

## Development Committee

**Meeting Date:** Monday, 11 December, 2017  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.00pm

**Membership** (Quorum - 5)  
Clr Joanna Gash - Chairperson  
Clr John Levett – Deputy 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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3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
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## 8. Confidential Reports

Nil

## Development Committee

### Delegation

THAT 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

- a. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
- b. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 4 of the EPA Act.
- c. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
- e. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the General Manager requires to be determined by the Committee
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 82A and 96AB of the EP&A Act that the General Manager requires to be determined by the Committee.
- h. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.

## MINUTES OF THE DEVELOPMENT COMMITTEE

**Meeting Date:** Tuesday, 14 November 2017  
**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra  
**Time:** 5.04pm

The following members were present:

Clr Joanna Gash - Chairperson  
Clr Amanda Findley  
Clr Patricia White  
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

### Apologies / Leave of Absence

Apologies were received from Clr Guile, Clr Pakes and Russ Pigg.

### Confirmation of the Minutes

**RESOLVED** (Clr Cheyne / Clr White) MIN17.951

That the Minutes of the Development Committee held on Tuesday 10 October 2017 be confirmed.

CARRIED

### Declarations of Interest

Nil

## DEPUTATIONS AND PRESENTATIONS

### DE17.77 Hitchcocks Lane, Berry - Proponent Initiated Planning Proposal

1. Mr Stephen Richardson (Representing Mr Peter and Mrs Pamela Bice), wishes to speak for the recommendation.
2. Mr Stuart Coughlan on behalf of the Berry Forum spoke against the recommendation.

3. Mr Will Armitage spoke against the recommendation.

**DE17.79 Outcomes - Building Height Review - Southern Part of Ulladulla CBD**

4. Mr John Willmott spoke against the recommendation.
5. Ms Jan Gregory on behalf of the Seven (7) Committee Members of the Ulladulla and Districts Community Forum, spoke against the recommendation.

**DE17.80 Submissions Consideration - Planning Proposal (PP022) – LEP Housekeeping Amendment 2016 - Minor Mapping & Instrument Changes**

6. Ms Toni Warburton spoke for the recommendation.

**DE17.83 Applications (multiple) to Modify Development Consents – Release of Easement for Carparking over Lot 1 DP 785956 & affecting Lot 4 DP785956 Island Point Road, St Georges Basin**

7. Mr John Willmott spoke for the recommendation.

**DE17.85 DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2 DP 662583**

8. Mr Tim Foley (Allen Price and Scarratts) spoke against the recommendation.
9. Ms Jenny McDonald spoke for the recommendation.

**DE17.86 DA16/2412 - Parson Street, Ulladulla - Proposed lot 15 in Subdivision of Lot 3 DP746228 and Lots 5 & 6 DP805221**

10. Ms Jan Gregory on behalf of the Seven (7) Committee Members Ulladulla and Districts Community Forum, spoke against the recommendation.

## REPORTS

### Procedural Motion - Bring Item Forward

**RESOLVED** (Clr Alldrick / Clr Cheyne)

MIN17.952

That the following items be brought forward for consideration.

DE17. 77 Hitchcocks Lane, Berry - Proponent Initiated Planning Proposal

DE17.79 Outcomes - Building Height Review - Southern Part of Ulladulla CBD

DE17.80 Submissions Consideration - Planning Proposal (PP022) - LEP Housekeeping Amendment 2016 - Minor Mapping & Instrument Changes

DE17.83 Applications (multiple) to Modify Development Consents – Release of Easement for Carparking over Lot 1 DP 785956 & affecting Lot 4 DP785956 Island Point Road, St Georges Basin

DE17.85 DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2 DP 662583

CARRIED

**DE17.77 Hitchcocks Lane, Berry - Proponent Initiated Planning Proposal**

**HPERM Ref:  
D17/325322**

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

That Council:

1. Prepare a Planning Proposal to rezone part (as detailed in the plans within this report) of Lots 762 and 763 DP 1224932, Hitchcocks Lane, Berry, to an R2 - Low Density Residential Zone with:
  - a. A 500 m<sup>2</sup> minimum lot size; and
  - b. An 8.5 m maximum height of buildings.
2. Forward this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination with a request that the determination be subject to a condition allowing up to 25% of the site to be provided with a lot size as small as 350 m<sup>2</sup> subject to specialist studies and community consultation.
3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal (prior to public exhibition):
  - a. Stormwater assessment including conceptual design details for the proposed drainage reserve
  - b. Stage 1 preliminary contaminated site assessment
  - c. Aboriginal cultural heritage assessment
  - d. Flood risk assessment
  - e. Traffic study
  - f. Visual impact assessment
  - g. Infrastructure study and delivery plan (including "soft" infrastructure)
  - h. Master plan including detailed urban design and built form guidelines
4. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.
5. Advise the Berry Forum of this resolution.
6. Consider a report on the Planning Proposal prior to public exhibition.
7. Request a future report that provides options for a policy framework for considering Planning Proposals that accelerate consideration of an area ahead of its timing in Council's adopted strategic plans.

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

MIN17.953

That Council:

1. Prepare a Planning Proposal to rezone part (as detailed in the plans within this report) of Lots 762 and 763 DP 1224932, Hitchcocks Lane, Berry, to an R2 - Low Density Residential Zone with:
  - a. A 500 m<sup>2</sup> minimum lot size; and
  - b. An 8.5 m maximum height of buildings.
2. Forward this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination with a request that the determination be subject to a condition allowing

up to 25% of the site to be provided with a lot size as small as 350 m<sup>2</sup> subject to specialist studies and community consultation.

3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal (prior to public exhibition):
  - a. Stormwater assessment including conceptual design details for the proposed drainage reserve
  - b. Stage 1 preliminary contaminated site assessment
  - c. Aboriginal cultural heritage assessment
  - d. Flood risk assessment
  - e. Traffic study
  - f. Visual impact assessment
  - g. Infrastructure study and delivery plan (including “soft” infrastructure)
  - h. Master plan including detailed urban design and built form guidelines
4. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.
5. Advise the Berry Forum of this resolution.
6. Consider a report on the Planning Proposal prior to public exhibition.
7. Request a future report that provides options for a policy framework for considering Planning Proposals that accelerate consideration of an area ahead of its timing in Council’s adopted strategic plans.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Alldrick

CARRIED

**DE17.79 Outcomes - Building Height Review - Southern Part of Ulladulla CBD**

**HPERM Ref: D17/333579**

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

That Council:

1. Prepare a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 to increase the height across the Study Area (excluding land subject to PP025) to part 11 metres and part 14 metres as per the Review of Building Heights Report.
2. Prepare an amendment to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014 to reflect proposed height modifications and address resulting implications across the Study Area, including land subject to PP025.
3. Consider a further report/s that contains the detail of the Planning Proposal for submission to the NSW Department and Planning and Environment for Gateway determination and the associated amendments to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014.
4. Notify Ulladulla & Districts Community Forum, affected landowners and workshop attendees of this decision and of further opportunities to be involved as this matter progresses.

**RESOLVED** (Clr Cheyne / Clr Findley)

MIN17.954

That Council:

1. Prepare a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 to increase the height across the Study Area (excluding land subject to PP025) to part 11 metres and part 14 metres as per the Review of Building Heights Report.
2. Prepare an amendment to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014 to reflect proposed height modifications and address resulting implications across the Study Area, including land subject to PP025.
3. Consider a further report/s that contains the detail of the Planning Proposal for submission to the NSW Department and Planning and Environment for Gateway determination and the associated amendments to Chapter S8: Ulladulla Town Centre of Shoalhaven Development Control Plan 2014.
4. Notify Ulladulla & Districts Community Forum, affected landowners and workshop attendees of this decision and of further opportunities to be involved as this matter progresses.

FOR: Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Wells, Clr Levett, Clr Cheyne, Clr Watson and Clr Kitchener

AGAINST: Clr Aldrick and Clr Proudfoot

CARRIED

**DE17.80 Submissions Consideration - Planning Proposal (PP022)  
- LEP Housekeeping Amendment 2016 - Minor Mapping  
& Instrument Changes**

**HPERM Ref:  
D17/334914**

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

That Council:

1. Adopt the Planning Proposal (PP022) with the minor amendment outlined in this report;
2. Forward Planning Proposal (PP022) to NSW Parliamentary Counsel Office to draft the requirement amendment to Shoalhaven Local Environmental Plan 2014; and
3. Make the resulting amendment to the Local Environmental Plan using the delegations issued under Section 23 of the NSW Environmental Planning and Assessment Act 1979 related to plan making.

**RESOLVED** (Clr Wells / Clr White)

MIN17.955

That Council:

1. Adopt the Planning Proposal (PP022) with the minor amendment outlined in this report;
2. Forward Planning Proposal (PP022) to NSW Parliamentary Counsel Office to draft the requirement amendment to Shoalhaven Local Environmental Plan 2014; and
3. Make the resulting amendment to the Local Environmental Plan using the delegations issued under Section 23 of the NSW Environmental Planning and Assessment Act 1979 related to plan making.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Aldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.83 Applications (multiple) to Modify Development Consents  
– Release of Easement for Carparking over Lot 1 DP  
785956 & affecting Lot 4 DP785956 Island Point Road, St  
Georges Basin**

**HPERM Ref:  
D17/267465**

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

That the Development Committee

1. Support the 32.2% variation to the car parking requirements; and
2. Refer the modification applications back to staff for determination.

**RESOLVED** (Clr White / Clr Gartner)

MIN17.956

That the Development Committee

1. Support the 32.2% variation to the car parking requirements; and
2. Refer the modification applications back to staff for determination.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.85 DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2  
DP 662583**

**HPERM Ref:  
D17/345909**

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

That Council resolve to refuse Application DS17/1233 to modify Development Consent DA15/2561 to include a rooftop communal BBQ area with covered and enclosed seating area and ancillary facilities at Lot 2 DP 662583, 12 Currumbene Street, Huskisson for reasons relating to:

1. Insufficient information submitted with the application to satisfactorily demonstrate that the development (as modified) conforms to the provisions of section 96(3) of Environmental Planning and Assessment Act, 1979 in relation to consideration of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. (Section 79C(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. An inadequate statement by a qualified designer has been submitted with the application to satisfy that required by clause 115(3A) of Environmental Planning and Assessment Regulation, 2000. (Section 79C(1)(a)(iv) of Environmental Planning and Assessment Act, 1979)
3. The development (as modified) is considered unsuitable having regard to potential adverse amenity impacts including visual impact and residential amenity, including noise, privacy and solar access. (Section 79C(1)(b) and (c) of Environmental Planning and Assessment Act, 1979)
4. Having regard to insufficient information being submitted with the application to satisfy the relevant provisions of Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000, along with amenity impacts, the granting of modification to Development Consent DA15/2561 is not considered to be in the public interest. (Section 79C(1)(e) of Environmental Planning and Assessment Act, 1979)

**RESOLVED** (Clr Wells / Clr White)

MIN17.957

That

1. Consideration of the matter be deferred pending submission of the amended design.
2. A report be provided to the Council on the amended S96 Application and providing responses to the comments made by the depute, Mrs McDonald.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**Procedural Motion - Bring Item Forward****RESOLVED** (Clr White / Clr Gartner)

MIN17.958

That the matter of item DE17.86 Development Application – Parson St Ulladulla – Proposed Lot 15 in Subdivision of Lot 3 DP746228 and Lots 5 &amp; 6 DP805221 be brought forward for consideration.

CARRIED

**DE17.86 Development Application – Parson St Ulladulla –  
Proposed Lot 15 in Subdivision of Lot 3 DP746228 and  
Lots 5 & 6 DP805221****HPERM Ref:  
D17/349640****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Confirm that it supports the proposed variation to the maximum building height of 7.5m to a maximum of 11m for the main building;
2. Refer the application back to staff for determination by delegation.

**RESOLVED** (Clr White / Clr Gartner)

MIN17.959

That Council:

1. Confirm that it supports the proposed variation to the maximum building height of 7.5m to a maximum of 11m for the main building;
2. Refer the application back to staff for determination by delegation.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Gartner, Clr Watson and Clr Kitchener

AGAINST: Clr Alldrick and Clr Proudfoot

CARRIED

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

MIN17.960

That the matter of item DE17.88 Serious and Irreversible Impact - Biodiversity Conservation Act - Yerrilyong Motor Complex be brought forward for consideration.

CARRIED

**DE17.88 Serious and Irreversible Impact - Biodiversity  
Conservation Act - Yerriyong Motor Complex****HPERM Ref:  
D17/358665****Recommendation (Item to be determined under delegated authority)**

The report is provided to the Committee for its consideration.

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

MIN17.961

1. That the report be received for information.
2. That the General Manager be requested to report back to the Council on whether the applicant has appointed the BDAR expert to provide the advice required for the Development Application.

FOR: Clr Findley, Clr Gash, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr White

CARRIED

**Procedural Motion - Adjournment of Meeting****RESOLVED** (Clr Cheyne / Clr Alldrick)

MIN17.962

That the meeting be adjourned for a 10 minute break.

CARRIED

Note: The meeting adjourned, the time being 7.21pm

Note: The meeting reconvened, the time being 7.32pm

When the following members were present:

Clr Joanna Gash - Chairperson  
Clr Amanda Findley  
Clr Patricia White  
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

**DE17.76 Rezoning Investigations - Goodland Road - Landowner Commitment and Future Investigation**

**HPERM Ref:  
D17/182093**

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

That Council:

1. Recommence the Planning Proposal and Planning Agreement process to resolve the development potential of the small lot rural subdivision at Goodland Road, Woollamia, but only on the following basis:
  - a. No additional development will be identified outside of Council's preferred exhibited Development Scenario (and its key elements) included in this report; and
  - b. All owners confirm in writing that they accept that the progression of the PP will only be on the basis of this Development Scenario and provide a written in-principle agreement that they will each sign a revised Voluntary Planning Agreement.
2. Amend the previously exhibited Landowner Agreement and Voluntary Planning Agreement, subject to the above, to include further detail on costings for all landowners, and times at which payments are to be made.

**RESOLVED** (Clr Wells / Clr White)

MIN17.963

That Council not proceed with the rezoning investigations until such time as all affected landowners fully commit to the matter and the costs associated with it.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.77 Hitchcocks Lane, Berry - Proponent Initiated Planning Proposal**

**HPERM REF:  
D17/325322**

Item dealt with earlier/later in the meeting see MIN17.953

**DE17.78 Draft Chapter G18 Streetscape Design for Town and Village Centres - Shoalhaven Development Control Plan 2014 - Preparation and Public Exhibition**

**HPERM Ref:  
D17/330934**

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

That Council:

1. Prepare and publicly exhibit Draft Chapter G18 Streetscape Design for Town and Village Centres and Dictionary of Shoalhaven DCP 2014 for a six (6) week period and in accordance with the *Environmental Planning & Assessment Regulation 2000*.
2. Advise relevant Community Consultative Bodies of the public exhibition.
3. Receive a further report on the draft Chapter G18 Streetscape Design for Town and Village Centres following the conclusion of the public exhibition period.

**RESOLVED** (Clr White / Clr Wells)

MIN17.964

That Council:

1. Prepare and publicly exhibit Draft Chapter G18 Streetscape Design for Town and Village Centres and Dictionary of Shoalhaven DCP 2014 for a six (6) week period and in accordance with the *Environmental Planning & Assessment Regulation 2000*.
2. Advise relevant Community Consultative Bodies of the public exhibition.
3. Receive a further report on the draft Chapter G18 Streetscape Design for Town and Village Centres following the conclusion of the public exhibition period.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.79 Outcomes - Building Height Review - Southern Part of Ulladulla CBD**

**HPERM REF:  
D17/333579**

Item dealt with earlier/later in the meeting see MIN17.954

**DE17.80 Submissions Consideration - Planning Proposal (PP022) - LEP Housekeeping Amendment 2016 - Minor Mapping & Instrument Changes**

**HPERM REF:  
D17/334914**

Item dealt with earlier/later in the meeting see MIN17.955

**DE17.81 Proposed Submission - Issues Paper: Review of Environmental Planning and Assessment Regulation 2000**

**HPERM Ref:  
D17/350165**

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

That Council make a submission to the NSW Department of Planning and Environment on *Review of the Environmental Planning and Assessment Regulation 2000 Issues Paper* based on the issues outlined in Attachment 1.

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

MIN17.965

That Council make a submission to the NSW Department of Planning and Environment on *Review of the Environmental Planning and Assessment Regulation 2000 Issues Paper* based on the issues outlined in Attachment 1.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.82 Wuncor Avenue Nowra Hill - Proponent Initiated Planning Proposal**

**HPERM Ref:  
D17/340215**

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

That:

1. Council resolve not to proceed with a Planning Proposal to permit a highway service centre at Lot 2 DP 1154597, Wuncor Avenue Nowra Hill, for the following reasons:
  - a. The proposal is not the result of any local, regional or state strategic plan or study; and
  - b. The proposal will draw commercial activity and investment away from existing employment lands precincts and is inconsistent with the Nowra-Bomaderry Structure Plan; and
  - c. The proponent has not satisfactorily demonstrated the need for the facility in this location; and
  - d. The proposal is inconsistent with part 4 of Council's Planning Proposal (Rezoning) Guidelines and would set an adverse precedent if supported; and
  - e. The RMS has raised a number of significant concerns including that this proposal is not compatible with the grade-separated interchange required for the Shaolin Temple tourist development; and that the proposal would result in significant delays and road safety issues, particularly for the right turn out of BTU Road.
2. Council advise the proponent and those who were notified of the proposal of this resolution.

**RESOLVED** (Clr Gartner / Clr White)

MIN17.966

That due to the applicant's withdrawal of the Planning Proposal for Lot 2 DP 1154597 Wuncor Avenue Nowra Hill, the report be received for information.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

**DE17.83 Applications (Multiple) to Modify Development Consents – Release of Easement For Carparking Over Lot 1 DP 785956 & Affecting Lot 4 DP785956 Island Point Road, St Georges Basin**

**HPERM REF:  
D17/267465**

Item dealt with earlier/later in the meeting see MIN17.956

**DE17.84 Development Application - 405 Princes Highway, Bomaderry – Lot 14 DP 20626**

**HPERM Ref:  
D17/335451**

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

That the Development Committee approve the application subject to the conditions contained in this report.

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

MIN17.967

That the Development Committee approve the application subject to the conditions contained in this report

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

<b>DE17.85</b>	<b>DS17/1233 – 12 Currambene Street, Huskisson – Lot 2 DP 662583</b>	<b>HPERM REF: D17/345909</b>
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Item dealt with earlier/later in the meeting see MIN17.957

<b>DE17.86</b>	<b>Development Application – Parson St Ulladulla – Proposed Lot 15 in Subdivision of Lot 3 DP746228 and Lots 5 &amp; 6 DP805221</b>	<b>HPERM REF: D17/349640</b>
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Item dealt with earlier/later in the meeting see MIN17.959

<b>DE17.87</b>	<b>Development Application SF10591 – 18 Calder Close, Vincentia – Lot 34 in DP 713629</b>	<b>HPERM Ref: D17/350005</b>
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**Recommendation (Item to be determined under delegated authority)**

That the Committee:

1. Pursuant to Clause 4.6 (Exceptions to development standards) of SLEP 2014, support the applicant's request to vary the minimum subdivision allotment size in respect of proposed Lot 2 from 500m<sup>2</sup> to 433.9m<sup>2</sup>; and
2. Refer the development application (SF10591) back to staff for determination.

**RESOLVED** (Clr Watson / Clr Wells) MIN17.968

That Council:

1. Pursuant to Clause 4.6 (Exceptions to development standards) of SLEP 2014, support the applicant's request to vary the minimum subdivision allotment size in respect of proposed Lot 2 from 500m<sup>2</sup> to 433.9m<sup>2</sup>; and
2. Refer the development application (SF10591) back to staff for determination.

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

AGAINST: Clr Levett

CARRIED

<b>DE17.88</b>	<b>Serious And Irreversible Impact - Biodiversity Conservation Act - Yerriyong Motor Complex</b>	<b>HPERM REF: D17/358665</b>
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Item dealt with earlier/later in the meeting see MIN17.961

**DE17.89 Works to restrict public access to Shoalhaven Water infrastructure at Kings Point and Burrill Lake**

**HPERM Ref:  
D17/329859**

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

That

1. Council approve the request from Crown Lands to install gates and rocks at the entrance to cleared pipeline and access corridors over Lot 7305 DP1166682 at Kings Point Road, Kings Point and Lot 201 DP75595 off Canberra Crescent and installation of rocks at pipeline corridors at the eastern and western sides of Lot 7305 DP1166682, as shown on the aerial photograph annexed to this report.
2. Council note that Crown Lands will be responsible for all notifications and enquiries relating to this activity.

**RESOLVED** (Clr Wells / Clr White)

MIN17.969

That Council

1. Approve the request from Crown Lands to install gates and rocks at the entrance to cleared pipeline and access corridors over Lot 7305 DP1166682 at Kings Point Road, Kings Point and Lot 201 DP75595 off Canberra Crescent and installation of rocks at pipeline corridors at the eastern and western sides of Lot 7305 DP1166682, as shown on the aerial photograph annexed to this report.
2. Note that Crown Lands will be responsible for all notifications and enquiries relating to this activity.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 7.49pm.

Clr Gash  
CHAIRPERSON

## DE17.90 Exhibition Outcomes & Adoption - Shoalhaven Affordable Housing Strategy

**HPERM Ref:** D17/346785

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

**Attachments:**

1. Exhibited Draft Affordable Housing Strategy (under separate cover) ⇄
2. Summary of Submissions (under separate cover) ⇄
3. Bomaderry Affordable Housing Workshop - Overview & Drawings (under separate cover) ⇄
4. Complete Presentation Package - Outcomes - Bomaderry Housing Affordability Workshop (Confidential - under separate cover)

### Purpose / Summary

- a) Consider submissions received during the public exhibition of the draft Shoalhaven Affordable Housing Strategy (draft Strategy); and
- b) Adopt the draft Strategy with changes as recommended and request endorsement by the NSW Department of Planning and Environment (DP&E).
- c) Consider the next steps to advance the proposed demonstration affordable housing development at Coomea Street, Bomaderry.

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

That Council adopt the Shoalhaven Affordable Housing Strategy as exhibited (Attachment 1) with the following changes:

1. Recognise the need for culturally appropriate housing for Shoalhaven's Aboriginal community.
2. Include/amend the following definitions:
  - a. Expand the definition of 'Socially Sustainable' to include housing designed to meet the future expectations and preferences of prospective residents.
  - b. Include a definition of 'affordable rental housing' which encompasses its management by a community housing provider.
3. Investigate temporary affordable housing opportunities on NSW Government land that is awaiting future development.
4. Advocate for the NSW Government to revise:
  - a. The Affordable Rental Housing State Environmental Planning Policy (SEPP) so that housing built under this SEPP remains affordable in perpetuity.
  - b. SEPP 70 Affordable Housing (Revised Schemes) to include Shoalhaven to effectively mandate provision of contributions for affordable housing where appropriate/required.
5. Provide measurable targets, where appropriate, for the relevant key performance criteria.
  - a. Specify that boarding houses should provide temporary to medium-term accommodation and that they should not become a long-term accommodation option.

- b. Investigate the:
  - i. Inclusion of provisions in Shoalhaven Development Control Plan 2014 to incentivise the creation of land for affordable housing and provision of affordable housing generally.
  - ii. Size of secondary dwellings in Clause 5.4(9) of Shoalhaven Local Environmental Plan 2014 to ensure standards do not hinder affordability.
6. Request endorsement of the adopted Strategy by the NSW Department of Planning and Environment.
7. Advise those who made a submission and other relevant stakeholders of this resolution.
8. Continue to advance the Bomaderry Affordable Housing project which is identified in the Strategy as an initial key short term strategy and in this regard:
  - a. Thank the workshop participants for their involvement in the process and for helping to make it a success;
  - b. Invite representatives from the Property Council of Australia to brief Council on the collaborative design exercise and its outcomes; and
  - c. Consider a subsequent more detailed report that presents a partnership model to realise an affordable housing development on the Council site at 42-46 Coomea Street, Bomaderry to enable it to be considered for funding under Round No.2 of the Social and Affordable Housing Fund that opens early 2018.

