

# PLANNING PROPOSAL – PP027

## Shoalhaven Local Environmental Plan 2014

### *Review of Subdivision Provisions*

Prepared by  
Planning, Environment and Development Group  
Shoalhaven City Council

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## Attachments

- Attachment A - Proposed R5 Large Lot Residential Maps
- Attachment B - Proposed 'Complying Local Exclusion' Maps
- Attachment C – Council report and minute, 2 April 2019
- Attachment D – SEPP Checklist
- Attachment E – S9.1 Directions checklist

## 1 Introduction

This Planning Proposal (PP) seeks to amend Shoalhaven Local Environmental Plan (LEP) 2014 as follows:

- Include a new sub clause in clause 4.1 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 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.
- Amend clause 4.1C relating to dwellings, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots to 300m<sup>2</sup>.
- 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: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.

The PP also seeks to exclude certain land in the following locations from the Low Rise Medium Density Housing Code (the Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP):

- Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.

This PP has been prepared in line with '*A Guide to preparing Local Environmental Plans*' and '*A Guide to preparing planning proposals*'.

As this PP proposes an amendment to the Codes SEPP, Council is not seeking authorisation to make the plan.

### 1.1 Subject Land

This amendment applies to the whole of the City of Shoalhaven (**Figure 1**), specifically land zoned RU5 Village, R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential.

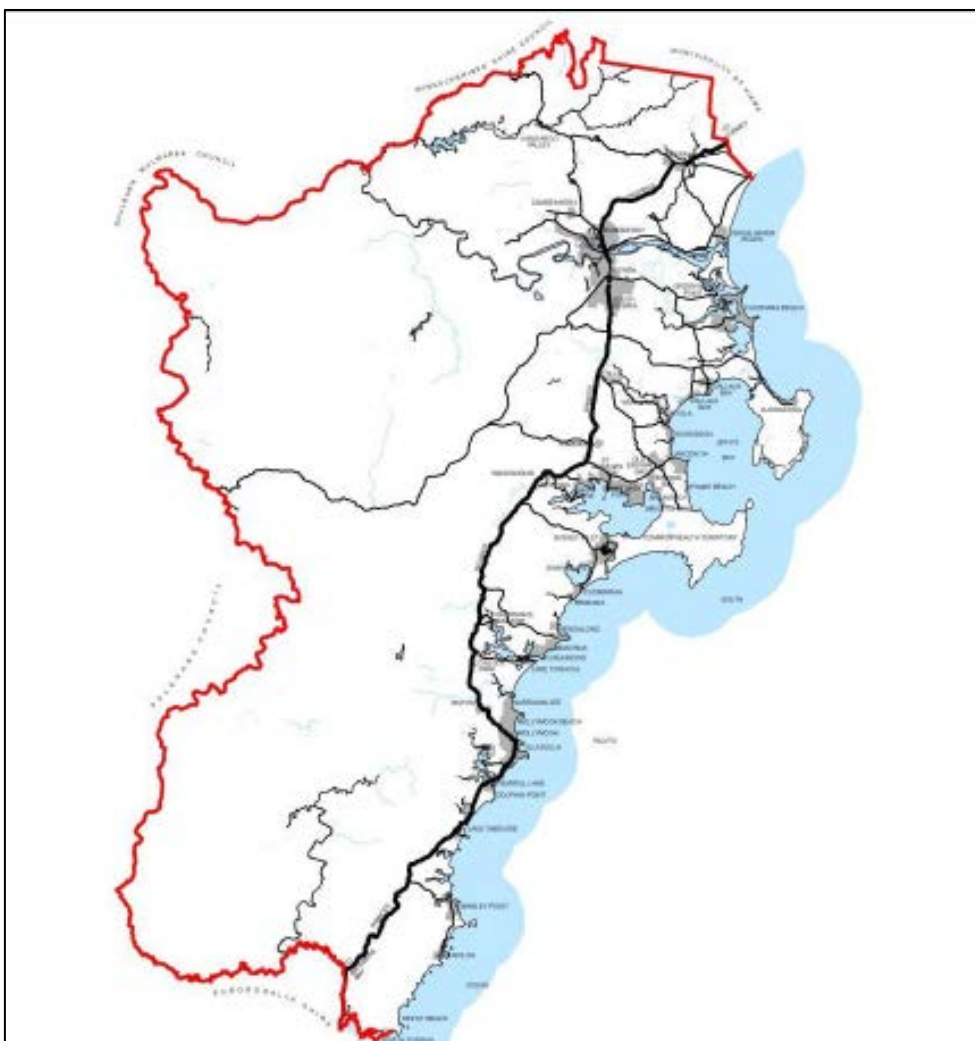


Figure 1: Subject Land

## 1.2 Background

Shoalhaven LEP 2014 includes a number of provisions relating to the subdivision of land which address the three main titling systems; Torrens, strata and community.

Following the commencement of Shoalhaven LEP 2014 in April 2014, there has been some concern that the current Torrens minimum lot size provisions are too large for certain approvable medium density development in urban zoned areas. In response, strata and community subdivision has increased in popularity as there are limited lot size restrictions for these titling options. Under Shoalhaven's current LEP provisions, existing residential development in an R1, R2, B4 or SP3 zone can be strata or community subdivided with resulting lots being less than that prescribed by the relevant minimum lot size map.

Shoalhaven LEP 2014 enables the Torrens subdivision of medium density development via a number of principal development standards:

- 4.1 Minimum subdivision lot size.
- 4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing.
- 4.1C Exceptions to minimum subdivision lot sizes for certain residential development.

Generally, it is unusual for medium density development to be Torrens subdivided under clause 4.1 of Shoalhaven LEP 2014. Torrens subdivision will usually occur under clause 4.1A or 4.1C depending on the land use type. Importantly, a subdivision of this nature occurs either after the development has been carried out, or where the subdivision and actual development is considered in a single application.

In June 2016, Council staff undertook a Review to consider, in part, the appropriateness of Torrens, community and strata title subdivision of dual occupancy development. The Review essentially concluded that the actual subdivision and its form does not change the appearance of development as it usually occurs later. However, consideration should be given to the timely inclusion of revised design controls in Shoalhaven Development Control Plan (DCP) 2014 to improve the standard of the finished development. As such, Council has recently adopted Chapter G13 of Shoalhaven DCP 2014 which provides improved design provisions for medium density development (including dual occupancy development).

Inevitably most medium density development will be subdivided at some point and it would be unreasonable to not allow this, particularly given that the physical development exists in most cases. If there are limited restrictions for strata and community title subdivision, the inequity of Torrens potential is questioned. There appears to be little point in permitting medium density development in urban areas and not allowing its subsequent subdivision under the Torrens system, provided the relevant outcomes are met. As such, this PP seeks to lift the restriction on the subdivision of medium density development.

In response to removing Torrens restrictions for lawful medium density development, it is also considered prudent to set a minimum lot size prior to the erection of a medium density development. The proposed minimum lot sizes also enables Council to respond to the Code, specifically clauses 3B.8, 3B.21 and 3B.33.

In setting minimum lot sizes, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned. The PP therefore proposes the rezoning of certain R2 land to R5 Large Lot Residential. The exclusion of certain residential land from the Code was also explored and six villages are proposed for exclusion.

On 2 April 2019, Council's Development & Environment Committee (under delegation) resolved (MIN19.210) to submit this PP for a Gateway determination. Council's Development & Environment Committee report and minutes can be found at **Attachment C**.

## **2 Part 1 – Intended Outcome**

The Planning Proposal intends to amend Shoalhaven LEP 2014 as follows:

- Include a new sub clause in clause 4.1 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 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.

- Amend clause 4.1C relating to dwellings, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots to 300m<sup>2</sup>.
- 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: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worworing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.

The PP also seeks to exclude certain land in the following locations from the Code:

- Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.

### 3 Part 2 – Explanation of Provisions

#### 3.1 Amendments to Shoalhaven LEP 2014

To achieve the intended outcomes in Section 2 (Part 1), it is proposed to amend Shoalhaven LEP 2014 as outlined in **Table 1** and **2**.

*Note: Any suggested wording may be subject to change following legal drafting of the LEP by the NSW Parliamentary Counsel's Office. Refer to Section 5 (Part 4) of this PP for mapping detail.*

**Table 1: SLEP 2014 Instrument Changes**

Existing Provision	Proposed Amendment
<p>Clause 4.1</p> <p>Minimum Subdivision Lot Size</p>	<p><b>Issue and Justification:</b></p> <p>This clause requires a proposed subdivision to be carried out in accordance with the Lot Size Map which sets out minimum lot sizes.</p> <p>There is a need to clarify in the LEP that although the Lot Size Map specifies a minimum lot size for subdivision, the calculation of lot size for battle axe lots is to exclude the access handle.</p> <p>The exclusion of access handles from the calculation of lot size ensures that lots have sufficient area to accommodate future development including requirements for setbacks, private open space, car parking etc. Battle-axe lots also do not benefit from the public open space (such as the nature strip) that lots fronting onto a road benefit from.</p> <p>It is noted that a number of other Councils Standard Instrument LEP's contain a similar subclause.</p> <p><i>Note: This matter was initially considered as part of the Stage 3 Housekeeping Amendment to Shoalhaven LEP 2014 (PP011), however was deferred following a Council resolution (5 April 2016 - MIN16.226). Council originally sought to set a minimum lot size for battle axe block at 650m<sup>2</sup> as well, however this numerical standard is no longer being pursued.</i></p> <p><b>Proposed amendment:</b></p> <p>Insert new subclause in clause 4.1 to make it clear that when a battle axe block is created by subdivision, the area of the access handle is not to be</p>

	<p>included as part of the lot for the purpose of meeting any designated minimum lot size for the lot.</p> <p>Suggested wording of the subclause is provided below (strikethrough refers to deletion, red refers to new content):</p> <p><b>4.1 Minimum subdivision lot size</b></p> <p>(1) <i>The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> <li>(a) <i>to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,</i></li> <li>(b) <i>to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,</i></li> <li>(c) <i>to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.</i></li> </ul> <p>(2) <i>This clause applies to a subdivision of any land shown on the <a href="#">Lot Size Map</a> that requires development consent and that is carried out after the commencement of this Plan.</i></p> <p>(3) <i>The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the <a href="#">Lot Size Map</a> in relation to that land.</i></p> <p><i>(4) In calculating the area of any lot resulting from a subdivision of land, if the lot is a battle axe lot or other lot with an access handle, the area of the access handle is not to be included as part of the area of the lot.</i></p> <p><del>(4)</del> (5) <i>This clause does not apply in relation to the subdivision of any land:</i></p> <ul style="list-style-type: none"> <li>(a) <i>by the registration of a strata plan or strata plan of subdivision under the <a href="#">Strata Schemes Development Act 2015</a>, or</i></li> <li>(b) <i>by any kind of subdivision under the <a href="#">Community Land Development Act 1989</a>.</i></li> </ul>
<p>Clause 4.1A</p> <p>Exceptions to minimum lot size for dual occupancy and multi dwelling housing</p>	<p><b>Issue and Justification:</b></p> <p><b>Resulting Subdivision/ Minimum Lot Size</b></p> <p>Following the Dual Occupancy Review, the focus has changed from a minimum lot size for the resulting subdivision to a minimum lot size approach for the erection of medium density development.</p> <p>A review of similar provisions applied by other NSW local government areas has identified that a number set a minimum lot size for the ‘parent lot’ instead of a minimum lot size for the resulting subdivision. This approach is more aligned with the conclusions of the recent Dual Occupancy Review than current clause 4.1A of Shoalhaven LEP 2014 and would enable LEP provisions to be supported by complimentary DCP provisions.</p> <p>It also is complementary to the Code amendments to the Codes SEPP which encourage Torrens subdivision – “if it looks like Torrens title it should be”<sup>1</sup>. By including minimum lot size provisions in Shoalhaven LEP 2014 for medium density development, Shoalhaven will have adequate provisions in</p>

<sup>1</sup> Explanation of Intended Effects, Proposed Medium Density Housing Code, NSW Government. Page 17.



place to respond to the built form development standards in the Code. Clauses 3B.8, 3B.21 and 3B.33 of the Code specify that the area of a lot for the purpose of the erection of certain medium density development must not be less than a prescribed numerical standard, or the minimum lot area specified for dual occupancies or multi dwelling housing in the environmental planning instrument that applies to the land concerned. Clause 6.4 also calls up minimum lot sizes for the subdivision of land for the purpose of a dual occupancy development in the environmental planning instrument that applies to the land.

Council seeks to move towards a provision similar to model provision 4.1B Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings, in that a minimum lot size for the erection of certain medium density development would be specified. A provision similar to Clause 4.1B(4) of the Bathurst Regional LEP 2014 would also act to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development (excluding residential flat buildings).

The table does not include a minimum lot size for a dual occupancy (attached or detached) in the R3 zone to avoid conflict with current clause 4.1B. The purpose of clause 4.1B is to retain larger sites for higher density development and as such, existing clause 4.1B prescribes a maximum lot size for a dual occupancy development in the R3 zone. A minimum lot size for other medium density residential would apply to R3 zones, however.

#### **Proposed Amendment:**

Delete existing clause 4.1A and replace with content similar to the intent of model clause 4.1B Minimum lot sizes for certain medium density development. Suggested wording of the new subclause is provided below:

#### ***Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings***

(1) *The objectives of this clause are to:*

- (a) *achieve planned residential density in certain zones,*
- (b) *ensure that the area and dimensions of a lot are able to accommodate development and subdivision that is consistent with the objectives and development controls for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings,*
- (c) *to minimise any likely adverse impact of such development on the amenity of adjoining neighbours.*

(2) *Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table:*

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Dual occupancy (attached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	500 square metres



		<p>Dual occupancy (detached)      Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village      700 square metres</p> <p>Multi dwelling housing      Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village      900 square metres</p> <p>Multi dwelling housing (terraces)</p> <p>Manor house</p> <p>Residential flat building</p> <p><i>(3) In calculating the area of any lot, if the lot is a battle axe lot or other lot with an access handle, the area of the access handle is not to be included as part of the area of the lot.</i></p> <p><i>(4) Despite any other provision of this Plan, development consent may be granted for the subdivision of dual occupancies, manor houses, multi dwelling housing and multi dwelling housing (terraces), approved under this clause, into lots of any size to enable the resulting individual dwellings on those lots to have separate titles.</i></p>
<p>Clause 4.1C</p> <p>Exceptions to minimum subdivision lot sizes for certain residential development</p>		<p><b>Issue and Justification:</b></p> <p>Clause 4.1C of Shoalhaven LEP 2014 enables the Torrens subdivision of dwellings, attached dwellings and semi-detached dwellings to a minimum lot size of 350m<sup>2</sup>, where there is a single application for both construction and subdivision (i.e. integrated development with 3 or more lots) in the R1 General Residential zone. This numerical standard is considered to be overly onerous in the R1 zone as it limits the ability to achieve the clause objective “to encourage housing diversity”.</p> <p>A reduction in the minimum lot size of resulting lots would be more consistent with the Codes SEPP Subdivision Code, as well as a number of other comparable and surrounding council Standard Instrument LEP’s (e.g. Eurobdalla, Goulburn-Mulwaree, Maitland).</p> <p><b>Proposed Amendment:</b></p> <p>Amend Clause 4.1C(3)(b) to reduce the minimum subdivision lot size requirement. Suggested amended wording is provided below (strikethrough refers to deletion, red refers to new content):</p> <p><b><i>4.1C Exceptions to minimum subdivision lot sizes for certain residential development</i></b></p> <p><i>(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.</i></p> <p><i>(2) This clause applies to development on land in Zone R1 General Residential.</i></p> <p><i>(3) Development consent may be granted to a single development application for development to which this clause applies that is both of the following:</i></p> <p><i>(a) the subdivision of land into 3 or more lots,</i></p> <p><i>(b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the</i></p>

	<i>subdivision, if the size of each lot is equal to or greater than <del>350</del> 300 square metres.</i>
Dictionary	<p><b>Issue and Justification:</b></p> <p>The proposed amendment to Clause 4.1 introduces the term “battle-axe lot” into Shoalhaven LEP 2014 for the first time. As such, it is considered important to define this term. A number of other Councils Standard Instrument LEP’s contain a similar definition.</p> <p><b>Proposed Amendment:</b></p> <p>Insert the definition of “battle-axe lot” into the Dictionary. Suggested wording of the new definition is provided below:</p> <p><i><b>battle-axe lot</b> means a lot that has access to a road by an access handle.</i></p>

**Table 2: SLEP 2014 Map Changes**

Existing LSZ Maps	Location	Proposed Amendment and Justification
LSZ_013D LSZ_013E LSZ_013F LSZ_014F LSZ_015G LSZ_015H LSZ_016C LSZ_016D LSZ_019C LSZ_019D LSZ_020C LSZ_020D LSZ_020G	Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigee, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	<p><b>Proposed Amendment:</b></p> <p>Remove Clause 4.1A in the legend from all LSZ map sheets, and subsequently remove the clause 4.1A overlay (Areas 1 and 2) from all relevant map tiles.</p> <p><b>Justification:</b></p> <p>To support deletion of existing clause 4.1A.</p>
LSZ_019F LSZ_019G LSZ_019H LSZ_019K LSZ_020F	Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	
LZN_013A LZN_013D LZN_014B LZN_014F LZN_015B	Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worworing Heights, Bewong, St Georges	<p><b>Proposed Amendment:</b></p> <p>Rezone certain R2 Low Density Residential land to R5 Large Lot Residential as outlined in Section 5 (Part 4) of this PP.</p> <p><b>Justification:</b></p>

LZN_016B LZN_016C LZN_019A LZN_019E LZN_020D	Basin, Conjola Park, Milton, Lake Tabourie.	<p>The subject land was predominantly zoned for rural residential or low density residential under Shoalhaven LEP 1985 (see table below). These lots were characterised as having a limited range of permissible land uses and relatively large lot sizes.</p> <p>Through the draft Shoalhaven LEP 2009 process, the land was initially proposed to be zoned R5 Large Lot residential due to the predominantly rural residential nature of the land. This was consistent with the LEP Practice Note PN11-002 Preparing LEPs using the Standard Instrument: standard zones – “This zone is intended to cater for development that provides for residential housing in a rural setting, often adjacent to towns or metropolitan areas”.</p> <table border="1"> <thead> <tr> <th>Location</th><th>SLEP zoning 1985</th><th>Draft SLEP zoning 2009</th></tr> </thead> <tbody> <tr> <td rowspan="2">Bangalee</td><td>Residential 2(a2)</td><td rowspan="2">R5 Large Lot Residential</td></tr> <tr> <td>Residential 2(a3)</td></tr> <tr> <td rowspan="2">Tapitallee</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td>Rural 1(d)</td><td>R1 General Residential</td></tr> <tr> <td>Worrawing Heights</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td>Conjola Park</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td>Lake Tabourie</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td>Bewong</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td>North Nowra</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> <tr> <td rowspan="2">Berry</td><td>Rural 1(g)</td><td rowspan="2">R5 Large Lot Residential</td></tr> <tr> <td>Residential 2(a3)</td></tr> <tr> <td rowspan="3">Milton</td><td>Rural 1(c)</td><td rowspan="3">R5 Large Lot Residential</td></tr> <tr> <td>Residential 2(a2)</td></tr> <tr> <td>Residential 2(a3)</td></tr> <tr> <td>St Georges Basin</td><td>Residential 2(a2) Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> </tbody> </table>	Location	SLEP zoning 1985	Draft SLEP zoning 2009	Bangalee	Residential 2(a2)	R5 Large Lot Residential	Residential 2(a3)	Tapitallee	Residential 2(a3)	R5 Large Lot Residential	Rural 1(d)	R1 General Residential	Worrawing Heights	Residential 2(a3)	R5 Large Lot Residential	Conjola Park	Residential 2(a3)	R5 Large Lot Residential	Lake Tabourie	Residential 2(a3)	R5 Large Lot Residential	Bewong	Residential 2(a3)	R5 Large Lot Residential	North Nowra	Residential 2(a3)	R5 Large Lot Residential	Berry	Rural 1(g)	R5 Large Lot Residential	Residential 2(a3)	Milton	Rural 1(c)	R5 Large Lot Residential	Residential 2(a2)	Residential 2(a3)	St Georges Basin	Residential 2(a2) Residential 2(a3)	R5 Large Lot Residential
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		<table border="1"> <tr> <td>Bomaderry</td><td>Residential 2(a3)</td><td>R5 Large Lot Residential</td></tr> </table> <p>All the land was however zoned R2 through the finalisation of SLEP 2014 predominantly due to Council's concerns regarding the ability for landowners to clear their land. The <i>Native Vegetation Act 2003</i> (NV Act) placed a number of restrictions on R5 land that was considered onerous. As a result of the recent Biodiversity Reforms, the NV Act has been repealed and there are generally less restrictions for clearing trees/vegetation on R5 land, than there is on R2 land.</p> <p>Approximately 45 (6%) of the 718 lots proposed to be rezoned to R5 are constrained by the <a href="#">Office of Environment &amp; Heritage's (OEH) Biodiversity Values Map</a>. Unlike R2 land, any R5 land identified as having Biodiversity Values may need to apply the Biodiversity Assessment Method (BAM) to assess the associated impacts. This will determine whether a proponent would be required to enter the Biodiversity Offsets Scheme or not. It is noted that a BAM assessment is not required if the development is located beyond the Biodiversity Values area identified on the Biodiversity Values Map. This is an important qualification and for this reason, the majority of the 52 lots should be relatively unaffected. A limited number of lots at Bangalee, Worrowing Heights and St Georges Basin are more heavily constrained by Biodiversity Values, however it is likely that these lots would be captured by the other threshold levels (e.g. area clearing threshold and 'test of significance') which would result in the same outcome (i.e. application of the BAM and offsetting required). A landowner may request that OEH review the Biodiversity Value layer of their land with sufficient justification.</p> <p>Recently land in stage 1A of the Tallimba Road, Bangalee subdivision has been certified under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This means that land in this location now has an exemption from <i>the Biodiversity Conservation Act 2016</i> and future development will be assessed under the former planning provisions (i.e. NV Act and <i>Threatened Species Conservation Act 1995</i>). As such, land in this location will not be adversely impacted by the proposed rezoning.</p> <p>It is noted that a 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 (4.2D(3)). This clause also considers replacement dwellings (4.2D(5)). It is Council's intention that all lots would retain a dwelling entitlement in this regard.</p> <p>As the land continues to depict low density large lot characteristics, it is an appropriate time to reconsider the</p>	Bomaderry	Residential 2(a3)	R5 Large Lot Residential
Bomaderry	Residential 2(a3)	R5 Large Lot Residential			

		zoning of this land to maintain this character into the future.
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### 3.2 Proposed amendments to the Codes SEPP

To achieve the intended outcomes in Section 2 (Part 1), it is proposed to amend the Codes SEPP by excluding the following land from the Code via Schedule 5:

- Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.

