

## Development & Environment Committee

**Meeting Date:** Tuesday, 01 October, 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  
Chief Executive Officer 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

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Nil

## Development & Environment Committee

### Delegation:

Pursuant to s377(1) of the *Local Government Act 1993* (LG Act) the Committee is delegated the functions conferred on Council by the *Environmental Planning & Assessment Act 1979* (EPA Act), 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 Chief Executive Officer 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 Chief Executive Officer 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, 3 September 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  
Clr John Wells  
Clr John Levett  
Clr Nina Digiglio  
Clr Annette Alldrick  
Clr Kaye Gartner  
Clr Mitchell Pakes  
Clr Greg Watson  
Clr Bob Proudfoot  
Mr Stephen Dunshea - Chief Executive Officer

### Apologies / Leave of Absence

Apologies were received from Clr Kitchener and Clr Guile.

### Confirmation of the Minutes

**RESOLVED** (Clr White / Clr Pakes) MIN19.609

That the Minutes of the Development & Environment Committee held on Tuesday 06 August 2019 be confirmed.

CARRIED

### Declarations of Interest

Nil.

## Call Over of the Business Paper

The following items were called up for debate:

DE19.78, DE19.79, DE19.80, DE19.81, DE19.82, DE19.83, DE19.84, DE19.85, DE19.86, DE19.87, DE19.88, DE19.90, DE19.91.

The remaining item (DE19.89) was resolved en bloc (Clr Wells / Clr Gash) at this time. It is marked with an asterisk (\*) in these Minutes.

## DEPUTATIONS AND PRESENTATIONS

### DE19.78 - Notice of Motion - Gravel Quarry - Termeil & Tomerong (Page 11)

Ms Kate Child, representing Tomerong Community Forum, addressed the meeting and spoke in favour of the recommendation.

### DE19.79 - Notice of Motion - Support for Shoalhaven Netball Association - Court Refurbishment (page 13)

Sue Malley, representing Shoalhaven Netball Association, addressed the meeting and spoke in favour of the recommendation.

### DE19.86 - Proponent Initiated Planning Proposal - Lot 1 DP 949932 - Taylors Lane, Cambewarra (Page 47)

Mr Michael Park, representing Cambewarra Ventures, addressed the meeting and spoke in favour of the recommendation.

Mr Terry Barratt, representing the Shoalhaven Branch of the Australian Conservation Foundation, addressed the meeting and spoke in favour of the recommendation.

### DE19.88 - Presentation of petition in opposition to exploratory drilling/mining for fossil fuels in the Great Australian Bight (Page 76)

Ms Monica Mudge, representing Treading Lightly in the Mud, wishes to address the meeting and spoke in favour of the recommendation.

## Procedural Motion - Bring Item Forward

**RESOLVED** (Clr Pakes / Clr Wells)

MIN19.610

That the following matters be brought forward for consideration:

- DE19.79 - Notice of Motion - Support for Shoalhaven Netball Association - Court Refurbishment
- DE19.88 - Presentation of petition in opposition to exploratory drilling/mining for fossil fuels in the Great Australian Bight
- DE19.78 - Notice of Motion - Gravel Quarry - Termeil & Tomerong
- DE19.86 - Proponent Initiated Planning Proposal - Lot 1 DP 949932 - Taylors Lane, Cambewarra

CARRIED

## NOTICES OF MOTION / QUESTIONS ON NOTICE

**DE19.79 Notice of Motion - Support for Shoalhaven Netball Association - Court Refurbishment**

**HPERM Ref:  
D19/296544**

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

That it be noted that the Chief Executive Officer will provide a letter of support for the Shoalhaven Netball Association grant applications to the Office of Sport Clubs Grant and an infrastructure grant with the NSW Government, for the refurbishment of their courts located at the corner of Park Road and John Purcell Way, Nowra.

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

MIN19.611

That it be noted that the Chief Executive Officer will provide a letter of support for the Shoalhaven Netball Association grant applications to the Office of Sport Clubs Grant and an infrastructure grant with the NSW Government, for the refurbishment of their courts located at the corner of Park Road and John Purcell Way, Nowra.

CARRIED

**DE19.88 Presentation of petition in opposition to exploratory drilling/mining for fossil fuels in the Great Australian Bight**

**HPERM Ref:  
D19/289312**

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

That having considered the petition and background information presented in the report, Council determine its position on the matter.

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

MIN19.612

That Council:

1. Join other councils to protect the Great Australian Bight and oppose all exploratory drilling and mining for fossil fuels in the Great Australian Bight;
2. Write to relevant State and Federal Members of Parliament;
3. Write to Victorian councils that have already opposed this to express Council's support for their position;
4. Request that the Federal Government treat Shoalhaven City Council as a stakeholder and inform us duly of the progress of Equinor's application; and
5. Write to all Coastal Councils in NSW, NSW Coastal Council (NSW Department of Planning, Industry and Environment) and the Australian Coastal Councils Association Incorporated to advise them of Council's decision and encourage their support.

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

AGAINST: Nil

CARRIED

**DE19.78 Notice of Motion - Gravel Quarry - Termeil & Tomerong**

**HPERM Ref:  
D19/293256**

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

That Staff compile a report on the following in relation to the Non Designated Extractive Industry – Gravel Quarry at Portion 42, Parish of Termeil, Monkey Mountain Road, Termeil and the mooted intention of the Operators of that Quarry to begin gravel extraction at Tomerong Quarry Lot 4 DP 775296 Parnell Road Tomerong under existing DA90/1912:

1. Monkey Mountain Road Quarry DA 95/3365

Consent to operate was apparently for five years from 29<sup>th</sup> April 1996 to 29<sup>th</sup> April 2001 with an extraction rate not to exceed 30,000 cubic metres per annum.

- a. Is an EPA Licence required for crushing and grinding at this or any quarry if the extraction rate exceeds 30,000 cubic metres per annum.
- b. What evidence does Council have that this extraction rate was not exceeded at the Monkey Mountain Quarry in any 12 month period since approval was given in April 1996.
- c. On what legal basis or consent was the Quarry operating after 29<sup>th</sup> April 2001.
- d. Is the Council satisfied that there has been no illegal clearing of trees on the site.
- e. Given the proximity of the site to Termeil Creek, are particular licences required from the Office of Water or the EPA to protect the catchment.
- f. Can Council provide assurance that the operators are complying with all Approved Regulatory Authority documents.
- g. Can Council confirm that the Quarry has not operated beyond the 2 hectare extraction area described in the General Conditions of Consent.

2. Tomerong Quarry DA90/1912

Tomerong Quarry ceased operating in July 2017 and the DA and EPA Licence were surrendered in February 2018.

- a. Can Council give written assurance that compliance with DA90/1912 and subsequent modifications will be strictly enforced before any operator is permitted to resume extraction of material at the Tomerong site.
- b. Can Council provide an update on the progress of rehabilitation at the Quarry as required in the original consent, and has the former operator of the quarry, Shoalhaven Quarries, been subject to enforcement of this condition as was promised in a report to Council at the Strategy and Assets Committee Meeting on 15<sup>th</sup> May 2018 in response to a resolution at the Strategy and Assets Committee Meeting on 23<sup>rd</sup> January 2018.
- c. Can Council provide a summary of investigation and testing for pollution in and around the Tomerong Quarry site including the dumping of asbestos and in particular an allegation brought to Council in April 2018 that a significant amount of asbestos has been buried under a long mound on the south eastern side of the quarrying area and other places.
- d. Have the owners of Lot 4 DP 775296 Parnell Road Tomerong been informed of this alleged illegal asbestos dumping outside the quarry area on their land and can Council confirm that the site has been registered as contaminated.

**MOTION (Clr Levett / Clr Digiglio)**

That Staff compile a report on the following in relation to the Non Designated Extractive Industry – Gravel Quarry at Portion 42, Parish of Termeil, Monkey Mountain Road, Termeil and the mooted intention of the Operators of that Quarry to begin gravel extraction at Tomerong Quarry Lot 4 DP 775296 Parnell Road Tomerong under existing DA90/1912:

1. Monkey Mountain Road Quarry DA 95/3365

Consent to operate was apparently for five years from 29<sup>th</sup> April 1996 to 29<sup>th</sup> April 2001 with an extraction rate not to exceed 30,000 cubic metres per annum.

- a. Is an EPA Licence required for crushing and grinding at this or any quarry if the extraction rate exceeds 30,000 cubic metres per annum.
- b. What evidence does Council have that this extraction rate was not exceeded at the Monkey Mountain Quarry in any 12 month period since approval was given in April 1996.
- c. On what legal basis or consent was the Quarry operating after 29<sup>th</sup> April 2001.
- d. Is the Council satisfied that there has been no illegal clearing of trees on the site.
- e. Given the proximity of the site to Termeil Creek, are particular licences required from the Office of Water or the EPA to protect the catchment.
- f. Can Council provide assurance that the operators are complying with all Approved Regulatory Authority documents.
- g. Can Council confirm that the Quarry has not operated beyond the 2 hectare extraction area described in the General Conditions of Consent.

2. Tomerong Quarry DA90/1912

Tomerong Quarry ceased operating in July 2017 and the DA and EPA Licence were surrendered in February 2018.

- a. Can Council give written assurance that compliance with DA90/1912 and subsequent modifications will be strictly enforced before any operator is permitted to resume extraction of material at the Tomerong site.
  - b. Can Council provide an update on the progress of rehabilitation at the Quarry as required in the original consent, and has the former operator of the quarry, Shoalhaven Quarries, been subject to enforcement of this condition as was promised in a report to Council at the Strategy and Assets Committee Meeting on 15<sup>th</sup> May 2018 in response to a resolution at the Strategy and Assets Committee Meeting on 23<sup>rd</sup> January 2018.
  - c. Can Council provide a summary of investigation and testing for pollution in and around the Tomerong Quarry site including the dumping of asbestos and in particular an allegation brought to Council in April 2018 that a significant amount of asbestos has been buried under a long mound on the south eastern side of the quarrying area and other places.
  - d. Have the owners of Lot 4 DP 775296 Parnell Road Tomerong been informed of this alleged illegal asbestos dumping outside the quarry area on their land and can Council confirm that the site has been registered as contaminated.
3. That staff investigate the possibility of introducing a planning proposal to rezone so that "extractive industries" are no longer permissible at the site.
  4. That Council communicate regularly with the community with respect to developments at the Tomerong quarry site.

AMENDMENT (**RESOLVED**) (Clr Watson / Clr Wells)

MIN19.613

That:

1. Staff compile a report on the following in relation to the mooted intention of the Operators of the Quarry to begin gravel extraction at Tomerong Quarry Lot 4 DP 775296 Parnell Road Tomerong under existing DA90/1912:

Tomerong Quarry ceased operating in July 2017 and the DA and EPA Licence were surrendered in February 2018.

- a. Can Council give written assurance that compliance with DA90/1912 and subsequent modifications will be strictly enforced before any operator is permitted to resume extraction of material at the Tomerong site.

- b. Can Council provide an update on the progress of rehabilitation at the Quarry as required in the original consent, and has the former operator of the quarry, Shoalhaven Quarries, been subject to enforcement of this condition as was promised in a report to Council at the Strategy and Assets Committee Meeting on 15<sup>th</sup> May 2018 in response to a resolution at the Strategy and Assets Committee Meeting on 23<sup>rd</sup> January 2018.
  - c. Can Council provide a summary of investigation and testing for pollution in and around the Tomerong Quarry site including the dumping of asbestos and in particular an allegation brought to Council in April 2018 that a significant amount of asbestos has been buried under a long mound on the south eastern side of the quarrying area and other places.
  - d. Have the owners of Lot 4 DP 775296 Parnell Road Tomerong been informed of this alleged illegal asbestos dumping outside the quarry area on their land and can Council confirm that the site has been registered as contaminated.
- 2. Staff investigate the possibility of introducing a planning proposal to rezone so that “extractive industries” are no longer permissible at the site.
  - 3. Council communicate regularly with the community with respect to operations at the Tomerong quarry site.

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

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

CARRIED on the CASTING VOTE of the Chair

The AMENDMENT became the MOTION.

THE MOTION WAS PUT

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

Against: Nil

CARRIED

**DE19.79 Notice of Motion - Support for Shoalhaven Netball Association - Court Refurbishment**

**HPERM REF:  
D19/296544**

Item dealt with earlier in the meeting see MIN19.611.

## REPORTS

Note: Clr Gartner left the meeting at 6.57pm.

**DE19.86 Proponent Initiated Planning Proposal - Lot 1 DP 949932 - Taylors Lane, Cambewarra**

**HPERM Ref:  
D19/271794**

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

That Council:

- 1. Accept the proponent initiated Planning Proposal for land within Lot 1 DP 949932, Taylors Lane, Cambewarra as a possible ‘major’ Planning Proposal that Council will take forward dependent of the outcome of Part (2) of this resolution.

2. Undertake an independent Riparian Lands Study for the subject land, at the proponent's expense, that includes rigorous assessment of the riparian land function and watercourse classification.
3. If the outcome of the Riparian Lands Study shows the PP has merit to proceed, develop a Planning Proposal in Council's format, for submission to the NSW Department of Planning, Industry and Environment (DPIE) for initial Gateway determination, and report back to Council when a response is received.
4. Receive a further report to determine how to proceed, if the Riparian Lands Study does not provide clear justification for the Planning Proposal.

**RESOLVED** (Clr Wells / Clr Pakes)

MIN19.614

That Council:

1. Accept the proponent initiated Planning Proposal for land within Lot 1 DP 949932, Taylors Lane, Cambewarra as a possible 'major' Planning Proposal that Council will take forward dependent of the outcome of Part (2) of this resolution.
2. Undertake an independent Riparian Lands Study for the subject land, at the proponent's expense, that includes rigorous assessment of the riparian land function and watercourse classification.
3. If the outcome of the Riparian Lands Study shows the PP has merit to proceed, develop a Planning Proposal in Council's format, for submission to the NSW Department of Planning, Industry and Environment (DPIE) for initial Gateway determination, and report back to Council when a response is received.
4. Receive a further report to determine how to proceed, if the Riparian Lands Study does not provide clear justification for the Planning Proposal.

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

AGAINST: Nil

CARRIED

Note: Clr Levett left the meeting at 6.58pm.

**DE19.80 Exhibition - Proposed Development Control Plan and Contribution Plan Amendments - St Georges Basin Village Centre**

**HPERM Ref:  
D19/150814**

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

That Council:

1. Endorse the preparation of the housekeeping amendment to Chapter N23: St Georges Basin Village Centre of Shoalhaven Development Control Plan (DCP) 2014 (Attachment 1) which in part includes the changes resolved by Council on 7 May 2019 (MIN19.287).
2. Exhibit the following for a minimum period of 28 days in accordance with legislation:
  - a. Housekeeping amendments to Chapter N23: St Georges Basin Village Centre of Shoalhaven DCP 2014 (Attachment 1).
  - b. Deletion of the Shoalhaven Contributions Plan 2019 project 03ROAD2113 (St Georges Basin Village Centre Service Lane).
3. Receive a further report following the public exhibition to consider submissions received and to consider finalisation of the draft Amendment.

4. Notify affected landowners and the Basin Villages Forum of this resolution and future exhibition arrangements.

**RESOLVED** (Clr Proudfoot / Clr White)

MIN19.615

That Council:

1. Endorse the preparation of the housekeeping amendment to Chapter N23: St Georges Basin Village Centre of Shoalhaven Development Control Plan (DCP) 2014 (Attachment 1) which in part includes the changes resolved by Council on 7 May 2019 (MIN19.287).
2. Exhibit the following for a minimum period of 28 days in accordance with legislation:
  - a. Housekeeping amendments to Chapter N23: St Georges Basin Village Centre of Shoalhaven DCP 2014 (Attachment 1).
  - b. Deletion of the Shoalhaven Contributions Plan 2019 project 03ROAD2113 (St Georges Basin Village Centre Service Lane).
3. Receive a further report following the public exhibition to consider submissions received and to consider finalisation of the draft Amendment.
4. Notify affected landowners and the Basin Villages Forum of this resolution and future exhibition arrangements.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Pakes, Clr Watson, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE19.81 Draft Low Density Residential Amendment - Shoalhaven DCP 2014 (DCP2014.25) - Post Exhibition Consideration and Finalisation**

**HPERM Ref: D19/256782**

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

That Council:

1. Adopt the draft Low Density Residential Amendment (the Amendment) as exhibited, with the inclusion of the changes to draft Chapter G12 as highlighted in Attachment 1 and shown 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. Rescind existing Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures of Shoalhaven Development Control 2014 when the Amendment is made effective.
4. Advise key stakeholders, including relevant industry representatives, of this decision, and when the Amendment will be made effective.

Note: Clr Gartner returned to the meeting at 6.58pm and Clr Levett returned to the meeting at 6.59pm.

**RESOLVED** (Clr Pakes / Clr White)

MIN19.616

That this Item be deferred to a Councillor briefing to allow consideration and discussion of Clr Pakes' proposed amendments prior to the next Council meeting.

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

AGAINST: Clr Digiglio

CARRIED

**DE19.82 Planning Proposal - Land Use Zones & Building Height Controls - Ulladulla Town Centre**

**HPERM Ref:  
D19/261192**

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

That Council:

1. Resubmit the Planning Proposal proposing changes to the planning controls in part of the Ulladulla Town Centre to the NSW Department of Planning, Industry and Environment as required by the Gateway Determination.
2. Proceed to place the Planning Proposal on public exhibition and invite community feedback in accordance with the Gateway Determination.
3. Receive a subsequent report on the outcome of the public exhibition period and to enable the Planning Proposal to be finalised.

**RESOLVED** (Clr Proudfoot / Clr Wells)

MIN19.617

That Council:

1. Resubmit the Planning Proposal proposing changes to the planning controls in part of the Ulladulla Town Centre to the NSW Department of Planning, Industry and Environment as required by the Gateway Determination.
2. Proceed to place the Planning Proposal on public exhibition and invite community feedback in accordance with the Gateway Determination.
3. Receive a subsequent report on the outcome of the public exhibition period and to enable the Planning Proposal to be finalised.

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

AGAINST: Clr Alldrick

CARRIED

**DE19.83 Update - The Review of Subdivision Provisions Planning Proposal (PP027)**

**HPERM Ref:  
D19/262580**

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

That Council:

1. Endorse the continuation of the Review of Subdivision Provisions Planning Proposal (PP027) and proceed to exhibit PP027 (as amended by the Gateway determination) as per the legislative and Gateway determination requirements.
2. Receive a further report following the conclusion of the public exhibition period.
3. Receive a further report on the outcomes of the review being undertaken by Professor Ryan and the options available (if any) to progress the exclusion of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North from the Low-Rise Medium Density

Housing Code.

4. Advise key stakeholders of this decision and the resultant exhibition arrangements, including relevant Community Consultative Bodies and Development Industry representatives.

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

MIN19.618

That Council:

1. Endorse the continuation of the Review of Subdivision Provisions Planning Proposal (PP027) and proceed to exhibit PP027 (as amended by the Gateway determination) as per the legislative and Gateway determination requirements.
2. Receive a further report following the conclusion of the public exhibition period.
3. Receive a further report on the outcomes of the review being undertaken by Professor Ryan and the options available (if any) to progress the exclusion of Greenwell Point, Kangaroo Valley, Bawley Point, Kioloa, Depot Beach, Durras North from the Low-Rise Medium Density Housing Code.
4. Advise key stakeholders of this decision and the resultant exhibition arrangements, including relevant Community Consultative Bodies and Development Industry representatives.

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

AGAINST: Nil

CARRIED

**DE19.84 Proposed Housekeeping Amendment - Shoalhaven  
Development Control Plan 2014 - Chapter G2:  
Sustainable Stormwater Management and  
Erosion/Sediment Control**

**HPERM Ref:  
D19/263024**

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

That Council:

1. Endorse the initial draft Housekeeping Amendment to Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control and the Dictionary of Shoalhaven Development Control Plan 2014 (draft Amendment) at Attachment 1 and support the exhibition of the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Advise key stakeholders, including relevant industry representatives, of this decision and the exhibition arrangements in due course.
3. 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.

**RESOLVED** (Clr Proudfoot / Clr Alldrick)

MIN19.619

That Council:

1. Endorse the initial draft Housekeeping Amendment to Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control and the Dictionary of Shoalhaven Development Control Plan 2014 (draft Amendment) at Attachment 1 and support the exhibition of the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Advise key stakeholders, including relevant industry representatives, of this decision and the exhibition arrangements in due course.

3. 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.

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

AGAINST: Nil

CARRIED

**DE19.85 Biosecurity Act 2015 - Weed Management Plans**

**HPERM Ref:  
D19/268306**

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

That Council endorse the following Weed Management Plans:

1. Alligator weed
2. Blackberry
3. Coolatai Grass
4. Giant Parramatta Grass
5. Salvinia
6. Bitou bush
7. Boneseed
8. Fireweed
9. Lantana
10. Water hyacinth

**RESOLVED** (Clr Digiglio / Clr Wells)

MIN19.620

That Council:

1. Endorse the following Weed Management Plans:
  - a. Alligator weed
  - b. Blackberry
  - c. Coolatai Grass
  - d. Giant Parramatta Grass
  - e. Salvinia
  - f. Bitou bush
  - g. Boneseed
  - h. Fireweed
  - i. Lantana
  - j. Water hyacinth
2. Continue to look for alternative methods to improve weed management that are safer into the future.

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

AGAINST: Nil  
CARRIED

**DE19.86 Proponent Initiated Planning Proposal - Lot 1 DP 949932 - Taylors Lane, Cambewarra** **HPERM REF: D19/271794**

Item dealt with earlier in the meeting see MIN19.614.

**DE19.87 Novation Request - Voluntary Planning Agreement - Seaspray Close - Narrawallee** **HPERM Ref: D19/279715**

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

That Council agree to the amended Deed of Novation, presented as Attachment 1 to this report, related to the Voluntary Planning Agreement that is in place for land at Narrawallee owned by Hanson South Coast Pty Ltd.

**RESOLVED** (Clr Findley / Clr Wells) MIN19.621

That Council:

1. Agree to the amended Deed of Novation, presented as Attachment 1 to this report, related to the Voluntary Planning Agreement that is in place for land at Narrawallee owned by Hanson South Coast Pty Ltd.
2. Approach the Biodiversity Conservation Trust to seek the purchase of Seaspray Close, Narrawallee as an addition to the Garrads Reserve.

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

AGAINST: Nil  
CARRIED

**DE19.88 Presentation of Petition in Opposition to Exploratory Drilling/Mining for Fossil Fuels in the Great Australian Bight** **HPERM REF: D19/289312**

Item dealt with earlier in the meeting see MIN19.612.

**Items marked with an \* were resolved 'en block'.**

**DE19.89 Grant application - Grey Headed Flying Fox Berry Camp** **HPERM Ref: D19/259892**

**RECOMMENDATION\*** (Clr Wells / Clr Gash)

That Council:

1. Accept the maximum grant of \$50,000 from Local Government NSW, if the application is successful.
2. Provide an in-kind contribution from existing operational budgets, a maximum of \$50,000, of Environmental Services officers time; and

3. Write to Local Government NSW thanking them for the grant funding, if the application is successful.

**DE19.90 West Culburra Development Proposal - NSW Land & Environment Court Matter**

**HPERM Ref:  
D19/292580**

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

That Council consider the separate confidential report on this matter in accordance with Section 10A(2)(g) of the NSW Local Government Act 1993.

**RESOLVED** (Clr Pakes / Clr White)

MIN19.622

That Council consider the separate confidential report on this matter in accordance with Section 10A(2)(g) of the NSW Local Government Act 1993.

CARRIED

**DE19.91 Drought Impact on Shoalhaven Water Supplies**

**HPERM Ref:  
D19/277621**

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

That Council note:

1. The current water supply situation with Shoalhaven storages and Shoalhaven River flows.
2. The proposed strategy to implement Level 1 water restrictions on 23 September 2019, in accordance with Council's Drought Management Plan, should no significant rainfall be experienced and the outlook for rain remains low.

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

MIN19.623

That Council:

1. Note the current water supply situation with Shoalhaven storages and Shoalhaven River flows.
2. Note the proposed strategy to implement Level 1 water restrictions on 23 September 2019, in accordance with Council's Drought Management Plan, should no significant rainfall be experienced and the outlook for rain remains low.
3. Write to the Hon Shelley Hancock, MP, Member for South Coast and the Hon Gareth Ward, MP, Member for Kiama seeking their support in approaching the Minister for Water, Property and Housing with respect to the Shoalhaven Water Sharing Plan.
4. At the appropriate time, write to the Hon Melinda Pavey, MP, Minister for Water, Property and Housing, requesting a meeting to discuss aspects of the review of the Shoalhaven Water Sharing Plan.

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

AGAINST: Nil

CARRIED

**Procedural Motion - Matters of Urgency**

**MOTION** (Clr Findley / Clr Gash)

That the following additional items be introduced as a matter of urgency:

1. The following Development Applications:
  - a. DA19/1102 - 252 Princes Hwy Ulladulla (Cnr of Pitman Ave) – Manufactured Home Estate
  - b. DA19/1692 - Princes Hwy Ulladulla (Cnr of Ilett St Mollymook) – Aged Care Facility
2. Intersection of Pitman Avenue and Princes Highway.

The Chairperson ruled the matters as urgent due to the level of public interest.

**DE19.92 Additional Item - Development Applications - Ulladulla - Extension of public submission period**

**RESOLVED** (Clr Findley / Clr Pakes) MIN19.624

That Council extend the public submission period on the following Development Applications for 21 days AFTER the Roads and Maritime Service have issued their response to the applications:

- DA19/1102 - 252 Princes Hwy Ulladulla (Cnr of Pitman Ave) – Manufactured Home Estate
- DA19/1692 - Princes Hwy Ulladulla (Cnr of Ilett St Mollymook) – Aged Care Facility

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

AGAINST: Nil

CARRIED

**DE19.93 Additional Item - Intersection of Pitman Avenue and Princes Highway, Ulladulla**

**RESOLVED** (Clr Findley / Clr Gash) MIN19.625

That the Chief Executive Officer undertake an investigation into historical correspondence in respect to the Pitman Ave and Princes Hwy intersection treatment. The purpose of the investigation is to give background to the Roads and Maritime Service to build their understanding of the community's desires for a safe and passable intersection with some consideration for a roundabout or other treatment that makes access and egress from Pitman Ave timely and safe.

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

AGAINST: Nil

CARRIED

**CONFIDENTIAL REPORTS**

Pursuant to Section 10A(4) the public were invited to make representation to the meeting before any part of the meeting is closed, as to whether that part of the meeting should be closed.

No members of the public made representations.

**RESOLVED** (Clr Wells / Clr Pakes)

MIN19.626

That the press and public be excluded from the Meeting, pursuant to section 10A(1)(a) of the Local Government Act, 1993, to consider the following items of a confidential nature.

CDE19.1 West Culburra Development Proposal - NSW Land & Environment Court Matter

*Advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. 10(A)(2)(g)*

*There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings or prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness.*

CARRIED

The meeting moved into confidential the time being 7.47pm.

The meeting moved into open session, the time being 7.57pm.

## **REPORT FROM CONFIDENTIAL SESSION**

The following resolutions of the meeting, whilst closed to the public, were made public.

**CDE19.1 West Culburra Development Proposal - NSW Land & Environment Court Matter**

**HPERM Ref:  
D19/277454**

**RESOLVED**

MIN19.627C

That Council:

1. Not proceed to apply to join the Land and Environment Court (LEC) proceedings regarding the refusal of the West Culburra development proposal.
2. Be represented at the Conciliation Conference on 14/15 November 2019 by senior member(s) of Council Staff or Councillor Watson. The focus of such representation is to reflect the presentation previously made to the Independent Planning Commission.
3. Continue to work cooperatively with the applicant on solutions required to achieve stated outcomes in regard to the subject proposal and subsequent reports be provided to Council if needed in this regard.

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

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

CARRIED

There being no further business, the meeting concluded, the time being 7.59pm.

Clr Gash  
CHAIRPERSON

## **DE19.94 Notice of Motion - Call In DA19/1841 - 44 Duncan Street, Huskisson**

**HPERM Ref:** D19/316168

**Submitted by:** Cllr John Levett

### **Purpose / Summary**

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

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

That Council call in the Development Application DA19/1841 - 44 Duncan Street, Huskisson due to public interest.

### **Background**

I call this application to Council in response to the public reaction which has the view that this development will not preserve and enhance the amenity and natural character of the locality. The height and floor space ratio proposed exceed those permitted in an R3 Medium Density Zoning. The DA does not meet the test for balanced growth in that its size and location are not in keeping with the character of Huskisson.

### **Note by the CEO**

The proposal is for the demolition of an existing dwelling and erection of a 4 storey residential flat building with basement carparking. The application was officially received by Council on 29 August 2019 and is currently on public notification until 3 October.

DE19.94

## DE19.95 Development Application 18/2115 – 171B Strongs Rd JASPERS BRUSH – Lot 2 & DP 778594

**DA. No:** DA18/2115/4

**HPERM Ref:** D19/240144

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

**Attachments:** 1. Draft Determination [↓](#)  
2. Planning Report – S4.15 Assessment (under separate cover) [↗](#)  
3. Applicant Response to Submissions [↓](#)

**Description of Development:** Temporary use of land for events/ functions including weddings

**Owner:** Brigrath No. 2 Pty Ltd

**Applicant:** SET Consultants Pty Ltd

**Notification Dates:** The application was notified on two separate occasions on 10 October 2018 to 25 October 2018 and 1 February 2019 to 16 February 2019

**No. of Submissions:** 16 submissions were received to the first notification and all submissions were in objection to the application. Following the second notification, a total of 85 submissions were received to the application, one in support and 84 submissions in opposition to the application.

### Purpose / Reason for consideration by Council

On 26 March 2019, at an Ordinary Meeting of Council, it was resolved that Council call-in DA18/2115 for determination by the elected Council due to the public interest with the number of submissions lodged with Council (MIN19.161).

*That Council 'call-in' the following Development Application for determination by the elected Council*

1. *DA18/2115 for 171B Strongs Road, Berry due to the public interest with the number of submissions lodged with Council*

*2018 – 17 submissions*

*2019 – 60 plus resubmissions of 11*

In accordance with the resolution, the development application is to be determined by the Council.

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

That Development Application No.18/2115 for the 'temporary use of land for events/functions including weddings' be determined by way of refusal for the reasons set out in the Notice of Determination **Attachment 1** to this report.

DE19.95

## Options

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

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

2. Approve the DA.

Implications: Council would have to provide the grounds to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations. This would require a further report to Council attaching a suite of conditions. Under some circumstances, third parties (i.e. objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

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

## Location Map



*Figure 1: Location Map*

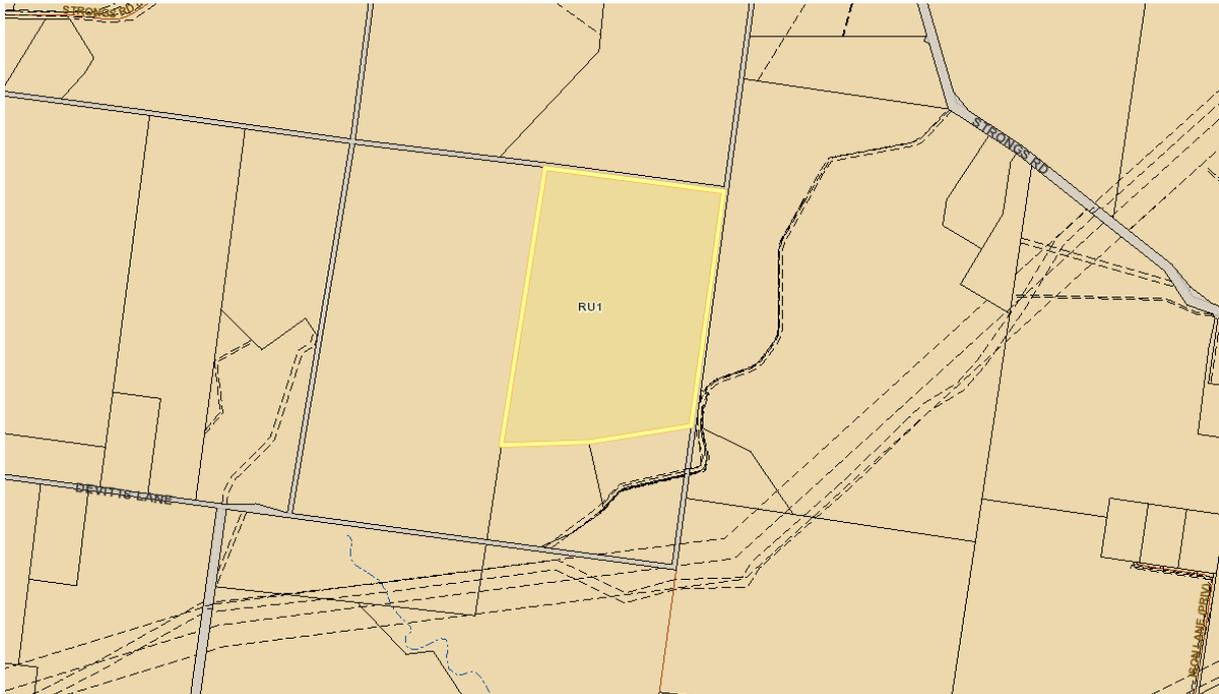


Figure 2: Zoning Map

DE19.95

## Background

### Proposed Development

The application (DA18/2115) was lodged on 2 October 2018, seeking development consent for development described in the Statement of Environmental Effects (SEE) prepared by SET Consultants dated 11 September 2018 as: “*the proposed temporary use of land for private functions and events (weddings ceremonies and receptions)*” on the land at 171B Strongs Rd Berry (Lot 2 DP 778594). The DA was made pursuant to clause 2.8 of Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

The SEE lodged with the DA described the development as follows:

- 1) *The maximum number of people to attend a function on site is limited to 130 people.*
- 2) *No more than 52 events per year is proposed. The 52 events are made up of functions such as weddings and receptions.*
- 3) *The functions (weddings) will be limited to a single weekend day with an absolute finishing time of 12pm. The site being accessed over the weekend for set up.*
- 4) *Marquees will be erected the preceding work day to the function and removed the following work day, in the location specified in the site layout plan.*
- 5) *Catering for the event will be provided by external catering companies. Food will be cooked offsite and brought to the site to be reheated.*
- 6) *No on-site liquor licence is required as the guests will be responsible for providing alcohol.*
- 7) *All guests other than the bridal party (or attendees of small conferences) will access the site via a mini bus service.*
- 8) *Portable toilets are to be brought onto site and placed in the designated location by a hire company. The facilities will be removed the following day/work day by the hire company.*
- 9) *The existing bathroom facilities within the dwelling will not be available for use by guests before/during or after the function.*

- 10) *No guests will remain onsite following the function and no camping is to occur on site.*

Based on the submitted site plan, four (4) possible locations around the existing dwelling were identified as marquee areas and three (3) portable toilet locations specified. No permanent structures were proposed.