DE17.90

## Options

1. As recommended.

Implications: This is the preferred option as it will enable the draft Strategy to be adopted/finalised and Council to begin implementation of the strategies in the document in association with others.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the finalisation of the Strategy and work commencing on its strategies.

3. Not adopt the recommendation.

Implications: This may delay or cease the completion of an affordable housing strategy for Shoalhaven.

## Background

### Draft Shoalhaven Affordable Housing Strategy (the draft Strategy)

Access to affordable housing is a growing issue in Shoalhaven and despite being a relatively low cost area, Shoalhaven has the worst housing affordability problem in the Illawarra-Shoalhaven for the following reasons:

- Highest level of disadvantage
- Demand pressure from Sydney
- Mismatch between need and supply
- Much lower rate of private and social rental
- High % of vacant properties

Council engaged Judith Stubbs and Associates (JSA) in late 2015 to develop and present an initial Affordable Housing Discussion Paper to identify achievable and feasible options and strategies to increase the supply of affordable housing in Shoalhaven for relevant target groups in appropriate locations.

The Discussion Paper includes evidence based recommendations regarding those locations likely to be most effective in the local housing market context. To inform the Discussion Paper, JSA also prepared the:

- Shoalhaven Affordable Housing Background Report (Background Report); and
- Framework for an Affordable Housing Strategy (Framework).

The draft Strategy (**Attachment 1**) that followed from the Discussion Paper targets the most effective policy solutions in the context of the local challenges presented in the Background Report and Discussion Paper. It has been designed to be implemented through a number of key stages over the next 10 years with short, medium and long-term strategies. The initial focus is on strategies that are most likely to have a practical impact on the supply of affordable housing on the ground, particularly the development of surplus or underutilised Council land in partnership with government or community agencies and/or the private sector.

The draft Strategy also provides for the ongoing and sustainable engagement of Council in affordable housing through long-term strategies related to relevant planning mechanisms, amendments to relevant planning instruments and monitoring its effectiveness against key performance indicators over time.

On 17 July 2017, Council's Development Committee resolved (MIN17.607), under delegation, to endorse the draft Strategy for public exhibition.

### **Public Exhibition – Draft Strategy**

The draft Strategy was exhibited for a period of 37 days from 23 August to 29 September 2017. All relevant NSW Government agencies, State and Federal Members, community housing providers, Community Consultative Bodies (CCB's) and other key stakeholders were directly notified by email of the exhibition arrangements.

Dr Judy Stubbs from Judith Stubbs & Associate's, who is assisting with this project, gave Councillors a briefing on the draft Strategy and the background to it on 28th September 2017.

The draft Strategy was exhibited at Council's Administrative Offices at Bridge Road, Nowra and Deering Street, Ulladulla, during business hours, and on Council's 'Get Involved' and general exhibition webpage. The exhibition material included the following:

- The draft Strategy.
- Associated Framework, Discussion Paper and Background Report.
- Explanatory Statements relating to the draft Strategy and the proposed demonstration affordable housing development site at 42-46 Coomea Street, Bomaderry.
- Newspaper advertisement/media release

The exhibited material can still be viewed on Councils 'Get Involved' webpage at:

<http://getinvolved.shoalhaven.nsw.gov.au/draft-shoalhaven-affordable-housing-strategy/documents>

Seventeen (17) submissions were received during the public exhibition period and the general breakdown of these is as follows:

Type	In Support (in part or whole)	Not in Support
Individuals	6	6
Community Housing Providers	3	0
State Agency	1	0
Internal Submission	1	0
<b>Total</b>	<b>11</b>	<b>6</b>

Twelve (12) of the submissions were received via Council's 'Get Involved' page which asked questions relating to the draft Strategy and the appropriateness of the chosen sites. A total of 478 visits were recorded for the webpage.

The key issues raised/mentioned in the submissions and the staff comments in response are summarised in detail at **Attachment 2**, and briefly summarised below:

- Welcome the release of the Strategy. Commend Council for developing strategies to address housing affordability. Acknowledge there is robust research evidence underpinning the Strategy.
- Affordable housing is the responsibility of the NSW Government, not Council. Ratepayers should not be subsidising affordable housing or providing social housing.
- A number of submitters were not in support of the chosen sites in CBD locations due to perceived resulting negative impacts. Alternative sites outside key centres were suggested.
- Amendments are required to environmental planning instruments to maintain affordable housing into perpetuity, provide incentives to create affordable housing and limit obstacles.
- Investigate temporary sites owned by NSW Government agencies that are awaiting future development.
- Include/amend definitions relating to 'affordable rental housing' and 'socially sustainable'.
- Recognise the need for culturally appropriate housing for Shoalhaven's Aboriginal community.
- Properties created for affordable housing should be managed by a community housing provider.

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

It is noted that concerns relating to the role of Local Government in facilitating affordable housing was common in individual submissions submitted via the 'Get Involved' page.

There is a distinction between affordable housing and social housing and it is argued that Council does have a role to play in regard to this important issue and a statutory responsibility to create and preserve affordable housing through the planning and assessment process. It is acknowledged that the direct provision of social housing remains the responsibility of other levels of Government and associated bodies.

As part of the draft Strategy, it is proposed to use underutilised Council land to facilitate the provision of affordable housing in partnership with a community housing provider/private sector/other bodies. This process, for individual sites, will involve community consultation, design workshops, and feasibility modelling to design appropriate mixed tenure

developments that will give a positive return to Council. It is envisaged that Council will work with community housing providers to secure external funding for development and the only Council outlay being the provision of land.

This process has already commenced for the preferred site at Coomea Street, Bomaderry which is discussed further below.

### **Next Steps - Proposed Demonstration Affordable Housing Development at Coomea Street, Bomaderry**

As part of the resolution to proceed to exhibit the draft Strategy it was also resolved to:

*Continue to pursue the possibility of an initial demonstration affordable housing development at Coomea Street, Bomaderry with the NSW Government, Community Housing Providers, property industry representatives (e.g. Property Council of Australia) and relevant community consultative bodies. MIN17.607(4)*

The Strategy contains a short term (less than 3 years) strategy for Council to facilitate a mixed tenure development on Council-owned land at 42-46 Coomea Street, Bomaderry in partnership with a registered Community Housing Provider.

A specific explanatory statement on this potential project was included as part of the exhibition material for the draft Strategy. The aim of this initial demonstration affordable housing project is to show how public land can be utilised to achieve cost effective affordable housing outcomes and also provide practical examples of less common, but needed, forms of residential accommodation e.g. one bed room dwelling unit.

Consistent with the above resolution, Council partnered with the Illawarra Chapter of the Property Council of Australia (PCA) and participated in a collaborative design exercise to look at a potential affordable housing development on this site. This exercise run by the PCA was made up of two components:

1. *12<sup>th</sup> October 2017 - Community Co-design workshop*

Was conducted with potential tenants from Southern Cross Housing. Representatives from the Pride of Bomaderry Group, the local CCB, were also present. This initial workshop focussed on gathering information from perspective occupiers, including a 'day in their life' that looked at their activities over the course of a day. This informed a list of potential spaces that are needed and could be included in the development

2. *26<sup>th</sup> October 2017 - DA in a day*

Using the information gained at the initial workshop, the aim was to compress the design/approval process into a one-day workshop and involved collaboration between architects, consultant planners, engineers and Council planners. A quantity surveyor and financiers were also involved to assess the project's financial viability.

Various Council staff, representatives from Southern Cross Housing and a range of development professionals contributed their time and participated in the workshops.

The workshop process received reasonable media coverage and Council was acknowledged for taking a progressive step and setting an example for other Councils to follow in this regard.

The PCA has subsequently provided a package of information to Council on the collaborative design exercise – relevant extract from this is provided as **Attachment 3** to this report.

The complete package of information is contained in the separate confidential attachment to this report given the financial details contained within it and its potential "commercial in confidence" nature.

The information provided by the PCA collates the data from the workshop and provides details of potential site yields, best design options, details on how a partnership could be structured with a Community Housing provider and/or private developer, as well as commentary on some broad financial outcomes.

The concept design plans that form part of **Attachment 3** show the potential for an affordable housing development on the site comprising:

- 18 boarding house rooms
- 6 x 1 bed units
- 12 x 2 bed units
- 1 commercial tenancy
- 25% under croft parking

The PCA information also provides a commentary on potential financial and ownership model – a simple development/ownership model to possibly move forward with could be one that involves:

- Land being contributed by Council, with its value independently determined
- Development costs funded by a partner Community Housing provider through Government grants, debt funding or a combination of these.
- Appropriate governance structure established to enable shared development oversight. This structure could change once the development is completed and the project moves to a management phase.
- Ownership of the completed dwellings as “tenants in common” and proportion of ownership independently calculated based on financial contribution and other factors.

As part of the process it was stressed that Council’s involvement would most likely be on the basis of no direct cost (other than the land component) and the potential for any development to return a profit through time.

The NSW Government’s Social and Affordable Housing Fund Round No.2 (SAHF) represents a significant opportunity for Council to partner with Social Housing Providers to deliver an affordable housing development on the ground in this and other locations. It is noted that an objective of this round of funding for 30% of dwellings to be delivered in regional NSW. The SAHF also requires successful properties to be utilised for affordable housing for 25 years.

To take the opportunity presented by SAHF Round No.2 Council needs to move quickly and decide the action to take now to see this opportunity at Bomaderry become a reality as the Expression of Interest process will open in early 2018. As such a more detailed report will be presented to Council in this regard shortly.

Whatever option Council decides to take in this regard, it will also be critical to brief and involve the CCB moving forward.

## Conclusion

The draft Strategy is an important tool in helping facilitate much needed affordable housing in a way that responds to Shoalhaven’s local challenges.

Following exhibition and review of the submissions received, a number of amendments to the draft Strategy are suggested prior to finalisation, as per part 1 of the recommendation.

Once the recommended changes have been made, the final Strategy can be sent to DP&E for endorsement. This will enable any proposed changes to the Local Environmental Plan that arise from the Strategy to be acknowledged as having a clear strategic basis.

Adoption and endorsement of the Strategy will enable Council to commence and continue to implement the actions and strategies in it.

It is also recommended as part of this adoption to also resolve the next steps in regard to the possible demonstration site at 42-46 Coomea Street, Bomaderry that is owned by Council. Resolving to move forward on this development opportunity, which is a key short term strategy, at the same time as adopting the Strategy will also show that Council is committed to advancing and achieving the outcomes the Strategy.

### **Policy Implications**

The Strategy has identified a number of possible changes to Council's policies and planning controls. Any resulting changes to existing policy will ultimately be considered in subsequent reports to Council as needed following the adoption of the Strategy.

Endorsement of the final Strategy by DP&E would also be beneficial should a future planning proposal be inconsistent with any Section 117 Directions or government policy.

### **Financial Implications**

The finalisation of the draft Strategy, including endorsement by DP&E, will be resourced within the Strategic Planning budget.

Implementation of the strategies or actions within the Strategy may have future financial implications/considerations for Council. These will be considered in future reports to Council as required.

At present the Bomaderry site opportunity is being pursued on the understanding that it will, at the very least, not directly cost Council any money. Further reports will be presented to Council on this project as it advances.

## DE17.91 Establishment of a Design Review Panel for Shoalhaven

**HPERM Ref:** D17/364387

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

**Attachments:** 1. Instrument of Delegation - State Environmental Planning Policy No 65 [↓](#)  
2. Design Quality Principles [↓](#)

### Purpose / Summary

To report back on a previous resolution that sought to consider the establishment of a Design Review Panel and endorse a way forward in this regard.

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

That Council:

1. Resolve to proceed to establish a Design Review Panel for Shoalhaven.
2. Explore the possibility of establishing a joint Design Review Panel for the Illawarra-Shoalhaven region.
3. Apply the Design Review Panel to all development citywide that is covered under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and development in the Nowra and Ulladulla CBD's that is at least 3 or more storeys in height.
4. Endorse the nine (9) Design Quality Principles defined in Attachment 1 for the consideration of development referred to the Design Review Panel.
5. Receive a subsequent report on the Terms of Reference and proposed budget and fee structure for the Design Review Panel.

### Options

1. Adopt the recommendation.

Implications: This will enable the establishment of a Design Review Panel (DRP) for nominated centres and development types in Shoalhaven in line with State Government planning initiatives.

Should the potential for a joint panel for the Illawarra-Shoalhaven not be practicable, Council is still able to consider the establishment of a DRP specific to Shoalhaven.

2. Adopt an alternative recommendation that seeks to establish a DRP that applies to development Citywide in certain zones (SP3, B2, B3 and B4) and is at least three or more storeys in height.

Implications: Depending on the locality, the process of referring a Development Application (DA) to a DRP may be onerous and add to the cost of lodgement and assessment fees for proponents. However, the application to specific Business and

Tourist Zones and development scales captures specific development types which Council has recently had controversial development applications in (e.g. Huskisson).

3. Not adopt the recommendation.

Implications: No further action will be taken in establishing a DRP for Shoalhaven. Current DA processes will remain as is and an opportunity to improve processes and outcomes related to these higher impact forms of development will not be taken up.

## Background

Council's Development Committee at its meeting on 8 August 2017 considered a report on Nowra CBD Urban Design Planning Controls. This report included a specific resolution to "Separately consider the establishment of a Design Review Panel to assist in the assessment of Development Applications for certain land uses and scales within Shoalhaven through a separate report to Council" (MIN17.685).

## Design Review Panel (DRP)

Design review is a process of evaluating the quality of a development proposal, through an independent process provided by a panel of design professionals that make up a DRP. DRPs are now common in most metropolitan areas and centres with high levels of apartment development.

The primary purpose of a DRP is to provide independent, impartial and expert design advice on certain development applications to assist Councils in improving the design quality of development, strengthen the approval process and raise design standards across the built environment.

DRPs have become increasingly common since they first emerged in NSW in the late 1990s. Since the introduction of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) in 2002, the appointment and functions of DRPs specifically for residential flat development were defined.

### *Effectiveness of DRPs*

DRPs have been effective elsewhere in improving the design quality of the built environment and help to create healthy, safe and liveable communities. DRPs provide specialised design expertise as part of the planning process, which is particularly beneficial where practical design skills are limited. Over time, DRPs can help to increase the design expertise among Council staff and can also give consent authorities greater confidence and ability to resist poor proposals, leading to better outcomes for the community as a whole.

In order for DRPs to be effective, they must be specific in their purpose and comprise of a suitable range of expert panel members. Panels tend to be less effective when the assessment process or criteria are too vague or where the panel has insufficient experience.

### *Establishment of DRPs*

Councils have powers to establish independent expert panels under Section 355 of the Local Government Act (LG Act) 1993. Under the LG Act, Councils have total discretion on the membership, charter and code of practice of their panels. In addition, the appointment and functions of DRPs, specifically for residential apartment development is stipulated in Part 3 of SEPP 65. The Apartment Design Guide (ADG) also provides guidelines to assist councils in administering DRPs at all relevant stages of the DA process. Part 5A of the ADG enables councils to seek advice from a DRP on DA's that SEPP 65 does not apply to.

Delegation to establish a DRP under SEPP 65 has been provided to Councils by the NSW Minister for Planning. A copy of the Ministerial Delegation is provided as **Attachment 1**. Once Council has established a DRP and appointed its panel members (including alternate members), it must advise the Minister in writing of the membership.

It is considered that the application of the DRP process in Shoalhaven could go beyond development to which SEPP 65 applies. In establishing a Panel, Part 5 of the ADG outlines the following steps Councils should take to establish a DRP under delegation, or to establish its own panel, namely:

1. Resolve to establish a DRP for the LGA.
2. Seek expressions of interest (EOI) for DRP members from suitably qualified professionals.
3. Assess EOIs against core selection criteria and any additional criteria established to address local issues.
4. Appoint members for a term of at least 2 years.
5. Determine and confirm all terms of the appointment, including remuneration details for each member.

In addition to the above steps, should Council resolve to establish a DRP for Shoalhaven, it is recommended that a further report including the Terms of Reference, and Fees and Charges for the panel be considered by Council prior to seeking formal expressions of interest for panel members.

DRP's may be constituted for an LGA, or two or more local government areas. On this basis, there is the potential for a joint Illawarra-Shoalhaven DRP to be set up. Due to the potential low number or fluctuating number of relevant development applications in Shoalhaven that may need to be referred to the Panel, a joint Panel that could be shared among the Illawarra-Shoalhaven Council's is considered to be the preferred option at this stage. This would require discussions with Illawarra-Shoalhaven Council's to gauge interest in forming a joint Panel.

#### *Types of Applications to be referred to a DRP*

If a Council operates a DRP under SEPP 65, the following developments are to be referred to the panel for advice in accordance with clause 4 of the SEPP:

*Development for the purposes of residential flat buildings, shop top housing or mixed use development with a residential component if:*

- (a) *the development consists of any of the following:*
  - (i) *the erection of a new building,*
  - (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
  - (iii) *the conversion of an existing building, and*
- (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) *the building concerned contains at least 4 or more dwellings.*

There is also an opportunity to extend the DRP to other land uses and scales of development within Shoalhaven. The following options could be considered:

**Option 1:** Only development as per Clause 4 of SEPP 65 (referenced above).

**Option 2:** Development as per Clause 4 of SEPP 65, and other land uses (i.e. conventional commercial development) in Nowra and Ulladulla CBD's that is three or more storeys in height. At this point, this is the preferred option.

**Option 3:** Development as per Clause 4 of SEPP 65, and development Citywide in SP3 Tourist, B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones that is three or more storeys in height.

The purpose of identifying particular zones, is to capture certain development types which are not defined by Clause 4 of SEPP 65, where there is merit for a design review to be undertaken of those development types that are three or more storeys.

### *Design Quality Principles*

Should Council resolve to establish a DRP under SEPP 65, developments would be considered against nine (9) Design Quality Principles:

1. Context and neighbourhood character
2. Built form and scale
3. Density
4. Sustainability
5. Landscape
6. Amenity
7. Safety
8. Housing diversity and social interaction
9. Aesthetics

If Council were to apply the DRP to additional development types such as those listed in Options 2 and 3 above, the wording of these principles may need to be modified slightly to remove specific references to residential development so that they may be applied more broadly. The proposed Design Quality Principles are provided as **Attachment 2**.

### *Composition of DRP's*

DRP's should consist of at least three (3) members, with expertise in architecture, landscape architecture, or urban design. It is also recommended that alternate members be appointed to ensure a quorum of three (3) panel members can be maintained. As the DRP is an independent body, Councillors, Council officers or employees cannot be appointed as panel members.

In addition, panel members must not reside in or do business with the Council; this is considered to be best practice and is consistent with the approach of other councils. However, due to Shoalhaven's geographical distance to outside areas, Council may consider that this might not be appropriate to apply to a Shoalhaven DRP. Council may wish to use panel members who do reside within the LGA who will be responsible for declaring any pecuniary interests.

### **Community Engagement**

Given the specialist nature of DRP's, there are no requirements under relevant legislation for community consultation with respect to establishing a DRP. However, an Expressions of Interest (EOI) process will be run in order to seek applications from interested and qualified professionals for appointment as a panel member.

## Policy Implications

The establishment of a DRP for Shoalhaven will require certain development applications to be referred to the DRP for expert design advice during the pre-lodgement and/or development assessment stage. The DRP will provide an assessment of the design of the development against the nine Design Quality Principles and provide recommendations for improvements to the design.

DRP's have an advisory role only and do not have powers to determine development applications. However, consent authorities are required to take into consideration the advice of a DRP's in the determination of development applications.

In terms of mandating that certain applications must be referred to a DRP, clause 28(1) of SEPP 65 states that *"After receipt of a development application for consent to carry out development to which this Policy applies (other than State significant development) and before it determines the application, the consent authority is to refer the application to the relevant design review panel (if any) for advice concerning the design quality of the development."* For development outside SEPP 65, there is no known specific mandate that stipulates that development must be referred to an established DRP.

At present the design of residential flat buildings, mixed use developments and similar is often the contentious aspect of this form of development application. Whilst Council does not receive a large number of this type of application in comparison to other Councils, the number of these types of development are growing and the ones that are received are often high profile and require close consideration. Thus considerable time is often spent as part of the development application process refining and improving the design of these types of development. The establishment of a DRP has the potential to improve outcomes in this regard.

## Financial Implications

Establishing a DRP will have a number of financial implications, including expenses for the payment of expert panel members, additional development application fee/s for DRP advice, and potential additional staff resourcing for the ongoing administration and coordination of the panel.

Should Council resolve to establish a DRP, funding and resourcing will need to be sourced and included in Council's budget. The potential financial implications are discussed briefly below, but will need to be firmed up and included in future budgets and Councils fees/charges.

### *Payment of DRP Members*

DRP members are entitled to remuneration and the payment of expenses as determined by Council under Section 23 of SEPP 65. DRP members should be remunerated commensurate with their professional role and meeting input at a pre-determined rate per meeting.

### *Development Fees for DRP Advice*

Section 248 of the Environment Planning & Assessment (EP&A) Regulation 2000 provides that an additional fee is payable for development referred to a DRP for advice, not exceeding \$3,000.

Council's existing Fees and Charges includes an additional fee for development referred to a DRP of \$760, which was formerly the maximum fee payable prior to the 2015 amendments to SEPP 65.

Should Council resolve to establish a DRP, it is recommended that Council adopt the new maximum fee payable in line with EP&A Regulation and as adopted by other Councils,

charged per meeting. This will ensure greater cost recovery of operating expenses of the DRP.

#### *Resourcing*

Council will be responsible for the coordination and ongoing administration of the DRP. Part 5 of the ADG suggests a specific Council officer be the nominated coordinator of the DRP, or the role may be shared amongst several officers.

Based on development application numbers over the previous 12 months, initially there may be approximately 6 applications referred to the DRP per year. On this basis, meetings would initially be held as needed, with the potential to increase this to a monthly basis should this be required in the future.

Resourcing of the panel would be dependent on whether it is established for Shoalhaven only, or shared among Illawarra-Shoalhaven Councils. If the panel is shared, Council will be required to fund the panel's operation on an equitable basis, for example, based on the number of DAs referred to the panel by each Council. If the panel operates for Shoalhaven only, an additional resource may be required.

## Instrument of Delegation

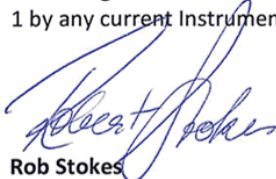
### *Environmental Planning and Assessment Act 1979*

I, Rob Stokes, Minister for Planning, under section 23 of the *Environmental Planning and Assessment Act 1979* hereby delegate my functions under *State Environmental Planning Policy No 65— Design Quality of Residential Apartment Development* ('the SEPP') referred to, and subject to the conditions set out, in Schedule 1 to this Instrument of Delegation, to the all councils (within the meaning of the *Local Government Act 1993*).

To avoid doubt, under this delegation:

- a council may exercise all delegated functions to constitute a design review panel for its local government area, or
- two or more councils may exercise all delegated functions to constitute a design review panel for their combined local government areas.

This delegation is intended to revoke any delegation of my functions referred to in Schedule 1 by any current Instrument of Delegation.



**Rob Stokes**  
Minister for Planning

Date 12-6-15.

### SCHEDULE 1

Function	Conditions
All my functions under Part 3 Division 1 of the SEPP in relation to design review panels.	<ol style="list-style-type: none"> <li>1. Where two or more councils appoint a design review panel for their local government areas, agreement from both councils is required before the design review panel may be abolished under clause 19(2) of the SEPP.</li> <li>2. The appointment of any member or alternate member to a design review panel under clauses 21 and 22 of the SEPP must be on terms consistent with any determination made by the Minister under clause 23 of the SEPP.</li> <li>3. Council/s must advise the Minister in writing on the membership (including alternate members) of a design review panel.</li> </ol>

### **Design Quality Principles**

(Taken from SEPP 65 – Design Quality of Residential Apartment Development with slight wording amendments)

#### **Principle 1: Context and neighbourhood character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

#### **Principle 2: Built form and scale**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

#### **Principle 3: Density**

Good design achieves a high level of amenity ~~for residents and each apartment~~, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

#### **Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability ~~of residents~~ and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

#### **Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for ~~neighbours'~~ neighbourhood amenity and provides for practical establishment and long term management.

