

Development & Environment Committee

Meeting Date: Tuesday, 02 July, 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**
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3. **Declarations of Interest**
4. **Call Over of the Business Paper**
5. **Mayoral Minute**
6. **Deputations and Presentations**
7. **Notices of Motion / Questions on Notice**

Nil
8. **Reports**
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9. 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 & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 4 June 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Amanda Findley
Clr Joanna Gash - Chairperson
Clr Patricia White – arrived 5.01pm
Clr John Wells
Clr John Levett
Clr Annette Alldrick
Clr Kaye Gartner
Clr Andrew Guile – arrived 5.07pm
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Acting General Manager

Apologies / Leave of Absence

An apology was received from Clr Digiglio.

Confirmation of the Minutes

Note: Clr White arrived at 5.01pm

RESOLVED (Clr Findley / Clr Pakes)

MIN19.366

That the Minutes of the Development & Environment Committee held on Tuesday 07 May 2019 be confirmed.

CARRIED

Declarations of Interest

Nil

Call Over of the Business Paper**RESOLVED** (Clr Gartner / Clr Alldrick)

MIN19.367

That no call over of the agenda be carried out and all items be dealt with individually.

CARRIED

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS**DE19.40 - Development Application – 17 Hawke Street & 22 Currumbene Street, Huskisson - Lot 7 & 8 DP 758530 Sec 3E - Relocation of the former church on the subject site and demolition of the existing associated hall and shed (page 15)**

Mr George Brown, representing the Save Husky Church group, addressed the meeting and spoke against the recommendation.

Note: Clr Guile arrived at 5.07pm

Mr Stephen Bartlett addressed the meeting and spoke for the recommendation

DE19.48 - Jerberra and Verons Estates - Biodiversity Assessment - Clause 34A Certification (page 110)

Ms Mary-Jean Lewis, representing Jerberra Committee land owners, addressed the meeting and spoke for the recommendation.

Procedural Motion - Bring Item Forward**RESOLVED** (Clr Wells)

MIN19.368

That Item DE19.48 - Jerberra and Verons Estates - Biodiversity Assessment - Clause 34A Certification be brought forward for consideration.

CARRIED

DE19.48 Jerberra and Verons Estates - Biodiversity Assessment - Clause 34A Certification**HPERM Ref:
D19/140355****Recommendation (Item to be determined under delegated authority)**

1. Receive the update on the Clause 34A certification provided for Jerberra and Verons Estates for information.
2. As a way of removing uncertainty, adopt a policy position for Jerberra Estate that requires appropriate covenants to be registered on property titles as part of the development approval process to ensure the areas listed below are managed for conservation into the future:
 - a. Bushland Management Area (BMA)
 - b. Bushland Conservation Area (BCA)
 - c. Orchid Management Area (OMA)

3. Commence to amend the Shoalhaven Development Control Plan (DCP) 2014 to update Chapter N20 (Jerberra Estate) and S1 (Verons Estate) because of the Clause 34A certification for each Estate, including the following:
 - a. the addition of a specific provision in Chapter N20 to establish covenants outlined in part 1. to ensure the clause 34A certification remains legally valid in Jerberra Estate
 - b. update references to legislation
 - c. make other changes as required to improve the effectiveness and readability of both chapters.

RESOLVED (Clr Guile / Clr Wells)

MIN19.369

1. Receive the update on the Clause 34A certification provided for Jerberra and Verons Estates for information.
2. As a way of removing uncertainty, adopt a policy position for Jerberra Estate that requires appropriate covenants to be registered on property titles as part of the development approval process to ensure the areas listed below are managed for conservation into the future:
 - a. Bushland Management Area (BMA)
 - b. Bushland Conservation Area (BCA)
 - c. Orchid Management Area (OMA)
3. Commence to amend the Shoalhaven Development Control Plan (DCP) 2014 to update Chapter N20 (Jerberra Estate) and S1 (Verons Estate) because of the Clause 34A certification for each Estate, including the following:
 - a. the addition of a specific provision in Chapter N20 to establish covenants outlined in part 1. to ensure the clause 34A certification remains legally valid in Jerberra Estate
 - b. update references to legislation
 - c. make other changes as required to improve the effectiveness and readability of both chapters.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

REPORTS

DE19.40 Development Application – 17 Hawke Street & 22 Currumbene Street, Huskisson - Lot 7 & 8 DP 758530 Sec 3E - Relocation of the former church on the subject site and demolition of the existing associated hall and shed

**HPERM Ref:
D19/145092**

Recommendation (Item to be determined under delegated authority)

That Council approve Development Application DA18/2102 for the relocation of the former church and demolition of the existing associated hall and shed on the land at 17 Hawke Street and 22 Currumbene Street, Huskisson - Lots 7 and 8 DP 758530 Sec 3E subject to the recommended conditions of consent contained in Attachment 1 to this report.

RESOLVED (Clr Guile / Clr Watson)

MIN19.370

That:

1. Council approve Development Application DA18/2102 for the relocation of the former church and demolition of the existing associated hall and shed on the land at 17 Hawke Street and 22 Currambene Street, Huskisson - Lots 7 and 8 DP 758530 Sec 3E subject to the recommended conditions of consent contained in Attachment 1 to this report.
2. The consent be structured to enable demolition to occur independent to the Church relocation.

FOR: Clr Gash, Clr White, Clr Wells, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener and Stephen Dunshea

AGAINST: Clr Findley, Clr Levett, Clr Alldrick, Clr Gartner and Clr Proudfoot

CARRIED

**DE19.41 Development Application – 43 Willowford Road
WOOLLAMIA – Lot 80 & DP 9289**

**HPERM Ref:
D19/6384**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Approve Development Application DA18/2020 subject to the conditions provided at Attachment 1; and
2. Officers give notice of its intention to serve a “Demolish Works Order” under Section 9.34 of the Environmental Planning and Assessment Act 1979 in respect of the Blacksmith’s Shed and the pergola. The order that follows any representations received will be suitably aligned with the recommended conditions of approval.

RESOLVED (Clr Findley / Clr Alldrick)

MIN19.371

That Council:

1. Approve Development Application DA18/2020 subject to the conditions provided at Attachment 1; and
2. Officers give notice of its intention to serve a “Demolish Works Order” under Section 9.34 of the Environmental Planning and Assessment Act 1979 in respect of the Blacksmith’s Shed and the pergola. The order that follows any representations received will be suitably aligned with the recommended conditions of approval.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Note: This item was re-introduced later in the meeting for final resolution see MIN19.375

DE19.42 Collingwood Beach - Action Plan Progress Report**HPERM Ref:
D19/77369**

Note: Cllr Proudfoot left the meeting at 6.16pm

Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the report on the progress of the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan for information; and
2. Revote any of the remaining funds in job number 15857 to the 2019/20 budget to allow implementation of the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan until the end of the two-year trial period.

RESOLVED (Cllr Levett / Cllr Gartner)

MIN19.372

That Council:

1. Receive the report on the progress of the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan for information; and
2. Revote any of the remaining funds in job number 15857 to the 2019/20 budget to allow implementation of the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan until the end of the two-year trial period.

FOR: Cllr Findley, Cllr Gash, Cllr White, Cllr Wells, Cllr Levett, Cllr Alldrick, Cllr Gartner, Cllr Guile, Cllr Pakes, Cllr Watson, Cllr Kitchener and Stephen Dunshea

AGAINST: Nil

CARRIED

DE19.43 Two (2) Bushcare Group Action Plans - Review**HPERM Ref:
D19/124016****Recommendation (Item to be determined under delegated authority)**

That Council adopt the following two (2) reviewed Bushcare Group Action Plans:

1. The Grotto; and
2. Camp Quality.

RESOLVED (Cllr Findley / Cllr Wells)

MIN19.373

That Council adopt the following two (2) reviewed Bushcare Group Action Plans:

1. The Grotto; and
2. Camp Quality.

CARRIED

DE19.44 Strategic Planning Works Program - Proposed 2019-2020 Version

**HPERM Ref:
D19/94513**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Attachment 2 as Council's 2019-2020 Strategic Planning Works Program.
2. Receive a report on the 2020-2021 Strategic Planning Works Program in June 2020 to coincide with the new financial year.
3. Make future changes or additions to the Strategic Planning Works Program only after considering the current program, project priority, staff workload and resources.

RESOLVED (Clr Watson / Clr Gartner)

MIN19.374

That Council:

1. Adopt and finalise Attachment 2 as Council's 2019-2020 Strategic Planning Works Program.
2. Receive a report on the 2020-2021 Strategic Planning Works Program in June 2020 to coincide with the new financial year.
3. Make future changes or additions to the Strategic Planning Works Program only after considering the current program, project priority, staff workload and resources.

CARRIED

DE19.45 Draft Medium Density Amendment (Chapter G13) - Shoalhaven DCP 2014 - Post Exhibition Consideration and Finalisation

**HPERM Ref:
D19/132724**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the amendment to Chapter G13: Medium Density and Other Residential Development of Shoalhaven Development Control Plan 2014 (the Amendment) as exhibited, with the changes outlined in **Attachment 2**.
2. Notify the adoption of the Amendment in local newspapers in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulations.
3. Advise key stakeholders, including all Community Consultative Bodies, relevant industry representatives and those who made a submission, of this decision, and when the Amendment will be made effective.

MOTION (Clr Guile / Clr Gash)

That Council:

1. Defer this matter until the June 2019 Ordinary Meeting.
2. Advise the key stakeholders (including landowners, submitters and relevant CCBs) of this decision and of the upcoming Council meeting arrangements.

Note: Debate on this item was not completed at this time – refer MIN19.376 for resolution.

Procedural Motion - Reintroduction of Item**PROCEDURAL MOTION** (Clr Watson / Clr Guile)

That DE19.41 - Development Application – 43 Willowford Road WOOLLAMIA – Lot 80 & DP 9289 be reintroduced for clarification of the recommendation.

PROCEDURAL MOTION CARRIED

Note: Clr Proudfoot returned to the meeting at 6.20pm

**DE19.41 Development Application – 43 Willowford Road
WOOLLAMIA – Lot 80 & DP 9289****HPERM Ref:
D19/6384**

This item was re-introduced for clarification of the recommendation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Approve Development Application DA18/2020 subject to the conditions provided at Attachment 1; and
2. Officers give notice of its intention to serve a “Demolish Works Order” under Section 9.34 of the Environmental Planning and Assessment Act 1979 in respect of the Blacksmith’s Shed and the pergola. The order that follows any representations received will be suitably aligned with the recommended conditions of approval.

RESOLVED (Clr Findley / Clr Wells)

MIN19.375

That Council:

1. Approve Development Application DA18/2020 subject to the conditions provided at Attachment 1; and
2. Officers give notice of its intention to serve a “Demolish Works Order” under Section 9.34 of the Environmental Planning and Assessment Act 1979 in respect of the Blacksmith’s Shed and the pergola. The order that follows any representations received will be suitably aligned with the recommended conditions of approval.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE19.45 Draft Medium Density Amendment (Chapter G13) -
Shoalhaven DCP 2014 - Post Exhibition Consideration
and Finalisation**

**HPERM Ref:
D19/132724**

The previous motion was not put and carried.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the amendment to Chapter G13: Medium Density and Other Residential Development of Shoalhaven Development Control Plan 2014 (the Amendment) as exhibited, with the changes outlined in **Attachment 2**.
2. Notify the adoption of the Amendment in local newspapers in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulations.
3. Advise key stakeholders, including all Community Consultative Bodies, relevant industry representatives and those who made a submission, of this decision, and when the Amendment will be made effective.

RESOLVED (Clr Guile / Clr Gash)

MIN19.376

That Council:

1. Defer this matter until the June 2019 Ordinary Meeting.
2. Advise the key stakeholders (including landowners, submitters and relevant CCBs) of this decision and of the upcoming Council meeting arrangements.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE19.46 Public Exhibition Outcomes - Coastal Hazard Review
Planning Proposal and Coastal Management Areas DCP
Amendment**

**HPERM Ref:
D19/113261**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal (PP026) as exhibited and forward to the NSW Department of Planning and Environment for finalisation.
2. Adopt and finalise Shoalhaven Development Control Plan 2014 Chapter G6: Coastal Management Areas Amendment as exhibited, with the inclusion of the changes highlighted in Attachment 2.
3. Advise key stakeholders, including all CCBs, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

RESOLVED (Clr Proudfoot / Clr Pakes)

MIN19.377

That Council:

1. Defer this matter until the July 2019 Development & Environment Committee meeting.

2. Advise the key stakeholders (including submitters and relevant CCBs) of this decision and of the upcoming Council meeting arrangements.

CARRIED

Note: At Page 99 in the report in the background, "some" should be inserted with reference to Public and private properties.

DE19.47 New Proponent Initiated Planning Proposal - Appleberry Close, Meroo Meadow

HPERM Ref: D19/130924

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the Planning Proposal to permit a boundary adjustment between Lots 21 and 22 in DP 1113675 and Lot 202 in DP 1180659 provided no additional lots or dwelling entitlements will be created, and the mechanism to achieve this outcome be determined in consultation with the NSW Department of Planning and Environment.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance as a 'minor' proponent-initiated Planning Proposal and fees be charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

RESOLVED (Clr Wells / Clr Gartner)

MIN19.378

That Council:

1. Support the Planning Proposal to permit a boundary adjustment between Lots 21 and 22 in DP 1113675 and Lot 202 in DP 1180659 provided no additional lots or dwelling entitlements will be created, and the mechanism to achieve this outcome be determined in consultation with the NSW Department of Planning and Environment.
2. Prepare and submit the Planning Proposal documentation to the NSW Department of Planning and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advance as a 'minor' proponent-initiated Planning Proposal and fees be charged in accordance with Council's adopted Fees and Charges.
4. Advise the proponent of this resolution.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE19.48 Jerberra and Verons Estates - Biodiversity Assessment - Clause 34A Certification

HPERM REF: D19/140355

Item dealt with earlier in the meeting see MIN19.369

GENERAL BUSINESS

Procedural Motion - Matters of Urgency

RESOLVED (Clr White)

MIN19.379

That an additional item regarding urgent matters regarding Lake Conjola be introduced as a matter of urgency due to the current weather conditions.

CARRIED

The Chairperson ruled the matter as urgent as it relates to public interest.

DE19.49 Additional Item - Lake Conjola - Rising Water Levels - Water Gauges

Clr White raised concerns regarding the water levels at Lake Conjola in the current weather and the residents are concerned for their safety.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.380

That Council:

1. Immediately install manual water gauges/devices in 2 locations, one at the top end of the lake and one near the Manly Hydraulic device as a matter of urgency.
2. Provide the community with an emergency plan that contains emergency phone numbers of who to contact in emergency situations related to the lake.
3. A briefing be provided to Councillors on Council's protocols for emergencies related to the lake.
4. Request the Mayor to make representations to the Member for South Coast – The Hon Shelley Hancock regarding the Council's safety concerns relating to the Lake.

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr White)

MIN19.381

That an additional item DA18/2175 – 38 Lyrebird Drive, Nowra be introduced as a matter of urgency.

CARRIED

The chairperson ruled the matter as urgent as it relates to public interest.

DE19.50 Additional Item - Call in Development Application

RESOLVED (Clr White / Clr Proudfoot)

MIN19.382

That the matter of DA18/2175 – 38 Lyrebird Drive, Nowra be called in due to the public interest and Policy.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr Pakes)

MIN19.383

That an additional item regarding the pathway structure at Orient Point be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent as it relates to public interest.

DE19.51 Additional Item - Pathway Infrastructure - Orient Point

Clr Pakes raised concerns regarding the newly constructed pathway infrastructure at Orient Point.

RESOLVED (Clr Pakes / Clr Gash)

MIN19.384

That with respect to the recently constructed pathway structure at Orient Point, Council:

1. Take immediate steps to isolate or barricade the structure for concerns of public safety;
2. Provide an urgent report on the new pathway and the report include:
 - a. The total cost of the project
 - b. Who in the Community was consulted
 - c. If the pathway meets current standards

CARRIED

There being no further business, the meeting concluded, the time being 7.00pm.

Clr Gash
CHAIRPERSON

DE19.46 Public Exhibition Outcomes - Coastal Hazard Review Planning Proposal and Coastal Management Areas DCP Amendment

HPERM Ref: D19/113261

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. External Consultation Submission Summary (under separate cover) [⇒](#)
2. Proposed Post Exhibition Changes to Chapter G6 (under separate cover) [⇒](#)

This item was deferred from the Development & Environment Committee meeting of 4 June 2019.

Purpose / Summary

- Report the outcomes of the combined public exhibition of Planning Proposal PP026 – Coastal Hazards Review (PP) and Development Control Plan (DCP) Amendment No. 20 Chapter G6: Coastal Management Areas.
- Enable the amendments to Shoalhaven Local Environmental Plan (LEP) 2014 and Shoalhaven DCP 2014 to proceed to finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal (PP026) as exhibited and forward to the NSW Department of Planning and Environment for finalisation.
2. Adopt and finalise Shoalhaven Development Control Plan 2014 Chapter G6: Coastal Management Areas Amendment as exhibited, with the inclusion of the changes highlighted in Attachment 2.
3. Advise key stakeholders, including all CCBs, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

Options

1. As recommended.

Implications: This is the preferred option as it will ensure the amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 proceed to finalisation. This will increase the dependability of Council's coastal risk information and address several housekeeping matters within Chapter G6: Coastal Management Areas.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, this could delay the progress of the amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014.

3. Not adopt the recommendation.

Implications: This option is not preferred as the coastal risk planning maps will remain in Shoalhaven LEP 2014 resulting in lengthy delays to update these maps. The housekeeping matters for consideration in Chapter G6: Coastal Management Areas of Shoalhaven DCP 2014 will remain outstanding, which will negatively impact upon the overall application and use of the Chapter.

Background

Some public and private properties along the coast are at risk from coastal hazards such as beach erosion, shoreline recession, coastal entrance instability, sand drift, coastal inundation, storm water erosion, and slope instability. Council's planning instruments assist to manage this risk.

On 14 August 2018, Council's Development Committee resolved (MIN18.609) to:

1. *Endorse the Coastal Hazards Review Planning Proposal (PP026) (Attachment 1) and submit it to the NSW Department of Planning and Environment for Gateway determination*
2. *Following receipt of the Gateway determination, concurrently exhibit PP026 and draft Chapter G6: Coastal Management Areas of Shoalhaven Development Control Plan 2014 (Attachment 2), for a period of 28 days as per legislative requirements.*
3. *Support the preparation of the online coastal hazard mapping based on current coastal risk data.*
4. *Receive a further report on PP026 and draft Chapter G6: Coastal Management Areas following the conclusion of the public exhibition period.*
5. *Advise key stakeholders, including relevant Community Consultative Bodies, of this decision.*

The following is an overview of the PP and DCP amendment.

Planning Proposal

Seeks to amend the current coastal hazard related controls in the LEP by:

- Removing the Coastal Risk Planning Maps from the LEP (Note: detailed coastal hazard mapping is now publicly available on [Council's website](#));
- Amend Clause 7.4 Coastal Risk Planning to apply to all land at risk of coastal hazards identified within the Shoalhaven Coastal Zone Management Plan, coastal management programs and/or supporting studies.

The PP was submitted to the NSW Department of Planning and Environment (DP&E) following the August 2018 resolution and was granted a favourable Gateway determination on 24 October 2018. Council was not granted delegated authority to finalise the LEP amendment which means the PP will ultimately need to be submitted to DP&E for finalisation.

DCP Amendment

The proposed amendments to DCP Chapter G6: Coastal Management Areas respond to operational issues and matters the require clarification. The key changes are summarised below:

- Insert references to the Shoalhaven Coastal Hazard Interactive Mapping.
- Replace references to 2025 Zone of Reduced Foundation Capacity (ZRFC) with 2030 ZRFC throughout.

- Clarify that sites landward of Precinct 2 (i.e. 2100 ZRFC) have limited restrictions, not no restrictions.
- Include additional commentary and provisions relating to wave runup.
- Include Bandalong Boat Harbour Beach as a known area of beach erosion and/or oceanic inundation, and Narrawallee as a known area of cliff/slope instability.
- Insert references to recently adopted studies (e.g. Royal Haskoning DHV Report – Shoalhaven Coastal Cliffs and Slopes Risk Management Program – 2018).
- Clarify that the side setback requirements also apply to lots on the landward side of an unformed road that adjoins a waterfront reserve.
- Include several provisions adopted from Council Policy POL12/217 Coastal Areas – Planning and Development relating to mitigating loss of public amenity and managing aesthetic and environmental impacts on the foreshore and other public areas.
- Expand foreshore development controls in Section 5.2 to also apply to non-residential development.
- Include new provisions relating to public infrastructure on public land.
- Include provisions to reflect the revised content of the Generic Community Lands Plan of Management – Natural Areas and Foreshore Reserves Policy (e.g. Stormwater from adjoining residences should be managed via inter-allotment drainage and discharged directly into a stormwater facility of Council).
- Update all images to enhance the readability of the Chapter and consistency across the DCP.

DE19.46

Government Agency Feedback

Prior to public exhibition, the PP was referred to the NSW Office of Environment and Heritage (OEH) as required by the Gateway determination. The comments from OEH and the Council staff response is summarised in Table 1 below.

Table 1: OEH Comments on the Planning Proposal

OEH Comments	Council Staff Response
Clearly demonstrate that removing the coastal hazard mapping will not affect or remove existing development controls for development on land subject to coastal hazards.	The PP was updated prior to exhibition to include the following additional commentary in Section 3.2 Map Change: <i>"It (the online coastal mapping) will be updated as and when Council adopts new or updated coastal risk data (for example, Coastal Zone Management Plan). The removal of the CRP Map from SLEP 2014 will not affect or remove existing development controls on land subject to coastal hazards."</i>
Clearly demonstrate that there is a legal planning mechanism in place to trigger and apply appropriate coastal hazard related development controls for land subject to coastal hazards.	The PP was updated prior to exhibition to include the following additional commentary in Section 2 Part 1 Intended Outcome: <i>"The SLEP 2014 will then be used in conjunction with the Shoalhaven Coastal Management Plan (CZMP) 2018 and the Shoalhaven Development Control Plan 2014 (SDCP) to apply appropriate development controls to areas at risk of coastal hazards as identified in the online coastal risk mapping."</i>
Clarify how the proposed mapping will be linked to the development controls within Shoalhaven LEP 2014 and Shoalhaven DCP 2014.	

Update the proposed amendment to Clause 7.4(2) as follows: "This clause applies to the land identified as being at risk of coastal hazards in Council's Coastal Zone Management Plan, Coastal management programs and/or supporting studies."	The PP was updated prior to exhibition to reflect this request.
Outline how the intent of the PP is consistent with the Shoalhaven Coastal Management Plan.	<p>The following additional commentary was included in Section 4.2.2 of the PP prior to exhibition: <i>"It is more appropriate to remove the CRP Mapping from SLEP 2014 and move the mapped coastal risk data to Council's online mapping system. This will allow for more timely updates of new risk data in perpetuity."</i></p> <p><i>"The PP is considered consistent with this Action, as although the mapping is not included in SLEP 2014 or SDCP 2014, both draft documents refer to all risk areas, including the revised Advisian Risk Assessment Maps, via the content and relationship to the proposed online coastal risk mapping."</i></p>

Public Exhibition

In accordance with the Council resolution (MIN18.609) and Gateway determination, the PP and proposed DCP amendment were publicly exhibited for a period of 30 days, from 6 February to 8 March 2019 (inclusive).

Notices appeared in local newspapers on 6 February. All CCBs, Development Industry Representatives and affected landowners were notified directly in writing.

The combined PP and DCP amendment were exhibited at Council's Administrative Office, Bridge Road, Nowra during business hours, and could also be viewed at the Ulladulla Administrative Office and on Council's website. The exhibition material consisted of the following:

- [Planning Proposal \(PP026\) – Coastal Hazards Review.](#)
- [Draft DCP 2014 Amendment No. 20 Chapter G6: Coastal Management Areas.](#)
- [Explanatory Statement.](#)
- [Gateway determination, dated 24 October 2018.](#)
- [Agency consultation responses.](#)
- Newspaper advertisement.

As a result of the exhibition, twelve (12) formal submissions were received including:

- One (1) submission from a consultancy firm.
- Nine (9) submissions from the community.
- Two (2) internal Council submissions: Environmental Services and Strategic Planning Sections.

A detailed summary of the submissions with a Council staff response to all comments raised is provided in **Attachment 1**.

Copies of the actual submissions will also be available for review in the **Councillor's Room** prior to the meeting.

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Post-Exhibition Amendments

Resulting from the submissions received, various minor amendments are proposed to the Draft Chapter G6 as shown at **Attachment 2**. For convenience, the proposed changes are highlighted in yellow, with strikethroughs to note deletions.

The recommended post exhibition amendments to Draft Chapter G6 are summarised briefly below:

- Include a link to the Shoalhaven Coastal Hazard Interactive Mapping in Section 1.
- Amend the purpose to apply to development in areas of coastal risk instead of development in areas of coastal management.
- Amend the context to correct the number of beaches, bays and headlands and include a link to the Shoalhaven Coastal Zone Management Plan 2018.
- Remove the word physical from objective ii in section 4 Key Objectives.
- Remove reference to planned retreat in acceptable solution A1.9.
- Include the Narrawallee – Surfers Avenue/Bannister Head Road/Tallwood Avenue, Geotechnical Scoping Study and Stability Assessment, Douglas Partner 2012 within acceptable solution A2.1.
- Include additional wording to section 5.2 to correct a grammatical error.
- Remove reference to the Advisian hazard mapping and Shoalhaven Coastal Zone Management Plan as examples of properties identified but not studied.
- Include the 2016 Shoalhaven Coastal Mapping Review within Section 6.2.

No changes are required to the Coastal Hazard Review Planning Proposal following exhibition.

Policy and Risk Implications

Council will no longer rely upon the Coastal Risk Planning maps within Shoalhaven LEP 2014 to identify land subject to coastal risk. Instead, land subject to coastal risk will be identified by the Shoalhaven Coastal Zone Management Plan, coastal management programs and/or supporting studies.

This approach better manages coastal hazard risk for Shoalhaven. As information is obtained or updated the online mapping can be updated in a timely manner.

Financial Implications

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

DE19.52 Progress Update - Berry Heritage Investigations

HPERM Ref: D19/181822

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

Provide an update on the Berry Heritage Investigations and obtain the required resolution to undertake preliminary community consultation regarding the potential heritage listing of several additional individual heritage items and heritage conservation areas within Berry.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Provide in principal support to the proposed heritage listing of the 25 properties and 2 Heritage Conservation Areas in Shoalhaven Local Environmental Plan 2014, as identified in Table 1 in this report, for preliminary community consultation only.
2. Investigate the heritage significance of No. 30 and No. 40 Alexandra Street, Berry as recommended by the Heritage Consultant.
3. Following part 2 of this recommendation, commence preliminary community consultation with the affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society regarding the Berry Heritage Investigations work to date.
4. Advise relevant stakeholders (affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society) of this decision.
5. Receive a further report outlining the findings of the supplementary heritage investigations and preliminary community consultation.

Options

1. Adopt the recommendation.

Implications: This is the preferred option, as it will enable Council staff to proceed with investigating potential heritage listings within the township which will assist in the preservation of the character of the old residential area of Berry. This option will also enable Council staff to undertake important preliminary community consultation with the affected landowners and others prior to a further report being presented to Council.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes. Depending on its nature, an alternative recommendation could delay any investigation into the potential heritage listings.

3. Not adopt the recommendation.

Implications: This option is not preferred as no further heritage listings would be investigated/considered within Berry at this point in time. There is potential for the

erosion of the heritage character of the township by way of unsympathetic development if appropriate heritage protection is not considered.

Background

Prior to the commencement of the Shoalhaven Local Environmental Plan (LEP) 2014, there were several heritage items and Heritage Conservation Areas suggested for inclusion within Schedule 5 – Environmental Heritage, that were ultimately not included the LEP. There was also a request at the time of preparing the LEP to consider identifying the whole township as a conservation area.

Following consideration of an options report, Council's Development Committee resolved on 12 July 2017 to investigate 29 items (dwellings) and 2 Heritage Conservation Areas identified in the Shoalhaven Heritage Study and Inventory for potential additional heritage listing within Schedule 5 of the LEP (MIN17.613(1)):

Pursue Option 1 – Consideration of additional heritage listings for properties outlined in the report as the appropriate approach to progress heritage investigations in the Berry urban area.

Council then reaffirmed its commitment to investigating these additional heritage listings within Berry by resolving at its Development Committee Meeting on 11 September 2018 (MIN18.695(1)) to:

Proceed with the Berry Heritage Investigations project; to investigate and consider the 29 properties and 2 smaller Heritage Conservation Areas identified as possible additional heritage listings for Berry.

Consistent with this resolution, Council's Heritage Consultant (Louise Thom) has subsequently researched and prepared inventory sheets for the 29 properties and 2 Heritage Conservation Areas. A summary of the findings is provided below:

- 4 of the properties (50, 66 and 70 Albert Street and 31 Albany Street) do not meet the threshold required for local heritage listing.
- The remaining 25 properties and 2 Heritage Conservation Areas outlined in Table 1 are recommended for potential heritage listing in the LEP.

*Note: Since the affected land owners have not yet had an opportunity to consider the content of the preliminary inventory sheets, a copy is provided in the **Councillors' Room** for review if necessary.*

- 2 additional properties (30 and 40 Alexandra Street) potentially possess heritage significance and should be further investigated to determine whether heritage listing would be appropriate.

Table 1: Summary of Heritage Consultant's Findings

Address	Description	Recommended for listing in Shoalhaven LEP 2014	Additional recommendations
Group 1 – High priority Heritage Conservation Areas (HCA)			
Berry Town Centre Heritage Conservation Area	Queen Street between Alexandra Street and Prince Alfred Street	Yes	Include in a Development Control Plan and prepare an interpretation plan.
Berry Showground Heritage Conservation Area	Berry Showground and adjacent residential area	Yes	Include in a Development Control Plan and prepare an interpretation plan.

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Address	Description	Recommended for listing in Shoalhaven LEP 2014	Additional recommendations
Group 2 – High Priority items			
17 Albany Street	Victorian style brick residence	Yes	Include in the Berry Showground HCA
27 Albany Street	Inter war federation style weatherboard cottage	Yes	Include in the Berry Showground HCA
29 Albany Street	Inter war weatherboard & fibro cottage	Yes	Include in the Berry Showground HCA
31 Albany Street	Post war fibro & tile residence & garden	No	Include as a contributory item in the Berry Showground HCA
3 Albert Street	Inter war weatherboard cottage	Yes	-
46 Albert Street	Federation weatherboard cottage	Yes	-
50 Albert Street	Victorian Georgian Style weatherboard cottage	No	-
66 Albert Street	Federation style Weatherboard cottage	No	-
70 Albert Street	Inter war cottage	No	Archivally record the building prior to any alteration or demolition
39 George Street	Federation weatherboard cottage	Yes	Produce a conservation management plan and document/prepare an archival record.
19 Prince Alfred Street	Inter war weatherboard Californian bungalow	Yes	-
33 Prince Alfred Street	Federation weatherboard cottage	Yes	-
36 Prince Alfred Street	Federation weatherboard cottage	Yes	-
45 Prince Alfred Street	Inter-war weatherboard bungalow	Yes	-
44 Princess Street	Inter-war bungalow	Yes	-
64 Princess Street	Federation weatherboard cottage	Yes	-
71 Princess Street	Federation weatherboard cottage	Yes	-
51 Queen Street	Federation weatherboard cottage	Yes	-
53 Queen Street	Inter-war weatherboard cottage	Yes	-
54 Queen Street	Federation weatherboard cottage	Yes	-
59 Queen Street	Federation weatherboard cottage	Yes	-
68 Queen Street	Federation weatherboard cottage	Yes	-
70 Queen Street	Inter-war weatherboard bungalow	Yes	-
44 Victoria Street	Federation weatherboard cottage	Yes	-
50 Victoria Street	Federation weatherboard cottage	Yes	-
63 Victoria Street	Inter-war weatherboard cottage	Yes	-
69 Victoria Street	Federation weatherboard cottage	Yes	-
73 Victoria Street	Federation weatherboard cottage	Yes	-
75/77 Victoria Street	Inter-war Californian bungalow	Yes	-

Conclusion

It is recommended that the 25 properties and 2 Heritage Conservation Areas recommended for possible inclusion in Schedule 5 of the LEP by the Heritage Consultant, as well as the 2 properties that require further heritage assessments (30 and 40 Alexandra Street), form the basis of preliminary community consultation with key stakeholders (affected landowners,

Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society).

