

CL22.393 Exhibition Outcomes and Proposed Finalisation - Planning Proposal - 268A Beach Road, Berry - LEP Minimum Lot Size Amendment

HPERM Ref: D22/323075

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. Redacted NSW DPI Letter for amended proposal (support Concept 2)
01042022

Reason for Report

The reason for this report is to present to the Council, the public exhibition outcomes for this Planning Proposal (PP061) that ultimately facilitates a boundary adjustment subdivision between 268A and 268B Beach Road, Berry, by amending the Minimum Lot Size in Shoalhaven Local Environmental Plan (LEP) 2014 that applies to 268A Beach Road (Lot 1 DP 1081549).

A further reason is to obtain endorsement from Council to finalise the post-exhibition version of PP061 and proceed to amend the LEP accordingly.

Recommendation

That Council:

1. Adopt and finalise Planning Proposal PP061 to amend the Shoalhaven LEP 2014 Minimum Lot Size map overlay as exhibited, to potentially enable a boundary adjustment subdivision to be considered between 268A and 268B Beach Road, Berry.
2. Liaise with the NSW Parliamentary Counsel's Office to amend the Shoalhaven LEP 2014 Minimum Lot Size map overlay, using Council's delegation.
3. Advise the proponent and adjoining landowners of this outcome.

Options

1. As recommended.

Implications: This is the preferred option. The resulting LEP amendment will potentially enable a boundary adjustment subdivision between Lots 1 and 2 DP 1081549 (268A and 268B Beach Road) Berry. Both Lots have existing approved dwellings and no further dwelling entitlements will be created. The proposed boundary adjustment would enable the central treed area to be encompassed within one lot. The resulting minimum lot size for Lot 1 DP 1081549 would not be inconsistent with surrounding properties and the accompanying Agricultural Assessment indicates that this would not preclude land use(s) consistent with the applicable *RU4 – Primary Production Small Lots* land-use zoning.

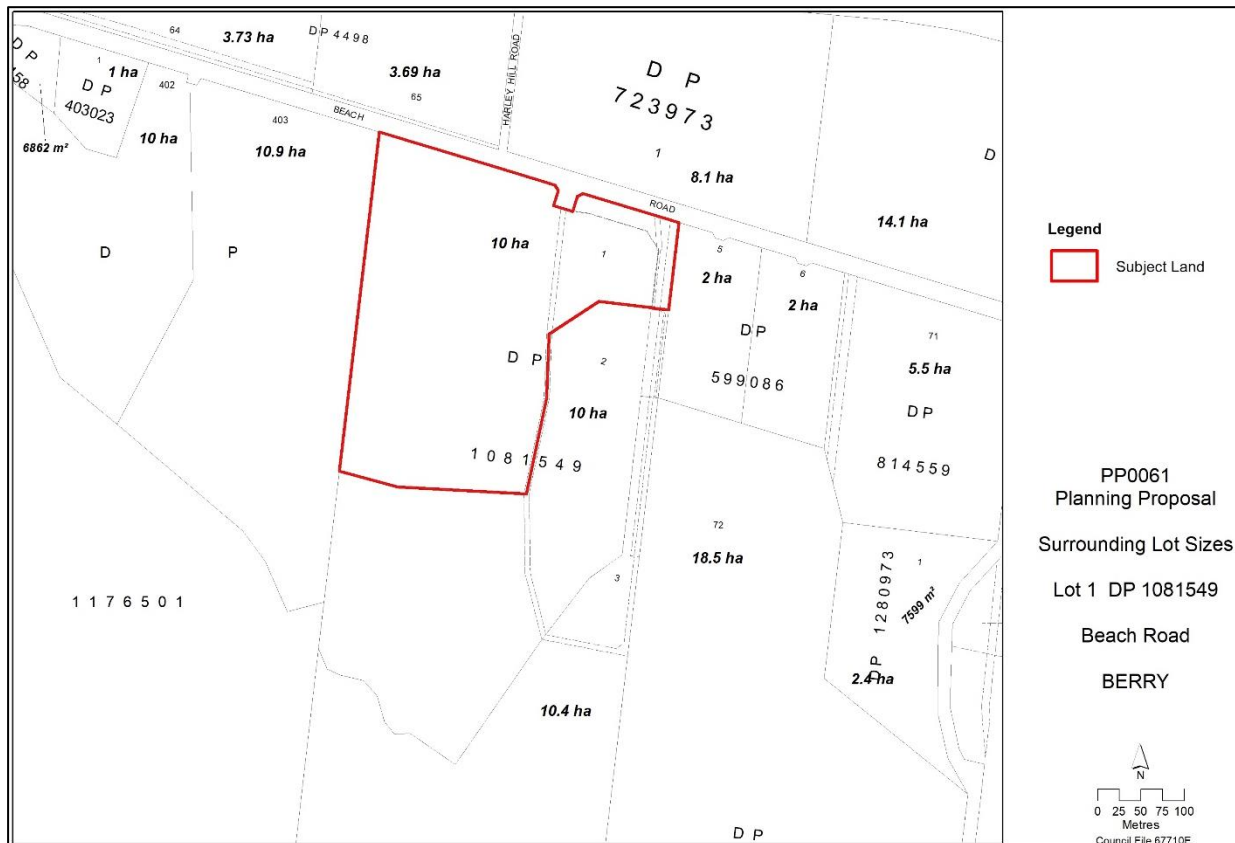
2. Make an alternate resolution.

