

## Development Committee

**Meeting Date:** Tuesday, 13 February, 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**
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3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

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**8. Confidential Reports**

Nil

## Development Committee

### Delegation

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

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a s82A or s96AB EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

### Schedule

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

## MINUTES OF THE DEVELOPMENT COMMITTEE

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

The following members were present:

Clr Joanna Gash - Chairperson  
Clr Amanda Findley  
Clr Patricia White  
Clr John Wells  
Clr John Levett  
Clr Nina Cheyne  
Clr Annette Alldrick  
Clr Mitchell Pakes  
Clr Greg Watson  
Clr Mark Kitchener  
Clr Bob Proudfoot  
Ms Carmel Krogh – Acting General Manager

### Apologies / Leave of Absence

Apologies were received from Clr Gartner and Clr Guile.

### Confirmation of the Minutes

**RESOLVED** (Clr Findley / Clr Alldrick) MIN18.1

That the Minutes of the Development Committee held on Monday 11 December 2017 be confirmed.

Note: The Development Committee was provided with a verbal update on the development of DE17.99 - DS17/1233 – 12 Currambene Street, Huskisson – Lot 2 DP 662583

CARRIED

### Declarations of Interest

Clr Proudfoot – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Kitchener – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Pakes – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Watson – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

## **DEPUTATIONS AND PRESENTATIONS**

Mr Stephen Richardson (Cowman Stoddart – representing Tim Pembroke) addressed the Committee in relation to DE18.1 – Development Application DA17/1264 – 77C Nerringillah Rd, Bendalong – Lot 3 & DP 858721

Mr Peter Hudson addressed the Committee in relation to DE18.1 – Development Application DA17/1264 – 77C Nerringillah Rd, Bendalong – Lot 3 & DP 858721

Ms Robyn Flack (Shoalhaven Heads Forum) addressed the Committee in relation to DE18.3 - Crown Land at Shoalhaven Heads - Proposed Rezoning – Update

Mr Howard Jones addressed the Committee in relation to DE18.3 - Crown Land at Shoalhaven Heads - Proposed Rezoning – Update

Ms Maree Walsh-Harris addressed the Committee in relation to DE18.5 - Proposed Planning Proposal - citywide SP3 Tourist Zone Review

### **Procedural Motion - Bring Item Forward**

**RESOLVED** (Clr Pakes / Clr Cheyne)

MIN18.2

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

- DE18.1 – Development Application DA17/1264 – 77C Nerringillah Rd, Bendalong – Lot 3 & DP 858721
- DE18.3 - Crown Land at Shoalhaven Heads - Proposed Rezoning – Update
- DE18.5 - Proposed Planning Proposal - citywide SP3 Tourist Zone Review

CARRIED

## REPORTS

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

**HPERM Ref:  
D17/386304**

Note: Mr Peter Hudson and Mr Stephen provided deputations in relation to this matter earlier in the meeting.

### 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**

### MOTION (Clr White / Clr Findley)

That Council, under delegated authority, refuse DA17/1264 for an eco-tourism development at Lot 3 DP 858721 Nerringillah Road, Bendalong on the following grounds:-

1. That the proposed development application does not meet the demonstrated connection to the site and/or other requirements under Clause 5.13 of the Shoalhaven Local Environment Plan 2014 which pertains to an eco-tourist facilities.
2. Insufficient information/details have been submitted to Council on the proposed engineering designs and/or plans for the proposed works required for the Right of Carriageway and Nerringillah Road that demonstrate safety; heavy rigid vehicle access; and that the proposed works can be constructed within the existing corridor/road and to the required standards.
3. Traffic safety issues & maintenance with Bendalong Road; intersection of Bendalong Road & Nerringillah Road; and Right of Carriage Way.
4. The proposed development is not in the public interest due to the substance of the public objections.

FOR: Clr Findley, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick and Clr Kitchener

AGAINST: Clr Gash, Clr Wells, Clr Pakes, Clr Watson, Clr Proudfoot and Carmel Krogh

LOST ON THE CASTING VOTED OF THE CHAIR

Note: Clr Gash left the meeting, the time being 6.25pm.

Note: Clr Levett assumed the chair.

Note: Clr Gash resumed the Chair, the time being 6.28pm.

### FORESHADOWED MOTION (Clr Proudfoot / Clr Gash)

That (Under Delegated Authority):

1. The 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**
2. Council undertake further negotiations with the applicant regarding a greater upgrade of the Right of Way and that these negotiations be reported back to council prior to Development Application being lodged for the Right of Way

### AMENDMENT (Clr White / Clr Cheyne)

1. That Council undertake further negotiations with the applicant regarding a greater upgrade of the Right of Way and that the result of these negotiations be reported back to council prior to the Development Application being lodged for the Right of Way.

2. The current Development Application be deferred until Council receives the above report.

FOR: Clr White, Clr Cheyne, Clr Alldrick and Carmel Krogh

AGAINST: Clr Findley, Clr Gash, Clr Wells, Clr Levett, Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot

AMENDMENT LOST

**RESOLVED** (Clr Proudfoot / Clr Gash)

MIN18.3

That (Under Delegated Authority)

1. The 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**
2. Council undertake further negotiations with the applicant regarding a greater upgrade of the Right of Way and that the result of these negotiations be reported back to council prior to the Development Application being lodged for the Right of Way.

FOR: Clr Gash, Clr Wells, Clr Pakes, Clr Watson, Clr Proudfoot and Carmel Krogh

AGAINST: Clr Findley, Clr White, Clr Levett, Clr Cheyne, Clr Alldrick and Clr Kitchener

CARRIED ON THE CASTING VOTE OF THE CHAIR

**Note: There was a rescission motion received on this item.**

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

**HPERM Ref: D17/421221**

Note: Robyn Flack and Howard Jones provided deputations in relation to this matter earlier in the meeting.

**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.

**RESOLVED** (Clr Watson / Clr Pakes)

MIN18.4

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.

FOR: Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Pakes, Clr Watson, Clr Kitchener and Carmel Krogh

AGAINST: Clr Findley, Clr Cheyne, Clr Alldrick and Clr Proudfoot

CARRIED

**Note: There was a rescission motion received on this item**

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

**HPERM Ref: D17/386496**

Note: Maree Walsh-Harris provided a deputation on this matter earlier in the meeting.

Clr Proudfoot – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Kitchener – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Pakes – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

Clr Watson – DE18.5 – Proposed Planning Proposal - Citywide SP3 Tourist Zone Review – less than significant non pecuniary interest declaration – will remain in the room and will take part in discussion and vote – the depute, Maree Walsh-Harris ran for election as a member of the Shoalhaven Independents at the last election.

**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.

**MOTION (Clr Findley / Clr Wells)**

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.

**AMENDMENT (RESOLVED) (Clr Watson / Clr Pakes)**

MIN18.5

That the matter of the Proposed Planning Proposal - Citywide SP3 Tourist Zone Review be deferred, pending a Councillor briefing.



FOR: Clr Gash, Clr White, Clr Alldrick, Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot  
 AGAINST: Clr Findley, Clr Wells, Clr Levett, Clr Cheyne and Carmel Krogh  
 CARRIED

**Procedural Motion - Adjournment of Meeting**

**RESOLVED** (Clr Pakes / Clr Alldrick) MIN18.6

That the meeting be adjourned for ten minutes, until 8.06pm.

CARRIED

Note: The meeting adjourned, the time being 7.56pm.  
 Note: the meeting reconvened, the time being 8.06pm

When the following members were present:

- Clr Joanna Gash - Chairperson
- Clr Amanda Findley
- Clr Patricia White
- Clr John Wells
- Clr John Levett
- Clr Nina Cheyne
- Clr Annette Alldrick
- Clr Mitchell Pakes
- Clr Greg Watson
- Clr Mark Kitchener
- Clr Bob Proudfoot
- Ms Carmel Krogh – Acting General Manager

**Procedural Motion - Bring Item Forward**

**RESOLVED** (Clr Gash / Clr Wells) MIN18.7

That the matter of item DE18.4 – Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014 be brought forward for consideration.

