

Development Committee

Meeting Date: Tuesday, 14 February, 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**
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5. **Deputations and Presentations**
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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: Monday, 23 January 2017

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Time: 5:04pm

The following members were present:

Clr Patricia White - Chairperson

Clr Amanda Findley

Clr Joanna Gash

Clr John Wells

Clr John Levett

Clr Nina Cheyne

Clr Annette Alldrick

Clr Kaye Gartner

Clr Mitchell Pakes

Clr Greg Watson

Clr Mark Kitchener

Clr Bob Proudfoot

Mr Ben Stewart – Acting General Manager

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

Recommendation

That the Minutes of the Development Committee held on Tuesday 06 December 2016 be confirmed.

RESOLVED (Clr Findley / Clr Wells)

MIN17.1

That the Minutes of the Development Committee held on Tuesday 06 December 2016 be confirmed.

CARRIED

Declarations of Interest

Clr Cheyne – less than significant non pecuniary interest – DE17.1 Rescission Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee. will remain in the room and will take part in discussion or vote – the conflict is one of perception that the subdivision could affect my property value. She does not believe that she has a specific pecuniary interest as she is one of the many residents who live within the vicinity of the subdivision.

DEPUTATIONS AND PRESENTATIONS

Mr Dennis Johnson addressed the Committee in relation to DE17.1 – Rescission Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee.

Mr Lee Carmichael addressed the Committee in relation to DE17.6 - Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Proudfoot / Clr Wells)

MIN17.2

That the following items be brought forward for consideration:

- DE17.1 – Rescission Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee and
- DE17.6 - Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach.

CARRIED

Procedural Motion – Deputation

RESOLVED (Clr Findley / Clr Levett)

MIN17.3

That Mr James McCullough be permitted to provide a deputation in relation to DE17.6 - Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach.

CARRIED

Mr James McCullough addressed the Committee in relation to DE17.6 - Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach.

NOTICES OF MOTION / QUESTIONS ON NOTICE

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

**HPERM Ref:
D16/400228**

Note: Clr Cheyne – less than significant non pecuniary interest – DE17.1 Rescission Motion - Gateway Determination - Planning Proposal - Warrah Road, Bangalee – remained in the room and took part in discussion or vote – the conflict is one of perception that the subdivision could affect my property value. She does not believe that she has a specific pecuniary interest as she is one of the many residents who live within the vicinity of the subdivision.

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.

MOTION (Clr Gartner / Clr Cheyne)

MIN17.4

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

FOR: Cllr Findley, Cllr Levett, Cllr Cheyne, Cllr Alldrick, Cllr Gartner and Ben Stewart

AGAINST: Cllr White, Cllr Gash, Cllr Wells, Cllr Pakes, Cllr Watson, Cllr Kitchener and Cllr Proudfoot

LOST

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

HPERM Ref: D16/404195

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.

MOTION (Cllr Findley / Cllr Levett)

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.

RESOLVED (Cllr Watson / Cllr Kitchener)

MIN17.5

That the Development Committee defer the Development Application SF10534 – Proposed 2 lot subdivision at Lot 7 DP249396 (No.1) Tulip Street, Hyams Beach to the Development Committee Meeting, Tuesday 14 March 2017 in order to assess the flow on effects of future potential subdivisions.

FOR: Cllr White, Cllr Findley, Cllr Gash, Cllr Wells, Cllr Cheyne, Cllr Alldrick, Cllr Gartner, Cllr Pakes, Cllr Watson, Cllr Kitchener and Cllr Proudfoot

AGAINST: Cllr Levett and Ben Stewart

CARRIED

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

HPERM Ref: D16/400234

Recommendation (Item to be determined under delegated authority)

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

Note: As advised by the Chair, this item was not dealt with as the recission motion was lost, see MIN17.4 (DE17.1).

REPORTS

DE17.3	Submission - Department of Planning & Environment - Improving Voluntary Planning Agreements	HPERM Ref: D16/389453
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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.

RESOLVED (Clr Wells / Clr Gash)

MIN17.6

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.

CARRIED

DE17.4	Draft State Environmental Planning Policy (Coastal Management) 2016 - proposed Council submission	HPERM Ref: D16/393179
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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.

RESOLVED (Clr Wells / Clr Kitchener)

MIN17.7

That:

1. 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.
2. Council make representations to the State Government through our Local Members in regards to Councils concerns in this regard.
3. The General Manager seek as a matter of urgency a deputation to the NSW Planning Minister Hon Rob Stokes, the Member for the South Coast, Hon Shelley Hancock, The Member for Kiama, Hon Gareth Ward, the Upper House Member Hon Paul Green and the Upper House Green Member, Hon Justin Fields and that those representatives be given a thorough briefing prior to the deputation.

CARRIED

DE17.5	Draft Planning Agreement - 18 Haigh Ave, Nowra and 103 Plunkett St, Nowra – Lot 1 in DP 781046 & Lot 1001 in DP 1176270	HPERM Ref: D16/397895
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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.

RESOLVED (Clr Wells / Clr Gash)

MIN17.8

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.

CARRIED

DE17.6 Development Application SF10534 – Proposed 2 Lot Subdivision At Lot 7 Dp249396 (No.1) Tulip Street, Hyams Beach

**HPERM REF:
D16/404195**

Item dealt with earlier in the meeting see MIN17.5

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

HPERM Ref: D17/2635**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.

RESOLVED (Clr Pakes / Clr Wells)

MIN17.9

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.

CARRIED

Procedural Motion - Matters of Urgency**RESOLVED** (Clr Watson / Clr Proudfoot)

That an additional item Property Matter - Additional Lane on Princes Hwy, Nowra – be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent due to the potential sale of the property.

DE17.8 Property Matter - Additional Lane on Princes Hwy, Nowra**RESOLVED** (Clr Watson / Clr Proudfoot)

MIN17.10

That:

1. This be dealt with under the Development Committees delegated authority from Council
2. Council bring to the attention of the Roads and Maritime Services the property on the corner of the Princes Hwy that is currently for sale and is critical for the future highway widening and the additional travel lane.

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr Alldrick / Clr Cheyne)

That an additional item Development Application – Lot 1 DP 130825 Princes Hwy (Emerald Dr), Meroo Meadow, be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent as the submission closed and the residents feel they need more time for considerations such as access and it could be determined prior to the next available meeting.

DE17.9 Development Application - Lot 1 DP130825 Princes Hwy (Emerald Dr) Meroo Meadow

RESOLVED (Clr Alldrick / Clr Cheyne)

MIN17.11

That:

1. All delegations for SF10541 be withdrawn and this matter be reported to council for consideration.
2. A residents briefing meeting be held on the abovementioned application.
3. The time for submissions be extended until the residents briefing meeting can be held.

Note: Clr Proudfoot left the meeting at 7:23pm.

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr Levett / Clr White)

That an additional item DS16/1512 - Section 96 amendment for the quarry on Parnell Rd, Tomerong to increase the extraction rate be introduced as a matter of urgency.

CARRIED

The Chairperson ruled the matter as urgent due to the broad public interest.

DE17.10 DS16/1512 - Section 96 Amendment for the Quarry on Parnell Rd Tomerong

RESOLVED (Clr Levett / Clr White)

MIN17.12

That the Development Committee call in an application to Council for determination (DS16/1512) - Section 96 amendment for the quarry at Parnell Rd, Tomerong.

Note: Clr Proudfoot returned to the meeting at 7:25pm

Note: Clr Watson left the meeting at 7:29pm

CARRIED

There being no further business, the meeting concluded, the time being 7.29pm.

Clr White
CHAIRPERSON

DE17.11 Notice of Motion - Subdivision Application - 7 Bangalee Road, Tapitallee

HPERM Ref: D17/39662

Submitted by: Cllr Nina Cheyne

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)

To report to Council recommendations and updates on the progress of the Tapitallee Development Application.

Background

Concerns include:

- a) Size of lots, not in keeping with character of area, waste management & privacy
- b) Runoff and drainage, emergency evacuation in case of extreme bushfire
- c) Traffic both local and Illaroo Road Way the animal count was conducted
- d) No one in Council had looked at DA so no answers to resident questions, yet time for submissions continued Most attendees were keen to support the Bangalee Resident group - tired of lack of action with regards to upgrade of Illaroo Rd and general services in the area, yet development continues
- e) Sewerage issues
- f) Lack of infrastructure to cope with numbers of cars and people in that vicinity on top of the proposed Bangalee submission.

Note by the General Manager

This development application is currently under assessment with a number of technical assessments underway and issues identified. The applicant will be provided with the opportunity to respond. The results of the referrals and responses in reply are or will be available on line.

With respect to the specific points in the notice of motion including: drainage, bushfire, traffic impacts including issues on Illaroo Rd, flora, fauna and effluent disposal are all technical matters that will be carefully considered and assessed by Council's technical officers.

Some of these assessments are already available and will require further detailed exploration by the applicant.

The lot sizes are compliant with the lot size map layer in the Shoalhaven Local Environmental Plan 2014. Whilst they comply, there are a number of other factors that contribute to lot sizes, including physical site constraints, soil characteristics, flora and fauna impacts and so on. These are again, matters for assessment.

The Section Manager – Development recently met with a small group of residents and discussed the proposal. It is noted that the formal exhibition did not commence until 18 January and that a Resident's Briefing Meeting will be arranged to ensure that the public is informed about the application. This will also provide an opportunity to explain the assessment process.

Consideration will be given with respect to the strategic context of the subdivision, including infrastructure in the area including what section 94 contributions apply to the proposal. Contributions that can be levied for this particular development include but are not limited to community facilities eg sports stadium, recreation facilities up grades, community hall at North Nowra and City wide fire fighting services.

DE17.12 Notice of Motion - Development Application - Coastal Palms Caravan Park - Shoalhaven Heads - DA17/1019

HPERM Ref: D17/39684

Submitted by: Cllr Nina Cheyne

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 the time for consideration of DA17/1019 be extended to allow for more considered feedback to Council and that an information evening be held with Council representation to attend the meeting to further explain the elements of the DA.

Background

Issues raised by the local Forum included:

- Mix of temporary sites to permanent sites – is the 99 camping sites merely a ruse to get the additional permanent sites
- How is the traffic issues going to managed – Shoalhaven Heads road was congested over the holiday period with traffic movements and parking.
- Flood evacuation plan is inadequate
- Inadequate access for fire trucks
- Potential noise to adjoining residents from the 99 camping sites
- Social balance of the community of Shoalhaven Heads – there were a number of “annual” site occupiers at the meeting and they have been given little notice of the changes and have made submissions but feel they have not been given adequate time to consider their situation
- How is this a Holiday Park when the park will only accept permanent residents who are over 55 (feedback is that this is the same at Tall Timbers)
- The development is changing the balance of tourist to the Shoalhaven (there were a number of younger temporary site holders at the meeting who have been coming to holiday in Shoalhaven Heads for years who say they have no where to go with their vans)
- Several trees already removed & no replacement planting
- Lush gardens removed from entrance, now one palm tree. No natives for Lorikeets etc
- 99 proposed camp sites, toilet blocks not cleaned now, what will happen with 396 extra people?
- Extra noise of 99 camp sites on flood prone land (flooded June 2016)
- Traffic through park with extra 99 camp sites

DE17.12

- Overnight cabins, already sold off & people living in them? Can you sell off before DA approved?
- Carports etc already added to sold off cabins

Note by the General Manager

The application is under assessment and is some way off being finalised. There is no issue with submissions continuing to be made albeit the notification period has formally closed. Council does and is happy to continue to accept submissions on this application noting also the level of community interest and concern.

Council officers are arranging to attend a Community Forum meeting at Shoalhaven Heads in March to explain the application and assessment process. Contact has been made with the Forum and confirmation of attendance is being arranged.

The issues raised in the notice of motion are noted and will be considered during the assessment.

DE17.13 Notice of Motion - Crown Land adjacent to Shoalhaven Heads Golf Course

HPERM Ref: D17/40293

Submitted by: Cllr Nina Cheyne

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

1. The General Manager report back to Council on the botanical status of the land at Lot 7010 DP 1035145, Scott Street, Shoalhaven Heads, and
2. If it is confirmed that it is littoral rainforest, council consider submitting making an additional submission to have the land identified in the final State Environmental Planning Policy (Coastal Management) 2016, maps as a coastal wetland and littoral rainforest area.

Background

A recent walk with ecologists through bushland adjacent to Shoalhaven Heads Golf Course revealed that the south eastern part of the land in question (refer to attached map) consists of Endangered Ecological Community (EEC) littoral rainforest with EEC bangalay sand forest over story.

The draft State Environmental Planning Policy (Coastal Management) 2016 sets out to protect coastal wetlands and littoral rainforest within the coastal zone.

Recently the NSW Department of Planning & Environment sought submissions to assist in the mapping of coastal wetland and littoral rainforest and other areas identified in this Plan.

If it is confirmed that the land in question is in fact littoral rainforest then Council has a responsibility to ensure this endangered coastal rainforest vegetation is recognised and identified within this Plan.

DE17.13



DE17.13

Note by the General Manager

The subject land is a piece of Crown Land at Shoalhaven Heads that is currently zoned R1 General Residential under Shoalhaven Local Environmental Plan 2016.

