

Planning Services

IRF19/2876

Gateway determination report

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Review of subdivision provisions (uncertain number of homes, 0 jobs)
NUMBER	PP_2019_SHOAL_003_00
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	Various localities across the LGA
DESCRIPTION	Various lots and DPs
RECEIVED	8 April 2019
FILE NO.	IRF19/2876
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to review subdivision provisions for residentially zoned land in the Shoalhaven local government area (LGA) under the Shoalhaven Local Environmental Plan (LEP) 2014. It also seeks to rezone certain land from R2 Low Density Residential to R5 Large Lot Residential and exclude certain land from the Low Rise Medium Density Housing Code via State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

The planning proposal was prepared in response to the code. Council was granted a 12-month deferral from the implementation of the code until 1 July 2019.

1.2 Site description

The planning proposal applies to the entire Shoalhaven LGA, specifically to land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and RU5 Village. The proposal affects land at Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worroving Heights, Bewong, St Georges Basin, Conjola Park, Milton and Lake Tabourie. The proposal also seeks to exclude certain land from the code at Greenwell Point, Kangaroo Valley, Bawley Point, Kiola, Depot Beach and Durras North (Figure 1, next page).

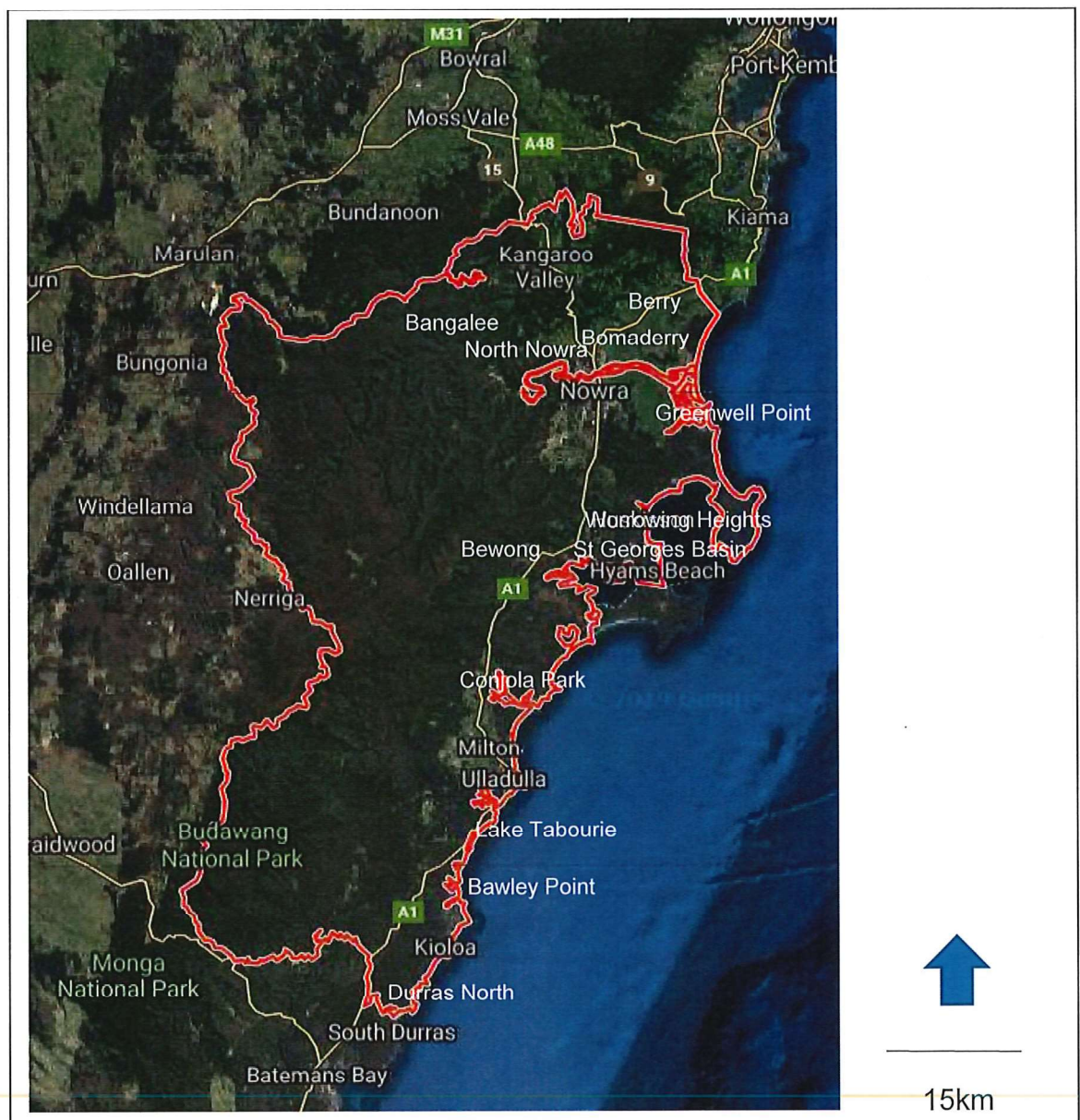


Figure 1: Site map (source: Google maps, 2019).

1.3 Existing planning controls

The planning proposal seeks to rezone 11 sites from R2 Low Density Residential to R5 Large Lot Residential. Current and proposed zoning maps extracted from the planning proposal are provided at **Attachment D**.

