

Development & Environment Committee

Meeting Date: Monday, 21 January, 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Joanna Gash - Chairperson
Clr Greg Watson
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**
2. **Confirmation of Minutes**
 - Development Committee – 4 December 2018 1
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
 - Planning Environment & Development
 - DE19.1 Proposed Amendment - Shoalhaven Development Control Plan 2014 - Low Density Residential.....9
 - DE19.2 Proposed Submissions - State Environmental Planning Policies - Affordable Rental Housing 13
 - DE19.3 Development Application No.18/1815 – 270 Back Forest Road, Back Forest – Lot 2231 DP 103477421
 - DE19.4 Tallimba Subdivision36

DE19.5 Review of the Lake Conjola Interim Entrance Management Policy and
 the Citywide Dredging Feasibility Study - Conjola Estuary39

8. Confidential Reports

Nil

Development & Environment 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.
- i. The preparation, adoption, and review of policies and strategies of the Council in respect to sustainability matters related to climate change, biodiversity, waste, water, energy, transport, and sustainable purchasing.
- j. The preparation, adoption and review of policies and strategies of the Council in respect to management of natural resources / assets, floodplain, estuary and coastal management.

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Tuesday, 4 December 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

The following members were present:

Clr Greg Watson - Chairperson
Clr Amanda Findley
Clr Patricia White
Clr John Wells
Clr John Levett
Clr Nina Digiglio
Clr Annette Aldrick
Clr Kaye Gartner
Clr Mitchell Pakes
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

Apologies were received from Clr Gash and Clr Guile.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Gartner) MIN18.1

That the Minutes of the Development Committee held on Tuesday 06 November 2018 be confirmed.

CARRIED

Declarations of Interest

Nil.

DEPUTATIONS AND PRESENTATIONS

DE18.78 - Proposed Council Submission - Multiple Aboriginal Land Claims - Bangalee Reserve (page 29)

Leonard White, representing Bangalee Bushcare, spoke for the recommendation.

DE18.80 - Development Application – 20 Norfolk Avenue, SOUTH NOWRA - Lot 30 DP 790535 - Concrete Batching Plant (page 50)

Adnan Voloder, representing Boral, spoke for the recommendation.

DE18.81 - Development Application - 8 Admiralty Crescent, Huskisson - Lot 4 DP16055 (DS18/1343) (page 69)

John Lawrence, representing Frazer and Joanne Roberts, spoke against the recommendation.

John Lawrence spoke against the recommendation.

Rachel Harrison of SET Consultants, representing Viv Latimer, spoke for the recommendation.

REPORTS

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr White) MIN18.2

That the matter of items DE18.81, DE18.78 and DE18.80 be brought forward for consideration.

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

AGAINST: Nil

CARRIED

DE18.81 Development Application - 8 Admiralty Crescent, Huskisson - Lot 4 DP16055 (DS18/1343)	HPERM Ref: D18/416422
--	------------------------------

Recommendation (Item to be determined under delegated authority)

That Development Application DS 18/1343 for the modification of an approved attached dual occupancy development be approved as per the Consolidated Consent at **Attachment 1** to this report.

RESOLVED (Clr Proudfoot / Clr Gartner) MIN18.3

That the Committee notes that the basis of the report has changed substantially with the advice that the applicant has withdrawn their approval for the amended plan and that staff reconsider the DA and report back to the December Ordinary Council Meeting.

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

AGAINST: Nil

CARRIED

DE18.78 Proposed Council Submission - Multiple Aboriginal Land Claims - Bangalee Reserve

**HPERM Ref:
D18/386434**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Advise the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that it does not support Aboriginal Land Claim Numbers 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251 and part of the blanket claims 24254 and 24297 on the basis that, at the date of claim lodgement:
 - a. The land formed the Bangalee Reserve and was being lawfully used for its reserve purpose of Public Recreation;
 - b. Council held an interest in the land, being infrastructure to support the reserve purpose of Public Recreation;
 - c. Two of the lots were needed for an essential public purpose of electricity infrastructure.
2. Provide any necessary documents and evidence to the ALCIU to support this position.

RESOLVED (Clr Wells / Clr White)

MIN18.4

That Council:

1. Advise the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that it does not support Aboriginal Land Claim Numbers 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251 and part of the blanket claims 24254 and 24297 on the basis that, at the date of claim lodgement:
 - a. The land formed the Bangalee Reserve and was being lawfully used for its reserve purpose of Public Recreation;
 - b. Council held an interest in the land, being infrastructure to support the reserve purpose of Public Recreation;
 - c. Two of the lots were needed for an essential public purpose of electricity infrastructure.
2. Provide any necessary documents and evidence to the ALCIU to support this position..

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

AGAINST: Nil

CARRIED

DE18.80 Development Application – 20 Norfolk Avenue, SOUTH NOWRA - Lot 30 DP 790535 - Concrete Batching Plant

**HPERM Ref:
D18/382826**

Recommendation

That Council:

1. Confirm it supports, pursuant to clause 4.6 (Exceptions to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11m to 23m; and
2. Refer the development application (DA18/2054) back to staff for determination.

RECOMMENDATION (Clr Proudfoot / Clr Pakes)

That Council:

1. Confirm it supports, pursuant to clause 4.6 (Exceptions to development standards) of SLEP

2014, the applicant’s request to vary the height limit of 11m to 23m; and

2. Refer the development application (DA18/2054) back to staff for determination.

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

AGAINST: Nil

CARRIED

DE18.75 Potential Planning Controls - Character - Cambewarra Escarpment

**HPERM Ref:
D18/240772**

Recommendation (Item to be determined under delegated authority)

That:

1. Council proceed to investigate the possibility of an amendment to the Shoalhaven Local Environment Plan (LEP) 2014 by way of application of the Scenic Preservation Overlay or additional local clause to help protect the character of the Cambewarra Escarpment,
2. Council staff report back on specific detailed options in this regard to be included in a Planning Proposal.

Note: Clr Gartner left the meeting, the time being 6.32pm.

RESOLVED (Clr Findley / Clr White)

MIN18.5

That:

1. Council proceed to investigate the possibility of an amendment to the Shoalhaven Local Environment Plan (LEP) 2014 by way of application of the Scenic Preservation Overlay or additional local clause to help protect the character of the Cambewarra Escarpment.
2. Council staff report back on specific detailed options in this regard to be included in a Planning Proposal and the possibility and practicality of including the additional areas of Wattamolla, Brogers Creek and the Kangaroo Valley escarpment in the planning proposal.

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

AGAINST: Nil

CARRIED

Note: Clr Gartner returned to the meeting, the time being 6.34pm.

DE18.76 Required Housekeeping Amendment - Shoalhaven Development Control Plan 2014 - Medium Density

**HPERM Ref:
D18/370232**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Commence preparation of an amendment to Chapter G13: Medium Density and Other Residential of Shoalhaven Development Control Plan (DCP) 2014 consistent with Table 1 in this report and progress the amendment as part of the next appropriate housekeeping amendment to the DCP.
2. Consider any other amendments relevant to the Chapter G13 as the matters arise prior to part

3 of this recommendation.

3. Receive a further report on this matter as part of the relevant housekeeping amendment before proceeding to public exhibition.

RESOLVED (Clr White / Clr Proudfoot)

MIN18.6

That Council:

1. Commence preparation of an amendment to Chapter G13: Medium Density and Other Residential of Shoalhaven Development Control Plan (DCP) 2014 consistent with Table 1 in this report and progress the amendment as part of the next appropriate housekeeping amendment to the DCP.
2. Consider any other amendments relevant to the Chapter G13 as the matters arise prior to part 3 of this recommendation, including relevant requested amendments from development industry representatives and others as required.
3. Receive a further report on this matter as part of the relevant housekeeping amendment before proceeding to public exhibition.

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

AGAINST: Nil

CARRIED

**DE18.77 Proposed Exhibition - Amendment to Chapter V3
Shoalhaven Development Control Plan 2014 -
Ulladulla/Mollymook Gateway Precinct**

**HPERM Ref:
D18/343126**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed to exhibit the draft amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan 2014 for a period of 28 days as per legislative requirements.
2. Receive a further report on the draft amendment to Chapter V3 following the conclusion of the public exhibition period.
3. Advise the Ulladulla & Districts Community Forum, subject land owners and adjoining land owners of the exhibition arrangements.

RESOLVED (Clr Findley / Clr Digiglio)

MIN18.7

That Council:

1. Proceed to exhibit the draft amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan 2014 for a period of 28 days as per legislative requirements.
2. Receive a further report on the draft amendment to Chapter V3 following the conclusion of the public exhibition period.
3. Advise the Ulladulla & Districts Community Forum, subject land owners and adjoining land owners of the exhibition arrangements.
4. Invite the affected landowners to participate in an information session during the public exhibition period.

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

AGAINST: Nil

CARRIED

DE18.78 PROPOSED COUNCIL SUBMISSION - MULTIPLE ABORIGINAL LAND CLAIMS - BANGALEE RESERVE HPERM REF: D18/386434

Item dealt with earlier in the meeting see MIN18.943.

DE18.79 Mandatory Controls - Shoalhaven Development Control Plan 2014 HPERM Ref: D18/403997

Recommendation (Item to be determined under delegated authority)

That Council:

1. Retain existing mandatory controls within Shoalhaven Development Control Plan (DCP) 2014 and continue the use of mandatory controls as required in future amendments to the DCP.
2. Amend Chapter 1: Introduction of Shoalhaven DCP 2014 to make it clearer that a mandatory control can be varied subject to an applicant demonstrating to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development. This matter is to be addressed as part of the next appropriate housekeeping amendment to the Chapter.
3. Advise relevant stakeholders of this decision, including Industry Representatives.