On 30 January 2019, following referral advice and the formal notification process, the applicant amended the proposal.

The proposed amendments on page 7 of the revised Operation Management Plan (OMP) dated 25 January 2019 (Ref:L103619) prepared by SET Consultants details as follows:

- *The maximum number of people to attend a function on site is limited to **60 people.***
- *No more than **26 events** per year is proposed. The 26 events are made up of functions such as weddings, receptions and small conferences.*
- *The functions (weddings) will be limited to a single weekend day with an absolute finishing time of 12am (midnight). The site being accessed over the weekend for set up purposes.*
- *Marquees will be erected the preceding work day to the function and be removed the following work day, in the location specified in the site layout plan.*
- *Catering for the event will be provided by external catering companies. Food will be cooked offsite and brought to the site to be reheated.*
- *No on-site liquor licence is required as the guests will be responsible for providing alcohol.*
- *All guests other than the bridal party (or attendees of small conferences) will access the site via a mini bus service. Guests will not be allowed to drive themselves to the event. This will be enforced as part of the terms and conditions signed by the hiring party.*
- *The hiring party will be required to inform the management team if attendees include person with disabilities so assistance can be arranged if required.*
- *Portable toilets are to be brought onto site and placed in the designated location by a hire company. The facilities will be removed the following day/work day by the hire company.*
- *The existing bathroom facilities within the dwelling will not be available for use by guests before/during or after the function.*
- *No guests will remain onsite following the function and no camping is to occur on site.*

The revised OMP also states that:

*“The Property Manager will provide waste bins for the event. The owner/management will be responsible for the removal of all rubbish from the site.”*

As part of the amended proposal, the marquee locations were reduced from four (4) locations to one (1) adjacent to the existing dwelling. The applicant also clarified that:

*“..the existing swimming pool will not be used as part of the events taking place on the site.*

*Additional lighting will be supplied to the site for use during the wedding functions. Lighting will be setup prior the event taking place. If portable flood lighting is used, the events manager will ensure that they are directed towards the existing structures onsite, and that lighting is not pointing towards surrounding properties.*

*The existing dwelling will not be used for the events and functions. All facilities to be used for the reheating and serving of food will be transported to site by the hired caterers. All waste and cleaning will be done off site by the caterers.”*

Mini-buses will pick up the wedding guests from their accommodation and transport them to the wedding venue. They will remain parked onsite and transport the guests back to their accommodation after the event.

On-site parking spaces are provided within the existing gravel areas for the bridal party, catering and entertainment staff (or attendees of small conferences). There is enough space for 22 vehicles in the designated parking area as shown on the revised site plan. The proponent has indicated that all guests attending functions/weddings at the site will attend by mini-bus.

The proposal is to use the spaces around the existing dwelling house, not the house itself, to erect temporary marquees, the temporary amenities areas for the placement of mobile bathrooms/toilets, and temporary car parking for mini-buses.

In accordance with the submitted *Environmental Noise Impact Assessment Proposed Function Venue* (Acoustic Report) prepared by Harwood Acoustics dated 14 August 2018 (D18/344082), the proposal involves live or amplified music on occasion. The report was prepared based on a maximum of 130 guests, four (4) marquee locations and live or amplified music on occasion. The acoustic report stated on page 10 that:

*“The main sources of noise associated with the proposal will be amplified music and human voice noise. Consideration is also given to motor vehicles accessing the property as well as any mechanical plant servicing the functions.”*

Recommendations are made in Section 7 of the Acoustic Report to reduce the level of noise emission to within **acceptable** limits at all receptors. These include limiting the level of amplified music played, erecting 1.6m high temporary sound barrier screens around marquees in certain locations and establishing a noise and traffic management plan. The acoustic report concluded on page 4 as follows:

*“Providing these recommendations are implemented and maintained, **the acceptable** (emphasis added to this expression as this is a significant point with regard to the assessment discussed later in this report) noise limits set by the EPA and required by Shoalhaven City Council can be met at all receptor locations.”*

Based on the amended OMP, the onsite property manager and relevant site staff are to remain on-site, or in reasonable proximity, for the duration of the function at to ensure the level of noise emission is within acceptable limits set by the Acoustic Report. In the event of an incident taking place during the event, a register will be maintained by the events management team. Evacuation of the site during an emergency, such as a bushfire, will be undertaken in accordance with the OMP.

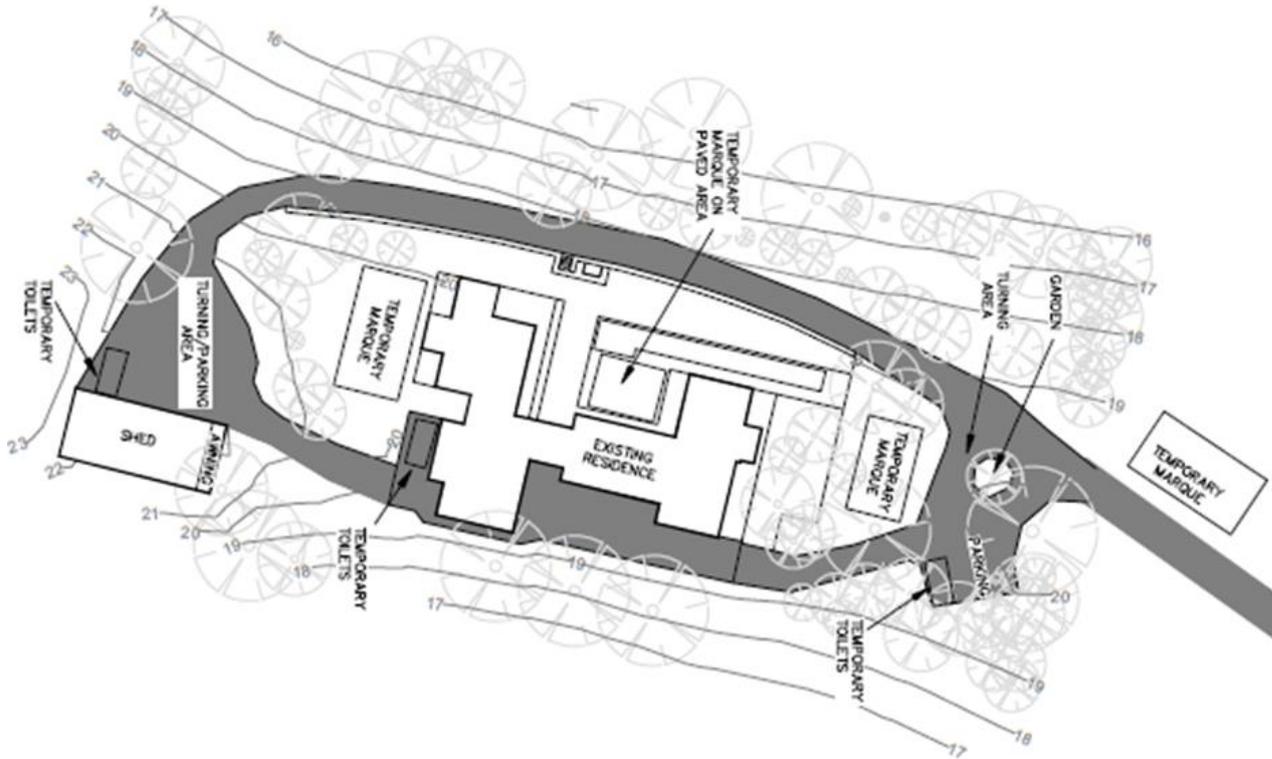


Figure 3: Original site plan showing 4 marquees locations and 3 portable toilets locations

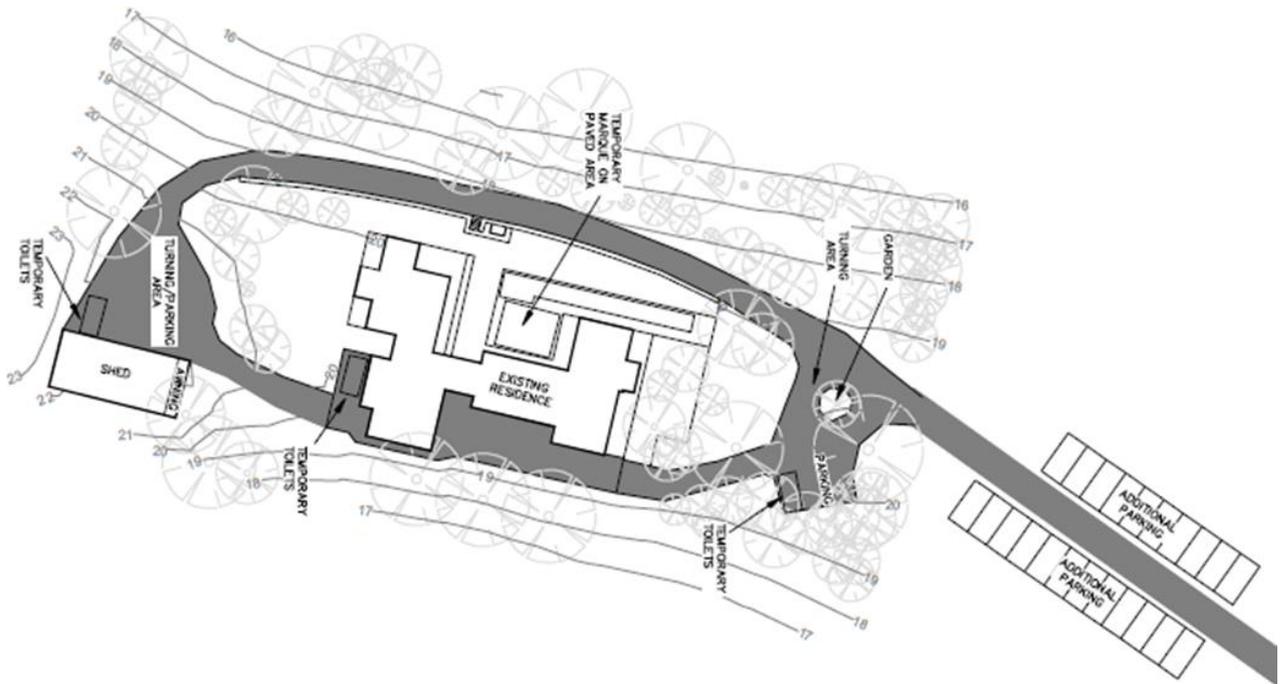


Figure 4: Revised site plan showing 1 temporary marquee location,  
3 portable toilets locations and additional parking spaces

Subject Land

The subject site:

- Is located at 171B Strongs Road, Jasper Brush and is legally identified as Lot 2 DP 778594.

- Is zoned RU1 Primary Production and has an area of 20.73ha.
- Is accessed by a right of carriageway off Strongs Road, with a driveway that enters Lot 2 from the east of the site.
- Contains an existing dwelling house, swimming pool and an ancillary shed.
- Is surrounded by other rural properties, which contain similar buildings to the subject site.
- Is identified as bushfire prone land.
- Is identified as “Riparian Land” on the Riparian lands and Watercourses map and is identified as “Biodiversity – habitat corridor” or “Biodiversity – significant vegetation” on the Terrestrial Biodiversity map. However, the proposed temporary use does not propose any clearing of significant vegetation on-site and is not located in the immediate vicinity of the areas identified as containing Biodiversity.
- Is not identified as Potentially Contaminated Land (PCL).
- Is identified as containing class 5 acid sulfate soils.



*Figure 5: Expanded aerial view of the subject site and surrounding developments*

### Site & Context

The dwelling is in the middle of the site with the land sloping away on either side to the south west and north east, with several unnamed watercourses traversing the site. The nearest neighbouring dwelling is located approximately 350m to the south west of the site. The surrounding areas are predominantly large rural properties with agricultural and rural lifestyle activities similar to what is present on the subject site.

### History

The lot was created by subdivision in 1988. The site is accessed via Right of Way (ROW) (8m wide) off Strongs Road. The ROW mentioned above provides access to the subject site and other properties being 171A, 171C – 171F Strongs Rd.

In 1985, a dwelling was approved via DA85/2732. A review of Council’s records has indicated that there has been a variety of DAs and Building Approvals (BAs) for dwelling additions including a swimming pool.

DE19.95

### Post-Lodgement

The following correspondence has taken place with the applicant following the lodgement of the DA:

- 20 November 2018 – Council requested additional information to address matters relating to hours of operation, noise, parking arrangement and traffic issues, the maximum number of guests, disabled access, marquees details, portable toilets and BCA issues related to the existing swimming pool and concerns raised by submitters.
- 18 December 2018 – Council requested additional information (2) to address matters relating to proposed lighting, existing toilet within the house, wastewater disposal, portable toilets and food preparation.
- 30 January 2019 and 7 March 2019 – The applicant submitted additional information to address the matters raised by Council in the requests of 20 November 2018 and 18 December 2018.
- 10 April 2019 - Council requested additional information (3) relating to clause 2.8 of the SLEP 2014 and how clause 2.8(3)(b) has been met, noise and amenity impacts, other concerns raised by submitters, food preparation and proposed marquees. The applicant was advised to review relevant court cases and submitted acoustic report.
- 6 May 2019 – Council received amended OMP and response letter to address the issues raised in Council's email dated 10 April 2019. The applicant stated that:

*“Clauses 2.8(1) and 2.8(3)(b) are considered to be achieved as the submitted Acoustic Report stated that “Providing these recommendations are implemented and maintained, the acceptable noise limits set by the EPA and required by Shoalhaven City Council can be met at all receptor locations”. The acceptable noise limits set by the EPA and required by Shoalhaven City Council are thought to be not adversely impacting on adjoining land. It should also be noted that the Acoustic Report submitted with this application assessed the noise of a 130 guest event which has since been reduced to 60 guests. Given the significantly reduced scale of the proposed temporary use of the site, we believe that Council can be satisfied that the development meets the requirements of Clause 2.8 of the SLEP 2014.”*

The applicant also requested that:

*“Council complete their determination based on the information provided to date in regard to this application”.*

### **Issues**

#### Shoalhaven Local Environmental Plan 2014 – Clause 2.3 - Zone objectives and Land Use Table

The subject land is zoned RU1 Primary Production under the SLEP 2014, with the following stated objectives:

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

- *To conserve and maintain the economic potential of the land within this zone for extractive industries.*

When considering a development application, the consent authority must have regard for the objectives of the zone (clause 2.3 of the SLEP 2014). The applicant (in the original SEE dated 11 September 2018, page 12 and 14) provided the following commentary regarding the land use table and zone objectives:

*“...The proposal is consistent with the controls applicable to the land under SLEP 2014...*

*The proposed temporary use of a site would be defined as a function centre, and a function centre is prohibited under the RU1 Primary Production zone. A function centre is defined as follows under the LEP:*

**Function centre** *means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.*

*Whilst the land use table lists the development for a function centre as prohibited, the SLEP2014 acknowledges that there are circumstances, depending on the use where there is opportunity to allow a prohibited land use temporarily. This involves the application of provisions contained in Clause 2.8 temporary use of land.”*

The proposed development is not considered to be entirely consistent with all relevant objectives of the RU1 zone. It was identified that the proposed temporary use would have the potential to result in land use conflicts and adversely impact on adjoining land and/or the amenity of the neighbourhood.

The surrounding areas are predominantly large rural properties with agricultural and rural lifestyle activities with minimal noise and traffic generation. Given the location of the subject site and nature of the proposal for commercial purposes including the use of amplified music during events/functions, the proposal would generate noise issues that would impact on the quiet rural lifestyle. The noise generated would be above the normal noise generation for a dwelling and without appropriate measures in place, the proposal will have an adverse impact on adjoining land and rural ambience of the locality.

#### Shoalhaven Local Environmental Plan 2014 – clause 2.8 - Temporary use of land

The proposal is best characterised as a Temporary Use of land for the purpose of a *Function Centre* under SLEP 2014. In accordance with the Land Use Table to the RU1 Primary Production zone development for the purposes of “*function centres*” is not listed under item 2 or 3 as permitted without consent or permitted with consent and is therefore prohibited within the zone.

The development is lodged on the basis that clause 2.8(1)-(3) Temporary use of land under SLEP 2014 is nominated to apply. Clause 2.8(1)-(3) is reproduced below:

#### **2.8 Temporary use of land**

(1) *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

(2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*

(3) *Development consent must not be granted unless the consent authority is satisfied that:*

- (a) *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
- (b) *the temporary use will **not adversely** impact on any adjoining land or the amenity of the neighbourhood, and*
- (c) *the temporary use and location of any structures related to the use will not **adversely impact** on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
- (d) *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

Clause 2.8(2) permits the operation of a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months. The amended activity seeks approval for 26 days per year.

Under clause 2.8(3) development consent must not be granted unless the consent authority is satisfied that clause 2.8(3)(a)-(d) are complied with. An assessment of the proposal against the provisions of clause 2.8(3) is detailed below.

**“Clause 2.8(3)(a)** *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and...*”

The proposed temporary use of the land for a function centre and wedding venue will be located within existing cleared areas close to the existing structures on site as indicated within the amended site plan. A temporary marquee and portable toilets will be utilised on-site and cooking facilities and food for the event will be provided by external catering companies. All waste and cleaning will be undertaken off-site, by the caterers. No guest camping is proposed. The proposed temporary use of the land will not result in significant unacceptably irreversible changes to the continued use of the site.

It is considered that the temporary use of land will not prejudice the subsequent development of the land in accordance with clause 2.8(3)(a).

**“Clause 2.8(3)(b)** *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and...*”

In order to properly consider this matter, it is appropriate to review case law relating to the function of clause 2.8 and the nature of a temporary use of land. The operation of clause 2.8 as it relates to Standard Instrument Local Environmental Plan (of which the SLEP 2014 is a Standard Instrument LEP) has been considered by the Land and Environment Court of NSW in the leading judgement of: *Marshall Rural Pty Limited v Hawkesbury City Council and Ors [2015] NSWLEC 197*.

### ***Marshall Rural Pty Limited v Hawkesbury City Council [2015] NSWLEC 197***

The Marshall case involved a challenge by a neighbour to a development consent for the temporary use of barn buildings as a function centre issued by Hawkesbury City Council on a rural holding which was otherwise used for the holding of polo tournaments.

The development consent authorised the function centre use for up to 28 days in any 12 month period and the consent was granted for a period of 2 years.

Acting Justice Moore (Moore AJ) described the nature of the test for development applications made pursuant to clause 2.8 at [113] – [116] as follows:

*113 The nature of the activities that are capable of being permitted by an application invoking cl 2.8 are, I remind myself, activities that are otherwise prohibited in a zone.*

114 That any application that is sought to be approved for such a prohibited use seeks a significant indulgence for such a substantial departure from the planning controls applicable to a zone is reflected in two aspects of the clause.

115 The first arises with respect to the temporal limitation mandated by the clause if such an otherwise prohibited use is to be permitted. This aspect of the clause was the subject of Marshall Rural's first complaint, a complaint dealt with and dismissed in my rejection of Ground 1.

116 The second element engaged by these proceedings is the requirement that the proposal will "**not adversely impact**" in the fashion specified in cl 2.8(3)(b). This test, cast in absolute terms reflecting the seriousness with which an application of this nature is required to be assessed, puts a very high hurdle in the path of any such application. The placing of such a hurdle requires that the Council must approach the consideration and determination of any such application with a marked degree of precision and caution.

A matter for the consent authority to consider carefully is what Moore AJ describes at [116] as a "very high hurdle" in the path of any application for approval under clause 2.8. That is the requirement in clause 2.8(3)(b) that the temporary use of land "*will not adversely impact on any adjoining land or the amenity of the neighbourhood*". As his Honour pointed out in *Marshall Rural* this provision is cast in absolute terms: any adverse impact is sufficient to require the refusal of such an application.

Moore AJ stipulated that the clause 2.8 test is 'absolute' and that the temporary use must have not have an adverse impact on any adjoining land or the amenity of the neighbourhood. This case strongly demonstrates that when a use is prohibited in the zone, but the LEP provides for temporary use of the land in a manner that is otherwise prohibited, that use is still fundamentally prohibited in nature within that zone.

As the current application has been made pursuant to clause 2.8, Council must be satisfied that the proposed development "*will not adversely impact on any adjoining land or the amenity of the neighbourhood*".

The applicant responded in their letter dated 6 May 2019 (Ref: L103619, page 1 & 2) to address this clause:

*"Clauses 2.8(1) and 2.8(3)(b) are considered to be achieved as the submitted Acoustic Report stated that "Providing these recommendations are implemented and maintained, the acceptable noise limits set by the EPA and required by Shoalhaven City Council can be met at all receptor locations". The acceptable noise limits set by the EPA and required by Shoalhaven City Council are thought to be not adversely impacting on adjoining land.*

*It should also be noted that the Acoustic Report submitted with this application assessed the noise of a 130 guest event which has since been reduced to 60 guests. Given the significantly reduced scale of the proposed temporary use of the site, we believe that Council can be satisfied that the development meets the requirements of Clause 2.8 of the SLEP 2014."*

*"We would like to confirm that the owner is satisfied with the submitted information regarding DA18/2115. Again, we believe that the information provided meets the requirements of the SLEP 2014, including Clause 2.8 Temporary Use of Land. The concerns raised by the community were acknowledged and resulted in the significant reduction of the number of guests (now 60), number of events (now 26), and proposed marquee locations. Community submissions are considered to have been addressed appropriately. We would appreciate if Council could complete their determination of this application using the provide information to date."*

Any development application made pursuant to clause 2.8 of the LEP must have **no adverse impact** on any adjoining land or the amenity of the neighbourhood **rather than an acceptable impact**.

The proposed development is located in a large rural property in RU1 zone with the nearest neighbouring dwelling located approximately 350m to the south of the site.

The proposed location for the marquee is a ridge feature of the site, where any use of amplified music as proposed, could be heard from any adjoining properties. The surrounding areas are predominantly large rural properties with agricultural and rural lifestyle activities with minimal noise and traffic generation.

Given the location of the subject site and nature of the proposal for commercial purposes including the use of amplified music during events/functions, the proposal would generate noise that would impact on the quiet rural lifestyle. Amplified music in a rural setting is not an everyday or common 'rural' noise and is therefore potentially an adverse impact on amenity enjoyed by occupants of the bucolic landscape.

It is important to note that this application was notified on two (2) separate occasions in accordance with Council's Community Consultation Policy for Development Applications. During the first notification period there were 16 submissions received objecting to the proposal.

During the second round of notification, there were 84 submissions objecting to the proposal on amenity grounds and one (1) submission in support. The concerns raised mainly related to noise, amenity impact, traffic generation and anti-social behaviour.

The development application was supported by an Acoustic Report prepared by Harwood Acoustics dated 14 August 2018. The Acoustic Report was prepared based on maximum 130 guests, four (4) marquee locations and live or amplified music on occasion. The report stated that the main sources of noise associated with the proposal will include amplified music, guest noise and motor vehicle movements. A brief statement is included on page 10 the report to address Clause 2.8(3)(b) of the SLEP as follows:

*"Given the low noise level of 35 dBA as an assessment criterion in this instance and the separation distance to the nearest properties, we are of the opinion that compliance with the Intrusiveness Criterion of 35 dBA satisfies the above requirement."*

Recommendations are made in Section 7 of the Acoustic Report to reduce the level of noise emission to within acceptable limits at all receptors. The Acoustic Report concluded on page 4 that:

*"Providing these recommendations are implemented and maintained, **the acceptable noise limits set by the EPA and required by Shoalhaven City Council can be met at all receptor locations.**"*

The Acoustic Report did not address how the proposal complies with clause 2.8(3)(b) or demonstrate that the proposed temporary use will have no adverse impact on any adjoining land or the amenity of the neighbourhood. It concludes that the impacts are '**acceptable**'. There is no doubt that a reduction in the scale of the development will reduce potential impacts but documentation has not been provided which provides certainty or comfort that the impacts will not be adverse.

It appears that the test explained by Moore AJ has not been applied or satisfied as there are impacts generated by the proposal and those impacts are considered adverse, that is, being negative to residents and their amenity.

As Moore AJ pointed out in *Marshall Rural* case, any adverse impact is enough to require refusal of such an application. As previously mentioned, the locality is a quiet rural area. Any intrusion of unusual noise be it music or otherwise, is likely to disturb the rural ambience. The disturbance in this context is potentially adverse.

Based on a review of the documentation submitted with the application including the acoustic report, it is considered that the proposal does not satisfy clause 2.8(3)(b). This is considered a reason to inform the recommendation for refusal.

**“Clause 2.8(3)(c)** *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and...”*

The temporary use of land itself will not adversely impact on environmental attributes of the land or features of the site as the temporary marquees and portable toilets will be installed within the existing cleared areas close to the dwelling house on site. On-site parking spaces are provided within the existing gravel areas for the bridal party, catering and entertainment staff (or attendees of small conferences). All guests other than the bridal party (or attendees of small conference) will access the site via a mini-bus service, therefore reducing and limiting conflicts with vehicle traffic in the locality and noise impact on adjoining properties.

The site is identified as bushfire prone land. As stated in the recommendations provided as part of the Bushfire Assessment Report, a Bushfire Emergency Evacuation Management Plan would be required, in accordance with the RFS Guidelines prior to functions commencing, if approved.

Such a plan would be required to address issues such as; contacts in the event of an emergency, evacuation points and procedures for guests and staff, and location of emergency water sources.

A site-specific emergency management plan is also required to be prepared for each event and include event-specific information such as forecasted fire danger of the day, number of occupants on the site including protocols for accounting for occupants on the site during the events and staff emergency role.

**“Clause 2.8(3)(d)** *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.”*

As per the submitted SEE, at the end of each temporary use period, the site will be returned to pre-event condition.

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

Applicant’s submission:

*“The proposed temporary use is consistent with the rural character of the surrounding area. The subject site has a scenic rural backdrop, and can be considered as being a picturesque location. The rural landscape of the site can provide the perfect location for a wedding with a rural, country outdoor feel. Locations similar to the subject site are highly sought-after locations for wedding functions. The proposal aims to provide a location for wedding events to harness the surround natural beauty, while still preserving it for future uses. The proposal does not have any adverse impacts in terms of privacy, overshadowing, agricultural capacity or outlook to neighbouring properties, and will not have a negative influence on the natural environment.”*

Contrary to the applicant’s opinion, the assessment has concluded that the site is not considered to be suitable for the development for the following reasons:

- The proposal is prohibited within the zone and is inconsistent with the objectives of the RU1 zone.
- Non-compliance with clause 2.8(3)(b) as it will adversely affecting the underlying rural nature of the land and the amenity of the rural area and bucolic lifestyle as enjoyed by adjoining rural residents. The submitted acoustic report does not satisfactorily

demonstrate that there will not be adverse amenity effects upon adjoining properties or upon the residents in the locality.

- Without adequate measures in place to remove any impacts, particularly acoustic impacts, it is not considered that the proposal is compatible with the existing and future development in the locality.

Owner's Consent for works within the ROW

The ROW mentioned earlier in this report, provides access to the subject site and other properties being 171A, 171C – 171F Strongs Rd. Therefore, any proposed works to upgrade the existing ROW or to provide a passing bay as recommended by Council's Development Engineer as a result of this application would require owners' consent from other properties owners, benefiting from the ROW prior to the commencement of any works carried out. Owner's consent has not been provided. Affected owners have objected to the proposal.

**The Public Interest**

The development has been assessed against state and local environmental planning instruments, and the development control plan and related guidelines for the Shoalhaven City Council. The assessment identified the development does not comply with the objectives of the zone and clause 2.8(3)(b) of the SLEP 2014. It is acknowledged that neighbouring residents have concerns with the proposed development, particularly in regard to noise and traffic impacts.

Council is aware of other existing/approved similar temporary function venues in rural areas within Shoalhaven region. Council is now however aware of the recent ruling and guidance issued by the Land and Environment Court. Further, approving this application could potentially set an undesirable precedent. Additionally, the results of the noise assessment indicate noise levels would be within 'acceptable' limits rather than an absence of adverse impact. Accordingly, the granting of development consent is not considered to be in the public interest.

**Planning Assessment**

The DA has been assessed under s4.15 of the EP&A Act1979. Please refer to **Attachment 2**.

**Policy Implications**

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

However, following receipt of large number of submissions from the community in relation to development applications made under clause 2.8, an information report was prepared to obtain direction from Council regarding a potential review of clause 2.8 of the SLEP 2014. This will provide Council with the necessary information to adequately respond to community concerns and make an informed decision on whether any amendments to clause 2.8 are required.

On 7 May 2019, at the Development & Environment Committee Meeting (MIN19.285), it was resolved that Council:

1. *Proceed to review the operation and effect of the current Clause 2.8 (Temporary use of land) in Shoalhaven Local Environmental Plan 2014.*

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2. Advise relevant stakeholders (all CCBs, Development/Tourism Industry, Shoalhaven Tourism Advisory Group) of this decision and engage them during the Review.
3. Receive a further report outlining the findings of the Review and options to revise the clause as appropriate.

Additionally, Destination Sydney Surrounds South (DSSS) is undertaking research into the growth of the destination wedding and conference business in rural locations. The project is examining the contribution and demand for weddings and conferences in the DSSS region. The project is also investigating the management of land use approvals and 'issues' associated with the current planning system.

**Consultation and Community Engagement:**

This application has been notified on two (2) occasions.

The first notification period was from 10 October 2018 to 25 October 2018. The notification was made in accordance with Council's *Community Consultation Policy for Development Applications (including subdivision) and the Formulation of Development Guidelines and Policies* with letters being sent to the owners of properties within a 100m buffer of the site. 16 submissions were received by Council objecting to the proposal.

Following the submission of revised plans/supporting documents, the DA was re-notified to adjoining properties in accordance with the Policy, from 1 February 2019 to 16 February 2019, with letters being sent to the owners of properties within 100m buffer of the site and to those people who made submissions during the first round of notification. During the second round of notification, a total of 85 submissions were received by Council. One (1) submission in support and 84 submissions were in opposition to the development application.

The applicant's response to submissions is shown at **Attachment 3**.

