

PLANNING PROPOSAL – PP060

Shoalhaven Local Environmental Plan 2014

Huntingdale Park Large Lot Residential Precinct, Berry

Prepared by
City Futures
Shoalhaven City Council

File: 66385E
Version: Final
Date: June 2021

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541
telephone (02) 4429 3111
facsimile (02) 4422 1816
e-mail planning@shoalhaven.nsw.gov.au
internet www.shoalhaven.nsw.gov.au

Disclaimer

Every effort has been made to provide accurate and complete information.
However, Shoalhaven City Council assumes no responsibility for any direct, indirect, incidental, or consequential damages arising from the use of information in this document.

Copyright Notice

No part of this publication may be reproduced in any form, or stored in a database or retrieval system, or transmitted or distributed in any form by any means, electronic, mechanical photocopying, recording, or otherwise without written permission from Shoalhaven City Council. All rights reserved.

Copyright © 2021, Shoalhaven City Council

Table of Contents

Table of Contents	3
1 Introduction	5
1.1 Subject Land	6
1.2 Site photos	12
1.3 Background	16
Part 1 – Intended Outcome	20
Part 2 – Explanation of Provisions	20
Part 3 – Justification	22
3.1 Need for the Planning Proposal (Section A)	22
3.1.1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?	22
3.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	23
3.2 Relationship to strategic planning framework (Section B).....	24
3.2.1 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?	24
3.2.2 Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?	27
3.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?	29
3.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?	29
3.3 Environmental, Social and Economic Impact (Section C).....	36
3.3.1 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?	36
3.3.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?	37
3.3.3 How has the Planning Proposal adequately addressed any social and economic effects?	38
3.4 State and Commonwealth Interests (Section D)	41
3.4.1 Is there adequate public infrastructure for the Planning Proposal?	41
3.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	41
Part 4 – Mapping	42
Part 5 - Community Consultation	45
Part 6 – Project Timeline.....	45
Attachment A: Checklist for the review of a request for delegation of plan making functions to Councils	46

Attachment B: Council Resolution and Report – Ordinary Meeting 23 June 2020	50
Attachment C: Council Resolution and Report – Development and Environment Committee 18 January 2021	58
Attachment D: State Environmental Planning Policies Checklist	65
Attachment E: Section 9.1 Planning Directions	68
Attachment F: Pre-exhibition State Agency correspondence	71

Tables

Table 1: Affected properties	8
Table 2: R1, R2 & R5 Zones - Land Use Table Comparison	23
Table 3: S.9.1 Planning Direction 3.1 Residential Zones	30
Table 4: S.9.1 Direction 4.4 Planning for Bushfire Protection	35
Table 5: List of agencies for consultation	41
Table 6: Project timeline	45

Figures

Figure 1: Location Map	6
Figure 2: Subject Land	7
Figure 3: Aerial Photo	10
Figure 4: Current Land Use Zones	11
Figure 5: Detached housing development showing separation between buildings	12
Figure 6: Looking west, showing rural and escarpment landscape beyond	12
Figure 7: Currently vacant corner lot looking east, showing slope of land	12
Figure 8: Currently vacant lots	13
Figure 9: Looking south	13
Figure 10: Vacant lot, advertising development	13
Figure 11: Large lot areas looking east	14
Figure 12: Large lots with significant vegetation - top of Connors View	14
Figure 13: New housing under construction	14
Figure 14: Looking west	15
Figure 15: Access to large lot area - Connors View	15
Figure 16: Connors View 6 m wide road carriageway	15
Figure 17: Map from DCP 70	17
Figure 18: Current Minimum Lot Size Map - SLEP 2014	18
Figure 19: Existing Land Use Zone (left) and Proposed Land Use Zone (right)	21
Figure 20: Existing Minimum Lot Size (left) and Proposed Minimum Lot Size (right)	21
Figure 21: Flood Prone Land affected land	33
Figure 22: Huntingdale Estate: Bushfire Prone land	34
Figure 23: Excerpt from Huntingdale Estate (SF9320) Section 88b Instrument	38

Planning Proposal Maps

Map 1: Existing and Proposed Land Use Zones (LZN)	43
Map 2: Existing and Proposed Lot Sizes (LSZ)	44

1 Introduction

This Planning Proposal (PP) seeks to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to preserve the large lot and low density residential character on the western and northern periphery of Huntingdale Park Estate (the Estate) in Berry.

This PP seeks to ensure planning controls align with the strategic planning intent for the large lot residential areas of the Estate and achieve the following objectives:

- Facilitate a transition from suburban and medium density housing in the central parts of the Estate to lower density areas bordering the neighbouring farmlands, existing rural-residential development and native bushland;
- Provide large lots on the north and western fringes of the Estate (along the elevated and prominent ridgelines) to mitigate visual impacts of development in this scenic location;
- Reinforce the character of Berry through high quality subdivision and housing design to protect residential amenity;
- Ensure planning controls for large lots reinforce character objectives, including encouraging suitable open space around buildings and larger landscaped areas; and
- Provide suitable and efficient infrastructure to the Estate.

The PP is necessary to update planning controls that apply to the large lot area of the Estate, as contemporary controls could compromise achievement of the aforementioned objectives and impact adversely on the desired future character and residential amenity in the area.

It is requested that Council be given delegation for plan making functions for this PP. The evaluation criteria for delegation are provided at **Attachment A**.

1.1 Subject Land

The subject land is located on the edges of Huntingdale Park, a new residential estate in Berry, west of the Princes Highway (refer to **Figure 1: Location Map**). The Estate is located approximately 850m west of the Berry Town Centre at its closest point, and approximately 2.4km away at its furthest point.

The subject land represents the large lot housing area of the Estate, situated in the north and western extremities of the Estate as highlighted in **Figure 2: Subject Land**.

There are forty-three (43) properties affected by the PP, consisting of properties in the western corner of Parker Crescent and along the north-western section of Connors View. The large lot properties range in size from 2000m² to 6113m² and are located in the steeper areas of the Estate, at the interface between the residential and rural areas of Berry. The typical lot size in the Estate is ~700m².

Table 1: PP060 Affected Properties lists all the properties affected by this Planning Proposal and provides their respective lot size.

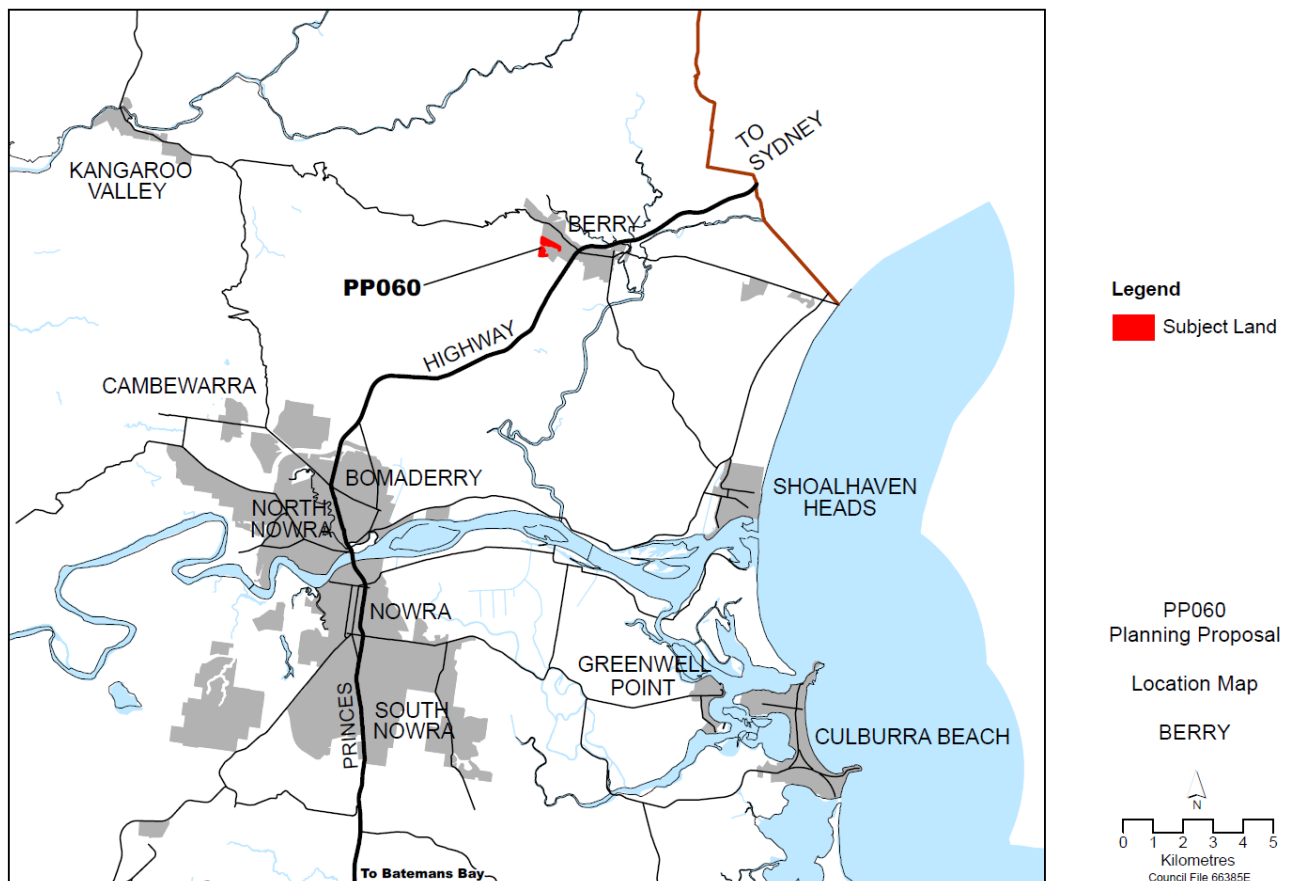
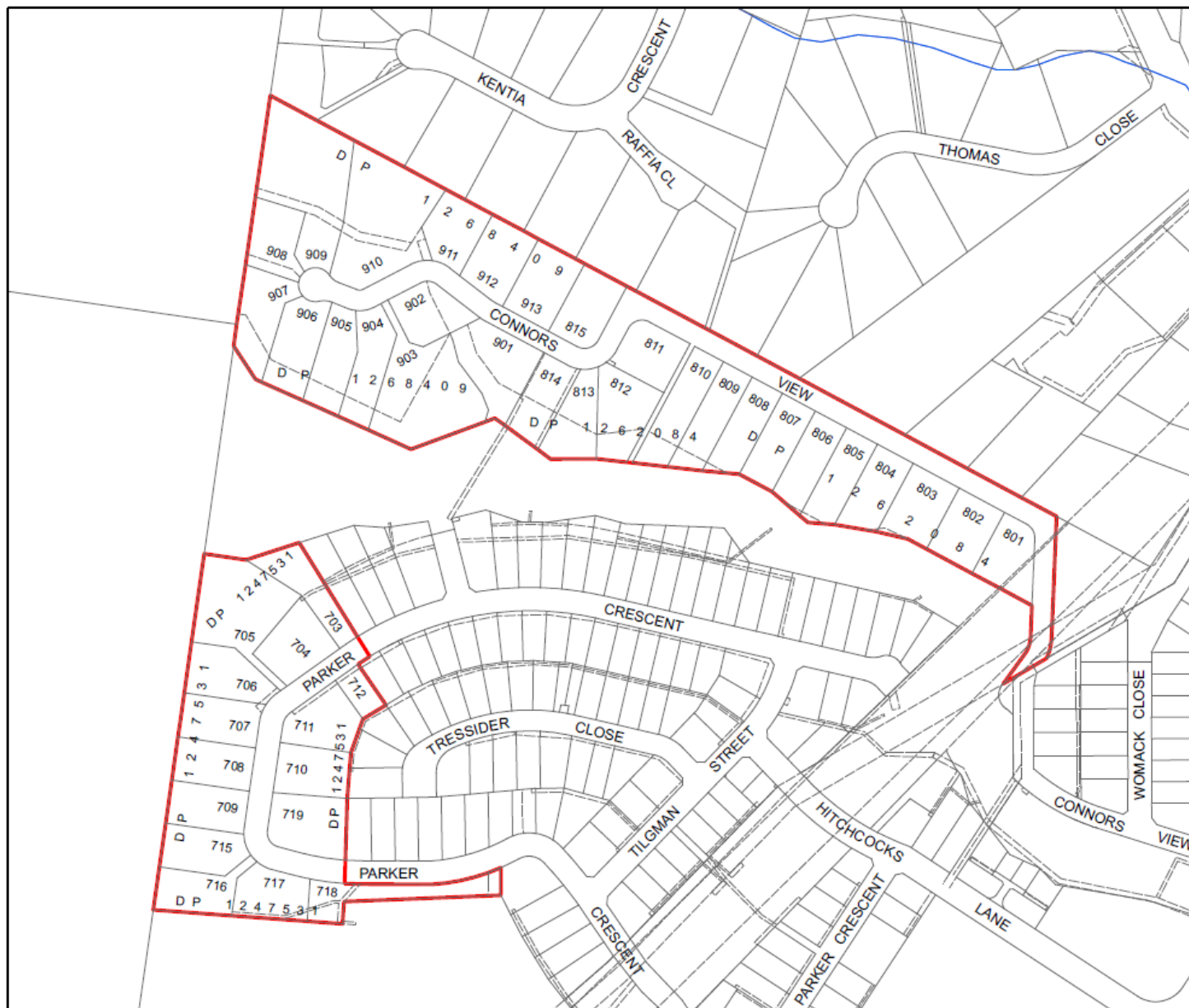


Figure 1: Location Map



Legend

Subject Land

PP060
Planning Proposal

Subject Land

Lots 703-712 &
715-719 DP 1247531,
Lots 801-815 DP 1262084,
Lots 901-913 DP 1268409
& Road UPNs
1000963, 1001560 &
Part of Road UPN 121808

Huntingdale Park Estate

BERRY

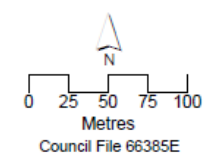


Figure 2: Subject Land

Table 1: Affected properties

Lot & DP	Address	Lot Size
Lot 703 DP 1247531	69 Parker Crescent	2071m ²
Lot 704 DP 1247531	65 Parker Crescent	2298m ²
Lot 705 DP 1247531*	63 Parker Crescent	4430m ²
Lot 706 DP 1247531	61 Parker Crescent	2261m ²
Lot 707 DP 1247531	59 Parker Crescent	2063m ²
Lot 708 DP 1247531	57 Parker Crescent	2001m ²
Lot 709 DP 1247531	55 Parker Crescent	2000m ²
Lot 710 DP 1247531#	52 Parker Crescent	2062m ²
Lot 711 DP 1247531	56 Parker Crescent	2194m ²
Lot 712 DP 1247531^	60 Parker Crescent	784m ²
Lot 715 DP 1247531	53 Parker Crescent	2060m ²
Lot 716 DP 1247531	51 Parker Crescent	2035m ²
Lot 717 DP 1247531	47 Parker Crescent	2045m ²
Lot 718 DP 1247531	43 Parker Crescent	2401m ²
Lot 719 DP 1247531	48 Parker Crescent	2617m ²
Lot 801 DP 1262084	21 Connors View	2071m ²
Lot 802 DP 1262084	23 Connors View	2094m ²
Lot 803 DP 1262084	25 Connors View	2193m ²
Lot 804 DP 1262084	27 Connors View	2002m ²
Lot 805 DP 1262084	29 Connors View	2000m ²
Lot 806 DP 1262084	31 Connors View	2000m ²
Lot 807 DP 1262084	33 Connors View	2001m ²
Lot 808 DP 1262084	35 Connors View	2000m ²
Lot 809 DP 1262084	37 Connors View	2159m ²
Lot 810 DP 1262084	39 Connors View	2408m ²
Lot 811 DP 1262084	41 Connors View	2009m ²
Lot 812 DP 1262084	43 Connors View	2570m ²
Lot 813 DP 1262084	45 Connors View	2087m ²
Lot 814 DP 1262084	47 Connors View	2041m ²
Lot 815 DP 1262084	42 Connors View	2131m ²
Lot 901 DP 1268409	49 Connors View	3111m ²
Lot 902 DP 1268409	51 Connors View	2017m ²
Lot 903 DP 1268409	53 Connors View	5456m ²

Lot 904 DP 1268409	55 Connors View	2318m ²
Lot 905 DP 1268409	57 Connors View	2195m ²
Lot 906 DP 1268409	58 Connors View	2497m ²
Lot 907 DP 1268409	61 Connors View	2477m ²
Lot 908 DP 1268409	54 Connors View	2072m ²
Lot 909 DP 1268409	52 Connors View	6113m ²
Lot 910 DP 1268409	50 Connors View	6031m ²
Lot 911 DP 1268409	48 Connors View	2041m ²
Lot 912 DP 1268409	46 Connors View	2262m ²
Lot 913 DP 1268409	44 Connors View	2348m ²

Notes

* Approval to subdivide existing lot into two (2) lots: Lot 1 - 2301m² & Lot 2 - 2129m²

DA to construct multi-dwelling housing (5) and strata subdivision refused by Council in September 2020. The applicant has lodged a Class 1 appeal against this decision and the matter is currently being heard by the Land and Environment Court of NSW – Case Number 2020/00296318.

