



DATE OF DETERMINATION	5 October 2023
DATE OF DECISION	31 August 2023
PANEL MEMBERS	Chris Wilson (Chair), Juliet Grant and Glennis James
APOLOGIES	None
DECLARATIONS OF INTEREST	Note: Shoalhaven City Council do not have nominated local council members

REZONING REVIEW

RR-2023-10 Lot 5 Sealark Road, Callala Bay (PP-2022-4162) (As described in Schedule 1)

Reason for Review:

- The council has notified the proponent that the request to prepare a planning proposal has not been supported
- The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

PANEL CONSIDERATION AND DECISION

The Panel considered the material listed at item 4 and the matters raised and/or observed at the site inspection and briefings listed at item 5 in Schedule 1.

Based on this review, the Panel recommends that the proposed instrument, subject to amendment:

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic merit and may be capable of demonstrating site specific merit
- should not** be submitted for a Gateway determination because the proposal has:
 - not demonstrated strategic merit
 - demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

Strategic Merit

The Panel agreed that the Planning Proposal had Strategic Merit given:

- The Planning Proposal would provide a significant public benefit as it would result in 4.35 hectares of high value conservation lands being incorporated into the Jervis Bay National Park. The inclusion of the land would also help protect Wowly Creek (Gully) which is a sensitive Intermittent Closed and Open Lakes and Lagoons (ICOLL). The ICOLL was identified in the Illawarra Shoalhaven Regional Plan 2014, May 2021 as a *sensitive coastal estuary that is susceptible to the impacts of land use development*. The Strategy seeks to *'Protect coastal lakes and estuaries by implementing the NSW Government's Risk-Based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning Decisions, with sensitive coastal lakes and estuaries prioritised. Strategic planning and local plans should support improved water quality and ecological function.'*

- The Planning Proposal would respond to changing circumstances. Shoalhaven City Council's arguments that the Planning Proposal is inconsistent with the existing strategic context is not supported by the Panel given this context was established nearly 20 years ago. There is an identified housing crisis in the region and delivering housing supply is a priority issue for NSW across all levels of Government. The Planning Proposal is consistent with applicable strategic planning documents, particularly as they relate to the general objectives for housing. These include the Illawarra Shoalhaven Regional Plan 2041 (May 2021) and the Shoalhaven 2040, Local Strategic Planning Statement (July 2020).
- The provision of additional housing in this location is supported by the Panel as:
 - The housing can be serviced without placing pressure on Council's infrastructure delivery program;
 - The environmental impacts associated with the delivery of housing on the site are likely to be able to be managed subject to appropriate design;
 - Residential development on the site would be contiguous with existing residential development; and
 - The Panel is satisfied that the Planning Proposal would not establish a precedent as it would deliver a significant public benefit with the incorporation of high conservation lands into the National Parks estate with the added protection of a sensitive ICOLL.

Site Specific Merit

The Panel agreed that the Planning Proposal should be able to achieve Site Specific Merit subject to revisions addressing site constraints noting that:

- The Planning Proposal seeks to rezone the site R1 General Residential consistent with the majority of neighbouring land, with the same Minimum Lot Size (LSZ) (consistent with the neighbouring R1 and R2 Low Density Residential zoned land), and the same Height of Building (HOB) (consistent with the neighbouring R2 zoned land). There are no Floor Space Ratio (FSR) controls for the R1 and R2 zoned land in Callala Bay;
- The proposed residential footprint is located primarily on the cleared areas of the site which have relatively low biodiversity values; and
- The site is within walking and cycling distance to local services in Callala Bay, including a public school, sporting fields, shopping centre and medical facilities.

The Panel was however, concerned about the uncertainty surrounding the built form outcomes for the site and concluded that there is a need for a more detailed design response to site constraints to ensure an appropriate lot and street layout, landform and built form outcome that complement adjoining land uses.

Panel recommendations



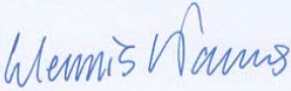
Consequently, the Panel recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal should be revised to address the following:

- All proposed development works including proposed roads are to be retained on the subject land and the masterplan and other supporting plans revised accordingly;
- Proposed Lot A on the Preliminary Earthworks Plan (dated 22/11/2020) is to be zoned R1 General Residential whilst proposed Lot B on the Plan is to be zoned R2 Low Density Residential;
- Insert a maximum building height of 8.5m for both the R1 and R2 zoned lands;
- Reduce the maximum lot size from 40ha to 500m² for both the R1 and R2 zoned lands;
- The drainage lines and triangular parcel of land between these two lines are to be zoned C3 Environmental Management;
- The drainage lot secured for development immediately to the south under separate development consent should be unencumbered by any works associated with this Planning Proposal;
- An Urban Design Report is to be prepared to identify and address built form outcomes having regard to flooding, earthworks – cut and fill, bushfire management and Asset Protection Zones (APZs), and subdivision layout and road design. The Urban Design Report should also identify the need for any site specific provisions that should be applied to the site;

- If required, prepare a site-specific development control plan (DCP) for the site to support the proposal, which is to be exhibited with the Planning Proposal;
- Provide certainty around the transfer of the conservation lands to public ownership including the mechanism and timing. This detail should accompany the Planning Proposal should it proceed to public exhibition; and
- The Planning Proposal's supporting studies including the biodiversity assessment, flood study, integrated water quality management assessment, Aboriginal cultural heritage assessment, traffic study, Stage 1 preliminary contaminated site assessment and bushfire hazard risk assessment are to be updated where required to reflect the revisions to the Planning Proposal.

