

Development & Environment Committee

Meeting Date: Monday, 18 January, 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Mitchell Pakes - Chairperson
Clr Bob Proudfoot
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

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
 - Development & Environment Committee - 1 December 2020 1
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
 - City Futures
 - DE21.1 Post Exhibition Finalisation - Voluntary Planning Agreement Policy and Works in Kind Policy Package 15
 - DE21.2 Post Exhibition Finalisation - Shoalhaven Contribution Plan 2019 - Amendment No.1 (CP2019.1) 27
 - DE21.3 Proposed Natural Disaster Clause - NSW Standard Instrument Local Environmental Plan 35

DE21.4	Proposed Planning Proposal - Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry)	45
DE21.5	Update - 'Legacy' Planning Proposals - Timing and Progression - NSW Government Direction	52
DE21.6	Proposed Council Submission - Draft Local Character Clause - Local Environmental Plan	64
DE21.7	Information Report - NSW Productivity Commission Report - Infrastructure Contributions System	80

City Development

DE21.8	Companion Animals - Activities for 2019-20	83
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8. Confidential Reports

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, 1 December 2020
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley – arrived at 5.04pm
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner – (Remotely)
Clr Nina Digiglio
Clr Annette Alldrick
Clr John Levett – (Remotely)
Clr Andrew Guile – (Remotely)
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

RESOLVED (Clr White / Clr Wells) MIN20.884

That the Minutes of the Development & Environment Committee held on Tuesday 03 November 2020 be confirmed.

CARRIED

Declarations of Interest

Nil

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

DE20.131 - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

Graham Stokes – AGAINST

DE20.132 - DA20/1579 – 42 Naval Parade Erowal Bay

Chris Grounds – FOR

DE20.133 - DA20/1751 – 42 Lyrebird Drive NOWRA – Lot 72 & DP 1198691

Anthony Barthelmess – FOR

DE20.135 - SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823

James Robinson – AGAINST

DE20.139 - Review of Tabourie Lake Entrance Management Policy

Matt Philpott – FOR

NOTICES OF MOTION / QUESTIONS ON NOTICE

DE20.127 Question on Notice - Subdivision - Edendale Street, Woollamia

**HPERM Ref:
D20/517130**

These questions are in relation to an approved development proposal/subdivision on the north side of Edendale St, Woollamia. The matter was drawn to my attention by a group of concerned residents.

The subject block was originally known as Lot 71 DP 9289 and in June 1994 the applicants instructed Alan Price & Associates to apply for a subdivision of Lot 70 and Lot 71 DP9289 on the corner of Woollamia Road and Edendale Street, Woollamia.

On 19 April, 1995 application SF7945 was approved for three Lots in Woollamia Road.

Question

1. In January 1995 when the application was lodged how many nearby property owners were notified or are likely to have been notified and does Council have evidence of this notification?

On 25 January 1996 a 13 Lot subdivision SF7946 was approved in Edendale St.

2. This DA should have expired on 25 January, 2001...why is it still active?...in what way was a substantial start made ?
3. What planning law permits a DA approval to be acted upon 24 years after the original assessment and does that law permit reassessment by Council to bring the consent conditions up to contemporary standards ?

In August 1997 Council apparently approved a "borrow pit" to excavate 6,500 cubic metres of soil to use on SF7945 to build 2 metre high mounds so that future structures might be out of flood reach. The clearing of bush and the excavation of the "borrow pit" began in May 2000. Local residents estimate that more than 100 trips were made per day for almost three weeks by 10 tonne dump trucks travelling to and from along Edendale St and Woollamia Rd, creating a dangerous situation for residents. Residents questioned the validity of the development as they were not aware of any substantial start occurring and they conveyed their concerns to

Shoalhaven City Council, Department of Land & Water Conservation, NPWS and the Departments of Planning and Health.

4. Was the work on the “borrow pit” approved under SF7945 on 19 April 1995 and what community consultation took place in relation to the approval and the truck movements that would be involved ?

If, as residents claim, work on the “Pit” began in May 2000 wouldn’t such work be illegal due to the expiration of SF 7945 a month before ?

5. Were permits required from the Dept. of Land & Water Conservation before these earthworks could take place and if so why were they not applied for ?

The attached letter from the DL&WC and signed by Noel Kesby, Manager Resource Assessment & Planning, states that; “The Department has no record of any previous referral from Council in relation to seeking DL&WC comment on natural resource management issues for the subject lands at the subdivision application stage...and how Council addressed relevant State policies on natural resource management”

The DL&WC letter went on to say that Council would be aware that the proposed development; “is likely to be impacted on and impact flood behaviour...and should be considered in accordance with the NSW Government’s Flood Prone Land Policy...to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding”

6. What flood plain management plans existed when this development was approved and what plan now exists to mitigate against the potential impacts of flooding in the area as a result of the development proceeding ? Is there such a thing as a Currumbene Creek Floodplain Management Plan (the creation of which was suggested by DL&WC back in 2000 before Council made any further development decisions in the area) and if so does it address the issue of flood free access and evacuation requirements, including hazards on access routes in the event of a major flood?

7. Is Council satisfied that it is protected under Section 733 of the Local Government Act 1993 in the event that litigation arises as a result of flooding at this site ?

8. When this development was approved, did Council give appropriate consideration to relevant State Natural Resource Policies, can Council give evidence of doing so, and what conditions of consent were applied as a result of these considerations ?

The issues that should have been addressed are detailed in the October 2000 DL&WC letter under the broad headings of; management of water quality, vegetation management, the existence of acid sulphate soils, and effluent disposal.

9. The riparian land on the site is defined in Council documentation as “drainage reserve”. Is Council satisfied that this description is accurate and in the words of DL&WC, “appropriately reflects the total function as a riparian corridor and its connection to a State significant wetland system.” What riparian protection or enhancement, including buffer zones, has Council built into approvals at this site by way of consent conditions ?

DL&WC offered the view at the time of approval that the so called drainage reserve; “would in fact contain inherent conservation values and provide a significant environmental function that would warrant consideration of its definition (and zoning) that affords greater protection”

The Statement of Environmental Effects that accompanied the application offered the opinion that; “no protected or endangered fauna would visit the area”. On 15th June, 2000 after the excavation of the “borrow pit” began and in response to representations from the public, two officers of the NSW National Parks & Wildlife Service inspected the Edendale site and in a letter to Development Manager, Tim Fletcher on 13th July, 2000, Michael Hood (Manager, Conservation Planning, NPWS south) described the property differently, as “a mature coastal

forest” and added that; “such a community provides habitat for a number of fauna species which at the time were listed on the Endangered Fauna (Interim Protection) Act.”

10. Did Council at any stage consider having the original Statement of Environmental Effects peer reviewed?

Of additional concern to Michael Hood was that there was no evidence of consideration of Aboriginal Heritage as part of the development application, notwithstanding the fact that the location of the site, adjacent to Currumbene Creek should have triggered an archaeological assessment.

11. Has an archaeological assessment of the site been requested by Council and has any consultation with the Jerrinja Local Aboriginal Land Council taken place ?

The NPWS letter also drew attention to the impact of the “pit” excavation and the building of pads to elevate future dwellings, citing concerns about destruction of habitat and the impact on possible aboriginal sites.

12. Will Council allow more mining for fill at the “borrow pit” and permit further house construction on “pads” given the warnings from NPWS about the environmental sensitivity of the site.

13. Since the sale of the site some 12 months ago, has Council received an application to modify the DA in any way or a request for a “Certificate of Construction” to clear bushland on the site ?

Response

A report responding to the Questions on Notice will be presented to a future Development & Environment Committee meeting.

REPORTS

DE20.128 Nebraska & Jerberra Estates - Options for Future Management of E2 Environmental Conservation Land

HPERM Ref:
D20/434779

Note: Cllr Findley arrived at 5.04pm

Recommendation (Item to be determined under delegated authority)

That the Development & Environment Committee:

1. Receive the update on the Nebraska Estate Planning Proposal (LP145.1) for information.
2. Agree “in principle” to the development of a new policy for the voluntary acquisition of “residual” E2 Environmental Conservation land in the Nebraska & Jerberra Estates, to be funded by any profits from the sale of developable Council land in each Estate.
3. Agree to the preparation of a draft policy for Council’s consideration based on the following:
 - a. the cost-neutral voluntary acquisition of undevelopable E2 land in each Estate, to the extent possible, funded by the net profit from the sale of Council-owned land with development potential;
 - b. if offers to sell E2 land are received before any developable Council-owned land has been sold, general funds be used to purchase E2 properties in each Estate limited to the anticipated net profits from the future sale of the Council-owned land;
 - c. land in Nebraska Estate is not purchased until the Planning Proposal has been finalised and the land zoning has been resolved;

- d. the policy be limited to the acquisition of E2 properties that are not able to form part of a development parcel;
 - e. the cost of removing any unauthorised structures from the land be deducted from the acquisition price;
 - f. any land acquired by Council under the new policy be managed for conservation purposes consistent with clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation using any available surplus funds and/or external funding programs and subject to resourcing;
 - g. receiving further advice from the NSW Government on the likelihood of receiving clause 34A certification for Nebraska on the basis of parts 2 and 3 above; and
 - h. consultation with the landowners in each Estate, in particular to gauge the interest of the E2 land in Jerberra Estate and proposed E2 land in Nebraska Estate.
4. Agree an independent valuation advice be obtained in order for management to provide detailed estimates of the following for consideration before a draft policy is presented to Council:
- a. the potential net profit from the sale of Council land in each Estate;
 - b. total unimproved land value of the undevelopable E2 land (existing and proposed); and
 - c. the annual cost of maintaining land to the Council.

RESOLVED (Clr Proudfoot / Clr Gash)

MIN20.885

That the Development & Environment Committee:

1. Receive the update on the Nebraska Estate Planning Proposal (LP145.1) for information.
2. Agree “in principle” to the development of a new policy for the voluntary acquisition of “residual” E2 Environmental Conservation land in the Nebraska & Jerberra Estates, to be funded by any profits from the sale of developable Council land in each Estate.
3. Agree to the preparation of a draft policy for Council’s consideration based on the following:
 - a. the cost-neutral voluntary acquisition of undevelopable E2 land in each Estate, to the extent possible, funded by the net profit from the sale of Council-owned land with development potential;
 - b. if offers to sell E2 land are received before any developable Council-owned land has been sold, general funds be used to purchase E2 properties in each Estate limited to the anticipated net profits from the future sale of the Council-owned land;
 - c. land in Nebraska Estate is not purchased until the Planning Proposal has been finalised and the land zoning has been resolved;
 - d. the policy be limited to the acquisition of E2 properties that are not able to form part of a development parcel;
 - e. the cost of removing any unauthorised structures from the land be deducted from the acquisition price;
 - f. any land acquired by Council under the new policy be managed for conservation purposes consistent with clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation using any available surplus funds and/or external funding programs and subject to resourcing;
 - g. receiving further advice from the NSW Government on the likelihood of receiving clause 34A certification for Nebraska on the basis of parts 2 and 3 above; and
 - h. consultation with the landowners in each Estate, in particular to gauge the interest of the E2 land in Jerberra Estate and proposed E2 land in Nebraska Estate.

4. Agree an independent valuation advice be obtained in order for management to provide detailed estimates of the following for consideration before a draft policy is presented to Council:
 - a. the potential net profit from the sale of Council land in each Estate;
 - b. total unimproved land value of the undevelopable E2 land (existing and proposed); and
 - c. the annual cost of maintaining land to the Council.

CARRIED

**DE20.129 Exhibition Outcomes and Proposed Finalisation -
Planning Proposal and Draft DCP Amendment - Urban
Release Areas Small Lots Clause**

**HPERM Ref:
D20/472861**

Recommendation (Item to be determined under delegated authority)

That Council

1. Adopt and finalise Planning Proposal (PP055) as exhibited.
2. Forward PP055 to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South Urban Release Area as exhibited and give the required public notice advising of its commencement date.
5. Advise all affected and adjoining landowners, the Cambewarra Residents and Ratepayers Association and development industry representatives of this decision, and when the LEP and DCP amendments will be made effective.

RESOLVED (Clr Findley / Clr White)

MIN20.886

That Council:

1. Adopt and finalise Planning Proposal (PP055) as exhibited.
2. Forward PP055 to the NSW Parliamentary Counsel's Office to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
4. Adopt and finalise the amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South Urban Release Area as exhibited and give the required public notice advising of its commencement date.
5. Advise all affected and adjoining landowners, the Cambewarra Residents and Ratepayers Association and development industry representatives of this decision, and when the LEP and DCP amendments will be made effective.

CARRIED

**DE20.130 'Legacy' Planning Proposals - Timing and Progression -
NSW Government Direction**

**HPERM Ref:
D20/488125**

Recommendation (Item to be determined under delegated authority)

That Council

1. Receive the updates on each of the 'legacy' Planning Proposals (PP's) for information.
2. In respect of each PP covered in the report, take the following steps:
 - a. Warrah Road, Bangalee (PP005): continue toward finalising this PP under a new Gateway determination.
 - b. Halloran Trust Land, Culburra (PP006): withdraw the current PP and seek a new Gateway determination, subject to further discussions with the proponent and the NSW Department of Planning, Industry & Environment (DPIE) in an attempt to resolve a development footprint.
 - c. Nebraska Estate, St Georges Basin (LP145.1): withdraw the current PP and seek a new Gateway determination while continuing efforts to secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
 - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): withdraw the current PP on the basis that it will be added to and covered by a new PP and accompanying Biodiversity Certification Assessment Report (BCAR) that is being prepared by the proponent.
 - e. Inyadda Drive, Manyana (PP007): withdraw the current PP and seek a new Gateway determination once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
3. Prepare a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.

RESOLVED (Clr White / Clr Gash)

MIN20.887

That Council:

1. Receive the report for information.
2. Defer this item to:
 - a. Request an extension of time from Dept of Planning Industry and Environment to seek further advice, including but not limited to the existing expert reports that have been prepared for the applications.
 - b. Request an urgent meeting with the Hon Shelly Hancock MP Member for South Coast and The Hon. Robert Stokes MP to discuss the NSW Government Direction on these Planning Proposals.

CARRIED

**DE20.131 DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP
713138**

**HPERM Ref:
D20/259112**

Recommendation (Item to be determined under delegated authority)

That Council determine Development Application DA20/1495 by way of approval subject to the conditions at attachment 10.

RESOLVED (Clr Alldrick / Clr Guile)

MIN20.888

That in relation to DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138:

1. Council defer the item and refer back to staff to consider:
 - a. If under 7.13 of the Shoalhaven Local Environment Plan the Council can legally require a further Development Application should a change to short term holiday letting be required by the owners;
 - b. The submissions by surrounding residents;
2. A report be provided on the above to the next Development & Environment Meeting.

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

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

CARRIED

**DE20.132 DA20/1579 – 42 Naval Parade, Erowal Bay – Lot 45 DP
1052512**

**HPERM Ref:
D20/478805**

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/1579 to demolish existing structures and construct shop top housing at Lot 45 DP 1052512, 42 Naval Parade, Erowal Bay not be supported by Council having regard to the reasons contained in Attachment 3 of this report.

RESOLVED (Clr Findley / Clr Wells)

MIN20.889

That Development Application DA20/1579 to demolish existing structures and construct shop top housing at Lot 45 DP 1052512, 42 Naval Parade, Erowal Bay not be supported by Council having regard to the reasons contained in Attachment 3 of this report.

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

Against: Clr Gash

CARRIED

**DE20.133 DA20/1751– 42 Lyrebird Drive NOWRA – Lot 72 & DP
1198691**

**HPERM Ref:
D20/478771**

Recommendation (Item to be determined under delegated authority)

That Development Application No. DA20/1751 for the construction of dual occupancy (attached) be determined by way of refusal for the reasons set out in the draft Notice of Determination at **Attachment 1**.

MOTION (Clr White / Clr Gash)

That in relation to DA20/1751– 42 Lyrebird Drive NOWRA – Lot 72 & DP 1198691:

1. Council approve the Development Application; and
2. Conditions of Consent be modelled on Attachment 5 and amended to reflect this development including the need for a Flood emergency plan.

Clr Proudfoot raised a Point of Order against Clr Digiglio regarding her comment about Councillors not making moral decisions. The Chairperson ruled as a Point of Order. Clr Digiglio was asked to withdraw her comments. Clr Digiglio withdrew her comments.

RESOLVED (Clr White / Clr Gash)

MIN20.890

That in relation to DA20/1751– 42 Lyrebird Drive NOWRA – Lot 72 & DP 1198691:

1. Council approve the Development Application; and
2. Conditions of Consent for the development be modelled on Attachment 5 to the report and amended to reflect this development, including the need for a Flood emergency plan.

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

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

CARRIED on the CASTING VOTE of the Chair.

DE20.134 SF10686 – Red Gum Dr Ulladulla – Lot 600 DP 1249606 & Lot 2 DP 1076005

HPERM Ref: D20/480834

Recommendation (Item to be determined under delegated authority)

That Development Application SF10686 for a residential subdivision to create eight (8) Torrens Title allotments, including seven (7) residential allotments, one (1) public reserve lot, and associated site works within the subdivision approved by SF9275 at Lot 600 DP 1249606 and Lot 2 DP 1076005, Red Gum Drive, Ulladulla, be refused for the reasons contained in Attachment 1 of this report.

RESOLVED (Clr White / Clr Proudfoot)

MIN20.891

That Council defer this recommendation until such time as the issues with Transport NSW are sorted out and resolved, with a time limit of 12 months to be applied for that resolution.

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

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

CARRIED

DE20.135 SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823

**HPERM Ref:
D20/509320**

Recommendation (Item to be determined under delegated authority)

That the report on SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823 be received for information.

RESOLVED (Clr Wells / Clr White)

MIN20.892

That in relation to SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823:

1. The report be received for information; and
2. SF10804 be called in for determination by the elected Council on the basis of public interest in the Development.

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

AGAINST: Nil

CARRIED

DE20.136 Quarterly Review for Compliance Matters

**HPERM Ref:
D20/422071**

Recommendation (Item to be determined under delegated authority)

That Council receive the quarterly report on compliance matters for information.

RESOLVED (Clr Wells / Clr Alldrick)

MIN20.893

That Council receive the quarterly report on compliance matters for information.

CARRIED

DE20.137 Misuse of Vegetation Policy Report

**HPERM Ref:
D20/461817**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive this report for information; and
2. Having regard to the fact that there is already a process through the Land & Environment Court, supported by the Tree (Disputes Between Neighbours) Act 2006, to deal with the type of issues outlined in Council Minute MIN20.637, Council not proceed with developing a separate policy relating to the misuse of vegetation at this time.

RESOLVED (Clr Proudfoot / Clr Kitchener)

MIN20.894

That Council:

1. Produce a draft Voluntary Vegetation Planting Code with a specified list of guidelines including view sharing, vegetation invasiveness, overshadowing and bushfire hazard;
2. Update and refresh the Shoalhaven City Council Tree Guides;
3. Offer street trees for council to plant in residential streets on private land at the request of

homeowners.

4. Receive a briefing from a member of council's legal panel on legal and best practice advice in relation to vegetation management.

CARRIED

Procedural Motion - Adjournment of Meeting

RESOLVED (Clr Pakes / Clr Findley)

MIN20.895

That the meeting be adjourned for five (5) minutes to allow for refreshments.

CARRIED

The meeting adjourned the time being 7.39pm.

The meeting resumed the time being 7.45pm.

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner – (Remotely)
Clr Nina Digiglio
Clr Annette Aldrick
Clr John Levett – (Remotely)
Clr Andrew Guile – (Remotely)
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

DE20.138 Collingwood Beach Dune Vegetation Two-Year Trial Action Plan - Final Report

HPERM Ref:
D20/480826

Recommendation

That Council:

1. Support the preparation of the Collingwood Beach Dunecare Action Plan to guide the work of the Collingwood Beach Dunecare Group under Council's Bushcare Program. This will be supported by Council's 2020 Collingwood Beach Coastal and Estuary Grant, should it be successful;
2. Allocate \$37,700 in the 2021/22 budget for Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant;
3. Allocate a dedicated annual budget of \$15,000 from 2021/22 onwards to continue to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven, noting the type of replacement trees planted in the dune from Susan Street to Albion Street must be on the approved revegetation species list;
4. Consider allocation of an additional \$125,000 for additional annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year of the Shoalhaven's 170 km of coastline with more than 250 beach access ways;

5. Undertake an audit of the stormwater outlets, shared pathway and accessways along Collingwood Beach to inform the Coastal Management Program to maintain the resilience of the dune and identify any maintenance works that are required; and
6. Adopt the recommendations of the Final Report - Collingwood Beach Dune Vegetation Action Two-Year Trial Plan.