RESOLVED (Clr Findley / Clr Wells)

MIN18.8

That Council:

1. Retain existing mandatory controls within Shoalhaven Development Control Plan (DCP) 2014 and continue the use of mandatory controls as required in future amendments to the DCP.
2. Amend Chapter 1: Introduction of Shoalhaven DCP 2014 to make it clearer that a mandatory control can be varied subject to an applicant demonstrating to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development and the inclusion of a note where there is a mandatory control to refer to the definitions. This matter is to be addressed as part of the next appropriate housekeeping amendment to the Chapter.
3. Advise relevant stakeholders of this decision, including Industry Representatives.

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

AGAINST: Nil

CARRIED

DE18.80 DEVELOPMENT APPLICATION – 20 NORFOLK AVENUE, SOUTH NOWRA - LOT 30 DP 790535 - CONCRETE BATCHING PLANT **HPERM REF: D18/382826**

Item dealt with earlier in the meeting.

DE18.81 DEVELOPMENT APPLICATION - 8 ADMIRALTY CRESCENT, HUSKISSON - LOT 4 DP16055 (DS18/1343) **HPERM REF: D18/416422**

Item dealt with earlier in the meeting see MIN18.942.

Procedural Motion - Matters of Urgency

RESOLVED (Clr White / Clr Proudfoot) MIN18.9

That an additional item DA18/1000, 315 Princes Highway, Bomaderry, Lot 2 DP 777260 be introduced as a matter of urgency.

FOR: Clr White, Clr Wells, Clr Levett, Clr Digiglio, Clr Aldrick, Clr Gartner, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Clr Findley

CARRIED

The Chairperson ruled the matter as urgent as it is in the public interest.

DE18.82 Additional item - DA18/1000 - 315 Princes Highway, Bomaderry - Lot 2 DP 777260

MOTION (Clr White / Clr Proudfoot)

That DA18/1000, 315 Princes Highway, Bomaderry, Lot 2 DP 777260 be called in for consideration by Council due to public interest.

Note: Staff advised the following:

- The Development Application had been determined by staff and refused on 30 November 2018;
- The Notice of Determination outlines the rights of review and appeal, including a review under Division 8.2 of the *Environmental Planning and Assessment Act 1979*;
- Staff were unaware a request to review its determination had been received; and
- If a request to review the application is received, it must be reported to Council.

Clr Findley raised a Point of Order against Clr Watson on the basis that the Motion is out of order.

Clr White withdrew the Motion.

Clr Watson ruled Clr Findley's conduct out of order.

DE18.83 Additional item - Shoalhaven Growth Management Strategy 2019-2041 - Consultation

Clr Proudfoot noted that consultation for the Shoalhaven Growth Management Strategy closes on Friday 7 December 2018.

Question Without Notice:

Clr Proudfoot asked whether the consultation period could be extended by 14 days, to close on Friday 21 December 2018.

Staff advised that this could occur and the extension will be applied.

DE18.84 Additional item - DA18/1598 - Bunnings, South Nowra

Question Without Notice:

Clr Pakes noted that DA18/1598 – Bunnings, South Nowra was called in at the Ordinary meeting on 13 November 2018 and asked when it will be reported to Council.

Staff advised that the matter will be reported to Council once assessment is complete, which is anticipated to be early in 2019.

There being no further business, the meeting concluded, the time being 7.18pm.

Clr Watson
CHAIRPERSON

DE19.1 Proposed Amendment - Shoalhaven Development Control Plan 2014 - Low Density Residential

HPERM Ref: D18/420522

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Chapter G12 (under separate cover) [↗](#)
2. Draft Dictionary (under separate cover)

Purpose / Summary

Obtain the required Council resolution to commence the formal exhibition of the draft amendment to the Low Density Residential Chapter (G12) of the Shoalhaven Development Control Plan (DCP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the exhibition of the draft Low Density Residential Amendment to Shoalhaven Development Control Plan 2014 for a period of 28 days as per legislative requirements.
2. Receive a further report on the draft Low Density Residential Amendment following the conclusion of the public exhibition period.
3. Advise key stakeholders, including relevant industry representatives, of this decision.

Options

1. As recommended.

Implications: This is the preferred option as it will enable the resolution of operational issues and matters that require clarification to improve the function of the chapter. The Amendment will also result in provisions that holistically consider local character and context, good quality design, amenity, universal design (optional) and more broadly the public interest.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the implementation of updated and more appropriate low density residential development provisions.

3. Not adopt the recommendation.

Implications: This could stop the implementation of more appropriate and better structured low density residential development provisions. This option is not preferred as the current approach is confusing and in parts outdated.

Background

Amendment Context

Council's Development Committee resolved, under delegation, on 2 June 2015 to commence a large-scale systematic review/amendment of Shoalhaven DCP 2014 to address several existing Council resolutions and other matters identified since the commencement of the original plan on 22 October 2014.

Stage 5 of the review/amendment included the review of the DCP Chapters related to subdivision and residential development, namely:

- Chapter G11: Subdivision of Land.
- Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures.
- Chapter G13: Dual Occupancy Development.
- Chapter G14: Other Residential Development.

The Medium Density Amendment to Shoalhaven DCP 2014 addressed Chapter G13 and G14; and came into effect on 31 October 2018. An amendment to Chapter G11 remains identified as a priority project on the Strategic Planning Works Program and will be reported separately to Council for consideration in due course.

The updating of Chapter G12 is considered as part of this reported amendment.

The Draft Low Density Residential Amendment

The draft Low Density Residential Amendment includes:

- The repeal of existing [Chapter G12](#).
- Proposed new Chapter G12: Dwelling Houses and Other Low Density Residential Development (**Attachment 1**).
- Proposed consequential amendment to the DCP Dictionary (**Attachment 2**).

The proposed new Chapter G12 applies to:

- Dwelling houses, including additions and alterations.
- Rural workers' dwellings, including additions and alterations.
- Relocation of second-hand dwellings.
- Detached habitable rooms.
- Secondary dwellings.
- Ancillary structures.
- Non-habitable structures on vacant land.

Essentially, the draft Amendment proposes to improve the function of low density residential controls, address gaps in policy and address operational issues or matters that need clarification that have been identified since the Shoalhaven DCP 2014 became effective on 22 October 2014.

The most notable components of the draft Amendment are outlined in the following Table:

Theme	Proposed content
General	<ul style="list-style-type: none"> • Introduction of a more logical layout, consisting of general controls that apply to all low density residential (and ancillary) development and further controls based on the proposed land use.
General Controls	<ul style="list-style-type: none"> • Introduction of provisions that encourage the retention where possible of mature shade/large canopy trees, vegetation and shrubs.
Dwelling Houses, Rural Workers' Dwellings and Associated Development	<ul style="list-style-type: none"> • Introduction of provisions relating to: <ul style="list-style-type: none"> - Noise generating equipment. - Minimum landscape requirements (based on Codes SEPP complying development requirements). - Private open space requirements. - Laundries in garages. - Storage. - Detached habitable rooms/studios. - Universal design (only applies when an applicant designs a dwelling to be accessible or adaptable). - Bin storage, presentation and collection. • Refinement of provisions relating to the relocation of secondary dwellings.
Secondary Dwellings	<ul style="list-style-type: none"> • Deletion of existing provisions relating to 'granny flats'. • Introduction of provisions for 'secondary dwellings' to supplement the relevant provisions within the Affordable Rental Housing SEPP; e.g. visual and acoustic privacy, solar and daylight access.
Ancillary Structures	<ul style="list-style-type: none"> • Introduction of eave height for garages (or similar structures) in the R1, R2 and SP3 (> 2000m²), R3 and RU5 zones. • Greater consideration of solar and daylight access. • Introduction of provisions regarding swimming pools.
Non-Habitable Structures on Vacant Land	<ul style="list-style-type: none"> • Introduction of new provisions regarding non-habitable structures on vacant land, e.g. density, height, setbacks and solar/daylight access.
Dictionary	<ul style="list-style-type: none"> • Introduction of new terms to support draft Chapter G12: Detached habitable room, Detached studio, Solar access and Solar collector. • Deletion of the Detached habitable room (existing definition) and Granny flat definitions.

DE19.1

Community Engagement

The draft Low Density Residential Amendment will be publicly exhibited for at least 28 days in accordance with legislative requirements at the Nowra Administrative Building. Documentation will also be available on Council's website and at the Ulladulla Administrative Buildings. Development Industry representatives will be directly notified of the exhibition arrangements.

Policy Implications

The draft Low Density Residential Amendment seeks to introduce user-friendly DCP provisions in a logical structure that address gaps in policy and respond to operational matters that have arisen following the passing of time. Should the Amendment not proceed, these fundamental concerns will not be addressed.

It is proposed that draft Chapter G12: Dwelling Houses and Other Low Density Residential Development will ultimately replace existing Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures.

Financial Implications

The draft Low Density Residential Amendment to Shoalhaven DCP 2014 will continue to be resourced within the existing Strategic Planning budget.

Risk Implications

Should the draft Low Density Residential Amendment not proceed, there is a risk that Council will not be able to respond to low density residential development in a way that holistically considers matters such as local character and context, good quality design and amenity and more broadly the public interest. This could result in poor built form and liveability outcomes for both residents and the broader community. There are also matters that need to be revised to ensure the planning controls continue to operate as expected/intended and resolve inconsistencies.

DE19.2 Proposed Submissions - State Environmental Planning Policies - Affordable Rental Housing

HPERM Ref: D18/432461

Group:

Section: Strategic Planning

- Attachments:**
1. Draft SEPP 70 Submission [↓](#)
 2. Draft ARHSEPP Submission [↓](#)
 3. SEPP 70 Exhibition Package (under separate cover) [↗](#)
 4. ARHSEPP Explanation of Intended Effects (under separate cover)

Purpose / Summary

- Advise of the public exhibition by the NSW Government of the following:
 - The draft State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes); and
 - The proposed State Environmental Planning Policy (Affordable Rental Housing) 2009 amendment.
- Obtain endorsement to make submissions to the NSW Department of Planning and Environment (DP&E).

Recommendation (Item to be determined under delegated authority)

That Council make formal submissions to the NSW Department of Planning and Environment, by the granted extension date of 30 January 2019 consistent with Attachments 1 & 2 on the:

1. Draft State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (see Attachment 1); and
2. Proposed State Environmental Planning Policy (Affordable Rental Housing) 2009 amendment (see Attachment 2).