The **key issues** identified in objection to the development through notification process may be generally summarised as follows:

Summary of Public Submissions	
Submission in Objection	Comment
Permissibility and suitability of the site for the proposed development.	<p>Clause 2.8 affords opportunity for uses that would otherwise be prohibited to be considered on a temporary basis. However, as mentioned in this report, the test in determining if the impacts are acceptable is high with the decision in the <i>Marshall Rural</i> case setting a high bar, in that there should be no adverse impacts. As Moore pointed out in <i>Marshall Rural</i> case, any adverse impact is enough to require refusal of such an application.</p> <p>In response to the submissions received, Council has considered the applicant's site plan, supporting documents and relevant constraints of the site and adjoining development. It is considered that the subject site is not suitable for the proposed development in accordance with section 4.15(1)(c) of the EP&amp;A Act for the following</p>

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	<p>reasons:</p> <ul style="list-style-type: none"> <li>• The proposal is prohibited within the zone.</li> <li>• The proposal is inconsistent with the objectives of the zone.</li> <li>• The proposal is inconsistent with the context of the area.</li> <li>• There will be significant adverse amenity impacts resulting from the development.</li> </ul> <p>Therefore, the proposal is recommended for refusal.</p>
<p>Approval of any future applications utilising clause 2.8 must not be granted other than as a one-off event for a family function.</p>	<p>Any future applications to be assessed under all relevant legislation and policies prevailing at the time.</p> <p>This clause currently permits the operation of the temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.</p>
<p>The proposal contravenes SLEP clause 2.8 particularly clause 2.8(3)(b) as such temporary use of land will adversely impact on adjoining land or amenities of the neighbourhood. Quiet rural lifestyle will be highly affected.</p>	<p>It is acknowledged that the submitted acoustic report did not satisfactorily address clause 2.8(3)(b) and that the proposed development will have adverse amenity impacts. Therefore, the proposal is recommended for refusal.</p>
<p>Reference is made to the decision of the Court, <i>Marshall Rural Pty Ltd v Hawkesbury City Council and Ors</i> [2015] NSWLEC 197, highlights that when a use is prohibited in a zone, that use is fundamentally prohibited in the zone, irrespective as to whether the statutory instrument provides for a "temporary use" of that otherwise prohibited activity. Submitters raised that this court case should be considered during assessment and decision making.</p>	<p>Valid points raised in the court case have been considered during assessment of this application.</p> <p>The submitted Acoustic Report is considered insufficient to provide certainty regarding noise impacts. As mentioned, the report concludes impacts to be acceptable as opposed to not be adverse. This is not considered adequate having regard to the test applied by the Court.</p>
<p>Approval of this DA will set undesired precedent in rural area and Shoalhaven region</p>	<p>There are already several existing clause 2.8 approvals in operation. In reviewing any modifications for these approvals, the recent decision of the Marshall case will be considered. However, there may be other decisions in the future which impact on the assessment of applications. Additionally, Council will have the benefit of those clause 2.8 applications being operational which will assist in identifying if there have been any</p>

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	adverse impacts. With a new application, it is more difficult as a very convincing and comprehensive application is required to confirm that there are no adverse impacts.
<p>The main issue raised by neighbouring residents is the impact of noise from the proposed development and the cumulative impact of that noise in combination with existing function venues in the area.</p> <p>Excessive noise from loud music, guests and vehicles on the day/s of preparation, day/s of the event and day of dismantling/clean-up will impact on amenity of neighbouring properties.</p>	<p>The Acoustic Report makes recommendations on noise attenuation measures to ensure that noise levels remain within acceptable limits.</p> <p>As mentioned above, the submitted Acoustic Report is insufficient and noise impacts on adjoining properties have not been satisfactorily addressed. Therefore, the application is recommended for refusal.</p>
Potential impact upon the environment	As no further building work is proposed to be undertaken, no vegetation or habitat areas would be impacts. Additionally, the proposed temporary marquees and portable toilets will be installed on already cleared/concreted areas. No requirements would be necessary with regard to the environment.
The proposed 1.6m noise screen is not considered effective to reduce the noise impacts	<p>As per the submitted Acoustic Report, the 1.6m high noise screen is required for marquees erected in locations 2, 3 and 4 and no additional screening is required for the marquee at location 1 given the attenuation due to the existing dwelling to the closest receptors.</p> <p>On 30 January 2019, the application was amended to reduce the marquees to one (1). Based on the Acoustic Report, no additional screening is required for the marquees at location 1. No additional noise screen has been proposed as a result of the amendment to the proposal.</p>
Notification process - Many local residents have not been notified by Council or given the opportunity to make a submission.	<p>Notification of the development application was carried out in accordance with the requirements of Council's Community Consultation Policy and the EP&amp;A Regulation.</p> <p>Council typically accepts submissions after the closure of the formal exhibition period in circumstances where an application is under assessment.</p> <p>Additionally, this application as are all applications, is viewable on DA Tracking.</p>
The proposal does not comply with clause 2.8 of the SLEP 2014 as it does not count a	In accordance with the judgement in the <i>Marshall Rural</i> case, the number of days on

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<p>day before the event and a day after the event to dismantle the marquees – submitter suggested no more than 12 events/year</p>	<p>which the temporary use is carried out does not include days spent preparing for or packing up following the actual events. Restrictions would be placed on the timeframe for when set-up/pack-up can take place should the DA be approved. A condition would be placed in the consent (if approved) requiring no more than 26 events per year. Any non-compliance with this requirement would be investigated by Council as a compliance matter.</p>
<p>12 midnight finish will impact on the amenity of neighbouring properties. Submitters suggested the event(s) finish by 10pm.</p>	<p>Should the DA be approved, recommended conditions could be placed in the consent. Any non-compliance with this requirement would be investigated by Council as a compliance matter.</p>
<p>Amenity impact from vehicles' headlights and proposed lighting within/surrounding the proposed marquees</p>	<p>Any impact from vehicles' headlight and proposed lighting within/surrounding the proposed marquees would be temporary and restricted to weekends only. The brightness of the proposed portable lighting within/surrounding the proposed marquees could be adjusted to acceptable levels if required. As per the supporting document, the event manager would be responsible to ensure that the portable lighting does not point towards surrounding properties. Light spill is something that could also be potentially 'adverse'.</p>
<p>Increased traffic impacts on road condition and safety of road users, livestock, native animals and increase the level of roadkill. The submitter suggested the applicant provide speed limit sign, passing lane on steep hill</p>	<p>The existence of native animals and livestock in the locality is acknowledged. Any increase in traffic would however be temporary and restricted to weekends only. Further, use of mini-buses would further decrease the potential number of vehicles on the road and reduce potential conflict between vehicles and pedestrians.</p> <p>Council's Development Engineer has reviewed the application and has raised no objection to the proposal in relation to the traffic impacts due to its temporary nature. As per the Development Engineer's recommendation, conditions of consent requiring suitable passing bays and the right of way to be sign-posted stating the road is private could be imposed in the event of an approval. This matter would however need to be explored with regard to owner's consent.</p>

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<p>Increase traffic movements will significantly increase wear and tear and maintenance cost of the narrow gravel road, degrade the amenity and increase danger to all users of the road.</p>	<p>Any increase in traffic would be temporary and would be restricted to weekends only and is to be limited through the use of buses. As per the response provided from the Development Engineer to the internal referral, the access would be provided to meet the requirements of the largest vehicle such as a bus or a truck (for pick-up and drop-off of equipment). The increase in traffic does have the potential for adverse impact.</p> <p>The DA is recommended for refusal.</p>
<p>The proposed 52 events in any 12 months is not considered “temporary” under Clause 2.8 of the SLEP.</p>	<p>The proposal was amended on 30 January 2019 to reduce the number of events from 52 to 26 events per year. The 26 events are made up of functions such as weddings, receptions and small conferences.</p>
<p>Concerns regarding the impact of the development on the habitat of native species occupying the site and potential for an increase in human-animal encounters.</p>	<p>The existence of native vegetation on and adjacent to the site is acknowledged. However, no trees or habitat areas are proposed to be affected as functions and temporary structures would be held within existing cleared areas.</p>
<p>Concerns raised regarding additional impacts due to setup and pack-up requirements for event organisers before and following the events.</p>	<p>Concerns regarding the additional time taken for set-up and dismantling of temporary structures is acknowledged.</p>
<p>Increase noise impact and bad behaviour Serving alcohol without liquor licence will increase.</p>	<p>As per supporting documents, no on-site liquor licence is required as the guests will be responsible for providing their own alcohol.</p> <p>In this regard, an onsite manager would be required to be present at all times as well as standard procedures to enact in the event of excessive alcohol consumption. A condition could be imposed to reflect this should the DA be approved.</p>
<p>Parking issues</p>	<p>Adequate parking spaces to accommodate the minibuses, bridal party, caterer and entertainer’s vehicles including guests attending small conference/business meetings have been provided on-site as shown on the amended site plan. Council’s Development Engineer has reviewed the application and has raised no objection to the proposal in relation to the parking arrangement subject to the imposition of conditions of consent, if an approval were to eventuate.</p>

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<p>Impact on property values</p>	<p>There is no evidence to support the claim that adjoining property values would be adversely affected if the development as currently proposed is approved. It is noted that possible adverse impacts on property values is not a relevant prescribed planning consideration that Council can take into consideration in the assessment of a development application.</p>
<p>The submitter suggested applicant gives notice to resident before the commencement of the events.</p>	<p>Should the DA be approved, a condition could be included in a development consent requiring advance notice to be given to residents.</p>
<p>The proposal results in unacceptable impacts in relation to the disposal of waste.</p>	<p>As per submitted supporting documents, waste facilities are to be provided for each event and removed following each event.</p>
<p>Concerns raised that mini-buses would not be used by guests and guests driving their own vehicles instead.</p>	<p>Should the DA be approved, a condition could be included requiring that all guests other than bridal party, caterer and entertainer's vehicles, will be transported to/from the site via the hired mini-buses to/from the guests' accommodation elsewhere. Again, however this would require adherence by the beneficiary of the consent and potentially compliance monitoring.</p>
<p>The submitted Noise Impact Assessment is insufficient. It does not satisfactorily address the potential noise impacts associated with the proposed development.</p>	<p>Having regard to the court decision <i>Marshall Rural Pty Limited v Hawkesbury City Council and Ors [2015] NSWLEC 197</i>, the temporary use must have no adverse impact on any adjoining land or the amenity of the neighbourhood rather than an acceptable impact.</p> <p>The Acoustic Report did not satisfactorily resolve the issue of adversity.</p>
<p>Concerns were raised regarding events/functions management as follow:</p> <ul style="list-style-type: none"> <li>• How the function will be monitored</li> <li>• Who is responsible to ensure the events and guests comply with conditions of consent if approved.</li> </ul>	<p>If approved, a condition could be imposed requiring a register of complaints is to be kept and a management audit be undertaken yearly that is required to be submitted to Council (i.e. details on complaints received, details on actions/additional measures implemented and record of functions held). This would give Council an opportunity to assess impacts from the venue. The Events Manager will be responsible to ensure all recommendation outlined in the OMP are in place for the duration of the event.</p> <p>However, seeking a complaint register or</p>

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	<p>monitoring regime, implies future 'issues' that is, it could be argued that such a condition foreshadows potential for adverse impacts which is what must be avoided. As mentioned throughout this report, there must be no adverse impacts.</p>
<p>The 'Temporary use of land' is going to occur every single Saturday night of the entire year, along with the associated noise and road disruptions. The use of clause 2.8 should only apply to "one off" events only.</p>	<p>This clause permits the operation of a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. (The proposal was modified, seeking 26 events.)</p> <p>Concerns in this regard are acknowledged. Should the DA be approved, Council could impose a condition advising that a 12-month approval is granted – following which a modification could be required to provide for an extension to the operating period. Any issues arising during the 12-month period would then be considered as part of the next application.</p> <p>However, as mentioned elsewhere throughout this report, the DA is recommended for refusal.</p>
<p>The use of rural property for commercial activity is not considered appropriate</p>	<p>Certain land uses including commercial activities are permitted with development consent in rural zone providing they comply with relevant planning provisions.</p>
<p>Submitters raised that the amendments to the proposal to reduce the number of guests from 130 to 60, 52 events to 26 and 4 marquees locations to one do not result in an absence of adverse impact.</p>	<p>It is acknowledged that the significantly reduced scale of the proposed development will reduce impacts. However, given the location of the site and proposed amplified music to be played during functions, it is considered that the proposed reduction of the number of guests, events and marquees locations will result in an acceptable impact rather than an absence of adverse impacts.</p>
<p>Concerns were raised regarding other similar applications that are currently assessed by Council.</p>	<p>These concerns are acknowledged. However, each application is assessed on its own merit having regard to the particulars of each application.</p>
<p><b>Submission in support</b></p>	
<p>The event has a positive economic impact and landowners should be able to utilise their</p>	<p>Noted</p>

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properties with the appropriate consent from Council.	
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**Financial Implications:**

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

**Legal Implications**

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued (if the recommendation is adopted) the matter would be put to Council for consideration. Alternatively, an applicant who is dissatisfied with the determination of the application by the Council may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act. Applicants can choose to do both, setting aside the Appeal pending resolution of the review, noting there are time limitations with respect to lodging applications for review and appeal.

**Summary and Conclusion**

This application has been assessed having regard for section 4.15 (Matters for consideration) under the EP&A Act. Having regard to the assessment, the proposal is not considered capable of support. Reasons for refusal are provided below and can also be found at Attachment 1 to this report.

1. The information submitted with the development application does not satisfy the objectives of the RU1 Primary Production zone, which Council must have regard for under clause 2.3(2) of the *Shoalhaven Local Environmental Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
2. The information submitted with the development application does not satisfy clause 2.8(3), which Council must be satisfied of when granting development consent to an application for the temporary use of land under *Shoalhaven Local Environmental Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
3. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed development. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*).
4. Having regard to the inconsistency with the objectives of the zone and clause 2.8(3) under *Shoalhaven Local Environmental Plan 2014*, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*).

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

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION  
DEVELOPMENT CONSENT**  
Environmental Planning and Assessment Act, 1979  
DA18/2115

**TO:**

Brigrath No 2  
15 Duke St  
Woonona NSW 2517

being the applicant(s) for **DA18/2115** relating to:  
**171B Strongs Road, JASPERS BRUSH - Lot 2 DP 778594**

**REFUSED USE AND OR DEVELOPMENT:**

Temporary use of land for events/ functions including weddings

**DETERMINATION DATE:**

TBA

**REFUSAL DATE:**

TBA

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

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**Determination by way of Refusal - Page 2 of 3 DA18/2115**

**PART A  
REASON FOR REFUSAL**

1. The information submitted with the development application does not satisfy the objectives of the RU1 Primary Production zone, which Council must have regard for under clause 2.3(2) of the *Shoalhaven Local Environmental Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
2. The information submitted with the development application does not satisfy clause 2.8(3), which Council must be satisfied of when granting development consent to an application for the temporary use of land under *Shoalhaven Local Environmental Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
3. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed development. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*).
4. Having regard to the inconsistency with the objectives of the zone and clause 2.8(3) under *Shoalhaven Local Environmental Plan 2014*, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*).

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

***Determination under Environmental Planning and Assessment Act, 1979***

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request must be made **within three (3) months** of the date of the receipt of the determination to allow Council time to undertake the review within the prescribed period of six (6) months and be accompanied by the prescribed fee.

Division 8.3 of the EP&A 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 6 months after the applicant has been notified of the decision.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within 28 days after the date the objector is notified of the decision.

**PART C  
GENERAL ADVICE TO APPLICANT**

***Privacy Notification***

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

**SIGNED** on behalf of Shoalhaven City Council:

**Determination by way of Refusal - Page 3 of 3 DA18/2115**

Signature

Name XXX  
XXX  
Planning, Environment & Development Group

SURVEYING | ENGINEERING | TOWN PLANNING



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30 January 2019

Your Reference: DA18/2115  
Our Ref: L103619

Development Planner  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Attention: Mary Kunang

Dear Ms Kunang

RE: DA18/2115 - Development Application for Temporary Use of Land for the purpose of a Function Centre (weddings and social events) at 171B Strongs Road, Jaspers Brush - Lot 2 DP 778594

We refer to your request for additional information received by email dated the 20/11/2018 and the 18/12/2018. This letter and attached documents provide response to all points raised in council's emails, internal referrals and submissions made by members of the community. This letter has been prepared on behalf of *Michael Briggs* to support the development application for the temporary use of Lot 2 DP 778594 for the purpose of a function centre which include weddings and social events.

It should be noted that the proposed functions have been significantly reduced in scale from a maximum of 130 guests per event to 60 guests. The proposal will also now only seek 26 events per year rather than the 52 originally proposed. The marquee locations have also be reduced to one proposed location adjacent to the existing dwelling.

Specifically, the following points have been raised by Council, received from referrals and submissions made by members of the Community on the proposed application. This letter outlines how each point has been addressed, with the relevant documentation attached to this submission. Each of the points raised has been addressed below, with a response under each heading being provided.

- 1. The submitted SEE and Operational Management Plan stated that “The functions (weddings) will be limited to a single weekend day with an absolute finishing time of 12pm”. Please clarify (in writing) whether the finishing time is 12pm or 12am.**

The functions will have an absolute finishing time of 12am (midnight). An Amended Operational Management Plan has been submitted with this response.

- 2. The submitted SEE and Operational Management Plan (OMP) stated that “all guests other than the bridal party (or attendees of small conferences) will access the site via a mini bus. How many vehicles are likely to be used by bridal party and where to they park on site? Please ensure there are sufficient parking spaces for mini buses, catering staff, entertainment staff and late arrivals.**

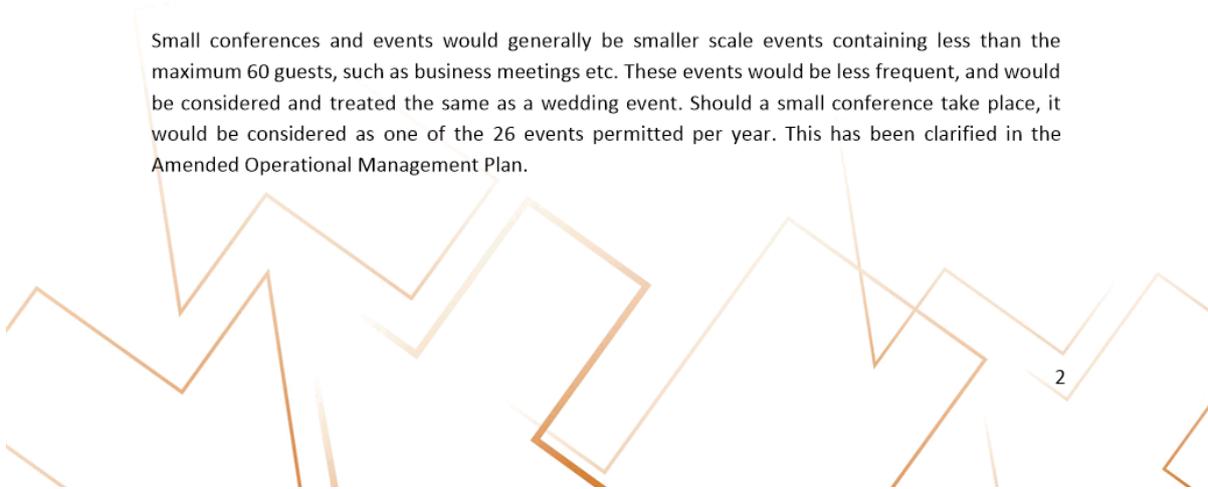
Mini Buses will be used by guests to access the site. There are a number of mini bus and coach hire services that operate throughout the South West Coast. Some of the hiring services in the area include Kiama Mini Coach Charters, Gerringong Buses, Stuarts Coaches, and Shoalhaven Shuttle. These hire services offer a variety of types of mini buses seating between 13 - 24 passengers. Mini buses would pick up the wedding guests from their accommodation and transport them to the wedding venue. They will remain parked onsite, and transport the guests back to their accommodation after the event.

Approximately five (5) mini bus trips would be required for an event with 60 guests, which would be the maximum attendees permitted to attend an event. It is expected that mini buses will be hired to pick up and drop off guests to the venue in separate trips. Catering deliveries, hired equipment and mini buses are provided with sufficient space to deliver to the site, turn and leave in a safe and efficient manner.

Staff and mini bus parking is provided adjacent to the existing shed west of the dwelling, and east of the dwelling. If overflow parking is required there is sufficient space for vehicles to park along the driveway leading up to the dwelling. The proposed location of the overflow parking has been added to the Amended Site Plans submitted with this application.

- 3. Please clarify the maximum number of “attendees of small conference” as mentioned in the SEE and OMP and how often they come to the site? Please ensure the “small conference” including functions such as wedding do not exceed the proposed 52 events per year.**

Small conferences and events would generally be smaller scale events containing less than the maximum 60 guests, such as business meetings etc. These events would be less frequent, and would be considered and treated the same as a wedding event. Should a small conference take place, it would be considered as one of the 26 events permitted per year. This has been clarified in the Amended Operational Management Plan.



**4. Response to Submissions from the Community.**

There have been eighteen (18) separate submission made from members of the community as part of the proposed development applications advertisement by Council. A number of concerns have been raised regarding the temporary use of the property for events such as weddings and functions. Some concerns raised have been addressed by the responses to Councils request for additional information. Each submission has been read and addresses in the following section of this response letter.

Noise and Traffic Disruptions

There has been a number of submissions expressing concern regarding the potential noise disruptions generated by the increased traffic and wedding events taking place at the site. The setup for events which will include the hire and catering companies accessing the site will occur the previous day to the event. Set up and pack up of the temporary structures and facilities will be done during the day to minimise potential noise disruption at night.

The noise and traffic concerns raised by the community has been considered, and resulted in the size of the events being reduced from 130 potential guests down to 60 per event. This proposal now also only seeks 26 functions or events per year, rather than the full 52 allowed under the temporary use clause. The proposed locations of the marquees have also been amended, now restricting events in the courtyard area adjacent the existing dwelling. The Amended Site Plan shows the proposed location. This will significantly reduce the amount of traffic, noise and disruption potentially generated by the temporary use.

The Acoustic Report prepared by *Harwood Acoustic* includes the recommended noise controls that will be strictly abided by and put in place at each event. These recommendations will remain the same even though the scale of the events have been significantly reduced.

The Events Manager will be responsible to ensure all recommendation are in place for the duration of the event. All recommendations are included in the Operational Management Plan. Events will have an absolute finishing time of 12am (midnight) of the event day. Guests will be transport from the site via the hired mini buses from the site to the guests accommodation. Pack up of the temporary structures and facilities will be done the following day, again at a reasonable time to avoid noise disruptions. The Acoustic Report suggests that events held at the site will be compliant with the appropriate allowable noise so long as the recommendations provided are in place.

Access and Traffic

Another concern raised in the community submissions was the increase in vehicle traffic accessing the site. The site is accessed from Strong Road which connects to Princes Highway approximately 1.7km to the south east. The vehicle access track which connects the proposed site to Strongs Road is the shared access for a number of other properties in the surrounding area.

Concern has been raised regarding the increased use of the track by the catering vehicles and mini buses. In particular, issues relating to the potential increased wear of the track, impact on pedestrian safety, and the impact on biodiversity have been identified.

The use of the track is unlikely to affect the condition of the track as it has been constructed to cater for safe vehicle movements and reduced maintenance. Rainfall and storm events are more likely to cause damaged to unsealed roads. The events now being significantly smaller in size will reduce the likelihood of damage occurring.

During the event set up, pack up and function actually taking place there is expected to be increased pedestrian movement on the site, and an increased level of caution used for the vehicles accessing the site. The vehicles accessing the site at all stages of the event will be at low speeds to ensure the safety of all pedestrians on site.

Vehicles moving at low speed will reduce the wear of the track, and reduce the likelihood of hitting fauna that may be present on the site.

Responsibility and Management of Events

There has also been some comment on who has responsibility during an event. The events management team and hiring party will have shared responsibility for each event. The event management team will have an elected property manager how is responsible for ensuring that the controls proposed to reduce noise disruption are in place.

The property manager will also be required to keep a complaints and injury registry documenting any issues that may arise during the event. This registry along with any information including contact numbers for the management team will be provided upon Councils request.

**5. Response to Councils Development Engineer Referral.**

Further detailed information is required on how the parking arrangement will work;

- a. This will need to include where the proposed mini bus picks up from and drops off. Where do the guests park off sight?
- b. How will the development restrict guests from bringing their own vehicle or late arrivals? If so where do they park on site?

Mini Buses will be used by guests to access the site. There are a number of mini bus and coach hire services that operate throughout the South West Coast. These hire services offer a variety of types of mini buses seating 13 - 24 passengers. Mini buses would pick up the wedding guests from their accommodation and transport them to the wedding venue. The buses will remain parked onsite during the event, and transport the guests back to their accommodation post event.

Guests will park their cars at their accommodation, and will not be allowed to drive themselves to the event. This will be enforced as part of the terms and conditions signed by the hiring party. This has also been added to the Amended Operational Management Plan.



Details of a compliant swimming pool barrier will need to be provided to Council, demonstrating full compliance with the Swimming Pools Act 1992.

The swimming pool will not be used as part of the events taking place on the site. The swimming pool is enclosed by fencing that to our knowledge the swimming pool barriers are compliant with the Swimming Pools Act 1992.

Access for peoples with disabilities will need to be demonstrated from the accessible parking areas to that throughout the proposed Marques and function facility areas.

Each wedding function will provide at least one unisex toilet for people with disabilities. This is compliant with “Manual 12 Safe and Health Mass Gatherings 1999” prepared by the Australian Institute for Disaster Resilience. This is also compliant with Part F2.2 of the BCA Volume 1 requirement.

The parking areas, location of accessible facilities and events areas are accessible for persons with disabilities. The hiring party will be required to inform the management team if attendees include person with disabilities so assistance can be arranged if required. This has also been added to the Amended Operational Management Plan.

The marques will need to be provided with essential fire safety measures as listed within the Exempt and Complying Code SEPP 2008. In this regard, details of the proposed sizes of each marque are to be provided to Council.

As each wedding function or event will vary, the size, dimensions and number of marquees will likely change depending on the requirements. However, marquees will now only be located in the single location indicated on the Amended Site Plans.

Marquees will be hired from *South Coast Party Hire* which can provide a variety of types and sized marquees. Detail of the ‘P10 Hocker Structure’ have been provided as this is the largest marquee offered by *South Coast Party Hire*. All marquees have a wind speed rating of 80km/hr and consist of flame retardant vinyl tested in accordance with AS 1530.2-1993. The largest marquee dimensions are a width of 10m, length of 3m with a 2.4m eave height and 4.23m maximum roof height. The length of the marquee can be extended in 3m increments. Alternatively smaller marquees can be provided. The marquees are compliant with the requirements of the SEPP Exempt and Complying Code 2008.

Details of the proposed facilities will need to be provided to Council for consideration demonstrating compliance with Part F2.2 of the BCA Volume 1. In this regard, the facilities for the functions supporting up to 130 patrons will need to include the following:

- a. Males, consisting of:
  - i. 1 WC with a basin and,
  - ii. 1 Urinals with a basin,
- b. Females, consisting 2 WC’s with a basin for each and,
- c. An accessible unisex WC with a basin.

Note a urinal can be replaced with an additional WC for males if required.

The events on site will provide portable facilities for events. Facilities will be temporarily located on site in the designated areas, and removed from the site during the pack up of the event. The portable facilities will be supplied to the requirements outlined in “Manual 12 Safe and Health Mass Gatherings 1999” prepared by the *Australian Institute for Disaster Resilience*. Below is an extract taken from the document outlining the required number of facilities required to be provided for a wedding event.

Patrons	Males			Females	
	WC	Urinals	Hand Basins	WC	Hand Basins
<500	1	2	2	6	2
<1000	2	4	4	9	4
<2000	4	8	6	12	6
<3000	6	15	10	18	10
<5000	8	25	17	30	17

It is also noted that under Part F2.2 of the BCA Volume 1 a minimum of 2 male WC with basins, 2 female WC with basins, and 1 accessible unisex WC with a basin are required.

For 60 maximum guests attending the site for a wedding function, the above facilities will be provided. *Portable Toilet Hire Shoalhaven* are an example of a hire company that can provide portable bathroom facility that include both toilet and basins, and accessible variants. The portable toilets do not require plumbing, and will be transported of site the following day by the hire company for appropriate disposal.

The portable toilet requirements have been added to the amended Operational Management Plan.

**6. Response to Councils Development Environmental Health Referral.**

Location of temporary toilets located adjacent the shed at the rear of the property and at the front of the property near the turning area are in the turning/ parking area and are considered to be in a poor location in terms of safety – entering and leaving the toilets at night with car movements.

The proposed location of the temporary toilets will be separate from the proposed parking areas, and conflict between the two areas will be minimal. The amenities areas will be provided with temporary lighting, and vehicle movements will be slow and not frequent during the events. At night vehicle movements will be restricted to vehicles transporting guests from the site, and therefore will be minimal.

“Food will be cooked offsite and brought to the site to be reheated” – where and with what facilities? The use of the existing kitchen is implied as must be considered as part of the impact of the existing onsite effluent management system. A report has not been submitted addressing increase impact and change of use of the site.

The existing dwelling will not be used for the events and functions. All facilities to be used for the reheating and serving of food will be transported to site by the hired caterers. All waste and cleaning

will be done off site by the caterers. There will be no increased demand placed on the existing effluent disposal systems onsite.

How will they ensure that existing bathrooms/ toilets will not be used by guests? It is stated in the report that existing bathrooms/ toilets will not be utilised by guests. As the website for this property states – there is a minimum 3-night stay. This needs to be addressed.

Guests attending the wedding functions onsite will not be permitted within the existing dwelling to use the existing bathroom facilities. Portable toilets will be provided by the hiring party to be used by all guests. The property can be rented out as short term rental accommodation under Clause 7.13 of the Shoalhaven LEP 2014, and does not require development consent.

For example the bridal party, bride and groom etc. may wish to rent the dwelling as short term accommodation during the wedding event. However, as the renting of the dwelling as short term accommodation is separate to this development application for temporary use of the land for wedding functions, and the dwelling onsite will not be used as part of the functions with all guests required to use the portable facilities supplied for the event, there is expected to be no impact on the existing onsite effluent management as part of this application.

Wastewater report is required to be submitted to ensure that the effluent load can be assimilated. Current onsite effluent system is standard size septic tank and trench, however proposed guest stay is 12 people.

Guests attending the wedding functions onsite will not be permitted within the existing dwelling to use the existing bathroom facilities. Portable toilets will be provided by the hiring party to be used by all guests. The property can be rented out as short term rental accommodation under Clause 7.13 of the Shoalhaven LEP 2014, and does not require development consent. There will be no increased demand placed on the existing effluent disposal onsite as part of this development application, as portable facilities will be supplied for use during the event.

A Wastewater Report on the current onsite effluent disposal is not considered to be required as the events onsite will be supplied with portable facilities.

Impacts of lighting on surrounding properties and visual impact need to be addressed.

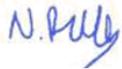
Additional lighting will be supplied to the site for use during the wedding functions. Lighting will be hired from *South Coast Party Hire*, or from a similar hire company. Lighting will be setup prior the event taking place. Due to the distance between the proposed site on the north side of the house and surrounding developments, the impact of lighting used as part of the functions is expected to be minimal. If portable flood lighting is used, the events manager will ensure that they are directed towards the existing structures onsite, and that lighting is not pointing towards surrounding properties.

The visual impact of the temporary use of the site for wedding functions and events will have no significant impact on the visual amenity of the area. The proposed structures which will be used for

events are only temporary and will be removed post event. The proposed locations of the temporary structures are located adjacent to the existing development on site. The topography and existing vegetation also assist in minimising the visual impacts of the functions.

We would be pleased for Council to give consideration to this matter and continue the assessment of the application as soon as possible.

Yours faithfully  
SET CONSULTANTS PTY LIMITED



Nicholas Reddy  
**Graduate Town Planner** (B.Arts Urban & Regional Planning (Hons))



## DE19.96 Development Application – No. 20, Lot 3 in DP 539866, The Wool Road Vincentia

DA. No: DA18/1736/4

HPERM Ref: D19/213103

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

- Attachments:**
1. Reasons for refusal [↓](#)
  2. Approved site plan for Secondary Dwelling approved under CD16/1166 [↓](#)
  3. Amended site plan dated 5 February 2019 [↓](#)
  4. Plan of proposed strata subdivision (amended plan Rev 2) [↓](#)
  5. Vehicle turning path plan for rear dwelling (revised plan dated 9 April 2019) [↓](#)
  6. Sketch plan of private open space areas [↓](#)
  7. Sketch plan of landscaped area [↓](#)
  8. Section 4.15 Assessment Report (under separate cover) [⇒](#)
  9. Checklist for SDCP 2014 Chapter G11 (Dual occupancy subdivision) (under separate cover) [⇒](#)
  10. Checklist for SDCP 2014 Chapter G13 (Dual occupancy development) (under separate cover) [⇒](#)

**Description of Development:** Change of use to dual occupancy and strata subdivision

**Owner:** SJ and JC Vickery  
**Applicant:** PDC Planners

**Notification Dates:** 27 July to 13 August 2018

**No. of Submissions:** No submissions received.

### Purpose / Reason for consideration by Council

This application was called in by Council at its Ordinary meeting held on 25 June 2019 (MIN19.449).

The development does not satisfy the vehicle manoeuvring requirements of SDCP (2014) Chapter G21. The application is recommended for refusal.

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

That Council refuse Development Application DA18/1736 for change of use to dual occupancy and strata subdivision at lot 3 DP539866, 20 The Wool Road Vincentia, for the reasons set out in **Attachment 1**.

### Options

1. Refuse the application as recommended.

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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. Council defer the matter and conduct a site inspection

Implications: To understand the on-site constraints associated with the proposed turning circles.

3. Alternative recommendation

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

### Location Map

The location of the subject site is shown on the map below at Figure 1.

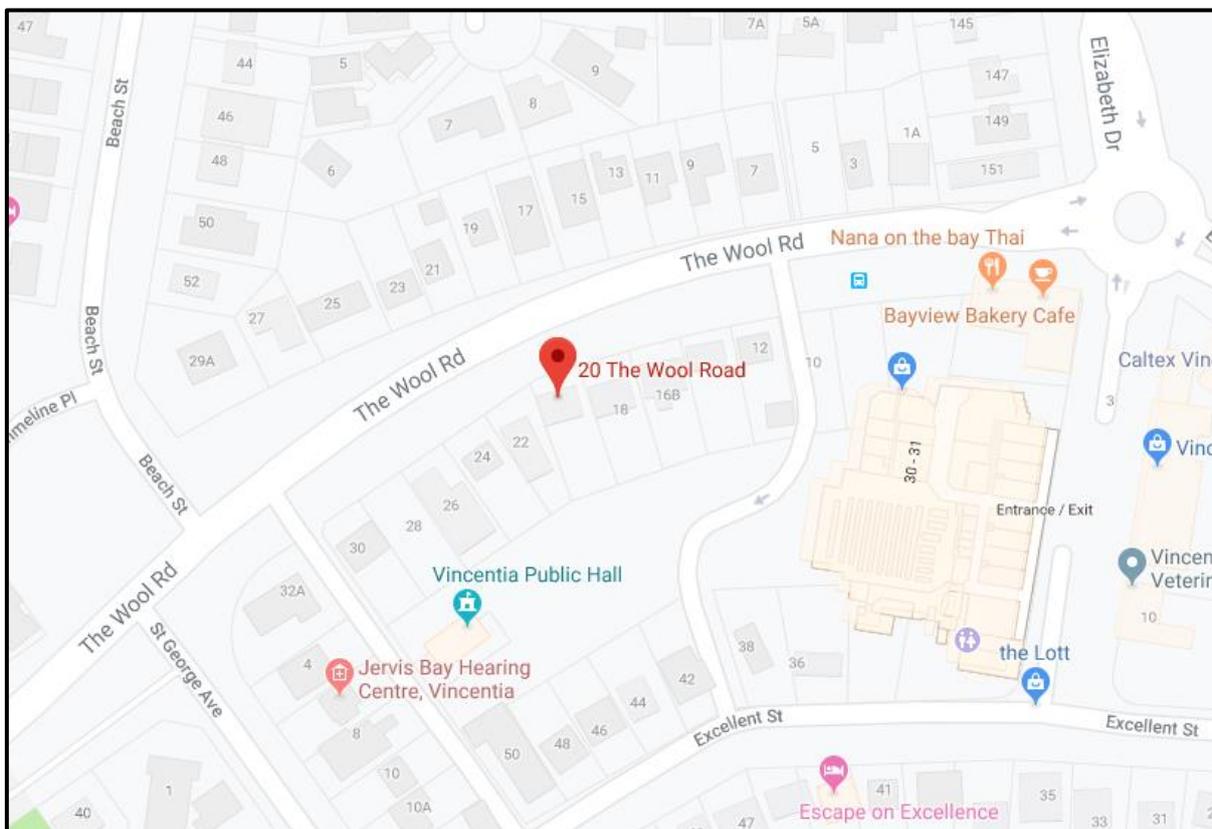


Figure 1 – Location map (Source: Google Maps)

### Background

#### Proposed Development

The application proposes to change the use of the site from a principal dwelling and a secondary dwelling to a dual occupancy with strata subdivision.

The site currently contains a two-storey dwelling located towards the front of the site that was constructed in the 1970s (the “principal dwelling”) and a single storey dwelling located at the rear of the site that was constructed in 2016 as a “secondary dwelling” (CD16/1166). The

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secondary dwelling was approved by a private certifier as a complying development (see approved site plan at **Attachment 2** and extract of site plan at Figure 7).

The only physical work proposed in this application is the construction of a vehicle turning area associated with the existing secondary dwelling. The proposed site plan indicates the proposed turning area is at **Attachment 3**.