The revised Planning Proposal including supporting reports and studies is to be submitted to the Panel within 3 months from the determination date of this Record of Decision. The Panel will reconvene following the receipt of the revised Planning Proposal to assess and determine whether the Proposal has met the Panel's recommendations and is suitable for submission for a Gateway determination.

Shoalhaven City Council has previously declined to progress the proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the Planning Proposal Authority (PPA) for this Planning Proposal.

PANEL MEMBERS	
 Chris Wilson (Chair)	 Juliet Grant
 Glennis James	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2023-10 – Shoalhaven LGA - Lot 5 Sealark Road, Callala Bay (PP-2022-4162)
2	LEP TO BE AMENDED	Shoalhaven Local Environmental Plan (LEP) 2014
3	PROPOSED INSTRUMENT	The proposal seeks to: <ul style="list-style-type: none"> • Rezone the land from C3 Environmental Management to part R1 General Residential and part C2 Environmental Conservation • Reduce the minimum lot size from 40ha to 500m² (R1 zoned lands) and 4ha (C2 zoned land); and • Insert a maximum building height of 8.5m (R1 zoned lands)
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Briefing report from Department of Planning and Environment, 21 August 2023
5	SITE INSPECTION AND BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection with Department of Planning and Environment (DPE): 10.00am – 10.50am, 31 August 2023

- **Panel members in attendance:** Chris Wilson (Chair), Juliet Grant and Glennis James
- **DPE staff in attendance:** Graham Towers, George Curtis, Lisa Kennedy & Adam Williams
- **Key issues discussed:** History of planning proposal; proposal – public benefit, zonings, Floor Space Ratio (FSR), Height of Building (HOB) & built form; site constraints – topography, flooding & native vegetation cover; character of locality - residential, National Park & Wowly Creek
- **Briefing with Department of Planning and Environment (DPE):** 11.50am – 12:14pm, 31 August 2023
 - **Panel members in attendance:** Chris Wilson (Chair), Juliet Grant and Glennis James
 - **DPE staff in attendance:** Graham Towers, George Curtis, Lisa Kennedy & Adam Williams
 - **Key issues discussed:**
 - Planning proposal history and Department’s assessment of previous planning proposal
 - Strategic Planning context – Jervis Bay Settlement Strategy, Shoalhaven Local Strategic Planning Statement, Shoalhaven Growth Management Strategy, no local housing strategy
 - Community benefits and Voluntary Planning Agreement with National Parks and Wildlife Service for land dedication to National Park Estate
 - Site specific issues - flooding, cut and fill, bushfire management (Asset Protection Zones), proposed masterplan
- **Briefing with Shoalhaven City Council:** 12.16pm - 1:14pm, 31 August 2023
 - **Panel members in attendance:** Chris Wilson (Chair), Juliet Grant and Glennis James
 - **DPE staff in attendance:** Graham Towers, George Curtis, Lisa Kennedy & Adam Williams
 - **Council representatives in attendance:** Coralie Bell, Jenna Teague, Eric Hollinger & Kaitlin Aldous
 - **Key issues discussed:**
 - Subdivision & planning proposal history of site, preparation of studies
 - Strategic Planning context – Illawarra Shoalhaven Regional Plan – housing, sensitive estuary, water quality; Jervis Bay Settlement Strategy; Ministerial Direction 4.1 Flooding – flood planning area, fill, flood storage
 - Precedent in supporting planning proposal
 - Site specific issues - flooding, cut and fill, stormwater management & water quality, Endangered Ecological Community & wetlands, bushfire management (Asset Protection Zones), proposed masterplan & draft subdivision plan, local character & amenity
 - Infrastructure servicing
 - Proposed R1 General Residential or R2 Low Density Residential zone – potential for medium density/dual occupancies

- **Briefing with PMR Architects & Town Planners & Landholders (Proponent):** 1:38pm – 2:49pm, 31 August 2023
 - **Panel members in attendance:** Chris Wilson (Chair), Juliet Grant and Glennis James
 - **DPE staff in attendance:** Graham Towers, George Curtis, Lisa Kennedy & Adam Williams
 - **Proponent representatives in attendance:** Michael Mantei, Patrick Mahedy & Ashley Bond
 - **Key issues discussed:**
 - Planning proposal history and proponent’s request that Panel is appointed PPA
 - Strategic Planning context – Jervis Bay Settlement Strategy; Precedent in supporting planning proposal
 - Ministerial Direction 4.1 Flooding – flood planning area, fill, flood storage, will need flood maps, water quality, dedication of drainage reserve
 - Bushfire management – road & 19m of residential properties are Asset Protection Zones
 - Proposed R1 General Residential or R2 Low Density Residential zone – 12 single & 18 medium density/dual occupancies
 - Could do a site specific Development Control Plan (DCP), haven’t prepared a subdivision plan
 - Urban design & form – setback from Sealark Road
 - Public benefit offer – dedication of land to the National Park Estate, exhibition of offer with exhibition of a planning proposal
 - Further work to revise/complete the planning proposal
- **Panel Discussion:** 2:06pm – 2.23pm, 31 August 2023
 - **Panel members in attendance:** Chris Wilson (Chair), Juliet Grant and Glennis James
 - **DPE staff in attendance:** Graham Towers, George Curtis, Lisa Kennedy & Adam Williams