

## Development Committee

**Meeting Date:** Tuesday, 10 April, 2018

**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

**1. Apologies / Leave of Absence**

**2. Confirmation of Minutes**

- Development Committee - 13 March 2018..... 1

**3. Declarations of Interest**

**4. Mayoral Minute**

**5. Deputations and Presentations**

**6. Notices of Motion / Questions on Notice**

Nil

**7. Reports**

DE18.23	S96 Modification Application – Tomerong Quarry - Parnell Rd, Tomerong – Lot 4 DP 775296 .....	10
DE18.24	Proposed Submission - Aboriginal Cultural Heritage Reforms.....	19
DE18.25	Proposed Exhibition - Review of Shoalhaven Contributions Plan 2010 .....	23
DE18.26	DA18/1010 – 27 Quinns Lane, South Nowra – Lot 4 DP 519090 .....	45
DE18.27	DE18.16 - Update and Proposed Next Steps - Nowra CBD Fringe Medium Density Study Recommendations Report - Public Exhibition .....	58
DE18.28	Development Application DA17/2337 – 16 Coolangatta Rd, Coolangatta – Lot 1 DP 1204108 .....	73

**8. Confidential Reports**

Nil

## Development Committee

### Delegation:

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

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

### Schedule:

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

## MINUTES OF THE DEVELOPMENT COMMITTEE

**Meeting Date:** Tuesday, 13 March 2018  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.00pm

The following members were present:

Clr Amanda Findley  
Clr Joanna Gash - Chairperson  
Clr Patricia White  
Clr John Wells  
Clr John Levett  
Clr Nina Cheyne  
Clr Annette Alldrick  
Clr Kaye Gartner  
Clr Andrew Guile – arrived 5.16pm  
Clr Mitchell Pakes  
Clr Greg Watson  
Clr Mark Kitchener  
Clr Bob Proudfoot  
Mr Russ Pigg - General Manager

### Apologies / Leave of Absence

Nil

### Confirmation of the Minutes

**RESOLVED** (Clr Findley / Clr White) MIN18.156

That the Minutes of the Development Committee held on Tuesday 13 February 2018 be confirmed.

CARRIED

### Declarations of Interest

Clr Gash – less than significant non pecuniary declaration of interest – DE18.15 – Proposed Policy – Narrow Laneways across Shoalhaven – Clr Gash is the co-owner of property at Culburra – will remain in room and will take part in the discussion and vote because the house is already built, with DA approval.

Clr Pakes – less than significant non pecuniary declaration of interest – DE18.15 – Proposed Policy – Narrow Laneways across Shoalhaven – Clr Pakes is the owner of property at Culburra with rear lane access – will remain in the room and will take part in the discussion and vote because the laneway unformed and the property does not meet requirements for minimum lot size.

## MAYORAL MINUTES

### **MMD18.1 Additional item - Mayoral Minute - Triple J One Night Stand - Competition**

**HPERM Ref:  
D18/85970**

Triple J, the ABC's youth radio station, runs an annual competition to host a free concert. The event attracts between 10,000 and 15,000 visitors. There is a group of young people working on an application, and as the closing date being 21 March 2018 the item needs to be urgently addressed. Milton Showground is considered by the group preparing the application to be the preferred location.

**RESOLVED** (Clr Findley / Clr Levett)

MIN18.157

That Council support the community application to Triple J for the One Night Stand event to be held in the Shoalhaven.

CARRIED

## DEPUTATIONS AND PRESENTATIONS

Ms Deborah Ely, CEO of Bundanon Trust addressed the Committee in relation to DE18.21 Aboriginal Land Claim No. 41831 – Illaroo

### **Procedural Motion - Bring Item Forward**

**RESOLVED** (Clr Gash / Clr Wells)

MIN18.158

That the matter of item DE18.21 – Aboriginal Land Claim No. 41831 – Illaroo be brought forward for consideration.

CARRIED

### **DE18.21 Aboriginal Land Claim No.41831 - Illaroo**

**HPERM Ref:  
D18/48784**

Ms Deborah Ely, CEO of Bundanon Trust addressed the Committee in relation to this item.

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

That Council:

1. Notify the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit that Council has no objection to the granting of Aboriginal Land Claim No.41831 at Illaroo, subject to the following being excluded from the Claim, or being resolved as part of the determination of the Claim:
  - a. Agreements to achieve the outcomes of the Bundanon Masterplan.
  - b. Easements/rights of way or similar to maintain legal and practical access.

- c. Easements to establish and maintain Asset Protection Zones.
- d. Preservation of the environmental significance of the area by ensuring that the registered wildlife sanctuary and threatened species habitats are not compromised, and existing environmental initiatives can continue.
- e. Preservation of the cultural significance of the area, as demonstrated on the Commonwealth Heritage Listing.

**RESOLVED** (Clr Wells / Clr Findley)

MIN18.159

That Council:

1. Notify the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit that Council has no objection to the granting of Aboriginal Land Claim No.41831 at Illaroo, subject to the following being excluded from the Claim, or being resolved as part of the determination of the Claim:
  - a. Agreements to achieve the outcomes of the Bundanon Masterplan.
  - b. Easements/rights of way or similar to maintain legal and practical access.
  - c. Easements to establish and maintain Asset Protection Zones.
  - d. Preservation of the environmental significance of the area by ensuring that the registered wildlife sanctuary and threatened species habitats are not compromised, and existing environmental initiatives can continue.
  - e. Preservation of the cultural significance of the area, as demonstrated on the Commonwealth Heritage Listing.

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

AGAINST: Nil

CARRIED

## REPORTS

**DE18.15 Proposed Policy - Development Potential of Narrow Laneways across Shoalhaven**

**HPERM Ref: D17/397661**

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

That Council:

1. Establish an 'interim' policy position in relation to development on narrow laneways in Shoalhaven that includes:
  - a. Laneways are not to be used as primary frontages.
  - b. Development proposals to increase densities along narrow laneways that have a road reserve width of less than 10m are not supported.
  - c. Development proposals to increase densities across along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:
    - i. The development results in minimal impact on existing residential amenity, and
    - ii. Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.
2. Undertake a review of Shoalhaven Development Control Plan 2014 to:

- a. Identify any gaps in planning policy in relation to development in laneways.
  - b. Prepare development controls that may allow for sympathetic infill development or increased densities in certain laneways across Shoalhaven consistent with Council's adopted policy decision.
3. Receive a further report to endorse the reviews to Shoalhaven Development Control Plan 2014, prior to public exhibition.

Clr Gash – less than significant non pecuniary declaration of interest – DE18.15 – Proposed Policy – Narrow Laneways across Shoalhaven – Clr Gash is the co-owner of property at Culburra – did remain in room and did take part in the discussion and vote because the house is already built, with DA approval.

Clr Pakes – less than significant non pecuniary declaration of interest – DE18.15 – Proposed Policy – Narrow Laneways across Shoalhaven – Clr Pakes is the owner of property at Culburra with rear lane access – did remain in the room and did take part in the discussion and vote because the laneway unformed and the property does not meet requirements for minimum lot size.

Note: Clr Guile arrived at the meeting, the time being 5.16pm.

**MOTION** (Clr Findley / Clr Gartner)

That Council:

1. Establish an 'interim' policy position in relation to development on narrow laneways in Shoalhaven that includes:
  - a. Laneways are not to be used as primary frontages.
  - b. Development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.
  - c. Development proposals to increase vehicular access and servicing along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:
    - i. The development results in minimal impact on existing residential amenity, and
    - ii. Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.
  - d. Where an Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position.
  - e. That the interim policy be advertised for a period of 30 days, and if no submissions are received, the policy be adopted. If submissions are received, that the policy be reported to Council prior to adoption.
2. Undertake a review of Shoalhaven Development Control Plan 2014 to:
  - a. Identify any gaps in planning policy in relation to development in laneways.
  - b. Prepare development controls that may allow for sympathetic infill development or increased densities in certain laneways across Shoalhaven consistent with Council's adopted policy decision.
3. Receive a further report to endorse the reviews to Shoalhaven Development Control Plan 2014, prior to public exhibition.

**AMENDMENT** (Clr Pakes / Clr Proudfoot)

That the matter be deferred pending a detailed briefing in relation to establishing the interim policy

- Development Potential of Narrow Laneways across Shoalhaven.

LOST

FOR: Clr Guile, Clr Pakes and Clr Proudfoot

AGAINST: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Watson, Clr Kitchener and Russ Pigg

PROCEDURAL MOTION (Clr Wells / Clr Findley)

That the MOTION be PUT.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Watson, Clr Kitchener and Russ Pigg

AGAINST: Clr Guile, Clr Pakes and Clr Proudfoot

CARRIED

**RESOLVED** (Clr Findley / Clr Gartner)

MIN18.160

That Council:

1. Establish an 'interim' policy position in relation to development on narrow laneways in Shoalhaven that includes:
  - a. Laneways are not to be used as primary frontages.
  - b. Development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.
  - c. Development proposals to increase vehicular access and servicing along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:
    - iii. The development results in minimal impact on existing residential amenity, and
    - iv. Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.
  - d. Where an Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position.
  - e. That the interim policy be advertised for a period of 30 days, and if no submissions are received, the policy be adopted. If submissions are received, that the policy be reported to Council prior to adoption.
2. Undertake a review of Shoalhaven Development Control Plan 2014 to:
  - a. Identify any gaps in planning policy in relation to development in laneways.
  - b. Prepare development controls that may allow for sympathetic infill development or increased densities in certain laneways across Shoalhaven consistent with Council's adopted policy decision.
3. Receive a further report to endorse the reviews to Shoalhaven Development Control Plan 2014, prior to public exhibition.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Watson and Russ Pigg

AGAINST: Clr White, Clr Guile, Clr Pakes, Clr Kitchener and Clr Proudfoot

CARRIED

**DE18.16 Update and Proposed Next Steps - Nowra CBD Fringe  
Medium Density Study Recommendations Report -  
Public Exhibition****HPERM Ref:  
D17/407927****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Receive the attached Nowra CBD Fringe Medium Density Study - Recommendations Report prepared by Studio GL for information and endorse it being placed on public exhibition for a minimum period of 28 days to enable community comment.
2. Consider a further report following the exhibition of the Nowra CBD Fringe Medium Density Study Recommendations Report on any comment received, with a view to proceeding to: prepare a Planning Proposal for submission for initial Gateway determination to revise relevant Local Environmental Plan provisions; and a supporting Area Specific Chapter to be inserted in Shoalhaven Development Control Plan 2014.

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

MIN18.161

That the matter be deferred for one month to allow for a full briefing of Councillors.

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

AGAINST: Clr Proudfoot

CARRIED

**DE18.17 Proponent Initiated Planning Proposal - Lot 3 DP 846470  
Jervis Bay Road, Falls Creek****HPERM Ref: D18/7710****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Prepare a Planning Proposal to:
  - a. Permit a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls into rural residential lots and a neighbourhood environmental conservation lot; and
  - b. Rezone the land to part R5 – Large Lot Residential and part E2 - Environmental Conservation.
2. Submit this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination.
3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal to determine the actual subdivision potential (prior to public exhibition):
  - a. Flora and fauna assessment
  - b. Onsite wastewater management plan
  - c. Water quality and stormwater management
  - d. Bushfire hazard assessment
  - e. Traffic study
  - f. Visual impact assessment
4. Receive a report once all the above studies have been completed to determine the number



and size of lots prior to public exhibition of the Planning Proposal.

5. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.

**RESOLVED** (Clr Wells / Clr Gartner)

MIN18.162

That Council:

1. Prepare a Planning Proposal to:
  - a. Permit a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls Creek into rural residential lots and a neighbourhood environmental conservation lot; and
  - b. Rezone the land to part R5 – Large Lot Residential and part E2 - Environmental Conservation.
2. Submit this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination.
3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal to determine the actual subdivision potential (prior to public exhibition):
  - a. Flora and fauna assessment
  - b. Onsite wastewater management plan
  - c. Water quality and stormwater management
  - d. Bushfire hazard assessment
  - e. Traffic study
  - f. Visual impact assessment
4. Receive a report once all the above studies have been completed to determine the number and size of lots prior to public exhibition of the Planning Proposal.
5. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.

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

AGAINST: Clr Guile, Clr Pakes, Clr Watson and Clr Kitchener

CARRIED

**DE18.18 Exhibition - Draft Works in Kind Agreement - DA15/1102  
- 21 Beach Street, Huskisson**

**HPERM Ref:  
D18/46170**

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

That Council:

1. Accept and proceed to publicly exhibit the draft Works in Kind agreement for 21 Beach Street, Huskisson (associated with DA15/1102) for a period of 28 days in line with the *Environmental Planning and Assessment Regulation 2000*; and
2. Receive a further report to consider the outcomes of the exhibition and enable the finalisation of the Works in Kind agreement.

**RESOLVED** (Clr Watson / Clr Gartner)

MIN18.163

That Council:

1. Accept and proceed to publicly exhibit the draft Works in Kind agreement for 21 Beach Street, Huskisson (associated with DA15/1102) for a period of 28 days in line with the *Environmental Planning and Assessment Regulation 2000*; and
2. Receive a further report to consider the outcomes of the exhibition and enable the finalisation of the Works in Kind agreement.

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

AGAINST: Nil

CARRIED

**DE18.19 Nowra CBD Contributions Discount Subsidy Policy - Review**

**HPERM Ref:  
D18/52690**

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

That Council:

1. Continue the operation of the Nowra CBD Contributions Discount Subsidy Policy; and
2. Consider, as part of the 2018/2019 Budget, allocating an annual budget of \$50,000 for the operation of the Nowra CBD Contributions Discount Subsidy Policy.

**RESOLVED** (Clr Pakes / Clr Guile)

MIN18.164

That Council:

1. Continue the operation of the Nowra CBD Contributions Discount Subsidy Policy; and
2. Consider, as part of the 2018/2019 Budget, allocating an annual budget of \$50,000 for the operation of the Nowra CBD Contributions Discount Subsidy Policy.

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

AGAINST: Clr Levett and Clr Kitchener

CARRIED

**DE18.20 Exhibition Outcome and Finalisation - Draft Amendment No 22 - Shoalhaven Development Control Plan 2014 - Chapter N19: Huskisson Mixed Use Zones**

**HPERM Ref:  
D18/47058**

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

That Council:

1. Adopt Amendment No. 22 to Shoalhaven Development Control Plan 2014 as exhibited, with the following minor amendment:
  - a. Highlighting of LEP and DCP dictionary terms.
2. Notify the adoption of Amendment No 22 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the NSW Environmental Planning & Assessment Act 1979 and Regulations.

**RESOLVED** (Clr Findley / Clr Cheyne)

MIN18.165

That Council:

1. Adopt Amendment No. 22 to Shoalhaven Development Control Plan 2014 as exhibited, with the following minor amendment:
  - a. Highlighting of LEP and DCP dictionary terms.
2. Notify the adoption of Amendment No 22 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the NSW Environmental Planning & Assessment Act 1979 and Regulations.

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

AGAINST: Nil

CARRIED

**DE18.21 ABORIGINAL LAND CLAIM NO.41831 - ILLAROO**

**HPERM REF:  
D18/48784**

Item dealt with earlier in the meeting see MIN18.156.

**DE18.22 SF10586 – 11 Grahams Rd, Meroo Meadow – Lot 2 DP  
861948**

**HPERM Ref:  
D18/55215**

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

That the Committee:

1. Confirms that it supports the removal of the Restriction that was placed on the section 88B Instrument of the subject land under SF7377; and
2. Refer the application (SF10586) back to staff for determination.

**RESOLVED** (Clr Watson / Clr Pakes)

MIN18.166

That the Council:

1. Confirms that it supports the removal of the Restriction that was placed on the section 88B Instrument of the subject land under SF7377; and
2. Refer the application (SF10586) back to staff for determination.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, 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 6.13pm.

Clr Gash  
CHAIRPERSON

**DE18.23 S96 Modification Application – Tomerong Quarry - Parnell Rd, Tomerong – Lot 4 DP 775296****DA. No:** DS16/1532/4**HPERM Ref:** D18/49185**Group:** Planning Environment & Development Group  
**Section:** Development Services**Attachments:** 1. Scanned Copy of Development Consent and Modifications to 2006 - Tomerong Quarry (under separate cover)**Description of Development:** Modify condition 14(h) of DA90/1912 which currently restricts the transportation of shale material from the site to not exceed 1,000 tonnes per day.

The modification proposes a maximum of 4,000 tonnes per day and an annual daily average of 1,000 tonnes per day.

**Owner:** In-Ja-Ghoondji Lands Incorporated**Applicant:** Cowman Stoddart Pty Ltd**Notification Dates:** 11/1/17 to 15/2/17**No. of Submissions:** 35 in objection  
Nil in support**Purpose / Reason for consideration by Council**

Called in by Councillors for determination on 23 January 2017 – MIN17.12.

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

That the Development Committee resolve to refuse Application DS16/1532 to modify DA90/1912 to modify condition 14(h) for the following reasons:

1. The modification application has not adequately demonstrated that the proposal will not have adverse environmental impacts on the built environment and social impacts on the locality. (Section 79C(1)(b) of Environmental Planning and Assessment Act, 1979)
2. The information submitted with the modification application does not satisfactorily demonstrate that the site is suitable for the proposed modification. (Section 79C(1)(c) of Environmental Planning and Assessment Act, 1979)
3. Having regard to the information submitted with the modification application and having regard to submissions received, the modification of the consent is not considered to be in the public interest. (Section 79C(1)(e) of Environmental Planning and Assessment Act, 1979)

DE18.23

## Options

1. Resolve to refuse the application to modify condition 14(h) of development consent DA90/1912.

Implications: This will result in the quarry having to comply with the current condition that restricts the daily tonnage limit to 1,000 tonnes. The applicant will be able to exercise an appeal right if choosing to do so.

2. Resolve to support the proposed variation as requested to increase the daily tonnage limit to a maximum of 4,000 tonnes with an annual daily average of 1,000 tonnes.

Implications: The will permit the application to be modified as requested. This will require staff to determine appropriate conditions in regard to road improvements works and any other appropriate conditions. This decision would require the modification to be reported back to the Committee for determination.

