

Development Committee

Meeting Date: Monday, 22 January, 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Joanna Gash - Chairperson
All Councillors
General Manager or nominee

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

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
 - Development Committee - 11 December 2017 1
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**

DE18.1	Development Application DA17/1264 – 77C Nerringillah Road, Bendalong – Lot 3 & DP 858721	12
DE18.2	Development Assessment Best Practice Guide for Councils	28
DE18.3	Crown Land at Shoalhaven Heads - Proposed Rezoning - Update	36
DE18.4	Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014	44
DE18.5	Proposed Planning Proposal - Citywide SP3 Tourist Zone Review	51
DE18.6	Proposed Planning Proposal - Semi-Detached Dwelling Housekeeping Amendment	58
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: Monday, 11 December 2017
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.05pm

The following members were present:

Clr Joanna Gash - Chairperson
Clr Amanda Findley – left the meeting, the time being 6.28pm
Clr Patricia White
Clr John Levett
Clr Nina Cheyne
Clr Annette Alldrick
Clr Andrew Guile
Clr Mitchell Pakes – left the meeting the time being 6.51pm
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

A Leave of Absence was previously granted for Clr Wells and apologies were received from Clr Gartner and Clr Guile.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Cheyne) MIN17.1037

That the Minutes of the Development Committee held on Tuesday 14 November 2017 be confirmed with the following amendment:

Clr Pakes was an apology, he was noted as both an apology and as attending.

CARRIED

Declarations of Interest

Nil

MAYORAL MINUTES

Nil.

Note: The following achievements awarded at the NSW Local Government Conference were discussed:

- That Cllr White was awarded the Elected Members Certificate
- That Cllr Gash congratulated on Emeritus Mayor Award

DEPUTATIONS AND PRESENTATIONS

Mr Adam Collison (representing Southern Cross Housing) provided a deputation to the Development Committee in relation to DE17.90 Exhibition Outcomes & Adoption - Shoalhaven Affordable Housing Strategy

Mr Lee Carmichael provided a deputation to the Development Committee in relation to DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291

Ms Leal provided a written and verbal deputation to the Development Committee in relation to DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291

Ms Jenny McDonald provided a deputation to the Development Committee in relation to DE17.99 DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2 DP 662583

Motion

RESOLVED (Cllr Pakes / Cllr White)

MIN17.1038

That the matters of the following items be brought forward for consideration:

- DE17.90 Exhibition Outcomes & Adoption - Shoalhaven Affordable Housing Strategy
- DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291
- DE17.99 DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2 DP 662583

CARRIED

REPORTS

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

HPERM Ref:
D17/346785

Mr Adam Collison (representing Southern Cross Housing) provided a deputation to the Development Committee in relation to this item earlier in the meeting.

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.

RESOLVED (Clr Findley / Clr White)

MIN17.1039

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, thank the workshop participants for their involvement in the process that helped make it a success and Invite representatives from the Property Council of Australia (Illawarra) to brief Council on the collaborative design exercise and its outcomes.
9. Consider a subsequent more detailed report that presents a partnership model between Council and Southern Cross Housing to realise affordable housing on Council owned land, including 42-46 Coomea Street, Bomaderry and to enable an application to be submitted under Round No.2 of the NSW Social and Affordable Housing Fund that opens in early 2018.
10. Not proceed to make an application under the Building Better Regions Fund – Infrastructure Projects Stream for the ‘affordable housing/emergency housing project’ at Bomaderry (MIN17.1028) and instead submit the Paringa Park Development.

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

AGAINST: Nil

CARRIED

Note: Clr White commended Allan Baptist, Alan Blackshaw and Gordon Clark for their work on this project

DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291

**HPERM Ref:
D17/383769**

Mr Lee Carmichael provided a deputation to the Development Committee in relation to this item earlier in the meeting.

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)

RESOLVED (Clr Pakes / Clr White)

MIN17.1040

That the Development Committee, under its delegated authority from Council:

1. Support the 22.5% variation to the minimum lot size for the 'battle-axe' / rear lot and the reduced private recreation areas for the dual occupancies, for the Torrens title subdivision, dual occupancies and dwelling house development (DA17/1533), at Lot A in DP 402291, 150 North Street Berry on the basis that it provides additional housing choice and a suitable design consistent with the character of the Berry Township; and
2. Refer the application back to staff for determination.

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

AGAINST: Clr Levett

CARRIED

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

**HPERM Ref:
D17/389787**

Ms Jenny McDonald provided a deputation to the Development Committee in relation to this item earlier in the meeting.

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 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. 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)

Note: Cllr Findley left the meeting the time being 6.28pm.

RESOLVED (Cllr Watson / Cllr Levett)

MIN17.1041

That the report DS17/1233 – 12 Currumbene Street, Huskisson – Lot 2 DP 662583 be received for information as the application has been withdrawn.

FOR: Cllr Gash, Cllr White, Cllr Levett, Cllr Cheyne, Cllr Aldrick, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.91 Establishment of a Design Review Panel for Shoalhaven

**HPERM Ref:
D17/364387**

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.

RESOLVED (Cllr Watson / Cllr White)

MIN17.1042

That Council:

1. Supports in principle the establishment of a Design Review Panel for Shoalhaven subject to receiving the report outlined in number 5.
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.

FOR: Cllr Gash, Cllr White, Cllr Levett, Cllr Cheyne, Cllr Aldrick, Cllr Pakes, Cllr Watson, Cllr Kitchener, Cllr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D17/374106**

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.

Note: Clr Pakes left the meeting the time being 6.51pm.

RESOLVED (Clr Watson / Clr Alldrick)

MIN17.1043

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D17/374917**

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.

RESOLVED (Clr Watson / Clr White)

MIN17.1044

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener,

Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D17/375583**

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.

RESOLVED (Clr Watson / Clr Cheyne)

MIN17.1045

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener,
Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D17/376937**

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.

RESOLVED (Clr Watson / Clr White)

MIN17.1046

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, the General Manager 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 and report back to council if necessary.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

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

HPERM Ref: D17/380097

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.

RESOLVED (Clr Watson / Clr Proudfoot)

MIN17.1047

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.97 Proposed Submission - Proposed SEPP (Environment)

**HPERM Ref:
D17/382647**

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.

RESOLVED (Clr Watson / Clr White)

MIN17.1048

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener,
Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE17.98 DA17/1533 – 150 North Street, Berry – Lot A DP 402291

**HPERM REF:
D17/383769**

Item dealt with earlier in the meeting see MIN17.1040.

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

**HPERM REF:
D17/389787**

Item dealt with earlier in the meeting see MIN17.1041.

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

**HPERM Ref:
D17/397201**

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.

RESOLVED (Clr Proudfoot / Clr Alldrick)

MIN17.1049

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.

FOR: Clr Gash, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Watson, Clr Kitchener,
Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 7.04pm.

Clr Gash
CHAIRPERSON

DE18.1 Development Application DA17/1264 – 77C Nerringillah Road, Bendalong – Lot 3 & DP 858721

DA. No: DA17/1264/4

HPERM Ref: D17/386304

Group: Planning Environment & Development Group
Section: Ulladulla Service Centre

Attachments:

1. Draft Conditions for deferred commencement development consent (under separate cover) ➡
2. Architectural Plans - Ecotourist Facility (under separate cover) ➡
3. Revised Comments and reports in relation to Statement of Environmental Effects (under separate cover) ➡
4. CI 5-13 Supporting Documents - EcoTourist Facility (under separate cover) ➡
5. Section 79C Assessment Report - Proposed Eco-Tourism Facility (under separate cover) ➡

Description of Development: Eco tourist facility to be constructed in 2 phases comprising 30 bed bunkhouse, lodge, ancillary managers dwelling/fire refuge, primitive camping ground for 10 camp sites and ancillary facilities. Proposed ancillary use of facility for up to 18 functions per year for group bookings with up to 30 additional guests to be accommodated in the primitive camp ground.

Owner: Tim Pembroke

Applicant: Cowman Stoddart Pty Ltd

Notification Dates: 10 April to 24 April 2017 extended to 8 May 2017 and 3 August to 18 August 2017

No. of Submissions: 73 in objection
1 in support
1 comment

Purpose / Reason for consideration by Council

Called in by Councillors due to significant public interest – Min17.781

Recommendation

1. That Development Application DA17/1264 for an eco-tourism development at Lot 3 DP 858721 Nerringillah Road, Bendalong be determined by way of deferred commencement development consent with the deferred matter and conditions as detailed in **Attachment 1**

DE18.1

Options

2. That Council determine DA17/1264 for an eco-tourism development at Lot 3 DP 858721 Nerringillah Road, Bendalong by way of deferred commencement development consent with the deferred matter and conditions as detailed in **Attachment 1**.

Implications: This allows the development to proceed as proposed once owners consent for works in the Right of Way is obtained and will enable the development of a high quality eco-tourism visitor accommodation in the area.

This could also result in litigation by the surrounding land owners who are objecting to the proposal.

3. That Council resolve to refuse DA17/1264 for an eco-tourism development at Lot 3 DP 858721 Nerringillah Road, Bendalong and state the planning reasons for this decision.

Implications: Appeal provisions would be available to the applicant.

Location Map

Figure 1 – Location Map – 77C Nerringillah Road Bendalong

(Source SoEE Report)



Background

Proposed Development

The development application seeks consent for the staged construction of an Eco tourism facility comprising:

Phase 1

- 1 bedroom manager's residence that acts as the Phase 1 Fire Refuge and carport.
- Primitive camping on site to accommodate a maximum of 30 guests in 10 camp sites.
- On-Site toilet, shower, communal camp kitchen facilities to serve the primitive camping area.
- Car parking for 35 vehicles
- Onsite sewage management system

- Ancillary civil works including driveways, access/manoeuvring areas, drainage & landscaping.
- Upgrading civil road works outside the subject site to satisfy Council's requirements.

Figure 2 – Site Plan

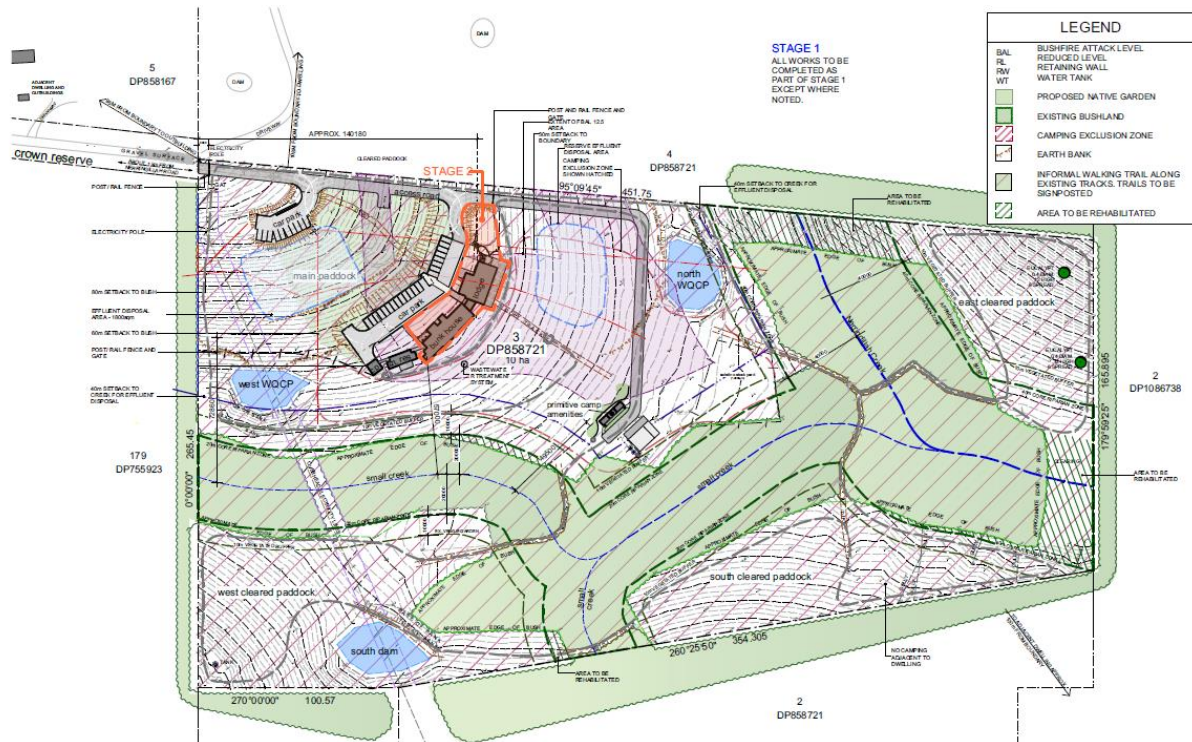


Figure 3 – Phase 1 Photomontage



Phase 2

- Bunk house comprising 12 rooms providing accommodation for up to 30 people with shared amenities, laundry and attached lodge and shared dining, kitchen, outdoor kitchen, lounge, deck and sanitary facilities.

DE18.1

- The bunk house/lodge will act as the permanent fire refuge for the entire development.
- The construction of the lodge will enable ecological and culturally themed functions such as conferences and nature themed weddings to be held as part of this second phase.
- Up to 18 functions per annum with a maximum of 2 per month ancillary to eco-tourist accommodation with a prohibition on the use of amplified music at any functions that occur on site.
- Primitive camp ground to be available for guests of the lodge / bunkhouse as part of phase 2 as an alternative style of accommodation to the bunkhouse accommodation and to provide overnight accommodation on Friday and Saturday nights for up to an additional 30 guests attending functions that are not staying in the bunkhouse/lodge.