As such, these areas will be mapped as a 'Complying Local Exclusion'.

Refer to Section 5 (Part 4) of this PP for mapping detail. Justification for the exclusion of each area is outlined in **Table 3**.

**Table 3: Justification for Schedule 5 'Complying Local Exclusion' Areas**

Town/ Village	Justification for exclusion
Kangaroo Valley	<p>The pressured sewerage scheme at Kangaroo Valley is finely balanced. The sewerage scheme has 45 equivalent tenements (ETs) available for infill development. At this point in time, 25.15 ETs have been taken up by proposed/approved development.</p> <p>Clause 1.19 of the Codes SEPP specifies the following land on which complying development may not be carried out:</p> <p><i>(j) unsewered land:</i></p> <p><i>(i) to which <a href="#">State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</a> applies, if that development will result in an increase to the number of bedrooms on the site or a site disturbance area of more than 250m<sup>2</sup></i></p> <p>Kangaroo Valley urban area wholly falls within the Sydney Drinking Water Catchment area; however, the exclusion only applies to unsewered land. Technically all RU5 and R2 land in Kangaroo Valley benefits from pressure sewer, however there are few ETs remaining. At some point in the near future, the sewerage scheme will be at capacity and undeveloped land will not be able to connect to the sewerage scheme.</p> <p>The number of complying development certificates issues by private certifiers could exceed the 19.85 remaining ETs, which is of significant concern. Whilst it is acknowledged that Kangaroo Valley is unique in this regard, the Code is essentially silent which is misleading and appears to be directly contrary to the NSW Governments intent.</p> <p>The development assessment process enables Council to closely monitor ETs approved to ensure the scheme does not exceed capacity. Excluding Kangaroo Valley from the Code is the most appropriate mechanism to achieve this outcome.</p>
Greenwell Point	<p>The village of Greenwell Point experiences access and evacuation difficulties in potentially as little as a 10% annual exceedance probability design event and greater. Greenwell Point is classified as an 'island' under the Floodplain Manual 2005. The formation of 'islands' in the floodplain during a flood is potentially dangerous and people trapped on the 'island' and their rescuers will be placed at undue risk. Thus, the development of</p>

land that becomes isolated prior to ultimate inundation needs to be carefully considered.

In 2017, the NSW State Emergency Service provided the following advice regarding Greenwell Point:

*Although an assessment to determine emergency response classifications has not been conducted for Greenwell Point, it is likely there are areas above the PMF which would be classified as 'high flood islands' [A High Flood Island 'includes enough land higher than the limit of flooding (i.e. above the PMF) to cope with the number of people in the area]. This is where the land is surrounded by flood water but not directly impacted by flooding. Furthermore, as an assessment of the capacity of Greenwell Point community to cope with the risk during floods up to and including the PMF has not been conducted, it is unknown whether the community can cope with the risk during floods.*

*During a flood, the NSW SES response strategy for Greenwell Point is to warn the community to evacuate prior to Greenwell Point Road closing. If the community does not evacuate in time, they will become isolated for up to three days at a time. Greenwell Point is a particularly difficult place to resupply, especially during a severe flood on the Shoalhaven River, when NSW SES resources are limited...*

*Any increase in residential development at Greenwell Point will increase the population at risk from flooding. **A decision to enable development that deliberately places more people at risk from flooding, is in contravention to emergency management principles supported by the NSW SES** [emphasis Councils]. Furthermore, where no mitigation strategies are put in place to address the existing, future and continuing risk, the NSW SES will be required to devise emergency response strategies to deal with this additional population at risk...*

***The Service considers that this would not be an orderly planning outcome** [emphasis Councils], unless sufficient evidence can show that the period of isolation is tolerable for the future residents in flood events up to and including the probable maximum flood.*

Under Council's existing provisions, restrictions apply to subdivision of land, including flood free land, at Greenwell Point. This is consistent with the Lower Shoalhaven River Flood Risk Management Study and Plan (FRMS&P) that states that:

*Any proposal for further subdivision of land at Greenwell Point will increase the population at risk and potential damages due to flooding for the area. There will also be a greater reliance on emergency services, since the subdivision is likely to attract new people to the area who are not necessarily flood aware.*

*Ensuring that high hazard flood prone land situated in the existing developed areas is zoned low density and enforcing minimum floor height restrictions will prevent large increases in population or potential flood damages.*

*Land not classified as flood prone should have similar low density restrictions because the entire area can be isolated from services*



	<p><i>such as fresh water, sewer and electricity during major flood events. Even though there will be no threat to property in the flood free areas there will still be a burden for emergency services because of the isolation. Any further expansion or new development beyond the current residential zoning should not be permitted at all.”</i></p> <p>Whilst it is acknowledged that medium density development cannot be undertaken as complying development on any part of a flood control lot (clause 3B.5), the Greenwell Point flood free land will not benefit from the exception to the Code. As such, the Codes SEPP would enable the erection and subdivision of medium density development on flood free lots approved under the Code, contrary to the FRMS&amp;P. By excluding Greenwell Point from the Code, the risk to property and life would be reduced, as would the burden on emergency services during a flood event. As such, it is considered that excluding Greenwell Point from the Code is a good planning outcome.</p>
Bawley Point, Kioloa, Depot Beach, Durras North	<p>The villages of Bawley Point, Kioloa, Depot Beach and Durras North are unsewered and will remain so for at least the next 30 years. As such, clause 1.18 of the Codes SEPP becomes applicable, requiring a section 68 approval for an on-site effluent disposal system.</p> <p>It is not the issuing of the approval for the on-site effluent disposal system that is concern, but the subsequent subdivision that may occur under Part 6 of the Code (the Subdivision Code). Due to the small minimum lot sizes under Division 2 of Part 6 of the Codes SEPP, there is concern that a certifier will not adequately consider the extent of the area required to operate the on-site effluent disposal system, despite condition 1(1) of Schedule 6B of the Codes SEPP (Conditions applying to complying development certificates under the Subdivisions Code).</p> <p>The villages of Bawley Point, Depot Beach, Durras North and Kioloa are also relatively isolated and experience a significant influx of tourists during peak tourist season. Clause 3B.4 of the Code provides provisions relating to complying development on bushfire prone land, however there are no restrictions on land that is not bushfire prone. This is of concern as the road access to these villages is Vegetation Category 1, which is the most hazardous vegetation category.</p> <p>It would be appropriate to exclude these villages from the Code due to risk of isolation, risk to life in a bushfire event and concerns regarding management of on-site effluent disposal system infrastructure.</p>

## 4 Part 3 – Justification

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

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

The PP is the result of a citywide review of subdivision provisions that was undertaken in June 2016. The Review considered the appropriateness of Torrens, community and strata title subdivision and how Shoalhaven LEP 2014 operates in this regard. Subsequent strategic work has been undertaken to consider the relationship between the Code and Shoalhaven LEP 2014, as well as the implications for Shoalhaven more broadly.

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

This PP is considered to be the best and only means of achieving the intended outcome.

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

#### **4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The Illawarra- Shoalhaven Regional Plan (ISRP) applies to the whole Shoalhaven LGA. The main area of relevance in the ISRP is Goal 2 – “A Variety of Housing Choices, with Homes that Meet Needs and Lifestyles”.

##### *Proposed Change to Clause 4.1A*

The introduction of a minimum lot size for the parent lot prior to the erection of medium density development reflects the NSW Government’s strategic intent and removes impediments to the subsequent subdivision of this form of development. As Torrens subdivision becomes an option across the City’s residential areas, it is likely that the supply of medium density development will increase. This in turn will increase flexibility and choice, and will assist in achieving Direction 2.1, 2.2 and 2.3 of the ISRP.

##### *Proposed Change to Clause 4.1C*

The reduction in the minimum lot size of resulting lots in relation to ‘integrated housing development’ will enable more flexibility in development and subdivision opportunities, which will assist in achieving Direction 2.1, 2.2 and 2.3 of the ISRP.

##### *Proposed Rezoning to R5 Large Lot Residential*

The PP seeks to rezone certain R2 Low Density Residential land in the following locations to R5 Large Lot Residential: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.

The change in zone will prohibit certain residential land uses, with detached dual occupancies being the most notable. Medium density development options remain permissible however, in the form of attached dual occupancy and secondary dwellings. The capacity for housing in these locations will not be greatly impacted, especially as detached dual occupancies are not commonplace in these locations.

The ISRP specifies that the Berry centre is one of the focus areas for increased housing activity in Shoalhaven, notably in the form of dual occupancies. The proposed rezoning site in Berry is removed from the Berry Town Centre, being over 1 kilometre 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 in the release area to the west of the Highway (south of the subject land) and to the east of the highway in the traditional Berry village and surrounds. It is noted that dual occupancy (attached) will remain a permissible land use in the R5 zone.



The rezoning will switch off the Code for approximately 700 lots (1.5%) of Shoalhaven's residentially zoned land), which is minimal. As such, the PP is not considered inconsistent with the ISRP.

### Proposed Exclusion Areas

The land proposed to be excluded from the Codes SEPP is subject to significant constraints, including flooding and bushfire, character, isolation and servicing. Council has concerns regarding complying development for medium density developments in these locations. The exclusion will apply to approximately 2020 residential lots, which is 4.3% of all residentially zoned lots in Shoalhaven.

The ISRP is clear that there is enough potential for the Shoalhaven market to “supply housing across a range of locations and housing types for the long term” (page 33). The ISRP was also in place prior the commencement of the Code. Whilst the proposed exclusion areas will slightly reduce development potential for medium density across the City via complying development, medium density development opportunity remains via the DA process. Further, Council is supportive of the Code in the remaining towns and villages, which notably includes all Shoalhaven's major centres and urban release areas (URA). As such, the proposal is not considered inconsistent with the ISRP in this regard.

## **4.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

### Shoalhaven City Council's Community Strategic Plan

The Proposal is consistent with Council's Community Strategy Plan, specifically Theme 2. Sustainable, liveable environments, and its Action 2.2 Plan and manage appropriate and sustainable development.

### Growth Management Strategy (GMS)

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.

Application in relation to this PP: Kangaroo Valley, Shoalhaven Heads, Berry, Greenwell Point, Orient Point, Wandandian, Fisherman's Paradise, Bendalong, Berringer Lake, Manyana, Cunjurong Point, Conjola Park, Lake Conjola, Lake Tabourie, Bawley Point, Kioloa, Depot Beach and North Durras.

The GMS identifies that a number of these settlements are constrained by bushfire, flooding, servicing, transport networks (and the like) which are considered limitations. Notable commentary regarding the GMS/subject land follows:

<b>Kangaroo Valley</b>	The GMS details that further investigations are required to identify the amount of density increase that can occur in the Kangaroo Valley existing urban area. As such, excluding the land from the Code is consistent with the GMS until at least this body of work can be completed.
<b>Berry</b>	Of all the villages, Berry experiences the greatest development pressure. The GMS outlines opportunities for increasing densities within the existing urban framework, whilst protecting values such as the prevailing landscape.

	As only part of Berry is proposed for rezoning to R5, substantial infill development (including medium density) will be achieved in the rest of the location (concentrated around the station, town centre and release area) via both the development application and complying development stream. The GMS identifies the land proposed for rezoning at Berry as 'Large Lot Residential'. Due to the extent of land included in the rezoning and the other land in the village capable of absorbing medium density development, the PP is not considered inconsistent with the GMS.
<b>Greenwell Point</b>	Infill development may be considered at Greenwell Point (including medium density), however there are significant flooding constraints including isolation. Managing medium density development at Greenwell Point through the DA system only is not considered inconsistent with the GMS in this regard.
<b>Conjola Park</b>	The GMS identifies the land subject to the rezoning as "Large Lot Residential". The proposed rezoning is not inconsistent with the GMS in this regard.
<b>Lake Tabourie</b>	The GMS identifies the land subject to the rezoning as "Large Lot Residential". The proposed rezoning is not inconsistent with the GMS in this regard.
<b>Bawley Point, Depot Beach, North Durras, Kioloa</b>	Low density infill development opportunities are available, however there are significant limitations due to the distance and isolation from settlements and services.

Medium density opportunities remain in all villages via the DA process. It is not expected that the proposed minimum lot sizes will affect the intent of the GMS.

On balance, the PP is not considered inconsistent with the GMS.

#### *Nowra-Bomaderry Structure Plan (NBSP)*

The NBSP sets the development-conservation agenda for the Nowra-Bomaderry Area.

Application in relation to this PP: Cambewarra, Moss Vale Road South and North URA, Meroo Meadow, Bomaderry, Bangalee, Tapitallee, Crams Road URA, North Nowra, Nowra, Mundamia, West Nowra, Worrigee, Cabbage Tree Lane URA, South Nowra.

The NBSP encourages medium density housing within close proximity to commercial centres in the identified locations of Bomaderry, North Nowra and Nowra. Due to the strategically planned nature of the Nowra-Bomaderry urban release, medium density development is expected and encouraged, especially around neighbourhood retail locations. Greater flexibility in subdivision choice and size will also assist in achieving the goals of the NBSP. It is not expected that the proposed minimum lot sizes or rezonings (North Nowra and Bomaderry) will affect the intent of the NBSP.

The PP is not inconsistent with the NBSP.

#### *Jervis Bay Settlement Strategy (JBSS)*

The JBSS provides a strategic framework to manage residential and rural residential growth in the Jervis Bay area.

Application in relation to this PP: Culburra Beach, Currarong, Callala Bay, Callala Beach, Myola, Huskisson, Woollamia, Vincentia, Tomerong, Worrowing Heights Erowal Bay, Bewong, Old Erowal Bay, Basin View, Sanctuary Point, St. Georges Basin, Hyams Beach, Wrights Beach.

The JBSS requires that the supply of housing opportunities for future residential development be provided within the environmental and servicing limits of the Region. In certain locations, opportunities for consolidation and higher density is appropriate and a choice of living opportunities and types of settlements is encouraged.

The proposed minimum lot sizes will ensure appropriate medium density development in identified locations, on sites that are of an appropriate size for that development. Huskisson is the only area identified for consolidation and higher densities, and is not identified as a proposed rezoning or exclusion area in the PP.

The proposal is not considered to be inconsistent with the JBSS.

### Sussex Inlet Settlement Strategy

The JBSS provides a broad framework to guide the future residential and rural residential growth and development of the area.

Application in relation to this PP: Badgee URA, Sussex Inlet, Swanhaven, Cudmirrah, Berrara.

The SISS supports opportunities for appropriate urban consolidation and greater densities to increase the range of housing choices available, particularly in convenient and appropriate locations.

The proposal is not inconsistent with the SISS.

### Milton Ulladulla Structure Plan (MUSP)

MUSP applies to the Milton-Ulladulla area and establishes a set of principles to manage appropriate growth. It identifies the Ulladulla CBD as the sub regional retail core and commercial hub of southern Shoalhaven.

Application in relation to this PP: Narrawallee, Milton, Mollymook Beach, Mollymook, Ulladulla, Kings Point, Burrill Lake, Dolphin Point.

The MUSP encourages medium density near centres and a variety of subdivision forms. The PP is not inconsistent with the MUSP.

### Affordable Housing Strategy (AHS)

The AHS provides a range of effective policy solutions to facilitate affordable housing across the Shoalhaven local government area.

The AHS promotes affordably priced housing in well located areas (close to transport and services), being precincts within 400-600m of the urban centres of Nowra-Bomaderry, Vincentia and Milton-Ulladulla.

The PP will result in the ability to Torrens subdivide medium density development across all residential zones in Shoalhaven which should increase the take up rate of this form of development. The areas for proposed rezoning or exclusion are not in highly accessible locations and with the exception of Milton, are not within 400-600m of the above centres.

The land proposed for rezoning at Milton is within 400-600m of the Milton Centre, however the land is unlikely to be an economically feasible option for affordable housing due to existing high land values and prevailing built form. It is expected that affordable housing locations in the Milton area will be clustered closely around the centre and to the west of the Princes Highway, especially the release area.

The PP is not inconsistent with the AHS.

#### **4.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?**

The PP is consistent with the applicable State Environmental Planning Policies (SEPP). A full list of SEPPs is provided at **Attachment D**. The relevant SEPPs are discussed below.

##### *Coastal Management 2018*

The SEPP sets out matters for consideration for development in the coastal zone. A large number of residentially zoned lots across Shoalhaven fall within the coastal zone area, as defined by the *Coastal Management Act 2016*.

There are no provisions in this SEPP that directly apply to the PP, however it is noted that the SEPP will need to be taken into consideration as part of any development application for residential development or related subdivision. This includes Clause 16 which requires the Shoalhaven Coastal Zone Management Plan to be considered prior to the issuing of development consent for a development application in the coastal zone.

##### *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 or complying development streams. There are no provisions in this SEPP that directly apply to the PP, and therefore the PP is not inconsistent in this regard.

The PP does however seek to exclude certain land in the following locations from the Code:

- Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.

This would mean that complying development for the purpose of low rise medium density development could not be undertaken on the land.

The SEPP was designed to provide state-wide provisions relating to certain development types, however the design of the SEPP enables land to be excluded from the Code via Schedule 5. As such, additional land could be added, as appropriate.

It is considered that the proposed exclusion areas are in the spirit of the SEPP and the mechanism available via Schedule 5. It is noted that only 4.3% of Shoalhaven's residential land is intended to be excluded from the Code through Schedule 5 and medium density and its subdivision may still be considered via a development application.

### Sydney Drinking Water Catchment 2011

The SEPP specifies provisions to protect the water quality in the Sydney Drinking Water Catchment area. There are no provisions in this SEPP that directly apply to the PP, and therefore the PP is not inconsistent in this regard.

The PP does seek to exclude Kangaroo Valley from the Code, for the reasons outlined in Section 3 (Part 2) of this report. This means that complying development via the Code could not be undertaken on the land, however medium density and its subdivision may still be considered via a development application. It is noted that the SEPP will need to be taken into consideration as part of any development application which includes Clause 10 that requires a neutral or beneficial effect on water quality to be demonstrated.

### Vegetation in Non-Rural Areas 2017

This SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas in Shoalhaven, as well as the amenity they provide. There are no provisions in this SEPP that directly apply to this PP, and therefore the PP is not inconsistent in this regard.

It is noted that the recent Biodiversity Reforms is one of the reasons why the rezoning of certain R2 land to R5 has been reconsidered by Council. The *Native Vegetation Act 2003 (NV Act)* placed a number of restrictions on R5 land that was historically considered onerous. However, following the repeal of the NV Act, there are generally less restrictions for clearing trees/vegetation on R5 land than there is on R2 land.

The SEPP will need to be taken into consideration prior to the clearing of native vegetation in non-rural areas, as specified by the SEPP.

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

The s.9.1 Ministerial Directions are considered at **Attachment E** and those specifically relevant to this PP are discussed in greater detail below.

### 2.2 Coastal Management

A large number of residentially zoned lots across Shoalhaven fall within the coastal zone area, as defined by the *Coastal Management Act 2016*.

The PP is considered to be consistent with the:

- Objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas.
- NSW Coastal Management Manual and associated Toolkit.
- NSW Coastal Design Guidelines 2003.
- Shoalhaven Coastal Zone Management Plan 2018.

The PP does not propose to rezone land to enable increased or more intensive land use on the subject land. Further, this PP does not propose to amend any maps under State Environmental Planning Policy (Coastal Management) 2018.

The development assessment process for future development will consider the above (as relevant) and the Coastal Management SEPP on a site by site basis.

The PP is therefore not inconsistent with this direction.

### 3.1 Residential Zones

This direction applies as the PP affects land within existing residential zones.

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

- The choice of medium density building types is not expected to change vastly as a result of this PP:
  - Medium density development options remain available in all residential zones to varying extents.
  - The rezoning of certain R2 zoned land to R5 will prohibit dual occupancies (detached) however dual occupancies (attached) remain permissible in the zone which maintains the ability to erect a second dwelling on the land.
  - The exclusion of certain villages from the Code will not affect the building types that may be considered. Refer to the notification of the Amendment to the Standard Instrument (Local Environmental Plans) Order 2006 (6 April 2018). It is only the mechanism for assessment that will be restricted (i.e. complying development vs DA) which is not addressed by the direction.
- The PP does not affect the ability for the market to make more efficient use of existing infrastructure as the land is developed/redeveloped in the future.
- The PP will not increase the consumption of land for housing on the urban fringe. Significant medium density development opportunities are available across Shoalhaven in infill areas and endorsed URAs.
- The PP seeks to set a minimum lot size for the parent lot to ensure that the land is an appropriate size to facilitate well designed medium density development.
- Satisfactory servicing arrangements are currently in place for all sites or will be resolved via the assessment process.
- The PP does not seek to reduce the permissible residential density of the subject land or the larger prevailing minimum lot sizes for these areas. The differences between the R2 and R5 land use tables will see a change in permissible land uses, most notably the prohibition of detached dual occupancies, however, it is considered that the density on the ground will remain the same as:
  - Dual occupancies (attached) remain permissible in the zone;
  - Dwelling entitlements will be preserved for all proposed R5 lots (clause 4.2D(3));
  - Shoalhaven DCP 2014 includes provisions regarding density which remain unchanged.

### 3.4 Integrating Land Use and Transport

This direction applies as the PP seeks to alter the planning provisions relating to residential land in Shoalhaven. The land subject to the PP is currently residential in nature and serviced by a mix of pedestrian, private and public transport options.



The PP supports the principles and objectives of *Improving Transport Choice — Guidelines for planning and development* and *The Right Place for Business and Services — Planning Policy*. Traffic impacts would be considered as part of the development assessment process.

The PP is not inconsistent with this direction.

### 3.5 Development Near Regulated Airports and Defence Airfields

This direction applies as the PP seeks to alter planning provisions for residential land “near” a defence airfield (HMAS Albatross).

The term “near” is not quantified, however the PP is not inconsistent with this direction for the following reasons:

- All land around the airfield has existing height provisions supported by the Department of Defence and the PP does not propose any changes in this regard.
- The PP does not propose to allow development types that are incompatible with the current and future operation of that airfield.
- There is no R1, R2, R3 or RU5 land within the ANEF 20-25 buffer area.

