

CL22.119 Exhibition Outcomes - Planning Proposal (PP005) - Revision and Proposed Re-Exhibition - 'Deferred' Land, Warrah Road, Bangalee

HPERM Ref: D21/523566

Department: Strategic Planning

Approver: Gordon Clark, Interim Director - City Futures

Attachments: 1. Summary of Submissions (under separate cover)
2. Agency feedback - PP005 Warrah Road

Reason for Report

- Provide feedback on the outcomes of the public exhibition and Government Agency consultation in respect of the Planning Proposal (PP005) for land with a 'deferred' zoning at Warrah Road, Bangalee.
- Present a revised version of the PP that was triggered by concerns raised by the NSW Rural Fire Service (RFS) and to seek endorsement for re-exhibition.
- Seek 'in principle' support for the transfer/dedication of approximately 45 ha of proposed C2 Environmental Conservation land to Council with a single, fully costed and funded Biodiversity Stewardship Agreement (BSA). Previously the C2 land was proposed to be contained in three (3) privately owned 'caretaker lots'.

Recommendation

That Council:

1. Endorse the revised proposal and modified Local Environmental Plan (LEP) maps contained in this Report and prepare an updated Planning Proposal (PP) that also includes:
 - a. Information about the proposed biodiversity certification of the development land and proposed conservation arrangements for the environmental land as outlined in recommendation 2 below;
 - b. A revised subdivision concept plan 2022;
 - c. Current agency comments.
2. Endorse, **in principle**, the transfer/dedication of the proposed C2 Environmental Conservation zoned land (part of Lot 24 DP 714096) to Council at the appropriate point in the future with a single, fully costed and funded Biodiversity Stewardship Agreement (BSA), registered on Title.
3. Forward an updated PP to the NSW Department of Planning and Environment (DPE) with a request for a further Gateway extension to permit re-exhibition and finalisation of the PP.
4. Publicly exhibit the updated PP in accordance with legislative requirements and consult relevant agencies (provided Gateway extension is issued), with costs accrued to date to be invoiced and paid by the Proponent prior to exhibition commencing.
5. Concurrently exhibit the Biodiversity Certification Application (BCA) and updated BCAR with the PP for 30 days in accordance with s8.6 of the *Biodiversity Conservation Act 2016*.
6. Receive a future report on the outcomes of the re-exhibition and proposed finalisation

process.

7. Advise the proponent and previous submitters of this resolution.

Options

Options to progress the PP are limited.

1. As recommended

Implications

This is the preferred option as it is realistically the only way to progress the proposal to meet the requirements of Government Agencies. The revised PP is an improved planning outcome and is supported by DPE, RFS, Biodiversity & Conservation Division of DPE (BCD) and relevant Council Section. The revised PP also responds to concerns raised in community submissions about bushfire risk, alternate access and environmental protection.

The revised footprint and proposed arrangements for the proposed C2 Environmental Conservation zoned land achieves a more balanced/robust development/conservation land supply outcome and is also consistent with the 'Planning for Bushfire Protection' 2019 (PBP 2019) guidelines. Due to the extent of changes, the PP needs to be re-exhibited. The Proponent supports the revised proposal.

2. Seek to finalise the PP as exhibited

Implications

Not recommended. The PP cannot be finalised as exhibited due to the concerns raised by the RFS (making it inconsistent with the s 9.1 Ministerial Direction that applies to bushfire prone land).

3. Propose an alternative/not adopt/defer the recommendation

Implications

Not recommended. There is insufficient time for an alternative proposal to be negotiated before the Gateway is due to expire on 25 May 2022. Changes to the proposal at this stage could delay the process and might not be supported by the key government agencies and/or proponent. A potential yield of 200 residential lots may not be realised. The environmental land would remain in private ownership and its future long term management would not be secured.

Location and Current Zoning

The subject land (**Figure 1**) has an area of approximately 80 ha and is located at Bangalee, approximately 3.5 km northwest of Nowra town centre. It is identified as Lots 21-24 DP 714096 and is predominately vegetated with cleared and partially cleared areas in the east as shown in aerial photo below. Most of the partially cleared area is subject to a Remediation Order under the *NSW Biodiversity Conservation Act 2016*.



