

Attachment C: Council Resolution and Report – Development and Environment Committee 18 January 2021

DE21.4 Proposed Planning Proposal - Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry)

HPERM Ref:
D20/538996

RESOLVED (Clr Wells) Watson / Clr MIN21.5

That Council:

1. Endorse the preparation of a Planning Proposal with the following scope, and proceed to submit it to the NSW Government for a Gateway determination, and if this is favourable, proceed to exhibition as per the legislative and any determination requirements:
 - a. Huntingdale Park Estate Precinct (Berry):
 - i. Rezone the subject land to R5 Large Lot Residential.
 - ii. Set a 2,000m² minimum lot size for the entirety of the subject land.
2. Receive a further report following the conclusion of the public exhibition period or if the Gateway determination is not favourable.
3. Advise key stakeholders of this decision and the resultant exhibition arrangements, including affected landowners, relevant Community Consultative Bodies and Development Industry representatives.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Levett and Stephen Dunshea

CARRIED



Development & Environment Committee – Monday 18 January
2021

DE21.4 Proposed Planning Proposal - Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry)

HPERM Ref: D20/538996

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

- Provide an update on the resolved planning investigations for:
 - Riverview Road Precinct (Nowra) – dual occupancy exclusion options.
 - Huntingdale Park Estate Precinct (Berry) – large lot residential zoning options.
- Obtain endorsement to proceed with a Planning Proposal (PP) to amend Shoalhaven Local Environmental Plan (LEP) 2014 to respond in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the preparation of a Planning Proposal with the following scope, and proceed to submit it to the NSW Government for a Gateway determination, and if this is favourable, proceed to exhibition as per the legislative and any determination requirements:
 - a. Riverview Road Precinct (Nowra):
 - i. Insert a new local clause (similar to clause 4.1A) setting a parent lot size for the erection of a dual occupancy development that is 1,500m².
 - ii. Establish a clause map to identify the land to which the local clause would apply (the land in Figure 1 of this report).
 - iii. Amend clause 4.6(8) to ensure that the parent lot size set in the new local clause could not be varied.
 - b. Huntingdale Park Estate Precinct (Berry):
 - i. Rezone the subject land to R5 Large Lot Residential.
 - ii. Set a 2,000m² minimum lot size for the entirety of the subject land.
2. Receive a further report following the conclusion of the public exhibition period or if the Gateway determination is not favourable.
3. Advise key stakeholders of this decision and the resultant exhibition arrangements, including affected landowners, relevant Community Consultative Bodies and Development Industry representatives.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to adjust Shoalhaven LEP 2014 to resolve the planning issues resulting from the Council resolutions on Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry).

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone or stop the resolution of these planning issues.

3. Not adopt the recommendation.

Implications: This option would stop the resolution of these planning issues. The planning controls in these areas would remain unaltered.

Background

Riverview Road Precinct – Nowra

On 2 July 2019, Council resolved (MIN19.459) that:

The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

This resolution essentially seeks to prohibit dual occupancy development in the Riverview Road precinct (**Figure 1**) due to the highly flood prone nature of the land. The precinct includes all the R2 Low Density Residential zoned land located in the Riverview Road Area Floodplain Risk Management Plan area. Dual occupancy development (both attached and detached) is currently permissible with consent citywide in the R2 zone.



Figure 1: The Riverview View Road Precinct

A number of options have been explored to progress this matter, as outlined in the following table.

Option	Comment
Use the DCP to highlight the precinct's flood issues to specify that dual occupancies are not supported in this area.	<p>Chapter G9: Development on Flood Prone Land of Shoalhaven Development Control Plan (DCP) 2014 already seeks to restrict dual occupancies in this location, stating that no dual occupancy or subdivision will be permitted.</p> <p>It is noted that there are difficulties in enforcing this provision solely through a DCP, especially where there is a direct conflict with an environmental planning instrument (i.e. Shoalhaven LEP 2014). Simply a DCP cannot prohibit something that is permissible under an LEP.</p> <p>From a practicality perspective, this option is not ideal; however, following a discussion with the Department of Planning and Environment (DPIE), this is their preferred option despite the obvious conflict issue.</p>