The following provisions of the LEP that relate to the development and subdivision of land for the purposes of dual occupancies and other medium-density development apply to the subject land:

Clause 4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing

This clause allows development consent to be granted:

- to the subdivision of land on which development for the purpose of dual occupancy has been carried out if the area of each resulting lot will be equal to or greater than 350m² (Area 1 on the lot size map) or 400m² (Area 2 on the lot size map). Area 1 applies to land located in 14 Shoalhaven urban areas including Bomaderry, Nowra and Ulladulla. Area 2 applies to land located in five urban areas including Shoalhaven Heads, Greenwell Point and Culburra. Further details are provided on page 12 of the planning proposal. An example lot size map is provided in Figure 2 (below).
- The clause also allows development consent to be granted for the subdivision of land in the R1 General Residential zone on which development for the purpose of multi-dwelling housing has been carried out if the area of each resulting lot will be equal to or greater than 350m².

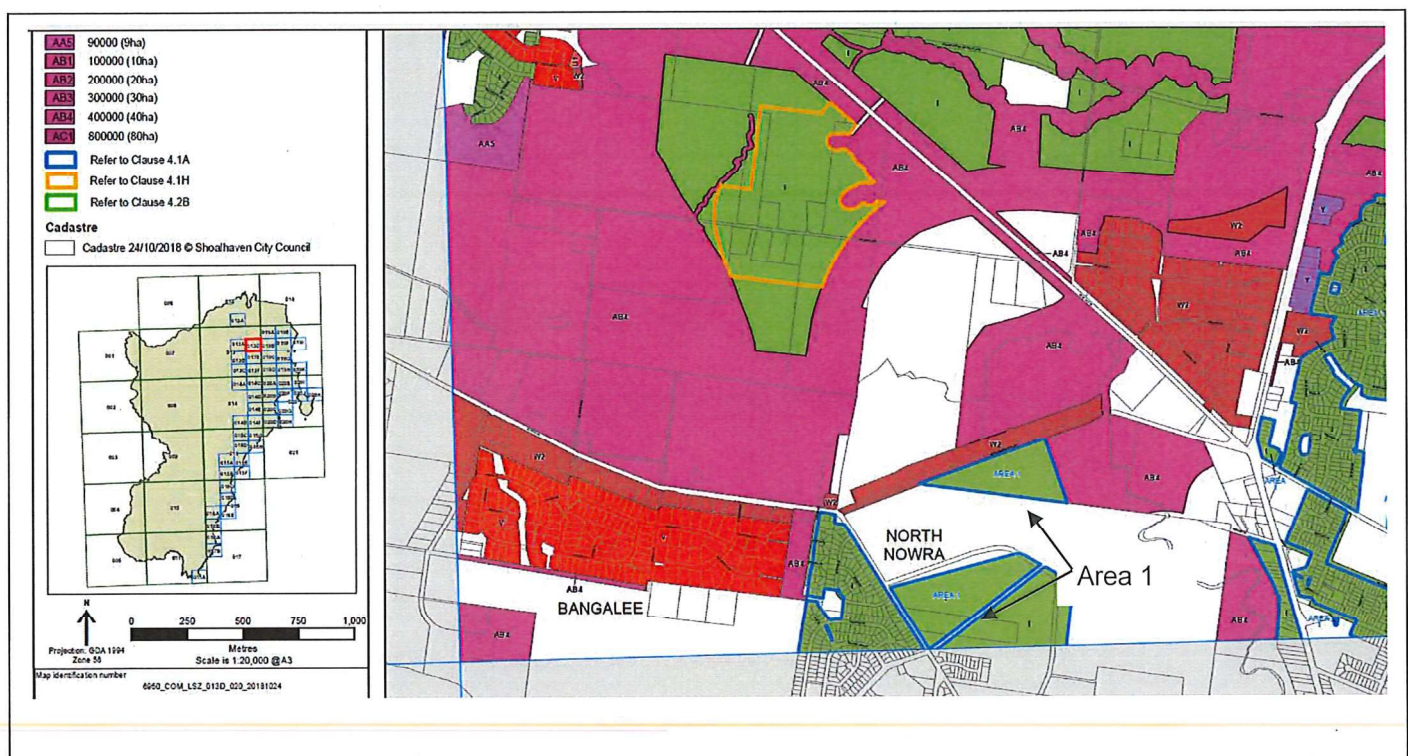


Figure 2: Current lot size map example (clause 4.1A) (source: extract from Lot Size Map LSZ_013D Shoalhaven LEP 2014).

Clause 4.1C Exceptions to minimum subdivision lot sizes for certain residential development.

This clause enables the Torrens subdivision of dwellings, attached dwellings and semi-detached dwellings to a minimum lot size of 350m² where there is a single application for both construction and subdivision (i.e. integrated development with three or more lots) in the R1 General Residential zone.

1.4 Surrounding area

The 11 sites proposed to be rezoned from R2 to R5 are generally small settlements surrounded by rural and/or environmental lands (**Attachment D**). The six settlements proposed to be excluded from the code are isolated rural or coastal villages that are surrounded by rural and/or environmental lands (**Attachment E**).

