

PLANNING PROPOSAL – PP033

Shoalhaven Local Environmental Plan 2014 2017 Housekeeping Amendment Instrument Changes

Prepared by
Planning, Environment & Development Group
Shoalhaven City Council

File: 57580E
Version: Exhibition

Date: March 2019

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541
telephone (02) 4429 3111
facsimile (02) 4422 1816
e-mail planning@shoalhaven.nsw.gov.au
internet www.shoalhaven.nsw.gov.au

Disclaimer

Every effort has been made to provide accurate and complete information.
However, Shoalhaven City Council assumes no responsibility for any direct, indirect, incidental, or consequential damages arising from the use of information in this document.

Copyright Notice

No part of this publication may be reproduced in any form, or stored in a database or retrieval system, or transmitted or distributed in any form by any means, electronic, mechanical photocopying, recording, or otherwise without written permission from Shoalhaven City Council. All rights reserved.

Copyright © 2019, Shoalhaven City Council

Table of Contents

1	Introduction	5
1.1	Subject Land.....	5
1.2	Background.....	6
2	Part 1 – Intended Outcome.....	6
3	Part 2 – Explanation of Provisions	7
4	Part 3 – Justification	16
4.1	Need for the Planning Proposal (Section A)	16
4.1.1	Is the Planning Proposal a result of any strategic study or report?	16
4.1.2	Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	16
4.2	Relationship to strategic planning framework (Section B).....	16
4.2.1	Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?	16
4.2.2	Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?.....	17
4.2.3	Is the Planning Proposal consistent with applicable state environmental planning policies?	17
4.2.4	Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?	17
4.3	Environmental, Social and Economic Impact (Section C)	21
4.3.1	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?	21
4.3.2	Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?	21
4.3.3	How has the Planning Proposal adequately addressed any social and economic effects?	22
4.4	State and Commonwealth Interests (Section D)	22
4.4.1	Is there adequate public infrastructure for the Planning Proposal?.....	22
4.4.2	What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	22
5	Part 4 – Mapping	22
6	Part 5 - Community Consultation.....	22
7	Part 6 – Project Timeline.....	23

Tables

Table 1: Summary of LEP instrument amendments	6
Table 2: Planning Proposal Proposed Instrument Changes	7
Table 3: Project Timeline	23

Figures

Figure 1: Subject land	5
------------------------------	---

Attachments

- Attachment A – Evaluation criteria for the delegation of plan making functions
- Attachment B – Council report and minute, 11 September 2018
- Attachment C – SEPP Checklist
- Attachment D – S117 Directions checklist
- Attachment E – E2 zoned land greater than 40ha

1 Introduction

The 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP) seeks to amend Shoalhaven Local Environmental Plan (LEP) 2014 to improve the operation and accuracy of the Plan. The amendment responds to a range of issues that have arisen over the past year since the previous housekeeping amendment.

It is requested that Council be given delegation for plan making functions for this PP. The evaluation criteria for delegation is located at **Attachment A**.

This PP has been prepared in line with '*A Guide to preparing Local Environmental Plans*' and '*A Guide to preparing planning proposals*'.

1.1 Subject Land

The PP applies to all land in the Shoalhaven Local Government Area.

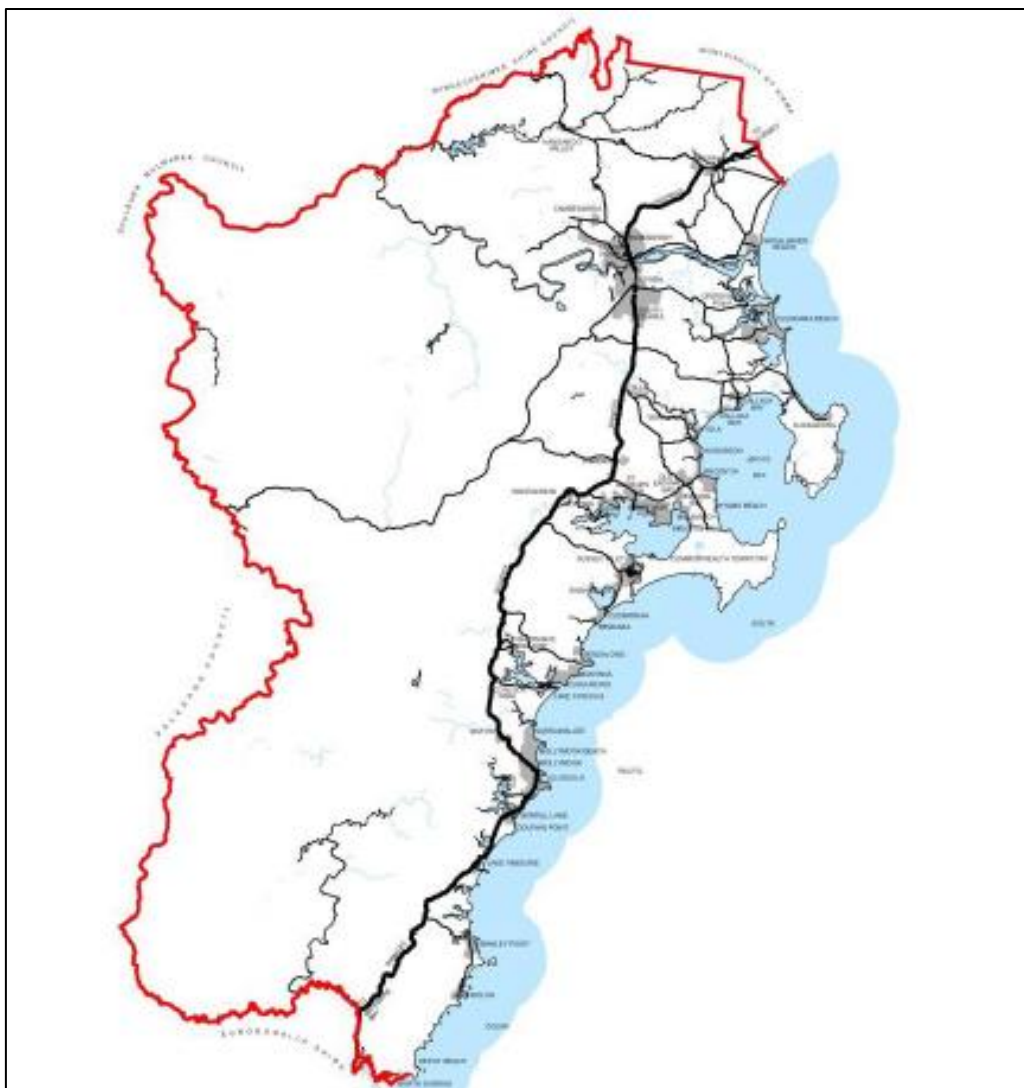


Figure 1: Subject land

1.2 Background

Shoalhaven LEP 2014 commenced on 22 April 2014. It consolidated planning controls into the one LEP and also transitioned existing controls into the NSW Government's Standard Instrument LEP format.

