

Development Committee

Meeting Date: Monday, 23 January, 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5:00pm

Membership (Quorum - 5)
Clr Patricia White - Chairperson
All Councillors
General Manager or nominee

Please note: Council's Code of Meeting Practice permits the electronic recording and broadcast of the proceedings of meetings of the Council which are open to the public. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
 - Development Committee - 6 December 2016 1
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**
 - DE17.1 Rescission Motion - Gateway Determination - Planning Proposal -
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 - DE17.2 Notice of Motion - Gateway Determination - Planning Proposal -
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 St, Nowra – Lot 1 in DP 781046 & Lot 1001 in DP 1176270..... 25

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8. Confidential Reports

Nil

Development Committee

Delegation:

Pursuant to s377 (1) of the Local Government Act 1993 the Committee is delegated the functions conferred on Council by the Environmental Planning & Assessment Act 1979 (EPA Act), Local Government Act 1993 (LG Act) or any other Act or delegated to Council, as are specified in the attached Schedule, subject to the following limitations:

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB 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:

1. 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.
2. 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 4 of the EPA Act.
3. 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.
4. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which breaches 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.
5. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
6. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
7. Review of all determinations of development applications under sections 82A and 96AB of the EP&A Act.
8. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Tuesday, 6 December 2016
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 4.05pm

The following members were present:

Clr Patricia White - Chairperson
Clr Amanda Findley – left 6.32pm
Clr Joanna Gash
Clr John Levett
Clr Nina Cheyne
Clr Annette Alldrick – left 6.38pm
Clr Kaye Gartner
Clr Andrew Guile – arrived 4.07pm
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

An apology was received from Clr Wells.

Confirmation of the Minutes

RESOLVED (Clr Cheyne / Clr Alldrick) MIN16.941

That the Minutes of the Development Committee held on Monday 07 November 2016 be confirmed.

CARRIED

Declarations of Interest

Clr Watson - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - pecuniary interest declaration – he and his wife own property in the Woollamia area and the result of this decision may be seen to have a positive or negative affect – will leave the room and will not take part in discussion or vote.

Clr Guile - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues – less than significant non pecuniary interest declaration – he ran as a

Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Pakes - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Kitchener - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Proudfoot - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

DEPUTATIONS AND PRESENTATIONS

Note: Clr Guile arrived at the meeting

DE16.14 – Huskisson Town Centre - Service Lanes Review - Funding and Costing Options

Mr Greg Kilpatrick addressed the meeting in relation to this item.

DE16.15 - Interim Heritage Order Request - Chinaman's Island Cottages, Lake Conjola

Ms Glenda Milham addressed the meeting in relation to this item.

DE16.18 – Possible Change – Height of Buildings – Shoalhaven Local Environment Plan 2014 – Anson Street, St Georges Basin

Ms Maureen Webb (St Georges Basin Community Forum) addressed the meeting in relation to this item.

DE16.20 - Gateway Determination - Planning Proposal - Warrah Road, Bangalee

Ms Sam Wilson from URBIS Town Planners addressed the meeting in relation to this item.

REPORTS

Procedural Motion - Bring Item Forward

MOTION (Clr Guile / Clr Proudfoot)

That the following items be brought forward for consideration:

- DE16.14 - Huskisson Town Centre - Service Lanes Review - Funding and Costing Options
- DE16.15 – Interim Heritage Order Request – Chinaman's Island Cottages, Lake Conjola
- DE16.18 – Possible Change – Height of Buildings – Shoalhaven Local Environment Plan 2014 – Anson Street, St Georges Basin
- DE16.20 – Gateway Determination – Planning Proposal – Warrah Road, Bangalee

CARRIED

DE16.14 Huskisson Town Centre - Service Lanes Review - Funding and Costing Options

HPERM Ref: D16/324563

Recommendation

That Council:

1. Prepare an amendment to the Shoalhaven Contributions Plan 2010 to:
 - a. Amend the acquisition area of Currumbene Street service lane Section 94 project (03ROAD0057) to reflect Council's resolved position to not acquire No. 12 Currumbene Street for a proposed vehicle link (as per the map included in Attachment 2).
 - b. Include the previously exhibited draft Morton Street service lane Section 94 project (03ROAD0058) as per the map included in Attachment 2 with minor amendments determined by infrastructure requirements and design and the exclusion of the proposed laneway from Lot 12 DP 7169, No. 11 Currumbene Street.
 - c. Obtain updated acquisition and construction costs for both projects and include these in the draft Shoalhaven Contributions Plan 2010 amendment.
2. Receive a further report to consider the actual draft amendments to Shoalhaven Contributions Plan 2010.
3. Consider the following changes to Chapter N18 of the Shoalhaven Development Control Plan 2014 through a future review of this chapter to:
 - a. Remove the proposed service vehicle link between the Currumbene Street service lane and Currumbene Street (through Lot 2 DP 662583, No. 12 Currumbene Street) and include provisions relating to service vehicle access on individual properties.
 - b. Update the service lane provisions in accordance with updated infrastructure requirements and design.
4. Commit to funding the upfront costs for the construction of the Morton Street and Currumbene Street service lanes in accordance with the following principles:
 - a. Fund the initial expenditure of the works using loan funds or through general revenue allocations in the future Capital Works Program of up to \$3.24 million and request a further report should it require more than this amount.
 - b. Recoup part of the expended funds through Section 94 contributions levied by Shoalhaven Contributions Plan 2010 for future development.
 - c. Include the design and construction of the Currumbene Street and Morton Street service lanes in Council's capital works planning.
5. Notify the affected landowners of Council's resolution.

Recommendation (Clr Proudfoot / Clr Gash)

That Council:

1. Prepare an amendment to the Shoalhaven Contributions Plan 2010 to:
 - a. Amend the acquisition area of Currumbene Street service lane Section 94 project (03ROAD0057) to reflect Council's resolved position to not acquire No. 12 Currumbene Street for a proposed vehicle link (as per the map included in Attachment 2).
 - b. Include the previously exhibited draft Morton Street service lane Section 94 project (03ROAD0058) as per the map included in Attachment 2 with minor amendments determined by infrastructure requirements and design and the exclusion of the proposed laneway from Lot 12 DP 7169, No. 11 Currumbene Street.
 - c. Obtain updated acquisition and construction costs for both projects and include these in the draft Shoalhaven Contributions Plan 2010 amendment.

2. Receive a further report to consider the actual draft amendments to Shoalhaven Contributions Plan 2010.
3. Consider the following changes to Chapter N18 of the Shoalhaven Development Control Plan 2014 through a future review of this chapter to:
 - a. Remove the proposed service vehicle link between the Currumbene Street service lane and Currumbene Street (through Lot 2 DP 662583, No. 12 Currumbene Street) and include provisions relating to service vehicle access on individual properties.
 - b. Update the service lane provisions in accordance with updated infrastructure requirements and design.
4. Commit to funding the upfront costs for the construction of the Morton Street and Currumbene Street service lanes in accordance with the following principles:
 - a. Fund the initial expenditure of the works using loan funds or through general revenue allocations in the future Capital Works Program of up to \$3.24 million and request a further report should it require more than this amount.
 - b. Recoup part of the expended funds through Section 94 contributions levied by Shoalhaven Contributions Plan 2010 for future development.
 - c. Include the design and construction of the Currumbene Street and Morton Street service lanes in Council's capital works planning.
5. Notify the affected landowners of Council's resolution.

FOR: Clr Findley, Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Clr Kitchener

CARRIED

DE16.15 Interim Heritage Order Request - Chinaman's Island Cottages, Lake Conjola

HPERM Ref: D16/346783

Recommendation (Item to be determined under delegated authority)

That in accordance with the Committee's delegated authority from Council, that Council not support a heritage assessment and allow the current end of lease demolition arrangements with DPI - Lands to remain.

RESOLVED (Clr Guile / Clr Gartner)

MIN16.942

That:

1. Council seek advice from the member of South Coast the Hon Shelley Hancock as to her support for the heritage value of the cottages on Chinaman's Island;
2. Seek support from the Local Member to make representations to the Minister
3. Subsequent to parts 1) and 2) Council undertake a heritage assessment of the Chinaman's Island cottages to determine their heritage significance.
4. If required a further report back to council on this matter

FOR: Clr Findley, Clr White, Clr Gash, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Levett and Russ Pigg

CARRIED

**DE16.18 Possible Change - Height of Buildings - Shoalhaven
Local Environmental Plan 2014 - Anson Street, St.
Georges Basin**

**HPERM Ref:
D16/350122**

Recommendation (Item to be determined under delegated authority)

That the Development Committee decide whether it wishes to pursue reducing the 'height of building' controls in Shoalhaven Local Environmental Plan 2014 over Lots 1 and 6 DP1082382 Anson Street, St. Georges Basin and if so which of the options outlined in the report to pursue.

RESOLVED (Clr Findley / Clr Cheyne)

MIN16.943

That Council retain the current 8m height control over the western part of Lot 1 DP 1082382 and prepare a planning proposal to amend the height of buildings map over the remainder of Lot 1 and the whole of 6 DP1082382 Anson Street, St Georges Basin and remove the current 13m height and replace with 8.5m mapped height.

FOR: Clr Findley, Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE16.20 Gateway Determination - Planning Proposal - Warrah
Road, Bangalee**

**HPERM Ref:
D16/357943**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed to publicly exhibit the Planning Proposal to rezone land (Lot 21 to 24 DP 714096) at Warrah Road, Bangalee, in accordance with the Gateway determination with the following changes:
 - a. The proposed residential area be shown as R2 Low Density Residential
 - b. The proposed residential area be given a minimum lot size of 2,500m²
 - c. The proposed residential area be given a maximum height of building of 8.5m
2. Update the supporting Bushfire Hazard Study and Aboriginal Archaeological Assessment prior to exhibition the Planning Proposal.
3. Write to the Department of Planning and Environment in relation to the reasonableness of the Gateway determination requirement to prepare a biodiversity review of Lots 21-23 and Provision of Infrastructure Assessment.
4. Write to the proponent to advise them of this resolution and advise them to submit the additional biodiversity assessment as part of the formal public exhibition period for the Planning Proposal.
5. Advise adjoining land owners and relevant community groups of the future exhibition arrangements for the Planning Proposal.

MOTION (Clr Cheyne / Clr Levett)

That Council:

1. Proceed to publicly exhibit the Planning Proposal to rezone land (Lot 21 to 24 DP 714096) at Warrah Road, Bangalee, in accordance with the Gateway determination with the following changes:

- a. The proposed residential area be shown as R2 Low Density Residential
 - b. The proposed residential area be given a minimum lot size of 2,500m²
 - c. The proposed residential area be given a maximum height of building of 8.5m
2. Update the supporting Bushfire Hazard Study and Aboriginal Archaeological Assessment prior to exhibition the Planning Proposal.
 3. Write to the Department of Planning and Environment in relation to the reasonableness of the Gateway determination requirement to prepare a biodiversity review of Lots 21-23 and Provision of Infrastructure Assessment.
 4. Write to the proponent to advise them of this resolution and advise them to submit the additional biodiversity assessment as part of the formal public exhibition period for the Planning Proposal.
 5. Advise adjoining land owners and relevant community groups of the future exhibition arrangements for the Planning Proposal.

