



Planning,  
Industry &  
Environment

IRF21/4792

## Gateway determination report - PP-2021-6611

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Planning Proposal – PP062 Shoalhaven Local  
Environmental Plan 2014 - 2021 Instrument  
Housekeeping

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**Table 1 Reports and plans supporting the proposal**

## Relevant reports and plans

“Shoalhaven City Council. Development and Environment Committee – 07 September 2021. Proposed Instrument Housekeeping Planning Proposal – Shoalhaven Local Environmental Plan 2014.”

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	Shoalhaven
<b>PPA</b>	Shoalhaven City Council
<b>NAME</b>	2021 Instrument Housekeeping Planning Proposal
<b>NUMBER</b>	PP-2021-6611
<b>LEP TO BE AMENDED</b>	Shoalhaven LEP 2014
<b>ADDRESS</b>	Various - LGA-wide
<b>DESCRIPTION</b>	Various - LGA-wide
<b>RECEIVED</b>	10/11/2021
<b>FILE NO.</b>	IRF21/16546 (EF21/16546)
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend or add provisions to the LEP instrument to improve the Plan's operation and address issues that have arisen since its commencement in 2014, namely concerning medium density housing development and replacement of lawfully erected dwellings following natural disasters.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Shoalhaven LEP 2014 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Clause 4.1A “Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings”.	Clause 4.1A currently sets minimum lot size standards for medium density development for zones RU5 Village, R1 General Residential and R2 Low Density Residential and R3 Medium Density Residential.	<ul style="list-style-type: none"> <li>To include a 900m<sup>2</sup> minimum lot size standard for multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings in the B4 Mixed Use Zone.</li> <li>To clarify the current wording in subclause 4 that medium density development approved via clauses 4.1A can subsequently be subdivided into lots of any size.</li> </ul>
Clause 4.1B “Dual occupancy development in Zone R3”.	Clause 4.1B currently provides an 800m <sup>2</sup> minimum lot size standard for dual occupancy development in the R3 Medium Density Zone. The current clause, however, does not specify whether dual occupancy development can subsequently be subdivided into lots of any size, each with its own lot and DP which is Council’s intention.	To include a subclause that specifies that dual occupancy development approved via clause 4.1B can subsequently be subdivided into lots of any size.
New natural disaster clause	There is currently no natural disaster clause in the Shoalhaven LEP 2014.	To include a revised version of the optional natural disaster clause that is provided in the Standard Instrument LEP Order that includes the replacement of all lawfully erected dwellings including dual occupancies and rural workers dwellings.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. The inclusion of the B4 Mixed Use Zone and an associated minimum lot size standard in clause 4.1A is considered reasonable. The proposed clarification regarding the subsequent subdivision of medium density development resulting from clause 4.1A and 4.1B is also appropriate.

The intent of Council’s proposed Natural disaster clause to include the replacement of all lawfully erected dwellings, including dual occupancies and rural workers dwellings, not just dwelling houses and secondary dwellings as provided in the Standard Instrument Order (SI Order) is understood and supported.

It is unclear whether Parliamentary Counsel’s Office will support a variation to the SI Order clause. Notably, Clause 4(2) of the SI Order states that if an optional provision is to be adopted, it is to be adopted without variation (subject to any relevant direction in the Standard Instrument). Under Clause 5(1) of the SI Order, however, it may be possible to include additional clauses provided they aren’t inconsistent with a mandatory clause. Clause 4(1)(a) of the SI Order states that an optional provision is a mandatory provision of the LEP if a decision is made to adopt it.

It is recommended that Council consult with Parliamentary Counsel at LEP drafting stage, to discuss the option of including the current optional natural disasters clause, without variation, as well as including a separate provision to address the replacement of the additional dwelling types

sought by Council. There is, however, a risk PCO may only accept the current optional natural disasters clause provided in the SI Order.

## 1.4 Site description and surrounding area

The planning proposal applies to all land in the Shoalhaven Local Government Area, particularly land zoned B4 Mixed Use and R3 Medium Density Zone and land potentially affected by natural disasters including bushfire.

