

PLANNING PROPOSAL – PP063

Shoalhaven Local Environmental Plan 2014

Lot 1 DP 1257338 – Moss Vale Rd,
Kangaroo Valley

Shoalhaven LEP Clause 7.25 amendment to
enable Strata sub-division of multi-dwelling
housing lot

Prepared by
City Future Directorate
Shoalhaven City Council

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Table of Contents

1	Introduction	5
1.1	Subject Land.....	5
1.2	Background – Clause 7.25.....	8
2	Part 1 –Intended Outcome	13
3	Part 2 – Explanation of Provisions.....	14
4	Part 3 – Justification	15
4.1	Need for the Planning Proposal (Section A).....	15
4.1.1	Is the Planning Proposal a result of any strategic study or report?	15
4.1.2	Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	15
4.2	Relationship to strategic planning framework (Section B)	15
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)?	15
4.2.2	Is the Planning Proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?	15
4.2.3	Is the Planning Proposal consistent with applicable state environmental planning policies?	16
4.2.4	Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?	16
4.3	Environmental, Social and Economic Impact (Section C)	21
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?	21
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?	21
4.3.3	How has the Planning Proposal adequately addressed any social and economic effects?	21
4.4	State and Commonwealth Interests (Section D)	21
4.4.1	Is there adequate public infrastructure for the Planning Proposal?	21
4.4.2	What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	21
5	Part 4 – Mapping.....	22
6	Part 5 - Community Consultation.....	23
7	Part 6 – Project Timeline	23
8	Attachments	23

Figures

Figure 1. Location Map	5
Figure 3. Subject Land.....	6
Figure 4. Aerial Photo	7
Figure 5. Current Land Use Zones (SLEP 2014)	8
Figure 6. Clauses map (SLEP 2014)	9
Figure 7. Extracts from Deposited Plans with red outline demonstrating Lot 14 DP 773481	10
Figure 8. Extract from the stamped approved plans	11

Appendices

A	Evaluation criteria for the delegation of plan making functions
B	Council report and minute, 5 October 2021
C	Consistency with State Environmental Planning Policies
D	Consistency with Local (s9.1) Planning Directions
E	Consistency with Council's Local Strategic Planning Statement
F	Gateway determination, 29 November 2021

1 Introduction

This proponent-initiated Planning Proposal (PP063) seeks to amend Clause 7.25 (Additional Local Provision) of Shoalhaven Local Environmental Plan 2014 (SLEP 2014) which applies to part of Lot 1 DP 1257338, Moss Vale Road, Kangaroo Valley.

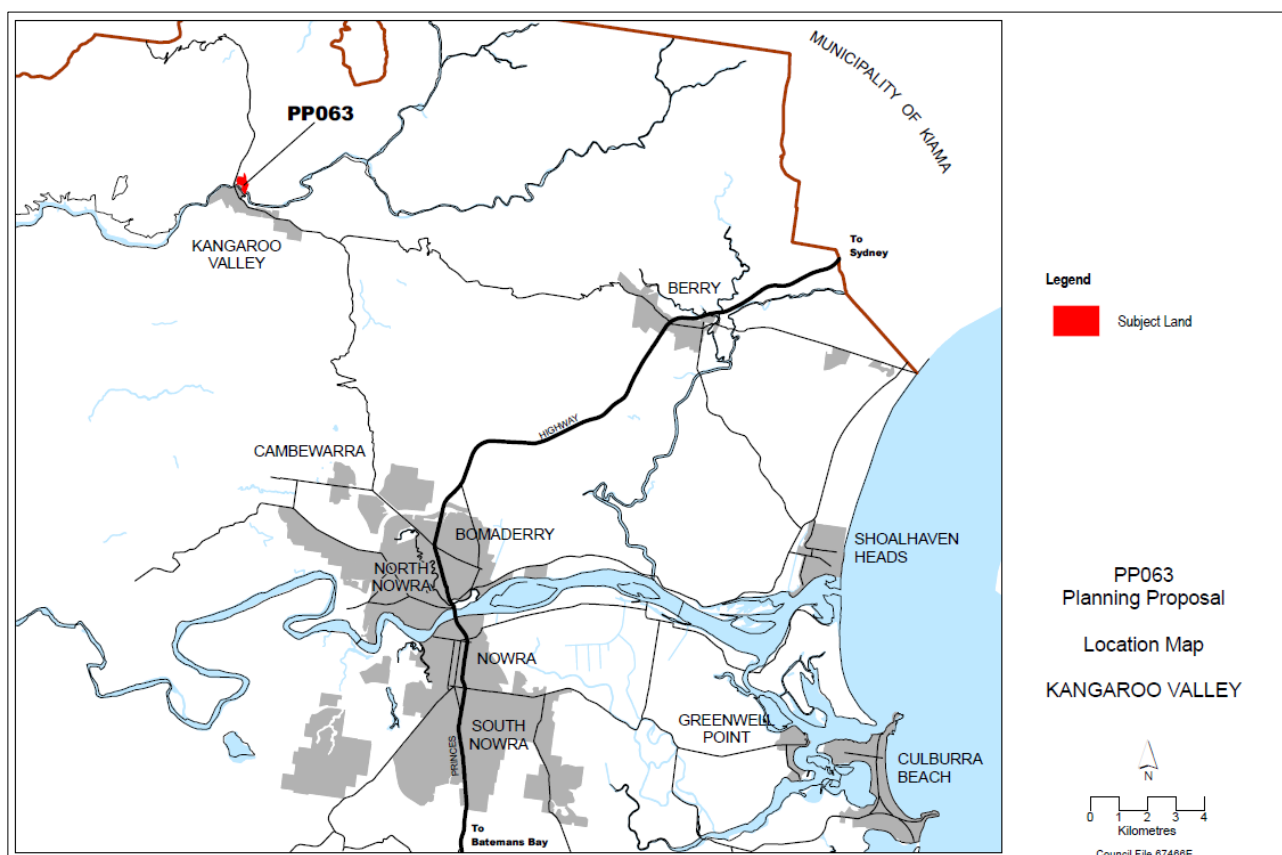
The request seeks to allow the future multi dwelling housing lot (that is already permissible under CI 7.25) to be Strata subdivided, so that the dwellings can be individually owned. No additional dwelling entitlements are sought.

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

It is requested that Council be given delegation for plan making functions for this PP. The evaluation criteria for delegation are provided in **Attachment A**.

1.1 Subject Land

The subject land is part Lot 1 DP 1257338, Moss Vale Road, Kangaroo Valley. Lot 1 currently comprises 16.18 hectares (ha) and is located on the eastern side of Moss Vale Road, immediately north of the Kangaroo River at Kangaroo Valley. A site location map is provided in Figure 1 and the subject land is shown in Figure 2.