PROCEDURAL MOTION – MOTION BE PUT (Clr Findley / Clr Cheyne)

That the MOTION be PUT.

FOR: Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner and Russ Pigg

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

LOST

DEBATE CONTINUED THEN THE MOTION WAS PUT

FOR: Clr Findley, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner and Russ Pigg

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

MOTION LOST

RESOLVED (Clr Watson / Clr Pakes)

MIN16.944

FORESHADOWED MOTION

That Council consider the proponents additional biodiversity assessment prior to the public exhibition.

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

AGAINST: Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner and Russ Pigg

CARRIED

Note: Clr Findley left the meeting at 6.32pm during debate on the foreshadowed motion.

DE16.11 Planning Proposal - Falls Creek/Woollamia Deferred Areas - Bushfire Planning Issues

**HPERM Ref:
D16/328009**

Clr Watson – DE16.11 - Planning Proposal - Falls Creek/Woollamia Deferred Areas - Bushfire Planning Issues - pecuniary interest declaration – he and his wife own property in the Woollamia area this decision may be seen to have a positive or negative affect and - left the room and did not take part in discussion or vote.

Clr Guile - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues – less than significant non pecuniary interest declaration – he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Pakes - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Kitchener - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Clr Proudfoot - DE16.11 – Planning proposal – Falls Creek/Woollamia Deferred Area – Bushfire Planning Issues - less than significant non pecuniary interest declaration - he ran as a Shoalhaven Independent and may be seen as a political associate – will remain in the room and will take part in discussion or vote.

Note: Clr Alldrick left the meeting at 6.38pm

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed with the Planning Proposal based on the following potential development outcomes:
 - a. In respect of 1, 3, 5, 7, 9, 11, 13, 18, 20, 21 and 23 Seasongood Road, and 49, 53, and 59 Woollamia Road, to potentially enable a two lot subdivision of each of the lots, such that:
 - i. New dwelling sites will be located within 200 metres of the public road.
 - ii. In respect of 21 and 23 Seasongood Road, the new dwelling sites be positioned no further from the road than the existing dwelling at 21 Seasongood Road and Asset Protection Zones be based on a maximum bushfire attack level of 19 kW/m²
 - b. In respect of 111 Woollamia Road, to potentially enable a three lot subdivision based on establishment of a reciprocal right of way between Woollamia Road and Falls Road as outlined in the report prepared by SET Consultants, subject to the owner surrendering the consent for three tourist cabins (DA00/2847) which have not yet been constructed.
2. Revise the Planning Proposal based on the above proposed development outcomes and seek the NSW Department of Planning and Environment's approval to publicly exhibit the Planning Proposal.
3. Prepare a draft site-specific chapter (Chapter N16) for inclusion in Shoalhaven Development Control Plan 2014 and brief Council prior to exhibiting the draft DCP chapter concurrently with the Planning Proposal.
4. Invoice each landowner for 50% of the costs (currently \$1,423.50) prior to exhibition of the Planning Proposal, and the remaining 50% after Council has resolved to finalise the Planning Proposal.

RESOLVED (Clr Gash / Clr Kitchener)

MIN16.945

That Council:

1. Proceed with the Planning Proposal based on the following potential development outcomes:
 - a. In respect of 1, 3, 5, 7, 9, 11, 13, 18, 20, 21 and 23 Seasongood Road, and 49, 53, and 59 Woollamia Road, to potentially enable a two lot subdivision of each of the lots, such that:

- i. New dwelling sites will be located within 200 metres of the public road.
 - ii. In respect of 21 and 23 Seasongood Road, the new dwelling sites be positioned no further from the road than the existing dwelling at 21 Seasongood Road and Asset Protection Zones be based on a maximum bushfire attack level of 19 kW/m²
 - b. In respect of 111 Woollamia Road, to potentially enable a three lot subdivision based on establishment of a reciprocal right of way between Woollamia Road and Falls Road as outlined in the report prepared by SET Consultants, subject to the owner surrendering the consent for three tourist cabins (DA00/2847) which have not yet been constructed.
2. Revise the Planning Proposal based on the above proposed development outcomes and seek the NSW Department of Planning and Environment's approval to publicly exhibit the Planning Proposal.
 3. Prepare a draft site-specific chapter (Chapter N16) for inclusion in Shoalhaven Development Control Plan 2014 and brief Council prior to exhibiting the draft DCP chapter concurrently with the Planning Proposal.
 4. Invoice each landowner for 50% of the costs (currently \$1,423.50) prior to exhibition of the Planning Proposal, and the remaining 50% after Council has resolved to finalise the Planning Proposal.
- FOR: Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Gartner, Clr Guile, Clr Pakes, Clr Kitchener, Clr Proudfoot and Russ Pigg
- AGAINST: Nil
- CARRIED

DE16.12 Shoalhaven LEP 2014 - Review of Flood Controls

**HPERM Ref:
D16/334860**

Note: Clr Watson returned to the meeting.

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Prepare a Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven LEP 2014 as follows:
 - a. Remove the Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
 - b. Update Clause 7.3 in Shoalhaven LEP 2014 to provide consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
 - c. Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.
2. Consider a further report to adopt PP012 – Review of Flood Controls for submission to the NSW Department of Planning of Environment for Gateway determination.
3. Endorse the preparation of an online Flood Planning map to provide a publicly accessible and interactive display of adopted Flood Study mapping and historic flooding information.

RESOLVED (Clr Guile / Clr Levett)

MIN16.946

That the Committee:

1. Prepare a Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven LEP 2014 as follows:
 - a. Remove the Flood Planning Area maps from Shoalhaven LEP 2014 to ensure that the most accurate and up to date flood mapping is relied upon from Council's adopted Flood Risk Management Studies and Plans (FRMSP).
 - b. Update Clause 7.3 in Shoalhaven LEP 2014 to provide consistency with the definitions in the *NSW Floodplain Development Manual* and to identify historic flooding information and subsequently provide controls for areas previously mapped as Rural 1(g) (Flood Liable) and Residential 2(a4) (Restricted Development) in Shoalhaven LEP 1985 that fall outside the adopted flood study areas.
 - c. Incorporate provisions for stock mounds in flood prone or acid sulphate soil areas.
2. Consider a further report to adopt PP012 – Review of Flood Controls for submission to the NSW Department of Planning of Environment for Gateway determination.
3. Endorse the preparation of an online Flood Planning map to provide a publicly accessible and interactive display of adopted Flood Study mapping and historic flooding information.

FOR: Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE16.13 Review of the Nowra CBD Contributions Discount Subsidy Policy

HPERM Ref: D16/324536

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Extend the Nowra CBD Contributions Discount Subsidy Policy for an additional 12 months from the initial review date
2. Advise the Nowra CBD Revitalisation Committee members, Nowra CBD Business Chamber and the Shoalhaven Business Chamber of this resolution

RESOLVED (Clr Guile / Clr Cheyne)

MIN16.947

That the Development Committee:

1. Extend the Nowra CBD Contributions Discount Subsidy Policy for an additional 12 months from the initial review date
2. Advise the Nowra CBD Revitalisation Committee members, Nowra CBD Business Chamber and the Shoalhaven Business Chamber of this resolution

FOR: Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Clr Kitchener

CARRIED

DE16.14 HUSKISSON TOWN CENTRE - SERVICE LANES REVIEW - FUNDING AND COSTING OPTIONS

HPERM REF: D16/324563

Item dealt with earlier in the meeting.

DE16.15 INTERIM HERITAGE ORDER REQUEST - CHINAMAN'S ISLAND COTTAGES, LAKE CONJOLA

HPERM REF: D16/346783

Item dealt with earlier in the meeting see MIN16.942

DE16.16 Council Submission - Proposed Medium Density Housing Code and Draft Design Guide

HPERM Ref: D16/347254

Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Department of Planning & Environment on the proposed Medium Density Housing Code and draft Design Guide based on Attachment 1 prior to the deadline of 12 December 2016.

RESOLVED (Clr Gash / Clr Gartner)

MIN16.948

That Council make a submission to the NSW Department of Planning & Environment on the proposed Medium Density Housing Code and draft Design Guide based on Attachment 1 prior to the deadline of 12 December 2016.

CARRIED

DE16.17 Exhibition Outcomes/Finalisation - Shoalhaven Development Control Plan 2014 - Draft Amendment No. 13 - Chapter G4: Tree and Vegetation Management

HPERM Ref: D16/348177

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Note the submissions received during the exhibition of Shoalhaven Development Control Plan 2014 Draft Amendment No. 13 – Chapter G4: Tree and Vegetation Management
2. Adopt Amendment No. 13 to the Shoalhaven Development Control Plan 2014 as exhibited with the inclusion of the following changes to Chapter G4:
 - a. Minor editorial changes
 - b. Content and mapping changes as outlined in the submission summary table in the report
3. Notify the adoption of Amendment No.13 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
4. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No. 13 to Shoalhaven DCP 2014 has been adopted
5. Prepare a separate Development Application form, checklist and brochure to clarify and simplify the application process for the removal of trees and vegetation prescribed by Shoalhaven LEP 2014 and Shoalhaven DCP Chapter G4: Tree and Vegetation Management
6. Undertake a further review of the exempt provisions in Chapter G4: Tree and Vegetation Management to ensure consistency with Clause 5.9 of Shoalhaven LEP 2014.
7. Continue the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clauses Map to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.

RESOLVED (Clr Gartner / Clr Cheyne)

MIN16.949

That the Development Committee

1. Note the submissions received during the exhibition of Shoalhaven Development Control Plan 2014 Draft Amendment No. 13 – Chapter G4: Tree and Vegetation Management
2. Adopt Amendment No. 13 to the Shoalhaven Development Control Plan 2014 as exhibited with the inclusion of the following changes to Chapter G4:
 - a. Minor editorial changes
 - b. Content and mapping changes as outlined in the submission summary table in the report
3. Notify the adoption of Amendment No.13 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Regulations
4. Notify the NSW Department of Planning & Environment and those who made a submission on this matter that Amendment No. 13 to Shoalhaven DCP 2014 has been adopted
5. Prepare a separate Development Application form, checklist and brochure to clarify and simplify the application process for the removal of trees and vegetation prescribed by Shoalhaven LEP 2014 and Shoalhaven DCP Chapter G4: Tree and Vegetation Management
6. Undertake a further review of the exempt provisions in Chapter G4: Tree and Vegetation Management to ensure consistency with Clause 5.9 of Shoalhaven LEP 2014.
7. Continue the preparation of a Planning Proposal to amend Shoalhaven LEP 2014 Clauses Map to ensure the Clause 5.9 mapping is consistent with the DCP Chapter G4 maps and submit to State Government for initial Gateway determination.
8. In any future review of DCP's, Council consider the value of the contribution of mature trees' to providing shade and reducing the heat island effect.