As part of the completion, and also since Shoalhaven LEP 2014 has been in force, Council has identified a number of housekeeping amendments needed to improve the operation and accuracy of the Plan. Council continuously reviews Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary, and delivers positive outcomes for the community.

Due to the extent of the mapping changes proposed as part of the 2017 Housekeeping Amendment, the amendment has been split into two PPs:

- 2017 Housekeeping Amendment – Instrument Changes (this PP).
- 2017 Housekeeping Amendment – Minor Mapping Changes (future PP).

On 11 September 2018, Council's Development Committee resolved (MIN18.699) to submit this PP to the NSW Department of Planning and Environment for a Gateway determination. Refer to **Attachment B** for a copy of the Council Report and Minutes.

2 Part 1 – Intended Outcome

The intended outcome of this PP is to amend or add provisions to the LEP instrument to improve the Plan's operation and address issues that have arisen since its commencement in 2014. The PP intends to amend the LEP instrument as summarised in **Table 1**.

Table 1: Summary of LEP instrument amendments

Item	Summary of proposed amendment
1	Amend references to the <i>Crown Lands Act 1989</i> in clause 1.9A(2) to reflect the repeal of the Act in June 2018.
2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
4	Amend clause 4.1(4) to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.
5	Insert a new subclause to clause 4.1F to make it clear that clause 4.1F is not subservient to clause 4.1.
6	Amend clause 4.2B(2) to only apply to land in a RU1, RU2 or RU4 zone.

7	Amend clause 4.2G(4) to delete reference to permissibility of a dwelling following subdivision.
8	In relation to Schedule 1 Additional permitted uses (6) 'Use of certain land at Manyana', update the description of the land to which Schedule 1 (6) applies.
9	In relation to Schedule 2 Exempt Development 'Temporary events on public land and public roads and associated temporary structures', insert additional criteria in subclause 2 in relation to Crown land that is vested in Council, or of which Council is the Crown lands manager.
10	In relation to Schedule 2 Exempt Development, insert new exempt development criteria relating to: <ul style="list-style-type: none"> • A-frame sign boards and structures. • Merchandise displays.

3 Part 2 – Explanation of Provisions

To achieve the intended outcome outlined in Section 2 (Part 1 – Intended Outcome) above, it is proposed to amend Shoalhaven LEP 2014 as outlined in **Table 2**.

Table 2: Planning Proposal Proposed Instrument Changes

Item	Clause	Proposed Amendment
1	Clause 1.9A Suspension of covenants, agreements and instruments	<p>Issue and Justification: The <i>Crown Lands Act 1989</i> was repealed in June 2018 and replaced by the <i>Crown Land Management Act 2016</i>, as was the <i>Trustees of Schools of Arts Enabling Act 1902</i>. SLEP 2014 currently refers to the <i>Crown Lands Act 1989</i> in clause 1.9A, clause 3.3, clause 5.2 and in the Dictionary.</p> <p>Clause 1.9A, not being a compulsory Standard Instrument clause, should be amended to reflect the new Act and content within.</p> <p>It is noted that the Standard Instrument LEP will require amendment in relation to clause 3.3, clause 5.2 and the Dictionary as follows:</p> <ul style="list-style-type: none"> • Standard Instrument compulsory clause 3.3(2)(i) refers to "land reserved or dedicated under the <i>Crown Lands Act 1989</i> for the preservation of flora, fauna, geological formations or for other environmental protection purposes". This reference should be updated. • Standard Instrument compulsory clause 5.2(5)(c) refers to "reservations of minerals (within the meaning of the <i>Crown Lands Act 1989</i>)". This reference should be updated.

		<ul style="list-style-type: none"> The Dictionary term 'Crown reserve' refers to the <i>Crown Lands Act 1989</i> and the <i>Trustees of Schools of Arts Enabling Act 1902</i>. These references should be updated/removed. The Dictionary term 'Public land' includes the definition of 'Public land' within the <i>Local Government Act 1993</i>. This definition has been amended to refer to the <i>Crown Land Management Act 2016</i> and no longer references the <i>Trustees of Schools of Arts Enabling Act 1902</i>. This should be reflected in the Standard Instrument LEP. <p>These amendments will need to be addressed by the Department of Planning and Environment as part of a separate process.</p> <p>Proposed Amendment: Amend the reference to the <i>Crown Lands Act 1989</i> in clause 1.9A(2) as follows. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>1.9A Suspension of covenants, agreements and instruments</p> <p>(2) <i>This clause does not apply:</i></p> <p>(a) <i>to a covenant imposed by the Council or that the Council requires to be imposed, or</i></p> <p>(b) <i>to any relevant prescribed instrument within the meaning of section 13.4 183A of the Crown Land Management Act 2016 Crown Lands Act 1989, or</i></p> <p>(c) <i>to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or</i></p> <p>(d) <i>to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or</i></p> <p>(e) <i>to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or</i></p> <p>(f) <i>to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or</i></p> <p>(g) <i>to any planning agreement within the meaning of Division 6 of Part 4 of the Act.</i></p>
2	<p>Land Use Table</p> <p>RU1 Primary Production zone</p> <p>RU2 Rural Landscape zone</p>	<p>Issue and Justification: The NSW Government recently released an amendment to the Standard Instrument Local Environmental Plan to include provision for a new land use term 'artisan food and drink industry'.</p> <p>As a result, the land use 'artisan food and drink industry' is now permissible with consent in the following Shoalhaven LEP 2014 zones:</p>

		<ul style="list-style-type: none"> • RU5 Village • B5 Business Development • B7 Business Park • IN1 General Industrial • IN2 Light Industrial • IN4 Working Waterfront <p>It is considered appropriate for the term to also be permissible with consent in the RU1 Primary Production and RU2 Rural Landscape zones to support the growing artisan and craft food and drink industry in Shoalhaven.</p> <p>Proposed Amendment: Insert ‘artisan food and drink industry’ as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones. Note: red text depicts addition.</p> <p>Zone RU1 Primary Production</p> <p>3 Permitted with consent</p> <p><i>Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Artisan food and drink industry; Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Crematoria; Depots; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Educational establishments; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Food and drink premises; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Information and education facilities; Intensive livestock agriculture; Intensive plant agriculture; Marinas; Markets; Mooring pens; Moorings; Offensive industries; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Rural workers’ dwellings; Tourist and visitor accommodation; Veterinary hospitals; Water recreation structures; Water supply systems</i></p> <p>Zone RU2 Rural Landscape</p> <p>3 Permitted with consent</p> <p><i>Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Artisan food and drink industry; Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs;</i></p>
--	--	--