Community representations have been received regarding the possible establishment of a retirement village and children's facility on part of the subject land and Council resolved on 4 October 2016 to investigate the acquisition of the land from the Crown. Work is ongoing in this regard.

The draft State Environmental Planning Policy (Coastal Management) 2016, including its associated draft maps, was on public exhibition for comment from 11 November 2016 to 20 January 2017. Council resolved on 23 January 2017 to make a submission on the draft SEPP. This matter at Shoalhaven Heads did not form part of Council's submission dated 30 January 2017 (note we had an extension of time).

In Council's submission to the Draft SEPP, it was noted that the associated mapping for littoral rainforests needs to be amended to be consistent with areas that had been verified. Council has provided data to the Department in this regard and the submission specifically highlighted examples at Mollymook, Comerong Island, Currarong, Ulladulla and possibly Bawley Point that needed to be refined or added. The highlighted area at Shoalhaven Heads was however not one of the areas identified in Council's submission and in this regard it is noted that the Species Impact Statement (SIS) that was prepared as part of the Shoalhaven

Heads Golf Course development, verified the subject land as the EEC Bangalay Sand Forest. The SIS did not however identify the subject land as littoral rainforest. It is also noted that the SIS also identified that, at least part of, the identified area was affected by heavy Lantana infestations.

As such the verified information currently held by Council does not identify this area as littoral rainforest.

DE17.14 Council Land Reclassification Housekeeping Planning Proposal - Post Exhibition Consideration and Finalisation

HPERM Ref: D16/393791

Group: Planning & Development Services Group
Section: Strategic Planning

Attachments:

1. Submission Summary (under separate cover) [⇒](#)
2. Revised Planning Proposal PP010 Council Land Reclassification (Housekeeping) (under separate cover) [⇒](#)
3. Revised Gateway Determination (under separate cover) [⇒](#)
4. Revised Explanatory Statement Reclassification PP (under separate cover) [⇒](#)
5. 3 November 2015 - Development Committee Report - Exhibition Outcomes (under separate cover) [⇒](#)
6. Report of Public Hearing - November 2016 (under separate cover) [⇒](#)
7. Additional Matters to be Addressed when Governor's Approval is Required (under separate cover) [⇒](#)

Purpose / Summary

- a) To consider submissions received during the public exhibition and public hearing into the Council Land Reclassification Housekeeping Planning Proposal (the PP); and
- b) Finalise the PP and undertake the required steps to enable drafting of the amendment to Shoalhaven Local Environmental Plan (LEP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal as exhibited with the following change:
 - Amend the Planning Proposal to refer to MIN 812 in relation to the sale of 50 Shoalhaven Heads Road, Shoalhaven Heads.
2. As per Council's delegated functions as Relevant Planning Authority, forward the Planning Proposal to NSW Parliamentary Counsel to draft the amendment to the Shoalhaven Local Environmental Plan 2014 and enable it to proceed to finalisation.
3. When considering the future management of the Lively Street, Vincentia land; have regard to issues raised in submissions at Attachment 1 and those identified in the 3 November 2015 Development Committee Report (D15/324914); and
4. Notify submitters and Community Consultative Bodies of this resolution, and again when the Planning Proposal is notified and comes into effect.

DE17.14

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable the Council Land Reclassification Housekeeping Planning Proposal (the PP) to be finalised. This will ultimately enable the subject land to be reclassified to 'operational' then sold or licensed.

2. Adopt an alternative recommendation.

Implications: This may result in changes to the PP that could complicate the intent of the PP or delay the finalisation of the PP.

3. Not proceed with the PP.

Implications: This is not favoured as the land will remain classified as 'community' which will not enable its sale or lease. Further, the information in Schedule 4 of Shoalhaven Local Environmental Plan (LEP) 2014 will remain inaccurate and a new planning proposal will be required to include the land in Part 3 of Schedule 4 of LEP 2014.

Background

The PP relates to the following parcels of Council-owned land (the subject land):

1. Lot 21 DP 252581 - Shoalhaven Heads Road, Shoalhaven Heads
2. Lot 12 DP 617101 - Bolong Road, Coolangatta
3. Lot 3 DP597223 - Bolong Road, Coolangatta
4. Lot 4 DP 550354 - Island Point Road, St Georges Basin
5. Part Lot 2081 DP 216860 - Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No. 7 Sutton Street only)

When LEP 2014 was prepared, the subject land was reclassified from 'community' to 'operational'. While it was intended that the interests in the land be extinguished at the same time, due to a drafting error this did not occur. In addition, all of Lot 2081 DP 216860 – Lively Street, Vincentia was reclassified 'operational', however it was the intention that only part of the lot was to be reclassified.

To correct these administrative errors, Council prepared and exhibited a PP (30 September to 16 October 2015) which sought to:

- a) Remove the interests from sites 1 to 5; and
- b) Reclassify part of the land at Lively Street, Vincentia back to 'community'.

After the PP was sent to the Department of Planning and Environment (DP&E) for finalisation, Council was advised that the LEP could not be made as the *Local Government Act 1993* (LG Act) does not allow the removal of interests from land which is already classified as 'operational'. This can only be done when land is reclassified from 'community' to 'operational'.

Consequently on 5 April 2016, Council resolved to reclassify the subject land from 'operational' to 'community' and to prepare a PP to reclassify the parcels of land to 'operational' with interests removed under Section 30 of the LG Act. This process would correct all administrative errors relating to the subject land.

A revised PP (**Attachment 2**) was submitted to DP&E in August 2016 and a revised Gateway determination issued with conditions shortly thereafter (**Attachment 3**).

Public Exhibition

As per the requirements of the revised Gateway determination, the PP was exhibited for a period of 16 days from 5 October 2016 to 21 October 2016. A notice was placed in the South Coast Register on 5 October 2016. All adjoining land owners (including the National Parks and Wildlife Service) and the relevant Community Consultative Bodies (CCBs) were notified in writing.

The PP was exhibited at Council's Administrative Office, Bridge Road, Nowra during business hours, and could also be viewed at the Ulladulla Administrative Office and on Council's website. The exhibition material remains available on Council's website (<http://shoalhaven.nsw.gov.au/My-Council/Public-exhibition/Documents-on-exhibition>) and includes:

- Planning Proposal (PP010) - Council Land Reclassification (Housekeeping) dated August 2016
- Explanatory Statement (**Attachment 4**) summarising the interests in the land to be extinguished, anticipated development, asset management objectives and financial implications as a result of the proposed reclassifications.
- Revised Gateway Determination dated 21 August 2016
- Newspaper advertisement
- LEP Practice Note PN 09-003 – Classification and reclassification of public land through a local environmental plan
- Best Practice Guideline - LEPs and Council Land

Submissions

Nine (9) submissions were received in response to the October 2016 public exhibition. The key issues raised and Council Staff comments in response are summarised at **Attachment 1**. A copy of all submissions received will be available before the Development Committee meeting in the Councillors' room.

Eight (8) submissions were received in relation to part Lot 2081 DP 216860 - Lively Street, Vincentia. These submissions were from owners of properties on Frederick and Sutton Streets; most of whom adjoin the land. Key themes for this land include the reclassification, licencing, access, traffic and car parking, Jervis Bay National Park/matters of environment/biodiversity, and development of the land. The majority of submission concerns can be addressed via appropriate licencing conditions and additional arrangements that will require licence holders to contribute to the maintenance and upgrade of the access way. No changes to the PP are recommended as a result of these submissions.

One (1) informal submission was received from the Shoalhaven Heads Forum in relation to the Shoalhaven Heads Road, Shoalhaven Heads site. This submission requested an amendment to the Explanatory Statement documentation to reflect the latest Council resolution regarding the future sale of the land. This report recommends a change to the PP to respond to this matter.

The submissions received during the September/October 2015 public exhibition relating to the superseded PP were previously addressed in the 3 November 2015 Development Committee report (**Attachment 5**).

Public Hearing

The revised Gateway Determination required Council to conduct a public hearing in accordance with the legislative requirements of the LG Act. Accordingly, a public hearing was conducted by an independent chair (Mr Allen Grimwood of Zenith Town Planning) on 16 November 2016. A notice was placed in the South Coast Register on 26 October 2016 advising of the public hearing. All adjoining land owners (including the National Parks and

Wildlife Service) and the relevant CCBs were notified in writing on 24 October 2016, allowing 21 days notice following the conclusion of the exhibition period.

The Public Hearing was carried out in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the LG Act. Four individuals attended the hearing and three made a verbal submission. Consideration of these submissions and the outcome of the hearing is detailed in the consultant's Public Hearing Report at **Attachment 6**. The Public Hearing Report was made publically available on Council's website within 4 days of receipt.

The Public Hearing Report recommended that the PP to reclassify the lands to 'operational' with interests removed should proceed without change. The Public Hearing process is independent to Council and the Public Hearing Report has been considered as a further submission to the PP.

Governor's Approval

In accordance with section 30 of the LG Act, the Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land. Council is required to address a list of requirements relating to the land and the PP process in the Council report which is sent back with the PP to DP&E for finalisation. These requirements have been addressed in **Attachment 7**.

Conclusion

The PP will reclassify the land from 'community' to 'operational' and extinguish the public reserve status and other interests in the subject land to enable Council to explore the sale or licensing of the land. The PP corrects an administrative error in the drafting of the LEP 2014 and will ensure that the original intent of the reclassifications is reflected in the written plan. As such, it is recommended that Council adopt the PP and forward it to NSW Parliamentary Counsel for finalisation.

Community Engagement

The PP was exhibited for 16 days in accordance with the revised Gateway determination issued 28 August 2016. Eight (8) submissions were received in relation to the licensing, management and impact on the Vincentia land and one (1) in relation to the sale of the Shoalhaven Heads land.

A small change to the PP is recommended to reflect the latest Council resolution in relation to the sale of the land at Shoalhaven Heads. No other changes are recommended as a result of the submissions or the Public Hearing Report.

It is recommended that the relevant sections of Council are made aware of the concerns identified in the submissions relating to Lively Street, Vincentia. This will enable due consideration of the concerns raised when making future decisions relating to the management and licensing of the subject land.

Policy Implications

Finalisation of the PP as recommended will enable Council to resolve a long standing administrative error in LEP 2014. Reclassifying the land to 'operational' with interests removed will ultimately enable the sale or licensing of the subject land.

Financial Implications

Finalisation of the PP will be resourced via the existing Strategic Planning budget. As a result of the reclassifications, Council could realise a small financial gain through the sale and licensing of the subject land.

DE17.15 Development Application DA16/1123 – 56 - 69 Graham St, Nowra, Lots H, J & K & DP 39320

DA. No: DA16/1123/4

HPERM Ref: D17/217

Group: Planning & Development Services Group
Section: Development Services

Attachments: 1. DA16-1123 section 79C Development Assessment Report - Graham St, Nowra (under separate cover) ➡

Description of Development: Demolition of existing buildings and construction of a five storey residential flat building (31 units - 15 x 2 bedroom and 16 x 3 bedroom, over 3 to 5 levels) car parking, landscaping and associated infrastructure

Owner: South Coast Property Development
Applicant: Ghazi Al Ali Architects Pty Ltd

Notification Dates: 24 February to 11 March 2016.

No. of Submissions: Four (4) submissions from two persons.

Purpose / Reason for consideration by Council

The Development Application (DA) is being reported to Council due to a policy variation that is beyond staff delegation. The variation relates to a height exceedance. Under the current controls, a maximum height of 11m applies. The majority of the development is 15m.

The top of the parapet of the proposed building is RL19.2m AHD and RL 20m AHD to the top of one of the two lift overruns.

The vertical distance to the top of the lift overruns is 15.6m (from the existing ground level of RL4.4m AHD) at these points of the site. Utilising the slightly lower part of the site (RL4.2m AHD), the maximum vertical height to the rooftop parapet which represents the majority of the building height (at RL19.2m AHD) is 15m. The development therefore does not comply with the *current* 11m development standard.

The applicant has formally sought an exception to this development standard pursuant to clause 4.6 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

It is important to note that on 2 November 2016 Council commenced public exhibition of a Planning Proposal (PP) and draft Development Control Plan (DCP). The PP proposes to add a set of maximum building heights for the Nowra CBD into the SLEP 2014. The proposed new height control is 15m.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Confirm that it supports the height variation
2. Refer the application back to staff for determination.

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Options

1. Support the height variation (recommended).

Implications: This would enable the application to be finalised and conditions prepared to enable consent to be issued, noting that there has been a favourable section 79C assessment of the application by TCG Planning.

Refer to attachment 1. This is the full section 79 development assessment report prepared by TCG. The conditions of consent referred to as attachment E in that report have not been included as they are incomplete.

This option would not satisfy the objectors. The objectors could choose to pursue the matter through the land and environment court. It would however be necessary to demonstrate that due process was not observed with respect to the processing of the DA.

2. Not support the variation.

Implications: This would mean that the application could not be supported in its current form. This would require modifications to be made to specifically adjust the height which could have implications on the number of units in the development and potentially commercial considerations for the owners of the site. This option could also potentially result in litigation - by the applicant.