MOTION (Clr White / Clr Gash)

That Council:

1. Support the preparation of the Collingwood Beach Dunecare Action Plan to guide the work of the Collingwood Beach Dunecare Group under Council's Bushcare Program and completed within four months. Such plan to be in accordance with the NSW Coastal Dune Management manual and the NSW Coastal Management Act 2016. This plan will be supported by Council's 2020 Collingwood Beach Coastal and Estuary Grant, should it be successful.
2. Allocate \$37,700 in the 2021/22 budget for Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.
3. Allocate a dedicated annual budget of \$15,000 from 2021/22 onwards to continue to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven, noting the type of replacement trees planted in the dune from Susan Street to Albion Street must be on the approved revegetation species list in the Collingwood Beach Dunecare Action Plan.
4. Allocate additional funding for annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year for Collingwood Beach.
5. Undertake an audit of the stormwater outlets, shared pathway and accessways along Collingwood Beach to inform the Coastal Management Program to maintain the resilience of the dune and identify any future maintenance works that are required.
6. Submit a grant immediately under the CZMP funding opportunities for the implementation of the storm water discharge concept proposed by City Services, with the responsibility for all matters relating to the dunes of Collingwood Beach be transferred to City Services.
7. Receive the Final Report – Collingwood Beach Dune Vegetation Action Two Year Trial Plan for information
8. Re-endorse the Council resolution on February 11, 2020 (subject to a Recission Motion Council Meeting February 25, 2020 - defeated), that Council immediately remove all banksia root suckers, seedlings and saplings and:
 - a. This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual and Council's publicly displayed acknowledgement the houses are built on the hind dune.
 - b. This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual.
9. Tall tree species that potentially endanger people, residences and infrastructure will not be planted particularly in unstable foredune areas.
10. All deadwood will be removed from Collingwood Beach Dune areas.
11. Undertake within the next 3 months further pruning and thinning of Banksia's where thickets occurring from Susan Street to the north to Ilfracombe Ave.

PROCEDURAL MOTION – MOTION BE PUT (Clr Wells / Clr White)

That the MOTION be PUT.

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

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

PROCEDURAL MOTION CARRIED

The MOTION was PUT to the meeting and CARRIED

RECOMMENDATION (Clr White / Clr Gash)

That Council:

1. Support the preparation of the Collingwood Beach Dunecare Action Plan to guide the work of the Collingwood Beach Dunecare Group under Council's Bushcare Program and completed within four months. Such plan to be in accordance with the NSW Coastal Dune Management manual and the NSW Coastal Management Act 2016. This plan will be supported by Council's 2020 Collingwood Beach Coastal and Estuary Grant, should it be successful.
2. Allocate \$37,700 in the 2021/22 budget for Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.
3. Allocate a dedicated annual budget of \$15,000 from 2021/22 onwards to continue to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven, noting the type of replacement trees planted in the dune from Susan Street to Albion Street must be on the approved revegetation species list in the Collingwood Beach Dunecare Action Plan.
4. Allocate additional funding for annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year for Collingwood Beach.
5. Undertake an audit of the stormwater outlets, shared pathway and accessways along Collingwood Beach to inform the Coastal Management Program to maintain the resilience of the dune and identify any future maintenance works that are required.
6. Submit a grant immediately under the CZMP funding opportunities for the implementation of the storm water discharge concept proposed by City Services, with the responsibility for all matters relating to the dunes of Collingwood Beach be transferred to City Services.
7. Receive the Final Report – Collingwood Beach Dune Vegetation Action Two Year Trial Plan for information
8. Re-endorse the Council resolution on February 11, 2020 (subject to a Recission Motion Council Meeting February 25, 2020 - defeated), that Council immediately remove all banksia root suckers, seedlings and saplings, and:
 - a. This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual and Council's publicly displayed acknowledgement the houses are built on the hind dune.
 - b. This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual.
9. Tall tree species that potentially endanger people, residences and infrastructure will not be planted particularly in unstable foredune areas.

10. All deadwood will be removed from Collingwood Beach Dune areas.
11. Undertake within the next 3 months further pruning and thinning of Banksia's where thickets occurring from Susan Street to the north to Illfracombe Ave.

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

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

CARRIED

DE20.139 Review of Tabourie Lake Entrance Management Policy

**HPERM Ref:
D20/486502**

Recommendation (Item to be determined under delegated authority)

That Council

1. Adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD.
2. Continue to investigate stormwater drainage issues affecting properties on Princes Highway, Tabourie Lake in conjunction with Transport for New South Wales.

RESOLVED (Clr Gartner / Clr Digiglio)

MIN20.896

That Council:

1. Adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD.
2. Continue to investigate stormwater drainage issues affecting properties on Princes Highway, Tabourie Lake in conjunction with Transport for New South Wales.

FOR: Clr Findley, Clr Wells, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile and Stephen Dunshea

AGAINST: Clr Pakes, Clr Gash, Clr White, Clr Watson, Clr Kitchener and Clr Proudfoot

CARRIED

Note: A Rescission Motion was received after the meeting closed in relation to DE20.139 Review of Tabourie Lake Entrance Management Policy signed by Clr Kitchener, Clr White & Clr Watson.

There being no further business, the meeting concluded, the time being 8.52pm.

Clr Pakes
CHAIRPERSON

DE21.1 Post Exhibition Finalisation - Voluntary Planning Agreement Policy and Works in Kind Policy Package

HPERM Ref: D20/424616

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments:

1. Public Exhibition Submission Summary [↓](#)
2. Combined Policy Package with recommended post exhibition changes (under separate cover) [↗](#)

Reason for Report

- Present the submissions received during the public exhibition of the draft Voluntary Planning Agreement (VPA) and Works in Kind Agreement (WIKA) Policy Package (the Policy Package).
- Enable the final adoption and implementation of the Policies.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the draft Voluntary Planning Agreement (VPA) and Works in Kind Agreement (WIKA) Policy Package as exhibited, with changes shown in Attachment 2 to the report.
2. Endorse the exhibition of the proposed new fee structure for VPA and WIKA applications (\$280 per agreement) as part of the 2021/22 Fees and Charges process and review the fee amount after a 12-month period.
3. Delegate the management of the VPAs and WIKAs outlined in Table 2 of this report to the Chief Executive Officer (or his delegate) for consideration and resolution, with the following VPAs and WIKAs being reported to Council:
 - Those that fall outside the criteria in Table 2 in this report, or
 - As a result of negotiations, additional or different provisions or credit arrangements were required to be included, or substantial objections or issues were raised as a result of public notification.
4. Advise the Development Industry Representatives and those who made a submission of this resolution.

Options

1. As recommended.

Implications: This is the preferred option as it will enable this much needed Policy Package to be finalised. This also responds to a number of matters raised during the public exhibition period.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the finalisation and implementation of the Policy Package.

3. Not proceed with the Policy Package.

Implications: This is not recommended as it would mean:

- It would be inconsistent with Internal Audit Recommendations and previous Council decisions.
- There would be a policy gap regarding WIKAs.
- Outdated information and processes would remain relating to VPAs.

Background

Following an increase in the number of VPAs and WIKAs being received by Council, it was identified that an additional and more comprehensive process was required to better manage these mechanisms moving forward.

Council currently has an existing [Voluntary Planning Agreement Policy](#) in place, but not a policy relating to WIKAs. The need for updated and new policy guidance in this regard was also raised through Council's Internal Audit process.

On 20 July 2020 Council resolved (MIN20.467) to:

1. *Endorse the public exhibition of the draft Voluntary Planning Agreement (VPA) and Works in Kind Agreement (WIKa) Policy Package at **Attachment 1**.*
2. *Endorse the review of the existing fee structure relating to VPA's and WIKa's and prepare a new fee structure as required.*
3. *Receive a further report regarding the outcomes of the public exhibition, proposed delegation arrangements for certain VPA's/WIKa's, proposed fee structure and proposed finalisation of the draft Policy Package.*
4. *Advise relevant stakeholders, including CCB's and industry representatives of this resolution and exhibition arrangements.*

Public Exhibition

The draft Policy Package was exhibited for a period of 30 days from Wednesday 12 August to Friday 11 September 2020 (inclusive). A notice appeared on Council's website and as per the resolution, the key industry stakeholders were notified directly in writing.

The exhibition material included the following documents:

- [Draft VPA Policy and the draft VPA Template](#) (prepared for Council by Lindsay Taylor Lawyers).
- [Draft WIKa Policy and the draft WIKa Template](#) (reviewed by Lindsay Taylor Lawyers, based on the existing template).

As a result of the exhibition, two (2) formal submissions were received from the following industry representatives:

- Allen Price & Scarratts.
- Shaw Reynolds Lawyers (on behalf of Jemalong Mundamia Pty Ltd).

Submission Summary and Recommended Post Exhibition Changes

Attachment 1 provides a summary of the submissions received and staff comment on each. Copies of the actual submissions can be made available to Councillors prior to the meeting on request.

As a result of the submissions received, the following changes are proposed to the exhibited draft Policies and Templates, which are also shown in **Attachment 2**:

- Remove the reference to 'staff time' from section 7 of the draft VPA Policy and clarify that the costs outlined in the draft VPA and WIKA Policy refer to Council's external costs, such as legal or professional costs/expenses (i.e. valuation and other consultant costs) and disbursements.
- Add a note into the draft VPA Policy (Section 7) to indicate that the draft VPA template is not 'static' and developers can propose changes to the hand-over procedure as set out in the draft VPA template.
- Provide clarification in the draft VPA Policy regarding security and when a lesser amount may be acceptable.
- Include a definition for 'guarantee' and 'unendorsed bank cheque' in the draft WIKA Policy.
- Amend the reference in Section 5 of the draft WIKA Policy from 'bank guarantee' to 'bank cheque'.
- Amend clause 7 of the draft VPA template to specify that this clause only prevents a developer from appealing the terms of the VPA they have negotiated. This does not prevent them appealing other aspects of the development.
- Amend clause 6.2(a) of the draft WIKA template to clarify the value of works.

Implementation of an Application/ Supervision Fee

At present, there is no consistent approach regarding how requests for VPAs and WIKAs are submitted. The proposed draft policies require specific information to be provided as part of the preliminary process, and as such it is considered appropriate for a new clear application process to be implemented for efficiency and consistency.

A number of NSW councils have established an application fee for the initial consideration of a VPA or WIKA (i.e. a lodgement fee) and a supervision fee for the construction phase (where appropriate). These fees acknowledge the preliminary work relating to a VPA or WIKA that utilises significant staff and other resources before the proposed VPA or WIKA is supported for progression.

The following table outlines the fees charged for the application of a VPA or WIKA by a number of other NSW councils:

Table 1: Examples of VPA and WIKA fees in NSW

Council	VPA	WIKI	Additional Notes
Blacktown City Council	\$530		This fee is for each full Section 7.11 work listed in a contributions plan.
	\$264		This fee is for each part of a Section 7.11 work listed in a contributions plan.
Strathfield Council	\$550	\$550	Preliminary assessment.
Wingecarribee Shire Council	10%	10%	This is an administration fee that is 10% of costs of the works.
MidCoast Council	50%	50%	This fee is a management fee and is based on 50% of the cost of preparation.
City of Sydney Council	\$880	-	Administration costs.
Clarence Valley Council	\$565	-	VPA preparation fee.
Georges River Council	\$599	-	Preliminary assessment.

Based on the above information, the reviewed councils (largely metropolitan) charge significant fees for the application of both a VPA and WIKA. These fees are considered to be too high for Shoalhaven at this point in time given the regional nature of the area and the desire to not wish to discourage appropriate VPAs or WIKAs. As Council moves to implement a new/amended policy position relating to VPAs/WIKAs, an initial application fee of \$280 is considered reasonable. It would be appropriate for the fee amount to be reviewed following a period of 12 months to see if any changes are required.

It is noted that these fees would be in addition to developers paying for Council's legal and other external costs associated with the drafting of the VPA or WIKA. An application form will be available to assist developers with the lodgement of VPAs and WIKAs once this Policy Package has been formally adopted.

As Council continues to see an increase in the number of requests for VPAs and WIKAs it is appropriate that there is some administration fee/cost recovery.

Delegation

There is currently no consistent approach to reporting proposed or draft VPAs and WIKAs to Council. As part of the current process, legal advice was obtained from Lindsay Taylor Lawyers regarding potential staff delegation opportunities. Staff delegation for the straightforward VPAs/WIKAs of a mechanical, administrative etc. nature would reduce the number of agreements that need to be reported to Council and also assist in reducing time delays associated with development applications.

Table 2 below (and the draft VPA/WIKA Policies at **Attachment 1**) outlines instances where VPAs or WIKAs could be considered under delegation and thus may not need to be reported to Council. Generally, this would be when the VPA or WIKA is in accordance with the template form, does not go beyond the specified arrangements, and no objections or substantial issues are raised during public notification. Council could consider providing general delegations to the Chief Executive Officer (or their delegate) for these types of VPAs and WIKAs, enabling staff to:

- Negotiate, publicly notify and enter into VPAs.
- Negotiate and enter into WIKAs.

Table 2: Instances where VPAs/WIKAs could be considered under delegation

VPAs	WIKAs
<ul style="list-style-type: none"> • Where a VPA is in a template format, and • The contributions that will be required: <ul style="list-style-type: none"> – are a standard amount of monetary contributions or an amount of monetary contributions that can be easily calculated using a standard rate, or – consists of work and/or dedicated land that is listed in the Council's Contributions Plan and Section 7.11 contributions are not excluded, or – consists of work and/or dedicates land that is listed in the Council's Contributions Plan and Section 7.11 is excluded, but only in relation to Section 7.11 which are for the same category of infrastructure as the works 	<ul style="list-style-type: none"> • The WIKA is in a template format, and • The WIKA consists of works that are listed in the Council's Contributions Plan, and • The value of works which are recognised are consistent with the value as specified in the Council's Contributions Plan, and • The works satisfy Section 7.11 contributions of the same category of infrastructure as the works, and • The WIK Agreement does not involve credit or refund arrangements or has credit or refund arrangements which are set out in template format.

<p>and land to be provided under the VPA, and</p> <ul style="list-style-type: none"> The VPA does not involve credit or refund arrangements or has credit or refund arrangements which are set out in template format. 	
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VPAs or WIKAs would however need to be reported to the Council prior to being entered into if:

- They fall outside the criteria in Table 2, or
- As a result of negotiations, additional or different provisions or credit arrangements were required to be included, or substantial objections or issues were raised, as a result of public notification.

Conclusion

The proposed Policy Package is need in a timely manner given the increase number of WPA and WIKa requests that Council is receiving. As such it is important that this matter proceed to finalisation, noting that it can continue to be reviewed and improved through time.

Community Engagement

The draft Policy Package was publicly exhibited for 30 days in accordance with legislative requirements. Two (2) submissions were received which are summarised at **Attachment 1** and discussed above.

Policy Implications

The NSW Government announced a review of the NSW Infrastructure Contributions system in 2020. This included a new draft planning agreement policy framework. The review is ongoing, and the Policy Package may need to be adjusted and updated in the future in response to changes to the NSW system.

Financial Implications

Finalising the Policy Package will continue to be undertaken within the existing Strategic Planning budget.



Attachment 1: Summary of Submissions

Draft Voluntary Planning Agreement (VPA) Policy and Draft Works in Kind (WIKa) Policy

Public Exhibition: 12 August 2020 – Friday 11 September 2020

No.	Submitter	Submission Summary	Comments
1.	Allen Price & Scarrats	The VPA and WIKa process is somewhat complex and, in many cases, may cross over between engineering, planning, ecology and finance and because of this, it falls through the cracks.	No recommended change. There is often significant coordination required between the various specialised areas of Council, which can take time. With the introduction of the new policy and associated supporting documents, it is anticipated that this process will become more streamlined and efficient.
		Section 7.11 CP projects are not updated on a frequent enough basis or to the accuracy required and therefore, with the passage of time and as more detailed designs are progressed, the actual costs differ considerably from the estimated costs in the plan. Along with the proposed policy needs to be a commitment to more regular cost estimates and reviews of the CP projects.	No recommended change. Shoalhaven Contributions Plan 2019 (the CP) was adopted in 2019. Council has committed to an ongoing housekeeping process to address this issue. A number of amendments are currently underway to ensure the CP is operating efficiently.
		It is important the policy not become a disincentive to development, and we are concerned about the costs and the cost sharing arrangements being placed too heavily on the developer. Whilst we appreciate Council cannot expend excessive time on VPA's and WIKa's, we also note that in many cases the only reason a WIKa (for example) is to be entered into is because the timing of infrastructure delivery by Council is delayed. Some recognition of this should be incorporated into the policy.	No recommended change. The policies aim to provide a fair, transparent and accountable process for developers seeking to enter into VPAs/ WIKAs. The policies also recognise Council's obligations in relation to the broader public interest and community expectations in this regard.
		Most VPA's are relatively straightforward and relate to the dedication of Public Reserves etc as part of a DA process. In these cases, the VPA process and corresponding fee should be reduced as they are not necessarily very extensive to negotiate.	No recommended change. VPAs vary in complexity and often involve staff from multiple sections of Council. The VPA Policy establishes a process for the more straightforward VPAs and its use will reduce drafting/legal costs incurred.

