

PLANNING PROPOSAL – PP062

Shoalhaven Local Environmental Plan 2014

2021 Instrument Housekeeping

Prepared by
City Futures Group
Shoalhaven City Council

File: 68535E
Version: Public Exhibition
Date: February 2022

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541
telephone (02) 4429 3111
facsimile (02) 4422 1816
e-mail planning@shoalhaven.nsw.gov.au
internet www.shoalhaven.nsw.gov.au

Disclaimer

Every effort has been made to provide accurate and complete information.
However, Shoalhaven City Council assumes no responsibility for any direct, indirect, incidental, or consequential damages arising from the use of information in this document.

Copyright Notice

No part of this publication may be reproduced in any form, or stored in a database or retrieval system, or transmitted or distributed in any form by any means, electronic, mechanical photocopying, recording, or otherwise without written permission from Shoalhaven City Council. All rights reserved.

Copyright © 2022, Shoalhaven City Council

Table of Contents

1	Introduction	5
1.1	Subject Land	5
1.2	Background	6
2	Part 1 – Intended Outcome.....	6
3	Part 2 – Explanation of Provisions	6
4	Part 3 – Justification	10
4.1	Need for the Planning Proposal (Section A)	10
4.1.1	Is the Planning Proposal a result of any endorsed local strategic planning statement, strategic study or report?	10
4.1.2	Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	11
4.2	Relationship to strategic planning framework (Section B).....	11
4.2.1	Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?	11
4.2.2	Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?	11
4.2.3	Is the Planning Proposal consistent with applicable state environmental planning policies?	13
4.2.4	Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?	14
4.3	Environmental, Social and Economic Impact (Section C).....	18
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?	18
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?	18
4.3.3	Has the Planning Proposal adequately addressed any social and economic effects?	18
4.4	State and Commonwealth Interests (Section D)	19
4.4.1	Is there adequate public infrastructure for the Planning Proposal?	19
4.4.2	What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	19
5	Part 4 – Mapping	19
6	Part 5 - Community Consultation	19
7	Part 6 – Project Timeline	19

Tables

Table 1: Summary of LEP instrument amendments	6
Table 2: Proposed Instrument Changes	7
Table 3: Illawarra-Shoalhaven Regional Plan	11
Table 4: Council’s strategies and plans	12
Table 5: Project Timeline	20

Figures

Figure 1: Subject land	5
------------------------------	---

Attachments

- Attachment A – Evaluation criteria for the delegation of plan making functions
- Attachment B – Council report and minute supporting the PP, 7 September 2021
- Attachment C – SEPP Checklist
- Attachment D – S117 Directions checklist
- Attachment E – Pre-Gateway Consultation Response – WaterNSW
- Attachment F – Consultation Response – NSW RFS

1 Introduction

The 2021 Instrument Housekeeping Amendment seeks to amend Shoalhaven Local Environmental Plan (LEP) 2014 to improve the operation and accuracy of the Plan. The amendment responds to three specific issues that have arisen since the last housekeeping amendment relating to medium density development/subdivision and rebuilding after natural disaster events.

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

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

1.1 Subject Land

The PP applies to all land in the Shoalhaven Local Government Area.

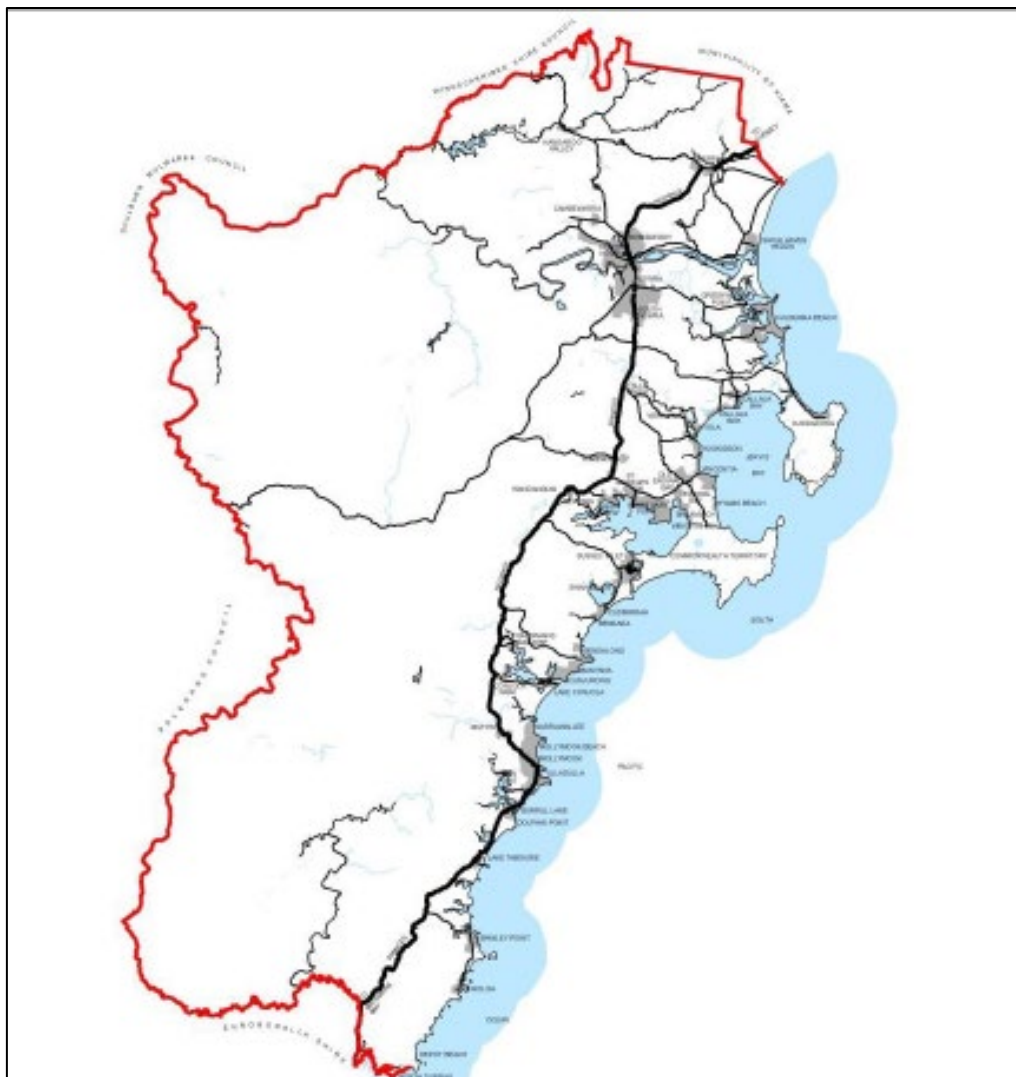


Figure 1: Subject land

1.2 Background

Shoalhaven LEP 2014 commenced on 22 April 2014. It consolidated planning controls into the one LEP and also transitioned existing controls into the NSW Government's Standard Instrument LEP format.

As part of the completion, and also since Shoalhaven LEP 2014 has been in force, Council has identified a number of housekeeping amendments needed to improve the operation and accuracy of the Plan. Council continuously reviews Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary, and delivers positive outcomes for the community.

On 7 September 2021, Council's Development & Environment Committee resolved (MIN21.620) to submit this PP to the NSW Department of Planning, Industry and Environment for a Gateway determination. Refer to **Attachment B** for a copy of the Council Report and Minutes.

