

## Development Committee

**Meeting Date:** Tuesday, 05 June, 2018

**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra

## Attachments (Under Separate Cover)

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# PLANNING PROPOSAL – PP013

## Shoalhaven Local Environmental Plan 2014 Citywide SP3 Tourist Zone Review

Prepared by  
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Version: Pre-gateway

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- Attachment A – Evaluation criteria for the delegation of plan making functions
- Attachment B – Council report and minute, xxx
- Attachment C – SEPP Checklist
- Attachment D – S117 Directions checklist

DE18.43 - Attachment 1

Planning Proposal – Shoalhaven LEP 2014 – PP013 Citywide SP3 Tourist Zone Review

## 1 Introduction

Following a citywide review of existing SP3 Tourist zoned land, this Planning Proposal (PP) seeks to amend the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) to:

- Rezone land at Shoalhaven Heads, Greenwell Point, Sanctuary Point, St Georges Basin, Sussex Inlet, Ulladulla/Mollymook and Burrill Lake from SP3 Tourist to either R1 General Residential, R2 Low Density Residential or SP2 Infrastructure with subsequent amendments to the Height of Building and Minimum Lot Size maps where required.
- Depending on the site; also amend the zoning, height of building and minimum lot size of the road network or land adjacent.
- Insert a new clause in Part 7 Additional local provisions of SLEP 2014 to provide criteria for the consideration of dwelling houses in the SP3 Tourist zone and delete objective 3 in the SP3 Tourist Land Use Table.

The PP aims to retain the SP3 Tourist zoned land with an ongoing tourism value and rezone the remaining land that is predominantly residential in nature to better reflect the current use and future likely use of the land.

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 sites are located across the Shoalhaven Local Government Area as shown in **Figure 1**.

DE18.43 - Attachment 1

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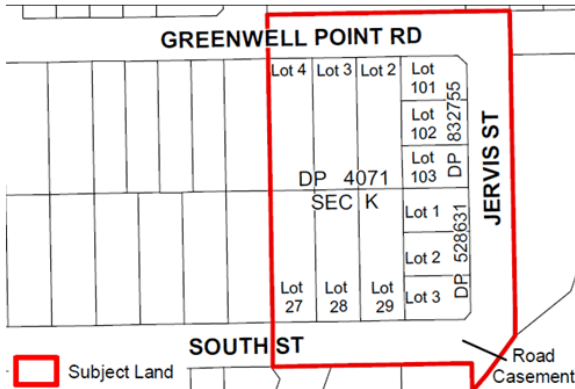
Figure 1: Subject Land Locations

The PP relates to seven sites as outlined in Table 1 below.

Table 1: Site details

Site 1 – 60-72 McIntosh Road, Shoalhaven Heads	
Subject land:	
Site details:	<p>Lot 2 DP 1203276, 60 McIntosh Street, Shoalhaven Heads</p> <p>Lot 3 DP 1203276, 62 McIntosh Street, Shoalhaven Heads</p> <p>Lot 4 DP 1203276 64 McIntosh Street, Shoalhaven Heads</p> <p>Lot 5 DP 1203276, 66 McIntosh Street, Shoalhaven Heads</p> <p>Lot 6 DP 1203276, 68 McIntosh Street, Shoalhaven Heads</p>

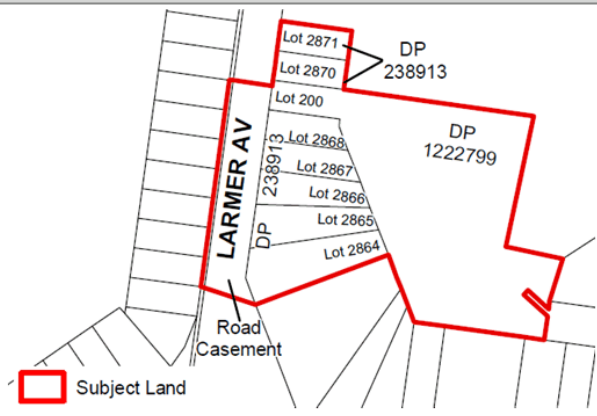
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	<p>Lot 7 DP 1203276, 70 McIntosh Street, Shoalhaven Heads</p> <p>Lot 8 DP 1203276 72 McIntosh Street, Shoalhaven Heads</p> <p>UPN 118343 - Road casement to the south-west of Lot 2</p>
Existing development:	Dwelling houses.
Surrounding development:	<p>North – Tourist and visitor accommodation approval (Lot 1 DP 1203276).</p> <p>South and East – Shoalhaven Heads Surf Club and foreshore reserve.</p> <p>West – Jerry Bailey Oval.</p>
<b>Site 2 – Greenwell Point Road, South Street and Jervis Street, Greenwell Point</b>	
Subject land:	
Site details:	<p>Lot 101 DP 832755, 74 Greenwell Point Road, Greenwell Point</p> <p>Lot 102 DP 832755, Jervis Street, Greenwell Point</p> <p>Lot 103 DP 832755, 41 Jervis Street, Greenwell Point</p> <p>Lot 1 DP 528631, 43 Jervis Street, Greenwell Point</p> <p>Lot 2 DP 528631, 45 Jervis Street, Greenwell Point</p> <p>Lot 3 DP 528631, 29 South Street, Greenwell Point</p> <p>Lot 29 DP 4071 Sec K, 27 South Street, Greenwell Point</p> <p>Lot 28 DP 4071 Sec K, 25 South Street, Greenwell Point</p> <p>Lot 27 DP 4071 Sec K, 23 South Street, Greenwell Point</p> <p>Lot 2 DP 4071 Sec K, 72 Greenwell Point Road, Greenwell Point</p> <p>Lot 3 DP 4071 Sec K, 70 Greenwell Point Road, Greenwell Point</p> <p>Lot 4 DP 4071 Sec K, 68 Greenwell Point Road, Greenwell Point</p> <p>Part Greenwell Point Road, Jervis Street and South Street (UPN 106764, 302841, 102790, 106763, 115665, 103356, 107569, 105469)</p>
Existing development:	A tourist cabin development is located at Lot 2 DP 4071 Sec K and Lot 3 DP 4071 Sec K is vacant. The other lots contain dwelling houses.
Surrounding development:	<p>North – Greenwell Point Public School.</p> <p>South – Residential development and Crookhaven River.</p>

DE18.43 - Attachment 1



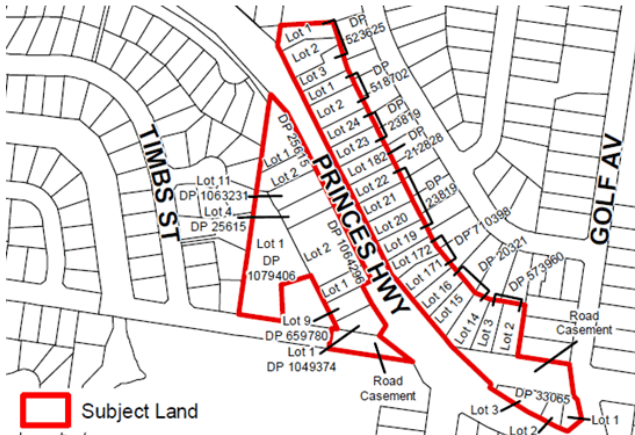
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	<p>East – A mix of tourist and visitor accommodation, residential development and commercial premises (shops).</p> <p>West – Residential development.</p>
<b>Site 3 – 150-164 Larmer Avenue, Sanctuary Point</b>	
Subject land:	
Site details:	<p>Lot 2871 DP 238913, 150 Larmer Avenue, Sanctuary Point</p> <p>Lot 2870 DP 238913, 152 Larmer Avenue, Sanctuary Point</p> <p>Lot 200 DP 1222799, 154 Larmer Avenue, Sanctuary Point</p> <p>Lot 2868 DP 238913, 156 Larmer Avenue, Sanctuary Point</p> <p>Lot 2867 DP 238913, 158 Larmer Avenue, Sanctuary Point</p> <p>Lot 2866 DP 238913, 160 Larmer Avenue, Sanctuary Point</p> <p>Lot 2865 DP 238913, 162 Larmer Avenue, Sanctuary Point</p> <p>Lot 2864 DP 238913, 164 Larmer Avenue, Sanctuary Point</p> <p>UPN 112092 - Part Larmer Avenue</p>
Existing development:	Vacant allotments.
Surrounding development:	<p>North – Rural zoned land.</p> <p>South – Residentially zoned land; some lots vacant, others with dwelling houses.</p> <p>East – Rural zoned land.</p> <p>West – Residential development and petrol station.</p>

DE18.43 - Attachment 1

DE18.43 - Attachment 1

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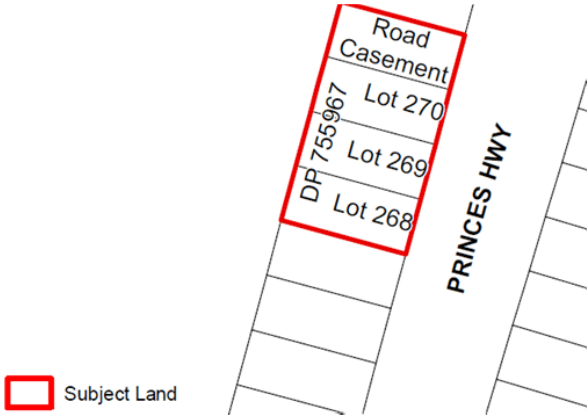
	<p>Lot 15 DP 19840, 60 Glanville Road, Sussex Inlet          Lot 16 DP 19840, 62 Glanville Road, Sussex Inlet          Lot 17 DP 19840, 64 Glanville Road, Sussex Inlet          Lot 18 DP 19840, 66 Glanville Road, Sussex Inlet          Lot 19 DP 19840, 68 Glanville Road, Sussex Inlet          Lot 20 DP 19840, 11 Lakehaven Drive, Sussex Inlet          Lot 17 DP 27489, 9 Lakehaven Drive, Sussex Inlet          Lot 16 DP 27489, 7 Lakehaven Drive, Sussex Inlet          Lot 9 DP 746389, 5 Lakehaven Drive, Sussex Inlet          Lot 15 DP 27489, 3 Lakehaven Drive, Sussex Inlet          Lot 14 DP 27489, 1 Lakehaven Drive, Sussex Inlet          Part Inverison Road, Glanville Road and Lakehaven Drive (UPN 111952, 111752, 111753, 101359, 111754, 112068, 111712)</p>
Existing development:	Dwelling houses.
Surrounding development:	<p>North – Dwelling houses.          South – Sussex Inlet Bowling Club, dwelling houses and Sussex Inlet Lions Park.          East – Sussex Inlet Bowling Club, Reserve adjacent to Sussex Inlet.          West – Dwelling houses.</p>
<b>Site 6 - Princes Highway, Mollymook/Ulladulla</b>	
Subject land:	
Site details:	<p>Lot 1 DP 523625, 4 Princes Highway, Mollymook          Lot 2 DP 523625, 6 Princes Highway, Mollymook          Lot 3 DP 523625, 8 Princes Highway, Mollymook          Lot 1 DP 518702, 10 Princes Highway, Mollymook          Lot 2 DP 518702, 12 Princes Highway, Mollymook          Lot 24 DP 23819, 14 Princes Highway, Mollymook</p>

