

# PLANNING PROPOSAL – PP054

## Shoalhaven Local Environmental Plan 2014

Lot 1 DP 949932 Taylors Lane, Cambewarra  
(adjacent to Moss Vale Road South urban  
release area)

Prepared by  
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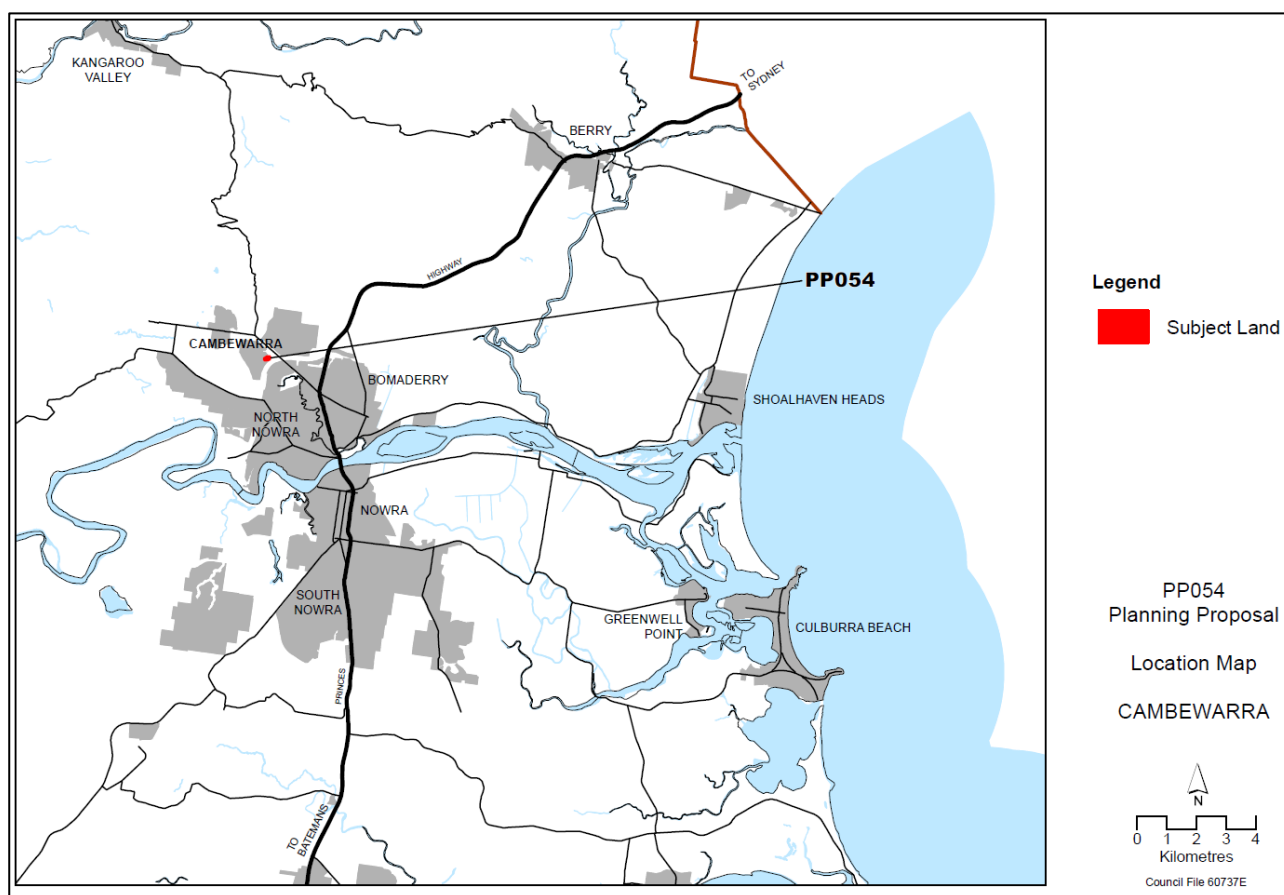
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## 1 Introduction

This Planning Proposal (PP) seeks to rezone land on the eastern edge of the Moss Vale Road urban release area (URA) to allow residential development.

### 1.1 Subject Land

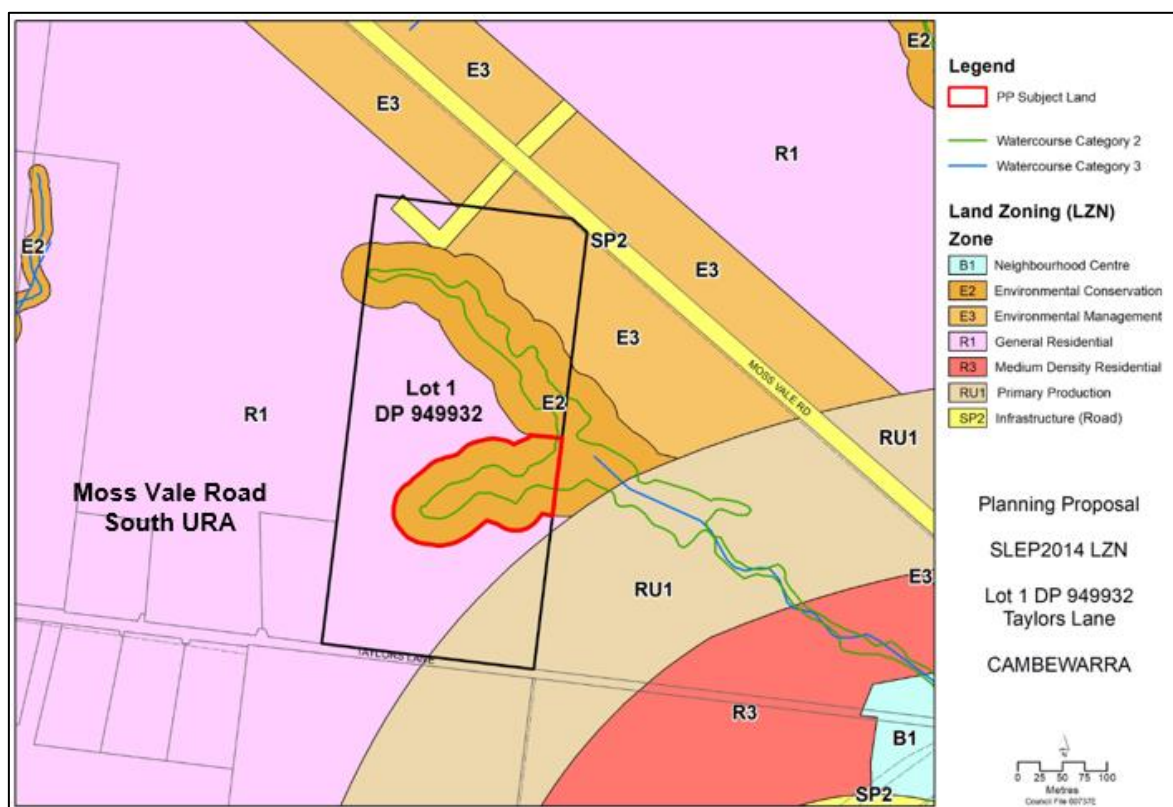
The subject land is part of Lot 1 DP 949932, Taylors Lane, Cambewarra. Lot 1 DP 949932 is located on the eastern side of the Moss Vale Road South URA which is situated in the foothills of the Cambewarra Range, between the Bomaderry urban area and Cambewarra Village, see **Figure 1**.



**Figure 1: Location Map**

Lot 1 DP 949932 consists of residential zoned land within the Moss Vale Road South URA boundary, as well as land outside of the URA boundary zoned for environmental conservation (watercourses), environmental management and primary production. It is adjoined by Moss Vale Road to the north, Moss Vale Road South URA to the west and south and rural land to the east. This PP applies to a portion of Lot 1 DP 949932 identified as a Category 2 watercourse and zoned E2 Environmental Conservation – see **Figure 2**.

The watercourse drains a small catchment within the eastern portion of the URA, merging with another watercourse beyond the eastern boundary of Lot 1 DP 949932 and eventually flowing into Bomaderry Creek.



**Figure 2: Subject land, existing LEP zoning & watercourse classification**

The subject land is largely cleared and maintained as pasture. The watercourse contains two patches of native vegetation. Most of the site has a gentle fall towards the watercourse. The site has views of the prominent Cambewarra Range escarpment to the north and west and rural lands to the east and south. **Figure 3** is an aerial image of the subject land and surrounds.

Surrounding land use is characterised by agriculture (grazing) and rural dwellings. Moss Vale Road South URA is as yet undeveloped. The regional services / western bypass corridor lies immediately to the east.





Figure 3: Aerial Photo

The residential zoned portion of Lot 1 DP 949932 is part of stage 1 of the Moss Vale Road South URA. It is subject to an approved development application (ref. SF10632) for a proposed 50 lot residential subdivision consisting of 2 stages (stage 1a and stage 1b). Dependent on the progression of this PP, the subject land is the proposed future third stage (1c) of this subdivision. The developer of Stages 1a and 1b is the Proponent of this PP request.