**Principle 6: Amenity**

Good design positively influences internal and external amenity ~~for residents and neighbours~~. Achieving good amenity contributes to positive living-environments and resident-user well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

**Principle 7: Safety**

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

**Principle 8: Housing diversity and social interaction (where applicable)**

Good design achieves a mix of apartment-dwelling sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment-residential developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

**Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment-development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

## DE17.92 Proposed Submission - Repeal of two operational State Environmental Planning Policies

**HPERM Ref:** D17/374106

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

### Purpose / Summary

To advise of the proposed repeal of *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)* and *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 (SEPP MCP)*, and obtain endorsement to make a submission based on the content of this report.

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

That Council make a submission to the NSW Department of Planning & Environment on the proposed repeal of the *State Environmental Planning Policy No. 1 – Development Standards* and *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007* based on the content of this report.

### Options

1. Adopt the recommendation and endorse the content of this report as the basis of Council's submission.

Implications: This is the preferred option as it ensures that Council's comments on the proposed repeals will be considered by NSW Department of Planning & Environment (DP&E). It is essential that Council comment on the proposals, as the repeals of these SEPPs will have implications for Council.

2. Identify other matters or issues to be raised and submit to DP&E for consideration.

Implications: This option will still enable Council to identify matters to be considered in relation to the proposed repeal of these SEPPs; however, the implications of any possible changes are unknown and may require closer consideration or refinement.

3. Not make a submission.

Implications: This action is not recommended, as it will mean that Council does not provide any input and the opportunity to identify issues for consideration or resolution will be missed.

### Background

The proposed repeals are part of the NSW Governments drive to reduce the number of SEPP's that exist. In this case, this will be achieved by transferring the relevant provisions that need to be retained into local instruments and making these provisions uniform within each local government area (LGA).

### SEPP 1

Has been in place since 1980 and is aimed at providing flexibility in the application of certain planning controls by providing a mechanism to allow Councils to approve a development that does not comply with a development standard where it can be shown that compliance is unreasonable or unnecessary.

### SEPP MCP

Was originally made to ensure that the demolition of buildings, the subdivision of land, and the conversion of fire alarm systems were matters that required consent. It also included provisions to enable the erection of temporary structures with development consent and limited changes of use in certain business zones without consent.

### Relevance to Shoalhaven

Shoalhaven Local Environmental Plan (LEP) 2014 and Shoalhaven LEP (Jerberra Estate) 2014 are based on NSW Government's Standard Instrument (SI) LEP which already contains equivalent provisions to those in the SEPP's that are proposed to be repealed.

However, Council's older planning instruments (e.g. Shoalhaven LEP 1985) will need to be amended to include the equivalent SI provisions. A small number of SEPP's that were in effect prior to the introduction of the SI LEP will also need to be amended to add the relevant provisions prior to SEPP 1 and SEPP MCP being repealed, however, these do not generally apply to Shoalhaven.

SEPP 1 still currently applies in respect to the areas 'deferred' from the Shoalhaven LEP 2014 (shown as "Deferred Matters" on the Land Application Map). The three 'deferred' areas are listed below and are now the subject of separate Planning Proposal processes:

- Warrah Road, Bangalee (Crams Road Urban Release Area);
- Halloran lands at Culburra Beach, Kinghorne/Arrow Point, and Callala Bay; and
- Parts of Badgee Lagoon Urban Release Area, Sussex Inlet.

The Shoalhaven LEP 1985 and Shoalhaven Interim Development Order (IDO) 1964 currently apply to these 'deferred' areas. DP&E intend to ultimately amend these older plans to include the following SI LEP clauses:

- Cl.2.6 Subdivision—consent requirements
- Cl.2.7 Demolition requires development consent
- Cl.2.8 Temporary use of land
- CL4.6 Exceptions to development standards
- Cl.5.8 Conversion of fire alarms

### Proposed Submission

Council previously provided initial comments to DP&E in May 2017 on the proposed repeal of SEPP 1. It is proposed to make a further submission to the current exhibition based on the following points:

1. As advised previously, the preference is for SEPP 1 to remain in force until the 'deferred' areas are ultimately resolved, however, there is no real objection to the proposal to amend Shoalhaven LEP 1985 and Shoalhaven IDO 1964 to include a clause similar to the SI LEP Clause 4.6 Exceptions to development standards, given that this ultimately maintains the current flexibility.
2. Council does not wish to nominate any exclusions to the operation of the development standard variation provision for either Shoalhaven LEP 1985 or Shoalhaven IDO 1964.

3. Shoalhaven LEP 1985 already contains provisions similar to SI LEP Clause 2.6, namely Clause 10. As there is no change to the intent of the Clause and the wording is very similar, it may not be necessary to amend the existing provisions of Clause 10; however, this is something DP&E need to consider when reviewing the consistency of existing provisions.
4. Shoalhaven LEP 1985 already contains provisions similar to SI LEP Clause 2.8, namely Clause 39C; however, this does restrict the use of the land to 28 days rather than the 52 days prescribed under the clause in Shoalhaven LEP 2014.

It is unclear from the exhibited Explanation of Intended Effects whether the existing Clause 39C will be amended to reflect the provisions of Shoalhaven LEP 2014 (i.e. 52 days), or whether the entire Clause will be replaced with the one from the SI.

5. While it is acknowledged that this is a request for comments on the repeal of SEPP 1, the opportunity should also be taken to comment on SI LEP Clause 4.6 Exceptions to development standards.

The current test for a departure under Clause 4.6 is more onerous than SEPP 1. While there is no issue in ensuring the integrity of the standard is maintained, there are problems with how the clause is interpreted by applicants who read the clause and interpret it as they see fit. They are often unaware of the related case law and what is actually required to satisfy the requirements of the clause. Thus it is suggested that SI LEP Clause 4.6 should also be reviewed for clarity.

### Community Engagement

The proposed changes are currently on public exhibition from 27 October to 22 December 2017 with exhibition documents available on DP&E's website at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Repeal-of-Operational-SEPPs>

### Policy Implications

DP&E will undertake any resulting amendments to Shoalhaven LEP 1985 and Shoalhaven IDO 1964 and will continue to work with Council to achieve acceptable provisions. The proposed reforms do not propose any changes to the SI LEP.

### Financial Implications

There are no financial implications for Council in making a submission on the proposed repeals

## **DE17.93      Exhibition Outcomes/Finalisation - Draft Amendment No. 21 - Shoalhaven Development Control Plan 2014 - Chapter G4: Tree and Vegetation Management**

**HPERM Ref:**      D17/374917

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

**Attachments:**    1. Post-exhibition version - Chapter G4: Tree and Vegetation Management  
and Dictionary (under separate cover) [⇒](#)

### **Purpose / Summary**

- Report the outcomes of the exhibition of the draft Amendment No. 21 to Shoalhaven Development Control Plan (DCP) 2014 related to Chapter G4: Tree and Vegetation Management (the draft amendment), and
- Adopt and finalise the amendment to the DCP with minor amendments as outlined in this report

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

That Council:

1. Adopt Amendment No. 21 to Shoalhaven Development Control Plan 2014 as exhibited, with minor amendments as outlined in this report.
2. Notify the adoption of Amendment No.21 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the NSW Environmental Planning & Assessment Act 1979 and Regulations; and
3. Notify the NSW Department of Planning & Environment of the adoption of Amendment No.21 to Shoalhaven Development Control Plan 2014.

### **Options**

1. Adopt Amendment No. 21 to Shoalhaven DCP 2014 as exhibited, with minor amendments as outlined in this report and make the amendment effective.

Implications: This option will ensure that the DCP is revised in a timely manner and inconsistencies created by the recent commencement of the NSW legislation associated with land management and biodiversity conservation reforms are rectified. In particular, it will ensure that environmental zones are included in Chapter G4 of the DCP to ensure that consent is required for certain clearing in these important zones.

2. Make changes to the exhibited Amendment No. 21 to Shoalhaven DCP 2014.

Implications: This option is not recommended as it is possible that changes would need to be subject to further public exhibition period and this would delay the inclusion of environmental zones in Chapter G4 of the DCP.

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## Background

### The Draft Amendment

The draft amendment is intended to update DCP Chapter G4 in response to the NSW Government's land management and biodiversity conservation reforms, remove any resulting inconsistencies, and ensure that it complies with the new State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP).

The amendment:

- Aligns the DCP with the removal of *Clause 5.9 Preservation of trees or vegetation* from Shoalhaven LEP 2014 and the introduction of the Vegetation SEPP.
- Includes environmental zones in the DCP to control clearing in environmental zones given the repeal of the Native Vegetation Act.
- Revises the Supporting Maps to remove any mapped rural areas as the Chapter can no longer apply to land zoned RU1 to RU4.
- Includes flow on amendments to the Shoalhaven DCP 2014 Dictionary and required minor changes (typos, formatting, changes for document consistency and usability etc.).

The draft amended Chapter G4 and Dictionary (with post exhibition changes in response to submissions) are included as **Attachment 1**.

### Submissions

No external submissions were made on the draft amendment at the close of the public exhibition period.

Two internal submissions were received from Council's Building and Compliance and Environmental Services Sections. The issues raised in these submissions are outlined below:

#### *45 Degree Rule*

There is a compliance issue in relation to the 45 Degree Rule as it is very difficult to verify once a tree has been removed. The wording 'Council is satisfied' should be added to provision 5.2.2(a). This would require a new approach to managing the removal of trees under this exemption which would possibly require inspections or at least a process where Council acknowledges satisfaction of the exemption in relation to a tree proposed for removal.

### Comment

This is a valid concern but is outside the scope of this current amendment given the need to progress it without delay. This should be considered as part of a future DCP amendment (see section below relating to a model DCP chapter) should Council consider it has merit.

#### *Definition of 'Non-Urban' Area*

Need to clarify in a note exactly what constitutes 'non-urban' in relation to non-urban roads in *Section 5.1 Declared trees or other vegetation – Part 3 of the Vegetation SEPP*.

### Comment

Non-urban roads are mapped on the supporting maps but an advisory note box can also be included in Section 5.1 to clarify which zones are considered 'non-urban' for the purpose of this DCP Chapter. The note should also clarify that R5 Large Lot Residential is included as non-urban (given it was previously subject to the Native Vegetation Act).

### Definition of 'Native Vegetation'

Requests inclusion of the definition of 'native vegetation' from the Local Land Services Act to ensure protection of all native vegetation and not just "trees".

### Comment

This request is supported – the words 'and native vegetation' are proposed to be included in relation to E zones to ensure that all native vegetation clearing requires a permit and the definition is included in the Dictionary. This will ensure sufficient assessment of threatened species etc., particularly threatened orchid species, which will reduce the risk of landowners unknowingly clearing threatened species and risking action under the Biodiversity Conservation Act 2016.

Any exotic (non-native) shrubs or groundcover are excluded from the requirement to obtain a permit for their removal.

The use of 'native vegetation' rather than 'vegetation' will also avoid confusion around the definition of 'vegetation' as the DCP Dictionary has a different definition from the Vegetation SEPP as shown below.

- DCP Dictionary definition:  
**Vegetation** means all native plant communities other than trees as defined in this plan. *Note: this definition is used in other chapters of the DCP so should not be changed.*
- Vegetation SEPP definition:  
**Vegetation** means a tree or other vegetation, whether or not it is native vegetation.

### Proposed amendments

A small number of amendments to the exhibited Chapter are proposed as a result of the internal submissions discussed above and further consideration by staff. These are outlined below:

Section of the Chapter	Proposed amendment
5.1 Declared trees or other vegetation – Part 3 of the Vegetation SEPP	Second paragraph – change 'prescribed' to 'declared' to be consistent with the wording in the SEPP.
	Amend number 7 in the numbered list to include 'and native vegetation' after the word 'tree'.
	Amend the note box at the end of Section 5.1 as follows:  Insert 'excluding R5 Large Lot Residential' after the word 'residential'.  Add the wording under the existing note 'A non-urban area for the purposes of this Chapter is any area with a R5 Large Lot Residential, environmental, recreation, or waterway zone.'
Dictionary	Insert in alphabetical order: <b>native vegetation</b> is as defined in Part 5A of the <i>Local Land Services Act 2013</i> . <b>Note:</b> this means any of the following types of plants native to New South Wales:

Section of the Chapter	Proposed amendment
	<ul style="list-style-type: none"> <li>a) trees (including any sapling or shrub or any scrub),</li> <li>b) understorey plants,</li> <li>c) groundcover (being any type of herbaceous vegetation),</li> <li>d) plants occurring in a wetland.</li> </ul>

#### Model DCP Chapter

Council is now involved in a working group with the NSW Department of Planning and Environment (DP&E) to prepare a 'model' DCP Chapter for tree and vegetation management. The model Chapter will be optional but adoption of the Chapter should ensure that Council is consistent with the Vegetation SEPP. The use of exemptions, including the 45 degree rule, has been raised with this group. A further report will be presented on this model Chapter once the project is further progressed. Depending on its contents this may result in a future amendment to this Chapter.

#### **Community Engagement**

The draft amendment was publicly exhibited for a period of 31 days from Wednesday 25 October until Friday 24 November 2017.

The exhibition included:

- Public notification of the exhibition in local newspapers.
- A plain English explanatory statement.
- Outline of key changes proposed to Chapter G4 and the Dictionary provided as a Table of Changes.
- Copies of the exhibition material on Council's internet site and for viewing at Council's Nowra Administration Building and Ulladulla Branch Office.

#### **Policy Implications**

A future amendment to Chapter G4 may need to be considered once the 'model' DCP Chapter is finalised and released by DP&E.

Other DCP Chapters will most likely also need to be updated to reflect the changes in legislation including:

- G5: Threatened Species Impact Assessment
- N20: Jerberra Estate

These chapters will be included in a future amendment once Council staff have a better understanding of the operation of the new legislation.

#### **Financial Implications**

This project is being managed within the existing Strategic Planning Budget.

### **Risk Implications**

If Chapter G4 is not amended as per the recommendation, the DCP will continue to be inconsistent with the new legislation, and likely to cause confusion and misinterpretation for Council staff, landowners, and community members, particularly in relation to:

- Clearing on rural land which is now solely regulated under the Local Land Services Act 2013 as there is a risk that landowners may rely on the Chapter to undertake clearing in rural zones.
- Landowners may inadvertently undertake illegal clearing of land that is mapped on the Biodiversity Values Map without being aware of its existence given that there is no reference to the map or associated threshold in the current Chapter.

There is also a risk of negative impacts on the amenity and biodiversity values of environmental zoned land given the current situation where landowners can undertake relatively large amounts of clearing in these zones (up to 5000m<sup>2</sup>) without the need for assessment through a permit application.

## **DE17.94 Moss Vale Road South Urban Release Area - Proposed Public Exhibition - Planning Proposal, Development Control Plan and Contributions Plan**

**HPERM Ref:** D17/375583

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

**Attachments:**

1. Planning Proposal Report (under separate cover) ➡
2. Draft DCP Chapter NB3 Moss Vale Road South Urban Release Area (under separate cover) ➡
3. Draft Contributions Plan Amendment - Moss Vale Road South URA (under separate cover) ➡

### **Purpose / Summary**

Obtain the required resolution to publicly exhibit a package of planning documents for the Moss Vale Road South Urban Release Area (URA) to support and enable the formal release (subdivision and development) of the land.

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

That Council:

1. Proceed to publicly exhibit in accordance with relevant legislation the Planning Proposal, Draft Development Control Plan Chapter and Contributions Plan as a package for the Moss Vale Road South Urban Release Area for a minimum of 54 days.
2. Advise landowners, relevant Community Consultative Bodies and the NSW Office of Environment and Heritage of the public exhibition.
3. Receive a further report after the public exhibition period.

### **Options**

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable this important planning project to continue on to the next step in the process required to enable the actual release and development of the zoned Moss Vale Road South URA. The ultimate finalisation of this project will help address concerns regarding potential residential land release shortage.

2. Adopt an alternative recommendation to revise the Planning Proposal (PP) to exclude the open space area identified in the Indicative Layout Plan (ILP) from the proposed 'exception to the minimum lot size' provision.

Implications: The revision to remove the application of the proposed clause over land associated with drainage lines and significant vegetation may address concerns raised by NSW Office of Environment and Heritage (OEH) in their early advice on the PP. However, as the ILP is indicative only, it may be more preferable for the clause to only be removed from open space areas after the land has been acquired by Council for that

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purpose. This is more logical in case the eventual and actual development of the URA differs slightly to what is illustrated in the indicative ILP. Given that the land is already zoned for residential development, It is also acknowledged that the issues raised now by OEH may be able to be addressed through provisions in the Development Control Plan or alternatively during the Development Application process. This is acknowledged in OEH's submission, specifically in relation to biodiversity and Aboriginal cultural heritage matters.

3. Defer the matter and request a detailed briefing from staff to enable a greater understanding of the proposals contained in the planning documents.

Implications: This option is not preferred as there is an urgent need to continue to advance the actual release and development of land in this area to ensure that there is a continued land supply in Nowra-Bomaderry. Thus delays in the process need to be minimised if possible. However, if Council feel they need a briefing to better understand the proposals this can be arranged during the proposed public exhibition period, before the proposals are finally adopted.

4. Formally delay the public exhibition of the Moss Vale Road South URA package to align it with the work to be undertaken or the advancement of the Moss Vale Road North URA.

Implications: This option is not preferred given the work that has been completed to date and the commitment that has been established with the landowners. The package of planning documents encourages a mix of lot sizes, housing types and densities in the Moss Vale Road South URA to facilitate the desired development outcome and enable Council to levy local contributions to assist in the provision of community facilities or infrastructure to meet demand created by this new development. Delaying the public exhibition of the planning documents also has the potential to further inhibit the timely release of land to help address the potential residential land release shortage.

## Background

The Moss Vale Road South URA was originally identified as a 'New Living Area' in the Nowra-Bomaderry Structure Plan (NBSP) which was adopted by Council in 2006 and endorsed by the State Government in 2008.

The site was subsequently rezoned under Shoalhaven Local Environmental Plan (LEP) 2014 to predominantly R1 General Residential with parts rezoned E2 Environmental Protection and E3 Environmental Management as shown in *Figure 1*.

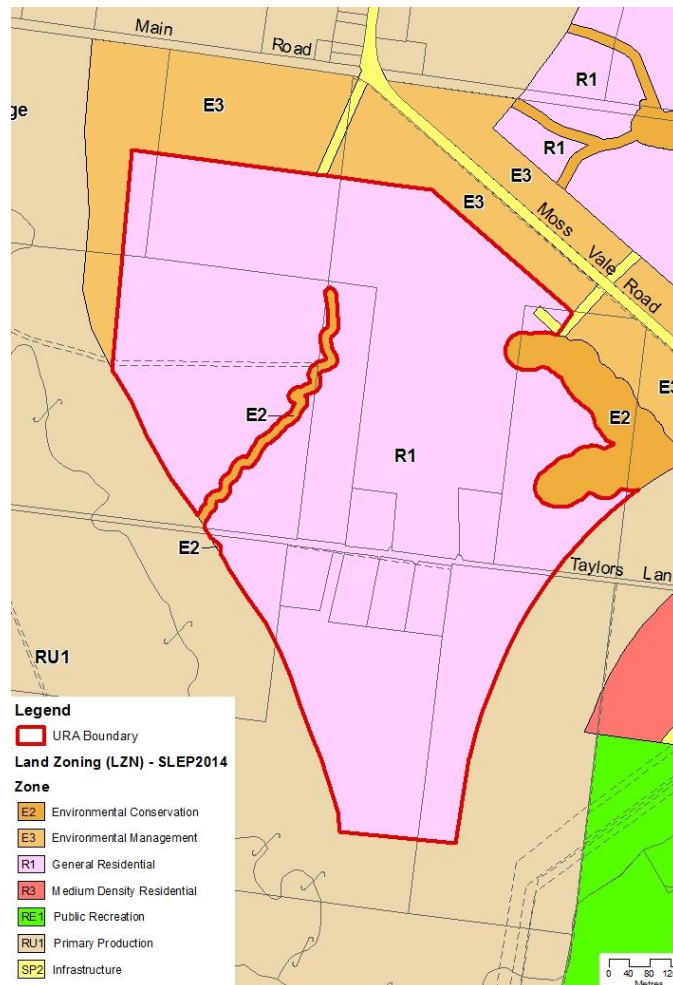


Figure 1 – Moss Vale Road South URA

The E2 zoned parts relate to riparian/drainage areas that were verified as part of the LEP process. The E3 zoned parts set the developable land back from existing main roads consistent with the Structure Plan outcomes.

The R1 zoned land currently has a minimum lot size of 500m<sup>2</sup> and is subject to Part 6 – Urban Release Areas of Shoalhaven LEP 2014 which requires that the following are provided before development consents can be granted:

- a) Satisfactory arrangements for designated State public infrastructure;
- b) Satisfactory arrangements for public utility infrastructure; and
- c) Site-specific Development Control Plan (DCP).

On 9 May 2017, Council's Development Committee resolved to undertake the detailed planning work to satisfy the provisions of Part 6 including a PP to enable smaller lot sizes, a site-specific DCP and a Contributions Plan (CP) to guide development and identify public infrastructure required for the URA. The resolution (MIN17.374) is as follows:

*That Council:*

1. *Support the proposed insertion of a clause in Shoalhaven Local Environmental Plan 2014 that allows for an exception to the minimum lot size in the Moss Vale Road South Urban Release Area and prepare a Planning Proposal to submit to the NSW Department of Planning and Environment for Gateway determination.*
2. *Give in principle support for the current Indicative Layout Plan for the Urban Release Area, which will be utilised in the proposed Development Control Plan Chapter.*

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3. Commence the preparation of a Development Control Plan Chapter and Contributions Plan for the Moss Vale South Urban Release Area as required by Part 6 of Shoalhaven LEP2014.
4. If necessary, receive a further report following receipt of the Gateway determination.

The necessary detailed planning work has now been completed for the Moss Vale Road South URA in order for it to proceed to the next step of community consultation.

### Planning Proposal

Council lodged a PP with the NSW Department of Planning & Environment (DP&E) on 27 June 2017 to amend Shoalhaven LEP 2014 by introducing an exception to the minimum lot size of 500m<sup>2</sup> that will allow lots as small as 300m<sup>2</sup> in certain locations within the URA. In simple terms this means the existing mapped minimum lot size is retained, but the clause also allows the smaller lots to be considered if appropriate

The subject land where this clause will apply is outlined in red in *Figure 2* below.

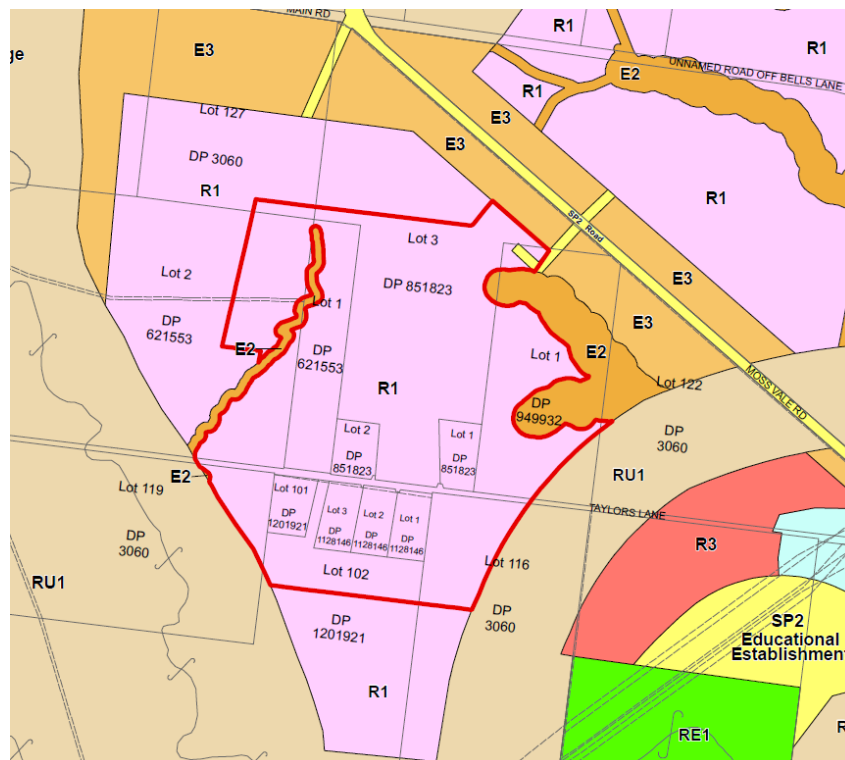


Figure 2 – Planning Proposal Subject Land

A Gateway determination was received on 21 September 2017 that enables the PP to proceed subject to conditions. The conditions required an Integrated Water Cycle Assessment (IWCA) to be completed, community consultation for a minimum period of 28 days, and consultation with public authorities and organisations including Shoalhaven Water, Endeavour Energy and Office of Environment and Heritage (OEH). A copy of the PP including the public authority's consultation and completed IWCA is provided at **Attachment 1**. A copy of the final IWCA will be included in the package of information for the public exhibition.

