

Pre-Gateway Report – PP-2022-4162

Amend planning controls for Lot 5 DP 1225356, Sealark Road, Callala Bay to amend the zoning, height and minimum lot size to produce 15 residential lots and dedicate 4 hectares of land to National Parks and Wildlife Service.

1 Introduction

The purpose of this report is to update the Southern Regional Planning Panel (Panel) on the status of the planning proposal (PP) at Lot 5 DP 1225356, Sealark Road, Callala Bay (PP-2022-4162). The report makes a recommendation to the Panel to submit the proposal to the Department of Planning, Housing and Infrastructure (the Department) for Gateway Assessment, with amendments.

On 5 October 2023, the Panel determined at a rezoning review that the proposal had strategic and site merit (**Attachment B**), however revisions were needed prior to submitting the proposal to the Department for Gateway Assessment. Subsequently, the proposal has been updated and has partially addressed these conditions.

Table 1 – Overview of planning proposal

Element	Description
LGA	Shoalhaven City Council
LEP to be amended	Shoalhaven Local Environment Plan (SLEP) 2014
Address	Lot 5 DP 1225356, Sealark Road, Callala Bay 2540
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment. <input type="checkbox"/> Council failed to indicate support for the proposal within 90 days.
Brief overview of the timeframe/ progress of the planning proposal	<p>January 2019 – The previous version of the planning proposal was lodged with council.</p> <p>May 2019 – Gateway Determination issued for previous version of the planning proposal (PP-2021-990).</p> <p>May 2021 – Gateway Determination completion date lapsed.</p> <p>December 2021 – Department issued a ‘do not proceed’.</p> <p>20 December 2022 – Current version of planning proposal lodged with Council.</p> <p>13 March 2023 – Council resolved not to support the proposal due to a lack of strategic justification.</p> <p>24 April 2023 – Proponent lodges a Rezoning Review.</p>

Element	Description
	<p>5 October 2023 – The Panel determined that the proposal should be submitted for a Gateway determination subject to the proposal being revised to address several items.</p> <p>22 December 2023 - Revised planning proposal and bushfire report submitted to Agile Planning.</p> <p>16 January 2024 – Revised Technical reports submitted to Agile Planning.</p> <p>18 January 2024 - Urban Design Report and Biodiversity Development Assessment Report submitted to Agile Planning.</p> <p>29 January 2024 - Status of deed of transfer with National Parks submitted to Agile Planning.</p>
<p>Department contact:</p>	<p>Kimberley Beencke, Senior Planning Officer, Agile Planning</p>

1.1 The site and local context

The subject site (**Figure 1**) is located at Sealark Road, Callala Bay and is legally described as Lot 5, DP 1225356. The site is currently zoned C3 Environmental Management (**Figure 2**).

The site is an irregular shape with an area of 6.05ha. Its primary frontage is to Sealark Road and secondary frontage to Monarch Place. The northern section of the site is largely cleared of native vegetation. However, the site is heavily vegetated along the eastern portion of the site.

To the north and east the site is the Jervis Bay National Park with Wowly Creek (Gully) situated along the eastern boundary of the site. To the south, along Monarch Place and west, along Sealark Road is low density residential development.



Figure 1: Subject site (source: Near Maps 2024)

1.2 Planning proposal

Table 2 – Overview of planning proposal

Element	Description
Site area	6.05ha
Proposal summary	<p>The planning proposal seeks to amend the SLEP 2014 to enable residential development of approximately 25 dwellings.</p> <p>In summary, the proposal seeks to make the following amendments:</p> <ul style="list-style-type: none"> • Rezone part of the site to R2 Low Density Residential, R1 General Residential and C2 Environmental Conservation. • Apply an 8.5m height of building control to the R2 Low Density Residential and R1 General Residential zoned land. • Reduce the minimum lot size from 40ha to 500m² for the R2 Low Density Residential and R1 General Residential zoned land.
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> • SLEP 2014 • Illawarra Shoalhaven Regional Plan 2041 • Local Strategic Planning Statement – Shoalhaven 2040 • Community Strategic Plan - Shoalhaven 2032 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Primary Production) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • Shoalhaven Growth Management Strategy • Jervis Bay Settlement Strategy (JBSS) 2003 • Shoalhaven Affordable Housing Strategy, December 2017

The planning proposal (**Attachment A**) seeks to amend the SLEP per the changes in **Table 3** below.

