

# PLANNING PROPOSAL – PP061

Shoalhaven Local Environmental Plan 2014

268A Beach Road, BERRY

Minimum Lot Size amendment to enable  
boundary adjustment subdivision

Prepared by  
City Futures Directorate  
Shoalhaven City Council

File: 67710E

Version 4.0: Final

Date: September 2022

Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Shoalhaven City Council's website: [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)

**Contact:**

Strategic Planning Team

Phone: (02) 4429 3111

e-mail: [council@shoalhaven.nsw.gov.au](mailto:council@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 © 2022, Shoalhaven City Council

File Number	Version	Date created	Officer
D21/397210	1 – Gateway submission	15 September 2021	DR
D21/487289	2 – Pre-exhibition	11 November 2021	DR
D22/225173	3 – Exhibition	31 May 2022	DR
D22/323136	4 – Final	02 August 2022	DR

## Table of Contents

1	Introduction.....	5
1.1	Subject Land.....	5
1.2	Background .....	8
2	Intended Outcome (Part 1) .....	11
3	Explanation of Provisions (Part 2) .....	12
4	Justification (Part 3).....	13
4.1	Need for the Planning Proposal (Section A) .....	13
4.1.1	Is the Planning Proposal a result of any strategic study or report? .....	13
4.1.2	Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?.....	13
4.2	Relationship to strategic planning framework (Section B).....	13
4.2.1	Applicable Ministerial Directions (s9.1 Directions) .....	13
4.2.2	Applicable State Environmental Planning Policies (SEPPs) .....	15
4.2.3	Illawarra-Shoalhaven Regional Plan 2041 .....	15
4.2.4	Integrated Strategic Plan – Shoalhaven 2027 Community Strategic Plan .....	15
4.2.5	Local Strategies/Structure Plans.....	15
4.3	Environmental, Social and Economic Impact (Section C).....	16
4.3.1	Biodiversity Considerations .....	16
4.3.2	Environmental Considerations.....	16
4.3.3	Social and Economic Considerations .....	16
4.4	State and Commonwealth Interests (Section D).....	16
4.4.1	Infrastructure Provision.....	16
4.4.2	State and Commonwealth Public Authorities.....	16
5	Mapping (Part 4) .....	19
6	Community Consultation (Part 5).....	20
7	Project Timeline (Part 6) .....	20
	<b>Attachment A - Evaluation criteria for the delegation of plan making functions</b>	<b>22</b>
	<b>Attachment B – Council report and minute – 7 September 2021.....</b>	<b>26</b>
	<b>Attachment C – Ministerial Planning Directions (s9.1) Checklist .....</b>	<b>27</b>
	<b>Attachment D - State Environmental Planning Policies (SEPP) Checklist .....</b>	<b>28</b>
	<b>Attachment E – Gateway determination (3 November 2021) .....</b>	<b>29</b>
	<b>Attachment F – Correspondence with Consultation Agencies.....</b>	<b>31</b>
	<b>Attachment G – Proponent’s Agricultural Assessment (Cowman Stoddart P/L, February 2021) .....</b>	<b>37</b>

Figures

Figure 1: Location Map .....5

Figure 2: Subject Land with surrounding lot sizes demonstrated.....6

Figure 3: Aerial Photo .....7

Figure 4: Current Land Use Zones Map .....8

Figure 5: Existing (left) and Proposed (right) Minimum Lot Size (LSZ) Maps .....12

## 1 Introduction

This proponent-initiated Planning Proposal (PP) seeks to amend the minimum lot size map overlay in Shoalhaven LEP 2014, as it applies to Lot 1 DP 1081549 at 268A Beach Road, Berry. The PP seeks to enable a boundary adjustment between Lots 1 and 2 DP 1081549 that will:

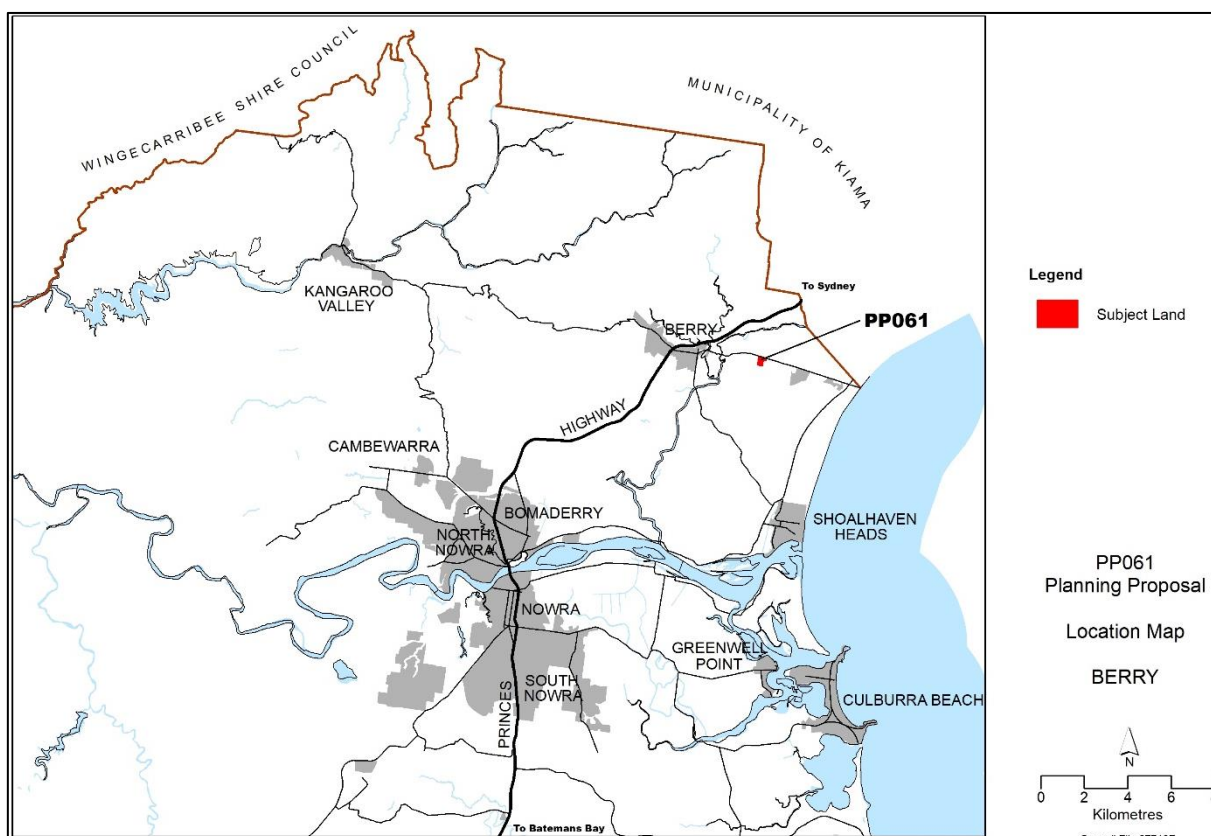
- Reduce Lot 1 DP 1081549 (268A Beach Road) to 4 hectares (ha)
- Increase Lot 2 DP 1081549 (268B Beach Road) to 16 ha.