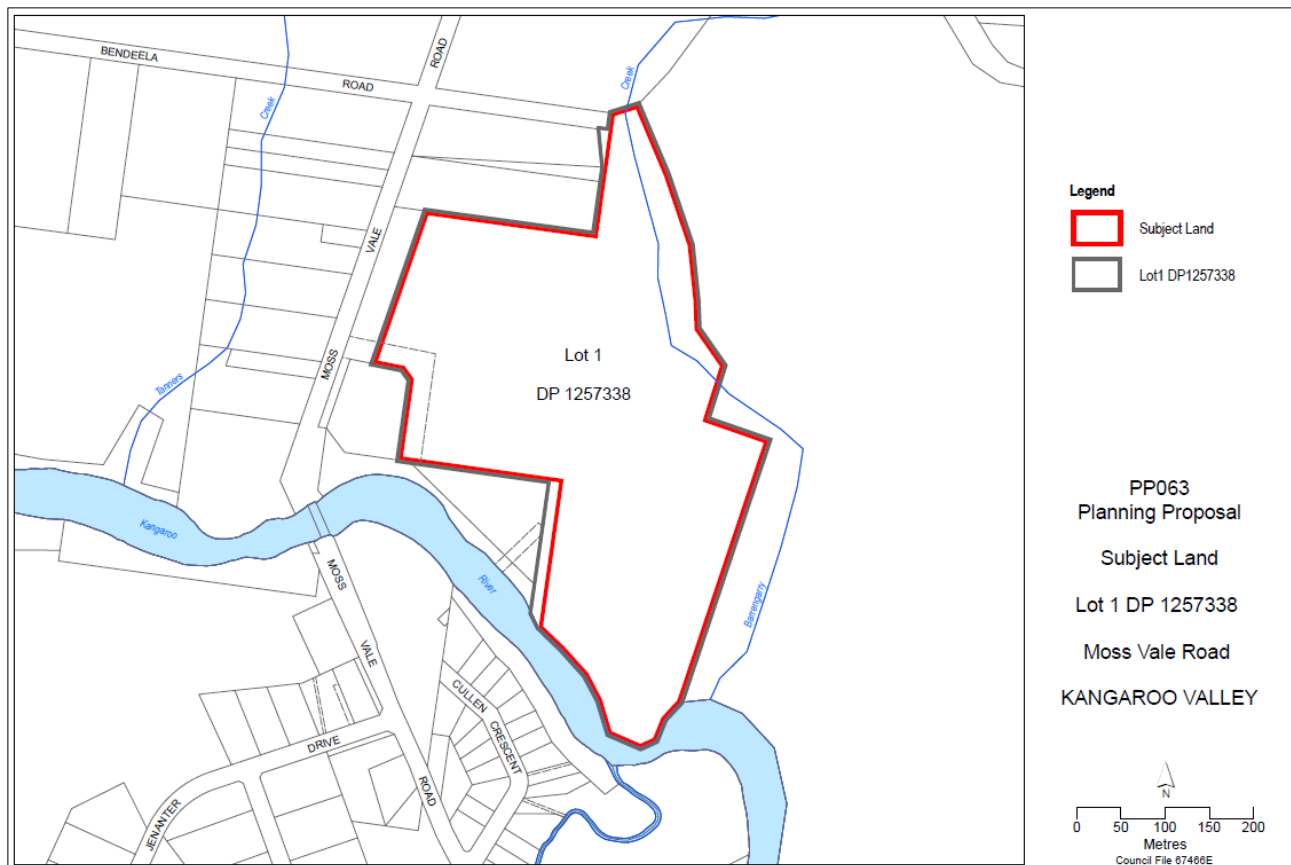


Figure 2. Subject Land

The subject land is largely cleared and historically has been used for agricultural activities that include grazing and plantings of wine grapes and olive trees. The site is largely flat with existing fences and slopes gently from its centre to intact vegetation that correlates with the banks of the Barrengarry Creek along its western extent and to the Kangaroo River on its southern limit. The riparian vegetation, a combination of well-established and regenerating vegetation, is largely mapped as terrestrial biodiversity in the Shoalhaven LEP 2014.

The site is adjacent to Moss Vale Road and lies between 60 and 83 metres elevation Australian Height Datum (AHD). Small agricultural holdings abut the subject land to the north and west with large agricultural holdings located immediately west and further north. The township of Kangaroo Valley is located on the far banks of the Kangaroo River to the south. An aerial view of the subject land and its surrounds is provided in Figure 3.



Figure 3. Aerial Photo

The subject land comprises land zoned R5 Large Lot Residential and E3 Environmental Management within Lot 1 DP 1257338. Two small areas of Lot 1 DP 1257338 are zoned RU1 Primary Production are not included in the subject land. Lot 1 is surrounded by RU1 Primary Production and RE1 Public Recreation zoned lots and does not have direct frontage to Moss Vale Road.

The current minimum lot size (LSZ) for the subject land is 3,000 m² in the western portion of the site, correlating with the R5 Large Lot Residential zoned land, with 40 ha applying over the remainder of the land.

Prior to SLEP 2014, the majority of the subject land was zoned Rural 1(b)(Arterial and main road protection) with a portion along its western extent zoned Rural 1(g)(Flood Liable), under SLEP 1985.

Access to Moss Vale Road is gained via a 25m-wide Right of Carriageway over the Council-owned Lot 16 DP 773481, which is zoned RE1 Public Recreation. The land-use zoning for the subject land and surrounds is shown in Figure 4.

The subject land is identified as bush fire prone land, is partly within the Flood Planning Area (FPA) and is located within the Sydney drinking water catchment area. The concurrence of NSW Rural Fire Service and Water NSW was sought during the original subdivision approval and granted, subject to conditions of consent.

