

## Development Committee

**Meeting Date:** Tuesday, 10 October, 2017  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.00pm

**Membership** (Quorum - 5)  
Clr Joanna Gash – Chairperson  
Clr John Levett – Deputy 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

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4. **Mayoral Minute**
5. **Deputations and Presentations**
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## **8. Confidential Reports**

Nil

## Development Committee

### Delegation

THAT 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

- a. 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.
- b. 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.
- c. 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.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary 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.
- e. 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
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 82A and 96AB of the EP&A Act that the General Manager requires to be determined by the Committee.
- h. 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:** Tuesday, 12 September 2017  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.00 pm

The following members were present:

Clr Patricia White - Chairperson  
Clr Joanna Gash  
Clr Amanda Findley  
Clr John Levett  
Clr Nina Cheyne  
Clr Annette Alldrick  
Clr Kaye Gartner  
Clr Mitchell Pakes  
Clr Greg Watson  
Clr Mark Kitchener  
Clr Bob Proudfoot  
Mr Russ Pigg - General Manager

### Apologies / Leave of Absence

**RESOLVED** (Clr Gash / Clr Cheyne) MIN17.773

1. An apology be received from Clr Guile.
2. That a leave of absence be granted to Clr Wells for the period of Tuesday 12 September 2017 to Wednesday 20 September 2017 inclusive.

CARRIED

### Confirmation of the Minutes

**RESOLVED** (Clr Gash / Clr Cheyne) MIN17.774

That the Minutes of the Development Committee held on Tuesday 08 August 2017 be confirmed.

CARRIED

### Declarations of Interest

Nil

## DEPUTATIONS AND PRESENTATIONS

Ms Di Milne addressed the Committee in relation to DE17.61 Planning Proposal (Rezoning) - Albatross Road & Kinghorne Street, Nowra - Post Exhibition Consideration and Finalisation.

Mr Lee Carmichael, Lee Carmichael Town Planning, addressed the Committee in relation to DE17.61 Planning Proposal (Rezoning) - Albatross Road & Kinghorne Street, Nowra - Post Exhibition Consideration and Finalisation.

Mr Howard Jones addressed the Committee in relation to DE17.64 Petition - Crown Land - Shoalhaven Heads - Rezoning Request.

### Procedural Motion - Bring Item Forward

**RESOLVED** (Clr Pakes / Clr Gash) MIN17.775

That item DE17.64 Petition - Crown Land - Shoalhaven Heads - Rezoning Request be brought forward for consideration after DE17.61.

CARRIED

## REPORTS

<b>DE17.61 Planning Proposal (Rezoning) - Albatross Road &amp; Kinghorne Street, Nowra - Post Exhibition Consideration and Finalisation</b>	<b>HPERM Ref: D17/254334</b>
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### Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal as exhibited with the following addition:
  - a. To avoid uncertainty, the width of the part of the site with an 8.5m maximum building height is 9m, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114.
2. Under Council's delegation as Relevant Planning Authority, forward the Planning Proposal to NSW Parliamentary Counsel to draft the amendment to Shoalhaven Local Environmental Plan 2014 under Section 59(1) of the *Environmental Planning and Assessment Act 1979*.
3. Advise those who made a submission, the Rural Fire Service, proponent and surrounding landowners of this resolution and again when the LEP Amendment is notified.

**RESOLVED** (Clr Gash / Clr Gartner) MIN17.776

That Council:

1. Adopt the Planning Proposal as exhibited with the following addition:
  - a. To avoid uncertainty, the width of the part of the site with an 8.5m maximum building height is 9m, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114.
2. Under Council's delegation as Relevant Planning Authority, forward the Planning Proposal to NSW Parliamentary Counsel to draft the amendment to Shoalhaven Local Environmental Plan

2014 under Section 59(1) of the *Environmental Planning and Assessment Act 1979*.

3. Advise those who made a submission, the Rural Fire Service, proponent and surrounding landowners of this resolution and again when the LEP Amendment is notified.

FOR: Clr White, Clr Gash, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot, Russ Pigg

AGAINST: Nil

CARRIED

**DE17.64 Petition - Crown Land - Shoalhaven Heads - Rezoning Request**

**HPERM Ref:  
D17/265867**

**Recommendation (Item to be determined under delegated authority)**

That Council contact the Member for Kiama, Mr Gareth Ward MP, to obtain his views in regard to the petition that requests the rezoning of the Crown Land at Shoalhaven Heads to an appropriate environment protection zone, prior to considering the request further.

**RESOLVED** (Clr Findley / Clr Proudfoot)

MIN17.777

That Council:

1. Write to the Member for Kiama, Mr Gareth Ward MP providing the petition and advising that Council supports the intent of the petition.
2. Requests that the NSW Government undertake the rezoning of the land to protect the area as an Environmental Protection Zone.
3. Rezone the land should the NSW Government not undertake the rezoning.

FOR: Clr White, Clr Gash, Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Proudfoot, Russ Pigg

AGAINST: Clr Pakes and Clr Kitchener

CARRIED

**DE17.62 Planning Proposal (Rezoning) - Halloran Trust Lands - Progression in Parts**

**HPERM Ref:  
D17/254610**

**Recommendation (Item to be determined under delegated authority)**

That Council

1. Receive the initial groundwater investigation report prepared by HGEO consultants for information (**Attachment 1** – under separate cover).
2. Support splitting the Planning Proposal into two parts to allow the land at Callala Bay and Kinghorne Point to be progressed ahead of the land at Culburra Beach, with the mechanism to achieve this to be determined in consultation with NSW Department of Environment & Planning.
3. Support any necessary additional Planning Proposals that need to be prepared to achieve item 2 above.
4. Advise the proponent, relevant CCB's, interest groups and those who previously made submissions of this resolution.

**RESOLVED** (Clr Pakes / Clr Gash)

MIN17.778

That Council

1. Receive the initial groundwater investigation report prepared by HGEO consultants for information (**Attachment 1** – under separate cover).
2. Support splitting the Planning Proposal into two parts to allow the land at Callala Bay and Kinghorne Point to be progressed ahead of the land at Culburra Beach, with the mechanism to achieve this to be determined in consultation with NSW Department of Environment & Planning.
3. Support any necessary additional Planning Proposals that need to be prepared to achieve item 2 above.
4. Advise the proponent, relevant CCB's, interest groups and those who previously made submissions of this resolution.

FOR: Clr White, Clr Gash, Clr Findley, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot, Russ Pigg

AGAINST: Clr Levett

CARRIED

**DE17.63 Nowra CBD Contributions Discount Subsidy Policy - Review****HPERM Ref: D17/260722****Recommendation (Item to be determined under delegated authority)**

That Council

1. Rescind the Nowra CBD Contributions Discount Subsidy Policy; and
2. Advise the Nowra CBD Revitalisation Committee members, Nowra CBD Business Chamber, and the Shoalhaven Business Chamber of the Development Committee resolution.

**RESOLVED** (Clr Gash / Clr Watson)

MIN17.779

That Council defer consideration of this report and seek feedback from the Nowra CBD Revitalisation Strategy Committee members, Nowra CBD Business Chamber, and the Shoalhaven Business Chamber on this matter before making a decision.

FOR: Clr White, Clr Gash, Clr Findley, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Pakes, Clr Gartner, Clr Watson, Clr Proudfoot, Russ Pigg

AGAINST: Clr Kitchener

CARRIED

**DE17.64 PETITION - CROWN LAND - SHOALHAVEN HEADS - REZONING REQUEST****HPERM REF: D17/265867**

Item dealt with earlier/later in the meeting see MIN.777

**DE17.65 Nowra-Bomaderry Retail Hierarchy Review - Consultants  
Report - Consideration****HPERM Ref:  
D17/279940****Recommendation (Item to be determined under delegated authority)**

That Council

1. Release the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* report prepared by David Broyd Consulting Services & Urbacity for community comment.
2. Consider a further report on this matter following the community consultation.

**RESOLVED** (Clr Proudfoot / Clr Pakes)

MIN17.780

That the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* report prepared by David Broyd Consulting Services & Urbacity not go on public exhibition at this stage until staff have been given the opportunity to report to Council on its content and implications and that Councillors are briefed on that report

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

AGAINST: Nil

CARRIED

**DE17.66 Additional Item - Development Application - Ecotourist Facility - 77C Nerringillah Road, Bendalong****RESOLVED** (Clr White / Clr Findley)

MIN17.781

That DA17/1264 – Ecotourist Facility – 77C Nerringillah Road, Bendalong be called in by Council for determination due to significant public interest.

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

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 6.34 pm.

Clr White  
CHAIRPERSON



## **DE17.67 Possible Affordable Housing Opportunity - Coomea Street, Bomaderry - Initial NSW Government Response**

**HPERM Ref:** D17/285258

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:**

1. Mayoral Minute - Affordable Housing Opportunity - Bomaderry [↓](#)
2. Possible Affordable Housing Opportunity Site - Coomea Street, Bomaderry [↓](#)
3. NSW Government Response - Affordable Housing Opportunity [↓](#)
4. Future Directions for Social Housing in NSW (under separate cover) [↗](#)

### **Purpose / Summary**

To advise of the NSW Governments initial response to the Council resolution in this regard and present potential options as a result.

### **Recommendation (Item to be determined under delegated authority)**

That Council

1. Acknowledge the advice received from the NSW Government in this regard;
2. Continue to work on the possible demonstration affordable housing project at Coomea Street, Bomaderry;
3. Approach the five first phase service providers under the Social and Affordable Housing Fund (SAHF) to see if they are interested in being part of the project; and
4. Request the NSW Minister for Social Housing to consider making a budget bid for additional social and affordable housing in Shoalhaven and ensure that the NSW Government work with Council on redeveloping some of their land to a higher and better use to assist in this regard.

### **Options**

1. Continue to move forward and take the following steps in this regard:
  - Acknowledge the advice received from the NSW Government in this regard;
  - Continue to work on the possible demonstration affordable housing project at Coomea Street, Bomaderry;
  - Approach the five first phase service providers under the Social and Affordable Housing Fund (SAHF) to see if they are interested in being part of the project; and
  - Request the NSW Minister for Social Housing to consider making a budget bid for additional social and affordable housing in Shoalhaven and ensure that the NSW Government work with Council on redeveloping some of their land to a higher and better use to assist in this regard.

DE17.67

Implications: This option is recommended, as it will ensure that Council continues to take positive action to address ongoing affordable housing concerns in Shoalhaven.

2. Note the advice received from the NSW Government in this regard and take no further action at this point

Implications: This option is not recommended, as it is important that the NSW Government collaborate with Council and the community to ensure there are ongoing affordable housing opportunities in Shoalhaven.

## Background

Following consideration of a Mayoral Minute in this regard (**Attachment 1**) Council resolved on 22 November 2016 (MIN16.887) that:

*The General Manager submit to the NSW Government for funding consideration the application that was previously submitted in 2013 by Southern Cross Community Housing and Council for the Restart NSW – Illawarra Infrastructure Fund. The application needs to be given to the Premier, Minister for Housing, and any other Minister who may have a funding source such as Family and Community Services.*

This report summarises that approach that was subsequently made to the NSW Government, the response that was received and discusses potential further steps.

## Request to NSW Government

As a result of this resolution, the Mayor forwarded a detailed briefing paper and supporting information to the NSW Premier and the relevant Ministers.

The briefing paper provided background on the need for affordable housing in Shoalhaven drawn from the Affordable Housing Strategy work, summarised the previous 2013 grant application (for potentially 16 affordable housing units) and indicated the following advice:

- *Underutilised Council land at 42-46 Coomea Street, Bomaderry could be utilised to increase the supply of affordable housing in Shoalhaven. It was also noted that additional adjacent land could possibly be added.*
- *Given the location, the land is suitable for a financially viable affordable housing project.*
- *An effective way of delivering affordable housing is through the development of affordable housing on Council land in partnership with community housing provider such as Southern Cross Community Housing and possibly also the private sector.*
- *State Government funding would assist Council and possible partner organisations to implement a much-needed affordable housing project.*

In conclusion, the paper requested the following from the NSW Government:

*That the 2013 application (to be updated to current values) for grant funding for this project be reconsidered by the NSW Government following an evaluation of costings and partnership arrangements.*

The site at 42-46 Coomea Street and its surrounds is shown on **Attachment 2**.

## NSW Government Response

The NSW Minister for Social Housing, Pru Goward MP, responded on behalf of the NSW Government and a copy of her letter dated 16 August 2017 is provided as **Attachment 3**. In summary, this letter advises of the following:

- Commend work being done by Council to facilitate affordable housing projects in Shoalhaven.
- Unfortunately, the NSW Department of Family & Community Services (FACS) does not have any funding available to finance the proposed project.
- Recognise that housing affordability is a serious and growing issue and it is putting increased pressure on social housing.
- Addressing housing affordability is a long-term priority for the Government and recently announced as comprehensive housing affordability package.
- Support the development of affordable housing for very low and moderate-income earners in various ways including planning mechanisms that provide incentives for affordable housing.
- Also, have a significant program of works to deliver additional social and affordable housing to support lower income households.
- The Governments *Future Directions for Social Housing in NSW* (Future Directions) will deliver better outcomes and increase the supply of social and affordable housing in NSW.
- The Communities Plus program which is part of *Future Directions* will deliver up to 23,000 new and replacement social housing dwellings and increase housing supply. This additional supply includes 500 affordable dwellings and up to 40,000 private dwellings in integrated communities.
- Management of 18,000 public housing tenancies will be transferred to the non-government sector. One of the objectives of this is to enable the assets to be used to fund the building of new properties, adding to the supply of social housing

The letter concludes with the note that whilst the NSW Government has no funding to support the project at this time, there may be future grant opportunities.

The Mayor responded to the Ministers letter on 28 August 2017 expressing her disappointment at the response, advised that Council will continue to pursue this project in association with other groups and noted that hopefully the NSW Government will possibly reconsider being involved in the project as some point in the future.

## Overview – Future Directions for Social Housing in NSW

Given that the NSW Government's *Future Directions* document (copy provided as **Attachment 4**) is referred to in the Ministers response, the following overview of it is provided:

This document was released by the NSW Government in early 2016 and sets out a vision for social housing over the next 10 years. This includes reducing homelessness, providing more housing for those needing social housing and providing additional support to help transition out of the social housing system. It contains three strategic priorities:

- More social Housing
- More opportunities, support and incentives to avoid and or leave social housing
- Better social housing experience

*Future Directions* is a whole of Government approach to transforming the NSW social housing system. There are a wide range of actions in this document and a number that specifically relate to affordable housing.

It is noted that one of the supporting directions that is particularly relevant to this project, is to “grow affordable housing supply” also Action 2.4 deals specifically with affordable rental housing as a stepping-stone. The role that affordable rental housing plays in providing an important stepping-stone for people to enter the private rental market is recognised. It also plays a role in also accommodating people who are in housing stress, who would otherwise seek social housing.

Under this action, affordable housing will be a feature of the Social and Affordable Housing Fund and Land and Housing Corporation redevelopments.

Under Action 2.5 Collaboration and accountability, it is interesting to note in this context that the NSW Department of Planning & Environment will work with FACS to identify options to work with the other levels of government, including Councils to increase affordable housing supply possibly using surplus Commonwealth and local government land.

Sitting under *Future Directions* is the Social and Affordable Housing Fund (SAHF), which is intended to be a new way to deliver social and affordable housing in NSW. This fund has been set up with \$1.1 billion in seed funding investment from the Government. Money generated as interest on this investment will be applied to funding SAHF projects. At the end of the projects, the Government will continue to invest the capital with a view to generating additional returns to further support social and affordable housing projects.

The first phase of this project was commenced in March 2017 when the following five service providers were announced:

- BaptistCare NSW & ACT
- Compass Housing Services Co Ltd
- SGCH Sustainability Ltd
- St Vincent de Paul Housing
- Uniting

Each service provider will deliver a package for 25 years involving access to accommodation, asset management, tenancy management and support services.

Under this first phase up to 2,200 additional social and affordable homes will be delivered in metropolitan and regional NSW.

Whilst the Ministers response on this project is somewhat disappointing given was is outlined and suggested in *Future Directions*, there could be an opportunity to directly involve one of the five first phase service providers (some already operate in Shoalhaven) and an approach should be considered in this regard.

### **Coomea Street, Bomaderry – Project Update**

As part of adopting the draft Affordable Housing Strategy for exhibition, Council also resolved on 17 July 2017 to:

- *Identify the Council owned site at 42-46 Coomea Street, Bomaderry as the preferred site for the short term strategy and investigate potential opportunities for expansion to include additional land in the precinct;*
- *Continue to pursue the possibility of an initial demonstration affordable housing development at Coomea Street, Bomaderry with the NSW Government, Community Housing Providers, property industry representatives (e.g. Property Council of Australia) and relevant community consultative bodies.*

Specific material was included in the draft Affordable Housing Strategy exhibition package in this regard. The exhibition ended on 29 September 2017. To discuss and advance the possible demonstration affordable housing project at Coomea Street, Bomaderry a workshop has been arranged for the 26 October 2016 in association with the Property Council of Australia's Illawarra Committee

Whilst the NSW Government may not currently be able to assist with this project there is still merit in moving ahead with it to clarify in consultation with the range of interested parties what could be realised on this site, what delivery mechanisms might exist and what other alternate funding opportunities exist.

## Conclusions

Whilst at this point the NSW Government has not agreed to assist with the possible affordable housing project at Bomaderry, it is recommended that the following occur:

- Council keeps working on the Coomea Street opportunity with other parties.
- Approach the five first phase service providers under the SAHF to see if they are interested in being part of the Coomea Street project.
- Request that the NSW Minister for Social Housing to make a budget bid for additional social and affordable housing in Shoalhaven and that the NSW Government work with Council on redeveloping some of their land to a higher and better use to assist in this regard.

## Community Engagement

No specific community engagement is required at this point. However, depending on the option taken by Council and the detail that might arise from it, detailed community engagement will be undertaken at the appropriate point.

## Policy Implications

There are no immediate policy implications arising from this report, given that Council has already identified the Coomea Street site as the preferred short-term site for a possible affordable housing development through the Affordable Housing Strategy work.

## Financial Implications

There are no immediate financial implications in this regard. Should the project proceed, regular updates will be provided to Council and any financial implications will be detailed in these.

**MM16.15 Mayoral Minute - Southern Cross Community  
Housing & Shoalhaven City Council at  
Bomaderry**

**HPERM Ref:** D16/364762

**Recommendation**

That the General Manager submit to the NSW Government for funding consideration the application that was previously submitted in 2013 by Southern Cross Community Housing and Council for the Restart NSW – Illawarra Infrastructure Fund. The application needs to be given to the Premier, Minister for Housing, and any other Minister who may have a funding source such as Family and Community Services.

**Details**

The issue of homelessness is a statewide issue driven mostly by the lack of affordable housing either for rent or purchase. The State Government could show its commitment to alleviating the issues in the Shoalhaven by collaborating with Council and the Southern Cross to fund this much needed housing project.

In July 2013, Council endorsed the application over its land in Coomea Street, Bomaderry. The original application proposed to construct 16 accommodation units, two shops and a training room



Possible Affordable Housing Opportunity Site & Surrounds  
42-46 Coomea Street, Bomaderry





**The Hon Pru Goward MP**

Minister for Family and Community Services  
Minister for Social Housing  
Minister for the Prevention of Domestic Violence and Sexual Assault

**MAYORAL**

EAP17/4962

Shoalhaven City Council

Received

22 AUG 2017

File No.

Referred to: ① G. Clark

② C. Crebbin

③ M. Cronin

Rel to: D17/165689

elc: R.P.  
- Rachel  
- Marnie

Cr Amanda Findley, Mayor  
Shoalhaven City Council  
P O Box 42  
NOWRA NSW 2541

Dear Cr Findley

Thank you for your letter of 25 May 2017 about a proposed affordable housing project. I commend the work the council is doing to facilitate affordable housing projects in the Shoalhaven local government area.

Unfortunately, at this time I am advised that the Department of Family and Community Services (FACS) does not have any additional, uncommitted funds available to finance the proposed project.

The NSW government recognises that housing affordability is a serious and growing issue in NSW. Housing is becoming more expensive for renters and first home buyers, and an acute shortage of affordable private rental housing for low income households is putting increased pressure on the social housing system.

Addressing housing affordability is a long-term priority for the NSW government. In the recent NSW budget, a comprehensive housing affordability package was announced that will boost supply, provide immediate support to first home buyers and deliver important infrastructure to service new homes and support communities. Information about this package is available at: <https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/first-home-buyers/>.

As Minister for Social Housing, I am particularly concerned about the challenges faced by low-income households trying to find safe, secure and sustainable accommodation. I appreciate the specific concerns you raise regarding the growing issue of homelessness and high rates of housing stress in the Shoalhaven local government area and your council's efforts to address the growing demand for affordable housing for low-income renters and support your work in developing an Affordable Housing Strategy for the city.

The NSW government supports the development of affordable housing for very low to moderate income earners in a number of ways. These include planning mechanisms, for instance incentives for developments that contain affordable housing, such as floor space incentives.



NSW also has a significant program of work underway to deliver additional social and affordable housing to support lower income households.