## 1.2 Background

The Moss Vale Road South (MVRS URA) is a regionally significant release area in the Illawarra-Shoalhaven Regional Plan. It was first identified as a 'New Living Area' in the Nowra-Bomaderry Structure Plan that was adopted by Council in 2006 and endorsed by the NSW Government in 2008. The land was zoned as a URA in 2014 with the commencement of SLEP 2014. The Development Control Plan and Contributions Plan amendments were completed in late 2018, enabling the 'release' of MVRS URA for development.

Council has received several DAs to subdivide land within the MVRS URA, including one for the residential zoned portion of Lot 1 DP 949932 (DA SF10632). Consultants associated with the preparation of SF10632 identified that a watercourse on the subject land, that is outside the current MVRS URA boundary, is potentially incorrectly

classified/zoned and proposed it to be removed so the land can be rezoned to allow residential development.

On 28 March 2019 Council received a request from Cardno, on behalf of Biara Grove Developments Pty Ltd (the Proponent), to prepare a PP to:

- Remove the classification of the subject land as a watercourse;
- Rezone the land associated with the watercourse from Zone E2 Environmental Conservation to Zone R1 General Residential;
- Extend the MVRs URA boundary to include the land;
- Reduce the minimum lot size of the land from 40ha to 500sqm, with potential to subdivide down to 300sqm under Clause 4.1H of SLEP 2014;

The Proponent's submission included a draft PP document and a range of supporting documentation including assessments for Aboriginal cultural heritage, flora and fauna, traffic impact, arboriculture, a preliminary contamination review, concept lot layout and preliminary agency consultation.

Council's preliminary assessment of the PP request noted that further investigation into the classification and function of the identified watercourse was needed in order to determine whether or not the PP had merit to proceed.

Council's Development & Environment Committee considered the proposal on 3 September 2019. The Committee resolved to:

1. *Accept the proponent-initiated Planning Proposal for land within Lot 1 DP 949932, Taylors Lane, Cambewarra as a possible 'major' Planning Proposal that Council will take forward dependent of the outcome of Part (2) of this resolution.*
2. *Undertake an independent Riparian Lands Study for the subject land, at the proponent's expense, that includes rigorous assessment of the riparian land function and watercourse classification.*
3. *If the outcome of the Riparian Lands Study shows the PP has merit to proceed, develop a Planning Proposal in Council's format, for submission to the NSW Department of Planning, Industry and Environment (DPIE) for initial Gateway determination, and report back to Council when a response is received.*
4. *Receive a further report to determine how to proceed, if the Riparian Lands Study does not provide clear justification for the Planning Proposal.*

Council engaged consultants Niche Environment & Heritage Pty Ltd to undertake an independent riparian lands study (the Study) in accordance with Part 2 of Council's resolution. The study is provided at **Attachment 1** to this PP. In summary, the Study concluded that:

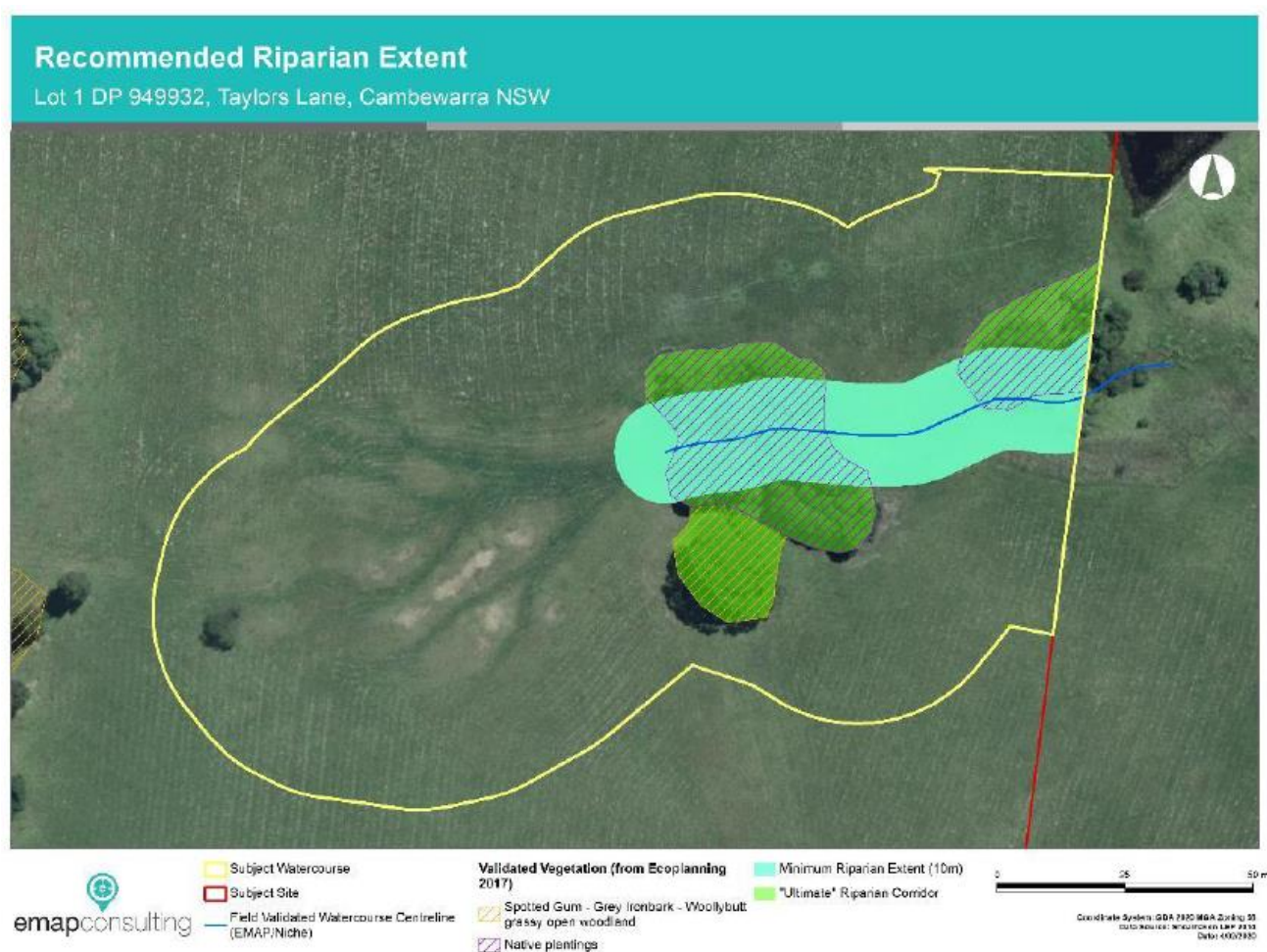
- There is a Strahler Stream Order 1 watercourse on the land. Functions of the watercourse are bank stability, conveyance and water quality;
- Land within 10m of the identified watercourse centreline should be retained as the minimum riparian zone (i.e. total corridor width of 20m).



- The native vegetation in and around the identified watercourse is of ecological value. It would be ideal to incorporate this land into the riparian zone as well;
- The remainder of the land does not have riparian land characteristics and could potentially be rezoned for residential development.

Note: the Study used the Strahler Stream Order system of classification to classify the subject watercourse. The SLEP 2014 Riparian Lands and Watercourses Map uses a different system of classification which is based on riparian corridor objectives. The Strahler Order 1 watercourse identified in the riparian lands study is equivalent to *Category 3 - Bank stability and water quality* on the Riparian Lands and Watercourses Map.

**Figure 4** from the Study illustrates the minimum recommended riparian corridor (light blue) and the additional vegetated land (light green).