The reason for changing the approved use from the combination of a principal dwelling and secondary dwelling to a dual occupancy is to avoid the prohibition of secondary dwellings being subdivided as per Clause 24 of the Affordable Housing SEPP.

The proposed subdivision is under the Strata Titles Act and proposes three lots:

- Lot 1 has an area of 331.2 m<sup>2</sup> and will contain the two-storey principal dwelling at the front of the site.
- Lot 2 has an area of 293.3 m<sup>2</sup> and will contain the single storey secondary dwelling at the rear of the site.
- A common property lot of 77.4 m<sup>2</sup> will contain the shared driveway and some landscaping.

SLEP 2014 has no minimum lot size for strata subdivisions. Provided the development meets the requirements for dual occupancy the use is permissible within the R1 General Residential zone. An extract of the proposed strata subdivision is shown at Figure 2 below and the full plan can be seen at **Attachment 4**.

The secondary dwelling was approved as Complying Development under State Environmental Planning Policy (Affordable Rental Housing) 2019. Clause 24 of that Policy provides as follows:

**"24 No subdivision**  
*A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division."*

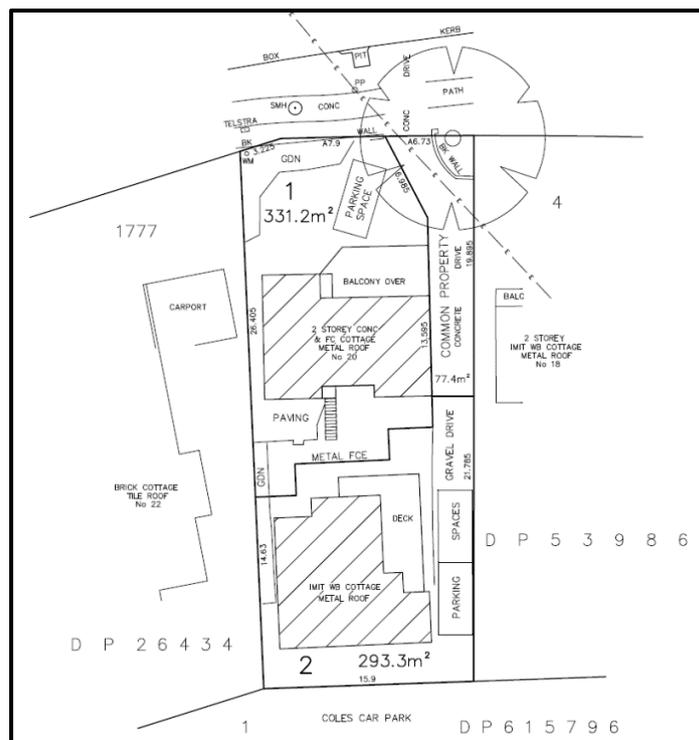


Figure 2 – Subdivision sketch plan

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A new application for a dual occupancy does permit a pathway for subdivision. However, the proposal must satisfy all the requirements for dual occupancy for this to occur. The main issue of non-compliance is vehicle manoeuvring and this cannot be satisfied.

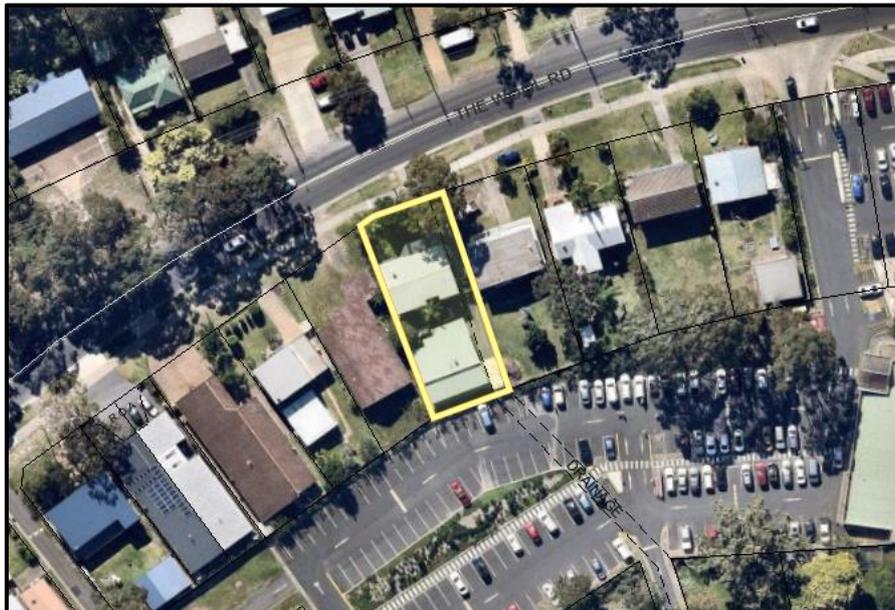
Subject Land

The subject land is known as 20 The Wool Road Vincentia and legally described as Lot 3 on DP539866. The subject site is a regular shaped allotment with a total area of 695.6m<sup>2</sup>. The subdivision sketch submitted with the application shows the site area as 701.9m<sup>2</sup> and this is incorrect. Torrens title subdivision requires a minimum lot size of 700m<sup>2</sup> (excluding the access handle). It would be permissible to achieve strata title subdivision as there is no minimum lot size.

The site has frontage of 17.855m to The Wool Road and a rear boundary of 15m with the Coles Carpark. The western side boundary is 41.034m and the eastern side boundary 41.637m. The site slopes gently from the rear to The Wool Road. Along the full length of the eastern boundary is a 3.048m wide stormwater drainage easement for underground infrastructure.

The site is zoned R1 General Residential under Shoalhaven LEP 2014.

A recent aerial photograph of the site and surrounds is shown at Figure 3 below.



*Figure 3 – Recent aerial photograph of site and surrounds*

The site is developed with an existing two storey dwelling at the front of the site and more recent single storey secondary dwelling at the rear of the site. There is an existing concrete driveway providing vehicular access to The Wool Road.

Parking was not required to be provided for the secondary dwelling under the provisions of the Affordable Housing SEPP. A gravel driveway extension and stacked parking for two cars has been provided for the secondary dwelling. These site features are shown in the photographs in figures 4, 5 and 6 below.

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*Figure 4 – Photograph of existing driveway entrance*



*Figure 5 – Photograph of driveway passing along the side of the front (principal) dwelling and car parked next to the rear (secondary) dwelling.*

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Figure 6 – Photograph of the space between the two dwellings where the vehicle turning area is proposed

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### Site & Context

As depicted in Figures 1 and 2 above, the site is located within close proximity to the commercial centre of Vincentia. The Wool Road at this location is a wide two-lane carriageway with double unbroken centre lines and a 50 kph speed limit.

The site is surrounded to the north, east and west by residential development of mixed ages and styles. The Vincentia Shopping Centre carpark adjoins the land's southern boundary.

The existing driveway is 70m from the exit lane from the Coles Carpark and 180m to the roundabout at the junction of The Wool Road and Elizabeth Drive.

### History

The lot was created by subdivision in 1969 and the front (principal) dwelling was erected under BA70/692. Alterations and additions were approved in 1974 under BA74/1425.

The approved layout for the principal dwelling has habitable rooms contained on the upper floor. The ground floor contains a carport, garage, laundry and WC. It appears the ground floor has been converted to habitable rooms at some stage in the past. Council has no record of any approvals being granted for this change of use of the ground floor.

The secondary dwelling was erected following approval of a complying development certificate under CD16/1166. The occupation certificate for this dwelling was issued on 29 November 2016. The approved site plan under CD16/1166 is contained in **Attachment 2**.

A secondary dwelling proposed under the Affordable Housing SEPP is not required to provide car parking. However, a proposed secondary dwelling is required to provide an area of dedicated private open space that meets the minimum area and dimension requirements.

As depicted in Figures 7 and 8 below, the approved private open space area for the secondary dwelling is now compromised by the proposed vehicle turning bay in order to satisfy the parking and manoeuvring requirements that apply for dual occupancies.

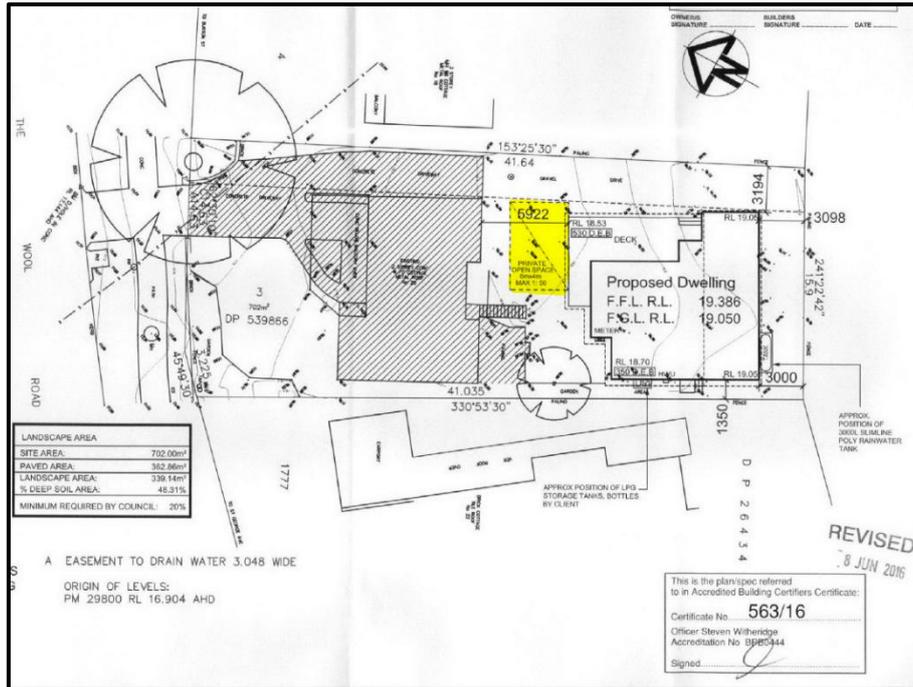


Figure 7 – Approved site plan for secondary dwelling under CD16/1166. The approved private open space area is highlighted in yellow.

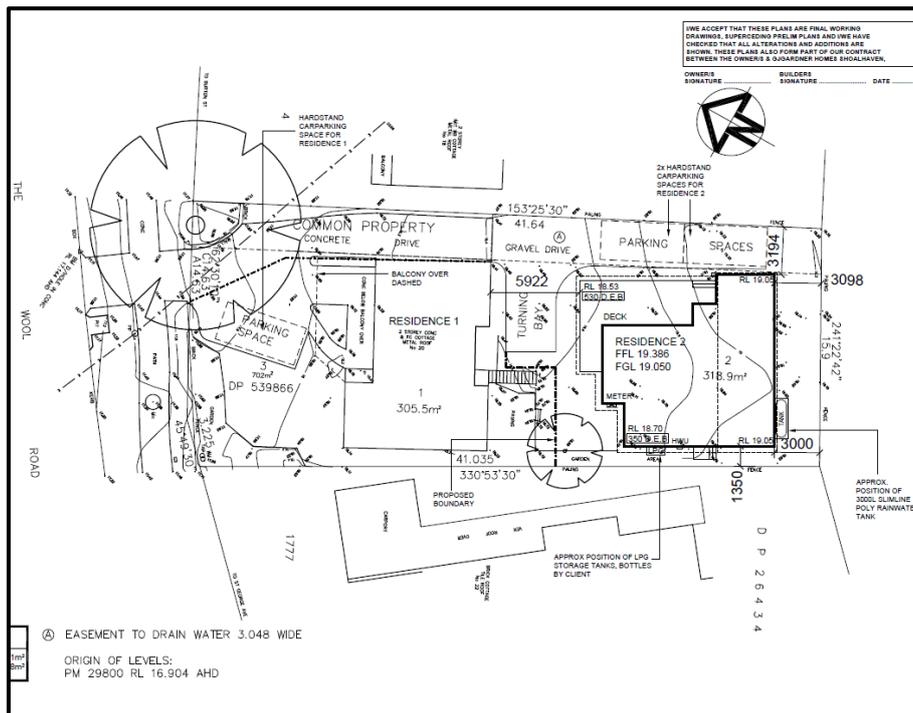


Figure 8 – Amended site plan dated 5 February 2019 for the proposed dual occupancy (Note the turning area shown in the space between the two buildings).

The applicant was advised by email on 11 June 2019 and 24 June 2019 that an application for a dual occupancy was to be recommended for refusal and was offered the opportunity to withdraw the application. The application was called in by Council at its Ordinary meeting based on Public Interest.

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## Issues

### Unapproved conversion of ground floor to habitable rooms

As noted above under the 'History' heading, the known approved use of the ground floor of the front (principal) dwelling is carport, garage, laundry and WC.

Partial ground floor plans submitted by the applicant on 17 June 2019 show the ground floor is used as bedrooms, TV room and rumpus room. It is clear from the external inspection of the building that there is no access for vehicles available to the ground floor area, as shown on the photograph at Figure 9 below.



Figure 9 – Photograph of the street elevation of the front (principal) dwelling. The ground floor door on the left is where the approved carport entry was located. The ground floor window to the right of the building is where the approved garage entry was located.

### Applicant's Submission

The applicant has made no specific submission on this issue.

### Discussion

The loss of at least two car spaces behind the building line has resulted in car spaces being located forward of the building line.

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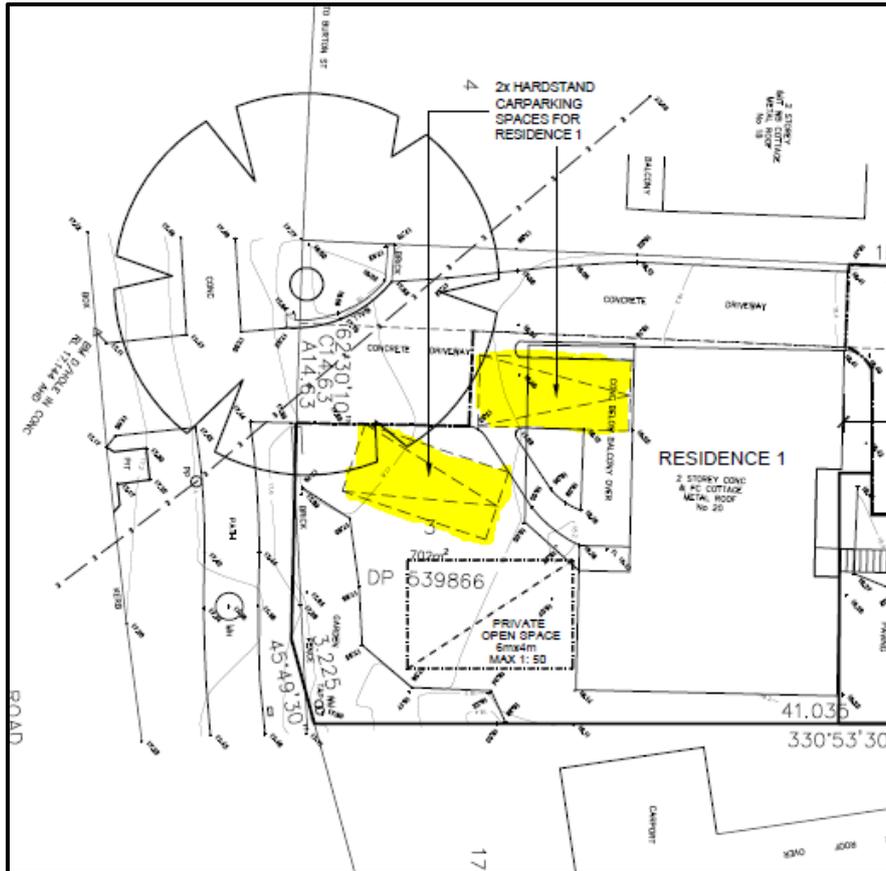


Figure 10 – Original site plan dated 26 April 2018 showing the proposed two car spaces for the front (principal) dwelling within the front building setback

Vehicle manoeuvring and parking provision for the front dwelling

The two required uncovered car parking spaces provided for the principal dwelling are in front of the building line and the layout of the spaces does not permit vehicles to enter and exit in a forward direction. This is a requirement for dual occupancy developments gaining ingress/egress on busy roads.

Applicant's Submission

The applicant contends that the parking and manoeuvring for the front dwelling is existing, is typical of the locality and has proven to be satisfactory.

Discussion

The arrangement is “existing” because parking spaces previously provided in the carport and garage behind the building line have been converted to habitable rooms.

There are similar arrangements for single dwellings in the vicinity, but this site is seeking approval for dual occupancy with vehicles from two separate occupancies accessing The Wool Road in a reversing movement.

The erection of a secondary dwelling at the rear of the site has deprived the front dwelling of the opportunity to have two car spaces behind the building line and to provide a suitable turning area to allow vehicles to enter and leave in a forward direction.

The parking and access arrangements for the front dwelling do not meet the fundamental requirement in DCP Chapter G21 for vehicles to enter and exit in a forward direction.

The existing car space located under the first-floor deck does not provide the required access clearance of 1 metre to the ground floor doorway as required by Australian Standard

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AS2890.1. This variation to DCP Chapter G21 requirements is not consistent with the objectives of the Chapter and is not supported.

Vehicle manoeuvring and parking provision for the rear dwelling

Two 'stacked' or 'tandem' parking spaces are provided next to the rear dwelling, along with a turning area in the space between the front and rear dwellings. This layout is shown on the extract from the site plan at Figure 11 below.

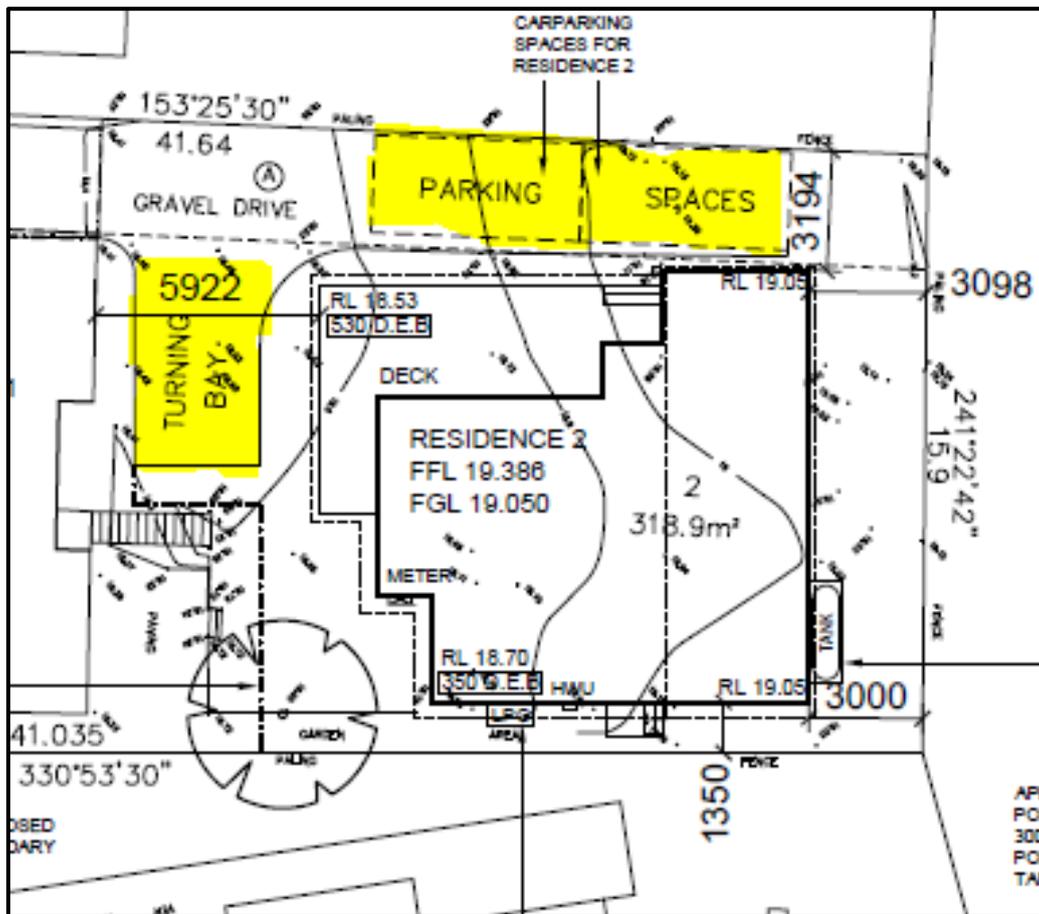


Figure 11 – Parking and turning area layout for rear (secondary) dwelling

Applicant's Submission

The applicant states that the parking and turning area for the rear dwelling are workable and has submitted turning circle plans. The most recent of these turning circle plans is shown below at Figure 12 and is also at **Attachment 5**.

DE19.96

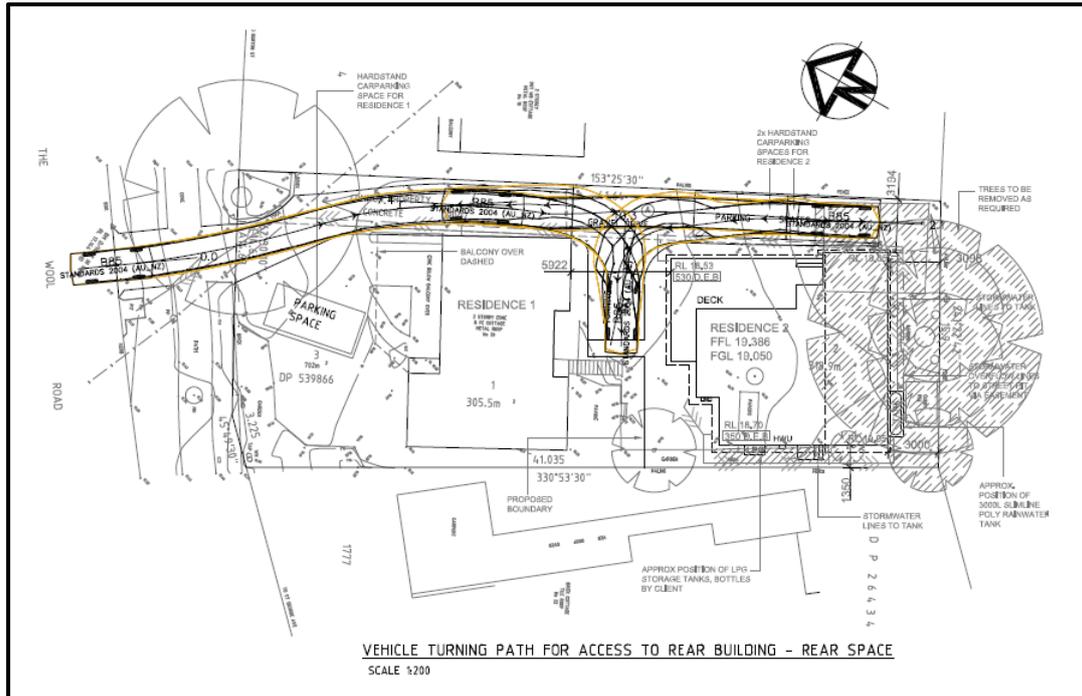


Figure 12 – Turning path plan for the rear dwelling

Discussion

The parking and turning area plan for the rear dwelling has several problems and these were identified in referral responses from Council’s Development Engineer:

- The turning area does not provide the minimum 300mm clearance required by Australian Standard AS2890.1 between the vehicle turning path and the adjoining buildings.  
 The turning path plan is based on the 85<sup>th</sup> percentile vehicle, meaning that the turning area would not work satisfactorily for a larger vehicle. The tightness of the turning path means that occupants may be less inclined to turn the vehicle and end up reversing out of the site onto The Wool Road. The turning path therefore falls short of satisfying the objectives (iii), (v), and (vi) of SDCP Chapter G21, as detailed below.
- The stacked parking for the rear dwelling is not supported by the Development Engineer, because the front vehicle will occupy the turning area when the rear vehicle wishes to leave the site. This will result in the rear vehicle reversing along the full length of the driveway and onto The Wool Road. Again, the arrangement does not satisfy objectives (iii), (v) and (vi) of SDCP Chapter G21.

The turning area also removes the private open space area approved for the rear dwelling as a secondary dwelling under Complying Development application DCD16/1166 (refer to approved site plan for CD16/1166 at Figure 7 above).

This variation to DCP Chapter G21 requirements is not consistent with the objectives of the Chapter and is not supported.

DE19.96

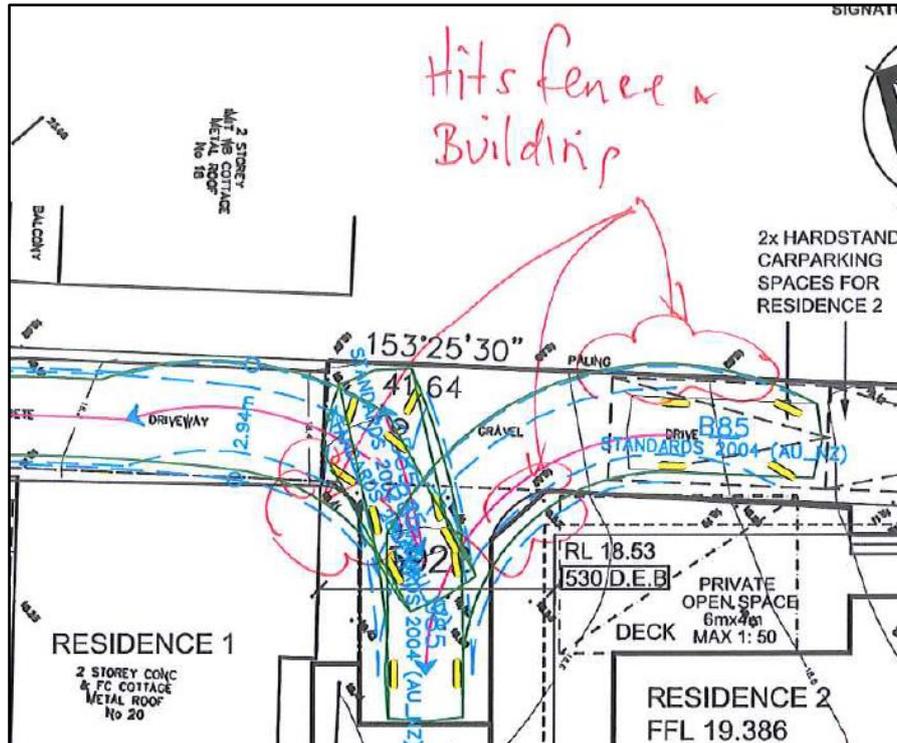


Figure 13 – Turning paths marked up by development engineer.

DE19.96

### Planning Assessment

The application has been assessed under S4.15 of the Environmental Planning and Assessment Act 1979 (Refer **Attachment 8**). There are separate checklists for the assessment under SDCP Chapters G11 (Subdivision) and G13 (Dual occupancy) respectively at **Attachment 9** and **Attachment 10**.

### Policy Implications

#### State Environmental Planning Policy (Affordable Rental Housing) 2009

The Affordable Housing SEPP contains a number of aims at clause 3. Clause 3(b) is relevant to secondary dwellings approved under the SEPP and provides as follows:

*“(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards”.*

The non-discretionary development standards include that secondary dwellings approved under the SEPP are not required to provide any parking spaces.

The prohibition on subdivision is clearly intended to ensure the retention of secondary dwellings in the stock of affordable rental housing. If subdivided a secondary dwelling could be owner-occupied and would therefore be lost from the rental housing stock.

It is not in the public interest for this to occur.

#### SDCP 2014 Chapter G21 Car Parking and Traffic

Among the objectives of Chapter 21 of SDCP 2014 are the following:

- iii. Ensure that car parking areas are functional and operate efficiently.
- iv. Ensure that car parking areas (are) visually attractive.

- v. *Ensure that car parking facilities are safe and meet the needs of users.*
- vi. *Ensure that all vehicles enter and leave a site in forward direction and that the manoeuvring of vehicles does not take place within the road reserve, but within the subject site.*

These objectives are expressed in the Performance Criteria and Acceptable Solution in the DCP Chapter.

The Car Parking Schedule in Section 5.1 of Chapter 21 specifies these requirements for dual occupancy developments:

*A minimum of one on-site car parking space shall be provided behind the building line for each dwelling having a gross floor area of 125m<sup>2</sup> or less, except where the dwelling contains three bedrooms or rooms capable of use as a bedroom, where two car spaces shall be provided behind the building line.*

*A minimum of two on-site car parking spaces shall be provided behind the building line for each dwelling having a gross floor area exceeding 125m<sup>2</sup>.*

The applicant has accepted that 2 car spaces are required for each of the dwellings on the site. However, the two spaces proposed for the front dwelling are both in front of the building line.

Acceptable Solution A5.1 requires that *development must be designed so that vehicles enter and leave the premises in a forward direction*. This requirement echoes Objective vi in Chapter 21 of SDCP 2014.

As noted earlier in this report, vehicles parked in the two spaces provided for the front dwelling are not capable of exiting in a forward direction. The layout of the two car spaces for the rear dwelling also results in a vehicle being unable to leave in a forward direction due to the tight turning circle provided.

Consequently, the requirement for all vehicles to enter and exit in a forward direction should not be varied in the case of this application.

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

The application was notified to owners of adjacent and adjoining properties within a 25 metre buffer, in accordance with Council Community Consultation Policy. The notification commenced on 27 July 2018 and concluded on 13 July 2018.

No submissions were received during the notification period.

### **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.

### **Summary and Conclusion**

This application presents Council with a situation not seen previously, where an applicant is seeking to 'convert' an existing approval for a secondary dwelling into an approval for a dual

occupancy. This would circumvent the prohibition on subdivision that applies under the Affordable Housing SEPP. It would also give further development capacity which is not available under the SEPP used to approve the secondary dwelling. The public interest considerations of this are outlined above under the 'Policy Implications' heading.

The proposal does not satisfactorily meet DCP requirements for a dual occupancy, in terms of parking provision and vehicular ingress and egress.

The unapproved conversion of the ground floor of the front (principal) dwelling to habitable rooms removes the two vehicle parking spaces that were available behind the building line and places Council in the position of tacitly approving an unlawful change of use. If Council were of the mind to approve this application, then consideration should be given to converting the lower ground floor area of the principal dwelling back to carparking. This can be added as a condition of approval.

The application is recommended for refusal.

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

**BY REFUSAL**

**Environmental Planning and Assessment Act, 1979  
DA18/1736**

**TO:**

PDC Planners  
PO Box 214  
Wollongong NSW 2520

being the applicant(s) for **DA18/1736** relating to:  
**20 The Wool Rd, VINCENTIA - Lot 3 - DP 539866**

**REFUSED USE AND/OR DEVELOPMENT:**

Change of Use to Dual Occupancy & 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 proposed parking for Dwelling 1 and Dwelling 2 does not comply with the provisions of Shoalhaven DCP 2014 Chapter G21 and of Australian Standard AS2890. (Section 4.15 (1)(a)(iii) and (b) Environmental Planning and Assessment Act 1979)
2. Due to insufficient site area to accommodate the existing buildings, adequate landscaped area, and parking and manoeuvring areas of satisfactory design, the site is unsuitable for the proposed development (Section 4.15 (1)(c) Environmental Planning and Assessment Act 1979)
3. The proposal is not in the public interest as it would encourage and entrench unsafe traffic movements of vehicles reversing onto The Wool Road. (Section 4.15 (1)(e) Environmental Planning and Assessment Act 1979)
4. The subdivision aspect of the proposal is not in the public interest as it will set an undesirable precedent for conversion of affordable residential housing and thereby encourage a reduction of the stock of affordable residential housing in the Shoalhaven area. (Section 4.15 (1)(e) Environmental Planning and Assessment Act 1979)

5. Supporting a development proposal that includes parts of a building that have been converted to habitable rooms without the necessary approval is not in 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**      **Anthony Blood**  
**Team Supervisor Development Assessment**  
**Development & Environmental Services Group**

I/WE ACCEPT THAT THESE PLANS ARE FINAL WORKING DRAWINGS, SUPERSEDING PRELIM PLANS AND I/WE HAVE CHECKED THAT ALL ALTERATIONS AND ADDITIONS ARE SHOWN. THESE PLANS ALSO FORM PART OF OUR CONTRACT BETWEEN THE OWNER/S & GJ GARDNER HOMES SHOALHAVEN.