This will enable Council to consider the views of these stakeholders in a further report to Council prior to possibly proceeding further with an LEP amendment in this regard.

Community Engagement

The proposed preliminary community consultation will provide an opportunity to gain initial early feedback from affected landowners and key stakeholders at the early stage of the project.

Any future Planning Proposal resulting from this process would ultimately be formally exhibited for comment in accordance with Council's Community Engagement Policy to 'inform' and 'consult' and relevant legislative requirements.

Policy Implications

The outcomes of the Berry Heritage Investigations may recommend future amendments to Shoalhaven LEP 2014, which would be reported to Council in due course.

Financial Implications

Based on the recommended approach, there are no immediate financial implications for Council. The preliminary community consultation arrangements and any future amendments to Shoalhaven LEP 2014 would be resourced from the Strategic Planning budget.

Risk Implications

Investigating potential heritage items/areas within Berry offers an opportunity to protect these items/areas from unsympathetic development which may over time erode the heritage significance and character of Berry.

DE19.53 Exhibition Outcomes and Finalisation - Planning Proposal: 2017 Housekeeping Amendment (Instrument Changes) - Shoalhaven LEP 2014

HPERM Ref: D19/121834

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Exhibition Submission Summary [↓](#)
 2. Planning Proposal - Post-Exhibition Version (under separate cover) [⇒](#)

Purpose / Summary

Detail the outcomes of the public exhibition of Planning Proposal (PP033) – 2017 Housekeeping Amendment (Instrument Changes) and enable the resultant amendments to Shoalhaven Local Environmental Plan (LEP) 2014 to proceed to finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Planning Proposal (PP033) as exhibited, with the changes outlined in Attachment 2.
2. Forward PP033 to NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Undertake a separate future review of Clause 4.2B of Shoalhaven Local Environmental Plan 2014 with the following scope:
 - a. Further consideration of Item 6 (proposed for deletion from PP033) including the appropriateness of the current zoning of certain land in Clause 4.2B.
 - b. Provide clarification as to what 'land' means (i.e. identifying holdings).
 - c. Other matters that are identified during the review or were raised in submissions.
5. Prepare a future report to Council in relation to the outcome of the review at Part 4 of this recommendation, including the scope of a future Planning Proposal as appropriate and its priority in the Strategic Planning Works Program.
6. Advise key stakeholders, including all CCBs, relevant industry representatives and those who made a submission, of this decision, and when the Amendment will be made effective.

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will ensure that the relevant housekeeping matters in Shoalhaven LEP 2014 are addressed and progressed in a timely manner so that the LEP operates efficiently.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, this could delay the progress of the Planning Proposal (PP) and the resulting amendments to Shoalhaven LEP 2014

3. Not adopt the recommendation.

Implications: This is not the preferred option as the identified housekeeping matters will not be resolved.

Background

The Shoalhaven LEP 2014 is continuously reviewed/updated to ensure it aligns with strategic documents, is improved where necessary, relevant matters are resolved and delivers positive outcomes for the community. As a result, Council has an ongoing process of housekeeping amendments to improve the operation and maintain the accuracy of the LEP.

In this regard on 11 September 2018, Council (MIN18.699) resolved to:

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

This PP addresses several non-urgent matters (Table 1) that were identified during the 2017 calendar year to improve the accuracy and operation of the plan.

Table 1: Summary of LEP instrument amendments

Item	Summary of proposed amendment
1	Amend references to the <i>Crown Lands Act 1989</i> in clause 1.9A (2) to reflect the repeal of the Act in June 2018.
2	Insert 'artisan food and drink industry' as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones.
3	Insert 'dual occupancies (attached)' as a land use permitted with consent in the E2 Environmental Conservation zone.
4	Amend clause 4.1(4) Minimum Subdivision Lot Size, to allow the creation of a lot from a closed road that is smaller than the minimum lot size shown on the Lot Size Map.
5	Insert a new subclause to clause 4.1F Minimum Subdivision Lot Size for Community Scheme and Strata Plan Lots, to make it clear that clause 4.1F is not subservient to clause 4.1 (Minimum subdivision lot size).
6	Amend clause 4.2B(2) Subdivision of Certain Land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4, to only apply to land in a RU1, RU2 or RU4 zone in relation to prime crop and pasture land given they are the 'rural' zones where agriculture would be expected, noting that R5 and E4 are essentially residential in nature.
7	Amend clause 4.2G (4) Boundary Adjustments of Land in Certain Rural and Environmental Protections Zones, to delete reference to permissibility of a dwelling following subdivision.

Item	Summary of proposed amendment
8	In relation to Schedule 1 Additional permitted uses (6) 'Use of certain land at Manyana', update the description of the land to which Schedule 1 (6) applies.
9	In relation to Schedule 2 Exempt Development 'Temporary events on public land and public roads and associated temporary structures', insert additional criteria in subclause 2 in relation to Crown land that is vested in Council, or of which Council is the Crown lands manager.
10	In relation to Schedule 2 Exempt Development, insert new exempt development criteria relating to: <ul style="list-style-type: none"> • A-frame sign boards and structures. • Merchandise displays.

The PP was submitted to the NSW Department of Planning and Environment (DP&E) and was granted a favourable Gateway determination on 5 November 2018. The Gateway determination granted delegated authority to Council for this PP which means that Council can liaise directly with the NSW Parliamentary Counsel's Office to prepare and finalise the LEP amendment.

Government Agency Feedback

Prior to the required public exhibition, the PP was referred to the NSW Office of Environment and Heritage (OEH), NSW Rural Fire Service (RFS), Natural Resource Access Regulator and the NSW Department of Primary Industries – Agriculture (NSW DPI) as required by the Gateway determination. The comments from each agency on the PP are summarised in Table 2 below.

Table 2: Agency Consultation

Agency	Feedback
NSW Office of Environment and Heritage	Requested a map be included within the PP illustrating the spatial location of the E2 Environmental Conservation land that meets the minimum lot size requirement (40ha) for a dual occupancy in relation to proposed Instrument Amendment Item 3. <i>Note: The maps were included as an attachment to the exhibited PP.</i>
NSW Rural Fire Service	No objection to the PP under the condition that development applications comply with Planning for Bush Fire Protection 2006 and the pre-release Planning for Bush fire Protection 2018. <i>Note: This will be undertaken as required at the DA stage.</i>
Natural Resource Access Regulator	No objection to the PP.
Department of Primary Industries – Agriculture	No objections to the PP under the condition that development applications for land in rural zones are assessed in order to avoid conflict with nearby agricultural activities. <i>Note: This will be undertaken as required at the DA stage.</i>

Public Exhibition

In accordance with the Gateway determination and Council resolution (MIN18.699) the PP was publicly exhibited for a period of 31 days from 13 March to 12 April 2019 (inclusive).

Notices appeared in local newspapers on 13 March 2019. All Community Consultative Bodies (CCBs), Development Industry Representatives and relevant affected landowners were notified directly in writing.

The PP was exhibited at Council's Administrative Office, Bridge Road, Nowra during business hours, and could also be viewed at the Ulladulla Administrative Office and on Council's website. The exhibition material included the;

- [Planning Proposal \(PP033\) – 2017 Housekeeping Amendment Instrument Changes.](#)
- [Explanatory Statement.](#)
- [Gateway determination, dated 5 November 2018.](#)
- [Agency consultation responses.](#)
- Newspaper advertisement.

As a result of the exhibition ten (10) formal submissions were received including:

- Two (2) industry/consultancy submissions.
- One (1) internal Council submission: Recreation, Community & Culture Section.
- Seven (7) submissions from the community.

Copies of the actual submissions received will be available for review in the **Councillors' Room** prior to the meeting.

A detailed summary of the submissions with a response to all comments raised is provided in **Attachment 1**. A summary of key issues raised, and brief staff comment is outlined in Table 3 below:

Table 3: Summary of key issues raised in submissions and brief staff comment

Item	Summary of issues raised	Staff comment
2	Support inclusion of 'artisan food and drink industry' as a land use permitted with consent in the RU1 and RU2 zones.	Noted.
	Request to include the land use as permissible with consent in the B2 Local Centre zone.	Permitting artisan food and drink with consent in the B2 Local Centre zone across the city at this stage is a substantial change and beyond the scope of this PP and would trigger re-exhibition. More appropriate for the current PP to proceed and investigate this matter and its merit as part of a future housekeeping amendment to the LEP.
3	Support inclusion of 'dual occupancies (attached)' as a land use permitted with consent in the E2 zone.	Noted.
6	Request the definition of prime crop or pasture land be amended to allow a qualified agricultural consultant to identify prime crop or pasture land.	DP&E has advised that an alteration to the definition of prime crop or pasture land at this point would not be supported by them or the NSW DPI.
	Locality 1: Bundewallah – Question zoning of area and request review.	It is recommended that Item 6 be removed from the PP at this point. Given the nature of the feedback/submissions received, closer consideration of this
	Locality 4: Tapitallee – Question zoning	

	of area and request review. The clause does not recognise the environmental constraints which restricts agricultural pursuits.	<p>issue and related matters is considered to be warranted.</p> <p>This will require a more thorough review of the zoning of land within the localities in question. The priority of this work will be considered in the context of the overall Strategic Planning Works Program. The review once completed will inform any future alterations needed to the proposed/exhibited amendment, which will be addressed within a future PP.</p> <p>This separate handling of Item 6 will enable Council to address the concerns raised surrounding the Clause 4.2B amendment and associated matters, without delaying the other proposed LEP amendments within the PP.</p>
	Concerns related to impact on amenity and land values.	The impact of the proposed amendment on amenity of the surrounding area will be further investigated as part of the identified review into the zoning of land within the localities (see above), if this approach is accepted.
	Locality 4: Tapitallee – Requested a reduction in minimum lot size for the area.	<p>It is not recommended to reduce the minimum lot size provisions within Clause 4.2B. This would conflict with the purpose of Clause 4.2B (2) and significantly limit the ability to undertake agricultural pursuits within the localities.</p> <p>The Growth Management Strategy review that is underway will consider the need for additional rural residential zones/development.</p> <p>This would also be a significant change to the exhibited PP, if pursued, and as such would trigger re-exhibition.</p>
	Locality 6: Termeil – Requested a reduced minimum lot size to enable greater subdivision potential.	
8	Request that the Lot/DP references in Schedule 1 be removed and Council purely rely upon the mapping within Shoalhaven LEP 2014 to identify land that Schedule 1 applies to.	The LEP relies on both mapping and a Lot/DP description to identify the land Schedule 1 applies to. This method is the accepted practice and allows for better identification of the subject land.
9	Support for the additional criteria with a request to include additional wording to allow the clause to apply to all Crown land managed by Council.	The proposed additional wording will enable the clause to capture all Council management/tenure arrangements over Crown land.

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Because of the submissions received, 2 amendments are proposed to the exhibited PP as shown at **Attachment 2**. For convenience, the proposed changes are highlighted in yellow, with strikethroughs to note deletions. The recommended post-exhibition amendments to the PP are summarised briefly below.

- Remove Instrument Amendment Item 6 (Clause 4.2B Subdivision of certain land in Zone RU1, Zone RU2, Zone RU4, Zone R5 and Zone E4) from the PP. It would be appropriate to include the scope of Item 6 within a broader future review of Clause 4.2B which would consider the zoning of land within the localities identified within Clause 4.2B and also provide clarification as to what 'land' means (i.e. identifying holdings).
- Include the following criteria within Instrument Amendment Item 9 (Exempt Development - 'Temporary events on public land) to capture all management/tenure arrangements over Crown land: *"(e) public reserves for which Council has devolved responsibility under Section 48 Local Government Act 1993"*.

Policy Implications

Finalising these amendments will ensure Shoalhaven LEP 2014 is both accurate and is operating as intended. Removing Item 6 from PP033 will ensure due consideration of matters raised during public exhibition.

Financial Implications

The finalisation of the Amendment will continue to be resourced within the existing Strategic Planning budget.



Summary of Submissions

Amendment 33: 2017 Housekeeping Amendment Instrument Changes Planning Proposal

Public Exhibition: 13 March 2019 – 12 April 2019

Submission Number	Summary of Submission	Comments
1. Consultancy: Allen Price and Scarratts	Instrument Amendment Item 6. Clause 4.2B(2) Extend the definition of prime crop or pasture land to include “other land that has been assessed by a suitably qualified agricultural consultant”.	Not supported. The NSW Department of Planning and Environment has advised that an alteration to the definition of prime crop or pasture land at this point would not be supported by them or the NSW Department of Primary Industries.
	Instrument Amendment Item 8. Schedule 1 Council should consider removing any Lot/DP references within Schedule 1 and purely rely on the maps within the Shoalhaven LEP (SLEP) 2014 to identify which land Schedule 1 applies to.	Not supported. SLEP 2014 relies upon both mapping and a Lot/DP description to identify land Schedule 1 applies to. This method allows for better identification of the subject land.
2. Internal Council: Recreation, Community & Culture	Instrument Amendment Item 1. Clause 1.9A(2) The amendment to Clause 1.9A(2) is supported as it will enable the LEP to accurately reference the current Crown Land legislation.	Support noted.
	Instrument Amendment Item 9. Schedule 2 The wording of the proposed amendment to Schedule 2 should be changed to capture all Council management/tenure arrangement over Crown land.	Supported. The intention of the amendment is to capture all Council management/tenure arrangements over Crown land. Including the following additional criteria will enable this to occur: “(e) public reserves for which Council has devolved responsibility under Section 48 Local Government Act 1993”.
3.	General, Land Zoning The land identified as locality 4 (Tapitallee) within Clause 4.2B(3) should not be zoned RU4 Primary Production Small Lots. It is more appropriate to zone the land R5 Large Lot Residential.	Partially supported. Any proposed changes to the zoning of land is beyond the scope of this PP and would need to be considered separately. It would be appropriate to remove Item 6. from the Planning Proposal and re-address the proposed amendment within a broader review of Clause 4.2B which could consider a wider assessment into the zoning of land within the localities. This will allow the concerns within the submission to be appropriately addressed without postponing the items within the Planning Proposal.

	<p>General, Prime Crop and Pasture Land</p> <p>Clause 4.2B(2) applies to all land identified as prime crop and pasture land. The Clause does not recognise the environmental constraints (i.e. poor soil fertility and presence of protected vegetation) which would not allow the land to be used for agricultural activities. The Department of Primary Industry has no plans to address the inaccuracies within their identification of prime crop and pasture land.</p>	<p>Not supported. The identification of prime crop and pasture land is currently based on the NSW Department of Primary Industries Agricultural Land Classification Maps. These maps were produced to determine land highly suited for agricultural activities through an evaluation of the biophysical, social and economic factors that influence the use of land for agriculture. As such, any land identified as prime crop and pasture land by the NSW Department of Primary Industries is, to the best knowledge available, suitable for agricultural activities.</p> <p>The NSW Department of Primary Industries are currently preparing a new mapping resource to identify important agricultural land. Once this mapping is complete, Council can utilise the data to inform potential future amendments to Clause 4.2B.</p>
	<p>Instrument Amendment Item 6. Clause 4.2B(2)</p> <p>Amend Clause 4.2B(2) (Locality 4) to increase the maximum density from 1 lot per 10 hectares to 5 lots per 10 hectares.</p>	<p>Not supported. It is recommended to remove Instrument Amendment Item 6. from the Planning Proposal until a wider assessment of the localities identified within Clause 4.2B has occurred. However, a review of the density provisions within Clause 4.2B will not occur as a part of this assessment. The purpose of Clause 4.2B(2) is to maintain an appropriate level of density for land identified as prime crop and pasture land to ensure the preservation of land for agricultural activities. Increasing the density to 5 lots per 10 hectares would effectively permit lots with a minimum lot size of 2 hectares. This fragmentation will significantly limit the ability to undertake the intended agricultural pursuits.</p>
	<p>Instrument Amendment Item 6. Clause 4.2B(2)</p> <p>The wording in the proposed amendment to Clause 4.2B(2) should not use the word “or” as it indicates a choice in determining which zones Clause 4.2B(2) applies to.</p>	<p>Not supported. Instrument Amendment Item 6. is recommended to be removed from the Planning Proposal and re-addressed within a later Planning Proposal after further assessment into the zoning of land within the localities identified within Clause 4.2B has occurred.</p> <p>It is noted however that the proposed wording does not include the word “or”. The proposed wording is as follows, “Zone RU1 Primary Production, Zone RU2 Rural Landscape and Zone RU4 Primary Production Small Lots”.</p>
	<p>Instrument Amendment Item 6. Clause 4.2B(2)</p> <p>Discontinue the amendment to Clause 4.2B(2) and conduct an in-depth assessment into the inaccuracies of the current zoning of rural land. Any amendment to this Clause should only proceed after this research has taken place.</p>	<p>Supported. The intention of the amendment to Clause 4.2B is to remove the prime crop and pasture land provisions from applying to land where neither the form nor character of the area reflect small scale agriculture. There is merit in conducting a further investigation into the zoning of land within the localities identified within Clause 4.2B to ensure that both the proposed amendment and land zonings are reflective of the character of these areas.</p>

		It would be appropriate to remove Item 6. from the Planning Proposal and re-address the proposed amendment within a broader review of Clause 4.2B which could consider a wider assessment into the zoning of land within the localities. This will allow the concerns within the submission to be appropriately addressed without postponing the items within the Planning Proposal.
4.	General, Minimum Lot Sizes Reduce the total allotment size of larger acreages in Termeil (Locality 6) to approximately 15 hectares or less to allow smaller lots of 5 or 7 hectares to be created.	Not supported. Amendments to the minimum lot size within this area are beyond the scope of this PP. A variation of this nature would need strategic justification and would need a revised Gateway determination. Future growth opportunities across the City are being considered as part of the Growth Management Strategy process.
5.	General, Amenity Impacts The proposed amendment will lead to the destruction of the ambience of the area and will adversely affect the quality of life of the residents in the district. It will also potentially reduce the appeal of the properties and therefore the land values.	Noted. The proposed housekeeping amendments are minor and are unlikely to significantly impact upon the amenity of the areas they apply to. Additionally, any future development application would consider amenity.
6.	Instrument Amendment Item 2. Land Use Table The proposed amendment to include artisan food and drink as a land use permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones will allow greater flexibility for the food and drink industry. The amendment will also support the tourism sector and increase employment in the region.	Support noted.
7.	Instrument Amendment Item 6. Clause 4.2B(2) Objects to the proposed amendment to Clause 4.2B(2).	Partially supported. It is recommended to remove Instrument Amendment Item 6. from the Planning Proposal and re-address the proposed amendment within a future Planning Proposal, after a wider assessment into the zoning of land within the localities has occurred.
8.	Instrument Amendment Item 6. Clause 4.2B(2) The current land zoning within Locality 1 (Bundewallah) is not reflective of the character of the area. Instrument Amendment Item 6. should be withdrawn from the Planning Proposal until a re-examination into the land zonings within the localities identified in Clause 4.2B has been undertaken.	Supported. The intention of the amendment to Clause 4.2B is to remove the prime crop and pasture land provisions from applying to land where neither the form nor character of the area reflect small scale agriculture. There is merit in conducting a further investigation into the zoning of land within the localities identified within Clause 4.2B to ensure that both the proposed amendment and land zonings are reflective of the character of these areas. It would be appropriate to remove Item 6. from the Planning Proposal and re-address the proposed amendment within a broader review of Clause 4.2B which could consider a wider assessment into the zoning of land within the localities. This will allow the concerns within the submission to

		be appropriately addressed without postponing the items within the Planning Proposal.
9. Consultancy: Milestone Australia	Instrument Amendment Item 2. Land Use Table Include artisan food and drink premises as a permitted use with consent in the B2 Local Centre Zone.	Not supported. Permitting artisan food and drink with consent in the B2 Local Centre Zone across the city is a substantial change and beyond the scope of the PP. It is more appropriate for the current PP to proceed and investigate this matter as part of a future housekeeping amendment to SLEP 2014.
10.	Instrument Amendment Item 3. Land Use Table The proposed amendment to include dual occupancies (attached) as a land use permitted with consent in the E2 Environmental Conservation zone is a sensible approach to allow greater housing flexibility and increase land use opportunities.	Support noted.

DE19.54 Nowra CBD Fringe Planning Proposal - Progress and Possible Next Steps

HPERM Ref: D19/122291

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Nowra CBD Fringe - Heritage Study - Final - 29-3-2019 (under separate cover) [⇒](#)

Purpose / Summary

- Provide an update on the Nowra CBD Fringe Planning Proposal (PP), including the results of consultation with the NSW Office of Environment & Heritage (OEH) and outcomes of the resultant Heritage Study.
- Obtain direction on the next steps for this PP.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the following recommendations of the Heritage Study and provide an amended Planning Proposal to the Department of Planning and Environment:
 - a. Reduce the boundaries of the proposed Heritage Conservation Area to exclude areas where there are large areas of 'non-contributory' buildings.
 - b. Update the Statement of Significance for the proposed Heritage Conservation Area.
2. Not adopt the following recommendation of the Heritage Study and defer for consideration as part of any broader future Shoalhaven heritage review:
 - a. *Expand the proposed Heritage Conservation Area boundary to include Oliver Parade which is in the study area but not in the proposed Heritage Conservation Area.*
3. Not include 'post-war fibro cottages' on Leaney Avenue and Oliver Parade as 'contributory' items on the contributory items map.
4. Endorse the revised contributory items map for public exhibition with the supporting DCP Chapter.
5. Not endorse the DCP controls recommended in the Heritage Study to ensure the overall focus of the DCP Chapter remains on character rather than heritage aspects of individual 'contributory' items.

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it enables this important community project and its outcomes, including the PP, to progress and establishes a clear policy direction for the area, providing certainty to landowners/developers.

This option will enable two of the Heritage Study recommendations to be pursued, whilst deferring the recommendation of including a further area of post-war fibro cottages (initially developed by the NSW Housing Commission) in the Heritage Conservation Area

(HCA) for consideration in any broader scale heritage review for Shoalhaven that may take place on the future. Examples of the post-war fibro cottages are prolific across the LGA so more detailed consideration needs to be given to what examples have the most heritage merit.

It will also ensure that the DCP Chapter does not become overly prescriptive with heritage related controls, and instead retain its focus on ensure the overall character of the area can be retained, as was the original intent behind the Nowra CBD Medium Density Study.

2. Adopt the recommendations of the Heritage Study.

Implications: This option is not favoured as one of the recommendations of the Heritage Study is to expand the proposed HCA boundary to include Oliver Parade, which is in the study area but not in the proposed HCA.

Oliver Parade is a highly intact example of post-war fibro cottages initially developed by the NSW Housing Commission, which played a significant part in Nowra's history. However, this style is already represented in other parts of the proposed HCA, and given it is common across Shoalhaven, it should be given more detailed consideration through a wider Heritage Review, should this be included on Council's Strategic Planning Works Program in the future and with detailed engagement with affected owners.

The Heritage Study also recommends including some DCP controls which are highly prescriptive and, if adopted, would make demolition of contributory items prohibited. This was not the intent of the Nowra Medium Density Study, which was primarily about retaining the character of the area, not specific buildings which may be contributory from a heritage perspective.

3. Place the Nowra CBD Fringe project on hold pending the outcome of the Local Character Overlay Discussion Paper which was recently exhibited.

Implications: This option is not favoured given that the project is identified as a priority on Council's adopted Strategic Planning Works Program. A significant body of work has already been done on the project, having now reached Gateway determination stage. Detailed heritage referrals and advice has found the area has heritage significance and grounds for creating a HCA and initial community consultation showed support for the PP and DCP.

There are still uncertainties around the proposed Local Character Overlay, including the legal weight it would have in the planning process and how it would affect complying development. If it does eventually become an option, it would still require a PP for the overlay to be included in Council's Local Environmental Plan and so there is a risk that this delay will lead to further losses to substantially intact streetscapes.

4. Adopt an alternative recommendation.

Implications: This option is not favoured. By not adopting the recommendation there is potential for the PP to be delayed which could lead to uncertainty for landowners/developers in the area.

Background

Council adopted the [Nowra CBD Fringe Medium Density Study](#) (prepared by Studio GL) on 3 July 2018. Council also resolved to prepare a PP and Development Control Plan (DCP) Chapter based on the recommendations of the Study.

The initial PP was prepared and submitted to the NSW Department of Planning and Environment (DP&E) on 8 August 2018 and a favourable Gateway determination was issued on 11 September 2018.

As part of the conditions of the Gateway determination, consultation was required with the NSW Rural Fire Service (RFS) and OEH. RFS raised no objections. OEH indicated support for the creation of the HCA but recommended a Heritage Study be undertaken by a suitably qualified and experienced heritage consultant to review and make recommendations on:

- Proposed HCA boundaries;
- Land use zonings;
- Building heights;
- DCP controls; and
- Effect on two (2) State Heritage Register (SHR) items (Meroogal and Graham Lodge).

Louise Thom Heritage was engaged to undertake the required Heritage Study, which is provided in **Attachment 1**.

The Heritage Study makes the following recommendations which may require alterations to the PP and/or Gateway determination:

- 1) Reduce the boundary of the proposed HCA to exclude areas where there are large areas of 'non-contributory buildings'.
- 2) Expand the proposed HCA boundary to include Oliver Parade which is in the study area but not in the proposed HCA.
- 3) Revise the statement of significance for the proposed HCA.
- 4) Consider making the zoning within the HCA low density residential.

Further discussion on these recommendations, options and potential impacts is discussed below.

1) Reduce the boundary of the proposed HCA to exclude areas where there are large areas of non-contributory buildings.

For the purposes of addressing OEH's submission to review and confirm the most appropriate boundaries of the HCA, a map of 'contributory' and 'non-contributory' items was prepared with assistance from *Louise Thom Heritage* (Figure 1).

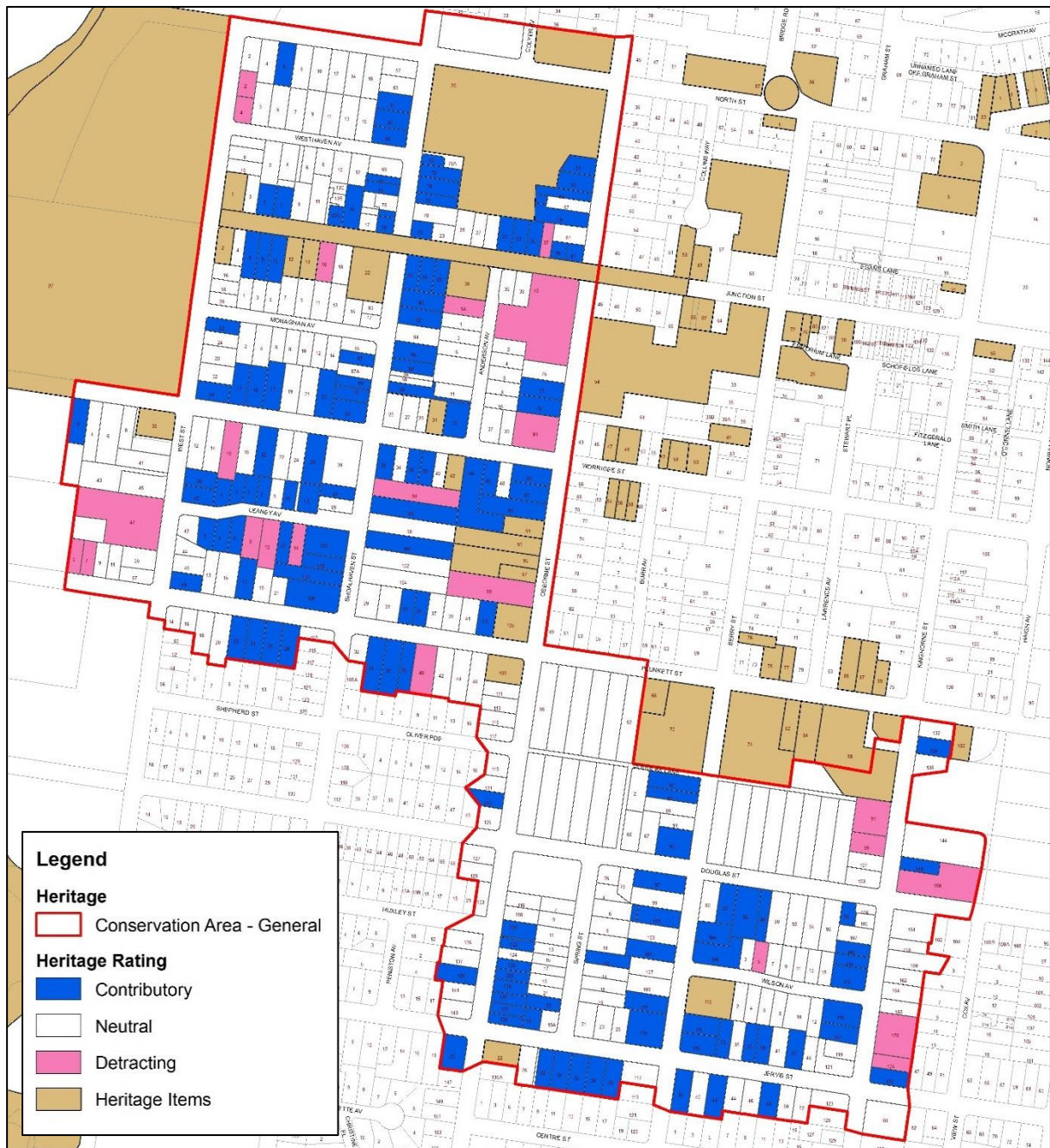


Figure 1. Contributory items map

'Contributory' items are buildings not listed as 'heritage items' but are located within a HCA (identified in the LEP) that make an important and significant contribution to the character and significance of the HCA. 'Contributory' items are buildings that are representative of the Victorian, Federation, Inter-war or Post-war period. The Heritage Study recommends a number of supporting DCP controls that generally specify that 'contributory' items are not to be demolished and any additions to them must retain their character and be located at the rear of the existing building.

'Neutral' items are 'non-contributory', however their design and scale does not detract from the overall character of the HCA.

'Detracting' items are buildings that are intrusive, uncharacteristic and detract from the overall significance of the area.

Examples of identified 'contributory' items identified by the consultant within the current proposed HCA are shown in Figures 2-6 below:

DE19.54



Figure 2. Examples of Contributory Items from the Victorian Period (1850-1890)



Figure 3. Examples of Contributory Items from the Federation Period (1890-1915)



Figure 4. Examples of Contributory Items from the Inter-war Period (1915-1940)



Figure 5. Examples of Contributory Items from the Post-war Period (1940-late 1950s)

DE19.54



Figure 6. Examples of Contributory Items from the Post-war Period – Leaney Avenue (1940-late 1950s fibro cottages, initially developed by the NSW Housing Commission)

Further discussion on the identification of Post-war fibro cottages as ‘contributory’ items is provided later in this report.