^ This lot is not part of the large lot area. It is proposed to retain the R1 General Residential zoning over this lot. This lot is included in the PP to correct a mapping anomaly. It is proposed to remove the minimum lot size requirement of 2000m² in the top / western corner of the site and extend the 500m² minimum lot size across the lot (refer to Map 2: Minimum Lot Sizes for more information).

The subject land is bordered by residential development to the east (Huntingdale Park Estate), rural land and bushland to the west and south, and large lot (rural-residential) housing to the north. The Estate sold out in November 2020 with all stages released. Some of the subject properties have dwelling houses built upon them, whilst others are vacant, having recently been released or sold (see **Figure 3: Aerial Photo**). All the subject lots are zoned to allow for residential development and are expected to be developed for housing over time.

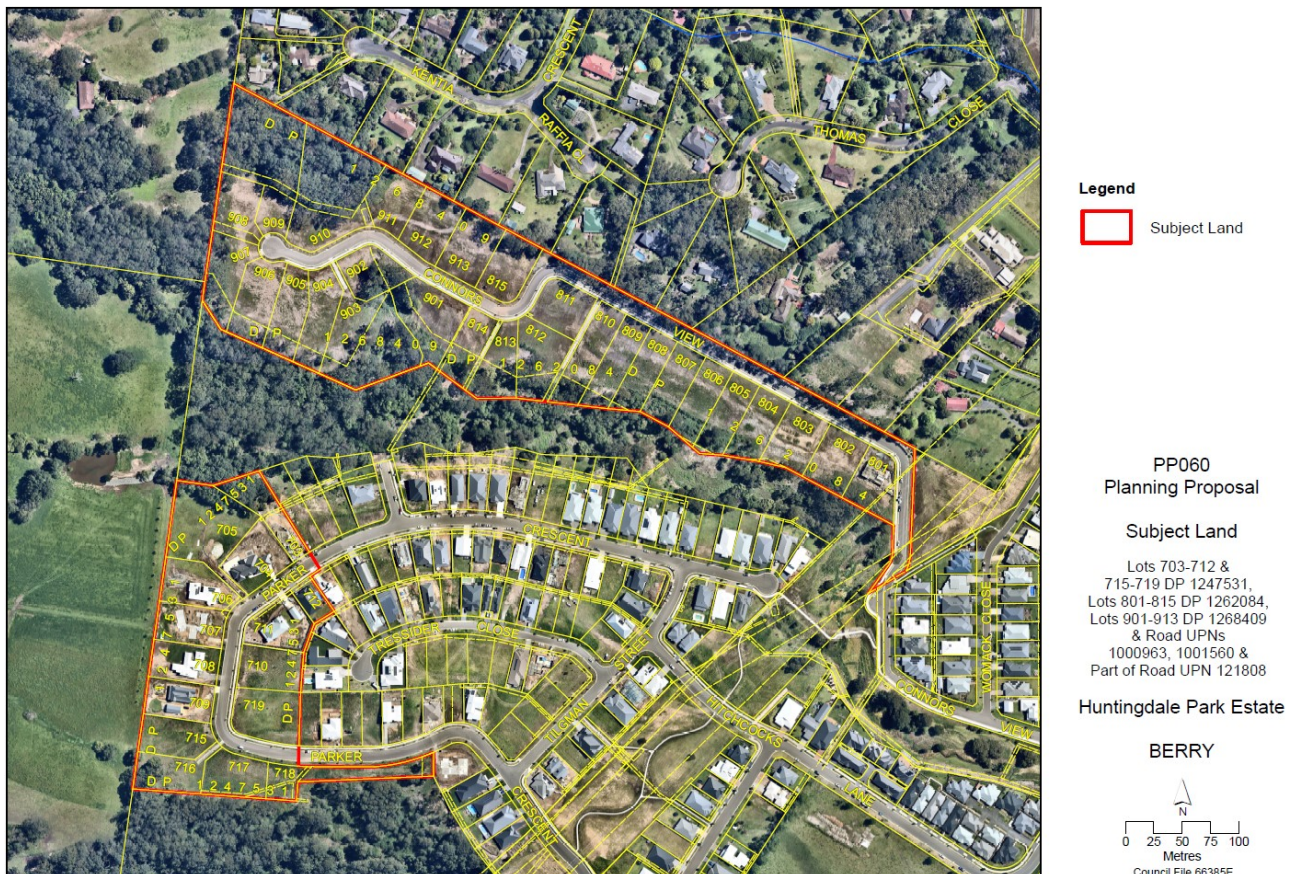


Figure 3: Aerial Photo

The majority the Estate is zoned R1 General Residential under Shoalhaven Local Environmental Plan 2014. The exceptions are a small central area along Hitchcocks Lane, which is zoned R3 Medium Density Residential, and development east of Boran Place, which is zoned R2 Low Density Residential. An area between Hitchcocks Lane, Huntingdale Park Road and the Princes Highway is zoned RE1 Public Recreation (for a park). Land to the south and west is zoned RU1 Primary Production (rural). Land to the north (along Kangaroo Valley Road) is zoned R5 Large Lot Residential.

The current zoning of the subject land and surrounds is illustrated in **Figure 4: Current Land Use Zones**. Eleven (11) hectares of land to the south of Hitchcocks Lane is proposed to be rezoned from rural land to R2 Low Density Residential as part of PP029. The Hitchcocks Lane subdivision area is expected to deliver approximately 110 – 150 new homes in the area, consistent with the Shoalhaven Growth Management Strategy 2014.

PP060
Planning Proposal
Existing SLEP2014 LZN

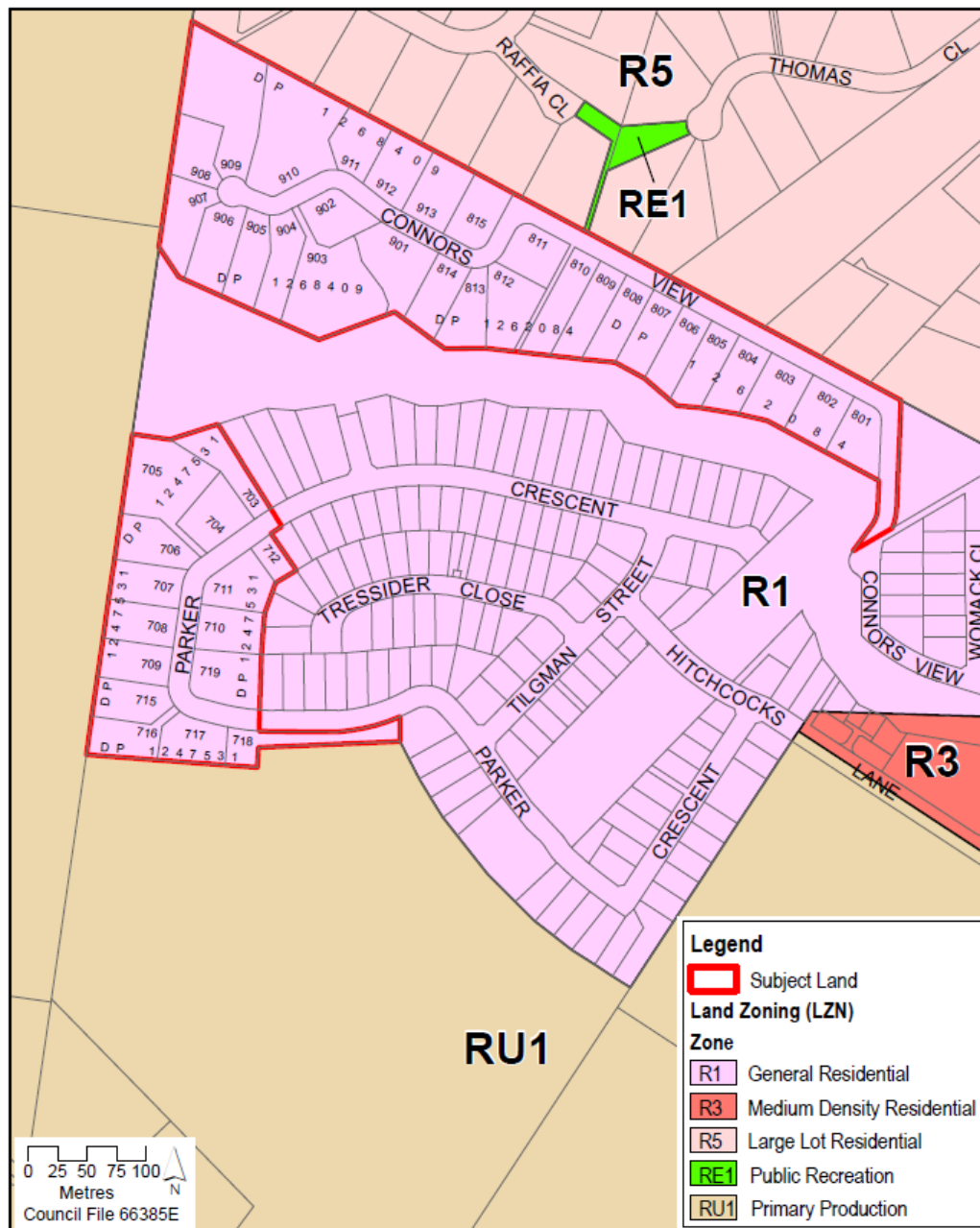


Figure 4: Current Land Use Zones

1.2 Site photos

Parker Crescent – March 2021



Figure 5: Detached housing development showing separation between buildings



Figure 6: Looking west, showing rural and escarpment landscape beyond



Figure 7: Currently vacant corner lot looking east, showing slope of land



Figure 8: Currently vacant lots



Figure 9: Looking south



Figure 10: Vacant lot, advertising development (currently subject to legal proceedings)

Connors View – March 2021



Figure 11: Large lot areas looking east



Figure 12: Large lots with significant vegetation - top of Connors View



Figure 13: New housing under construction



Figure 14: Looking west



Figure 15: Access to large lot area - Connors View



Figure 16: Connors View 6 m wide road carriageway

1.3 Background

This PP seeks to rezone the large lot areas of Huntingdale Park Estate (the Estate) to better reflect the original strategic intent of planning for the area.

Strategic planning for the Estate occurred in the 1990s, when the area was known as Berry Gardens Estate. Planning involved extensive community and agency consultation. A site-specific Development Control Plan (DCP) 70 was approved in 1998 to guide development of the Estate, including identification of large lot areas on the fringes of the residential area (see **Figure 17: DCP 70 Map**).

The first subdivision approval for the Estate was issued in 2003 (SF9320) for a *“Six Stage Subdivision comprising 287 Residential lots, One (1) Community lot, One (1) Medium Density Lots & Public Open Space and residue lot”*. This approval was subsequently modified 19 times, most recently as part of DS18/1462 in July 2019 for: *Staged Subdivision Comprising 255 Residential Lots, 3 Medium Density Lots and Public Open Space*. The Estate development was completed in 2020 with the release of the final (9th) stage of the subdivision. The Estate provides a mix of lot sizes, with 42 of the 255 residential lots measuring 2000m² or more in size.

As part of the introduction of Shoalhaven LEP 2014, the subject land (large lot area) within the Estate land was given an R1 General Residential zone. This zone was applied generally to all new residential areas/urban release areas across Shoalhaven as the objectives of the zone are most similar to those of the former ‘2 (c) Residential Living zone’ (as both relate to planning for new residential areas). The R1 General Residential zone allows for a wide range of housing types, including attached dwellings; boarding houses; dual occupancy (attached and detached); multi-dwelling housing; manor houses and residential flat buildings.

The minimum lot size applied under Shoalhaven LEP 2014 allows for subdivision down to 500m² lots over the majority of the Estate, with a 2000m² minimum lot size applying to part of the large lot area on the north and western fringe. However, as shown in **Figure 18: Current Minimum Lot Size Map**, the area of 2000m² lot sizes do not align with the resulting larger lots, as they were drawn from the DCP 70 mapping and not the approved subdivision pattern. Consequently, some of the large lot areas have a split minimum lot size requirement of between a 2000m² and 500m². This mapping anomaly requires rectification, which is proposed as part of this PP.

As planning controls (and housing market trends) have changed over time, contemporary controls now allow for increased development density and intensity over the areas that have been subdivided into lots 2000m² and larger.

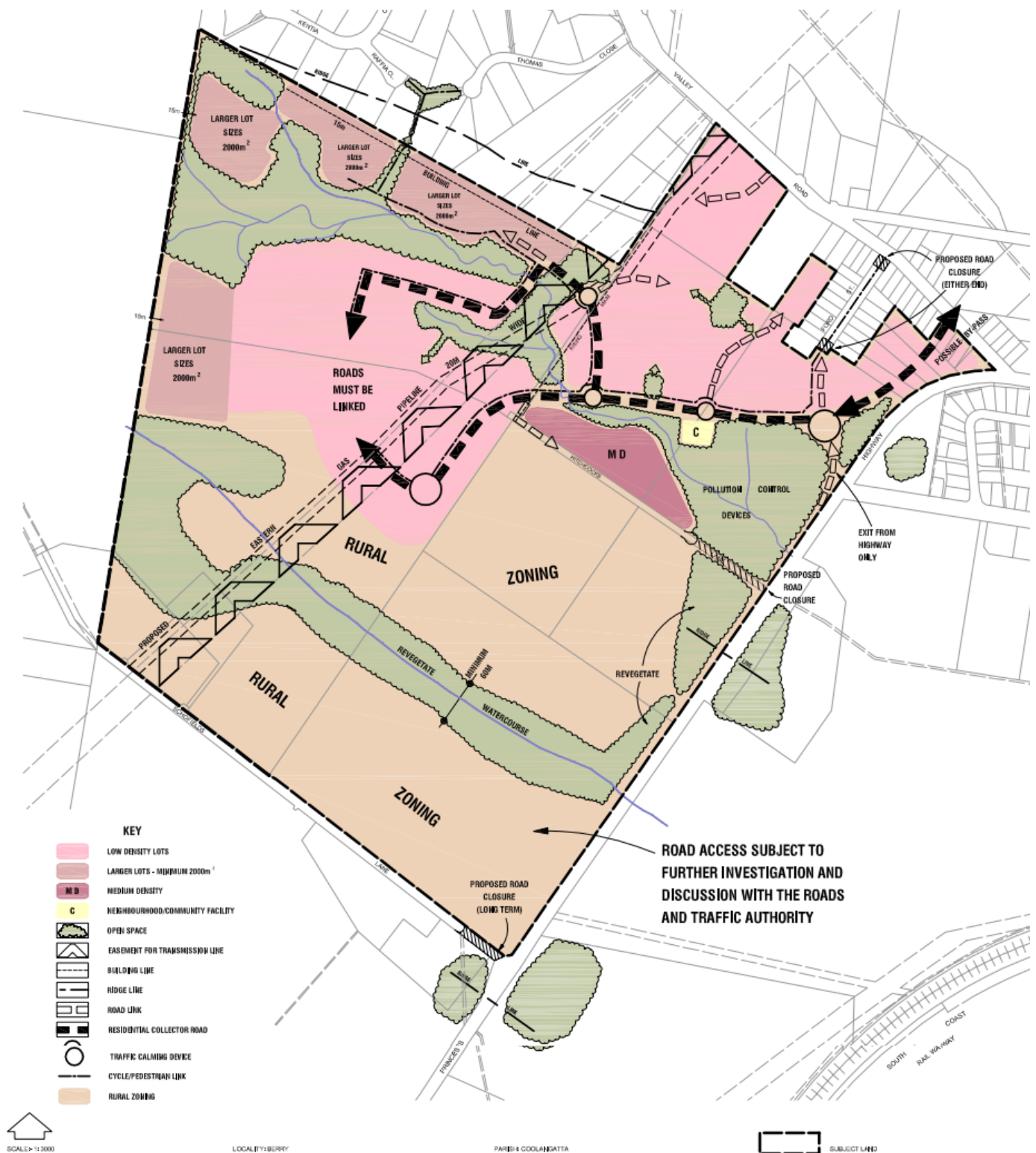


Figure 17: Map from DCP 70

Showing original strategic plans for the Estate with large lot areas identified along northern and western edge of residential areas.