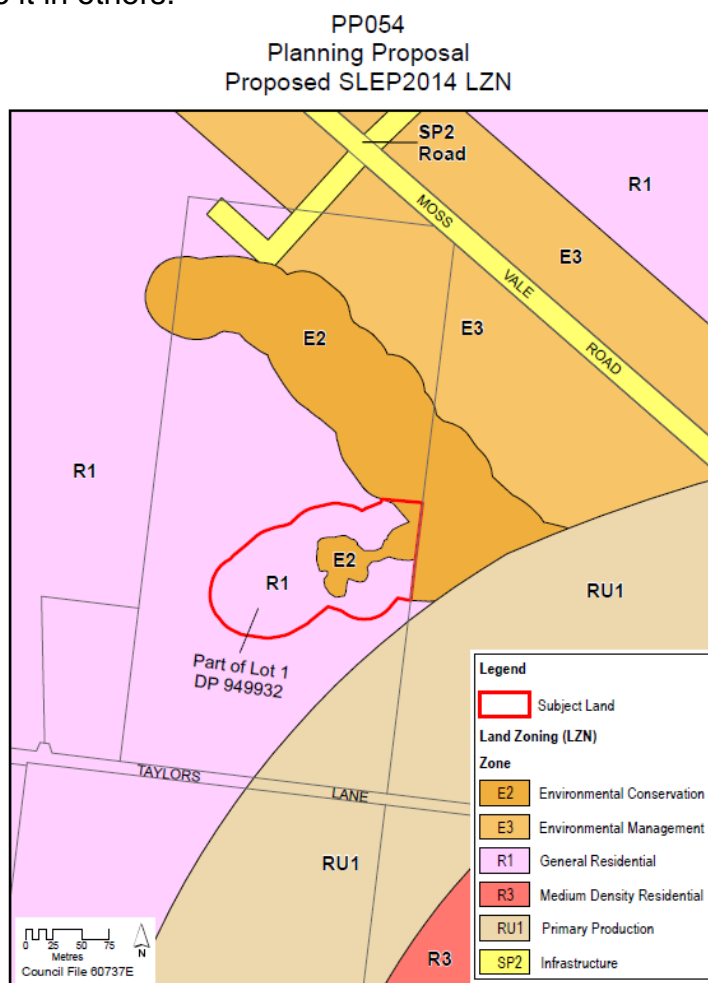


**Figure 4: Recommended riparian extent (Niche Environment & Heritage, 2020)**

The Proponent submitted a revised rezoning proposal to Council in response to the findings of the Study (**Figure 5**). It was accompanied by an indicative lot layout showing broadly how the future proposed subdivision could occur.

The revised proposal sought to use the principles of the 'averaging rule' (from the Department of Primary Industries (DPI) – Office of Water's *Guidelines for riparian corridors*

on waterfront land) to reduce the width of the recommended riparian corridor in some places and increase it in others.



The revised rezoning proposal sought to:

- Reduce the width of the riparian corridor in several unvegetated places and rezone them for residential use.
- Offset the narrowed sections with wider sections incorporating existing native vegetation.
- Rezone the rest of the subject land from environmental conservation to residential.
- Reduce the minimum lot size of the rezoned land from 40ha to 500sqm and apply SLEP Clause 4.1H to the rezoned land to allow subdivision down to 300sqm in certain cases.
- Extend the URA boundary to include the rezoned land.

Council's Development & Environment Committee considered the revised rezoning proposal on 2 June 2020. The Committee resolved (in part) to:

1. Prepare a Planning Proposal for part of Lot 1 DP 949932, Taylors Lane, Cambewarra, to:
  - a. Rezone part of an existing riparian area from E2 Environmental Conservation to R1 General Residential (based on the Proponent's revised rezoning proposal at Figure 4);

- b. Amend the classification and extent of the watercourse on the Riparian Lands and Watercourses Map;*
  - c. Apply a 500m<sup>2</sup> minimum lot size and the provisions of Clause 4.1H to the rezoned land;*
  - d. Extend the Moss Vale Road South URA boundary to include the rezoned land.*
- 2. Forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.*
- 3. Proceed to place the Planning Proposal on public exhibition and invite community feedback in accordance with the Gateway Determination.*

The report considered by Council and the full resolution is provided at **Attachment 2**.

Council noted that the PP would be referred to DPI – Natural Resources Access Regulator (NRAR) for comment following the release of any Gateway Determination and may need to be revised if NRAR raised any concerns with respect to the proposed use of the ‘averaging rule’.

Council prepared a PP in accordance with the resolution and submitted it to DPIE for a Gateway Determination. A favourable Gateway determination was issued on 23 July 2020 authorising the PP to proceed, subject to consultation with several public authorities and public exhibition. Council was given delegation to make the LEP amendment.

#### Consultation with Public Authorities

Consistent with the Gateway determination, the PP was referred to the following public authorities for comment in August 2020:

- Natural Resource Access Regulator (NRAR);
- NSW Department of Premier and Cabinet - Aboriginal Cultural Heritage Regulator (ACHR);
- Transport for NSW (TfNSW);
- Shoalhaven Water; and
- Endeavour Energy

TfNSW, Shoalhaven Water and Endeavour Energy made submissions which raised no objection to the PP. No submission was received from the ACHR.

NRAR made a submission in October 2020 which objected to the proposed use of the ‘averaging rule’ and raised concerns with several other aspects of the PP. In response, the proposal was amended to remove the use of the ‘averaging rule’ and to increase the overall width of the area to remain in the E2 zoned riparian corridor. The amended proposed Land zoning, Lot Size and Urban Release Areas LEP maps are shown in Part 2 (Explanation of Provisions) of this PP. No change was made to the proposed Riparian Lands and Watercourses LEP map.

NRAR subsequently advised that it supported the amended PP and that its concerns had been satisfactorily addressed. It acknowledged that the layout of the future proposed subdivision and associated infrastructure (roads, drainage etc) will be considered in detail at the development application stage, should the PP proceed.

Further details of Council's consultation with public authorities is included in section 4.4.2 of this PP. Copies of public authority submissions and Council's response is included in the exhibition package.

## 2 Part 1 –Intended Outcome

The intended outcome of this Planning Proposal is to amend the classification and extent of a watercourse and rezone part of the associated riparian area to allow the land to be developed for urban residential purposes.

## 3 Part 2 – Explanation of Provisions

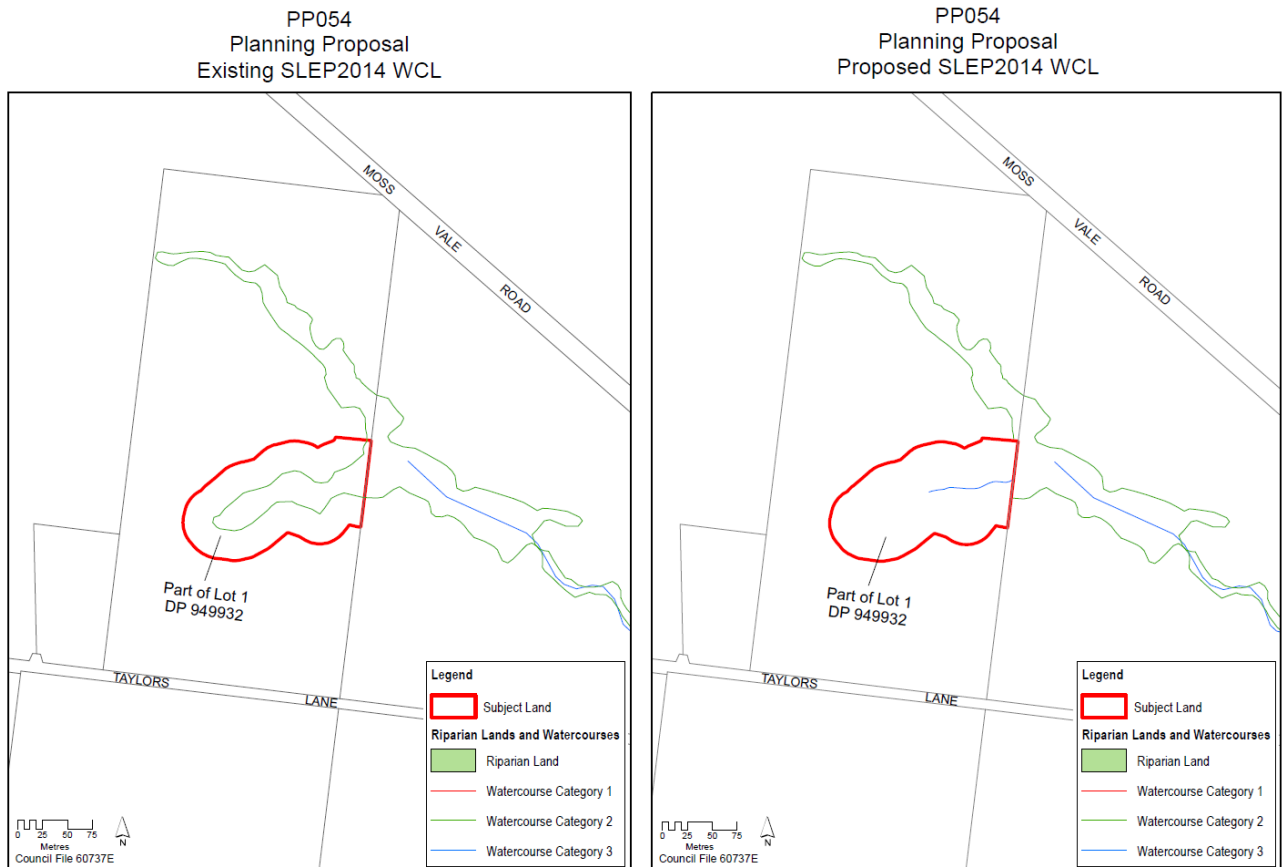
The following amendments are proposed to Shoalhaven LEP 2014:

- No clause changes.
- **Riparian Lands and Watercourses Map:** amend the extent of the watercourse and reclassify it from Category 2 to Category 3.
- **Land Zoning Map:** rezone part of the subject land from E2 Environmental Conservation to R1 General Residential.
- **Lot Size Map:** reduce the minimum lot size for the rezoned land (currently 40ha) to allow subdivision from 500m<sup>2</sup> generally and from 300m<sup>2</sup> in certain high amenity locations under LEP Clause 4.1H.<sup>①</sup>
- **Urban Release Area Map:** include the rezoned land in the Moss Vale Road South URA.