*Future Directions for Social Housing in NSW* (Future Directions) is the government's ten-year reform to the social housing system that will deliver better outcomes for our residents and the communities in which they live. Key programs under this strategy include Communities Plus and the Social and Affordable Housing Fund, which will increase the supply of social and affordable housing in NSW.

Communities Plus will deliver up to 23,000 new and replacement social housing dwellings and will increase housing supply across Sydney and regional NSW to help more families waiting for assistance. This additional supply includes 500 affordable housing dwellings and up to 40,000 private dwellings in integrated communities.

As part of *Future Directions*, the government is also transferring management of 18,000 public housing tenancies to the non government sector. One of the policy objectives of the transfer program is to enable community housing providers to use public housing assets to secure finance to build new properties, adding to the supply of social housing stock.

Thank you for providing Shoalhaven City Council's proposal for consideration. Although the NSW Government has no funding available to support the project at this time, there may be opportunities to apply for funding in the future.

If you would like more information, please contact Ben Stirling, A/Director on 8753 9313 or email [ben.stirling2@facs.nsw.gov.au](mailto:ben.stirling2@facs.nsw.gov.au).

Yours sincerely



Pru Goward MP

16 AUG 2017

## DE17.68 Proposed Submission - Options Paper: Short Term Holiday Letting in NSW

**HPERM Ref:** D17/306769

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:**

1. Council Report - Nov 2016 - Short Term Rental Inquiry (under separate cover) [⇒](#)
2. NSW Government Response - Short Term Rental Inquiry [↓](#)
3. Options Paper - Short Term Holiday Letting in NSW (under separate cover) [⇒](#)
4. Report, August 2017 - Shoalhaven Tourism Advisory Group - Short Term Letting Options Paper [↓](#)

### Purpose / Summary

Provide an overview of the Options Paper that has been released for community comment regarding short term holiday letting in NSW for Council consideration and to enable a submission to be made.

### Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Government on the Options Paper: Short Term Holiday Letting in NSW consistent with the content of the report and continue to be involved as required in any outcomes that eventuates.

### Options

1. Make a submission based on the content of this report as recommended.

Implications: This will enable Council to make a submission, continue to be involved in this key matter and contribute to the dialogue in this regard. This is particularly relevant given that, depending on the approach that the NSW Government decides to take, there could be a significant impact on Council and the tourism economy.

2. Make a submission based on an alternate approach, for example, that supports a more fully regulated approach in regard to short term holiday rentals.

Implications: This will still enable Council to make a submission and be involved, however dependent on the nature of any alternate approach, the implications are unknown or could be significant for Council.

3. Receive the report for information.

Implications: This will essentially see Council not take a position on the Options Paper. This is inconsistent with the previous involvement that Council has had in this regard.

## Background

The NSW Government released an Options Paper – Short-term Holiday Letting in NSW for community comment until 31 October 2017. This report provides relevant background, an overview of the discussion paper and details a proposed submission.

### Holiday Homes in Shoalhaven

Short term holiday rentals/letting or holiday homes have been a feature of the tourism in Shoalhaven for a long period. This important form of accommodation makes up a large part of the overall tourism accommodation supply in the City. It was previously estimated that there could be in excess of 4,000 holiday homes in the City.

Data from the Tourism Research Australia's National Visitor Survey (March 2017) for the three (3) years ending September 2016 relating to accommodation types used by domestic overnight visitors indicates that approximately 60% of domestic overnight visitors to Shoalhaven stayed in what could be termed 'holiday homes'. This is broken down as follows compared to Regional NSW and Coastal NSW:

	Shoalhaven	Regional NSW	Coastal NSW
Rented House/ apartment/Unit	17%	9%	11%
Own Property (e.g. holiday house)	11%	4%	5%
Friend or relatives property	32%	40%	40%
Total	60%	53%	56%

This data gives an insight into the key role that this type of accommodation plays in the Shoalhaven tourism economy. As such, it is important that Council continues to play a role in research, advocacy and any regulatory changes related to this form of accommodation.

### Current Planning Controls

Court decisions related to cases in Sydney involving the short term rental of residential apartments deemed that the practice was a commercial activity and was thus prohibited. Specifically a decision in 2003 involving Sutherland Shire Council (a unit in a complex at Cronulla) lead Council to amend its Local Environmental Plan (LEP).

Given the importance of this issue to Shoalhaven, Council took the step of amending its then Shoalhaven LEP 1985 to enable the practice of the short-term rental of existing residential dwellings to continue without any legal uncertainty. This was done via an LEP amendment in 2006 that included a provision that made the short-term rental of dwellings permissible without consent. At the time, Shoalhaven was understood to be the only Council to take this step.

As part of the move to the new Standard LEP Instrument format the intent of the provision was retained and the current Shoalhaven Local Environmental Plan (LEP) 2014 states that consent is not required for the short term rental of a dwelling unless there is an impact on neighbourhood amenity.

The current LEP2014 clause reads as follows:

#### *Clause 7.13 Short-term rental accommodation*

- (1) *The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*
- (2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpacker accommodation or bed and breakfast*

*accommodation) if the use is only short term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*

- (3) *In this clause, short-term means for a maximum period of 45 consecutive days in any 12 month period.*

Development standards associated with this clause are provided in Chapter G16 ‘Short Term Rental Accommodation’ of the Shoalhaven Development Control Plan (DCP) 2014 and addresses issues particularly relating to the impact on neighbourhood amenity.

This chapter generally only applies once a development application is required to be lodged, such as instances where there is an unacceptable impact on the amenity of the neighbourhood. The DCP Chapter can be viewed on the internet at:

<http://dcp2014.shoalhaven.nsw.gov.au/sites/dcp2014.shoalhaven.nsw.gov.au/files/Chapter%20G16.pdf>

The key difference between the original and current LEP provisions is that Council can step in and take action if warranted against problematic holiday homes or short term rentals.

It is understood that we have not yet formally used the provision to require development consent in individual circumstances. However, its general intent has been utilised. For example, earlier this year Councils Compliance Section wrote to the owners of some properties in the Vincentia area following concerns being raised about amenity impacts and drew their attention to requirements of Clause 7.3 of the LEP.

#### Emerging platforms

Since Council first amended its LEP in 2006 to enable the practice to continue without the need for consent, the landscape has changed considerably with the emergence and growth of on-line booking platforms and the ‘sharing’ economy. This has seen platforms such as Airbnb, Stayz etc. play an increasing role in the letting of holiday homes in Shoalhaven. The use of these platforms has grown in recent years and is likely to grow into the future.

As an indication of the scale and growth of these platforms, the following is an indication of the number of listings in Shoalhaven on two of these platforms:

Stayz		Airbnb	
2015 Listings	2077	2016 Listings	483
2016 Listings	2127	2017 Listings	1062

Prior to the emergence and growth of these platforms a large percentage of the holiday homes in Shoalhaven we mostly let or rented through local real estate agents or directly by landowners. This ensured that that there was a local presence or someone who could be directly approached if neighbours or others had issues, for example noise from the night before. The challenge now is that many of the properties are rented via the internet and there is no local management presence should immediate issues need addressing.

Shoalhaven will be part of a research project being undertaken for the Australian Coastal Councils Association into appropriate planning responses to the impacts of online short term holiday rental platforms on coastal communities. The research team will be headed by Professor Nicole Gurran from the University of Sydney. The key outputs for this project include:

- *A report for participating councils which identifies appropriate planning responses, tools and strategies that can be adopted by coastal councils to address concerns in relation to the impacts of online short-term holiday rental platforms;*

- *A guideline checklist, in a form developed in consultation with participating councils, which provides a practical framework to assist council's decision-making in relation to these issues; and*
- *Case studies which illustrate both the range of issues affecting particular stakeholders in different coastal contexts, as well as the application of appropriate planning responses to the impacts of on-line short-term holiday rental platforms on these local communities.*

It is envisaged that the research will be completed in the first half of 2018 and as such could ultimately help inform Council further in this regard depending on what arises from the Options Paper.

#### Shoalhaven Destination Management Operational Plan

The Shoalhaven Tourism Advisory Group adopted this plan on 28 August 2017. The plan guides tourism in Shoalhaven and contains a range of detail that is relevant in this regard.

The plan recognises that a weakness is the high number of holiday properties, which are difficult to engage, and absent holiday home owners impacting on neighbourhoods. One of the threats is the potential that State legislation and cross government responsibilities can prevent some strategic desirable outcomes e.g. review of short term holiday accommodation regulation. It is also acknowledges that holiday homes generally not requiring consent is also a strength.

#### Holiday Homes - Issues

Council's submission to the Parliamentary Inquiry (**Attachment 1**) highlighted a number of issues and matters that are relevant in this regard including:

- Compliance issues – pools, fire safety etc.
- Amenity issues and resolving complaints – noise, car parking, rubbish etc.
- Local infrastructure impacts – rubbish being dumped in public litter bins etc.
- Taxation - benefit from funds spent on tourism marketing and resultant growth without making a contribution.
- Use of holiday homes and/or adjacent parks and reserves for large functions such as weddings.
- Competition with other forms of tourist accommodation – not a level playing field.
- Impact of 'party houses'.

It has also been suggested that the prevalence of short term holiday rentals also impacts on housing availability and affordability.

#### Recent History

During 2015/16 the NSW Parliament (Legislative Assembly Committee on Environment and Planning) carried out an Inquiry into the *Adequacy of the Regulation of Short Term Holiday Letting in NSW*. The terms of reference for this Inquiry were:

*That the Committee inquire into and report on the adequacy of the regulation of short-term holiday letting in NSW, with particular reference to:*

- The current situation in NSW and comparison with other jurisdictions*
- The differences between traditional accommodation providers and online platforms*
- The growth of short-term and online letting, and the changing character of the market*
- The economic impacts of short-term letting on local and the state economies*

- e) *Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation*
- f) *Any other related matters.*

Detailed information on this Inquiry can be found at:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1956>

Council made a detailed submission to this Inquiry and was represented at one of the Inquiry's Public Hearing. The Council submission to this Inquiry was reported through Council in November 2015 – see **Attachment 1**.

The Inquiry published its report in October 2016 and made twelve (12) recommendations and seven (7) findings. The NSW Government responded to the Inquiry findings in April 2017 (see **Attachment 2**), supporting three (3) of the twelve (12) recommendations and providing qualified support for the remainder. It was also flagged that the NSW Government would release a consultation paper on potential regulatory approaches to short term holiday letting.

### Options Paper - Overview

The NSW Government released an *Options Paper – Short-term Holiday Letting in NSW* (see **Attachment 3**) in July 2017 and the paper is out for community comment until 31 October 2017.

Additional information is also available on the NSW Department of Planning & Environment (DPE) website at: <http://www.planning.nsw.gov.au/STHL>

[The Discussion Paper notes that there has been a rapid growth in short term holiday letting \(STHL\) nationally and in NSW in recent years due to the emergence of online booking platforms and the growth of the 'sharing economy'.](#)

The NSW Government supports putting a regulatory framework in place for STHL and the Options Paper seeks feedback on the approaches that allow the economic benefits while managing impacts.

STHL is estimated to be worth \$31.3 billion nationally and NSW constitutes approximately half of the national total, accounting for 25% of total visitor nights. It is expected that STHL in NSW will continue to increase its share of visitor night demand over the next ten (10) years.

STHL also generates impacts (noise, waste, parking etc.) on the community and these often need to be managed. The paper notes that these impacts vary between regional and metropolitan areas and between detached dwellings and apartments.

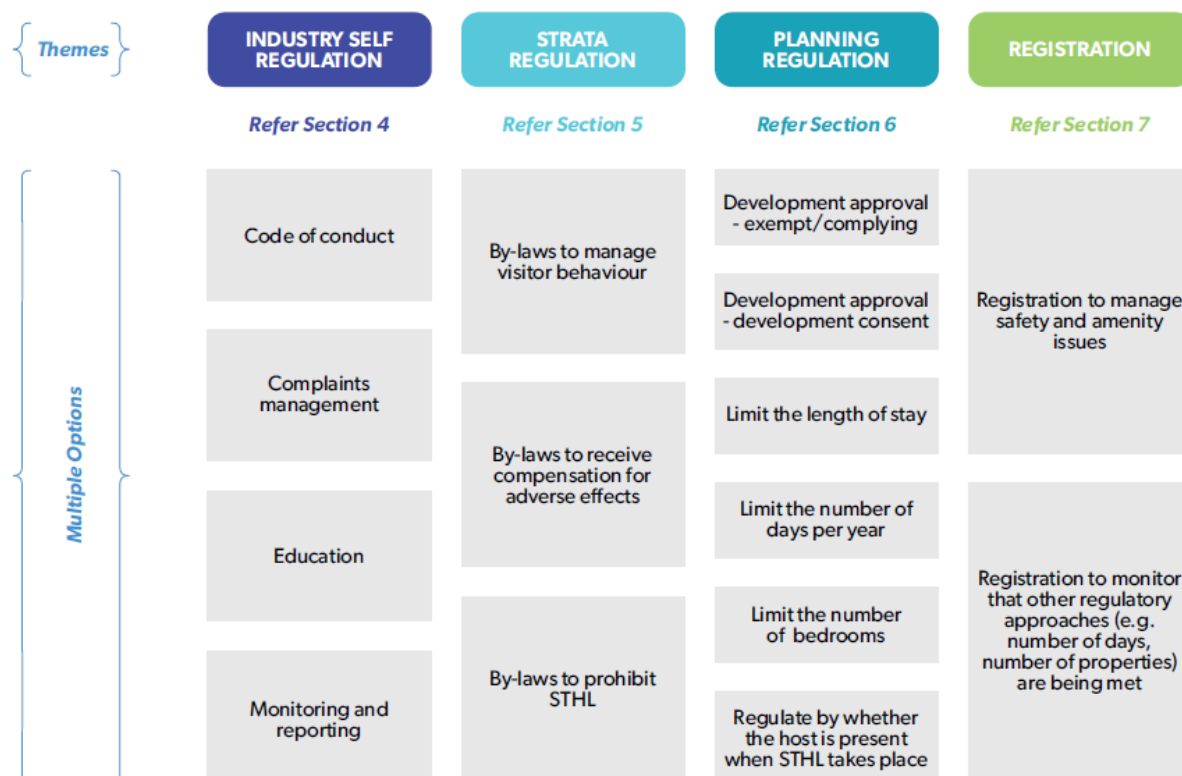
The NSW Government considers that STHL is acceptable in a residence, however there is a point where it can be considered to be a more intensive commercial type use. Thus the paper canvasses what level of regulation best meets the needs of the NSW community.

Building on the work of the Parliamentary Inquiry, the Discussion Paper presents and discusses a range of options from minimal intervention to more substantial Government regulation that could help determine a whole of government framework.

The options presented in the Discussion Paper are summarised in the following figure and discussed below:



**Figure 1: Potential Options**



**Note:** The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form.

**Option 1 - Industry Self-Regulation:** The industry takes greater responsibility for regulating its operation and the effectiveness of this will influence the ongoing level of government regulation that is needed. A strong and unified industry body with the ability to ensure compliance with self-regulation is seen as necessary under this option. It is noted that most properties operate without incident, and as such a regulated approach may not be appropriate. For this option to work there would need to be effective, accountable and transparent self-regulation involving a Code of Conduct, education, complaint management and monitoring/reporting.

*Comment – A Holiday Rental Code of Conduct was previously launched in 2012 by a number of industry groups and Council previously distributed a flyer with rates notices promoting the use of the code. Whilst industry self-regulation is always helpful the take up of the current Code of Conduct appears to have been limited and the ability to enforce things through this approach is limited given its optional non-binding nature.*

**Option 2 - Strata Regulation:** Strata properties have different requirements to detached dwellings, mainly because of the proximity and number of residents and also the shared responsibility for common property. The ability to for owner's corporations to manage use and behaviours was recommended by the Parliamentary Inquiry. To enable better management of STHL in this setting, strata laws could be amended to help manage visitor behaviour or adverse impacts. Another option could be to allow Strata Schemes to prohibit or restrict STHL within their schemes.

*Comment – It is acknowledged that strata situations are somewhat different to standalone dwellings, given the number of residents/occupants, their closeness and the shared property element. As such it may be appropriate for owner's corporations or bodies to be able to have*

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a say in limiting or prohibiting STHL in their complex dependent on its nature, circumstances etc.

Option 3 - Planning Regulation: The Parliamentary Inquiry recommended this approach, specifically the use of planning schemes to regulate STHL in a 'light' way through exempt or complying development.

Under this option it is noted that there is currently no consistent definition for STHL and that the Government considers the use to be acceptable up to a point that it becomes a more intensive commercial use. The most appropriate definition for STHL is suggested as: "a dwelling, or part of a dwelling, that provides short term accommodation, but does not include tourist and visitor accommodation". Planning controls, either through exempt or complying development, or requiring development consent could be used to manage STHL taking into account length of stay, number of bedrooms, presence for a host, code of conduct compliance and/or waste management options.

Some of the detail presented under this option to trigger types of development approval could include:

Length of Stay – setting the length of stay could be one way of regulating the use and reducing potential amenity impacts. It is noted that STHL is important to the economies of regional areas and consideration should be given to different approaches for urban and regional areas. Days per stay or days per year, or a combination, could be part of a regulatory approach.

Number of bedrooms – limiting the number of bedrooms could reduce the likelihood of large gatherings and the potential for noise, traffic, parking, 'party houses' and the like. However there is potentially no change to the potential number of occupants just because the use changes from long term to short term occupancy. The paper also notes the potential for this option to be unfairly restrictive on large houses, possibly in regional areas.

Presence of hosts – The Parliamentary Inquiry recommended that where a landlord or host is present on site that the short term letting of rooms be exempt development, given that potential impacts are lower where the principal resident is present on site

*Comment – This option is perhaps the closest to the current provision that Council has in its LEP related to STHL. Councils current LEP Clause is effectively an "exempt" development type provision, given that the use generally does not need consent. It does however provide Council with the opportunity to step in and require development approval where the use impacts on neighbourhood amenity in any way including noise and traffic generation.*

*The current LEP clause also defines "short term" as a maximum period of 45 consecutive days in any 12 month period. Actually measuring the length of stay is however difficult to quantify on the ground and as such this type of provision may not actually add much value. Restricting use to the number of bedrooms has some merit and would help control overcrowding or excessive use and stop additional unauthorised sleeping space being constructed or used within existing dwellings e.g. if a dwelling is approved at 4 bedrooms (2 double and 2 single) then no more than 6 people should stay.*

Option 4 – Registration: Licencing or registration of STHL's is another management option. Any scheme would need to be established and managed by a Government Agency rather than an industry group. The most likely agency, being NSW Fair Trading, would work with others to ensure compliance against codes or guidelines.

The Options Paper notes that other jurisdictions have registration processes for STHL in association with planning requirements. In Western Australia registration is via local Councils



and applicants must submit floor plans (number/location of sleeping rooms), onsite parking details, name of manager and contact details and an undertaking that they will respond within 12 hours. No guest is also allowed to stay for more than 3 months in any 12 month period.

The Options Paper notes that this option could provide greater information to potential users and help monitor the industry. It could also address issues not addressed through the planning framework. It could work in with the planning framework as other current licencing schemes do (e.g. child care and liquor licensing). Pursuing this option would require the careful consideration of the broader regulatory costs against the need to manage negative impacts.

*Comment – This option has some potential as it could require a certain minimum standard or compliance requirements to be met. It would also potentially enable the properties being used for this practice to be accurately identified and as such levied to also contribute to tourism marketing and the like. However, as noted in the Options Paper licencing/registration is closely linked to planning requirements and as such, whilst NSW Fair Trading may be identified as a potential implementation agency, it is likely that Council could wear a considerable burden in this regard.*

In terms of the next steps, it is indicated that the NSW Government will consider submissions and decide whether or not to pursue any regulation of STHL. Should new provisions, such as in State Environmental Planning Policies (SEPP's), or other legislative changes be considered there will be the opportunity for further input.

### Proposed Submission

The Shoalhaven Tourism Advisory Group considered the Options Paper on 28 August 2017 and the report (see **Attachment 4**) was received for information. The Options Paper was also circulated internally to relevant Council Groups and limited feedback was received.

The bulk of the properties in the city that are used for STHL largely create no direct issues and given the important tourism role this form of accommodation plays, Council has not felt the need or had the appetite to fully regulate holiday homes or STHL in Shoalhaven. This position does not appear to have changed, although the need and ability to resolve problematic properties is acknowledged. The current LEP provision allow Council to step in where there are properties that are impacting on the amenity of a neighbourhood.

Thus it is intended that Council provide a submission to the current Options Paper that is consistent with the content of this report and the previous submission to the NSW Parliamentary Inquiry (**Attachment 1**). Council's current approach is still favoured as it means that we do not have the burden of regulating every STHL in the City, but can regulate problematic properties via a development approval if necessary.

Council's current approach falls broadly under the planning regulation option in the Options Paper, specifically the exempt or complying development approach. It is suggested that a set of rules could be established that development needs to abide by or be consistent with so as not to require development approval. This could relate to consistency with the current approval for the dwelling (limit number of occupants to be consistent with the number of bedrooms, car parking limited to the number of spaces provided etc.) or specific requirements such as on site signage to nominate a point of contact if issues arise. This could ensure that practice continues in a manageable manner, without Council having to consider approvals for every single STHL. It is also acknowledged that it may be appropriate for strata situations to be able to use their own rules to restrict/manage STHL.