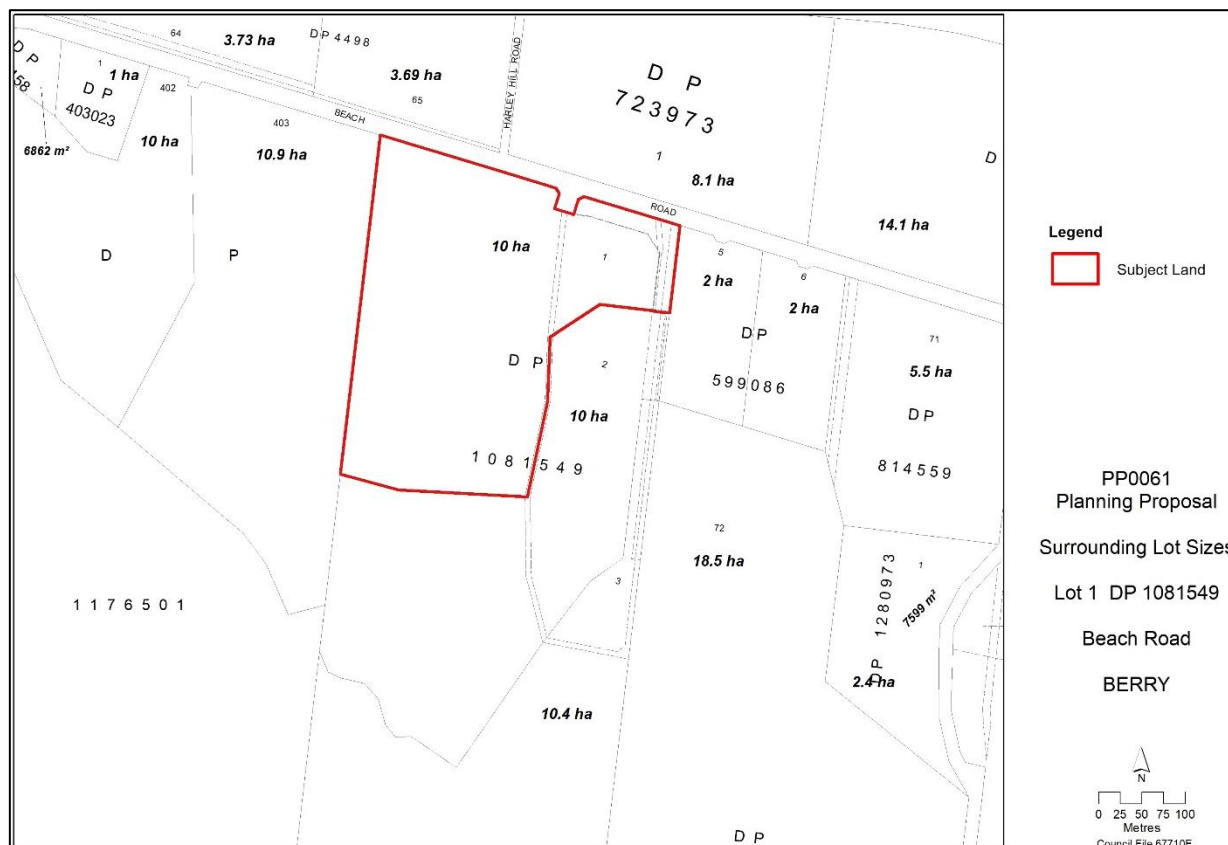
This PP has been prepared in line with the NSW Government's '*LEP Making Guideline*'.

Council has been given delegation for plan making functions for this PP. The evaluation criteria for delegation is provided at **Attachment A**.

### 1.1 Subject Land

The subject land is Lot 1 DP 1081549, a 10.04 ha property at 268A Beach Road, Berry, approximately 3 km east of Berry township. A site location map is provided in Figure 1 and the subject land is shown in Figure 2.





**Figure 2: Subject Land with surrounding lot sizes demonstrated**

Located adjacent to Beach Road, the subject land is one of three 10 ha lots (approx.) created by subdivision in May 2005. Surrounding lands include:

- Rural residential lifestyle properties ranging from 6,816 m<sup>2</sup> to 10 ha to the west;
- Rural residential lifestyle properties and grazing lands ranging from 2 to 40 ha to the east;
- Rural residential lifestyle properties of 10 ha, partly vacant bushland and partly grazing land to the south; and
- Harley Hill Road Cemetery located opposite the site to the north.

The subject land and surrounding lot sizes are shown in Figure 2.

The subject land is zoned *RU4 Primary Production Small Lots* under Shoalhaven LEP (SLEP) 2014 and is subject to covenants (access, landscaping, infrastructure etc) that benefit:

- The remaining Lots created by the 2005 subdivision, being Lots 2 and 3 DP 1081549
- Integral Energy Australia and
- Shoalhaven City Council.

Covenants over the subject land, which will be unaffected by this PP, establish:

- Rights of Carriageway to Lots 2 and 3 DP 1081549
- a building envelope



- limit clearing / disturbance of native vegetation, and
- easements for the maintenance of existing water supply and underground energy cables.