<p>Rezone the land to a zone that prohibits dual occupancy development.</p>	<p>Dual occupancy development is currently prohibited citywide in the following zones:</p> <ul style="list-style-type: none"> • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> RU3 Forestry. • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All business zones. • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All industrial zones. • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All special purpose zones. • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All recreation zones. • <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All waterway zones. <p>None of the above zones would be ideal for the precinct; however, of them all, SP3 Tourist would perhaps be the only one that could even be considered. It is noted that dwelling houses remain permissible with consent in that zone; however, clause 7.27 of Shoalhaven LEP 2014 requires that any future dwelling needs to form an integral part of development for the purposes of tourism. This precinct is not an identified tourism precinct and rezoning it SP3 would have a range of additional unintended consequences.</p> <p>DPIE have advised that applying an appropriate zone to the land is preferable; however, as discussed above, none of the existing zones are considered appropriate if this approach is taken.</p>
<p>Pursue a local clause in the LEP prohibiting dual occupancy development.</p>	<p>Trying to prohibit dual occupancies in the precinct through a local clause will result in what would be termed a 'sub-zone' which is not consistent with the Standard LEP Instrument approach and will not be supported by DPIE.</p>
<p>Pursue a new local clause to introduce a minimum parent lot size specifically for the Precinct for dual occupancy development, similar to the new clause 4.1A in the LEP.</p>	<p>In August 2020, an amendment to Shoalhaven LEP 2014 was finalised which introduced a new clause (clause 4.1A) that set a minimum parent lot size prior to the erection of medium density development in certain residential zones.</p> <p>A similar approach could be considered for the Precinct. Dual occupancies would remain permissible with consent as per the land use table; however, a local clause would set a parent lot size that is greater than the standard lot size in the area for both attached and detached dual occupancies. It is noted that the largest lot in the Precinct is 4,016.49m²; however, 85% of lots are less than 1,000m² and 98% are less than 1,500m². As such, it is considered appropriate for the parent lot size to be set at 1,500m².</p> <p>This would require consolidation of lots for a dual occupancy development and would be less appealing for infill dual occupancy development.</p> <p>It is noted that this option is not a prohibition. A dual occupancy development could be considered if land is consolidated and an applicant could seek a variation to the parent minimum lot size standard, unless the proposed new local clause is exempt from clause 4.6 Exceptions to development standards (the clause enabling variations to LEP standards).</p> <p>This is the preferred option should Council still wish to pursue a change to the LEP in this regard.</p>

As a result of the investigations, and assuming Council still wishes to pursue this matter, it would be appropriate to progress this matter by amending the LEP via a PP to:

- Insert a new local clause (similar to clause 4.1A) setting a parent lot size for a dual occupancy development that is greater than the standard lot size in the Precinct, being 1,500m².
- Establish a clause map to identify the land to which the new local clause would apply, being the land in **Figure 1**.
- Amend existing clause 4.6(8) to ensure that the parent lot size set in the new local clause could not be varied.

Huntingdale Park Estate Precinct – Berry

During the public exhibition of Council's Review of Subdivision Provisions PP (PP027), there were a number of specific requests to review the zoning of certain land within Huntingdale Park Estate, Berry. As a result, Council resolved on 23 June 2020 (MIN20.448(2b)) to:

As part of a separate process: Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.

The resolved review has now been undertaken in relation to the land within the estate shown in **Figure 2**, being the larger R1 General Residential lots in the Estate on its periphery.



Figure 2: The Huntingdale Park Estate Review Precinct

In the planning for the Huntingdale Park Estate area and through the DCP, large lots with a minimum lot size of 2,000m² were envisaged along the northern, western, and southern boundaries to provide a transition from the higher density development in the centre of the subdivision through to lower density development bordering the adjacent rural lands.

Despite the original intentions to create low density lots along these boundaries, following the commencement of LEP in 2014, the majority of the residential portion of the estate was zoned R1 General Residential. Multi-dwelling housing is however generally permitted with consent within the R1 zone and this is considered to conflict with the desired low density characteristics and intentions envisaged for the Huntingdale Estate. Recent multi-dwelling development applications on some of these larger lots have prompted significant community opposition/concern.

Submissions during the PP027 process suggested that the subject land (Figure 2) be rezoned to R2 Low Density Residential in order to prevent multi-dwelling development which is prohibited within the R2 zone under the LEP. An R2 zone would assist in maintaining the low density large lot characteristics that were initially supported by Council and the community during the original subdivision, with the exception of dual occupancy development and its lawful subdivision via the NSW Government's *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code) (complying development) and clause 4.1A of Shoalhaven LEP 2014 (development application). These opportunities still have the potential to also erode the desired large lot low density characteristics of the subject land.

Thus an R5 Rural Residential zoning is considered more appropriate in securing the low-density intentions of the identified parts of the Estate, as the Code does not apply to this land and limited medium density opportunities are available. Suitable 'dual occupancy (attached)' development would remain permissible as would 'secondary dwellings' under the NSW Government's *State Environmental Planning Policy (Affordable Rental Housing) 2009*. The proposed R5 zoning of the subject land will likely protect the area from the erosion of the existing (and desired) large lot character, as well as respond to issues arising as a result of the Code. This zone is also the same as the land to the north that was rezoned as part of PP027 for (in part) the same reasons.