FOR: Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE16.18 Possible Change - Height Of Buildings - Shoalhaven
Local Environmental Plan 2014 - Anson Street, St
Georges Basin**

**HPERM REF:
D16/350122**

Item dealt with earlier in the meeting see MIN16.943

DE16.19 Strategic Planning Works Program - Formulation

**HPERM Ref:
D16/351866**

Recommendation (Item to be determined under delegated authority)

That the Development Committee

1. Adopt Attachment 1 as Council's interim Strategic Planning Works Program.
2. Request Council staff to arrange a half day workshop for Councillors in early 2017 to provide an opportunity for their detailed input into the structure and content of the suggested new Strategic Planning Works Program
3. Request that the new Strategic Planning Works Program be reported back to Council for consideration by mid-2017 at the latest.

RESOLVED (Clr Watson / Clr Guile)

MIN16.950

That the Development Committee:

1. Adopt Attachment 1 as Council's interim Strategic Planning Works Program.
2. Request Council staff to arrange a half day workshop for Councillors in early 2017 to provide an opportunity for their detailed input into the structure and content of the suggested new Strategic Planning Works Program
3. During the workshop, consideration be given to the development of the following as a priority:
 - a. of strategic assessments of the urban areas in the Bay and Basin area
 - b. of controls to protect the vicinity of the Berry to Cambewarra escarpment
4. Request that the new Strategic Planning Works Program be reported back to Council for consideration by mid-2017 at the latest.

CARRIED

DE16.20 Gateway Determination - Planning Proposal - Warrah Road, Bangalee

**HPERM REF:
D16/357943**

Item dealt with earlier in the meeting see MIN16.944.

CONFIDENTIAL REPORTS

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

No members of the public made representations.

RESOLVED (Clr Gash / Clr Proudfoot)

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

CDE16.1 Review of Determination - Development Application – Lot 2 DP165748 Bowen Street Huskisson

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

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

CARRIED

The meeting moved into confidential the time being 7.17pm.

The meeting moved into open session, the time being 7.24pm.

REPORT FROM CONFIDENTIAL SESSION

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

**CDE16.1 Review of Determination - Development Application –
Lot 2 DP165748 Bowen Street Huskisson**

**HPERM Ref:
D16/365508**

RESOLVED (Clr Gartner / Clr Proudfoot)

MIN16.951C

That the Committee confirm that it supports Option 1, and not support a review of the determination (i.e. refusal) in response to the request for a review under s82A by the applicant.

CARRIED

There being no further business, the meeting concluded, the time being 7.26pm.

Clr White
CHAIRPERSON

DE17.1 Rescission Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee

HPERM Ref: D16/400228

Submitted by: Clr Kaye Gartner
 Clr Nina Cheyne
 Clr John Levett

Purpose / Summary

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

Recommendation (Item to be determined under delegated authority)

That Council rescind the Motion relating to Item DE16.20 of the Development Committee Meeting held 6 December 2016.

Background

The following resolution was adopted at the Development Committee held Tuesday 6 December 2016 (MIN16.944).

That Council consider the proponents additional biodiversity assessment prior to the public exhibition.

DE17.1

DE17.2 Notice of Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee

HPERM Ref: D16/400234

Submitted by: Cllr Kaye Gartner
Cllr Nina Cheyne
Cllr John Levett

Purpose / Summary

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

Recommendation (Item to be determined under delegated authority)

That Council proceed to public exhibition in accordance with the Gateway determination.

Note by the General Manager

The Gateway determination issued on 12 July 2016 allowed the PP to proceed subject to variations and conditions. It was determined that the NGH Environmental Peer Review was sufficient to define areas of HCV land and that '*...no further biodiversity studies are required at this time for Lot 24*'. The Gateway determination also required land currently subject to a remediation order (as a result of unauthorised clearing) to be given an appropriate environmental protection zone, and for the PP to be updated to confirm the proposed zoning, lot size and height of building maps prior to public exhibition.

In accordance with the Gateway determination, Council will need to determine the proposed zoning, lot size and height of building for the subject land prior to public exhibition.

The Gateway determination also required the following studies to be prepared or reviewed prior to the exhibition of the PP:

- Bushfire Hazard Study (to reflect the reduced development footprint)
- Aboriginal Archaeological Assessment
- Biodiversity Review of Lots 21-23 (not considered in the NGH Peer Review as they had previously been accepted as R1 General Residential under the draft Shoalhaven LEP 2014)
- Provision of infrastructure – water, sewerage and electricity to confirm demand and supply issues.

The Biodiversity Review of Lots 21-23 is considered unnecessary at this time. These lots were not considered in the NGH Peer Review as they had previously been accepted by DP&E as a proposed R1 General Residential zone under the draft Shoalhaven LEP 2014. Similarly, the provision of an infrastructure assessment is not considered appropriate at this time. The Crams Road URA is a long term release area, and Part 6 of Shoalhaven LEP 2014 already provides the appropriate mechanism to ensure that adequate infrastructure is provided prior to the land being released.

Therefore the notice of motion will need to be amended to reflect Council's preferred zoning, lot size and height of building for the subject land in accordance with the requirements of the Gateway determination. Otherwise, the matter will need to be reported back to Council at a later meeting.

DE17.3 Submission - Department of Planning & Environment - Improving Voluntary Planning Agreements

HPERM Ref: D16/389453

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Draft Submission - DP&E - Improving Voluntary Planning Agreements [↓](#)

Purpose / Summary

The NSW Government is proposing changes to the policy framework for Voluntary Planning Agreements. The purpose of this report is to obtain endorsement to make the attached submission (**Attachment 1**) on the draft Voluntary Planning Agreement Framework.

Recommendation (Item to be determined under delegated authority)

That Council make a submission to the NSW Department of Planning & Environment on the draft Voluntary Planning Agreement Framework based on Attachment 1 prior to the deadline of 27 January 2017.

Options

1. Adopt the resolution outlined in the report which endorses **Attachment 1** as Council's submission on the draft Voluntary Planning Agreement (VPA) Framework and submit to the NSW Department of Planning and Environment (DP&E).

Implications: This is the preferred option as it will enable Council to provide a submission within the nominated exhibition period and have input into this proposal.

2. Adjust **Attachment 1** and include additional comments as necessary and submit to DP&E.

Implications: This option will still enable Council to provide a submission within the nominated exhibition period.

3. Not make a submission.

Implications: This is not favoured as Council's position will not be considered as part of the policy framework review for VPAs.

Background

The NSW Government is seeking feedback on a draft policy framework for VPAs which is currently on exhibition until 27 January 2017. The draft Ministerial Direction, draft Practice Note and draft Planning Circular is available on DP&E's website at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Improving-Voluntary-Planning-Agreements>

The improvements seek to ensure:

- There is a clear public benefit arising from the VPA that relates to the development;
- The VPA negotiation process is fair and reasonable between parties, and is transparent to the broader community;
- The identification of infrastructure in a VPA is informed by an assessment of local community needs.

The draft submission at **Attachment 1** supports the focus of the review and suggests the following for consideration as part of the review process:

- Further improvement and simplification of the VPA process to encourage the use of VPAs in appropriate situations.
- Consideration of “value capture”. Although VPAs are not necessarily the appropriate mechanism for value capture in all cases, DP&E should investigate how the benefits of a rezoning could be spread more broadly across the community.

It is important that Council makes a submission on this matter to ensure the final VPA Framework is appropriate, effective and enables broader infrastructure and community benefits.

Community Engagement

The draft VPA Framework is on exhibition for community comment until 27 January 2017 and is available for viewing on the DP&E's website (<http://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Improving-Voluntary-Planning-Agreements>).

Policy Implications

Based on the content of the draft VPA Framework exhibition package, it is unlikely that the proposed changes will have any implications on Council's current Voluntary Planning Agreements Policy (POL12/243). This will be examined further when the review and expected changes to the VPA framework are finalised.

Financial Implications

There are no immediate financial implications for Council in making a submission on the draft VPA Framework. Should an amendment be required to Council's Voluntary Planning Agreements Policy (POL12/243) in the future, this will be resourced within 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 General Manager, PO Box 42, Nowra NSW 2541 Australia
DX5323 Nowra Fax 02 4422 1816

Council Reference: 34468E (D16/395556)

Department of Planning & Environment - Planning Policy
Ms Elizabeth Kinkade
Executive Director, Planning Policy

By email

Dear Ms Kinkade

Submission – Improving Voluntary Planning Agreements

Thank you for the opportunity to provide feedback on the draft Voluntary Planning Agreement (VPA) Framework. VPAs play an important role in the NSW planning system and provide a degree of flexibility and an alternate mechanism to capture contributions towards public infrastructure.

Council's Development Committee resolved (under delegation) on 23 January 2017:

Insert resolution.

Council welcomes the clarification of when it is appropriate to use VPAs as compared to other contributions mechanisms. This will clear up any misconceptions that the public may have in regard to the method and process for collecting contributions.

Council agrees that improving transparency can only benefit the process and that VPAs should not be used as a 'bargaining chip', used as a mechanism to allow the varying of development standards or to "capture windfall profits".

Although the 'capture of windfall gains' is discouraged, the Department of Planning and Environment (DP&E) should examine the concept of 'value capture' in relation to changes in planning controls. The concept is becoming increasingly popular as a way to fund infrastructure works. Council's are currently struggling financially to be able to provide essential infrastructure and community resources, while planning decisions such as rezonings are made which do generate huge increases in land value. These benefits need to be spread more broadly to assist in providing infrastructure that the future community requires. Whether VPAs or another mechanism is more appropriate for this needs to be examined in further detail.

VPAs can be a time consuming and costly process. Although DP&E has provided a template in the draft Practice Note, this is too general in nature to be useful and will still require legal advice to be obtained prior to finalisation. It is suggested that DP&E develop a standard template for simpler agreements (e.g. land dedication, car parking). Such a template would make VPAs easier to prepare and reduce delays in processing times as legal advice would not be required for each and every VPA.

If you need further information about this matter, please contact Steven Horvath, Planning & Development Services Group on (02) 4429 3570. Please quote Council's reference 34468E (D16/395556).

Yours faithfully

Gordon Clark
Strategic Planning Manager
Insert Date

DRAFT

DE17.4 Draft State Environmental Planning Policy (Coastal Management) 2016 - proposed Council submission

HPERM Ref: D16/393179

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments: 1. Draft council submission - draft coastal management SEPP 2016 (under separate cover) [⇒](#)
2. Attachment to Submission - Draft Coastal Management SEPP Mapping Anomalies (under separate cover) [⇒](#)

Purpose / Summary

To endorse the Council's submission (**Attachment 1 and 2**) in response to the public exhibition of the draft State Environmental Planning Policy (Coastal Management) 2016, accompanying maps and draft section 117 Ministerial direction currently on public exhibition.

Recommendation (Item to be determined under delegated authority)

That Council make the submission attached to this report to the NSW Department of Planning and Environment on the draft State Environmental Planning Policy 2016 (Coastal Management), accompanying maps and draft section 117 Ministerial direction by 31 January 2017.

Options

1. Adopt the recommendation and endorse Attachment 1 and 2 as Council's submission to NSW Department of Planning and Environment. This is the preferred option to ensure Council will make a submission by 31 January 2017. This is an important opportunity for Council to contribute on matters that will impact large areas in the Shoalhaven Local Government Area.

Implications: This is the preferred option as it will enable Council to provide a submission by 31 January 2017 and have input into this phase of NSW Coastal Reforms.

2. Revise and amend the draft submission (**Attachment 1 and 2**) as necessary and submit to the NSW Department of Planning and Environment.