		<p><i>Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Crematoria; Depots; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Food and drink premises; Freight transport facilities; Funeral homes; Group homes; Hazardous industries; Helipads; Home-based child care; Home businesses; Home industries; Information and education facilities; Marinas; Markets; Mooring pens; Moorings; Offensive industries; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Tourist and visitor accommodation; Veterinary hospitals; Water recreation structures; Water supply systems</i></p>
3	<p>Land Use Table</p> <p>E2 Environmental Conservation zone</p>	<p>Issue and Justification: ‘Dual occupancies (attached)’ are prohibited in the E2 Environmental Conservation zone.</p> <p>‘Dual occupancies (attached)’ have limited additional impact above and beyond the impact of a single dwelling due to the fact that they are required to be co-located and have a common roofline. As such, it is considered appropriate for ‘dual occupancies (attached)’ to be permissible with consent in the E2 Environmental Conservation zone.</p> <p>Proposed Amendment: Insert ‘dual occupancies (attached)’ as a land use permitted with consent in the E2 Environmental Conservation zone. Note: red text depicts addition.</p> <p>Zone E2 Environmental Conservation</p> <p>3 Permitted with consent</p> <p><i>Aquaculture; Bed and breakfast accommodation; Boat sheds; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Home businesses; Recreation areas; Research stations; Roads; Sewerage systems; Water recreation structures; Water supply systems</i></p>
4	<p>Clause 4.1</p> <p>Minimum subdivision lot size</p>	<p>Issue and Justification: The current situation where the lot size map is applied to roads is causing issues in relation to road closures. The closure is technically a subdivision creating a lot smaller than the minimum lot size.</p> <p>It would be appropriate to amend clause 4.1 to facilitate the creation of lots smaller than the prescribed lot size where the subdivision is resulting from a road closure.</p>

		<p>Proposed amendment: Amend clause 4.1(4) to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map. Note: red text depicts addition.</p> <p>4.1 Minimum subdivision lot size</p> <p>(4) <i>This clause does not apply in relation to the subdivision of any land:</i></p> <p>(a) <i>by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or</i></p> <p>(b) <i>by any kind of subdivision under the Community Land Development Act 1989.</i></p> <p>(c) <i>required to identify a road closure carried out in accordance with Part 4 of the Roads Act 1993.</i></p>
5	<p>Clause 4.1F</p> <p>Minimum subdivision lot size for community scheme and strata plan lots</p>	<p>Issue and Justification: Clause 4.1AA of the Standard Instrument LEP was recently amended. As part of this amendment, subclause 4.1AA(4) was added to make it clear that clause 4.1 does not override the provisions of clause 4.1AA. Clause 4.1AA(4) reads “<i>This clause applies despite clause 4.1</i>”.</p> <p>It is proposed to add the same wording to clause 4.1F to make it consistent with clause 4.1AA and therefore making it clear that clause 4.1 does not override the provisions of clause 4.1F.</p> <p>This ensures consistency between clauses in the LEP and negates any argument that clause 4.1F is subservient to clause 4.1.</p> <p>Proposed amendment: Insert a new subclause to clause 4.1F to make it clear that clause 4.1F is not subservient to clause 4.1. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>4.1F Minimum subdivision lot size for community scheme and strata plan lots</p> <p>(4) <i>This clause applies despite clause 4.1.</i></p> <p>(4) (5) <i>In this clause:</i></p> <p>association property <i>has the same meaning as in the Community Land Development Act 1989.</i></p> <p>common property <i>has the same meaning as in the Strata Schemes (Freehold Development) Act 1973.</i></p>
6	Clause 4.2B	<p>Issue and Justification: Clause 4.2B specifies that land identified as prime crop and pasture land may only be</p>

	<p>Subdivision of certain land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4</p>	<p>subdivided where each lot created by the subdivision will contain at least 10 hectares of prime crop and pasture land.</p> <p>The clause relies on the prime crop and pasture land definition which is defined as follows:</p> <p><i>prime crop or pasture land means:</i></p> <p>(a) Rural land identified by the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services as comprising Classes 1, 2 or 3 of a classification set out in the Rural Land Evaluation Manual (ISBN 0724044868) published by the NSW Government in 1981 and available from the Department of Trade and Investment, Regional Infrastructure and Services, or</p> <p>(b) Other land identified by the Secretary of that Department.</p> <p>Some landowners in areas identified by Clause 4.2B and mapped as prime crop and pasture land have submitted subdivision applications supported by detailed site specific land capability studies indicating that the subject land is not class 1, 2 or 3 agricultural land. Following referral, the NSW Department of Primary Industries (DPI) has advised that they will not be revising the mapping and will not consider site specific studies. This leaves Council unable to consider these applications other than by way of refusal.</p> <p>As part of the preparation of Shoalhaven LEP 2014, a desktop assessment was undertaken of all the areas to which this clause applies to determine the appropriate zone. Some areas were identified in the study as having a character or form of development that is reflective of lifestyle living rather than small scale agriculture, e.g. the R5 Large Lot Residential and E4 Environmental Living zones. It is noted that the E4 zone does not permit any form of agriculture.</p> <p>As such, it is appropriate to amend 4.2B(2) to only apply to land in the RU1, RU2 and RU4 zones.</p> <p>Proposed amendment: Amend clause 4.2B(2) to only apply to land in a RU1, RU2 or RU4 zone. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>(2) <i>Despite clause 4.1, land identified as prime crop and pasture land in a zone to which this clause applies Zone RU1 Primary Production, Zone RU2 Rural Landscape and Zone RU4 Primary Production Small Lots may only be subdivided if the consent authority is satisfied that each lot created by the subdivision will contain at least 10 hectares of prime crop and pasture land.</i></p>
--	---	--