The northern part of the subject land is generally cleared for grazing purposes. An existing approved dwelling is located north of a timbered hillcrest that rises from west to east. The timbered area in the southern part of the subject land is over 100 m wide and is under scrubbed for grazing purposes. The timbered area extends further east into the adjacent Lot 2 DP 1081549. Lots 1 and 2 are owned by the same family.

An aerial image of the subject land (highlighted in red outline) and surrounding lots is shown below – see Figure 3.



**Figure 3: Aerial Photo**

The subject land is gently undulating. Shale geology associated with the Berry formation supports a loam topsoil, of varying depth, that overlies a medium / heavy clay subsoil.

Neighbouring lands comprise:

- Rural residential lifestyle properties surround the subject land, ranging in size from less than a hectare to circa 10 ha
- The adjacent Harley Hill Cemetery, which lies to the north, separates the subject land from the Illawarra Railway line and further rural residential allotments
- Medium to large grazing lands are located both adjacent (west) to the subject land and in the immediate area

The native vegetation on the southern portion of the subject land is mapped as terrestrial biodiversity in the Shoalhaven LEP 2014.

The land use zoning of the subject land and surrounds is shown in Figure 4 (below).

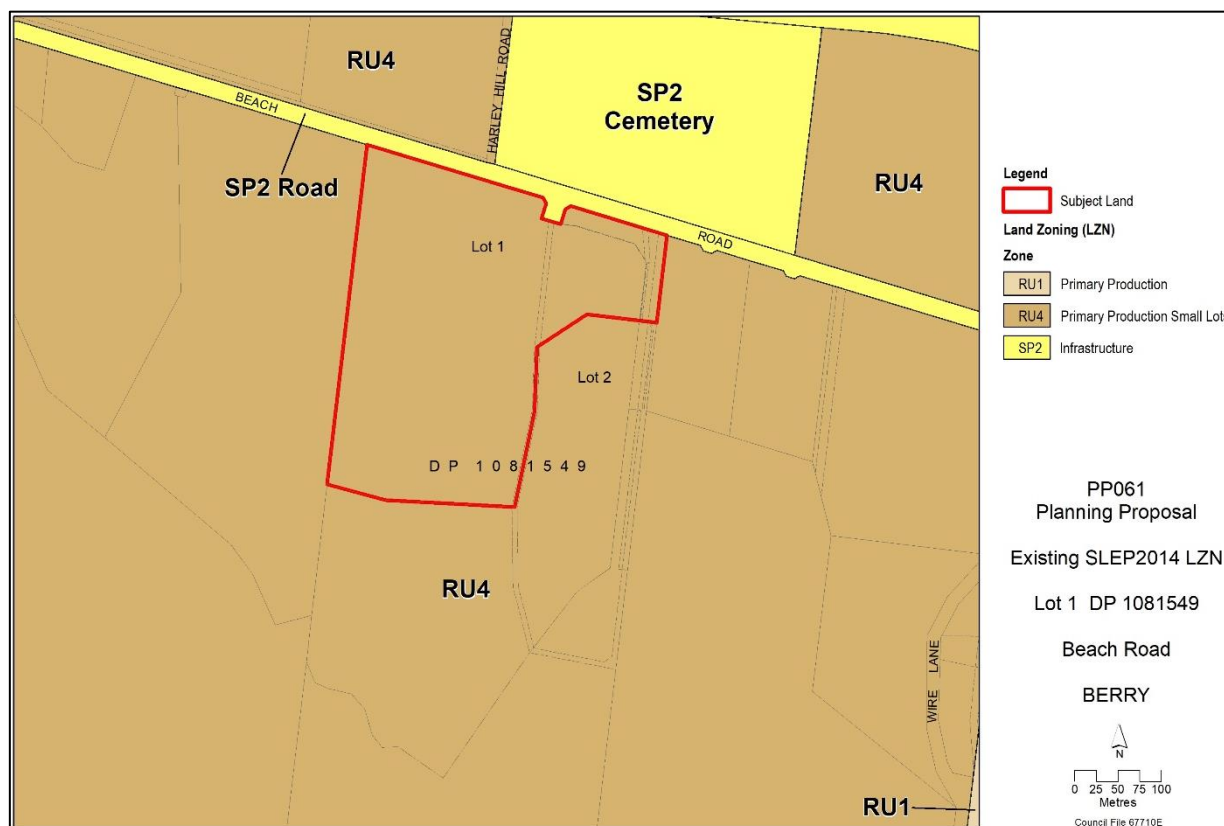


Figure 4: Current Land Use Zones Map

## 1.2 Background

A request to undertake this proponent-initiated planning proposal (PP061) was submitted to Council on 21 June 2021 and can be accessed via the following links:

1. [Proponent Planning Proposal request with appendices: Beach Road - Berry](#)
2. [Site Map - 268A & 268B Beach Road - Berry](#)

This proponent-initiated PP was submitted by Allen Price & Scarratts Pty Ltd, on behalf of the landowners. The PP request seeks to enable future consideration of boundary adjustment between Lots 1 and 2 in DP 1081549.

Both lots are zoned RU4 under the Shoalhaven LEP 2014. The current minimum lot size (LSZ) for the subject land is 10 ha (AB1), consistent with the other RU4-zoned land in the locality.

Prior to SLEP 2014, the RU4-zoned land in the locality, including the subject land, was zoned *Rural 1(c)(rural lifestyle)* under SLEP 1985. The 1(c) zoning resulted from the Rural Plan Amendments (No.127) to SLEP 1985 that were gazetted in 1999. Schedule 13 of SLEP 1985 sought to:



- retain the conservation values of the remnant coastal forest vegetation in the area and to ensure that development does not reduce those values.
- recognise the presence of prime crop and pasture land in the area and to provide opportunities for small scale part time farming
- prevent ribbon development along Beach Road and Agars Lane
- provide only a basic level of services to the area in keeping with its low development potential and the potential impact of reticulated water supply on waste water volumes.

Schedule 13 of SLEP 1985 set a 10 ha minimum lot size (development standard) for the 1(c) zoned land in this locality.