Implications: It is important that the issues identified in Council's submission can be considered and addressed by the NSW Government. If any items are removed they will not be able to be addressed and there would not be sufficient time to report back to Council with an amended submission.

3. Not make a submission.

Implications: This is not preferred, as a Coastal Council, Shoalhaven will be required to apply the draft State Environmental Planning Policy (Coastal Management) 2016 (SEPP (CM)) throughout its planning and assessment functions. The draft SEPP (CM) is important for the management of natural resources in the coastal environment.

Background

NSW Coastal Reforms

The NSW Department of Planning and Environment (DP&E) together with the NSW Office of Environment and Heritage (OEH) is developing a new coastal management framework to improve planning for development and natural hazards along the coast.

The release of the draft State Environmental Planning Policy (Coastal Management) 2016 (SEPP (CM)) is the next step in finalising the NSW Government coastal reforms program. The draft SEPP (CM) supports the implementation of the management objectives in the new Coastal Management Act 2016 (CMA). The new CMA was passed by Parliament on 31 May 2016 and will commence following consultation on the draft SEPP (CM).

Previous Public Consultation Process

OEH released a coastal reform package which was placed on exhibition from November 2015 until 29 February 2016, which included the following documents:

- draft bill for the Coastal Management Act;
- draft Coastal Management Manual; and
- Explanation of Intended Effect for the State Environmental Planning Policy (Coastal Management) 2016.

This previous coastal reform package was addressed in a detailed report to Council's Ordinary meeting on 16 February 2016 (MIN16.120) which also included Council's submission to OEH. A copy of the report is available from Council's website: <http://doc.shoalhaven.nsw.gov.au/displaydoc.aspx?record=D16/38491>

Current Public Consultation Process

DP&E released the following draft documents and seven (7) factsheets, were released for public comment between 11 November 2016 and 20 January 2017:

- Coastal Management SEPP 2016 and draft maps;
- Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016; and
- Local Planning Direction – Coastal Management S117 Ministerial Direction.

The draft documents and factsheets are available for viewing on DP&E's website at:

<http://www.planning.nsw.gov.au/CoastalReform>

DP&E also ran a series of information sessions for the community and Councils, which were attended by Council staff at Kiama on 2 December 2016. Copies of the exhibition material will also be available for review in the Councillors Room prior to the meeting.

Draft SEPP (Coastal Management) 2016

The SEPP (CM) will be the single, primary environmental planning policy for coastal development and will repeal SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The SEPP (CM) establishes a new strategic land use planning framework for coastal management. The SEPP (CM) will implement the objectives in the new CMA by specifying development controls that will apply to particular forms of development or within particular coastal management areas. The new CMA defines the NSW coastal zone and divides it into four coastal management areas (which are identified in the maps accompanying the SEPP (CM)):

- coastal wetlands and littoral rainforests area;
- coastal vulnerability area;

- coastal environment area; and
- coastal use area.

The four coastal management areas mapped under the proposed SEPP (CM) in a digital format are available from DP&E's website:

http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=Coastal_SEPP_View
[er](#)

Draft submission

Council's draft submission (provided as **Attachment "1"**) provides comments on each of the documents released on public exhibition.

The key issues raised in the proposed submission regarding the SEPP (CM) include:

- DP&E has provided SEPP (CM) mapping data that does not correctly align with Council's cadastre, leading to inconsistencies between what is showing on DP&E's website on the Planning Portal/e-planning tools compared with Council's website. In this regard, the SEPP (CM) should not commence until these mapping issues have been addressed and resolved by DP&E.

Various examples of these anomalies are included in the attachment to Council's submission (see **Attachment "2"**). As shown in Figure 6 (Elizabeth Drive, Vincentia) and Figure 13 (Plantation Point Parade, Vincentia) in Attachment 2, the Coastal Hazard Area mapping does not align with property boundaries. This will cause issues for Council issuing Section 149 Planning Certificates and assessing development applications and needs to be resolved to ensure that land is correctly identified through relevant mapping in the final SEPP.

- Council would like to view the SEPP mapping before it is finalised and made effective;
- The process for amending the SEPP maps, particularly within the next 12 months should be clarified by the release of a Planning Circular;
- The mapping of the coastal environmental area should ensure it captures the beach and dune areas;
- The littoral rainforest identified in the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) should be included in the SEPP mapping and amended accordingly where Council has verified data on the extent of littoral rainforest areas;
- The improved mapping of coastal wetlands is supported;
- The purpose of provisions relating to land in proximity to coastal wetlands or littoral rainforest land should be clarified;
- The definitions should be improved to be more comprehensive. The definitions of the coastal management areas in the Coastal Management Act 2016 relies solely on the SEPP mapping. This is insufficient as the absence of descriptive definitions makes it difficult to propose amendments to the SEPP mapping through planning proposals. Council's submission, recommends comprehensive definitions are included in the SEPP (CM) for the following terms:
 - coastal environment area;
 - coastal use area
 - coastal wetlands and littoral rainforests area
 - coastal vulnerability area
 - beach nourishment

- Coastal protection works provisions should be amended to ensure more realistic timeframes. The draft SEPP (CM) proposes that certain coastal protection works undertaken by or on behalf of a public authority do not need development consent. For example, the placing of sandbags for not more than 90 days does not require development consent but a longer period would need consent. This implies that a solution needs to be developed, submitted to Council, approved, constructed and the sandbags removed all within the 90 day period. This is an unrealistic time period and Council's draft submission suggests this time period be increased to 6-12 months.
- Flexible zone provisions provided in Shoalhaven Local Environmental Plan (LEP) 2014 should continue to apply in urban zoned areas within the coastal zone. State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71) currently prevents the use of flexible zone provisions in an environmental planning instrument applying to areas affected by the coastal zone. The draft SEPP (CM) proposes to retain this clause by 'switching off' flexible zone provisions in the coastal zone. Council's draft submission raises concern with this provision, particularly in town centres such as Nowra and Culburra. Our submission reinforces the need for flexible zone provisions.
- The coastal lakes listed in Schedule 1 should be reviewed to ensure consistency with the Healthy Rivers Commission Inquiry into Coastal Lakes. There are a number of important coastal lakes in the Shoalhaven that have been omitted from this schedule.
- Council supports the strengthening of the Section 117 Direction to ensure planning proposals do not consider increased development or more intensive land uses in coastal wetlands, littoral rainforest areas or coastal vulnerability areas;
- Council's submission endorses the intention of the draft SEPP (CM) to allow Councils to submit planning proposals to amend the SEPP maps in line with a Coastal Management Program or a Coastal Zone Management Plan; and
- In relation to the Standard Instrument Local Environmental Plans (SI LEP) Amendment Management Order 2016, Council views the removal of Clause 5.5 from the SI LEP as unnecessary as it currently provides clear controls for coastal Councils.

DE17.4

Community Engagement

The public exhibition was open for interested members of the public to make personal submissions between 11 November 2016 and 20 January 2017 by viewing the documents on DP&E's website. Council has received an extension until 31 January 2017 from DP&E to allow the draft submission to be considered by Council. All submissions will be published by the NSW government unless the person or organisation making the submission requests that their submission not be published.

Policy Implications

The draft Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order 2016, once notified, will automatically amend the Shoalhaven LEP 2014 including the removal of Clause 5.5 Development within the coastal zone and several dictionary terms. Councillors will be kept informed of these changes as they arise.

The draft Local Planning Direction - Coastal Management (Section 117 Ministerial direction) will revoke Ministerial Direction 2.2 Coastal Protection. This direction applies to land within the coastal zone or land affected by a coastal hazard when preparing planning proposals to rezone land in the coastal zone by amending the Shoalhaven LEP 2014 or when proposing to amend the coastal zone maps. Councils will need to demonstrate that any proposed zoning changes are consistent with state-level policies. Before land is rezoned within the coastal zone, consideration must be given to the objectives of the CMA.

SEPP (CM) will partly rely on the Coastal Risk Planning Map in Shoalhaven LEP 2014. Where LEPs and DCPs contain coastal hazard maps and provisions, these mapped areas become part of the coastal vulnerability area, however the controls in the LEP continue to apply.

Financial Implications

There are no immediate financial implications for Council in making the submission.

DE17.5 Draft Planning Agreement - 18 Haigh Ave, Nowra and 103 Plunkett St, Nowra – Lot 1 in DP 781046 & Lot 1001 in DP 1176270

DA. No: DA15/2291/6

HPERM Ref: D16/397895

Group: Planning & Development Services Group
Section: Development Services

Attachments:

1. Minute - Council Resolution - In Principle Support for Draft Planning Agreement [↓](#)
2. Draft Planning Agreement (under separate cover) [⇒](#)
3. Explanatory Note [↓](#)
4. Development Consent (under separate cover) [⇒](#)

Description of Development: DA15/2291 – Draft Planning Agreement – Partial demolition of existing structures, alterations to an existing building and construction of a service station (BP), food and drink premises (McDonald's), car parking, signage and associated works at Lot 1 DP 781046 (No. 18 Haigh Ave, Nowra) and Lot 101 DP 1176270 (No. 103 Plunkett Ave, Nowra)

Owner / Developer: RG Property Ten Pty Ltd

DA Applicant: KDC Pty Ltd

Notification Dates: Draft Planning Agreement and Explanatory Note publicly exhibited:
26 October – 30 November 2016

No. of Submissions: Nil

Purpose / Reason for consideration by Council

At the Ordinary Meeting of 28 June 2016 (refer to **Attachment 1**) it was resolved that Council:

- a) *Provide 'in-principle' support to enter into a proposed draft Planning Agreement with the owner of Lot 1 DP 781046 (No.18) Haigh Avenue and Lot 101 DP 1176270 (No.103) Plunkett Street, Nowra as detailed in the letter from RG Property dated 16 June 2016;*
- b) *The draft Planning Agreement and Explanatory Note associated with DA15/2291, when prepared, be placed on public exhibition in compliance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated regulations; and*
- c) *A further report on the Planning Agreement be submitted to Council following the public exhibition.*

In accordance with points b) and c) of the above resolution, the draft Planning Agreement (PA) (refer to **Attachment 2**) and Explanatory Note (EN) (refer to **Attachment 3**) have been

publicly exhibited and are being reported back to the Development Committee for final consideration.

Recommendation (Item to be determined under delegated authority)

That in accordance with the Committee's delegated authority from Council, the Committee endorse the draft Planning Agreement between Shoalhaven City Council (Council) and the Developer (RG Property Ten Pty Ltd) of Lot 1 DP 781046 (No. 18 Haigh Ave, Nowra) and Lot 101 DP 1176270 (No. 103 Plunkett St, Nowra), which was publicly exhibited from 26 October – 30 November 2016.

Options

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

Implications: Endorsement of the draft PA would satisfy Condition 22 of development consent DA15/2291 (This condition is reproduced later in this report).

Once the terms of the PA have been met (i.e. the PA is signed by both parties and payment is made by the Developer to Council), a Construction Certificate would be able to be issued for Stage 2 of the approved development (subject to compliance with all other relevant conditions of consent).