No.	Submitter	Submission Summary	Comments
		<p>The speed of any of these proposals is crucial in the development space. The proposed Old Southern Rd WIKa is an example of a WIKa that is taking longer than expected.</p>	<p>No recommended change.</p> <p>Council is committed to processing WIKa and VPA requests in a timely fashion and has put a number of processes in place to assist with this (e.g. Contributions Panel). It should also be recognised that delays in the process (in a general sense) may also be due to external delays including quality of information provided and differing expectations.</p>
		<p>I have not done a detailed legal review of either policy/draft agreement and am hopeful that as we utilise these documents in the future, Council's legal preparation is not overly one-sided so that developers are not willing to accept the proposed conditions.</p>	<p>No recommended change.</p> <p>The policies aim to provide a fair, transparent and accountable process for developers seeking to enter into VPAs/WIKAs, whilst protecting Council's interests. There is also flexibility in the respective templates.</p>
2.	Shaw Reynolds on behalf of Jemalong Mundamia Pty Ltd	<p>Issues for consideration – Draft VPA Policy and VPA Template</p> <p>Payment of Council's costs - Section 7 (at page 9) of the VPA Policy imposes a new obligation on developers and requires that 100% of Council's costs are to be paid by the developer for:</p> <ul style="list-style-type: none"> i. negotiating, preparing and entering into the agreement (including associated legal costs and staff time); and ii. enforcing the agreement. <p>We have found that other councils may require payment of external services which were engaged by council (such as legal advisors or other external consultants), however costs usually do not include payments for internal council staff time. Further clarification may assist developers with respect to the extent and calculation of such costs.</p>	<p>Change recommended.</p> <p>The Council's existing VPA Policy provides that the Council will generally require a Planning Agreement to make provision for payment by the developer of the Council's costs. The draft VPA Policy clarifies the Council's position that 100% of the Council's costs are payable by the developer and to clarify that the costs include payment of external services that are required to be engaged by Council, such as legal advisors or other external consultants.</p> <p>Council staff time is not included in this, but within the proposed new fee, which covers some of the time it takes staff to negotiate and prepare VPAs/WIKAs.</p> <p>As such, it is recommended that "staff time" be removed from Section 7 of the VPA Policy.</p> <p>It is also worth noting that the extent that costs need to be recovered can be negotiated at the VPA preparation stage; however, in general, Council should not be out of pocket for an agreement which is voluntary.</p>
		<p>Additional costs for administration - Section 7 (at page 9) notes that in particular cases Council may require the VPA to make provision for ongoing administration costs associated with the agreement. We submit that such costs could be quantified and considered as contributions under a VPA, dependant on the circumstances. It may be appropriate for an acknowledgement of this in the Draft VPA Policy.</p>	<p>No recommended change.</p> <p>Administration of a VPA requires additional staff resourcing which would vary for each VPA. Any ongoing administrative requirements and costs would be considered as a VPA is prepared and as required in the context of each VPA, as not all costs would be the same.</p>

No.	Submitter	Submission Summary	Comments
		<p>Hand-over procedure -Section 7 (at page 10) sets out a new procedure for the hand-over of public work carried out under a planning agreement. A certificate from the developer and defects liability period must now be provided. In the instance where a staged approach is required, we suggest that this is clearly set out in any VPA to ensure that the parties are clear as to the requirements and a standard table or format could be included in the VPA Template in this regard.</p>	<p>Change recommended.</p> <p>This is a current requirement of the Council's existing VPA Policy (p.9). The VPA template is not static and can be modified as required in the circumstances of each case for certain VPAs to include additional clarification/requirements.</p> <p>It is recommended that a note be added to the VPA Policy to clarify that developers can propose changes to the hand-over procedure as set out in the VPA template for the Council's consideration and approval as appropriate in the circumstances of each case.</p>
		<p>Provision of security – Section 7 (at page 11) and clause 24 of the VPA Template has a new requirement that Council will now require security in the form of an unconditional bank guarantee to the full value of the developer's provision under the planning agreement and on terms otherwise acceptable to Council. Previously the policy said that Council would "generally require" such a security. It is submitted that it may be appropriate to provide further guidance to developers with respect to the provision of security if it is still the case that Council will exercise discretion in particular circumstances.</p> <p>There may be some instances where the Council might consider another form of security more appropriate, for example where it may not be financially viable for the developer to provide bank guarantees and the VPA obligations can be secured in another way. In our experience it is not uncommon for monetary contributions and works to be secured by way of tying the completion of works or payment of monetary contributions to the restriction of the issuing of construction certificates, subdivision certificates or occupation certificates. We do not know whether the Council has considered these other forms of security when it prepared the draft VPA Policy.</p> <p>Subject to Council's instructions in this matter, we suggest that the VPA Policy be amended to state that the Council will require bank guarantees to the full value of the developer's provision under the VPA as security but may consider a lesser amount if it can be satisfied that other security measures are implemented to secure the provision of the development contributions and any Council's enforcement costs.</p>	<p>Change recommended.</p> <p>This is a current requirement of Council's existing VPA Policy (p.8); however, in the past it has not been applied consistently.</p> <p>The provision of a security enables the enforcement of a VPA where there is a breach by the developer. With an increase in the number of VPAs/WIKAs of late, it is essential that Council consistently seeks provision for security to protect its interests.</p> <p>It is recommended that the VPA Policy be amended to state that Council will require bank guarantees to the full value of the developer's provision under the VPA as security, but may consider a lesser amount if it can be satisfied that other security measures are implemented to secure the provision of the development contributions and any Council's enforcement costs.</p>
		<p>Annual report – Clause 37 of the VPA Template includes an obligation that the developer provide an annual report detailing the performance of obligations under the Deed in a form specified by</p>	<p>No recommended change.</p>

No.	Submitter	Submission Summary	Comments
		<p>Council. We respectfully submit that it could be useful to incorporate the proposed form of the annual report into the Draft VPA Policy.</p> <p>Clause 7 of the VPA Template regarding the surrender of right of appeal, etc. - Developers could be prevented from engaging in any proceedings appealing against, or questioning the validity of the Deed, or an Approval relating to the Consent. Such an exclusion appears to be much broader than what was envisaged by section 7.8 of the Environmental Planning and Assessment Act 1979 and may result in a technical breach of clause 7 in the instance where a developer brings an action against a third party authority.</p> <p>It may be appropriate for this clause to clarify the standard inclusions and exclusions envisaged by Council in regard to proceedings.</p>	<p>In most cases, a standard letter addressing all the matters (which vary from VPA to VPA) is appropriate. This does not require a formal process which in most cases would be excessive.</p> <p>Change recommended.</p> <p>This clause is intended to prevent a developer from commencing or maintaining any appeals of proceedings which question the validity of a VPA or challenging the matters set out in the VPA, as the Council and a developer would have negotiated and agreed on the terms of a VPA before it is entered into. It is not appropriate for the developer to subsequently commence any such proceedings which would impact or prevent the implementation of the VPA.</p> <p>For example, it would not be appropriate for a developer who has entered into and agreed to the terms of a VPA to subsequently challenge the validity of a VPA, or to appeal against a condition of consent requiring the VPA to be complied with.</p> <p>The clause is not intended to prevent a developer from commencing or maintaining any other appeals or proceedings in relation to a development consent (such as appealing against any conditions of consent unrelated to the VPA).</p> <p>As a result of this submission point, additional wording is recommended to clarify clause 7.1 of the template, as follows:</p> <p><i>The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to the validity of this Deed or any condition in the Approval requiring the entering into or compliance with this Deed.'</i></p>
Issues for consideration – Draft WIKA Policy and WIKA Template			
		<p>Provision of security – Section 1.4 (at page 5), section 5 (at page 8) and clause 14 of the WIKA Template has a new requirement that Council will require security in the form of cash or an unendorsed bank guarantee. Clause 14 of the WIKA Template refers to an “unendorsed bank cheque” Clarification is sought in relation to Council’s requirements.</p>	<p>Change recommended.</p> <p>The provision of a security enables the enforcement of a VPA where there is a breach by the developer. With an increase in the number of VPAs/WIKAs of late, it is essential that Council consistently seeks provision for security to protect its interests.</p> <p>Additionally, the term Guarantee is defined on page 19 of the WIKA Template and includes the options of using either cash or an</p>

No.	Submitter	Submission Summary	Comments
			<p>unendorsed bank cheque as security. This is consistently applied throughout the document.</p> <p>An unendorsed bank cheque is a form of guarantee that does not have limitations attached on the back of the cheque.</p> <p>It is recommended that a definition of 'Guarantee' be included in the definition section of the draft WIKA Policy. This definition is the same as the definition in the WIKA Template. A definition for unendorsed bank cheque should also be included.</p> <p>The reference to 'bank guarantee' at section 5, page 8 should also been amended to 'bank cheque.'</p>
		<p>Agreement on specification – Clause 1 of the WIKA Template requires agreement from the Council to the requirements for the design, materials and specification must be obtained before detailed design of the works may commence. Once this is provided separate approvals of the detailed design construction drawings for the works are required.</p> <p>Clause 2 of the WIKA Template requires a developer to make written requests to approve any variations to the design or specification of the works the subject of the WIKA.</p> <p>Matters relating to this approval may cause timing and scheduling issues with construction and so clarification is sought as to the process proposed by Council in relation to written requests (for example, whether there will be a single point of contact responsible for the management and approval of such requests).</p>	<p>No recommended change.</p> <p>Council staff will be required to sign off on all relevant stages of the WIKA. This is to ensure that Council is receiving what they have agreed to and that all works are to Council's specifications and requirements.</p> <p>The relevant contact person for each stage of the WIKA, as relevant, will be made known to the developer at the appropriate point in the process.</p>
		<p>Value of works – Clause 6 of the WIKA Template requires that the Works Value is to be based on the value of the Works as specified in the Contributions Plan. With respect to the works being completed by Jemalong, the Contributions Plan is yet to be updated therefore the value of the Contributions offset against the Developers contributions required pursuant to SCP2019 is currently indeterminate. This clause may need to be varied in particular circumstances.</p>	<p>Change recommended.</p> <p>In the example of Mundamia, Council is working towards a series of amendments to the Contributions Plan regarding costings etc. This will result in better outcomes for the URA. In some cases, it may be more appropriate for the Contributions Plan to be updated prior to entering into a WIKA; however, there is also elements of flexibility through the negotiation process, depending on the circumstances of the WIKA.</p> <p>It is recommended that Clause 6.2(a) of the WIKA Template be amended to read:</p> <p><i>'the Works Value as set out in Schedule 2 is based on the value of the Works as specified in the Contributions Plan, <u>or as otherwise agreed by the Council</u>.'</i></p>

No.	Submitter	Submission Summary	Comments
		<p>Payment of Council's costs - Section 1.4 (at page 5) and clause 23.2 of the WIKA Template imposes a new obligation on developers and requires that 100% of Council's costs are to be paid by the developer for:</p> <ul style="list-style-type: none"> i. negotiating, preparing and entering into the agreement (including associated legal costs and staff time); and ii. enforcing the agreement. <p>From our experience we have found that other councils may require payment of external services which were engaged by council (such as legal advisors or other external consultants), however costs usually do not include payments for internal council staff time. Further clarification is may assist developers with respect to the extent and calculation of such costs.</p>	<p>Change recommended.</p> <p>The WIKA Policy and associated Template does not specify that 100% of the Council's costs are recoverable; however, it does require the payment of Council's legal costs and the costs associated with any external consultants that may need to be engaged to enable the preparation and negotiation of WIKAs.</p> <p>It is also worth noting that the extent that costs need to be recovered can be negotiated at the WIKA preparation stage; however, in general, Council should not be out of pocket for an agreement which is voluntary.</p> <p>As such, it is recommended that the following be added to the note box under section 1.4 of the draft WIKA Policy:</p> <p><i>'...applicant must pay Council's legal <u>and external costs and disbursements</u>...'</i></p> <p>Similarly, clause 23.2 of the WIKA Template should be amended to state:</p> <p><i>'The Developer must pay all the Council's reasonable legal and administrative other external costs and expenses in relation to...'</i></p> <p>A lodgement fee is addressed in the related Council report.</p>
		<p>Clause 1.3 of the WIKA Template regarding scope and design of works – The Developer is to obtain Council's requirements, or written notice of its in-principle agreement for the design, materials, and specification, prior to commencing any design of the Works. Once Council's requirements have been established and detailed design of the Works has been prepared, Council's approval for the detailed design and constructions drawings must both be obtained.</p>	<p>No recommended change.</p> <p>This statement is correct. All relevant stages of the WIKA need to be signed off by Council to ensure that Council is receiving what they have originally agreed to and that all works are to Council's specifications and requirements.</p>

No.	Submitter	Submission Summary	Comments
		<p>Clause 6 of the WIKA Template regarding the value of works – The Developer is required to expressly acknowledge that the Works Value is to be based on the value of the Works as specified in the Contributions Plan. The value of the Works, however, may not be settled in certain circumstances.</p> <p>With respect to the Neighbourhood Safer Place (NSP) and the Community Hall for which Jemalong will deliver, Attachment B to the Letter of Offer proposes that Council will commence the process of amending the SCP2019 and SDCP2014 to incorporate the revised location and design/construction requirements following issue of the Consent. We understand that the amendments to these documents are not yet complete and therefore the Works Value is not yet defined.</p> <p>It is submitted that it may be appropriate for the express acknowledgements at clause 6.2 to be adjusted dependent on the circumstances of the situation.</p>	<p>No recommended change.</p> <p>As mentioned previously, Council is currently working towards a series of amendments to the Contributions Plan regarding costings etc relating to Mundamia. In some cases, it may be more appropriate for the Contributions Plan to be updated prior to entering into a WIKA; however, there is also elements of flexibility through the negotiation process, depending on the circumstances of the WIKA.</p>

DE21.2 Post Exhibition Finalisation - Shoalhaven Contribution Plan 2019 - Amendment No.1 (CP2019.1)

HPERM Ref: D20/519119

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Explanatory Statement - Draft Amendment No.1 - Shoalhaven CP2019 [↓](#)

Reason for Report

- Detail the outcomes of the public exhibition of Amendment No.1 (CP2019.1) to Shoalhaven Contributions Plan 2019 (the Plan).
- Enable the amendment to proceed to finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Amendment No.1 (CP2019.1) to Shoalhaven Contributions Plan 2019 as exhibited and proceed to finalise it.
2. Advise relevant industry representatives of this decision and when the amendment to Shoalhaven Contributions Plan 2019 will be made effective.

Options

1. Adopt the recommendation to finalise the Amendment as exhibited.

Implications: This is the preferred option as it will allow the Amendment to be finalised, noting that no submissions were received during the public exhibition period.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the finalisation and implementation of the Amendment.

3. Not adopt the recommendation.

Implications: This would essentially stop the implementation of the Amendment which is not preferred.

Background

The Plan originally commenced on 2 April 2019, and as part of its finalisation, Council resolved to make necessary housekeeping amendments to the Plan and that these be reported for consideration as required. As a result, ongoing reviews of the Plan will be undertaken to ensure the accuracy and operation of the Plan is maintained and improved, and positive outcomes for the community are delivered.

Council resolved (MIN20.713) on 6 October 2020 to endorse the initial draft amendment for exhibition. The main components include the:

1. Review of certain content in the Plan (i.e. website content).
2. Deletion of a number of projects within the Plan.
3. Review and revision of certain projects within the Plan.

Not all components of the 2019 Council resolution have been considered in this amendment and future housekeeping amendments will further refine the Plan and its projects.

Community Engagement

Draft Amendment No.1 was publicly exhibited for a period of 30 days from Wednesday 11 November until Friday 11 December 2020 (inclusive) via Council's website.

The exhibition material remains available on [Council's website](#) and includes the:

- Explanatory Statement.
- Fact Sheet.
- Appendix A – Website Changes.
- Appendix B – Projects to be Deleted.
- Appendix C – Projects to be Revised.
- Public Exhibition Notice.

The 'explanatory statement' is provided as **Attachment 1** and provides a good overview of the scope of this amendment.

Development Industry Representatives and all CCBs were directly notified of the exhibition arrangements.

At the conclusion of the exhibition period, and at the time of writing this report, no submissions had been received.

Conclusion

Given that the exhibition process has been concluded and no submissions were received that need to be responded to, it is considered appropriate for Amendment No.1 to be adopted as exhibited and it proceed to finalisation.

Policy Implications

The proposed amendment seeks to increase the efficiency and improve the operation of the Plan as a whole.

Financial Implications

The finalisation will continue to be resourced from the Strategic Planning budget.



EXPLANATORY STATEMENT

Proposed Amendment No. 1 (Housekeeping) to Shoalhaven Contributions Plan 2019

Overview

The Shoalhaven Contributions Plan 2019 (the Plan) is a web-based plan that allows Council to levy contributions on development consents and complying development certificates issued for the development of land within Shoalhaven. These contributions are collected to enable the provision of community infrastructure projects (as detailed in the Plan) to meet demand created by development.

The Plan is relatively contemporary (commenced in May 2019), however upon finalisation, Council endorsed the preparation of future amendments to:

- Update project costings, apportionment, and timeframes,
- Clarify calculation of credits, when contributions are charged for industrial/commercial subdivision, dedication of land and works in kind, and how merit assessment for miscellaneous development types is to be undertaken; and
- Address general housekeeping matters that may arise.

The main components of this Housekeeping Amendment include the:

1. Review of certain content in the Plan (i.e. website content).
2. Deletion of a number of projects within the Plan.
3. Review and revision of certain projects within the Plan.

Future housekeeping amendments will further refine the Plan and projects within.

The Plan can be viewed at www.cp.shoalhaven.nsw.gov.au.

Proposed Amendments

A summary of the proposed amendments to the Plan is outlined below.

1. Website Content Review

The overall content of the plan has been reviewed to improve readability, accuracy and address other matters that have arisen since the Plan originally became effective in May 2019. The key proposed amendments to the Plan include:

- New mapping (e.g. planning areas map) for a consistent and modern look and feel.
- Update of population projections with the most recent statistical data.
- Review of equivalent tenement rates for residential development (excluding boarding houses and development under the Affordable Rental Housing SEPP) with a change to 1ET per dwelling, regardless of size.

EXPLANATORY STATEMENT - Amendment 1 (Housekeeping) to Shoalhaven Contributions Plan 2019

- Review of the following sections/schedules to provide more detailed, clearer and up to date information (as appropriate):
 - Legal basis of contributions.
 - Land dedication.
 - Planning agreements.
 - Deferred or periodic contributions payments.
 - ET rates applying to tourism accommodation development.
 - Accredited certifier obligations.
 - Refunds.
 - Schedule 2 (Old subdivision properties).
 - Schedule 7 (Land acquisition).
- Inclusion of transitional arrangements provisions that were unintentionally omitted from the new Contributions Plan 2019.
- Update of gross floor area definition in line with the Standard Instrument Local Environmental Plan.
- Deletion of Schedule 1 (Infrastructure Projects) and Schedule 3 (Contribution Project Rates) to reduce duplication and website maintenance.
- Deletion of Schedule 6 (Projects Exempt from Residential Cap) as there will be no projects exempt from the residential cap following this amendment.

Appendix A shows the changes proposed to the website and summarises the rationale behind those changes.

2. Project Deletions

The current Plan contains approximately 100 separate projects, 6 of which are proposed to be deleted through this review. Reasons for the proposed deletions include:

Reason for deletion	Projects proposed for deletion
The project has been completed and paid off.	<ul style="list-style-type: none"> • 02CFAC0001: Callala Bay Community and Child Care Centre (Emmett Street)
These projects relate to land associated with the Halloran Planning Proposal at Culburra Beach (PP006) and future community infrastructure should be considered as part of that process.	<ul style="list-style-type: none"> • 02AREC0002: Culburra & District Sporting Complex Site. • 02CFAC0004: Culburra Community Centre (Proposed Long Bow Point Subdivision). • 02OREC0005: Land Acquisition for Passive Open Space – Long Bow Point Subdivision.

EXPLANATORY STATEMENT - Amendment 1 (Housekeeping) to Shoalhaven Contributions Plan 2019

These projects relate to the sealing of rural roads at Falls Creek. The projects are low value and the limited remaining funds are unlikely to be collected in a reasonable timeframe.	<ul style="list-style-type: none"> 03ROAD2014: Sinclair Road upgrade Parts 1 & 2 (Princes Highway to Hart Road). 03ROAD3011: Hart Road bitumen upgrade (Entire road length), Falls Creek.
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Appendix B contains a:

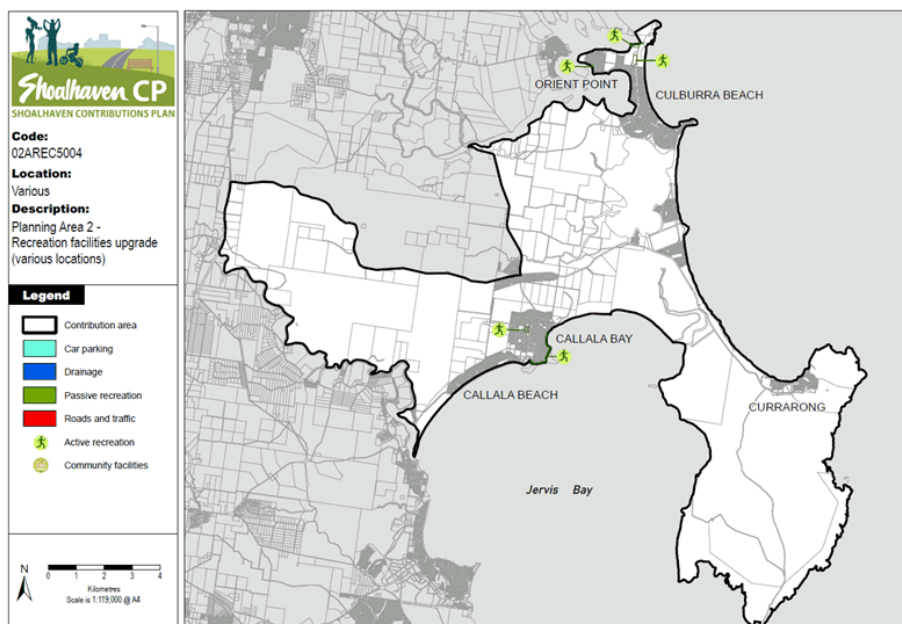
- List of the projects proposed to be deleted and greater detail as to why.
- Copy of existing project and supporting information sheets for each revised project.