## 1.5 Mapping

The planning proposal does not include changes to LEP maps.

## 2 Need for the planning proposal

The planning proposal is needed to address issues Council has identified during the administration of the medium density subdivision provisions provided in the Shoalhaven LEP 2014. The proposal is also needed to enable Council to include a natural disaster clause in its LEP to facilitate the replacement of lawfully erected dwellings in different forms of development that have been destroyed through natural disasters such as bushfire.

Following the exhibition of the Department's proposed natural disaster model LEP clause in 2020, Council resolved not to "opt-in" to insert the clause in the Shoalhaven LEP 2014 because Council considered the clause did not meet Shoalhaven's needs. Notably, the model clause only enables replacement of a dwelling house or secondary dwelling, not the replacement of any dwelling including dual occupancies and rural workers dwellings. Council resolved in January 2021 to consider including a different version of the clause, that better meets Shoalhaven's needs via a planning proposal.

The planning proposal process is the appropriate mechanism to facilitate an amendment of the current subdivision clauses in the LEP and to insert the proposed natural disaster clause.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Illawarra Shoalhaven Regional Plan.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 12: Build resilient places and communities	The proposed natural disasters provision will support recovery in places and communities affected by natural disasters.
Objectives 18: Provide housing supply in the right locations and Objective 19: Deliver housing that is more diverse and affordable.	The proposal will facilitate medium density development on suitable sized lots in medium density and mixed-use zones which will support diverse and affordable housing.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement Shoalhaven 2040	The proposal is consistent with planning priority 1 – “Providing homes to meet all needs and lifestyles” and planning priority 11 – “Adapting to natural hazards through building resilience”.
Shoalhaven City Council's Community Strategic Plan	The proposal is consistent with Theme 2 – “Sustainable, liveable environments” and Action 2.2 “Plan and manage appropriate sustainable development”.
Shoalhaven Growth Management Strategy	The proposal is consistent with the intent of the GMS to manage the social and economic implications of future growth in Shoalhaven while protecting and preserving the environmental values of the LGA as it will facilitate medium density residential development in suitable locations and facilitate the replacement of lawfully erected dwellings that have been destroyed by natural disasters.
Nowra Bomaderry Structure Plan	The proposal is consistent with the objective of the NBSP to encourage medium density housing in mixed use and medium density residential zones adjoining the Nowra and Bomaderry commercial centres.
Jervis Bay Settlement Strategy	The proposal will facilitate medium density development in mixed use and medium density residential zones in Huskisson and Vincentia in the Jervis Bay area which is consistent with the intent of the JBSS to provide opportunities for urban consolidation and higher-density development and choice of living opportunities in appropriate locations.
Sussex Inlet Settlement Strategy	The proposal will support opportunities for appropriate urban consolidation and housing diversity in Sussex Inlet which is consistent with the intent of the SISS.
Milton Ulladulla Structure Plan	The proposal will support medium density development opportunities in the Ulladulla CBD which is consistent with the MUSP.
Affordable Housing Strategy	The proposal will support medium density development in the mixed use and medium density residential zones which will contribute to housing diversity/choice and affordability.