In considering the zoning of the subject land, it would be appropriate to also adjust the minimum lot size of the subject land and apply a 2,000m² minimum lot size to all areas within the precinct (currently part 500m² and part 2,000m²).

The rezoning of the land to R5 will trigger clause 4.2D of Shoalhaven LEP 2014 which requires a dwelling entitlement to be established before a dwelling could be considered on the land. It is noted that all lots in the subject area are larger than the 2,000m² minimum lot size proposed for the land, meaning that each lot by virtue would retain a dwelling entitlement.

As a result of the investigations, it would be appropriate to progress this matter by amending the LEP via a PP to:

- Rezone the subject land to R5 Large Lot Residential (**Figure 3**).
- Set a 2,000m² minimum lot size for the entirety of the subject land (**Figure 4**).

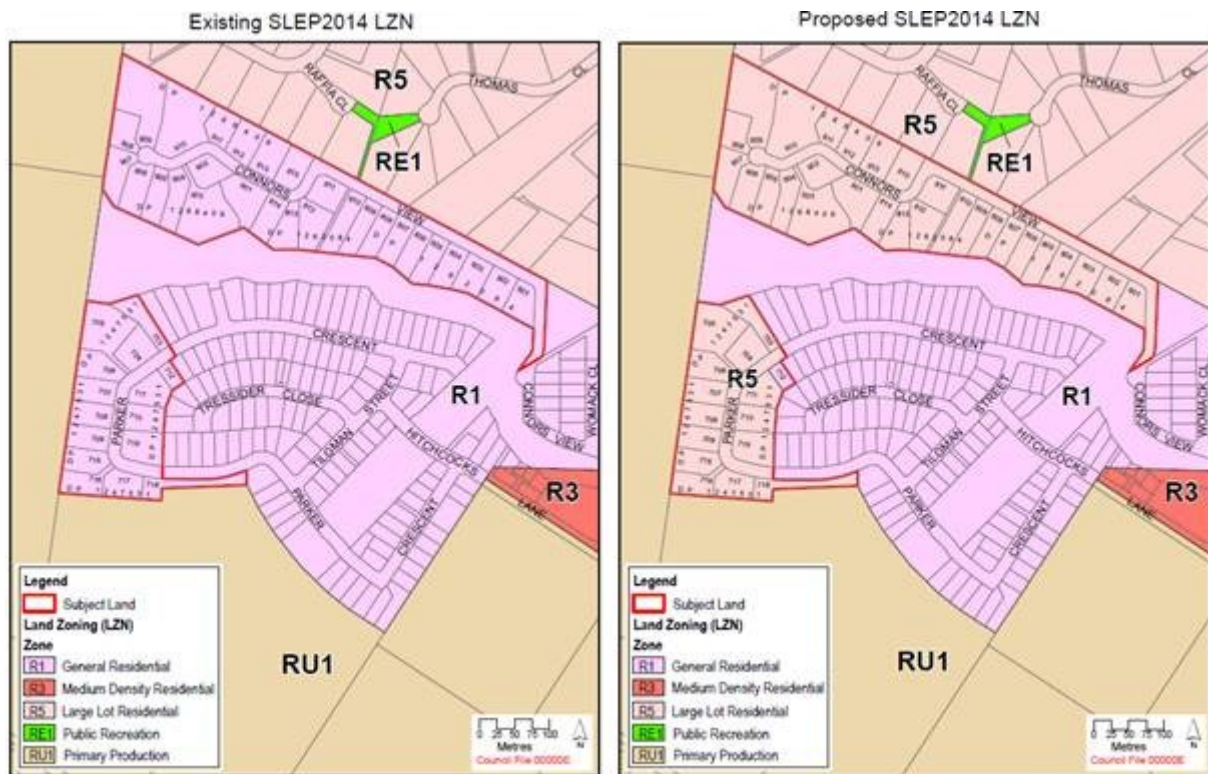


Figure 3: Existing and proposed zoning - Huntingdale Park Estate Review Precinct



Figure 4: Existing and proposed minimum lot size - Huntingdale Park Estate Review Precinct

Conclusion

Given the relatively contemporary nature of the resolutions regarding these two matters it is assumed, subject to the consideration of the detail in this report, that Council will be comfortable proceeding with a PP to seek to amend the LEP as recommended.

Community Engagement

Any PP to amend Shoalhaven LEP 2014 would require a formal public exhibition in accordance with the Gateway determination and legislative requirements. Affected landowners, relevant CCBs and Development Industry Representatives would be directly notified of the exhibition arrangements.

Policy Implications

The suggested approach to resolve the planning issues associated with the Riverview Road Precinct and the Huntingdale Park Estate Precinct will see a reduction in the achievable density in these areas which will need to be adequately justified in any PP.

Financial Implications

Any PP would be resourced within the existing Strategic Planning budget.