CARRIED

<b>DE18.4</b>	<b>Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014</b>	<b>HPERM Ref: D17/424832</b>
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**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.

**RESOLVED** (Clr Findley / Clr Wells)

MIN18.8

That Council:

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.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Carmel Krogh

AGAINST: Nil

CARRIED

**DE18.2 Development Assessment Best Practice Guide for Councils**

**HPERM Ref:  
D17/276640**

**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.

**MOTION** (Clr Pakes / Clr Watson)

That the matter of Development Assessment Best Practice Guide for Councils be deferred pending a Councillor briefing from staff.

FOR: Clr Pakes, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick and Carmel Krogh

LOST

**FORSHADOWED MOTION (RESOLVED) (Clr Wells / Clr Findley)**

MIN18.9

That Council:

1. Endorse the broad principles contained in the Development Assessment Best Practice guide.
2. 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 or as otherwise prescribed;
  - c. If all requested information is not provided within the required 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. 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.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick and Carmel Krogh

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

CARRIED

<b>DE18.3</b>	<b>Crown Land At Shoalhaven Heads - Proposed Rezoning - Update</b>	<b>HPERM REF: D17/421221</b>
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Item dealt with earlier/later in the meeting see MIN18.4.

<b>DE18.4</b>	<b>Proposed Planning Proposal - Clause 6.5 of Shoalhaven Local Environmental Plan 2014</b>	<b>HPERM REF: D17/424832</b>
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Item dealt with earlier/later in the meeting see MIN18.8.

<b>DE18.5</b>	<b>Proposed Planning Proposal - Citywide Sp3 Tourist Zone Review</b>	<b>HPERM REF: D17/386496</b>
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Item dealt with earlier/later in the meeting see MIN18.5.

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

**HPERM Ref:  
D17/425584**

**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.

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

MIN18.10

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.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Carmel Krogh

AGAINST: Nil

CARRIED

Note: Rescission motions were received on the following matters:

- DE18.1 – Development Application DA17/1264 – 77C Nerringillah Rd, Bendalong – Lot 3 & DP 858721
- DE18.3 – Crown Land at Shoalhaven Heads - Proposed Rezoning - Update

There being no further business, the meeting concluded, the time being 8.30pm.

Clr Gash  
CHAIRPERSON

## DE18.7 Proposed Submission - Draft Greener Places Policy

HPERM Ref: D18/19106

Group: Planning Environment & Development Group  
Section: Strategic Planning

### Purpose / Summary

To advise of the exhibition by Government Architect NSW of a draft *Greener Places* policy document, and obtain endorsement to make a submission based on the content of this report.

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

That Council make a submission to the Government Architect NSW on the draft *Greener Places* policy based on the content of this report.

### Options

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

### Background

*Greener Places* is a draft policy which has been prepared by Government Architect NSW to help guide the design, planning, design and delivery of "green infrastructure" in urban areas across NSW.

The draft policy is currently out for review until 26 February 2018 and can be viewed on the internet at:

<http://www.governmentarchitect.nsw.gov.au/thinking/greener-places>

The website also notes that three manuals are currently in development and will support/facilitate the implementation of the *Greener Places*. These manuals will cover:

- Bushland and waterways

- Open space and recreation
- Urban tree canopy

More information on the scope of these manuals is available on the Government Architects website at the above link and It is indicated that they are due for release in early 2018.

Also, relevant in this regard is the Planning Circular that was issued by the NSW Department of Planning & Environment on 16 January 2018 entitled *Stepping up planning and designing for better places: respecting and enhancing local character*. This circular can be viewed on the internet at:

<http://www.planning.nsw.gov.au/~media/Files/DPE/Circulars/local-character-planning-circular-2018-01-16.ashx>

Significant amendments to the NSW Environmental Planning & Assessment Act 1979 will commence on 1 March 2018 and will include additional objectives re good design and amenity of the built environment. The draft *Greener Places* policy, along with the Planning Circular and *Better Placed*, the Integrated Design Policy for Built Environment in NSW that was finalised and released during 2017, all appear to be part of the NSW Governments desire to encourage good design and a strategic approach to it.

### **Greener Places – Review**

Green infrastructure is the network of green spaces, natural systems and semi-natural systems including parks, rivers, bushland and private gardens that are strategically planned, designed and managed to support good quality of life in the urban environment.

The aim of the proposed policy is to create a healthier, more liveable, more resilient and sustainable urban environment by improving community access to recreation and exercise, walking and cycling connections.

Council staff have reviewed the draft policy document and it is proposed to make a submission to it based on the following comments:

- Generally, support the objectives and initiatives to proactively plan for multifunctional green infrastructure and greater connectivity between open spaces.
- Connected urban ecosystems of green space would clearly deliver worthwhile social, environmental and economic benefits. However, the question is how to plan for/require this through the planning system. This is not clearly articulated in the draft policy. Page 44 and 46 of the draft policy relating to implementation and statutory measures needs more detail and to be more specific, including their practical application at the local level.
- The document is currently very Sydney-centric in nature, when its intention is to cover New South Wales. As such greater consideration of regional issues, challenges, needs etc. should be included in the final document.
- There are concerns around the future ownership and ongoing maintenance of areas of green infrastructure. Such land is usually transferred to Council, thus, increasing the size and number of green spaces that Council must manage, without consideration of the impact on Council's operating budgets. This will potentially see further pressure placed on Council's resources. This includes prevention and maintenance of weeds, provision and maintenance of walking trails, maintenance of stream bank erosion and clean-up of flood prone lands. There is additional responsibility for Council in managing the increased risk from bushfire spreading into built environments through green ribbons/corridors. As such, the final policy should also consider the longer-term financing of the maintenance and management of the green infrastructure and not just its initial planning and design.
- In Shoalhaven, green spaces may also contain or include protected/threatened species, and in these circumstances, the management of these environmental values

is often inherited by Council and requires specific management depending on the species. For example, reserves which include Green and Golden Bell Frog habitat cannot undergo simple maintenance without Council preparing a review of the environmental factors. Such costs are a further burden on Council's operating budget. The final policy also needs to consider how areas like this are managed into the future.

- Support the need for further work to embed the principles into policy areas and into decision making processes. It is important that the policy is practical to implement. As such further dialogue should occur with all end users, including local Councils.
- Making the draft manuals referenced in the policy available to comment on will assist in the understanding of how the policy will be implemented and managed. The draft manuals should incorporate instructions for practical inclusion of policy principles into planning documents, particularly at the local government level. They need to include the range of detail that Councils and others will need to interpret and implement the detail of the policy. The draft manuals should include direction on:

Bushland and waterways – riparian vegetation protection; stormwater filtration requirements/considerations; consideration of asset protection zones between green spaces and development.

Urban Tree Canopy – consider the width of road reserves for green corridors and the need for them to be wide enough to contain trees/greenery but still be serviceable for installation/maintenance of services whether it be power, electricity, water, sewerage, or stormwater without damaging the trees or utilities.

- Support the issue of detailed practice notes and the availability of a model Development Control Plan clause, subject to detailed dialogue on their contents.

### Community Engagement

The draft policy is currently on public exhibition until 26 February 2018 with the exhibition documents available on the Government Architect NSW website at:

<http://www.governmentarchitect.nsw.gov.au/thinking/greener-places>

### Policy Implications

The final policy may require future changes to various Council's policies and strategies. The draft policy proposes that that *Greener Places* will need to be included and referred to in regional and district plans, priority precincts, open space strategies, urban bushland and waterway strategies, and urban canopy cover strategies. A model DCP clause regarding *Greener Places* is also to be developed to assist in implementing the requirements of the policy and related guidelines at the local level. As noted above there needs to be ongoing and detailed dialogue with all users, including Councils as the supporting detail is rolled out.