3. Resolve otherwise, such as deferral.

Implications: This would require the Committee to provide direction to staff.

## Location Map

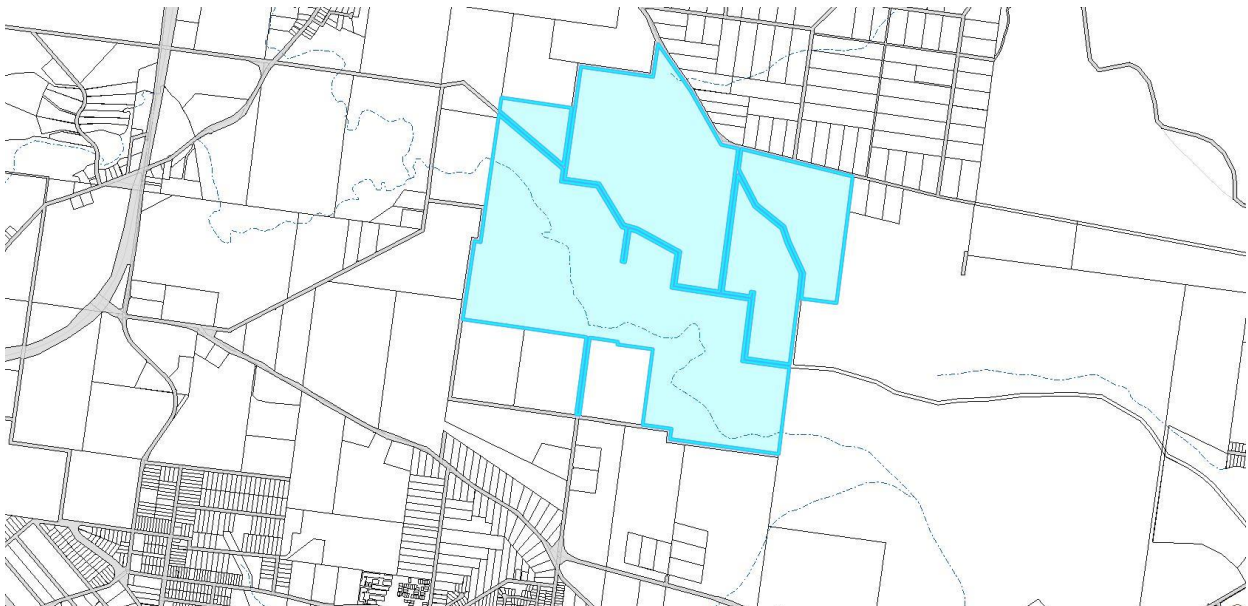


Figure 1 – Location Map

## Background

### Proposed Development

The current application is to modify condition 14(h) of the consent which states:

14. In the interests of traffic safety, the following requirements of the Local Traffic Committee and City Engineer shall be complied with:

(h) the transportation of shale material from the quarry shall not exceed 1,000 tonnes per day. Should the applicant wish to exceed this tonnage, the proposal shall be submitted to the Regional Traffic Committee as major upgrading would be required on the access roads.

DE18.23

The applicant has proposed the following amendment to the condition:

*(h) the transportation of shale material from the quarry shall not exceed an annual average of 1,000 tonnes per day, with a maximum daily limit of 4,000 tonnes. Should the applicant wish to exceed this tonnage, the proposal shall be submitted to the Regional Traffic Committee as major upgrading would be required on the access roads.*

#### Subject Land

The subject site is identified as Lot 4 DP 7755296 Parnell Road, Tomerong. The site is an irregular shaped allotment that has been partially cleared and used for grazing with the remaining undeveloped land containing native vegetation.

The existing quarry is centrally located on the site. Access to the site is gained via Gumden Lane to the south and Parnell Road to the north.

#### Site & Context

The subject site is located within a rural location with most of the adjoining land being relatively undeveloped and covered in native vegetation. Small rural holdings are located to the north and south of the development within the greater village areas of Tomerong and St Georges Basin. An existing tourist development adjoins the subject site to the south.

#### History

On 16 May 1990 a development application (DA90/1912) was received for the increased rate of extraction and continued use of a shale quarry that had been operating at the site (Lot 4 DP 7755296) since at least 1970. The proposal, as identified in the Environmental Impact Statement, was seeking approval to:

- Operate the quarry and processing facilities for a period of thirteen years;
- Produce and market up to 100,000 tonnes per annum of finished product;
- Operate the quarry 5.5 days per week, 10 hours per day with blasting restricted to specific hours; and
- Transport the product 5.5 days per week, 10 hours per day.

At the time, the application raised concern in the local community with respect to potential impacts on roads, traffic generation, noise, dust and rehabilitation. The application was reported to the elected Council for determination.

On 6 November 1990, the elected Council approved the application for the quarrying and extraction of up to 100,000 tonnes of shale per annum for a period of thirteen years.

On 29 October 2002 an application (DS02/1087) was approved to modify the consent by extending the life of the consent until 6 November 2010 and to modify a number of conditions related to road improvement works.

On 6 February 2004 an application (DS03/1325) was approved to modify conditions relating to the sealing of Gumden Lane.

On 17 May 2006, a further application (DS06/1039) was approved to modify the consent by extending the life of the consent until 6 November 2020. A condition was also imposed with respect to maintenance of nominated roads (Condition 22).

Date	Reference	Approval / Modification
06/11/1990	DA90/1912	Conditional approval granted for the Quarry.
29/10/2002	DS02/1087	Life of quarry extended until 06/11/2010. Conditions imposed regard road works.
06/02/2004	DS03/1325	Conditions modified related to sealing of Gumden Lane.
17/05/2006	DS06/1039	Life of quarry extended until 06/11/2020 and new condition imposed concerning road condition maintenance.

*Table 1 - Short Summary of Approvals*

#### Comment on assessment

**An assessment can only be made having regard to what has been applied for. There is no scope to revisit other aspects of the development if unrelated to the application at hand. Further, whilst there is a history of non-compliance and concerns regarding the operation of the quarry, breaches and any alleged breaches cannot be taken into account in the assessment of an application. The assessment is governed by the relevant provisions of the Environmental Planning and Assessment Act 1979 – having regard to section 96 and 79C.**

#### **Issues**

##### Limitation on export of excavated material

While Council resolved to approve the development application for the quarrying and extraction of up to 100,000 tonnes of shale per annum, the development consent itself was silent with respect to the 100,000 tonne annual extraction limit.

The applicant contends that therefore there is no limit on the annual extraction rate other than that imposed by the daily limit of 1,000 tonnes.

If accepting this contention, noting the consent approved the quarry to operate for 5.5 days per week, this would give a theoretical annual extraction rate of 285,000 or up to 312,000 tonnes (6 days x 52 weeks = 312).

The difference depending on how much material would be able to be transported on the Saturday which has limited operating hours. The potential extraction being up to 212,000 tonnes higher than that applied for.

Council wrote to the applicant on 27<sup>th</sup> February 2017 requesting clarification of the modification to condition 14(h) concerning the annual extraction rate limitation.

*“Your attention is drawn to the Environmental Impact Statement (EIS) that accompanied DA90/1912 which stated that the proposed maximum output for the quarry was up to 100,000 tonnes per annum of excavated material. While Council in the consent imposed a daily limit of 1,000 tonnes via condition 14 h), the condition does not override the restriction of 100,000 tonnes per annum which was the subject of the application and the basis of the EIS upon which the potential environmental impacts of the proposal were assessed.*

*It is noted that the s96 application states that the tonnage of excavated material has exceeded the 100,000 tonne limit in every year since 2011. Considering the 100,000 tonne annual limit of DA90/1912, you are requested to advise Council what the proposed annual tonnage of excavated material would be from the quarry with an “annual average of 1,000 tonnes per day, with a maximum daily limit of 4,000 tonnes”. If that tonnage exceeds 100,000 tonnes per annum you are requested to demonstrate*

to Council how this proposal would meet the test of being substantially the same development as originally approved as required by s96 of the Environmental Planning and Assessment Act, 1979.”

#### Applicant's Submission

The applicant contends that *“the current limit imposed by condition 14(h) is a serious impediment to the continued operations of the quarry and its ability to service the needs of the local community.”*

The applicant further states:

*“this is not the first time that Council has raised the issue of the annual extraction rate for the quarry with the quarry operators. In a letter dated 27<sup>th</sup> July 2010 Council wrote to the quarry operators raising this very same issue...”*

In the applicant's submission a comment is made with respect to correspondence of 2010 where Watkinson Apperley Pty Ltd responded at that time contending that there was no limitation on the extraction rate of the quarry operation other than the daily limit.

*“Our client advises that they have continued to rely upon the position as outlined in the Watkinson Apperley submission and that Council is aware the quarry has achieved annual tonnages in excess of 100,000 tonnes but at all times has endeavoured to comply with the daily limit of 1,000 tonnes as per condition 14(h). They are somewhat surprised that Council should now raise this same issue again some seven years later.”*

The applicant has further advised the following:

*“There is no limitation on the extraction rate of the quarry operation. The only limitation imposed on the quarry operation at the time of the consent related to the amount of material transported from the site on any day. It is our client's view, based upon legal advice that they have received, that Council's contention that the maximum annual production rate of the quarry is 100,000 tonnes per annum has no basis. The 1990 consent does not incorporate expressly or by necessary implication the terms of the EIS, and condition 2 of the 1990 consent only incorporates the “submitted plans”.*

*Council would be well aware of a long line of Court rulings when it comes to reliance upon documents not included in the development consent. Judicially, Council is not permitted to have recourse to extrinsic documents in order to construe a development consent, unless such documents have been incorporated in the consent expressly or by necessary implication. In this particular situation, the only limit is the total quantum per annum which may be transported from the site, being currently 1000 tonnes each day the quarry is permitted to operate.*

*In conclusion, condition 14(h) imposes a limit on the transportation rather than on the extraction of shale material. The consent does not expressly incorporate the EIS. Consequently, the terms of the EIS are not imported to the consent. It is our clients view that it would be improper for Council to rely on the EIs to support their view that the condition operates to impose a limit on the extraction of shale material.”*

#### Discussion

The development application for the quarry included an Environmental Impact Statement (EIS) that specifically stated, *“the development application seeks approval to ... produce and market up to 100,000 tonnes per annum of finished product...”*.

The purpose of the EIS was to assess the environmental impacts of the quantified operation of the quarry. This assessment was based on an annual extraction rate of 100,000 tonnes per annum. The subsequent Council assessment of the application and report to the elected Council reiterated that the application was for a quarry with an annual extraction rate of up to 100,000 tonnes. On 6 November 1990, Council resolved to approve the application for the

DE18.23



quarrying and extraction of up to 100,000 tonnes of shale per annum for a period of thirteen years.

As the applicant rightly states, this is an issue that has been raised a number of times with the current quarry operators over a number of years.

In 2009 SCE Resources wrote to Council contending that the daily limit of 1,000 tonnes was actually an average daily limit and that the EIS envisaged this with a total annual extraction rate of 312,000 tonnes. Council replied that this was not the case and the 1,000 tonne daily limit was not an average and the annual extraction rate was 100,000 tonnes as per the EIS.

It has always been Council's position, and still is, that the consent limits the extraction of material to a maximum of 100,000 tonnes per annum as proposed in the EIS.

### Planning Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 96 of the *Environmental Planning & Assessment Act 1979*.

Under Section 96 (1A) of the Act, Council may on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

**(a) *it is satisfied that the proposed modification is of minimal environmental impact***

The proposed modification seeks to increase the daily transport limit from 1,000 tonnes per day to an annual average of 1,000 tonnes per day with a maximum daily limit of 4,000 tonnes. The proposed modification will potentially increase the daily truck movements four fold on the local road network. Council's Traffic Unit have stated that the "*current operating conditions equate to approximately 68 truck movements per day. The new proposal, if approved, would permit this to quadruple to 266 trucks per day.*" Council is of the opinion that this is not a minimal environmental impact as the upgrade of at least one intersection will be required due to the increased number of truck movements per day. The proposed increase in truck movements will affect the local residents and community along the truck routes.

There is a disagreement between Council and the quarry operator about the total annual tonnage of material able to be exported. This proposal appears to attempt to address the quarry operator's position on the annual tonnage limit without undertaking a full environmental assessment of the impacts of increasing the daily tonnage limit.

**(b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)***

Council is satisfied that the proposed development would remain substantially the same development as the development for which consent was originally granted, provided that exported material did not exceed 100,000 tonnes per annum.

**(c) *notification of the application in accordance with the regulations or a development control plan***

The application was notified in accordance with Council's Community Consultation Policy as detailed later in this report.

**(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be***

See consultation and community engagement later in this report.

In determining an application for modification of a consent Council must also take into consideration the matters referred to in s79C that are of relevance to the application. The following matters were considered relevant to the application.

**(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land**

The proposal does not propose any changes to the consent other than 14(h) as described above. It is considered that the development remains consistent with all relevant instruments, draft instruments, DCP and regulations. No further assessment is warranted in this regard.

**(b) Likely impact of that development on the natural and built environment and social and economic impacts in the locality**

The proposed increase in export of material from 1,000 tonnes per day to a maximum of 4,000 tonnes per day will impact on the road network through the four fold increase in daily truck movements. The proposal will increase daily truck movements through Tomerong Village and Gumden Lane.

The proposal to increase the maximum daily tonnage limit and introduce an annual average daily limit will likely have a detrimental impact on the local community as truck movements will fluctuate from a high of 4,000 tonnes per day down to a low of less than 1,000 tonnes per day. The number of trucks used to transport the material is unknown and will vary considerably, depending on the type of trucks and their load carrying capacity. This will affect the community and introduce an element of uncertainty with respect to the volume of trucks using the local roads as well as impacts from the increased number of trucks on the local roads.

Due to the proposal for an annualised average, it will be difficult for the quarry operator and Council to determine compliance with the condition during the year. For example, there could be a month or two of considerable extraction in the middle of the year and nothing either side. To determine compliance with the consent to ascertain if the extraction rate equates to an average of 1,000 tonnes per day, all data for the year up until December would have to be considered. However, the 4,000 daily limit, if exceeded could not necessarily be identified.

Accordingly, the modification as put by the application is likely to become an ongoing compliance issue for Council and the quarry operator.

**(c) Suitability of the site for the development**

The site is suitable for the quarry operation as originally approved. However, the off-site impacts associated with the proposed increased truck movements will affect the local community.

**(d) Submissions made in accordance with the Act or regulations**

The application was notified in accordance with the requirements of Council's Community Consultation Policy as detailed below.

**(e) The public interest**

The development is not in the public interest due to the impact the increased truck movements will have on the local community.

**Consultation and Community Engagement:**

Thirty-five (35) public submissions were received in relation to Council's notification of the development. All submissions received were objections to the development.

The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a two hundred (200) m buffer of the site, all the properties on Gumden Lane and the local community consultation body (Tomerong Community Forum).

The exhibition period was 11/1/17 to 15/2/17. The application was advertised in the South Coast Register on 11/1/17.

Additionally, a Resident's Briefing Meeting was held on 27 April 2017 at the Tomerong Hall.

Key issues raised as a result of the notification are detailed below.

**Issues**

- The application assumes that the current extraction rate is 286,000 tonnes when the EIS for the original application was for a 100,000 tonne limit.
- Significant increase in truck movements on Parnell Road and Gumden Lane, which are not suitable roads for such large truck movements.
- Increase in noise and diesel fumes to residents from the increased number of trucks.
- Increase in dust coming off the loads and from the wheels of the trucks which is a health issue.
- The trucks are continually damaging the roads.
- Trucks driving through the 50kmh zone in Tomerong village is dangerous.
- The intersection of Island Point Rd and the Princes Hwy is a known crash site. What would be the impact with a huge daily increase in trucks entering and exiting the highway?
- Concerns about pedestrian and school children safety due to increased trucks on road.
- Blasting at the quarry is extremely loud and is causing damage to houses.
- Quarry trucks are driving down Gumden Lane at 6am, when hours of operation are 7am.
- The quarry appears to be breaching many conditions that were approved in the past, how can locals feel that this new application won't be breached also?
- Parnell residents are on tank water and there is concern that increased dust will pollute the water supply.

The submissions have been considered in the assessment as follows:

- Council's position is that the consent approved a quarry with an extraction limit of 100,000 tonnes per annum.
- The increased truck movements will likely require an upgrade of selected intersections along the truck routes.
- The Noise Impact Assessment submitted with the application has assessed the noise impacts and determined that while there will be an increase in noise levels from the additional trucks, the increased noise levels are predicted to comply with the NSW EPA Road Noise Policy 2011.
- Dust from the trucks leaving the quarry is an ongoing compliance matter for Council's Compliance Unit and the EPA who licence the quarry operations.
- The consent has a road maintenance condition that operates for the life of the quarry.
- The quarry operations, such as blasting, are regulated by the EPA.
- Hours of operation are not proposed to change and any work outside of the approved hours is a matter for the EPA and Council's Compliance Unit.
- The previous non-compliances with conditions of consent are not issues that are able to be considered in the assessment of the current application. The assessment can only consider the conditions that proposed to be modified.

**Legal Implications**

There are potential legal and cost implications for Council in the event of not supporting the requested variation and refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

**Summary and Conclusion**

The proposal to amend condition 14(h) to increase the daily tonnage limit to a maximum of 4,000 tonnes per day with an annual daily average of 1,000 tonnes will likely have a detrimental impact on the local community and is not in the public interest.

## DE18.24 Proposed Submission - Aboriginal Cultural Heritage Reforms

HPERM Ref: D17/362593

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

### Purpose / Summary

Outline the proposed reforms that the NSW Office of Environment & Heritage (OEH) is currently proposing on how Aboriginal cultural heritage is managed and protected within NSW, and to obtain endorsement to make a submission based on the content of this report.

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

That Council make a submission to the NSW Office of Environment & Heritage on the proposed Aboriginal Cultural Heritage Reforms based on the content of this report.

### Options

1. Adopt the recommendation and endorse the content of this report as the basis for Council's submission.

Implications: This is the preferred option as it ensures that Council's comments will be considered by OEH in the finalisation of the proposed Aboriginal Cultural Heritage Reforms.