1.5 Summary of recommendation

With the exception of the proposal to exclude six small settlements from the operation of the Low Rise Medium Density Housing Code via schedule 5 of the Codes SEPP, the planning proposal is recommended to proceed with conditions for the following reasons:

- it addresses the terms of Council's 12-month deferred commencement from the code;
- it will facilitate medium-density housing supply and support the operation of the code in the Shoalhaven LGA;
- it will protect the current and proposed large-lot residential character of 11 sites in the LGA; and
- it is consistent with the Illawarra-Shoalhaven Regional Plan and local strategies, including the Shoalhaven Growth Management Strategy, the Nowra-Bomaderry Structure Plan and the Shoalhaven Affordable Housing Strategy.

The Minister for Planning and Public Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal seeks to amend the Shoalhaven LEP 2014 as follows:

- include a new subclause in clause 4.1 to clarify that when calculating the area of a battleaxe lot, an access handle is excluded from the calculation;
- replace 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 from 350m² to 300m²;
- include the term 'battleaxe' in the dictionary;
- amend all relevant lot size maps to remove the clause 4.1A layer; and
- 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; and Lake Tabourie.

The planning proposal also seeks to amend the Codes SEPP to exclude certain land in the following locations from the code: Greenwell Point; Kangaroo Valley; Bawley Point; Kioloa; Depot Beach; and Durras North.

It is considered that the stated objectives and intended outcomes provided in the planning proposal are clear. It is recommended that the Gateway determination be conditioned to require the removal of the proposed amendment to the Codes SEPP

from the stated objectives prior to exhibition as a policy position to exempt land under the Codes SEPP has not been made.

2.2 Explanation of provisions

The planning proposal provides a detailed explanation of the proposed provisions on pages 8–17, which in summary comprises the following amendments to the Shoalhaven LEP 2014:

Clause 4.1 Minimum subdivision lot size

- Insert a new subclause in clause 4.1 to make it clear that when a battleaxe block is created by subdivision, the area of the access handle is not to be included as part of the lot for the purpose of meeting any designated minimum lot size for the lot.
- Include a definition of 'battleaxe lot' in the dictionary, namely 'battleaxe lot means a lot that has access to a road by an access handle'.

It is considered that the explanation of the provision provided is clear and does not require amendment prior to exhibition. A similar provision and 'battleaxe lot' definition are included in several other councils' Standard Instrument LEPs, notably Ku-ring-gai, Liverpool, Penrith and Wollongong.

Clause 4.1A Exceptions to minimum lot size for dual occupancies and multi dwelling housing

- Delete clause 4.1A and replace with a similar clause 4.1B 'Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings'. The proposed minimum lot sizes are provided in Table 1.
- Remove clause 4.1A in the legend and overlay from all applicable lot size map sheets.

Table 1: Proposed minimum lot sizes for dual occupancy and multi-dwelling housing

Medium-density development	Applicable zone	Minimum lot size
Dual occupancy (attached)	R1 General Residential R2 Low Density Residential RU5 Village	500m ²
Dual occupancy (detached)	R1 General Residential R2 Low Density Residential RU5 Village	700m ²
Multi-dwelling housing Multi-dwelling housing (terraces) Manor house Residential flat building	R1 General Residential R3 Medium Density Residential RU5 Village	900m ²

It is considered that the explanation of provision provided is clear. The intent of the proposed provision is to set a minimum lot size for the parent lot instead of a minimum lot size for the resulting subdivision, similar to the approach taken in the Bathurst Regional LEP 2014. The proposed minimum lot sizes are also considered

to be suitable. Further assessment of the proposed minimum lot sizes is provided in section 3 of this report.

Council has advised that it considered mapping the minimum lot size on specific lot size maps similar to the approach in the Bathurst Regional LEP. However, based on feedback from two councillor workshops and one local development industry workshop, Council prefers to include the minimum lot sizes in table form in the proposed clause. Subject to Parliamentary Counsel's agreement, the Department supports Council's proposed approach as it eliminates the need to prepare mapping over large areas.

Clause 4.1C Exceptions to minimum subdivision lot sizes for certain residential development

- Amend Clause 4.1C(3)(b) to reduce the minimum subdivision lot size requirement for certain residential development from 350m² to 300m².

It is considered that the explanation of this provision is clear and does not require amendment prior to exhibition.

Council considers that the current 350m² standard is overly onerous in the R1 zone as it limits the ability to achieve the clause objectives to encourage housing diversity. It is considered that the proposed minimum subdivision lot size is appropriate.

Zone changes

- Rezone certain land identified on maps provided in section 5.1 of the planning proposal from R2 Low Density Residential to R5 Large Lot Residential.

It is considered that the explanation of this provision is clear and does not require amendment prior to exhibition. An assessment of the proposed rezonings is provided in section 4 of this report.

Exclusions from Codes SEPP

- Amend the Codes SEPP by excluding the following land from the Low Rise Medium Density Housing Code via Schedule 5 Land excluded from the Housing Code of the SEPP: Greenwell Point; Kangaroo Valley; Bawley Point; Kioloa; Depot Beach; and Durras North. These areas will be mapped as a 'complying local exclusion'.

Schedule 5 and clause 1.19(2) of the SEPP provide a mechanism, under certain circumstances, for excluding certain lands from the Housing Code, Inland Code and Low Rise Medium Density Housing Code. Several identified coastal risk planning areas in the Shoalhaven, such as Callala Bay and Mollymook Beach, are listed in schedule 5 as excluded land.

It is uncertain whether the amendment of schedule 5 of the SEPP is an appropriate mechanism to exclude land from the code as the Housing Code would also potentially be excluded under the schedule, which is not the intention of the planning proposal.