## 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 6 Section 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Consistency or Inconsistency
Direction 1.1 Business and Industrial Zones	Yes	The proposal does not reduce the location or extent of B4 zonings in the Shoalhaven LGA and is unlikely to reduce the total potential floor space area for employment uses in the B4 Zone. The proposal is likely to support/activate existing commercial centres.
Direction 1.2 Rural Zones	Yes	The proposal does not seek to rezone rural zoned land. The proposed natural disaster clause is consistent with the objective of the Direction to protect agricultural production value of rural land by supporting the replacement of lawfully erected rural dwellings.
Direction 1.5 Rural Lands	Yes	The planning proposal is consistent with the rural planning principles provided in the Direction.
Direction 2.2 Coastal Management	Yes	The planning proposal is consistent with the Coastal Management Act 2016 and objectives of the relevant coastal management areas as well as the NSW Coastal management Manual and Toolkit, Coastal Design Guidelines and Council's Coastal Zone Management Plan. The proposal won't intensify development in areas subject to coastal hazards.
Direction 3.1 Residential Zones	Yes	The planning proposal does not seek to rezone or reduce the permissible density of land zoned residential.
Direction 3.4 Integrating Land Use and Transport	Yes	The planning proposal applies to land zoned B4 Mixed Use and R3 Medium Density which is generally located in town centres which are serviced by public transport.
Direction 4.1 Acid Sulphate Soils	Yes	The planning proposal does not seek to seek to intensify development on land that mapped as containing acid sulphate soil.
Direction 4.3 Flooding	Yes	The planning proposal meets the requirements of the Direction concerning flood prone land. The proposed natural disasters clause will require affected landowners to lodge a development application for assessment by Council which will include assessment of flooding issues.
Direction 4.4 Planning for Bushfire Protection	To be determined	The planning proposal does not seek to facilitate medium density development in bushfire prone areas. The proposed natural disasters clause will require affected landowners to lodge a development application for assessment by Council which will include assessment of bushfire issues. Council is required under the Direction to consult with the Rural Fire Service on the planning proposal prior to public exhibition.



Direction 5.2 Sydney Drinking Water Catchments	Yes	The planning proposal applies to Kangaroo Valley which is located within the Sydney Drinking Water Catchment. WaterNSW has advised Council during pre-gateway consultations, that it considers the proposal is consistent with the requirements of the Direction.
Direction 5.10 Implementation of Regional Plans	Yes	Refer to Section 3.1 of this Report.

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Coastal Management 2018	There are no provisions in the SEPP that directly relate to planning proposals, rather the SEPP sets out matters for consideration for development applications in the Coastal Zone.	Consistent	The planning proposal does not seek to facilitate development that is not consistent with the aims and objectives of the SEPP.
Exempt and Complying Development Codes 2008	There are no provisions in the SEPP that directly relate to planning proposals.	Consistent	The planning proposal does not seek to amend existing, or introduce additional, exempt and complying development controls.
Sydney Drinking Water Catchment 2011	Any DAs to replace lawfully erected dwellings destroyed by natural disaster such as bushfire will need to demonstrate a neutral or beneficial effect (NorBE) on water quality.	Consistent	WaterNSW has reviewed the planning proposal and has not raised any concerns regarding consistency with the SEPP.

## 4 Site-specific assessment

### 4.1 Environmental

The planning proposal is unlikely to impact any important environmental areas, including threatened species or endangered ecological communities, as the majority of lots affected by the proposal have already been developed for residential or other purposes. No other environmental impacts are likely to occur because of the planning proposal.

## 4.2 Social and economic

The proposal is unlikely to have any negative social or economic impacts. Rather the proposal will provide positive social and economic effects by supporting medium density housing in the B3 and B4 zones and provide certainty for landowners and the community that lawfully erected homes destroyed because of natural disaster can be rebuilt.

## 4.3 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms the conditions of the Gateway determination.

## 4.4 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

It is recommended the following agency be consulted on the planning proposal and given 21 days to comment:

- Rural Fire Service

## 5 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The Department agrees with this time frame.

## 6 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is low impact/local significance and is consistent with local and regional and strategic planning, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 7 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It will facilitate medium density housing supply in the R3 Medium Density Housing and B4 Mixed Use zones in the Shoalhaven area which will support housing choice and affordability.
- It will provide certainty for landowners and the community regarding the replacement of lawfully erected dwellings destroyed because of natural disaster.
- It is consistent with local and regional strategic planning.

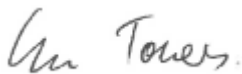
## 8 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

- Prior to community consultation, consultation is required with the Rural Fire Service.
- The planning proposal should be made available for community consultation for a minimum of 28 days.
- The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
- Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



29/11/21

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