

Development Committee

Meeting Date: Tuesday, 06 November, 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Joanna Gash - Chairperson
Clr Greg Watson – Deputy Chairperson
All Councillors
General Manager or nominee

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. 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**
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4. **Mayoral Minute**
5. **Deputations and Presentations**
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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 section 8.11 or section 8.9 EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

Schedule

- a. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
- b. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 7 of the EPA Act.
- c. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
- e. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 8.11 and 8.9 of the EP&A Act that the General Manager requires to be determined by the Committee.
- h. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Tuesday, 11 September 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Joanna Gash - Chairperson
Clr Amanda Findley
Clr Patricia White
Clr John Wells
Clr Nina Cheyne
Clr Kaye Gartner
Clr Mitchell Pakes (left 5.49pm)
Clr Greg Watson
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

Apologies were received from Clrs Alldrick, Levett, Kitchener and Guile.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Cheyne) MIN18.690

That the Minutes of the Development Committee held on Tuesday 14 August 2018 be confirmed.
CARRIED

Declarations of Interest

Nil.

DEPUTATIONS AND PRESENTATIONS

DE18.61 - Exhibition Outcomes and Next Steps – Nowra Riverfront Entertainment and Leisure Precinct - Proposed Planning Controls Report

Johnny Vynes spoke for the recommendation.

DE18.63 Berry Heritage Investigation Project - Future Direction

Catherine Barlow, representing the Berry & District Historical Society, spoke for the recommendation.

DE18.64 South Nowra Industrial Zoned Area - Future Direction

Rodney Foyel, representing South Nowra Disadvantaged Landholders, spoke against the recommendation.

DE18.67 DA18/1788 – 128 Princes Highway SOUTH NOWRA - Lot 25 DP 734975

Lee Carmichael, PDC Planners, spoke against the recommendation.

REPORTS

Introduction of Items as Matters of Urgency

RESOLVED (Clr Pakes / Clr Wells)

MIN18.691

That the following addendum reports be introduced as matters of urgency:

1. DE18.67 DA18/1788 – 128 Princes Highway SOUTH NOWRA - Lot 25 DP 734975

CARRIED

The Chairperson ruled the matters as ones of urgency as they relate to urgent business of Council and allowed their introduction.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr Wells)

MIN18.692

That items DE18.67, DE18.61, DE18.63 and DE18.64 be brought forward for consideration.

CARRIED

DE18.67 DA18/1788 – 128 Princes Highway SOUTH NOWRA - Lot 25 DP 734975

HPERM Ref: D18/305499

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the variation to Acceptable Solution A1.6 of Chapter G22: Advertising Signs and Structures as it relates to Development Application No. DA18/1788 for the installation of two (2) additional free-standing business identification signs in association with an approved vehicle sale or hire premises (motor vehicle showroom) at 128 Princes Highway, South Nowra - Lot 25 DP 734975, subject to compliance with the revised location of free-standing signage indicated in the part site plan provided as **Figure 6** of this Council Report; and
2. Refer the application back to staff for determination.

RESOLVED (Clr Proudfoot / Clr Wells)

MIN18.693

That Council supports the variations of Acceptable Solutions of Chapter G22: Advertising Signs and Structures as proposed by the applicant in its supporting site plan.

FOR: Cllr Gash, Cllr Findley, Cllr White, Cllr Wells, Cllr Cheyne, Cllr Gartner, Cllr Pakes, Cllr Watson, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

Note: Cllr Pakes left the meeting, the time being 5.49pm.

**DE18.61 Exhibition Outcomes and Next Steps - Nowra Riverfront
Entertainment and Leisure Precinct - Proposed Planning
Controls Report**

**HPERM Ref:
D18/218690**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the Nowra Riverfront Leisure and Entertainment Precinct Strategic Direction: Review & Analysis and Proposed Planning Controls Reports as exhibited and with the following changes to the Proposed Planning Controls Report:
 - a. Amend the Indicative Future Road Local / Alignment on the key development parameters mapping including the closure of Pleasant Way as per Variation B of the report and illustrate an additional road connection off Hawthorn Avenue to Princes Highway.
 - b. Include further justification for the change in Land Use Zone and Height of Building in Scenic Drive, Wharf Road, Bridge Road and Pleasant Way and Graham Lodge sub-precincts in accordance with Section 9.1 Ministerial Direction 1.1 Business and Industrial Zones and 3.1 Residential Zones.
 - c. Amend the Bridge Road and Scenic Drive sub-precincts to include additional text which notes that the future development of these sub-precincts will be subject to additional investigation once the detail design of the Nowra Bridge project is complete.
 - d. Amend Figure 43 and supporting text to categorise Bridge Road sub-precinct as Level 3 high level of uncertainty around the impact to development outcomes as a result of the acquisition associated with the Nowra Bridge project.
2. Prepare a Planning Proposal for Mandalay Avenue sub-precinct to amend the Land Use Zones, Height of Buildings and Floor Space Ratio as per the exhibited Proposed Planning Controls Report and submit to Department of Planning & Environment for Gateway determination.
3. Prepare a Planning Proposal for the remaining sub-precincts as per the Staging Plan (except for Bridge Road and Scenic Drive sub-precincts) as per the exhibited Proposed Planning Controls Report and with the following additional considerations:
 - a. Reflect the latest Concept Design for the Nowra Bridge Project.
 - b. Consider reduction in Height of Building and Floor Space Ratio to address flooding impacts.
 - c. Consider B4 Mixed Use as an alternative zone for the Wharf Road precinct, and Additional Permitted Uses to enable the activation of the riverfront.
 - d. Prior to submitting to NSW Department of Planning & Environment for Gateway determination, report the matter to Council.
4. Prepare a Development Control Plan Chapter to be inserted into Shoalhaven Development Control Plan 2014 for the Nowra Riverfront Precinct, which includes the controls in the exhibited Proposed Planning Controls Report as per the Staging Plan (except for Bridge Road and Scenic Drive), and:

- a. In preparing the Draft Development Control Plan Chapter:
 - i. Review appropriateness and suitability of flood related controls.
 - ii. Revise the key development parameters of each sub-precinct to reflect the latest Concept Design for the Nowra Bridge Project.
5. Commence initial preparatory work to clarify the infrastructure required to support the future development of the precinct and inform a possible Contributions Plan Amendment for new road, drainage and open space infrastructure projects and consider a subsequent report on this aspect that details the funding required to advance the infrastructure design work and identifies a Council funding source.
6. Notify all submitters and public authorities of the resolution.

RESOLVED (Clr Gartner / Clr Cheyne)

MIN18.694

That Council:

1. Endorse the Nowra Riverfront Leisure and Entertainment Precinct Strategic Direction: Review & Analysis and Proposed Planning Controls Reports as exhibited and with the following changes to the Proposed Planning Controls Report:
 - a. Amend the Indicative Future Road Local / Alignment on the key development parameters mapping including the closure of Pleasant Way as per Variation B of the report and illustrate an additional road connection off Hawthorn Avenue to Princes Highway.
 - b. Include further justification for the change in Land Use Zone and Height of Building in Scenic Drive, Wharf Road, Bridge Road and Pleasant Way and Graham Lodge sub-precincts in accordance with Section 9.1 Ministerial Direction 1.1 Business and Industrial Zones and 3.1 Residential Zones.
 - c. Amend the Bridge Road and Scenic Drive sub-precincts to include additional text which notes that the future development of these sub-precincts will be subject to additional investigation once the detail design of the Nowra Bridge project is complete.
 - d. Amend Figure 43 and supporting text to categorise Bridge Road sub-precinct as Level 3 high level of uncertainty around the impact to development outcomes as a result of the acquisition associated with the Nowra Bridge project.
2. Prepare a Planning Proposal for Mandalay Avenue sub-precinct to amend the Land Use Zones, Height of Buildings and Floor Space Ratio as per the exhibited Proposed Planning Controls Report and submit to Department of Planning & Environment for Gateway determination.
3. Prepare a Planning Proposal for the remaining sub-precincts as per the Staging Plan (except for Bridge Road and Scenic Drive sub-precincts) as per the exhibited Proposed Planning Controls Report and with the following additional considerations:
 - a. Reflect the latest Concept Design for the Nowra Bridge Project.
 - b. Consider reduction in Height of Building and Floor Space Ratio to address flooding impacts.
 - c. Consider B4 Mixed Use as an alternative zone for the Wharf Road precinct, and Additional Permitted Uses to enable the activation of the riverfront.
 - d. Prior to submitting to NSW Department of Planning & Environment for Gateway determination, report the matter to Council.
4. Prepare a Development Control Plan Chapter to be inserted into Shoalhaven Development Control Plan 2014 for the Nowra Riverfront Precinct, which includes the controls in the exhibited Proposed Planning Controls Report as per the Staging Plan (except for Bridge Road and Scenic Drive), and:

- a. In preparing the Draft Development Control Plan Chapter:
 - i. Review appropriateness and suitability of flood related controls.
 - ii. Revise the key development parameters of each sub-precinct to reflect the latest Concept Design for the Nowra Bridge Project.
 5. Commence initial preparatory work to clarify the infrastructure required to support the future development of the precinct and inform a possible Contributions Plan Amendment for new road, drainage and open space infrastructure projects and consider a subsequent report on this aspect that details the funding required to advance the infrastructure design work and identifies a Council funding source.
 6. Notify all submitters and public authorities of the resolution.
- FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Cheyne, Clr Gartner, Clr Proudfoot and Russ Pigg
- AGAINST: Clr Watson
- CARRIED

DE18.63 Berry Heritage Investigation Project - Future Direction**HPERM Ref:
D18/261051****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Proceed with the Berry Heritage Investigations project; to investigate and consider the 29 properties and 2 smaller Heritage Conservation Areas identified as possible additional heritage listings for Berry.
2. Commit to the direct funding of the project (approximately \$40,000) via savings from the quarterly budget review.
3. Notify relevant stakeholders, including the Berry Forum, of this decision and how they can be involved as the project progresses.

RESOLVED (Clr Wells / Clr White)

MIN18.695

That Council:

1. Proceed with the Berry Heritage Investigations project; to investigate and consider the 29 properties and 2 smaller Heritage Conservation Areas identified as possible additional heritage listings for Berry.
2. Refer the matter of funding for The Berry Heritage Investigations Project for consideration (approximately \$40,000) in the next quarterly budget review report to Council.
3. Notify relevant stakeholders, including the Berry Forum, of this decision and how they can be involved as the project progresses.

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

AGAINST: Nil

CARRIED

DE18.64 South Nowra Industrial Zoned Area - Future Direction

**HPERM Ref:
D18/273390**

Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the report on the representations made by landowners in South Nowra Industrial Zoned Area for information.
2. Engage a suitably qualified and experienced consultant/s to assist Council with the preparation of proposed development controls and engineering design investigations for required access roads, drainage infrastructure, land acquisition and water/sewerage in the South Nowra Industrial Zoned Area.
3. Support the preparation of an area specific chapter for South Nowra Industrial Zoned Area in Shoalhaven Development Contribution Plan (DCP) 2014.
4. Support the preparation of an amendment to Shoalhaven Contributions Plan (CP) 2010 to include additional Local Contribution Projects to facilitate required infrastructure works and recoup design and investigation costs.
5. Receive a future report to consider the draft DCP Chapter and draft CP amendment for South Nowra Industrial Zoned Area for public exhibition.

RESOLVED (Clr Findley / Clr Proudfoot)

MIN18.696

That Council

1. Receive the report on the representations made by landowners in South Nowra Industrial Zoned Area for information.
2. Engage a suitably qualified and experienced consultant/s to assist Council with the preparation of proposed development controls and engineering design investigations for required access roads, drainage infrastructure, land acquisition and water/sewerage in the South Nowra Industrial Zoned Area.
3. Support the preparation of an area specific chapter for South Nowra Industrial Zoned Area in Shoalhaven Development Contribution Plan (DCP) 2014.
4. Support the preparation of an amendment to Shoalhaven Contributions Plan (CP) 2010 to include additional Local Contribution Projects to facilitate required infrastructure works and recoup design and investigation costs.
5. Receive a future report to consider the draft DCP Chapter and draft CP amendment for South Nowra Industrial Zoned Area for public exhibition.
6. Directs the General Manager to prepare a planning proposal and submit it for Gateway determination seeking to confirm and establish a dwelling entitlement on each of the individual properties within the industrially zoned area.
7. Receive an additional report from the General Manager (Economic Development) on the business case of the proposition of the land bank of future industrial land.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Cheyne, Clr Gartner, Clr Watson and Clr Proudfoot

AGAINST: Russ Pigg

CARRIED

DE18.61 Exhibition Outcomes and Next Steps - Nowra Riverfront Entertainment and Leisure Precinct - Proposed Planning Controls Report

**HPERM REF:
D18/218690**

Item dealt with earlier in the meeting see MIN18.694.

DE18.62 Exhibition Outcomes - Planning Proposal - 9 Browns Road South Nowra - Caravan Park

**HPERM Ref:
D18/228829**

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Adopt the Planning Proposal PP034 as exhibited, with the minor adjustments detailed in the report, to make 'caravan parks' an additional permitted use at Lot 1 DP 1079345, 9 Browns Road South Nowra.
2. Forward Planning Proposal (PP034) to NSW Parliamentary Counsel's Office to draft the required amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using the plan making delegations issued under Section 2.4 of the *NSW Environmental Planning and Assessment Act 1979*.
4. Notify the proponent, submitters and residents of the site when the amendment of Shoalhaven Local Environmental Plan 2014 is notified.

RESOLVED (Clr Findley / Clr Wells)

MIN18.697

That the Committee:

1. Adopt the Planning Proposal PP034 as exhibited, with the minor adjustments detailed in the report, to make 'caravan parks' an additional permitted use at Lot 1 DP 1079345, 9 Browns Road South Nowra.
2. Forward Planning Proposal (PP034) to NSW Parliamentary Counsel's Office to draft the required amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using the plan making delegations issued under Section 2.4 of the *NSW Environmental Planning and Assessment Act 1979*.
4. Notify the proponent, submitters and residents of the site when the amendment of Shoalhaven Local Environmental Plan 2014 is notified.

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

AGAINST: Nil

CARRIED

DE18.63 Berry Heritage Investigation Project - Future Direction

**HPERM REF:
D18/261051**

Item dealt with earlier in the meeting see MIN18.695.

DE18.64 South Nowra Industrial Zoned Area - Future Direction

**HPERM REF:
D18/273390**

Item dealt with earlier in the meeting see MIN18.696.

**DE18.65 Low Rise Medium Density Housing Code - Request for
Deferred Commencement Extension**

**HPERM Ref:
D18/279418**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Submit the correspondence at Attachment 1 to the Department of Planning and Environment, requesting up to a further 12-month deferral (until 30 June 2020) for Shoalhaven in relation to the Low Rise Medium Housing Code.
2. Advise Development Industry Representatives and Community Consultative Bodies of this resolution, and again should Council be successful in obtaining the further 12-month extension.

RESOLVED (Clr Findley / Clr White)

MIN18.698

That Council:

1. Submit the correspondence at Attachment 1 to the Department of Planning and Environment, requesting up to a further 12-month deferral (until 30 June 2020) for Shoalhaven in relation to the Low Rise Medium Housing Code.
2. Advise Development Industry Representatives and Community Consultative Bodies of this resolution, and again should Council be successful in obtaining the further 12-month extension.

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

AGAINST: Nil

CARRIED

**DE18.66 Proposed 2017 Housekeeping Amendment to
Shoalhaven Local Environmental Plan 2014 - Instrument
Changes**

**HPERM Ref:
D18/282538**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Submit the 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP033 – Attachment 1) to the NSW Department of Planning and Environment for a Gateway determination and if favourable, proceed to formal public consultation in accordance with the terms of the determination.
2. Advise any relevant community groups of this decision, noting the opportunity for formal consultation later in the process.

RESOLVED (Clr Wells / Clr Gartner)

MIN18.699

That Council:

1. Submit the 2017 Housekeeping Amendment – Instrument Changes Planning Proposal (PP033 – Attachment 1) to the NSW Department of Planning and Environment for a Gateway

determination and if favourable, proceed to formal public consultation in accordance with the terms of the determination.

2. Advise any relevant community groups of this decision, noting the opportunity for formal consultation later in the process.

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

AGAINST: Nil

CARRIED

ADDENDUM REPORTS

**DE18.67 DA18/1788 – 128 Princes Highway SOUTH NOWRA - Lot
25 DP 734975**

**HPERM REF:
D18/305499**

Item dealt with earlier in the meeting see MIN18.693.

There being no further business, the meeting concluded, the time being 6.36pm.

Clr Gash
CHAIRPERSON

DE18.68 Notice of Motion - DA18/1998 - 64 Seagrass Avenue Bayswood (Vincentia)

HPERM Ref: D18/377205

Submitted by: Cllr John Levett

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation (Item to be determined under delegated authority)

That DA18/1998 at 64 Seagrass Avenue, Bayswood be called in for consideration by Council. There have been around 30 objections to this development and the application has caused considerable public concern. And also that Council Staff organise a public briefing to allay the fears of Bayswood residents that this proposed development is not in accordance with the original Bayswood Masterplan and that it contravenes Dual Occupancy Guidelines and relevant Development Control Plans.

Background

64 Seagrass Avenue, Bayswood (Lot 1138 in DP 1210394) is a 500 sq mtr block in an R2 Zone. The DA is for a detached dual occupancy totalling 9 bedrooms, 2 single garages and 2 parking spaces. Parking in Seagrass Avenue is already inadequate on a main access 6 metre wide carriageway. The proposal is out of character with existing Bayswood accommodation which is single dwellings.