The Minister for Planning and Public Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

It is recommended that:

- the Gateway determination be conditioned to remove the proposal to exclude six small settlements from the code; and
- subject to the outcomes of the independent review Council consider applying separately to the Department to assess and consider the proposed exclusion from the code.

2.3 Mapping

The planning proposal includes amendments to 18 lot size maps and 11 zoning maps. It also proposes to include five 'complying local exclusion' area maps in schedule 5 of the Codes SEPP. The planning proposal provides current and proposed zoning maps and proposed complying local exclusion area maps. The maps provided in the planning proposal are considered to be clear. It is recommended that the proposed complying local exclusion maps are removed from the planning proposal prior to exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal states that it is the result of a citywide review of subdivision provisions undertaken by Council in June 2018. The review considered the appropriateness of Torrens, community and strata title subdivision and how the Shoalhaven LEP 2014 operates in this regard. The planning proposal also considers additional strategic work undertaken by Council to consider the relationship between the code and the LEP. Council considers that the planning proposal is the best and only means of achieving the intended outcome.

It is considered that the planning proposal is needed to improve medium-density development and subdivision in the Shoalhaven LEP and to address the terms of Council's 12-month deferred commencement of the code, which was provided to Council on 5 July 2018.

Council requested a deferment to:

- consider the implications of the code amendment to the Shoalhaven LGA and work towards preparing a planning proposal to insert minimum lot size provisions for certain medium-density development in the Shoalhaven LEP 2014; and
- prepare local character statements for each of Shoalhaven's 49 towns and villages and to include these in the Shoalhaven Development Control Plan (DCP) 2014.

It is considered that the proposed medium-density provisions provided in the planning proposal are largely a formalisation of existing DCP/LEP controls and/or comparable to relevant provisions of the code. A table comparing the proposed minimum lot sizes for medium-density development and proposed Torrens subdivision with those permitted under the code and Council's DCP provisions is provided overleaf.

Table 2: Comparison of medium-density housing provisions

Development	Minimum lot size			
	Dual occupancy	Manor houses	Multi-dwelling housing	Residential flat buildings
Proposed	500m ² (attached) 700m ² (detached)	900m ²	900m ²	900m ²
Low Rise Medium Density Housing Code	400m ² (if LEP doesn't specify)	600m ²	600m ² (if LEP doesn't specify)	
Current (DCP)	500m ² (attached) 700m ² (detached)	Nil	Nil	Nil
Torrens subdivision	Minimum lot size (resulting lot)			
	Dual occupancy	Manor houses	Multi-dwelling housing	Residential flat buildings
Proposed	300m ²			
Low Rise Medium Density Housing Code	300m ² (i.e. at least 60% of subdivision lot size for dual occupancies specified in the LEP)		200m ²	
Current (LEP)	350m ²			

The Department is satisfied that the planning proposal is unlikely to unreasonably restrict or impact on future medium-density housing development or subdivision in the Shoalhaven LGA.

To ensure this is the case, the Department has recommended Gateway conditions requiring Council to undertake quantitative analysis prior to public exhibition. This would require Council to assess the impact of the proposed controls on future housing supply and diversity by considering the number and lot sizes of all medium-density developments and associated Torrens subdivisions approved in the R1, R2, R3 and RU5 zones in the LGA in the past five years. A new savings and transition clause is also recommended to be inserted into the Shoalhaven LEP to ensure the proposed amendments do not affect any development applications or appeal processes.

As discussed in section 2 of this report, the Minister for Planning and Public Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

It is considered that a planning proposal is the appropriate mechanism to facilitate an amendment to the Shoalhaven LEP.

4. STRATEGIC ASSESSMENT

4.1 Regional

The planning proposal states that it is not considered inconsistent with the Illawarra-Shoalhaven Regional Plan, particularly Goal 2 – A variety of housing choices, with homes that meet needs and lifestyles, for the following reasons:

- The proposed change to clause 4.1A will increase the supply of medium-density development across residential areas in the LGA by allowing the subdivision of medium-density development (excluding residential flat buildings) that meets the minimum allotment size, which will increase housing flexibility and choice consistent with the following regional plan directions:
 - 2.1 – Provide sufficient housing supply to suit the changing demands of the region;
 - 2.2 – Support housing opportunities close to existing services, jobs and infrastructure in the region's centres; and
 - 2.3 – Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact.
- The proposed change to clause 4.1C will reduce the minimum lot size of resulting lots in relation to 'integrated housing development', which will enable more flexibility in development and subdivision opportunities and assist in achieving Directions 2.1–2.3 of the regional plan.

The Department supports Council's view that the proposed changes to clauses 4.1A and 4.1C will enable more flexibility in development and subdivision opportunities and will assist in achieving the regional plan directions 2.1–2.3.

- The planning proposal states that the proposed rezoning of 11 sites from R2 to R5 is not inconsistent with the regional plan because, although the rezoning will prohibit detached dual occupancies and 'switch off' the Low Rise Medium Density Housing Code for approximately 700 lots (1.5% of Shoalhaven's residentially zoned land), the capacity for housing in these areas will not be greatly impacted. Medium-density options would remain permissible, namely attached dual occupancy and secondary dwellings. Council considers that the R5 zone better reflects the predominantly rural-residential character of the subject areas.