As such, no consultation has been undertaken with the Department of Defence as part of this PP.

### 4.1 Acid Sulphate Soils

The land subject to this PP is mapped as having acid sulfate soils. The PP however does not seek to intensify the land uses that are permissible with consent in Shoalhaven’s residential zones. The PP is not inconsistent with the Acid Sulfate Soils Planning Guidelines.

The PP is therefore not inconsistent with this direction.

### 4.3 Flood Prone Land

This direction applies as the PP seeks to alter planning provisions for land that is identified as flood prone.

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 or 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

This direction applies as the PP affects land that is, or is in proximity to, land mapped as being bushfire prone.

The PP:

- Has regard to Planning for Bushfire Protection 2006 and the draft Planning for Bushfire Protection 2018. Where relevant, future development will be assessed against Planning for Bushfire Protection during the development assessment process.
- Does not result in controls that place inappropriate developments in hazardous areas.
- Does not prohibit bushfire hazard reduction within an APZ.

Consultation will be undertaken with the NSW Rural Fire Service following receipt of a Gateway determination, and prior to undertaking community consultation.

The PP is not inconsistent with this direction.

#### 5.2 Sydney Drinking Water Catchments

The PP applies to land located at Kangaroo Valley which falls within the Sydney drinking water catchment area.

Consultation will be undertaken with WaterNSW following receipt of a Gateway determination, and prior to undertaking community consultation. Pre-Gateway consultation has not been undertaken as:

- It is considered that the PP will not adversely impact on water quality in the catchment area, nor will it disturb land and water capability in these areas. The amendments to Shoalhaven LEP 2014 are considered to be of minor significance. The amendments to the Codes SEPP seek to set aside Kangaroo Valley to better manage sewerage capacity in the Sydney Drinking Water Catchment Area.
- The PP is consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and the outcomes of the Strategic Land and Water Capability Assessment prepared by the Sydney Catchment Authority.

The PP is not inconsistent with this direction.

#### 5.10 Implementation of Regional Plans

The Illawarra Shoalhaven Regional Plan (ISRP) applies to Shoalhaven and the PP is considered consistent with the ISRP as discussed in Section 4.2.1.

The PP is therefore not inconsistent with this direction.



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

### **4.3.1 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 PP is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats as the majority of lots have already been developed for residential purposes. Any future use of the land will consider environmental impacts as part of the development assessment or complying development process.

Approximately 45 (6%) of the 718 lots proposed to be rezoned to R5 are constrained by the [OEH's Biodiversity Values Map](#). This means that the Biodiversity Assessment Method (BAM) may need to be applied to assess the associated impacts if clearing is proposed in the affected part of the site. A limited number of lots at Bangalee, Worroving Heights and St Georges Basin are more heavily constrained by Biodiversity Values, however it is likely that these lots would be captured by the other threshold levels (e.g. area clearing threshold and 'test of significance') which would result in the same outcome (i.e. application of the BAM and offsetting required).

Recently land in stage 1A of the Tallimba Road, Bangalee subdivision has been certified under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This means that land in this location now has an exemption from the *Biodiversity Conservation Act 2016* and future development will be assessed under the former planning provisions (i.e. NV Act and *Threatened Species Conservation Act 1995*).

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

Other environmental impacts are not anticipated due to the nature of the PP. Any future use of the land will consider environmental impacts as part of the development assessment or complying development process.

### **4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?**

The social and economic impacts related to the PP are considered minimal.

The rezoning of the sites from R2 Low Density Residential to R5 Large Lot Residential would result in certain land uses becoming prohibited (e.g. dual occupancy (detached)), however on balance, a large and varied range of land uses remain permissible (including dual occupancy(attached)) and the prevailing large lot character of the area will be protected.

It is Council's intention that all lots subject to the proposed rezoning would retain a dwelling entitlement under clause 4.2D(3) of SLEP 2014.

Shoalhaven supports the application of the Code in the vast majority of towns and villages and this additional housing supply may assist with housing affordability. Whilst certain areas are proposed to be excluded from the Code (4.3% of Shoalhaven's residentially zoned land), medium density development opportunities remain available via the development assessment stream.

The proposed changes to the instrument, especially the reduction in minimum lot size for 'integrated housing development', will support the supply of additional housing in the R1

zone, which may assist with housing affordability. The relaxation of Torrens restrictions should also stimulate medium density development outside of the current Areas 1 and 2.

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

##### **4.4.1 Is there adequate public infrastructure for the Planning Proposal?**

The land proposed for rezoning is generally well serviced by existing infrastructure and the PP does not trigger the need for additional infrastructure at this point in time.

Kangaroo Valley's pressured sewerage scheme has limited capacity which is the prevailing reason for excluding the Village from the Code.

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

Council will consult with relevant State and Commonwealth authorities (e.g. NSW Rural Fire Service, WaterNSW, OEH) in accordance with the conditions of the Gateway determination. The PP will be updated prior to public exhibition, if required, to incorporate the view of any public authority.

### **5 Part 4 – Mapping**

The proposed mapping, as outlined in Section 3.1 and 3.2 of the PP, includes:

- Amending the LSZ maps in Shoalhaven LEP 2014 to delete the clause 4.1A layer (Areas 1 and 2) and the clause 4.1A legend references on all LSZ map sheets.
- Rezoning the following land from R2 Low Density Residential to R5 Large Lot Residential by amending the relevant Shoalhaven LEP 2014 LZN maps (**Attachment A**).
  - Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.
- Excluding the following land from the Code via Schedule 5 of the Codes SEPP (**Attachment B**).
  - Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.

The proposed mapping is shown below.

### **6 Part 5 - Community Consultation**

Council proposes to exhibit the PP in accordance with the requirements of Schedule 1 of the *Environmental Planning and Assessment Act 1979* and any other requirements as determined by the Gateway determination. It is intended that an exhibition period of 28 days would apply.

Public notification of the exhibition would include notification in the local newspapers, and a package of exhibition material on Council's website. Hard copies of the PP would be made available at Council's Administrative Buildings in Nowra and Ulladulla.

## 7 Part 6 – Project Timeline

The anticipated timeline for the Planning Proposal is outlined in the table below.

**Table 4: Project timeline**

<b>Task</b>	<b>Anticipated Timeframe</b>
Commencement date (date of Gateway determination)	May 2019
Completion of Gateway determination requirements	June 2019
Public exhibition	July - August 2019
Consideration of submissions	August 2019
Post exhibition consideration of PP	September-October 2019
Finalisation and notification of Plan	November-December 2019

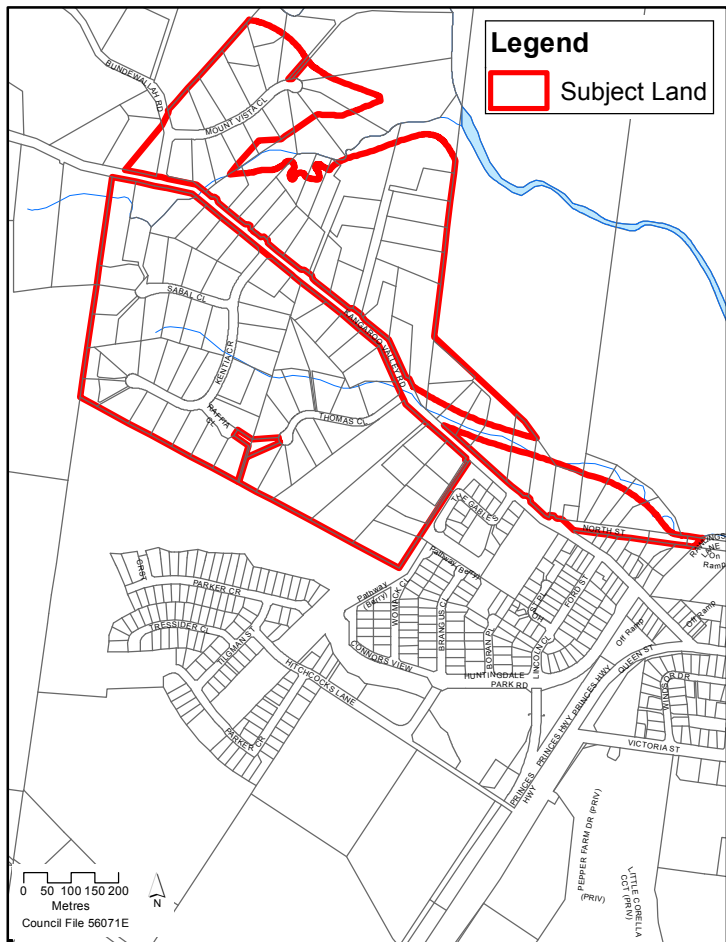
## **ATTACHMENTS**

### **Attachment A - Proposed R5 Large Lot Residential Maps**



**PP027  
Planning Proposal  
Proposed LZN  
Berry (West of Highway)**

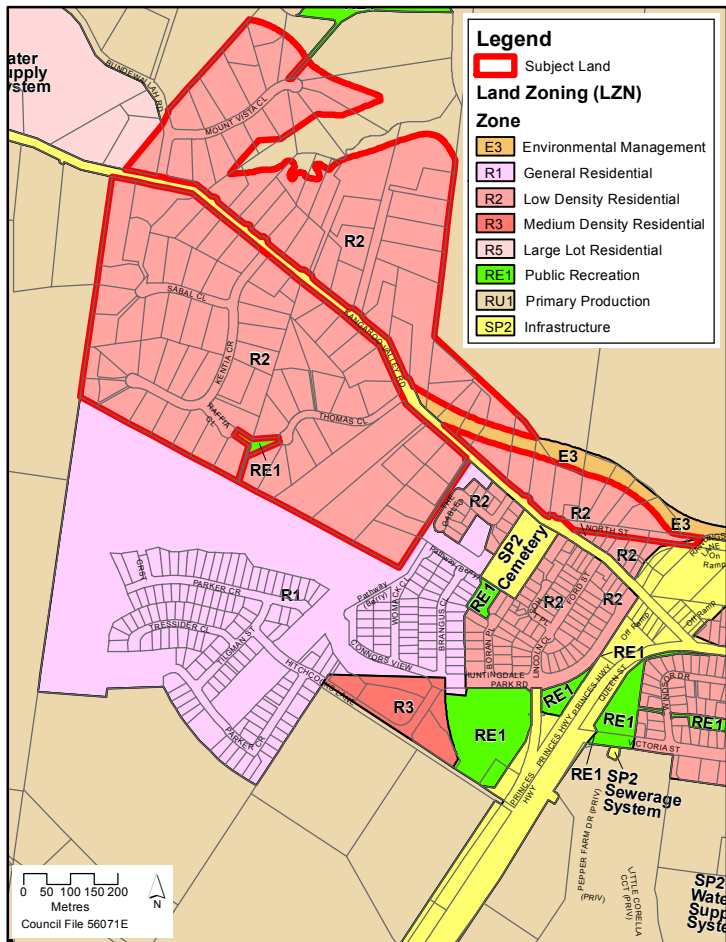
**Subject Land**



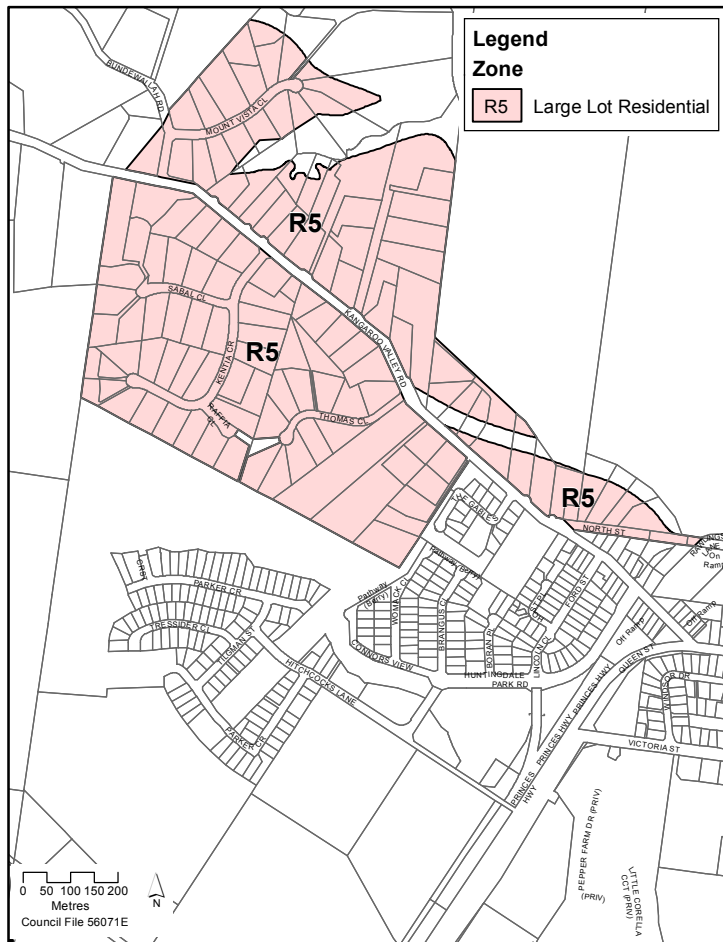
**Aerial Photo**



**SLEP2014 LZN**



**Proposed LZN**



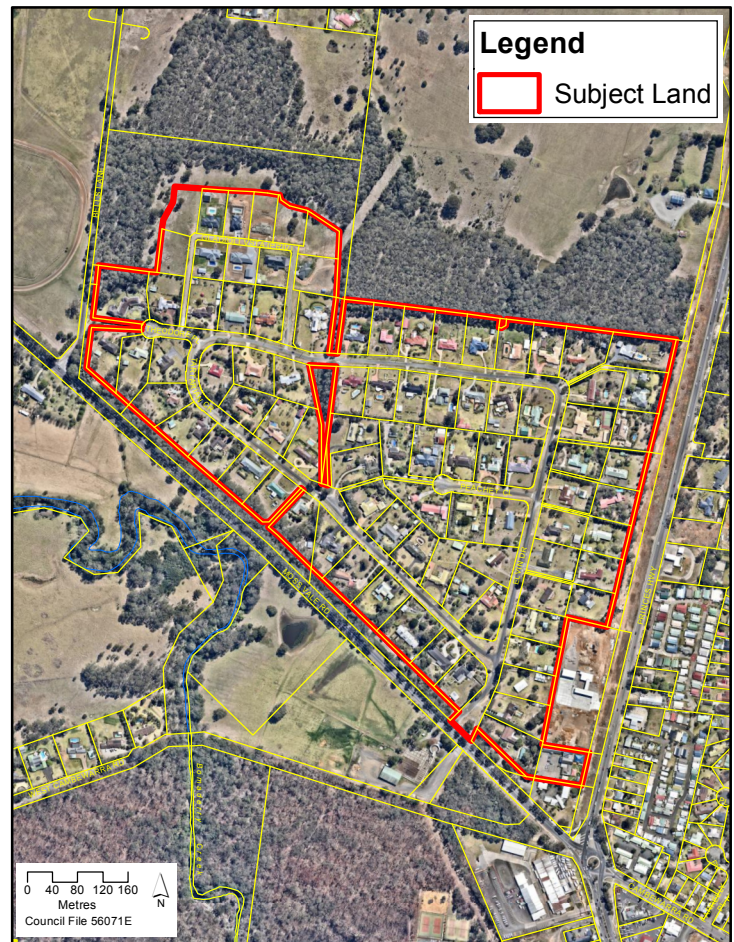


**PP027  
Planning Proposal  
Proposed LZN  
Gladioli Estate Bomaderry**

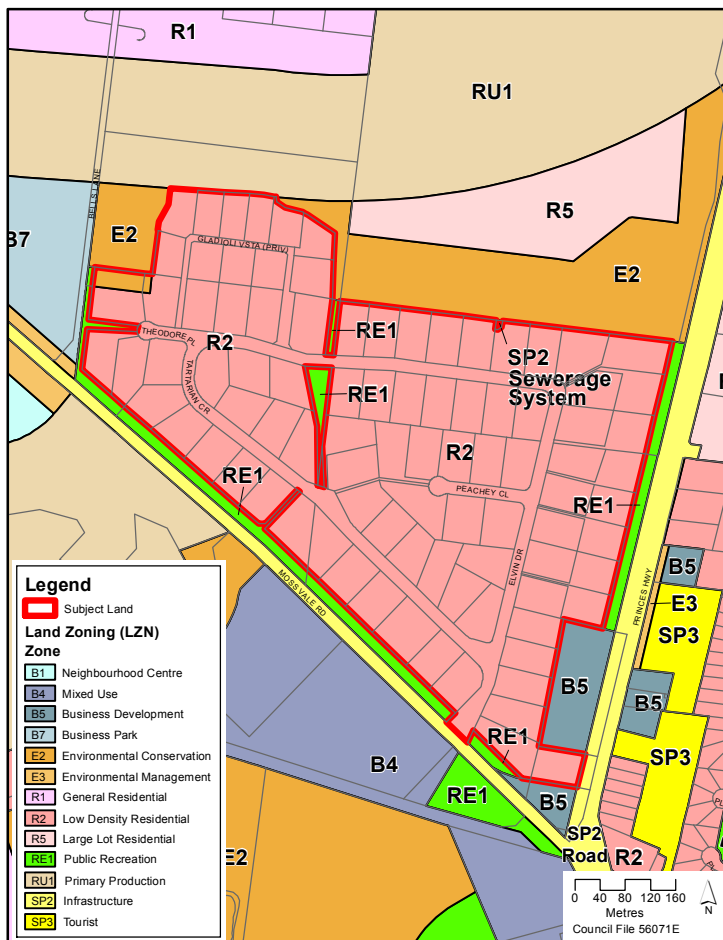
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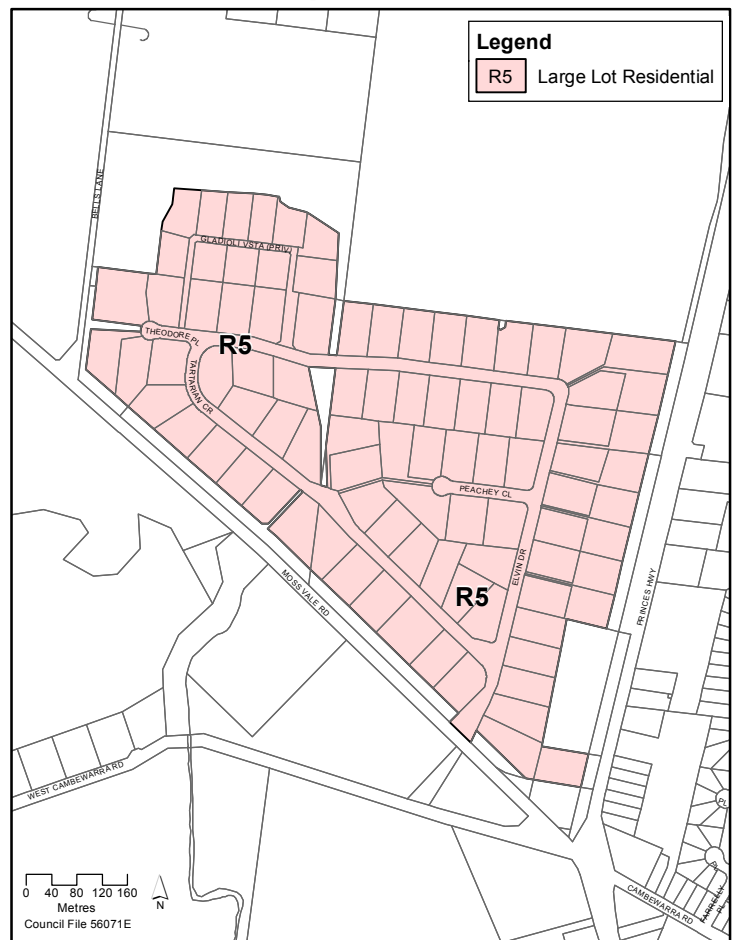
**Aerial Photo**