To ensure consistency, but also not require one set approach across the state, the NSW Government should provide a suite of options that Councils can choose from and utilise. Such as standard LEP provisions for the different approaches. This will at least ensure that there is consistency depending on what approach a Council wishes to take based on the nature of their local area, recognising the distinct differences between the issue in city and regional areas.

## **Conclusion**

Given the significance of STHL to tourism in Shoalhaven, Council has had an ongoing and active involvement in this issue and as such it is recommended that a submission be made that supports our current approach or one that is similar (essentially “light-touch”) where the vast majority do not need consent or approval, but problematic ones can be regulated.

The NSW Government has indicated that following the Options Paper and the responses to it, they will decide whether or not to pursue any regulation of STHL.

## **Community Engagement**

The NSW Government currently has an Options Paper in this regard out for community comment and feedback. It is also indicated that if they decide to pursue the regulation of STHL then there will be further opportunities for comment.

## **Policy Implications**

Council’s current established policy is to not require consent for the use of a dwelling for short term holiday rental. Depending on the approach taken by the NSW Government, Council may need to reconsider or adjust this approach in the future.

## **Financial Implications**

There are currently no direct financial implications associated with making a submission in this regard. However, depending on what option or options the NSW Government ultimately pursue there could be a range of direct and indirect implications on Council, such as the costs associated with being involved in any licencing or registration scheme or resource implications created by additional development applications.

NSW Government response to the Final Report of the Parliamentary Inquiry into the Adequacy of Regulation for Short Term Holiday Letting

## **NSW Government response to the final report of the Parliamentary Inquiry into the Adequacy of Regulation of Short Term Holiday Letting**

Short-term holiday letting has been carried out in coastal and other tourist destinations in NSW for many years, often without planning approvals or incident.

The emergence of online booking services and the development of the sharing economy has seen short-term holiday letting expand significantly in Australia and overseas. Internet platforms have generated new marketplaces for short-term holiday letting, benefitting consumers and providers by lowering transaction and accommodation costs, and providing opportunities to earn income from unused assets; and broadening the economic benefits of tourism.

The NSW Government welcomes the final report of the Parliamentary Inquiry into the Adequacy of Regulation of Short Term Holiday Letting, and accepts many of its recommendations. The Government will be releasing a consultation paper on potential regulatory approaches to short term holiday letting in the near future.

A table with the NSW Government response to each of the final report's 12 recommendations is presented below.

NSW Government response to the Final Report of the Parliamentary Inquiry into the Adequacy of Regulation for Short Term Holiday Letting

## NSW Government Response to Recommendations

No	Recommendation	Response
1	That the NSW Government amends <ul style="list-style-type: none"> <li>a) The Standard Instrument - Principal Local Environmental Plan to include a definition of short-term rental accommodation in the category of tourist and visitor accommodation</li> <li>b) The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow short-term rental accommodation.</li> </ul>	Qualified support. An options paper with approaches to implement a whole of government framework will be released for consultation.
2	Short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.	
3	Short-term letting of a principal place of residence be permitted as exempt development.	
4	Short-term letting of empty properties be permitted under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as: <ul style="list-style-type: none"> <li>• exempt development where the development does not exceed applicable impact thresholds; and</li> </ul> complying development where the development exceeds applicable impact thresholds	Qualified support. Exempt and complying provisions will be considered as part of the new approach.
5	The NSW Government investigates, in consultation with advocates for traditional accommodation operators, the impact of the growth of short-term rental accommodation on their industry, and identifies opportunities to reform current regulations.	<p>Qualified support. The principles for regulating traditional accommodation operators and short-term holiday letting should be aligned, fit for purpose and focused on consumer and community safety and amenity. The issues will be investigated further.</p> <p>The NSW Government will continue to work closely with all stakeholders to identify opportunities for regulatory reform.</p>

NSW Government response to the Final Report of the Parliamentary Inquiry into the Adequacy of Regulation for Short Term Holiday Letting

6	The NSW Government participates in the management of the Holiday and Short-Term Rental Code of Conduct to ensure that it has a broadly-based management structure, including community representation, and increases its industry coverage.	Qualified support. The Code of Conduct is an industry-led, voluntary national code and industry is best placed to oversee and enforce it. The NSW Government will support implementation of the national code when and where possible.
7	The NSW Government develops a compliance system for short-term rental accommodation under the Environmental Planning and Assessment Act 1979 which considers: a) the use of the investigative powers in Division 1C of the Act b) streamlined development assessment (Complying Development Certificates) c) the Holiday and Short-Term Rental Code of Conduct d) 'party house' provisions	Qualified support. A strong compliance system already exists under the <i>Environmental Planning and Assessment Act 1979</i> and is able to be used by councils. These provisions will be evaluated when considering the new approach.  The Government supports industry taking a strong approach to self regulation through its Code of Conduct. Government will work with industry to determine the effectiveness of their approach to monitor and respond to complaints and other compliance issues, and will determine if a further regulatory response is required.
8	The NSW Government prepares advice to councils and the community outlining the changes which will apply to short-term rental accommodation, and implements a communication and monitoring program.	Support.
9	That local councils be responsible for communicating with all landowners about their rights and obligations	Support.
10	The NSW Government considers amendments to strata regulations to give owners corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings.	Support.
11	The NSW Government reviews the impact of short-term letting in the strata environment after no later than three years.	Qualified support. The <i>Strata Schemes Management Act 2015</i> will be reviewed in five years. The timing will allow assessment of any on-going impacts of short-term letting in the strata environment that current provisions have failed to resolve.

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NSW Government response to the Final Report of the Parliamentary Inquiry into the Adequacy of Regulation for Short Term Holiday Letting

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| 12 | The NSW Government implements a program to collect data on the holiday industry generally, and short-term letting in particular, to assess the economic contribution of short-term letting and its impact on housing affordability and community viability. | Qualified support. The Commonwealth Government, through Tourism Research Australia, collects data for the National and International Visitor Survey through a sampling technique. This time series of data for tourists and visitors in accommodation other than traditional forms such as hotels, serviced apartments, bed and breakfast, backpackers' accommodation and the like will be drawn upon to assist in identifying trends in numbers of visitors accommodated. The Government will analyse this and other available data to help consider the economic contribution of short-term letting and its impact on housing affordability and community viability. |
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## TA17.41 Short Term Holiday Accommodation Opinion Paper Discussion

**HPERM Ref:** D17/256084

**Select:** Louise Hallum, Co-Deputy Chair STAG.

**Attachments:** 1. Short Term Holiday Letting Paper, 20 July 2017 (under separate cover)

### Recommendation (Item to be determined under delegated authority)

That

1. General discussion from STAG to form a position and way forward.
2. Broadly speaking STAG would endorse the current regulatory framework and would not, at the present time, recommend or support changes or additions to this framework.

### Details

*Note from Louise:*

*I have a specific interest in this area as I operate a tourist accommodation business and am active both on Air B&B and Stayz etc.*

Short term holiday letting (SHTL) has a very long history across NSW.

STHL can (and does) bring significant economic benefits to local, state and national economies – especially in the Shoalhaven where tourism plays such a significant role. However, the rapid growth of the industry (particularly through online businesses such as Air B&B and Stayz) has led to a need to consider whether improved regulation of SHTL is required to enable activity to continue to take place without unduly impacting on local communities, the safety of visitors or introducing unnecessary red tape.

The NSW Government's response to the Parliamentary Inquiry into the regulation of SHTL supported putting in place a regulatory framework for SHTL. The Options Paper (currently open for comment) is the next step in determining a policy framework.

Council will submit a response to the Options Paper and it is also the intention of STAG to submit a response – particularly given the importance of this sector to the economy of the Shoalhaven and to tourism in particular.

### The Options Paper Summary

The options paper gives governments the opportunity to adopt a revised framework for the regulation of SHTL given the perception that SHTL has the potential to impact on the community if it is not adequately managed. Potential impacts could include:

Noise (in particular Party Houses), additional waste generation, traffic and parking safety, security and the potential impact on housing and the broader industry in general.

It is noted that the potential impact of SHTL can vary significantly between regional and metropolitan areas, and between detached dwellings and apartments (ref. Strata buildings vs houses) and that literature detailing these impacts is very thin. Therefore, one specified

response will not suit all areas, requiring a range of options for management that can be deployed as appropriate.

The Options Paper seeks feedback regarding the type and degree of impacts observed and the appropriate response by governments to these impacts. There have been a range of provisions raised in the Options Paper. These include:

- Development of a Code of Conduct (this is already partly in progress in the Shoalhaven).
- Education – of both Hosts and Guests
- Complaint Management – either self-managed as part of the Code of Conduct or regulated as part of the development process.
- Monitoring and Reporting
- Allowing Strata schemes to prohibit or restrict STHL in their schemes.
- Regulation through the planning system – Potentially considering factors such as length of stay; Number of bedrooms; Presence of a host; Compliance with a Code of Conduct; Waste management arrangements etc.
- Registration or Licensing

It is noted that several these measures have been 'tested' in various jurisdictions around the world with limited and varying success.

#### **Shoalhaven**

The Shoalhaven has a long history of STHL with many holiday properties being used for this purpose over a great many years. The occurrence of STHL in Strata buildings would be significantly less than metropolitan areas (e.g. Sydney). There are over 4000 holiday homes in the Shoalhaven with only 2-3 compliance issues currently before council.

The current regulatory framework in relation to STHL in the Shoalhaven is as follows: Properties being used for STHL are typically '**Exempt**' – meaning that the development does not require approval if it is 'low impact'.

The next level of development is **Complying** meaning that a development needs a simplified approval from a private certifier or council, subject to meeting a set of provisions.

**Requiring consent** means a full development application must be lodged with the consent authority and a full merit assessment undertaken against a range of state and local planning provisions.

It should be noted that there are provisions within the DCP that identify 'reasonable amenity'. This means that in rare instances where 'reasonable amenity' is being impacted the Compliance Unit has the regulatory capacity to investigate and take steps to resolve the situation.

#### **STAG Recommendation for discussion**

Broadly speaking STAG would endorse the current regulatory framework and would not, now, recommend or support changes or additions to this framework.

The framework appears to be working effectively within our region and does not bring additional regulation where there is no proven need for additional regulation. Nor does it place a heavy burden on Council resources or add undue costs to the industry. It also appears to have provision to manage adverse situations as and when they occur. However,



it is noted that this situation may change in the future and ongoing monitoring is essential to ensure that the framework continues to be effective.

STAG would also recommend a focus on Education – both of Guests and Hosts. Either through a Code of Conduct or Best Practice. Part of this may be the development of a Toolkit that reinforces the role of 'Hosts', their responsibilities and obligations.

It is also noted that the retention of the current framework perpetuates a perceived inequality for some traditional operators such as Hotels and Motels who must comply with specific regulations to operate but essentially 'compete' with operators who do not have to comply with these regulations as they are classified as STHL. This reflects the changing nature of the market place with the fast growing share economy and a shift by the consumer away from the traditional business model.

## **DE17.69 Berry Landcare Grant - Berry Wildlife Corridor - Inclusion on Terrestrial Biodiversity Map - Shoalhaven LEP 2014**

**HPERM Ref:** D17/268800

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Berry Wildlife Corridor Newsletter [↓](#)

### **Purpose / Summary**

To advise Council of the significant grant received by the Berry Landcare group and the National Parks Association of NSW received from the NSW Environment Trust to revegetate land around the Berry area, and their subsequent request to have this land recognised within Shoalhaven Local Environmental Plan (LEP) 2014.

### **Recommendation (Item to be determined under delegated authority)**

That Council:

1. Support making ongoing amendments to the Terrestrial Biodiversity Map as part of a Shoalhaven Local Environmental Plan 2014 housekeeping amendment process, where landholders in Berry and surrounds have accepted public money for revegetation and agreed to enter into a conservation agreement over that land.
2. Write to the Berry Landcare group to congratulate them on gaining a substantial grant to improve the biodiversity linkages in the area, and advise them that this will be reflected in the Shoalhaven Local Environmental Plan 2014 through future amendments.

### **Options**

1. Adopt the recommendation.

Implications: Revegetation using public grant money will be appropriately recognised and protected in the LEP. It will be easier for Development Assessment staff to recognise this as protected vegetation and it will also be transparent to future owners. There is no other effective mechanism to enable this and ensure that the public investment is protected.

2. Not amend the Shoalhaven LEP 2014 Terrestrial Biodiversity Map to include the areas revegetated using public money.

Implications: If the land is not identified in the LEP, there will be no indication to future owners that there are areas of protected vegetation on the land. This would also be inconsistent with the wish of the landholders for their land to form part of an east-west vegetation corridor or the grant money that is being spent to improve biodiversity linkages in the Berry area.

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## Background

The Berry Landcare group, in partnership with the National Parks Association of NSW, was awarded a grant of \$500,000 by the NSW Environment Trust for the Berry Bush Links Project. This grant is to be spent on securing agreements with landholders to revegetate key areas of the Berry floodplain to improve the linkage between areas of native vegetation on the coast and the escarpment – the Berry Wildlife Corridor.

The area subject to the grant extends from Seven Mile Beach National Park and Coomonderry Swamp up to the escarpment at Barren Grounds and from the Shoalhaven Local Government Area boundary in the north east down to Coolangatta Road in the south west and Bong Bong Road and Woodhill Mountain Road in the north west.

It is understood that more than 60 landholders have expressed an interest in the project. Landholders will receive funding for weeding, planting, fencing and feral animal control.

More information on this project and a map showing the broad area of the Berry Wildlife Corridor is provided in **Attachment 1**.

Any revegetation on private land using public money becomes classified as ‘*protected vegetation*’ to protect the public investment. These areas are then treated the same as areas classified as ‘sensitive regulated land’ under the amended Local Land Services Act 2013 which triggers the need for an assessment by the Native Vegetation Panel prior to the removal of any vegetation. Efforts must be made to minimise the impact of future development on this vegetation.

The Berry Landcare group has approached Council and requested that land that benefits from the grant money be specifically identified on the Terrestrial Biodiversity Map that forms part of the Shoalhaven Local Environmental Plan (LEP) 2014. This would ensure that future development assessments consider the value of the vegetation as part of a biodiversity corridor and will also be a flag to potential buyers so that they are aware of a property’s status.

The Berry Landcare group will provide a list of landholders who have signed agreements along with a map of the areas to be included in the LEP.

The requested amendment to the LEP is consistent with the NSW Government’s new land management and biodiversity reforms and can be done as part of the ongoing housekeeping amendment to Shoalhaven LEP 2014 as information is provided on landowner agreements.

It was noted in the minutes of the Council Bushcare Representatives Group from 4 September 2017 that:

*The Council Bushcare Representative Group support the inclusion in biodiversity overlay for work completed, as part of the Berry Corridor in the LEP.*

## Community Engagement

Should Council support the inclusion of relevant land on the Terrestrial Biodiversity Map in the Shoalhaven LEP 2014, this will occur via future housekeeping amendments to the LEP as information is provided.

As with any proposed amendment to an LEP via the Planning Proposal process, the proposed adjustments will be subject to State Government approval through the Gateway determination. The Gateway determination will specify a minimum public exhibition period and will specify any government agencies who should be consulted.

Any directly affected landowners will also be advised of the exhibition arrangements in writing when that point is reached. Although it is also assumed that will also be aware of this matter, as they have signed funding agreements specific to their property.

**Policy Implications**

Adopting the recommendation would result in future amendments to the Shoalhaven LEP 2014. This will map the land as 'Biodiversity – habitat' and also 'Excluded Land' to ensure that complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 cannot be undertaken on this land.



**Financial Implications**


Any amendment to the LEP will be resourced within the existing Strategic Planning budget.

**Risk Implications**

If the land is not identified on the Shoalhaven LEP 2014 Terrestrial Biodiversity Map, there will potentially be no indication in the LEP to future owners that there are areas of protected vegetation on the land.

If Council does not proceed to include relevant land in the LEP this will be inconsistent with the wish of the landholders for their land to form part of an east-west vegetation corridor or the grant money that is being spent to improve biodiversity linkages in the Berry area.



# Corridors

No. 1 March 2017

## from escarpment to sea

The e-newsletter of the Berry Wildlife Corridor - Bush Links Project


### An E-Newsletter to keep us informed and connected

Welcome to the first issue of Corridors. This is our newsletter for the Berry Bush Links project and will provide news and information about the project to all those who are participating or have expressed an interest.

### The Project

At the end of 2015 a grant of \$500,000 from the NSW Environment Trust was awarded to Berry Landcare and the National Parks Association NSW for the Berry Bush Links Project. This is a 10 year project which aims to support and augment the Berry Wildlife corridor by connecting existing 'stepping stone' patches of native vegetation across private and public tenures. This will be achieved by controlling weeds and pest animals, replanting, fencing and restoration of native habitat, across a range of selected sites.

Each site is the subject of a formal agreement, between the owner (or managers) and the Bush Links project. The agreements specify a program of works for each site, the funding to be provided, and the agreed contributions of each party.



Base image (2006) from Google Earth

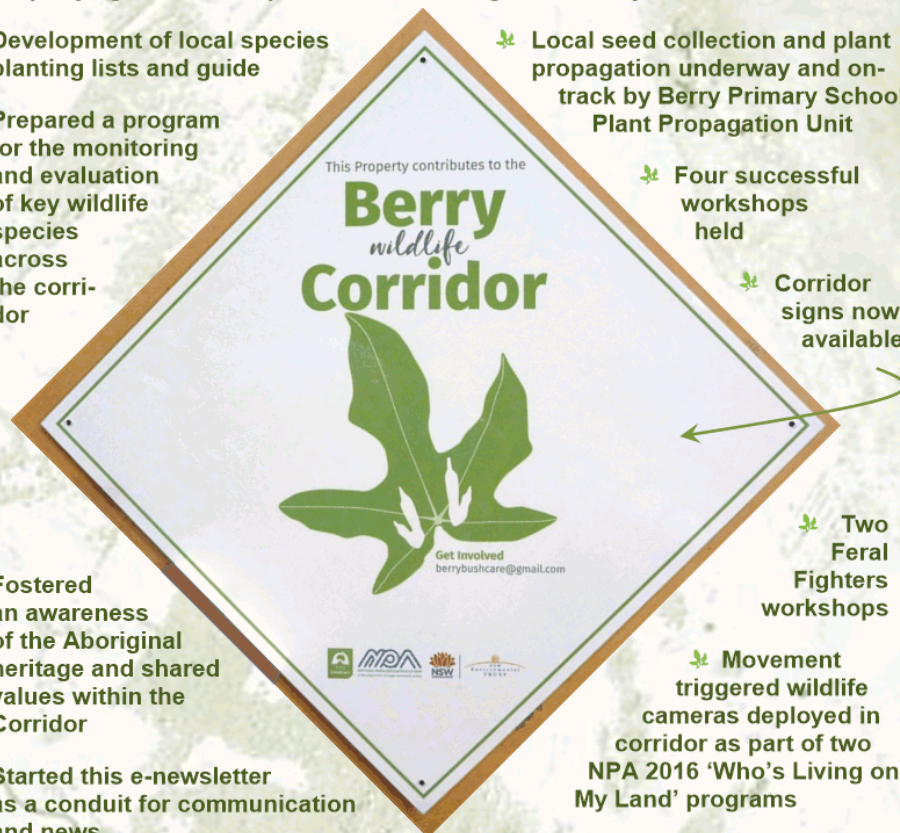
← Approximate boundaries of the Berry Wildlife Corridor.



## Where is the Project at?

Berry Bush Links has progressed through its planning phase and is now gearing up to conduct fieldworks at Stage One approved sites. The following is a summary of where we are at:

- ✿ More than 60 local landholders have expressed interest in the project
- ✿ Development of a plain English property agreement template
- ✿ Development of local species planting lists and guide
- ✿ Prepared a program for the monitoring and evaluation of key wildlife species across the corridor
- ✿ Fostered an awareness of the Aboriginal heritage and shared values within the Corridor
- ✿ Started this e-newsletter as a conduit for communication and news
- ✿ Coordinated with NSW Roads and Maritime Princes Highway natural vegetation offsets, to maximise connectivity
- ✿ Forum attended by 64 landholders and four local Councillors and Shoalhaven Mayor
- ✿ On track for the signing of 6 property agreements by the end of March
- ✿ Local seed collection and plant propagation underway and on-track by Berry Primary School Plant Propagation Unit
- ✿ Four successful workshops held
- ✿ Corridor signs now available
- ✿ Two Feral Fighters workshops
- ✿ Movement triggered wildlife cameras deployed in corridor as part of two NPA 2016 'Who's Living on My Land' programs
- ✿ Lobbying of State and Federal parliamentarians
- ✿ Five existing Berry Bushcare sites occur within the Corridor and will be managed in parallel with corridor objectives



## Display your support for the Corridor!

The Project now has a sign which is available for distribution to landowners and land managers to display within the Corridor. The sign features the Bush Links Berry Wildlife Corridor Logo, is weather-proof, includes holes for mounting and is 300 x 300mm square.

We hope that the display of the sign will help raise local awareness of the corridor and of the project.