2. Make changes to the issues outlined in this report and submit to OEH for consideration.

Implications: This option will still enable Council the opportunity to identify areas of the legislation that require further review or consideration; however, the implications of any proposed changes would require closer consideration or refinement.

3. Not make a submission.

Implications: This is not recommended, as it will mean that Council does not provide any input or suggestions into the preliminary review of Aboriginal cultural heritage management and the opportunity to identify issues for consideration or resolution will possibly be missed.

### Background

The NSW Government has committed to reforming how Aboriginal Cultural Heritage (ACH) is considered, proposing a new *Aboriginal Cultural Heritage Act* to replace the provisions for ACH currently included in the *National Parks and Wildlife Act 1974*. The objectives of the proposed ACH Act will support the NSW Government's OCHRE plan (Opportunity, Choice, Healing, Responsibility, Empowerment), which aims to support strong Aboriginal communities in which Aboriginal people actively influence and participate fully in social, economic and cultural life in NSW.

The proposed standalone legislation aims to respect and protect ACH for current and future generations and provide clear and consistent processes for economic and social development in NSW.

The proposed Act and supporting material will be part of a system of existing and proposed legislation that:

- Empowers Aboriginal people to conserve and keep their culture alive in all of its forms and representations – these include the proposed *Aboriginal Languages Bill* and the *Aboriginal Land Rights Act*.
- regulate activities that can impact on ACH, for example, development approved via the *Environmental Planning and Assessment Act 1979*.

The draft ACH Bill has now been released for review/comment, and seeks to achieve the above outcomes by delivering on the following five key aims:

- Better recognise ACH values.
- Enable decision making by Aboriginal people.
- Provide better information gathering and management.
- Improve protection and conservation of ACH.
- Provide greater confidence in the regulatory system.

Implementation of the draft Bill will be achieved through the creation of a new governance structure. This structure will involve the creation of an ACH Authority, a state-wide body of Aboriginal people who will administer the new legal framework by:

- Making decisions about the management and conservation of ACH;
- Providing advice to the Minister administering the new legislation regarding the operation of the Act;
- Establishing and administering an ACH Information System, including an online mapping portal;
- Developing and adopting operational policies, guidelines, codes of practices and methods that guide how the new ACH legislation is to be applied in practice.

The ACH Authority's decisions will be informed by Local ACH Consultation Panels. These local consultation panels will consist of Aboriginal people recognised by their local communities as having the authority to speak for Country. Their role will be to provide advice to the Authority on various issues, including:

- Information to be included in the ACH Information System and on the NSW Aboriginal Cultural Heritage Maps;
- The content of the ACH strategic plans – identifying ACH conservation and funding priorities in their areas and the implementation of those plans;
- The repatriation of Aboriginal objects or materials and human remains, proposals for declared ACH, conservation agreements, ACH nominations on the State Heritage Register under the *Heritage Act 1977*, and applications for intangible ACH to be registered on the ACH Information System;
- The outcomes of their negotiations of ACH Management Plans with development proponents.

The draft Bill and a range of supporting material are currently on exhibition for comment until 20 April 2018. This can be viewed on the internet at the following link:

<http://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage/legislation/draft-aboriginal-cultural-heritage-legislation-2017-consultation>

### Aboriginal Cultural Heritage Bill 2018 - Review

Council staff have reviewed the exhibition material and are strongly supportive of the proposal to create a standalone body of legislation that deals with ACH management. The reforms are generally positive and improve on the current system. The following intentions are supported in principle:

- Developing standalone legislation;
- Providing a stronger conservation focus;
- Providing for broader recognition of Aboriginal cultural values (not just objects);
- Increasing local Aboriginal community involvement and decision making;
- Integrating the ACH model with the planning system; and
- Creating a central contact for Aboriginal consultation.

As part of the consultation process, Council staff and prominent Aboriginal community members met and watched the webinar provided by OEH. Following the webinar, staff and community members shared their concerns with one another, many of which were very similar and are outlined below.

The proposed model for ACH management still requires a considerable amount of refinement and further detail, to ensure that it will actually provide functional mechanisms for achieving Aboriginal cultural heritage conservation. In particular the following points have been identified:

- Further consultation is required with Aboriginal people to identify the election process to be undertaken in establishing/electing the proposed ACH Authority and the Panel members – this is particularly relevant in Shoalhaven, where there are multiple Aboriginal groups and Local Aboriginal Land Councils (LALC).
- The term “boundary” needs defining for the purposes of electing ACH Authority and Panel members – i.e. Local Government Area, LALC boundary or Country.
- Clarification is needed regarding the integration and role of the existing *Aboriginal Land Rights Act* and LALC’s.
- It is difficult to provide a detailed submission given that many of the supporting Guidelines and Codes of Practice (containing much of the detail) are not yet available. There needs to be the ability to review these as part of the overall reform package.
- Clarification is needed regarding Local Consultation Panels/Local Coordination and Support Panels and who is responsible on remuneration of these panels.
- The process to be undertaken for new or unregistered Aboriginal cultural places, items and objects needs to be clarified.
- There is a lack of detail regarding the implications of this legislation on planning instruments/matters, such as Local Environmental Plans, Planning Proposals, Ministerial Directions, and Planning Certificates under the *Environmental Planning and Assessment Act 1979*.
- Greater detail is required on the proposed development assessment pathways, particularly relating to the onus being placed on developers to consider ACH, and how ACH is to be considered for exempt and complying development.

- A governance model is needed that deals with probity and conflicts of interest, particularly in circumstances where LALC's wish to develop their land and their members are either members of the ACH Authority or Local ACH Consultation Panels.

It is intended that Council's submission highlight and raise the above points, with the main thrust of the submission being that more detailed consultation and dialogue is needed to ensure that this important piece of legislative reform is functional, integrates with other legislation and is supported by all interest groups.

### **Community Engagement**

The draft Bill is currently on public exhibition until 20 April 2018, with all exhibition documents available via OEH's website:

<http://www.environment.nsw.gov.au/research-and-publications/publications-search/aboriginal-cultural-heritage-bill-2018>

As part of the consultation process OEH held a webinar held on the 12 March 2018, which can also be viewed at: <http://www.webcasts.com.au/oeh080318/>

An information session for government agencies and community members was also held in Nowra on 28 March 2018.

In addition to the above, as part of Council's own consultation, a number of Aboriginal community members were invited to watch the webinar, that was held on the 12 March 2018, with Council staff. This helped ensure that Council was aware of any issues arising for the Aboriginal community, as well as to share with community members any views staff may have. Council thanks those community members who attended and shared their views as their insights were invaluable.

### **Policy Implications**

There will be policy changes associated with the implementation of this new legislation, however, the extent of these changes cannot be confirmed until this legislation and the associated guidelines and codes of practice are released.

### **Financial Implications**

Clarification has been sought regarding remuneration of the proposed Local Consultation Panels as it is unclear how they are to be funded. There are no other immediate financial implications for Council in making a submission on the Aboriginal Cultural Heritage Reforms and this is being managed within the Strategic Planning budget.

### **Risk Implications**

Should Council resolve not to make a submission on the preliminary consultation phase of the Aboriginal Cultural Heritage Reforms, there is a risk that the issues outlined above may be overlooked and subsequently excluded from the final reforms.



## DE18.25 Proposed Exhibition - Review of Shoalhaven Contributions Plan 2010

**HPERM Ref:** D18/67978

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

**Attachments:** 1. Draft Amended Contributions Plan 2010 (under separate cover)  
2. Contribution Projects Proposed to be Deleted [↓](#)  
3. New and Revised Contribution Projects [↓](#)

### Purpose / Summary

Obtain endorsement to publicly exhibit draft Amendment No. 10 (major review) to Shoalhaven Contributions Plan 2010 to enable feedback from the community and development industry.

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

That Council:

1. Adopt for exhibition purposes the draft Amendment No. 10 to Shoalhaven Contributions Plan 2010 as attached;
2. Exhibit draft Amendment No. 10 for a minimum period of 28 days in accordance with legislation;
3. Receive a further report after public exhibition to consider any submissions and to adopt the amendment for finalisation; and
4. Acknowledge a further amendment to the Contributions Plan will be necessary once the two significant projects identified in this report have been revised and adopted by council.

### Options

1. Publicly exhibit draft Amendment No. 10 to Shoalhaven Contributions Plan (CP) 2010 as recommended, and report the outcomes of the exhibition back to Council.

Implications: This is the preferred option as it will enable the draft Amendment to be exhibited to allow for community and development industry consideration and comment. It will also enable this important update review to the Contributions Plan to progress. The proposed update will make it a more flexible Plan and facilitate the ability to deliver higher priority projects in a more timely manner.

2. Amend the changes proposed to the Shoalhaven CP 2010.

Implications: If doing so, ensure the changes requested are in line with the requirements of the *Environmental Planning and Assessment (EP&A) Act 1979* and Regulations.

3. Do not proceed to exhibit the proposed changes to the Shoalhaven CP 2010.

DE18.25

Implications: This is not recommended as the current plan needs to be updated to represent the current needs of the community and support future growth.

## Background

The existing Shoalhaven CP was adopted in 2010. Since then there have been a number of amendments to the Plan (minor to more significant), however, over time the Plan has become out of date, the website looks aged and is difficult to navigate, and projects are in need of a review.

Work commenced on a review of the Plan with the creation of an internal staff Development Contributions Panel with the aim of taking a 'whole of Council' approach to a revised contributions plan.

An update report on this project was provided to the Council Meeting on 24 October 2017 where a draft list of projects was provided for the revised plan. Most recently a briefing was held with Councillors on 15 March 2018 to discuss the draft Amendment in more detail.

The main components of the current review are:

1. Revision of the content of the plan.
2. Review and rationalisation of projects.
3. Creation of an updated website including a new calculator.

When completed this will represent a significant review of the plan and the establishment of, essentially, a new plan.

## Review of the content of the Plan

The overall content of the Plan has been reviewed to improve readability while ensuring that it still complies with the relevant legislation and guidelines. **Attachment 1** is the draft amended version of the Shoalhaven CP 2010, noting that the plan itself is a web based one. The changes that have been made represent:

- Amendments that have been made to the *Environmental Planning and Assessment Act 1979*.
- Clear explanation of concepts.
- The correction of links throughout the website.
- Clarification of the policy relating to refunds.
- Updates to population forecasts.
- Improvements to overall readability.

The changes are in line with the requirements outlined by the NSW Department of Planning & Environment in the *Development Contributions – Practice Note July 2005* and the *Revised Local Development Contributions Practice Note February 2014*.

## Review of Projects

The current Plan contains 179 projects, 88 of which are proposed to be deleted. There are various reasons for this, including:

- Have been completed and paid off.
- Have been completed and no further contributions are able or likely to be collected.

- No longer being required due to Council policy changes and/or changes in community requirements.
- No longer being economically feasible.
- Project has been changed/amended.

The projects to be deleted are outlined in **Attachment 2**.

The remaining projects that are proposed to be retained in the Plan have been identified as still being required to accommodate future population growth as follows:

- Have not been completed; or
- Have been completed but are currently being recouped, and can be recouped within a reasonable timeframe.

Seven new projects have been added to the Plan. These represent recreation and community facility projects for each of Council's five planning areas. This is consistent with the new approach to the provision of community infrastructure set out in the *Community Infrastructure Strategic Plan* adopted in 2017. This approach allows Council to pool funds and apply these funds to a works program for community infrastructure projects by planning area.

**Attachment 3** identifies the new projects and the projects that are proposed to be revised through this review.

#### Recoupment projects

The recoupment projects have been rationalised through the review; where timeframes for recoupment were reasonable (e.g. funds likely to be recouped within 20 years), the projects are proposed to be kept. Where timeframes were considered to be unreasonable (e.g. 50+ years to recoup funds), projects are proposed to be deleted and the balance of contributions paid included in the recoupment fund. There will be a negative balance of approximately \$2.7 million dollars resulting from the deleted projects where Council has already expended funds undertaking some of these projects; this will be paid from a positive balance of approximately \$14.2 million of contributions paid for other deleted projects, leaving a balance of \$11.5 million in the recoupment fund.

The rate of recoupment from projects will continue to be monitored; there may be additional projects in the near future which are deleted based on expected low future rates of funds collection for projects.

Council previously resolved on 21 March 2017 that:

*The funds from recoupment projects and identified deleted projects be transferred to a "recoupment fund" and used as Council's apportionment to projects and to provide seed funding for community infrastructure projects identified in the revised Contributions Plan.*

Consistent with this resolution, these recoupment funds will be put towards upcoming projects necessary to allow for development to support future population growth, for example, provision of essential community infrastructure up front in urban release areas like Moss Vale Road North and South, to reduce delays in achieving release of land in these areas.

The total value of projects remaining in the Plan is approximately \$350 million. Council's liability for these projects is approximately \$175 million with the potential to collect approximately \$175 million from development.

\*The largest of these liabilities for Council are the Shoalhaven Community and Recreational Precinct (\$63 million), Bay and Basin District Community Centre and Branch Library (\$22

million), (both subject to change – see below), and a new project encompassing Planning Area 1 Recreation Facility Upgrades (\$11 million).

#### \*Recent Project Changes

It is recognised that there have been recent changes to significant projects which have a portion of funding coming from the contributions plan. At the time data was being collated for this review the information was based on the draft MasterPlans, both of which were in line with the resolved position of Council. However, with the new resolved positions as recent as early April'18, the scope of these projects have changed.

Therefore, the changes to the Shoalhaven Community and Recreation Precinct Project and the Bay and Basin Community Centre and Branch Library Project (to eliminate the District library component) will be incorporated into this exhibition of the contributions plan **if possible**. If however, the project redesigns and costings are not completed and adopted by council, in time for this to occur, the public exhibition will proceed (with appropriate notations) and a future amendment to the contributions plan (and new exhibition in line with the requirements of the Environmental Planning and Assessment Act) will be undertaken.

#### New website

A new website is being developed which will have a similar look and feel to the existing LEP and DCP websites. This website will form the exhibition of the Plan and will display the amended Plan and additional information relating to projects being deleted/updated.

To avoid any confusion, there will not be a contributions calculator active on this new website. The website for the existing Plan will continue to operate until the new Plan is commenced, at which point a new calculator will be available on the new website.

#### Future Work

Regular reviews of the Plan will be undertaken to ensure that it remains up to date and reflects actual costs incurred, that cost estimates and timeframes for projects are revised, and that projects are still necessary and achievable.

In undertaking this review, it has been identified that a number of contributions projects are not necessarily representative of information within Council's Development Control Plans. These projects remain in the current plan, but will be incorporated into a review of the specific projects, this will involve targeted consultation with local communities.

### **Community Engagement**

The proposed changes will be exhibited for a minimum of 28 days in line with legislative requirements and Council's Community Engagement policy. This will be done through the new website.

Any issues raised in submissions made during this time will be reported to Council for consideration as part of the final adoption of the proposed amendments.

### **Financial Implications**

For a number of the projects being deleted, Council is balancing out the debt incurred with money available in projects with a positive balance.

As previously resolved by Council, the money remaining is to be 'ring-fenced' specifically for contributions projects and will not be permitted to be used to fund other works. It will be restricted to providing seed funding for priority projects with a high apportionment. This will

ensure that projects can commence and be completed in a manner in line with development requirements in urban release areas.

Council will need to continue to consider how Council's liabilities as outlined in the Contributions Plan are to be met going forward.

DE18.25

## Attachment 2 – Projects proposed to be deleted – draft Amendment No. 10 – Contribution Plan 2010

Project code	Project name	Comment
01AREC2008	Planning Area 1 - Recreation facility upgrades	To be replaced with outcomes outlined in CISP. Delete project.
01CFAC0005	Worrigee District Community Centre	Identified as no longer being required in the CISP. Project to be deleted.
01CFAC0013	Berry Gardens Neighbourhood Community Centre	Part of the Huntingdale development. No longer required. Developer to embellish open space as per development consent.
01CFAC2003	Nowra District Community Centre	No longer required.
01CFAC3007	West Nowra Community Meeting Room	No longer required.
01ROAD0109	Burrier Road & Yalwal Road	Contributions collected in respect to this project. Delete project.
01ROAD0142	Yalwal Road	Low developer apportionment. Much of the nexus area is rural. Delete project.
01ROAD2025	Lilly Pilly Lane	Is in 2018/19 Works Plan - low cost project but will not collect further contributions as development potential realised within rural zoning/1ha min lot size. Council will need to fund the remaining costs. Delete project.
01ROAD2026	Ironbark Road	Low cost project. Potential to collect up to ~\$50,000 with two new lots. However, this is a rural road and no major development is proposed for the area. Delete project.
01ROAD2027	Flannery Road	This is a rural road, and works should be done as part of Council's maintenance and works plan. Delete project.
01ROAD2028	Browns Mountain Road	This is a rural road, and works should be done as part of Council's maintenance and works plan. Delete project.
01ROAD2040	Quinns Lane - Strengthen Pavement	Project has collected all development apportioned funds, Council needs to contribute and complete this project. Delete project.
01ROAD2042	Broughton Vale Road - Upgrade Gravel Pavement	Works completed. Rural road with little development potential. Delete project.
01ROAD2043	Brogers Creek Road - Upgrade Gravel Pavement	No further development potential as it is a rural road and most/all lots are around the minimum lot size. No further funds likely to be collected. Delete project.
01ROAD2045	Wattamolla Road (2) - Upgrade & Seal	Rural road with little future development potential, further funds unlikely to be collected in a timely manner. Delete project.
01ROAD2049	Woodhill Mountain Road	Works completed. Project to be deleted as it is a rural road, low apportionment and a very wide nexus area. Delete project.
01ROAD2053	Bridge over Kangaroo River	Project has been completed. Rural road with little to no further development potential as most, if not all lots, around the minimum lot size. Delete project.

