

CL22.394 Exhibition Outcomes and Finalisation - Planning Proposal (PP005) - 'Deferred' Land at Warrah Road, Bangalee

HPERM Ref: D22/319299

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. Summary of Submissions

Reason for Report

The reason for this report is to present the public exhibition outcomes for this revised Planning Proposal (PP005) and the associated biodiversity certification application for 'deferred' land at Warrah Road, Bangalee.

A further reason is to obtain endorsement to finalise the post-exhibition version of PP005 and proceed to amend the LEP accordingly.

Recommendation

That Council:

1. Adopt and finalise the revised Planning Proposal (PP005) as exhibited between 15 June and 18 July 2022.
2. Forward PP005 to the Office of the NSW Parliamentary Counsel (PCO) with a request to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 (SLEP) using Council's delegation.
4. Issue a final invoice for the balance of fees outstanding, to be paid by the proponent prior to making the LEP amendment.
5. Post a 'Newsfeed' update to the 'Get Involved' project page and advise all subscribers and the proponent of this resolution.
6. Advise submitters of Council's decision once the LEP amendment has been notified.

Options

1. As Recommended

Implications: Strongly preferred as this is the only realistic way to resolve this complex legacy PP and future zoning for this part of the Crams Road Urban Release Area identified in the 2008 Nowra-Bomaderry Structure Plan (NBSP). Council previously considered a report and agreed that the revised proposal and associated proposed transfer/dedication of C2 land with a fully funded Biodiversity Stewardship Agreement is a better planning outcome compared to the previously exhibited version of this PP.

The revised PP is supported/not opposed by the relevant NSW Government agencies, Council Sections and the proponent. Residential land will not be released for actual development until the provisions of Part 6 of Shoalhaven LEP 2014 have been satisfied.

Council's longstanding position, which was reconfirmed in 2019 (MIN19.289) is that release of this land should not occur until both the Princes Highway / Shoalhaven River Bridge duplication and the Far North Collector Road projects have been completed. Hence, preparation of the required DCP is not considered a priority at this time.

Finalisation of the PP would allow the proponent to progress the biodiversity certification application for the residential development area and, in due course, a biodiversity stewardship agreement (BSA) for the proposed C2 Environmental Conservation land.

2. Make changes to the Planning Proposal.

Implications: Not supported. This could potentially further unduly delay or jeopardise finalisation of this PP. A small number of submissions could indicate there is a level of community acceptance to the proposed LEP changes. The issues that were raised can be more closely considered and addressed as part of addressing the subsequent requirements of Part 6 of LEP before any land is 'released' for actual development.

3. Not proceed with the Planning Proposal

Implications: Not supported. This is a legacy PP with a complex history dating back to 2013. Considerable resources have been expended to refine and improve the proposal and gain its acceptance from Government agencies. Should Council not proceed with the PP, the opportunity to finally resolve the planning status of this land could be lost. The opportunity to also increase housing supply in North Nowra in the longer term by approximately up to 240 dwellings and to protect, in perpetuity, the environmental values of the proposed C2 Environmental Conservation land could also be lost in the longer term.

Location

PP005 applies to Lots 21-24 DP 714096, Warrah Road, Bangalee and approximately 300 linear metres of unmade Council road reserve west of Warrah Road and south of Lochaven Drive as shown in **Figure 1** below.

Lots 21-24 (the 'deferred' land) are currently zoned *Rural 1(d)(General Rural)* under Shoalhaven Local Environmental Plan (LEP) 1985. It is proposed through this PP to resolve the zoning of the land and incorporate this land into the Shoalhaven LEP 2014. The road reserve is currently zoned *C2 Environmental Conservation* under LEP 2014.

