

Development Committee

Meeting Date: Tuesday, 06 December, 2016
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 4.00pm

Membership (Quorum - 5)
Clr Patricia White - Chairperson
All Councillors
General Manager or nominee

Please note: Council's Code of Meeting Practice permits the electronic recording and broadcast of the proceedings of meetings of the Council which are open to the public. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
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3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
 - DE16.11 Planning Proposal - Falls Creek/Woollamia Deferred Areas - Bushfire
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8. Confidential Reports

Reports

- CDE16.1 Review of Determination - Development Application – Lot 2 DP165748 Bowen Street Huskisson

Local Government Act - Section 10A(2)(g) - Advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings or prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness.

Development Committee

Delegation:

Pursuant to s377 (1) of the Local Government Act 1993 the Committee is delegated the functions conferred on Council by the Environmental Planning & Assessment Act 1979 (EPA Act), Local Government Act 1993 (LG Act) or any other Act or delegated to Council, as are specified in the attached Schedule, subject to the following limitations:

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

Schedule:

1. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
2. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 4 of the EPA Act.
3. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
4. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which breaches a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
5. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
6. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
7. Review of all determinations of development applications under sections 82A and 96AB of the EP&A Act.
8. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Monday, 7 November 2016
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 4.05 pm

The following members were present:

Clr John Wells - Chairperson (Acting)
Clr Amanda Findley
Clr Joanna Gash
Clr Nina Cheyne
Clr Kaye Gartner
Clr Annette Alldrick
Clr Andrew Guile – arrived 4.19pm
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Election of Chairperson

RESOLVED (Clr Findley / Clr Gartner) MIN16.834

That Clr Wells be appointed as the Acting Chairperson for the Meeting in the absence of Councillor White.

CARRIED

Apologies / Leave of Absence

Clr White and Clr Levett

Confirmation of the Minutes

RESOLVED (Clr Findley / Clr Cheyne) MIN16.834

That the Minutes of the Development Committee held on Monday 10 October 2016 be confirmed.

CARRIED

Declarations of Interest

Nil.

DEPUTATIONS

DEV16.4 - Exhibition Outcomes/Finalisation - Shoalhaven Development Control Plan 2014 - Draft Amendment No 5 - Stage 2 Housekeeping – Mr Steve Richardson (Cowman and Stoddart) spoke **against** parts of the recommendation.

DEV16.8 – 25 Junction Street, Nowra Lot 1 DP 81167 – Mr Alex Kelly (Lawyer requested by Lee Carmichael of Lee Carmichael Town Planning) spoke **for** the recommendation.

Note: Clr Guile arrived, the time being 4.19pm

Procedural Motion – Permission to Address the Committee

RESOLVED (Clr Proudfoot / Clr Gash)

MIN16.836

That Lee Carmichael of Lee Carmichael Town Planning be permitted to address the Development Committee.

CARRIED

DEV16.8 – 25 Junction Street, Nowra Lot 1 DP 81167 – Mr Lee Carmichael of Lee Carmichael Town Planning addressed the Committee.

DEV16.8 – 25 Junction Street, Nowra Lot 1 DP 81167 – Ms Jennifer Parkyn - spoke **against** the recommendation.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Wells / Clr Gash)

MIN16.837

That the matters of items DE16.4 Exhibition Outcomes/Finalisation - Shoalhaven Development Control Plan 2014 - Draft Amendment No 5 - Stage 2 Housekeeping and DE16.8 Development Application – 25 Junction Street, Nowra – Lot 1 DP 81167 be brought forward for consideration.

CARRIED

REPORTS

DE16.4 Exhibition Outcomes/Finalisation - Shoalhaven Development Control Plan 2014 - Draft Amendment No 5 - Stage 2 Housekeeping

**HPERM Ref:
D16/298267**

Recommendation (Item to be determined under delegated authority)

That the Development Committee:

1. Note the submissions received during the exhibition of Shoalhaven DCP 2014 Draft Amendment No. 5 - Stage 2 Housekeeping
2. Adopt Amendment No.5 to Shoalhaven DCP 2014 as exhibited with the inclusion of the following changes to respond to the submissions as per Attachment 2 - Submission Summary Table:
 - a. Minor editorial changes in Chapter G9: Development on Flood Prone Land; and
 - b. Content changes in Chapter G9: Development on Flood Prone Land, Chapter G10: Caravan Parks in Flood Prone Areas and the Dictionary as outlined in Attachment 2 and Attachment 4.
 - c. Defer the draft changes to Chapter G9: Development on Flood Prone Land relating to subdivision in Greenwell Point to seek legal advice and remove the current wording in the DCP to consider alternative provisions in Shoalhaven Local Environmental Plan 2014 to implement development controls identified in the Lower Shoalhaven River Floodplain Risk Management Plan. Prepare an additional report following the receipt of legal advice to outline possible alternative provisions.
3. Rescind Council Policy: POL 12/118 Finders Estate – Zincalume Roofs
4. Undertake a future review of DCP Chapter G9: Development on Flood Prone Lane to improve the readability of controls with simplified wording and formatting
5. Notify the adoption of Amendment No.5 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
6. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No.5 to Shoalhaven DCP 2014 has been adopted.

MOTION (Clr Watson / Clr Guile)

That the Development Committee:

1. Note the submissions received during the exhibition of Shoalhaven DCP 2014 Draft Amendment No. 5 - Stage 2 Housekeeping
2. Adopt Amendment No.5 to Shoalhaven DCP 2014 as exhibited with the inclusion of the following changes to respond to the submissions as per Attachment 2 - Submission Summary Table:
 - a. Minor editorial changes in Chapter G9: Development on Flood Prone Land; and
 - b. Content changes in Chapter G9: Development on Flood Prone Land, Chapter G10: Caravan Parks in Flood Prone Areas and the Dictionary as outlined in Attachment 2 and Attachment 4.
 - c. Adopt the draft changes to Chapter G9: Development on Flood Prone Land relating to subdivision at Greenwell Point.
 - d. Should Staff believe the Shoalhaven River Floodplain Risk Management Plan is inconsistent with the D C P seek legal advice regarding the desirability of amending the

Plan and then refer matter to Shoalhaven Natural Resources and Floodplain Management Committee.

3. Rescind Council Policy: POL 12/118 Finders Estate – Zincalume Roofs
4. Undertake a future review of DCP Chapter G9: Development on Flood Prone Lane to improve the readability of controls with simplified wording and formatting
5. Notify the adoption of Amendment No.5 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
6. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No.5 to Shoalhaven DCP 2014 has been adopted.

LOST on the casting vote of the chair

FOR: Cllr Guile, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Cllr Findley, Cllr Gash, Cllr Wells, Cllr Cheyne, Cllr Aldrick and Cllr Gartner

RESOLVED (Cllr Findley / Cllr Gartner)

MIN16.838

That the Development Committee:

1. Note the submissions received during the exhibition of Shoalhaven DCP 2014 Draft Amendment No. 5 - Stage 2 Housekeeping
2. Adopt Amendment No.5 to Shoalhaven DCP 2014 as exhibited with the inclusion of the following changes to respond to the submissions as per Attachment 2 - Submission Summary Table:
 - a. Minor editorial changes in Chapter G9: Development on Flood Prone Land; and
 - b. Content changes in Chapter G9: Development on Flood Prone Land, Chapter G10: Caravan Parks in Flood Prone Areas and the Dictionary as outlined in Attachment 2 and Attachment 4.
 - c. Defer the draft changes to Chapter G9: Development on Flood Prone Land relating to subdivision in Greenwell Point to seek legal advice and remove the current wording in the DCP pending a further report on further advice.
3. Rescind Council Policy: POL 12/118 Finders Estate – Zincalume Roofs
4. Undertake a future review of DCP Chapter G9: Development on Flood Prone Lane to improve the readability of controls with simplified wording and formatting
5. Notify the adoption of Amendment No.5 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
6. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No.5 to Shoalhaven DCP 2014 has been adopted.

FOR: Cllr Findley, Cllr Gash, Cllr Wells, Cllr Cheyne, Cllr Aldrick, Cllr Gartner, Cllr Guile, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE16.8	Development Application – 25 Junction Street, Nowra – Lot 1 DP 81167 DP	HPERM Ref: D16/316144
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Recommendation (Item to be determined under delegated authority)

That the Committee grant consent to Development Application DA16/1369 for a multi-unit housing development, comprising, 3 single storey units with garages (2 x 3 bedroom and 1 x 2 bedroom) in accordance with the conditions as detailed in Attachment 1.

RESOLVED (Clr Gash / Clr Wells)

MIN16.839

That the Committee grant consent to Development Application DA16/1369 for a multi-unit housing development, comprising, 3 single storey units with garages (2 x 3 bedroom and 1 x 2 bedroom) in accordance with the conditions as detailed in Attachment 1.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE16.4	EXHIBITION OUTCOMES/FINALISATION - SHOALHAVEN DEVELOPMENT CONTROL PLAN 2014 - DRAFT AMENDMENT NO 5 - STAGE 2 HOUSEKEEPING	HPERM REF: D16/298267
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Item dealt with earlier/later in the meeting see MIN16.837

DE16.5	Development of an Affordable Housing Strategy for Shoalhaven	HPERM Ref: D16/312373
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Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Receive the Affordable Housing Background Report, Discussion Paper and Strategic Framework prepared by Judith Stubbs and Associates as the initial stages of the development of an Affordable Housing Strategy for Shoalhaven for information
2. Make the Background Report, Discussion Paper and Strategic Framework publicly available and endorse the continued preparation of a draft Affordable Strategy for Shoalhaven based on the Strategic Framework.
3. Receive a future report on the draft Affordable Housing Strategy for Shoalhaven, to enable it to be fully considered prior to proceeding to community consultation/engagement
4. Arrange for Dr Judy Stubbs to brief Council, when appropriate, on the Affordable Housing Strategy work for Shoalhaven

RESOLVED (Clr Findley / Clr Wells)

MIN16.840

That the Development Committee

1. Receive the Affordable Housing Background Report, Discussion Paper and Strategic Framework prepared by Judith Stubbs and Associates as the initial stages of the development of an Affordable Housing Strategy for Shoalhaven for information
2. Make the Background Report, Discussion Paper and Strategic Framework publicly available and endorse the continued preparation of a draft Affordable Strategy for Shoalhaven based on the Strategic Framework.

3. Receive a future report on the draft Affordable Housing Strategy for Shoalhaven, to enable it to be fully considered prior to proceeding to community consultation/engagement
4. Arrange for Dr Judy Stubbs to brief Council, when appropriate, on the Affordable Housing Strategy work for Shoalhaven

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE16.6 Draft Huskisson Foreshore Masterplan - Exhibition Outcomes & Process Finalisation

HPERM Ref: D16/312632

Recommendation (Item to be determined under delegated authority)

That Council

1. Adopt the draft Huskisson Foreshore Masterplan with the following changes:
 - a. Remove the four development scenarios for 59 Owen Street and any content that specifically relates to the development scenarios; and
 - b. Identify priority projects to implement the Wider Town Centre Concept Plan.
2. Commence the process to amend Shoalhaven Development Control Plan 2014 Chapter N18 – Huskisson Town Centre to include relevant aspects of the Urban Design Principles and Wider Town Centre Concept Plan, and to restrict development above ground level on 59 Owen Street.
3. Using the material gathered during the preparation of the draft Masterplan prepare a preferred option for the site that is consistent with the proposed ‘community’ classification and that maintains the view, for possible incorporated into a management plan for the site that supports the proposed ‘community’ classification.
4. Advise submission makers, the Huskisson Chamber of Business and Tourism and the Huskisson -Woollamia Community Voice of this resolution and provide a letter of thanks to the members of the Community Reference Group who assisted with this project.
5. Council staff be thanked and Council continue to support them in the exercise of their duties.

RESOLVED (Clr Watson / Clr Guile)

MIN16.841

That Council

1. Adopt the draft Huskisson Foreshore Masterplan with the following changes:
 - a. Remove the four development scenarios for 59 Owen Street and any content that specifically relates to the development scenarios; and
 - b. Identify priority projects to implement the Wider Town Centre Concept Plan.
2. Commence the process to amend Shoalhaven Development Control Plan 2014 Chapter N18 – Huskisson Town Centre to include relevant aspects of the Urban Design Principles and Wider Town Centre Concept Plan, and to restrict development above ground level on 59 Owen Street.
3. Using the material gathered during the preparation of the draft Masterplan prepare a preferred option for the site that is consistent with the proposed ‘community’ classification and that maintains the view, for possible incorporated into a management plan for the site that supports the proposed ‘community’ classification.

4. Advise submission makers, the Huskisson Chamber of Business and Tourism and the Huskisson -Woollamia Community Voice of this resolution and provide a letter of thanks to the members of the Community Reference Group who assisted with this project.

5. Council staff be thanked and Council continue to support them in the exercise of their duties.

Note: Clr Watson left the meeting, the time being 6.08pm and was not present for the vote.

FOR: Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Clr Gash and Clr Wells

CARRIED

DE16.7 Development Application – No.160 Bolong Road, Bomaderry – Lot 1 DP 838753

HPERM Ref: D16/314387

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Confirm that it supports, pursuant to Clause 4.6 (Variation to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11m to 34.12m; and
2. Refer the development application (DA14/2161) back to staff for determination.

Note: Clr Watson returned to the meeting, the time being 6.09pm

RESOLVED (Clr Gash / Clr Pakes)

MIN16.842

That the Committee:

1. Confirm that it supports, pursuant to Clause 4.6 (Variation to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11m to 34.12m; and
2. Refer the development application (DA14/2161) back to staff for determination.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE16.8 DEVELOPMENT APPLICATION – 25 JUNCTION STREET, NOWRA – LOT 1 DP 81167 DP

HPERM REF: D16/316144

Item dealt with earlier/later in the meeting see MIN16.838

DE16.9 Possible Planning Proposal - The Wool Road, St Georges Basin

HPERM Ref: D16/319525

Recommendation (Item to be determined under delegated authority)

1. Provide in principle support for the proposal to jointly rezone Lot 7 DP 827728 and Lot 218 1071257, subject to the following:
 - a. Any loss of industrial zoned land being offset by the identification of new industrial zoned land.

- b. A detailed biodiversity assessment being completed prior to formally considering a Planning Proposal over the site.
- c. An odour assessment being completed within the identified buffer area around the Sewerage Treatment Plant following Gateway determination.
2. Seek initial input from the NSW Department of Planning and Environment in regard to the proposed Planning Proposal, particularly in regard to the strategic issue of maintenance of industrial zoned land.
3. Notify the proponents of the Council resolution, the outcome of consultation with the NSW Department of Planning and Environment and the studies that need to be prepared to support a formal Planning Proposal.
4. Encourage the proponents to have early discussions with the Basin Villages Forum in regard to the Planning Proposal should it proceed to formal lodgement.
5. Report back to Council when a formal Planning Proposal has been lodged, following the completion of the necessary studies.

RESOLVED (Clr Guile / Clr Wells)

MIN16.843

1. Provide in principle support for the proposal to jointly rezone Lot 7 DP 827728 and Lot 218 1071257, subject to the following:
 - a. Any loss of industrial zoned land being offset by the identification of new industrial zoned land.
 - b. A detailed biodiversity assessment being completed prior to formally considering a Planning Proposal over the site.
 - c. An odour assessment being completed within the identified buffer area around the Sewerage Treatment Plant following Gateway determination.
2. Seek initial input from the NSW Department of Planning and Environment in regard to the proposed Planning Proposal, particularly in regard to the strategic issue of maintenance of industrial zoned land.
3. Notify the proponents of the Council resolution, the outcome of consultation with the NSW Department of Planning and Environment and the studies that need to be prepared to support a formal Planning Proposal.
4. Encourage the proponents to have early discussions with the Basin Villages Forum in regard to the Planning Proposal should it proceed to formal lodgement.
5. Report back to Council when a formal Planning Proposal has been lodged, following the completion of the necessary studies.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE16.10 Central Nowra Residential Zones - Character Related
Development Controls**

**HPERM Ref:
D16/320236**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Finalise the character analysis that is currently underway in central Nowra, including the

planned consultation with the Old Houses Our History group, landowners and other key stakeholders.

2. Following the completion of the character analysis, Council:
 - a. Receive a further report on the outcomes of the consultants work including recommendations on suitable mechanisms to protect the character of central Nowra.
 - b. Identify specific locations to be considered for a backzoning to an R2 Low Density Residential Zone, where appropriate.
 - c. Prepare a set of detailed planning and character development controls that seek to maintain the character of the central Nowra area.

Note: Cllr Guile left the meeting, the time being 6.28pm

RESOLVED (Cllr Gash / Cllr Cheyne)

MIN16.844

That Council:

1. Finalise the character analysis that is currently underway in central Nowra, including the planned consultation with the Old Houses Our History group, landowners and other key stakeholders.
2. Following the completion of the character analysis, Council:
 - a. Receive a further report on the outcomes of the consultants work including recommendations on suitable mechanisms to protect the character of central Nowra.
 - b. Identify specific locations to be considered for a backzoning to an R2 Low Density Residential Zone, where appropriate.
 - c. Prepare a set of detailed planning and character development controls that seek to maintain the character of the central Nowra area.

FOR: Cllr Findley, Cllr Gash, Cllr Wells, Cllr Cheyne, Cllr Alldrick, Cllr Gartner, Cllr Guile, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 6.30pm.

Cllr Wells
CHAIRPERSON

DE16.11 Planning Proposal - Falls Creek/Woollamia Deferred Areas - Bushfire Planning Issues

HPERM Ref: D16/328009

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments:

1. 111 Woollamia Road - Draft Subdivision Proposal 20/6/2016 [↓](#)
2. 1, 3, 5 & 7 Seasongood Road - Draft Subdivision Proposal 26/6/2016 [↓](#)
3. 21 & 23 Seasongood Road - Draft Subdivision Proposal 8/6/2016 [↓](#)
4. RFS letter 25/8/2016 [↓](#)
5. Conceptual dwelling location map - 21 & 23 Seasongood Road [↓](#)
6. DPE Gateway extension 31/8/2016 [↓](#)

Purpose / Summary

- Provide an update on the Planning Proposal (PP) following Council's resolution on 5 April 2016 to enable landowners to commission their own bushfire planning reports with the aim of maximising their lot yield.
- Clarify the proposed subdivision and development outcomes to be sought through the PP.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed with the Planning Proposal based on the following potential development outcomes:
 - a. In respect of 1, 3, 5, 7, 9, 11, 13, 18, 20, 21 and 23 Seasongood Road, and 49, 53, and 59 Woollamia Road, to potentially enable a two lot subdivision of each of the lots, such that:
 - i. New dwelling sites will be located within 200 metres of the public road.
 - ii. In respect of 21 and 23 Seasongood Road, the new dwelling sites be positioned no further from the road than the existing dwelling at 21 Seasongood Road and Asset Protection Zones be based on a maximum bushfire attack level of 19 kW/m²
 - b. In respect of 111 Woollamia Road, to potentially enable a three lot subdivision based on establishment of a reciprocal right of way between Woollamia Road and Falls Road as outlined in the report prepared by SET Consultants, subject to the owner surrendering the consent for three tourist cabins (DA00/2847) which have not yet been constructed.
2. Revise the Planning Proposal based on the above proposed development outcomes and seek the NSW Department of Planning and Environment's approval to publicly exhibit the Planning Proposal.
3. Prepare a draft site-specific chapter (Chapter N16) for inclusion in Shoalhaven Development Control Plan 2014 and brief Council prior to exhibiting the draft DCP chapter concurrently with the Planning Proposal.

DE16.11

4. Invoice each landowner for 50% of the costs (currently \$1,423.50) prior to exhibition of the Planning Proposal, and the remaining 50% after Council has resolved to finalise the Planning Proposal.

Options

1. Adopt the recommended approach.

Implications: This addresses the bushfire planning concerns, and hence should enable the PP to progress.

2. Adopt an alternative approach as directed by Council.

Implications: The PP may not be able to be finalised within the required timeframe. There is a risk that the NSW Department of Planning and Environment (DP&E) may not be willing to grant a further (fifth) gateway extension, and hence the PP will not progress.

Background

Council initially resolved to commence this PP and the investigations associated with it in 2011, in accordance with the action in the Jervis Bay Settlement Strategy (JBSS) to investigate increased densities in the rural residential deferred areas.

The JBSS states that: *“it may be possible to increase the density of rural residential development in some of these existing areas and to use this process to also achieve outcomes for biodiversity, riparian areas and so on”* with a one (1) hectare as the *minimum* lot size to be considered.

The PP that was submitted for Gateway determination in 2012, identified a number of technical investigations that would need to be undertaken to enable the potential subdivision and development options to be developed.

The Gateway determination issued by the DP&E for this PP in 2012 originally covered 87 lots. Over the course of the investigations, this has been reduced to 15, and any potential development within these lots must be confined to the ‘investigation area’ on each that was adopted by Council in 2014.

Reports were prepared for Council’s consideration as these investigations have been progressed and the resulting Council resolutions can be viewed on Council’s website at:

<http://shoalhaven.nsw.gov.au/Planning-amp-Building/Strategic-planning/Paper-subdivisions/Woollamia-Falls-Ck-Deferred-Areas>

Bushfire planning requirements and issues

There is a statutory requirement for Council to consult with the NSW Rural Fire Service (RFS) when preparing PP’s over bushfire prone land. The Gateway determination issued by DP&E for this PP also includes a specific requirement to consult with the RFS and address any bushfire planning concerns prior to public exhibition.

Following completion of the Strategic Water Cycle Assessment in October 2015, advice was sought from the RFS in November 2015 on the possible subdivision and development options. The RFS raised a number of bushfire planning concerns relating to:

- The public road network and the broader locality; and

- Inconsistencies with the RFS's Planning for Bushfire Protection (BPB) guideline under the maximum development scenario, particularly where new dwellings would be located more than 200 metres of a public road.

This matter was reported to Council on 5 April 2016 and it was resolved to:

1. *Provide an eight (8) week period for the landowners in each of the five (5) clusters of properties to collectively provide their own detailed bushfire report prepared by a suitably qualified consultant, addressing PBP 2006 and the RFS specific comments/concerns with the aim of maximising the lot yield.*
2. *Where full cooperation of land owners in the respective clusters cannot be achieved part clusters or individual fire reports be considered subject to the reports satisfying PBP 2006 requirements for protection from bushfire.*
3. *Council seek a further extension from the Department of Planning and if that extension is not forthcoming then Council revert to Option 1 (staff recommendation outlined in report).*

After advising the landowners of the above resolution, Council received three (3) landowner bushfire planning reports covering a total of seven properties, as summarised in Table 1. In relation to the remaining eight properties, the PP will seek to allow a two lot subdivision of each, with the new dwelling sites to be located within 200 metres of the public road, referred to herein as the 'default option'.

Table 1 - Summary of bushfire reports commissioned by landowners

Address	Proposed lot yield	Consultant
111 Woollamia Road	Three (3) - see Attachment 1	SET Consultants
1, 3, 5 and 7 Seasongood Road (four adjoining lots)	Three (3) on each existing lot - see Attachment 2	EcoLogical Australia
21 and 23 Seasongood Road (two adjoining lots)	Four (4) at 21 Seasongood Road and five (5) at 23 Seasongood Road - see Attachment 3	Bushfire Building Solutions

The above reports were forwarded to the RFS for review and comment. The RFS responded on 25 August 2016, stating that it has no objection to the proposal for 111 Woollamia Road, but raising a number of concerns regarding the proposals for 1, 3, 5 and 7 Seasongood Road, and 21 and 23 Seasongood Road. A copy of the RFS letter is provided in **Attachment 4**.

However, the RFS stated that it would have no objection to the PP if it ensures that future lots are within 200 metres of Seasongood Road, or a suitable public road network complying with the performance criteria in PBP is provided.

A copy of the RFS's letter was forwarded to the respective consultants, leading to further discussions with the landowners, their consultants and the RFS. The outcome in respect of each proposal is discussed further below.

111 Woollamia Road (Lot 159A, DP 15266)

The proposed three-lot subdivision is based on establishing an 8 metre wide reciprocal right of way (property access road) along the eastern boundary of the property, linking Woollamia

Road and Falls Road (Refer to **Attachment 1**). The property access road would be approximately 640 metres long, with a creek crossing at the northern end.

The RFS raised no objections to the proposal.

In 2001, Council issued development consent (DA00/2847) for the construction of three tourist cabins on the Lot. The cabins have not been constructed and the consent would have lapsed except that in 2007, Council advised the applicant that 'suitable commencement' has occurred. Hence, the approval will not lapse unless it is surrendered.

The cumulative impacts (and conflicts) of the tourist cabins and a three lot subdivision on local amenity could be significant, e.g. noise, dust and visual impacts on adjoining properties. Hence, it is recommended that in relation to 111 Woollamia Road, the PP seek to allow a three lot subdivision on the basis that the approval for the cabins be 'surrendered' and that this be done prior to finally amending Shoalhaven LEP 2014. This could be done without delaying the LEP amendment for the other lots within the PP.

The proposed subdivision layout may also need to be further refined to minimise impacts on adjoining properties and achieve environmental outcomes.

1, 3, 5 and 7 Seasongood Road (Lots 119, 119A, 118 and 118A, DP 15266)

To address the perimeter access requirements of PBP, the proposed subdivision incorporated a perimeter fire trail (see **Attachment 2**) approximately 1100 metres long. As noted in the RFS letter, the reliance of fire trails rather than public roads around the perimeter of the site is not consistent with PBP.

The owner of 1 Seasongood Road advised Council that they did not want to pursue a three-lot subdivision of their lot.

A meeting was held with the consultant and the RFS on 11 October 2016, in which the RFS reiterated its concerns, and the merits and issues of the proposal were discussed and debated. The outcome of this meeting was that for the three-lot subdivision option to be pursued, additional information would be required relating to 1) the proposed perimeter access arrangements, and 2) safety concerns about the road network in a bushfire emergency.