The signs are free and will be made available at Corridor functions and work days. Come along, get involved and pick up a sign.

## Get Involved in The Berry Corridor 'Big Lift'

### Come to our next Workday Weekend

We are holding two Volunteer Work days on Saturday 6<sup>th</sup> and Sunday 7<sup>th</sup> May 2017. Multiple teams will assist in weed control and planting of seedlings across a number of important corridor sites. Sessions start: Saturday 9:00am and 2:00pm, Sunday 9:00am. Meet at Camp Quality Park, Woodhill Mountain Rd carpark, Berry, just south of Bundewallah Creek bridge..

BBQ lunch provided (1:00pm), please register your intention to attend so we can cater appropriately – call Bill Pigott: 0409 469655 [wpigott@bigpond.net.au](mailto:wpigott@bigpond.net.au)



↑ Corridorians at the 2016 Forum

## Want more information?

Contact David Rush: 0418 977 402; [davidr@npansw.org.au](mailto:davidr@npansw.org.au)  
or Berry Landcare: [berrylandcare@gmail.com](mailto:berrylandcare@gmail.com)



## The Berry Wildlife Corridor Bush Links Working Group

This Bush Links project is directed by the following Working Group:

Bill Pigott	Group Chair .....	<a href="mailto:wpigott@bigpond.net.au">wpigott@bigpond.net.au</a>
David Rush	NPA Bush Connect Project Officer .....	<a href="mailto:davidr@npansw.org.au">davidr@npansw.org.au</a>
Jim Jefferis	(Berry Landcare Chairperson) .....	<a href="mailto:jim.jefferis@gr8advice.com.au">jim.jefferis@gr8advice.com.au</a>
Harvey Blue	.....	<a href="mailto:harvey.blue@ozemail.com.au">harvey.blue@ozemail.com.au</a>
Kim Dove	.....	<a href="mailto:doveberry@southernphone.com.au">doveberry@southernphone.com.au</a>
Ian Parker	.....	<a href="mailto:ianlindap@shoalheven.net.au">ianlindap@shoalheven.net.au</a>
Kelvin Officer	.....	<a href="mailto:kofficer@nohc.com.au">kofficer@nohc.com.au</a>

## Useful Links

National Parks Association NSW

<https://www.npansw.org.au/>

Berry Landcare

<http://www.landcare.nsw.gov.au/groups/berry-landcare>

Berry Wildlife Corridor

<http://www.landcare.nsw.gov.au/groups/berry-landcare/projects/berry-corridor>

<https://www.npansw.org.au/index.php/36-campaigns/great-eastern-ranges>

Great Eastern Ranges

<http://www.greateasternranges.org.au/>

National Parks Association NSW and the Great Eastern Ranges Initiative

<https://www.npansw.org.au/~npans186/index.php/campaigns/great-eastern-ranges>

Connectivity conservation and the Great Eastern Ranges Corridor

[www.environment.nsw.gov.au/resources/nature/ccandger.pdf](http://www.environment.nsw.gov.au/resources/nature/ccandger.pdf)

The Barren Grounds – Budderoo Quollidior project

<http://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program/threatened-species-conservation/featured-projects/barren-grounds-budderoo-quollidior>

97.3 ABC Illawarra news Item

<https://www.facebook.com/abcillawarra/posts/1243341035711747:0>

South Coast Register article

<http://www.southcoastregister.com.au/story/4356808/landholders-keen-on-wildlife-corridor/>



↑ A Corridor resident, the Long Nosed Bandicoot, (*Paramelomys nasuta*), photographed in August 2016 near Broughton Mill Creek





**The Berry Corridor 'Big Lift'**

**May 6<sup>th</sup> & 7<sup>th</sup> 2017**

Get involved in the restoration of the Berry Wildlife Corridor!

Join Berry Landcare in a fun weekend of tree planting and weed punishment.

Come for two hours or longer, morning or afternoon.

Sessions start: Saturday 9:00am and 2:00 pm, Sunday 9:00am.

BBQ lunch provided (1:00pm).

Meet at Camp Quality Park, Woodhill Mountain Rd carpark (just south of Bundewallah CK bridge).

Please let us know when you're coming, so we can juggle the snags, contact Bill Pigott on 0409 469655  
[wpigott@bigpond.net.au](mailto:wpigott@bigpond.net.au)

Corridors no.1

page 5

## DE17.70 Shoalhaven Development Control Plan 2014, Chapter N19 Huskisson Mixed Use Zones - Draft Amendment Preparation and Proposed Public Exhibition

**HPERM Ref:** D17/216331

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Draft DCP Amendment - Chapter N19 Huskisson Mixed Use Zones (under separate cover) [⇒](#)

### Purpose / Summary

To obtain endorsement for the preparation and public exhibition of Draft Chapter N19 Huskisson Mixed Use Zones (draft Amendment), Shoalhaven Development Control Plan (DCP) 2014 to:

- Include adopted changes from the rescinded DCP No. 99 Huskisson Foreshore Business Development Zones 3(g) Amendment No 2, which were inadvertently omitted during the conversion to the new Citywide DCP.
- Review and revise the waste and traffic management related controls that apply to the laneways in Precincts 1, 2, 3 and 4.
- Improve the overall legibility of the DCP Chapter.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare and publicly exhibit Draft Chapter N19 Huskisson Mixed Use Zones of Shoalhaven Development Control Plan 2014 for a minimum period of 28 days in accordance with the *Environmental Planning & Assessment Act 1979*.
2. Advise the relevant Community Consultative Body (Huskisson Woollamia Community Voice) of the public exhibition.
3. Report the outcomes of the public exhibition period to Council when appropriate.

### Options

1. Adopt the recommendation.

Implications: This will enable the intent of a previous Council resolution to be enacted, which sought to consider submissions received during the exhibition of Shoalhaven DCP 2014, relating to Area Specific Chapters.

The draft Amendment will incorporate controls previously adopted by Council and made effective by the previous DCP No. 99 Amendment No. 2, which addressed issues relating to traffic management and waste collection of the Huskisson Laneways, specifically Kent Lane, Winnima Lane and Unnamed Lane.

DE17.70

In addition, the draft Amendment will delete duplicate or contradictory controls, address additional concerns raised by Council's Development Services, Traffic Unit and Waste Services Section, and simplify the wording of existing controls relating to the three laneways.

2. Adopt an alternative recommendation or defer the public exhibition of the draft Amendment to enable further changes to the DCP.

Implications: Dependent on the changes requested, this may delay the adopted controls from DCP No. 99 being inserted as previously intended into Chapter N19. This may result in waste collection and traffic management issues for new development in the area.

3. Not support the recommendation to include the adopted changes from previous DCP No. 99 process.

Implications: DCP No. 99 was rescinded as a result of Shoalhaven DCP 2014 coming into effect. Given that the adopted changes to DCP No. 99 were carried over, the missing controls have no effect on any new development in Kent Lane, Winnima Lane and the Unnamed Lane.

Issues with respect to waste collection and traffic management cannot be appropriately mitigated or managed with the existing controls in Chapter N19 and as such may result in adverse impacts to existing and proposed development and the street network should this not be addressed.

DE17.70

## Background

Following the notification of Shoalhaven Local Environmental Plan (LEP) 2014 in April 2014, Council had six months to make its single Citywide DCP effective. This task involved reviewing and consolidating over 100 DCP's into the single plan. Due to the limited time available to undertake this involved task, a number of DCP's were unable to be fully reviewed and amended as necessary. Housekeeping amendments to the DCP are continuing to take place to address issues as a result of this process and other issues that have arisen since its adoption.

In adopting the Shoalhaven DCP on 9 October 2014, the Special Development Committee also resolved the following (Part MIN14.728(a)):

*That Council:*

- a) *Consider the submissions received during the exhibition of the draft Shoalhaven DCP 2014 relating to Part 2 Area Specific Chapters and the individual preferred options/changes to the draft Shoalhaven DCP 2014 as set out in the sections of this report via the successive recommendations.*

Part a) of the above resolution sought to make changes to the Area Specific Chapters based on the successive recommendations addressing submissions received during the public exhibition of the draft Citywide DCP. The report to the Special Development Committee summarised a submission with respect to the Huskisson Mixed Use Zones precinct as follows:

*"DCP 99 Huskisson Foreshore Business Development Zone 3(g), Duncan, Bowen, Fegan and Nowra Streets has recently been amended in 2012 and 2014. Ensure the amendments have been included in Chapter N19."*

The corresponding resolution was to (MIN14.728 N19c):

*“Ensure that the content of the 2012 and 2014 amendments to DCP No. 99 are included in Chapter N19.”*

This draft Amendment essentially seeks to enact this resolution.

### **Draft Chapter N19 Huskisson Mixed Use Zones**

The draft Amendments address important issues relating to waste collection and traffic management within Kent Lane, Winnima Lane and the Unnamed Lane at Huskisson. Other minor housekeeping amendments have been made with respect to Murdoch Street to ensure a consistent approach between the four precincts, improving the legibility of the chapter through use of simplified and clearer language and figures.

The draft Amendments are summarised with relevant justifications in the table of changes at the beginning of the draft Chapter (see **Attachment 1**). The draft Amendments throughout the document are highlighted in green, yellow and blue to indicate whether they are:

- Green - Existing controls to be reworded and/or relocated, or
- Yellow – Existing controls to be deleted, or
- Blue – New controls or additional advisory text to be inserted.

Generally, the changes seek to incorporate the missing controls adopted through DCP No. 99 Amendment No 2, utilise consistent wording (i.e. waste collection, not services), delete duplicated or contradictory controls, address additional recent concerns raised by Councils Traffic Unit and Waste Services Section, minimise conflict between pedestrians and vehicles, and simplify the wording of existing controls relating to the three laneways.

In preparing the draft Amendment, relevant Sections of Council were consulted including Development Services, Waste and Traffic. The issues they raised generally relate to the location of waste collection services in the subject laneways, consistent use of references, improving legibility of locational figures, structures and landscaping adjacent to laneways and traffic management.

Some issues had already been included and addressed as part of the draft Amendment, other issues raised were addressed through further revisions to controls where considered appropriate. Where issues raised were outside the scope of this draft Amendment, they have been noted and will be considered as part of a future broader Amendment to this DCP Chapter. It is also noted that as part of the post-exhibition review, LEP and DCP dictionary terms will need to be highlighted in this Chapter.

Proceeding to exhibit the draft Amendment to Chapter N19 will enable Council staff to action the two minutes referred to above.

### **Community Engagement**

The draft Amendment will be publicly exhibited for a minimum period of 28 days in accordance requirements of the *Environmental Planning & Assessment Act 1979*.

### **Policy Implications**

The draft Amendment proposes changes to Chapter N19 of the Shoalhaven DCP 2014. The proposed amendments relate to an adopted position of Council from 2014 and additional matters to address concerns from Council's Waste Services and Traffic Unit.

**Financial Implications**

The draft Amendment is to be undertaken within the existing Strategic Planning budget.

**Risk Implications**

If the draft Amendment does not progress, there is a risk that any future development adjacent to Kent Lane, Winnima Lane or the Unnamed Lane will not provide sufficient space to allow for waste collection to be provided, or for waste collection trucks to safely manoeuvre in and out of the laneways. Including clear controls in the DCP will help provide clarity for future development applications.

The current laneway arrangement of narrow widths and limited kerb side access may restrict waste collection truck access to the laneways or ability to exit the laneway in a forward direction. This is a particular issue during holiday periods.

The proposed amendments to Chapter N19 are intended to mitigate against these risk implications.

## DE17.71 Update - Nowra Riverfront Precinct - Strategic Direction and Next Steps

**HPERM Ref:** D17/286874

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Draft Report - Nowra Riverfront Strategic Direction: Review & Analysis (under separate cover) [⇒](#)

### Purpose / Summary

To provide an update on the work completed so far for the Nowra Riverfront Precinct and seek endorsement to proceed to the next stage and prepare detailed urban design controls.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive this update on the progress of the Nowra Riverfront Precinct planning work for information; and.
2. Receive a further report once the draft detailed urban design controls have been prepared in accordance with the recommended strategic directions, that considers how to proceed with a potential Planning Proposal for new zones/building heights and supporting planning controls

### Options

1. Adopt the recommendation.

Implications: This will enable Council staff to enact the previous Council resolution and not be delayed by the release of the final concept design for the new bridge crossing.

2. Not proceed further with this project.

Implications: This option is not recommended given the work that has been undertaken to date on this important precinct and the expectation that steps will be taken to facilitate its redevelopment.

### Background

In 2014, Council initially commissioned Studio GL (consultant) to undertake work on the overall Nowra CBD Urban Design Development Controls. At the time, this also included the business zoned land within the Nowra Riverfront Precinct.

The Riverfront Precinct was however deferred from this project due to the announcement by the NSW Government that they would pursue a new bridge crossing to the west (upstream) of the existing bridges. Given that the impact that this crossing and associated relocation of the intersections at Pleasant Way and Bridge Road would have on the precinct and properties in it was unknown.

Council proceeded to adopt the Nowra CBD Urban Design Development Controls in November 2015 and in making that decision also resolved to:

*Proceed to prepare detailed urban design controls for the northern Riverfront/Gateway precinct and report back to Council on the steps required to enable redevelopment of this important precinct.*

As a result planning work recommenced on this important precinct.

### **Nowra Riverfront Precinct**

Various strategic planning work has been undertaken in the last decade related to the Nowra Riverfront Precinct. The proposed detailed urban design controls are intended to build on these documents and move onto the next stage to enable and encourage the positive redevelopment of this important precinct that activates the riverfront, improves connections between the riverfront and the CBD and reinforces the gateway to Nowra.

In proceeding with the Riverfront Precinct work, the precinct area was rationalised and broadened. A number of current projects, spatial constraints, key facilities and uses stimulated the broadening of the precinct to include both sides of the Princes Highway, including:

- Potential impact of the new bridge crossing and associated realignment of the highway and intersections at Pleasant Way and Bridge Road;
- Proposed Shoalhaven Hospital Masterplan;
- Desire to activate the Riverfront as identified in the Illawarra-Shoalhaven Regional Plan;
- Opportunity for increased development close to the CBD and key services to address the need for a variety of housing stock at different price points and for a range of home buyers; and
- The precincts potential as a 'gateway' location to shape the character of Nowra in the future and strengthen the town's role as the civic, community, tourism and recreation hub for the Region.

The Riverfront Precinct area is bound by Shoalhaven River to the north, Hawthorn Avenue to the east, Hyam Street and Graham Street to the south, and Shoalhaven Street to the west.

The Precinct area is shown graphically in *Figure 1* below.





*Figure 1 – Riverfront Precinct Area*

The project consultants prepared a strategic analysis of the precinct that investigated the constraints and opportunities of the area, including its topography and landform, flood risk, urban structure, land ownership, access network, and built form and heritage.

The initial work also involved a detailed review of previous work that has been undertaken including:

- Shoalhaven Development Control Plan (DCP) 2014, Chapter N7 Nowra Hotel Site and Civic Precinct (previously DCP No. 119)
- Nowra Gateway Masterplan (Cox Humphries Moss)
- Nowra CBD Urban Design Master Plan (ARUP)
- Riverfront Precinct Master Plan (Elton Consulting)
- Nowra CBD Heights and Floor Space Ratio (Jackson Teece)

The consultants also reviewed the NSW Roads & Maritime Services (RMS) information on the preferred bridge option as part of the analysis.

In addition, the consultants undertook initial consultation with NSW Government agencies who have an interest in the precinct including NSW Department of Health, Land & Housing Corporation, Department of Planning & Environment, and RMS. Initial discussions were also held with landowners within the precinct. Councillors were also briefed on the initial work in December 2016.

The purpose of the initial consultation exercises was to present the ideas that evolved from the strategic analysis and gauge the response from the various stakeholders. The responses received during the consultations were generally positive and enabled an identification of the preferred direction.

The consultants provided the Strategic Direction: Review and Analysis Report (**Attachment 1** to this report) in August 2017 following the completion of the strategic analysis stage and initial stakeholder consultation.



While the consultants were finalising their strategic direction report for the Nowra Riverfront Precinct, the Nowra Sailing Club was destroyed by fire in June 2017. The report on the Nowra Sailing Club to Council in June 2017 included the following commentary on this project:

*Urban design consultants Studio GL Pty Ltd are currently assisting Council with this project. Councillors were briefed on the project and its next steps in December 2016. Most recently targeted consultation has been undertaken with relevant Government Agencies and also landowners within the precinct.*

*The primary objective of the Shoalhaven River front masterplan is to recognise the opportunities that exist within the Riverfront precinct, identify planning and design principles and recommend a strategic direction for the precinct and the areas within it. It is intended that this Plan will act as a catalyst for future investment and development within the precinct and could lead to the adjustment of planning controls in the area to assist.*

*Opportunities for the Riverfront precinct to also be put forward as potential location for a future regional 'city deal' are also being considered and investigated to help ensure that the long held desire to 'activate' the precinct can be realised.*

*As part of this exercise, the physical connection and relationship with the River generated by the Nowra Sailing Club building has been identified as an opportunity to take advantage of. Whilst it was acknowledged that the building had structural issues, the Plan always intended on building on and fostering the opportunity provided by the existing Nowra Sailing Club building. Thus, the opportunity for a replacement building or structure to provide a focus and opportunity in this location is likely to be something the masterplan will identify.*

*The Nowra Sailing Club building and surrounds also have local historical significance.*

As noted, this planning work provides an opportunity to investigate ways in which the legacy of the previous Nowra Sailing Club building could be honoured or celebrated.

Progress on this project has also been somewhat delayed by the lack of definitive advice from the NSW Government on the likely design for the new bridge and its associated intersections.

### **Strategic Direction: Review and Analysis Report**

The report prepared by the consultants identifies a number of directions to move forward with in regard to the detailed planning of the precinct and to act as a catalyst for positive development.

The strategic directions are built on five objectives of:

1. Increasing safety,
2. Enhancing open space,
3. Improving connections,
4. Strengthening the gateway, and
5. Providing a catalyst for renewal.

These objectives will be achieved through the following actions and design elements, all of which have their own challenges in being achieved.

The recommended strategic directions specifically include:

- Seek to build new roads within the open space area in order to improve connections, enhance access to open space, increase safety, and act as a catalyst for renewal;
- Explore the opportunity to negotiate a "land swap" with the owner of the Riverfront Motel to expand the size of the open space next to the river;
- Poorly located land should be rezoned and sold to help fund open space improvements;
- Move car parks away from the waterfront and reallocate areas with views to riverfront open space;
- In association with the new bridge crossing, seek to create a more legible urban structure and showcase key heritage items;
- The new bridge and gateway intersection should provide an opportunity to improve wayfinding and pedestrian and bicycle access to the precinct and around the precinct; and
- Consider alternative heights in the precinct to encourage growth (additional comment provided below).

In identifying opportunities within the precinct, rationalising building heights was considered as one of the key drivers that could act as a catalyst for positive development and urban renewal in the precinct.

Potential alternative heights have been identified by the consultant that build on the precincts strengths, will encourage growth, achieve an urban edge to the open space and riverfront areas, respect views across the wider landscape and that also addresses potential constraints.

The alternative heights currently identified by the consultant range from two to six storeys and are illustrated in *Figure 4* below. It should be noted that more work is required in this regard and this will be part of the next stage of this project.



*Figure 4 – Recommended Alternative Heights*

The alternative heights that are ultimately recommended by the consultant will be implemented, when that point is reached, through a future Planning Proposal (PP) to amend the Height of Buildings development standard in the LEP that applies to the precinct.

Through the actions and design elements that are described above, the Nowra Riverfront has the potential to achieve three primary outcomes:

1. Connect the Nowra CBD to the riverfront
2. Revitalisation of the riverfront
3. An improved open space along the river

As noted in the report to Council in June 2017 it is intended that this work when completed will act as a catalyst for future investment and development within the precinct. Opportunities for the Riverfront precinct to also be put forward as potential location for a future regional 'city deal' will also be considered and investigated to help ensure that the community's long held desire to 'activate' this precinct can be realised.

### **Next Steps**

The next stage of the Nowra Riverfront Precinct work is to develop detailed urban design controls in accordance with the November 2015 resolution of Council. This will ultimately potentially lead to adjusted planning controls in this area to help achieve the desired outcomes. This will be the subject of future reports to Council as required.

Although there has been no decision on the final concept design for the new bridge crossing by RMS, it is still recommended that Council proceed with the next steps in this project to prevent any further delays.

### **Community Engagement**

The consultant facilitated three landowner presentations on 18 and 19 May 2017 and the findings of the site analysis and the initial ideas on how the development of the Riverfront Precinct could proceed. The concept of increasing height of building development standards, rationalising the road network to provide a more legible and permeable precinct, potential land swap arrangements to optimise public open space and riverfront were discussed with landowners in an open forum.

Additional community engagement will be carried out as this project proceeds and in ultimately moving to implement the existing Council resolution, the future detailed urban design controls for the precinct will require the preparation of a Planning Proposal and DCP Chapter that will be publically exhibited to enable community comment as required by legislation.

### **Policy Implications**

In implementing the existing Council resolution future reports to Council will detail any required DCP Amendment and possible the possible PP to amend the LEP Amendment as a result. With respect to the DCP, any adoption of a chapter that applies specifically to this precinct may also result in the repeal of existing Chapter N9 - Nowra Hotel Site and Civic Precinct.

