

Planning and Assessment

IFR19/7700

Gateway determination report

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Various housekeeping amendments regarding heritage
NUMBER	PP_2019_SHOAL_007_00
LEP TO BE AMENDED	Shoalhaven Local Environmental Plan 2014
ADDRESS	Various (refer to Attachment A)
DESCRIPTION	Various (refer to Attachment A)
RECEIVED	2 December 2019
FILE NO.	IRF19/7700
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 amend the Shoalhaven Local Environmental Plan 2014 by making various heritage-related housekeeping amendments and adding new and amended heritage items.

The amendments are predominantly administrative and have been progressively identified by Council since the commencement of the Shoalhaven LEP in 2014 through its regular housekeeping review process.

1.3 Site description

The planning proposal applies to approximately 172 heritage items identified throughout the Shoalhaven local government area.

A detailed site description (address, locality and property description) of each item is provided in Part 2 of the planning proposal (refer to Attachment A).

1.4 Existing planning controls

The planning proposal seeks to amend Schedule 5 (Environmental heritage) of the Shoalhaven LEP and the associated heritage maps.

Schedule 5 and the associated heritage maps identify the heritage items, conservation areas and archaeological sites requiring protection through clause 5.10 (heritage conservation) of the Shoalhaven LEP.

1.5 Summary of recommendation

It is recommended that the planning proposal proceed as submitted as it is consistent with local and regional strategic planning objectives to protect heritage.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal are to update Schedule 5 of the Shoalhaven LEP (and the associated heritage mapping) to:

- correct a range of administrative errors and anomalies such as (but not limited to):
 - items incorrectly identified or described;
 - incorrect property descriptions and addresses;
 - mapping errors; and
 - inconsistencies with other heritage items.
- add new items and new components of existing items, including:
 - new components to existing heritage items 202 (Lady Denman heritage complex) and 215 ('Bundanon' homestead);
 - additional listing for existing heritage item 407 (Inter-war Weatherboard Building and Timber Wharf) as an archaeological site known as Nowra Wharf (item A8);
 - listing a new heritage item known as the Chinaman's Island Cottage Group (item 540); and
 - listing a new archaeological item known as the Chinaman's Island timber railway remains (item A7).

A detailed description of each item and all the proposed changes is provided in Part 2 of the planning proposal (refer to Attachment A).

The objectives are clearly explained, and a planning proposal of this nature is the best and only means of achieving the intended outcomes.

2.2 Explanation of provisions

Part 2 of the planning proposal is clear in identifying that Schedule 5– Environmental Heritage and the relevant heritage maps in the Shoalhaven LEP will require amendment to achieve the objectives and intended outcomes of the planning proposal.

2.3 Mapping

Part 2 of the planning proposal includes drafts of the maps requiring amendment which are considered adequate for the purposes of public exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is needed to fix administrative errors and anomalies regarding heritage items listed in Schedule 5 of the Shoalhaven LEP.

These amendments have been progressively identified by Council since the commencement of the Shoalhaven LEP in 2014 through its regular housekeeping review process.

The planning proposal is also needed to protect the heritage significance of new items and new components of existing items. Heritage Assessments (and associated Statements of Significance) are attached to the planning proposal to support the proposed new and amended listings.

The Department is supportive of proposals to protect local heritage items identified by Councils in line with local and regional strategic planning objectives

A planning proposal of this nature is the best and only means of achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 Illawarra Shoalhaven Regional Plan

The Illawarra Shoalhaven Regional Plan applies to land in the Shoalhaven local government area (LGA).

Council has identified the following relevant direction and action from the Regional Plan:

- Direction 3.4: Protect the Region's Cultural Heritage.
 - Action 4.3.1: Conserve heritage sites when preparing local planning controls.

Council considers the planning proposal to be consistent with the above as it will strengthen the identification of heritage items in the Shoalhaven LGA.

The Department agrees the planning proposal is consistent with heritage protection and conservation objectives of the Regional Plan.

4.2 Local

Council has advised the planning proposal is not the direct result of any specific local strategic planning study or report but rather the proposed amendments have been progressively identified by Council since the commencement of the Shoalhaven LEP in 2014 through its regular housekeeping review process. However, Heritage Studies have been prepared for the proposed new or revised items.