The owners of 3, 5 and 7 Seasongood Road subsequently advised Council of their collective decision not to further pursue the three-lot subdivision option, noting their considerable disappointment in reaching this decision. Thus this report recommends that the PP aim to allow a two-lot subdivision of each property (1, 3, 5 and 7 Seasongood Road). This would essentially enable consideration of one additional dwelling house lot on each property.

21 and 23 Seasongood Road (Lots 113 and 113A, DP 15266)

This proposed subdivision layout was based on establishment of an internal/link public road straddling the common boundary between the two lots and a perimeter road – see **Attachment 3**. The combined length of the proposed roads was approximately 1500 metres and the proposed link road incorporated a watercourse crossing. The report provided limited detail on the proposed road system.

The RFS's comments (see **Attachment 4**) stated that for the proposal to be supported by the RFS, Council would need to endorse the creation of the proposed road layout as public roads, including the perimeter road network.

A meeting was held with the consultant and the RFS on 11 October 2016, in which the RFS reiterated its concerns and clarification was sought on the proposed road layout.

Council staff had subsequent discussions with the consultant, the owner of 23 Seasongood Road and the RFS. The owner and the RFS have verbally indicated general support to progress the PP based on allowing one additional dwelling lot on each property, with the new dwellings to be positioned in proximity to or forward of the existing dwelling at 21 Seasongood Road, as conceptually shown in **Attachment 5**.

Note: For each of the areas a nominated contact was requested after the previous Council resolution related to the submission of bush fire reports by the owners. Staff have not had direct contact with the owner of 21 Seasongood Road. The owner of 23 Seasongood Road advised that they would not be opposed to the PP proceeding as recommended in this report. The owner of No.21 will have the formal opportunity to comment, should they wish, when the PP is exhibited.

A draft conceptual map shows that larger bushfire asset protection zones (APZ's) can be achieved, potentially providing an increased level of safety. If Council adopts the recommendations of this report, this map will be refined and included in a supporting draft DCP chapter (proposed Chapter N16).

Gateway extension

Council sought and was granted a one year extension by DP&E to complete this PP. The PP is now due to be finalised by 5 September 2017. The DP&E letter states:

“This is the third extension of twelve months and brings the total time for completion of the LEP to five years. The Department may not be willing to support any further requests for extension. Council is requested to provide a timeline for the project’s milestones that can be used to track progress towards the completion of the LEP by 5 September 2017.”

A copy of DP&E’s letter dated 31 August 2016 is provided in **Attachment 6**. A timeline will be forwarded to DP&E pending the outcome of this report. If the recommendations are adopted, an indicative timeline is as follows:

Task	Indicative completion by dates
Prepare mapping and update the PP	March/April 2017
Prepare draft Chapter N16 of Shoalhaven DCP 2014	March/April 2017
Report to / Brief Council prior to exhibition	May 2017
Publicly exhibit PP and draft Chapter N16, and consult with Government agencies	May/June 2017
Consider submissions and prepare post exhibition report	July 2017
Adopt PP	July/August 2017
Consult with DP&E to prepare and finalise LEP amendment	July/August/September 2017

In addition to the specific bushfire risk management measures outlined earlier in this report, the DCP chapter would also incorporate the recommendations and findings of the Strategic Water Cycle Assessment to protect water quality and catchment health, and appropriate controls relating to biodiversity and riparian corridors in accordance with the JBSS.

Community Engagement

Consultation with directly involved landowners has been ongoing as the PP has evolved. A formal public exhibition process will still need to be undertaken as part of the PP and DCP process. This will also allow landowners, including those adjoining the PP area, the broader community, and relevant Government agencies to formally comment on the details provided as part of the PP and draft DCP exhibition package.

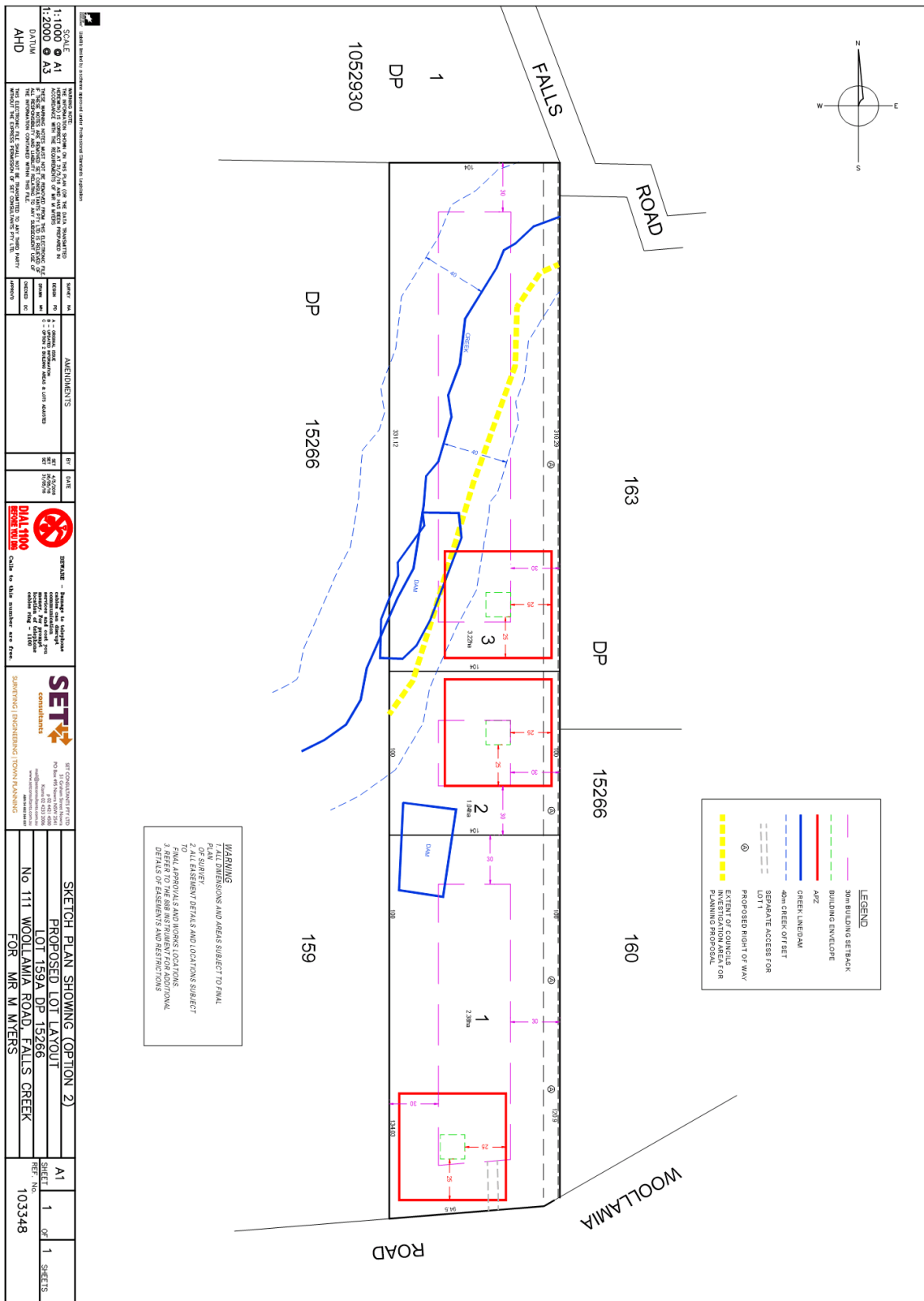
Financial Implications

The costs that are ultimately proposed to be recovered from the benefitting landowners are based on Council's adopted PP fee structure. Given the evolving and longstanding nature of this project, it is likely that Council has incurred costs in excess of what will be recovered from landowners. It is imperative that finalisation of this PP and supporting DCP chapter be concluded in a timely and efficient manner.

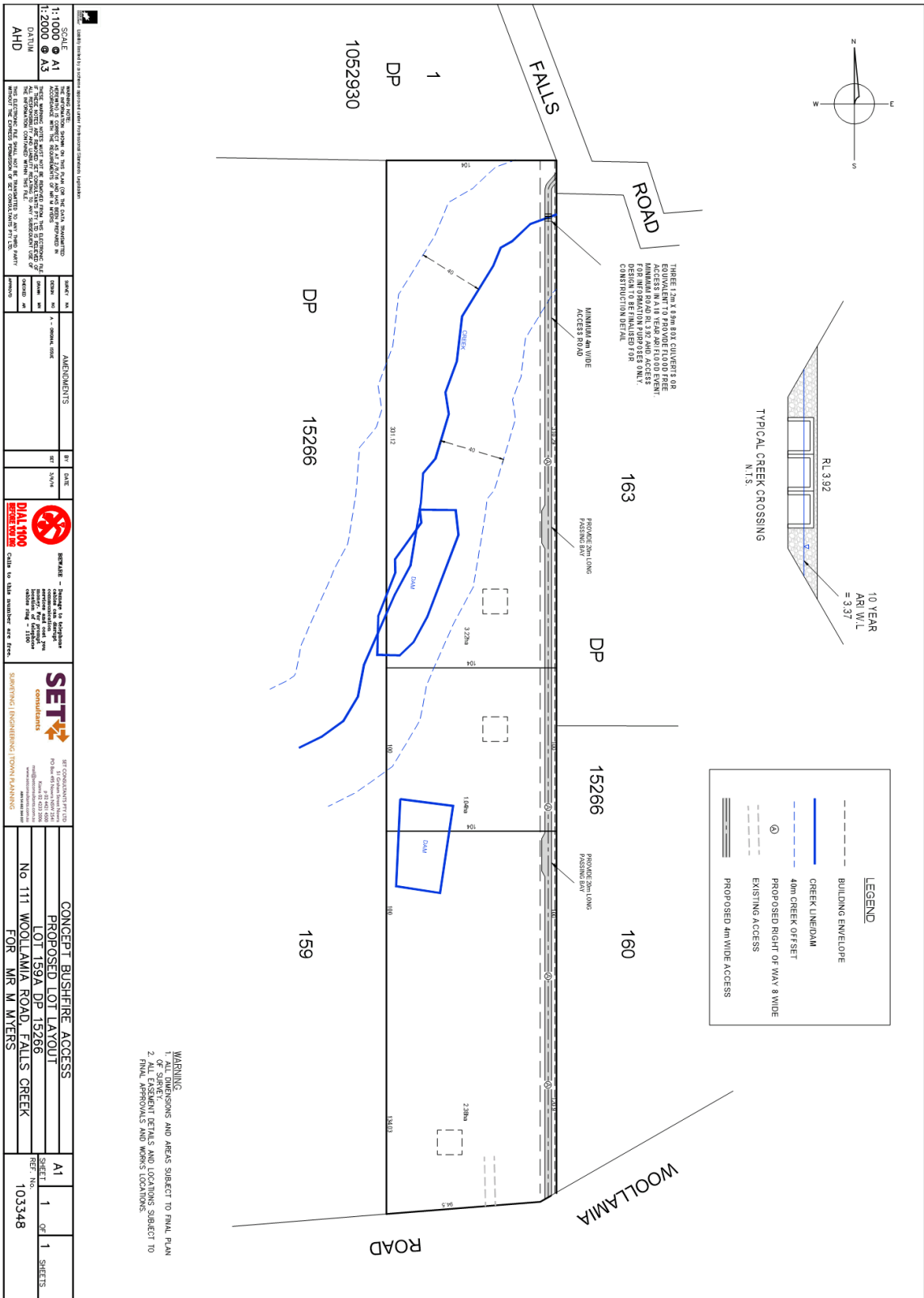
Conclusion

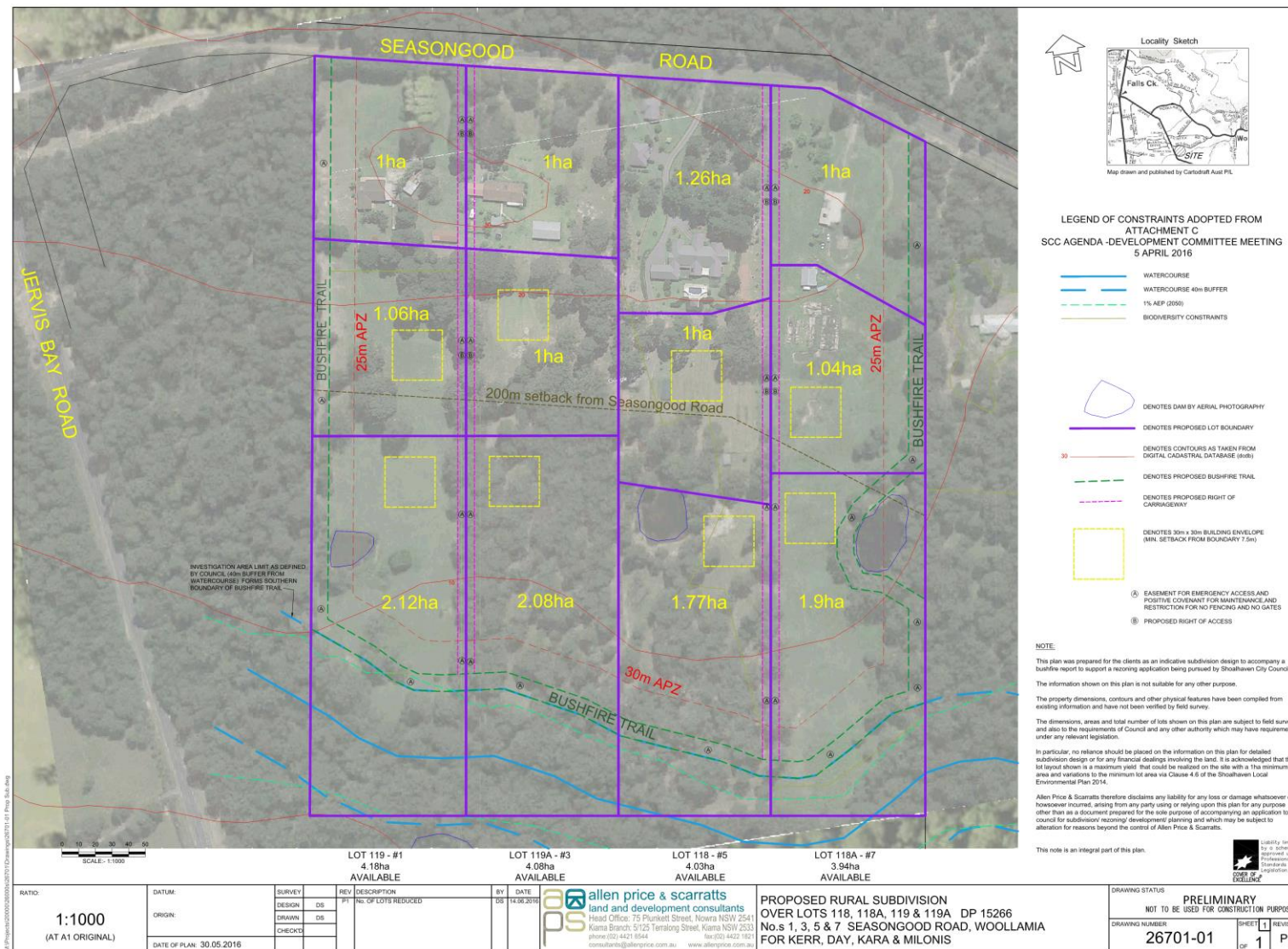
The proposed development outcomes outlined in the recommendations of this report appear have the support of the landowners and the RFS. The indicative timeline suggests that the PP could be finalised within the required period provided there are no significant delays in respect of the PP and draft DCP. This is important in context of DP&E's comments regarding any further Gateway extension request.

DE16.11 - Attachment 1

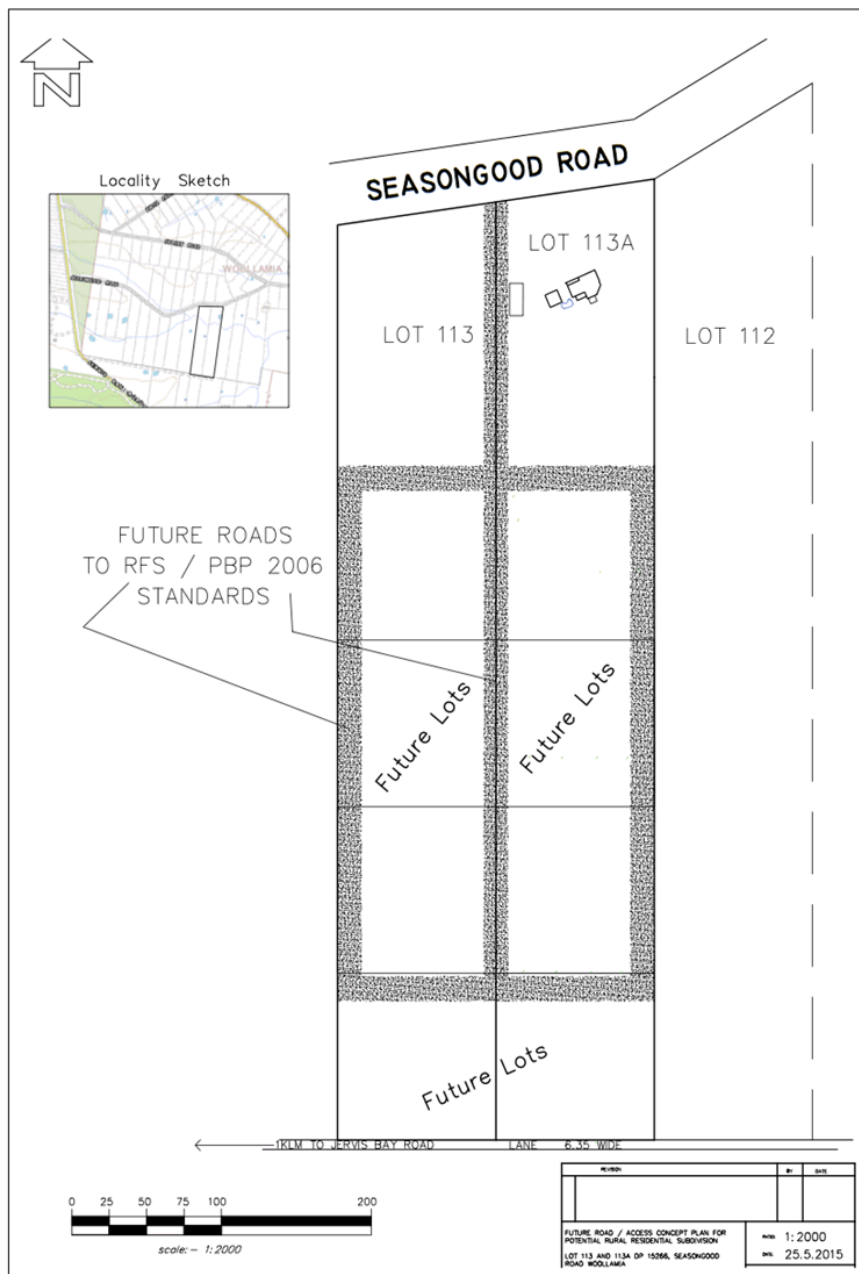


Attachment 1 DE161911





Attachment One Subdivision Plan/Public Road Design





NSW RURAL FIRE SERVICE



The General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Your Ref: 38279E
Our Ref: L13/0007

ATTENTION: Eric Hollinger

25 August 2016

Dear Eric

Woollamia - Falls Creek Deferred Areas Planning Proposal

I refer to the above Planning Proposal, the Gateway Determination dated 3 March 2015 and Council's request for comments from the NSW Rural Fire Service (NSW RFS) in relation to Bush Fire Studies submitted in support of properties located within the Planning Proposal area.

The NSW RFS have reviewed the following Bush Fire studies submitted in support of the Planning Proposal;

111 Wollamia Road - "Bushfire Risk Assessment" - SET Consultants (dated 20 June 2016)

1, 3, 5 and 7 Seasongood Road - "Bushfire Protection Assessment" ecological (dated 20 June 2016)

21 and 22 Seasongood Road - "Bushfire Hazard Assessment Report" Bushfire Building Solutions (dated 6 May 2016)

Having regard to clause 4.4 of the directions under section 117(2) of the *Environmental Planning and Assessment Act 1979*, *Planning for Bush Fire Protection, (PBP) 2006* and future obligations under Section 91 of the *Environmental Planning and Assessment Act 1979*. The following comments are provided for your consideration.

General Comments

1. The NSW RFS notes that the land the subject of the Planning Proposal is located on bush fire prone land on the Shoalhaven Bush Fire Prone Land Map.
2. The NSW RFS has previously raised concerns regarding the locational context of the sites and the ability of the Planning Proposal to ensure future development could meet the specific provisions of *PBP* at subdivision and development stage.
3. The objectives of clause 4.4 of the directions under s.117(2) of the *Environmental Planning and Assessment Act 1979* with regard to the preparation of a Local Environmental Plan with regard to rezoning land mapped as bush fire are;

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
15 Carter Street
LIDCOMBE NSW 2141

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and

(b) to encourage sound management of bush fire prone areas.

Detailed Comments 111 Wollamia Road - "Bushfire Risk Assessment" - SET Consultants (20 June 2016)

4. The NSW RFS is of the opinion that the bush fire study supporting the draft Planning Proposal in relation to land located along Woollamia Road is consistent with the objectives and provisions of clause 4.4 of the directions under s.117(2) of the *Environmental Planning and Assessment Act 1979*.

General Comments Seasongood Road Precinct

5. The NSW RFS is of the opinion that the bush fire studies supporting the draft Planning Proposal in relation to land located along Seasongood Road do not demonstrate consistency with the objectives and provisions of clause 4.4 of the directions under s.117(2) of the *Environmental Planning and Assessment Act 1979*.
6. Whilst the Planning Proposal has had regard to *PBP*, the bush fire studies in regards to the Seasongood Road precinct do not;
 - a. consider access into and out of the locality, and in particular, the ability of the existing road network to cope with additional demand in a bush fire situation. Occupants of this area have the potential to be cut off from surrounding areas of safety and residents must travel through heavily forested areas; and
 - b. demonstrate that future subdivision and development can comply with the acceptable solutions for property access roads and public road access of *PBP* at future development stages.
7. As Council is aware, future development applications on bush fire prone land will be required to comply with either section 79BA of the *Environmental Planning and Assessment Act 1979* or section 100B of the *Rural Fires Act 1997* depending upon the nature of the proposed development.
8. The NSW RFS advises the following matters are not consistent with clause 4.4 of the directions under s.117(2) of the *Environmental Planning and Assessment Act 1979*;
 - a. Minimising the interface to the bush fire hazard is a key planning principle of *PBP*. This is most commonly achieved through the use of perimeter roads. This would not appear to be viable given the moderate lot yield of future subdivisions, the rural residential nature of the zoning, the relatively large minimum lot size (MLS) and the fragmented ownership of the land.
 - b. *PBP* specifies requirements for access to and from development. For example, the acceptable solutions for public roads in subdivisions require roads to be through roads. Dead end roads are not recommended, but where unavoidable, dead ends shall not be more than 200m in length. For property access roads, the acceptable solutions require that where a dwelling is located greater than 200 metres from a public through road, a secondary access road shall be provided. Where the acceptable solutions of *PBP* cannot be met, the development is considered under the "merit based provisions" and required to satisfy the intent of the relevant 'performance criteria'.
 - c. The NSW RFS is concerned that lots located further than 200m from Seasongood Road are unlikely to comply with the acceptable solutions for property access roads and public road access of *PBP* at future development stages. Future subdivisions within the Planning Proposal area would need to demonstrate that they can satisfy the intent of the public road access 'performance criteria' that 'public road widths and design that allow safe access for firefighters while residents are evacuating an area' and the property access 'performance criteria' that 'road widths and design enable safe access for vehicles'.
 - d. The use of fire trails as an alternative for property access is not supported.

9. The NSW RFS would have no objection to the progression of the Planning Proposal if it was amended to ensure future lots were within 200m of Seasongood Road or a suitable public road network complying with the performance criteria with *PBP* was provided.

Detailed comments - 1, 3, 5 and 7 Seasongood Road - "Bushfire Protection Assessment" (ecological 20 June 2016)

10. While the Bush Fire study considers the development of the site within the site boundaries, the suitability of the site in terms of bush fire safety from a broader strategic context have not been addressed.
11. This is fundamental because the site is surrounded by bush fire hazard on four sides and there is the potential for a fully developed bush fire to impact on the site.
12. The provisions of safe access/egress to residential properties so that occupants leaving and fire fighters accessing areas can do so in relative safety is a fundamental principle of *PBP*.
13. The schematic layout shows lots which are located greater than 200m from Seasongood Road. Gated fire trails are proposed to be relied upon along the eastern, western and southern perimeter of the site. The use of fire trails for alternative access is not consistent with the aims and objectives, or the specific intents of *PBP* with regard to access.
14. The reliance on fire trails rather than public roads around the perimeter of the site is not consistent with the specific objectives for subdivision contained within *PBP*. Fire trails are used as access for firefighters, as fire control lines and for APZ maintenance. *PBP* states that a fire trail is not a substitute for a perimeter road. It also states that if fire trails are part of the development, they should be under Council management to ensure that maintenance occurs. Clear and ready access should be available from all properties to the public road system for residents and emergency services.

Detailed comments - 21 and 22 Seasongood Road - "Bushfire Hazard Assessment Report - (Bushfire Building Solutions 6 May 2016)

15. The NSW RFS would require the endorsement of Council with regard to the proposed road layout identified for Lot 113 and 113A Seasongood Road prior to supporting this configuration. Specifically, endorsement of the creation of perimeter roads as public roads would be required.
16. The site is surrounded by bush fire hazard on four sides and there is the potential for a fully developed bush fire to impact on the site.

The NSW RFS is unlikely to support Planning Proposals which will result in placing residents and fire fighters in areas which may be impacted on bush fire and where the provisions of *PBP* cannot be met at future development stages.