DE18.68

DE18.69 Exhibition Outcomes and Next Steps - Proposed Interim Policy - Development Adjoining Narrow Laneways across Shoalhaven

HPERM Ref: D18/233210

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Submission Summary - Laneways by Suburb (under separate cover) [↗](#)
2. Proposed Interim Policy - Development Adjoining Narrow Laneways [↓](#)
3. Review of Other Councils' Policies - Case Studies of Ballina, Newcastle and Randwick [↓](#)

Purpose / Summary

- Detail the outcomes of the public exhibition of the proposed Interim Policy for Development Adjoining Narrow Laneways and seek Council adoption of an Interim Policy; and
- Commence the process to prepare a future amendment to Shoalhaven Development Control Plan (DCP) 2014 in relation to development adjoining narrow laneways.

Recommendation (Item to be determined under delegated authority)

That Council

1. Adopt the Interim Policy – Development Adjoining Narrow Laneways as amended to apply to secondary access lanes only, provided in Attachment 1.
2. Apply the Interim Policy until Shoalhaven Development Control Plan 2014 has been amended to include development controls for development adjoining and fronting onto narrow laneways.
3. Prepare a draft amendment to Shoalhaven Development Control Plan 2014 to insert specific development controls for development adjoining narrow laneways in residential zones for Council consideration prior to proceeding to exhibition.
4. Notify those people who provided a submission of this resolution.

Options

1. Adopt the recommendation to establish an interim policy position in relation to development adjoining narrow laneways and prepare a draft amendment to Shoalhaven DCP 2014 for Council consideration via a subsequent report.

Implications: This is the preferred option, as it will help mitigate/manage future ad-hoc development outcomes occurring along narrow laneways. The recommendation means that in the interim, development will generally not be supported where laneways are less than 10m wide, and where greater than 10m, the development must result in minimal impact on existing residential amenity and be adequately serviced.

The option will also enable Council to commence the preparation of an amendment to Shoalhaven DCP 2014 to ultimately insert specific development controls for development adjoining narrow laneways in residential zones.

DE18.69

2. Adopt an alternative recommendation.

Implications: Depending on the nature, this recommendation this could create certain risks, including the potential for further uncontrolled development along laneways.

3. Not adopt the recommendation.

Implications: This is not preferred. Council does not currently have a policy position on developments that propose to utilise rear laneways for primary vehicular access and frontage.

Approval of individual Development Applications (DA's) along the laneways without first establishing a policy position could result in uncontrolled and inconsistent development along the narrow laneways, with potentially detrimental impacts on existing infrastructure and neighbourhood amenity.

Background

There are over 8,750 metres of “laneways” throughout the Shoalhaven Local Government Area. Ninety per cent (90%) of these laneways have a road reserve width (property boundary to boundary) of less than 10m. At present, most narrow laneways are used for secondary access to detached garages/outbuildings, or for direct rear-yard access for the parking of boats, caravans, and the like. This use is a mix of formal and informal.

Increasing development pressure has seen an increase in the number of applications and future interest from property owners for subdivision and dual occupancy development fronting onto narrow laneways. Council does not currently have specific development controls to effectively manage or consider this type of development.

On 13 March 2018 the Development Committee considered a report identifying the current and emerging issues associated with development adjoining narrow laneways. The report was prompted following the lodgement of two development applications (DA's) in Culburra Beach which sought to utilise Allerton Lane as a primary frontage for future development.

As a result of the report it was resolved:

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.

This report provides the results of the public exhibition and seeks a resolution to adopt the interim policy and prepare an amendment to Shoalhaven DCP 2014 to insert new development controls for consideration in development adjoining or fronting on to narrow laneways across Shoalhaven.

Community Consultation

In accordance with the resolution, the proposed interim policy was advertised for a period of 30 days, from 11 April until 11 May 2018, inclusive. A copy of the proposed interim policy and explanatory statement were available at Council's Administrative Centre, Ulladulla Branch Office and on Council's website.

In addition to newspaper and online advertising, Council wrote directly to over 650 landowners adjoining a narrow laneway, including a survey with the following questions:

1. Do you support the proposed interim policy? (Yes / No / In part)
2. Explanation of reasons / any other comments.

A total of 92 submissions were received, including 39 hard copy surveys, 36 online surveys and 17 written submissions. Most submissions related specifically to the laneway adjoining the submitter's property, rather than the overall proposed interim policy. As such, the submissions summary that is provided in **Attachment 1** is broken up by suburb and laneway.

It is noted that some submitter's comments contradicted their response to Question 1 of the survey, however the general response from the survey on the proposed interim policy is summarised below:

Do you support the proposed interim policy?	Responses	Percentage
Yes	36	39%
No	42	46%
In part	12	13%
Other	2	2%

It is noted that there was no clear consensus in terms of support or opposition to the proposed interim policy.

Submissions Overview

The following is an overview of the matters commented on in submissions and Council staff comments where necessary/appropriate.

1. Impact on Existing Arrangements

Some submissions raised concern that the proposed interim policy would impact on, or revoke existing access arrangements, development consents, or servicing relating to development adjacent to laneways.

Staff Comment

The proposed interim policy would have no effect on existing informal or formal access arrangements, development consents or servicing in laneways. It is aimed at new development proposing primary access from a laneway.

2. Laneway Upgrades

Some submissions thought the proposed interim policy meant the laneway was being developed or built on, or that the laneway would be upgraded.

Staff Comment

The proposed interim policy would not enable building in the laneway, and the policy does not relate to the physical upgrading of laneways. Any future costs associated with upgrading lanes would need to be met by any developer creating the demand.

3. Laneways that provide the only legal access

Several submissions raised concern that Part a) of the exhibited policy would restrict development of properties that have their only legal access off a laneway. Examples include Brooks Lane in Kangaroo Valley and parts of The Marina and Marina Lane at Culburra Beach (included in **Attachment 1**).

Staff Comment

As part of the community consultation, all properties adjoining a 'laneway' were advised of the public exhibition of the proposed interim policy. Some submissions identified issues with the policy and the effect of Part a) on properties where laneways are their only legal access. To address this issue, it is recommended that the wording of the proposed interim policy be amended with the addition of the bold text below to better reflect the original intent of the proposed interim policy:

- a. *Laneways are not to be used as primary frontages, **except in cases where the laneway is the only legal access.***
- 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.*

4. Application of the Policy where an Area Specific DCP exists

Some submissions raised concern over Part d) of the proposed interim policy which states that "Where an Area Specific DCP Chapter exists, it prevails over the interim policy position". It was suggested that the interim policy should prevail over Council's adopted DCP.

Staff Comment

As reflected in the title, the proposed interim policy is intended to be an ‘interim’ measure and will only apply until development controls can be included in Shoalhaven DCP 2014 to manage development adjoining and fronting on to narrow laneways.

Some properties adjoining laneways in Huskisson and Culburra Beach are covered by detailed area specific chapters in Shoalhaven DCP 2014 including Chapter N19 Huskisson Mixed Use Zones and Chapter N12 Culburra Beach – The Marina Area. These were worked up in most cases with the community etc. The intent of Part d) of the proposed interim policy was for the DCP to prevail, but only to the extent of any inconsistency. This was explained in the Explanatory Statement exhibited with the proposed interim policy, however it is recommended that this be clarified (additional text in bold) in the wording of the proposed interim policy as follows:

- d. *Where an Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position, **to the extent of the inconsistency.***

The review of Shoalhaven DCP 2014 has found that there are no specific development controls for development fronting onto or adjoining narrow laneways. Given the origin of these issues in residential areas, and the presence of Council adopted development controls in other areas such as Huskisson B4 Mixed Use Zones, it is recommended that Shoalhaven DCP 2014 be amended to include controls for laneways in residential zones only.

5. Possible Restrictions on Development

Some submissions raised concern that the proposed interim policy would restrict development and that the Local Environmental Plan (LEP) should remain as is.

Staff Comment

The proposed interim policy has no effect on existing controls within Shoalhaven LEP 2014 which enable the subdivision and development of certain land within Shoalhaven. The proposed interim policy does not and cannot override the LEP.

The proposed interim policy provides a policy position statement which can be applied to future development applications to ensure they do not create any adverse impacts on existing residential amenity and that there is adequate infrastructure to support the development. In some cases, this might mean that development to increase the density (for example from a single dwelling house to a dual occupancy) of a property will utilise the primary frontage for access, waste collection and other servicing arrangements.

The proposed interim policy is only intended to apply on an interim basis, until specific measures and development controls for development fronting laneways are adopted. Further consultation will be undertaken should Council resolve to prepare and then exhibit an amendment to the DCP. It is recommended that the policy be amended, with the addition of the following wording, to clarify the ‘interim’ nature of the policy:

- e. *That this policy apply until suitable development controls are in place in Shoalhaven DCP 2014.*

A copy of the Proposed Interim Policy including the recommended amendments is provided as **Attachment 2**.

Review of Other Council's Policies

A wider review of the policy approach to development along narrow laneways by other Councils was also undertaken to inform potential options for development controls in Shoalhaven.

Three case studies from Ballina Shire Council, Newcastle City Council and Randwick City Council are included in **Attachment 3**, which provides a summary of their respective DCP controls and examples of the resultant development form.

The three case studies highlight a generally proactive approach to the management of development along laneways as an emerging form of development in existing areas that needs to be managed. Several issues can be effectively managed through a managed approach to development as well as changes to the road environment such as reduced speed limits, no parking signs and making laneways one way only.

In terms of NSW Government policy, it is noted that SEPP (Affordable Rental Housing) 2009 allows a zero setback to laneways for 'secondary dwellings' and 'group homes' for up to 50% of the length of the boundary, where laneways are defined as "a public road, with a width greater than 3m but less than 7m, that is used primarily for access to the rear of premises, and includes a nightsoil lane." Depending on the future take up of complying development, this has the potential to influence the existing use and character of existing laneways in Shoalhaven.

Proposed Amendment - Shoalhaven Development Control Plan 2014

In accordance with Council's resolution, a review of Shoalhaven DCP 2014 was also undertaken to identify any gaps in planning policy in relation to development adjoining narrow laneways. Shoalhaven DCP 2014 does not currently provide any specific controls in relation to development fronting onto narrow laneways, other than some specific examples.

It is recommended that Shoalhaven DCP 2014 be amended to insert specific controls for development fronting on to narrow laneways. The amendment will seek to manage potential issues and provide a consistent policy approach to set backs and frontages, infrastructure servicing, pedestrian safety, entering and existing driveways, lighting and surveillance, character and existing residential amenity, waste collection, sight lines on corner lots, traffic and car parking.

The objectives of the proposed amendment will be:

- To respond positively to the pressure for the introduction of dwellings fronting onto laneways;
- To ensure development is compatible with the characteristics of laneways and existing residential character;
- To ensure any buildings fronting laneways have a scale and mass secondary to the main dwelling on the lot, or parent lot, and is appropriate to the width of the laneway;
- To promote casual surveillance and improve the safety and security of laneways; and
- To ensure development fronting laneways has safe and practical access and appropriate infrastructure servicing.

At this stage the controls are recommended to be included as part of a Generic Chapter amendment, as the controls relate to specific development types that occur across Shoalhaven. Should amendments to other chapters be required, these will be included as part of the exhibition package for community consultation.

It is recommended that this approach be supported so that the draft amendment can be formally prepared. A further report will be provided to Council to enable consideration of the draft amendment to the DCP.

Community Engagement

As detailed earlier in this report, the proposed interim policy was publicly exhibited for a period of 30 days, from 11 April until 11 May 2018, inclusive. In addition to newspaper and online advertising, Council wrote to over 650 landowners adjoining a narrow laneway, with a short survey to seek direct feedback from landowners. Internal consultation has also occurred with relevant Council staff.

Any future amendment to Shoalhaven DCP 2014 will also involve further consultation with relevant stakeholders and the broader community in accordance with the *Environmental Planning & Assessment Regulation 2000*.

Policy Implications

This project is a current, non-priority project identified in the 2018-2019 Strategic Planning Works Program.

The adoption of the recommendation will result in a future amendment to Shoalhaven DCP 2014 and the addition of this project to the Works Program.

Financial Implications

This project is, and will be managed, within the existing Strategic Planning Budget.

Risk Implications

Without suitable development controls in place, there is a risk of uncontrolled development occurring along laneways. The amendment will seek to manage potential issues and provide a consistent policy approach to future development adjoining narrow laneways.



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For more information contact the Planning Environment & Development Group

Proposed Interim Policy - Development Adjoining Narrow Laneways

Policy Number: POL18/55 • **Adopted:** [\[Click here to enter date\]](#) • **Minute Number:** [\[Click here to enter Minute number\]](#) • **File:** 57914E • **Produced By:** Planning Environment & Development Group
• **Review Date:**

1. PURPOSE

To fill a policy gap in relation to the development of land adjacent to narrow laneways in Shoalhaven.

2. STATEMENT

There are currently no specific DCP controls which identify or set parameters for development along narrow laneways across Shoalhaven in respect to:

- Their use as a primary frontage and access, or
- Specific building design (i.e. presentation to the laneway) or impact mitigation controls.

In the absence of any planning controls that address potential issues arising from increased development in these locations, there may be adverse impacts on the current use and function of narrow laneways, and the overall character and residential amenity of these areas.

The proposed interim policy seeks to ensure that use of laneways by new development does not cause any adverse effects, for example, traffic and amenity impacts. In some cases, this might mean that development to increase the density (i.e. from a single dwelling house to a dual occupancy) of a property will utilise the primary frontage for access, waste collection and other servicing arrangements.

3. PROVISIONS

- a. Laneways are not to be used as primary frontages, except in cases where the laneway is the only legal access.
- 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.

Shoalhaven City Council - Title

- d. Where an Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position, to the extent of the inconsistency.
- e. That this policy apply until suitable development controls are in place in Shoalhaven DCP 2014.

4. IMPLEMENTATION

The policy will apply on an interim basis, until an amendment to Shoalhaven Development Control Plan (DCP) 2014 introduces development controls relating to development adjoining and/or fronting onto laneways.

In the case of inconsistencies with any Area-Specific Chapter of Shoalhaven DCP 2014, the provisions within the Area-Specific Chapter prevail over the proposed interim policy position, but only to the extent of the inconsistency.

5. REVIEW

The interim policy will be reviewed as needed should circumstances arise to warrant revision.

6. APPLICATION OF ESD PRINCIPLES

ESD principles will be applied in the preparation of development controls for development adjoining narrow laneways.

Review of Other Council's Policies – Case Studies

1. Lennox Head

Controls: Ballina Shire DCP 2012 Chapter 4 Residential & Tourist Development – Part F Development Fronting Laneways

- i. Residential accommodation and tourist and visitor accommodation buildings and all ancillary development on a lot must be setback from the boundary with a lane behind the building line as specified on the Building Line Map.
- ii. Where a lot has a lane frontage and a building line to the lane is not specified on the Building Line Map, the building line is 3.5m from the lane frontage, as specified in Table 4.1 above.
- iii. Garages that are directly accessed from the lane shall have a minimum setback of 5.5m for direct access or 3.5 metres for indirect access from the lane boundary in accordance with Figure 4.5, except as specified in (v).
- iv. Residential accommodation and tourist and visitor accommodation with direct frontages to laneways are permitted except where specified on the Restricted Lane Frontage Map.
- v. Where direct frontage to a lane is restricted under (iv), garages must be provided in accordance with the design parameters shown in Figure 4.6.
- vi. Where development occurs on the corner of a lane, a corner splay of 2.5m x 2.5m must be dedicated to Council.
- vii. Adequate infrastructure servicing, including formalised vehicular and pedestrian access, waste collection and postal delivery, must be available to any lane where direct frontages are proposed, except where the requirements of (viii) are met.
- viii. Where waste collection or postal delivery services are not provided to a lane, direct frontages may be permitted where a paved pedestrian access way with a minimum width of 1.2m is provided on site to enable each dwelling or occupancy direct access to the street frontage.

Garages and onsite parking are encouraged from laneways (where available). However, the above controls do not directly prohibit access from the secondary street frontage.

Example: Dodge Lane, Lennox Head



View from Megan Crescent:



View from Dodge Lane:



- DCP requires that where waste collection or postal delivery services are not provided to a lane, direct frontages may be permitted where a paved pedestrian access way with a minimum width of 1.2m is provided on site to enable each dwelling or occupancy direct access to the street frontage.

2. Newcastle City Council

Controls: Newcastle DCP 2012 Section 7.11 Development Adjoining Laneways

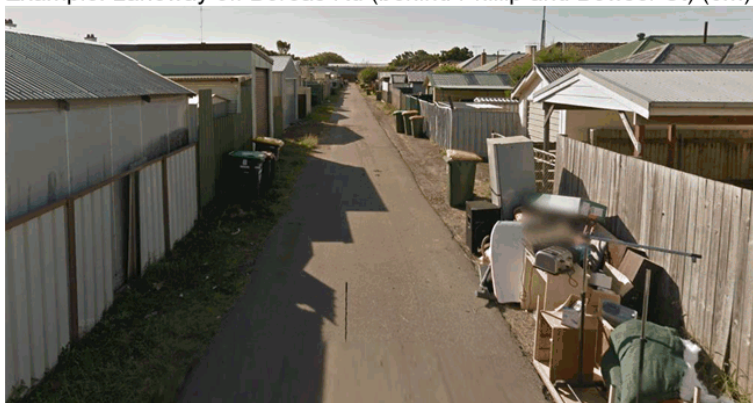
Residential accommodation on a lot with a boundary to a laneway with a road reserve width greater than 6m must:

- Be set back at least 3m, or at least 2m where the laneway is a side boundary.
- Have garages or carports set back at least 5.5m from the boundary of the laneway.
- Ensure dwellings have a covered front door and window to a habitable room facing the laneway.
- Have provision for vehicular and pedestrian access; waste collection; and mail delivery from the laneway, where it meets the minimum construction standards. If this cannot be met, an access handle to the primary road frontage will be required (at least 3m wide where vehicular and pedestrian access is required; or at least 1m wide where pedestrian only access is required).