**SLEP2014 LZN**



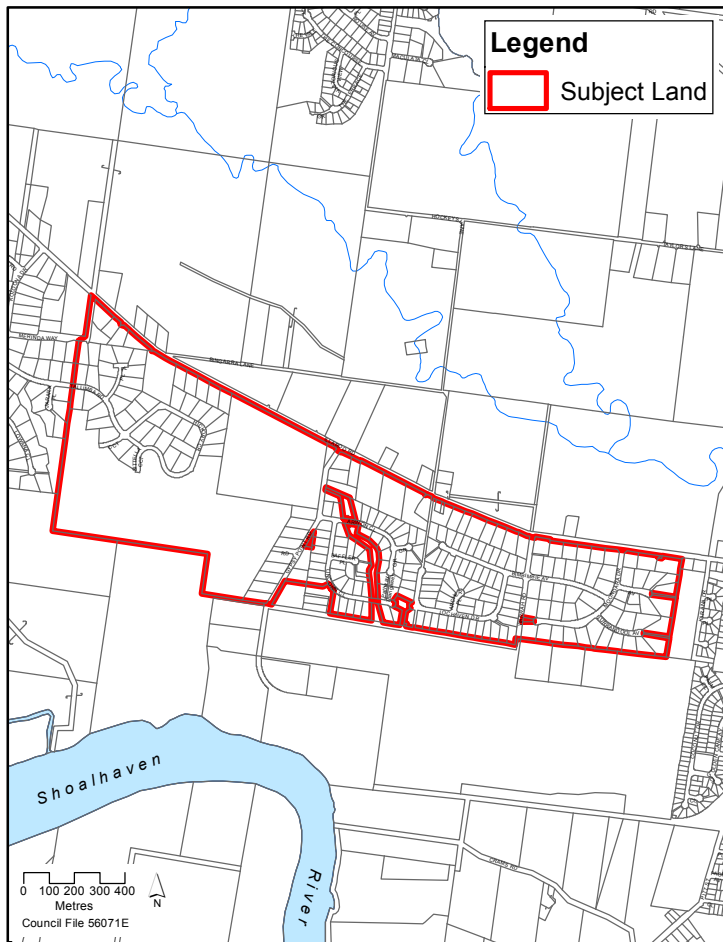
**Proposed LZN**



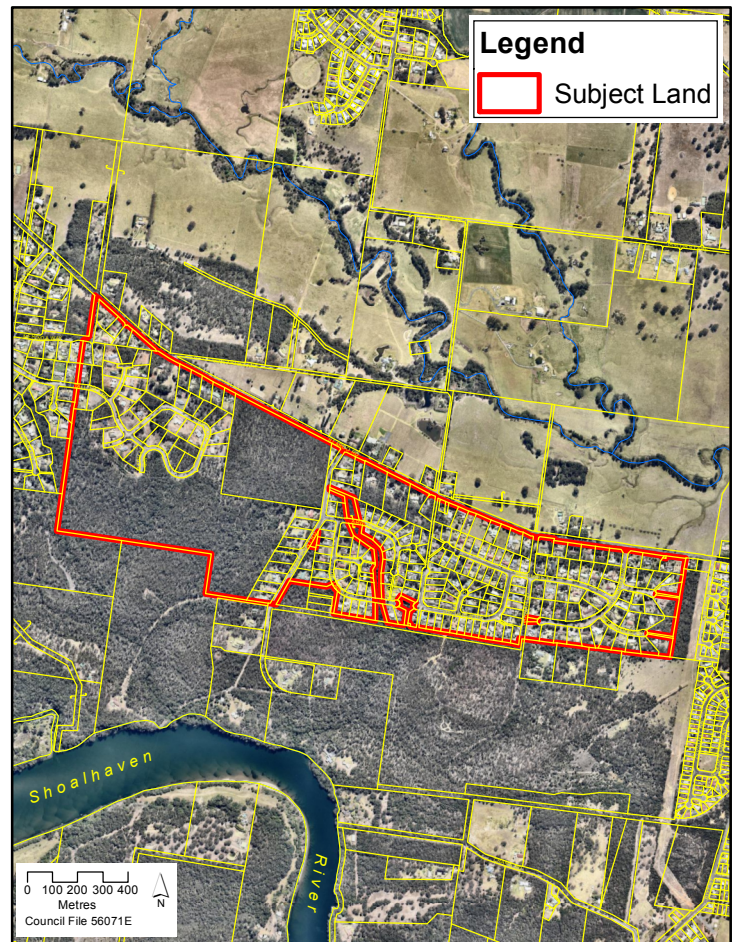


# PP027 Planning Proposal Proposed LZN Bangalee

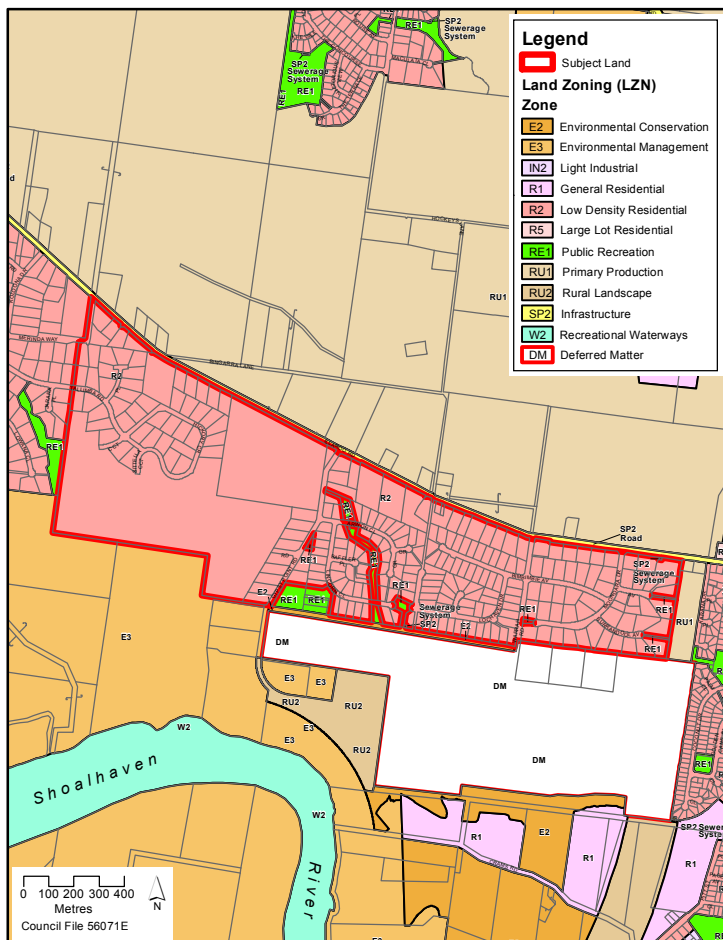
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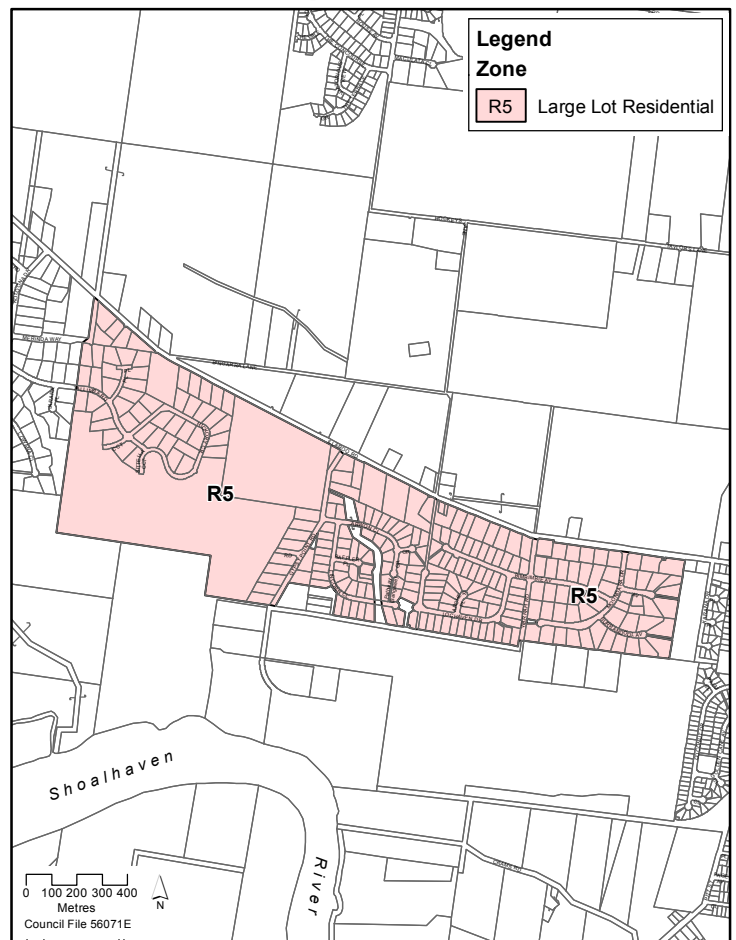
Aerial Photo