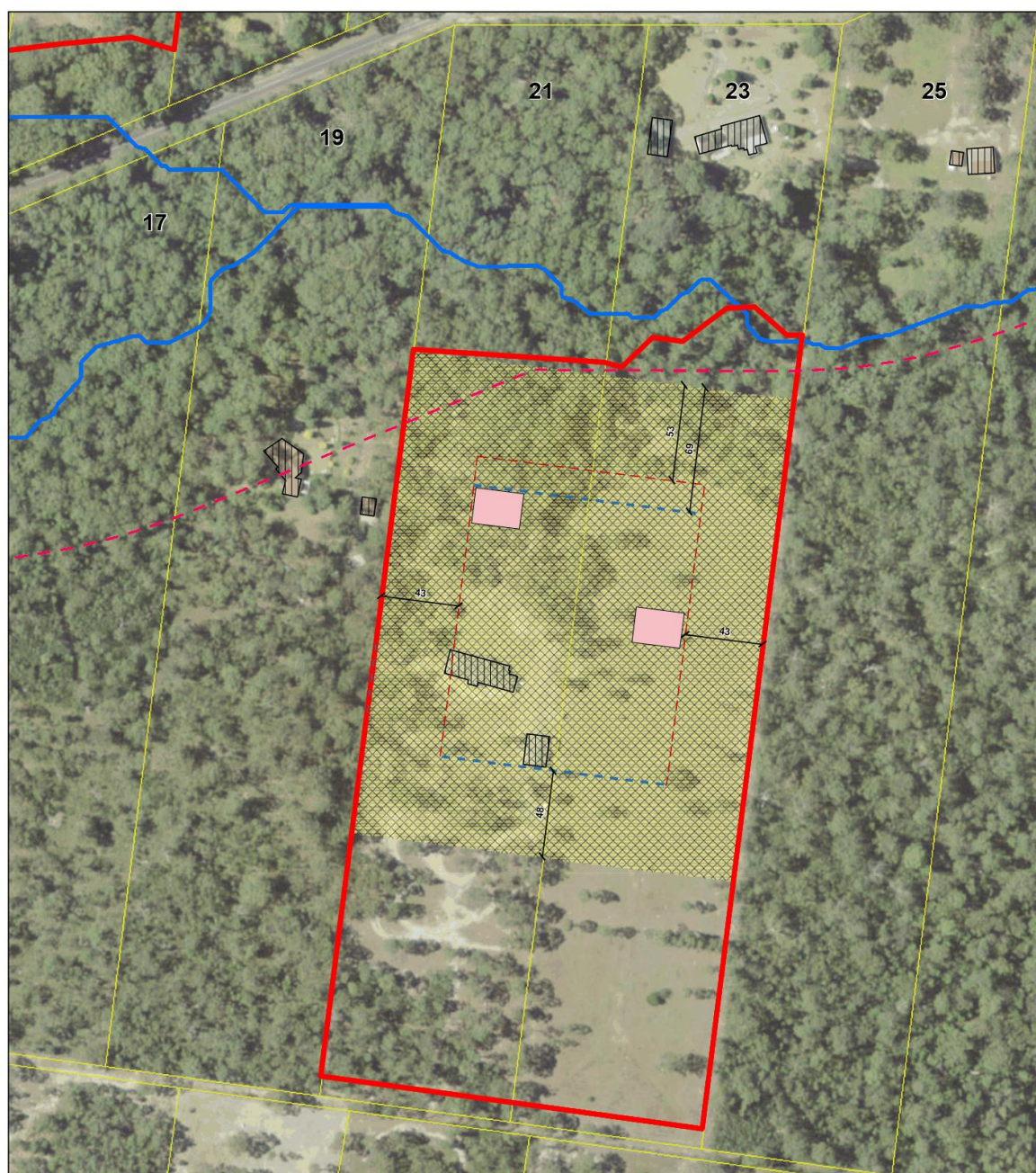
For any enquiries regarding this correspondence or to discuss the matters raised in this letter further please contact Amanda Moylan on (02) 4472 0600.

Yours faithfully,



Nika Fomin

Manager Planning and Environment Services



Legend

- Watercourse (generated from LiDAR)
- Investigation Area Boundary
- Indicative Building Line & APZ**
 - BAL 19 Building Line
 - BAL 12.5 Building Line
- Indicative New Dwelling (conceptual only)
- Existing Dwelling & Ancillary Structures
- 200m from Seasongood Road

**Planning Proposal LP406
Woollamia-Falls Creek PP**

**Potential location of new dwellings at
21 and 23 Seasongood Road**



1:2,000

Council File: 38279E

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Mr Russ Pigg
General Manager
Shoalhaven City Council
PO Box 42
Nowra NSW 2541

Contact: Lisa Kennedy
Phone: 02 4224 9457
Email: Lisa.kennedy@planning.nsw.gov.au

Our ref: 12/02248
Your ref: 38279E(D14/131104)

Attention: Mr Eric Hollinger, Senior Project Planner

Dear Mr Pigg,

**Planning Proposal for Falls Creek Woollamia Deferred Rural Residential Area
PP_2012_SHOAL_001_00 – Gateway determination extension**

I refer to your request of 29 August 2016 seeking an extension of time to complete the Planning Proposal PP_2012_SHOAL_001_00 to resolve the residential development potential of deferred lands in the Falls Creek and Woollamia area. I understand Council is addressing concerns raised by the NSW Rural Fire Service in order to demonstrate consistency with the S117 direction 4.4 Planning for Bushfire Protection.

I have determined, as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979*, to amend the Gateway determination to extend the time for the completion of the LEP by a further 12 months. The LEP is now due to be finalised by 5 September 2017. Please see the attached Alteration of Gateway determination.

The State Government is committed to reducing the time taken to complete LEPs. The Minister may take action under section 54(2)(d) of the *Environmental Planning and Assessment Act* if the timeframes outlined in a Gateway determination are not met.

The Gateway determination for the planning proposal, issued on 29 August 2012, identified a 24 month timeframe for completion of the Local Environmental Plan (LEP), expiring on 5 September 2014. Two extensions for 12 months were granted on 20 June 2014 (expiring on 5 September 2015) and on 8 September 2015 (expiring on 5 September 2016).

This is the third extension of twelve months and brings the total time for completion of the LEP to five years. The Department may not be willing to support any further requests for extension. Council is requested to provide a timeline for the project's milestones that can be used to track progress towards the completion of the LEP by 5 September 2017.

If you have any questions in relation to this matter, please contact Ms Lisa Kennedy of the Department of Planning and Environment's Southern Region on 02 4224 9457.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Linda Davis', followed by the date '31/8/16' written vertically.

Linda Davis
Acting Director Regions, Southern
Planning Services



Alteration of Gateway Determination

Planning Proposal (Department Ref: PP_2012_SHOAL_001_00): to resolve the residential development potential of deferred lands in the Falls Creek and Woollamia area.

I, the Acting Director Regions, Southern, as delegate for the Minister for Planning, have determined, under section 56(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 29 August 2012 for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

Delete

"4. The timeframe for completing the Local Environmental Plan is to be **48 months** from the week following the date of the Gateway determination"; and replace with

"4. The timeframe for completing the Local Environmental Plan is to be **60 months** from the date of the Gateway determination."

Dated 31st day of August 2016

A handwritten signature in black ink, appearing to read 'Linda Davis'.

Linda Davis
Acting Director Regions, Southern
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

DE16.12 Shoalhaven LEP 2014 - Review of Flood Controls

HPERM Ref: D16/334860

Group: Planning & Development Services Group
Section: Strategic Planning

Purpose / Summary

It is proposed to review the current flood related development controls in Shoalhaven Local Environmental Plan (LEP) 2014 to:

- Remove the Flood Planning Area mapping to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
- Update Clause 7.3 in Shoalhaven LEP 2014 to ensure consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
- Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.

DE16.12

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Prepare a Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven LEP 2014 as follows:
 - a. Remove the Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
 - b. Update Clause 7.3 in Shoalhaven LEP 2014 to provide consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
 - c. Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.
2. Consider a further report to adopt PP012 – Review of Flood Controls for submission to the NSW Department of Planning of Environment for Gateway determination.
3. Endorse the preparation of an online Flood Planning map to provide a publicly accessible and interactive display of adopted Flood Study mapping and historic flooding information.

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable a review of flood controls in Shoalhaven LEP 2014 to ensure they reflect Council's adopted Flood Risk Management

Study and Plans. This will ensure that the LEP reflects one mapping source meet the definition of ‘Flood Planning Level’ in Clause 7.3 in Shoalhaven LEP 2014. The proposal to remove the Flood Planning Area map from the actual LEP will reduce the need for constant updating of the Shoalhaven LEP 2014 via Planning Proposals as ongoing changes to the FRMSP’s are adopted.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the updating of flood controls in Shoalhaven LEP 2014 and could result in mapping that is not necessarily up to date being utilised in the development application process.

Background

Stage 4 Housekeeping Planning Proposal (PP)

On 3 June 2014, the Development Committee resolved to commence the process to make necessary housekeeping amendments to Shoalhaven LEP 2014 and report these for consideration as required.

The housekeeping amendments are now complete except for Stage 4 (PP012). The original intent of the Stage 4 Housekeeping PP was to:

- Update the LEP Flood Planning Area Map with any new flood data that has been prepared and finalised since the commencement of Shoalhaven LEP 2014 on 22 April 2014.
- Add those areas of former Rural 1(g) land that are outside the scope of existing flood studies to the Flood Planning Area Map.
- Include a provision to regulate the construction of stock mounds in flood prone areas.

Updated Flood Mapping

When Shoalhaven LEP 2014 was prepared, the most up to date flood data available was used to create the Flood Planning Area Map that forms part of the plan. Since then, new data has become available as additional flood studies and/or risk management plans have been completed and adopted by Council for the following catchments:

- Kangaroo River
- Broughton Creek
- Bomaderry Creek
- Shoalhaven River
- Nowra Creek
- Browns Creek
- Lake Wollumboola
- Currambene Creek
- Moona Moona Creek
- St Georges Basin
- Lake Conjola
- Burrill Lake
- Lake Tabourie

Further, Council resolved on 12 April 2016 that the Flood Planning Area Map in the Shoalhaven LEP 2014 be updated to include flood extents from the Lake Tabourie, Kangaroo River, Nowra and Browns Creeks, Bomaderry Creek and the Currambene and Moona Moona Creeks Floodplain Risk Management Studies and Plans (FRMSP). Council also resolved on the 19 July 2016, to update the map in Shoalhaven LEP 2014, also to

include the flood extents from the revised Broughton Creek catchment flood information and mapping.

The data for the Lake Tabourie, Nowra and Browns Creeks, Bomaderry Creek and the Currumbene and Moona Moona Creek's catchments also includes Council's resolved sea level rise benchmark of 0.36 metres (2100 sea level rise projection).

During the background research for this PP and following discussions with NSW Office of Environment and Heritage (OEH) and a number of Councils with flood controls, it became apparent that a number of Councils do not have a Flood Prone Land layer (Flood Planning Area Map) in their LEP's and rely solely on the application of LEP Clause 7.3, that relates to land that is defined as below the 'flood planning level'. This approach appears to be a sensible option for Council to adopt considering the number of flood affected areas identified in Councils FRMSP which are updated and amended on a regular basis. However the Flood Planning Area maps in Shoalhaven LEP 2014 can only be amended through a PP and the process for a simple PP can take 6-12 months before an LEP amendment is made. As such there is a time lag.

Council's adopted FRMSP's are available on Council's website, however most of the mapping is located within the documents and can be difficult for the public to interpret. As part of this review, it is recommended that the data from the adopted FRMSP's be displayed on Council's interactive mapping system enabling the public to search and locate a property very easily. This will also mean that the online map can be updated without delay as it sits outside the formal LEP.

Proposed Changes - Clause 7.3 Flood Planning

Clause 7.3 Flood Planning in the Shoalhaven LEP 2014 is a 'model clause' provided by the NSW Department of Planning & Environment (DP&E) that has been slightly adapted to meet the local situation in Shoalhaven.

The clause applies to:

- 2) (a) land that is shown as "Flood planning area" on the Flood Planning Map,
and
- (b) other land at or below the flood planning level.

DP&E's [Clause 7.3 model clause and drafting instructions](#), indicate that the wording of Clause 2 is aimed at identifying areas that are mapped as the 'flood planning area' but also applies to other areas where accurate mapping is not possible. Consequently, the wording captures land that can be accurately mapped and also land that cannot. Unmapped land includes the "flood planning area" (as defined in the *NSW Floodplain Development Manual*) up to the "flood planning level". Council's Section 149 (2) Planning Certificates currently identify properties that are mapped on the Flood Planning Area map, also areas that are not mapped in Shoalhaven LEP 2014 but that meet the definition of subclause Clause 7.3 2(b), being land at or below the 'flood planning level' in Council's adopted FRMSP's. By removing the Flood Planning Area map from the Shoalhaven LEP 2014 there is no real change to the application of Clause 7.3, it will however result in an improvement for the public accessing accurate and up to date information.

Clause 7.3 (4) in Shoalhaven LEP 2014 states that words or meanings used in this clause have the same meaning as in the *NSW Floodplain Development* (April 2005), unless otherwise defined in the clause. Clause 7.3 (5) goes on to provide the following definition:

'Flood planning level' means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

At the time of preparing the Shoalhaven LEP 2014, the definition of ‘flood planning level’ was one (1) definition out of four (4) possible definitions that could be used from model Clause 7.3 (see link above). To provide consistency with the *NSW Flood Plain Development Manual*, it is recommended that the PP include a request to remove subclause 7.3(5) so that the definition of ‘flood planning level’ in the *NSW Floodplain Development Manual* can instead be relied. This will enable a broader approach that includes flood levels derived from significant historical flood events. The definition in the Manual is provided below:

‘Flood planning levels’ (FPLs) are the combinations of flood levels (derived from significant historical flood events or flood of specific AEPs) and freeboards selected from floodplain risk management purposes, as determined in management studies and incorporated in management plans. FPLs supersede the “standard flood event” in the 1886 manual

Standard Instrument LEP issues

Through the introduction of the Standard Instrument LEP and the transfer of zones from Shoalhaven LEP 1985 to Shoalhaven LEP 2014, a number of zones that provided additional restrictions for development on flood prone land were unable to be carried over and were lost. Zones including Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) were not able to be carried over. In the areas where these zones applied, a similar zone has been applied and the land has as appropriate also been identified on the Flood Planning Area – Other map in Shoalhaven LEP 2014.

Inclusion of zone Rural 1(g) (Flood Liable) land

The Rural 1 (g) (Flood Liable) zone under Shoalhaven LEP 1985 previously applied to land that had been identified as flood prone land. In the transfer to Shoalhaven LEP 2014, Rural 1(g) land was zoned RU1 Primary Production or RU2 Rural Landscape and also shown on the Flood Planning Area - Other Map as there was no equivalent zone in the Standard Instrument LEP. In areas where a contemporary flood study had been undertaken, it was assumed that this data would supersede the data underpinning the Rural 1(g) zone and that any properties zoned Rural 1(g) that were not identified in the flood study for that catchment were assumed to not be flood prone and therefore were not shown on the Flood Planning Area map.

It has since been found that this was an erroneous assumption as the flood study areas do not always incorporate all of a catchment. Subclause 7.3(2) does not reference land mapped as ‘other’ on the Flood Planning Area map in Shoalhaven LEP 2014 and therefore carries no legal weight.

Thus there are some instances where former Rural 1(g) land which was excluded from a flood study area, was not transferred to the Flood Planning Area map. The map below shows an example at Erowal Bay where the Flood Planning Area map (blue area) has been overlaid over the Shoalhaven LEP 1985 map. The properties zoned Rural 1(g) or Residential 2(a4) in Shoalhaven LEP 1985 within the red circle are not shown on the Flood Planning Area map in Shoalhaven LEP 2014 which was clearly ‘cut-off’ partway along the waterway that runs through Erowal Bay. As a result, it is not readily apparent that these properties are flood prone. To rectify this, it was originally intended that properties be included on the Flood Planning Area map. Through the relevant PP to remove the Flood Planning Area map, historic flood information needs to be captured through Clause 7.3 in Shoalhaven LEP 2014. As outlined earlier in this report it is recommended that Clause 7.3 be amended to remove subclause (5) to rely on the definition of ‘flood planning levels’ in the *NSW Floodplain Development Manual*. This will provide a consistent approach to definitions in the LEP as well as provide a broader definition to cover flood levels derived from significant historic flood events.



Stock mounds

Stock mounds provide an elevated mound of fill to raise stock above the probable maximum flood level at a size large enough to provide suitable holding, feed and water space for the duration of the flood event (usually 14 days) where adequate flood free access/refuge is not available elsewhere on a property.

Under Clause 29 Development of flood liable land in the previous Shoalhaven LEP 1985 development consent was required for filling in the floodplain that was ancillary to agriculture. This meant that the construction of a stock mound required consent.

Shoalhaven LEP 2014 does not have similar clause which means that stock mounds are considered ancillary to extensive agriculture and therefore are unregulated. As unregulated stock mound construction could have significant environmental and flooding relating impacts (within a site and across the wider floodplain); Shoalhaven LEP 2014 needs to also be amended to require consent for their construction to enable sufficient consideration of their potential impacts.

The Planning Proposal (PP012) – Review of Flood Controls will propose to include an additional provision in Shoalhaven LEP 2014 to require development consent for stock mounds as detailed in the table below:

3	Clause Exceptions to earthworks in a Flood Planning Area	7.3A	<p>Insert an additional provision in the instrument to clarify that stock mounds require consent. The objectives of such a provision are to:</p> <ul style="list-style-type: none"> To provide for the orderly development of a stock mound in a flood planning area. To ensure that stock mounds do not have a detrimental impact on environmental functions and processes in a flood planning area. <p>It is intended that the provision apply in the following circumstances:</p>
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	<ul style="list-style-type: none"> • Land is zoned RU1 Primary Production and RU2 Rural Landscape; and • Land identified as “Flood Planning Area” on the Flood Planning Areas Map and/or land identified at or below the “Flood Planning Level” and/or land identified as Class 1-4 Acid Sulfate soils on the Acid Sulfate Soils Map; and • where the usable surface area of the stock mound is 100 square metres or greater in area.
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Community Engagement

Should the proposed PP ultimately proceed further it will be exhibited for comment in accordance with Council’s Community Engagement Policy at Level 1 to ‘inform’ and ‘consult’, and in accordance with the relevant legislative requirements. The Gateway determination will specify the minimum exhibition period and any government agencies with whom Council must consult. Community Consultative Bodies (CCB’s) and other interest groups will also be advised of future exhibition arrangements.

Policy Implications

The proposed review of flood controls in Shoalhaven LEP 2014 is consistent with Council’s Flood Risk Management Studies and Plans, Shoalhaven LEP 1985 and relevant Chapters. The relevant DCP chapters can be reviewed in the future if needed to ensure consistency with any changes to the LEP.

Financial Implications

Based on the recommended approach, there are no immediate financial implications for Council as the proposed approach will be resourced within the existing Strategic Planning budget.

Risk Implications

Consistency with the FRMSP’s is important to ensure Council’s planning documents include suitable controls consistent with the *Floodplain Development Manual* and to ensure Council is acting in good faith when providing flood risk controls to ensure legal indemnity is maintained. By providing one source of up to date information for flood affected properties that are identified through adopted FRMSP’s, Council is providing the most accurate information available to current and future landowners.

DE16.13 Review of the Nowra CBD Contributions Discount Subsidy Policy

HPERM Ref: D16/324536

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Nowra CBD Contributions Subsidy [↓](#)

Purpose / Summary

To seek direction in relation to the review of the Nowra CBD Contributions Discount Subsidy. Given that the two (2) year trial period for the subsidy has now been completed, and Council needs to determine whether they wish to continue providing the subsidy.

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Extend the Nowra CBD Contributions Discount Subsidy Policy for an additional 12 months from the initial review date
2. Advise the Nowra CBD Revitalisation Committee members, Nowra CBD Business Chamber and the Shoalhaven Business Chamber of this resolution

Options

1. Adopt the resolution outlined in the report.

Implications: This is the preferred option. The trial subsidy was intended to stimulate/encourage new development within the Nowra CBD. This does not appear to have occurred. It is proposed that the trial be extended by another 12 months to see whether there is further interest.

2. Adopt an alternative resolution.

Implications: Council can choose to rescind or amend the current Nowra CBD Contributions Discount Subsidy Policy if it wishes.

Background

The Shoalhaven Contributions Plan 2010 allows Council to levy contributions on new development for the provision of essential community infrastructure. Where a commercial development cannot meet all of their parking requirements on-site, a developer has the option of paying a monetary contribution in lieu of providing on-site parking. In the Nowra CBD, the current contribution rate for car parking is \$25,662.36 per space.

On 28 October 2014, Council resolved to adopt the Nowra CBD Contributions Discount Subsidy Policy (**Attachment 1**).

The subsidy was in response to concerns raised by the development industry and others that the cost of current car parking contributions is inhibiting development in the Nowra CBD. Council resolved to subsidise car parking contributions by 50% as a trial measure, to

hopefully stimulate new development. This was intended to encourage redevelopment within the Nowra CBD through the provision of a short term discount subsidy applied to the Nowra Car Parking Contributions Project.

The policy is primarily aimed at small to medium development scenarios that generally have a net development area of less than 1,500m² and excludes supermarkets, clubs, hotel and motel developments. The policy operates separately and in isolation of Council's Contributions Plan and the discount subsidy is paid from Council's General Revenue funds and not from the contribution projects funds.

A review was set two years from the date of adoption to analyse the uptake of the policy, its effectiveness in encouraging development in the Nowra CBD and financial implications to Council.

Analysis

During the two years of operation, the policy has only been utilised twice:

The first was for a development that had already been completed, and the subsidy was applied retrospectively. The second was a recent application for an expansion of an existing medical centre.

As such, the policy has not had the desired outcome of encouraging new development within the CBD. The two instances where the subsidy has been issued were of a relatively minor nature. Notwithstanding, it is recommended that the trial of the subsidy continue for an additional 12 months, to be reviewed on 27 October 2017.

Continuing the trial of the policy requires Council to provide a funding source in its annual Management Plan for the period of the subsidy. The amount required cannot be accurately predicted, therefore the status of the subsidy will be monitored every three months in Council's quarterly budget reviews.

Policy Implications

This report recommends that the Nowra CBD Contributions Discount Subsidy POL14/24 be extended for an additional 12 months.

Chapter G21: Car Parking and Traffic in the Shoalhaven Development Control Plan (DCP) 2014 contains a related Clause 5.17 Nowra CBD – Development Incentive. This was introduced at the same time as the policy and the status of the clause will be reviewed as part of the wider review of the DCP chapter.

Financial Implications

Continuing the trial of the policy requires Council to provide a funding source for the period of the policy. The amount required cannot be accurately predicted given the nature of the policy.



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For more information contact the Planning & Development Services Group

Nowra CBD Contributions Discount Subsidy

Policy Number: POL14/24 • **Adopted:** 28/10/2014 • **Minute Number:** MIN14.777 • **File:** 48884E • **Produced By:** Planning & Development Services Group • **Review Date:** 28/10/2016

1. PURPOSE

To encourage the delivery of redevelopment within the Nowra CBD through the provision of a short term discount subsidy that is applied to the following contributions projects:

- Nowra Car Parking Contributions Project

2. STATEMENT

In accordance with Council's Contributions Plan, contributions are levied on development (including redevelopment) where community / public infrastructure (identified in a contributions project) is required as a consequence of this development. The identification of a nexus and apportionment related to the infrastructure cost determines the amount that development will be levied per contributions project (i.e. it is a user pays system). The specific contributions project which development is levied and supporting information can be viewed in the Contributions Plan at: <http://s94.shoalhaven.nsw.gov.au/>.

Within the Nowra CBD the current contributions amounts levied on development have been identified as a potential hindering factor in regard to the delivery of development. Therefore, a lower contributions amount may stimulate new development within the Nowra CBD. The application of contributions discount subsidy is an incentive to attract the delivery of development within the Nowra CBD for a defined period.

3. PROVISIONS

The application of this policy is primarily aimed at small to medium development scenarios that generally have a net development area of less than 1,500m² and excludes supermarkets, clubs, hotel and motel developments.

This policy applies to Development Applications (including section 96 applications) received after the exhibition period for the draft of this Policy commenced (i.e. 30 July 2014) where the development is not complete and an Occupation Certificate has not been issued.

The policy requires full payment of the contributions applicable to a Development Consent within the Nowra CBD (as shown in the attached plan) and for Council to pay a discount subsidy after this payment is received.

The discount subsidy applied to the contributions projects listed in this policy is 50% of the amount paid for a period of 2 years which commences on Council adoption of this policy.

Payment of the subsidy will be made upon provision of a tax invoice to Council from the identity which made the related contribution payment to Council.

4. IMPLEMENTATION

This policy operates separately and in isolation to Council's Contributions Plan. Therefore any discount subsidy is paid from Council's General Revenue funds and not from the contribution projects funds. Therefore, Council will retain all contributions funds for the purpose that they were collected.

The application of the policy results in the requirement for Council to provide a funding source in its annual Management Plan for the period of the subsidy. The amount of subsidy paid per financial year is estimated to be \$100,000 however this amount cannot be accurately predicted. Therefore, the status of the remaining subsidy will be monitored every 3 months in Council's quarterly budget reviews.

5. REVIEW

The application of a discount subsidy will be monitored in Council's quarterly budget reviews. Depending on the uptake and financial implications of Council applying such a policy, Council reserves the right to review or amend the policy within its intended 2 year period. This review may involve rescinding the policy with 21 days notice.

6. APPLICATION OF ESD PRINCIPLES

The application of the policy is aimed at encouraging the delivery of development in the short term within the Nowra CBD. The outcome of such development is to provide greater employment and retail opportunities in Nowra CBD and the associated community benefit.



DE16.13 - Attachment 1

DE16.14 Huskisson Town Centre - Service Lanes Review - Funding and Costing Options

HPERM Ref: D16/324563

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments:

1. Report to Development Committee 7/6/16 - Huskisson Town Centre - Service Lanes Review (under separate cover) [↗](#)
2. Draft Contribution Project and Amendment Maps - Morton Street and Currumbene Street Service Lanes [↓](#)
3. Supporting Information - draft CP 03ROAD0058 and CP03ROAD0057 [↓](#)
4. Confidential - Updated Costing Information - Huskisson Service Lanes (Confidential - under separate cover)

Purpose / Summary

To provide further information on costing and funding options to facilitate the implementation of the proposed Huskisson Town Centre service lanes, in response to a previous Council resolution and enable a preferred way forward to be determined.

