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Gateway determination report – PP-2021-3512

Shoalhaven Planning Proposal Housekeeping 2020-2021

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans

“Shoalhaven City Council, Development and Environment Committee 11 May 2021 Proposed 2020/2021 Housekeeping Amendment to Shoalhaven Local Environmental Plan 2014 (PP044)”

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Shoalhaven Housekeeping 2020/21 (0 homes, 0 jobs)
NUMBER	PP-2021-3512
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	Various (refer planning proposal document)
DESCRIPTION	Various lots and DPs (refer planning proposal document)
RECEIVED	21/05/2021
FILE NO.	IRF21/7659
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal which is:

- To amend a number of clauses and maps in the Shoalhaven LEP 2014 in order to correct identified anomalies or inconsistencies within the LEP; and
- To improve the Plan's operation.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. The following housekeeping changes are proposed:

A. Ten changes to existing LEP Instrument provisions:

1. Insertion of secondary dwellings as a permissible use with consent in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R5 Large Lot Residential zones consistent with SEPP (Affordable Rental Housing) 2009.

2. Insertion of artisan food and drink industry in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones city-wide.
3. Amendment of Clause 4.1D “Exceptions to minimum subdivision lot sizes for multiple occupancy development on land in Zone RU1 or Zone RU2” to reflect the repeal of SEPP Nos 15 (Multiple Occupancy of Rural Land), 42 (Multiple Occupancy of Rural Land) and 15 (Rural Landsharing Communities).
4. Amendment of Clause 4.1E “Minimum lot size for certain split zone lots” to insert an additional subclause that prevents lots created under proposed new clause 7.29(2) (refer to item 10 below) from being subdivided further.
5. Amendment of Clause 4.2D (7) “Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and environment protection zones” to include the term “waterbody” in the definition of “holding”.
6. Amendment of Clause 7.10 “Development in HMAS Albatross Military Airfield buffer area” to update the relevant Australian Standard.
7. Amend Item No. 39 ‘Coomanderry Swamp Drainage Channel’ in Schedule 5 Environmental Heritage to correct the property description.
8. Amend item No.262 ‘Remnant rainforest’ in Schedule 5 Environmental Heritage to correct the property description.
9. Amend Item No. 299 ‘Rendered Masonry Commercial Store’ to update the item description.
Insert new local clause 7.29 “Minimum lot size for certain split zone lots” to enable the subdivision of identified split zoned lots located at Nowra Hill and Sussex Inlet to create at least two resulting lots which are required to contain all of the industrial zoned land (minimum 1,800m² industrial zoned land per lot) and all of the non-urban (environmental/rural) land.

B. Changes to existing provisions involving LEP mapping only:

Twenty-nine housekeeping amendments to land zoning, lot size, height of building, buffer, urban release area, clauses and heritage maps. The proposed amendments are primarily mapping errors that occurred during the preparation of the comprehensive Shoalhaven LEP 2014 as well as updates to LEP maps to reflect subdivisions, boundary adjustments, land reservations and acquisitions such as for public parks and roads.

C. Changes to existing provisions involving both LEP Instrument and mapping

Two proposed housekeeping amendments to correct the property descriptions for existing item No.355 “Mafeking Boer War Memorial” and No. 407 “Former Nowra Sailing Club site and Timber Wharf” provided in Schedule 5 of Shoalhaven LEP 2014 and correction of the associated heritage mapping.

The explanation of the provisions of this planning proposal is clear and adequate.

1.4 Site description and surrounding area

The planning proposal applies to land within the Shoalhaven LGA. The affected land is shown on maps provided in the planning proposal.

Mapping

The planning proposal includes extensive mapping showing the current and proposed changes to the relevant LEP maps. These are suitable for the purposes of public consultation.

2 Need for the planning proposal

It is considered the planning proposal is needed to facilitate housekeeping corrections and updates to the Shoalhaven LEP 2014 that Council has identified during the administration of the LEP over the last two years. The planning proposal will ensure the accuracy and effectiveness of the LEP.

Council has advised that the proposed new provision 7.29 “Minimum lot size for certain split zone lots” is needed to enable an application to subdivide the subject lots located at Nowra Hill and Sussex Inlet. Council considers that the subdivision of the lots to get a desirable outcome cannot be done using existing LEP clause 4.1E “Minimum lot size for certain split zone lots” due to the riparian network and zone fragmentation affecting the subject lots. It is recommended that Council consult further on the proposed provision during the LEP drafting stage.