Figure 1 – Aerial Photo and boundaries of Subject Land

The subject land is bordered by existing land zoned R5 Large Lot Residential to the north, R2 Low Density Residential to the east and small rural holdings zoned C2 - Environmental Conservation and C3 - Environmental Management to the south and west. The remaining part of the original Crams Road URA zoned R1 (General Residential) adjoins the land to the south separated by a Crown Road (see **Figure 2**).

The zoning of the subject land was 'deferred' from Shoalhaven LEP 2014 and therefore the provisions of Shoalhaven LEP 1985 continue to apply. Under Shoalhaven LEP 1985, the site is currently zoned Rural 1(d) (General Rural).



Figure 2 – Shoalhaven LEP 2014 (Note: subject land is currently deferred from SLEP 2014)

Background

The PP has a long and complex history dating back to Nowra-Bomaderry Stricture Plan (NBSP) and draft Shoalhaven LEP processes, including in 2013 when the proponent made a submission to the draft Shoalhaven LEP. The history is fully documented in the exhibited PP [here](#).

Council resolved to submit a PP for Gateway determination in December 2015 after considering an independent review of conflicting biodiversity assessments. A favourable Gateway determination was originally issued by the NSW Government in July 2016. This PP is one of five “Legacy” PPs for which the original Gateways were **terminated** by DPE on 15 December 2020 (see more information about the Legacy PPs in Council report DE21.5 [here](#)).

A new Gateway determination was issued for this PP on 25 February 2021 with a 12-month timeframe and an expiry date of 25 February 2022. A Gateway extension request was sent to DPE on 17 January 2022 based on a project plan with an estimated completion date of August 2022. However, on 24 January 2022, a [revised Gateway](#) was issued with an extension of only three **(3) months** until **25 May 2022**. DPE advised:

“This 3-month timeframe will allow Council sufficient time to complete the updated reports and revise the planning proposal and to confirm whether the elected Council supports an altered planning proposal. Should Council seek a Gateway determination alteration for a revised planning proposal, then a request for a further extension of 3 months to finalise the plan could be considered”.

Copies of all Gateway determinations for the PP are available in the document library on the [Get Involved Web-Page](#).

Outcome of Public Exhibition and Agency Consultation

Public Exhibition: May-June 2021

The PP was publicly exhibited between 12 May and 25 June 2021. During the exhibition:

- Council’s [‘Get Involved’](#) project page was maintained to assist community engagement on this PP and accompanying biodiversity certification application (which is discussed later in this report). All exhibition documentation, relevant Council reports and resolutions, technical studies, Gateway determinations, agency comments, the Biodiversity Certification Application (BCA) and Biodiversity Conservation Assessment Report (BCAR) were (and remain) available for viewing.
- Information ‘drop-in’ sessions were held between 4 pm and 6 pm on 8th and 9th June 2021 at the North Nowra Community Centre, following an online registration process (to help manage COVID risks). Twenty-four (24) registrations were received, and eighteen (18) individuals attended at least one session. No follow-up enquiries were received.

A total of twenty-four (24) submissions were received during the public exhibition period and a breakdown of submissions is provided in the following table:

| Basic summary | Number | Comment |
|---------------------|--------|---|
| In support | 6 | Only one appears to have a connection with Shoalhaven and none were connected to Bangalee |
| Bangalee landowners | 16 | Objections – 3 of 16 Concerns and comments – 13 of 16 |
| Other | 1 | Objection - from Sydney - appears to have no connection with the Shoalhaven or Bangalee |
| Neutral | 1 | Jerrinja Tribe – consultation concerns addressed via direct correspondence as detailed (Attachment 1). |

A detailed summary of submissions is provided as **Attachment 1**. The key issues raised are summarised below. The resultant proposed changes are discussed in the next section of this report.

Lot size:

- *There was generally no support for the 500 m² minimum lot size (LSZ). There was, however, considerable support for the status quo i.e., Large Lot Residential ≥1,000 m² was preferred. One submission noted that the entire locality of Bangalee was rezoned (from R2 to R5) as recently as August 2020 to reflect the existing development (PP027). **10 submissions**.*

Comments on the concerns about minimum lot sizes are provided in **Attachment 1** Summary of Submissions (see responses 1.4 to 1.8).