7	<p>Clause 4.2G</p> <p>Boundary adjustments of land in certain rural and environmental zones</p>	<p>Issue and Justification: The wording of clause 4.2G(4) has caused some confusion. The subclause appears to create a circular argument with 4.2D(3)(cc) if one of the proposed lots is an existing holding.</p> <p>Clause 4.2D(3)(cc) ensures that a dwelling can be approved on lot created under clause 4.2G so it is redundant to specify that a dwelling must be permissible on a lot after the subdivision.</p> <p>The removal of the second half of subclause 4 (from “and...”) would resolve the confusion.</p> <p>Proposed amendment: Amend clause 4.2G(4) to delete reference to the permissibility of a dwelling following subdivision. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>4.2G Boundary adjustments of land in certain rural and environment protection zones</p> <p>(4) <i>The consent authority must not grant development consent under this clause unless a dwelling was permissible under this Plan on each lot immediately before the subdivision and a dwelling will be permissible under this Plan on each lot after the subdivision.</i></p>
8	<p>Schedule 1 Additional permitted uses</p> <p>(6) Use of certain land at Manyana</p>	<p>Issue and Justification: Lot 204 DP 755923 (Por 204) and Lot 1070 DP 836591 have been subdivided, with registration occurring in 2008 and 2011 respectively.</p> <p>Lot 204 DP 755923 (Portion 204) is now known as Lot 2 DP 1121854, and Lot 1070 DP 836591, Curvers Drive is now known as Lot 2 DP 1161638, Inyadda Drive.</p> <p>The proposed amendments to this clause seek to reflect the newly created lots as the land to which the clause applies.</p> <p>Proposed amendment: Update the description of the land to which Schedule 1 (6) applies. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>Schedule 1 Additional permitted uses</p> <p>6 Use of certain land at Manyana</p> <p>(1) <i>This clause applies to land identified as “Sch 1.15” on the Clauses Map, being Lot 204, DP 755923, (Portion 204), Lot 2 DP 1121854, Sunset Strip, Manyana, that part of Lot 106, DP 755923, (Portion 106), Inyadda Drive, Manyana that is in Zone E3 Environmental Management; and that part of Lot 2 DP</i></p>

		1161638, Inyadda Drive Lot 1070, DP 836591, Curvers Drive, Manyana that is in Zone E3 Environmental Management.
9	<p>Schedule 2 Exempt Development</p> <p>Temporary events on public land and public roads and associated temporary structures</p>	<p>Issue and Justification: The current wording excludes the operation of the clause to any land to which the <i>Crown Land Management Act 2016</i> applies, including where Council is the Crown land manager or is responsible for the care, control and management of that land pursuant to the provisions of that Act. A development application is therefore required for any event on land to which the <i>Crown Land Management Act 2016</i> applies. This is not the intent of Council.</p> <p>As such, it is appropriate to amend the clause to extend its application to Crown land of which Council is the Crown lands manager or Crown land which has been vested in Council pursuant to the <i>Crown Land Management Act 2016</i>.</p> <p>Proposed amendment: Insert additional criteria in Schedule 2 Temporary events on public land and public roads and associated temporary structures, subclause 2 in relation to Crown land that is vested in Council, or of which Council is the Crown lands manager. Note: red text depicts addition, red strikethrough depicts deletion.</p> <p>Schedule 2 Exempt development</p> <p>Temporary events on public land and public roads and associated temporary structures</p> <p>(2) <i>Must take place on:</i></p> <p>(a) public land within the meaning of the <i>Local Government Act 1993</i>; or</p> <p>(b) a public road for which the Council is the roads authority under the <i>Roads Act 1993</i>; or</p> <p>(c) land that is dedicated or reserved Crown land of which Council is the Crown lands manager under the <i>Crown Lands Management Act 2016</i>; or</p> <p>(d) land that has been vested in Council to which the <i>Crown Lands Management Act 2016</i> applies.</p>
10	<p>Schedule 2 Exempt Development</p> <p>New provisions relating to:</p> <ul style="list-style-type: none"> A-frame sign boards and structures. 	<p>Issue and Justification: Shoalhaven Development Control Plan currently includes a Chapter relating to exempt development. As it is unlawful for a development control plan to provide an exemption to a land use where the permissibility of that land use is prescribed by an environmental planning instrument, it is considered appropriate to include additional provisions in Schedule 2 Exempt Development. A development application should not be required in this regard.</p>

	<ul style="list-style-type: none"> • Merchandise displays. 	<p>Further, Council also issues a number of approvals under Section 68 of the <i>Local Government Act 1993</i> in relation to the commercial use of a footpath. The inclusion of these exempt development types will assist in the timely processing of these applications.</p> <p>Proposed amendment: Insert the following new exempt development criteria relating to A-frame sign boards and structures, and merchandise displays.</p> <p>Schedule 2 Exempt development</p> <p>A-frame sign boards and structures</p> <p>(a) <i>only 1 sign per business premises, and</i></p> <p>(b) <i>maximum sign face area of 1m² per side, and</i></p> <p>(c) <i>maximum of 750mm in width, and</i></p> <p>(d) <i>must not obstruct the public thoroughfare, and</i></p> <p>(e) <i>must be located adjoining the place of business referred to on the sign, and</i></p> <p>(f) <i>must not be located in a residential zone, rural zone or environmental protection zone unless it relates to an existing purpose-built shop, and</i></p> <p>(g) <i>must be removed from the footpath outside of the approved operating hours of the related business.</i></p> <p>Merchandise displays</p> <p>(a) <i>maximum of 2 merchandise display per premises, and</i></p> <p>(b) <i>maximum height of 1.8m, and</i></p> <p>(c) <i>maximum depth of 800mm, and</i></p> <p>(d) <i>maximum width of 3m, and</i></p> <p>(e) <i>must not obstruct the public thoroughfare, and</i></p> <p>(f) <i>must be removed from the footpath outside of the approved operating hours of the related business, and</i></p> <p>(g) <i>location must adjoin the related premises, and</i></p> <p>(h) <i>must be stable and firmly secured.</i></p>
--	---	--

4 Part 3 – Justification

4.1 Need for the Planning Proposal (Section A)

4.1.1 Is the Planning Proposal a result of any strategic study or report?

No, given that this PP covers a range of housekeeping matters related to the current LEP. While these amendments are not the result of a strategic study or report, they are consistent with Council's policy position and will ensure the LEP operates as originally intended and is improved in its operation.

4.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

This PP is considered to be the best and only means of achieving the intended outcome.

4.2 Relationship to strategic planning framework (Section B)

4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Illawarra- Shoalhaven Regional Plan (ISRP)

The PP is largely consistent with the objectives and actions of the Illawarra Shoalhaven Regional Plan. The plan applies to Shoalhaven Local Government Area (LGA) and aims to grow the economy, provide affordable housing, secure agricultural land, build infrastructure and protect natural and cultural environments.

The proposal amendments will better align Shoalhaven LEP 2014 with the aims of these plans and cater for future development more effectively by way of improving the efficiency and operational integrity of the instrument which will enable for more streamlined processes.

Direction 5.1 Protect the Region's Environmental Values by Focusing Development in Locations with the Capacity to Absorb Development

Direction 5.1 seeks to focus development within locations that are not environmentally significant so as to protect areas of environmental value. This PP proposes to permit dual occupancies (attached) within the E2 Environmental Conservation zone in SLEP 2014.