Figure 4 – Phase 2 Photomontage



DE18.1

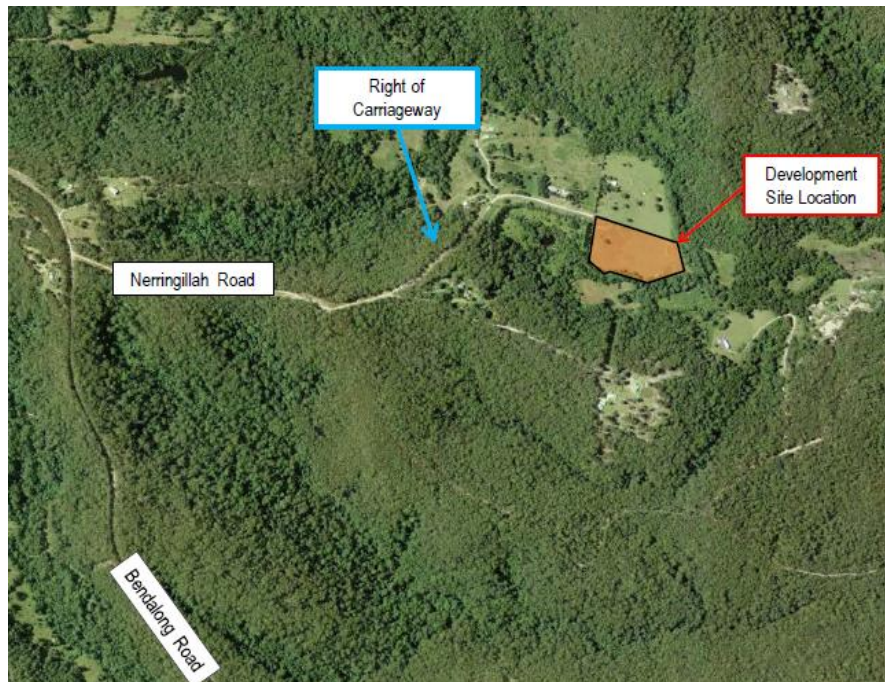
Plans and Reports

The full set of revised plans are included in **Attachment 2** and Revised Submission on Statement of Environmental Effects (including revised traffic assessment) in **Attachment 3**.

Subject Land

The site is identified as Lot 3 in DP 858721, 77C Nerringillah Road, Bendalong and comprises a regular shaped allotment with a total area of 10 hectares. The site comprises mainly cleared paddocks with three farm dams and forested riparian areas following three watercourses that flow through it.

*Figure 5 – Site Context
(From Revised Traffic Impact Assessment)*



DE18.1

Site & Context

The subject property is within a rural area approximately 8 km west of the village of Bendalong and is surrounded by rural residential land holdings of various sizes. The site is located in the upper reaches of the Nerringillah Creek catchment area, which is almost completely bounded by the Conjola National Park.

The subject land gains vehicular access via Nerringillah Road by way of a partly constructed discontinuous road connected by right of way that crosses Lot 7 DP 858721. The right of way comprises a bitumen sealed road, which connects all-weather gravel road approaches within the public road reserve. Bendalong Road is a sealed road maintained by Shoalhaven Council.

The subject property is zoned RU2 – Rural Landscape under the provisions of Shoalhaven Local Environmental Plan 2014.

History

The subject site was part of a land grant to John Duffy prior to 1884 who was reported to be a farmer in Government Gazette 1923:5971.

Aerial photos of the site in the Heritage Due Diligence Assessment submitted with the application indicate from 1959 it was largely cleared including the riparian corridors. In 1975 there were some evidence of fences and some regrowth of the riparian corridor. The land was allowed to revegetate and the dams present were constructed between 1975 and the present.

Issues

ROW Upgrade and Deferred Commencement

Access to the development site is proposed from Bendalong Road via Nerringillah Road and a discontinuous Right of Carriageway through Lot 7 DP858167 [77G Nerringillah Road].

Bitzios Consulting [traffic engineer] was engaged by the applicant to provide a revised Traffic Impact Assessment [TIA] [**Attachment 3**]. This proposal will require upgrading of the ROW to ensure safe egress and ingress for which land owners consent has not at the time of preparing this report been provided. The applicants are seeking a deferred commencement approval as landowner's consent is likely to be required possibly via either section 40 of the Land & Environment Court Act 1979 or section 88K of the Conveyancing Act 1919 for resolution of this matter. As the upgrading of the ROW is a critical issue the applicant will have to demonstrate that owners consent for a separate application for the work in the ROW has been obtained before any proposed consent is operational and the work carried out before any occupation of the development.

Other External Road Works

The key findings of the Bitzios TIA that are relevant to this report are as follows:

- *Due to the increase in turn volumes generated by the proposed development at the intersection of Nerringillah Road / Bendalong Road, a BAL and BAR treatment will be required and designed in accordance with Austroads Guide to Road Design part 4A: Unsignalised and Signalised Intersections;*
- *Nerringillah Road currently meets the minimum dimensional requirements for a Minor Road Class 4B in accordance with ARRB Unsealed Roads Manual (2009);*
- *the Safe Intersection Site Distance [SISD] to the north of the Bendalong Road / Nerringillah Road intersection provides less than the required sight distance with trees along the western side of the road obstructing driver visibility (i.e. SISD required to be 285m for 110km/h design speed);*
- *the applicant will enhance the private road to achieve the minimum standard on the approaches to the one-way sealed right of carriageway with the following minimum dimensional requirements:*
 - *3.5m traffic lane;*
 - *1m shoulder on both sides; and*
 - *1m table drain.*
- *The existing bitumen sealed driveway provides one (1) large passing bay for all vehicles expected to enter the site and one (1) car passing bay. This arrangement is considered to be acceptable based on the expected low two-way vehicle volumes of the Nerringillah Eco Tourism Facility, provision of signs and guide posts;*

Bitzios recommended the trimming of trees on the inside curve of Bendalong Road to the north of the Bendalong Road / Nerringillah Road intersection to improve Safe Intersection Site Distance. As Council cannot impose a requirement to clear vegetation on private land this recommendation can only apply to vegetation within council's road reserve. Also the speed limit in Bendalong Road is 100km/h and the SISD required is 248m, which will be able to be achieved with trimming within the road reserve only.

The revised Traffic Impact Assessment was reviewed by Council's Traffic Unit, Works and Services Road Engineer and Development Engineer and found to be acceptable. Council's Traffic Unit recommended that the applicant provide a street light on an extension bracket on the existing pole situated on the south east corner of the intersection of Bendalong and Nerringillah Roads, in consultation with SCC and the local electricity distributor [Endeavour Energy]. This recommendation and the draft conditions from council's development engineer are provided in the draft conditions of consent.

Existing Approval DA/BA96/2222

An existing approval [combined DA/BA96/2222] for a dwelling, garage and shed has been activated with the construction of the shed. The approved dwelling and garage are located in conflict with the proposed footprint for the eco-tourist development and as such a condition under section 80A of the Act is required to be included in the draft conditions requiring the surrender of those components of DA/BA96/2222 in conflict with DA17/1264, prior to the release of an Occupation Certificate for Phase 1 of DA17/1264.

Clause 5.13 Eco-tourist facilities SLEP 2014

As components of the proposed development have been characterised as an 'eco-tourist facility' the consent authority must be satisfied as to each of the criteria set out in this clause.

Eco-tourist facilities are defined in SLEP 2014 as:

Eco-tourist facility means a building or place that:

(a) provides temporary or short-term accommodation to visitors on a commercial basis, and

(b) is located in or adjacent to an area with special ecological or cultural features, and

(c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Documents prepared on behalf of the applicant to address the requirements of clause 5.13 include (**Attachment 4**):

- Table 5 of the Statement of Environmental Effects [SoEE] prepared by Cowman Stoddart dated March 2017;
- Annexure 5 Water Cycle Management prepared by Cowman Stoddart dated Feb 2017;
- Annexure 6 Bushfire Protection Assessment prepared by Eco Logical Australia dated 9/03/2016;
- Annexure 7 Ecological Feasibility of the Proposed Nerringillah Lodge prepared by Eco logical Australia dated 6/02/17;
- Annexure 10 Environmental Noise Impact Assessment prepared by Harwood Acoustics dated 20/12/16;
- Ecologically Sustainable Design Report prepared by SLR Global Solutions dated 15/11/17;
- Preliminary Environmental Management Plan [EMP] prepared by Cowman Stoddart dated Dec 2016;
- Cowman Stoddart letter dated 14/12/17;
- Heritage Due Diligence Assessment prepared by Niche Environment and Heritage dated 10/12/17;
- Nura Gunyu letter prepared by Noel Butler Elder Budawang Country Yuin Nation dated 13/12/17; &
- Nerringillah Eco-Tourist Lodge: Waste Management Plan prepared by MRA Consulting Group dated 10/11/17

In relation to the specific provisions of Clause 5.13:

- 1(a): **to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out** – The building components and primitive camp ground area of the proposed development are consistent with the objectives in this clause as they will maintain the environmental features of the site as they do not require the removal of any vegetation given the developments configuration that utilises the existing cleared areas on the site for the siting of new buildings/works.

As detailed in the Ecological Feasibility Assessment prepared by Eco Logical Australia, as well as the attached Niche Report, there has been an Aboriginal occupation and use of the area within which the site is located for over 20,000 years.

The Due Diligence report prepared by Niche Environment and Heritage found that the use of the site by Aboriginal people is likely to have been infrequent and consisted of occasional visits in relation to transient movements associated with hunting and gathering rather than focused activity associated with encampment. In this locality more suitable location for camping would have been in close proximity of higher order drainage channels where resources would have been more prevalent.

While the Niche Report states the subject site itself does not contain any specific indigenous or non-indigenous cultural heritage significance, Nura Gunyu also indicated that the site of the proposed Nerringillah Eco Tourist Facility sits within the connected pathways used by the Budawang Clan to travel from the ocean and lakes along the local water courses to the north of Balgan, one of their sacred mountains, across Bhundoo the river, past Budawang Mountain to Mongarlow. From there they travelled past their western boundary to the big ceremonial and meeting place on the plains by the lake at Bungendore. In close proximity of the subject site there are places and sites of high significance. Nura Gunyu site visit also recorded at least 17 plant species significant to Aboriginals either as food, medicinal or as lifestyle resources.

- 1(b): **to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.** The proposed development has been sensitively designed to minimise its bulk and physical footprint and ecological and visual impact. It incorporates passive and active energy saving measures such as correct orientation to the sun providing a good level of daylight but not hot afternoon sun during summer, operable windows & opposing windows to enhance natural cross-flow ventilation through the buildings, LED lighting controlled by motion sensors and time clocks with specified illumination limits to reduce energy use, gas boosted solar hot water, water efficient fittings, water tanks for irrigation, toilet flushing and laundry, and a 30 kW solar PV system has been proposed for the facility – designed to supply 100% of its energy needs.

Operationally the development is proposed to follow the principles of Environmentally Sustainable Development [ESD] as detailed in the SLR Global Solutions report and be managed as detailed in the draft EMP, the MRA Waste Management Plan and the Noise Assessment.

- Subclause 3(a): **there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area** - The natural and cultural heritage values of the area, along with the general landform and climate, are interconnected. The native vegetation of the property and immediate surrounds is

dominated by Southern Turpentine Forest with Coastal Warm Temperate Rainforest found in forested riparian areas. Nearby Conjola National Park is considered a biodiversity hotspot with 429 native plant species, including five threatened species, within 18 vegetation communities supporting a variety of fauna habitat, more than 20 threatened fauna species recorded in and/or near the park (NSW National Parks and Wildlife Service 2009). The riparian corridors that traverse the site provide connection of the site to the surrounding land and Conjola National Park. As detailed in point 1(a) above there is a demonstrated connection of the cultural values of the site to the surrounding area.

- 3(b): ***the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment*** - The applicant has demonstrated that the development will be located, constructed, managed and maintained to minimise any impacts on the natural environment. This is due to the siting of proposed buildings and associated works in areas that have been cleared with suitable buffers to the riparian zones, the ESD measures contained within the building design and energy and waste measures and operational details provided in the draft EMP, Water Cycle Management Plan, Acoustic Assessment and Waste Management Plan. Rehabilitation of eroded areas in the riparian zones is addressed in part 9 of the Water Cycle Management Plan, which demonstrates that the development will conserve the natural environment.
- 3(c): ***the development will enhance an appreciation of the environmental and cultural values of the site or area*** - The applicant has demonstrated that the development will enhance an appreciation of the environmental and cultural values of the site or area given the proponents intention to conduct formal ecological and environmental studies for school groups and other educational groups, environmental appreciation and interpretation programs, general nature inspired and adventure based leisure activities and local indigenous cultural awareness programs run by Nura gunyu including bush tucker and story-telling. There are also a number of existing paths within the site that will be maintained for bush walks, recreation and appreciation of the local environment. Any upgrading or construction of paths within the riparian zone would need approval at a minimum from NSW Office of Water [NSWOW]
- 3(d): ***the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal*** - The applicant has demonstrated that the impacts upon watercourses, soil quality, heritage, and native flora and fauna will be minimal. In summary, minimal works are required in the vicinity of the existing creeks with the NSWOW raising no objection to the proposal.
- 3(e): ***the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment*** - The applicant has demonstrated that the site will be maintained to ensure the continued protection of natural resources and enhancement of the natural environment. This is to be achieved via the operation of the facility in accordance with the EMP, ESD, Noise and Waste Management Reports.
- 3(f): ***waste generation during construction and operation will be avoided and that any waste will be appropriately removed*** - The applicant has demonstrated that waste generation during and post construction will be avoided/minimised with appropriate

removal of waste in accordance with the MRA Waste Management Plan which sets an operational goal to reuse 75% of all waste material generated at the site.