<sup>①</sup> **Note:** *Shoalhaven LEP 2014 (Amendment No. 39)*, which became effective on Friday 19 March 2021, amended Clause 4.1H and the associated map area in Moss Vale Road South URA. Clause 4.1H enables subdivision to create small lots (generally 300m<sup>2</sup> to 500m<sup>2</sup>) in certain high amenity locations that are identified on the Lot Size Map. An adjustment has been made to the existing and proposed Lot Size Maps for this PP to align them with the amended Clause 4.1H. The original PP included all of the subject land within the Clause 4.1H map area, however, under the original Clause 4.1H small lots were only possible along the western boundary of the subject land. The PP now only includes the part of the subject land which is adjacent to future public open space in the Clause 4.1H map area.

### 3.1 Riparian Lands and Watercourses (WCL)

The existing and proposed Riparian Lands and Watercourses Maps are shown in **Map 1**.

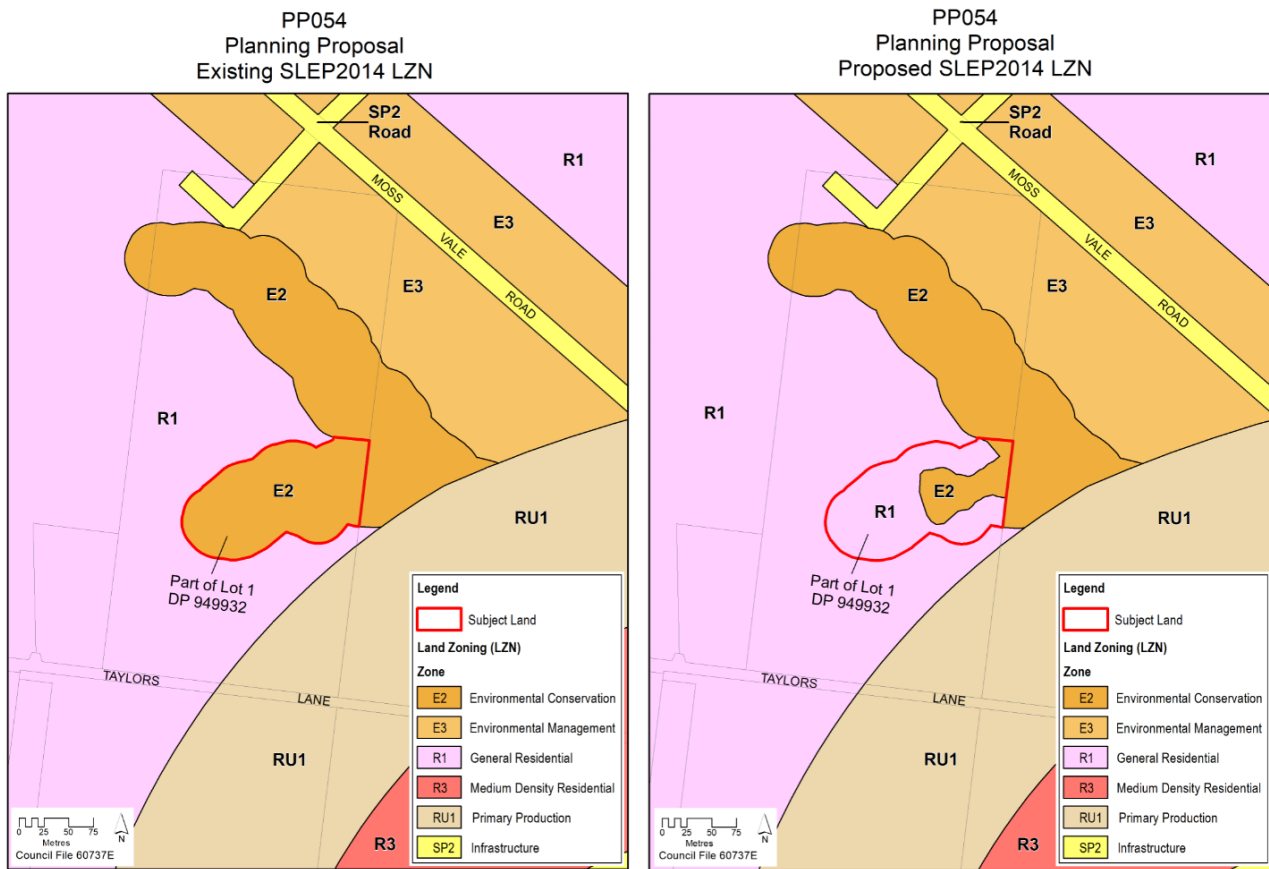


**Map 1: Existing Riparian Lands and Watercourses Map (left) and Proposed Riparian Lands and Watercourses Map (right)**



### 3.2 Land Use Zones (LZN)

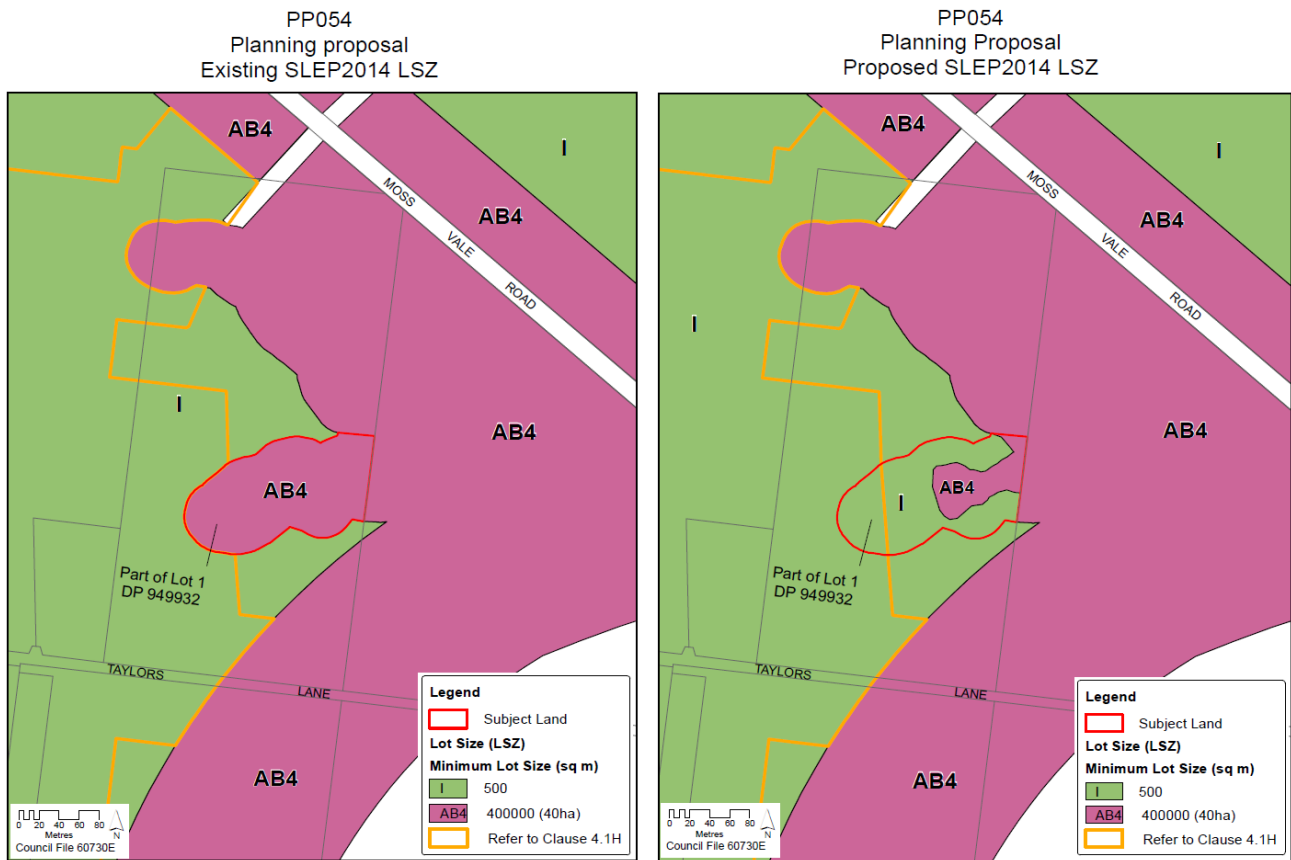
The existing and proposed Land Zoning Maps are shown in **Map 2**.