PP060
Planning Proposal
Existing SLEP2014 LSZ

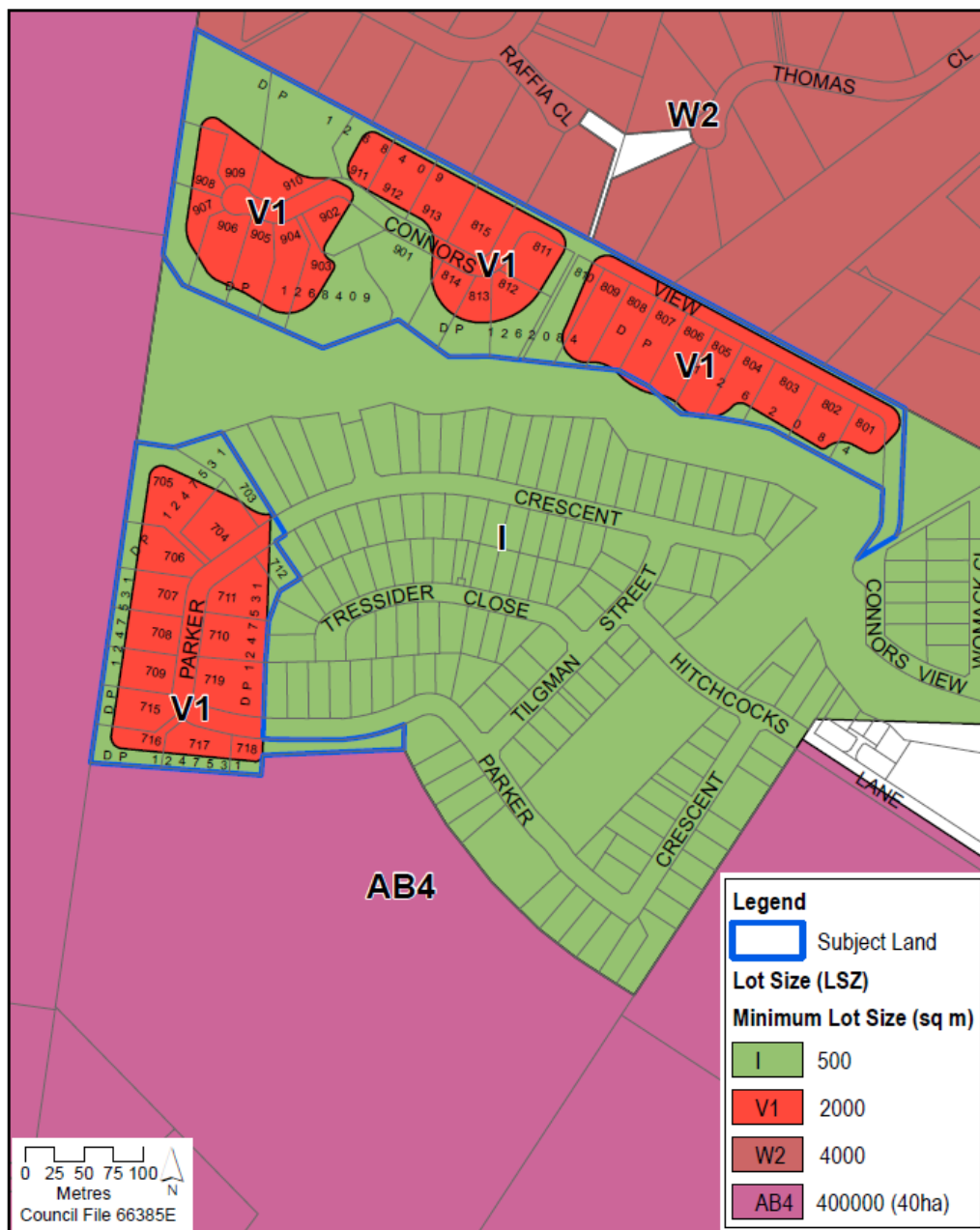


Figure 18: Current Minimum Lot Size Map - SLEP 2014

Amendment No 35 to Shoalhaven LEP 2014 (PP027) – Review of Subdivision Provisions & Introduction of the Low-Rise Housing Diversity Code

These two key changes to the planning system have been recently introduced which allow for increased development opportunities in the large lot residential area of the Estate (the subject land) beyond what was originally intended and planned for in the area.

Amendment No 35 to Shoalhaven LEP 2014 removed restrictions on Torrens Title subdivision of lawfully approved dual occupancy and medium density housing types and introduced minimum parent lot sizes for these development types.

These changes were made following a comprehensive review of Shoalhaven's subdivision provisions and clarified controls relating to the delivery of diverse housing types across Shoalhaven. These changes coincided with the introduction of the NSW State Government's Low Rise Housing Diversity Code, which provides fast-track approval pathways for dual occupancy and medium density housing types (that meet certain standards). Whilst facilitating the delivery of more diverse housing types is a shared goal, the review process identified some areas where large lot housing and lower density development is more appropriate, due to a wide range of factors including location (proximity to services), topography, environmental constraints, existing and future desired character and infrastructure considerations. Therefore, as part of Amendment No 35 (PP027), over 700 properties in 11 locations were rezoned from R2 Low Density Residential to R5 Large Lot Residential. This included land located directly north of the subject land (the large lot residential estate along Kangaroo Valley Road).

The subject land was not originally included in PP027 because the scope of that proposal was informed by previous land use zones under Shoalhaven LEP 1985.

During the public exhibition of PP027, there were a number of requests to review the land zoning of the large lot areas within Huntingdale Estate, Berry. Specifically, twenty-three (23) submissions by households in the Estate (and including one submission by the Berry Forum Community Consultative Body) supported a suggestion to rezone the large lot areas of the estate to R2 Low Density Residential, in order to protect the large lot and low density character of the area on the fringe of Berry township.

In addition, a recent Development Application for a multi-dwelling development (5 dwellings and strata subdivision) (DA19/1857) on one of the large lots in the Estate attracted significant community opposition (99 objections, no submissions in support). DA19/1857 was refused on 1 September 2020. Objecting residents were concerned that the recently introduced subdivision provisions incentivise similar multi-dwelling developments on the large lot periphery of Berry, stating this is not consistent with the intended or desired future character of this particular area, nor is it consistent with strategic planning objectives to encourage higher density development in more accessible locations closer to services.

Council Resolution to prepare Planning Proposal for large lot areas of Huntingdale Park Estate

In response to planning control changes and community concerns, Council resolved at its meeting of 23 June 2020 to: *Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.* (MIN 20.448). This review was completed and presented to the Council Development and Environment Committee meeting of 18 January 2021, where Council resolved to (MIN21.5(1)):

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.

As the subject land is currently characterised by large lot, low density layouts with single residential dwellings, it is appropriate to reconsider the zoning of this land to maintain this character into the future, consistent with the original strategic planning intentions for the area.

Part 1 – Intended Outcome

The intended outcome of this Planning Proposal is to update planning controls applying to the large lot residential areas of Huntingdale Park Estate in Berry to maintain the current and desired future character of the area as a low density transition to the surrounding rural and bushland areas.

Part 2 – Explanation of Provisions

The intended outcome will be achieved by amending Shoalhaven LEP 2014 to:

- Rezone 42 large lot properties along the western and northern boundary of the Estate from R1 General Residential to R5 Large Lot Residential; and
- Extend the minimum lot size for subdivision requirement to 2000m² across the entire area proposed to be zoned R5 Large Lot Residential and,
- Apply a minimum lot size of 500m² across the entire Lot 712 DP 1247531 (60 Parker Crescent) to rectify a mapping anomaly on this lot. The lot measures 784m² and is not a large lot. The current R1 General Residential zone will be retained over this property.

Thumbnail Maps (refer to Part 4 for full-sized maps)

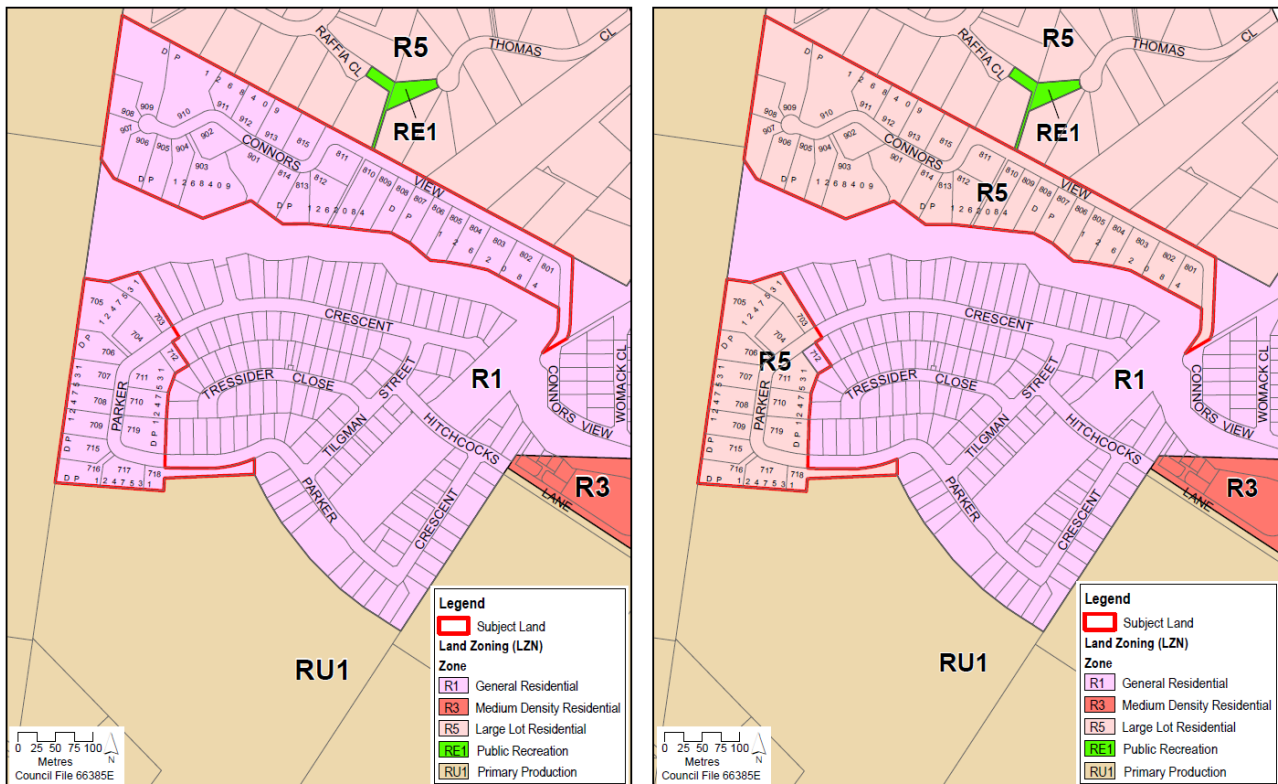


Figure 19: Existing Land Use Zone (left) and Proposed Land Use Zone (right)

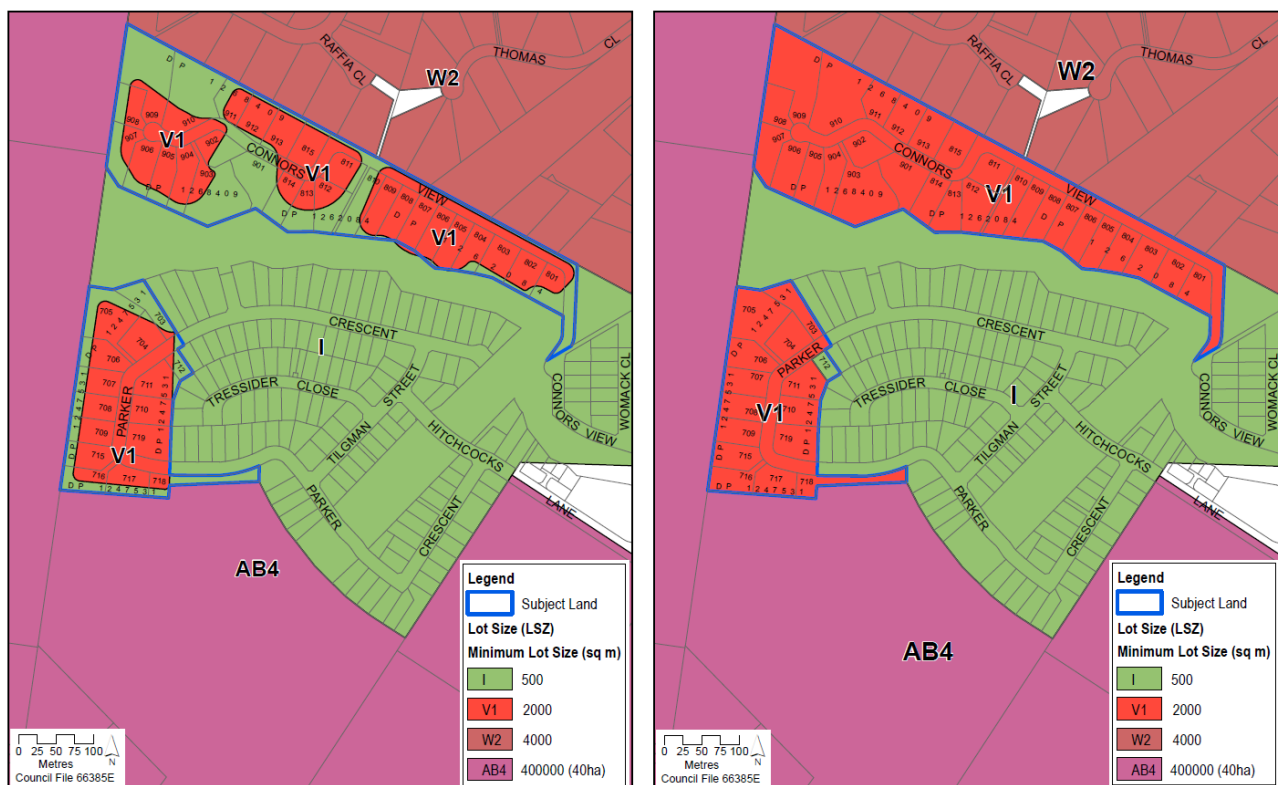


Figure 20: Existing Minimum Lot Size (left) and Proposed Minimum Lot Size (right)

Part 3 – Justification

3.1 Need for the Planning Proposal (Section A)

3.1.1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

Yes – The PP is the result of a strategic review of subdivision provisions across Shoalhaven (PP027 / Amendment No. 35 to Shoalhaven LEP 2014). This review and its outcomes are detailed in **Attachment B: Council Report Ordinary Meeting 23 June 2020**.

Amendment 35 allows large lot housing areas to be further subdivided and developed on the fringes of the Estate, in a manner contrary to strategic objectives for the area. Amendment 35 identified a number of large lot housing areas to be rezoned to R5 Large Lot Residential in response to the proposed changes, to maintain the low density nature and character of these areas into the future. In addition, the review process identified the subject land at the Estate should also be investigated for rezoning as it displays similar large lot characteristics that could be compromised by planning control changes.

With the changes to subdivision provisions across Shoalhaven, the introduction of the Low Rise Housing Diversity Code and current development pressures, it is an appropriate time to consider the future zoning of this land in order to maintain its desired character into the future.

Post-exhibition note: The Planning Proposal also gives effect to the principles within the *Berry Community Strategic Plan (CSP)*, dated September 2016, which is a community-led plan to guide future directions for the town. This Plan was prepared by the Berry Forum and involved extensive community engagement and was endorsed by Council's Strategy and Assets Committee under delegation on 15 November 2016.

The preservation of the town's heritage character and "village feel" is one of the very high priorities in the CSP. The subject land is physically separated from the town centre by the Princes Highway and is located within a modern housing area, however respecting the character of the town, and especially the landscape setting and 'gateway' positioning, remains very important.

The Berry CSP provides the following direction: *4.2 - Define the edge of the town - Provide a distinct town edge that retains views to the escarpment to the north and minimises residential subdivisions and housing release at the rural interface.*

The PP gives effect to this direction by minimising further subdivision at the rural interface of Parker Crescent and Connors View in Huntingdale Park Estate. The Berry CSP does support the provision of affordable housing, but not at the expense of retaining heritage character and definition of a clear town edge to surrounding rural areas.

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

Yes. The R5 zone is the most appropriate to secure the low-density intentions of the identified parts of the Estate. The Low Rise Housing Diversity Code (part of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*) (The Code) does not apply to the R5 zone and medium density opportunities are limited. Also, extending a 2,000m² minimum lot size to all areas within the precinct (currently part 500m² and part 2,000m²) will prevent future fragmentation of the large lots and mitigate any associated character, amenity and design concerns. The area is at risk of attracting unsympathetic, poorly located medium density development, in an area that was not planned to accommodate higher densities. The Estate was planned to provide a variety of lot sizes and housing types. Medium density development and small housing lot opportunities are provided in the central, less constrained areas nearby.

The proposed R5 zoning of the subject land will protect the area from the erosion of the existing (and desired) large lot character, as well as respond to design and amenity concerns arising as a result of the Code. This zone is also the same as that applied to the land to the north that was rezoned as part of Amendment 35 for many of the same reasons.

An alternative considered as part of the review included investigating rezoning the subject land to R2 Low Density Residential in order to prevent multi-dwelling development as suggested by some residents of the area. An R2 zone could assist in maintaining large lot characteristics, with the exception of allowing detached dual occupancy and subdivision. Detached dual occupancy development is permitted using Council or State approval pathways in the R2 Low Density Residential zone. Despite the minimum lot size provisions applying to the land, subdivision of lawful dual occupancy is permitted, potentially allowing the large lots (should they be zoned R2 Low Density) to be split below the prescribed minimum lot size. Cumulative dual occupancy (detached) development in the area has the potential to erode the desired large lot characteristics of the subject land. **Table 2** below outlines the main differences between the R1, R2 and R5 zones.