Recommendation

That the Development Committee:

1. Prepare an amendment to the Shoalhaven Contributions Plan 2010 to:
 - a. Amend the acquisition area of Currumbene Street service lane Section 94 project (03ROAD0057) to reflect Council's resolved position to not acquire No. 12 Currumbene Street for a proposed vehicle link (as per the map included in Attachment 2).
 - b. Include the previously exhibited draft Morton Street service lane Section 94 project (03ROAD0058) as per the map included in Attachment 2 with minor amendments determined by infrastructure requirements and design and the exclusion of the proposed laneway from Lot 12 DP 7169, No. 11 Currumbene Street.
 - c. Obtain updated acquisition and construction costs for both projects and include these in the draft Shoalhaven Contributions Plan 2010 amendment.
2. Receive a further report to consider the actual draft amendments to Shoalhaven Contributions Plan 2010.
3. Consider the following changes to Chapter N18 of the Shoalhaven Development Control Plan 2014 through a future review of this chapter to:
 - a. Remove the proposed service vehicle link between the Currumbene Street service lane and Currumbene Street (through Lot 2 DP 662583, No. 12 Currumbene Street) and include provisions relating to service vehicle access on individual properties.
 - b. Update the service lane provisions in accordance with updated infrastructure requirements and design.
4. Commit to funding the upfront costs for the construction of the Morton Street and

- Currambene Street service lanes in accordance with the following principles:
- a. Fund the initial expenditure of the works using loan funds or through general revenue allocations in the future Capital Works Program of up to \$3.24 million and request a further report should it require more than this amount.
 - b. Recoup part of the expended funds through Section 94 contributions levied by Shoalhaven Contributions Plan 2010 for future development.
 - c. Include the design and construction of the Currambene Street and Morton Street service lanes in Council's capital works planning.
5. Notify the affected landowners of Council's resolution.

Options

1. Adopt the recommendation

Implications: Council can choose to fund the service lanes through external borrowings or through general revenue allocations in the future Capital Works Program in order to commence the planning, design and construction of the Currambene Street and Morton Street service lanes.

This option moves the timeframe for construction ahead of the development and will hopefully stimulate development in the benefiting areas. The construction of the service lanes will help ensure the best future development outcomes for servicing and access arrangements.

By including both projects in the Section 94 contribution project, landowners within the project benefit area will contribute to the costs through Section 94 contributions at development stage.

2. Adopt an alternative recommendation

Implications:

As detailed in this report, there are a number of funding options available in this regard:

- a) Funding the project through general revenue
- b) Funding the project through loan funds and seeking recoupment through:
 - Section 94 Contributions (recommended option)
 - Voluntary Planning Agreement
 - Special Rate Variation applied to benefitting landowners or the broader Huskisson Town Centre landowners

Council could also decide not to proceed with delivery of the service lanes. This option would involve amending Shoalhaven Contributions Plan (CP) 2010 to remove the Currambene Street service lane project and amending Chapter N18 in Shoalhaven DCP 2014 to identify the proposed service lanes as desirable. This option would require each individual landowner to provide safe and practical servicing options for each individual property. This removes Council's financial liability to fund a portion of the cost of providing the service lanes. As detailed in the previous report, this option seems to be generally preferred by the landowners, however this approach does not provide the best longer term development/planning outcome for the town centre.

Background

The ongoing review of Huskisson service lanes was reported to Council's Development Committee Meeting on 7 June 2016. A copy of this report is included as **Attachment 1**. At this meeting it was resolved:

That this matter be deferred pending further investigation by staff on costing and funding options to facilitate the implementation of the service lanes.

Shoalhaven Development Control Plan (DCP) 2014 – Chapter N18 Huskisson Town Centre

As outlined in the report to June 2016 report, Shoalhaven DCP 2014 Chapter N18 – Huskisson Town Centre currently proposes rear service lanes with the intention of removing service vehicles from the main commercial streets of Huskisson and to also facilitate better development outcomes by providing rear access for vehicles, servicing and car parking.

The proposed service lanes, known as the Currumbene Street service lane and the Morton Street service lane are shown in Figure 1 (DCP extract) below.

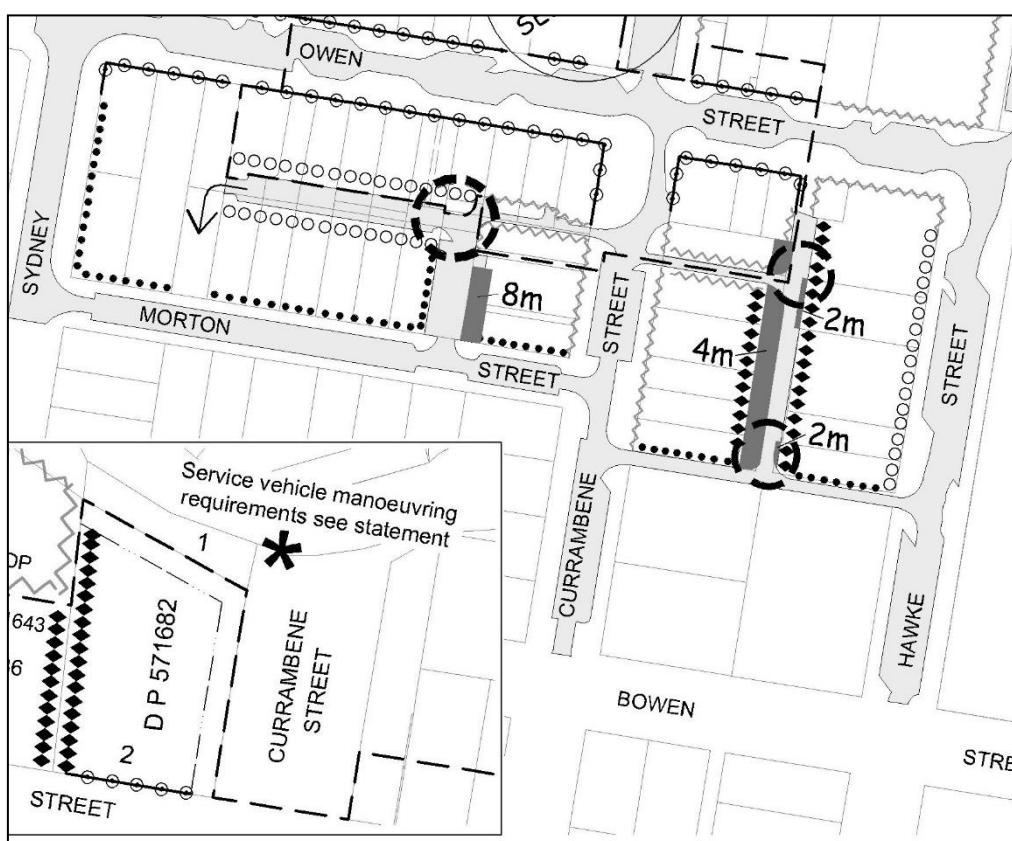


Figure 1 - Extract from Chapter N18 - Shoalhaven DCP 2014, Proposed Service Lanes

Shoalhaven Contributions Plan (CP) 2010

In 2012, the proposed Currumbene Street service lane was incorporated into the Shoalhaven CP 2010, which enabled Council to levy contributions from development towards the cost of land acquisition and the construction of the proposed service lane.

At that time, Council resolved not to include the proposed Morton Street service lane in the CP (**Attachment 2** contains the relevant maps), however this proposal is still identified in the Shoalhaven DCP 2014.

Council resolved as part of the consideration of draft Amendment No.1 to Shoalhaven CP 2010 (MIN12. 867) that:

DE16.14

Council confirm its previous decision to not acquire the land from the property known as Huski Bakery (11 Currumbene St) for the purpose of widening the laneway as part of the proposed Morton Street Service Lane.

It is thus recommended that any proposed CP project over the proposed Morton Street service lane recognise Council's previous resolution in this regard and remove 11 Currumbene Street from the proposed acquisition area.

In 2014, Council was approached by the then owner of 12 Currumbene Street to acquire that part of their property affected by the proposed service lane (the link between the proposed Currumbene Street service Lane and Currumbene Street). At the time, Council resolved not to acquire the land, and to review the proposed service lanes identified in Shoalhaven DCP 2014. Thus it is recommended that Council's position in this regard also be reflected through an amendment to the Currumbene Street service lane CP Project by also removing this proposed vehicle link. An updated draft plan is included in **Attachment 2** with the vehicle link removed.

The report to Council's Development Committee on 7 June 2016 (**Attachment 1**) includes further details on the review process to date and the outcomes of landowner meetings and overview of landowner comments.

Updated Service Lane Design and Costings

At this stage, detailed infrastructure designs have not been completed for the two proposed service lanes, however land acquisition and construction cost estimates were sought in 2009 during the preparation of the draft Shoalhaven CP 2010 (Amendment No. 1) and are included in the supporting information provided as **Attachment 3**. A number of properties have already been acquired along the Morton Street service lane project area via previous development consents requiring dedication or through acquisition. As detailed in the **Confidential Attachment 4**, Council has already spent \$195,136.00 on the acquisition of properties along the Morton Street service lane.

It is recommended that relevant land acquisition, construction cost estimates and apportionment percentages for the draft Section 94 projects be updated before the exhibition of any draft amendment to the Shoalhaven CP 2010 is undertaken. A quote has been sought to engage a valuation firm to update the valuation schedule to reflect current market value and amend the area of acquisition arising from Council decisions. An updated valuation schedule with rough estimates based on recent sale information and internal valuation advice, with an updated list of affected properties, is included as a Confidential Attachment for Council's information.

The estimated construction costs for the projects from 2009 are likely to increase substantially given an increase to unit rates for certain materials and an increase of 21.24% for the Building Price Index. Further detailed cost estimates will be sourced internally from Council's Assets & Works Group with the preparation of infrastructure design plans.

As indicated in the spreadsheet (**Confidential Attachment 4**) the initial cost of both projects with an updated property list, estimate land values and constructions costs is likely to be in excess of \$3.24 million.

Funding Options

Advice from Council's Finance Section has been incorporated into the commentary in this section.

There are a limited range of mechanisms available for Council to fund and deliver community infrastructure. Council can choose to fund this project using external borrowings or by committing to fund it through future capital works programs, however it is recommended that Council commit to some form of recoupment option as security over the land. Both proposed service lanes will help activate development and will provide good development outcomes for

the Huskisson Town Centre, however they will come at a high cost to Council and directly benefit only a small number of land owners.

There is currently no available budget for the Currumbene Street and Morton Street service lane projects. Section 94 funds are yet to be recouped from the current Section 94 Project for the Currumbene Street service lane (03ROAD0057). The recoupment of costs through a direct invoice to landowners is not appropriate for these projects as it offers no security for Council in recouping costs and requires Council to amend its fees and charges. This option would not cover land acquisitions costs. Any costs invoiced to landowners for construction works would need to be sought through debt collection and this could result in legal action and additional costs. This option could place an unnecessary financial burden on landowners who may not be in the position to commit to the project and could result in poor credit ratings for landowners if a debt collection process ends up being undertaken.

Council will ultimately incur the cost of constructing the Currumbene Street and Morton Street service lanes, however the total amount that can be recouped is yet to be determined. Under the current Shoalhaven CP 2010, Council is currently required to fund a portion of the cost of providing the Currumbene Street service lane. The current apportionment rate to future development in the Section 94 Project for the Currumbene Street service lane (03ROAD0057) is 51.8%. Council's contribution to this project is estimated to be 48.2% of the total estimate or approximately \$545,105 at the current indexed project estimate of \$1,130,922.65. As detailed in **Confidential Attachment 4**, the total project estimate is expected to substantially reduce due to the reduction in the acquisition area for No. 12 Currumbene Street, Huskisson as already resolved by Council.

The Shoalhaven CP 2010 will need to be amended to include the Morton Street service lane project, Council will also be required to fund a portion of providing this service lane and a reasonable apportionment rate will need to be considered in preparing this draft Section 94 project.

Possible recoupment methods are outlined below:

a) Section 94 Contributions (preferred option):

- Landowners/developers contribution requirements may be satisfied by a monetary contribution, dedication of land to Council, the provision of a material public benefit or works-in-kind, or a combination of these.
- Council would still be required to fund a portion of the cost.
- Contributions can only be required if a contributions plan is in place at the time a development application is determined.
- Seed funding through Section 94 funds could be used as initial expenditure for both projects and will be recouped as development occurs, however it is noted that there are currently no available funds in the Planning Area 3 pool. If Council decides to proceed with the projects before funds become available through Section 94 contributions, Council will need to commit to borrow loan funds or allocate future budget in the future capital works program.

b) Voluntary Planning Agreement

- A voluntary planning agreement (VPA) is an agreement entered into by a planning authority (such as Council) and a developer
- Under the agreement a developer can agree to provide or fund infrastructure
- Contributions can be made through dedication of land, monetary contributions, construction of infrastructure and the provision of materials for public benefit and/or use.
- A VPA would need to be entered into voluntarily with each individual landowner and Council. This is unlikely to be successful given that most landowners have not

indicated a clear desire to further develop their land at present or to contribute towards a service lane to increase their development potential.

c) Special Rate Variation

- This option would involve the initial expenditure of loan funds and the recoupment of costs through a Special Rate Variation applied to the benefitting landowners or alternatively to the wider Huskisson Town Centre landowners.
- Council can apply to the NSW Independent Pricing and Regulatory Tribunal (IPART) for a Special Rate Variation to increase rates above the rate peg.
- This application will be considered against the guidelines set by the NSW Office of Local Government guidelines.
- This application is unlikely to meet the criteria considering the scale of the projects, the small number of benefitting owners, the existing Section 94 project and other more suitable recoupment options.

d) General Revenue (no recoupment)

- There is currently no budget available to fund both projects through Council's General Revenue (rate income).
- Any expenditure will require loan funds to be borrowed. Without a secured recoupment method, this option would put Council in a difficult financial position for the benefit of a relatively small number of landowners.

Community Engagement

Council staff facilitated a number of meetings with affected landowners to discuss the proposed service lanes, and the recommendation of the report largely reflects the feedback received at the public meetings.

The formal amendments to Shoalhaven DCP 2014 and Shoalhaven CP 2010 will be publicly exhibited for a minimum period of 28 days and further landowner and broader community feedback will be undertaken at that point.

Policy Implications

Shoalhaven DCP 2014 and Shoalhaven CP 2010 will need to be amended to reflect Council's decision. It is recommended that the exhibition of the draft Amendments occur simultaneously. Any change to the service lanes proposed will require an amendment to both the DCP and CP in some form to reflect Council's previous resolution not to acquire 12 Currumbene Street, Huskisson for the purposes of a vehicle link.

Financial Implications

There is currently no funding set aside for project delivery or acquisitions of this kind nor have any funds been collected under a relevant contributions plan. Seed funds for the delivery of the service lanes projects will require external borrowings.

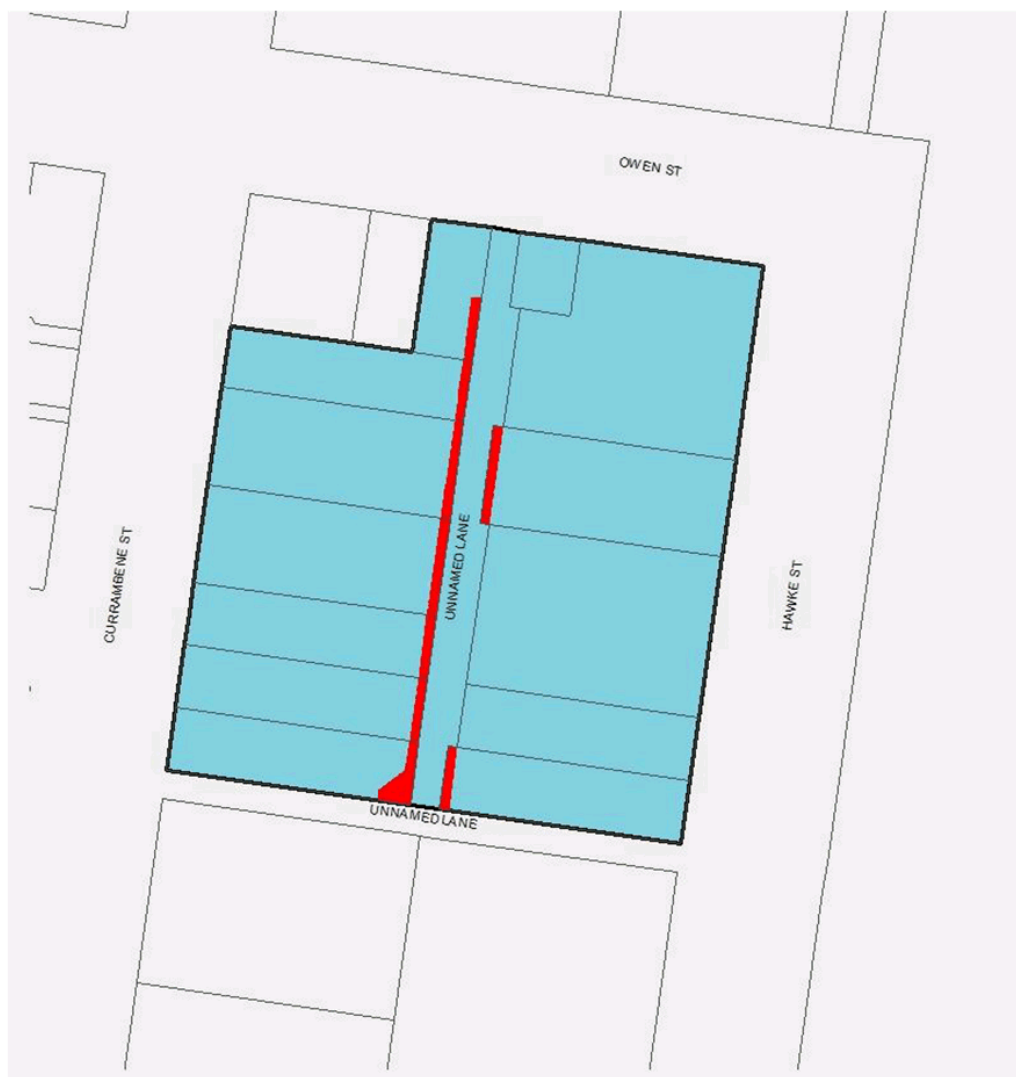
Updated land acquisition estimates will be provided for the preparation of the draft amendment to Shoalhaven CP 2010. Initial disbursement items of legal and valuation fees will be included in the valuation schedule.

Council will ultimately incur the cost of constructing the Currumbene Street and Morton Street service lanes, however the total amount that can be recouped is yet to be determined. Under the current Shoalhaven CP 2010, Council is currently required to fund a portion of the cost of providing the Currumbene Street service lane. If the Shoalhaven CP 2010 is amended to include the Morton Street service lane project, Council will also be required to fund a portion in providing this service lane.

03ROAD0057 - Morton Street Service Lane – Draft Contribution Project Map



03ROAD0057 – Currumbene Street Service Lane Contribution Project – draft Amendment Map



Supporting information

Project code

03ROAD0057

Date of project delivery

Project not completed

Project cost breakdown

Construction	
Site Establishment and Preparation	\$8,640
Construct New Pavement	\$56,416
Kerb and Gutter	\$34,764
Concrete Paving	\$25,921
Drainage 375mm dia Class Pipe	\$33,250
Drainage Pits and Hardware	\$7,192
Signposting	\$1,784
Landscaping	\$3,482
Total Construction	\$171,449
Works on Cost	\$51,435
Survey Design and Administration	\$17,145
Total Implementation	\$240,029
Land Acquisition Estimate	\$799,451
Total Cost	\$1,039,480

Apportionment assumptions

The following provides an overview of the existing and future development estimates used to calculate the project apportionment.

	Existing	ET's	Future	ET's
Retail	965m ²	97	1,100m ²	110
Office	0m ²	0	72m ²	1
Apartments	31	25	25	20
Total ET's		122		131

Benefit area(s) assumptions

None applicable

Actual project cost

Project not completed

History of amendment to this project

None applicable

Other relevant information

This project provides for the upgrade and extension of the existing lane parallel to Hawke and Currumbene Streets with kerb and gutter, new surfacing and shared car-pedestrian zones. The unnamed lane which intersects Currumbene Lane at right angles and runs towards Owen Street will be upgraded to provide car parking, improved drainage and provide a loop linking to Currumbene Street at the north and provide pedestrian access to Owen Street

The following table identifies the properties that will be the subject of partial acquisition to facilitate the service lane.

Lot	Deposited Plan	Address	Area to be Acquired
Lot 8	DP 12310	20 Currumbene Street	34m ²
Lot 7	DP 12310	18 Currumbene Street	26m ²
Lot 6	DP 12310	16 Currumbene Street	26m ²
Lot 3	DP 970148	14 Currumbene Street	40m ²
Lot 2	DP 662583	12 Currumbene Street	425m ²
Lot 5	DP 12310	10 Currumbene Street	28m ²
Lot 2	DP 311442	68 Owen Street	24m ²
Lot C	DP 322973	15 Hawke Street	26m ²
Lot CP	SP 7258	7 Hawke Street	40m ²

Supporting information

Project code

03ROAD0058

Date of project delivery

Project not completed

Project cost breakdown

Construction	
Site Establishment and Preparation	\$8,500
Construct New Pavement	\$101,340
Kerb and Gutter (and concrete edging)	\$57,785
Concrete Paving (Road)	\$209,365
Concrete Paving (Footpath)	\$82,855
Drainage 375mm dia Class Pipe	\$29,745
Drainage Pits and Hardware	\$7,075
Signposting	\$1,750
Line Marking	\$1,060
Landscaping	\$1,860
Total Construction	\$501,335
Works on Cost	\$150,400
Survey Design and Administration	\$50,134
Total Implementation	\$701,869
Future Land Acquisition Estimate	\$1,667,715
Past Acquisition Cost	\$195,136
Total Cost	\$2,564,720

Apportionment assumptions

The following provides an overview of the existing and future development estimates used to calculate the project apportionment.

	Existing	ET's	Future	ET's
Retail	2,164m ²	216	1,744m ²	174
Office	530m ²	5	427m ²	4
Apartments	13	10	10	8
Total ET's		231		186

Benefit area(s) assumptions

Shoalhaven Contributions Plan 2010 – Draft Amendment No.1

File 40340E

None applicable

Actual project cost

Project not completed

History of amendment to this project

None applicable

Other relevant information

This project facilitates the upgrade and extension of the existing laneway parallel to Owen and Morton Streets to provide rear access for these street fronts and additional parking. Realignment of the existing lane will provide a loop connection with Morton Street as per the Huskisson DCP.

The following table identifies the properties that will be the subject of partial acquisition to facilitate the service lane.

Lot	Deposited Plan	Address	Area to be Acquired
Lot 101	DP 616543	42 Owen Street	178m ²
Lot 102	DP 616543	44 Owen Street	161m ²
Lot 4	DP 7169	46 Owen Street	168m ²
Lot 44	DP 1002994	48 Owen Street	117m ²
Lot 42	DP 1002994	50 Owen Street	117m ²
Lot 72	DP 789148	52 Owen Street	66m ²
Lot 22	DP 7169	5 Morton Street	80.5m ²
Lot 21	DP 7169	7 Morton Street	80.5m ²
Lot 20	DP 7169	9 Morton Street	80.5m ²
Lot 19	DP 7169	11 Morton Street	80.5m ²
Lot 18	DP 7169	13 Morton Street	80.5m ²
Lot 17	DP 7169	15 Morton Street	80.5m ²
Lot 12	DP 7169	11 Currumbene Street	146m ²

DE16.15 Interim Heritage Order Request - Chinaman's Island Cottages, Lake Conjola

HPERM Ref: D16/346783

Group: Planning & Development Services Group
Section: Strategic Planning

Purpose / Summary

To seek direction on a recommendation from the NSW Minister for Heritage, that Council assess the likely heritage significance of the cottages located on Chinaman's Island, Lake Conjola.

Recommendation (Item to be determined under delegated authority)

That in accordance with the Committee's delegated authority from Council, that Council not support a heritage assessment and allow the current end of lease demolition arrangements with DPI - Lands to remain.

Options

1. Not support a heritage assessment and allow the current end of lease demolition arrangements with DPI - Lands to remain.
Implications: This would enable DPI – Lands to continue with their end of lease arrangements.
2. Undertake a heritage assessment of the Chinaman's Island cottages to determine their heritage significance.
Implications: This option will enable Council to determine whether the cottages should be identified as items of local environmental heritage in Shoalhaven Local Environmental Plan (LEP) 2014 or whether they should be subject to an archival recording prior to demolition.
3. Support the preparation of archival recording prior to demolition.
Implications: This option will enable the history and stories associated with the cottages to be documented. It would be consistent with the preferred approach of NSW Department of Primary Industries – Lands (DPI – Lands) and enable sustainable long term maintenance and management of Chinaman's Island.

Background

Chinaman's Island is located in Lake Conjola, north of the existing urban area as shown in Figure 1 below.



Figure 1: Chinaman's Island, Lake Conjola

The island is currently owned by the NSW Government and is managed by DPI – Lands. Early last century 12 lots were offered for lease by ballot on a permissive occupancy (lease). A number of small cottages were subsequently constructed by the leaseholders during the 1940s and 1950s, with some used as permanent occupancies and others as holiday cottages. During the 1970s, DPI - Lands informed the leaseholders that the cottages would be demolished when the last surviving occupant died.

Of the 12 original cottages:

- 5 have been demolished (the last of which was removed in 2012).
- 4 are earmarked for removal.
- 3 are subject to a current lease:
 - 1 is permanently occupied;
 - 2 are used for holiday purposes.