Example: Lambton laneway (6m road reserve)



Example: Laneway off Boreas Rd (behind Phillip and Bowser St) (6m)



3. Randwick City Council

Controls: Randwick DCP 2013 Chapter C1 Low Density Residential – Part 8.1
Development in Laneways

- i. All ancillary buildings fronting laneways must have a maximum height of not more than 6m. The maximum external wall height is limited to 4.5m.

Ancillary buildings on laneways must have a mass and scale secondary to the primary dwelling on the allotment. Any upper level (for instance, storey above garage) must be contained within the roof form as an attic storey.

- ii. The laneway elevation of any upper level must provide at least 1 operable window to enable casual surveillance of the rear lane.
- iii. Where there is a consistent setback pattern along the lane, buildings must be aligned in accordance with that setback. Where there is no consistent setback pattern, buildings must be setback a minimum of 1m from the laneway

boundary. (Refer to Sub-Section 6 for controls relating to setback to garage entry.)

- iv. Laneway development may reserve nil setback from the side boundaries in the following scenarios:
 - The adjoining site already contains a building at the rear constructed to the common boundary.
 - The reservation of nil side setback/s will not result in unreasonable visual, privacy and overshadowing impacts on the adjoining properties.
- v. Laneway development must screen or match any exposed blank walls within the adjoining properties that are near to or abut the common / side boundaries.

Laneway development may be built to the common boundary, provided the adjoining site already contains a building constructed to the boundary, and where no unreasonable impacts will result.

Example: Studio development along Huddart lane (6m wide laneway) – R2 zone, predominately small scale studio development above existing garages.



DE18.70 Exhibition Outcomes and Proposed Finalisation - Review of LEP and DCP Flood Controls

HPERM Ref: D18/238835

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Planning Proposal PP0012 - Review of Flood Controls (under separate cover) [⇒](#)
2. Draft DCP Chapter G9: Development on Flood Prone Land (under separate cover) [⇒](#)
3. Draft DCP Chapter G9: Supporting Maps (under separate cover) [⇒](#)
4. Draft DCP Chapter G10: Caravan Parks in Flood Prone Areas (under separate cover) [⇒](#)
5. Draft DCP Dictionary (under separate cover) [⇒](#)
6. Submission Summary - Draft DCP Amendment No. 8 Flood Related Development Controls - Submission Summary [↓](#)
7. Post Exhibition Table of Changes - PP012 [↓](#)

Purpose / Summary

Report the outcomes of the combined public exhibition of Planning Proposal 012 (PP) – Review of flood controls and Shoalhaven Development Control Plan (DCP) 2014 – Draft Amendment No. 8 - Flood related development controls and to enable the LEP and DCP amendments to proceed to finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Planning Proposal (PP012) with a minor amendment being the retention of the existing Clause 7.3(5) definition in Shoalhaven Local Environmental Plan 2014.
2. Progress the draft amendment to Shoalhaven Local Environmental Plan 2014 by:
 - a. Forwarding PP012 to Parliamentary Counsel to draft the resulting amendment to Shoalhaven Local Environmental Plan 2014; and
 - b. The resulting amendment to Shoalhaven Local Environmental Plan 2014 be made using Council's delegation.
3. Adopt and finalise draft DCP Amendment No. 8 with the following amendments:
 - a. Amend the Dictionary to:
 - Update the definition of Flood Planning Level definition to be consistent with Shoalhaven Local Environmental Plan 2014.
 - Add the following definition for 'flood free land'
Flood free land means land above the probable maximum flood level.
 - Be consistent with changes made to the Dictionary by other recent amendments to the DCP.
 - b. Amend Draft Chapter G9 to:
 - Update the advisory note in Section 2 as outlined in this report.

DE18.70

- Reword P3.1 as follows:
P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.
- Amend the note in Schedule 2 to clarify that ‘existing use rights’ are defined in the *NSW Environmental Planning and Assessment Act 1979*.
- Include two new supporting maps for the *Floodplain Risk Management Areas – Riverview Road Area and Terara Village* to clearly identify the land to which relevant site-specific controls apply, remove the supporting map for Lake Wollumboola, and reformat and reorder all the maps.
- c. Amend the Chapter G9 Supporting Document to insert the words “or with a local planning consultant” after “Please check with Council....”
- d. Amend Draft Chapter G10 to update the advisory note in Section 1 as outlined in this report.
- e. Update all references to ‘Section 149 Planning Certificates’ to Section 10.7 Planning Certificates in both Draft Chapters G9 and G10 and all supporting documents.
- f. Make general formatting changes to improve the readability of both Draft Chapters G9 and G10 and all supporting documents.

Options

1. Adopt the recommendation.

Implications: This will enable the PP to be finalised within the required period set by the Gateway determination (by 11 December 2018) and Amendment No. 8 to the DCP to be made effective.

2. Adopt the PP and DCP Amendment as exhibited.

Implications: This will result in a PP and DCP amendment that is not supported by sections of Council and the OEH and does not respond to the community submission received. Given that there would be an outstanding State government agency objection to the PP, Council’s powers to make the LEP amendment would need be relinquished to the DP&E for decision making and the PP may not proceed.

3. Not proceed with the PP or draft DCP Amendment.

Implications: The relevant provisions of Shoalhaven Local Environmental Plan (LEP) 2014 and the Shoalhaven Development Control Plan (DCP) 2014 will not be amended, and the existing outdated flood maps will remain in Shoalhaven LEP 2014. This may compromise/complicate the ongoing operation of Shoalhaven LEP 2014 and Shoalhaven DCP 2014.

Background

The PP is part of the ongoing housekeeping amendments aimed at improving and continually updating the Shoalhaven LEP 2014. It seeks to amend the flood related development controls in the LEP by:

- Removing the Flood Planning Area Maps (Note: detailed flood mapping is now available on Council’s website for public access);
- Addressing the definition of Flood Planning Level (FPL); and

- Adding development controls that require consent for ‘stock mounds’ on flood prone land and areas affected by acid sulfate soils.

The Gateway determination for the PP was granted on 8 June 2017 for a period of 12 months, with a subsequent 6-month extension granted until 11 December 2018. Council has delegated authority to finalise the LEP amendment in this regard.

The associated Draft DCP Amendment seeks to amend the existing Chapters G9 - Development on Flood Prone Land, G10 – Caravan Parks in Flood Prone Areas and the DCP Dictionary to complement the changes proposed in PP.

Public Exhibition

PP and draft DCP Amendment were exhibited together for a period of 31 days from 23 May 2018 to 22 June 2018. Notices appeared in local newspapers on 23 May 2018.

All Community Consultative Bodies (CCB’s) and local development industry representatives were notified in writing. Internal groups within Council and relevant State Government agencies were also advised. It is also noted that pre-exhibition consultation was undertaken with internal groups of Council and relevant State Government Agencies.

The exhibition package consisted of the following:

- Planning Proposal (PP012) – Flood related development controls, dated May 2018 (**Attachment 1**).
- Gateway determination dated 8 June 2018.
- Draft DCP 2014 Amendment No. 8 Chapter G9 Development on Flood Prone Land (**Attachment 2**) and supporting maps (**Attachment 3**).
- Draft DCP 2014 Amendment No. 8 Chapter G10 Caravan Parks in Flood Prone Areas (**Attachment 4**).
- DCP 2014 Amendment No. 8 – Dictionary (**Attachment 5**).
- Explanatory Statement.

Community and External Stakeholder Feedback

No issues raised by the community or industry representatives in relation to the PP.

One (1) submission was received from a local consultancy in relation to the draft DCP, which advises that the proposed changes are generally positive in nature and clarify areas of uncertainty. It provides detailed comments on aspects of the DCP and related matters. The contents of the submission are summarised in **Attachment 6** and a copy of the actual submission will be available in the Councillors room prior to the meeting.

In response to the submission, it is intended to make the following changes to the exhibited Amendment No.8 to the DCP:

Section	Proposed change
Dictionary	<ul style="list-style-type: none"> • Amend the definition of ‘Flood Planning Level’ (FPL) to be consistent with Shoalhaven Local Environmental Plan 2014 • Add the following definition for ‘flood free land’: <i>Flood free land means land above the probable maximum flood level.</i> • Other require consistency changes.

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Section	Proposed change
Chapter G9	<ul style="list-style-type: none"> Reword new Performance Criteria P3.1 to read as follows: <i>P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.</i> Amend the note in Schedule 2 to clarify that ‘existing use rights’ are defined in the <i>NSW Environmental Planning and Assessment Act 1979</i>. Include the supporting maps for Terara and Riverview Road, remove the supporting map for Lake Wollumboola, and reformat and reorder all the maps.
Chapter G9 Supporting Document	Insert the words “or with a local planning consultant” should be inserted after “Please check with Council....”
General	General formatting changes to improve the readability of both Draft Chapters G9 and G10 and supporting documents as suggested (see Attachment 6).

DE18.70

Government Agency and Internal Feedback

Feedback was received from the following government agencies on the exhibited package:

- NSW Department of Primary Industries
- NSW Office of Environment and Heritage (OEH)
- Water NSW

Most feedback was supportive or raised no issues. However, OEH and Council's Environmental Services Section raised some concerns regarding the intent of the PP, which are summarised below:

- Deleting the current Clause 7.3(5) FPL Definition (1:100 ARI + 0.5m freeboard) is inconsistent with the NSW Floodplain Development Manual (FDM) 2005 and could lead to differing interpretations of the FPL.
- Including a new Clause 7.3A in relation to stock mounds may not adequately consider ‘other earthworks’ that are not stock mounds.

Further consultation with OEH and Council's Environmental Services Section resulted in an updated proposed Clause 7.3(5) FPL definition being explored. However, OEH was ultimately not supportive of this approach due to the potential for it to also be inconsistent with the FDM (see **Attachment 7**). For Council to pursue this approach, Council would have to relinquish its delegated powers from the Minister for Planning and have the Department of Planning and Environment (DP&E) decide how to proceed. As the main intention of the PP was to remove the flood maps from the LEP, OEH's position was agreed to by staff to enable the PP to progress. Thus, it is recommended that the existing Clause 7.3(5) definition be retained in the LEP.

Conclusion

- Planning Proposal

To enable Council to adopt and finalise the PP, it is recommended that the PP be amended to maintain the Clause 7.3(5) definition of *Flood Planning Level* in Shoalhaven LEP 2014 as it currently exists:

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

This amendment is considered minor in nature and re-exhibition of the PP is not required. This has been confirmed by DP&E. Once adopted the final PP can be provided to the NSW Parliamentary Counsel to enable the drafting of the amendment to Shoalhaven LEP 2014. Council has authority to carry out the functions of the Minister in relation to the making of the LEP Amendment.

Future investigation may be required into how ‘earthworks other than stock mounds’ on flood prone land are addressed in Shoalhaven LEP 2014. This is not within the scope or intent of this PP - a future PP may be required, dependant on research and future consideration of this issue, but this is not considered to be a pressing issue to resolve.

- **DCP Amendment**

To enable Council to finalise and adopt Draft DCP Amendment No.8, it is recommended that the following minor amendments be made as part of the finalisation process:

1. Amend the Dictionary to:

- a. Update the definition of flood planning level (FPL) to be consistent with Shoalhaven LEP 2014.
- b. Add the following definition for ‘flood free land’

Flood free land means land above the probable maximum flood level.

- c. Be consistent with changes made to the Dictionary by other recent amendments the DCP.

2. Amend Draft Chapter G9 to:

- a. Update the advisory note in Section 2 as shown below (**additions** identified as such for the purposes of this report only):

Advisory Note: In addition to the provisions outlined in this Chapter, you must refer to the supporting documents/checklists/maps:

- Supporting Document 1: Chapter G9 – Guidelines for Development on Flood Prone Land.
- Supporting Maps: Site Specific Areas
- **Council's online interactive flood mapping portal.**

Flood Prone Land: is all land at or below the Probable Maximum Flood event level and is described in detail in supporting Document 1 under the heading of Flood Planning Concepts in Schedule 5

There are a number of catchments within the Shoalhaven that have not been subject of a detailed flood study. Any works proposed within such an area must therefore be accompanied by a flood assessment report – refer to Supporting Document 1: Chapter G9 – Guidelines for Development on Flood Prone Land for more information. It is noted that if a flood assessment report identifies land to be at or below the Flood Planning Level (FPL) then Clause 7.3 of Shoalhaven LEP 2014 will also apply to development on that land. FPL is defined in the DCP Dictionary and Shoalhaven LEP 2014 Dictionary.

In cases where the site is classified as partially flood affected, it is strongly recommended to only consider development on the flood free portion of the allotment.

- b. Reword Performance Criteria P3.1 as follows:

P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.

- c. Amend the note in Schedule 2 to clarify that ‘existing use rights’ are defined in the NSW Environmental Planning and Assessment Act 1979.

- d. Include two new supporting maps for the *Floodplain Risk Management Areas – Riverview Road Area and Terara Village* to clearly identify the land to which relevant site specific controls apply, remove the supporting map for Lake Wollumboola, and reformat and reorder all the maps.
3. Amend the Chapter G9 Supporting Document to insert the words “or with a local planning consultant” should be inserted after “Please check with Council....”
4. Amend Draft Chapter G10 to update the advisory note in Section 1 of as outlined in this report shown below (**additions** identified as such for the purposes of this report only):

Advisory Note: In addition to the provisions outlined in this Chapter, you must refer to the supporting documents/checklists/**maps**:

- Supporting Document 1: Chapter G10 – Guidelines for Caravan Parks in Flood Prone Areas
- Supporting Maps: Site Specific Areas **and**
- **Council's online interactive flood mapping portal.**

There are a number of catchments within the Shoalhaven that have not been subject of a detailed flood study. Any works proposed within such an area must therefore be accompanied by a flood assessment report – refer to Supporting Document 1: Chapter G10 – Guidelines for Caravan Parks in Flood Prone Areas for more information. It is noted that if a flood assessment report identifies land to be at or below the Flood Planning Level (FPL) then Clause 7.3 of Shoalhaven LEP 2014 will also apply to development on that land. FPL is defined in the DCP Dictionary and Shoalhaven LEP 2014 Dictionary.

Manufactured home estates, caravan parks and camping grounds will all be referred to as caravan parks from here on.

5. Make minor formatting etc. changes as identified in the submission received.

These amendments are minor in nature and re-exhibition of the resultant draft DCP Amendment No. 8. is not required.

Policy Implications

Progressing these amendments will mean that the most up-to-date flooding information applies to development in flood prone areas.

Financial Implications

Finalisation of the PP and draft DCP amendments will continue to be undertaken within the existing Strategic Planning budget.

DE18.70

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E



SUMMARY OF SUBMISSIONS

Draft DCP Amendment No. 8 – Flood related development controls

This document summarises the one (1) submission made on the draft DCP Amendment No. 8 and provides comments and recommendations from planning staff.

Submission	Proposed DCP change	Submission Content	Planning staff comments
1	Dictionary	definition for the term “flood planning level” is incomplete	PP012 and the Draft DCP amendment will be modified and the FPL definition in the DCP will now be: <i>Flood planning level</i> has the same meaning as in <i>Clause 7.3(5) of Shoalhaven Local Environmental Plan 2014.</i>
	Dictionary	<i>“flood free land” is used but is not defined. I assume it means land above the PMF but Council’s definition of the term should be outlined.</i>	It is taken to mean land that is not “flood prone land”, as defined. Which, is as assumed in the submission. A definition of Flood Free Land will be included as follows: <i>Flood free land</i> means land above the Probable Maximum Flood level.
	Dictionary	<i>“flood free access” is not defined. This term is not mentioned in Chapter G9 but is mentioned in Chapter NB2 Worrigea Urban Release Area..... In light of all this, the requirements to have a “flood free” access road to one development area in the Shoalhaven is a nonsense.</i>	This is not within the scope of the proposed amendment that has been exhibited. Given that this relates to a separate chapter of the DCP it will be considered as part of relevant future housekeeping amendments.
	Document notes	<i>We question the formatting of the various “Notes” throughout the document.</i>	The format for the notes is applicable over the wider DCP. The comments are acknowledged – the final version of the DCP

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E

Submission	Proposed DCP change	Submission Content	Planning staff comments
			chapter will undergo formatting review in line with the future direction of the DCP, prior to publication. The continued improvement of the “notes” will be considered as part of any DCP housekeeping.
	Section 5.3 Objectives	<i>Support the relocated Clause, however the intended future use of a lot is not always known at subdivision stage and SCC will need to apply a reasonable approach in the way this is interpreted in certain cases.</i>	Noted; however, the general intended future use will be known, such as whether the lot is intended for residential uses, commercial etc. Assessing officers of future applications will apply due consideration in the interpretation of this DCP control.
	Performance Criteria P3.1	<i>We strongly object to the new Performance Criteria P3.1 which stipulates Schedule 2 must be satisfied. Schedule 2 (previously Schedule 6) has consistently been applied as an Acceptable Solution and this is the only way that Schedule 2 should be applied. Your attention is drawn to the fact that Acceptable Solution A3.1 is an exact copy of Performance Criteria P3.1. Schedule 2 is not an appropriate performance criteria as it is too prescriptive.</i>	Note the objection and P3.1 will be reworded as follows: <i>P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.</i>
	Section 5.4 Site Specific Flood Related Development Controls	<i>We support the way the site specific measures have been brought into Section 5.</i>	The support for this change is noted.
	Section 5.4 Notes and Maps	Maps should not be in a single PDF Each sub section should reference the map it refers. Should be ordered north to south	Noted. The presentation of the maps on the DCP website will be considered in the finalisation of the DCP amendment. The intent of this comment is supported, maps will be reordered and reformatted prior to commencement of the amendment.