In consulting with OEH as required by the determination, concerns were raised with respect to reducing minimum lot size over drainage corridors or areas containing significant native vegetation. The following recommendations were made by OEH:

- The E3 Environmental Management be extended southwards to cover drainage reserves from Main Road to the existing E3 area within the URA.

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- If the E3 zone extension is not pursued, drainage reserves should be excluded from changes to the minimum lot size.
- Significant vegetation should be excluded from the changes to the minimum lot size.
- Proponents undertake Aboriginal cultural heritage assessment at an early stage of the project development.
- Council provide OEH an opportunity to comment on the DCP.

Acknowledging that the land is already zoned residential and a DCP has to be prepared, in addressing the response from OEH, it is recommended to proceed as follows:

- The land that is zoned E3 and immediately south is outside of the subject land area and therefore no further modifications need to be made to the subject land.
- Incorporate provisions in the DCP which require the retention of significant vegetation and focus their location in the proposed public domain areas. As the location of significant vegetation is largely located within the proposed open space areas, these will ultimately be acquired by Council via the Contributions Plan. Once the open space areas come into Council's ownership, the zone will be changed and the exception to the minimum lot size will be removed through a separate PP process, most likely the ongoing annual housekeeping ones.
- Incorporate provisions in the DCP which require Aboriginal cultural heritage assessment to be undertaken at the subdivision development application stage and if need be incorporate any identified values into open space areas.
- Refer the DCP to OEH for comment. It is noted that this has already occurred, given they are part of a Nowra-Bomaderry Urban Release Area Project Control Group that was set up by the NSW Government to help advance the URA's. At the time of writing this report, no response had been received from OEH in relation to the draft DCP.

The response from OEH acknowledges that these details may be better dealt with in the DCP or at the development application stage at which point they are available to provide further advice on the issues as required. This comment is made specifically in relation to biodiversity and Aboriginal Cultural Heritage matters.

The response from Endeavour Energy suggests that they are planning for the growth expected in the area. The response received from Shoalhaven Water also indicated that they are planning for growth in the area with the expectation of at least 840 dwellings, and their Development Servicing Plan (DSP) considers and plans for the expected growth in the URA. However it was noted that due to the exception clause enabling a potential 49% increase in lots, it was emphasised that it was necessary to know the lot yield that will be permitted to ensure that the sizing of the planned water supply and sewerage infrastructure for the URA is carried out correctly. This issue will be further considered as the PP proceeds to finalisation.

### **Draft DCP Chapter NB3 Moss Vale Road South URA**

The draft DCP for the Moss Vale Road South URA has been prepared to achieve the desired future character set out in the NBSP and achieve the following design and development outcomes:

- Housing diversity to encourage variety and choice that meets the needs of the future community. Encouraging housing diversity will offer housing at different price points and for different household sizes and ages.
- Defined street hierarchy that is well connected, accessible and integrates walking, cycling and public transport routes that are safe and convenient.
- Quality open space that provides for the needs of the community, protects and enhances significant vegetation, incorporates water sensitive urban design and is multi-functional.

These development outcomes will be achieved through the mandatory controls and acceptable solutions contained within the draft DCP.

In preparing the draft DCP, a review of best practice precinct plans from priority growth areas in NSW was also undertaken to determine the best way to proceed with the draft DCP for this URA.

The draft DCP covers the requirements of Clause 6.3 of Shoalhaven LEP2014 and contains controls in regard to subdivision design, street hierarchy, residential development, protection of environmental features, landscape strategy, staging and more.

The draft DCP considers staging the development of the area based on delivery of critical infrastructure such as roads, water, sewer and electricity; as well as current fragmentation of land and ownership.

From a water and sewer perspective, the proposed staging does allow for the availability of water and sewer however, it should be noted that the current Shoalhaven Water, Water Supply and Wastewater Servicing strategies initially propose supply of water to the western side of the URA and provision of sewerage services to the east and south of the URA. These documents serve as the basis on how and where servicing can be provided with more detail and refinement to be developed. The Water Supply and Sewerage Development Servicing Plans (DSPs) will outline the extent of water and sewerage infrastructure to be constructed by Council. Thus, 'works in kind' to water and sewer infrastructure may be required where the development is delivered as per the proposed staging plan. This aspect will be discussed further with Shoalhaven Water when the draft DCP is on exhibition.

The proposed controls relating to residential development consider the recently proposed Greenfield housing code and are drafted to be similar to ensure that the eventual housing product achieved in these areas is consistent, irrespective of whether it goes through the development application (Council) or complying development certificate (certifier) path.

A copy of the draft DCP is provided at **Attachment 2**.

### **Draft Contributions Plan Amendment**

The draft CP proposes to introduce three new projects for roads (ROADS), drainage (DRAI), and passive open space (OREC) specific to the Moss Vale Road South URA.

The new projects have been prepared based on the recent Council resolution to review and amend the overall CP to group individual projects. As such, the road project incorporates the construction of two entry roads, eight roundabouts, crossing thresholds and shared paths along road reserves. The drainage project incorporates six bio retention basins, wetland and swale drains. The passive recreation project includes the acquisition, construction and embellishment of two large passive open space areas, which will be features of the development, which are also generally associated with riparian corridors.

The draft CP will be part of the public exhibition package and a copy is provided at **Attachment 3**.

Initial costings have been identified and is estimated to be \$18,692.49 per equivalent tenement (ET) for the new Moss Vale Road South URA specific projects. The total contribution that would be payable per ET including the existing planning area wide and citywide projects, is estimated to be \$22,918.18. The breakdown of the contributions projects, per ET, is as follows:

Project	Cost
<i>New Moss Vale Road South Projects</i>	
OREC	\$9,991.67
ROAD	\$5,432.67
DRAI	\$3,268.15
<i>Existing planning area and citywide projects</i>	\$4,225.69
<b>Total Estimated Contribution per ET</b>	<b>\$22,918.18</b>

It should be noted much of the cost of the contributions comes from the large area associated with the acquisition of the passive open space, being 9.8ha. Whilst the size of the land for acquisition is quite significant, it is due to the proposed multi-functional nature of the open space area being for passive recreation, drainage and natural areas.

Any opportunities for funding (government funding/grants etc.) to help reduce the cost in this regard will be investigated and if appropriate pursued.

## Community Engagement

### *Landowner engagement*

Council staff have held two meetings with the landowners of Moss Vale Road South URA over the last year to discuss the planning work being undertaken. Staff have also met with consultants who act on behalf of some of the landowners and development interest groups wishing to develop and lodge development applications in the Moss Vale Road South URA.

### *Get Involved Page*

A project page has also been established on Councils 'Get Involved' community engagement portal to enable the current and future community of the Nowra-Bomaderry area to keep up to date as Council plans for actual growth and development in these areas.

The page has been operational for the last six weeks and provides background, links to key information and maps, timelines and a news feed. The page can be found at the following link:

<http://getinvolved.shoalhaven.nsw.gov.au/planning-for-growth-nowra-and-bomaderry>

The 'Get Involved' page will remain live after the Moss Vale Road South URA planning work is completed as it will be used as the platform to provide updates for planned growth areas in the Nowra-Bomaderry area such as Moss Vale Road North, and subsequent Phases of the NBSP including Cabbage Tree Lane.

### *Public Exhibition*

The package of information will be publicly exhibited in accordance with the Gateway determination and *Environmental Planning & Assessment Regulations 2000*. The Gateway determination and Regulations require a public exhibition period of a minimum 28 days, however given the significance of the URA an extended exhibition period is warranted. In addition, the public exhibition period will most likely coincide with the Christmas and New Year period, therefore the package of information will be exhibited for a minimum period of 54 days.

## Policy Implications

The package of information seeks to make amendments to Shoalhaven LEP 2014, Shoalhaven DCP 2014 and Shoalhaven CP 2010 by way of adding clauses, development controls and projects that relate to the URA. Specifically the proposed amendments include:

- Insertion of a new Clause under Part 4 of Shoalhaven LEP 2014 that enables an exception to the mapped minimum lot size of 500m<sup>2</sup> in certain areas. The clause will be associated with a new map layer to be created that identifies the specific land to which the clause applies to.
- Insertion of a new Chapter, Draft NB3 Moss Vale Road South Urban Release Area into the Shoalhaven DCP 2014.
- Insertion of three new projects which relate specifically to Moss Vale Road South, as outlined in this report, into the Shoalhaven CP 2010.

The draft DCP and draft CP have been the subject of internal consultation with relevant sections of Council.

## Financial Implications

The preparation of the package of information for Moss Vale Road South URA has been managed by Council's existing Strategic Planning budget.

Delivery of local infrastructure will be funded by contributions levied under Shoalhaven CP 2010. State infrastructure including transport, health, education and emergency services will most likely be delivered initially via a Planning Agreement due to the current absence of a State Infrastructure Contribution. The costs for water supply and sewer infrastructure as listed in the DSP's for the development of Moss Vale Road South URA will be recouped via Section 64 Charges.

The ongoing management of the open space areas within Moss Vale Road South URA will require an additional budget to ensure Council's Social Infrastructure Planning, Natural Resources and Assets and Works teams, as the custodians of the land, are able to suitably manage and oversee these areas.

Other Local Government Area's in NSW have adopted differential rates or environmental levy in areas where large open space and natural areas are integral to and integrated into the development. As Section 94 Contribution Plans do not allow for the levying of contributions for the ongoing management of these spaces, differential rates or environmental levies provide a viable option in this regard.

Due to the large expanses of open space area, consideration of the application of different rates or environmental levies specifically for Moss Vale Road South URA should be considered and investigated. Similar issues in terms of ongoing management have already been experienced in places like Bayswood, and will become a large consideration in planning for the future growth areas Moss Vale Road North URA. This will need to be resolved in the finalisation and adoption step of the process. The options in this regard will continue to be investigated and will be addressed in subsequent reports to Council.

## DE17.95 Proposed Submission - Proposed Amendment to Bulky Goods Premise Definition - Standard Instrument LEP

**HPERM Ref:** D17/376937

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

**Attachments:** 1. Explanatory Statement - Proposed Standard Instrument LEP definition amendment [↓](#)

### Purpose / Summary

Advise of the release by the NSW Department of Planning & Environment (DP&E) of the Retail Expert Advisory Committee's (REAC) Independent Recommendations Report and resulting proposed amendment to the Standard Instrument Local Environmental Plan (LEP) definition of 'bulky goods premises', and obtain endorsement to make a submission based on this report.

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

That Council:

1. Make a submission to the NSW Department of Planning and Environment on the proposed amendment to the Standard Instrument Local Environmental Plan definition of 'bulky goods premises' based on the following issues:
  - a. The potential safety and traffic issues associated with the removal of the requirement to provide loading facilities; and
  - b. The potential for small format 'bulky goods premises' in industrial areas to impact on the viability of retail centres and the availability of industrial land; and
  - c. Request that a change to the definition is to be pursued that they consider retaining the requirement to have a large floor area, and introduce flexibility with the inclusion of the following wording (or similar): 'and may or may not include direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire'.
2. Should the definition of 'bulky goods premises' be amended as exhibited, as a separate exercise, Council reconsider the appropriateness of 'bulky goods premises' as a permissible use in the IN1 General Industrial and IN2 Light Industrial zones in the Shoalhaven Local Environmental Plan 2014.

### Options

1. Make a submission on the proposed amendment to the Standard Instrument LEP definition of 'bulky goods premises' based on the issues outlined in this report. Further, should the definition of 'bulky goods premises' be amended as exhibited, reconsider the appropriateness of 'bulky goods premises' as a permissible use in the IN1 General Industrial and IN2 Light Industrial zones in the Shoalhaven LEP2014.

DE17.95

Implications: This is the preferred approach as it enables Council to make a submission and raise concerns with the proposed broadening of the 'bulky goods premises' definition. Should the amendment progress as exhibited, which is likely, Council needs to reconsider the appropriateness of 'bulky goods premises' in industrial zones as a spate exercise.

2. Not make a submission on the proposed amendment to the Standard Instrument LEP definition of 'bulky goods premises'.

Implications: The opportunity to comment on the proposed amendment to the definition will be missed.

## Background

### The REAC Independent Recommendations Report

In 2016, the NSW Minister for Planning appointed an independent Retail Expert Advisory Committee (REAC) to investigate and review retail planning in NSW.

The Committee has finalised its report and recommendations which have been accepted by the Minister. The REAC Independent Recommendations Report can be viewed on the DP&E website at the following link:

<http://www.planning.nsw.gov.au/~media/056A9886DA9345F0A7E9B3542509C0D2.ashx> .

DP&E has committed to review the retail planning framework in NSW, informed by the Committee's recommendations, and will seek public feedback as resulting retail planning policies are developed.

### The bulky goods premises definition

Based on one of the recommendations of the REAC's Independent Recommendations Report, DP&E is proposing an amendment to the definition of 'bulky goods premises' in the Standard Instrument LEP. The explanatory document in this regard is included as **Attachment 1**.

The current definition is:

***bulky goods premises*** means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, **and**
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

*and including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.*

Thus, currently, 'bulky goods premises' must meet two requirements or tests:

1. A large floor area for the display, hire and sale of goods; and
2. Direct public vehicle access for loading and unloading goods.

The proposed amendment, whilst it might look minor, will remove the requirement to provide both a large floor area and direct vehicular access, by replacing 'and' with 'or'. This means that bulky goods retailers will only need to meet one of the requirements or tests to satisfy the definition.

It is suggested that the proposed amendment is intended to increase flexibility and to decrease costs when developing 'bulky goods premises'.

#### Potential Implications

'Bulky goods premises' are currently permissible with consent in the following zones under Shoalhaven LEP 2014:

- RU5 Rural Village
- B2 Local Centre (mandated as permissible with consent)
- B3 Commercial Core (mandated as permissible with consent)
- B4 Mixed Use (mandated as permissible with consent)
- B5 Business Development (mandated as permissible with consent)
- B7 Business Park
- IN1 General Industrial
- IN2 Light Industrial

*Note:* where the use is 'mandated' as noted above, Council has no discretion in this regard as the permissibility is set across NSW via the Standard Instrument LEP.

The proposed amendment to the definition could be viewed as a potential weakening of the test of what is a 'bulky goods premises'. It could mean that 'bulky goods premises' would not have to provide a loading area, which may have traffic and safety implications if customers have to transport bulky items or goods across car parks and/or roads to load them in their vehicles.

Conversely, it appears that 'bulky goods premises' could also be approved in a small retail format as long as they have direct public vehicle access for loading and unloading goods. This has the potential to further blur the distinction between 'bulky goods premises' and 'shops', and essentially allow for shops to be located in the IN1 and IN2 zones. This may be an attractive option for retailers due to the lower cost of land and property rental in outer industrial or commercial areas than in CBD's or local shopping centres. This could have a flow on effect on the viability of retail centres, and the availability of industrial land for manufacturing and other genuine industrial uses. This general issue has been a source of ongoing debate in regard to the current South Nowra commercial/industrial area.

This change also has the potential to put increasing pressure on relatively scarce industrial land. The retail sector is acknowledged as a key driver of employment, however, in terms of employment there are other highly valued jobs that could be created within regional and rural economies and these rely on the availability of appropriately priced and sized industrial land.

Wholesale trade, warehousing and manufacturing activities are traditionally undertaken in industrial zones and expansions in these require that there is a stock of appropriately zoned and priced land. In addition, the REAC have predicted that the demand for warehousing and logistics is projected to increase as the retail sector evolves, a further reason why industrial zoned land needs to be maintained for industrial purposes.

A change to the definition could promote further out-of-centre development. It is widely acknowledged that this can affect the viability of existing centres, other land uses, and weaken employment lands by inflating industrial land values and thus affecting the future viability of the operation of industrial zoned lands. Bulky goods retailers looking to move into industrial areas are, in regional areas, not driven by a lack of available land in other zones as may be the case in a metropolitan area, but rather attracted to lower land values and the creation of 'destination' retail shops and centres where competition is reduced.

Therefore, it is recommended if this amendment proceeds as exhibited, that as a future standalone exercise, Council reconsiders the appropriateness of permitting bulky goods premises in the IN1 General Industrial and IN2 Light Industrial zones in Shoalhaven LEP 2014.

### The submission

It is proposed to make a submission to DP&E outlining the following:

- The potential safety and traffic issues associated with the removal of the requirement to provide loading facilities; and
- The potential for small format 'bulky goods premises' in industrial areas to impact on the viability of retail centres and the availability of industrial land; and
- Request that a change to the definition is to be pursued that they consider retaining the requirement to have a large floor area, and introduce flexibility with the inclusion of the following wording (or similar): 'and may or may not include direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire'.

### **Community Engagement**

The proposed amendment is currently on public exhibition with exhibition materials available for viewing on DP&E's website at <http://www.planning.nsw.gov.au/Policy-and-Legislation/Retail-planning/Retail/Bulky-Goods-Premises>

DP&E is accepting submissions and feedback on the proposed amendment until 5pm Wednesday, 13 December 2017.

### **Policy Implications**

Any update to the Standard Instrument LEP will automatically update Shoalhaven LEP 2014. Only the definition in the Dictionary is intended to be updated; there are no proposed changes to where 'bulky goods premises' are mandated as permissible with consent or prohibited.

# ***Proposed Standard Instrument Local Environmental Plan Amendment***

*Bulky goods premises  
definition*



Planning &  
Environment

November 2017

DE17.95 - Attachment 1

## Proposed amendment to Standard Instrument (Local Environmental Plans) Order 2006

The Department of Planning and Environment (the Department) is committed to ensuring the Standard Instrument Local Environmental Plan (SILEP) remains a robust, up-to-date and relevant planning tool that supports appropriate development in NSW. A minor amendment to the *Standard Instrument (Local Environmental Plan) Order 2006* (the Order) is proposed that will respond to issues raised with the current bulky goods premises definition. The proposed amendment to the Order will automatically update the definition of bulky goods premises in all Local Environmental Plans made under the Order.

### Retail Expert Advisory Committee

In 2016, the NSW Government appointed an independent committee, the Retail Expert Advisory Committee (REAC) to inquire into and advise on planning reforms to support the NSW retail sector. REAC's independent recommendations report was released by the Minister for Planning in November 2017.

The report makes five recommendations including one to review retail definitions within the SILEP to better suit the changing nature of retailing, remove onerous requirements and to better support customer and retailer needs. One of the key implementation actions following recommendation three is to amend the definition of bulky goods premises.

In implementing the REAC recommendations the Department will undertake a broader review of large format retailing as part of the preparation of a State-wide retail policy. The proposed minor amendment to the bulky goods definition is consistent with actions arising from the REAC report and aligns with the policy direction established in the report and its recommendations.

### Amendment to bulky goods premises definition

The current definition of bulky goods premises incorporates a two-part requirement. A bulky goods premise must provide a large area for handling, display or storage of goods AND direct vehicle access for customers to load or unload their purchases to meet the definition.

The proposed amendment seeks to remove the need to satisfy both requirements by replacing the word 'AND' with the word 'OR'. The proposed change to the existing definition is below, with **bold** text showing the proposed wording and ~~strikethrough~~ showing wording proposed to be deleted.

**bulky goods premises** means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, ~~and~~ **or**
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

and including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.

### Amendment and Land Use Zones

The proposed amendment to the definition will not affect or alter the permissibility of bulky goods premises in the land use tables of local environmental plans across the State.

### Potential impact of the proposed amendment

The proposed amendment to the bulky goods premises definition is likely to have the following impacts:

- Bulky goods retailers will have the ability to decide if they wish to provide public loading access, based on their business model and suitability of the site, and subject to normal council requirements;
- Cost to comply with this two-test requirement will be reduced, as the requirement to provide public loading access can be expensive; and
- The intent of the definition will be clearer and easier for consent authorities to assess development applications.

It should be noted that while the proposal will remove the obligation to provide both a large floor area and direct vehicular loading access, it does not prevent a retailer from providing both items.

### Proposed savings provisions

It is proposed that any amendment will include transitional arrangements such that the updated definition would apply to all applications lodged six weeks from the date of gazettal, giving applicants time to update their designs.

### Background

#### 1.1 Rationale for the proposed change

In 2011, the definition of bulky goods premises was amended to its current form. The current definition requires a bulky goods premises to satisfy two requirements:

1. There must be a large floor area for the handling, display or storage of goods; and,
2. The premises must have direct vehicle access for customers to load and unload goods.

Prior to 2011 the definition required only one of the requirements to be satisfied. Since the amendment was made, representations to the Department raised concerns with the reduced flexibility of the definition following its amendment.

The way people shop and the general nature of retailing is changing rapidly. With the rise of online shopping, traditional storefront shopping is declining for many items. This trend means that large format retailers no longer need, or always require, the capacity to store large quantities of bulky goods in shops as well as direct vehicle access for customers.

The current definition restricts bulky goods retailers to one building form and is making adaption to changing retail demands harder. Bulky goods retailers do not always require both large floor areas and direct public vehicle loading access, but are required to have both under the current definition. The proposed amendment will allow bulky goods retailers the choice of whether they provide direct vehicle loading access.

## 1.2 Changes to the bulky goods premises definition over time

In 2006, the NSW Government introduced the SILEP and a program of standardising all LEPs by way of the Order. The SILEP provides a consistent framework for local environmental plans across the State, and standardises land use definitions and zones.

When the SILEP was gazetted in 2006, the bulky goods premises definition included the two-part requirement but only required one of the two parts to be satisfied for the definition to be met. That is, the definition used 'or' rather than 'and' to meet requirements (a) or (b) for bulky goods premises.

### **2006 bulky goods premises definition**

**bulky goods premises** means a building or place used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale of bulky goods.

In 2011 the definition was amended to its current form. The change to the definition was made in conjunction with wider amendments to the SILEP which expanded the zones where bulky goods premises are permitted, and included bulky goods premises as a type of retail activity as defined.

In 2011 bulky goods premises were mandated as 'permitted with development consent' in the B5 Business Development zone. The inclusion of the two-part test for bulky goods premises has been identified as restrictive for bulky goods retailers.

## How to have your say

- Submissions on the proposed amendment will close on Wednesday 13 December 2017.
- You can view and make a submission:
  - Online at <http://www.planning.nsw.gov.au/Have-Your-Say>
  - Service NSW Centres located near you  
[Service NSW Centre locator](#).
- You can make a submission by:
  - responding online at:  
<http://www.planning.nsw.gov.au/Have-Your-Say>
  - by mail to the Director, Employment Policy and Systems  
GPO Box 39, Sydney, NSW 2001
- All submissions will be made public in line with the Department's objective to promote an open and transparent planning system. If you do not want your name published,

*Proposed SILEP amendment bulky goods premises definition*

please state this clearly at the top of your submission. Before making a submission, please read our privacy statement at: [www.planning.nsw.gov.au/privacy](http://www.planning.nsw.gov.au/privacy)

**Where can I find out more?**

- Call our Information Centre on 1300 305 695.
- If English isn't your first language, you can call 131 450 and ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.
- Email [retail@planning.nsw.gov.au](mailto:retail@planning.nsw.gov.au)

## **DE17.96 Proposed Submission - SEPP Review Program - Primary Production and Rural Development Planning Reform Package**

**HPERM Ref:** D17/380097

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

**Attachments:** 1. Submission content - Primary Production and Rural Development SEPP



### **Purpose / Summary**

The purpose of this report is to advise Council of the release by the NSW Department of Planning & Environment (DP&E) of the State Environmental Planning Policy (SEPP) Review Program – Primary Production and Rural Development planning reform package and obtain endorsement to make a submission based on the issues outlined in this report and in **Attachment 1**.

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

That Council make a submission to the NSW Department of Planning and Environment on the Primary Production and Rural Development Explanation of Intended Effect and Draft Planning Guidelines – Intensive Livestock Agriculture Development based on the issues outlined in **Attachment 1** to this report.