The planning proposal process is the appropriate mechanism to facilitate the required amendments to the LEP.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is consistent with the Illawarra Shoalhaven Regional Plan 2041 because:

- The proposed amendments will better align the Shoalhaven LEP 2014 with the Regional Plan objectives and actions by improving the efficiency and operational integrity of the LEP.
- The proposed insertion of the artisan food and drink industry land-use in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones in the LEP will facilitate employment opportunities in the Shoalhaven LGA and support a productive and innovative region.
- The proposed new local clause 7.29 “Minimum lot size for certain split zone lots” (item 10) will protect industrial, rural and environmental land on four identified sites in Nowra and Sussex Inlet and support a productive, innovative, sustainable and resilient region.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies as stated in the table below:

Table 3 Local strategic planning assessment

Local Strategies	Justification
<p><u>Shoalhaven 2040 Local Strategic Planning Statement:</u></p> <ul style="list-style-type: none"> • Planning Priority 10 Protecting the environment • Planning priority 13 Protecting and enhancing neighbourhoods • Planning Priority 14 Heritage items and places. <ul style="list-style-type: none"> • Action 14.1 Administration and management of heritage items, heritage conservation areas and archaeological sites. 	<p>The planning proposal is consistent with Council's LSPS because the proposal will facilitate accuracy of the LEP and alignment with identified priorities and actions in the LSPS.</p>
<p><u>Shoalhaven Community Strategic Plan:</u></p> <p>Theme 1: Resilient, safe and inclusive communities</p> <ul style="list-style-type: none"> • Priority 1.3 Support active, healthy liveable communities <p>Theme 2 – Sustainable, liveable environments.</p> <ul style="list-style-type: none"> • Priority 2.1 Improve and maintain road transport infrastructure • Priority 2.2 Plan and manage appropriate and sustainable development • Priority 2.3 Protect and showcase the natural environment <p>Theme 4 – Responsible governance</p> <ul style="list-style-type: none"> • Priority 4.1 Deliver reliable services • Priority 4.3: inform and engage the community about decisions that affect their lives. 	<p>The planning proposal is consistent with the identified themes and priorities of the Shoalhaven Community Strategic Plan because it will improve the accuracy and operational efficiency of the LEP and improve decision-making concerning development in the Shoalhaven LGA.</p>
<p>Sussex Inlet Settlement Strategy</p>	<p>The planning proposal seeks to resolve the zoning anomaly associated with Lot 100 DP 1247844 (Mapping item 15), which is identified as a residential investigation area in the Strategy. The proposed new local clause (item 10) will support the employment objective in the Strategy by enabling subdivision of split zoned industrial/rural/environmental lots located in Sussex Inlet.</p>

Nowra Bomaderry Structure Plan	The planning proposal is not inconsistent with the Nowra Bomaderry Structure Plan as it only seeks to correct the alignment of the Moss Vale North urban release area boundary to standardise the eastern boundary of the URA.
Shoalhaven Growth Management Strategy Jervis Bay Settlement Strategy Milton Ulladulla Structure Plan	The planning proposal is consistent with the objectives of the Shoalhaven Growth Management Strategy, Jervis Bay Settlement Strategy and Milton Ulladulla Structure Plan.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 Section 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 2.1 Environmental Protection Zones	No	Item 22 of the planning proposal is inconsistent with the Direction because it proposes to reduce the area of land zoned IN2 for split zoned land at Lots 1-5 DP 700116 Pitt Street North Nowra. The inconsistency is justified as minor significance as it corrects a zoning anomaly.
Direction 1.5 Rural Lands	No	Mapping items 3, 4, 6, 10, 14, 20 and 29 are inconsistent with the Direction. The inconsistencies are, however, justified as minor significance as the proposal seeks to correct zoning errors or anomalies.
Direction 2.1 Environment Protection Zones	No	Mapping items 3,4 and 10 are inconsistent with the Direction as they reduce the environmental protection standards that apply to the land. The inconsistencies are, however, justified as minor significance as the proposal seeks to correct zoning errors or anomalies.
Direction 2.2 Coastal Management	Yes	The planning proposal is not inconsistent with the terms of the Direction.
Direction 2.3 Heritage Conservation	Yes	The planning proposal seeks to update property descriptions of existing local heritage items.
Direction 2.6 Remediation of Contaminated Land	Yes	The planning proposal is of minor housekeeping in nature.