Table 3 – Current and proposed controls

Control	Current	Proposed
Zone	C3 Environmental Management	<ul style="list-style-type: none"> • R1 General Residential • R2 Low Density Residential • C2 Environmental Conservation • C3 Environmental Management
Maximum height of the building	n/a	<ul style="list-style-type: none"> • 8.5m to be applied to the R1 and R2 zoned land.

Control	Current	Proposed
Minimum lot size	40 ha	<ul style="list-style-type: none"> 500m² to be applied to the R1 and R2 zoned land.

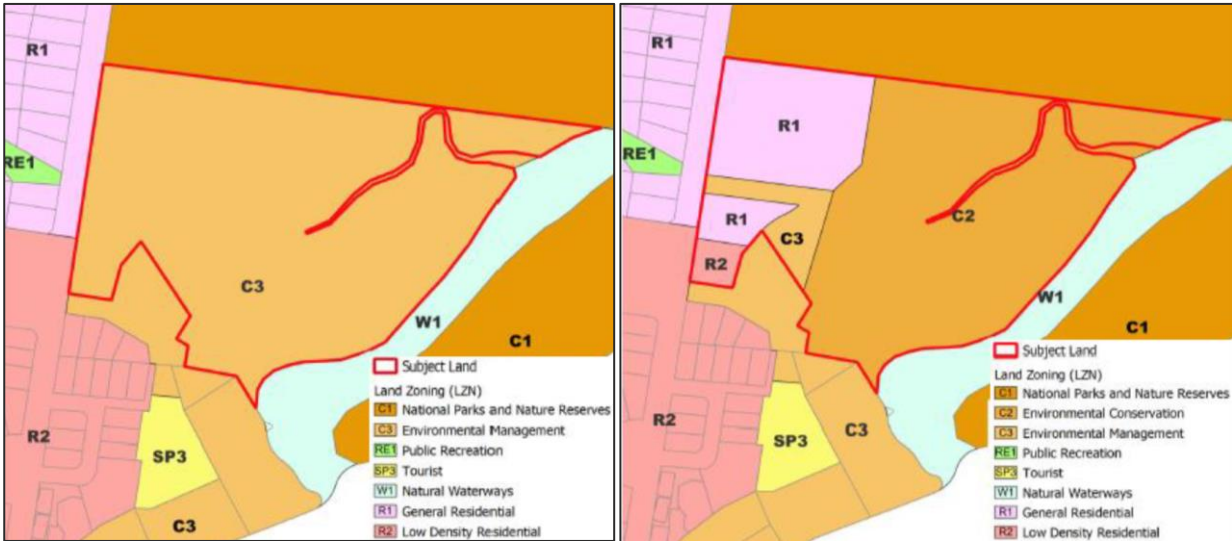


Figure 2: Current zoning map (left) and proposed zoning map (right) (source: Planning proposal 2023)

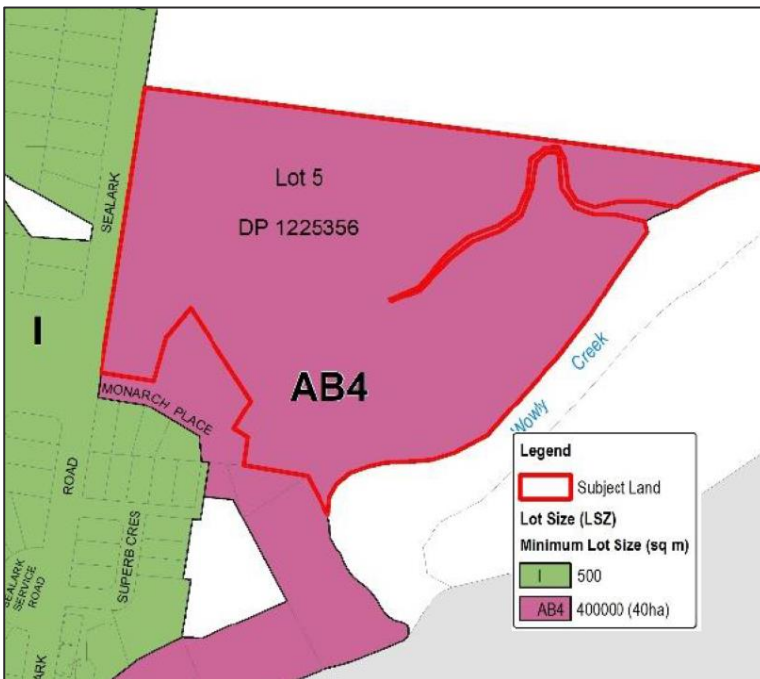


Figure 3: Current Minimum Lot size (source: Planning proposal 2023)