- With a few exceptions, lot sizes in the Bangalee area range from 2,000-5,000 m². Several submitters, whilst not opposed to the PP, suggested a transition be provided between the existing development and the possible smaller lots within the subject land. *Note: the exhibited PP did provide a transitional 2,000 m² LSZ between the existing 2,000 m² area to the north and the proposed 500 m² LSZ to the south.*

An R5 zoning for this entire Urban Release Area (URA) is not considered appropriate as the zone objectives would frustrate the delivery of planned regional land supply as anticipated by the NBSP. Projected yield has already been substantially reduced due to the environmental/biodiversity constraints of the land. Only 25 ha of the 80 ha parcel of land is suitable for development. An R5 zone would significantly reduce the projected yield of 200 lots and potentially render the proposal uneconomic.

However in response to community concerns, it is proposed to create a transition/buffer area between existing development in Bangalee and smaller R2 lots by zoning part of the URA to R5 Large Lot Residential zone and applying a minimum lot size of 2,000 m².

Not all submitters will be satisfied with the proposed changes. However, it is considered that the revised proposal goes some way to respond to the concerns raised about minimum lot size without rendering the entire proposal uneconomic and thereby, failing to deliver much needed new housing in the region.

If Council supports the revised proposal for re-exhibition, the community will have the opportunity to provide further feedback on the proposed minimum lot sizes.

Traffic and access

- *Specifically, the need for an alternate and / or secondary access other than Warrah Road and concerns about bushfire risk and evacuation arising from the increased population, additional traffic, and access issues. **8 submissions***
- Increased traffic on Warrah Road, Bimbimbie Avenue and Moondara Drive was highlighted. Access via a new roundabout at the intersection of Warrah/Illaroo Roads was suggested as an alternative. However, construction of this northern

extension of Warrah Road is of significant concern to at least three of the four immediately adjoining landowners.

Of greatest concern, however, was bushfire risk and the lack of an alternate/secondary access in the event of an emergency evacuation. This issue was also central to concerns raised by RFS and was a key consideration in revising the proposal.

An alternative access option via Pitt Street is illustrated in the sketch plan – available via the link in **Attachment 2**. Access via the northern extension of Warrah Road through to a roundabout at the intersection with Illaroo Road could also be further explored to reduce traffic impacts on Moondara Drive and Bimbimbie Avenue. This access option addresses one of the key RFS concerns.

All access options would be further considered at DCP stage if Council supports the revised proposal and if/when the land is rezoned, and community will be invited to engage in this process.

Environmental – loss of bushland and wildlife habitat.

- *Impact on threatened species caused by previous clearing and proposed development. **6 submissions.***
- The proposal to protect the environmental and biodiversity values of the site along with development is well documented in this report and its attachments. If Council supports the recommendations and the land is rezoned, the environmental values of the C2 zoned land will be better protected, particularly when the Biodiversity Stewardship Site is ultimately established. As noted by BCD, on balance, the biodiversity package is robust. It is also consistent with the requirements of PBP 2019 and also facilitates the delivery of planned regional land supply.

State and local infrastructure

- *The need for major infrastructure to be provided prior to development and the need for additional social infrastructure in the area, e.g., footpaths, public open space and a playground. **5 submissions.***

The provision of State Infrastructure has been commented on in the Summary of Submissions at **Attachment 1** (see responses 1.2 and 1.3).

- No land will be able to be ‘released’ for actual development until the provisions of Part 6 of Shoalhaven LEP 2014 have been satisfied. Council has also resolved (MIN19.289) that release of this land should not occur until both the Princes Highway Shoalhaven River Bridge duplication and the Far North Collector Road have been completed.

The need for social infrastructure to support the proposed URA such as public open space, a playground and shared paths, etc was also raised in submissions. These issues are commented on in the Summary of Submissions at **Attachment 1** (see responses 2.4 – 2.6).

A key issue to arise is the need for a local park. City Lifestyles (Strategic Asset Planning) supports the dedication of a minimum of 4,000 m² as public open space within the proposed URA for use by both future (approx. 500) and existing residents. A local park is considered to be justified based on projected population increase as there are no suitable existing parks in Bangalee or its immediate surrounds. Ideally, a park would be centrally located to be accessible to all residents of Bangalee.

