

Submission Type

I am submitting on behalf of my organisation

Title

Miss

First Name

Kaitlin

Family name

Aldous

☒ Name withheld

Please tick this box if you do not want your name published in the list of submitters on the department's website

Email

kaitlin.aldous@shoalhaven.nsw.gov.au

Suburb/ Town

Nowra

I have made a reportable political donation

No

☒ I agree to the Privacy statement

submission

Please refer to the attached submission in relation to 29 Sheraton Circuit Bomaderry on behalf of Shoalhaven City Council.  
This submission is consistent with Council’s resolved position in relation to the original PP request that was considered by Council in November 2023.  
The exhibited PP is unchanged from the original PP request considered at the 6 November 2023 meeting.

27 May 2024

Southern Regional Planning Panel  
C/O Planning, Land Use Strategy, Housing and Infrastructure, Department of Planning, Housing and Infrastructure

By email & NSW Planning Portal: [wollongong@planning.nsw.gov.au](mailto:wollongong@planning.nsw.gov.au)

**Attention: Ian Woods – Planning Officer**

Dear Southern Regional Planning Panel

**Submission on Planning Proposal PP-2023-1567  
Lot 32 DP 1050818, 29 Sheraton Circuit, BOMADERRY**

I refer to the Department's exhibition of Planning Proposal PP-2023-1567 relating to 29 Sheraton Circuit, Bomaderry (subject land).

This submission is consistent with Council's resolved position in relation to the original PP request that was considered by Council in November 2023. The exhibited PP is unchanged from the original PP request considered at the 6 November 2023 meeting.

**Background**

The land is currently zoned *R5 Large Lot Residential* under the Shoalhaven Local Environmental Plan 2014. The subject land is subject to a mapped Minimum Lot Size of 1 ha.

A Planning Proposal (PP) request to reduce the mapped minimum lot size that applies to the subject land from 1 ha to 4000 m<sup>2</sup> to facilitate an additional dwelling opportunity. The request was formally received by Council on 25 July 2023 and was subsequently considered by the elected Council on 6 November 2023.

The staff report that was considered by Council on 6 November 2023, describes the existing development on the subject land and surrounding land, the zoning and height controls that apply to the site under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014), and site merit considerations. The staff report is available at:

[Agenda of Ordinary Meeting - Monday, 6 November 2023 \(infocouncil.biz\)](https://www.shoalhaven.nsw.gov.au/infocouncil/biz).

This report provides a comprehensive summary of the background and assessment considerations and concludes with Council's recommendation.

### Council's resolved position

In response to the report and deputations, Council resolved as follows (MIN23.652):

*That Council:*

1. *Acknowledge the site access limitations and note that if the land is subdivided as requested by the proponent, other forms of development could eventuate on each lot - for example a group home, attached dual occupancy or secondary dwelling.*
2. ***Support a Planning Proposal for a detached dual occupancy on the land (to enable an additional housing opportunity), while retaining the current mapped minimum lot size of 1ha. This will prevent the land from being subdivided.***
3. *If the proponent wishes to proceed on this basis, prepare and submit the PP documentation to the NSW Department of Planning and Environment (DPE) for Gateway determination.*
4. *Subject to receiving a favourable Gateway determination from DPE, report back to Council after the PP has been publicly exhibited.*

Note: The Council meeting, including deputations, can be viewed online if needed at:

<https://www.shoalhaven.nsw.gov.au/Council/Meetings/Stream-a-Council-Meeting>

The full minutes of the meeting are available at:

[Minutes of Ordinary Meeting - Monday, 6 November 2023 \(infocouncil.biz\)](#)

### **Rationale for Council's decision to support a modified PP**

The [staff report](#) recommended progression of a modified version of the proponent's request, noting that:

***"...the proponent's PP request is considered to have strategic merit, but due to site access limitations, an alternative approach is recommended to provide an additional housing opportunity: allowing a detached dual occupancy to be considered on the land via Schedule 1 of the LEP (additional permitted uses). While this differs from the proponent's PP request, it would still effectively deliver an additional housing opportunity without exceeding the site's access limitations. The proposed alternative approach is considered to have sufficient strategic and site merit to warrant Council's support and progression to the Gateway step. It is broadly consistent with applicable strategies and actions in the strategic planning framework."***

Potential impacts of reducing the mapped minimum lot size to 4000 m<sup>2</sup> to facilitate a two-lot subdivision are discussed in detail in the Planning Proposal Assessment on pages 8-12 of the [Council Report](#).

The staff report recommended a modified PP be progressed to permit the construction of an additional dwelling whilst ensuring long-term development outcomes do not exceed the subject land's access constraints.

The site is legally accessed via a ROW to Sheraton Circuit that is at capacity. The site also benefits from an existing legal and practical access to the Princes Highway. Transport for NSW (TfNSW) supports the use of this access for a single dwelling but does not support more intensive uses that could eventuate if the land is subdivided.

### **Rezoning Review: Southern Regional Planning Panel's Recommendation**

Following Council's decision, a proponent-initiated rezoning review was assessed by the Southern Regional Planning Panel (the Panel). Following the Panel meeting on 14 February 2024, the Panel recommended the PP be submitted for Gateway determination in the Record of Decision dated 22 February 2024.

The Panel appointed itself as the Planning Proposal Authority (PPA) consistent the Department's Local Environmental Plan Making Guideline.