A favourable Gateway Determination was issued on 30 November 2021.

2 Part 1 – Intended Outcome

The intended outcome of this PP is 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. The PP intends to amend the LEP instrument as summarised in **Table 1**.

Table 1: Summary of LEP instrument amendments

Item	Summary of proposed amendment
1	Amend clause 4.1A to: <ul style="list-style-type: none">• Apply a minimum parent lot size for multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings in the B4 mixed Use zone (subclause 2).• Provide clarification in subclause 4 surrounding the permissibility of resulting land uses post subdivision.
2	Amend clause 4.1B to clearly specify Torrens subdivision opportunities.
3	Insert a new Shoalhaven appropriate version of the NSW Government's 'model' Natural Disaster clause.

3 Part 2 – Explanation of Provisions

To achieve the intended outcome outlined in Section 2 (Part 1 – Intended Outcome) above, it is proposed to amend Shoalhaven LEP 2014 as outlined in **Table 2**.

The exact wording of the proposed amendments will be determined in conjunction with the NSW Parliamentary Counsels Office.

Table 2: Proposed Instrument Changes

Item	Clause	Proposed Amendment
1	<p>Clause 4.1A</p> <p>Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings</p>	<p>Issue and Justification: The existing LEP Clause 4.1A was introduced in August 2020 to set a minimum lot size for a parent lot prior to the erection of a dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) or residential flat building in certain residential zones. The clause sought to prescribe a minimum parent lot size to provide more certainty for developers and the community, and also lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.</p> <p>The new clause has assisted in the provision of more assurance and flexibility in the consideration and delivery of medium density residential products throughout Shoalhaven.</p> <p>The original Planning Proposal c. 2020 only considered medium density development in residential zones, however medium density land uses are also permissible with consent in certain non-residential zones, specifically multi dwelling housing and residential flat buildings in the B4 Mixed Use zone. To ensure an equitable and consistent approach for all medium density land uses across the City, it would be beneficial to amend Clause 4.1A to apply to certain development in the B4 Mixed Use zone.</p> <p>Whilst a minimum parent lot size of 900m² would be required, this is considered consistent with the minimum parent lot size across the City for this form of development. More importantly, the clause enables the efficient subdivision of the resulting dwellings which is a market expectation, and not unrealistic. Essentially, “if it looks like Torrens title it should be”¹.</p> <p>After a year of operation, there is also merit in slightly adjusting subclause 4 to avoid any doubt surrounding the permissibility of resulting land uses post subdivision. It is important that medium density development considered under clause 4.1A is able to be subdivided, regardless of the permissibility of the resulting land use.</p> <p>Proposed Amendment: Amend clause 4.1A(2) and (4) as follows. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p><i>(2) Development consent must not be granted to development on a lot in a zone shown in Column 2 of the Table to this subclause for a purpose shown in Column 1 of the Table opposite that zone, unless the area of the lot is equal to or greater than the area</i></p>

¹ Explanation of Intended Effects, Proposed Medium Density Housing Code, NSW Government.

		<p><i>specified for that purpose and shown in Column 3 of the Table.</i></p> <table> <tr> <th>Column 1</th><th>Column 2</th><th>Column 3</th></tr> <tr> <td><i>Dual occupancy (attached)</i></td><td><i>RU5 Village, R1 General Residential and R2 Low Density Residential</i></td><td><i>500 square metres</i></td></tr> <tr> <td><i>Dual occupancy (detached)</i></td><td><i>RU5 Village, R1 General Residential and R2 Low Density Residential</i></td><td><i>700 square metres</i></td></tr> <tr> <td><i>Manor houses</i></td><td><i>RU5 Village, R1 General Residential and R3 Medium Density Residential</i></td><td><i>900 square metres</i></td></tr> <tr> <td><i>Multi dwelling housing</i></td><td><i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i></td><td><i>900 square metres</i></td></tr> <tr> <td><i>Multi dwelling housing (terraces)</i></td><td><i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i></td><td><i>900 square metres</i></td></tr> <tr> <td><i>Residential flat buildings</i></td><td><i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i></td><td><i>900 square metres</i></td></tr> </table> <p><i>(4) Despite the Land Use Table or any other provision of this Plan, a dual occupancy, manor house, multi dwelling housing or multi dwelling housing (terraces) for which development consent has been granted in accordance with this clause may, with development consent, be subdivided into lots of any size to enable each dwelling to be situated on its own lot of land with a separate title the resulting individual dwellings on those lots to have separate titles.</i></p>	Column 1	Column 2	Column 3	<i>Dual occupancy (attached)</i>	<i>RU5 Village, R1 General Residential and R2 Low Density Residential</i>	<i>500 square metres</i>	<i>Dual occupancy (detached)</i>	<i>RU5 Village, R1 General Residential and R2 Low Density Residential</i>	<i>700 square metres</i>	<i>Manor houses</i>	<i>RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>	<i>Multi dwelling housing</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>	<i>Multi dwelling housing (terraces)</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>	<i>Residential flat buildings</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>
Column 1	Column 2	Column 3																					
<i>Dual occupancy (attached)</i>	<i>RU5 Village, R1 General Residential and R2 Low Density Residential</i>	<i>500 square metres</i>																					
<i>Dual occupancy (detached)</i>	<i>RU5 Village, R1 General Residential and R2 Low Density Residential</i>	<i>700 square metres</i>																					
<i>Manor houses</i>	<i>RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>																					
<i>Multi dwelling housing</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>																					
<i>Multi dwelling housing (terraces)</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>																					
<i>Residential flat buildings</i>	<i>B4 Mixed Use, RU5 Village, R1 General Residential and R3 Medium Density Residential</i>	<i>900 square metres</i>																					
2	<p>Clause 4.1B</p> <p>Dual occupancy development in Zone R3</p>	<p>Issue and Justification: The current clause 4.1A does not include a minimum lot size for a dual occupancy development (attached or detached) in the R3 Medium Density Residential zone to avoid conflict with current clause 4.1B. The purpose of clause 4.1B is to retain larger sites for higher density development (e.g., multi dwelling housing and residential flat buildings) and as such, existing clause 4.1B prescribes a <u>maximum</u> lot size for a dual occupancy development in the R3 zone of 800m². Further, this can only occur if it can be demonstrated to Council's satisfaction that amalgamation of land to create a lot greater than 800m² to facilitate a higher density development cannot occur.</p> <p>Despite the above, if a dual occupancy is approved via clause 4.1B on a lot less than 800m², there is a reasonable market expectation that the development could be subdivided. As such, it is appropriate to clearly specify subdivision opportunities in clause 4.1B (similar</p>																					

