

- a) *the concurrence under Part 3 of the [Coastal Protection Act 1979](#) of the Minister administering that Part of the Act,*
- (b) *a permit under section 201, 205 or 219 of the [Fisheries Management Act 1994](#),*
- (c) *an approval under Part 4, or an excavation permit under section 139, of the [Heritage Act 1977](#),*
- (d) *a permit under section 87 or a consent under section 90 of the [National Parks and Wildlife Act 1974](#),*
- (e) *an authorisation referred to in section 12 of the [Native Vegetation Act 2003](#) (or under any Act to be repealed by that Act) to clear native vegetation,*
- (f) *a permit under Part 3A of the Rivers and Foreshores Improvement Act 1948,*
- (g) *a bush fire safety authority under section 100B of the [Rural Fires Act 1997](#),*
- (h) *a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the [Water Management Act 2000](#).*

#### **4.2.1.1    *Environmental Planning and Assessment Act (1979) Objects***

Section 5 deals with the objects of the EP&A which are as follows:

- (a) *to encourage:*
  - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
  - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
  - (iii) *the protection, provision and co-ordination of communication and utility services,*
  - (iv) *the provision of land for public purposes,*
  - (v) *the provision and co-ordination of community services and facilities, and*
  - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
  - (vii) *ecologically sustainable development, and*
  - (viii) *the provision and maintenance of affordable housing, and*

- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is considered that the proposal is consistent with these objects as it:

- is consistent with growth strategies adopted by SCC and the DoP;
- has been developed after consideration of a number of separate assessments which have identified the constraints and opportunities available at the site;
- results in the preservation of ecologically constrained lands identified during ecological assessment;
- properly considers natural hazards applying to the locality, restricted to bushfire;
- results in the development of land that has been identified for urban purposes, which will lead to the orderly and economic use of land;
- builds upon established infrastructure in the locality, and other essential infrastructure which is currently being coordinated by the relevant providers;
- protects the environment by enabling the preservation of land identified as having ecological significance;
- increases the availability of housing stock within the SCC area thereby maintaining housing affordability by ensuring that real estate prices are not artificially inflated due to land shortages; and
- public participation has already been provided in the development of the NBSP and SCRS, the preparation of the Aboriginal Archaeological Assessment, and through the assessment of this major project.

#### **4.2.2 Other Acts**

Pursuant to Section 75U of the EP&A Act authorisation, the provisions of the following Acts do not require consideration in relation to Part 3A projects:

*The Threatened Species Conservation (TSC) Act;*

*The Heritage Act 1977;*

*The National Parks and Wildlife (NPW) Act 1974;*

*The Native Vegetation Act 2003;*

*The Water Management Act 2000; and*

*The Coastal Protection Act 1979.*

### 4.2.3 State Environmental Planning Policies

The following State Environmental Planning Policies (SEPPs) require consideration in the assessment of this major project.

#### 4.2.3.1 *State Environmental Planning Policy (SEPP) – Major Projects (2005)*

As outlined above in Section 4.2.1, the provisions of SEPP Major Projects continue having regard to the current project due to the transitional arrangements applying under the *Environmental Planning & Assessment (Part 3A Repeal) Act*.

The aims of this Policy are as follows:

- (a) *to identify development to which the development assessment and approval process under Part 3A of the Act applies;*
- (b) *to identify any such development that is a critical infrastructure project for the purposes of Part 3A of the Act;*
- (c) *to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant sites for the benefit of the State;*
- (d) *to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes;*
- (e) *to rationalise and clarify the provisions making the Minister the approval authority for development and sites of State significance, and to keep those provisions under review so that the approval process is devolved to Councils when State planning objectives have been achieved.*

It is considered that the subdivision would constitute a Major Project under the provisions of Schedule 2 of the Major Projects SEPP under clause 1(1)(j).

Schedule 2 Clause 1(1)(j) Coastal Area identifies the following development as a major project:

*“subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location):*

- (i) *into more than 25 lots”*

The NSW Coastal zone applies:

- three nautical miles seaward of the mainland and offshore islands;
- one kilometre landward of the open coast high water mark;
- a distance of one kilometre around:
  - ⇒ all bays, estuaries, coastal lakes, lagoons and islands;

- ⇒ tidal waters of coastal rivers to the limit of mangroves, as defined by NSW Fisheries (1985) maps or the tidal limit whichever is closer to the sea.