- 3(g): ***the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora*** - The applicant has demonstrated that the proposed location of the development will avoid visibility above ridge lines, is not located near any escarpments and would not be visible from watercourses outside the site. Visual intrusion has been carefully considered through the location, design, colours and material finishes and landscaping proposed.
- 3(h): ***any infrastructure services to the site will be provided without significant modification to the environment*** - The applicant has demonstrated that any infrastructure services required to service the site could be provided without significant modification to the environment. Specifically, this relates to wastewater, electricity, general water supply and access. While it is acknowledged that some minor excavation/earthworks will be required they are not considered significant in terms of modification to the environment.
- 3(i): ***any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design*** - The applicant has demonstrated that, where possible, power and water to the site are capable of being provided through the use of passive heating/cooling, renewable energy sources and water efficient design in accord with the ESD Report & Water Cycle Report.
- 3(j): ***the development will not adversely affect the agricultural productivity of adjoining land*** - The applicant has demonstrated that the proposed development is not likely to adversely affect the agricultural productivity of adjoining land.
- 3(k): ***the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:***
 - (i) ***measures to remove any threat of serious or irreversible environmental damage,***
 - (ii) ***the maintenance (or regeneration where necessary) of habitats,***
 - (iii) ***efficient and minimal energy and water use and waste output,***
 - (iv) ***mechanisms for monitoring and reviewing the effect of the development on the natural environment,***
 - (v) ***maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.***

The submitted documents adequately address the requirements of subclause 3(k), the management strategy is provided in the form of the draft EMP in conjunction with the ESD, Water Cycle and Waste Management Plans.

It is considered that the applicant has demonstrated that the requirements of Clause 5.13 have been satisfied.

Functions and Amenity Impact

The applicant submitted a Noise Impact Assessment prepared by Harwood Acoustics dated 20/12/16 that addressed potential noise impacts for the proposed development including use for functions with amplified music and up to 60 guests. Council employed a third party (Noise and Sound Services) to undertake a peer review of the noise assessment submitted with the development application. The peer review found that there were no significant reasons for Council to not approve the Eco Tourism Lodge subject to appropriate amplified music time limits being set and a condition prohibiting audibility of venue noise after midnight.

Upon receiving a significant number of objections to the original application, the applicants revised their application on 20/07/17 to:

- Move the proposed manager's residence closer to the proposed lodge and bunkhouse to improve supervision of guests behaviour
- Reduce the primitive camp area to an area below the proposed manager's residence and provide the tents for the primitive camping to also be made available for the guests attending functions, who are not staying within the bunkhouse / lodge facility, to camp overnight on Friday and Saturday nights within the primitive camping facilities as an option to reduce the need for late night traffic movements and associated noise, safety and light spill concerns.
 - Reduce the number of functions per year to eighteen (18) functions with a maximum of 2 functions during any one month.
 - Prohibit the use of amplified music at any functions that occur at the site.
 - Improve the sanitary facilities for the primitive camping area.
 - Provided a revised Noise Impact Assessment

The revised Noise Impact Assessment was reviewed and with the above measures, in conjunction with those outlined in the original development, will minimise the impacts of the proposal on local residents. However, taking into consideration the submissions and the revised proposal, it is considered that amenity impact could be better managed with conditions in accordance with the acoustic consultants reports together with requirements to restrict the generation of noise in accordance with conditions that are equivalent to the controls provided in the Noise Regulation of Protection of Environment Operations Act for residential premises. Full details are provided in the S79C assessment report [**Attachment 5**] and in the draft noise conditions in **Attachment 1**.

Figure 6 - Concept Tent Design to be provided for Primitive Camp Ground Guests



Planning Assessment

The DA has been assessed under s79C of the Environmental Planning and Assessment Act 1979 and the full assessment is provided in to **Attachment E**.

Consultation and Community Engagement:

Seventy Five (75) public submissions were received in relation to Council's notification of the development. Seventy three (73) were objections to the development. One (1) was in support of the development and one (1) was considered as comment only. The DA has been exhibited in accordance with public participation requirements for integrated development as outlined in the EPA Act and EPA Regs. Information submitted with the DA has been exhibited on two (2) occasions as outlined below:

Notification Period 1:

All surrounding property owners were notified of the proposal (13 letters sent) as well as notification to the Red Head Villages Association by letter from 10 April to 24 April 2017. This notification period was then extended (18 letters sent) on 18 April to 8 May 2017.

Notification Period 2 - Amended Development Application:

This notification was undertaken due to the receipt of amended plans and supporting information from the applicant. All surrounding property owners and any parties that had previously indicated an interest in the application were renotified of the proposal by letter from 3 August to 18 August 2017. Due to community interest the notification period was extended on 15 August to 31 August 2017.

Key issues raised as a result of the notification are provided below.

Issue

Alleges the function use component of the proposal is the dominant use and therefore prohibited under SLEP 2014.

Comment

The application is characterised as an eco-tourist accommodation facility with ancillary camping ground and up to 18 ancillary functions limited to 60 persons per event. Both eco-tourist facilities and camping grounds are permitted uses with consent in the RU2 Zone. Eco-tourist accommodation is considered to be the dominant use of the proposed development on the basis of the details of the application, more detailed comment is provided in the Section 79C report attached.

Issue

Comparison of the proposed development and Rockfield Park in Kangaroo Valley alleges that the functions for the current application cannot be considered ancillary to the eco-tourism facility.

Comment

The Rockfield Park proposal, although it was also a proposed eco-tourist facility, is very different in scale, layout and character and cannot be reasonably used as a relevant comparison to the current application for eco-tourism facilities. There is provision for all people attending a function to be accommodated in the facility.

Issue

Suggestion that holiday periods will be used by families for tourist and visitor accommodation and as such the proposed development will not be used as an eco-tourist facility.

Comment

The use of the facility during holiday periods for family holidays does not alter the eco-tourism bona fides of the development. The physical development is unchanged and the management practices detailed within the Preliminary Environmental Management Plan continue to operate.

Issue

Primitive type camping is incompatible with eco-tourism criteria.

Comment

There are numerous approved and successful examples of primitive camp style eco-tourism developments in the Shoalhaven and further afield. The fact that the guests are accommodated within a tent vs some other form of constructed accommodation does not negate the eco-tourism credentials of a development.

Issue

Owners consent for upgrade works in the Right of Carriageway has not been obtained and as such cannot legally be carried out.

Comment

Council can provide a deferred commencement consent that requires the applicant to obtain the subject land owners consent either by negotiation or litigation prior to the development consent becoming operational. The actual carrying out of the works in the ROW will require a separate development application once they have obtained owners consent. Council needs to be satisfied that this consent can be obtained before an operational consent can be issued for the eco-tourism facility.

Issue

Upgrade details for the Right of Carriageway and Nerringillah Road are deficient and considered major works that should be carried out under a separate development application.

Comment

The revised Bitzios Traffic Impact Assessment has been reviewed by council engineering staff and found to be acceptable subject to the draft conditions of consent in **Attachment 1**. The works are not considered to be major works. Detailed engineering design for these works is required prior to the issue of a section 138 Approval to carry out works in the road reserve. Risk management for these works is carried out under the section 138 application.

The scale of the works in the road do not determine if a separate development application is required, they are related to the development proposed and can be included in the one application. The upgrade works within the Right of Carriageway will, however, require a separate development application once owners consent is obtained as it cannot be covered by a section 138 application.

Issue

Proposed development would contravene restriction as to user [RATU] fourthly referred of the existing S88B instrument for the subdivision which states: "The land hereby burdened shall not be utilized for any purpose that would inhibit the quiet enjoyment of the locality for the proprietors of the appurtenant lots for the time being. This restriction is to be read as expressly including trail bikes, shooting and noise generating home industries, but does not relate to normal agricultural pursuits".

Comment

The applicants contend that the proposed development does not contravene the provisions of the s88B caveat as the proposal is intended to encourage guests to pursue quiet enjoyment of the facilities with no trail biking, shooting or home industries to be carried out. Clause 1.9A (Suspension of covenants, agreements and instruments) SLEP 2014 suspends the operation of this covenant provision for the development of an eco-tourism development on the subject land as the covenant is in conflict with the Shoalhaven LEP 2014 and was not required by Council in the original subdivision.

Issue

That the application fails to address the requirements of Clause 5.13 of the Shoalhaven Local Environmental Plan 2014.

Comment

The applicant has demonstrated compliance with the provisions of Clause 5.13 as detailed previously in this report.

Issue

Manager' residence was located too far away from lodge & primitive camping areas to provide effective management of the facility.

Comment

The revised development consolidated the managers dwelling with the bunkhouse and lodge and consolidated the primitive camp area to the flatter land below the bunkhouse/lodge. This removed development from the steeper original position, increased setbacks to boundaries and provides easier and more efficient management and supervision of the facility.

Issue

The land has no intrinsic, special or remarkable features worthy of an ecotourism site.

Comment

The natural and cultural heritage values of the area, along with the general landform and climate, are interconnected. The riparian corridors that traverse the site provide connection of the site to the surrounding land and Conjola National Park. Refer to detailed comments under clause 5.13 [subclauses 1(a), 3(a) & 3(c)] SLEP 2014.

Issue

The proposal does not have any educational, environmental or ecological function.

Comment

Refer to detailed comments under clause 5.13 [subclauses 3(c)] SLEP 2014.

Issue

Potential noise amenity impact of amplified music on surrounding residents that is compounded by the natural amphitheatre of the topography and contradicts the principles of eco-tourism. General noise concerns with the operation of the proposed development.

Comment

The revised proposal does not include the use of amplified music. The draft conditions provide strict noise requirements for the development, including prohibiting the use of any form of amplified music within the tourist areas of the site. Noise and amenity impact management is further addressed within the Preliminary Environmental Management Plan which calls up the revised Noise Assessment refer **Attachment 3**. Detailed conditions are proposed to manage noise from the development and are discussed previously in this report and included in the draft conditions in **Attachment 1**.

Issue

Operational hours excessive (10 pm closing Monday to Thursday and 12.00 pm Friday to Saturday: based on tourist and visitor criteria that is totally inappropriate for an eco-tourist lodge. There is no noise from the Valley after 8 p.m.

Comment

The proposed hours are consistent with Acceptable Solution 13.1 of Chapter G15 of the SDCP 2014 specified for food and drink premises which the temporary use of the site for a limited number functions per year closely resembles. The amenity impact of the development is also restricted by conditions in relation to noise management discussed above.

Issue

The proposed development fails to address local historical/cultural values.

Comment

Annexure 7 of the SEE, the ESD report, the Heritage Due Diligence Assessment and the submission of Nura Gunyu all demonstrate the local historical/cultural values for the site and surrounding area. Refer to clause 5.13 comments SLEP 2014 in the body of the report.

Issue

Bushfire – no fire refuge until phase 2, difficulty of evacuation using single narrow steep escape route, lack of potential RFS support in the valley, past fire history, proposed modular construction not suitable for BAL 40.

Comment

The revised development provides the managers dwelling as fire refuge for phase 1 and the lodge/bunkhouse as fire refuge for phase 2. Eco-tourism facilities provide fire refuges specifically to enable the operators and guests to remain on site in the event that evacuation becomes untenable. Being an integrated development, the RFS have provided their General Terms of Approval that address the bush fire requirements for construction, maintenance and operation of the development.

Issue

The development will cause erosion, sedimentation and septic seepage to pollute the watercourses traversing the site and Nerringillah Creek. The riparian zones require remediation and erosion control.

Comment

The proposed design of the development has carefully considered the constraints of the site and provided appropriate buffers and erosion control measures to remediate eroded areas and prevent erosion and siltation of the watercourses. The submitted Water Cycle Management Study has provided an acceptable waste water management design that can support the proposed demands of the development while protecting the watercourses and Nerringillah Creek from pollution.

Issue

Waste generation is not being avoided. no special recycling, no composting nor water minimisation strategies are proposed.

Comment

A detailed Waste Management Plan and Ecologically Sustainable Development Report demonstrate a serious commitment to reduce the production of waste on site, carry out recycling activities and reduce water and power consumption.

The applicant provided a response to the submissions and that is included in **Attachment 3**.

Financial Implications:

All required road upgrade works associated with the application are at the developer's cost.

Legal Implications

Appeal provisions under relevant legislation are applicable..

Summary and Conclusion

The development application has been assessed having regard to the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Following a detailed assessment it is considered that Development Application DA17/1264 for an eco-tourism development at Lot 3 DP 858721 Nerringillah Road, Bendalong be determined by way of deferred commencement development consent with the deferred matter and conditions as detailed in **Attachment 1**.

DE18.2 Development Assessment Best Practice Guide for Councils

HPERM Ref: D17/276640

Group: Planning Environment & Development Group

Attachments: 1. Development Assessment Best Practice Guide (under separate cover) [↗](#)

Purpose / Summary

The Minister for Planning, Housing and Special Minister of State, Anthony Roberts released the Development Assessment Best Practice Guide (guide) on 21 March 2017.

In the Ministers' forward he states the Premier of New South Wales has set a priority for faster housing approvals, with a target of 90% of housing approvals to be determined within 40 days, thus this guide has been developed to assist in delivering the Premiers housing target.

The guide is based on successful, historic practices used by councils that assist in the timely determination of development applications. It was developed in close collaboration with a number of high growth local councils and draws on current best practice and has been tested in a pilot project, which has shown that, when best practice processes and procedures are applied, determination times improve.

Shoalhaven City Council's current development application process, whilst similar in general framework, has some significant differences in regard to resourcing levels/focus at the "front end" of the process and with some of the internal administrative processes and timeframes adopted for each of these processes.

Recommendation (Item to be determined under delegated authority)

1. That Council endorse the broad principles contained in the Development Assessment Best Practice guide.
2. Council adopt a framework for dealing with development applications which includes;
 - a. The rejection of applications that do not have the required information as nominated by Schedule 1 of the Environmental Planning and Assessment Act;
 - b. Requests for additional information will be limited to one request per application and the time frame for complying with such request shall be 21 days;
 - c. If all requested information is not provided within the 21-day time frame, the applicant shall be requested to withdraw the application within a period of 7 days or the application will be determined with the information at hand;
 - d. The development Industry and general community be informed of any adopted changes under this recommendation and the implementation of any such changes will be discussed with relevant groups to facilitate the necessary information being available to intended applicants;
3. Council make a submission to the State Government at the time of review of the Development Assessment Best Practice Guide, requesting that a formal mechanism be introduced to allow Councils to mandate pre-lodgement meetings for Development Applications of an agreed status, also that Council fully support the implementation of

the Planning Portal and the creation of templates for widely used documents that can be used on a state-wide basis.

