



# PLANNING PROPOSAL

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**Subject site:**

Lot 32 DP 1191742  
88 North Bendalong Road, Bendalong

Planning Proposal – Dwelling Entitlement

Document Properties	
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**Acknowledgment of Country**

MMJ acknowledges the traditional custodians of the land to which this Planning Proposal applies. We pay our respect to all Aboriginal people of this land and to Elders past, present, and emerging.

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The following documents are referred to in this Planning Proposal and submitted as separate documents:

Report	Author
Survey Plan	Leslie & Thompson
Concept Architectural Plans	James Stockwell Architects
Bushfire Assessment Report	Building Code & Bushfire Hazard Solutions Pty Limited
Concept Landscape Plan	Lindy Lean Landscape Architect
Stormwater Management Plan	South East Engineering + Environmental
Flora & Fauna Assessment	Lodge Environmental
Valuation Report	Opteon Property Group
Council & Agency Responses	Shoalhaven City Council, NSW RFS & DPE - BCD

## Executive Summary

This report has been prepared by MMJ Town Planning & Advisory on behalf of our clients Bendalong Essential Services P/L (Rob Aldis & Penny Bingham-Hall) to accompany a Planning Proposal (PP) seeking to permit a Dwelling Entitlement at Lot 32 DP 1191742, 88 North Bendalong Road, Bendalong (hereafter referred to as the subject site).

Following the submission of a Scoping Proposal to Council, Council advised that allowing a dwelling to potentially be approved on the subject land in place of the approved holiday cabins (DA14/2397) would result in a less intensive development on the site. Given the sensitivity of the adjacent bushland, Council advised that a PP that seeks to facilitate this outcome is supported in principle, provided DA14/2397 is surrendered prior to finalisation of the PP.

## Site Analysis

### Site Description

The subject site is located on the eastern side of North Bendalong Road, on the south eastern extent of the Bendalong residential area, north of Manyana and south of Berrara.

The site is an irregular triangular shaped allotment situated on the eastern side of the street with frontage to North Bendalong Road of ~138m and a depth of ~91m to the eastern boundary that adjoins the vegetated natural reserve which separates Flat Rock Beach (north) and Dee beach (south). The site has a total area of 6,349.84sqm.

The site is accessed from North Bendalong Road. The site has a relatively consistent slope from the northwest corner to the southeast with a distinct fall down to the reserve which adjoins Dee Beach to the south, there is also a distinct cross fall in a southeast direction from the road frontage to the rear boundary, these cross falls combine to result in the creation of an amphitheatre shaped depression mid way along the southeast site boundary.

The land was developed as a tourist park during the 1950's known as the Allawah Beachside Cabins. Since that time various applications have been approved by Council for renovations and alterations & additions to the cabins. However, over this period both the site and the existing site facilities were degraded by inadequate and / or unsatisfactory site management practices. The Allawah Beachside Cabins accommodation included a 2 storey manager's residence; 8 single storey cabins, 3 of which had their own bathroom facilities; a 3 bedroom house which was in part let to guests; a raised caravan; a storage shed; a shared user toilet/shower block and utilities infrastructure. The buildings were generally arranged around the site perimeter and randomly through the centre of the site. The siting of the cabins is illustrated in the Survey Plan.

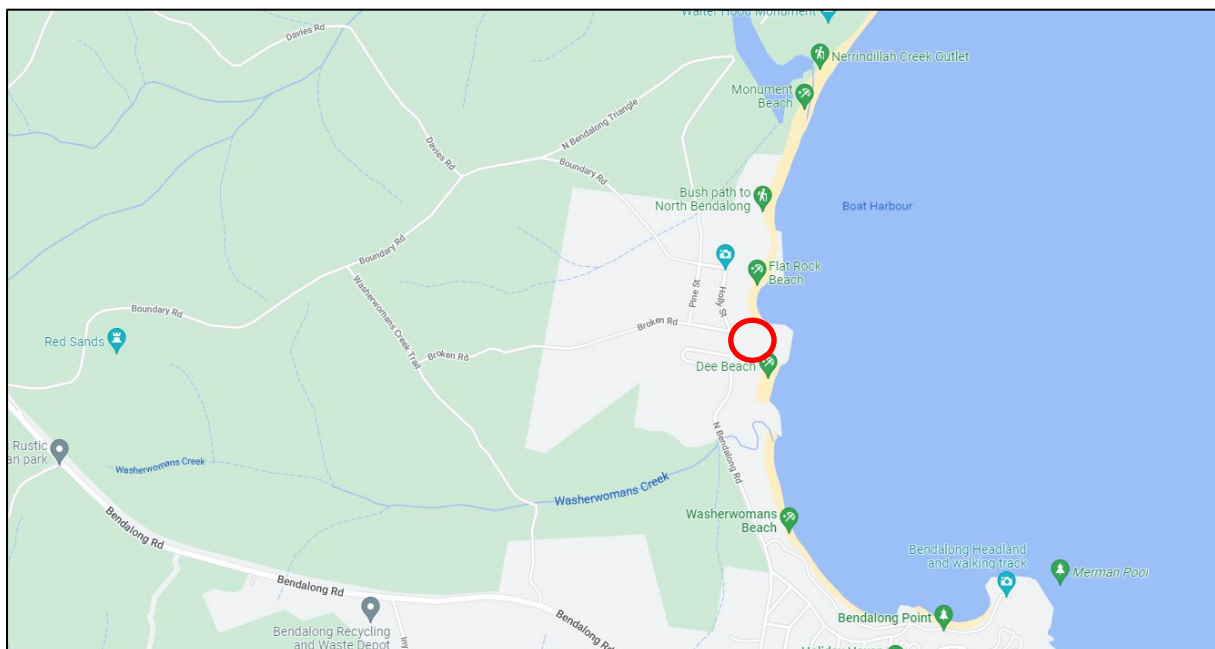
A local group of North Bendalong residents bought the site when Allawah Cabins went into receivership to ensure it was in safe hands and the new owners developed a design for a low

impact 20-person eco-tourist retreat and secured a DA for 9 x 2 storey “tree house” cabins, a common user facility and reception/office. The application was approved on 10 June 2015 for the demolition of the existing Allawah Cabins and the staged construction and operation of an eco-tourist accommodation facility comprising 9 x 2 storey one bedroom cabins and 1 accessible accommodation unit, multipurpose building containing communal dining, terrace, kitchen and sanitary facilities, an office/fire refuge, on-site parking, landscaping and associated infrastructure; and the following:

- Contract service staff on demand
- Pop-up kiosk to service local residents and visitors (high season)
- Other ancillary uses – cultural or environmental activities, business retreats, family gatherings, celebrations; and
- Small weddings

While undertaking demolition, pre-approved funding from Westpac significantly reduced when an independent valuer (Opteon) appointed by Westpac concluded that the proposed development was not commercially viable and best use of the land was residential and hence no construction of the proposed eco-tourist facility commenced. The site is currently vacant and clear as detailed in the aerial image and site photos below.

Following the recommendation of the unsuccessful funding application and numerous attempts to sell the site, it is now proposed to develop the land for single residential use in keeping with the residential surrounds and the low density residential character of the coastal village.