The site is identified in relevant mapping as being within the coastal zone applies, and as the proposal comprises a residential subdivision consisting of some 312 residential allotments, the Part 3A Major Project provisions are triggered.

A Preliminary Environmental Assessment (PEA), prepared by Allen Price and Associates was provided to DoP for the purpose of attaining confirmation that the proposed subdivision is indeed a Part 3A Major Project, and to inform the DoP of the general details of the proposed subdivision application. Advice provided from the DoP confirmed that the proposed subdivision application was a Part 3A Major Project.

#### **4.2.3.2 State Environmental Planning Policy (Infrastructure) 2007**

SEPP (Infrastructure) was made by the NSW Government on the 21<sup>st</sup> December 2007. The stated aims of the SEPP are to facilitate the effective delivery of infrastructure across the State by:

- (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.*

Of particular relevance to this proposal is Clause 104 of SEPP Infrastructure which deals with Traffic Generating Developments (replacing the provisions previously contained within SEPP 11 which have been repealed) and requires that development applications for certain development that have a "*relevant size or capacity*" be referred to the Roads and Traffic Authority of NSW for consideration of traffic matters. Developments having the "*relevant size or capacity*" are outlined in Schedule 3 of SEPP Infrastructure, and **Table 2** below reproduces the relevant part of Schedule 3 that applies to development of the type assessed in this EA. Column 1 relates to the type of

development, whilst Columns 2 and 3 outline the traffic generation that trigger referrals dependent on whether the site has frontage to a classified road, or any road.

**Table 2**  
**Schedule 3 of SEPP Infrastructure**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Purpose of development <b>Note:</b> The development may be the erection of new premises or the enlargement or extension of existing premises	Size or capacity - site with access to any road	Size or capacity - site with access to classified road or to road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road)
Sub-division of land	200 or more allotments where the subdivision includes the opening of a public road	50 or more allotments

Having regard to this proposal, as it comprises more than 200 allotments and will result in the opening of new roads, the application must be referred to the NSW Roads and Traffic Authority. A Transport Report prepared by Colston Budd Hunt & Kafes has been undertaken and is reproduced as **Annexure 2**. Traffic matters are further discussed in Section 5.3 of this EA.

#### **4.2.3.3 State Environmental Planning Policy No 14—Coastal Wetlands**

The aim of this policy is to “*ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the state.*”

In respect of land to which this policy applies, development consent is required to:

- a) “*clear that land;*
- b) *construct a levee on that land;*
- c) *drain that land; or*
- d) *fill that land.*”

The maps which accompany SEPP No. 14 have been reviewed with respect to this proposal and in this regard, the site is NOT identified as containing a coastal wetland, and nor does it drain towards a coastal wetland. Consequently, the provisions of this SEPP have no relevance to the proposal.

#### **4.2.3.4     *State Environmental Planning Policy No. 44 - Koala Habitat***

The Shoalhaven is one of the local government areas in which *State Environmental Planning Policy No.44 - Koala Habitat Protection* (SEPP 44) (New South Wales 1995) applies. SEPP 44 encourages the conservation and management of natural vegetation that provides habitat for Koalas, to ensure a permanent free-living population over the species' present range and to reverse the current trend of Koala population decline.

SEPP 44 helps to identify "potential Koala habitat", namely "areas of native vegetation where the trees of the types listed in Schedule 2 [of SEPP 44] constitute at least 15% of the total number of trees in the upper or lower strata of the tree component". If no Schedule 2 tree species are present or if they constitute less than 15% of the total number of trees present, then no further provisions of the Policy apply.

If more than 15% of the trees in the area are Schedule 2 tree species, then an assessment must be made by a qualified person to determine whether the area contains "core Koala habitat", a term applied to "an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population".

According to SLR (refer **Annexure 3**) the study area does contain some feed trees listed on Schedule 2 of SEPP No. 44, which forms more than 15% of the tree species, and as such, is potential koala habitat as defined in the SEPP. However, according to SLR, there are no recent recordings of koalas in the locality or site and consequently there are no resident populations of koalas. As such, the site does not constitute core koala habitat.