The subject lot was created through approved subdivision of an existing 30 ha parcel of land, registered in May 2005 (Lot 3 DP521138). The subdivision created three (3) 10 ha lots, each of which contains an existing rural dwelling and ancillary buildings.

Covenants over Lot 1 DP 1081549, unaffected by this PP, include:

- Easements for
  - tree screening
  - Water supply
  - underground cables and
  - overhead powerlines
- Right of carriageway to Lots 2 & 3 DP 1081549
- restriction on clearing for development

The proposed amendment would potentially allow a future boundary adjustment to locate the stand of vegetation that currently extends across Lots 1 and 2, to be entirely within a single lot. This would potentially facilitate better management and protection of this stand of vegetation.

Subject to the proposed amendment to Sheet LSZ\_019E of the Shoalhaven LEP 2014 minimum lot size map overlay, the proponent (owner of both lots) intends to lodge a future development application, seeking a boundary adjustment between Lots 1 and 2 DP 1081549 (268A and 268B respectively) that will:

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

Legally approved dwellings are established on both lots. The proposed amendment to the SLEP 2014 maps will not create additional dwelling entitlements nor enable further subdivision. Further, none of the existing covenants that apply to Lot 1 DP 1081549 will be impacted or negated by the proposed amendment.

This PP was considered by Council's Development and Environment Committee (DEC) on 7 September 2021 (minute included at **Attachment B**), at which Council 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.*

## 2 Intended Outcome (Part 1)

This PP seeks to enable a boundary adjustment subdivision (subject to development approval) between Lots 1 and 2 DP 1081549 that will:

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

No additional dwelling entitlements or subdivision potential is sought or intended.

### 3 Explanation of Provisions (Part 2)

It is proposed to amend Sheet LSZ\_019E of the minimum lot size map overlay in Shoalhaven Local Environment Plan 2014, 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 change to the LSZ mapping is demonstrated in Figure 5, below:



**Figure 5: Existing (left) and Proposed (right) Minimum Lot Size (LSZ) Maps**

This amendment would enable the landowner to lodge a development application for a boundary adjustment subdivision. Any future boundary adjustment subdivision application would be assessed on merit at that time.

## 4 Justification (Part 3)

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

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

This PP is not the result of a strategic study or report. The subject land is appropriately zoned. The PP is minor and is not of a kind that would generally be identified in a broad strategic planning process.

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

The proposed boundary adjustment is currently not possible under Shoalhaven LEP 2014. There is also no State Environmental Planning Policy that provides a mechanism to permit the intended boundary adjustment subdivision. Thus, a PP is the only way to achieve the intended outcome.

A pre-lodgement meeting was held between Council staff and the proponent. A pre-lodgement meeting letter was subsequently issued to the proponent, outlining the processes and considerations for progressing a planning proposal.

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

#### 4.2.1 Applicable Ministerial Directions (s9.1 Directions)

The PP is minor in nature and generally consistent with the relevant Ministerial Directions issued under s9.1 of the Environmental Planning and Assessment Act, 1979. A checklist of s.9.1 Ministerial Directions is included at **Attachment C**.

The relevant Directions are briefly discussed below.

##### Direction 1.1 – Implementation of Regional Plans

The PP is minor in nature and will not result in any additional dwelling entitlements or subdivision potential. The PP is generally consistent with the Illawarra Shoalhaven Regional Plan (ISRP) 2041 with directly relevant directions summarised below.

##### *Objective 9: Promote agriculture innovation, sustainability and value-add opportunities*

The PP is supported by an [agricultural assessment](#) that finds the proposed amendment will not preclude agriculture on the basis that intense agriculture would be viable on the smaller Lot. The proposal is not expected to increase the risk of land use conflict or further fragment agricultural land.

##### *Objective 11: Protect important environmental assets*

Lots 1 and 2 share a treed area of over 5 hectares that contributes to a larger biodiversity corridor situated within expansive reserves of cleared agricultural land. This PP will enable



the treed area to be consolidated into a single Lot, thus facilitating more effective management.

#### Direction 1.4 – Site Specific Provisions

The PP will amend an environmental planning instrument (SLEP 2014) to allow an application for boundary adjustment subdivision, but will not result in additional dwelling entitlements or further subdivision potential.

#### Direction 3.1 – Conservation Zones

The land is not zoned environmental and no land use zone changes are proposed. The proposed amendment would allow the treed land to be consolidated within one lot.

#### Direction 3.2 – Heritage Conservation

The PP will not create any additional dwelling entitlements or subdivision potential. The PP is not inconsistent with this Direction.

#### Direction 4.3 – Planning for Bushfire Protection

The subject land is partly mapped as bushfire prone land and therefore this Direction applies. The PP only seeks to enable a boundary adjustment application. It will not intensify development or create any dwelling entitlements. The PP was referred to NSW RFS for comment and the RFS raised no objection.

The minor nature of this PP means that it is not inconsistent with this Ministerial Direction.

#### Direction 4.4 – Remediation of Contaminated Land

Lots 1 and 2 both have an existing approved dwelling and ancillary rural buildings. The PP will not create any additional dwelling entitlements or subdivision potential. The PP is not inconsistent with this Direction.

#### Direction 9.1 – Rural Zones

It is not proposed to rezone the land and no additional dwelling entitlements will be created.

#### Direction 9.2 – Rural Lands

Direction 9.2(2) directly applies to this PP because it seeks to change the minimum lot size within a rural-zoned area. The PP is generally consistent with this Direction as it:

- does not seek to further fragment rural land and is not expected to increase the risk of land-use conflict
- is supported by an [agricultural assessment](#) that concludes that agriculture will be viable on both lots
- does not seek to create any additional rural residential development (the subject land has an established dwelling and additional dwelling entitlements will not be created by the PP).

#### **4.2.2 Applicable State Environmental Planning Policies (SEPPs)**

This PP is minor and the proposed amendment is not in conflict with the only applicable SEPP, being Primary Production SEPP 2021.

The proposed amendment does not create additional dwelling entitlements whilst ongoing agricultural viability of the subject land is supported by the accompanying [agricultural assessment](#). Should this PP ultimately be finalised, any future application for boundary adjustment subdivision would be assessed on its merits against the Primary Production SEPP 2021.