It is considered that the proposed rezoning of land from R2 to R5 is not inconsistent with the regional plan or that any inconsistency is minor for the following reasons:

- an R5 zone is appropriate for the subject lands because it reflects their current and future intended local character, the lands are remote from town centres and adjoin bushland or agricultural land;
- the minimum lot sizes for dwelling houses are not proposed to change in the subject lands and so there will not be a significant impact on the supply of dwellings; and
- as the rezoning relates to only 1.5% of the LGA's residentially zoned land, it is of minor significance. The code will still apply to most of Shoalhaven's urban areas, including the Nowra-Bomaderry, Vincentia and Ulladulla areas, which are planned to accommodate most of the Shoalhaven's growth. These

larger settlements are more likely to attract, and are more appropriate for, medium-density development.

- The planning proposal states that the proposed exclusion areas from the Low Rise Medium Density Housing Code are not considered inconsistent with the regional plan because:
 - the subject areas are subject to significant constraints, including flooding, bushfire, local character, isolation and servicing. Council is concerned that these issues cannot be satisfactorily addressed via the complying development pathway for medium-density housing developments;
 - the exclusion is proposed to apply to 2020 residential lots, which is only 4.3% of all residentially zoned lots in the Shoalhaven;
 - the regional plan 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 of the plan);
 - while the proposed exclusion areas will slightly reduce development potential for medium density via complying development, medium-density development opportunities would remain via the development assessment process; and
 - Council supports the Low Rise Medium Density Housing Code in all of Shoalhaven's major centres including Nowra, Vincentia and Ulladulla, as well as remaining towns and villages.

As discussed in section 2 of this report, the Minister for Planning and Public Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

4.2 Local

The planning proposal states that it is consistent with the following local strategies:

Shoalhaven City Council's Community Strategic Plan

The planning proposal states that the proposal is consistent with Council's community strategic plan, specifically Theme 2 – Sustainable, liveable environments and Action 2.2 – Plan and manage appropriate sustainable development.

It is considered that the planning proposal is consistent with the community strategic plan because it will provide a strategic approach to medium-density housing across the LGA, which will provide sustainable liveable environments.

Shoalhaven Growth Management Strategy

The Shoalhaven Growth Management Strategy was prepared by Council in 2012 and endorsed by the Department in 2014. It manages the social and economic implications of growth in Shoalhaven while protecting and preserving the environmental values of the city.

The planning proposal states that it is not inconsistent with the strategy for the following reasons:

- the strategy identifies that several settlements subject to the planning proposal, namely Kangaroo Valley, Greenwell Point, Bawley Point, Depot Beach, North Durras and Kioloa, have significant development constraints including bushfire, flooding, servicing, local character and/or transport networks. Council considers that excluding these areas from the code is consistent with the strategy until detailed assessment and investigation can be undertaken to address these constraints;
- the strategy identifies that land proposed to be rezoned from R2 to R5 at Berry, Conjola Park and Lake Tabourie is large-lot residential in character; and
- medium-density opportunities will remain in all villages via the development assessment process. It is not expected that the proposed minimum lot sizes will affect the intent of the strategy.

The Department supports Council's view that the planning proposal is not inconsistent with the strategy for the following reasons:

- the planning proposal will implement the intent of the strategy to support medium-density development (up to 6700 dwellings), primarily from the redevelopment of existing urban areas within the Nowra-Bomaderry major regional centre and the Vincentia and Ulladulla regional centres; and
- the 11 areas identified in the planning proposal to be rezoned from R2 to R5 are not identified in the strategy for more intensive development.

Nowra Bomaderry Structure Plan

The Nowra Bomaderry Structure Plan was prepared by Council in 2006 and endorsed by the Department in 2008. It is a strategic plan for development and conservation of the Nowra-Bomaderry area.

The planning proposal states it is not inconsistent with the structure plan because the proposal will assist in achieving the goals of the plan by encouraging medium-density housing near commercial centres in the Nowra-Bomaderry area.

It is considered that the planning proposal is consistent with the structure plan because it will facilitate and encourage medium-density development in the Nowra-Bomaderry area.

Jervis Bay Settlement Strategy

The Jervis Bay Settlement Strategy was prepared jointly by Council and the Department of Planning, Infrastructure and Natural Resources in 2003. It provides a strategic framework to manage residential and rural-residential growth in the Jervis Bay area. It covers the settlements of Culburra Beach (southern part), Orient Point, Currarong, Callala Bay/Beach, Myola, Huskisson, Woollamia, Wrights/Bream Beach, Erowal Bay, Old Erowal Bay, Sanctuary Point, Basin View, Tomerong, Falls Creek, Vincentia, Hyams Beach, St Georges Basin and Worroving Heights.

The planning proposal states it is not inconsistent with the settlement strategy because it will facilitate medium-density development in towns and villages in the Jervis Bay area, which will provide a choice of living opportunities.

The Department supports Council's view that the planning proposal is not inconsistent with the strategy. It is considered that the planning proposal will support balanced future living opportunities, including medium-density development, and

protect the local character and values of the Jervis Bay area consistent with the aims and objectives of the settlement strategy.

The land proposed to be rezoned from R2 to R5 at St Georges Basin (approximately 31 lots) and Worrowing Heights (two lots) is not identified in the strategy for more intensive development.

Sussex Inlet Settlement Strategy

The Sussex Inlet Settlement Strategy was prepared by Council in 2007 and endorsed by the Department that year. It guides the conservation of the Sussex Inlet area and residential/rural-residential growth over the next 25 years.

The planning proposal covers the towns of Badgee, Sussex Inlet, Swanhaven, Cudmirrah and Berrara, which are located in the Sussex Inlet area.