As seen in the Figure 1 Contributory Items Map, there are a number of areas in the proposed HCA with relatively few ‘contributory items’, i.e. buildings that represent one of the four key historic periods (Victorian, Federation, Inter-war and Post-war). The Heritage Study indicates that the proposed HCA is larger than it needs to be and has recommended two (2) areas that should be removed from the proposed HCA - see Figures 7 and 8 below.



Figure 7. Northern part of the HCA recommended to be removed (shaded area)

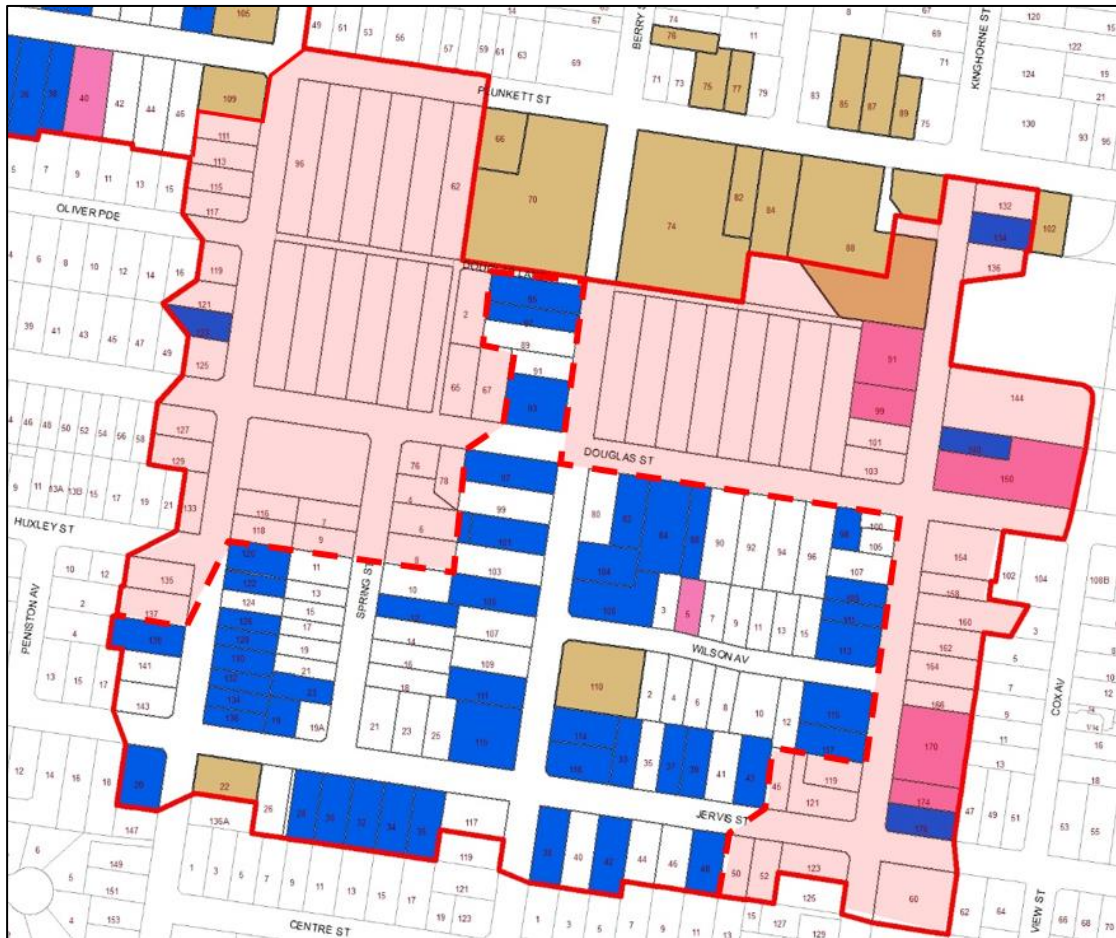


Figure 8. Southern part of the HCA recommended to be removed (shaded area)

It is recommended, if this project proceeds, that the boundaries of the proposed HCA be consolidated to exclude the areas shaded in Figure 7 and Figure 8 given their lack of heritage value or significance, and that a revised PP be submitted to DP&E prior to public exhibition.

It should be noted that there are zones (R1, R3 and B4) in these two locations that allow more intensive forms of development. The community may still have ‘character’ concerns regarding redevelopment that could occur in these areas in the future if they are removed from the HCA.

2) Revise the statement of significance for the proposed HCA in the Planning Proposal.

The Heritage Study provides an assessment of the draft statement of significance to support the PP and provides a suggested rewording as follows:

“Nowra Town Centre West Heritage Conservation Area (HCA) has historical and aesthetic value for its ability to demonstrate Governor Darling’s set of rules for laying out of towns through the underlying grid structure laid out in 1852 by surveyor Thomas Mann. The HCA provides physical evidence of the 19th century and early 20th century residential development surrounding the administrative and commercial centre of Nowra which was established after floods devastated the centres of Numbaa and Terara in 1862 and 1870. The HCA is rare as one of the oldest residential areas of Nowra and for the considerable evidence it retains of Nowra’s settlement and early expansion.

The terrain and elevated natural setting add to the aesthetic value of the HCA by providing long distance views to the scenic rural landscape, Shoalhaven River or the Cambewarra escarpment, framed by landscaped streetscapes and garden settings. The residential

buildings within the HCA provide evidence of the local emergence of architectural styles representative of different periods including late Victorian, Federation, Inter-War, Post-war and public housing. Within the HCA houses demonstrate a consistency in character that is defined by similar setbacks and heights and architectural styles from the four key periods of development which as a group form attractive streetscapes. In particular the prevalence of houses from the Inter-war period provide a continuity of house style that has high aesthetic value and contributes to the overall visually appealing character of the HCA. Houses within the HCA demonstrate the predominant building materials available at different times and the aesthetic value of houses is enhanced by their garden settings and the streetscape plantings.

The HCA is an excellent representative example of a residential area in a town centre containing substantially intact built form evidence from the end of the 19th century through to the Post-war period. The HCA is also historically and aesthetically significant as it provides substantially intact examples of the early work of the NSW Housing Commission to provide affordable housing by acquiring parcels of land, creating mid-block subdivisions and building new cottages in the Post-war period."

If this project proceeds, it is recommended that the statement of significance for the proposed HCA be updated and that a revised PP be submitted to DP&E prior to public exhibition.

3) Expand the HCA boundary to include Oliver Parade which is in the study area but not in the proposed HCA.

The Heritage Study recommends including a section surrounding Oliver Parade in the proposed HCA, as shown in Figure 9.



Figure 9. Additional area recommended to be included in the HCA (shaded area)

The Heritage Study states that "Oliver Parade is an excellent example of early post-war Housing Commission development and should be considered for inclusion within the HCA".

Oliver Parade is a highly intact example of post-war cottages developed by the NSW Housing Commission in the years following WWII. Examples of houses in Oliver Parade are

shown in Figure 10, and similar housing styles can already be found inside the proposed HCA boundaries, including along Leaney Avenue (see Figure 6).

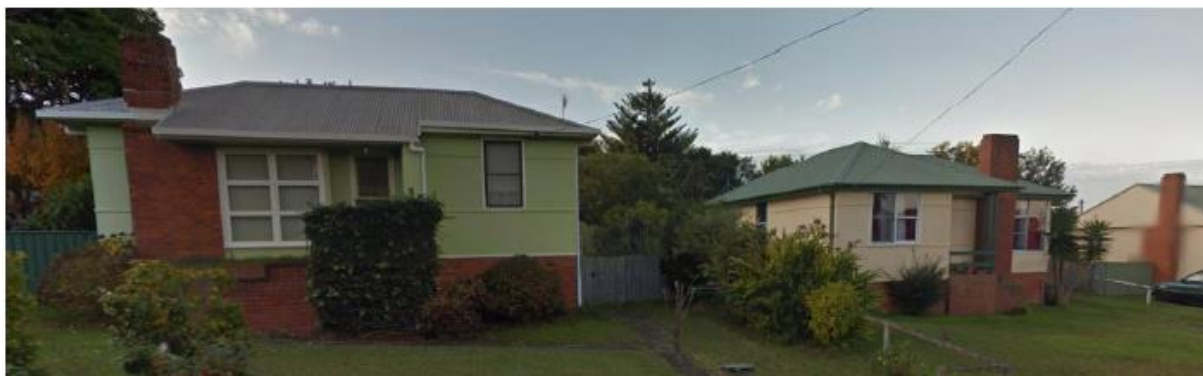


Figure 10. Post-war Fibro Cottages in Oliver Parade (1949)

There are a number of concerns with this recommendation given the age of these buildings and the presence of fibro sheeting containing asbestos. The Shoalhaven LEP 2014 also identifies these two streets as being suitable for medium density development, with Leaney Avenue being zoned R1 General Residential and Oliver Parade zoned R3 Medium Density Residential. This building style is also common across other parts of Shoalhaven and would need to be given more detailed consideration before identifying any parts as contributory to a HCA. The identification of this type of development was also generally considered as part of the earlier Shoalhaven Heritage Study (and LEP) process.

It is recommended that this particular recommendation of the Heritage Study not be pursued at this stage and that it be considered as part of a broader Heritage Review, should this be included on Council's Strategic Planning Works Program in the future.

4) Consider making the zoning within the HCA low density residential.

As discussed in previous reports, the zoning of the proposed HCA is not proposed to be changed. The aim of the PP is to achieve a balance in protecting the existing character of this area of Nowra whilst also facilitating an appropriate mix of densities and high-quality housing, and 'back-zoning' is unlikely to be supported by DP&E given Nowra's status as a Major Regional Centre in the Illawarra-Shoalhaven Regional Plan.

DCP Chapter

Following current best practice for Heritage Conservation Area DCPs, the heritage advice from *Louise Thom Heritage* has suggested the inclusion of a 'contributory' items map to assist future decision making in the HCA (see Figure 1).

'Contributory' items are buildings not listed as 'heritage items' but are located within a HCA and make an important and significant contribution to the contribution to the character and significance of the HCA. Contributory items are buildings that represent one of the following four key historic periods:

Period	Dates	Description
Victorian	1850-1890	Slow development as the shift is slowly made from Numbaa and Terara after the devastating floods
Federation	1890-1915	Increase in growth with opening of the bridge and the railway
Inter-war	1915-1940	Substantial period of growth in housing in West Nowra CBD

Post-war	1940-late 1950s	Period of infill growth primarily led by the NSW Housing Commission
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‘Neutral’ items are non-contributory; however, their design and scale does not detract from the overall character of the HCA while ‘detracting’ items are buildings that are intrusive, uncharacteristic and detract from the overall significance of the area.

The Heritage Study also suggests the following DCP controls to apply to the HCA:

1. Contributory items are not to be demolished.
2. Additions to contributory items must retain their character and be located at the rear.
3. Additions to heritage items and contributory items are not permitted in front of the existing building.
4. New development must maintain the predominant setbacks, heights and front streetscape zone of contributory items in the vicinity.
5. Garages and carports must be located at the rear or the side – set back behind the front of the building.

As discussed earlier in this report, there are concerns with including post-war fibro cottages as ‘contributory’ items in the DCP. It is recommended that the contributory items map exclude this style along Leaney Avenue (sample shown in Figure 6) as ‘contributory’ items.

There is also some concern that by adopting the above DCP controls, the overall intent and focus of this project will change from being primarily about character, to one that is more heavily focused on heritage. While heritage is an important aspect that contributes to the overall character of the area, it is only one among other aspects such as setbacks, landscaping, and streetscape interface. The recommended controls are highly prescriptive and prohibitive and focused more on the heritage aspects of individual ‘contributory’ items. It is therefore recommended that Council not endorse the DCP controls recommended in the Heritage Study to ensure the overall focus of the DCP Chapter remains on character rather than heritage. It is also noted that a DCP cannot override an ability in the LEP, for example regarding demolition.

It is also recommended that Council endorse the inclusion of a revised contributory items map (excluding post-war fibro cottages as ‘contributory’ items) in the draft DCP Chapter for the purposes of consulting with the community.

Alternate Option – Local Character Overlay

The DP&E recently released a Discussion Paper on the proposal to introduce a ‘local character overlay’ in the form of a map and supporting local clause into the Standard Instrument Local Environmental Plan (LEP). The proposed clause could require applicants to:

- meet development controls within the LEP clause; and/or
- meet development controls within a DCP; and/or
- submit a ‘statement of consistency’ with the desired future character for the area, as set out in a desired future character statement adopted by Council.

This proposal could ultimately provide an additional more appropriate way of managing consideration of character impact through the LEP, however at this stage the exact detail and timings for the implementation of the local character overlay are unknown.

Community Engagement

The PP and DCP Chapter have not yet been publicly exhibited, however the Nowra CBD Fringe Medium Density Study which is the basis for the PP and DCP was on public exhibition from 18 April to 18 May 2018.

Following formal exhibition of any PP and/or DCP Chapter, a further report will be provided to Council for consideration.

Policy Implications

This is a 'high priority' project on the 2018-2019 Strategic Planning Works Program that was adopted by Council in June 2018.

Council adopted the Nowra CBD Fringe Medium Density Study (Background Report and Recommendations Report) on 3 July 2018. The PP seeks to implement the recommendations of that report into Shoalhaven Local Environmental Plan 2014.

Financial Implications

The Nowra CBD Fringe Medium Density Study and associated PP and DCP Chapter work has been managed with the existing Strategic Planning Budget.

Risk Implications

If the PP does not proceed, there is a risk that the character of the Nowra CBD fringe area will not be considered in the development process, and substantially intact streetscapes and evidence of key historic periods may be permanently lost or damaged.

DE19.55 Funding Offer - NSW Heritage Grants - 2019-20 and 2020-21

HPERM Ref: D19/185099

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

Detail the NSW Heritage Grants funding offers received for the 2019-20 to 2020-21 financial years from the NSW Government and obtain endorsement to accept the offers.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Accept the following NSW Heritage Grants funding offers as detailed in the report:
 - a. 2019-20 to 2020-21 financial years for the Local Heritage Places and Local Government Heritage Advisor streams; and
 - b. 2019-2021 Local Government Heritage Studies stream (Berry Heritage Investigations project).
2. Note that recurrent funding is provided in the annual Budget to meet Council's matching commitment.

Options

1. Adopt the recommendation.

Implications: This will enable the grant funding offers to be accepted which will help ensure the continuation of both the Heritage Advisor Service and Shoalhaven Local Heritage Assistance Fund Program for 2019-20 to 2020-21. The resolved Berry Heritage Investigations project can also be progressed.

2. Adopt an alternative recommendation.

Implications: This would not be inconsistent with the established process that has been followed for this grant funding that Council has been successfully promoting and administering.

Background

Council has continued its commitment to local heritage projects by supporting the NSW Heritage Grants. This grant funding provided by the NSW Office of Environment and Heritage (OEH) assists Council to provide a Heritage Advisor and run an annual Local Heritage Assistance Fund to provide grants of up to \$5,000 for a wide range of small heritage projects including general maintenance, adaptive reuse, or sympathetic alterations/additions for heritage items.

The conservation of Shoalhaven's cultural heritage by its owners is clearly beneficial to the broader community and visitors to the area. These grants, although small, show that Council and the NSW Government are committed to helping owners to conserve and enhance their properties for future generations. These heritage projects demonstrate Council's commitment

to heritage conservation management and promoting cultural sustainability, heritage tourism and the Community Strategic Plan.

NSW Heritage Grants Program 2019-20 and 2020-21

OEH have again required councils to apply for two (2) financial years in the one application, to provide greater efficiency in grant administration, management processes and to provide financial certainty for councils.

NSW Heritage Grant funding was sought under the following streams:

- Local Heritage Places (Shoalhaven Local Heritage Assistance Fund).

The application was successful, and Council has been offered a grant of up to \$5,500 per annum (ex GST) for 2019-20 and 2020-21. Acceptance is required **by 31 July 2019**.

- Local Government Heritage Advisors.

The application was successful, and Council has been offered a grant of up to \$6,000 per annum (ex GST) for both 2019-20 and 2020-21 for providing a Heritage Advisor Service for Shoalhaven. Acceptance is required **by 31 July 2019**.

- Local Government Heritage Studies (Berry Heritage Investigations project).

The application was successful, and Council has been offered a grant of up to \$12,000 (ex GST) for the 2019-2021 funding period. Acceptance is required **by 31 July 2019**.

Community Engagement

No specific community engagement is required in relation to this report. The Shoalhaven Local Heritage Assistance Fund will continue to be run and advertised in accordance with the usual process when the funding round opens, following acceptance of the funding offers. Direct advice will also be provided to people who have previously expressed an interest in the program.

Community and landowner engagement will be undertaken as part of the Berry Heritage Investigations project and this will be separately reported to Council.

Policy Implications

As part of the funding agreement for the Local Government Heritage Advisors Grant and to claim re-imbursement, Council is required to submit a Heritage Strategy covering the relevant financial years. Any required changes to the Shoalhaven Heritage Strategy will be reported to Council for endorsement at the appropriate stage in the grant process.

Financial Implications

Shoalhaven Local Heritage Assistance Fund (Local Heritage Places Grant)

The funding offer from the NSW Government for the 2019-20 and 2020-21 financial years is up to \$5,500 (ex GST) per annum, with a funding formula of \$1: \$1 (NSW Government: Council). Recurrent funding to match the Grant continues to be provided in Council's annual budget.

Local Government Heritage Advisors Grant

The funding offer from OEH for the 2019-20 and 2020-21 financial years is up to \$6,000 (ex GST) per annum, with a funding formula for both years of \$1: \$1 (NSW Government: Council). Recurrent funding to match the Grant continues to be provided in Council's annual budget.

Local Government Heritage Studies (Berry Heritage Investigations Project)

The funding offer from OEH for the 2019-2021 funding period is up to \$12,000 (ex GST), with a funding formula of \$1: \$1 (NSW Government: Council). Therefore, a matching contribution of up to \$12,000 is required which will be sourced from the existing Strategic Planning budget.

DE19.56 Proposed Housekeeping Amendment - Shoalhaven Development Control Plan 2014 - General and Generic Chapters

HPERM Ref: D19/185859

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Proposed Housekeeping Amendment - Draft Chapters (under separate cover) ➡

Purpose / Summary

Obtain the required Council resolution to formally exhibit the draft General and Generic Chapters Housekeeping Amendment (the Amendment) to Shoalhaven Development Control Plan (DCP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the initial draft General and Generic Chapter Housekeeping Amendment (draft Amendment) to Shoalhaven Development Control Plan 2014 at Attachment 1 (including the Draft Waste Minimisation and Management Guidelines and rescission of Chapter 3: Exempt Development) and support the exhibition of the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider feedback received, any necessary adjustments and the finalisation of the amendment.
3. Advise key stakeholders, including relevant industry representatives, of this decision and the exhibition arrangements in due course.

Options

1. As recommended.

Implications: This is the preferred option as it will enable operational issues and matters that require clarification to improve the function of the relevant chapters and DCP as a whole to be considered and resolved.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the implementation of updated and improved DCP provisions.

3. Not adopt the recommendation.

Implications: This could stop the implementation of improved, best practice/modern and better structured provisions in the DCP.

DE19.56

Background

Council's resolved on 2 June 2015 to commence a large-scale systematic review/amendment of Shoalhaven DCP 2014. This program was based on a 5-stage approach and included several of the General and Generic Chapters in the DCP.

The scope of the draft Amendment has been expanded since 2015 and now includes the review of the following DCP Chapters:

- General Chapters and Dictionary:
 - [Chapter 1: Introduction](#)
 - [Chapter 3: Exempt Development](#)
 - [Dictionary](#)
- Generic Chapters:
 - [Chapter G1: Site Analysis, Sustainable Design and Building Materials in Rural, Coastal and Environmental Areas](#)
 - [Chapter G3: Landscaping Design Guidelines](#)
 - [Chapter G5: Threatened Species Impact Assessment](#)
 - [Chapter G7: Waste Minimisation and Management Controls](#)
 - [Chapter G8: Onsite Sewage Management](#)
 - [Chapter G17: Business, Commercial and Retail Activities](#)
 - [Chapter G19: Home Based Business Activities](#)
 - [Chapter G28: Design Guidelines for Permanent Occupation of Caravan Parks](#)

Essentially, the draft DCP Amendment proposes to improve the function of the relevant chapters, address gaps in policy and address operational issues or matters that need clarification that have been identified since the Shoalhaven DCP 2014 originally commenced on 22 October 2014.

The most notable components of the draft Amendment are outlined in Table 1. All the proposed changes to the respective chapters are detailed in the table of changes at the beginning of each chapter at **Attachment 1**.

Table 1: Summary of key changes in the draft Amendment

Chapter	Summary of key changes
Throughout Amendment	
Throughout	<ul style="list-style-type: none"> • Highlight all terms in the DCP Dictionary green and terms in LEP Dictionary blue. • Minor changes to punctuation, spelling, grammar, structure, formatting and acronyms. • Change references of 'you' to less personal reference. • Replace section references of the EP&A Act to reflect amendments to the Act. • Numbering changes. • Transfer content of certain acceptable solutions to note boxes. • New and redrafted images. • Update legislation, policy and guideline references.

	<ul style="list-style-type: none"> • Complete plain English review. • Expand references of vegetation to include trees. • Remove definitions already in the DCP Dictionary. • Remove checklists as relevant – now on Council's Hub on internet.
General Chapters and Dictionary	
Chapter 1: Introduction	<ul style="list-style-type: none"> • DCP Matrix removed from the chapter - will be available instead on the DCP website. • Remove references to Chapter 3 (exempt development). • Include reference to the Jerberra LEP in reference to exempt development. • Expand area specific chapters to identify the 4 categories of development (Northern, Southern, Various and Nowra-Bomaderry Urban Release Areas). • Introduction of commentary regarding: <ul style="list-style-type: none"> - Inconsistencies between area specific and generic provisions. - Transitional arrangements. - Variations to mandatory controls.
Chapter 3: Exempt Development	<ul style="list-style-type: none"> • Chapter to be rescinded. There is now no place for exempt development provisions in a DCP given legislative changes/reforms.
Dictionary	<ul style="list-style-type: none"> • Add new definitions: Arterial road, Collector road, Continuous Accessible Path of Travel (CAPT), Local distributor road, Local road, Mandatory control, Potentially hazardous food, Sub-arterial road, Tourist accommodation sites. • Delete definitions: Council, Dilapidation/defects report, Flood planning level, Height of building, Named river, Native vegetation, Structurally independent, Waterbody. • Amend definitions: Acceptable solutions, Access street, Building height plane, Development, Economic activity zones, Environmental planning instrument, Flood compatible building components, Flood compatible materials, Ground level (natural), Laneway, Performance criteria, Variation statement, Waste minimisation and management plan (now waste management plan). • Amend term: 'Outdoor eating area' is now 'outdoor dining area' – definition remains the same.
Generic Chapter	
Chapter G1: Site Analysis, Sustainable Design and Building Materials in Rural, Coastal and Environmental Areas	<ul style="list-style-type: none"> • Change in Chapter Heading – proposed to be "Chapter G1: Site Analysis, Site Design and Building Materials." • Application – Simply state that the Chapter applies to all development in Shoalhaven. • Inclusion of additional requirements for site analysis plans. • Delete existing Section 5.2 'Energy Efficiency & Solar

	Access' (content already in Chapter G12/13) and related content throughout.
Chapter G3: Landscaping Design Guidelines	<ul style="list-style-type: none"> • New objectives relating to winter sun and summer shade. • New content relating to the retention/removal of mature shade trees - aim is to reduce the reduction of native vegetation and dominant locally occurring native trees to restore and retain the urban canopy <u>where appropriate</u>. This is consistent with an existing resolution of Council (MIN16.946) that requires any future DCP reviews to consider the value of mature trees in providing shade and reducing the heat island effect. The proposed amendments emphasise retention <u>where appropriate</u>. • New acceptable solution regarding amenity when considering plant palate. • Landscape plan now required for a dual occupancy development. • Currently a landscape plan can only be prepared by a 'qualified landscape architect or designer' – propose to change to 'suitably qualified landscape professional'. • Rationalised landscape plan requirements. • Paving to be fit for purpose. • Clarification that plants can be selected outside of the species list. • Figure 1 replaced with an updated landscape plan.
Chapter G5: Threatened Species Impact Assessment	<ul style="list-style-type: none"> • Change in Chapter Heading – proposed "Chapter G5: Biodiversity Impact Assessment" to reflect general legislative changes. • All changes to supporting information and general commentary respond to the recent Biodiversity Reforms. • Performance criteria and acceptable solutions have been reshaped to reflect the new legislation (e.g. preserve high value ecological areas).
Chapter G7: Waste Minimisation and Management Controls	<ul style="list-style-type: none"> • Replace references to POL12/273 'Waste Minimisation and Management Guidelines' with new draft Waste Minimisation and Management Guidelines. Supporting Document 1 (copy of POL12/273) to be deleted. <ul style="list-style-type: none"> – Guidelines to be exhibited with the proposed DCP Amendment but will be a 'guideline' of Council, not located within the DCP. • Remove duplicate definitions already in the DCP Dictionary.
Chapter G8: Onsite Sewage Management	<ul style="list-style-type: none"> • Remove content that duplicates existing legislation. • Remove links to the Sydney Drinking Water Catchment Area Map - directly refer to legislation. • Changes to reflect content of Shoalhaven Local Approvals Policy (LAP) 2017. • Restructure chapter to better separate controls and supporting information. Some content moved from

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	<p>supporting information to controls.</p> <ul style="list-style-type: none"> • New table to simplify and update information required to install, construct or alter a sewage management system. • Deletion of outdated information (i.e. concurrence powers of Sydney Catchment Authority). • Replace ‘suitably qualified practising person or persons’ with reference to a ‘professional engineer or environmental/soil scientist with appropriate indemnity insurance’. • Reintroduced content from previous DCP No.78 Effluent Disposal that was as an oversight not transferred as part of the citywide DCP process (overall impact of the proposal both in the long and short term). • Update role of designers and installers in the onsite sewage management process.
Chapter G17: Business, Commercial and Retail Activities	<ul style="list-style-type: none"> • Remove reference to roadside stalls throughout – there are no controls for roadside stalls in the chapter. • New provisions relating to streetscape design, pavement, planting and street trees/landscaped areas. • Inclusion of provisions relating to mature trees. • Update provisions relating to markets to reflect the changing nature of this activity. • Insert/update provisions relating CAPT to incorporate best practice principles: <ul style="list-style-type: none"> – Travel diagram. – Human Rights Commission Good Practice Principles. – Locate commercial use of the footpath along the kerbside rather than along the building line/shopfront and maintain established CAPTs. – Clearly and concisely identify CAPT widths. • Insert site line diagram. • Delete section relating to parking of caravans for commercial or community activities – most developments considered under the Codes SEPP or assessed on merit in conjunction with the LAP.
Chapter G19: Home Based Business Activities	<ul style="list-style-type: none"> • Update terminology – “Commercial Home Catering” is now “Home Based Food Businesses”. • Hours of operation have been extended to 9am-6pm and references made consistent across the Chapter. • Clarification that a home-based activity should not be undertaken outside of the designated home-based activity area, rather than the whole property. • Reword, clarify and expand provisions relating to home-based food businesses, including potentially hazardous food, to ensure provisions are contemporary and meet relevant food standards. • Clarify that the term ‘vehicle repair station’ is not a home-based business activity.

Chapter G28: Design Guidelines for Permanent Occupation of Caravan Parks	<ul style="list-style-type: none"> • Insert requirement that only 50% of sites in a caravan park in an SP3 zone may be long term sites. • Delete provisions relating to demand for affordable housing as other provisions in the chapter allow 50% of sites to be considered for this housing stock. • Remove superfluous content regarding environmental hazards which are addressed throughout the development application process. • Insert references to the Shoalhaven LAP 2017 regarding criteria for approvals. • Clarify that long terms sites should not reduce public road access for tourist accommodation.
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Community Engagement

The draft 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 for viewing on Council's website and at the Ulladulla Administrative Building. Development Industry representatives will be directly notified of the exhibition arrangements.

Policy Implications

The draft Amendment seeks to address issues relating to the General and Generic chapters of DCP 2014 arising from:

- Resolutions of Council;
- Operational issues, gaps in policy or matters that need clarification that have been identified since the Shoalhaven DCP 2014 became effective on 22 October 2014.

These changes will increase efficiency and improve the operation of the Shoalhaven DCP 2014.

Financial Implications

The draft Amendment will continue to be resourced within the existing Strategic Planning budget.

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DE19.57 Exhibition Outcomes and Proposed Finalisation - Citywide SP3 Tourist Zones Review - Planning Proposal and Proposed Amendment to Chapter V3 Shoalhaven Development Control Plan 2014

HPERM Ref: D19/171980

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Exhibition Package (under separate cover) [⇒](#)
2. Summary of Submissions - Proposed PP and DCP Amendments (under separate cover)

Purpose / Summary

- Report the outcomes of the public exhibition of the Citywide SP3 Tourist Zones Review Planning Proposal (PP) and the related proposed draft Amendment to Chapter V3 Shoalhaven Development Control Plan (DCP) 2014 for Site 6 in the PP - Ulladulla-Mollymook Gateway Precinct;
- Enable the amendments to Shoalhaven Local Environmental Plan (LEP) 2014 and Shoalhaven DCP 2014 to proceed to finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise the exhibited Planning Proposal (PP013).
2. Forward PP013 to NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven Local Environmental Plan 2014.
3. Make the resulting amendment to the Shoalhaven Local Environmental Plan 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven Development Control Plan 2014 Chapter V3: Miscellaneous Site-Specific Issues as exhibited, with the inclusion of the change to Performance Criteria P5.1 as noted in Attachment 2.
5. Advise key stakeholders, including owners of the subject land, adjoining land owners, all Community Consultative Bodies, relevant industry representatives and those who made a submission, of this decision, and when the LEP and DCP amendments will be made effective.

Options

1. As recommended.

Implications: This is the preferred option as it will enable the amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 to be finalised.

This will see the seven (7) predominantly residential sites rezoned from SP3 Tourist to a more appropriate residential zone. The new local LEP Clause and removal of the third SP3 Tourist zone objective will also clarify the consideration of development applications for dwelling houses in the SP3 Tourist zone. The site-specific development controls for Site 6 'Ulladulla/Mollymook Gateway Precinct' will also help guide future development in

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this prominent precinct and minimise potential impacts (e.g. Privacy and solar access) on the amenity of adjoining properties.

2. Adopt an alternative recommendation.

Implications: An alternative recommendation could delay the completion of this PP and the implementation of related Shoalhaven DCP 2014 provisions for Site 6.

This could result in the retention of a zone that does not reflect existing or likely future land use. The absence of a local LEP Clause and retention of the third SP3 Tourist zone objective will result in ongoing uncertainty as to the permissibility of dwelling houses in the SP3 Tourist zone. Without site specific development controls to accompany a rezoning of Site 6, future development would be subject to the generic provisions of the DCP which may lead to undesirable outcomes from new development in this high-profile site and possible negative impacts on the amenity of adjoining properties. Whilst not ideal, the PP could also proceed without the proposed DCP amendment.

3. Not adopt the recommendation.

Implications: This is not the preferred option as the existing zoning provisions in Shoalhaven LEP 2014 will remain unchanged. The seven (7) sites will remain zoned SP3 Tourist in the Shoalhaven LEP 2014 which does not reflect the existing and likely future use of the land and may limit good or logical development outcomes. Without a local LEP Clause and removal of the third SP3 Tourist zone objective there will be ongoing uncertainty as to the permissibility of dwelling houses in the SP3 zone.