**Map 2: Existing Land Zoning Map (left) and Proposed Land Zoning Map (right)**

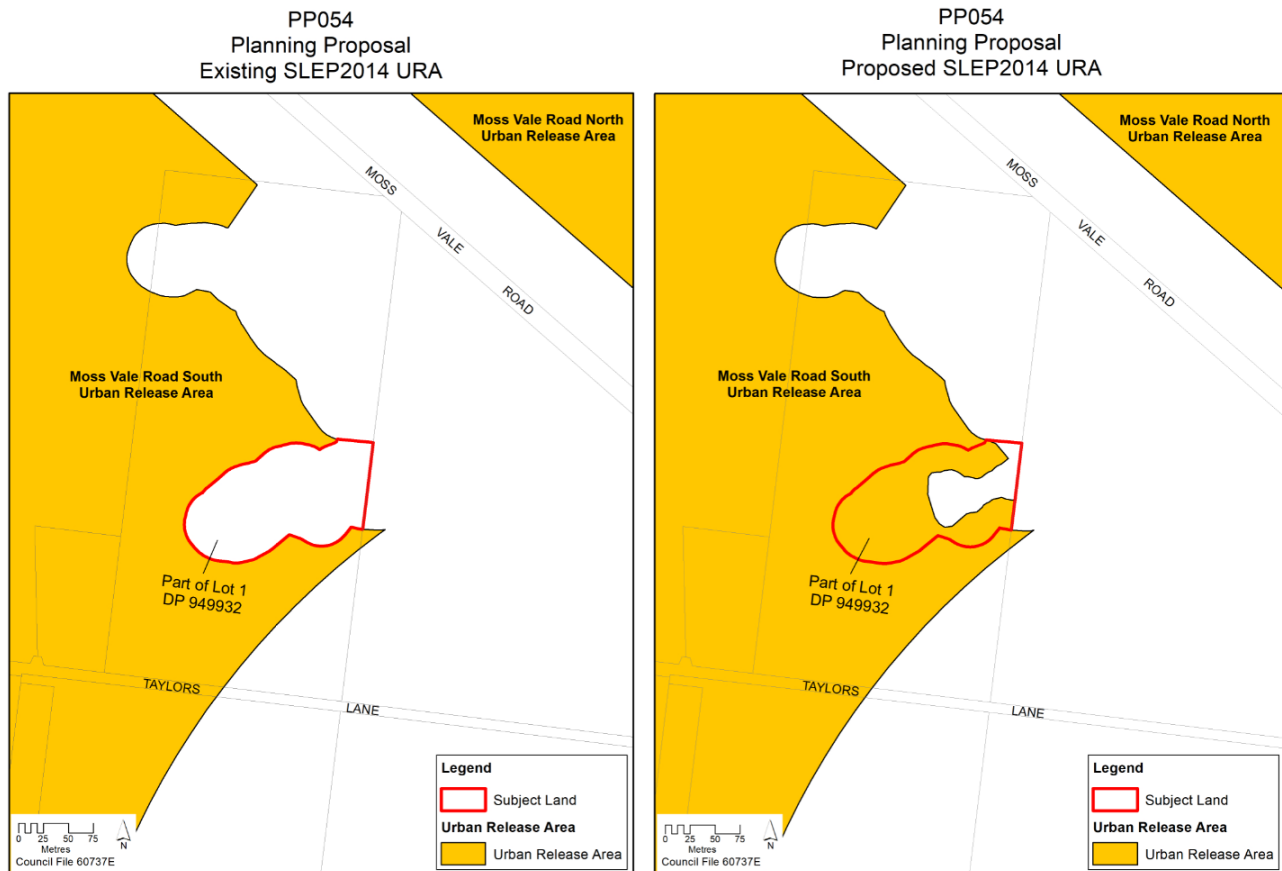
### 3.3 Minimum Lot Size (LSZ)

The existing and proposed Lot Size Maps are shown in **Map 3**.



### 3.4 Urban Release Area (URA)

The existing and proposed Urban Release Area Maps are shown in **Map 4**.



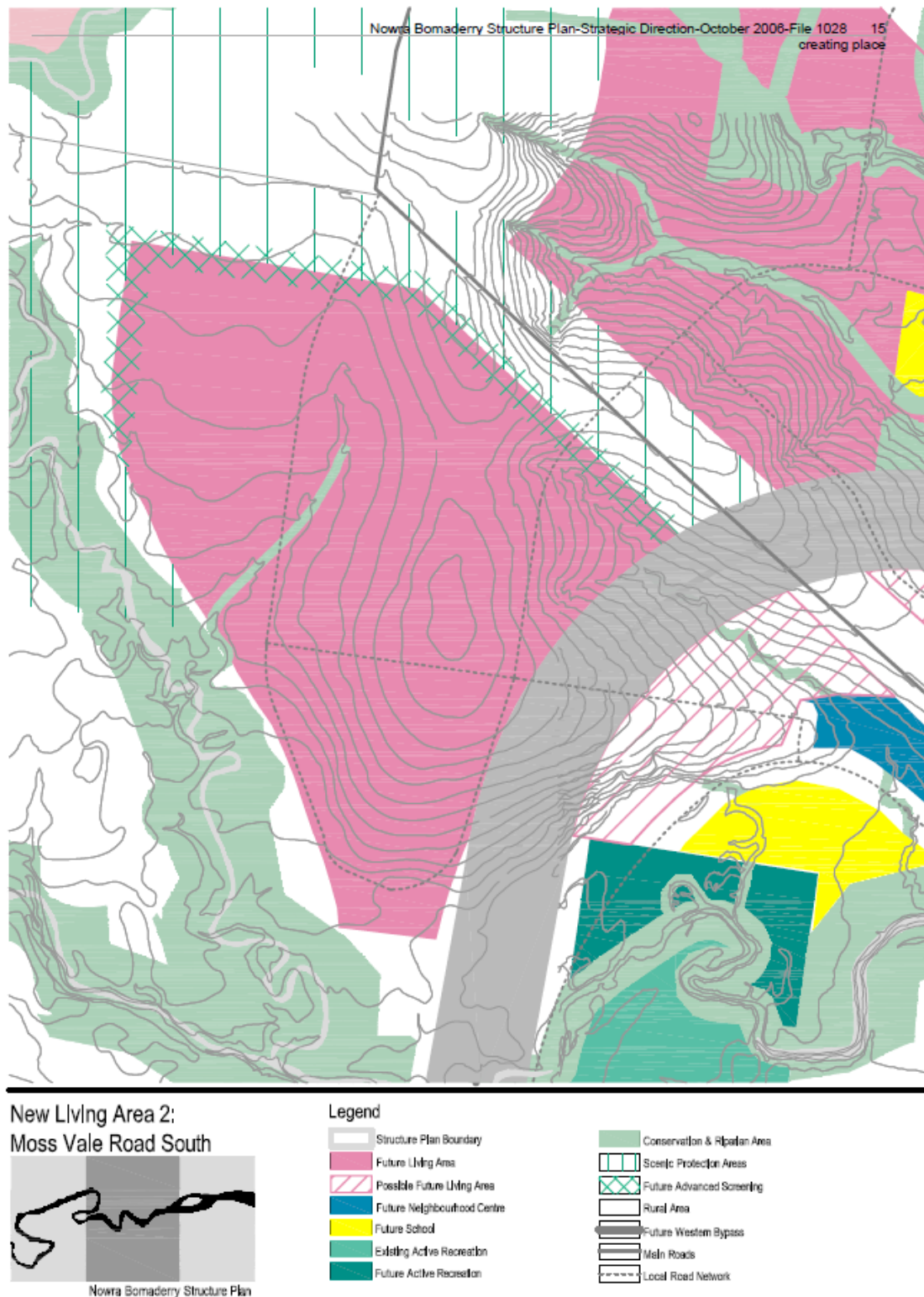
**Map 4: Existing Urban Release Area Map (left) and Proposed Urban Release Area Map (right)**

## 4 Part 3 – Justification

### 4.1 Need for the Planning Proposal (Section A)

#### 4.1.1 Is the Planning Proposal a result of any strategic study or report?

Yes. The subject land is identified as part of the Moss Vale Road South 'New Living Area' in the Nowra-Bomaderry Structure Plan (NBSP) that was adopted by Council in 2006 and endorsed by the NSW Government in 2008.



**Figure 6: Moss Vale Road South New Living Area (NBSP)**

When the NBSP was prepared the subject land was not identified as a watercourse. The *Riparian Corridor Objective Setting for Selected Streams in Nowra and Bomaderry* study undertaken by the Department of Infrastructure, Planning and Natural Resources (DIPNR) in 2004 did not identify the subject land as a watercourse.

Council subsequently undertook detailed investigations of riparian areas associated with the new Moss Vale Road living areas to inform the mapping/zoning of riparian lands in the new Shoalhaven LEP 2014. The resulting 'Mapping of Riparian Lands Report' (GHD, April 2008), which was based on riparian corridor objectives, categorised the subject watercourse as *Category 2 - Terrestrial and aquatic habitat*. This formed the basis for the current zoning and classification of the watercourse within the Shoalhaven LEP 2014.