DE18.43 - Attachment 1

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	<p>Lot 23 DP 23819, 16 Princes Highway, Mollymook          Lot 182 DP 212828, 18 Princes Highway, Mollymook          Lot 22 DP 23819, 20 Princes Highway, Mollymook          Lot 21 DP 23819, 22 Princes Highway, Mollymook          Lot 20 DP 23819, 24 Princes Highway, Mollymook          Lot 19 DP 23819, 26 Princes Highway, Mollymook          Lot 172 DP 710398, 28 Princes Highway, Mollymook          Lot 171 DP 710398, 30 Princes Highway, Mollymook          Lot 16 DP 20321, 32 Princes Highway, Mollymook          Lot 15 DP 20321, 34 Princes Highway, Mollymook          Lot 14 DP 20321, 1 Buchan Street, Mollymook          Lot 3 DP 573960, 3 Buchan Street, Mollymook          Lot 2 DP 573960, 5 Buchan Street, Mollymook          Lot 3 DP 33065, 2 Buchan Street, Mollymook          Lot 2 DP 33065, 4 Buchan Street, Mollymook          Lot 1 DP 33065, 6 Buchan Street, Mollymook          Lot 1 DP 1049374, 23 Princes Highway, Ulladulla          Lot 9 DP 659780, 21 Princes Highway, Ulladulla          Lot 1 DP 1064296, 19 Princes Highway, Ulladulla          Lot 2 DP 1064296, 13 Princes Highway, Ulladulla          Lot 4 DP 25615, 11 Princes Highway, Ulladulla          Lot 11 DP 1063231, 9 Princes Highway, Ulladulla          Lot 2 DP 25615, 7 Princes Highway, Ulladulla          Lot 1 DP 25615, 5 Princes Highway, Ulladulla          Lot 1 DP 1079406          Part Millard Street and Buchan Street (UPN 113728, 113139, 105746)</p>
Existing development:	<p>Mainly residential with 4 motels interspersed between existing dwelling houses and dual occupancy development.</p> <p>Part of the western portion of the site has been identified for acquisition by the NSW Roads and Maritime Services.</p>
Surrounding development:	<p>The area adjoins land zoned R1 General Residential to the south and south-west and R2 Low Density Residential land in all other directions. Land to the east of Lot 1 DP 33065 is zoned R3 Medium Density Residential.</p>

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Site 7 – 3-7 Princes Highway, Burrill Lake	
Subject land:	 <p>Subject Land</p>
Site details:	<p>Lot 270 DP 755967 (Por 270), 3 Princes Highway, Burrill Lake          Lot 269 DP 755967 (Por 269), 5 Princes Highway, Burrill Lake          Lot 268 DP 755967 (Por 268), 7 Princes Highway, Burrill Lake          UPN 105673 - Road casement to the north of Lot 270</p>
Existing development:	Dwelling houses
Surrounding development:	<p>North – Vacant land.          South – Land reserved for the Milton-Ulladulla Bypass.          East – Dwelling houses and Council managed reserve.          West – Land reserved for the Milton-Ulladulla Bypass.</p>

## 1.2 Background

On 5 May 2015, Council's Development Committee considered a development application for the construction of a dwelling house within the SP3 Tourist Zone in Sussex Inlet (Site 5). Although a dwelling house is permissible with consent in the zone, the report sought direction from Council in regard to the appropriateness of approving the dwelling house due to the potential inconsistency with the third objective of the SP3 Tourist Zone being:

*To provide for dwelling houses that form an integral part of tourist oriented development.*

Council's Development Committee resolved (D15/130228) that:

- a) as a matter of policy, the erection of dwellings for residential purposes on existing lots without a tourist related use be permitted within the area of SP3 zoned area of Glanville Road and Lakehaven Drive Sussex Inlet.*
- b) the appropriateness of the SP3 Tourist Zone for the small individual lots in this locality, be reviewed as part of ongoing SLEP 2014 reviews.*

During the Principal SLEP 2014 process, it came to the attention of Council that much of the development in the tourist zone is not necessarily tourist related, which is inconsistent with the objectives of the zone. In addition, some SP3 Tourist land is unsuitable for tourist type development due to current bushfire or flooding requirements. As a result, the scope of the Review was expanded to include all SP3 Tourist land across the City, as the issue is not isolated to the Sussex Inlet area.

The Review was undertaken in 2015/2016 and considered approximately 55 sites currently zoned SP3 Tourist. The Review identified land that:

- Should remain SP3 Tourist due to its ongoing tourism activities;
- Was recently zoned SP3 during the Principal SLEP 2014 process and was therefore rezoning was not appropriate; and
- Would be more appropriately zoned residential given current and adjoining uses.

Preliminary consultation was undertaken with property owners of SP3 Tourist land in October 2016. Landowners of properties zoned SP3 that were being used for existing residential purposes received a letter and a survey to canvas their future intentions for their land and gauge their interest in a potential change of zone. Land owners of properties that had a tourist related use, or were located in an area that is predominantly developed for tourist related uses, were sent a letter inviting comments.

As a result of the Review, associated consultation and two Councillor Briefings, 7 sites across Shoalhaven have been identified for rezoning.

## **2 Part 1 – Intended Outcome**

### **2.1 Amendment to mapping**

The intended outcome of this PP is to rezone certain SP3 Tourist zoned land identified in the Review to an appropriate residential zone, recreation or special infrastructure zone. Table 2 below outlines the rationale behind the proposed rezoning for each site as well as the subsequent amendments to the Height of Buildings and Minimum Lot Size maps where required.

The seven sites are not currently subject to height mapping under SLEP 2014; however provisions for maximum building height apply via Clause 4.3(2A) where an 11m blanket height provision is prescribed. The PP seeks to map the heights to be consistent with the adjoining residential zones, where appropriate, whilst maintaining the citywide approach of mapping foreshore residential lots (first residential lot back from the waterfront of the sea, bays, rivers and lakes) at 7.5m.

The sites currently have no minimum lot size under SLEP 2014. For consistency with surrounding residentially zoned land, a minimum lot size of 500m<sup>2</sup> is generally proposed for



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all seven sites. Further, where appropriate to the immediate location, a lot size clause (clause 4.1A) will also be applied.

Depending on the site, the PP also seeks to amend the associated zoning, height of building and minimum lot size of the road network or land adjacent to the SP3 Tourist land.

**Table 2: Rationale for amendments**

<p><b>Site 1</b> <b>Shoalhaven Heads</b></p>	<p>A subdivision was approved in 2014 for an 8 lot subdivision that created 7 small lots for the purpose of residential use along McIntosh Street, the residue remaining for a tourist purpose. The 7 small lots were unable to meet the asset protection zone (APZ) requirements for tourist and visitor accommodation, which is a 'Special Fire Protection Purpose' under the <i>Rural Fires Act 1997</i>. This area was only suitable for residential purposes as the APZ for the dwellings could be accommodated within the road reserve. The lots have now been sold and dwelling houses have been approved and constructed on each lot.</p> <p>A submission was received during the Review that supported a zone change to residential as the development application would have been easier if the parent lot was zoned residential.</p> <p>It is proposed that Lots 2-8 be rezoned to R1 General Residential, with the road casement rezoned to RE1 consistent with the surrounding road network.</p> <p>The lots are the first residential lot back from the waterfront and a height of 7.5m is proposed.</p> <p>A minimum lot size of 500m<sup>2</sup> will be mapped for the site consistent with other R2 Low density residential land in the vicinity.</p> <p>The height and minimum lot size of the road casement will remain as existing.</p>
<p><b>Site 2</b> <b>Greenwell Point</b></p>	<p>Lot 3 DP 528631 is mapped as high hazard floodway and 4 other adjoining lots are mapped as high hazard flood storage (1% AEP = 0.5m freeboard) in the Lower Shoalhaven Flood Study 2011.</p> <p>The Lower Shoalhaven River Floodplain Risk Management Plan and Study identifies that land in the Greenwell Point area should have low density restrictions because the entire area can be isolated from services such as fresh water, sewer and electricity during flood events. Even though there will be no threat to property in the flood free areas, there will still be a burden for emergency services because of the isolation. Further, tourist development in the area has the potential to increase the density during times of flood and attracts people to the area who are not necessarily flood aware. A R2 Low Density Residential zoning is therefore considered more appropriate than SP3 Tourist.</p> <p>The lots along Jervis Street are the first residential lots back from the waterfront and therefore are proposed to be mapped at a maximum height of 7.5m. All other land is proposed to be a maximum height of 8.5m.</p> <p>A minimum lot size of 500m<sup>2</sup> will be mapped for the site consistent with other R2 Low Density Residential land in the vicinity.</p>

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	<p>To ensure consistency across the road network, the following amendments are proposed:</p> <ul style="list-style-type: none"> <li>• Jervis Street – rezone to B2 Local Centre.</li> <li>• Greenwell Point Road – rezone to R2 Low Density Residential.</li> <li>• South Street – rezone to R2 Low Density Residential, map height at part 7.5m and part 8.5m, minimum lot size at 500m<sup>2</sup>.</li> </ul>
<b>Site 3 Sanctuary Point</b>	<p>Although it is zoned for tourist purposes, the land is not located in a high profile tourist area and holiday choices now centre on high amenity areas in close proximity to the water. The land is:</p> <ul style="list-style-type: none"> <li>• A considerable distance from the water.</li> <li>• Constrained by flood and bushfire.</li> <li>• Surrounded by low density residential.</li> <li>• In proximity to a petrol station.</li> </ul> <p>A submission was received from the owner of the allotments during the Review that outlined the difficulties associated with selling the lots because of the zoning. The demand in the area is for residential land.</p> <p>A maximum building height of 8.5m is proposed for the land (except RU2 part of Lot 200), which is consistent with other land in the area.</p> <p>A minimum lot size of 500m<sup>2</sup> will be mapped for the land (except RU2 part of Lot 200), which is consistent with other R2 Low Density Residential land in the vicinity. It is appropriate that the lot size clause (4.1A – Area 1) also applies to this land, including the relevant part of Larmer Avenue.</p>
<b>Site 4 St Georges Basin</b>	<p>This lot has been used for residential purposes since the subdivision and development application approval in 1981 and is in separate ownership to the adjoining Tourist Park, which is also zoned SP3. The lot adjoins a low density residential area to the north and west.</p> <p>It would be appropriate to rezone the allotment to be consistent with the adjoining R2 Low Density Residential zone and 'tidy up' the zone boundary line.</p> <p>A maximum building height of 8.5m is proposed for the land which is consistent with other properties in the area.</p> <p>A minimum lot size of 500m<sup>2</sup> and lot size clause (4.1A – Area 1) will be mapped for the land, including the relevant part of Island Point Road, which is consistent with other R2 Low Density Residential land in the vicinity.</p>
<b>Site 5 Sussex Inlet</b>	<p>The development application for a dwelling house on Lot 15 DP 19840 was the catalyst for the Review of SP3 Tourist land.</p> <p>The SP3 Tourist zone in this location is likely to have been related to the opportunity that existed to provide tourist accommodation to extend the adjacent Bowling Club uses, and the fact that a number of the residential sized lots were vacant at the</p>



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	<p>time Shoalhaven LEP 1985 came into effect. This area was not revisited as part of the SLEP 2014 process and was simply transferred across to SP3 Tourist.</p> <p>Due to the current residential use of the properties, the relatively small size of the blocks and the limited likelihood that they will be amalgamated into a larger tourism site, it is appropriate to rezone these properties to R2 Low Density Residential.</p> <p>Council received 4 submissions during the review, all of which indicated that they would support a change to a residential zone.</p> <p>The lots with a primary frontage to Lakehaven Drive are the first blocks back from the Sussex Inlet and therefore a maximum building height of 7.5m is proposed for these lots. A maximum building height of 8.5m is proposed for the rest of the blocks facing Glanville Road and Inverison Road. This is consistent with other properties in the area.</p> <p>A minimum lot size of 500m<sup>2</sup> and lot size clause (4.1A – Area 1) will be mapped for the land, including the relevant part of the road network, which is consistent with other R2 Low Density Residential land in the vicinity.</p>
<b>Site 6 Mollymook/ Ulladulla</b>	<p>The current SP3 Tourist zone reflects the LEP zones that were established through Amendment No. 195 to LEP 1985 (Milton-Ulladulla Structure Plan) that was gazetted in 13 June 2003. This amendment sought to retain and protect existing tourist zones. The strip has 4 motels, 3 of which have been for sale on and off for some time now. Most of the motels were built in the 1960s and 1970s and are somewhat dated.</p> <p>The Milton-Ulladulla Structure Plan identified a trend in the 'reduction in demand for traditional motel accommodation particularly those located adjacent to major highways' and it would appear that this trend is continuing as discussed in the Shoalhaven Tourism Masterplan 2012-2017. Two of the land owners have recently approached Council about rezoning their sites to residential and the potential for residential subdivision due to the motels decreasing business. Further, Council received a submission from one of the motel owners during the Review who support a residential zone change and believes that there is an oversupply of motels in this location, with most of the demand being for motels in the main tourist area near Mollymook Beach.</p> <p>The Shoalhaven Tourism Masterplan 2012-2017 suggests that 'Building motel occupancy and improving performance will be dependent in part on both improvements in the quality and presentation of the properties and building the conference, meeting and events market segments as they have a far greater propensity to use motel accommodation'. The Masterplan also notes a gap in the supply of quality serviced apartments in the region and some of these older style motels due to their land size and location may be in a good position for such a land use.</p> <p>There could be future potential for these motels to improve their appearance or to diversify into serviced apartments. It is proposed to rezone the land, including the relevant part of Buchan Street, to R1 General Residential, compatible with one of the adjoining zones to the south. It will offer a more flexible suite of uses that include both tourist and visitor accommodation and a variety of residential</p>