A detailed site-specific Development Control Plan (DCP) must be prepared before the land can be ‘released’ for subdivision in accordance with Part 6 of the Shoalhaven LEP 2014. The community will be invited to engage in this process. The DCP will provide more detailed planning provisions and will help achieve beneficial outcomes, for example, those relating to local/social infrastructure provision (e.g., a local park,

cycleways, shared paths, and sustainability infrastructure such as high-quality stormwater management, and subdivision design). Council may also prepare/consider other supporting documents (such as a Voluntary Planning Agreement and Contributions Plan Amendment). In this case, the community will also be engaged if/when these documents are prepared.

Schools

- *Impact of additional population on the capacity of local primary schools. **3 submissions.***
- Council continues to liaise with the NSW Department of Education (DE) in relation to the educational needs of the Shoalhaven more broadly. DE is aware of the regional significance of the Nowra-Bomaderry Growth Area and the projected population increase. Future needs and the capacity of existing education facilities in the area are being monitored by DE. Initially, DE intends to meet the increased demand for schooling by completing upgrades to one or more existing schools.

Agency Consultation

As required by the Gateway determination, consultation was undertaken with a range of government agencies between July and October 2021. **Attachment 2** is a summary of the agency feedback.

Crucially, the NSW Rural Fire Service (RFS) objected (after the exhibition) on the basis that the proposal did not meet the subdivision requirements of PBP 2019 and therefore was not consistent with Ministerial Direction 4.4 under s 9.1 of the *Environmental Planning & Assessment Act, 1979*.

This PP cannot be progressed unless this objection is resolved, and this triggered Council to seek assistance from DPE's Planning Delivery Unit (PDU).

The Revised Proposal

Essentially, the revised proposal is the outcome of discussions lead by the PDU with the RFS, DPE's Biodiversity & Conservation Division (BCD), DPE's Regional Office, the Proponent and Council's Strategic Planning Team.

The PDU's role was critical in bringing together these parties, allowing the proposal to be reshaped to help overcome concerns. There are no outstanding agency objections relating to the revised PP presented in this Report.

The revised development footprint is substantially different from the exhibited PP but presents a better potential planning outcome, as illustrated in Figure 3 below.