OR

2. Resolve to not endorse the draft PA.

Implications: A decision to not endorse the draft PA would mean that a Construction Certificate could not be issued for Stage 2 of the approved development. Thus for the development to proceed, the Developer would need to lodge a Section 96 Modification Application to modify / delete Condition 22 (the condition is reproduced overleaf).

The development consent condition requiring a PA to be entered into was agreed to by the Developer, Council and the Roads and Maritime Services (RMS) (Condition 22 in DA15/2291).

This would mean that a new assessment of the traffic-related impacts of the proposed development would need to be undertaken and alternative solutions sought, considered and approved to address traffic impacts of the approved development.

OR

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

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

Background / Approved Development Development Application DA15/2291 was determined under delegated authority by way of approval on 9 August 2016 (refer to **Attachment 4**). The description of the approved development is:

"Partial demolition of existing structures, alterations to an existing building, construction of a service station (BP), food and drink premises (McDonald's), car parking, signage and associated works."

The development consent was staged as follows:

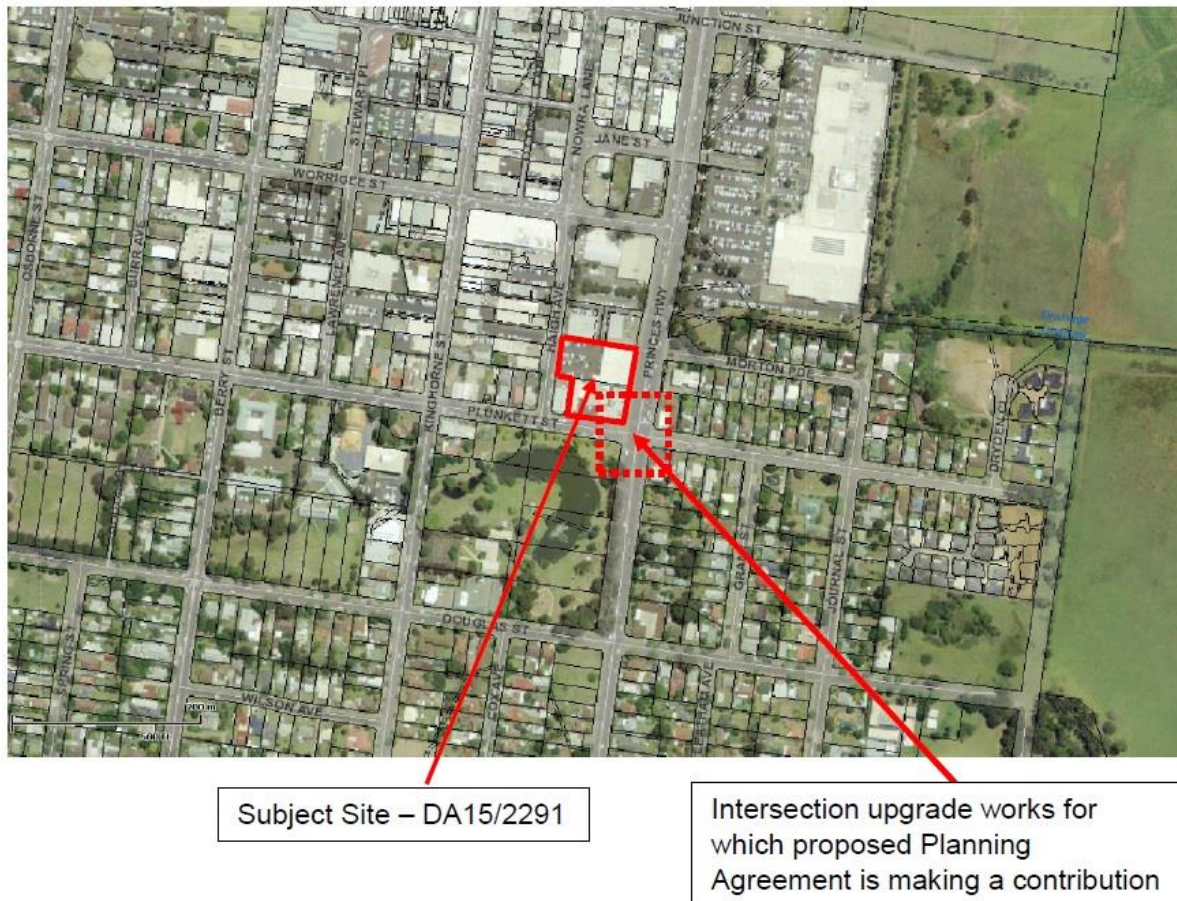
- Stage 1 – Demolition and preparatory site works
- Stage 2 – Construction of approved buildings and associated infrastructure

Condition 22, intended to address traffic impacts via a PA was imposed on the development:

22. Prior to the issue of a Construction Certificate for Stage 2, the applicant or any party acting upon this consent must:

- a) Enter into a Planning Agreement (PA) with Shoalhaven City Council in accordance with the offer it made as part of the Development Application (refer letter of offer dated 16 June 2016); and
- b) Satisfy all works/requirements as detailed in the PA that are required to be satisfied prior to the issue of a Construction Certificate.

Location Plan; corner of Plunkett Street and Princes Highway, Nowra



DE17.5

Draft Planning Agreement Overview

During assessment of DA15/2291, the Developer made an offer to Council to enter into a PA pursuant to Section 93F of the Environmental Planning & Assessment Act 1979 (EP&A Act).

The PA makes provision for the payment of \$100,000 to Council as a mechanism to contribute towards *future* upgrade works required at the intersection of Plunkett St and Princes Hwy, Nowra. These upgrade works being in accordance with the requirements of the Nowra CBD (East) Expansion Road Network Strategy. This Strategy in part outlines the need for road widening and associated works (i.e. relocation of traffic lights, provision of new lanes, drainage etc.) at this intersection.

The Developer's offer to enter into a PA does not remove the requirement to pay applicable Section 94 Contributions in accordance with the provisions of Shoalhaven Contributions Plan 2010. As such, applicable Section 94 Contributions were included as a condition of consent (Condition 19) to be paid prior to the issue of a Construction Certificate for Stage 2 of the approved development.

The wording of the draft PA and related EN were agreed upon by Council's Legal Services Coordinator in conjunction with the Developer's lawyer. It complies with legislative requirements and adequately protects Council's interests.

Consultation and Community Engagement

After wording of the draft PA and the EN was agreed to by both parties, the draft PA, EN and related development consent DA15/2291 were placed on public exhibition from 26 October until 30 November 2016, in accordance with the requirements of Council's Community Consultation Policy (POL08/440), Voluntary Planning Agreement Policy (POL08/417) and applicable clauses of the EP&A Act and associated Regulation 2000.

Public consultation / community engagement was as follows:

- Individual property owners within the vicinity of the subject site were individually notified by letter (45 letters sent);
- The proposal was advertised in the local press (South Coast Register on 26/10/16 and Nowra News on 09/11/16); and
- The documents were placed on display at Council's City Administrative Centre, Nowra as well as on Council's website.

No submissions were received.

Financial Implications

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

The works that have been proposed by the Developer to be included in the PA should be beneficial for Council's capital works program as the money collected will be held in trust and will offset the cost of the works when they are undertaken. At this time there is no timeframe for the proceeding with the intersection upgrade works.

Advancing this project without a PA could have associated costs for Council, which would include undertaking the works / providing any infrastructure required at its cost and without any contribution from an adjoining land owner.

Summary and Conclusion

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

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

ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 28 JUNE 2016

522. Proposed Draft Planning Agreement – Partial demolition of existing structures, alterations to an existing building and construction of a service station (BP), food and drink premises (McDonalds), car parking, signage and associated works at Lot 1 DP 781046 (No.18) Haigh Avenue and Lot 101 DP 1176270 (No.103) Plunkett Street, Nowra. Applicant: KDC Pty Ltd. Owner: RG Property Ten Pty Ltd. File: DA15/2291

MOTION:

Moved: Wells / Second: Robertson

That Council:

- a) Provide 'in-principle' support to enter into a proposed draft Planning Agreement with the owner of Lot 1 DP 781046 (No.18) Haigh Avenue and Lot 101 DP 1176270 (No.103) Plunkett Street, Nowra as detailed in the letter from RG Property dated 16 June 2016;
- b) The draft Planning Agreement and Explanatory Note associated with DA15/2291, when prepared, be placed on public exhibition in compliance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated regulations; and
- c) A further report on the Planning Agreement be submitted to Council following the public exhibition.

CARRIED

FOR: Tribe, Robertson, Kearney, Anstiss, White, Wells, Baptist, Findley, Guile, Watson, Kitchener, Gash

AGAINST: Nil

Draft Planning Agreement
Shoalhaven City Council and RG Property Ten Pty Ltd
Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979* (the **Act**).

1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the Act.

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

2. Parties to the Planning Agreement

The parties to the Planning Agreement are:

- **Shoalhaven City Council** - ABN 59 855 182 344 of City Administration Centre, 36 Bridge Rd, Nowra 2541 NSW (the **Council**); and
- **RG Property Ten Pty Ltd** – ACN 601 089 329 of Suite 1401, Level 14, Pitt Street, Sydney NSW 2000 (the **Developer**).

3. Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to 18 Haigh Avenue (Lot 1 in DP 781046) and 103 Plunkett Street (Lot 1001 in DP 1176270), Nowra (the **Land**).

4. Description of the Change to the Environmental Planning Instrument and the Proposed Development

On 9 August 2016 Council granted consent to the Developer's development application DA15/2291 (**Development Consent**). The Development Consent is for the partial demolition of existing structures, alterations to an existing building, construction of a service station (BP), food and drink premises (McDonalds), car parking, signage and associated works (**Development**).

5. Summary of objectives, nature and effect of the Planning Agreement

The parties have agreed to enter into the Planning Agreement.

Objectives of the Planning Agreement

The objectives of the Planning Agreement are to provide development contributions for the benefit of the public in the form of the payment of a monetary contribution. The monetary

contribution is to be applied towards the road improvements at Plunkett Street, Nowra (Development Contribution).

Nature and effect of the Planning Agreement

The Planning Agreement will not come into effect until the Developer notifies the Council in writing that it intends to commence the Development.

The terms of the Planning Agreement require the Developer to make a monetary contribution of \$100,000 to Council prior to the issue of a Construction Certificate for stage 2 of the Development.

The Council must apply the monetary contribution towards the carrying out of the design, approval and construction of the future upgrade of the intersection of Princes Highway and Plunkett Street, Nowra.

6. Assessment of Merits of Planning Agreement

The Public Purpose of the Planning Agreement

In accordance with section 93F(2)(c) of the Act, the Planning Agreement has the following public purposes:

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

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by requiring the Developer to pay a monetary contribution to Council which will be spent on a public purposes.

The Development Contribution will have a public benefit by improving the road infrastructure in the local community.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by:

- promoting and co-ordinating the orderly and economic use and development of the Land;
- the provision and co-ordination of community facilities; and
- the proper management and development of artificial resource for the purpose of promoting the social and economic welfare of the community.

How the Planning Agreement Promotes the Elements of the Council's Charter

The Planning Agreement promotes the principles of the *Local Government Act 1993* by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

The Planning Agreement promotes the elements of Council's Charter under Section 8 of the *Local Government Act 1993* by:

- providing appropriate services for the community and ensuring that those services are managed efficiently and effectively;
- enabling Council to properly manage, develop, restore and enhance the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development; and
- effectively plan for, account for and manage the assets for which it is responsible, such as the local road networks.