### **Risk Implications**

The final concept design for the Shoalhaven River bridge crossing has not been released by RMS, therefore the new river crossing has an unidentified impact on land immediately adjacent to the existing bridges and the southern intersections. Another current unknown is what will ultimately happen to the existing heritage bridge and whether it will stay and be utilised for something else or be removed.

## DE17.72 Shoalhaven DCP 2014 - Required Amendment - Chapter G4: Tree & Vegetation Management - NSW Government Land Management & Biodiversity Conservation Reforms

**HPERM Ref:** D17/308277

**Group:** Planning Environment & Development Group  
**Section:** Strategic Planning

**Attachments:** 1. Chapter G4 & Dictionary (under separate cover) [↗](#)

### Purpose / Summary

To advise of the recent changes to NSW legislation in relation to tree and vegetation management, and detail required corresponding amendments (draft Amendment No.21) to Chapter G4: Tree and Vegetation Management of the Shoalhaven Development Control Plan (DCP) 2014 so they can proceed to public exhibition.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the draft Amendment 21 to Shoalhaven Development Control Plan 2014 which includes amendments to Chapter G4 Tree and Vegetation Management and to the Dictionary (detailed in Attachment 1) and which is consistent with Option 1 in the report; and
2. Exhibit the draft Amendment for a minimum period of 28 days in accordance with legislation; and
3. Consider a further report after public exhibition to consider any submissions received and to adopt the amendment for finalisation.

### Options

1. Adopt draft Amendment No. 21 to Shoalhaven DCP 2014 with the inclusion of Environmental zones (option is discussed in detail later in the report) and proceed to public exhibition

Implications: This option will ensure that the DCP is revised and inconsistencies with the recent commencement of the NSW legislation associated with the land management and biodiversity conservation reforms are rectified. The inclusion of Option 1 for Environmental zones is consistent with the intent of these zones and will allow the impact of any clearing in these zones to be assessed. The general DCP exemptions e.g. the 45 degree rule, will continue to apply.

This is the preferred option given that Environmental zoned land has an important conservation and amenity role.

2. Adopt draft Amendment No.21 to Shoalhaven DCP 2014 with the inclusion of Environmental zones and a limited number of exemptions (called allowable activities to

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be consistent with the Local Land Services Act 2013 (LLS Act)) based on a reduced number of routine agricultural management activities (RAMA's) that were permitted under the repealed Native Vegetation Act 2003 (option is discussed in detail later in the report) and proceed to public exhibition.

Implications: This option whilst not being recommended, would still ensure that the DCP is revised and inconsistencies with the recent commencement of the NSW legislation associated with the land management and biodiversity conservation reforms are rectified. However the inclusion of Option 2 for Environmental zones still allows a reduced number of exemptions (allowable activities) based on the RAMA's under the now repealed Native Vegetation Act 2003 (NV Act) that may be considered more appropriate in the Environmental zones.

This option allows landowners to undertake the clearing required for more routine farming activities without consent (e.g. fencing) while requiring assessment of the clearing required for those less routine types of farming activities (e.g. erection of shearing sheds).

Note: the legislation provides a transitional provision for clearing that was permissible without consent under the NV Act for 12 months (until 25 August 2018).

3. Adopt draft Amendment No.21 to Shoalhaven DCP 2014 with the inclusion of Environmental zones with exemptions (allowable activities) based on the full list of RAMA's that were permitted under the now repealed NV Act (option is discussed in detail later in the report) and proceed to public exhibition.

Implications: This option whilst not being recommended, would still ensure that the DCP is revised and inconsistencies with the recent commencement of the NSW legislation associated with the land management and biodiversity conservation reforms are rectified. However the inclusion of Option 3 for E zones maintains what could be considered to be the status quo as it includes additional exemptions (allowable activities) to cover all the situations where RAMA's would have applied under the NV Act. This is a broad list of activities and includes ones where the level of clearing required would perhaps be better considered under a permit process e.g. clearing for a shearing or machinery shed, which permits up to 20 metres of clearing around the structure as well as any clearing required for the footprint of the structure.

4. Not adopt draft Amendment No.21 to Shoalhaven DCP 2014.

Implications: This option is not recommended as it does not address the inconsistencies in the DCP with the recent commencement of the NSW legislation associated with the land management and biodiversity conservation reforms.

## Background

On 25 August 2017, NSW Government commenced the relevant legislation to enact their new framework for land management and biodiversity conservation in the State. A range of legislation commenced, was amended, or repealed, including the following:

- Biodiversity Conservation Act 2016 - commenced
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 - commenced
- Local Land Services Act 2013 and Regulation – amended
- Standard Instrument (Local Environmental Plans) Order – amended
- Environmental Planning and Assessment Act 1979 and Regulation – amended
- National Parks and Wildlife Act 1974 – amended
- Native Vegetation Act 2003 - repealed

- Threatened Species Conservation Act 1995 - repealed

#### Automatic Amendment to Shoalhaven LEP 2014

Any amendment to the Standard Instrument (Local Environmental Plans) Order automatically results in the subsequent amendment of any LEP's based on the Standard Instrument; thus Shoalhaven LEP 2014 was also amended through this process.

The amendment had the effect of repealing *Clause 5.9 Preservation of trees or vegetation*. Clause 5.9 set out that Council could prescribe in a DCP the trees or other vegetation that required development consent or a permit issued by Council for their removal or pruning.

#### SEPP (Vegetation in Non-Rural Areas) 2017

The previous LEP Clause 5.9 has been replaced with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (the Vegetation SEPP) which applies to all zones except the Rural Zones RU1 to RU4. It sets out when a permit from Council is required for the clearing of vegetation in non-rural areas and requires a DCP to declare the vegetation to which the SEPP applies.

Consistent with the Vegetation SEPP, the DCP can only apply to non-rural land that does not exceed the biodiversity offsets scheme threshold (as per section 7.4 of the *Biodiversity Conservation Act 2016* – see table below). Any clearing that exceeds the threshold is to be assessed by a Native Vegetation Panel.

**Note:** Clearing of vegetation exceeds the **biodiversity offsets scheme threshold** if it is:

- the clearing of native vegetation of an area that exceeds the threshold (see Table below), **or**
- the clearing of native vegetation is on land mapped as 'Sensitive Values' on the Biodiversity Values Map prepared by the Office of Environment and Heritage (OEH) and located on their website.

**Table: Threshold by minimum lot sizes**

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

The minimum lot size applicable to any land being cleared is as follows:

- (a) the minimum lot size as shown on the Shoalhaven LEP 2014 Lot Size Map, or
- (b) if the Lot Size Map does not map a minimum lot size for the land, the actual size of the allotment of land on which the proposed development is to be carried out.

The new SEPP includes provisions regarding the permit process, and the functions and approval process of the Native Vegetation Panel (including the ability to delegate the exercise of its functions to a council).

There is a special transitional provision for existing allowable NV Act clearing within R5, E2, E3 and E4 zones which gives landowners 12 months from the commencement of the SEPP to continue certain clearing that was permitted without consent under the NV Act.

#### DCP Chapter G4: Tree & Vegetation Management.

The SEPP contains a transitional provision so Chapter G4 of Shoalhaven DCP 2014 is taken to be a DCP for the purposes of the SEPP, however, there are inconsistencies between the Chapter and the SEPP that need to be resolved, for example, any requirements in the DCP that relate to Rural Zones RU1 to RU4 e.g. trees along rural roads, are no longer enforceable

under the new legislation. There is also an issue with Environmental zones which is discussed in detail below.

#### Clearing in Environmental zones

The NV Act has been repealed and has been replaced in part by amendments to the LLS Act. However, these amendments only apply to land in the RU1 to RU4 zones. Environmental zones were previously covered by the NV Act, but are not covered the LLS Act. Therefore, any clearing below the new biodiversity offsets scheme threshold is now not covered by any restrictions and can be carried out without consent.

Under the previous NV Act, clearing required consent from State Government unless exempt via a RAMA. Environmental zones were previously not specifically included in the DCP (except where mapped as a verified Endangered Ecological Community or other specific situation) as this would have created a dual consent requirement where an applicant would require consent from both Council and State Government for the same clearing

There are three potential options to resolve this issue or omission in the DCP Chapter, as follows:

#### Option 1 (preferred option)

Add the Environmental zones as land to which the DCP Chapter applies - means that any clearing under the threshold will require a permit application to be made to Council. This is consistent with the intent of these zones to protect, manage and restore areas of ecological, scientific, cultural and aesthetic value. It will allow the impact of any clearing to be assessed. The general exemptions in the current DCP (e.g. the 45 degree rule), will continue to apply.

This is the preferred option given that Environmental zoned land has an important conservation and amenity role that needs to be safeguarded. **Attachment 1** contains the suggested draft changes to the DCP.

#### Option 2

Add the Environmental zones as land to which the DCP Chapter applies but include a reduced number of exemptions (allowable activities) based on the RAMA's under the previous NV Act, but that are more appropriate in the Environmental zones and more in keeping with the objectives of the zones. The potential allowable activities and associated clearing are set out in the table below.

#### **Option 2: Allowable activities in E zones**

<b>Allowable activity</b>	<b>Maximum amount of clearing permitted</b> (only to the minimum extent of clearing necessary for that purpose)
Permanent boundary fence	6 metres either side
Permanent internal fence	6 metres total width of clearing
Temporary fence	3 metres total width of clearing
Road or track	6 metres total width of clearing

#### Option 3

Add the Environmental zones as land to which the DCP Chapter applies but include additional exemptions (allowable activities) to cover all the situations where RAMA's would have applied under the NV Act.

This is quite a broad list of activities, most of which require consent from Council irrespective. The level of clearing required would be better considered through the development application process for the associated structure e.g. clearing for a shearing or machinery shed which permits up to 20 metres of clearing around the structure as well as any clearing required for the footprint of the structure. The potential allowable activities and associated clearing are set out in the table below.

### Option 3: Allowable activities in E zones

Allowable activity	Maximum amount of clearing permitted (only to the minimum extent of clearing necessary for that purpose)
Permanent boundary fence	6 metres either side
Permanent internal fence	6 metres total width of clearing
Temporary fence	3 metres total width of clearing
Road or track	6 metres total width of clearing
Pipeline	3 metres total width of clearing
Shearing or machinery shed	20 metres from the outer edge of the structure
Ground tank	15 metres from the outer edge of the structure
Tank (other than a ground tank)	3 metres from the outer edge of the structure
Dam	15 metres from the outer edge of the structure
Stockyards	20 metres from the outer edge of the structure
Bore	10 metres from the outer edge of the structure
Pump	3 metres from the outer edge of the structure
Water point	3 metres from the outer edge of the structure
Windmill	10 metres from the outer edge of the structure

### DCP Amendment No.21

Draft Amendment No.21 is intended to update DCP Chapter G4 in response to NSW Government's land management and biodiversity conservation reform, remove any inconsistencies, and ensure that it complies with the Vegetation SEPP. The amendment:

- Aligns the DCP with the removal of *Clause 5.9 Preservation of trees or vegetation* from Shoalhaven LEP 2014 and the introduction of the Vegetation SEPP.
- Includes Environmental zones in the DCP to control clearing in Environmental zones given the repeal of the NV Act.
- Amends the Supporting Maps to remove any mapped rural areas as the Chapter can no longer apply to land zoned RU1-RU4.

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Flow on amendments to the Shoalhaven DCP 2014 Dictionary and minor changes (typos, formatting, changes for document consistency and usability etc.) are also included in this amendment.

The draft amended Chapter G4 and Dictionary are included as Attachment 1. Both the Chapter and the Dictionary include a table of changes which outline the changes that are being made, with a reason for each of the changes.

### **Community Engagement**

Should draft Amendment No. 21 be adopted, it will be placed on public exhibition for a minimum of 28 days to allow the community to view and comment on the changes.

Any issues raised in submissions made during this time will be reported to Council for consideration.

### **Policy Implications**

The Vegetation SEPP includes a savings provision relating to DCP's which means that a DCP that prescribed trees and vegetation for the purpose of Clause 5.9 of Shoalhaven LEP 2014 is taken to be a DCP that declares trees and vegetation for the purpose of the Vegetation SEPP. Therefore, Chapter G4 continues to operate for the purposes of the Vegetation SEPP, albeit no longer applying to rural zones.

The Chapter still needs to be updated to reflect the legislation changes and more importantly to put in place provisions relating to Environmental zoned land which are now partially unregulated with the repeal of the NV Act.

Other DCP chapters will also need to be updated to reflect the changes in legislation including:

- G5: Threatened Species Impact Assessment
- N20: Jerberra Estate

These chapters will be included in a future amendment once Council staff have a better understanding of the operation of the new legislation.

### **Financial Implications**

This project is being managed within the existing Strategic Planning Budget using existing staff resources.

### **Risk Implications**

DCP Chapter G4 is now inconsistent with the new legislation, and is likely to cause confusion and misinterpretation for Council staff, landowners, and community members, particularly in relation to:

- Clearing on rural land which is now solely regulated under the Local Land Services Act 2013 as there is a risk that landowners may rely on the Chapter to undertake clearing in rural zones.
- Landowners may inadvertently undertake illegal clearing of land that is mapped on the Biodiversity Values Map without being aware of its existence given that there is no reference to the map or associated threshold in the current chapter.

There is also a risk of negative impacts on the amenity and biodiversity values of Environmental zoned land given the current situation where landowners can undertake relatively large amounts of clearing in these zones (up to 5000m<sup>2</sup>) without the need for assessment through a permit application.

## DE17.73 Development Application – proposed 2 lot subdivision at Lot 4 DP1027849 (no.22) James Farmer Grove, Woollamia

**DA. No:** SF10551/4

**HPERM Ref:** D17/99695

**Group:** Planning Environment & Development Group  
**Section:** Development Services

**Attachments:** 1. Proposed Plan of Subdivision - SF10551 [↓](#)

**Description of Development:** Two (2) lot subdivision

**Owner:** M & J Brooks

**Applicant:** Lee Carmichael Town Planning (LCTP)

**Notification Dates:** 14 – 28 February 2017

**No. of Submissions:** Nil

### Purpose / Reason for consideration by Council

The development application (DA) proposes a variation to Shoalhaven Development Control Plan 2014 (SDCP 2014), Chapter G8 *Onsite Sewage Management*, to permit the provision of pump out services to a proposed lot to be created via the subdivision of land as proposed in Development Application SF10551.

Provision of pump out services to new lots requires Council approval.

The land is mapped as being within the flood planning area. The land contains land that is high hazard storage. Council's SDCP 2014, Chapter G9 states that subdivision should not create new lots that are in a high hazard area or flood way in today's conditions or in the climate change conditions up to the year 2100.

### Recommendation (Item to be determined under delegated authority)

That the request to permit the provision of effluent pump out services to proposed lot 1 and subdivide the flood affected land:

1. Be supported.
2. Refer the application back to staff for determination.

### Options

1. Support the variation to Shoalhaven Development Control Plan 2014 with respect to, pump out and the subdivision of a flood affected lot:

This will permit the provision of a pump out service to proposed Lot 1 and subdivision of flood affected land.

Implications: This will enable the completion of the s79C assessment and determination of the application.

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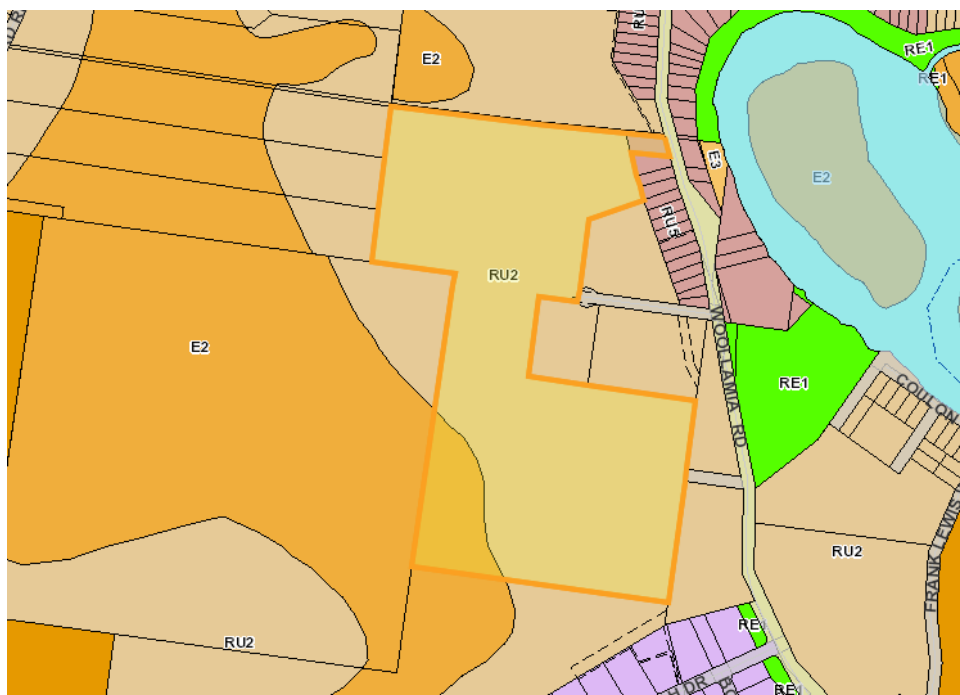
2. Not support the variations to Shoalhaven Development Control Plan 2014.

Implications: The DA as currently submitted will not be able to be supported and would therefore be determined by way of refusal under delegated authority.

3. Adopt an alternative recommendation and provide direction to staff.

### Location Map

The subject land is Lot 4 DP1027849 (no. 22) James Farmer Grove, Woollamia. The lot also enjoys frontage to Woollamia Road. The land is part zoned E2 – Environmental Conservation, part RU2 – Rural Landscape and part RU5 Village under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 1 below.



**Figure 1 – Subject Land & Zonings**

**Extract from Shoalhaven Local Environmental Plan 2014**

### Background

#### History

The subject property was created via SF7919 and registered on 9/5/2001.

The existing dwelling on proposed lot 2 was approved via DA05/1325.

#### Subject Land

The land is located on the western side of Woollamia Road, at the southern end of the Woollamia village.

The land is unsewered. There is an existing dwelling on land zoned RU2 – Rural Landscape, (which is part of the proposed Lot 2) and has a current Approval to Operate a Sewage Management Facility. Proposed Lot 1 will be vacant land, zoned RU5 with direct frontage to Woollamia Road.

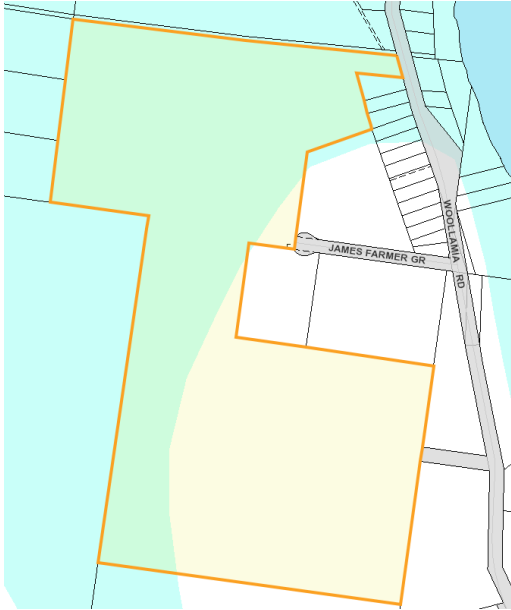
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Shoalhaven Water has advised that town sewer will not be available to this site in the immediate future. That is, not within the next four years.

The land is also flood affected, bushfire prone and partly within a Sensitive Coastal Location as mapped under State Environmental Planning Policy No. 71 – Coastal Protection (SEPP71).

The land is also flood affected. Figure 2 shows the site within the Flood Planning Area.

The RU2 zoned land has recently been cleared. (The clearing issue has been dealt with by the Compliance Unit as a separate matter.)



**Figure 2 – Flood Planning Area**



**Figure 3 – Aerial Photo**

### Proposed Development

In summary:

- The proposal is for a 2 lot subdivision under Clause 4.1E *minimum lot size for certain split zone lots*.
- Clause 4.1E enables the subdivision with multiple zones where the rural or environmental zoned land does not and would not achieve the minimum lot size requirement.
- Proposed lot 1 would have an area of 1,419m<sup>2</sup>, whereas proposed Lot 2 would have an area of 24.97ha.
- Proposed lot 1 would be a vacant block of RU5 zoned land.
- Proposed lot 2 would have the existing dwelling and outbuildings and would contain RU5, RU2 and E2 zoned land.
- To ensure compliance with Clause 4.1E, a small area (535m<sup>2</sup>) of RU5 zoned land must be attached to the proposed Lot 2. This is the hatched area shown in Figure 4 below.



*In support of the proposal, the applicant stated:*

*The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform."*

In relation to effluent disposal, the existing dwelling is connected to an on-site effluent disposal system which operates under the approval of the Shoalhaven Council and is subject to regular inspections.

The proposed new lot will not rely upon an on-site effluent disposal system. The new lot is proposed to be serviced by way of a pump-out system. Impacts on the environment as a result of effluent disposal in connection with the proposed subdivision of the land are therefore not expected.