Project code	Project name	Comment
01ROAD2054	Gerringong Ck Rd-Upgde Grav Pvt Kangaroo R Bdg-Gerrgng Ck B	Rural road with no further development potential. Delete project.
01ROAD2064	Upper River Rd-Upgrade & Seal-End exist seal-Township(1.1km)	Works completed. Rural area with little development potential. Council unlikely to recoup funds in the near future. Delete project.
01ROAD2067	Jacks Corner Rd - Upgrade Gravel Pavement	Rural road with little to no development potential in the future. Delete project.
01ROAD2071	Carters Rd - Upgrade Gravel Pavement	Rural road with little to no future development potential. Delete project.
01ROAD2074	Illaroo Road - Upgrade and Seal Bingara/Bangalee	Rural road with little to no future development potential. Delete project.
01ROAD2075	Illaroo Road 7.2-7.5km from Princes Hwy:Bangalee to Browns Mountain Road	Rural road with a very low cost apportionment which has been completed. Delete project.
01ROAD2080	Bundanon Road - Upgrade Gravel Pavement	Some potential for subdivision exists, however, because this is a rural area it may be some time before anything actually occurs. Delete project
01ROAD2083	Cabbage Tree Lane	Works completed. Project funded. Delete project.
01ROAD2090	Parma Road - Upgrade Gravel Pavement	No further development potential in the nexus area. Delete project.
01ROAD2091	Parma Rd-Strengthen Pavt Between 2.1 & 4.2km from SH1	Low apportionment to development. Minimal potential for further contributions. Potentially only one new lot. Delete project.
01ROAD2093	Beinda/Brinawarr Streets (Right Turn Lane)	The rate of collection and the low apportionment rate due to the benefit of existing development less than 15% of the project cost will be collected. Delete project.
01ROAD2096	Pyree Lane Culburra Road	Works completed. At current rate will be paid off in ~41 years. Low apportionment and a low rate of collection means. Delete project.
01ROAD2099	Greenwell Point Road	At current rate will be recouped on ~75 years. Delete project.
01ROAD2100	Greenwell Point Road	Project has been completed and there is \$325 left to recoup. Delete project.
01ROAD2128	RIVERSDALE ROAD - Upgrade and Seal 805 metres	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
01ROAD2129	SPOTTED GUM DRIVE - Upgrade and Seal 650m	Rural road with a relatively low cost. Delete project.
01ROAD2131	ILLAROO ROAD from Bugong Rd to Riversdale Rd	Project completed. Delete project.

Project code	Project name	Comment
01ROAD2132	ILLAROO ROAD from Browns Mtn Rd to Bugong Rd	Being a rural road, due to the large nexus area, and relying on rural subdivisions makes the collection of funds very slow. Delete project.
01ROAD2137	BOSTON ROAD - Upgrade and Seal 1030m	Works completed. Delete project.
01ROAD3073	Emerys Road - Upgrade Gravel Pavement	Rural road upgrade should be part of the works program, not the contributions plan. Delete project.
01ROAD3082	Bugong Road - Upgrade Gravel Pavement	Rural road upgrade should be part of the works program, not the contributions plan. Delete project.
01ROAD3103	Service Road Western Side of Highway South Nowra	Works completed. Project to be deleted.
01ROAD3124	Moss and Brearton Streets Roundabout	Low apportionment, and no future development potential means that no further money will be collected. Delete project.
02ROAD2001	Culburra Road/ Princes Highway	Money recouped. Delete project.
02ROAD2002	Currarong Road	Works completed. Low apportionment to development. Delete project.
02ROAD2005	Currarong Road Bridge	Works completed. Low apportionment to development. Delete project.
03AREC2004	Planning Area 3 active recreation facility upgrades	Project to be replaced by those outlined in CISP. Delete project.
03CFAC0002	Sanctuary Point/ Old Errol Bay Community Centre	Unlikely to collect any substantial level of funds in a reasonable timeframe. Delete project.
03ROAD0059	Field Street Turning Circle	Works completed. Delete project.
03ROAD0114	Windley Road Wandadian	Rural road. Delete project.
03ROAD2001	Dowling Street Falls Creek	Delete project.
03ROAD2013	Sinclair Road (Part 3) Falls Creek	Rural road with no further/minimal opportunity to collect contributions. Delete project.
03ROAD2022	Grange Road St Georges Basin	Works completed. Delete project.
03ROAD2024	Atherton Street / The Wool Road Basin View	Works completed. Relatively low cost project and it appears there will be a slow take-up in DAs that will pay contributions. Delete project.
03ROAD3053	The Wool Lane Sanctuary Point	Works completed. Project costs have been recouped. Delete project.



Project code	Project name	Comment
04AREC2004	Planning Area 4 - Recreation facility upgrades	The CISP does not identify any AREC projects for planning area 4.
04ROAD2001	Sussex Inlet Road Network	Road has been constructed, and it has a low apportionment to development (17.9%) and a very large nexus area. Delete project.
04ROAD3002	Old Berrara Road	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
05AREC2004	Planning Area 5 active recreation facility upgrades	Projects to be replaced by outcomes outlined in CISP. Delete project.
05AREC3002	Leisure Centre Heated Indoor Swimming Pool	Future development in line with mini-masterplan - which includes learn to swim pool, water play, amenities enhancements. Change Total Value to \$5,000,000. Project deleted and incorporated into new AREC project.
05CFAC0002	Lake Conjola Community Hall	Low recoupment rate. Delete project.
05CFAC0006	Bawley Point/Kioloa Community Hall	Delete project. Would take ~120+ years to recoup at current rate.
05DRAI2005	New Street Drainage	Works completed. Low value project with low rate of recoupment. Delete project.
05ROAD2010	Shepherd St/Golf Road Intersection	Works completed. Very low apportionment to development. Delete project.
05ROAD2020	Bendalong Road + Inyadda Drive	Low collection rate. Delete project.
05ROAD2021	Woodstock Road	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
05ROAD2022	Cunjurong Point Road	Low apportionment. Little to no money being collected. Delete project.
05ROAD2026	Little Forest Road	Works completed. Rural Road. Delete project.
05ROAD2028	Garrads Lane North	Works completed and paid. Delete project.
05ROAD2029	Garrads Lane South	Works completed. Delete project.
05ROAD2032	Croobyar Road Ulladulla Rural	Only collecting from rural lots. Little potential to collect. Delete project.

Project code	Project name	Comment
05ROAD2035	Hobbs Lane	Works completed. Rural road upgrade. Delete project.
05ROAD2036	Croobyar Road Croobyar	Rural road upgrade. Delete project.
05ROAD2037	Mimosa Park Road Woodburn	Works completed. Rural road. Delete project.
05ROAD2038	Wheelbarrow Road	Works completed. Rural road. Delete project.
05ROAD2039	Woodstock Road	Works completed. Rural Road. Delete project.
05ROAD2040	Woodburn Rd Wheelbarrow to Clyde Ridge	Works completed. Rural road. Delete project.
05ROAD2041	Woodburn Road	Works completed. Rural road. Delete project.
05ROAD2042	Brooman Road Boyne	Works completed. Rural road. Delete project.
05ROAD2043	The River Road	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
05ROAD2045	Monkey Mountain Road	Works completed. Rural road. Delete project.
05ROAD2047	Murramarang Road Highway to Willinga Lake	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
05ROAD2062	Little Forest Road	Rural road with little future development potential, further funds unlikely to be collected in a timely manner.
CWAREC2004	Synthetic Hockey Field Facility	Project completed and the costs allocated to development have been collected. Delete project.
CWCFAC0003	Shoalhaven City Arts Centre	This is a recoupment project. It has been identified through the Community Infrastructure Strategic Plan that the Arts Centre needs re-vamp or to be relocated. New citywide project created for Arts Centre upgrade - CWCFACXXXX.
CWCFAC0004	Shoalhaven Mobile Children's Services	Remove project.
CWCFAC0005	Shoalhaven Multimedia & Music Centre	Needs revamp, to be included as part of new Arts Centre development. Delete project.
CWOREC2001	Embellishment of Icon and District Parks and Walking Tracks	These projects are to be addressed within planning areas in line with CISP with new AREC projects within each planning area.
MACFAC2002	Northern Shoalhaven Community Transport and Family Support Services	Delete project. Current rate of recoupment has it being paid off in 40+ years.

Project code	Project name	Comment
MACFAC4001	Northern Shoalhaven Integrated Children's Services	Delete project. Project no longer required.

### Attachment 3 – New and revised contribution projects

This attachment outlines the new and contribution projects where one or more aspects of the project is being changed. For details of remaining projects to be kept in the Contributions Plan, please refer to the website <http://s94.shoalhaven.nsw.gov.au/>

*Note: Recent changes relating to the Shoalhaven Community and Recreation Precinct and the Bay and Basin District Community Library, including the new library at Sanctuary Point will be incorporated into the public exhibition if information and costings become available. If however, these cannot be completed in time, these changes will be incorporated into a future amendment and will be exhibited accordingly. Another report will be submitted once they have been reviewed reporting any changes.*

#### 1. Planning Area 1

##### 1.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
01ARECXXXX	Planning Area 1 Community & Recreation Facilities Upgrades	\$14,286,250	\$11,268,994	\$3,017,256	21.12%	Development dependent	\$721

##### 1.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
01AREC2006	Northern Shoalhaven Sports Stadium	\$13,698,959	No change	\$ 551.71	No change	2020/24	No change	No	
01AREC3007	Nowra Swimming Pool Expansion	\$2,644,251	No change	\$ 392.73	No change	2014/18	N/A The project has been completed.	Yes	
01CARP2002	Berry Town Centre Car Parking	\$7,744,372	No change	\$ 37,232.56	No change	2012/16	2020/24	No	
01CARP3001	Car parking provision at Egans Lane 8 Lawrence Ave Collins Way, Bridge Road, Lamonds Lane 9 Haigh Avenue & 67	\$23,650,434	No change	\$ 26,278.26	No change	2014/18	2018/20	No	May require a review to align with recently adopted DCP chapter – N8 Nowra CBD Urban Design Development Controls.

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
	Kinghorne Street, Nowra								
01CARP3004	Kangaroo Valley car parking provision at 169 Moss Vale Road	\$165,382	No change	\$ 3,445.46	No change	2010/14	2020/28	No	
01CFAC0014	Mundamia URA Community/Childcare Centre	\$1,172,829	No change	\$ 2,458.76	No change	Development Dependent (Approximately 2024-2029)	Development Dependent	No	
01DRAI2003	Illaroo Road, North Nowra Drainage	\$252,152	No change	\$ 1.15	No change	2017/21	2020/28	No	
01OREC0014	Mundamia URA Central Open Space	\$909,443	No change	\$ 1,906.59	No change	Development Dependent (Approximately 2018-23)	Development Dependent	No	
01ROAD0146	Mundamia URA Shared Cycle/Pathway - George Evans Road	\$184,160	No change	\$ 386.08	No change	Development Dependent (Approximately 2016-2021)	Development Dependent	No	
01ROAD0149	Mundamia URA George Evans and Yalwal Road Intersection Upgrade	\$657,649	No change	\$ 1,378.72	No change	Development Dependent (Approximately 2016-2021)	Development Dependent	No	
01ROAD0150	Roundabouts - Yalwal Road/Rannoch Drive and Yalwal Road/Lightwood Drive	\$1,163,448	No change	\$ 918.55	No change	Development Dependent (Approximately 2027-2032)	Development Dependent	No	
01ROAD0152	Traffic signals and associated works at intersection of Albatross / Yalwal Roads.	\$985,770	No change	\$ 294.36	No change	Development Dependent (Approximately 2016-2021)	Development Dependent	No	
01ROAD2007	Beach (Tannery) Road, Berry -	\$1,260,187	\$1,598,000	Area 1- \$16594	Area 1- \$21040	2013/17	2020/25	No	Project will potentially need to be revised if

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
	Strengthen Pavement & Bridge			Area 2- 5456	Area 2- \$6601				land at 510 Beach Road, Berry is rezoned (PP018). Revised value puts contribution over the contribution cap which requires approval from IPART.
01ROAD2038	Old Southern Road, South Nowra upgrade (1km south from Quinns Lane)	\$1,197,698	No change	\$ 1,606.45	No change	2015/19	Development Dependent	No	
01ROAD2039	Quinns Lane/Old Southern Rd, South Nowra - Construct Roundabout	\$491,372	\$840,000	\$ 184.90	\$316 71% increase	2018/22	N/A Project has been completed	Yes	
01ROAD2101	Nth Nowra Link Rd-Construct Rd Bridge & Traffic Facilities	\$16,886,524	No change	Area 1-\$3,185 Area 2-\$2,201 Area 3-\$4,289 Area 4-\$7,366 Area 5-\$5,330 Area 6-\$6,524 Area 7-\$3,822	No change	2011/15	2020/24	No	
01ROAD2143	Quinns/Browns Ind. Link Road, South Nowra	\$557,201	No change	\$ 2,041.03	No change	2016/20	Development dependent	No	Planning agreement in place to construct part of road.
01ROAD2144	Hillcrest Ave, South Nowra Road & Drainage Works	\$1,842,174	\$2,000,000	\$ 12,881.37	\$13,564 9% increase	2017/21	Development dependent	No	
01ROAD3102	Const Acc/Deceleration Lane & K&G - Eastern Side Of SH1, South Nowra	\$698,076	No change	\$ 575.97	No change	N/A Project has been completed	No change	N/A	Map to be updated to show whole properties rather than part properties.
01ROAD3104	Quinns/Old Southern Link, South Nowra Construct Internal	\$4,355,457	No change	\$2,215	No change	2013/17	2020/25	No	Separate review underway to amend project.

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
	Service Rd & Loop Rd								
01ROAD3105	Quinns/Old Southern Link, South Nowra Construct Road Drainage - Internal Service	\$1,449,585	No change	\$1,122	No change	2012/20	2020/25	No	May be incorporated with related road project (01ROAD3104) as part of future amendment.

## 2. Planning Area 2

### 2.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
02ARECXXXX	Planning Area 2 - Recreation facility upgrades	\$1,286,000	\$1,014,327	\$271,673	21.13%	Development dependent	\$1,535

### 2.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
02AREC0002	Culburra & District Sporting Complex Site	TBD when future lot yield is known	No change	Unknown	No change	Development dependent	No change	No	
02ROAD0011	East and West Crescent, Culburra Beach	\$2,222,219	No change	\$ 17,226.50	No change	2014/18	Development dependent.	No	May exceed contributions cap which will require approval from IPART.
02ROAD2007	DCP41 Area Roads, Callala Bay	\$1,436,697	No change	\$ 15,963.30	No change	2009/13	Development dependent	No	May exceed contributions cap which will require approval from IPART.





### 3. Planning Area 3

#### 3.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
03ARECXXXX	Planning Area 3 - Recreation facility upgrades	\$2,480,000	\$1,956,202	\$523,798	21.12%	Development dependent	\$1,013

#### 3.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
03AREC3003	Bay and Basin Leisure Centre (The Wool Road, Vincentia)	\$902,140	No change	\$398	No change	N/A Project has been completed			
03CARP0004	St Georges Basin Village Centre car parking (Island Point Road)	\$201,261	No change	\$10,063	No change	Development dependent	No change	No	
03CARP2002	Huskisson Car Parking	\$1,314,511	No change	\$15,109	No change	2013/17	Development dependent	No	
03CARP3001	Car parking provision at Kerry Street, Sanctuary Point	\$690,452	No change	\$5,851	No change	2012/16	Development dependent	No	
03CFAC3001	Bay and Basin District Community Centre and Branch Library (Bay & Basin urban precinct)	\$11,823,852	\$29,000,000	\$1,183	\$2,898 145% increase	2015/19	No change	No	
03DRAI2001	St Georges Basin Village Centre Drainage	\$1,401,289	\$2,000,000	Area 1-\$13 Area 2-\$11 Area 3-\$7 (per m <sup>2</sup> )	Area 1-\$18 Area 2-\$15 Area 3-\$11 (per m <sup>2</sup> ) 43% increase	2009/13	Development dependent	No	

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
03OREC0009	Tomerong open space	\$188,162	No change	\$2,163	No change	Development dependent	No change	No	Map to be amended to remove Lot 58 DP 816150 (510 Hawken Rd, Tomerong) as no longer required – funds to be for embellishment of open space in Tomerong.
03OREC0012	St Georges Basin Village Green	\$342,470	No change	\$845	No change	Development dependent	No change	Partial – land acquired and embellished.	Amenities building component not completed.
03ROAD0060	Kent Lane, Huskisson	\$393,404	\$500,000	\$10,299	\$13,079 27% increase	Development Dependent	No change	No	
03ROAD0061	Winnima Lane, Huskisson	\$276,748	\$500,000	\$8,068	\$14,604 81% increase	Development Dependent	No change	No	
03ROAD0062	Unnamed Lane (Huskisson)	\$141,457	\$200,000	\$10,636	\$14,997 41% increase	Development Dependent	No change	No	
03ROAD0115	Sydney / Bowen Streets, Huskisson	\$1,129,216	\$1,329,000	\$400	\$472 18% increase	2016/20	2020/25	No	
03ROAD2011	Hart Road, Falls Creek	\$233,625	\$300,000	\$15,575	\$19,936 28% increase	2013/17	2020/25	No	
03ROAD2016	Port Jervis Estate Roads, Tomerong	\$1,163,192	No change	Area 1-\$17,928 Area 2-\$3,805	No change	2011/17	2022/27	No	
03ROAD2019	Tasman Park Estate gravel upgrade (The Wool Rd, The Basin Road & Island Point Rd)	\$107,773	No change	\$6,736	No change	N/A The project has been completed.			
03ROAD2023	St Georges Basin Village Access Road & Traffic Facilities	\$3,046,350	No change	\$7,514	No change	2012/16	Development dependent	Partial	Works partially completed.
03ROAD2028	Wandean Road Wandandian	\$604,042	No change	Area 1-\$8,823 Area 2-\$6,566	No change	2013/17	Not applicable.	Yes	

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
				Area 3- \$0.09(per tonne)			The project has been completed.		
03ROAD2112	Anson Street Extension St Georges Basin	\$2,339,139	No change	\$2,968	No change	2011/15	Not applicable. The project has been completed.	Yes	
03ROAD3021	St Georges Basin Bypass	\$6,163,745	\$8,000,000	Area 1-\$131 Area 2-\$788 Area 3-\$131 Area 4-\$313	Area 1-\$171 Area 2-\$1024 Area 3-\$171 Area 4-\$407 30% increase	Not applicable. The project has been completed.			