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The Planning Agreement will have a positive impact on the public as it will provide upgrades and expand the existing transport infrastructure through a payment of a monetary contribution to Council.

Requirements relating to Construction and Occupation Certificates

The Planning Agreement provides that the monetary contribution will be paid to Council prior to the issue of a Construction Certificate for stage 2 of the Development.

DE17.6 Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach

DA. No: SF10534

HPERM Ref: D16/404195

Group: Planning & Development Services Group
Section: Development Services

Description of Development: Two lot subdivision

Owner: J Forbes

Applicant: Lee Carmichael Town Planning

No. of Submissions: 13 in objection
0 in support

Purpose / Reason for consideration by Council

The applicant proposes a Clause 4.6 exception to the minimum lot size, as specified by Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The extent of the exception, or variation exceeds the delegated authority level (greater than 10%) of staff, and is therefore required to be considered by Council.

Recommendation (Item to be determined under delegated authority)

That the request for the exception under Clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (variation), to the minimum lot size:

1. Not be supported; and
2. Refer the application back to staff for determination.

Options

1. Not support the exception to Clause 4.1 SLEP2014, under Clause 4.6 SLEP 2104.

Implications: The application would not be able to be supported, and the application would therefore be determined by way of refusal, under delegated authority.

2. Support the application, and the exception to Clause 4.1 SLEP2014, under Clause 4.6 SLEP 2014, as submitted.

Implications: Subject to the completion of a satisfactory 79C assessment the application be determined by way of approval, under delegated authority.

3. Adopt an alternative recommendation and provide direction to staff.

Background

Proposed Development

The applicant proposes a 2 lot Torrens title subdivision. Proposed lot 1 will have an area of 373.1m² and will contain the existing dwelling.

Proposed lot 2 will have an area of 500m², and will include the existing garage. This lot may be further developed by way of a future dwelling or attached dual occupancy.

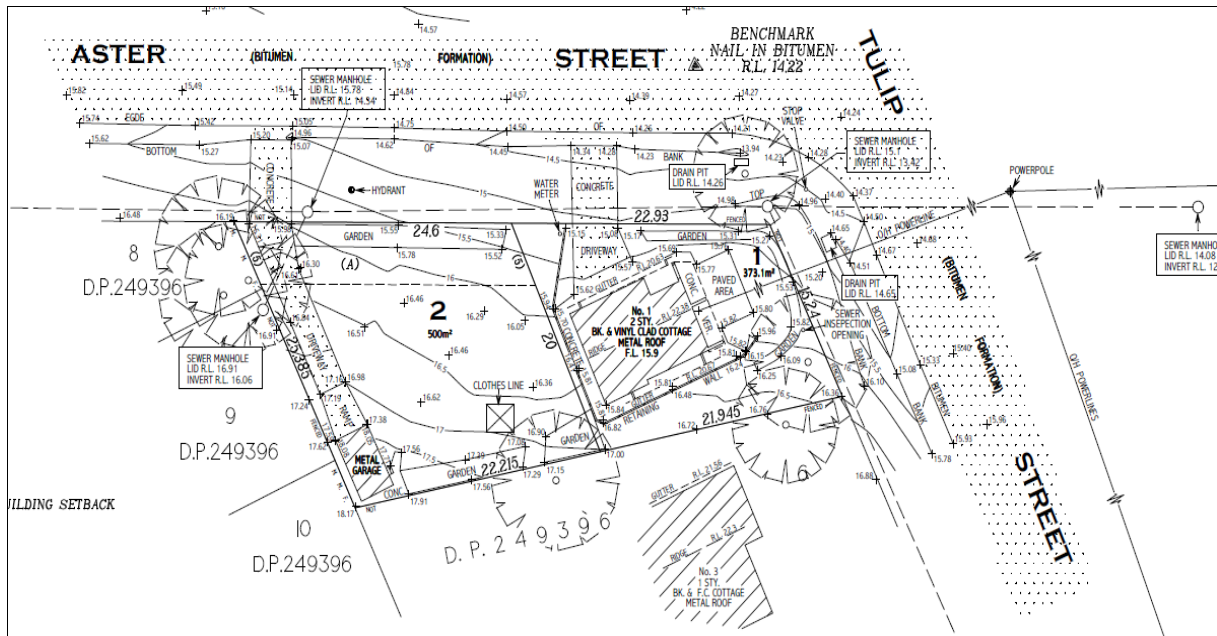
The applicant is seeking an exception (or variation) with respect to proposed lot 1, under clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014), to the minimum lot size of 500m².

Proposed lot layout

Figure 1

Extract of subdivision plan

Johnson Procter Surveyors dated 26 July 2016, reference 16070.



Subject Land

The subject land is Lot 7 DP249396, 1 Tulip Street, Hyams Beach. The land is situated on the corner of Aster and Tulip Street, it faces the National Park to the north of the Hyams Beach village.

DE17.6

Figure 2 – Site Location



Site & Context

Hyams Beach is surrounded by National Park and vacant Crown land. Access to the village is limited to a single road through heavily vegetated lands. The subject land is located on the northern 'edge' of the village separated from the National Park by Aster Street. Of the 40 lots within the area identified above:

- There are no lots less than 550m²;
- 40% have an area between 651m² and 700m²;
- 10% of lots have an area between 800m² and 850m²;
- 12.5% of lots exceed 850m², including the subject land;
- 7 (including the subject land) of the 40 lots have an irregular lot shape to accommodate the trapezoid blocks defined by the road reserve.

The size of the existing lot and the lot configuration is consistent with the overall subdivision pattern in the northern end of the village.

History

The subject land was subdivided in 1962. A weatherboard and brick dwelling is located on the land. Additions to the dwelling were approved in 1987 (BA87/0639) and a Building Certificate (BC14/1003) issued for the dwelling and metal shed in 2014.

Issues

Clause 4.1 Minimum subdivision lot size, Shoalhaven Local Environmental Plan 2014

Clause 4.1 is reproduced below.

4.1 Minimum subdivision lot size

(1) *The objectives of this clause are as follows:*

- (a) *to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,*
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

The subject land is identified on the SLEP14 Lot Size Map as having a minimum lot size of 500m². Proposed Lot 2 has an area of 500m² and achieves the minimum lot size. Proposed Lot 1 has an area of 373.1m² and is 25.38% less than the minimum lot size.

The Hyams Beach area is not subject to Clause 4.1A *Exceptions to minimum lot sizes for dual occupancy and multi dwelling housing*.

The applicant has made a formal submission requesting a variation the minimum lot size under Clause 4.6 *Exceptions to development standards*.

Applicant's Submission

The relevant details from the applicant's submission is reproduced below.

The following comments are made in support of this proposal and to justify the request made for this application to be approved pursuant to Clause 4.6 of the SLEP 2014:

- 1) *The provision of the SLEP 2014 which requires variation is Clause 4.1. This clause is not expressly excluded from the operation of Clause 4.6 of the SLEP 2014.*
- 2) *The standard being varied is the 500m² minimum lot size.*
- 3) *The land is with the R2 zone.*
- 4) *The objectives of the zone have been outlined earlier in this report.*
- 5) *The objectives of Clause 4.1 are as follows:*
 - a. *to ensure that subdivision is compatible with, and reinforces the predominant or historic subdivision pattern and character of, an area,*
 - b. *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
 - c. *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*
- 6) *The extent of the variation is 25.38% with the proposed lot size at 373.1m².*
- 7) *The proposal is consistent with the objectives of the R2 zone for the following reasons:*
 - a. *The proposal contributes towards providing additional saleable housing in the locality.*
 - b. *The proposal to subdivide cannot reasonably be regarded as one that will substantially alter the low density nature of the existing residential environment.*
 - c. *The proposed lots will facilitate the construction of detached housing and housing that will be compatible with the immediate environs.*

- d. *The proposal to subdivide will in no way result in development that would be incompatible with the existing built environment.*
- 8) *The proposal is consistent with the objectives of the development standard for the following reasons:*
 - a. *There is no reason to believe that the subdivision will not be compatible with the established subdivision pattern. Both new lots will have full street frontage and the current property, being a corner lot, lends itself to this proposal.*
 - b. *The design of the subdivision is sound with respect to creating new lots which can be developed in accordance with the provisions of Council's adopted development controls for single dwellings and/or dual occupancy. These policies aim to ensure development takes place in such a way so as to protect the amenity of adjoining lands.*
 - c. *The new lot proposed can easily accommodate new residential development – it meets the minimum lot size. With respect to the under-sized lot, it must be remembered that it already contains a dwelling and this sits comfortably within allowable development controls for low density residential development (i.e. setbacks, FSR etc). The newly proposed vacant lot meets the minimum lot size.*
- 9) *Strict compliance with the development standard in this instance is not considered necessary for the following reasons:*
 - a. *The site is within an established residential area comprising a range of lot sizes. The locality is one subject to urban renewal through redevelopment and use of vacant land as well as replacement of existing housing stock.*
 - b. *As outlined above, the proposed subdivision if approved will not result in development taking place that would be contrary to the objectives of the R2 zone or the objectives of Clause 4.1.*
 - c. *The proposed subdivision will not impact on either the built or natural environment in any substantial away. In this regard;*
 - i. *It will not result in any substantial changes to the established streetscape qualities of the area;*
 - ii. *The act of subdividing will not directly impact on neighbouring properties. Future development will be subject to building application requirements where issues including overshadowing, noise, and privacy will be addressed. The new building site would have good separation distances to adjoining dwellings.*
 - iii. *The act of subdividing the site will not result in any substantial changes to traffic volumes in the locality;*
 - iv. *Subdividing the site will not necessitate removal of any existing important vegetation.*
 - d. *This report demonstrates that despite Lot 1 being less than 500m² in area, the proposal fully complies with the performance criteria within Council's Development Control Plan for Subdivisions (Chapter G11).*
- 10) *The contravention of the 500m² development standard in no way known to the author of this report raises any matter of significance for State or regional environmental planning. Further, there are no identifiable public benefits of the maintaining the 500m² development standard in this instance. The*

proposal does not represent an unacceptable departure to said standard and this report demonstrates the merits of the application justify approval of the same.

- 11) *Due to the size, scale and nature of the development coupled with the nature of the variation sought, the proposal will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) if the EP&A Act.*
- 12) *The site is not one that would be sensitive to threatened species issues, and it is not flood prone. Further, the site is not steep or unstable land. Potential bushfire threat has been appropriately assessed and professional advice from Bushfire Building Solutions Pty Ltd indicates the proposal is acceptable in this regard. For these reasons, it is considered that there are sufficient environmental planning grounds to approve the proposal.*
- 13) *It is our view that the proposal will not set an undesirable precedence. Hyams Beach has been subject of subdivisions in the past whereby lots of less than 500m² have been created. Further, the locality is undergoing change and redevelopment includes larger homes and dual occupancies. The site, its location within Hyams Beach, the fact that it contains an existing dwelling, it being located on a corner lot, coupled with the absence of development opposite the site contribute towards the appropriateness of the proposal.*
- 14) *The proposal is within the public interest for reasons outlined above.*

It is requested that for reasons outlined above and throughout the remainder of this report, the Council approve the creation of the lots proposed.