The Interim Heritage Order and Heritage Significance

In 2015, relatives of the leaseholders petitioned the NSW Government to issue an Interim Heritage Order (IHO) under the NSW Heritage Act 1977 to preserve the remaining cottages.

The purpose of an IHO is to provide a "breathing space" of no more than 12 months during which a full heritage assessment can be completed. They are thus intended to be temporary in nature and the majority are made in response to community representations or concerns raised by local government.

The cottages were not identified or considered through the Shoalhaven Heritage Study that led to the amendments to the Heritage Schedule in Shoalhaven Local Environmental Plan 2014.

The NSW Office of Environment and Heritage (OEH) advised Council on 2 June 2016 that they had received a request for an IHO. On 12 July 2016 the NSW Minister for Heritage advised that he had resolved not to proceed with an IHO for the cottages. The advice noted that the cottages may be representative examples of mid-20th century vernacular and weekender style holiday cottages in a coastal setting, however, they were unlikely to meet the criteria of state significance for listing on the State Heritage Register. Due to the urgency of the situation (possible pending demolition), the Minister recommended that Council assess the likely significance of the cottages with a view to possibly listing them as a local heritage item in Shoalhaven LEP 2014. In addition, the Minister has recommended that the owner DPI –Lands undertake an archival recording of the remaining cottages to record the historic stories of the cottages for future generations.

Council's Heritage Advisor has advised that it is possible that the cottages:

- Were associated with the wave of tourists to the south coast after World War II, which defines the culture of coastal villages in Shoalhaven and NSW.
- May be examples of themes of recreation and leisure in the post war period.
- May be comparable to heritage listings of similar holiday cabins in the Lake Conjola area.

Council's Heritage Advisor agrees with the Ministers recommendation that the significance of the cottages requires assessment and has also suggested that this should include investigation into the Chinese man after whom the island is named.

Key Environmental Issues

Zoning

Chinaman's Island is currently zoned E2 Environmental Conservation under Shoalhaven LEP 2014 which reflects its location in an environmentally sensitive water body and the significant vegetation/habitat identified on the Island. The Island is also partly mapped as bushfire prone.

Flooding

Chinaman's Island is flood prone and categorised as a high hazard floodway. Therefore it is not considered an appropriate location for residential development. The danger of occupation is increased given that the Island itself will be completely inundated in larger flood events, and access to and from the Island would be dangerous.

Wastewater Disposal

The existing cottages currently have onsite waste water disposal systems. Any increased use of them would likely require improved effluent disposal systems. Systems in this location will be classified as high risk due to the proximity to Lake Conjola and other constraints such as soil and buffer zones. Traditional effluent disposal systems are unlikely to be supported given the increased risk to water quality and the fact that the Island is located less than 500 metres from oyster leases and the lake is used extensively for recreational activities.

Asbestos

The cottages were constructed from weatherboard and fibro-cement sheeting which contain asbestos. Previous consents for demolition have contained conditions regarding the safe removal of asbestos.

The Lease and Long Term Management

DPI - Lands have advised that regardless of whether Council lists the structures as local items of environmental heritage, they will not renew the leases over the cottages which will continue to be revoked on the death of the lease holders.

Should the cottages be heritage listed, it is unlikely that demolition would be pursued, however DPI – Lands is opposed to any form of heritage listing. It is the view of DPI - Lands that the heritage listing of these cottages would have significant cost and management implications for Government. The buildings are not considered suitable for continued long-term use for residential purposes or for redevelopment for a new use. Given the poor condition of the cottages and the fact that they contain asbestos and are located on an island with limited supporting infrastructure, DPI - Lands have advised that they cannot justify maintaining the structures on the basis of their potential heritage significance alone.

DPI - Lands believes that the environmental value in returning the Island to its natural state outweighs the merits of retaining the cottages and that it would be in the greater public interest to recognise the use of the Island by other means such as archival recording. DPI-Lands strategic plan for Chinaman's Island is for the removal of all cottages, the rehabilitation of the grounds and reservation for public recreation and environmental protection. This has been the case for the last 30 years.

DPI - Lands also intends to appoint Council as trustee of the reserve (charged with care, control and management) as previously discussed with Council. Should this eventuate and the cottages were listed as local heritage items, Council would then most likely be responsible for the ongoing maintenance of the vacant cottages (e.g. vandalism, unauthorised occupations etc.).

Summary

It is apparent that DPI - Lands will not renew the lease of the remaining 3 occupied cottages, regardless of whether a heritage assessment recommended the cottages for a local heritage listing.

Should Council ultimately become Trustee (CCM) of Chinaman's Island in the future, if the cottages were listed, it would be responsible for the ongoing management and maintenance of vacant and potentially hazardous structures. Supporting DPI – Lands end of lease arrangements would be a more practical approach to overcome the liability of ongoing management and maintenance.

Community Engagement

No formal community engagement has been undertaken at this stage. The representative of the remaining leaseholders (and relatives) has been advised that this matter will be presented to Council's Development Committee for consideration.

Financial Implications

The immediate financial cost to Council would be in engaging a heritage consultant to undertake the assessment of heritage significance, should this option be pursued.

Should the item warrant local heritage listing, Council staff time would be required to prepare a Planning Proposal to include the item in Schedule 5 of Shoalhaven LEP 2014. This cost could possibly be recovered through heritage grants from the State Government.

Council will also need to consider the financial implications of ongoing management and maintenance of Chinaman's Island should Council become the Trustee for it in the future.

DE16.16 Council Submission - Proposed Medium Density Housing Code and Draft Design Guide

HPERM Ref: D16/347254

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Draft Submission - December - Medium Density Housing Code & Guide
[↓](#)
2. Draft Submission February 2016: Expanding Complying Development [↓](#)

Purpose / Summary

To obtain endorsement to make the attached submission (**Attachment 1**) on the proposed Medium Density Housing Code and draft Design Guide.

Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Department of Planning & Environment on the proposed Medium Density Housing Code and draft Design Guide based on Attachment 1 prior to the deadline of 12 December 2016.

Options

1. Endorse **Attachment 1** as Council's submission on the proposed Medium Density Housing Code and draft Design Guide.

Implications: This is the preferred option as it will enable Council to provide a submission within the nominated exhibition period and have input into this proposal.

2. Adjust **Attachment 1** and include additional comments as necessary and submit to the NSW Department of Planning and Environment (DP&E).

Implications: This option will still enable Council to provide a submission within the nominated exhibition period.

3. Not make a submission.

Implications: This is not favoured as the proposed Medium Density Housing Code and draft Design Guide may have direct implications on Shoalhaven.

Background

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) currently provides for a number of complying development codes including:

- General Housing;
- Rural Housing;
- Housing Alterations;
- General Development;
- Commercial and Industrial Alterations;
- Commercial and Industrial (New Buildings and Additions);

- Subdivisions;
- Demolition;
- Fire safety.

At this point, the Codes SEPP does not provide complying development provisions for the construction of multi dwelling housing, dual occupancy or attached dwellings. As a result, applications for this type of development must be made via a development application to Council, considering the provisions of Councils Local Environmental Plans (LEP) and Development Control Plan (DCP). The one exception is dual occupancy and multi dwelling housing development which can also be considered under State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009, however such development must be used for affordable housing for a period of 10 years.

The subdivision of dual occupancy and multi dwelling housing can be undertaken under Shoalhaven LEP 2014 as either Torrens, Strata or Community title depending on the location, zone or land use. Under the Codes SEPP, the strata subdivision of multi dwelling housing is considered to be complying development where specified.

In 2015, DP&E released a Discussion and Background Paper 'Options for low rise medium density housing as comply development'. The Discussion Paper acknowledged the gap in state policy and proposed the expansion of the Codes SEPP to include medium density housing as complying development and the preparation of a Design Guide. The Discussion and Background Paper was publically exhibited between 27 November 2015 and 1 March 2016. Council's previous submission on this is provided at **Attachment 2**.

About the proposed Medium Density Housing Code (proposed Code) and draft Design Guide:

The proposed Code and draft Design Guide were released by the NSW Government on 12 October 2016 and are currently on exhibition for comment until 12 December 2016. The draft Design Guide, explanation of intended effects for the proposed Code and the frequently asked question documentation is available on DP&E's website at:

<http://www.planning.nsw.gov.au/mediumdensityhousing>

Copies of the exhibition material will also be available for review in the Councillors Room prior to the meeting.

The proposed Code attempts to fill the gap in complying development policy in the Codes SEPP by introducing provisions that will apply to low rise medium density housing types including:

- Attached dwellings.
- Dual occupancies.
- Semi-detached dwellings.
- Multi dwelling housing (strata titled terrace housing).
- Multi dwelling housing (strata titled villas and townhouses).
- Community titled master-planned medium density developments up to two storeys.
- Manor homes.

This gap has been referred to as the 'Missing Middle' as shown in Figure 1.

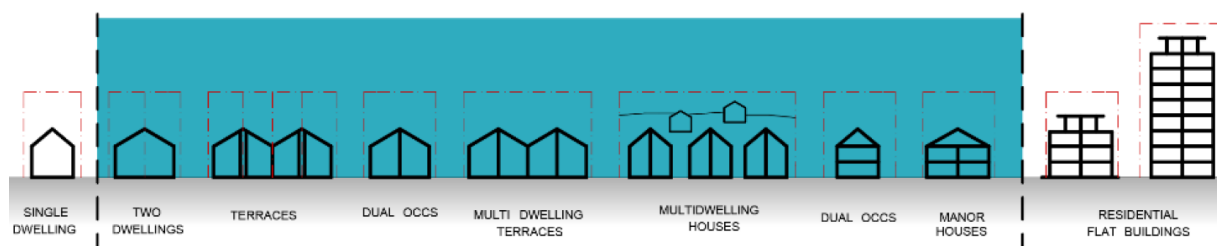


Figure 1: The Missing Middle (source: DP&E)

Accompanying the proposed Code is the draft Design Guide which is a comprehensive set of design guidelines that seek a state-wide approach to promote well designed and environmentally sustainable medium density development that contributes positively to the existing character of an area. It is also expected that the Design Guide would be used for development applications.

The NSW Government anticipates that the proposed Code and draft Design Guide will make approvals more efficient and consistent, increase supply and choice to the market and assist with housing affordability. The NSW Government has established the 'Missing Middle Design Competition' (Design Competition). The Design Competition seeks high quality, innovative design solutions for low-rise medium housing within three categories: terraces, dual occupancies and manor homes. A prize pool of \$50,000 is available for winning entries.

Significant Relevant Highlights

The following is a summary overview of some of the significant components of the proposed Code and draft Design Guide that are relevant to Shoalhaven, with observations and comments where relevant. It is noted that the proposed Code and draft Design Guide are detailed and have generally been well thought out for a metropolitan context, however they will have a state wide application and there appears to be no flexibility for a regional context.

The proposed Medium Density Code

The land use types included in the proposed Code are considered to be 'low rise' with entry and private open space at the ground level. Each dwelling must have a frontage to a road (i.e. side by side) except dual occupancy (attached – one above the other) and manor houses. Development is to appear to be of a similar scale to a dwelling house that can be currently carried out as complying development under the Codes SEPP General Housing Code.

Development types included and excluded from the proposed Code are noted in the following table:

Development included	Development excluded
Dual occupancy: <ul style="list-style-type: none"> Attached - side by side Attached – one above the other Detached - side by side 	Dual occupancy: <ul style="list-style-type: none"> Attached - one dwelling with road frontage, other directly behind Detached - where one dwelling does not have a frontage to a road.
Attached dwellings	Multi dwelling housing (terraces) – width of dwelling less than 6m and lot less than 200m ² .
Multi dwelling housing (terraces)	Multi dwelling housing where each dwelling does not have frontage to the street
Manor houses (3-4 dwellings)	

Development will only be considered as complying development where it is permissible with consent in Shoalhaven LEP 2014. Further, it is restricted to the following zones:

- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- RU5 Village

Attached dual occupancy and attached dwellings are permissible with consent in a number of additional zones in Shoalhaven SLEP 2014 (attached dwellings - B4 zone, attached dual occupancy - RU1, RU2, RU4, R5, E3 and E4 zones) and therefore development could only be considered via a development application in these zones.

To be complying development under the proposed Code, the development must not be carried out on specific land, for example land within a heritage conservation area, ecologically sensitive area, land reserved for a public purpose etc. This is the same approach as the current General Housing Code and Rural Housing Code.

The proposed Code will include provisions such as floor space ratio, landscaped area, height and setbacks which would prevail over Shoalhaven LEP 2014. It is noted that the maximum height under the proposed Code is 9 metres for some development types (e.g. terrace houses) which exceeds the maximum height limit mapped under Shoalhaven LEP 2014 for a number of residential areas or zones in Shoalhaven (e.g. 8 metres and 8.5 metres). There is currently no proposed scope for regional variation in the proposed Code to address this concern.

Complying development under the proposed Code can be assessed by a Principal Certifying Authority, which could be Council or a private certifier. There is concern about the ability of a private certifier to assess complying development applications of this scale/nature. Further, the question of conflict of interest continues to be of concern, especially if a developer has the ability to appoint their own certifier.

Proposed amendment to the Subdivisions Code

Strata subdivision of a multi dwelling housing development can already be undertaken as complying development under the Codes SEPP Subdivisions Code. As part of the proposed Code package, it is planned to expand the specified complying development under the Subdivisions Code to include:

- Strata subdivision of dual occupancy development.
- Torrens subdivision of medium density development with frontage to a public road.

For both forms of proposed subdivision, the medium density development must be approved as complying development under the Codes SEPP. Where a concurrent complying development certificate for medium density development and subdivision is issued, the subdivision can only be registered after the interim occupation certificate has been issued for the dwellings.

Apart from dual occupancy (attached – one above the other) and manor houses, the minimum lot width for strata or Torrens subdivision is 6 metres and minimum lot size is 200m². This is consistent with the minimum subdivision size for a dwelling house approved as complying development. This does however result in very narrow and significantly smaller Torrens lots than typically currently occur in Shoalhaven.

Standard Instrument LEP and Shoalhaven LEP 2014

The proposed Code package would require amendments to the Standard Instrument LEP and Shoalhaven LEP 2014 to ensure there are no conflicts between planning instruments and to enable certain development:

- A new standard instrument clause will be introduced to standardise requirements for concurrent consent for dwelling and subdivision to ensure that subdivision on smaller lots is undertaken in a co-ordinated manner. Council would be required to make relevant amendments to Shoalhaven LEP 2014 in the future to respond to this direction. It is hoped this would be managed NSW wide via an amendment to the Standard Instrument LEP. This was always the intent of the Standard Instrument LEP.
- Council may be required to amend Shoalhaven LEP 2014 to conform to the model clause 'Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings'. Shoalhaven LEP 2014 minimum lot sizes have generally been formulated based on a conventional subdivision for a single dwelling. This clause will clarify the amount of land required before certain medium density development can occur (essentially lot fixing) to ensure a suitable minimum lot size for the parent lot.

There is merit in applying such a clause in Shoalhaven LEP 2014. However it is also noted that we currently allow the subdivision of dual occupancies only in certain localities under the LEP and there are specific lot sizes to the localities. As such we may need a flexible approach in this regard to allow the setting of lot sizes, but also flexibility to retain our locality specific controls if possible.

- The Standard Instrument LEP, and therefore Shoalhaven LEP 2014, will need to be amended to include three new/amended definitions as outlined in the following table.

Land use	Existing definition	Proposed definition
Multi dwelling housing	means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.	means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access at ground level, but does not include a residential flat building.
Multi dwelling housing (terraces)	-	means 3 or more dwellings (whether attached or detached) on one lot of land, each dwelling has a frontage to a public road and no other dwellings are above or below. Note. Multi dwelling housing (terraces) is a type of multi dwelling housing.
Manor house	-	Means a building containing 3 or 4 dwellings on one lot of land, where:

		<p>a) Each dwelling is attached to another dwelling by a common wall and/or floor; and</p> <p>b) The building contains no more than two storeys, excluding any basement storey.</p>
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Note: Until the planning instruments have been amended and the term added to the appropriate zone land use tables, a manor house could be considered as complying development anywhere that multi dwelling housing or residential flat buildings are permissible with consent. For Shoalhaven, this would be in the R1, R3, RU5 and B4 zones. This approach appears to be reasonable and the form of development consistent with the expected future character of these zones.

The draft Design Guide

The draft Design Guide is a companion document to the proposed Code which will apply state wide to complying development. It is based on best practice design principles and has been prepared to be a benchmark for designing and assessing applications. Its goal is to produce well designed and liveable development that is respectful of the environment and existing built form.

The draft Design Guide is based on a set of design criteria. Complying development can meet the design criteria or use an alternative solution that meets the objective/s. This is generally the same principle as Shoalhaven DCP 2014 which also uses the performance criteria and acceptable solution approach. A design verification statement would be required as part of the complying development application to 'ensure consistency in planning approach across the state'. In a basic sense, the design verification statement is a tailored approach based on a standard Statement of Environmental Effects. It should respond to the design criteria and explain how the development fits in with the local context. The design verification statement would need to be signed off by the development designer.

The Design Guide is legally enforceable for complying development, however it may also apply to development applications. When relating to a development application, the Design Guide is not legally enforceable and Council has the flexibility to:

- Adopt the Design Guide in its entirety for the development to which it applies (including the requirement for a design verification statement). The Design Guide would need to be referenced in Shoalhaven DCP 2014; or
- Include certain components of the Design Guide in Shoalhaven DCP 2014 in some form, but not formally adopt the overall Design Guide; or
- Choose not to adopt any component of the Design Guide and continue to solely rely on the existing Shoalhaven DCP 2014 provisions.

There are a number of good design criteria in the draft Design Guide which would be of benefit to Shoalhaven. There could be merit in adopting the Design Guide in its entirety for the purpose of development applications, particularly as matters such as building envelope, height, setbacks, floor space ratio, car parking and landscaping are to consider the controls in the LEP or DCP that applies to the land (not the Design Guide). In essence, the Design Guide would only apply for:

- Requirement for a design verification statement;
- Local character and context;

- Public domain interface;
- Internal streets – pedestrian and vehicle access;
- Orientation and siting;
- Building separation;
- Solar and daylight access;
- Natural ventilation;
- Ceiling heights;
- Dwelling size and layout;
- Private open spaces;
- Storage;
- Bicycle parking;
- Visual and acoustic privacy;
- Noise and pollution;
- Universal design (e.g. adaptable and accessible provisions);
- Architectural form and roof design;
- Visual appearance and articulation;
- Pools and ancillary development;
- Energy efficiency;
- Water management and conservation;
- Waste management.

Of the above points, the size of private open space areas (minimum of 16m²) and waste management are the main areas of concern:

- Shoalhaven DCP 2014 currently requires 50m² per dwelling for a dual occupancy and 35m² per dwelling for multi dwelling housing and attached dwellings. There is a significant difference between the proposed state (16m²) and current local requirements.
- The draft Design Guide does not provide adequate waste related design based provisions:
 - Greater consideration needs to be given to height, width and material of internal streets, driveways and basements to enable servicing of side-lift and front-lift vehicles.
 - Detail on the size and location of waste storage areas (including kerbside presentation) has been omitted.
 - No differentiation between commercial waste contractor and kerbside council collection service requirements.
 - Omission of a Waste Management Plan or similar document at the assessment stage.

These areas of concern have the potential to have significant impacts on long term liveability and practical servicing. Unless the above points can be addressed in the draft Design Guide, it would be unwise of Council to adopt the Design Guide in its entirety. A better outcome would be to include certain components of the Design Guide in Shoalhaven DCP 2014 in some form but not formally adopt the Design Guide in its entirety.

Council staff are currently undertaking a review of the existing medium density residential provisions in Shoalhaven DCP 2014 (Chapters G13: Dual Occupancy Development and G14: Other Residential Development) and the review of the Design Guide (once made effective) and its integration could be considered concurrently with this process. The outcome of this review could assist determine whether Council is better placed adopting the Design Guide in its entirety or only certain components, should matters of waste and private open space remain unresolved.

Any proposed changes to Shoalhaven DCP 2014 would be reported to Council and exhibited as per legislative requirements.

Summary

Council has no option but to work with the proposed Code and draft Design Guide in relation to complying development if the policy becomes effective state wide. It is therefore imperative that Council makes a submission on this matter to ensure that the final Code and Design Guide are appropriate for a Shoalhaven (and regional) context. The Code and Design Guide must also be appropriate for those matters that proceed as development applications, should Council adopt the Design Guide in the future for this purpose. The submission at **Attachment 1** seeks to achieve this.

DP&E are anticipating that the Code and Guide will be made effective by mid-2017.

Community Engagement

The draft documentation is on exhibition for community comment for a period of 8 weeks from 12 October to 12 December 2016 and is available for viewing on the DP&E's website (<http://www.planning.nsw.gov.au/mediumdensityhousing>).

Policy Implications

Should the proposed Code and draft Design Guide be adopted, Council will be required to amend Shoalhaven LEP 2014 accordingly as outlined above. Further, should Council decide to adopt elements of the Design Guide in Shoalhaven DCP 2014 for development applications, amendments to Shoalhaven DCP 2014 will be required.

Any proposed changes to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would be reported to Council and prepared and exhibited as per legislative requirements.

The content of the proposed Code and draft Design Guide is mostly 'generic' and there currently appears to be limited opportunity to reinforce or protect the existing or desired future character of certain areas in Shoalhaven. For example areas such as Kangaroo Valley, Huskisson, Milton etc. which currently have specific development controls aimed at acknowledging their character and which were developed in consultation with the community.

Financial Implications

There are no immediate financial implications for Council in making a submission on the proposed Code and draft Design Guide. Any amendment to the LEP or DCP will require future financial commitments from Council. These will be separately considered and reported as needed in the future.

COUNCIL REFERENCE: 31157E
CONTACT PERSON: Jenna Tague

XX December 2016

Dear Ms Kinkade

Submission – Proposed Medium Density Housing Code and Draft Design Guide

Thank you for the opportunity to comment on the proposed Medium Density Housing Code (proposed Code) and draft Design Guide. We commend the NSW Government effort to develop planning policy that responds to the need for a medium density component to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). Further, we support the aspiration to improve liveability, encourage housing mix/choice and we welcome the opportunity to provide further comment on this matter.

Council's Development Committee resolved (under delegation) on 6 December 2016 to:

a) INSERT RESOLUTION

This submission is broken into two parts: general matters and section specific matters for consideration.

1. General matters for consideration

- What safeguards are in place to ensure some form of quality control particularly given some of the matters raised in this submission (e.g. private certifiers)? This is an issue of concern that requires consideration.
- Current draft amendments to the Codes SEPP include an Inland Code to simplify the development standards for single dwelling housing in regional local government areas west of the Great Dividing Range. There would be merit in providing greater flexibility to the proposed Medium Density Code by enabling regional variation. A number of provisions in the proposed Code and the draft Design Guide would work well in a metropolitan context, however are not as appropriate in a regional context (e.g. parking, private open space, waste servicing). The objectives and design criteria in the Design Guide should reflect differences in context, both spatially and in terms of built form expectations.
- The draft Design Guide details that the net density proposed under the proposed Code is 24-45 dwellings per hectare. Shoalhaven has a number of urban release areas under Part 6 of Shoalhaven Local Environmental Plan (LEP) 2014, and even the areas that are expected to have the highest yield would only result in 15-20 dwellings per hectare. Whilst Council supports an increase in medium density development, the yield suggested in the proposed Code is concerning.
- The Government Architect of NSW has recently released the draft Better Placed Policy (draft Policy). It is indicated that the draft Policy and its future Design Guideline should "influence the development of new [State Environmental Planning

Policies]”. There are a number of excellent design principles within the draft Policy that would enhance the proposed Code and draft Design Guide, particularly in relation to the public realm and built form generally. Although these design principles are mostly metro-centric in nature, there would be benefit in considering these in the finalisation of the proposed Code and draft Design Guide.

- Council is generally concerned with the minimal community consultation associated with complying development, with no notification given to the community until approval is granted and the complying development certificate issued. This removes any opportunity for the community to comment on possible increased densities in low density areas.
- It is noted that the NSW Department of Planning and Environment (DP&E) recently ran a workshop on the ‘Beauty-In-My-Back-Yard’ (BIMBY) tool. If the State Government decides to adopt this tool, will it be considered when assessing the future character of the streetscape in the design verification statement? It would be unfortunate if this was the only avenue for community involvement in the complying development process (see above point).
- Has the work behind ‘Plan Melbourne Refresh’ been taken into consideration during the preparation of the proposed Code? ‘Plan Melbourne Refresh’ seeks to include a similar ‘missing middle’ approval code at a State level and it may be useful to review this approach in finalising NSW’s policy.
- There needs to be greater clarity around what happens with post approval compliance for complying development and also modifications to complying development certificates. Is a design verification statement required for the modification and does the design verification statement need to be prepared by the same designer?
- It is noted that the land use term ‘manor house’ will be added to the Standard LEP Instrument. It is important that this land use is not a mandatory inclusion in the R1 or R2 zone as Councils should have the discretion on where such developments are permissible, especially in a regional context.
- Should Council choose not to adopt the Design Guide in its entirety for development applications, is there scope for Council to adopt isolated provisions for integration in our own DCP or reference back to certain elements of the Design Guide? Clarification would be appreciated in this regard.
- Should Council choose to adopt the Design Guide in its entirety for development applications:
 - It is assumed from the Explanation of Intended Effects that the Design Guide would be treated like the Apartment Design Guide - a standalone document that is just referenced in our DC. From an operational perspective it is important to understand what ‘referenced’ actually means.
 - If a gap in the Design Guide provisions is identified, can additional provisions be included in the DCP as long as no conflicts arise? Clarification would be appreciated.
- Medium density development is a more complex development form than a standard dwelling house. The skill and ability of a private certifier to assess complying development applications of this nature is a concern. Further, the question of conflict of interest continues to be of concern, especially if a developer has the

ability to appoint their own certifier - is the private certifier acting in the best interest of the community or their client?