3. Project Review and Revision/Amendment

A total of 15 projects are proposed to be revised as part of this Amendment. The general themes of the amendments include the following:

- Inclusion of new facilities in certain existing recreation projects to assist with delivering community infrastructure in line with Council's recently adopted *Community Infrastructure Strategic Plan 2017* (e.g. Pepper Reserve and Vic Zealand Oval, Shoalhaven Heads (01AREC0009) and Crookhaven Park, Culburra Beach (02AREC0004)).
- As part of the 2019 Contribution Plan process, a new rate of 2.31 people per ET was applied based on population projection changes over time. These changes were applied to some projects, but not all. Several projects have been updated to substitute the now outdated 2.39 ET rate with the new 2.31 ET rate.
- The apportionment rates for some projects had not been updated to reflect population projections and current household composition figures from the 2016 Census. These figures have recently been refined by Council's demographic consultant and affected projects have been revised, resulting in amended contribution rates to reflect revised population statistics.
- The project codes for amended projects have been changed so that each amendment can easily be identified. For example, the first amendment to the project under the Plan is prefaced with a 5; e.g. 01ROAD5111, amendment two would be prefaced with a 6; e.g. 01ROAD6111. As projects are amended in the future, the relevant project codes will also be updated.
- Update of assumptions to reflect 1ET for each dwelling, regardless of size etc and also changes in the LEP (Huskisson Laneways).
- A new project map layout and theme (example below) has been introduced for all projects subject to the Amendment to better communicate the intent of the maps. As projects are amended in the future, the maps associated with those projects will also be updated.

EXPLANATORY STATEMENT - Amendment 1 (Housekeeping) to Shoalhaven Contributions Plan 2019



Appendix C contains a:

- List of revised projects and key changes.
- Copy of the project and supporting information sheets for each revised project, with proposed changes highlighted for convenience.

A list of all projects proposed to be amended is provided below:

PLANNING AREA 1	
01CFAC2012	Nowra Integrated Youth Services Centre (Cnr Kinghorne & Plunkett Streets)
01AREC0009	Planning Area 1 recreational facilities upgrades (various locations)
01AREC2006	Northern Shoalhaven Sports Stadium (Cambewarra Road)
01AREC3007	Nowra Swimming Pool Expansion (Scenic Drive)
01OREC0015	Moss Vale Road South URA Passive Recreation
PLANNING AREA 2	
02AREC0004	Planning Area 2 - Recreation facilities upgrade (various locations)
PLANNING AREA 3	
03ROAD2060	Kent Lane Huskisson

EXPLANATORY STATEMENT - Amendment 1 (Housekeeping) to Shoalhaven Contributions Plan 2019

03ROAD2061	Winnima Lane, Huskisson
03ROAD2062	Unnamed Lane (off Jervis Street, Huskisson)
PLANNING AREA 4	
04CFAC0003	Planning Area 4 - Community facility upgrades (various locations)
04AREC2003	Sussex Inlet Aquatics Centre (Thomson Street)
CITYWIDE PROJECTS	
CWCFCAC2006	Shoalhaven City Library Extensions (Berry Street, Nowra)
CWCFCAC0007	Shoalhaven Regional Gallery
CWAREC005	Shoalhaven Community and Recreational Precinct (SCaRP) Cambewarra Road, Bomaderry
CWCFCAC2002	Shoalhaven Entertainment Centre (Bridge Road, Nowra)

Public exhibition

The public exhibition documentation includes:

- Exhibition Notification.
- This Explanatory Statement.
- Fact Sheet: Contributions Planning Explained.
- Appendix A: Proposed Changes to the Contribution Plan Website.
- Appendix B: Projects Proposed to be Deleted.
- Appendix C: Projects Proposed to be Revised.

The draft documents and supporting material will be on public exhibition from **Wednesday 11 November to Friday 11 December 2020 (inclusive)** on Council's website at: <https://www.shoalhaven.nsw.gov.au/Council/Access-to-Information/Documents-on-Exhibition>

How to make a submission

You are encouraged to view the documents and provide a written submission during the consultation period. Submissions should be made in writing and include Council's reference 60967E. All submissions must be received in writing by **5pm Friday 11 December 2020**.

Post: The Chief Executive Officer, Shoalhaven City Council, PO Box 42, Nowra NSW 2541

E-mail: council@shoalhaven.nsw.gov.au

Website: via the form on the Exhibition page at:

EXPLANATORY STATEMENT - Amendment 1 (Housekeeping) to Shoalhaven Contributions Plan 2019

<https://www.shoalhaven.nsw.gov.au/Council/Access-to-Information/Documents-on-Exhibition>

Please note that correspondence submitted to Council on this matter may be open to public inspection without notifying the correspondents. Pre-printed form letters, which have been individually signed will be considered but not formally acknowledged. All persons who lodge a submission are required to declare any relevant political, donations and/or gifts in accordance with Section 10.4(5) of the *Environmental Planning and Assessment Act 1979*.

Further Information

For further information, contact Jenna Tague of Council's Planning Environment and Development Group on (02) 4429 3553.

DE21.3 Proposed Natural Disaster Clause - NSW Standard Instrument Local Environmental Plan

HPERM Ref: D20/522846

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. August 2020 Staff Submission - Proposed Natural Disasters Clause [↓](#)
2. NSW Government's Final Natural Disaster Clause Package [↓](#)

Reason for Report

Obtain endorsement to not 'opt-in' to the NSW Government's proposed new Standard Instrument Local Environmental Plan (LEP) Natural Disaster clause but investigate the merits of a different/tailored version of the clause suitable for Shoalhaven.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Not opt-in to the new Standard Instrument Local Environmental Plan Natural Disaster clause and advise the NSW Department of Planning, Industry and Environment accordingly (by 15 February 2021) based on the content of this report.
2. Consider including a different version of the clause, that better meets Shoalhaven's needs, via the standard Planning Proposal process at the appropriate point in time and receive a future report.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to develop an appropriate Natural Disaster clause that is appropriate to Shoalhaven without being constrained by the 'model' clause (**Attachment 2**). A more tailored clause can be drafted which will meet the specific needs of Shoalhaven now and into the future, which could include all forms of residential development.

2. Adopt an alternative recommendation.

Implications: This will depend on the nature of the changes; however, a set State-wide Natural Disaster 'model' clause may not meet the City's needs.

3. Not opt-in to the new 'model' Natural Disaster clause, or a more specific Shoalhaven version that is developed.

Implications: This is not recommended as in some circumstances there may be uncertainty surrounding the ability to rebuild homes following a natural disaster event. A clause suitably tailored for Shoalhaven will however assist in resolving uncertainty and red tape for landowners.

Background

In response to the 2019-2020 bushfire and flood events, the NSW Department of Planning, Industry and Environment (DPIE) has prepared a 'model' draft Natural Disaster clause for inclusion in the NSW Standard Instrument LEP to attempt to alleviate regulatory challenges faced by homeowners seeking to rebuild lawfully erected homes following natural disaster events.

Anything that assists in this regard is generally seen as a positive step forward, acknowledging that Shoalhaven was significantly affected by the 2019-2020 Bushfire event and was also affected by flood events in 2020. Many people affected by these natural disasters are now seeking planning approval to enable them to rebuild or repair their dwellings.

In August 2020, DPIE sought initial feedback from NSW councils on a proposed clause to 'cut the red tape'. Due to the timeframes associated with the submission (26 days) and the fact that the draft submission could not be considered by Council for endorsement within that timeframe, a staff submission was provided (**Attachment 1**). This indicated 'in principle' support for the new clause, subject to matters being resolved, including the type of land uses the clause would apply to.

Following consideration of the submission received, DPIE has now provided the final clause package (**Attachment 2**) for consideration. The Council staff concerns have in part been addressed through the finalisation process; however, there is one main unresolved issue that potentially has significant implications for Shoalhaven.

The proposed clause enables the replacement of a lawfully erected dwelling house or secondary dwelling in appropriate zones; however, this is not considered flexible enough for Shoalhaven. There can be barriers to the replacement of a dwelling (beyond a dwelling house and secondary dwelling) in a zone where that use is no longer permissible; for example, a detached dual occupancy constructed in a R2 zone where that land had been subsequently rezoned to R5 prior to the natural disaster. Medium density development (including dual occupancies) should also be considered in the same way as lower density residential development.

Thus it is important that any clause enables the replacement of any dwelling destroyed by a natural disaster, not just a dwelling house or secondary dwelling.

Council has now been asked by DPIE to formally consider 'opting-in' to the new 'model' clause for the relevant Shoalhaven LEPs. Whilst the previous Council staff submission indicated a general interest in the new Natural Disaster Clause, given that the points raised have not been satisfactory resolved, opting-in at this point in time is not considered in Shoalhaven's best interest. Instead, it would be more appropriate for Council to consider including a different tailored version of the clause into our LEPs that meets Shoalhaven's needs. This could be undertaken at a later date via the standard Planning Proposal process. Through this process, the type of development that could be replaced could theoretically be expanded to include other forms of residential development (not just dwelling houses and secondary dwellings). In the meantime, it is likely that most existing dwellings that are lost in such circumstances would benefit from 'existing use' rights depending on their legal status.

Community Engagement

No community consultation has been undertaken to date, noting that DPIE has consulted directly with NSW councils. Any planning proposal to include a different version of the Natural Disaster clause into Shoalhaven's LEPs would likely require public exhibition in accordance with the Gateway Determination and legislative requirements.

Policy Implications

Opting-in to the new Natural Disaster clause will not offer Council the flexibility it needs to alleviate the regulatory challenges faced by homeowners seeking to rebuild any type of dwelling (not just a dwelling house or secondary dwelling) following these natural disaster events.

It would be more prudent to instead develop a different version of the Natural Disaster clause which will meet all of Shoalhaven's needs, especially the consideration of all dwelling types.

Financial Implications

There are no financial implications associated with making this submission. Any future planning proposal would be resourced via the existing Strategic Planning budget.



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

Address all correspondence to

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

Council Reference: 31157E (D20/362218)

31/08/2020

Via Planning Portal

Attention: Disaster Recovery Team

Dear Sir/Madam

Submission – Proposed Natural Disaster Clause – Standard Instrument LEP

Thank you for the opportunity to provide comment on the proposed new Standard Instrument LEP Natural Disaster Clause.

As you are aware, the Shoalhaven Local Government Area (LGA) was significantly affected by the recent 2019-2020 Bushfire event, especially the Currowan Bushfire, and has also been affected by multiple flood events this year. The preparation of a new Standard Instrument clause that is responsive and efficient following a natural disaster is a positive step for current and future recovery processes.

1. Submission Timeframe

Due to the short timeframe associated with the exhibition, this submission does not necessarily reflect the views of the elected Council.

It is requested that the NSW Department of Planning, Industry and Environment consider extended consultation timeframes, not only in order to provide an appropriate and thorough submission, but to also allow the submission to go through the formal Council reporting processes so that it is the endorsed Council position.

2. Comments – The Proposed New Clause

- Whilst Clause 4.2D(5) of Shoalhaven LEP 2014 (and a similar clause in Shoalhaven LEP (Jerberra Estate) 2014) includes a provision for a replacement dwelling house (which includes dual occupancy (attached)), there are limitations in terms of application, newer standards and confusion regarding 'existing use rights' (if the building is completely destroyed, it is no longer an existing dwelling). This clause also only applies to certain rural, environmental and R5 land, and does not apply to secondary dwellings.

- The proposed clause enables the replacement of a dwelling house or secondary dwelling in appropriate zones and could apply as appropriate to the relevant LGA. The ability to specify the zones to which the clause would apply is helpful, however the clause should be flexible enough to be able to apply to all zones without listing them all. Further, only specifying zones may be too crude in some circumstances; for example, not all land in a certain zone may be appropriate for residential development.
- The 5 year time frame is supported in terms of recovery timelines and avoids the possible 12 month limit that might be applied to a dwelling that relies on existing use rights.
- The prescriptive nature of the applicable land use terms is not considered flexible enough for Shoalhaven. Without flexibility in the wording of the clause (perhaps 'dwelling' would suffice), the clause will not operate as it should – there will still be the 'red tape' outlined in the Policy Consultation Paper. For example:
 - The clause would not facilitate the replacement of a dual occupancy (attached) in a rural, environmental or R5 zone. This is not equitable.
 - There would likely be barriers to the replacement of a dwelling (beyond dwelling house and secondary dwelling) in a zone where that use is no longer permissible. For example, a detached dual occupancy constructed in a R2 zone where that land had been subsequently rezoned to R5 (for example) prior to the natural disaster.
- The Policy Consultation Paper specifies that the provision will allow Council "to grant development consent to the repair or rebuild of a lawfully erected dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster, **despite any applicable development standards in the LEP**". What is meant by 'applicable development standards' and how will this be specified in the clause (this is not clear in the proposed draft at all). DPIE should consider rephrasing 5.9(3) to make it explicitly clear that a DA cannot be refused or specify the standards that cannot be used to refuse a consent (for example, clause 14 of the Affordable Rental Housing SEPP).
- It is vitally important that clauses like the flood planning model clause remain relevant in the assessment requirements. It is noted that there are some existing dwellings in highly flood prone locations where it may not be appropriate to rebuild on the lot due to the high risk to life and property.
- Consideration of a definition of 'natural disaster' should be considered to assist in managing expectations.

An amending SEPP to include the new clause in the relevant Shoalhaven LEPs is appreciated.

3. Other Comments

Will any changes be made to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to enable complying development rebuilding pathways?

4. Expression of Interest

Council staff would like to express our interest in incorporating the final clause into our LEPs once all the feedback received during the public exhibition has been considered and on the basis that any revisions made are suitable for Shoalhaven.

As this submission has not been endorsed by the elected Council, it is **essential** that Shoalhaven's elected Council have the opportunity to formally consider opting in at Stage 3. Council's reporting timeframes **must** be factored into the Stage 3 timing and 6 weeks may not be long enough (depends on when the request is sent in the reporting cycle).

It is noted that the clause would likely need to be included in the following Shoalhaven LEPs/planning instruments:

- Shoalhaven LEP 2014 (standard instrument)
- Shoalhaven LEP (Jerberra Estate) LEP 2014 (standard instrument)
- Shoalhaven LEP 1985
- Shoalhaven Interim Development Order.

I can be contacted directly regarding the potential implementation of the clause in Shoalhaven.

Thank you again for the opportunity to comment on the proposed new Standard Instrument LEP Natural Disaster Clause. If you need further information about this matter, please contact Jenna Tague, Planning Environment & Development Group on (02) 4429 3553. Please quote Council's reference 31157E (D20/362218).

Yours faithfully



Jenna Tague
Coordinator - Policy Planning Team

Dwelling house or secondary dwelling affected by natural disaster

- (1) The objective of this clause is to enable the repair or replacement of lawfully erected dwelling houses and secondary dwelling that have been damaged or destroyed by a natural disaster.
- (2) This clause applies to land in the following zones—
 - (a) *[set out the zones to which the clause is to apply]*,
- (3) Despite any other provision of this Plan, development consent may be granted to development on land to which this clause applies to enable a dwelling house or secondary dwelling that has been damaged or destroyed by a natural disaster to be repaired or replaced if—
 - (a) the dwelling house or secondary dwelling was lawfully erected, and
 - (b) the development application seeking the development consent is made to the consent authority no later than 5 years after the day on which the natural disaster caused the damage or destruction.

Natural Disasters Clause

Guidance for Implementation



November 2020

Natural Disasters Local Environmental Plan Clause

Introduction

Clause 5.9 of the Standard Instrument Order (the clause) was introduced to support homeowners whose homes have been damaged or destroyed by natural disasters. The clause applies to development applications (DAs) where development consent is sought to repair or replace a dwelling house or secondary dwelling that was damaged or destroyed by a natural disaster.

The clause was prepared in response to regulatory challenges faced by homeowners seeking to rebuild homes following natural disasters where planning controls in Local Environmental Plans (LEP) have changed over time.

The clause will ensure that development consent can be granted for the repair or replacement of a dwelling that was damaged or destroyed by a natural disaster despite any provisions in the relevant LEP which would otherwise prevent the consent authority from doing so.

The clause intends to eliminate the need for applicants to:

- Prepare formal requests to vary a development standard; or
- Demonstrate the continuance of an existing use in circumstances where dwelling houses or secondary dwellings are no longer permitted with consent in the relevant zone (applicants will need to demonstrate that the existing dwelling was lawfully erected).

Natural Disasters

Natural disasters are naturally occurring, rapid onset events that cause serious disruption to life or property in a community or region, such as floods, bushfires, earthquakes, storms, cyclones, storm surges, landslides and tsunamis. A natural disaster can include a state of emergency declared under section 33 of the *State Emergency and Rescue Management Act 1989*.

The rebuilding or repair of damage or destruction caused by or because of any of these events is development to which the clause applies.

Varying Development Standards

The clause states that consent can be granted to the specified development in a zone where the clause applies despite any other provision of the relevant LEP. For this reason, it is not necessary for applicants to submit a request to vary a development standard where a development standard is contravened. DAs will still undergo a merit assessment to ensure that dwelling houses and secondary dwellings are of an appropriate size, location and design in the context of the site.

In situations where key planning controls or development standards have changed over time, removing the need to formally request a variation under clause 4.6 of the relevant LEP will save time and resources for applicants and consent authorities.

Merit Assessment

For DAs where the clause applies, the consent authority cannot refuse a DA on the basis it does not comply with a development standard or other provision in the applicable LEP.

The proposed development will be assessed on its merits against the relevant considerations under section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and any other applicable legislation.

Natural Disasters Clause

Guidance for Implementation



Any standards or provisions outlined in a State Environmental Planning Policy (SEPP) that are relevant to the DA continue to apply (including any concurrence or referral requirements). Development Control Plan (DCP) provisions also continue to apply.

Evaluation under section 4.15 of the *Environmental Planning and Assessment Act 1979* where the clause applies

For DAs where the clause applies, LEP provisions themselves must not be used as a reason for refusal. However, if the consent authority considers that the risk, or other environmental impact associated with the proposed development is inconsistent with the relevant considerations of section 4.15, the consent authority can refuse the application on that basis.

Example

Due to a period of local severe rains, a river floods and destroys two homes. Although this natural event is not subject to an emergency declaration under section 33 of the *State Emergency and Rescue Management Act 1989*, it is still considered to be a natural disaster and accordingly, the natural disasters clause could potentially be applied to rebuild the destroyed dwelling houses.

Council is unable to refuse the DA to rebuild the destroyed dwelling on the basis that it does not comply with a development standard in the applicable LEP – however, council will be able to undertake a merit assessment under section 4.15 of the EP&A Act. If council considers the site is unsuitable for redevelopment under section 4.15(1)(c) due to flooding concerns, then the DA may be rejected on this basis.

Other Applicable Legislation

The requirements of other applicable legislation referred to in a SEPP, or in the EP&A Act continue to apply to DAs where the clause applies. For example, section 4.14 of the EP&A Act continues to apply for development of bushfire prone land and all relevant requirements of *Planning for Bushfire Protection 2019* must be satisfied.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the *Biodiversity Conservation Act 2016* will also continue to apply to development involving clearing of vegetation and development of land with high biodiversity values. Any relevant assessment and offsetting requirements under that Act must also be met.

Replace and Repair

The clause refers to the *repair* or *replacement* of a lawfully erected dwelling house or secondary dwelling that was damaged in a natural disaster. There is no requirement for the *replacement* or *repair* subject of a DA to be identical to the original dwelling which was destroyed or damaged.

Development consent can be granted for dwelling houses and secondary dwellings that are of a different size, location or design to the original dwelling under the clause. Changes to the design and location of a proposed dwelling may be required to meet the relevant provisions of a DCP, other environmental planning instruments, associated legislation or the requirements of the National Construction Code.

Lawfully Erected

To be a lawfully erected dwelling house or secondary dwelling, it must have been constructed under a valid development consent, building approval or another lawful planning pathway under the EP&A Act or equivalent historical planning legislation.