3. Defer consideration of height variation.

Implications: Council could defer consideration of the matter subject to the consideration of the formal exhibition of the PP and DCP for the Nowra CBD building heights and reconsider the issue thereafter. This option could potentially result in litigation by the applicant.

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

Location Map

Figure 1 – Location Map

Site - 65-69 Graham St, Nowra



Background

Proposed Development

The DA, as amended, seeks approval for the demolition of the existing commercial buildings and construction of a five (5) storey residential apartment building comprising 31 apartments (16 x 3 bedroom units and 15 x 2 bedroom units).

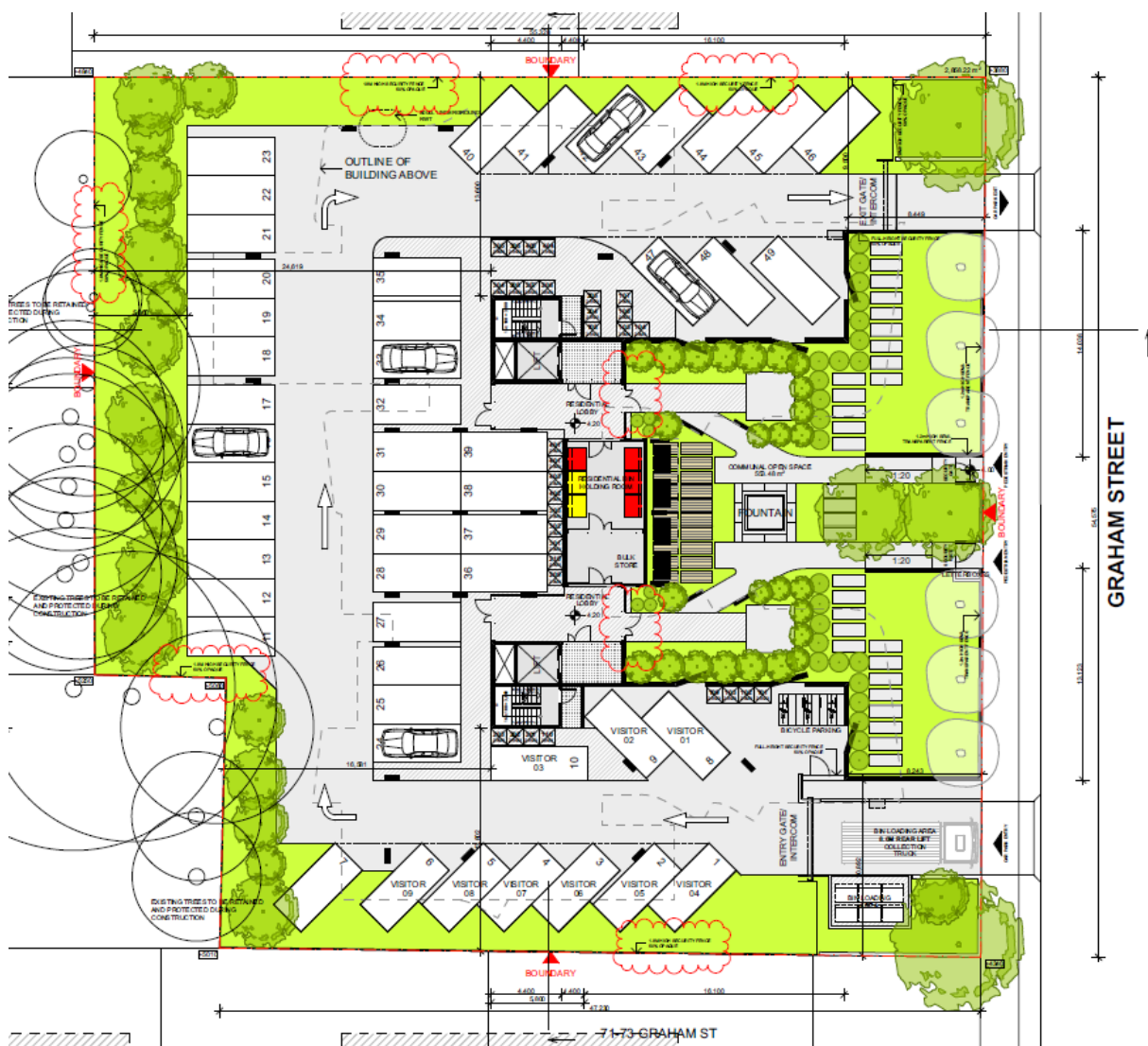
The ground floor comprises two separate entry lobbies and an open undercroft parking area, comprising 49 parking spaces for cars (9 to be allocated for visitors) and 8 bicycle racks (accommodating up to 16 bicycles).

The apartments are located on Levels 1 - 4 of the building. The majority of the bulk of the building (ie. 5 storey component) is to the rear of the subject land. The front portion of the building predominantly presenting to the street is three (3) storeys and separated into two "wings".

Note that the various floors of the building have not been included as illustrations in this report for privacy reasons.

Figure 2 – Ground Floor Plan

(From Architectural Drawings, Issue E)



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Figure 3 - photomontage

(Note: the proposal has had some design modifications since submitted which alter this photomontage – eg fence and design changes to the upper levels.)



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Subject Land

The development site comprises three parcels of land known as Lots H, J and K in DP 39320 (65-69 Graham Street, Nowra). Refer to Figure 1.

Site & Context

The development site:

- Contains an aging single storey commercial premises (No. 65 currently occupied by "The Everything Store"; No. 69 is occupied by "Nowra Hydroponics" and No. 67 is vacant and is 'boarded up'.
- Has a combined area of 2858.22m²;
- Has a combined frontage to Graham Street of 54 metres and northern (side boundary) of 53.968m. The south-western corner of the site is staggered as Lot K has a shorter northern (side) boundary of 46.315m. Lot K (No. 69) has a rear boundary of 16.5m and Nos. 65-67 have a combined rear boundary of 36.627m.
- Is predominantly level, with a slight crossfall from the south-western portion of the site (at RL5m AHD) to the north-eastern street frontage (at RL3.82m AHD).
- Is flood-prone.
- Is identified as contaminated land, and is within the vicinity of a heritage item.
- Is impacted upon by a small easements/restrictions as to user at the south-western corner of Lot J (No. 67).
- Is located at the northern part of the Nowra Central Business District (CBD) and is located opposite the southern portion of Harry Sawkins Park.

Figure 4 – context photos / images
“The Everything Store” and Harry Sawkins Park



Figure 5 – aerial photo of site and context relative to Harry Sawkins Park, Nowra



In summary, it is believed that the site has no significant features or physical impediments that would prevent the proposed development.

History of Application

The following provides details on pre-lodgement discussions, post lodgement actions and general site history:

- a) Pre Lodgement: A pre-lodgement meeting was held with Council planning, building and engineering staff and the applicant's planning consultant (Development Advisory Unit (DAU) Meeting on 19 August 2015).

- b) Post Lodgement: The DA was lodged on 5 February 2016. TGC Planning was engaged to independently assess the application on 3 March 2016.

During the assessment of the application Council officers requested additional information from the applicant on four occasions, 19 February 2016), 11 October 2016, 22 March 2016 and 16 June 2016.

Additional/amended information was provided by the applicant on 27 May 2016. The plans altered the unit mix from 20 x 2 bedroom units and 12 x 3 bedroom units, to 16 x 2 bedroom units and 16 x 3 bedroom units.

An assessment report of the matters of consideration under section 79C of the Environmental Planning and Assessment Act 1979 was prepared by TCG Planning dated 6 July 2016 recommended that the application not be supported at that time as some of the information was still considered to be inadequate and/or issues not satisfactorily resolved.

On 12 July 2016 the applicant was provided another opportunity to address the inadequate aspects of the application (in summary: clause 4.6 statement; setbacks, solar access and overshadowing; storage areas; safety and security, waste collection arrangements) and submit further amended information to address these matters.

On 10 October 2016 the applicant submitted amended plans and documents (cover letter, Crime Prevention by Environmental Design (CPTED) report, waste servicing letter, BASIX certificate), which was deemed to be unacceptable.

On 18 October 2016 the applicant was requested to meet with Council staff and the Council's planning consultant (held 2 November 2016). The revised design deleted one unit on Level 4 (therefore 15 x 2 bedroom units and 16 x 3 bedroom units) and increased setbacks to side setbacks to Level 4.

On 28 November 2016 the applicant submitted further amended plans and documents (cover letter containing Clause 4.6 statement; revised SEPP 65 Verification Statement, correspondence addressing parking accessibility and an updated BASIX Certificate).

- c) Site History: The site contains three (3) aging commercial properties that have existed on the site since the 1950s / 60s.

Issues

Clause 4.3 (Height of Buildings)

The SLEP 2014 'Height of Buildings' map does not stipulate a maximum building height for the subject land. Therefore subclause (2A) applies which states: "*if the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11m.*"

The majority of the building height is 15 metres. The development therefore does not conform to the 11m development standard. The applicant has consequently sought an 'exception' to the development standard pursuant to clause 4.6 of the SLEP 2014. The following diagrams illustrates the building elevations and shows the proposed 15m height control and the lift overrun protrusions.

Figure 6 - east elevation, Graham St, Nowra

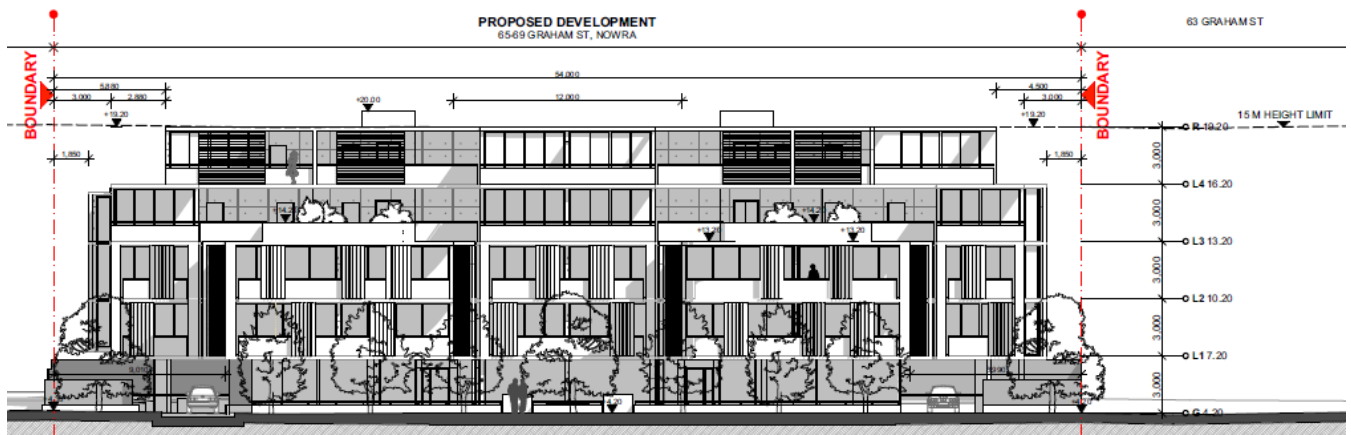
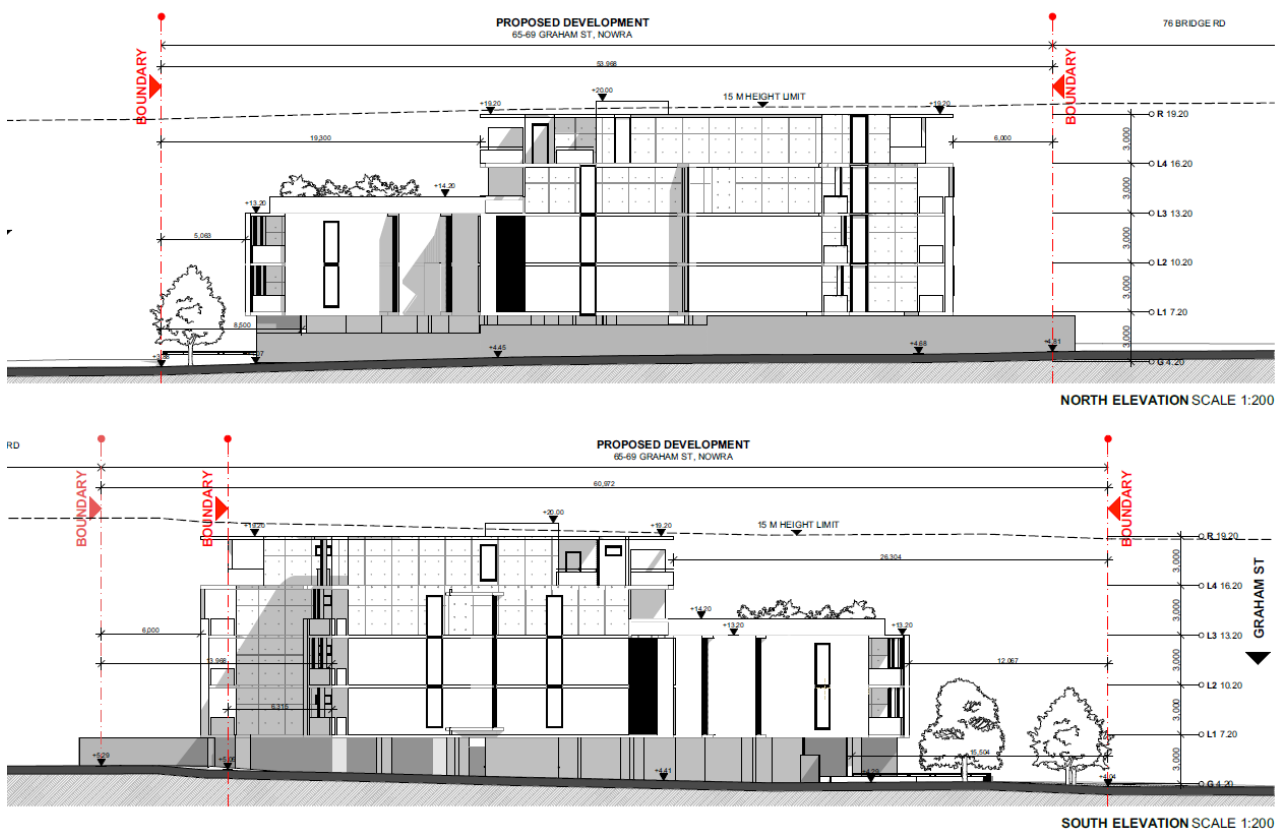
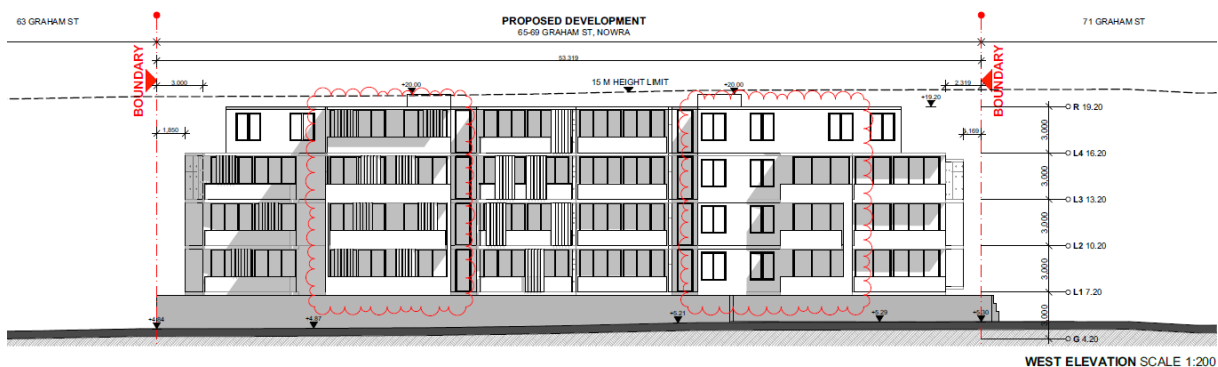