The planning proposal states that it is not inconsistent with the strategy, which supports opportunities for appropriate urban consolidation and greater densities in the Sussex Inlet area to increase the range of housing choices available, particularly in convenient and appropriate locations.

The Department supports Council's view that the planning proposal is not inconsistent with the strategy. It is considered that the planning proposal will facilitate medium-density development in suitable locations and provide housing choice in the Sussex Inlet area. It is not proposed to rezone any areas or exclude the code from the Sussex Inlet area.

Milton-Ulladulla Structure Plan

The Milton-Ulladulla Structure Plan was prepared by Council in 1996. It establishes a set of principles to manage growth in the Milton-Ulladulla area. The planning proposal applies to the towns of Narrawallee, Milton, Mollymook Beach, Mollymook, Ulladulla, Kings Point, Burrill Lake and Dolphin Point. The planning proposal states that it is not inconsistent with the structure plan, which encourages medium density near centres and a variety of subdivision forms.

The Department supports Council's view that the planning proposal is not inconsistent with the plan. It is considered that the planning proposal will facilitate medium-density development and contribute to housing choice in the Milton-Ulladulla area.

The planning proposal would rezone land at Milton (41 lots) from R2 to R5 to reflect the current and planned large-lot residential character of the lots. The proposal is considered to be consistent with the plan's objective to protect scenic/landscape amenity in the area.

Shoalhaven Affordable Housing Strategy

The Shoalhaven Affordable Housing Strategy was prepared by Council in 2018. It promotes affordably priced housing in well-located areas (close to transport and services) within 400m–600m of the urban centres of Nowra-Bomaderry, Vincentia and Milton-Ulladulla.

The planning proposal states that it is not inconsistent with the strategy because it will facilitate Torrens title subdivision of medium-density development across all residential zones in Shoalhaven, which will contribute to housing choice, including affordable housing. The areas proposed to be rezoned from R2 to R5 or excluded from the code are generally not in accessible locations within 400m–600m of urban centres.

The Department supports Council's view that the planning proposal is not inconsistent with the strategy. It is considered that the planning proposal will facilitate

medium-density housing choice, including affordable housing, particularly in the Nowra-Bomaderry, Vincentia and Milton-Ulladulla urban areas.

4.3 Section 9.1 Ministerial Directions

The planning proposal states that it is consistent with the following section 9.1 Directions:

Direction 2.2 Coastal Management

The planning proposal identifies that it applies to a large number of residentially zoned lots across the Shoalhaven that are within the coastal zone. It states that it is consistent with the terms of this Direction because it is consistent with:

- the objectives of the *Coastal Management Act 2016* and the relevant coastal management areas;
- the NSW coastal management manual and associated toolkit;
- the NSW coastal design guidelines (2003); and
- the Shoalhaven Coastal Zone Management Plan 2018.

The planning proposal also states that it does not propose to rezone land to enable more intensive development on land within the coastal zone.

The Department supports Council's view that the planning proposal is consistent with this Direction. The planning proposal will not facilitate inappropriate development within the coastal zone.

Direction 3.1 Residential Zones

The planning proposal states that the proposal is not inconsistent with the terms of this Direction for the following reasons:

- the choice of medium-density building types is not expected to change significantly as a result of the planning proposal;
- the planning proposal does not affect the provision of housing that will make more efficient use of existing infrastructure and services;
- the planning proposal does not increase the consumption of land for housing on the urban fringe because significant medium-density opportunities are available across the Shoalhaven in infill and urban release areas;
- the planning proposal, by setting a minimum lot size for the parent lot, will ensure that the land is an appropriate size to facilitate well-designed medium-density development;
- satisfactory servicing arrangements are in place for all sites or can be resolved via the development assessment process; and
- the planning proposal does not seek to reduce the permissible residential density of the subject land.

The Department supports Council's view that the planning proposal is not inconsistent with this Direction. The sites proposed to be rezoned from R2 to R5 will still permit medium-density development options, namely attached dual occupancy and secondary dwellings. The current minimum lot sizes applying to the sites are not proposed to change under the planning proposal. It is considered that the planning proposal provides a strategic approach to medium-density development in suitable locations, taking into consideration local housing supply needs and local character.

Direction 3.4 Integrating Land Use and Transport

The planning proposal states that the proposal is not inconsistent with this Direction because it is consistent with the aims, objectives and principles of:

- Improving Transport Choice – Guidelines for planning and Development (2001) and;
- The Right Place for Business and Services – Planning Policy (2001).

The Department supports Council's view that the planning proposal is not inconsistent with this Direction. It is considered that the planning proposal will facilitate medium-density development in urban areas that are generally well serviced by public transport such as the Nowra, Bomaderry, Vincentia and Ulladulla areas.

Direction 3.5 Development Near Regulated Airports and Defence Airfields

The planning proposal states that this Direction applies because the proposal seeks to alter planning provisions for residential land near a defence airfield (HMAS Albatross). The planning proposal states that it is not inconsistent with this Direction because it meets the requirements for Defence aviation areas as it:

- does not seek to change the height controls around the HMAS Albatross airfield; and
- does not propose to allow development types that are incompatible with the current and future operation of the HMAS Albatross airfield.

The Department supports Council's view that the planning proposal is not inconsistent with this Direction. The planning proposal does not seek to increase the height or density of development near the HMAS Albatross airfield.