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E

Submission	Proposed DCP change	Submission Content	Planning staff comments
		Is there need for 'Amendment 8' in the footer	The reference to Amendment 8 will be removed as part of the finalisation of the DCP amendment.
	Section 5.4 Various	FRMSP compiled with common themes already contained in the main body and are unnecessary as it creates duplication.	Noted but it is considered useful to reiterate those controls.
	Section 5.4.1 Terrara Village Section 5.4.2 Riverview Road Area	There are missing maps- Terara Village and Riverview Rd.	Noted. All relevant maps will be included in the final DCP chapter.
	Section 5.4.3 St Georges Basin & Section 5.4.4 Lower Shoalhaven River	<i>We object to the setbacks imposed which are not directly flood related. Section 7.6 of SLEP2014 contains sufficient controls, along with the Water Management Act provisions. The requirements in the first row of the table are just a double up and are unnecessary.</i>	These setbacks are flood related, whether considered directly or otherwise as appropriate management of riparian corridors may reduce flood risks and impacts. There is no double up as this table sets the minimum setback which is not contained in the LEP.
	Section 5.4.4 Lower Shoalhaven River	<i>No mention is made of the Lower Shoalhaven Climate Change Management report which was published in 2011. This should be included in the discussion within this section.</i>	Noted but not deemed necessary.
	Section 5.4.5 Burrill Lake and Section 5.4.6 Lake Conjola	<i>Filling is banned "until a long term climate change adaptation strategy is established". Council's attention is drawn to its Adaptation Plan which was prepared in 2012 and can be found on Council's website...</i>	Noted. However the Adaptation plan only provides a framework for the preparation of future strategies/plans and is not specific to Burrill Lake and Lake Conjola.

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E

Submission	Proposed DCP change	Submission Content	Planning staff comments
		<i>As this plan has now been adopted, either the readers attention should be drawn to this fact or this requirement should be removed from the DCP.</i>	
	Sec 5.4.7 Broughton Creek	<i>The Broughton Creek Floodplain Risk Management Study and Plan was adopted is not completed. No mention is made of the Cardno modelling completed since the Princes Highway upgrade was completed.</i>	This section reflects Council's adopted floodplain risk management plans. Should the <i>Broughton Creek Floodplain Risk Management Plan</i> be updated to reflect the Princes Highway upgrade, this will then be incorporated into this chapter.
	Sec 5.4.8 Kangaroo River	<i>Section 117 Direction 4.3(7) contains provisions that a planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). If a s117 Direction prevents this from occurring, it is our view that a DCP which is a lower order planning document than an LEP has less ability to require development to be controlled by PMF levels. This requirement should be removed. (Same comment for Development Controls Matrix Legend)</i>	This is not an LEP amendment and the s117 Directions are therefore not applicable. The role of the DCP is to provide more detailed provisions and to cover a range of issues that are not appropriate to include in the LEP. The NSW Government's Floodplain Development Manual states that councils should "manage flood risk to future land use strategically considering the full range of flood risk..."
	Sec 5.4.9 Bomaderry Creek	<i>All the carpark controls should be made to be generic controls for all carparks in flood prone areas – not just in Bomaderry.</i>	This is noted and generally supported, however, as this would then impose carparking controls on all flood prone land, this is a change that should be separately considered and exhibited so that affected landowners have the opportunity to comment.

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E

Submission	Proposed DCP change	Submission Content	Planning staff comments
		<i>All the other requirements here are double ups from the main body of the DCP and should be deleted.</i> (similar comments for Section 5.4.10 -) (Similar comments for Section 5.4.11) (Similar comments for Section 5.4.12)	Therefore, this change will be considered as part of a future housekeeping amendment to the DCP.
	Section 5.4.13 Lake Wollumboola	<i>This section does not exist in the draft document. Is it supposed to? There is a map for this area.</i>	No site specific controls have been made for this location – the map will be removed.
	Schedule 2	Council needs to define what it means by “existing use rights” in note (*).	Existing use rights are defined in the Environmental Planning Assessment Act 1979. The note will be reworded to clarify this.
	Development Controls Matrix Legend	Floor Level Note 2 PMF Section 117 Direction 4.3(7) contains provisions that a planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director General). If a s117 Direction prevents this from occurring, it is our view that a DCP which is a lower order planning document than an LEP has less ability to require development to be controlled by PMF levels. This requirement should be removed.	This is not an LEP amendment and the s117 Directions are therefore not applicable. The role of the DCP is to provide more detailed provisions and to cover a range of issues that are not appropriate to include in the LEP. The NSW Government's Floodplain Development Manual states that councils should “manage flood risk to future land use strategically considering the full range of flood risk...”
	Supporting DOC 1:	Will ‘Draft’ be removed?	Draft will be removed as part of the finalisation process for the document.

Draft DCP Amendment 8. (Flood related Development Controls) – 50922E & 55639E

Submission	Proposed DCP change	Submission Content	Planning staff comments
		Why is the table of changes here and not in the main doc? What weight does the supporting document have? Is it formally part of the DCP? Confusion in there being schedules of the main DCP and of the supporting document	There is a table of changes for each section of the draft DCP to outline the changes made to that section. The supporting document provides supplementary information and needs to be addressed as specified in the main body of the DCP To reduce confusion relating to the schedules, the schedules in the supporting documents for each chapter will be renamed with letters rather than numbers e.g. Schedule A instead of Schedule 1.
	Supporting DOC 1:	The words “or with a local planning consultant” should be inserted after “Please check with Council....”	This is supported. This wording will be inserted.

PP012 – Review of Flood Controls – Post Exhibition Table of Changes

Existing	Proposed	Comment
1. Flood Planning Area Map – remove the Flood Planning Area Maps from SLEP 2014.	No change	N/A
<p>2. Clause 7.3 Flood Planning</p> <p>– Remove subclause 7.3(2)(a) to clarify that Clause 7.3 only applies to land at or below the flood planning level.</p> <p>– Remove subclause 7.3(5) to delete the single definition of ‘flood planning level’ (FPL). The default definition of ‘flood planning level’ will become the definition of ‘flood planning level’ in the <i>Floodplain Development Manual</i> as per Clause 7.3(4).</p>	<p>No change</p> <p>Retain subclause 7.3(5) so the FPL definition of 1:100 ARI + 0.5m freeboard continues.</p>	<p>N/A</p> <p>The initial intent of removing the existing Clause 7.3(5) definition was to capture ‘other land’ where historic flood data exists but falls outside land subject to FRMP&S. However, OEH raised concerns with this approach as the ‘other land’ historic flood data does not necessarily mean a 1:100 ARI event has been recorded and thus creates the potential for an applicant to define a FPL based on a lesser event than the 1:100 ARI event. This is inconsistent with the NSW Floodplain Development Manual.</p> <p>It has been determined that there is a current mechanism for capturing such land without the need to amend the Clause 7.3(5) FPL definition:</p> <ul style="list-style-type: none"> There are triggers to require a flood assessment report, that defines the FPL, to be provided with any development application on land that meets certain criteria. One such criterion is ‘land that has a history of flooding’ (i.e. other land with historic flood data as referenced in PP012). Therefore, retaining the FPL definition at 1:100 ARI + 0.5m freeboard, will require all flood assessment reports, including land subject to ‘historic flood data’ to define this FPL. If the land is found to be at or below this FPL then Clause 7.3 applies, and the intent is achieved. <p>To ensure that land that has a ‘history of flooding’ is identified in all circumstances:</p> <ul style="list-style-type: none"> Flooding maps have been made available on Council’s public portal that clearly identify any land that is subject to “historic flood data”, as well as the other triggers (for example proximity to a waterway) that require the preparation of a flood assessment report. Also available on these maps is all land affected by a FRMP&S and a 1:100 + 0.5m freeboard FPL has been defined. To complete this suite, maps of all waterways in the Shoalhaven will be included at the same location (this addresses the other trigger

PP012 – Review of Flood Controls – Post Exhibition Table of Changes

		<p>criteria requiring a flood assessment report to accompany a development application).</p> <ul style="list-style-type: none"> - The relevant DCP will be updated to specifically reference the need to refer to the publicly available flood maps in determining requirements for development applications (amongst other requirements). - Section 10.7 Planning Certificate notes will be updated to specifically identify any land has a 'history of flooding' and the other relevant trigger criteria (such as proximity to waterways). <p><u>Is this a substantial change to PP012?</u></p> <p>PP012 is only being changed in that Council is choosing not to adopt the deletion of cl 7.3(5) as initially proposed which means the status quo applies. The retention the flood planning level in the LEP does not apply cl7.3 to any more or any fewer properties.</p> <p>As such, the proposed amendment is not considered to be a substantial change and re exhibition of PP012 should not be required.</p>
<p>3. Clause 7.3A Exceptions to earthworks in the Flood Planning Area</p> <p>Insert an additional provision in the instrument to clarify that stock mounds require consent. The objectives of such a provision are to:</p> <ol style="list-style-type: none"> 1) To provide for the orderly development of a stock mound in a flood planning area. 2) To ensure that stock mounds do not have a detrimental impact on environmental functions and processes in a flood planning area. It is intended that the provision apply in the following circumstances: <ul style="list-style-type: none"> • Land is zoned RU1 Primary Production and RU2 Rural Landscape; and • Land that is at or below the 'flood planning level' as identified in Clause 7.3 Flood Planning/or Land identified as Class 1-4 Acid Sulfate soils on the Acid Sulfate Soils Map; and • where the usable surface area of the stock mound is 100 square metres or greater in area. 	No Change	N/A

DE18.71 Draft Planning Agreement – Lot 172 DP 755923 and Lot 823 DP 247285 Berringer Rd, Cunjurong Point Rd and Sunset Strip Manyana

DA. No: SF9787-02

HPERM Ref: D18/347434

Group: Planning Environment & Development Group
Section: Development Services

Attachments:

1. Voluntary Planning Agreement (Draft) - Shoalhaven City Council & Ozy Homes Pty Ltd - Lot 172 DP 755923 Cunjurong Point Rd Manyana (under separate cover) [⇒](#)
2. Explanatory Note - Voluntary Planning Agreement - Shoalhaven City Council & Ozy Homes Pty ~ Lot 172 DP 755923 Cunjurong Point Rd, Manyana [↓](#)
3. Report to Development Committee 7/7/09 - Strategic Planning & Infrastructure [↓](#)

Description of Development: Draft Planning Agreement associated with a 182 lot residential subdivision

Owner: Manyana Coast Pty Ltd

Applicant: Ozy Homes Pty Ltd

Notification Dates: Draft Planning Agreement and Explanatory Note publicly exhibited 12 September - 10 October 2018

No. of Submissions: nil in objection
four in support

Purpose / Reason for consideration by Council

At the Ordinary Meeting of Tuesday 14th July 2009, it was resolved that:

- a) Council accept the additional development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285, and commence the process to enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd;
- b) Council require Malbec Properties and Manyana Estates Pty Ltd to design and cost the intersection upgrade of Bendalong Road and Inyadda Drive, Manyana as a requirement of the Voluntary Planning Agreement;
- c) Council negotiate with Vacenta (proposed developer of Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678) on identical development contributions approved by Minister for Planning for Malbec Properties and Manyana Estates Pty Ltd (Lot 172 DP 755923 and Lot 823 DP 247285) on a pro-rata basis; and
- d) Any Voluntary Planning Agreement be consistent with Council's Voluntary Planning Agreement Policy and template with costs of preparing Agreements borne by the Developer.

The draft Planning Agreement (PA) (refer to **Attachment 1**) and Explanatory Note (EN) (refer to **Attachment 2**) have been publicly exhibited and are being reported to the Development Committee for final consideration.

DE18.71

Recommendation (Item to be determined under delegated authority)

That in accordance with the Committee's delegated authority from Council, the Committee endorse the draft Planning Agreement between Shoalhaven City Council and the developer (Ozy Homes Pty Ltd) of Lot 172 DP 755923 Cunjurong Point Rd and Lot 823 DP 247285 Sunset Strip Manyana which was publicly exhibited from 12 September – 10 October 2018.

Options

1. Resolve to endorse the draft PA and therefore adopt the recommendation of this report (preferred option).

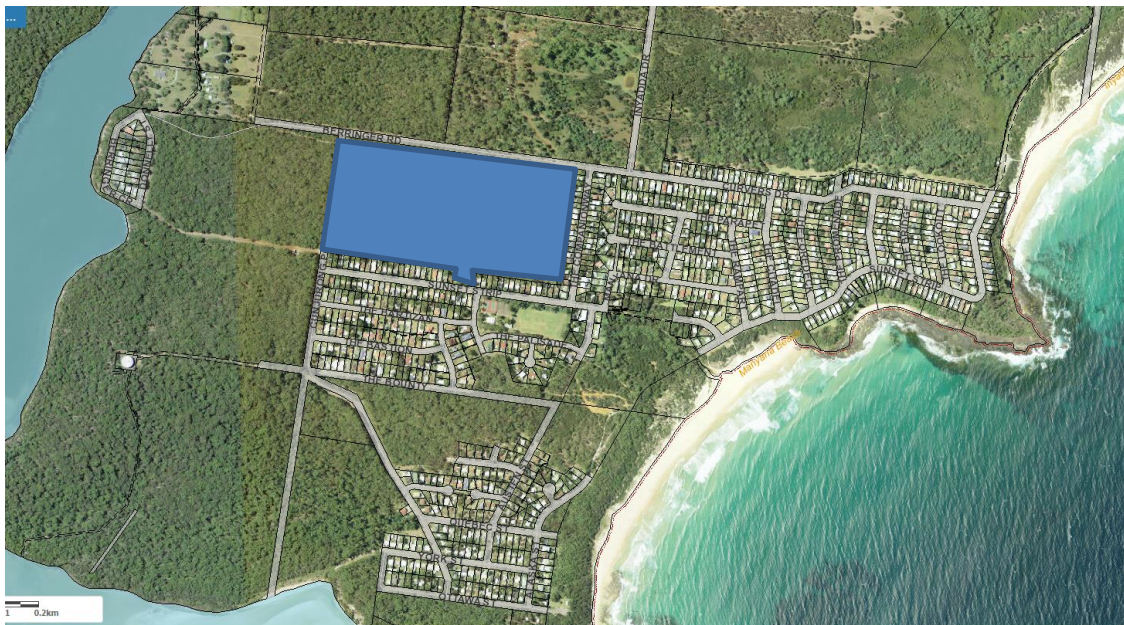
Implications: Endorsement of the draft PA would satisfy Condition B28 of development consent MP05_0059 (SF9787) (This condition is reproduced later in this report).

Once the terms of the PA have been met (i.e. the PA is signed by both parties and payment is made by the Developer to Council), a Construction Certificate would be able to be issued (subject to compliance with all other relevant conditions of consent).

2. Resolve to modify the recommendations as contained in this report and/or request amendments to the draft PA.

Implications: Council will need to provide further direction to staff.

Figure 1 - Location Map



DE18.71

Figure 2 - Detailed Location Map



DE18.71

Background

Malbec Properties and Manyana Estates Pty Ltd (Malbec) were granted development consent on 8th July 2008 by the Minister for Planning (the Minister) for a 182 residential lot subdivision at Manyana (Council Subdivision Reference SF9787).

Prior to the determination by the Department of Planning (the Department), Malbec and Council had been negotiating development contributions to be paid by Malbec to Council. In addition to development contributions required under Council's then 1993 Contributions Plan, the Department agreed that Malbec should make additional contributions.

Malbec and Council made separate submissions to the Department over the nature of these additional contributions, with the Department determining what the Minister should consider. These discussions were previously reported to Council on 14th April 2007 and 24th July 2009. (refer to Attachment 3)

The Minister's consent for the Malbec proposal did not fully capture Council's request for additional contributions. It is noted that all the contributions required under Council's Contributions Plan were included as a condition of consent.