Natural Disasters Clause

Guidance for Implementation



Further Information

For more information:

Web: www.planningportal.nsw.gov.au/natural-disasters-clause

Phone: 1300 73 44 66

Email: disaster.recovery@planning.nsw.gov.au

DE21.4 Proposed Planning Proposal - Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry)

HPERM Ref: D20/538996

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

- Provide an update on the resolved planning investigations for:
 - Riverview Road Precinct (Nowra) – dual occupancy exclusion options.
 - Huntingdale Par Estate Precinct (Berry) – large lot residential zoning options.
- Obtain endorsement to proceed with a Planning Proposal (PP) to amend Shoalhaven Local Environmental Plan (LEP) 2014 to respond in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the preparation of a Planning Proposal with the following scope, and proceed to submit it to the NSW Government for a Gateway determination, and if this is favourable, proceed to exhibition as per the legislative and any determination requirements:
 - a. Riverview Road Precinct (Nowra):
 - i. Insert a new local clause (similar to clause 4.1A) setting a parent lot size for the erection of a dual occupancy development that is 1,500m².
 - ii. Establish a clause map to identify the land to which the local clause would apply (the land in Figure 1 of this report).
 - iii. Amend clause 4.6(8) to ensure that the parent lot size set in the new local clause could not be varied.
 - b. Huntingdale Park Estate Precinct (Berry):
 - i. Rezone the subject land to R5 Large Lot Residential.
 - ii. Set a 2,000m² minimum lot size for the entirety of the subject land.
2. Receive a further report following the conclusion of the public exhibition period or if the Gateway determination is not favourable.
3. Advise key stakeholders of this decision and the resultant exhibition arrangements, including affected landowners, relevant Community Consultative Bodies and Development Industry representatives.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to adjust Shoalhaven LEP 2014 to resolve the planning issues resulting from the Council resolutions on Riverview Road Precinct (Nowra) and Huntingdale Park Estate Precinct (Berry).

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone or stop the resolution of these planning issues.

3. Not adopt the recommendation.

Implications: This option would stop the resolution of these planning issues. The planning controls in these areas would remain unaltered.

Background

Riverview Road Precinct – Nowra

On 2 July 2019, Council resolved (MIN19.459) that:

The next Housekeeping Amendment seek to consider inserting provisions in the Shoalhaven LEP to rule out dual occupancy development in the vicinity of Riverview Road and Lyrebird Drive, Nowra.

This resolution essentially seeks to prohibit dual occupancy development in the Riverview Road precinct (**Figure 1**) due to the highly flood prone nature of the land. The precinct includes all the R2 Low Density Residential zoned land located in the Riverview Road Area Floodplain Risk Management Plan area. Dual occupancy development (both attached and detached) is currently permissible with consent citywide in the R2 zone.

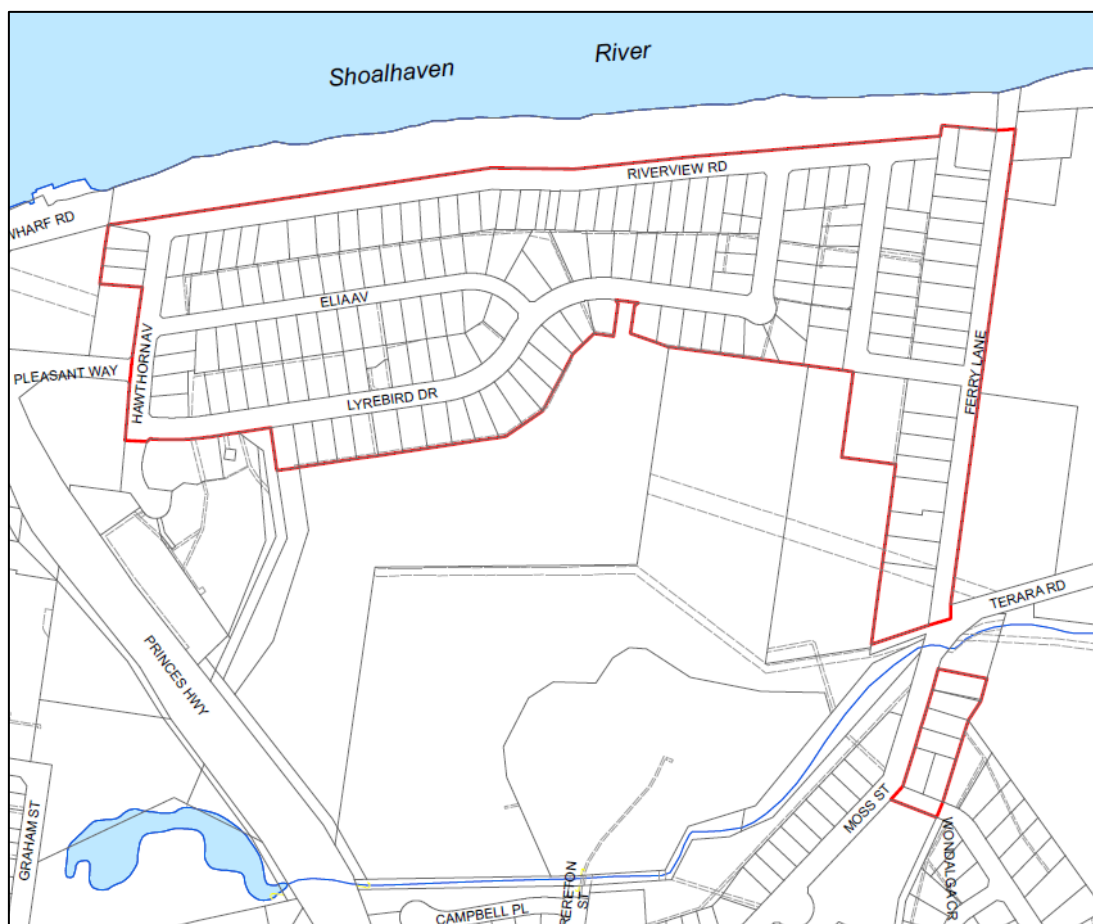


Figure 1: The Riverview View Road Precinct

A number of options have been explored to progress this matter, as outlined in the following table.

Option	Comment
Use the DCP to highlight the precinct's flood issues to specify that dual occupancies are not supported in this area.	<p>Chapter G9: Development on Flood Prone Land of Shoalhaven Development Control Plan (DCP) 2014 already seeks to restrict dual occupancies in this location, stating that no dual occupancy or subdivision will be permitted.</p> <p>It is noted that there are difficulties in enforcing this provision solely through a DCP, especially where there is a direct conflict with an environmental planning instrument (i.e. Shoalhaven LEP 2014). Simply a DCP cannot prohibit something that is permissible under an LEP.</p> <p>From a practicality perspective, this option is not ideal; however, following a discussion with the Department of Planning and Environment (DPIE), this is their preferred option despite the obvious conflict issue.</p>
Rezone the land to a zone that prohibits dual occupancy development.	<p>Dual occupancy development is currently prohibited citywide in the following zones:</p> <ul style="list-style-type: none"> • RU3 Forestry. • All business zones. • All industrial zones. • All special purpose zones. • All recreation zones. • All waterway zones. <p>None of the above zones would be ideal for the precinct; however, of them all, SP3 Tourist would perhaps be the only one that could even be considered. It is noted that dwelling houses remain permissible with consent in that zone; however, clause 7.27 of Shoalhaven LEP 2014 requires that any future dwelling needs to form an integral part of development for the purposes of tourism. This precinct is not an identified tourism precinct and rezoning it SP3 would have a range of additional unintended consequences.</p> <p>DPIE have advised that applying an appropriate zone to the land is preferable; however, as discussed above, none of the existing zones are considered appropriate if this approach is taken.</p>
Pursue a local clause in the LEP prohibiting dual occupancy development.	Trying to prohibit dual occupancies in the precinct through a local clause will result in what would be termed a 'sub-zone' which is not consistent with the Standard LEP Instrument approach and will not be supported by DPIE.
Pursue a new local clause to introduce a minimum parent lot size specifically for the Precinct for dual occupancy development, similar to the new clause 4.1A in the LEP.	<p>In August 2020, an amendment to Shoalhaven LEP 2014 was finalised which introduced a new clause (clause 4.1A) that set a minimum parent lot size prior to the erection of medium density development in certain residential zones.</p> <p>A similar approach could be considered for the Precinct. Dual occupancies would remain permissible with consent as per the land use table; however, a local clause would set a parent lot size that is greater than the standard lot size in the area for both attached and detached dual occupancies. It is noted that the largest lot in the Precinct is 4,016.49m²; however, 85% of lots are less than 1,000m² and 98% are less than 1,500m². As such, it is considered appropriate for the parent lot size to be set at 1,500m².</p>

	<p>This would require consolidation of lots for a dual occupancy development and would be less appealing for infill dual occupancy development.</p> <p>It is noted that this option is not a prohibition. A dual occupancy development could be considered if land is consolidated and an applicant could seek a variation to the parent minimum lot size standard, unless the proposed new local clause is exempt from clause 4.6 Exceptions to development standards (the clause enabling variations to LEP standards).</p> <p>This is the preferred option should Council still wish to pursue a change to the LEP in this regard.</p>
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As a result of the investigations, and assuming Council still wishes to pursue this matter, it would be appropriate to progress this matter by amending the LEP via a PP to:

- Insert a new local clause (similar to clause 4.1A) setting a parent lot size for a dual occupancy development that is greater than the standard lot size in the Precinct, being 1,500m².
- Establish a clause map to identify the land to which the new local clause would apply, being the land in **Figure 1**.
- Amend existing clause 4.6(8) to ensure that the parent lot size set in the new local clause could not be varied.

Huntingdale Park Estate Precinct – Berry

During the public exhibition of Council's Review of Subdivision Provisions PP (PP027), there were a number of specific requests to review the zoning of certain land within Huntingdale Park Estate, Berry. As a result, Council resolved on 23 June 2020 (MIN20.448(2b)) to:

As part of a separate process: Review the zoning of the R1 zoned large lots at the periphery of Huntingdale Estate Berry.

The resolved review has now been undertaken in relation to the land within the estate shown in **Figure 2**, being the larger R1 General Residential lots in the Estate on its periphery.

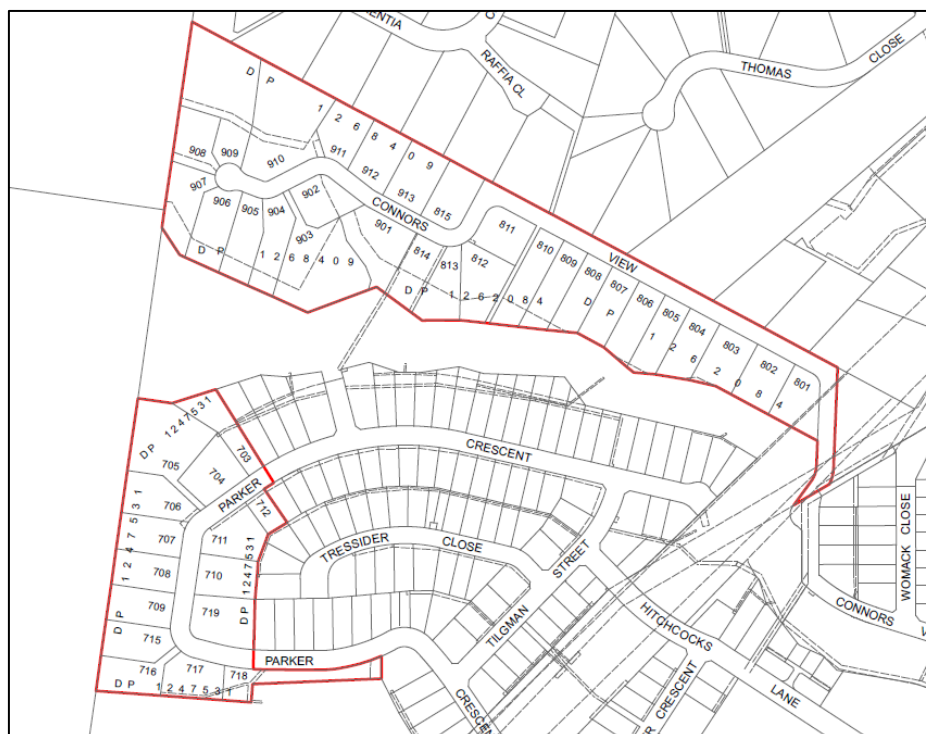


Figure 2: The Huntingdale Park Estate Review Precinct

DE21.4

In the planning for the Huntingdale Park Estate area and through the DCP, large lots with a minimum lot size of 2,000m² were envisaged along the northern, western, and southern boundaries to provide a transition from the higher density development in the centre of the subdivision through to lower density development bordering the adjacent rural lands.

Despite the original intentions to create low density lots along these boundaries, following the commencement of LEP in 2014, the majority of the residential portion of the estate was zoned R1 General Residential. Multi-dwelling housing is however generally permitted with consent within the R1 zone and this is considered to conflict with the desired low density characteristics and intentions envisaged for the Huntingdale Estate. Recent multi-dwelling development applications on some of these larger lots have prompted significant community opposition/concern.

Submissions during the PP027 process suggested that the subject land (Figure 2) be rezoned to R2 Low Density Residential in order to prevent multi-dwelling development which is prohibited within the R2 zone under the LEP. An R2 zone would assist in maintaining the low density large lot characteristics that were initially supported by Council and the community during the original subdivision, with the exception of dual occupancy development and its lawful subdivision via the NSW Government's *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code) (complying development) and clause 4.1A of Shoalhaven LEP 2014 (development application). These opportunities still have the potential to also erode the desired large lot low density characteristics of the subject land.

Thus an R5 Rural Residential zoning is considered more appropriate in securing the low-density intentions of the identified parts of the Estate, as the Code does not apply to this land and limited medium density opportunities are available. Suitable 'dual occupancy (attached)' development would remain permissible as would 'secondary dwellings' under the NSW Government's *State Environmental Planning Policy (Affordable Rental Housing) 2009*. The proposed R5 zoning of the subject land will likely protect the area from the erosion of the existing (and desired) large lot character, as well as respond to issues arising as a result of the Code. This zone is also the same as the land to the north that was rezoned as part of PP027 for (in part) the same reasons.

In considering the zoning of the subject land, it would be appropriate to also adjust the minimum lot size of the subject land and apply a 2,000m² minimum lot size to all areas within the precinct (currently part 500m² and part 2,000m²).

The rezoning of the land to R5 will trigger clause 4.2D of Shoalhaven LEP 2014 which requires a dwelling entitlement to be established before a dwelling could be considered on the land. It is noted that all lots in the subject area are larger than the 2,000m² minimum lot size proposed for the land, meaning that each lot by virtue would retain a dwelling entitlement.

As a result of the investigations, it would be appropriate to progress this matter by amending the LEP via a PP to:

- Rezone the subject land to R5 Large Lot Residential (**Figure 3**).
- Set a 2,000m² minimum lot size for the entirety of the subject land (**Figure 4**).

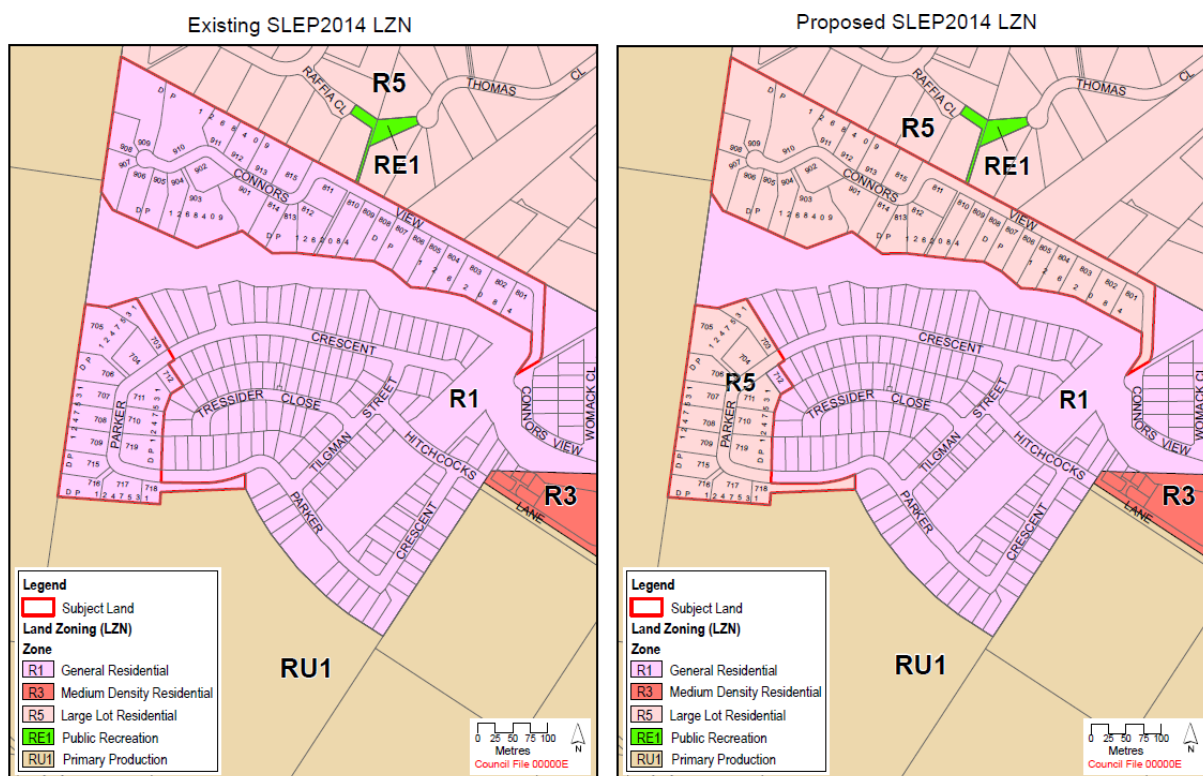


Figure 3: Existing and proposed zoning - Huntingdale Park Estate Review Precinct

DE21.4

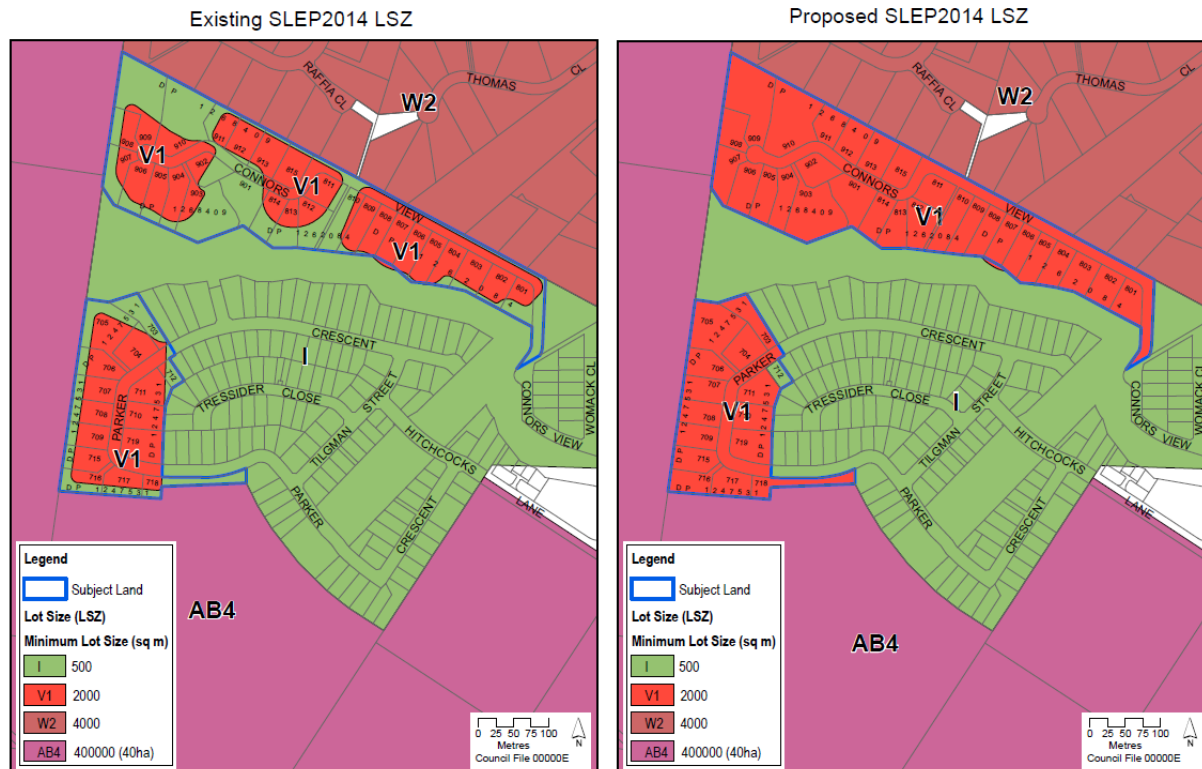


Figure 4: Existing and proposed minimum lot size - Huntingdale Park Estate Review Precinct

Conclusion

Given the relatively contemporary nature of the resolutions regarding these two matters it is assumed, subject to the consideration of the detail in this report, that Council will be comfortable proceeding with a PP to seek to amend the LEP as recommended.