Figure 7 - North and South Elevations (side elevations)



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Figure 8 - west (rear elevation)



Clause 4.6 (Exceptions to Development Standards)

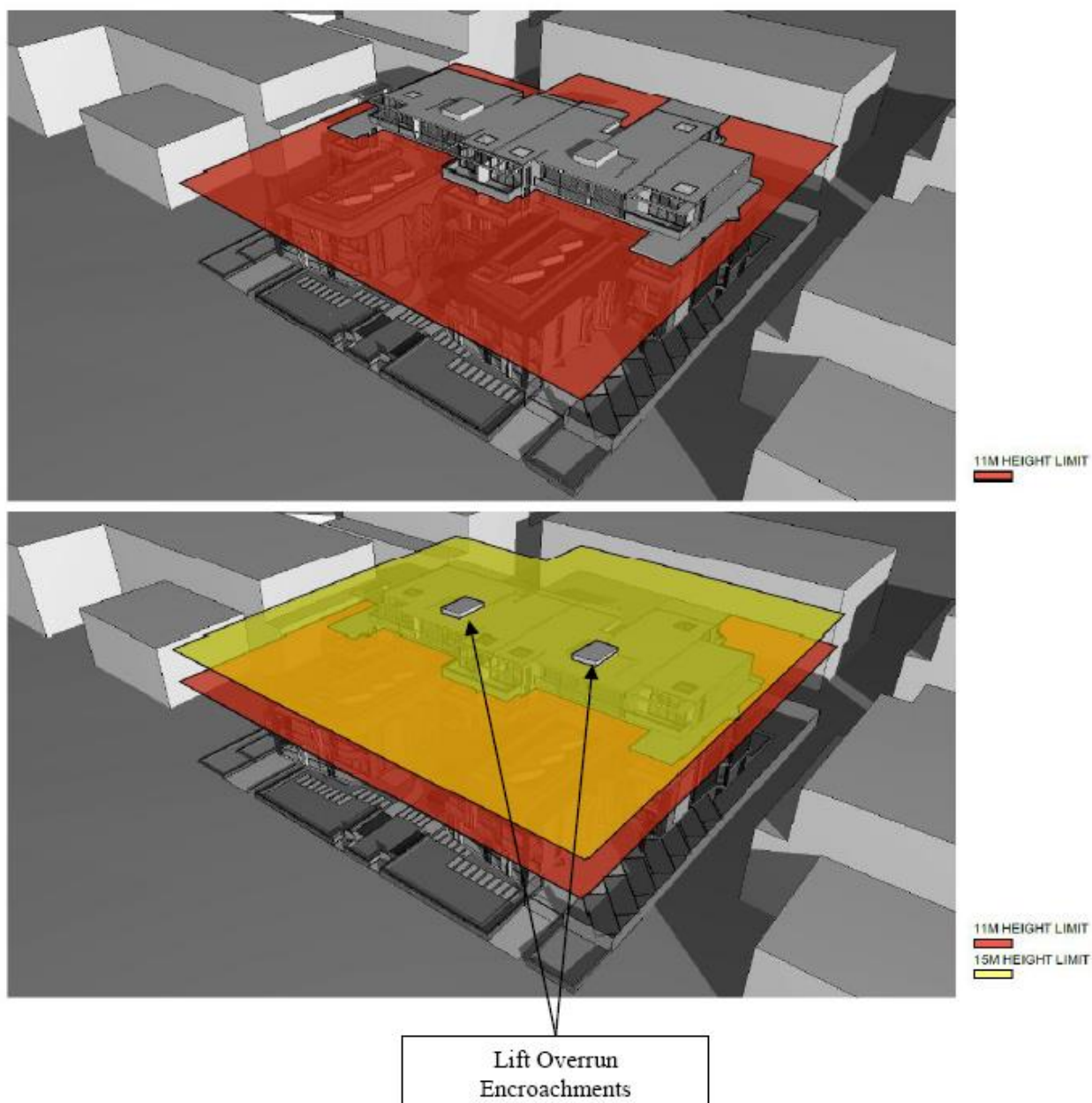
As required by this clause, the applicant provided a written request for an exception to the required maximum 11m building height development standard. The discussion and table below is extracted, edited and reproduced in part from TCG's report. It assesses and discusses the provisions of clause 4.6.

The full TCG report is attached to this report.

In summary, the amended Clause 4.6 variation statement submitted in November 2016 is improved from the original submission and is acceptable for the purposes of an assessment of height.

Clause 4.6 Variation to Height Control

The diagram below is Figure 2 within the applicant's Clause 4.6 Statement (dated 19/11/2016) and illustrates the extent of exceedence of the building above the current 11m height plane (top) and proposed 15m height limit, being the minor lift overruns (bottom).



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EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
<p>(1) <i>The objectives of this clause are:</i></p> <p>a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development ;</i></p> <p>b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p>		
<p>(3) <i>Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i></p>	<p><i>The proposal seeks a building height of fifteen (15) metres (15.6m including the lift overrun) in line with the Nowra CBD Building Height and FSR Study prepared by Jackson Teece and adopted by Council on the 22nd October 2013 which is four (4) metres higher (4.6m including lift overrun) than the maximum permissible building height under the Shoalhaven Local Environmental Plan 2014. The extent of the variation to the height controls is shown in Figure 2 with only minor encroachments from the lift overrun through the 15 metre height plane."</i></p>	<p>Provided</p>
<p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p>	<p>The applicant's written request stated:</p> <p><i>"In relation to the question as to whether compliance with the development standard unreasonable or unnecessary in the circumstances (Clause 4.6 Sub-clause (3)(a)), it is the applicants view that strict compliance with the Height of Buildings development standard is considered to be unreasonable in this particular case as the proposed variation simply seeks to maximise the site outcomes and improve the residential standard of the precinct.</i></p> <p><i>It also proposes a high quality residential interface with the Graham Street frontage in line with the Draft Nowra Development Control Plan. It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.</i></p> <p><i>The variation will not adversely affect the amenity of the immediate locality or compromise the objectives of Clause 4.3 of the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) or Section 5(a)(i)(ii) of the EP&A Act.</i></p> <p>The applicant further concludes:</p> <p><i>"....Based on the above assessment, the attached</i></p>	<p>Satisfied</p>

DE17.15

EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
	<p><i>amended architectural plans and the previously submitted supporting documents, it is considered that the proposed residential development will deliver a better planning outcome than one that strictly complies with the current 11.0 metres height limit for the following reasons:-</i></p> <ul style="list-style-type: none"> <i>i) strict compliance would not be responsive to the intent of the Nowra Development Control Plan (Draft) objectives and the associated Nowra CBD Building Height and FSR Study prepared by Jackson Teece as adopted by Council on the 22nd October 2013;</i> <i>ii) strict compliance would not be responsive to the intent of the Urban Design Development Controls for the Nowra CBD as adopted by Council on the 5th April 2016;</i> <i>iii) strict compliance would restrict building height and subsequent floor space outcomes to the extent that the alternative would be an underutilisation of the site in an area within the Nowra CBD that seeks higher height and density outcomes; and</i> <i>iv) strict compliance would not meet the desired future character of the precinct.</i> <p><i>In relation to this clause, it is considered that the objection to the Height of Buildings standard is well founded and that based on the details provided above, strict adherence to the development standard would appear to be unreasonable and unnecessary in the circumstances of this development application. Therefore, Council's favourable consideration of the application under the provisions of Clause 4.6 is sought."</i></p> <p>Evaluation: With the exception to increased development yield and ensuring the highest and best use of the land, it provides limited satisfactory reason as to why the outcome requires an increased building height.</p> <p>Council notes that the site is flood affected which has in part contributed to the design solution and increased height. This is discussed later in this table. Council also notes that the applicant has also relied on the new proposed height controls.</p> <p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, para 61, Commissioner Person summarises the considerations from Wehbe v</i></p>	

DE17.15

EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
	<p><i>Pittwater Council</i> [2007] NSWLEC 827 at [42] per Preston CJ, and notes in para 62 that clause 4.6 can be considered in a similar way to that of SEPP 1. In <i>Wehbe</i> at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.</p> <p>A brief response to these has been undertaken to establish whether there is some merit in considering Clause 4.6:</p> <ul style="list-style-type: none"> ▪ <i>The underlying objective or purpose is not relevant to the development:</i> The objective of Clause 4.3 is relevant and addressed elsewhere. ▪ <i>That the objective would be defeated or thwarted if compliance was required:</i> If the PP currently being exhibited is adopted and gazetted, then the objective of Clause 4.3 in terms of compatibility of desired future character and building height would not be achieved if the 11m height was adhered to. ▪ <i>That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard:</i> No known departures have occurred from the standard to date by Council within the locality. However, Council has recently adopted and exhibited documents that confirm a desired future building height exceeding the current standard of 11m within the planning instrument and development controls. ▪ <i>The zoning of the land is unreasonable or inappropriate:</i> The zoning of the land is appropriate. <p>Overall, the desired future character and height of the precinct in exhibited draft planning instrument and controls warrants consideration of the 11m height limit being unreasonable or unnecessary.</p>	
a) <i>that there are sufficient environmental planning grounds to justify</i>	The applicant's written request stated the following in response to this provision:	Satisfied

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EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
<p>contravening the development standard.</p>	<p><i>"...the subject site has particular circumstances in relation to flooding impacts which has triggered the specific design response. The site is affected by flooding in 100-yr ARI storm and the PMF as identified by Shoalhaven City Council, who have provided a flood certificate which identified the 1% AEP flood level for the site at RL5.8m AHD and the PMF flood level is RL 8.8m AHD. The existing ground levels range between RL3.88m AHD and RL5.01m AHD which is below the flood planning level.</i></p> <p><i>This has necessitated that the building be designed such that on-grade parking is provided with habitable floor levels on top. Basement or sub-basement parking is negated due to the flooding impacts. The lowest habitable level is proposed at RL 7.20m AHD which is clear of the 1% AEP flood + 500mm freeboard (ie: RL6.30m AHD). If strict adherence to the 11.0 metre height limit were observed, then the maximum number of levels would be three without undercroft car parking. This would be further reduced to two levels if undercroft parking were provided. This would represent an underdevelopment of the site and would be contrary to the intent of the Nowra Development Control Plan (Draft) objectives and the associated Nowra CBD Building Height and FSR Study prepared by Jackson Teece as adopted by Council on the 22nd October 2013.</i></p> <p><i>By adopting the proposed fifteen (15) metre height controls and raising the building such that it is clear of the flood planning level (with undercroft parking) results in a more efficient and orderly use of the land and will produce a better outcome than would otherwise be the case if strict adherence to the standard were observed. In relation to this clause, it is considered that the objection to the Height of Buildings standard is well founded."</i></p> <p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in the Clause 4.6 objection. While not referencing this Judgement, and limiting the response to this provision as above, the applicant has addressed the site-specific flood impacts and how compliance with the 11m height would limit the feasibility and appropriate development of the site having consideration to this particular constraint.</i></p>	