It is considered that this additional land use will not pose a significantly greater impact than a dwelling house, a land use which is already permissible within the E2 zone. This minimal impact is due to dual occupancies (attached) being required to co-locate and share a common roof-line with a single dwelling. Furthermore, there are only 378 lots in the E2 zone that meet the minimum lot size requirements to erect such a development. Under clause 4.2D of SLEP 2014 however, dual occupancies (attached) could possibly be erected on an additional 3561 lots should they be found to possess a dwelling entitlement and satisfy the

assessment requirements under section 4.15 of the *Environmental Planning and Assessment Act 1979*. These are crude statistics and it is unlikely that a dual occupancy (attached) could be realised on the vast majority of these lots as many will not possess a dwelling entitlement and have significant environmental constraints.

As dual occupancies (attached) are unlikely to pose a significantly greater impact to E2 zoned land, beyond that of a dwelling house, the inconsistency is considered minor in nature.

4.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Shoalhaven City Council's Community Strategic Plan

The PP is consistent with Council's Community Strategic Plan and the relevant themes and actions below:

- Theme 2. Sustainable, liveable environments
 - 2.2 Plan and manage appropriate and sustainable development
 - 2.3 Protect and showcase the natural environment
- Theme 3. Prosperous communities
 - 3.1 Maintain and grow a robust economy with vibrant towns and villages

Due to the housekeeping nature of the PP, the PP is considered consistent with the:

- Shoalhaven Growth Management Strategy.
- Nowra Bomaderry Structure Plan.
- Jervis Bay Settlement Strategy.
- Milton Ulladulla Structure Plan.
- Sussex Inlet Settlement Strategy.

4.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

The PP is consistent with the applicable state environmental planning policies (SEPPs). A full list of the SEPPs is provided at **Attachment C**.

4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Ministerial Directions are considered in **Attachment D** and those that are most relevant are discussed below.

1.5 Rural Lands

This direction applies as the PP affects land within an existing or proposed rural or environmental zone through the following changes:

Item 2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
Item 3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
Item 4	Amend clause 4.1(4) to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.
Item 6	Amend clause 4.2B(2) to only apply to land in a RU1, RU2 or RU4 zone.
Item 7	Amend clause 4.2G(4) to delete reference to permissibility of a dwelling following subdivision.
Item 8	In relation to Schedule 1 Additional permitted uses (6) 'Use of certain land at Manyana', update the description of the land to which Schedule 1 (6) applies.

The PP:

- Is consistent with any applicable strategic plan (see section 4.2.1).
- Does not result in controls that infringe upon farmers right to farm.
- Does not prohibit the use of rural zoned land for the purpose of agriculture and primary production.

Although the PP does potentially result in increased development/more intensive land uses within certain rural and environment protection zones, all development applications will be assessed with regard to the surrounding land uses as to reduce the risk of land use conflict. Current planning controls will be used to ensure future developments are responsive to the natural and physical constraints of the land and do not damage environmental assets within the area.

The amendment to clause 4.1(4) to allow for the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map would only apply to subdivisions required for a road closure carried out in accordance with Part 4 of the *Roads Act 1993*. These subdivisions would be in accordance with clause 5.16 of SLEP 2014, having regard for the surrounding land uses and the operation and viability of existing and future rural land uses and related enterprises.

This PP is therefore not inconsistent with this direction.

2.1 Environmental Protections Zones

This direction applies as the PP affects land within an environment protection zone or land otherwise identified for environment protections purposes through the following changes:

Item 3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
--------	--

Item 7	Amend clause 4.2G(4) to delete reference to permissibility of a dwelling following subdivision.
--------	---

The introduction of dual occupancies (attached), as a land use permitted with consent in the E2 Environmental Conservation zone, could be considered to reduce the environmental protection standards that apply to the land by intensifying development within the zone.

There are 378 lots within the E2 zone that would meet the minimum lot size prescribed under the LEP 2014 to permit a dual occupancy (attached) (refer to **Attachment E**). Under clause 4.2D of SLEP 2014 however, dual occupancies (attached) could possibly be erected on an additional 3561 lots should they be found to possess a dwelling entitlement and satisfy the assessment requirements under section 4.15 of the *Environmental Planning and Assessment Act 1979*. These are crude statistics and it is unlikely that a dual occupancy (attached) could be realised on the vast majority of these lots as many will not possess a dwelling entitlement and have significant environmental constraints.

It is noted that dual occupancies (attached) have limited additional impact above and beyond the impact of a single dwelling as they are required to be co-located and have a common roofline.

Although the proposal is considered inconsistent with this Direction, the inconsistency is minor and justified. The Department of Planning and Environment have advised that no further approval is required in relation to this Direction.

2.2 Coastal Management

This direction applies as the PP affects land within the coastal zone through the following changes:

Item 2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
Item 3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
Item 4	Amend clause 4.1(4) to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.
Item 6	Amend clause 4.2B(2) to only apply to land in a RU1, RU2 or RU4 zone.

The PP is considered to be consistent with the:

- Objects of the *Coastal Management Act 2016* and the objectives of the relevant coastal management areas.
- NSW Coastal Management Manual and associated Toolkit.
- NSW Coastal Design Guidelines 2003.
- Shoalhaven Coastal Zone Management Plan 2018.

Although potentially resulting in increased development/more intensive land uses on certain land, the PP does not propose to rezone any land. Further, this PP does not propose to amend any maps under State Environmental Planning Policy (Coastal Management) 2018. The development assessment process for future development will consider the above (as relevant) and State Environmental Planning Policy (Coastal Management) 2018, on a site by site basis.

The PP is therefore not inconsistent with this direction.

4.1 Acid Sulfate Soils

The land subject to this PP is mapped as having acid sulfate soils. The following changes are relevant to this direction:

Item 2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
Item 3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.

All land within the RU1, RU2 and E2 zones have been identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning maps. It may be considered that the above changes will intensify the land uses that are permissible with consent in the RU1, RU2 and E2 zones. The PP is not inconsistent with the Acid Sulfate Soils Planning Guidelines.

Should this matter be considered an inconsistency, it is of minor significance. As such, an acid sulfate soils study has not been prepared.

4.4 Planning for Bushfire Protection

This direction applies as the PP affects land that is, or is in proximity to, land mapped as bushfire prone.

The PP:

- Has regard to Planning for Bushfire Protection 2006. Where relevant, future development will be assessed against Planning for Bushfire Protection during the development assessment process.
- Does not result in controls that place inappropriate developments in hazardous areas.
- Does not prohibit bushfire hazard reduction within an APZ.

Consultation will be undertaken with the NSW Rural Fire Service following receipt of a Gateway determination, and prior to undertaking community consultation.

The PP is not inconsistent with this direction.

5.2 Sydney Drinking Water Catchments

The PP applies to land located at Kangaroo Valley and Sassafras which falls within the Sydney drinking water catchment area.