Community Engagement

Any PP to amend Shoalhaven LEP 2014 would require a formal public exhibition in accordance with the Gateway determination and legislative requirements. Affected landowners, relevant CCBs and Development Industry Representatives would be directly notified of the exhibition arrangements.

Policy Implications

The suggested approach to resolve the planning issues associated with the Riverview Road Precinct and the Huntingdale Park Estate Precinct will see a reduction in the achievable density in these areas which will need to be adequately justified in any PP.

Financial Implications

Any PP would be resourced within the existing Strategic Planning budget.

DE21.5 Update - 'Legacy' Planning Proposals - Timing and Progression - NSW Government Direction

HPERM Ref: D21/936

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments:

1. DPIE Gateway termination cover letter 15/12/2020 [↓](#)
2. Gateway termination - LP407 Badgee deferred areas, Sussex Inlet [↓](#)
3. Gateway termination - PP006 Halloran Trust, Culburra Beach [↓](#)
4. Gateway termination - LP145.1 Nebraska Estate, St Georges Basin [↓](#)
5. Gateway termination - PP007 Inyadda Drive, Manyana [↓](#)
6. Gateway termination - PP005 Warrah Road, Bangalee [↓](#)

Reason for Report

- Provide an update on the outcomes arising from Council's resolution of 1 December 2020 (MIN20.887); and
- Obtain direction on the progression/timing of the five (5) 'legacy' Planning Proposals (PPs).

Recommendation (Item to be determined under delegated authority)

That Council

1. Acknowledge that the Gateway determinations for the Planning Proposals (PPs) in question were terminated by the NSW Department of Planning, Industry & Environment (DPIE) on 15 December 2020.
2. Continue to progress each PP as follows:
 - a. Warrah Road, Bangalee (PP005): seek a new Gateway determination immediately and if the outcome is favourable, place the PP and supporting documentation on public exhibition.
 - b. Halloran Trust Land, Culburra (PP006): seek a new Gateway determination at the appropriate point once potential development footprint is more fully resolved in consultation with the proponent and DPIE.
 - c. Nebraska Estate, St Georges Basin (LP145.1): seek a new Gateway determination at the appropriate point once the policy is adopted that will help resolve the tenure and management of the proposed E2 land (as per Council resolution MIN20.885) to help secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
 - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): seek a new Gateway determination for each 'deferred' area at the appropriate point, subject to considering a new PP request that will include land adjacent to the northern deferred area and an accompanying overall draft Biodiversity Certification Assessment Report (BCAR).
 - e. Inyadda Drive, Manyana (PP007): seek a new Gateway determination at the appropriate point once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
3. Receive further reports on the above matters as appropriate.

4. Receive a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.

Options

1. Seek new Gateway determinations for each PP at the appropriate point.

Implications: This is the recommended approach. DPIE will only consider issuing a new Gateway determination for each PP if there is certainty that it can be completed within one to two years maximum. Each PP in question has different issues. The report recommendations seek to provide direction on each PP, while allowing any key issues to be appropriately resolved before seeking a new Gateway determination. In some cases, a further Council report may be required. The Warrah Road PP (PP005) is the most advanced of the five PPs and should be able to be finalised in less than 12 months.

2. Seek new Gateway determinations for each PP now.

Implications: This is not recommended as DPIE has stated that PPs will only be supported if they can be completed within one to two years maximum. Except for the Warrah Road PP (PP005) which is exhibition-ready, until key issues have been resolved, the risk of not being able to complete the PPs within two years is considered too high.

3. Not seek new Gateway determinations

Implications: This option would only be appropriate if, for some reason, Council no longer supports or wants to progress a PP and this has not been indicated to date. Substantial work has been invested by the proponents and Council in all the PPs in question, and as such this option is not recommended.

Background

As reported to Council on 1 December 2020, a letter from DPIE dated 1 October 2020 stated that Council's five 'legacy' PP's were to be finalised by the end of the year (2020). A copy of the Council report can be viewed [here](#). The report included an update on the status of each PP and key issues. The report suggested that Council consider withdrawing each PP and requesting new Gateway determinations for each at the appropriate point.

In response, Council resolved to (MIN20.887):

1. *Receive the report for information.*
2. *Defer this item to:*
 - a. *Request an extension of time from Dept of Planning Industry and Environment to seek further advice, including but not limited to the existing expert reports that have been prepared for the applications.*
 - b. *Request an urgent meeting with the Hon Shelly Hancock MP Member for South Coast and The Hon. Robert Stokes MP to discuss the NSW Government Direction on these Planning Proposals.*

Council staff wrote to the NSW Department of Planning, Infrastructure & Environment (DPIE) requesting an extension of time to the 31 December 2020 deadline.

Letters were sent to The Hon Shelly Hancock MP and then to The Hon Robert Stokes MP seeking the resolved meeting. These requests were unsuccessful and a meeting with the NSW Minister for Planning & Public Spaces has not been secured.

Correspondence subsequent received from DPIE, dated 15 December 2020, declined Council's extension request and terminated all five of the Gateway determinations (via amended Gateways). DPIE's letter and the associated Gateway alterations/terminations is provided as **Attachments 1 to 6**.

In summary:

- The extension of time to the 31 December 2020 deadline was not granted.
- All five Gateways have now been terminated.
- Council is encouraged to submit PPs for new Gateway determinations at the appropriate point once any outstanding issues have been addressed/resolved.
- Work carried out to date, including studies, will be considered should a new Gateway be sought.

Conclusion

Unfortunately, Council's representations in this regard have been unsuccessful. As such there is a need to consider and resolve how the PPs will now move forward. This will require requests for new Gateway determinations to be submitted at the appropriate point in the process for each. When these are issued, each PP will then need to be finalised within 1 to 2 years. This is the recommended approach.

Community Engagement

Although there has been some community engagement to date on these PPs, none have been 'formally' exhibited at this point (as the pre-exhibition conditions of the Gateway determinations have not been addressed).

The community has also not had the opportunity to provide feedback on DPIE's decision to terminate the Gateways for these PPs. Existing Council resolutions in respect of each PP support the progression of the specialist studies and ultimately public exhibition.

Should the recommendations of this report be adopted, and DPIE issues new Gateway's when sought, the community will be engaged as part of the subsequent formal exhibition process for each PP.

Policy Implications

Previously PPs were allowed to proceed based on a minimal level of information relevant to the matter/site/issue, in accordance with DPIE's [Planning Proposal Guidelines](#).

DPIE has made it clear that PPs will now have to be finalised within one to two years maximum. This is likely to mean that more comprehensive supporting documentation will be required prior to seeking Gateways for new PPs. Council will need to assess any new PP requests more closely when received. Council's current Planning Proposal Guidelines will also need to be revised as a priority once DPIE's guidelines are updated.

DPIE has also flagged its intention to look at the next tranche of older PPs that are still to be finalised and work with Council on how they will be resolved. This may result in future reports to Council on any applicable PPs.

Financial Implications

Four of the five PPs are proponent-initiated and hence funded by the proponent in accordance with Council's Planning Proposal Guidelines and the applicable fees and charges. The 'Major PP' fee which applies to these PPs covers up to 80 hours of staff time. If new Gateways are requested, this fee structure will be carried over.

Council took out a \$200,000 loan in 2006 to fund the Nebraska Estate rezoning investigations and to be paid off by the landowners over 10 years through a special rate. There is currently \$65,240 in the Nebraska Estate special rate budget. Any funds remaining at the conclusion of the PP/DCP process would then be carried over to any infrastructure upgrade projects.

Risk Implications

The outcome, nature and content of any new Gateway determination is unknown. However, four of the five PPs have a strategic basis (key Gateway requirement) as they are specifically identified in an adopted/endorsed strategy. The other PP (Inyadda Drive, Manyana) site is already zoned for development, and is justified by the fact that the PP is seeking to reduce the overall development footprint and provide a better environmental outcome.

Planning,
Industry &
Environment

IRF20/5759

Mr Stephen Dunshea
CEO
Shoalhaven City Council

By Email: council@shoalhaven.nsw.gov.au

Attention: Gordon Clark, Manager Strategic Planning

Dear Mr Dunshea

Planning proposals - Alteration of Gateway Determination

I refer to Council's letter dated 10 December 2020 requesting an extension of time to respond to the Department's letter of 1 October 2020 advising that the following "legacy" planning proposals need to be finalised by the end of 2020:

- PP_2014_SHOAL_001_03 - Badgee Lagoon
- PP_2014_SHOAL_004_01 - Culburra Beach
- PP_2015_SHOAL_002_03 - Nebraska Estate
- PP_2015_SHOAL_003_03 - Inyadda Drive, Manyana
- PP_2016_SHOAL_002_03 - Warrah Road, Bangalee

I acknowledge that progress has been made on the above planning proposals including completion of studies and investigations required to satisfy Gateway conditions. I also note that further significant work is required prior to proceeding to public consultation.

Unfortunately, I cannot agree to Council's request for an extension of time due to the significant time lapsed to date and as more work and consultation is required before a decision can be made on all proposals. I have therefore determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determinations for the above planning proposals to not proceed.

The Alteration of Gateway determinations for each of the planning proposals is enclosed.

Council is encouraged to consider submitting new and revised planning proposals and seeking fresh Gateway determinations once outstanding issues have been addressed sufficiently to allow the matters to be finalised within a reasonable timeframe. The Department would be pleased to work with Council in relation to this matter, including alignment to local and regional strategies, site-specific planning matters and consultation with relevant agencies. I can confirm that the work carried

out to date on the proposals, including the studies prepared will be taken into consideration by the Department should new Gateway determinations be sought.

If you have any questions in relation to this matter, I have arranged for Ms Sarah Lees, Director Southern Region to assist you. Ms Lees can be contact on 0488 499 309.

Yours sincerely



15.12.2020
Tim Hurst
Deputy Secretary
Local Government, Planning and Policy

Encl: Alteration of Gateway Determinations



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: no. PP_2014_SHOAL_001_04)

I, the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 4 March 2014 (since altered) for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

1. delete paragraph 2:

"I, the Deputy Director General, Growth Planning and Delivery at Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determine under section 56(2) of the EP&A Act that an amendment to the draft Shoalhaven Local Environmental Plan (LEP) 2014 to rezone land at the northern part of Badge Lagoon Urban Release Area at Sussex Inlet for private recreation and the southern part of the release area for residential purposes should proceed subject to the following conditions:"

and replace with a new paragraph 2:

"I the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to rezone land at the northern part of Badge Lagoon Urban Release Area at Sussex Inlet for private recreation and the southern part of the release area for residential purposes, should not proceed".

2. Delete conditions 1-8

Dated 15th day of December 2020.

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: no. PP_2014_SHOAL_004_02)

I, the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 16 November 2015 (since altered) for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

1. delete paragraph 2:

"I, the Deputy Secretary, Planning Services, as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to rezone land in the Culburra Beach, Callala Bay and Currarong localities for the purposes of residential, commercial, industrial, recreation and environmental purposes, should proceed subject to the following conditions:"

and replace with a new paragraph 2:

"I the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to rezone land in the Culburra Beach locality for the purposes of residential, commercial, industrial, recreation and environmental purposes, should not proceed".

2. Delete conditions 1-11

Dated 15th day of December 2020

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: no. PP_2015_SHOAL_002_04)

I, the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 3 March 2015 (since altered) for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

1. delete paragraph 2:

"I, Brett Whitworth, General Manager, Southern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determine under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to enable residential development and environmental protection within Nebraska Estate should proceed subject to the following conditions:"

and replace with a new paragraph 2:

"I the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to enable residential development and environmental protection within Nebraska Estate should not proceed".

2. Delete conditions 1-8

Dated 15th day of December 2020.

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces



**Planning,
Industry &
Environment**

Alteration of Gateway Determination

Planning proposal (Department Ref: no. PP_2015_SHOAL_003_04)

I, the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 22 June 2015 (since altered) for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

1. delete paragraph 2:

"I, the Deputy Secretary, Planning Services at the Department of Planning and Environment, as delegate of the Minister for Planning, have determine under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to:

- rezone land at Inyadda Drive and Sunset Strip, Manyana from R5 large Lot Residential, R1 General Residential, E3 Environmental Management and RE1 Public Recreation to R1 General Residential, R2 Low Density Residential and E2 Environmental Conservation;
- establish a minimum lot size of 600sqm for land zoned R2 Low Density Residential;
- update the Urban Release Area Map to include land as an urban release area; and
- remove the land from the Clause Map and delete the additional use under Schedule 1 Clause 6 Use of certain land at Manyana,

should proceed subject to the following conditions:"

and replace with a new paragraph 2:

"I the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan 2014 to:

- rezone land at Inyadda Drive and Sunset Strip, Manyana from R5 large Lot Residential, R1 General Residential, E3 Environmental Management and RE1 Public Recreation to R1 General Residential, R2 Low Density Residential and E2 Environmental Conservation;
- establish a minimum lot size of 600sqm for land zoned R2 Low Density Residential;
- update the Urban Release Area Map to include land as an urban release area; and

- remove the land from the Clause Map and delete the additional under Schedule 1 Clause 6 Use of certain land at Manyana,

should not proceed”.

2. Delete conditions 1-7

Dated 15th day of December 2020.

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces



**Planning,
Industry &
Environment**

Alteration of Gateway Determination

Planning proposal (Department Ref: no. PP_2016_SHOAL_002_04)

I, the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 12 July 2016 (since altered) for the proposed amendment to the Shoalhaven Local Environmental Plan 2014 as follows:

1. delete paragraph 2:

"I, the Deputy Secretary, Planning Services, at the Department of Planning and Environment, as delegate of the Minister for Planning, have determine under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Shoalhaven Local Environmental Plan (LEP) 2014 as described above should proceed subject to the following conditions:"

and replace with a new paragraph 2:

"I the Deputy Secretary, Local Government, Planning and Policy at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment as described above to the Shoalhaven Local Environmental Plan 2014 should not proceed".

2. Delete conditions 1-8

Dated 15th day of December 2020.

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

DE21.6 Proposed Council Submission - Draft Local Character Clause - Local Environmental Plan

HPERM Ref: D20/548440

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments:

1. Proposed Submission - Draft Local Character Clause [↓](#)
2. Council's 2019 Submission - Proposed Standard Instrument LEP Local Character Overlay [↓](#)
3. FAQs - Local Character Clause and Overlay [↓](#)

Reason for Report

Advise of the public exhibition by the NSW Department of Planning, Industry and Environment (DPIE) of a draft Standard Instrument LEP 'Local Character' Clause and obtain endorsement to make the submission at **Attachment 1**.

Recommendation (Item to be determined under delegated authority)

That Council make a submission (Attachment 1 to this report) to the NSW Department of Planning, Industry and Environment in relation to its draft Standard Instrument LEP Local Character Clause.

Options

1. Endorse **Attachment 1** as Council's submission on the draft Local Character Clause.
Implications: This is the preferred option as it will enable Council to provide a submission highlighting matters that should be considered.
2. Amend **Attachment 1** and include additional comments as necessary and submit.
Implications: This option will still enable Council to provide a submission; however, the implications of any changes are unknown and may require closer consideration or refinement which may delay Council's submission.
3. Not make a submission.
Implications: This is not recommended as it would prevent Council from having any input and the opportunity to identify issues for consideration or resolution would potentially be missed.

Background

The NSW Government is working to strengthen the role of 'character' in the NSW planning system in recognition of its importance to local communities and the need to appropriately manage the effects of population growth and change on local character and amenity. A range of material on local character is now available through the [DPIE website](#).

In 2019 DPIE released a Discussion Paper for comment which explored the proposal to introduce a 'local character overlay' in the form of a map and supporting local clause into the

Standard Instrument Local Environmental Plan (SI LEP). Council provided a submission to the Discussion Paper on in May 2019 (see **Attachment 2**).

Exhibition - Local Character Clause Package

Following on from the 2019 Discussion Paper, DPIE released a draft Local Character Clause for comment on 12 November 2020. The formal exhibition period ends on 29 January 2020.

DPIE's proposed character provisions, as outlined in the exhibited Explanation of Intended Effects, consist of:

- Draft Local Character Clause in the SI LEP;
- New map layer for 'local character areas'; and
- Local Character Areas Statement for each mapped local character area. This Statement will be developed in accordance with DPIE's Local Character and Place Guideline and will identify existing character and desired future character.

The exhibition package can be viewed at www.planningportal.nsw.gov.au/local-character and **Attachment 3** is the 'Frequently Asked Questions' sheet that forms part of the package.

The proposed 'optional' Clause will allow a council to adopt a map overlay which identifies the boundaries of a local character area and will require a Local Character Areas Statement to be considered when addressing development applications in the mapped area.

Councils will determine how to apply the proposed local character overlay, but it is intended for specific or defined areas where the broader zone objectives in the relevant LEP do not provide sufficient direction to manage, change and support local character. To use the overlay and clause in the Shoalhaven LEP 2014 (SLEP) Council would need to prepare a future Planning Proposal (PP) addressing criteria established by DPIE.

Under the current proposal, the Local Character Clause and overlay will not trigger local variations or exclusions from state-wide policy, such as complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. However, Council can nominate 'exclusion zones' within local character areas where the Low Rise Housing Diversity Code (LRHD Code) will not apply. Exclusion zones would however need to be specifically requested and justified by way of a 'comprehensive evidence base' that meets numerous criteria set by DPIE.

Draft Council Submission

Given the nature of this proposal and its relevance, it is recommended that Council make a submission on the draft Local Character Clause.

The proposed Council submission (see **Attachment 1**) provides comments on the draft Local Character Clause and related provisions set out in the exhibited Explanation of Intended Effects. These comments build upon Council's previous submission.

The key comments in the proposed submission are as follows:

- The character of many of Shoalhaven's towns and villages is valued highly by the community. The community has previously raised concerns about the perceived erosion of local character by unsympathetic development in certain areas.
- The intent of the proposed local character provisions in the Standard Instrument LEP is generally supported. Council may consider introducing these provisions in the SLEP for certain areas in Shoalhaven (e.g. Berry, Milton, Kangaroo Valley, Nowra CBD Fringe, certain coastal villages), subject to consultation with affected communities and endorsement from Council.

- The local character provisions in the SI LEP should provide clear direction for a consent authority to consider local character and desired future character.
- A development application should be required to explicitly address the Local Character Areas Statement through a standard format 'statement of consistency' or similar. This would provide direction and clarity to both applicants and assessors and would give the community confidence that character considerations are being addressed.
- In order to justify the application of the local character provisions, land identified as within a local character area, being land of significant or exceptional character value, should automatically be exempted from complying development.

Allowing complying development to proceed in a local character area will potentially undermine the purpose of the overlay. The additional requirements to support exclusion from the LRHD Code for limited areas are considered to be onerous and overly complex.

Conclusions

At present there is limited opportunity in the SI LEP, other than through individual heritage listing, the establishment of Heritage Conservation Areas or perhaps the use of the scenic protection layer, to strengthen consideration of character impact.

Thus, it would be helpful for a mechanism to be introduced and available that would help manage character impacts arising from new development in areas like the older part of Berry, Milton, Kangaroo Valley, certain coastal or rural settlements, and the medium density zones to the west of the Nowra CBD (not exclusively).

This proposal could ultimately provide an additional future opportunity for Council to consider and to appropriately manage this issue through the SLEP.

Community Engagement

The draft Local Character Clause is on public exhibition until 29 January 2021 to provide an opportunity for Council, community members and industry stakeholders to provide comments and feedback.

In the future should Council consider using the final clause and applying it to mapped areas of Shoalhaven there would need to be detailed engagement with affected landowners, the community, and others as part of this process.

Policy Implications

If DPIE introduce the proposed local character provisions into the SI LEP in the future, Council would have the option to prepare a PP (or PPs) to introduce it into the SLEP for selected areas or settlements. Any amendments in this regard will be separately considered and reported to Council as needed in the future. Through this process, Council will be able to nominate local character areas and provide appropriate justification for their inclusion.

Under DPIE's exhibited model, there is an amount of detailed work required to enable the provisions to be pursued. Council will also need to prepare Local Character Areas Statements for each local character area identified on the Local Character Areas Map in accordance with DPIE's Local Character and Place Guideline. This would likely build on the recently completed [Shoalhaven Character Assessment Report](#).

NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

By email only: localcharacter@planning.nsw.gov.au

Dear Sir/Madam

Submission - Draft Local Character Clause – Standard Instrument LEP

Thank you for the opportunity to comment on the draft Local Character Clause. Council acknowledges the NSW Government's recognition of the importance of place character to local communities and its commitment to embedding and strengthening the consideration of character in the NSW planning system.

Council's Development & Environment Committee resolved (under delegation) on 18 January 2021 (MINXXX) to:

INSERT RESOLUTION

General Comments

As advised in Council's previous submission on this matter (14 May 2019), the character of Shoalhaven's towns and villages is valued highly by the community and tourists who visit the area.

Shoalhaven's community has expressed concerns about the design quality of new development and a perceived erosion of local character in some areas by development that does not necessarily respect or reflect the history, architecture, streetscape, natural qualities or other attributes of those settlements. It is critical that future growth is managed in a way that, wherever possible, respects and enhances the characteristics valued by residents and visitors alike.

Council generally supports the intention of the local character provisions into the Standard Instrument LEP (SI LEP) to give statutory weight to the consideration of local character. There are several rural, heritage and coastal towns and villages in Shoalhaven that could be suitable for inclusion in the Local Character Areas Map. These places are noted for their low-key, traditional village charm, heritage values, connection to the natural environment and scenic amenity. They are sensitive to new development and there is a desire among local communities to preserve/enhance their character. The proposed provisions could provide a suitable mechanism or option to help manage character impacts of development in, for example, the older parts of Berry, Kangaroo Valley, Milton, the medium density zones adjacent to the Nowra CBD. They could also possibly assist in new urban release areas where a certain character is being planned for. Shoalhaven's recent work on Local Character Assessments provides a sound basis for developing local character statements for areas of significant character value.

At present there is limited opportunity in the SI LEP to strengthen the consideration of impact on character, other than through individual heritage listing, establishment of Heritage Conservation Areas (HCA) or possibly the use of the scenic protection layer.

Impacts arising from development in areas of significant character value need greater consideration. Relying solely on existing provisions, such as character controls in a Development Control Plan (DCP), may not ensure effective consideration of character. The proposed local character provisions could ultimately provide an additional opportunity for Council to appropriately consider and manage this issue through the local environment plan.

Comments - The Draft Local Character Clause, Overlay and Local Character Areas Statement

The local character provisions should provide clear direction for a consent authority

Council's previously stated position is that the SI LEP Clause should:

- a) require applicants to submit a statement of consistency with the desired future character statement adopted by Council;
- b) require the consent authority to not grant consent to a proposed development unless it has considered the statement of consistency and is satisfied that the proposed development is consistent with the desired future character statement;
- c) include development controls that proposals are required to meet;
- d) implement the community's future vision for areas as articulated in the Local Strategic Planning Statement (LSPS) and local growth management strategies. The Clause could do this by linking to a 'statement of desired future character' adopted by Council for each character area.

Considering the current exhibition proposal, it appears d) has essentially been adopted, but a) and b) have not.

Council now regards c) is best addressed via the DCP. In this case, the Local Character Areas Statement should operate to set out the intent or objectives of the local character area, while the DCP provides the controls which support these objectives and desired future character. This will enable a consent authority to identify a clear line of sight between the controls, the objectives, and the statutory requirement in the LEP to consider these.

The current draft Local Character Clause states:

(4) Development consent must not be granted to development on land in a local character area unless the consent authority has taken into account the Local Character Areas Statement for the land.

The requirement to "take into account" the Local Character Areas Statement lacks rigour. Applicants should demonstrate that the proposed development complies or is consistent with the Local Character Areas Statement, including 'desired future character'. The clause should be explicit that the consent authority is required to assess the proposed development on such grounds.

Alternative wording might be:

*Development consent must not be granted to development on land in a local character area unless the consent authority **is satisfied that the development is consistent with** the Local Character Areas Statement for the land.*

Or

The consent authority may, before granting consent to any development located within a local character area, require a statement of consistency to be prepared which demonstrates that the proposed development is consistent with the Local Character Areas Statement.

Council supports the requirement to specify local character and desired future character in a Local Character Areas Statement that is linked to the Local Character Areas Map. Local Character Areas Statements should provide clear guidance to enable a consent authority to determine a development's consistency with local character. A clear line of sight between the objectives outlined in the Local Character Areas Statement and the controls specified in the DCP will greatly assist in assessing a development application in terms of desired future character. Consistency with this aspect should also be clearly articulated by the applicant.

A development applicant should be required to explicitly address the Local Character Areas Statement

Council has previously indicated its support for a 'statement of consistency' to be lodged with a development application. This statement would demonstrate a proposal's consistency with the desired future character for a local character area. We note that a standard statement of consistency does not form part of the latest exhibited materials. Instead, under the provisions currently proposed, if the local character overlay applies to the land a development applicant must demonstrate in the Statement of Environmental Effects (SEE) that the proposal is consistent with the Local Character Areas Statement and LEP clause.

Council maintains that it would be helpful if the Department developed a standard format 'statement of consistency' requiring applicants to separately address each of the elements of character identified for the local character area. Such a statement should be required to be endorsed by a suitably qualified professional (for example an architect or town planner). This would provide clarity and direction to applicants and councils and would give the community further confidence that character requirements are being properly considered in development applications.

A design verification statement for complying development under the Low Rise Housing Diversity Code (LRHDC) will not be sufficient to address local character in a holistic sense or in the ways that may be outlined in the Local Character Areas Statement. It almost certainly will not address the various social, environmental and economic elements of character set out in the Guideline. Allowing complying development to proceed in a local character area will potentially undermine the purpose of the overlay.

Comments – Exemption from LRHDC and complying development

Land identified as a local character area, being land of significant or exceptional local character value, should automatically be exempted from complying development.

Council agrees that making the clause and overlay optional and to be implemented by way of a planning proposal is appropriate. Given the amount of work that may be required it is likely that Shoalhaven will be careful in determining which areas to possibly include. In which case, it is also important that the sensitivities of local character are not eroded by unsympathetic, standardised development.

Under the two pathways that will be available for development approval in proposed local character areas - development application or complying development - local character will really only be given proper consideration only through a development application pathway. Allowing complying development to operate in local character areas clearly has the potential to undermine the intent of the proposed local character provision.

Council maintains that it is appropriate that the application of the proposed local character overlay automatically excludes or varies complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, as well as *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. These SEPPs permit a range of significant and comparatively homogenous developments with limited consideration of local character.

Local character is something that applies variably across Shoalhaven but since the 'local character areas' overlay is likely to be applied to areas with *significant or exceptional character values*, it is appropriate that this should automatically exclude or vary complying development under these SEPPs in the same way that the heritage conservation overlay does. Council suggests that the proposed local character provision would have limited effect without a variation or exclusion from these SEPPS.

It is noted that exclusions from the LRHDC are possible within local character areas, but not for an entire local character area. Council considers the additional requirement for a comprehensive

evidence base to support exclusion from the Codes SEPP to be overly onerous and complex for what is considered to be relatively self-evident, particularly when it is noted that complying development does not apply in HCAs.

It is unclear why the available exclusion relates to the LRHDC only and not the general Housing Code. In Shoalhaven, the Housing Code may have broad application in areas which may also be identified as a local character area. As complying development under the Code can arguably result in outcomes that are not consistent with the specific local character of certain areas in the Shoalhaven, it would be appropriate to also enable exclusion from complying development broadly under this Code as well.

It is strongly suggested that complying development should not be able to be undertaken within local character areas.

Thank you again for the opportunity to comment on the draft Local Character Clause. Council appreciates the Department's consideration of the comments made in this submission and looks forward to seeing additional changes made to the draft clause to effectively protect areas with significant or exceptional character in Shoalhaven. We remain available to discuss the content of this submission further, if required.



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Council Reference: 14690E (D19/124005)

NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

By email only: localcharacter@planning.nsw.gov.au

Dear Sir/Madam

Submission to the Discussion Paper - Local Character Overlays

Thank you for the opportunity to comment on the Discussion Paper - Local Character Overlays. Council acknowledges the NSW Government's recognition of the importance of place character to local communities and its commitment to embedding and strengthening the consideration of character in the NSW planning system.

On 7 May 2019 Council at its Development and Environment Committee meeting resolved (MIN19.292):

That Council make a submission to the NSW Department of Planning and Environment in relation to its Discussion Paper on a proposed Standard Instrument LEP Local Character Overlay.

General Comments

Shoalhaven is a large and diverse Local Government Area (LGA) on the NSW south coast with an area of approximately 4,600km, 170km of coastline, 100 beaches and 49 towns and villages. It is well known for its spectacular natural environment, pristine beaches, historic villages, scenic rural landscapes and relaxed lifestyle.

These characteristics have made Shoalhaven a drawcard for new residents and tourists alike. It is the most visited region in NSW outside of Sydney and has experienced consistently strong population growth. The estimated resident population of 104,371 in 2018 is projected to grow by an average of 0.9% per annum to 126,513 in 2041.

The character of Shoalhaven's towns and villages is valued highly by the community. In community engagement undertaken in late 2018 as part of Council's review of its local Growth Management Strategy (GMS), the issue of place character was commented on more than any other issue in community submissions.

There was much concern about the design quality of new developments and a perceived erosion of local character in some settlements by developments that do not necessarily respect or reflect the history, architecture, streetscape, natural qualities and other attributes of those settlements.

In a high growth LGA like Shoalhaven it is critical that future growth is managed in a way that, wherever possible, respects and enhances the characteristics that local residents and visitors value.

Thus, Council welcomes the NSW Government's recognition of the importance of place character to local communities and its commitment to embedding and strengthening the consideration of character in the NSW planning system. The addition of new "tools" to assist in this regard is also supported.

Responses to the Discussion Paper's Key Questions

1. Do you think the inclusion of a standard approach to Local Character Overlays within LEPs will be effective at balancing growth with supporting local character?

The LEP is possibly the most appropriate place for character considerations because it has the statutory weight to ensure that they are effective. This is important given how important local character is to many communities in Shoalhaven. Relying solely on character controls in a Development Control Plan (DCP) may not ensure effective consideration of character.

At present there is limited opportunity in the LEP, other than through individual heritage listing or establishment of Heritage Conservation Areas (HCA), to strengthen consideration of character impact. Council has been grappling with how to manage character impacts arising from development in areas like the older parts of Berry and the medium density zones west of the Nowra CBD. This proposal could ultimately provide an additional opportunity for Council to consider to appropriately consider and manage this issue through the LEP.

A Local Character Overlay in the LEP has the potential to balance growth and support local character, provided that:

- a) it is accompanied by clearly defined and measurable development controls in the supporting local LEP Clause that enable development proposals to be meaningfully assessed against it and minimise uncertainty;
- b) the desired future character of areas mapped in the overlay is clearly articulated. The specific elements of character in each area (built form, architectural style, subdivision pattern etc.) will need to be clearly described. This detail would be best captured in a 'statement of desired future character' prepared in accordance with the Local Character & Place Guideline and adopted by Council. The 'statement of desired future character' could be referenced (linked) in the local LEP Clause.
- c) It automatically excludes or varies Complying Development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. These SEPPs permit a range of significant and comparatively homogenous developments with limited consideration of local character.

Since the overlay is intended for areas with significant or exceptional character values, it is considered self-evident that it should automatically exclude or vary Complying Development under these SEPPs in the same way that the heritage conservation overlay does. Council suggests that a Local Character Overlays would have limited effect without a variation or exclusion from these SEPPs.

2. What functions of a Local Character Overlays would be helpful in supporting local character?

The local character map overlay should:

- a) identify defined character areas and map their boundaries;
- b) identify how the character in each area is to be managed (i.e. character should be "changed", "enhanced", "maintained" or "conserved"); and
- c) should trigger local variations or exclusions from state-wide policy (e.g. the SEPPs referred to above in question 1).

The ability to introduce alternate, local development standards within state-wide policies for the key attributes that strongly influence the character of the area is supported. Alternate standards should be able to address matters such as building design and siting, articulation requirements, materials, external finishes, gross floor area and landscaped area, which all influence local character.

The local LEP Clause should:

- a) require applicants to submit a statement of consistency with the desired future character statement adopted by Council;
- b) require the consent authority to not grant consent to a proposed development unless it has considered the statement of consistency and is satisfied that the proposed development is consistent with the desired future character statement;
- c) include development controls that proposals are required to meet;
- d) implement the community's future vision for areas as articulated in the Local Strategic Planning Statement (LSPS) and local growth management strategies. The Clause could do this by linking to a 'statement of desired future character' adopted by Council for each character area. Council recently prepared and exhibited a set of draft character statements for each of its settlements which are intended to inform its next GMS and LSPS. The final character statements could form part of a future Local Character Overlay for relevant areas in the Shoalhaven LEP 2014.

3. *What are your thoughts on a "statement of consistency" for development applications to identify a proposal's consistency with desired future character?*

This approach is supported. It would be helpful if the Department developed a standard format 'statement of consistency' requiring applicants to separately address the elements of character identified in the 'statement of desired future character'. This would provide clarity and clear direction to applicants, Councils and the community and help to ensure that development applications properly address the statement of desired future character adopted by Councils.

It is suggested that the Statement of Consistency should be required to be endorsed by a suitably qualified professional (for example an architect or town planner) registered with the NSW Government Architect or NSW Department of Planning & Environment. This would give the community further confidence that character requirements are being taken seriously and properly considered in development applications.

4. *Do you anticipate introducing a Local Character Overlay into your LEP?*

Council would consider introducing a Local Character Overlay into the Shoalhaven LEP 2014 for certain areas and settlements, subject to consultation with affected communities and endorsement from the elected Council to prepare a Planning Proposal (PP). Feedback received during initial community engagement on Council's GMS and draft character statements indicates that a Local Character Overlay would be supported in several towns and villages.

Council has also been considering ways to manage growth, whilst also respecting character, in areas such as the older parts of Berry and medium density zones adjacent to the Nowra CBD. The ability to consider using a character overlay in these circumstances may be of assistance.

5. *Are you able to provide detail on any potential overlays to assist with developing the policy?*

In Shoalhaven LGA, a character overlay would need to address a diversity of settlements with different character and apply development controls accordingly i.e. a 'one size fits all' approach to development controls would not be suitable. A 'statement of desired future character' which clearly articulates the elements of character in each character area (built form, architectural style, subdivision pattern etc.) may be appropriate. The local LEP Clause could require applicants to submit a 'statement of consistency' separately addressing each element of character in the statement of desired future character.

There are several rural and coastal towns and villages in Shoalhaven that could be suitable for a potential character overlay. These places are valued by local residents and visitors for their low-key, traditional village charm, connection to the natural environment and scenic amenity. They are sensitive to new development and there is a desire among local communities to preserve their character.

An overlay could also provide a suitable mechanism or option to manage character impacts of development in the older parts of Berry, the medium density zones adjacent to the Nowra CBD and in new urban release areas where a certain character is being planned for.

6. *The proposed overlay would be a map layer in the Standard Instrument LEP with a supporting standard optional Clause to give weight to local character considerations. Do you think this is the right approach?*

Yes, this approach is supported. The LEP is possibly the most appropriate place for character considerations. Relying solely on character controls in a DCP may not ensure effective consideration of character. At present there is limited opportunity in the LEP, other than through individual heritage listing or establishment of HCAs, to strengthen consideration of character impact. This proposal could ultimately provide an additional opportunity for Council to consider to appropriately consider and manage this issue through the LEP.

It is suggested that the LEP Clause link to 'statements of desired future character' adopted by Council for each character area. Applicants could then be required to submit a 'statement of consistency' with the desired future character with development applications.

7. *Are the proposed criteria and supporting information for a Planning Proposal to introduce a Local Character Overlay reasonable?*

Yes, they are generally supported. The relevance/intent of the last bullet point under the 'Indicative Supporting Information' for Criteria 1 is questioned: "*will the addition of a Local Character Overlay on the site increase the regulatory burden on the land owners / potential applicants?*" Given that a character overlay would introduce additional requirements for developments, it is evident that the answer is yes, but this doesn't necessarily mean that the introduction of a character overlay is not justified. It is suggested that this question should not form part of the criteria.

8. *Are the proposed criteria for determining a local character variation or in exceptional circumstances an exclusion from a SEPP appropriate?*

Given that the character overlay is intended for areas with significant or exceptional character values, should it not be granted an automatic variation or exclusion from SEPPs in the same way that the LEP heritage conservation overlay has? It is considered self-evident that complying development under several SEPPs will impact places with significant or exceptional character (see further comments above under question 1c).

Should criteria for variations and exclusions from SEPPs be retained, the following comments are made:

- The requirements under Part 2 "compelling reason for variation or exclusion" are overly complex for what is considered to be relatively self-evident, in the same way that it is self-evident that complying development should not apply to HCAs. Council could address the proposed requirements but questions the need to submit "*modelling of existing and proposed controls*" in addition to detailed analysis and comparison of existing and proposed controls, examples and case studies, character assessments and community feedback.

- Why is an “*explanation of impact on property values*” relevant? Besides the fact that it is not a consideration for planning/environmental assessments under the EP&A Act, there is much evidence to suggest that places with a strong sense of local character enjoy higher property values on average. Planning Circular [*PS 18–00 Respecting and enhancing local character in the planning system*](#) (January 2018) acknowledges that:
 - *areas with a strong sense of local character are desirable places to live and work and support strong communities. A strong sense of local character should be an objective in planning for all communities;*
 - *areas that build on existing local character contribute to the vitality and viability of centres;*
 - *investing in local character can drive economic development and opportunity, particularly in regional areas.*

Thank you again for the opportunity to comment on the Discussion Paper for a proposed Local Character Overlay. Council appreciates the Department's consideration of the comments made in this submission.

If you need further information about this matter, please contact Ryan Jameson of Council's Planning Environment & Development Group on (02) 4429 3570. Please quote Council's reference D19/124005.

Yours faithfully



Gordon Clark
Strategic Planning Manager
14 May 2019

Draft Local Character Clause

Frequently asked questions



November 2020

Local Character clause and Overlay

This document answers frequently asked questions regarding the draft clause for local character and the associated overlay, which is currently being exhibited for community feedback.

What is a local character clause and overlay?

- The local character overlay is a map which identifies the boundaries of a character area(s).
- The draft local character clause is proposed to be included in the Standard Instrument Local Environmental Plan (SI LEP). The local character clause (attached) will allow a council to map and describe the future desired character of an area. It will require the council to consider its local character statement when assessing development applications.
- A local character statement must be developed in accordance with the [Local Character and Place Guideline](#); and describe an area's existing character; and detail its desired future character. It will also set out how future growth will be consistent with the identified future character.

Is a council required to introduce a local character overlay?

- Introducing a local character overlay in an LEP is not mandatory. Councils can decide how to integrate local character into their strategic and statutory plans to suit their local needs. This includes inserting local character into Local Strategic Planning Statements (LSPSs), development controls in development control plans (DCPs) and standalone local character statements.

Who will prepare a local character overlay?

- Councils will undertake their local character assessments, prepare local character overlays and submit planning proposals to introduce the overlays into their LEPs.

How will the community be involved in the preparation of a local character overlay?

- A council will consult with its community to undertake a character assessment and develop a local character statement about the desired future character of an area.

Is community engagement undertaken during exhibition of a council's LSPS sufficient consultation for a local character statement?

- Whether the consultation undertaken during the development of an LSPS is sufficient for developing a local character statement will depend on the extent of the previous consultation and whether the community was consulted about the desired future character of their area.

Draft Local Character Clause

Frequently asked questions



What are the technical requirements for preparing an LEP map layer?

- Mapping a local character area will need to adhere to the Department's *Standard Technical Requirements for Spatial Datasets and Maps* (August 2017).

Can a local character map overlay include more than one local character area?

- A map overlay can include more than one local character area. Each area must be identified by undertaking a local character assessment in accordance with the *Local Character and Place Guideline*.

What does a council need to address to prepare a planning proposal to introduce a local character overlay?

- Councils need to address the Department's *Guide to Preparing Planning Proposals* and the *Guide to Preparing Local Environmental Plans*.
- The Local Character Overlay fact sheet provides additional requirements for planning proposals to introduce a local character overlay.