OWNER/S SIGNATURE \_\_\_\_\_ BUILDERS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**NORTH-EASTERN ELEVATION**

**SOUTH-EASTERN ELEVATION**

**NORTH-WESTERN ELEVATION**

**SOUTH-WESTERN ELEVATION**

**ELEVATIONS**

SCALE: 1:100

G.J.GARDNER HOMES SHOALHAVEN  
UNIT 3, No 19 CENTRAL AVENUE, NOWRA, NSW 2541  
OFFICE (02) 4422 9400 FAX: (02) 4422 9369

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CLIENT: VICKERY

SITE: LOT 3 DP 539886  
20 THE WOOL ROAD  
VINCENTIA 2540

DATE: 02.05.16    DRAWN: S,R,P    SHEET NO. **05 / 10**

HOUSE TYPE: -    JOB NO. DPP250326    ISSUE: **E**

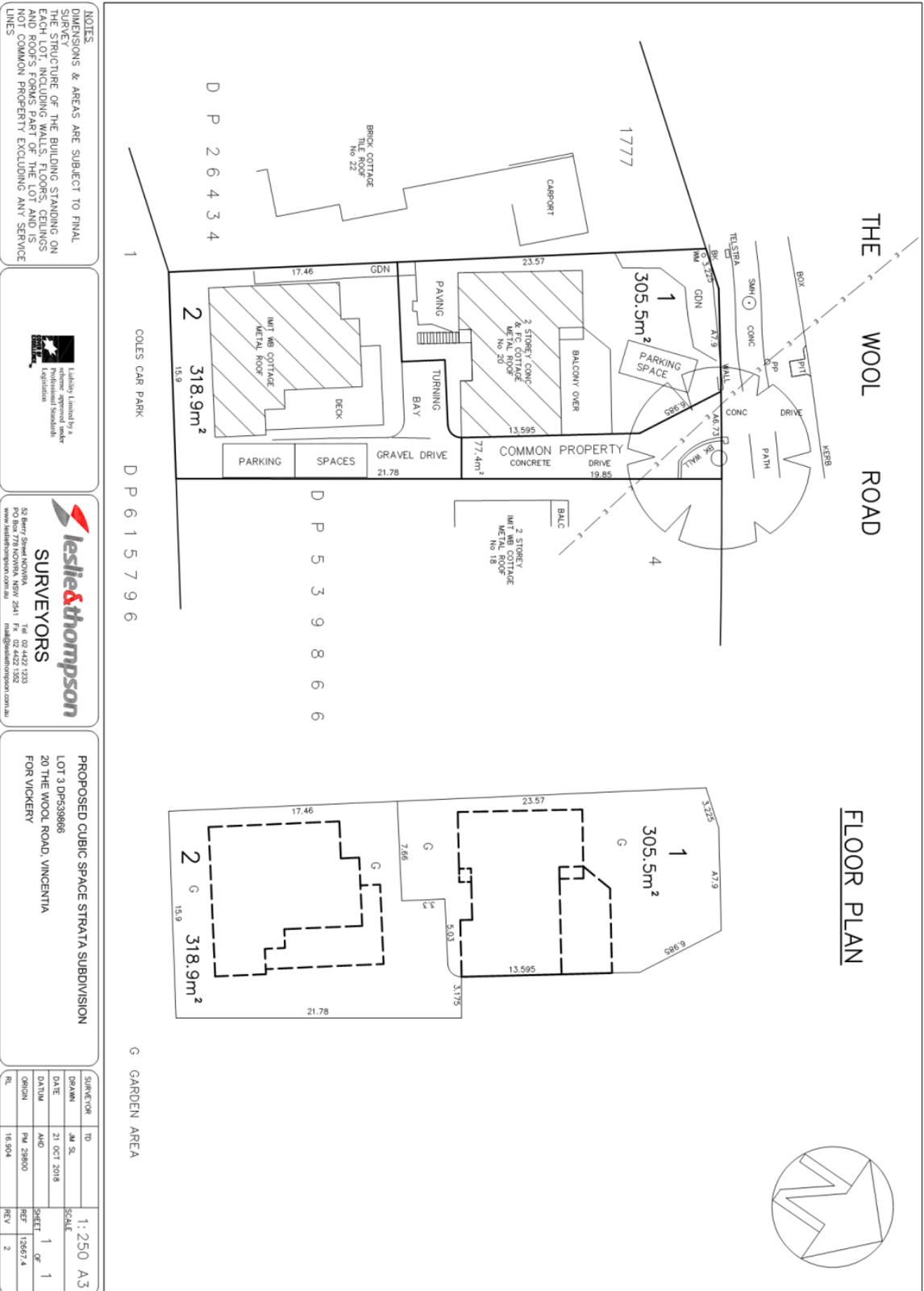
FACADE: -    INCLUSIONS: COAST

This is the plan/spec referred to in Accredited Building Certifiers Certificate:  
Certificate No. **563/16**  
Officer Steven Withridge  
Accreditation No. **BPB0444**  
Signed: \_\_\_\_\_

REVISED  
8 JUN 2016



**DE19.96 - Attachment 4**



**NOTES**  
DIMENSIONS & AREAS ARE SUBJECT TO FINAL SURVEY.  
THE STRUCTURE OF THE BUILDING STANDING ON EACH LOT, INCLUDING WALLS, FLOORS, CEILINGS AND ROOF'S FORMS PART OF THE LOT AND IS NOT COMMON PROPERTY EXCLUDING ANY SERVICE LINES



**leslie&thompson**  
**SURVEYORS**  
52 Berrig Street, Nowra, NSW 2541  
Tel: 02 4422 1333  
Fax: 02 4422 1332  
www.leslieandthompson.com.au  
mail@leslieandthompson.com.au

**PROPOSED CUBIC SPACE STRATA SUBDIVISION**  
LOT 3 DP9339866  
20 THE WOOL ROAD, VINCENTIA  
FOR VICKERY

SURVEYOR	TD	SCALE
DRAWN	JM SL	1:250 A3
DATE	21 OCT 2018	
DATUM	AND	
ORIGIN	FM 29800	SHEET 1 OF 1
REV	16.804	REV 12867.4
		REV 2

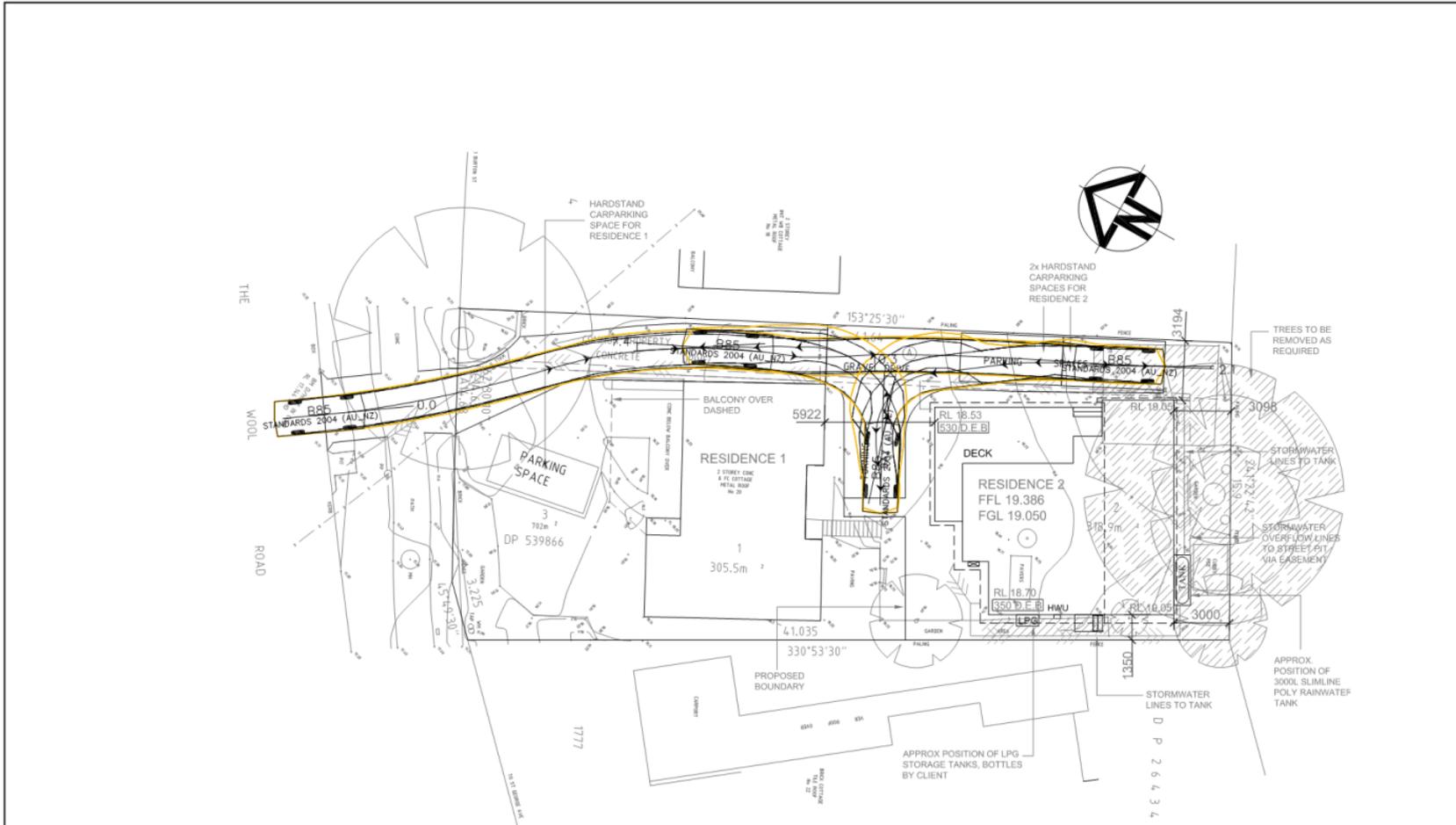
D P 2 6 4 3 4

COLES CAR PARK

D P 6 1 5 7 9 6

D P 5 3 9 8 6 6

G GARDEN AREA

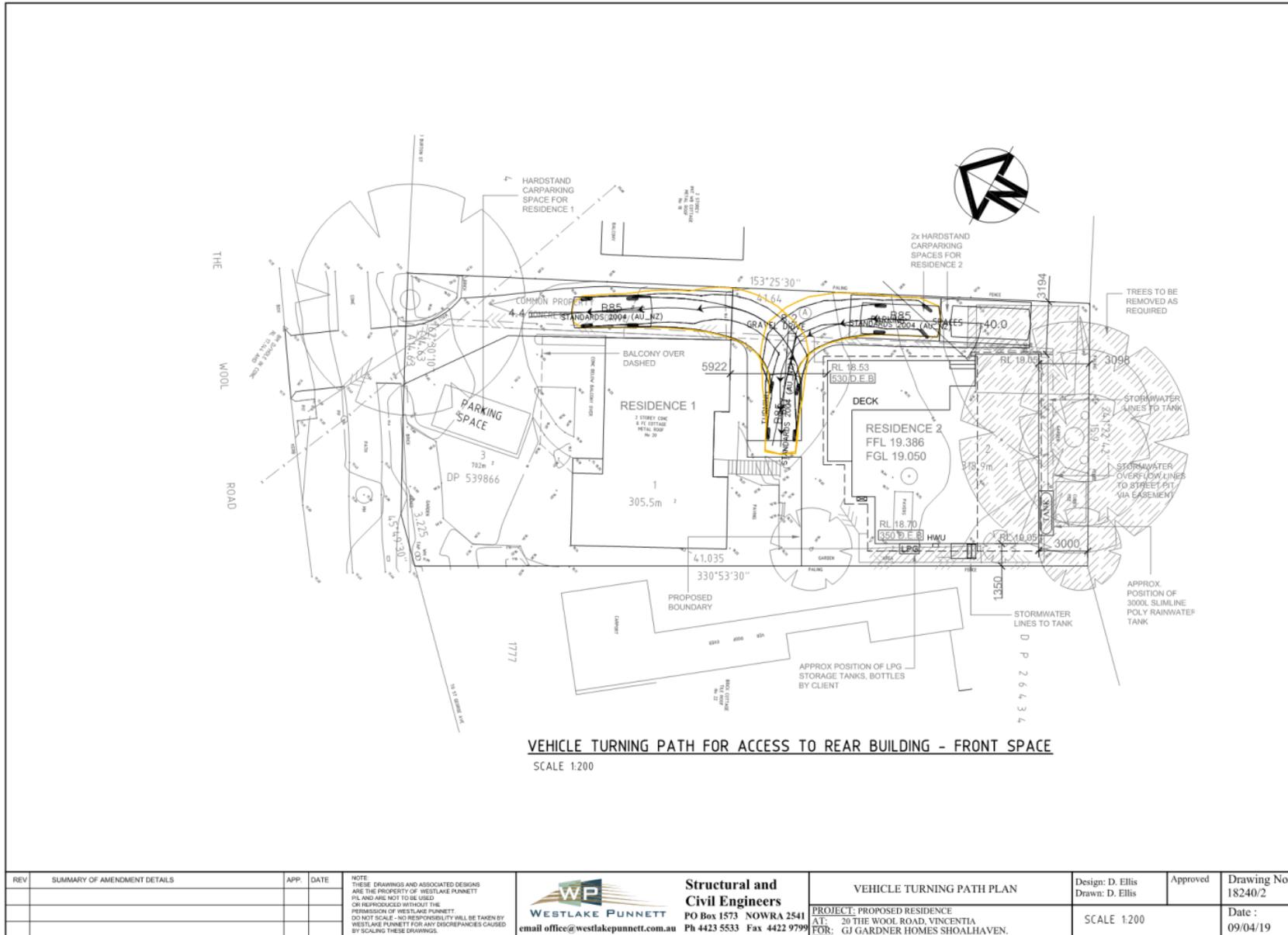


**VEHICLE TURNING PATH FOR ACCESS TO REAR BUILDING - REAR SPACE**

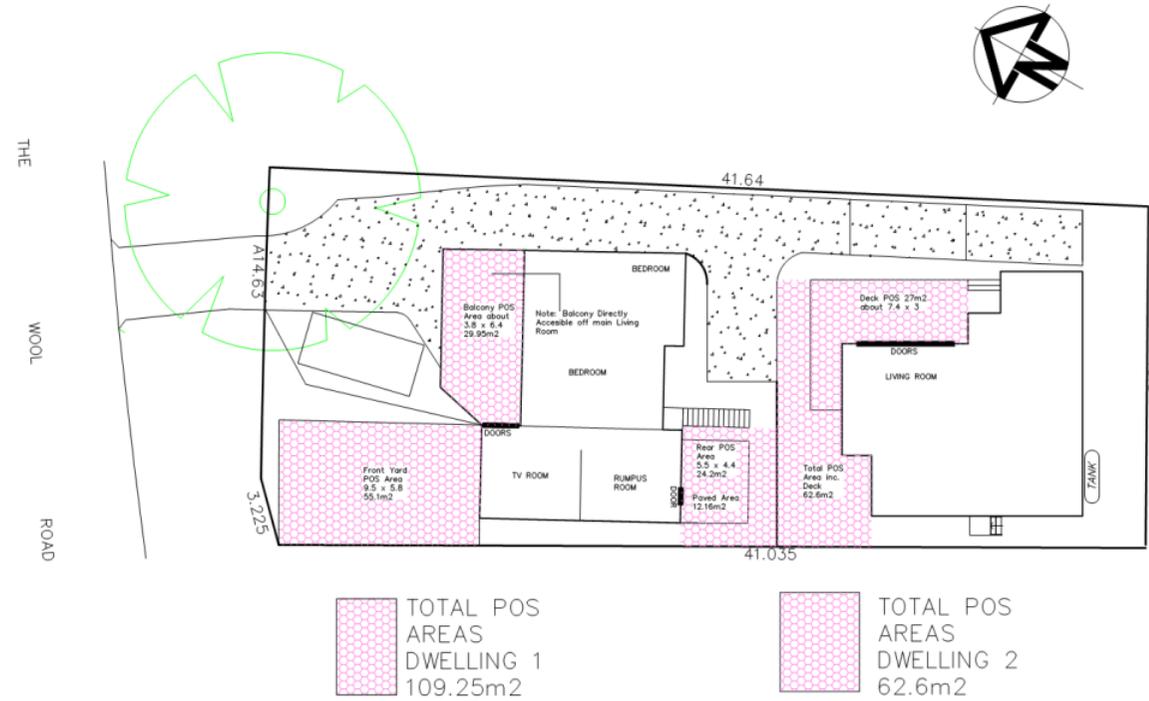
SCALE 1:200

REV	SUMMARY OF AMENDMENT DETAILS	APP. DATE	NOTE	 <b>Structural and Civil Engineers</b> PO Box 1573 NOWRA 2541 Ph 4423 5533 Fax 4422 9799 email office@westlakepunnett.com.au	VEHICLE TURNING PATH PLAN  PROJECT: PROPOSED RESIDENCE AT: 20 THE WOOL ROAD, VINCENTIA FOR: GJ GARDNER HOMES SHOALHAVEN.	Design: D. Ellis	Approved	Drawing No. 18240/1A
A	REVISED TO SUIT NEW STRATA SUBDIVISION PLAN	9.04.19	NOTE: THESE DRAWINGS AND ASSOCIATED DESIGNS ARE THE PROPERTY OF WESTLAKE PUNNETT P/L AND ARE NOT TO BE USED OR REPRODUCED WITHOUT THE PERMISSION OF WESTLAKE PUNNETT. DO NOT SCALE - NO RESPONSIBILITY WILL BE TAKEN BY WESTLAKE PUNNETT FOR ANY DISCREPANCIES CAUSED BY SCALING THESE DRAWINGS.			SCALE 1:200	Date: 09/04/19	

DE19.96 - Attachment 5



## PRIVATE OPEN SPACE AREAS



POS ACCEPTABLE SOLUTIONS AS PER DCP CHAPTER G13

A17.1 A minimum area of private open space shall be provided for each dwelling in accordance with Table 5. COMMENT: 50M2 REQUIRED FOR EACH DWELLING. MORE POS PROVIDED THAN MINIMUM

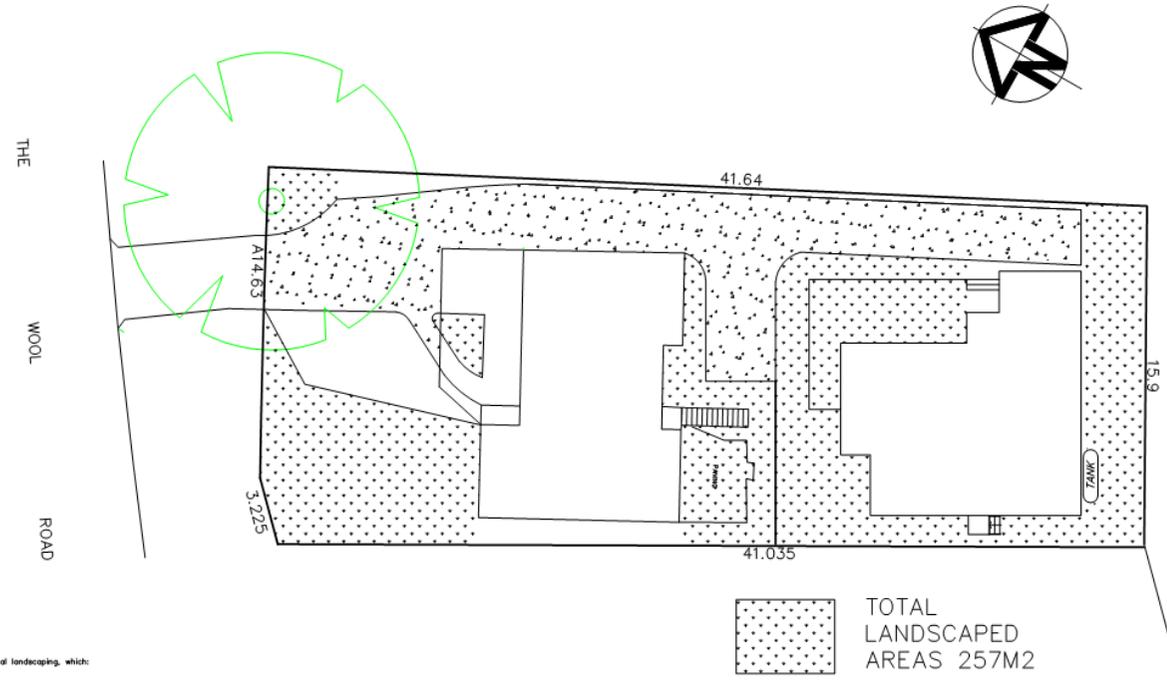
A17.2 Private open space shall have direct access from a living area. COMMENT: ALL POS AREAS FOR BOTH DWELLINGS ARE ACCESSIBLE FROM LIVING AREAS

A17.3 Where the private open space of a dwelling is provided at the ground level, it shall:

- Include a defined hardstand area (e.g. concrete, paving, decking) of usable space which:
  - Is setback at least 1.2m from an external boundary. BOTH DWELLINGS COMPLY
  - Has a minimum dimension of 5m x 4m, of which 50% shall be covered to provide protection from the elements. GROUND LEVEL POS AREAS NOT COVERED FOR DWELLING 1, HOWEVER BALCONY ON DWELLING 1 IS COVERED. DWELLING 2 COMPLIES
- Have a minimum dimension of 2m for all other areas. COMPLIES
- Have a gradient no steeper than 1:20. COMPLIES
- Be adequately screened to provide privacy to residents. COMPLIES. POS IS ALL LOCATED BEHIND FENCING.

A17.4 Where the private open space of a dwelling is provided at an upper level, it shall have a minimum dimension of 2m x 3m which is covered to provide protection from the elements. COMPLIES FOR DWELLING 1

## LANDSCAPED AREAS



**LANDSCAPING ACCEPTABLE SOLUTIONS AS PER DCP CHAPTER G13**

A6.1 At least 10% of the site area is to include high quality formal landscaping, which:

- Has a minimum dimension of 1.5m in any direction.
- Consists of 100% deep soil planting.
- Is provided with an automated watering system.

COMMENT: PROPOSAL COMPLIES. SPRINKLER SYSTEM CAN BE INSTALLED IF COUNCIL DEEMS NECESSARY.

A6.2 In addition to the formal landscaping area required at A6.1, a further area of at least 20% of the site is to be provided, which:

- Has a minimum dimension of 1m in any direction.
- Is inclusive of 40% deep soil planting.
- Can include landscaped areas, decks, terraces, alfresco areas, swimming pools or other recreation areas / structures.

COMMENT: WITH 257M2 OF LANDSCAPING PROVIDED, 36% OF THE SITE IS LANDSCAPED. OF THIS LANDSCAPED AREA 217M2 IS DEEP SOIL WHICH IS 30% OF THE SITE. MIN REQUIREMENT FOR DEEP SOIL IS 56M2 (40% OF 20% OF THE TOTAL SITE AREA)

A6.3 At least 35% of the front setback is to be landscaped. COMMENT: PROPOSAL COMPLIES.

A6.4 The landscaping provided at A6.1, A6.2 and A6.3 excludes any encroachments (i.e. any part of a building or structure), hardstand areas and any areas used for storage, clothes drying, and water tanks. NOTED.

A6.5 Retaining walls greater than 0.6m within the front setback are to be softened by planting for a minimum depth of 600mm on the low side of the retaining wall, for the entire length of the retaining wall. NOTED.

## DE19.97 Proposed Public Exhibition - Planning Proposal (PP043) - Additional Permitted Use - South Nowra Industrial Expansion Zone

**HPERM Ref:** D19/284727

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

**Attachments:** 1. Public Agency Referral Response - NSW Rural Fire Service [↓](#)  
2. Planning Proposal - Pre Gateway Version - South Nowra Industrial land - Additional Use (under separate cover) [⇄](#)

### Purpose / Summary

Obtain the required Council Resolution to publicly exhibit the subject Planning Proposal (PP).

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

That Council:

1. Endorse Planning Proposal (PP043) – Additional Permitted Use – South Nowra Industrial Expansion Zone, updated to include the responses of Public Agency Consultation, for Public Exhibition for a minimum period of 28 days.
2. Receive a further report that provides the results of the Public Exhibition period and recommends the next steps to finalise the Planning Proposal.

### Options

1. Proceed as recommended

Implications: This is the preferred option as it will ensure that the PP is progressing in accordance with the previous Council resolution and the Gateway determination that has been received.

2. Do not proceed as recommended and advise on an alternative.

Implications: This is not recommended as it could potentially delay the PP progressing.

### Background

The Development Committee resolved on 11 September 2018 (MIN18.696.6) that Council:

*Directs the General Manager to prepare a planning proposal and submit it for Gateway Determination seeking to confirm a dwelling entitlement on each of the individual properties within the industrially zoned area.*

This resolution responds, in part, to representations from the South Nowra Disadvantaged Landholders Group (Landholder Group) following a meeting that was held with the Mayor, Council staff and Kiama MP Gareth Ward on 18 July 2018, and detailed to Council in the [Report](#) to Development Committee of 11 September 2018 (DE.18.64).

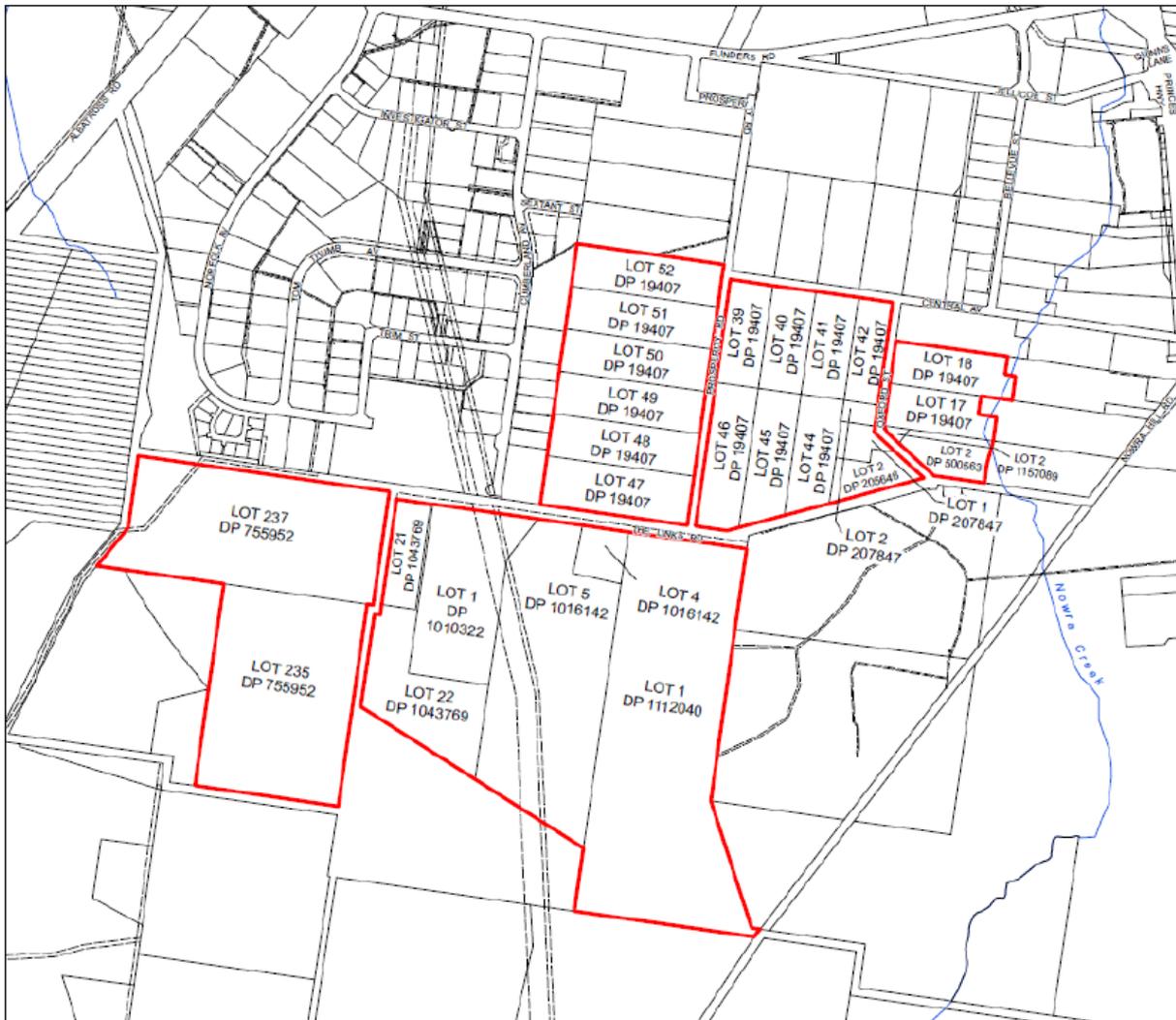
A key concern of the Landholder Group is potential uncertainty around the lawfulness of continuing and/or expanding their current land uses (e.g. Dwellings) given the change of zoning to industrial that has occurred in this area.

Notwithstanding, it is noted that 24 of the 28 subject properties most likely benefit from 'existing use rights' in accordance with [Division 4.11 of the Environmental Planning and Environment Act 1979](#) (the Act), and therefore have a lawful mechanism to continue and even expand their current uses. This is confirmed by the NSW Department of Planning and Environment's (DPIE) Gateway Determination Report.

It is noted that the Landholder Group does not necessarily represent the views of all owners of the individual properties.

**Subject Land**

The subject land is located in South Nowra/Nowra Hill, to the south of the existing Flinders Industrial Estate, and is made up of 28 properties as shown in **Figure 1** below.



**Figure 1 – Subject Land**

**Land Use Zoning & Zoning History**

The subject land is now predominantly zoned for industrial use (IN1), with some environmental (E2, E3) and rural zoning (RU2), under the provisions of Shoalhaven Local Environmental Plan 2014 (LEP 2014), as shown in **Figure 2** below.

Prior to the commencement of LEP on 22 April 2014 the land was partly zoned Rural 1(c)(Rural Lifestyle) and Rural 1(d)(General) under the previous Shoalhaven LEP 1985 (LEP 1985), as shown in **Figure 3** below.

DE19.97

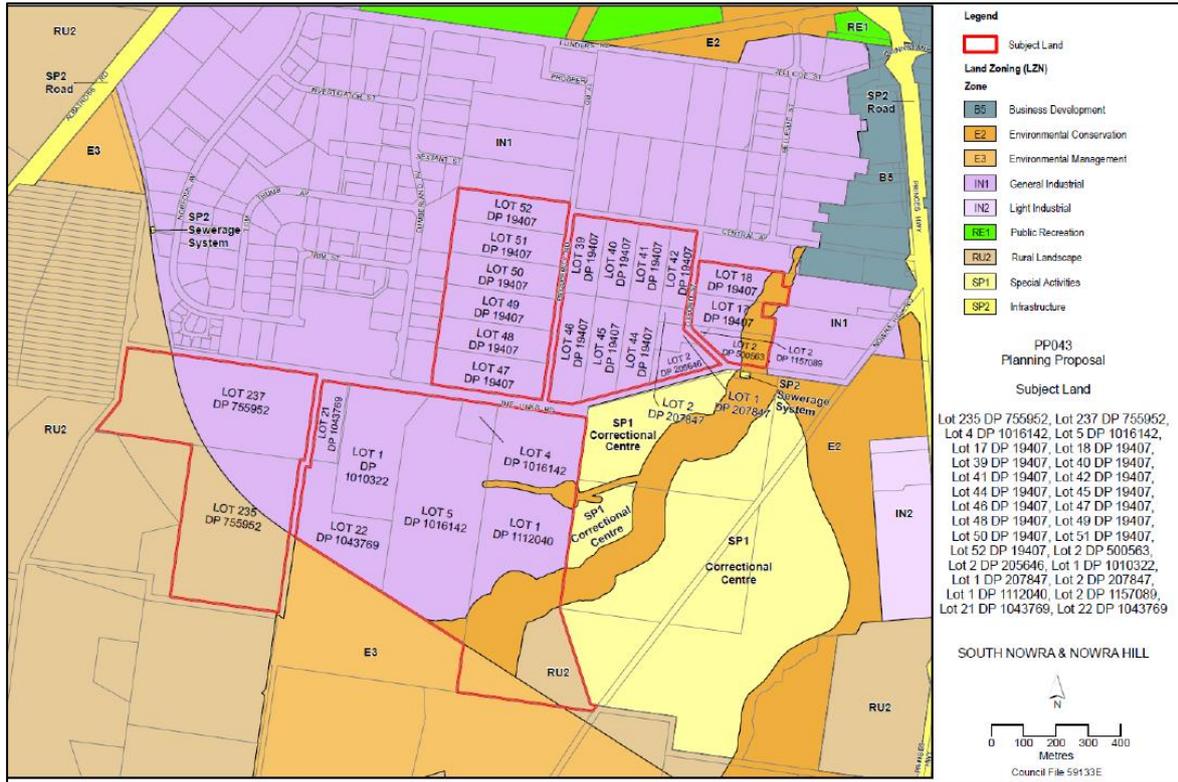


Figure 2 – Land Use Zoning, Shoalhaven LEP 2014

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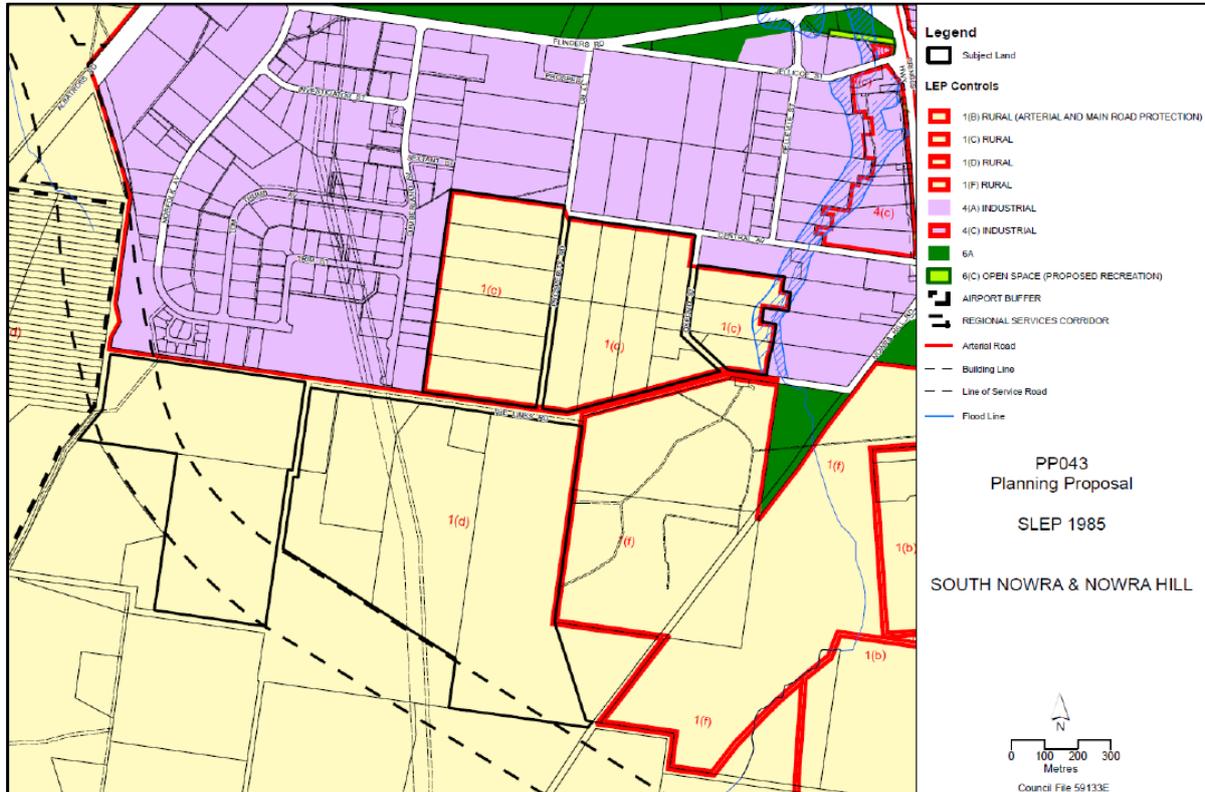


Figure 3 – Land Use Zoning, Shoalhaven LEP 1985

## Planning Proposal & Gateway Determination

The PP (**Attachment 2**) seeks to permit/confirm a ‘dwelling house’ as an ‘additional permitted use’ on each lot within the subject land, under Clause 2.5 of the Shoalhaven LEP 2014.