**FIGURE 1 SUBJECT SITE (SOURCE: GOOGLE MAPS)**





FIGURE 2 AERIAL IMAGE (SOURCE: NEARMAP)



IMAGE 1: VIEW OF SITE LOOKING NORTH-WEST





**IMAGE 2: VIEW OF RECONSTRUCTED COUNCIL ACCESS FROM THE SOUTH OF THE SITE TO DEE BEACH**



**IMAGE 3: VIEW OF THE SITE WEST TOWARDS EXISTING DWELLINGS ON NORTH BENDALONG ROAD**





**IMAGE 4: VIEW OF THE SITE LOOKING SOUTH EAST FROM NORTH BENDALONG ROAD**

## Surrounding Context

Surrounding development is predominantly characterised by a mix of low-density residential development in a coastal / bushland setting. The site is zoned C3 Environmental Management with immediately adjacent land categorised as follows:

<i>North</i>	<i>R2 Low Density Residential &amp; RE1 Public Recreation</i>	<i>Residential dwellings accessed from North Bendalong Road and Flat Rock Beach</i>
<i>South</i>	<i>R2 Low Density Residential &amp; RE1 Public Recreation</i>	<i>Residential dwellings accessed from North Bendalong Road and Dee Beach</i>
<i>East</i>	<i>RE1 Public Recreation</i>	<i>Natural Reserve with the headland adjoining the site separating Dee Beach and Flat Rock Beach</i>
<i>West</i>	<i>R2 Low Density Residential</i>	<i>Residential dwellings accessed from North Bendalong Road</i>

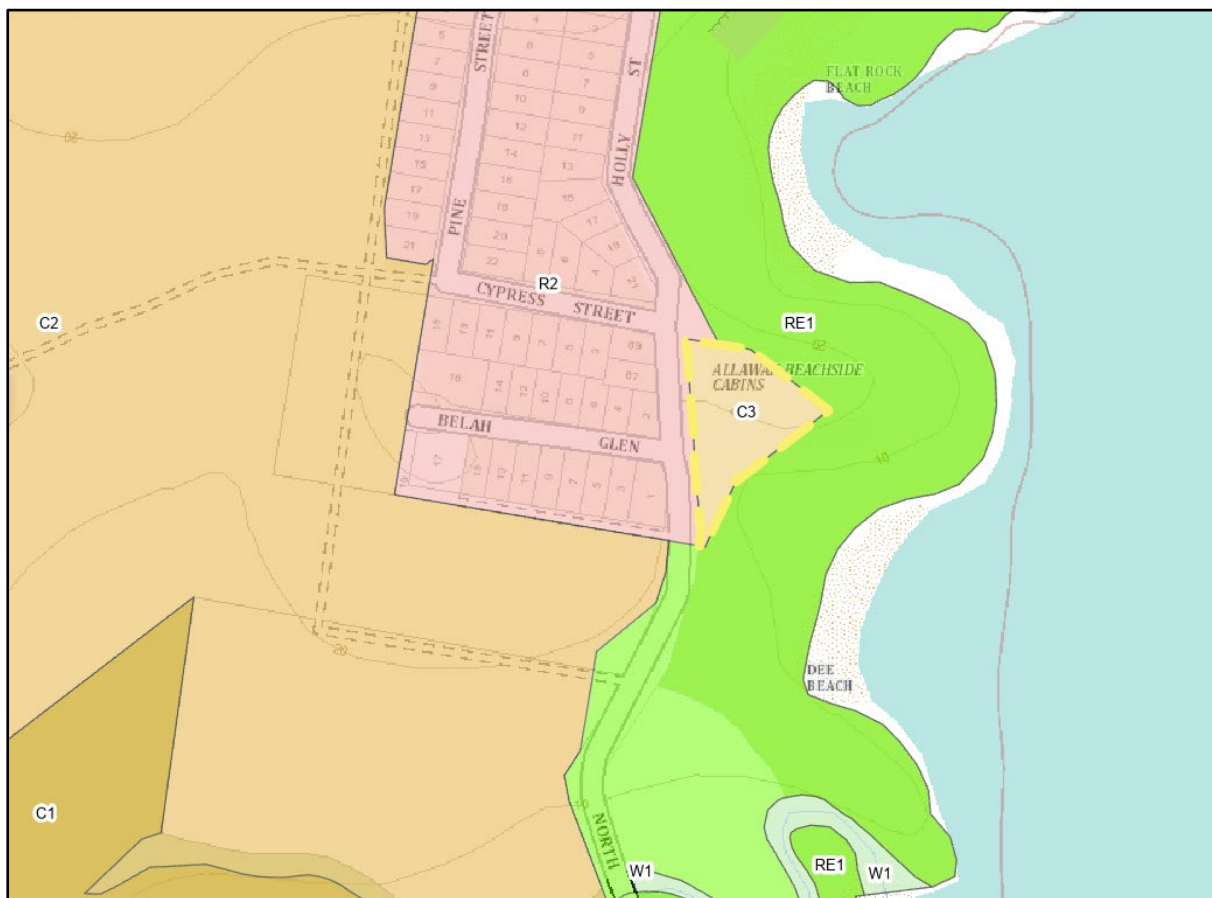


FIGURE 3 LAND ZONING (SOURCE: NSW PLANNING PORTAL)

## Planning History

### Consultation

Prior to preparing this Planning Proposal a Scoping Proposal was submitted to Shoalhaven City Council that sought guidance on the proposal and concluded:

- *The approved eco tourism development is proposed to be surrendered as part of the proposed amendment to enable a dwelling entitlement on the land.*
- *The proposed use substantially reduces the bushfire risk profile through the reduction of occupants on site.*
- *Community access areas will need to be further reviewed with Council to determine what mechanisms are required to provide items of broader community benefit on private land. The existing track passes through the southern section of this private land and connects to Council constructed stairs leading to Dee Beach that is located on a Crown Reserve.*

The Scoping Proposal was referred to the Department of Planning and Environment (DPE) – Biodiversity Conservation Division (BCD) who provide the following for consideration and implementation should a Planning Proposal be submitted:



- *Zoning – BCD understands a change to the minimum lot size is required to accommodate a single dwelling on E3 zoned land which is currently a minimum lot size of 40ha. The site is approximately 0.6ha. The landowner was also willing to provide some area for “community space” in the north-west and south-west corners of the site. The south-west area was to also enable public access across the private land to the beach. It is suggested Council may wish to consider the possibility of such community space been zoned as either RE1 (or C2) to differentiate the land’s use as well as secure the commitment of the landowner more fully. The RE1 land may be dedicated to Council in order to manage such land as “community space”. The change in Lot size for the land zoned C3 also enables other permissible development types to become a reality (e.g. dual occupancy). Council should be mindful of what else may be indirectly enabled.*
- *Biodiversity assessment – it is noted that the site is largely cleared and there is an intention that any landscaping incorporate local native species (being mindful of the intended management of the site as an APZ). There will be a need to prepare a more detailed flora and fauna study at the development application stage and consider any clearing impacts in light of the Biodiversity Conservation Act (i.e. entry into the Biodiversity Offset Scheme may/may not be triggered).*
- *Coastal - The information provided demonstrates likely compliance with the requirements of the section 9.1 (2) Local Planning Direction - Focus Area 4: Resilience and Hazards 4.2 Coastal Management. The scale of the development is significantly reduced from what was previously approved, is not in a coastal vulnerability, littoral rainforest or coastal wetland area, and would maintain public access to the foreshore. Council should however check recent hazard mapping of geotechnical risk completed as part of the preparation of a coastal management program for the Shoalhaven coast to ensure the footprint of the development does not overlap with any potential geotechnical risks.*

The advice from the BCD has been considered in the formulation of this Planning Proposal and it is expected that these will be considered by Council and the Department in their assessment and determination.