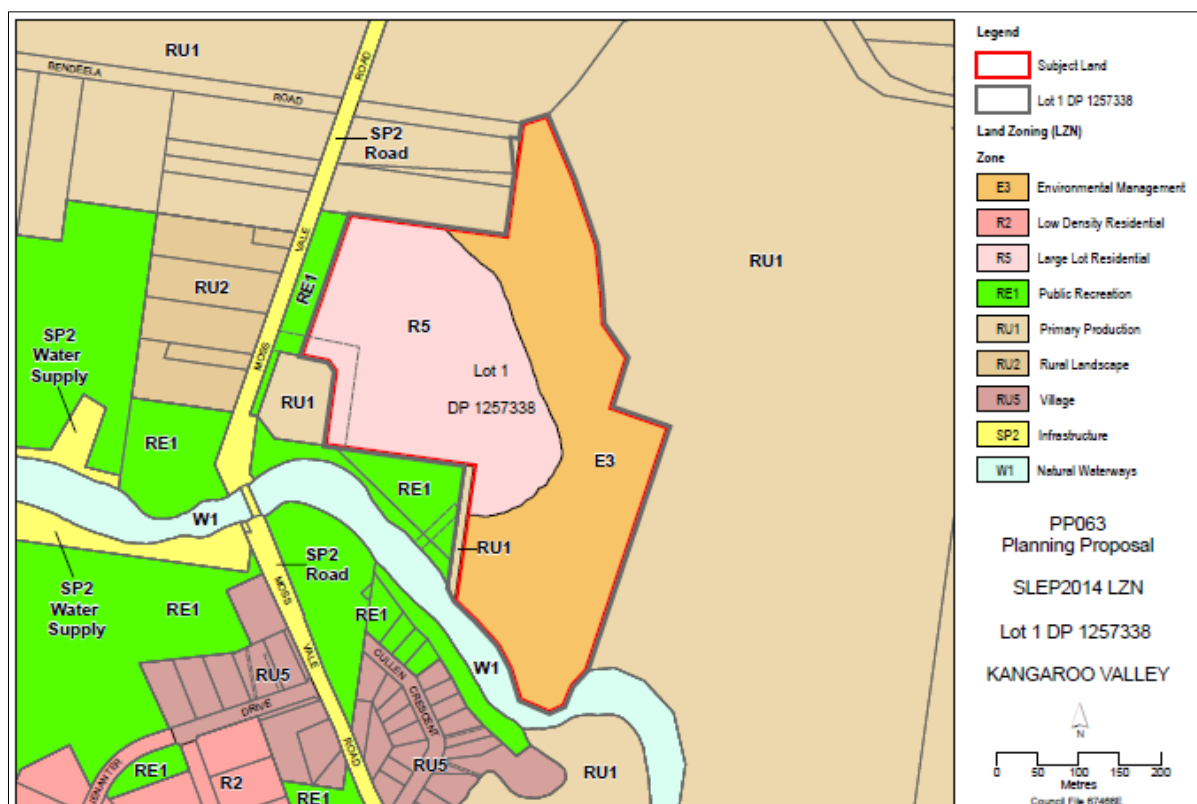


Figure 4. Current Land Use Zones (SLEP 2014)

1.2 Background - Clause 7.25

Clause 7.25 of SLEP 2014 conditionally permits subdivision of part Lot 1 DP 1257338 into a maximum of 12 lots, one of which is intended for multi dwelling housing, comprising no more than six (6) dwellings. Clause 7.25 of the Shoalhaven LEP 2014 states:

7.25 Development on land at Moss Vale Road, Kangaroo Valley

- (1) *This clause applies to land at Moss Vale Road, Kangaroo Valley, being Lot 14, DP 773481 (the original lot).*
- (2) *Despite any other provision of this Plan, development consent may be granted to subdivide the original lot to create other lots (the resulting lots) if—*
 - (a) *two of the resulting lots—*
 - (i) *will each contain land in Zone R5 Large Lot Residential that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *will together contain all of the land in Zone E3 Environmental Management that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3) *Development consent must not be granted to the subdivision of land under subclause unless the consent authority is satisfied that—*

- (a) **one of the resulting lots** referred to in paragraph (b) **will contain multi dwelling housing that comprises no more than 6 dwellings** [emphasis added], and
- (b) *all other resulting lots will contain a single dwelling house, and*
- (c) *the subdivision will not result in more than 12 resulting lots.*

Note: multi dwelling housing is prohibited in the R5 zone.

Clause 7.25 applies to the area shown in Figure 6 below.

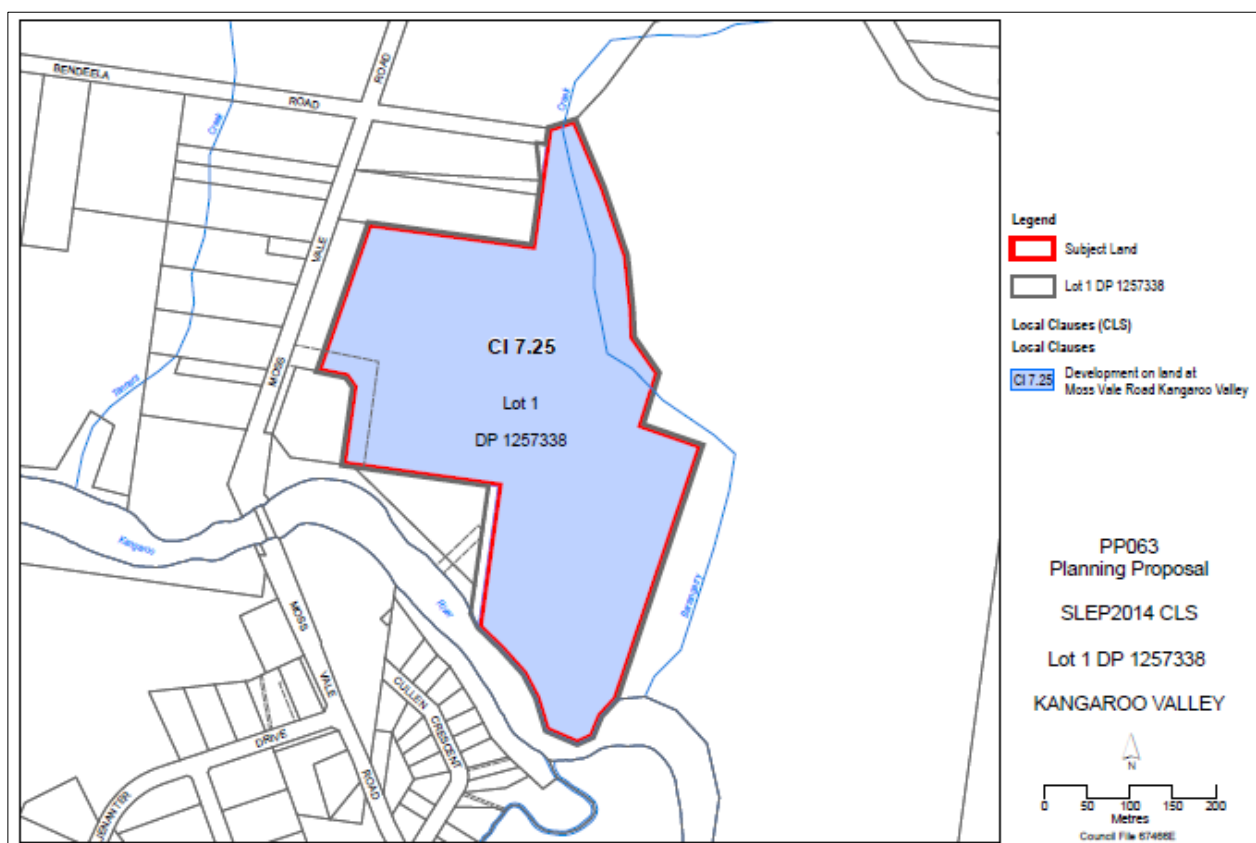


Figure 5. Clauses map (SLEP 2014)

As shown in Figure 5, Clause 7.25 only applies to part Lot 1 DP 1257338. The part of Lot 1 to which Clause 7.25 does not apply is an area that was previously within a separate lot. The recent subdivision / amalgamation history and genesis of Clause 7.25 is described below.