The PP also currently proposes a ten-year time limit for development consent to be granted under Clause 2.5. This is a balanced approach that recognises the current situation and also the strategic future direction for the land. It is suggested that this ‘time limit’ can be increased in the future if required. It is not recommended to initially set a longer ‘time limit’ as it may unnecessarily discourage industrial investment, and that is inconsistent with the zoning of the land and its future strategic direction. It is stressed that irrespective of the outcome of the PP, including any form of a ‘sunset clause’ or ‘time limit’ will be of no impact on the ‘existing use rights’ that exist in accordance with the Act, now or in the future.

In accordance with the Council resolution the PP was prepared and submitted to the NSW Government for Gateway determination. The determination was received on 19 June 2019.

Council is authorised to be the local plan making authority for the PP, subject to conditions as detailed in the Gateway determination. The timeframe for completing the LEP amendment is 12 months.

Relevant documents, including but not limited to the PP and the Gateway determination, can be viewed on the NSW Government’s LEPs Online [Website](#).

## Public Agency Engagement

The Gateway determination includes a requirement to consult with NSW Rural Fire Service (RFS) prior to the public exhibition of the PP.

This has occurred and NSW RFS raised no objections to the proposal subject to a requirement that any future development of the land complies with *Planning for Bushfire Protection 2006* or any subsequent version.

The response from NSW RFS is provided as **Attachment 1**.

## Community Engagement

The purpose of this report is to seek Council endorsement to publicly exhibit the PP, in accordance with the Gateway determination, requirements of the Act, and Council’s Community Engagement Policy. This will occur for a minimum of 28 days, as soon as possible following the Council resolution.

The PP will be updated to include the results of the consultation with NSW RFS, prior to public exhibition.

The public exhibition will provide a formal opportunity for the affected landowners to comment on the detail of the PP, including the proposed time limitation/‘sunset’ clause.

## Policy Implications

The subject land is currently zoned industrial and provides a longer-term supply of employment land in the Nowra-Bomaderry area. This longer-term bank of land is acknowledged as being regionally significant in the Illawarra-Shoalhaven Regional Plan.

The PP provides a shorter-term confirmation that the existing residential uses can continue in the meantime with some security.

**Financial Implications**

The PP is being managed within the existing Strategic Planning budget.

**Risk Implications**

The resultant outcome from the PP may have impacts on the uptake of the subject land for industrial uses, which is the strategic and desired future use of the land.

DE19.97



**NSW RURAL FIRE SERVICE**



The General Manager  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Your reference: 59133E (D19/210030)  
Our reference: R19/625  
30 July 2019

**Attention:** Thomas Trezise  
[council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au)  
CC - [thomas.trezise@shoalhaven.nsw.gov.au](mailto:thomas.trezise@shoalhaven.nsw.gov.au)

Dear Sir,

**South Nowra Industrial Expansion Area**

Reference is made to Council's correspondence dated 25/6/2019 seeking comment in relation to the above Planning Proposal which seeks to:

- Amend *Schedule 1 Additional Permitted Uses* (and the associated Additional Permitted Uses Map) of Shoalhaven Local Environmental Plan 2014 (SLEP 2014) to confirm the allowance of a *dwelling house*, as an *additional permitted use on particular land*, in accordance with Clause 2.5 of SLEP 2014, for a limited time period (10 years). Impacting the following land:

Lot 52, DP 19407, 21 Prosperity Road;	Lot 51, DP 19407, 25 Prosperity Road
Lot 50, DP 19407, 29 Prosperity Road	Lot 49, DP 19407, 33 Prosperity Road
Lot 48, DP 19407, 37 Prosperity Road;	Lot 47, DP 19407, 148 The Links Road;
Lot 46, DP 19407, 106 The Links Road	Lot 45, DP 19407, 92 The Links Road
Lot 44, DP 19407, 80 The Links Road	Lot 42, DP 19407, 8 Central Avenue
Lot 41, DP 19407, 6 Central Avenue	Lot 40, DP 19407, 4 Central Avenue
Lot 39, DP 19407, 2 Central Avenue	Lot 2, DP 500563, 41 Oxford Street
Lot 2, DP 205646, 40 Oxford Street	Lot 2, DP 1157089, 33 Oxford Street
Lot 1, DP 207847, 32 Oxford Street	Lot 17, DP 19407, 21 Oxford Street
Lot 2, DP 207847, 20 Oxford Street	Lot 18, DP 19407, 13 Oxford Street
Lot 237, DP 755952, 183 The Links Road	Lot 235; DP 755952, the Links Road
Lot 21, DP 1043769; 181 The Links Road	Lot 22, DP 1043769, 175 The Links Road
Lot 1, DP 1010322, 167 the Links Road	Lot 5, DP 1016142, 147 The Links Road
Lot 4, DP 1016142, 129 The Links Road	Lot 1, DP 1112040, 109 The Links Road

The New South Wales Rural Fire Service (NSW RFS) has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 9.1 of the *Environmental Planning and Assessment Act 1979*.

**Postal address**

NSW Rural Fire Service  
Planning and Environment Services  
Locked Bag 17  
GRANVILLE NSW 2141

**Street address**

NSW Rural Fire Service  
Planning and Environment Services (East)  
4 Murray Rose Avenue  
Sydney Olympic Park NSW 2127

T 1300 NSW RFS  
F (02) 8741 5433  
E [records@rfs.nsw.gov.au](mailto:records@rfs.nsw.gov.au)  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)



The objectives of the direction are:

- (a) *to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*
- (b) *to encourage sound management of bush fire prone areas.*

The direction provides that a planning proposal must:

- (a) *have regard to Planning for Bushfire Protection 2006,*
- (b) *introduce controls that avoid placing inappropriate developments in hazardous areas, and*
- (c) *ensure that bushfire hazard reduction is not prohibited within the APZ.*

Based upon an assessment of the information provided, including advice that 24 of the 28 lots subject to the planning proposal already possess a dwelling entitlement. As such the NSW RFS raises no objections to the proposal subject to a requirement that the future development of the land complies with *Planning for Bush Fire Protection 2006* or any subsequent version. This includes, but is not limited to:

- > Provision of Asset Protection Zones (APZs) within the proposed lots in accordance with Table A2.4;
- > Access to be provided in accordance with the design specifications set out in section 4.1.3; and,
- > Services to be provided in accordance with section 4.1.3.

If you have any queries regarding this advice, please contact Anna Jones, Development Assessment and Planning Officer, on 1300 NSW RFS.

Yours sincerely,



Martha Dotter  
A/Team Leader, Development Assessment and Planning  
Planning and Environment Services (South)

## DE19.98 Urban Greening Strategy and Voluntary Compensatory Tree Planting Policy

**HPERM Ref:** D19/266523

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

**Attachments:**

1. Urban Greening Strategy - Summary (under separate cover) [⇒](#)
2. Sutherland Shire Council Urban Tree and Bushland Policy (under separate cover) [⇒](#)
3. Wollongong City Council Urban Greening Strategy 2017-2037 (under separate cover) [⇒](#)
4. Urban greening strategies reviewed [↓](#)

### Purpose / Summary

To provide options and clarification from Council on;

- a “tree replacement policy” in line with those of other Councils (MIN18.955) and
- the Notice of Motion (MIN19.330) for Council to work with the building and development industry to establish a compensatory tree planting policy.

A tree replacement policy would assist to halt the loss of the urban tree canopy and reinstate tree cover in the city that has been reduced over time due to development pressure.

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

That Council

1. Commence development of an overarching urban greening strategy in-line with other Australian and regional Councils to meet objectives within the Community Strategic Plan 2027, Integrated Strategic Plan 2018, Delivery Program and Operational Plan 2019-2020 and Illawarra Shoalhaven Regional Plan, that includes a compensatory tree replacement policy (except where a development application has triggered entry into the NSW Biodiversity Offset Scheme).
2. Hold a Councillor workshop so that Councillors can provide input into the development of the draft Strategy and Policy.
3. Following the Councillor workshop report back to Council the draft Strategy and Policy for endorsement for public exhibition.
4. Endorse the NSW LGA *Increasing Resilience to Climate Change* grant applied for in September 2019 to enable Council to undertake a tree canopy audit within urban areas to determine tree canopy and land use distributions, vegetation change and priority areas for potential planting and urban greening to assist in implementation of Council resolution (MIN18.955).

### Options

1. As recommended.

Implications: This will allow Council resources to be allocated to hold a Councillor workshop to guide the framework, objectives and preparation of an overarching urban greening strategy which would include a compensatory tree replacement policy and allow various options to be considered along with the broader community. This approach

will address multiple objectives and strategies outlined in the Community Strategic Plan 2027, Integrated Strategic Plan 2018, Delivery Program and Operational Plan 2019-2020 and Illawarra Shoalhaven Regional Plan 2036 as well as the NSW Government's Climate Change Policy Framework.

2. Partially adopt recommendations as above.

Implications: This would depend on the nature of any recommendation.

3. Not adopt any recommendations.

Implications: potential for a net loss of tree canopy and associated impacts

4. Alternative recommendation.

Implications: Unknown.

## Background

Council officers have been reviewing the work of other councils (see attachments 1 to 4), with the aim of developing an overarching urban greening strategy and compensatory tree planting policy in-line with Council resolutions as follows;

At the Ordinary meeting of Council on 28 May 2019 Council resolved (MIN19.330) that:

*Council staff work with the building and development industry in an endeavour to establish a voluntary compensatory tree planting policy. The meaningful negotiations would include, but not be restricted to, the following:*

1. *Pre-clearing tree audit.*
2. *A commitment to a one-for-one replacement of trees whose height is greater than an agreed height.*
3. *Careful selection of replacement sites such as council reserves and private land whose owners have indicated a desire to participate in the programme.*
4. *An acknowledgement of the "45-degree rule" and the respect of neighbouring properties regarding future overshadowing at the planting sites could be factored into the discussion.*
5. *Publicising the initiative giving praise to the industry as to the way that they optimistically committed to the voluntary code.*
6. *The General Manager provide a report back with the matters raised in the General Managers Note contained in the report.*

At the Strategy & Assets Committee meeting on 11 December 2018, the Committee resolved (MIN18.955) that Council:

1. *Receive the St Georges Basin urban canopy study area report prepared by the University of Technology Sydney for information.*
2. *Review relevant current policies, with the exception of the 45-degree rule, to consider opportunities to better protect and enhance the urban tree canopy.*
3. *Consider a city wide, or larger area audit to better inform Council on the economic, social and environmental value of trees in urban areas. (Refer to 2019/20 Budget considerations.)*
4. *Consider a subsequent report on the detail of a possible "tree replacement policy" in line with those of other Councils and the previous Council resolution (MIN18.733).*

Shoalhaven has a diverse range of scenic landscapes with the tree canopy (in both urban and natural areas) adding to the character and attractiveness of the area. The Shoalhaven's natural assets, liveability and amenities are a key factor driving tourism, business, development and investment. Trees are critical in the continuation of healthy urban environments through ecological, social and economic functions.

However, nationally, there is tree canopy loss in urban areas as a result of development activities (e.g. new subdivisions) or tree removals authorised via exemption provisions relating to tree removal.

Council staff have investigated the issues raised in the above resolutions and seek a resolution of Council to present options and to clarify direction in response to those resolution at a Councillor workshop in the first instance.

With respect to investigations and reviews undertaken to date, there is currently no local strategic approach to replacing trees on public or private landholdings as most fall outside the NSW Biodiversity Management Act. Species selection, specifications and site-specific design for new or replacement plantings across all land types are the type of issues that would need to be considered.

Other Councils (both metropolitan and regional) have implemented urban forest/greening strategies to help reduce tree loss and retain tree canopy within urban centres (see attachment 1) in response to reports such as the Technical guidelines for urban green cover in NSW (OEH, 2015) and the Enabling Adaptation Reports (OEH, 2017).

Sutherland Shire Council has implemented a tree replacement policy of 4:1 for single dwellings, 8:1 for dual occupancies, medium and high density development and commercial development which can be planted either on council owned lands or on the applicant's property as part of an Urban Tree and Bushland Policy in order to stem the loss of tree canopy (SSC, 2019).

Wollongong City Council has an existing Tree Management Permit policy which allows for removal of trees on private lands under application via a permit system (WCC, 2013). They have recently developed an Urban Greening Strategy to create a coordinated approach to managing urban vegetation (WCC, 2017). This provides an overarching strategy in order to achieve a number of interconnected community goals and objectives set out in strategic plans and delivery programs (see attachment 3).

### **Community Engagement**

Further consultation with business and community would be anticipated with the proposed adoption of tree replacement policy as part of an encompassing Urban Greening Strategy.

### **Policy Implications**

Adopting a Tree Replacement Policy as part of an overall Urban Greening Strategy satisfies the objectives of Council's three primary strategic and operational plans and the Shoalhaven Illawarra Regional Plan.

### **Financial Implications**

The economic value of trees is not considered at present in existing policies. Assessment of trees as an economic asset in line with other Councils around Australia including those in our region, will help to reinforce the importance of trees within the Shoalhaven. To implement Council resolution, MIN18.955 above, a Local Government NSW (LGNSW) *Increasing Resilience to Climate Change* grant was applied for on 2 September 2019. If successful this will provide funding to enable Council to undertake a tree audit across the Shoalhaven LGA to determine tree canopy and land use distributions,

vegetation change and priority areas for tree planting and urban greening across. This work will inform future development of a strategy and policy and provide data to inform various future Council planning including the CSP and DPOP. The grant applications are likely to be determined by the end of 2019.

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## DE19.99 NSW Heritage Grants 2019-2020: Shoalhaven Local Heritage Assistance Fund

HPERM Ref: D19/289172

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

### Purpose / Summary

Present the applications received for the Shoalhaven Local Heritage Assistance Fund for the 2019-2020 financial year and seek endorsement to allocate funding to eligible applicants.

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

That Council endorse the allocation of the Shoalhaven Local Heritage Assistance Funds for the 2019-2020 program as listed in **Table 1** within the report; and reallocate any declined offers amongst the remaining successful and eligible applicants if required.

### Options

1. Endorse the proposed allocation of Shoalhaven Local Heritage Assistance Funds for the 2019-2020 program as listed in **Table 1** in this report.

Implications: This will see the allocated budget amount being used on appropriate local heritage projects in accordance with the established process.

2. Adopt an alternate recommendation.

Implications: This option is not preferred as it would not be in keeping with the established process for these grants, which involves seeking applications from interested owners.

### Background

Council has a long-term commitment to local heritage, demonstrated through the ongoing support of the NSW Heritage Grants. The grant funding provided by the NSW Office of Environment and Heritage (OEH) assists Council to employ a Heritage Advisor and to 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 property owners is clearly beneficial to the broader community and visitors to the area. These grants, although small, show that Council and the NSW State 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 Grant funding was sought under the Local Heritage Places (Shoalhaven Local Heritage Assistance Fund). Council was offered and has accepted a grant of up to \$5,500 per annum (ex GST) for 2019-2020.

### Shoalhaven Local Heritage Assistance Fund - Process

An advertisement was placed in local newspapers on 10 July 2019, calling for applications from owners of heritage items to participate in the 2019-2020 Shoalhaven Local Heritage Assistance Fund Grant Program. Council also wrote to potential applicants who had previously expressed an interest in the program to inform them of the call for applications.

At the close of the application period on 9 August 2019, thirteen (13) applications were received. As Council does not currently have a Heritage Advisor, the applications were assessed by Council staff and peer reviewed by a heritage consultant (Louise Thom, Council's most recent Heritage Advisor), in accordance with OEH guidelines.

It has been deemed that nine (9) of the thirteen (13) applications qualified for grant funding, with the successful applications having a total estimated value of \$91,191.33 ex GST. Details of the recommended successful applications together with the recommended grant amounts (total of \$22,500 ex GST) are shown in **Table 1**.

The four (4) unsuccessful applications were considered ineligible for the following reasons:

- 51 and 53 Queen Street, Berry (dwellings) – Non-listed heritage items. Funding is primarily used to assist LEP heritage listed items as a priority over non-listed heritage items.
- 71 Princes Highway, Milton (former Town Hall) – The proposal is for a new all-weather noticeboard for the Milton Ulladulla Historical Society, rather than conservation or maintenance of an actual item.
- 137 Princes Highway, Milton (dwelling) – The proposal is for the repair of the existing front fence which does not appear to be original and therefore has a very low significance. The fence currently blocks views to the dwelling and could be said to be intrusive. Repairing the fence as is would potentially not be a good conservation outcome.

The priorities for allocation of funding are based on the assessment criteria noted on the grant application. A grant assessment matrix is also used to score applications, based on their merit. For the current round, grant applications are welcomed from across Shoalhaven.

Given that OEH recommends councils consider short term and longer-term funding priorities for the local heritage fund, in future, Council could consider a more targeted approach for particular area/s of strategic importance for heritage grant applications. This approach could support wider strategic planning projects.

**Table 1: Shoalhaven Local Heritage Assistance Fund Program – Proposed Grant Allocation – 2019-2020**

Project Location	Heritage Item	Description of Project	Project Cost (ex GST)	Suggested Grant Amount
3 Pulman Street, Berry	Colonial weatherboard cottage (former curate's cottage)	Painting front of house	\$25,860.00	\$2,500.00
117 Pyree Lane, Pyree	"Somerset House"— Federation weatherboard farmhouse and trees	Verandah repairs	\$6,930.00	\$1,600.00
13 Pulman Street, Berry	Farmhouse and Broughton Creek former grist mill (former Tindal's farm).	Replace 5 aluminium windows and fan light with original style cedar windows	\$10,450.00	\$3,000.00
1180 Bolong Road, Coolangatta	Former Berry Estate brick schoolmaster's residence including	Re-gutter schoolmaster's residence and	\$5,272.70	\$2,350.00

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	garden and former weatherboard Berry Estate school	removal/grinding of Camphaloral tree		
22-24 Jervis Street, Nowra	Victorian Italianate residence and garden	Installation of garden edging, entrance pathway, plantings and removal of TV aerial	\$7,060.45	\$2,400.00
94B Tannery Road, Berry	“Woodside Park”—dairy farm complex and gatehouse	Repair, reglaze and paint downstairs windows	\$8,454.55	\$1,900.00
175 Jindy Andy Lane, Numbaa	“Edinglassie Lodge” – Federation Weatherboard Farmhouse	Repairs to verandah post, deck, bearers, joints and guttering	\$8,253.64	\$2,700.00
138 Moss Vale Road, Kangaroo Valley	Relocated Victorian weatherboard school (former Beaumont School)	Surface water diversion and wombat exclusion measures.	\$9,900.00	\$3,000.00
70 Wason Street, Milton	Victorian weatherboard worker’s cottage	Replace roofing, including capping, flashing, gutter and battens	\$9,010.00	\$3,050.00
<b>TOTAL</b>			<b>\$102,986.33 ex GST</b>	<b>\$22,500.00 ex GST</b>

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The above recommended grant amounts have been calculated based on a base score attributed to the relevant works based on the grant assessment matrix and then calculated as a percentage of total funds available.

It is noted that successful applicants are required to match the grant amount offered by Council on a ‘dollar-for-dollar’ basis and must complete the required works by Friday 27 March 2020.

### Community Engagement

The Shoalhaven Local Heritage Fund Program 2019-2020 was advertised in local newspapers on 10 July 2019. A link was provided to Council’s website for relevant information on eligibility and assessment criteria. Direct advice was also provided to people who had previously expressed an interest in the program.

### Financial Implications

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

For the 2019-2020 financial year, the recommended overall amount of funding for the Shoalhaven Local Heritage Assistance Fund is \$22,500 and Council’s current budget allocation is \$21,315. This means initially there will be a shortfall of \$1,185 which will need to be allocated to this budget. This will be managed within the Strategic Planning budget and will be recouped when OEH reimburse the grant funding to Council.

Council should also ensure that at least a similar level of funding is provided in the 2020-2021 financial year to cover Council's required financial commitment for that period (a grant of up to \$5,500 has been accepted by Council for this period).

## DE19.100 Nowra-Bomaderry Retail Review - Exhibition Outcomes and Proposed Implementation

**HPERM Ref:** D19/293966

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

**Attachments:** 1. Assessment recommendations, submission feedback and staff comments/recommendations [↓](#)

### Purpose / Summary

Present an overview of the submissions received in response to the public exhibition of the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* that was prepared for Council. The report also identifies the options available to implement the recommendations of this assessment and seeks Council's endorsement on a way forward.

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

That Council:

1. Commission a detailed, city-wide retail supply and demand analysis modelled on forecast future population growth to inform its strategic land use planning activities.
2. Prepare a Planning Proposal to enable consideration of amendments to *Shoalhaven Local Environmental Plan 2014* to:
  - a. Introduce a new local provision to support retail activity in Nowra CBD.
  - b. Change the zone objectives for B3 Commercial Core and B4 Mixed Use zones to support retail activity in Nowra CBD, and
  - c. Exclude general and speciality shops from the South Nowra bulky goods retail area.
3. Commence a detailed project to examine the location, size and function of the planned retail centres intended to service the Moss Vale Road Urban Release Areas and the land use zones associated with the southern centre.
4. Identify Planning Priorities in its Local Strategic Planning Statement to:
  - a. Develop a city-wide retail strategy to identify the amount and type of retail floor space required across all retail zones and centres, and
  - b. Develop place-based strategies to guide the future growth and development of Nowra CBD and Bomaderry.

### Options

1. As recommended.

Implications: This option presents a framework of future strategic land-use planning work to implement selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment*.

2. Make an alternative resolution that recognises the limitations of our current evidence base to inform retail planning and exclude (in part or full), the recommendation to amend current planning controls to support retail activity in Nowra CBD (Recommendation 2, parts a-c).

Implications: This option provides time to undertake an analysis of retail demand and supply modelled on future population growth and develop a broader retail strategy. This work will provide a robust evidence base to inform a revisit of this component of the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* recommendations.

3. Not proceed with the implementation of selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment*.

Implications: This option is open to Council but would result in no action on the Assessment that has been undertaken arising from out of centre retail approvals at Bomaderry.

## Background

In 2016, Council commissioned independent consultants David Broyd Consulting Services & Urbacity to prepare the [\*Nowra-Bomaderry Centres – Retail & Centres Planning Assessment\*](#). This assessment reviewed the existing planning controls and hierarchy of existing/proposed retail centres across the Nowra-Bomaderry area to:

1. Determine if the existing hierarchy established in the adopted *Nowra-Bomaderry Structure Plan* (2006) remains valid or if an alternative hierarchy would better respond to current and future retail scenarios.
2. Identify measures to maintain or strengthen the preferred hierarchy, principally through changes to planning and development controls.

The review was triggered by the approval of two significant, out-of-centre retail developments in Bomaderry adjacent to the Princess Highway in 2016 (Woolworths and ALDI supermarkets). These supermarkets, when constructed, will provide the community north of Shoalhaven River additional shopping options. However, the supermarket locations are not consistent with the adopted Structure Plan and will potentially deliver an additional centre or centres not anticipated in the planned hierarchy. These supermarkets and any associated outcomes could have a significant impact on the long-term viability of existing and planned retail centres in the Nowra-Bomaderry area.

The detailed Assessment, completed in 2017, provides an overview of the strategic context and statutory planning controls for retail development. It reviews the strength and relationship of existing and proposed centres, including Nowra CBD, and provides a comparative analysis of similar centres in Maitland, Coffs Harbour, Port Macquarie and Shellharbour. The assessment concludes with a detailed and comprehensive set of recommendations to possibly guide future strategic land-use planning activities.

Whilst the Assessment has been completed, Council has not yet endorsed any of its findings or recommendations. The Assessment has however been considered by Council on several occasions. This included a Council workshop to prioritise the recommendations into short, mid, and long-term actions, and examine options to implement the recommendations.

The recommendations can be summarised as follows:

- Develop a vision to guide the future development of the CBD.
- Develop a new Retail Centres Policy.
- Incorporate elements of the *Nowra-Bomaderry Structure Plan* into the Local Strategic Planning Statement.
- Review the planning controls applying to retail and business zones across the Nowra-Bomaderry area.
- Amend planning controls to require new retail developments to demonstrate how they complement and support retail activity in the CBD.

- Review development controls for the CBD to identify opportunities to improve the public domain.
- Investigate the development of Council land in the CBD for a variety of uses to help increase economic activity.
- Review the size and location of the planned super-market based local centres previously identified to service the Moss Vale Road Urban Release Areas.
- Develop a strategy to guide the revitalisation of Bomaderry.

On 14 August 2018, Council resolved to publicly exhibit the Assessment and the rationalised set of priorities arising from the Council workshop process. The exhibition took place between November 2018 and January 2019.

### Community Consultation Outcomes

Seventeen (17) submissions were received from a range of property owners, retail companies/representative groups, community groups, and individuals. Copies of the submissions will be available in the Councillors Room for review prior to the meeting.

The submissions indicated general support for the exercise recognising the need to facilitate increased economic activity in the CBD, including through public domain improvements, and to help respond to the potential impacts of unplanned out-of-centre retail developments.

The following table summarises the key feedback.

Submitter	Summary
<b>Business owners/Landowners</b>	<ul style="list-style-type: none"> <li>• Encourage the implementation of as many of the recommendations as possible.</li> <li>• Identify impacts of out-of-centre retail developments, ad-hoc decision making, and the absence of a coordinating strategy.</li> <li>• Recognise the contribution of poor access, low quality facades, and anti-social behaviour to the decline of the CBD.</li> <li>• Request the reprioritisation, from medium to high, of the review of the proposed retail centres associated with the Moss Vale Road Release Areas.</li> </ul>
<b>Pride of Bomaderry (Community Consultative Body)</b>	<ul style="list-style-type: none"> <li>• Support the recommendations relating to the Bomaderry centre.</li> <li>• Raise concerns about economic decline of Bomaderry and the contribution of historic planning decisions to this decline.</li> <li>• Request the reprioritisation, from low to high, of future strategic planning review activities for the Bomaderry centre.</li> </ul>
<b>Large format retailers</b>	<ul style="list-style-type: none"> <li>• Express caution about the proposed prohibition of shops in the South Nowra bulky goods retail area.</li> <li>• Oppose proposed measures to limit the size of shops in mixed-use areas.</li> <li>• Actions to strengthen retail activity in one centre should not be to the detriment of other centres.</li> <li>• Request flexible planning controls to allow retailers to expand and evolve in response to retailing preferences.</li> <li>• The planned extension of the Stockland shopping centre should be integrated with CBD.</li> <li>• Support recommendations to promote the primacy of Nowra CBD and strengthen identified retail centres.</li> </ul>

**Individuals**

- Nowra CBD and Bomaderry are threatened by out-of-centre retail developments.
- Council should support small, local businesses in its decision making.
- Oppose a new multiplex cinema in Nowra CBD.
- Raise concerns about the development of a new Discount Department Store.

**Attachment 1** aligns the feedback received in response to the public exhibition with the recommendations of the Assessment. It also provides a detailed comment against each.

**Proposed Next Steps**

The implementation of all or a selection of the recommendations provided by the Assessment requires a strategic, coordinated approach to identify priorities. This will ensure an appropriate focus and resourcing of actions to ensure effective and accurate implementation. The Assessment and Council’s subsequent prioritisation exercise identified three priority categories: short (6 to 12 months), mid (1 to 2 years) and long-term (2+ years) actions. The proposed next steps will also require integration into the existing Strategic Planning Works Program.

Short-term Actions

The Assessment relies on the retail demand data prepared to inform the development of the *Nowra-Bomaderry Structure Plan*. The Assessment did not refresh this 2007/2008 data with a contemporary analysis of current or future retail demand modelled on forecast population growth – a fundamental evidence base to inform strategic land use planning activities for retail activities and centres.

To help us plan to provide our communities with the shops and services they need and support the growth of our existing retail centres into active, vibrant and attractive places we need to understand the amount, type and location of new retail space required over the next 20-years. The primary recommendation of this report is for Council to commission a detailed, city-wide retail supply and demand analysis modelled on forecast future population growth to inform its strategic land use planning activities. Such analysis will help:

1. Develop a coordinated strategy for retail planning, including the potential establishment of a centre’s hierarchy, across Shoalhaven (not just Nowra-Bomaderry).
2. Identify the amount and type of future floor space required across all retail zones, including discount department stores and a multiplex cinema.
3. Create place-based strategies to guide the future growth, development and revitalisation of existing retail centres, including the CBD.
4. Review the appropriateness of current planning and development controls, acknowledging they were established in 2014.
5. Revisit the location and size of planned, but not yet delivered, retail centres to ensure they efficiently service new communities.
6. Ensure effective and accurate implementation of the recommendations made by the Assessment.

Other short-term actions include amending current planning controls to:

1. Support a critical mass of retail and economic activity in the CBD - a recognised regional centre providing jobs, shops and services to Illawarra-Shoalhaven communities, and

2. Confirm the future development of the South Nowra bulky goods retail area for bulky goods retailers, reserving land for shops requiring a large floor area.

This will involve:

1. Introducing a new local clause into the LEP to require proponents of out of centre retail development to demonstrate how they complement and support retail activity in the Nowra CBD and explain/outline why the proposed development cannot take place in the CBD (e.g. lack of suitable or appropriately sized site, unreasonably priced land, inability to negotiate with landowners etc.).
2. Changing the zone objectives for the B3 Commercial Core and B4 Mixed Use zones to complement the new clause.
3. Amending the permissibility of the B5 Business Development zone applied to the South Nowra bulky goods retail area to exclude new general and speciality shops (e.g. clothing and grocery stores). This would not affect the operation of already approved shops or complementary uses such as service station or takeaway food and drink premises.

Current work on revising current and drafting new development controls for various precincts in and around Nowra CBD will also continue.

#### Mid to Long-term Actions

The completion of the recommended retail supply and demand analysis will allow for the development of a broader retail strategy. This strategy can consider the changing nature of the retail industry, which includes increasing competition from online retailers and the NSW Government's evolving retail planning policy. It will guide future strategic planning activity to ensure the required amount of retail floor space is delivered in the right locations. It may also identify a centres hierarchy to prioritise future planning work for existing centres, examining options for expansion and renewal.

A good understanding of retail demand and supply and the many factors affecting retail planning also allows the preparation of place-based strategies for Nowra CBD and Bomaderry. There is a clear need to develop an overarching strategy to guide the continued development and revitalisation of Nowra CBD. This work will involve the community and will be guided by a vision developed with stakeholders. Such a strategy will ultimately be delivered through revised planning and development controls. It will also examine the ways Council can use its property to help increase economic activity through direct residential and commercial development and other contributory elements open space or car parking. Bomaderry also requires an examination of its future role and the opportunities available to revitalise this centre.

The inclusion of these high-level actions in the new Local Strategic Planning Statement will provide an appropriate mechanism to ensure they are given weight, adequately resourced, and their implementation monitored. This Statement, which is currently being developed, will set a City-wide vision, planning priorities and actions to guide Council's strategic land-use planning activities for the next 20 years.

Current planning work for the Moss Vale Road North Urban Release Area provides the best opportunity to examine the size, location and function of the centres planned to service both Moss Vale Road Urban Release Areas (North and South). Current work is focused on refining the planning controls applying to the northern release area. There is thus a need to undertake a related project to review the commercial/school/recreation zone adjacent to the southern release area. This does need to occur in a timely manner given what is occurring in this general area.

### Other Actions

There are several other recommendations which would benefit from a contemporary retail analysis. These include the proposals to limit retail floor space or the size of shops in mixed use zones and the rezoning of the mixed-use area adjacent to the Princes Highway in Bomaderry.

### **Conclusion**

This report presents a framework of future strategic land-use planning work to implement selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* and address the feedback received in response to the public exhibition of this document. It is recommended that Council:

1. Commission a detailed, city-wide retail supply and demand analysis modelled on forecast future population growth to inform its strategic land use planning activities.
2. Prepare a Planning Proposal recommending amendments to *Shoalhaven Local Environmental Plan 2014* to:
  - a. Introduce a new local provision to support retail activity in Nowra CBD.
  - b. Change the zone objectives for B3 Commercial Core and B4 Mixed Use zones to support retail activity in Nowra CBD, and
  - c. Exclude general and speciality shops from the South Nowra bulky goods retail area.
3. Examine the location, size and function of the planned retail centres intended to service the Moss Vale Road Urban Release Areas.
4. Identify Planning Priorities in its Local Strategic Planning Statement to:
  - a. Develop a city-wide retail strategy to identify the amount and type of retail floor space required across all retail zones and centres, and
  - b. Develop detailed place-based strategies to guide the future growth and development of Nowra CBD and Bomaderry.

### **Community Engagement**

The *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment* was publicly exhibited between November 2018 and January 2019. A total of seventeen submissions were received in response to this exercise. All the recommendations are subject to processes with their own community participation requirements. A city-wide retail strategy and placed-based strategies for the CBD and Bomaderry will need to be informed by various stakeholders, while Planning Proposals will be exhibited in accordance with relevant Gateway Determinations.

### **Policy Implications**

This report presents a framework of future strategic land-use planning work to implement selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning Assessment*. This work is required to continue to plan for the growth and development of existing retail centres to ensure Shoalhaven's communities are provided with the shops and services they need.

### **Financial Implications**

This report presents a framework of future strategic land-use planning work to implement selected recommendations from the *Nowra-Bomaderry Centres – Retail & Centres Planning*

*Assessment.* The implementation of his framework will need to be managed through resource allocation and prioritisation of the existing Strategic Planning Works Program. These impacts can be considered once Council determines the action it will take.

**Risk Implications**

No implications at this stage.