Implications: Will depend on the nature of any resolution.

Background

The subject land is Lot 1 DP 1081549, a 10.04 ha property located at 268A Beach Road, Berry, approximately 3km east of Berry township. The subject land and surrounding lot sizes is shown in **Figure 1** below.

Figure 1 - Subject Land and Surrounding Lot Sizes



The subject land is one of three 10 ha lots (approx.) created by a subdivision in May 2005 that are zoned *RU4 Primary Production Small Lots* under the LEP and also has the following easements that benefit:

- The remaining Lots created by the 2005 subdivision, being Lots 2 and 3 DP 1081549
- Integral Energy Australia for the maintenance of existing underground energy cables
- Council for the maintenance of existing water supply.

Covenants over the subject land include:

- a building envelope
- a restriction to clearing / disturbance of native vegetation

The PP will not alter these existing covenants/easements.

A request to undertake this proponent-initiated PP was submitted by Allen Price & Scarratts Pty Ltd, on behalf of the landowners, on 21 June 2021. Subject to the outcome of the PP and proposed amendment to the minimum lot size map overlay in the LEP, the proponent (owner

of both lots) intends to lodge a future development application, seeking a boundary adjustment that will:

- Reduce Lot 1 DP 1081549 (268A Beach Road) to 4 ha
- Increase Lot 2 DP 1081549 (268B Beach Road) to 16 ha (Note: This does not require an amendment to the current 10 ha minimum lot size requirement.)

The PP will amend Sheet LSZ_019E of the minimum lot size map overlay in the LEP as it applies to Lot 1 DP 101549. The amendment will affect approximately 4 ha of land within the north-western portion of the subject lot, by replacing the current 10 ha (AB1) minimum lot size with a 4 ha (Z3) minimum lot size. The proposed LSZ mapping change is shown in Figure 2, below:



Figure 2: Existing (left) and Proposed (right) Minimum Lot Size (LSZ) Maps

Legally approved dwellings are already established on both lots. The proposed LEP amendment will not create additional dwelling entitlements nor enable further subdivision.

The PP request was considered by Council on 7 September 2021 and it was resolved to:

1. Support the Planning Proposal to amend the Shoalhaven LEP 2014 Minimum Lot Size maps to show a 4ha (Z3) parcel for Lot 1 DP 1081549 (268A Beach Rd BERRY), as identified in the Proposed Minimum Lot Size Map associated with this proposal.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance as a 'minor' proponent-initiated Planning Proposal with fees charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

A Gateway determination was subsequently received permitting this PP to proceed, subject to conditions requiring early consultation with the following Government agencies and public exhibition (14 days):

- NSW Rural Fire Service (RFS)
- NSW Department of Primary Industries (DPI) – Agriculture

Feedback from Public Authorities

The following formal submissions were received from the required early consultation.

NSW Rural Fire Service

Comments received on 18 February 2022 - no objection to the PP and no further consultation is necessary.

NSW Department of Primary Industries Agriculture

As a result of consultation, three (3) letters were received from DPI - Agriculture dated 2 December 2021, 1 April 2022, and 26 May 2022.

Letter dated 2 December 2021 - initially objected to the PP on the basis that part of the smaller proposed lot (Lot 1) "...contains land that is of high agricultural quality". Acknowledged that the proposal retained mapped Biophysical Strategic Agricultural Land (BSAL) within a single Lot but opposed the proposal to separate this land from non-BSAL agricultural resources. Raised further concerns that any boundary adjustment may compromise agricultural practices intended for the RU4 land-use zoning, due to a resulting smaller lot size for Lot 1 (268A Beach Road).

