



# Review of Subdivision Provisions Planning Proposal (PP027) – PROPOSED REZONING

## What is a rezoning?

A rezoning is a change to the zoning of a parcel of land in a Local Environmental Plan (LEP). This can increase or decrease the range of potentially permissible uses for a land parcel or change the development standards (i.e. controls) that are applicable to it.

## What land is Council proposing to rezone?

Council is proposing to rezone certain R2 Low Density Residential (R2) land in the following locations within the City to R5 Large Lot Residential (R5): Berry, Bomaderry, Bangalee, Tapitallee, North Nowra, Worrowing Heights, Bewong, St Georges Basin, Conjola Park, Milton, Lake Tabourie.

The specific land to be rezoned is identified on the maps in Attachment A of the exhibited Planning Proposal.

## Why is Council proposing to rezone my land?

The land in the above locations was predominantly zoned for rural residential or low density residential under the previous Shoalhaven LEP 1985 (the LEP that applied before the current Shoalhaven LEP 2014). These lots were characterised as having predominately a residential focus, a limited range of permissible land uses and relatively large lot sizes.

Through the draft Shoalhaven LEP 2014 process, the land was initially proposed to be zoned R5 due to the predominantly rural residential or large lot nature of the land.

All the land was however subsequently zoned R2 through the finalisation of Shoalhaven LEP 2014 predominantly

due to Council's concerns regarding the ability for landowners to clear their land given that the then NSW *Native Vegetation Act 2003* (NV Act) placed a number of restrictions on R5 land that was considered onerous. **Note:** As a result of the recent Biodiversity Reforms in NSW, the NV Act has been repealed and there are generally less restrictions for clearing trees/vegetation on R5 land, than there is on R2 land.

The proposed rezoning also responds to the NSW Government's pending Low Rise Medium Density Housing Code in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 which will commence for Shoalhaven on 1 July 2020. Further information about the Code is outlined below.

Given that the subject land continues to be characterised by large low density lot layouts with single residential dwellings, it is an appropriate time to reconsider the zoning of this land to maintain this character into the future.

## Will the rezoning affect the value of my land?

The onus is on the landowner to consider the financial implications of the rezoning as it relates to their land.

**Note:** Once you have reviewed the exhibition material, you may wish to consider obtaining your own independent advice if you are still concerned about the proposed zone change and its impact on you/your land.

## Will the rezoning impact any existing development/use on my land?

The proposed change in zone will not affect any existing lawful development or use on the land. Any new development being considered would need to be

permissible in the R5 zone under the LEP or relevant other planning instrument (see section regarding secondary dwellings).

## What are the differences between the R2 and R5 land use tables? What can I do with my land?

The land use tables within the LEP identify what type of development is permissible or prohibited in a zone. The current land use tables for both the R2 and R5 zones are provided below (Table 1). Both are predominantly residential zones and some of the changes (not exclusively) include:

- ‘Dual occupancy (detached)’ is prohibited in the R5 zone. ‘Dwelling houses’ and ‘Dual occupancy (attached)’ remains permissible in the R2 zone.
  - ‘Boarding houses’, ‘Places of public worship’ and ‘Centre-based child care facilities’ are prohibited in the R5 zone, but are permissible in the R2 zone.
  - ‘Extensive agriculture’ and ‘Horticulture’ is permissible in the R5 zone, but not in the R2 zone.
- Note:** This does not relate to gardening or similar activities of a scale that could be considered incidental to a dwelling.

## What do the changes regarding dwelling entitlements mean?

Not all land in Shoalhaven has an automatic right or ability to erect a dwelling. A ‘Dual occupancy (attached)’ or ‘Dwelling house’ cannot be considered on land in certain rural, residential and environment protection zones unless it can be demonstrated that a ‘dwelling entitlement’ exists, even though these land uses may be generally permissible in the relevant zone.

Land in the R2 zone automatically has a dwelling entitlement, however an R5 zoning would require a lot to have a dwelling entitlement prior to the erection of a ‘Dwelling house’ or ‘Dual occupancy (attached)’. Due to the subdivision history and historic zoning of the subject land, it is considered that the dwelling entitlement threshold test could be met or an existing lawfully erected dwelling could be rebuilt using the replacement dwelling provisions in Shoalhaven LEP 2014 (clause 4.2D(5)).