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to provide submissions within the extended timeframe. This will enable the comments to be considered in the finalisation of amendments to the respective State Environmental Planning Policies (SEPPs).

2. Revise or adjust the draft submissions at **Attachments 1** and **2** and submit.

Implications: This option is not preferred as any changes, depending on the nature, may limit Council's ability to meet the deadline extension of 30 January 2018.

3. Not make a submission.

Implications: This is not recommended as it would mean that Council does not comment or provide feedback on the proposed changes to the respective SEPP amendments. As such, the opportunity to identify issues for consideration or resolution would be missed.

Background

Draft State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)

SEPP No 70 – Affordable Housing (Revised Schemes) (SEPP 70) identifies a need for affordable housing in certain local government areas (LGAs), describes the kind of households for which affordable housing may be provided, and includes requirements regarding the imposition of conditions relating to the provision of affordable housing.

The SEPP currently only applies to the Greater Sydney Metropolitan Region, which includes Wollongong, Shellharbour and Kiama LGAs. The SEPP does not currently apply to Shoalhaven.

The proposed amendment package is provided at **Attachment 3** and includes:

- Explanation of Intended Effect.
- Draft Guideline for Developing an Affordable Housing Contribution Scheme.
- Frequently asked questions.

In summary the proposed amendments include:

- Expansion of the SEPP to potentially apply to and be used in all LGAs in NSW.
- Amendment of the affordable housing definition to define household income for areas outside the Greater Metropolitan Region.
- Clarify that affordable housing is to be made available for very low, low and moderate-income households or *any combination* of these households.
- Inclusion of a draft Guideline for Developing an Affordable Housing Contribution Scheme to assist Council's in developing an affordable housing contributions plan.

Generally, the proposed amendments are positive, generally supported and consistent with the Shoalhaven Affordable Housing Strategy 2017 (Strategy 6c) that involves Council:

Advocating for the NSW Government to revise SEPP 70 Affordable Housing (Revised Schemes) to include Shoalhaven to effectively mandate provision of contributions for affordable housing where appropriate/required.

This advocacy work was undertaken in 2018, and it is encouraging to see the proposed inclusion of Shoalhaven in the SEPP.

Importantly the proposed amendment will provide Council with the mechanism to potentially levy for the provision of affordable housing which is welcomed as no effective mechanism is currently available to enable Council to mandate developer contributions for the purpose of providing affordable housing in appropriate circumstances.

Should Council wish, a contribution plan could be prepared in the future for an area or areas within the LGA to enable the levying of contributions for the purpose of affordable housing. This would need to be undertaken via a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 and also requires the preparation of an Affordable Housing Contributions Scheme.

Whilst this is a positive step, the Guideline for Developing an Affordable Housing Contribution Scheme is clear that Council cannot apply an Affordable Housing Contribution Scheme retrospectively to land that has already been zoned. Thus, it is likely that within the Shoalhaven LGA, the majority of areas suitable for the scheme are already appropriately zoned. As such, Council would not be able to levy contributions for affordable housing as part of the development of existing zoned areas, but in the future could consider the levying of such contributions if new and appropriate areas are rezoned.

The proposed Council submission relating to SEPP 70 is provided as **Attachment 1**.

State Environmental Planning Policy (Affordable Rental Housing) 2009

SEPP (Affordable Rental Housing) 2009 seeks to increase the supply and diversity of affordable rental and social housing throughout NSW through infill affordable housing, secondary dwellings, boarding houses and group homes. The SEPP currently applies to Shoalhaven.

The Explanation of Intended Effect for the proposed SEPP amendment is provided at **Attachment 4**.

The proposed amendment seeks to limit the number of rooms per boarding house development to twelve (12) rooms, to maintain the character and typical built form within the R2 Low Density Residential zone. It is noted that boarding houses are currently permissible in Shoalhaven's R2 zoned areas within 400m walking distance of a B2 Local Centre or a B4 Mixed Use zone.

The proposed changes to the SEPP are positive in terms of more appropriately responding to the existing character and built form of Shoalhaven's low-density residential area. However, it would be prudent to clarify whether there is a restriction on the number of boarding houses per site (e.g. could 2 x 12 room boarding houses be considered on a single site?). Further, there would be value in including a mechanism for housing built under the SEPP to remain "affordable" in perpetuity. This is consistent with the following strategy (6.b) of the Shoalhaven Affordable Housing Strategy 2017:

Advocate for the NSW Government to revise the Affordable Rental Housing SEPP so that housing built under this SEPP remains affordable in perpetuity.

The proposed Council submission relating to the SEPP (Affordable Rental Housing) 2009 amendment is provided as **Attachment 2**.

Community Engagement

The proposed amendments to SEPP 70 and the SEPP (Affordable Rental Housing) 2009 were publicly exhibited from 30 November until 19 December 2018 to provide an opportunity for local government, community members and industry stakeholders to submit feedback.

Council has been provided with an extension until the end of January 2019 to provide a Council endorsed submission. A preliminary submission based on **Attachment 1** and **Attachment 2** was submitted to DP&E on 18 December 2018.

Policy Implications

The proposed amendments to SEPP 70 will potentially provide Council with a mechanism to mandate developer contributions for an area or areas across Shoalhaven in the future – for the purpose of providing affordable housing. To do this, an Affordable Housing Contribution Scheme will need to be prepared and an amendment to Shoalhaven Local Environmental Plan 2014 will be required (via a Council initiated Planning Proposal).

Any required future amendments of this nature would be separately reported to Council for consideration as needed.



Bridge Rd, Nowra NSW 2541 02 4429 3111
Deering St, Ulladulla NSW 2539 02 4429 8999

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

Council Reference: 31157E (D18/440359)

Director, Housing Policy
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2000

Online submission

Dear Sir/Madam

Submission – Proposed Amendment to State Environmental Planning Policy No. 70 Affordable Housing (Revised Schemes)

Thank you for the opportunity to comment on the Proposed Amendment to State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (Proposed SEPP Amendment). We commend the NSW Government's ongoing commitment to planning for affordable housing.

On 21 January 2019, Council's Development Committee resolved (MIN19.**INSERT**) under delegation to:

INSERT

It is understood that the Proposed SEPP Amendment intends to expand the application of SEPP 70 to include all local government areas (LGAs) in NSW. This is based on the demonstrated need for LGAs outside the Greater Sydney metropolitan area to facilitate greater housing affordability, including affordable rental housing.

The basis of Shoalhaven's submission relating to SEPP 70 and the draft Guideline for Developing an Affordable Housing Contribution Scheme is outlined below:

- The Shoalhaven Affordable Housing Strategy 2017 (**attached**) identifies that just like the Greater Sydney Metropolitan Area, Shoalhaven is unable to respond to the housing needs of very low, low and moderate income families at affordable levels. Thirty-Five percent (35%) of Shoalhaven households are on a very low income and 46% of renting households are in the very low income band (Greater Sydney 28%). There is an identified gap in the Shoalhaven market for very low and low income households. Strategy 6.c. of the Shoalhaven Affordable Housing Strategy 2017 involves Council:

Advocat[ing] for the NSW Government to revise SEPP 70 Affordable Housing (Revised Schemes) to include Shoalhaven to effectively mandate provision of contributions for affordable housing where appropriate/required.

- The inclusion of Shoalhaven and the other remaining LGAs in NSW in SEPP 70 is supported as this provides Council the opportunity to prepare an Affordable Housing Contribution Scheme that will support the Shoalhaven Affordable Housing Strategy 2017. There is currently no effective mechanism available to enable Council to mandate developer contributions for the purpose of providing affordable housing in appropriate circumstances. The ability to obtain developer contributions for this purpose would assist in a positive and tangible increase in the supply of affordable housing in Shoalhaven especially for the very low, low and moderate-income household income market.
- Expanding Principle 3 to clarify that affordable housing can be made available to very low, low and moderate- income households or *any combination*, is supported.
- It is questioned whether applying the “rest of NSW” median household incomes is appropriate? A more local benchmark may be more appropriate?
- It is understood that the adoption of an Affordable Housing Contribution Scheme for Shoalhaven would be delivered via an amendment to Shoalhaven Local Environmental Plan 2014 (i.e. planning proposal). This mechanism is considered appropriate.
- Whilst the intent is understood, of concern is the restriction on applying an Affordable Housing Contribution Scheme retrospectively to land that has already been zoned. It is likely that within the Shoalhaven LGA, the majority of areas suitable for the scheme are already appropriately zoned (e.g. the Nowra CBD and Bomaderry Town Centre area). As such, Council would not be able to levy contributions for affordable housing or would need to consider rezoning land for no other purpose than to levy such contributions, which is undesirable. In regional areas, greater flexibility would be beneficial.
- Appendix 1 – Template for affordable housing contributions schemes, is helpful to provide councils with a brief overview of the structure and requirements of the scheme. It would be appreciated if detailed instructions could be provided to councils following notification of the amendments to SEPP 70. For example, what is DP&E’s criteria for determining whether the contributions in an area would make development unviable?

It is noted that the submission period for the Proposed SEPP Amendment (3 weeks) was not sufficient for Council to provide a Council endorsed submission. This matter has been consistently raised with DP&E and it is again requested that a greater exhibition period be provided to accommodate council reporting cycles.

DP&E (Margaret Kirton) has provided written agreement for this Council endorsed submission to be submitted by the end of January 2019 (staff submission was submitted 18 December 2018).

Thank you again for the opportunity to comment on the Proposed SEPP Amendment. It is hoped that the comments raised within this submission will be fully considered and provide an opportunity for further dialogue in relation to the improvement of affordable housing in LGAs outside of the Sydney Region.

If you need further information about this matter, please contact Kaitlin Aldous, Planning Environment & Development Group on (02) 4429 3213. Please quote Council’s reference 31157E (D18/440342).