### **Options**

1. That Council make a submission to the DP&E on the Primary Production and Rural Development Explanation of Intended Effect (EIE) and Draft Planning Guidelines – Intensive Livestock Agriculture Development based on the issues outlined in **Attachment 1** to this report.

Implications: This is the preferred approach as it enables Council to express its concerns in a submission on the proposed Primary Production and Rural Development Planning Reform Package.

2. Make changes to the draft submission included as **Attachment 1** and submit to DP&E.

Implications: This option will still enable Council to provide a submission, however the implications of any possible changes are unknown and may require closer consideration or refinement.

3. Not make a submission.

Implications: This is not favoured, as it will mean Council does not provide input on the changes proposed in the Primary Production and Rural Development Planning Reform Package.

DE17.96

## Background/Overview

### Primary Production and Rural Development Planning Reform Package

As part of the NSW Government's review of current State Environmental Planning Policies (SEPP), that focusses on consolidation into new 'thematic' SEPP's, a package of reforms is currently being proposed to simplify, modernise and improve the operation of the NSW planning framework as it applies to primary production and rural development.

The reforms also aim to support the delivery of commitments in the NSW Government's 'Right to Farm Policy' (released in 2015 and reported to Council at that time) which can be viewed on the internet at:

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0006/587184/NSW-Right-to-farm-policy.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0006/587184/NSW-Right-to-farm-policy.pdf)

The 'Right to Farm Policy' contains a range of actions in regard to the following to help address land use conflict:

- reinforcing rights and responsibilities;
- establishing a baseline and ongoing monitoring and evaluation of land use conflicts;
- strengthening land use planning;
- ensuring ongoing reviews of relevant environmental planning instruments include consideration of options to ensure best land use outcomes and to minimise conflicts;
- improving education and awareness on management of land use conflicts; and
- Considering potential future legislative options, should additional Government intervention be required.

As part of the current reforms package, a new Primary Production and Rural Development SEPP, a revised Ministerial Direction for local planning, and changes to the Standard Instrument Local Environmental Plan (SI LEP) are all proposed.

DP&E are seeking feedback on the reforms package with the following documents on public exhibition:

- Primary Production and Rural Development Explanation of Intended Effect (EIE);
- Frequently Asked Questions;
- Subdivision fact sheet; and
- Draft Planning Guidelines for Intensive Livestock Agriculture Development.

The documents are currently available for community comment until 18 December 2017 on DP&E's website and can be viewed at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-Primary-Production-SEPP>.

The EIE document outlines the intended effect of the reforms proposed via the new SEPP and related planning reforms.

### Proposed Primary Production and Rural Development SEPP

The proposed new SEPP will consolidate the following five existing SEPP's, which will then be repealed:

- SEPP (Rural Lands) 2008
- SEPP 30 - Intensive Agriculture
- SEPP 52 - Farm Dams and Other Works in Land and Water Management Plan Areas
- SEPP 62 - Sustainable Aquaculture
- Sydney Regional Environmental Plan (SREP 8) - Central Coast Plateau Areas

*Note:* SREP is included as it is a 'deemed' SEPP.

SEPP 52 and SREP 8 do not apply to Shoalhaven and it is not intended through this review to extend provisions from those plans to our area.

The proposed aims of the new SEPP will be to support sustainable agriculture and aquaculture. Various provisions will be transferred from the current SEPP's and amended where needed.

It will include provisions that specify that consent is not required for stock containment facilities to assist with pasture management during dry periods, thus allowing temporary feedlots to be developed without consent.

The new SEPP will also introduce a provision to make 'goat depots' (enclosures to contain feral goats before their sale or slaughter) exempt from development consent if they are not located in 'environmentally sensitive areas' (as defined in the Exempt and Complying Development Codes SEPP), or in proximity to sensitive receivers such as dwellings.

The new SEPP will also have the ability to identify and protect agricultural land of state significance in a schedule, which will be utilised if necessary to support the outcomes of regional planning. It is understood that the Department of Primary Industries (DPI) is currently reviewing their Agricultural Land Suitability Mapping, over a 3 year period, as part of the implementation of Regional Plans. DP&E is closely involved via a project steering committee.

#### Proposed Changes - Ministerial Direction (Section 117) - Rural Lands 1.5

The rural planning and subdivision principles from the current Rural Lands SEPP are proposed to be included, in a revised form, in Ministerial Direction 1.5, rather than the new SEPP. This is considered to be the most appropriate mechanism to provide direction in this regard during the preparation of an LEP or an amendment to one.

#### Proposed Changes - Standard Instrument (SI) Local Environmental Plan (LEP)

The following is a summary of the changes proposed to the SI LEP:

- Amend Clause 4.2 *Rural subdivision* so that a lot created by a subdivision which contains an existing dwelling does not need to meet the minimum lot size.
- Introduce a mechanism associated with Clause 4.2 to prevent further dwellings being developed and subdivided on newly subdivided properties that do not meet the minimum lot size (preventing 'double dipping'). Details of the mechanism in this regard were not specified in the EIE and clarification will be requested in the proposed submission.
- Revision of the SI LEP definitions of 'intensive livestock agriculture', 'extensive agriculture', 'feedlot', 'water reticulation system' and 'water storage facility' to:
  - Add 'sheep' to the list of animals in the definition of 'intensive livestock agriculture' and change 'piggeries' to 'pig farms'.
  - Remove references to the source and type of feed in the 'feedlot' and 'intensive livestock agriculture' definitions.
  - Amend the definition of 'extensive agriculture' to clarify that grazing and pasture-based dairies involve animals eating plants growing on the land, and that supplementary feeding or temporary penning sometimes occurs as part of these activities.
  - Remove reference to meat production or fibre products in the definition of 'feedlot', and make it clear that the definition does not include 'extensive agriculture operations'.

- Addition of a new clause in the SI LEP to clarify definitions and thresholds for 'intensive livestock agriculture' requiring development consent (subject to satisfying locational criteria).
- These changes will provide exemptions for small scale livestock operators in non-sensitive locations. It is proposed that development consent will only be required for commercial operations involving the following:
  - Cattle feedlot or dairy (restricted) able to accommodate 50 or more head of cattle.
  - Pig farm able to accommodate 200 or more pigs or 20 or more breeding sows.
  - Sheep or goat feedlots with capacity to accommodate 200 animals or more.
  - Egg or poultry production facilities able to accommodate 1000 or more birds.
  - Any cattle, sheep or goat feedlot, dairy (restricted), pig farm, or egg or poultry production facility located within 500 metres of a dwelling not associated with the development or in an 'environmentally sensitive area'.

Given that the Shoalhaven Local Environmental Plan (LEP) 2014 is based on the SI LEP, if the proposed changes are ultimately made, the LEP will automatically be amended accordingly.

#### Draft Planning Guidelines - Intensive Livestock Agriculture Development

Draft guidelines have been prepared to assist applicants and consent authorities to understand the development assessment requirements for new intensive livestock developments, such as feedlots, poultry farms and pig farms. This guide aims to improve certainty by making sure that appropriate levels of assessment and relevant approvals are identified. This guide will also help farmers and council assessment staff understand what should be considered in the development application (DA) process.

DP&E have noted that these guidelines will be revised after considering community feedback in the final planning reforms package.

#### Proposed Council Submission

Thus is a potentially wide ranging set of reforms and various matters have been identified for consideration by DP&E as they progress.

The key issues to be outlined in the proposed Council submission (see **Attachment 1**) include:

- The continued release of EIE documents for public comment (instead of publicly exhibiting the draft SEPP in full) is not supported and is a significant ongoing concern. An EIE lacks the required detail to enable the implications of the reforms to be fully understood. The draft SEPP should not be made effective until it has been released in full for public comment or at the very least there is an opportunity to review its detail.
- The proposed consolidation of five existing operational SEPP's is generally supported.
- It is appreciated that DPI is undertaking a review of their Agricultural Land Suitability Mapping as part of implementing the Regional Plan, however, there is no criteria or methodology for what is considered to be regional significant agricultural land. Council requests consistent criteria to be applied across the State to identify and protect such lands.
- As part of the proposal to make 'goat depots' exempt from requiring development consent, (subject to locational requirements), should ensure there are thresholds and appropriate consideration of environmental impacts.

- The 'mechanism' (wording) associated with the proposed revision of SI LEP Clause 4.2 *Rural Subdivision* to prevent further subdivision and development of the land ('double dipping') needs to be released in full, for public comment. Concern is raised over the effectiveness of covenants listed on development consents being used as the mechanism to ensure there is adequate protection against ongoing fragmentation of land.
- Any proposed implications on the existing LEP clause 4.2D *Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and environment protection zones* should be outlined and clarified by DP&E.
- The revised definition of 'intensive livestock agriculture' and thresholds enabling certain activities to be undertaken without development consent should only be available where intensive livestock agriculture is a permissible land use under the LEP. This will ensure smaller scale operations can only be undertaken without consent in appropriate areas.
- Development consent should be required for 'Intensive livestock agriculture' within 100 metres of a perennial watercourse to ensure that water quality in rivers and streams is considered. This is appropriate given the potential level of pollution runoff that can be associated with this form of agriculture, if not carefully managed.
- Concern is raised as to how the location threshold requirements for 'Intensive livestock agriculture' will apply to rural land adjoining properties that are zoned (or proposed to be zoned) for residential use, but do not contain an existing dwelling at that time (i.e. land adjoining an Urban Release Area) to avoid future land use conflict.
- Clarification requested on how environmental impacts for 'Intensive livestock agriculture' will be considered for development that does not require development consent.
- Believe the proposed amended definition of 'extensive agriculture' requires the addition of the word 'predominantly' to make the distinction between 'extensive' and 'intensive' agriculture clearer.
- Provision of guidelines to assist applicants and planners in relation to intensive livestock developments is supported, but they should be modified to be more practical and user friendly.

### Community Engagement

The public exhibition documents are currently available for community comment until 18 December 2017 on DP&E's website at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-Primary-Production-SEPP>.

### Policy Implications

If the SI LEP is ultimately amended, this will in turn automatically amend Shoalhaven LEP 2014 and Shoalhaven LEP (Jerberra Estate) 2014.

Future amendments to the Shoalhaven DCP 2014 may also be required as a result of the proposed amendments, such as to Chapter G11 Subdivision of land. Any required future amendments would be separately considered and reported to Council as needed once the detail is ultimately known.

## **Attachment 1 – Content of Submission - Primary Production & Rural Development SEPP**

### **General Comments**

- Council generally supports the ongoing review of State planning policies to help modernize, streamline and simplify the planning system. Changes that reduce the number and complexity of SEPPs and remove duplication between EPIs are supported.
- Council is concerned about the continued release of EIE documents for public comment, instead of publicly exhibiting the draft SEPP and associated amendments in full. An EIE provides limited certainty for Councils and the community, as it lacks the required detail to enable a clear understanding of the full implications of the reforms. The draft SEPP and proposed amendments to the Standard Instrument LEP (SI LEP) should not proceed until they have been released in full for review.

### **Primary Production and Rural Development - Explanation of Intended Effect (EIE)**

- The proposed consolidation of five existing operational SEPPs is supported as the current system is fragmented, overly complex and does not provide a clear framework. However, to ensure the SEPP does not become a long, impractical and difficult document to use, it should be rationalized and reduced in size and tailored to (and appropriate for) its audience which includes industry and land owners, in addition to planning professionals
- The principle that SEPPs should be for matters of state or regional significance is supported, however as many provisions as possible should be located within SI LEP wherever appropriate to avoid having to refer to multiple documents.
- Care should be taken so that existing provisions that are transferred into the proposed SEPP are consistent but also simplified in line with the aims of modernizing and streamlining the planning system. Interactions/relationship of the proposed SEPP to the SI LEP and other SEPPs should be carefully checked to ensure there are no unintended consequences, which would require further amendments to EPIs

### *State Significant Agricultural Land*

- Moving the provision identifying State Significant Agricultural Land from the Rural Lands SEPP into a schedule in the new SEPP is supported, however, this mechanism may need to be strengthened to ensure appropriate protections are given where relevant, particularly of 'food bowl' areas.

### *Management of Goats*

- The proposal to make 'goat depots' exempt from requiring development consent, subject to locational requirements, should be further considered. Maximum numbers of goats that can be held in enclosures should be clarified. It may be appropriate to place a threshold on the number of goats to be held at any one time and also further consideration given to how environmental impacts should be assessed (water contamination, noise, soil degradation).

#### Definitions

- Strongly support the SEPP definitions matching the definitions in the Standard Instrument LEP. However, SEPP definitions should not refer to external pieces of legislation, which makes using these documents cumbersome and difficult. Wherever possible, all terms should be fully defined within the SEPP and in the Standard LEP Dictionary rather than referring to external pieces of legislation (with a trigger for updating these definitions when legislation changes).

#### Proposed amendments to Ministerial Direction – Rural Lands 1.5

- The transfer of SEPP provisions into Section 117 Ministerial directions for plan making to ensure considerations are addressed consistently at the appropriate stage of the planning process (e.g. at rezoning stage rather than DA stage) is supported. Specifically the proposed amendment to move the rural subdivision planning principles into Section 117 Direction is supported.

#### Proposed amendments to Standard Instrument LEP

##### *Rural subdivision for primary production / agricultural purposes*

- Concerns are raised regarding the proposal to amend the existing SI Clause 4.2 to allow that a lot created as part of a subdivision for primary production purposes, and which contains an existing dwelling, does not need to meet minimum lot size requirements. If revision of this clause results in pockets of residential development, this could lead to further land use conflict. Potential unintended implications as a result of these proposed changes should be carefully considered.
- The proposed revision of the SI LEP *Clause 4.2 Rural Subdivision* should ensure that any references to an existing dwelling specifies that it must be a lawfully erected existing dwelling.
- The EIE refers to a proposed mechanism to prevent 'double dipping' (further subdivision and development of dwellings), however, there is insufficient detail in the exhibited material to enable meaningful review and comment to be made. The actual draft provision needs to be released for review prior to being made effective.
- Concern is raised over the effectiveness of covenants on development consents being used as a 'mechanism' to avoid 'double dipping' and ensure there is adequate protection against ongoing fragmentation. Covenants on 88B instruments and conditions of consent have the potential to be missed or overlooked through time.
- If these 'mechanisms' are not well considered, two (or more) undersized primary production lots could be consolidated and the resulting provisions may not be strong enough to protect the land against future claims against LEP Clause 4.2D (3) *Erection of dual occupancies (attached) and dwelling houses on land in certain rural, residential and environment protection zones*. Additional consultation is requested in this regard.
- Any implications for the standard model clause for the erection of dwelling houses (Clause 4.2D in Shoalhaven LEP 2014) should be detailed and considered by DP&E. At present, land subdivided under LEP clause 4.2 (the land for primary production) would not have a dwelling entitlement. Council's understanding is that this would be retained, and this is supported. However, DP&E should confirm that they do not intend to require Councils to amend 4.2D(3) to consider the resulting lot with the dwelling. Not all resulting

lots with a dwelling would have a dwelling entitlement under 4.2D(3) and would instead need to rely upon 4.2D(5) (replacement of a lawfully erected dwelling house). Note: there will be a need to update the note in Clause 4.2D (under (3)(d)(iii)) to adjust or remove the reference to Rural SEPP.

- Council assumes that SI LEP Clause 4.2(3) will be amended in some way but that there will not be any flow on implications for Clause 4.2D(3)(a). If there are, clarification should be provided.
- DP&E should consider including an exclusion from the operation of Clause 4.6 of the SI LEP to ensure that it cannot be used as a means to then get consent for a dwelling on the lot created specifically for primary production.

*SI LEP Definition of 'intensive livestock agriculture' and thresholds*

- To ensure the proposed thresholds for development consent for certain cattle feedlot or piggeries does not have unintended consequences and that land use zonings established by Councils are not undermined, the exception from needing consent should only be available on land where intensive livestock agriculture is a permissible land use under an LEP. This will help to ensure that smaller scale operations can only be undertaken without consent in appropriate areas.
- It is also suggested that intensive livestock agriculture within 100 metres of a perennial watercourse should require consent. This will ensure that water quality in rivers and streams is considered. This is appropriate for the potential level of pollution runoff that can be associated with intensive livestock agriculture, if not carefully managed (refer to: Cornish et al (1997) *Land and Water Degradation Due to Agriculture in the Hawkesbury-Nepean*, Sydney. Centre for Farming Systems Research, University of Western Sydney). It is also an important consideration where natural water based aquaculture is present or proposed.
- The proposed size and location thresholds are likely to become a problem. Development under these thresholds, is likely to still need some form of environmental assessment and conditions of consent e.g. where up to 1000 birds may be kept in a poultry farm without development consent (if not located within 500m of a residence or within an environmentally sensitive area).
- Concern is raised as to how the location requirements for intensive livestock agriculture would apply to rural land adjoining properties that are zoned (or proposed to be zoned) residential but do not contain currently an existing dwelling i.e. land adjoining a zoned but future urban release area. For example, it is proposed that a farm with up to 200 pigs or 1000 birds can be undertaken within close proximity to property boundaries if the adjoining property does not currently have an existing dwelling/residence. However, it is necessary to consider including provisions relating to property or zone boundaries, rather than an existing residence, to avoid future land use conflict with planned future uses. This will also help cover other types of developments that would potentially be impacted by this type of use such as tourist accommodation, residential care facilities etc.
- Clarification is requested as to how environmental impacts will be considered for development that does not require development consent (e.g. up to 200 goats). It is unclear from the EIE to what extent (if at all) environmental impacts will need to be considered (water contamination, noise, soil degradation) if the land is not located in 'environmentally sensitive areas' as defined in the Codes SEPP. Primary production land uses below the size and location thresholds will still have environmental impacts that

should be assessed and managed.

- There should also be a note or provision that the exemptions to do authorise any removal of trees or vegetation that would otherwise require consent.

#### *Definition of 'extensive agriculture'*

- The proposed changes to the definition of "extensive agriculture" (permissible without consent in some zones) or "intensive agriculture" (which requires consent) could be problematic and create further confusion. There needs to be a much clearer distinction made between these two types of agriculture.
- The proposed amended definition of 'extensive agriculture' will mean that supplementary feeding is not limited to emergency cases and the eating of plants on the site does not need to be the predominate food source for the stock. As a result, a farm would only need enough pasture to provide some of the food for their stock, for the development to be 'extensive agriculture' and therefore may not require development consent. This could result in the carrying capacity of the land being exceeded and the development not being assessed appropriately.
- The addition of the word 'predominantly' into the proposed definition of 'extensive agriculture' would help to make the distinction between 'extensive' and 'intensive' agriculture clearer. The following highlighted changes are thus suggested:

*Extensive agriculture means any of the following:*

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,*
- (b) the grazing of livestock for commercial purposes, where the animals **predominantly** eat plants growing on the land **on which they are kept**,*
- (c) bee keeping,*
- (d) a dairy (pasture-based), where the animals **predominantly** eat plants growing on the land,*
- (e) supplementary and emergency feeding, and temporary penning or housing of animals for weaning, dipping or related purposes, that is incidental to the grazing of livestock or a dairy (pasture-based).*

#### *Permissibility for aquaculture*

- The inclusion of "pond-based" and "tank-based" aquaculture as separately defined land uses within the SI LEP is supported. For ease of interpretation, the LEP Dictionary should include full comprehensive definitions instead of referring to external legislation. The current definition of "aquaculture" has the same meaning as in the Fisheries Management Act 1994, which does not make distinctions between "pond-based" and "tank-based" aquaculture (see Clause 142 of the Fisheries Management Act). The LEP Matrix template will also need to be updated in due course to reflect this change. Note: the LEP Matrix should be updated in a timely manner after any changes under these proposals.

#### **Environmental Planning and Assessment Regulations**

- Ensuring consistency of definitions between SEPPs, SI LEP, EP&A Act and Regulations is supported. Wherever possible, full definitions should be provided to ensure understanding references to external pieces of legislation (which are complex and make interpretation difficult) is avoided.

#### **Comments - Planning guidelines for intensive livestock agriculture development**

- The provision of guidelines to assist applicants and planners in relation to intensive

livestock developments is supported. It is noted that the guidelines will need to be updated in the final reforms package following consideration of community consultation. There also needs to be a mechanism to update these guidelines whenever there are legislative changes to ensure that they remain relevant and current.

- While the information contained in the guidelines is highly useful, the document is considered to be overly detailed and too long which may be overwhelming for other users such as industry and Council customer service staff.
- To make the guidelines more practical and user-friendly it is suggested that:
  - The majority of the information is placed on the DP&E website for referencing when required;
  - The guidelines are condensed into a simple, plain English document that retains the existing flowcharts and tables along with some brief checklists. The guidelines can point to the further detail available on the DP&E website and from external sources.

#### **Concluding Comments**

- Look forward to the considerations of Council's comments as the proposed package of reforms advances.
- Is considered imperative that the actual wording of the proposal SEPP and other legislation changes are released for review prior to finalisation. This is important for Councils to ensure that any unintended consequences or implications can be resolved prior to their introduction.

## DE17.97 Proposed Submission - Proposed SEPP (Environment)

HPERM Ref: D17/382647

Group: Planning Environment & Development Group  
Section: Strategic Planning

### Purpose / Summary

To advise of the exhibition of a proposal for a *State Environmental Planning Policy (SEPP) - Environment*, and obtain endorsement to make a submission based on the content of this report.

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

That Council make a submission to the NSW Department of Planning & Environment on the proposed *State Environmental Planning Policy (Environment)* based on the content of this report.

### Options

1. Adopt the recommendation and make a submission based on the content of this report.  
Implications: This is the preferred option as it ensures that Council's comments will be considered by the NSW Department of Planning & Environment (DP&E) in the finalisation of the proposed SEPP.
2. Make changes to the issues outlined in this report and submit to DP&E for consideration.  
Implications: This option still provides the opportunity to identify matters to be considered in relation to the proposed SEPP; however, the implications of any possible changes are unknown and may require closer consideration or refinement.
3. Not make a submission  
Implications: This is not recommended, as it will mean that Council does not provide any comment or input in regard to the proposed SEPP and the opportunity to identify issues for consideration or resolution will be missed.

### Background

As part of the reduction and consolidation of existing SEPP's and the move to 'thematic' SEPP's, the NSW Government is developing a new SEPP for the protection and management of our natural environment. The proposed SEPP (Environment) seeks to:

- Simplify the planning rules for a number of existing SEPP's;
- Update the policies to reflect changes that have occurred since the creation of the original policies; and
- Ensure these policies are accessible in one location as the SEPP (Environment).

Changes proposed include consolidating the following seven (7) existing SEPP's:

- SEPP No. 19 – Bushland in Urban Areas
- SEPP (Sydney Drinking Water Catchment) 2011
- SEPP No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property

*Note:* the Regional Environmental Plans are considered to be 'deemed' SEPP's under current legislation.

Of the above, only the *SEPP (Sydney Drinking Water Catchment) 2011* and *SEPP No. 50 – Canal Estate Development* currently apply to Shoalhaven.

The proposed new SEPP will set out provisions under four parts being:

- Catchments (will apply to part of Shoalhaven)
- Waterways (will in part apply to Shoalhaven)
- Bushland (will not apply to Shoalhaven)
- Protected areas (will not apply to Shoalhaven).

The 'explanation of intended effect' and other supporting material in regard to the proposed SEPP (Environment) are currently on public exhibition from 31 October until 15 January 2018. The exhibition documents are available on DP&E's website at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-PlanningPolicies-Review/Draft-Environment-SEPP>

#### SEPP (Sydney Drinking Water Catchment) 2011

This SEPP applies to the Sydney drinking water catchment, which includes a large part of Kangaroo Valley and surrounds. It requires that a consent authority not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.

The proposed new SEPP will contain general heads of consideration for consent authorities when determining development proposals in the relevant catchments. Existing requirements for consent and prohibitions will be transferred to the 'Catchments' part of the proposed new SEPP. It will also clarify the use of the Neutral or Beneficial Effect (NorBE) Tool.

It is also proposed to make an associated change to the SEPP (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP) to allow relevant development proposals on urban land in water catchments, including drinking water catchments, to be assessed under the Seniors SEPP. The NorBE tool will still be applied where relevant. It is also proposed to not allow the Site Compatibility Certificate process in the Seniors SEPP to be used for proposals on land adjoining land zoned for urban purposes that's is identified as a 'water catchment' in an environmental planning instrument.