#### The applicant also states:

It is requested that the Council approve a pump-out service for the proposed lot for the following reasons:

- 1) Site conditions are such that on-site disposal of effluent is not a straight forward matter. The size of the new lot is such that on-site disposal would not be possible. Further, complications arise to the site being liable to flooding.
- 2) Effluent pump-out services are currently available to the village of Woollamia. The additional lot proposed should not present any inconveniences to local contractors for the servicing the new property.
- 3) Section 64 Contributions will be paid to the Council for the creation of the new lot for water and sewerage services. This is to cover the future costs associated with the treatment of collected effluent;
- 4) The new lot will have a collection point located close to the public road for easy collection by the pump-out contractor.

Based on the above justification, it is requested that Council approve this development application for subdivision with permission for each lot to be serviced by way of effluent pump-out.

The whole of proposed Lot 1 is low lying and unsuited to on-site effluent disposal. Proposed Lot 1 has however a residential zone, which creates an expectation that the land can be used for a residential purpose.

Whilst there are environmental risks associated with the provision of pump out service to proposed Lot 1, it is anticipated that reticulated town sewer will be available within five years. In this regard, pump out may be an appropriate option noting that it is an **interim solution**.

#### Environmental Health Officer Comments

Chapter 8 – On-site Sewage Management states that new pump out services are not to be provided to new subdivisions. This is due to pump out being less cost effective and less efficient compared to on-site sewage management or reticulated sewerage. There are also traffic and pollution issues associated with transportation of effluent by truck.

In addition, Council has received complaints from residents regarding pump out systems in Woollamia during times of flood.

Such complaints include the truck not being able to access properties due to flood waters and complaints of effluent leaking from tanks during time of flood and being present in floodwaters, creating a public health and environmental risk. The most recent of such complaints was a submission during the release of the Currumbene and Moona Mona Creeks Floodplain Risk Management Study and Plan, dated April 2016.

The environmental health comments also mentioned that in addition, the applicant has claimed that the size of the new proposed lot 1 (1,419 m<sup>2</sup>) would not facilitate on-site disposal. A minimum lot size of 2,500 m<sup>2</sup> is listed as an acceptable solution for on-site



sewage management. Accordingly, it was suggested that the applicant could review the proposed lot sizes and have an on-site wastewater assessment completed by a suitably qualified consultant.

Whilst the comments provided by the environmental health officer were not supporting it was acknowledged that:

*“Sometimes pump out may be appropriate where an area is soon to be connected to sewer. Confirmation of any proposal and timeframe to connect the Woollamia Village area to reticulated sewer should be received from Council’s Shoalhaven Water Group.”*

#### Shoalhaven Water comment

The 2017/18 Capital Expenditure Budget – Water & Wastewater, notes that in 2018/19 and 2019/20, Woollamia is programmed to receive pressure sewer services.

However, whilst this is the current planning horizon the Capital Expenditure Budget may be subject to change should priorities and funding issues arise.

#### Summary

- Proposed lot 1 would have insufficient area for on-site disposal.
- Use of pump out facilities are likely to be an interim arrangement until such time as connection to pressure sewer services become available to the Woollamia Village.

#### Issue 2 – Flooding

##### Access

##### Natural Resources comment:

*“The greatest concern for subdivision development in high hazard flood storage is access, thus why the Chapter G9 indicates this sort of development being not suitable. However, the access onto Woollamia Road is not restricted in a 1% AEP flood event (as demonstrated in Council’s flood information).*

*Any future dwelling proposal will need comply with Chapter G9. It is recommended that flood affectation be indicated in the 88B for awareness to future buyers.*

*.....For the internal access taking the assumption that it comes off Woollamia Rd along the southern boundary, and if assumed that the access is constructed on the ground the access can be inundated with up to 300mm of water in a 1% AEP flood event. Checking the water depth-velocity product (pg. 63), the proposal complies with 0.3m<sup>2</sup>/s requirement. However practically the access would need to be raised to meet Council’s driveway standards.”*

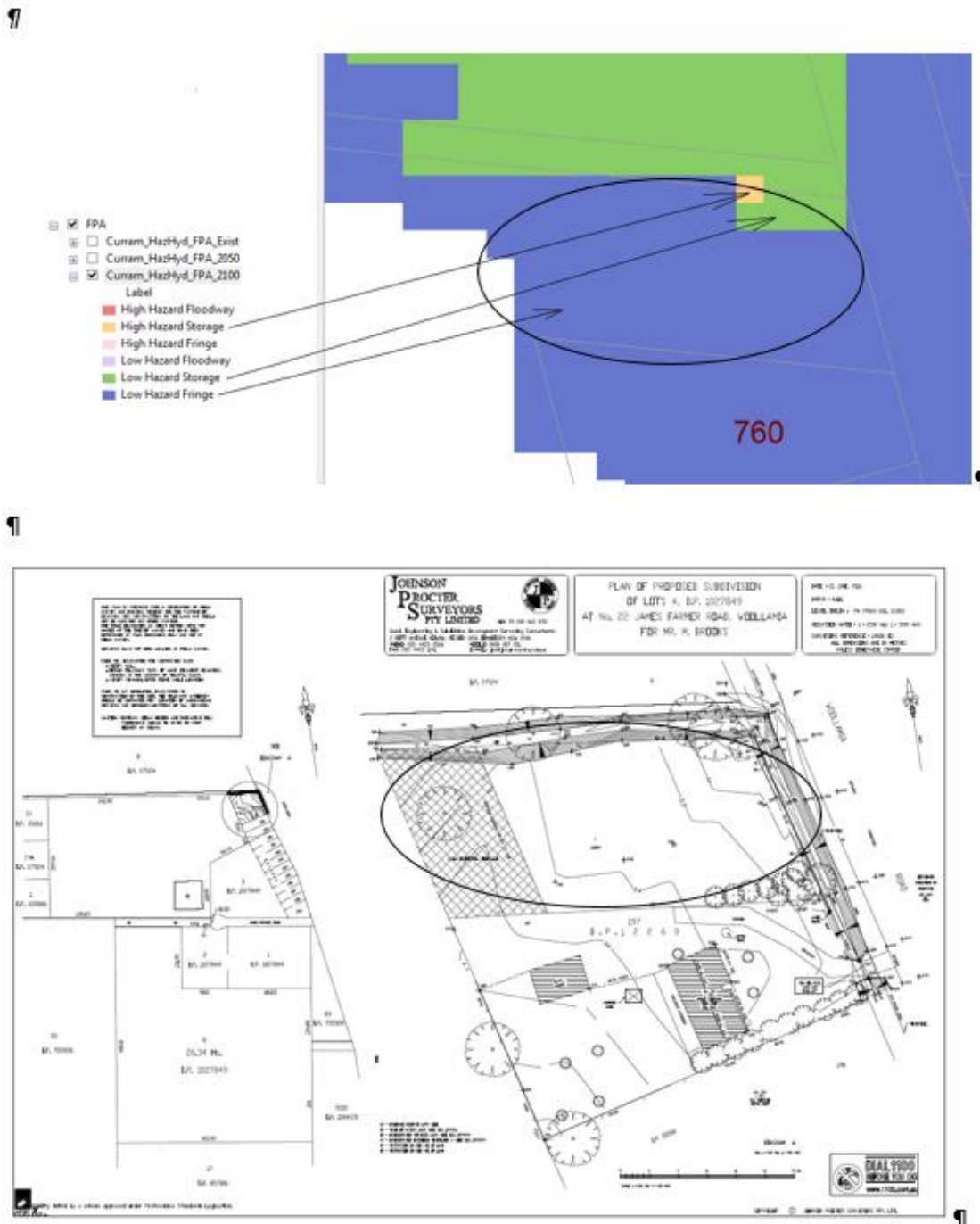
Therefore, based on the above findings the proposed subdivision can achieve suitable egress, an important consideration having regard to development in flood affected locations.

##### Building Envelope

The proposal has been assessed as also containing an adequate building envelope / area, subject to some minor filling.

##### Natural Resources comment:

*“The flood certificate indicates the land being effected by high hazard flood storage. However not all of the lot is categorised high hazard flood storage. Part of the property is categorised low hazard flood storage, part of the property is categorised low hazard flood fringe and part of the property is above the flood planning level as seen below:*



**Figure 5 – Diagrammatic representation of flooding / Comparison to subdivision plan**

Given the above is diagrammatical representation of the flooding, further checks were made using:

- Figure L2 of the Floodplain Development Manual 2005 to check hazard categories;
- Survey provided by the consultant;
- 1% AEP flood levels (based on 2100 i.e. 2.4mAHD) and velocities from Council's Currumbene Floodplain Risk Management Study and Plan (2016).

After checking the flood data against the survey, the above diagrammatical representation can be relied on for this assessment. Based on this information only a small portion of the site is effected by high hazard flooding as shown above which is

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*negligible. Therefore, the site is considered low hazard and subdivision is permissible under Chapter G9 - Schedule 6 (pg. 60) providing reliable access for pedestrian and emergency services is provided during a 1% AEP flood event (as per A3.2 page 8).*

*Based on Chapter G11 A79.3 (pg. 41), the proposed development does not comply as they (sic) don't have enough nominal building envelope above the 1% AEP flood level of 2.4m AHD. Assessing the survey, a fair section of the building envelope is above 2.2m AHD and increases as the block slopes to the west. Practically, site regarding (sic) (filling) will be required prior building construction and this may result in raising the land which may end up complying with this requirement. The filling/regrading of the building envelope does not trigger any filling controls in Chapter G9.*

*To conclude, the proposed subdivision developments meets Chapter G9 requirements, however does not meet the Chapter G11 control A79.3. For Chapter G11 control A79.3, as explained above the control can be met given site regarding will be required prior building construction.*

Chapter G11 is Subdivision of Land, A79.3 is an acceptable solution which is:

*"A79.3 Small scale infill subdivision on flood prone land – For small scale infill subdivisions a nominal building envelope of approximately 15m wide and 21m deep, sited in accordance with the requirements of Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures be provided above the 1% flood level on each proposed lot in the subdivision."*

The development is capable of achieving the acceptable solution but importantly with a combination of filling and suitable design the performance criteria can be met which is:

*"Lots have the appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings, the provision of outdoor space, convenient vehicle access and parking."*

In support of the application, a detailed Flood Impact Statement for Proposed Subdivision was prepared by Rienco. The report concluded as follows:

- *"The subject site is located within the Currumbene Creek and Moona Moona Creek catchment. The site is currently developed as a residential property with rural uses and ranges in height from RL +0.8m AHD to RL +3.27m AHD.*
- *Flood levels applicable to the subject site are as follows:*
  - *RL +2.10 m AHD for a 1% AEP event that occurs today (i.e. 2016).*
  - *RL +4.30m AHD for the PMF event that occurs today (i.e. 2016).*
- *The Flood Planning Level (FPL) applicable to future development on the site is RL +2.90m AHD for 2100 climate change scenario.*
- *The proposed development meets all the requirements of the Shoalhaven LEP (2014) Clause 7.3."*

Of significance to this application is that reliable access is achievable on the newly created lot up to 500mm higher than the current 1% AEP peak flood level and that Woollamia Road at the frontage of the proposed lot, it is flood free in the 1% AEP event. Construction of an access point would be required from Woollamia Road to Lot 1.

## Planning Assessment

The DA is being assessed under s79C of the Environmental Planning and Assessment Act 1979.

In the event that pump out services are not supported or that the subdivision of the lot is not considered acceptable, the final s79C assessment would not result in a favourable recommendation.

## Policy Implications

### Shoalhaven Development Control Plan 2014 (SDCP 2014)

Chapter G8 of the SDCP 2014 does not support the provision of new pump out services to new subdivisions unless the environmental impacts are minor or the alternative carries a greater environmental risk.

Chapter G9 of the SDCP 2014 indicates that a subdivision of High Hazard Flood Storage area is not considered suitable. However, a detailed report has been submitted and accepted by Council's technical staff, noting in particular that reliable access is achievable.

## Consultation and Community Engagement:

The DA was notified in accordance with Council's Community Consultation Policy with letters being sent to property owners within a 100m buffer of the site. The notification was for a two (2) week period. No submissions were received.

## Financial Implications:

In the event that Council decides to adopt the recommendation, the application will still need to have a favourable final s79C assessment to enable consent to be issued however the issue of effluent and flooding will have been resolved.

It is also important to note Council resolved on 19 December, 1995 that:

*"If Council resolves to allow a new effluent pump out service for a particular circumstance which is not in accordance with policy then the pump out service be at the full cost of providing the pump out service and this will be noted on the Section 149 Certificate and Title Deeds."* (Chapter G8 page 13)

If the pump out and subdivision of the flood affected land is not supported (which would result in an unfavourable assessment), the applicant could potentially appeal the decision in the Land and Environment Court. Legal action would have cost implications for Council.

## Legal Implications

Should the pump out or subdivision of flood affected land not be supported and the application ultimately refused, then the applicant may, as mentioned above, appeal to the Land and Environment Court.

## Summary and Conclusion

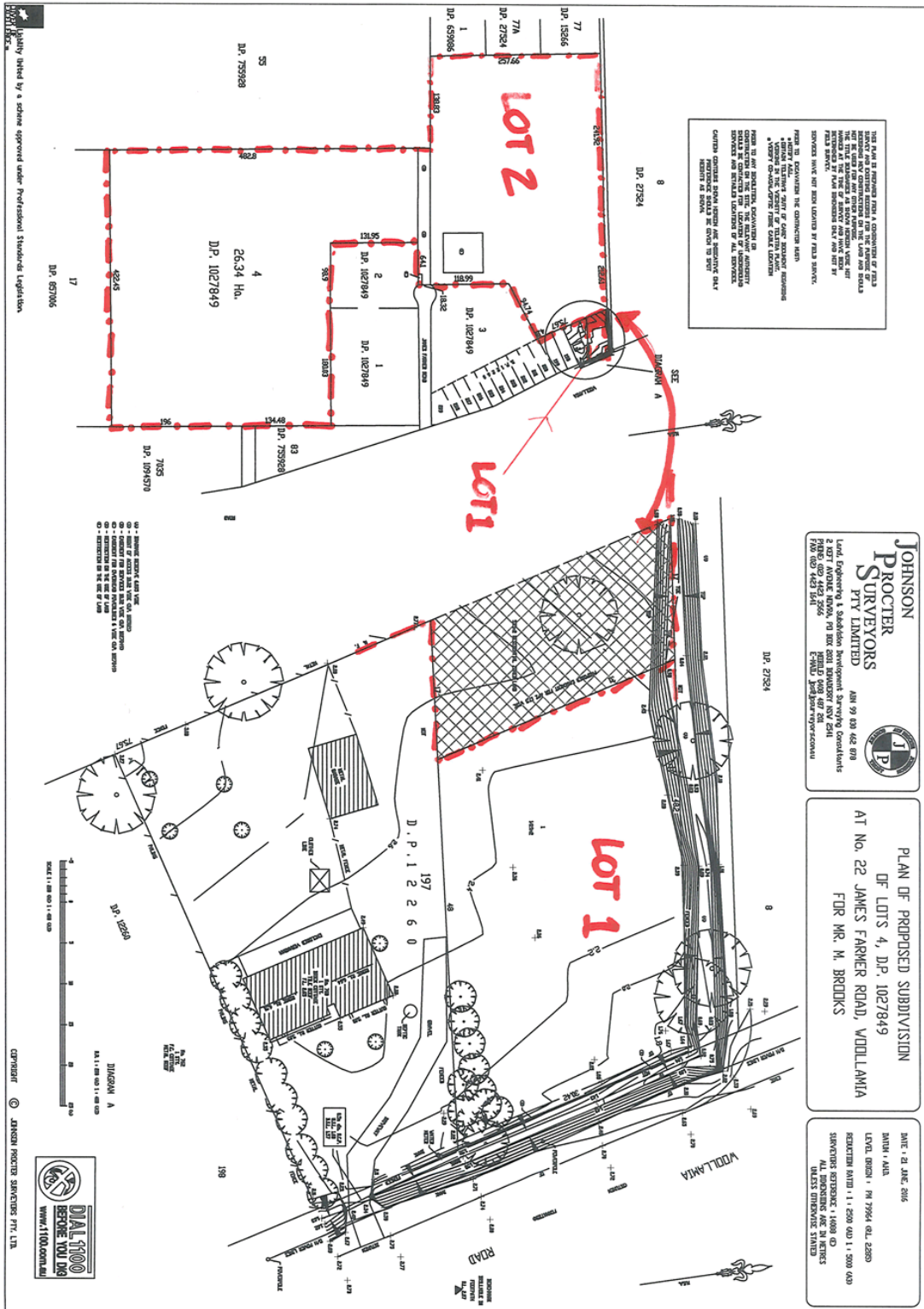
The residential zoning of proposed Lot 1 creates an expectation that the land can be used and developed for residential purposes.

Whilst there are environmental risks associated with the provision of a pump out service to proposed Lot 1, it is acknowledged that this would be an interim arrangement noting that reticulated town sewer is likely to be available within five years. The lot is unsuitable for

alternative forms of effluent disposal. On this basis, the proposal for pump out services is considered a suitable option in the circumstances of the case.

Whilst the land is flood affected, noting that a suitable flood level is considered achievable for a future dwelling and that reliable access is available to the land, the proposal is considered capable of support.

# DE17.73 - Attachment 1



## DE17.74 DA16/2070 – 7 Beach Street, Huskisson – Lot B DP 359526 – Proposed Residential Flat Building

**DA. No:** DA16/2070/4

**HPERM Ref:** D17/253749

**Group:** Planning Environment & Development Group  
**Section:** Development Services

**Attachments:**

1. Planning Report - Residential Flat Building (under separate cover) [⇒](#)
2. Appendix A - Apartment Design Guide Compliance Summary (SEPP 65) (under separate cover) [⇒](#)
3. Excerpt to Council Response Report - 7 Beach St Huskisson (under separate cover) [⇒](#)
4. Addendum to SEE - FSR Clause 4.6 Variation - 7 Beach St Huskisson (under separate cover) [⇒](#)
5. Solar Study (under separate cover) [⇒](#)
6. Draft Development Consent - Residential Flat Building (under separate cover) [⇒](#)

**Description of Development:** Demolition of existing dwelling and ancillary outbuilding, and Construction of a residential flat building

**Owner:** JACA Property Group Pty Ltd

**Applicant:** JACA Property Group Pty Ltd

**Notification Dates:** 23 September 2016 to 10 October 2016

**No. of Submissions:** Five (5) in objection  
Nil in support

### Purpose / Reason for consideration by Council

Councillors called in the Development Application (DA) due to extensive public interest on 25 October 2016.

The matter was previously reported to Council on 11 April 2017. At that meeting, Council resolved not to support the application in its current form and for the DA to be reported back to the Committee for determination when further analysis was completed.

### Recommendation (Item to be determined under delegated authority)

That Development Application DA16/2070 to demolish the existing dwelling and ancillary outbuilding and construct a residential flat building at Lot B DP 359526, 7 Beach Street, Huskisson be approved subject to the recommended conditions of consent contained in Attachment 6 of this report.

### Options

1. Approve the development application (DA) in accordance with the recommendation of this report.

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**Implications:** This would allow the applicant to pursue construction of the residential flat building.

2. Refuse the application.

**Implications:** Council would need to determine the grounds on which the application is refused, having regard to section 79C considerations.

3. Alternative recommendation.

**Implications:** Council will need to specify an alternative recommendation and advise staff accordingly.

**Figure 1 – Location Map**



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## Background

### Proposed Development

The DA seeks approval for the demolition of the existing dwelling and ancillary outbuilding and construction of a five (5) storey residential flat building (including basement parking), containing twelve (12) dwelling units:

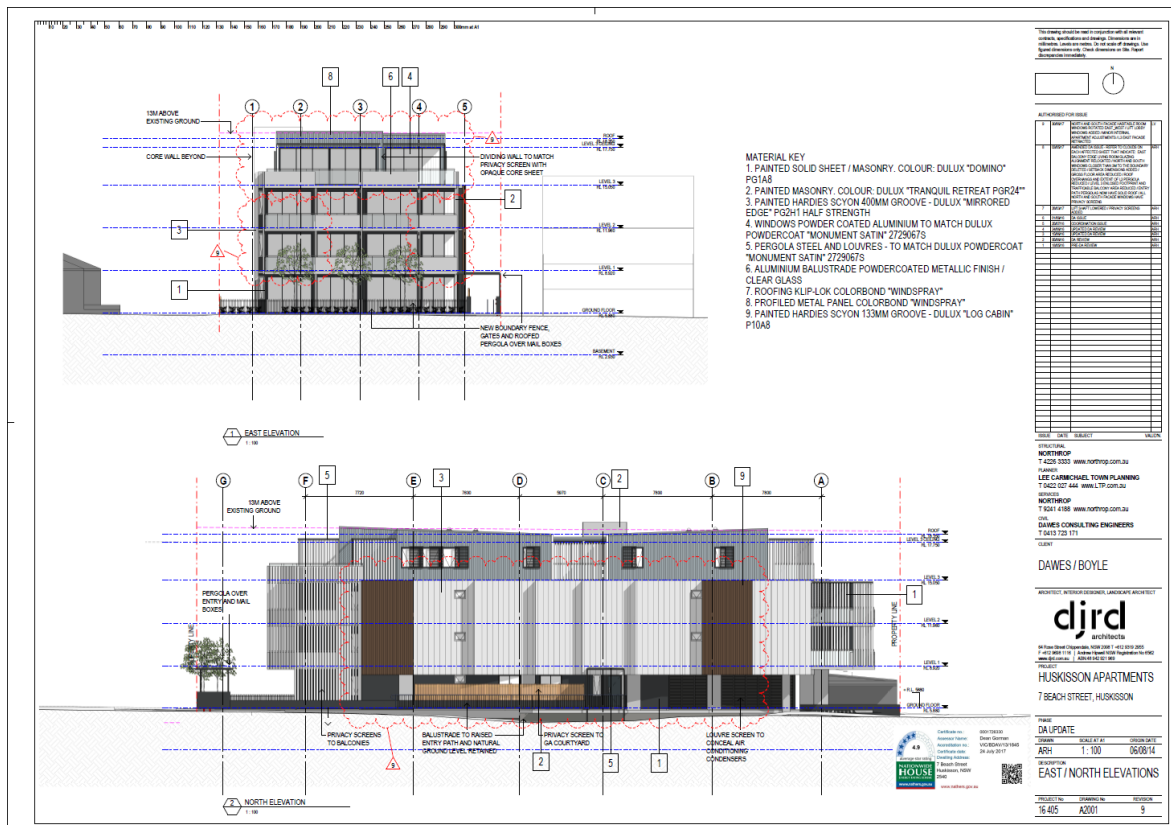
- 2 x 2 bedroom and 10 x 3 bedroom apartments; and
- 22 car spaces, with 2 spaces also provided at ground level adjacent to Winnima Lane.