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	<p>accommodation. This may be a catalyst for the renewal of the aging motel structures and potentially may improve the amenity in this high profile town gateway site.</p> <p>A change in zone in this area would need to be accompanied by site specific Development Control Plan (DCP) provisions to guide future development and reduce the impact on the amenity of adjoining properties. It is expected that these provisions will be included in Chapter V3: Miscellaneous Site Specific Issues of Shoalhaven DCP 2014. Such DCP provisions would be prepared and exhibited alongside this PP.</p> <p>The site will continue to have no maximum building height mapped, and will rely on Clause 4.3(2A) of SLEP 2014 where an 11m blanket height provision is prescribed.</p> <p>A minimum lot size of 500m<sup>2</sup> and lot size clause (4.1A – Area 1) will be mapped for the land, including the relevant part of the road network and Lot 1 DP 1079406, which is consistent with other R1 General Residential and R2 Low Density Residential land in the vicinity.</p>
<p><b>Site 7</b> <b>Burrill Lake</b></p>	<p>The lots front Princes Highway and the land to the west is zoned SP2 for the proposed Milton-Ulladulla bypass road. The lots are of a small residential size, affected by bushfire and are not in a high amenity location. It is also noted that a tourist use is a special fire protection purpose and it is unlikely that the required asset protection zones can be managed on site. It is for this reason that land to the east of the Princes Highway has been rezoned to R1 General Residential. It would be appropriate to rezone Site 7 land to a residential zone consistent with the lots across the road and alter the Height of Buildings and Minimum Lot size maps to be consistent with the adjacent residential zoned land.</p> <p>The proposed zone of R1 General Residential is consistent with the land to the east of the Princes Highway. The land is not first residential lot from the foreshore and therefore a height of 8.5m is considered appropriate.</p> <p>A minimum lot size of 500m<sup>2</sup> is proposed for the land which is consistent with other R1 General Residential land in the vicinity.</p> <p>The road easement to the north of the proposed R1 General Residential lots should be rezoned SP2 Infrastructure (Road) in line with the identified use. The height and minimum lot size would remain as existing.</p>

## 2.2 Amendment to instrument

It is intended to insert a clause into Part 7 of SLEP 2014 to provide criteria for the future consideration of dwelling houses in the SP3 zone.

Dwelling houses are permissible with consent in the SP3 zone, however there is confusion as to the weight of SP3 Tourist zone objective 3, in relation to this permissibility:

*To provide for dwelling houses that form an integral part of tourist-oriented development.*

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For example, if a proposed dwelling house does not form part of an integral part of a tourist-oriented development, is it considered to be prohibited? This is a question often asked by Council staff, industry and the broader community.

The intended effect is not clear and the proposed local provision will clarify Council's intent in this regard.

It is noted that this clause was carried over from the previous 2(d) (Residential "D" Zone) in Shoalhaven Local Environmental Plan 1985 where dwelling houses were permissible with consent.

### 3 Part 2 – Explanation of Provisions

It is proposed to rezone sites 1 to 5 from SP3 Tourist to R2 Low Density Residential (with RE1 Public Recreation and B2 Local Centre elements) and sites 6 and 7 from SP3 Tourist to R1 General Residential (with a SP2 Instructure element) with a corresponding amendment to the Height of Buildings and Minimum Lot Size maps.

The existing and proposed zone, height of building and minimum lot size maps are shown in (Section 5) Part 4 - Mapping.

The proposed outcome of this PP will be achieved by amending the Land Zoning, Height of Building and Minimum Lot Size maps as follows:

**Table 3: Amendments to zoning, height of buildings and minimum lot size maps**

<b>Site 1 Shoalhaven Heads</b>	<p><i>Land Zoning Map</i> – Sheet LZN_019G – amend zoning of subject land from SP3 Tourist to R2 Low Density Residential. Road casement from SP3 Tourist to RE1 Public Recreation.</p> <p><i>Height of Buildings Map</i> – Sheet HOB_019G – amend maximum height of building from no maximum building height to 7.5m.</p> <p><i>Lot Size Map</i> – Sheet LSZ_019G - amend minimum lot size from no minimum lot size to 500m<sup>2</sup>.</p>
<b>Site 2 Greenwell Point</b>	<p><i>Land Zoning Map</i> – Sheet LZN_019H – amend zoning of subject land from SP3 Tourist to R2 Low Density Residential. Part Jervis Street to B2 Local Centre, part Greenwell Point Road to R2 Low Density Residential and part South Street to R2 Low Density Residential.</p> <p><i>Height of Buildings Map</i> – Sheet HOB_019H – amend maximum height of building from no maximum building height to part 7.5m (lots adjacent to Jervis Street and part road casement) and part 8.5m, including part South Street.</p> <p><i>Lot Size Map</i> – Sheet LSZ_019H - amend minimum lot size from no minimum lot size to 500m<sup>2</sup>, including part South Street.</p>

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<b>Site 3 Sanctuary Point</b>	<p><i>Land Zoning Map</i> – Sheet LZN_020D – amend zoning of all lots, except Lot 200 DP 1222799, from SP3 Tourist to R2 Low Density Residential. The part of Lot 200 DP 1222799 currently zoned SP3 Tourist will be amended to R2 Low Density Residential and the part currently zoned RU2 Rural Landscape will be retained.</p> <p><i>Height of Buildings Map</i> – Sheet HOB_020D – amend maximum height of building of all lots, except Lot 200 DP 1222799, from no maximum building height to 8.5m. The part of Lot 200 DP 1222799 currently zoned SP3 Tourist will be amended to a maximum building height of 8.5m and the part currently zoned RU2 Rural Landscape will be retained as no maximum building height.</p> <p><i>Lot Size Map</i> – Sheet LSZ_020D - amend minimum lot size of all lots and road casement, except Lot 200 DP 1222799, from no minimum lot size to 500m<sup>2</sup> with a clause 4.1A (Area 1) overlay. The part of Lot 200 DP 1222799 currently zoned SP3 Tourist will be amended to a minimum lot size of 500m<sup>2</sup> with a clause 4.1A (Area 1) overlay and the part currently zoned RU2 Rural Landscape will be retained with a minimum lot size of 40ha (AB4).</p>
<b>Site 4 St Georges Basin</b>	<p><i>Land Zoning Map</i> – Sheet LZN_014F – amend zoning of subject land from SP3 Tourist to R2 Low Density Residential.</p> <p><i>Height of Buildings Map</i> – Sheet HOB_014F – amend maximum height of building from no maximum building height to 8.5m.</p> <p><i>Lot Size Map</i> – Sheet LSZ_014F:</p> <ul style="list-style-type: none"> <li>• Amend minimum lot size from no minimum lot size to 500m<sup>2</sup>.</li> <li>• Amend boundary of lot size clause 4.1A (Area 1) so it encompasses Lot 4 DP 621676 and adjacent road casement.</li> </ul>
<b>Site 5 Sussex Inlet</b>	<p><i>Land Zoning Map</i> – Sheet LZN_015H – amend zoning of subject land from SP3 Tourist to R2 Low Density Residential.</p> <p><i>Height of Buildings Map</i> – Sheet HOB_015H:</p> <ul style="list-style-type: none"> <li>• Amend maximum height of building from no maximum building height to 7.5m for the following lots: <ul style="list-style-type: none"> <li>– Lot 17 DP 27489, 9 Lakehaven Drive, Sussex Inlet</li> <li>– Lot 16 DP 27489, 7 Lakehaven Drive, Sussex Inlet</li> <li>– Lot 9 DP 746389, 5 Lakehaven Drive, Sussex Inlet</li> <li>– Lot 15 DP 27489, 3 Lakehaven Drive, Sussex Inlet</li> <li>– Lot 14 DP 27489, 1 Lakehaven Drive, Sussex Inlet</li> </ul> </li> <li>• Amend maximum height of building for all other lots from no maximum building height to 8.5m.</li> </ul> <p><i>Lot Size Map</i> – Sheet LSZ_015H:</p> <ul style="list-style-type: none"> <li>• Amend minimum lot size from no minimum lot size to 500m<sup>2</sup>.</li> </ul>

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	<ul style="list-style-type: none"> <li>Amend boundary of lot size clause 4.1A so it encompasses the subject land, including the road casement.</li> </ul>
<b>Site 6</b> <b>Mollymook/</b> <b>Ulladulla</b>	<p><i>Land Zoning Map</i> – Sheet LZN_016C and Sheet LZN_016D – amend zoning of land from SP3 Tourist to R1 General Residential.</p> <p><i>Lot Size Map</i> – Sheet LSZ_016C and Sheet LSZ_016D:</p> <ul style="list-style-type: none"> <li>Amend minimum lot size from no minimum lot size to 500m<sup>2</sup>, including the Buchan Street road casement.</li> <li>Amend boundary of lot size clause 4.1A (Area 1) so it encompasses the subject land, including part Lot 1 DP 1079406 and the Millard Street and Buchan Street road casements.</li> </ul>
<b>Site 7</b> <b>Burrill Lake</b>	<p><i>Land Zoning Map</i> – Sheet LZN_016D – amend zoning of Lots 268-270 from SP3 Tourist to R1 General Residential. Amend zoning of road casement from SP3 Tourist to SP2 Infrastructure (Road).</p> <p><i>Height of Buildings Map</i> – Sheet HOB_016D – amend maximum height of building for Lots 268-270 from no maximum building height to 8.5m. The road casement will continue to have no mapped building height.</p> <p><i>Lot Size Map</i> – Sheet LSZ_016D - amend minimum lot size for Lots 268-270 from no minimum lot size to 500m<sup>2</sup>. The road casement will continue to have no mapped minimum lot size.</p>

The PP also seeks to insert a new clause in Part 7 Additional local provisions of SLEP 2014 to provide criteria for the consideration of dwelling houses in the SP3 zone.

Suggested wording:

#### 7.27 Dwelling houses on land in Zone SP3 Tourist

- (1) The objective of this clause is to ensure dwelling houses form an integral part of a tourist-oriented development.
- (2) Development consent must not be granted to a dwelling house on land in Zone SP3 Tourist unless the consent authority is satisfied that the dwelling house:
  - a) forms an integral part of a tourist-oriented development on the site; or
  - b) will not conflict with the existing or a future tourist-oriented development on the site.

*Note: The final wording of the amendment will be determined in consultation with Parliamentary Counsel.*

There is merit in removing SP3 Tourist zone objective 3 to avoid duplication. It is considered that the proposed Clause 7.27 above and SP3 Tourist zone objectives 1 and 2 clearly reflect Council's intent in this regard.



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## **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?**

The PP is the result of a citywide review of land within the SP3 Tourist zone that aims to retain land with an ongoing tourism value and rezone the remaining land that is predominantly residential in nature to better reflect the future intent for the land.

#### **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 ISRP applies to the whole Shoalhaven LGA including the subject lands. It identifies tourism as a priority growth sector and includes an action to investigate tourism related transport services in Shoalhaven in the medium term. The ISRP also acknowledges the importance of the unique features of the area as tourist and recreational attractions that help to enhance the economy. The relationship between tourism and the housing market is identified.

The ISRP also encourages a variety of housing choices with homes that meet a variety of needs and lifestyles (Goal 2).

The Review provided an opportunity for Council to rationalise the valuable tourism assets across the City and identified that only seven of approximately 55 sites were suitable for rezoning to a predominantly residential purpose. As such, the proposal is considered to be consistent with the ISRP.

#### **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 Proposal is consistent with Council's Community Strategy Plan and the relevant themes and actions below:

- Theme 2. Sustainable, liveable environments

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- 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

Shoalhaven Tourism Masterplan 2012-2017 (Masterplan)

The Masterplan presents a number of recommendations, strategies and actions designed to deliver the vision, objective and targets for tourism in Shoalhaven. One of these actions is to ensure prime development sites are recognised and protected in SLEP 2014. It also discusses the declining demand for the aging motel/hotel style accommodation in the City and the increase in holiday rental market through well-known internet platforms.