Table 2: R1, R2 & R5 Zones - Land Use Table Comparison

R1 General Residential	R2 Low Density Residential	R5 Large Lot Residential
Permissible without Consent		
Home occupations	Home occupations	Home occupations
Permissible with Consent		
Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works;	Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling	Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dual occupancies (attached); Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection

Exhibition homes; Exhibition villages; Group homes; Home-based child care; Home businesses; Home industries; Hostels; Jetties; Multi dwelling housing ; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Registered clubs; Residential flat buildings ; Respite day care centres; Roads; Semi-detached dwellings ; Seniors housing; Sewerage systems; Shop top housing ; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Water supply systems	houses ; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Jetties; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings ; Sewerage systems; Tank-based aquaculture; Water supply systems	works; Exhibition homes; Extensive agriculture; Group homes (transitional); Home-based child care; Home businesses; Home industries; Horticulture; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Sewerage systems; Tank-based aquaculture; Water supply systems
Prohibited		
Farm stay accommodation; Any other development not specified in item 2 or 3	Any development not specified as 'permissible without consent' or 'permissible with consent'.	Any development not specified as 'permissible without consent' or 'permissible with consent'.

The residential land uses in the table have been highlighted in bold. When comparing the R1 zone to the R5 zone:

- 'Dwelling houses' and 'Dual occupancies (attached)' are permissible in both zones.
- 'Dual occupancies (detached)' are prohibited in the R5 zone.
- Multi dwelling housing, boarding houses, attached dwellings, residential flat buildings, shop top housing and semi-detached dwellings are prohibited in the R5 zone.
- Secondary dwellings are permissible in the R1, R2 and R5 zones under the *SEPP Affordable Rental Housing 2009*.

Therefore, rezoning of the large lot areas to R5 Large Lot Residential is the preferred method to achieve the intended outcomes of this PP.

3.2 Relationship to strategic planning framework (Section B)

3.2.1 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Illawarra Shoalhaven Regional Plan (ISRP) specifies that the Berry centre is an area identified for increased housing activity in Shoalhaven, notably in the form of dual occupancies. The subject land applies to a small number of lots that are removed from the Berry Town Centre, over 2km from the western most extent of the business zone. It is expected that the demand for dual occupancy development in the Berry area will be concentrated closer to the Berry Town Centre, including land in existing built up areas, east of the subject land. It is noted that dual occupancy (attached) will remain a permissible land use in the R5 zone. Given the above, the proposal is not inconsistent with the provisions of the ISRP as they relate to Berry.

The PP is consistent with the following general objectives and actions of the Illawarra-Shoalhaven Regional Plan 2015-2036 as summarised below.

Goal 1: A Prosperous Illawarra-Shoalhaven

The scenic location, leafy village character and urban form of Berry contribute to the tourist appeal of the area, and tourism is a priority growth sector in the Regional Plan. This PP seeks to minimise the potential for unsympathetic urban development on the rural fringes of Berry, which could undermine this highly-valued character and appeal.

Goal 2: A variety of housing choices, with homes that meet needs and lifestyles

Direction 2.1 Provide sufficient housing supply to suit the changing demands of the region

The Regional Plan indicates there is enough housing supply identified across the Shoalhaven and no new release areas are required beyond those already identified in the Shoalhaven Growth Management Strategy (GMS). The Estate is identified in the GMS, with original development envisaged to provide a variety of housing choices ranging from medium density housing within walking distance to Berry Town Centre through to conventional suburban lots (~500m²) through to large lots (>2000m²) on the rural periphery.

Direction 2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres

As detailed above, strategic planning and subsequent subdivision of the Estate provides for higher densities closer to Berry Town Centre and closer to the planned park. The large lot areas are further from the Berry Town Centre (~2 km away and not in typical walking distance, with limited access to any form of public transport) making them less suitable for higher density forms of housing.

Direction 2.3 Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact

This direction supports sound urban design principles such as those adopted in strategic planning for the Estate – to locate higher density forms of housing in less constrained areas focused on local centres. The PP does not compromise provision of housing choice or greater (relative) affordability in the area. The large lot areas of the Estate were not intended, nor originally subdivided, to accommodate higher density development. The proposed R5 zone allows for the provision of housing choice through allowing secondary dwellings and dual occupancy (attached), whilst preserving space for housing designs that are sympathetic to the character and landscape qualities of the location.

Direction 2.4 Identify and conserve biodiversity values when planning new communities

The proposal will not adversely impact upon any biodiversity values of the subject land, as the existing significant vegetation on the site (primarily located at the rear of lots along Connors View) is protected by conditions of development consent (issued with the subdivision approval of the land), positive covenants and easements over the land. These covenants and easements are registered on the land title and enforced via an 88B instrument (under the *Conveyancing Act 1919*).

Goal 3 – A region with communities that are strong, healthy and well-connected

Direction 3.2 Enhance community access to jobs, goods and services by improving connections between centres and growth areas

As discussed above, the Estate was planned to locate higher density housing closer to the Berry Town Centre with lower density housing (i.e. the subject land) on the periphery. This PP seeks to maintain this urban form and the current and future desired character of the locality.

Direction 3.3 Build socially inclusive, safe and healthy communities

The larger lots are intended to provide for greater open space and landscaping around homes in the area, to preserve the valued scenery in the Berry foothills and provide a low density transition between the smaller lot areas of the Estate and the rural and natural surrounds. There are opportunities for diverse housing types available across the Estate and within the Hitchcocks Lane proposed residential area (subject to PP029) which will provide additional small lot housing opportunities in the lower-lying, more centrally located parts of the Estate.

Goal 4 – A region that makes appropriate use of agricultural and resource lands

Direction 4.1 Protect regionally important agricultural lands as an asset to food and fibre production

The PP is consistent with state-wide policies which seek to reduce land use conflict between rural and residential land uses (land use conflict is considered more likely if development is intensified on the rural fringe). The R5 Large Lot Residential zone will act as a buffer between rural land and urban areas.

Goal 5 – A region that protects and enhances the natural environment

Direction 5.1 Protect the region's environmental values by focusing development in locations with the capacity to absorb development

Planning for the Estate followed this principle, and this PP seeks to bring contemporary planning controls in line with these intentions.

Direction 5.2 Build the Illawarra-Shoalhaven's resilience to natural hazards and climate change

The majority of the subject land is mapped as bushfire prone. Planning for Bushfire Protection 2019 (NSW RFS) supports locating lower density development on fringes of residential areas that are exposed to greater bushfire risks and seeks to limit intensification of development in bushfire affected areas.

Draft Illawarra-Shoalhaven Regional Plan 2041

The 5-year review of the Illawarra-Shoalhaven Regional Plan has commenced with the release of the Draft ISRP 2041 for public comment in late 2020. The PP is not inconsistent with the directions within the Draft ISRP, with the Draft Plan in fact adding weight to the justification for the proposal with the addition of commentary about reinforcing Urban Growth Boundaries across the region to protect existing character and scenic landscapes:

The unique character of the cities, towns and villages in the Illawarra Shoalhaven region is contingent on protecting the scenic, non-urban spaces in-between. The

Regional Plan identifies West Lake Illawarra, Nowra-Bomaderry and Bombo Quarry as growth areas. Aside from these areas, the Plan concentrates new development and intensive uses in existing centres, rather than in the scenic hinterland that defines the coastal rural character of the region. The Plan promotes the retention of existing scenic and natural areas, and seeks to protect them through an urban growth boundary. This will be maintained by land use zones that do not permit urban uses or intensive subdivision, and will ensure that existing centres, not identified as growth areas, do not expand into the surrounding, non-urban hinterlands.

Post-Exhibition Note: The Illawarra Shoalhaven Regional Plan 2041 came into force on 3 June 2021. The Planning Proposal is not inconsistent with the new Regional Plan, reinforcing the aforementioned planning principle to locate new development in and near existing centres and protect scenic hinterland areas. PP060 also gives effect to various new objectives including:

Objective	Comment
Objective 9: Promote agriculture innovation, sustainability and value-add opportunities	The proposal will minimise risk of land use conflicts between neighbouring rural land and residential development through providing a low-density and large lot transition to surrounding rural land.
Objective 11: Protect important environmental assets	The proposal will continue to protect important vegetation on large lot properties.
Objective 12: Build resilient places and communities	The proposal will ensure higher density development is located further from areas of bushfire affected land.
Objective 13: Increase urban tree canopy cover	The proposal will continue to protect existing tree canopy on private land.
Objective 15: Plan for a Net Zero region by 2050	The proposal will support lower transport emissions by directing medium density development to areas closer to shops and services, thereby enabling active transport choices in higher density locations.
Objective 22: Embrace and respect the region's local character	The proposal gives effect to this objective and aims to protect the scenic values of the large lot areas, which are generally steeper than the rest of the Estate and located upon visible ridgelines. The proposal is consistent with the strategic intent of plans for the area, which seek to provide a low-density transition to rural and bushland areas in the Berry Mountain foothills.

3.2.2 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Shoalhaven 2027 – Community Strategic Plan

The Proposal is consistent with Shoalhaven 2027, specifically: Theme 2 - Sustainable, liveable environments and Action 2.2 Plan and manage appropriate and sustainable development.

Local Strategic Planning Statement (LSPS) – Shoalhaven 2040

Shoalhaven 2040 is Council's adopted Local Strategic Planning Statement (LSPS). The PP gives effect to a number of strategies described within the LSPS.

The PP is consistent with the LSPS Vision Statement as it supports the provision of well-located housing offering residents a relaxed lifestyle, including protection of the natural and rural character qualities of the area and supporting the local economy, including but not limited to agriculture and tourism.

This PP is consistent with the two directions of the LSPS being *Enhancing and managing Economic Growth and Preserving and enhancing the City's natural and built environments and lifestyles* through providing for housing growth in accordance with strategic plans and policies.

Sitting under the two Directions are sixteen Planning Priorities. Thirty-seven potential Actions or tasks sit under the priorities. The PP is consistent with the relevant Planning Priorities and Actions as listed below. The PP is not inconsistent with any of the Planning Priorities or Actions.

- *Planning Priority 1 Providing homes to meet all needs and lifestyles*
 - *CW1.1 Implementing the existing Shoalhaven Growth Management Strategy (2014) and the settlement strategies and structure plans that are reflected in it to manage residential growth and deliver a potential 12,700 of the 14,600 dwellings required by 2041.*
- *Planning Priority 2 Delivering infrastructure*
 - *CW2.3 Delivery and maintenance of a safe and efficient road and active transport network.*
- *Planning Priority 11 Adapting to natural hazards through building resilience*
 - *CA11.1 Work with the NSW Rural Fire Service to identify bush fire prone land and implement the Planning for Bush Fire Protection 2019 Guideline in relevant decisions.*
- *Planning Priority 13 Protecting and enhancing neighbourhoods*
 - *CW13.2 Support the implementation of Community Strategic Plans that are prepared by community groups and accepted by Council.*
 - *CA13.1 Work with the NSW Government to identify opportunities for proposed special character planning controls to help guide in-fill development in Berry, Kangaroo Valley, Milton and other area as appropriate*
- *Planning Priority 15 Scenic and cultural landscapes*

- *A15.1 Consider, where appropriate, the identification of scenic and landscape values and the development of appropriate controls to protect and enhance identified values*

Shoalhaven Growth Management Strategy (GMS) 2014

The purpose of the GMS is to manage the social and economic implications of future growth in Shoalhaven whilst protecting and preserving the environmental values of the City.

The GMS highlights that the Estate and infill development across Berry will cater for growth in the area, and notes the importance of protecting landscape qualities and character of the area. The PP is not inconsistent with the GMS as it applies to a relatively small area of the Estate and it will give effect to objectives to preserve character and scenic qualities of the area.

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

The PP is consistent with applicable SEPPs as outlined in **Attachment D: List of SEPPs**. Specific commentary regarding the Vegetation in Non-Rural Areas SEPP is provided below.

State Environmental Planning Policy - Vegetation in Non-Rural Areas

Whilst this SEPP and Council's accompanying Development Control Plan (DCP) Chapter G4: Tree and Vegetation management have general implications for vegetation removal in R5 Large Lot Residential zones, no additional vegetation removal on the subject land will be permitted. This is because the significant vegetation within the Estate is protected via conditions of development consent issued for the subdivision approval (SF9320) under the *Environmental Planning and Assessment Act 1979*.

These conditions of consent prevent vegetation removal (not associated with approved bushfire risk mitigation such as provision of asset protection zones) and restrict development to the cleared areas of lots via easements and positive covenants, described in the 88B instruments for each lot. 88B instruments detail land based restrictions registered on title and are issued under the *Conveyancing Act 1919*. In this case, any change to the 88B instrument restriction and development consent conditions would require separate development application assessment and approval (either via a new DA or a modification to and existing DA). Therefore, the PP does not affect the current vegetation management restrictions applying to the land.

Part 1, Clause 6 of this SEPP does not affect authorisations under other Acts, therefore the PP and the proposed change of land use will have no implications for the protection of the vegetation on the land.

3.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Relevant Ministerial Directions (Planning Policy Directions issued under section 9.1 of the *Environmental Planning and Assessment Act 1979*) are addressed below. For a comprehensive list of s.9.1 Directions see **Attachment E**.

2.1 Environmental Protection Zones

This Direction requires planning proposals to protect biodiversity values. Areas of the subject land with biodiversity value (primarily at the rear of lots along Connors View and in the north-western corner of the site) are protected via conditions of development consent (issued for SF9320 and dated 12 July 2019) and restrictions on land title (88B instruments registered on the Deposited Plans of each of the lots). Therefore, significant vegetation will not be able to be removed, regardless of the land use zone applying to the land.

The proposal was referred to the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment for comment. The BCD did not object to the proposal subject to the existing conditions of subdivision consent SF9320 being complied with. The referral recognised that:

‘In principle, formalising a larger area of 2000m² lots would reduce pressure on tree removal, notably for those lots adjacent to and contiguous with the riparian corridor. The proposed rezoning from R1 to R5 would also prevent additional development pressure on retained trees resulting from more intensive and higher density forms of residential development allowed under the NSW Low Rise Housing Diversity Code.’

Therefore, the PP is not inconsistent with this Direction.

2.6 Remediation of Contaminated Land

This Direction applies because the land was historically used for agricultural (grazing) purposes. However, the land is not known to be contaminated and has since been rezoned and developed for residential purposes. The PP is not inconsistent with this Direction as it relates to rezoning from one type of residential land use to another type of residential land use and does not propose a more intensive or sensitive land use.

3.1 Residential Zones

The PP meets the objectives and gives effect to the provisions within Part (4) of this Direction. The PP displays a minor inconsistency with Part (5)(b), however this inconsistency is strategically justified, is consistent with the Illawarra-Shoalhaven Regional Plan (and Draft Regional Plan) and is of minor significance, therefore is acceptable and meets the provisions of Part (6) of this Direction. **Table 3** comprehensively addresses the requirements of this Direction.