A SEPP checklist is included at **Attachment D**.

#### **4.2.3 Illawarra-Shoalhaven Regional Plan 2041**

This PP is generally compliant with the Plan, particularly *Objective 9: Promote agriculture innovation, sustainability and value-add opportunities* and *Objective 11: Protect important environmental assets*.

The proposed amendment would enable a boundary adjustment to consolidate most of the actively farmed land within Lot 2, which would be increased to 16 ha. The proponent's supporting [agricultural assessment](#) indicates that the proposed smaller lot (4 ha) would have sufficient area to enable agricultural use, such as intensive plant agriculture. Further, the proposal should not increase the risk of land use conflict or further fragmentation of agricultural land.

The proposal will facilitate better management practices for the treed area enabling it to be consolidated within a single Lot. This treed area forms part of larger biodiversity corridor situated within expansive reserves of cleared agricultural land.

#### **4.2.4 Integrated Strategic Plan – Shoalhaven 2027 Community Strategic Plan**

This PP is minor and is generally consistent with this plan.

#### **4.2.5 Local Strategies/Structure Plans**

##### Shoalhaven Local Strategic Planning Strategy (LSPS) 2020

This PP is generally consistent with the LSPS as it does not seek to rezone land for rural-residential and/or residential outcomes (the land is already zoned). The PP is supported by an [agricultural assessment](#) that concludes over half of the proposed 4 hectares LSZ area is potentially suitable for intensive agriculture, such as horticulture. Additionally, the subject lot has an established dwelling and no additional dwelling entitlements or further subdivision opportunities will be created by this PP.

##### Shoalhaven Growth Management Strategy (GMS) 2012

The PP is not inconsistent with the GMS. It will not create any additional dwelling entitlements or subdivision potential other than enabling a boundary adjustment subdivision between two existing lots, each of which have an existing approved dwelling.

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

### **4.3.1 Biodiversity Considerations**

This PP will not result in the removal of any native vegetation or habitat. No adverse biodiversity impacts are anticipated.

The PP seeks to enable a future boundary adjustment application that, subject to approval, should improve security for the biodiversity assets by encompassing the stand of native vegetation within a single lot. The proposed amendment to the minimum lot size map has been prepared specifically to facilitate this outcome.

### **4.3.2 Environmental Considerations**

The proposed amendment will result in a change to Sheet LSZ\_019E of the SLEP 2014 maps to enable a future development application seeking a boundary adjustment between Lots 1 and 2 DP 101549. Both lots have established lawful dwellings and the proposed amendment will not result in additional dwelling entitlements, subdivision potential and / or associated clearing of vegetation. It is unlikely that the proposed amendment will result in any other environmental effects.

### **4.3.3 Social and Economic Considerations**

The proposed amendment will result in a change to Sheet LSZ\_019E of the SLEP 2014 maps to enable a future development application seeking a boundary adjustment between Lots 1 and 2 in DP 101549. Both lots have established lawful dwellings and the proposed amendment will not result in additional dwelling entitlements and / or subdivision potential.

This PP is supported by an [agricultural assessment](#) that concludes that the smaller lot could potentially be used for some form of intensive agriculture such as horticulture. It is unlikely that the proposed amendment will result in any other social or economic impacts.

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

### **4.4.1 Infrastructure Provision**

This PP is minor in nature and will not result in any additional infrastructure needs.

The proposed amendment to SLEP 2014 minimum lot size mapping will enable a future development application seeking a boundary adjustment between Lots 1 and 2 DP 101549. Both lots have established lawful dwellings and the proposed amendment will not result in additional dwelling entitlements and / or subdivision potential.

### **4.4.2 State and Commonwealth Public Authorities**

A Gateway determination by the delegate of the Minister for Planning and Public Spaces has permitted this PP to proceed subject to conditions. The PP is to be exhibited for a minimum of 14 days in accordance with the requirements identified in section 6.5.2 of A

*guide to preparing local environment plans* (Dept. of Planning and Environment, 2018). A copy of the Gateway determination is included at **Attachment E**.

Consultation with the following agencies was required by the Gateway determination:

Agency	Reason for consultation
NSW Rural Fire Service	Land is affected by bushfire prone land mapping and hence, s9.1 Ministerial Direction 4.4 requires RFS to be consulted prior to public exhibition.
NSW Department of Primary Industries - Agriculture	Land is partly mapped as Prime Crop and Pasture Land

As required by the Gateway determination, each named consultation agency was provided with a copy of the PP and any relevant supporting material and given at least 21 days to comment on the proposal. Copies of the correspondence received from the named consultation agencies is included at **Attachment F**.

Note: should the PP be finalised, any future boundary adjustment application will be assessed upon its merits and necessary referrals sought at that time.

#### NSW Rural Fire Service

The NSW Rural Fire Service was consulted as required by the Gateway Determination and comments were received on 18 February 2022. RFS indicated that it has no objection to the PP and no further consultation with NSW RFS is necessary.

#### NSW Department of Primary Industries Agriculture

The NSW Department of Primary Industries (DPI) Agriculture was consulted as required by the Gateway Determination. Three (3) letters were received from DPI Agriculture; dated 2 December 2021, 1 April 2022 and 26 May 2022.

NSW DPI Agriculture's letter dated 2 December 2021 objected to the PP on the basis that part of the smaller proposed lot (Lot 1) "...contains land that is of high agricultural quality". NSW DPI Agriculture 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. NSW DPI Agriculture further raised 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 the concerns raised in NSW DPI Agriculture's first letter, the proponent prepared an [alternative conceptual drawing](#) that sought to further minimise fragmentation of cleared agricultural land. Whilst this concept was initially supported by DPI Agriculture in a [letter dated 1 April 2022](#), Council and Department of Planning and the Environment (DPE) held the view that the original concept on which the Gateway version of the PP was based, was 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 met with NSW DPI Agriculture, 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.

NSW 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"*. Considerations associated with NSW DPI Agriculture's revised position on this PP are contained within its [letter of 26 May 2022](#). Hence, DPI Agriculture does not object to the proposal and no further consultation with DPI Agriculture is necessary.