Creation of Lot 1 DP 1257338

Lot 1 DP 1257338 was registered on 2 April 2020, and resulted from an approved subdivision that amalgamated Lot 14 DP 773481 and a 10.06 m wide unformed private road (status confirmed by Crown Lands) which dissected Lot 14 in a north-south direction. The current and previous deposited plans relating to the subject land are shown in Figure 6 below.

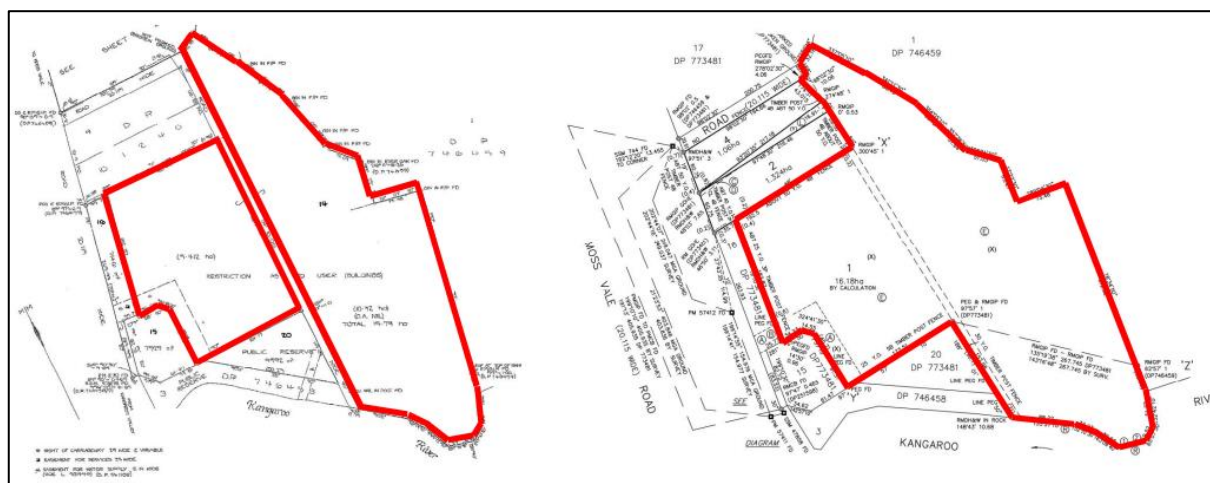


Figure 6. Extracts from Deposited Plans with red outline demonstrating Lot 14 DP 773481 (left) and Lot 1 DP 1257338 (right) (Source: SET Consultants PP)

To avoid unnecessary complications or confusion, this PP is not seeking to vary the area to which Clause 7.25 applies (which is based on the previous Lot 14 DP 773481 and excludes southern portion of the previous unformed private road). That is, the status quo will be retained in terms of the land affected by Clause 7.25.

Genesis of Clause 7.25

On 6 December 2002, Council approved development of a Guest House on Lot 14 DP 773481. A total of 15 Equivalent Tenements (ETs) were subsequently allocated under the Kangaroo Valley Sewerage Scheme. The Guest House did not proceed to construction and the consent was ultimately surrendered to facilitate an LEP amendment and development approval(s) outlined below.

A proponent-initiated planning proposal (PP) was received by Council on 25 September 2013. The PP request sought to rezone Lot 14 to R5 Large Lot Residential and modify the minimum lot size map overlay, to provide a greater range of housing options in the locality.

The PP was supported by Council in December 2013 on the basis that the allocation of 15 ETs is not exceeded. The PP resulted in Amendment No. 5 to SLEP 2014 in August 2015, which inserted Clause 7.25 and added the land to the associated local clauses map overlay.

Subdivision approval (SF10697)

On 23 December 2019, Council approved a Torrens Title subdivision (SF10697) of Lot 14 DP 773481 into nine (9) lots. Following the consolidation of Lot 14 DP 773481 with the road portion, to form Lot 1 DP 1257338, an application to modify the consent (DS20/1603) was approved on 27 April 2021, allowing a twelve (12) lot Torrens Title subdivision.

All building envelopes associated with that subdivision are located within the R5 – Large Lot Residential area, limiting the impact upon E3 – Environmental Management zoned land. Access to the subject land from Moss Vale Road, is via a private road in a Right of Carriageway through the Council-owned Lot 16 DP 773481. A further modification for minor changes to the road and drainage design was approved on 18 August 2021 (DS21/1204).

In accordance with Clause 7.25 of SLEP 2014, Condition 78 of the modified Development Consent (SF10697) requires that a restriction-as-to-user be created under Section 88B of the Conveyancing Act such that:

“Future development of Lot 12 is to be multi dwelling housing only, comprising of no more than six (6) dwellings” [emphasis added].

Further the stamped approved plan for the modified consent contains a note *“Lot 12 is a designated multi dwelling site to contain up to 6 dwellings”*.

An extract from the approved plans is provided below, with Lot 12, the designated multi dwelling site highlighted yellow.