The absence of site specific DCP controls for Site 6 'Ulladulla/Mollymook Gateway Precinct' may also lead to undesirable outcomes from development at this location and negative impacts on the amenity of adjoining properties.

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Background

The Citywide SP3 Tourist Zones Review PP seeks to rezone SP3 Tourist zoned land in seven predominantly residential sites at various locations in the City to a residential zone to better reflect the current and likely future use of the land. The PP also seeks to remove the third SP3 Tourist zone objective from the LEP and introduce a local Clause to clarify when development applications for dwelling houses in the SP3 Tourist zone can be considered and approved.

The PP was initially endorsed by Council on 5 June 2018 (MIN18.420) and received a Gateway determination from the NSW Department of Planning and Environment (DP&E) on 24 September 2018 authorising the PP to proceed, subject to public exhibition and consultation with public authorities.

In its resolution of 5 June 2018, Council also resolved to prepare supporting development controls to guide future development in Site 6 in the PP (the 'Ulladulla/Mollymook Gateway Precinct'). A draft amendment to the Shoalhaven DCP 2014, Chapter V3 Miscellaneous Site-Specific Issues (the DCP Amendment) was subsequently endorsed by Council on 4 December 2018 (MIN18.946) and exhibited alongside the PP to enable detailed landowner and community review/comment.

Government Agency Feedback

Prior to the required formal public exhibition, the PP was referred to the NSW Office of Environment and Heritage (OEH), NSW Rural Fire Service (RFS) and the NSW Roads and Maritime Service as required by the Gateway determination. The comments from each agency are summarised in Table 1 below.

Table 1: Agency Consultation

Agency	Summary	Staff Comment
NSW Office of Environment and Heritage	Sites 1, 2, 3, 4, & 5: the presence of flood prone land requires Council to address the relevant flood related Ministerial Direction 4.3 Flood Prone Land. Council should do so in a manner consistent with the NSW Government's Flood Prone Land Policy and the principles in the Floodplain Development Manual 2005. This could consider the information available in the adopted Floodplain Risk Management Plans and draft Floodplain Risk Management Studies and Plans being prepared for the Lower Shoalhaven and St Georges Basin floodplains. This would ensure that the intended use of the land is compatible with the flood hazard, using best available flood information as part of the rezoning process.	Ministerial Direction 4.3 Flood Prone Land has been addressed in section 4.2.4 of the PP in a manner consistent with the NSW Government's Flood Prone Land Policy and the principles in the Floodplain Development Manual 2005. As part of this Council considered the information in the adopted Floodplain Risk Management Plans for the Lower Shoalhaven and St Georges Basin floodplains. A review of these plans and studies is currently underway however no new flood mapping or modelling was available at the time of preparation of the PP. Hence, there is no change in Council's understanding of flood affectation of Sites 1, 2, 3, 4, & 5 from the review. The PP is considered to be consistent with Ministerial Direction 4.3 Flood Prone Land and consistent with the advice from OEH. It is however noted that proposed change of zone will enable a similar or lesser scale of development to be considered.
NSW Rural Fire Service	Raises no objections to the PP subject to a requirement that any future subdivision of the land complies with <i>Planning for Bushfire Protection 2006</i> (or equivalent), including provision of asset protection zones, access and services.	Any future subdivision of sites that are bushfire prone will be required to comply with the provisions of Planning for Bushfire Protection 2006 (or equivalent) at development application stage.
Roads and Maritime Service	Given that the PP aims to update the Shoalhaven LEP 2014 to better reflect the existing land use across the identified sites, RMS does not consider that the proposal would significantly alter the traffic generation of the sites. Noting the above, RMS does not believe the proposed changes will have a significant impact on the state road network and on this basis, does not object to the PP. No objection to the PP.	Noted.

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Community Engagement/Public Exhibition

The PP and proposed DCP Amendment were formally exhibited concurrently from 30 January to 1 March 2019 inclusive (31 days), in accordance with the Gateway determination. The exhibition included:

- Advertisements in local newspapers;
- Exhibition of the proposed PP, DCP Amendment and related documentation at the Nowra and Ulladulla Administrative Buildings and on Council's website. A copy of the exhibition material is provided at **Attachment 1**;
- Notification to affected and adjoining landholders at each site;
- Notification to Development Industry Representatives and Community Consultative Bodies (CCBs);
- A public information / Q&A drop in session at the Ulladulla Civic Centre on 20 February 2019 for affected landholders and other interested parties in Site 6 (Princes Highway, Mollymook/Ulladulla);
- An information / Q&A session between Council's Strategic Planning staff, Councillors (2) and owners/representatives of the four existing motels in Site 6.

Council also consulted with three public agencies on the PP prior to the exhibition period as required by the Gateway determination.

As a result of the public exhibition, seven (7) submissions were received on the PP and three (3) submissions were received on the proposed DCP Amendment. Three (3) of the submissions commented on both the PP and DCP Amendment, thus the total number of submissions was seven (7).

Submissions on the PP and proposed DCP Amendment are broken down below.

- Submissions on PP:
 - Site 3 (150 to 164 Larmer Avenue, Sanctuary Point) – Two (2) submissions: One (1) from a landowner and one (1) from a consultant on behalf of landowner. Both support the PP;
 - Site 6 (Princes Highway, Mollymook/Ulladulla) – Four (4) submissions; One (1) from a landowner (support), one (1) from an individual (not support) and two (2) from a consultant on behalf of landowners in Site 6 (general support); and
 - One (1) submission from Council's Recreation Community & Culture Section (general support for the PP).
- Submissions on proposed DCP Amendment for Site 6:
 - One (1) from a landowner and two (2) from a consultant on behalf of landowners – 2 object to aspects of the DCP Amendment and 1 raises no objections.

Council staff also responded to numerous enquiries during the exhibition from landholders across the seven (7) sites who were generally supportive of the proposed rezoning and keen to see it finalised promptly.

The submissions received on the PP and proposed DCP Amendment are summarised and commented on at **Attachment 2**. Copies of the actual submissions received will also be available for review in the **Councillors' Room** prior to the meeting.

As a result of submissions received, no changes are recommended to the exhibited PP and one change is recommended to the proposed DCP Amendment (Performance Criteria P5.1) as follows:

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Amend the wording of Performance Criteria P5.1 from:

The front setback is generally consistent with adjoining development and does not undermine the integrity of the prevailing building lines

to

The front setback does not undermine the integrity of the prevailing building lines.

In simple terms, the above change makes it clear that developments in Site 6 do not need to match the front setbacks of adjoining developments – they are permitted to build further forward, provided they are generally consistent with the prevailing setback pattern on the same side of the street.

Policy Implications

The amendments proposed via the PP to Shoalhaven LEP 2014 will see the seven predominantly residential sites rezoned from SP3 Tourist to a more appropriate residential zone which reflects the existing and likely future use of the land. The introduction of a new local LEP Clause and removal of the third SP3 Tourist zone objective will clarify when development applications for dwelling houses in the SP3 Tourist zone can be considered and approved.

The implementation of site specific development controls for Site 6 'Ulladulla/Mollymook Gateway Precinct' will help guide future development in this prominent precinct and minimise potential impacts on the amenity of adjoining properties, such as privacy and solar access. The need for site specific development controls in Site 6 was identified during the preparation of the associated PP.

Financial Implications

Finalisation of the amendments to the Shoalhaven LEP 2014 and Shoalhaven DCP 2014 will continue to be resourced within the existing Strategic Planning budget.

DE19.58 Shoalhaven Development Control Plan 2014 - Proposed Amendment to Chapter N12: Culburra Beach - The Marina Area

HPERM Ref: D19/191446

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Former DCP 48 Maps [↓](#)

Purpose / Summary

- Obtain the required Council resolution to commence the preparation of an amendment to Chapter N12: Culburra Beach – The Marina (Chapter N12) of Shoalhaven Development Control Plan (DCP) 2014.
- Adopt an 'Interim' Policy Position in relation to building lines, erosion setback lines and 20m vegetation buffer lines along The Marina.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the preparation of an amendment to Chapter N12: Culburra Beach – The Marina of Shoalhaven Development Control Plan 2014.
2. Receive a further report on the draft Amendment prior to public exhibition.
3. Adopt the 'Interim' Policy Position that the Maps at **Attachment 1** represent Council's ongoing strategic intent in terms of building lines, erosion setback lines and 20m vegetation buffer lines for The Marina area and apply the Interim Policy Position until the lines have been reviewed, considered and finalised as part of the amendment to DCP Chapter N12.
4. Advise key stakeholders, including relevant industry representatives and landowners, 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 DCP Chapter N12. This is also an opportunity to update and streamline the Chapter which will assist in the preparation and assessment of development applications in the subject area.

The proposed 'Interim' Policy Position will also enable the specified building lines, erosion setback lines and 20m vegetation buffer lines (see **Attachment 1**) to be clearly applied until they can be reviewed, considered and finalised as part of the amendment to Chapter N12.

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 provisions.

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3. Not adopt the recommendation.

Implications: This option is not preferred as it could stop the implementation of more appropriate, best practice and better structured provisions in Chapter N12. An “Interim” Policy Position would also not be in place in the meantime to clarify Council’s intent regarding the specified building lines, erosion setback lines and 20m vegetation buffer lines referred to within Chapter N12.

Background

[Chapter N12 of Shoalhaven DCP 2014](#) is an area specific chapter that provides provisions for residential development along The Marina, an unformed road reserve that runs parallel to Culburra Beach - Figure 1 below shows the area covered by this Chapter.



Figure 1: Subject Land - Chapter N12

The content in Chapter N12 was transferred from former [DCP 48 - Culburra Beach](#) as part of the 2014 citywide DCP process. There have been no amendments to the Chapter since Shoalhaven DCP 2014 became effective on 22 October 2014. The original DCP 48 was first adopted in the early 1990s.

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Over time it has become apparent that there are several operational issues and other matters that are complicating the preparation and assessment of development applications in the subject area, including (not exclusively):

- Dated and confusing figures/images.
- Punctuation, spelling, grammar, structure, formatting and acronyms issues.
- Lengthy, overly complex, duplicated and confusing provisions.
- Need for a landscape plan due to dune stability concerns.
- Need for building lines, erosion setback lines and 20m vegetation buffer lines to be located in the chapter.

An amendment to Chapter N12 will enable Council to modernise and improve the Chapter to ensure it is an effective planning tool now and into the future.

Interim Policy Position

The matter of building lines, erosion setback lines and 20m vegetation buffer lines (hereon referred to as relevant lines) in relation to Chapter N12 has proven to be confusing.

Former DCP 48 (Amendment 1) included several maps as supporting documentation that detailed the relevant lines in relation to The Marina (**Attachment 1**). The relevant lines identified in former DCP 48 Amendment 1 were based on an interpretation of the technical information contained in engineering reports prepared by NSW Public Works in 1980 and 1995 and consideration of visual impact.

These maps were not carried across to DCP 48 Amendment 2; rather the DCP outlined that accurate details of the relevant lines were available from Council. As a result, during the transfer of content from DCP 48 to the Citywide DCP in 2014, the maps were not included in Chapter N12.

Chapter N12 currently includes a 'note' box below Acceptable Solution A2.2 that also outlines that accurate details of the relevant lines are available from Council. The relevant lines in DCP 48 Amendment 1 remain Council's strategic intent for the subject land and have been rigorously applied throughout the area to date.

Whilst DCP 48 has been rescinded, the associated map sheets of Amendment 1 remain the easiest way to view the relevant lines. As such, it would be appropriate to adopt an 'Interim' Policy Position which clarifies that the relevant lines at **Attachment 1** are Council's long term strategic intent for the subject land. It would be appropriate for the 'Interim' Policy Position to be in place until the relevant lines have been reviewed, considered and finalised as part of an amendment to Chapter N12.

Community Engagement

Any future amendment to the DCP would be publicly exhibited for at least 28 days in accordance with legislative requirements at the Nowra Administrative Building. Documentation would also be available on Council's website and at the Ulladulla Administrative Buildings.

Policy Implications

The draft Amendment seeks to address operational issues, gaps in policy or matters that need clarification that have been identified since Chapter N12 became effective on 22 October 2014.

Importantly, the Amendment will look to crystallise Council's building lines, erosion setback lines and 20m vegetation buffer line requirements. The proposed Interim Policy Position

would be in place until the relevant lines have been reviewed, considered and finalised as part of an amendment to Chapter N12.

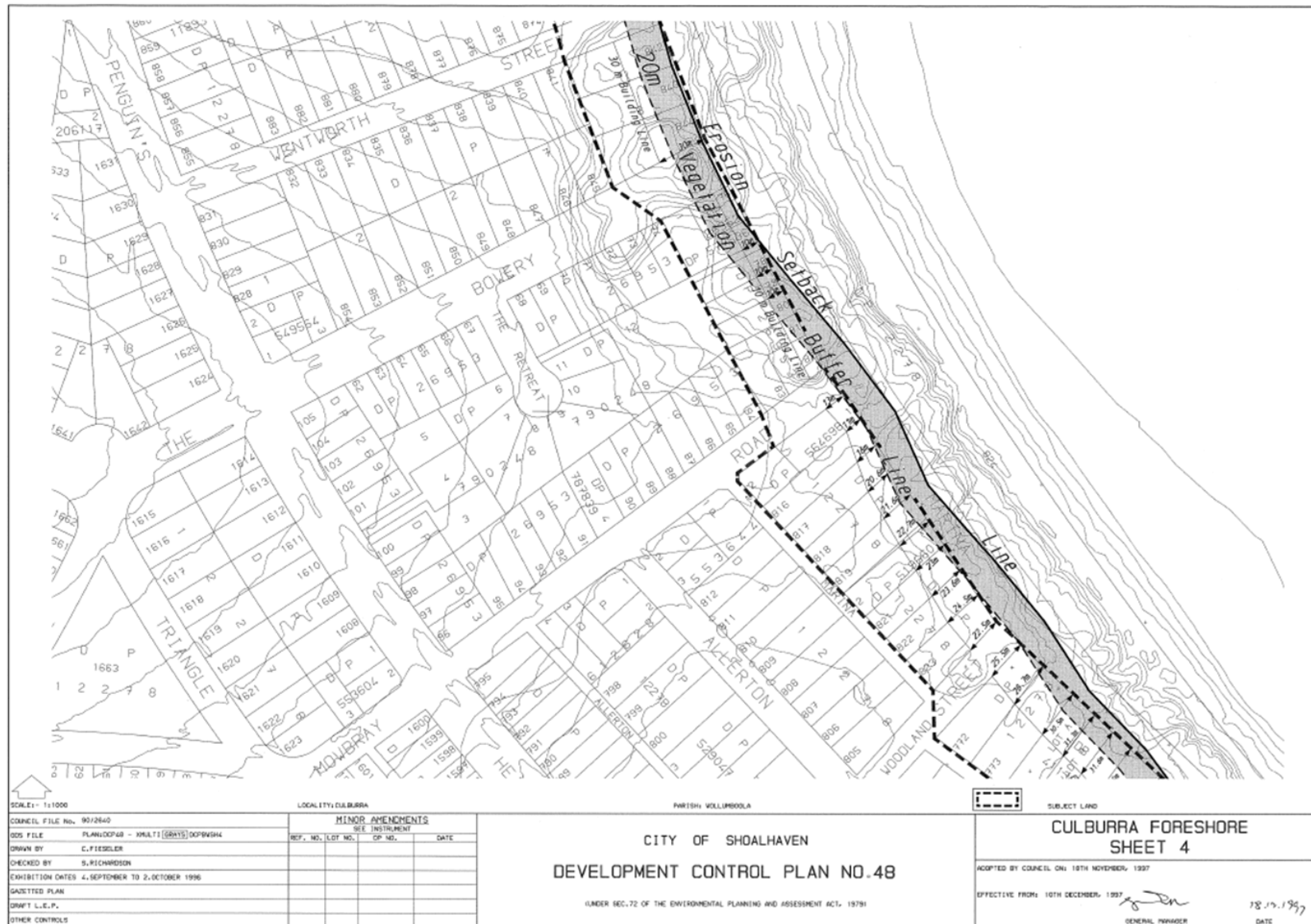
Financial Implications

The draft Amendment will be resourced within the existing Strategic Planning budget.











DE19.59 Development Application – No.64, Lot 1138 in DP 1210394, Seagrass Avenue Vincentia

DA. No: DA18/1998/4

HPERM Ref: D18/383673

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

Attachments:

1. Draft Notice of Determination [↓](#)
2. Plans of the proposal (under separate cover) [⇒](#)
3. Email from applicant - detailed shadow analysis [↓](#)
4. Independent Shadow Analysis - (Revised) (under separate cover) [⇒](#)
5. Section 4.15 Assessment Report (under separate cover) [⇒](#)
6. Applicant's request for variation to driveway location [↓](#)
7. Applicant's response to submissions (under separate cover) [⇒](#)
8. Proceedings of the Residents Briefing Meeting held on 4 March 2019 (under separate cover) [⇒](#)
9. Report - Assessment of Submissions (councillors information folder) [⇒](#)
10. Submission by Sherrie Smith dated 20 March 2019 (under separate cover) [⇒](#)
11. Submission by Peter O'Sullivan dated 21 March 2019 (under separate cover) [⇒](#)
12. Checklist for SDCP Chapter G11 - Dual Occupancy Subdivision [↓](#)
13. Checklist for SDCP Chapter G13 - revised version post 30 Oct 2018 (under separate cover) [⇒](#)

Description of Development: Attached Dual Occupancy (2 x Two Storey Dwellings) and Strata Subdivision

Owner: KARINA MAY WAITE & ANDREW JOHN STECYK

Applicant: Eagle Homes

Notification Dates: 10 October 2018 to 25 October 2018 and 6 to 21 March 2019

No. of Submissions:

First round of notification: 48 submissions in objection (from 38 submitters), one petition of objection with 30 signatures, 1 in support (from owner of subject land).

Second round of notification: 46 in objection (from 40 submitters), one petition of objection with 193 signatures, none in support.

Purpose / Reason for consideration by Council

This application was called in for determination by Council's Development Committee at its meeting held on 6 November 2018 (MIN18.892), citing the large number of objections made and the considerable public concern caused by the application.

The Committee further resolved at that meeting that a Residents Briefing Meeting be organised.

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Recommendation (Item to be determined under delegated authority)

That Development Application DA18/1998 be refused for the reasons set out in Attachment 1 to this report.

Options

1. Refuse the application as recommended.

Implications: The application would not proceed. The applicant can apply for a Section 8.2 review of Council's decision and/or could lodge an appeal with the Land and Environment Court against Council's decision.

2. Approve the application as submitted

Implications: The application could proceed subject to compliance with any conditions of consent, issue of Construction Certificate and Subdivision Certificate. Under some circumstances third parties (i.e. objectors) can seek a judicial review of Council's decision in the Land and Environment Court.

Location Map

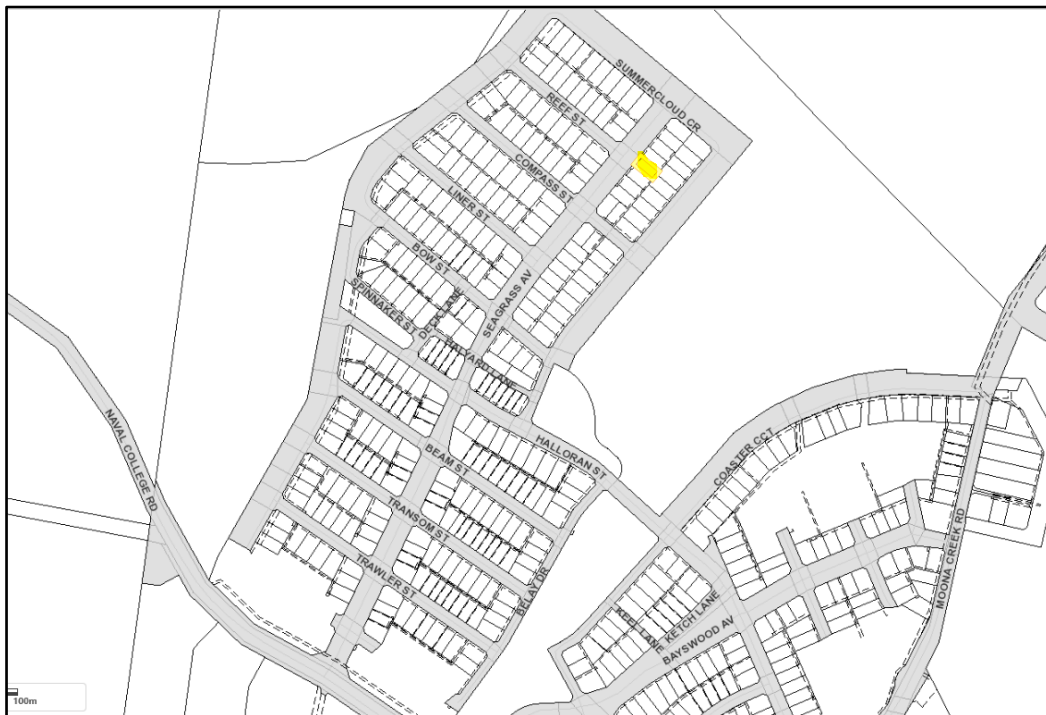


Figure 1 - Site location plan

Background

The applicant proposes an attached dual occupancy of two storeys containing two, four-bedroom dwellings. The application includes Strata subdivision of the completed development. There have been no prior approvals for Dual Occupancy within the Bayswood Estate.

The Bayswood Estate was approved by the State government under the Major Projects SEPP. It is a highly planned residential estate. When Shoalhaven LEP2014 came into effect, the development came under the control of Council as consent authority, and many of the

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former development controls in the Major Project approval were embraced in a new Chapter N15 of the Shoalhaven DCP (Vincentia Coastal Village and District Centre).

Ownership of the remaining undeveloped and unsold land in the Bayswood site transferred to the current developer, Wakefield Ashworth Developments P/L.

Proposed Development

The applicant proposes an attached dual occupancy of two storeys containing two, four-bedroom dwellings. The application includes Strata subdivision of the completed development. The plans of the proposal are shown in **Attachment 2**.

Subject Land

The subject land is lot 1138, DP1210394, No.64 Seagrass Avenue, Vincentia. The land is situated towards the northern end of Seagrass Avenue in Bayswood Estate, between Reef Road and Summercloud Crescent. The site is shown highlighted yellow on the aerial photograph in Figure 2 below.



Figure 2 – Aerial view of the site and surrounding development

Site & Context

The site is 500 m² in area with a width of 15.625 metres and depth of 32 metres. The site is cleared of vegetation.

The land is zoned R2 Low Density Residential under Shoalhaven LEP 2014. Dual occupancies are permissible in the zone with consent.

The site is relatively level over most of its surface but slopes down by approximately 0.6 metres to the footpath and road surface in Seagrass Avenue in the section of the lot forward of the general front building alignment.

Immediately surrounding the site are single storey dwellings of recent construction. There are several two storey dwellings more distant from the site. In accordance with the practice adopted by the initial developers, most of these two storey dwellings are located on corner lots with the intent of minimising overshadowing.

A street view of the site and surrounding residential development is shown at Figure 3 below.

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Figure 3 – Street view of the site

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The east-west orientation of the site and those in its vicinity, and their relatively small size and narrow width, means that the blocks are highly vulnerable to overshadowing from two storey developments.

The NSW Land and Environment Court has established a planning principle for development on small or narrow sites in *CSA Architects v Randwick City Council [2004] NSWLEC 179*. This planning principle has relevance to this issue of solar access. Its application is discussed under the 'Issues' section below.

Seagrass Avenue is constructed with divided carriageways with a central landscaping strip. Each of the one-way road carriageways are narrow and are supplemented by parking bays outside of the carriageways themselves. These parking bays are not continuous and provide for significantly less on-street parking than would be found in a more traditional subdivision.

On the eastern side of the section of Seagrass Avenue containing the subject site, there is a parking bay between Summercloud Crescent and Reef Street providing approximately five (5) on-street car spaces and another parking bay between Reef Street and Compass Street providing approximately another five on-street car spaces. On the western side of Seagrass Avenue there is a parking bay containing three on-street car spaces, adjoining the property on the corner of Seagrass Avenue and Summercloud Crescent (approximately 40 metres from the subject property). There are no on-street car parking spaces on the western side of Seagrass between Reef Street and Compass Street.

There are approximately thirteen on-street car parking spaces to serve the sixteen residential properties on Seagrass Avenue between Summercloud Crescent and Compass Street.

One of these on-street car parking spaces is located immediately in front of the subject site and will be lost due to the width and location of the proposed driveway. The parking bay is terminated by a kerb extension or 'blister' that is designed to reduce traffic conflict at the intersection with Reef Street.

Due to the narrow one-way roads, the intersection with Reef Street also functions as a 'U' turn bay for traffic travelling up and down Seagrass Avenue.

The expanded aerial view of the site and surrounds at Figure 4 below shows the configuration of Seagrass Avenue, its intersection with Reef Street immediately opposite the site, and the configuration of the on-street parking bay and kerb 'blister' in front of the site.



Figure 4 – Expanded aerial view of the site and surrounding development

History

The subject land was subdivided in accordance with Subdivision Approval SF9786. There are no previous development applications applying to this site.

Issues

Overshadowing of adjacent dwellings (SDCP Chapter G1)

The proposal causes shading to two adjacent properties; 62 Seagrass Avenue and 33 Summercloud Crescent. The impact on each of these properties is addressed individually below.

Applicant's Submission

The shadow diagrams submitted by the applicant are included in the plans at **Attachment 2** and the applicant's assessment of shadow impact is at **Attachment 3**.

The applicant contends that the level of shadowing is largely compliant with the DCP standard and is therefore acceptable.

Discussion

33 Summercloud Crescent

The shadow diagrams provided by the applicant and the independent shadow review commissioned by Council, both indicate that this property does not encounter additional shading from the proposal until after 2pm.

This meets the solar access requirements set out in Acceptable Solutions A3.1 and A4.1 of SDCP Chapter G1. The property retains at least 3 hours solar access to north facing living rooms and principal open space areas between 9 am and 3 pm on the shortest day of the year.

62 Seagrass Avenue

The assessment of solar impact affecting this property is complex and has been aided by Council's commissioning of independent shadow diagrams. The decision to obtain an independent shadow review was made because the shadow diagrams submitted with the application did not include shadow elevations of sufficient accuracy and because those shadow diagrams indicated that the result was borderline.

The independent shadow analysis commissioned by Council is at **Attachment 4**

A detailed assessment of the shadow impact of the proposal on 62 Seagrass Avenue is contained in the SDCP Chapter G1 Checklist contained in the Section 4.15 Assessment Report at **Attachment 5**.

In summary, that detailed assessment finds as follows:

- The proposal does not meet the solar access standard in Acceptable Solution A4.1 in SDCP2014 Chapter G1, which states that *"50% of the area of the windows or glazed doors of north facing living areas and principal open space of adjoining dwellings do not have their sunlight reduced to less than three hours of sun between the hours of 9am and 3pm on the 21st June(winter solstice)"*;
- There is significant self-shading of the north facing living areas and private open space of the dwelling at 62 Seagrass Avenue caused by the roof and eaves of the building and by the existing boundary fence;
- Because of the development, the principal private open space area (which comprises the al fresco area and the private open space area adjacent to the living rooms) loses virtually all the sunlight that it currently receives;
- Due to the extent of self-shading and the proposal's non-achievement of the 3hours / 50% standard, a more qualitative assessment was conducted in accordance with the NSW LEC Planning Principal on solar access (established in *The Benevolent Society v Waverley Council [2010] NSWLEC 1082 at 144* – updated from *Parsonage v Ku-Ring-Gai*);
- This assessment finds that the loss of solar access to 62 Seagrass Avenue is unreasonable;
- The proposal does not satisfy Performance Criteria P4 in SDCP2014 Chapter G1, which is *"To ensure that dwellings are sited to minimise the overshadowing of neighbouring dwellings, such that the impact on adjoining residences is not unreasonable"*.

The NSW Land and Environment Court Planning Principle on development on small or narrow sites (established in *CSA Architects v Randwick City Council [2004] NSWLEC 179*) states that the "main criterion for assessing the proposal on its own site is whether it meets other planning controls" and identifies the most critical control for small and narrow sites is that for setbacks, and asked the question whether the development's impact is "worse because the development is on a small or narrow site".

The Planning Principle deals with the issue of solar access and identifies that where setbacks meet the Council's standards (as they do in this case) building height is the other critical element where narrow sites are concerned. The assessment undertaken for this development is consistent with the elements of this Planning Principle.

SDCP2014 standards for solar access in relation to 62 Seagrass Avenue

SDCP2014 contains the following standards for solar access to neighbouring dwellings:

- Performance Criteria P4: "To ensure that dwellings are sited to minimise the overshadowing of neighbouring dwellings, such that the impact on adjoining residences is not unreasonable".

- Acceptable Solution A3.1: “Your dwelling design should be based on the NSW Land & Environment Court Planning Principle ‘Impact on Solar Access of Neighbours’ from *Parsonage v Ku-ring-gai* [2004] NSWLEC 347”.
- Acceptable Solution A4.1: “50 % of the area of the windows or glazed doors of north facing living areas and principal open space of adjoining dwellings do not have their sunlight reduced to less than three hours of sun between the hours of 9am and 3pm on the 21st June (winter solstice)”.

The requirements of Acceptable Solution A4.1 are generally conclusive in determining the acceptability of loss of sunlight to neighbouring dwellings. That is to say, if the development retains at least 3 hours of sun over 50% of the area of north facing living area windows and principal open space area, then the degree of impact is considered to be reasonable.

In the case of this development and its impact on the adjoining dwelling at 62 Seagrass Avenue, the 3 hours / 50% standard is not met for either north facing living area windows or for the principal private open space (PPOS) area. For the period between 9 am and 3 pm, solar access to north facing windows ranges between 27% and 49.5% and never reaches the 50% level. For the principal private open space (PPOS) area, the most sunlight that is retained is about 10%, so the standard is not met for the PPOS area either.

A second analysis was undertaken because the affected property receives substantial self-shading of the north facing windows and PPOS from its roof eaves and from the existing boundary fence. In this analysis the extent of self-shading was excluded and the loss of solar access to the residual area receiving sunlight was estimated. This approach provides the most favourable assessment of the shading impact of the development. It is not strictly in accordance with Acceptable Solution A4.1, which is silent on the issue of self-shading.

When self-shading by 62 Seagrass Avenue is taken into account, the 3 hours / 50% standard is met for north facing living area windows – but is not met for the principal private open space (PPOS) area.

It is therefore concluded that even when self-shading is accounted for, the development still does not achieve the 3 hours / 50% standard for both north facing living area windows and principal private open space area.

Due to the extent of solar impact on the adjoining dwelling, the development was also assessed with reference to the NSW Land and Environment Court’s Planning Principle on solar access. This is referenced in Acceptable Solution A3.1.

The LEC Planning Principle provides a more qualitative assessment of solar impact, which includes consideration of the density of development in an area, vulnerability of a site to overshadowing, and the nature and extent of solar access to private open space.

The structure of SDCP2014 requires that, where an Acceptable Solution is not met, then the development must be assessed against the relevant Performance Criteria (P4, shown above).

Taking into account the extent and incidence of shading and the LEC Planning Principle, it is concluded that the impact on the adjoining residence is unreasonable and that therefore Performance Criteria P4 is not satisfied.

The detailed assessment of this issue is contained in the SDCP2014 Chapter G1 Checklist that forms part of the Section 4.15 Assessment Report at Attachment 5.

Having regard to the detailed assessment, it is considered that:

- The design and siting of the development does not minimise the overshadowing of the neighbouring dwelling at 62 Seagrass Avenue. This is mainly due to the two-storey design of the building and its location on the site.