## **5 Mapping (Part 4)**

It is proposed to amend the existing Shoalhaven Local Environment Plan 2014 minimum lot size (LSZ) map, being 6950\_COM\_LSZ\_019E\_020\_20210406.

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 change to the LSZ mapping is shown in Figure 5 (above).

## 6 Community Consultation (Part 5)

In accordance with the requirements of Schedule 1 of the Environmental Planning and Assessment Act 1979 and other requirements as determined by the Gateway determination, Council exhibited the Planning Proposal between the dates of **Wednesday, 29 June 2022 and Friday, 15 July 2022** (inclusive).

Public notification included a package of exhibition materials exhibited on Council's website. Electronic copies of the PP were made available for viewing at Council's Administrative Building in Nowra.

Three (3) submissions were received in total and summarised as an addendum to the post-exhibition report to Council's Ordinary meeting of 12 September 2022. One submission from NSW DPI, discussed above, initially objected to the proposal. However, following discussions with Council and NSW DPE officers, the objection was reconsidered and NSW DPI now has *"no objections to the proposed minimum lot size proposal in the original submission to NSW DPI on 11<sup>th</sup> November 2021"*.

A public submission from a neighbouring property owner raised "significant concerns" with the planning proposal. The concerns raised are either addressed within this Planning Proposal, discussed within the accompanying Agricultural Assessment or will be considered during assessment of any future development application to achieve a boundary adjustment between Lots 1 and 2 DP 1081549.

## 7 Project Timeline (Part 6)

The anticipated timeline for the Planning Proposal is outlined in the table below. The project timeline may be updated as the Planning Proposal progresses through the Gateway Process.

**Table 1: Indicative Project Timeframe**

Action	Date
Council considers the planning proposal	7 September 2021
Gateway Determination	November 2021
Completion of conditions in Gateway Determination	26 May 2022
Public Exhibition	June/July 2022

Consideration of Submissions and Report to Council	August/September 2022
Finalisation of Planning Proposal, including publication of amendments to the LEP (i.e. notification).	September/October 2022

## **Attachment A - Evaluation criteria for the delegation of plan making functions**

### **Local Government Area:**

Shoalhaven City Council

### **Name of draft LEP:**

*Shoalhaven Local Environment Plan 2014*

*PP061 – 268A Beach Rd Berry – SLEP 2014 Minimum Lot Size (LSZ) Amendment*

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

The subject land is known as 268A Beach Rd, BERRY and is legally described as Lot 1 DP 101549.

### **Intent of draft LEP:**

To amend Sheet LSZ\_019E of the Shoalhaven Local Environment Plan (SLEP) 2014 maps, to identify a specified area of the subject lot, being Lot 1 DP 101549, as having a 4 ha (Z3) minimum lot size and enable a future boundary adjustment.

### **Evaluation criteria for the issuing of an Authorisation:**

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Yes or No	N/A	Agree	Not agree
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the Planning Proposal adequately address any consistency with all relevant S9.1 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N	N/A		
<b>Heritage LEPs – Does the heritage assessment meet these criteria</b>				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?	N	N/A		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N	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	N/A		
<b>Reclassifications</b>				
Is there an associated spot rezoning with the reclassification?	N	N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?	N	N/A		
Is the Planning Proposal proposed to rectify an anomaly in a classification?	N	N/A		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?	N	N/A		



Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Yes or No	N/A	Agree	Not agree
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?	N	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	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	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			
<b>Spot Rezoning</b>				
Will the proposal result in a loss of development potential for the site (ie 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			
Does the Planning Proposal create an exception to a mapped development standard?	N			
<b>Section 3.22 matters</b>				
Does the proposed instrument:	N			
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?	N			

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Yes or No	N/A	Agree	Not agree
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?	N			

## **Attachment B – Council report and minutes.**

### **MINUTES**

#### **7 September 2021**

**RESOLVED** (Clr Findley / Clr Wells)

MIN21.617

That Council

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.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

#### **12 September 2022**

**RESOLVED\*** (Clr Wells / Clr White)

MIN22.601

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.

FOR: Clr Findley, Clr Kotlash, Clr Norris, Clr Butler, Clr D'Ath, Clr Copley, Clr Ell, Clr Christen, Clr White, Clr Wells, Clr Watson, Clr Kitchener and Clr Gray

AGAINST: Nil

CARRIED

## Attachment C – Ministerial Planning Directions (s9.1) Checklist

1 March 2022 Version

MD	Subject	Applies?	Relevant?	Consistent?
<b>Focus Area 1: Employment &amp; Resources</b>				
1.1	Implementation of Regional Plans	Yes	Yes	Justified – see 4.2.1
1.2	Development of Aboriginal Land Council Land	No	No	
1.3	Approval and Referral Requirements	No	No	
1.4	Site Specific Provisions	Yes	No	Yes – see 4.2.1
1.5 – 1.16	Planning Systems (Place based)	No	No	
<b>Focus Area 2: Design and Place – Directions for this Focus Area have not been finalised to date</b>				
<b>Focus Area 3: Biodiversity &amp; Conservation</b>				
3.1	Conservation Zones	Yes	Yes	Yes – see 4.2.1
3.2	Heritage Conservation	No	No	
3.3	Sydney Drinking Water Catchments	No	No	
3.4	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	No	No	
3.5	Recreation Vehicle Areas	No	No	
<b>Focus Area 4: Resilience &amp; Hazards</b>				
4.1	Flooding	No	No	
4.2	Coastal Management	No	No	
4.3	Planning for Bushfire Protection	Yes	Yes	Yes – see 4.2.1
4.4	Remediation of Contaminated Land	Yes	Yes	Yes – see 4.2.1
4.5	Acid Sulfate Soils	No	No	
4.6	Mine Subsidence and Unstable Land	No	No	
<b>Focus Area 5: Transport &amp; Infrastructure</b>				
5.1	Integrating Land Use and Transport	No	No	
5.2	Reserving Land for Public Purposes	No	No	
5.3	Development Near Regulated Airports and Defence Airfields	No	No	
5.4	Shooting Ranges	No	No	
<b>Focus Area 6: Housing</b>				
6.1	Residential Zones	No	No	
6.2	Caravan Parks and Manufactured Home Estates	No	No	
<b>Focus Area 7: Industry and Employment</b>				
7.1	Business and Industrial Zones	No	No	
7.2	Reduction in non-hosted short-term rental accommodation period	No	No	
7.3	Commercial and Retail Development along the Pacific Highway, North Coast	No	No	
<b>Focus Area 8: Resources and Energy</b>				
8.1	Mining, Petroleum Production and Extractive Industries	No	No	
<b>Focus Area 9: Primary Production</b>				
9.1	Rural Zones	Yes	Yes	Yes – see 4.2.1
9.2	Rural Lands	Yes	Yes	Justified – see 4.2.1
9.3	Oyster Aquaculture	No	No	
9.4	Farmland of State and Regional Significance on the NSW Far North Coast	No	No	