Consultation will be undertaken with the NSW Department of Industry – Natural Resources Access Regulator following receipt of a Gateway determination, and prior to undertaking community consultation. Pre-Gateway consultation has not been undertaken as:

- It is considered that the PP will not adversely impact on water quality in the catchment area, nor will it disturb land and water capability in these areas. The amendments to Shoalhaven LEP 2014 is considered to be of minor significance.
- The PP is consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and the outcomes of the Strategic Land and Water Capability Assessment prepared by the Sydney Catchment Authority.

The PP is not inconsistent with this direction.

5.10 Implementation of Regional Plans

The Illawarra Shoalhaven Regional Plan (ISRP) applies to Shoalhaven and the PP is considered consistent with the ISRP as discussed in Section 4.2.1.

The PP is therefore consistent with this direction.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 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 likelihood that critical or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the PP is very low. The PP proposes to make amendments to the LEP that are of a housekeeping nature.

Any future use of the land will consider environmental impacts as part of the development assessment process.

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

Other environmental impacts are not anticipated and any future development would consider environmental impacts as part of the development assessment process.

4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?

The PP is likely to have positive social and economic effects due to the LEP operating in a more efficient manner which will better align the objectives of the instrument with appropriate development.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The planning proposal does not create additional need for infrastructure.

4.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council will consult with relevant State and Commonwealth authorities (e.g. NSW Rural Fire Service and NSW Department of Industry – Natural Resources Access Regulator) in accordance with the conditions of the Gateway determination. The PP will be updated prior to public exhibition, if required, to incorporate the view of any public authority.

5 Part 4 – Mapping

No mapping changes are proposed as part of this PP.

6 Part 5 - Community Consultation

Council proposes to exhibit the planning proposal in accordance with the requirements of Schedule 1 of the *Environmental Planning and Assessment Act 1979* and any other requirements as determined by the Gateway process. It is intended that an exhibition period of 28 days apply.

Public notification of the exhibition would include notification in the local newspapers, and a notice on Council's website. A hard copy of the planning proposal would be made available at Council's Administrative Building in Nowra.

7 Part 6 – Project Timeline

Table 3: Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	November 2018
Completion of Gateway determination requirements	January 2019
Public exhibition	February 2019
Consideration of submissions	March 2019
Post exhibition consideration of PP	April/May 2019
Finalisation and notification of Plan	June/July 2019

ATTACHMENTS

Attachment A – Evaluation criteria for the delegation of plan making functions to Councils

Local Government Area:

Shoalhaven City Council

Name of draft LEP:

Shoalhaven Local Environmental Plan 2014
PP033 – 2017 Housekeeping Amendment – Instrument Changes

Address of Land (if applicable):

The PP applies to all land in the Shoalhaven Local Government Area.

Intent of draft LEP:

The intent of the draft LEP is to amend or add provisions to the instrument to improve the Plan's operation and address issues that have arisen since its commencement in 2014.

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)				
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		NR		
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			

Does the Planning Proposal adequately address any inconsistency with all relevant s9.1 Planning Directions?		NR		
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NR		
Heritage LEPs				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?		NR		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NR		
Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NR		
Reclassifications				
Is there an associated spot rezoning with the reclassification?		NR		
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management (POM) or strategy?		NR		
Is the Planning Proposal proposed to rectify an anomaly in a classification?		NR		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		NR		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		NR		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the Planning Proposal?		NR		
Has the council identified that it will exhibit the Planning Proposal in accordance with the Department's Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?		NR		

Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		NR		
Spot Rezoning				
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?		NR		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		NR		
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NR		
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?		NR		
Does the Planning Proposal create an exception to a mapped development standard?		NR		
Section 3.22 matters				
<p>Does the proposed instrument:</p> <p>a. Correct an obvious error in the principal instrument consisting of a mis description, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary works or a formatting error?;</p> <p>b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;</p> <p>c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE – the Minister (or delegate) will need to form an Opinion under section 3.22(1)(c) of the Act in order for a matter in this category to proceed).</p>		<p>NR</p> <p>NR</p> <p>NR</p>		

Attachment B – Council report and minute, 11 September 2018

DE18.66 Proposed 2017 Housekeeping Amendment to Shoalhaven Local Environmental Plan 2014 - Instrument Changes

HPERM Ref: D18/282538

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Planning Proposal - 2017 Housekeeping Amendment - Instrument Changes (under separate cover)

Purpose / Summary

To obtain the necessary resolution to progress the 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP) which seeks to undertake and resolve a range of necessary housekeeping adjustments and changes to Shoalhaven Local Environmental Plan (LEP) 2014 that have been picked up during the 2017 calendar year.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Submit the 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP033 – Attachment 1) to the NSW Department of Planning and Environment for a Gateway determination and if favourable, proceed to formal public consultation in accordance with the terms of the determination.
2. Advise any relevant community groups of this decision, noting the opportunity for formal consultation later in the process.

Options

1. As recommended.

Implications: Since the commencement of Shoalhaven LEP 2014, anomalies and minor issues continue to arise and be identified and that need to be resolved. The matters related to the LEP instrument that were identified during 2017 will be corrected through this housekeeping amendment. Continuously improving the LEP is necessary to ensure it remains current.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the resolution of the identified housekeeping matters.

3. Reject the recommendation.

Implications: This is not the preferred option as the identified housekeeping matters will not be resolved.

Background

Shoalhaven LEP 2014 commenced on 22 April 2014. It consolidated planning controls into the one LEP and transitioned existing controls into the NSW Government's Standard Instrument LEP format.

As part of the completion, and since Shoalhaven LEP 2014 has been in force, Council has identified a number of housekeeping amendments needed to improve the operation and accuracy of the Plan. Council continuously reviews Shoalhaven LEP 2014 to ensure it aligns with strategic documents, is improved where necessary, and delivers positive outcomes for the community.

Due to the extent of the mapping changes proposed as part of the 2017 Housekeeping Amendment, the amendment has been split into two PPs:

- 2017 Housekeeping Amendment – Instrument Changes (this PP).
- 2017 Housekeeping Amendment – Minor Mapping Changes (future PP). Council will receive a future report in this regard.

2017 Housekeeping Amendment – Instrument Changes

This PP covers a variety of required housekeeping adjustments and amendments to Shoalhaven LEP 2014 to improve the operation and accuracy of the plan. It responds to issues that were identified in the 2017 calendar year.

The intended outcome of this PP is to amend or add provisions to the LEP instrument to improve the Plan's operation and address the identified issues. The proposed amendments are summarised in **Table 1** below.