Table 3: S.9.1 Planning Direction 3.1 Residential Zones

Provision	Comment
Objectives (1) The objectives of this direction are:	The PP meets these objectives. The Estate is planned to provide housing choice, ranging from medium density housing in the central

<p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	<p>parts of the Estate through to large lot, low density development on the urban fringe. The R5 zone allows for housing choice by allowing for secondary dwelling development (also known as granny flats) and attached dual occupancy development. These forms of development (in the regional context) are most likely to provide housing choice and fill identified gaps in the local housing market for smaller dwellings.</p> <p>The PP will ensure that new housing has appropriate access to infrastructure and services, by reinforcing strategic plans to cluster higher density development closer to services and infrastructure such as the local park and Berry Town Centre and to provide lower density development on the edges of the Estate. The land has been subdivided on the basis that the large lot areas would accommodate primarily detached housing; therefore, current planning controls that allow higher density housing types in the area (such as multi-dwelling housing or smaller lot sizes) may have unforeseen infrastructure implications.</p>
<p>Where this direction applies (2) This direction applies to all relevant planning authorities.</p>	<p>-</p>
<p>When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <p>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</p> <p>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</p>	<p>This direction applies because the PP seeks to alter a residential zone.</p>
<p>What a relevant planning authority must do if this direction applies (4) A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p>	<p>The PP is consistent with Part (4) of this direction. In particular the PP will give effect to Part (4)(c), in that it will reduce the consumption of land for housing on the urban fringe of Berry.</p> <p>The PP allows for large lots and detached housing on the urban fringe. The zone permits dual occupancy (attached) development. Secondary dwelling development is enabled under the Affordable Rental Housing SEPP. These housing types provide housing choice as they are typically associated with smaller housing products, which are in short supply locally. Secondary dwellings and dual occupancy (attached) are also compatible with large lot characteristics and make efficient use of existing infrastructure.</p> <p>As the large lot parts of the Estate were originally subdivided with the intention of providing a low</p>

	<p>density transition to rural and natural surrounds, infrastructure has not been delivered to provide for increased density and any future retrofitting of medium density development within the current subdivision and road layout will likely result in significant design compromises. Therefore, the proposed PP will encourage good design outcomes, consistent with original masterplans for the locality.</p>
<p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	<p>The PP is not consistent with Part (5)(b) but this inconsistency is minor and acceptable as discussed below.</p> <p>The change in zone will prohibit certain residential land uses, including multi-dwelling housing and detached dual occupancies. The proposal therefore reduces the theoretical permissible residential density of the land. However, the area has been planned and infrastructure delivered to service a large lot, low density area. Higher residential densities and housing types such as multi-dwelling housing were not originally intended for the land. This PP seeks to realign planning controls with the strategic objectives for the land, as they have changed over time, leading to unintended consequences and potential unforeseen impacts.</p> <p>All dwelling entitlements will be preserved by virtue of all lots meeting the prescribed minimum lot size. Diverse housing options that are compatible with the future desired character of the area will remain permissible, in the form of secondary dwellings and attached dual occupancies.</p>
<p>Consistency</p> <p>(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</p> <p>(iii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy</p>	<p>The PP is mostly consistent with Direction 3.1 Residential Zones, with a minor inconsistency with Part (5)(b).</p> <p>The PP is justified by a number of strategies, including the Illawarra-Shoalhaven Regional Plan and Shoalhaven GMS which align with the objectives of this direction; identify the subject land as part of a growth area; and are approved by the NSW Department of Planning. These strategies are discussed in Sections 3.2.1 and 3.2.2 above.</p> <p>The PP applies to 42 existing large lots on the periphery of the Estate. The broader Estate comprises over 255 lots, plus medium density housing areas and additional housing of between 110-150 new lots are proposed in the area as part of PP029. Housing diversity development options remain permissible on the subject land in the form of attached dual occupancy and secondary dwellings and more broadly across the Estate due to the R1 zoning. The capacity for housing in the area will</p>

prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) of minor significance.	remain consistent with approved plans and strategies, and the PP provides numerous strategic and community benefits, as discussed throughout this PP. The PP inconsistency with part of this Direction is therefore considered minor.
---	---

3.4 Integrating Land Use and Transport

The objectives of this Direction include:

- a) improving access to housing, jobs and services by walking, cycling and public transport, and*
- (b) increasing the choice of available transport and reducing dependence on cars, and*
- c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car...*

This PP is consistent with the provisions of this Direction, as it seeks to limit higher density development to the relatively more accessible parts of the Estate, and promote lower density development on the subject land which is located at the north and western extremities of the Estate.

4.3 Flood Prone Land

This direction applies as the PP seeks to alter planning provisions for land that is identified as flood prone. However, it is noted that only small areas of the subject land are identified as flood prone as shown in **Figure 21** below.

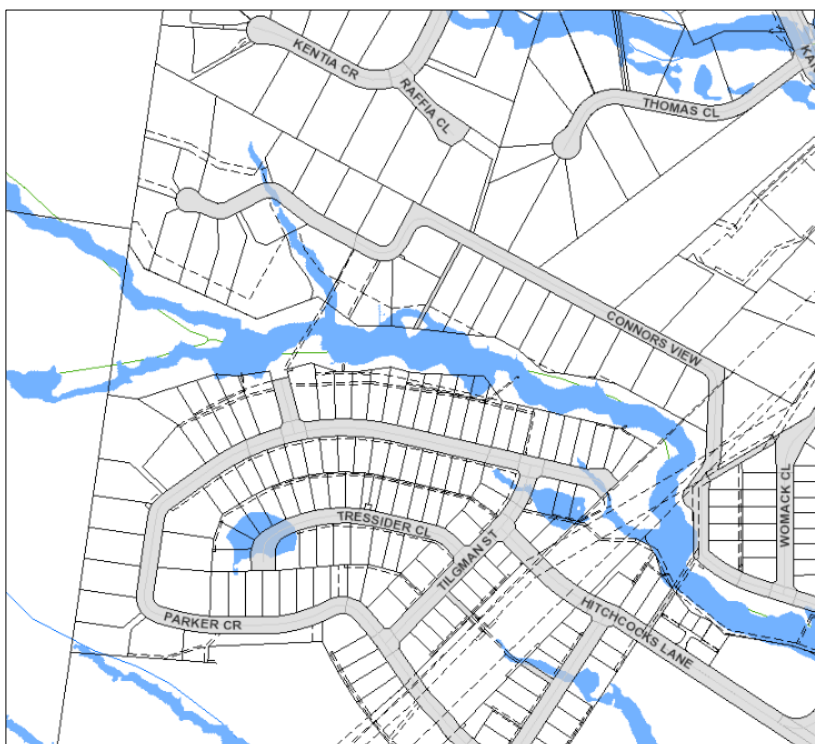


Figure 21: Flood Prone Land affected land

The PP is not inconsistent with this direction for the following reasons:

- It is not inconsistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.
- It does not rezone any land from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use of Special Purpose Zone.
- It does not contain provisions that apply to flood planning areas which:
 - Permit development in floodway areas.
 - Permit development that will result in significant flood impacts to other properties.
 - Permit a significant increase in the development of that land.
 - Are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services.
 - 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.
- Flood related development controls are not being imposed.

4.4 Planning for Bushfire Protection

A significant portion of the large lot areas of the Estate is mapped as being bushfire prone, as shown below in **Figure 22**. Large lots are generally intended to limit increases in future residential density, in turn decreasing bushfire risk exposure. Pre-exhibition consultation with the NSW RFS, as required by this direction, raised no issues or concerns in relation to bushfire. The PP is therefore consistent with this Direction, as outlined in **Table 4**.



Figure 22: Huntingdale Estate: Bushfire Prone land

Table 4: S.9.1 Direction 4.4 Planning for Bushfire Protection

Provision	Comment
Objectives (1) The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	The PP gives effect to these objectives as it seeks to discourage incompatible land uses in fire prone areas and facilitates continued management of these areas consistent with the subdivision approval.
Where this direction applies (2) This direction applies to all local government areas in which the responsible Council is required to prepare a bush fire prone land map under section 10.3 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.	The subject land is mapped as bushfire prone land.
When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	This PP is located on land that is mapped as bushfire prone land.
What a relevant planning authority must do if this direction applies (4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made, (5) A planning proposal must: (a) have regard to Planning for Bushfire Protection 2019, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. (6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building	<p>The NSW RFS was consulted in accordance with this part and as required by the Gateway determination.</p> <p>Comments from the NSW RFS received on 7 May 2021 indicate the NSW RFS considered the proposal and have <i>'no concerns or issues in relation to bush fire.'</i></p> <p>The PP has regard to PBP 2019 and does introduce controls that avoid placing inappropriate development (more intensive housing development and more people) in bushfire prone areas. Bushfire hazard reduction is not prohibited in the proposed R5 Large Lot Residential zone.</p> <p>The proposal is not inconsistent with, and does not compromise compliance with, Part (6) (a) – (f).</p>

<p>line consistent with the incorporation of an APZ, within the property, and</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</p> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>	
<p>Consistency (7)</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the noncompliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.</p>	<p>The PP is consistent with this Direction.</p>

3.3 Environmental, Social and Economic Impact (Section C)

3.3.1 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?

The proposal will not impact on any critical habitat or threatened species, populations or ecological communities, or their habitats as the existing significant vegetation on the subject land is protected from removal by conditions of development consent under the *Environmental Planning and Assessment Act 1979* (issued with the subdivision approval to protect significant vegetation on the site) and restrictions on land title under the *Conveyancing Act 1919*.

The large lot areas of Parker Crescent are largely cleared; however significant vegetation remains at the rear of many lots along Connors View. Retention and protection of this vegetation was recognised throughout the planning process for the Estate, with the upper reaches of the Estate valued by the community for its habitat and scenic values. As part of the subdivision approval (SF9320), land title restrictions were placed upon lots containing significant vegetation in the form of an 88B instrument, preventing removal of this vegetation (except for maintenance of Asset Protection Zones for bushfire risk mitigation). This 88B instrument also requires landowners to manage weeds on their properties and undertake vegetation management in accordance with approved Vegetation Management Plans (VMPs). A development application approval would be required in order to remove vegetation that is currently protected by an easement, positive covenant or otherwise protected via the 88B instruments applying to each property.

Therefore, whilst NSW Biodiversity Reforms have resulted in generally less restrictions for clearing trees/vegetation on R5 zoned land (compared to R1 or R2 zoned land) in Shoalhaven, the above land title based restrictions and subdivision consent conditions protect the existing vegetation on the subject land. The PP therefore will not enable any additional vegetation clearing.

As the subdivision of the land was predicated on the provision of large lots and low density housing, planning for vegetation management, asset protection zones and biodiversity conservation assumed higher density development would not be built on the large lot properties and that further subdivision (and associated fencing) would not occur. Therefore, any higher density development on the large lots may have implications for bushfire management and vegetation clearing that have not previously been accounted for. The PP seeks to avoid these unforeseen impacts.

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

The PP will have a number of beneficial environmental impacts including:

- Precluding higher density housing forms on the urban fringe given the large lot areas are located in an elevated area furthest from Berry Town Centre and not within convenient walking distance (over 2 km away). Higher density development within the Estate is located closer to town services and the planned park thereby promoting walking, cycling and active transport. The PP will therefore limit additional car dependency (and related congestion and emissions) associated with poorly located medium density dwellings on the urban fringe.
- The PP will ensure there is ample space to accommodate well-designed dwellings on the large lot areas, providing for optimised passive design opportunities, larger landscaped areas and greater opportunities for stormwater infiltration. The PP seeks

to avoid compromising housing design on the urban fringe to achieve higher development yields in an area intended for, and best suited to, lower-density housing.

- The PP will reduce the risk of overdevelopment in a visually sensitive area, and within an area that contains (or borders) areas of ecologically important vegetation.

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

Dwelling entitlements

The PP will maintain all dwelling entitlements to all existing and approved lots. Lots within the R5 zone trigger clause 4.2D(3) of Shoalhaven LEP 2014, which requires a lot to have a dwelling entitlement prior to the erection of a dwelling house or dual occupancy. As a result of this, all lots would be required to be greater than 2000m² (the minimum lot size for the land) to meet the requirements of clause 4.2D(3) or the lots would need to meet the requirements of another part of clause 4.2D(3). **Table 1** presents the lot size of all lots in the investigation area. All lots proposed to be rezoned from R1 General Residential to R5 Large Lot Residential contain an area greater than 2000m², exceeding the minimum lot size for the land, and will therefore continue to benefit from dwelling entitlement.

Development potential

The PP will result in reduced development capacity for certain types of development; namely, multi-dwelling housing and dual occupancy (detached) will no longer be permissible in the R5 Large Lot Residential Zone. However, the large lot area of the Estate is not considered to be an optimal location for these housing types, as the subject land is not located close to town centre services or recreational facilities.

The subdivision of the area has also been carried out with the intention of the large lot areas providing for low density housing. This is evidenced by the legal restrictions placed on the land via an 88B instrument (under the *Conveyancing Act 1919*) which attempt to limit development on the land to only one residence per lot (**see Figure 23**). These developer-imposed restrictions can be overridden by the provisions of the Shoalhaven LEP 2014. In addition, infrastructure has been extended to the subject land based on the area accommodating low-density residential development.

3. Terms of Restriction numbered 5 in the plan:

- a) Not more than one main building may be erected or be permitted to remain on any lot burdened and that main building must not be used for any purpose other than a single residential dwelling but this restriction does not prevent the erection and use of a building or buildings on any lot burdened strictly in accordance with the conditions of the Shoalhaven Local Environmental Plan 2014.

Figure 23: Excerpt from Huntingdale Estate (SF9320) Section 88b Instrument

Importantly, the subject land will retain the ability for secondary dwellings and attached dual occupancies to be built upon the land, providing additional development options for

landowners and some flexibility. There are many other opportunities for detached dual occupancy and medium density housing types to be accommodated nearby, in more central, accessible and less-constrained areas of the Estate and Berry. The proposed rezoning of land south of Hitchcocks Lane (proposed as part of PP029) also looks to provide additional opportunities for suburban and small lot housing in the area.

The area is characterised by high property values with the median house price in Berry in 2020 over \$1.15 million. The larger lot sizes of the area are valued by residents for the space, privacy and outlook they provide, with many residents in the area raising concerns about the impacts of additional subdivision in the area and higher density development during recent planning projects (e.g. DA19/1857 for multi dwelling housing on Parker Crescent and PP027 (Citywide changes to subdivision provisions)). The PP is therefore unlikely to impact adversely on property values, as large lot housing remains in demand in the area.

Overall, the PP is unlikely to have any adverse economic impacts as it proposes to support a development character that is consistent with strategic plans for the area, and consistent with marketing of the properties and resident expectations. Any potential negative social and economic effects of the proposal are envisaged to be minimal and are outweighed by the benefits of the proposal.

View and character impacts

The Estate is located in the foothills of Berry Mountain and is bounded by rural land to the west and south, and by large rural lifestyle lots to the north. The subject land is located in the elevated areas and along the ridgelines of the Estate, making the area visually prominent. The surrounding landscape is characterised by rural pastures and forested hills and provides residents and visitors with a sense of arrival into the historic town of Berry. Protecting these views and scenic landscapes is an important planning consideration, and the large lot areas (minimum lot size of 2,000m²) are intended to provide a transition between the suburban lots within the estate (with a 500m² minimum lot size) and the surrounding rural and forested escarpment areas. Higher density building forms, depending upon their design, could intrude on these views. This PP will reduce the likelihood of adverse view impacts by promoting low density development on large lots, encouraging provision of additional landscaped areas and greater separation between buildings.

This PP, to rezone land on the edges of the Estate, is consistent with recent decisions to rezone large lot areas to R5 Large Lot Residential to better reflect existing and desired future character. The subject land is similar in character to the rural-residential land directly to the north of the Estate, being the lifestyle properties along Kangaroo Valley Road. This area was recently rezoned from R2 Low Density Residential to R5 Large Lot Residential as part of Amendment 35, recognising the need to maintain this character into the future.

Post-exhibition note: The proposal illustrates consistency with the Shoalhaven Character Assessments by Roberts Day (February 2020), prepared for the then NSW Department of Planning and Environment and Shoalhaven Council. This document recognises that place

character has become a clear and important focus for planning and development in recent times and seeks to *‘ensure that any proposed changes and future development consider the place character and local values’* in the context of growth planning. The document also recognises planning opportunities (to build upon) such as Shoalhaven’s unique natural setting and recreation opportunities, and challenges such as lack of housing diversity, dispersed network of settlements and fluctuating population (e.g. seasonal tourism impacts). Berry is recognised in the Character Assessment as ‘leafy’, ‘surrounded by countryside’, with a ‘historic’, ‘boutique’ and ‘rural’ identity. Elements of character listed as ‘to improve’ include improving walkability and pedestrian connections; and for new developments to ensure they are sympathetic to heritage, fine-grain character and rural atmosphere. In relation to Huntingdale Park Estate, the assessment states, *‘Newer development to the south & south west to be enhanced to reflect the character of the main historic town, whilst maintaining the strong character of the core heritage area.’*

The large lot areas of the Estate therefore contribute to valued characteristics of Berry overall, including preservation of rural landscapes and leafy streetscapes and historic development patterns.

Housing choice and (relative) affordability

Multi-dwelling housing is often described as providing greater housing choice and affordability; which is true and desirable in many contexts; however, it is important that multi-dwelling housing and other diverse housing types are well-located in order to realise these objectives. Large lot residential areas in the regions typically have limited access to town centres, parks and public transport and other locational features that incentivise and justify compact housing forms in metropolitan/urban areas. Therefore, multi-dwelling housing developments on the fringes of regional towns usually do not offer true housing choice, instead offering very similar features, sizes and building forms as detached housing in the area, but with reduced landscaped and private open space areas and sometimes less parking space.

A pertinent example is the recent DA for multi-dwelling housing in Parker Street within the Estate. This multi-dwelling application proposed 5 dwellings, each with 3 bedrooms (and media room with window which could also be a 4th bedroom), and 3 bathrooms (one dwelling proposed to have 2 bathrooms). All but one dwelling offered a double garage. These types of developments accommodated on large lots do not contribute to achieving the objective of providing greater housing choice (or affordability) in an area lacking in smaller one and two bedroom (and small 3 bedroom, 1 / 2 bathroom) dwellings and simply replicate more common 3 and 4 bedroom detached dwelling configurations multiple times within a larger property. The large lot areas of the Estate were not intended, nor originally subdivided, to accommodate higher density development with more central and less-constrained areas identified for this purpose.

With the ability to undertake multi-dwelling housing and other higher density housing forms removed, other diverse housing forms are incentivised such as development of secondary dwellings or attached dual occupancy (these could be overlooked where higher density

housing is permitted as they would not typically be considered as profitable as higher density). These housing types are typically smaller and therefore assist in supplying a recognised gap in the local market for smaller 1,2 and modest 3 bedroom dwellings. This PP therefore does not impact upon the provision of true housing choice and whilst it does not contribute to directly improving housing affordability, as large lots are envisaged to remain very high value properties, it does allow for housing types which are likely to be more (relatively) affordable than larger dwellings in the area.