The record of decision stated that the Panel "accepts that the provision of an additional dwelling in this location has strategic merit".

### **Traffic-related concerns**

Each access point to the site is limited to traffic associated with a single dwelling. A range of more intensive forms of development are permissible in the R5 zone. If subdivision is permitted, the risk of these more intensive forms of development occurring will be greatly increased, as explained below.

During consultation, TfNSW revealed that the access to the Princes Highway was suitable for a single dwelling only and did not support the use of the site for any uses that may otherwise exceed this capacity. While a future subdivision is likely to require consultation with this agency per Section 2.119 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, this consultation is by referral and does not trigger concurrence requirements.

Any form of permissible development could be legally approved, either by the Council of the day, or subsequent legal challenge. Further, there is no legal ability to restrict the development of the site to a single dwelling outcome, such as the implementation of a restrictive covenant that is registered on an 88B Instrument.

The amendment, as proposed by the PP, delivers the ability to subdivide and construct an additional dwelling, but also risks development outcomes that may exceed this access capacity, including dual occupancy (attached), group homes and secondary dwellings.

Implementing an Additional Permitted Use clause, as recommended by Council however, would facilitate the additional dwelling outcome sought by the proponent while responding the site's access constraints.

Strategic transport planning and the protection of community safety and transport efficiency should be prioritised over individual landowner interests, particularly where this could compromise public safety and the efficient operation of a State Highway.

Consistent with Council's adopted position, the PP should not be finalised in its current form unless the risks and concerns outlined above can be adequately addressed.

### **Conclusion**

The exhibited PP seeks to allow the land to be subdivided to create the additional dwelling entitlement. Council remains concerned that this will allow the land to be more intensely developed, which could impact on the safety and efficacy of the Princes Highway, and the amenity of neighbouring homes.

Council does not object to allowing one additional dwelling on the land if access is via the existing single driveway to the Princes Highway only. The additional housing opportunity can be provided without the risks associated with subdividing the land. Council's adopted position is that an additional permitted use (APU) for dual occupancy (detached) should be applied to the site via Clause 2.5 of Shoalhaven LEP 2014. This would allow an additional dwelling while minimising the risk of the land being more intensively developed.

It is requested that potential mechanisms to address Council's concerns be assessed. If the APU option is not supported by DHPI, another equally robust mechanism should be applied when finalising the PP.

If you need further information about this matter, please contact Kaitlin Aldous on 4429 3570. Please quote Council's reference 72177E/9 (D24/218409).

Yours sincerely

A handwritten signature in black ink that reads "Gordon Clark." The signature is written in a cursive, flowing style.

**Gordon Clark**  
**Section Manager - Strategic Planning**

**Attachments:**

1. Council Report and Report Attachment D23/348711 & D23/425526
2. Correspondence from TfNSW dated 13 October 2023 D23/424676

## CL23.407 New Proponent Initiated Planning Proposal - 29 Sheraton Circuit Bomaderry

**HPERM Ref:** D23/348711

**Department:** Strategic Planning

**Approver:** Coralie Bell, Acting Director - City Futures

**Attachments:** 1. Preliminary PP Assessment

### Reason for Report

The purpose of this report is to introduce and seek direction on a new proponent Planning Proposal (PP) request. The proponent's PP aims to amend Shoalhaven Local Environmental Plan (LEP) 2014 to enable a two-lot residential subdivision at 29 Sheraton Circuit, Bomaderry. The PP request has been submitted by Jervis Bay Town Planning on behalf of the owners, J. and S. Hodges.

### Recommendation

That Council:

1. Acknowledge the site access limitations and note that if the land is subdivided as requested by the proponent, other forms of development could eventuate on each lot - for example a group home, attached dual occupancy or secondary dwelling.
2. Support a Planning Proposal for a detached dual occupancy on the land (to enable an additional housing opportunity), while retaining the current mapped minimum lot size of 1ha. This will prevent the land from being subdivided.
3. If the proponent wishes to proceed on this basis, prepare and submit the PP documentation to the NSW Department of Planning and Environment (DPE) for Gateway determination.
4. Subject to receiving a favourable Gateway determination from DPE, report back to Council after the PP has been publicly exhibited.

### Options

1. Proceed with the PP as recommended.

Implications: This will permit a detached dual occupancy, allowing the current owners to downsize and age in place as requested by the proponent, while preventing the land from being subdivided. The new dwelling would be accessed from the Princes Highway via an existing driveway which has only been designed to service one dwelling, while the existing dwelling would continue to be accessed via the Right of Carriageway (ROW) to Sheraton Circuit, noting that the ROW is also at capacity. This option would balance the need to provide additional housing, with the site's access limitations. This option is recommended.

2. Proceed with the PP as requested.

Implications: Will potentially enable a future two lot subdivision and create an additional dwelling entitlement. There is no planning mechanism to limit the number of dwellings on each lot following the subdivision. Other uses that are permissible in the zone could

eventuate on each lot, which could exceed the access capacity to Sheraton Circuit and/or the Princes Highway.

3. Not proceed with the PP.

Implications: Given there is an existing five-bedroom dwelling on the site, there are limited opportunities to provide additional housing on the land. While secondary dwellings are permissible in the R5 Large Lot Residential zone, detached dual occupancies are not. The land cannot be subdivided due to the current mapped minimum lot size in the LEP. It is noted that the proponent would have the option of seeking a rezoning review if Council does not support the PP request.