Figure 1 - Subject land



Background

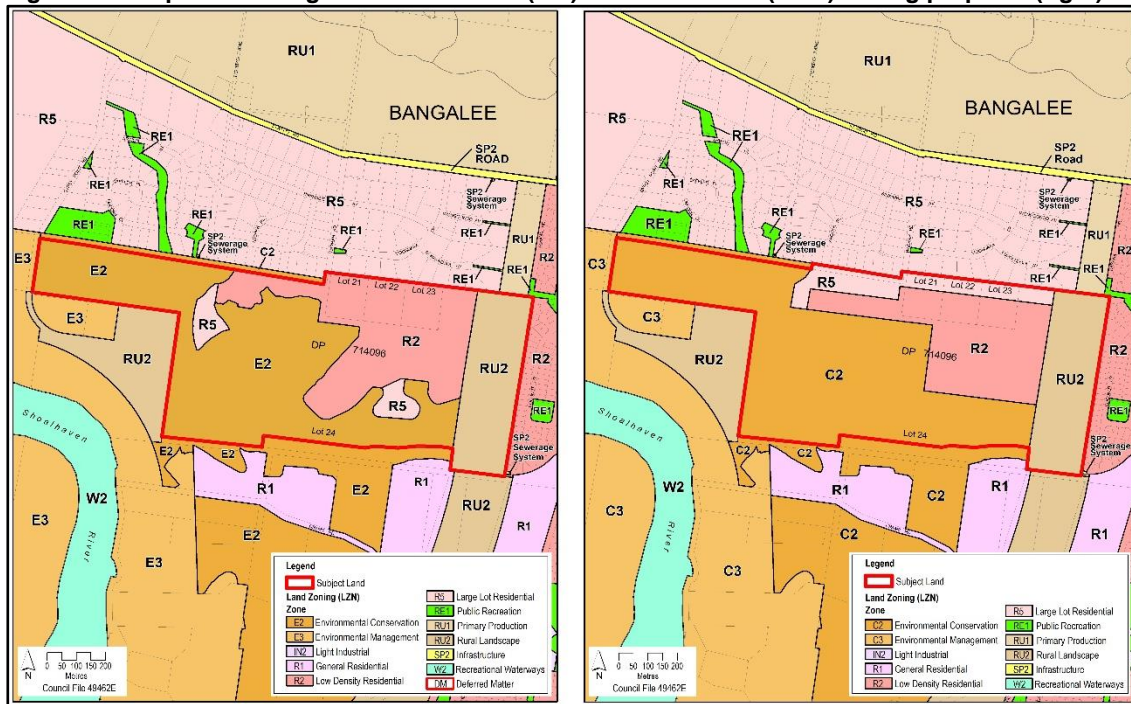
The Planning Proposal

The PP dates back to Nowra-Bomaderry Structure Plan (NBSP) and draft Shoalhaven LEP processes, including in 2013 when the proponent made a submission to the draft city-wide Shoalhaven LEP.

The detailed history of the PP is documented in a [previously exhibited version of the PP](#). The [current version of the PP \(as exhibited – Version 2.6\)](#) details the rationale for revising and re-exhibiting the PP.

The previously exhibited planning proposal (2021) and the revised PP (2022) are compared below at **Figure 2**. Council previously considered a report and agreed that the revised proposal and associated proposed transfer/dedication of C2 land with a fully costed and funded Biodiversity Stewardship Agreement is a superior planning outcome compared to the previously exhibited PP.

Figure 2 – Proposed zoning exhibited in 2021 (left) and the current (2022) zoning proposal (right)



At the [Ordinary meeting on 14 March 2022](#), Council considered a report on the previously exhibited PP and resolved (MIN22.170) to:

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.*
8. *Prepare any future DCP Chapter for the area in accordance with Part 6 of the LEP including requirements for appropriate tree retention within the subdivision area.*

New Gateway determination

As per Council's decision (MIN22.170), an updated PP and Gateway extension request were submitted to DPE on 23 March 2022. The Gateway was due to expire on 25 May 2022. As re-exhibition was required, the project timeline was updated with an *anticipated* completion date of August/September 2022 indicated.

Notwithstanding DPE's support for the revised proposal, Council's Gateway extension request was disappointingly declined. Instead, on 19 April 2022, the Gateway was terminated, and the reasons cited were:

- The original 12month timeframe to complete the proposal had already been extended by three months
- The significant time lapsed to date
- The need to consult on the proposal; and
- Uncertainty that the proposal could be finalised within the additional time requested.

By the time the Gateway was terminated, the updated PP and SLEP mapping to include the additional land (the Council road reserve) had already been completed. Notwithstanding this, re-exhibition could not proceed at that time because the Gateway had been terminated by DPE.

Council staff again amended the PP to reflect the changed Gateway status and requested a new Gateway determination on 4 May 2022.

The decision to terminate generated two additional versions of the PP, consumed Council resources unnecessarily and delayed progression of the PP. The concerns about the need to obtain a new Gateway determination were relayed to DPE's Regional Office.