### Financial Implications

There is a cost associated with the management of green infrastructure, especially if there are protected/threatened species associated with it and this is noted above.

The exact financial implication of this proposed policy is unknown at this stage, however, it is proposed to be raised as part of the submission.

## **DE18.8 Worrowing Heights Precinct Plan and Strategic Directions Report - Public Exhibition Outcomes**

**HPERM Ref:** D17/392947

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

**Attachments:**

1. Summary of Submissions (under separate cover) [⇒](#)
2. Consultation Report (under separate cover) [⇒](#)
3. Worrowing Heights Precinct Plan and Strategic Directions Report (under separate cover) [⇒](#)

### **Purpose / Summary**

Provide the outcomes of the landowner and community consultation in relation to the draft Worrowing Heights Precinct Plan and Strategic Directions Report and obtain direction regarding both the Precinct Plan and proponent initiated request for Planning Proposal (PP) that was submitted for 1310 Naval College Road, Worrowing Heights.

**DE18.8**

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

That

1. Council receive the submissions provided in respect of the draft Worrowing Heights Precinct Plan and Strategic Directions Report for information.
2. Council adopt the Worrowing Heights Precinct Plan and Strategic Directions Report as exhibited and with the following changes:
  - a. Insert a new section “2.2 Regional Context” including an explanation of the Illawarra-Shoalhaven Regional Plan and Jervis Bay Settlement Strategy;
  - b. Insert comments with respect to European, Australian and Aboriginal Cultural Heritage within Section 2.4.1 General Features – Land Use Planning;
  - c. Insert comments with respect to biodiversity values and corridors within Section 2.4.3 Precinct Flora and Fauna;
  - d. Insert comments with respect to environmental impacts of bushfire hazard risk management within Section 2.4.4 Bushfire;
  - e. Revise Figure 9: Preferred Precinct Plan to note that the retention of habitat/biodiversity corridor (width and extent) and the extent and nature of any developable land will be subject to the outcome of detailed studies; and
  - f. Insert two extra Suggested Additional Detailed Studies within Section 4.4; Aboriginal Cultural Heritage Assessment and European & Australian Cultural Heritage Assessment.
3. Council write to the NSW Department of Planning & Environment to seek endorsement of the Worrowing Heights Precinct Plan and Strategic Directions Report.
4. The review of the Jervis Bay Settlement Strategy continues to be undertaken in accordance with Council’s adopted Strategic Planning works program and as part of this consider the incorporation of the Worrowing Heights Precinct Plan and Strategic Directions Report as an input into the review of the Jervis Bay Settlement Strategy.



5. The proponent initiated request for Planning Proposal for 1310 Naval College Road, Worroving Heights, which seeks to amend Shoalhaven Local Environmental Plan 2014 to change the zone from RU2 Rural Landscape to SP3 Tourist and increase the height limit to 18 metres to enable the development of a six-storey hotel resort/serviced apartment complex not be supported by Council.
6. Council advise landowners, submitters and State Government Agencies to the Draft Worroving Heights Precinct Plan and Strategic Directions Report of Council's resolution in this regard.

### Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable a wider review of the area to be undertaken including review of the Jervis Bay Settlement Strategy (JBSS). The Precinct Plan may be revisited and used as a background document to the review of the JBSS.

2. Adopt an alternative recommendation to adopt the Worroving Heights Precinct Plan and proceed to the next stage of undertaking technical studies to further inform an appropriate land use outcome for the precinct. This would include, but is not exclusive to, flora and fauna, bushfire, traffic, visual impact, Aboriginal cultural heritage, European and Australian cultural heritage, infrastructure/servicing, hydrological, land contamination and geotechnical studies.

Implications: This option is not preferred as it would incur significant costs to Council, which have not been budgeted or planned for. Proceeding to the next stage of undertaking technical studies would not allow for the broader JBSS to be reviewed and a holistic approach be taken to investigating appropriate growth and conservation in the Bay and Basin Region.

3. Adopt an alternative recommendation to support the Planning Proposal (PP) over 1310 Naval College Road.

Implications: This is not preferred as the PP expressly conflicts with the Worroving Heights Precinct Plan and Strategic Directions Report. It is also not identified in any existing strategy. Should Council resolve to adopt the Precinct Plan, then the PP would also be inconsistent with Council's Planning Proposal (Rezoning) Guidelines and the NSW Department of Planning & Environment's (DP&E) Guidelines to Preparing Planning Proposals.

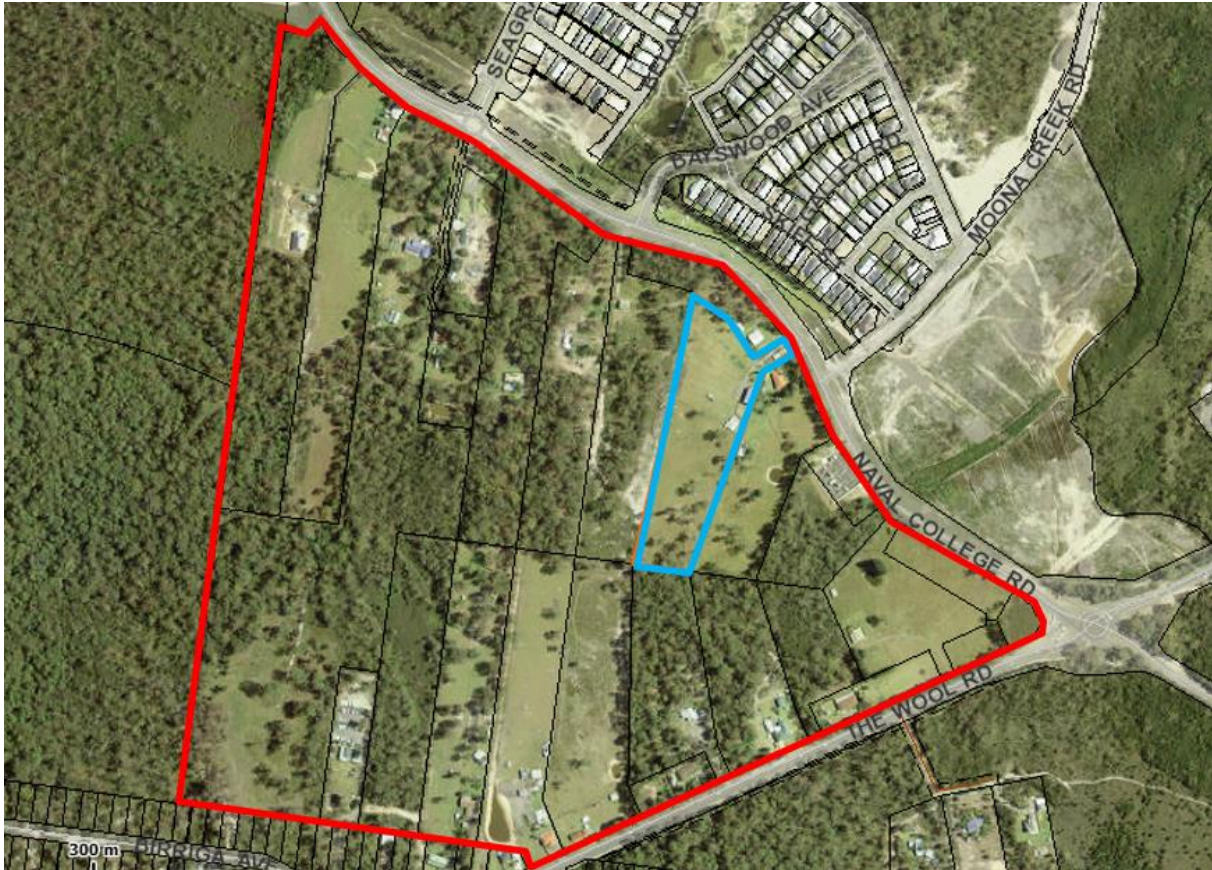
4. Adopt an alternative recommendation.