Table 1: Summary of LEP instrument amendments

Item	Summary of proposed amendment	Rationale
1	Amend references to the <i>Crown Lands Act 1989</i> in clause 1.9A(2) to reflect the repeal of the Act in June 2018.	The <i>Crown Lands Act 1989</i> was repealed in June 2018 and replaced by the <i>Crown Land Management Act 2016</i> . The proposed amendment seeks to reflect the new Act and content within.
2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.	<p>The NSW Government recently released an amendment to the Standard Instrument Local Environmental Plan to include provision for a new land use term 'artisan food and drink industry'.</p> <p>This new land use term is a subset of the 'light industry' land use and is permissible wherever 'light industry' is permissible in LEP's.</p> <p>As a result, the land use 'artisan food and drink industry' is now permissible with consent in the following Shoalhaven LEP 2014 zones:</p> <ul style="list-style-type: none"> • RU5 Village

		<ul style="list-style-type: none"> • B1 Neighbourhood Centre • B5 Business Development • B7 Business Park • IN1 General Industrial • IN2 Light Industrial • IN4 Working Waterfront <p>It is considered appropriate for the term to also be permissible with consent in the RU1 Primary Production and RU2 Rural Landscape zones to support the growing artisan and craft food and drink industry in Shoalhaven.</p> <p>It is noted that following similar land uses are already permissible in the RU1 and RU2 zones in Shoalhaven: intensive plant agriculture (e.g. viticulture/wineries), cellar door premises, food and drink premises and rural industries.</p>
3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.	<p>'Dual occupancies (attached)' have limited additional impact above and beyond the impact of a single dwelling due to the fact that they are required to be co-located and have a common roofline. As such, it is considered appropriate for 'dual occupancies (attached)' to be permissible with consent in the E2 Environmental Conservation zone.</p> <p>It should be noted that the use can only be considered where a dwelling is currently permissible and as such this inclusion will not create new development opportunities in the E2 zone.</p>
4	Amend clause 4.1(4) Minimum Subdivision Lot Size, to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.	<p>The current situation where the lot size map is applied to roads is causing issues in relation to road closures. The closure is technically a 'subdivision' creating a lot smaller than the minimum lot size.</p> <p>It would be appropriate to amend clause 4.1 to facilitate the creation of lots smaller than the prescribed lot size where the subdivision is resulting from a road closure.</p>
5	Insert a new subclause to clause 4.1F Minimum Subdivision Lot Size for	It is proposed to add new wording to clause 4.1F " <i>This clause applies despite</i>

	Community Scheme and Strata Plan Lots, to make it clear that clause 4.1F is not subservient to clause 4.1 (Minimum subdivision lot size).	<p>clause 4.1”, to make it clear that clause 4.1 does not override the provisions of clause 4.1F.</p> <p>This ensures consistency between clauses in the LEP and negates any argument that clause 4.1F is subservient to clause 4.1.</p>
6	Amend clause 4.2B(2) Subdivision of Certain Land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4, to only apply to land in a RU1, RU2 or RU4 zone in relation to prime crop and pasture land given they are the ‘rural’ zones where agriculture would be expected, noting that R5 and E4 are essentially residential in nature.	<p>Some landowners in areas identified by Clause 4.2B and mapped as prime crop and pasture land have submitted subdivision applications supported by detailed site-specific land capability studies indicating that the subject land is not class 1, 2 or 3 agricultural land. Following referral, the NSW Department of Primary Industries (DPI) has advised that they will not be revising the mapping and will not consider site specific studies. This leaves Council unable to consider these applications other than by way of refusal.</p> <p>As part of the preparation of Shoalhaven LEP 2014, a desktop assessment was undertaken of all the areas to which this clause applies to determine the appropriate zone. Some areas were identified in the study as having a character or form of development that is reflective of lifestyle living or residential rather than small scale agriculture, e.g. the R5 Large Lot Residential and E4 Environmental Living zones. It is also noted that the E4 zone does not permit any form of agriculture.</p> <p>As such, it is appropriate to amend 4.2B(2) to only apply the requirement to land in the rural zones RU1, RU2 and RU4.</p>
7	Amend clause 4.2G(4) Boundary Adjustments of Land in Certain Rural and Environmental Protections Zones, to delete reference to permissibility of a dwelling following subdivision.	<p>The wording of clause 4.2G(4) has caused some confusion. The subclause appears to create a circular argument with 4.2D(3)(cc) if one of the proposed lots is an existing holding.</p> <p>Clause 4.2D(3)(cc) ensures that a dwelling can be approved on lot created under clause 4.2G so it is redundant to specify that a dwelling must be permissible on a lot after the subdivision.</p> <p>The removal of the second half of subclause 4 (from “and...”) would</p>

		resolve the confusion.
8	In relation to Schedule 1 Additional permitted uses (6) 'Use of certain land at Manyana', update the description of the land to which Schedule 1 (6) applies.	<p>Lot 204 DP 755923 (Por 204) and Lot 1070 DP 836591 have been subdivided, with registration occurring in 2008 and 2011 respectively.</p> <p>Lot 204 DP 755923 (Portion 204) is now known as Lot 2 DP 1121854, and Lot 1070 DP 836591, Curvers Drive is now known as Lot 2 DP 1161638, Inyadda Drive.</p> <p>The proposed amendments to this clause seek to reflect the newly created lots as the land to which the clause applies.</p>
9	In relation to Schedule 2 Exempt Development 'Temporary events on public land and public roads and associated temporary structures', insert additional criteria in subclause 2 in relation to Crown land that is vested in Council, or of which Council is the Crown lands manager.	<p>The current wording excludes the operation of the clause to any land to which the <i>Crown Land Management Act 2016</i> applies, including where Council is the Crown land manager or is responsible for the care, control and management of that land pursuant to the provisions of that Act. A development application is therefore required for any event on land to which the <i>Crown Land Management Act 2016</i> applies. This is not the intent of Council.</p> <p>As such, it is appropriate to amend the clause to extend its application to Crown land of which Council is the Crown lands manager or Crown land which has been vested in Council pursuant to the <i>Crown Land Management Act 2016</i>.</p>
10	<p>In relation to Schedule 2 Exempt Development, insert new exempt development criteria relating to:</p> <ul style="list-style-type: none"> • A-frame sign boards and structures. • Merchandise displays. 	<p>Shoalhaven Development Control Plan currently includes a Chapter relating to exempt development. As it is unlawful for a development control plan to provide an exemption to a land use where the permissibility of that land use is prescribed by an environmental planning instrument, it is considered appropriate to include additional provisions in Schedule 2 Exempt Development. A development application should not be required in this regard. <i>Note: The removal of Chapter 3 Exempt Development from the DCP will be considered in a future report to Council.</i></p> <p>Further, Council also issues a few approvals under Section 68 of the <i>Local Government Act 1993</i> in relation to the</p>

		commercial use of a footpath. The inclusion of these exempt development types will assist in the timely processing of these applications.
--	--	---

Following endorsement from Council, the PP will be submitted to the NSW Department of Planning and Environment for a Gateway determination.