		<p>to clause 4.1A).</p> <p>Proposed Amendment: Amend clause 4.1B to include a new subclause 3 as follows: Note: red text depicts addition.</p> <p>4.1B Dual occupancy development in Zone R3</p> <p><i>(1) The objective of this clause is to encourage greater dwelling densities on land in Zone R3 Medium Density Residential.</i></p> <p><i>(2) Development consent must not be granted to development for the purpose of a dual occupancy on a lot in Zone R3 Medium Density Residential unless—</i></p> <p><i>(a) the area of the lot is less than 800 square metres, and</i></p> <p><i>(b) the consent authority is satisfied that amalgamation of the lot with other land in that zone is not feasible.</i></p> <p><i>(3) Despite the Land Use Table or other provision of this Plan, a dual occupancy for which development consent has been granted in accordance with this clause may, with development consent, be subdivided into lots of any size to enable each dwelling to be situated on its own lot of land with a separate title.</i></p>
3	New Natural Disaster Clause	<p>Issue and Justification: In response to the 2019-2020 bushfire and flood events, DPIE prepared an optional general ‘model’ Natural Disaster clause for inclusion in the NSW Standard Instrument LEP to attempt to alleviate regulatory challenges faced by homeowners seeking to rebuild lawfully erected homes following natural disaster events.</p> <p>Through the consultation process relating to the new clause, NSW councils had the opportunity to ‘opt in’ to the set Clause being included in their LEPs. On 18 January 2021, Council resolved (MIN21.4) to:</p> <ol style="list-style-type: none"> <i>1. Not opt-in to the new Standard Instrument Local Environmental Plan Natural Disaster clause and advise the NSW Department of Planning, Industry and Environment accordingly (by 15 February 2021) based on the content of this report.</i> <i>2. Consider including a different version of the clause, that better meets Shoalhaven’s needs, via the standard Planning Proposal process at the appropriate point in time and receive a future report.</i> <p>Essentially, the model clause only enables the replacement of a dwelling house or secondary dwelling,</p>

		<p>not the replacement of <u>any</u> dwelling, which is an important criterion for Shoalhaven. As Council already has provisions in its existing LEP that provide for the replacement of lawfully erected dwellings that are lost, a clause that openly excluded certain residential land uses was not considered helpful.</p> <p>This proposal seeks to enact part two of the January 2021 resolution, to pursue an alternate version of the clause to ‘cut the red tape’ for rebuilding any dwelling after a natural disaster, especially acknowledging that Shoalhaven was significantly affected by the 2019-2020 Bushfire event and 2020 flood events.</p> <p>Proposed Amendment: Insert the following new clause in the relevant part of the Shoalhaven LEP 2014:</p> <p><i>[Insert Clause Number] Dwellings affected by natural disaster</i></p> <p><i>(1) The objective of this clause is to enable the repair or replacement of lawfully erected dwellings that have been damaged or destroyed by a natural disaster.</i></p> <p><i>(2) Despite the other provisions of this Plan, development consent may be granted to enable a dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if—</i></p> <p><i>(a) the dwelling was lawfully erected, and</i></p> <p><i>(b) the development application seeking the development consent is made to the consent authority no later than 5 years after the day on which the natural disaster caused the damage or destruction.</i></p>
--	--	---

4 Part 3 – Justification

4.1 Need for the Planning Proposal (Section A)

4.1.1 Is the Planning Proposal a result of any endorsed local strategic planning statement, strategic study or report?

The PP is not a direct result of an action in an endorsed local strategic planning statement, strategic study or report.

The proposed changes to clause 4.1A and 4.1B follow an extensive subdivision review in 2016-2019 and the changes made to Shoalhaven’s subdivision provisions as part of Amendment 35 to Shoalhaven LEP 2014. The proposed new natural disaster clause modifies the model clause prepared by the NSW Government.

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

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

4.2 Relationship to strategic planning framework (Section B)

4.2.1 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Illawarra-Shoalhaven Regional Plan 2041 (ISRP) applies to the whole Shoalhaven LGA. The main areas of relevance in the ISRP is:

- Theme 1 – A productive and innovative region.
- Theme 2 – A region that values its people and places.

Table 3: Illawarra-Shoalhaven Regional Plan

PP Item	Comment
Clause 4.1A	The introduction of a minimum lot size for the parent lot prior to the erection of medium density development in the B4 zone reflects the NSW Government's strategic intent and removes impediments to the subsequent subdivision of this form of development. As Torrens subdivision opportunities become clearer for medium density development in the B4 zone, it is likely that the supply of medium density development will increase. This in turn will increase flexibility and choice and will assist in achieving Objectives 18 and 19 of the ISRP.
Clause 4.1B	The changes to clause 4.1B will also clarify subdivision opportunities for dual occupancy in the R3 zone. Clearly enabling Torrens subdivision opportunities will provide variety in dwelling typology for the Shoalhaven community, which will assist in achieving Objectives 18 and 19 of the ISRP.
New Natural Disaster Clause	The new Natural Disaster Clause will enable Shoalhaven to build more resilience into its planning scheme which will support its community following a natural disaster. This will assist in achieving Objective 12 of the ISRP.

4.2.2 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

The proposed new Natural Disaster Clause enables the rebuilding of lawfully erected dwellings and therefore is considered consistent with all of Council's relevant plans due to the nature of the proposal.

The following table considers the consistency of the clause 4.1A and clause 4.1B proposals against all of Council's relevant strategies and plans.

Table 4: Council's strategies and plans

Council Strategy/Plan	Comment
Local Strategic Planning Statement - Shoalhaven 2040	<p>The proposal relating to clauses 4.1A and 4.1B is consistent with Planning Priority 1 - Providing homes to meet all needs and lifestyles. More housing typology choice is expected to result from the amendment.</p> <p>The new Natural Disaster Clause will enable Shoalhaven to build more resilience into its planning scheme which will support its community following a natural disaster. This is consistent with Planning Priority 11 – Adapting to natural hazards through building resilience.</p>
Shoalhaven City Council's Community Strategic Plan	<p>The Proposal is consistent with Council's Community Strategy Plan, specifically Theme 2. Sustainable, liveable environments, and its Action 2.2 Plan and manage appropriate and sustainable development.</p>
Growth Management Strategy (GMS)	<p>The purpose of the GMS is to manage the social and economic implications of future growth in Shoalhaven whilst protecting and preserving the environmental values of the City.</p> <p>Due to the nature of the PP, it is not expected that the proposal will affect the intent of the GMS. The PP is not considered inconsistent with the GMS.</p>
Nowra-Bomaderry Structure Plan (NBSP)	<p>The NBSP sets the development-conservation agenda for the Nowra-Bomaderry Area.</p> <p>The NBSP encourages medium density housing within close proximity to commercial centres in the identified locations of Bomaderry, North Nowra and Nowra. Due to the strategically planned nature of the Nowra-Bomaderry urban release areas, medium density development is expected and encouraged, especially around neighbourhood retail locations. Greater flexibility in subdivision choice and size will also assist in achieving the goals of the NBSP. It is not expected that the proposed minimum lot sizes or subdivision opportunities will affect the intent of the NBSP.</p> <p>The PP is not inconsistent with the NBSP.</p>
Jervis Bay Settlement Strategy (JBSS)	<p>The JBSS provides a strategic framework to manage residential and rural residential growth in the Jervis Bay area.</p> <p>The JBSS requires that the supply of housing opportunities for future residential development be provided within the environmental and servicing limits of the Region. In certain locations, opportunities for consolidation and higher density is appropriate and a choice of living opportunities and types of settlements is encouraged. The proposed minimum lot sizes will ensure appropriate medium density development in identified locations, on sites that are of an appropriate size for that development.</p> <p>The proposal is not considered to be inconsistent with the JBSS.</p>
Sussex Inlet Settlement Strategy (SISS)	<p>The SISS provides a broad framework to guide the future residential and rural residential growth and development of the area.</p> <p>The SISS supports opportunities for appropriate urban consolidation and greater densities to increase the range of housing choices available,</p>