Consequently, SLR considers that the provisions of State Environmental Planning Policy No. 44 have no effect on the proposal.

#### **4.2.3.5     *State Environmental Planning Policy No 71—Coastal Protection***

The provisions of SEPP 71 apply to the coastal zone and are intended to provide a consistent approach to planning within this area. Clause 8 identifies additional matters for consideration where SEPP 71 applies which are to be assessed by an authority when it determines developments to be carried out on lands within the Coastal Zone. The site is located within the Coastal Zone, and is therefore subject to these additional considerations. The following table (**Table 3**) addresses these requirements:

**Table 3**  
**Clause 8 – Matters for Consideration**

<b>Clause 8 – Matters for Consideration</b>	<b>Compliance</b>
(a) The aims of this Policy set out in clause 2.	<p>The proposal is considered to comply with the aims of the SEPP as it is considerate of ecological and social constraints of the site and surrounds.</p> <p>The proposal includes the conservation of areas having ecological significance or subject to natural hazards.</p> <p>The site does not have direct frontage to any watercourse, beach or other foreshore location.</p>
(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.	<p>Although the site is located within the coastal zone, it does not have direct frontage or access to the coastal foreshore.</p> <p>As such, this has no further relevance to the proposal.</p>
(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.	<p>The site is within the coastal zone as it is located within 1km of the Shoalhaven River however its relationship with the River is limited due to local topography which does not permit access. Consequently, no impacts are expected.</p>
(d) The suitability of development given its type, location and design and its relationship with the surrounding area.	<p>The design of the subdivision has followed an extensive environmental assessment featuring an analysis of ecological and social matters, and the constraints to development.</p> <p>This assessment demonstrates the site is suitable for the proposed development.</p> <p>Additionally, this was preceded by studies undertaken by SCC as part of the NBSP process. This identified land suitable for further urban expansion of Nowra Bomaderry.</p> <p>Such has been further explored during a Masterplan process undertaken by our clients with support of SCC.</p> <p>The site is considered to be suitable for the subdivision now proposed.</p>
(e) Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.	<p>Due to the location of the site, there will be no impacts on the coastal foreshore.</p> <p>The site is well removed from the foreshore and will not result in any view loss or overshadowing.</p> <p>Further visual assessment is undertaken in Section 5.1.</p>
(f) The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.	<p>As outlined above, the subject site is well clear of any waterway and is not visible. As such, direct scenic impacts are largely avoided. Visual impact is further addressed in Section 5.1.</p>

**Table 3 (continued)**

<b>Clause 8 – Matters for Consideration</b>	<b>Compliance</b>
(g) Measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats.	An Environmental Flora and Fauna Assessment has been undertaken by SLR which has built upon preliminary assessment undertaken on behalf of SCC and this has identified an area of land which has higher conservation values and this is not to be developed, being retained in a conservation zone. This is further addressed in Section 5.6.
(h) Measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.	As the site is well removed from any watercourse, no direct impacts are expected. According to SLR, it is unlikely that the proposal will adversely impact on native fish or fish habitat (refer <b>Annexure 3</b> ). Consequently, impacts on fish species, marine vegetation and habitats are unlikely.
(i) Existing wildlife corridors and the impact of development on these corridors.	The site is not identified as containing a habitat corridor or ecologically sensitive lands by either Shoalhaven LEP or the deemed SEPP – Illawarra REP. In considering the suitability of the site, ecological assessment has been undertaken and this is expected to result in the biodiversity certification of the LEP. Further, the assessment by SLR has concluded that suitable corridors will be maintained within proposed environmental conservation zones.
(j) The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.	The site, due to its location, is not subject to coastal hazards or processes such as flooding, tidal inundation or shoreline erosion.
(k) Measures to reduce the potential for conflict between land-based and water-based coastal activities.	While the site is located within the coastal zone, it is not directly adjacent to a coastal foreshore area and as such, conflict between land and water based coastal activities are unlikely.
(l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.	The proposal has been the subject of an assessment undertaken by South East Archaeology Pty Ltd (SEA) ( <b>Annexure 8</b> ) which has assessed the site as having low to very low probability of containing artefacts or other indigenous heritage evidence.
(m) Likely impacts of development on the water quality of coastal waterbodies.	Storm Consulting have been engaged to provide a Water Cycle Management Report (WCMR) ( <b>Annexure 7</b> ). Stormwater quality modelling undertaken as part of the WCMR utilising MUSIC modelling demonstrates that the benchmark 85% removal of Suspended Solids, and 65% removal of Total Phosphorus loads, and 45% removal of Total Nitrogen is achieved.