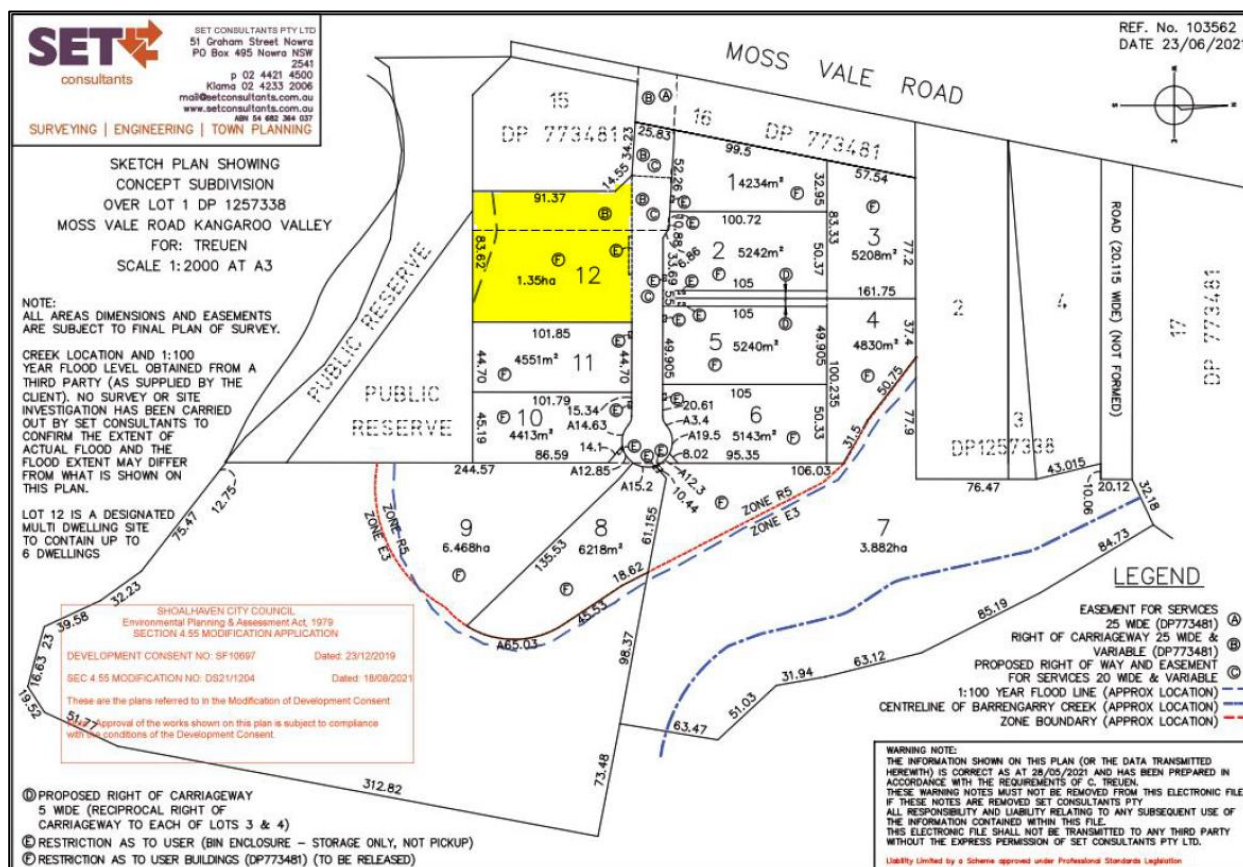


Figure 7. Extract from the stamped approved plans
 (Note: designated multi dwelling site is highlighted yellow)

Proponent-led Planning Proposal (PP) request

A request to undertake this proponent-initiated planning proposal (PP) was submitted to Council by SET Consultants, on behalf of the landowners, on 25 August 2021. The PP request sought to permit Strata subdivision of the multi-dwelling lot currently permitted by Clause 7.25(3)(a) of the Shoalhaven LEP 2014.

The PP request was reported to Council on 5 October 2021 for initial consideration. In response, Council resolved (MIN21.698) to:

1. *Support the Planning Proposal (PP) request to amend Shoalhaven Local Environmental Plan 2014 (SLEP 2014) consistent with the explanation of provisions outlined in this report, primarily to permit Strata subdivision of the*

designated multi dwelling housing lot that was approved under LEP Clause 7.25, without increasing the number of dwellings.

2. *Prepare and submit the required PP documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.*
3. *Advance the matter as a ‘minor’ proponent-initiated Planning Proposal with fees charged in accordance with Council’s adopted Fees and Charges.*
4. *Advise the proponent of this resolution.*

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

AGAINST: Nil

CARRIED

2 Part 1 –Intended Outcome

This Planning Proposal (PP063) seeks to enable the strata subdivision of future multi dwelling housing on Lot 1 DP 1257338. The dedicated multi dwelling housing allotment (Lot 12) was approved by Council on 23 December 2019 under Clause 7.25 of Shoalhaven LEP 2014.

Strata subdivision will allow individual ownership of future housing product and thereby facilitating a range of housing types. No increase in the dwelling yield (intended through Amendment No. 5 to SLEP 2014) is proposed.

Given that multi dwelling housing is prohibited in the R5 zone, PP063 also seeks to expressly make multi dwelling housing permissible on the designated lot in the approved subdivision. This would remove any ambiguity regarding the permissibility of multi dwelling housing on the designated multi dwelling housing lot.

3 Part 2 – Explanation of Provisions

It is proposed that amending Clause 7.25 of SLEP 2014 as follows will achieve the intended outcome:

- Delete ‘and’ at the end of Subclause (3)(b)
- Amend (3)(c) to read:

The subdivision will not result in more than 18 resulting lots comprising a maximum of 12 Torrens Title Lots and 6 Strata Title lots; and

- Add Clause 7.25(3)(d) as follows:

Only the Lot referred to in Subclause (3)(a) may be strata subdivided.

No change to the associated Clauses Map in SLEP 2014 is proposed.

Given that multi dwelling housing is prohibited in the R5 zone, PP063 also seeks to expressly make multi dwelling housing a permissible use for Lot 12 on the approved subdivision plans. The mechanism for achieving this in SLEP 2014 will be determined in consultation with the NSW Parliamentary Counsel’s Office (PCO).

As Clause 7.25 applies to the former Lot 14 DP 773481, the option of updating the lot description should be considered. Given that the subdivision enabled by Clause 7.25 has already been approved, this is not considered necessary. This will be further considered in consultation with PCO when the amendment to SLEP 2014 is being drafted.

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?

This PP is not the result of a strategic study or report. The subject land is appropriately zoned. The PP is minor and is not of a kind that would generally be identified in a broad strategic planning process. The PP is consistent with the Shoalhaven Growth Management Strategy 2012, which identifies the subject land within the 'Short term investigation area' for Kangaroo Valley.

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

The proposed Strata subdivision is not currently permissible under Shoalhaven LEP 2014. A PP is therefore the only way to achieve 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 PP is generally consistent with the Illawarra Shoalhaven Regional Plan 2041, particularly:

Objective 19: Deliver housing that is more diverse and affordable.

The proposed amendment would allow any future multi dwelling housing development to be Strata subdivided, facilitating the provision of a variety of housing types within the locality. This outcome reflects the intent of Regional Plan Objective 19 which acknowledges the need for smaller homes or multi dwelling housing.

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

Integrated Strategic Plan – Shoalhaven 2027 Community Strategic Plan

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

Shoalhaven Local Strategic Planning Strategy (LSPS) 2020

The PP is generally consistent with the LSPS and specifically achieves the goals of Planning Priority 1: Providing homes to meet all needs and lifestyles. Allowing separate private ownership of the dwellings within the future multi dwelling development is consistent with the LSPS, specifically "providing a range of homes helps provide a choice of homes to match income levels".

The PP will not increase the intended number of dwellings on the subject land and is therefore not inconsistent with *LSPS Direction 2: Natural and Built Environments and Lifestyles*.

Shoalhaven Growth Management Strategy (GMS) 2012

The PP is consistent with the GMS. It will not create any additional dwelling entitlements or subdivision potential other than enabling Strata subdivision of permissible multi-dwelling housing. The subject land is identified as 'short term investigation area' within the Shoalhaven GMS 2012.

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

This PP is minor and the proposed amendment is not inconsistent with any State Environmental Planning Policies (SEPPs), including the Biodiversity and Conservation SEPP 2021 which aims to protect water quality within the Sydney Drinking Water catchment. WaterNSW previously considered the impacts of a 12-lot subdivision, including the proposed multi-dwelling housing, and advised that, subject to appropriate conditions being imposed and implemented, the proposed development had the ability to deliver a neutral or beneficial effect on water quality. Water NSW's conditions were included in the development consent issued by Council on 27 April 2021, and integrated into the most recent consent, on 18 August 2021.

The proposed amendment does not seek to create additional dwelling entitlements whilst allowing individual ownership of future housing to occur. It is not proposed that there will be any alteration to the conditions of development consent previously imposed. The PP will therefore not place additional burden upon the Sydney Drinking Water catchment and is therefore consistent with the Biodiversity and Conservation SEPP 2021.