#### SEPP No. 50 – Canal Estate Development

This SEPP was introduced in 1997 and prohibits new canal estates in NSW to ensure coastal and aquatic environments are not affected by these developments.

The proposed SEPP will continue to prohibit new canal estates. The provisions will be amended to make it clear that it applies to development in all waterways, including non-tidal

and man-made waterways. This change will mean that all excavation to create waterways, when read in the context of the definition, will be defined as a canal estate development. It will also clarify that the SEPP applies to man-made lakes or reservoirs.

For consistency, the definition of ‘canal estate development’ within the Standard Instrument LEP will also be updated.

The current Standard Instrument LEP definition is:

**canal estate development** means development that incorporates wholly or in part a constructed canal, or other waterway or waterbody, that is inundated by or drains to a natural waterway or natural waterbody by surface water or groundwater movement (not being works of drainage, or for the supply or treatment of water, that are constructed by or with the authority of a person or body responsible for those functions and that are limited to the minimal reasonable size and capacity to meet a demonstrated need for the works), and that either:

- (a) includes the construction of dwellings (which may include tourist and visitor accommodation) of a kind other than, or in addition to:
  - (i) dwellings that are permitted on rural land, and
  - (ii) dwellings that are used for caretaker or staff purposes, or
- (b) requires the use of a sufficient depth of fill material to raise the level of all or part of that land on which the dwellings are (or are proposed to be) located in order to comply with requirements relating to residential development on flood prone land.

The definition of canal estate development is proposed to be amended to mean development that:

- (a) incorporates wholly or in part a constructed canal, or other waterway or waterbody, that is inundated by or drains to a waterway or waterbody by surface water or groundwater movement (not being works of drainage, or for the supply or treatment of water, that are constructed by or with the authority of a person or body responsible for those functions and that are limited to the minimal reasonable size and capacity to meet a demonstrated need for the works), and
- (b) Includes the construction of dwellings (which may include tourist accommodation) of a kind other than, or in addition to:
  - (i) dwellings that are permitted on rural land, and
  - (ii) dwellings that are used for caretaker or staff purposes, and
- (c) requires or includes,
  - (i) the use of a sufficient depth of fill material to raise the level of all or part of that land on which the dwellings are (or are proposed to be) located in order to comply with requirements relating to residential development on flood prone land, or
  - (ii) excavation to create a waterway or both.

#### Proposed Submission

It is proposed to make a submission to DP&E based on the following points.

Generally support the proposed SEPP including the initiatives to:

- Reduce duplication and it make it easier to understand and work with;
- Ensure consistency with recent legislation changes;
- Continue protection of natural resources and environmentally significant and sensitive areas and bushland; and
- Transfer provisions to the Standard Instrument Local LEP and Section 117 (Ministerial) Directions as appropriate.

Some concerns are raised including:

- As noted in previous submissions on proposed SEPP's, it is concerning that only an Explanation of Intended Effects (EIE) is available for comment and that the SEPP will be made without the opportunity to view and comment on its detailed wording prior to commencement. This has caused issues in the past where the release of a SEPP has had unanticipated implications and impacts, which were not made explicit in the EIE. Thus the release of the actual draft SEPP for review, even if it is a short period, is strongly requested.
- The need for differences between metropolitan and regional/rural areas to be taken into consideration, particularly in relation to the proposed change to allow the Seniors SEPP to be applied in the Sydney Drinking Water Catchment as this may encourage inappropriate applications for senior's housing developments in Kangaroo Valley which has a defined reticulated sewerage system capacity.
- The potential size of the SEPP which may make it unwieldy to use (the EIE alone is 84 pages). DP&E should ensure that the content of the SEPP is clear and easy to follow.
- Need to ensure that interactions and relationships with other SEPP's and the Standard Instrument LEP are fully considered to mitigate any conflicts and ensure they work together.

### Community Engagement

The proposal is currently on public exhibition from 31 October 2017 until 15 January 2018 with the exhibition documents available on DP&E's website at:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-Environment-SEPP>).

### Policy Implications

It appears there will be minor policy implications for Council, however, without the actual wording of the SEPP, it is difficult to fully determine these implications.

As the SI LEP is to be amended, this will in turn automatically amend Shoalhaven LEP 2014 and Shoalhaven LEP (Jerberra Estate) 2014 in relation to the 'canal estate development' definition.

DE17.97

**DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291****DA. No:** DA17/1533/4**HPERM Ref:** D17/383769**Group:** Planning Environment & Development Group  
**Section:** Development Services**Attachments:** 1. Planning Report - Subdivision of Land to Create Four (4) Lots and Construction of an Attached Dual Occupancy on Each Lot (under separate cover) [📄](#)**Description of Development:** Subdivision of Land to Create Four (4) Torrens Title Lots and Construction of an Attached Dual Occupancy on Each Lot**Owner:** Strongbuild Developments Pty Ltd**Applicant:** Lee Carmichael Town Planning**Notification Dates:** 23 June 2017 to 8 July 2017**No. of Submissions:** Three (3) in objection  
One (1) submission with no objection 'in principle'**Purpose / Reason for consideration by Council**

Numerous variations proposed to Shoalhaven Development Control Plan 2014 (SDCP 2014), some of which are beyond staff delegation.

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

That Council resolve to refuse Development Application DA17/1533 for subdivision to create four (4) lots and construction of an attached dual occupancy on each lot at Lot A DP 402291, 150 North Street, Berry for reasons relating to:

1. The development proposes substantial departure to acceptable solution A1.1 of Control 5.1 Minimum Lot Size, Chapter G13 Dual Occupancy Development, SDCP 2014 requiring a minimum 1000sqm for 'battle-axe' lots that accommodate dual occupancies. This departure is not considered to be acceptable in the circumstances. (Section 79C(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)
2. The development is considered unsuitable having regard to inadequate provision being made for the intended dual occupancy on the 'battle-axe' lot and associated works and services; along with potential adverse residential amenity impact, particularly with regard to privacy and solar access. (Section 79C(1)(b) and (c) of Environmental Planning and Assessment Act, 1979)
3. Having regard to insufficient information being submitted with the application to satisfy the relevant provisions of Environmental Planning and Assessment Act, 1979, along with amenity impacts, the granting of development consent is not considered to be in the public interest. (Section 79C(1)(e) of Environmental Planning and Assessment Act, 1979)

## Options

1. Refuse the application in accordance with the recommendation of this report.

Implications: A section 82A review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

2. Approve the application.

Implications: Council could choose to approve the application if it considers that the provisions of section 79C(1) have been satisfactorily addressed. Any such approval would be conditional and require a further report to Council detailing draft conditions.

3. Alternative recommendation.

Implications: Council could specify an alternative recommendation and advise staff accordingly. This, by way of example, could be to defer the matter and invite the applicant to make design modifications.

**Figure 1 – Location Map**



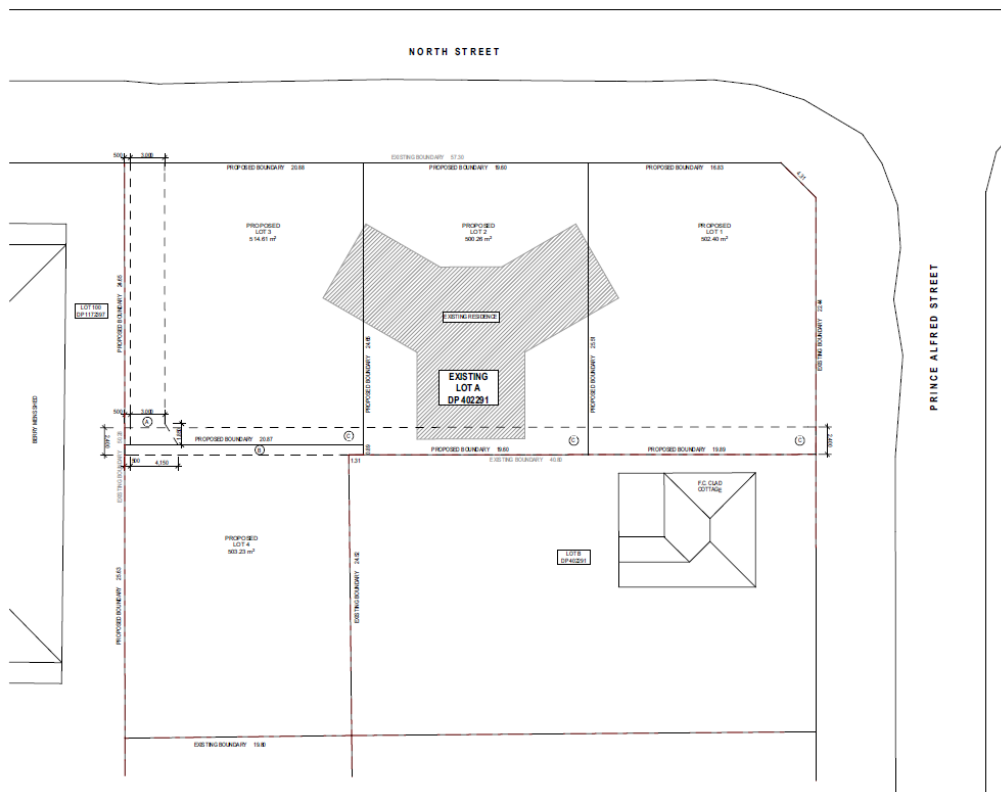
## Background

### Proposed Development

The Development Application (DA) seeks approval for a four (4) lot (Torrens title) subdivision and subsequent construction of four (4) x two storey attached dual occupancies, being 8 x 3 bedroom dwellings in total.

Vehicular access is proposed from North Street only.

### Figure 2 – Subdivision Plan



### Figure 3 – Site Plan

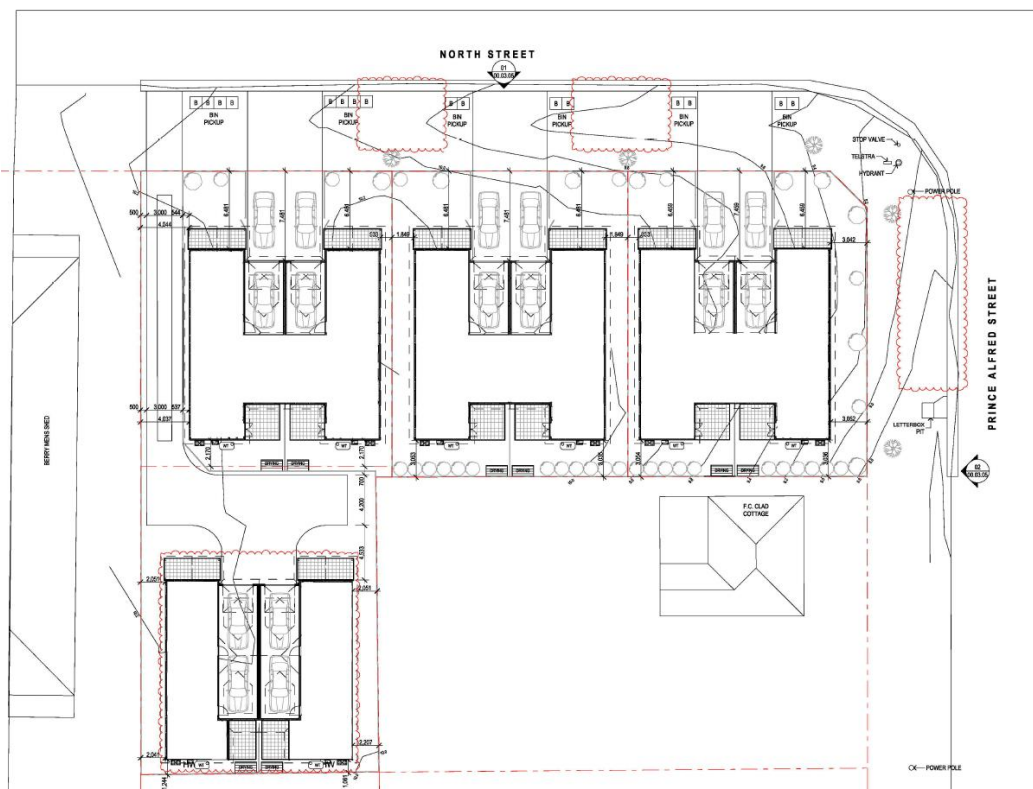


Figure 4 – Landscape Plan

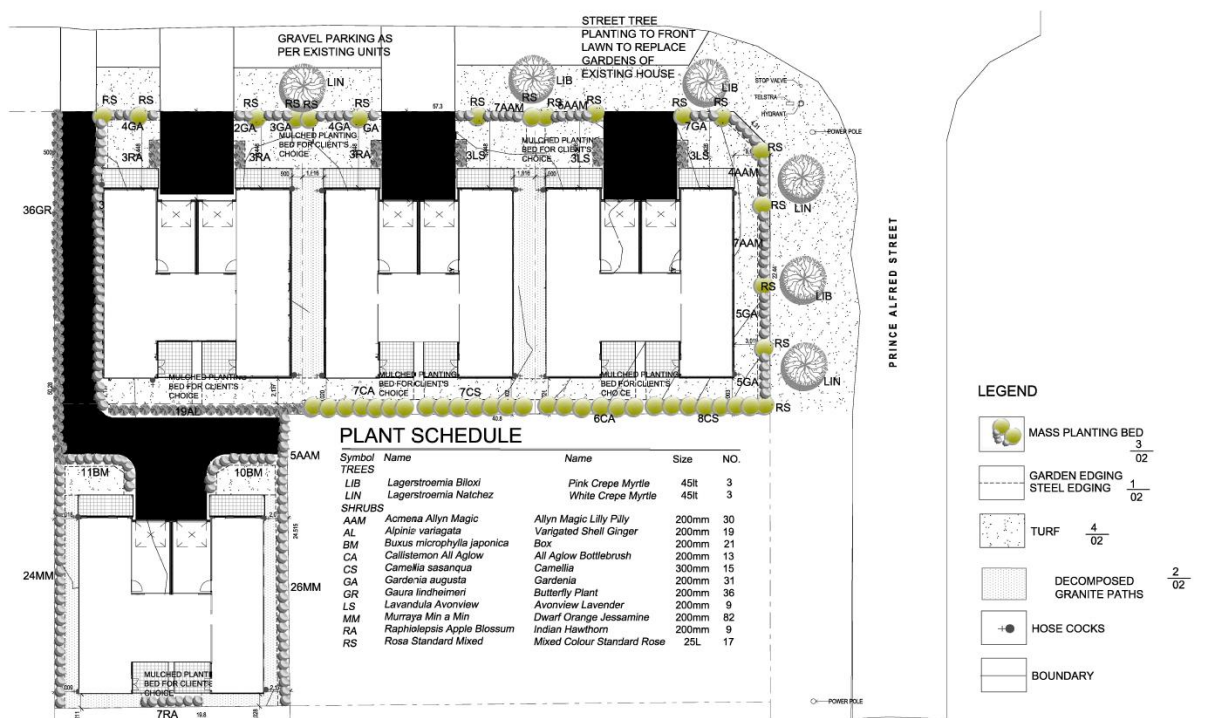
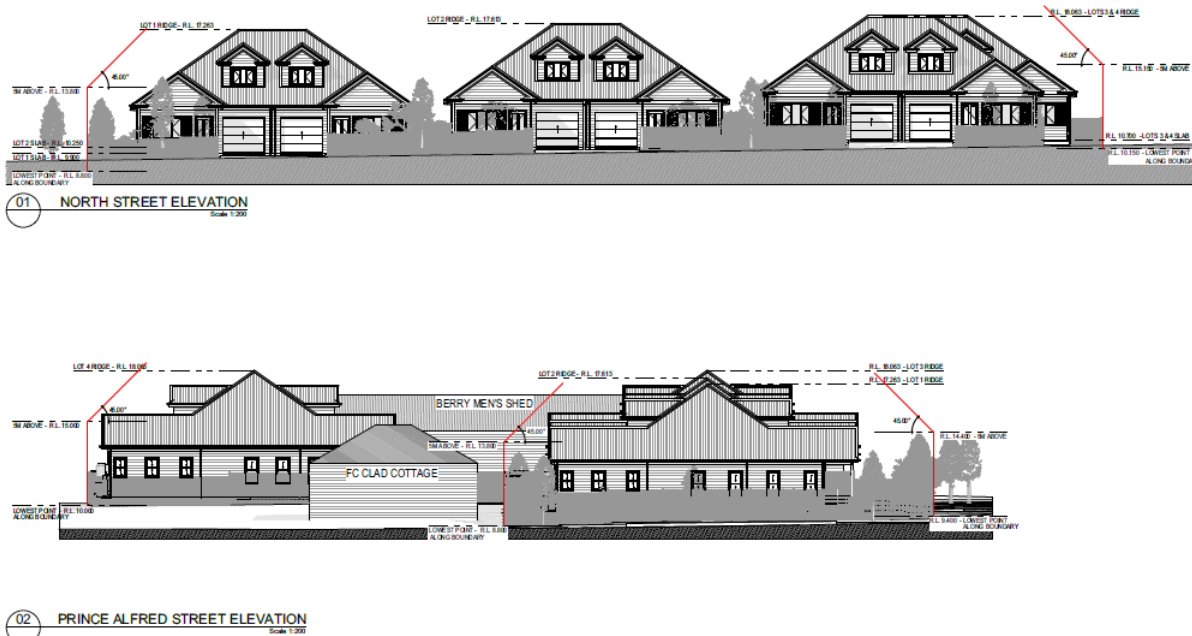


Figure 5 – Street Elevations



DE17.98

### Subject Land

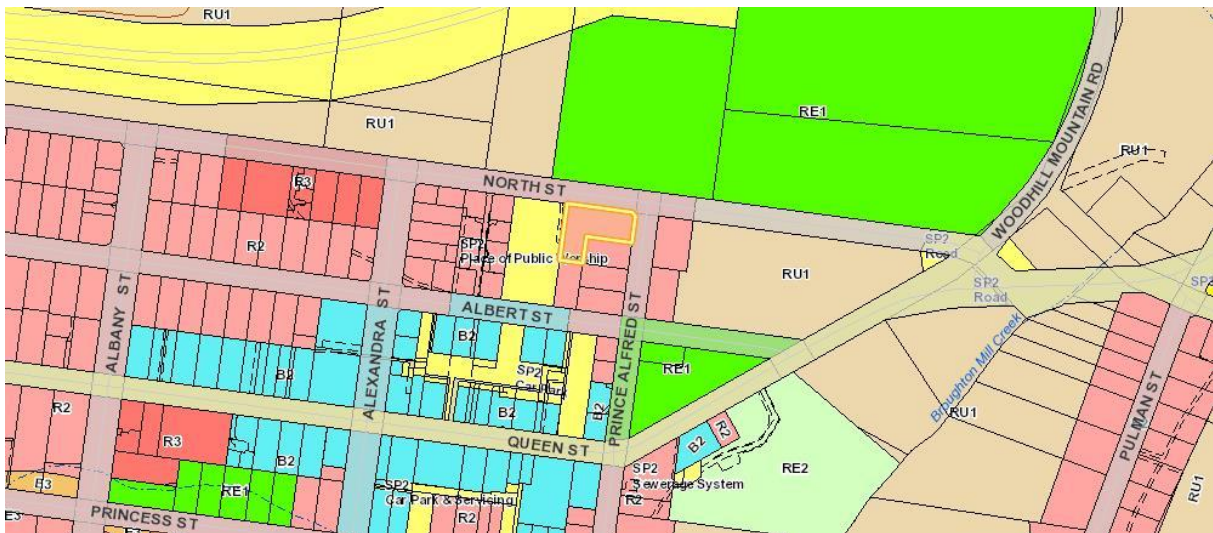
The development site comprises Lot A DP 402291 (150 North Street, Berry). Refer to Figure 1 for the location and Figure 6 below. The site is on the northern edge of the town/urban area and is in close walking distance to the commercial area. The site is well placed with respect to shops and restaurants and is a high amenity location.

### Site & Context

The development site:

- Previously contained a single dwelling house with associated structures, which were approved for demolition by way of a Complying Development Certificate. Demolition works have now been completed;
- Is zoned R2 Low Density Residential and has an area of 2,020sqm;
- Has two (2) existing frontages, a primary frontage to North Street and secondary frontage to Prince Alfred Street. Vehicular access is proposed from North Street; and
- Adjoins land zoned R2 Low Density Residential, SP2 Infrastructure (Place of Public Worship to the west) and RE1 Public Recreation (to the north), under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 6.

**Figure 6 – Zoning Extract**



### History

The following provides details on post-lodgement actions and general site history for context:

- The application was lodged on 10 May 2017.
- As a result of detailed assessment of the application, additional information was requested from the applicant on four (4) occasions – 18 May 2017, 3 August 2017, 18 September 2017 and 27 October 2017.
- On 18 May and 14 June 2017, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council for comment.
- On 3 August 2017, following detailed assessment of the application and submitted information, additional information was requested in order to address a number of matters including concerns with formalised parking within the road reserve, relevant provisions of SDCP 2014 and clause 4.6, SLEP 2014.
- Council staff met with the applicant and their client on 16 August 2017 to discuss previous correspondence dated 3 August 2017.

- On 13 September 2017, the applicant submitted a written response with documentation addressing Council's request in part. The applicant disagreed with Council's interpretation of certain sections of SDCP 2014 and position in relation to the proposed vehicular access to proposed Lot 4.
- On 26 September 2017, the applicant submitted legal advice from PDC Lawyers in relation to the access to Lot 4.
- On 10 November 2017, the applicant submitted a written response with amended plans attached for the construction of a single storey dwelling house upon Lot 4 (the battle-axe lot). The applicant indicated that the single dwelling would comply with the relevant controls as set out within SDCP 2014, however, advised that it was not their preferred option. The plans were submitted to Council for information only.

The applicant disagrees with Council's position and interpretation of certain sections of SDCP 2014.

## Issues

### 1. Council's DCP Controls:

#### A81.1 of Control 5.13 Residential Allotment Layout, Chapter G11 Subdivision of Land, SDCP 2014

Battle-axe lots are required to have a minimum lot size of 650sqm, excluding access handle, to accommodate a single dwelling house.

Lot 4 is proposed at 503.23sqm (being a 22.5% variation). The battleaxe lot unusually does not contain an access handle, instead relying on a proposed right of way over the adjoining lot. The lot burdened by the right of way does not benefit from the right of way. This has been done to ensure that proposed Lot 3B achieves required boundary setbacks, as it is located some 4 metres from the proposed boundary, but only 544mm from the edge of the right of way.

In residential areas, Council previously resolved in 2003 (excerpt below) that access is to be via a full or partial access handle forming part of the rear lot. This has been consistently applied since the resolution.

*"ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 22 JULY 2003*

*970. Proposed Subdivision of Lot 2 DP503839 at Boorawine Terrace, Callala Bay for Mr Cornell File SF9316, 5034*

*RECOMMENDED that:*

- a) Council support some flexibility in the interpretation of the acceptable solutions within DCP 100 as it relates to battleaxe development in infill areas subject to the General Manager being satisfied that the performance criteria for such lots has been satisfactorily addressed.*
- b) In regard to battleaxe subdivision development in urban locations, Council generally discourage the creation of a right of way to provide sole access to the rear allotment."*

The applicant has consequently sought a variation to this solution with the following justification:

- *"The lot is of sufficient size for the construction of future residential development. The site is level and the lot is of regular shape. There is no reason to believe that constructing new residential development on this new lot would be difficult or inappropriate due to creating unacceptable impacts on adjoining development.*
- *The development application submitted herewith includes the construction of an attached dual occupancy on the lot. The development application demonstrates that*

*the attached dual occupancy as proposed complies with the dual occupancy DCP. This element of the proposal demonstrates that the creation of the proposed new lot is appropriate and construction of new development upon it is possible despite the variation requested.”*

The area of Lot 4 allows for the siting and construction of residential development and ancillary facilities (as required by the performance criteria). The objectives of this section include the provision of a range and mix of lot sizes to suit a variety of dwellings and household types, with areas and dimensions to meet user requirements. This section also notes that these provisions could apply to dual occupancy if the minimum lot size is met; which is not the case for the currently proposed dual occupancy. Lot sizes for dual occupancies on battle axe lots are larger. The following section of the report details the relevant requirements.