The proposal is not inconsistent with the Masterplan.

Growth Management Strategy (GMS)

Application: Sites 1 and 2.

The GMS encourages and strengthens tourism opportunities by identifying key tourism sites across the City. Residential growth is predominately expected to occur through infill development.

The proposal is not inconsistent with the Masterplan.

Jervis Bay Settlement Strategy (JBSS)

Application: Sites 3 and 4

The JBSS encourages tourism development in appropriate locations to building on a range of experiences and services that are currently available. The supply of housing opportunities for future residential development will be provided within the environmental and servicing limits of the region.

The proposal is not inconsistent with the JBSS.

Sussex Inlet Settlement Strategy

Application: Site 5

The SISS is mostly silent in relation to tourism, however it supports opportunities for appropriate urban consolidation and greater densities to increase the range of housing choices available, particularly in convenient locations.

The proposal is not inconsistent with the SISS.

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Milton Ulladulla Structure Plan (MUSP)

Application: Sites 6 and 7

The MUSP addresses tourism trends in the Milton-Ulladulla area, noting the increase in demand for nature-based holiday experiences, cultural based tourism, budget self-catering and authentic personalised quality accommodation. It also notes the reduced demand for traditional motel accommodation located adjacent to major highways. It seeks to encourage tourism developments that give greater experiences of the Milton-Ulladulla area and increase the economic base of the area.

Site 8 is identified in the MUSP as broad acre tourism, however the preferred accommodation types include holiday cabins and caravan parks that cannot be accommodated on the lots due to their relatively small size.

The proposal is not inconsistent with the MUSP.

**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**. The relevant SEPPs are discussed below.

State Environmental Planning Policy (Coastal Management) 2018

This policy aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone by protecting the environmental assets of the coast. Certain land within sites 1, 2, 4, 5, 6 and 7 are located in the coastal use area. Certain land within sites 2, 3 and 5 are located in the coastal environment area.

The proposal to rezone the land will not have any significant impacts on the matters for consideration outlined Division 3 and 4 of the Coastal Management SEPP. The protection of the coast and associated amenity can be adequately addressed through the development assessment process.

**4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

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



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### 1.1 Business and Industrial Zones

This direction applies as the PP seeks to expand the B2 Local Centre zone across part of Jervis Street at Site 2 to remove the SP3 classification which is redundant. The proposed rezoning is generally administrative and it:

- Achieves the objectives of this direction,
- Retains the existing B2 Local Centre zone and only proposes extension over part of Jervis Street.
- Does not reduce the total potential floor space area for employment uses and related public services in the B2 Local Centre zone.

The PP is not inconsistent with this direction.

### 2.2 Coastal Protection

The direction applies as the PP affects land within the coastal zone. The PP not inconsistent with the NSW Coastal Policy: A sustainable future for the New South Wales Coast or the NSW Coastline Management Manual 1990.

The PP is not considered inconsistent with the Coastal Design Guidelines 2003 as the potential for intensification and the impacts of any future development on the coastal environment should be reduced. Shoalhaven Development Control Plan 2014 includes a number of provisions relating to visual connections and views, appropriate scaled buildings and future desired character.

The PP is not inconsistent with this direction.

### 3.1 Residential Zones

The direction applies as the PP proposes to rezone the subject land to either R1 General Residential or R2 Low Density Residential.

The PP will broaden the choice of building types and locations in the housing market and make more efficient use of existing infrastructure and services. Satisfactory servicing arrangements are in place for all sites.

The change in zone from tourist to residential will not impact on the residential density of the land but will improve the ability of the land to provide for residential development. Further, development pressure on town and village boundaries will be reduced.

The PP is not inconsistent with this direction.

### 3.4 Integrating Land Use and Transport

The sites are generally located in areas that are serviced by pedestrian infrastructure and public transport, which should reduce car dependency and increase the viability of public

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transport services. Tourism uses in Shoalhaven are generally heavily dependent on the private vehicle and a change to a residential zoning will reduce demand in this regard.

The PP supports the principles and objectives of *Improving Transport Choice — Guidelines for planning and development* and *The Right Place for Business and Services — Planning Policy*. Traffic impacts would be considered as part of the development assessment process.

The PP is not inconsistent with this direction.

#### 4.1 Acid Sulfate Soils

All of the subject sites are mapped as having acid sulfate soils as follows:

- Site 1 – Class 3
- Site 2 – Class 2 and 5
- Site 3 – Class 2 and 5
- Site 4 – Class 5
- Site 5 – Class 3 and 5
- Site 6 – Class 5
- Site 7 – Class 5

The PP to rezone the land from a tourist to a residential zone will not intensify the land use of the land or increase the potential impact on surface groundwater quality and quantity, nor any ecosystems or biodiversity.

The PP is not inconsistent with this direction.

#### 4.3 Flood Prone Land

Sites 2 and 3 are flood prone as discussed in Section 2 (Part 1 – Intended Outcome) above.

The Lower Shoalhaven River Floodplain Risk Management Plan and Study identifies that land in the Greenwell Point area should have low density restrictions because the entire area can be isolated from services such as fresh water, sewer and electricity during flood events. The St Georges Basin Floodplain Risk Management Plan and Study identifies that access to Larmer Avenue, Sanctuary Point may be severed in small or frequent events.

The PP proposes to rezone these sites to R2 Low Density Residential and it is considered that permissible development (most likely dwelling houses) is unlikely to result in significant flood impacts to other properties or permit a significant increase in the development of the land. It is expected that the PP will reduce the future intensity of the land use in these locations and therefore reduce the requirements for government spending on flood mitigation, infrastructure or services.

The PP is not inconsistent with this direction.

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#### 4.4 Planning for Bushfire Protection

Site 1, 3 and 7 are identified as bushfire prone land. The rezoning of the subject sites to residential will reduce the potential for development that would be classified as 'Special Bushfire Protection Purpose' and the requirement for a Bushfire Safety Authority from the Rural Fire Services.

Where relevant, future development will be assessed against Planning for Bushfire Protection during the development assessment process.

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.

#### 5.10 Implementation of Regional Plans

The Illawarra-Shoalhaven Regional Plan (ISRP) applies to Shoalhaven and addresses the provision of suitable land for tourism and housing needs. The PP is considered consistent with the ISRP as discussed in Section 4.2.1. The PP is therefore consistent with this direction.

#### 6.3 Site Specific Provisions

To enable the proposal to proceed, this PP seeks to rezone the sites to either a R1 General Residential, R2 Low Density Residential, RE1 Public Recreation, SP2 Infrastructure or B2 Local Centre. These zones already apply in SLEP 2014. This approach is consistent with Section (4)(b) of 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 PP will not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats as it involves a rezoning from a tourist to predominantly residential zones in SLEP 2014 and the majority of lots have already been developed for residential purposes.

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

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**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 as the PP involves a rezoning from a tourist to predominantly residential zones and the majority of lots have already been developed for residential purposes. Further, the maximum permissible height for each site has been decreased in line with surrounding residentially zoned land further mitigating amenity, visual and view sharing impacts.

Any future use of the land will 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 social and economic impacts related to the PP are considered minimal. Most of the sites have existing dwelling houses. The vacant allotments on Larmer Avenue are likely to be more attractive to potential buyers for a residential use than a tourist use. The rezoning of some of the sites could potentially improve the economic viability of those properties and increase the availability of a diverse range of residential housing which is currently in high demand in the LGA.

The loss of land zoned for tourism purposes is not considered to result in any adverse economic impacts as the eight sites hold limited tourism value. Further, existing tourist and visitor accommodation can continue to operate and intensify etc via existing use provisions.

The increased residential opportunities following the rezoning will have positive social impacts for the community. Additional housing supply across the City may assist with housing affordability.

**4.4 State and Commonwealth Interests (Section D)**

**4.4.1 Is there adequate public infrastructure for the Planning Proposal?**

All seven sites are located in areas that are well serviced by existing infrastructure and the PP does not trigger the need for additional infrastructure.

Shoalhaven Water have advised that all sites are serviced by water supply and sewerage services adequate to support residential development. No augmentation of the existing systems is required to support the change of zone from SP3 Tourist to R1 General Residential, R2 Low Density Residential, RE1 Public Recreation, B2 Local Centre or SP2 Infrastructure (Road).

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**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) 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**

The proposed mapping changes are outlined in Section 3 (Part 2 – Explanation of Provisions) and shown below in the following map sets:

DE18.43 - Attachment 1

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**Site 1 – 60-72 McIntosh Road, Shoalhaven Heads**





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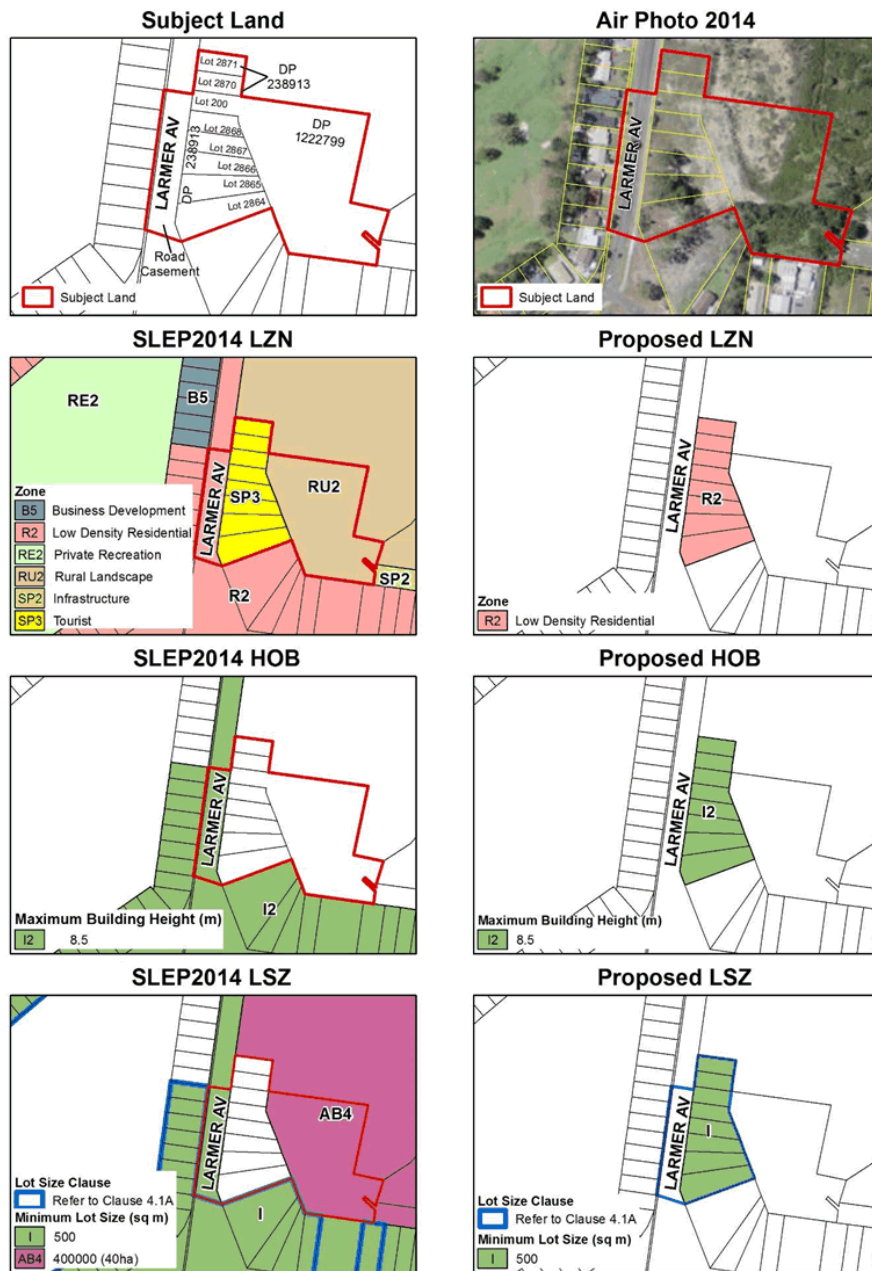
**Site 2 – Greenwell Point Road, South Street and Jervis Street, Greenwell Point**