The PP request lodged with Council by the Proponent in March 2019 provided an assessment of the watercourse which indicated that it is incorrectly classified and zoned, contrary to the findings of the 2008 GHD Report.

The independent riparian lands study subsequently commissioned by Council (**Attachment 1**) does not support the claim in the Proponent's PP request that there is no watercourse but does conclude that the watercourse is incorrectly classified and that some of the land currently identified and zoned as riparian could be rezoned for residential development. The study concluded that the watercourse is a Strahler Stream Order 1 (equivalent to *Category 3 - Bank stability and water quality* in terms of riparian corridor objectives). This PP is generally based on the findings and recommendations of this study.

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

Yes. An LEP amendment or a State Environmental Planning Policy (SEPP) are the only statutory mechanisms available to facilitate the reclassification of the watercourse and rezoning of the land for urban residential development. A PP is the most appropriate approach to achieve these amendments because:

- The site is relatively small and adjoins an urban release area (Moss Vale Road South URA) with similar circumstances and characteristics. The master planning for Moss Vale Road South URA was recently completed by Council via the PP process.
- The PP process is the appropriate context to undertake the detailed investigations needed to support the amendments.
- The PP process will allow for community consultation in the preparation of planning controls for the site.

## **4.2 Relationship to strategic planning framework (Section B)**

### **4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The Illawarra-Shoalhaven Regional Plan is the regional strategy that applies to the land. An assessment of the proposal against the relevant actions in this plan is provided below:

**Table 1: Consistency with actions of Illawarra-Shoalhaven Regional Plan**

Action	Consistency	Comments
2.1 Provide sufficient housing	YES	The PP will provide the opportunity for



Action	Consistency	Comments
supply to suit the changing demands of the region.		additional housing supply and a range of housing types to meet the needs of the community.
2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres.	YES	The PP proposes a small expansion of the Moss Vale Road South URA which is recognised in the ISRP as a regionally significant release area supporting future housing supply in the major regional centre of Nowra-Bomaderry.
2.3 Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact	YES	The PP proposes a small expansion of the Moss Vale Road South URA to provide additional housing on land that has been identified as suitable for development without impacting on the environment.
5.1 Protect the region's environmental values by focusing development in locations with the capacity to absorb development	YES	The PP proposes a small expansion of the Moss Vale Road South URA to provide additional housing on land that has the capacity to absorb development without impacting on the environment.

There is currently no draft or adopted sub-regional strategy.

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

##### Shoalhaven City Council Integrated Strategic Plan 2018

The PP is consistent with the relevant Integrated Strategic Plan 2018 priorities listed below:

- 1.1 Build inclusive, safe and connected communities
- 1.3 Support active, healthy and liveable communities
- 2.2 Plan and manage appropriate and sustainable development

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

A checklist of the State Environmental Planning Policies (SEPPs) is at **Attachment 4** to this PP. It is concluded that the PP is not inconsistent with all relevant SEPPs.

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

A checklist of the s.9.1 Ministerial Directions is at **Attachment 5** to this PP. The most relevant Ministerial Directions are discussed below.

## 1.5 Rural Lands

This Direction relates to the protection of agricultural land and it applies when a PP will affect an existing or proposed rural or environment protection zone; or when the minimum lot size is proposed to be changed within a rural or environmental protection zone.

The subject land is currently zoned E2 and the minimum lot size is also proposed to be reduced from 40 ha to 500m<sup>2</sup> (and in some circumstances 300m<sup>2</sup>). As such, this Direction 1.5 applies. The land is also mapped as 'Class 3' agricultural land and thus is 'prime crop and pastureland'.

The subject land is a relatively small area positioned on the eastern side of the Moss Vale Road South URA and is surrounded by residential zoned land to the north, west and south. The PP is also supported by an independent riparian lands study which indicates that the land's current riparian classification, which lead to its existing environmental zoning, is inaccurate.

Given these circumstances, the PP will have minimal impact on the fragmentation of rural land and the operation and viability of existing and future rural land uses and related enterprises. The PP is considered to be inconsistent with the direction, however, the inconsistency is considered to be minor and therefore justified.

The concurrence of the Secretary of the Department of Planning, Industry & Environment (or an officer of the Department nominated by the Secretary) will be required.

## 2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. The direction requires PP's to include provisions that facilitate the protection and conservation of environmentally sensitive areas. It also states that PP's applying to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land.

The subject land is zoned E2 Environmental Conservation. Rezoning part of this land to R1 General Residential will be inconsistent with the provisions of this direction. It is considered that this inconsistency is justified because the PP is supported by a riparian lands study which considers the objectives of the direction. A copy of the study is at **Attachment 1**.

The riparian lands study assessed the watercourse classification and riparian function of the land. It classified the watercourse as a Strahler Stream Order 1 and identified an appropriate riparian zone which should remain in the E2 zone, see **Figure 4**. It concluded that the remainder of the subject land does not have riparian land characteristics and could be rezoned for residential use.

The PP is generally in accordance with the findings of the riparian lands study. DPI – Natural Resources Access Regulator (NRAR) has advised that it concurs with the findings of the study and does not object to the progression of the PP.

The concurrence of the Secretary of the Department of Planning, Industry & Environment (or an officer of the Department nominated by the Secretary) will be required.

## 2.3 Heritage Conservation

This direction requires that PPs must contain provisions that facilitate the conservation of:

- items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area
- Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes.

The subject land is not listed as a 'heritage item' in the Shoalhaven LEP 2014 or the NSW State Heritage Register.

An Aboriginal Cultural Heritage Assessment (ACHA) was prepared by Biosis in 2018 for proposed subdivision DA SF10632 and the land subject to this PP. A copy is provided in **Attachment 2**. The ACHA included an archaeological survey and test excavations due to the presence of an archaeological site (artefact scatter 'Moss Vale Road Aft 1') recorded in a previous ACHA undertaken in 2017. This archaeological site was never recorded on the AHIMS and the previous ACHA provided no details of it.



Figure 7: ACHA study area and site recorded in a previous ACHA (Biosis, 2018)

The archaeological survey and test excavations undertaken by Biosis identified no Aboriginal sites or objects and did not detect any evidence of the previously recorded site on the land. Based on background research, consultation with Aboriginal stakeholders and

site investigations the Biosis ACHA concluded that Moss Vale Road Aft 1 was of low significance and that the potential for archaeological sites and objects on Lot 1 DP 949932 is low.



**Figure 8: Plan of test excavations undertaken (Biosis, 2018)**

The ACHA recommended that, prior to the commencement of works for DA SF10632, an Aboriginal Heritage Impact Permit (AHIP) be obtained under Part 6 of the *National Parks and Wildlife Act 1974* to allow for the development to impact on the previously recorded archaeological site plus any further Aboriginal objects encountered during construction (except for human remains).

The former Office of Environment and Heritage (OEH) issued General Terms of Approval (GTAs) for DA SF10632 and gave preliminary feedback that the extent of Aboriginal cultural heritage site investigations undertaken for the DA should be sufficient to inform this PP. The OEH noted that any future DA for the subject land will require GTAs and likely a new AHIP (or significant AHIP variation), including additional stakeholder consultation covering the rezoned areas.

Based on the information in the ACHA and the preliminary feedback from OEH, the PP is considered to be inconsistent with the provisions of the direction because of the presence of a previously recorded Aboriginal site on the subject land. The inconsistency is considered to be minor and justified because the ACHA has assessed the significance of



the site as low and has suggested that development on the site could proceed, subject to GTAs and an AHIP being obtained at the future DA stage.

The delegate of the Secretary, DPIE, has agreed that the PP's inconsistency with this Direction is of minor significance and that no further approval is required in relation to this Direction (see Gateway Determination dated 23 July 2020).

## **2.6 Remediation of Contaminated Land**

This direction applies to the PP because the subject land is known to have been used for agriculture in the past and the PP proposes to rezone the land for residential use. Agriculture is a use referred to in Table 1 of the Contaminated Land Planning Guidelines that has the potential to result in contamination of the land.

Before including such land in a zone that would permit a change of use, the direction requires the planning proposal authority to consider first whether the land is contaminated. In doing so the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

The following investigations have been undertaken as part of the preparation of the PP:

- A site walkover by an environmental scientist to identify and record any evidence of contamination on the site and any sources of potential contamination.
- A review of databases, registers and other publicly available information relating to contaminated sites.
- A review of historical aerial photographs of the site dating back to 1961 for potential sources of contamination such as the presence of structures including commercial / industrial operations and areas of uncontrolled filling.

The investigations revealed no evidence of contamination on the site or any sources of potential contamination. The land does not appear in any databases or registers relating to contaminated sites. No structures or buildings were apparent in any of the aerial photographs reviewed and the land appears to have been used for livestock grazing throughout the period reviewed.

Council's Environmental Services Unit has reviewed the information submitted with the PP and advised "*The site has previously only been used for agricultural purposes. There is a possibility for associated structures such as sheds to have isolated contamination i.e. farming machinery, machine fuels, pesticides, asbestos etc. This is not a major issue, as such Phase 2 contamination investigation is not considered necessary and geotechnical investigations at a later a stage prior to development of the site can capture this.*"

It is concluded that the PP is consistent with this Direction.