A SEPP checklist is attached and assesses the PP against the consolidated planning policies implemented by Minister for Planning and Public Spaces Rob Stokes on 2 December 2022. The new Housing SEPP is in effect whilst the remaining consolidated planning policies will take effect (1 March 2022) prior to lodgement of the finalised PP with the Department of Planning, Industry and Environment.

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

The PP is generally consistent with the relevant Ministerial Directions issued under s9.1 of the Environmental Planning and Assessment Act, 1979. A checklist of s.9.1 Ministerial Directions is attached to this PP. The relevant Directions are briefly discussed below.

Direction 1.2 – Implementation of Regional Plans

As outlined previously, the PP is generally consistent with the Regional Plan, facilitating the provision of a range of housing options in the locality.

Direction 3.1 – Biodiversity and Conservation

The subject land is partly zoned E3 Environmental Management and part of the E3 area is mapped on the Terrestrial Biodiversity map overlay in SLEP 2014. The area mapped as Terrestrial Biodiversity corresponds with riparian vegetation associated with the Kangaroo River and Barrengarry Creek. No changes to the land use zoning or the physical development enabled by Clause 7.25 are proposed. The PP will not reduce the environmental protection standards that apply to the land and is therefore consistent with this Direction.

The subdivision application (SF10697) was accompanied by a Biodiversity Development Assessment Report and a Tree Retention and Tree Removal Plan. Appropriate conditions were included in the consent to ensure that native vegetation is managed in accordance with the approved Tree Retention and Tree Removal Plan.

Direction 3.2 – Heritage Conservation

The subject land is not listed as having heritage significance and no changes to the extent or amount of development intended by Clause 7.25 are proposed. The PP will not impact on, or hinder the conservation of, heritage items or Aboriginal cultural heritage values.

Direction 3.3 – Sydney Drinking Water Catchments

This direction, which seeks to protect water quality within the Sydney Drinking Water Catchment, is applicable because this PP affects land within that catchment. The PP seeks to enable Strata subdivision of the designated multi dwelling lot in the approved subdivision. It does not seek to create additional dwelling entitlements on the subject land and therefore does not seek to enable any substantive change to the physical development outcome. It is noted that Water NSW was previously satisfied that the subdivision approved (SF10697) would have a neutral or beneficial effect on water quality (NorBE) and issued its concurrence accordingly. Hence, the PP is not inconsistent with this Direction.

In accordance with the Gateway determination, this PP was referred to Water NSW. In response, WaterNSW raised objection subject to minor clarification and inclusion of additional text in this PP to make it clearer that the Sydney Drinking Water Catchment guidelines apply.

Direction 4.1 – Flooding

This Direction applies as part of the subject land is flood-prone. The PP is generally consistent with this Direction in so far as:

- No land use zoning changes are proposed
- Clause 7.25 of SLEP 2014 seeks to ensure that any dwellings will be located with the R5-zoned land which is above the Flood Planning Level.

- No changes are proposed to the number or location of dwellings intended when Clause 7.25 was inserted into SLEP 2014 via Amendment No. 5.

While the R5-zoned land is above the Flood Planning Area, it is below the Probable Maximum Flood (PMF). Section (7) of this Direction states:

- (7) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:*
- (a) permit development in floodway areas,*
 - (b) permit development that will result in significant flood impacts to other properties,*
 - (c) permit a significant increase in the dwelling density of that land,*
 - (d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,*
 - (e) are likely to affect the safe occupation of and efficient evacuation of the lot, or*
 - (f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.*

According to DPIE's guideline titled '[Considering flooding in land use planning](#)' Special Flood Considerations (SFC) apply to certain types of development that have a higher risk to life, warranting the consideration of the impacts of rarer flood events on land located outside the Flood Planning Area (FPA). SFCs also apply to land between the FPA and the Probable Maximum Flood (PMF) where there is a particular risk to life, the evacuation of people may be required, or there are other safety considerations.

SFC provisions can be introduced through an optional clause in the Standard Instrument LEP, which councils can choose to adopt in their LEP(s). In this regard, on 5 October 2021, Council resolved (MIN21.700) to:

"... opt-in to adopt the Standard Instrument 'Special Flood Considerations' clause and specify that 'sensitive and hazardous development' to which the clause applies includes the following land uses: correctional centres, early education and care facilities, educational establishments, emergency services facilities, group homes, hospitals, respite day care centres, seniors housing, hazardous industries, hazardous storage establishments.

Note: Clause (7) of this Ministerial Direction applies only if the optional SFC clause applies. Although Council has resolved to adopt the SFC clause, DPIE has indicated that SLEP 2014 is unlikely to be amended before March 2022, by which time this PP (PP063) might be finalised.

Notwithstanding the uncertain time frame for amending the SLEP to include the SFC clause, according to DPIE's guideline, the SFCs seek to ensure that development:

1. *will not affect the safe occupation of and efficient evacuation of people in the event of a flood, and*
2. *incorporates appropriate measures to manage risk to life from flood, and*
3. *will not adversely affect the environment in the event of a flood.*

The SFC clause will apply:

- (a) *for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and*
- (b) *for development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may—*
 - (i) *cause a particular risk to life, and*
 - (ii) *require the evacuation of people or other safety considerations.*

In relation to (a) this PP is not seeking to enable any 'sensitive and hazardous development' uses.

In relation to (b) this PP is not seeking to create any additional dwelling entitlements (above what was intended by the previous PP that led to the inclusion of clause 7.25 into SLEP 2014 via Amendment No. 5 in 2015) and it generally appears to be consistent with DPIE's guidelines on SFC. It is noted that Councils who adopt the SFC clause in their LEP are also encouraged to amend their development control plan (DCP) to include supporting controls.

Note that Chapter G9 - Development on Flood Prone Land in the Shoalhaven Development Control Plan 2014 (DCP) includes planning controls that apply to land affected by the PMF. Specifically, any subdivision application affecting land between the FPA and PMF would need to address the following performance criteria:

- P3.2 The proposed subdivision will not create new lots that are affected by a high hazard area, or floodway in today's flood conditions or in climate change conditions up to the year 2100.*

Given the above, the PP is generally consistent with this Direction.

Direction 4.3 – Planning for Bushfire Protection

The subject land is entirely mapped as bushfire prone land on the Bushfire Prone Land map certified by the Commissioner of the NSW Rural Fire Service. Therefore, this Direction applies. The PP does not seek to intensify development or create any additional dwelling entitlements to what was intended when Clause 7.25 was inserted into SLEP 2014 via Amendment No. 5. It is noted that the RFS issued a Bushfire Safety Authority subject to a range of conditions that were included in the subdivision approval (SF10697). Hence, the PP is not inconsistent with this Direction.

The PP was referred to the NSW RFS for comment prior to public exhibition. The RFS made no objection to the PP but noted that future development made permissible by the PP must comply with *Planning for Bushfire Protection 2019*.