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EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

[illegible]


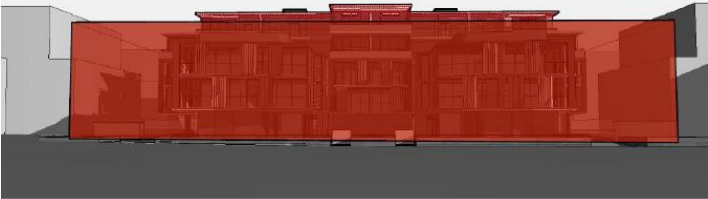
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EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
<p>access to existing development,</p> <p>c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.</p> <p><u>Objectives of the B4 Zone</u></p> <ul style="list-style-type: none"> To provide a mixture of compatible land uses. To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling 	<p><i>subject site is not a heritage listed item on Schedule 5 of the Shoalhaven Local Environment Plan (LEP) 2014, it is however in the vicinity of "Rodway's Cottage" which is identified as Item 336 on the LEP. Therefore, consideration of the heritage impact on the visual setting of nearby heritage items was required with the report supporting the proposal on heritage grounds. It will not have any adverse physical and visual impacts on the local heritage significance of the nearby Rodway's Cottage."</i></p> <p>In respect to impacts to compatibility and existing development (Objectives a and b above), the applicant provides the following commentary in the correspondence/Clause 4.6 Statement dated 19/11/2016 (excerpts from p2 and 8):</p> <p><u>"Shadow Diagrams and Design Changes</u> <i>The attached amended architectural plans (Revision E) provide additional details in relation to the analysis for the site the south and what may be built in the future. A solar access 3D comparison plan (see Issue A - Sheet A1055) is also provided which shows potential solar impacts from the eleven (11) metre height compliant development on #71 Graham Street compared to the improved impacts resulting from the proposed development.</i></p> <p><i>Future impacts on amenity of the potential residents at the sites towards the south would not be negatively impacted by the proposed development. Figure 1...shows that a compliant scheme on the subject site will overshadow the site to the south. Notwithstanding, the proposed development would in fact improve the solar access in comparison with an eleven (11) metre high building compliant with the current controls. Further assessment on various times of the day is also available in drawing (Sheet A1055 Solar Access 3D Comparison). Conclusively, the proposed built form would result in a positive outcome in terms of its marginal impact on the amenity of any future building within the subject precinct between Graham and Bridge Street.</i></p> <p><i>The height variation is considered to be reasonable when considered within the context of the overall streetscape with its primary frontage to Graham Street and the intent of the Nowra CBD Building Height and FSR Study prepared by Jackson Teece adopted by Council on the 22nd October 2013. The building is</i></p>	

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EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
	<p><i>four storeys and integrates satisfactorily within the future street context (see Figure 3 - copy of excerpt below).</i></p>  <p><i>The satisfactory streetscape impacts are further highlighted in the amended plans (3D Comparison 11 Built Form – Issue A Sheet A1800) as shown in Figure 4 (copy of excerpt below) where an eleven (11) metre compliant built form would have a significantly greater impact that the proposed development as viewed from McGrath Avenue."</i></p>  <p>11M HEIGHT COMPLIANT BUILT FORM</p> <p>Applicant's response to how the proposal meets the objectives of the B4 Zone:</p> <p><i>"The proposed development meets the objectives of the zone in that:-</i></p> <ul style="list-style-type: none"> <i>i) it provides a mixture of compatible land uses comprising residential units close to the Nowra town centre and public transport; and</i> <i>ii) it integrates suitable residential accommodation in an accessible locations that maximises public transport patronage (ie: bus services) and encourages walking and cycling.</i> <p><i>Therefore, it is considered that the proposal satisfies the public interest test as it is consistent with both the objectives of the standard and for development within the zone. In relation to this clause, it is considered that the objection to the Height of Buildings standard is well founded."</i></p> 	
(b) <i>the concurrence of the Director-General has been obtained.</i>	Concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).	Satisfied

DE17.15

EDITED Table 5: Compliance with SLEP 2014 - Contravention of Clause 4.3 Building Height

Clause 4.6 Exceptions to Development Standards	Applicant's Response/Justification (in <i>italics</i>) and Assessment Officer's Comment	Consistent/ Complies
(5) <i>In deciding whether to grant concurrence, the Director-General must consider:</i>		Council has this function.
(a) <i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i>	There are no anticipated matters of State or Regional significance that would hinder the Director-General from providing concurrence,	Satisfied
(b) <i>the public benefit of maintaining the development standard, and</i>	There is not considered to be an overall public benefit which would be achieved by maintaining the development standard.	Satisfied
(c) <i>any other matters required to be taken into consideration by the Director-General before granting concurrence.</i>	There are no anticipated environmental planning considerations that would hinder the Director-General from providing concurrence, with the exception of an inconsistent building height if the proposed amendments to allowable building height within SLEP 2014 and associated controls within SDCP 2014 are not supported/do not proceed. If approved, the building will be inconsistent with existing and other future buildings. This is however unlikely.	Satisfied

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Draft Amendments to SLEP 2014 and SDCP 2014 (Nowra CBD Height, FSR and Urban Design Development Controls)

Section 79C(i)(a)(ii) requires the consent authority to take into consideration the provisions of

"any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)."

On 2 November 2016 Council commenced public exhibition of a PP and draft Development Control Plan (DCP) Chapter for the Nowra CBD Building Heights and Urban Design Development Controls.

The PP proposes to add a set of maximum building heights for the Nowra CBD into the Shoalhaven Local Environmental Plan 2014; and the draft DCP Chapter, for proposed inclusion in the SLEP 2014, seeks to establish a set of urban design controls to support the increased building heights and guide future built form in the Nowra CBD.

At the time of preparation of the TCG assessment report (early December 2016), the PP and Draft DCP Chapter were still being publicly exhibited (concluding on 16 December 2016).

While the draft controls were not publicly exhibited at the time of lodgement of the application (and for the majority of the assessment period), the application relied heavily on the proposed new height control of 15 metres, which had previously been adopted by Council within studies and draft documents (as detailed in the background below). However, the

current exhibition of the PP (and associated documents) now requires statutory consideration of these documents under Section 79(c)(i)(a)(ii).

The proposal is five 'storeys' and 15.6 metres high (at the lift overruns) and 15 metres elsewhere on the building, significantly higher than the maximum allowable height of 11 metres within the current development standard. Refer to Figure 1.

Given the proposed development relies heavily on the proposed amendments to the height controls within the SLEP 2014 and SDCP 2014 (and subsequent desired future character) a brief background, content and status of the relevant draft documents is provided below so that the relevance of the draft reports are clearly understood in the context of the assessment of the proposal. Further detail is contained in the attached section 79C Report.

Background to Nowra CBD Building Height & FSR Study (Jackson Teece – 2013)

Council commissioned consultants Jackson Teece P/L to prepare a Draft Building Height and FSR Study (hereby, 'Draft Study') over the area of the proposed Commercial Core (B3) and Mixed Use (B4) zones in the Nowra CBD as exhibited in the Draft SLEP 2013.

A detailed report on the Draft Study was submitted to Nowra CBD Action on 20 June 2013, and Council, resolved on 21 June 2013 (MIN 13.684) that:

- a) *The Draft Nowra CBD Building Height and Floor Space Ratio (FSR) Study be placed on public exhibition for a period of 28 days;*
- b) *The Draft Nowra CBD Building Height and Floor Space Ratio (FSR) Study be placed on Council's internet site and also displayed at Nowra Administrative Building and Nowra Library;*
- c) *Landowners within the study boundary be informed in writing of the public exhibition;*
- d) *The Department of Planning & Infrastructure be informed of the public exhibition and of Council's intention to incorporate the final outcome of the Draft Study into the SLEP 2013 at the appropriate point;*
- e) *A further report be submitted to Council following the public exhibition period.*

The draft Study was publicly exhibited in accordance with the above resolution. In summary, the exhibited draft Study outcomes recommended that that the subject site have a proposed maximum building height of **15 metres and FSR of 2.3:1**.

A report to the Planning and Development Committee was prepared on 10 October 2013 on the outcome of the exhibition.

Council received 3 (three) written submissions from individuals. Two more submissions were received after the close of the exhibition. The submissions were summarised and the only relevant comments with respect to the subject land/vicinity was that the area between Bridge Road and Harry Sawkins Park was that there should be 12m height limit (not 15m). The report recommended the proposed height controls of 15m remain.

Council resolved (in part) on 22nd October 2013 to:

- *Adopt the exhibited building heights and FSRs (ie. a desired height of 15 metres for the Bridge Road and Graham Street vicinity)*
- *Commence the preparation of a planning proposal be prepared to incorporate the final height and FSR outcomes into the SLEP 2013;*
- *Prepare an urban design Development Control Plan (DCP) to support the adopted heights and FSRs, and placed a high priority project in the Council's Delivery Program."*

Background to Urban Design Development Controls for the Nowra CBD (Studio GL)

The following excerpts (as extracted from the attached TCG Report) from the Development Committee Report of 4 April 2016 provide some background to these controls:

"The exhibited Urban Design Development Controls Report (Studio GL, Final Draft, dated Sept 2015) contains a range of controls for building and floor heights, building setbacks, building bulk and scale, articulation, heritage conservation and solar access. The report also identifies opportunities to build on the existing character of the different precincts within the CBD, opportunities for active street frontages, improved vehicle and pedestrian linkages, and the protection of views and vistas.

A copy of the exhibited draft Urban Design Development Controls Report was made available to Councillors for review prior to the meeting. Councillors were also given a detailed briefing by the project consultant (Di Griffiths from Studio GL) on 24 September 2015.

Community Engagement and Public Exhibition

The draft urban design development controls were prepared in consultation with a project liaison group that was made up of local property/business owners, architects, planning consultants and community representatives. The consultants facilitated 3 workshops with the group during the development and testing of the controls. The draft report was public exhibited from 25 November 2015 to 8 January 2016 (inclusive). Only one (1) formal submission was received, as well as internal comments from Council's Traffic and Transport Section.

Submission Comments

The submission congratulates Council on the draft report and the efforts to improve the usability of the Nowra CBD. Strongly supports the preservation of views, the recognition and preservation of heritage items, solar principles and the focus on walkability in the CBD. The submission also made a number of suggestions in relation to civic upgrades, healthy living, historical walks and new development proposals that are generally consistent with the Nowra CBD Master Plan and Revitalisation Strategy, but outside of the scope of the detailed Development Controls Report.

Planning Proposal (LEP Amendment) and DCP Chapter

The Urban Design Development Controls Report recommends setting building heights in the Nowra CBD, as shown in Figure 1 below. A PP has been prepared to incorporate the recommended heights into Shoalhaven Local Environmental Plan (LEP) 2014 and the other related urban design development controls will be included as a Chapter in Shoalhaven Development Control Plan (DCP) 2014. Council resolved on 5 November 2015 to prepare the required PP and DCP Chapter. Following the receipt of Gateway determination for the PP, the proposal and draft DCP chapter will be exhibited as a package.

Council resolved to:

- a) Adopt the Nowra CBD Urban Design Development Controls Report as exhibited with the following minor changes:
 - i. Include a note in Section 3.2 of the report to ensure corner building setbacks do not impact on planned intersection upgrades in the CBD.
 - ii. Include a note in Section 3.9 of the report that outlines the requirements for active ground floor uses under Clause 7.16 of Shoalhaven Local Environmental Plan 2014.
- b) Advise the NSW Department of Planning and Environment and those who made submissions on the draft report of Council's resolution in this regard.
- c) Report back to Council following the public exhibition of the resulting Nowra CBD Planning Proposal and Shoalhaven Development Control Plan 2014 chapter."

The recently exhibited documents include the final version of the Urban Design Development Controls for the Nowra CBD Report (Studio GL, 5 April 2016), (including a few minor edits from the Sept 2015 version) (with no changes relating to the subject application). The exhibited draft Nowra CBD Urban Design Development Controls DCP Chapter directly adopts the controls from within the above Studio GL report.

Consistency of the Development Application with the exhibited Planning Proposal and draft Nowra CBD Urban Design Development Controls DCP Chapter

The Shoalhaven LEP 2014 Height of Buildings Map will be amended if the PP is finalised as exhibited. Clause 4.3(2) 'Height of Buildings' will therefore apply to the subject application which states "*the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*"

The proposed development conforms to the proposed maximum height of 15 metres (with the exception of the two lift overruns, which are at a height of 15.6m (ie. exceeds by 600mm).