## Part 1 – Objectives and Intended Outcomes

### Objective

The objective of this Planning Proposal (PP) is to permit a Dwelling House at the subject site known as Lot 32 DP 1191742, 88 North Bendalong Road, Bendalong subject to development approval.

This PP seeks to initiate an assessment and determination process in accordance with the provisions of the *Environmental Planning & Assessment Act, 1979*, and recommends amendment to *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)* to achieve the preferred long-term land use strategy for the subject land. This PP seeks to amend SLEP 2014 by permitting a Dwelling Entitlement on the subject site.

## Intended outcomes

The concise statement setting out the objective or intended outcome of this Planning Proposal is as follows:-

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To provide a less intensive development on the site than the approved eco-tourist development (DA14/2397) that has secured substantial commencement.*
- *The eco tourist development DA14/2397 will be surrendered as part of the finalisation of the PP to permit a dwelling house.*

*The PP will not set an undesirable precedent to occur given the unique circumstances and merit of reducing the overall development intensification.*

## Part 2 – Explanation of provisions

The Planning Proposal proposes to amend the Minimum Lot Size Map overlay in Shoalhaven Local Environmental Plan 2014 (SLEP 2014) that applies to the property Lot 32 DP 1191742, 88 North Bendalong Road, Bendalong from 40 HA to 6000m<sup>2</sup>. By amending the Minimum Lot Size Map, the site will benefit from a dwelling entitlement in accordance with *Clause 4.2D Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and conservation zones* in SLEP 2014. Clause 4.2D requires that dwelling houses are not permitted on land in the C3 Environmental Management (and other environmental and rural zones) unless they meet the minimum lot size or other criteria in Clause 4.2D.

## Part 3 – Justification of strategic and site-specific merit

This Planning Proposal does not propose any new planning controls relating to the site in terms of land zoning, height of buildings or floor space ratio and only proposes changes to the minimum lot size map in SLEP 2014. As outlined above, an amendment to the Lot Size Map is required to allow for a dwelling housing to be permitted under Clause 4.2D of SLEP 2014.

This section of the Planning Proposal explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument in accordance with Clause 3.33(2) and (3) of the EP&A Act.

### Section A – Need for the Planning Proposal



Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal is the only means of legally achieving the objectives or intended outcomes to allow for a dwelling entitlement by amending the Local Environmental Plan through the a change to the minimum lot size map in Shoalhaven Local Environmental Plan 2014 (SLEP 2014) from 40 HA to 6000m2.

**Section B – Relationship to the strategic planning framework**

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

The Planning Proposal is consistent with the *Illawarra Shoalhaven Regional Plan* (ISRP) 2041, which identifies increased demands/targets for housing within the region. In this regard, the Plan is very focussed on a collective vision “*An innovative, sustainable, resilient, connected, diverse and creative region*” To achieve this, four themes have been set down, being:-

- 1) *A productive and innovative region;*
- 2) *A sustainable and resilient region;*
- 3) *A region that values its people and places;*
- 4) *A smart and connected region*

In terms of the above goals, the most relevant in this instance is “*A region that values its people and places*”, given the existing residential development and site’s context. For Shoalhaven, one State Government direction is to collaborate Council to review housing opportunities within the LGA so it can best respond to changing housing needs. To achieve this, the NSW Government will work with Council to monitor and review the potential of the area to accommodate housing demand. The Planning Proposal is consistent with the following Objectives:

- Objective 18: Provide housing supply in the right locations;
- Objective 19: Deliver housing that is more diverse and affordable;
- Objective 21: Respond to the changing needs of local neighbourhoods;
- Objective 23: Celebrate, conserve and reuse cultural heritage

The proposed dwelling entitlement at 88 North Bendalong Road, Bendalong will not contradict with the objectives and actions of this Plan.

Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

**Shoalhaven Growth Management Strategy 2019-2041**

Council is updating its Growth Management Strategy. This strategic land-use document was originally completed in 2014 and guides the future growth of Shoalhaven. It examines the

number and type of new homes needed by the community over the next 20 years. It also addresses:

The location of new homes to:

- Provide good access to jobs, shops and services
- Protect environmentally sensitive and culturally significant land
- Initiatives to make housing easier to afford.

Council is updating the Strategy to reflect:

- Updated population information
- Changes to planning legislation
- Completion of actions (in the current Strategy), and
- New information about environmental constraints such as flooding.

The updated document will be known as the Growth Management Strategy 2019-2041. It will not be a legal document that zones land or sets planning and development controls. Instead, it will provide options for future growth and urban development while considering Shoalhaven's natural and built values.

Given the minor reclassification nature of this Planning Proposal, the amendment to the SLEP 2014 will not contradict the intent of the current or proposed GMS.

### **Shoalhaven 2040 - Our Strategic Land-use Planning Statement (Shoalhaven 2040)**

This document is a high-level strategic land-use planning policy document setting out how Council will identify and work to consider and meet the communities' land use needs over the next 20 years. The strategies and objectives in Shoalhaven 2040 that are relevant to this planning proposal include:

#### **Direction 1 Managing Economic Growth**

##### ***1 - Providing homes to meet all needs and lifestyles***

The site is located adjacent an existing residential area. The land was developed as a tourist park during the 1950's known as the Allawah Beachside Cabins. Since that time various applications have been approved by Council for renovations and alterations & additions. However, over this period both the site and the existing site facilities have been degraded by inadequate and / or unsatisfactory site management practices. New owners developed a design for a low impact 20-person eco-tourist retreat and secured a DA for 9 x 2 storey "tree house" cabins, a common user facility and reception/office, approved 10 June 2015.

While undertaking demolition, pre-approved funding from Westpac significantly reduced when an independent valuer appointed by Westpac concluded that the proposed development was not commercially viable and best use of the land was residential and hence no construction of



the proposed eco-tourist facility commenced. It is now proposed following the recommendation of the unsuccessful funding application and numerous attempts to sell the site, to develop the land for single residential use in keeping with the residential surrounds and maintains the character of the coastal village.

## Direction 2 – Natural and Built Environments and Lifestyles

### *10 - Protecting the environment*

Biodiversity is indicated to the eastern boundary of the site. A forthcoming application for a dwelling house can comply with the biodiversity requirements and comply with the recommendations in the Flora and Fauna Assessment report.

The future development will require the existing grass cover under the building footprint to be removed and one imported protea bush with all trees retained.

The overall landscape design includes grassed areas and multiple deep soil areas. The Landscape Concept design is consistent with the coastal species and is bushfire resistant.