Implications: Depending on the nature of the alternative recommendation, this might result in uncertainty around the Worroving Heights Precinct and the PP over 1310 Naval College Road.

### Background

On 18 July 2016, the Development Committee considered a report on a proponent initiated PP that had been received for 1310 Naval College Road, Worroving Heights. The PP sought to rezone the site SP3 Tourist and increase (map) the maximum height of buildings to 18m under Shoalhaven Local Environmental Plan (LEP) 2014.

It was resolved that a decision on the PP would be deferred until a more detailed strategic planning exercise that considered the future zoning of the broader precinct was completed. In September 2016, Locale Consulting Pty Ltd (Locale) commenced a strategic review on Council's behalf of the precinct (outlined in red) illustrated in *Figure 1* below. The site subject to the PP is outlined in blue.



*Figure 1 – Precinct Plan Boundary*

The draft Strategic Directions Report prepared by Locale contained a strategic directions (desk top) analysis/review for the precinct, recognised key / unique attributes and presented four possible options for a precinct plan with one identified as the preferred option.

It should be noted that the review was not a detailed “on the ground” investigation of the precinct, but rather considered known compiled data.

The draft Strategic Directions Report was reported to Council at its Ordinary Meeting on 27 June 2017 and it was resolved (MIN17.540) to:

1. *Adopt the draft Worwaring Heights Precinct Plan and Strategic Directions Report for the purposes of landowner and broader community consultation.*
2. *The draft Worwaring Heights Precinct Plan and Strategic Directions Report be made publicly available for minimum period of 28 days.*
3. *Request the proponent of the Planning Proposal for 1310 Naval College Road, Worwaring Heights to consider the draft Precinct Plan as exhibited and modify their proposal accordingly.*
4. *Council staff report back after the landowner/community consultation and dialogue with the proponent of the Precinct Plan.*

## Draft Worrowing Heights Precinct Plan and Strategic Directions Report

### Community Consultation

Following Council's resolution, the draft Worrowing Heights Precinct Plan and Strategic Directions report was initially publicly available for review at Council's Administrative Centre and on Council's website from 26 July to 25 August 2017 (inclusive). Given community interest and following a Mayoral Minute (MM17.20), the closing date for the exhibition period was extended to 29 September 2017.

During this time, a separate briefing and community drop-in session was held on 2 August 2017 at the Bay and Basin Leisure Centre. These sessions provided information about the draft Plan and were attended by over 50 individuals who represented both landowners and the broader community.

During the extended community consultation period, a total of 36 submissions were received from 33 individuals/organisation. One of the submissions received was from a consultant on behalf of the proponent of the PP over 1310 Naval College Road, further detail on this submission and the PP is provided later in this report. Copies of the submissions received will be also be available in the Councillor's Room prior to the meeting. A summary of the submissions is provided in **Attachment 1**.

In addition, a Consultation Report was prepared by Council's project consultant Locale which provides a summary of the outcomes of consultation undertaken and recommended changes to the exhibited Draft Worrowing Heights Precinct Plan and Strategic Directions Report. A copy of the report is provided in **Attachment 2**. The major issues and key themes raised in the submissions are provided and discussed below.

### Submissions Overview

#### Lack of justification

A number of submissions raised concern over a lack of justification or demonstrated need for the draft Worrowing Heights Precinct Plan and the options it presents. Specific questions raised in the submissions related to what is the Worrowing Heights Precinct; why is there a Precinct Plan proposed / needed; and why was this area of Worrowing Heights looked at in isolation.

#### *Staff Comment*

*The Worrowing Heights Precinct covers an area of approximately 67 hectares on the north-western corner of the intersection of The Wool Road and Naval College Road, Worrowing Heights. The Precinct is broadly defined based on the area currently zoned RU2 Rural Landscape under Shoalhaven LEP 2014 around Lot 1310 Naval College Road.*

*The reference to "the precinct" first emerged through Council's determination of a development application (DA14/1391) in May 2015 for demolition of the existing dwelling, and construction and operation of a motel comprising 80 rooms and associated facilities. The development was permissible under the former Shoalhaven LEP 1985 which was in force when the DA was lodged. As part of the determination for the DA, Council resolved (MIN15.290) in part that:*

- "b) Should the proposed development proceed, that Council investigate and consider the rezoning of the precinct."*

*The intention of this part of the resolution was to minimise the impact of the approved development on the adjoining land owners, provide adjoining land owners similar*

redevelopment opportunities and address the changing nature of the precinct. It is noted the approved development has not yet proceeded.

A PP was subsequently lodged over the site of the approved motel to rezone the site to SP3 Tourist and increase permissible building heights to 18m under Shoalhaven LEP 2014. The purpose of the PP was to enable the development of a six-storey hotel resort/serviced apartment complex with 120 hotel rooms and 180 serviced apartments. In considering the PP, Council resolved to commence the strategic planning exercise. The draft Warring Heights Precinct Plan was prepared to provide a potential strategic planning framework for the precinct and its potential future land use that integrates with the surrounding area.

#### Impact on infrastructure and services

Several submissions raised concern related to impacts on existing infrastructure and services that are already at capacity and are stretched further during peak holiday periods. These infrastructure and services included but are not limited to medical, retail, roads and transport. Several submissions also noted that significant upgrades to infrastructure would be required to accommodate additional demand and maintain the existing quality of life enjoyed by existing residents.

#### *Staff Comment*

*It is acknowledged that additional infrastructure and services would be required to accommodate any future growth in the precinct. At this preliminary stage, assessments of impact on infrastructure and services has not been completed. Should Council resolve to proceed further with the Precinct Plan, the next stage would involve undertaking detailed technical investigations, including an Infrastructure/Servicing Plan, Traffic Assessment and Hydrological Assessment and possibly others which would detail the level of service upgrades required.*

#### Environmental concerns

Concerns were raised over biodiversity loss as a result of the Precinct Plan, lack of protection for remnant vegetation and habitat within the Jervis Bay Key Biodiversity Area (KBA) and habitat corridor adjacent to Booderee National Park. Another submission commented that the Precinct should be nominated for the National Heritage Listing for conservation purposes due to the high biodiversity values of the site.

#### *Staff Comment*

*Biodiversity is a key constraint for the precinct (and the overall Jervis Bay Region), with specific areas mapped as containing significant vegetation and biodiversity habitat corridor in Shoalhaven LEP 2014. At this preliminary stage, a detailed biodiversity assessment has not been undertaken, therefore the Precinct Plan is broad in its reference to environmental constraints. Should Council resolve to proceed further with the Precinct Plan, a detailed flora and fauna assessment would be required to map and quantify the specific biodiversity values of the area, which in turn would inform the width and extent of habitat/biodiversity corridors to be retained or protected.*

*At this early stage, the four options included in the draft Strategic Directions Report have sought to balance the known biodiversity values of the site based on existing knowledge with the potential provision of additional urban land. In doing so, the draft Strategic Directions Report consistently identifies that the south-western corner of the precinct which is densely vegetated be retained and protected due to its environmental significance. It also acts as a corridor between the Jervis Bay National Park and the Booderee National Park that has been recognised through the various regional planning exercises related to Jervis Bay.*

*It should be noted that any future precinct plan would need to be developed based on the results of a detailed flora and fauna assessment over the entire site, which is likely to alter the potential development footprint that is currently presented in the preferred option included in the draft Strategic Directions Report. Thus, it is recommended that the preferred option be amended to add a note that the extent and nature of any developable land and the width and extent of the “retention of habitat / biodiversity corridor” be subject to detailed studies.*

#### Aboriginal Cultural Heritage

Submissions raised concern over the protection of Aboriginal cultural heritage on the site and statements in the draft Strategic Directions Report that the precinct contains no known Aboriginal heritage sites and that the likelihood of this is considered to be low.