	<p>particularly in convenient and appropriate locations.</p> <p>The proposal is not inconsistent with the SISS.</p>
Milton Ulladulla Structure Plan (MUSP)	<p>The MUSP applies to the Milton-Ulladulla area and establishes a set of principles to manage appropriate growth. It identifies the Ulladulla CBD as the sub regional retail core and commercial hub of southern Shoalhaven.</p> <p>The MUSP encourages medium density near centres and a variety of subdivision forms. The PP is not inconsistent with the MUSP.</p>
Affordable Housing Strategy (AHS)	<p>The AHS provides a range of effective policy solutions to facilitate affordable housing across the Shoalhaven local government area.</p> <p>The AHS promotes affordably priced housing in well located areas (close to transport and services), being precincts within 400-600m of the urban centres of Nowra-Bomaderry, Vincentia and Milton-Ulladulla.</p> <p>The PP will result in the ability to Torrens subdivide medium density development in the B4 and R3 zones which should increase the take up rate of this form of development.</p> <p>The PP is not inconsistent with the AHS.</p>

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

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

Coastal Management 2018

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

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

Exempt and Complying Development Codes 2008

The SEPP sets out a number of Codes which enables certain development to be undertaken without Council approval via the exempt or complying development streams. There are no provisions in this SEPP that directly apply to the PP, and therefore the PP is not inconsistent in this regard.

Sydney Drinking Water Catchment 2011

The SEPP specifies provisions to protect the water quality in the Sydney Drinking Water Catchment area. There is land in Kangaroo Valley that clause 4.1A may apply to, and the new Natural Disaster Clause would have application in the Sydney Drinking Water Catchment area as well.

There are no provisions in this SEPP that directly apply to the PP, and therefore the PP is not inconsistent in this regard.

It is noted that the SEPP will need to be taken into consideration as part of any development application, notably Clause 10 which requires a neutral or beneficial effect on water quality to be demonstrated.

Pre-Gateway consultation has been undertaken with WaterNSW. WaterNSW agrees that the PP is not inconsistent with the SEPP (refer to **Attachment E**).

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

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

1.1 Business and Industrial Zones

This Direction applies as the PP affects land within the B4 zone.

The proposal is considered consistent with this Direction for the following reasons:

- The proposal establishes a minimum parent lot size for a land use already permissible in the B4 zone, as well as clarifying subdivision opportunities. This is not inconsistent with the objectives of the zone as employment growth and employment opportunities are not being discouraged. As the land uses are currently permissible with no minimum lot size consideration, the change is unlikely to affect the viability of relevant centres across the City.
- The proposal does not change the location or extent of existing B4 zones.
- The proposal is unlikely to reduce the total potential floor space area for employment uses and related public services in the B4 zone as medium density development can currently be considered in the zone.
- No new employment zones are proposed.

2.2 Coastal Management

A number of lots subject to the PP fall within the coastal zone area, as defined by the *Coastal Management Act 2016*.

The PP is considered to be consistent with the:

- Objects of the *Coastal Management Act 2016* and the objectives of the relevant coastal management areas.
- NSW Coastal Management Manual and associated Toolkit.

- NSW Coastal Design Guidelines 2003.
- Shoalhaven Coastal Zone Management Plan 2018.

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

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

The PP is therefore not inconsistent with this direction.

1.2 Rural Zones

This direction applies as the PP affects land within a rural zone. The new Natural Disaster Clause will result in provisions that allow the rebuilding of an existing lawfully erected dwelling that has been destroyed or damaged by a natural disaster in these areas.

The proposal is not considered inconsistent with this Direction as no rezoning is proposed and the permissibility density of the land will not change.

1.5 Rural Lands

This Direction applies as the PP affects land within a rural or environment protection zone. The new Natural Disaster Clause will result in provisions that allow the rebuilding of an existing lawfully erected dwelling that has been destroyed or damaged by a natural disaster in these areas.

The proposal is not considered inconsistent with this Direction as the proposal:

- Is consistent with any relevant plans and strategies (see Section 4.2.1 and 4.2.2 of this PP).
- Enables the replacement of an existing dwelling which would have already considered the significance of agriculture and primary production to the State and rural communities, environmental values, natural and physical constraints, fragmentation, land use conflict and the social, economic and environmental interests of the community (refer to Section 4.3 of this PP).
- Does not impact upon opportunities for investment in productive, diversified, innovative and sustainable rural economic activities.
- Does not adversely impact upon support of farmers in exercising their right to farm.
- Will not adversely impact State significant agricultural land identified in State Environmental Planning Policy (Primary Production and Rural Development) 2019 for the purpose of ensuring the ongoing viability of the land.

3.1 Residential Zones

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

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

- The choice of medium density dwelling options is not expected to change vastly as a result of this PP, but the proposal will enable more flexibility in the type of subdivision undertaken.
- The PP does not affect the ability for the market to make more efficient use of existing infrastructure as the land is developed/redeveloped in the future.
- The PP will not increase the consumption of land for housing on the urban fringe. Significant medium density development opportunities are available across Shoalhaven in infill areas and endorsed URAs.
- The PP seeks to set a minimum lot size for the parent lot to ensure that the land is an appropriate size to facilitate well designed medium density development.
- Satisfactory servicing arrangements are currently in place for all sites or will be resolved via the assessment process.

3.4 Integrating Land Use and Transport

This direction applies as the PP seeks to alter the planning provisions relating to urban zoned land in Shoalhaven. The land subject to the PP (relating to the clause 4.1A and clause 4.1B proposal) is currently residential and business in nature and serviced by a mix of pedestrian, private and public transport options.

The new Natural Disaster Clause enables the replacement of existing lawfully erected dwellings destroyed or damaged in a natural disaster. The existing dwellings would have had adequate infrastructure and transport arrangements in place, and replacement infrastructure can be considered via the development assessment or complying development process.

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

The PP is not inconsistent with this direction.

4.1 Acid Sulphate Soils

The land subject to this PP is mapped as having acid sulfate soils. The PP however does not seek to intensify the land uses beyond what is already permissible with consent in the relevant zones or existing. The PP is not inconsistent with the Acid Sulfate Soils Planning Guidelines.

The PP is therefore not inconsistent with this direction.

4.3 Flooding

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

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

- It is not inconsistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005 or the Considering flooding in land use planning guideline 2021.
- It is not inconsistent with any flood study or flood plain risk management plan.
- It does not rezone any land from Recreation, Rural, Special Purposes or Environmental Protection Zones to a Residential, Business, Industrial or Special Purpose Zone.
- It does not contain provisions that apply to flood planning areas which:
 - Permit development in floodway areas.
 - Permit development that will result in significant flood impacts to other properties.
 - Permit development for the purpose of residential accommodation in high hazard areas.
 - Permit a significant increase in the development of that land.
 - permit specific sensitive land uses in areas where the occupants of the development cannot effectively evacuate.
 - Permit development to be carried out without development consent except for exempt development or agriculture (not including dams, drainage canals, levees.
 - Are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services.
 - Would permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.

It is noted that Shoalhaven DCP 2014 includes provisions specifying certain areas where certain development is not supported in high hazard flood zones.

- Does not introduce any provisions relating to Special Flood Considerations.

4.4 Planning for Bushfire Protection

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

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

- It has regard to Planning for Bushfire Protection 2019. Where relevant, future development will be assessed against Planning for Bushfire Protection during the relevant assessment process.
- It does not result in controls that place inappropriate developments in hazardous areas.
- It does not prohibit bushfire hazard reduction within an APZ.