IMAGE 1 EXCERPT OF LANDSCAPE PLAN (LINDY LEAN LANDSCAPE ARCHITECT)

### *11 - Adapting to natural hazards through building resilience*

The site is identified as being affected by bushfire. The site has been reviewed from a Strategic Bushfire perspective and provides an opportunity to substantially reduce the bushfire risk

profile of the existing approved use by reducing the number of occupants to the site by providing a single dwelling house instead of a tourist development. A forthcoming application for a dwelling house has been assessed in accordance with the requirements of 'Planning for Bush Fire Protection' (RFS 2019). A Bushfire Hazard Assessment been prepared for the site by Bushfire Building Solutions and provides recommendations to ensure the development complies with the specifications and requirements of 'Planning for Bush Fire Protection 2019'. Building Code & Bushfire Hazard Solutions Pty Ltd provided the following conclusion in their assessment:

*In this instance the subject site is depicted on Shoalhaven City Council's Bushfire Prone Land Map as containing Category 1 Vegetation. The subject site is therefore considered 'bushfire prone'.*

*If the PP and subsequent dwelling application is successful it will require the approval for the ecotourism development to be surrendered, which from a bushfire planning context will reduce the number of occupants from 24 persons and reduce the occupant risk profile from Special Fire Protection Purpose to Residential.*

*While it is acknowledged that the future dwelling on the subject site will likely attract a Flame Zone rating, which is generally not desirable unless there are existing dwelling entitlements and site restrictions, the benefits of the ecotourism approval being surrendered cannot be understated.*

*We are also confident that a suitable package of Bushfire Protection Measures can be applied to a future dwelling application which will satisfy the aim and objectives of Planning for Bush Fire Protection 2019.*

*It is our opinion that the proposal will result in a better bushfire safety outcome for the subject site and we are therefore in support the Planning Proposal, subject to the ecotourism approval being surrendered.*

The NSW Rural Fire Service (RFS) provided the following response to the Scoping Proposal

*The site is subject to a significant level of risk, however the justifications put forth as part of the scoping report include recognising that this proposal seeks to replace an existing lawful development consent (that is unconstructed) for a special fire protection purpose (SFPP) with a proposed residential use. The proposed residential development footprint shown is subject to likely direct flame contact in the event of a fire, and as such does not meet the acceptable solutions of Planning for Bush Fire Protection (PBP) 2019. Notwithstanding, given the proposed reduction in the risk profile of future occupants (going from a SFPP to residential), the NSW RFS supports the proposal subject to the following:*

- The existing development consent for SFPP development be surrendered as part of any approved planning proposal that would allow a residential land use. In this regard the proponents should be aware that if development consent was surrendered, future development applications for a SFPP development on the site would be assessed against current legislative bush fire requirements (and not take*



*into account previous existing use rights nor a surrendered development consent as precedence). Therefore future applications for SFPP development would be unlikely to be supported by the NSW RFS due to the level of risk at the site and its inability to comply with the current requirement for new SFPP development to have a 10KW asset protection zone.*

- *The following comments are provided in recognition that the scoping report includes specific details as to a future dwelling on the site, including plans and an identified footprint. Whilst an assessment against S4.14 of the EP & Act will be required at any future DA stage – it is considered appropriate to provide the following comments relating to a future dwelling, for the Council/approval authorities consideration at this stage:*
  - *A minimum 10m setback to hazards for any future dwelling on the site*
  - *Future dwelling would be required to construct to Flame Zone under AS3959*
  - *Entirety of the site to be managed as an asset protection zone*
  - *Compliance with other applicable bush fire protection measures in PBP 2019*
- *The NSW RFS notes that the scoping report has not been supported with a Strategic Bush Fire Study in accordance with Chapter 5 of PBP 2019. Whilst this is not generally accepted, in this instance the NSW RFS is prepared to accept the proposed Bush Fire Assessment prepared by Building Code & Bushfire Hazard Solutions Pty Ltd, Reference 230204, dated 28th October 2022, as being appropriate to support any future planning proposal given the unique premise of the proposal.*

As detailed by Building Code & Bushfire Hazard Solutions Pty Ltd in their assessment and the RFS in their referral response, the proposed residential use for a single dwelling house is a better bushfire safety outcome for the site than the approved ecotourist development. The RFS support a future planning proposal on this site given the unique premise of the proposal with recommendations and a requirement for the previously approved ecotourist development (DA14/2397) be surrendered through the Planning Proposal and LEP finalisation process.

### *15 - Scenic and cultural landscapes*

The proposal includes the reduction in the approved development footprint and intensification from an eco-tourist cabin development including a ecotourist development including 9 x tourist cabins, a multipurpose room and other infrastructure to a single dwelling house. The proposed concept and future development application as a dwelling house is a less intensive development from a scenic and cultural landscape perspective.

The site is not identified on the Scenic Protection Area map in the SLEP 2014. Nevertheless, consistent with the aims and objectives for development in foreshore locations, the visual impact of the proposal when viewed from public places, as confirmed by the various architectural perspectives proposed in the concept development is unobtrusive and substantially reduces the overall building form that was previously approved for the eco tourist cabin development (Images 5-7).

The view from the recreational areas towards the site will be mainly from the beach dunes between the coast and the site. The dwelling will sit at a higher topography than the ridge of

the dune. The existing topography and the proposed design reduce potential view impacts from the existing residential dwellings to the west of the site. The proposal substantially reduces the building form and height in comparison to the approved ecotourism development including 9 x tourist cabins on site, multipurpose building for communal dining and pop up kiosk as well as a manager's office/refuge.

The development will not have an adverse visual impact within the locality or broader landscape. The public will be located at a distance and lower height elevation and minimal view impacts will be experienced. Accordingly, the site will maintain its heavily landscaped appearance when viewed from the surrounding properties and the public domain.

The visual impact of the proposed buildings has been minimised by a combination of factors including the physical location of the proposed dwelling, the restricted building footprint, the design of the dwelling, the choice of exterior building materials and colours, together with the retention of existing site landscaping and the proposed supplementary landscaping which is augmented by the vegetation located within the foreshore reserve. The architectural plans illustrate a design that is in keeping with the coastal village concept and residential environment of North Bendalong.

The key viewpoints are identified from the recreational areas to the north and south of the site and the west of the site from the existing residential dwellings:



**IMAGE 5 VIEW FROM DEE BEACH**





IMAGE 6 VIEW FROM FLAT ROCK



IMAGE 7 PHOTOMONTAGE OF PROPOSED DWELLING HOUSING (JAMES STOCKWELL ARCHITECT)

## Red Head Villages Association Strategic Plan

It is understood that the Red Head Villages Association is preparing their own community led strategic plan. Given the previous representations made by the proponent to the Red Head Villages Association, the Planning Proposal to permit a dwelling house and surrender the approved tourist cabin development approval is consistent with the community aspirations for this site.

Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The proposal to provide dwelling entitlement through a is a minor application. There are no other applicable State or regional studies or strategies relevant to the proposal.

Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes. A review and assessment against the proposal's consistency with the applicable SEPPs is attached as *Appendix A* of this report.

Whilst several of the SEPPs are applicable, most are not relevant to the proposed reclassification and this Planning Proposal. The following SEPPs are relevant to this Planning Proposal:

State Environmental Planning Policy (Resilience and Hazards) 2021

The site is mapped as "Coastal Use Area" and "Coastal Environment Area" in Chapter 2 of the SEPP (Resilience and Hazards) 2021. The Planning Proposal is consistent with the SEPP and any future development will be subject to the provisions of the SEPP.

Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 Directions)?