#### *Staff Comment*

*At this early stage, a detailed investigation into the presence of Aboriginal cultural heritage within the Precinct has not been undertaken. The information provided in the draft Strategic Directions Report regarding Aboriginal cultural heritage is based on a search of Council’s records, discussions with relevant Council staff and a search of the NSW Office of Environment and Heritage (OEH) Aboriginal Heritage Information Management System (AHIMS). It is acknowledged that these information sources provided limited information and a detailed Aboriginal archaeological assessment would be required should Council resolve to take the Precinct Plan to the next stage. It is recommended that an Aboriginal Cultural Heritage Assessment be added to the suggested additional detailed studies in the draft Strategic Directions Report.*

#### Other heritage concerns

Many submissions raised concern that the proposal threatens the Commonwealth Heritage listed area of Jervis Bay, which is identified as an Indigenous place under the Environment Protection and Biodiversity Conservation Act 1999. Another submission stated the Precinct Plan would impact the heritage significance of The Wool Road which is listed in Schedule 5 of Shoalhaven LEP 2014.

#### *Staff Comment*

*Again, it is noted that at this early stage, a detailed investigation into the heritage impacts of the Precinct Plan has not been undertaken. Should Council resolve to progress the Precinct Plan, a detailed heritage assessment would need to be undertaken that considers any heritage impacts, including the Commonwealth Heritage Listed area of Jervis Bay.*

*Under existing provisions of Shoalhaven LEP 2014, the Worroving Heights Precinct includes a Scenic Protection Area along The Wool Road, which is also subject to clause 7.8 Scenic Protection of Shoalhaven LEP 2014. Clause 7.8 requires development to consider visual impacts and ensure that development minimises any detrimental impacts. This Scenic Protection Area will assist in maintaining the heritage significance of the road and the overall route it is part of. It is recommended that a European & Australian Cultural Heritage Assessment be added to the suggested additional detailed studies in the draft Strategic Directions Report.*

#### Water and hydrology impacts

One submission commented that the proposal will have adverse impacts on water quality, hydrology and the natural wetting and drying processes that occur throughout the site and adjoining properties.



### Staff Comment

*In preparing the draft Strategic Directions Report, a high-level consideration of watercourses and flooding was undertaken as part of the overall constraints and opportunities analysis for the precinct. This work found that there is a potential hydrology / drainage impact to the north and potential flooding considerations in the southern part of the precinct. These findings would be investigated in further detail through a comprehensive hydrological assessment which will seek to quantify and consider impacts to water flows resulting from the future development on the land. This would be part of the next stage of the strategic planning process should Council resolve to pursue the Precinct Plan.*

### Consistency with Jervis Bay Settlement Strategy

Many submissions raised concern that the draft Strategic Directions Report may present inconsistencies with the Jervis Bay Settlement Strategy (JBSS) 2003 and questioned whether the Strategy has since been abandoned. Many submissions also raised concern that the JBSS has not been updated since 2003 and suggested that a renewed consultation and settlement strategy be undertaken.

### Staff Comment

*The JBSS was adopted by Council in 2003 and prepared to provide direction and guidance for the future development of the Jervis Bay Region to 2023. The JBSS was also endorsed by the NSW Government. The overall vision for the Bay and Basin area outlined in the JBSS is “to maintain and enhance the marine, estuarine and natural resources by providing balanced future living and visiting opportunities which are environmentally, socially and economically sustainable” (page 5). It also includes a broad principle for Worroving Heights to investigate “the possibility of limited development that also provides for the protection and management of the habitat corridor in the locality” (page 6).*

*While the JBSS neither earmarks the precinct for environmental or future urban purposes, the JBSS is now some 15 years old and the current situation is considerably different from that of the early 2000’s when the JBSS was first prepared. As noted in the JBSS, further expansion of the Vincentia District Centre is constrained by National Park to the west, north and east, and biodiversity value and corridor connections between the east and west are recognised. Given the age of the document and with Vincentia identified as a Regional Centre in the Illawarra-Shoalhaven Regional Plan, it is considered reasonable that the future of the precinct be considered in the context of the current situation, whilst also continuing to recognise the overarching JBSS directions until it is reviewed.*

*Council adopted a new Strategic Planning Works Program in July 2017 and a review of the JBSS was amongst the identified priority projects. As such, Council staff have commenced initial preparatory work in this regard. This project will be the subject of an initial report to Council during March/April 2018 to formally commence the review process and detail how it will be undertaking, including potential timeframes.*

*In its present form however, the draft Precinct Plan is not considered to be inconsistent with the JBSS. This is also noted by DP&E in their submission, which made comment that whilst the Worroving Heights Precinct is not specifically identified for future residential development in the JBSS, it is the only land around the Vincentia District Centre that may be suitable for consideration for urban development. Their submission is discussed later in this report.*

### Support for the Precinct Plan

Many submissions also expressed support for the Precinct Plan. One submission stated that with the development of Bayswood and Vincentia Marketplace and future Anglican schools, further development seems logical for the Precinct. Another submission agreed in principle that a rezoning of the Worroving Heights Precinct is needed, due to Shoalhaven's growing population and shortage of suitable land for development in the area. A number of submissions suggested the area needs to provide additional residential areas within walking distance from shops such as those at Vincentia Marketplace. Another submission stated they would like to see commercial, recreation and community uses within the Precinct to generate jobs and provide entertainment opportunities for young families.

Of the submissions supporting the Precinct Plan, most recognised that any future development must achieve a balance with biodiversity and other characteristics of the site.

### *Staff Comment*

*The draft Strategic Directions Report presents several options for the Precinct. The Market Feasibility Analysis recognised that there is a need for ongoing residential land in the medium to longer term in the Bay and Basin area. The consultant's preferred option takes into consideration the Market Feasibility Analysis and seeks to balance the medium to long term demand for residential land whilst managing the known opportunities and constraints of the site.*

### **State Government Agency Consultation**

Relevant State Government agencies were also invited to provide comments on the draft Strategic Directions Report, including DP&E, Department of Primary Industries (DPI) – Water and NSW Office of Environment and Heritage (OEH). Comments received from the State Government agencies are provided below.

In addition, the Commonwealth Department of Environment and Energy were also advised of the community consultation period. No response was received during the consultation period and at the time of writing this report.

### *Department of Planning and Environment (DP&E)*

- Support a strategic planning review of the Worroving Heights Precinct considering existing land use and development pattern within the precinct and its relationship with the adjoining Vincentia District Centre to the north.
- The Precinct Plan is not considered to be inconsistent with the Jervis Bay Settlement Strategy. The Strategy advises that further expansion of the Vincentia District Centre is constrained by Jervis Bay National Park to the west, north and east. Whilst the Worroving Heights Precinct is not specifically identified for future residential development it is the only land around the Vincentia District Centre that is considered suitable for urban development.
- Detailed investigations are required prior to determining areas and possible uses within the preferred Precinct Plan Option No. 3, including possible environment protection zoning and consideration of biodiversity and bushfire constraints.
- Council must ensure that the Precinct Plan is consistent with habitat corridor actions from the JBSS.

*Department of Primary Industries (DPI) - Water*

- Response was received from WaterNSW who reviewed the content of the draft plan for. There are no regulatory issues for WaterNSW to consider in this matter.
- No response was received from NSW Office of Water.