Options

1. As recommended

Implications: It is understood that there will be a review of the guide in the short – medium timeframe. Irrespective, the recommendations and underlying principles contained in the guide are unlikely to significantly change unless there is a substantial review of the legislation, regulation and policy framework.

A number of the recommendations and principles are already implemented or are in the process of being implemented within council's assessment teams, which includes the Building, Subdivision, Development and Ulladulla teams.

The adoption of the specified recommendations will facilitate consistency in the assessment framework and methodology, give surety to those involved in the process and assist to decrease assessment times.

2. Resolve an alternative.

Implications: Council's Development Committee can resolve an alternative recommendation to guide staff.

Background

The Department of Planning and Environment has released the Development Assessment Best Practice Guide. A copy of the Guide is attached for information.

Figure 1 below represents the 5 basic steps of assessment identified in the Guide and attaches various requirements and timeframes to each stage.

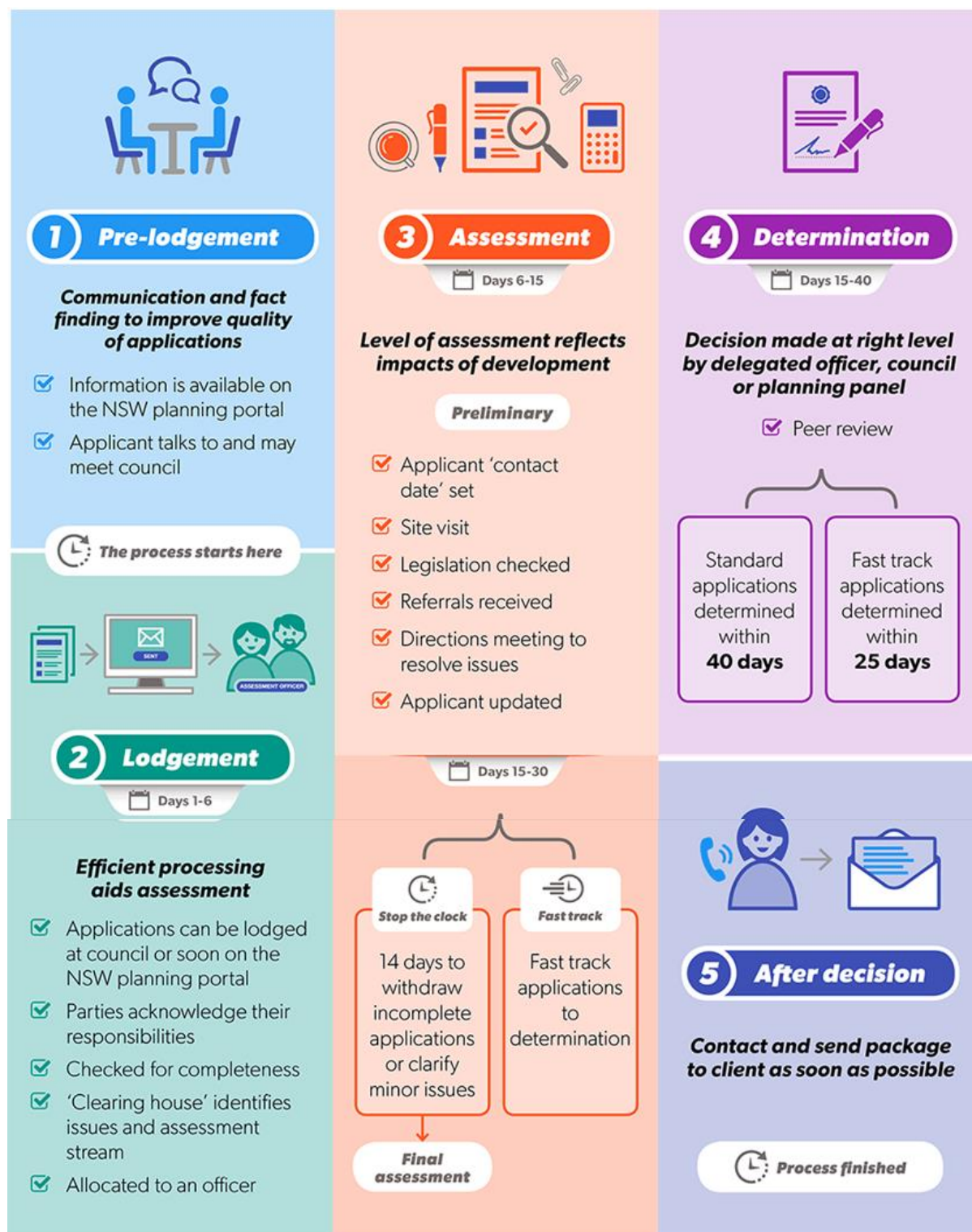


Figure 1 – the 5 key stages of development assessment

Financial Implications

At a *strategic* level, the Department is of the opinion that boosting housing supply in a timely manner, is a key priority of the NSW State for a number of reasons as detailed below. One way to do this is to improve the assessment regime and timeliness of approvals.

An improved assessment regime and corresponding improved housing supply:

- “will provide certainty to the housing market by bringing new housing online sooner – making it easier for people to find or build homes.
- It will help meet demand as Sydney plans for an additional one million people over the next 10 years.
- Building new and sustainable communities and increasing supply is important for housing affordability.
- A strong housing market is integral to the NSW economy – driving investment, and generating jobs and wealth.”

With respect to impacts on council, the full and strict implementation of the recommendations contained in the guide, would have financial implications with respect to staff resourcing, software rollout, process review etc., with such items being more medium – long term options. However, in the short term, potential exists for adoption of basic strategies from the guide, which will improve overall outcomes. The impacts are touched on in this report.

Intention of the Guide

From page 6 of the guide:

“The guide promotes a number of underlying principles that, if consistently applied throughout the assessment process, will lead to improved determination times. The guide draws on leading practices and procedures being used by councils, which have proven to assist in the timely determinations of DAs.

These include:

- Targeted pre DA services.
- Efficient lodgement and triage practices.
- Notification procedures commensurate with impacts.
- Corporate accountability for assessment timeframes in the form of key performance indicators.
- Delegations that support a consistent, targeted and efficient decision making process.”

In addressing the above, the Guide has put forward the following principles:

1. Investment in the pre-lodgement stage

The guide recommends that councils have a significant investment in the pre-lodgement phase of development applications. The intent is that councils who invest time and resources at the pre-lodgement stage will receive applications that have better responses to policy and compliance requirements. The lodgement of an assessment ready DA allows the assessment officer to focus on assessing and determining the application rather than liaising with the applicant to get the application to a standard where it can actually be assessed.

The guide recognises two aspects of pre-lodgement, being formal pre-lodgement meetings for more complex applications such as residential flat buildings, multi-dwelling housing and applications where complex environmental issues are identified, and general pre-lodgement advisory services for more standard applications such as duplexes dwelling houses rural dwellings and the like.

Comments

Shoalhaven City Council does not mandate pre-lodgement meetings, in fact, it is doubtful that such meetings can be mandated unless it is under the provisions of SEPP 65 - Residential Flat Buildings. It encourages and recommends such meetings, particularly for the more complex matters. A modest fee has been introduced which, whilst not being full cost recovery, provides incentive for applicants to utilise the service and gain valuable information for the preparation of a full Development Application.

Council has a customer contact centre and counter which provides basic development advice. Council also provides duty building surveyors and planners to answer more technical enquiries during set hours. In addition to this, there are email and phone enquiries which are spread amongst various officers. This council however does not have a dedicated resource nor has it built up a customer contact centre equivalent to councils which have been running with similar models for some time. Blue Mountains and Shellharbour Councils are examples where customer contact centres have been established through which all calls and enquiries are managed, thus freeing up assessing officers to carry out assessments. Many councils have ensured that front line staff have some level of training in regard to Development Assessment. Whilst this Council did have dedicated front line Development staff, this resource is no longer available.

There is no doubt that time and effort put into development proposals before lodgement assists in a higher standard application. It is important that those who are diligent with the preparation of applications, are not disadvantaged by those applicants who submit sub-standard applications and use the assessment process to identify shortfalls in their application, thus delaying overall processing, by the need for Council to repeatedly seek additional information. This issue is further addressed later in this report.

- 1.
2. *Performance targets*

The guide advocates the adoption of clear performance targets (assessment timeframes) for assessing staff, to foster a transparent and outcomes focused system.

Comments

Shoalhaven City Council has established Key Performance Indicators (KPIs) with respect to the assessment of Development and other types of applications. The targets have been in place for a number of years, however it is clear that assessing time frames are often impacted upon by issues outside the assessing officer's control. Unlike some local government areas that are dealing with dwellings and other types of residential accommodation primarily in new subdivisions, Shoalhaven has land that is within the coastal zone, is affected by flooding and coastal hazards as well as threatened species and bushfire risk. It is not uncommon for multiple additional information requests being made to advance applications, also external referrals being required for bushfire and environmental issues. Thus, whilst Council has performance targets, it is not always legitimate to simply look at an overall processing time, without considering the complexity of the application.

3. *Incentives*

The guide advocates that incentives should be provided for applicants by way of reduced assessment timeframes, i.e. fast tracked assessment processes, for applications that are fully compliant and do not require notification or referral.

Comment

Council has recently adopted a process along these lines whereby straightforward applications, including dwelling houses, are dealt with by a dedicated assessment team with a processing goal of 21 days. Whilst this assessment group is still resolving process issues,

significant gains have been made and approx. 58% of all development applications have been able to be dealt with within 21 days over the preceding 12 months.

4. Assessing officer workloads:

The Guide advocates that assessing offices are capable of achieving nominated assessment timeframes when they manage up to 25 relatively straightforward development applications at any one time. Where offices have more than 25 relatively straightforward applications and/or where a significant proportion of the applications are complex, assessment time's increase proportionately.

Comment.

As noted above, Council has recently introduced an assessment group focused on straightforward assessments, and a number of fixed term staff have been employed to resource this group. These staff are currently undergoing training and will be a major boost to the assessment team.

With regard to the abovementioned standard, the difficulty lies in determining what are "relatively straightforward" applications, as few applications relate to new subdivision release areas, and as such, the applicability of the benchmark is not straightforward. It is fair to say however, that Council staff have been operating in an environment where a very large number of Development applications are being received and dealt with. In the last financial year some 2500 applications were determined, equating to around 150 per full time assessing officer, which is significantly above the State average for comparable Councils.

5. Delivery focused assessment processing

The Guide recognises that establishing a culture that supports efficient and consistent development assessment, with this process being driven by the assessing officer and supported by all levels of management, is fundamental to improving delivery times.

Further, applications that are not capable of being assessed and determined on the information submitted at lodgement are likely to have adverse resource implications for assessments workloads and overall staff morale.

Where DAs are deemed deficient following lodgement, the applicant should be encouraged to withdraw the application, it should be rejected or it should be determined on the information available to council. The stop the clock provisions should only be used once and only where absolutely necessary i.e. in response to information received as a result of exhibition, or preliminary assessment identifies information gaps. The recommended time frame for the provision of additional information is 14 days.

Comments

The current process implemented by Shoalhaven Council in regard to the provision of additional information is significantly different to that advocated by the best practice guide. This has likely been brought about by a number of factors, a significant one being the broad range of issues that may apply to any individual application and the resulting complexity of documentation required to support an application.

A recent review of development application statistics indicates that in excess of 60% of development applications have additional information requests made of applicants. This may be a single request or multiple requests, depending on the standard of information provided by the applicant.

The guide states that applicants should be encouraged to withdraw applications that do not progress or are deficient following lodgement or that applications should be determined based on the information available.

This is also significantly different to current practice which has staff consistently guiding applicants in regard to the basic information required to make a determination in regard to a proposal. Whilst it is recognised that it may not be practical to apply a “one size fits all” approach to development applications, there is a problem whereby applicants are not adequately investigating their obligations, and utilising openly available information, to provide complete applications that can go directly through the assessment process.

The process whereby staff are repeatedly liaising with applicants to build up an application that may be able to be assessed, is resource hungry, takes the staff member away from their core function of DA assessment and is detrimental to applicants that provide complete applications, in that a greater timeframe is attached to the overall assessment cycle.

It is recognised that, if amended parameters are to be placed around the rejection of applications, additional information requests and the timeframe in which additional information will be received and requests to applicants to withdraw applications, there needs to be an open communication with the development industry who would need to be made aware of any adopted position. In addition to the provision of information, Council would need to work with industry to ensure that relevant information is made available to facilitate the submission of complete applications.

The contents of the best practice guide, particularly that part relating to assessment and processing, were raised at a recent meeting with members of the development industry. Further a link to the document was distributed to all industry members on Councils email register. No significant objection has been raised to the process outlined above, recognising that any move to implement same requires consultation with industry to address any issues and ensure the process is clearly defined.

6. *Standardised processes and procedures.*

This includes conditions, templates and delegations. Adoption of performance controls as opposed to prescriptive controls to minimise variations.

Comments

Council does have standard conditions, templates and processes. However, there are four (4) sections in council issuing consents, under 3 separate managers in 2 separate physical locations. Most councils do not have such a regime.

Over the passage of time (over 10 years) and given practices and ‘tools’ available, the ‘separation’ of teams has resulted in some inconsistency of documentation and process. Over the past 2 years Section Managers have collaborated and are working to align processes and procedures.

This is proving to be a significant task having regard to the scale of the organisation, and time that has elapsed having regard to maintenance and review of processes and procedures in the current system.

Overall, the review of conditions to produce one standardised set is advanced, with a draft document, for internal consultation, expected to be available in the near future.

7. *Business system improvements and on-line tools. This includes modern software, secure document management and archiving including consolidation of property information in a centralised accessible manner.*

The guide states that councils:

“...that have invested in software to manage lodgement, assessment and determination of DAs have reduced assessment and administrative workloads. Digital business systems also provide a more integrated and secure document management system reduce the cost of archiving and they consolidate property information in a centralised and assessable manner.

Such software can also assist integration with the NSW Planning Portal.”