Discussion

An assessment of the proposed Clause 4.6 variation against the five part test as outlined in Department of Planning, *Varying development standards, A Guide*, August 2011 is made below.

1. The **objectives** of the standard are achieved notwithstanding noncompliance with the standard;

The objectives are:

- (a) *to ensure that subdivision is compatible with, and **reinforces the predominant or historic subdivision pattern and character of, an area,***
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.)*

For a sample of 40 lots in the vicinity of the subject land, existing lots have a:

- minimum area of 588.06m²;
- maximum area of 1138.18m²;
- median range of 651m² to 700m²; and
- mean area of 702.94m².

The areas of the proposed lots are 500m² and 373.1m². The proposed lots are significantly smaller than the lots within the existing subdivision. The proposal is not compatible with the predominant subdivision pattern or character of the area.

The result of the subdivision is potentially a higher density of development which is of concern, noting the isolated location of Hyams Beach.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objectives of Clause 4.1 preserve and support the zone objectives and the intentions of the SLEP 2014 as demonstrated by the exclusion of the Hyams Beach area from the provisions of Clause 4.1A *Exceptions to minimum lot sizes for dual occupancy and multi dwelling housing*.

Clause 4.1A permits the subdivision of constructed dual occupancies and multi-dwelling housing within R1 and R2 zoned land to create Torrens Title lots less than the minimum lot size shown in the Lot Size Map. The Clause permits the creation of lots to 350m² within Area 1 and to 400m² within Area 2. The Clause does not apply to areas:

- where there are significant limitations on higher densities, such as the lack of town sewer; or
- where the character of the area is considered a significant and desirable attribute, such as Hyams Beach; and / or
- where the environmental heritage of the area may be unsuited to higher densities, such as Berry and Milton townships.

The Clause requires that the dwellings be constructed prior to the issue of a Subdivision Certificate thereby ensuring that the final development achieves the desired outcomes as outlined in the relevant Chapters of SDCP14.

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Compliance with the minimum lot size of 500m²:

- Is compatible with and does not limit, restrict or prevent the reinforcement of *the predominant or historic subdivision pattern and character of, an area;*
- Minimises *any likely impact of subdivision and development on the amenity of neighbouring properties;*
- Ensures *that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Therefore, the underlying objectives of Clause 4.1 are not thwarted or defeated by compliance with the development standard.

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

The development standard has not been abandoned. No other variations to the development standard as applied in SLEP 2014 have been approved for the Hyams Beach area.

5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

In accordance with the findings of *Four2Five Pty Ltd v Ashfield City Council* (2015) NSWLEC 90 the applicant has not established that the requested variation to the minimum lot size is unreasonable and unnecessary.

Showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable and unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6 (and 4.6 (3) (a) in particular (Excerpt Is an Objection Under Clause 4.6 More Onerous to Establish Than Under SEPP1?, Stuart Simington, Lindsay Taylor Lawyers, July 24 2015).

The R2 Low Density Residential zone applying to the land is appropriate given the constraints on the area imposed by the isolation, limited access and bush fire risk. The R2 zone is consistent with the domestic low scale coastal residential / village character of the area. The subject land and the current residential use of the land are not unique with respect to location, lot size, orientation, configuration or constraints, that is, the site and dwelling do not provide or present a particular set of circumstances warranting special consideration or smaller lot development. Furthermore, the isolated location and associated bushfire risk are also important considerations with respect to controlling density of development.

Accordingly, compliance with the development standard is neither unreasonable nor unnecessary.

To establish that compliance with the development standard is unnecessary and/or unreasonable, circumstances specific to the proposed development must be identified to justify a significant departure from the development standard. For example, a pre-existing use of the land that is at variance with the objectives of the residential zone (petrol station) and where separation of a portion of the land for residential use is considered reasonable.

The proposal requires clearing of vegetation within the road reserve to provide asset protection requirements. The impact of such clearing has not been assessed and the required specialist report has not been received to date (at the time of writing this report).

Planning Assessment

The DA will be assessed under s79C of the Environmental Planning and Assessment Act 1979. At the time of drafting this report, the planning assessment was not complete.

Policy Implications

Environmental Planning Instrument SLEP 2014

Support for a significant variation of 25.38%, undermines the integrity of the development standard as discussed earlier in this report.

Consultation and Community Engagement:

Thirteen (13) submissions were received in relation to Council's notification of the development. All were objections to the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent to adjoining and nearby property owners and the Hyams Beach Villagers Association (HBVA).

Key issues raised as a result of the notification are provided in the table below:-

Table 1 – Key Issues	
Issues / Concerns Raised	Comments
<i>Does not comply with the SCC LEP14, Part 4.1 Minimum Sub Division Lot Size, Objectives 1, a, b and c; Objective 2 Lot size Maps, which require 500 sq mtrs and Objective 3.</i>	Agreed
<i>Lot 1 of the proposed subdivision does not comply (and is not even close to) the minimum lot size of 500 sq mtrs.</i>	Agreed
<i>373.1m² is a <u>substantial reduction</u> to the already minimum block size. It is difficult to see that a block size only 75% of the <u>minimum</u> is in any way acceptable.</i>	Agreed
<i>I completely object to this variation as the Council mapping site distinctly shows that Hyams Beach does not fall in permissible areas for subdivision below 500 sqm. On the Council map for our area the shaded green depicts a minimum permissible lot minimum lot size of 500 sqm. The Vincentia map has a blue border around it which indicates that clause 4.1A of the SLEP 2014 applies i.e. dual occupancy subdivision. However, Hyams Beach does not have a blue border, therefore Clause 4.1A of the SLEP does not apply - therefore minimum lot sizes must be 500sqm.</i>	Noted
<i>Not representative of any historical subdivision in the Village and is smaller than previously allowed subdivisions</i>	Agreed
<i>The proposal is overdevelopment and inconsistent with the objective and terms of the LEP (a legally binding document). They aren't guidelines to be overcome but impose limits for the benefit of residents which should be respected. If this sort of development is allowed it begs the question as to what the use of LEPs are and why bother consulting with residents when they are being prepared in the first place.</i>	The proposal is an intensification of land use and is not characteristic of the area
<i>As Secretary of HBVA I have received a substantial number of communications from residents of the village, expressing dismay at the application and the precedent it could set. I personally share these concerns, especially in view of the fact that HBVA, as the recognised CCB for the village, has just commenced the development of a strategic plan - in which the issues raised by this application will certainly be given considerable attention. In view of this process, any departure from the minimum subdivision sizes set out in the SCC LEP 14 would seem particularly unfortunate and to risk setting a dangerous precedent that could undermine important elements of our strategic plan.</i>	The proposal is a significant variation to the minimum lot size development standard.
<i>Construction of a larger home on the second block will result in over development of this area</i>	The proposed vacant Lot 2 achieves the 500m ² minimum lot size for the area. Further development of the lot would require a further application and assessment under the 'rules' applicable at the time.
<i>We already have so many overdeveloped sites which continue to cause ongoing problems with neighbours - the hatred and bickering has become unbearable.</i>	Noted.
<i>I echo the sentiments of other residents of Hyams Beach who are appalled at the idea of further degrading a village atmosphere characterised by quiet enjoyment, large open lots, expansive views, and extensive vegetation. This proposal would directly contribute to degrading these characteristics, particularly in a quiet corner of Hyams Beach that has remained relatively unaffected by much larger recent developments in other parts of the village. I encourage you to strongly reject the proposer's assertion that "It is not expected that this proposal will in any way alter the character of the place." This is demonstrably false and self-serving</i>	The low density 'village' character of the area is a significant factor in the assessment of this application.

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<i>If this application is approved it would be a green light for any landowner or speculator to make the same application and such subdivisions would spoil the 'village' atmosphere of Hyams Beach.</i>	The low density 'village' character of the area is a significant factor in the assessment of this application.
<i>Hyams Beach is one of the most beautiful places in the Shoalhaven area and must be protected from overdevelopment.</i>	Noted.
<i>As both Council and residents repeatedly acknowledge, a large part of the appeal of Hyams Beach is the view corridors afforded to most homes in the village due to the relatively small homes on larger blocks, a factor which the council has thankfully and obviously taken account of in its minimum allowable block size. To ignore this now, allowing this exception to the clearly stated rules, sets a precedent that others will be able to cite and employ.</i>	The low density 'village' character of the area is a significant factor in the assessment of this application.
<i>It should be noted by Council that no trees or "important vegetation" will be removed in relation to the proposed development because the owner has already cut down all vegetation on the proposed block.</i>	Vegetation is a s79C planning consideration.
<i>Once a subdivision like this is approved it sets a precedence for all future subdivisions and developments.</i>	Each application for variation to a development standard is assessed on its merits.
<i>I request that the Council observes the sensible and reasonable limits already set in the area and reject this proposal, which clearly fails to comply with minimum block-size requirements by a significant margin.</i> <i>By doing so, Shoalhaven Council will be embracing another opportunity to maintain Hyams Beach uniqueness and re-enforce its cultural and environmental value and character as a low density coastal village. This was clearly the Council's intention with the current regulations and I firmly support its ongoing existence. By upholding the SLEP, Hyams Beach will retain its character for both visitors and residents alike, rather than seeing it eroded by setting a precedent which will be hard to overturn when the damage is done.</i>	The low density 'village' character of the area is a significant factor in the assessment of this application.
<i>There is ample land within the Shoalhaven that is available for development without destroying the simple rule of 500 square metres minimum size.</i>	No comment

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Financial Implications:

In the event that Council decides to adopt the recommendation and a refusal ensues, the applicant has the right to lodge an appeal with the Land and Environment Court. Litigation has cost implications for Council. Conversely, objectors could also seek to challenge Council's decision if the development is ultimately approved, however this can legally only relate to the process followed by Council not the merits of the application. Again, this has potential cost implication for Council.

Legal Implications

Should the exception not be supported and the application not be approved, then the applicant may choose to lodge an appeal with the Land and Environment Court as is the case with objectors.

Summary and Conclusion

The applicant's submission has not adequately justified the variation to the minimum lot size development standard. The departure from the minimum lot size is significant at 25.38%. In the circumstances of the case and given the attributes of the site, character of the area its location and isolation, noting the bushfire risk, it is considered undesirable to increase the density of the area contrary to the SLEP 2014.

DE17.7 Development Application SF10532 Two Lot Subdivision – E754 Woollamia Rd, Woollamia – Lot 8 DP 27524

DA. No: SF10532

HPERM Ref: D17/2635

Group: Planning & Development Services Group
Section: Development Services

Description of Development: Two Lot Rural Residential Subdivision

Owner: JW & MG McManus

Applicant: Lee Carmichael Town Planning

Notification Dates: 07/10/2016 to 21/10/2016

No. of Submissions: Nil objections
Nil in support

Purpose / Reason for consideration by Council

The application proposes a variation to Chapter G8 *Onsite Sewage Management*, to permit the provision of a pumpout service to a lot to be created via the subdivision of land as proposed in Development Application (DA) SF10532. Provision of pumpout services to new lots that are not provided with existing effluent disposal systems requires Council approval.