DPE issued a new Gateway determination for PP005 on 11 May 2022.

Gateway conditions

The conditions of the new Gateway are summarised below:

- Public exhibition period: 28 days (minimum)
- Exhibition material to comply with DPE's Local Environmental Plan Making Guidelines 2021
- No consultation is required with public authorities or government agencies
- A public hearing is not required
- Council is the delegated local plan-making authority under section 3.36(2) of the EP&A Act subject to:
 - all conditions of the Gateway determination being satisfied
 - the PP being consistent with applicable Section 9.1 Ministerial directions and
 - there being no outstanding objections from public authorities
- The LEP should be completed on or before 13 February 2023

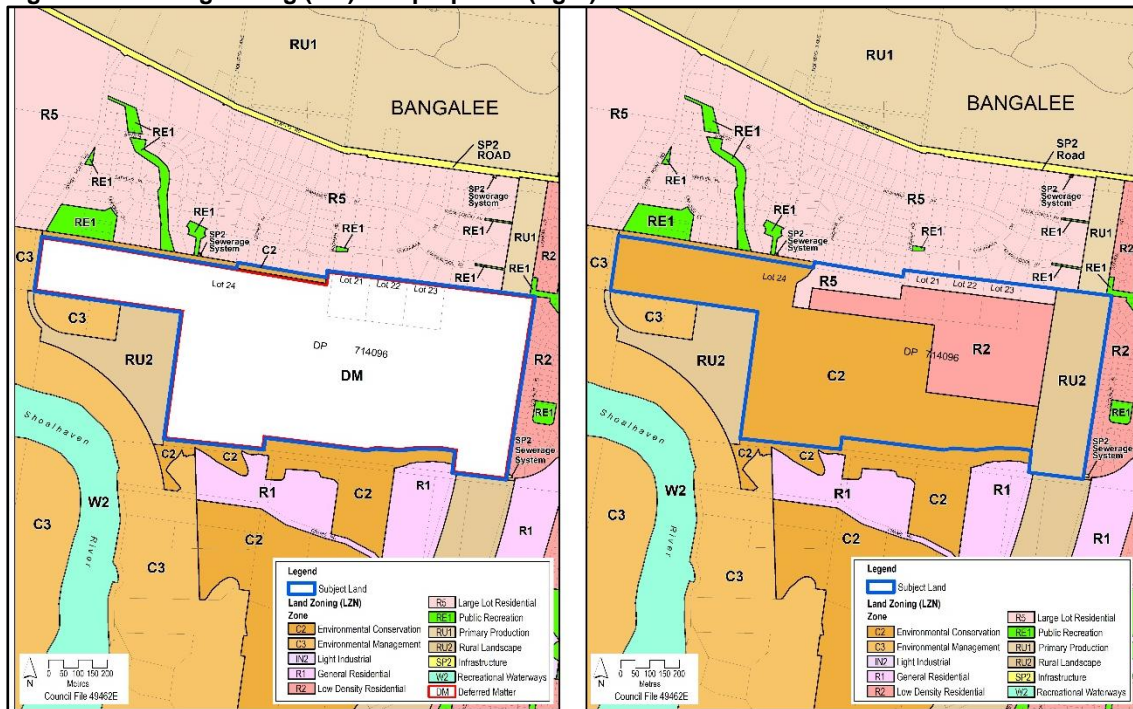
Resulting Proposed Amendments to Shoalhaven LEP 2014

The following proposed map amendments will result from this PP :

Land Use Zoning (LZN)

It is proposed to rezone the 'deferred' land to a mix of *R5 – Large Lot Residential*, *R2 – Low Density Residential*, *RU2 – Rural Landscape* and *C2 – Environmental Conservation*. See **Figure 3** below. A section of the Council road reserve is proposed to be included in the R5 zone, consistent with DPE's Practice Note PN 10–001, because the road reserve would form part of a perimeter road network to comply with *Planning for Bushfire Protection 2019*.