Comment

Council has committed to the purchase and implementation of Tech 1 software, which is used by many other councils, to replace software developed by this Council over an extended period of time. The installation of this software will not only provide an opportunity to revisit and standardise processes but will also enable documents to be modernised and standardised with a view to achieve greater consistency and improved documents (determinations) for applicants. This will also align with the NSW State government’s planning portal program.

The implementation of Tech 1 in the development area is however likely to be 1-2 years hence and the generation of development consent documents is currently extremely time consuming as each document requires significant formatting and individual input. These documents also have to be registered within the records management system along with other documents. There is limited automatic integration.

In the interim, it would be beneficial to investigate an intermediate step which would allow a level of standardisation and automation of development consents, with such work integrating into the Tech 1 system. Further, the dedication of a resource into reviewing and updating standard conditions, templates, letters and processes will facilitate a significant improvement and result in faster approvals.

DE18.3 Crown Land at Shoalhaven Heads - Proposed Rezoning - Update

HPERM Ref: D17/421221

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Sept 2017 Report - Crown Land at Shoalhaven Heads - Rezoning Petition [↓](#)

Purpose / Summary

This matter was previously considered by Council in September 2017. This report provides an update and seeks further direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council take no further action at present in regard to the rezoning of the Crown Land (that part of Lot 7010 DP1035145 that is currently zoned R1 General Residential) at Shoalhaven Heads.

Options

1. Continue to pursue the current resolution as resolved.

Implications: Part 1 of the current resolution has been completed and the Local Member has advised he does not support the proposed rezoning. Given his position on this matter it may thus be difficult to pursue Parts 2 and 3 of the resolution.

Should Council ultimately decide to continue to pursue this matter and pursuing its own Planning Proposal (PP) to rezone the land, the local Community Consultative Body (CCB) has requested that there be appropriate consultation with the community before any further action is taken.

2. Take no further action on the matter until the Local Member supports any change

Implications: This would see the existing zoning retained until there is broader support for the zoning to change. In the meantime, it is acknowledged that any development of this site will be difficult to achieve, irrespective of the zoning, given the existence of an acknowledged Endangered Ecological Community (EEC).

There may be little point in Council continuing to pursue this matter (rezoning) until there is support for it at a State Government level. It could be suggested to the petitioners that they may wish to continue to make representations in this regard to the Local Member and also the relevant Ministers

Background

This matter was previously reported to the Development Committee on 12th September 2017 when it was resolved that Council:

1. *Write to the Member for Kiama, Mr Gareth Ward MP providing the petition and advising that Council supports the intent of the petition.*
2. *Requests that the NSW Government undertake the rezoning of the land to protect the area as an Environmental Protection Zone.*
3. *Rezone the land should the NSW Government not undertake the rezoning.*

The report to the 12th September 2017 Development Committee meeting is provided as **Attachment 1** to this report and provides relevant background detail.

Council staff wrote to the Member for Kiama, Gareth Ward MP and advised him of the above resolution. His response was received in early November 2017 and advised as follows:

Given the nature of zoning controls and natural barriers around Shoalhaven Heads Village, I believe the zoning of the abovementioned land should not be changed.

I have received considerable feedback from the community opposed to any de-zoning of the site.

The Shoalhaven Heads Community Forum also wrote to Council in early November 2017 and advised that the matter was considered at their meeting on 1st November 2017 and the following motion was moved:

That a letter be sent to Council expressing concern that Council did not consult with the recognised Community Consultative Body regarding the rezoning request of this land which is of high significance to the future of the village of Shoalhaven heads, including the Golf Club and further; Council now undertake appropriate consultation with the community via the Community Consultative Body – the Shoalhaven Heads Community Forum before taking any further action in regard to the rezoning.

Copies of the abovementioned letters were provided to Councillors on 16th November 2017 for their information.

Prior to receiving these letters, clarification was also provided to the Shoalhaven Heads Golf Club as there was concern regarding how it may affect them. It was noted that the proposed rezoning relates to that part of Lot 7010 that is currently zoned R1 General Residential under Shoalhaven Local Environmental Plan 2014 and is largely vegetated. It was also noted that the existing RE1 Public Recreation zoning in this location appears to be generally consistent with the layout of the existing golf course.

Next Steps

Given the nature of the response received from the Member for Kiama, Gareth Ward MP, Council needs to decide what to do now in regard to this matter.

In summary the Local Member has advised that he does not support changing the zoning of this land (to environment protection) and the local CCB has requested that Council consult them further should they decide to pursue any rezoning.

It is noted that if the subject land is retained in an R1 zoning it will be difficult to consider its development under that zoning given that the vegetation on the land is an acknowledged Endangered Ecological Community - Bangalay Sand Forest

Should the zoning of the land be changed to an environmental one there is also the potential that a significant number of biodiversity credits could be generated. This would provide a return to the owner (the Crown) and could also be used to manage the land into the future.

As such Council needs to consider the options presented earlier in this report and decide what to do next.

Community Engagement

At present there has been no formal community engagement in this regard. If the matter proceeds as a PP this will involve a formal public exhibition process.

The local CCB in their representations on this matter has requested that Council undertake appropriate consultation with the community via them before taking any further action in regard to the rezoning.

Financial Implications

There are currently no direct financial implications in regard to this matter, other than staff time which is being managed within the budget of the Strategic Planning Section.

DE17.64 Petition - Crown Land - Shoalhaven Heads - Rezoning Request

HPERM Ref: D17/265867

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Report - Proposal for the Development of an Aged Care Facility
2. Notice of Motion - Shoalhaven Heads Crown Land

Purpose / Summary

Consider a petition received from residents and visitors of Shoalhaven Heads that calls on the NSW Government to rezone an area of Crown Land at Shoalhaven Heads to National Park or E2 Environmental Conservation.

Recommendation (Item to be determined under delegated authority)

That Council contact the Member for Kiama, Mr Gareth Ward MP, to obtain his views in regard to the petition that requests the rezoning of the Crown Land at Shoalhaven Heads to an appropriate environment protection zone, prior to considering the request further.

Options

1. Receive for information.

Implications: Given the nature of this petition, specifically the fact that it is calling on the NSW Government to rezone the land, Council may wish to receive the petition for information at this point. There is still the opportunity to reconsider this matter in future once the NSW Government's position on it is known.

2. Approach the Member for South Coast, Gareth Ward MP, to obtain his views on this request, prior to reconsidering Council's position on it.

Implications: Before formalising a position, it may be appropriate to contact the Local Member given his previous involvement in this site, its ownership and given that the petition requests the NSW Government to take steps to rezone the subject land.

3. Request the NSW Government to consider the petition and if appropriate take steps to rezone the subject land.

Implications: Council could choose to support the intent of the petition and formally request the NSW Government to take steps to rezone the subject land, noting that it is Crown Land and as such, the Government first needs to decide what its future use should be.

4. Resolve to prepare a Planning Proposal (PP) to rezone the subject land to an appropriate environment protection zone, after consultation with the Shoalhaven Heads Community Forum.

Implications: Council could resolve to prepare a PP to rezone the subject land to E2 Environmental Conservation and submit this to the NSW Government for initial

consideration. This should be done after consultation with the Shoalhaven Heads Community Forum given their interest in the subject land. Council cannot pursue a PP to rezone the land to E1 National Park without the involvement of agreement of the NSW Government. The priority of this project (Council initiated PP) would also need to be considered in the context of the overall Strategic Planning Works Program.

Background

Petition – Detail

In early July 2017, Council received a copy of a petition that was signed by four hundred and eighty (480) people that contains the following text:

Call to rezone the Crown land in Shoalhaven Heads, bounded by Shackleton Street, Bass Street, Scott Street & The Golf Course, to National Park or E2 (Environment Protection)

Petition to: Greens NSW Upper House Member – Justin Field

Local State Members – Gareth Wards

Mayor – Amanda Findley

*We, the residents of Shoalhaven Heads and Visitors, call on the NSW Government to rezone the Crown Land in Shoalhaven heads (bounded by Shackleton Street, Bass Street, Scott Street & The Golf Course) to National Park or E2 (Environment Protection), as it is comprised of **two** Endangered Ecological Communities (EEC), being Bangalay Sand Forest & Littoral Rain Forest. It is also a habitat for many Native Animals, some of which area endangered. This EEC should never be cleared or built on. We need to preserve & protect the small amount have left, for future generations to enjoy.*

A copy of the petition will be available for review in the Councillors Room prior to the meeting.

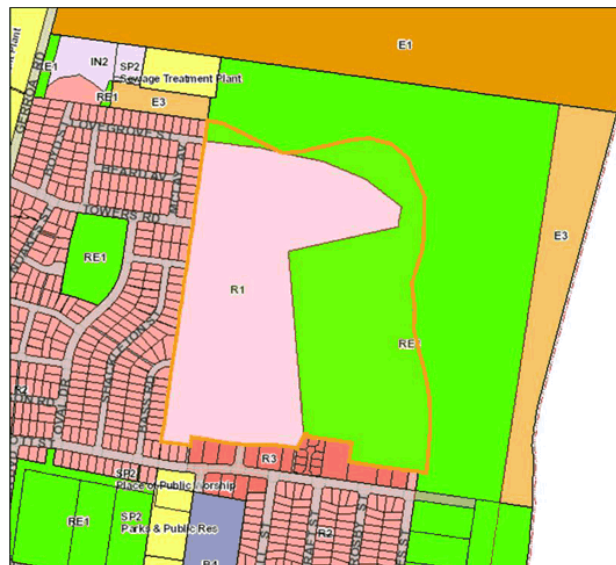
Subject Land - Overview

The land to which the petition relates is part of Lot 7010 DP1035145 at Shoalhaven Heads. Lot 7010 is a large parcel of Crown Land which the Shoalhaven Heads Golf Club also has an interest in, given that part of the existing Shoalhaven Heads golf course is located on the lot. The remainder of the lot contains an area of existing bushland.

The following aerial photography and map show the subject land (Lot 7010) and its existing zoning.



Subject Land – Lot 7010 (orange outline)



Subject Land - Lot 7010 (orange outline) – Existing Zoning

Under the Shoalhaven Local Environmental Plan (LEP) 2014, the overall lot is zoned part R1 General Residential and part RE1 Public Recreation. The vegetated part of the subject land is also mapped on the LEP's biodiversity overlay as it contains a known Endangered Ecological Community (EEC) – *Bangalay Sand Forest*.

The subject land has a complex zoning and conservation history. It was originally identified in the Shoalhaven LEP 1985 as a Residential 2(c) zone to provide for a future residential expansion opportunity. At different points after 1985, it was proposed for rezoning to an environment protection zone given its environmental characteristics, but this did not proceed.

Part of the subject land was subsequently development as part of the Shoalhaven Heads Golf Course (part now zoned RE1). Through the Shoalhaven LEP 2014 process, the decision was made to retain the undeveloped vegetated part of the subject land in a residential zone (part now zoned R1).

Subject Land – Recent History

The subject land (the R1 zoned part) has been the subject of recent deliberations regarding a possible retirement village and children's centre.

The subject land was initially identified by the Shoalhaven Heads Retirement Village Working Group as their preferred location for the proposed use. Council made a range of resolutions regarding this site and the proposed use. Most recently on 23 May 2017, it was resolved that:

1. *The advice from the Minister for Lands and Forestry to Gareth Ward MP (Attachment 1) in relation to the Crown land at Shoalhaven Heads be noted.*
2. *Shoalhaven Heads CCB be advised that Council does not intend to pursue this matter any further on the basis of such advice.*

The report that relates to this resolution is provided as **Attachment 1**. The report concluded that the development of any facility on the subject land is not likely to eventuate based on advice received from the NSW Government.

The Shoalhaven Heads Community Forum are now investigating the possible use of Lot 96 DP1069334, which is a business zoned lot in the centre of the village that is owned by the Jerrinja Local Aboriginal Land Council, for the possible retirement village and children's centre.

Council's Development Committee also considered a Notice of Motion relating to the subject land on 14 February 2017 – see **Attachment 2**. The Notice of Motion was received for information.

The General Manager's note on the Notice of Motion provides comment on the EEC's that exist on the subject land. The Species Impact Statement (SIS) that was prepared over the land at the time of the golf course development application verified the subject land as the EEC *Bangalay Sand Forest*. However, the verified information held by Council does not identify this area as containing *Littoral Rainforest*. This is relevant given that the petition suggests that two EEC's exist on the subject land.

Conclusion

Council needs to consider the petition and decide how it may wish to respond to it, noting that the petition itself calls on the NSW Government to take steps to rezone the subject land.

Should Council decide to pursue a PP to rezone the subject land this needs to be considered in the context of the recently adopted Strategic Planning Works Program and what priority to give to this project.

Community Engagement

Depending on the option that is taken in this regard community engagement will be required if Council decides to pursue a PP to rezone the land. It is also suggested that early consultation should be undertaken with the Shoalhaven Heads Community Forum given their interest in the subject land, depending on the option pursued.

Policy Implications

The land that is currently zoned R1 General Residential under the Shoalhaven LEP2014 provides a potential expansion opportunity for the village of Shoalhaven Heads. Given the nature of this village, this is perhaps the only potential urban expansion opportunity that

currently exists. If the area is rezoned to a conservation zone, this opportunity will be removed. However, given the biodiversity profile of the area, its future development for urban uses would be difficult to pursue.

Financial Implications

Should Council resolve to pursue a PP over the subject land, then the staff cost of this will be managed within the existing Strategic Planning budget. However if any studies are required to support the PP then funding for these may need to be separately considered by Council.

DE18.4 Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014

HPERM Ref: D17/424832

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

To obtain the required resolution to prepare and submit a Planning Proposal (PP) to amend Clause 6.5 of Shoalhaven Local Environmental Plan (LEP) 2014 to rectify an anomaly that has been identified.

Clause 6.5 deals with the erection of a dwelling on residue lots associated with identified Urban Release Areas (URA's).