**Note:** It is Council’s intention that all lots subject to the rezoning would retain a dwelling entitlement.

**Table 1: R5 and R2 Land Use Table Information Comparison**

R2 Low Density Zone	R5 Large Lot Residential Zone
<b>Permissible without consent</b>	
Home occupations	Home occupations
<b>Permissible with consent</b>	
Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Jetties; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings; Sewerage systems; Tank-based aquaculture; Water supply systems	Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dual occupancies (attached); Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes; Extensive agriculture; Group homes (transitional); Home-based child care; Home businesses; Home industries; Horticulture; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Sewerage systems; Tank-based aquaculture; Water supply systems
<b>Prohibited</b>	
Any development not specified as ‘permissible without consent’ or ‘permissible with consent’.	Any development not specified as ‘permissible without consent’ or ‘permissible with consent’.

## Will the rezoning affect my ability to erect a second dwelling on my property?

'Secondary dwellings' are able to be considered on R5 zoned land under the NSW Government's Affordable Rental Housing State Environmental Planning Policy. A 'Secondary dwelling' is defined as:

*a self-contained dwelling that –*

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

A second dwelling may also be possible as a 'Dual occupancy (attached)' in the R5 zone. A 'Dual occupancy (attached)' is defined in the LEP as:

*2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.*

## Are there any clearing/biodiversity implications associated with the rezoning?

As a result of the recent NSW Biodiversity Reforms, there are generally less restrictions for clearing trees/vegetation on R5 zoned land, than there is on R2 zoned land.

Approximately 45 (6%) of the 718 lots proposed to be rezoned to R5 are currently constrained by the [NSW Government's Biodiversity Values Map](#). This means that the Biodiversity Assessment Method (BAM) may need to be applied to assess the associated impacts if clearing is proposed in the affected part of the site. A limited number of lots at Bangalee, Worrowing Heights and St Georges Basin are more heavily constrained by Biodiversity Values, however generally the application of the BAM and the requirement to offset certain lost vegetation in these locations would still be required whether the land remains zoned R2 or if it is rezoned to R5.

Recently land in stage 1A of the Tallimba Road, Bangalee subdivision has been certified under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This means that land in this location now has an exemption from the NSW *Biodiversity Conservation Act 2016* and future development will be assessed under the former planning provisions (i.e. NV

Act and NSW *Threatened Species Conservation Act 1995*).

## What is the Low Rise Medium Density Housing Code and how does it relate to the rezoning proposal?

The Low Rise Medium Density Housing Code (the Code) is a part of the NSW Government's State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). The Code allows certain medium density development (and subdivision) to be undertaken as 'complying' development in the R1, R2, R3 and RU5 zones. 'Complying' development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a Council or an accredited certifier.

The proposed rezoning seeks to avoid any unintended consequences from the Code in areas that are essentially large lot residential by turning off the ability to use the Code. This means that medium density could not be undertaken as 'complying' development in the R5 zone. Permissible medium density forms of development in the R5 zone, for example 'Dual occupancy (attached)', could still be considered via a Development Application through Council.

## Why is Council exhibiting the Planning Proposal during the COVID-19 Crisis?

Council has been advised by the NSW Department of Planning, Industry and Environment to exhibit the Planning Proposal as soon as possible in light of the impending 1 July 2020 commencement of the Low Rise Medium Density Housing Code set by the NSW Government.

Given that Council's customer service centres and other facilities are currently closed to the public in response to COVID-19, the Planning Proposal will be available for viewing on Council's public exhibition webpage only: [www.shoalhaven.nsw.gov.au/MyCouncil/Publicexhibition](http://www.shoalhaven.nsw.gov.au/MyCouncil/Publicexhibition)

Council staff are also available via phone or email to answer any detailed or specific enquiries you may have regarding the proposed rezoning or broader Planning Proposal. Printed copies of the Planning Proposal can be made available for landowners who do not have access to a computer, on request.

### Have Your Say

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Written comments are invited and should be addressed to the Chief Executive Officer, 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.

### Further Information

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For further information, contact Jenna Tague on 4429 3553 or [jenna.tague@shoalhaven.nsw.gov.au](mailto:jenna.tague@shoalhaven.nsw.gov.au).