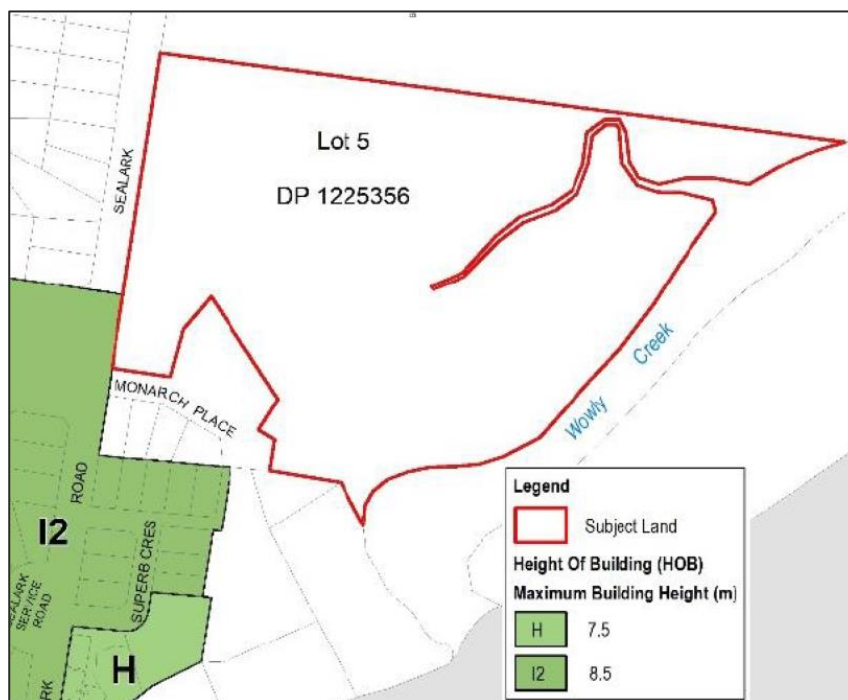


Figure 4: current height of buildings (source: Planning proposal 2023)

Some of the maps submitted as part of the planning proposal package are incorrect and apply standards to areas not seeking to be amended as part of the proposal. The following mapping errors have been identified:

Minimum Lot size Maps

- Align proposed minimum lot size changes to align with proposal Residential zones, excluding the environmental zones
- Remove minimum lot size changes not associated with the proposal

Maximum building height Maps

- Align proposed building height changes to align with proposal Residential zones, excluding the environmental zones.

Prior to lodging the proposal for Gateway Determination, the planning proposal's maps need to be updated to correctly identify the changes being sought as part of this LEP amendment.

2 Rezoning review

On 31 August 2023, the Southern Planning Panel considered a rezoning review for this planning proposal as Shoalhaven Council had notified the proponent that it will not support the proposed amendment.

The Panel resolved that the planning proposal demonstrated strategic merit and should be able to achieve site specific merit, subject to amendments. The Panel's determination and reasons for its decision are provided at **Attachment B**.

The Panel appointed itself as the planning proposal authority (PPA).

3 Assessment against Panel conditions

On 29 January 2024, the proponent provided a complete revised planning proposal and supporting information in response to the Panel's conditions (**Attachments A-A13**).

The Agile Planning team has undertaken an assessment of the revised planning proposal and additional information against the Panel's conditions (**Attachment C**). The Agile Planning team is satisfied that the proposal has been generally revised to meet the Panel's conditions, however, there are still conditions that are yet to be met.

The proponent's response and Agile Planning team's comments are discussed in detail below.

Condition 1 – All proposed development works are to be retained on the subject land and Condition 6 – The drainage lot immediately to the south should be unencumbered by any works associated with this Planning Proposal.

Proponent's Response:

The proponent has prepared two development options to demonstrate the impact the location of the perimeter road and Asset Protection Zone (APZ) has on development opportunities. The proponent considers that accommodating both these safety features within Lot B would make development unfeasible and therefore, has proposed progressing with an option locating both the perimeter road and APZ off the subject site.