## **3.1 Residential Zones**

This Direction applies because the PP seeks to rezone the subject land to a residential zone. The PP is consistent with this direction in that it proposes to make additional land available for a range of housing types and densities in an existing planned release area



that will be well served by planned infrastructure and services. The land will also be made subject to development control plan provisions specific to Moss Vale Road South URA that encourage good design.

### **3.4 Integrating Land Use and Transport**

This Direction requires PP's to give effect to and be consistent with the aims, objectives and principles of:

- *Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
- *The Right Place for Business and Services – Planning Policy (DUAP 2001).*

The PP is consistent with this direction in that it proposes to make additional land available for housing in an existing planned release area that will be well served by planned public transport and active transport infrastructure.

### **4.1 Acid Sulfate Soils**

Part (6) of this Direction states that:

*A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.*

The subject land is not mapped on the State Government's Acid Sulfate Soils Planning Maps. As such the PP is consistent with this Direction.

Note: The Subject Land is mapped as Class 5 - Acid Sulfate Soils in the Shoalhaven LEP 2014, to which clause 7.1 of the LEP applies. This would be considered in any future development application.

### **5.10 Implementation of Regional Plans**

As discussed in section 4.2.1, the PP is consistent with the Illawarra Shoalhaven Regional Plan (ISRP).

### 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 subject land has been largely cleared of vegetation and used for livestock grazing over a long period of time. A Flora and Fauna Assessment was undertaken by Ecoplanning (2017) for DA SF10632. It encompassed all of Lot 1 DP 949932 and was submitted in support of this PP. A copy is provided in **Attachment 3**. It should be noted that the proposed lot layout for SF10632 in the Flora and Fauna Assessment has been revised since.

The flora and fauna assessment identified that the land subject to the PP contains:

- One native vegetation community: *Spotted Gum – Grey Ironbark – Woollybutt grassy open forest on coastal flats* (PCT 1212), near the watercourse;
- Plantings of other non-local canopy vegetation, near the watercourse;
- Exotic pasture/grassland across the remainder of the subject land.

**Figure 9** Shows the field validated vegetation across Lot 1 DP 949932.



**Figure 9: Field validated vegetation on Lot 1 DP 949932 (Ecoplanning 2017)**

The vegetation has been modified by agricultural practices (grazing and pasture improvement) over a long period of time, reducing the structural complexity and diversity of the community. Nonetheless the flora and fauna assessment noted that it provides potential foraging, roosting and nesting habitat for a variety of bird and mammal species.

No threatened flora species were recorded within Lot 1 DP 949932 but five threatened microbat species were recorded. It is not clear exactly where on Lot 1 DP 949932 they were recorded, however, given that the vegetation around the watercourse on the subject land is to be retained within the E2 zoned riparian corridor, there are not expected to be any adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats, as a result of the PP.

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

The riparian lands study undertaken by Niche Environment and Heritage (2020) identified the eastern portion of the subject land as a Strahler Order 1 watercourse, as mapped in **Figure 4**. The study noted that the watercourse and its associated riparian zone plays an important function in conveyance of flows from higher up in the catchment on the subject lot and in the maintenance of water quality flowing downstream. Further, the existing vegetation in the subject watercourse plays a key role in soil stabilisation of the bed and banks. The study has recommended:

- Retaining land within 10m of the watercourse centreline as a minimum riparian corridor/zone will maintain the conveyance and water quality functions of the watercourse.
- Retaining the native vegetation in the vicinity of the watercourse within a wider riparian corridor will enhance the ecological function of the watercourse and provide the opportunity to improve vegetation condition and habitat quality.

The PP is generally in accordance with the findings of the study. DPI – Natural Resources Access Regulator (NRAR) has advised that it concurs with the findings of the study and does not object to the progression of the PP.

The riparian lands study also recommended that a Vegetation Management Plan be implemented to facilitate the revegetation and management of the adopted riparian corridor. This is supported and will be implemented as part of any future approval to subdivide the land.

The flora and fauna assessment identified a number of potential indirect environmental impacts resulting from the proposal, including erosion and reduced water quality in the adjoining farm dam and downstream environments during the construction phase of the future development. It is considered that these impacts can be mitigated/addressed at DA stage if/when the land is rezoned.

#### **Stormwater Management**

Council's Natural Resources & Floodplain Unit have reviewed the proposal and raised no objections to the PP, noting that stormwater management will be addressed in further detail at the DA stage for the proposed subdivision. Revegetation of the riparian corridor is supported and would provide some pre-treatment of pollutants prior to stormwater entering the treatment area. The following specific matters will require further attention at the DA stage in consultation with the developer:

- The subdivision's compliance with stormwater treatment, retention and onsite stormwater detention objectives of Council's Development Control Plan (DCP).



- the riparian corridor will need to provide for an overland flow path that can safely convey flows up to a 1% Annual Exceedance Probability (AEP) event.
- the provision of a stormwater treatment device for the future subdivision stage 1c. Council's preference is for the Stage 1b stormwater treatment device to be enlarged and shared with Stage 1c.

#### Scenic values

The Moss Vale Road South URA is part of a pastoral landscape of high scenic value, with high visibility from the Moss Vale Road tourist drive and the Cambewarra Mountain Lookout. Some impact on local views and scenic amenity is inevitable but will be limited given the relatively small proposed addition to the URA.

#### The Built Environment

The PP proposes a minor addition to the master planned Moss Vale Road South URA. If the rezoning proceeds, development of the subject land will be subject to the Moss Vale Road South URA urban design DCP controls which promote healthy, active, high quality and environmentally sensitive urban design. The site will contribute to the mix of lot sizes and housing products required by the community in this location. The draft amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA is included in the exhibition package.

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

The PP will facilitate the delivery of a small amount of additional housing supply in Moss Vale Road South URA. This will potentially result in the following positive social and economic effects:

- Increased affordability and housing choice;
- Increased employment related to the construction and supply of material for businesses within the local area;
- Improved viability of retail/commercial sectors as a result of economic activity generated by future residents

Conversely, the provision of additional housing will add to demand more broadly on existing social infrastructure and services (such as schools and hospitals). However, this will be negligible.

As noted under Ministerial Direction 2.3, an Aboriginal Cultural Heritage Assessment was undertaken for DA SF10632 and the land subject to this PP. No Aboriginal sites or objects were identified. An AHIP will most likely be required at the future DA stage to allow for impact on a site recorded in a previous ACHA on the subject land.

#### **4.4 State and Commonwealth Interests (Section D)**

##### **4.4.1 Is there adequate public infrastructure for the Planning Proposal?**

It is proposed to include the subject land in the Moss Vale Road South URA which will make it subject to the requirements of Part 6 of Shoalhaven LEP 2014. This requires



satisfactory arrangements to be in place for the provision of State, local and public utility infrastructure before consent can be granted to the subdivision of the land.

The essential infrastructure required to service Moss Vale Road South URA (road upgrades, water and sewer trunk infrastructure, electricity, gas, telecommunications) is currently being planned and delivered by the relevant authorities as land in the initial stages is released. It is anticipated that planned infrastructure will have the capacity to service the subject land as the PP will not generate significant additional demand for infrastructure and services. The indicative yield of the subject land is 30 additional lots versus 950 lots for the overall URA.

Should the PP proceed, the subject land will be included in the catchment area for local infrastructure projects in Moss Vale Road South URA (drainage, public open space and access roads) via an amendment to Shoalhaven Contributions Plan 2019. The draft amendment to the Shoalhaven Contributions Plan 2019 is included in the exhibition package.

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

Consistent with the Gateway determination, the PP was referred to the public authorities listed in **Table 2** for comment in August 2020.

**Table 2: Agency Consultation**

Public Authority	Reason
Department of Primary Industries – Natural Resources Access Regulator (NRAR)	PP involves the reclassification and rezoning of a watercourse
NSW Department of Premier and Cabinet - Aboriginal Cultural Heritage Regulator (ACHR)	Impact on a previously recorded Aboriginal site
Shoalhaven Water	Future infrastructure planning
Endeavour Energy	Future infrastructure planning
Transport for NSW (TfNSW)	Traffic impact and future infrastructure planning

TfNSW, Shoalhaven Water and Endeavour Energy made submissions which raised no objection to the PP. No submission was received from the ACHR.

NRAR made a submission dated 28 October 2020 which:

- Agreed that the watercourse upstream of the existing vegetation is relatively minor and could be considered for rezoning from E2 to residential;
- Objected to the use of the ‘averaging rule’ to reduce the width of the proposed riparian corridor in several places;
- Submitted that the proposed riparian corridor was incorrectly measured from the watercourse centreline and should instead be measured from the ‘top of bank’;
- Recommended that the Proponent’s proposed layout of subdivision stage 1c be reconsidered so as to separate the riparian corridor from the residential zone and

ensure that roads, drainage and other infrastructure doesn't encroach into the riparian corridor.