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Support the preparation and submission of a Planning Proposal for Gateway determination to amend Clause 6.5 of Shoalhaven Local Environmental Plan 2014 to include reference to land associated with Urban Release Areas to rectify the identified anomaly.
2. If Gateway determination is received, proceed to public exhibition to at least the requirement specified in the Gateway determination

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable this anomaly to be rectified in a timely manner, consistent with Council's Planning Proposal Guidelines and related DP&E Guidelines.

Council is currently in receipt of two development applications for land in the Moss Vale Road South Urban Release Area (URA). On review the current Clause does not allow for the subdivision of the part of the land that has a non-urban zone and that is less than the general mapped minimum lot size. Unless the anomaly is rectified, the significant variations to the minimum lot size exceed Council's delegation to approve variations under Clause 4.6, and as such concurrence may need to be sought from DP&E for these development applications and subsequent other ones within the URA's.

2. Adopt an alternative recommendation to amend the URA maps to include the Environment Protection zones contained within URAs (i.e. those generally associated with buffers and riparian corridors).

Implications: This is not preferred as it would still not resolve the current issue for land on the periphery of URA's where existing lots are partly in the URA and a residue will be created.

3. Not support the preparation of a PP to rectify this anomaly.

Implications: This would leave the identified matter unresolved and this will create ongoing problems as land within and associated with the URA's is subdivided.

Background and Issue Overview

Part 6 Urban Release Areas of the LEP when drafted was informed by a 'Model Clause' provided by DP&E. Model Clauses were provided for Councils to use to reduce the time required to amend Standard Instrument LEP's given that the wording was settled by the Parliamentary Counsel's Office and they address common topics raised by Councils in the preparation of their new LEP's.

In preparing Shoalhaven LEP 2014, an additional Clause 6.5 was added to Part 6 Urban Release Areas to deal with the erection of dwelling houses on residual lots in relevant zones. The relevant zones are RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management.

The Clause in question was prepared to enable the subdivision of the non-urban zoned land tied to a URA (generally in one ownership) to a size less than the lot size map generally specifies. It also enables development consent to be granted for the erection of a dwelling house on the newly created non-urban zoned lot (the residual lot).

The current wording of Clause 6.5 is as follows:

6.5 Erection of dwelling houses on residual lots in certain zones

- 1) *Development consent may be granted for the subdivision of land in an urban release area to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land or less than the minimum lot size permitted for the land immediately before it became, or became part of, an urban release area if the lot is comprised entirely of land in one or more of the following zones (the residual lot):*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape,*
 - (c) *Zone E2 Environmental Conservation,*
 - (d) *Zone E3 Environmental Management*
- 2) *Development consent may be granted for the erection of a dwelling house on a residual lot.*

Whilst the above Clause references prescribed zones, it also specifically refers to land that is in an URA. Shoalhaven LEP 2014 defines an "urban release area" as "*the area of land identified as "Urban Release Area" on the [Urban Release Area Map](#).*" Therefore, it appears that the current wording of the Clause restricts its application to the land that is within a mapped URA. This interpretation has been discussed with DP&E and concurred with.

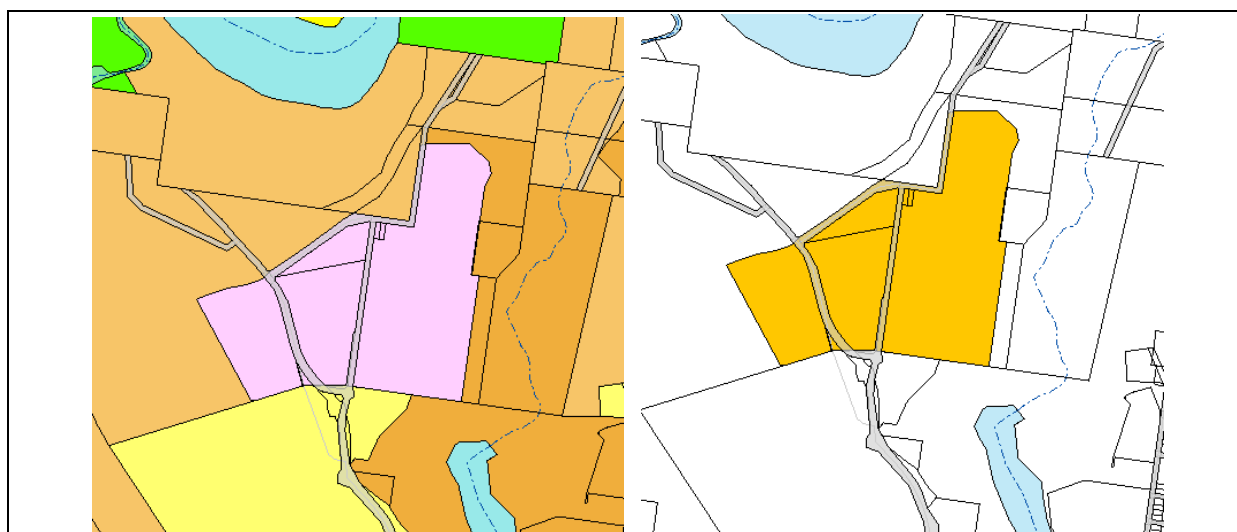
Within Shoalhaven LEP 2014 there are currently six mapped URA's including Mundamia, Moss Vale Road South, Moss Vale Road North, Crams Road, Cabbage Tree Lane and Badgee.

The following table and supporting maps identify the six URAs and provide an overview of the zones of the area mapped as URA, and land that is 'within' the overall URA but excluded from the URA map in Shoalhaven LEP 2014.

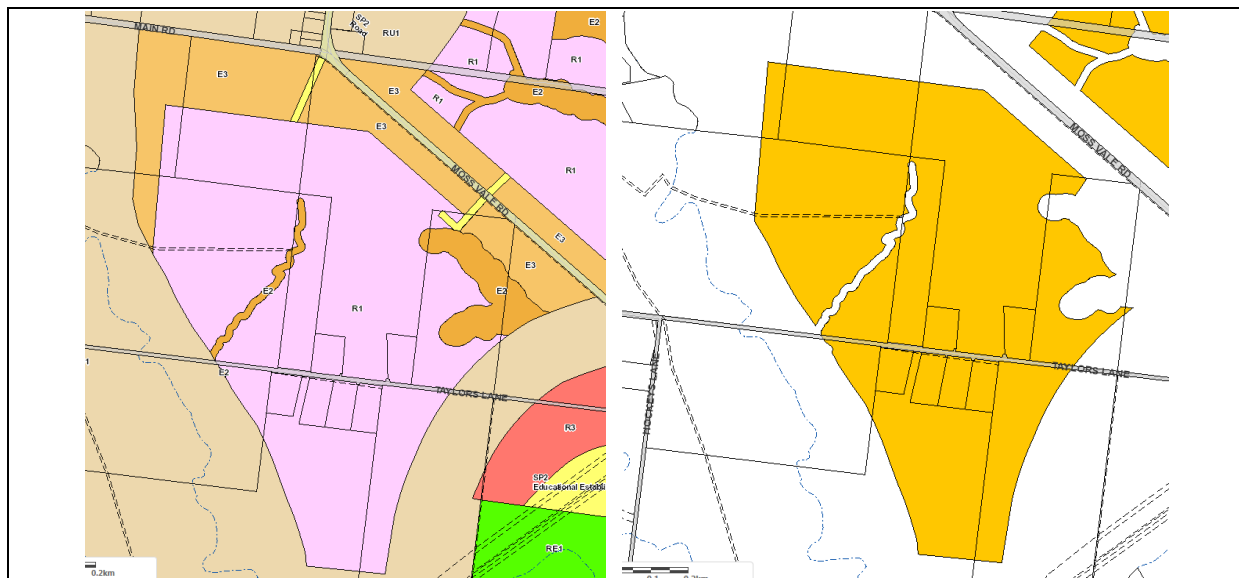
URA	Zones within mapped URA	Zones part of the overall URA but not in the mapped URA
Mundamia	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road South	R1 General Residential SP2 Infrastructure (Road)	E2 Environmental Conservation E3 Environmental Management
Moss Vale Road North	R1 General Residential RE1 Public Recreation B1 Local Centre B7 Business Park SP2 Infrastructure (Road)	E2 Environmental Conservation E3 Environmental Management
Crams Road	R1 General Residential	E2 Environmental Conservation E3 Environmental Management
Cabbage Tree Lane	R1 General Residential	B1 Local Centre RE1 Public Recreation E2 Environmental Conservation SP2 Infrastructure (Educational Establishment)
Badgee	R1 General Residential RE2 Private Recreation E2 Environmental Conservation	RE1 Public Recreation