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
1. Develop a vision for Nowra City Centre.	No specific comments but general support for all recommendations promoting the primacy and revitalisation of Nowra City Centre.	<p><b>Supported:</b> A place-based strategy guiding the development and growth of Nowra City Centre should be developed in consultation with the community and relevant stakeholders. The Local Strategic Planning Statement, currently being prepared in consultation with the community, can action this recommendation.</p> <p><i>Recommendation: The Local Strategic Planning Statement action the development of a vision for Nowra City Centre.</i></p> <p><i>Mid-Term Priority 12-24 months.</i></p>
2. Develop a Centres Policy to reaffirm the primacy of Nowra City Centre, to be given legal effect via amendments to <i>Shoalhaven Local Environmental Plan 2014</i> .	No specific comments but general support for all recommendations promoting the primacy of Nowra CBD and strengthening identified centres.	<p><b>Supported:</b> Council needs to update its existing retail and centres hierarchy policy framework set by the <i>Nowra-Bomaderry Structure Plan</i>. This will provide landowners, business operators, developers, investors and the broader community a clear understanding of Council's policy position. Without an updated policy there is a risk of undermining the economic strength and development of Nowra City Centre and other commercial centres. The Local Strategic Planning Statement, currently being prepared in consultation with the community, can action this recommendation.</p> <p><i>Recommendation: The Local Strategic Planning Statement action the development of a revised Retail &amp; Centres Hierarchy Policy.</i></p> <p><i>Mid-Term Priority 12-24 months.</i></p>
3. That the Centres Policy establish a hierarchy of centres.	As above.	As Above
4. That the Centres Policy recognise the nexus between high performing retail and social, cultural and economic performance in Nowra City Centre.	As above.	As above.
5. That Council define and differentiate between urban and	No comments.	<p><b>To be considered:</b> There is limited scope to include new centres-based definitions and controls in <i>Shoalhaven Local Environmental Plan 2014</i> because of the inflexibilities of the Standard Instrument Template for Local Environmental Plans. The recommended Centres</p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
non-urban “Centres” in the LEP Dictionary.		<p>Policy provides an opportunity to implement this consideration and potentially identify amended development controls for each centre.</p> <p><i>Recommendation: The Local Strategic Planning Statement action the development of a revised Retail &amp; Centres Hierarchy Policy.</i></p> <p><i>Mid-Term Priority 12-24 months.</i></p>
<p>6. Review relevant sections of the Nowra-Bomaderry Structure Plan to be a “Local Strategic Planning Statement” with a focus on:</p> <ul style="list-style-type: none"> <li>a. Centres Policy;</li> <li>b. Program for urban release areas;</li> <li>c. Infrastructure &amp; development planning;</li> <li>d. Implementing the Study recommendations;</li> <li>e. Street frontage DCP controls for all new centres.</li> </ul>	<p>No specific comments but general support for actions to strengthen identified centres and for better street frontage and urban design controls in centres.</p> <p>Pride of Bomaderry CCB noted the Structure Plan actions for Bomaderry are dated given recent transport upgrades and the Woolworths and Aldi supermarket approvals.</p>	<p><b>Supported:</b> Council is currently preparing its Local Strategic Planning Statement which will set out the community’s vision, planning priorities, and actions for land use planning for the next 20 years. The Nowra-Bomaderry Structure Plan is a key document informing the development of the Statement.</p> <p><i>Recommendation: The Local Strategic Planning Statement incorporate relevant elements of the Nowra-Bomaderry Structure Plan.</i></p> <p><i>Short-term Priority 6-12 months.</i></p>
<p>7. Rezone the 12ha of B4 Mixed Use zoned land at Bomaderry (west of Princes Highway) to a combination of R3 Medium Density Residential (approx. 9ha) and B5 Business Development (approx. 3ha). The exact apportionment of zones R3 and B5 to be determined by site-specific planning/ urban design studies.</p>	<p>No specific comments but broad recognition of threat to existing centres by out-of-centre retail developments.</p>	<p><b>To be considered:</b> Subject to detailed analysis of retail demand and supply and consultation with landowners. This work may identify a different range and extent of appropriate zones.</p> <p><i>Recommendation: Consider future zoning regime following completion of retail demand and supply analysis and development of a broader retail strategy.</i></p> <p><i>Long-term Priority – 24+ months.</i></p>
<p>8. Include a ‘Primacy Clause’ in <i>Shoalhaven Local Environmental Plan 2014</i> for the Nowra Commercial Core / CBD (zone B3).</p>	<p>General support for actions to promote retail development in identified centres</p>	<p><u>Primacy clause:</u> <b>Supported:</b> The suggested objectives of the clause are supported in principle, noting that the final wording would be subject to a Planning Proposal and consultation with the community.</p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
<p>Clause to promote, strengthen and grow the primacy of the Nowra Commercial Core. Clause to include:</p> <ul style="list-style-type: none"> <li>a maximum gross floor area (GFA) for 'shops' in zone B4 Mixed Use;</li> <li>requirements for an Economic Impact Analysis for shops / business premises &gt;2000sqm GFA on B4 zoned land external to CBD.</li> </ul>	<p>and maintain/strengthen the primacy of Nowra City Centre.</p> <p>No objections to the introduction of a Primacy Clause for the Nowra Commercial Core / CBD (submissions did not comment on the suggested wording of the clause).</p> <p>Opposition from Stockland to a maximum gross floor area for 'shops' in zone B4 Mixed Use, arguing it is very limiting and has the potential to impair the progress of the Nowra CBD. Stockland owns a 6ha parcel of B4 zoned land adjoining the Stockland Shopping Centre (East Nowra) with a development approval for two mini discount department stores (DDS), a supermarket and additional specialty shops. Stockland argues the site is key to realising the primacy of the CBD given its size and location. A balance of commercial, retail and residential uses that support the desired mixed-use characteristics of the core's edge is appropriate and should be supported here.</p> <p>No specific comments were made on the recommended Economic Impact Analysis requirements for shops and business premises &gt;2000sqm GFA.</p>	<p><i>Recommendation: Prepare a Planning Proposal to implement this recommendation.</i></p> <p><i>Short-term Priority – 6-12 months.</i></p> <p><u>Maximum gross floor area: To be considered:</u> Subject to detailed analysis of retail demand and supply. The B4 zone applies to various other sites throughout Nowra-Bomaderry and the wider Shoalhaven. Depending on their role in the local retail hierarchy it may not be appropriate to restrict retail capacity on all sites.</p> <p><i>Recommendation: Consider future zoning regime following completion of retail demand and supply analysis and development of a broader retail strategy.</i></p> <p><i>Long-term Priority – 24+ months.</i></p> <p><u>Economic impact: Not supported.</u> The Department of Planning, Industry &amp; Environment (DPIE) is not likely to support the inclusion of such a requirement in the LEP. It would be more appropriate to require such information to inform the consideration of out of centre retail developments against the proposed primacy clause.</p>
<p>9. Amend the objectives of Zone B3 Commercial Core in the SLEP to promote, strengthen and grow the</p>	<p>No objections.</p>	<p><b>Supported:</b> Amending the objectives of zone B3 Commercial Core complement the proposed primacy clause. Zone B3 also applies to the Ulladulla CBD; this would need to be reflected in any amended</p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
primacy of the Nowra Commercial Core.	Stockland suggests there should be additional zone objectives addressing synergies between the Nowra CBD and Stockland to bolster the CBD e.g. enhanced movement pathways and pedestrian linkages.	zone objectives. Opportunities to integrate the Stockland development with Nowra City Centre can be investigated in the proposed place-based strategy.  <i>Recommendation: Prepare a Planning Proposal to implement this recommendation.</i>  <i>Short-term Priority – 6-12 months.</i>
10. Council adopt the amended land use table for the B3 Commercial Core zone in the Study.	Supported by Stockland, provided retail, commercial and associated uses that are currently permitted in the zone remain permitted.  No other specific comments in submissions on this recommendation.  Department of Planning, Industry and Environment has confirmed support for review of uses in the B3 zone land use table but no support for 'closing' the zone.	<b>Not supported:</b> The proposed amendments to the B3 zone would not result in a different land use table than currently published in <i>Shoalhaven Local Environmental Plan 2014</i> . The Department of Planning, Industry and Environment will not support 'closing' the B3 zone.  Nevertheless, it is suggested that land use tables for all business zones be reviewed following completion of detailed retail analysis and development of a broader strategy.
11. Prepare an amendment to <i>Shoalhaven Development Control Plan</i> for Nowra CBD to include: a. Urban Design Controls for Nowra CBD; b. "Study of building Heights and Floor Space Ratio Controls" (Jackson Teece, June 2013); c. "Nowra CBD Master Plan" (ARUP, January 2011); d. Policy statements to facilitate the development of a DDS.	No specific comments, however: <ul style="list-style-type: none"><li>• General support for controls to improve streetscape and urban design in centres (particularly building facades in Nowra CBD);</li><li>• One submitter commented that Nowra CBD has suffered from a lack of a masterplan and ad-hoc decision making by Council;</li><li>• Opposition to the development of a Discount Department Store (DDS) in the Nowra CBD from some individuals. Council should support small local businesses over big</li></ul>	<u>Nowra City Centre development controls:</u> <b>Supported:</b> New controls adopted on 8 September 2017 including the suggested modifications relating to the grounding of buildings and maximum amount of glazing.  <u>Facilitate a DDS in Nowra City Centre:</u> <b>To be considered:</b> Subject to detailed analysis of retail demand and supply and place-based strategy for Nowra City Centre.

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
	<p>business and consider the possible flow-on effects a DDS could have on existing retailers.</p> <ul style="list-style-type: none"> <li>Woolworths Group submission states that it is not currently considering opening a Big W DDS in Nowra and the business case is not likely to prioritise it in the long term.</li> </ul>	
<p>12. Council re-evaluate the development potential of its three (3) key sites in the Nowra CBD with the priority of facilitating the development of a DDS and a University of Wollongong presence.</p>	<p>Opposition to the development of a Discount Department Store (DDS) in Nowra CBD from some individuals. Woolworths Group is not likely to consider opening a Big W DDS in Nowra in the long term.</p>	<p><b>Facilitate a DDS in Nowra City Centre: To be considered:</b> Subject to detailed analysis of retail demand and supply and place-based strategy for Nowra City Centre.</p> <p><b>University of Wollongong presence: Supported:</b> To be explored further in place-based strategy for Nowra City Centre.</p> <p><i>Recommendation: Council explore opportunities with the University of Wollongong for a University presence on one of its 3 key landholdings in the Nowra CBD during development of place-based strategy for Nowra City Centre.</i></p> <p><i>Mid-Term Priority 12-24 months.</i></p>
<p>13. That Council initiate development promotion opportunities for a new multiplex cinema in Nowra CBD and plan for a related precinct of restaurants, cafes etc.</p>	<p>Opposition to the development of a multiplex cinema in Nowra CBD and support for the existing Roxy Cinema complex by most individual submitters. Council needs to invest more in streetscape improvements and establish an eating / entertainment precinct as recommended in the 1999 Charrette.</p>	<p><b>To be considered:</b> Subject to detailed analysis of retail demand and supply and place-based strategy for Nowra City Centre.</p> <p><i>Recommendation: Council to investigate feasibility/demand for use in detailed analysis of retail demand and supply and place-based strategy for Nowra City Centre.</i></p> <p><i>Mid-Term Priority 12-24 months.</i></p>
<p>14. Prohibit 'shops' in zone B5 Business Development.</p>	<p><u>Individuals, business owners &amp; Bomaderry CCB:</u> No specific comments on the recommendation but general support for all actions to</p>	<p><b>Supported (with modifications):</b> The B5 zone applies to several localities in Shoalhaven, not just Nowra-Bomaderry. An audit of numbers of shops and lots in the B5 zones revealed a very small number of existing shops:</p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
	<p>strengthen and protect centres from out-of-centre retail development. Nowra CBD has suffered as a result of out-of-centre retail developments like South Nowra bulky goods precinct. The approval of the Woolworths supermarket in North Bomaderry will add to the economic decline of Bomaderry Centre.</p> <p><u>Large format retailers:</u> Mixed response. Harvey Norman and the Large Format Retail Association object, citing:</p> <ul style="list-style-type: none"> <li>• A statewide undersupply of suitable sites for retail;</li> <li>• restricting zoned land for retail is anti-competitive &amp; anti-choice;</li> <li>• planning controls need to be flexible to allow retailers to expand &amp; evolve;</li> <li>• additional retail uses should be encouraged in bulky goods &amp; industrial zones;</li> <li>• the forthcoming NSW State Retail Policy needs to be considered prior to any action.</li> </ul> <p>Woolworths and Stockland do not object, provided shops remain permitted on their sites at North Bomaderry and East Nowra respectively (note: Stocklands site is zoned B4 not B5).</p>	<ul style="list-style-type: none"> <li>• Bomaderry -1.</li> <li>• Culburra Beach – 4.</li> <li>• Nowra – 1.</li> <li>• South Nowra – 2.</li> <li>• Ulladulla – 4.</li> </ul> <p>This demonstrates Nowra, South Nowra and Bomaderry are almost exclusively 'bulky goods' retail precincts and the effect of prohibiting shops here is likely to be negligible (noting that existing shops gain protection as 'existing uses' under the EP&amp;A Act).</p> <p>The audit indicates that a prohibition may not be suitable for the Culburra Beach and Ulladulla. Shops account for a higher (albeit still relatively small) proportion of premises in these areas. This reflects their different context and zoning history (shops were permitted under the Ulladulla &amp; Culburra Beach sites former zoning).</p> <p>Although the small number of shops could be used to argue there is historical development of these areas for shops and no need to change permissibility, the recommendation is focussed on preserving the area for future retail proposals requiring large floor areas and maintaining a critical mass of retail activity in the Nowra City Centre.</p> <p>Changes to land use definitions in the standard instrument LEP by the NSW government are another consideration. The new definition permits a much wider range of retail premises in B5 zones, providing retailers with greater flexibility.</p> <p><i>Recommendation: Prepare a Planning Proposal to implement this recommendation.</i></p> <p><i>Short-term Priority – 6-12 months.</i></p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
15. Objectives of the B2: Local Centre zone (relating to the proposed changes to the zoning of Bomaderry Centre).	General support for actions to revitalise Bomaderry.	<p><b>To be considered:</b> The proposed changes to the B2 Local Centre zone are not supported as this zone has been used City-wide and cannot be tailored to a specific centre.</p> <p>However, the detailed analysis of retail demand and supply and development of a place-based strategy for Bomaderry provide opportunities for further consideration.</p> <p><i>Recommendation: Consider future zoning regime following completion of retail demand and supply analysis and development of a broader retail strategy and place-base strategy for Bomaderry.</i></p> <p><i>Mid-term Priority – 12-24 months.</i></p>
16. Rezone land zoned B4 Mixed Use at Bomaderry (duplication of recommendation no. 7).	See recommendation no. 7 above.	See recommendation no. 7 above.
17. The two B1 Neighbourhood Centre areas currently zoned to service Moss Vale Road North and South urban release areas should be subject to a strategic analysis and be combined in a single centre that is relevant and accessible for the two growth areas north and south of Moss Vale Road. The resultant business centre should be zoned B2 Local Centre with a maximum size of 1.2–1.5ha providing for a centre of a maximum of 5,000 m <sup>2</sup> Gross Lettable Area (GLA). The existing B1 zoned areas should be rezoned to R2 Low Density Residential.	<p><u>Moss Vale Road North URA landholder group:</u></p> <ul style="list-style-type: none"> <li>• The Study recommendations are supported by the planning objectives of the MVRN URA: <ul style="list-style-type: none"> <li>○ An integrated village centre within walkable distance of medium density living;</li> <li>○ sense of place and service amenity;</li> <li>○ opportunities for tourism, education and retail employment.</li> </ul> </li> <li>• The Woolworths and Aldi supermarket approvals in north Bomaderry challenged this strategy.</li> <li>• The business zoned site at MVRN (corner Taylors Lane) should be</li> </ul>	<p><b>Supported:</b> There is a need to re-examine the location and size of the business zones planned to service the urban release areas as the role and development potential of these sites has changed with the supermarket approvals in north Bomaderry.</p> <p>Council is currently undertaking a significant strategic planning exercise to review and refine the planning controls applying to the northern release area. This work, and a concurrent exercise for the southern release area, provides the opportunity to consider and implement this recommendation.</p> <p><i>Recommendation: Consider this recommendation in detailed planning work for the Moss Vale Road Urban Release Areas.</i></p> <p><i>Mid-term Priority – 12-24 months.</i></p>

**Attachment 1 to Council Report – Assessment Recommendations, Submissions, Considerations and Actions**

Assessment Recommendation	Submission Feedback	Consideration and Options
	<p>rezoned to R2 Low Density Residential.</p> <ul style="list-style-type: none"> <li>• The MVRN business centre land should remain where it is with a role serving both north and south URAs. It should be rezoned from B1 to B3 Commercial Core.</li> <li>• The agreed rezonings should be high priority, not medium priority, so that the development of the MVRN village centre is not delayed.</li> </ul>	
18. Revitalisation of Bomaderry centre	<p><u>Pride of Bomaderry CCB:</u></p> <ul style="list-style-type: none"> <li>• General support for the Study recommendations relating to Bomaderry Centre.</li> <li>• Concerned about the progressive decline in the economic viability of Bomaderry centre and critical of past Council planning decisions that have, in its opinion, added to its decline (e.g. Woolworths supermarket in North Bomaderry in 2016).</li> <li>• Revitalisation of Bomaderry centre should be a high, not low, priority. The role of the centre needs to be redefined.</li> <li>• The Study does not consider the potential impacts of current and potential transport infrastructure upgrades (road and rail) on Bomaderry Centre.</li> </ul>	<p><b>Supported:</b> The detailed analysis of retail demand and supply and development of a place-based strategy for Bomaderry provide opportunities for further consideration.</p> <p><i>Recommendation: Consider future zoning regime following completion of retail demand and supply analysis and development of a broader retail strategy and place-based strategy for Bomaderry.</i></p> <p><i>Mid-term Priority – 12-24 months.</i></p>

## DE19.101 St Andrews Way/Berry's Bay & Woollamia Sewerage Schemes - Waiving of Fees for Approval to Operate On-site Sewage Systems

HPERM Ref: D19/305033

Group: Planning Environment & Development Group  
Section: Environmental Services

### Purpose / Summary

To obtain endorsement to waive the fees to property owners for approval to operate on-site sewage management systems for properties in the St Andrews Way/Berry's Bay and Woollamia Sewerage Schemes until completion of construction. Any annual risk inspections required during this period are proposed to be funded through Council's sewer fund as a means to manage risk until the sewerage schemes are completed.

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

1. That Council endorse the waiving of "Approval to Operate Systems of Sewage Management" and associated inspection fees for property owners within the St Andrews Way/Berry's Bay and Woollamia Sewerage Schemes, during the construction phase of the schemes.
2. Any annual risk inspections required through the construction of the schemes be funded from Council's sewer fund.

### Options

1. Adopt the recommendation.

Implications: Property owners and Council will continue to meet legislative and policy requirements. There will be an estimated additional cost of \$16,400 to Shoalhaven Water's Sewerage budget, which will be adjusted at the next quarterly review.

2. Not adopt the recommendation

Implications: The affected property owners will be required to pay Council's adopted fees for approval to operate a system of sewage management, which may be for a short period only.

3. Other direction as Council decides.

Implications: Any implications relating to legislative responsibility, cost, policy and risk need to be considered.

### Background

Council has previously resolved that construction of the Woollamia and St Andrews Way/Berry's Bay Pressure Sewerage Schemes be completed by the end of the 2019/2020 financial year.

Until such time that properties are connected to the reticulated pressure sewerage schemes, a current approval to operate the existing on-site sewage management systems is required under section 68 Local Government Act, 1993.

The requirement for Approval to Operate is ongoing until the completion of the sewerage schemes. Approval to Operate is issued for a period of one or five years, depending on the potential risk to the environment and public health of operating the systems. Renewals are required at the expiration of each approval period.

There are 31 properties in the Woollamia Sewerage Scheme and 26 in the St Andrews Way/Berry's Bay Sewerage Scheme where Approval to Operate is due for renewal within the current financial year.

Given the current program to connect the Schemes to sewer and the potential for property owners to pay fees for a full year and not realise that year value (due to the schemes being completed), it is proposed that the inspection and administrative fees associated with the Approval to Operate be funded from the sewer fund, and not be levied on individual property owners. This cost is estimated to be \$16,400.

As approval to operate is still required under legislation, a desk-top approval process will be completed, and a 5-year approval issued for systems on all properties within both the Woollamia and St Andrews Way/Berry's Bay Sewerage Schemes.

With the impending connection to sewer, inspections would not be completed on those properties where systems are operating at a lower risk. These properties are in the Woollamia Sewerage Scheme area.

At least one more risk inspection will be conducted of the onsite sewage management system located at each property within the St Andrews Way/Berry's Bay Sewerage Scheme. These systems are considered high risk due to several factors, including previous known system failures and proximity to the Berry's Bay oyster lease area.

Council will continue to take any compliance action in accordance with Council's compliance policy and procedures, should any system failures in either location be reported to Council.

### **Community Engagement**

Council has consulted with the affected property owners throughout the sewerage scheme project. Council has communicated the on-going requirement for approval to operate from both a legislative and operational risk perspective.

Representations from affected property owners have been received requesting that the fees for Approval to Operate be waived. All affected residents will be informed of Council's decision.

### **Policy Implications**

Property owners will continue to have a current Approval to Operate and Council will ensure that systems are being operated in accordance with the legislated performance criteria. This ensures that both property owners and residents are meeting Council policy and legislative requirements.

The recommendation only relates to properties located within the Woollamia and St Andrews Way/Berry's Bay Sewerage Schemes and as such there is no widespread policy implication.

Ensuring that at least one more annual inspection is completed of the systems at St Andrews Way/Berrys Bay will manage the potential risk of these systems until the sewer is connected.

### **Financial Implications**

There will be an additional cost to Shoalhaven Water's Sewer Fund of approximately \$16,400.

Adjustments will be made to the Sewer Fund as part of the next quarterly budget review.

**Risk Implications**

Nil. Property owners will continue to legally operate their on-site sewage systems until the sewer is connected. Council will fulfil its legislative and policy responsibilities.

Ensuring that at least one more annual inspection is completed of the systems at St Andrews Way/Berrys Bay will manage the potential risk of these systems until the sewer is connected.

## DE19.102 Formation of Collingwood Beach Dunecare Group - Progress Report

HPERM Ref: D19/308998

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

### Purpose / Summary

To inform Council of the progress on the establishment of Collingwood Beach Dunecare Group.

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

That Council receive the progress report, regarding the formation of the Collingwood Beach Dunecare Group, as per Council resolution (MIN19.318).

### Options

1. As per the recommendation

Implications: The group will continue to meet and take an active role in the management of the Collingwood Beach dune area between Susan St and Moona Moona Creek

2. Alternative recommendation.

Implications: These will depend on the nature of any recommendations.

### Background

At its Ordinary Meeting of the 28 May 2019, Council resolved (MIN19.318):

*That staff take all necessary steps required to form a Collingwood Beach Dunecare Group for the Susan Street to Moona Creek section of the dunes. A particular focus on the recruitment of nearby residents would be absolutely essential, with other residents being most welcome to apply*

The management of 'Dunecare' groups aligns with Council's Bushcare Program and there are two other volunteer groups that operate under the tag of 'Dunecare'. These are the Mollymook Dunecare/Bushcare Group and the Currarong Dunecare Group.

In June 2019, Council sent out flyers to residents/ratepayers surrounding Collingwood Beach, (400 flyers) seeking interest from individuals to volunteer with the new Collingwood Beach Dunecare Group.

Following this, forty (40) individuals registered. The first meeting – an 'Introduction Session' was held on 31 August, with twelve (12) members attending. At this session, the following topics were covered:

- Hazard identification and risk assessment
- Introduction to the plants present within the dunes, both natives and weeds
- A site inspection was carried out, with identification of the actions within existing plans and progress against these; and

- Nominations were also sought for the group volunteer coordinator role.

A week following the Introduction Session, an email was sent to all volunteers who had registered with the Collingwood Beach Dunecare Group, seeking nominations for the Dunecare Group Volunteer Coordinator. Following this, Dawn Thompson was confirmed as the volunteer coordinator for the group.

The next steps will be to further develop work activities and to timetable such activities in a way that suits the group’s members. Activities will adhere to the approved policies and the plans for the reserve. Primarily, the *Collingwood Beach Dune Vegetation Action Two-year Trial Plan* and the *Vincentia - Collingwood Beach Reserve Bushcare Action Plan – 2008*.

Volunteer uniforms, tools and materials will be made available and further safety inductions held for newcomers to forthcoming sessions.

### Community Involvement and Engagement

During the establishment of the Collingwood Beach Dune Care Group, Council staff have been working directly with the community. A number of onsite meetings and discussions have occurred. These are explained in Table 1 below.

Table 1: The steps that have been completed to date

21/06/2019	Telephone discussion between Council’s Bushcare Coordinator and Collingwood Beach Preservation Group (CBPG) Coordinator about the new Dunecare group. Information on how to register was forwarded to the CBPG Coordinator. Registrations started being received by Council.
Late June	Collingwood Beach Dunecare Group established in Council’s database and posted on Council’s website, with the Council’s Bushcare Coordinator number listed as the website contact.
06/07/2019	Bushcare Coordinator met with members of CBPG to discuss the formation of the new group.
12/07/2019	Flyers distributed to residences close to Collingwood Beach, from Moona Moona Creek to Church St. 400 flyers were distributed.
Late July	Telephone discussion between Bushcare Coordinator with the volunteer coordinator of the Vincentia Bushcare Group regarding the formation of the Dunecare Group, emphasising that all were welcome to join.
12/08/2019	Email sent to those registered or registering as an invitation to the Introduction Session held on 31 August
27/08/2019	Bushcare Coordinator met with a small group of Collingwood Beach residents that couldn’t attend the Introduction Session.
31/08/2019	Introduction Session held
9/09/2019	Collingwood Beach Dunecare Group Volunteer coordinator established

It is expected that ongoing promotion of the actions and achievements of the Dune Care group will occur via standard Council’s communication methods ( such as media releases, get involved site, newsletters etc). Communications staff are also working on enhancing the Council website specifically the section relating to Environmental Care (Bushcare, Parkcare, Dune Care) to ensure updated content and detail is provided. This page will also include an

DE19.102

enhanced online form which can be completed by future volunteers for a range of environmental care volunteer opportunities. This will enable future new participants to easily register their interest in assisting Council in their management of the environment.

## DE19.103 Initial Consideration - Proponent Initiated Planning Proposal - Danjera Dam Camping & Recreation Area

**HPERM Ref:** D19/309365

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

**Attachments:** 1. Danjera Dam - Concept Site Plan [↓](#)

### Purpose / Summary

Present a proponent initiated Planning Proposal (PP) request for the Danjera Dam Camping and Recreation Area for initial consideration to enable a Gateway determination to be obtained.

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

That Council:

1. Support the Planning Proposal request for the Danjera Dam Camping & Recreation Area submitted for Shoalhaven Water.
2. Prepare and submit the required Planning Proposal documentation to the NSW Department of Planning, Industry and Environment for Gateway determination, and dependent on the outcome proceed to exhibit the PP and report back to Council post-exhibition.
3. Advise the proponent of this resolution.

### Options

1. Support the PP request, request a Gateway determination and should a favourable determination be received proceed to publicly exhibit the proposal. This is the preferred approach and the matter will be reported back to Council through the process as needed or if issues arise.

Implications: This is consistent with Councils previous resolution to proceed with a PP to assist with the resolution and management of the camping area in this location.

2. Not proceed further with the PP.

Implications: This would be inconsistent with the previous resolution of Council in this regard and would effectively limit future management options.

3. Take an alternative course of action.

Implications: This will depend on the nature of any decision.

### Background

The subject land is Part Lots 1, 4 and 5 DP252338 and Lot 1 DP217080. The land is owned by Council, classified as “operational” land under the Local Government Act 1993, and administered by Shoalhaven Water. The land is currently zoned E2 Environmental Conservation under Shoalhaven Local Environmental Plan (LEP) 2014 which does not permit “camping grounds”.

In 2002, a Schedule 9 - Allowance Clause was inserted into then Shoalhaven LEP 1985 to enable tourist facilities at the site. However, in the process of preparing Shoalhaven LEP 2014, the provision in LEP 1985 was not transferred as a result of a request from the NSW Government that 'Additional Permitted Uses' be kept to a minimum.

In 2015 Council resolved to support a PP over the subject land to again provide for 'camping grounds' in the LEP. This PP received a favourable Gateway determination but was discontinued in 2017.

Following a detailed report on the possible redevelopment of the Danjera Dam Camping Area, Council resolved (in part) on 13 November 2018 to:

*Prepare a new planning proposal based on limiting camping to the main camping area adjacent to the dam, as outlined in the Future Directions Report and conceptualised in the attachment to the report.*

The attachment referred to in this resolution is provided as **Attachment 1**.

### **Planning Proposal Request**

Shoalhaven Water submitted a PP request in May 2019, seeking to permit "camping grounds" as a defined use at the Council owned Danjera Dam camping area located at Yalwal to enable this use to be formalised/managed.

This report presents the PP request for initial Council consideration to enable a Gateway determination to be obtained.

The PP request received from Shoalhaven Water can be viewed on the internet at:

<http://doc.shoalhaven.nsw.gov.au/DisplayDoc.aspx?record=D19/163677>

The PP request is supported by detailed attachments covering bushfire, biodiversity and onsite sewerage management.

An initial review of the PP request was undertaken by relevant staff. One issue that was raised at this point is whether the proposed use is a 'primitive campground' or a 'campground' under Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. However, at this point, the relevant LEP Dictionary Definition is 'camping ground'. The issue raised can be further considered/resolved as part of the subsequent processes following the amendment of the LEP.

Whilst a range of detailed assessments have been prepared to support this PP request, it is likely that detailed issues could emerge through the Gateway determination and PP process.

Early consultation will thus be undertaken with relevant NSW Government Agencies including NSW Rural Fire Service, NSW Office of Environment & Heritage and NSW Crown Lands (or their new equivalents) and prior to the formal public exhibition of the PP. This could raise matters that will require detailed consideration in association with Shoalhaven Water. Any additional studies that are required as a result will also need to be funded by Shoalhaven Water.

Given both the history of use and previous planning background (the provision previously existed in the LEP) this request is considered minor given this context and has sound justification.

### **Community Engagement**

The PP will be formally exhibited for community comment at the appropriate point consistent with the requirements of the Gateway determination. Adjacent landowners will be directly advised of the public exhibition arrangements to give them the opportunity to review and comment on the PP.

### **Policy Implications**

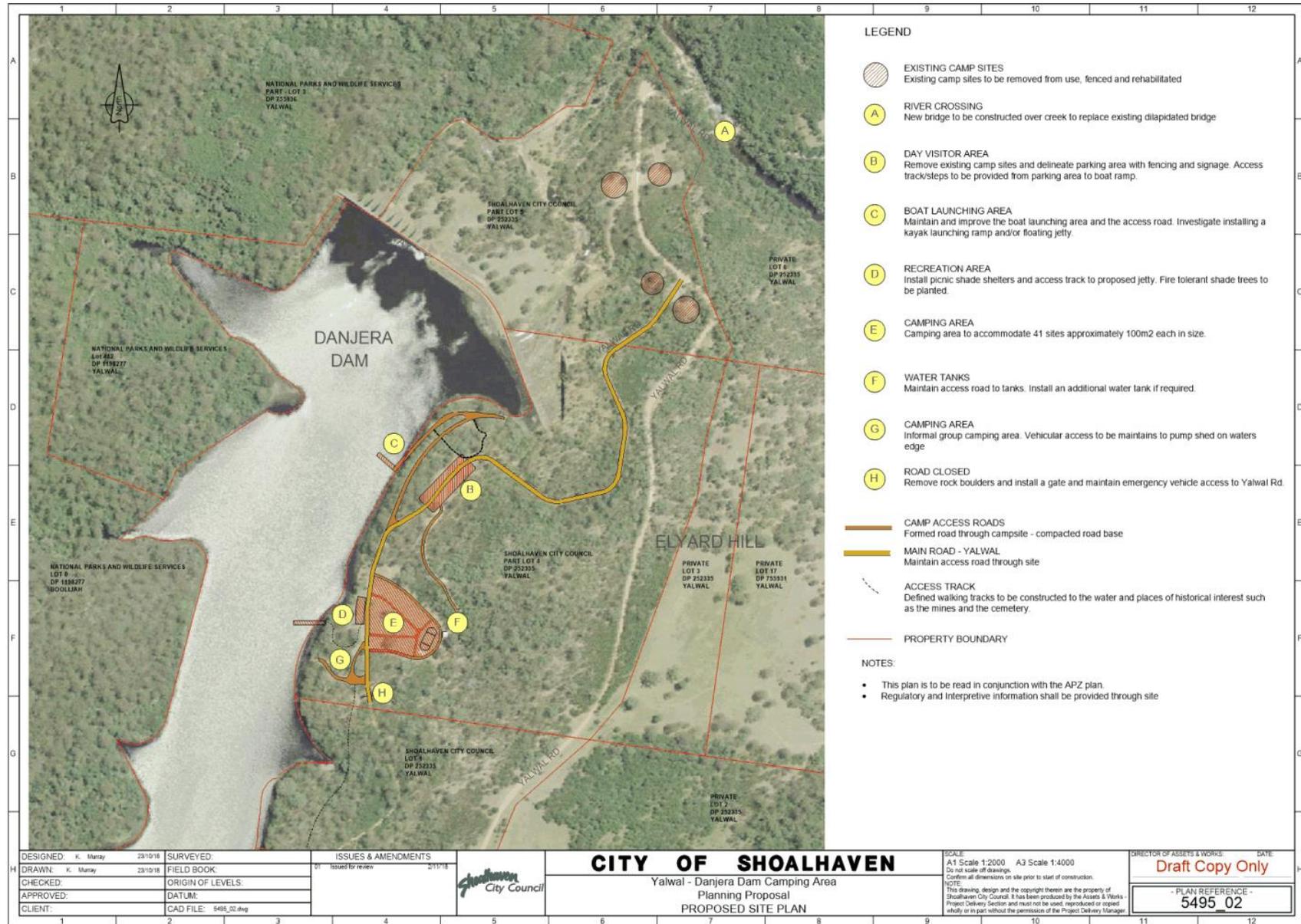
The LEP does not currently allow for the requested use which is part of the management solution for the Danjera Dam Camping and Recreation Area. As such the PP is the only way to adjust the LEP to assist with this solution.

### **Financial Implications**

This PP request is being managed in accordance with Councils Planning Proposal (rezoning) Guidelines on a cost recovery basis. Shoalhaven Water paid the required initial lodgement fee for this request and will be required to pay the necessary processing/management fees in accordance with Council's Fees & Charges.