In response, the proposal was amended to remove the use of the 'averaging rule' and to increase the overall width of the riparian corridor by measuring it from the 'top of bank' as recommended by NRAR. The amended proposed Land zoning, Lot Size and Urban Release Areas LEP maps are shown in Part 2 (Explanation of Provisions) of this PP. No change was made to the proposed Riparian Lands and Watercourses LEP map.

The amended PP and responses to NRAR's other concerns were referred back to NRAR for comment on 27 November 2020. NRAR subsequently advised that it supported the amended PP and that its concerns had been satisfactorily addressed. It acknowledged that the layout of the future proposed subdivision and associated infrastructure (roads, drainage etc) will be considered in detail at the development application stage, should the PP proceed.

Copies of the submissions received from public authorities, and Council's responses, are included in the exhibition package.

## **5 Part 4 – Mapping**

This PP is supported by the following maps:

- Land Zone Map (LZN)
- Lot Size Map (LSZ)
- Riparian Lands and Watercourses Map (WCL)
- Urban Release Area Map (URA)

The above maps are provided in Maps 1 – 4 in Part 2 of this PP.

## **6 Part 5 - Community Consultation**

The PP was publicly exhibited from Wednesday 24 March to Friday 23 April 2021 inclusive (31 days) as required by the Gateway determination. As a result of the exhibition, one (1) submission was received which objected to the PP. In summary the issues raised were:

- This PP, as well as other recent decisions by Council at Moss Vale Road South URA, maximise returns for development at the expense of the environment.
- The additional lots proposed as part of this PP makes the retention of open spaces even more important. The E2 and E3 zoned lands should be kept open for recreational use by future residents.
- The PP will result in the loss of more trees at Moss Vale Road South.

The issues raised in the submission were addressed in the [report to Council's 1 June 2021 Development & Environment Committee](#) meeting. The issues were not considered sufficient to warrant any changes to the PP.

## 7 Part 6 – Project Timeline

The anticipated timeline for the PP is outlined in Table 3 below.

**Table 3: Indicative timeframe for completing tasks**

<b>Task</b>	<b>Anticipated Timeframe</b>
Commencement date (date of Gateway determination)	July 2020
Completion of Gateway determination requirements (including agency consultation)	January 2021
Public exhibition	March-April 2021
Consideration of submissions	May 2021
Post-exhibition consideration of PP by Council	June 2021
Finalisation and notification of Plan	July 2021

## **Attachments**

### **Attachment 1: Riparian Lands Study (Niche Environment & Heritage, 2020)**

Under separate cover

## **Attachment 2: Aboriginal Cultural Heritage Assessment (Biosis, 2018)**

Under separate cover



### **Attachment 3: Flora and Fauna Assessment (Ecoplanning, 2017)**

Under separate cover

## Attachment 4: SEPPs Checklist

SEPP	Date	Name	Relevant	Not inconsistent
19	24.10.86	Bushland in Urban Areas	x	n/a
21	24.04.92	Caravan parks	x	n/a
33	13.03.92	Hazardous and Offensive development	x	n/a
36	16.07.93	Manufactured home estates	x	n/a
47	17.11.95	Moore Park Showground	x	n/a
50	10.11.97	Canal estate development	x	n/a
55	28.08.98	Remediation of land	x	n/a
64	16.03.01	Advertising and signage	x	n/a
65	26.07.02	Design quality of residential flat development	x	n/a
70	31.05.02	Affordable Housing (Revised Schemes)	x	n/a
--	06.02.19	Aboriginal Land 2019	x	n/a
--	12.06.20	Activation Precincts 2020	x	n/a
--	31.07.09	Affordable Rental Housing 2009	x	n/a
--	25.06.04	Building Sustainability Index: BASIX 2004	x	n/a
--	03.04.18	Coastal Management 2018	x	n/a
--	28.02.19	Concurrences and Consents 2018	x	n/a
--	01.09.17	Educational Establishments and Child Care Facilities 2017	x	n/a
--	27.02.09	Exempt and Complying Development Codes 2008	x	n/a
--	12.10.18	Gosford City Centre 2018	x	n/a
--	31.03.04	Housing for Seniors or People with a Disability 2004	x	n/a
--	01.01.08	Infrastructure 2007	✓	✓
--	01.03.20	Koala Habitat Protection 2019	✓	✓
--	12.12.07	Kosciuszko National Park – Alpine Resorts 2007	x	n/a
--	30.06.89	Kurnell Peninsula 1989	x	n/a
--	16.02.07	Mining, Petroleum Production and Extractive Industries 2007	x	n/a
--	21.11.86	Penrith Lakes Scheme 1989	x	n/a
--	28.02.19	Primary Production and Rural Development 2019	✓	✓
--	01.10.11	State and Regional Development 2011	x	n/a
--	25.05.05	State Significant Precincts 2005	x	n/a
--	01.03.11	Sydney Drinking Water Catchment 2011	x	n/a
--	28.07.06	Sydney Region Growth Centres 2006	x	n/a
--	31.05.13	Three Ports 2013	x	n/a
--	15.12.10	Urban Renewal 2010	x	n/a
--	25.08.17	Vegetation in Non-Rural Areas 2017	x	n/a
--	21.08.09	Western Sydney Employment Area 2009	x	n/a
--	06.03.09	Western Sydney Parklands 2009	x	n/a

## Attachment 5: S9.1 Directions Checklist

Directions current as at 17 April 2020.

Direction		Applicable	Relevant	Not inconsistent
<b>1 Employment and Resources</b>				
1.1	Business and Industrial Zones	✗	✗	n/a
1.2	Rural Zones	✗	✗	n/a
1.3	Mining, Petroleum Production and Extractive Industries	✓	✗	n/a
1.4	Oyster Aquaculture	✗	✗	n/a
1.5	Rural lands	✓	✓	Minor inconsistency, Secretary has given concurrence.
<b>2 Environment and Heritage</b>				
2.1	Environmental Protection Zones	✓	✓	Inconsistent but justified, Secretary has given concurrence.
2.2	Coastal Management	✗	✗	n/a
2.3	Heritage Conservation	✓	✓	Minor inconsistency. Secretary's concurrence required
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	✓	✓	✓
<b>3 Housing, Infrastructure and Urban Development</b>				
3.1	Residential Zones	✓	✓	✓
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.3	Home Occupations	✓	✓	✓
3.4	Integrating Land Use and Transport	✓	✓	✓
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
<b>4 Hazard and Risk</b>				
4.1	Acid Sulphate Soils	✓	✓	✓
4.2	Mine Subsidence and Unstable Land	✗	✗	n/a

4.3	Flood Prone Land	x	x	n/a
4.4	Planning for Bushfire Protection	x	x	n/a
<b>5 Regional Planning</b>				
5.1	Implementation of Regional Strategies	x	x	n/a
5.2	Sydney Drinking Water Catchments	x	x	n/a
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	x	x	n/a
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	✓	✓	✓
5.11	Development of Aboriginal Land Council land	x	x	n/a
<b>6 Local Plan Making</b>				
6.1	Approval and Referral Requirements	✓	✓	✓
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	✓	✓	✓
<b>7 Metropolitan Planning</b>				
7.1	Implementation of A Plan for Growing Sydney	x	x	n/a
7.2	Implementation of Greater Macarthur Land Release Investigation	x	x	n/a
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 Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.9	Implementation of Bayside West	x	x	n/a

	Precincts 2036 Plan			
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	x	x	n/a



## **Attachment 6: 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  
PP054

**Address of Land (if applicable):**

The subject land is known as Taylors Lane, Cambewarra and is legally described as Lot 1 DP 949932.

**Intent of draft LEP:**

The Planning Proposal seeks to amend Shoalhaven LEP 2014 as follows:

- amend the extent of a watercourse on the subject land and reclassify it from Category 2 to Category 3 on the Riparian Lands and Watercourses Map.
- rezone part of the subject land from E2 Environmental Conservation to R1 General Residential.
- reduce the minimum lot size for the rezoned land from 40ha to 500m<sup>2</sup> and include it in the area subject to Clause 4.1H of SLEP 2014 which permits subdivision down to 300m<sup>2</sup> in certain circumstances.
- include the rezoned land in the Moss Vale Road South URA on the Urban Release Area Map.

<b>Evaluation criteria for the issuing of an Authorisation</b>	<b>Council Response</b>		<b>Department Assessment</b>	
	<b>Y/N</b>	<b>Not relevant</b>	<b>Agree</b>	<b>Not agree</b>
<b>(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)</b>				
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the Planning Proposal adequately address any consistency with all relevant S9.1 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
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/A		

<b>Heritage LEPs</b>				
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			
<b>Reclassifications</b>				
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		
<b>Spot Rezoning</b>				
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			
<b>Section 73A matters</b>				
Does the proposed instrument:				
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?;	N			
b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;	N			
c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	N			