As per the requirements of the Gateway determination, feedback from the NSW Rural Fire Service (RFS) has been obtained (**Attachment F**). The RFS raises no objections to the PP.

5.2 Sydney Drinking Water Catchments

The PP applies to land located at Kangaroo Valley and Sassafras which falls within the Sydney Drinking Water Catchment area (i.e. Item 1 and 3 of this PP).

It is considered that the PP will not adversely impact on water quality in the catchment area, nor will it disturb land and water capability in these areas. The amendments to Shoalhaven LEP 2014 are considered to be of minor significance.

The PP is consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and the outcomes of the Strategic Land and Water Capability Assessment prepared by WaterNSW.

As such, the PP is not considered inconsistent with this direction.

Pre-Gateway consultation has been undertaken with WaterNSW. WaterNSW agrees that the PP is not inconsistent with this Direction (refer to **Attachment E**).

5.10 Implementation of Regional Plans

The Illawarra Shoalhaven Regional Plan 2041 (ISRP) applies to Shoalhaven and the PP is considered consistent with the ISRP as discussed in Section 4.2.1.

The PP is therefore not inconsistent with this direction.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

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

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

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

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

The social and economic impacts related to the PP are considered minimal. The clarification surrounding Torrens subdivision in relation to clause 4.1A and clause 4.1B should stimulate medium density development and the introduction of a parent lot size for

certain medium density development in the B4 zone should provide greater certainty for the community and developers.

Although most existing dwellings that are lost in a natural disaster circumstance would benefit from 'existing use' rights depending on their legal status, the clause will provide additional clarity (and comfort for landowners) that a dwelling can be rebuilt or repaired if the original lawful dwelling was destroyed or damaged in a natural disaster event.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The land relating to clause 4.1A and clause 4.1B is generally well serviced by existing infrastructure and the PP does not trigger the need for additional infrastructure at this point in time.

The new Natural Disaster Clause enables the replacement of existing lawfully erected dwellings destroyed or damaged in a natural disaster. The existing dwellings would have had adequate infrastructure in place, and replacement infrastructure can be considered via the development assessment or complying development process.

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

Pre-Gateway consultation has been undertaken with WaterNSW. WaterNSW does not raise any objection to the proposal (refer to **Attachment E**).

As per the requirements of the Gateway determination, feedback from the RFS was sought (refer to referral response at **Attachment F**). The RFS raises no objection to the PP.

5 Part 4 – Mapping

No mapping changes are proposed to support this PP.

6 Part 5 - Community Consultation

Council is exhibiting 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. An exhibition period of at least 28 days applies.

Public notification of the exhibition includes a notification and a package of exhibition material on Council's website (which can also be viewed via the Planning Portal). Depending on the NSW Public Health Orders at the time, the PP may be able to be viewed electronically at Council's administration buildings.

7 Part 6 – Project Timeline

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

Table 5: Project Timeline

Task	Anticipated Timeframe
Pre-Gateway consultation with WaterNSW	October/November 2021
Commencement date (date of Gateway determination)	November/December 2021
Completion of Gateway determination requirements	February 2022
Public exhibition	February/March 2022
Consideration of submissions	March 2022
Post exhibition consideration of PP	April/May 2022
Finalisation and notification of Plan	June - August 2022

Attachment A - Evaluation Criteria for the Delegation of Plan Making Functions

Checklist for the review of a request for delegation of plan making functions to Councils

Local Government Area:

Shoalhaven City Council

Name of draft LEP:

Shoalhaven Local Environmental Plan 2014
PP062

Address of Land (if applicable):

Applies across the City.

Intent of draft LEP:

The Planning Proposal seeks to:

- Amend clause 4.1A to:
 - Apply a minimum parent lot size for multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings in the B4 mixed Use zone (subclause 2).
 - Provide clarification in subclause 4 surrounding the permissibility of resulting land uses post subdivision.
- Amend clause 4.1B to clearly specify Torrens subdivision opportunities.
- Insert a new Shoalhaven appropriate version of the NSW Government's 'model' Natural Disaster clause.

Evaluation criteria for the issuing of an Authorisation (Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council Response		Department Assessment	
	Y/N	Not relevant	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?		N/A		
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	Y			

endorsed by the Director-General?				
Does the Planning Proposal adequately address any consistency with all relevant S9.1 Planning Directions?		Nil		
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			
Heritage LEPs				
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/A		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		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/A		
Reclassifications				
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		N/A		
Is the Planning Proposal proposed to rectify an anomaly in a classification?		N/A		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		N/A		
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/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/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/A		

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 lead to the deferral has been addressed?	N			
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the Planning Proposal create an exception to a mapped development standard?	N			
Section 73A matters				
<p>Does the proposed instrument:</p> <p>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 works or a formatting error?;</p> <p>b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;</p> <p>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?</p> <p>(NOTE – the Minister (or delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>	N			

Pre-Gateway consultation has been undertaken with WaterNSW. WaterNSW does not object to the proposal (refer to **Attachment E**).

Attachment B - Council report and minute supporting the PP, 7 September 2021

DE21.91 Proposed Instrument Housekeeping Planning Proposal - Shoalhaven Local Environmental Plan 2014

HPERM Ref: D21/341854

Department: Strategic Planning

Approver: Gordon Clark, Acting Director - City Futures

Reason for Report

Obtain the necessary resolution to progress the proposed LEP Instrument Housekeeping Planning Proposal which seeks to make three low-impact but timely amendments to Shoalhaven Local Environmental Plan 2014 (the LEP).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare the Instrument Housekeeping Planning Proposal based on the scope outlined in this report and submit to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.
2. If the Gateway Determination requires formal public exhibition, proceed to public exhibition in accordance with the terms of the determination and legislative requirements and if any submissions are received, these are to be considered in a further report to enable finalisation of the Planning Proposal and subsequent Amendment to the LEP. If no submissions are received (or if exhibition is not required), proceed to finalise the Planning Proposal as exhibited to enable the subsequent Amendment to the LEP to occur, without any further reports.
3. Advise Development Industry Representatives and Community Consultative Bodies of the exhibition arrangements and when the Plan is finalised.

Options

1. As recommended.

Implications: This is the preferred option. The Planning Proposal is considered to have a minor impact as it enables permissible medium density development to benefit from clearly defined subdivision opportunities in the B4 Mixed Use zone, a value currently enjoyed by medium density in residential zones. Subdivision opportunities for dual occupancy development in the R3 Medium Density Development zone will also be clarified in line with Council's longstanding intent. The Planning Proposal also proposes a Natural Disaster Clause that is tailored to Shoalhaven to assist in the rebuilding of dwellings destroyed during a natural disaster event, which is considered beneficial following the 2019-2020 Bushfire and flood events, and likely future natural disaster events.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent and scope of any changes.

3. Not proceed with the PP.

Implications: This option is not favoured as subdivision opportunities for certain medium density development in the B4 and R3 zones will remain ambiguous. Further, a Shoalhaven specific Natural Disaster Clause will not be available to the community for rebuilding after natural disaster events.