DE18.43 - Attachment 1

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**Site 3 – 150-164 Larmer Avenue, Sanctuary Point**



DE18.43 - Attachment 1



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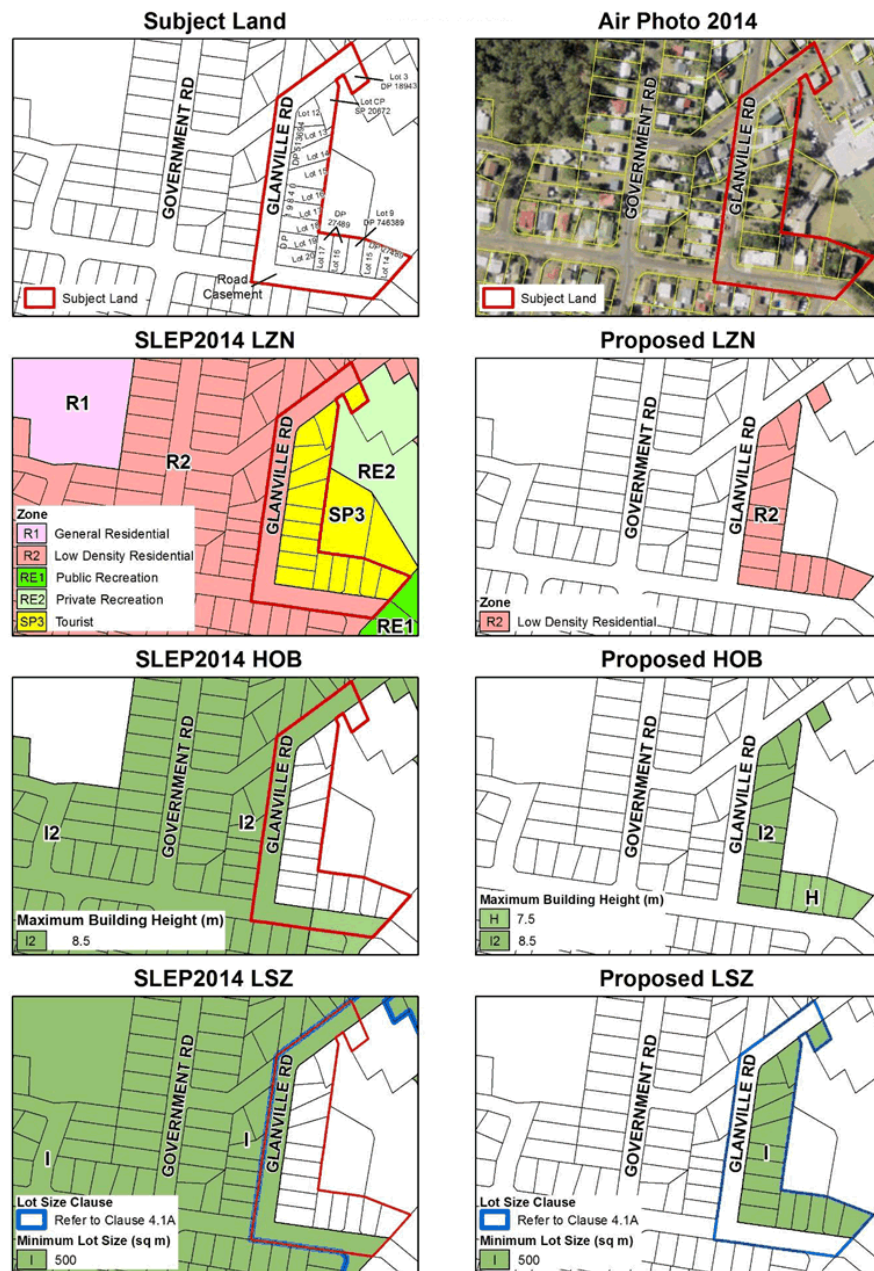
**Site 4 – 81 Island Point Road, St Georges Basin**



DE18.43 - Attachment 1

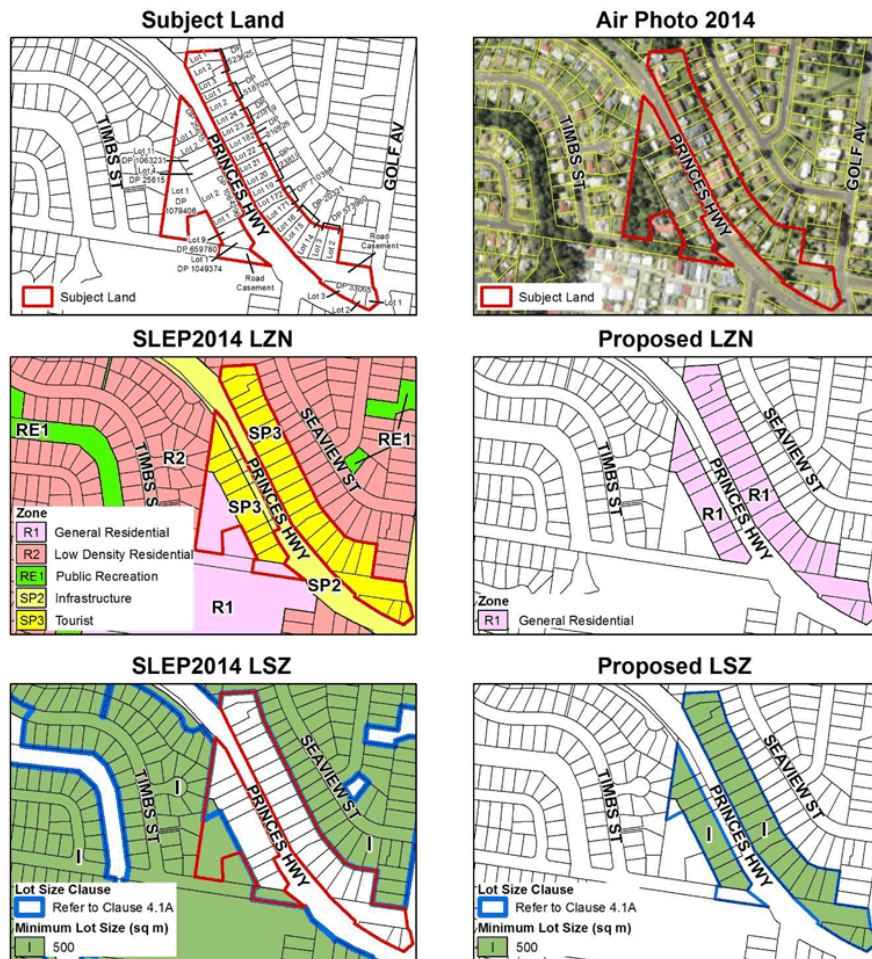
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**Site 5 – Iverison Road, Glanville Road, Lakehaven Drive, Sussex Inlet**



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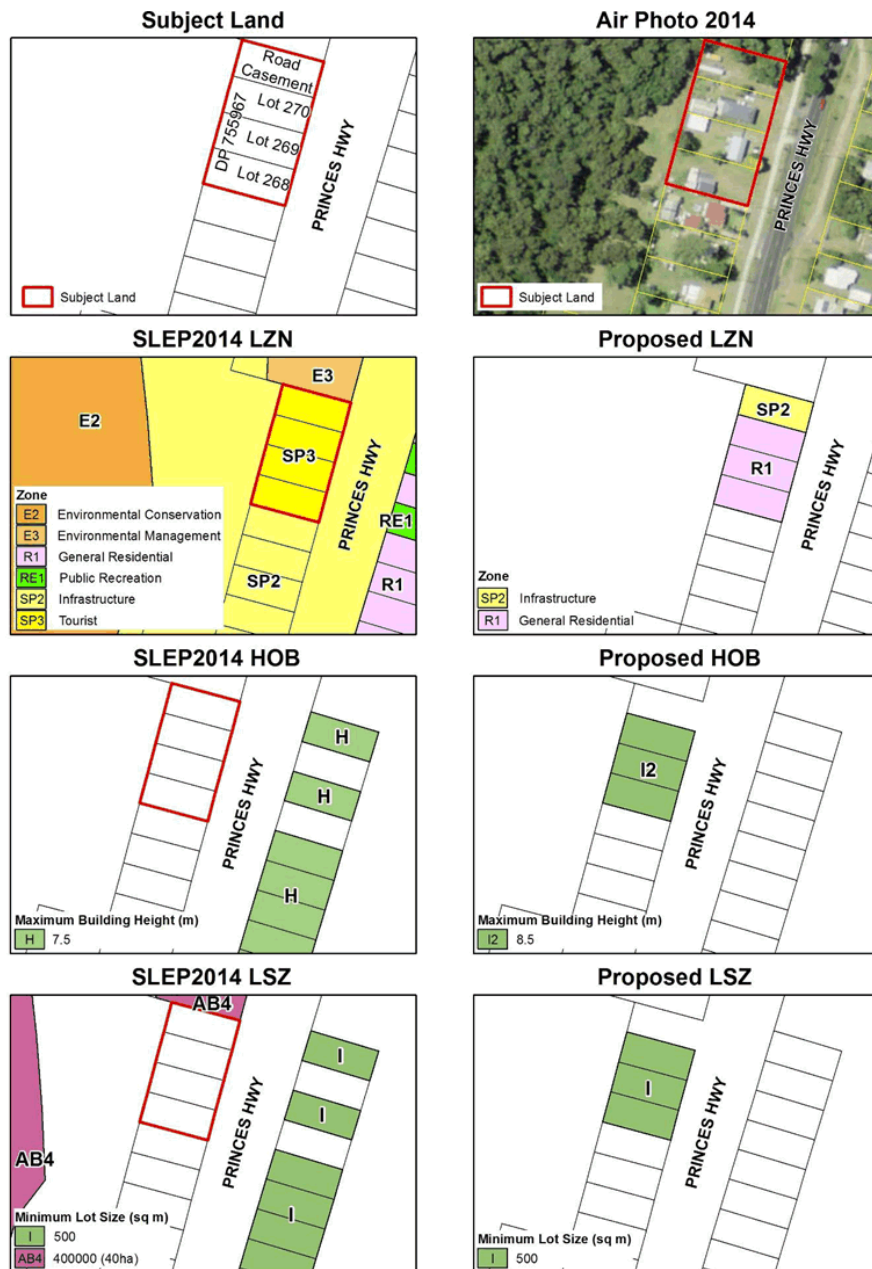
**Site 6 - Princes Highway, Mollymook/Ulladulla**



DE18.43 - Attachment 1

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**Site 7 – 3-7 Princes Highway, Burrill Lake**



DE18.43 - Attachment 1



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## 6 Part 5 - Community Consultation

An initial consultation of the SP3 Tourist zone was undertaken in October 2016 which involved a letter being sent to all property owners in the SP3 zone. Landowners of properties zoned SP3 that were used for existing residential purposes received a letter and a survey to canvas their future intentions for their land and gauge their interest in a potential change of zone. Land owners of properties that had a tourist related use, or are located in an area that is predominantly developed for tourist related uses, were sent a letter inviting comments. Survey and general comments have informed the direction of the Review and this PP.

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. Hard copies of the planning proposal would be made available at Council's Administrative Buildings in Nowra and Ulladulla.