Condition B28 of the consent, issued on 8th July 2008, required the developer to enter into a Voluntary Planning Agreement with Council prior to the issue of a Construction Certificate. The agreement to specifically provide for the works and costs outlined in the table below:

Table 1 – Additional Contributions to be included in the Voluntary Planning Agreement

Item	Description	Amount
1	Extension of Community Hall, Yulunga Reserve	\$36,134.00
2	Upgrade Foreshore Facilities, Including the Provision of Car Parking	\$15,265.00
3	Upgrade Works to Bendalong Road and Inyadda Drive	\$56,160.00
4	Construction of a Rural Road Type B Intersection, Bendalong Road and Inyadda Drive	\$12,721.00
Total		\$120,280.00

At the Ordinary Meeting of Tuesday 14th July 2009, it was resolved that:

- a) *Council accept the additional development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285, and commence the process to enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd;*
- b) *Council require Malbec Properties and Manyana Estates Pty Ltd to design and cost the intersection upgrade of Bendalong Road and Inyadda Drive, Manyana as a requirement of the Voluntary Planning Agreement;*
- c) *Council negotiate with Vacenta (proposed developer of Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678) on identical development contributions approved by Minister for Planning for Malbec Properties and Manyana Estates Pty Ltd (Lot 172 DP 755923 and Lot 823 DP 247285) on a pro-rata basis; and*
- d) *Any Voluntary Planning Agreement be consistent with Council's Voluntary Planning Agreement Policy and template with costs of preparing Agreements borne by the Developer.*

Regarding the resolution above the following comments are made:

- a) A review of the file indicates that the process to enter into the PA with the developer did not proceed at that time.
- b) The condition of consent for the PA is a set monetary contribution for specific works and does not require the developer to undertake design work or permit Council to attribute additional costs associated with the intersection upgrade works.
- c) This component of the resolution is not relevant to the PA.
- d) The PA has been prepared in accordance with the Council Policy with the cost of preparing the PA borne by the developer.

Draft Planning Agreement Overview

In December 2017 the developer contacted Council to discuss the steps required to commence the PA process. Following numerous discussions with staff a draft PA and EN were developed. The wording of the draft PA and related EN were agreed upon by Council's Legal Services Coordinator in conjunction with the developer's lawyer. It complies with legislative requirements and is consistent with the requirements of the development consent.

Consultation and Community Engagement:

The draft PA, EN and related development consent MP05_0059 were placed on public exhibition from 12 September until 10 October 2018, in accordance with the requirements of Council's Community Consultation Policy (POL08/440), Voluntary Planning Agreement Policy (POL08/417) and applicable clauses of the EP&A Act and associated Regulation 2000.

Public consultation / community engagement was as follows:

- Notification sent to the Red Head Villages Association which is the Community Consultative Body for the area;
- Advertised in the local press (South Coast Register) on 12/9/18; and
- The documents were available on the public access computers at the public libraries and Council's administrative buildings in Nowra and Ulladulla as well as on Council's website.

Four (4) submissions were received. All four submissions supported the PA, though two submissions requested that the contributions be used for purposes other than that stipulated in the consent as detailed below.

DE18.71

Issue:

Two (2) submissions advise that there is a long list of necessary maintenance and improvements to be made to the hall which cannot be funded from income generated by facility use. They request that the purpose of the contribution of \$36,134 for the hall extension is instead spent on maintenance and improvements to the existing hall or be used to upgrade the playground equipment at the hall.

Comment

Council's Asset Management Unit and Community and Recreation Unit have advised that maintenance issues raised in the submission will be addressed within operational budgets, in liaison with Community and Recreation Unit staff. Scoping of extension works will be considered in consultation with Management Committee and user groups.

It is important to note that the condition is specific in that the contribution is for extension to the community hall. Therefore, the contribution cannot be used for maintenance works or improvements to other public facilities such as playground equipment.

Financial Implications

If Council resolves to support the draft PA, it can be signed by the two parties. Council staff and resources have already been required to review the information and facilitate public exhibition of the draft PA. As per Council's Voluntary Planning Agreement Policy, all costs associated with drafting the PA (i.e. legal costs) have been funded by the Developer and staff resources are not charged.

Summary and Conclusion

This report seeks to ensure transparency of process in the consideration of the Developer's offer to enter into the PA. It is not proposed to change the PA which was publicly exhibited.

The PA as exhibited is considered acceptable and will provide a material public benefit for Council and the community and is therefore recommended to be endorsed.

Explanatory Note
Shoalhaven City Council
and
Ozy Homes Pty Ltd ACN 163 519 079
Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Shoalhaven City Council (Council) and Ozy Homes Pty Ltd ACN 163 519 079 (the **Developer**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 172 DP 755923; and
- Lot 823 DP 247285

at Berringer Road, Cunjurong Point Road and Sunset Strip, Manyana (**Subject Land**).

Description of the Proposed Development

The Developer is seeking to subdivide the Subject Land into 182 residential lots generally in accordance with the determination issued by the Minister for Planning on 8 July 2008 for Major Project Application No. 05-0059 (**Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

Condition B28 of the Minister's determination requires a Planning Agreement to be entered into with the Council, the terms of which require a monetary payment as indicated in the third column in the table below towards the provision of works described in the second column in the table below:

<i>Item</i>	<i>Description</i>	<i>Amount</i>
1	Extension of the Community Hall, Yulunga Reserve	\$36,134.00
2	Upgrade Foreshore Facilities, Including the Provision of Car Parking	\$15,265.00
3	Upgrade Works to Bendalong Road and Inyadda Drive	\$56,160.00
4	Construction of a Rural Road Type B Intersection, Bendalong Road and Inyadda Drive	\$12,721.00
Total		\$120,280.00

The monetary contribution will be payable prior to a subdivision certificate. The requirement for the timing of the payment is set out in Schedule 4 to the Planning Agreement.

The Developer is not required to provide a Bank Guarantee. The Developer is required to register the Planning Agreement on the title to the Subject Land.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of works described in column 2 of the table above.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement serves the following public purposes:

- the provision of (or the recoupment of the cost of providing) public amenities or public services, and
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Planning Agreement will provide a reasonable means of achieving the public purposes set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of public amenities and infrastructure.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of public amenities and infrastructure including demand for public amenities and infrastructure that will arise from development of the Subject Land.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion of the orderly and economic use and development of land.

The Planning Agreement promotes the object of the Act set out above by requiring the Developer to make a contribution towards the provision of public amenities and infrastructure.

How the Planning Agreement Promotes the Principles for Local Government

The Planning Agreement promotes the principles for Local Government (formerly the Council's Charter) by encouraging Council to manage land and other assets so that current and future local community needs can be met in an affordable way.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement requires the Development Contribution to be paid prior to the issue of a relevant subdivision certificate and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15 (1) (d) of the Act.

Whether the Agreement Conforms with the Council's Capital Works Program

The contribution will not be inconsistent with capital works to be implemented by the Council.

REPORT OF GENERAL MANAGER**DEVELOPMENT COMMITTEE****TUESDAY, 7 JULY 2009****STRATEGIC PLANNING AND INFRASTRUCTURE****1. Residential Development at Manyana - Development Contributions**
File 39746, SF9787 & SF9747

Purpose of the Report: To advise Council on the status of the Department of Planning's Part 3A consent of the Malbec Properties and Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285 – Berringer Road, Cunjurong Point Pont Road and Sunset Strip, Manyana and to seek direction from Council on future development contributions at Manyana.

RECOMMENDED that:

- a) Council accept the additional development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and Manyana Estates Pty Ltd subdivision of Lot 172 DP 755923 and Lot 823 DP 247285, and commence the process to enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd;
- b) Council require Malbec Properties and Manyana Estates Pty Ltd to design and cost the intersection upgrade of Bendalong Road and Inyadda Drive, Manyana as a requirement of the Voluntary Planning Agreement;
- c) Council negotiate with Vacenta (proposed developer of Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678) on identical development contributions approved by Minister for Planning for Malbec Properties and Manyana Estates Pty Ltd (Lot 172 DP 755923 and Lot 823 DP 247285) on a pro-rata basis; and
- d) Any Voluntary Planning Agreement be consistent with Council's Voluntary Planning Agreement Policy and template with costs of preparing Agreements borne by the Developer.

Options:

Council may choose to:

- a) Accept the development contributions as detailed in the consent issued by the Minister for Planning to Malbec Properties and Manyana Estates Pty Ltd for Lot 172 DP 755923 and Lot 823 DP 247285, and enter a Voluntary Planning Agreement with Malbec Properties and Manyana Estates Pty Ltd, and negotiate these same conditions for the proposed Vacenta development.
- b) Not enter a Voluntary Planning Agreement with Malbec and continue negotiations with Malbec Properties and Manyana Estates Pty Ltd and Vacenta.

Details/Issue:

Background

- # Malbec Properties and Manyana Estates Pty Ltd (Malbec) was granted development consent on 8th July 2008 by the Minister for Planning (the Minister) for a 182 residential lot subdivision at Manyana (Council Subdivision Reference SF9787). A locality map showing the subdivision area is provided as Attachment 'A'.

Prior to this determination by the Department of Planning (the Department), Malbec (represented by Cowman Stoddart P/L) and Council had been negotiating development contributions to be paid by Malbec to Council. In addition to development contributions required under Council's 1993 Contributions Plan, the Department agreed that Malbec should make additional contributions.

- # Malbec and Council made separate submissions to the Department over the nature of these additional contributions, with the Department determining what the Minister should consider. These discussions have previously been reported to Council on 24th April 2007 (Attachment 'B').

The Minister's consent for the Malbec proposal did not fully capture Council's request for additional contributions, which has since been a source of on-going disagreement between Council and the Department. It should be noted that there is no disagreement over contributions required under Council's Contributions Plan. A description of the additional contributions and the total amount to be paid by Malbec included in the consent for 182 residential lots is detailed below:

Item	Description	Amount
1	Extension of Community Hall, Yulunga Reserve	\$36,134
2	Upgrade Foreshore Facilities, including provision of car parking	\$15,265
3	Upgrade works to Bendalong Road and Inyadda Drive	\$56,160
4	Construction of a Rural Road Type B Intersection, Bendalong Road and Inyadda Drive	\$12,721
Total		\$120,280

The above additional contributions are to be applied via Council and Malbec entering into a Voluntary Planning Agreement (VPA).

Disagreement over Scope of Works

- # For the intersection treatment of Bendalong Road and Inyadda Drive (additional item No. 4), Council recommended to the Department a roundabout at an estimated cost of \$300,000. However, the Minister agreed with Malbec that a Type B intersection (i.e. wider road pavement area than the existing T intersection – shown as Attachment 'C') was sufficient, and assumed a cost of \$100,000, although some correspondence from the Department continues to refer to a roundabout treatment. As far as Council staff are aware, this estimate is not based on any design details, which should be provided by the applicant for negotiations to continue.

Disagreement Over Cost Apportionment

The Department has advised Council that the costs of the additional works should be apportioned between:

- Council, representing the demand generated by existing development; and
- Malbec, representing the demand generated by future demand of their development.

Council has advised the Department that this apportionment was inappropriate for at least some of the works, including the Bendalong Road and Inyadda Drive intersection upgrade, on the basis that the existing intersection is satisfactory for the current demand. Therefore, Council should not have to subsidise development for infrastructure that is not otherwise required.

The Department's position on this matter was determined "...with a view to the amount the proponent volunteered to pay". However, the Department also noted that "Any increase in the amount over time can be included as a term of the VPA". Whilst further negotiations with Malbec may be possible, it is unlikely Malbec will agree to payments to Council outside their conditions of consent.

Requirement to Enter a VPA

The Minister has required Malbec to enter a VPA with Council, as this is the only power available to Council to require such contributions. Two key issues arise from this requirement, being:

1. Terms of the agreement are not as Council proposed

Should Council reject this request on the basis that it has not entered an agreement voluntarily, it is not clear how Malbec can act on their consent. The Minister's power to direct Council in regard to development contributions should also be noted. Whilst the Department has indicated "If Council is reluctant to enter into a VPA, the Department will consider whatever mechanism is suggested to deliver the works ...", it would require Malbec to agree to a greater level of contributions than in their consent, and this is unlikely.

Consequently, in the interests of advancing the development in accordance with the Minister's consent, it is recommended Council accept this offer, despite the additional costs to Council this will incur, and Council's capital works program will need to consider the additional works in future planning.

2. A VPA requires public notice before it can be finalised

Prior to Council agreeing to enter into a VPA it must be made available for public inspection together with an explanatory note. Normally this occurs upon public exhibition of the proposed subdivision/development application. When this occurs after subdivision consent, there is no opportunity for public comment to be considered, which may reduce public confidence in the process.

Relationship to Other Development Applications

The Department is now considering a Part 3A development application for Vacenta (Lot 810 DP 247285, Lot 705 DP 613881 & Lot 682 DP 568678 - Manyana Drive, Manyana) for public exhibition and is requiring the applicant to negotiate with Council over additional development contributions. The applicant is represented by Watkinson Apperley Pty Limited (Council Subdivision Reference SF9747). A locality map showing the proposed subdivision area is provided in Attachment 'A'.

The applicant appears prepared to accept similar requirements as applied to Malbec on a pro rata basis. Should Council agree to entering a VPA with Malbec as per the 3A consent, it would be reasonable to apply identical conditions to the Vacenta development application and other applications in the Manyana area. Should Council reject the arrangements with Malbec, the Vacenta development application will be similarly affected.

Economic, Social & Environmental (ESD) Consideration:

Entering an agreement with Malbec and other developers will commit Council to infrastructure works of benefit to the wider community.

Financial Considerations:

Entering an Agreement with Malbec under the terms of their consent will commit Council to infrastructure works that are not yet included in Council's Capital Works program.

The amount of additional contributions is relatively low, but it should be noted that contributions under Council's Contributions Plan will be required in full.



Development Committee 7 July 2009 - Item 3

Attachment B

ADDENDUM REPORT OF GENERAL MANAGER**POLICY AND PLANNING COMMITTEE****TUESDAY, 10 APRIL 2007****STRATEGIC PLANNING**

1. **Malbec Subdivision, Manyana – S94 Contributions imposed by Minister for Planning –
response from Department of Planning** **File SF9787**

Purpose of Report

To inform Council of the Department of Planning response to Council's submission for additional s94 contributions to be imposed on SF9787 by the Minister for Planning.

Background

This matter applies to residential subdivisions at Manyana, with specific reference to SF9787 for a 175 lot subdivision application by Malbec Properties, which is with the Minister for Planning for determination. Council was invited by the Department of Planning to submit suggestions that the Minister might consider as section 94 contributions over and above those contained within Council's Contributions Plan.

Submissions to Department of Planning

Draft comments were considered by Council at the Council meeting of 27th February, 2007. These related to additional contributions for community facilities, foreshore works, road works, and active sporting facilities. The total value of these additional contributions was estimated to be \$2,532.57 per lot, in addition to the \$4,558.11 per lot for projects contained in the current Contributions Plan. Council also suggested that because the development will result in an unsatisfactory level of service at the intersection of Bendalong Road with the Princes Highway, that Malbec Properties should also make contribution to any upgrade, but Council did not quantify what that contribution might be. These contributions are considered reasonable in the context of the impact of the development on the local area and the relative value of contributions compared to those required by development in other areas.

At that meeting, Council resolved to negotiate with the applicant of SF9787 (Malbec Properties) prior to finalising Council's position. These negotiations took place by way of meetings between staff and consultants acting on behalf of Malbec Properties on 1st March. At these meetings, the position of Council was explained, including cost estimates and cost apportionment as required under section 94. Note that this process and Council's submission were required at short notice and were not part of Strategic Planning Group work plan, resulting in limited resources being available.

An offer on behalf of Malbec Properties was received by Council staff on about the 12th March. This offer amounted to \$198.21 per lot, a total of \$34,686 comprising a \$20,000 ex gratia payment to embellishment of the existing community hall, \$3,432 toward foreshore works and \$11,254 toward road works not required by other condition of consent.

Development Committee 7 July 2009 - Item 3

Attachment B

These positions were considered sufficiently different that a consensus position could not be reached and both submissions were sent separately to the Department.

Department Response

The Department of Planning response was received at Council on 3rd April. The Department declined to accept Council's suggestions, given the weight of the Malbec submission against Council and the perceived risk of challenge to the Minister by the developer, on the basis that an identifiable nexus and the reasonableness of the contribution for each item had not been established. The Department has agreed to receive an amended submission if Council wishes to pursue the matter.

It remains uncertain if the Minister will apply conditions of consent that are consistent with the offer by Malbec Properties and whether the Minister will direct that Council's Contributions Plan be amended.

RECOMMENDED that the report of the General Manager (Strategic Planning) concerning S94 Contributions for the Malbec subdivision be received for information.

E J Royston
DIRECTOR, STRATEGIC PLANNING

J Gould
ASSISTANT GENERAL MANAGER

R.D Pigg
GENERAL MANAGER

Development Committee 7 July 2009 - Item 3

Attachment B

ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 24 APRIL 2007

520. Malbec Subdivision, Manyana - S94 Contributions imposed by Minister for Planning - response from Department of Planning File SF9787
-

RECOMMENDED that

- a) The report of the General Manager (Strategic Planning) concerning S94 Contributions for the Malbec subdivision be received for information.
- b) Council submit an amended submission to the Department of Planning qualified by a supporting infrastructure documentation.