## Background

### The Subject Land

Lot 32 DP 1050818, at 29 Sheraton Circuit, Bomaderry, is a regular shaped allotment with an area of approximately 10,000m<sup>2</sup> (1ha). The land is predominately cleared with patches of established vegetation. The site is generally flat with a gentle slope from south to north-west. Established vegetation (Shoalhaven Lowland Bloodwood Shrub Forest) exists along the western and northern boundaries of the subject land.

The adjoining properties to the north, east and south are also predominately cleared with patches of established vegetation. The site is bounded to the west by the Princes Highway.

Surrounding land uses include:

- Low Density Residential properties ranging from 827m<sup>2</sup> to 1.02ha to the north, south and east.
- Large Lot Residential properties ranging from 4,222m<sup>2</sup> to 4,832m<sup>2</sup> to the west, separated by the Princes Highway and a small strip of RE1 Public Recreation land.

An aerial photograph of the subject land is shown in **Figure 1**.





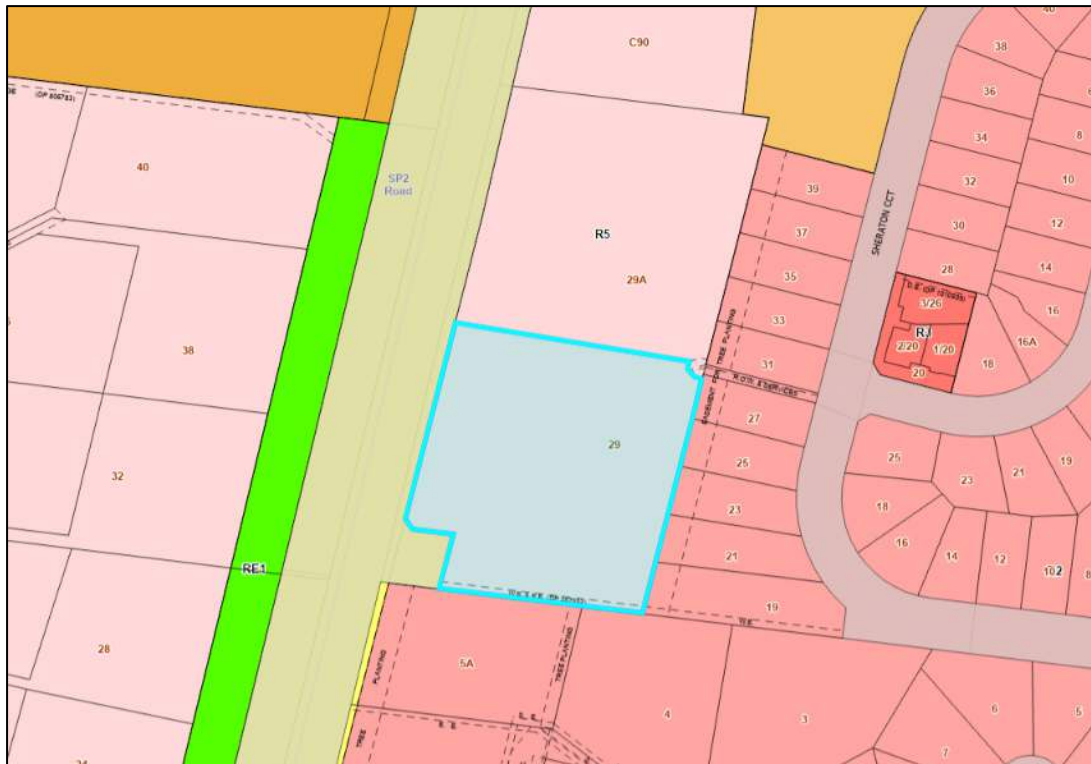
**Figure 1: Aerial View of the Subject Land (2023).**

The subject site is located within the 70km/h section of the Princes Highway on the south-bound side approaching Bomaderry. Lots to the south of the site along the Princes Highway support uses including service stations, single dwellings, commercial premises and two caravan parks which predominately contain long-term sites. Each of the listed uses currently rely upon the Princes Highway for their legal and practical vehicular access as these sites do not have alternative access to a non-classified road.

#### Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

The subject land is currently zoned R5 Large Lot Residential with a mapped minimum lot size for subdivision of 1 ha under Shoalhaven Local Environmental Plan (SLEP) 2014. The site was previously zoned 1(c) Rural (Rural Lifestyle) Zone under SLEP 1985. Land to the east and south is zoned R2 – Low Density Residential. The current land use zoning of the subject land and surrounds is shown in **Figure 2**.





**Figure 2.** Land use zoning of the subject land (blue outline) and surrounds under the SLEP 2014.

Forms of development which are permissible in the R5 zone include, but not limited to, the following:

Bed and breakfast accommodation; Dual occupancies (attached); Dwelling houses; Group homes (transitional); Home-based childcare; Neighbourhood shops; Secondary dwellings.

The current mapped minimum lot size is 1ha. As the site is 1ha, it currently has no further subdivision potential.

#### Subdivision and Development History

The subject land was legally created through a two-lot subdivision (SF8843) of Lot 5 DP 845654. The residential subdivision was registered on 25 March 2003.

