

# EXPLANATORY STATEMENT

## Review of Subdivision Provisions Planning Proposal (PP027) Shoalhaven Local Environmental Plan 2014



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Shoalhaven  
City Council

### Overview

Shoalhaven LEP 2014 includes a number of provisions relating to the subdivision of land which address the three main titling systems; Torrens, strata and community.

Following the commencement of Shoalhaven LEP 2014 in April 2014, there has been some concern that the current Torrens minimum lot size provisions are too large for certain approvable medium density development in urban zoned areas. In response, strata and community subdivision has increased in popularity as there are limited lot size restrictions for these titling options. Under Shoalhaven's current LEP provisions, relevant existing residential development in an R1, R2, B4 or SP3 zone can be strata or community subdivided with resulting lots being less than that prescribed by the relevant minimum lot size map.

Shoalhaven LEP 2014 also enables the Torrens subdivision of medium density development in relevant circumstances via a number of principal development standards in the plan as outlined in Table 1.

Table 1: Medium density Torrens subdivision provisions in Shoalhaven LEP 2014

Shoalhaven LEP 2014 Clause	Minimum lot size for subdivision						
4.1 Minimum subdivision lot size	Torrens only. As per the associated lot size maps. Subdivision can occur prior to development.						
4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Subdivision can only occur after development has been carried out.</p> <p>Dual occupancy:</p> <table><tr><th>Area identified on the lot size map</th><th>Minimum area</th></tr><tr><td>Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigeer, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.</td><td>350m<sup>2</sup></td></tr><tr><td>Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.</td><td>400m<sup>2</sup></td></tr></table> <p>Multi dwelling housing:</p> <ul style="list-style-type: none"><li>R1 zone – 350m<sup>2</sup>.</li></ul>	Area identified on the lot size map	Minimum area	Area 1: Bomaderry, North Nowra, Nowra, West Nowra, Worrigeer, South Nowra, St Georges Basin, Sanctuary Point, Huskisson, Vincentia, Sussex Inlet, Mollymook Beach, Mollymook, Ulladulla.	350m <sup>2</sup>	Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m <sup>2</sup>
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Area 2: Shoalhaven Heads, Greenwell Point, Culburra Beach, Callala Bay, Callala Beach.	400m <sup>2</sup>						
4.1C Exceptions to minimum subdivision lot sizes for certain residential development	<p>Enables Torrens lots smaller than prescribed by clause 4.1. Single application in the R1 zone that considers both:</p> <ul style="list-style-type: none"><li>Subdivision of land into 3 or more lots; and</li></ul>						

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|  | <ul style="list-style-type: none"><li>• Erection of dwelling house, attached dwelling or semi-detached dwelling on each lot resulting from the subdivision where each lot is greater than 350m<sup>2</sup>.</li></ul> |
|--|---|

Generally, it is unusual for medium density development to be Torrens subdivided at present under clause 4.1 of Shoalhaven LEP 2014. Torrens subdivision will usually occur under clause 4.1A or 4.1C depending on the land use type. Importantly, a subdivision of this nature occurs either after the development has been carried out, or where the subdivision and actual development is considered in a single application.

In June 2016, Council staff undertook a review to consider, in part, the appropriateness of Torrens, community and strata title subdivision of dual occupancy development. The review essentially concluded that the actual subdivision and its form does not change the appearance of development as it usually occurs later. However, consideration should be given to the timely inclusion of revised design controls in Shoalhaven Development Control Plan (DCP) 2014 to improve the standard of the finished development. As such, Council has recently adopted [Chapter G13](#) of Shoalhaven DCP 2014 which provides revised design provisions for medium density development (including dual occupancy development).

Inevitably most medium density development will be subdivided at some point and it would be unreasonable to not allow this, particularly given that the physical development exists in most cases. If there are limited restrictions for strata and community title subdivision, the inequity of not allowing Torrens subdivision is questioned. There appears to be little point in permitting medium density development in urban areas and not allowing its possible subsequent subdivision under the Torrens system, provided the relevant outcomes are met. As such, this Planning Proposal seeks to lift the restriction on the subdivision of medium density development via the Torrens system.

In response to removing Torrens restrictions for lawful medium density development, it is also considered prudent to set a minimum lot size prior to the erection of a medium density development to assist the outcome in this regard.

Thus, on 17 July 2017, Council's Development Committee resolved (MIN17.611) to prepare a Planning Proposal to amend Shoalhaven LEP 2014 to facilitate this.

In setting minimum lot sizes, the appropriateness of an R2 Low Density Residential zoning for certain large lot residential land in Shoalhaven was questioned. The PP therefore proposes to also rezone certain R2 land to R5 Large Lot Residential.