### **Risk Implications**

If the PP is not supported, it will be difficult to implement the management solutions for the area that has been a problematic location for Council.



## DE19.104 Tomerong Quarry - Lot 4 DP 775296 Parnell Rd DA90/1912

HPERM Ref: D19/315873

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

### Purpose / Summary

At Council's Development & Environment Committee Meeting held on the 3 September 2019, it was resolved that staff compile a report to answer specific questions on Tomerong Quarry (Item 1 of MIN19.613).

This report provides a response to each question asked in Item 1 of MIN19.613.

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

That Council receive this report on Tomerong Quarry for information.

### Options

1. Council receive the report for information.

Implications: Nil

2. Council determine an alternative recommendation.

Implications: Council's Compliance Officers will work on satisfying the requirements of the alternative recommendation.

### Background

At the Development and Environment Committee meeting held on 3 September 2019, Council resolved the following:

*That:*

1. *Staff compile a report on the following in relation to the mooted intention of the Operators of the Quarry to begin gravel extraction at Tomerong Quarry Lot 4 DP 775296 Parnell Road Tomerong under existing DA90/1912:*

*Tomerong Quarry ceased operating in July 2017 and the DA and EPA Licence were surrendered in February 2018.*

- a. *Can Council give written assurance that compliance with DA90/1912 and subsequent modifications will be strictly enforced before any operator is permitted to resume extraction of material at the Tomerong site.*
- b. *Can Council provide an update on the progress of rehabilitation at the Quarry as required in the original consent, and has the former operator of the quarry, Shoalhaven Quarries, been subject to enforcement of this condition as was promised in a report to Council at the Strategy and Assets Committee Meeting on 15<sup>th</sup> May 2018 in response to a resolution at the Strategy and Assets Committee Meeting on 23<sup>rd</sup> January 2018.*
- c. *Can Council provide a summary of investigation and testing for pollution in and around the Tomerong Quarry site including the dumping of*

*asbestos and in particular an allegation brought to Council in April 2018 that a significant amount of asbestos has been buried under a long mound on the south eastern side of the quarrying area and other places.*

- d. *Have the owners of Lot 4 DP 775296 Parnell Road Tomerong been informed of this alleged illegal asbestos dumping outside the quarry area on their land and can Council confirm that the site has been registered as contaminated.*
2. *Staff investigate the possibility of introducing a planning proposal to rezone so that “extractive industries” are no longer permissible at the site.*
  3. *Council communicate regularly with the community with respect to operations at the Tomerong quarry site.*

This report provides detailed answers to the questions raised in Item 1 of minute MIN19.613. With respect to the other two items listed in the minute, the following update is provided:

- Staff will report separately on the possibility of introducing a planning proposal to rezone the land; and
- Compliance staff will communicate regularly with the community concerning the operations at Tomerong Quarry.

## Report

The following advice is provided to address the issues raised in item 1 of MIN19.613:

### **1. Tomerong Quarry ceased operating in July 2017 and the DA and EPA Licence were surrendered in February 2018.**

The last known blast at the Tomerong Quarry was on 7 April 2017. The last known time SCE trucks removed material from the site was in late July 2017.

The comment that the DA and EPA licence were surrendered is incorrect as neither have been surrendered.

- (a) Development Consent: The development consent (DA90/1912) and the approved modifications (DS02/1087, DS03/1325 and DS06/1039) have not been surrendered by the owner of the premises. These will remain active until the consent expires on 6 November 2020 or unless the owner surrenders it beforehand.
- (b) EPA Licence: Council’s Compliance Officer contacted the EPA shortly after learning the owners of the premises intended to recommence operations at the site to remove the won material that exists on the quarry floor. The EPA confirmed the licence had not been surrendered but merely transferred to the owner of the premises. This transfer from SCE to In-Ja-Ghoodji Lands Incorporated occurred on 1 June 2018.

The EPA advised they had placed several conditions on the licence and these need to be completed prior to quarrying operations recommencing. These requirements are listed in the ‘Notice of Variation of Licence No 3532’ issued by the EPA and dated 30 August 2018 and include the following:

*U1.1 Prior to the recommencement of extractive activities at the premises, including the transportation of any stockpiled quarried materials the licensee must install fit for purpose equipment and/or measures at the premises to prevent the tracking of mud, dust and debris onto the roadways outside the premise’s boundary.*

*U1.2 Prior to the recommencement of extractive activities at the premises, including the transportation of any stockpiled quarried*

*materials the licensee must ensure that the section of internal roadway between Gumden Lane and the weighbridge at the premises has a surface layer that prevents the generation of dust from vehicle usage, including trucks.*

*U1.3 Prior to the recommencement of extractive activities at the premises, including the transportation of any stockpiled quarried materials the licensee must repair the sealed section of the internal roadway between Parnell Road and the weighbridge at the premises so that it has a surface layer that prevents the generation of dust from vehicle usage, including trucks.*

*U1.4 No later than 14 days prior to the recommencement of extractive activities at the premises, including the transportation of any stockpiled quarried materials the licensee must provide a written report to the EPA's Regional Manager Operations, South East that demonstrates the works as required by conditions U1.1 to U1.3 have been implemented at the premises. This report is to be submitted by any of the following means:*

- *Post - PO Box 622 Queanbeyan NSW 2620*
- *Email - queanbeyan@epa.nsw.gov.au*

It is understood from discussions with the owner and lessee that works have commenced on site to complete these items.

**1a. Can Council give written assurance that compliance with DA90/1912 and subsequent modifications will be strictly enforced before any operator is permitted to resume extraction of material at the Tomerong site.**

Council's Compliance Team have met with both the landowners, In-Ja-Ghoondji Lands Inc, and their lessee, Hisway Pty Ltd, to discuss the way forward. As a result of these discussions, letters were sent to both the owner and the lessee on 3 September 2019. The letters are similar in content and generally advise that the following needs to be address before quarrying operations recommence:

- Conditions 4 and 6: a landscape and rehabilitation plan are to be prepared and submitted to Council for approval.
- Condition 7: Verification that the sediment and erosion control measures as specified in the Erosion and Sedimentation Control Plan are still in place and in serviceable condition.
- Condition 9(d) and 9(e): Confirmation that the holding tanks and water cart are on site and in serviceable condition in accordance with Conditions 9(d) & 9(e).
- Condition 9 and 11: Prior to the crushing plant commencing operations Council is to be provided evidence that Consent Conditions 9 and 11 have been addressed.
- Condition 15: Confirmation that the all-weather dust free parking area has been provided is in serviceable condition.
- Condition 16: Confirmation that the all-weather dust free standing/parking area for plant & equipment has been provided.
- Conditions 18 and 19: Council is to be provided with written confirmation that the fuel storage area remains compliant.

- **Condition 22:** An agreement is to be signed off between the operator and Council concerning the standard to which Parnell Road and Gumden Lane are to be maintained.

Council's Compliance Team have also advised it will require additional information from either In-Ja-Ghoondji Lands Inc or Hisway Pty Ltd at regular intervals during the operation of the quarry. These include the following:

- Documentation on the quantity of material being exported daily to demonstrate that no more than 1000 tonnes per day is being exported from the site (Condition 14(h)).
- Written documentation of truck movements to and from the site to demonstrate compliance with hours of operation (Condition 11(c) and 11(f)).
- Written confirmation that water from the eastern most of the two dams located to the north of the quarry is not being utilised for operations associated with the quarry. This dam did not form part of the Consent and was constructed for use associated with the agricultural pursuits on the land only.

Council's Compliance Team have also highlighted the need for the owner and the lessee to comply with the conditions associated with the EPA Licence (regulated by the EPA) and the Road Rules associated with heavy vehicles on public roads (regulated by the NSW Police Service and Road and Maritime Services).

Finally, both the owner and the lessee were encouraged to liaise with the Tomerong Community Forum in order that all concerns might be tabled and addressed.

**1b. Can Council provide an update on the progress of rehabilitation at the Quarry as required in the original consent, and has the former operator of the quarry, Shoalhaven Quarries, been subject to enforcement of this condition as was promised in a report to Council at the Strategy and Assets Committee Meeting on 15/05/2018 in response to a resolution at the Strategy and Assets Committee Meeting on 23/01/2019.**

Council's Compliance Team spent a lot of time working with the landowners encouraging them to allow Council to pursue the previous lessee to rehabilitate the quarry. The main issue was the previous lessee had to be allowed back on site to complete the investigations and report in the first instance, and then they needed permission to re-enter the site to complete the associated works. This took the best part of 2018 to reach a verbal approval to move this forward.

Independently of the above, Council's Compliance, Environmental and Development Assessment staff had met on several occasions to discuss what was needed in the rehabilitation plan. With this determined, Council's legal representative wrote to the previous lessee and indicated our intention to pursue them to prepare a plan of rehabilitation and then carry out the works. Not surprisingly, there was opposition from the previous lessee. Council's Compliance Staff worked with its legal representative and had set a course of action for moving this forward. This was to be Class 4 action in the Land and Environment Court to seek Court orders to have the works completed.

Unbeknown to Council's Compliance Staff, the landowners had transferred the licence to themselves and signed a lease to have the won materials withdrawn from the quarry floor. Council's legal representative advised it would no longer be possible to pursue the previous licensee and the proposed Class 4 action was not pursued.

On 3 September 2019, the owners of the premises were sent a notice of intention to give a development control order requiring them to prepare and submit a detailed landscape and rehabilitation plan for the quarry. This notice was identical to the requirements being sort by the Compliance Team from the previous licensee of the site. Amongst other things, this notice requires the plan to include the following:

- A site rehabilitation management plan
- Community consultation during the preparation of the plan and once the plan has been finalised
- Desired outcomes to consider the future needs of the owners, a maximum batter of 25°, regeneration with endemic native species, no truck movements to Parnell Road and a dilapidation report to Gumden Lane and the repair of any damage.
- Identification of the rehabilitation area
- Protection of existing native vegetation, fauna and regeneration

The representation period for this notice expires on 1 October 2019. It is envisaged the order will be sent out shortly after the expiry period. As Council must consider any representations made as a result of this notice, it is possible the final order could be amended and/or delayed.

As discussed at Council's Development and Environment Committee meeting held on 3 September 2019, this rehabilitation plan is required to be completed and submitted to Council for approved prior to quarrying operations recommencing. This has also been made clear in the correspondence sent to both the owner and the new lessee.

**1c *Can Council provide a summary of investigation and testing for pollution in and around the Tomerong Quarry site including the dumping of asbestos and in particular an allegation brought to Council in April 2018 that a significant amount of asbestos has been buried under a long mound on the south eastern side of the quarrying area and other places.***

The testing of the quarry site was undertaken by the EPA and not Council. The EPA made this report public and presented it to the Tomerong Community Forum on 31 July 2018. The results of the EPA testing did not identify any breaches of recognised health standards.

Council engaged the services of an Occupational Hygienist to undertake testing of water tanks, dams and roads from several properties in the vicinity of the quarry. The initial testing identified some anomalies, and these resulted in some follow up testing. The anomalies were not related to quarrying activities. The final report on the testing has been made public and it was presented to the Tomerong Community Forum on 18 February 2019. The results of the testing did not identify any breaches of recognised health standards.

With respect to the anonymous complaint alleging asbestos dumping on the site, this was a separate issue to the quarrying operations, and it was directed towards the landowners and not the previous lessee. Some considerable time was spent working with the landowners on this issue. The delays were mainly attributed to the landowner seeking funding assistance for the testing.

It was found that funding assistance was not available given the ownership of the land. On 22 June 2019, the landowners were issued with a notice of intention to have the report prepared.

Following consideration of representations to the notice, Council issued the Development Control Order on 2 September 2019. Testing is required to be undertaken by 08/10/2019 and a hazardous substance management plan be submitted to Council by 29/10/2019 (if hazardous substances located).

Should the landowners not undertake the testing within the required time frame, Council intends to exercise its power to have the testing undertaken. The costs associated with this testing plus any administration costs incurred by Council will be charged back to the landowners.

**1d. Have the owners of Lot 4 DP 775296 Parnell Road Tomerong been informed of this alleged illegal asbestos dumping outside the quarry area on their land and can Council confirm that the site has been registered as contaminated.**

The landowners have been advised of the allegations and this is detailed in 1c above. The site has not been registered as contaminated as no verification is available at this time.

Land will only be considered as contaminated if there is documentary evidence confirming the existence of contaminates and the site cannot otherwise be adequately remediated.

## DE19.105 Submission - Proposed New Regulatory Framework - Short Term Rental Accommodation

**HPERM Ref:** D19/316058

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

**Attachments:** 1. Draft Short Term Rental Accommodation Submission (under separate cover) [⇒](#)

### Purpose / Summary

Provide a brief overview of the proposed new regulatory framework for short term rental accommodation (STRA) in NSW and obtain Council endorsement for the submission that was made.

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

That Council

1. Endorse the draft submission that was made on the proposed Short Term Rental Accommodation reform package (provided as **Attachment 1** to this report) and advise the NSW Government accordingly.
2. Continue to play an active role, as required, in this important matter and received future reports as needed.

### Options

1. Endorse the draft submission that has been provided on this matter, a copy of which is provided as **Attachment 1**.

Implications: This is the preferred option given that the draft submission is detailed and covers a range of points that are important to Council and is consistent with the previously resolved positions on STRA.

2. Adjust the draft submission and provide to the NSW Government.

Implications: This will depend on the nature of any resolved adjustments.

3. Not make a submission

Implications: This option is not recommended as the proposed reforms are relevant to Shoalhaven and could have a significant impact.

### Background

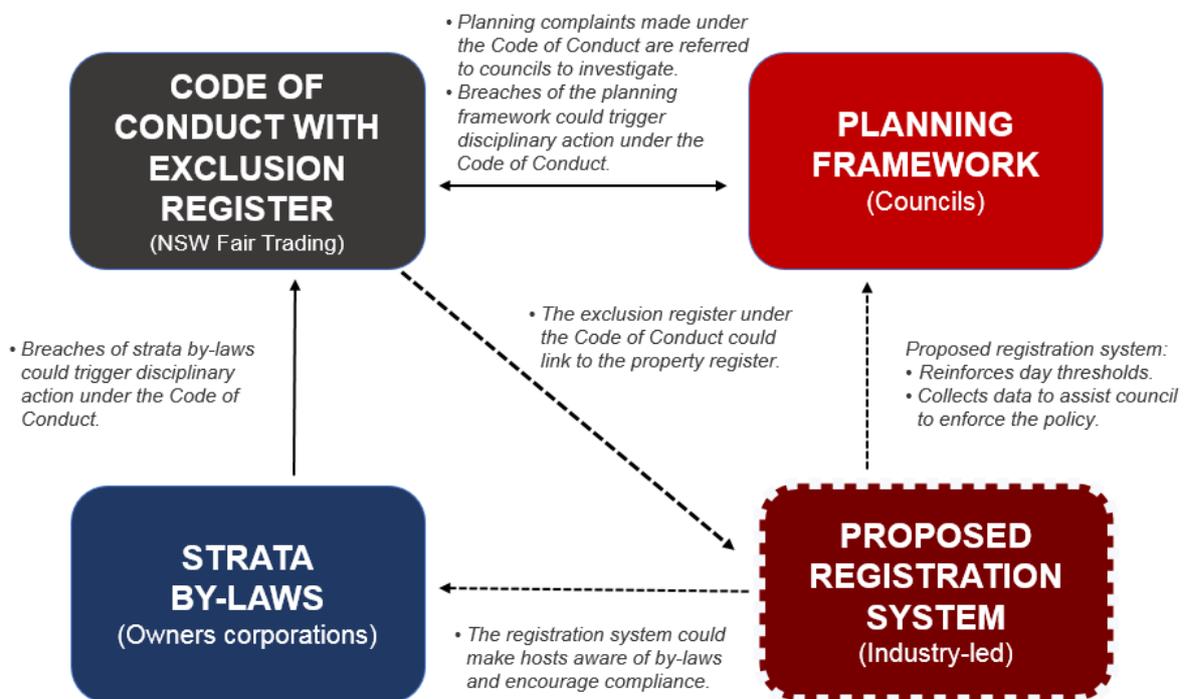
Council has consistently been active in responding to proposed reforms related to STRA and has held the view that any regulatory framework should have a 'light touch', be clear and workable and not place an additional administrative or compliance burden on Council.

Council made a detailed submission in November 2018 to the proposed NSW planning framework for STRA based on a report to Council dated 13 November 2018. This previous framework only related to the planning aspects of the NSW Governments STRA reforms and did not provide an opportunity to review and comment on the associated aspects such as the proposed Code of Conduct.

On the 14 August 2019 the NSW Government released a more complete draft regulatory framework package related to STRA for comment that includes:

- Draft State Environmental Planning Policy (Short-term rental accommodation) 2019
- Draft Code of Conduct for the Short-term rental accommodation industry
- Draft Fair Trading Amendment (Code of Conduct for Short-term rental accommodation industry) 2019
- Draft Environmental Planning and Assessment (Short-term rental accommodation) Regulation 2019
- Short-term rental Accommodation Fire Safety Standard

The exhibition material also includes a Discussion Paper on the new regulatory framework that provided a good overview of its components. The following diagram from the Discussion Paper also provides a simple overview of the components and how they are intended to fit together.



Overview – Proposed Integrated STRA Framework

The proposed reform package can be accessed on the internet at the following link:

<https://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms>

Comments on the proposed reform package were due by 11 September 2019 (extended till 25 September 2019).

### Council Submission

Given the comment timeframes involved, it was not possible to review the more extensive package and report a proposed submission through Council by the originally nominated timeframe of 11 September 2019. As such it was agreed with the NSW Department of Planning, Industry and Environment (DPIE) that a draft submission would be provided, and the matter would be reported to Council for endorsement in due course.

The attached (**Attachment 1**) draft submission was provided to DPIE on 11 September 2019 and was prepared with feedback from relevant Sections within Council including Tourism, Building & Compliance and Environmental Services. Council staff also participated in a teleconference on the proposed reforms arranged by Local Government NSW which was also valuable in identifying general Council concerns.

The draft submission provides detailed comment regarding:

- Tourism role/importance
- The overall package and how it fits together
- Proposed SEPP
- STRA Definition
- Existing use rights
- Need for a development application pathway
- Exempt and complying development
- Number of days (note: Council previously resolved to accept the general permissibility under the reforms of 365 days)
- Bushfire provisions
- Flood prone land provisions
- Code of Conduct
- Proposed registration system
- Proposed exclusion register
- Compliance
- Fire safety standards
- DCP Provisions

The new draft package contains provisions in regard to what could be considered to be 'existing use rights' given the current STRA situation in Shoalhaven – our LEP has allowed STRA essentially as 'exempt' development since 2006. As such it appears that any currently operating STRA may benefit from 'existing use rights'. Clause 15(2) of the draft SEPP covers this situation and currently reads as follows:

- *Development that was commenced before the commencement of this Policy and that was, immediately before that commencement, exempt development in accordance with an environmental planning instrument that was amended by this Policy may be continued as if this Policy had not commenced.*

As such, importantly for Shoalhaven any currently operating STRA will not need to follow the planning pathways that could ultimately arise from the draft SEPP. There are however still some issues that need to be clearly confirmed – specifically are 'existing use' premises still added to the register and is there a need for them to install the essential fire safety measures?

The draft submission concludes with a request that the NSW Government draw these reforms to a conclusion in a timely manner to remove the current uncertainty, ensure that there is a continued dialogue with Local Government on the final provisions and release clear advisory material to ensure there is broader community awareness of the new system when it comes in.

### **Conclusion**

It is recommended that Council endorse the draft submission that was made on the proposed STRA reform package, advise the NSW Government of this decision and continue to play an active role as required in this important matter.

### **Community Engagement**

The NSW Government's package of proposed reforms was out for community comment from 14 August until 25 September 2019. The package was available for review on the DPIE website.

### **Policy Implications**

The SEPP will remove relevant provisions from Council's three existing LEP's given that on its commencement the NSW wide planning framework for STRA will take over.

The continued role of Councils existing [DCP Chapter G16 – Short Term Rental Accommodation](#) is raised in the submission.

### **Financial Implications**

Reviewing/commenting on this matter is being managed within the existing Strategic Planning budget.

## DE19.106 Ministerial Representations - Chapter G4 Tree & Vegetation Management - Shoalhaven DCP2014

**HPERM Ref:** D19/316102

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

**Attachments:** 1. Letter - NSW Minister for Planning & Public Spaces - Tree & Vegetation Management DCP [↓](#)

### Purpose / Summary

Detail representations received from the NSW Minister for Planning & Public Spaces in this regard to enable Council to consider a response/position.

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

That Council

1. Determine relevant action having regard to options provided below or other appropriate actions,
2. Advise the NSW Minister for Planning & Public Spaces of this decision and keep him advised of the progress of the review/possible amendment to the DCP.

### Options

1. Note the request received from the Minister that essentially requests that Council reconsider the current provisions in this regard and advise the Minister of Council's decision to retain the current provisions for the overriding reason of public safety, noting that Council is also considering policy options to address tree loss within the City more generally.

**Implications:** This will see the retention of the current 45 degree rule unchanged in the DCP and the Minister will be advised of this and the reasons for its retention. Council originally introduced the provision into its then Tree Preservation Order (TPO) in 2004 as a result of a court case that followed the death of man at a property in South Nowra in 1998.

The provision provides private landowners the ability to consider the management of trees on their own property, particularly where they hold safety concerns. It also removes Council staff from the assessment process and leaves any decision concerning the potential risk of a tree to the owner of the land or their contractor. Council has reaffirmed the relevant provisions on a number of occasions, most recently in September 2018 when it was resolved that Council:

1. *Re-affirm it's "45 degree-rule" tree removal policy*
2. *Staff prepare a draft policy on "compensatory tree planting" following the legal removal of trees in our city. This policy would need to address, but not be restricted to the following*
  - a. *Suitable sites to plant new trees, especially in non-residential locations.*
  - b. *The ideal new tree to old tree ratio.*
  - c. *The possibility of recoupment costs.*
  - d. *The investigation of similar policies that may exist in other municipal areas*

DE19.106

2. Commence a review of the DCP Chapter G4, along with outcomes associated with the use of the 45 degree rule, to consider the possible amendment or removal of the current 45 degree rule.

Implications: This would enable various options, including removal, to be further investigated along with the broader community.

3. Make a resolution to take the necessary steps to immediately remove the 45 degree rule – Section 5.2.3 (d) from DCP Chapter G4.

Implications: This would enable the DCP to be amended to remove the 45 degree rule from the DCP. Due process would need to be followed in this regard.

### **Background**

Council has received a letter from the NSW Minister for Planning & Public Spaces, the Hon. Rob Stokes MP regarding the impact of Shoalhaven Development Control Plan 2014 (DCP) on the urban tree canopy in Shoalhaven.

This letter was triggered by representations to the Minister from Justin Field MLC regarding the exemption provided by Clause 5.2.3(d) within Chapter G4 – Tree and Vegetation Management that enables residents/owners to self-assess tree removal and does not require Council consent where the terms of the exemption are met. The provision in question has become commonly known as the ‘45 degree rule’.

Mr Field suggests that this provision is being used by businesses pursuing work and has resulted in the loss of a large number of significant urban trees. He also suggests that Council is not meeting requirements set by the *NSW Environmental Planning and Assessment Act 1979* (the Act) to conserve biodiversity and ecological integrity.

As a result, the Minister has been asked to use his authority under the Act to direct Council to remove the exemption from its DCP.

The Minister in his letter to Council notes the following (key statements underlined):

*While I strongly support local Councils in determining planning rules and acknowledge the work Council is doing to protect and enhance urban tree canopy in the Shoalhaven area, I agree with Mr Fields’s concerns.*

*I appreciate that tree management requires balancing risk to public safety and property with the numerous benefits provided by trees. However, I am concerned that Shoalhaven’s broad exemption is out of step with other Councils.*

*I would appreciate if you could look into this matter and investigate whether the amendments made to your DCP in 2004 have led to perverse outcomes.*

Given the Minister’s strong statements it is felt appropriate that Council should formally consider the matter to enable staff to respond appropriately. It should also be noted that there is no readily available data on tree removal in the Shoalhaven that can be referenced, thus the issue of outcomes is one that would require further investigation.

The Minister’s letter and associated correspondence are provided as **Attachment 1**.

### **Current DCP Provision – Commentary**

The Council first resolved to introduce the 45 degree rule into its Tree Preservation Order (TPO)/Tree Management Policy. Part (e) of the resolution included the following regarding schedule 4 of the TPO:

- Tree works on private land where any part of a tree is above a line 45 degrees from the vertical extension of the wall of any building ~~on the land~~ measured from its base; or
- Tree works within six (6) metres of an approved dwelling ~~on the same land~~; or three (3) metres of an approved garage or outbuilding; zoned residential under Shoalhaven Local Environmental Plan 1985.

Schedule 4 of the TPO outlined various ‘exemption’ scenario’s where the order did not apply and as such consent was not required.

The 45 degree rule arose from consideration arising from the court case: *Timbs v Shoalhaven City Council* [2004] NSWCA 81 (1 April 2004).

This provision has been carried forward by subsequent Councils in DCP (replaced TPO) provisions associated with tree and vegetation management since 2004.

Currently Chapter G4 of the Shoalhaven DCP2014 covers ‘tree and vegetation management’ and can be viewed on the internet at:

<http://dcp2014.shoalhaven.nsw.gov.au/content/tree-and-vegetation-management>

The following is an extract from the DCP:

### 5.2.3 Exemptions

The following **trees** or other **vegetation** are exempt from section 5.1:

- Clearing trees and vegetation** that is authorised under Section 600 of the *Local Land Services Act 2013* (LLS Act). This sub-clause does not apply to clearing merely because it is a part of or ancillary to the carrying out of **exempt development**.
- Trees and vegetation** that **Council** or the **Native Vegetation Panel** is satisfied is dying or dead and is not required as the **habitat** of native animals.
- Trees and vegetation** that **Council** is satisfied are a risk to human life or property.
- Where a **tree** is closer than its own height from an approved **building** (including a **dwelling, garage or outbuilding**). This means where any part of a **tree** is above a line 45 degrees from the vertical extension of the wall of any building measured from its base (as shown in Figure 1). Hollow bearing **trees** can only be removed without assessment under the 45 degree exemption if an animal handler is present.

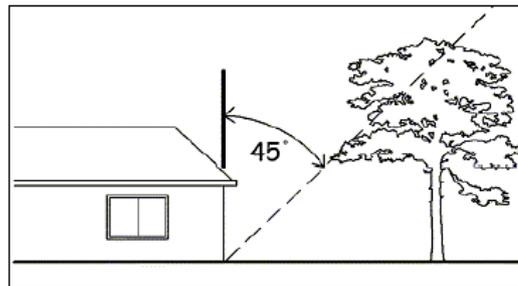


Figure 1: Example of the 45 degrees line from the vertical extension

Various ‘housekeeping’ type amendments have been made to the DCP chapter since 2014. Whilst concerns surrounding the 45 degree rule have been raised by community members and others as parts of these processes and more generally, Council has consistently retained the provision in the DCP

### Conclusion

There has been some community concern associated with the current 45 degree rule in the DCP. It now appears that this has been taken forward via approaches to relevant State Government representatives.

The most recent letter from the NSW Minister for Planning & Public Spaces (**Attachment 1**) raises concerns with the current DCP provision. In this regard it is noted that the under Section 3.46 of the Act, the Minister may: “direct a council to make, amend or revoke a development control plan in the time and manner specified in the direction”.

It is noted in a recent [newspaper article](#) that the Minister has also recently questioned the tree management approach being taken/proposed by the Inner West Council that enables trees within 3 metres of a dwelling to be removed without consent.

Council has been doing a range of work in a broader sense in regard to tree and vegetation management/retention, including:

- Urban tree canopy example audit at St. Georges Basin
- New urban release area planning – working to ensure retention of significant vegetation into the intended public reserve system and additional public domain planning.
- Tree replacement policy – draft reported to this meeting.

Council needs to consider how it wants to respond to the Minister’s letter and specifically whether it wishes to retain, modify or remove the 45 degree rule.

### **Community Engagement**

The current DCP Chapter has been prepared and amended consistent with public notification requirements set in legislation. Any proposed amendment that arises from this report would need to be notified for public review and comment as part of the process.

### **Policy Implications**

Council has consistently retained the 45 degree rule in its planning schemes since 2004. Any change in this regard would need to be given due consideration as it would represent a change in policy.

### **Financial Implications**

There are currently no direct financial implications arising from this report. Should Council resolved, for instance, to amend the DCP then this would be undertaken within the Strategic Planning budget.



**The Hon. Rob Stokes MP**  
Minister for Planning and Public Spaces

Ref: MDPE19/1807

Councillor Amanda Findley  
Mayor  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Shoalhaven City Council  
Received

- 9 SEP 2019

Dear Mayor *Amanda,*

I write in relation to correspondence from Mr Justin Field MLC about urban tree clearing in the Shoalhaven area.

Mr Field has raised concerns about the potential impact of Shoalhaven City Council's tree clearing clause in its development control plan (DCP) on Shoalhaven's urban tree canopy. I have attached a copy of Mr Field's correspondence and my reply for your information.

While I strongly support local councils in determining planning rules and acknowledge the work Council is doing to protect and enhance urban tree canopy in the Shoalhaven area, I agree with Mr Field's concerns.

I appreciate that tree management requires balancing risk to public safety and property with the numerous benefits provided by trees. However, I am concerned that Shoalhaven's broad exemption is out of step with other councils.

I would appreciate if you could look into this matter and investigate whether the amendments made to your DCP in 2004 have led to perverse outcomes. Can you please look into this matter and advise me of the outcome.

I look forward to your response.

Yours sincerely

**The Hon. Rob Stokes MP**  
Minister for Planning and Public Spaces

Encl: Correspondence from Mr Justin Field MLC  
Reply to Mr Justin Field MLC



LEGISLATIVE COUNCIL

Justin Field MLC  
6 Macquarie St  
SYDNEY NSW 2000

24 May 2019

The Hon. Rob Stokes MP  
NSW Minister for Planning and Public Spaces  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister,

**Re: Urban tree clearing in the Shoalhaven**

I am writing in regards to an urban tree clearing issue in the Shoalhaven Local Government Area.

Under the Shoalhaven Development Control Plan 2014, Chapter G4: Tree and Vegetation Management Plan provides an exemption clause 5.2.3 (d) that allows residents to self-assess tree removal on their property. No consent is required from council or notification is required by council.

The relevant clause provides:

- d) Where a tree is closer than its own height from an approved building (including a dwelling, garage or outbuilding). This means where any part of a tree is above a line 45 degrees from the vertical extension of the wall of any building measured from its base (as shown in Figure 1). Hollow bearing trees can only be removed without assessment under the 45 degree exemption if an animal handler is present.

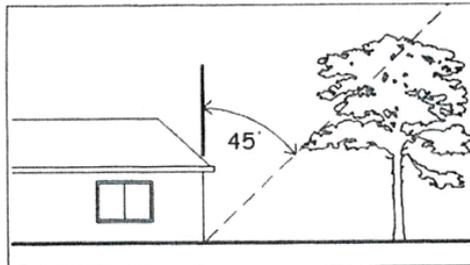


Figure 1: Example of the 45 degrees line from the vertical extension

The rule is known as the '45 degree rule'. In practice, almost every mature tree on an average size residential lot in the Shoalhaven qualifies for removal without council notice or approval. If everyone evoked this rule, the Shoalhaven LGA would be denuded of its entire urban canopy.

I understand that the Shoalhaven may be the only LGA in NSW that has this rule in place. This is increasingly becoming an issue as local tree lopping businesses are known to be touting for business, utilising the flexibility of this rule. I have been informed that businesses are targeting older residents and claiming trees are diseased and dangerous in order to encourage residents to employ them to remove the trees. No arborist report or notification requirement exists under the Shoalhaven DCP, enabling the abuse of trust of residents.

The consequence of this rule is that the area is losing a large number of significant urban trees. Council collects no information about trees removed and consequently has no ability to ensure it is meeting requirements under the *Environmental Planning and Assessment Act 1979* ('the Act') to conserve biological diversity and ecological integrity.

I understand that you as Minister for Planning and Public Spaces have the authority under the Act to direct Shoalhaven City Council to remove the exemption clause 5.2.3 (d) in Chapter G4 of the Shoalhaven DCP 2014.

I am asking you to look into these matters and consider exercising your authority, or seek to influence the Shoalhaven Council to amend its own DCP, or at the very least provide an explanation to you as to how Council is meeting its obligations under the Act while allowing this exemption clause to remain in place.

Thank you for considering this matter, I look forward to your response.

Regards,

Justin Field MLC.



**The Hon. Rob Stokes MP**  
Minister for Planning and Public Spaces

MDPE19/1807

Mr Justin Field MLC  
6 Macquarie Street  
SYDNEY NSW 2000

Dear Mr Field *Justin,*

Thank you for your correspondence regarding urban tree clearing in the Shoalhaven area.

I agree with your concerns about the potential impact of Shoalhaven City Council's tree clearing clause in its development control plan (DCP) on Shoalhaven's urban tree canopy. It is very important that locally elected representatives determine planning rules in their council area, and for that reason ordinarily I am loathe to intervene. That is why the power to direct a council to amend its DCP is so rarely used.

In this case, I will write to the Mayor of Shoalhaven City Council Amanda Findley to raise the matter and tell her that I agree with your concerns.

In the meantime, Council has told me that it is undertaking several initiatives to better protect and enhance the urban tree canopy in the Shoalhaven area. In particular, Council's planning for the new urban release areas in Nowra-Bomaderry aims to ensure that significant vegetation is retained where possible and additional public domain tree planting occurs as part of the development of these areas.

Council has been working with the Department's Environment, Energy and Science division to assess biodiversity corridors in the Shoalhaven LGA and to protect these corridors in local planning controls.

Council has also started to prepare its Local Strategic Planning Statement (LSPS), which provides an opportunity to identify and implement planning priorities related to the urban tree canopy, open space and the environment. Council's LSPS is due for completion in mid-2020.

If you have any more questions, please do not hesitate to contact my office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Stokes'.

**The Hon. Rob Stokes MP**  
Minister for Planning and Public Spaces

## 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.