Recommendation (Item to be determined under delegated authority)

That the request to permit the provision of effluent pumpout service to proposed Lot 2:

1. Be supported.
2. Refer the application back to staff for determination.

Options

1. Support the variation to Chapter G8 of the SDCP14 to permit the provision a pumpout service to proposed Lot 2.

Implications: Subject to the completion of a satisfactory s79C assessment of the application, this would enable the DA to be determined by way of approval under delegated authority.

2. Not support the variation to Chapter G8 of the SDCP14.

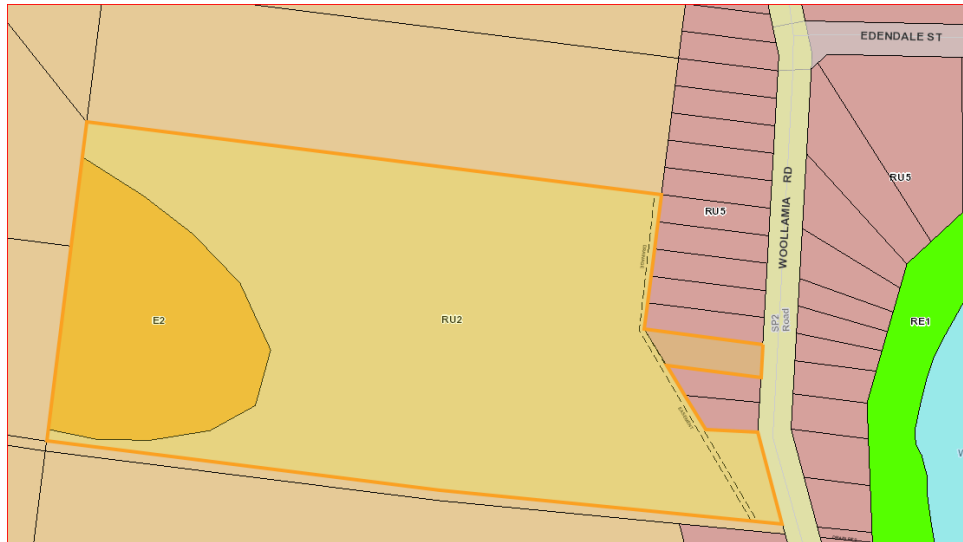
Implications: The DA as currently submitted will not be able to be supported and would therefore be determined by way of refusal under delegated authority.

3. Adopt an alternative recommendation and provide direction to staff.

Location Map

The subject land is Lot 8 DP 27524, 754 Woollamia Road, Woollamia and is located on the western side of Woollamia Road. The land has split zone of E2 Environmental Conservation, RU2 Rural Landscape and RU5 Village under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The RU5 and RU2 have separate road frontages.

Figure 1 – Site Location



Background

The subject land is unsewered. An existing dwelling located within the RU2 land has a current Approval to Operate a Sewage Management Facility (DR01/1448). Proposed Lot 2 is vacant land within the RU5 zone and has direct frontage to Woollamia Road.

Shoalhaven Water has advised that town sewer will not be available to this site in the immediate future. That is, within the next four years.

Proposed Development

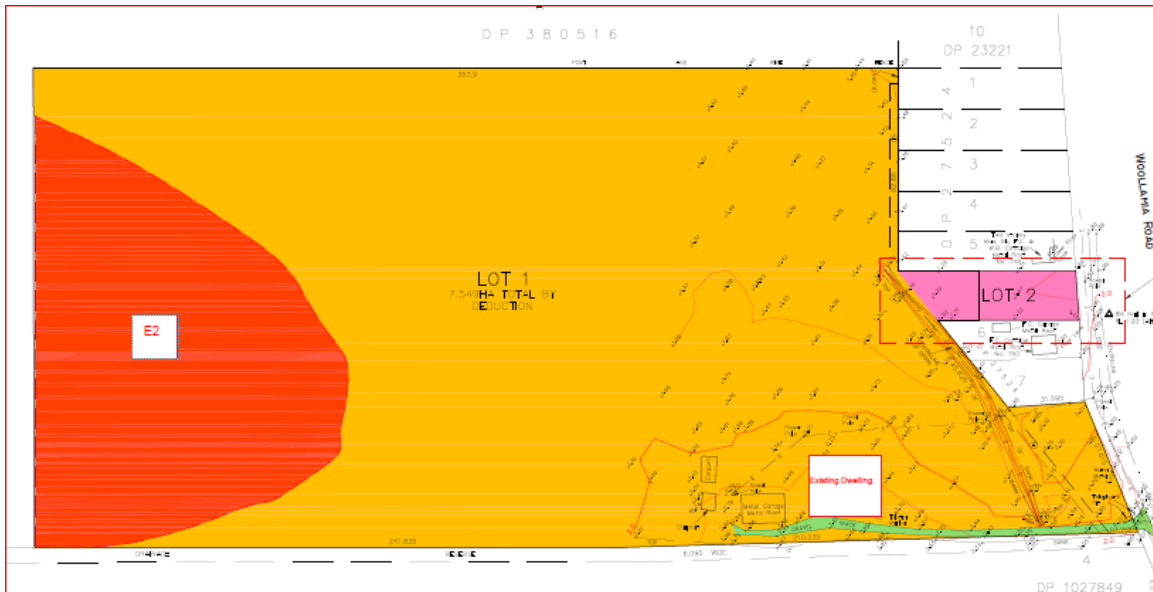
The proposal is for a two lot subdivision under Clause 4.1E *Minimum lot size for certain split zone lots*. Clause 4.1E facilitates the subdivision of land with 'split zones' where the rural or environmental zoned land does not achieve the minimum lot size.

Proposed Lot 1 includes **all** the E2 and RU2 zoned land and a portion of the RU5 land (505m²). The total area of Lot 1 is 7,549 hectares. **Figure 2** illustrates the proposed lot layout and zones applicable to the land. The RU5 land is considered residential land for the purposes of this Clause.

The appropriateness of the lot size is subject to a full 79C assessment, the proposed subdivision is not finalised by this report.

Figure 2 – Extract of Subdivision Plan

Overall Site Plan Proposed Subdivision & Dwelling Envelope, LTC 16.12.2015, ref M^cManus



Subject Land

The land is flood affected, bushfire prone and is partially within a sensitive coastal location. It is also low lying, relatively flat and burdened by a north-south aligned drainage easement located to the immediate west of the RU5 zoned land.

Drainage within the site is poor. Much of the RU2 land has been cleared and fenced for pasture. Proposed Lot 2 is essentially clear of vegetation and is slightly lower than the street level.

Site & Context

The subject land is located on the western side of Woollamia Road approximately 1.7km north of Huskisson township. Woollamia Road is flood affected in this location.

History

The subject lot was created in 1957 and Council rates records show a cottage on the land prior to 1964. The existing cottage is located to the south-east of the existing lot as shown on the proposed plan of subdivision above, in Figure 2.

A shed was approved on the land in 1979 (BA79/1856) and a drainage approval was issued for the on-site effluent disposal system connected for the dwelling in 2001 (DR01/1448).

Issues

Shoalhaven Development Control Plan 2014, Chapter G8 Onsite Sewage Management

Chapter G8 section 5.3 Effluent Pumpout states that:

“New pumpout services are not to be provided to new subdivisions or new rezonings.

Pumpout services are not cost effective or efficient compared to on-site sewage management or reticulated sewerage. Transportation of effluent by truck (tanker) creates traffic and pollution issues. In addition the transport of trade waste prevents Council from entering and implementing good management practices outlined in Council’s Liquid Trade waste Discharge to the Sewerage System Policy.”

However, Council may choose to approve pumpout services in other or particular circumstances, by way of example where there are particular environmental attributes which warrant pumpout to protect the environment.

Applicant's Submission

In support of the proposal the applicant stated:

"In relation to effluent disposal, the existing dwelling is connected to an on-site effluent disposal system which operates under the approval of the Shoalhaven Council and is subject to regular inspections.

The proposed new lot will not rely upon an on-site effluent disposal system. The new lot is proposed to be serviced by way of a pump-out system. Impacts on the environment as a result of effluent disposal in connection with the proposed subdivision of the land are therefore not expected."

Discussion

The applicant has not identified the environmental impacts or provided supporting argument for the provision of pumpout services to proposed Lot 2.

As mentioned earlier, the site and access to the site are flood prone. Council has received complaints from residents regarding pumpout systems during flood events, for example, pumpout trucks being unable to access properties, effluent leaking from tanks, effluent in flood water creating risk to public health and the environment.

The total area of the RU5 land within the existing lot is 1005m², of which no less than 500m² must be retained within proposed Lot 1. The land area or lot size is essentially not sufficient to satisfactorily dispose of effluent on-site effluent.

The whole of the RU5 land within the existing Lot 2 is low lying and unsuited to on-site effluent disposal.

Proposed Lot 2 has a residential zone which creates an expectation that the land can be used for a residential purpose.

Whilst there are environmental risks associated with the provision of pumpout service to proposed Lot 2, it is anticipated that reticulated town sewer will be available within five years. In this regard, pumpout may be an appropriate option noting that it is an interim solution.

Planning Assessment

The DA is being assessed under s79C of the Environmental Planning and Assessment Act 1979. In the event that pumpout services are not supported, the subdivision of the land will not achieve a favourable recommendation as effluent disposal must be resolved.

Policy Implications

Shoalhaven Development Control Plan 2014 (SDCP 2014)

Chapter G8 of the SDCP 2014 does not support the provision of new pumpout services to new subdivisions unless the environmental impacts are minor or the alternative carries a greater environmental risk.

Comments

There are environmental risks associated with the provision of pumpout service to proposed Lot 2 however, it is anticipated that reticulated town sewer will be available within five years. Accordingly, the proposal is considered an interim arrangement and supportable on this basis. Alternative effluent management systems are unsuited to the site.

Consultation and Community Engagement:

The DA was notified in accordance with Council's Community Consultation Policy with letters being sent to property owners within a 100m buffer of the site. The notification was for a two week period. No submissions were received.

Financial Implications:

In the event that Council decides to adopt the recommendation, the application will still need to have a favourable s79C assessment to enable consent to be issued however the issue of effluent will have been addressed.

It is also important to note Council resolved on 19 December, 1995 that:

If Council resolves to allow a new effluent pumpout service for a particular circumstance which is not in accordance with policy then the pumpout service be at the full cost of providing the pumpout service and this will be noted on the Section 149 Certificate and Title Deeds. (Chapter G8 page 13)

In the event that the application does not obtain a favourable assessment or if the pumpout is not supported (which would result in an unfavourable assessment), the applicant could potentially appeal the decision in the Land and Environment Court. Legal action would have cost implications for Council.

Legal Implications

Should the exception not be supported and the application is refused, then the applicant may choose to lodge an appeal with the Land and Environment Court.

Summary and Conclusion

The residential zoning of proposed Lot 2 creates an expectation that the land can be used / developed for residential purpose.

Whilst there are environmental risks associated with the provision of a pumpout service to proposed Lot 2, it is an interim arrangement noting that reticulated town sewer will be available within five years. The lot is otherwise unsuitable for alternative forms of effluent disposal. On this basis, the proposal for pumpout services is considered a suitable option in the circumstances.

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.