Background

The Instrument Housekeeping Planning Proposal proposes the following changes/adjustments to the LEP:

- Require a minimum parent lot size and extend greater subdivision opportunities for medium density development in the B4 zone by including multi dwelling housing and residential flat buildings in Clause 4.1A of the LEP.
- Clarify subdivision opportunities for dual occupancy development in the R3 Medium Density Residential zone, to which Clause 4.1B of the LEP applies.
- Introduce a 'Natural Disaster Clause' that is more specific to the needs of Shoalhaven, to enable the rebuilding of dwellings following a natural disaster.

These matters are discussed in more detail below.

Parent Lot Size and Subdivision of Medium Density Development in the B4 Zone

The existing LEP Clause 4.1A (Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing etc), was introduced in August 2020 to set a minimum lot size for a parent lot prior to the erection of a dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) or residential flat building in certain residential zones. The clause sought to prescribe a minimum parent lot size to provide more certainty for developers and the community, and also lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.

The new clause has assisted and provided more assurance and flexibility in the consideration and delivery of medium density residential products throughout Shoalhaven.

The original Planning Proposal (2020) only considered medium density development in residential zones, however medium density land uses are also permissible with consent in certain non-residential zones, specifically multi dwelling housing and residential flat buildings in the B4 Mixed Use zone. To ensure an equitable and consistent approach for all medium density land uses across the city, it would be beneficial to amend Clause 4.1A to apply to certain development in the B4 Mixed Use zone. The current clause 4.1A is provided below, with the proposed additions highlighted in red to facilitate this proposal (subject to drafting by the NSW Parliamentary Counsels Office). Whilst a minimum parent lot size of 900m² would be required, this is considered consistent with the minimum parent lot size across the city for this form of development. More importantly, the clause enables the efficient subdivision of the resulting dwellings which is a market expectation, and not unrealistic. Essentially, "if it looks like Torrens title it should be"¹.

After a year of operation, there is merit in slightly adjusting subclause 4 to avoid any doubt surrounding the permissibility of resulting land uses post subdivision (also shown in red below, subject to drafting by the NSW Parliamentary Counsels Office).

4.1A Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings

(1) The objectives of this clause are as follows—

(a) to achieve planned residential density in certain zones,

¹ Explanation of Intended Effects, Proposed Medium Density Housing Code, NSW Government.

- (b) to ensure that the area and dimensions of a lot are able to accommodate development that is consistent with the objectives and development controls for dual occupancies, manor houses, multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings,
 - (c) to minimise any likely adverse impact of development on the amenity of neighbouring properties.
- (2) Development consent must not be granted to development on a lot in a zone shown in Column 2 of the Table to this subclause for a purpose shown in Column 1 of the Table opposite that zone, unless the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	RU5 Village, R1 General Residential and R2 Low Density Residential	500 square metres
Dual occupancy (detached)	RU5 Village, R1 General Residential and R2 Low Density Residential	700 square metres
Manor houses	RU5 Village, R1 General Residential and R3 Medium Density Residential	900 square metres
Multi dwelling housing	B4 Mixed Use , RU5 Village, R1 General Residential and R3 Medium Density Residential	900 square metres
Multi dwelling housing (terraces)	B4 Mixed Use , RU5 Village, R1 General Residential and R3 Medium Density Residential	900 square metres
Residential flat buildings	B4 Mixed Use , RU5 Village, R1 General Residential and R3 Medium Density Residential	900 square metres

- (3) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.
- (4) Despite **the Land Use Table** or any other provision of this Plan, a dual occupancy, manor house, multi dwelling housing or multi dwelling housing (terraces) for which development consent has been granted in accordance with this clause may, with development consent, be subdivided into lots of any size to enable **each dwelling to be situated on its own lot of land with a separate title** ~~the resulting individual dwellings on those lots to have separate titles.~~
- (5) In this clause—
manor house and **multi dwelling housing (terraces)** have the same meaning as in clause 1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Subdivision of Dual Occupancy Development in the R3 Zones

The current clause 4.1A discussed above does not include a minimum lot size for a dual occupancy (attached or detached) in the R3 Medium Density Residential zone to avoid conflict with current clause 4.1B. The purpose of clause 4.1B is to retain larger sites for higher density development (e.g., multi dwelling housing and residential flat buildings) and as such, existing clause 4.1B prescribes a maximum lot size for a dual occupancy development

in the R3 zone of 800m². Further, this can only occur if it can be demonstrated to Council's satisfaction that amalgamation of land to create a lot greater than 800m² to facilitate a higher density development cannot occur.

Despite the above, if a dual occupancy is approved via clause 4.1B on a lot less than 800m², there is a reasonable market expectation that the development could be subdivided. As such, it is appropriate to clearly specify subdivision opportunities in clause 4.1B (similar to clause 4.1A), as shown below in red (subject to drafting by the NSW Parliamentary Counsels Office).

4.1B Dual occupancy development in Zone R3

- (1) The objective of this clause is to encourage greater dwelling densities on land in Zone R3 Medium Density Residential.
- (2) Development consent must not be granted to development for the purpose of a dual occupancy on a lot in Zone R3 Medium Density Residential unless—
 - (a) the area of the lot is less than 800 square metres, and
 - (b) the consent authority is satisfied that amalgamation of the lot with other land in that zone is not feasible.
- (3) Despite the Land Use Table or other provision of this Plan, a dual occupancy for which development consent has been granted in accordance with this clause may, with development consent, be subdivided into lots of any size to enable each dwelling to be situated on its own lot of land with a separate title.

Natural Disaster Clause

In response to the 2019-2020 bushfire and flood events, the NSW Department of Planning, Industry and Environment (DPIE) prepared an optional general 'model' Natural Disaster clause for inclusion in the NSW Standard Instrument LEP to attempt to alleviate regulatory challenges faced by homeowners seeking to rebuild lawfully erected homes following natural disaster events. Council has provisions in its existing LEP that already provide for the replacement of dwellings that are lost.

The clause in the Standard Instrument LEP is outlined below:

5.9 Dwelling house or secondary dwelling affected by natural disaster [optional]

- (1) The objective of this clause is to enable the repair or replacement of lawfully erected dwelling houses and secondary dwellings that have been damaged or destroyed by a natural disaster.
- (2) This clause applies to land in the following zones—
 - (a) *[set out the zones to which the clause is to apply]*
- (3) Despite the other provisions of this Plan, development consent may be granted to development on land to which this clause applies to enable a dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if—
 - (a) the dwelling house or secondary dwelling was lawfully erected, and
 - (b) the development application seeking the development consent is made to the consent authority no later than 5 years after the day on which the natural disaster caused the damage or destruction.

Through the consultation process relating to the new clause, NSW councils had the opportunity to 'opt in' to the set Clause being included in their LEPs. On 18 January 2021, Council resolved (MIN21.4) to:

1. *Not opt-in to the new Standard Instrument Local Environmental Plan Natural Disaster clause and advise the NSW Department of Planning, Industry and Environment accordingly (by 15 February 2021) based on the content of this report.*
2. *Consider including a different version of the clause, that better meets Shoalhaven's needs, via the standard Planning Proposal process at the appropriate point in time and receive a future report.*

Essentially, the clause only enabled the replacement of a dwelling house or secondary dwelling, not the replacement of any dwelling which is an important criterion for Shoalhaven.