SLEP2014 LZN



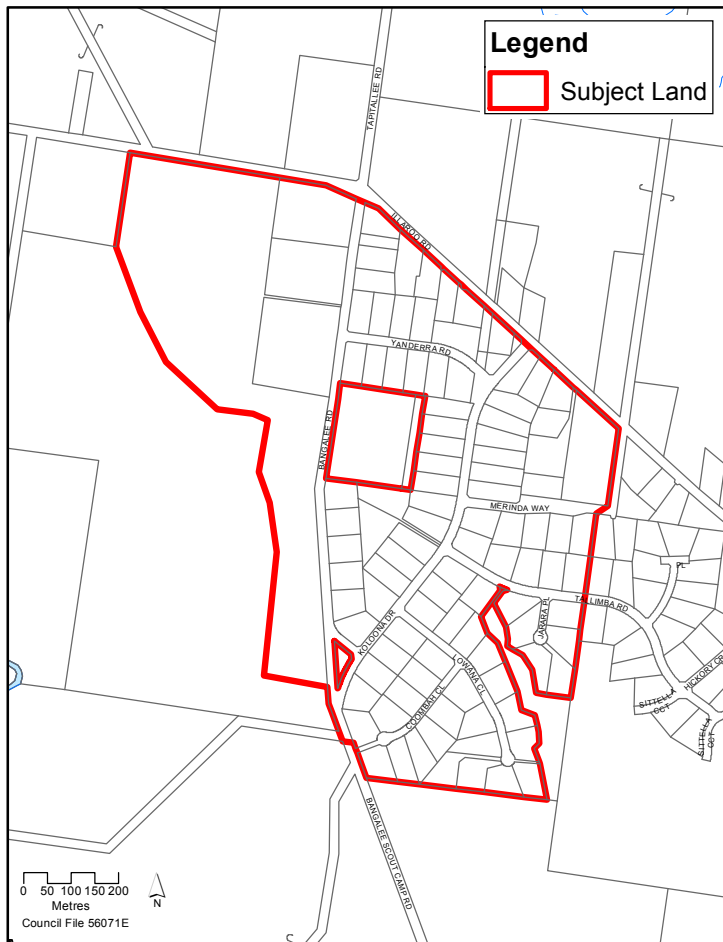
Proposed LZN



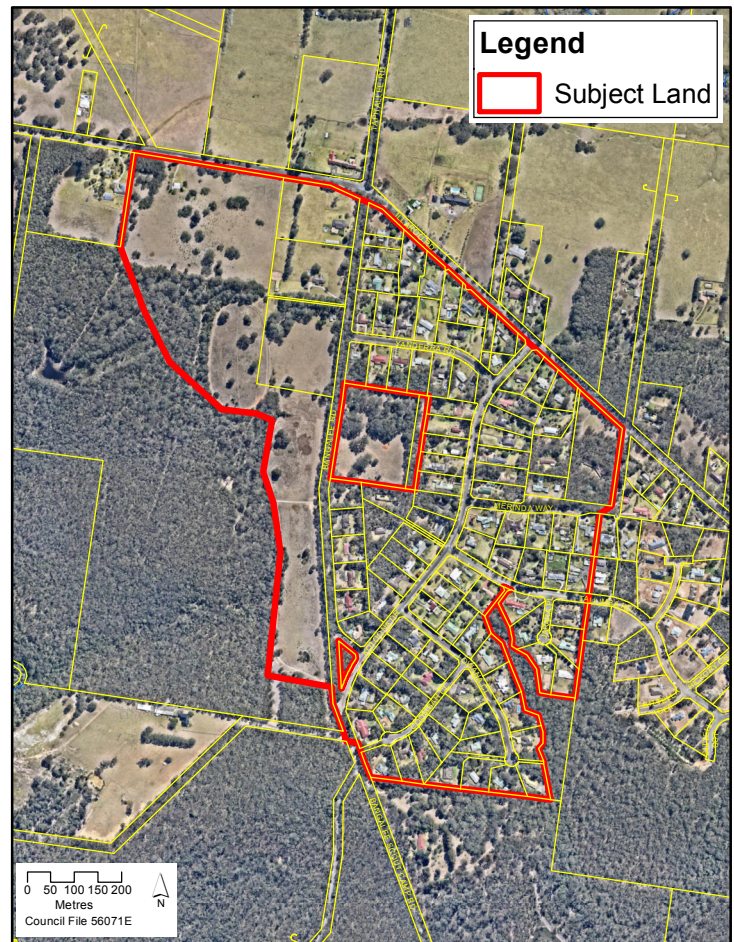


# PP027 Planning Proposal Proposed LZN Tapitallee

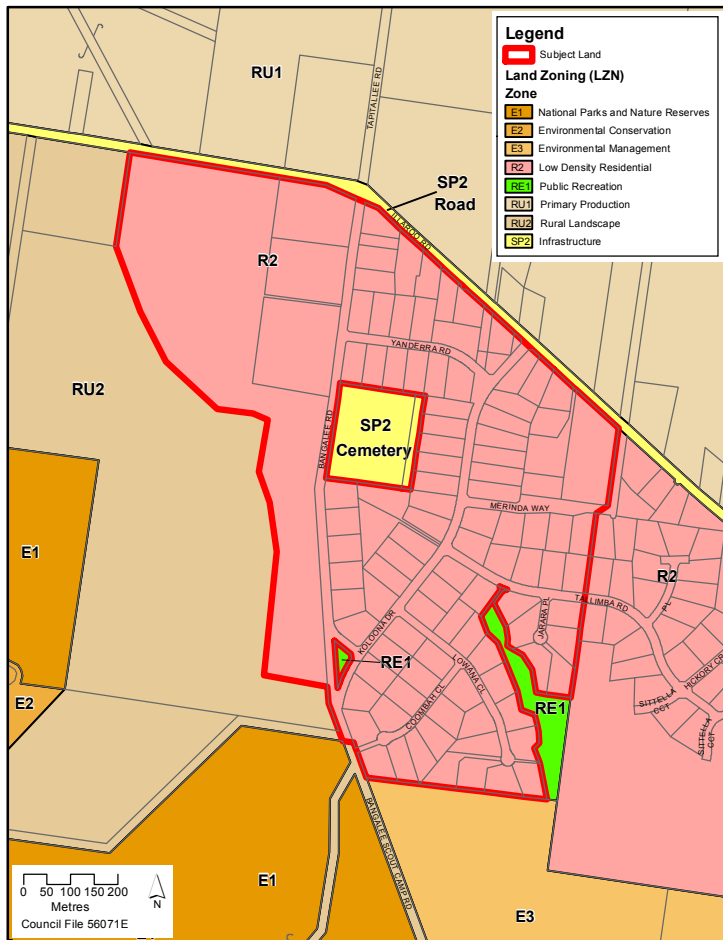
## Subject Land



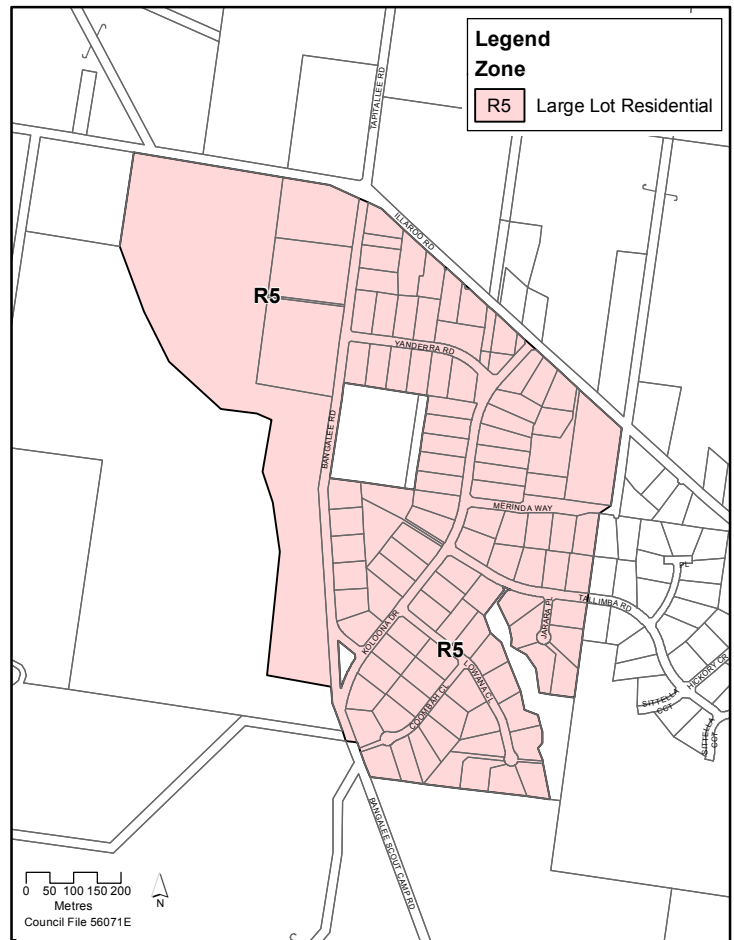
## Aerial Photo



## SLEP2014 LZN



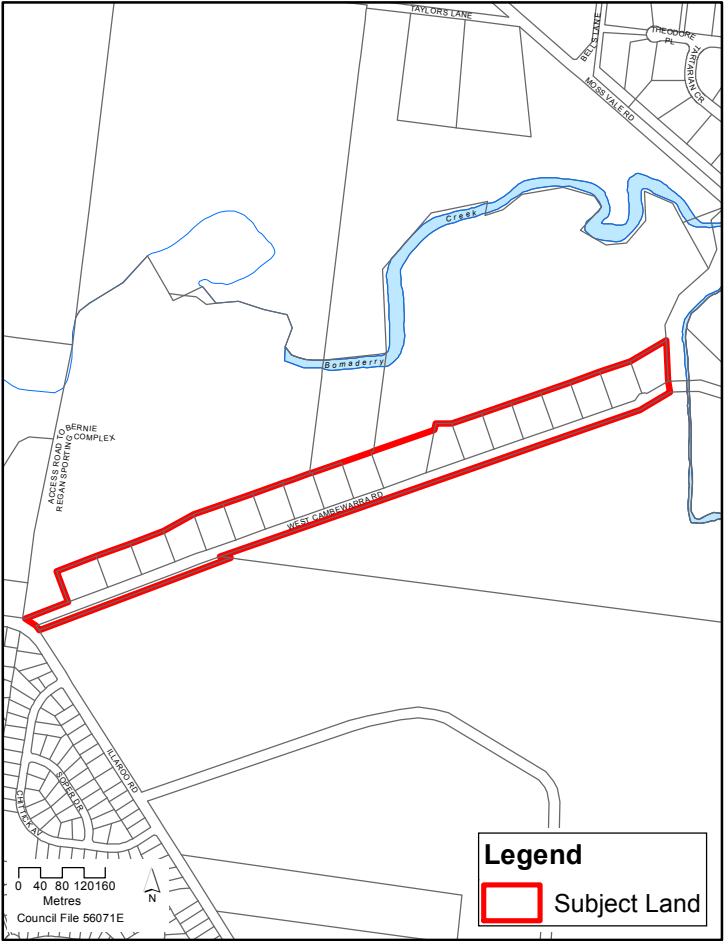
## Proposed LZN



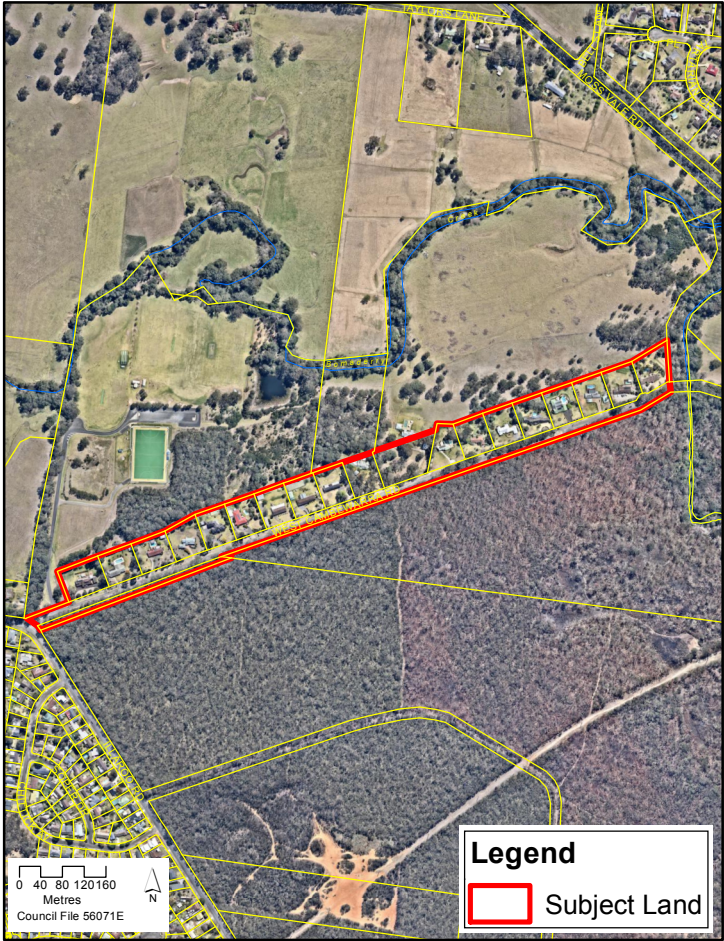


PP027  
Planning Proposal  
Proposed LZN  
North Nowra

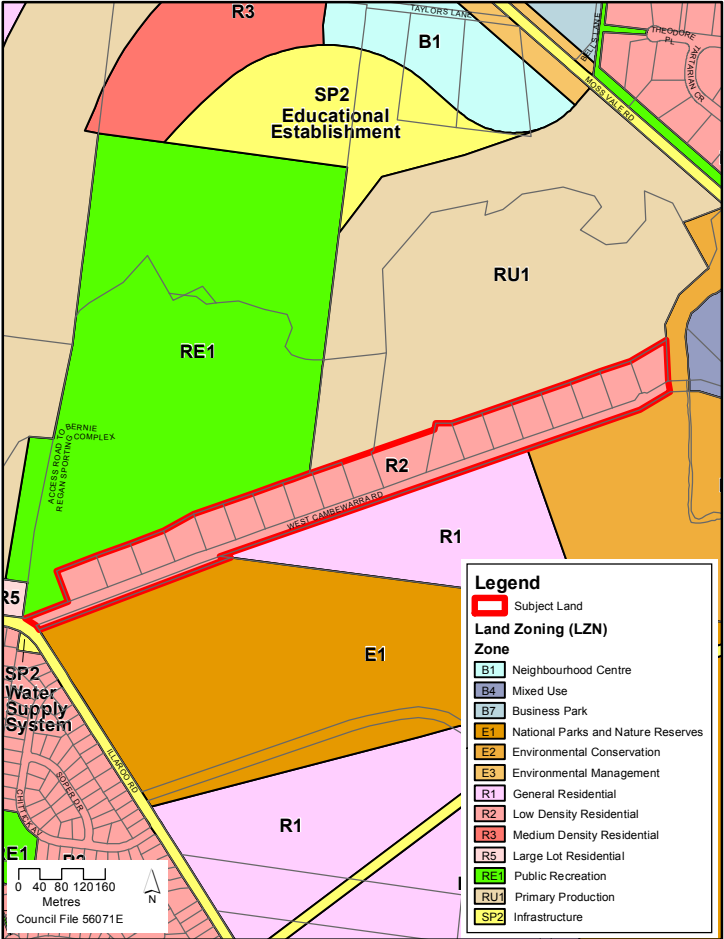
Subject Land



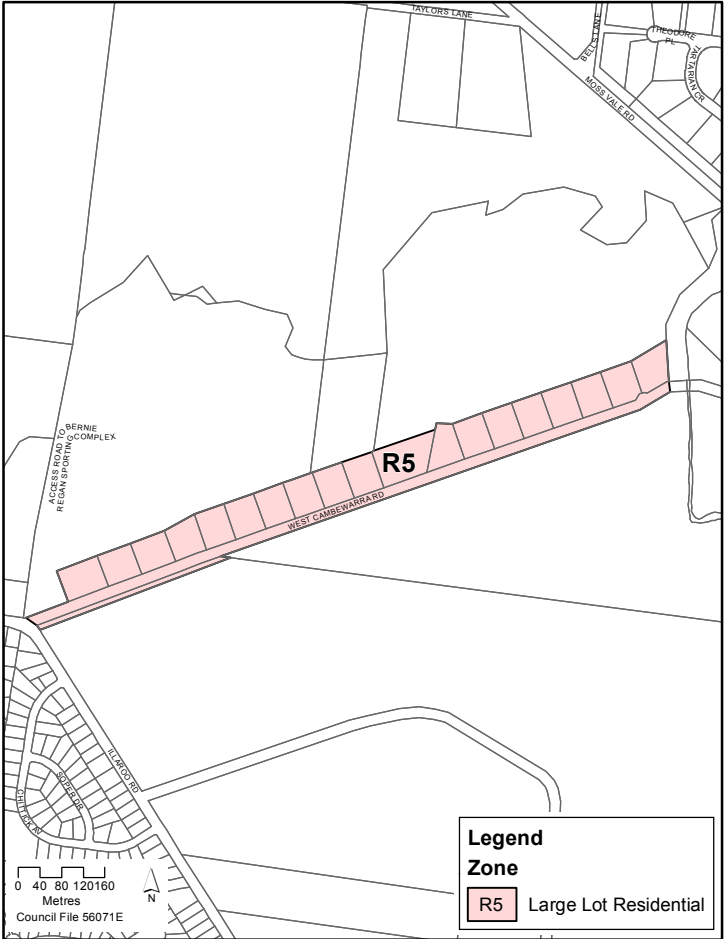
Aerial Photo



SLEP2014 LZN

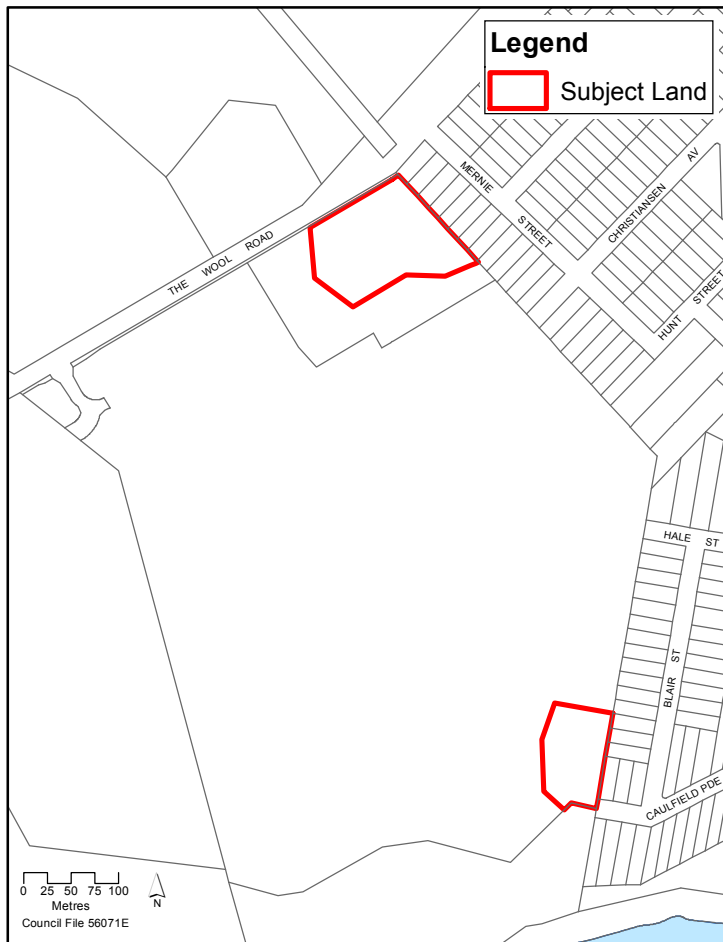


Proposed LZN



# PP027 Planning Proposal Proposed LZN Worworing Heights

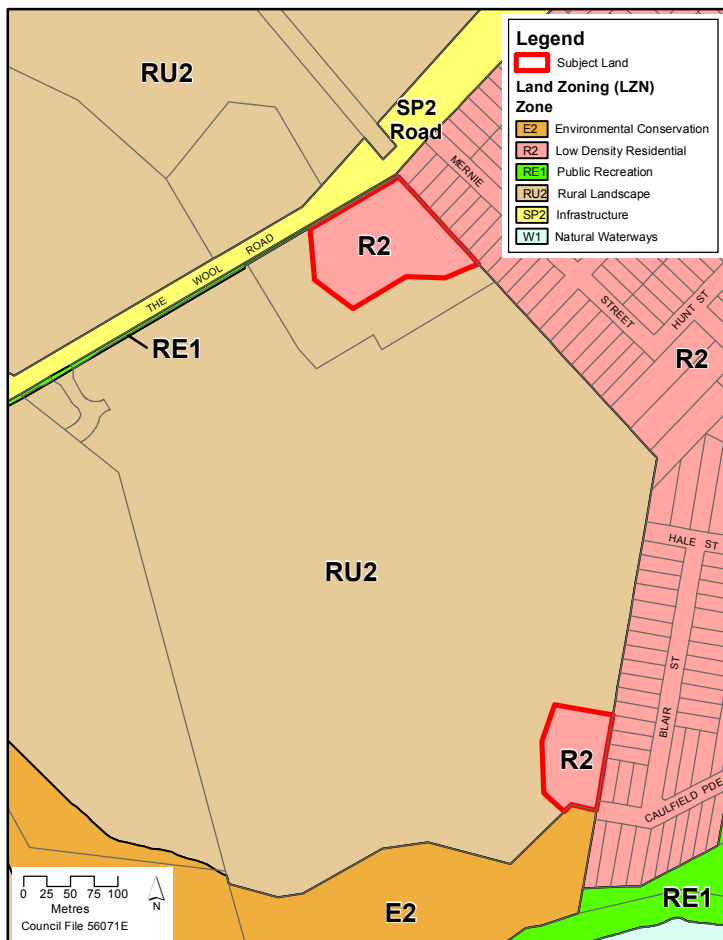
Subject Land



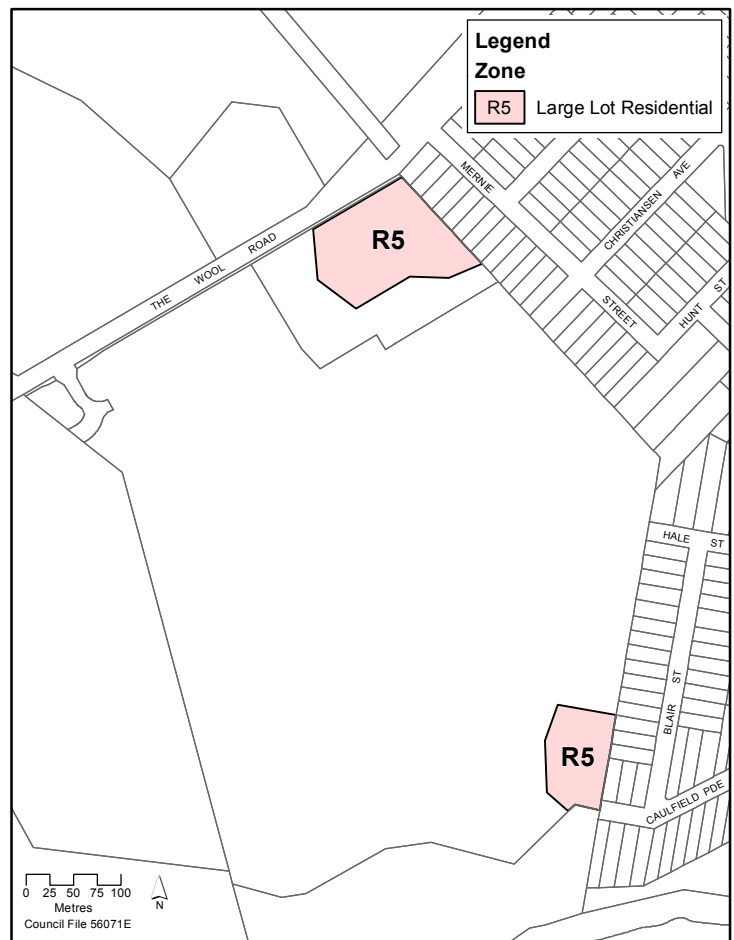
Aerial Photo



SLEP2014 LZN



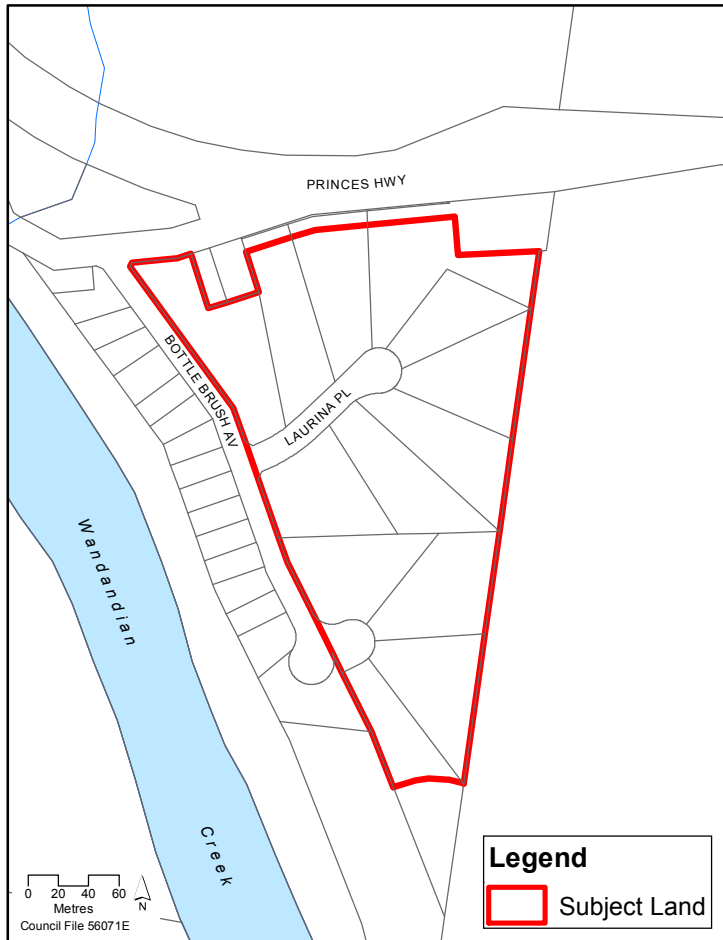
Proposed LZN



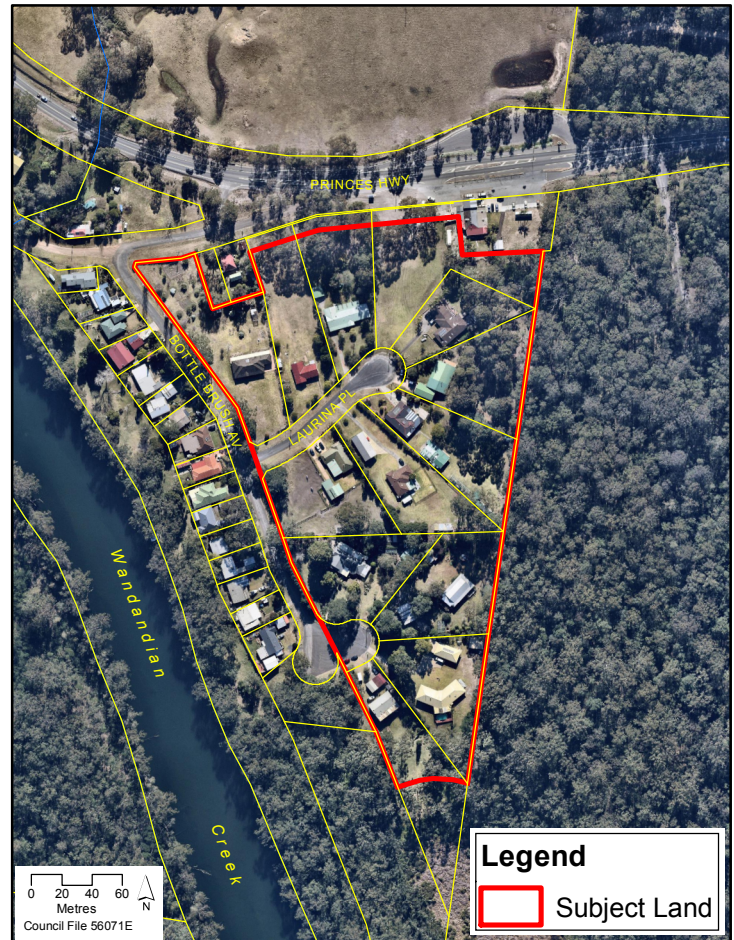


**PP027**  
**Planning Proposal**  
**Proposed LZN**  
**Bewong**

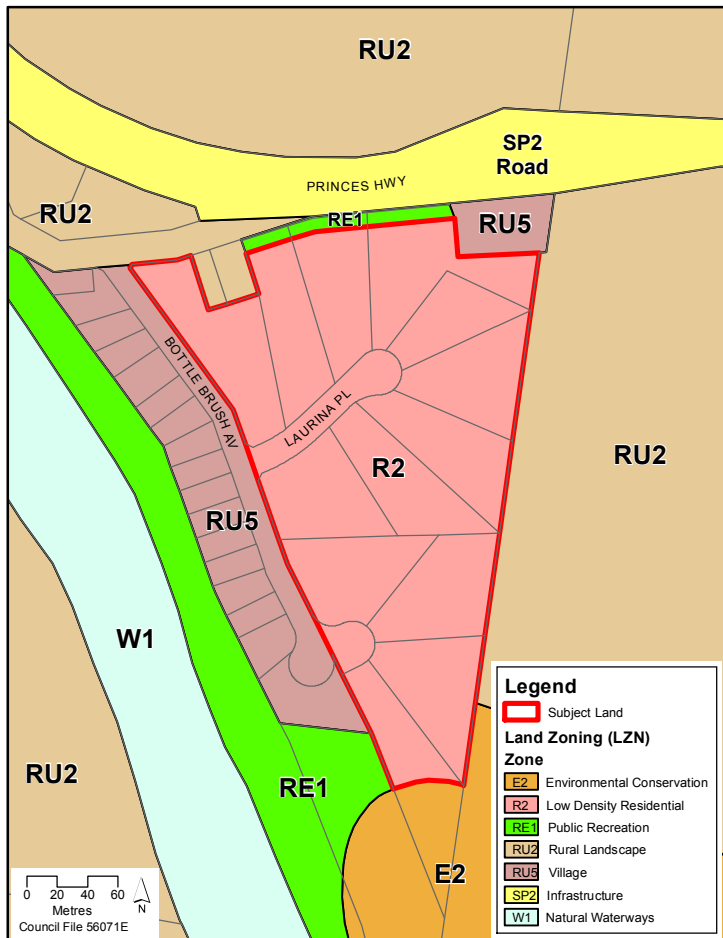