The applicant did not address the proposed draft DCP controls (as they were adopted subsequent to the lodgement of the DA). It is noted however that the draft document had been exhibited, with the landowner notified in November 2015 - January 2016, prior to the lodgement of the DA.

However, most controls are satisfied/complied with, with the exception of the minor exceedence of the maximum 15m building height by the two lift overruns (15.6m), and provision of an east-west pedestrian link between Graham St and Bridge Road.

The latter non-compliance/inconsistency has been raised with Council's Strategic Planning Division as, if approved and constructed, the proposed linkage will not be achieved in the mapped location. Further, whilst there is an intention to facilitate a pedestrian connection, it is on private land and there are no mechanisms / incentives currently in place to facilitate the outcome.

What weight should be given to the recently exhibited Planning Proposal and draft Nowra CBD Urban Design Development Controls DCP Chapter

The draft SLEP and SDCP amendments detailed above, now have some statutory weight, as they have progressed to an exhibited draft environmental planning instrument/PP [considered within Section 79C(1)(a)(ii)].

A 'planning principle' on the correct approach to consideration of and the weight to be given to detailed planning policies adopted by a council has therefore been considered in the assessment (within *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 revised - 01/10/2004). Refer to the attached section 79C report for further information and detail.

In summary:

- The proposed height controls can now be considered under Section 79C(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 (relating to an exhibited draft environmental planning instrument).
- The controls have some weight in the assessing the development.
- The public interest [section 79C(e)] is also of relevance, in particular given that the exhibition of the draft instrument is currently occurring (at the 'tail-end' of the assessment of the application).
- TCG has advised it is therefore prudent to also consider the level of public consultation of the proposed controls (height) prior to the current formal exhibition of the draft planning instrument and development controls.

- A fairly robust study was prepared which arrived at the proposed height of 15m for the site (Jackson Teece, 2013), in addition to more detailed urban design controls (Studio GL, 2015).
- Both studies have been adopted by Council following a detailed process of consultation with the community, with relatively little interest and objection to the proposed height of 15m for the precinct within which the subject site is located.
- The development application was also widely notified/exhibited (as being a 3 to 5 storey building) and only two objections to this application were made on the basis of inappropriate building height.

TCG's consultation with Council's Strategic Planning Staff at the time of writing [the TCG report (early December 2016)] indicated there were only a few enquiries being received at that time (during the current formal exhibition of the proposed increased building heights (ie. PP amending SLEP 2014 and controls within SDCP 2014).

The assessment of the application therefore places a reasonable weight on the intended building scale (15m) for the site, however places greater and more significant weight on the objectives of the controls (including the provisions of clauses 4.3 and 4.6 of SLEP 2014), and the merits of the proposal under SEPP 65 associated Apartment Design Guidelines and the SDCP 2014.

If this assumption is incorrect, and future community concern from the future exhibition of a draft amending LEP and DCP results in amendment to the 15m height control in particular, then Council could take the view that the application is premature and will set a precedent for the locality that may be inconsistent to the ultimate gazetted height control and associated development controls.

Exhibition of the PP and draft DCP

This will be reported to Council in due course. Preliminary advice, dated 4 January 2017, from Strategic Planning advises:

"During the public exhibition period a total of 11 submissions were received (two of which were received from one company/individual). The submissions do not relate solely to the draft DCP, but also the Planning Proposal to amend the building heights in the Nowra CBD which was exhibited concurrently.

Majority of the submissions object to the proposed building height controls with some suggesting they are too high for a 'regional' context, create visual and overshadowing impact, and do not have regard to the heritage / character of Nowra. A maximum HOB of 12m is suggested as being the most suitable / sympathetic especially within proximity to heritage items or buildings with heritage character or streets that maintain vistas of Cambewarra Mountains. There is some acceptance of proposed higher HOB away from primary streetscapes, i.e. in Stewarts Place. Where buildings in excess of 12m are supported, it is suggested that there should be upper storey setbacks (this is a requirement of the DCP with customised upper storey setbacks for different streets/areas).

One submission makes reference to the current application on Graham Street (Central Park development). Objections are made with respect to the building height, contamination, overshadowing of adjacent heritage property and bulk and scale of the proposed development. This submission states that development in Nowra should be capped at no greater than 3 storeys....."

Planning Assessment

The DA has been assessed under section 79C of the Environmental Planning and Assessment Act 1979. The assessment considers matters prescribed by section 79C including but not limited to planning instruments, Council's DCP, site suitability, impacts of the development and public interest. The draft planning controls have also been considered in the assessment.

In summary, the assessment is favourable.

Policy Implications

TCG Planning comments in conclusion that:

The application relies on draft development standards and controls that have been exhibited in strategic planning studies and draft plans, and are currently being formally exhibited as a Planning Proposal/draft environmental planning instruments (with associated development controls), but are not yet in force.

The desired future character is well articulated within the community based on the draft strategic planning documents for the Nowra CBD heights, however relies on consistent community and council opinion for the future controls which are still being exhibited. If the development is approved and circumstances change, then there is a risk that the proposed development will not be consistent with the final gazetted planning instrument and associated development controls. Notwithstanding this, considerable weight should be given to the proposed building height as detailed in this report. The assessment has identified that the overall compatibility of the proposal and consideration of streetscape, bulk and scale are considered acceptable. The bulkier rear portions of the building are offset by compliant building setbacks and separation from the rear/western boundary and deep soil planting area.

The building height and side setbacks (in accordance with the current LEP and ADG respectively) are not compliant, however the applicant has amended the plans to improve the setbacks of the upper level. With some recommended additional minor design amendments (which can be conditioned), the privacy impacts can be ameliorated. Analysis of the impacts with respect to overshadowing and/or solar access was undertaken, being the first of its scale within the precinct, as the non-compliant side setbacks could detrimentally impact on the development potential for the properties on either side. The analysis identified that if the property to the south was developed for commercial (non-residential) purposes, the proposed development is reasonable and the future development to the south will comply, regardless of the height or setback non-compliance. If the property to the immediate south was developed for residential purposes, then the height and side setbacks of the proposed building would most likely unreasonably limit the development footprint and associated yield to achieve the required solar access to the northern facade than if it complied with the 11m height control. However, the proposed development has a similar impact to that of a compliant commercial development on that land, and there are no current or proposed controls that require consideration of the overshadowing impacts to Business-zoned land, nor to consider whether the likely future use of the adjacent land will be developed for residential purposes. Therefore, on balance, having regard to: the CBD location/context and Business-zoning; the existing commercial use of the land to the south; lack of objection from the property owner to the immediate south, and the probability that the site to the south will be developed for commercial purposes, the proposed height and southern side setbacks (and associated overshadowing impacts) are considered to be acceptable.

Consultation and Community Engagement:

In accordance with the requirements of the Environmental Planning and Assessment Act (EPA Act), Environmental Planning and Assessment Regulation (EPA Regulation) and applicable components of Council's "Community Consultation Policy" the DA was notified as follows. It is noted that the development was described as "demolition of existing buildings and construction of a residential flat building (32 units - 12 x 2 bedroom units and 20 x 3 bedroom, over 3 to 5 levels) car parking, landscaping and associated infrastructure".

- Individual property owners within a 200 metre radius of the site were notified of the proposal. Council should confirm that relevant community groups and the Chamber of Commerce were also notified. The notification period was from 24 February to 11 March 2016;
- A notice was not placed on the land (according to administration procedures checklist on file);
- The proposal was advertised in the local press on one occasion (South Coast Register 24 February 2016– copy of press notification on file); and
- The application and supporting documentation were on display at Council's City Administrative Centre in Nowra as well as Council's website.

An article on the proposed development was also placed in the South Coast Register and Illawarra Mercury on 9 February 2016.

Two separate submissions from a nearby property owner, and two submissions from another interested person was received by Council. Further discussion of the issues raised in the submissions that have been received is provided in the following sections of this report.

The minor amendments to the development application and additional information received by Council in May, October and November 2016 were not re-notified as Council was of the opinion that the amended application differed only in minor respects from the original application. The changes resulted in increased setbacks, changes the unit mix (number of bedrooms) and reduced number of units from 32 to 31. The overall shape and characterisation of the development remained however as originally put to Council.

Key issues raised as a result of the notification include but were not limited to matters listed below. A more detailed analysis can be found in the attached section 79C assessment report by TCG.

- Exceed height control.
- The existing 1-2 storey character should be maintained.
- Impact on Rodway cottage.
- Contaminated site.
- Plans are misleading. Accuracy of shadow diagrams is questionable.
- Traffic impacts.
- Impacts on Harry Sawkins Park.
- Visual impact.
- Noise and light emissions.

Financial Implications:

In the event that Council decides not to support the height variation, this will mean that the design as submitted could not be approved. The applicant could elect to pursue an amended design or pursue an approval via the Land and Environment Court. Litigation has cost implications for Council. Further, the 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 implications for Council.

Legal Implications

In the event that the variation is not supported and a refusal issued in the event that the proposal was not modified to conform with current height controls, an appeal with the land and environment court is possible. The applicant also has the option to request a section 82A review in the event of a refusal which would mean that the matter would be brought before the Council again for reconsideration. A request for a review or the lodgement of an appeal must be made within 6 months of the date of determination.

Summary and Conclusion

The proposal has been assessed under section 79C of the Environmental Planning and Assessment Act 1979 and found to be satisfactory. There have been no *substantive* planning reasons or significant defects with the application to warrant recommending a refusal. Furthermore, the height variation or 'exception' has been supported having regard to the criteria contained within clause 4.6 of the SLEP 2014.

The modifications to the design made during the assessment, have substantially addressed issues raised during the assessment. There are some matters which may warrant 'conditioning' in the event of an approval being issued, which would address the recommendation made in TCG Report, section 10. (It is noted that during the preparation of the report, revised stormwater details were submitted and with a revised landscape plan.)

DE17.16 Development Application – 1 Brooks Lane, Kangaroo Valley – Lot 102 in DP 1056895

DA. No: DA16/1561

HPERM Ref: D17/31245

Group: Planning & Development Services Group

Attachments:

1. Clause 4.6 Statement - 2nd May 2016 (under separate cover) ➡
2. Supporting information Nov 2016 (under separate cover) ➡
3. Statement of Environmental Effects - by applicant - 2 May 2016 (under separate cover) ➡
4. Statement of Heritage Impact - 2 May 2016 (under separate cover) ➡
5. Site Plan ↓
6. Section Plan ↓
7. Submission (under separate cover) ➡

Description of Development: Erection of new dwelling house

Owner: John Sinclair and Simone O'Halloran

Applicant: Anika Ekholm of Teknemodus Pty Ltd

Notification Dates: 28 June to 13 July 2016

No. of Submissions: One (1) in objection
Nil in support

Purpose / Reason for consideration by Council

Council is in receipt of an application to construct a new dwelling which exceeds the 5.5 metre height limit set by clause 4.3 of Shoalhaven Local Environmental Plan 2014 (SLEP-2014). The two storey portion of the dwelling has a height of 6.63 metres (20.5%) and 6.55 metres (19.1%) and the rear single storey portion has a part encroachment to 6.3 metres (14.5%).

These variations are beyond the delegated authority of Council staff which is set at 10%. The application is therefore presented to Council for determination.

Recommendation (Item to be determined under delegated authority)

That the Council:

1. Support the variations to the 5.5 metre height limit set by clause 4.3 of SLEP-2014;
2. Refer the application back to staff for determination

Options

1. Support the variations as presented in the application.

Implications: The development can proceed as proposed, subject to meeting other considerations under section 79C of the Environmental Planning and Assessment Act and subject to such conditions as may be imposed arising from those considerations.

DE17.16

2. Decline to support the variations.

Implications: The application as submitted would be refused on the grounds that it exceeds the maximum building height set out in SLEP-2014 and that Council does not support the proposed variations. The applicant would be entitled to appeal against Council's refusal in the Land and Environment Court.

3. Decline to support the variation and invite the applicant to redesign the proposal so as to meet the height limit.

Implications: The applicant would need to substantially redesign the proposal. If the applicant refuses to change the design they would be entitled to appeal Council's failure to determine the application to the Land and Environment Court as a deemed refusal.

Background

Proposed Development

The allotment is identified as Lot 102, DP1056895, No.1 Brooks Lane Kangaroo Valley. The allotment is located on the corner of Brooks Lane and the unformed portion of Murray Street (Refer Figure 1).



Figure 1 - Location Map

The application proposes the erection of a dwelling house of partly one and two storeys. The walls are a mixture of rendered blockwork and painted fibre cement sheeting and the roof is corrugated steel. The building has three bedrooms and a total floor area of 280 m² (ground floor 150 m², first floor 70 m² and garage 60 m²). The site plan for the application is at Attachment 5.

The building steps down the steeply sloped site in a series of pavilions. The simple skillion roofs of the garage and two storey element of the building run at a slope of 14 degrees which is approximately parallel with the slope of the ground. The roof of the single storey dining room area at the northern end of the building slopes in the opposite direction at an angle of 11 degrees. This provides interest in the design and is aesthetically appealing. The roof form and proposed heights are shown in the section drawing below in Figure 2 (also see Attachment 6).