- It is understood that the proposed Code and draft Design Guide predominantly relate to design, however there seems to be no consideration of related matters such as developer contributions (s94).
- It is presumed that the complying development conditions of consent will be included as a Schedule to the Codes SEPP and modelled on those already contained within. Council would appreciate the opportunity to view and comment on the proposed conditions of consent when drafted, prior to their finalisation.
- The NSW Government is congratulated on establishing the Missing Middle Design Competition to assist in regard to the proposed changes. This will be a great opportunity to highlight built form and design elements that will also be appropriate to a regional or rural context. Considering pathway housing types only from a metropolitan context would be a missed opportunity.

2. Medium Density Code Development standards:

- It is acknowledged that the intent of the proposed Code is to encourage medium density development at a similar scale to that of a dwelling house under the Codes SEPP General Housing Code. The development is to have a frontage to the street, front and rear setback and private open space at ground level. The standards currently do not provide for 'built to boundary' provisions and it is critical for Shoalhaven that this approach is retained. This will assist with blending complying medium density development with most existing streetscapes.
- A maximum height of 8.5 metres/9 metres conflicts somewhat with Shoalhaven LEP 2014 heights in a number of areas throughout Shoalhaven (e.g. 7.5 metres for foreshore areas). The maximum prescribed height in the proposed Code should not override any height of buildings set in a Council LEP at a lower height – the Shoalhaven LEP 2014 heights should be maintained, to ensure community confidence. This is an area where regional flexibility would be of benefit.
- The minimum Torrens subdivision size of 200m² is concerning. Again there needs to be scope for regional variation. The smallest Torrens lot size available under Shoalhaven LEP 2014 is currently 350m² and is for dual occupancy and multi dwelling housing in certain areas of the city. This lot size has the potential to have an impact on the character of Shoalhaven's smaller towns and villages and also encourage increased densities in isolated settlements that have limited or no services and are at high risk from natural hazards e.g. bushfire and flooding.
- If Shoalhaven LEP 2014 is to conform with the model clause 'minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings', the clause should be drafted in a way to enable flexibility so that locality specific controls can be retained (e.g. 4.1A of Shoalhaven LEP 2014).
- Dual occupancies should not be permitted as complying development in R3 Medium Density zones as these areas should essentially be retained for higher forms of density. Council's current policy is to only allow dual occupancies in the R3 zone where a lot is smaller than 800m² and it is not feasible to amalgamate the lot with adjoining R3 zoned land to create a suitable sized parcel for multi dwelling housing.
- The minimum front setback proposed is 3.5 metres - 10 metres (depending on the size of the lot), or the average of the setback of adjoining properties. The 3.5 metres

minimum setback is too small. The front setback should be related to the height of the building and the width of the street, not just the size of the lot.

- The bulk and scale of a manor house undertaken as complying development is a concern. The Explanation of Intended Effects identifies that the intent is for a manor house to look similar to a dwelling house in terms of bulk and scale. Due to the characteristics of a manor house, it is unlikely that this will be the case. Further, the layout of a manor house means that not all dwellings will have direct access from the street which seems to conflict with the intent of the proposed Code.
- In Section 2.1 Design Principles in the Explanation of Intended Effects, it is noted that the following design principle has been used to guide the development of the standards: “ensuring that car parking does not dominate the streetscape”. However a minimum of 1 car space per dwelling is not adequate in a local government area like Shoalhaven, which is heavily car dependant and this minimum requirement would result in cars parking on the street. This will dominate the streetscape, cause congestion and is contrary to the above design principle.

3. Design Guide

- The Explanation of Intended Effects document indicates that “proposed development can comply with the design criteria or use an alternative solution that satisfies the objective”. This appears to imply that if the alternative solution is achieved, the objective has been satisfied. Some clarification is required on whether meeting the design criteria automatically means that the objective has been met. The relationship between the design criteria and the objectives need to be explicit. This is important particularly in circumstances where a poorly designed development satisfies the design criteria but not necessarily the objectives e.g. where certifiers may approve poorly considered developments based on a development satisfying minimum design criteria standards.
- It is concerning that the design verification statement is to be prepared by the person who designed the development. The process needs to be strengthened to allow more accountability particularly for complying development. At a minimum, the design verification statement should be provided by a qualified designer or planner.
- Whilst there is merit in the design principles in the draft Design Guide and it is noted that the design verification statement must articulate how the proposal responds to these principles, it is unclear how the assessment will be quality-controlled when the assessment is undertaken by a private certifier. A good example of this is ensuring that the desired future character element of 2D Local Character and Context is adequately considered.
- The minimum standards particularly in the Amenity Section of the Design Guide should be increased. A higher minimum design criteria requirement allows for a considered design rather than a design which satisfies the minimum requirements but results in poor amenity for occupants. Essentially, if the design criteria requires a higher minimum requirement it provides Councils with a tool to improve design standards. The minimum standards in the draft Design Guide do not give Councils a mechanism to respond to a development where minimum requirements are satisfied but it is clear that there are concerns with the design of the proposal. Higher minimum requirements gives Councils (and the applicant) scope to question

any concerns and the applicant to justify the alternative solution for not satisfying the higher minimum design criteria.

- Page 15 – the draft Design Guide outlines that the principal controls on land use, height of buildings, floor space ratio (FSR) and landscaped area are to be contained within the local environmental plan. Shoalhaven LEP 2014 only currently contains land use, height of buildings and FSR for a limited number of sites. FSR provisions (for the majority of sites in Shoalhaven) and provisions for landscaped area are located in Shoalhaven DCP 2014. Council requests clarification on whether or not there will be a future expectation that Council include FSR mapping and landscaping provisions in Shoalhaven LEP 2014 (or LEP (Jerberra Estate) 2014) – this preferred approach is not favoured by Council.
- Although it is acknowledged that the gross floor area and bulk/scale of multi dwelling terraces (for example) is comparable to a dwelling house permissible under the Codes SEPP, the overall bulk and scale of the development is greater and not necessarily comparable to the existing streetscape or subdivision pattern in Shoalhaven. This is an important issue in Shoalhaven where the housing stock is predominantly detached dwelling houses on large lots. Whilst Council is supportive of medium density options, consideration of the bulk and scale should be paramount. Allowing the assessment to be handed to a private certifier, especially the consideration of what is appropriate bulk and scale for Medium Density development, is concerning.
- C - Landscaped Area:
 - Landscape plans – will there be requirements on who is considered suitable to prepare the plan (e.g. Landscape Architect or Landscape Designer)? This is a key area of concern as landscape plans prepared by people who are not suitably qualified often result in poor design and streetscape outcomes, for what is a higher impact form of development.
 - Ongoing maintenance plan – how will this be enforced?
- D - Local Character and Context:
 - Whilst it is important that development contributes to the character of the local area, the wording of the objective and design criteria is misleading. Further, how will a consistent approach be taken during the assessment of complying development applications, especially when undertaken by individual private certifiers?
- E - Public Domain Interface:
 - Design Criteria 7 –private courtyards should generally not be located within the front setback and forward of the front building line at all. Consideration should be given to the amenity of the courtyard, not just the fencing component.
- F – Internal Streets – Pedestrian and Vehicle Access:
 - Gun barrel type development and dual occupancy in cul-de-sacs should be avoided. This type of development creates parking and waste serving issues due to the increased demand for on street parking and the reduced (or lack of) kerbside area available for bin kerbside presentation.

- The maximum height of 2.7 metres for the façade opening for a carpark entry is not high enough to accommodate a waste vehicle should onsite (basement) collection be proposed.
- Laneways should be between 8-10 metres in width to safely accommodate side-lift kerbside collection or front-lift vehicles. There needs to be sufficient space for turning into and exiting the site.
- H - Building Separation:
 - No consideration has been given to bin storage areas.
- I - Solar and Daylight Access:
 - The standard requiring a minimum of 2 hours daylight between 9am -3pm to living rooms and private open space for all medium density development should be increased for developments that are less intensive such as two dwellings side by side. Complying development approvals with low minimum requirements may result in substandard developments.
 - Living rooms and private open space that do not face north should primarily be required to achieve adequate daylight whilst north-facing living rooms and private open space should have an emphasis on attaining adequate solar access.
- M - Private Open Space:
 - The minimum area of private open space to be provided for ground floor dwellings (16m²) is a concern. Shoalhaven DCP 2014 currently requires 50m² per dwelling for a dual occupancy and 35m² per dwelling for multi dwelling housing and attached dwellings. There is a significant difference in the proposed state and current local requirements. This difference will potentially increase pressure on the provision and embellishment of public parks in walking distance to new dwellings. The reduction in private open space will lead to increased demands on public open space, and the provision of usable open space will potentially shift from developers to local government. Again, this is another provision that would benefit from a regional variation.
- O - Car and Bicycle Parking:
 - For complying development, 1 car parking space per dwelling is not considered appropriate in most instances. Shoalhaven DCP 2014 currently requires the following parking rates which are considered appropriate for our regional context.

Land Use	Existing SDCP 2014 parking rate
Dual Occupancy	<ul style="list-style-type: none"> • A minimum of one on-site car parking space shall be provided behind the building line for each dwelling having a gross floor area of 125m² or less, except where the dwelling contains three bedrooms or rooms capable of use as a bedroom, where two car spaces shall be provided behind the building line. • A minimum of two on-site car parking spaces shall be provided behind the building line for each dwelling having a gross floor area exceeding 125m².

Multi dwelling housing	<ul style="list-style-type: none"> 1 space per small dwelling (under 55m²) 1.5 spaces per medium dwelling (56-85m²)
Attached dwellings	<ul style="list-style-type: none"> 2 spaces per dwelling of 86m² or greater

The following is an example of the differences that would result from developments being approved under the two approval paths:

Development examples	Shoalhaven DCP 2014 requirement	Proposed Code - parking provisions
6 x 2 bedroom multi dwelling housing development	9 Spaces	6 Spaces
4 x 3 bedroom multi dwelling housing development	8 Spaces	4 Spaces

As demonstrated above, there is a significant variation between the parking requirements. Using the Guide to Traffic Generating Developments may be suitable in metropolitan areas where public transport is available, however, it is generally not appropriate in regional areas where residents rely on cars and therefore have greater car parking requirements. Not providing enough parking will cause congestion on public roads and have associated impacts such as waste servicing difficulties. Allowing some form of regional variation in relation to the provision of parking would result in a better outcome.

- The minimum setback from the primary/secondary frontage to a garage, car space, carport could be anywhere between 4.5 metres to 5.5 metres. This additional setback element will add articulation, however practically it will also be used for parking a vehicle. A setback of between 4.5 metres and 5.5 metres can cause circulation issues (both within and in front of the development site) and may result in the vehicle overhanging the verge. This is considered to be a practical issue and one which should be considered, especially in a regional context where that area will be used for car parking.
- Z - Waste Management:
 - Sufficient bin storage for commercial services or kerbside collection must be provided.
 - The draft Design Guide does not consider the design of collection points for onsite servicing including road infrastructure, width, turning and manoeuvring. Paving materials need to be considered if truck access to the site is required for waste collection. Infrastructure needs to be able to support the size and weight of trucks.
 - The size of trucks must be considered when designing a medium density development, especially in relation to basements, rear lanes, and larger mews/masterplan communities. Waste servicing vehicles in regional areas are not necessarily as narrow as waste servicing vehicles in metropolitan areas. Waste trucks must be able to manoeuvre safely.
 - For larger developments:

- There is concern that the potential kerb space will not be adequate to enable presentation of bins at the kerbside. There needs to be a requirement that if adequate kerbside space is not provided, the development will provide a layout that will enable a waste contractor to enter the property to provide a Council collection service.
- There needs to be a bin storage area dedicated for this purpose (not in conjunction with bicycle storage etc.).
- The Design Guide should include a requirement for a Council approved Waste Management Plan.
- Council does not run currently a regular green waste collection service. It is unclear how "Communal compost and green waste facilities" are to be managed or what they should look like.
- Off-Site Amenity Impacts:
 - Whilst it is acknowledged that the existing and future character of the area is considered, the draft Design Guide is light-on in terms of consideration of amenity impacts on existing dwellings. Whilst there is some consideration of overshadowing existing living room windows, consideration should also be given to the private open space of existing dwellings and ensuring solar access to these areas is maintained to a reasonable standard. Consideration should also be given to the protection of existing north facing habitable room windows. These matters are of ongoing concern to the communities of Shoalhaven.
- The Site Analysis checklist should include provision for bin collection and traffic/truck movement.

4. Summary

Thank you again for the opportunity to comment on the proposed Code and draft Design Guide. It is hoped that DP&E will fully consider the comments raised in this submission and amend the proposed Code and draft Design Guide accordingly.

Council has a number of significant concerns with the draft Design Guide (e.g. waste, private open space, solar access) which will likely result in significant long term liveability and practical servicing issues if not considered. Unless these matters can be addressed in the draft Design Guide, it could be difficult for Council to ultimately adopt the Design Guide for development applications.

We would welcome the opportunity to review the Code and Design Guide before finalisation and to discuss the opportunity for regional variation with you further.

Should you require further information about this matter, please contact Jenna Tague, Planning and Development Services Group, on (02) 4429 3553. Please quote Council's reference 31157E in any correspondence.

Yours faithfully

Gordon Clark
Strategic Planning Manager

DRAFT

DE16.16 - Attachment 1



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Deering St, Ulladulla NSW 2539 02 4429 8999

Address all correspondence to
The General Manager, PO Box 42, Nowra NSW 2541 Australia
DX5323 Nowra Fax 02 4422 1816

Council Reference: 31157E (D16/39780)

NSW Department of Planning & Environment
Codes & Approvals Pathways
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Submission – Discussion Paper on Expanding Complying Development across NSW

Council welcomes the opportunity to provide a submission to this Discussion Paper that proposes to expand complying development to include two storey medium density housing types in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP).

Background Paper

The background data is incorrect as it states that Shoalhaven does not have any building controls for dual occupancy and medium density housing in its development control plan (DCP). Please note that Shoalhaven DCP 2014 contains Chapters G13: Dual Occupancy Development and G14: Other Residential Accommodation (medium to high density development) that deal with these forms of development.

Proposed changes

The changes proposed to complying development may be appropriate for metro areas but should not be applied in regional areas of NSW or should only be permissible in nominated locations that are in close proximity to existing higher order services and centres and have access to efficient public transport services. Opening up all areas to increased densities and associated development standards could impact on the character and liveability of certain established residential areas.

Density

The proposed minimum standards should not be applied to all areas of NSW. Allowing lots down to 400m² to be subdivided for dual occupancy development may be appropriate in some locations, close to urban centres as they would have access to regular public transport services and be close to employment, retail and social services.

However, regional centres generally suffer from the lack of regular or efficient public transport and, as such, most travel is done by private motor vehicle. Increasing densities, as proposed, in potentially inappropriate locations could increase traffic congestion and increase pressure on parking as there are no, or limited, alternative transport options.

Council currently only allows subdivision of dual occupancies in certain areas (i.e. areas with better access to services) and only down to a minimum of 350m². Opening up the whole of the LGA to allow subdivision of dual occupancies down to 200m² could have a serious impact on the character of Shoalhaven's smaller towns and villages and also encourage increased densities in isolated villages that have limited or no services and are at high risk from natural hazards e.g. bushfire and flooding.

Dual occupancies should not be permitted as complying development in R3 Medium Density zones as these areas should essentially be retained for higher forms of density. Shoalhaven's policy is to only allow dual occupancies in the R3 zone where a lot is smaller than 800m² and it is not feasible to amalgamate the lot with adjoining R3 zoned land to create a suitable sized parcel for medium density development.

Given that 'manor houses' are not a defined use in the Standard Instrument, it needs to be made clear that a manor house is a form of multi-dwelling housing and thus can only be considered as complying development in zones where multi-dwelling housing is a permitted use. For example, Council only permits dwelling houses and dual occupancies in the R2 Low Density zone so it needs to be clear that manor houses are not made permissible in this zone through the SEPP.

Parking

The proposal could lead to parking issues, especially in areas with narrow streets and limited on street parking. The reduction in parking that is proposed for dual occupancies and multi-unit dwellings would force people to park on streets, rather than off-street, creating traffic movement and pedestrian safety issues in residential areas.

There is a substantial difference in parking requirements from the current standards in the Shoalhaven Development Control Plan (DCP) and those proposed. The following is an example of the differences that would result from developments being approved under the two approval paths:

Development Examples	Council DCP Requirement	Discussion Paper- Proposed Parking Controls
6 x 2 bedroom development	9 Spaces	6 Spaces
4 x 3 bedroom development	8 Spaces	4 Spaces

The use of the Guide to Traffic Generating Developments may be suitable in metro areas where public transport is available, however, it is generally not appropriate in regional areas where residents have high car dependency and therefore higher car parking requirements.

Setbacks and frontages

The minimum front setback proposed is 4.5m, or the average of the setback of adjoining properties. The 4.5 minimum setback is too small. The front setback should be related to the height of the building and the width of the street.

Appropriate setbacks also provide space for residents to have an adequate sense of visual and acoustic privacy when using rooms that front the street. Road frontage sizes must be considered in order to accommodate bin presentation, especially in cul-de-sac locations.

The application of rear setbacks for dual occupancies on corner lots needs to be considered to ensure optimum design outcomes for corner blocks.

The use of building envelopes is strongly recommended as they provide a greater amenity control than simple setbacks and are relatively easy to assess. Council currently allows encroachment of eaves of up to 600mm.

Private open space

The reduced standard for private open space proposed will also have a detrimental impact on residents. The table below shows the difference between the Shoalhaven DCP and the proposed changes.

Development Type	Shoalhaven DCP	Discussion Paper - Proposal
Dual Occupancy	50m ²	24m ² ground level (12m ² balcony)
Multi-Dwelling Housing	35m ²	24m ² ground level (12m ² balcony)

This difference will potentially increase the pressure on the provision and embellishment of public parks in walking distance to new dwellings. The reduction in private open space will lead to increased demand on public open space, and the provision of usable open space will shift from developers to local government.

Height of Buildings

The set height limit of 8.5m should not override any height of buildings map in a council's LEP that set a lower height. Council maps heights lower than 8.5m for certain areas such as 7.5m for foreshore lots and these heights should be maintained in these locations.

The application of the proposals across the State needs to be reconsidered and Council would be happy to work with the Government to tailor the proposed controls to appropriate areas of our City.

If you need further information about this matter, please contact Steven Horvath, Planning & Development Services Group on (02) 4429 3570. Please quote Council's reference 31157E (D16/39780).

Yours faithfully

Gordon Clark

Gordon Clark
Strategic Planning Manager
12/02/2016

DE16.17 Exhibition Outcomes/Finalisation - Shoalhaven Development Control Plan 2014 - Draft Amendment No. 13 - Chapter G4: Tree and Vegetation Management

HPERM Ref: D16/348177

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Draft Chapter G4 Tree and Vegetation Management - Post Exhibition Track Changes Version (under separate cover) [↗](#)

Purpose / Summary

The purpose of this report is to:

- Detail the submissions received during the exhibition of the proposed amendment to Chapter G4 of the Shoalhaven Development Control Plan (DCP) 2014
- Enable the finalisation of the amendment with the recommended changes, rescind the previous DCP Chapter and detail the subsequent steps required in this regard.

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Note the submissions received during the exhibition of Shoalhaven Development Control Plan 2014 Draft Amendment No. 13 – Chapter G4: Tree and Vegetation Management
2. Adopt Amendment No. 13 to the Shoalhaven Development Control Plan 2014 as exhibited with the inclusion of the following changes to Chapter G4:
 - a. Minor editorial changes
 - b. Content and mapping changes as outlined in the submission summary table in the report
3. Notify the adoption of Amendment No.13 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
4. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No. 13 to Shoalhaven DCP 2014 has been adopted
5. Prepare a separate Development Application form, checklist and brochure to clarify and simplify the application process for the removal of trees and vegetation prescribed by Shoalhaven LEP 2014 and Shoalhaven DCP Chapter G4: Tree and Vegetation Management
6. Undertake a further review of the exempt provisions in Chapter G4: Tree and Vegetation Management to ensure consistency with Clause 5.9 of Shoalhaven LEP 2014.
7. Continue the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clause 5.9 Map to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.

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Options

1. Adopt the recommendation

Implications: This is the preferred option as it will enable Council to consider the submissions received during the public exhibition and make minor appropriate changes. This will also enable the finalisation of the new DCP chapter which will:

- Increase the readability/usability of DCP Chapter G4.
- Streamline the relevant DCP controls.
- Remove duplicate controls.
- Simplify processes relating to tree removal applications.

2. Request that the consultants who undertook the legal and planning review for Council also review the submissions received and comment on the options to finalise this DCP

Implications: This option would delay the process, but would provide an opportunity for the consultants who have been assisting Council with this project to comment on the submissions received and as a result the options to finalise the DCP.

3. Adopt an alternative recommendation

Implications: Depending on its nature, this could also delay the finalisation of the new DCP Chapter G4.

Background

Through the Standard Instrument Local Environmental Plan (LEP) process, the State Government introduced a standard clause for the management of tree removal (Clause 5.9 Preservation of trees and vegetation) to replace previous Tree Preservation Orders (TPO) as the mechanism to require consent for tree removal in certain circumstances.

The LEP clause requires that Council prepare a DCP to prescribe the kind of trees or vegetation to which the clause applies and for which Council consent is required.

Shoalhaven LEP 2014 contains Clause 5.9 and Shoalhaven DCP 2014 contains the current corresponding chapter (Chapter G4 Removal and Amenity of Trees). This current chapter was based on Council's previous TPO which required the consent of Council for the removal of trees in specified circumstances – generally for trees in urban areas and some limited instances in rural areas.

Review – Current DCP Chapter G4

The review of current Chapter G4 arose from a particular incident of unauthorised clearing of land at Griffin Street, Callala Bay, for which Council undertook successful legal action in the Land and Environment Court (*Council of the City of Shoalhaven v Elachi [2015] NSWLEC85*). However, the Court decision highlighted issues in relation to inconsistencies between the LEP and DCP and the potential for misinterpretation of the current DCP controls.

As a result Locale Consulting Pty Ltd were engaged by Council to undertake the following:

- Legal review taking into account the Court decision.
- Planning review to, as a result:
 - Ensure a clear legal framework, particularly in regard to the relationship between the Shoalhaven LEP 2014 and Shoalhaven DCP 2014; and
 - Simplify the DCP content, remove any inconsistencies and potential for misinterpretation.

Arising from this a draft revised DCP chapter was prepared, however an appeal was lodged against the Court decision. The appeal was unsuccessful but raised further issues with the drafting of the LEP clause and the DCP Chapter, resulting in a further legal review and further revisions to the draft DCP chapter.

The exhibited draft DCP Chapter is essentially intended to clarify the content to improve interpretation and address issues raised in the Court judgements and not necessarily revisit or reconsider the overall provisions. The legal advice and planning review undertaken by Locale Consulting highlighted the need for a further review of Chapter G4 to consider:

- Reviewing the controls regarding the removal or pruning of a tree or other vegetation when considered a 'risk to human life or property'; and
- Adopt internal processes and external guidelines for the public for being satisfied of the criteria in clause 5.9(6) of SLEP 2014.

A further review of Chapter G4 is required to ensure that the provisions in Chapter G4 clearly align with Clauses 5.9(5) and Clause 5.9(6) in SLEP 2014. Section 74C (5) of the Environmental Planning and Assessment Act 1979 outlines that a provision in a DCP has no effect to the extent that it is the same or substantially that same as a provision in an LEP or it is inconsistent or incompatible with a provision in an LEP. It is arguable that these controls in Section 5 of Chapter G4 have no work to do as an exemption from obtaining development consent in these circumstances exists in Shoalhaven LEP 2014. This leaves open the possibility of differing interpretations about the need for development consent in the circumstances arising under clause 5.9(6) of the SLEP.

A copy of the draft Chapter and the explanatory statement that was exhibited is available online: <http://shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>.

The proposed amendments which were exhibited within the draft DCP Chapter include:

- Renaming the Chapter from “Removal and Amenity of Trees” to “Tree and Vegetation Management”.
- Clarifying the purpose of the Chapter and simplifying its format.
- Making terminology consistent throughout.
- Clarifying arborist qualifications.
- Clarifying that a building must be a 'lawful' building for the 45 degree rule to apply.
- Removing the permit process and creating a new section on the development assessment process.
- Adding a requirement to identify “exempt” development for which tree or vegetation removal is a pre-cursor.
- Removing any duplicate controls e.g. bushfire, heritage.
- Add and/or clarify advisory notes.
- Removing references to Illawarra Regional Environmental Plan as it is no longer in force.
- Limiting the exemptions to those related to the species, size or location to link back to Clause 5.9(2) of the LEP.
- Simplifying controls in Section 5.4 given that Clauses 5.9(5) and (6) of Shoalhaven LEP 2014 state that the clause does not apply where:
 - Council is satisfied the tree or other vegetation is dying or dead and is not required as the habitat of native fauna; or
 - Council is satisfied that the tree or other vegetation is a risk to human life or property.
- Amending Map Sheet 14 in the DCP to remove an area of developed urban land that was inadvertently mapped as a “paper subdivision”.

Public Exhibition

The Development Committee (under delegation) resolved on 7 June 2016 to:

- a) *Adopt the draft revised Shoalhaven DCP 2014 Chapter G4 Removal and Amenity of Trees for public exhibition and exhibit for a minimum period of 28 days; and*
- b) *Commence the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clause 5.9 mapping to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.*

As a result, Draft Chapter G4 - Tree and Vegetation Management Amendment was publicly exhibited for comment from Wednesday 17 August until Friday 16 September 2016.