DE18.71 - Attachment 3

RTA of NSW

Section 4 - Intersections at Grade
4.5 Options for Intersection Layout and Form of Construction

Development Committee 7 July 2009 - Item 3

Attachment C

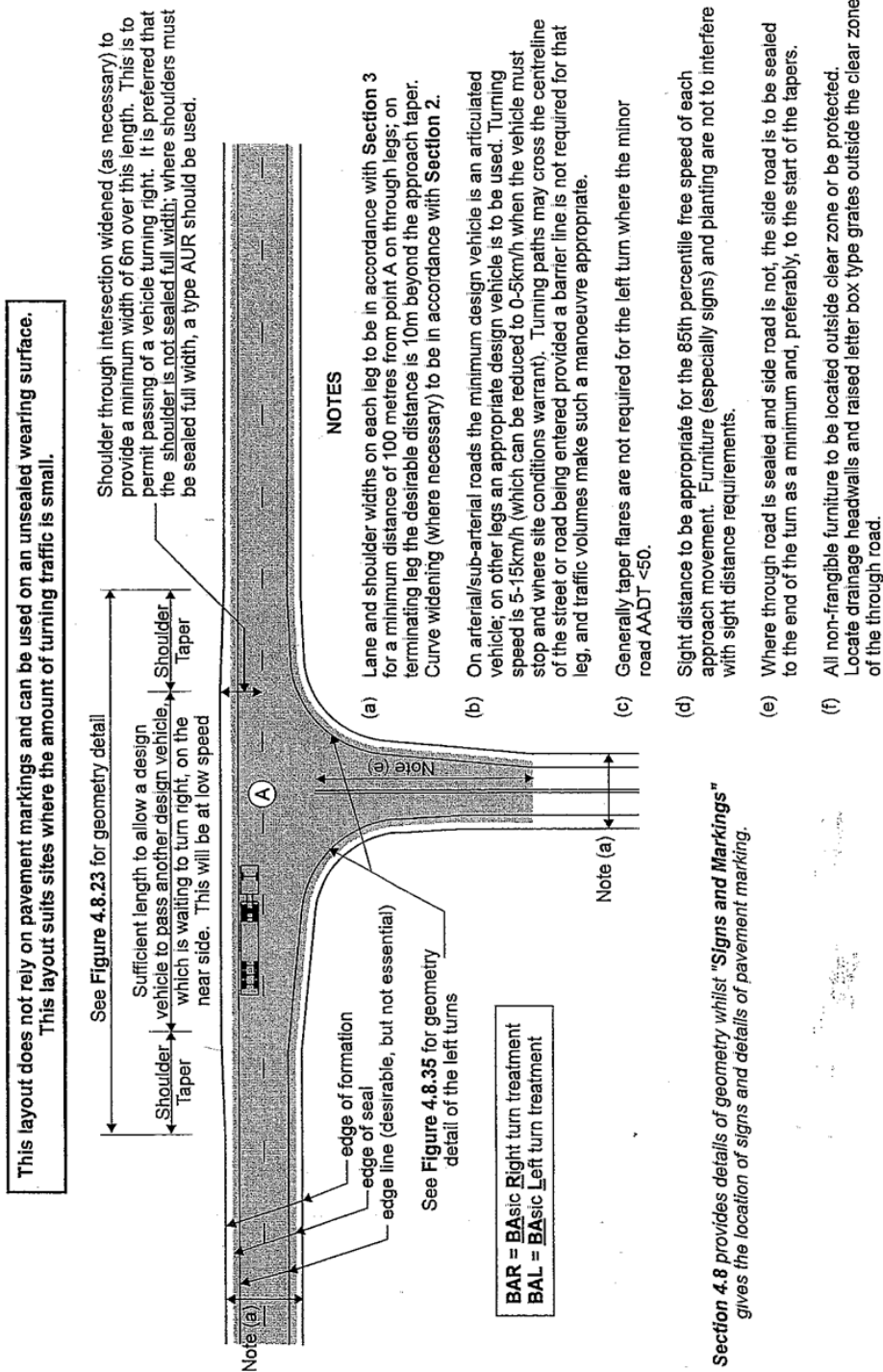


Figure 4.5.2 - Type BAR and BAL Layout Combined to show a Basic Rural Intersection Treatment on both a Through and a Terminating Leg

DE18.72 Development Application – 54 Eastbourne Ave, Culburra Beach – Lot 494 DP 12278

DA. No: DA17/2605/4

HPERM Ref: D18/352598

Group: Planning Environment & Development Group
Section: Building & Compliance Services

Attachments: 1. Applicant's Objection Under SLEP Clause 4.6 - 54 Eastbourne Avenue
Culburra Beach DA17-2605 [↓](#)

Description of Development: Dwelling Alterations - The proposed alteration is to enclose the existing unroofed deck area (3.5m x 9.36m) with high windows to create an enclosed habitable space.

Owner: S & C McNaughton

Applicant: iarchitecture

Notification Dates: 22 January 2018 – 6 February 2018

No. of Submissions: 1 in objection
0 in support

Purpose / Reason for consideration by Council

Obtain direction from Council regarding a request for a variation of a development standard (building height) applicable to the site under clause 4.6 of Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Note: Requests for a variation that exceed 10% of the development standard are required to be determined by Council in accordance with the conditions of assumed concurrence by the Secretary, NSW Department of Planning.

Recommendation (Item to be determined under delegated authority)

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 7.5 metres to 9.08 metres; and
2. Refer the development application (DA17/2605) 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.

DE18.72

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.

Figure 1 - Location Map



Background

Proposed Development

The application seeks approval to enclose an existing approved roof deck to create a room of 32.76 m². The area is currently an open roof deck 6.77m x 9.36m. The proposed alteration is to enclose 3.5m x 9.36m of this deck with high windows to create an enclosed games room.

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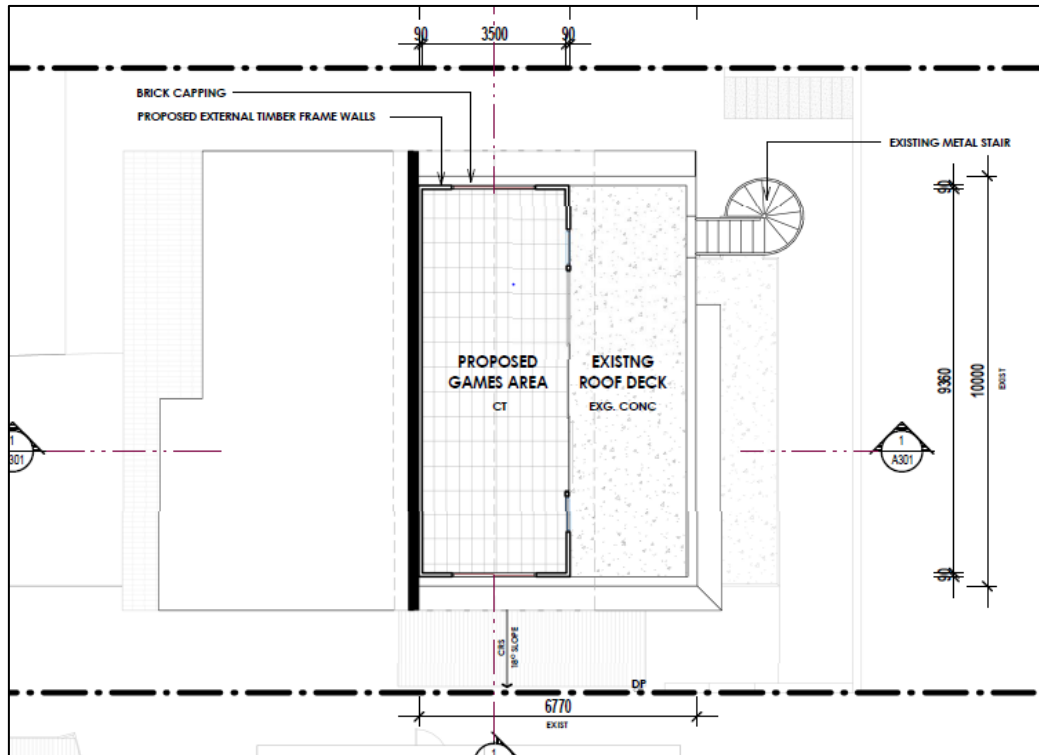


Figure 2:- Proposed enclosure of the existing roof deck to form a games room.

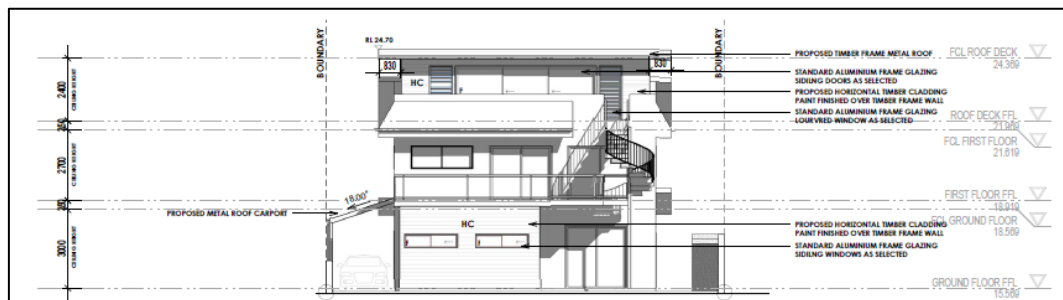


Figure 3:- Proposed north east elevation.

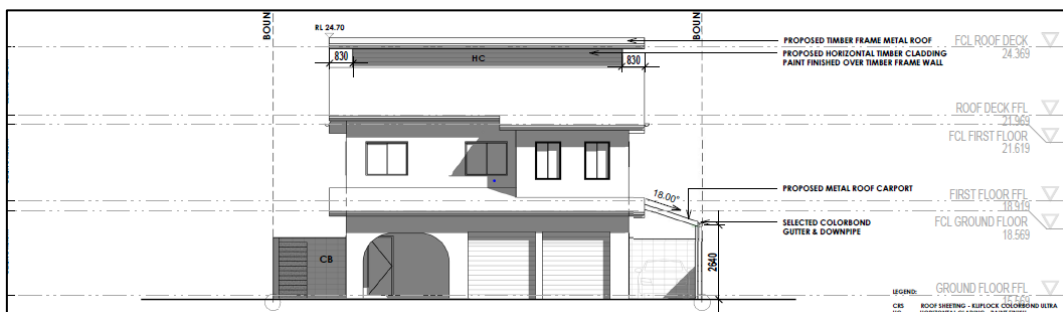


Figure 4:- Proposed south west elevation.

DE18.72

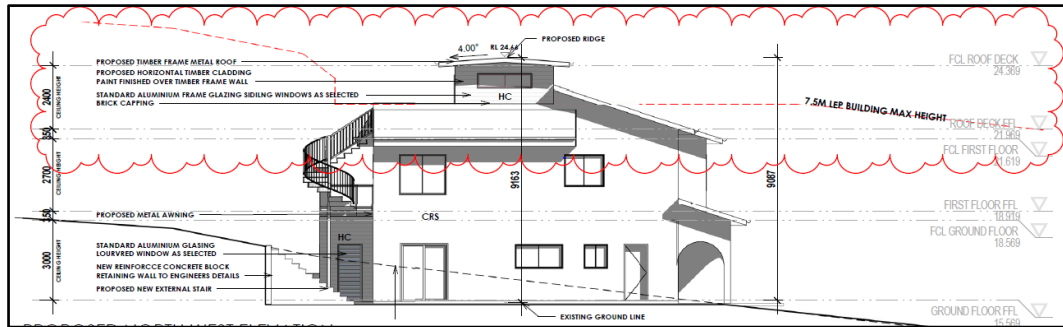


Figure 5:- Proposed north west elevation.

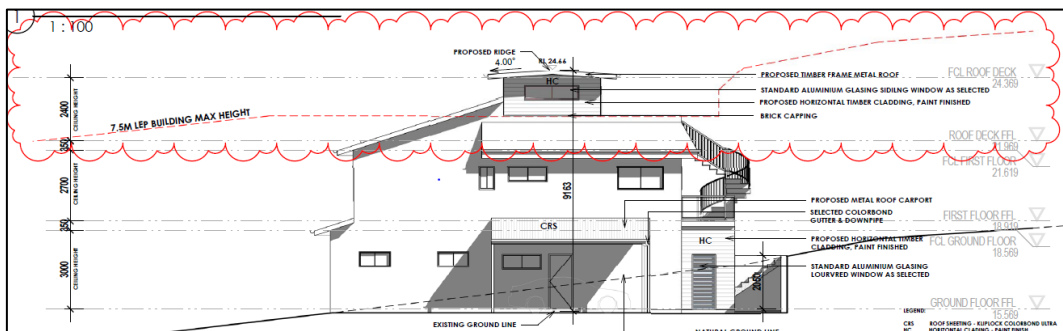


Figure 6:- Proposed south east elevation.

DE18.72

Subject Land

The subject site is identified as Lot 494, DP 12278, No.54 Eastbourne Avenue, Culburra Beach. The land has a 15 metre frontage to Eastbourne Avenue, is regular in shape and has an area of 822.02 m². The site rises in elevation towards the Crown Reserve towards Culburra Beach.

Site & Context

The development site has an existing three level house located along the back of the coastal dune fronting Warrain Beach. The house contains two enclosed levels plus an externally accessed roof deck. The full brick building has concrete floors at each of the three levels and the roof is tiled.

The land is zoned R2 – Residential. The development in the immediate vicinity are residential dwellings and these are predominantly two storey.

History of approvals

The existing dwelling was approved under DA88/2043 on 27/06/1988 and a subsequent Building Application (BA88/2793) was approved on 19/09/1988. The current building exceeds the maximum height by 830 mm (i.e. it is 8.33 metres above existing ground level). The proposal is to increase this current height by a further 750 mm to 9.08 metres above existing ground level.

Issues

Clause 4.3 (Height of Buildings) of SLEP 2014.

Clause 4.3 relates to the maximum height of buildings and the land is mapped as having a maximum height limit of 7.5 metres above existing ground level. The development does not comply with this development standard as the proposed games room will be 9.08 metres above the existing ground level. This is a further 750 mm above the current roof level.

This represents a 21% variation to the height limit (i.e. 1.58 metres).

Clause 4.6 (Exception to development standards) of SLEP 2014.

The applicant has sought a variation to the development standard pursuant to the requirements of clause 4.6 of the SLEP 2014.

The following is an extract from the applicant's justification for the variation of the development standard:

"The proposal does not detrimentally affect the shadowing of adjoining property. It does not disrupt views as the new roof area will be within the width of the existing building. The proposal will increase privacy by partially enclosing an upper level recreation space. The proposal is consistent with the visual quality of the current dwelling and with the neighbouring roof design characteristics. The likely impact of the development will not differ noticeably compared with a strictly complying development."

Discussion

In accordance with 4(a)(i) of clause 4.6 of the SLEP 2014, the applicant's written request is considered to have adequately addressed the matter required to be demonstrated by subclause (3), that is:

- 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.*

After reviewing the applicant's submission, it is considered that the variation is acceptable for the following reasons:

- The existing character of the area predominantly presents as large two storey residential dwellings. The proposal presents as a two storey form with a stepped ridge line. This is consistent with neighbouring residences;
- The building height variation does not generate overshadowing impacts, loss of views or loss of privacy on the surrounding properties;
- The proposal will improve acoustic privacy, as it is proposed to enclose an existing open balcony on the property;
- The majority of the height, bulk and scale is already existing and the proposal will not change the character of the existing building or the desired future character of the locality.
- The proposal is considered to be consistent with the objectives of the height standard.

In accordance with subclause 4(a)(ii) of clause 4.6 of the SLEP 2014, the applicant's written request and associated plans are considered to have adequately demonstrated that the proposed development will be in the public interest because it is consistent with the objective of clause 4.3 and the objectives for development within the R2 zone in which provide as follows:

4.3 Height of buildings

(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,

DE18.72

- (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.

Zone Objectives

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.

In accordance with the departments guidelines for variations to development standards, Council should consider the following 5 part test to identify if the application is well founded:

- a) *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The objectives of the height standard have been achieved as the proposed games room is compatible with the height, bulk and scale of the existing and desired future character of the locality while minimising visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

- b) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Due to the proposed setbacks, existing height of the dwelling and minimal impact to the elevation visible from the public area, it is considered that the underlying objective of the height standard is not relevant to the proposed variation.

- c) *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective or purpose of the height control would not be defeated or thwarted if compliance is not required. The objectives of the control will remain intact and available to ensure compliance with other aspects as considered on a case-by-case basis.

Any future applications for this site will be subject to an assessment against this control and may warrant compliance. Although the proposal does not meet the numerical controls it is considered that it does satisfy the objectives as discussed above and will not lead to a precedent that undermined the objective of the control.

- d) *The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The development standard has not been abandoned or destroyed in any form in this locality. Compliance with the standard is considered unnecessary and unreasonable. The extent to which the proposal meets the tests of the above provides sound justification for support of the variation.

- e) *The compliance with the development standard is unreasonable or inappropriate due to existing use of the land and current environmental character of the parcel of land. This is, the particular parcel of land should have been included in the zone.*

This control is considered relevant and appropriate to this site, locality and zone and compliance with the standard is unnecessary and unreasonable. The extent to which the proposal meets the tests of the above provides justification for support of the variation.

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Under the terms of the Secretary's notification, Council can assume concurrence under clause 4.6(4)(b) but must give consideration to the matters in clause 4.6(5) of the SLEP 2014:

- a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*

It is considered that the contravention of the maximum building height development standard will not raise any matters of state or regional planning significance in this case;

- b) *The public benefit of maintaining the development standard;*

The subject site already benefits from a height greater than 7.5 metres from existing ground level. There is no public benefit in maintaining the 7.5 metre height standard for this development as the variation is minor in scale, well setback from boundaries and will not impact on views, privacy or cause shade impacts to neighbours;

- c) *Any other matters required to be taken into consideration by the Secretary before granting concurrence;*

No other matters required.

Planning Assessment

The Development Application assessment under S4.15 of the Environmental Planning and Assessment Act 1979 will be finalised following determination of the application for variation to development standards.

Consultation and Community Engagement:

(1) submission was received in relation to Council's notification of the development. This submission is by way of an objection to the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a twenty five (25) metre buffer of the site the notification was for a two week period.