In response to these initial comments from DPI - Agriculture, the proponent prepared an alternative conceptual drawing that sought to further minimise fragmentation of cleared agricultural land. This concept was initially supported by DPI Agriculture in a letter dated 1 April 2022. However on review, it was considered that the original concept on which the Gateway version of the PP was based, facilitated a better overall planning outcome due to:

- Direct access to Beach Road is maintained for both Lots;
- Viability of agricultural land-use is retained for both RU4-zoned Lots, according to the findings of the supporting agricultural assessment;
- The BSAL mapping is not sufficiently fine-grained or ground-truthed to accurately determine its boundaries;
- A large portion of the mapped BSAL land is already compromised by established infrastructure, approved development and effluent disposal area for the existing dwelling on Lot 1;
- Improved management practices are facilitated for the quality environmental land (treed area), by permitting it to be consolidated within a single Lot.

Council staff met with DPI - Agriculture, NSW Department of Planning & Environment (DPE) and the proponent's representative on 26 April 2022, where both options were discussed.

Council subsequently wrote to DPI - Agriculture on 2 May 2022, formally requesting that it reconsider its initial objection to the Gateway version of the PP.

DPI - Agriculture responded to Council on 26 May 2022, stating it *“has no objections to the proposed minimum lot size proposal in the original submission to NSW DPI on 11th November 2021”* - see **Attachment 1**.

As such DPI - Agriculture does not object to the PP and no further consultation with them was necessary.

Community Engagement

The PP was subsequently publicly exhibited on Council’s website and the NSW Planning Portal between **29 June** and **15 July 2022** (inclusive) in accordance with the Gateway determination.

The exhibition package included:

- Planning Proposal (PP061) document
- Explanatory statement
- Gateway determination
- Exhibition notification

One (1) community submission was received from an adjoining landowner who raised several concerns which are summarised in **Table 1** below. Staff responses are provided are also provided. A copy of the actual submission can be provided to Councillors if required.

Table 1 – Response to submission (from adjoining landowner)

Issue / Concern	Staff response
No reasons or justification given for creation of the smaller lot.	The proponent’s agricultural assessment states: <i>“It is proposed to reduce the area of Lot 1 to 4 ha and increase the size of Lot 2 to 16 ha to allow increased agricultural use of Lot 2 while retaining agricultural potential for Lot 1.”</i> Any resultant proposal by the landowner to create the smaller lot will be assessed on its merits as part of a separate development application. No change to the PP considered necessary.
The proposed smaller lot will not support a viable number of livestock.	The proponent’s agricultural assessment states that intensive agriculture will be viable on the smaller lot. This land-use is compatible with the objectives of the RU4 Primary Production Small Lots zone. No change to the PP considered necessary.
Creation of the smaller lot will set a precedent for future smaller lot sizes.	The protection of agricultural lands from subdivision is an important element of the strategic planning framework. In this case, the land is already subdivided and developed (dwellings exist), and the PP will not create additional dwelling entitlements or further subdivision potential. The PP will also enable the treed area to be encompassed within the larger lot, which is considered a better

	<p>environmental outcome. Given these circumstances, it is not considered that the PP will create an undesirable precedent.</p> <p>No change to the PP considered necessary.</p>
Increased size of Lot 2 will lead to a future subdivision application.	<p>The PP will not create additional dwelling entitlements or further subdivision potential on the larger lot. (As is the case for the smaller lot.)</p> <p>No change to the PP considered necessary.</p>
No guarantee that additional dwelling entitlements of future subdivision will not occur.	<p>The PP will not create additional dwelling entitlements or further subdivision potential.</p> <p>No change to the PP considered necessary.</p>

In summary, the concerns raised by an adjoining owner have, in the view of staff, been anticipated and are covered in the PP. Hence, no changes to the PP are proposed.

Conclusion

It is proposed to proceed to amend Sheet LSZ_019E of the minimum lot size map overlay in the LEP as it applies to Lot 1 DP 101549. The amendment will affect approximately 4 ha of land within the north-western portion of the subject lot, by replacing the current 10 ha (AB1) minimum lot size with a 4 ha (Z3) minimum lot size.

The amendment will enable a future development application seeking a boundary adjustment subdivision to be pursued and assessed on its merit when lodged.

Policy Implications

The NSW planning system places significant emphasis on protecting the state's agricultural lands from fragmentation. This is reiterated through actions in Council's strategic planning documents including [Shoalhaven 2040 - Our Strategic Land-use Planning Statement](#) and Council's [Growth Management Strategy](#).

In this case, the land is already subdivided and developed (dwellings exist) and the PP will not create additional dwelling entitlements or further subdivision potential. The PP will also enable the treed area to be encompassed within the larger lot, which is considered a better environmental outcome. Given these circumstances, it is not considered that the PP has any significant policy implications.