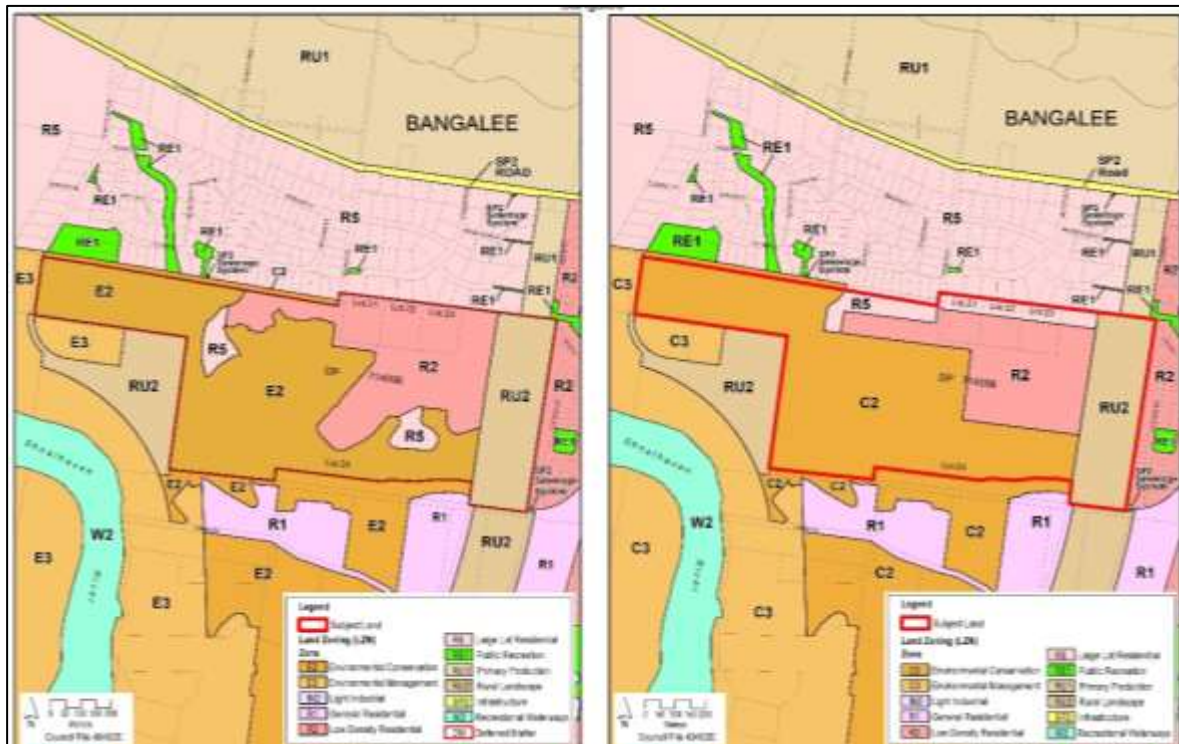


Figure 3 – Comparison – Exhibited proposed zoning (LHS) and revised proposed zoning (RHS)

The key changes to emerge and frame the revised proposal are:

- A regular boundary and manageable interface between the proposed residential zones and environmental land that will facilitate consistency with the subdivision requirements of PBP 2019 and therefore Ministerial Direction 4.4.
- Two small pockets of R5 zoned land with dwelling entitlements have been removed. The R5 land had been proposed to accommodate dwellings associated with three (3) 'caretaker lots' for the C2 land.
- A buffer/zone of transition between the existing development in Bangalee and smaller R2 lots is proposed to be created by applying an R5 zone to the north of the URA, with a minimum lot size of 2,000m².
- Approximately 300 linear metres of the former Crown Road necessary for perimeter road access to the development is proposed to be included in the R5 Large Lot Residential zone.
- A minimum lot size of 700 m² is proposed to apply along the R2/C2 interface to ensure that the bushfire Asset Protection Zones (APZs) can be accommodated.
- C2 Environmental Conservation land is proposed to be increased by 2 ha to 45 ha.
- Minimum lot sizes in the revised proposal are proposed to be simplified and reduced to four as follows:
 - R2 zone – 500 m² and 700 m²
 - R5 zone – 2000 m²
 - C2 and RU2 zones – 40 ha

As a result, four (4) of the exhibited proposed LEP Map changes have been modified to reflect the revised proposal, these are:

- LZN – Land use zones (Figure 4)

- LSZ – Minimum Lot Size (Figure 5)
- HOB – Height of Buildings (Figure 6)
- Proposed URA (Figure 7)