Figure 5 Proposed site layout and perimeter road location (source: Urban Design report, 2024)

Legal advice from Madison Marcus Lawyers (January 2024) (**Attachment A12**) was also submitted in support of the proposed road, stating that:

- the lot to the south of the site is a designated road reserve and therefore the proposed construction of a road is entirely appropriate.
- the planning proposal, in terms of amendments to SLEP 2014 controls, will not affect Council's land.
- under the *Roads Act 1993*, permission to construct the proposed road (or portion thereof) lies with Shoalhaven Council, or otherwise the Land and Environment Court.

Agile Planning Comments:

The adjacent lot is identified as a road reserve, however it is currently occupied by a drainage pond. This lot is not owned by the proponent and is owned by Shoalhaven Council. Furthermore, Agile Planning has not seen any evidence to demonstrate Shoalhaven Council's consent for the work (as landowner), or indicative support for this approach.

In addition to the proposed road, the proponent also seeks to located part of the required APZ on the adjacent Council site. The Agile Planning team is unaware of any commitment from Shoalhaven Council to support the location and/or maintenance of an APZ on their site to support development on the subject site.

The Agile Planning team notes the supporting subdivision options (**Attachment A14**) for the site show that it is capable of delivering an APZ and perimeter road within the site boundary and still be able to undertake development, albeit with less development yield than proposed by the proponent.

Further concerns are raised with the proposed APZ. As per section 3.2.5 of Planning for Bushfire (2019), APZ's should be contained within the development site and not utilise space from adjoining land. The proposal has not achieved this. Should an APZ encroach on adjoining land, an easement under the terms of s.88B of the Conveyancing Act 1919 is required.

The continued use of land outside of the subject site for a perimeter road is inconsistent with the Panel's conditions. The Agile Planning Team recommends that the proposal is updated to align with the Panel's condition.

Should the proponent not wish to revise the proposal in line with the Panel's original decision, the Agile Planning team recommends that the Panel no longer proceed with the Planning Proposal and the making of this local environmental plan amendment.

Condition 2 – Proposed Lot B on the Plan is to be zoned R2 Low Density Residential.

Proponent's Response:

The new drainage solution (**Attachment A03**) has been prepared to improve flooding outcomes on the site and maximise development opportunities on Lot B. The proposal seeks to fill the southern drainage channel and direct water to the northern channel, reducing both the drainage point of entry and drainage channel on the site from two to one. As a result, the proposal seeks to apply a C3 Environmental Management zone for the remaining channel and apply a residential zone for the land over the proposed filled channel.

The revised planning proposal now seeks to apply the R1 General Residential zone to the northern portion of Lot B and a R2 Low Density Residential zone to the southern portion of Lot B (**Figure 5**). The R1 General Residential Zone has been proposed to enable multi-dwelling housing on the lot and ensure the drainage channel can be privately maintained. The proponent states that Lot B needs to be developed and maintained or it will become a bushfire hazard. The split zoning generally aligns with the zoning patterns east of Monarch Place.