A dwelling was approved on 27 April 2005. Legal and practical access for the dwelling is via a ROW to Sheraton Circuit. A driveway crossing to the Princes Highway was provided as part of the Berry-Bomaderry Highway upgrade.

#### Planning Proposal (PP) Request

In accordance with the NSW Department of Planning and Environment's (DPE) [Local Environmental Plan Making Guideline](#), the following pre-lodgement consultation process was followed:

- The proponent submitted a scoping proposal report to Council.
- The scoping proposal was referred to the relevant Council staff and external agencies for comment.
- Feedback received was collated and a pre-lodgement meeting held with the proponent and landowner representatives.

A 'pre-lodgement letter' was issued to the proponent dated 24 January 2023. Council's letter is included in the proponent's documentation - see below.

A PP request was submitted to Council on 25 July 2023 and can be accessed on [Council's website](#). The proponent's documents include:

- [Planning Proposal Report](#)
- [NSW RFS Scoping Proposal Response](#)
- [NSW TfNSW Biodiversity Scoping Proposal Response](#)
- [Council Scoping Proposal Feedback](#)
- [Ecological Constraints and Opportunities](#)
- [Strategic Bushfire Study](#)
- [Traffic Impact Statement](#)
- [Traffic Noise Assessment](#)

The PP request seeks to enable a two-lot residential subdivision of the subject land, subject to a future development application. The intended subdivision outcome would be achieved by reducing the mapped Minimum Lot Size in the SLEP 2014 from 1ha to 4000m<sup>2</sup>. The proponent's PP report includes a conceptual subdivision layout plan, which is reproduced in **Figure 3** below.



*Figure 3. Proponent's conceptual subdivision layout (Jervis Bay Town Planning, 2023)*

Proposed Lot 1 contains the existing dwelling and would be accessed from Sheraton Circuit via an existing ROW arrangement. Proposed Lot 2 would have a dwelling entitlement and would be accessed from the Princes Highway via the existing driveway crossing. This is discussed later in this report.

The proponent's PP report indicates that a dwelling would be provided on the newly created lot. However, as noted earlier in the report, a range of development forms are permissible in the R5 zone and could eventuate on each proposed lot. This would exceed the traffic capacity of the existing access arrangements to Sheraton Circuit and/or the Princes Highway (depending on which lot it occurred on).

## Preliminary Assessment

A preliminary assessment of strategic and site merit criteria within the framework set out in the NSW Government's [Local Environmental Plan Making Guideline](#) (last updated September 2023) is provided in **Attachment 1**. This framework requires the planning authority (Council) to consider several questions when determining the strategic merit and site merit of a PP.

Key findings are summarised below:

- The PP is generally consistent with the [Illawarra Shoalhaven Regional Plan 2041](#), particularly Objective 14 Enhance and connect parks, open spaces and bushland with walking and cycling paths, Objective 18 Provide housing in the right locations and Objective 19 Deliver housing that is more diverse and affordable. Broadly, the PP will give effect to Objective 18 includes concentrating growth within identified urban growth areas, noting that the subject land is within the boundaries of the Nowra-Bomaderry Growth Area (NBGA). Further, Nowra-Bomaderry is a “regionally significant growth area.
- The PP is generally consistent with the [Shoalhaven 2032 Community Strategic Plan](#), particularly with the key themes of resilient, safe, accessible communities and sustainable, liveable environments. The PP is also broadly consistent with the Shoalhaven Growth Management Strategy (GMS) 2014.
- The subject land has frontage to a classified road being the Princes Highway. The PP is broadly consistent with the State Environmental Planning Policy (Transport and Infrastructure) 2021, provided access to the Highway is limited to a single dwelling house. Transport for NSW (TfNSW) does not support enabling more intensive development of the land on the eastern side of the Princes Highway having direct vehicular access to and from the Princes Highway as this will have adverse impacts on the safety and efficiency of the Princes Highway.
- The narrow ROW access to Sheraton Circuit (see **Figure 4**) is also unsuitable for supporting additional traffic loads beyond a single dwelling. Schedule 1 of the LEP (additional permitted uses) could be amended to allow a detached dual occupancy to be considered. While this differs from the proponent's PP request, it would still effectively deliver an additional housing opportunity while balancing the site's access constraints.
- There are no identified significant inconsistencies with any applicable [Ministerial Directions](#), including Direction 1.1 (Implementation of Regional Plans), Direction 4.3 (Planning for Bushfire Protection), and Direction 6.1 Residential Zones. As the PP would achieve additional residential development within an existing residential area the PP is considered consistent with this direction as it will reduce the consumption of land on the urban fringe and make more efficient use of existing infrastructure and services.





**Figure 4.** The access driveway to 29 and 29A Sheraton Circuit Bomaderry. Source: Council Staff (October 2023)

In conclusion, the proponent's PP request is considered to have strategic merit, but due to site access limitations, an alternative approach is recommended to provide an additional housing opportunity: allowing a detached dual occupancy to be considered on the land via Schedule 1 of the LEP (additional permitted uses). While this differs from the proponent's PP request, it would still effectively deliver an additional housing opportunity without exceeding the site's access limitations.

The proposed alternative approach is considered to have sufficient strategic and site merit to warrant Council's support and progression to the Gateway step. It is broadly consistent with applicable strategies and actions in the strategic planning framework.