**Subject Land**



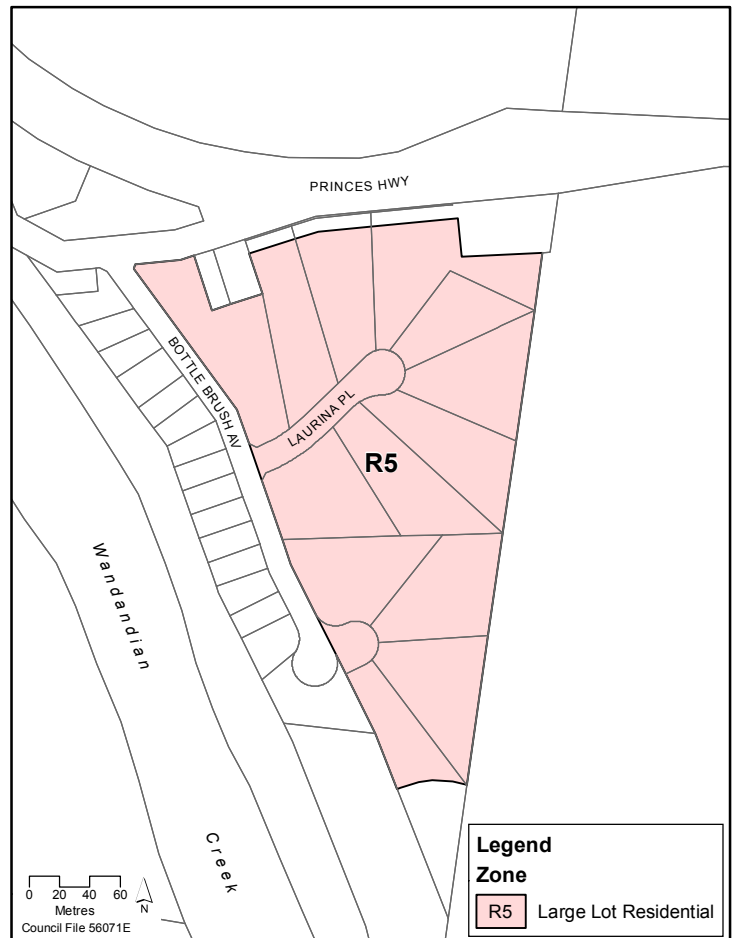
**Aerial Photo**



**SLEP2014 LZN**



**Proposed LZN**



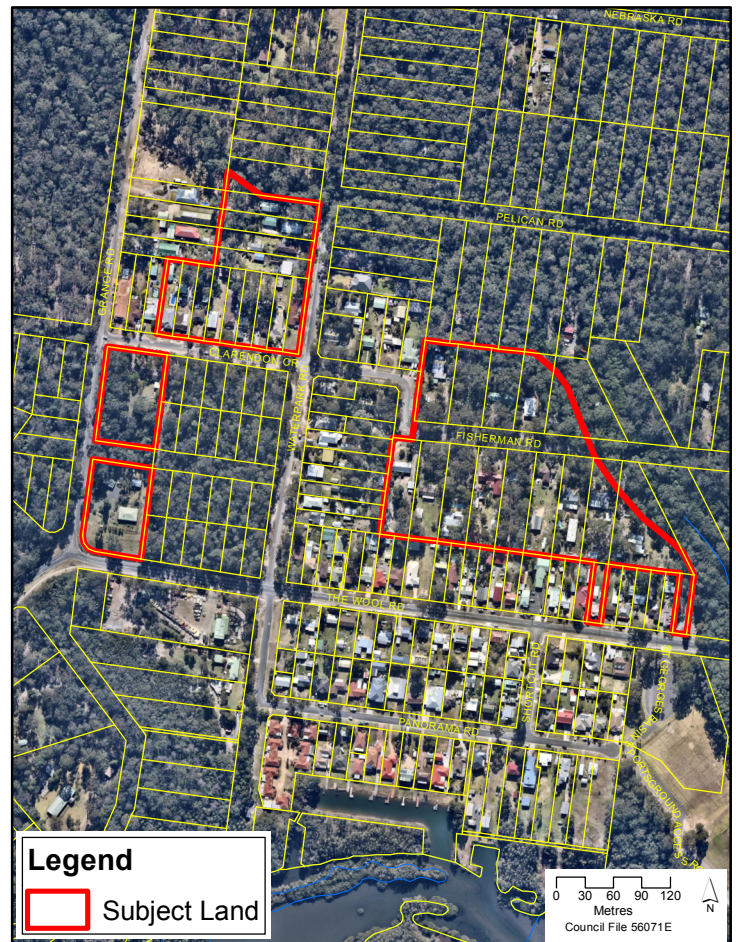


# PP027 Planning Proposal Proposed LZN St Georges Basin

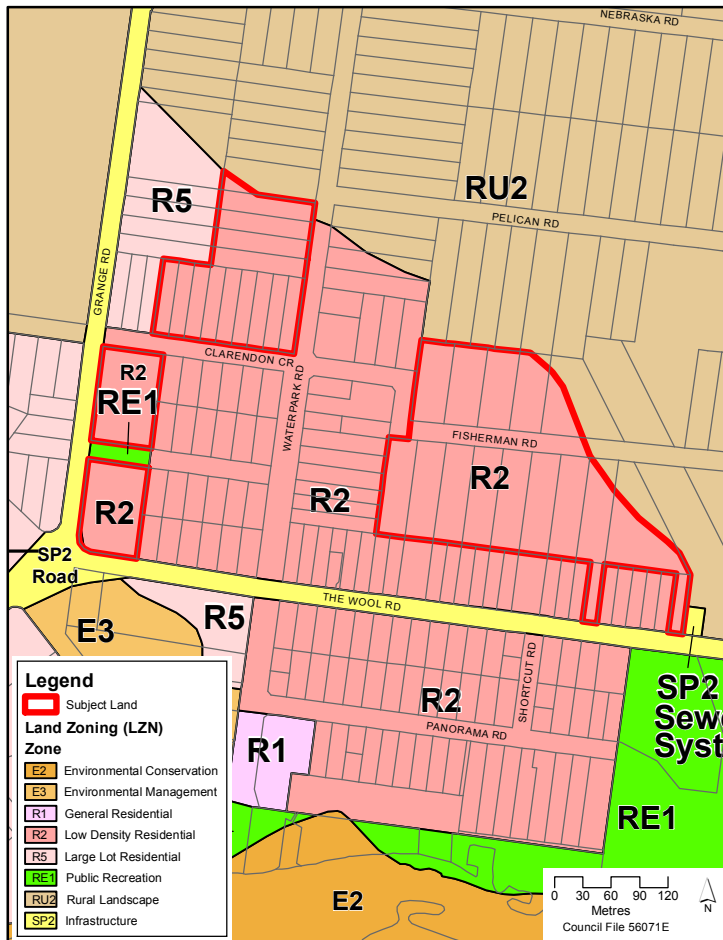
Subject Land



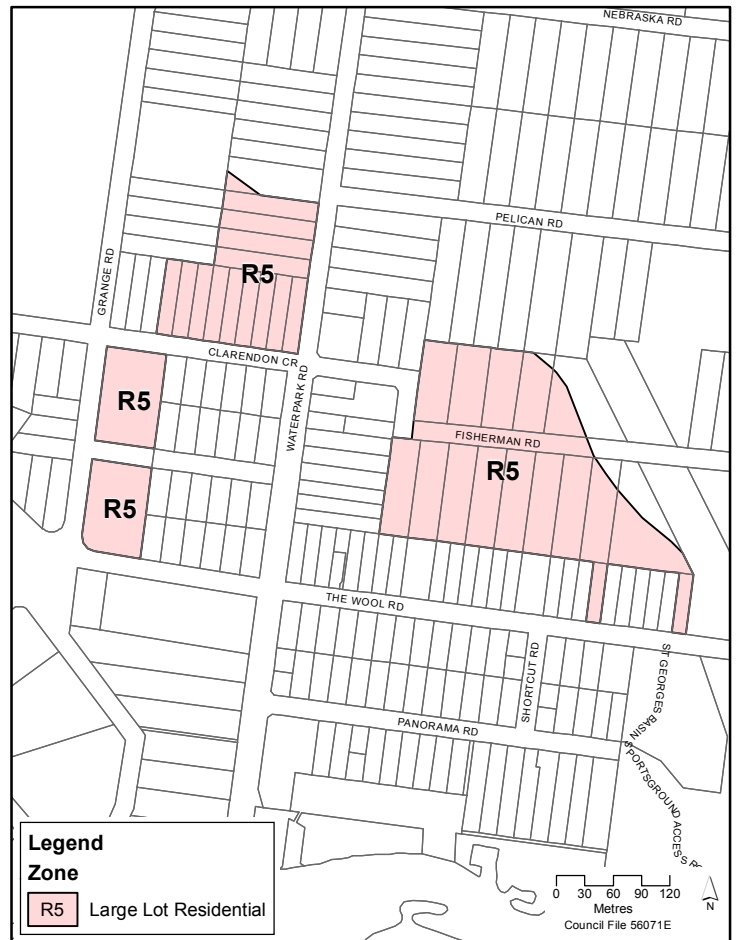
Aerial Photo



SLEP2014 LZN



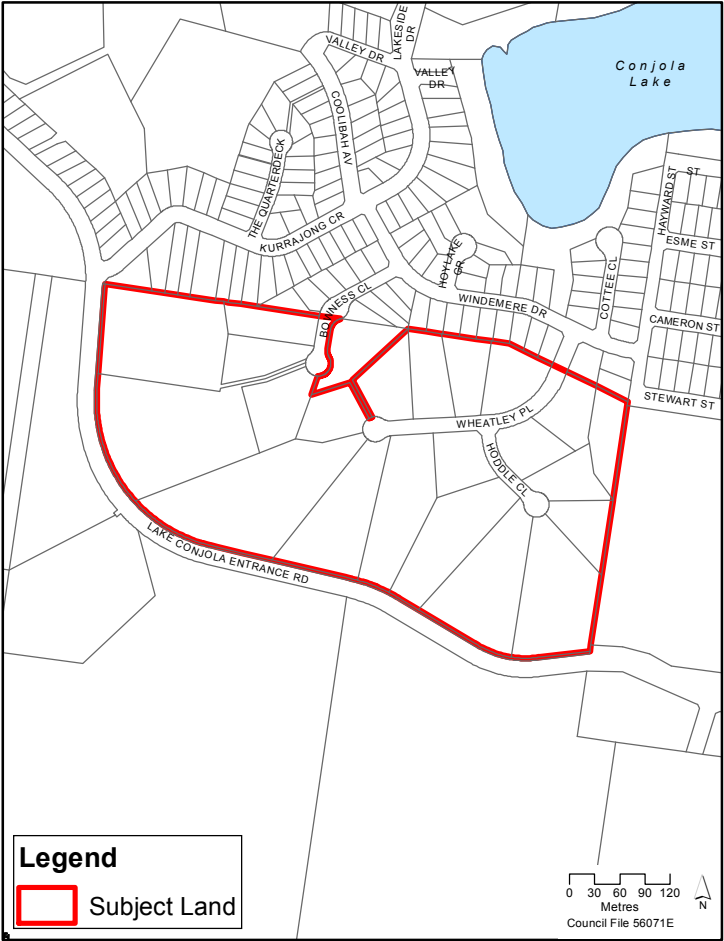
Proposed LZN



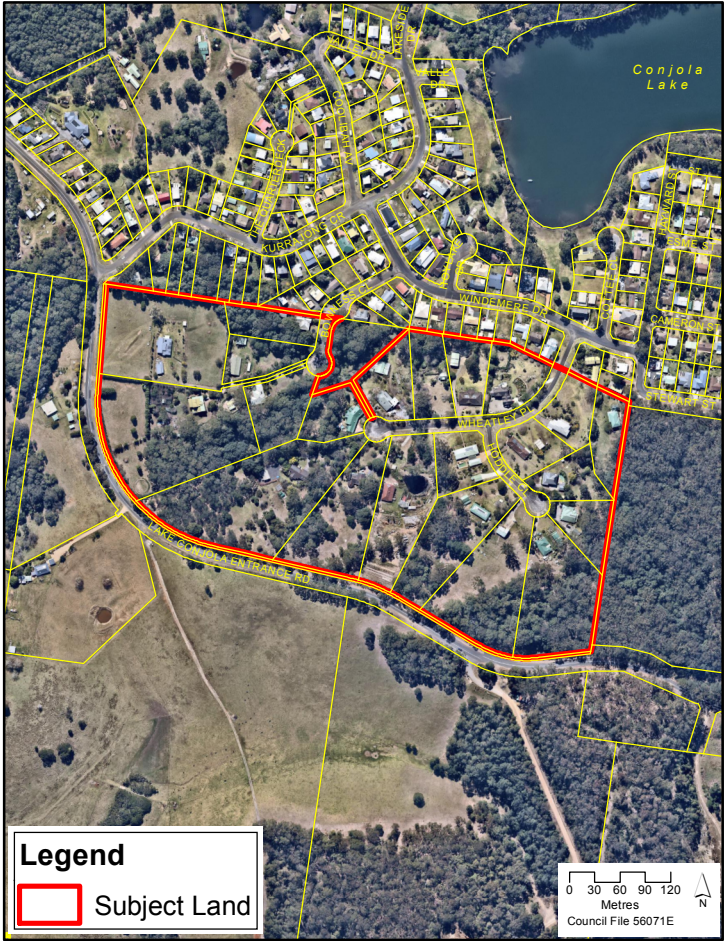


# PP027 Planning Proposal Proposed LZN Conjola Park

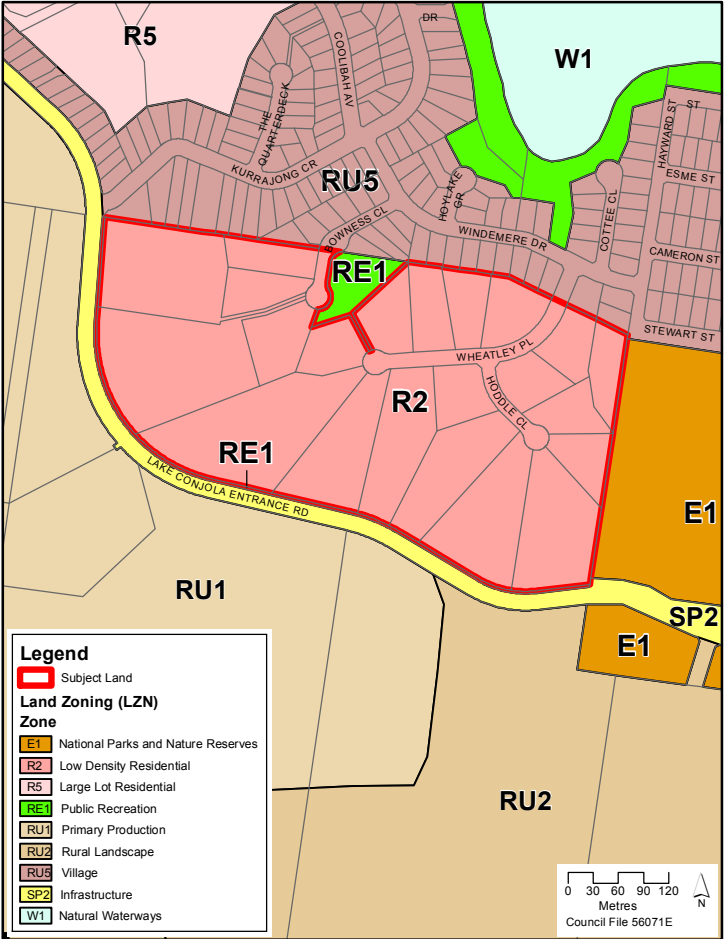
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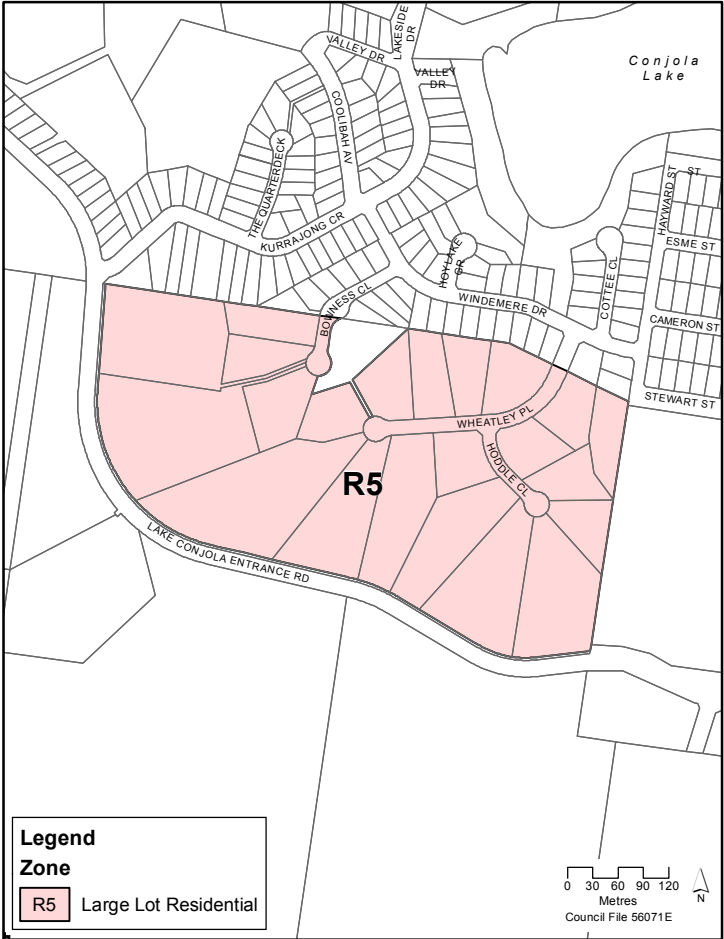
Aerial Photo



SLEP2014 LZN



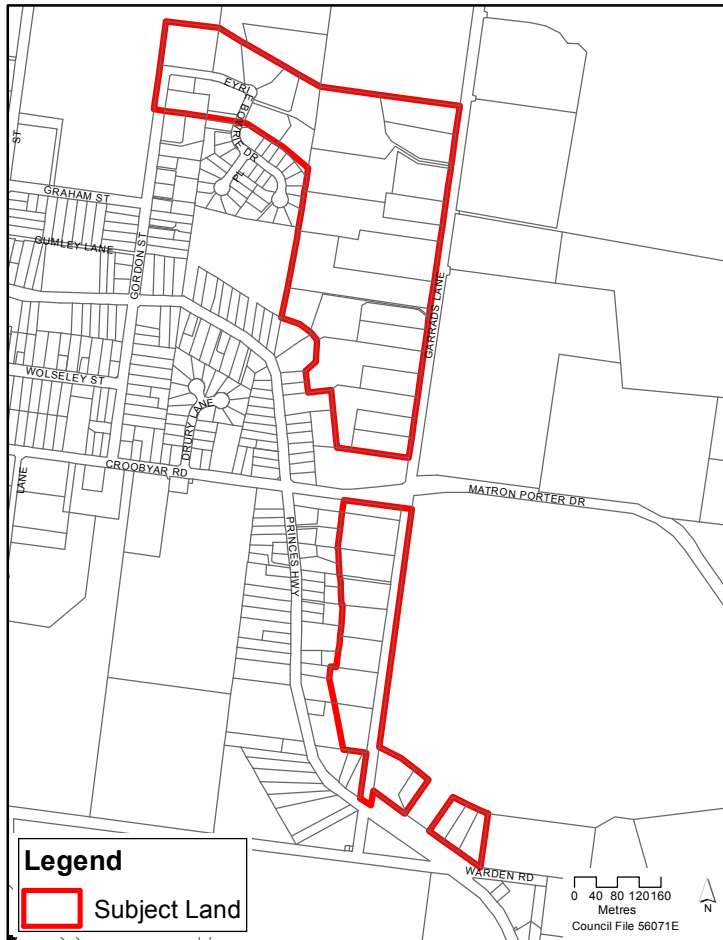
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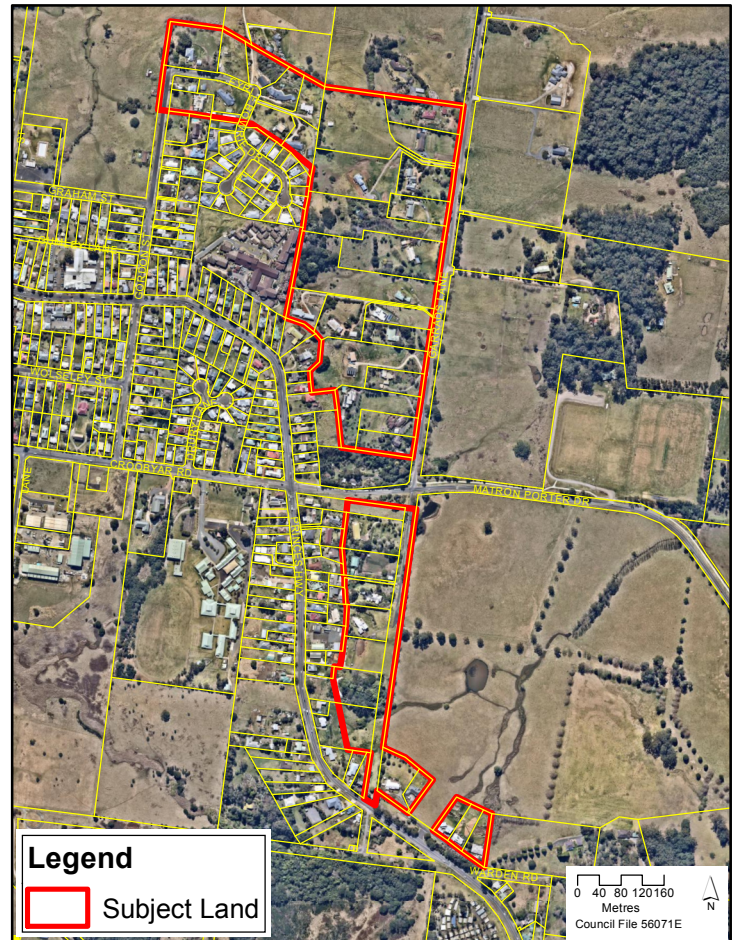


# PP027 Planning Proposal Proposed LZN Milton

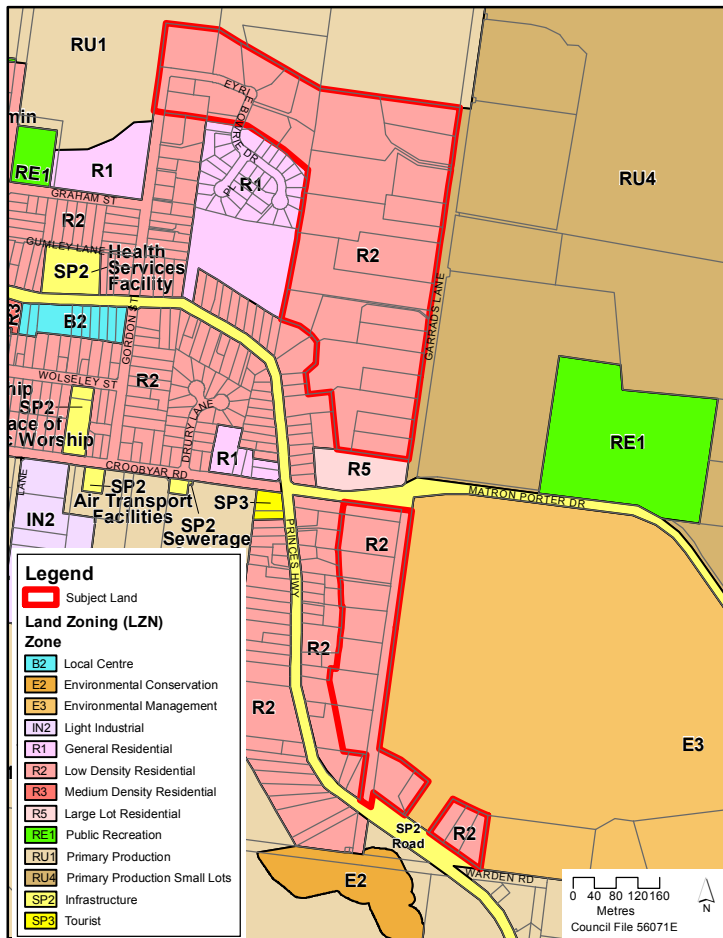
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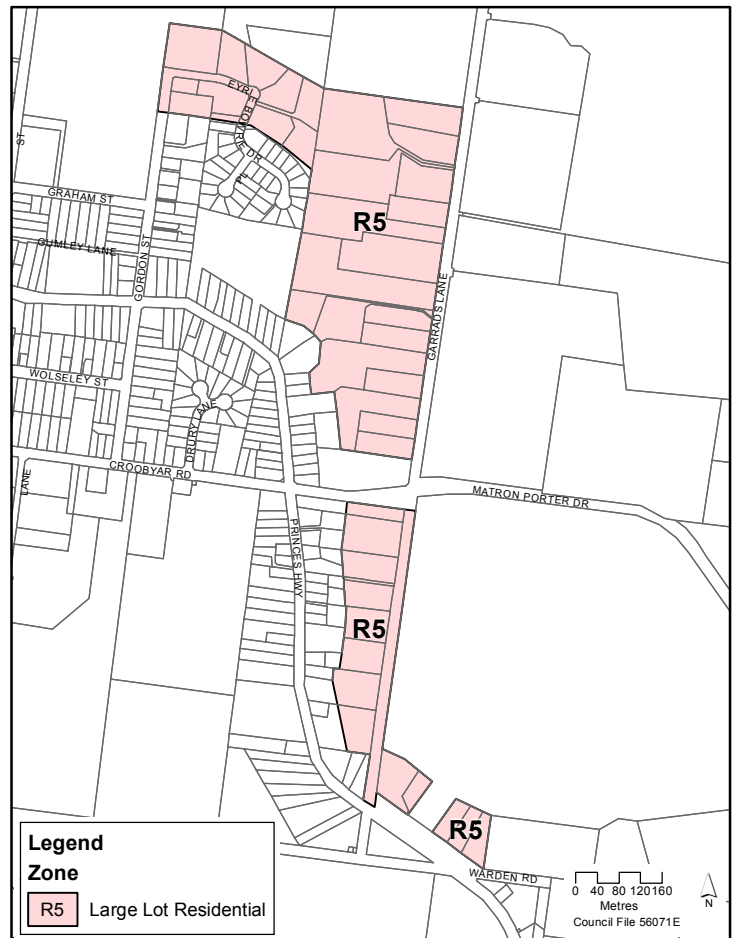
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SLEP2014 LZN