- The impact on the adjoining residence at 62 Seagrass Avenue is unreasonable, as the proposed development deprives that residence of adequate sunlight to its most valued northern facing living areas, al fresco and principal private open space area.

Tandem (stacked) parking spaces exceed the maximum slope of 5% (SDCP Chapter G13)

The application proposes a single garage for each dwelling and a tandem or stacked car space for each dwelling on the driveway in front of each garage.

This is compliant with the two on-site car spaces required for each dwelling where there are more than two bedrooms. However, it does not comply with the requirement in SDCP Chapter G21 for both spaces to be behind the building line, instead relying on the revised Chapter G13 (Dual Occupancy) which permits tandem or stacked parking under some circumstances.

The tandem parking spaces do not comply however, with the revised G13 requirement that such car parking spaces have no greater longitudinal slope than 5%. The submitted driveway sections show that the parts of the driveways containing the car parking spaces have grades of 12% and 14% respectively and do not comply.

The maximum longitudinal slope of 5% is based on experience with similar provisions in other Council areas, notably in the Shellharbour City Council area. This is similar to, but less stringent than, the requirement in Australian Standard AS/NZS 2890.6:2009 (Parking Facilities) which establishes a maximum grade of 3% for accessible car spaces.

Excessive slope of a parking space can impair the functioning of vehicle door check straps, make it more difficult for parents of young children and for people with limited mobility to safely enter and exit a car. It also increases the risk of vehicles rolling onto the road carriageway if handbrakes are not properly applied or they fail.

Applicant's submission

The applicant has not made a specific submission in relation to this matter.

It is noted that this issue was raised with the applicant in Council's Preliminary Assessment email dated 10 October 2018 which was sent shortly after the application was lodged.

Discussion

The excessive slope affects the functionality and safety of the proposed parking spaces.

Driveway location (SDCP Chapter G21).

The site is located at the intersection of Seagrass Avenue and Reef Street as shown on the aerial photo at Figure 5 below. This photo shows the location of the car parking bay in front of the subject site. The site is outlined in yellow.



Figure 5 – Aerial photo showing the site (outlined in yellow) in relation to the intersection of Seagrass Avenue with Reef Street

SDCP Chapter G21 contains the following provisions indicating acceptable driveway locations, as shown in Figure 6 below.

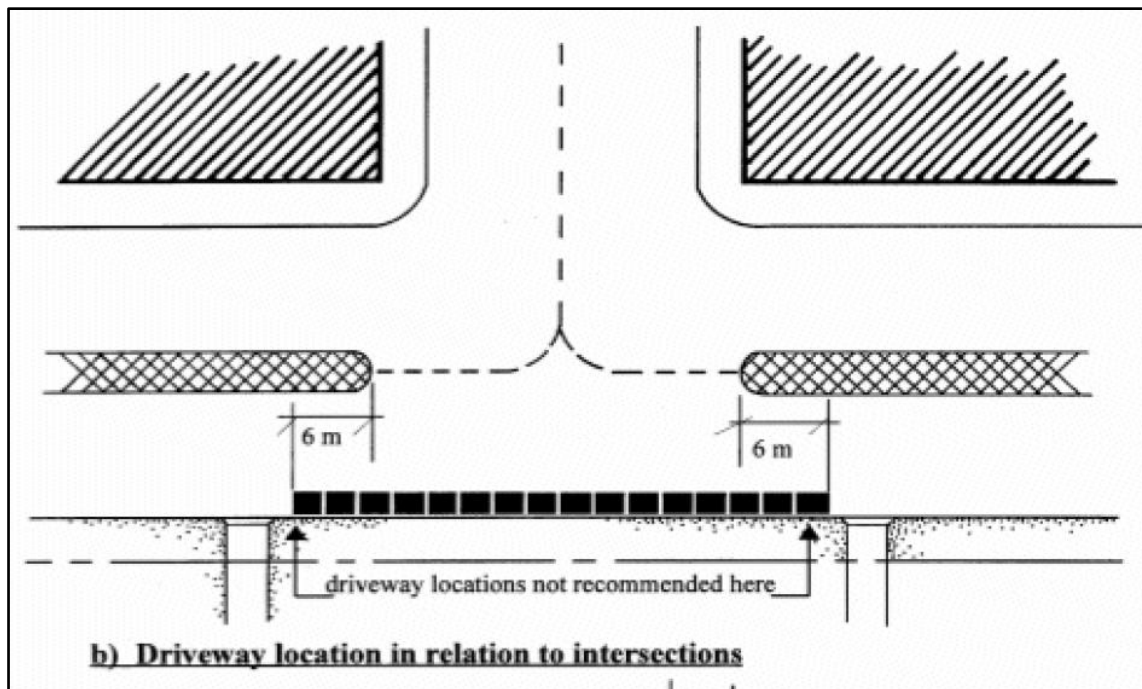


Figure 6 – Driveway locations in relation to intersections not recommended in SDCP Chapter G21

The 6m ('no driveway') distance to the north of the traffic median is where the proposed driveway is to be located.

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The extract of the site plan in Figure 7 below shows the location of the proposed driveway occupying the site of the on-street parking bay and essentially opposite the intersection with Reef Street.

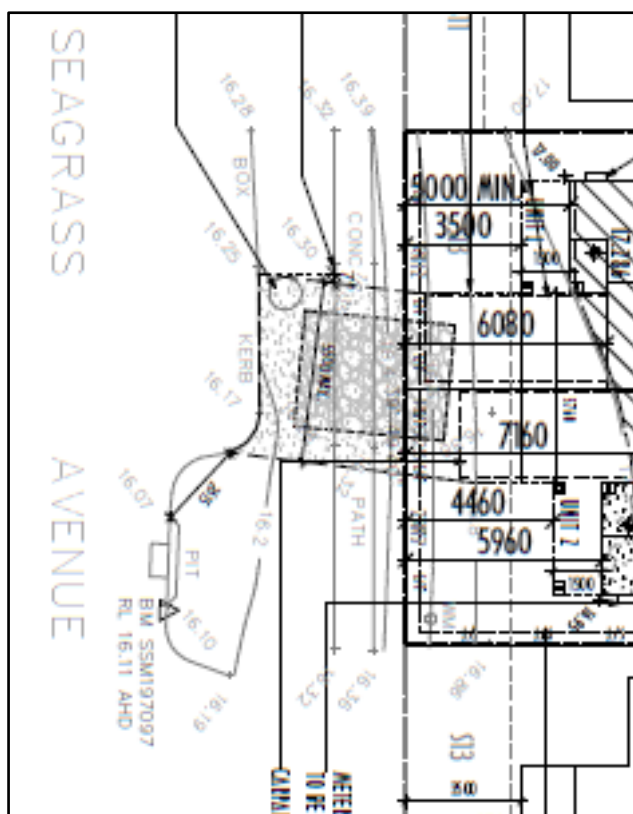


Figure 7 – Extract of site plan showing location of proposed driveway

Applicant's submission

This non-compliance was drawn to the attention of the applicant who submitted a variation request in respect of the non-compliance. The variation request is reproduced at **Attachment 6** and is summarised below:

- 6m distance is arbitrary;
- Egress is not inhibited by the road intersection, with adequate sight lines and distance to the carriageway of Seagrass Avenue;
- Vehicles using either Seagrass Avenue or Reef Street will not have sight lines or safety impeded by the driveway location.

Discussion

In assessing the variation request, it is noted that the 'kerb blister' in Seagrass Avenue opposite Reef Street was constructed at the time of subdivision as a means of minimising traffic conflict. The clear intention was for an on-street car parking space to be located immediately north of the kerb blister and for the driveway access to 64 Seagrass to be located at the northern end of the frontage, i.e. as far as possible from the Reef Street intersection.

One intent of this arrangement is to reduce traffic conflict by discouraging drivers from crossing the southbound carriageway of Seagrass Avenue from the U turn bay at the intersection to enter the property. As can be seen from the photograph at Figure 8 below, the driveway location would be in a direct line from the U-turn bay, which would encourage this movement, thereby reducing traffic safety. Essentially motorists may be tempted to go the wrong way up the one-way carriageway to access the premises.

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Figure 8 – Street view of site from Reef Street, showing U-turn bay between the two one-way carriageways

As the driveway services two dwellings, the number of inappropriate traffic movements would be double that of a driveway servicing only one dwelling. The proposed driveway location effectively negates one of the design features of the subdivision's road network.

Accordingly, the variation request is not supported.

Suitability of the site for the development (EPA Act section 4.15 (1) (c))

This is one of the important considerations in section 4.15.

Applicant's submission

The applicant considers that the site is well suited to the proposed development.

Discussion

In most cases it can be expected that the Court will approve an application to use a site for a purpose for which it is zoned, provided of course the design of the project results in acceptable environmental impacts. In this instance, the site is not considered to be suitable for the development for the following reasons:

- The narrow block widths and their east-west orientation makes the site less suitable for two storey development due to the heightened vulnerability to overshadowing (as apparently reflected in a long-standing practice of the developer designating corner sites for two storey buildings and directing such development to those sites);
- The 'master planned' nature of Bayswood with its narrow roads and minimal on street parking provides no excess capacity for on street parking;

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- The site is located at the intersection with Reef Street and this gives rise to additional vehicle conflict and the encouragement of potentially unsafe turns into the site;
- The short steep slope of the lot between the front building alignment and the footpath means that the proposed 'stacked' or 'tandem' car parking spaces in front of the garage of each dwelling have an excessive slope which considerably exceeds the 5% specified in the revised SDGP Chapter G13 for such spaces;
- The site is not suitable for a dual occupancy development with a central driveway as the lot and adjoining road layout are configured to provide for a single driveway access adjoining the lots northern boundary and to provide an on-street car space in the parking bay in front of the lot.

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Planning Assessment

The DA has been assessed under section 4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 5**.

Policy Implications

There are no policy implications arising from this application.

Consultation and Community Engagement:

This application has been notified on two occasions.

The first notification period was from 10 October to 25 October 2018. The first notification was made in accordance with Council's Community Consultation Policy with letters being sent to the owners of properties within a 25-metre buffer of the site.

During the first notification period there were 48 submissions in objection (from 38 submitters), one petition of objection with 30 signatures, and 1 submission in support (from the owner of subject land).

The applicant's response to submissions is shown at **Attachment 7**.

In accordance with the Development Committee's decision, a Residents Briefing Meeting was held on 4 March 2019. A record of the proceedings of that meeting is shown at **Attachment 8**.

Following the holding of the Residents Briefing Meeting a second notification period was provided from 6 March to 21 March 2019. The second notification was made in accordance with Council's Community Consultation Policy, with letters being sent to the owners of properties within a 25-metre buffer of the site and to those people who made submissions during the first round of notification.

During the second round of notification, there were 46 submissions in objection (from 40 submitters), one petition of objection with 193 signatures, and no submissions in support.

Attachment 9 is the report on the assessment of submissions. This includes copies of submissions made on the application and an assessment of the issues raised in each submission. **Attachment 10** and **11** are copies of two submissions that were too long to include in the report on the assessment of submissions.

Key issues raised in submissions are provided below.

Issue

The dual occupancy proposal does not comply with the covenants for Bayswood Estate and the Bayswood Design Essentials.

Comment

While the original sales material for Bayswood indicated that dual occupancy would not be allowed, the zoning and the Restrictions ('covenants') imposed at the time of subdivision do not prohibit them. The statement quoted in several submissions i.e. "single dwelling per lot with no further subdivision of lots" was not a legal restriction on the title of properties in the Bayswood Estate.

The application was certified by the current estate developer as being compliant with the Bayswood Design Essentials.

Clause 1.9A of Shoalhaven LEP 2014 overrides private covenants to the extent necessary to enable development to be carried out in accordance with the LEP.

Issue

The development is not consistent with the zone objectives for the R2 Low Density Residential zone

Comment

The zone objectives for the R2 Low Density Residential zone under Shoalhaven LEP 2014 are:

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

The key zone objectives that are relevant to the proposed development are the first and third objectives. The second zone objective relates to non-residential land uses such as child care facilities community facilities, neighbourhood shops, and places of public worship.

Several submissions have argued that the dual occupancy does not qualify as 'low density' but rather should be 'medium density'. Submissions have also pointed out that the term 'low density' is not defined in the Environmental Planning and Assessment Act 1979, the Shoalhaven LEP 2014 or the Shoalhaven DCP 2014. They have pointed to commonly-accepted thresholds for 'low density' and medium density' development of 25 dwellings per hectare and 40 dwellings per hectare, respectively.

The above thresholds equate to typical lot sizes of 400 m² (at 25 dwellings per hectare) and 250 m² (at 40 dwellings per hectare).

The rationale is that existing lots in Bayswood are typically around 500 m² so fall clearly in the 'low density' category, while the proposed development will result in two lots each of 250 m² and therefore ought to be categorised as 'medium density'.

While a street full of sites occupied by dual occupancies would likely not be regarded as being a 'low density' environment, one or a few dual occupancies spread throughout an area mainly consisting of single detached dwellings likely would. The proposal before Council is for one dual occupancy development in an existing subdivision that primarily consists of single detached dwellings. The proposal is therefore not inconsistent with providing an environment **primarily** (report author's emphasis) for detached housing. The third zone objective does not say **exclusively** for detached housing, or even **overwhelmingly** for detached housing, but **primarily**.

The other element of the third zone objective is that a proposed development should be compatible with an environment primarily for detached housing.

In this regard it is noted that dual occupancies are specified as a development that is permissible with development consent in the R2 Zone.

The NSW Land and Environment Court has established a Planning Principle (at *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*) in relation to the issue of **compatibility** between a development and its surroundings. This Planning Principle identifies the two major aspects of such compatibility as visual impact and physical impact.

Visual impact of the proposal has been considered by Council primarily under SDCP Chapter N15 (Vincentia Coastal Village and District Centre) which contains detailed provisions relating to the design and visual appearance of the proposal. The application satisfactorily complies with the design and appearance guidelines in SDCP Chapter N15. Further, it is noted that the developer has certified the plans submitted with the application as being compliant with the Bayswood *Design Essentials*.

In terms of physical impact, aspects such as noise, overlooking, overshadowing and constraining development potential have been assessed in the Section 4.15 Assessment Report and SDCP Chapter G13 (Dual Occupancy Development). While the proposal is broadly compatible with the surrounding development in terms of its physical impact, there are some issues in relation to overshadowing and impact on the availability of on-street parking that are relevant and that are discussed elsewhere in this report.

The NSW Land and Environment Court has also established a Planning Principle on the relevance of zoning (in *BGP Properties Pty Limited v Lake Macquarie City Council [2004] NSWLEC 399*). This Planning Principle relevantly states that “In most cases it can be expected that the Court will approve an application for a purpose for which it is zoned, provided of course the design of the project results in acceptable environmental impacts”.

Issue

The subdivision of the land does not comply with the LEP minimum lot size.

Comment

The land size of 500 m² meets the minimum site area requirement under SDCP 2014 for attached dual occupancy.

There is no minimum lot size under SLEP 2014 for strata subdivision, and Clause 4.1A of SLEP 2014 is not relevant as it is a strata subdivision that is proposed.

Issue

The development will overshadow adjoining residence at 62 Seagrass Avenue.

Comment

Council commissioned an independent shadow review to properly assess the shadow impact on the adjoining properties. This assessment is complex and is detailed in the Section 4.15 Assessment Report at **Attachment 5**.

The conclusion of that assessment is that the development unreasonably overshadows the adjoining residence at 62 Seagrass Avenue.

The area of the roof containing the existing hot water solar panels at 62 Seagrass Ave will not be affected by the proposal. The possible shadowing of future potential placement of solar panels on parts of the roof that may be affected by the proposal is not a relevant consideration, although it is noted that the worst-case shading of the roof of 62 Seagrass Ave occurs at 9am, with shading decreasing after that time.

Issue

The development will overshadow the adjoining residence at 33 Summercloud Crescent.

Comment

Shadow diagrams commissioned by Council show that 33 Summercloud Crescent will not be affected by shadows from the proposal until after 2pm on the shortest day of the year. At

3pm the shadows from the development extend only slightly beyond the self-shading caused by the rear boundary fence of 33 Summercloud Crescent.

Figure 9 below shows the extent of shadowing at 3pm. The property to the right of 64 Seagrass that has the compass “True North” (TN) superimposed upon it is 33 Summercloud Crescent. The grey area represents the self-shading from the rear fence. The small area of red shading to the right of the grey shading represents the additional shading from the proposed development.

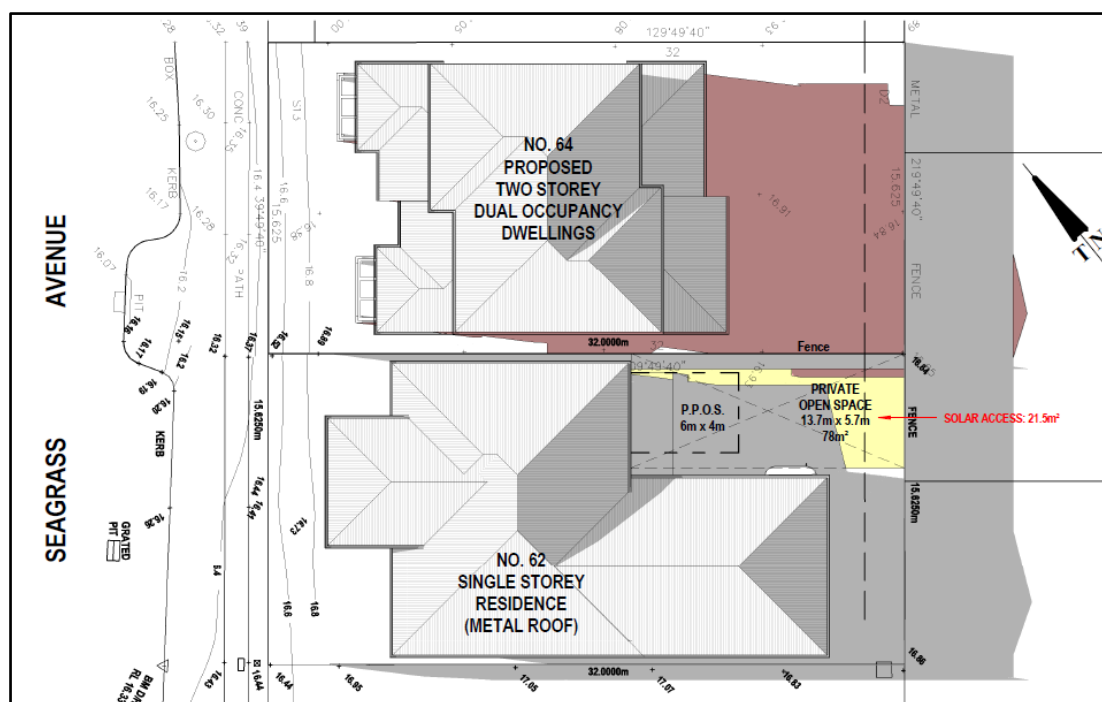


Figure 9- Extent of shadowing of 33 Summercloud Crescent

Issue

Bayswood has narrow roads and very limited on street parking. The development has insufficient parking provided on site and will worsen the existing limited parking situation in Bayswood.

Comment

Due to its location in the centre of the block's frontage and its width, the proposed driveway will take up one of the spaces currently provided in the on-street parking bay in front of the property.

The proposal is compliant with SDCP 2014 requirements for onsite parking spaces. This aspect of the development is assessed in detail in the Section 4.15 Assessment Report and in the SDCP 2014 Checklists for the current and recently superseded Chapter G13 documents.

Despite compliance with the parking space requirements above, it is agreed that it is possible that more car spaces will be occupied by this development than are provided. It is also undeniable that any overflow parking from the development will have to be accommodated in the street rather than on the site, as there are no additional spaces on site and there is insufficient space or access to park a car (or a boat, caravan or trailer) beside or behind the building. This differs from most of the single dwellings in Bayswood which often have double garages with two visitor spaces on the driveway, or room to place a vehicle behind the building line.

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Issue

The development will worsen traffic safety in the area.

Comment

The proposal will increase traffic on Seagrass Avenue, but this increase is likely to be marginal and is acceptable.

Some submissions raised the concern that vehicles will make illegal right hand turns into the driveways from the U turn bay at the Reef Street intersection.

This is made more likely by the one-way divided carriageway design of Seagrass Avenue. This means that a vehicle coming from the south (the usual direction for a vehicle coming into Bayswood) would have to travel up to the intersection with Summercloud Crescent to make a 'U' turn and then return on the southbound carriageway of Seagrass Avenue before entering the property. The road widths in Bayswood are such that the turning path available at that intersection is marginal for larger vehicles (e.g. 4WDs) and so the incentive to make an earlier and illegal right hand turn is heightened. Evidence of this is shown at Figure 10 below. The inability to make a U-turn at this location while keeping to the sealed carriageway has been confirmed by the assessing officer using a Toyota Hilux which equates to a 99th percentile vehicle under Australian Standard AS/NZS 2890.



Figure 10 – Aerial photo of the intersection of Seagrass Avenue and Summercloud Crescent

A further relevant issue is how close the driveway is to the intersection and its compliance with the relevant provision of SDCP Chapter G21 (Car Parking and Traffic). This issue is the subject of a variation request by the applicant and is detailed above in this report under the "Issues" heading.

Issue

Bayswood is not a 2 storey developed area – 2 storey buildings have previously been restricted to corner sites where they do not shade other houses.

Comment

There are two storey buildings elsewhere in Bayswood although it is noted that the developer has previously encouraged these to be confined to corner lots where impact on nearby residences would be potentially less. The relatively small lot sizes and east-west lot configuration of this part of Bayswood mean that individual lots are particularly vulnerable to shadowing by two storey buildings on lots to their north.

The applicant identified a two storey building at 70 Seagrass Avenue. It was mentioned in support of its two storey proposal, being a two storey building that was not located on a corner as has been previous practice. This two storey dwelling was approved as a Complying Development (CD17/1617) by a private certifier.

Issue

The development is medium density, not low density.

Comment

This issue is discussed at some length under the issue relating to zone objectives and this view is not supported.

Issue

Development will put extra stresses on infrastructure designed for low density housing.

Comment

Increase in traffic from the proposal will be marginal and within the capacity of the local road system, noting that roads in the Bayswood estate are narrow and traffic disruption events do occur as a result of deliveries/removalists.

Existing services such as water, sewer and electricity will accommodate the marginal increase in use arising from one additional dwelling on this lot. Shoalhaven Water has issued a Development Application Notice for the proposal and it is considered adequate.

This objection is therefore not supported.

Issue

The site is not suitable for the proposed development.

Comment

This aspect is assessed in detail in the Section 4.15 Assessment Report with specific reference to Section 4.15(1)(c) – the suitability of the site for the development.

The following are aspects of concern:

- The narrow block widths and their east-west orientation makes the site less suitable for two storey development;
- The 'master planned' nature of Bayswood with its narrow roads and minimal on street parking provides no excess capacity for on street parking;
- The site is located at the intersection with Reef Street and this gives rise to additional vehicle conflict and the encouragement of illegal right hand turns into the site;
- The short steep slope of the lot between the front building alignment and the footpath means that the proposed 'stacked' or 'tandem' car parking spaces in front of the garage of each dwelling have an excessive slope which considerably exceeds the 5% specified in the revised SDCP Chapter G13 for such spaces.

Issue

The block is not large enough to accommodate the proposed development.

Comment

The lot complies with the minimum 500 m² lot area for attached dual occupancies required by SDCP Chapter G13.

Issue

Stormwater is shown on the plans as being directed onto the property at the rear.

Comment

The Site Analysis plan shows flow of stormwater to the rear of the property. However, there is a drainage easement and underground storm water pipe at the rear of the property and the Stormwater Plan shows that overflow from the rain water tanks is piped to the easement and underground pipeline. It would be expected that there will be minimal if any flow of stormwater onto 33 Summercloud Crescent.

Issue

Parking provision and vehicular access do not comply with the requirements of SDCP Chapter G21 (Car Parking and Traffic).

Comment

This issue is discussed in the “Issues” section above in this report. Briefly, it is noted that the tandem parking spaces in front of the garage have excessive longitudinal slope and the driveway location is too close to the intersection with Reef Street.

Issue

Development will reduce property values in the area.

Comment

There is no evidence to support the contention that approval of the proposal will adversely affect property values in the area.

Issue

Allowing the development could create a precedent which could endanger the character of the entire estate.

Comment

Council has to consider this application on its merits and the likelihood of future similar developments is not relevant to this consideration.

Issue

Development will subject surrounding homes to unacceptable noise.

Comment

Noise impact is generally controlled by the Protection of the Environment Operations (PoEO) Act which establishes acceptable noise limits for residential development and provides for enforcement action by Council, Police and the Court where these limits are breached.

If the application was to be approved, a condition could be imposed to ensure that noise from air conditioning units will be kept within acceptable levels.

Issue

Development will overlook private outdoor areas of the adjoining homes and reduce privacy.

Comment

There is potential for overlooking from the first floor rooms of the proposal. However, all of the first floor rooms, with the exception of a rumpus room at the rear of each of the dwellings, will be either bedrooms or bathrooms and so are not regarded by SDCP 2014 as a concern

with respect to privacy. The rumpus rooms at the rear of the building are more than 12m from the boundary with 33 Summercloud Crescent and are therefore beyond the 'privacy sensitive zone' identified in SDCP2014. The windows in these rooms have highset windows with a sill height of 1.5m which would also reduce the likelihood of overlooking.

Issue

The lot sizes for the proposed subdivision are less than the minimums in Shoalhaven LEP 2014.

Comment

Strata subdivision of the proposal is permissible under SLEP 2014. There is no minimum lot size for strata subdivision.

Financial Implications:

If the application is appealed, it will result in costs to Council in defending the appeal. This is not a matter Council should consider in determining a development application. Accordingly, it should not be given any weight in Council's decision.

Legal Implications

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

Under some circumstances, third parties may also have a right to appeal Council's decision to the Land and Environment Court.

Summary and Conclusion

This application has been the subject of extensive community consultation comprising two rounds of neighbour notification and the holding of a Residents Briefing Meeting at Vincentia on 4 March 2019.

The application, while broadly compliant with principal development standards in the Shoalhaven LEP 2014 and Shoalhaven DCP 2014, has fundamental shortcomings in terms of parking provision, vehicular access and loss of solar access to the adjoining property at 62 Seagrass Avenue. The lack of suitability of the site for the development also weighs against the application.

It is recommended that Council refuse the application.

NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION

BY REFUSAL

**Environmental Planning and Assessment Act, 1979
DA18/1998**

TO:

Eagle Homes
7-9 Norfolk Street
LIVERPOOL NSW 2170

being the applicant(s) for **DA18/1998** relating to:
64 Seagrass Av, VINCENTIA - Lot 1138 - DP 1210394

REFUSED USE AND/OR DEVELOPMENT:

Two Storey Dual Occupancy with Strata Subdivision

DETERMINATION DATE: [#Application Date#]

REFUSAL DATE: [#Application Date#]

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the following reasons:

1. The development will have an unreasonable impact on the solar access to 62 Seagrass Avenue, including non-compliance with the acceptable solutions and performance criteria of SDCP 2014 Chapter G1 (Section 4.15 (1) (a) (iii) and (b), Environmental Planning and Assessment Act 1979);
2. The proposed driveway location does not comply with SDCP 2014 Chapter G21, will eliminate one on street car park without compensation, and will reduce traffic safety in the vicinity (Section 4.15 (1) (a) (iii) and (b), Environmental Planning and Assessment Act 1979);
3. The proposed tandem car spaces considerably exceed the maximum longitudinal slope

set by SDCP 2014 Chapter G13 and are unsuitable for the development as they will be unsatisfactory in terms of safety and utility (Section 4.15 (1) (a) (iii), Environmental Planning and Assessment Act 1979); ;

4. The site is unsuitable for the development. (Section 4.15 (1) (c), Environmental Planning and Assessment Act 1979);

RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 82A 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 Integrated Development. The request must be made **within six (6) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers 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 six (6) months** after receipt of this notice.*

PRIVACY NOTIFICATION

Personal information contained on this Determination will be published on Council's website as required by the *Government Information (Public Access) (GIPA) Act 2009*.

SIGNED on behalf of Shoalhaven City Council:

Signature

Name	Name
	Position
	Planning, Environment and Development Group

From: Mark Papoulias <mpapoulias@eaglehomes.com.au>
Sent: Wednesday, 27 February 2019 10:37 AM
To: Candice Hearne <chearne@eaglehomes.com.au>
Cc: Garry Goody <ggoody@eaglehomes.com.au>
Subject: RE: 8278 - FW: DA18/1998 - 64 Seagrass Ave Vincentia

Good morning Candice,

Please see shadow diagrams attached. The following are my comments regarding the proposed overshadowing. You may forward this response directly to Mr Clauge.

To note, our program does not allow creation of shadow elevations without many hours of effort, and as 3D & perspective shadows paint a clearer picture, we have instead provided these.

These are the shadow effects (approx. % **shadowed**) of No. 62 Seagrass. The first table shows the dwelling and shadow from the 1800mm high boundary fence only, as demonstrated by attached PDFs (refer to pages 2, 4 & 5). We have included the Study and Media room in this list, as they are both public spaces and should be considered as they will be occupied. To note, the Activity room & Kitchen are already overshadowed by No. 62's own roof/ eaves or boundary fence.

	9am	10am	11am	12pm	1pm	2pm	3pm	3hrs solar access ≥ 50% of window (✓/X)
Activity room	0%	-	-	60%	-	-	100%	X
Kitchen	60%	-	-	100%	100%	100%	100%	X
Family room (east)	60%	55%	50%	40%	30%	20%	10%	✓
Family room (west)	60%	55%	50%	40%	30%	20%	10%	✓
Study	0%	0%	0%	0%	0%	0%	0%	✓
Media	10%	0%	0%	0%	0%	0%	20%	✓

These next table shows the effects of overshadowing from the proposal. The conclusion is that only the easterly Family room window is overshadowed so as to lose 3 hours solar access between 9am & 3pm.

	9am	10am	11am	12pm	1pm	2pm	3pm	3hrs solar access ≥ 50% of window (✓)
Activity room	35%	-	-	60%	-	-	100%	X
Kitchen	100%	-	-	100%	100%	100%	100%	X
Family room (east)	100%	100%	100%	100%	100%	100%	75%	X
Family room (west)	100%	80%	65%	45%	25%	0%	10%	✓
Study	60%	10%	0%	0%	0%	0%	0%	✓
Media	10%	0%	0%	0%	0%	0%	20%	✓

We would like to conclude that No. 62 Seagrass' orientation and distance to northern boundary mean that even if our proposal were single storey, there would still likely be overshadowing. The boundary fence shadows show that it already struggles to achieve solar access requirements without any northern neighbour. We also refer to the 2 storey dwelling at No. 70 Seagrass Avenue that overshadows its single storey neighbour No. 68 (an inevitability when northern light comes from a side boundary).

I would also like to add that No. 62 never achieved 50% solar access to its own private outdoor recreation space, as the fence shadows it at 9am & its roof shadows it at 3pm. This was demonstrated in the most recent shadow diagram sent to council, which has been reattached with a better angle on the Activity room sliding door. Our proposal increases this overshadowing at midday but again we refer to the precedent council has allowed 3 houses up the street at No. 70 Seagrass overshadowing No. 68 and as such request council support the proposal on this topic.

Cheers,
Mark Papoulias
Drafting Manager



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From original email to Candice 14 November 2018

15. The DA does not comply with some provisions of the Shoalhaven DCP Chapter G21 (Car Parking and Traffic). These are Acceptable Solutions A5.1 (enter and leave in a forward direction) and the driveway location in relation to intersections and the 90° driveway orientation referred to in Acceptable Solution A5.12 as shown in Figure 3: Access (b) and (c). **A variation statement is required to provide a justification for the non-compliance and addresses the performance criteria.**

Acceptable Solutions

A5.1 Development must be designed so that vehicles enter and leave the premises in a forward direction.