## 7 Part 6 – Project Timeline

Table 4: Project Timeline

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	August 2018
Completion of Gateway determination requirements	October 2018
Public exhibition	November 2018
Consideration of submissions	November 2018
Post exhibition consideration of PP	December 2018
Finalisation and notification of Plan	February 2019

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## 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  
PP013

#### Address of Land (if applicable):

The legal description for the subject land is:

Site 1 – 60-72 McIntosh Road, Shoalhaven Heads
Lot 2 DP 1203276, 60 McIntosh Street, Shoalhaven Heads
Lot 3 DP 1203276, 62 McIntosh Street, Shoalhaven Heads
Lot 4 DP 1203276 64 McIntosh Street, Shoalhaven Heads
Lot 5 DP 1203276, 66 McIntosh Street, Shoalhaven Heads
Lot 6 DP 1203276, 68 McIntosh Street, Shoalhaven Heads
Lot 7 DP 1203276, 70 McIntosh Street, Shoalhaven Heads
Lot 8 DP 1203276 72 McIntosh Street, Shoalhaven Heads
UPN 118343 - Road casement to the south-west of Lot 2
Site 2 – Greenwell Point Road, South Street and Jervis Street, Greenwell Point
Lot 101 DP 832755, 74 Greenwell Point Road, Greenwell Point
Lot 102 DP 832755, Jervis Street, Greenwell Point
Lot 103 DP 832755, 41 Jervis Street, Greenwell Point
Lot 1 DP 528631, 43 Jervis Street, Greenwell Point
Lot 2 DP 528631, 45 Jervis Street, Greenwell Point
Lot 3 DP 528631, 29 South Street, Greenwell Point
Lot 29 DP 4071 Sec K, 27 South Street, Greenwell Point
Lot 28 DP 4071 Sec K, 25 South Street, Greenwell Point
Lot 27 DP 4071 Sec K, 23 South Street, Greenwell Point
Lot 2 DP 4071 Sec K, 72 Greenwell Point Road, Greenwell Point
Lot 3 DP 4071 Sec K, 70 Greenwell Point Road, Greenwell Point
Lot 4 DP 4071 Sec K, 68 Greenwell Point Road, Greenwell Point
Part Greenwell Point Road, Jervis Street and South Street (UPN 106764, 302841, 102790, 106763, 115665, 103356, 107569, 105469)

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<b>Site 3 – 150-164 Larmer Avenue, Sanctuary Point</b>
Lot 2871 DP 238913, 150 Larmer Avenue, Sanctuary Point
Lot 2870 DP 238913, 152 Larmer Avenue, Sanctuary Point
Lot 200 DP 1222799, 154 Larmer Avenue, Sanctuary Point
Lot 2868 DP 238913, 156 Larmer Avenue, Sanctuary Point
Lot 2867 DP 238913, 158 Larmer Avenue, Sanctuary Point
Lot 2866 DP 238913, 160 Larmer Avenue, Sanctuary Point
Lot 2865 DP 238913, 162 Larmer Avenue, Sanctuary Point
Lot 2864 DP 238913, 164 Larmer Avenue, Sanctuary Point
UPN 112092 - Part Larmer Avenue
<b>Site 4 – 81 Island Point Road, St Georges Basin</b>
Lot 4 DP 621676, 81 Island Point Road, St Georges Basin
UPN 111933 - Part Island Point Road
<b>Site 5 – Iverison Road, Glanville Road, Lakehaven Drive, Sussex Inlet</b>
Lot 3 DP 18943, 54 Iverison Road, Sussex Inlet
Lot CP SP 20672, 58 Iverison Road, Sussex Inlet
Lot 12 DP 513695, 60 Iverison Road, Sussex Inlet
Lot 13 DP 513694, 56 Glanville Road, Sussex Inlet
Lot 14 DP 513694, 58 Glanville Road, Sussex Inlet
Lot 15 DP 19840, 60 Glanville Road, Sussex Inlet
Lot 16 DP 19840, 62 Glanville Road, Sussex Inlet
Lot 17 DP 19840, 64 Glanville Road, Sussex Inlet
Lot 18 DP 19840, 66 Glanville Road, Sussex Inlet
Lot 19 DP 19840, 68 Glanville Road, Sussex Inlet
Lot 20 DP 19840, 11 Lakehaven Drive, Sussex Inlet
Lot 17 DP 27489, 9 Lakehaven Drive, Sussex Inlet
Lot 16 DP 27489, 7 Lakehaven Drive, Sussex Inlet
Lot 9 DP 746389, 5 Lakehaven Drive, Sussex Inlet
Lot 15 DP 27489, 3 Lakehaven Drive, Sussex Inlet
Lot 14 DP 27489, 1 Lakehaven Drive, Sussex Inlet
Part Iverison Road, Glanville Road and Lakehaven Drive (UPN 111952, 111752, 111753, 101359, 111754, 112068, 111712)
<b>Site 6 - Princes Highway, Mollymook/Ulladulla</b>
Lot 1 DP 523625, 4 Princes Highway, Mollymook
Lot 2 DP 523625, 6 Princes Highway, Mollymook
Lot 3 DP 523625, 8 Princes Highway, Mollymook
Lot 1 DP 518702, 10 Princes Highway, Mollymook
Lot 2 DP 518702, 12 Princes Highway, Mollymook

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Lot 24 DP 23819, 14 Princes Highway, Mollymook  
 Lot 23 DP 23819, 16 Princes Highway, Mollymook  
 Lot 182 DP 212828, 18 Princes Highway, Mollymook  
 Lot 22 DP 23819, 20 Princes Highway, Mollymook  
 Lot 21 DP 23819, 22 Princes Highway, Mollymook  
 Lot 20 DP 23819, 24 Princes Highway, Mollymook  
 Lot 19 DP 23819, 26 Princes Highway, Mollymook  
 Lot 172 DP 710398, 28 Princes Highway, Mollymook  
 Lot 171 DP 710398, 30 Princes Highway, Mollymook  
 Lot 16 DP 20321, 32 Princes Highway, Mollymook  
 Lot 15 DP 20321, 34 Princes Highway, Mollymook  
 Lot 14 DP 20321, 1 Buchan Street, Mollymook  
 Lot 3 DP 573960, 3 Buchan Street, Mollymook  
 Lot 2 DP 573960, 5 Buchan Street, Mollymook  
 Lot 3 DP 33065, 2 Buchan Street, Mollymook  
 Lot 2 DP 33065, 4 Buchan Street, Mollymook  
 Lot 1 DP 33065, 6 Buchan Street, Mollymook  
 Lot 1 DP 1049374, 23 Princes Highway, Ulladulla  
 Lot 9 DP 659780, 21 Princes Highway, Ulladulla  
 Lot 1 DP 1064296, 19 Princes Highway, Ulladulla  
 Lot 2 DP 1064296, 13 Princes Highway, Ulladulla  
 Lot 4 DP 25615, 11 Princes Highway, Ulladulla  
 Lot 11 DP 1063231, 9 Princes Highway, Ulladulla  
 Lot 2 DP 25615, 7 Princes Highway, Ulladulla  
 Lot 1 DP 25615, 5 Princes Highway, Ulladulla  
 Lot 1 DP 1079406  
 Part Millard Street and Buchan Street (UPN 113728, 113139, 105746)

**Site 7 – 3-7 Princes Highway, Burrill Lake**

Lot 270 DP 755967 (Por 270), 3 Princes Highway, Burrill Lake  
 Lot 269 DP 755967 (Por 269), 5 Princes Highway, Burrill Lake  
 Lot 268 DP 755967 (Por 268), 7 Princes Highway, Burrill Lake  
 UPN 105673 - Road casement to the north of Lot 270

**Intent of draft LEP:**

The Planning Proposal seeks to rezone SP3 Tourist zoned land in seven locations across the City to either R1 General Residential, R2 Low Density Residential, RE1 Public Recreation, B2 Local Centre or SP2 Infrastructure (Road), with corresponding amendments to the Height of Buildings Map and Minimum Lot Size Map as required.



**Additional Supporting Points/Information:**

The proposal is considered to be relatively minor in nature as it proposes to rezone land that has been identified as being more appropriately zoned either R1 General Residential, R2 Low Density Residential, RE1 Public Recreation, B2 Local Centre or SP2 Infrastructure (Road), consistent with the current land use or future intended land use. The proposal also seeks to insert a new clause into Part 7 of SLEP 2014 providing criteria for consideration of dwelling houses in the SP3 Tourist zone.

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
<b>(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)</b>				
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?	Y			
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 consistency with all relevant S117 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>				
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		
<b>Heritage LEPs</b>				

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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		
<b>Reclassifications</b>				
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		
<b>Spot Rezoning</b>				
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	Y			
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?	N			
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it	N			

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provide enough information to explain how the issue that lead to the deferral has been addressed?				
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?	N			
<b>Section 73A matters</b>				
Does the proposed instrument:				
a. Correct an obvious error in the principal instrument consisting of a misdescription, 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 words or a formatting error?;		NR		
b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;		NR		
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?		NR		
(NOTE – the Minister (or delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).				

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**Attachment B – Council report and minute, XXX**

DE18.43 - Attachment 1

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**Attachment C – SEPP Checklist**

SEPP	Name	Applicable	Not inconsistent
1	Development Standards	x	n/a
19	Bushland in Urban Areas	x	n/a
21	Caravan parks	x	n/a
30	Intensive agriculture	x	n/a
33	Hazardous and Offensive development	x	n/a
36	Manufactured home estates	x	n/a
44	Koala habitat protection	x	n/a
47	Moore Park Showground	x	n/a
50	Canal estate development	x	n/a
52	Farm Dams and Other Works in Land and Water Management Plan Areas	x	n/a
55	Remediation of land	x	n/a
62	Sustainable aquaculture	x	n/a
64	Advertising and signage	x	n/a
65	Design quality of residential apartment development	x	n/a
70	Affordable Housing (Revised Schemes)	x	n/a
--	Affordable Rental Housing 2009	x	n/a
--	BASIX 2004	x	n/a
--	Coastal Management 2018	✓	✓
--	Educational Establishments and Child Care Facilities 2017	x	n/a
--	Exempt and Complying Development Codes 2008	x	n/a
--	Housing for Seniors or People with a Disability 2004	x	n/a
--	Infrastructure 2007	x	n/a
--	Integration and Repeals 2016	x	n/a
--	Kosciuszko National Park—Alpine Resorts 2007	x	n/a
--	Kurnell Peninsula 1989	x	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	x	n/a
--	Miscellaneous Consent Provisions 2007	x	n/a

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--	Penrith Lakes Scheme 1989	x	n/a
--	Rural Lands 2008	x	n/a
--	State and Regional Development 2011	x	n/a
--	State Significant Precincts 2005	x	n/a
--	Sydney Drinking Water Catchment 2011	x	n/a
--	Sydney Region Growth Centres 2006	x	n/a
--	Three Ports 2013	x	n/a
--	Urban Renewal 2010	x	n/a
--	Vegetation in Non-Rural Areas 2017	x	n/a
--	Western Sydney Employment Area 2009	x	n/a
--	Western Sydney Parklands 2009	x	n/a



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**Attachment D – S9.1 Directions checklist**

Direction		Applicable	Relevant	Not inconsistent
<b>1 Employment and Resources</b>				
1.1	Business and Industrial Zones	✓	✓	Refer to Section 4.2.4
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	✗	✗	n/a
<b>2 Environment and Heritage</b>				
2.1	Environmental Protection Zones	✓	✗	n/a
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
<b>3 Housing, Infrastructure and Urban Development</b>				
3.1	Residential Zones	✓	✓	Refer to Section 4.2.4
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	n/a
3.3	Home Occupations	✓	✗	n/a
3.4	Integrating Land Use and Transport	✓	✓	Refer to Section 4.2.4
3.5	Development Near Licensed Aerodromes	✗	✗	n/a
3.6	Shooting Ranges	✗	✗	n/a
<b>4 Hazard and Risk</b>				
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	✓	✓	Refer to Section 4.2.4
4.4	Planning for Bushfire Protection	✓	✓	Refer to Section 4.2.4
<b>5 Regional Planning</b>				
5.2	Sydney Drinking Water Catchments	✗	✗	n/a
5.3	Farmland of State & Regional Significance Far North Coast	✗	✗	n/a

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5.4	Commercial & Retail Development Far North Coast	x	x	n/a
5.8	Second Sydney Airport: Badgerys Creek	x	x	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
<b>6 Local Plan Making</b>				
6.1	Approval and Referral Requirements	✓	x	n/a
6.2	Reserving Land for Public Purposes	✓	x	n/a
6.3	Site Specific Provisions	✓	✓	Refer to Section 4.2.4

DE18.43 - Attachment 1

# Works In Kind Agreement

Section 94(5)(b) – Environmental Planning & Assessment Act 1979

**Shoalhaven City Council &  
John Andrew Nixon**

**DA15/1102**

Reference: DA15/1102  
Template Reference: LS303

**The Council of the City of Shoalhaven  
Council Administrative Centre  
Bridge Road  
NOWRA, NSW 2541**

## Works In Kind Agreement

**This Agreement** is made on the date set out in **Item 1** of **Schedule 1**.

### Parties

- (1) **The Council of the City of Shoalhaven** of Bridge Road, Nowra, NSW 2541 (**Council**),  
and
- (2) **The party set out Item 2 of Schedule 1 (Developer).**

### Background

- A. The Developer has been granted the Development Consent or is otherwise entitled to act upon the Development Consent.
- B. The Development Consent contains the Condition which requires the Developer to pay the Contributions in respect to the development.
- C. The Developer has offered to carry out the Works in lieu of paying the Contributions.
- D. The Developer and Council wish to enter into this Agreement to make provision for the carrying out of the Works by the Developer in satisfaction of the Developer's obligation to pay the Contributions.
- E. Section 94(5)(b) of the Act authorises Council and the Developer to enter into this Agreement.