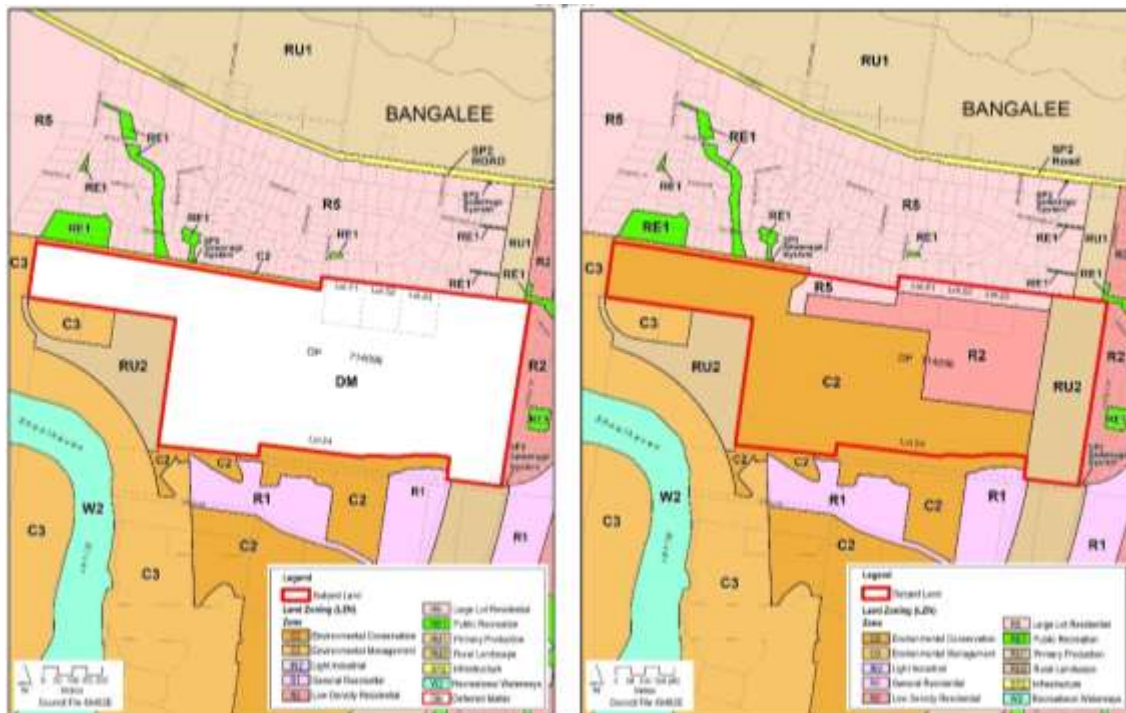


Figure 4 – Existing (LHS) and proposed (RHS) land use zoning (LZN) under SLEP 2014



Figure 5 – Existing (LHS) and proposed (RHS) minimum lot size (LSZ) under SLEP 2014



Figure 6 – Existing (LHS) and proposed (RHS) height of buildings (HOB) under SLEP 2014



Figure 7 – Existing (LHS) and proposed (RHS) urban release area (URA) under SLEP 2014

If supported, the revised proposal does, however, need to be re-exhibited due to the extent and nature of changes.

An updated PP document will need to be prepared and forwarded to DPE with a further Gateway extension request prior to re-exhibition of the PP.

Biodiversity Certification

Biodiversity certification offers a streamlined biodiversity assessment process under the *NSW Biodiversity Conservation Act 2016* for areas of land that are proposed for development. The process identifies both areas that can be developed after they are 'certified', and measures to offset the impacts of development. Where land is 'certified', development may proceed without the usual requirement for site-by-site assessment as part of the development application (DA) process.

An application for Biodiversity Certification (BCA) and the associated Biodiversity Certification Assessment Report (BCAR) were exhibited concurrently with PP in accordance with 'best practice'. **No** submissions were received in relation to the BCA/BCAR.

An updated BCAR was received on 14 January 2022, reflecting the revised PP. In addition to recalculation of the biodiversity credits, the revised BCAR proposes to transfer/dedicate the C2 land to Council. The exhibited PP and BCAR proposed the C2 land to be split into three (3) caretaker lots / Biodiversity Stewardship Sites (which would have remained in private ownership).

If the revised proposal is supported, the BCA and updated BCAR will be re-exhibited concurrently with the PP. The NSW Minister for Environment & Heritage will determine the BCA in consultation with the NSW Minister for Planning and Homes. The application will be assessed and determined in accordance with the biodiversity certification provisions of the *Biodiversity Conservation Act 2016*.

Ultimately, if the development area is biodiversity certified, the biodiversity credits calculated in the BCAR would have to be secured by the developer and retired.

Proposed Land transfer to Council with Biodiversity Stewardship Agreement

Critical to BCD's support for the revised proposal is for all the land proposed to be zoned C2 Environmental Conservation to be transferred/dedicated to Council with a **single** fully funded Biodiversity Stewardship Agreement (BSA) registered on the Title. In contrast, the exhibited proposal was for the C2 land to be the subject of three separate BSA's and split into the three (3) privately owned caretaker lots.

BCD stated that: "... on balance, the biodiversity package is considered more robust and assists integrating the bushfire requirements of the RFS while assisting SCC to achieve regional land supply."

The biodiversity stewardship site would have to be managed in accordance with the agreement, which aims to improve the land's biodiversity values.

An application for a BSA must be lodged with the Biodiversity Conservation Trust (BCT) and the application must be supported by a BSA Report prepared by the proponent. The BSA will calculate the amount of the deposit that must be made to the Biodiversity Stewardship Payments Fund for ongoing management of the site (total fund deposit - TFD). The Payments Fund would pay Council scheduled management payments from the TFD as determined in the BSA Report and by the Fund.

City Development (Environmental Services) supports the revised proposal and transfer/dedication of C2 land to Council with a single BSA. Key comments received were:

- *The revised possible development footprint is supported. This revised layout is more condensed than the previous design and is beneficial as this design allows a*

greater width of wildlife corridor to be conserved by the C2 zoned area proposed to be managed under a Biodiversity Stewardship Site Agreement.