### Summary of Notable Components

The Planning Proposal intends to amend Shoalhaven LEP 2014 as follows:

- Include a new sub clause in clause 4.1 to clarify that for the purpose of calculating the area of a battle-axe lot, an access handle is excluded from the calculation.
- Replace existing clause 4.1A with a minimum lot size for the parent lot prior to the erection of a dual occupancy, manor house, multi dwelling housing, multi dwelling housing (terraces) or residential flat building. The provision also seeks to lift the restriction on Torrens subdivision via clause 4.1 following lawful medium density development.

This means that medium density development in certain urban zoned locations cannot be undertaken unless the minimum lot size for the parent lot can be met, however once this is satisfied, the resulting dwellings can be Torrens subdivided to any size.

- Amend clause 4.1C relating to dwelling houses, attached dwellings and semi-detached dwellings to reduce the minimum lot size for resulting lots from 350m<sup>2</sup> to 300m<sup>2</sup>.
- Include term ‘battle-axe’ in the Dictionary.
- Amend all relevant Lot Size Maps to remove the clause 4.1A layer.
- Rezone certain R2 Low Density Residential land in the following locations to R5 Large Lot Residential to maintain the low density large lot characteristics of the land into the future: Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie. These areas are shown at Attachment A of the Planning Proposal.

It is noted that an R5 zoning would trigger clause 4.2D of SLEP 2014 which requires a lot to have a dwelling entitlement prior to the erection of a dwelling house or dual occupancy (clause 4.2D(3)). This clause also considers replacement dwellings (4.2D(5)). It is Council’s intention that all lots would retain a dwelling entitlement in this regard.

- Include a savings and transition provision to ensure that the proposed amendments do not affect any undetermined development applications or appeal processes.

Refer also to Section 3 (Part 2 – Explanation of Provisions) of the Planning Proposal which provides greater detail in relation to the proposed amendments to the LEP.

## **Public Authority Consultation**

Condition 4 of the Planning Proposal Gateway Determination requires consultation with the NSW Rural Fire Service and Water NSW prior to public exhibition. The draft documents and relevant supporting material were provided to the public authorities, who were given a period of at least 21 days to comment.

A submission was received from WaterNSW (refer to Attachment E of the Planning Proposal) which:

- Supports replacement of existing clause 4.1A with a minimum lot size for parent lots and the lifting of restrictions on Torrens title subdivision as proposed.
- Recommends describing the relationship of the new clause 4.1A to the Subdivisions Code under the Codes SEPP. The PP has been updated to provide commentary in this regard.
- Agrees that the PP does not adversely affect water quality in the Sydney Drinking Water Catchment in relation to Section 9.1 Direction 5.2. Requested reference to the Sydney Catchment Authority be replaced with WaterNSW - the PP has been updated in this regard.
- Consistency with Section 9.1 Direction 5.2 was noted relating to the timing of consultation with WaterNSW. This matter has been resolved through WaterNSW’s response and the PP has been updated accordingly.
- Has no objections to the other elements of the PP, however notes that further consultation should be undertaken with WaterNSW should the scope of the rezoning include land in the Sydney Drinking Water Catchment in the future.

The consultation process with the NSW Rural Fire Service (RFS) has commenced in accordance with the Gateway determination. Correspondence was sent to the RFS on 8 November 2019 and to date no response has been received. The Department Planning, Industry and Environment have advised that the PP should proceed to exhibition, despite not being in accordance with the consultation requirements of the relevant s9.1 Direction, as Council has taken all reasonable steps in this regard.

Condition 4 of the Gateway Determination also requires consultation with the Department of Planning, Industry and Environment's (DPIE) Biodiversity and Conservation Division (formerly Office of Environment and Heritage), which is being undertaken during this public exhibition period.

### Further Information

The Amendment is on exhibition for a period of 30 days from Wednesday 22 April to Friday 22 May 2020.

Written comments are invited and should be addressed to the General Manager, Shoalhaven City Council, PO Box 42, Nowra 2541 or emailed to [council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au) before 5pm on **Friday 22 May 2020** quoting Council's reference 56071E.

Enquiries to Jenna Tague on (02) 4429 3553.

### Exhibition Documents

1. Explanatory Statement
2. Newspaper Advertisement
3. Review of Subdivision Provisions Planning Proposal (PP027).
4. Gateway Determination (10 July 2019)

Copies of the exhibition documentation are available at:

- Council's website at: [www.shoalhaven.nsw.gov.au/MyCouncil/Publicexhibition](http://www.shoalhaven.nsw.gov.au/MyCouncil/Publicexhibition).