Submissions

During the exhibition period, a total of ten (10) submissions were received as outlined and below:

- 5 Individuals
- 4 Community Consultative Bodies (CCB's)/ Community Groups
- 1 Internal Council

The submissions received have been summarised below:

No.	Type	Submission	Staff comments	Recommendations
1.	Individual	Properties at Callala Beach have been wrongly mapped as a paper subdivision. Provides reasoning for this - based on belief that the previous TPO only identified Rural 1(g) zoned land in DP 9063.	<p>The land is correctly identified as it is located in an original 'paper subdivision' deposited plan (DP9063).</p> <p>There is no 'best fit' zone in the Shoalhaven LEP2014 that reflects the previous Rural 1(g) Flood Liable zone in Shoalhaven LEP 1985. The provisions of the previous TPO were also updated as part of the transfer to Shoalhaven LEP 2014 and Shoalhaven DCP 2014.</p> <p>To reduce confusion, there is merit in amending Section 5.1 of the DCP to reference land in the 'paper subdivision' Deposited Plans, as mapped, rather than referring to the wording of the previous TPO.</p>	Amend Section 5.1 of the DCP Chapter to reference land in the 'paper subdivision' Deposited Plans, as mapped, rather than referring back to the previous TPO.
2.	Community Group – Birdlife Shoalhaven	<p>In general supports the proposal.</p> <p>Outlines need for community education.</p>	<p>Noted.</p> <p>Future community education options will be discussed with Council's Environmental Services team.</p>	Amend point under 5.3.2 Application documents to read "A description of the trees or vegetation, including species name, proposed for removal or pruning."

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		<p>Suggests more specific statements in the objectives in relation to the importance of trees and bird habitat, especially in urban areas.</p> <p>Inclusion in relation to “old growth trees” as a distinctive element of the tree community.</p> <p>Questions the listing of Black Wattle and Sweet Pittosporum as “non-native and/or invasive”.</p> <p>List of recommended amenity plantings should be removed and re-thought.</p> <p>Trees should not be allowed to be removed without the identification of species and an assessment made of the threat to this species and its importance to fauna and birdlife.</p> <p>Requests the survey and inclusion of all SEPP14 type wetlands that are not currently listed.</p>	<p>Proposal to strengthen the objectives to emphasise the importance of trees in urban areas.</p> <p>In regard to “old growth trees” Council does have access to some mapping provided by NSW Office of Environment & Heritage (OEH), however the mapping provided is coarse and not comprehensive.</p> <p>These species are native, but are still considered to be invasive and can become a monoculture if not effectively managed.</p> <p>These trees are known to occur in sensitive areas and therefore they have been identified as requiring consent for removal only if they are greater than 10 metres tall.</p> <p>Agreed. Species name to be required under 5.3.2 Application Documents.</p> <p>The classification of wetlands as SEPP14 Coastal Wetlands falls outside of the scope of this review, however, any lands identified as SEPP14 Coastal Wetlands in future would be included.</p>	
3.	Community Group – Jervis Bay Regional Alliance	<p>Strongly supports the replacement of removed trees with local or endemic species, but does not support the removal of healthy, mature trees for reasons of convenience.</p> <p>Encourages a policy that would see any removed</p>	<p>Amenity considerations provide for limited reasons to remove trees. These are important in maintaining character and amenity in areas, while balancing the needs for healthy streetscapes and solar access.</p> <p>Council does encourage the replacement of trees endemic to</p>	No change recommended.

		tree on private land replaced with a native species.	the region to maintain the character of an area. This is outlined in Section 5.4.3.	
4.	Individual	<p>Concerned with the omission of the words “when it is dangerous to life or property” in 5.4 assessment criteria, believes it should be retained.</p> <p>Believes removing the tree removal permit and making it a DA process just makes it a more arduous task.</p>	<p>The controls in DCP Section 5.4 have been simplified as Clauses 5.9(5) and (6) of the Shoalhaven LEP 2014 state that the clause does not apply where Council is satisfied that the tree is dying or when the tree is a risk to human life or property.</p> <p>The “dual application” type process has been proposed to be discontinued to reduce confusion.</p>	No change recommended.
5.	Community Group – Collingwood Beach Preservation Group	<p>The new plan is not as concise as the current plan and the current plan should be retained with minor terminology changes.</p> <p>Should reinstate tree removal permits and not require DAs.</p> <p>Should include criteria/definition of a tree.</p> <p>Create provisions that allow for the control of trees for amenity reasons by not requiring replanting and allowing pruning to scenic and iconic views.</p> <p>The plan should include an additional amendment to protect the amenity of ratepayers with words to the effect:</p> <p>“That, where possible, public and Crown Land in coastal areas be managed</p>	<p>Changes to the DCP chapter have been proposed to adequately respond to issues that were raised as part of a recent Court proceedings which Council was involved in. The exhibited draft Chapter has also has arisen from a legal and planning review. The whole aim of the review is to clarify its operation.</p> <p>The “dual application” type process has been proposed to be discontinued to reduce confusion.</p> <p>Prescribed trees are defined in Section 5.1 of the DCP. This provides a definition of trees and other vegetation for the purposes of Clause 5.9(2) of Shoalhaven LEP2014.</p> <p>This would not be an acceptable provision in sensitive coastal and foreshore locations. It is also inconsistent with Councils approach in this regard.</p> <p>The purpose this DCP Chapter is to generally protect trees and vegetation rather than manage coastal views.</p>	No change recommended.

		in such a way that the impact on the amenity of adjacent property owners is minimised and that coastal views are protected."		
6.	CCB - Basin Villages Forum	<p>Wishes to see policies that retain understorey.</p> <p>Supports the efforts to ensure property owners are aware of their responsibility in regards to tree and vegetation management.</p> <p>Concerned about the rates of bush and tree loss in St. Georges Basin and in Shoalhaven. Compliments Council's initiative but would like to see the wholesale removal of existing vegetation and trees stopped to limit future problems.</p>	<p>Understorey is included as "other vegetation" in the draft chapter.</p> <p>The draft chapter aims to make the processes clearer and consistent with legislative requirements.</p> <p>In general, housing development is planned where ever possible, in appropriate areas that are not identified as being of high ecological value. However it is acknowledged in some circumstances vegetation removal is unavoidable.</p>	No changes recommended.
7.	Individual	<p>Objects to the new chapter stating it is confusing and convoluted.</p> <p>Wants Tree removal permits reinstated to provide a simple process for inappropriate trees.</p>	<p>This draft chapter aims to make the processes clearer and consistent with legislative requirements.</p> <p>The Standard Instrument LEP introduced Clause 5.9 Preservations of trees or vegetation to replace existing Tree Preservation Orders (TPOs) in NSW. Clause 5.9 requires that Council must adopt a DCP (Chapter G4) to prescribe the kinds of trees or vegetation that Clause 5.9 applies to and for which the consent of Councils. Council no longer issues Tree Removal permits where the removal of prescribed trees or vegetation is proposed. This is because assessment of a development application is required under Part 4 of the <i>Environmental Planning & Assessment Act 1979</i>. The draft DCP Chapter G4 amendment notes that Council no longer issues Tree Removal Permits. A specific</p>	No changes recommended.

		Wants to be able to prune in scenic areas and coast line areas.	development application form for the removal of trees/vegetation will be available when the draft Chapter G4 is made effective. This would not be an acceptable solution in a sensitive coastal area.	
8.	Individual	Supports same points as Submission 5. Suggests a provision be made to reinstate provision not only for risk to life or property but extend that to cover risk to the safety of persons or property including near misses to the safety of persons or property.	Noted. The controls in Section 5.4 of the DCP have been simplified as Clauses 5.9(5) and (6) of the Shoalhaven LEP 2014 state that the clause does not apply where Council is satisfied that the tree is dying or when the tree is a risk to human life or property.	No changes recommended.
9.	Individual	The original chapter is much clearer. Tree removal permits should be retained.	The draft chapter aims to make the processes clearer and consistent with legislative requirements. The Standard Instrument LEP introduced Clause 5.9 <i>Preservations of trees or vegetation</i> to replace existing Tree Preservation Orders (TPOs) in NSW. Clause 5.9 requires that Council must adopt a DCP (Chapter G4) to prescribe the kinds of trees or vegetation that Clause 5.9 applies to and for which the consent of Council is required. Council no longer issues Tree Removal permits where the removal of prescribed trees or vegetation is proposed. This is because development assessment through the lodgement of a development application is required under Part 4 of the <i>Environmental Planning & Assessment Act 1979</i> . The draft DCP Chapter G4 amendment notes that Council no longer issues Tree Removal Permits. A specific development application form for the removal of trees/vegetation will be available when the draft Chapter G4 is made effective.	No changes recommended.

		Something needs to be done about coastal view amenity and tree pruning.	This would not be an acceptable solution in a sensitive coastal area.	
10	Internal – Environmental Services Section	<p>To reduce confusion relating to riparian areas, trees proximate to waterways should be given appropriate protection areas in line with Clause 7.6(2) (c) of the LEP - that is 50 metres for Category 1 waterways and 30 metres for Category 2 waterways. This would be appropriate to protect riparian areas.</p> <p>Hollow Bearing Trees – remove them from any of the listed exemptions to ensure they require approval. To be included in Sections 5.2.1 and 5.2.2 of the draft DCP.</p>	<p>Agree with the need for clarity in this regard. The distance of 50 metres from a Category 1 waterway, and a reduced distance of 30 metres for Category 2 Waterways would provide for appropriate corridors along waterways in all zones to provide consistency with LEP controls.</p> <p>Change is warranted to provide adequate protection to hollow bearing trees. Hollow bearing trees will be added to Sections 5.2.1 and 5.2.2 as suggested.</p>	<p>Amend the Chapter G4 mapping to identify SLEP 2014 Category 1 waterways and apply a buffer of 50 metres and apply a 30 metre buffer for Category 2 waterways.</p> <p>Amend Section 5.2.1 to read “None of the exemptions listed in this section apply to <u>hollow bearing trees or trees</u> and other vegetation located on a heritage listed item...”</p> <p>Amend Section 5.2.2 (a) to include “Hollow bearing trees can only be removed without assessment under the 45 degree exemption if an animal handler is present”</p>

DE16.17

Copies of the submissions received will be available in a folder in the Councillors Room for review prior to the meeting.

Attachment 1 provides a marked up version of the draft Chapter that is proposed for adoption and shows the changes highlighted in the table above in context.

Planning Proposal to amend Local Environmental Plan

The review of DCP Chapter G4 has also highlighted a discrepancy between the LEP and DCP maps in that rural roads and category 1 and 2 waterways are not mapped on the Clauses Map in the LEP but are shown in the DCP.

Thus the LEP maps need to be amended to ensure the consistent application of Clause 5.9 of the LEP and also the DCP. The PP will only amend and update the Clauses Map in the LEP - it is not proposed to make any changes to LEP Clause 5.9 (mandated clause set by State Government that Council cannot change).

Community Engagement

The draft DCP Chapter G4 was exhibited from Wednesday, 17 August to Friday, 16 September 2016. In that time ten submissions were received. The future Planning Proposal to be submitted for Gateway determination will also be publicly exhibited for community comment in due course.

Policy Implications

Adopting the report recommendation will amend via replacement, Chapter G4 of the DCP and bring it in line with Clause 5.9 of Shoalhaven LEP2014. This will also be followed by mapping changes to Shoalhaven LEP2014 via a subsequent Planning Proposal.

Financial Implications

This DCP amendment is being undertaken using existing resources in Council's Strategic Planning Section and as such is being managed within existing budgets.

Risk Implications

If this amendment is not adopted, the inconsistency between Shoalhaven LEP 2014 and Shoalhaven DCP 2014 considered by the legal and planning review and raised during the Court cases will not be addressed. This could leave Council open to legal challenges and future uncertainty in this regard.

DE16.18 Possible Change - Height of Buildings - Shoalhaven Local Environmental Plan 2014 - Anson Street, St. Georges Basin

HPERM Ref: D16/350122

Group: Planning & Development Services Group
Section: Strategic Planning

Purpose / Summary

Detail the options that are available to Council to consider reducing the 'height of building' controls in the Shoalhaven Local Environmental Plan (LEP) 2014 that apply to land on Anson Street, St. Georges Basin.

Recommendation (Item to be determined under delegated authority)

That the Development Committee decide whether it wishes to pursue reducing the 'height of building' controls in Shoalhaven Local Environmental Plan 2014 over Lots 1 and 6 DP1082382 Anson Street, St. Georges Basin and if so which of the options outlined in the report to pursue.

Options

1. Retain the current 8 metre height control over the western part of Lot 1 DP1082382 and prepare a Planning Proposal (PP) to amend the 'height of buildings' map over the remainder of Lot 1 and the whole of 6 DP1082382 Anson Street, St. Georges Basin to remove the current 13 metre height and replace it with a more suitable mapped height (Note: Council would need to determine what height it wishes to apply should it proceed with this option).

Implications: This option if successful would see the existing 8 metre height retained over the western part of Lot 1 DP1082382 and a new height placed over the remainder of the subject land. That new height would however need to be determined.

In the absence of detailed work in this regard an 8.5 metre height could be applied to Lot 6 DP1082382 which is currently zoned R1 General Residential. An 8.5 metre height would be consistent with other residential zones in the area and in keeping with the scale/character of the existing adjacent residential development. It would however be inconsistent with the majority of other R1 zones city wide, where there is no mapped height (the general 11 metre maximum currently applies) to enable some flexibility given the development nature of the zone.

The remainder of Lot 1 DP1082382 (eastern part) is zoned B4 Mixed Use. There is no consistent height that has been applied to this zone city wide. In most cases the general 11 metre maximum applies, but in other specific locations higher heights have been mapped based on detailed work that has been undertaken.

2. Retain the current 8 metre height over the western part of Lot 1 DP1082382 and prepare a PP to amend the 'height of buildings' map over the remainder of Lot 1 (eastern part) and the whole of 6 DP1082382 Anson Street, St. Georges Basin to remove the current 13 metre height.

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Implications: This option would be consistent with the recommended approach that was suggested during the preparation of the Shoalhaven LEP 2014, in that it maintained the 'status quo' that previously applied. It would mean that the majority of the land would have no mapped height and the general 11 metre maximum in the LEP would apply. This would enable some flexibility up to 11 metres given the nature of the zone.

Background

It was resolved on the 25th October 2016 that:

The General Manager prepare a report in respect to options that consider reducing the height limits at Lot 1 & 6 DP1082382 Anson Street, St. Georges Basin.

As such, this report provides relevant background and details the options that are available to Council to consider amending the LEP in this regard.

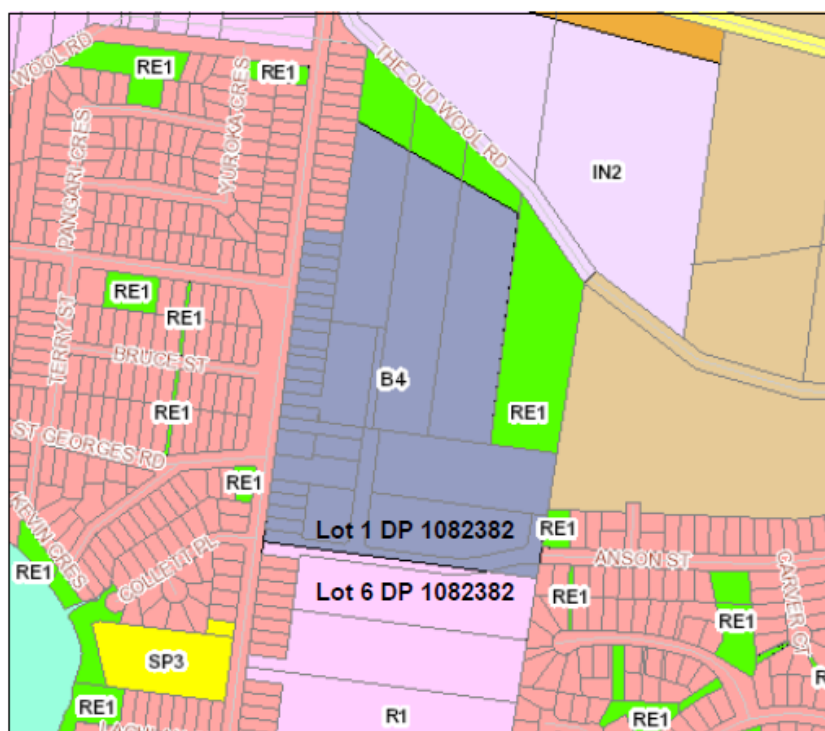
LEP Existing Zones

Under the Shoalhaven LEP 2014 the subject land has the following zoning:

Lot 1 DP 1082382 – B4 Mixed Use (Note: lot is in 3 parts)

Lot 6 DP 1082382 – R1 General Residential.

The existing zones are shown on the following map:



*Extract: Shoalhaven LEP2014 – Zones
St. Georges Basin*

The B4 Mixed Use zone allows a mix of compatible land uses including business, office, residential, retail and other development in accessible locations. The R1 General Residential zone provides for a variety of housing types and densities. It also allows other land uses that provide facilities or services to meet the needs of residents. As such both zones in this location are relatively flexible and allow a range of land uses.

LEP Background – Height of Buildings

Prior to the preparation of the Shoalhaven LEP 2014, building height controls largely sat outside the LEP and in appropriate areas or zones were controlled via Development Control Plans (DCP's) and a provision in the previous Illawarra Regional Environmental Plan (REP) that enabled Council to consider development up to 11 metres.

With the move to the new Standard LEP Instrument in NSW, Council was required to include 'height of building' controls in its new LEP. This occurred in our LEP in two ways:

- Zones, areas or sites were mapped at a specific height based on existing controls that may have been in place in existing DCP's
- Provision included in Clause 7.3 Height of Buildings in the LEP instrument for those areas that are not mapped, requiring the height of buildings on the land to not exceed 11 metres.

Throughout the LEP preparation and exhibition processes, the 'height of building' control was an issue of general community concern throughout Shoalhaven.

Specific 'height of building' decisions were made during the LEP preparation process and in respect to the land which is the subject of this resolution, these are summarised below.

Draft LEP 2011 Exhibition – two submissions were received that commented on the proposed height controls in the vicinity of the St. Georges Basin Village Centre.

- One supported the proposed mapped height limit of 8 metres for the St. Georges Basin Village Centre (note not all the zoned area) that was consistent with the former DCP No.17 that covered this area.
- One requested a 13 metre building height for Lot 1 and 6 DP1082382 to ensure that a realistic development opportunity for the subject land was economically feasible (Note: economic feasibility study was included with the submission).

It was noted in the Council report following the exhibition that changing the height of buildings map for Lots 1 and 6 DP1082382 to 13 metres would be inconsistent with the DCP and maybe inconsistent with the existing and desired future character for the area. The report went on to note that the submission argued that higher density residential development, as per the master plan that the landowner has developed for the site, was only economically viable if the height of buildings for the two sites is increased to 13 metres. The submission acknowledged that this was not likely to be popular with the community.

Staff noted that should a future development proposal warrant heights that are inconsistent with the DCP then a future PP can be considered for the site and this would enable specific dialogue with the community on the proposal. As a result the report recommended that the height of buildings remain unchanged in this location – 8 metres for the village centre as per the DCP and the 11 metres general maximum elsewhere.

Council however ultimately resolved on 30 May 2012 to:

Change the maximum height of buildings for Lots 1 and 6 DP 1082382 St. Georges Basin to 13 metres to facilitate the feasibility of higher density development on the site.

Draft LEP 2013 Exhibition – during this exhibition five submissions (including one from the Basin Villages Forum) were received on the change that was made to the height of buildings for Lot 1 and 6 DP 1082382 St. Georges Basin, noting that it was a significant change that was contrary to the LEP ground rules and as such should not be supported.

One submission was also received on behalf of the owners who requested that the height for Lot 1 DP 1082382 be increased from 13 metres to 14 metres to enable buildings up to four storeys and to enable a commercial component consistent with the zoning provisions.

The Council report following the exhibition again recommended that the exhibited maximum 8 metre height of building overlay for the western portion of Lot 1 DP 1082382 be retained and that the overlay be removed from the remaining eastern portion of Lot 1 DP 1082382 and entirely from Lot 6 DP 1082382.

Council however ultimately resolved on 17 July 2013 to:

Retain the exhibited maximum 8 metre Height of Building overlay for the western portion of Lot 1 DP 1082382, and the Height of Building overlay for the remaining eastern portion of Lot 1 DP 1082382 and Lot 6 DP 1082382 be retained at 13 metres.

As such the Shoalhaven LEP 2014 was finalised and ultimately notified on 8 April 2014 with the following 'height of building' controls:

- Western portion of Lot 1 DP 1082382 – mapped at 8 metres.
- Eastern portion of Lot 6 DP 1082382 – mapped at 13 metres.

The following map provides shows the current mapped areas and their heights in this location:



*Extract: Shoalhaven LEP2014 – Height of Buildings Map
St. Georges Basin*

The above map shows the following:

Green and notated I1 – mapped 'height of buildings' is 8 metres. Note this is consistent with the area identified at this height in the former DCP No.17 – St. Georges Basin Village Centre.

Brown and notated N1 – mapped 'height of buildings' is 13 metres.

DE16.18

Uncoloured – no specific mapped height, however the provision in Clause 7.3 Height of Buildings in the LEP instrument enables buildings up to 11 metres to be considered. This provision also applies to the remainder of the land zoned B4 Mixed Use to the north of Anson Street and R1 General Residential to the south of Anson Street.

Community Engagement

Should Council decide to proceed with a PP to amend the Shoalhaven LEP 2014 to adjust the 'height of building' controls in this location and the matter receives a favourable Gateway determination from the NSW Department of Planning & Environment (DP&E), then there will be a formal community consultation opportunity as part of the PP process.

Policy Implications

It is noted that the specific 'height of building' controls in this location resulted from a submission during the draft LEP 2014 preparation process. They did not result from any strategic work that justified specific heights in this location.

It is noted that the Council reports in 2012 and 2013 both recommended against placing the requested building height in this location as part of the new LEP process. The reports noted that should a future development proposal warrant heights that are inconsistent with the then DCP or the generic height controls then a future PP could be considered for the site. This would have enabled specific dialogue with the community on the proposed changes.

Given that the 'height of building' controls were effectively a 'one-off' change that occurred during the new LEP process, changing or adjusting them is unlikely to be inconsistent to any great deal with existing Council or NSW Government Policy. As such Council is able to consider making this change and appropriate justification for any change would be included in the PP that is forwarded to the DP&E.

Should the 'height of building' controls in this location ultimately change and depending on the outcome of the development application in this this location it could result in a 13 metre development eventuating on part of Lot 6 and the remainder of the land having a lesser height control. This is a potential outcome given that a development application is currently pending over part of the lot.

Financial Implications

Any future PP would be undertaken using existing resources in Councils Strategic Planning Section and as such would be managed within existing budgets.

DE16.19 Strategic Planning Works Program - Formulation

HPERM Ref: D16/351866

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Interim Strategic Planning Works Program [↓](#)

Purpose / Summary

To obtain direction on the formulation of a new Strategic Planning Works Program for Council and also provide relevant background in this regard.

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Adopt Attachment 1 as Council's interim Strategic Planning Works Program.
2. Request Council staff to arrange a half day workshop for Councillors in early 2017 to provide an opportunity for their detailed input into the structure and content of the suggested new Strategic Planning Works Program
3. Request that the new Strategic Planning Works Program be reported back to Council for consideration by mid-2017 at the latest.

Options

1. Council prepare a new Strategic Planning Works Program that is proactive and focusses Councils future strategic planning efforts.

Implications: This option is favoured as it builds on the earlier approach of Council in this regard to have a works program that guides our strategic planning effort and ensure that we are undertaking proactive planning. It also helps to prioritise projects and manage staff efforts/workload

2. Not prepare a new a new Strategic Planning Works Program and react to requests, opportunities etc. as they arise in the future.

Implications: This option would mean that Council reacts to requests, opportunities, requirements etc. for strategic planning work in an ad-hock or unmanaged manner. This is not desirable as it does not necessarily focus efforts in areas or on projects that support the broader community.

Background

Planning Works Program - History

As part of reporting the completion of the Shoalhaven Local Environmental Plan (LEP) 2014 to Council it was also resolved to:

Prepare a new Planning Works Program to focus Councils Strategic Planning effort and arrange a Councillor briefing to discuss the desired detail of this program before it being reported back to Council for consideration.

Prior to this resolution a “Planning Works Program” had previously been in place within Council for some time and was used to coordinate and manage Councils strategic planning efforts. Historically the works program related to projects undertaken under the provisions of the NSW Environmental Planning & Assessment Act 1979 or that would/could lead to projects under this Act, and included:

- Local Environmental Plans (LEP’s)
- Development Control Plan (DCP’s) and development related policies
- Contribution Plans (CP’s)
- Land use related strategies (e.g. Settlement Strategies, Structure Plans etc.).
- Urban design related strategies or plans (e.g. Masterplans)

The works program originally emerged from an internal tool that was used to track and manage planning projects. It was reported to Council from 2003 onward for information and to enable priorities to be considered – this initially occurred quarterly and then moved to twice yearly.

The 2008 NSW Department of Local Government Promoting Better Practice Review, recommended that:

Council should review the projects on the Strategic Planning Group Work program in order to give priority to finalising the Growth Management Strategy and new Comprehensive LEP.

As a result the works program focussed on the completion of the Shoalhaven LEP, Shoalhaven DCP and Growth Management Strategy, which were all ultimately finalised during 2014. Since the completion of these significant planning documents, Councils Strategic Planning Staff have been working on a range of ‘housekeeping’ amendments to the LEP and DCP and a range of other significant planning projects.

Given that we have a new Council, it is now opportune and appropriate to create a new forward thinking and aspirational Strategic Planning Work Program (work program) to focus Councils current and future strategic planning effort.

Having a work program will also assist with some discipline in regard to Councils decision making regarding new planning related projects and require consideration of the likely impact on the current program, priority, staff workload or resources. Ideally this new work program will be proactive and not reactionary.

Overview – Current Strategic Planning Tasks

Attachment 1 shows the current tasks that Councils Strategic Planning Staff are currently working on and their status.

The following however are some the main tasks that staff are currently working on or involved in:

- Shoalhaven LEP2014 & Shoalhaven DCP2014 – ongoing maintenance, updating and review. Range of ongoing housekeeping amendments underway or required.
- Contributions Plan 2010 – ongoing maintenance, updating and review.
- Council initiated PP’s e.g. Shoalhaven Animal Shelter Planning Proposal (PP).
- Resolving Legacy Planning Issues – ‘paper’ subdivisions (e.g. Nebraska Estate PP), deferred areas, revisiting matters etc.
- Shoalhaven Affordable Housing Strategy.
- Nowra-Bomaderry Urban Release Areas – detailed planning to enable actual release of land. This is becoming a greater priority given the diminishing stock of subdividable land.