Direction 4.4 – Remediation of Contaminated Land

The PP is not seeking to increase the number or location of dwellings that were envisaged when Clause 7.25 of SLEP 2014 was created. It is noted that a stage 1 – preliminary site contamination assessment report accompanied the Planning Proposal (LP411) that resulted in Amendment No.5 to SLEP 2015. The report concluded that the land is suitable for the proposed residential sub-division development.

Direction 6.1 – Residential Zones

This Direction applies as the subject land is partly zoned R5. The PP aims to broaden housing choice in the locality. The PP will not increase the number or location of dwellings intended when Clause 7.25 was inserted into SLEP 2014. The PP will not increase the consumption of land on the urban fringe and will not impact the ultimate development design or its efficient use of existing infrastructure and services. The PP is therefore consistent with this Direction.

Direction 9.1 – Rural Zones

The subject land comprises land zoned R5 Large Lot Residential and E3 Environmental Management within Lot 1 DP 1257338 and therefore this Direction does not apply. Two small areas of Lot 1 DP 1257338 are zoned RU1 Primary Production are not included in the subject land. It is not proposed to rezone the land and no additional dwelling entitlements will be created.

Direction 9.2 – Rural Lands

The subject land comprises land zoned R5 Large Lot Residential and E3 Environmental Management within Lot 1 DP 1257338. It is not proposed to rezone the land, no changes to the minimum lot size are proposed, and no additional dwelling entitlements will be created beyond that intended through Amendment No. 5 to SLEP 2014 that resulted in the insertion of Clause 7.25.

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?

This PP will not result in the removal of any native vegetation or habitat. The PP does not seek to increase dwelling entitlements or development footprint. No adverse biodiversity impacts are anticipated.

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?

The PP does not seek to increase dwelling entitlements or development footprint. No increased impact to the environment is anticipated.

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

The PP seeks to enable delivery of a range of housing types in the locality. Strata subdivision will allow private ownership, through owner-occupiers or leasing arrangements, and likely provide positive social and economic outcomes for the community. No adverse social or economic effects are anticipated.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The previous PP that resulted in Clause 7.25 was based on the historical allocation of 15 equivalent tenements (ETs) for the property. This was based on the capacity of the Kangaroo Valley sewage treatment plant.

This PP (PP063) will not alter the physical development occurring on the subject land and therefore not give rise to any additional infrastructure needs. The PP will not increase the dwelling yield above what was intended in the previous PP.

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

A Gateway determination by the delegate of the Minister for Planning and Public Spaces has permitted this PP to proceed subject to conditions. The PP is to be exhibited for a minimum of 28 days in accordance with the requirements identified in section 6.5.2 of *A guide to preparing local environment plans* (Dept. of Planning and Environment, 2018).

Each consultation agency named was provided with a copy of the PP and any relevant supporting material and given at least 21 days to comment on the proposal. Note that should the PP ultimately be finalised, any future boundary adjustment application will be assessed upon its merits and necessary referrals sought at that time.

Consultation with the following agencies has occurred:

Agency	Response
NSW Rural Fire Service	The RFS did not raise any objection but noted that any future development made permissible by this PP must comply with <i>Planning for Bushfire Protection 2019</i> .
Water NSW	Water NSW initially raised concern regarding potential uncertainty around the timing of Water and Sewerage connections and establishment of an effective storm water management system within a future Strata subdivided multi-dwelling housing lot. After discussing Water NSW's initial concern with Council Development Assessment officers, clarification was provided to Water NSW, which then confirmed that it is satisfied that these issues can be suitably resolved during the development assessment process for any future buildings on the land. Water NSW raised no further objection to this PP proceeding but requested that context for the Sydney Drinking Water Catchment guidelines be included in the PP.

The following agencies were consulted in relation to the previous PP that resulted in Clause 7.25 in 2015:

Agency	Reason for consultation	Views
NSW Rural Fire Service (RFS)	Bushfire prone land: s9.1 Ministerial Direction 4.4 requires RFS to be consulted prior to public exhibition.	The RFS did not object to the PP, however they outlined that future development applications on bush fire prone land will be required to comply with either Section 4.14 of the EP&A Act or Section 100B of the Rural Fires Act.
Roads & Maritime Services (RMS)	Moss Vale Road is a classified regional road	No significant impacts on the operating performance of Moss Vale Road. Access arrangements to be addressed at development application (DA) stage.
Sydney Catchment Authority (SCA) – now responsibility of Water NSW	Land within Sydney drinking water catchment	Support zoning the flood prone area to E3 and restricting all housing to the R5 zoned land. All development associated with this rezoning must be sewerage and limited to 15 ETs. The E3 zoned land should be attached to only one residential lot to minimise the risk of any further subdivision of the zoned land.

The subdivision application (SF10697) was also previously referred to the RMS (now Transport for NSW) and Water NSW. Neither agency objected to subject to conditions and these were incorporated into the consent.

5 Part 4 – Mapping

No mapping changes are proposed.

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, including an exhibition period of 28 days.

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

7 Part 6 – Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	5 October 2021
Commencement date (date of Gateway determination)	29 November 2021
Completion of Gateway determination requirements	January
Public exhibition	February / March
Consideration of submissions	March
Post exhibition consideration of PP	April
Finalisation and notification of Plan	May

8 Attachments

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

Local Government Area:
Shoalhaven City Council

Name of draft LEP:
Shoalhaven Local Environment Plan 2014
PP063 – Moss Vale Rd, KANGAROO VALLEY – Shoalhaven LEP Clause 7.25
Amendment

Address of Land (if applicable):
The subject land is located at Moss Vale Rd, KANGAROO VALLEY and is legally described as Lot 1 DP 1257338.

Intent of draft LEP:
To amend Clause 7.25 of the Shoalhaven Local Environment Plan (SLEP) 2014 to enable the strata subdivision of future multi dwelling housing identified within that Clause.

Evaluation criteria for the issuing of an Authorisation:

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Yes or No	N/A	Agree	Not agree
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the Planning Proposal adequately address any consistency with all relevant S9.1 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N	N/A		
Heritage LEPs – Does the heritage assessment meet these criteria				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?	N	N/A		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N	N/A		
Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N	N/A		
Reclassifications				
Is there an associated spot rezoning with the reclassification?	N	N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?	N	N/A		
Is the Planning Proposal proposed to rectify an anomaly in a classification?	N	N/A		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?	N	N/A		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?	N	N/A		

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Yes or No	N/A	Agree	Not agree
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the Planning Proposal?	N	N/A		
Has the council identified that it will exhibit the Planning Proposal in accordance with the Department's Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?	N	N/A		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?	N			
Spot Rezoning				
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that led to the deferral has been addressed?	N			
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?	N			
Does the Planning Proposal create an exception to a mapped development standard?	N			
Section 3.22 matters				
Does the proposed instrument:	N			
a. Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?				
b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?	N			
c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	N			

Attachment B – Council report and minute – 5 October 2021.