Shoalhaven City Council Community Strategic Plan

Council considers the planning proposal to be consistent with key themes and priorities identified in its Community Strategic Plan as follows:

- Theme 2: Sustainable, Liveable Environments
 - Priority 2.2: Plan and manage appropriate and sustainable development
- Theme 3: Prosperous Communities
 - Priority 3.1: Maintain and grow a robust economy with vibrant towns and villages.
- Theme 4: Sustainable, Liveable Environments
 - Priority 4.3: Inform and engage with the community about the decisions that affect their lives

Council considers the identification and preservation environmental heritage items will enable Council and the community to make informed and appropriate development decisions relating to heritage items within Shoalhaven. This would also positively contribute to the vibrancy of towns and villages within Shoalhaven.

Local Planning Strategies

Council also considers the planning proposal to be consistent with key local planning strategies, including:

- Shoalhaven Growth Management Strategy;
- Nowra Bomaderry Structure Plan;
- Jervis Bay Settlement Strategy;
- Milton Ulladulla Structure Plan; and
- Sussex Inlet Settlement Strategy.

The Department is satisfied the planning proposal is consistent with heritage conservation objectives contained in the abovementioned documents.

4.3 Section 9.1 Ministerial Directions

Section 4.2.4 and Attachment I of the planning proposal lists applicable section 9.1 Directions and Council does not consider that the proposal is inconsistent with relevant Directions.

Directions of particular relevance are discussed below:

Direction 2.3 – Heritage Conservation

This Direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The Direction states (inter alia) planning proposals must contain provisions to facilitate the conservation of heritage items and/or precincts.

The planning proposal seeks to protect the heritage significance of items in the Shoalhaven LEP which have been identified by Council in line with local and regional strategic planning objectives. Heritage assessments have been provided for the proposed new items.

The proposal is therefore considered to be consistent with this Direction.

Direction 3.1 Residential Zones

This Direction applies to planning proposals affecting residential zones and other zones on which significant residential development is permitted or proposed.

The Direction aims to encourage housing to meet local demand, ensure new housing makes efficient use of existing infrastructure and services and minimise the impact of residential development on the environment.

The proposed heritage controls may somewhat restrict design and development of property in residential zones. However, these potential impacts are considered to be outweighed by the need to protect the heritage value of items in line with local and regional strategic planning objectives.

The Secretary's delegate may therefore be satisfied that any potential inconsistency with this Direction is of minor significance.

Direction 4.4 Planning for Bushfire Protection

The planning proposal affects land mapped as bushfire prone.

Consultation has not occurred with the NSW Rural Fire Service (NSW RFS) and consistency with Direction 4.4 remains unresolved at this stage. A Gateway condition has therefore been recommended requiring consultation the NSW RFS.

Direction 5.2 Sydney Drinking Water Catchment

This Direction aims to protect water quality in Sydney's Drinking Water Catchment. The planning proposal affects land at Kangaroo Valley and Sassafras which falls within the drinking water catchment area.

This Direction requires consultation with the Sydney Catchment Authority (now Water NSW) prior to Gateway determination.

Council considers the planning proposal is unlikely to adversely impact on water quality noting the proposed amendments are of minor significance (predominantly administrative).

Notwithstanding this, the planning proposal is currently inconsistent with the Direction because Council has not yet consulted with Water NSW. It is recommended that Council consult with Water NSW and provide further information demonstrating it has addressed the requirements of this Direction, prior to finalising the planning proposal.

Direction 5.10 Implementation of Regional Plans

This Direction gives legal effect to the vision, directions and actions contained in regional plans. Planning proposals must be consistent with the relevant Regional Plan.

As identified earlier in this report, the planning proposal is consistent with the Illawarra Shoalhaven Regional Plan and therefore with this Direction.

4.4 State environmental planning policies (SEPPs)

Key relevant SEPPs have been identified and addressed Attachment H of the planning proposal.

The Department is satisfied the proposed is not inconsistent with applicable SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and Economic

Council considers the planning proposal would result in positive social and economic impacts by providing clarity around identification of heritage items in the Shoalhaven.