A5.12 - Prohibited driveway locations and driveway orientation are indicated in Figure 3.

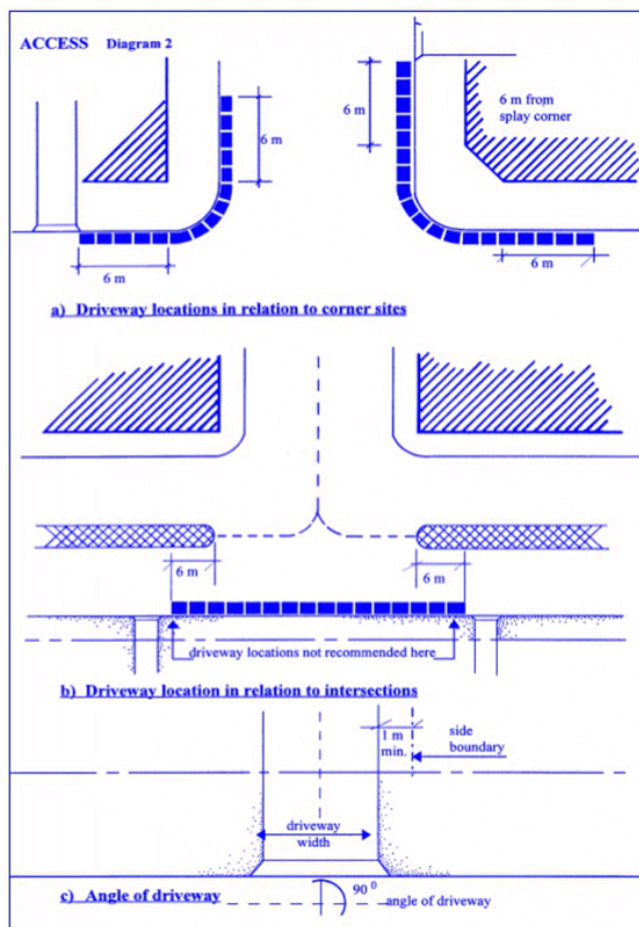


Figure 3: Access from Chapter G21 of the Shoalhaven DCP 2015

Justification as provided below:

- a) N/A
- b) Figure b) is a recommendation only – even in a single dwelling scenario, it is impossible to achieve both the 1m setback shown in figure c) as well as the recommendation of the 6m distance from the median strip, a seemingly arbitrary point of reference, based on the site conditions resulting from developer subdivision. Furthermore, the site position & location on Seagrass Avenue is such that egress is not inhibited by the intersection of Reef Street and Seagrass Avenue, with adequate sight lines & distances to Seagrass Avenue itself – refer justification for item c) below, along with Figure 1 below.
- c) We seek to justify the driveway angle from the specified 90° in figure c), the reason for which is

advantageous rather than detrimental to the site. The step in the council strip limits driveway location on the site as is, and due to the presence of the median strip means the car must exit the site onto Seagrass Avenue facing south-west, and the mild driveway angle of 7° to the road allows the car to reverse safely into the shoulder bay behind it before taking off safely.

Performance Criteria

P5.1 To ensure that driveways relate to:

- i) Type of land use
- ii) Frontage road type
- iii) Size of parking facility
- iv) Type of vehicle likely to enter the development

P5.2 To ensure that traffic safety is preserved both on-site and within the local road network.

P5.2 in particular establishes acceptable solution A5.1, to ensure the safety of pedestrians and vehicle occupants. The proposed driveway has no issues with ingress as there are clear sight lines on approach from Seagrass avenue (refer Figure 2).

In regards to egress, the primary benefit to a slight angle on the driveway allows an easier turning circle to the shoulder bay behind it, meaning the driver does not have to reverse directly onto the road. As such, this angle should be supported by council as the outcome is positive and supports performance criteria P5.2 directly by increasing safety of pedestrians and other vehicles. Figure 3 also shows the lack of obstruction from driveway to road and supports the notion that safety is not compromised with this proposed driveway location.

In this regard, we feel that the driveway also respects the performance criteria P5.1 as the proposed parking suits the land type, frontage road, size of parking facility and type of vehicles accessing the site – all of which suit a safer egress that allows the driver to reverse carefully into the bay behind. Ipso facto performance criteria P5.2 is also satisfied, as this results in preservation of traffic and pedestrian safety.



Figure 1 – Sight is not interrupted as a vehicle approaches the proposed driveway



Figure 1 – The view on approach to Seagrass Avenue from Reef Street. A vehicle turning left is unaffected, and a vehicle turning right does not have sight lines/ safety impeded by the driveway location



Figure 3 – View from proposed driveway location back down Seagrass, where the vehicle will be able to reverse into the shoulder bay behind it

DA 18/1998 – 64 Seagrass Ave Vincentia - Assessment table for DCP Chapter G11 – Subdivision (dual occupancy section only)

Control	Essential requirements or Performance Criteria	Acceptable solution	Proposed (assessment against acceptable solutions and performance criteria))	Compliance with DCP and other comments		
5.2.4 Dual occupancy subdivision						
Essential Requirements						
E1	Subdivision certificates (linen plan release) will not be issued until the approved dual occupancy development is either: <ul style="list-style-type: none">completed; orthe first or existing dwelling is completed and the second dwelling is completed and the second dwelling has completed the mandatory framework stage inspection. The conditions of consent will be composed to satisfy section 109J of the EP&A Act 1979 relating to compliance with consent conditions before the release of a Subdivision Certificate.		Standard conditions required for compliance with all conditions of consent and issue of a Final OC for the new dwelling,	Will comply subject to a condition for building to be completed prior to issue of Sub Cert		
E2	The proposed subdivision of an approved dual occupancy development must ensure that all required development consent conditions (siting, car parking, open space, landscaping, fencing, services and facilities) are complied with for each lot.		All conditions of consent must be complied with prior to SC.	Will comply subject to a condition for building to be completed prior to issue of Sub Cert		
E3	On corner lots separate road frontage is provided for each dwelling.		NA	Not a corner lot		
E4	For battle-axe allotments, the access handle is a minimum 4.0m wide and the area of the access handle is not included in the calculation of the minimum lot area.		NA	Not a battle-axe lot		
E5	Subdivision of dual occupancy development in Rural and Environmental Protection zones is not permitted.		NA	Not in a Rural or Environmental zone.		
Performance criteria	P112: A dual occupancy development is approved on the subject land.	A111.1: A current approved dual occupancy development is completed or under construction.	Subject application includes the erection of a dual occupancy and subdivision.	Will comply subject to a condition for building to be completed prior to issue of Sub Cert		
	P113: Minimise the occurrence and impact of grouped dual occupancy subdivisions on the local streetscape.	A112.1: Materials and design of individual dwellings are shown to be significantly architecturally different.	Assess in G13 Checklist – roof line and front wall materials differ.	Complies		
	P114: The resultant subdivision and dwellings must conform to the dual occupancy guidelines under which the dual occupancy was approved.	Provide, to Council's specification, concrete kerb and gutter for the full frontage of the lot together with a concrete layback and footpath crossing. In the case of corner allotments, kerb and gutter is required on each road frontage of the dual occupancy development.	Kerb & gutter is existing. New driveway crossings are to be conditioned. The table below shows that after subdivision both lots will comply with dual occupancy guidelines.	Will comply subject to condition for layback and footpath crossing		
	P115* Provide coincidental legal and practical access.	A114.1: Each lot is to have coincidental legal and practical access in a rural and/or residential subdivision.	Each lot has legal and physical access to Seagrass Ave	Complies		
G11 5.24 E2 & P113 The resultant subdivision and dwellings must conform to the dual occupancy guidelines under which the dual occupancy was approved, for example:						
Lot/s	Size m ²	Width/depth	FSR	PRA m ² /m x m	% Landscaping	Access
Parent Lot 5	500	-	0.49:1	NA	33%	
Proposed Lot 1	250	NA (Strata)	0.49:1	30 sq m (6 x 5m) / 80 sq m	33%	Direct to Seagrass Ave
Proposed Lot 2	250	NA (Strata)	0.49:1	30 sq m (6 x 5m) / 71 sq m	33%	Direct to Seagrass Ave

Assessing Officer : John Clague
Development Assessment Planner
Date: 4 March 2019

Delegated Officer: Colin Wood
Building and Compliance – Section Manager
Date:

Was

DE19.60 Development Application – 38 Lyrebird Drive Nowra – Lot 74 DP 1198691 DA18/2175

DA. No: DA18/2175

HPERM Ref: D19/189185

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

Attachments:

1. Draft Notice of Determination [↓](#)
2. Report attachment - plans (excluding habitable floor plan) - Lot 74 DP 1198691 - 38 Lyrebird Dr Nowra [↓](#)
3. SLEP 2014 Clause 7.3 Assessment Table (under separate cover) [⇒](#)
4. Section 4.15 Assessment Report including DCP Checklists (under separate cover) [⇒](#)
5. Applicant's Flood Assessment Report (under separate cover) [⇒](#)
6. Applicant's supplementary letter - Flood Assessment (under separate cover) [⇒](#)
7. SDCP 2014 Chapter G9 - Riverview Road Area controls [↓](#)
8. SDCP 2014 Chapter G9 - Generic controls for High Hazard Floodway [↓](#)
9. Riverview Road Area Floodplain Management Plan (under separate cover) [⇒](#)
10. NSW Floodplain Development Manual - extract relating to S.733 LG Act (under separate cover) [⇒](#)

Description of Development: Attached dual occupancy

Owner: AM Rowell
Applicant: Hotondo South Coast

Notification Dates: 30 October to 14 November 2019

No. of Submissions: No submissions received

Purpose / Reason for consideration by Council

This report provides an assessment of the development application for the proposed dual occupancy. The report recommends that the application be refused due to the flood hazard on the land.

This application was called in by Councillor White at the meeting of the Development and Environment Committee held on 4 June 2019.

Recommendation (Item to be determined under delegated authority)

That the Committee refuse Development Application DA18/2175 for the erection of an attached dual occupancy at Lot 74 DP 1108691, 38 Lyrebird Drive Nowra, for the reasons as shown in the draft Notice of Determination at Attachment 1.

DE19.60

Options

1. Refuse the application as recommended by the report.

Implications: The development will not proceed. The applicants may seek a review of the application under Section 8.2 of the EPA Act or may appeal the decision in the Land and Environment Court.

2. Adopt a different recommendation.

Implications: Council would need to consider and prepare a different recommendation to that which is recommended in this report.

Location Map

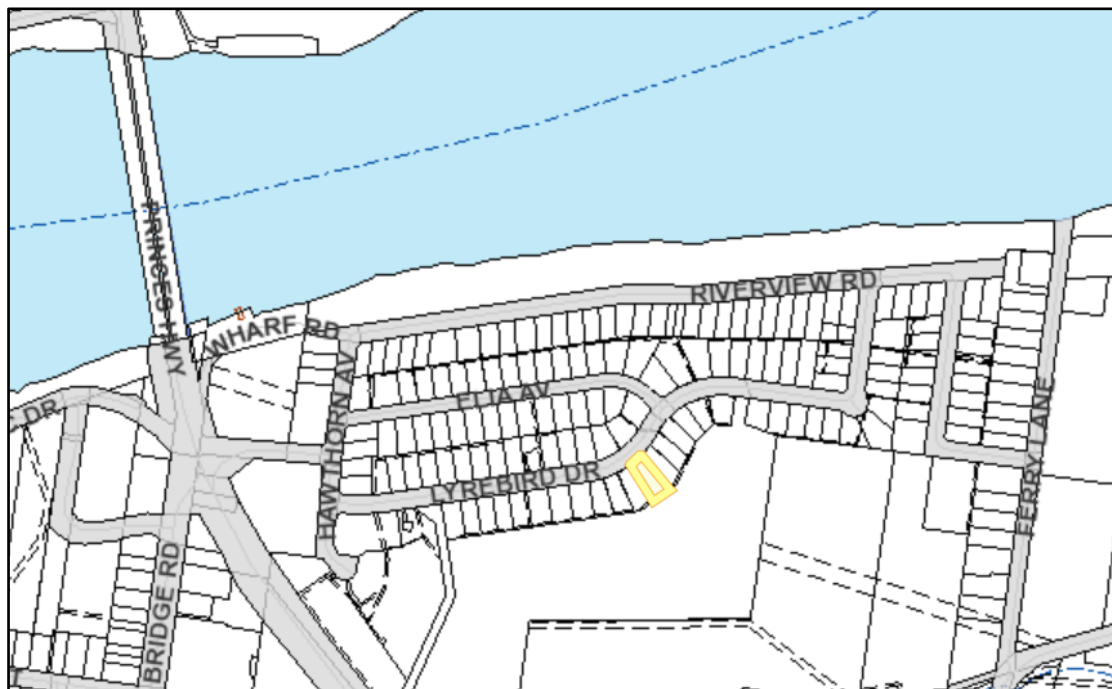


Figure 1 – Map showing location of site (outlined in yellow)

Background

Proposed Development

The proposed development is an attached dual occupancy comprising two, two-bedroom dwellings. The habitable rooms are elevated above the Flood Planning Level and there is an enclosed subfloor space for each dwelling which also houses a single garage for each unit.

Plans of the proposed development are shown at **Attachment 2**.

Subject Land

The subject land is 923.5 m² in area. It is identified as lot 74 in DP 1198691 with a street address of 38 Lyrebird Drive Nowra. The site is essentially rectangular and is flat. Spot heights shown on the survey range from a low of 4.46 metres AHD up to 4.69 metres AHD.

The site is zoned R2 Low Density Residential under SLEP2014 and is subject to a maximum building height of 8.5 metres under that plan. Dual occupancies are permissible in this zone with consent.

The site is vacant and is devoid of trees. There is a small street tree and a large shrub located on the footpath in front of the site.

DE19.60

The site is flood prone. It is categorised as High Hazard Floodway with the following flood levels:

- 2050 1% AEP (Annual Exceedance Probability) flood level of 6.2 metres AHD; and
- 2050 PMF (Probable Maximum Flood) of 8.2 metres AHD.

If the site is considered to have an average height of 4.6 m metres AHD, this means that the likely depth of floodwaters would be:

- 1.6 metres in the 2050 1% AEP flood event; and
- 3.6 metres in the 2050 Probable Maximum Flood.

The velocity for the 1% AEP flood event is 1.2 metres per second.

A recent aerial photograph is shown at Figure 2 below, with the subject land shown outlined in yellow.



Figure 2 – Aerial photograph of site and immediate surrounds

DE19.60

Shown below in Figure 3 is a street view of the site.



Figure 3 – Street view of the subject land

Site & Context

The site is part of a low density residential subdivision approved in 1972 that includes Riverview Road, Ella Avenue and Lyrebird Drive. A view of the nearby single dwelling residential development from the rear of the site is shown at Figure 4 below.



Figure 4 – View of surrounding residences from the rear of the site

The site is within the Shoalhaven River floodplain and it is located east of the Nowra Bridge. It is part of a residential subdivision that preceded the current level of flood knowledge and flood controls.

DE19.60

The Riverview Road Area Floodplain Management Plan (The Plan) was adopted by Council in 2002 and applies to the site. The Riverview Road Area Floodplain Management Plan (Outcomes Section at page 2) found that the area is currently protected from the 1% AEP flood level from direct inundation from the Shoalhaven River by the 2 metre high Riverview Road levee which was constructed in 1986/1987.

The Plan further found that in this area (west of Ferry Lane) the flood hazard is low for events less than a 1% AEP and high for larger events because of overtopping of the levee. The report states that *“it is likely that the community will not be prepared for the sudden change in hazard which may occur with levee overtopping or failure”*.

History

The Plan states that approvals for the subdivisions in the Riverview Road, Ella Avenue and Lyrebird Drive areas were made in 1972. The subdivision plan for the stage containing the subject site was registered on 14 October 2014.

The subject site is vacant and has not been previously developed.

Issues

Issue - Clause 7.3 (Flood Planning) of Shoalhaven LEP 2014

The application has been assessed against the provisions of this clause (see Clause 7.3 Assessment Table at **Attachment 3** and Section 4.15 Assessment Report at **Attachment 4**).

The assessment has determined that the application does not comply with several subclauses of clause 7.3. The most important of these are detailed below.

This clause includes requirements that development consent must not be granted unless the consent authority is satisfied that the development:

- is compatible with the flood hazard of the land (clause 7.3(3)(a));
- incorporates appropriate measures to manage risk to life from flood (clause 7.3(3)(c));
- is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding (clause 7.3(3)(e)).

Applicant's Submission

The applicant has submitted a Flood Impact Statement (see copy at **Attachment 5** and Supplementary Letter at **Attachment 6**) that addresses the requirements of these subclauses as follows:

In relation to subclause (3)(a):

“It is our view that the proposed development is compatible with the flood hazard of the land. In particular, this is achieved by the ‘pier’ construction of the development allowing the 1% AEP flood to pass safely underneath the development.”

In relation to subclause (3)(c):

“It is our view that the proposed development meets this requirement. The proposed habitable FFL’s are entirely above the Flood Planning Level, and the development meets the controls of SCC’s DCP (Chapter G9).”

In relation to subclause (3)(e):

“It is our view that the proposed development will not result in unsustainable social and economic costs to the community as a consequence of flooding. This is demonstrated, and managed, by:

- *Improvement of residentially zoned land that is flood free in the 1% AEP event, including allowances for climate change.*

- Ensuring habitable floor levels set at a minimum of the 1% AEP flood level plus 500mm.
- Use of flood compatible materials below the Flood Planning Level.
- Safe refuge in the PMF.”

Discussion

In relation to subclause (3)(a):

The land is categorised as High Hazard Floodway.

Given current flood knowledge, the land would not be considered suitable for a residential zoning or subdivision. While even single dwellings are not compatible with the High Hazard Floodway category, allowing single residential dwellings on lots approved in the past is a concession to the historical situation. Increasing the number of occupied residential premises by approving a dual occupancy development is not compatible with the land's flood hazard.

The 1% AEP flood will not be able to pass underneath the enclosed subfloor space (including the garages) which has dimensions of 15.8m in width and approximately 11.7m in depth and 62 square metres in area. The 'pier' construction referred to in the Flood Report does not apply to the enclosed subfloor area.

Council cannot be satisfied that the development is compatible with the flood hazard of the land.

In relation to subclause (3)(c):

The development does not meet the controls in SDCP Chapter G9.

The proposal provides no realistic safe refuge from the Probable Maximum Flood (PMF), given that the elevated habitable floor levels would be inundated by 1.63m of floodwater in the PMF. Additionally, there is no flood free evacuation route available to the property, and the nearest land above the 1% AEP flood level is 315m to the west, as shown in Figure 5 below.



Figure 5 – Showing the site (outlined in yellow) and the extent of the 2050 1% AEP flood event (shaded brown). The nearest flood free land is near the intersection of Lyrebird Drive and Hawthorn Avenue, 315 metres to the west of the site.

DE19.60

In a flood event the development will increase the number of premises that require evacuation by emergency services. Additional demand for evacuations increases the cost to the community and the risk to emergency services personnel.

Council cannot be satisfied that the development incorporates appropriate measures to manage risk to life from flood.

In relation to subclause (3)(e):

The development cannot be described as “Improvement of residentially zoned land that is flood free in the 1% AEP event” as the land is clearly flooded by the 1% AEP flood.

The provision of safe refuge is questionable as the habitable floors would be inundated by 1.63m of floodwater in the 2050 PMF.

In a flood event the development will increase the need for evacuation by emergency services. Additional demand for evacuations increases the cost to the community and the risk to emergency services personnel.

The risk of unsustainable social and economic costs would be reduced by limiting development on the site to a single residential dwelling, as is recommended by the Riverview Road Area Floodplain Management Plan and as provided for by Shoalhaven DCP 2014 Chapter G9.

Council cannot be satisfied that the development is not likely to result in unsustainable social and economic costs to the community because of flooding.

Issue - Shoalhaven DCP Chapter G9 (Development on Flood Prone Land)

The application does not comply with SDCP2014 Chapter G9. The parts of the DCP with which it does not comply are:

- the site specific flood related development controls for the Riverview Road Area;
- the generic flood related development controls for the High Hazard Floodway category.

The Riverview Road Area controls are shown at **Attachment 7** and the generic controls set out in Schedule 2 to Chapter G9 for the High Hazard Floodway category are shown at **Attachment 8**.

The important elements of these controls are:

- Within the Riverview Road/Ella Avenue/Lyrebird Drive subdivision area, no dual occupancies or subdivisions will be permitted;
- Within the High Hazard Floodway category, the ‘other residential/habitable’ category (which includes dual occupancy) is not suitable for this category of flood hazard.

Even single residential buildings are shown as being not suitable in the High Hazard Floodway, however this exception is provided:

“This type of development is not suitable within the risk category - however, if existing use rights (as defined in the Environmental Planning and Assessment Act 1979) can be established and there is no other option, the conditions as per Schedule 2 will apply.”

Applicant’s submission

The applicant provides a detailed response to the SDCP provisions in the Flood Impact Statement at **Attachment 5**.

The Flood Impact Statement acknowledges the ‘prohibition’ on dual occupancies and subdivision in the specific controls for the Riverview Road Area, but argues this should be flexibly interpreted and that density as measured by Floor Space Ratio (FSR) ought to be the determining control in this regard. The applicant’s argument regarding the appropriateness of FSR is expanded upon in the Supplementary Letter at **Attachment 6**.

Discussion

To ensure thoroughness of assessment, the application has been assessed against the requirements for a single dwelling in Schedule 2, as there are no requirements specified for dual occupancies. This is because Council has determined that land in the High Hazard Floodway category is not suitable for this type of development. As can be seen from the SDCP Chapter G9 Checklist in the Section 4.15 Assessment Report at **Attachment 4**, the application does not satisfy these requirements.

Section 4.15 (3A)(b) of the EPA Act requires a consent authority to be flexible in applying provisions of a DCP that set standards with respect to an aspect of the development, where reasonable alternative solutions are put forward that achieve the objectives of the standards for dealing with that aspect of the development.

The principal objectives set out in Section 4 of Chapter G9 are:

- i. *Reduce risk to life and property resulting from floods.*
- ii. *Ensure that the impacts of the full range of flood sizes up to and including the probable maximum flood (PMF) are considered when assessing development on flood prone land.*
- iii. *Ensure that the impact of climate change is considered when assessing development on flood prone land.*
- iv. *Ensure the future use of flood prone land does not cause undue distress to individuals or unduly increase potential flood liability to individuals or the community.*
- v. *Incorporate site specific floodplain management recommendations from local floodplain risk management plans into Council's overall planning framework.*

The principal objectives that are relevant to the DCP provisions in question are objectives (i), (iv) and (v).

The specific objectives set out in Section 5.1 of Chapter G9 are:

- i. *Minimise risk to life and damage to property by controlling development on flood prone land;*
- ii. *Ensure the impacts of the full range of flood sizes up to and including the PMF are considered when assessing development on flood prone land within the Shoalhaven;*
- iii. *Ensure that development does not have a significant impact on flood behaviour, people's safety, surrounding properties and structures, and the natural environment;*
- iv. *Ensure that the effects of climate change are considered when assessing development on flood prone land within the Shoalhaven;*
- v. *Ensure that development on the floodplain is consistent with the NSW Flood Prone Land Policy and NSW Floodplain Development Manual;*
- vi. *Ensure that developers and the community are conscious of the potential flood hazard and consequent risk associated with the use and development of land within the floodplain;*
- vii. *Protect the integrity of floodplains and floodways, including riparian vegetation, fluvial geomorphologic environmental processes and water quality;*
- viii. *Ensure that all land uses and essential services are appropriately sited and designed in recognition of all potential floods; and*

- ix. *Ensure that development on flood prone land does not place an unacceptable financial burden on landowners or the community.*

The specific objectives that are relevant to the DCP provisions in question are objectives (i) (iii), (v) and (viii).

The applicant has not addressed the DCP objectives and has not satisfactorily demonstrated that these provisions should be set aside, nor have they provided an alternative that satisfactorily addresses the objectives.

The prohibition in the DCP is well founded. The stated prohibition is grounded in the process Council went through in consultation with the community, State agencies and emergency services in developing and adopting the Riverview Road Area Floodplain Management Plan. The position that lead to the current planning controls for this area should not be lightly set aside for an individual development. Added to this is the potential to establish a precedent for future development, having regard to there being a number of vacant residential allotments in this area.

Density

The applicant's argument in the Supplementary Letter at **Attachment 6** that density as expressed by Floor Space Ratio (FSR) ought to be the determinant of increased population densities is not supported in the assessment of the application.

It is instead the number of occupancies that is critical to the proper interpretation of the provisions of the DCP. These are derived from the recommendations and outcomes of the River Road Floodplain Management Plan.

In a flood evacuation scenario, it is the number of occupancies, as much as the total number of people, that is critical. Another occupancy is another door that emergency services must be able to access and check. Furthermore, the typical occupancy ratio of dwellings is relatively low, so that even a five bedroom home may only have two or three persons living there and this may be no more than might live in one of the dwellings within a dual occupancy development.

For the reasons outlined above, the assessment concludes that the DCP provisions are reasonable and are grounded in the Riverview Road Area Floodplain Management Plan and the provisions of clause 7.3 (Flood Planning) in SLEP2014.

The applicant has not provided sufficient grounds to justify the setting aside of the clear standards set by the DCP in relation to dual occupancy development at this location.

Issue – Referral advice from Council's Flood Engineering Unit

The application has been referred to Council's Flood Engineering Unit. The referral response identified specific controls and did not support the development. This outcome was considered by the applicant which then submitted the Supplementary Letter as reproduced at **Attachment 6**. This was referred to and considered by the Flood Engineering Unit, which provided the following final response:

"The site is within the high hazard flood way. High hazard floodway condition will be developed if the levee is overtopped. There is significant hazard and risk to life due to failure of the levee and further burdening emergency services.

In order to limit the increase in population requiring evacuation, no dual occupancy and subdivisions are permitted in this area. According to Schedule 2 of Chapter G9 SDCP 2014, single residential dwelling is not suitable within this risk category unless existing user rights can be established and there is no other option. Given that Council is dealing with a legacy subdivision, Council continues to permit single dwelling housing in this area. It is clear that, in the risk category, other residential building including dual occupancy is not permissible and noting that in Section 5.4.5 of G9 states clearly about the site-specific control within the

Lyrebird Drive subdivision that no dual occupancy or subdivisions will be permitted. As mentioned in previous referral, this site-specific control is based on Riverview Road Area – Nowra Floodplain Management Plan adopted by the Council in 2002.

It is not feasible to vary both the generic and site-specific controls of the DCP which is used by the Council as a fundamental best practicing guide in assessing developments, based on state policies and engineering principles. Furthermore, Council can be flexible with acceptable solutions but not with performance criteria's and objectives. This does not also go with the local built environment characteristics of the area. It is in Council's opinion that varying numerous controls, particularly specific controls, is an erosion of the DCP.

Moreover, approval of the proposed development will act as a precedent and open the window for other developers to intensify development within this area which will expose more lives and properties to risk.

In order to achieve effective floodplain risk, case-by-case decision making cannot account for the cumulative impacts on flood behaviour and risks, caused by individual developments or works. The NSW Floodplain Development Manual (2005) clearly states that this form of ad hoc assessment contravenes the principles of the manual (see Section 1.6).

Therefore, the flood unit recommends that this development in its current form should be refused." (sic)

Both Council's Flood Engineering Unit and the assessing officer for this application have considered the application in accordance with the required legislation and policies. The site is highly constrained by the flood hazard and the resulting potential risk to life and property.

The information supplied by the applicant in relation to flood hazard is extensive and has been fully considered. However, it remains that the site is High Hazard Floodway, which is a constraint that makes the land fundamentally unsuitable for residential development. It is only the fact that a subdivision was approved in 1972 that permits residential use to be considered.

The applicant was advised by email on 11 March 2019 that an application for a dual occupancy was likely recommended to be refused due to non-compliance with SDCP 2014 Chapter G9 and was offered the opportunity to withdraw the application. A second opportunity for withdrawal was offered on 4 June 2019.

Planning Assessment

The DA has been assessed under section 4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 4**.

The only issue for refusal of this application relates to the flood hazard.

Policy Implications

Riverview Road Area Floodplain Management Plan and SDCP 2014 Chapter G9

This Floodplain Management Plan was prepared in accordance with the NSW Flood Prone Land Policy and NSW Floodplain Development Manual as part of the Shoalhaven Flood Program. It was adopted by Shoalhaven City Council in 2002 following extensive consultation with the public, State agencies and emergency services organisations.

A copy of the Riverview Road Area Floodplain Management Plan can be seen at **Attachment 9**.

As detailed in the report above, the controls in Chapter G9 are based on the findings and recommendations of The Plan. Also, assessment of development proposals under Shoalhaven LEP2014 Clause 7.3 (Flood Planning) and under Section 4.15 of the EPA Act are informed by the findings and recommendations of The Plan.

The NSW Floodplain Development Manual provides the following guidance for circumstances such as are brought into focus by the current application:

“Case-by-case decision making cannot account for the cumulative impacts on flood behaviour and risks, caused by individual developments of works. This form of assessment contravenes the principles of the manual.” (NSW Floodplain Development Manual, p.5).

“A fundamental principle of floodplain risk management is to assess development applications within the strategic framework of a floodplain risk management plan and not in isolation or individually.” (NSW Floodplain Development Manual, p.12).

Appendix I of the Manual relates to the implementation of floodplain management plans like the Riverview Road Area Floodplain Management Plan. Section I6.3.6 relates to development types outside those identified as appropriate by the Plan: those not foreseen, and those that were rejected. Dual occupancies and subdivision are development types that were clearly rejected by Council when it adopted the Riverview Road Area Floodplain Management Plan.

If Council were of a mind to approve Development Application 18/2175, this may constitute an abandonment of the development standard in SDCP 2014 Chapter G9 that currently does not permit dual occupancies. Further similar applications could then be expected, particularly having regard to the number of vacant allotments in this area.

Approval of this application would result in circumstances where Council should review the Riverview Road Area Floodplain Management Plan and the relevant sections of SDCP 2014 Chapter G9.

There are currently 169 residential allotments in the Riverview Road precinct. There are currently 10 vacant allotments (including No.38 Lyrebird). Potentially, a decision to approve the application would set a precedent in the area.

Council has approved 2 dual occupancy developments in the area; one in 1993 (BA93/1618) and another in 2000 (DA00/1146). These were both approved before the Riverview Road Area Floodplain Management Plan was completed and Chapter G9 of SDCP 2014 was adopted. No dual occupancy applications have been approved since this time.

Consultation and Community Engagement:

The application was notified in accordance with Council's Community Consultation Policy with letters being sent within a 25 metre buffer of the site. The notification was for a 14 day period between 30 October and 14 November 2018.

No submissions were received.

Financial Implications:

If the applicant is dissatisfied with Council's determination they have a right of appeal to the Land and Environment Court. If an appeal was pursued, Council would incur costs in defending the appeal.

In the event of an unsuccessful appeal against refusal, Council's advice to the applicant of 11 March 2019 that the application was unlikely to be approved, and its invitation to the applicant to withdraw the application on that date and again on 4 June 2019, may provide grounds for Council to seek costs from the applicant.

Legal Implications

Council is protected in its decisions relating to floodplain management by Section 733 of the Local Government Act 1993 (LG Act), provided it acts (or chooses not to act) in good faith.

The workings of the Section 733 are set out on pages 17 and 18 of the NSW Floodplain Development Manual, which pages are reproduced at **Attachment 10**.