- It is understood that for the 'suggested option' all areas outside of the revised possible development footprint (R2) and the RU2 proposed area would be zoned C2 and managed under a Biodiversity Stewardship Agreement. This is supported.*
- The R2 zoned development footprint would become a revised biodiversity certification area. Comments provided by the BCD in relation to revising the BCAR to reflect this new alignment, in accordance with BAM 2020 are supported.*
- It is understood that in order to support the PP, BCD require that all the land proposed to be zoned C2 Environmental Conservation be dedicated to Council with a fully funded BSA registered on the Title. This is supported. It would be expected that the credits generated by the BSA would be retired by the developer as part of the offset for the biodiversity certification area.*

Council's **in principle** agreement, is sought to accept transfer/dedication of the proposed C2 Environmental Conservation land. The BSA would ensure that the C2 Environmental Conservation land is managed for its biodiversity and conservation values in perpetuity. Fundamentally, the negotiated land transfer and BSA is an improved biodiversity outcome to the exhibited proposal.

Transfer of the land and accompanying funding would be set out in the Biodiversity Certification Agreement as part of any conferral by the NSW Minister for the Environment and Heritage under Part 8, Division 2 of the Biodiversity Conservation Act 2016. The timing of transfer is yet to be determined but it would potentially be a set period after Part 6 of the LEP (requirements relating to Urban Release Areas) is satisfied, or some other key point in the process (e.g., prior to release of subdivision works certificate). Council and BCD will continue to work closely on this timing aspect.

Further reports on the mechanism for and the environmental/financial benefits arising from transfer of the land to Council will be prepared in due course when the appropriate milestones are reached.

Conclusion

In conclusion, the revised proposal and associated proposed transfer/dedication of C2 land with BSA (Option 1) is a superior planning outcome compared to the exhibited PP.

The revised proposal responds to most issues and concerns raised during community consultation (drop-in sessions) and submissions received during the original exhibition. The revised proposal has the support of the key NSW Government agencies as well as the support of the relevant sections within Council.

The extent of the changes is such that re-exhibition (concurrently) of the PP and BCA is necessary. Proceeding with this approach will allow this longstanding matter to be resolved and achieve the best overall planning outcome.

Community Engagement

The revised PP option will need to be re-exhibited due to the extent of changes. The community will have a further opportunity to consider the revised proposal as a result.

The Warrah Road 'Get-Involved' project page will be updated to keep the community informed and to seek submissions on the revised PP and BCA.

Policy Implications

No implications for existing policy arise from the revised proposal or re-exhibition of the PP.

The transfer/dedication of the C2 Environmental Conservation land to Council (with a fully funded BSA registered on Title) is facilitated via the *Biodiversity & Conservation Act 2016* and as such, there is no intersect with existing policies of Council. This is a shift in Council's general approach; however, the proposal will result in a good conservation/management outcome and importantly the proposal will be fully funded, meaning Council will not need to expend funds for ongoing management.

Land transferred/dedicated would be classified as 'Community land – Natural Area Bushland' in accordance with Section 31 and Section 36 of the *NSW Local Government Act 1993* and Section 102 of the *NSW Local Government (General) Regulation 2021*. Classification of the land would be addressed when further reports on the land transfer/dedication and establishment of BSA are presented to Council in due course.

The preparation of a Development Control Plan relating to the land will need to be prepared at the appropriate point, noting that Council's long held position is that land release will not occur until the new bridge crossing and the Far North Collector Road have both been completed.

Financial Implications

Council has fees and charges in place for progressing proponent-initiated Planning Proposals. These seek to recoup costs incurred by Council in progressing the matter, including the costs associated with staff time. Costs incurred to date (as prescribed in Council's adopted Fees and Charges) will need to be invoiced to, and paid by, the Proponent before the PP proceeds to exhibition.

The provision of a fully costed and funded BSA would ensure that the future cost of managing the biodiversity stewardship site would be met by the sale of Biodiversity Credits generated under the NSW Biodiversity Offsets Scheme. Rates would also not be payable. If any implications should arise that need to be considered, these would be canvassed when further reports on the establishment of the BSA are prepared.

Note: Below are the links contained within Attachment 2 below

[16 July 2021 response](#)

["Suggested Option"](#)

["Subdivision Concept Plan"](#)

<https://getinvolved.shoalhaven.nsw.gov.au/warrah-road-bangalee-planning-proposal>

[18 October 2021](#)

[updated BAR](#)

[Subdivision Concept Plan](#)

[upated BCAR](#)

[advice](#)

[Comments](#)