Figure 3 - Existing zoning (left) and proposed (right)

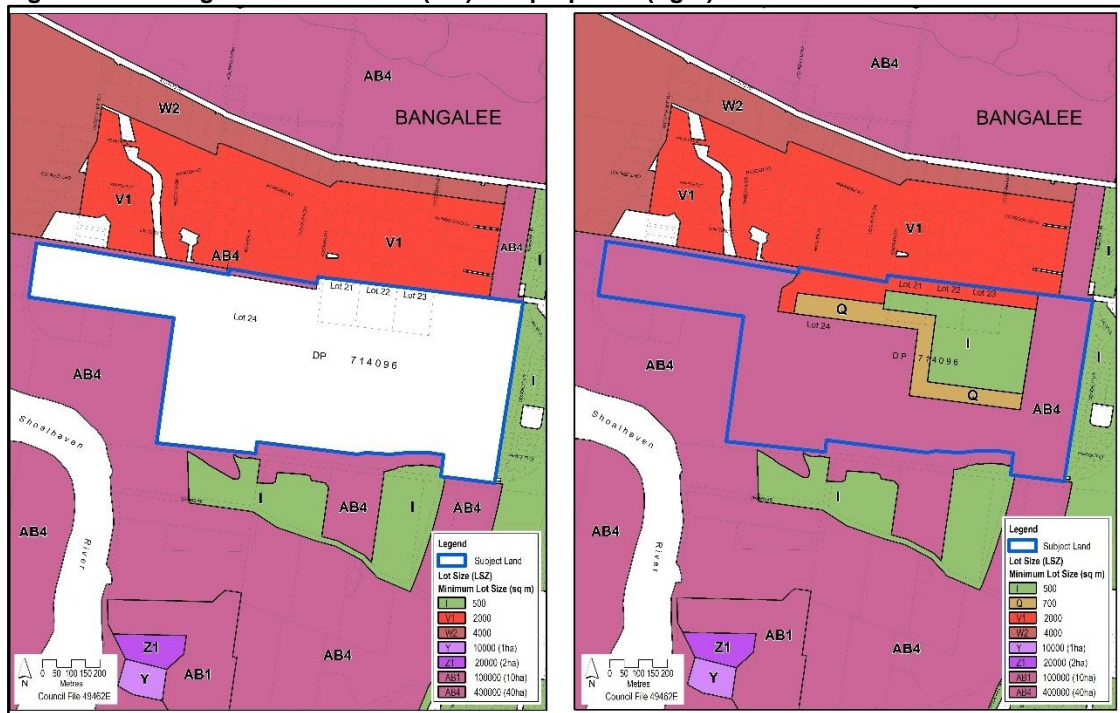


Minimum lot size (LSZ)

The proposed Minimum Lot Size Map (see **Figure 4** below) has the following elements:

- R5 zone: The northern boundary of the site has been allocated a minimum lot size of 2,000 m² (V1) to complement the adjoining large lot residential development to the north and provide a buffer to new and most likely denser residential development within the urban release area to the south.
- R2 zone: A 500 m² lot size (I) is proposed for the least constrained part of the urban release area (R2 zone) for the provision of standard residential lots.
- R2 Zone: A 700 m² lot size (Q) is proposed for the land identified as a buffer between the 500 m² lot size area and adjoining environmental land. Larger lots are required in this location to help accommodate the required bushfire asset protection zones (APZs).
- RU2 zone: A 40 ha (AB1) minimum lot size is proposed to recognise the corridor and alignment of the future Western Bypass and to allow this land to be excised and attached to a residential lot within the subdivision until the NSW Government is ready to acquire the land.
- C2 zone: The balance of the site is environmental land and will have a 40 ha (AB1) minimum lot size.

Figure 4 - Existing minimum lot size (left) and proposed (right)