Council may not be seen to have acted in good faith if it was to approve a development application that is clearly inconsistent with an adopted Floodplain Management Plan. This could, for instance, expose Council to actions in relation to losses encountered due to flooding of the approved development or in increasing the risk to other properties, people and emergency services personnel.

Summary and Conclusion

This application for an attached dual occupancy at 38 Lyrebird Drive is not supported, based on assessment against the provisions of the Shoalhaven LEP 2014 and DCP 2014 relating to development on flood prone land.

The land is within the High Hazard Floodway category in the Riverview Road Area. The findings and recommendations of the Riverview Road Area Floodplain Management Plan adopted by Council in 2002 state that no dual occupancies or subdivisions should be approved in this area. It is accepted that the levee may protect the area up to the 1% AEP flood; however, in the event of a bigger flood, the levee will be overtopped and the area will rapidly change from Low Hazard conditions to High Hazard conditions. As the Riverview Road Area Floodplain Management Plan notes,

“it is likely that the community will not be prepared for the sudden change in hazard which may occur with levee overtopping or failure”.

The fundamental issue in this area is managing evacuation in the event of a flood greater than the 1% AEP, and minimising the risk to life, for both residents and for the emergency service personnel who will inevitably become involved in the evacuation task.

The Shoalhaven DCP seeks an equitable outcome for existing landowners by allowing development of vacant residential lots with single dwellings, despite the flood hazard, but draws the line at dual occupancies or subdivisions which would increase the number of households or occupancies in this area.

The application, because of its inconsistency with the DCP, Riverview Road Area Floodplain Management Plan and NSW Floodplain Development Manual, raises important policy issues for Council. Approval in these circumstances may have an impact on the availability of the ‘good faith’ defence provided by section 733 of the Local Government Act 1993.

Refusal of the application is recommended.

**NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION
BY REFUSAL**

**Environmental Planning and Assessment Act, 1979
DA18/2175**

TO:

Hotondo Homes South Coast Pty Ltd
PO Box 1057
NOWRA NSW 2541

being the applicant(s) for **DA18/2175** relating to:
38 Lyrebird Dr, NOWRA - Lot 74 - DP 1198691

REFUSED USE AND/OR DEVELOPMENT:

Dual Occupancy - attached

DETERMINATION DATE:

[#Application Date#]

REFUSAL DATE:

Date#]

[#Application

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the following reasons:

1. Council is not satisfied that the development is compatible with the Flood Hazard of the land (Section 4.15 (1) (a) (i) Environmental Planning and Assessment Act 1979).
2. Council is not satisfied that the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding (Section 4.15 (1) (a) (i) and (b) Environmental Planning and Assessment Act 1979).
3. The development does not comply with the provisions of Chapter G9 of Shoalhaven Development Control Plan 2014 (Section 4.15 (1) (a) (iii) Environmental Planning and Assessment Act 1979).
4. The site is not suitable for the development due to its location within a High Hazard Floodway (Section 4.15 (1) (c) Environmental Planning and Assessment Act 1979).

5. Approval of the development would be contrary to the public interest (Section 4.15 (1) (e) Environmental Planning and Assessment Act 1979).

RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 82A 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 Integrated Development. The request must be made **within six (6) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers 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 six (6) months** after receipt of this notice.*

PRIVACY NOTIFICATION

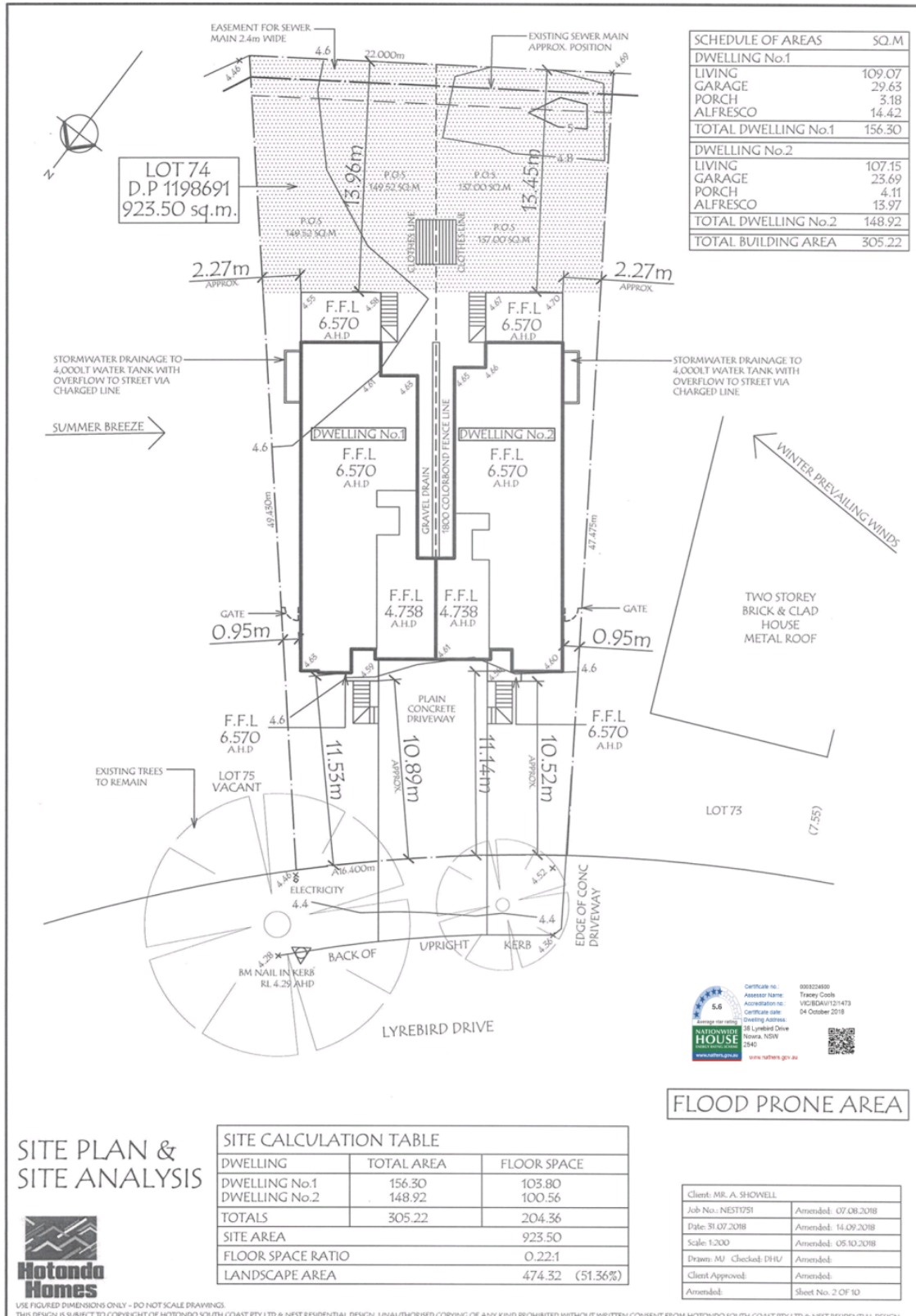
Personal information contained on this Determination will be published on Council's website as required by the *Government Information (Public Access) (GIPA) Act 2009*.

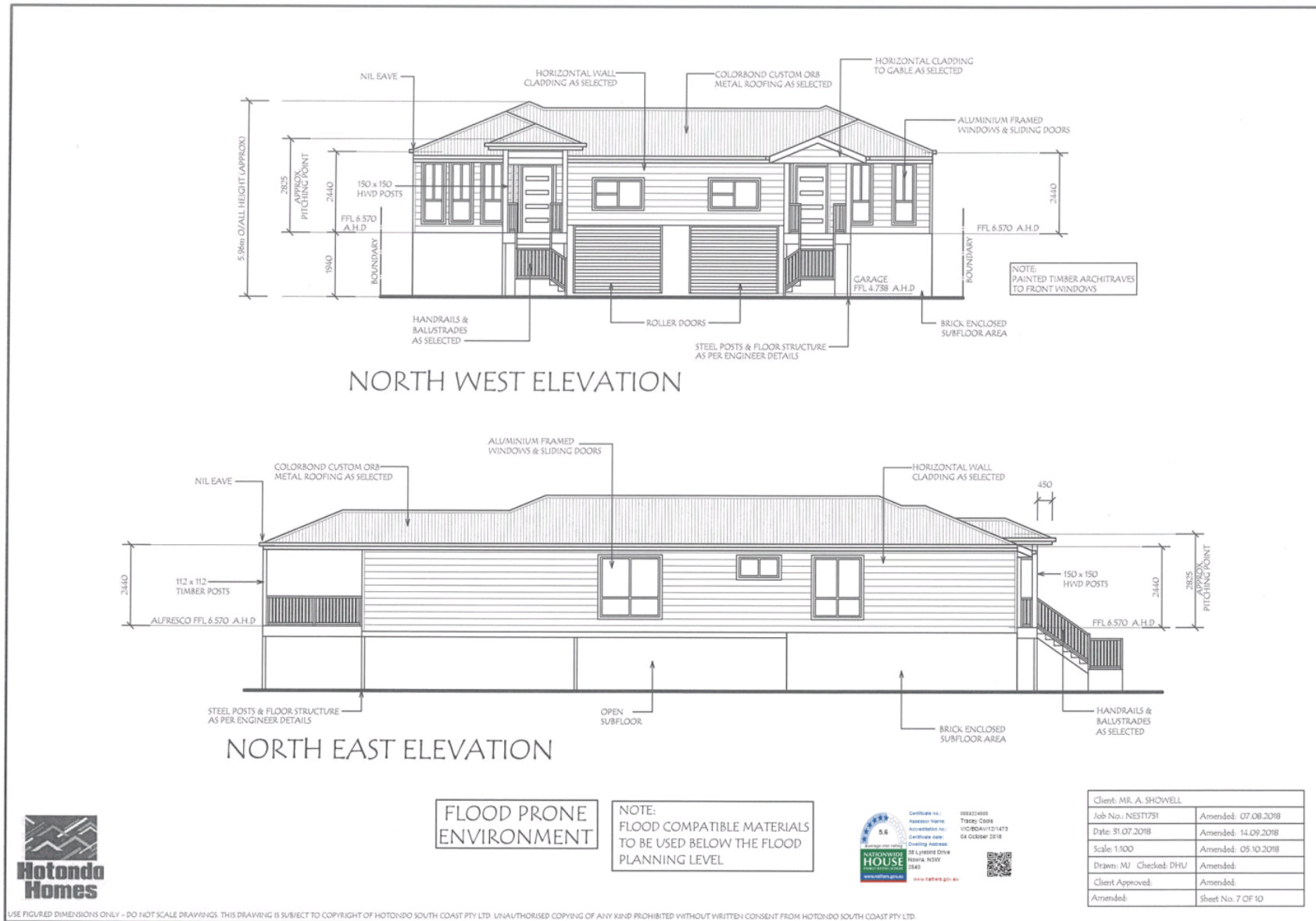
SIGNED on behalf of Shoalhaven City Council:

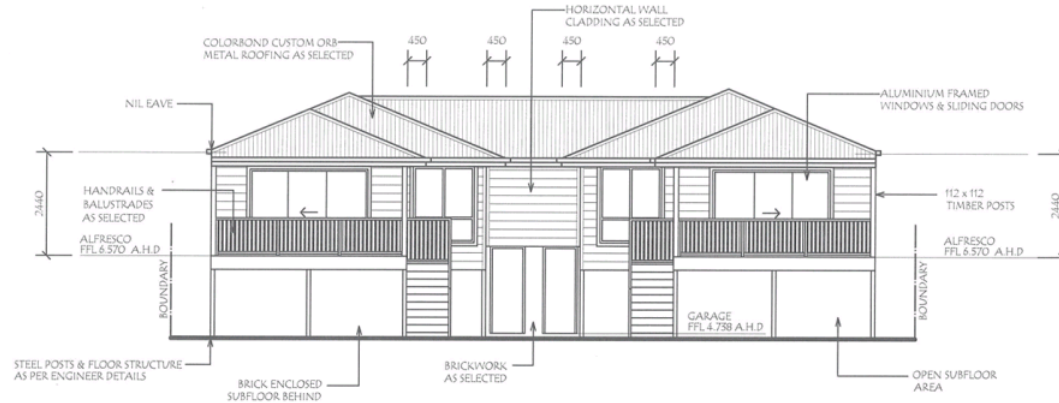
Signature



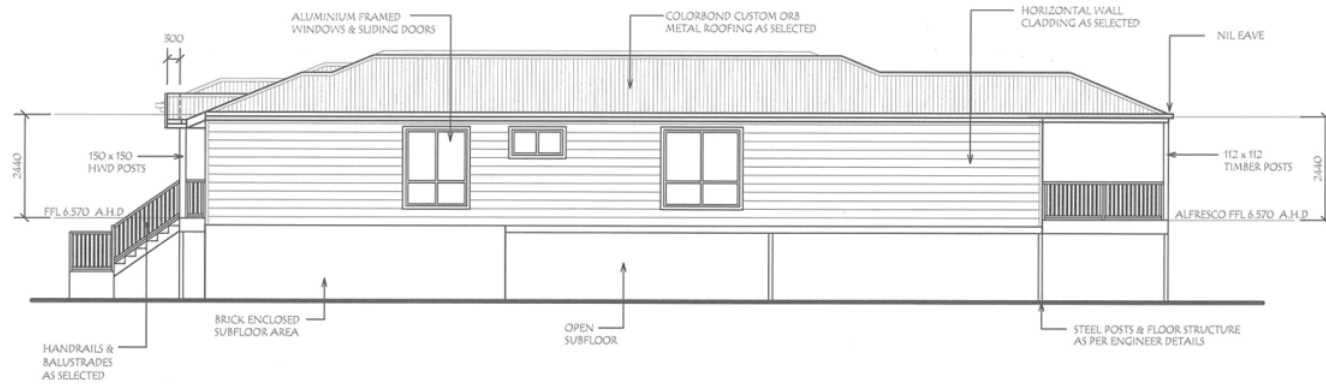
Name Nahid Mahmud
Development Planner
Development & Environmental Services Group







SOUTH EAST ELEVATION



SOUTH WEST ELEVATION

FLOOD PRONE
ENVIRONMENT

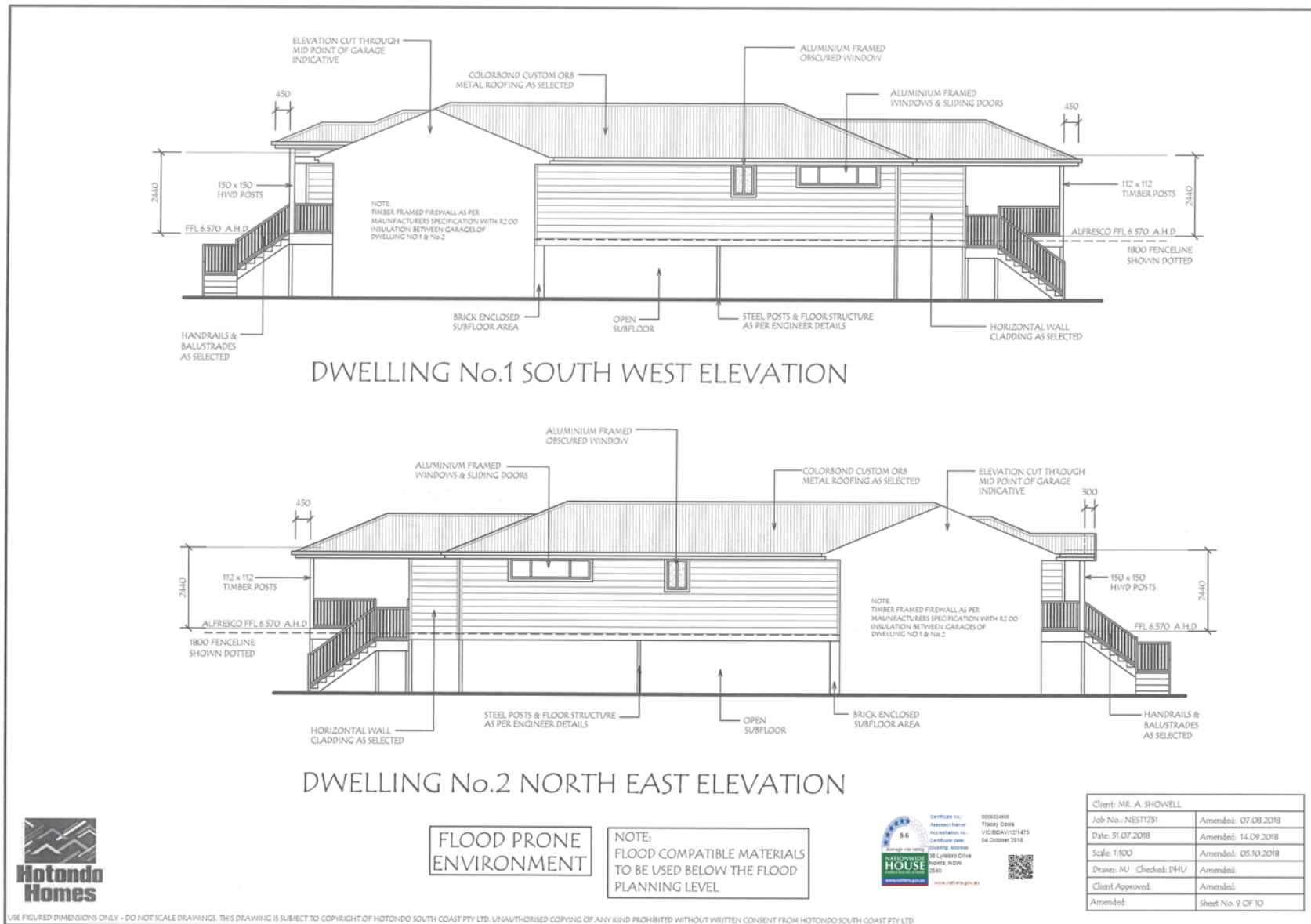
NOTE:
FLOOD COMPATIBLE MATERIALS
TO BE USED BELOW THE FLOOD
PLANNING LEVEL.

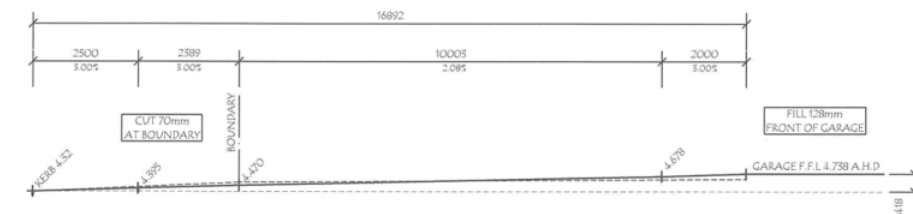
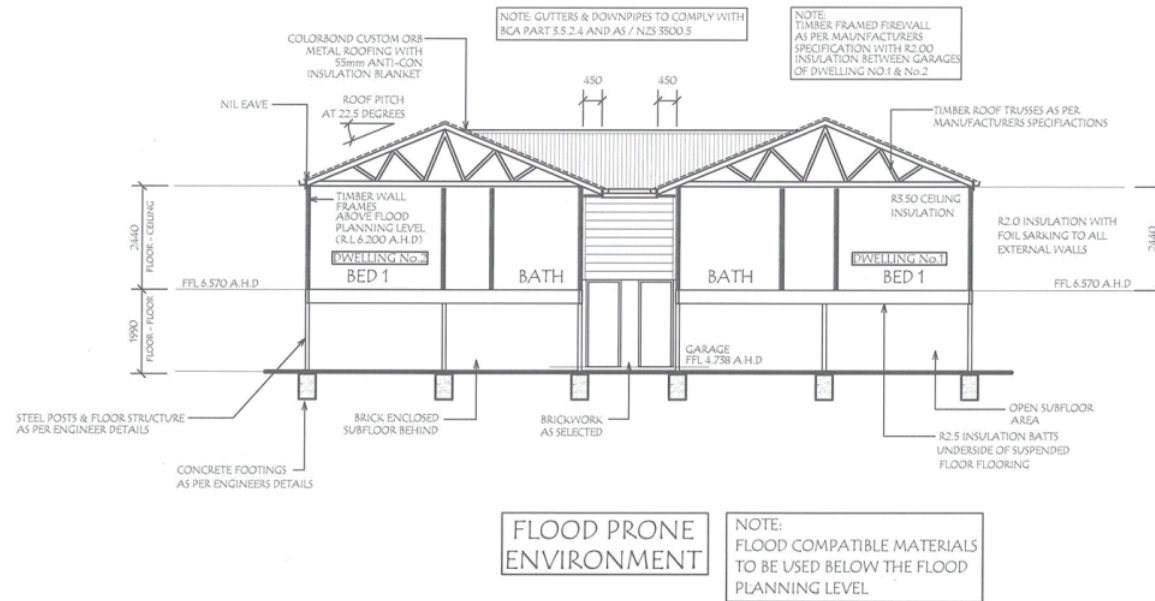


Client: MR. A. SHOWELL	
Job No.: NEST1751	Amended: 07.08.2018
Date: 31.07.2018	Amended: 14.09.2018
Scale: 1:100	Amended: 05.10.2018
Drawn: MJ Checked: DHU	Amended:
Client Approved:	Amended:
Amended:	Sheet No. 8 OF 10



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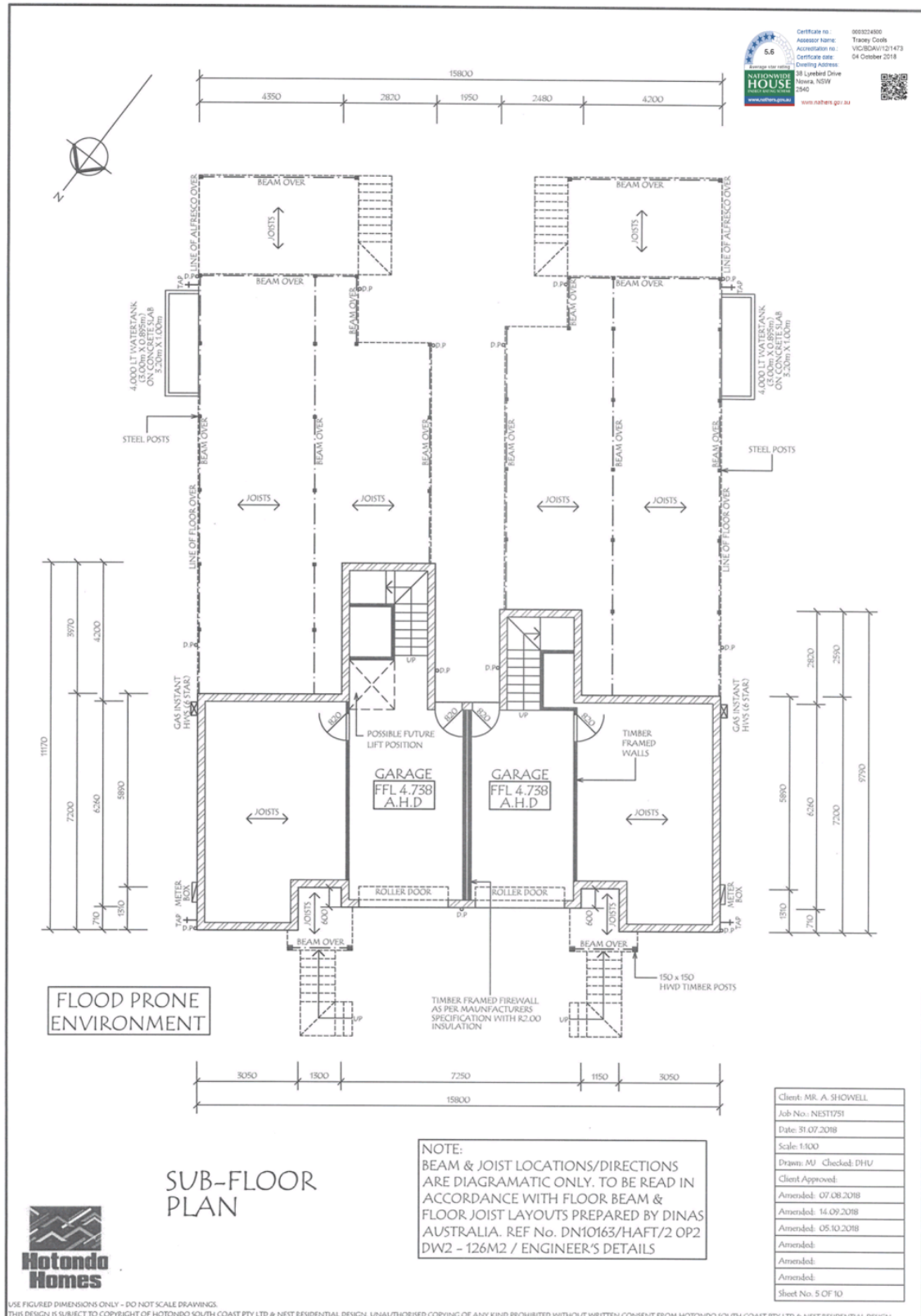
PROPOSED DRIVEWAY LONG SECTION
SECTION SHOWN THROUGH MIDDLE OF DRIVEWAY



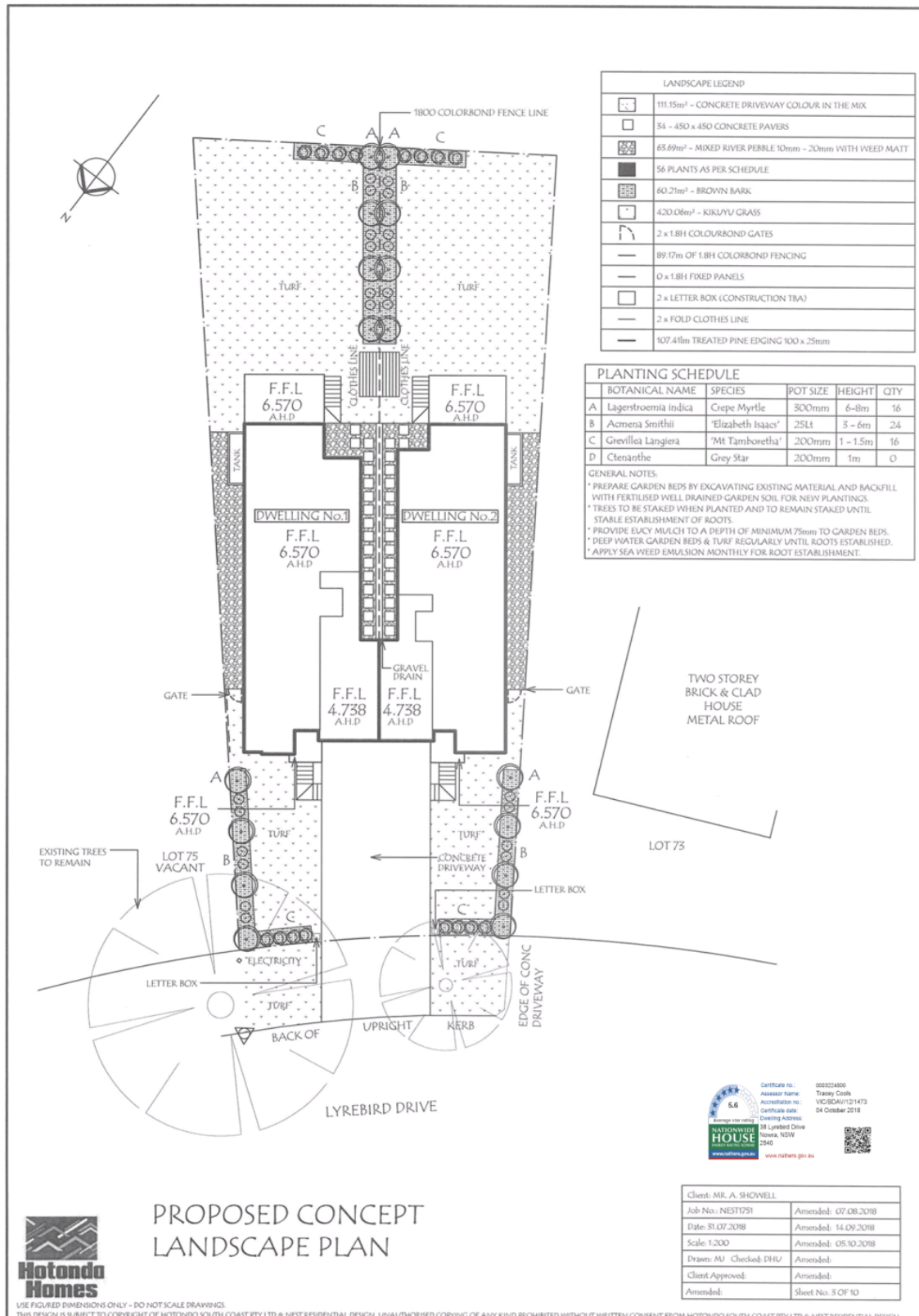
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Drawn: MJ	Checked: DHU
Client Approved:	Amended:
Amended:	Sheet No. 8 OF 10



DE19.60 - Attachment 2



Shoalhaven Development Control Plan 2014

Chapter G9: Development on Flood Prone Land

	soils . Local landowner modifications to the existing mitigation drains will require Council's written approval.
--	--

5.4.5 Riverview Road Area

The Riverview Road Area [Floodplain Risk Management Plan](#) was adopted in 2002. Please refer to Supporting Map 5.

Site specific [flood](#) related development controls:

Location / Type of Development	Specific Controls
All of Riverview Road Area FRMP Study Area	<ul style="list-style-type: none"> No new subdivision approvals will be granted as it would increase the demand on the rescue services and the risk to life. The minimum required floor level for infill development and reconstruction is the 1 in 100 year pre levee flood level plus a freeboard of 0.5m for habitable rooms.
New residential buildings where approved in accordance with the zoning requirements	<ul style="list-style-type: none"> Structural soundness of completed works to withstand water and debris damage up to the 0.2% AEP (1 in 500 year) event is to be certified by a suitably qualified structural engineer. Owners must have measures in place to enable them to self evacuate to not place additional burden on Emergency Services
New residential buildings within: <ul style="list-style-type: none"> Riverview Road, Elia Avenue Lyrebird Drive subdivision Lot 7 DP809132 Lot 1 DP1053438 Lot 2 DP1053438 Lot 6 DP538956 Lot 1 DP449102 All vacant land not already subdivided.	<ul style="list-style-type: none"> No Dual Occupancies or subdivisions will be permitted.

Shoalhaven Development Control Plan 2014

Chapter G9: Development on Flood Prone Land

Schedule 2 – Flood Related Development Controls – Generic

Hazard/Hydraulic Category	High Hazard Floodway													
Land Use Category (As per schedule 1)	Single Residential / Habitable Buildings	Single Residential / Habitable Buildings	Other Residential / Habitable	Carparks	Commercial / Industrial / Agricultural Buildings / Retail	Commercial / Industrial / Agricultural Buildings / Retail Existing Use Rights Only	Subdivision	Earthworks	Resources Management / Agriculture / Recreational Activities	Critical Infrastructure Assets / Potentially Polluting Activities	Buildings and activities requiring special evacuation consideration	Minor Development	Ancillary Structures	Events
	A(I)	A(I)*	A(II)	B	C	C(I)*	D	E	F	G	H	I	J	K
FLOOR LEVEL*		1				1						1 or 4**		
BUILDING COMPONENTS		1, 2				1, 2			1, 2			1, 2	1, 2	
STRUCTURAL SOUNDNESS		2, 4				2, 4			3			2	3	
HYDRAULIC IMPACT		1				1			1, 2				1	
ACCESS		1, 2				1,2						3		
FLOOD EVACUATION PLAN		1				1						1		2
MANAGEMENT & DESIGN		1, 3				1, 2, 3			1, 2				1	



Not suitable for development



Not required

Note: For definitions of Land Use Categories refer to Schedule 1.