Yours faithfully

INSERT

Jenna Tague
Coordinator - Policy Planning Team

INSERT



Bridge Rd, Nowra NSW 2541 02 4429 3111
Deering St, Ulladulla NSW 2539 02 4429 8999

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

Council Reference: 31157E (D18/440395)

Director, Housing Policy
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Online Submission

Dear Sir/Madam

**Submission – Proposed Amendment to State Environmental Planning Policy
(Affordable Rental Housing) 2009**

Thank you for the opportunity to comment on the proposed amendment to State Environmental Planning Policy (Affordable Rental Housing) 2009 (Proposed ARHSEPP Amendment). We commend the NSW Government's ongoing commitment to planning for affordable housing.

On 21 January 2019, Council's Development Committee resolved (MIN19.INSERT) under delegation to:

INSERT

It is understood that the Proposed ARHSEPP Amendment will amend existing provisions regarding boarding houses in the R2 Low Density Residential zone (R2 zone) to address concerns of compatibility with typical built form.

The basis of Shoalhaven's submission is outlined below:

- The proposed limit of no more than 12 boarding rooms per boarding house in an R2 zone is supported. This amendment will ensure that boarding house developments are more compatible with the surrounding typical built form in low density areas.
- Although the Proposed ARHSEPP Amendment is clear that only 12 rooms are permissible **per boarding house**, the DP&E Media release (28 November 2018) notes that only 12 boarding rooms may be allowed **per site**. Clarification in this regard (12 rooms per building or site) would be appreciated as for example, two boarding houses (total of 24 rooms) would appear inconsistent with the proposed amendment.



- The permissibility of boarding houses in the R2 zone remains dependent on the proximity to an appropriate B2 Local Centre or B4 Mixed Use zone. Shoalhaven generally has limited public transport opportunities to enable adequate access to services and facilities out of centre without a private vehicle. As such, it is considered appropriate that boarding houses should be located within 400m walking distance of a B2 or B4 zone.
- There would be value in including a mechanism in the ARHSEPP for housing built under the SEPP to remain “affordable” in perpetuity. This is consistent with Strategy 6.b. of the Shoalhaven Affordable Housing Strategy 2017 (attached).

It is noted that the submission period for the Proposed ARHSEPP Amendment (3 weeks) was not sufficient for Council to provide a Council endorsed submission. This matter has been consistently raised with DP&E and it is again requested that a greater exhibition period be provided to accommodate council reporting cycles.

DP&E (Margaret Kirton) has provided written agreement for this Council endorsed submission to be submitted by the end of January 2019 (staff submission was submitted 18 December 2018).

Thank you again for the opportunity to comment on the Proposed ARHSEPP Amendment. It is hoped that the comments raised within this submission will be fully considered and provide an opportunity for further dialogue in relation to the affordable rental housing needs of regional councils.

If you need further information about this matter, please contact Kaitlin Aldous, Planning Environment & Development Group on (02) 4429 3213. Please quote Council's reference 31157E (D18/440379).

Yours faithfully

INSERT

Jenna Tague
Coordinator - Policy Planning Team
INSERT

DE19.3 Development Application No.18/1815 – 270 Back Forest Road, Back Forest – Lot 2231 DP 1034774

DA. No: DA18/1815/4

HPERM Ref: D18/439193

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Determination DA18/1815 - 270 Back Forest Road, Back Forest [↓](#)
2. Planning Report - DA18/1815 - 270 Back Forest Road, Back Forest - Lot 2231 DP1034774 (under separate cover) [⇒](#)

Description of Development: Consent sought for the construction of a rural dwelling and change of use of an existing dwelling to a rural worker's dwelling.

Owner: Peter Harold Watts

Applicant: Andrew Gordon

Notification Dates: Between 8 August 2018 and 23 August 2018

No. of Submissions: Nil

Purpose / Reason for consideration by Council

On 13 November 2018, at an Ordinary Meeting of Council, it was resolved "That Council call in DA18/1815 - 270 Back Forest Road, Far Meadow, because of concerns received from the applicant" (MIN18.933).

Recommendation (Item to be determined under delegated authority)

That Development Application No.18/1815 being for the 'construction of a rural dwelling and change of use of an existing dwelling to a rural worker's dwelling' be refused in accordance with the reasons contained in attachment 1. Determination.

Options

1. Refuse the Development Application (DA) in accordance with the recommendation.

Implications: The applicant would have the ability to request a review of any refusal by Council and / or pursue an appeal through the NSW Land and Environment Court (L&EC).

2. Approve the DA.

Implications: Council would have to determine the grounds on which the DA is to be approved, that is, provide reasons to support the development, having regard to section 4.15 considerations. This would require a further report to Council attaching a suite of conditions.

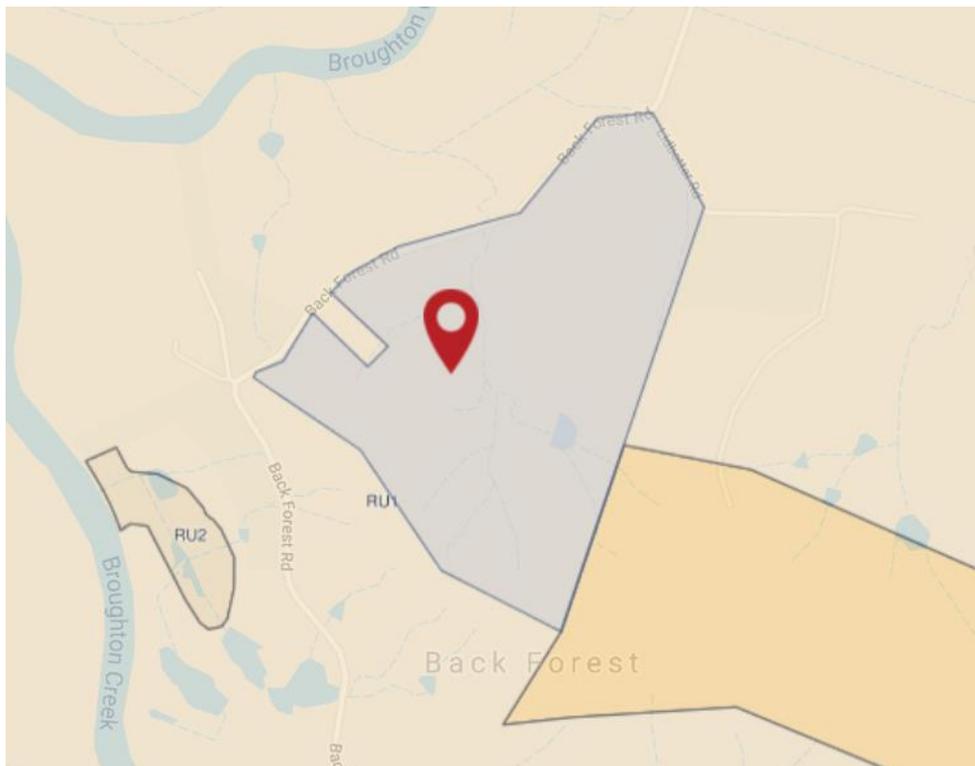
3. Alternative recommendation.

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

Figure 1 - Location Map



Figure 2 - Zoning Map



DE19.3

Background

Proposed Development

An application has been lodged with Council seeking consent for the construction of a rural dwelling and the change of use of an existing dwelling to a rural worker's dwelling. The proposed dwelling will contain the following features:

- 4 bedrooms, main with ensuite bathroom;
- Combined living/dining/kitchen;
- Laundry;
- Separate w.c. and main bathroom; and
- Timber deck.

Upon the completion of the new dwelling, and the issue of an Occupation Certificate, it is proposed that the existing 3 bedroom dwelling be used as a rural worker's dwelling. No physical works are proposed to facilitate the change of use.

Subject Land

The site is legally identified as Lot 2231 in DP1034774 and is known as 270 Back Forest Road, Back Forest.

The site is a large rural holding measuring approximately 51 hectares and having an RU1-Primary Production zoning. The site is bounded by Back Forest Road and Lidbetter Road, with vehicular access achieved from Back Forest Road. It is largely cleared of vegetation with only a minor portion of the site to the south containing vegetation forming part of a larger stand. **Figures 1 and 2** display the site and context in greater detail.

The site currently contains a 3 bedroom dwelling, hayshed, machinery shed, stockyards, fencing and a farm dam with a 9ML capacity.

The applicant has indicated that the site is currently utilised for beef cattle production and in the past has been utilised as a dairy farm.

Site & Context

The property is located within Back Forest. It is located approximately 6km from Bomaderry and approximately 5.5km from Shoalhaven Heads. It is located within a rural area typified by larger rural properties that are utilised for agricultural pursuits and smaller rural residential allotments known as 'concessional allotments'.

Figure 3 - Looking South from Back Forest Rd - Existing Dwelling House



DE19.3

Figure 4 - Looking South West along Back Forest Road - Dwelling Site



History

A rural subdivision SF7821 was lodged with Council on 18/7/94, seeking to excise a rural workers dwelling that previously benefitted a dairy farm. This was a State Environmental Planning Policy No.1 application (SEPP No.1), given the lot being created was less than the minimum permitted lot size, which included the following 'objection to standard' within the submission:

Minimum area requirement for creation of an allotment around an existing rural workers dwelling erected on land which is surplus to needs for agricultural pursuits. The excision of the allotment around the dwelling, from the main farm, will not adversely affect or diminish the agricultural potential or viability of the property.

At the time of assessment, the land was being utilised as outlined within the submission:

The fibro clad and weatherboard cottage on proposed lot 21 is not longer require [sic] in the management of the agricultural pursuit, beef cattle, undertaken on the farm. This dwelling ceased being used in conjunction with the agricultural pursuit when our clients retired from the dairying industry some 20 years ago.

More specifically about the nature of the agricultural use being undertaken on the land the submission noted:

The agricultural pursuit currently undertaken on the farm is for the grazing and fattening of beef cattle for sale as vealers and cows as required. Our clients currently carry some 120 head of cattle on the property which fluctuates according to market demand and weather conditions.