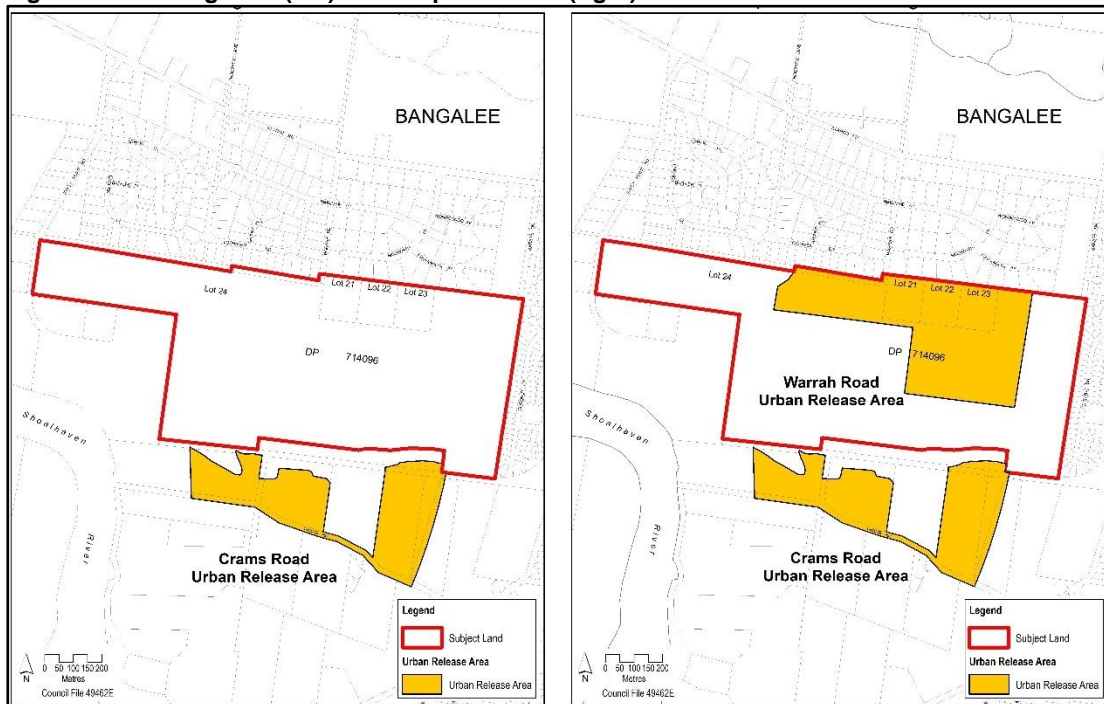
Urban Release Area (URA)

The area of land to be identified as Urban Release Area (URA) corresponds to the area of land proposed to be zoned *R5 - Large Lot Residential* and *R2 - Low Density Residential* plus the Council road reserve (west of Warrah Road and south of Lochaven Drive) - see **Figure 5** below.

This will mean that Part 6 of the LEP will have to be satisfied before the land can ultimately be subdivided and developed. The proposed URA land, minus the road reserve, is also subject to the Biodiversity Certification Application (BCA) and revised Biodiversity Certification Assessment Report (BCAR), exhibited concurrently with the PP¹.

¹ A Biodiversity Development Assessment Report (BDAR) would be required for constructing the road on land that is not biodiversity certified, i.e. within this road reserve.

Figure 5 – Existing URA (left) and Proposed URA (right)



Height of Buildings (HOB) Map

The URA is proposed to be allocated a maximum building height of 8.5 m. The existing 11 m maximum height of buildings control is set out in Clause 4.3(2A) of the LEP will continue to apply to the remainder of the subject land.

Clauses Overlay (CLS) Map

That part of the site to be zoned RU2 Rural Landscape is also proposed to be mapped as being subject to Clause 7.21 of the LEP that relates to the future use of the land for a road corridor.

Land Application (LAP) Map

Lots 21-24, DP 714096 are currently 'deferred' from Shoalhaven LEP 2014. The Land Application Map will also be amended to include the subject land (so that the land is no longer 'deferred').

Riparian Lands and Watercourses (WCL) Map

The existing watercourse and its tributaries are proposed to be mapped in the LEP.

Acid Sulfate Soils (ASS) Map

The subject land is proposed to be mapped as Class 5 on the Acid Sulfate Soils Map under the LEP. This classification is consistent with all land surrounding the subject land.

Community Engagement

Public Exhibition: June - July 2022

The revised PP was publicly exhibited from 15 June to 18 July 2022 inclusive.

A public notice was placed on Council's website. All adjoining land owners were notified, as were all previous submitters and all subscribers to Council's ['Get Involved' project page](#).

During the exhibition, the 'Get Involved' project page was updated to assist community engagement on the revised PP and accompanying Biodiversity Certification Application (discussed below).

The PP exhibition package included:

- [1. Exhibition Notice](#)
- [2. Explanatory Document](#)
- [3. FAQs](#)
- [4. Planning Proposal](#)
- [5. Council Report & Minute](#)
- [6. Gateway Determination](#)
- [7. Bushfire Assessment](#)
- [8. Biodiversity Certification Application Form](#)
- [9. Biodiversity Certification Assessment Report](#)

Submissions

Three (3) submissions were received from Bangalee residents. The key issues raised are briefly outlined below and a more detailed response to submissions is provided as **Attachment 1**. The actual submissions can be provided to Councillors if required.