#### 4. Planning Area 4

##### 4.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
04CFACXXX	Planning Area 4 - Community Facilities	\$600,000	\$473,282	\$126,718	21.12%	Ongoing	\$316

##### 4.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
04CARP3001	Car parking provision at 16 Nielson Road 45-47 Ellmoos Avenue, Sussex Inlet	\$896,378	No change	\$7,114	No change	2014/18	Development dependent	No	

#### 5. Planning Area 5

##### 5.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
05ARECXXX	Planning Area 5 - Recreation facility upgrades	\$7,099,200.00	\$3,115,720.33	\$1,900,800.00	21.12%	Development dependent	\$1,658

##### 5.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
05CARP3002	Car parking provision at 84 Princes Highway, Milton	\$705,636	No change	\$10,856	No change	2009/13	Not applicable. The project	Yes	

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?	Comment?
							has been completed.		
05CFAC2010	Southern Shoalhaven Branch Library	\$5,183,901	No change	\$499	No change	2011/15	Not applicable. The project has been completed.	Yes	
05ROAD2001	Bishop Drive, Mollymook extension (Northern Link Road)	\$14,463,918	No change	Area 1-\$5,246 Area 2-\$1,749 Area 3-\$17,488 Area 4-\$12,241	No change	2012/18	Development dependent	No	Planning agreement in place for construction of road.
05ROAD2007	Kings Point Road, Kings Point	\$642,248	\$1,000,000	\$ 3,211	\$5010 56% increase	2014/18	2022/27	No	
05ROAD2030	Croobyar Road Milton	\$184,713	\$250,000	Area 1-\$192 Area 2-\$77 Area 3-\$62 Area 4-\$39	Area 1-\$260 Area 2-\$104 Area 3-\$83 Area 4-\$52 35% increase	2012/16	2020/25	No	
05ROAD2058	Corks Lane Link Road	\$2,845,852	\$3,100,000	\$12,842	\$13,985 9% increase	2014/18	Development dependent.	No	
05ROAD2061	Matron Porter Drive, Milton	\$2,936,646	\$3,500,000	Area 1-\$4,903 Area 2-\$1,471 Area 3-\$490 Area 4-\$1,961	Area 1-\$6,944 Area 2-\$1,751 Area 3-\$584 Area 4-\$2,334 19% increase	2021/25	No change	No	
05ROAD3008	St.Vincent Street Connector Road, South Ulladulla	\$1,933,552	\$4,000,000	\$ 2,323	\$4,809 107% increase	2017/21	No change	No	

## 6. Citywide projects

### 6.1 New projects

Project code	Project name	Total value (Indexed)	Council amount	Development amount	Developer apportionment	Timeframe	Contribution rate
CWARECXXXX	Shoalhaven Community and Recreational Precinct (SCaRP)	\$80,000,000.00	\$63,104,000.00	\$16,896,000.00	21.12%	2018/19-2024	\$1,866
CWCFACXXXX	Shoalhaven City Arts, Multimedia & Music Centre	\$3,000,000	\$2,366,400	\$633,600	21.12%	2020/24	\$70

### 6.2 Revised projects

Project code	Project name	Total value	Revised total value	Current contribution rate	Revised contribution rate	Timeframe	Revised timeframe	Change to recoupment project?
CWCFAC0006	Shoalhaven City Library Extensions	\$3,750,816	\$10,000,000	\$315	\$841 167% increase	2020/24	No change	No

## DE18.26 DA18/1010 – 27 Quinns Lane, South Nowra – Lot 4 DP 519090

**DA. No:** DA18/1010/4

**HPERM Ref:** D18/75316

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

**Attachments:** 1. Variation Statement - Height of Building - Clause 4.6 [↓](#)

**Description of Development:** Temporary Relocation of an Existing Concrete Batching Plant

**Owner:** TJ Lynch and MJ Lynch

**Applicant:** TJ Lynch and MJ Lynch c/o SET Consultants

**Notification Dates:** 12 February 2018 to 27 February 2018

**No. of Submissions:** Nil

### Purpose / Reason for consideration by Council

To seek direction from Council on a policy variation relating to the 11m height of buildings standard in clause 4.3 (Height of Buildings) of Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

### Recommendation

That Council:

1. Confirm that it supports, pursuant to clause 4.6 (Exceptions to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11m to 15.63m; and
2. Refer the development application (DA18/1010) back to staff for determination.

### Options

1. Resolve to support the requested variation to the maximum height of buildings requirement.

Implications: This will permit the application to proceed in its current form.

2. Resolve not to support the proposed variation to the maximum height of buildings requirement.

Implications: This would result in the applicant needing to reconsider the design of the proposal.

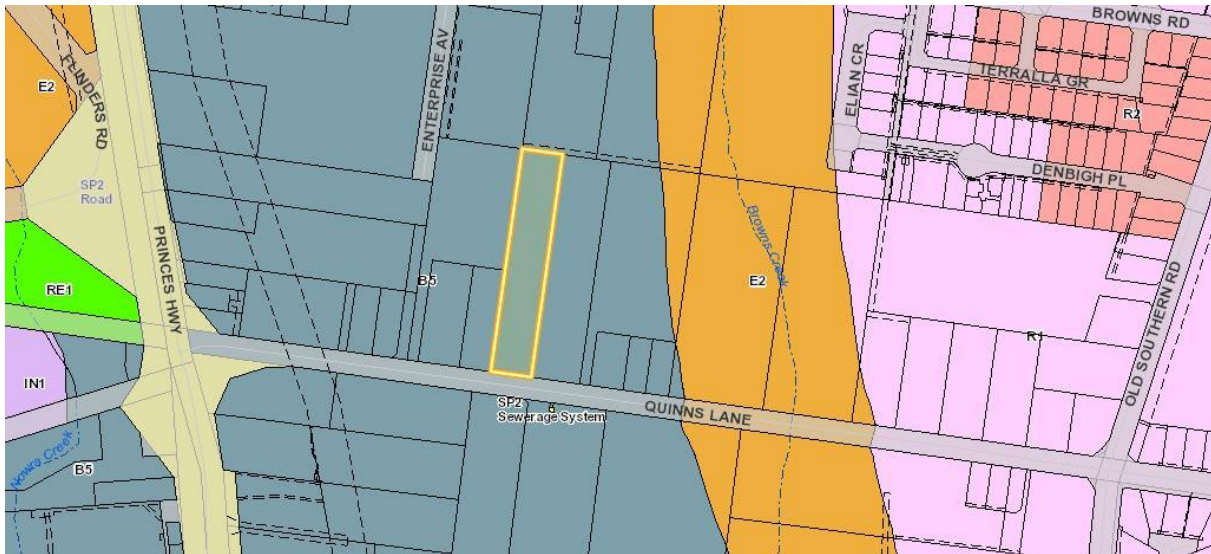
3. Resolve to modify the recommendations contained in this report.

Implications: This would require the Committee to provide direction to staff.

DE18.26



**Figure 1 – Location and Zone Map**



## Background

### Proposed Development

The application seeks approval for the temporary relocation of an existing concrete batching plant to the rear of the development site to allow for the ongoing operation of the business whilst the new batching plant is constructed (as approved by Development Consent DA12/1895, being “Refurbishment of the existing concrete batching plant, construction of a machinery workshop, storage shed and increase in production capacity. To be undertaken in 3 stages.”)

### Subject Land

The development site comprises Lot 4 DP 519090 (27 Quinns Lane, South Nowra). Refer to Figure 1.

### Site & Context

The development site:

- Contains an existing concrete batching plant, including a cement silo, hopper, storage bunkers, washout area, water collection system, office and carpark and produces premixed concrete formed from cement, aggregates, additives and water;
- Is zoned B5 (see Figure 1) Business Development and has an area of 7,360.22m<sup>2</sup>;
- Is identified as being part flood and bush fire prone land;
- Has existing access from Quinns Lane; and
- Adjoins land zoned B5 Business Development under SLEP 2014.

### History

The following provides details on general site history in relation to the current application:

- Council approved the construction and operation of the existing concrete batching plant on the development site on 27 February 1978 as part of Development Consent DA78/1158 and on 5 April 1978 as part of Building Permit BA78/0266. The cement silo was subsequently approved in 1981 by Building Permit BA81/0591.

DE18.26



- The staged refurbishment of the existing concrete batching plant was approved by Council on 30 October 2013 as part of Development Consent DA12/1895.
- The current application was lodged on 3 January 2018.

## Issues

### Clause 4.3 (Height of buildings) of SLEP 2014

Clause 4.3 contains controls for the maximum height of buildings and specifically outlines that the maximum height of a building must not exceed the height shown on the 'Height of Buildings Map' that supports SLEP 2014 or if land is not mapped a building must not exceed 11m.

In this instance, the 'Height of Buildings Map' has no specific maximum building height provisions for the development site. As such, the maximum height of any building, under this clause, must not exceed 11m as required by subclause (2A). The subject silo meets the criteria of a 'building' as defined in SLEP 2014 as the definition, in part, includes "any structure or part of a structure". The development therefore does not comply with this development standard as the silo will be above the 11m height requirement with the structure having a maximum height of 15.63m. This represents a 42% variation to the numerical standard.

### Clause 4.6 (Exceptions to development standards) of SLEP 2014

The applicant has consequently sought an 'exception' to the development standard pursuant to the requirements of clause 4.6 of SLEP 2014. Refer to Attachment 1 for the detailed request.

Therefore, Council is required to consider subclauses (3), (4) and (5).

- "(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.*
- (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.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

In support of the proposal, the applicant notes that Council via Development Consent DA12/1895, approved silos at a height of 23.2m; and contends that a height of 15.63m for the relocated silo (which is the existing height of the silo in-situ) is minimal in comparison to the approved height of the batching plant that will be constructed on the development site.

#### Comment

Although the contravention is considered numerically significant, the relocated silo will remain at the same height as the existing, and its siting 80m to the north, will not increase the visual impact of the structure in the public domain or to neighbouring properties.

This proposal is a temporary change to the existing site layout and will allow for ongoing operation of the existing batching plant during the construction period of the approved refurbished plant (envisaged by the applicant to be 12 – 18 months in duration). Once the refurbished plant is fully constructed, the relocated plant will be decommissioned and removed from the site.

The development will be in the public interest as the proposal is not inconsistent with the objectives that are detailed in clause 4.3 as well as being consistent with the objectives of the B5 zone that apply to the site. Accordingly, the written submission provided by the applicant is considered to satisfy the requirements of clause 4.6(3), (4) and (5).

#### **Planning Assessment**

The DA will be assessed under s79C of the Environmental Planning and Assessment Act 1979. Part of the assessment requires resolution of the height issue pursuant to clause 4.6 which is the subject of this report.

#### **Consultation and Community Engagement:**

Notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site, including Shoalhaven Business Chamber during the period 12 February 2018 to 27 February 2018.

No submissions were received.

#### **Financial Implications:**

There are potential cost implications for Council in the event of not supporting the requested variation to the height limit and refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

#### **Legal Implications**

If the requested variation is not supported and the application subsequently refused, or if the applicant is dissatisfied with Council's determination, the applicant has the right of appeal to the Land and Environment Court.

#### **Summary and Conclusion**

The applicant's submission has provided sufficient justification to demonstrate that given the specific circumstances of this case, that the 11m height limit is unreasonable, there is sufficient environmental planning grounds to justify contravention of the height requirement and that the proposal is in the public interest and should be supported.

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#### Clause 4.6 Variation Statement

#### Clause 4.3 Height of buildings – Shoalhaven LEP 2014

#### Site - Lot 4 DP 519090, No. 27 Quinns Lane, South Nowra

This submission is prepared on behalf of Eziway Concrete to support the Statement of Environmental Effects (SEE) for the temporary relocation of the existing concrete batching plant, specifically the silo, at Lot 4 DP519090 known as No. 27 Quinns Lane South Nowra.

Council via DA12/1895 approved the construction of new Batching Plant to replace the existing outdated structures. However, to allow for the ongoing operation of the business whilst the new batching plant is being constructed, the existing batching plant and associated infrastructure is required to be relocated to the rear of the property temporarily.

Whilst the silo already exists and is only being relocated to another portion of the site the maximum height clause applies and is required to be considered. Clause 4.3 of the Shoalhaven LEP 2014 (2A) applies as the site is not mapped on the 'Height of Buildings Map'. The applicable maximum building height for this site is therefore 11m.

Under the LEP, building height is defined as follows:

**building height (or height of building) means:**

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
  - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The existing silo exceeds the 11m building height development standard reaching a height of 15.63m at the highest point. At a maximum height of 15.63m the variation equates to a non-compliance of 4.63m or 42%.

It is noted that Council via the designated development approval (DA12/1895) for the new batching plant approved the silos at a height of 23.2m. A height of 15.63m is minimal in comparison to the approved height of the batching plant that will be constructed on the site.

Figure 1 shows the existing silo in-situ at 15.63m above natural ground level. This structure will be relocated within the site with no change to the overall height.



Figure 1: Elevation of existing silo showing the 11m height level in red.

Figure 2 shows the silo in context with surrounding development.



Figure 2: Existing silo (red arrow) in context of surrounding development.

This request seeks to provide justification to the departure from the provisions of Clause 4.3 of the Shoalhaven LEP 2014.

#### Clause 4.6 Exceptions to development standards

The objectives and provisions of clause 4.6 are as follows:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (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.
- (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.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.**
- When this Plan was made, it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 6.1 or 6.2,
- (cb) clause 7.25.

Building Height is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

This submission will address the requirements of subclauses 4.6(3), (4) & (5) to demonstrate that compliance with Clause 4.3 of SLEP 2014 with respect to the maximum height of buildings requirement is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the non-compliance. Thereby, imploring Council to exercise “an appropriate degree of flexibility” in applying the development standard, consistent with objective 1(a).

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

- (1) *The objectives of this clause are as follows:*
  - a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
  - b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
  - c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the objectives of the height clause are discussed in turn below.

*Objective A - to ensure future development is compatible with the height, bulk and scale of the existing and desired future character of a locality,*

The silo was approved under building application BA81/0591. Its relocation within the site does not affect the character of the locality, nor will it present excessive bulk or scale in relation to existing development beyond that which is already approved.

While the silo exceeds the maximum height limit by 4.63m, the silo is only 2.7m wide with a 770mm wide ladder up the northern side. All other structures on the site comply with the maximum building height control. As Figure 2 demonstrates, the visual impact of the silo in context with the surrounding development is negligible.

The development is located in an industrial estate and has supported a concrete batching plant since the late 1970's. The proposal is a temporary change to the existing site layout. The relocation is



necessary to allow continuing operation during construction of an approved new batching plant (DA12/1895). It is envisaged that the temporary plant will operate for twelve to eighteen months before the new plant is commissioned and the existing (relocated) plant decommissioned and removed.

The plant is already constructed on the site and its relocation 80m to the north will not result in any inconsistency with existing or future development in the surrounding area. As mentioned, the silo has been part of the Quinns Lane streetscape for over 30 years. Accordingly, it is considered that the proposed height breach will not result in a building form that is apathetic to the character objectives of the height control.

*Objective B - to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

The proposal will not compromise the amenity of neighbouring properties. The silo has been onsite since the 1980's, therefore it has been part of the Quinns Lane - South Nowra skyline for over 30 years. The relocation will reduce its prominence in the public domain by moving it away from public spaces. Furthermore, the relocation is temporary and its impacts will therefore be temporary in nature. It is considered that there will be no unreasonable detrimental impact to local amenity and daylight access for neighbouring properties.

The silo does not provide living spaces or viewing platforms above the maximum height limit and therefore will not impact on privacy in any way.

In terms of daylight access to adjoining development and the public domain, the proposed height non-compliance does not contribute to any overshadowing of the adjoining public domain or adjoining properties that would be unacceptable or cause non-compliance with solar access standards. The silo is already present on the site and as Figure 3 shows, moving it to the north will reduce shadowing impacts on surrounding properties by placing the silo adjacent to stockpile areas to the west and undeveloped land to the east.





**Figure 3:** Aerial photograph showing the current silo location (blue arrow), proposed temporary future location (red arrow) and surrounding land uses.

*Objective C - to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The subject site does not contain any heritage items, nor is it within a heritage conservation area or adjacent to any heritage items. The proposed temporary relocation of the batching plant will not affect any heritage items or conservation areas.

Despite the height non-compliance of the silo structure, it is considered that the proposed temporary relocation is consistent with the objectives in the LEP for the maximum building height.

As required by Clause 4.6(4) the objectives of the zone are also required to be considered. The objectives of the B5 Business Development zone are as follows:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres,*
- *To allow a diversity of activities that do not significantly conflict with the operations of existing or proposed development.*

While Industry is prohibited in the zone, the existing concrete batching plant has approved under DA78/1158 and therefore has the benefit of existing use rights. The development has not been shown to conflict with the surrounding land uses and is therefore unlikely to be inconsistent with the future development of the South Nowra business development zone. Furthermore, the temporary relocation proposed is essentially a 'stop gap' to allow operations to continue in the existing plant while a newer, larger plant is constructed (under DA12/1895). Given that a larger plant has been approved on the site



recently, it is reasonable to assume that Council considered the operation of a concrete batching plant from the site to be consistent with the future development of the area and the zone objectives.

Despite inconsistency with intended uses for the zone, the relocation of the existing plant within the approved development footprint will not increase external impacts or affect the development potential of surrounding lands. The existing development adds to the diversity of activities in the region without affecting surrounding land or its development opportunities.

Unreasonable and Unnecessary

Clause 4.6(3)(a) requires that the variation request demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

The judgement goes on to state that:

*“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

In *Wehbe*, Preston CJ expressed the view that there are five ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Further, the Land and Environment Court in *Four2Five v Ashfield Council [2015] NSWLEC 90* has now found that whether something was ‘unreasonable or unnecessary’ is now addressed specifically in Clause 4.6(4)(a)(ii). Specifically requiring separate attention to the question of whether compliance is unreasonable or unnecessary. Accordingly, while it is demonstrated above that the objectives of the standard are achieved despite non-compliance with the standard, further discussion is provided. As required by Clause 4.6(3)(a) this variation seeks to demonstrate that requiring strict adherence to the standard would be ‘unreasonable or unnecessary’ for reasons that are additional to consistency with the development standard.