### Internal Consultation

The following internal stakeholders were invited to comment on the PP (including as part of the scoping proposal process):

- City Development – Development Services (North) and Environmental Assessment
- City Services – Works and Services
- City Futures – Principal Traffic Engineer
- Shoalhaven Water

Feedback from the above stakeholders was provided in Council's pre-lodgement included in the proponent's documentation. This feedback has informed the recommendations of this report.

### Community Consultation

Adjoining landowners and the Pride of Bomaderry Community Consultation Body were notified on 7 August 2023 that the PP had been received. Council's letter requested any comments be provided within 21 days, i.e., by 28 August 2023. No submissions were received at the time of report writing.

Should the PP receive a favourable Gateway determination, the community will be formally consulted at the public exhibition stage.

**External Consultation**

The Rural Fire Service (RFS) and Transport for NSW (TfNSW) were consulted during the scoping proposal process. DPE - Planning was notified on 4 August 2023 that a PP had been received by Council.

TfNSW does not object to providing access to the Highway for a single dwelling but does not support enabling more intensive development due to impacts on the safety and efficiency of the Princes Highway.

Should the PP progress and a favourable Gateway determination be received from the NSW Government, public exhibition and agency consultation would be undertaken in accordance with legislative and Gateway requirements.

**Financial Implications**

The PP would be managed as a 'standard PP', fully funded by the proponent in accordance with the applicable Council fees and charges.

## Preliminary Planning Proposal (PP) Assessment – 29 Sheraton Circuit, Bomaderry

### **Section A – need for the planning proposal**

#### **Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

The PP is not the result of an endorsed LSPS, strategic study or report. The subject land is already zoned appropriately as determined by the 2014 citywide LEP process. The PP is not something that would normally be identified by a broad strategic planning process.

#### **Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The submitted planning proposal report states the intended outcome is to achieve a two-lot residential subdivision to permit the construction of a more suitable dwelling for the landowners, who wish to “*age in place and remain on the property they enjoy*”. The report states this is to be facilitated through a reduction to the mapped minimum lot size per Shoalhaven LEP 2014.

The subject land has a total land area that is equal to the mapped minimum lot size and hence, does not currently have the legal ability to achieve a subdivision. The intended outcome is unable to be achieved through a variation to development standards per Clause 4.6 of Shoalhaven LEP as the extent of variation required exceeds “*an appropriate degree of flexibility*”, as the total variation required would represent a 51 percent (approximately) departure to the development standard described by Clause 4.2D(a).

Further, there is no State Environmental Planning Policy that provides a suitable mechanism to achieve a subdivision.

The owners could seek approval for a secondary dwelling under the current planning provisions. This would enable the owners to downsize and remain on the property.

If the LEP is amended to potentially enable a future two lot subdivision and create an additional dwelling entitlement, there is no planning mechanism to limit the number of dwellings on each lot following the subdivision. Other uses that are permissible in the zone could eventuate on each lot, which could exceed the access capacity to Sheraton Circuit and/or the Princes Highway.

As such, the landowner’s desire to downsize and remain on the property would be more safely achieved by making a detached dual occupancy permissible on the land via an additional permitted use under Clause 2.5 of Shoalhaven LEP. This would potentially allow the landowners to construct a suitable dwelling on the site that can be utilised as a separate domicile. This would prevent the land from being subdivided, and minimise the risk of the land being more intensely developed, beyond the site’s access limitations.

#### **Q3. 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 PP as recommended is generally consistent with the Regional Plan, particularly:

- Objective 14 Enhance and connect parks, open spaces and bushland with walking and cycling paths.
- Objective 18 Provide housing in the right locations.
- Objective 19 Deliver housing that is more diverse and affordable.



Broadly, the PP will give effect to Objective 18 which includes concentrating growth within identified urban growth areas, noting that the subject land is within the boundaries of the Nowra-Bomaderry Growth Area (NBGA). Further, Nowra-Bomaderry is a regionally significant growth area.

*Q4. Is the planning proposal consistent with a council Local Strategic Planning Statement (LSPS) that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?*

The PP, as recommended, is generally consistent with the LSPS. The PP seeks to facilitate an additional housing opportunity within Nowra-Bomaderry, consistent with Planning Priority 1 (Providing Homes to meet all needs and lifestyles) and the future development will be able to take advantage of existing and planned infrastructure.

The PP is generally consistent with the Shoalhaven 2032 Community Strategic Plan, particularly with the key themes of resilient, safe, accessible communities and sustainable, liveable environments. The PP is also broadly consistent with the Shoalhaven Growth Management Strategy (GMS) 2014.

*Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?*

The PP is generally consistent with the Housing 2041 NSW Housing Strategy.

*Q6. Is the planning proposal consistent with applicable SEPPs?*

The PP is consistent with the State Environmental Planning Policy (Biodiversity and Conservation) 2021, noting that the central and rear part of the site is largely cleared. The proponent's conceptual subdivision layout indicates that most of the native vegetation on the site can be retained (subject to detailed consideration at the development application stage).

The subject land has frontage to a classified road being the Princes Highway. The PP is broadly consistent with the State Environmental Planning Policy (Transport and Infrastructure) 2021, providing access to the Highway is limited to a single dwelling. TfNSW does not support enabling more intensive development due to impacts on the safety and efficiency of the Princes Highway. There is risk that other forms of development could eventuate, such as a secondary dwelling, dual occupancy, group home.