This subdivision relied upon a policy of Council adopted on 21 June 1994 for the use of SEPP No.1 for subdivision involving rural workers dwellings. Consent was granted by Council on 30 January 1995 subject to conditions.

After the approval, a letter was received by Council outlining that a further boundary adjustment was proposed. Council in response to the letter raised no objection to the boundary adjustment. In essence, this reduced the area of the lot that is now the subject of this Development Application even further than originally approved by Council.

It is acknowledged that, whilst a previous rural dwelling was approved and excised from the parent lot, this can only be taken to provide context with the current application and is not a planning consideration. The assessment of the current application must be made having regard to the current planning controls and circumstances.

Timeline of Events

The following provides details on pre-lodgement discussions and post-lodgement actions for context:

- There were no formal pre-lodgement discussions held with Council to discuss the proposed development.
- On 24 July 2018, Development Application No.18/1815 was lodged with Council.
- On 7 August 2018, additional information was requested by Council requesting a floor plan of the existing dwelling, a revised site plan and a more detailed assessment against clause 4.2F of the *Shoalhaven Local Environmental Plan 2014* (LEP).
- On 8 August 2018, the applicant submitted the requested floor plan and elevations for the existing dwelling.
- On 29 August 2018, the consultant acting for the applicant submitted a supplementary letter and revised site plan as requested by Council.

- On 8 October 2018, an email was sent to the applicant recommending that the application be withdrawn as it was unable to be supported in its current form. That the assessing officer would otherwise recommend that the application be determined by way of refusal.
- On 16 October 2018, a meeting was held at Council with the applicant and their consultants to discuss the concerns raised by Council.
- On 18 October 2018, the consultant acting for the applicant submitted two supplementary statements addressing Council's email dated 8 October 2018 and the outcome of the meeting.

Issues

Shoalhaven Local Environmental Plan 2014 - Clause 4.2F Erection of rural workers' dwellings in Zone RU1

Clause 4.2F was created to provide for adequate accommodation for employees of existing agricultural or rural industries within the RU1 Primary Production zone, as detailed within sub-clause 2.

Development consent must not be granted for a rural worker's dwelling unless the consent authority is satisfied of the following matters listed under sub-clause 3:

- (a) the development will be on the same lot as an existing lawfully erected dwelling house, and*

The applicant in their submission states that the 'proposed rural worker's dwelling will be sited on the same allotment as a lawfully erected dwelling' (i.e. the proposed new dwelling in this application).

Further to those comments, in a previous application (SF7821), which resulted in the creation of the subject lot, the existing dwelling was described as a 'brick cottage' which was occupied by Mrs M. Herne, being the wife of the original owner of the land at 1964. It was constructed some 80 years ago.

This clause is satisfied.

- (b) the development will not impair the use of the land for agriculture or rural industries, and*

It is proposed to change the use of an existing dwelling house to a rural worker's dwelling located towards Back Forest Road amongst a cluster of buildings.

This is an appropriate siting of the development and will not reduce the amount of land available for agricultural pursuits.

- (c) the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*

The applicant has outlined the existing agricultural use of the land comprises a beef cattle enterprise comprising the following:

- one black limousine bull;
- 30 cross bred cows (listed as Angus cows in the SEE);
- 30 young stock which are sold as weaners at nine months of age; and
- Opportunity grazing of steers in good seasons.

The Department of Agriculture uses a 5 class system to map rural land on the basis of its suitability for agriculture. The mapping shows that 95% of the property is prime agricultural land (class 3) with the remainder being class 4 land. Class 3 being defined as follows:

Class 3

Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic factors or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation, and soil conservation or drainage works may be required.

Utilising the class of the land the applicant has determined the agricultural capacity of the land via what is known as the carrying capacity. The applicant concluded that the land has a capacity of “about 40 cows and young stock”.

With regard to the economic capacity to support the ongoing employment of rural workers the following was noted in the applicant’s statement:

The sale of young stock from the breeding herd of 30 Angus cows, the opportunity grazing of steers and the sale of hay will be sufficient to pay the salary of the rural worker (who will also have the benefit of accommodation and motor vehicle provided by the landowner).

A beef cattle gross margin budget for coastal weaners on improved pastures is attached as Appendix A. This shows a predicted gross margin of \$19,650.00 for a 30 cow herd (i.e. 30 x \$655.00). However, it does not include the additional income from buying and selling steers and sale of silage. The property is categorised Farmland for rating purposes by Shoalhaven City Council. Mr Watts has Primary Producer status with the Australian Taxation Office.

In a supplementary statement to Council dated 17 October 2018, prepared by Cowman Stoddart, the following revised figures were provided based on the historic carrying capacity of the site gleaned from a previous subdivision application (SF7821):

The current area of 51.68 ha can carry 88 head... The predicted gross margin of \$19,650 for the 61 head (30 cow herd) can be extrapolated to \$28,350 for 88 head.

The economic information provided by the applicant for a herd of 30 Angus cows is not entirely convincing, that is, demonstrating economic capacity to support the ongoing employment of a rural worker(s).

The following three agricultural activities were identified in a supplementary statement as missed opportunities that could be undertaken with the benefit of a rural worker living on site:

1. *It is common practice for graziers to buy “store cattle” and grow them out/fatten them if they have excess pasture. Mr Watts does not do this due to the extra work it entails.*
2. *Mr Watts no longer owns hay making equipment and uses contractors for hay making. This reduces the profit from hay and doesn’t allow flexibility in hay making, i.e. it has to be cut, raked and baled when it suits the contractor.*
3. *The large farm dam has capacity of 9 ML. While the water is reticulated to cattle troughs there is also sufficient volume for a travelling irrigator to irrigate pastures during dry seasonal conditions. This will allow weaner cattle to be turned off in peak production. Mr Watts is not able to do this due to his age so it is an opportunity missed.*

All three activities described above will increase turnover and the agricultural productivity of the property. They are hard to quantify which is why the only gross margin supplied was for the current weaner enterprise. There are other opportunistic activities which present themselves from time to time that the current operator is not able to avail himself of. However, notwithstanding this, it is clear that the site has a demonstrable history of viable primary production. The ability to employ a rural worker onsite is necessary to enable the proper use of the property and which will make more effective use of the site’s primary production resources and capabilities. In addition, it is essential for the manager

to live on-site to supervise calving. Consequently, it is considered that past economic capacity bears no reflection on the site's economic capacity or that will be achieved upon implementation of the proposal.

The points raised by the applicant regarding the missed economic opportunities of the land are noted. In this regard, there appear to be 'future opportunities' to enhance agricultural pursuits.

The wording of the sub-clause refers to an agricultural activity being undertaken on the land and **demonstrated** economic capacity (emphasis added) to support the ongoing employment of rural workers. To satisfy the sub-clause the agricultural activity, it appears that it must be an existing use of the land and not a future or potential use as permitted under the relevant instrument. In this regard, some guidance is taken from a court case which is referred to below.

As outlined by the applicant, the economic opportunities presented by the site are not currently undertaken for various reasons. Those missed opportunities would require potentially substantial investment in agricultural equipment and may not eventuate with the provision of a rural worker's dwelling. This is currently a hypothetical scenario and justifiably questions the economic capacity of the existing agricultural use to support the ongoing employment of rural workers.

The applicant submitted a supplementary statement, prepared by Cowman Stoddart dated 18 October 2018, refuting Council's interpretation of the clause, providing the following commentary:

'Capacity', as defined by the Oxford dictionary is "the amount that something can produce".¹ Having regard to current circumstances, the capacity relates to what agricultural products and yield the property can produce, and not the current production levels of the property. There is the potential, as is the case here, where a property has spare capacity to yield more agricultural produce. Examples of this could include an activity that does not currently use all available land, or alternatively, a site where management practices do not properly utilise the full capacity of the site. This is the case with respect to this matter where current activities:-

- *involve minimal pasture improvement and no irrigation being undertaken (despite being available),*
- *rather than increasing the breeding herd, cattle grazing and fattening is undertaken in conjunction with breeding (thereby reducing profit margins),*
- *limited access to machinery means no hay making is undertaken (lost economic opportunity), and*
- *other opportunities that arise from time to time are not currently being undertaken.*

This is clearly evident in that past practices have resulted in a carrying capacity of 88 head, as opposed to the 61 head being currently farmed at the site.

Enhancing management at the site and undertaking these opportunities would clearly increase production and returns at the site, and therefore, it is clear that the site has additional capacity. Consequently, it is entirely appropriate, and accords with the requirements of Clause 4.2F (3)(c) to consider the capacity of the site, and not wrongly restrict considerations to current activities.

Commissioner Morris in *Maschewski v Murray Shire Council* [2015] NSWLEC 1251 heard an appeal for the use of an existing building as a rural worker's dwelling.

In the applicant's submission, the existing use of the land and proposed use of the land were described as follows:

In relation to the nature of the livestock currently on the property, I confirm that all 6 cattle currently on the property were purchased by us to fatten up for commercial sale.

Michael Wright has ample feed at present therefore agistment is not required at this moment.

In relation to any proposal we have for future crops. Approximately 7 years ago we had all the paddocks laser levelled by a local contractor for flood irrigation. The purpose of this being (our 10 year plan) to plant and grow lucerne. Our future proposal, all going well, is to crop 3 out of our 4 paddocks within the next 2 to 3 years and grow the best lucerne in town.

With regard to the future use of the land the Court found that:

*'Any **hypothetical or planned future use of the site**... is not relevant to determination of this issue'.*

Observing this conclusion, there is reasonable element of doubt as to whether Council is able to consider a 'future use' of the site, rather it is limited in its scope to the existing use of the land.

(d) the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.

The applicant in their original statement provided the following commentary regarding the necessity of the rural worker's dwelling:

The landowner, Mr Watts, is elderly and needs the assistance of a rural worker for the property to be operated at peak production, especially hay production and intensive stock management.