- Concerns relating to the future construction of a road within the existing road reserve (west of Warrah Road) - Two (2) submitters expressed a concern that it is Council's intent to transfer the road reserve to the proponent for housing.

Comment:

This is definitely not the case. This is a 'public road' and approximately 300 m would need to be constructed as part of the perimeter road network if/when the land is rezoned and released for development. An amendment to the Shoalhaven Contributions Plan (CP) or a Voluntary Planning Agreement (VPA) is likely to be needed to establish a funding mechanism for any upgrades to surrounding road infrastructure etc.

- Concerns about traffic congestion, lack of footpaths, kerb and guttering etc in adjoining residential areas and Illaroo Road.

Comment:

- *Current traffic issues are acknowledged.*
- *An additional/alternate access from Pitt Street is integral to the proposal. This alternate access will help re-direct and disperse traffic movements between the development area and North Nowra/Nowra, thereby reducing the total number and impact of additional traffic movements within the existing Bangalee road network.*
- *In accordance with Part 6 of the LEP, the subject land would not be able to be subdivided for development before a DCP has been prepared, the new Shoalhaven River Bridge crossing and the Far North Collector Road (FNCR) have been completed, and arrangements are in place for the provision of other essential infrastructure. As noted above, either a CP amendment or a VPA are likely to be required to establish a funding mechanism for any required upgrades to the surrounding road network etc.*

- Detailed controls requiring the provision of local infrastructure such as cycleways, shared paths, parks and sustainability infrastructure are more relevant to the next stages (DCP, subdivision design concept and development application) if/when the land is rezoned and ultimately released for urban development.
- New kerb and gutter (K&G) programs have not been funded for several years. Available funds are directed to replacement/drainage programs or where there is potential risk to property. Almost all new K&G construction is funded by property owners or developers. The need, if any, for K&G extension beyond the boundaries of the proposed URA will be considered during preparation of the DCP.
- Need for a local park.

Comment:

City Lifestyles (Strategic Asset Planning) supports the dedication of a minimum of 4,000 m² as public open space within the proposed Urban Release Area (URA) for use by future residents (possibly up to 500). A local park is considered justified on projected population increase as there are no suitable existing parks in the vicinity. Ideally a park would be centrally located to be accessible to all residents of Bangalee. This is a matter that can be further considered during preparation of the required DCP.

- Fencing to minimise light & noise pollution

Comment:

This is a matter of detail that can be further considered during the preparation of the required DCP, noting that certain forms of low-impact development may be exempt from the need to obtain planning or construction approval under [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008 \(Codes SEPP\)](#).

- Tree retention difficulties due to 500 m² lot size

Comment:

Minimum lot sizes have been set at 500m², 700m² and 2000m². Almost all lots shown in the [subdivision concept plan](#) exceed the minimum. The smaller residential lots (150 lots ranging from +500 m² to +900 m²) comprise about 75% of the development area. The remaining lots are proposed to be +2000 m².

Opportunities for appropriate street trees in public areas, such as road reserves, can also be considered at DCP stage provided that these do not compromise bushfire prevention or interfere with asset protection zones. In addition, Council has initiated a review of Chapter G4 – Tree and Vegetation Management of the DCP and the 45 degree rule that currently sits within it.

Summary

This matter has been exhibited a number of times. The most recent exhibition has resulted in a relatively small number of submissions. The issues that were raised will be more closely considered as part of the process of addressing Part 6 (Urban Release Areas) of the LEP – which must occur before the land can be subdivided/released. This will include preparation of a site-specific Development Control Plan (DCP) and potentially a Contributions Plan and/or Voluntary Planning Agreement (VPA) to address provision and funding of essential infrastructure. No changes to the PP are considered necessary to respond to the issues raised.

Biodiversity Certification Application (BCA)

The BCA and associated Biodiversity Certification Assessment Report (BCAR) were updated and amended to reflect the revised proposal, in that all land proposed to be zoned C2 Environmental Conservation is proposed to be transferred to Council with a single, fully costed and funded Biodiversity Stewardship Agreement (BSA).