**Table 3 (continued)**

<b>Clause 8 – Matters for Consideration</b>	<b>Compliance</b>
	<p>Furthermore, the report of SLR (<b>Annexure 3</b>) has considered the impacts of this on the receiving environment and has concluded that due to the location of this, a considerable distance from the site, coupled with extensive native vegetation that is to be retained, the proposal will have no impact on the Shoalhaven River.</p> <p>This is further discussed in Section 5.4.5.</p>
(n) The conservation and preservation of items of heritage, archaeological or historic significance.	<p>An Aboriginal Heritage Assessment has been undertaken by SEA (<b>Annexure 8</b>) to consider this project which included a reconnaissance inspection, and research of aboriginal sites registers, which failed to identify, or detect any features of significance on this site. Predictive modelling has identified the site as having low to very low probability of containing artefacts or other indigenous heritage evidence.</p> <p>Despite this, mitigation measures have been recommended for implementation during construction works.</p> <p>According to the Aboriginal Heritage Assessment, no items of non-indigenous heritage are identified on the site. Furthermore, no items in the vicinity of the site are identified.</p> <p>Heritage matters are further considered in Section 5.5.</p>
(o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.	<p>The proposal relies on the site being zoned for residential purposes. The site is identified in the NBSP and Draft LEP 2013 as being one to enable the further residential expansion of the Nowra/Bomaderry urban area.</p> <p>The proposal encourages a compact town by conforming to the Masterplan prepared for the locality, with residential development centred around a commercial precinct (sited on adjoining land owned by Shoalhaven Council), with suitable walking distances and appropriate infrastructure being provided, in order to encourage active transport options.</p>
<p>(p) Only in cases in which a development application in relation to proposal is determined:</p> <p>(i) The cumulative impacts of the proposal on the environment.</p> <p>(ii) Measures to ensure that water and energy usage by the proposal is efficient.</p>	<p>Not applicable to this project given made under the provisions of Part 3A.</p>

#### **4.2.4 State Policies**

##### **4.2.4.1 NSW Coastal Policy**

The NSW Coastal Policy applies:

- three nautical miles seaward of the mainland and offshore islands;
- one kilometre landward of the open coast high water mark;
- a distance of one kilometre around:
  - ⇒ all bays, estuaries, coastal lakes, lagoons and islands;
  - ⇒ tidal waters of coastal rivers to the limit of mangroves, as defined by NSW Fisheries (1985) maps or the tidal limit whichever is closer to the sea.

The subject site is located within the coastal zone and as such the NSW Coastal Policy 1997 applies. The Policy guides the management and planning of the coastal zone and has a strong emphasis on ecologically sustainable development. The Policy essentially brings together all policies, programs and standards that apply to the coastal zone into the one document. In addition, the Policy seeks to co-ordinate the multiple agencies and authorities, and various levels of government, to ensure consistency in application of the Policy, outlining who is responsible for implementing the Policy, and at what stage in the development process.

The requirements of the NSW Coastal Policy have been considered and are addressed in **Annexure 12**.

##### **4.2.4.2 Coastal Design Guidelines 2003**

The Coastal Design Guidelines for NSW were prepared by the NSW State Government with reference to the NSW Government's Coastal Policy 1997 and complement the Government's Coastal Protection Package (which included SEPP No. 71). The Coastal Design Guidelines are based upon the principles of ecologically sustainable development. The Guidelines provide additional direction to supplement the limited design matters contained in the Coastal Policy and are broad brush guidelines that support the place-based planning approaches espoused in PlanFirst, the NSW Government's plan making reform package released in 2002.

The Guidelines operate by applying the hierarchy of coastal settlements, which provides seven different settlement types ranging in size from Coastal Cities down to isolated coastal dwellings on large rural allotments.