In the appeal heard by C. Morris in *Maschewski v Murray Shire Council* [2015] NSWLEC 1251 the issue of the development being necessary was considered with the following pertinent finding:

*It is the applicant's submission that the rural worker's dwelling is necessary because the owner of the land does not reside at the property. I do not accept this proposition. The test is **not about the personal circumstances of the applicant** (emphasis added). It is to consider whether the development is necessary because the nature of the agricultural and rural industry land use lawfully occurring on the land.*

In considering whether it is satisfied as to the necessity of the rural worker's dwelling, the consent authority is strongly guided in regard to the personal circumstances of the applicant, in this instance being the age and ability of the owner of the land.

In a further statement prepared by Cowman Stoddart dated 18 October 2018, the necessity of the rural worker's dwelling is elaborated upon as follows:

- *ensure that a skilled worker is on hand at all times to attend to a crisis, such as cattle getting through fences,*
- *ensuring that a skilled worker is on hand at all times when cattle are calving. This often occurs at irregular hours where external support is not readily available,*
- *attending to cattle which are sick or injured and require attention. This is irregular work requiring on site support,*
- *undertake regular care and maintenance of cattle, including drenching, checking for scours, pink eye (infectious disease) and those that are lame,*
- *property biosecurity,*
- *provide stock security,*
- *regular general site maintenance including maintenance of vehicular access,*
- *regular rotation of livestock,*

- *weed eradication, requiring regular monitoring and often including manual removal of Fireweed and Parramatta Grass,*
- *regular tractor and machinery maintenance, plus repair on an as needs basis,*
- *daily inspection and maintenance of reticulated water supply feeding various cattle troughs throughout the property,*
- *regular maintenance of paddock fencing, including daily inspection and repairs as necessary of 15 km of fencing,*
- *monitor and repair electric fencing, and*
- *reconfiguration of fencing to implement 'cell grazing' techniques.*

Without the employment of a rural worker, the current agricultural activity will not be properly undertaken with the result being that the site will be predominantly used for rural lifestyle purposes. Under that circumstance, the property will not be utilised to its capacity. This will be at odds with the provisions of the Shoalhaven LEP and RU1 Primary Production zone which seeks to encourage sustainable primary industry production, amongst other things.

It is considered that the provisions of subclause d) are met having regard to the current application.

Further to the matters raised in the supplementary statement the following is noted:

- English bred cattle have an approximate gestation period of 283 days. A review of various sources suggests that calving and rebreeding ideally occur within an 85-day window. Using this as a guide the existing 30 cross bred cows could conceivably produce 30 calves within a calendar year, noting that this is an approximation and subject to a number of variables including, however not limited to, the health and nutrition of the cattle.
- Primefact 627 developed by NSW Department of Primary Industry, dated May 2007, indicates that the joining period for cattle is up to 12 weeks (Victoria Agriculture suggests 9 to 12 weeks). This spread results in calving at certain times of the year, although it is acknowledged that there are greater duties associated with cows during the pregnancy to ensure their health and wellbeing.
- Comments regarding property biosecurity are assumed to relate to say the maintenance of the health of the cattle within the property, ensuring boundary fences are maintained / in place, manage the movement of people, equipment and vehicles, etc. (National Farm Biosecurity Manual prepared by Animal Health Australia– April 2018).
- General maintenance has been listed by the applicant that would be required for a rural property whether or not an agricultural activity was being undertaken on the land including general site maintenance (vehicular access), weed eradication, machinery maintenance and repair, regular maintenance and repairs of fencing (electric or otherwise), albeit not to the extent necessary for an agricultural activity of this scale.
- The applicant rightly points out that the site is neither remote or isolated and as such the clause cannot be satisfied by these means.

A significant portion of the matters outlined in the supplementary statement relate to the ordinary maintenance of the rural land and not the agricultural use occurring on the land, being the breeding and rearing of cattle. These maintenance activities appear to be required by the owner of the land regardless of whether there is an agricultural activity or rural industry occurring on the land.

The work to be undertaken by the rural worker that is of relevance to the existing agricultural use would include the caring for cows during the calving period, which is seasonal by nature

and expected to occur during a maximum 12-week period. Based on the current capacity it is expected that the herd would generate a maximum of 30 calves per annum. This is not such a substantial use that it would require dedicated accommodation for a rural worker, particularly by way of a three (3) bedroom dwelling.

The supplementary statement indicates that:

'Without the employment of a rural worker, the current agricultural activity will not be properly undertaken... that the site will be predominantly used for rural lifestyle purposes'.

Currently the agricultural use of the land is being undertaken successfully without a rural worker's dwelling. The owner of the land is able to employ a rural worker to improve upon the capacity of the land for agricultural pursuits albeit without the provision of separate residential accommodation. Insufficient information has been submitted by the applicant to ascertain whether they have explored legitimate alternatives including offering of employment contracts noting also that there are towns and villages nearby which could provide accessible labour as well as farm equipment, machinery, specialised feed and product etc.

The information submitted by the applicant does not appear to satisfy the test that the rural worker's dwelling is necessary for the existing agricultural use occurring on the land.

Shoalhaven Local Environmental Plan 2014 – Objectives of the Zone

The subject land is zoned RU1 Primary Production under the LEP, with the following stated objectives:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To conserve and maintain productive prime crop and pasture land.*
- *To conserve and maintain the economic potential of the land within this zone for extractive industries.*

Under clause 2.3 of the LEP when considering a development application, the consent authority must have regard for the objectives of the zone. The applicant (in the original submission) provided the following commentary regarding the zone objectives:

- *The proposal encourages primary production by enabling the employment of persons to work in agricultural activities undertaken at the site. This is further discussed in Section 5.3.4;*
- *The siting of the proposed dwelling enables surveillance of the site and agricultural activities that are undertaken;*
- *The proposed dwelling is sited in such a manner that it will not conflict with agricultural activities undertaken at the site or on adjoining properties;*
- *The proposal does not adversely affect the productivity of prime crop and pasture lands, and on the contrary will enable these lands to be used in a more productive manner;*
- *The proposal will not have any adverse impacts on biodiversity values within the subject site or surrounding locality;*

- *The proposal does not impact on the rural landscape. The proposed new dwelling is located so that it will not be overtly prominent from surrounding properties or within the broader landscape;*
- *The proposal is consistent with the requirements of the Shoalhaven LEP 2014 and Shoalhaven DCP.*

In the supplementary statement dated 18 October 2018 Cowman Stoddart made the following additional observations regarding the zone objectives:

Whilst it is noted that Shoalhaven LEP 2014 includes separate provisions applying to rural workers dwellings (Clause 4.2F), it is considered that Council should assess such applications mindful of the definition and its intent, along with the objectives of the RU1 Zone underpinning planning in the locality, and in a beneficial and facultative manner.

It is also worth noting that the subdivision provisions of the Shoalhaven LEP 2014 are such that the existence of a rural workers dwelling will not justify further subdivision of a property. This previously was a legitimate concern that may have undermined the planning and subdivision provisions relating to rural land, however it has no basis for concern under the current requirements.

With regards to the zone objectives and the comments made in the applicant's submission, it is considered that the proposed development is not entirely consistent with the objectives of the zone. The rural worker's dwelling is not necessary for the existing agricultural use being undertaken on the land as outlined in the above assessment against clause 4.2F of the LEP. The lack of dedicated accommodation for a rural worker does not necessarily prevent the employment of a rural worker on the site, noting, as mentioned earlier, the relatively easy access to towns and villages which could provide employment and other services to assist with farm operations and management.

With respect to the location of the proposal, all existing structures are clustered around the entrance to the site optimising the amount of land that can be utilised for primary production purposes consistent with rural planning practice. The proposed dwelling house is however to be located more 'central' to the site with the requirement for effluent disposal areas, potentially future ancillary structures (i.e. garage, carport, shed), particularly given the distance from the proposed dwelling house to existing ancillary structures, and the existing driveway all reduce the potential of the site to be maintained for primary production purposes, leading to arguably, potential fragmentation of the rural land.

Planning Assessment

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Please refer to Attachment 2. Planning Report.

Consultation and Community Engagement:

No public submissions were received in relation to Council's notification of the development.

The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 100m buffer of the site.

Policy Implications

There are no specific policy implications that arise from this matter should the recommendation be adopted.

Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending any appeal in the Land and Environment Court, should the applicant utilise their appeal rights.

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. In the event that such a review is ultimately pursued (if the recommendation is adopted) the matter would be put to Council for consideration. Alternatively, an applicant for development consent who is dissatisfied with the determination of the application by the Council may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

Summary and Conclusion

- The proposal is considered to be inconsistent with *Shoalhaven Local Environmental Plan 2014* with particular regard for clause 4.2F and the objectives of the zone; and
- The rural worker's dwelling is not considered necessary for the existing (and future) agricultural use of the land. There are alternatives available to the applicant for the employment of a rural worker that does not necessitate a dedicated dwelling.

Having regard to the above, the above, the proposal is not considered supportable and refusal is recommended.



Bridge Rd, Nowra NSW 2541 02 4429 3111
Deering St, Ulladulla NSW 2539 02 4429 8999

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

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
BY WAY OF REFUSAL**
Environmental Planning and Assessment Act, 1979
DA18/1815

TO:

Andrew Gordon
270 Back Forest Road
Back Forest NSW 2535

being the applicant(s) for DA18/1815 relating to:

270 Back Forest Rd, BACK FOREST - Lot 2231 - DP 1034774

REFUSED USE AND OR DEVELOPMENT:

Construction of a rural dwelling and change of use of an existing dwelling to a rural worker's dwelling

DETERMINATION DATE: TBA

REFUSAL DATE: TBA

Pursuant to Section 4.18 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the reasons as outlined in Part A:

DE19.3 - Attachment 1



Determination by way of Refusal - Page 2 of 2 - DA18/1815

**PART A
REASONS FOR REFUSAL**

1. The information submitted with the development application does not satisfy the objectives of the RU1 Primary Production zone, which Council must have regard for under Clause 2.3(2) of the *Shoalhaven Local Environmental Plan 2014*. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*)
2. The information submitted with the development application does not satisfy clause 4.2F(3), which Council must be satisfied of when granting development consent to an application for a rural worker's dwelling under *Shoalhaven Local Environmental Plan 2014*. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*)
3. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed development. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*)
4. Having regard to the inconsistency with the objectives of the zone and clause 4.2F(3) under *Shoalhaven Local Environmental Plan 2014*, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*)

**PART B
ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL**

Development Determination under Environmental Planning and Assessment Act, 1979

Under Division 8.2 – Reviews of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a Complying Development Certificate, Designated Development or Crown development. The request must be made **within three (3) months** of the date of the receipt of the determination to allow Council time to undertake the review within the prescribed period of six (6) months and be accompanied by the prescribed fee.

Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act, 1979 confer on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within 6 months after the applicant has been notified of the decision. An appeal under Division 8.3 of the Environmental Planning and Assessment Act 1979 by an objector may be made only within 28 days after the date the objector is notified of the decision.

**PART C
GENERAL ADVICE TO APPLICANT**

Privacy Notification

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the *Government Information (Public Access) Act 2009* (GIPAA).

DE19.4 Tallimba Subdivision

HPERM Ref: D19/9100

Group: Planning Environment & Development Group

Section: Development Services

Purpose / Summary

This report is presented to Council for information following recent meetings with residents of the Tallimba subdivision. The report is intended to outline and explain the processes triggered by the Biodiversity Conservation Act 2016 (BC Act).

Recommendation (Item to be determined under delegated authority)

That the Committee note the next steps for owners with regards to biodiversity assessment presented in the report and as outlined at the meeting with residents on 9 January 2019.

Options

1. Receive the report for information.

Implications: Nil.

2. Make an alternative resolution and advise staff accordingly.

Background

The original Subdivision Development Application (DA) was determined by partial approval on 16 May 2013 prior to the commencement of the *NSW Biodiversity Conservation Act 2016* (BC Act) and was modified on two occasions, February 2014 and again in March 2015. The consent approved (SF9821 as modified) 39 lots, a conservation lot with building area, a public reserve and road reserves with a 'development lot'.

Condition 7 of the consent provides for an Environmental Management Plan (EMP) to be submitted and approved by Council and the NSW Office of Environment & Heritage (OEH). The EMP provides for the lot owners to undertake clearing as described in the EMP. That clearing must comply with the EMP and the consent conditions including the concurrence provisions issued by the Office of Environment and Heritage (OEH), which were required by the provisions of the then applicable *NSW Threatened Species Conservation Act 1995*.

The BC Act commenced on 25 February 2018. The provisions of this Act, and the Biodiversity Offset Scheme (BOS), do not apply to the native vegetation clearing that has been and can be undertaken pursuant to the original subdivision consent. Any new development, including the erection of a dwelling on the allotments, is not covered under prior approvals and will need to be assessed to ascertain if the BOS is triggered.

On 9 January 2019 a meeting was held involving a number of residents of the estate, Council staff and Gareth Ward MP, with the meeting chaired by Councillor Wells. The purpose of the meeting was to explain the assessment framework noting that all new developments involving clearing, as defined under the *NSW Local Land Services Act 2013*, of 0.25ha or more on lots with a minimum lot size of 0.4ha will trigger entry into the BOS.

The residents have been concerned and aggrieved considering the costs associated with the development of their lots due to credits calculated via the required Biodiversity Development Assessment Report (BDAR) which outlines the offsets and credit requirements of the BOS.

Residents have been concerned they are being treated inequitably, noting that there are other houses in the estate that did not require assessment under Biodiversity provisions and as such did not generate biodiversity credits. This is due to the change in legislation as highlighted above and the associated introduction of the BOS.

More information about the BOS can be found on the NSW Government website at <https://www.landmanagement.nsw.gov.au/biodiversity-offsets-scheme/>

Community Engagement

Council staff have met with residents on two occasions: first in late December 2018 and again on 9 January 2019.

At the second meeting staff advised that owners are entitled to clear vegetation as approved by the EMP. However, certain trees must be retained as per the plans in the EMP, the development consent and concurrence requirements from the State Government. This includes 'clumps' of trees in APZs, feed trees, trees over 200mm measured at chest height and trees nominated on the tree retention /removal plan referred to in the EMP.

Considering this permitted clearing, any BDAR assessment made thereafter may potentially reduce the offset obligations and credits payable by owners.

Staff have agreed to assist residents by identifying trees to be retained and be available to engage with any contractor to ensure that the work is consistent with the approval, therefore ensuring no potential compliance issues.

At the meeting of 9 January 2019, there was also discussion about potential exemptions. There are no exemptions under the legislation, there is however scope for development applicants to seek a reduction in offset credits once they have lodged their development application and completed the BDAR. Any reduction in credits requires concurrence from OEH. The assessment framework is discussed below.

Biodiversity Assessment

The next steps for owners with regards to biodiversity assessment, as outlined at the meeting of 9 January 2019, are:

1. Owners to sign and return a letter granting Council permission to enter their land to identify, measure and mark vegetation that has been approved to be modified under the subdivision consent. Owners can arrange with Council officers to meet on site. (A permission to enter form and Council's contact details were emailed to those that attended the meeting on 9 January on the evening of 9 January.) Site inspections have commenced.
2. Following the inspections with Property Owners and Council, Council issues orders specific to each lot taking into account requirements of the EMP for owners to maintain their lots to a NSW Rural Fire Services Planning for Bushfire Protection 2006 (PBP) Asset Protection Zone (APZ) standard.
3. Lot owners then engage contractors to carry out vegetation modification works on their land in accordance with the EMP and marked by Council officers. Council officers are available to supervise works to ensure no compliance issues. Owners were advised then to maintain their lot in this condition as per the specific order to their lot, as many are not ready to lodge their Development Application (DA) yet.
4. Lots are then in a condition whereby a BDAR can be produced and submitted with a DA (for each lot where "clearing" of the remaining vegetation is proposed more than the 0.25ha). Note: "credit totals" (and hence payment to retire the credits) cannot be predicted but having the native vegetation at an PBP APZ standard will likely significantly reduce its value for the calculation of credits.

5. If the BDAR calculates an offset obligation (in biodiversity “credits”) for the remaining residual impacts, the lot owner can submit with the DA and BDAR a justification, having regard to the environmental, social and economic impacts of the proposed development, under the provisions of s7.13(4) of the BC Act as to why a reduction in credits should be approved. Concurrence and approval for a reduction in credits must be obtained from OEH in accordance with s7.12 of the Act prior to determination of the DA.

Financial Implications

Council resources and time are required to assist residents; this may impact on other projects and work within the Group.

Council officers undertook an assessment of one property on 10 January 2019. It is estimated that the assessments will take 1-1.5 hours for each remaining undeveloped lot.

On 12 January 2019, staff undertook further assessments of 8 properties. Notices and Orders will be issued to owners – to comply with the previous DA (subdivision consent) to have these premises hazard reduced in line with the APZs and EMP.

Conclusion

The commencement of the BC Act has impacted on the owners of the estate via the imposition of credits where the clearing threshold has been reached. Council however has reviewed the subdivision consent and found that there is scope to reduce the potential credits via authorised clearing permitted via the consent.

DE19.5 Review of the Lake Conjola Interim Entrance Management Policy and the Citywide Dredging Feasibility Study - Conjola Estuary

HPERM Ref: D19/10756

Group:

Section: Environmental Services

Purpose / Summary

The purpose of this report is to seek commitment from the Committee to undertake a review of the Lake Conjola Interim Entrance Management Policy (August 2013) and allocate budget and resources to the review.

Recommendation

That Council:

1. Commit to an operational and strategic review of the Lake Conjola Interim Entrance Management Plan;
2. Approach the State Government for assistance in funding the review through the 2019/20 NSW Floodplain Management Grants or Floodplain Grants Scheme or Coastal and Estuary Grant Program and any other available funding opportunities;
3. Seek a further report following the round-table discussion planned for early in the new year with The Hon. Shelley Hancock MP, the Mayor, Councillors, community representatives, government agencies and relevant Council officers, to confirm the scope of the review;
4. Allocate a budget of \$150,000 in the 2019-2020 Budget for the strategic review and community consultation; and
5. Continue water quality monitoring program at the seven (7) sites being monitored with Lake Conjola, noting that this sampling program is outside Council's current operations budget.

Options

1. As recommended.

Implications: No funding or resources have been allocated for the review. The current EMP is due for review. Current entrance opening trigger levels are governed by inundation of public and private properties and lake levels required for an efficient scouring of the entrance. However, the management and maintenance of planned entrance openings in the current policy requires improvements from an operational and maintenance perspective. The terms of reference for a review of the dredging feasibility study at Lake Conjola will need to be supported by NSW OEH Coast and Estuary Division and be compatible with the current NSW Coastal Management Act 2016. There is opportunity to undertake a strategic review of the EMP as part of the development of Council's Coastal Management Program.

2. The Committee retain the current Lake Conjola Interim Entrance Management Policy (August 2013) (EMP) in its current form and only conduct an operational review of the

EMP. Council not continue with weekly water quality monitoring within the Lake at all additional sites.

Implications: The EMP is due for review and Council gave commitment to review the EMP at the December 2018 round-table meeting. In addition, the policy is based on superseded legislation and requires an update. The EMP requires Council to monitor water quality on a weekly basis at 3 locations within the lake during periods when the entrance is closed. Due to community concerns raised, additional sites have been added to the monitoring program. Council's current operational budget does not allow for this cost which is approximately \$1400 in laboratory costs and does not include staff time and resources.

3. The Committee could choose to provide an alternative recommendation for consideration by Council.

Implications: Unknown.

