritage LEPs</b>				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?		NR		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NR		
Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NR		
<b>Reclassifications</b>				
Is there an associated spot rezoning with the reclassification?		NR		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		NR		

Is the Planning Proposal proposed to rectify an anomaly in a classification?		NR		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		NR		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		NR		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the Planning Proposal?		NR		
Has the council identified that it will exhibit the Planning Proposal in accordance with the Department's Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?		NR		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		NR		
<b>Spot Rezoning</b>				
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?		NR		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		NR		
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NR		
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?		NR		
Does the Planning Proposal create an exception to a mapped development standard?		NR		
<b>Section 73A matters</b>				
Does the proposed instrument:	N			
a. Correct an obvious error in the principal instrument consisting of a mis-description, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary works or a formatting error?;				

<p>b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;</p> <p>c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>				
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