## Attachment D - State Environmental Planning Policies (SEPP) Checklist

State Environmental Planning Policy	Applies?	Consistent?
Housing SEPP 2021	No	
Transport and Infrastructure SEPP 2021	No	
Primary Production SEPP 2021	Yes	Yes – see 4.2.2
Biodiversity and Conservation SEPP 2021	No	
Resilience and Hazards SEPP 2021	No	
Draft Design and Place SEPP 2021	No	
Industry and Employment SEPP 2021	No	
Resources and Energy SEPP 2021	No	
Planning Systems SEPP 2021	No	
Precincts SEPPs 2021	No	
Exempt and Complying Development Codes 2008	No	



## Attachment E – Gateway determination (3 November 2021)



Planning,  
Industry &  
Environment

### Gateway Determination

**Planning proposal (Department Ref: PP-2021-4004):** to amend the Shoalhaven Local Environmental Plan (LEP) 2014 to apply a Minimum Lot Size of 4,000sqm to Lot 1, DP 1081549 at 268A Beach Road, Berry.

I, the Director, Southern Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan (LEP) 2014 as described above should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **14 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
2. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - NSW Rural Fire Service
  - Department of Primary Industries – Agriculture

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.
5. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination expiring on 3 August 2022.

Dated 3<sup>rd</sup> day of November 2021.





**Sarah Lees**  
**Director, Southern Region**  
**Local and Regional Planning**  
**Department of Planning, Industry and**  
**Environment**

**Delegate of the Minister for Planning**  
**and Public Spaces**

## Attachment F – Correspondence with Consultation Agencies

NSW Rural Fire Service (18 February 2022)

		<b>NSW RURAL FIRE SERVICE</b>
<hr/>		
<p>Shoalhaven City Council PO Box 42 NOWRA NSW 2541</p>		<p>Your reference: (REF-1011) Our reference: SPI20211114000196</p>
<p><b>ATTENTION:</b> Dale Richardson</p>		<p>Date: Friday 18 February 2022</p>
<p>Dear Sir/Madam,</p>		
<p><b>Strategic Planning Instrument</b> <b>Rezoning – Planning Proposal</b> Minimum Lot Size amendment to enable boundary adjustment subdivision</p>		
<p>I refer to your correspondence dated 11/11/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.</p>		
<p>The NSW RFS has considered the information submitted and provides the following comments.</p>		
<p>The NSW RFS has no objections to the proposed reduction of the minimum lot size for part of the subject property.</p>		
<p>For any queries regarding this correspondence, please contact Simon Derevnin on 1300 NSW RFS.</p>		
<p>Yours sincerely,</p>		
<p>Anna Jones <b>Supervisor Development Assessment &amp; Plan</b> <b>Built &amp; Natural Environment</b></p>		

NSW Department of Primary Industries Agriculture (received 2 December 2021)



Department of  
Primary Industries

OUT21/17318

Mr Russ Pigg  
The General Manager  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 25

Attention: Dale Richardson

cc. dale.richardson@shoalhaven.nsw.gov.au

Dear Mr Pigg

**Planning Proposal – Minimum lot size Amendment to lots 1 and 2 DP1081549**

Thank you for the opportunity to provide comment for the above proposal as per your request of 11<sup>th</sup> November 2021. The NSW Department of Primary Industries (NSW DPI) Agriculture is committed to the protection and growth of agricultural industries, and the land and resources upon which these industries depend.

NSW DPI understands that the planning proposal would reduce the minimum lot size (MLS) of the subject land in order to enable a boundary adjustment between Lots 1 & 2 DP 1081549. That boundary adjustment is intended to reduce Lot 1 DP 1081549 to 4 hectares (ha) and increase Lot 2 DP 1081549 to 16 ha.

Shoalhaven City Council benefits from an agricultural industry that contributes to the gross value of production and employment, including smaller scale and niche agriculture that supports the economy and agritourism. DPI's comments aim to ensure that investment in agriculture continues.

NSW DPI objects to the planning proposal on the basis that part of lot 1 contains land that is of high agricultural quality. It is identified as Biophysical Strategic Agricultural Land (BSAL) which is land with high quality soil and water resources capable of sustaining high levels of agricultural productivity. While BSAL is proposed to be retained within lot 1, the remaining agricultural land in lot 1 is proposed to be transferred to lot 2, causing fragmentation of land that will separate BSAL from the remaining agricultural resource.

While the agricultural assessment indicated that the land can support an intensive plant establishment, it is likely, given its location, 3km from the beach and 2km from Berry, that the smaller (4ha) lot 1 would be used for rural residential development. In DPI's view, any proposed rural residential development should be undertaken as part of a strategic planning process that considers a range of factors and localities to identify where and whether rural residential development should be supported. The ad hoc development of rural residential land uses in agricultural areas are one of the main reasons for agricultural land use conflicts.

The RU4 zone is intended to serve a specific primary production purpose. While helpful for farmers entering the market or with smaller land needs for niche enterprises or similar, this zone is commonly misconstrued as a quasi-rural lifestyle zone. This is an emerging area of land use conflict as smaller buffers and high levels of production can severely impact nearby residents and tourists who are not understanding and engaged in production activities.