Direction 3.1 Residential Zones	No	Mapping items 2, 21, 22, 23, 24 and 28 are inconsistent with the Direction, however, the inconsistency is justified as minor significance as the proposal seeks to correct zoning errors or anomalies.
Direction 3.4 Integrating Landuse and Transport	Yes	The planning proposal is minor housekeeping in nature.
Direction 4.1 Acid Sulfate Soils	Yes	The planning proposal is minor housekeeping in nature.
Direction 4.3 Flood Prone Land	No	Mapping items 4 and 15 propose to rezone flood prone land from Recreation and Environment Protection Zones to a residential zone which is inconsistent with the Direction. However, the inconsistency is justified as of minor significance because the proposal seeks to correct minor zoning errors or anomalies.
Direction 4.4 Planning for Bushfire Protection	No	The planning proposal will affect or is in proximity to land mapped as bushfire prone land. The Direction requires Council to consult with the NSW Rural Fire Service on the planning proposal following Gateway determination.
Direction 5.10	Yes	As discussed in section 3.1 of this report, the planning proposal is consistent with the draft Illawarra Shoalhaven Regional Plan and current Plan.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 5 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Coastal Management) 2018	The SEPP provides matters for consideration for development assessment for proposals located in four identified coastal management areas.	Yes	The planning proposal is minor housekeeping in nature which does not raise any implications concerning the SEPP. Future development applications on land covered by the planning proposal will need to address the SEPP.

SEPP (Exempt and Complying Development Codes) 2008	The SEPP sets out a number of Codes which enables certain development to be undertaken without Council approval via the exempt and complying development pathways.	Yes	The planning proposal corrects existing heritage and buffer maps in the Shoalhaven LEP 2014 which excludes most forms of complying development.
SEPP (Vegetation in Non-Rural Areas) 2017	The SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas in the Shoalhaven as well as the amenity they provide.	Yes	The planning proposal is minor housekeeping in nature. Future development applications on land covered by the planning proposal will need to address the SEPP.
SEPP (Affordable Rental Housing) 2009	The SEPP provides permissibility and matters for consideration for affordable rental housing including boarding houses and secondary dwellings.	Yes	The planning proposal seeks to insert secondary dwellings as permissible with consent in the R1, R2, R3 and R5 Zones in the LEP consistent with the SEPP.

4 Site-specific assessment

4.1 Environmental

The proposal is likely to have largely positive environmental outcomes by correcting errors and anomalies in the zoning of environmental land including mapping item 6 (Lot 1 DP 866983 Naval College Road, Vincentia) and mapping item 21 (Lot 147, DP 1248050 Sunset Road, Manyana).

4.2 Social and economic

The proposal is likely to have largely positive social and economic impacts as a result of correcting errors and anomalies in the Shoalhaven LEP 2014 which will improve its accuracy and operation. The proposed new local clause “Minimum lot size for certain split zone lots” (item 10) will allow owners of four identified sites in Nowra and Sussex Inlet to subdivide their land and protect industrial, rural and environmental land.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms a condition of the Gateway determination.

5.2 Agencies

The proposal identifies Council intends to consult with the NSW Rural Fire Service to satisfy the requirements of Section 9.1 Direction 4.4 Planning for Bushfire Protection.

It is recommended the following agencies are consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- DPIE - Environment, Energy and Science Division - Biodiversity and Conservation Team
- NSW National Parks and Wildlife Service

6 Timeframe

Council proposes to complete the LEP by February/March 2022.

The Department recommends a time frame of 12 months to complete the LEP to allow for any unforeseen issues or delays.

7 Local plan-making authority

Council has requested delegation to be the Local Plan-Making authority.

As planning proposal is housekeeping in nature the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It will correct errors and anomalies in the Shoalhaven LEP 2014 identified by Shoalhaven City Council during the administration of the LEP;
- It will improve the operation of the LEP; and
- It is consistent with the Illawarra Shoalhaven Regional Plan, Council's LSPS and endorsed local strategies and structure plans.

As discussed in the previous sections 4 and 5, the proposal does not require any updates prior to public consultation.

9 Recommendation

It is recommended the delegate of the Secretary:

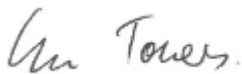
- Agree that the inconsistency with Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones and 4.3 Flood Prone Land are justified as minor significance under the terms of the Directions.
- Note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Consultation is required with the following public authorities:

- NSW Rural Fire Service

- Department of Planning, Industry and Environment – Energy, Environment and Science Division – Biodiversity and Conservation Team
 - National Parks and Wildlife Service
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
 3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
 4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



11/6/21

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