Vehicular access is proposed from Winnima Lane only, effectively providing rear access to the development.



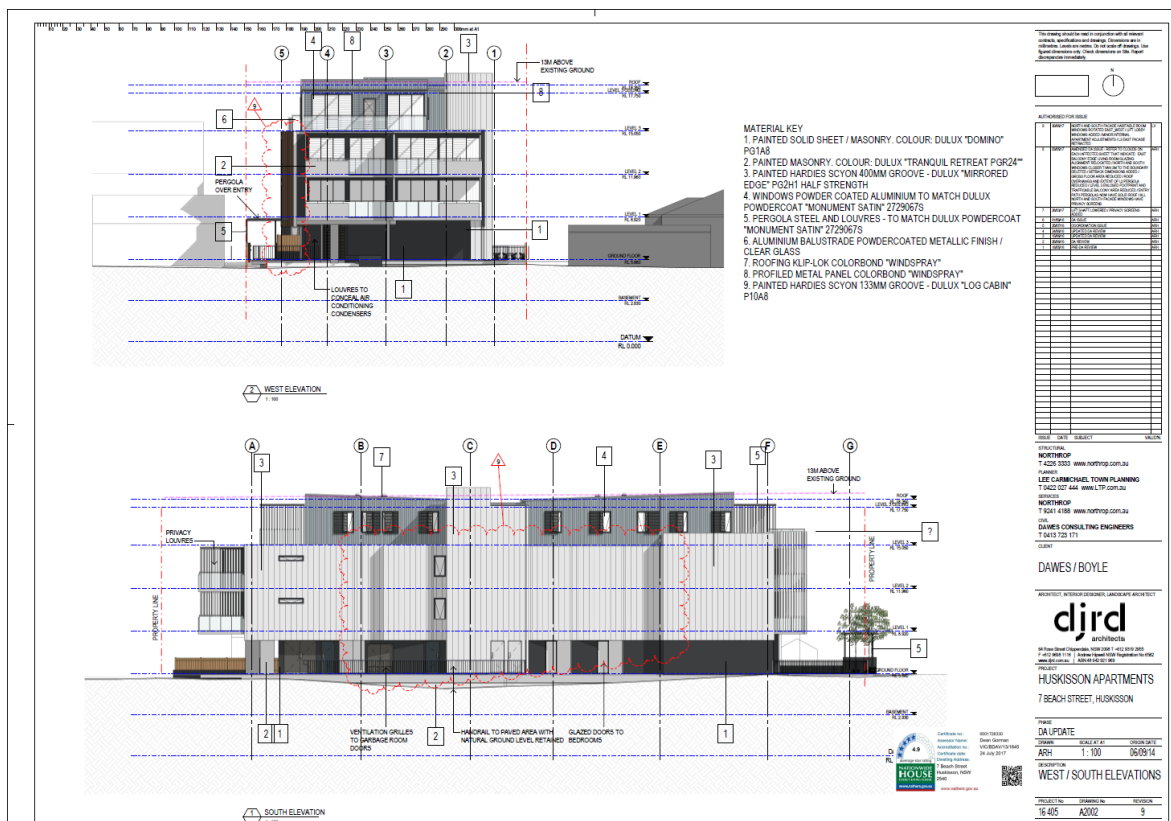
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Figure 4 – North and East Elevations



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Figure 5 – South and West Elevations



**Figure 6 – View from Beach Street**



**Figure 7 – View from Winnima Lane**



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### Subject Land

The development site comprises Lot B DP 359526 (7 Beach Street, Huskisson). Refer to Figure 1.

### Site & Context

The development site:

- Contains an existing two (2) storey dwelling house and ancillary outbuilding;
- Is zoned B4 Mixed Use and 1,011.71sqm in area;
- Is identified as being part bush fire prone land;
- Has existing access from Beach Street. The rear boundary of the site adjoins Winnima Lane; and
- Adjoins land zoned B4 Mixed Use and RE1 Public Recreation, under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 8.

**Figure 8 – Zoning Extract**



### History

The following provides details on pre-lodgement discussions, post-lodgement actions and general site history for context:

- A pre-lodgement meeting was held with planning, building and engineering staff and the applicant's planning consultants (Development Advisory Unit (DAU) Meeting on 19 April 2016).
- The application was lodged on 8 September 2016.
- As a result of detailed assessment of the application, additional information was requested from the applicant on eight (8) occasions – 19 September 2016, 14 October

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2016, 18 October 2016, 15 November 2016, 13 December 2016, 8 March 2017, 22 June 2017 and 20 July 2017.

- On 20 and 21 December 2016, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council for comment.
- On 8 March 2017, following detailed assessment of the application and submitted information, additional information was requested in order to particularly address the provisions of clause 4.6, SLEP 2014 and State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and associated Apartment Design Guidelines (ADGs).
- On 13 March 2017, the applicant submitted a written response detailing that design modifications are proposed to assist in addressing privacy and solar impact issues.
- The application was reported to the Development Committee Meeting on 11 April 2017, in which Council resolved that:
  - “1. On the basis of the information provided to date, Council is not prepared to support the variations to the SEPP65 guidelines and Council’s DCP2014;*
  - 2. Determination of the application be deferred to further assess the impacts with respect to solar, privacy and streetscape considerations having regard to future development on neighbouring sites; and*
  - 3. Staff report the application back to the Committee for determination when the further analysis is complete.”*
- On 1 June 2017, additional information received from the applicant in response to the above Council resolution was referred to Studio Zanardo (an urban design consultancy) in order to undertake a design review of the proposal.
- The review was to include the preparation of a compliance table against relevant provisions of SEPP 65, the Apartment Design Guide (ADG) and Council’s Chapter N19: Huskisson Mixed Use Zones, Shoalhaven Development Control Plan 2014 (SDCP 2014) and provide a commentary on design outcomes.
- On 22 June 2017, following an urban design review of the application by Studio Zanardo, additional information was requested of the applicant to resolve issues under the relevant objectives of the ADG and Chapter N19, SDCP 2014.

The major issues identified were:

- visual privacy and noise related to;
  - building separation; and
  - windows to corridors.
- On 14 July 2017, the applicant submitted a written response with amended plans addressing Studio Zanardo’s comments.
- On 20 July 2017, following assessment of the latest documentation, additional information was again requested in relation to the extent of storage space in the basement, reconfiguring the arrangement of the entry holding bay and the BASIX Certificate.
- On 26 July 2017 and 18 August 2017, the applicant submitted amended plans and BASIX Certification addressing Council’s request.

## Issues

### 1. State Government Design Guidelines:

#### State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG) – Non-compliance with Design criteria (1) of Section 3F – Visual Privacy.

The required separation distance from habitable rooms and balconies of the proposed building to side and rear boundaries is **6m** and **3m** for non-habitable rooms.

The proposed separation at **2.5 – 4m** to the side boundaries is less than required. This results in a numerical variation of approximately **33-58%** for habitable rooms and balconies.

The proposed separation of a minimum **1.8m** to the rear boundary is less than required (Unit 1C, 1D, 2C and 2D). This results in a maximum variation of **70%** for habitable rooms and balconies, though it is noted that the rear boundary adjoins Winnima Lane.

It is also evident that solar access for neighbouring sites will be reduced by this proposal, especially given the reduced side boundary setbacks. The design guidance component of Section 3B – Orientation suggests that if a proposal significantly reduces the solar access of neighbours, building separation should be increased beyond the minimums contained in Section 3F. Consideration also needs to be given to solar and daylight access to areas (i.e. living areas, private open space etc.) within the proposed building.

Whilst reduced setbacks and solar access are still in play, Studio Zanardo commented on the proposal and non-compliance/s; advising that generally all issues are resolvable and importantly that:

*“the proposal is considered, in many respects, to be of good quality from an urban design perspective.”*

The amended design has addressed the comments made by Studio Zanardo and these responses (as detailed below in Table 1) are considered acceptable solutions.

**Table 1 – ADG Design Responses**

<u>Studio Zanardo Comments</u>	<u>Response</u>
<b>Visual Privacy</b> <ul style="list-style-type: none"> <li>Objective 3F-1</li> </ul> <p><i>“Consideration should be given to adjusting the noncompliant habitable windows such that windows do not face directly towards the boundary. ‘Pop-out’ windows, or similar, can effectively present a solid wall to the boundary for privacy whilst diverting views to run along the side boundary setbacks towards more desirable outlooks.”</i></p> <ul style="list-style-type: none"> <li>Objective 3F-2</li> </ul> <p><i>“Consider introducing privacy louvres, to match those used on balconies, along the</i></p>	<p><i>Side windows facing north or south have been redesigned with splayed walls to face east or west, and not directly towards the boundary. All splayed walls are a minimum 3m from the boundary.</i></p> <p><i>Privacy louvres have been added to the southern side of the entry path, with planters</i></p>

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<p><i>southern side of the entry path. Ensure that the planters in front of the windows provide a positive outlook from the habitable rooms.”</i></p>	<p><i>in place to provide a positive outlook.</i></p>
<p><b>Bicycle and Car Parking</b></p> <ul style="list-style-type: none"> <li>Objective 3J-1</li> </ul> <p><i>“It is noted that the number of car spaces provided exceeds the minimum required under Guide to Traffic Generating Developments (GTTGD) and could be reduced.”</i></p> <p>Note: Council's (assessment officers) position in relation to this is that it supports the numeric provision of spaces; however, the usability of the on-grade spaces is questioned (see later comments).</p> <ul style="list-style-type: none"> <li>Objective 3J-2</li> </ul> <p><i>“No parking has been provided for motorbikes or scooters. Motorcycle and scooter parking could be provided in the space at the basement level adjacent to the car park ramp (A1000).”</i></p> <ul style="list-style-type: none"> <li>Objective 3J-3</li> </ul> <p><i>“A safe, direct and accessible path has not been provided from the on-grade car parking spaces to the lobby. This could occur through the space where the air-conditioning units are currently located and with a small adjustment to the corner of the hydraulic pump room to allow an adequate path.”</i></p>	<p><i>No change to the number of parking spaces.</i></p> <p><i>Parking for motorcycles and scooters has been included in the basement.</i></p> <p><i>A safe, direct and accessible path has been included from the on-grade car parking spaces to the lobby.</i></p>
<p><b>Solar and Daylight Access</b></p> <ul style="list-style-type: none"> <li>Objective 4A-1</li> </ul> <p><i>“The sunlight received to living rooms has not been optimised. However, it is presumed that 3 hours solar access is required outside of the Sydney Metropolitan Area, Newcastle or Wollongong because of an assumption about lower density buildings and/or context. The density and built form envisaged through the controls for this site are equivalent to those in denser areas.</i></p> <p><i>Therefore, it may be reasonable...that the 2 hours provided in the proposal is a satisfactory level of amenity. Only 8 of 12</i></p>	<p><i>The glass line of Unit GA living room has been brought forward to increase the solar access. This brings the total to 9 of 12 units (75%) as recommended by Studio Zanardo.</i></p> <p><i>The orientation and width of the lot affects the design of the building and limits the opportunities to achieve the 3 hours of solar access to units.</i></p> <p><i>Studio Zanardo comments:</i></p> <p><i>“...The density and built form envisaged</i></p>



<p>units (67%) of units receive 2 hours direct sunlight between 9am and 3pm in midwinter. Unit GA could be included by bringing forward the glass line of the living room (A8210). This would bring the total to 9 of 12 units (75%)."</p>	<p>through controls for this site are equivalent to those in denser areas. Therefore, it may be reasonable for Council to take the position that the 2 hours provided in the proposal is a satisfactory level of amenity."</p> <p>Importantly, the site is within a precinct that is zoned and planned for higher density development. These lots run east west and are relatively narrow. Given the controls are for 3 – 4 storey buildings it is highly likely that the design approach adopted for No. 7 will be similarly adopted when the adjoining lots are developed. Future applications will need to similarly demonstrate compliance with the objectives to address solar access and also privacy.</p> <p>The development site is one of several, which in time will be developed creating an apartment precinct.</p>
<p><b>Private Open Space and Balconies</b></p> <ul style="list-style-type: none"> <li>Objective 4E-3</li> </ul> <p>"Private open space and balcony design does not contribute to the overall architectural form. Full width full height glass balustrades are used for all east-facing balconies and will not screen clothes drying. It is suggested that a small portion of the balustrade be made solid (like the west facing balconies), to assist with visual privacy from the street and conceal the contents of the balcony including clothes drying. The balustrade in front of the bedrooms may be the most suitable."</p>	<p>Solid balustrades have been added to a portion of the east-facing balconies. Example, level 1 and 2 – in front of bedrooms and part of the living areas on level 3 to provide an area which can be screened for clothes drying.</p>
<p><b>Common Circulation and Spaces</b></p> <ul style="list-style-type: none"> <li>Objective 4F-1</li> </ul> <p>"Common circulation spaces do not receive good amenity. No window providing daylight or natural ventilation is provided to common circulation spaces on levels 1, 2 and 3. A window should be provided to each of these corridor spaces by adjusting an adjacent unit."</p>	<p>A window has been provided to each lobby. The window will be frosted louvered glass to allow ventilation and maintain boundary privacy.</p>
<p><b>Acoustic Privacy</b></p> <ul style="list-style-type: none"> <li>Objective 4H-1</li> </ul> <p>"The siting of buildings and building layout</p>	<p>Windows have been modified to face</p>

<p>does not minimise noise transfer. Consideration should be given to adjusting the noncompliant habitable windows such that windows do not face directly towards the boundary (see 3F-1). The southern side of the entry path could include a relatively solid screen to reduce noise transfer (see also 3F-2). Ensure that the planters in front of the windows provide a positive outlook from the habitable rooms.”</p> <ul style="list-style-type: none"> <li>▪ Objective 4H-2</li> </ul> <p>“Noise impacts are not mitigated within apartments through layout and acoustic treatments. The southern side of the entry path could include a relatively solid screen to reduce noise transfer (see also 3F-2). Ensure that the planters in front of the windows provide a positive outlook from the habitable rooms.”</p>	<p>east/west, privacy louvres have been added to the southern side of the entry path to reduce noise transfer and landscaping will be implemented to maintain a positive outlook.</p>
<p><b>Roof Design</b></p> <ul style="list-style-type: none"> <li>▪ Objective 4N-3</li> </ul> <p>“The roof design does not incorporate sustainability features. The opportunity exists for skylights to units 3A and 3B.”</p>	<p>Sky domes have been included for units 3A and 3B.</p>
<p><b>Universal Design</b></p> <ul style="list-style-type: none"> <li>▪ Objective 4Q-1</li> </ul> <p>“Universal design features are not included in apartment design. 3 units are required to be silver level universal design. It is suggested that typical unit A or B is adjusted to meet the requirements. It is also noted that not all spaces for use in common by the residents are accessible as required by BCA/NCC Table D3.1, including the storage room, garbage room and the car wash (A1001).”</p>	<p>Units GB, 1B and 2B are all designed in accordance with requirements of an adaptable dwelling to silver level universal design. This is demonstrated on drawing A8300.</p> <p>Access to the storage room, garbage room and the car wash has been modified to be compliant with BCA/NCC Table D3.1 (in relation to access for people with disabilities).</p>
<p><b>Energy Efficiency</b></p> <ul style="list-style-type: none"> <li>▪ Objective 4U-1</li> </ul> <p>“Passive environmental design through well located, screened outdoor areas have not been provided for clothes drying It is suggested that a small portion of the balustrade be made solid (like the west facing balconies), to conceal clothes drying.</p>	<p>As above (4E-3 and 4F-1).</p>

<p><i>The balustrade in front of the bedrooms may be the most suitable (see 4E-3)."</i></p> <ul style="list-style-type: none"> <li>▪ Objective 4U-3</li> </ul> <p><i>"Inadequate natural ventilation will require mechanical ventilation. Adequate natural ventilation is not provided to the common circulation spaces on levels 1, 2 and 3. A window should be provided to each of these corridor spaces by adjusting an adjacent unit (see 4F-1)."</i></p>	
<p><b>Waste Management</b></p> <ul style="list-style-type: none"> <li>▪ Objective 4W-1</li> </ul> <p><i>"Waste storage facilities do not minimise the impact on the amenity of residents. The waste and recycling storage area should be ventilated. A temporary storage space for large bulk items should be provided."</i></p>	<p><i>Waste and recycling areas will be mechanically ventilated. A temporary bulky good storage area has been provided in the basement below the entry ramp.</i></p>

Another point to note is that the applicant has designed this proposal in relation to future development on neighbouring sites.

Notably, the existing single dwelling developments on the neighbouring sites are no longer permissible in the prescribed land use zone and these developments now rely on existing use rights. The provisions of Shoalhaven Local Environmental Plan 2014 (SLEP 2014) and Shoalhaven Development Control Plan 2014 (SDCP 2014) specifically encourage redevelopment of these sites. In other words, these strategic controls foreshadow a different higher density residential character.

The applicant has provided a shadow study (Attachment 5) confirming that a similar development on the property to the south (being Lot A DP 359526, 9 Beach Street) will be able to receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter to living rooms and private open spaces of at least 70% of apartments within.

Taking into consideration the above, the design achieves the desired outcomes of the ADG, particularly in relation to visual privacy and solar access.

## 2. Council's LEP Controls:

### Clause 4.3 (Height of buildings)

The maximum building height is 13m.

Part of the proposed building (lift overrun) exceeds the maximum height by 574mm, being approximately 4.4%. Other sections of the roof also make minor encroachments to the height limit – eastern section being approximately 208mm (1.6%) and western section being approximately 239mm (1.8%).

The applicant has consequently sought an 'exception' to the development standard pursuant to clause 4.6 of SLEP 2014.

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The contraventions to the height control are considered relatively minor and negligible in terms of the overall design of the proposed building. In particular, the height of the lift overrun does not detract from the aesthetics of the building and does not affect views, privacy and solar access to neighbouring sites.

The proposed building height is considered compatible with the desired future character of the locality, having regard to the strategic controls (zone, DCP) for the locality.

Clause 4.4 (Floor space ratio)

The maximum floor space ratio requirement is 1.4:1. This equates to 1,416.4sqm for the subject site.

The proposed floor space ratio is 1.428:1, being 1,445sqm. It is noted that the applicant miscalculated the ratio to be 1.427:1, being 1,444sqm. The proposed building exceeds the maximum floor space ratio by 28.6sqm, being approximately 2.01%.

The applicant has accordingly sought an 'exception' to the development standard pursuant to clause 4.6 of SLEP 2014.

The contravention is relatively minor and negligible in terms of the overall design of the proposed building. Compliance with the standard could be achieved by modifying the internal design (i.e. relocation of storage and garbage collection areas to the basement) however; this would affect car parking spaces required by SDCP 2014. By including these areas in the basement, they would not be 'counted' as floor space. The deletion of the bin and service areas at the rear of the development would not result in a change to the streetscape or overall appearance of the development unless the development was modified substantially by removing apartments from the design, which would be necessary to address the resultant car-parking shortfall.

FSR is intended to assist in controlling bulk and scale of development. In this instance, the bulk and scale is considered consistent with the strategic vision for the locality. The strategic vision is a higher density type of accommodation in a high amenity location.

Clause 4.6 (Exceptions to development standards)

As discussed above, the applicant has sought an 'exception' to the development standards in relation to height of buildings and floor space ratio pursuant to clause 4.6 of SLEP 2014.

Therefore, Council is required to consider subclauses 3 and 4.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: Satisfied. The applicant provided advice in relation to this clause, entitled 'Council Response Report' (Attachment 3) and subsequently updated by advice in relation to the contravention to the floor space ratio (Attachment 4).