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

Issue - *The extension will intrude into the view of the eastern sky including the sunrise*

Comment - Despite the property backing onto the Crown Reserve to Culburra Beach the surrounding properties do not enjoy water views due to the contour of the land. The increase in roof height by 725 mm will not affect the views of surrounding properties. No significant views will be impacted upon. A reduction in the view of the eastern sky line is not considered to be a significant view line.

Issue - *The encroachment into the height limit will create a precedent which will see 5 storey buildings. Will end up living in complete shade.*

Comment - Clause 4.6 of the SLEP2014 allows for the owner of land to request a variation to a development standard. This is a state wide clause in the standard instrument and therefore it is not appropriate to deny land owners the opportunity to request a variation. Each variation is considered on its merit and therefore this application will not create a precedence.

Shadow diagrams were also provided with the application that demonstrated that the proposal will not significantly reduce the sunlight available to adjoining properties.

Financial Implications:

Nil

Legal Implications

If the application is refused, or if the applicant is dissatisfied with Council's determination, the applicant is entitled to appeal to the Land and Environment Court.

Summary and Conclusion

It is considered that the variation is reasonable and acceptable and strict compliance with the development standard is considered to be unnecessary as the development is appropriate in the location and can achieve the relevant planning objectives.

There are sufficient planning grounds to justify the departure from the maximum building height development standard prescribed in the Shoalhaven LEP 2014. The proposed variation is well founded in this instance and should be approved.

DE18.72

Attachment A

54 EASTBOURNE AVENUE, CULBURRA BEACH: DA/17/2605
REVISED : 17.07.18

Matters to be addressed in a written request to vary a development standard
To be submitted together with the development application
(refer to EP&A Regulation 2000 Schedule 1 Forms).

1. What is the name of the environmental planning instrument that applies to the land?

SHOALHAVEN LEP 2014

2. What is the zoning of the land?

R2 LOW DENSITY RESIDENTIAL

3. What are the objectives of the zone? Attach a zoning map of the land and surrounding properties

Zone R2 Low Density Residential

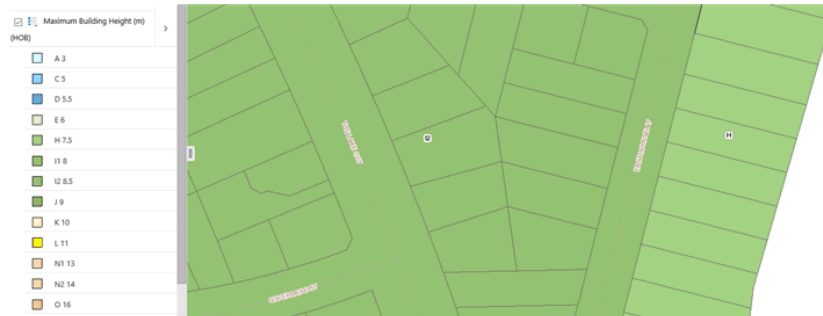
1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.



4. What is the development standard being varied and its numeric value? e.g. 40ha lot size. Attach a map of the development standard for the land and surrounding properties.

HEIGHT OF BUILDINGS_-the numeric value being varied is the overall height of 7.5m



5. Under what clause is the development standard listed in the environmental planning instrument?

CLAUSE 4.3

6. What are the objectives of the development standard?

Shoalhaven Local Environmental Plan 2014

Current version for 20 April 2018 to date (accessed 18 June 2018 at 13:51)

Part 4 > Clause 4.3

4.3 Height of buildings

- (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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).
- (2A) If the [Height of Buildings Map](#) does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

7. What is proposed numeric value of the development standard in your development application and the percentage variation (between your proposal and the environmental planning instrument)?

_a. __SLEP HEIGHT FOR SITE BEING :7.5M_

b. PROPOSED HEIGHT :8.25M

_c. PERCENTAGE HEIGHT VARIATION :10%

*Shoalhaven City Council - Varying Development Standards Shoalhaven Local Environmental Plans - Internal Procedure
Page 6*

8. How is the proposal consistent with the objectives of the zone in which the development is proposed to be carried out?

THE PROPOSAL IS CONSISTENT WITH ALL 3 OBJECTIVES OF THE ZONING FOR LOW DENSITY RESIDENTIAL AREA :-

- To provide for the housing needs of the community within a low density residential environment.

THE PROPOSAL PROVIDES FOR THE HOUSING NEEDS OF THE ONWER WHILST MAINTAINING A LOW DENSITY ENVIRONMENT

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

THE PROPOSAL MEETS THIS OBJECTIVE BY NOT OBSTRUCTING OTHER LAND USES FOR THE NEEDS OF OTHER RESIDENTS AND BEING A COMPATIBLE USE WITH NEIGHBOURS

- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.

THE ENVIRONMENT IN WHICH THE PROPOSAL IS SITUATED IS AN AREA THAT CONTAINS PREDOMINANTLY TWO STOREY LARGE SCALE RESIDENTIAL PROPERTIES. SOME HAVE HIGHER VIEWING STRUCTURES , ELEVATED DECKS, OR HIGHER STEPPED RIDGE LINES . THE PROPOSAL IS CONSISTENT WITH A DETACHED HOUSING CHARACTER OF THAT TYPE.

9. How is the proposal consistent with the objectives of the development standard?

THE DEVELOPMENT STANDARD OBJECTIVES ON HEIGHT STATES;

- (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.

THE PROPOSAL IS CONSISTENT WITH THE HEIGHT OBJECTIVES AS FOLLOWS :

- a. THE EXISTING CHARACTER OF THE AREA PRESENTS PREDOMINANTLY LARGE TWO STOREY RESIDENTIAL BUILDINGS. THE PROPOSAL PRESENTS AS ONLY A TWO STOREY FORM WITH A STEPPED RIDGE LINE. THIS IS CONSISTENT PARTICULARLY BEING A SIMILAR FORM TO BOTH NEIGHBOURING RESIDENCES WHICH HAVE LARGE TWO STOREY WALL AREAS AND AN ADDITIONAL HIGHER STEPPED RIDGE. THE ATTACHED IMAGE OF THE STREET VIEW FOR No.52 and No.56 CONFIRMS THIS.
- b. IT DOES NOT REDUCE TO ANY DETRIMENTAL EFFECT THE SHADOW TO NEIGHBOUR. THE SHADOW DIAGRAMS SUBMITTED FOR DA CONFIRM THIS. IT DOES NOT DISRUPT VIEWS AS THE NEW ROOF AREA IS TOTALLY WITHIN THE WIDTH OF THE EXISTING BUILDING; AS WELL, THE CURRENT HEIGHT PRECLUDES ANY VIEWS IN THE EXISTING SITUATION. THERE IS NO LOSS OF PRIVACY, BUT AN ACTUAL IMPROVEMENT IN PRIVACY THROUGH PARTIAL ENCLOSURE OF AN OPEN UPPER LEVEL RECREATION SPACE
- c. THE SITE /PROPOSAL IS NOT IN THE VICINITY OF ANY HERITAGE ITEM



STREET VIEW OF PROPOSAL WITH STEPPED RIDGE SHOWN IN RELATION TO SIMILAR STEPPED RIDGE NEIGHBOURING RESIDENCES.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

THE FLOOR AREA INTENDED FOR ENCLOSURE FOR RECREATIONAL PURPOSES IS ALREADY CONSTRUCTED AND USED FOR THAT PURPOSE; WITH PARTIAL ENCLOSURE OF THIS AREA THE HEIGHT NEEDED TO PROVIDE AN NCC COMPLIANT ROOFED SPACE REQUIRES A MINIMUM CEILING HEIGHT OF 2400MM AVERAGE WITH LOWEST CLEARANCE OF 2000MM. THE ROOF DESIGN HAS BEEN SET AT THE LOWEST POSSIBLE HEIGHT TO ACHIEVE CODE REQUIREMENTS. THE APPARENT APPEARANCE IS SIMILAR TO THAT OF BOTH NEIGHBOURS ROOF PROFILES. IT WOULD BE UNREASONABLE TO REFUSE APPROVAL FOR THIS SITE WHICH IS SITUATED BETWEEN BOTH EXISTING EXAMPLES.



STREET VIEW OF No.52 + No.56 EASTBOURNE AVENUE WHICH SHOW THE SIMILAR ROOF PROFILE STYLE WITH RAISED RIDGE LINE BEYOND AND ABOVE THE TWO STOREY HEIGHT.

11. How would strict compliance with the development standard hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act.

1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better [environment](#) by the proper management, [development](#) and conservation of the State's natural and other resources,

- (b) to facilitate [ecologically sustainable development](#) by integrating relevant economic, [environmental](#) and social considerations in decision-making about [environmental](#) planning and assessment,
- (c) to promote the orderly and economic use and [development](#) of [land](#),
- (d) to promote the delivery and maintenance of [affordable housing](#),
- (e) to protect the [environment](#), including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built [environment](#),
- (h) to promote the proper construction and maintenance of [buildings](#), including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for [environmental](#) planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in [environmental](#) planning and assessment.

STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD FOR HEIGHT IN THIS LOCATION, SECTION 1.3 (PREVIOUSLY SECTION 5 ((a) (i) and (ii)) EP+A ACT WOULD NECESSARILY HINDER THE ABILITY FOR FULL ENJOYMENT OF THE AMENITY OFFERED BY THE EXISTING STRUCTURE ON THE SITE AND THE ABILITY TO ACTUALLY IMPROVE ON PRIVACY AND ACOUSTIC AMENITY TO NEIGHBOURS. ALL APPLICABLE OBJECTIVES OF THIS CLAUSE CAN BE MET BY THE PROPOSAL.

12. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

THERE ARE FOUR SIGNIFICANT ENVIRONMENTAL GROUNDS FOR THE CONTRAVENTION OF THE DEVELOPMENT STANDARD:

- a. IMPROVED ACOUSTIC PRIVACY
- b. NO LOSS OF VIEWS FROM STREET OR NEIGHBOURS
- c. NO ADVERSE SHADOW IMPACT
- d. CONSISTENT VISUAL QUALITY WITH EXISTING APPEARANCE AND WITH NEIGHBOURS ROOF DESIGN CHARACTERISTICS

13. How will the proposal be in the public interest?

THE PROPOSAL ASSISTS IN ADDING ACOUSTIC AND VISUAL PRIVACY TO NEIGHBOURS AND TO THE STREET FOR AN EXISTING OPEN ROOF TOP RECREATION SPACE. IT WILL BE CONTAINED WITHIN A NEW ROOFED SPACE THAT IS CONSISTENT WITH THE ORIGINAL HOUSE FORM AND DESIGN AND THAT IS COMPATIBLE WITH ADJACENT RESIDENTIAL DEVELOPMENT. THE PROPOSAL WILL FULLY SCREEN THE RECREATION AREA FROM THE STREET VIEW. THE PROPOSAL WILL PROVIDE A CONSISTENT ROOF DESIGN THEME TO THIS AREA OF THE STREET.

DE18.73 Exhibition Outcomes - Draft Planning Proposal Guidelines 2018

HPERM Ref: D18/355726

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Draft Planning Proposal (Rezoning) Guidelines 2018 (under separate cover) [⇒](#)
2. Report to May 2018 Development Committee - Draft PP Guidelines [↓](#)
3. Survey Results Report - Community Engagement - PP Guidelines 2018 [↓](#)

Purpose / Summary

Report the results of the recent community engagement on the draft Planning Proposal (PP) (Rezoning) Guidelines, 2018 (**Attachment 1**) and recommend their adoption.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal (Rezoning) Guidelines 2018 as exhibited and repeal the 2013 version of these guidelines.
2. Advise those who made a submission during the exhibition of these guidelines of this resolution.

Options

1. Adopt the draft guidelines as exhibited.

Implications: The proposed guidelines are recommended for adoption without any changes.

2. Not the proceed with the draft guidelines.

Implications: The current 2013 guidelines will remain in place. The expanded provisions relating to specialist studies, community engagement and other matters will not be adopted by Council and this will not lead to an improved process.

3. Adopt the guidelines with amendments.

Implications: If amendments are proposed the implication of any changes would need to be considered.

Background

Council's Development Committee considered a report on proposed revisions to Council's existing Planning Proposal Guidelines on 8 May 2018. A copy of the report to that meeting and the draft revised guidelines are provided as **Attachment 2**. At the meeting it was resolved to:

1. *Endorse the attached draft revision to the Planning Proposal (Rezoning) Guidelines for public exhibition.*

DE18.73

2. Exhibit the draft revision to the Planning Proposal (Rezoning) Guidelines in accordance with the attached Community Engagement and Communications Strategy.
3. Receive a further report to consider feedback received during the public exhibition period and enable finalisation of the Guidelines.

Community Engagement

Consistent with the resolution the draft guidelines were exhibited from 5 September to 5 October 2018. The exhibition included advertisements in local newspapers, a direct mailout to Council's development industry liaison mailing list, an article in Council's community newsletter and information on Council's "Get Involved" website.

Four (4) submissions were received. All of which were survey responses lodged via the "Get Involved" website. The survey results summary report is provided as **Attachment 3**.

The matters raised in these submissions are summarised and commented on below:

Submission	Comment
<i>How do you ensure that several one off PPs don't have the cumulative effect of changing zoning for a wider area? Could a landowner apply to have a residential urban block rezoned for multiple dwellings, where that is currently not permitted? If that one-off rezoning is approved, it could start a domino effect in an area which was not zoned in the Shoalhaven LEP for multiple dwellings on one block?</i>	The coordination and high-level planning for rezoning is provided by Council's existing planning strategies. This includes the Growth Management Strategy and Structure Plans and Settlement Strategies. The draft guidelines continue Council's currently adopted position that a PP should only proceed if it is consistent with an adopted strategy or if it is minor or correcting a zoning anomaly. This approach is also consistent with relevant NSW Government guidance on PP's.
<i>More approvals of land rezoning in already established urban areas</i>	The draft guidelines continue Council's currently adopted position that a PP should only proceed if it is consistent with strategy or if it is minor or correcting a zoning anomaly.
The guidelines require too much community engagement.	The community engagement requirements in the draft policy are aimed to ensure engagement is proportional to the potential impact and complexity of the proposal. It provides appropriate opportunities for community engagement. Formal requirements are also set in the Gateway determination received for any PP.
The guidelines do not require enough community engagement.	
I think full public consultation occurs too late in the process.	The draft guidelines include a framework for engaging with the community at the beginning of the PP process. This engagement is in proportion to the potential impact and complexity of the proposal. This is above the requirements of the planning legislation and is intended to ensure the aspirations and concerns of the community are heard as early as possible in the process.

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Submission	Comment
<i>Must be balanced, you can find environmental reasons to stop all land rezoning.</i>	Environmental impact of a PP is assessed in accordance with the environmental legislation. It is beyond the scope of these guidelines to determine what constitutes an acceptable level of environmental impact.
<i>Need to be genuine specialist studies and not "cut and paste" documents prepared by junior staff members. There needs to be evidence that the authors spend a minimum number of hours on the ground and the report is tailored to a specific locality.</i>	<p>Specialist studies are assessed under standards set for these reports by a variety of guidelines and laws of NSW and the Commonwealth. The guidelines provide for additional measures, such as peer reviews and Council management of proponent funded studies, to ensure the quality of studies is acceptable.</p> <p>Ultimately, the studies need to be satisfactory to Council, the NSW Department of Planning and Environment and, potentially, other government agencies.</p> <p>There is also a public opportunity to review studies and provide feedback in the public exhibition of PPs.</p>
<i>Community engagement is paramount. There needs to be sufficient publicity at an early stage.</i>	The guidelines provide for community engagement at the beginning of the PP process in most circumstances. This engagement is above the requirements of the Act and is intended to ensure the aspirations and concerns of the community are heard as early as possible in the process.

The draft guidelines, as exhibited, are generally consistent with the expectations and wishes of the community. They will provide a more certain framework for the management of PPs. There are no particular changes that have been identified following the consideration of public submissions. As such it is recommended that they be adopted as exhibited.

Policy Implications

The draft PP Guidelines contain several policy positions to help ensure that PPs are managed consistently and transparently. The specific policy positions adopted in the guidelines are described in detail in the May 2018 report to Development Committee attached to this report.

Financial Implications

The review of the PP Guidelines is managed within the existing Strategic Planning Budget using existing staff resources.

DE18.73

DE18.31 Planning Proposal (Rezoning) Guidelines - Proposed Revisions

HPERM Ref: D18/16929

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Revised PP Guidelines (under separate cover)
2. Community Engagement and Communication Strategy - Revision to PP Guidelines

Purpose / Summary

Obtain Council's endorsement to publicly exhibit proposed revisions to Council's Planning Proposal (Rezoning) Guidelines.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the attached draft revision to the Planning Proposal (Rezoning) Guidelines for public exhibition.
2. Exhibit the draft revision to the Planning Proposal (Rezoning) Guidelines in accordance with the attached Community Engagement and Communications Strategy.
3. Receive a further report to consider feedback received during the public exhibition period and enable finalisation of the Guidelines.

Options

1. Endorse the draft Planning Proposal (PP) Guidelines for public exhibition, with or without changes.
Implications: The draft PP Guidelines contain several significant policy positions to ensure that PPs are managed consistently and transparently. It is considered appropriate for Council to engage with the community and industry before determining what, if any, amendments should be made to the guidelines. This option is preferred.
2. Adopt the draft PP Guidelines (with or without changes) without public exhibition.
Implications: Council is not legally obligated to exhibit or consult prior to amending the PP Guidelines, but it is preferable given the amount of new information proposed and the importance of the document to the PP process.
3. Not revise the existing PP Guidelines.
Implications: Some of the proposed changes to Council's PP Guidelines address a policy gap that was identified recently when Council considered a PP request for Hitchcocks Lane, Berry. This prompted a broader review of the PP Guidelines and the proposed

amendments will provide more certainty, transparency and consistency in relation to the PP process. Retaining the PP Guidelines in their current form is not preferred.