This proposal seeks to enact part two of the January 2021 resolution, to pursue an alternate version of the clause. The clause could be constructed as follows (subject to drafting by the NSW Parliamentary Counsels Office), noting that it would be appropriate for the clause to apply to the entire City, not just specific zones:

[Insert Clause Number] Dwellings affected by natural disaster

- (1) The objective of this clause is to enable the repair or replacement of lawfully erected dwellings that have been damaged or destroyed by a natural disaster.
- (2) Despite the other provisions of this Plan, development consent may be granted to enable a dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if—
 - (a) the dwelling was lawfully erected, and
 - (b) the development application seeking the development consent is made to the consent authority no later than 5 years after the day on which the natural disaster caused the damage or destruction.

It is noted that a merit assessment is still required, including consideration of contemporary bushfire legislation/guidelines or requirements of other legislation, however the rebuild or repair cannot be refused on the basis of any development standards in the LEP.

The proposed clause seeks to 'cut the red tape' for rebuilding any dwelling after a natural disaster and should be pursued, especially acknowledging that Shoalhaven was significantly affected by the 2019-2020 Bushfire event and 2020 flood events.

Conclusion

The proposed changes to the LEP have merit for a number of reasons, including facilitating the reasonable subdivision of medium density development in certain zones and assisting in the efficient rebuilding of dwellings affected by natural disasters. As such, it is recommended that the proposal proceeds to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.

Community Engagement

The PP will be exhibited for comment in accordance with Council's Community Participation Plan, and in accordance with relevant legislative requirements.

The Gateway determination will specify the minimum exhibition period and any government agencies who should be consulted (if any).

Policy and Risk Implications

Proposed Changes to the B4 and R3 Zones

The proposal seeks to reinforce subdivision opportunities for medium density development in the B4 and R3 zones. The subdivision of certain medium density development in these

zones is considered an acceptable outcome. Council's longstanding intent and should be facilitated through clear provisions.

Natural Disaster Clause

Although most existing dwellings that are lost in a natural disaster circumstance would benefit from 'existing use' rights depending on their legal status, the clause will provide additional clarity (and comfort for landowners) that a dwelling can be rebuilt or repaired if the original lawful dwelling was destroyed or damaged in a natural disaster event.

The rebuild or repair cannot be refused on the basis of any development standards in the LEP, however a merit assessment is still required, including consideration of contemporary bushfire legislation/guidelines, for example.

Financial Implications

There are no immediate financial implications for Council. This PP is being resourced within the Strategic Planning budget.

Subject: Instrument Housekeeping Planning Proposal - Shoalhaven Local Environmental Plan 2014 - Preparation - Gateway Determination - Public exhibition - Adoption
HPERM Reference 33363E
Related Report D21/341854
Item Number DE21.91

RESOLVED (Clr Watson / Clr Proudfoot)

MIN21.620

That Council:

1. Prepare the Instrument Housekeeping Planning Proposal based on the scope outlined in this report and submit to the NSW Department of Planning, Industry and Environment for an initial Gateway determination.
2. If the Gateway Determination requires formal public exhibition, proceed to public exhibition in accordance with the terms of the determination and legislative requirements and if any submissions are received, these are to be considered in a further report to enable finalisation of the Planning Proposal and subsequent Amendment to the LEP. If no submissions are received (or if exhibition is not required), proceed to finalise the Planning Proposal as exhibited to enable the subsequent Amendment to the LEP to occur, without any further reports.
3. Advise Development Industry Representatives and Community Consultative Bodies of the exhibition arrangements and when the Plan is finalised.

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

Against: Nil

CARRIED

Attachment C - SEPP Checklist

SEPP	Name	Applicable	Relevant	Not inconsistent
19	Bushland in Urban Areas	x	x	n/a
33	Hazardous and Offensive Development	✓	x	n/a
47	Moore Park Showground	x	x	n/a
50	Canal Estate Development	✓	x	n/a
55	Remediation of Land	✓	x	n/a
64	Advertising and Signage	✓	x	n/a
65	Design Quality of Residential Apartment Development	✓	x	n/a
--	Aboriginal Land 2019	x	x	n/a
--	Activation Precincts 2020	x	x	n/a
--	Building Sustainability Index: BASIX 2004	✓	x	n/a
--	Coastal Management 2018	✓	✓	See s.4.2.3
--	Concurrences and Consents 2018	✓	x	n/a
--	Educational Establishments and Child Care Facilities 2017	✓	x	n/a
--	Exempt and Complying Development Codes 2008	✓	✓	See s.4.2.3
--	Gosford City Centre 2018	x	x	n/a
--	Housing SEPP 2021	✓	x	n/a
--	Infrastructure 2007	✓	x	n/a
--	Koala Habitat Protection 2020	✓	x	n/a
--	Koala Habitat Protection 2021	✓	x	n/a
--	Kosciuszko National Park – Alpine Resorts 2007	x	x	n/a
--	Kurnell Peninsula 1989	x	x	n/a
--	Major Infrastructure Corridors 2020	x	x	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	✓	x	n/a
--	Penrith Lakes Scheme 1989	x	x	n/a
--	Primary Production and Rural Development 2019	✓	x	n/a
--	State and Regional Development 2011	✓	x	n/a
--	State Significant Precincts 2005	✓	x	n/a
--	Sydney Drinking Water Catchment 2011	✓	✓	See s.4.2.3
--	Sydney Region Growth Centres 2006	x	x	n/a
--	Three Ports 2013	x	x	n/a
--	Urban Renewal 2010	x	x	n/a
--	Vegetation in Non-Rural Areas 2017	✓	x	n/a
--	Western Sydney Aerotropolis 2020	x	x	n/a
--	Western Sydney Employment Area 2009	x	x	n/a
--	Western Sydney Parklands 2009	x	x	n/a

Attachment D - s9.1 Checklist*5 August 2021 Version*

Direction		Applicable	Relevant	Not inconsistent
1 Employment and Resources				
1.1	Business and Industrial Zones	✓	✓	See s.4.2.4
1.2	Rural Zones	✓	✓	See s.4.2.4
1.3	Mining, Petroleum Production and Extractive Industries	✗	✗	n/a
1.4	Oyster Aquaculture	✗	✗	n/a
1.5	Rural lands	✓	✓	See s.4.2.4
2 Environment and Heritage				
2.1	Environmental Protection Zones	✓	✓	✓
2.2	Coastal Management	✓	✓	See s.4.2.4
2.3	Heritage Conservation	✓	✗	n/a
2.4	Recreation Vehicle Area	✓	✗	n/a
2.5	Application of E2 and E3 Zones in Environmental Overlays in Far North Coast LEPs	✗	✗	n/a
2.6	Remediation of Contaminated Land	✓	✓	✓
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	See s.4.2.4
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.4	Integrating Land Use and Transport	✓	✓	See s.4.2.4
3.5	Development Near Regulated Airports and Defence Airfields	✓	✗	n/a
3.6	Shooting Ranges	✗	✗	n/a
3.7	Reduction in non-hosted short term rental accommodation period	✗	✗	n/a
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✓	✓	See s.4.2.4
4.2	Mine Subsidence and Unstable Land	✗	✗	n/a
4.3	Flooding	✓	✓	See s.4.2.4
4.4	Planning for Bushfire Protection	✓	✓	See s.4.2.4
5 Regional Planning				
5.2	Sydney Drinking Water Catchments	✓	✓	See s.4.2.4
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	✗	✗	n/a