A recent report by the NSW Agricultural Commissioner titled '*Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System*', July 2021, discusses the larger lot size requirements of agriculture stating that agriculture generally requires larger tracts of land and access to natural resources such as soils and water, as well as access to markets, infrastructure, and labour. For intensive operations there is also a need to accommodate buffers to avoid impacting sensitive receptors. The cumulative impact of sub-division and fragmentation can have a serious impact on local agricultural production and supply chains and gradually erode lot sizes, so they become too small for viable agricultural businesses.' Maintaining the cleared agricultural land in lot 1 will provide a greater opportunity for sustaining agricultural productivity.

It is also noted that the proposal intends to consolidate the timbered land to facilitate better management and protection of that stand of vegetation. While NSW DPI does not support the transfer of cleared agricultural land between the lots, NSW DPI does not have any objections to transferring the heavily timbered land from lot 1 to lot 2, particularly given the management benefits.

Should you require clarification on any of the information contained in this response, please contact Wendy Goodburn, Agricultural Land Use Planning Officer, on 0402 069 605 or by email at [landuse.aq@dpi.nsw.gov.au](mailto:landuse.aq@dpi.nsw.gov.au)

Yours sincerely



Dr David Mitchell  
Acting Group Director  
Agricultural Resources NSW DPI



NSW Department of Primary Industries Agriculture (received 1 April 2022)



Department of  
Primary Industries

OUT22/3710

Mr Russ Pigg  
The General Manager  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 25

Attention: Dale Richardson

cc. dale.richardson@shoalhaven.nsw.gov.au

Dear Mr Pigg

**Amended Planning Proposal – Minimum lot size Amendment to lots 101 and 102 DP1081549**

Thank you for the opportunity to provide comment for the above proposal as per your request of 29<sup>th</sup> March 2022. The NSW Department of Primary Industries (NSW DPI) Agriculture is committed to the protection and growth of agricultural industries, and the land and resources upon which these industries depend.

NSW DPI understands that the amended planning proposal would reduce the minimum lot size (MLS) of the subject land to enable a boundary adjustment between lots 101 & 102, DP 1081549. That boundary adjustment will transfer the cleared land and land identified as BSAL from Lot 1 DP 1081549, reduced to 4.1 hectares (ha) to lot 102 increased to 15.9 ha.

NSW DPI has no objections to the proposed amended subdivision proposal because the issues that were raised in previous correspondence (OUT21/17318) have addressed NSW DPI's concerns.

Principally, the transfer of cleared lands to the larger lot will enable the high-quality agricultural lands to be consolidated into the lot with greatest capacity for agriculture. This lot is also currently used for beef grazing. Extensive agriculture requires large areas of land to be competitive and pursue economies of scale. As outlined in the previous correspondence, agriculture is better supported by maintaining larger lot sizes (NSW Agricultural Commissioner titled '*Improving the Prospects for Agriculture and Regional Australia in the NSW Planning System*', July 2021).

Equally, larger lot sizes reduce the likelihood that rural land will be converted to rural residential development. Amalgamating rural lots will therefore support agricultural productivity to a greater extent than numerous small rural lots. Small lots also create significant pressure for residential lifestyle development, particularly in the RU4 zone and in locations that have high access to townships and beaches.

It should be noted that any subdivision of rural land that has a high potential for the conversion of rural land to residential style purposes should be addressed as part of a strategic planning process that considers a range of factors and localities to identify where and whether that style of development should be supported. The ad hoc development of any rural residential land uses in agricultural areas are one of the main reasons for agricultural land use conflicts.

Should you require clarification on any of the information contained in this response, please contact Wendy Goodburn, Agricultural Land Use Planner on 0402 069 605 or by email at [landuse.ag@dpi.nsw.gov.au](mailto:landuse.ag@dpi.nsw.gov.au)

Yours sincerely



1/4/2022

**Wendy Goodburn**  
**Agricultural Land Use Planner**



NSW Department of Primary Industries Agriculture (received 26 May 2022)



OUT22/6566

Mr Russ Pigg  
The General Manager  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 25

Attention: Dale Richardson

cc. [dale.richardson@shoalhaven.nsw.gov.au](mailto:dale.richardson@shoalhaven.nsw.gov.au)

Dear Mr Pigg

**Amended Planning Proposal – Minimum lot size Amendment to lots 101 and 102 DP1081549**

Thank you for the opportunity to provide comment for the above proposal as per your request of 2<sup>nd</sup> May 2022. The NSW Department of Primary Industries (NSW DPI) Agriculture is committed to the protection and growth of agricultural industries, and the land and resources upon which these industries depend.

NSW DPI understands that the request is for the further consideration of the planning proposal to amend the minimum lot size between lots 101 and 102 (DP1081549) following a meeting between NSW DPI, Council, and the applicant's consultant on 26<sup>th</sup> April 2022. That boundary adjustment will transfer the cleared land and high-quality land from Lot 101 (reduced to 4.1 ha) to lot 102 (increased to 15.9 ha).

NSW DPI has no objections to the proposed minimum lot size proposal in the original submission to NSW DPI on 11<sup>th</sup> November 2021. The objections raised in previous correspondence by NSW DPI (OUT21/17318) to the original proposal have now been reconsidered in the light of the issues discussed at the meeting of 26<sup>th</sup> April 2022. Practical issues associated with servicing difficulties, the inability to establish a buffer from the septic system (that I was previously unaware of), and the splitting of the timbered land between the two lots (subsequently discussed in the meeting) were unrealistic. The original proposal appears to be the best outcome when taking into account these additional considerations.

Should you require clarification on any of the information contained in this response, please contact Wendy Goodburn, Agricultural Land Use Planner on 0402 069 605 or by email at [landuse.ag@dpi.nsw.gov.au](mailto:landuse.ag@dpi.nsw.gov.au)

Yours sincerely

23/5/2022

Wendy Goodburn  
Agricultural Land Use Planner

**Attachment G – Proponent’s Agricultural Assessment (Cowman Stoddart P/L, February 2021)**

Agricultural Assessment (Cowman Stoddart P/L, February 2021)

<https://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=D22/233590>