Background

Council manages Lake Conjola in accordance with the Lake Conjola Interim Management Policy (August 2013) (EMP), which was adopted by Council and the State Government in 2013, following extensive community consultation. The policy outlines the circumstances under which Shoalhaven City Council is to artificially open the lake. The aims of the policy are as follows:

- Minimise risk to public safety associated with excessive inundation of foreshores and associated infrastructure because of low level flooding;
- Minimise interference with natural entrance opening processes and minimise associated impacts on ecological processes;
- Minimise risks to public health associated with water quality;
- Minimise impacts on the lake's ecology;
- Minimise impacts on the community's social values;
- Outline the procedures to be initiated for entrance operations, including entrance breakouts;
- Outline the key responsibilities for management of the entrance; and
- Detail the procedures for monitoring the lake entrance. (GHD, 2013)

This policy has been developed in consultation with the relevant NSW Government Authorities, Shoalhaven City Council, consultants and the Lake Conjola community. The Policy was adopted by Council on 24 September 2013.

Council recently proceeded with a planned opening under the provisions of the policy, based on that fact that an emergency opening would have been difficult with the volume of accumulated sand at the entrance, potentially significant weather/rainfall events which were forecast and the approaching Christmas holiday period. A pilot channel was constructed, and the lake opened to Tasman Sea on 21 December 2018. Council commenced further maintenance works of the pilot channel under the planning provisions of the policy due to further forecast rain and thunderstorms.

Council officers, senior Council officers and Group Director of Assets and Works conducted a debrief and review of this opening. The Acting General Manager and Group Director of Planning, Environment & Development reviewed the finding of this process. The main findings are:

- Council has been surveying the entrance spit since the lake closure in April 2018;
- Council routinely monitors lake levels as well as rainfall and forecast rainfall and weather using the Bureau of Meteorology;
- At the time of closure, the Lake was 0.55m AHD;
- A rainfall event on 28 and 29 November 2018 from an East Coast Low (ECL) raised the level from 0.46 to 0.76m AHD (300mm increase);
- Another rainfall event and storm cell in the upper catchment on 15 December 2018 raised the lake level to 0.95m AHD (190mm increase);
- Water quality monitoring commenced following the entrance closure and this showed that the lake was still suitable for swimming in accordance with NHMRC Guidelines and has continued to be;
- Site surveys around the lake showed evidence of low level nuisance flooding and impact on infrastructure around the lake foreshore;
- The increase in the lake level above 0.9m AHD triggered the pilot channel and planned opening response under the provisions of section 4 of the EMP;
- Approval from Government agencies was sought to open the pilot channel due to the peak summer holiday season and the amount of people that would potentially be impacted by low level nuisance flooding and the forecast weather conditions. Moderate to heavy rainfall and storms were forecast in the catchment, meaning the lake could rise quickly if this rainfall did eventuate. The construction of a pilot channel would mean that in the event the of an emergency opening the Lake could be opened much more quickly. The timing of this event meant that it was only a few days before Christmas when Lake Conjola village would fill with holiday makers and Council offices and depots would shut down for the Christmas–New Year period;
- Once necessary approvals were obtained Council commenced construction of the pilot channel;
- The time limitations on constructing the pilot channel meant that sand removed from the channel could not be moved to the approved northern stockpile site; and
- The pilot channel location and site management were carried out in accordance with the plan;
- The pilot channel was constructed to at least 10m wide and 0.0m AHD where practical on site (the channel needed to be realigned slightly due to rock) and time limitations; and
- The plug was removed from the pilot channel on 21 December; however the opening was not sustained. An inspection on 22 December 2018 and data on lake levels did not indicate any tidal exchange. The opening had filled back in slightly on the ocean side. On the following Monday 24 December 2018 with the spring tides there was overtopping and the lake level increased to 0.97m but resided again late in the afternoon. However, the opening was not sustained.

In summary, the review found that Council acted under the provisions of the EMP accordingly and sought the necessary approvals to respond

The opening event was recorded and data will be used to inform the review of the EMP.

The Lake Conjola Community Association, Councillors and the community members have raised concerns regarding the current adopted policy, thus requesting a review of the policy. Council officers have conducted a preliminary review of the policy and found that:

- Clearer distinction between a planned opening and emergency opening is required;

- Additional information and guidance is required for a planned opening;
- Roles and responsibilities need better clarification; and
- Changes in legislation need to be reflected.

It is not anticipated that changes to trigger levels are likely given that no significant changes within the catchment have occurred over the five years since the policy was adopted. Several of the villages bordering Lake Conjola are low lying and the land susceptible to inundation if the levels in the lake exceed approximately 1m AHD, with twelve (12) properties affected by above floor flooding at 1.2m AHD (GHD, 2013). From a hydraulics perspective, to achieve a more efficient scour resulting in a prolonged opening, a lake level exceeding 1.2 m AHD is necessary together with sustained rainfall over the catchment.

The NSW Office of Environment and Heritage (OEH) have advised that any entrance management regime and EMP review needs to be assessed under the new NSW coastal management framework being the NSW Coastal Management Act, Coastal Management State Environmental Planning Policy and Coastal Management Manual, and assessed and developed as part of a Coastal Management Program that considers coastal processes, environmental impacts and floodplain risk management studies and plans.

It is therefore recommended that Council conduct an operational review of the policy as described above and that a strategic review of the EMP be carried out as part of the development of Council's Coastal Management Program (CMP). The Scoping Study, the first stage in the process of preparing a CMP, is currently being undertaken and a draft due for completion in April 2019. Lake Conjola has been included as part of the Scoping Study. The aim of the Scoping Study is to review existing data and identify knowledge gaps, key issues, complete a first pass risk assessment to identify priority threats and hazards, and develop a stakeholder and community engagement strategy.

Council is currently conducting a review of the Lake Tabourie Entrance Management Policy (EMP) following the Lake Tabourie Floodplain Risk Management Study and Plan. This project was commenced prior to the commencement of the new NSW coastal management framework. The cost of this project to date is \$70,000 (excluding the review of environmental factors). Therefore, it is estimated that a strategic review of the Lake Conjola Interim EMP in accordance with the NSW coastal management framework, including community consultation, will cost \$150,000. A budget bid has been prepared for Council's consideration in the 2019/20 operational budget.

A second round-table meeting with Hon. Shelley Hancock MP, the Mayor, Councillors, community representatives, Council officers and NSW Government agency officers is due to be held early in the new year to discuss the review of the EMP. The outcomes from this meeting can inform the CMP Scoping Study in relation to Lake Conjola and a strategic review of the EMP.

The current EMP requires Council conduct a water quality monitoring program during periods when the Lake Conjola entrance is closed at 3 locations. The monitoring program has been increased to several sites to respond to community concerns about water quality. Water quality results have shown that the Lake is suitable for swimming in accordance with National Health and Medical Research Council Guidelines. The laboratory analysis cost of the water samples is approximately \$1400 per month and exceeds Council's water quality monitoring operational budget. This cost does not include staff time and resources.

Results of the monitoring are reported on Council's website at

<https://www.shoalhaven.nsw.gov.au/Environment/Coastline-and-waterways/Beachwatch>

and on Council water quality data portal Aquadata

<https://www.shoalhaven.nsw.gov.au/Environment/Aqua-Data>

Community Engagement

Considering the concerns that have been raised by the community during the peak summer holiday period a round-table discussion, hosted by The Hon. Shelley Hancock MP was held in December 2018 and attended by the Mayor, Councillors, community representatives, Council officers and officers from NSW OEH, Department of Primary Industries (Fisheries) and other NSW agencies.

A second round-table meeting is due to be held early in the new year.

Lake Conjola is included in the Scoping Study for Council's Coastal Management Program, which will include the development of a stakeholder and community engagement strategy.

Extensive community and stakeholder consultation was undertaken in developing the current EMP. If Council chooses to proceed with the review of the policy, notifications via electronic media to inform residents and ratepayers within the Lake Conjola catchment will be undertaken. Furthermore, community meetings and drop in sessions would typically be conducted throughout the review process.

Policy Implications

The current Lake Conjola Interim Entrance Management Policy (August 2013) (EMP) is in place until such time that an updated policy is adopted by Council. The current NSW Government policy for entrance management Intermittently Closed and Open Lakes and Lagoons (ICOLLS) is as far as possible, to allow ICOLL entrances to return to their natural processes.

Any review of the EMP must comply with the NSW Coastal Management Act, Coastal Management State Environmental Planning Policy and Coastal Management Manual.

Financial Implications

No funds or resources have been allocated for this review. A review of the Lake Conjola Interim Entrance Management Policy (August 2013) is estimated to cost \$150,000. This estimate includes an appointment of a project officer/facilitator to manage the review and consultancy fees. This cost has been based on the review of the Lake Tabourie Entrance Policy currently underway, and the extensive community consultation that would be required for Lake Conjola.

A review of the policy is estimated to take more than 12 months.

Risk Implications

The policy review will need to consider environmental, economic and social risk implications of managing the lake entrance.

Current Position

Following the installation of the original pilot channel prior to Christmas, further works have been carried out during the early part of January to ensure the channel complies with the operational plan adopted as part of the EMP and to transfer excavated sand to the nominated spoil storage area to the north of the excavated channel. This work has ensured that a pilot channel is in place in case of significant rainfall events within the catchment and also ensure a pilot channel will be easier to install in the future due to the removal/relocation of sand from the channel area. Lake water level, weather and tidal conditions have been closely monitored during this time to ensure a planned opening may take place if

circumstances warrant. At the time of preparation of this report, lake level was approximately 0.9m AHD, which is roughly equivalent to the expected highest tide within the next week, and this level has fallen over recent days due to the hot weather. This level is expected to continue to decrease having regard to weather forecasts for warm/hot conditions and no significant rainfall.

During the above period, Council's Mayor, Deputy Mayor, members of the Conjola Community Association and Council staff have been involved in discussions regarding a possible planned opening of the Lake. At a meeting of all parties on Wednesday 16 January it was agreed that existing "plugs" within the pilot channel would be modified to achieve a height and width that would facilitate quick release of lakewater in the event of the lake level rising. Any further action was not deemed appropriate at this time having regard to the very low potential for there to be any meaningful ocean inflow into the Lake and potential for adverse environmental conditions if Lake levels were to drop significantly.

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.