Having regard to all of the above, it is considered that compliance with the maximum height of building standard is unreasonable or unnecessary in the circumstances of this case for the reasons set out below:

- The silo has been part of the Quinns Lane South Nowra skyline for over 30 years. The relocation of the silo to the north will not increase the visual impact of the structure in the public domain or to neighbouring properties;
- The proposed relocation meets the objectives of the height control and strict numeric compliance would be contrary to its objectives;
- The proposal meets the objectives of the B5 zone. Strict compliance with the height limit would not improve compatibility with the zone objectives, planning or environmental outcomes;
- Strict compliance with the height control would require the existing plant to cease operation during construction of the new plant (DA12/1895). This would reduce the availability of pre-mix concrete in the local area, which may have unacceptable impacts on local development (possible shortages of necessary construction components).

In this regard, strict compliance with the building height control is considered to be unreasonable and unnecessary in the circumstances. As identified the proposal is compliant with the relevant objectives and will have no adverse environmental or amenity impacts. The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed building height variation is consistent with the requirements of Clause 4.6(3)(a) of the LEP.

#### Environmental planning grounds for non-compliance

Having regard to Clause 4.6(3)(b), this submission is also required to demonstrate that there are sufficient environmental planning grounds to justify non-compliance with the maximum height of building development standard.

It is considered that the proposal represents a building height which is compatible with the existing character and consistent with future development of the area. Furthermore, the proposal is for a temporary relocation, therefore the impacts will be temporary.

The height departure is a direct result of the existing approved structure exceeding the height limit. No change to the height of the existing structure is proposed. It should be recognised that the proposed relocation is of an existing approved structure that will be replaced by a much larger approved silo following construction of the new plant approved in 2012.

The proposal simply allows for ongoing operation of the existing plant during the construction period of the new replacement plant (envisaged to be 12 – 18 months in duration). There are sufficient environmental planning grounds to justify the variation of the height control, particularly given that:

- The height departure is a direct result of the height of the existing approved silo;
- No impacts on view corridors or sightlines from the public domain or neighbouring properties has been identified;
- No increase in overshadowing or reduction in visual amenity is associated with the proposal;
- No living areas or viewing platforms are proposed above the maximum height limit therefore there will be no impact on privacy to surrounding development;
- Strict compliance with the building height standard would result in no material built form benefits;
- The proposed height variation will not be visually dominant from the public domain or adjoining properties;
- The non-compliant sections of the building do not contribute to the additional floor space.

State or Regional Matters

Having regard to Clause 4.6(5)(a), the Concurrence Authority is required to consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning.

Contravention of the maximum building height limit with regard to the proposed temporary relocation of an existing approved silo associated with an approved concrete batching plant is not considered likely to raise any matters of State or Regional significance.

Public benefit of maintaining the standard

Having regard to Clause 4.6(5)(b), the Concurrence Authority is required to consider whether there is a public benefit for maintaining the development standard.

As the above discussion outlines, the proposed relocation of the existing silo within the approved development footprint will not impact on surrounding developments, the public domain or development opportunities of surrounding land. Strict enforcement of the numerical height restriction will result in the existing plant being forced to cease operation during construction of the new plant potentially affecting supply of concrete products to local industries. It is for this reason that we believe in this instance strict adherence to the height restriction will be detrimental to the public interest.

Considering the above detailed justification, we are of the opinion that the proposal demonstrates it is in the public interest to grant exception to the development standard as it is consistent with the zone objectives plus the objectives of the Clause 4.3 development standard.

We are of the belief that the Clause 4.3 development standard is unnecessary and unreasonable in this instance and therefore seek Council support to the proposal as requested.

## **DE18.27 DE18.16 - Update and Proposed Next Steps - Nowra CBD Fringe Medium Density Study Recommendations Report - Public Exhibition**

**HPERM Ref:** D18/98289

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

**Attachments:**

1. Nowra Medium Density Background Report (under separate cover)
2. Nowra Medium Density Recommendations Report (under separate cover)
3. Response from Department of Planning & Environment - Nowra CBD Fringe Medium Density Study Draft Recommendations Report [↓](#)

### **Purpose / Summary**

Report the outcomes of the Nowra CBD Fringe Medium Density Study – Recommendations Report (Recommendations Report) undertaken for Council by urban design consultants, Studio GL, and obtain endorsement to release it to enable public comment.

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

That Council:

1. Receive the attached Nowra CBD Fringe Medium Density Study - Recommendations Report prepared by Studio GL for information and endorse it being placed on public exhibition for a minimum period of 28 days to enable community comment.
2. Consider a further report following the exhibition of the Nowra CBD Fringe Medium Density Study Recommendations Report on any comment received, with a view to proceeding to: prepare a Planning Proposal for submission for initial Gateway determination to revise relevant Local Environmental Plan provisions; and a supporting Area Specific Chapter to be inserted in Shoalhaven Development Control Plan 2014.

### **Options**

1. Adopt the Recommendations Report for public exhibition and consider a further report following the exhibition on the need for a PP (and supporting DCP Chapter) to establish a new Heritage Conservation Area (HCA), and amend building heights and land use zoning in the study area.

Implications: This is the preferred option as it will enable the community to comment on the Recommendations Report which contains suggested controls that could subsequently be inserted into the Development Control Plan (DCP) and inform a PP to establish Local Environmental Plan (LEP) controls to conserve the character of the study area.

2. Consider changes to the proposed LEP and DCP recommendations contained within the Recommendations Report prior to public exhibition.

Implications: This option is not preferred. The Recommendations Report has been developed through extensive testing and community consultation. Any changes to the

DE18.27

draft controls contained in it may delay the public exhibition of the Recommendations Report and could impact on the ability to conserve the character of the study area.

3. Not proceed further with this matter.

Implications: This option is not recommended given the work that has already been undertaken and the community engagement that has already occurred.

## Background

In 2016, following receipt of development applications for medium density developments, Council recognised that areas to the west and south of the Nowra CBD (study area), which are predominately now zoned R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential, had the potential to undergo significant change.

Increasing development pressure in the area was acknowledged as having the capacity to change the area's existing character, which is currently predominately detached single storey dwellings on larger lots, with interspersed heritage items.

In November 2016, Council considered a report on 'Central Nowra Residential Zones – Character Related Development Controls'. This covered the engagement of urban design consultants, Studio GL (consultants) to undertake a review and analysis of the character of Central Nowra and provide recommendations on suitable mechanisms to maintain its character whilst also facilitating an appropriate mix of densities and high-quality housing.

In consideration of the report, Council resolved to:

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

Separately, Council resolved (in part) on 8 August 2017, in adopting the Nowra CBD Urban Design Planning Controls, that:

8. *Council receive a further report to consider a wider Heritage Conservation Area to the west of the Nowra CBD Commercial Core Area as part of the project that is underway in this regard. (MIN17.685).*

This report was initially provided to the Development Committee on 13 March 2018. In consideration of the report, the Committee resolved:

*That the matter be deferred for one month to allow for a full briefing of Councillors. (MIN18.161)*

A Councillor Briefing was held on 22 March 2018 where the project consultants provided a detailed presentation on the background and recommendations of the study.

The study area for this piece of work is shown in **Figure 1** below. In completing the Recommendations Report, the consultants undertook a background review of the current LEP and DCP controls, photographic study, spatial analysis and a series of workshops with

DE18.27

Council staff, Councillors, local community members, land owners and development industry representatives. A copy of the Background Report is provided as **Attachment 1**.

The consultants have now completed the Nowra CBD Fringe Medium Density Study – Recommendations Report which includes proposed mechanisms to protect the character of the study area through LEP and DCP provisions. A copy of the Recommendations Report is provided as **Attachment 2**.





**Figure 1 – Study Area (outlined in red)**

### **Recommendations Report - Findings Overview**

As per Council's resolution of November 2016, the consultants undertook an analysis of the study area and have developed potential draft development controls that would enable opportunities for high quality and sympathetic medium density housing without fundamentally damaging/altering the existing character of the area.

DE18.27

The study area, as shown in Figure 1, is located to the west and south of the Nowra CBD, and is one of the oldest residential areas of Nowra. It was also noted that the study area contains a high number of late 19<sup>th</sup> and early 20<sup>th</sup> Century houses which form considerable evidence of Nowra's early development and expansion, particularly in the area to the west of the CBD. During the community workshops, it was noted that these buildings and areas, with their substantially intact streetscapes, have an attractive character that is highly valued by residents and the wider community.

The study area contains several listed heritage items (identified in the Local Environmental Plan) and no complete HCA's. There is however a small HCA along Plunkett Street that is partially within the study area (shown in Figure 2 below).

There is some sentiment from the community that, without adequate protection and controls, the character of the area may be irreversibly changed, damaged or lost.

### **Local Character**

The study area is characterised not only by many older houses, but also a combination of elements in the public and private realm, which can be grouped into three domains; land, urban form and built form.

It was noted that every property, public place or piece of infrastructure contributed to the overall neighbourhood character, whether great or small. It is the combination of the underlying land, urban structure, and built form that establishes neighbourhood character. The following is a brief overview of the three components that exist in the study area:

#### *The Land*

The area is generally undulating, with an overall fall to the floodplain to the north and east. High points have northerly mountain views. Key tree-lined streets include Junction Street, North Street, sections of Shoalhaven Street, Douglas Street and Berry Street.

#### *The Urban Form*

The area has an underlying 200m by 200m grid based east-west structure with 20m wide road reserves. Most blocks are further divided with a 15m or 20m wide mid-block road. While the majority of lots are narrow and deep, there is a large variety in lot size and shape. Streets have upright kerbs, wide grassed verges and some have concrete footpaths. Public parks and open space tend to lie on the edges of the study area and open space has an informal, bushland character.

#### *The Built Form*

The area has a diverse range of existing dwelling styles, including Victorian and Federation houses, Californian bungalows, simple mid-century fibro houses, dwellings from the 1970s, 1980s and 1990s, as well as more recent developments. The majority are detached single storey dwellings, although many recent developments include slab on ground, brick veneer villas and townhouses. Where front fences are provided, they are predominately low and partially open. Front setbacks vary greatly, side setbacks are often small but tend to be wider on one side, and rear setbacks often contain large trees. Parking is generally to the side or rear of dwellings.

The Recommendations Report provides a detailed commentary on the range of things that make up the local character.



## Consultants Recommendations

The Recommendations Report makes the following recommendations that could be considered by Council to respond to this issue consistent with the earlier resolutions.

### LEP Recommendations

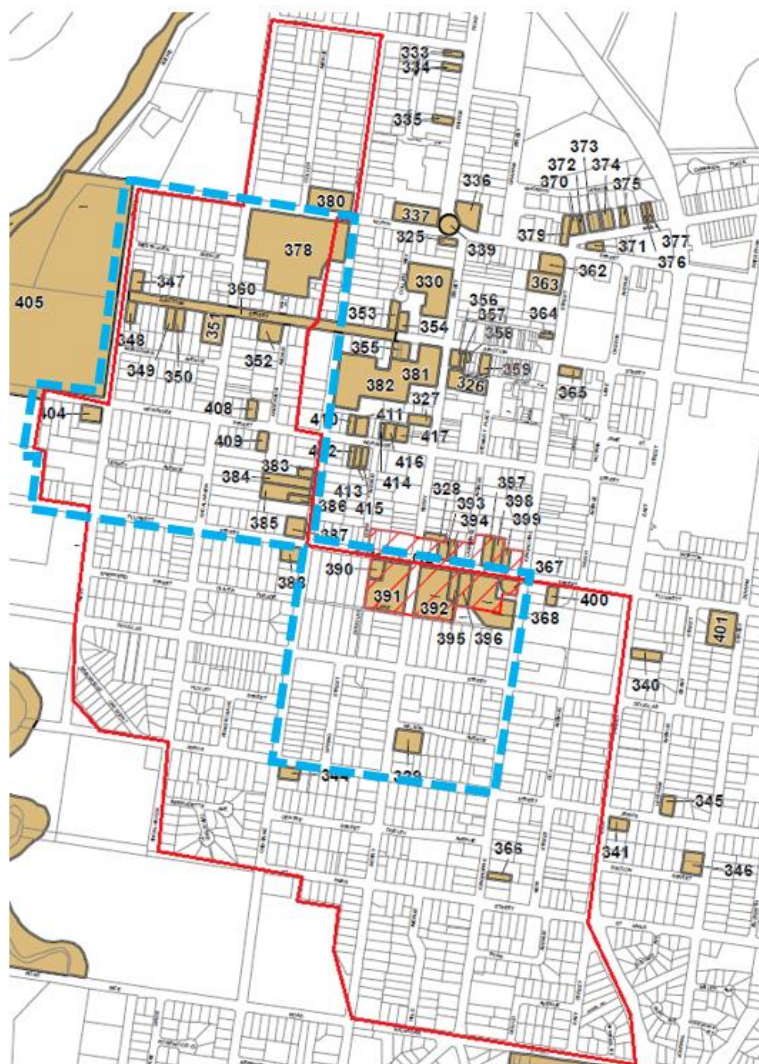
The consultants reviewed the following existing controls in Shoalhaven LEP 2014:

- Heritage items and HCA;
- Building heights; and
- Land use zoning.

As a result, various changes to the above controls within the study area have been recommended for consideration and these are summarised below.

### Heritage and conservation

1. Assess the area's heritage significance and, if justified, establish a HCA as shown via the blue dashed land in **Figure 2**. The area has the highest concentration of older dwellings.



**Figure 2 – Recommended HCA boundary (blue dashed outline)**

Key to the above map:

Red line – study area boundary. Brown colour - existing heritage items. Red hatch – existing HCA

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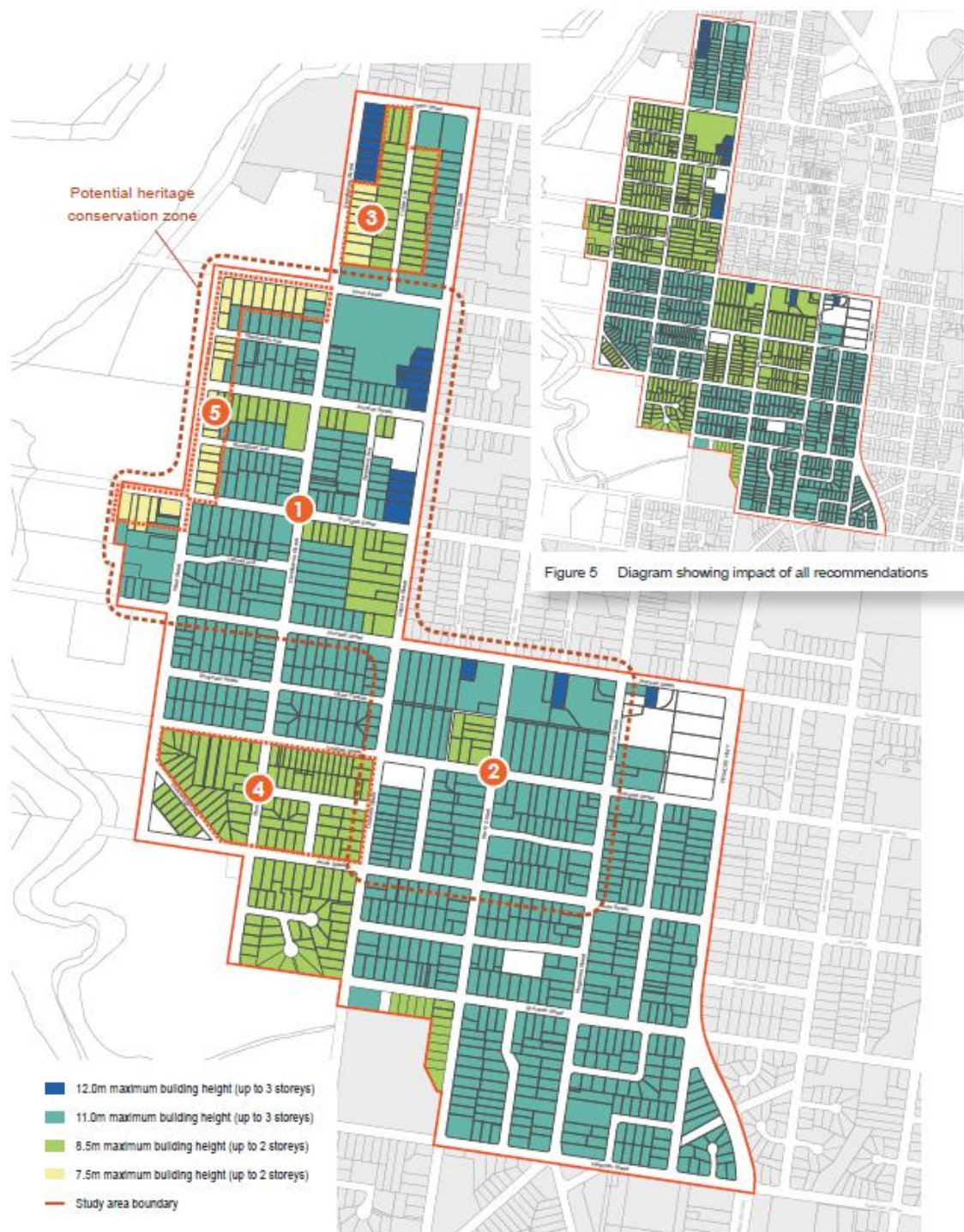
2. Consider whether the boundaries to any future HCA should include whole properties, or alternatively only be along streets.
3. Identify items of heritage value as well as contributory and non-contributory items within any future HCA, to help future development respect the character of the area/zone. Contributory and non-contributory items could then be identified in a DCP Chapter.

### *Building heights*

The recommended possible changes to building heights are summarised below (the numbers correspond with those shown in Figure 3).