*NSW Office of Environment and Heritage (OEH)*

- Recommend that Council consult with the Commonwealth regarding the implications of current precinct planning for any future controlled action approvals under the EPBC Act 1999. This would have a bearing on the functional width of biodiversity corridor across the southern portion of the site.
- Areas within the precinct where the critically endangered Pretty Beard Orchid (*Calochilus pulchellus*) and Swamp Sclerophyll Forest Endangered Ecological Community (EEC) occur should be avoided.
- The strategic direction pursued for Worroing Heights should retain and consolidate the existing habitat corridors under Shoalhaven LEP 2014 and the Illawarra-Shoalhaven Regional Plan 2015 at a minimum.
- The effectiveness of existing corridors identified in the planning framework for Jervis Bay should be considered before pursuing future strategic rezonings in the precinct. The preferred strategic outcome should pursue re-establishment of the disturbed habitat corridor linkages that maintain the function and connectivity of biodiversity corridors in Jervis Bay.
- Prior to any preferred option advancing, detailed investigation be undertaken to determine the width necessary for a robust and functional biodiversity corridor in the southern portion of the planning precinct.
- Strategic planning for the precinct should identify avoidance measures and consider implications for biodiversity assessment under the Biodiversity Conservation Act 2017 and supporting Biodiversity Assessment Methodology.
- Water quality impacts from future proposals into surrounding sensitive waterways should be carefully considered as part of strategic planning for the precinct.
- The environmental impact of additional bushfire hazard risk management within Jervis Bay National Park should be considered in addition to asset protection as part of strategic planning for the precinct.
- A full Aboriginal cultural heritage assessment in accordance with OEH guidelines should be conducted. The assessment must include Aboriginal community consultation and archaeological survey as set out in the OEH guidelines.

**Recommended Changes to Strategic Directions Report**

Based on the submissions received from individuals and State Government agencies and the comments provided above, it is recommended that amendments are made to the exhibited draft Worroing Heights Precinct Plan and Strategic Directions Report in order to address specific issues. The recommended changes are highlighted in the Strategic Directions Report provided at **Attachment 3**, and are summarised below:

- Insert a new section “2.2 Regional Context” including an explanation of the Illawarra-Shoalhaven Regional Plan and Jervis Bay Settlement Strategy;
- Insert comments with respect to European, Australian and Aboriginal Cultural Heritage within Section 2.4.1 General Features – Land Use Planning;
- Insert comments with respect to biodiversity values and corridors within Section 2.4.3 Precinct Flora and Fauna;
- Insert comments with respect to environmental impacts of bushfire hazard risk management within Section 2.4.4 Bushfire;



- Revise Figure 9: Preferred Precinct Plan to note that the retention of habitat/biodiversity corridor (width and extent) and the extent and nature of any developable land will be subject to the outcome of detailed studies; and
- Insert two extra Suggested Additional Detailed Studies within Section 4.4; Aboriginal Cultural Heritage Assessment and European & Australian Cultural Heritage Assessment.

It is recommended that the revised Worroving Heights Precinct Plan and Strategic Directions Report be adopted by Council and considered as part of the JBSS review.

### **Preliminary Planning Proposal – 1310 Naval College Road, Worroving Heights**

As summarised in the background section of this report, the current proponent initiated PP over 1310 Naval College Road was formally received by Council on 12 April 2016. An initial review of the PP was completed by Locale and is included in the draft Worroving Heights Precinct Plan and Strategic Directions Report. The initial review of the PP indicated that the proposal is potentially an overdevelopment of the site and the proposed height is not in keeping with the existing and future scale of development on the urban/rural fringe of the Bay and Basin area.

As per Council’s resolution of 27 June 2017, Council staff offered to meet with the proponent to discuss the draft Precinct Plan and the inconsistencies between the PP and the draft Plan. The proponent was also advised in writing that they should consider modifying their PP to consider the Precinct Plan and Strategic Directions Report. No response was received to this invitation and the PP has not been modified, however a submission was received as part of the community consultation process from a consultant on behalf of the proponent.

The submission received on the Worroving Heights Precinct Plan indicated that the proponent was in support of considering the Precinct for future urban purposes in the short, medium and long term. The submission also acknowledged that further analysis needs to be undertaken to demonstrate the suitability of, and the demand for, the scale and anticipated built form for the future hotel resort and serviced apartment development.

The submission raised concern that an R1 Residential Zone for short term development of the Precinct, whilst permitting ‘tourist and visitor accommodation’, would not provide adequate flexibility to support a wide range of land uses and flexibility to respond to market demand. They also raised concern that it would be difficult for their proposed development to demonstrate consistency with the overall objectives of the R1 zone and that supporting tourist uses such as restaurants, bars, cafes and shops are not permissible within the R1 zone. It was suggested that a more varied zoning structure be investigated, including opportunities to introduce Additional Permitted Uses through Schedule 1 of Shoalhaven LEP 2014, which could be accompanied by a precinct-specific Development Control Plan (DCP) which would guide the delivery of a wider range of land uses.

The submission also highlighted that interest for a hotel operator has been secured and that tourist accommodation could be delivered on the site in the short term. As such, the submission stated the site should be recognised and supported as an ‘anchor’ for the Precinct, being able to deliver housing and tourist accommodation and associated and complimentary land uses in the short term.

The decision to either support or not support the PP for 1310 Naval College Road, Worroving Heights was deferred by Council’s Development Committee at its meeting on 18 July 2016 until “*a more detailed strategic planning exercise that considers the future zoning of the broader precinct*” had been completed (MIN16.533). The more detailed strategic planning exercise has now been completed and publicly exhibited, with the outcome of its public exhibition provided in this report.

In assessing the PP against the Precinct Plan and Strategic Directions Report, the following should be noted:

- PP proposes to rezone the subject site SP3 Tourist which is inconsistent with the preferred option of a residential zone.
- PP proposes to introduce an 18m height of buildings development standard on the subject site which is inconsistent with the preferred option of retaining the existing default 11m height or alternatively reducing the height to 8.5m consistent with a residential zone.
- The Market Feasibility Analysis concludes that there is not sufficient demand for more land to be zoned for tourism purposes in the Bay & Basin area and therefore within the precinct.
- The scale of the intended development is incompatible with the existing character of the urban / rural fringe and the future character of the precinct as established by the Precinct Plan and the preferred option.

It is thus recommended that the PP not be supported as it expressly conflicts with the Worrowing Heights Precinct Plan and Strategic Directions Report. By adopting the Worrowing Heights Precinct Plan and Strategic Directions Report, the PP is also inconsistent with Council's Planning Proposal (Rezoning) Guidelines and DP&E's Guidelines to Preparing Planning Proposals as there is no existing strategy that supports it.

### **Community Engagement**

As summarised above, the draft Worrowing Heights Worrowing Heights Precinct Plan and Strategic Directions Report was publicly available from Wednesday 26 July to 29 September 2017. During this time, a total of 36 submissions were received from 33 individuals / organisations during this time.

Should Council resolve to proceed with the Precinct Plan and prepare a PP for the precinct or sites within it, a future PP will require public exhibition in accordance with the Environmental Planning & Assessment Regulations 2000.

### **Policy Implications**

If adopted by Council, the Worrowing Heights Precinct Plan would form a Council Strategic Planning Policy that could be used to rationalise the strategic basis of future amendments to Shoalhaven LEP 2014. The Precinct Plan would complement and be considered in the review of the existing JBSS, which has commenced.

### **Financial Implications**

The proponent of the PP for 1310 Naval College Road has paid the initial PP lodgement fee in accordance with Council's Fees and Charges. Should the PP proceed further into the process, additional fees will be payable.

The preparation of the Worrowing Heights Precinct Plan and Strategic Directions Report has been funded by the existing Strategic Planning budget.