Yes. A review and assessment against the proposal's consistency with the applicable Section 9.1 Directions is attached as *Appendix B* of this report. This Planning Proposal is consistent with the relevant current strategic State-based planning initiatives applying to the site with the following applicable Section 9.1 Directions addressed below:

1.1 Implementation of Regional Plans

The Planning Proposal is consistent with the following Directions of the Illawarra-Shoalhaven Regional Plan:

- Objective 18: Provide housing supply in the right locations;
- Objective 19: Deliver housing that is more diverse and affordable;
- Objective 21: Respond to the changing needs of local neighbourhoods;
- Objective 23: Celebrate, conserve and reuse cultural heritage

The proposed amendment to the Shoalhaven Local Environmental Plan 2014 to allow a dwelling house at 88 North Bendalong Road will not contradict with the objectives and actions of this Plan. The Planning Proposal is therefore consistent with this Direction.



### 3.1 Conservation Zones

Biodiversity is indicated to the eastern boundary of the site. A forthcoming application for a dwelling house is able to comply with the biodiversity requirements and comply with the applicable development standard in this regard. The development does not require tree clearing to provide for the proposed building envelope. Selected trees are proposed to remain as features of the development. The overall landscape design includes grassed areas and multiple deep soil areas.

### 3.2 Heritage Conservation

Consistent. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area and is therefore considered to be not consistent with this Direction.

### 4.2 Coastal Management

The site is mapped as “Coastal Use Area” and “Coastal Environment Area” in Chapter 2 of the SEPP (Resilience and Hazards) 2021. The proposed amendment to the SLEP 2014 will not contradict the aims of the NSW Coastal Policy. Existing access to Coastal Areas is available through existing footpaths and public reserves. The property is separated from the ocean foreshore area. The proposal will not contradict the aims of the NSW Coastal Policy and is therefore consistent with this Direction. The track currently traverses private property which the landowners are keen to formalise to provide a dedicated track for the broader community benefit.

### 4.3 Planning for Bushfire Protection

The site is identified as being affected by bushfire. A Strategic Bushfire Assessment for the Planning Proposal and a Bushfire Hazard Assessment has been assessed in accordance with the requirements of ‘Planning for Bush Fire Protection’ (RFS 2019) by A Bushfire Hazard Assessment. The assessment provide recommendations to ensure the development complies with the specifications and requirements of ‘Planning for Bush Fire Protection 2019’. By reducing the bushfire risk profile in this location, the proposal is consistent with this Direction.

### 4.4 Remediation of Contaminated Land

Consistent. The land is not identified as being contamination or potentially contaminated. There is no prior use that would suggest potential for contamination. Previous tourist cabins on site have been demolished in accordance with the Development Consent. The Planning Proposal does not intend to change the land use zone and is consistent with this Direction.

### 5.1 Integrating Land Use and Transport

The site will be accessed from North Bendalong from the existing driveway access. The driveway access complies with council’s standard vehicle entrance designs and is in accordance with the AS 2890.1 driveway requirements.



The new dwelling is provided with a double garage for two (2) car spaces with additional parking available to the front of the garage on the driveway.

## 9.2 Rural Lands

This direction applies when a relevant planning authority prepares a planning proposal for land outside the local government areas of Lake Macquarie, Newcastle, Wollongong and LGAs in the Greater Sydney Region (as defined in the Greater Sydney Commission Act 2015) other than Wollondilly and Hawkesbury, that:

- (a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or
- (b) changes the existing minimum lot size on land within a rural or conservation zone.

The existing zone is C3 Environmental Management and currently permits dwelling houses where *Clause 4.2D Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and environment protection zones* is achieved. Given the land is less than 40ha and does not appear to meet Clause 4.2D, a dwelling house is not permitted on the site. The Planning Proposal intends to permit a single dwelling house in conjunction with the surrender of development consent for an eco-tourism development and is consistent with the requirements of Direction 9.2 given it is of minor significance.

*(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:*

- (a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses*

The location of the site is an isolated headland site surrounded by public reserve, ocean and a small residential area. The property is already below the minimum lot size at 6346m<sup>2</sup>. The conflict between the existing residential development and the proposed development on the conservation management zoned land is that the development scale and visitation will be substantially reduced by proposing a dwelling house instead of the approved eco tourist cabins.

- (b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains*

The isolated location of the site will not affect the viability of existing rural land uses or enterprises.

- (c) where it is for rural residential purposes:*

- i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres*

The proposed development is for rural residential service. The proposal for a dwelling housing on site is suitable and the required services are available. Bendalong is a small coastal community to the east of the Princes Highway which connects the area to Milton/Ulladulla to the south and Nowra/Jervis Bay to the north.

- ii. *is necessary taking account of existing and future demand and supply of rural residential land.*

This unique lot will provide for one lot that is available for rural residential development as a single dwelling house. As detailed above, the proposal will reduce the intensity of the development on site and is considered to be of minor significance.

Given the minor nature of the proposed SLEP 2014 amendment, this Scoping Proposal is deemed to be consistent with the applicable Section 9.1 Ministerial Directions.

## Section C – Environmental, Social and Economic Impact

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 site is mostly cleared with scattered native vegetation throughout. The site does not contain any existing structures, however the degraded and poorly maintained cabins on site were demolished as part of the approved development for new eco tourist cabins.

The site is surrounded by some areas of native trees and vegetation with an Endangered Ecological Community (EEC) mapped to the south of the site. Lodge Environmental were engaged to undertake a Flora and Fauna Assessment with targeted surveys requested by Council through the Scoping Proposal and prelodgement phase. An extract of Lodge Environmental's findings are included below in Image 8. The Flora and Fauna Assessment (FFA) report concludes the following:

*The building envelope and driveway are sighted to avoid most impacts to native vegetation. Native vegetation that is to be impacted by the proposed driveway will not require total clearance, only pruning and maintenance, as there is a pre-existing access in this area (see **Section 6.1.1** for detail). No habitat bearing trees will be impacted.*

### **Direct impacts**

*The direct impact imposed by the proposal will occur to exotic vegetation and native vegetation (**Table 9**).*

<b>Vegetation type</b>	<b>Impact (ha)</b>
PCT 3638 – South Coast Sands Bangalay Forest (scattered/disturbed condition)	0.009
PCT 3638 – South Coast Sands Bangalay Forest (good condition)	0.01
No PCT – Cleared/exotic grassland	0.08
<b><u>Total native vegetation impact</u></b>	<b><u>0.019 ha</u></b>

**Table 9: Direct impacts**

*The direct impact will occur from clearance required for the proposed dwelling and associated driveway. Vegetation to be impacted by the driveway will only require trimming and maintenance. No HBTs are required to be removed under the current design.*

*The total area of impacted native vegetation is 0.019 ha. This is below the BOS entrance threshold of 1 ha.*

*...*

*Shoalhaven City Council's Scoping Proposal Feedback (May 2023) highlighted that impacts to native vegetation known to be TEC Bangalay Sand Forest could be reduced by changing the location of the proposed driveway.*

*The current proposed driveway is shown to access the property from the south, on aerial imagery (Nearmap 2023) this appears to be partially vegetated. It is understood that this driveway location was chosen as it is the current access road to the property and would therefore require the least amount of additional vegetation clearance. Survey of this area confirmed this, showing that the current access road is already cleared to accommodate the proposed driveway and would therefore require very little clearance, likely only trimming and maintenance (Figure 12 & Figure 13). Other possible driveway locations within the Study Area would likely require removal of trees or native vegetation associated with TEC Bangalay Sand Forest as the northern and western boundaries of the Study Area are lined with vegetation.*

*Therefore, the current proposed driveway is seen to have the least amount of impact to native vegetation validated to be TEC Bangalay Sand Forest.*





IMAGE 8 VALIDATED VEGETATION MAPPING AND IMPACTS MAP (LODGE ENVIRONMENTAL)

...