### Agreed Terms

#### 1. Scope of Works

- 1.1 The Developer and Council agree that the scope of Works to be carried out and completed under this Agreement is set out in **Schedule 2**.
- 1.2 If specified in Schedule 2, before the commencement of the Works, the Developer must (at its cost):
  - (a) prepare a detailed design for the Works;
  - (b) obtain the approval of Council for the detailed design;
  - (c) prepare construction drawings for the Works; and
  - (d) obtain the approval of Council for the construction drawings.
- 1.3 The Developer must prepare any detailed design or construction drawings for the Works in accordance with the standards set out in **Schedule 2**.

#### 2. Obligation to Carry out Work

- 2.1 The Developer must ensure that the Works reach Completion on or before the Completion Date in accordance with the terms of this Agreement.
- 2.2 The Developer's obligation under clause 2.1 exists irrespective of whether the Developer:

- (a) carries out the Works itself; or
  - (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- 2.3 The Developer must (at its cost):
  - (a) obtain all relevant approvals and consents for the Works whether from the Council or any other relevant authority; and
  - (b) before commencing the Works, give to the Council copies of all approvals and consents for the Works (except those granted by Council).
- 2.4 The Developer must carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council in accordance with:
  - (a) the Development Consent;
  - (b) any approvals and consents relating to the Works;
  - (c) all applicable laws, including those relating to the environment and occupational health and safety;
  - (d) this Agreement to the extent that it is not inconsistent with the Development Consent, any other approval or consent, or applicable law; and
  - (e) any reasonable directions given by Council about the Works.
- 2.5 The Developer must ensure, in relation to the carrying out of the Works, that it:
  - (a) takes all necessary measures to protect people and property;
  - (b) avoids unnecessary interference with the passage of people and vehicles; and
  - (c) prevents any nuisance or unreasonable noise and disturbance.
- 2.6 The Developer, at its own cost, must repair and make good to the satisfaction of Council any loss or damage to the Works from any cause whatsoever which occurs before the date on which the Works reach Completion.
- 2.7 The Council as a party to this Agreement and not as a consent authority may (but is not obliged) at reasonable times and on reasonable notice inspect the Works during the course of construction.
- 3. Ownership of Works**
- 3.1 Nothing in, or done under, this Agreement gives the Developer:
  - (a) any right, title or interest in the Works; or
  - (b) any estate or interest in the Site,
 whether at law or in equity.

**4. Effect of Developer's Compliance with this Agreement**

4.1 For the purposes of the Condition and the Act:

- (a) the performance of this Agreement by the Developer satisfies the Developer's obligation under the Development Consent to pay the Contributions to the extent of the Works Value; and
- (b) the Developer is not required to pay the Contributions to that extent.

4.2 Council is to pay the Developer the Surplus Value when:

- (a) all notices have been given under clause 7 in relation to the Works; and
- (b) it has received payments of monetary contributions towards the costs of the Works from persons other than the Developer totalling the amount of the Surplus Value.

**5. Value of Works**

5.1 For the purposes of this Agreement, the Council and Developer agree that the value of Works is the Works Value as set out in **Schedule 2**.

5.2 The Developer expressly acknowledges and agrees that

- (a) the cost of the Works as set out in **Schedule 2** are estimates only based on the values in the Contributions Plan and any cost estimates submitted by the Developer and approved by Council; and
- (b) if the Developer's actual cost of carrying out and completing the Works, including any costs incurred under this Agreement, determined at the date on which the Works reach Completion, differs from the Works Value, then:
  - (i) no party to this Agreement will be entitled to claim any credit or reimbursement, as the case may be, for the difference; and
  - (ii) the Developer is not entitled to change or reduce the scope of the Works by reason only that the costs actually incurred are greater than the Works Value.

**6. Access of the Works on the Site**

6.1 Subject to any applicable law and clause 6.2, the party that owns the Site authorises the other party to enter the Site for the purposes of carrying of their obligations under this Agreement.

6.2 Council may require the Developer to enter into a separate occupation licence in respect to the occupation and use of the Site.

6.3 If the Site is owned by a third party, the Developer must:

- (a) obtain any necessary approval or consent to enter the land for the purposes of carrying out the Works; and
- (b) if requested, provide Council with written evidence of such approval or consent.



**7. Completion of Works**

- 7.1 When, in the opinion of the Developer, the Works have reached a state of Completion, the Developer must notify Council in writing. This notice must include:
- (a) a statement from the person with direct responsibility for completion of the Works that the Works have reached Completion;
  - (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the ongoing maintenance or management of the Works;
  - (c) a complete set of works-as-executed-plans for the Works including one set in electronic format.
- 7.2 Within 10 Business Days of receipt of a notice under clause 7.1, Council will inspect the Works and must by written notice to the Developer:
- (a) agree that Completion has been achieved; or
  - (b) disagree that Completion has been achieved and identify the errors or omissions in the Works which in the opinion of Council prevent Completion.
- 7.3 Nothing in clause 7.2, or in any notice issued under clause 7.2, will be construed to reduce or waive in any manner the Developer's responsibilities to correct minor defects or omissions, whether or not these are identified by Council.
- 7.4 The Developer must comply with a direction given under clause 7.2(b) according to its terms and at the Developer's own cost. The Developer may then give Council further written notice in accordance with clause 7.1.
- 7.5 The Works is taken to have reached Completion when Council gives the Developer written notice to that effect.

**8. Defects Liability Period**

- 8.1 During the Defects Liability Period, Council may give to the Developer written notice in relation to the Works specifying:
- (a) the Works requiring rectification;
  - (b) the action to be undertaken by the Developer to rectify those Works; and
  - (c) the date on which those Works must be rectified.
- 8.2 The Developer must comply with a notice given under clause 8.1 according to its terms and at the Developer's own cost.
- 8.3 Until the end of the Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the Works Value as security for performance by the Developer of its obligations under clause 8.
- 8.4 If the Developer does not comply with a notice given under clause 8.1, Council may do such things as are necessary to rectify the defect and may:
- (a) call upon the Guarantee to meet its costs in rectifying the defect; and

- (b) recover, as a debt due and owing, any difference between the amount of the Guarantee and the costs incurred by Council in rectifying the defect.

8.5 Clause 8.1 does not limit any other right, power or privilege of the Council whether arising under this Agreement or otherwise at law.

## **9. Delay**

9.1 When it becomes evident to the Developer that anything, including:

- (a) any act or omission of Council;
- (b) delay or disruption caused by Council, or a breach of this Agreement by Council;
- (c) a change in legislative requirements;
- (d) an event of force majeure,

may delay the performance of any obligation under this Agreement, the Developer may within 20 Business Days of becoming aware of the delay, notify Council in writing with details of the possible delay, the cause and request an extension of time to perform the relevant obligation.

9.2 If the Developer is delayed by any of the causes referred to in clause 9.1 and such cause:

- (a) could not be reasonably avoided; and
  - (b) affects an activity critical for completion or performance of the relevant obligation,
- the Developer will be entitled to an extension of time for the relevant obligation.

## **10. Guarantee**

10.1 Within 5 Business Days of the date of this Agreement, the Developer must provide the Council with the Guarantee for the Guarantee Amount.

10.2 If the Guarantee is provided by way of cash or unendorsed bank cheque, Council must hold the Guarantee in an interest bearing account on behalf of the Developer. Any interest earned by the Developer forms part of the Guarantee.

10.3 Council may call upon the Guarantee if:

- (a) the Developer fails to comply with a notice given under clause 8.1 or 15.1; or
- (b) Council gives the Developer a termination notice under clause 16.

10.4 The amount appropriated by the Council under clause 10.3 must be applied towards:

- (a) the reasonable costs and expenses incurred by the Council in rectifying any default by the Developer under this Agreement; or
- (b) carrying out the Works; or
- (c) carrying out any works at the Site necessary for the protection of persons or property.

10.5 The Developer acknowledges and agrees that:

- (a) where the Council may call on the Guarantee under this Agreement, the Council may claim, and the bank will be entitled to make, payment under the Guarantee without reference to the Developer and despite any objection, claim or direction by the Developer to the contrary; and
  - (b) the rights of the Council under this Agreement are without derogation from the other rights and remedies available to the Council under this Agreement, at law or in equity in relation to the default of the Developer.
- 10.6 Upon the completion of any distinct stage of the Works, the Developer may by written notice to the Council request a partial release of the Guarantee. This notice must include details of the completed Works and Works Value.
- 10.7 Upon receipt of a notice under clause 10.6, Council may by written notice to the Developer:
- (a) request that the Developer provide verification from an appropriately qualified expert of the completed Works and the Works Value;
  - (b) partially release the Guarantee; or
  - (c) refuse to partially release the Guarantee.
- 10.8 If the Council refuses to partially release the Guarantee, on request by the Developer, it must give written reasons for its decision.
- 10.9 Unless the Council is entitled to call upon the Guarantee, Council will return the 90% of the Guarantee to the Developer within 10 Business Days of the Works reaching Completion and will retain 10% of the Guarantee in accordance with clause 8.3.
- 10.10 Unless the Council is entitled to the remaining Guarantee, Council will return the remaining Guarantee (and if applicable, together with any interest earned on the Guarantee less any charges payable to the bank) to the Developer within 10 Business Days of the end of the Defects Liability Period.
- 11. Insurance**
- 11.1 The Developer must:
- (a) maintain public liability insurance, with an insurer approved by Council, with Council nominated as an interested party, for an amount not less than the amount set out in **Item 11 of Schedule 1** covering all aspects of the Works;
  - (b) maintain all other necessary insurance policies in respect of the Works including, but not limited to, insurance of the Works and insurance against death or injury to persons employed in relation to the undertaking of the Works, and any other insurances required at law;
  - (c) submit a copy of the certificates of insurance to Council before commencement of the Works and when otherwise required by the Council;
  - (d) maintain the insurance in clauses 11.1(a) and (b) until the end of the Defects Liability Period.

**12. Indemnity**

- 12.1 Except to the extent that the Council has by act or omission contributed to its loss, the Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by it) in connection with the carrying out of the Works.

**13. Assignments & Dealings**

- 13.1 This Agreement is intended by the parties to bind successors in title to the Land.
- 13.2 The Developer must not have any Dealings with the Land unless the Developer
- (a) first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement;
  - (b) provides the Incoming Party with a copy of this Agreement;
  - (c) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer under this Agreement;
  - (d) remedies any default by the Developer, unless such default has been waived by the Council; and
  - (e) pays the Council's reasonable costs in relation to the assignment and novation.

**14. Dispute Resolution**

- 14.1 If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve that dispute in accordance with this clause 14.
- 14.2 The party wishing to commence dispute resolution processes must notify the other in writing of:
- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause 14;
  - (b) the intent to invoke this clause 14;
  - (a) (if practicable) the outcomes which the notifying party wishes to achieve; and
  - (b) any material impact which the dispute has upon the completion of all obligations under this Agreement.
- 14.3 The representatives of the parties must promptly (and in any event within 10 Business Days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:
- (a) resolve the dispute during the course of that meeting;
  - (b) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);

- (c) agree that the parties are unlikely to resolve the dispute in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

14.4 If:

- (a) at least one meeting has been held in accordance with clause 14.3; and
- (b) the parties have been unable to reach an outcome identified in clause 14.3(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with the process agreed under clause 14.3.

then that party may, by 10 Business Days written notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of the Agreement.

#### **15. Failure to Carry Out Works**

15.1 Subject to clause 16, if Council considers the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council may but is not obliged to give the Developer a notice requiring:

- (a) the Developer to rectify the breach to the Council's satisfaction; or
- (b) the Developer to immediately cease carrying out of the Works and to rectify the breach to Council's satisfaction.