Can a local character statement be inserted in a development control plan (DCP)?

- A local character statement can be included in a DCP where a council does not want to include a reference to local character areas in its LEP.
- If a council wants to insert the local character overlay in its LEP, a local character statement must be prepared as a standalone document and cannot be included in the DCP.

Development proposals in local character areas

If an LEP contains a local character overlay, what will applicants need to demonstrate when submitting a complying development application or development application?

- The local character clause will only apply to development applications (DAs).
- When submitting a DA, applicants will need to demonstrate in the Statement of Environmental Effects (SEE) that their proposal is consistent with the local character statement and the LEP clause.
- For complying development applications under the *Low Rise Housing Diversity Code* (Code), an applicant must submit a design verification statement prepared by a registered architect or accredited building designer that provides a description about how the built form of the development contributes to the character of the local area.

Draft Local Character Clause

Frequently asked questions



Are local character areas exempt from the Low Rise Housing Diversity Code?

- In some circumstances an exemption from the Low Rise Housing Diversity Code may be sought by councils for limited areas. This means in these areas council planning controls will apply.
- There are no blanket exclusions, for example the entirety of all local character areas or the whole of a zone will not be considered for an exclusion. Exclusions requests are to be supported by comprehensive evidence.
- Councils will need to ensure that there is no net loss of missing middle housing types as well as provide draft local character statements.
- The evidence base includes:
 - Evidence showing the outcomes of the Code are inconsistent with the local character and desired future character
 - Evidence that any exclusion will not result in a reduction of housing diversity overall
 - Current and historical data on complying development take up including take up of the LRHDC
 - Statistics on the range of housing types approved (DA and CDC) for the prior 5 years
 - Number of lots and proposed lots that will be excluded from the Code and the number of lots where the Code will still apply
 - Evidence of community and industry views being considered
 - A completed LSPS and LHS
 - Detailed analysis and comparison between Council's planning controls (including design standards) and the controls in the Code and Design Guide
 - How the proposal aligns to the strategic direction within regional and district plans
 - Strategic basis for the request supported by evidence (eg urban design studies)

Will a council be required to simultaneously introduce a local character overlay and amend the relevant development standards in the LEP or DCP for the local character area?

- When a local character overlay is introduced, the development standards in the LEP or DCP for the local character area should also be amended to be consistent with the local character statement.

Can a council identify their entire LGA as a local character area?

- Local character can be recognised everywhere. Identifying a local character area allows a council to articulate what the community recognises as its existing and desired future character.
- Local character areas can be maintained (limited change), enhanced (incremental change) or changed (transformative) (refer to the *Local Character and Place Guideline* for more information). Councils cannot choose one of these characterisations, such as maintain, for an entire local government area.

Draft Local Character Clause

Frequently asked questions



The department is seeking comments on the draft local character clause, and you can [have your say until 29 January 2021](#).

Draft local character clause

public consultation draft

Local character areas

- (1) The objectives of this clause are as follows—
 - (a) to identify local character areas,
 - (b) to promote the desired future character of local character areas.
- (2) The local character and desired future character for a local character area is specified in the *Local Character Areas Statement* published by *[insert the name of the body responsible for the publication]* at *[insert the place of publication]* on *[insert the date of publication]*.
- (3) Development consent must not be granted to development on land in a local character area unless the consent authority has taken into account the *Local Character Areas Statement* for the land.
- (4) In this clause—
local character area means land identified as “local character area” on the Local Character Areas Map.

Drafting note 2.1 The following definition should be included in the Dictionary—

Local Character Areas Map means the *[Name of local government area or other relevant name] Local Environmental Plan [Year] Local Character Areas Map*.

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DE21.7 Information Report - NSW Productivity Commission Report - Infrastructure Contributions System

HPERM Ref: D20/563814

Section: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

Provide information to Council on the release of a report into the Infrastructure Contributions System that has been released by the NSW Productivity Commission.

Recommendation (Item to be determined under delegated authority)

That Council receive the report on the release of the NSW Productivity Commission's report on the NSW Infrastructure Contributions System for information.

Options

1. Receive the report for information.

Implications: The report provides a brief overview of the report into the infrastructure contributions system that has been released by the NSW Productivity Commission. The NSW Government has not yet responded to it. Council will be provided with further update reports when the detail of any system changes is known.

2. Alternate decision.

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

Background

The NSW Government released the NSW Productivity Commission's report into the Infrastructure Contributions System on 3 December 2020.

The report was prepared as part of the ongoing reform of the NSW planning system.

Part 7 of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) includes the following current infrastructure funding mechanisms:

- Section 7.4 planning agreements (e.g. VPAs)
- Section 7.11 local infrastructure contributions
- Section 7.12 fixed development consent levies
- Section 7.24 special infrastructure contributions
- Section 7.32 affordable housing contributions

It was noted that if accepted by the government, recommended sweeping changes to the infrastructure contributions system in NSW could unlock up to \$12 billion of productivity benefits over the next 20 years. The changes would also be the most significant to the contributions regime in three decades.

In releasing the report, the NSW Minister for Planning & Public Spaces, Rob Stokes MP, noted that uncertainty surrounding infrastructure contributions was causing a range of impacts, and the report recommends a complete shift in thinking where land rezoning, infrastructure planning and funding are considered together at the start of the process. The Minister noted that: “if the changes in the report are implemented, these barriers will be removed and development will be coordinated with the right infrastructure.”

The review focusses on the following:

- Funding for growth
- Role of a reformed infrastructure contributions system
- Local government rates
- Local infrastructure
- State and regional infrastructure funding

The comprehensive review makes 29 recommendations, with the aim of boosting productivity and helping the state respond to COVID-19 impacts, including the following priority reforms:

- Removing the disincentive for local councils to accept development and growth by allowing for the local government rate peg to reflect population growth,
- Ensuring charges can be properly factored into feasibility studies by requiring contributions plans to be developed prior to rezoning,
- Introducing a direct land contribution obligation for landowners following rezoning to provide early and adequate funding for land,
- Managing the costs and complexity of s7.11 local contributions plans by using benchmark costs and focusing the role of IPART in reviewing such plans,
- Removing barriers to construction and improving project feasibility by deferring payment of local contributions to the occupation certificate stage of development,
- Providing a simpler option for local councils by increasing the maximum rate of s7.12 fixed development consent levies in certain circumstances,
- Limiting the use of state and local planning agreements to direct delivery of works and supporting infrastructure for ‘out of sequence’ developments,
- Addressing insufficient and ad hoc s7.24 special infrastructure contributions through the implementation of modest and simple broad-based regional charges,
- Ensuring the beneficiaries of major transport investments contribute to costs by implementing an additional state contribution for rezoned properties within station service catchments,
- Taking pressure off household water bills by transitioning to cost-reflective developer charges for water connections,
- Making the infrastructure contributions system easier to navigate and comply with by providing and maintaining clear and rationalised guidance and comprehensive digital tools, and
- Being more transparent in reporting on how much money is collected and where it is spent.
- Broad-based regional contributions of between \$8,000 and \$12,000 per dwelling in Greater Sydney, the Central Coast, Hunter and Illawarra-Shoalhaven, in place of special infrastructure contributions.

- Restoring water charges for Sydney Water and Hunter Water, which are currently set at zero.
- Simplifying the system with digital tools, adopting benchmark costs and use of standardised templates.

If accepted by the State government, the recommended reforms in the Final Report will need to be implemented through a combination of legislative changes, the development of a comprehensive suite of digital tools, and the review and consolidation of various policy materials.

The NSW Government is currently reviewing the recommendations and will consider the views of stakeholders in developing a roadmap to implement the reforms by early 2021. The reforms are not expected to be implemented in full until early 2023.

The full report from the Commission is available on the internet at:

<http://productivity.nsw.gov.au/sites/default/files/2020-12/Final%20Infrastructure%20Contributions%20Review%20Report.pdf>

Additional information regarding the review is also available on the Commission's website at:

<http://productivity.nsw.gov.au/infrastructure-contributions-review>

Community Engagement

The Commission carried out a range of engagements as part of the preparation of their report and these are summarised on the project website.

Policy Implications

This will depend on the NSW Government's response to the Commission's report and the resultant planning and associated reforms that result.

Financial Implications

This will depend on the nature of the reforms and system changes that the NSW Government take forward.

DE21.8 Companion Animals - Activities for 2019-20

HPERM Ref: D20/435757

Section: Building & Compliance Services

Approver: Phil Costello, Director - City Development

Reason for Report

To provide information in relation to Companion Animals activities within the Shoalhaven for the period 2019-2020.

Recommendation (Item to be determined under delegated authority)

That Council receives the report Companion Animals – Activities for 2019-2020 for information.

Options

1. Council receive the report for information

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

Implications: Any changes or additional matters can be added to future reports.

Report

This report provides an update on Companion Animals Activities for 2019/2020. Companion animals, especially dogs, are resource intensive for Council and encompass a wide range of complex issues. This report provides an overview of the program.

Companion animal community engagement programs.

Community engagement programs related to responsible pet ownership, pet registration, changes in legislation and community awareness regarding dog attacks in the community have been undertaken during the period:

1. Media releases: Ranger Services continue to raise community awareness on companion animal regulations via the media. From July 2019 to June 2020, nine media releases were created and distributed in collaboration with Council's communications team. Each of these resulted in media interviews and social media posts on Council platforms as well as publications in local news outlets. Enquiries from the media have also been addressed by Council.
2. Shoalhaven Animal Shelter's Facebook Page: Shoalhaven Animal Shelter's Facebook page now has more than 11,643 followers. The page has a weekly "Did you know" post which shares information about responsible pet ownership in the Shoalhaven with 21 posts during the period. This has included pet registration requirements, desexing assistance, researching breeds before buying, and education about health and welfare.

Information has also been provided to pet owners and vet clinics about new legislation requiring annual permits for declared dangerous, menacing and restricted breed dogs and for cats not desexed by four months of age. From 1 July 2020:

- (a) Owners of cats not desexed by four months of age are now required to pay an \$80 annual permit in addition to their one-off lifetime pet registration fee.

- (b) Owners of dogs of a restricted breed, declared restricted, or declared to be dangerous (including those already on the Register when the requirement came into effect), are required to pay a \$195 annual permit in addition to their one-off lifetime pet registration fee.
3. Animal Shelter Pet Expo: The Animal Shelter held its first Pet Expo on 13 October 2019 at the Nowra Showground. This event showcased the benefits of owning pets and how to be a responsible pet owner. The Pet Expo included a number of stalls providing education, products, services and entertainment. It was a huge success with about 4,000 people attending.
 4. Radio interviews: Animal Shelter staff regularly participate in radio interviews with a number of local stations to discuss pet ownership, kitten season and a special initiative 'The Cat Project'. The Cat Project focuses on desexing cats to reduce unwanted litters and feral cats in collaboration with the Animal Welfare League (AWL) and the RSPCA.
 5. Council's webpage: Public information is also available on Council's website along with posters, brochures and flyers.
 6. Badging of Council Ranger vehicles: Ranger vehicles are enhanced with Responsible Pet Ownership material depicting pictures and key messaging.

Rangers also hand out trauma puppies to children who have been involved with dog attacks. These soft toys are donated by the Spinners and Weavers group and serve to build up confidence in young children following the incident.
 7. School visits: Responsible pet ownership education was provided to primary school children in November 2019 with a number of schools visited.
 8. Pro-active beach patrols: Rangers conduct proactive beach patrols to identify owners and their dogs not complying with the Companion Animals Act. These patrols are increased during the shorebird nesting season.

Approximately 4,000 beach patrols were undertaken during the period. This included 142 patrols of Paradise Beach Reserve, Sanctuary Point which is an identified hot spot for dogs off leash.
 9. Nowra Library: Council's Nowra library has made available books, e-books, DVDs and CDs to help pet owners with a variety of dog and cat issues. The Paws'n'Tails reading program is currently on hold due to COVID19. This usually runs at the Nowra library where trained volunteers provide weekly sessions for children to read aloud to a well-trained dog.

The library has a movie streaming service called Kanopy which has documentary titles such as "Dog Training 101" and "Understanding your dog's behaviour". Due to the bush fires and COVID19, attending or coordinating many events has not occurred in recent months.

Strategies Council has in place to promote and assist the desexing of dogs and cats.

Shoalhaven Animal Shelter promotes the desexing of dogs and cats in conjunction with the Animal Welfare League. A "Chip and Snip" day is held at the animal shelter on the second Sunday of each month. This aids with microchipping and discounted desexing vouchers are given to pet owners.

All animals adopted from the Shelter are desexed showing Council's commitment to the importance of desexing.

The Cat Project mentioned above is a key strategy to get cats and kittens desexed, and it will continue due to its popularity. For the 2019/2020 financial year, a total of 296 kittens entered the shelter with 253 desexed and adopted. The aim of the project is to reduce unwanted litters by accepting kittens that would be given away for free within the community and not desexed. With many kittens desexed, the number of incoming cats should reduce over time.

Cat owners are also required to have their cat desexed where possible as a condition of accepting the litter.

Shoalhaven Animal Shelter promoted the “National Desexing month” in July 2019 by providing free microchipping and cheap desexing in conjunction with the local AWL branch and local veterinary clinics. This initiative is coordinated by the National Desexing Network (NDN). Under this scheme, pet owners are advised to contact local Veterinary Clinics who provide discounted desexing via the NDN. The goal is to end pet overpopulation by making desexing available and more affordable to pet owners who need it most.

Rangers Services regularly provide educational and regulatory information to the public to promote the desexing of animals. Owners of non-desexed pets who come to the attention of Council are also encouraged to take advantage of the discounted registration fee for desexed animals.

Strategies to comply with Section 64 (Companion Animals Act) to seek alternatives to euthanasia for unclaimed animals.

Since Council has been managing the Animal Shelter from June 2018 the Shelter has had a zero-euthanasia rate of healthy, adoptable animals. Council has achieved this rate by adopting the following for its shelter residents:

- Transfer to breed specific rescue groups
- Transfer to rescue groups specialising in older dogs and cats which may require medical treatment
- Weekly training from local dog trainers to work on minor behavioural issues that could otherwise complicate adoption
- Decrease in adoption fees for older dogs and cats and long term residents

Shoalhaven Animal Shelter is embarking on a program to work with other Council managed Shelters in NSW to cross transfer long term animals who may have a higher chance of adoption in another LGA.

Companion animal forms and incoming calls from the public

Approximately 8,000 companion animal forms were processed in the period. Incoming telephone calls to Ranger Services total 8,990 and 75% of these were animal related.

Access areas for dogs

Updates to the Policy, as well as consultation exercises and other decisions of Council or consultations in relation to Shoalhaven dog off-leash areas, are provided via Council’s Get Involved page. This is available at <https://getinvolved.shoalhaven.nsw.gov.au/dogs>

Data relating to dog attacks

A total of 219 dog attacks were reported to the Office of Local Government during the period. An analysis of dog attack data was undertaken and the tables below show a sample of the results. This provides valuable information to assist Ranger Services to develop educational information relevant to what is occurring within the community.

Dog Attack by Land Type	No.
Dog ran out of yard	58
Off leash - beach	5
Off leash - reserve	3
On leash - beach	8

On leash - reserve	25
On leash - road reserve	33
Private property	81
Prohibited - beach	2
Prohibited - reserve	1
Unknown	3
Grand Total	219

Table 1 – Dog attack by land type

The most prolific area for dog attacks is Nowra followed by Bomaderry and Sanctuary Point. Table 2 provides the breakdown of the dog attacks by area. Interestingly, Tomerong has a high number of attacks for a relatively small population.

Dog Attack by Town	No
Basin View	10
Bomaderry	19
Nowra	28
Sanctuary Point	19
St Georges Basin	11
Tomerong	10
Ulladulla	10
Worrigee	8
Other Towns	104
TOTAL	219

Table 2 – Dog attack by town

Summary of key aspects of activities undertaken by Rangers

Companion Animals 2019-2020	No
Customer Complaints	2,520
Penalty Notices (not all will be paid)	840
Warnings	242
Dog attacks	219
Proactive Patrols	4,001

Table 3 – Summary of key aspects of activities

Data relating to complaints

Table 4 below highlights the number of customer complaints via incident type (Refer Table 4).

The data indicates there is a trend that dog owners are not securing their dogs in their yard, allowing them to escape and roam. The other issue is dog owners with their dogs in public places not under effective control. Whilst Rangers spend a lot of time explaining the requirements under the Companion Animals Act to pet owners, it is not uncommon to have repeat offenders. This requires increased resources to attend to roaming dogs within the community.

Customer Complaints - Incident Type	No
Animal Welfare	45
Cat Causing Nuisance	21
Cat Stray Contained for Pickup	167
Cat Surrendered for Pickup	3
Companion Animals Register update	79
Dead Dog or Cat - Scan for Microchip	28
Dog Alleged Restricted Breed - Inspect	3
Dog Attack	219
Dog Barking	105
Dog Being Menacing	80
Declared Dog Premises Inspection	8
Dog Stray - Contained for Pickup	544
Dog Stray - Roaming - Patrol	691
Dog Surrendered for Pickup	2
Dog With Owner - Control Issue	435
Dog Working Dog Inspection	3
Livestock	85
Trap Delivery / Pickup	2
Grand Total	2520

Table 4 – Customer complaints by incident type

Data relating to penalty notices issued by offence types

Table 5 below provides data on the penalty notices issues for the different offence types (Refer Table 5).

Dogs roaming or not under effective control and failure to lifetime register a companion animal account for the highest number of penalty notices issued in the period. This is due mainly to the proactive work being undertaken in these areas and Council's zero tolerance on dog related offences.

Penalty Notice Offence Types	No
Cause or permit animal to be unattended in public place	8
Companion animal (other) not registered as prescribed - first offence	61
Companion animal (other) not registered as prescribed - second or subsequent offence	3
Companion animal (other) not registered if required by regulations - first offence	13
Dog to be declared dangerous or menacing not under effective control	1
Fail to comply with dangerous dog control requirements	2
Fail to comply with menacing dog control requirements	1
Fail to comply with nuisance dog order - 1st offence	6
Fail to comply with nuisance dog order - 2nd plus offence	6
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	140
In charge of dog in prohibited public place	10
In charge of dog not under control in public place	45
In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	6
Not comply notice re registration (other) - first offence	256
Not comply notice re registration (other) - prior offence	2
Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	9
Not immediately remove dog faeces from public place	1
Not notify change in registration/identification information - not dangerous/menacing/restricted dog	22
Owner not comply with restricted dog control requirements	1
Owner of dangerous dog not under control in public place	1
Owner of dog in prohibited public place	44
Owner of dog not under control in public place	180
Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	21
Owner of menacing dog not under control in public place	1
Grand Total	840

Table 5 – Penalty notice offence types

Data relating to warning issued by offence types

The option of issuing a warning is utilised when the owner has a reasonable explanation for non-compliance. It is a tool to assist Rangers to encourage voluntary compliance without financial consequences for the pet owner.

The last quarter of the financial year shows a decrease in the number of warnings with only 21 issued. This is largely attributed to Council's adopted zero tolerance to dog issues.

Warnings – Offence Types	No
Companion animal (other) not registered if required by regulations - first offence	2
Dog not wearing collar and name tag - not dangerous/menacing/restricted dog	2
Fail to comply with nuisance dog order - 1st offence	1
Fail to comply with nuisance dog order - 2nd plus offence	1
Fail to ensure registration information entered on Register	6
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	69
Former owner not notify change of ownership	1
In charge of dog in prohibited public place	4
In charge of dog not under control in public place	26
In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	2
Not immediately remove dog faeces from public place	1
Not notify change in registration/identification information - not dangerous/menacing/restricted dog	1
Owner of dog in prohibited public place	20
Owner of dog not under control in public place	91
Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	14
Grand Total	242

Table 6 – Warning offence types

Conclusion

The trends indicate that whilst there has been ongoing procedural changes to put the onus back onto the pet owner, the trends are not changing. This can be attributed to a range of factors both in relation to how Rangers operate, community expectations and population growth in both residential and visitor numbers. To address this, more proactive work is being undertaken by Rangers to provide a consistent education program to change pet owner behaviour.

Council has excellent teams within Ranger Services, Communications, Community & Recreation and Tourism. These Teams will continue develop and implement programs to create better outcomes for the community, pet owners and their animals.

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.