*A1.1 of Control 5.1 Minimum Lot Size, Chapter G13 Dual Occupancy Development, SDCP 2014*

Battle-axe lots are required to have a minimum lot size of 1,000sqm to accommodate a dual occupancy development.

Lot 4 is proposed with an area less than 1,000sqm (being a 49.6% variation).

The applicant has consequently sought a variation to this solution with the following justification:

*“The dual occupancy proposed is an attached dual occupancy. The applicable control does not differentiate regardless of whether an attached dual occupancy or detached dual occupancy is proposed. In this instance and with an attached dual occupancy being proposed for the site, the project is appropriate. In this regard, the dual occupancy has been designed to meet all FSR, height, landscaping and private open space requirements. The FSR proposed for this site is 0.43:1 or 43%. 50% is allowed. 180m<sup>2</sup> of landscaping is proposed where 151m<sup>2</sup> is the minimum. 100m<sup>2</sup> of private open space is required between the two dwellings (i.e. 50m<sup>2</sup> each), in this instance 144m<sup>2</sup> of private open space area is proposed.*

*It is clear from the above that despite the extent of the variation requested, the design response is favourable and the extent of compliance achieved with respect to FSR, height, landscaping and private open space demonstrate add merit to the proposal. In this regard, the 503m<sup>2</sup> allotment is of an appropriate size for the attached dual occupancy proposed.*

*There is no prospect of the proposed attached dual occupancy located on a private battle axe lot (which is under allowable limits for height and FSR, provides more landscaping and POS than required by the DCP), being perceived as high density development.*

*The visual impacts of the development will be minimal. In this regard, the dual occupancy is a single storey building with loft. Dormer windows are provided on the first floor. There is substantial building separation between the proposed dual occupancy and adjoining residential development.*

*The buildings are of residential size and scale. There is no reason to believe that the amenity of character of the locality would be affected.*

*Adequate and logical justification has been provided to demonstrate that the approval of this application would not give rise to any unacceptable adverse impacts on residents.*

The performance criteria is achieved as follows:

- The size of the battle-axe lot is adequately sized for the type of attached dual occupancy proposed. In this regard, the FSR, landscaping, POS, vehicle manoeuvring, setbacks are met. The construction of the attached dual occupancy upon the lot is not expected to give rise to any unacceptable amenity impacts for adjoining residential lots through overlooking/privacy related issues, noise, overshadowing or the like. The streetscape will not be impacted upon through the construction of an attached dual occupancy upon the lot.
- The neighbourhood character will be enhanced by the proposal. Smaller lots, dual occupancies and medium density developments located close to the centre of Berry (100m away from village centre) is entirely appropriate and makes planning sense. The form of development proposed is a sympathetic way of achieving greater density in and around the centre of Berry.
- The physical form of the development proposed will not be inconsistent with existing building types and the character of Berry generally.
- The site is connected to reticulated sewerage."

It is considered that the size of this lot does not make adequate provision for the intended dual occupancy and associated works and services. Departure to A81.1 of Control 5.13 Residential Allotment Layout, Chapter G11, SDCP 2014 would be more favourable (a lot for a single dwelling), currently being 22.5%. However, this is still a substantial departure and would require a well designed single dwelling to be proposed instead and / or a reduction in the scale of development to closer achieve numerical compliance as well as compliance with the objectives of the controls.

A13.1, 13.2 & 13.3 of Control 5.9 Private Recreation Areas, Chapter G13 Dual Occupancy Development, SDCP 2014

A minimum of 50sqm of functional private recreation space is required for each dwelling.

A portion of this area is to have minimum dimensions of 6m x 5m. These areas are to be grassed or paved with functional gradients and adequately screened to provide privacy to occupants; and designed to be adjacent to the dwelling with direct access from a living room.

The portion of private recreation area proposed on each lot does not meet the minimum dimensions.

The applicant has consequently sought a variation to these solutions with the following justification:

*"The objective is met as the areas of POS proposed for each dwelling are of sufficient size to be functional and useable for occupants. Each dwelling has over 76m<sup>2</sup> of POS. One area is 4.5x6.5m this is equivalent to the acceptable solution provided of 6x5m.*

- Private recreation areas are provided in the front AND rear yards.
- The rear yard private open spaces are useable and functional. Each rear POS areas has an alfresco area which adjoins lawn space. There is 6m distance measured from the internal wall of the alfresco area to the rear fence. The width of this space is about 3.25m. In addition to this, the rear yards in their entirety are 10m wide and 3m deep. This is all useable space.
- The front yard areas as painstakingly detailed within the SOEE and variation statements have the following attributes:
  - The spaces will be bound and secured with gated picket fencing and landscaping. This area can therefore be used as a secure space for children to play and as an outdoor area for pets.

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- *The spaces provide opportunity for positive interaction with neighbours, space for children and pets to play in a secure area, and space for enjoyment of the outdoors and garden space. There will be a clear delineation between public space (i.e. the common property/driveway area) and private space in relation to these areas. On this basis, the front yard areas of dwellings 1a to 3b can be regarded as private open space.*
- *The spaces are oriented to make the most of the northerly aspect and views towards the mountain ranges.*
- *The spaces are directly accessible off living rooms.*
- *The POS areas located to the north of each dwelling are not the only areas of POS. the abovementioned south facing POS areas are available for each dwelling and these include a grassed area of useable dimensions along with a paved alfresco area. These areas are undoubtedly visually private.*

*The private open space areas are functional useable for occupants as:*

- 1) *The spaces will be bound and secured with gated picket fencing and landscaping.*
- 2) *The spaces provide opportunity for positive interaction with neighbours, space for children and pets to play in a secure area, and space for enjoyment of the outdoors and garden space. There will be a clear delineation between public space (i.e. the common property/driveway area) and private space in relation to these areas. On this basis, the front yard areas of dwellings 1a to 3b can be regarded as private open space.*
- 3) *The spaces are oriented to make the most of the northerly aspect and views towards the mountain ranges.*
- 4) *The spaces are directly accessible off living rooms.*
- 5) *The POS areas located to the north of each dwelling are not the only areas of POS. South facing POS areas are available for each dwelling and these include a grassed area of useable dimensions along with a paved alfresco area. On the basis of the above, it is considered that the proposal meets the performance criteria of the DCP.*

*Further to this and for clarity, the acceptable solution of the DCP is met because:*

- 1) *The POS areas nominated are paved, grassed and level.*
- 2) *Each dwelling has two areas of POS. Both areas of POS for each dwelling are private spaces and useable as such.*
- 3) *The rear POS area of each dwelling is of a functional size and scale and screened."*

The important and fundamental question is whether these areas on each lot are in fact *private* if they are proposed forward of the building line and visible from neighbouring properties and the street. There is contention with regard to the useability of some of the outdoor spaces, particularly those located at the rear of proposed dwellings, and it is also considered that those in the front of dwellings are not, by definition private.

As 1.8m high fencing is not proposed as part of this application (and would not be supported having regard to the streetscape and proposed Australian country vernacular design). The proposed 1.2m high picket fencing, whilst appealing, is not sufficient for privacy purposes.

The required 50sqm of private recreation area should ideally be provided in the rear yards of each lot to afford a reasonable level of privacy.

SDCP 2014 states that: “areas with a dimension of less than 2m are not considered to be “functional” and should not be included in the calculation for private recreation areas.” It is apparent that the ‘mulched planting beds’ adjacent to the rear boundaries of Lots 1 and 2 and the boundary between Lots 3 and 4 shown on the submitted landscape plan are approximately 1-1.2m in width. Therefore, the only ‘functional’ areas would be the patios at the rear of each dwelling (being approximately 8.5sqm in area for Lots 1-3 and 7sqm in area for Lot 4) and those areas nominated forward of the building line (i.e. if these are considered to be *private*). The patio areas form egress pathways to rear yards, and as such lose some potential for recreation use. Further, in the case of Lot 4, the distance of 1-1.2m approx. between the rear of the dwelling and rear boundary is not considered functional.

The applicant contends that the proposal is compliant with each dwelling having access to private recreation areas from a living rooms.

However, the access is not *direct* as required. Occupants would need to walk at least 10m down a hallway from the living/dining room to access the private recreation area (i.e. patios at the rear of each dwelling). The patios on Lots 1-3 adjoin a bedroom (which is not defined as a living room) whilst the patios on Lot 4 adjoin double garages.

Direct access to private recreation or rather a relationship between indoors and outdoors has become commonplace in modern building design and is a reflection on how people use their outdoor areas and in particular smaller spaces for outdoor dining, entertainment, BBQs and the like. The proposal as it stands, does not provide such opportunity for future residents.

### Planning Assessment

The DA has been assessed under s79C of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 1.

### Consultation and Community Engagement:

Notification was undertaken in accordance with Council’s Community Consultation Policy with letters being sent within a 60m buffer of the site, including the Berry Chamber of Commerce and Tourism during the period 23 June 2017 to 8 July 2017.

Four (4) submissions were received in relation to Council’s notification of the development. Three (3) were objections to the development. Roads and Maritime Services (RMS), as an adjoining landowner, raised no objection in principle.

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.

- Impact on existing roads;
- Development not in keeping with existing character;
- Privacy;
- Solar access;
- Landscaping; and
- Bin storage.

### Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

### Legal Implications

A section 82A review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

## Summary and Conclusion

Multi dwelling housing is not permitted on this site, hence the dual occupancy proposal is being pursued. The development will in effect present as a medium density development given the design of the development.

The location is satisfactory (with respect to higher (dual occupancy) density type development) being that it is only approximately 200m from the main street of Berry.

The architectural treatment is considered suitable and in keeping with the heritage character of Berry. The developer has undertaken a similar development not far from the development site which is often referred to and commented as being an attractive development. However, the design is replicated on each lot which will result in the overall appearance being a multi dwelling housing complex and does not take advantage of the corner aspect which would enable a building to front the secondary street frontage in addition to the primary frontage (North Street).

With regard to garden and private outdoor space, Council has adopted reasonable standards to create useable areas for outdoor living and amenity. This becomes more relevant in higher density development.

There are no unique or exceptional circumstances, site characteristics and the like warranting a departure from Council's controls. Effectively, the site is a 'blank' canvas and a development could be designed achieving a higher level of compliance with Council's controls and their objectives. Accordingly, the recommendation does not support the proposal in its current form.

## **DE17.99 DS17/1233 – 12 Currambene Street, Huskisson – Lot 2 DP 662583**

**DA. No:** DS17/1233/4

**HPERM Ref:** D17/389787

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

**Attachments:** 1. Planning Report (under separate cover) ➡  
2. Applicant Submission (under separate cover) ➡

**Description of Development:** S96(2) – Extend Stairs and Lift to Rooftop to Facilitate Access for Maintenance

**Owner:** Michael Hanna

**Applicant:** Allen Price & Scarratts

**Notification Dates:** 27 June 2017 to 12 July 2017

**No. of Submissions:** Two (2) in objection  
Nil in support

### **Purpose / Reason for consideration by Council**

Councillors called in the application for public interest reasons on 25 July 2017.

The matter was previously reported to Council on 14 November 2017. At that meeting, Council resolved that:

1. *Consideration of the matter be deferred pending submission of the amended design.*
2. *A report be provided to the Council on the amended S96 Application and providing responses to the comments made by the depute, Mrs McDonald.*

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

That Council resolve to refuse Application DS17/1233 to modify Development Consent DA15/2561 to extend stairs and lift to the rooftop (to facilitate access for maintenance) at Lot 2 DP 662583, 12 Currambene Street, Huskisson for reasons relating to:

1. Insufficient information submitted with the application to satisfactorily demonstrate that the development (as modified) conforms to the provisions of section 96(3) of Environmental Planning and Assessment Act, 1979 in relation to consideration of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. (Section 79C(1)(a)(i) of Environmental Planning and Assessment Act, 1979)
2. A statement by a qualified designer has not been submitted with the application to satisfy that required by clause 115(3A) of Environmental Planning and Assessment Regulation, 2000. (Section 79C(1)(a)(iv) of Environmental Planning and Assessment Act, 1979)
3. The development (as modified) is considered unsuitable having regard to potential adverse amenity impacts including visual impact and residential amenity, including

privacy and solar access. (Section 79C(1)(b) and (c) of Environmental Planning and Assessment Act, 1979)

4. Having regard to insufficient information being submitted with the application to satisfy the relevant provisions of Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000, along with amenity impacts, the granting of modification to Development Consent DA15/2561 is not considered to be in the public interest. (Section 79C(1)(e) of Environmental Planning and Assessment Act, 1979)

## Options

1. Refuse the application in accordance with the recommendation of this report.

**Implications:** A section 96AB review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

2. Approve the application.

**Implications:** Council could choose to approve the application if it considers that the provisions of section 79C(1) have been satisfactorily addressed. Any such approval would be conditional and require a further report to Council detailing draft conditions.

- ### 3. Alternative recommendation.

Implications: Council could specify an alternative recommendation and advise staff accordingly.

### Figure 1 – Location Map



## Background

### Proposed Development

The application has been amended by deleting the proposed rooftop communal BBQ area and covered enclosed seating area. The application now seeks approval to extend the stairs and lift to the rooftop (to facilitate access for maintenance) of the mixed use development

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approved by Development Consent DA15/2561. The approved development comprises two (2) ground floor retail units and eight (8) x 2 bedroom residential units.

Figure 2 – Site/Ground Floor Plan

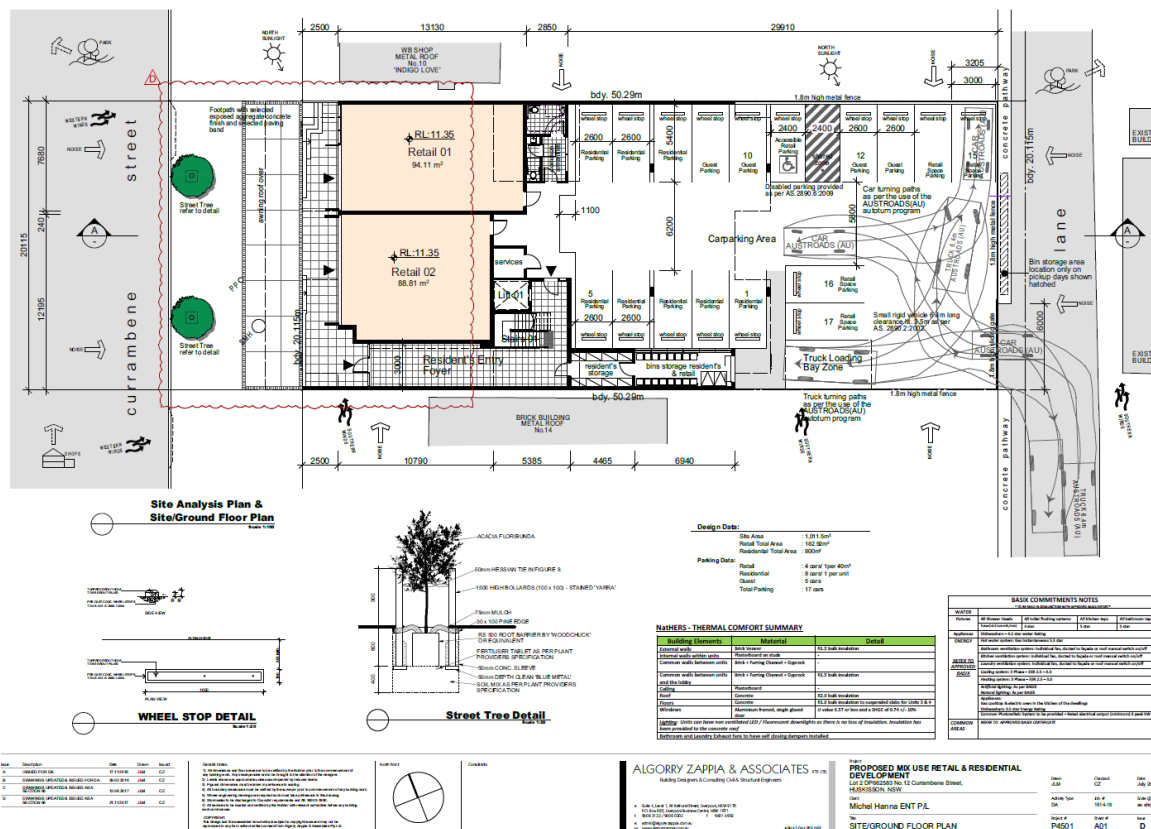
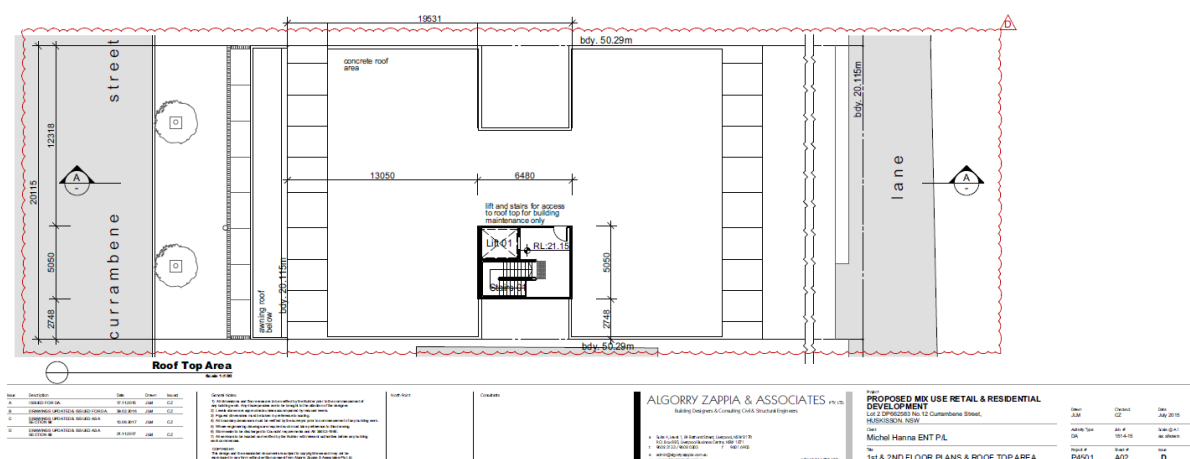


Figure 3 – Roof Top Area Plan



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Figure 4 – Elevations



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Figure 5 – External Colours Schedule



EXTERNAL COLOURS SCHEDULE	
1	Dark Grey Paint Finish "Mikado" (R101) (R101)
2	Dark Grey Paint Finish "Mikado" (R101) (R101)
3	Dark Grey Paint Finish "Mikado" (R101) (R101)
4	Dark Grey Paint Finish "Mikado" (R101) (R101)
5	Dark Grey Paint Finish "Mikado" (R101) (R101)

Item	Description	Date	Drawn	Check	Scale
1	PROPOSED MIX USE RETAIL & RESIDENTIAL DEVELOPMENT	01/11/2016	JAM	CZ	1:100
2	EXTERNAL COLOURS SCHEDULE	01/11/2016	JAM	CZ	1:100
3	EXTERNAL COLOURS SCHEDULE	01/11/2016	JAM	CZ	1:100

### Subject Land

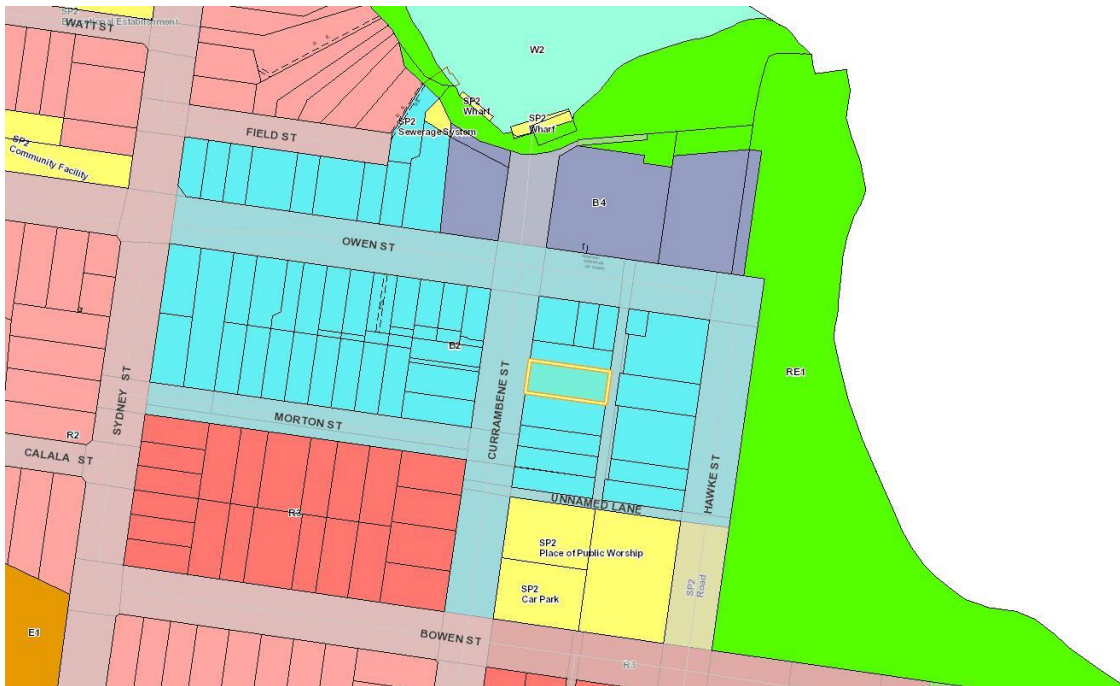
The development site comprises Lot 2 DP 662583 (12 Currambene Street, Huskisson). Refer to Figure 1.

### Site & Context

The development site:

- Previously contained a single dwelling house with ancillary shed, which were removed as part of Development Consent DA15/1561, which approved a three (3) storey building comprising retail units on the ground floor and two (2) levels of residential units. Construction is underway.
- Is zoned B2 Local Centre and has an area of 1,012sqm;
- Has two (2) existing frontages, a primary frontage to Currambene Street and secondary frontage to an unnamed laneway. Vehicular access is proposed from the laneway; and
- Adjoins land zoned B2 Local Centre, under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 6.

**Figure 6 – Zoning Extract**



### History

The following provides details on post-lodgement actions and general site history for context:

- The application was lodged on 19 June 2017.
- The application was reported to the Development Committee Meeting on 14 November 2017, in which Council resolved that:
  - “1. Consideration of the matter be deferred pending submission of the amended design.
  2. A report be provided to the Council on the amended S96 Application and providing responses to the comments made by the deputy, Mrs McDonald.”
- On 22 November 2017, the applicant submitted additional information in response to the above Council resolution.

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## Issues

### 1. State Government Design Guidelines:

#### State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG)

As this application is for the modification of a development consent under section 96(2) of the Environmental Planning and Assessment Act 1979 relating to residential apartment development and a development application which was accompanied by a design verification from a qualified designer under clause 50(1A), it was required to be accompanied by a statement by a qualified designer in accordance with clause 115(3) of the Environmental Planning and Assessment Regulation 2000.

The provisions of clause 115(3A) of the Regulation also require that:

*“The statement by the qualified designer must:*

*(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and*

*(b) provide an explanation of how:*

*(i) the design quality principles are addressed in the development, and*

*(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and*

*(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.”*

Whilst a statement has been submitted by a qualified designer, being Eduardo Villa of Villa & Villa, it is considered that the statement has not adequately addressed subclauses (b) and (c).

A statement has not been submitted for the amended modification to the approved development. Explanation is required as to how the design quality principles are addressed or in particular, the objectives of the ADG have been achieved in the development (as modified); and further to this, verification that the proposed modification does not diminish or detract from the design quality or compromise the design intent of the approved development.

### 2. Council's LEP Controls:

#### Clause 4.3 (Height of buildings)

The maximum building height is 10m.

The development site is also identified as being land in the Huskisson Town Centre and an increased building height of 13m is available in certain circumstances under clause 7.26 of SLEP 2014. However, this clause is not applicable to this development site as it does not satisfy the provisions of subclause (3) with respect to lot size and building height.

The enclosed stairs and lift on the rooftop proposed as part of this application exceeds the 10m maximum building height by 3m, being 30%.

Although it is acknowledged that the requirement of the development standard is ‘bypassed’ under section 96 of the Environmental Planning and Assessment Act 1979 and an ‘exception’ pursuant to clause 4.6 of SLEP 2014 is not required; the provisions of section 79C(1) are still a consideration in accordance with section 96(3) of the Environmental Planning and Assessment Act 1979.