1. Reduce the building height to the west of the CBD between North Street and Plunkett Street to a maximum of 8.5m (currently 11m). As noted previously, this area has the highest concentration of older dwellings and is consistent with the recommended HCA boundary.
2. Reduce the maximum building height to the south of the CBD between Plunkett Street, Jervis Street, Osbourne and Kinghorne Street to 8.5m (currently 11m). This area also has a concentration of older dwellings and is consistent with the recommended HCA boundary.
3. Increase the maximum building height along Shoalhaven Street and along Colyer Street north of North Street and south of Hyam Street to 11m (currently 8.5m).
4. Increase the maximum building height of the lots bounded by Bainbridge Crescent, Douglas Street, Osbourne Street, and Jervis Street to 11m (currently 8.5m).
5. Increase the maximum building height of the lots with a current height limit of 7.5m along the north-west edge of the study area to 8.5m. Note, this will ensure consistency with adjoining land and the current height control is a carryover from the previous Foreshore DCP that set the height of the first development lot back from a waterbody at 7.5m.

These possible changes are shown graphically on Figure 3 below, along with the existing LEP building heights.



**Figure 3 – Existing & Recommended Building Heights**

### Land use zoning

The recommended possible changes to the land use zoning are summarised below (the numbers correspond with those shown in **Figure 4**).

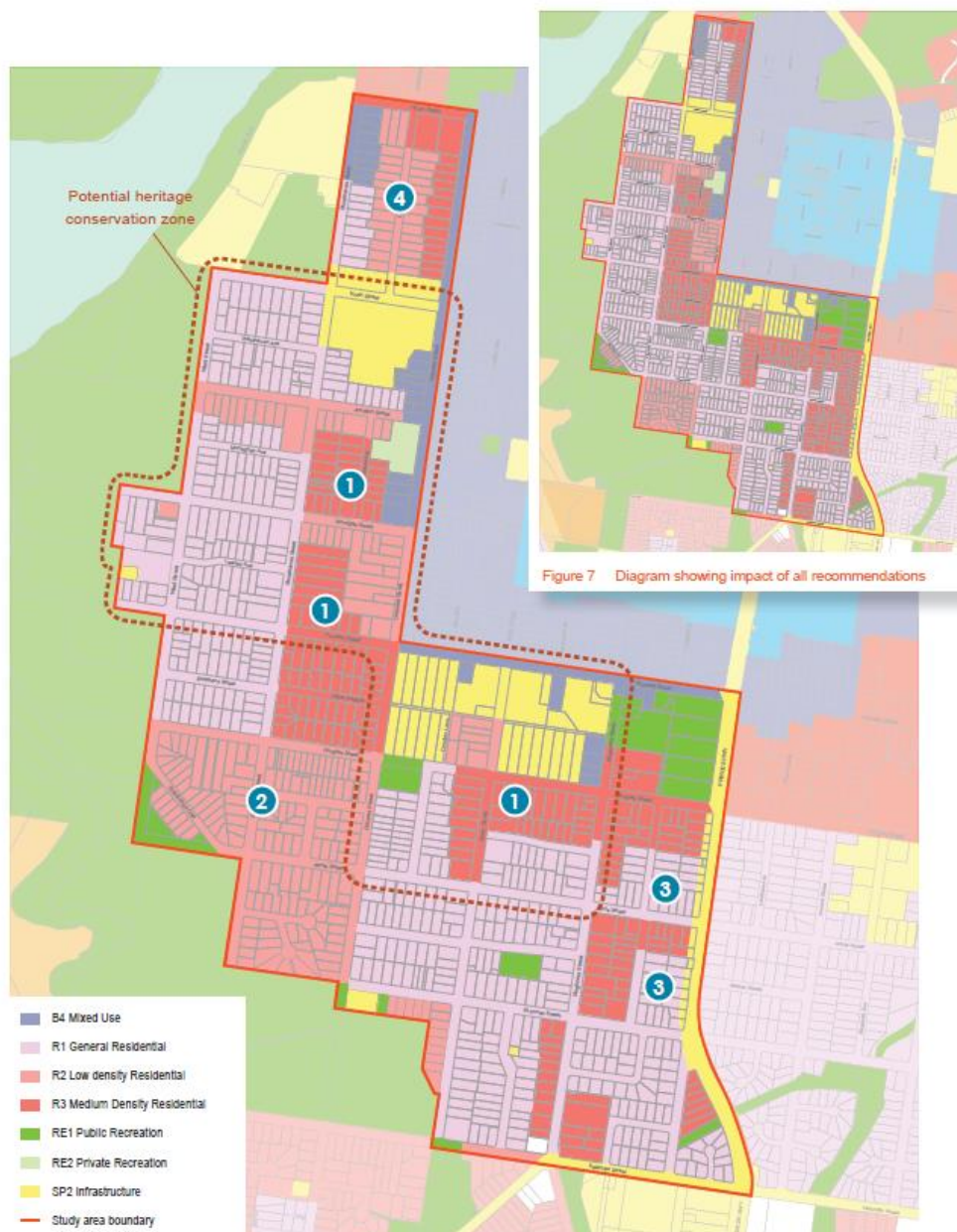
1. Retain the area of R3 Medium Density as this is well located land near the CBD. Local character can be adequately considered by the provisions of the HCA, reduced building heights and new DCP controls.
2. Change the zone of the lots bound by Bainbridge Crescent, Douglas Street, Osborne Street, and Jervis Street to R1 General Residential (from R2), subject to advice

DE18.27



regarding bushfire. This area has fewer older dwellings, some very large lots and a concentration of fibro dwellings. The zoning change suggested would still allow single dwellings, but would also allow a range of other residential housing types.

3. Change the zoning of the block to the west of the Princes Highway from R1 General Residential to R3 Medium Density, subject to consultation with NSW Roads and Maritime Services. Changing the zoning of areas with fewer heritage items outside the HCA should provide the incentive to replace individual dwelling houses with purpose built development that can create a buffer to the highway, whereby the design could mitigate some of the noise issues and use may well be of a rental/shorter term nature.
4. Change the zoning of the block to the north of North Street, south of Hyam Street and west of the hospital to either R1 or B4 to enable greater development in this well-located area close to the hospital. The B4 Mixed Use zoning could enable future medical uses, whereas an R1 General Residential zoning could be more appropriate if purely residential uses are preferred. It was noted that through site links would need to be considered, and this recommendation would change the existing character of Colyer Avenue.



**Figure 4 – Existing & Recommended Land Use Zoning**

DE18.27

Depending on the approach Council wishes to take, at a minimum, it is preferred that a HCA be applied to the area mapped in **Figure 2**, rather than extending the number of items individually heritage listed.

*What is the difference between heritage items and HCA?*

Individual properties may be identified and listed as a heritage item if they are assessed as having individual heritage significance in their own right. HCA's on the other hand, recognise a special character, setting or consistent streetscape of a broader area that is worth keeping. A HCA does not prohibit future development. The objective of HCA's is simply to make sure this character is maintained and that new development is sympathetic to the special character of the area, as visible from the public street. This is different to the more specific considerations that apply to individual heritage items, which cover the entire property, including the land, gardens, building interiors and exteriors. It should also be noted that some development within HCA's may potentially be undertaken as exempt or complying development.

Preliminary advice from Council's heritage advisor has demonstrated that some areas and streets with a high level of intactness can demonstrate key historic periods. These streets are of a scale, character and built form continuity that is significant as it provides important physical evidence of the development history of the town of Nowra. An expanded HCA may have benefits such as:

- Greater certainty for existing owners and future buyers that the amenity of the area will be protected.
- Positive contribution to property values through the maintenance of original features and heritage qualities of residential buildings.
- Future proposed development will need to consider how it will protect, preserve and reinforce the existing character of the HCA. All new development within a HCA should acknowledge the established heritage values of the existing place or building and respond by seeking to avoid any reduction in its value or any undesirable intrusion into the streetscape.
- Protect against inappropriate development that may detract from individual properties and the unique identity of the HCA.
- Limiting complying development to ensure all new development is assessed by Council and appropriate consideration can be given to the impact on the existing heritage character of the area.
- Infill development must achieve a sympathetic relationship with the HCA.

Should the option of a HCA be pursued further following the proposed public exhibition, additional heritage assessment work may be required to support any future PP, either prior to submission for Gateway determination or following as a condition of any determination received.

**DCP Recommendations**

Chapter 4 of the Recommendations Report (**Attachment 2**) includes recommendations for new DCP controls that could apply specifically to the study area.

These recommended controls would support the overarching LEP controls noted above and ensure that buildings are designed in such a way that their location, size and appearance all help to improve the character of a street or area. It is noted that without these area specific DCP controls, development could still potentially occur that is not sympathetic to the heritage character of the area.

The recommended controls address building and floor heights, street setbacks, side setbacks, rear setbacks, landscaped area, private open space, streetscape interface, access and parking and architectural appearance.

The recommended DCP controls include Performance Criteria and Acceptable Solutions that would encourage development that respects the existing or desired future character of the study area. The full set of recommended controls have been tested and refined in a staff workshop to ensure that they are usable.

The report can form the basis of a new Area Specific Chapter in the Shoalhaven DCP 2014. Before proceeding to prepare this DCP Chapter, it is recommended that the Recommendations Report be publicly exhibited and as part of that process, a further community workshop will be held to assist understanding and gain feedback.

### ***Advice from NSW Department of Planning & Environment (DP&E)***

Given that the Recommendations Report contains a range of possible changes to the LEP, a copy was provided to DP&E to get initial feedback. Their response is provided as **Attachment 3**.

DP&E in their response noted that a Planning Circular had recently been released relating to “Stepping up planning and designing for better places: respecting and enhancing local character” (16 January 2018). The circular provides detail of tools available for Council’s to incorporate consideration of local character into strategic planning and detailed planning for places.

DP&E indicated that they would be willing to consider many of the changes detailed in the Recommendations Report, subject to adequate justification being provided through any future PP.

### **Community Engagement**

In May and June 2017, the project consultant undertook workshops with landowners, community, Councillors and development industry representatives to obtain feedback about how development controls for the study area could encourage a mix of density and high-quality housing, consistent within the existing zoning, whilst also respecting existing character. The feedback obtained through the workshops was used to inform the Recommendations Report.

It is recommended that the Recommendations Report should now be publicly exhibited for a minimum period of 28 days to enable the community to comment on its recommendations. As part of this exhibition process, follow up workshop with landowners, the community and development representatives are also planned to be held.

Should the changes to the LEP and DCP recommended in the Recommendations Report proceed they will be separately consulted on and notified as required by legislation.

### **Councillor Briefing**

A Councillor Briefing was held on 22 March 2018 in response to the resolution of the Development Committee on 13 March 2018. The project consultants, Studio GL, provided a detailed presentation to Councillors on the background and recommendations of the study.

**Policy Implications***LEP Amendment*

Preparation of a PP to establish a HCA, amend height of building heights and land use zonings in the study area will ultimately amend Shoalhaven LEP 2014.

*DCP Amendment*

As noted above the Recommendations Report can form the basis of a new Area Specific DCP Chapter. This process will involve an amendment to Shoalhaven DCP 2014 to add a new chapter.

**Financial Implications**

The current work is being undertaken and managed within the existing Strategic Planning budget and is in accordance with the Council endorsed Strategic Planning Works Program.



Planning &  
Environment

Ms Molly Porter  
Strategic Planner  
Shoalhaven City Council  
By email: molly.porter@shoalhaven.nsw.gov.au

Your ref: 48168E (D17/349382)  
Our ref: OBJ17/01433

Dear Ms Porter

**Nowra CBD Fringe - Medium Density Study - Draft Recommendations Report**

I refer to Council's 27 October 2017 letter concerning the above draft report and its request for the Department to provide comment in relation to the recommended LEP and DCP changes. I note that Council has asked whether these recommendations are likely to receive support should they be pursued through a planning proposal. Council has also requested advice as to the types of background studies or supporting information which would be required to support the above changes in a future planning proposal, in addition to the work already completed by Studio GL.

I understand that the purpose of the report is to review the residential zoned land to the west and south of the Nowra CBD and to prepare development controls that would enable opportunities for high quality medium density housing without fundamentally impacting on the existing character of the area.

The Department has prepared a Planning Circular PS18-001– "Stepping up planning and designing for better places respecting and enhancing local character". The circular provides guidance for local councils and other relevant planning authorities, state agencies and communities about the tools available to them to incorporate consideration of local character into strategic planning and detailed planning for places. The Circular can be viewed on the Department's website: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars> and I encourage Council to read the Circular.

As a general comment, the Department is willing to consider many of the recommended changes to the Shoalhaven LEP 2014 identified in the report subject to adequate justification being provided through a planning proposal. I note that the consultant has identified the need for an assessment of heritage significance within the study area as a key consideration.

It is also considered important that any planning proposal addresses the projected housing needs for the Shoalhaven area, including the Nowra centre, identified in the Shoalhaven Regional Plan and Shoalhaven Growth Management Strategy. In particular, the following Directions and Actions of the Regional Plan are relevant to a future planning proposal:

- Direction 2.1 Provide sufficient housing supply to suit the changing demands of the region.
- Direction 2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres.



- Action 2.2.1 Investigate the policies, plans and investments that would support greater housing diversity in centres.

The consultant has identified areas that may be suitable for more intensive development to offset any reduction in development potential in identified heritage or special character areas. This approach is supported.

The following specific comments are provided in relation to the recommended changes to the Shoalhaven LEP:

#### **Heritage and conservation:**

The recommendation to undertake an assessment of the area's heritage significance and if justified, extend the number of properties listed and/or expand the amount of land that is within a conservation area, is supported. Council should ensure that the heritage study addresses the requirements of the Section 117 Direction 2.3 Heritage in relation to the protection of items, places, buildings, works, relics, moveable objects or precincts of heritage significance. Council may want to discuss the preparation of any heritage assessment with the Office of Environment and Heritage.

Imposing extensive heritage conservation areas may increase development costs and make housing in the area less affordable. It is recommended that Council adopt a balanced approach between protecting character and ensuring that adequate provision is made for a diversity of housing types, including affordable housing, in the study area.

#### **Land use zoning:**

The report recommends that, following the completion of the heritage study, a review of the current residential zonings in the study area (namely R1, R2 and R3 Zones) should be undertaken to identify areas having heritage value or residential character that are unsuited to higher density dwelling types. It also proposes to identify areas that are suitable for higher density development. The intent of the recommendations is supported in principle.

Council will need to address the requirements of Section 117 Direction 3.1 Residential Zones, particularly in relation to justifying any reduction in residential density as a result of permissible uses. Council will also need to address the requirement of Section 117 Direction 5.10 Implementation of Regional Plans in relation to meeting residential dwelling targets in the Nowra centre and to ensure that these dwelling targets can be facilitated through the planning controls proposed in the planning proposal. Council may consider undertaking an economic feasibility assessment to determine the feasibility of different zones, residential land uses and building heights in the study area to address the requirements of the Directions.

#### **Building heights:**

It is understood that the intent of the report's recommendations in relation to reviewing the building height controls in the study area, following the completion of the heritage assessment, is to identify areas that are unsuited to higher density development and areas that are suited to higher density development. The intent of the recommendations are supported in principle subject to addressing the Section 117 Directions 3.1 and 5.10 as described above in relation to the report's recommendations about land use zoning.

The Department would be pleased to work with Council on these matters and would like to meet with Council prior to the preparation of a planning proposal. Please contact George Curtis, Senior Planner, at the Department's Southern Region to discuss or to arrange a meeting. George can be contacted on telephone 4224 9465.

Yours sincerely



Graham Towers  
Team Leader  
Southern Region

22/1/18

## DE18.28 Development Application DA17/2337 – 16 Coolangatta Rd, Coolangatta – Lot 1 DP 1204108

**DA. No:** DA17/2337/4

**HPERM Ref:** D18/98711

**Group:** Planning Environment & Development Group

**Section:** Development Services

**Attachments:** 1. Amended Site / Market Plan - 16 Coolangatta Rd, Coolangatta - Lot 1 DP 1204108 [↓](#)

**Description of Development:** Farmers & General Goods Market

**Owner:** Alan Robert Murphy

**Applicant:** Alan Robert Murphy

**Notification Dates:** 7 to 22 November 2017

**No. of Submissions:** 5 in objection  
1 neutral

### Purpose / Reason for consideration by Council

This purpose of this report is seek Council's direction as to whether it supports in principle a proposal for a farmers and general goods market to be operated by the applicant/owner at the subject site.

The applicant/owner is not a local based non-profit organisation, as is required by Council's existing policy relating to markets, as defined in Section 5.2 (Markets) of Chapter G17 (Business, Commercial and Retail Activities) of Shoalhaven Development Control Plan 2014 (SDCP 2014). The proposal therefore is technically a variation to this policy.

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

That the Committee:

1. Confirms that it supports the variation to the policy; and
2. Refer the application back to staff for determination

### Options

1. Resolve to support the variation to the policy and refer the application back to staff for determination

Implications: The variation will permit an organisation who is not a non-profit organisation to operate the market, subject to consent being granted.

2. Resolve to not support the proposal and refer the application back to staff for determination.

DE18.28

Implications: The application would need either to be withdrawn by the applicant or refused consent by Council, as it would not comply with Council's existing policy that markets be conducted by a local based non-profit organisation as per Section 5.2 (Markets) of Chapter G17 of SDCP 2014.

## Background

### Proposed Development

The development application (DA17/2337) seeks approval for a farmers and general goods market to be located at the subject site. The proposal is as follows:

- A fortnightly boutique market to be held on at least 2 Saturdays per month i.e. 26 total in a year.
- The average market will host 10 -15 stalls with 12 of the 26 days in the year being a 'special event' market which would have a maximum of 25 stalls. According to the applicant, these 'special event' markets would be to specifically raise funds for charities (including Heart Foundation, Lions Club Shoalhaven Heads, Shoalhaven Heads Public School, Breast Cancer Research Fundraising etc.).
- Set up would be from 7:30am and trading hours would be from 8am to 4pm.

See the Amended Site / Market Plan (Attachment 1) for details on the proposed layout.