Progressing the Worrowing Heights Precinct Plan to the detailed investigation stage will incur significant financial costs for Council or the landowners. If Council undertakes the detailed studies there is potential for some of these costs to be recouped through a future Section 94

Plan for the area should future planning for the precinct continue, or alternatively through a cost sharing exercise similar to what has been done with the Falls Creek / Woollamia Investigation Area. This is not recommended to be pursued at the current time.

## DE18.9 Shoalhaven DCP 2014 - Amendment No. 8 - Flood Chapters G9 and G10

**HPERM Ref:** D17/419590

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

**Attachments:**

1. Attachment 1: Chapter G9 - Development on Flood Prone Land (under separate cover) [⇒](#)
2. Attachment 2: Supporting Document 1 - Chapter G9 (under separate cover) [⇒](#)
3. Attachment 3: Supporting Maps - Chapter G9 (under separate cover) [⇒](#)
4. Attachment 4: Chapter G10 - Caravan Parks in Flood Prone Areas (under separate cover) [⇒](#)
5. Attachment 5: Supporting Document 1 - Chapter G10 (under separate cover) [⇒](#)
6. Attachment 6: Supporting Document 2 - Chapter G10 (under separate cover) [⇒](#)
7. Attachment 7: Draft Dictionary (under separate cover) [⇒](#)

DE18.9

### Purpose / Summary

Obtain endorsement for the preparation and public exhibition of draft Amendment No. 8 to Shoalhaven Development Control Plan (DCP) 2014 which proposes to amend:

- Chapter 9 Development on Flood Prone Land;
- Chapter G10 Caravan Parks in Flood Prone Areas; and
- The Dictionary.

The amendment will then be placed on public exhibition with the associated Planning Proposal (PP012) – Review of Flood Controls.

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

That Council:

1. Adopt for exhibition purposes draft Amendment No. 8 to Shoalhaven Development Control Plan 2014 which includes amendments to Chapter 9 Development on Flood Prone Land, Chapter G10 Caravan Parks in Flood Prone Areas, and the Dictionary (detailed in Attachment 1); and
2. Exhibit the draft Amendment together with the associated Planning Proposal (PP012) – Review of Flood Controls for a minimum period of 28 days in accordance with legislation; and
3. Receive a further report after public exhibition to consider any submissions and to adopt the amendment for finalisation.

### Options

1. Adopt draft Amendment No. 8 to Shoalhaven DCP 2014 and proceed to public exhibition.

Implications: This is the preferred option as it enables the DCP amendment and the PP to proceed to exhibition as a package. These complementary amendments are aimed at improving the availability of flood information and make the process of applying for development approval in flood prone areas more straightforward.

2. Not adopt draft Amendment No. 8 to Shoalhaven DCP 2014.

Implications: This option is not recommended as it has potential to create inconsistencies between the LEP and DCP and misses the opportunity to refine Chapters G9 and G10 to improve their operation.

## Background

Council resolved in May 2017 (MIN17.380) to:

1. *Endorse the Planning Proposal (PP012) – Review of Flood Controls to amend Shoalhaven Local Environmental Plan (LEP) 2014 for lodgement with the NSW Department of Planning & Environment (DP&E) to request Gateway determination.*
2. *Amend Chapter G9: Development on Flood Prone Land and Chapter G10: Caravan Parks in Flood Prone Areas in Shoalhaven Development Control Plan 2014 as part of a future review of these chapters to ensure consistency with any proposed changes to Shoalhaven LEP 2014.*
3. *Support the preparation of an online Flood Planning map to provide publicly accessible information and interactive display of adopted Flood Study mapping and historic flooding information.*

The PP intends to remove the Flood Planning Area (FPA) Map from the LEP and rely instead on an online mapping system that will be available on Council's website that is based on Council's adopted flood studies. This change will remove the delays in updating the FPA map and the associated issues this created.

The PP received Gateway determination on 8 June 2017 and as such can now be placed on public exhibition.

The associated changes have now been made to DCP Chapters G9 and G10. Other changes have also been made to the chapters to make them more user friendly and improve interpretation. These changes are relatively minor and include:

- Removing content from the chapters that is more informative in nature and transferring it to a supporting guideline. This creates a clear distinction between the controls for development in flood prone areas and the supporting information which assists in the preparation of a development application.
- Creation of supporting maps for Chapter G9 to identify the areas to which the site-specific controls apply.
- Updating the matrix for Chapter G9 to add Low Hazard Floodway, High Hazard Flood Fringe, Low Hazard Flood Storage categories to clarify the provisions that apply to each category and adding relevant definitions to the Dictionary.
- Updating the matrix for Chapter G10 to include controls for 'Minor associated structure' and 'Large associated structure' in the High Caravan Park Flood Risk Precinct rather than completely prohibiting these structures.

The proposed DCP Amendment No. 8 includes the following documents which are included as attachments to this report.

1. Chapter G9: Development on Flood Prone Land (**Attachment 1**)

2. Supporting Document 1: Chapter G9 - Guidelines for Development on Flood Prone Land (**Attachment 2**)
3. Supporting Maps: Chapter G9 - Guidelines for Development on Flood Prone Land (**Attachment 3**)
4. Chapter G10: Caravan Parks in Flood Prone Areas (**Attachment 4**)
5. Supporting Document 1: Chapter G10 – Guidelines for Caravan Parks in Flood Prone Areas (**Attachment 5**)
6. Supporting Document 2: Chapter G10 – Flood Emergency Management Plan Template (**Attachment 6**)
7. The Dictionary (**Attachment 7**)

Each chapter and supporting document has a table of changes at the start to help readily identify the changes that have been made.

Adoption of proposed DCP Amendment No. 8 will enable the PP and the DCP amendment to now be exhibited together as a package. As part of the exhibition, Council's adopted flood information will be added to Council's online mapping system so that it is publicly available.

### **Community Engagement**

Should draft DCP Amendment No. 8 be adopted, it will be placed on public exhibition with the associated PP for a minimum of 28 days to enable the community to view and comment on the changes. Community Consultative Bodies (CCB's) and other relevant groups will be directly advised of the exhibition arrangement

Any issues raised in submissions made during this time will be reported to Council for consideration as part of the final adoption of the proposed amendments.

### **Policy Implications**

Amendment No. 8 is intended to make the DCP consistent with the amendment to the LEP that will remove the FPA Map. The DCP will continue to operate if this amendment does not proceed but it may result in confusion for applicants given the potential inconsistencies between the LEP and DCP. It is best practice to update the LEP and DCP together to ensure both documents are consistent and work together.

### **Financial Implications**

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

## DE18.10 Planning Proposal Request - Proponent Initiated - 9 Browns Road, South Nowra - Caravan Park

**HPERM Ref:** D17/421697

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

**Attachments:** 1. Proponent's Planning Proposal Request - Browns Road South Nowra Caravan Park (under separate cover) [↔](#)

### Purpose / Summary

Detail a proponent initiated request for Planning Proposal (PP) that has been received to enable the use of the whole property as a 'caravan park', including part of the site which has approved tourist cabins, to be used for long term accommodation (consistent with the bulk of the site), and to obtain direction in this regard.

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

That Council:

1. Prepare a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 to permit caravan parks as an additional permitted use for Lot 1 DP 1079345, No. 9 Browns Road South Nowra.
2. Forward this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination and if granted proceed to exhibition in accordance with its requirements, following which the matter be reported back to Council.
3. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of any necessary specialist studies be borne by the proponent.

### Options

1. Request a Gateway determination for the PP to allow caravan parks as an additional permitted use on the subject land.

Implications: This will allow the area with the approved tourist cabins to be used for long term accommodation without changing the underlying zone. This is the lowest impact approach to achieve the outcome being sought by the proponent. It will also effectively recognise the 'existing use right' on most of the site, while retaining the existing B5 – Business Development zone. This is the preferred option.