## 7.1 GENERAL RECOMMENDATIONS

*This report assesses the impacts from the proposed dwelling and associated driveway at 88 North Bendalong Road, Bendalong. This will require impact to 0.019 ha native vegetation that was validated to be PCT 3638 – South Coast Sands Bangalay Forest. This vegetation aligns with TEC Bangalay Sand Forest. No threatened flora was recorded within the Study Area, nor considered likely to occur. Native vegetation within*

*the site may provide habitat for local threatened fauna species, however targeted surveys confirmed the Study Area is not current roosting habitat for threatened gliders in the area. The following recommendations are provided to minimise potential impacts to non-threatened vegetation communities, and flora and fauna from the proposal:*

- Landscaping must use native species that align with PCT 3638 and TEC Bangalay Sand Forest*
- All Habitat Bearing Trees are to be retained as part of the proposal*
- Native vegetation within the proposed driveway should only be trimmed to maintain the current access path*
- Care must be taken when moving equipment near any vegetation to be retained. If works appear to encroach on retained vegetation, advice from a qualified Arborist should be gained to infer appropriate tree protection measures. Generally, the Tree Protection Zone (TPZ) is a hypothetical estimation of the area required to protect a tree from adverse construction and development activities. It is calculated for each tree by multiplying diameter at breast height (DBH) by 12 and is a radius measured in metres from the centre of trunk. It is understood that encroachments into the TPZ can occur for 10% of the zone in accordance with AS4970-2009 Protection of trees on development sites.*
- Due to the presence of Bangalay Sand Forest TEC within and surrounding the Study Area, it is important that any weeds and exotics within the cleared areas be appropriately controlled during and after development.*
- Adequate erosion and sediment control measures should be in place at all times during construction in accordance with best practice guidelines (Landcom 2004), including:*
  - o vehicle and machinery movement confined to designated work areas*
  - o consideration given to weather, with works stopped if the onset of heavy rain is deemed likely to cause soil erosion or soil structure damage.*

*...*

## **8.0 Conclusion**

*Through the completion of the desktop study and field survey conducted as part of this assessment, no threatened flora, fauna or ecological communities were recorded within the Study Area that would be significantly impacted by the development.*

*The impact of the proposed development is considered minor, and to occur primarily to exotic vegetation. The native vegetation to be impacted was validated to be PCT 3638 – South Coast Sands Bangalay Forest; this PCT is associated with TEC Bangalay Sand Forest. Furthermore, the native vegetation to be impacted is situated on the edge of exotic grassland and more consolidated bushland therefore will not fragment any existing biodiversity corridors. The Study Area presents some opportunity for nesting and opportunistic foraging. Local threatened and non-threatened fauna species may utilise the Study Area, however, they are unlikely to be dependent on the vegetation proposed for removal.*

*A range of suitable recommendations have been made to improve the environmental outcome of the proposal. This includes retention of all Habitat Bearing Trees, landscaping with species that align with PCT 3638 and appropriate management of any weeds and exotics within the Study Area to reduce any potential indirect impacts to adjacent Bangalay Sand Forest.*

*This FFA has adequately considered threatened species and communities in the context of the proposed dwelling and driveway at the Study Area by:*

- (a) Conducting field survey including targeted threatened Glider Surveys*
- (b) Adopting the precautionary principle in the assessment of threatened species*

(c) *Designating appropriate recommendations to minimise potential impacts to threatened species that may transiently occur on the site as well as any other fauna*  
*The assessments contained within this report have determined that the proposed development is unlikely to have a significant effect on the listed communities or species or their habitat in accordance with the EP&A Act, BC Act and EPBC Act provided the recommendations contained in this report are adhered to.*  
*There will not be an impact on any mapped areas of Biodiversity Value, nor will there be an impact on native vegetation above the relevant impact threshold.*  
*Therefore, the preparation and submission of a BDAR or referral to the Commonwealth is not required.*

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

**Solar Access**

The site has an existing east-west orientation. Windows to living rooms of the proposed and adjoining dwellings receive at least 3hrs continuous sun between 9am-3pm on 21 June; at least 50% of the POS of the proposed and adjoining residential properties will receive at least 3hrs continuous sun between 9am-3pm on 21 June.

**Overshadowing**

Due to the orientation of the site and the location of the development there will be no overshadowing impacts.

**Privacy and Amenity**

The development has been designed to ensure the privacy of adjoining development is maintained. Windows have been carefully considered to ensure there will be no loss of amenity to the adjoining property owners.

The proposed setback distances are sufficient to provide a reasonable separation between dwellings on the site and adjoining dwellings.

Accordingly, these measures will ensure the privacy and amenity of future occupants is protected, along with that of the adjoining property owners surrounding the site.

**Vegetation**

The development does not require tree clearing to provide for the proposed building envelope. Selected trees are proposed to remain as features of the development. See above for details of the ecological assessment undertaken as part of this PP.

The overall landscape design includes grassed areas and multiple deep soil areas.

**Soil Resources**

Construction activities have the potential to impact on soil resources by way of erosion and sedimentation. Conditions of consent should be imposed, if consent is granted, in relation to soil and water management controls to be implemented during construction. Satisfactory implementation of these controls will prevent significant impacts on soil resources.



## **Water Resources**

The site is not identified as being affected by flood. A civil engineering strategy for the site will be developed which provides a best fit solution within the constraints of the existing landform, structures and pavements, and the proposed architectural layout. A stormwater concept plan is provided with the Planning Proposal and has been prepared for the concept dwelling DA.

### How has the planning proposal adequately addressed any social and economic effects?

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail.

The identified positive impacts are summarised below:

- The proposal will generate direct employment opportunities in construction and flow on employment multipliers benefitting the local community.
- The proposal will provide an additional house in the area.
- The development will have a positive impact on the environment by enhancing and improving the site and by ensuring minimal impact on downstream water quality as a result of the development.

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail.

## **Traffic and Parking**

The site will be accessed from North Bendalong from the existing driveway access. The driveway access complies with council's standard vehicle entrance designs and is in accordance with the AS 2890.1 driveway requirements.

The new dwelling is provided with a double garage for two (2) car spaces with additional parking available to the front of the garage on the driveway.

## **Section D – Infrastructure**

### Is there adequate public infrastructure for the planning proposal?

Yes. The site is within an existing urban area with existing access to water, sewer, power, telecommunications, and the like.

In addition, access to the subject site is gained via existing public roads, which service the immediate residential area. The traffic generation characteristics will not be altered by this Planning Proposal, and there is ample capacity within the existing/proposed public road network to accommodate existing traffic levels.

## Section E – State and Commonwealth Interests

### What are the views of State and Commonwealth Public authorities?

Through the Scoping Proposal and prelodgement process, Council consulted the NSW DPE-BCD and NSW Rural Fire Service for input. No major concerns were identified and the comments from these authorities have been considered in the preparation of this proposal. A copy of the consultation response through the Scoping Proposal is attached to this Planning Proposal.

Any further consultation required with the relevant State and Commonwealth authorities will be undertaken as required by the gateway determination during public exhibition.