Figure 2 also shows a maximum cut of 1.5 metres and fill of 1.4 metres. The design has a mixture of slab on ground and elevated floors and is generally considered site responsive.

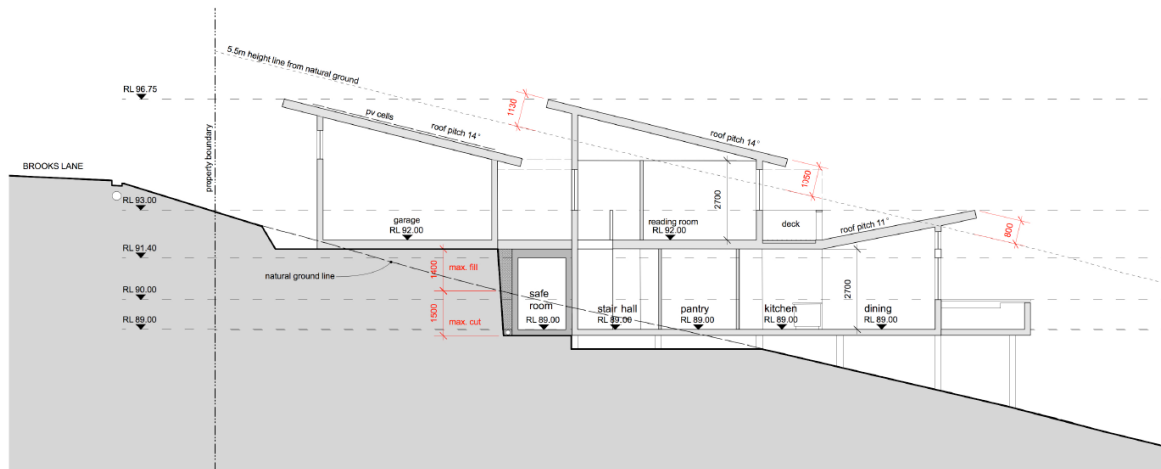


Figure 2 - Section drawing

The land is zoned RU5 Village zone. The height of buildings map referred to in clause 4.3 of SLEP-2014 sets the maximum building height for this allotment at 5.5m.

In Figure 2 the dotted line represents the 5.5 metre height limit and the following comments are made:

- The garage at the front of the allotment is fully below the height limit.
- The 2 storey portion exceeds the height by 1.13 metres (20.5%) at the front and 1.05 metres (19.1%) at the rear.
- The single storey portion at the rear over the dining room has a point encroachment of up to 0.8 metres (14.5%).

As these variations exceed the height limit by more than 10%, it is beyond the delegations of staff. The application therefore needs to be referred to Council for determination.

Subject Land

The allotment was created by a subdivision in 2003. It is rectangular in shape being 20.115 metres in width and 45.46 metres in depth. The area of the allotment is 914 m².

The allotment fronts Brooks Lane to the south and adjoins the unmade portion of Murray Street to the west. This allotment is ideally orientated for maximum solar access from the north to the rear of the allotment.

Site & Context

The land is vacant and falls steeply from its frontage with Brooks Lane towards the north. The site is in an elevated older part of Kangaroo Valley and is in the vicinity of a number of heritage listed properties, namely:

- 20 Quirk St – “Hilltop”. This is a federation period weatherboard residence and former doctor’s surgery (Item No 244) (across Brooks Lane and uphill of the site);
- a number of weatherboard federation period cottages and shops at H/N’s 116, 118, 120 and 124 Moss Vale Rd (Items Nos. 220, 221, 222 and 223).

The 5.5 metre height limit was set in SLEP-2014. Figure 3 shows the location of both 5.5 metre (blue) and 8.5 metre (green) height limited allotments.



Figure 3 - Height limit map (Blue = 5.5 metre height limit, Green = 8.5 metre height limit)

The site is one of only two vacant lots fronting Brooks Lane. The other vacant allotment is 3 Brooks Lane and this adjoins the subject site to the east.

History

The subject lot was subdivided from 110 Moss Vale Road by a subdivision registered on 8 August 2003 (S/F 9274). This subdivision also dedicated a strip of land 5 metres wide to Council as road widening to Brooks Lane.

Council granted consent for the erection of a two storey dwelling house and detached double garage on the subject allotment (DA07/2861). This consent was not commenced and subsequently lapsed. This application included a building height of approximately 7.5m, which was compliant with the then DCP66 height limit of 8m.

SLEP-2014 reduced the height limit to 5.5 metres. The rationale for this was to provide a buffer for the heritage precinct which needs to be considered in this current assessment.

Issues

Clause 4.3 Shoalhaven LEP 2014

Clause 4.3 of SLEP-2014 imposes a 5.5 metre height limit on the subject land. The application proposes a building with a maximum height of 6.63 metres. The elements of the building that exceed the 5.5 metre height limit are the roof and upper walls of the two storey part of the building and the upper edge of the dining room roof.

Applicant's Submission

The following information was provided by the applicant in support of this variation:

- Clause 4.6 variation statement (Attachment 1)
- Documents including maps, annotated copy of objector's letter addressing alleged inaccuracies and photographs of buildings showing skillion roofed buildings that the applicant considers are compatible with the landscape (Attachment 2).
- Statement of Environmental Effects (Attachment 3);

- Statement of Heritage Impact (Attachment 4).

In their clause 4.6 variation statement, the applicant states that the main reason for the variation is the steeply sloping site. The stepped design with its partly 2 storey portion minimises the building footprint and its bulk and scale. This also allows for generous setbacks to provide privacy and amenity for neighbours and occupants.

Discussion

The applicant needs to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Council cannot grant consent for such a development unless it is satisfied the applicant has adequately addressed the above matters. Further, the proposal must be in the public interest because it is consistent with the objectives of both the development standard and the zone in which the development is proposed.

The objectives of the development standard are:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) *to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

The development is considered consistent with the objectives of the development standard for the following reasons:

- the building is a single dwelling of modest size and it will sit comfortably with the existing and desired future character of the area. The proposed height is compatible with surrounding development.
- the development will not have any adverse impact in terms of disruption of views, loss of privacy or solar access to existing development and will have minimal visual impact.
- the top of the roof of the building is at least 2 metres below the floor level of 20 Quirk St (Heritage Item No. 244). At its closest point, the proposed development is over 30 metres from this heritage item and it is screened by substantial vegetation. The increased building height to 6.63 metres will not have any adverse impact on the heritage significance of this heritage item.
- in relation to the other heritage items at 116, 118, 120 and 124 Moss Vale Road, the proposed development is at least 30 metres from the closest of these sites and 70 metres from the closest building. Whilst vertically there is more than 10 metres difference between ground levels, the substantial vegetation screening results in no adverse impact on these heritage items.

Heritage impact of the proposal is specifically addressed in the Statement of Heritage Impact (see Attachment 4).

The objective of the RU5 Village zone is:

- *to provide for a range of land uses, services and facilities that are associated with a rural village.*

The development is clearly consistent with the zone objectives.

The primary reason advanced by the applicant for seeking a variation to the height limit is because of the steep slope of the site. The slope of the site is 14 degrees which equates to a fall of 1 in 4 (or 25%). Restricting development on the site to a height of 5.5 metres would limit the building to one storey, reduce an already modest floor space and significantly limit functionality.

The partial increased height in respect of the roof to the dining area (single storey component) provides generous solar access to the full depth of the living areas.

The applicant has adequately addressed the required matters and the proposal will be in the public interest because it is consistent with the objectives of both the development standard and those of the R1 General Residential zone.

Overall the design is a reasonable response to a difficult site and the variation should be supported.

Planning Assessment

The DA will be assessed under section 79C of the Environmental Planning and Assessment Act 1979.

Policy Implications

There are no specific policy implications that arise from this matter. The procedure in clause 4.6 of SLEP-2014 provides a framework for the variation of standards in a manner which does not undermine the policy aspects of the development standard.

Consultation and Community Engagement:

The notification was made in accordance with Council's Community Consultation Policy with letters being sent to the owners of ten (10) properties lying within a 25m buffer of the site. The notification was for a 14 day period.

One submission was received in relation to Council's notification of the development and this objected to the development (refer Attachment 7). Key issues raised as a result of the notification are provided below.

Issue: There is no reason why the development should not conform with the 5.5m height limit having regard to other similar development in Brooks Lane

The submission contends that the five dwellings on the northern side of Brooks Lane all comply with the 5.5 metre height limit. Four of these dwellings (H/N 5, 7, 9 and 11) are on similar sized lots with similar slope to the subject building.

Comment

The applicant has provided a response to this issue and states that the owner's research using Council's DA Tracking site has found that the buildings have the following heights:

- 5 Brooks Lane – 6.4 metres high;
- 7 Brooks Lane – drawings not available on line;
- 9 Brooks Lane – 6.4 metres high;
- 11 Brooks Lane – 6.6 metres high;
- 122 Moss Vale Rd – 6.3 metres high.

The plans have been checked by Council staff and while the heights appear to be correct for 5 Brooks Lane and 122 Moss Vale Rd, the heights of 7 and 9 Brooks Lane appear to be 5 metres and 5.5 metres respectively. The plans for 7 Brooks Lane were not readily available.

Neither the respondent nor the applicant's arguments are fully sustained. The fact there are already variations supports the case for approving this application.

Issue: Disagreement with statements in the clause 4.6 statement

The respondent alleges the following inaccuracies in the clause 4.6 statement provided by the applicant:

- slope is incorrectly stated as 25% - it is 15.5%;
- building is stated to be of 1 ½ storeys – it is 1 and 2 storeys;
- building is described as articulated whereas the building and garage are simple rectangles whose bulk and scale is not reduced by articulation of the building form.

Comment

The applicant has provided a response to this issue at Attachment 2 and is summarised below:

- the slope is indeed 25% and not 15.5% as indicated by the respondent. The relationship is illustrated in the Table on page 3 of Attachment 2.
- the 2 storey part of the house is half the size of the ground floor which is why it is referred to as 1 ½ storeys.

It is considered that the applicant has correctly identified the slope as 25%. The respondents comments are not supported.

The building should be described as being of 1 and 2 storeys. The description of 1 ½ storeys is incorrect and the respondents comments are supported. The number of storeys is irrelevant to Council's consideration as the overall height of the building is the issue.

"Articulation" as referred to in architectural terms can be described as the breaking up of large, otherwise featureless surfaces or masses to provide meaning and interest. Articulation of building elements is encouraged in Council's DCP Chapter 12 specifically to minimise the length of unbroken walls and glazed areas.

The respondent's comments about the lack of articulation are not supported. While the buildings may be rectangular in plan, the maximum wall length is a little over 12 metres and all wall surfaces are articulated by the use of glazing and battened panels.

Issue: The non-compliance is significant and Council is requested to uphold the development standard

The respondent states that 70% of the dwelling exceeds the height limit and the 2 storey portion exceeds the height limit by 20%. The non-compliance is significant; the development standard is reasonable and necessary in this case and Council is requested not to vary the building height control.

Comment

The applicant states that the total roof area of the dwelling and garage is 265 sq m, of which 125 sq m or 47% is above the 5.5m height limit.

It is considered that the respondent is correct in assessing that the height of the 2 storey portion exceeds the height limit by 20%. The variation is significant which is why the matter is being reported to Council.

Financial Implications:

If the application is appealed it will result in costs to Council for defending the appeal. In most cases this prospect is reasonably remote and is not a matter Council is required or entitled to consider in determining a development application. Accordingly it should not be given any weight in Council's decision.