Therefore, it is recommended that a detached dual occupancy is included as an additional permitted use rather than enabling the land to be subdivided. This addresses the concerns raised by TfNSW.

*Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?*

An assessment against relevant Ministerial Directions revealed Directions 1.1, 4.3 and 6.1 are relevant to the PP and are discussed below.

Direction 1.1 (Implementation of Regional Plans) seeks to ensure any planning proposal is consistent with a Regional Plan released by the Minister for Planning. For the reasons addressed in Question 3, the PP achieves the overall intent of the Regional Plan and gives effects to the strategies, objectives, and visions of the plan.

Direction 4.3 (Planning for Bushfire Protection) applies to this PP as the site is identified as being bushfire prone land. NSW RFS commented on the proposal on 1 May 2023 in relation to the scoping proposal. The [RFS Correspondence](#) includes the following:

*“In accordance with the intent of Planning for Bush Fire Protection 2019, all new residential lots, including those that contain existing dwellings, are to demonstrate the provision for a future building envelope that can accommodate a dwelling to a maximum radiant heat threshold of 29kW/m<sup>2</sup>. In this regard, further evidence is required to substantiate the current subdivision in which the existing buildings are located on new lots which cannot accommodate these building envelopes”.*

The submitted Strategic Bushfire Assessment indicates that the PP can comply with the *Planning for Bushfire Protection 2019*, including the above comment from the RFS. As detailed in Table 3 of the report, a future subdivision will be able to meet the APZ requirements of A1.12.2 (29kW/m<sup>2</sup>) and APZ requirements will be able to be contained within the site. Should a favourable decision be made to progress the PP to gateway, further consultation will occur with RFS prior to exhibition. Initial assessment indicates that the PP demonstrates satisfactory consistency with this Direction. It is envisioned that future development, including a detached dual occupancy, would be able to achieve these requirements.

Direction 6.1 (Residential zones) seeks to make efficient use of existing infrastructure and services, encourage a variety and choice of housing types which provides for existing and future housing needs whilst minimising the impact of residential development on the environmental and resource lands.

The PP outcome as recommended by staff would permit a detached dual occupancy, and hence allow an additional residential development within an existing residential area. As such, the PP is considered consistent with this direction as it will reduce the consumption of land on the urban fringe and make more efficient use of existing infrastructure and services.

### **Section C – environmental, social, and economic impact (site merit)**

#### **Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?**

The central and rear part of the subject land (where a future dwelling would be located) is predominately cleared. There are scattered trees and native vegetation within the area that would need to be maintained as a bushfire asset protection zone (APZ).

The proponent's PP report indicates that a small number of trees will be required to be removed to accommodate the conceptual building envelope, and that some trees are proposed to be retained within the bushfire APZ. Per the submitted Ecological Constraints and Opportunities Report, the site is mapped as exhibiting predominantly low ecological constraints with scattered areas of moderate, concentrated along the north and western property boundaries and a small section in the south-eastern corner of the site.

Whilst a Flora and Fauna Assessment Report would be required to support any tree removal required during subdivision works in association with development application, the concept plans indicate approximately 11 trees would be removed within the identified building envelope. Three small areas of high ecological constraint are identified across the site in accordance with the location of identified habitat bearing trees (HBTs).

The submitted Report demonstrates that any future subdivision development is unlikely to trigger entry into a Biodiversity Offset Scheme. Based on the proponent's PP and supporting documentation submitted to support the PP, it is considered unlikely that flora and fauna or their habitat will be adversely affected by the proposal. It is considered that a detached dual occupancy would also be able to achieve this result.

Any future development application (DA) would be considered on merit having regard to the objectives of the R5 Large Lot Residential zone.

*Q9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?*

No other adverse environmental effects of the PP are anticipated. The proponent's planning report demonstrates the identified habitat bearing trees are sought to be retained. Surrounding properties will not be impacted by overshadowing or reduced solar access (noting the mapped maximum height of buildings is 11 m). Further, the site is not identified as being flood affected, containing Class 1 or 2 Acid Sulphate Soils or being affected by site contamination.

*Q10. Has the planning proposal adequately addressed any social and economic effects?*

The PP, as recommended, will enable an additional form of residential development on the land (detached dual occupancy) which would have limited social and economic effects.

A small economic benefit would be expected during the construction phase. Another social benefit is that the site is located within walking distance to services (e.g., Bomaderry Woolworths) reducing reliance on cars.

The existing access to the Highway is only designed to accommodate a single dwelling. More intensive development would impact on the safety and efficiency of the Highway. The narrow ROW access to Sheraton Circuit is also unsuitable for supporting additional traffic loads beyond a single dwelling.

Schedule 1 of the LEP (additional permitted uses) could be amended to allow a detached dual occupancy to be considered. While this differs from the proponent's PP request, it would still effectively deliver an additional housing opportunity while balancing the site's access constraints.

Overall, the PP scope as recommended by staff, is not expected to have any significant adverse social and economic effects.

*Q11. Is there adequate public infrastructure for the planning proposal?*

The PP scope, as recommended by staff, will not generate additional infrastructure needs. As existing public infrastructure is sufficient, future development is likely to make more efficient use of the existing infrastructure.

*Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?*

The NSW Rural Fire Service (RFS) and Transport for NSW (TfNSW) were consulted as part of the pre-lodgement (scoping proposal) process.

NSW RFS expressed concern that the proposed residential outcomes may not be able to accommodate the required building envelope for to meet *Planning for Bush Fire Protection (PBP) 2019* requirements. However, preliminary assessment of information contained in the submitted Strategic Bushfire Assessment demonstrates that the PP can meet the necessary PBP 2019 requirements. This should be determined through further consultation with the agency.

Transport for NSW expressed in principle support for the proposal provided access to the Princes Highway is only required for a single dwelling house (as outlined in the proponent's scoping proposal). The proponent was asked to how the eventual development could be limited to a single dwelling house on the proposed new lot in Council's pre-lodgement letter,

noting that a PP cannot prohibit uses that are permissible in the zone, and that the R5 land use zoning permits other forms of development, including group homes and attached dual occupancies.

There would be no mechanism to prevent permissible uses such as group home, attached dual occupancy or secondary dwelling from eventuating on each lot (if the land is subdivided). This issue was discussed with Transport for NSW on 10 October 2023 to inform the preparation of this report. TfNSW's advice is that it does not support enabling more intensive development of the land on the eastern side of the Princes Highway having direct vehicular access to and from the Princes Highway as this will have adverse impacts on the safety and efficiency of the Princes Highway. As the ROW to Sheraton Circuit is already at capacity, the legal and practical access for any further residential development will need to be the Highway.

### **Consistency with Council's Guideline for Proponent-Initiated Planning Proposals**

In addition to the criteria set out in DPE's Local Environmental Plan Making Guideline, Section 1.7 of Council's [Guideline for Proponent-Initiated Planning Proposals \(PPs\)](#) states that a PP is more likely to be supported by Council if one or more of the following criteria are met:

1. There is a clear error or anomaly in the LEP. **Comment:** Not applicable
2. Council is satisfied that the proposed amendment is minor and has sound justification. **Comment:** The PP as recommended, is relatively minor provided it does not facilitate further subdivision of the land.
3. The proposal would not create an undesirable precedent. **Comment:** There is a risk that the PP may result in a precedent for other similar properties with frontage to a classified road. This risk has been assessed and is considered low, given that this site has a unique circumstance in that an established and approved access point to the subject site from the Princes Highway already exists. There is capacity for a single dwelling to rely upon the Princes Highway for legal and practicable access.
4. The proposal would provide environmental, social, and economic benefits to the community/public and is consistent with the objects of the Environmental Planning and Assessment Act, 1979. **Comment:** The PP scope, as recommended by staff, is expected to have some social and economic benefits, which must be weighed against potential traffic and related amenity issues if more than a single dwelling house eventuates on either of the proposed lots.

### **Conclusion**

The PP as recommended would enable the owners to downsize and remain on the land, and has strategic merit and acceptable site merit to warrant Council's support and progression to the Gateway step. The proponent's request to facilitate a two-lot subdivision is not supported due to the site's access limitations.

13 October 2023

TfNSW reference: STH22/00226/02

Council reference: 72177E

Shoalhaven City Council

By Email: [council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au)

Cc: [Kaitlin.Aldous@shoalhaven.nsw.gov.au](mailto:Kaitlin.Aldous@shoalhaven.nsw.gov.au)

Attention: Kaitlin Aldous

**PLANNING PROPOSAL PRE LODGEMENT ADVICE – AMENDMENT TO THE SHOALHAVEN LOCAL ENVIRONMENTAL PLAN 2014 – LOT: 32 DP: 1050818 – 29 SHERATON CIRCUIT, BOMADERRY**

Dear Kaitlin,

Transport for NSW (TfNSW) refers to your email dated 29 September 2022 regarding the above Planning Proposal (PP) as well as the subsequent meeting with Council staff on 10 October 2023.

TfNSW has reviewed the information in your email and provides the comments in **Attachment 1** to this letter which includes a response to the specific questions asked in the above email.

In summary, TfNSW, based on the new information provided, wishes to advise that it is not supportive of a PP that will enable more intensive development of the land on the eastern side of the Princes Highway having direct vehicular access to and from the Princes Highway as this will have adverse impacts on the safety and efficiency of the Princes Highway. For example, the existing U-turn facility that has been provided to the north of the PP site.

If you have any questions, please contact Andrew Lissenden, Development Services Case Officer, on 0418 962 703.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Andrew Lissenden".

**Andrew Lissenden**

Development Case Officer, Development Services (South Region)

**PLANNING PROPOSAL PRE LODGEMENT ADVICE – AMENDMENT TO THE SHOALHAVEN LOCAL ENVIRONMENTAL PLAN 2014 – LOT: 32 DP: 1050818 – 29 SHERATON CIRCUIT, BOMADERRY**

## 1. Context

TfNSW notes and advises:

- The key state classified road is the Princes Highway.
- The Planning Proposal (PP) will seek to reduce the minimum lot size to allow Lot 32 DP 1050818 to be subdivided into two lots (refer to **Attachment 2**).
- The PP site currently contains a single dwelling that has access via the local road network (Sheraton Circuit) as well as the Princes Highway. It is unclear to TfNSW how and when the Princes Highway access to and from the PP site was approved.
- It has provided pre-lodgement advice to Jervis Bay Town Planning on this PP (refer to the TfNSW letter dated 11 August 2022). In terms of access to and from the Princes Highway, the TfNSW advice was based on the proponent's assertion that the new lot to be created that would use the existing access to and from the Princes Highway would be constrained to a single dwelling house only. The TfNSW advice stated, in part, *“that should a more intensive use of the proposed new lot/Lot 2 be sought then other access options will need to be considered such as access being gained via extending the existing right of carriageway that services Lot 1 so as to enable access to and from Sheraton Circuit”*.
- This pre-lodgement advice is based on the information provided (i.e. letter from Jervis Bay Town Planning dated 20 July 2021, Council feedback letter dated 24 January 2023 and PP Scoping Report dated 11 July 2023 prepared by Jervis Bay Town Planning, Council's email dated 29 September 2023).