Direction		Applicable	Relevant	Not inconsistent
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	x	x	n/a
5.9	North West Rail Link Corridor Strategy	x	x	n/a
5.10	Implementation of Regional Plans	✓	✓	See s.4.2.4
5.11	Development of Aboriginal Land Council land	x	x	n/a
6 Local Plan Making				
6.1	Approval and Referral Requirements	✓	x	n/a
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	x	x	n/a
7 Metropolitan Planning				
7.3	Parramatta Road Corridor Urban Transformation Strategy	x	x	n/a
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	x	x	n/a
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	x	x	n/a
7.8	Implementation of Western Sydney Aerotropolis Plan	x	x	n/a
7.9	Implementation of Bayside West Precincts 2036 Plan	x	x	n/a
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	x	x	n/a
7.11	Implementation of St Leonards and Crows Nest 2036 Plan	x	x	n/a
7.12	Implementation of Greater Macarthur 2040	x	x	n/a
7.13	Implementation of the Pyrmont Peninsula Place Strategy	x	x	n/a

Attachment E – Pre-Gateway Consultation Response - WaterNSW

4 November 2021

Contact: *Stuart Little*
Telephone: *0436 948 347*
Our ref: *D2021/116804*

Ms Jenna Tague
Coordinator – Policy Planning Team
Shoalhaven Council
PO Box 42
NOWRA NSW 2541

Dear Ms Tague

Pre-Gateway Agency Consultation - Planning Proposal PP062 - 2021 Instrument Housekeeping – Shoalhaven LEP 2014

I refer to your letter of 14 October 2021 regarding Planning Proposal PP062 – 2021 Instrument Housekeeping Amendment to *Shoalhaven Local Environmental Plan 2014* (LEP). We understand that the Proposal seeks to amend clauses 4.1A and 4.1B and to insert an adapted version of the NSW Government's 'model' Natural Disaster clause.

About 16% of the Shoalhaven Local Government Area occurs with the Sydney Drinking Water Catchment (SDWC) including the Kangaroo Valley. Aspects of this Proposal potentially affect some zones in the Kangaroo Valley and the rebuilding of dwellings in the SDWC following natural disasters such as bushfires and floods.

Clause 4.1A

Clause 4.1A of the LEP applies to various village and residential zonings and specifies the minimum lot size (MLS) of the parent lot for dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) and residential flat building developments. The Planning Proposal will amend clause 4.1A(2) to apply the MLS provisions to multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings in the B4 mixed use zone. We note that minor modifications to 4.1A(4) are also proposed to facilitate subdivision and provide more clarity that each offspring dwelling can be situated on its own land with a separate title. This provision applies to all the purposes and corresponding zones listed under clause 4.1A(3) including the RU5 Village and R2 Low density residential zones in the Kangaroo Valley area. WaterNSW has no objection to these provisions.

Clause 4.1B

Clause 4.1B currently prescribes a maximum lot size of 800m² where dual occupancy is allowed within R3 Medium density residential zones. The Planning Proposal seeks to introduce a new clause 4.1B(3) to ensure that resulting dual occupancy developments can be subdivided with each dwelling able to be afforded a separate title. WaterNSW has no objection to this provision.

Natural disaster provision

In response to the 2019-20 bushfire and flood events, the Department of Planning, Industry and Environment (DPIE) prepared an optional 'model' Natural Disaster clause allowing flexibility for Councils to 'opt in' to adopt the clause (see clause 5.9 of the Standard Instrument – Principal Local Environmental Plan). It is understood that Shoalhaven Council chose not to adopt the clause as the provision was limited to dwelling houses or secondary dwellings. WaterNSW notes

that Council has now prepared its own more encompassing clause to allow for the rebuilding of *any* dwelling after a natural disaster. This broader provision is more adapted to the wider needs of the Shoalhaven LGA, especially given the impact of the 2019-20 bushfires and 2020 flood event in the Local Government Area (LGA).

WaterNSW supports the proposed provision noting that is limited to the repair of or replacement of *lawfully* erected dwellings. The clause will help facilitate rebuilding in the recovery phase of bushfire and flood events. It supplements, rather than waives, other important safety requirements such as the need to comply current bushfire safety standards including for bushfire rebuilding development to conform with the specifications and requirements of *Planning for Bush Fire Protection 2019* (see section 4.14 of the *Environmental Planning and Assessment Act 1979*).

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The Proposal gives consideration to *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (the SDWC SEPP), duly recognising that clause 4.1A may have implications for Kangaroo Valley and that the Natural Disasters clause would have application in the SDWC. The Proposal notes that new development within the SDWC is required to have a neutral or beneficial effect (NorBE) on water quality. Under the SDWC SEPP, new development is also required to adopt WaterNSW current recommended practices (CRPs) or standards and practices at least equivalent to the CRPs. The Planning Proposal notes that it is not inconsistent with the SEPP. WaterNSW agrees with this conclusion.

Direction 5.2 Sydney Drinking Water Catchment

The Planning Proposal responds to section 9.1 Ministerial Direction 5.2 Sydney Drinking Water Catchment Direction, noting that the Proposal applies to land at Kangaroo Valley and Sassafras which lie within the SDWC. The Proposal notes that it is not inconsistent with the Direction and will not adversely impact water quality in the SDWC. We agree with these conclusions.

For completeness, Direction 5.2 has the objective of protecting water quality in the SDWC. It requires Planning Proposals to be consistent with the SDWC SEPP, give consideration to the outcomes of any relevant Strategic Land and Water Capability Assessment (SLWCA), and zone Special Areas as stated in the Direction. The Proposal is not inconsistent with the SEPP as described above. SLWCAs are not relevant in this situation as the Proposal includes amendments to broad clauses rather than involving spot rezonings for particular land uses. The Proposal does not involve the rezoning of land in the Special Areas. Also, given the nature of the Proposal, it is unlikely to affect land or developments within the Shoalhaven Special Area which is predominantly zoned SP2 Water Supply System.

Should you have any questions regarding the above matters please contact Stuart Little (stuart.little@waternsw.com.au).

Yours sincerely



DARYL GILCHRIST
Manager Catchment Protection

Attachment F –Consultation Response – NSW RFS



NSW RURAL FIRE SERVICE

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Your reference: (REF-1059) PP-2021-6611
Our reference: SPI20211205000214

ATTENTION: Jenna Tague

Date: Thursday 10 February 2022

Dear Sir/Madam,

**Strategic Planning Instrument
LEP Amendment – Planning Proposal**

1. Amend clause 4.1A to:

- Apply a minimum parent lot size for multi dwelling housing, multi dwelling housing (terraces) and residential flat buildings in the B4 mixed Use zone (subclause 2).
- Provide clarification in subclause 4 surrounding the permissibility of resulting land uses post subdivision.

2. Amend clause 4.1B to:

- clearly specify Torrens subdivision opportunities for dual occupancy development on R3 zone land.

3. Insert a new Shoalhaven appropriate version of the NSW Government's 'model' Natural Disaster clause.

I refer to your correspondence dated 02/12/2021 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 9.1 of the *Environmental Planning and Assessment Act 1979*.

The objectives of the direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

The direction provides that a planning proposal must:

- (a) have regard to Planning for Bushfire Protection,
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

Based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future development of bush fire prone land complies with *Planning for Bush Fire Protection*.

For any queries regarding this correspondence, please contact Anna Jones on 1300 NSW RFS.

Yours sincerely,

Martha Dotter
**Supervisor Development Assessment & Plan
Built & Natural Environment**