DE18.4

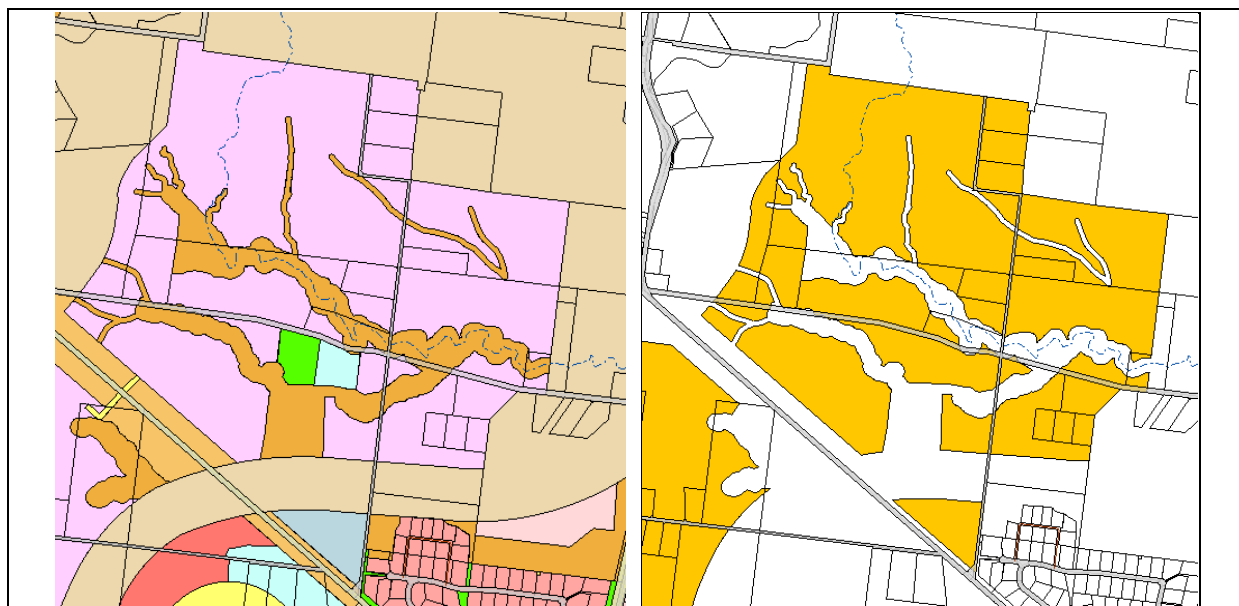
Mundamia URA



Moss Vale Road South URA

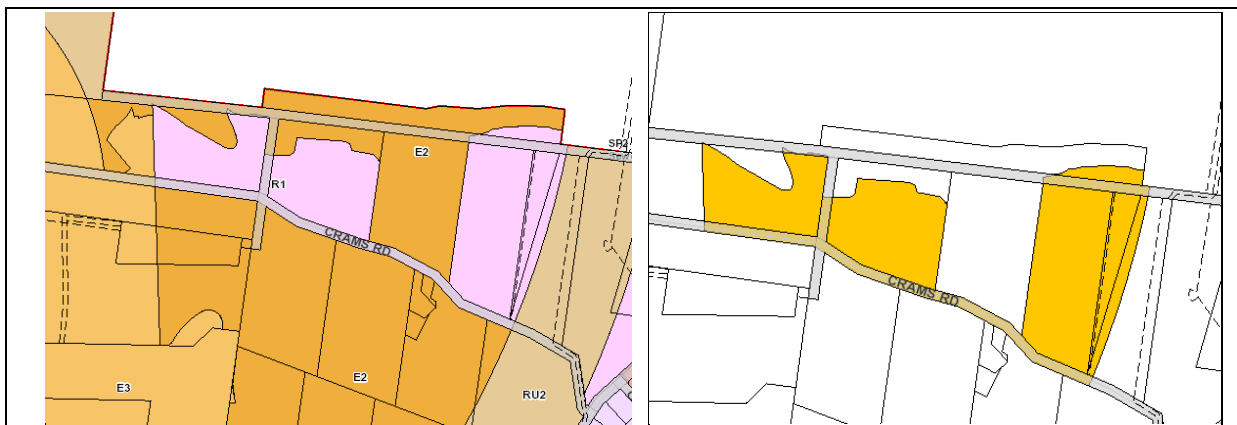


Moss Vale Road North URA

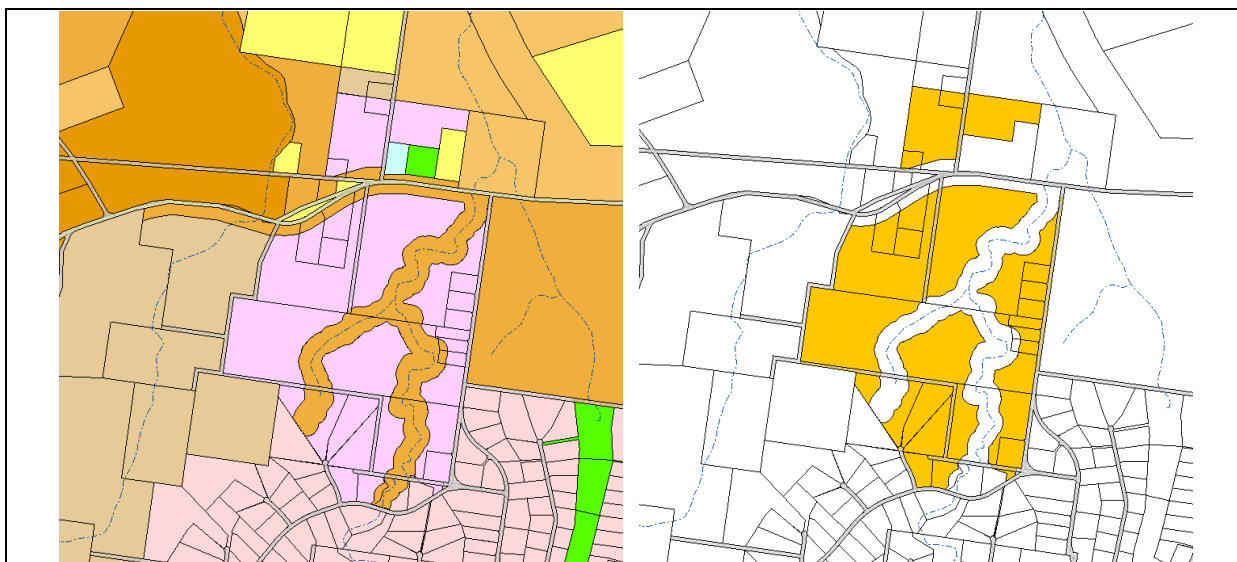


DE18.4

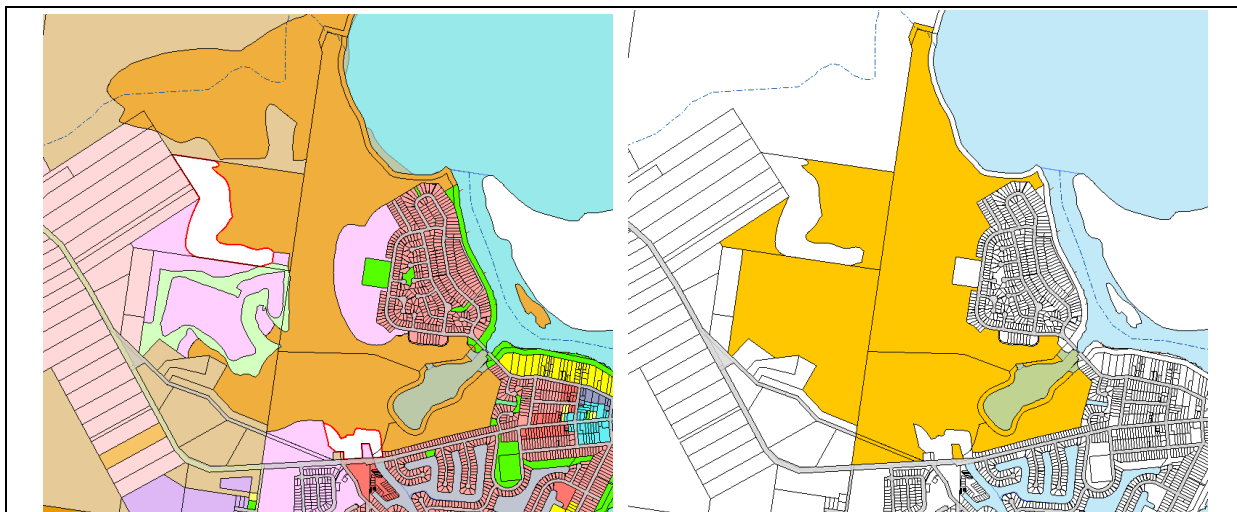
Crams Road URA



Cabbage Tree Lane URA



Badgee URA



DE18.4

In addition to the information contained in the above table and maps, it is noted that land on the periphery of the Moss Vale Road South and North URA's, where only part of the existing lots are within the mapped URA, is zoned RU1 Primary Production. Council is currently in receipt of two development applications for land in the Moss Vale Road South URA which would rely on this Clause to subdivide the non-urban zone from the urban zone and create a practical residual lot.

When considering the prescribed zones currently listed in Clause 6.5, the actual zones within the mapped URA and the land that is 'within' the overall URA but excluded from the mapped URA, it is clear that the Clause can only really apply to Badgee URA and has no effect to the Nowra-Bomaderry URA's.

Conclusion

As such, in simple terms, the current clause does not enable residue parcels to be dealt with as originally envisaged or intended.

Unless the clause is amended to improve its usability, there are likely to be problems with the future URA subdivisions. Thus, it is recommended that a PP be prepared in accordance with DP&E Guidelines and submitted for Gateway determination to rectify this anomaly. The two options available are:

Option 1: Amend Clause 6.5 to reference all land associated with the URA.

This is the preferred option as it enables all land that is wholly or partly mapped (including allotments on the periphery) as a URA to utilise the provisions of the Clause if required. Residual lots which are created from subdivisions under this Clause may also be granted development consent for the erection of a dwelling house.

Option 2: Amend the URA maps to include the Environment Protection zones contained within URAs (i.e. those generally associated with buffers and riparian corridors).

This is not preferred as it would really only deal with land that is essentially within the URA's and it would not assist with land that is on their periphery.

The above options will be discussed with DP&E prior to submission of the PP for the required Gateway determination, but Option 1 is the preferred approach.

Community Engagement

Should the proposed PP receive a Gateway determination, it will be publicly exhibited in accordance with the requirements of the determination and the Environmental Planning & Assessment Regulations 2000.

Policy Implications

The PP will amend Clause 6.5 of Shoalhaven LEP 2014 to rectify an anomaly and clarify future URA subdivisions.

Financial Implications

The PP will be prepared within the existing Strategic Planning budget.

Risk Implications

Clause 6.5 is intended to allow for situations where lots that are partly mapped as a URA and are partially a non-urban zone (RU1, RU2, E2 and E3) can be subdivided to a size that is less than specified general minimum lot size (40ha) for those zones. The clause also enables development consent to be granted for the erection of a dwelling house on the residual lot. However, on review, if the current Clause remains unchanged, it appears that this will be prohibited. Thus, to achieve the original intent there is a need to amend the Clause.

DE18.5 Proposed Planning Proposal - Citywide SP3 Tourist Zone Review

HPERM Ref: D17/386496

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Citywide SP3 Tourist Zone Review Planning Proposal - Pre-Gateway January 2018 (under separate cover) [↗](#)

Purpose / Summary

Commence the Planning Proposal (PP) process to amend Shoalhaven Local Environmental Plan (LEP) 2014 to:

- Rezone land at Shoalhaven Heads, Greenwell Point, Sanctuary Point, St Georges Basin, Sussex Inlet, Ulladulla/Mollymook and Burrill Lake from SP3 Tourist to either R1 General Residential, R2 Low Density Residential or RE1 Public Recreation with subsequent amendments to the Height of Building and Minimum Lot Size maps where required.
- Depending on the site, also amend the zoning, height of building and minimum lot size of the road network or land adjacent.
- Insert a new clause in Part 7 Additional local provisions of Shoalhaven LEP 2014 to provide criteria for the consideration of dwelling houses in the SP3 zone and delete the third objective in the SP3 Tourist Land Use Table as a result.

This report also seeks support to prepare an amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan (DCP) 2014 to include site specific provisions for a site (Site 7 in the review) at Ulladulla/Mollymook.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the preparation of the Citywide SP3 Tourist Zone Review Planning Proposal at Attachment 1 and submit to the NSW Department of Planning & Environment for Gateway determination. If Gateway determination is granted, proceed to formal public consultation in terms of such determination.
2. Prepare an amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan 2014 to establish site specific provisions for Site 7: Mollymook/Ulladulla.
3. Consider the detail of the proposed amendments to Shoalhaven Development Control Plan 2014 via a separate report and if needed a Councillor Briefing prior to exhibition.
4. Advise the owners of the subject land, adjacent land owners and relevant community groups of this decision, noting the opportunity for formal consultation later in the process.
5. Following public exhibition of the Planning Proposal and draft Chapter V3, submit a further report to Council to address any submissions and finalisation of the process.

Options

1. Adopt the recommendation.

Implications: This is the preferred option, as it will formally commence the process to rezone the eight predominantly residential sites from SP3 Tourist to a zone that better reflects the current use and future likely use of the land. Further, the introduction of a new local clause will clarify criteria for the consideration of dwelling houses in the SP3 Tourist zone. The preparation of Shoalhaven DCP 2014 provisions for Site 7: Ulladulla/Mollymook will ensure that the amenity of the land surrounding the site is considered, particularly land to the east along Seaview Street, Mollymook.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the rezoning of the eight SP3 Tourist zoned sites in Shoalhaven LEP 2014 and provision of related Shoalhaven DCP 2014 provisions for Site 7: Ulladulla/Mollymook. This could result in the retention of a zoning that does not facilitate appropriate development outcomes within the Study Area. Further, a new local clause may not be introduced which may result in ongoing confusion as to the application of Objective 3 in the SP3 Tourist Land Use Table.

3. Reject the recommendation.

Implications: This is not the preferred option, as the existing zoning provisions in Shoalhaven LEP 2014 will not be amended. The zoning will continue to not reflect the current use and future likely use for the land and may limit good development outcomes. Further, there will be ongoing confusion as to the application of Objective 3 in the SP3 Tourist Land Use Table.

Background

On 5 May 2015, the Development Committee considered a development application for the construction of a dwelling house within the SP3 Tourist Zone in Sussex Inlet (Site 6 in the review). Although a dwelling house is permissible with consent in the zone, the report sought direction from Council with regard to the appropriateness of approving the dwelling house due to the potential inconsistency with the current third objective of the SP3 Tourist Zone that reads as follows:

To provide for dwelling houses that form an integral part of tourist oriented development.

Council's Development Committee resolved that:

- a) *as a matter of policy, the erection of dwellings for residential purposes on existing lots without a tourist related use be permitted within the area of SP3 zoned area of Glanville Road and Lakehaven Drive Sussex Inlet.*
- b) *the appropriateness of the SP3 Tourist Zone for the small individual lots in this locality be reviewed as part of ongoing Shoalhaven LEP 2014 reviews.*

During the overall Shoalhaven LEP 2014 process, it was highlighted that much of the development in this tourist zone is not necessarily tourist related, which is inconsistent with the objectives of the zone. In addition, some SP3 Tourist land is now considered unsuitable for tourist type development due to current bushfire or flooding requirements. As a result, the scope of the Review was expanded to include all SP3 Tourist zoned land across the City, as the issue is not isolated to the Sussex Inlet area.

The Review was undertaken in 2015/2016 and considered approximately 55 sites currently zoned SP3 Tourist. The Review identified land that:

- should remain SP3 Tourist due to its ongoing tourism activities;
- was recently zoned SP3 during the Principal Shoalhaven LEP 2014 process and therefore rezoning is not appropriate; and
- would be more appropriately zoned residential given current and adjoining uses.

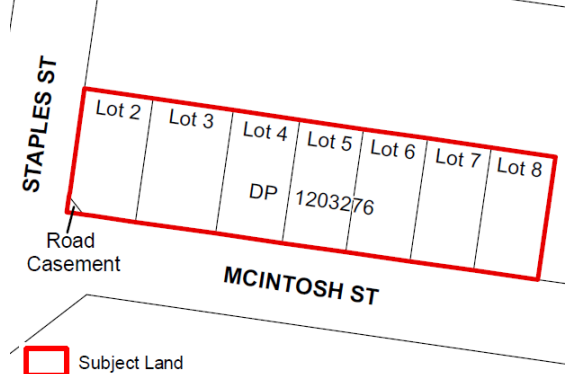
Preliminary consultation was undertaken with all property owners of SP3 Tourist land in October 2016. Landowners of properties zoned SP3 that were being used for existing residential purposes received a letter and a survey to canvas their future intentions for their land and gauge their thoughts on a potential change of zone. Land owners of properties that had a tourist related use, or were located in an area that is predominantly developed for tourist related uses, were sent a letter inviting comments.

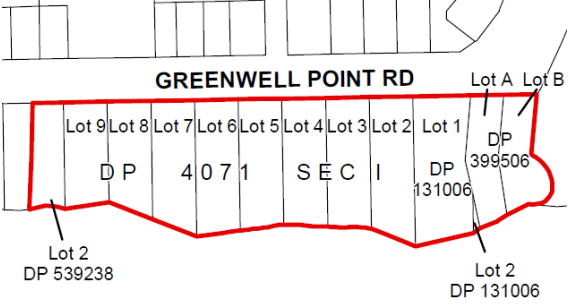
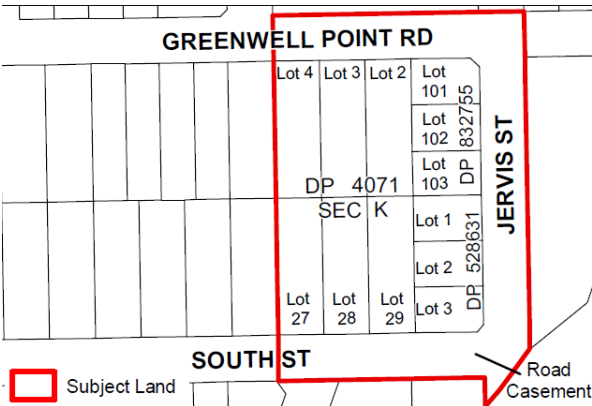
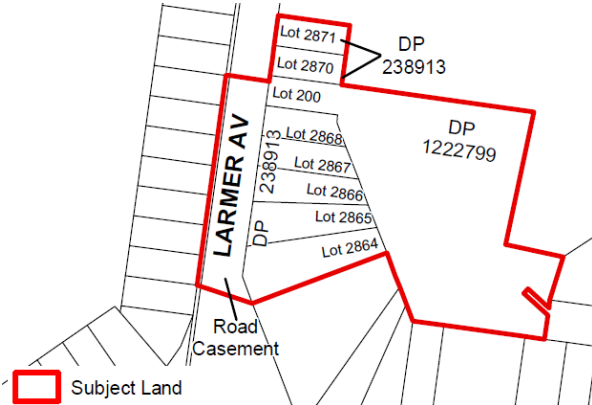
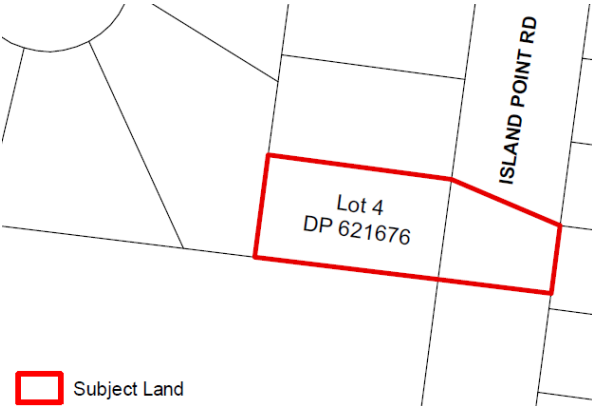
A Councillor Briefing was held in August 2017 to outline the review process, response to preliminary consultation and to discuss and consider a number of sites suggested for rezoning. As a result of the Review and associated consultation, eight sites across Shoalhaven have been identified for rezoning (see **Attachment 1** and Table 1 below).