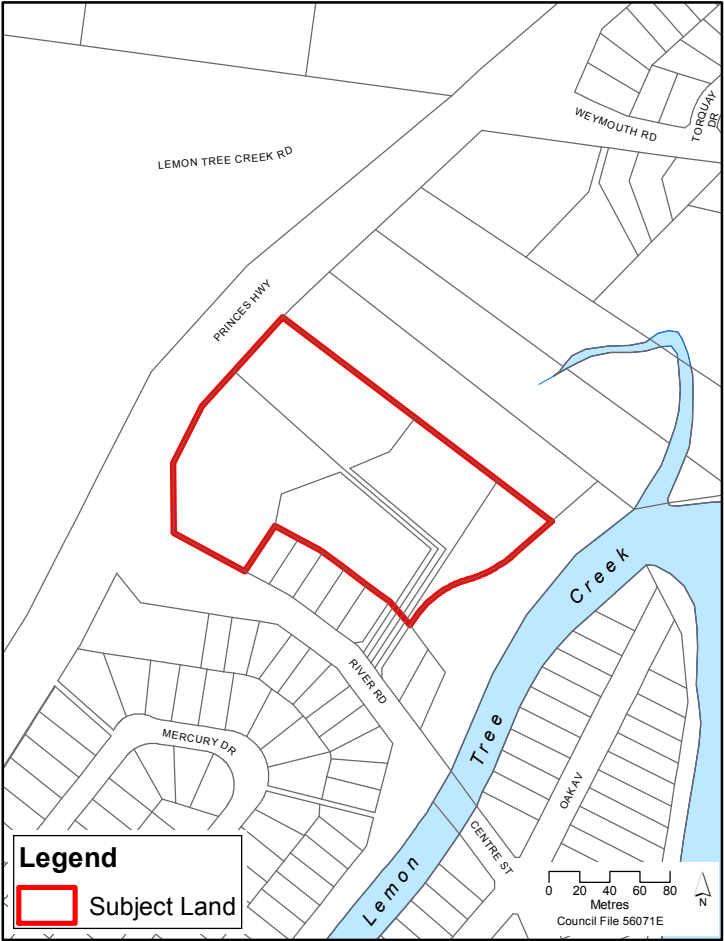
Proposed LZN





PP027  
Planning Proposal  
Proposed LZN  
Lake Tabourie

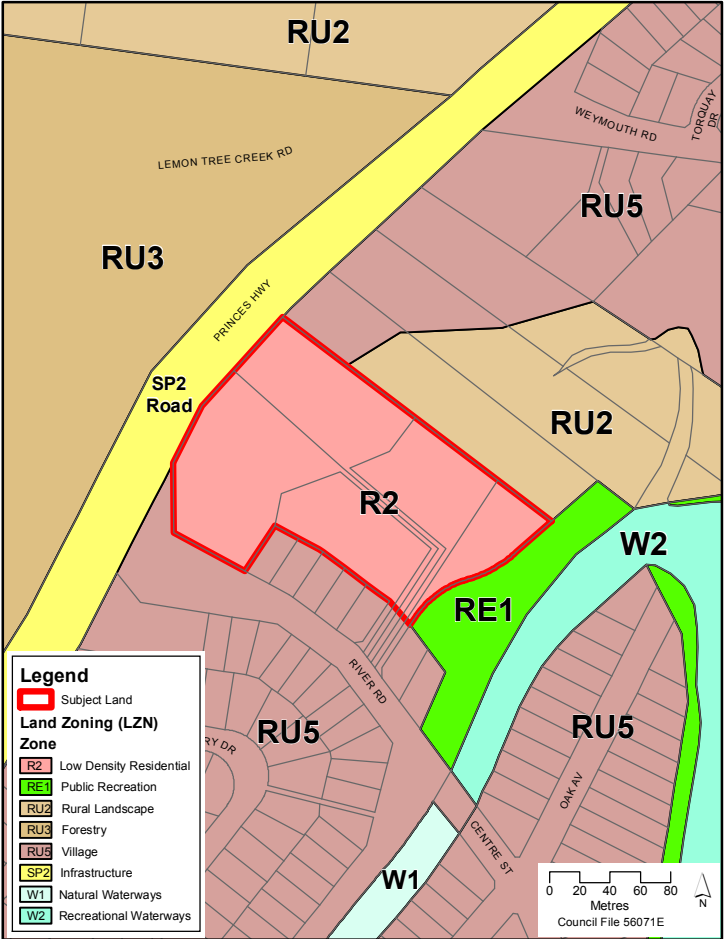
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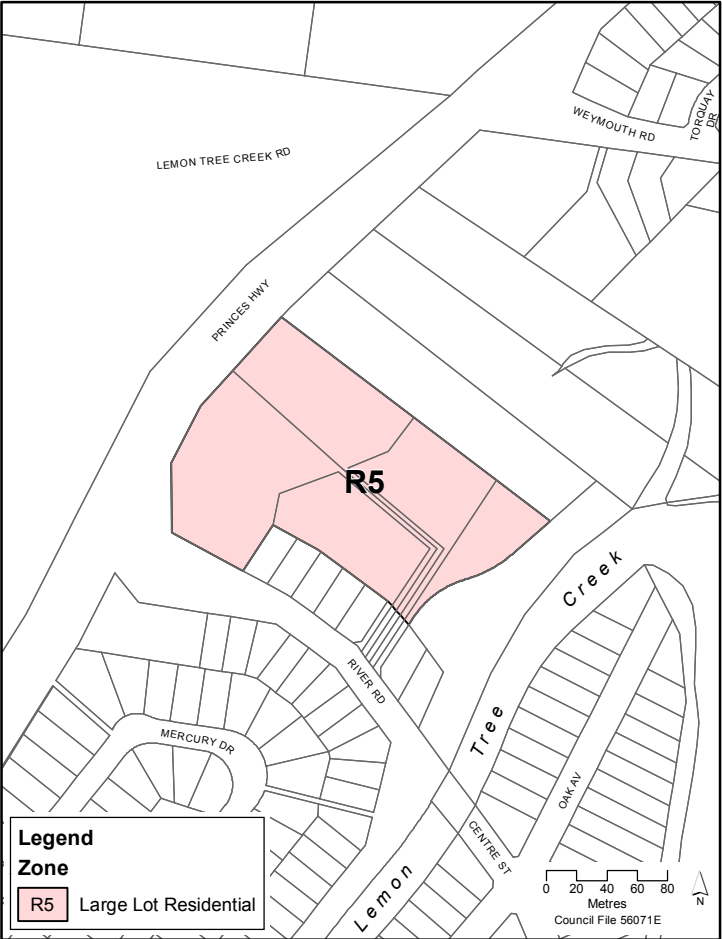
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SLEP2014 LZN



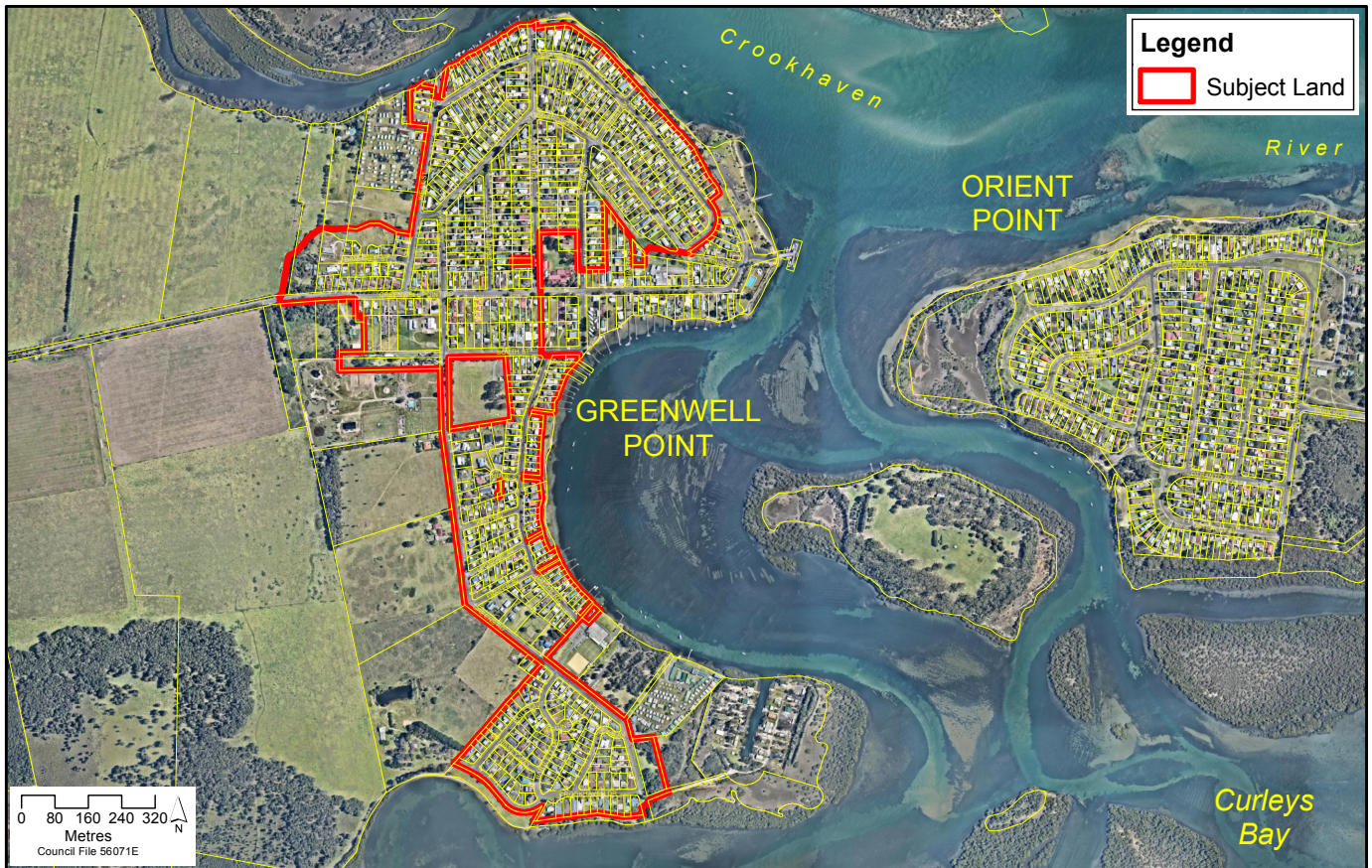
Proposed LZN



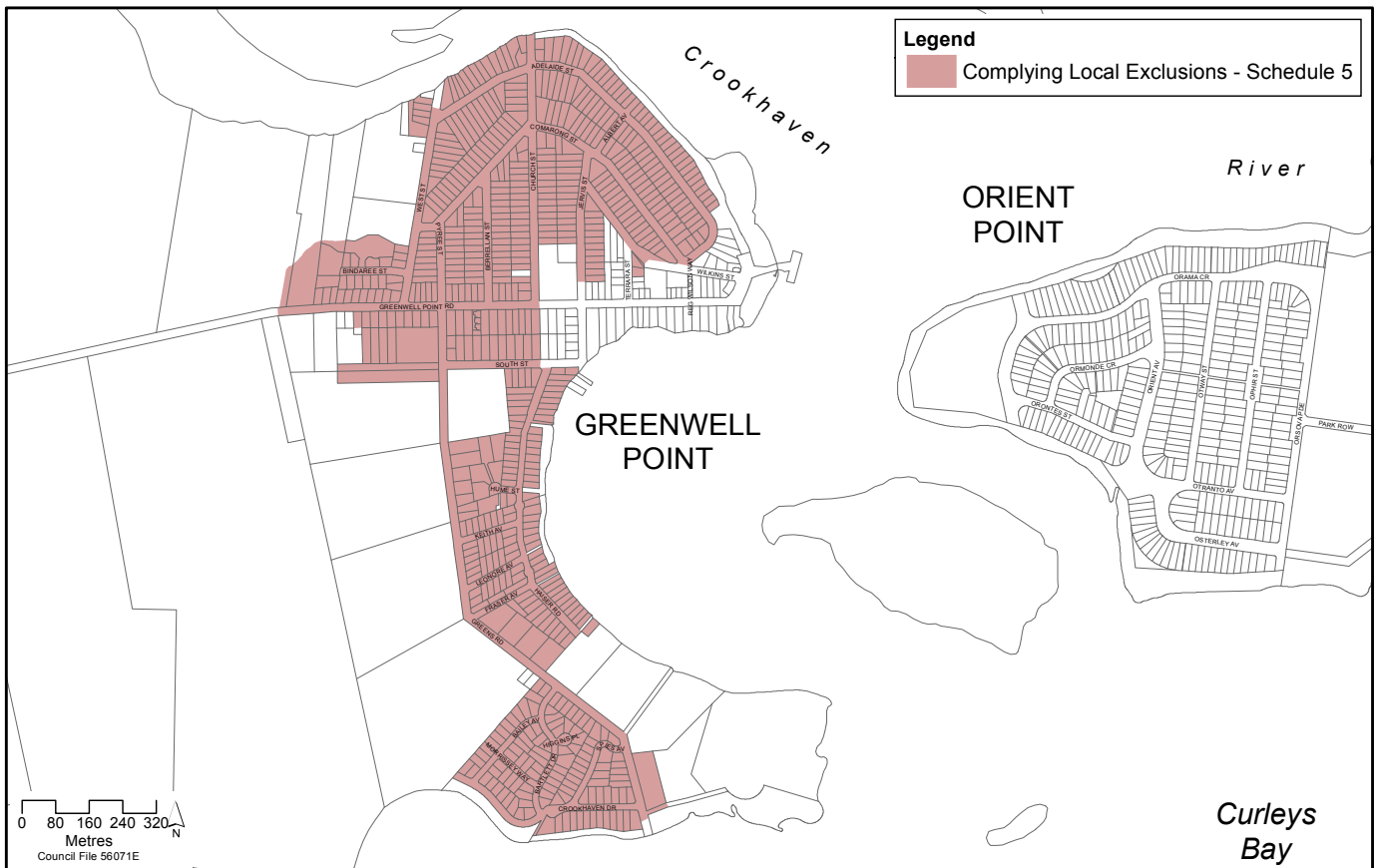


## **Attachment B - Proposed 'Complying Local Exclusion' Maps**

PP027  
Planning Proposal  
Proposed Codes SEPP Complying Local Exclusion Areas -  
Greenwell Point



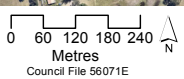
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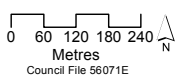
Proposed Complying Local Exclusion Area



## Proposed Codes SEPP Complying Local Exclusion Areas - Kangaroo Valley



### Aerial Photo



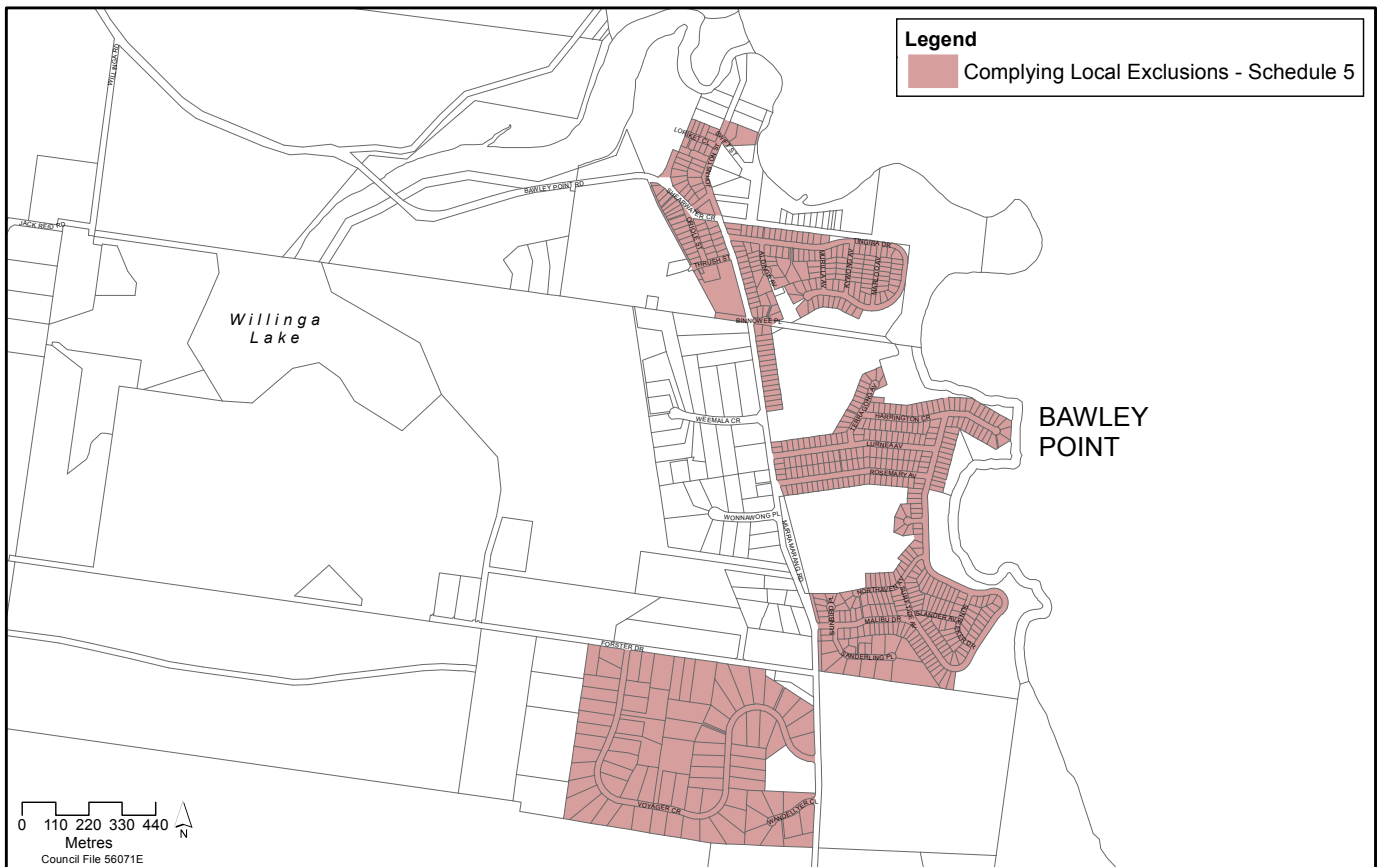
### Proposed Complying Local Exclusion Area



**PP027**  
**Planning Proposal**  
**Proposed Codes SEPP Complying Local Exclusion Areas -**  
**Bawley Point**



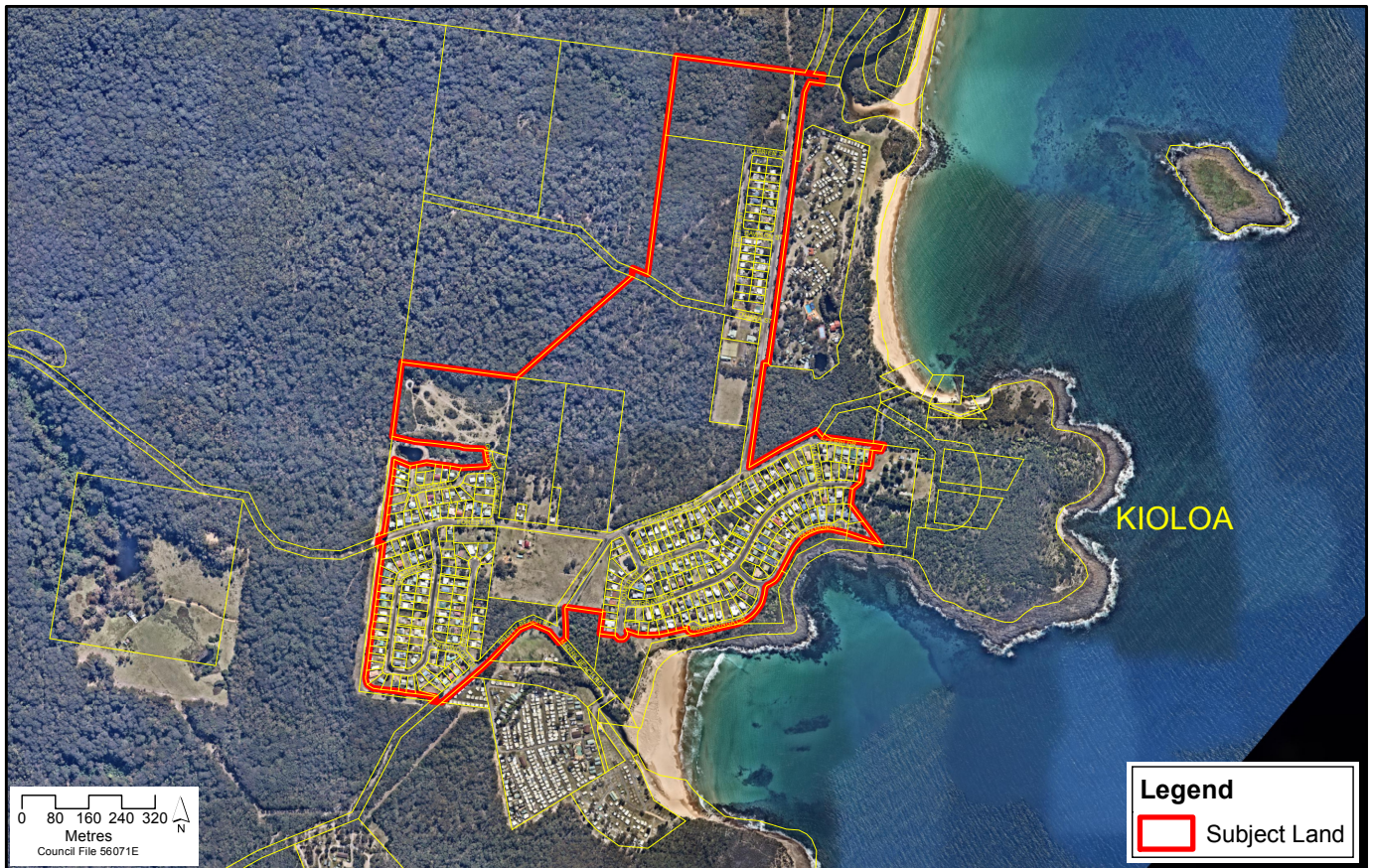
**Aerial Photo**



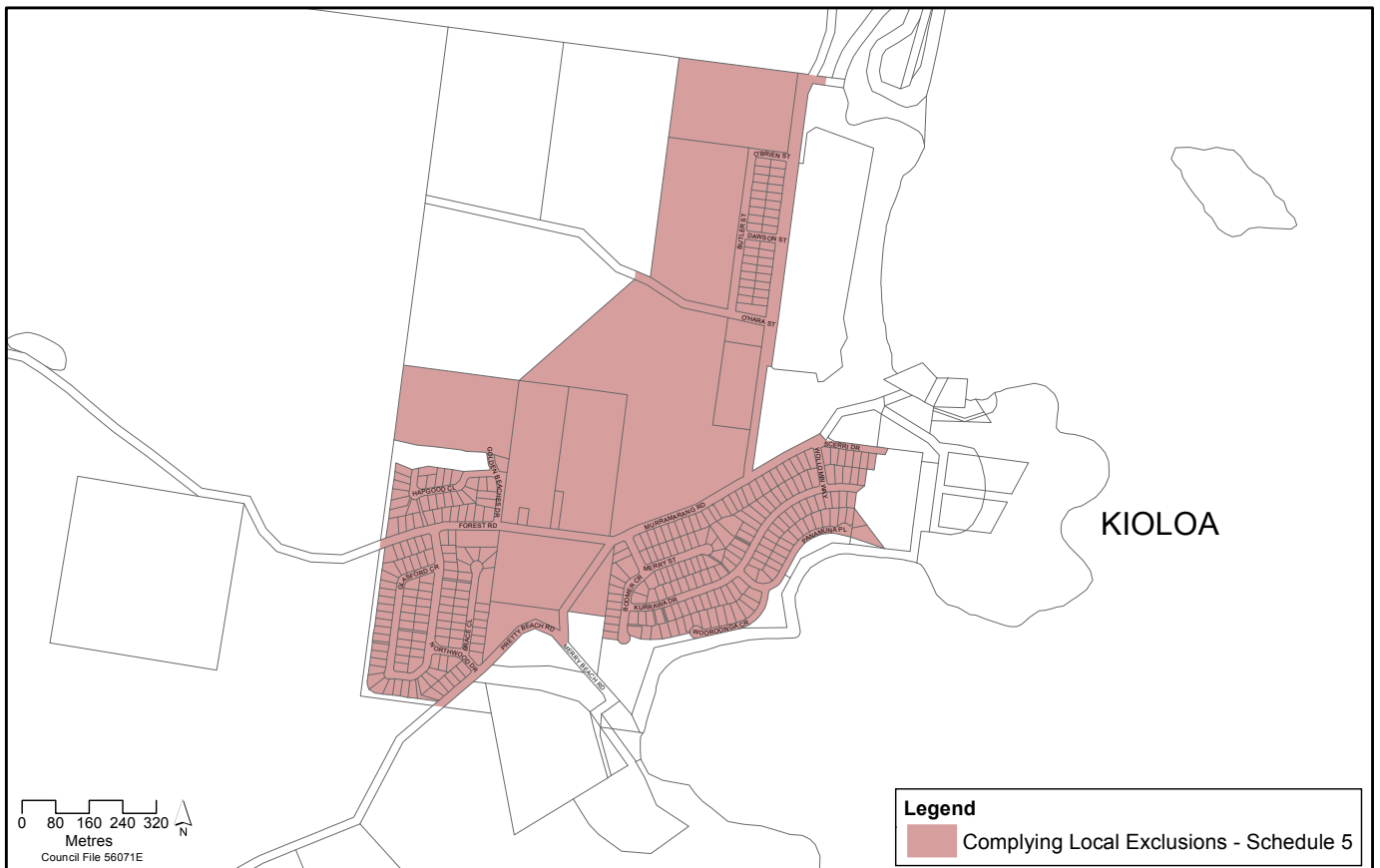
**Proposed Complying Local Exclusion Area**



**PP027**  
**Planning Proposal**  
**Proposed Codes SEPP Complying Local Exclusion Areas -**  
**Kioloa**



## Aerial Photo



### Proposed Complying Local Exclusion Area



## Proposed Codes SEPP Complying Local Exclusion Areas - Depot Beach & Durras North



### Aerial Photo



### Proposed Complying Local Exclusion Area

**Attachment C - Council report and minute, 2 April 2019**



## DE19.19 Draft Planning Proposal - Review of Subdivision Provisions - Shoalhaven LEP 2014

**HPERM Ref:** D19/59990

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Review of Subdivision Provisions Planning Proposal (PP027) (under separate cover)

### Purpose / Summary

Obtain endorsement to submit the Review of Subdivision Provisions Planning Proposal (PP027) to the NSW Department of Planning and Environment (DP&E) for a Gateway determination.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the Review of Subdivision Provisions Planning Proposal (PP027) (Attachment 1) and submit it to the NSW Department of Planning and Environment for a Gateway determination.
2. Following receipt of the Gateway determination, exhibit PP027 as per legislative and Gateway determination requirements.
3. Receive a further report following the conclusion of the public exhibition period.
4. Advise key stakeholders of this decision, including relevant Community Consultative Bodies and Development Industry representatives.