15.2 A notice given under clause 15.1 is to allow the Developer at least 20 Business Days to rectify the breach.

15.3 Without limiting any other rights Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 15.1:

- (a) call upon the Guarantee in accordance with clause 10;
- (b) carry out and complete the Works; and
- (c) recover, as a debt due and owing, any difference between the amount of the Guarantee and the costs incurred by Council in completing the Works.

15.4 Clause 14 does not prevent a notice being given under clause 15.1 and does not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 14 ceases to apply when such a notice is given.

#### **16. Termination**

16.1 If the Developer is in breach of this Agreement, the Council may, despite any other provision of this Agreement, give the Developer written notice requiring the Developer to show cause why the Council should not terminate this Agreement.

16.2 A notice under clause 16.1 must:

- (a) state that it is a notice given under this Agreement and clause 16.1;

- (b) particularise the nature of the breach by the Developer;
  - (c) require the Developer to show cause by notice to the Council why the Council should not terminate this Agreement;
  - (d) specify a date by which the Developer must show cause.
- 16.3 If the Developer fails to show cause to the reasonable satisfaction of the Council why the Council should not terminate this Agreement in relation to the Developer's breach, the Council may terminate this Agreement by written notice to the Developer.
- 16.4 If the Council terminates this Agreement under clause 16.3 the rights and liabilities of the parties are the same as they would have been at common law had the Developer repudiated this Agreement and the Council elected to treat this Agreement at an end and recover damages.
- 16.5 Clause 14 does not prevent a notice being given under clause 16.1 and does not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 14 ceases to apply when such a notice is given.
- 17. Notices**
- 17.1 Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that party at its address set out in **Item 12 of Schedule 1**; or
  - (b) faxed to that party at its fax number set out in **Item 12 of Schedule 1**.
- 17.2 If a party gives the other party three business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 17.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address;
  - (b) If it is sent by post, two business days after it is posted; or
  - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 17.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.
- 19. General**
- 19.1 Approvals & Consents**
- Except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is



not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

#### **19.2 Legal and Administrative Costs**

The Developer must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) any enforcement of Council's rights under this Agreement.

#### **19.3 Stamp Duty**

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

#### **19.4 Agreement**

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by law.

#### **19.5 Further Acts**

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

#### **19.6 Governing Law & Jurisdiction**

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **19.7 Joint & Several Liability**

An obligation on two or more persons binds them separately and together.

#### **19.8 No Fetter**

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law or under the Act, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty under the Act.

#### **19.9 Representations & Warranties**

The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

#### **19.10 Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

#### **19.11 Modification**

This Agreement may only be varied or replaced by a document in writing, which is signed by the parties.

#### **19.12 Waiver**

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **19.13 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

#### **19.14 Counterparts**

This Agreement may be signed in counterparts.

#### **19.15 GST**

- (a) In this clause 19.15:
  - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
  - (ii) “**GST Law**” has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999; and
  - (i) any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under, or in connection with, this Agreement are exclusive of GST.
- (c) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is:
  - (i) a monetary payment; or
  - (ii) a non-monetary payment which is not a taxable supply by the recipient, the recipient will pay to the supplier an additional amount equal to the GST payable by the supplier in respect of the supply (**GST Amount**).

- (d) Subject to paragraph (g), the recipient will pay the GST Amount referred to in clause 19.15(c) in addition to and at the same time the consideration for the supply is to be provided under this Agreement.
- (e) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is a non-monetary payment which is also a taxable supply by the recipient:
  - (i) at or before the time of payment of any relevant consideration by either party, the parties agree that they will each exchange tax invoices; and
  - (ii) if the parties exchange non-monetary consideration of unequal GST-inclusive market value:
    - (A) in respect of the exchange, one party (**the First Party**) will have a GST liability on its supply (**First Party Supply**) that exceeds its entitlement to an input tax credit on its acquisition in exchange for that supply (**First Party Acquisition**);
    - (B) the other party (**Second Party**) must make a monetary payment to the First Party equal to the positive difference between the GST payable on the First Party Supply and a full input tax credit in respect of the First Party Acquisition plus any GST payable in respect of that payment (**Payment**); and
    - (C) the Payment referred to in paragraph (B) above will be made by the Second Party at the time the Second Party receives a tax invoice for the First Party Supply.
- (f) The parties will agree upon the market value of any non-monetary consideration which the recipient is required to provide under clause 19.15(e). If agreement cannot be reached prior to the time that a party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The parties will each pay one half of the costs of referral and determination by the independent expert.
- (g) The supplier must deliver a tax invoice to the recipient before the supplier is entitled to payment of the GST Amount under clause 19.15(c). The recipient can withhold payment of the GST Amount until the supplier provides a tax invoice.
- (h) If an adjustment event arises in respect of a taxable supply made by a supplier under, or in connection with, this Agreement:
  - (i) any amount payable by the recipient under clause 19.15(c) will be recalculated to reflect the adjustment event, taking into account any previous adjustments under this clause, and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires and the supplier will issue an adjustment note to the recipient; or
  - (ii) in respect of an exchange of supplies that falls within clause 19.15(e), the principle in that clause will be applied, taking into account the adjustment event and any previous adjustments under this clause 19.15(h), tax invoices or adjustment notes will be exchanged, and a further monetary payment made as required or appropriate.

- (i) Where a party is required under, or in connection with, this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled.

## 20. Interpretation

### 20.1 Definitions

In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) as amended from time to time.

**Completion** means the stage in the construction of the Works when, in the discretion of Council acting reasonably, Council gives notice under clause 7.1 that the Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Works.

**Completion Date** means the date the Works must reach Completion as set out in **Item 8 of Schedule 1**.

**Contributions Plan** means the section 94 contributions plan made by Council under section 94EA of the Act as set out in **Item 7 of Schedule 1**.

**Condition** means the condition of the Development Consent which requires the payment of the Contribution as set out in **Item 5 of Schedule 1**.

**Contributions** means the section 94 contributions payable by the Developer under the Development Consent at the date of this Agreement as set out in **Item 6 of Schedule 1**.

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the land.

**Defects Liability Period** means the period of 12 months of the date the Works reach Completion.

**Development** means the development the subject of the Development Consent.

**Development Application** means the development application set out in **Item 4 of Schedule 1** submitted to the relevant consent authority.

**Development Consent** means the development consent granted by Council in respect to the Development Application as set out in **Item 4 of Schedule 1**.

**Guarantee** means

- (a) a deposit by cash or unendorsed bank cheque with the Council; or

- (b) an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that is:
  - (i) in favour of the Council;
  - (ii) for the Guarantee Amount; and
  - (iii) on such other terms the Council may approve from time to time.

**Guarantee Amount** means the amount of the Guarantee to be provided by the Developer in respect to the Works as set out in **Item 10 of Schedule 1**.

**Land** means the land the subject of the Development Consent as set out in **Item X of Schedule 1**.

**Party** means a party to this agreement, including their successors and assigns.

**Site** means the land where the Developer will carry out the Works as shown on the plan attached as **Schedule 3**.

**Surplus Value** means the amount by which the sum all Works Value exceeds the Contributions as set out in **Item 9 of Schedule 1**.

**Works** means the works the Developer must carry out and complete in accordance with the terms of this Agreement as set out in **Columns 2 & 4 of Schedule 2**.

**Works Value** means the value of the Works as set out in **Column 3 of Schedule 2**.

## 20.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than Saturday or Sunday on which banks are open for business generally in the Shoalhaven local government area.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.
- (n) The Explanatory Note for this Agreement is not to be used to assist in construing this Agreement.

Executed by the parties as an Agreement:

Signed for and on behalf of the )  
COUNCIL OF THE CITY OF )  
SHOALHAVEN by its duly authorised )  
officer in the presence of: )  
)

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Name (printed):

\_\_\_\_\_  
General Manager:

SIGNED by John Andrew Nixon, in the )  
presence of: )  
)  
)

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Name (printed):

\_\_\_\_\_  
Name (printed):



### Schedule 1 Reference Schedule

Item	Name	Description
1	Date	[leave blank until agreement signed by both parties – then insert date signed by last party]
2	Developer's Name Developer's ABN Developer's Address	John Andrew Nixon N/A 9 Hawke Street Huskisson NSW 2540
3	Land	21 Beach Street, Huskisson Lot 5 DP 25685
4	Development Application  Development Consent	N/A  DA15/1102 approving the installation of relocatable dwellings to be used as tourist cabins with car parking and access off rear land.
5	Condition	Condition 10 of DA15/1102
6	Contributions	\$16,405.25 paid on 07/04/2016 for project 03ROAD0062  <i>Note: The section 94 contributions are indexed each year in accordance with the Condition. The above figure is the amount payable under the Condition as at the date of this Agreement.</i>
7	Contributions Plan	Shoalhaven Contributions Plan 2010
8	Completion Date	30/06/2016
9	Surplus Value	\$9,983.38
10	Guarantee Amount	Value of the contributions
11	Insurance	\$20 million
12	Notices  <b>Council</b> Attention  Address   Fax Number	  General Manager  Administrative Building Bridge Road Nowra NSW 2541  02 4422 1816

	<b>Developer</b> Attention	John Andrew Nixon
	Address	9 Hawke Street Huskisson NSW 2540

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DE18.44 - Attachment 1

## Schedule 2 Works

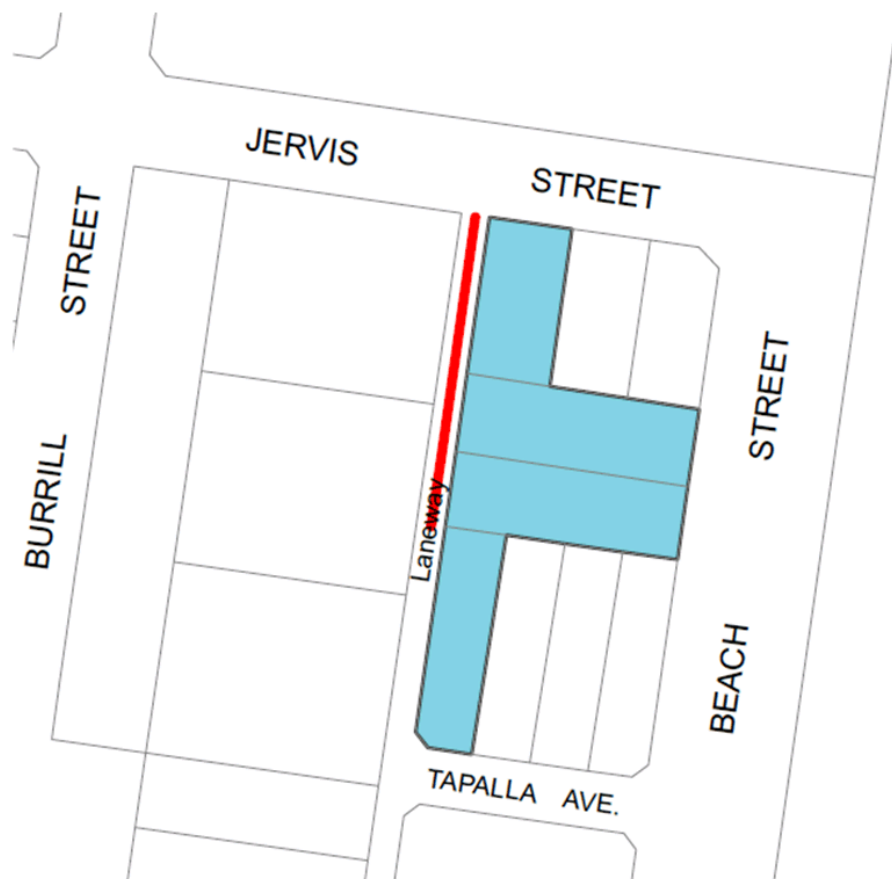
Contribution Project Code	Works	Works Value	Plans & Standards
03ROAD0062	Installation of drainage in unnamed lane at Huskisson	\$9,983.38	N/A

DRAFT

DE18.44 - Attachment 1

### Schedule 3 Site

The Developer must carry out the Works at the Site known as 'unnamed lane' between Tapalla Avenue and Jervis Road in Huskisson as shown marked red in the plan below:



DE18.44 - Attachment 1