Background

Council's Development Committee considered a report for a proponent-initiated PP at Hitchcocks Lane, Berry, on 14 November 2017. That report considered a request by the proponent to bring forward/accelerate a long term urban investigation area identified in the Growth Management Strategy (GMS). The report noted that Council does not have an adopted policy on such requests and it was resolved (MIN17.953) as part of the decision on that item to:

"...request a future report that provides options for a policy framework for considering Planning Proposals that accelerate consideration of an area ahead of its timing in Council's adopted strategic plans".

A subsequent review by Council staff has concluded that the most appropriate location for this policy is Council's Planning Proposal (Rezoning) Guidelines (PP Guidelines). No other appropriate existing policy or guidance document was identified, and it is also considered desirable to avoid the unnecessary proliferation of policies through the creation of an additional new one.

The PP Guidelines were initially adopted by Council on 26 March 2013 and followed earlier Rezoning Request Guidelines. The purpose of the PP Guidelines is to outline Council's processes and criteria for assessing proponent-initiated PPs. The current PP Guidelines can be viewed on the internet at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D16/22490>

Since the finalisation of the new LEP for Shoalhaven in 2014, a range of proponent-initiated PP requests have been made. These have progressed through the PP process to varying extents. This experience has revealed opportunities to improve the PP Guidelines, thus a broader review was undertaken, the outcome of which is detailed below.

Summary of Key Issues and Proposed Changes to the PP Guidelines

Updating the PP Process Diagram

The current PP Guidelines include a simplified diagram of the PP process. This diagram is now outdated due to changes made to the PP process by the NSW Government. For example, PPs are no longer considered by a Local Planning Panel; this role is now managed internally by the NSW Department of Planning and Environment (DP&E).

The current diagram also suggests that **all** specialist studies need to be completed before the PP is submitted for Gateway determination. The revised diagram shows that only studies for "threshold issues" need to be completed before sending a PP to Gateway. The revised diagram allows for specialist studies in relation to non-threshold issues to be prepared after the Gateway determination has been issued.

Other changes to the diagram include:

- a) Recognising that community consultation may occur prior to requesting a Gateway determination; and
- b) Identifying where in the PP process that fees will be charged.

Future Growth Areas - Requests to Vary Timing

In accordance with MIN17.953, the proposed changes to the PP Guidelines include a potential policy framework to consider requests to accelerate/bring forward longer-term urban investigation areas that are identified in endorsed Strategies or Plans.

This framework is based on the DP&E's Precinct Acceleration Protocol (PAP). The PAP applies to the Sydney Growth Areas and specifies what a proponent must demonstrate to accelerate a precinct.

The PAP's various requirements can be grouped into three main objectives:

1. A precinct will only be accelerated if it will be immediately developed. There is no value in accelerating a precinct otherwise. The PAP requires developers to show that they have the necessary experience, financial means and legal arrangements with owners to deliver the precinct as soon as it is released.
2. Only a logical and workable area of land will be released. The PAP is clear that an accelerated precinct must be a whole precinct. Accelerating a single lot in isolation makes infrastructure planning and delivery more difficult and expensive. It also prevents the proper master planning of development. If a precinct or part of a precinct is to be released it must be a logical and developable area of land.
3. Any additional infrastructure or servicing costs resulting from the acceleration must be borne by the proponent/developer. The PAP explains in detail the arrangements that need to be considered in funding infrastructure. The ultimate outcome is that the government will not incur any additional cost from the acceleration.

The above requirements have been adapted for inclusion into the draft PP Guidelines. Additional local provisions have been added to address the following matters:

4. There must be a need for land to be released in the local area. The PAP was established in the context of Sydney's need for housing supply. It assumes that demand will always exceed supply even if the precinct is 'accelerated'. While the demand for housing and land in Shoalhaven is currently strong, acceleration requests should only be supported if there is a demonstrated shortfall in urban land supply in the local area to the extent that would justify the proposed change in timing.
5. The Sydney Growth Centres were Biodiversity Certified, meaning that environmental land has already been identified and that Local Government will not incur the cost of managing the environmental land. As this is not the case for the investigation and growth areas in Shoalhaven, 'acceleration requests' should only be supported if the proponent provides for the long-term management of any environmental land at no cost to Council.
6. To varying extents, growth areas in Shoalhaven are more remote from a servicing perspective than the growth areas in Sydney. The draft PP Guidelines recognise this and require appropriate servicing if a precinct or area is to be accelerated. It also provides that acceleration should only occur if it will not give rise to development that is isolated from established urban services.
7. The draft PP Guidelines also require consideration of the 'public interest' in relation to any the acceleration request.

Specialist Studies

The draft PP Guidelines include information on how the specialist studies for a PP will be managed. It outlines which studies will be managed by the proponent and which studies will be managed by Council. The draft PP Guidelines state that studies will generally be managed by the proponent under the oversight of Council staff.

The following studies are however listed as exceptions to this and are to be entirely managed by Council:

- a) Heritage studies (including Aboriginal Cultural Heritage Assessments).
- b) Studies where there is a significant community interest.
- c) Studies that have a particular significance for Council (including Shoalhaven Water) or have a potential probity issue.
- d) Studies that are otherwise significant from a public interest perspective.

The draft PP Guidelines also require that all studies for proponent initiated PPs are to be wholly funded by the proponent. This is consistent with the current long-term practices of Council.

Urban Release Area Provisions (Part 6 of Shoalhaven LEP 2014)

The draft PP Guidelines outline the circumstances where Council will apply or consider applying the Urban Release Area (URA) provisions in Part 6 of Shoalhaven Local Environmental Plan (LEP) 2014 to the outcome of a PP.

Part 6 of Shoalhaven LEP 2014 requires certain matters to be addressed before the URA land can be subdivided. This includes preparation of a development control plan (DCP) and making satisfactory arrangements for the provision of public infrastructure.

The draft PP Guidelines include guidance on the circumstances in which Part 6 will or will not be used. Part 6 is proposed to be used:

- a) Where an adopted strategy/plan identifies multiple precincts with differing infrastructure issues and/or delivery timeframes;
- b) Where there is a need to resolve State public infrastructure or public utility infrastructure before the land can be subdivided;
- c) For major land releases that will be delivered over a long period of time and that require a staged master planning approach.

Part 6 is proposed not to be used in regard to a PP if it:

- a) Would defer a critical issue that could prevent the development from proceeding;
- b) Is clearly intended solely to facilitate the “flipping” of the site;
- c) Would result in unreasonable consultation fatigue for a community;
- d) Is unwarranted having regard to the scale and complexity of the PP.

Biodiversity Certification

Biodiversity Certification is a streamlined assessment process that allows the impacts on biodiversity to be fully resolved at the PP stage, thus avoiding the need for any further biodiversity assessment at subdivision/development stage.

The draft PP Guidelines provide that Council may require where appropriate/justified that a PP be biodiversity certified.

Development Control Plans (DCP)

The draft PP Guidelines include guidance on the form and place for any DCP controls required to accompany or ultimately support a PP. It also provides a general policy position that Council does not wish to see unnecessary site-specific DCP chapters.

Any new site-specific DCP chapters must achieve substantial planning outcomes.

Planning Agreements and Contributions Plans

The draft PP Guidelines include commentary on the use of contributions plans (CPs) and voluntary planning agreements (VPAs). It outlines the appropriate contexts for each approach. It also specifies that Council generally prefers VPAs where possible.

Classification of PPs

The draft PP Guidelines state that Council broadly classifies PPs as either 'minor' or 'major' based on potential impact.

These are defined as follows:

Minor PP:

PP for which no more than one (1) supporting specialist study is required. This includes 'housekeeping' PPs (prepared by Council to address minor anomalies etc) and other minor impact PPs.

Major PP:

PP for which two (2) or more specialist studies are required. Major PPs include:

- Local Impact PP - requires specialist studies that relate only to potential impacts on the locality; and
- Broader Impact PP - requires at least one (1) specialist study to address potential impacts beyond the land directly adjoining the subject land.

This informs community engagement approaches (see following section) and is used to determine the applicable fee for preparing proponent-initiated PPs for Gateway determination (as per Council's fees and charges).

Community Engagement for PPs

The draft PP Guidelines include an outline of the types of community engagement methods employed for various classifications of PPs, as summarised in the table below:

	Minor PPs		Major PPs	
	Housekeeping PP	Minor Impact PP	Local Impact PP	Broader Impact PP
✓ = Generally Required				
◆ = Determined on a case by case basis				
x = Generally Not Required				
Preliminary notification/consultation				
Make available online ¹ (applies to proponent-initiated PPs)	NA	✓	✓	✓
Notify directly affected & adjoining landowners	◆	✓	✓	✓
Invite submissions ²	x	x	◆	◆
Formal public exhibition phase				
Notify directly affected & adjoining landowners	◆	✓	✓	✓
Notify relevant CCBs	✓	✓	✓	✓
Newspaper notice(s)	✓	✓	✓	✓

✓ = Generally Required ◆ = Determined on a case by case basis × = Generally Not Required	Minor PPs		Major PPs	
	Housekeeping PP	Minor Impact PP	Local Impact PP	Broader Impact PP
Official hard copy display at Council	✓	✓	✓	✓
Post on Council's 'On exhibition' webpage	✓	✓	✓	✓
Invite submissions	✓	✓	✓	✓
Prepare/exhibit explanatory statement	◆	◆	✓	✓
Prepare/exhibit FAQs	×	×	◆	◆
Article(s) in community newsletter	×	×	◆	✓
Media release	×	×	◆	✓
Interactive Website ('Get Involved') ³	×	×	◆	◆
Public hearing ⁴	◆	◆	◆	◆
Information sessions, public meetings, workshops etc.	×	×	◆	◆
Social media	×	×	◆	◆

Notes:

1. PP request documents are published on Council's Planning Proposal webpage: <https://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Planning-Proposals>
2. Proponents can request a review if their PP request has not been determined within 90 days of lodgement. This timeframe limits the opportunity for preliminary community consultation.
3. Council's 'Get Involved' webpage will be utilised where there is a high level of public interest in the PP and will generally be used for the duration of the PP process.
4. Public hearings are mandatory for PPs involving reclassification of Council land. DP&E's Gateway determination will stipulate if a public hearing is necessary.

The draft guidelines also provide information on notification of stakeholders prior to Council meetings. This essentially documents Council's existing processes.

Fees and Charges

Council's fees and charges for proponent initiated PPs aim to ensure 100% cost recovery. The fees for preparing 'minor' and 'major' PPs (definitions provided above) for submission to Gateway allow up to 40 and 80 hours of staff time respectively. A separate 'excess staff time' fee (hourly rate) applies for PPs where the time allocation is exceeded. A corresponding review of this hourly rate in Council's fees and charges has been conducted as part of the review for the 2018/2019 financial year and necessary adjustments will be made. The draft PP Guidelines include a framework for determining chargeable staff time (i.e. inclusions and exclusions).

Community Engagement

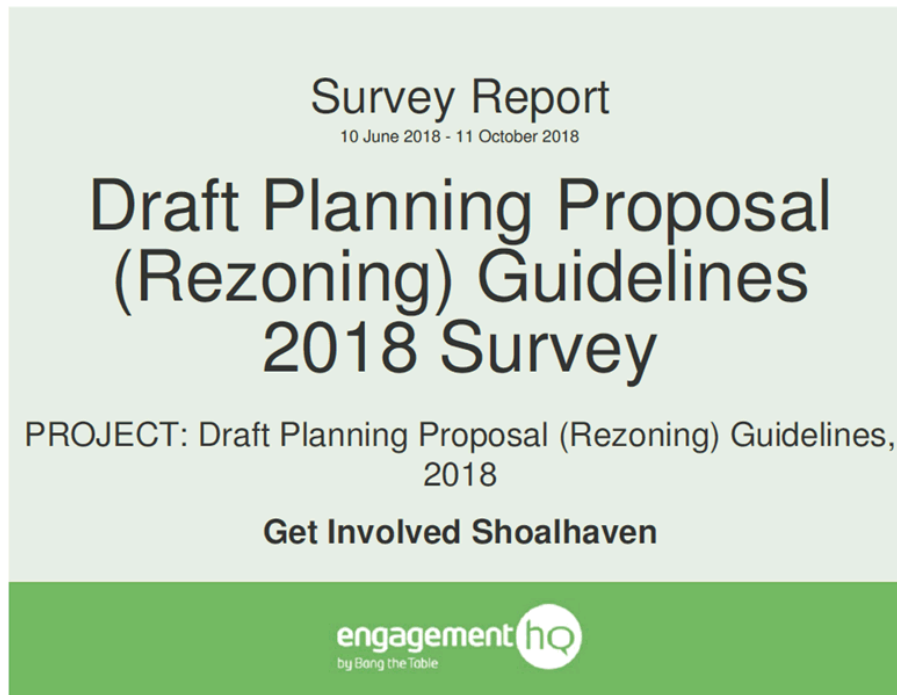
It is considered appropriate for Council to engage with the community and industry before finalising this matter. It is recommended that the draft PP Guidelines be adopted for exhibition and a further report be considered by Council following the exhibition and to enable the Guidelines to be finalised. A detailed Community Engagement and Communications Strategy has been prepared for this proposal and is attached to this report.

Policy Implications

The draft PP Guidelines contain several policy positions to help ensure that PPs are managed consistently and transparently. As noted above, it is proposed to engage with the community and industry before adopting Council's policy position in relation to these matters.

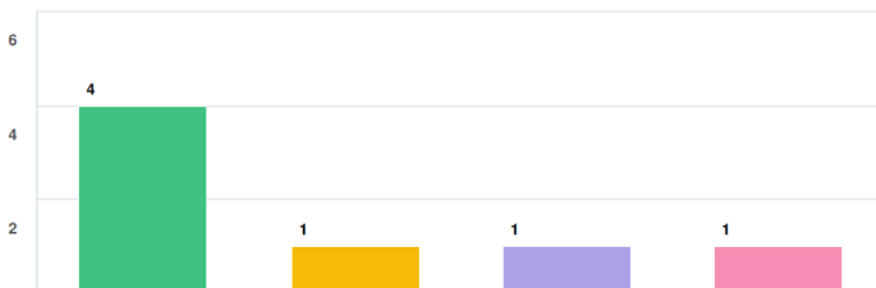
Financial Implications

The review of the PP Guidelines is being managed within the existing Strategic Planning Budget using existing staff resources.



Q2 requested an email from respondents to enable further communication in relation to this matter. This information is personally identifying and has been redacted from this report.

Q1 Which category (or categories) best describe you?



Question options

- Shoalhaven Resident and/or Landowner
- Property Developer
- Development Consultant
- Submitter on a current Planning Proposal in Shoalhaven

(5 responses, 0 skipped)

Q3 Do you have any feedback on the proposed requirements for lodging planning proposals? (OPTIONAL)

Anonymous

9/06/2018 03:59 PM

How do you ensure that several one off PPs don't have the cumulative effect of changing zoning for a wider area? Could a landowner apply to have a residential urban block rezoned for multiple dwellings, where that is currently not permitted? If that one-off rezoning is approved, it could start a domino effect in an area which was not zoned in the Shoalhaven LEP for multiple dwellings on one block?

Optional question (1 responses, 4 skipped)

Q4 Do you have any feedback on the proposed requirements for requests to vary the timing of future growth / investigation areas? (OPTIONAL)

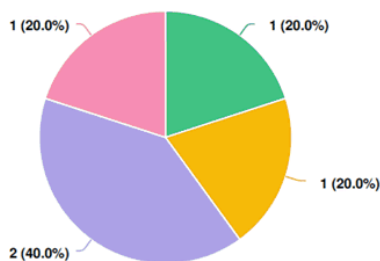
Anonymous

9/08/2018 08:05 AM

More approvals of land rezoning in already established urban areas

Optional question (1 responses, 4 skipped)

Q5 Do you think the requirements for community engagement in the Guidelines are appropriate? (OPTIONAL)



Question options

● Yes
 ● No, they require too much community engagement
 ● No, they do not require enough community engagement
 ● Other, see comments below

Optional question (5 responses, 0 skipped)

Q6 Do you have any feedback on the proposed requirements for community engagement? (OPTIONAL)

Anonymous
9/06/2018 03:59 PM

I think full public consultation at No. 10 in the flow chart process is too late.

Optional question (1 responses, 4 skipped)

Q8 Do you have any feedback on the proposed process for specialist studies for planning proposals? (OPTIONAL)

Anonymous
9/08/2018 08:05 AM

Must be balanced, you can find environmental reasons to stop all land rezoning.

Anonymous
9/26/2018 03:21 PM

Need to be genuine specialist studies and not "cut and paste" documents prepared by junior staff members. There needs to be evidence that the authors spend a minimum number of hours on the ground and the report is tailored to a specific locality.

Optional question (2 responses, 3 skipped)

Q9 | Do you have any other feedback on the draft Guidelines? (OPTIONAL)

Anonymous

9/26/2018 03:21 PM

Community engagement is paramount. There needs to be sufficient publicity at an early stage.

Optional question (1 responses, 4 skipped)

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.