Direction 4.1 Acid Sulfate Soils

The planning proposal states that this Direction applies because land affected by the proposal is mapped as having acid sulfate soils. The planning proposal states that it is not inconsistent with this Direction because it does not seek to intensify land uses on the subject land in Shoalhaven's residential zones.

The Department supports Council's view that the planning proposal is not inconsistent with this Direction. Clause 7.1 Acid sulfate soils of the Shoalhaven LEP 2014 will continue to apply to land subject to the planning proposal to ensure that development does not disturb, expose or drain acid sulfate soil and cause environmental damage.

Direction 4.3 Flood Prone Land

The planning proposal states that this Direction applies because the proposal seeks to alter planning provisions for land that is identified as flood prone. The planning proposal states that it is not inconsistent with this Direction because it:

- is not inconsistent with the NSW Flood Prone Land Policy and Floodplain Development Manual;
- does not seek to rezone land to a residential, business, industrial, special use or special purposes zone; and
- does not contain provisions that apply to a flood planning area that permit development in floodway areas.

The Department supports Council's view that the planning proposal is not inconsistent with this Direction. Clause 7.3 Flood planning of the Shoalhaven LEP 2014 will continue to apply to land subject to the planning proposal to minimise the flood risk to life and property associated with the use of land.

Direction 4.4 Planning for Bushfire Protection

The planning proposal states that this Direction applies because the proposal affects land that is, or is near, land mapped as being bushfire prone.

The planning proposal states that it is not inconsistent with this Direction because:

- the proposal has regard to Planning for Bush Fire Protection 2006;
- it does not result in controls that place inappropriate developments in hazardous areas;
- it does not prohibit bushfire hazard reduction in an asset protection zone; and
- consultation will be undertaken with the NSW Rural Fire Service (RFS) following the issue of a Gateway determination.

Council is required to provide further information to demonstrate compliance with this Direction, including the outcomes of consultation with RFS.

It is recommended that the Secretary's delegate note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

Direction 5.2 Sydney Drinking Water Catchments

The planning proposal states that it applies to land at Kangaroo Valley that is within the mapped Sydney drinking water catchment. Council did not consult with WaterNSW on the planning proposal prior to lodgement as required under the terms of the Direction because Council considers that:

- the proposal will not adversely impact on water quality in the catchment;
- the proposed amendments to the Codes SEPP are likely to improve the management of sewerage capacity in the Sydney drinking water catchment; and
- the proposal is consistent with SEPP (Sydney Drinking Water Catchment) 2011 and the applicable strategic land and water capability assessment prepared by the Sydney Catchment Authority.

Council intends to consult with WaterNSW on the planning proposal following the issue of a Gateway determination.

Council is required to provide further information to demonstrate compliance with this Direction, including the outcomes of consultation with WaterNSW.

It is recommended that the Secretary's delegate note that the consistency with section 9.1 Direction 5.2 Sydney Drinking Water Catchments is unresolved and will require justification.

4.4 State environmental planning policies (SEPPs)

The planning proposal states that it is consistent with the following SEPPs:

SEPP (Coastal Management) 2018

As discussed in section 4.3 of this report, the planning proposal states that it applies to land in the coastal zone as defined by the *Coastal Management Act 2016* and therefore the Coastal Management SEPP applies. The SEPP provides matters that Council will need to consider when assessing development applications.

It is considered that the planning proposal is not inconsistent with the objectives of this SEPP as it will not facilitate inappropriate development in the coastal zone.

SEPP (Exempt and Complying Development Codes) 2008

The planning proposal states that the proposal to exclude six small isolated settlements from the Low Rise Medium Density Housing Code via schedule 5 of the SEPP is consistent with the SEPP for the following reasons:

- the areas proposed to be excluded are subject to significant constraints, including flood/evacuation, bushfire/evacuation, local character, isolation and servicing (sewerage), which Council considers cannot be effectively managed under the code and Subdivision Code;
- the proposed exclusion areas are consistent with the intent of the Codes SEPP and the mechanism available under schedule 5;
- only 2020 residential lots, which is 4.3% of the Shoalhaven's residential land, is intended to be excluded from the code through schedule 5; and
- general housing and medium density and its subdivision may still be considered in these areas via a development application.

The planning proposal provides detailed justification for the exclusion of each settlement from the code.

It is considered that the planning proposal is consistent with the Codes SEPP except the proposal to exempt land under the Codes SEPP as a policy position on this matter has not yet been made.

Otherwise, the proposal is consistent with the Codes SEPP because it supports the operation of the code in suitable locations in the Shoalhaven. As discussed in section 2 of this report, the Minister for Planning and Public Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

SEPP (Sydney Drinking Water Catchment) 2011

As discussed in section 4.3 of this report, the planning proposal applies to Kangaroo Valley, which is within the Sydney drinking water catchment. There are no provisions in this SEPP that directly apply to the planning proposal and therefore the proposal is not inconsistent with the SEPP. The SEPP requires that development applications must demonstrate a neutral or beneficial effect on water quality, which Council must address during the assessment of development applications.

It is considered that the planning proposal is consistent with the objective of the SEPP to protect water quality in the Sydney drinking water catchment.

SEPP (Vegetation in Non-Rural Areas) 2017

This SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of Shoalhaven and the amenity they provide. There are no provisions in the SEPP that directly apply to the planning proposal and therefore the proposal is not inconsistent with the SEPP. Development applications applying to urban-zoned land will need to consider the SEPP. The planning proposal also seeks to rezone land from R2 to R5, which will remove these areas from the application of the SEPP, which does not apply to land zoned R5.