- Nowra CBD Revitalisation Strategy – coordinating its implementation and supporting the Nowra CBD Revitalisation Committee.
- Nowra CBD Building Heights PP and draft Urban Design DCP Chapter.
- Nowra Riverfront Masterplan.
- Nowra CBD residential areas character controls.
- Ongoing town centre DCP Reviews e.g. Huskisson, Ulladulla etc.
- Nowra-Bomaderry Retail Hierarchy Review.
- Comprehensive Council Land Audit/Reclassification LEP.
- Shoalhaven Local Approvals Policy Review.
- Citywide Section 149 Certificate policy note review.
- Citywide review of the SP3 Tourist zone.
- Proponent initiated PP's (rezoning) – currently have 8 active PP's that are at various steps in the process. These range from minor single site ones through the larger and more complex ones (e.g. Halloran PP at Culburra Beach/Callala/Currarong) There are a range of others for which preliminary approaches have been made.

Outside the more formal projects, strategic planning staff are also actively involved in a range of other important ongoing activities, including:

- Assisting with the implementation of the Illawarra-Shoalhaven Regional Plan and its relevant actions.
- Managing Councils continued response to planning and other reforms proposed by the NSW Government.
- Government Liaison – NSW Department of Planning & Environment, NSW Office of Environment & Heritage etc.
- Managing Council comment on relevant land matters e.g. Aboriginal Land Claims.
- Representing Council on external committees and taskforces e.g. Illawarra Urban Development Program.
- Economic Development Projects – assisting with relevant planning aspects of these projects.
- Assisting community and other groups with relevant projects.
- Local Heritage Grants Program – running and administering the grants.
- Heritage Estates – on going involvement in the voluntary acquisition project and the erosion control project.
- Verons Estate – continued involvement in the infrastructure and associated special rates project.

Land Use Planning – Community Involvement

A series of questions were asked as part of the 2016 Shoalhaven Community Survey undertaken by IRIS Research for Council, regarding 'land use planning' (essentially the strategic planning that is the subject of this report) and residents knowledge and participation in related projects

Some of the key outcomes of this were:

- 38% of residents indicated they were aware of land use planning projects in Shoalhaven in the past 12 months.
- 66% of residents were unable to name any specific planning project or initiative.
- 61% of residents indicated they were moderately/very satisfied with land use planning in Shoalhaven. Further 30% indicated they did not know or could not say.
- 6% of residents indicated they had directly participated in a land use planning project or initiative.

These results essentially show that residents are generally not that heavily involved or engaged in strategic land use planning in Shoalhaven. This is not unusual and is consistent with what is observed elsewhere and is an acknowledgement that more needs to be done to get people involved in strategic planning. This is however often difficult given the time

horizons and broad scale nature of the plans or that it does not directly impact on them right now, as opposed to a development application where the likely impacts can be directly identified.

Planning Challenges and Expected Tasks

Some of the known expected or likely planning tasks on top of the ones listed above that will need to be included in any new work program include:

- Growth Management Strategy, Version 2 – there is a community expectation that further work will be done on this Strategy to add detail for those centres that have been identified as having longer term growth potential (however not revisit the areas).
- Land Monitor – is a requirement arising from the Illawarra-Shoalhaven Regional Plan and there is a need to maintain and improve it.
- LEP and DCP outstanding Council resolutions – there a range of resolutions arising from the preparation of the new LEP and DCP's that need to be considered.
- Locality Planning Controls – for example for individual coastal villages in the form of a whole of village or town DCP.
- Projects arising from strategic plans prepared by local communities and their priority e.g. Shoalhaven Heads, Berry and others in the future.
- Positioning Shoalhaven to take up the opportunities that will arise from the Australian Governments 'Smart Cities Plan' – City Deals and Smart Cities & Suburbs Program.

There are also a range of more general current and emerging strategic planning challenges, demands, wants etc. around the following:

- Facilitating economic development opportunities.
- Planning for an ageing population given the profile of Shoalhaven.
- Transport - alternative options and effective/timely transport planning
- Retail hierarchy – given changes and current pressures, is it right?
- Agriculture – protect the existing and provide additional/new opportunities.
- Town Centres – acknowledging that they are about more than just retailing and helping revitalising CBD's.
- Activating our key waterfront locations – Shoalhaven River, Jervis Bay, Sussex Inlet and Ulladulla Harbour.
- Housing supply – accommodating population growth and providing appropriate future housing choices.
- Affordable housing/homelessness – address the need for increased affordable housing options.
- Overall housing strategy – options, increasing residential densities etc. What role does rural residential play?
- Childcare planning and the needs of young people.
- Tourism strategy – responsive planning.
- Effective community engagement/involvement – as noted above, getting the community involved is a challenge. But it is important in that they need to help shape or drive change.
- Future Infrastructure – where, when, how?
- Planning Proposals – implement a program to manage. Consider opportunities for broader benefits?
- Community expectations – heritage management, environment, natural hazards etc.
- Refining the LEP – does it achieve what is expected, some things may need review and refinement?
- Promoting the role of planning in the community.
- Heritage management – What is Councils role?
- Natural environment – are there planning gaps and responding to natural hazards?
- Community events – planning to facilitate/promote.

New Planning Work Program

As noted earlier in the report the formulation of a new work program is opportune and many of the matters listed above and in the following section were discussed initially with the previous Council at a briefing in September 2015.

It was noted at this briefing that as the decision makers Council needs to decide where our future strategic planning effort should be focussed, specifically:

- What do we need to be doing or working on?
- What is currently missing?
- What is important to you and your community?
- What sort of community or development do we want to deliver?
- What evidence base should we be investing in?

In this regard we also need to gain an understanding of what the community wants and expects and what is expected of us from the other levels of government.

Ideally it would be desirable to get agreement on 10 to 12 broader areas that are important and where Council should focus its future strategic planning work. Then a higher order strategy or policy position could be established for each area or issue and a work program would be developed around the 10 to 12 areas, with individual, tasks etc. under each.

Once the new work program is agreed upon it could be made available and kept updated via Councils internet page so that the community, Councillors Etc. can track what projects are currently being worked on and their progress. The new program could also be reported regularly (suggest twice year) to Council for formal consideration if this is considered beneficial.

Conclusion

It is proposed that at least a half day workshop be arranged for Councillors in early 2017 to provide an opportunity for focussed and detailed input into the structure and content of the suggested new work program, with the aim of reporting the matter back to Council for consideration by mid-2017 at the latest.

In the meantime it is also recommended that Council adopt Attachment 1 as Councils 'interim' work program so that Strategic Planning staff can continue to work on the listed projects and also that any new strategic planning related projects or tasks consider the impact on this interim program or alternatively be held over for consideration in the new work program deliberations.

Community Engagement

The work program is essentially intended to be a tool to manage Council's strategic planning effort. In preparing it, it will be important to incorporate community expectations on what planning projects should be undertaken. This will initially be drawn from existing knowledge, plans and community engagement processes.

This aspect can be further discussed, if needed, at the proposed Councillor Workshop on this matter.

Policy Implications

It is considered important to have a clear work program to focus Councils current and future strategic planning effort. This will also ensure that we have appropriate strategic planning policies in place and are also able to respond when they need to be changed or updated.

Financial Implications

Generally projects that are on the works program will be undertaken within existing budgets. However, should projects require specific funding allocations these will be reported to Council for consideration in the future as the need arises.

Planners Work Program (EPAA)

<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
DCP			
	DCP2014.12	<i>DCP 2014 Amendment No 12 - Housekeeping Amendments to Chapters G17, N3, N4</i>	Initial work has commenced.
	DCP2014.16	<i>Huskisson - DCP 2014 Amendment No 16 - Huskisson Town Centre Chapter N18</i>	Resolution to amend Chapter N18 on 7/11/16.
	DCP127	<i>Nowra - CBD Urban Design / Heights & Floor Space Ratio</i>	Currently on public exhibition for comment until 16/12/16.
	DCP2014.5	<i>Shoalhaven - DCP 2014 Amendment No 5 - Housekeeping Amendment to Chapters G6, G9, G10, G17, G20, NB1, Dictionary</i>	Report to Council Nov 16 to enable finalisation. Further work required on Greenwell Point flooding issue.
	DCP2014.10	<i>Shoalhaven DCP 2014 Amendment No 10 - Housekeeping amendment to Chapters V2, N18, N19, N20, N22, N23, N7, S6, S8, S9</i>	Yet to commence wider review - consultant to be engaged to undertake Milton Car Parking Study.
	DCP2014.13	<i>Shoalhaven DCP 2014 Amendment No 13 - Chapter G4 Tree & Vegetation Management</i>	Exhibition finished 16/9/16. 9 submissions received. Aim to report to Council in Dec. 16 to consider submissions.

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<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
	DCP2014.14	<i>Shoalhaven DCP 2014 Amendment No 14 - Housekeeping Amendment to Chapter G18 & Streetscape Technical Manual</i>	Draft DCP chapter prepared. Draft technical manual received - reviewing document. Consultation with CCB's to commence soon.
	DCP2014.7	<i>Shoalhaven DCP 2014 Amendment No 7 - Housekeeping Amendment to Chapters NB1, G17, G20, G6, G3</i>	To commence when capacity.
	DCP2014.8	<i>Shoalhaven DCP 2014 Amendment No 8 - Housekeeping Amendment to Chapter G21 CAR PARKING AND TRAFFIC</i>	To commence when capacity.
	DCP2014.9	<i>Shoalhaven DCP 2014 Amendment No 9 - Housekeeping Amendment to Chapters G11, G12, G13, G14</i>	Discussion paper prepared for G13/14 chapters review. Currently preparing discussion paper for Chapters G11/G12.
LEP	LP406	<i>Falls Creek/Woollamia - Planning Proposal Jervis Bay Settlement Strategy Rural Residential Deferred Areas</i>	To be reported to Council Dec 2016 to finalise direction.
	LP359	<i>Milton/Ulladulla deferred matter - 2(a1) areas in Mollymook & Ulladulla</i>	Future amendment to Shoalhaven LEP 2014 - yet to commence.
	LP410	<i>Nowra - CBD Heights Planning Proposal</i>	Currently on public exhibition for comment until 16 December 2016.

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<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
MISC	LP145.1	<i>St Georges Basin - rural part of Nebraska Estate</i>	Preparation of required water cycle assessment has commenced to support the rezoning.
	LP407	<i>Sussex Inlet - Planning Proposal Badgee Deferred Matters</i>	Granted an extension to gateway for 12 months until 11/9/17 to complete PP. Discussions to be held with proponent to progress.
	M0293	<i>Cambewarra - Moss Vale Road South (URA)</i>	Work has commenced on required plans to enable URA release. Initial landowner information session held.
	M0287	<i>Huskisson - Foreshore Masterplan</i>	Public exhibition completed and outcomes reported to Council Nov. 2016.
	M0302	<i>Huskisson - Huskisson town Centre Service Lanes Review</i>	Reported to Council June 2016. Options being considered prior to further report.
	M0295	<i>Manyana - Kylor Caveat Removal</i>	Awaiting outcome of PP007.
	M0300	<i>Nowra - CBD Murals Policy & Branding</i>	Project commenced and consultant engaged.
	M0291	<i>Nowra - Chinaman's Island Heritage Significance/Lease Issue</i>	To be reported to Council in Dec. 2016 to determine action.

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<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
	M0298	<i>Nowra - Shoalhaven Riverfront Strategy</i>	Urban Design consultant engaged and Stage 1 report completed.
	M0299	<i>Nowra - Urban Area Character Controls</i>	Urban Design consultant engaged and project commenced. Reported to Council Nov. 2016
	M0297	<i>Nowra/Bomaderry - Retail Hierarchy Review</i>	Project consultants engaged. Stage 2 report being finalised and Councillor briefing to be held.
	M0292	<i>Shoalhaven - Aboriginal Land Claims</i>	Collating feedback from other groups. Advice being provided to NSW Gov't.
	M0296	<i>Shoalhaven - Council Strategic Land Review</i>	Project has commenced and assisting Property Services Unit as required.
	M0289	<i>Shoalhaven - LAP Review</i>	Existing LAPS being transferred into City wide instrument - project progressing.
	M0294	<i>Shoalhaven - s149 Policy Note Review</i>	Review has commenced and is ongoing.
	M0301	<i>Shoalhaven - Shoalhaven Affordable Housing Strategy</i>	Background research work reported to Council in Nov 2016. Work continuing on proposed Strategy.
	M0303	<i>St Georges Basin - Possible Planning Proposal The Wool Road</i>	Reported to Council Nov. 2016 to enable consideration of policy issue.
	M0290	<i>Sussex Inlet - Easement Issues</i>	Initial investigation work underway. Will require DCP amendment.

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<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
PP	M0288	<i>Worowing Heights - 1310 Naval College Rd Precinct Plan</i>	Decision deferred on PP - consultants engaged to prepare precinct plan and work is underway.
	PP005	<i>Bangalee - Crams Road Urban Release Area</i>	Gateway determination received - to be reported to Council in Dec 2016 to determine direction.
	PP018	<i>Berry - Beach Road Rezoning Request</i>	Awaiting outcome of pre-gateway review. JRPP meeting held on 27/9/16.
	PP021	<i>Bomaderry - Boat Showroom and Office</i>	Gateway determination received 8/11/16.
	PP006	<i>Culburra - SLEP2014 Deferred Land</i>	Stage 1 water quality groundwater investigation. Consultant brief sent out - close date 7/12/16.
	PP007	<i>Manyana - Kylor Rezoning Request</i>	With owner (Kylor) re - biocertification. Will need to start process to request extension - meeting with owners rep in Oct 16.
	PP019	<i>Nowra - Albatross and Kinghorne Sts Rezoning Request</i>	Gateway determination received 9/11/16. Organising character assessment and RFS consultation.
	PP020	<i>Shoalhaven - Amend SLEP 2014 CL5.9 maps to DCP 2014 Chapter G4</i>	Maps to be prepared following adoption of DCP Chapter G4 amendment to enable possible mapping updates.

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<i>Type</i>	<i>ProjId</i>	<i>Task</i>	<i>Comments Statement</i>
	PP010.1	<i>Shoalhaven - Land Reclassification</i>	Public exhibition complete 21/10/16. Public hearing scheduled 16/11/16 and report in preparation.
	PP017	<i>Shoalhaven - Shoalhaven Animal Shelter</i>	Reported to Council Oct 16. Being finalised.
	PP012	<i>Shoalhaven - SLEP 2014 Housekeeping Stage 4 Flooding Issues</i>	Aim to report to December Development Committee.
	PP013	<i>Shoalhaven - SP3 Tourist Zone - Residential Dwellings</i>	Initial letters/surveys provided to owners of SP3 zoned land citywide. Options being considered.
	PP009	<i>Sussex Inlet - Paradise Lagoon/Lagoon Cres Canal Reclassification</i>	Status to be determined.
	PP016	<i>Yalwal - Danjera Dam Camping Area</i>	Gateway determination received - Planning Proposal extended for 12 months. Awaiting Bushfire report.
S94			
	M0304	<i>Shoalhaven - Shoalhaven Contributions Plan Review</i>	Internal staff contributions panel established to drive review of the CP.
VPA			
	VPA012	<i>South Nowra - Enterprise Avenue</i>	Reported to Council Aug 2016 - VPA being drafted.

DE16.20 Gateway Determination - Planning Proposal - Warrah Road, Bangalee

HPERM Ref: D16/357943

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Development Committee Report - December 2015 (under separate cover) [⇒](#)
2. Gateway Determination (under separate cover) [⇒](#)

Purpose / Summary

To advise of the Gateway determination has been received for the Planning Proposal (PP) relating to land at Warrah Road, Bangalee that was 'deferred' from the Shoalhaven Local Environmental Plan (LEP) 2014 and obtain direction on its progression.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed to publicly exhibit the Planning Proposal to rezone land (Lot 21 to 24 DP 714096) at Warrah Road, Bangalee, in accordance with the Gateway determination with the following changes:
 - a. The proposed residential area be shown as R2 Low Density Residential
 - b. The proposed residential area be given a minimum lot size of 2,500m²
 - c. The proposed residential area be given a maximum height of building of 8.5m
2. Update the supporting Bushfire Hazard Study and Aboriginal Archaeological Assessment prior to exhibition the Planning Proposal.
3. Write to the Department of Planning and Environment in relation to the reasonableness of the Gateway determination requirement to prepare a biodiversity review of Lots 21-23 and Provision of Infrastructure Assessment.
4. Write to the proponent to advise them of this resolution and advise them to submit the additional biodiversity assessment as part of the formal public exhibition period for the Planning Proposal.
5. Advise adjoining land owners and relevant community groups of the future exhibition arrangements for the Planning Proposal.

Options

1. Proceed to public exhibition in accordance with the Gateway determination.

Implications: This option is consistent with the established PP process and allows the proponent to formally submit the additional biodiversity assessment as part of the formal exhibition period which would then need to be considered by Council following the exhibition.

This option does not require an amended Gateway determination, however, if an increase in the residential footprint is supported following the exhibition, the Bushfire

Hazard assessment may need to be updated again to reflect the new residential footprint and may require a re-exhibition of the PP.

2. Consider the proponents additional biodiversity assessment prior to the public exhibition of the PP.

Implications: This option would require Council to engage a consultant to peer review the assessment (at the proponents cost). Depending on the outcomes of the peer review, Council may need to reconsider the matter and apply for a revised Gateway determination if an increased residential footprint is considered appropriate.

Background

The Crams Road New Living Area was one of seven (7) potential future living areas originally identified in the Nowra-Bomaderry Structure Plan (NBSP) to possibly be rezoned in the Shoalhaven LEP 2014. The new living areas were generally rezoned through the LEP process and identified as Urban Release Areas (URA's) in the final plan.

However, this site has been the subject of a number of conflicting biodiversity studies undertaken on behalf of Council and the proponents. Thus, following the exhibition of Shoalhaven LEP 2014 Council resolved (July/August 2013) to:

- a) *Defer the area identified as Lots 21, 22, 23, 24 DP 714096 from the Draft LEP 2013 to enable further specific consideration;*
- b) *Remove the deferred area from all relevant overlays; and*
- c) *Consider a planning proposal for the site after the completion of the investigations into alleged illegal clearing.*

In an attempt to reconcile the conflicting biodiversity studies over the subject land, Council engaged NGH Environmental Pty Ltd to undertake an independent peer review of the biodiversity studies and make recommendations on biodiversity significance. NGH were asked to review the existing studies, not to undertake further surveys/studies over the site.

The NGH peer review applied a 'precautionary approach' and found that without more detailed surveys it was not possible to rule out areas as High Conservation Value (HCV). Therefore, the majority of the site was deemed to be HCV based on the review of the studies, as shown in Figure 1 below.



Figure 1 – High Conservation Value Land (NGH Environmental)

The NGH Report also outlined the survey requirements and level of information that would be required to consider reducing the HCV land and increasing the residential zoned land.

Following the peer review of existing biodiversity studies by NGH, Council considered the proponents (Huntingdale Developments Pty Ltd and Southbank Land Pty Ltd) PP over the site in December 2015, where it was resolved to:

- a) *Prepare a Planning Proposal to rezone the non-High Conservation Value areas on the site, as identified in the NGH Environmental Report, to an appropriate residential zone;*
- b) *Include an assessment of residential land supply in the Nowra-Bomaderry Structure Plan area, particularly north of the Shoalhaven River in the Planning Proposal;*
- c) *Submit the Planning Proposal for Gateway determination and request the NSW Department of Planning and Environment determine the appropriateness of further biodiversity investigations over the site, to support the possible increase in residential zoned land; and*
- d) *Notify the proponent and adjoining landowners of this resolution.*

The Council report that led to this resolution provides further background detail on the Crams Road URA and Council's decision to submit the PP for Gateway determination and is provided as **Attachment 1**.

In accordance with the above resolution, Council submitted the PP for Gateway determination and requested the NSW Department of Planning and Environment (DP&E) to determine the appropriateness of further biodiversity investigations over the site, to support a possible increase in residential zoned land.

DE16.20

During this time, the proponent engaged a consultant to undertake the additional site survey works as outlined in the NGH report. These additional surveys were not requested by Council and they were cautioned about it at the time, however the proponent advised that the work was commenced to ensure surveys could be completed at the appropriate times of the year. The proponent's additional biodiversity assessment has now been completed, but is yet to be reviewed by Council.

Gateway Determination

DP&E issued a Gateway determination for the site on 12 July 2016 that allowed the PP to proceed subject to variations and conditions. It was determined that the NGH Environmental Peer Review was sufficient to define areas of HCV land and that '*...no further biodiversity studies are required at this time for Lot 24*'. The Gateway determination also requires land currently subject to a remediation order (as a result of unauthorised clearing) to be given an appropriate environmental protection zone, and for the PP to be updated to confirm the proposed zoning, lot size and height of building maps prior to public exhibition.

The Gateway determination also required the following studies to be prepared or reviewed prior to the exhibition of the PP:

- Bushfire Hazard Study (to reflect the reduced development footprint)
- Aboriginal Archaeological Assessment
- Biodiversity Review of Lots 21-23 (not considered in the NGH Peer Review as they had previously been accepted as R1 General Residential under the draft Shoalhaven LEP 2014)
- Provision of infrastructure – water, sewerage and electricity to confirm demand and supply issues.

A copy of the Gateway determination is provided as **Attachment 2**.

The Biodiversity Review of Lots 21-23 is considered unnecessary at this time. The lots in question were not considered in the NGH Peer Review as they had previously been accepted by DP&E as a proposed R1 General Residential zone under the draft Shoalhaven LEP 2014. Similarly, the provision of an infrastructure assessment is not considered appropriate at this time. The Crams Road URA is a long term release area, and Part 6 of Shoalhaven LEP 2014 already provides the appropriate mechanism to ensure that adequate infrastructure is provided prior to the land being released.

Post Gateway Determination Review

Following the Gateway determination, the proponent initiated a review of the determination with DP&E through the Post Gateway Review process. Their review requested that the Gateway determination be amended to allow Council to consider the recently completed biodiversity assessment that was undertaken by the proponent.

DP&E ultimately determined that it was Council's role as the Relevant Planning Authority (RPA) to determine if and how the additional biodiversity assessment should be considered as part of the PP process.

Council could either consider the proponents additional study formally prior to exhibiting the PP or alternatively, the proponent could submit the additional information as part of the formal public exhibition and it will be considered by Council following the exhibition. These two (2) options are discussed in more detail below. It is noted that either option will require Council to again engage an independent consultant to peer review the new study at the appropriate point.

Option 1 – Consider the additional biodiversity study following the public exhibition

Council could undertake or request the relevant studies required by the Gateway determination (Bushfire hazard etc.) and proceed to publicly exhibit the PP. The proponent could then formally submit the additional biodiversity assessment as part of the exhibition period. This would then need to be considered by Council following the exhibition.

At this point, Council would need to engage a consultant (at the proponents cost) to peer review the study. This option is consistent with the established PP process and does not require an amended Gateway determination. However, if an increase in the residential footprint is supported following the exhibition, the Bushfire Hazard assessment may need to be updated again to reflect the new residential footprint and depending on the nature of any changes the PP may need to be re-exhibited.

This option also affords the local community to express a position on the PP. Council would then be in a more informed position to consider additional biodiversity assessment.

Option 2 – Consider the additional biodiversity study prior to public exhibition

Council could consider the additional biodiversity assessment prior to proceeding to exhibit the PP. This option would again require Council to engage a consultant (at the proponents cost) to peer review the study. Depending on the outcome of the peer review, Council may need to reconsider the matter and apply for a revised Gateway determination if an increased residential footprint is considered appropriate. This would require a new resolution from Council to support an increased residential footprint. This option does not allow community input at this stage.

Council staff have met with the proponents, who have indicated that this is their preferred or favoured option.

Proposed Land Use Zone and Minimum Lot Size

The PP that was submitted for Gateway determination did not identify a specific residential zone or minimum lot size for the proposed residential area. It was considered that the most appropriate residential zone and minimum lot size would depend on the size of the area ultimately being rezoned.

If a larger residential development area eventuates it would most likely be given an R1 General Residential zone, consistent with other URA's in the Nowra-Bomaderry area. The proposed minimum lot size would also then most likely need to be consistent with the other URA's and be 500 sq. metres.

If a smaller residential development area eventuates one of the lower density zones (R2 Low Density Residential or R5 Large Lot Residential) would be applied, along with a larger minimum lot size. The low density zone and larger lot size has added benefits in that it is more in character with the adjoining subdivisions as well as affording an opportunity for a bushfire buffer to existing lots.

If Council proceeds with Option 1 to exhibit the smaller residential development footprint, it will need to determine the most appropriate zone and minimum lot size for the site prior to exhibition. In this case, it is recommended that Council adopt an R2 Low Density Residential Zone with a minimum lot size of 2,500m². Alternatively, if Council proceeds with Option 2, they will need to determine the most appropriate zone and minimum lot size for the site prior to requesting an amended Gateway determination. Again, the most appropriate zone and minimum lot size will depend on the size of the area being rezoned to residential.

Community Engagement

When the PP was first received and reported to Council, representations and objections were received from a number of landowners in the Bangalee area raising concerns about the proposed density of development, its consistency with and impact on the adjoining areas.

When the PP is ultimately exhibited in accordance with the relevant Gateway determination, the adjoining residents have been advised that this will provide an opportunity to provide any comments or raise any concerns in relation to the PP.

If the land is rezoned, the landowner would need to submit an application to subdivide the land, and the community will have another opportunity to comment on the proposal at this stage.

Financial Implications

The proponent has paid the PP lodgement and preparation fee in accordance with Council's fees and charges and met the costs of the NGH peer review. Any additional studies required by the PP are required to be wholly funded by the proponent, as would any further peer reviews that may need to be undertaken.

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.