### 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 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. Further, medium density development in the localities of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach and Durras North which are subject to flooding, bushfire, isolation and servicing constraints, will also be better managed via the development assessment process following their proposed exclusion from Low Rise Medium Density Housing Code (the Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone the amendments to Shoalhaven LEP 2014. In this regard it is noted that this matter has already been the subject of two (2) Councillor briefing workshops and a forum with Development Industry representatives.

### 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. Further, medium density development in the localities of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach and Durras North may be considered under the complying development process, which raises concerns in relation to flooding, bushfire, isolation and servicing constraints.

## Background

Shoalhaven LEP 2014 includes a number of provisions relating to the subdivision of land which address the three main titling systems; Torrens, strata and community.

Following the commencement of Shoalhaven LEP 2014 in April 2014, there has been some concern that the current Torrens minimum lot size provisions are too large for certain approvable medium density development in urban zoned areas. In response, strata and community subdivision has increased in popularity as there are limited lot size restrictions for these titling options. Under Shoalhaven's current LEP provisions, relevant existing residential development in an R1, R2, B4 or SP3 zone can be strata or community subdivided with resulting lots being less than that prescribed by the relevant minimum lot size map.

Shoalhaven LEP 2014 also enables the Torrens subdivision of medium density development in relevant circumstances via a number of principal development standards in the plan as outlined in **Table 1**.

**Table 1: Medium density Torrens subdivision provisions in Shoalhaven LEP 2014**

Shoalhaven LEP 2014 Clause	Minimum lot size for subdivision						
4.1 Minimum subdivision lot size	Torrens only. As per the associated lot size maps. Subdivision can occur prior to development.						
4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Subdivision can only occur after development has been carried out.</p> <p>Dual occupancy:</p> <table border="1"> <thead> <tr> <th>Area identified on the lot size map</th><th>Minimum area</th></tr> </thead> <tbody> <tr> <td>Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigee, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.</td><td>350m<sup>2</sup></td></tr> <tr> <td>Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.</td><td>400m<sup>2</sup></td></tr> </tbody> </table> <p>Multi dwelling housing:</p> <ul style="list-style-type: none"> <li>R1 zone – 350m<sup>2</sup>.</li> </ul>	Area identified on the lot size map	Minimum area	Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigee, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	350m <sup>2</sup>	Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m <sup>2</sup>
Area identified on the lot size map	Minimum area						
Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigee, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	350m <sup>2</sup>						
Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m <sup>2</sup>						
4.1C Exceptions to minimum subdivision lot sizes for certain residential development	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Single application in the R1 zone that considers both:</p> <ul style="list-style-type: none"> <li>Subdivision of land into 3 or more lots; and</li> </ul>						

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>Erection of dwelling house, attached dwelling or semi-detached dwelling on each lot resulting from the subdivision where each lot is greater than 350m<sup>2</sup>.</li> </ul> |
|--|---|

Generally, it is unusual for medium density development to be Torrens subdivided at present under clause 4.1 of Shoalhaven LEP 2014. Torrens subdivision will usually occur under clause 4.1A or 4.1C depending on the land use type. Importantly, a subdivision of this nature occurs either after the development has been carried out, or where the subdivision and actual development is considered in a single application.

In June 2016, Council staff undertook a review to consider, in part, the appropriateness of Torrens, community and strata title subdivision of dual occupancy development. The review essentially concluded that the actual subdivision and its form does not change the appearance of development as it usually occurs later. However, consideration should be given to the timely inclusion of revised design controls in Shoalhaven Development Control Plan (DCP) 2014 to improve the standard of the finished development. As such, Council has recently adopted [Chapter G13](#) of Shoalhaven DCP 2014 which provides revised design provisions for medium density development (including dual occupancy development).

Inevitably most medium density development will be subdivided at some point and it would be unreasonable to not allow this, particularly given that the physical development exists in most cases. If there are limited restrictions for strata and community title subdivision, the inequity of not allowing Torrens subdivision is questioned. There appears to be little point in permitting medium density development in urban areas and not allowing its possible subsequent subdivision under the Torrens system, provided the relevant outcomes are met. As such, the draft planning proposal (PP) seeks to lift the restriction on the subdivision of medium density development via the Torrens system.

In response to removing Torrens restrictions for lawful medium density development, it is also considered prudent to set a minimum lot size prior to the erection of a medium density development to assist the outcome in this regard.

Thus, on 17 July 2017, Council's Development Committee resolved (MIN17.611) to prepare a PP to amend Shoalhaven LEP 2014 to facilitate this.

In setting minimum lot sizes, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned. The PP therefore proposes to also rezone certain R2 land to R5 Large Lot Residential. The exclusion of certain residential land from the Code was also explored and six villages are proposed for exclusion.

The intent and content of the PP has been refined following two Councillor workshops (15 October 2018 and 10 December 2018) and a Forum with key Development Industry representatives on 5 November 2018.

## Planning Proposal (PP027)

The draft PP (**Attachment 1**) intends to amend Shoalhaven LEP 2014 as outlined in **Table 2** below. The table contains a summary of each proposed change and related commentary. The draft PP contains further detail.

**Table 2: Explanation of PP027 Provisions – Shoalhaven LEP 2014**

Intended outcome	Commentary
<b>Instrument</b>	
Include a new sub clause in clause 4.1 to clarify that for the purpose of calculating the area of a battle-axe lot, an access handle is excluded	There is a need to clarify in the LEP that although the Lot Size Map specifies a minimum lot size for subdivision, the calculation of lot size for battle axe lots is to exclude the access handle.

from the calculation.	<p>The exclusion of access handles from the calculation of lot size ensures that lots have sufficient area to accommodate future development including requirements for setbacks, private open space, car parking etc. Battle-axe lots also do not benefit from the public open space (such as the nature strip) that lots fronting onto a road benefit from.</p> <p>Various Standard Instrument LEPs across NSW contain a similar subclause.</p>												
<p>Replace existing clause 4.1A 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.</p> <p>New clause 4.1A also seeks to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.</p>	<p>Following the review, the focus has changed from a minimum lot size for the resulting subdivision to a minimum lot size approach for the erection of medium density development.</p> <p>A minimum lot size for the ‘parent lot’ is proposed, as follows:</p> <table><tr><th>Column 1</th><th>Column 2</th><th>Column 3</th></tr><tr><td>Dual occupancy (attached)</td><td>Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village</td><td>500 square metres</td></tr><tr><td>Dual occupancy (detached)</td><td>Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village</td><td>700 square metres</td></tr><tr><td>Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building</td><td>Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village</td><td>900 square metres</td></tr></table> <p>The proposed clause 4.1A is similar to the NSW Government’s Standard Instrument model provision 4.1B Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings.</p> <p>The clause will also enable Council to respond to the Code, specifically clauses 3B.8, 3B.21 and 3B.33, by setting a minimum lot size which can be applied to medium density complying development.</p> <p>The proposed clause will also act to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development (excluding residential flat buildings).</p> <p><i>Note: The table does not include a minimum lot size for a dual occupancy (attached or detached) in the R3 zone to avoid conflict with current clause 4.1B. The purpose of clause 4.1B is to retain larger sites where</i></p>	Column 1	Column 2	Column 3	Dual occupancy (attached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	500 square metres	Dual occupancy (detached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	700 square metres	Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building	Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village	900 square metres
Column 1	Column 2	Column 3											
Dual occupancy (attached)	Zone R1 General Residential; Zone R2 Low Density Residential; Zone RU5 Village	500 square metres											
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Multi dwelling housing Multi dwelling housing (terraces) Manor house Residential flat building	Zone R1 General Residential; Zone R3 Medium Density Residential; Zone RU5 Village	900 square metres											

	<i>possible/relevant for higher density development and as such, existing clause 4.1B prescribes a <u>maximum</u> lot size for a dual occupancy development in the R3 zone.</i>
Amend clause 4.1C relating to dwellings, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots to 300m <sup>2</sup> .	<p>Clause 4.1C of Shoalhaven LEP 2014 enables the Torrens subdivision of dwellings, attached dwellings and semi-detached dwellings to a minimum lot size of 350m<sup>2</sup>, where there is a single application for both construction and subdivision (i.e. integrated development with 3 or more lots) in the R1 General Residential zone. This numerical standard is considered to be overly onerous in the R1 zone as it limits the ability to achieve the clause objective “to encourage housing diversity”.</p> <p>A reduction in the minimum lot size of resulting lots to 300m<sup>2</sup> would be more consistent with the Codes SEPP Subdivision Code, as well as a number of other comparable and surrounding council Standard Instrument LEPs (e.g. Eurobodalla, Goulburn-Mulwaree, Maitland).</p>
Include term ‘battle-axe’ in the Dictionary.	The proposed amendment to Clause 4.1 introduces the term “battle-axe lot” into Shoalhaven LEP 2014 for the first time. As such, it is considered important to define this term. A number of other Councils’ Standard Instrument LEP’s contain a similar definition.
<b>Mapping</b>	
Amend all relevant Lot Size Maps to remove the clause 4.1A layer.	The deletion of the clause 4.1A layer supports the deletion of existing clause 4.1A.
Rezone certain R2 Low Density Residential land in the following locations to R5 Large Lot Residential: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.	<p>In setting the minimum lot sizes in this regard, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned.</p> <p>The subject land in question was predominantly zoned for rural residential or low density residential under the previous Shoalhaven LEP 1985. These lots were characterised as having a limited range of permissible land uses and relatively large lot sizes. Through the draft Shoalhaven LEP 2009 process, the land was initially proposed to be zoned R5 Large Lot residential.</p> <p>All the land was however ultimately zoned R2 through the finalisation of SLEP 2014 predominantly due to Council’s concerns regarding the ability for landowners to clear their land. The Native Vegetation Act 2003 (NV Act) placed a number of restrictions on R5 land that were considered onerous. As a result of the recent Biodiversity Reforms, the NV Act has been repealed and there are generally fewer restrictions for clearing trees/vegetation on R5 land, than there are on R2 land. Refer to the “Risk Implications” section of this Report for further commentary.</p> <p>It is also 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 (4.2D(3)). This clause also considers replacement dwellings (4.2D(5)). It is intended that all lots would retain a dwelling entitlement in this regard.</p>

	<p>As the land continues to depict low density large lot characteristics, it is an appropriate time to reconsider the zoning of this land to maintain this character into the future.</p> <p>The proposed mapping can be viewed at Section 5 (Part 4) of the draft PP at <b>Attachment 1</b>.</p>
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The draft PP (**Attachment 1**) also intends to amend the Codes SEPP as outlined in **Table 3** below.

**Table 3: Explanation of PP027 Provisions – The Codes SEPP**

Intended outcome	Commentary
<p>Exclude certain land in the following locations from the Code via Schedule 5 ('Complying Local Exclusion' mapping):</p> <ul style="list-style-type: none"> <li>Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North.</li> </ul>	<p>It is considered that the Code is appropriate for application in the majority of Shoalhaven's 49 towns and villages; however, there are six locations subject to significant constraints, including flooding, bushfire, isolation and servicing constraints, that would benefit from an exclusion to the Code.</p> <p>This means that complying development for medium density forms of development could not be considered under the Code; however, medium density development may still be considered via the development applications stream.</p> <p>Detailed justification in support of the exclusion areas can be viewed at Section 3.2 of the draft PP at <b>Attachment 1</b>; and the proposed mapping can be viewed at Section 5 (Part 4).</p>

## Conclusion

The PP will enable the existing provisions in Shoalhaven LEP 2014 to be refined and brought in line with industry expectations, whilst responding to recent amendments to NSW Government medium density policy.

The recommendation will enable the PP to be submitted to DP&E for a Gateway determination.

## Community Engagement

### Preliminary Consultation

On 5 November 2018, Council staff held a Forum with key Development Industry representatives to gauge industry opinion regarding the scope of this PP. Of the 87 representatives invited, 13 attended (15%); with Councillors Digiglio, Watson and Gash also in attendance.

Following the Forum, a copy of the presentation was sent to all industry attendees providing further opportunity to consider the content and provide feedback. Three submissions were received as a result.

The matters raised in the Forum and subsequent submissions were discussed at the 10 December 2018 Councillor briefing, and have in part informed the intent and content of the PP.

### Public Exhibition

Subject to a favourable Gateway determination, the PP would be formally exhibited for comment in accordance with Council's Community Engagement Policy to 'inform' and 'consult', and the relevant legislative requirements. The documentation would be exhibited at the Nowra Administrative Building for a period of at least 28 days. Documentation would also be available on Council's website and at the Ulladulla Administrative Building.

The Gateway determination would also potentially specify any government agencies with whom Council must consult.

Community Consultative Bodies (CCBs) and Development Industry representatives would also be advised of the future formal exhibition arrangements. This will give the Development Industry (and others) a further opportunity to provide input in this regard before the matter is finalised.

### **Policy Implications**

The proposed new clause 4.1A represents a change in how medium density development and subdivision is considered in Shoalhaven. It is noted that the approach of setting a minimum lot size prior to medium density development is well documented throughout NSW and was generally supported by the Development Industry representatives who attended the 5 November 2018 Forum.

### **Financial Implications**

Based on the recommended approach, there are no immediate financial implications for Council as this matter is being resourced within the existing Strategic Planning budget.

### **Risk Implications**

#### Rezoning – Biodiversity

Approximately 45 (6%) of the 718 lots proposed to be rezoned to R5 are constrained by the NSW Office of Environment & Heritage's (OEH) [Biodiversity Values Map](#). Unlike R2 land, any R5 land identified as having Biodiversity Values may need to apply the Biodiversity Assessment Method (BAM) to assess the associated impacts. This will determine whether a proponent would be required to enter the Biodiversity Offsets Scheme (BOS) or not. Application of the BAM must be completed by an "accredited person" under the *NSW Biodiversity Conservation Act* and entry into the BOS may involve a cost and delay in processing for applicants, with any credits generated having to be "retired" prior to a development commencing. It is noted that a BAM assessment is not required if the development is located beyond the Biodiversity Values area identified on the Biodiversity Values Map. This is an important qualification and for this reason, the majority of the 45 lots should be relatively unaffected. A limited number of lots at Bangalee, Worrowing Heights and St Georges Basin are more heavily constrained by Biodiversity Values; however, it is likely that these lots would be captured by the other threshold levels (e.g. area clearing threshold and 'test of significance') which would result in the same outcome (i.e. application of the BAM and offsetting required). Note: A landowner may request that OEH review the Biodiversity Value layer of their land with sufficient justification.

Recently land in stage 1A of the Tallimba Road, Bangalee subdivision has been certified under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This means that land in this location now has an exemption from the *Biodiversity Conservation Act 2016* and future development will be assessed under the former planning provisions (i.e. NV Act and *Threatened Species Conservation Act 1995*). As such, this land will not be adversely impacted by the proposed rezoning.

#### Excluding certain land from the Code



There are six locations across Shoalhaven (Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North) that are subject to significant constraints, including flooding, bushfire, isolation and servicing constraints. The PP seeks to exclude these locations from the Code via Schedule 5 ('Complying Local Exclusion' mapping) which will enable associated risks to be more closely managed via the development assessment process.

# FOR ACTION

## DEVELOPMENT & ENVIRONMENT COMMITTEE

02/04/2019

TO: Coordinator - Policy Planning Team (Tague, Jenna)

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<b>Subject:</b>	Draft Planning Proposal PP027 - Review of Subdivision Provisions - Shoalhaven LEP 2014 - Gateway Determination - Public Exhibition
<b>Item Number</b>	DE19.19

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**RESOLVED** (Clr Findley / Clr Digiglio)

MIN19.210

That Council:

1. Endorse the Review of Subdivision Provisions Planning Proposal (PP027) (Attachment 1) and submit it to the NSW Department of Planning and Environment for a Gateway determination.
2. Following receipt of the Gateway determination, exhibit PP027 as per legislative and Gateway determination requirements.
3. Receive a further report following the conclusion of the public exhibition period.
4. Advise key stakeholders of this decision, including relevant Community Consultative Bodies and Development Industry representatives.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Levett, Clr Digiglio, Clr Alldrick, Clr Gartner, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**Attachment D - SEPP Checklist**

<b>SEPP</b>	<b>Name</b>	<b>Relevant</b>	<b>Not inconsistent</b>
1	Development Standards	✗	n/a
19	Bushland in Urban Areas	✗	n/a
21	Caravan parks	✗	n/a
33	Hazardous and Offensive development	✗	n/a
36	Manufactured home estates	✗	n/a
44	Koala habitat protection	✗	n/a
47	Moore Park Showground	✗	n/a
50	Canal estate development	✗	n/a
55	Remediation of land	✗	n/a
62	Sustainable aquaculture	✗	n/a
64	Advertising and signage	✗	n/a
65	Design quality of residential apartment development	✗	n/a
70	Affordable Housing (Revised Schemes)	✗	n/a
--	Aboriginal Land 2019	✗	n/a
--	Affordable Rental Housing 2009	✗	n/a
--	BASIX 2004	✗	n/a
--	Coastal Management 2018	✓	✓
--	Concurrences	✗	n/a
--	Educational Establishments and Child Care Facilities 2017	✗	n/a
--	Exempt and Complying Development Codes 2008	✓	✓
--	Gosford City Centre 2018	✗	n/a
--	Housing for Seniors or People with a Disability 2004	✗	n/a
--	Infrastructure 2007	✗	n/a
--	Kosciuszko National Park—Alpine Resorts 2007	✗	n/a
--	Kurnell Peninsula 1989	✗	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	✗	n/a
--	Miscellaneous Consent Provisions 2007	✗	n/a
--	Penrith Lakes Scheme 1989	✗	n/a
--	Primary Production and Rural Development 2019	✗	n/a
--	State and Regional Development 2011	✗	n/a
--	State Significant Precincts 2005	✗	n/a
--	Sydney Drinking Water Catchment 2011	✓	✓

--	Sydney Region Growth Centres 2006	✗	n/a
--	Three Ports 2013	✗	n/a
--	Urban Renewal 2010	✗	n/a
--	Vegetation in Non-Rural Areas 2017	✓	✓
--	Western Sydney Employment Area 2009	✗	n/a
--	Western Sydney Parklands 2009	✗	n/a

**Attachment E – S9.1 Directions Checklist***28 February 2019 Version*

Direction		Applicable	Relevant	Not inconsistent
<b>1 Employment and Resources</b>				
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
<b>2 Environment and Heritage</b>				
2.1	Environmental Protection Zones	✓	x	n/a
2.2	Coastal Management	✓	✓	See s.4.2.4
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
<b>3 Housing, Infrastructure and Urban Development</b>				
3.1	Residential Zones	✓	✓	See s.4.2.4
3.2	Caravan Parks and Manufactured Home Estates	✓	x	n/a
3.3	Home Occupations	✓	x	n/a
3.4	Integrating Land Use and Transport	✓	✓	See s.4.2.4
3.5	Development Near Regulated Airports and Defence Airfields	✓	✓	See s.4.2.4
3.6	Shooting Ranges	x	x	n/a
3.7	Reduction in non-hosted short term rental accommodation period	x	x	n/a
<b>4 Hazard and Risk</b>				
4.1	Acid Sulphate Soils	✓	✓	See s.4.2.4
4.2	Mine Subsidence and Unstable Land	x	x	n/a
4.3	Flood Prone Land	✓	✓	See s.4.2.4
4.4	Planning for Bushfire Protection	✓	✓	See s.4.2.4
<b>5 Regional Planning</b>				
5.1	Implementation of Regional Strategies	x	x	n/a
5.2	Sydney Drinking Water Catchments	✓	✓	See s.4.2.4



5.3	Farmland of State and Regional Significance on the NSW Far North Coast	x	x	n/a
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	x	x	n/a
5.9	North West Rail Link Corridor Strategy	x	x	n/a
5.10	Implementation of Regional Plans	✓	✓	See s.4.2.4
5.11	Development of Aboriginal Land Council land	x	x	n/a
<b>6 Local Plan Making</b>				
6.1	Approval and Referral Requirements	✓	x	n/a
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	x	x	n/a
<b>7 Metropolitan Planning</b>				
7.1	Implementation of A Plan for Growing Sydney	x	x	n/a
7.2	Implementation of Greater Macarthur Land Release Investigation	x	x	n/a
7.3	Parramatta Road Corridor Urban Transformation Strategy	x	x	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