The requirement for site supporting specific provisions in Shoalhaven DCP 2014 and a possible increase of height to 11m in Shoalhaven LEP 2014 for Site 7: Ulladulla/Mollymook was discussed.

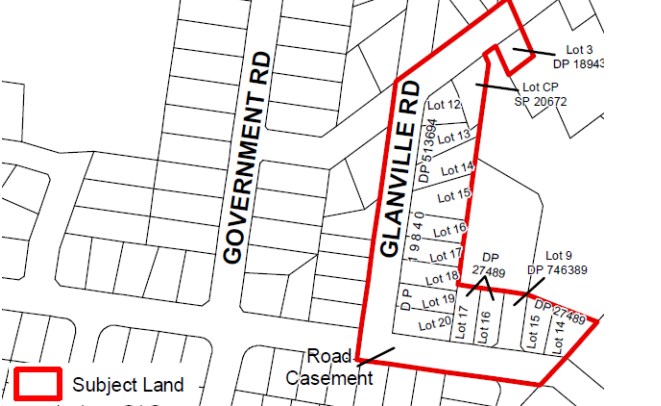
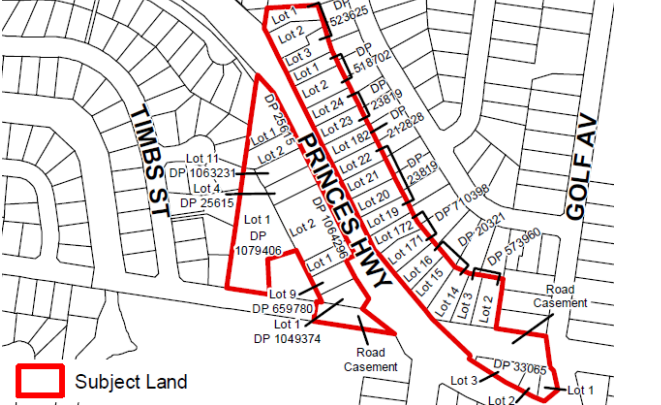
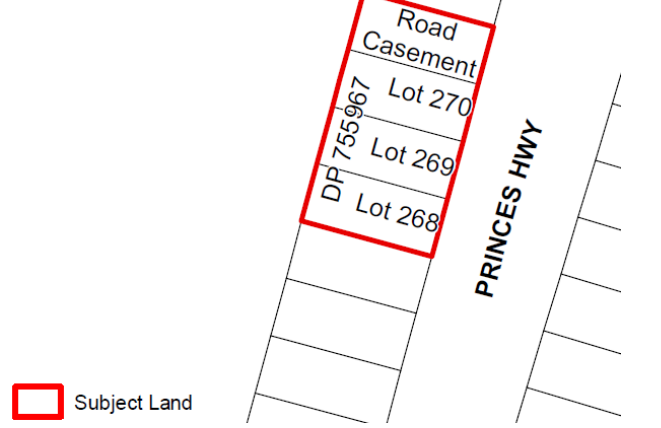
It was also highlighted that the permissibility of dwelling houses in the SP3 zone remains unclear - dwelling houses are permissible with consent, but what weight is given to the third zone objective is a question. For example, if a proposed dwelling house does not form an integral part of a tourist-oriented development, is it considered to be prohibited? This is a question often asked by Council staff, industry and the broader community and should also be clarified in the LEP.

Table 1: Site details

<p>Site 1</p> <p>60-72 McIntosh Road, Shoalhaven Heads</p>	 <p>STAPLES ST</p> <p>Lot 2 Lot 3 Lot 4 Lot 5 Lot 6 Lot 7 Lot 8</p> <p>Road Casement</p> <p>DP 1203276</p> <p>MCINTOSH ST</p> <p>Subject Land</p>
---	---

<p>Site 2</p> <p>Greenwell Point Road Greenwell Point</p>	 <p>GREENWELL POINT RD</p> <p>Lot 9 Lot 8 Lot 7 Lot 6 Lot 5 Lot 4 Lot 3 Lot 2 Lot 1 Lot A Lot B</p> <p>DP 4071 DP 131006 DP 539238 DP 131006</p> <p>Lot 2 DP 539238 Lot 2 DP 131006</p> <p><input type="checkbox"/> Subject Land</p>
<p>Site 3</p> <p>Greenwell Point Road, South Street and Jervis Street, Greenwell Point</p>	 <p>GREENWELL POINT RD</p> <p>Lot 4 Lot 3 Lot 2 Lot 101 Lot 102 Lot 103 DP 4071 SEC K Lot 1 Lot 2 Lot 3 Lot 27 Lot 28 Lot 29 DP 1222799 DP 528631 DP 832755</p> <p>SOUTH ST JERVIS ST</p> <p>Road Casement</p> <p><input type="checkbox"/> Subject Land</p>
<p>Site 4</p> <p>150-164 Larmer Avenue, Sanctuary Point</p>	 <p>Lot 2871 Lot 2870 Lot 200 Lot 2868 Lot 2867 Lot 2866 Lot 2865 Lot 2864 DP 238913 DP 1222799 DP 238913</p> <p>LARMER AV</p> <p>Road Casement</p> <p><input type="checkbox"/> Subject Land</p>
<p>Site 5</p> <p>81 Island Point Road, St Georges Basin</p>	 <p>Lot 4 DP 621676</p> <p>ISLAND POINT RD</p> <p><input type="checkbox"/> Subject Land</p>

DE18.5

<p>Site 6</p> <p>Iverison Road, Glanville Road, Lakehaven Drive, Sussex Inlet</p>	 <p>Subject Land</p>
<p>Site 7</p> <p>Princes Highway, Mollymook/Ulladulla</p>	 <p>Subject Land</p>
<p>Site 8</p> <p>3-7 Princes Highway, Burrill Lake</p>	 <p>Subject Land</p>

DE18.5

Planning Proposal

Generally, the PP seeks to rezone certain SP3 Tourist zoned land identified in the Review to an appropriate residential zone or recreation zone to better reflect the current use and future likely use for the land.

The eight sites shown in the table above are not currently subject to height mapping under Shoalhaven LEP 2014; however, provisions for maximum building height apply via Clause 4.3(2A) where an 11m blanket height provision is prescribed. The PP seeks to map the heights consistent with the adjoining residential zones, where appropriate, whilst maintaining the citywide approach of mapping foreshore residential lots (first residential lot back from the waterfront of the sea, bays, rivers and lakes) at 7.5m.

The sites currently have no minimum lot size under Shoalhaven LEP 2014. For consistency with surrounding residentially zoned land, a minimum lot size of 500m² is proposed for all

eight sites where appropriate. Further, where appropriate to the immediate location, a lot size clause (clause 4.1A) relating to Torrens dual occupancy/multi dwelling housing subdivision will also be applied.

Depending on the site, the PP also seeks to amend the zoning, height of building and minimum lot size of the road network or land adjacent to the SP3 land for consistency.

The PP also seeks to insert a new clause in Part 7 Additional Local Provisions of Shoalhaven LEP 2014 to provide criteria for the consideration of dwelling houses in the SP3 zone. This will provide certainty in the interpretation of provisions relating to SP3 Tourist zoned land. This will also see the third SP3 zone objective ultimately removed.

The PP at **Attachment 1** details the existing and proposed zones, height of building, minimum lot sizes and proposed area clause as well as justification for the proposed amendments.

Proposed Site-Specific Development Control Plan (DCP) Provisions - Ulladulla/Mollymook site

Site 7 spans across the Princes Highway along the northern approach to the Ulladulla Town Centre (Figure 1).



Figure 1: Site 7

The site is predominantly residential in nature (dwelling houses) with 4 motels interspersed throughout. These motels are somewhat dated, and it is noted that the demand for highway located motels is decreasing as visitors now look to stay in higher amenity locations. It is recommended that this site be rezoned to a R1 General Residential zone.

An outcome of the Councillor Briefing in August 2017 was the preparation of supporting Shoalhaven DCP 2014 provisions for this high-profile site to guide future development in this town gateway entrance and reduce the impact on the amenity (e.g. privacy and overshadowing) of adjoining properties along Seaview Street, Mollymook. It is expected that these provisions will be included in Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven DCP 2014. Any amendments to Shoalhaven DCP 2014 in this regard would be exhibited alongside the PP.

It is noted that an outcome of the August 2017 Councillor Briefing was to consider decreasing the height of Site 7 (eastern side of the Princes Highway) to 8.5m to address

concerns of privacy and amenity impacts to dwellings along Seaview Street, Mollymook. The PP proposes to retain the existing 11m height over this area as it is considered that the area specific provisions in Chapter V3 will adequately mitigate against these impacts.

Conclusion

The PP will enable SP3 Tourist zoned land to be rezoned to be consistent with the current and future likely use, including height and minimum lot size provisions. The inclusion of a clause in Shoalhaven LEP 2014 will provide consistency and clarity to the approval of dwelling houses in the SP3 Tourist zone.

The preparation of site specific Shoalhaven DCP 2014 provisions for Site 7: Ulladulla/Mollymook will support the zone change and guide appropriate development in this gateway entrance area.

Community Engagement

The community engagement undertaken to date as part of the Citywide SP3 Tourist Review is outlined above.

Any future PP would be subject to the exhibition requirements set out in the Gateway determination in accordance with the relevant legislation. This will involve notifying all adjoining landowners, relevant community groups and other interested parties.

Any amendments to Shoalhaven DCP 2014 would be exhibited concurrently with the PP in accordance with the relevant legislation.

Financial Implications

There are no immediate financial implications for Council. Any future amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would be resourced from the Strategic Planning budget.

DE18.6 Proposed Planning Proposal - Semi-Detached Dwelling Housekeeping Amendment

HPERM Ref: D17/425584

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Semi-Detached Dwelling Housekeeping Amendment Planning Proposal (under separate cover) [⇒](#)

Purpose / Summary

To obtain the required resolution to commence the Planning Proposal (PP) process to amend Shoalhaven Local Environmental Plan 2014 (LEP 2014) to include the land use term 'semi-detached dwelling' as permitted with consent in the R2 Low Density Residential and RU5 Village land use tables.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Support the preparation of the Semi-Detached Dwelling Housekeeping Amendment Planning Proposal at Attachment 1 and submit to the NSW Department of Planning & Environment for Gateway determination. If Gateway determination is granted, proceed to formal public consultation in terms of such determination.
2. Advise relevant community groups of this decision, noting the opportunity for formal consultation later in the process.

Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will formally commence the process to include the land use term 'semi-detached dwelling' as permitted with consent in the R2 Low Density Residential and RU5 Village land use tables within LEP2014. This will resolve any potential uncertainty relating to the classification of an attached dual occupancy once subdivided.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the process to include the land use term 'semi-detached dwelling' as permitted with consent in the R2 Low Density Residential and RU5 Village land use tables.

3. Reject the recommendation.

Implications: This is not the preferred option as the existing zoning provisions in Shoalhaven LEP 2014 will not be amended. Potential uncertainty relating to the classification of an attached dual occupancy once subdivided will remain.

Background

'Dual occupancy (attached)' is a land use that is currently permissible with consent in the R2 Low Density Residential and RU5 Village zones and Shoalhaven LEP 2014 currently enables subdivision of a 'Dual occupancy (attached)' which then results in a land use more appropriately defined as a 'semi-detached dwelling'. The LEP definition for a 'semi-detached dwelling' is as follows:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Currently, 'semi-detached dwellings' are identified as a prohibited land use in the R2 and RU5 zones, noting that the prohibited uses are "any development not specified in item 2 or 3". Items 2 and 3 are the 'permitted without consent' and 'permitted with consent' parts of the zone tables.

The intent of Shoalhaven LEP 2014 is to enable this development outcome to continue and the NSW Department of Planning and Environment (DP&E) have advised that Council's ability to approve 'dual occupancy (attached)' and their subdivision remains lawful. The proposed Housekeeping PP intends to make 'semi-detached dwellings' as permissible with consent in the R2 and RU5 to resolve any potential uncertainty in this regard.

The PP at **Attachment 1** details the proposed amendments to the R2 and RU5 land use tables, as well as justification for the proposed amendments.

Conclusion

This PP will enable Council to amend Shoalhaven LEP 2014 to insert 'semi-detached dwellings' as permissible with consent in the R2 and RU5 land use tables which will improve the operation and accuracy of the plan to deliver positive outcomes for the community.

Submitting the PP to DP&E for the required initial Gateway determination is the next step in the process.

Community Engagement

The proposed PP will be subject to the exhibition requirements set out in the Gateway determination, when issued, in accordance with the relevant legislation. This will involve notifying all adjoining landowners, relevant community groups and other interested parties.

Financial Implications

There are no immediate financial implications for Council. Housekeeping amendments to Shoalhaven LEP 2014 are resourced from the Strategic Planning budget.

Risk Implications

As DP&E have advised that Council's ability to approve 'dual occupancy (attached)' development and their subdivision remains lawful, this PP is simply a housekeeping amendment to resolve any potential ongoing uncertainty relating to this type of development and its classification.

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.