The updated BCA and BCAR were re-exhibited concurrently with PP in accordance with 'best practice' and no submissions were received.

Detailed discussion about the BCA/BCAR and BSA processes is included in the previous report of [14 March 2021 \(CL22.119\)](#).

Agency consultation

Consultation with public authorities or government agencies was not required by the most recent Gateway determination. Consultation has already occurred and was considered by Council in the previous report of [14 March 2021 \(CL22.119\)](#). The PP is now supported by the Department of Environment & Planning (DPE), the NSW Rural Fire Service and the Biodiversity & Conservation Division (BCD) of DPE.

Aboriginal Cultural Heritage

Heritage NSW (HNSW) emphasises the need for ongoing Aboriginal consultation including that Council and any future developers must be aware of their obligations in relation to Aboriginal cultural heritage under the *National Parks and Wildlife Act 1974*. As the development footprint has changed and the 'caretaker lots' removed from the proposal, it was considered prudent to give HNSW the opportunity to review their comments.

HNSW has provided advice to Council on Aboriginal cultural heritage matters in relation to this PP on two previous occasions:

- 20 November 2020 – advice included recommending an Aboriginal Heritage Management Plan be prepared over the 'caretaker lots' and ensuring appropriate buffers and management strategies are in place to protect recorded Aboriginal objects in the E2 (now C2 Environmental Conservation) zoned land.
- 25 June 2021 – previous comments were reiterated, noting that Council has committed to further addressing Aboriginal cultural heritage matters when preparing the Development Control Plan (DCP) and providing advice about the need for an Aboriginal heritage impact permit (AHIP) application should any future land management actions impact on an Aboriginal site located within the C2 land.

HNSW comments dated 20 November 2020 were discussed in the previously exhibited [Planning Proposal](#). HNSW has re-affirmed their previous advice.

In addition to consulting with HNSW, the Nowra Local Aboriginal Land Council (NLALC) and the Jerrinja Tribe were notified. No comments were received from the Jerrinja Tribe. NLALC advised it has "no objection" to the PP.

Comment

Two Aboriginal sites have been identified; one is located within land proposed to be zoned C2 Environmental Conservation and transferred/dedicated to Council as a fully funded biodiversity stewardship site. Management actions to avoid impacts on known Aboriginal cultural heritage must be included in the BSA when the land is transferred to Council. The

second site is in proximity to the boundary between the proposed C2 and RU2 zones and is yet to be identified on-site. Construction of an alternative access to Pitt Street as part of a subdivision DA would require an Aboriginal Heritage Impact Permit (AHIP) and a new ACHA would be required.

NLALC and Jerrinja Tribe will be engaged further during preparation of a DCP should the PP be finalised.

Policy Implications

The proposed 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. 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.

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. In accordance with recommendation 4 (MIN22.170) costs incurred to date were invoiced to, and paid by, the proponent before the PP was re-exhibited. A final invoice would need to be issued for payment before the SLEP Amendment is made.

The provision of a fully costed and funded Biodiversity Stewardship Agreement (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.

Work on duplication of the Shoalhaven River Bridge Crossing began in 2020 and is expected to be completed by mid-2024. On 21 February 2022 Council resolved to accept a tender to construct stages 2 and 3 of the Far North Collector Road and work is underway. This \$32.8M project is 100% funded by the Australian Government.

Conclusion

Finalisation of the PP as recommended (Option 1) will enable the zoning for this part of the Urban Release Area, originally identified in the 2008 Nowra-Bomaderry Structure Plan (NBSP), to be resolved

The revised footprint for the URA and proposed BSA for the proposed C2 Environmental Conservation zoned land achieves a balanced/robust development/conservation outcome and is also consistent with the 'Planning for Bushfire Protection' 2019 (PBP 2019) guidelines. The PP is supported by the key Government agencies and the Proponent.

Issues/concerns raised during re-exhibition of the PP would be considered when the requirements of Part 6 (Urban release Areas) of the LEP are addressed. No changes to the exhibited PP are considered necessary. If the subject land is rezoned, further consideration of infrastructure provision and funding will occur at the appropriate time, as part of the DCP and CP/VPA preparation process.

Finalisation of the PP would allow the proponent to further progress the biodiversity certification application for the URA and in due course, a Biodiversity Stewardship Agreement for the proposed C2 Environmental Conservation land.