3.4 State and Commonwealth Interests (Section D)

3.4.1 Is there adequate public infrastructure for the Planning Proposal?

The PP will reduce the possibility of future development placing undue strain on infrastructure provision (e.g. roads, water, sewer) in an area which was not planned or intended to accommodate higher density development.

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

The Gateway determination required consultation with the following public authorities listed in **Table 5**:

Table 5: List of agencies for consultation

Agency	Reason for consultation
NSW Rural Fire Service	To satisfy the requirements of Section 9.1 Direction 4.4 Planning for Bushfire Protection Clause (4).
DPIE - Biodiversity and Conservation Division	To provide the opportunity to comment on the proposal's potential impacts on biodiversity.

A response from the NSW Rural Fire Service was received on 7 May 2021. The NSW RFS did not raise any issues or concerns in relation to bushfire.

A response from DPIE - Biodiversity and Conservation Division was received on 7 May 2021. The BCD did not object to the Planning Proposal, recognising the proposed rezoning will (in principle) reduce pressure to remove trees and vegetation given the lower density and intensity of permitted uses.

The BCD noted the riparian corridors in the area contain significant vegetation (mapped as High Environmental Value under the Illawarra Shoalhaven Regional Plan 2015) and provide a link to remnant vegetation west of the Estate (consisting of Illawarra Subtropical Rainforest and Illawarra Lowlands Grassy Woodland Endangered Ecological Communities). The BCD requested that these riparian areas (within the upper reaches of Huntingdale Park Estate) be rezoned from their current R1 General Residential Zone to E3 Environmental Management or similar to better reflect their environmental character and function. The riparian corridor will remain unchanged as part of this PP, and the corridor has been dedicated to Council. This suggested zoning change to the riparian corridor will be explored as part of a future housekeeping amendment to Shoalhaven Local Environmental Plan 2014.

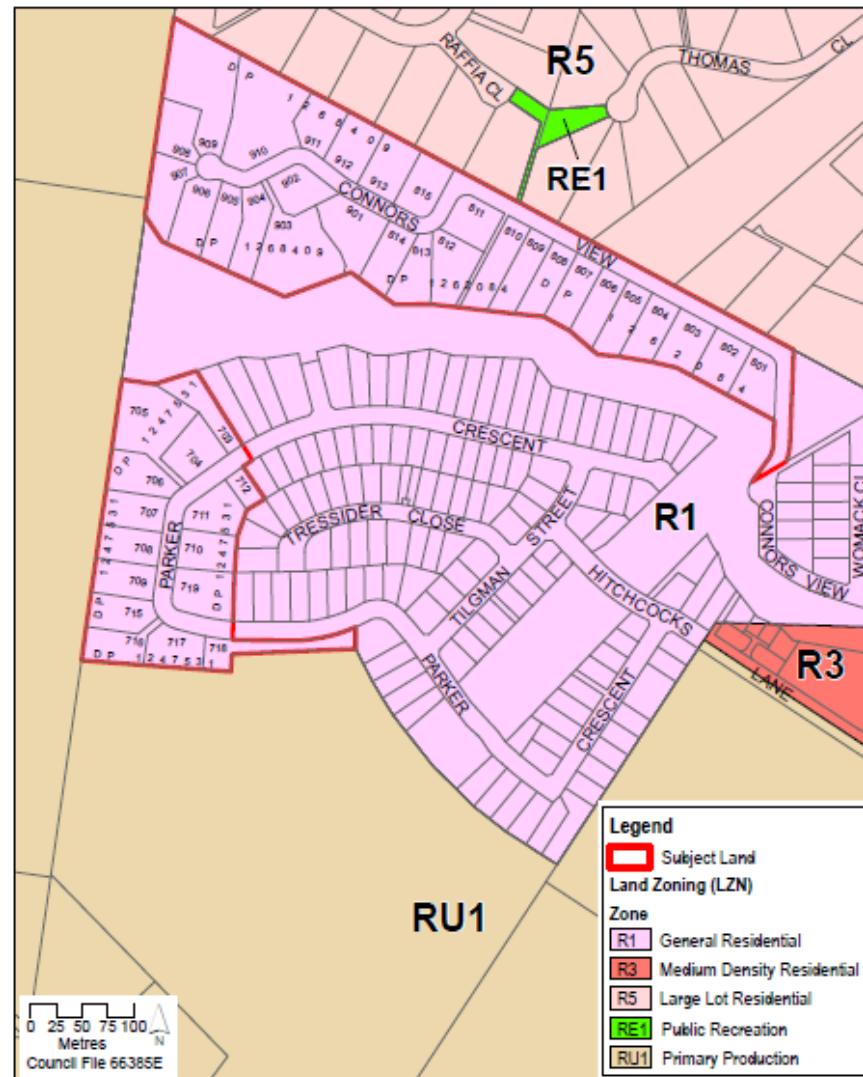
Part 4 – Mapping

This PP is supported by the following maps:

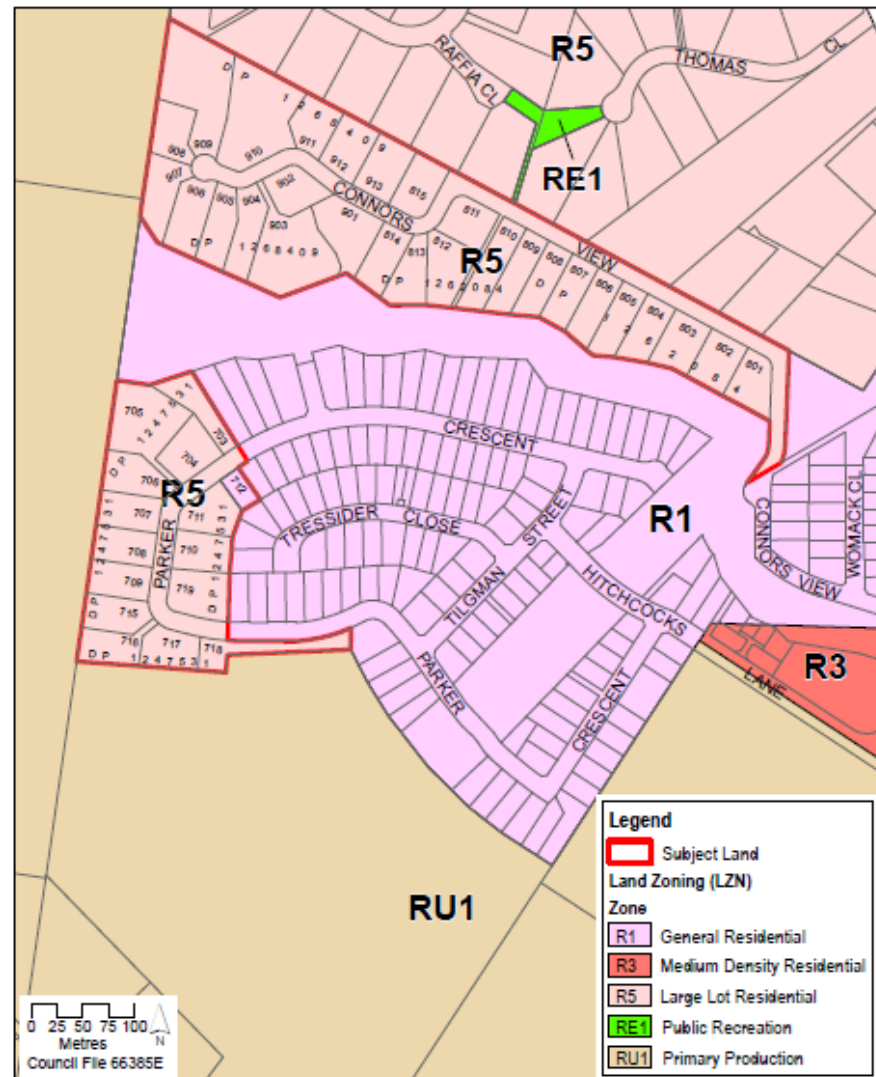
- Land Zone Map (LZN) – PP060 Existing LZN & PP060 Proposed LZN
- Lot Size Map (LSZ) – PP060 Existing LSZ & PP060 Proposed LSZ

These maps are provided on the following pages.

PP060
Planning Proposal
Existing SLEP2014 LZN

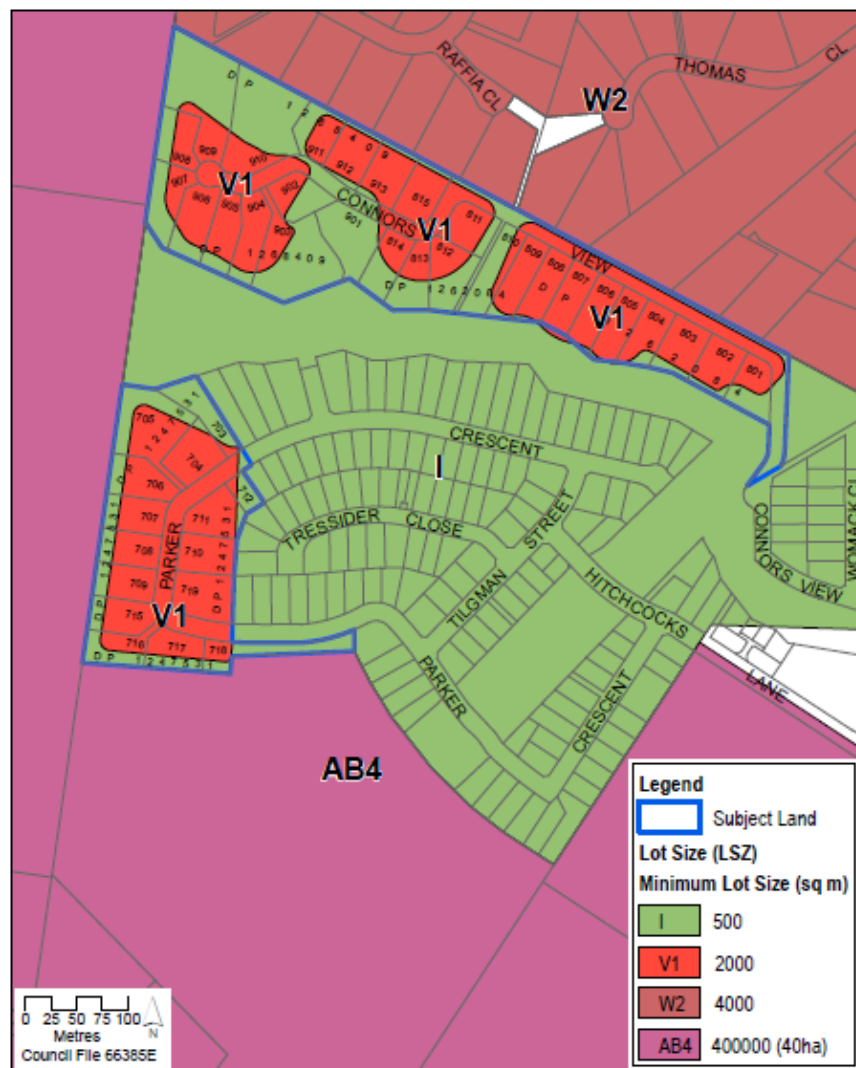


PP060
Planning Proposal
Proposed LZN Changes

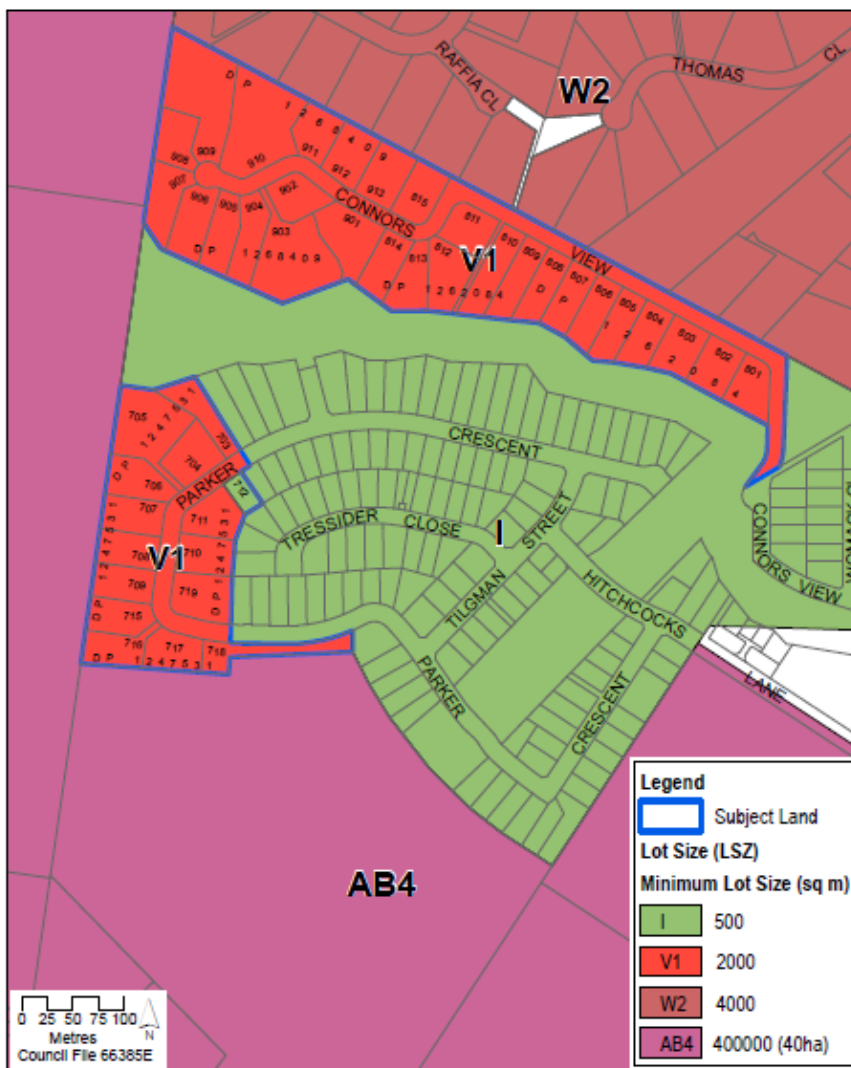


Map 1: Existing and Proposed Land Use Zones (LZN)

PP060
Planning Proposal
Existing SLEP2014 LSZ



PP060
Planning Proposal
Proposed LSZ Changes



Map 2: Existing and Proposed Lot Sizes (LSZ)

Part 5 - Community Consultation

The PP was exhibited in accordance with the requirements of Schedule 1 of the *Environmental Planning and Assessment Act 1979* and the Gateway determination.

The PP was placed on public exhibition for 31 days between 26 May to 25 June 2021 (inclusive). The Gateway determination required a public exhibition period of a minimum of 28 days.

The exhibition was publicly notified via Council's website. Affected and adjoining landowners (74 households) were notified in writing. Key stakeholders were also notified in writing, including: Berry Forum Community Consultative Body; Huntingdale Park Resident Action Group; Berry Chamber of Commerce and Tourism; Nowra Local Aboriginal Land Council and development industry representatives.

The PP package was available on Council's webpage and electronically at the Nowra Administration Building as well as on the NSW Planning Portal webpage (PP2021-2380).

The submissions received during the exhibition were considered and are addressed in the Council Development and Environment Committee Report dated 13 July 2021.

Part 6 – Project Timeline

Table 6: Project timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	April 2021
Completion of Gateway determination requirements	May-June 2021
Public exhibition	June-July 2021
Consideration of submissions	July-August 2021
Post exhibition consideration of PP	September-October 2021
Finalisation and notification of Plan	November 2021

Attachment A: 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
PP060

Address of Land (if applicable):

The following land in Berry:

Lot 703 DP 1247531, 69 Parker Crescent	Lot 810 DP 1262084, 39 Connors View
Lot 704 DP 1247531, 65 Parker Crescent	Lot 811 DP 1262084, 41 Connors View
Lot 705 DP 1247531, 63 Parker Crescent	Lot 812 DP 1262084, 43 Connors View
Lot 706 DP 1247531, 61 Parker Crescent	Lot 813 DP 1262084, 45 Connors View
Lot 707 DP 1247531, 59 Parker Crescent	Lot 814 DP 1262084, 47 Connors View
Lot 708 DP 1247531, 57 Parker Crescent	Lot 815 DP 1262084, 42 Connors View
Lot 709 DP 1247531, 55 Parker Crescent	Lot 901 DP 1268409, 49 Connors View
Lot 710 DP 1247531, 52 Parker Crescent	Lot 902 DP 1268409, 51 Connors View
Lot 711 DP 1247531, 56 Parker Crescent	Lot 903 DP 1268409, 53 Connors View
Lot 712 DP 1247531, 60 Parker Crescent	Lot 904 DP 1268409, 55 Connors View
Lot 715 DP 1247531, 53 Parker Crescent	Lot 905 DP 1268409, 57 Connors View
Lot 716 DP 1247531, 51 Parker Crescent	Lot 906 DP 1268409, 58 Connors View
Lot 717 DP 1247531, 47 Parker Crescent	Lot 907 DP 1268409, 61 Connors View
Lot 718 DP 1247531, 43 Parker Crescent	Lot 908 DP 1268409, 54 Connors View
Lot 719 DP 1247531, 48 Parker Crescent	Lot 909 DP 1268409, 52 Connors View
Lot 801 DP 1262084, 21 Connors View	Lot 910 DP 1268409, 50 Connors View
Lot 802 DP 1262084, 23 Connors View	Lot 911 DP 1268409, 48 Connors View
Lot 803 DP 1262084, 25 Connors View	Lot 912 DP 1268409, 46 Connors View
Lot 804 DP 1262084, 27 Connors View	Lot 913 DP 1268409, 44 Connors View
Lot 805 DP 1262084, 29 Connors View	Road UPNs - 1000963, 1001560 & Part of
Lot 806 DP 1262084, 31 Connors View	Road UPN 121808
Lot 807 DP 1262084, 33 Connors View	
Lot 808 DP 1262084, 35 Connors View	
Lot 809 DP 1262084, 37 Connors View	

Intent of draft LEP:

The Planning Proposal seeks to:

- Rezone the large lot areas of Huntingdale Park Estate Berry, from R1 General Residential to R5 Large Lot Residential; and
- Extend the minimum lot size of 2000m² across the entire area proposed to be zoned R5 Large Lot Residential and,
- Apply a minimum lot size for subdivision of 500m² across the entire Lot 712 DP 1247531 (60 Parker Crescent) to rectify a mapping anomaly on this lot.