## Part 4 – Maps

The proposal includes an amendment to the Lot Size (LSZ) map from 40 HA (AB4) to 6000m<sup>2</sup> (X2) Shoalhaven Local Environmental Plan 2014 (SLEP 2014). An extract of the existing SLEP 2014 LSZ Map Sheet 015E is provided below:

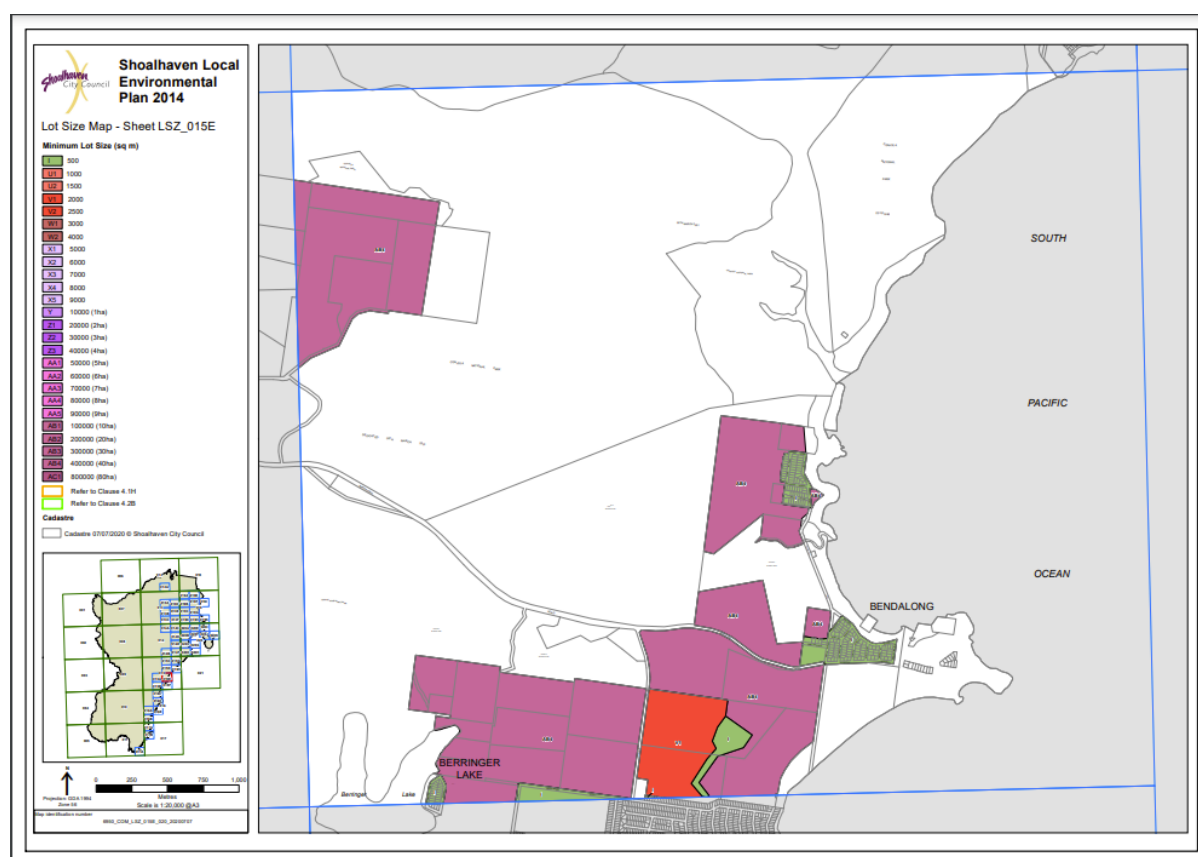
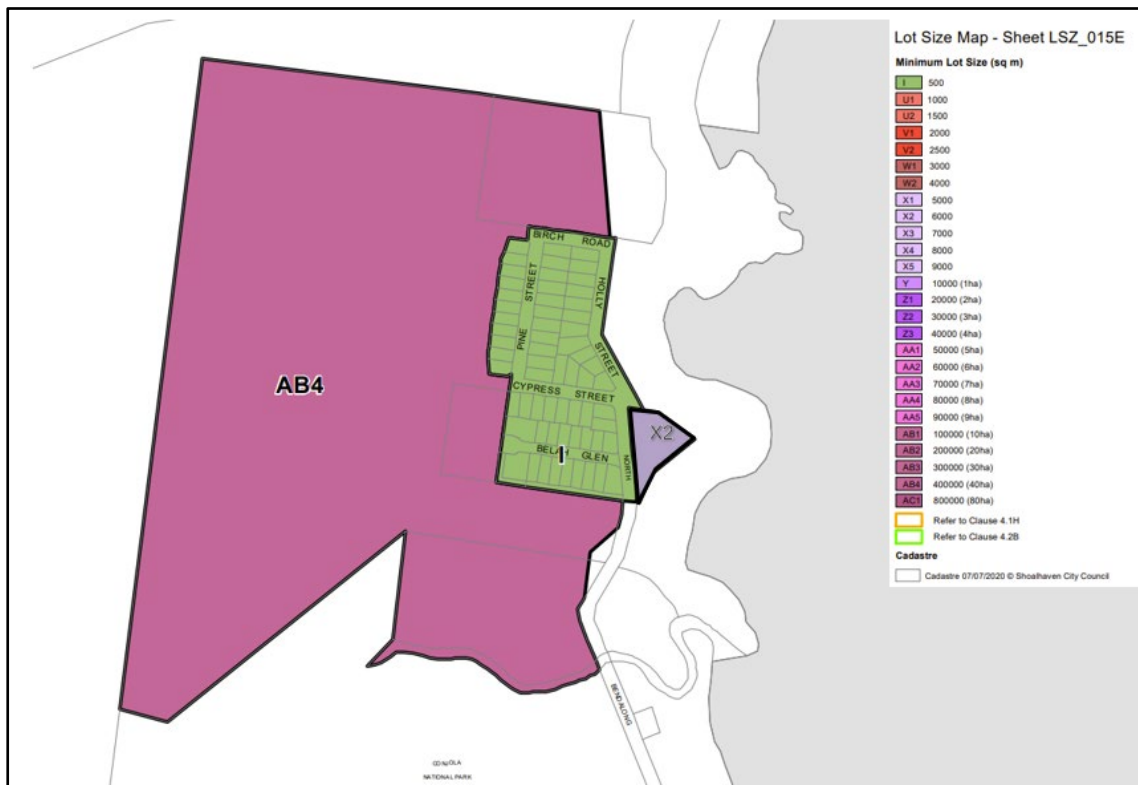


FIGURE 4 EXISTING MINIMUM LOT SIZE MAP(SOURCE: NSW PLANNING PORTAL)





## Part 5 – Community Consultation

The Planning Proposal will be made publicly available in accordance with any Gateway Determination for a minimum of 20 days. The community will be notified of the commencement of the exhibition period via a notice in a local newspaper and through publication on Council's website. Additionally, notification letters will be distributed to surrounding nearby property owners.

The written notice will:

- Give a brief description of the objectives or intended outcomes of the Planning Proposal;
- Indicate the land affected by the Planning Proposal;
- State where and when the Planning Proposal can be viewed/inspected;
- Give the name and address of the relevant planning authority (Council) for the receipt of submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- This Planning Proposal;
- The Gateway Determination; and
- Any studies relied upon by the Planning Proposal.