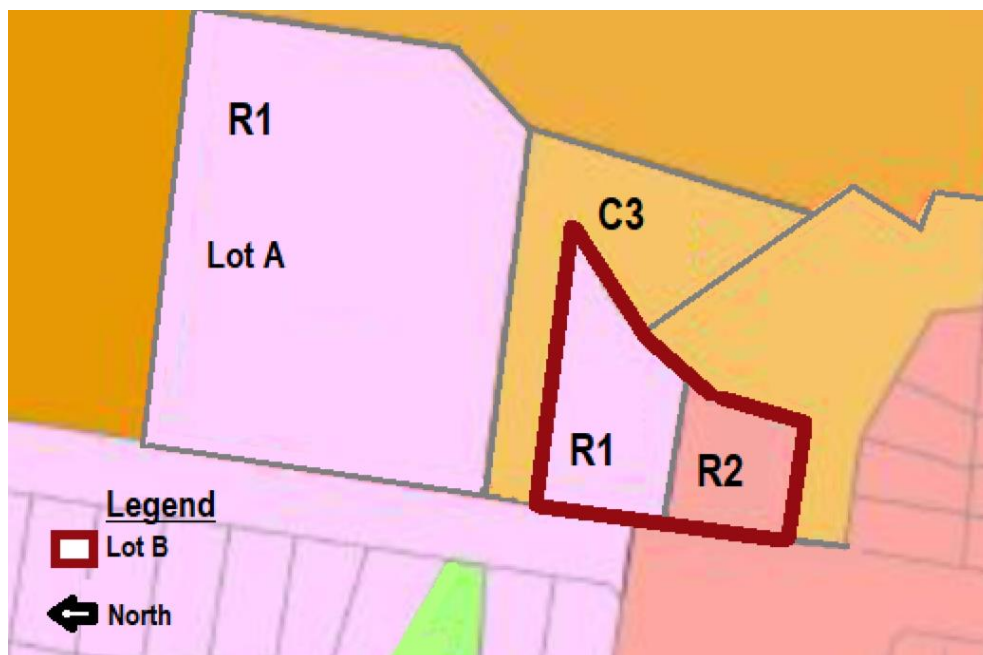


Figure 6 Proposed zones (source: DPHI amended planning proposal, 2023)

Agile Planning Comments:

The Agile Planning team notes that the proposal presented to the Panel previously proposed to zone Lot B R1 General Residential. The Panel didn't not support this and required the Lot B be zoned R2 Low Density Residential to ensure the built form responded to the site's constraints.

Council has not been consulted on the proposed new drainage solution, nor has it been approved. Given the assessment and approval of the new drainage channel falls outside of the scope of this planning proposal, the Agile Planning team is unable to comment on the adequacy of this drainage solution.

The proponent has not presented any compelling planning reasons to support the proposed R1 General Residential Zone and therefore the Agile Planning team recommends that proposal is updated to align with the Panel's condition of zoning Lot B R2 Low Density Residential.

Should the proponent not wish to revise the proposal in line with the Panel's original decision, the Agile Planning team recommends that the Panel no longer proceed with the Planning Proposal and the making of a local environmental plan amendment.

4 Recommendation

The Panel notes the Agile Planning team's comments and recommendation that the planning proposal be updated in line with its original decision, namely:

- apply an R2 Low Density Residential zone to the entirety of Lot B; and
- ensure all works are contained within the site boundary.

Should the proponent agree to these changes, the mapping supporting the proposal should also be updated to accurately reflect the changes proposed as part of this proposal. This includes:

- All maps reflect the correct zoning footprints; and
- Update the minimum lot size map to accurately depict the existing SLEP 2014 controls as they apply to the east of the site.

Should the proponent not agree to update the proposal in line with the Panel's decision, it is recommended that the Panel determine the proposal does not demonstrate site specific merit, and no longer proceed with the Planning Proposal and the making of a local environmental plan amendment.

Attachments

Attachment A – Planning proposal

Attachment A01 – Biodiversity Development Assessment Report (December 2023)

Attachment A02 – Flood Study Report (January 2024)

Attachment A03 – Integrated Water Cycle Assessment (January 2024)

Attachment A04 – Aboriginal Cultural Heritage Assessment (March 2020)

Attachment A05 – Traffic Impact Assessment (January 2024)

Attachment A06 – Report on Geotechnical Investigation (August 2019)

Attachment A07 – Stage 1 Contamination Preliminary Site Investigation (August 2019)

Attachment A08 – Bushfire Hazard Risk Assessment (July 2020)

Attachment A09 – Bushfire Strategic Study (December 2023)

Attachment A10 – Status of Proposed Dedication (January 2024)

Attachment A11 – Letter from SCC-Mr Gordon Clark (22 May 2007)

Attachment A12 – Legal advice about roads location (December 2023)

Attachment A13 – Urban Design Report (January 2024)

Attachment A14 – Reply to Panels Conditions (January 2024)

Attachment B – Record of Decision Rezoning Review (RR-2023-10)

Attachment C – Agile Planning's assessment against Panel recommendations

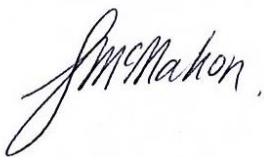


_____ (Signature)

_____ 07/03/2024 _____ (Date)

Douglas Cunningham

Manager, Agile Planning



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_____ 12/03/24 _____ (Date)

Louise McMahon

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Pre-Gateway Determination Report

PP-2022-4162 / RR-2023-10



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