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)				
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 S9.1 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
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?	N			

Heritage LEPs				
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?	N			
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications				
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		N/A		
Is the Planning Proposal proposed to rectify an anomaly in a classification?		N/A		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		N/A		
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?		N/A		
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?		N/A		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		N/A		

Spot Rezoning				
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?	N			
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?	N			
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?	N			
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the Planning Proposal create an exception to a mapped development standard?	N			
Section 73A matters				
<p>Does the proposed instrument:</p> <ul style="list-style-type: none"> a. Correct an obvious error in the principal instrument consisting of a misdescription, 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 words or a formatting error?; b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; 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>(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>	N			

Attachment B: Council Resolution and Report – Ordinary Meeting 23 June 2020

CL20.146 Planning Proposal (PP027) - Review of Subdivision Provisions - Post Exhibition Consideration and Proposed Finalisation

HPERM Ref:
D20/183027

RESOLVED* (Clr Proudfoot / Clr Wells)

MIN20.448

That Council:

1. Adopt the Planning Proposal (PP027) as exhibited and forward to the NSW Department of Planning, Industry and Environment for finalisation as a matter of urgency.
2. As part of a separate process:
 - a. Monitor the effectiveness/appropriateness of the minimum parent lot sizes in proposed clause 4.1A during operation and review as required.
 - b. Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.
3. Advise key stakeholders, including all CCBs, relevant industry representatives and submitters, of this decision and when the LEP amendment will be made effective.

CARRIED



Ordinary Meeting – Tuesday 23 June 2020

CL20.146 Planning Proposal (PP027) - Review of Subdivision Provisions - Post Exhibition Consideration and Proposed Finalisation

HPERM Ref: D20/183027

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. Public Exhibition Submission Summary (under separate cover) [↗](#)

Reason for Report

- Detail the outcomes of the public exhibition of the Review of Subdivision Provisions Planning Proposal (PP027).
- Enable the amendments to Shoalhaven Local Environmental Plan (LEP) 2014 to proceed to finalisation.

Note: this matter is being reported direct to Council given the need for a final position on this Planning Proposal as it responds in part to the impending commencement of the NSW wide Low Rise Medium Density Code on 1 July 2020.

Recommendation

That Council:

1. Adopt the Planning Proposal (PP027) as exhibited and forward to the NSW Department of Planning, Industry and Environment for finalisation as a matter of urgency.
2. As part of a separate process:
 - a. Monitor the effectiveness/appropriateness of the minimum parent lot sizes in proposed clause 4.1A during operation and review as required.
 - b. Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.
3. Advise key stakeholders, including all CCBs, relevant industry representatives and submitters, of this decision and when the LEP amendment will be made effective.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to respond to the changing nature of medium density development and associated subdivision through an amendment to Shoalhaven LEP 2014. The amendment will also involve rezoning 718 lots that are currently zoned R2 Low Density Residential to R5 Large Lot Residential to adequately reflect the prevailing large lot character of the land given the impending commencement of the Low Rise Medium Density Housing Code.

This option also enables monitoring of the new clause 4.1A following commencement and a review of a number of large lots at the periphery of Huntingdale Estate Berry as part of separate processes.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone the amendments to Shoalhaven LEP 2014. This may have implications for Shoalhaven as the Low Rise Medium Density Housing Code commences on 1 July 2020.

3. Not adopt the recommendation.

Implications: This could stop or postpone the implementation of amendments to Shoalhaven LEP 2014. This option is not preferred as the relevant subdivision provisions in Shoalhaven LEP 2014 may not be amended and 718 large residential lots across Shoalhaven will retain a R2 Low Density Residential zone which does not adequately reflect the prevailing large lot character of the land.

This option also means that the zoning of a number of large lots at the periphery of Huntingdale Estate Berry will not be reviewed.

Background

In 2016, Council commenced a planning review looking at medium density development, dual occupancy development and subdivision potential/implications across the City. Following the review, it was considered that a number of changes to the existing subdivision provisions in Shoalhaven LEP 2014 were required to:

- Tidy up several clauses (interpretation / definition),
- Assist deliver appropriate medium density development in certain residential zones,
- Respond to the NSW Government's Low Rise Medium Density Housing Code, and
- Lift the restriction on the subdivision of medium density development via the Torrens system.

Thus, on 17 July 2017, Council resolved (MIN17.611) to prepare a Planning Proposal (PP) to amend Shoalhaven LEP 2014 to facilitate this.

Through this process, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was identified as something that needed reconsideration. The scope of the PP was subsequently expanded to rezone certain R2 land to R5 Large Lot Residential.

The exclusion of certain residential areas/land from the Low Rise Medium Density Housing Code was also explored and six villages were ultimately proposed for exclusion (Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North).

The intent and content of the PP was refined following two Councillor workshops (15 October and 10 December 2018) and a Forum with key Development Industry representatives on 5 November 2018. On 2 April 2019 (MIN19.210), Council resolved to endorse a PP and to submit it to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination.

The PP was submitted to the then NSW Department of Planning and Environment (DP&E) and received a mostly favourable Gateway determination on 10 July 2019. The NSW Government required Council to remove the part of the PP that sought to exclude the six villages from the Code and to also include a savings and transitional provision to protect any undetermined development applications or appeal processes. Council was not given delegated authority to finalise the LEP amendment which means the PP will ultimately need to be submitted to the NSW Department of Planning, Infrastructure & Environment (DPIE) for finalisation.

Planning Proposal

Following satisfaction of the requirements of the Gateway determination, the exhibition version of the Planning Proposal seeks to amend Shoalhaven LEP 2014 as follows:

- Include a new sub clause in clause 4.1 (minimum subdivision lot size) to clarify that for the purpose of calculating the area of a battle-axe lot, an access handle is excluded from the calculation.
- Replace existing clause 4.1A (minimum lot sizes for dual occupancies and multi dwelling housing) with a minimum lot size for the parent lot prior to the erection of a dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) or residential flat building. The provision also seeks to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.

This means that medium density development in certain urban zoned locations can only be undertaken if the minimum lot size for the parent lot can be met, however once this is satisfied, the resulting dwellings can be Torrens subdivided to any size.

- Amend clause 4.1C (exception to minimum subdivision lot sizes) relating to dwelling houses, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots from 350m² to 300m².
- Include term 'battle-axe' in the Dictionary.
- Amend all relevant Lot Size Maps to remove the clause 4.1A layer.
- Rezone certain R2 Low Density Residential land in the following locations to R5 Large Lot Residential to assist ensure that the low density large lot characteristics of the land can be maintained into the future: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worworing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.

It is noted that an R5 zoning would trigger clause 4.2D of SLEP 2014 which requires a lot to have a dwelling entitlement prior to the erection of a dwelling house or dual occupancy (clause 4.2D(3)). This clause also considers replacement dwellings (4.2D(5)). It is Council's intention that all lots potentially affected by this change would retain a dwelling entitlement in this regard.

- Include a savings and transition provision to ensure that the proposed amendments do not affect any undetermined development applications or appeal processes.

Government Agency Feedback

The Gateway determination required consultation with the following relevant NSW Government Agencies prior to public exhibition:

- WaterNSW.
- NSW Rural Fire Service.

It is noted in this regard that Shoalhaven's recent bushfires resulted in a 6-month delay in receiving a response from the NSW Rural Fire Service, which was received during the public exhibition period. This has unfortunately caused substantial delays in the timeframes associated with the PP.

The Biodiversity and Conservation Division (formerly Office of Environment and Heritage) of DPIE was also directly consulted during the public exhibition period as per the Gateway determination.

The agency responses are summarised in **Table 1**.

Table 1: Summary of State Authority Consultation Responses (pre-public exhibition)

Agency	Response Summary
WaterNSW	<p>Supports replacement of existing clause 4.1A with a minimum lot size for parent lots and the lifting of restrictions on Torrens title subdivision as proposed. This change will reduce the opportunity for 'low rise medium density' development to bypass the requirements of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, NorBE and the concurrence of WaterNSW.</p> <p>Recommends describing the relationship of the new clause 4.1A to the Subdivisions Code under the Codes SEPP. <i>Comment - The PP was updated prior to exhibition to provide commentary in this regard.</i></p> <p>Agrees that the PP does not adversely affect water quality in the Sydney Drinking Water Catchment in relation to Section 9.1 Direction 5.2. Requested reference to the Sydney Catchment Authority be replaced with WaterNSW. <i>Comment - the PP was updated in this regard.</i></p> <p>Consistency with Section 9.1 Direction 5.2 was noted relating to the timing of consultation with WaterNSW. <i>Comment - This matter has been resolved through WaterNSW's response and the PP has been updated accordingly.</i></p> <p>Has no objections to the other elements of the PP, however, notes that further consultation should be undertaken with WaterNSW should the scope of the rezoning be expanded to include land in the Sydney Drinking Water Catchment in the future.</p>
NSW Rural Fire Service	<p>No objection to the PP.</p> <p>Provides commentary on a range of matters to be considered at the DA stage, including requirements for subdivisions, dual occupancy and multi-dwelling development on bushfire prone land.</p> <p>The response also notes that Council should consider other mechanisms to identify and address impacts of an increase in density dispersed across the existing urban landscape</p>

	(contributions, infrastructure plans) which will be undertaken, as appropriate, through separate processes.
DPIE - Biodiversity and Conservation Division	No comments: however, note that the proposed rezoning of numerous areas from R2 to R5 can result in a range of positive environmental benefits.

Public Exhibition

In accordance with the Council resolution (MIN19.210) and Gateway determination, the PP was publicly exhibited for a period of 30 days, from 22 April to 22 May 2020 (inclusive).

Notices appeared in local newspapers on 22 April 2020. All Community Consultative Bodies (CCBs), Development Industry Representatives and over 700 directly affected landowners (i.e. those subject to the proposed rezoning) were notified directly in writing.

Note: the PP was exhibited during the COVID-19 pandemic period and this was unfortunately unavoidable as Council was advised by the DPIE to exhibit the Planning Proposal as soon as possible in light of the impending 1 July 2020 commencement of the Low Rise Medium Density Housing Code (the Code) set by the NSW Government (see further discussion on the Code below).

Given that Council's customer service centres and other facilities were at the time closed to the public in response to COVID-19, the PP was available for viewing on Council's public exhibition webpage only. A [Get Involved Page](#) was also set up for the project.

Council staff were also available via phone or email to answer any detailed or specific enquiries regarding the proposed rezoning or broader PP. Council staff also held several online meetings with landowners, business owners and CCBs regarding the PP so that these stakeholders can better understand what the proposal means for them. Printed copies of the PP were made available and posted to landowners who advised they did not have access to a computer.

Despite some criticism related to the exhibition occurring during the COVID-19 period, on balance it is considered that the approach generally worked well, with over 100 phone calls received regarding the PP and appreciation being noted for Council's additional effort in light of the COVID-19 restrictions.

The exhibition material consisted of the following:

- [Review of Subdivision Provisions Planning Proposal \(PP027\)](#).
- [Explanatory Statement](#).
- Gateway determinations dated [10 July 2019](#) and [12 December 2019](#).
- [Rezoning Frequently Asked Questions](#).
- [Newspaper advertisement](#).

As a result of the exhibition, twenty (20) formal submissions were received including:

- Sixteen (16) submissions from the community members (i.e. individuals).
- Two (2) submissions from CCBs (The Milton & District Community Forum and The Berry Forum Committee).
- One (1) submission from the Development Industry (Allen Price & Scarratts)
- One (1) internal Council staff submission: Community and Recreation Section.

A detailed summary of the submissions and a Council staff response to all comments raised is provided in **Attachment 1** and a brief summary of feedback and resulting recommendations is provided in **Table 2**.

Copies of the actual submissions can also be made available to Councillors for review prior to the meeting, if required, on request.

Table 2: Consolidated feedback summary and recommendations

Component of Planning Proposal	Summary and Recommendations
<p>New sub clause in clause 4.1 to clarify that for the purpose of calculating the area of a battle-axe lot, that an access handle is excluded from the calculation.</p>	<p>Two (2) submissions were received - one support, one objection.</p> <p>Concern raised regarding exclusion of access handle for smaller blocks and inequity with standard residential blocks. It is noted that this is now a common clause across NSW Standard Instrument LEPs. It is also noted that clause 4.6 (Exceptions to development standards) could be considered where individual flexibility in lot size would result in a better outcome.</p> <p><i>No changes to the proposal are recommended at this stage.</i></p>
<p>Replace existing clause 4.1A with a minimum lot size for the parent lot prior to the erection of a certain medium density development.</p> <p>Lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.</p> <p>Amend all relevant Lot Size Maps to remove the clause 4.1A layer.</p>	<p>Six (6) submissions were received:</p> <ul style="list-style-type: none"> •One (1) submission in support. •Five (5) objections: <ul style="list-style-type: none"> - One (1) suggesting the proposed parent lot sizes are too large. - Four (4) suggesting the proposed provision is too pro-development. <p>The concerns of overdevelopment identified by the community is balanced by the concerns of the development industry that the lot sizes are too large.</p> <p>No changes to the proposed parent lot sizes or resulting Torrens potential in the PP is recommended at this stage.</p> <p>Recommendation: <i>That Council monitor the effectiveness / appropriateness of the minimum parent lot sizes in clause 4.1A during operation and review as required.</i></p>
<p>Amend clause 4.1C relating to dwelling houses, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots from 350m² to 300m².</p>	<p>Three (3) submissions objected to the minimum lot size change:</p> <ul style="list-style-type: none"> •One (1) objection related to a certain part of Berry, which is not applicable as the clause does not apply in that location. •One (1) objection related to size – not large enough to address adverse impacts. •One (1) objection related to size – too large and should be consistent with medium density changes. <p>The concerns of overdevelopment identified by the community is balanced by the concerns of one development industry member that the lot sizes are too large. <i>No change recommended.</i></p>
<p>Include term 'battle-axe' in the Dictionary.</p>	<p>One (1) objection - did not support the definition as the amendment to clause 4.1 was not supported. Noted that 'access handle' in the definition should be defined.</p> <p>The drafting has been considered appropriate by the NSW Parliamentary Counsel's Office for other LEPs across NSW. <i>As such no change is recommended.</i></p>
<p>Rezone certain R2 Low Density Residential land in the following locations</p>	<p>As expected, this was the aspect of the PP that was commented on the most – total of eleven (11)</p>

<p>to R5 Large Lot Residential: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.</p>	<p>Submissions were received in relation to the proposed rezoning at:</p> <ul style="list-style-type: none"> •Milton – two (2) in support. •Bangalee – one (1) support, one (1) objection. However the reasons for objection were actually in support of the intent of the rezoning i.e. to stop further subdivision. •Bomaderry – one (1) objection. However again on reading the reasons for objection were actually in support of the intent of the rezoning i.e. to stop further subdivision. •Berry – one (1) in support, two (2) objections. •Citywide generally – one (1) in support, two (2) objections. <p>No submissions were received in relation to the proposed rezoning at Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park or Lake Tabourie.</p> <p>It is noted that general support was received via phone enquiries, especially in relation to the Berry, Bangalee and Tapitallee areas.</p> <p>Points of support related to retention of large lot character and future restrictions on subdivision.</p> <p>Objections related to loss of development opportunities and reduction in land value. In this regard it is relevant to note that the areas in question were originally proposed to be zoned R5 in earlier versions of LEP 2014 given their previous zoning under LEP 1985. The R5 zoning did not proceed at that time due to concerns about the potential impact of the then Native Vegetation Act. These concerns are no longer present given legislative changes.</p> <p>Thus on balance, no changes are recommended to the exhibited rezoning proposal.</p> <p>Two (2) submissions raised concern regarding the zoning of the large lot parcels of land at the periphery of Huntingdale Estate, Berry (e.g. Parker Crescent) that are currently zoned R1. Suggest the land should be rezoned to R2 Low Density Residential or R5 Large Lot Residential. There may be some merit in exploring this matter further to consider the appropriateness of an alternative zoning for this land. It is noted that the process has always been that once R1 zoned areas are subdivided/developed that their zoning is then adjusted to the most appropriate residential zone. This change/review is however outside the scope of this current PP.</p> <p>Recommendation: <i>Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry as part of a separate process.</i></p>
<p>Include a savings and transition provision to ensure that the proposed amendments do not affect any undetermined development applications or appeal processes.</p>	<p>One (1) submission in support. <i>No change recommended.</i></p>

Commencement of the NSW Government's Low Rise Medium Density Housing Code

The Low Rise Medium Density Housing Code enables the consideration of the following medium density development types as complying development (do not need a development application):

- One and two storey dual occupancies, manor houses and terraces in Shoalhaven's R1 General Residential, R3 Medium Density Residential and RU5 Villages zones; and
- One and two storey dual occupancies in Shoalhaven's R2 Low Density Residential zone.