## Part 6 – Project Timeline

Milestone description	Start	Days
<b>Council</b>		
Planning Proposal Lodgement	19/07/2023	5
Council Staff Review PP	24/07/2023	28
Report to Council Meeting to consider Planning Proposal	21/08/2023	28
PP Submission to DPE	18/09/2023	28
<b>Department of Planning &amp; Environment</b>		
Gateway Determination	16/10/2023	14
<b>Council</b>		
Completion of Gateway Requirements	30/10/2023	7
Public Exhibition	6/11/2023	20
Agency Consultation	6/11/2023	28
Submission Review	4/12/2023	14
Post exhibition report to Council	18/12/2023	28
Submission to DPE for finalisation	15/01/2024	14
<b>Department of Planning &amp; Environment</b>		
Finalisation of the Plan by DPE	29/01/2024	14
Notification of Plan	12/02/2024	7

Given the indicative timeline provided we anticipate that a timeframe of 5 months is required for completion of the Gateway Determination requirements including Public Exhibition, Council Reporting, finalisation of the Planning Proposal, drafting of the LEP Amendment by Parliamentary Counsel and finalisation of the LEP Amendment.

## Conclusion

This Planning Proposal seeks to permit a Dwelling Entitlement 88 North Bendalong Road, Bendalong by amending the Lot Size Map to reduce the minimum lot size from 40 HA to 6000m<sup>2</sup>. The change in the minimum lot size map will mean that the lot will comply with Clause 4.2D. Through the finalisation of the Planning Proposal, the proponent agrees to surrender the previously approved DA14/2397 for an ecotourist development including 9 x tourist cabins on site, multipurpose building for communal dining and pop up kiosk as well as a manager's office/refuge.

The proposed dwelling house will substantially reduce the building footprint and the overall impact of development on this sensitive coastal site from a bushfire safety perspective and environmental impact perspective.

As such, this Planning Proposal report has been prepared for Council in consideration of the requirements under Section 3.33 of the EP&A Act, together with the NSW DPE's "LEP Making Guidelines" (September 2022), the Planning Secretary Requirements and the LEP Practice Note PN16-001.

A review of the relevant planning matters for consideration in this instance has been undertaken, and it is considered that the proposal has strategic merit and should proceed. The Planning Proposal has been justified relative to environmental, social and economic effects and will be in the public interest. Accordingly, the Planning Proposal should be forwarded to the Department of Planning and Environment for gateway determination in accordance with Section 3.34 of the EP&A Act, 1979.



## Appendix A – State Environmental Planning Policies

SEPP	Applicable	Relevant	Consistent
<a href="#"><u>SEPP (Biodiversity and Conservation) 2021</u></a>	Yes	Yes	Yes
<a href="#"><u>SEPP (BASIX) 2004</u></a>	Yes	No	-
<a href="#"><u>SEPP (Exempt and Complying Development Codes) 2008</u></a>	Yes	No	-
<a href="#"><u>SEPP (Housing) 2021</u></a>	Yes	No	-
<a href="#"><u>SEPP (Industry and Employment) 2021</u></a>	Yes	No	-
<a href="#"><u>SEPP No. 65 - Design Quality of Residential Apartment Development</u></a>	Yes	No	-
<a href="#"><u>SEPP (Planning Systems) 2021</u></a>	Yes	No	-
<a href="#"><u>SEPP (Precincts - Central River City) 2021</u></a>	No	No	-
<a href="#"><u>SEPP (Precincts - Eastern Harbour City) 2021</u></a>	No	No	-
<a href="#"><u>SEPP (Precincts - Regional) 2021</u></a>	No	No	-
<a href="#"><u>SEPP (Precincts - Western Parkland City) 2021</u></a>	No	No	-
<a href="#"><u>SEPP (Primary Production) 2021</u></a>	Yes	No	-
<a href="#"><u>SEPP (Resilience and Hazards) 2021</u></a>	Yes	Yes	Yes
<a href="#"><u>SEPP (Resources and Energy) 2021</u></a>	Yes	No	-
<a href="#"><u>SEPP (Transport and Infrastructure) 2021</u></a>	Yes	No	-

## Appendix B – Section 9.1 Local Planning Directions

Local Planning Direction	Applicable	Relevant	Consistent
<i>Focus Area 1: Planning Systems</i>			
1.1 Implementation of Regional Plans	Yes	Yes	Yes
1.2 Development of Aboriginal Land Council Land	Yes	No	-
1.3 Approval and Referral requirements	Yes	Yes	Yes
1.4 Site Specific Provisions	Yes	Yes	Yes
<i>Focus Area 1: Planning Systems – Place-based</i>			
1.6 Parramatta Road Corridor Urban Transformation Strategy	No	No	-
1.7 Implementation of North West Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	No	-
1.8 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	No	-
1.9 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	No	-
1.10 Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	No	-
1.11 Implementation of Western Sydney Aerotropolis Plan	No	No	-
1.12 Implementation of Bayside West Precincts 2036 Plan	No	No	-
1.13 Implementation of Planning Principles for the Cooks Cove Precinct	No	No	-
1.14 Implementation of St Leonards and Crows Nest 2036 Plan	No	No	-
1.15 Implementation of Greater Macarthur 2040	No	No	-

1.16 Implementation of Pyrmont Peninsula Place Strategy	No	No	-
1.17 North West Rail Link Corridor Strategy	No	No	-
Focus Area 2: Design and Place			
Focus Area 3: Biodiversity and Conservation			
3.1 Conservation Zones	Yes	Yes	Yes
3.2 Heritage Conservation	No	No	-
3.3 Sydney Drinking Water Catchments	No	No	-
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	No	No	-
3.5 Recreation Vehicle Areas	No	No	-
Focus Area 4: Resilience and Hazards			
4.1 Flooding	No	No	-
4.2 Coastal Management	Yes	Yes	Yes
4.3 Planning for Bushfire Protection	Yes	Yes	Yes
4.4 Remediation of Contaminated Land	Yes	Yes	Yes
4.5 Acid Sulfate Soils	No	No	-
4.6 Mine Subsidence and Unstable Land	No	No	-
Focus Area 5: Transport and Infrastructure			
5.1 Integrating Land Use and Transport	Yes	Yes	Yes
5.2 Reserving Land for Public Purposes	No	No	-
5.3 Development Near regulated Airports and Defence Airfields	No	No	-
5.4 Shooting Ranges	No	No	-
Focus Area 6: Housing			
6.1 Residential Zones	Yes	No	-
6.2 Caravan Parks and Manufactured Home Estates	No	No	-



<i>Focus Area 7: Industry and Employment</i>			
<i>7.1 Business and Industrial Zones</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>7.2 Reduction in non-hosted short-term rental accommodation period</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>7.3 Commercial and retail Development along the Pacific Highway, North Coast</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>Focus Area 8: Resources and Energy</i>			
<i>8.1 Mining, Petroleum Production and Extractive Industries</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>Focus Area 9: Primary Production</i>			
<i>9.1 Rural Zones</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>9.2 Rural Lands</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>9.3 Oyster Aquaculture</i>	<i>No</i>	<i>No</i>	<i>-</i>
<i>9.4 Farmland of State and Regional Significance on the NSW Far North Coast</i>	<i>No</i>	<i>No</i>	<i>-</i>



## Appendix C – Supporting Documentation