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Comment: The non-compliances are relatively minor. The applicant request adequately addresses subclause 3 and the proposal will be in the public interest as it is consistent with the objectives of the relevant standards (particularly noting the desired future character of the locality) and not inconsistent with the objectives of the B4 Mixed Use zone.

In relation to clause 4.3, the contraventions are minor and negligible in terms of the overall design of the proposed building and still ensure that the proposed building is compatible with the height, bulk and scale of the desired future character of the locality.

In relation to clause 4.4, again the contravention is minor and negligible in terms of the overall design of the proposed building. Compliance with the standard would only result in internal design amendments and would not alter the bulk and scale of the building in relation to the desired future character of the locality. The reduction of floor space (28.6sqm) over the whole building to meet the FSR would not result in substantial changes to the setbacks, bulk, scale or overall appearance.

### 3. Council's DCP Controls – urban design principles for the precinct:

The DCP controls were adopted by Council following extensive community engagement and with the benefit of expert urban design advice.

A1.2 of Control 5.5 Orientation and Separation, Chapter N19 Huskisson Mixed Use Zones, SDCP 2014

Chapter N19 requires separation distances, measured between residential **windows** facing one another, as follows:

**Table 1 – DCP separation distance requirements and proposed development**

Separation distance	Minimum distance between windows facing one another	Minimum distance to boundaries to achieve the minimum distance between windows	Proposed development minimum distance to boundaries
Between non-habitable rooms, windows (can be measured diagonally).	3m	1.5m	2.5m
Between all other windows except primary windows of living areas/external edge of balconies and terraces.	6m	3m	3m
Between primary windows of living areas/external edge of balconies and terraces and all other windows except between primary windows of living areas/external edge of balconies and terraces.	9m	4.5m	3m

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Between primary windows of living areas/external living areas and primary windows of living areas/external edge of balconies and terraces for buildings up to and including four storeys.	12m	6m	3m to balconies – privacy screens proposed

The applicant has designed the proposed building in relation to separation to windows of future residential flat building development on neighbouring sites. Separation between windows and future windows on adjoining sites has been achieved through the provision of privacy louvres on balconies and windows being orientated so they do not face the adjoining boundary.

The proposed design responses (i.e. reduction in the extent of balconies and installation of additional privacy screens etc.) are considered reasonable and consistent with the performance criteria.

Whilst numerical compliance with all the setbacks is not achieved at present with existing development on neighbouring sites, the provisions of Chapter N19, SDCP 2014 have been formed and designed for future development. Future development is likely to do similarly. The adjoining narrow lots are likely to have a similar design solution and in this regard, future proposals will need to deal with setback issues and design solutions to address privacy and solar access eg stepping, pop-out windows, tiering, etc.

The design, although restricted due to the lot size and width, is consistent with objectives of the DCP, in that the building orientation and separation provides the primary source of light, air and outlook to living room areas and private open space areas. Further, the acoustic privacy for residents and the visual and acoustic privacy of nearby residents will be also be protected.

Clause 6A of SEPP 65 confirms (that with respect to the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG), development control plans cannot be inconsistent with this guide in respect of the following:

- “(a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.”

Further, subclause 6A(2) clarifies that:

*“if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect”*

Whilst subclause 6A(3) clarifies that:

*“this clause applies regardless of when the development control plan was made”.*

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The provisions of Chapter N19 (Council's DCP) in relation to setbacks are inconsistent with SEPP 65 in that they refer to window separation. The SEPP refers to building separation. Accordingly, the **SEPP prevails** and separation distances should be to the site boundaries (in accordance with Design Criteria (1) of Section 3F – Visual Privacy) and not to the windows of future buildings on neighbouring sites.

However, the ADG also states that if the design criteria cannot be met design responses can be used to achieve the objectives of the criteria. The objective of the design criteria is that adequate building separation distances are *shared equitably* between neighbouring sites to achieve reasonable levels of external and internal visual privacy. The design response in this instance has been to modify the window placement and design to avoid looking directly into the neighbouring site.

It is noted that the SEPP does allow for reduced setbacks for transitional zones. Arguably, this location or precinct is an area that is undergoing transition and change as foreshadowed by the DCP with a new highly urban character.

In summary, the applicant made a number of modifications to the design in response to the urban design review undertaken by Studio Zanardo and it is considered that the objectives of the ADG have been achieved through the provision of privacy louvres on balconies and windows being orientated so they do not face the adjoining boundary.

A1.2 of Control 7.3 Building Height, Chapter N19, SDCP 2014

The maximum building form for Precinct 2 is 3 storeys with a 4th level setback.

Studio Zanardo commented on this:

*“The objectives are not achieved as the acceptable solutions are not met. The building is modulated backwards and forwards from the front and rear boundaries, however it is not modulated side-to-side (perspectives). The lack of a fourth level setback at the leading front corners of the building to Beach Street gives a clear fourth storey reading which contributes to bulk and scale. The height of the development is not compatible with the desired future character, which is for the fourth level to be set back.*

*The fourth level of the building does not entirely setback on the north and south facades.”*

The applicant amended the design to address this concern. The front leading corners of the development have been set back significantly. The fourth level is now setback along the northern, eastern, southern and western sides. The applicant considers that the building now ‘appears’ as a 3 storey building from the east and west. Refer to Figures 6 and 7 in this report.

The amended design achieves a satisfactory design result and in this regard, the objectives of this control have been achieved. The objectives are:

- *“Ensure development responds to the desired scale and character of the street within the precinct.*
- *Provide highly modulated buildings to reduce the bulk and scale of the buildings.*
- *Provide buildings forms that create distinctive and attractive coastal town streets.”*

Notably, the building has been modulated with side windows on north or south elevations redesigned with splayed walls to face east or west, and not directly towards the boundary. All splayed walls are a minimum 3m from the boundary.



Privacy louvres have been added to the southern side of the entry path, with planters in place to provide a positive outlook.

A1.3 of Control 7.4 Setbacks and Alignments, Chapter N19, SDCP 2014

Along Beach and Nowra Streets (except for the commercial component of buildings), a minimum 60% of the buildings street elevation is to be located on the front setback line and the remainder located behind the front setback line.

The design provides 46% of the street elevation on the 5m setback line. The balance of the development exceeds the setback.

The applicant considers there will be no adverse impacts and that the objectives are met, given:

- *“the building has been designed to reduce the overall bulk and increase soft landscaping by reducing the overall footprint. The frontage has been maximised along the 5m setback line taking into consideration of design excellence, internal apartment layout and streetscape; and*
- *the majority of the building façade is setback between 7m-9m, which is a favourable result in terms of bulk and solar access to neighbouring properties.”*

The design is considered satisfactory (as referred to under A1.5 below) observing that there is adequate landscaping, a clear definition of private and public domains and that it is consistent with the envisaged future character of the area. The proposal is considered to satisfy the objectives of the control which are to:

- *“Provide building forms that create distinctive, attractive and pedestrian friendly coastal town streets.*
- *Allow for deep soil planting areas.*
- *Define boundary between private and public land, which contributes positively to the streetscape.*
- *Establish a well-proportioned rhythm between buildings consistent with a residential streetscape.”*

A1.5 of Control 7.4 Setbacks and Alignments, Chapter N19, SDCP 2014

Chapter N19 states that the second level (third storey) of a building is to have a maximum 70% footprint of the floor below (second storey) and the third level (fourth storey) is to have a 70% footprint of the floor below it; and be set back 4m from the level below along the street frontage. This control effectively results in development being ‘tiered’ with a smaller footprint for each level as the building increases in height.

Having regard to the height controls in section 7.3 of the DCP, this control is slightly ambiguous given that the acceptable solution A1.2 in 7.3.2 states that the maximum building form shall be 3 storey’s with a 4<sup>th</sup> level setback.

The objectives for the controls are intended to assist in the creation of distinctive built forms, with a positive streetscape contribution and

*“establish a well-proportioned rhythm between buildings consistent with a residential streetscape”.*

The second and third levels **do not achieve a maximum footprint of 70%** of the level below and the levels are not fully compliant with the 4m setback from the level below. The second level has the same footprint as the first level. Refer to Figure 3.

The applicant has only applied this provision to the third level and indicated that this level is 66% of the lower level and contains a dwelling unit with the building line set back 2m from the level below.

In addition to this control being designed to encourage a certain design outcome, it reinforces setback controls, which have not been achieved. (It is noted that detailed analysis and consideration has been given to solar, privacy and streetscape impacts.)

The applicant has submitted a detailed report in support of the development. The report addresses various matters including but not limited to design and how the building is considered to be a satisfactory design response and refers to proposed amendments.

The second level (third storey) is 81% of the allowable maximum floor area with no façade setback and third level (fourth storey) is 66% of the level below with façade setback. The applicant also considers there will be no adverse impacts and that the objectives are met, given:

*“the proposed development provides a building that reduces the floor plate from the maximum allowable to increase deep soil planting and setbacks.”*

A comment is made in the report that the design is consistent with the four (4) storey residential flat building approved at No. 1 Beach Street.

Studio Zanardo commented on this:

*“The objectives are not achieved as the acceptable solutions are not met. Less than 60% of the street elevation is located on the front setback, however the built form in this respect is considered to be acceptable in defining the street (perspectives). The development does not setback and get smaller as the building gets taller as the controls indicate.”*

The applicant has made no change to the 5m building line, however, it is appropriate to consider a departure from this solution, noting the source document *Urban Design Strategy Nowra and Beach Street North Huskisson* (prepared by Ruker Urban Design, dated 29 August 2008) states:

*“Maximum building form of 3 storeys with a **4<sup>th</sup> level in the roof**. The 4<sup>th</sup> level can have a maximum footprint of 70% of the level below and is to be setback 4m from the level below along streets.”*

This report informed the DCP controls. The DCP controls however do not reference a 4<sup>th</sup> floor in a roof design.

With regard to the residential flat building at 1 Beach Street, it was approved on 19 February 2008, prior to the adoption of DCP 99 – Huskisson Business 3(g) Zone Precincts, Amendment No. 1, which was adopted on 7 November 2012.

The residential flat building at 2 Murdoch Street was also approved in 2008 prior to Amendment 1 being adopted. Therefore, neither of these two developments were assessed using the amended DCP 99 (Chapter N19 DCP2014).

A1.9 of Control 7.5 Car Parking, Vehicle Access and Vehicle Movement, Chapter N19, SDCP 2014

Basement garages are to be setback a minimum of 1.5m from the side boundaries but preferably in line with the building above.

The proposed basement setback is 1.3m on the southern side and varies from 1.03m-1.7m on the northern side.

The applicant considers a variation is required *“to maximise basement parking”*, there will be no adverse impacts and that the objectives are met:

*“by providing adequate and convenient parking that minimises visual impact” and “the setback is offset by exceeding the minimum for the majority of the northern side so the basement complies with the minimum deep soil requirements.”*

The departure is relatively minor and negligible in terms of the overall design of the proposed building and considered to satisfy the objectives of this control. The basement design allows for an adequate number of car parking spaces, does not visually affect either streetscape, integrating at grade spaces *“without compromising street character, landscape quality or pedestrian amenity and safety.”* Services are also integrated into the building in a *“sensitive manner.”*

### Planning Assessment

The DA has been assessed under s79C of the Environmental Planning and Assessment Act 1979. Refer to Attachment 1.

### Consultation and Community Engagement:

Notification was undertaken in accordance with Council’s Community Consultation Policy with letters being sent within a 120m buffer of the site, including the Huskisson Woollamia Community Voice and Huskisson Chamber of Commerce and Tourism Inc. during the period 23 September 2016 to 10 October 2016. The proposal was also advertised in the local press on one occasion (South Coast Register and Nowra News).

Five (5) public submissions were received in relation to Council’s notification of the development. They were all objections to the development.

Key issues raised as a result of the notification include but were not limited to matters listed below. A more detailed analysis can be found in the attached section 79C assessment report.

- Scale of the development, including height and density;
- Building separation and non-compliance with SEPP 65 and ADG;
- Amenity; and
- Onsite car parking.

### Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

### Legal Implications

A section 82A review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

### Summary and Conclusion

The SEPP sets out the NSW Government's policy direction for residential apartment development is NSW and is underpinned by the Apartment Design Guide (ADG), which provides guidance on how residential development proposals can meet the design principles embedded in the SEPP.

Importantly, the SEPP whilst providing measureable benchmarks acknowledges "*if it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective...*" thus allowing for some flexibility appreciating that there can be a number of unique circumstances and design responses. The design in this instances has, through the assessment process, been modified in a manner, whereby it is considered a suitable design.

With respect to Council's DCP, the objectives contained in Chapter N19, Section 4 have also been observed. Specifically, good design, additional higher density housing within a high amenity precinct in a unique coastal setting.

This application has been subjected to detailed (independent) analysis of the main issues identified in this report, being solar, privacy and streetscape impacts along with achievement of ADG design outcomes. These issues have also been extensively investigated by the applicant. The issues have been discussed in both this report and attachments.

The concerns (SEPP and DCP issues) raised by Council and by Studio Zanardo are now considered resolved by appropriate design responses. Accordingly, the application is supported and there are no overwhelming reasons to warrant refusal.

## DE17.75 Yalwal Camping Area (Danjera Dam)

HPERM Ref: D17/320884

Group: Shoalhaven Water Group

### Purpose / Summary

To report the outcome of investigations into formalising camping at Danjera Dam and explore options to facilitate recreational use of this area consistent with councils legislative and duty of care obligations.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Close the Yalwal camping area and temporarily close the area to public access after advertisements and notifications to legitimate known user groups
2. Prepare a plan for upgrading of the area for day use in consultation with key user groups.
3. Explore the opportunity for biobanking the credits associated with the EEC, excluding the proposed day-use area
4. Explore opportunities with adjoining landowner for eco tourism potential.

### Options

1. Shut Danjera Dam permanently to all recreational use.

Implications: This would effectively remove Council's current liability for accidents and incidents associated with the unregulated and unapproved camping use. However, it does not take advantage of the site as a community asset that could be developed for longer term sustainable uses.

2. Keep the site open for camping.

Implications: This option exposes Council to significant risks associated with the current unregulated use and the associated uncontrollable behaviour of some visitors. This option is not recommended in the strongest terms.

### Background

Yalwal, located on Danjera Creek, operated as a gold mining town from 1870 to 1939 when bushfire destroyed what remained of the old township. In 1972 the town was flooded following the construction of Danjera dam and since then the subject land has been used as a camping and picnic area. The subject land is owned by Council and is classified as "operational" land under the *Local Government Act 1993*. These lots are part of a group of allotments that are listed in Shoalhaven LEP 2014 as heritage item 527 'Former Yalwal gold mine and township site'.

The land is currently zoned E2 Environmental Conservation which does not permit "camping grounds". Whilst camping has occurred at the site for many years, this use has never been

formalised via development consent. Camping was a permitted use at the site under an enabling clause under the 1985 LEP, though this clause was not continued to the new LEP, nor was a development application ever made under the 1985 LEP. The objectives of the E2 Zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To protect water quality and the ecological integrity of water supply catchments and other catchments and natural waterways.
- To protect the scenic, ecological, educational and recreational values of wetlands, rainforests, escarpment areas and fauna habitat linkages.
- To conserve and, where appropriate, restore natural vegetation in order to protect the erosion and slippage of steep slopes.

No activities are permitted without consent.

Activities Permitted with consent are:

Aquaculture; Bed and breakfast accommodation; Boat sheds; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Home businesses; Recreation areas; Research stations; Roads; Sewerage systems; Water recreation structures; Water supply systems.

Prohibited activities are:

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; and any other development not specified above.

In an attempt to allow for the continuation of the existing use of the land and enable a future upgrade to the existing camping and day use/picnic areas a number of studies have been undertaken over the last few years, culminating in a Planning Proposal that was submitted to NSW Department of Planning & Environment for the initial Gateway Determination. The Proposal was subsequently determined to proceed subject to a number of conditions. One of those conditions related to bushfire assessment and the requirements of the Rural Fire Services, including the need for an Asset Protection Zones (APZ) which has implications for vegetation removal.

A preliminary Flora and Fauna assessment was required to enable the bushfire assessment report to be completed. The preliminary Flora and Fauna assessment report was completed in December 2016 and, in part, documented the occurrence of an Endangered Ecological Community (in an area that would have been required to clear for the provision of required bushfire APZs). The EEC is the Illawarra Lowlands Grassy Woodland (which is both State and Commonwealth listed).

Council will not get approval to clear large areas of vegetation at this site due to the status and nature of the EEC at the site. This makes it difficult to meet Asset Protection Zone requirements for any proposed camping. Any development must minimise the amount of disturbance to this EEC. Any disturbance that has the potential to cause a significant impact to the EEC has to be referred to the Commonwealth for assessment. This is a long and costly process.



The studies undertaken to date are summarised as follows:

#### **2014**

- Preparation of Preliminary Investigation into Yalwal Tourist Precinct. This uncovered an older study and more files leading to below.
- Review of files/ background documents and inter-agency workshop to document existing situation and key considerations. This uncovered that there was no approval for the existing camping ground.

#### **2015**

- Preparation of Planning Proposal to permit the “camping ground” use at the site. The PP was needed as the enabling clause was left out of the new LEP (Additional Permitted Use Schedule in SLEP 2014).
- Preparation of draft Operations & Management Plan – which included an on-site inter-agency workshop. Prepared to continue towards the DA in parallel with the PP.
- Council resolution to support the Planning Proposal.
- Gateway determination for Planning Proposal – which in part required preliminary bushfire assessment to enable exhibition of Planning Proposal.

#### **2016**

- Preliminary bushfire assessment options prepared by SET – which included meeting with RFS and refuge building vs open air refuge.
- Preliminary Flora & Fauna Assessment undertaken by consultant to enable bushfire assessment options to progress. This uncovered the existence of an EEC.

#### **2017**

- In-house Assessment to assess extent and condition of EEC.
- In-house Assessment of significance of the clearing impacts for camping options to determine whether referral to the Commonwealth would be triggered. Both open area refuge options which were investigated would require an assessment under the EPBC Act due to the amount of vegetation clearing required.

In summary, the investigations have brought to light some new information, including that Danjera Dam is surrounded by a Commonwealth and State listed critically endangered vegetation community (EEC). This presents both opportunities and constraints and needs to be considered to determine the options for future use of the site.

#### **Current Risks**

The attempt to formalise the camping occurring on this site to allow for better management was driven not only from a land use compliance perspective but also from a safety perspective. The site has been affected by bushfires over the years, and bushfire threat is present from all directions and access to the site is via a single dirt road. There is no mobile phone communication available in the camping area.

For some time now Council has been trying to address anti-social behaviour at the camping area. The 2016/2017 summer period saw antisocial behaviour force Council to establish a user pays arrangement with the NSW Police and set up regular Ranger patrols.

Issues requiring attention have included:

- Firearm misuse

- Trail bike riding and group 4WD activities being undertaken both legally and illegally on and around the site;
- Vandalism and misuse of facilities
- Unregulated and unapproved camping activities including aggregation of large groups which intimidate other groups.
- Unsafe behaviour involving vehicles and alcohol.
- Lack of animal control
- Threats to campers and the adjoining landowner

### Biodiversity Banking Opportunity

The opportunity presented by the EEC is to make some income for site management by biobanking the credits associated with this rare vegetation. It is the largest known patch of this EEC in NSW.

BioBanking is a market-based scheme that provides an offsetting scheme for developers as well as an opportunity for landowners to generate income by managing land for conservation. BioBanking enables 'biodiversity credits' to be generated by landowners who commit to enhance and protect biodiversity values on their land through a biobanking agreement. These credits can then be sold to offset a development, generating funds for the management of the site.

The financial benefits of biobanking the remaining site should not be underestimated. This could bring in the revenue to properly manage the EEC across the site. Income from biobanking can fund activities that are associated to the conservation of the land. For example, this might include fencing, track maintenance, rehabilitation of degraded areas, feral animal control, signage, weeding and erosion control.

The EEC, *Illawarra and South Coast Lowland Forest and Woodland Ecological Community* is very valuable in biobanking terms. There is very little areas of this EEC that available to developers for offsetting. The Biobanking Credit Register documents that in July 2016 229 credits were sold for \$7500 each. This equates to over \$1.7 million dollars. This demonstrates the value of the vegetation on the subject site.

A nominated day use area could still be progressed and occur in parallel to a biobanking assessment. The proposed day-use area would be excluded from the biobank to enable greater levels of disturbance to occur.

### **Community Engagement**

Community engagement will occur once Council has provided direction on this issue. It will be essential that the community understands the constraints and issues at this site and Council's liabilities/ risks. Council would need to widely publicise the proposed closure of the site prior to next summer.

### **Financial Implications**

The financial implications depend upon the chosen way forward. These will need to be the subject of a future report which will provide specific details on the chosen option.

Generally there are costs associated with all options which may range from basic improvements that could be funded by Shoalhaven Water, through to more substantial improvements that Council would seek through grant opportunities.

**Risk Implications**

There are serious risks in not taking action to formalise the use of this site. Large groups of people are currently camping at the site with no bushfire safety measures in place and no means of providing compliance. Council has a duty of care to ensure that action is taken reduce our liability under the Local Government Act, 1993.

## 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.