MINUTES

RESOLVED* (Clr Proudfoot / Clr Gartner)

MIN21.698

That Council:

1. Support the Planning Proposal (PP) request to amend Shoalhaven Local Environmental Plan 2014 (SLEP 2014) consistent with the explanation of provisions outlined in this report, primarily to permit Strata subdivision of the designated multi dwelling housing lot that was approved under LEP Clause 7.25, without increasing the number of dwellings.
2. Prepare and submit the required PP documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance the matter as a 'minor' proponent-initiated Planning Proposal with fees charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

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

AGAINST: Nil

CARRIED

Attachment C - Consistency with State Environmental Planning Policies

Note: The PP has been assessed against the consolidated planning policies implemented by Minister for Planning and Public Spaces Rob Stokes on 2 December 2022. The new Housing SEPP is in effect whilst the remaining consolidated planning policies will take effect (1 March 2022) prior to lodgement of the finalised PP with the Department of Planning, Industry and Environment.

State Environmental Planning Policy	Applicable	Not inconsistent
	✓ / x	✓ / n/a
Housing SEPP 2021	✓	✓
Transport and Infrastructure SEPP 2021	x	
Primary Production SEPP 2021	x	
Biodiversity and Conservation SEPP 2021	✓	✓
Resilience and Hazards SEPP 2021	x	
Design and Place SEPP 2021	x	
Industry and Employment SEPP 2021	x	
Resources and Energy SEPP 2021	x	
Planning Systems SEPP 2021	x	
Precincts SEPPs 2021	x	
Exempt and Complying Development Codes 2008	x	

Attachment D - Consistency with Local (s9.1) Planning Directions*1 March 2022 Version**Note: Ministerial Directions for Focus Area 2 (Design and Place) have not been finalised to date.**However, the PP does not propose any increase/change to density, design or bulk of the final built form deliverable on the site(s).*

Direction		Applicable	Relevant	Not inconsistent
1 Employment and Resources				
1.1	Implementation of the Minister's Planning Principles	✓	✓	The PP has been prepared with regard to all relevant planning principles outlined within the Minister's Planning Principles
1.2	Implementation of Regional Plans	✓	✓	The PP is not inconsistent with the Illawarra-Shoalhaven Regional Plan.
1.3	Development of Aboriginal Land Council land	N/A	N/A	
1.4	Approval and Referral Requirements	N/A	N/A	The proposed amendment is minor in nature and does not include provisions that will require concurrence, consultation or referral of development applications to a Minister or public authority. Any future concurrence is limited to applicable SEPPS and overlays within SLEP 2014.
1.5	Site Specific Provisions	✓	✓	The PP is not inconsistent with this direction as, whilst seeking to allow an additional land use, it does not seek to impose additional development standards that exceed those of SLEP 2014.
1.6 – 1.17	Planning Systems (Place-based)	N/A	N/A	
3 Biodiversity and Conservation				
3.1	Conservation Zones	✓	✓	The proposed amendment will not increase the dwelling capacity on the land nor impact upon the physical development delivered upon the site. NSW Dept of Environment has been consulted, as the land is partially mapped as Terrestrial Biodiversity, and does not object to the PP proceeding.
3.2	Heritage Conservation	✓	✓	The subject land is not listed as having heritage significance and no changes to the extent or amount of development are proposed. The PP will not impact on, or hinder the conservation of, heritage items or Aboriginal cultural heritage values.
3.3	Sydney Drinking Water	✓	✓	The PP will not result in additional dwelling entitlements or impact upon the physical

Direction		Applicable	Relevant	Not inconsistent
	Catchments			development that is delivered upon the site. No additional pressure will be placed upon the catchment by this PP and a neutral effect of water quality is achieved.
3.4	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	N/A	
3.5	Recreation Vehicle Area	N/A	N/A	
4 Resilience and Hazards				
4.1	Flooding	✓	✓	<p>The PP is not inconsistent with this Direction because:</p> <ul style="list-style-type: none"> No land use zoning changes are proposed Clause 7.25 of SLEP 2014 seeks to ensure that any dwellings will be located with the R5-zoned land which is above the Flood Planning Level. No changes are proposed to the number or location of dwellings intended when Clause 7.25 was inserted into SLEP 2014 via Amendment No. 5. <p>While the R5-zoned land is above the Flood Planning Area, it is below the Probable Maximum Flood (PMF). Further information is provided in section 4.2.4.</p>
4.2	Coastal Management	N/A	N/A	
4.3	Planning for Bushfire Protection	✓	✓	<p>The PP only seeks to enable Strata subdivision of permissible multi dwelling housing. It will not intensify development or create any dwelling entitlements. As the PP affects land identified as bushfire prone, the RFS has been consulted and does not object whilst noting that any DA will have to comply with PfbP 2019.</p>
5 Transport and Infrastructure				
5.1	Integrating Land Use and Transport	N/A	N/A	
5.2	Reserving Land for Public Purposes	N/A	N/A	
5.3	Development Near Regulated Airports and Defence	N/A	N/A	

Direction		Applicable	Relevant	Not inconsistent
	Airfields			
5.4	Shooting Ranges	N/A	N/A	
6 Housing				
6.1	Residential Zones	✓	✓	The proposed amendment will allow the choice of housing products in the locality to be broadened without increasing dwelling entitlements or the physical development delivered upon the land.
6.2	Caravan Parks and Manufactured Home Estates	N/A	N/A	
7 Industry and Employment				
7.1	Business and Industrial Zones	N/A	N/A	
7.2	Reduction in non-hosted short-term rental accommodation period	N/A	N/A	
7.3	Commercial and Retail Development along the Pacific Highway, North Coast	N/A	N/A	
8 Resources and Energy				
8.1	Mining, Petroleum Production and Extractive Industries	N/A	N/A	
9 Primary Production				
9.1	Rural Zones	N/A	N/A	This direction applies when a planning proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). The subject land is residential land, and it is not proposed to rezone the land.
9.2	Rural Lands	✓	x	The subject land is residential land within a rural locality. The land is mapped as prime crop and pasture land but the PP is not seeking to increase the number or location of dwelling entitlements. The PP is of minor nature and is not inconsistent with

Direction		Applicable	Relevant	Not inconsistent
				this Direction.
9.3	Oyster Aquaculture	N/A	N/A	
9.4	Farmland of State and Regional Significance on the NSW Far North Coast	N/A	N/A	

Attachment E – Gateway Determination

29 November 2021



Planning,
Industry &
Environment

Gateway Determination

Planning proposal (Department Ref: PP_2021_5317): to amend the Shoalhaven Local Environmental Plan (LEP) Clause 7.25 "Development on land at Moss Vale Road, Kangaroo Valley" (Additional Local Provision) to facilitate the future strata subdivision of a multi dwelling lot.

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

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
2. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - Rural Fire Service
 - WaterNSW

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;

- (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
- (c) there are no outstanding written objections from public authorities.

5. The time frame for completing the LEP is to be 9 months following the date of the Gateway determination, expiring 29 August 2022.

Dated 29th day of November 2021.



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

Delegate of the Minister for Planning
and Public Spaces