Legal Implications

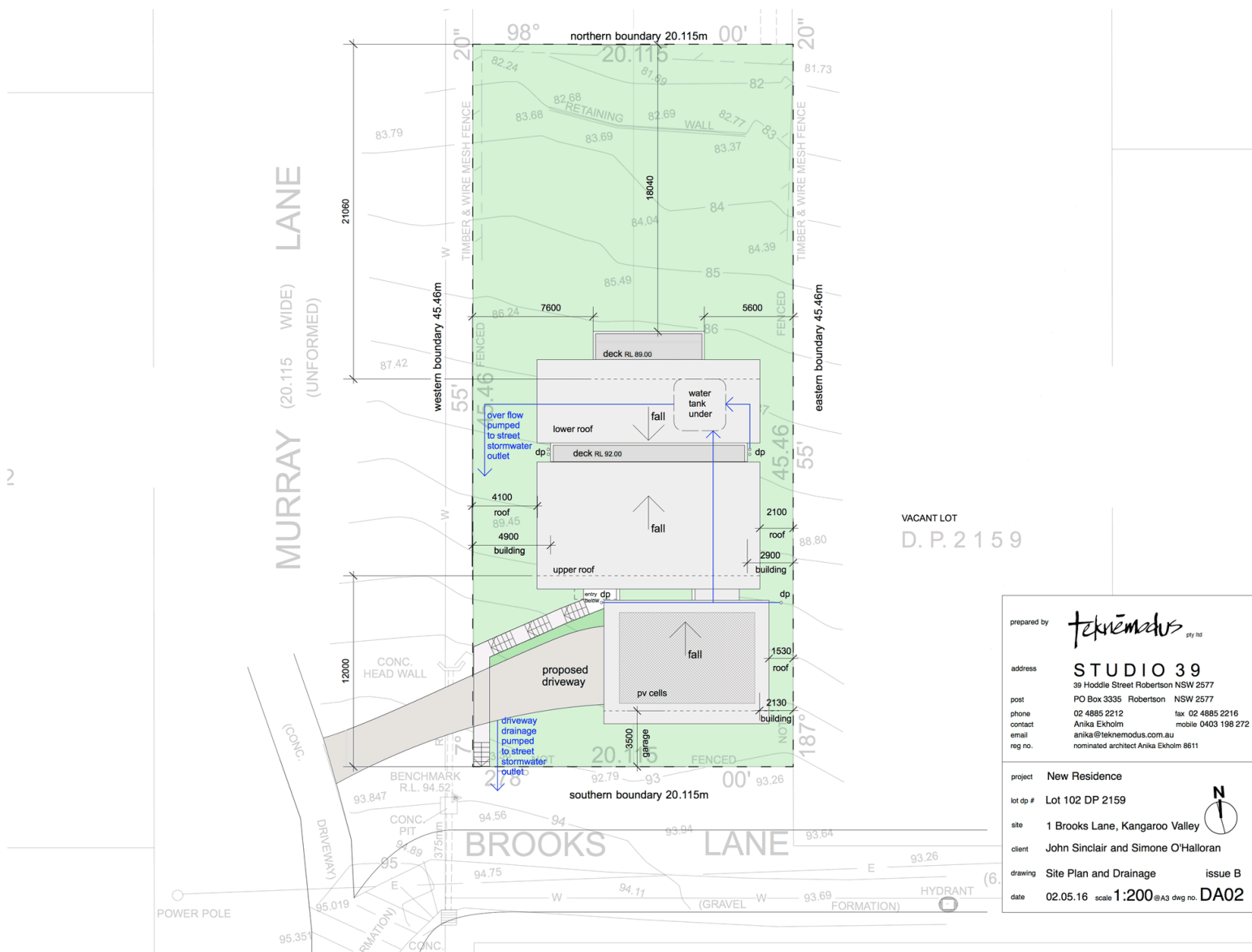
If the application is refused, or if the applicant is dissatisfied with Council's determination, the applicant is entitled to appeal to the Land and Environment Court.

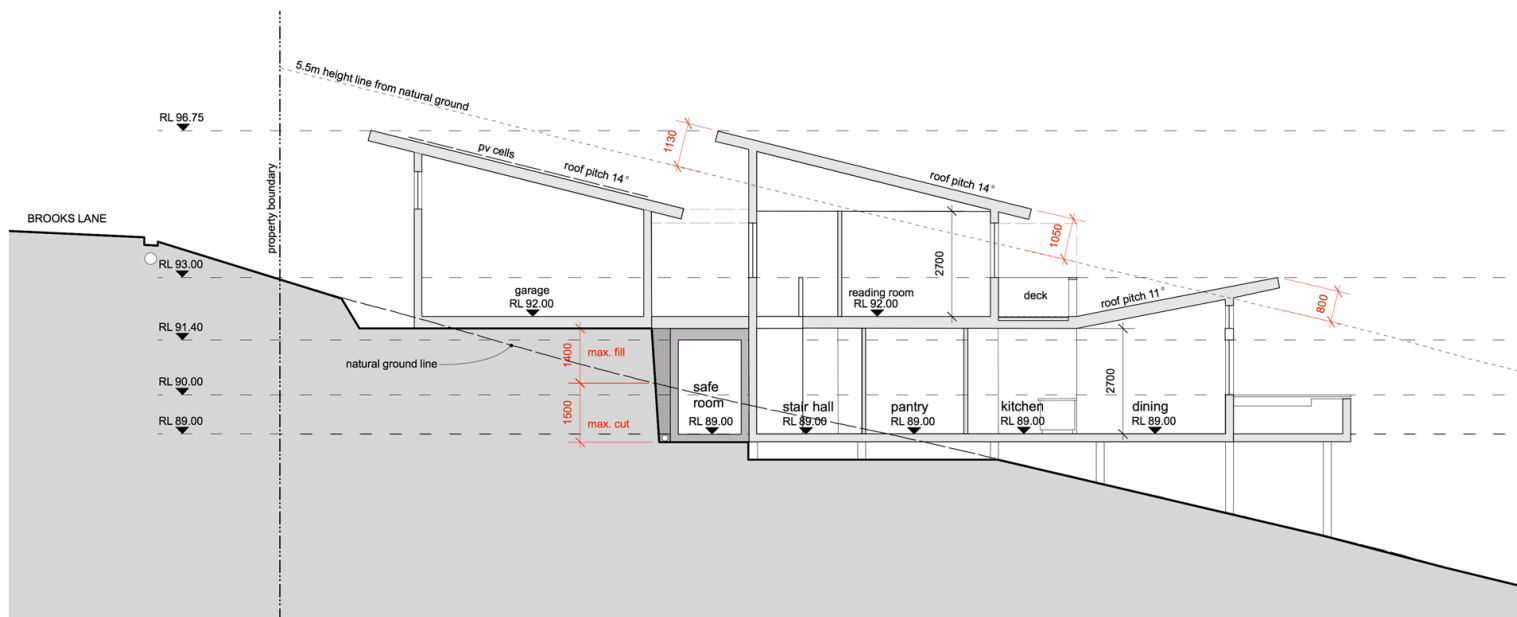
Under some circumstances, third parties may have a right to appeal Council's decision to the Land and Environment Court.

Summary and Conclusion

The variation to the 5.5 metre height limit is supported for the following reasons:

- the site is steep and therefore provides challenges in providing for a building of reasonable floor space, amenity and utility while minimising the number of levels;
- the site is on the very fringe of the 5.5 metre height limit under SLEP-2014 and arguably should be considered for some flexibility in the application of the height limit. Land that is less than 20 metres away has an SLEP-2014 height limit of 8.5 metres;
- no issues of loss of amenity, views, solar access, or adverse impact on heritage significance on nearby heritage items have been raised either in submissions or in assessment;
- the applicant has adequately addressed the matters set out in clause 4.6 of SLEP-2014;
- the proposal will be in the public interest because it is consistent with the objectives of both the development standard and those of the R1 General Residential zone.





TYPICAL SECTION

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DE17.17 DA Fee Exemption - South Coast Branch Surf Life Saving (NSW) - Proposed Administration, Training & Storage Facility - Integrated Emergency Management Centre, 92 Albatross Road, Nowra.

HPERM Ref: D17/26984

Group: Planning & Development Services Group

Section: Development Services

Purpose / Summary

To consider a request from the South Coast Branch Surf Life Saving (NSW) to waive normal development applications fees for a proposed development for an administration, training and storage facility at 92 Albatross Road, Nowra. Under the *Policy on Waiving of Development Application Fees and Other Fees for Charitable Organisations and Community Groups* (the Policy), clause 2.4 states:

Applicants / organisations who meet the exemption criteria in clause 2.1 are required to pay upfront any amount above the fee waiver threshold set in clause 2.2. The application / organisations can apply for reimbursement of the amount paid and Council will consider this request on merit in accordance with clause 2.4.

Under clause 2.4, a written request outlining grounds for the reimbursement must be submitted. The applicant has made a submission.

In this instance a fee has not been paid. The applicant is seeking a waiver up-front as opposed to the normal process which is paying fees and seeking a reimbursement thereafter.

The value of the development is \$800,000. The development application fee is \$2,274.45, excluding the notification component. The notification that would be undertaken for this development would be via on line tracking and letters to adjoining owners. This fee is \$182. (Where advertising includes press notification, that fee is \$300.)

Recommendation (Item to be determined under delegated authority)

For Committee's consideration.

Options

1. Resolve to waive the fees.

Implications: No fees would be charged. Council would have to absorb the total cost of processing and determining the development application (when lodged). This includes technical referrals, notification, correspondence, general administration and final assessment and determination of the DA.

2. Resolve to seek a part payment of fees for an amount determined by Councillors.

Implications: This would assist in partial cost recovery.

DE17.17

3. Decline the request to waive fees.

Implications: This would mean that normal fees would be paid and those fees would expended on the assessment and processing of the development application.

Background

Council's Policy exempts a non-profit organisation (e.g. registered charities, local sporting groups, schools and the like) from the payment of fees associated with a DA so long as the DA does not involve an ongoing commercial venture. The South Coast Branch meets this criteria.

Where the sum of all fees exceeds \$1,000, the applicant, may apply to Council for a reimbursement of the fees outlining the ground(s) for reimbursement.

The applicant has in this instance requested for the fee waiver to be considered and dealt with up front. That is, prior to the application being lodged.

The applicant wrote to Council via letter dated 12 December 2016 as follows:

I write to you on behalf of the members of the South Coast Branch Surf Life Saving to seek councils support in granting an exemption to the payment of Development Application fees for the lodgement of our application to building an Administration, Training and Storage facility on site 9 located within the Integrated Emergency Management Centre, 92 Albatross Road, Nowra.

The facility will greatly assist South Coast Surf Life Saving to provide improved training facilities and opportunities to our members as well as an administration centre and storage facility for our large amount of equipment currently distributed throughout the south coast branch.

The granting of an exemption of Development Application fees will relieve funding pressure on our volunteer organisation. I seek your support to our request for exemption.

In further support of the fee waiver, the applicant also submitted as follows:

SC Branch has had along association and communication with Shoalhaven Council. And (sic) is sought out for advice on lifesaving matters. We communicate regularly with the Manager Aquatics Services within council.

There is a four tier organisational structure within Surf Life Saving,

1. *Surf Life Saving Australia, the peak body at National Level*
2. *Surf Life Saving NSW, State Body which is Governed by a Board and has 11 State Councillors who are the 11 Branch Presidents representing the 129 clubs and members in NSW.*
3. *11 NSW Branches in NSW who are responsible for the Governance, Lifesaving Operations, Training & Administrative Oversight/Supervision of the Surf Life Saving Clubs with the branch.*
4. *Surf Life Saving Clubs who are the operations face of the organisation, with Surf Life Saving Beach Patrol & Rescue Service and Junior Development Program for 5 to 14 yr. old children.*

5. *South Coast Branch Clubs; Warilla-Barrack Point, Shellharbour, Kiama Downs, Kiama, Gerringong, Shoalhaven Heads, Nowra-Culburra, Sussex Inlet & District and Mollymook.*

The SC Branch has five (5) elected Directors, four of whom have portfolios, Lifesaving, Education, Administration & Surf Sports and Myself as President. I perform 25 to 30 hrs per 7 day week on behalf of Surf Life Saving in my time after work and weekends and my Directors Commit to similar Hours.

Three Directors including myself live in the Shoalhaven and operate home offices on behalf of SC Branch SLS. For approx. 3 – 4 years up to 2004 SC Branch had a lease with Council in the North Nowra Community Centre and this was our office for a period of time. Until fraud was committed on the branch.

Our postal address for more than 20 years has been PO Box 1598, Nowra NSW 2541

We have a Board of Lifesaving with 22 members who are the District Inspectors responsible for Club Patrol Inspections and Compliance of the Lifesaving Operations. Four Duty Officers responsible for Emergency Response, attendance to emergencies and Referral in emergencies.

An Education Panel of 5 with 15 Trainers and Assessors. SC Branch is responsible for the Assessment of all Lifesaving Club members who undergoing training at club level for various awards and qualification. Our Branch also conducts higher level qualification training for all clubs members in the branch.

Our Director of Education has authority in regard to all club training activities and training instructors within the branch. Our Director of Lifesaving has authority for all Branch and Club Lifesaving Operations and Club Captains report to the Dir. Lifesaving.

As Branch President I represent the clubs within the Local Government Areas of Shellharbour, Kiama and Shoalhaven on wider branch issues affecting clubs. The clubs have authority to liaise with their council respecting buildings, leases, repairs and ground upkeep. The Branch has responsibility and oversight of Patrol Service Agreements with each club and Governance oversight of activities and junior development as well as the fore mentioned matters.

All surf life saving clubs are required to be affiliated with their Branch, State and National Body to be recognised, they must accept and following SLSA Regulations. To receive funding assistance, Government Grants, Coverage of Public Liability Insurance, WorkCover Insurance and to be recognised as part of Surf Life Saving.

All are independently registered as an Incorporated Association in NSW under the Dept. of Fair Trading within the Incorporated Associations Legislation (sic).

This is a brief summary, I hope this brief assists you.

Thank you for your support, as you have always been there for surf lifesaving.

Policy Implications

The request for a waiver can be considered under the applicable Policy. Additionally, it is noted that the request is in advance of the DA being lodged which is also a 'variation' to the normal procedure. This early request will however avoid multiple financial transactions.

Financial Implications

The DA (only – no Construction or other associated) fees that would be payable to Council (excluding advertising) are \$2,274.45. Advertising fees for the development are estimated to be \$182. It is recommended that the full fees be waived.

The Policy states that any donations by way of whole or partial reimbursement / payment be determined by the Council and that they will be paid out of the (if available) unallocated donations budget or a source identified in Council's resolution.

Conclusion

Having regard to the functions of the Branch and capital outlay for a facility which will of benefit to the local community, the request to waive fees is considered supportable.

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.