* This type of development is not suitable within the risk category - however, if existing use rights (as defined in the *Environmental Planning and Assessment Act 1979*) can be established and there is no other option, the conditions as per Schedule 2 will apply.

** Control no. 1 is desirable however if this cannot be achieved control no. 4 is acceptable.
Numbers in columns are described in the Development Controls Matrix Legend.

DE19.61 Shoalhaven City Council - Mobile Food Vans in the LGA - Private and Public Lands

HPERM Ref: D19/187221

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

Attachments:

1. Guidelines for Mobile Food Vending Vehicles - Department of Primary Industries Food Authority (under separate cover) [⇒](#)
2. Mobile Food Vending Vehicle Guidelines (under separate cover) [⇒](#)
3. Shoalhaven Local Approvals Policy 2017 (under separate cover) [⇒](#)
4. Management of Mobile Food Vending Vehicles on Council Owned or Managed Land - LAP - POL16 77 (under separate cover) [⇒](#)

Purpose / Summary

At its Ordinary meeting held on 28 May 2019 Council resolved to request a report on its current management of mobile food vending vehicles on both private and public land (MIN19.331).

There are various approvals and exemptions that apply to the use and operation of mobile food vending vehicles and these are discussed in this report.

Recommendation (Item to be determined under delegated authority)

That the report Mobile Food Vans in the LGA - Private and Public Lands be received for information.

Options

1. As recommended

Implications: Nil

2. Council provide an alternative recommendation

Implications: to be advised.

Background

At its Ordinary meeting held on 28 May 2019, Council resolved as follows (MIN19.331):

That Council prepare a report on Council's current management of mobile food vans in the Shoalhaven LGA both on private and public land. Such report to include:-

1. Approvals issued in the last 2 years in accordance with the State Government guidelines for Mobile Food Vans on both private and public land.
2. Non-Compliance issues & complaints reported in the last 12 months including safety issues, property site issues, access issues, signage etc
3. Consideration to a review of current policies.

It is important to firstly explain the legislative framework that relates to mobile food vending vehicles. Several acts and policies regulate this function and the requirements vary between private or public land.

Legislative framework

Both exemptions and approvals apply for operating a mobile food vending vehicle. The relevant policies and legislation are identified as follows:

Private land

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- Environmental Planning and Assessment Act. This applies where the exemptions in the SEPP cannot be satisfied.

Public land

- Department of Primary Industries Food Authority – Guidelines for Mobile Food Vending Vehicles
- Shoalhaven Local Approvals Policy 2017 (POL18/15)
- Management of Mobile Food vending vehicles on Council owned or managed land (POL16/77)
- Shoalhaven Council Mobile Food Vending Vehicle Guidelines.

Private land

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Before a property can be considered in the exempt category, it needs to satisfy the general requirements of the SEPP as set out in Clause 1.16. Essentially this excludes certain areas such as

- land that is a declared area of outstanding biodiversity value,
- land that is critical habitat,
- land that is wilderness areas or
- land that is listed on the State Heritage Register.

If the land satisfies the requirements of Clause 1.16, then Subdivision 27A relates to the exempt provision for mobile food and drink outlets. Subdivision 27A provides as follows:

Subdivision 27A Mobile food and drink outlets

2.54A Specified development

The carrying out of the retail sale of food, drinks and related products on land from a mobile outlet such as a food truck, van, cart or other similar vehicle is development specified for this code.

2.54B Development standards

The standards specified for that development are that the development must:

- have the consent of the owner of the land on which the development is carried out or, if a council or public authority has the control and management of the land, the consent, in writing, of the council or public authority, and
- not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and

- (c) not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and
- (d) not be located within the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and
- (e) not result in any damage to public property on the land or on adjacent land, and
- (f) if carried out on land within or immediately adjacent to a residential zone – only be carried out between 7.00 am and 7.00 pm on any day, and
- (g) if located on a public place – have any approval required under section 68 of the Local Government Act 1993, and
- (h) if located on private land—be limited to 1 development on that land and not contravene any conditions of a development consent for any other use carried out on the land.

If a mobile food vending vehicle meets with the development standards set out in Subdivision 27A above, it can operate without any formal planning approval.

That said, all mobile food vending vehicles within the Shoalhaven must be inspected and approved by Council's Environmental Services Section as a Food Itinerant. This approval checks compliance with the NSW Food Act 2003 and the Food Standards Code.

Environmental Planning and Assessment Act

Where a private premise does not enjoy the exemption provisions of Subdivision 27A of the SEPP (Exempt and Complying Development Codes) 2008, then a development application will need to be lodged and considered by Council.

Public Land

NSW Government Department of Primary Industries "Guidelines for Mobile Food Vending Vehicles" January 2017

This document is used by businesses and enforcement agencies to guide them in assessing compliance with the NSW Food Act 2003 and the Food Standards Code. The primary aim of the guidelines is to make food businesses aware of their legal obligations and to suggest ways to assure food safety when selling food.

Council does not refer to this generic guideline prepared by the NSW Department of Primary Industries. Like many other Councils, Shoalhaven has prepared its own "Mobile Food Vending Vehicle Guidelines" and this is based on the State document.

Council's "Mobile Food Vending Vehicle Guidelines" provides information regarding requirements for obtaining Council approval within the context of the "Management of Mobile Food Vehicles on Council Owned or Managed Land (including Roads) Local Approvals Policy" (POL16/77). Both documents are referenced in Shoalhaven Local Approvals Policy 2017.

Shoalhaven Local Approvals Policy 2017 (POL18/15)

Shoalhaven Local Approvals Policy 2017 became effective on 21 March 2018. The purpose of a Local Approvals Policy is to provide exemptions from the need for approval and outline the criteria for those activities where approval is required.

The Local Approvals Policy applies to all land within the Shoalhaven except certain land under the jurisdiction of the National Parks and Wildlife Service. It applies to approvals under the Roads Act 1993 and Section 68 activities as prescribed in the Local Government Act 1993.

Part D of Section 68 relates to activities on Community Land and it includes engagement in a trade or business on such land. Part F relates to other activities and this includes the use of a standing vehicle or any article for the purpose of selling any article in a public place. Both would relate to mobile food vending vehicles.

The Local Approvals Policy is divided into three parts as per Section 158 of the Local Government Act.

Part 1: Exemptions - outlines the circumstances in which a person is not required to obtain an approval. Section A covers exemptions provided for under State Government Legislation. Section B outlines local exemptions applicable only to Shoalhaven. There are no local exemptions for mobile food vending vehicles in the Shoalhaven.

Part 2: Criteria - is the criteria which must be considered by Council when determining whether or not to grant approval to a particular activity. Section A covers criteria provided for under State Government Legislation. Section B outlines local criteria applicable only to Shoalhaven.

Part 3: Other matters - includes information on the processing of an application and other relevant matters

Two important definitions relate to the category of mobile food vending vehicle and these are defined in Council's "Mobile Food Vending Vehicle Guidelines" as follows:

- **Category 1** (Food Itinerant):- Service of food that is not potentially hazardous, or that involves low risk practices such as frothing milk and can trade on the street for such a period of time necessary to engage in the actual serving of a customer. Once the customer/s have been served they are required to move on. An example would be Mr Whippy or Home Ice Cream.
- **Category 2** (Food Van):- Allows the operator to occupy any one position on a public road or car park for up to a maximum of 5 hours between 7am to 7pm.

The following general criteria apply to all mobile food vending vehicles operating in the Shoalhaven:

- All vehicles must be registered as per the requirements of the NSW Roads and Maritime Services. No additional flashing or rotating lights permitted.
- Must not operate as a roadside stall or to sell food to the public on any site that requires development consent for that use.
- Control is to be exercised over noise emissions (e.g. amplified sound and motor noise) so as to cause no inconvenience to residents. The Protection of the Environment Operations Act 1997 and related Regulations will apply.
- All matter relating to the sale and storage of foods associated with this approval shall comply with the requirements of the Food Act 2003 and Food Regulation 2015.
- The vehicle is not permitted to use chimes or like devices to attract attention between the hours of 8pm and 8am or to operate within 90m from any hospital, churches in service or schools during school hours.
- The vehicle must not stop on a hill or bend where sight distance is limited nor located in front of driveways or entrances to properties.
- The vehicle must not trade in locations where motorists are forced to park on kerbside land, where parking/standing restrictions apply.
- The vehicle is not to create a traffic hazard, obstruction or dangerous situation.
- Litter bins are to be provided by the operator for the convenience of customers.
- Wastewater is to be contained with the vehicle for later disposal to the sewerage system.

- The vehicle must be made available for inspection by Council's Environmental Services Section for a permit under the Food Act 2003 prior to the issue of approval.
- Vehicle must not exceed 6m in length and 2.5m in width.
- Proof of Public Liability Insurance (minimum of \$20 million) must be provided.
- The vehicle must operate in full compliance with existing road rules and parking restrictions.

With respect to Community Land in Part D of Section 68 of the Local Government Act, mobile food vans on Council land (D1 activity), the following criteria relates to Category 2 – mobile food vehicles:

- The vehicle to occupy any one position on Council owned or managed land for up to a maximum of 5 hours between 7am and 7pm.
- The vehicle is prohibited from trading within 1 km of an open business serving the same or similar food/drink (the distance being measured by the shortest route by road).
- No trading is to occur on NSW Roads and Maritime Services controlled roads.

With respect to Other Activities in Part F of Section 68 of the Local Government Act, the following criteria relates to mobile food vehicles in a public place (F7 activity) and this would include roads:

(a) Category 1 - Mobile Food Vehicles (Itinerant Food Vendors)

- The vehicle is not permitted to occupy any one position in a public road, except for such period of time as may be necessary to engage in the actual serving of a customer. On completion of serving, the vehicle must pass on and not return soliciting customer/s over the same ground within one (1) hour and shall restrict vending to lightly trafficked roads.
- The vehicle is not permitted to operate within 75m of business zoned land under Shoalhaven Local Environmental Plan 2014.

(b) Category 2 – Mobile Food Vehicles

- The vehicle to occupy any one position on Council owned or managed land for up to a maximum of 5 hours between 7am and 7pm.
- The vehicle is prohibited from trading within 1 km of an open business serving the same or similar food/drink (the distance being measured by the shortest route by road).
- No trading is to occur on NSW Roads and Maritime Services controlled roads.

Report

The following additional comments are made to specifically answer the questions raised in the notice of motion.

(a) Approvals issued in the last 2 years in accordance with the State Government guidelines for Mobile Food Vans on both private and public land.

The State Government Guidelines for Mobile Food Vans do not apply in the Shoalhaven. Council's Local Approvals Policy deals with these approvals. All mobile food vending vehicles require a Category 1 approval to operate within the Shoalhaven.

Council's Environmental Services Unit inspect and issue Category 1 (Food Itinerant) approvals to owners of mobile food vehicles. These are valid for a period of 12 months only. This means that operators need to seek approval every year and this ensures the continued compliance with food safety standards. Council's Environmental Health Officers also carry out spot checks during the many functions and festivals throughout the year.

The following Category 1 approvals have been issued for the years specified:

2017/2018	119 approvals
2018/2019	146 approvals (to 31/05/2019)

Category 2 (Food Van) approvals are issued by Council's Property Unit. These approvals also require the owner to hold a Category 1 approval. These approvals also last for 12 months only and the time period is set from 1 July to 30 June each financial year.

Applications for Category 2 approvals are received from the Property Unit during May each year. The following approvals have been issued by the Property Unit for the years specified:

2017/2018	7 approvals
2018/2019	6 approvals
2019/2020	5 applications received to 31/05/2019.

With respect to private lands, Council does not keep a record of properties where mobile food vending vehicles meet with the exempt provisions of the SEPP. Some of these have been the subject of complaint in recent times and this will be discussed shortly in this report.

There have been no separate development consents for this specific use in the last 2 years. This means that the only mechanism for approval has been via the exempt provisions of the SEPP.

(b) Non-Compliance issues & complaints reported in the last 12 months including safety issues, property site issues, access issues, signage etc

There have been areas of non-compliance with the SEPP and operators have been advised on these issues by Council's Rangers and Compliance Officers. Some issues were easily addressed by the vendors and the use was allowed to continue. Other issues could not be addressed, and the use had to cease. Examples of where the use had to cease include one vehicle being located within the canopy of a tree and another vehicle caused a non-compliance with the development consent carparking requirements.

Council has received 23 complaints concerning the operation of mobile food vending vehicles in the last 12 months. These complaints related to the following:

	Date	Advice from	Issue
1	16/06/2018	Public (Shop owner)	Mobile food vending vehicle - Coffee Van - parking issues and local business being affected (Public Land)
2	04/09/2018	Public	Mobile food vending vehicle - parking illegally (Private Land)
3	11/09/2018	Public	Mobile food vending vehicle - Coffee Van illegally parked (Public Land)
4	08/10/2018	Public	Mobile food vending vehicle - Myola - unauthorised signage (Private Land)
5	28/11/2018	Public	Mobile food vending vehicle - Coffee Van - playing loud music until 10pm - Culburra Beach (Private Land)
6	02/01/2019	Public	Mobile food vending vehicle - Coffee Van - Cudmirrah - questioning approval (Public Land)
7	04/01/2019	Public (Shop owner)	Mobile food vending vehicle - Milton Post Office - Taking business away from shops (Private Land)
8	09/01/2019	Public (Shop owner)	Mobile food vending vehicle - Gelato Van - set up near Huskisson shops and taking business from shops (Public Land)

9	10/01/2019	Public	Mobile food vending vehicle situated on Crown Land Currarong – questioning approval (Public Land)
10	10/01/2019	Public (Shop owner)	Mobile food vending vehicle - Coffee Van - Milton Post Office - competing business with shop owners (Private land)
11	11/01/2019	Public	Mobile food vending vehicle at Bawley Point - Parking on grassed verge outside complainant's residence in a very dangerous position – bend in the road (Public Land)
12	17/01/2019	Public (Shop owner)	Mobile food vending vehicle at Milton Post Office - Taking business away from shops (Private land)
13	22/01/2019	Public	Mobile food vending vehicle - Coffee Van - customers parking in driveway blocking access to the Care Centre – Milton (Public Land)
14	22/01/2019	Public	Mobile food vending vehicle - Coffee Van - illegally parked at Mollymook Beach (Private Land)
15	04/03/2019	Public	Mobile food vending vehicle - Mobile Bus Café –concerns for structural issues (Private Land)
16	11/04/2019	Public (Shop owner)	Mobile food vending vehicle regularly setting up at South Nowra taking business away from take away business (Private Land)
17	11/04/2019	Public	Mobile food vending vehicle regularly setting up at Lake Tabourie causing parking and noise issues (Public Land)
18	15/04/2019	Public	Mobile food vending vehicle Callala Beach - causing parking and safety issues (Private Land)
19	23/04/2019	Public	Mobile food vending vehicle - Callala Beach - causing parking and safety issues (Private Land)
20	08/05/2019	Public	Mobile food vending vehicle Callala Beach - causing parking and safety issues (Private land)
21	08/05/2019	Public	Mobile food vending vehicle Callala Beach – causing parking and safety issues (Private Land)
22	15/05/2019	Public	Mobile food vending vehicle - Noise from generator causing a nuisance at Culburra Beach (Public Land)
23	16/05/2019	MP Ms Hancock	Mobile food vending vehicle – Milton Post Office – safe access, parking issues, safe food handling, odour and general amenity (Private land)

A total of 23 mobile food vending vehicle complaints have been received in the last 12 months. Of these complaints, 14 related to private land and 9 related to public land.

Of the 9 complaints on public land, all of these were isolated events.

(c) Consideration to a review of current policies

Council's Local Approvals Policy was confirmed on 11 December 2017 and commenced on 21 March 2018 (Min17.1054). In accordance with Section 165 of the Local Government Act,

DE19.61

the policy is automatically revoked 12 months after the declaration of the poll for a general election of Council.

From all accounts, there does not appear to be a problem with Council's Local Approvals Policy or the management and use of mobile food vending vehicles on public lands.

It is conceded that there is a double up in some requirements of the "Local Approvals Policy" (POL18/15) and "Management of Mobile Food Vehicles on Council Owned or Managed Land (including Roads) Local Approvals Policy" (POL16/77). The latter has not been endorsed by the Office of Local Government and is therefore not considered to be a Local Approvals Policy. The inconsistencies and the titling of the latter document needs to be addressed and this could be done now or at the time of the next review.

Unfortunately, the differences between the SEPP exempt development provisions on private land and the Local Approvals Policy requirements on public land has resulted in some confusion within the community. Council's Rangers and Compliance Officers have had to explain these differences on many occasions. This particularly impacts on shop owners who have trouble separating the 1 km business exclusion requirement for public spaces which does not apply to private land under the SEPP. It is possible to have a mobile food vending vehicle on private land immediately next door to a shop offering the same service or product for sale.

The requirements of the SEPP (Exempt and Complying Development Codes) 2008 are a product of State Government and override any local policy provisions.

DE19.62 Shoalhaven Heads - River Road Foreshore Precinct Rehabilitation Project - Progress Update

HPERM Ref: D19/115308

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. 95% Design showing cost savings - as per consultation with Shoalhaven Heads Estuary Taskforce [↓](#)

Purpose / Summary

To provide Council with an update on the progress of the Shoalhaven Heads – River Road Foreshore Precinct Rehabilitation Project.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed to call Tenders for the Shoalhaven Heads River Road Foreshore Precinct Rehabilitation Project in accordance with the separable portions strategy outlined in the report.
2. Receive a further confidential report regarding the Tender process in accordance with the provisions of the Local Government Act.

Options

1. As recommended.

Implications: This would allow Council to proceed to a Request for Tender. The project is proposed to be broken into Separable Portions to assist in identifying cost savings and project management. This will also for compliance with the guidelines of the Office of Local Government (OLG) and section 55 of the Local Government Act 1993.

2. Council direct staff to revise the project scope and design as per the options outlined in this report, to reduce the cost of construction to fit with the existing project budget of \$1,763,000 which would require a reduced scope of works.

Implications: Reducing the scope and extent of the project will result in Council potentially not being able to deliver project milestones as per the funding agreement with Infrastructure NSW. Council would need to obtain a funding variation approval to proceed with this option.

3. Council provide an alternative recommendation.

Implications: This would depend on the alternative recommendation.

Background

Generally, the scope of work is to undertake foreshore restoration works to reconstruct part of the embankment along the northern side of the Shoalhaven River, Shoalhaven Heads.

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The project design and works are being managed by Council's Project Delivery team in the Assets & Works Group, and community consultation and grant administration managed by Natural Resources & Floodplain Unit (Planning, Environment & Development Group) in conjunction with Project Delivery. As previously reported to Council, the foreshore suffered significant erosion during the east coast low storms in 2016. The area in question runs parallel to River Road generally between Renown Avenue and Mathews Street (opposite the Heads Hotel).

The University of NSW Water Research Laboratory (WRL) undertook an assessment of the coastal management options for a one-kilometre length of foreshore generally aligned with Jerry Bailey Road / Hay Avenue intersection at the west, and to the Holiday Haven Shoalhaven Heads Caravan Park, River Road in the east.

Qualitative prioritisation of management works determined to focus on a 170-metre-long section of the embankment.

Grant funding for the work was approved on 10 April 2018 for \$1,213,000 from Infrastructure NSW, and Council received formal notification from NSW Treasury that the project had been executed on 26 September 2018. Council will be contributing \$550,000 towards the project from the stormwater levy, coastal infrastructure reserve and coastal maintenance budgets.

The work is proposed to include the civil engineering reconstruction of the embankment, stormwater management, and beach access by the construction of two new beach access steps. In the funding there is no allowance for any road / street improvements, pavements etc., although being specifically related to the civil works, replacement vegetation is funded.

Following a formal select Request for Quotation process, Council engaged the services of coastal engineering specialist Magryn & Associates Pty Ltd to prepare the detailed design, and part of the consultants' brief was to attend two on-site meetings with members of the Shoalhaven Heads Estuary Taskforce (SHET).

The engineering design consultant provided 95% detail design drawings for review along with a pre-tender cost estimate which exceeds the original project estimates. Further Community Consultation with SHET focussing on design and cost options led to a determination to create Separable Portions enabling Council to prioritise the main part of the work and consider a reduction in the length of embankment stabilisation. Separable Portions can provide Council with strategic options following assessment tenders regarding cost and potential staged project delivery.

Adopting this approach, the Tender parties would be made clearly aware that one or more separable portions may not proceed.

Community Engagement

Council has collaborated with SHET, holding five meetings with SHET members, and corresponding approximately 20 times about project designs. On 21 February, Council staff meet with SHET, the owner of the Shoalhaven Heads Hotel, and Terry Magryn, the design consultant, to consult with them on the 75% detailed design.

Council's Natural Resources and Floodplain Unit Manager also attended the Shoalhaven Heads Community Forum meeting on Wednesday 6 March to give the community an overview on the project design and answer inquiries on the project design.

The following table outlines the community consultation undertaken and the changes made to the projects 50%, 75% and 95% design phase because of the consultation.

At the 95% review of the tender documentation, with the advent of the Pre-Tender cost estimate SHET was further consulted and further amendments made.

Consultation issues raised	Date	Changes to design because of consultation
Separate access for property 57 from rear of property shown on design	19/09/2018	Initial design showed access to the rear of this property; this was removed as it is illegal
Concern with retaining trees on embankment	21/09/2018	As many trees as is possible will be retained – no changes
Property owner of 64 River Rd concerned about losing boat launching ramp from rear of property to the river	28/09/2018	Explained to the owner that it is not possible to provide rock revetment protection and retain private boat ramp – no changes
50% design send to Shoalhaven Heads Community Forum for feedback	3/10/2018	No changes from forum
Local Fishing Club requested the installation of fishing platforms	14/10/2018	Explained that the fishing platform would be at increased risk of being washed away from wave action and the risk posed to the public from anglers casting
On-site meeting with SHET to review 50% design stage	15/10/2018	<ul style="list-style-type: none"> One larger viewing platform changed to two smaller viewing platforms Move eastern beach access steps
Shoalhaven Heads Hotel owner raised concern over having the viewing platform opposite the pub – concerned about issues relating to his license and Licensing Act rules	12/11/2018	Removed the reference to viewing platform and reduced them in size, now landings between steps instead.
On-site meeting with SHET to review the 75% stage	21/02/2019	<ul style="list-style-type: none"> Reduce the length of the rock channels at the outlets of the storm water pipes to reduce the risk and improve aesthetics Inclusion of poles onto the bottom of beach access steps to allow small boats to tie onto in the design
Phone call from property owner on River Rd, expressing concern over raised pedestrian crossing in front of Shoalhaven Heads Hotel	22/02/2019	Pedestrian crossing will not be raised

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Meeting with SHET members	24/4/19	Discuss aspects of 95% detailed design and options for reducing scope of works if necessary, to keep project within budget
Meeting in Council offices with SHET	21/05/2019	A reduction of both west and east scope of work from Zone 2b & Zone 3a. Resulting in keeping the western drainage outlet and beach access steps and reducing the essential work at the east end by redesign.
Survey of proposed design	15/05/2019	Council undertake survey
On-site meeting with SHET to inspect wall and stair mark-out by surveyors	28/05/2019	Revision to 95% design drawings: Wall has been moved further into the bank by 2m to allow for a wider beach. Re-orientation of each set of stairs to also allow for a wider beach.

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Council staff again meet with SHET members on 24 April 2019, to discuss aspects of the 95% detailed design and options for reducing the scope of the project to reduce overall costs, which have been outlined in the financial section of this report.

Program Implications

Currently, due to the extended community consultation and budget implications, the project is running behind schedule. The civil engineering design was scheduled to be completed in April 2019. Staff proposed to call tenders for the defined scope of work in May 2019 targeting contract engagement of a suitably experienced civil contractor within the current financial year, then allowing about nine months for the construction based on the tendered scope of works.

Council now expects to be in a position to call tenders in August 2019, with the contract works commencing in the second quarter of the 2019-2020 Financial Year, subject to gaining development consent. The development application supporting documents have been completed and are currently being reviewed, except for the acid sulfate soil report which is in progress. It is expected the DA will be lodged in early July 2019.

Under the provisions of the new State Environmental Planning Policy (Coastal Management) 2018 a development application is required for this project under clause 19(b) of the SEPP and the Coastal Management Act as the works are defined as coastal protection works, are on land adjacent to tidal water and include a revetment or seawall works. Although this type of work is often permissible under the State Environmental Planning Policy (Infrastructure) 2007 without development consent, the requirements of the Coastal Management SEPP prevail, in accordance with the provisions of the Infrastructure SEPP. Where coastal protection works are identified in a certified Coastal Management Program, development consent is not required.

Policy Implications

It is proposed that the Tender will be an open public Tender in accordance with the Local Government (General) Regulation 2005 (as amended) Clause 167. The contract value may exceed \$1,000,000, in which case a report will be provided to Council to assess its position, with the intention of entering into a contract for the work. The results of the Tender will provide Council with a more accurate financial position and to determine an accurate and positive outcome.

Financial Implications

The Office of Local Government guidelines require councils “to not invite tenders without a firm intention and capacity to proceed with a contract including having funds available”.

As the 95% detailed design cost estimates, which included contingencies, exceeded the existing budget, Council approached the grant funding body, NSW Infrastructure, to seek advice as whether additional grant funding could be obtained. Correspondence from NSW Infrastructure advised that there is no additional funding available.

There are also additional works that SHET have requested including a shared pathway, curb and guttering and pedestrian crossing. These works would provide additional community, tourism and environmental benefits to the project but are currently unfunded.

Council staff met with SHET members on 24 April 2019 to discuss options for reducing cost of the project should these be required to keep the project within budget. These are outlined in the table below, as well as highlighted graphically in the attached cost saving options map.

To manage the project budget and identify savings as well as assist management of the project, the Tender will be broken into Separable Portions. This will give Council greater control over budget expenditure.

Whilst a recommended funding strategy will be reported to Council in the further Confidential report referenced in Recommendation 2 to the report, it is suggested at this stage that should additional funding be required to complete the full scope of works as a single contract of works, that an internal loan be considered with repayments funded through future years allocations from the Coastal Management and Infrastructure Reserve.

Potential cost saving item (as discussed with SHET)	Implications
Reduction of the length of the rock revetment at the eastern end of the project site (at the rear of 64 & 66 River Rd) as there is an existing rock wall already in place since 1996 (approx. 40 metres)	Will not provide the same level of coastal protection as the remaining the site and will require agreement with property owners
Not upgrade the Western end stormwater outlet, as it already has had a rock revetment placed at the outlet which acts as an energy decapitator	Will mean this stormwater outlet is not upgraded to the same standard as the other two stormwater outlets. Also, will need to assess if the new rock revetment can be keyed into the existing one
Reduction in the length of the western end of the rock revetment to align with the current location of the western end stormwater outlet (approx. 30 meters)	Will not provide the same level of coastal protection as the remaining the site.
Not replace the existing access stairs at the western end of the site	Will mean that the stairs will need on-going maintenance and a shorter asset life

These options will be considered further as part of the review of Tenders.

Risk Implications

The main risk currently posed to this project is the potential shortfall in the budget to meet the 95% detailed design construction cost estimates. This may pose a risk by having to reduce the extent of the coastal protection component of the project, which is the primary driver of the project.

Council has revised the 95% detailed design in consultation with SHET, to remove the 25 metres long rock storm water scour protection, that protruded at right angles from the river bank out into the channel. This was mainly due to the risk to walkers, from the exposed rocks posing a public risk and adding to the trip/slip risks.

Work of this nature involving subsurface ground works gives an increased risk for the work to become more costly and prolonged. Furthermore, the type of work with large boulders requiring stabilisation is specialised and may result in an increased risk for supply, transport and placement.

During site investigations, non-friable asbestos cement fragments were observed in an area within the project site. A suitably qualified consultant was engaged to assess the area and recommend clean-up works. These clean-up works of surface asbestos fragments has been completed and a visual clearance certificate issued. It is likely that this material was dumped many years ago and has become uncovered where the foreshore was eroded. A management plan has been developed by a suitably qualified consultant to manage the potential risk of further fragments being found during construction and post construction.

For the Tender and construction contract procurement, Council can await the results being reported from the Tender process to determine its financial position at that stage.

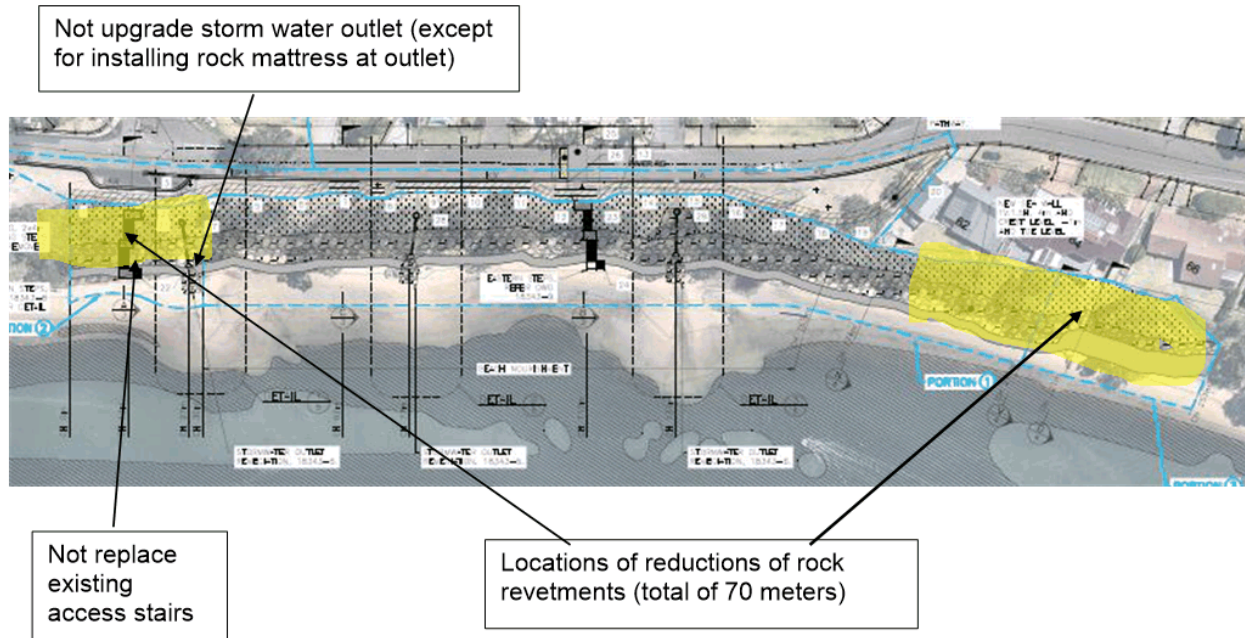
In addition to requiring prospective tenderers to respond to the RFT as a complete package of works for the entire project, it is proposed that they also be invited to respond to the scope of works as four prioritised Separable Portions:

1. The bulk of the embankment stabilisation work
2. The reconstruction of the western stormwater outlet, and embankment stabilisation
3. A reduced armour protection at the east end of the entire scope of work of
4. The civil road and shared user path construction

This strategy will provide Council with options to consider to potentially contain costs within the existing budget provision.

However, a reduced scope of works may not meet the requirements of the funding body, therefore an approved grant 'variation' would need to be obtained if necessary. A reduced scope of works may not fulfil all of the coastal management objectives set out in the University of NSW WRL report. A peer review of the revised scope of works and design by WRL could be sought to address this risk.

95% Design – Showing locations of cost savings discussed with Shoalhaven Heads Estuary Taskforce on 24/04/2019



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.