### Subject Site & Context

The subject site:

- Is located at 16 Coolangatta Rd, Coolangatta (legally known as Lot 1 DP 1204108).
- Is known as the Berry Cool Estate and contains a variety of buildings including a rural dwelling, plant nursery and sheds. The site includes a number of existing businesses including a plant nursery, landscape supplies and an associated café and gift shop.
- Is partly zoned RU1 Primary Production (predominantly the western half of the site) and partly E2 Environmental Conservation (predominantly the eastern half of the site).
- Is within a rural area of Coolangatta approximately 2-3km from the Shoalhaven Heads village.
- Has access for vehicles via two existing driveways; one for the dwelling located in the northwest corner of the site and a second for the commercial / rural components of the site closer towards the centre of the site which fronts Coolangatta Rd.
- Contains no identified Aboriginal or other heritage items;
- Is not located within a Scenic Protection Area.
- Is identified as Potentially Contaminated Land (PCL) given its use as a nursery.
- Is partially bushfire prone land but is not within the Flood Planning Area.

## Location Maps



Figure 1 – Subject site with aerial photo overlay

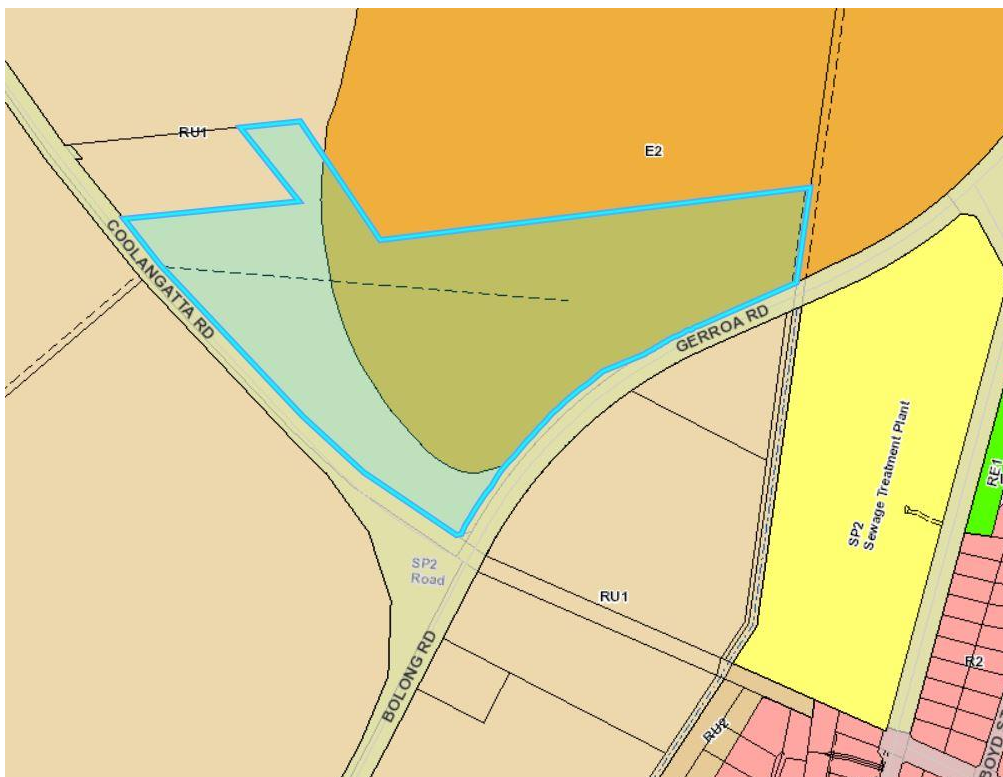


Figure 2 – Subject site with zoning overlay from Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

DE18.28



## Issues

### Applicant's Submission

The applicant's Statement of Environmental Effects (SEE) states:

*"All fees raised from the market days will go towards public liability insurance costs with the balance going towards one of the above mentioned charities. On the special event days, all fundraising will go to the specific charity of the day."*

*The stated intention of the proposed market is to "promote tourism, local business operators & entertainment in the Shoalhaven Heads and outlying areas."*

*The Berry Cool Estate in collaboration with the Berry Cool Nursery, The Collective @ Berry Cool Estate will work with Tourism NSW & other groups to invite people to experience the Shoalhaven region. Our marketing plan involves tourism operators who will bring guests via mini bus to visit the region, including the Berry retail area, local wineries & lunch at the Berry Cool Estate and Shoalhaven Heads shops with a visit to the local wineries at the end of the day. We have looked into purchasing a small bus of 21 seats to help cater for visitors to the property, we have acquired a 21-seater bus to accommodate the tourist if needed."*

During assessment of the DA, additional information was requested by Council staff from the applicant, namely supporting letters from charities named in the application to which proceeds of the market days would be donated.

However, at the time of writing this report, adequate information had not been provided. Therefore, the markets must be considered to effectively be a market operated on a commercial basis. It may indeed promote tourism, local business operators and entertainment in Coolangatta, Shoalhaven Heads and the surrounding areas more broadly, but it would also function as another ancillary activity to the applicant/owner's existing commercial businesses on the site.

### Council's policy on markets – Chapter G17 of SDCP 2014 & Markets as exempt development

Council's controls relating to markets (which require development consent) are contained within Section 5.2 (Markets) of Chapter G17 of SDCP 2014. This Section, its objectives and associated note are reproduced below:

#### **Extract from Chapter G17 of SDCP 2014**

##### **Section 5.2 Markets**

*This control applies to all land where markets are permissible with development consent. The objectives of this control are to:*

- i. Reduce adverse effects upon the local area by providing guidelines for traffic, access, car parking and hours of operation.*
- ii. Recognise the importance of markets as a source of income to local community/charity groups, whilst also appreciating the economic implications that markets can have on existing commercial activities.*
- iii. Encourage the stall and product type to be from locally and regionally produced sources and to be of a "Make it, Bake it, Sew it, Grow it" criteria.*

*Note: Markets may only be conducted by a local based non-profit organisation such as a:*

- Community group;
- Charity;

DE18.28

- *Sporting body; or*
- *Chamber of Commerce.*

It is noted that this Section of Chapter G17 was written at a time when all markets required development consent.

Since that time, Shoalhaven Local Environmental Plan 2014, Amendment No. 11 was notified on 19 August 2016. One of the amendments included Schedule 2 (Exempt development) which inserted the following (bolded for emphasis):

**Temporary events on public land and public roads and associated temporary Structures**

- (1) For the purposes of development specified for this clause: event means any event (including, without limitation, **a market**, exhibition, ceremony, meeting, concert, sporting event or fete) that would, but for this clause, require development consent.
- (2) Must take place on public land within the meaning of the *Local Government Act 1993* or a public road for which the Council is the roads authority under the *Roads Act 1993*.
- (3) Must not involve demolition or excavation.
- (4) Must not involve overnight accommodation on bushfire prone land.
- (5) Must not be conducted for more than 52 days (whether or not consecutive) in any period of 12 months.

**Note.** The proposed event may involve activities that require approvals under the *Local Government Act 1993* and other legislation. Such activities include the closure of public roads, the erection of temporary structures and activities on public land. Consultation with the Council will assist in identifying any requirements before organising such activities.

Therefore it is now possible for any person or group to propose a market as exempt development on public land and/or a public road. Such a proposal would therefore not be subject to the controls of the above-quoted Section 5.2 (Markets) of Chapter G17 – including the requirement to be a local based non-profit organisation.

It would be at the discretion of Council's Tourism and Events section (which has responsibility for such proposals on public land and/or public roads) to determine whether such a proposal would be something worthy of support, including if the market was to be run by a private citizen or group on a commercial basis.

**Economic considerations and existing markets in the area**

Among the controls listed in section 5.2 of Chapter G17, it is worth noting the following:

**Extract from Chapter G17 of SDCP 2014**

**Section 5.2.3 Economic Considerations**

<b>Performance Criteria</b>	<b>Acceptable Solutions</b>
<i>P16 To ensure the proposal:</i>	
<i>Minimises the economic impacts that the market may have on existing established shops and retail centres</i>	<b>A16.1</b> All applications will be limited to an approval of 12 months initially, which can then be extended to a period of up to five (5) years, to reduce the need for annual renewal.
<i>Recognises markets as an important source of income for local community/charity groups.</i>	<b>A16.2</b> The maximum number of markets will be one per month per locality e.g. town, suburb or village. Where more than

DE18.28

	<p><i>one monthly market per month is proposed in a locality, it must be clearly demonstrated that the market will:</i></p> <ul style="list-style-type: none"> <li><i>• Be beneficial to the community;</i></li> <li><i>• Not impact on financial viability of existing businesses; and</i></li> <li><i>• Result in the majority of the stalls meeting the “Make It, Bake It, Sew It, Grow It” criteria.</i></li> </ul>
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With regard to **A16.1**, if consent was granted it would only be for an initial 12-month period as per this acceptable solution, to enable the site owner/operator and Council to assess the overall viability of the markets and address any operational issues that may have eventuated (e.g. in relation to noise or traffic).

Having regard to **A16.2**, the acceptable solution is for a market to be held in a locality on a monthly basis. The applicant, as mentioned earlier is seeking approval for a boutique market with 10-15 stalls on a fortnightly basis and for a more significant market, to be held monthly with up to 25 stalls.

Given the scale of the smaller or boutique market, noting other nearby markets as detailed overleaf, and observing the recommended limitation of an initial 12-month approval, it is envisaged that the smaller fortnightly market will not compromise the performance criteria associated with **A16.2** which seek to limit impacts on established shops and retail centres. With regard to an income stream, the market will obviously benefit the operator but also participants.

This proposal would be the only market in the Coolangatta locality if consent was granted. Therefore, a strict interpretation of this control would conclude that the proposal complies. However, given the site’s proximity to Shoalhaven Heads and Berry, it is reasonable to make mention of the markets which currently operate in those localities as follows:

1. **Shoalhaven Heads Red Cross Market** (Shoalhaven Heads Community Centre) – Held on long weekends throughout the year (e.g. New Year’s Day, Australia Day, Easter etc.).
2. **Shoalhaven Heads Seafood and Fresh Produce Fair** (Heads Hotel, River Rd) – Every Saturday from 8am to 1pm.
3. **Berry Market and Country Fair** (Berry Showground) – First Sunday of the month from 8am to 2pm.
4. **Berry Produce Market** (Andrew Place Park, 102 Queen St) – Second Saturday and fourth Sunday of the month from 8am to 2pm.

With reference to the Shoalhaven Heads Red Cross Market, (in documentation submitted with the current DA), it was claimed by the applicant that these markets would no longer be operating.

A written submission was provided by the Red Cross to advise that this is not correct and to confirm that the markets are still operating. No specific objection was raised to the current proposal – the submission was only to clarify this point.

It appears that the wider Coolangatta / Shoalhaven Heads area would be able to support this proposal, as well as the Shoalhaven Heads Seafood and Fresh Produce Fair, which has a different product offering than the proposed market. The markets at Berry township are located sufficient distance away (approximately 9km) from the subject site to be considered in an independent locality to Coolangatta.

DE18.28



## Planning Assessment

The DA is being assessed under section 4.15 (previously section 79C) of the Environmental Planning and Assessment Act, 1979. An assessment of the DA overall is still to be completed however is dependent on Council resolving this variation to the policy.

Markets are permissible with consent within the RU1 Primary Production zoned part of the site proposed to contain the market and the proposal would not be inconsistent with the objectives of this zone.

## Policy Implications

Support of the proposed variation may encourage other commercial operators to propose such markets. However, it is worth noting Acceptable Solution A16.2 of Chapter G17 still limits markets to one per month per locality unless sufficient justification is provided which does function as a limitation on such proposals.

Although there are several existing markets in the greater Berry / Coolangatta / Shoalhaven Heads area, this proposal is considered to be able to co-exist with these existing markets.

## Consultation and Community Engagement

In accordance with Council's Community Consultation Policy for Development Applications the application was notified as follows:

- Individual property owners were notified of the proposal (within a 200m radius of the site – 25 letters sent. The notification period was from 07/11/2017 to 22/11/2017;
- The Shoalhaven Heads Community Forum (local Community Consultative Body – CCB) was notified directly but no response was received; and
- The application is also accessible on Council's website through DA Tracking.

Submissions from six (6) individual parties were received, which included the clarification from the Shoalhaven Heads Red Cross on the status of their existing markets. Key issues raised as a result of the notification are detailed below:

### Noise

Concerns were raised on the potential for noise issues, citing previous issues with noise from the operation of the Mountain Ridge Wines estate, which is located across the road from the subject site at 11 Coolangatta Rd, Coolangatta.

In this regard, any consent could be conditioned that only low-impact music be played e.g. a single busker, singer or group with a small amp or acoustic guitar etc. In any case, the proposal would take place during daylight hours where some noise is more acceptable than during the evening or late at night, which is what currently occurs at the adjacent Mountain Ridge Wines estate.

### Traffic and Car Parking

Concerns were raised on the potential for traffic and car parking issues resulting from the proposal.

The assessment of the application indicates that the subject site would be able to cater for the expected traffic generation and parking demands that would result from the proposal as there is more than sufficient space on the site for parking. There is an existing all-weather gravel driveway for customers of the existing businesses on the site, which is wide enough to enable two vehicles to pass each other. The access is to Coolangatta Rd (rather than Bolong/Gerroa Rd) which has a lower traffic volume.

## Financial and Legal Implications

There are potential financial costs and legal implications for Council in the event of a refusal of the application, which would likely result should the variation to the policy not be

supported. Such costs and implications would be associated with defending an appeal in the NSW Land and Environment Court.

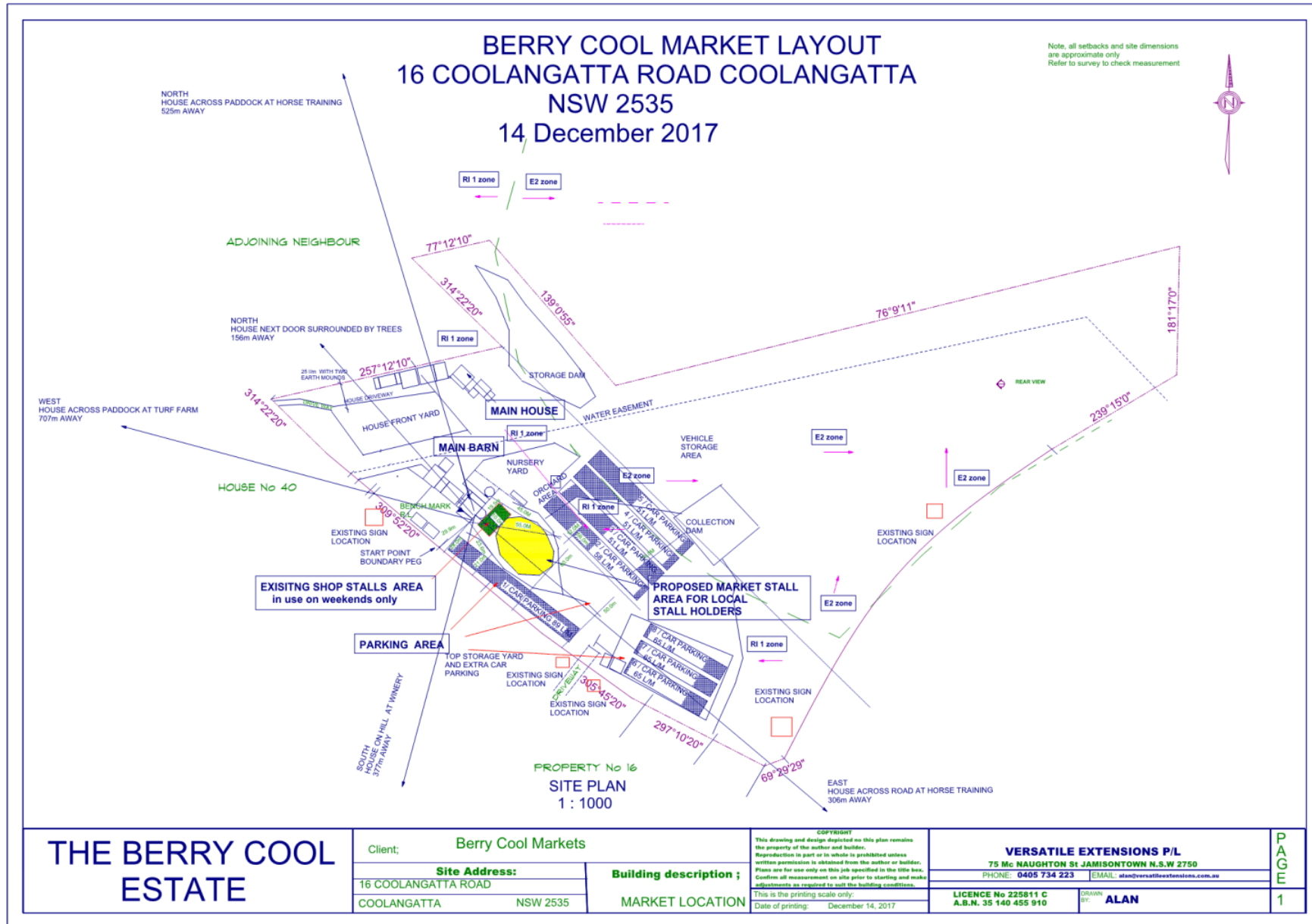
### **Summary and Conclusion**

In summary:

- The applicant/owner and proposed operator of the market is not a local based non-profit organisation, which represents a variation to Council's policy on markets which require development consent (Chapter G17 of SDCP 2014);
- There are two existing markets in Shoalhaven Heads, however this proposal is considered able to coexist with these markets without undermining their continued viability. No objections to the proposal on economic grounds were received;
- Concerns have been raised in relation to the potential for noise and car parking issues. These issues can be adequately addressed through appropriate conditions of consent, if consent is granted;
- Markets are permitted with consent within the site's RU1 Primary Production zoning and an assessment of the proposal indicates that it would not be inconsistent with the objectives of this zone;
- If consent is granted, this would only be for an initial 12-month period as per the relevant control of Chapter G17 of SDCP 2014. This would allow Council and the applicant/owner to assess the overall viability of the markets and address any issues that may have eventuated after that time.

Given the above reasons, it is considered that the proposed variation to the policy be supported and the application be referred back to staff for determination.

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## 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.