Following the review of the Code by Professor Roberta Ryan in 2019, commissioned by the NSW Government, the commencement of the Code was 'deferred' again for Shoalhaven until 1 July 2020. Despite representations, Council has been advised that no further extensions to the Code will be extended by the Minister.

As advised by DPIE, the PP needs to be finalised as soon as possible. It is noted that the delays with the NSW RFS referral have meant that the LEP Amendment will not be in place for 1 July 2020, however, if adopted by Council it can be in place shortly thereafter.

Conclusion

The PP will enable the existing provisions in Shoalhaven LEP 2014 to be refined and brought in line with industry and community expectations, whilst also responding, in part, to recent amendments to NSW Government medium density policy. The PP also seeks to protect the current and proposed large lot character of eleven (11) large lot residential locations across Shoalhaven.

As a result of the public exhibition, no changes are recommended to the exhibited PP, however it is recommended that the following be undertaken as part of separate processes:

- Monitor the effectiveness/appropriateness of the minimum parent lot sizes in clause 4.1A during operation and review as required.
- Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.

The recommendation, if accepted, will enable the PP to be submitted to DPIE for finalisation as soon as possible in line with DPIE's advice. Thus timing is critical in this regard.

Policy and Risk Implications

The PP represents a change in how medium density development and related subdivision is considered in Shoalhaven. This approach is more responsive and provides a greater element of flexibility for subdivisions.

The Low Rise Medium Density Housing Code commences for Shoalhaven on 1 July 2020. Whilst the LEP Amendment will not be in place for 1 July 2020, it is likely to be in place shortly thereafter.

Financial Implications

Finalisation of the PP will continue to be undertaken within the existing Strategic Planning budget.

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 Watson / Clr Wells) 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>
Rezone the land to a zone that prohibits dual occupancy development.	<p>Dual occupancy development is currently prohibited citywide in the following zones:</p> <ul style="list-style-type: none"> • RU3 Forestry. • All business zones. • All industrial zones. • All special purpose zones.

	<ul style="list-style-type: none"> • All recreation zones. • 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>
Pursue a local clause in the LEP prohibiting dual occupancy development.	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.
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>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**).

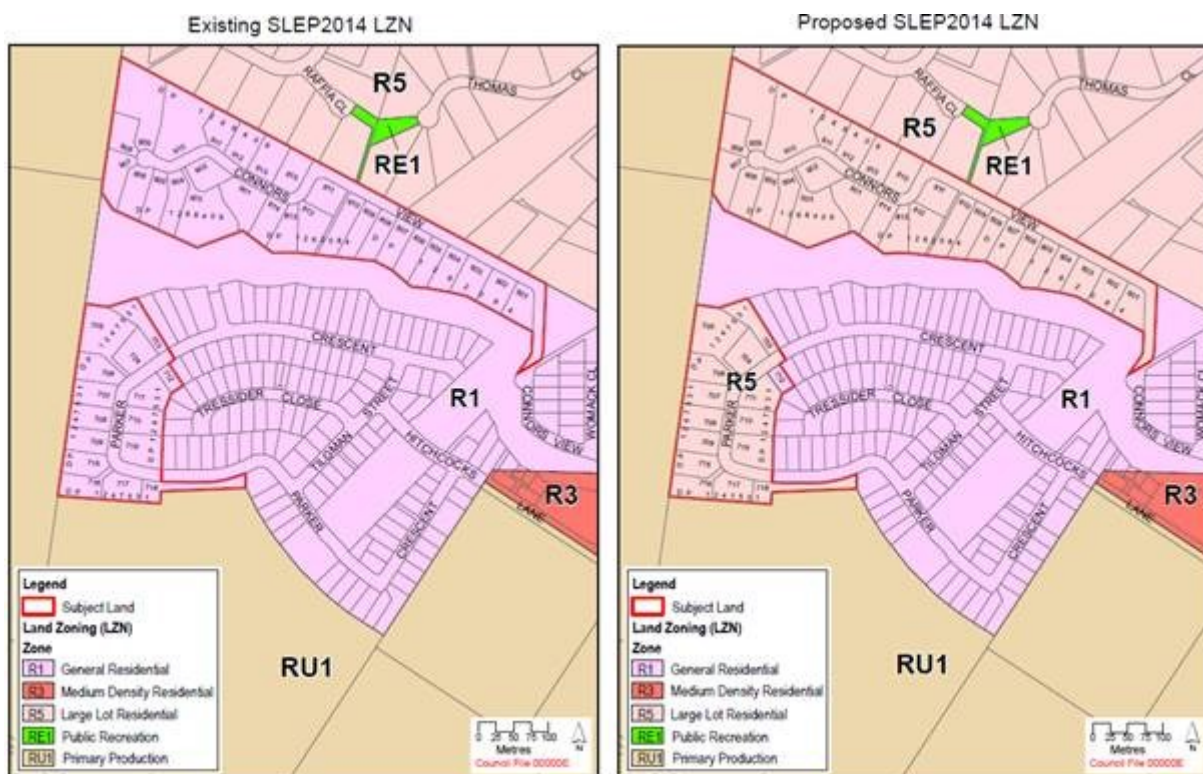


Figure 3: Existing and proposed zoning - Huntingdale Park Estate Review Precinct



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.

Attachment D: State Environmental Planning Policies Checklist

SEPP #	Name	Applicable	Relevant to PP	Consistency/Comment
		✓ / ✗	✓ / ✗	
-	Aboriginal Land 2019	✗	✗	Currently this SEPP only applies to land owned by the Darkinjung Local Aboriginal Land Council on the Central Coast.
-	Activation Precincts 2020	✗	✗	N/A
-	Affordable Rental Housing 2009	✓	✓	This SEPP allows for future secondary dwellings and other forms of affordable rental housing on the land.
-	Building Sustainability Index: BASIX 2004	✓	✗	Future dwellings on the site will need to comply with BASIX requirements relating to energy, water and thermal efficiency.
-	Coastal Management 2018	✗	✗	Subject land is not within the coastal management zone.
-	Concurrences & Consents 2018	✓	✗	This SEPP relates to integrated development applications.
-	Educational Establishments and Child Care Facilities 2017	✓	✗	Allows for certain educational and child care development as exempt and complying development.
-	Exempt and Complying Development Codes) 2008	✓	✓	Will apply to future rezoned area allowing for exempt and complying development on applicable land. Complying Development under the Low Density Housing Diversity Code will be precluded in the proposed R5 Large Lot Residential zone.
-	Gosford City Centre 2018	✗	✗	N/A
-	Housing for Seniors or People with a Disability 2004	✓	✗	No provisions relevant for PPs. Allows for some seniors housing and disability care facilities on certain land.
-	(Infrastructure) 2007	✓	✗	This SEPP allows for certain forms of infrastructure to be carried out as exempt development on behalf of a public authority.
-	Koala Habitat Protection 2020 & Koala Habitat Protection 2021	✓	✗	The Koala SEPP 2021 applies to the Shoalhaven LGA. The Koala SEPP 2020 applies to rural land in the Shoalhaven (and is not relevant to this proposal). The Koala SEPP 2021 requires individual study of koala habitat for development applications on land held in the same ownership that is greater than 1 hectare in size, therefore it is unlikely the SEPP requirements will be triggered for future development on the subject land (lot sizes are all < 1 ha).
-	Kosciuszko National	✗	✗	N/A

	Park—Alpine Resorts) 2007			
-	Kurnell Peninsulas	x	x	N/A
-	(Major Infrastructure Corridors) 2020	x	x	Applies only to western Sydney LGAs
-	Mining, Petroleum Production and Extractive Industries) 2007	✓	x	The Mining SEPP aims to manage and sustainably develop these resources for the social and economic benefit of the community.
19	Bushland in Urban Areas	x	x	N/A
21	Caravan Parks	✓	x	SEPP 21 identifies that consent is required under the EP&A Act to develop caravan parks within NSW.
33	Hazardous and Offensive Development	✓	x	SEPP 33 presents a systematic approach to planning and assessing proposals for potentially hazardous and offensive development for the purpose of industry or storage.
36	Manufactured Home Estates	✓	x	SEPP 36 provides permissibility and planning requirements for manufactured home estates.
47	Moore Park Showground	x	x	N/A
50	Canal Estate Development	✓	x	This SEPP prohibits new canal estate development.
55	Remediation of Land	✓	x	The requirement to consider contamination when rezoning land was removed from the SEPP and is now considered under Section 9.1 Ministerial Directions of the <i>Environmental Planning and Assessment Act 1979</i> .
64	Advertising and Signage	✓	x	This SEPP regulates certain advertising signage.
65	Design Quality of Residential Apartment Development	✓	x	Residential apartment buildings will not be permissible should the land be rezoned.
70	Affordable Housing Schemes	✓	x	This SEPP enables schemes to levy developer contributions for Affordable Housing.
-	Penrith Lakes Scheme 1989	x	x	N/A
-	Primary Production and Rural Development 2019	✓	x	This SEPP includes provisions relating to agricultural land uses.
-	State and Regional Development) 2011	✓	x	This SEPP provides an assessment framework for state and regionally significant developments.

-	State Significant Precincts 2005	✓	✗	This SEPP provides a planning and assessment framework for state significant precinct.
-	Sydney Drinking Water Catchment) 2011	✗	✗	N/A
-	Sydney Region Growth Centres 2006	✗	✗	N/A
-	Three Ports 2013	✗	✗	N/A
-	Urban Renewal 2010	✗	✗	N/A
-	Vegetation in Non-Rural Areas 2017	✓	✓	Will apply to clearing of vegetation in residential areas, defers generally to Council's DCP requirements for tree management and removal. Council's DCP requirements for vegetation management in R5 zones are discussed in Sections 4.31 and 4.3.2 of this PP.
-	Western Sydney Employment Area) 2009	✗	✗	N/A
-	Western Sydney Parklands) 2009	✗	✗	N/A

Attachment E: Section 9.1 Planning Directions

24 February 2021 Version

Direction		Applicable	Relevant	Not inconsistent
1 Employment and Resources				
1.1	Business and Industrial Zones	x	x	n/a
1.2	Rural Zones	x	x	n/a
1.3	Mining, Petroleum Production and Extractive Industries	x	x	n/a
1.4	Oyster Aquaculture	x	x	n/a
1.5	Rural lands	x	x	n/a
2 Environment and Heritage				
2.1	Environmental Protection Zones	✓	✓	✓
2.2	Coastal Management	x	x	n/a
2.3	Heritage Conservation	✓	x	n/a
2.4	Recreation Vehicle Area	✓	x	n/a
2.5	Application of E2 and E3 Zones in Environmental Overlays in Far North Coast LEPs	x	x	n/a
2.6	Remediation of Contaminated Land	✓	✓	✓
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	Consistent with Part (4). Minor inconsistency with Part (5) – addressed within PP.
3.2	Caravan Parks and Manufactured Home Estates	x	x	n/a
3.3	Home Occupations	Revoked 9 Nov 2020		
3.4	Integrating Land Use and Transport	✓	✓	✓
3.5	Development Near Regulated Airports and Defence Airfields	x	x	n/a
3.6	Shooting Ranges	x	x	n/a
3.7	Reduction in non-hosted short term rental accommodation period	x	x	n/a
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✓	✓	

				✓ Land is not mapped as affected by Acid Sulfate Soils (class1 - 4)
4.2	Mine Subsidence and Unstable Land	✗	✗	n/a
4.3	Flood Prone Land	✓	✓	✓
4.4	Planning for Bushfire Protection	✓	✓	✓
5 Regional Planning				
5.1	Implementation of Regional Strategies	(Revoked 17 October 2017)		
5.2	Sydney Drinking Water Catchments	✗	✗	n/a
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	✗	✗	n/a
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	✗	✗	n/a
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	(Revoked 18 June 2010)		
5.6	Sydney to Canberra Corridor	(Revoked 10 July 2008)		
5.7	Central Coast	(Revoked 10 July 2008)		
5.8	Second Sydney Airport: Badgerys Creek	(Revoked 20 August 2018)		
5.9	North West Rail Link Corridor Strategy	✗	✗	n/a
5.10	Implementation of Regional Plans	✓	✓	✓
5.11	Development of Aboriginal Land Council land	✗	✗	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
7 Metropolitan Planning				
7.1	Implementation of A Plan for Growing Sydney	✗	✗	n/a
7.2	Implementation of Greater Macarthur Land Release Investigation	(Revoked 28 November 2019)		
7.3	Parramatta Road Corridor Urban Transformation Strategy	✗	✗	n/a

7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	x	x	n/a
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	x	x	n/a
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.9	Implementation of Bayside West Precincts 2036 Plan	x	x	n/a
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	x	x	n/a
7.11	Implementation of St Leonards and Crows Nest 2036 Plan	x	x	n/a
7.12	Implementation of Greater Macarthur 2040	x	x	n/a
7.13	Implementation of the Pyrmont Peninsula Place Strategy	x	x	n/a

Attachment F: Pre-exhibition State Agency correspondence



Planning,
Industry &
Environment

Our ref: DOC21/359888

Senders ref: PP060

Rebecca Jardim
Senior Strategic Planner
Shoalhaven City Council
E-mail:
Rebecca.jardim@shoalhaven.nsw.gov.au

Dear Ms Jardim

Subject: Huntingdale Estate Berry Planning Proposal – PP060

Thank you for referring the abovementioned planning proposal dated 28 April 2021 via the NSW Planning Portal. We understand that the proposal comprises rezoning of part of the Estate from R1 General Residential to R5 Large Lot Residential and corresponding changes to minimum lot size to correct a mapping anomaly.

In summary, we do not object to the proposal, subject to the existing conditions of subdivision consent SF9320 being complied with. We do however suggest that consideration be given to rezoning the riparian corridor E3 Environmental Management or similar, recognising that this provides a local linkage to remnant vegetation to the west.

In principle, formalising a larger area of 2000m² lots would reduce pressure on tree removal, notably for those lots adjacent to and contiguous with the riparian corridor. The proposed rezoning from R1 to R5 would also prevent additional development pressure on retained trees resulting from more intensive and higher density forms of residential development allowed under the NSW Low Rise Housing Diversity Code.

We have reviewed the relevant conditions of consent for the most recent subdivision approval SF9320. We note that a Vegetation Management Plan is already required under development consent SF9320 requiring management of vegetation within the riparian corridor, as well as vegetation on those lots in the north western corner of Connors View.

Significant retained vegetation is situated within the existing riparian corridor and is to remain unchanged by this proposal. We note that the remnant vegetation west of the Estate aligns with Illawarra Subtropical Rainforest and Illawarra Lowlands Grassy Woodland EEC and land within the existing riparian corridor is identified as having high environmental value (HEV) under the Illawarra Shoalhaven Regional Plan (ISRP) 2015. This corridor is currently zoned R1 General Residential, however, the opportunity exists for zoning that more accurately reflects its environmental character and function.

If you have any questions about this advice, please do not hesitate to contact Mr Calvin Houlison, Senior Conservation Planning Officer, via calvin.houlison@environment.nsw.gov.au or 4224 4179.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Page'.

Chris Page 6 May 2021
Senior Team Leader, Planning (Illawarra)
Biodiversity & Conservation Division
Environment, Energy and Science



NSW RURAL FIRE SERVICE

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Your reference: (REF-191) PP060
Our reference: SPI20210430000057

ATTENTION: Rebecca Jardim

Date: Friday 7 May 2021

Dear Sir/Madam,

**Strategic Planning Instrument
LEP Amendment**

The planning proposal seeks to rezone the large lot areas of Huntingdale Park Estate at Berry (lots larger than 2000 m2) to maintain the current and future desired character of the area.

I refer to your correspondence dated 28/04/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

For any queries regarding this correspondence, please contact Peter Dowse on 1300 NSW RFS.

Yours sincerely,

Anna Jones
**Supervisor Development Assessment & Plan
Built & Natural Environment**

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au