It is considered that the planning proposal is not inconsistent with this SEPP. Biodiversity on land proposed to be rezoned to R5 Large Lot Residential will be protected via the *Biodiversity Conservation Act 2016*.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal states that the social impacts of the proposal are minimal. The proposal will have a positive social impact by facilitating medium-density housing opportunities in the Shoalhaven area and protecting the large-lot character in areas proposed to be rezoned from R2 to R5.

It is considered that the planning proposal will have a positive social impact by facilitating medium-density housing supply in suitable locations in the Shoalhaven LGA. The planning proposal will also protect the large-lot residential character of 11 sites in the Shoalhaven.

5.2 Environmental

The planning proposal states that it is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats as most affected lots have been developed for residential purposes. The planning proposal indicates that biodiversity located on land proposed to be rezoned from R2 to R5 would be protected under the *Biodiversity Conservation Act 2016*. Council proposes to consult the Office of Environment and Heritage regarding the protection of biodiversity on this land.

It is considered that the planning proposal will not have a negative environmental impact because lands affected by the proposal are zoned or developed for residential purposes. The proposed zoning of land from R2 to R5 will protect the large-lot character and environment of that land.

5.3 Economic

The planning proposal states it will have a minimal economic impact. The rezoning of sites from R2 to R5 will prohibit certain land uses (e.g. dual occupancy (detached)) but on balance, a large range of land uses will continue to be permissible including dual occupancy (attached) and secondary dwellings.

The planning proposal states that it will have a positive economic impact, namely:

- the proposal will support the supply of medium-density housing in the Shoalhaven LGA, which will assist with housing affordability;

- while the proposed rezoning of land from R2 to R5 will switch off the code to 700 residential lots, this is considered to be minor in the context of the entire LGA. The code will apply to most of Shoalhaven's urban areas, including the Nowra-Bomaderry, Vincentia and Ulladulla areas; and
- the exclusion of the code from identified areas that have complex flood, bushfire, local character and sewerage capacity issues will ensure that these issues are adequately assessed and managed via the development assessment pathway so that life, property and the environment are protected.

It is considered that the planning proposal will have a positive economic impact by facilitating medium-density housing supply in the Shoalhaven LGA, including areas planned to accommodate the majority of growth namely Nowra, Bomaderry, Vincentia and Ulladulla.

6. CONSULTATION

6.1 Community

Council proposes to exhibit the planning proposal for 28 days, notify the community of the exhibition in local newspapers, and place the exhibition materials on Council's website and at its administration buildings in Nowra and Ulladulla. It is considered that Council's proposed consultation on the planning proposal is appropriate.

6.2 Agencies

Council proposes to consult with RFS, WaterNSW and the Office of Environment and Heritage on the planning proposal. It is considered that the proposed agency consultation is appropriate.

7. TIME FRAME

Council proposes to finalise the planning proposal process and complete an LEP by November–December 2019. It is considered that Council's proposed time frame to complete the planning proposal process is appropriate and a six month time frame should be provided.

Council has sought a further 12-month deferred commencement of the code to enable completion of its planning proposal.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not requested to be the local plan-making authority because the planning proposal proposes to amend the Codes SEPP. It is considered that as it is proposed to amend the Codes SEPP and the proposal relates to the implementation of a statewide policy, it is not appropriate for Council to be the local plan-making authority.

9. CONCLUSION

With the exception of the proposal to exclude six small settlements from the operation of the code via schedule 5 of the Codes SEPP, the planning proposal is recommended to proceed with conditions because:

- it addresses the terms of Council's 12-month deferred commencement from the code;

- it will facilitate medium-density housing supply and support the operation of the code in the Shoalhaven LGA particularly the Nowra, Bomaderry, Vincentia and Ulladulla areas, which are planned to provide most of Shoalhaven's medium-density housing growth;
- it will protect the current and proposed large-lot residential character of 11 sites in the LGA; and
- it is consistent with the Illawarra-Shoalhaven Regional Plan and local strategies, including the Shoalhaven Growth Management Strategy, the Nowra Bomaderry Structure Plan and the Shoalhaven Affordable Housing Strategy.

The Minister for Planning and Open Spaces has requested an independent review to assess progress on the code to date, identify impediments to the code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the code's implementation. It would be inappropriate to prejudge the outcomes of the review. A Gateway condition is recommended requiring Council to remove the matter from the planning proposal.

10. RECOMMENDATION

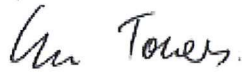
It is recommended that the delegate of the Secretary:

1. note that consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - WaterNSW; and
 - Office of Environment and Heritage.
3. The time frame for completing the LEP is to be six months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.
5. The planning proposal is to be updated prior to consultation to:
 - (a) remove the proposal to exclude land at Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach and Durras North from the Low Rise Medium Density Housing Code in the Codes SEPP;
 - (b) provide quantitative analysis and assess the impacts of the proposal on future housing supply and diversity as follows but not limited to:
 - i. the total area of land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and RU5 Village in the local government area;

- ii. the number and lot sizes of medium-density housing developments and associated Torrens subdivisions approved in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and RU5 Village zones in the LGA in the past five years; and
- (c) include a new savings and transition clause to ensure the proposed amendments do not affect any development applications or appeal processes.



19/6/19

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19/6/19

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