## 2. Comments

- Restricting future development:* TfNSW notes the Council's advice that contrary to statements from the applicant, the Council is unable to legally constrain the future development on the new lot to be created to a single dwelling house only. As such, other forms of development that would generate traffic above that of a single dwelling house are permissible within R5 zoned land and would potentially be enabled should access to and from the Princes Highway be allowed (e.g. community facilities, emergency service facilities, exhibition homes, group homes, neighbourhood shops, home businesses and industries, dual occupancy). In line with the Council's comment that *“it would be pertinent to consider the most intensive form of development permissible with consent in determining whether the future development outcomes will impact the operation of the classified road”* and noting that the Council has no option for restricting future development of the land to a single dwelling only, TfNSW is not supportive of access being gained via the Princes Highway as there is local road access available. This aligns



**Attachment 1**

with the provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* which under Section 2.119 would require Council to be satisfied that it is not practicable and safe for vehicle access to be provided by a road other than a classified road.

At this time, the applicant and/or Council has not provided any information as part of this PP to assess the above and therefore demonstrate to TfNSW that access is required from the Princes Highway (additional comments provided in c) below).

- b) NSW Rural Fire Service (RFS): TfNSW notes that the comments provided by the RFS on the PP (dated 1 May 2023) do not require the future subdivision to have a secondary access point (i.e. both access to and from the Princes Highway and the local road network). As such, to comply with RFS requirements all access can be gained solely from the local road network.
- c) Access: TfNSW is of the opinion that:
  - i) More intensive forms of development on the eastern side of the Princes Highway between the Moss Vale Road/Cambewarra Road/Princes Highway intersection and the existing U-turn facility to the north of Lot 415 DP 1210520/Sheraton Reserve, that have direct access to and from the Princes Highway will adversely impact the existing U-turn facility and the safety and efficiency of the Princes Highway in the vicinity of the U-turn facility.
  - ii) Insufficient information has been provided to demonstrate that it is not practicable that safe vehicular access cannot be provided to the new lot to be created via a road other than the Princes Highway/a classified road and that the safety, efficiency and ongoing operation of the Princes Highway will not be adversely affected by the resulting development that will be permissible on the new lot created (e.g. access arrangements, volume and frequency of vehicles, etc); and
- d) Precedent: TfNSW notes the comments that have been made by Council that “*Council upholds concern for the risk of precedent for similar sited properties*” and that “*this PP has potential to set a precedent for similar requests to be considered, subject to strategic and site merit.*” TfNSW also notes that the site to the north (Lot 31 DP 1050818) has the same zoning and a similar lot size as the subject site. While not having access to the Princes Highway a similar request could be lodged in the future. Similar to the position that it is advising in relation to this current PP, TfNSW would not be supportive of the lot to the north gaining access to and from the Princes Highway noting that it has local road access.
- e) Other questions asked: TfNSW notes that the Council email dated 19 September 2023 has also sought comments from TfNSW on the following:

**Attachment 1**

- i) *Question:* Provide commentary in relation to future consultation requirements and whether there are any additional requirements within State Environmental Planning Policy (Transport and Infrastructure) 2021 that would trigger further assessment/consideration or concurrence?

*Response:* TfNSW is happy to provide advice in the future as required. TfNSW notes that the requirements of Section 2.122 (Traffic-generating development) would be applicable if the future development met the requirements in Column 1 of the Table to Schedule 3. In addition, concurrence is required from TfNSW under Section 138 of the *Roads Act 1993* for works and structures as defined in subclause (1) of Section 138.

- ii) *Question:* It is requested that consideration is given to the risks associated with potential development outcomes and potential precedent to determine whether the risk of similar developments with classified road frontage is acceptable. Further, this consideration should consider the most intensive forms of development rather than the least intense form to ensure that the risk is fully understood, and that infrastructure provision remains sufficient.

*Response:* Refer to the comments above.

f) *Other comments:*

- i) Section 2.120 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* would apply to the future residential development of the PP site. This is because the site is adjacent to a road corridor with an annual average daily traffic volume of more than 20,000 vehicles and could contain a development that would be impacted by noise. The Council will need to satisfy itself as part of the PP that sufficient measures are in place to ensure that the requirements of Section 2.120 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* can be satisfied.
- ii) Please note that the comments that have been provided relate to traffic/access matters only that impact upon the Princes Highway. No consideration has been given to other constraints such as topography, zoning, flora/fauna, economic impacts, environmental impacts, land ownership, etc. These would need to be considered by the relevant consent authority as part of any future application that is lodged.