As detailed in the Project Timeline in the PP (**Attachment 1**), it is anticipated that the LEP amendment will be finalised by July 2019.

Community Engagement

Should the PP receive a favourable Gateway determination, it will be exhibited for comment in accordance with Council's Community Engagement Policy at Level 1 to 'inform' and 'consult', and in accordance with the relevant legislative requirements.

The Gateway determination will specify the minimum exhibition period and any government agencies who should be consulted. Any directly affected landowners will be advised of the exhibition arrangements in writing, as will all Community Consultative Bodies.

Financial Implications

There are no immediate financial implications for Council. The amendment to Shoalhaven LEP 2014 will be resourced from the Strategic Planning budget.

FOR ACTION

DEVELOPMENT COMMITTEE

11/09/2018

TO: Coordinator - Policy Planning Team (Tague, Jenna)

Subject: Planning Proposal PP033 - 2017 Housekeeping Amendment to Shoalhaven LEP 2014 - Instrument Changes - Gateway Determination - public consultation
Target Date: 11/10/2018
Notes:
HPERM Container 57580E
Related Report D18/282538
Item Number DE18.66

RESOLVED (Clr Wells / Clr Gartner)

MIN18.699

That Council:

1. Submit the 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP033 – Attachment 1) to the NSW Department of Planning and Environment for a Gateway determination and if favourable, proceed to formal public consultation in accordance with the terms of the determination.
2. Advise any relevant community groups of this decision, noting the opportunity for formal consultation later in the process.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Cheyne, Clr Gartner, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

Attachment C – SEPP Checklist

SEPP	Name	Applicable	Relevant	Not inconsistent
1	Development Standards	✓	✗	n/a
19	Bushland in Urban Areas	✗	✗	n/a
21	Caravan parks	✓	✗	n/a
33	Hazardous and Offensive development	✓	✗	n/a
36	Manufactured home estates	✓	✗	n/a
44	Koala habitat protection	✓	✗	n/a
47	Moore Park Showground	✗	✗	n/a
50	Canal estate development	✓	✗	n/a
55	Remediation of land	✓	✗	n/a
64	Advertising and signage	✓	✗	n/a
65	Design quality of residential apartment development	✓	✗	n/a
70	Affordable Housing (Revised Schemes)	✗	✗	n/a
--	Aboriginal Land 2019	✗	✗	n/a
--	Affordable Rental Housing 2009	✓	✗	n/a
--	BASIX 2004	✓	✗	n/a
--	Coastal Management 2018	✓	✓	✓
--	Concurrences 2018	✗	✗	n/a
--	Educational Establishments and Child Care Facilities 2017	✓	✗	n/a
--	Exempt and Complying Development Codes 2008	✓	✗	n/a
--	Gosford City Centre 2018	✗	✗	n/a
--	Housing for Seniors or People with a Disability 2004	✓	✗	n/a
--	Infrastructure 2007	✓	✗	n/a
--	Kosciuszko National Park—Alpine Resorts 2007	✗	✗	n/a
--	Kurnell Peninsula 1989	✗	✗	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	✓	✗	n/a
--	Miscellaneous Consent Provisions 2007	✓	✗	n/a
--	Penrith Lakes Scheme 1989	✗	✗	n/a
--	Primary Production and Rural Development 2019	✓	✓	✓

--	State and Regional Development 2011	✓	✗	n/a
--	State Significant Precincts 2005	✓	✗	n/a
--	Sydney Drinking Water Catchment 2011	✓	✓	✓
--	Sydney Region Growth Centres 2006	✗	✗	n/a
--	Three Ports 2013	✗	✗	n/a
--	Urban Renewal 2010	✗	✗	n/a
--	Vegetation in Non-Rural Areas 2017	✓	✓	✓
--	Western Sydney Employment Area 2009	✗	✗	n/a
--	Western Sydney Parklands 2009	✗	✗	n/a

Attachment D – S9.1 Directions checklist

Direction		Applicable	Relevant	Consistency
1 Employment and Resources				
1.1	Business and Industrial Zones	✗	✗	n/a
1.2	Rural Zones	✓	✗	n/a
1.3	Mining, Petroleum Production and Extractive Industries	✗	✗	n/a
1.4	Oyster Aquaculture	✗	✗	n/a
1.5	Rural lands	✓	✓	Refer to Section 4.2.4
2 Environment and Heritage				
2.1	Environmental Protection Zones	✓	✓	Refer to Section 4.2.4
2.2	Coastal Protection	✓	✓	Refer to Section 4.2.4
2.3	Heritage Conservation	✓	✗	n/a
2.4	Recreation Vehicle Area	✓	✗	n/a
2.5	Application of E2 and E3 Zones in Environmental Overlays in Far North Coast LEPs	✗	✗	n/a
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✗	n/a
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.3	Home Occupations	✓	✗	n/a
3.4	Integrating Land Use and Transport	✓	✗	n/a
3.5	Development Near Regulated Airports and Defence Airfields	✗	✗	n/a
3.6	Shooting Ranges	✗	✗	n/a
3.7	Reduction in non-hosted short term rental accommodation period	✗	✗	n/a
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✓	✓	Refer to Section 4.2.4
4.2	Mine Subsidence and Unstable Land	✗	✗	n/a
4.3	Flood Prone Land	✓	✗	n/a
4.4	Planning for Bushfire Protection	✓	✓	Refer to Section 4.2.4
5 Regional Planning				
5.1	Implementation of Regional Strategies	✗	✗	n/a
5.2	Sydney Drinking Water Catchments	✓	✓	Refer to Section 4.2.4
5.3	Farmland of State & Regional Significance Far North Coast	✗	✗	n/a
5.4	Commercial & Retail Development Far North Coast	✗	✗	n/a

5.9	North West Rail Link Corridor Strategy	x	x	n/a
5.10	Implementation of Regional Plans	✓	✓	Refer to Section 4.2.4
5.11	Development of Aboriginal Land Council land	x	x	n/a
6 Local Plan Making				
6.1	Approval and Referral Requirements	✓	x	n/a
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	x	x	n/a
7 Metropolitan Planning				
7.1	Implementation of A Plan for Growing Sydney	x	x	n/a
7.2	Implementation of Greater Macarthur Land Release Investigation	x	x	n/a
7.3	Parramatta Road Corridor Urban Transformation Strategy	x	x	n/a
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	x	x	n/a
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	x	x	n/a
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	x	x	n/a
7.9	Implementation of Bayside West Precincts 2036 Plan	x	x	n/a
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	x	x	n/a