This would improve social and cultural connection to these items in the community, increase the potential for heritage-related tourism and provide development certainty around heritage protection.

Like other planning controls, heritage controls do have the potential to restrict the freedom of landowners to do what they like with their property, potentially causing negative economic impacts.

Some individual economic and social impact is considered reasonable bearing in mind the broader public benefit of protecting identified heritage items in the Shoalhaven. It is also noted that some economic loss can be balanced with opportunities for external funding through heritage grants and conservation incentives.

5.2 Environmental

Environment

Council has advised the planning proposal is predominantly administrative in nature and is unlikely to result in any adverse impacts on the environment. Potential environmental impacts would be considered in detail as part of future development application assessments for identified sites.

Heritage

The Department has reviewed the heritage assessments and associated Statements of Significance provided in support of the planning proposal and is supportive of proposals to protect local heritage items and conservation areas identified by Councils. Land owners will have the ability to comment on the proposal during the consultation period.

5.3 Infrastructure

The planning proposal would not result in any additional public infrastructure burden.

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 a notice on Council's website. It is considered that Council's proposed consultation on the planning proposal is appropriate.

Considering the potential social and economic impacts of the proposal, the Department has recommended a Gateway condition requiring Council to write to all landowners (and immediately adjoining landowners) of the proposed new heritage items listed in the second dot point in Section 2.1 of this report providing notice of the proposal and public exhibition and explaining the effects of the proposed changes.

6.2 Agencies

Council proposed to consult the following government agencies on the planning proposal:

- Water NSW;
- NSW Rural Fire Service;
- Heritage Division, Department of Premier and Cabinet; and
- Biodiversity and Conservation, Department of Planning, Industry and Environment (DPIE).

Consultation with these agencies is considered appropriate and a Gateway condition has been recommended accordingly.

The Department also requires consultation with its Division of Crown Lands who is the landowner of Chinaman's Island. It is noted that Crown Lands has provided preliminary consultation advice to Council advising it does not support the proposed heritage listing of cottages on Chinaman's Island. Crown Lands strategic planning is to remove the cottages in accordance with the permissive occupation conditions and to rehabilitate the sites.

It is recommended the Department retain plan making function to allow independent finalisation of the proposal taking into consideration all views (refer to Section 8 of this report).

7. TIME FRAME

Council has sought a nine-month timeframe to finalise and notify the plan. It is recommended that a 12-month timeframe be granted to provide a buffer should any unforeseen issues arise through the process. This will also allow time for the Department to finalise the plan.

8. LOCAL PLAN-MAKING AUTHORITY

The Department has considered Council's request to be the local plan-making authority. While the proposed listing of local heritage is primarily a local matter, it has been determined not to condition the Gateway for Council to be the local plan-making authority for the following reasons:

- there is a dispute between at least one landowner (Crown Lands, DPIE) and Council in relation to the heritage listing; and
- retaining the plan making function will allow the Department to independently finalise the proposal taking into consideration all views.

9. CONCLUSION

The planning proposal is consistent with local and regional strategic planning objectives to protect heritage.

It is therefore recommended that the planning proposal should progress as submitted.

10. RECOMMENDATION

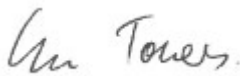
It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 3.1 Residential Zones is minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection and Direction 5.2 Sydney Drinking Water Catchment remain 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. As part of the public exhibition, Council shall write to all landowners (and immediately adjoining landowners) of the proposed new and amended heritage items referred to in Section 3.3 of the planning proposal providing notice of the proposal and public exhibition and explaining the effects of the proposed changes.
3. Consultation is required with the following public authorities:
 - Water NSW;

- NSW Rural Fire Service;
 - Heritage Division, Department of Premier and Cabinet;
 - Biodiversity and Conservation, DPIE; and
 - Crown Lands, DPIE.
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.



19/12/19

Graham Towers
Team Leader, Southern Region



20/12/19

Sarah Lees
Director, Southern Region
Local and Regional Planning

Assessment officer: Andrew Hartcher
Senior Planner, Southern Region
Phone: 4247 1823