As a statement by a qualified designer has not been submitted demonstrating how the development (as modified) satisfies the provisions of clause 115(3A) of the Regulation, it is difficult to ascertain all likely impacts and the suitability of the site for the development.

It is also evident that the development (as modified) is not compatible with the height, bulk and scale of the existing character of the Huskisson Town Centre and as it is proposed to exceed the maximum height it is considered that it will neither be compatible with the desired future character, having regard to the strategic controls (zone, DCP) for the locality.

Further to this, the enclosed stairs and lift on the rooftop will detract from the aesthetics of the approved building, affect the amenity of the streetscape when viewed from Currumbene Street in particular. In addition to this, public submissions were also made objecting to the development.

If access to the rooftop is for maintenance purposes only, it is highly likely that this will not be required on a regular basis. The argument that an extended lift and stairs to the rooftop will allow safe access compared to the use of a crane, cherry picker or scissors lift is not considered justified. It is expected that all maintenance personnel who have approval to 'work at heights' would be able to operate such machinery/equipment in a safe manner, taking into account the associated risks.

The applicant provided two examples of other developments where lift and stair access has been provided to rooftops. The examples provided are not considered to be relevant to this proposal as they relate to larger scale buildings consisting of six (6) and nine (9) storeys. The subject approved development is only three (3) storeys and an addition such as this would comparatively have a much greater visual impact on the streetscape and adjoining properties as well as it being easier for machinery/equipment to access the rooftop due to the lower height.

### 3. Compliance Matters:

#### Raised Floor Levels and Amendments to Ground Floor Design

There appear to be some discrepancies in regards to the approved development plans and the plans submitted with this application. The discrepancies relate to the nominated floor levels shown on the submitted plans and amendments to the ground floor design to extend the wall on the northern boundary adjacent to Currumbene Street.

The applicant has confirmed that the change in levels was approved with the Construction Certificate (CC):

*".....and came about to facilitate difficulties in regard to access and servicing. The FFL was raised by 200mm, reflected on the submitted section 96 drawings and is also reflected on the current updated drawings. In addition, the CC assessment process identified a requirement to provide additional panels at ground floor to address BCA fire separation and approved their installation. These amendments are also reflected on the current section 96 drawings."*

A recent Land and Environment Court Judgement: *Bunderra Holdings Pty Ltd v Pasminco Cockle Creek Smelter Pty Ltd (subject to Deed of Company Arrangement) [2017] NSWCA 263* confirmed that CC plans may differ from the development consent, concluding the following:

*"In the event of any inconsistency between development consent plans and the plans the subject of a construction certificate, the construction certificate plans will prevail to the extent of any inconsistency."*

Due to the change in the floor levels it appears that the whole building will now exceed the 10m height limit by at least 200mm. As the applicant has not sought to change the floor levels or amend the ground floor design to extend the wall as part of this application, the

discrepancies with the approved plans have been referred to Council's Compliance Unit for further investigation and action as required.

### **Planning Assessment**

The application has been assessed under s96 of the Environmental Planning and Assessment Act 1979. Refer to Attachment 1. It is important to note, that Council cannot reconsider the whole development. The assessment can only relate to the application put before Council.

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

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 60m buffer of the site, including the Huskisson Woollamia Community Voice and Huskisson Chamber of Commerce and Tourism Inc. during the period 27 June 2017 to 12 July 2017.

Two (2) submissions were received in relation to Council's notification of the development. They were objections to the development.

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 96 assessment report.

- Scale of the development, particularly height and density;
- Solar access;
- Privacy; and
- Noise.

### **Financial Implications:**

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

### **Legal Implications**

A section 96AB review or an appeal with the Land and Environment Court are possible in the event of a refusal of the application.

### **Summary and Conclusion**

SEPP 65 sets out the NSW Government's policy direction for certain mixed use developments with a residential accommodation component (such as this) in NSW and is underpinned by the ADG which provides guidance on how these proposals can meet the design principles embedded in the SEPP. In this regard, insufficient information has been submitted with this application to satisfactorily demonstrate that the development (as modified) conforms to these provisions.

Other issues raised in this report and attachments, relating to the excessive scale of the development and lack of justification for access to the rooftop for maintenance purposes are not demonstrated to be acceptable and for this reason the development is not considered to be in the public interest. Accordingly, refusal is recommended.

## DE17.100 DA17/1904 – Moss Vale Road & Broughton Street, Kangaroo Valley – Lot 1 DP 775132 & Lot 2 DP 748146

**DA. No:** DA17/1904/4

**HPERM Ref:** D17/397201

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

**Attachments:** 1. Planning Report (under separate cover) [⇒](#)  
2. Draft Conditions of Consent (under separate cover) [⇒](#)

**Description of Development:** Alterations and Additions to Rural Fire Service Brigade Station (Emergency Services Facility)

**Owner:** Shoalhaven City Council

**Applicant:** Shoalhaven City Council

**Notification Dates:** 21 August 2017 to 5 September 2017

**No. of Submissions:** Nil

### Purpose / Reason for consideration by Council

The applicant is Council's Assets & Works Group and includes a 44.9% variation to clause 4.3 Height of buildings, Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

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

That Development Application DA17/1904 for alterations and additions to the Rural Fire Service Brigade Station at Lot 1 DP 775132 and Lot 2 DP 748146, Moss Vale Road and Broughton Street, Kangaroo Valley be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

### Options

1. Approve the development application (DA) in accordance with the recommendation of this report.

Implications: This would allow the applicant to pursue the alterations and additions to the existing emergency services facility.

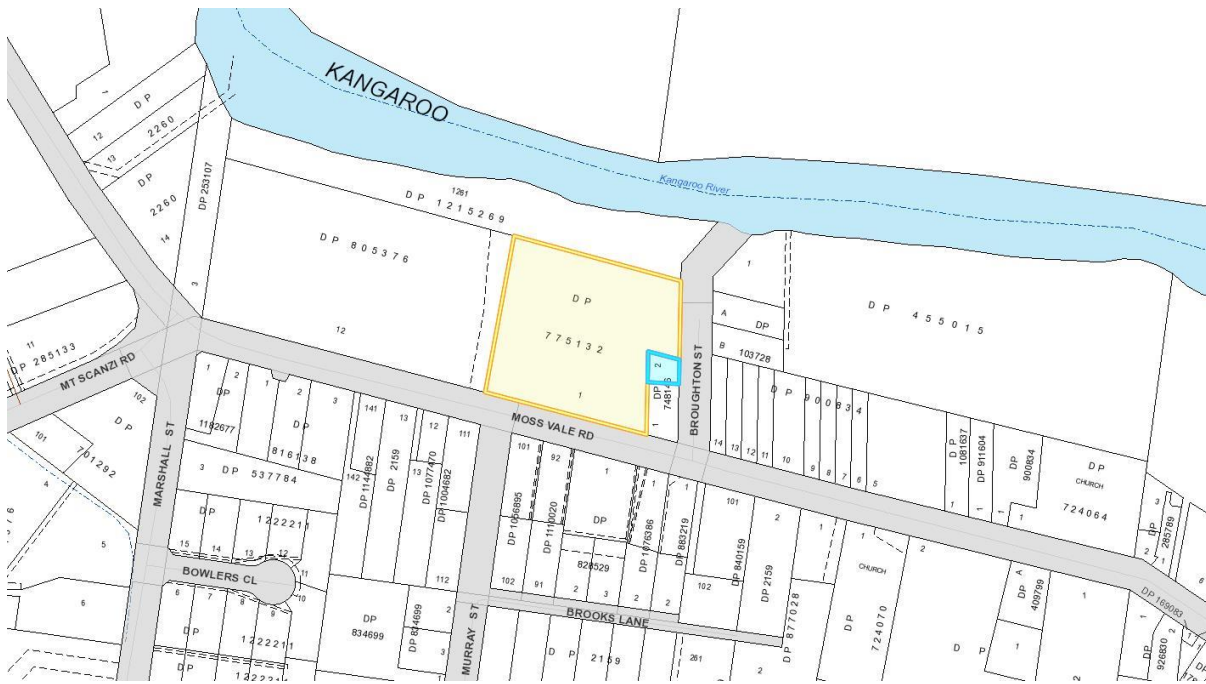
2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 79C considerations.

3. Alternative recommendation.

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

**Figure 1 – Location Map**



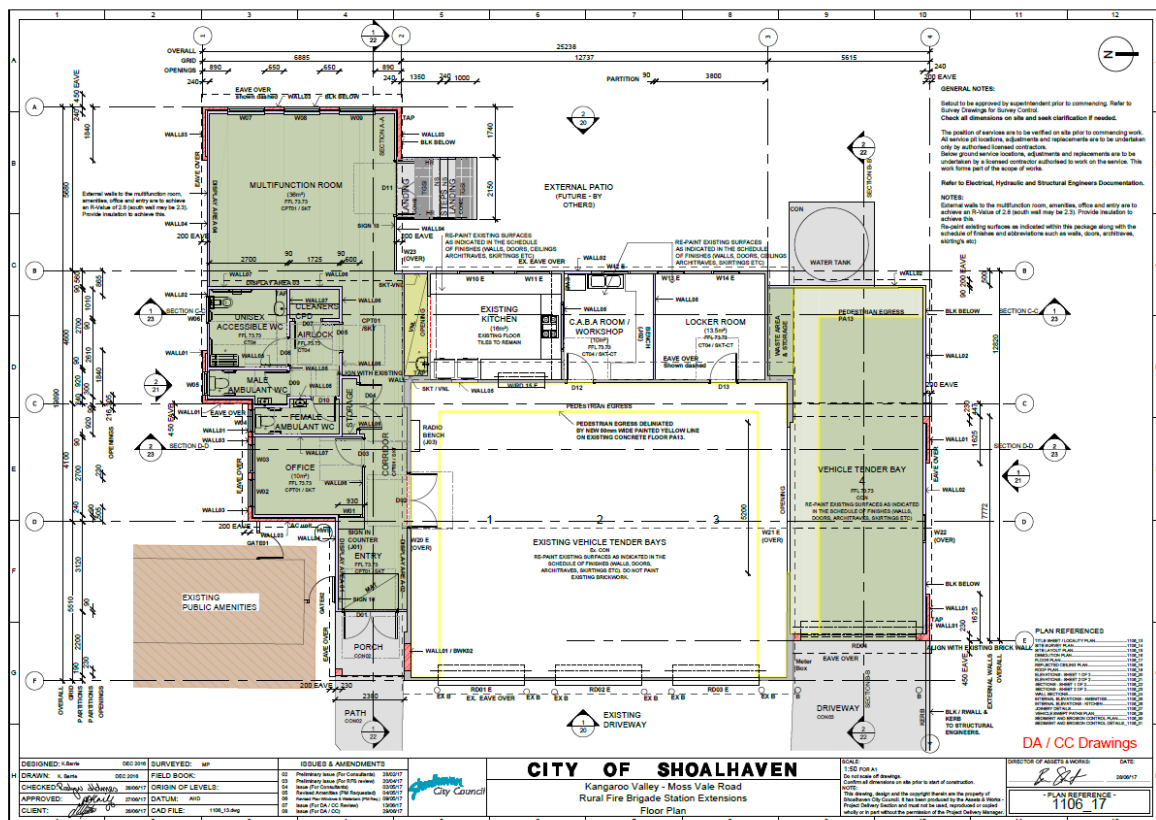
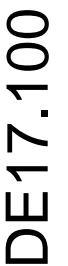
## Background

### Proposed Development

The DA seeks approval for alterations and additions to the Kangaroo Valley Rural Fire Service Brigade Station, incorporating an additional vehicle tender bay, multifunction room, office, amenities and waste area/storage room.

One (1) Sycamore tree at the rear of the building is also to be removed.

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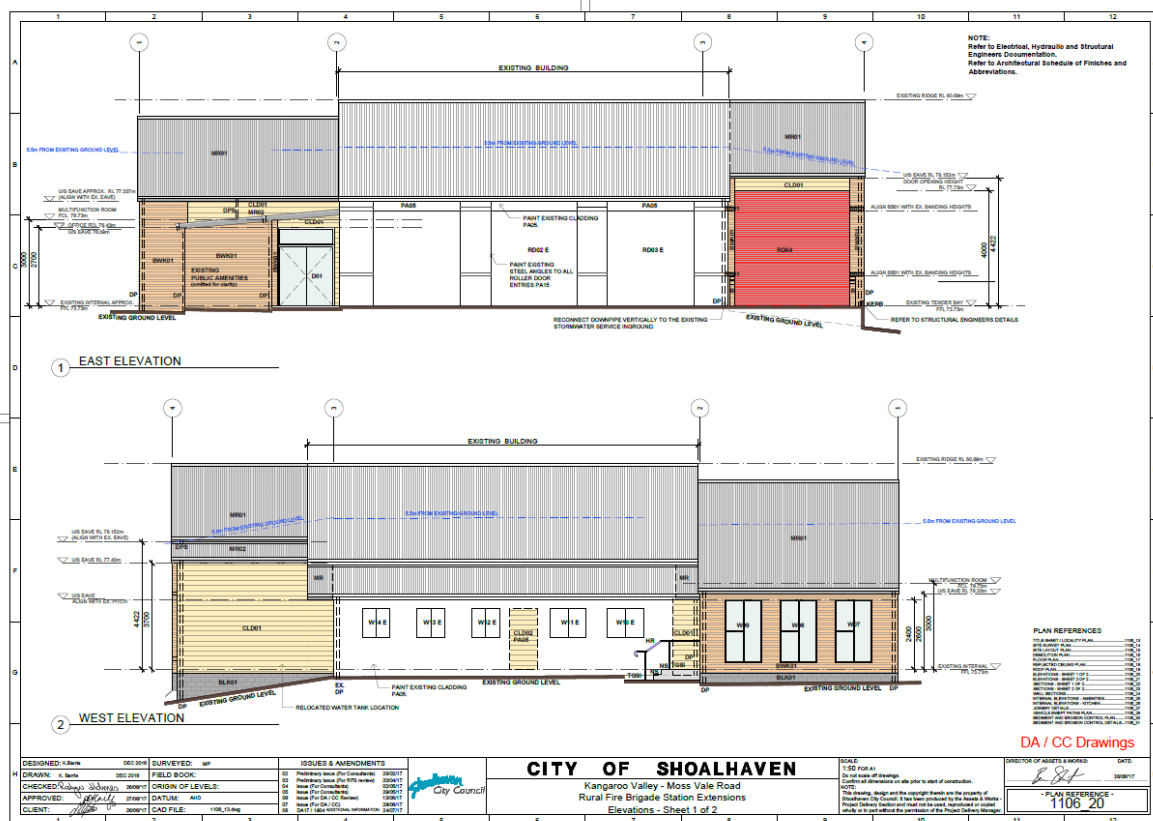
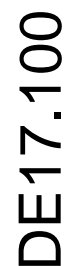
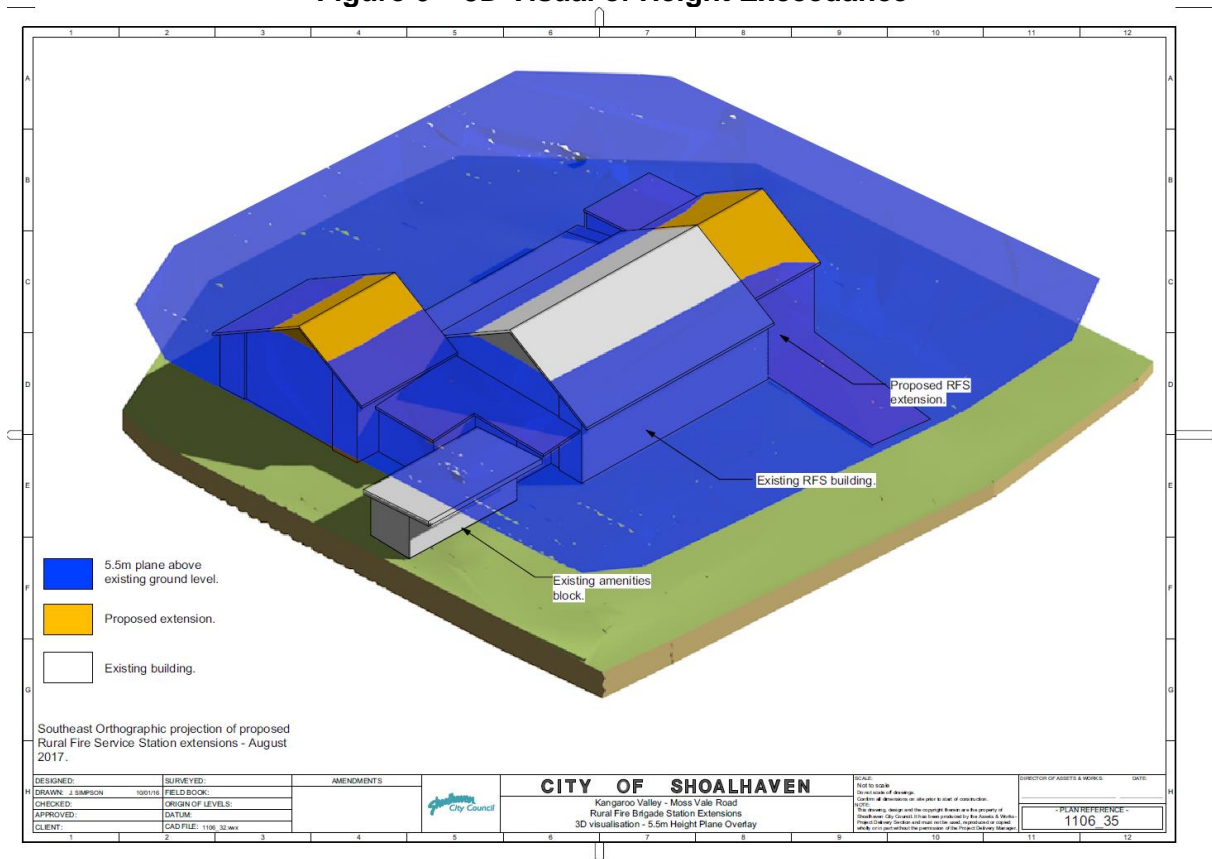


Figure 6 – 3D Visual of Height Exceedance



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Figure 7 – Zoning Extract



### Subject Land

The development site comprises Lot 1 DP 775132 and Lot 2 DP 748146 (Moss Vale Road and Broughton Street, Kangaroo Valley). Refer to Figure 1.

### Site & Context

The development site:

- Is Operational Land containing the existing Rural Fire Service Brigade station with detached public amenities and four (4) tennis courts with associated structures and scattered vegetation;
- Is zoned RU1 Primary Production and RU5 Village and 1.07ha in area;
- Is identified as being wholly flood prone land;
- Has existing access from Broughton Street; and
- Adjoins land zoned RU1 Primary Production and RU5 Village, under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014) as illustrated in Figure 7.

### History

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

- A pre-lodgement meeting was held with planning, building and engineering staff and the applicant, being Council staff managing this project (Development Advisory Unit (DAU) Meeting on 5 April 2017). As Council was proposing to carry out the work, clause 48(1) of State Environmental Planning Policy (Infrastructure) 2007 applies and the development is *permitted without consent* and an application to Council was not required. However, Council's Assets & Works Group elected to obtain development consent from Council.
- The application was lodged on 18 July 2017.
- As a result of detailed assessment of the application, additional information was requested from the applicant on five (5) occasions – 21 July 2017, 31 July 2017, 7 September 2017, 18 September 2017 and 6 November 2017.
- On 28 July 2017 and 16 August 2017, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council for comment.
- On 7 September 2017 and 18 September 2017, following detailed assessment of the application and submitted information, additional information was requested as the written request in relation to the contravention of clause 4.3 *Height of buildings*, SLEP 2014 was insufficient – particularly lacking justification as to why compliance with the development standard is unreasonable or unnecessary.

In addition to this, Council's Flood Unit were not supportive of this development proposal, having regard to the information at hand, particularly compliance with the provisions of clause 7.3(3), SLEP 2014. Further, the submitted Flood Impact Assessment Report had not adequately addressed the relevant criteria of Chapter G9, SDCP 2014.

- On 4 October 2017, the applicant submitted an amended written request regarding the proposed height of the building. However, from review of this request, it was apparent that further detail was required with evidence of rigorous assessment and consideration given to recent Land and Environment Court Judgements to ensure the provisions of clause 4.6, SLEP 2014 were satisfied.
- On 17 November 2017 an amended Flood Impact Assessment Report was submitted which concluded the *"report provides advice on which aspects of the proposed alterations and additions do and do not meet the Chapter G9 requirements. As can be seen in Section 5 of this report, there are multiple conditions of Chapter G9 with which the proposed additions and alterations do not comply."*
- Due to the multiple non-compliances with Chapter G9, SDCP 2014, this particular element of the application was reported to the Ordinary Meeting on 28 November 2017 by Council's Assets & Works Group, in which it was resolved that Council:

DE17.100

- “1. Acknowledge the existing Rural Fire Service Station is located in a flood storage zone, with the inherent risk of inundation.*
  - 2. Proceeds with the enhancement of the existing Rural Fire Service Station in Broughton Street, Kangaroo Valley for the ongoing provision of garaging and brigade facilities in Kangaroo Valley.”*
- Following the Council resolution of 28 November, Council’s Flood Unit was requested to provide recommended conditions, which were provided on 4 December 2017.

## Issues

### *1. Council’s LEP Controls:*

#### Clause 4.3 (Height of buildings)

The maximum building height is 5.5m.

The entire building additions exceed the maximum height by 1.46-2.47m, being approximately 26.54-44.9%.

The applicant has consequently sought an ‘exception’ to the development standard pursuant to clause 4.6 of SLEP 2014.

The contravention to the height control is considered numerically significant, however, in terms of the overall design, the proposal is consistent with the height, bulk and scale of the existing RFS building and the adjacent ambulance station. The alterations and additions do not detract from the aesthetics of the building and do not affect views, privacy and solar access to any nearby residential sites.

The proposed building height is considered compatible with the existing and desired future character of the locality, having regard to the strategic controls (zone, DCP) for the locality.

#### Clause 4.6 (Exceptions to development standards)

As discussed above, the applicant has sought an ‘exception’ to the development standards in relation to height of buildings pursuant to clause 4.6 of SLEP 2014.

Therefore, Council is required to consider subclauses 3 and 4.

*(3) Development 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:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

Comment:

The applicant provided advice in relation to this clause. (To be provided under separate cover.)

Although the contravention is considered numerically significant, in terms of the overall design of the proposed building, it is consistent with the height, bulk and scale of the existing RFS building and will result in minimal visual impact particularly as it only has frontage to Broughton Street (a relatively quiet cul-de-sac off Moss Vale Road). Refer to Figure 6 for the 3D visualisation of the height exceedance.

It is agreed that *“constructing to the 5.5m limit would result in an irregular, unsightly and impractical development”*. The proposal is an attempt to improve the aesthetic standard of the existing building and surrounding development, with the visual impact of the existing public amenities block reduced. It will also be in the public interest as it is an improvement to an emergency services facility, allowing for improved welfare to the local community in times of bush fire and other emergencies; is consistent with the objectives of the standard and not inconsistent with the objectives of the zones.

**Planning Assessment**

The DA has been assessed under s79C of the Environmental Planning and Assessment Act 1979, with all necessary heads of consideration reviewed. Please refer to Attachment 1.

**Consultation and Community Engagement:**

Notification was undertaken in accordance with Council’s Community Consultation Policy with letters being sent within a 200m buffer of the site, including the Kangaroo Valley Chamber of Tourism and Commerce during the period 21 August 2017 to 5 September 2017.

No submissions were received in relation to Council’s notification of the development.

**Financial Implications:**

There are potential cost implications for Council in the event of a refusal of the application.

**Legal Implications**

A section 82A review is possible in the event of a refusal of the application.

**Summary and Conclusion**

This development is an improvement to an existing emergency services facility, allowing for improved welfare to the local community in Kangaroo Valley. The overall design of the proposed building is also in keeping with the existing building height, bulk and scale and will result in minimal visual impact to Broughton Street.

Accordingly, the application is supported and there are no overwhelming reasons to warrant refusal, noting Council’s resolution on 28 November 2017.

## 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.