2. Request a Gateway determination for the PP to rezone the land to a zone in which caravan parks are permissible.

Implications: This would require the zoning to be changed to a non-business zone, fundamentally changing the zone objectives and land use table. Not only would it allow the expansion of the existing caravan park but also other uses that may not be appropriate in this location. While this approach will achieve the outcome being sought

by the proponent, it could lead to unintended uses on the site and is at odds with established strategic planning directions. This option is not recommended.

3. Not proceed with the PP.

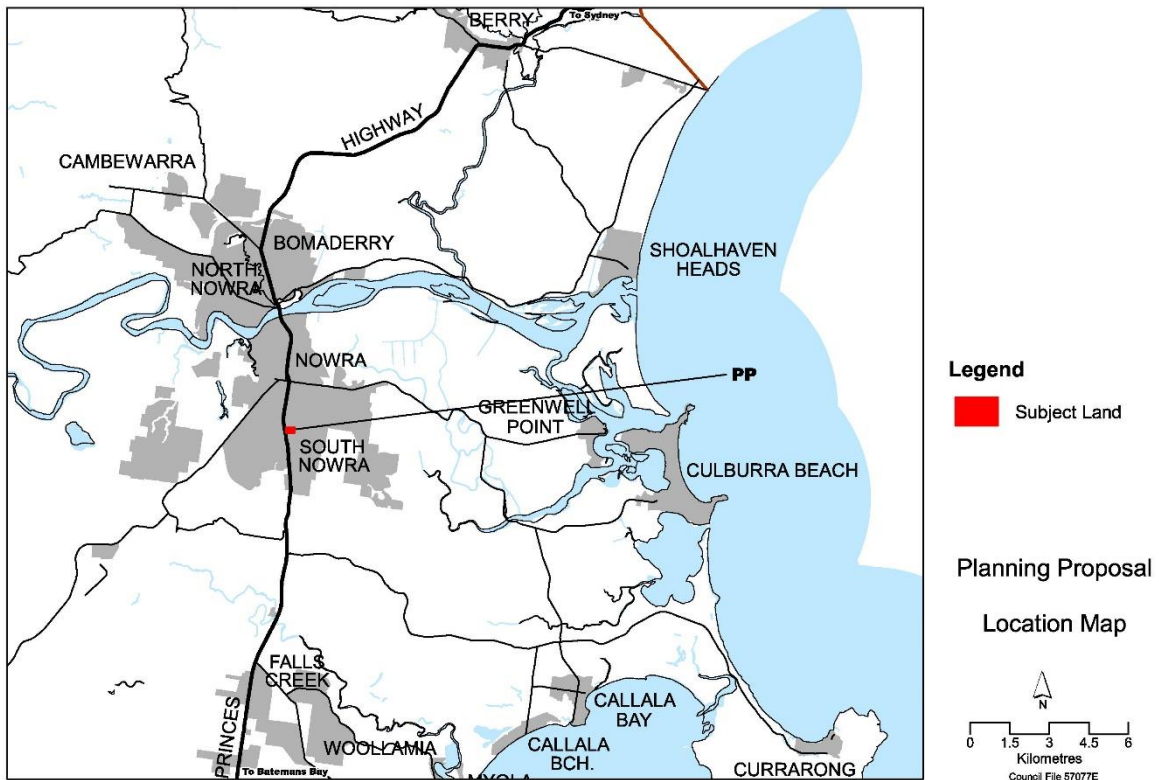
Implications: This would prevent the rationalisation of the uses on the site and would leave a relatively small part of the existing caravan park not able to be used for longer term accommodation. This option is not recommended.

**Background**

The Site

The subject land is Lot 1 DP 1079345, 9 Browns Road, South Nowra. It is located on the northern edge of the South Nowra employment lands area. The land adjoins Ison Park to the north, a small residential development to the east of Mumbulla Street, and business uses to the south and west. The site is an established caravan park.

Maps showing the subject land and its location are provided below:



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**Subject Land – Location**

DE18.10





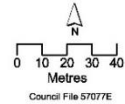
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**Legend**  
 Subject Land

Planning Proposal

Aerial Photo

Lot 1 DP1079345  
SOUTH NOWRA

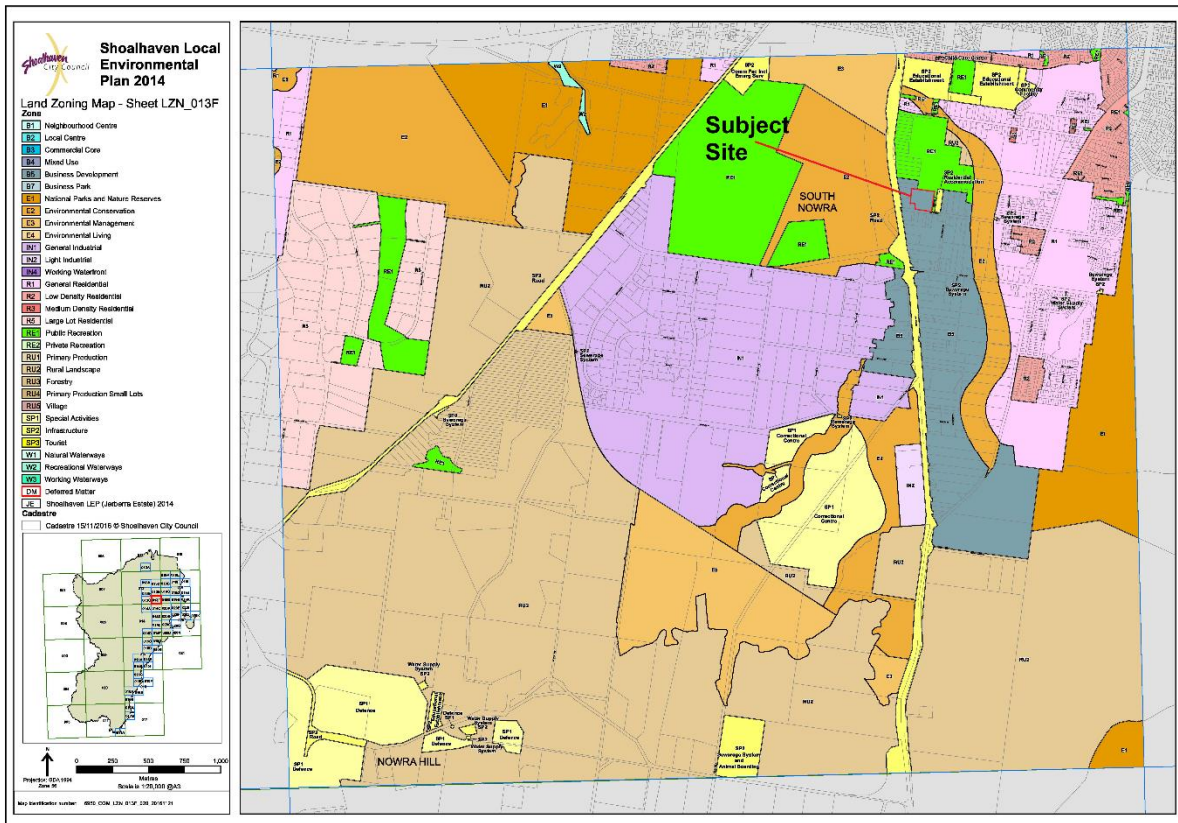


**Aerial Photograph Showing Subject Land - Lot 1 DP 1079345**

DE18.10

Shoalhaven Local Environmental Plan (LEP) 2014

The subject land is currently zoned B5 – Business Development under Shoalhaven LEP 2014. The relevant zoning map is provided below.



**Shoalhaven LEP 2014 Land Zoning Map Showing Subject Land**

One of the objectives of the B5 zone is to “allow a diversity of activities that do not significantly conflict with the operation of existing or proposed development”.

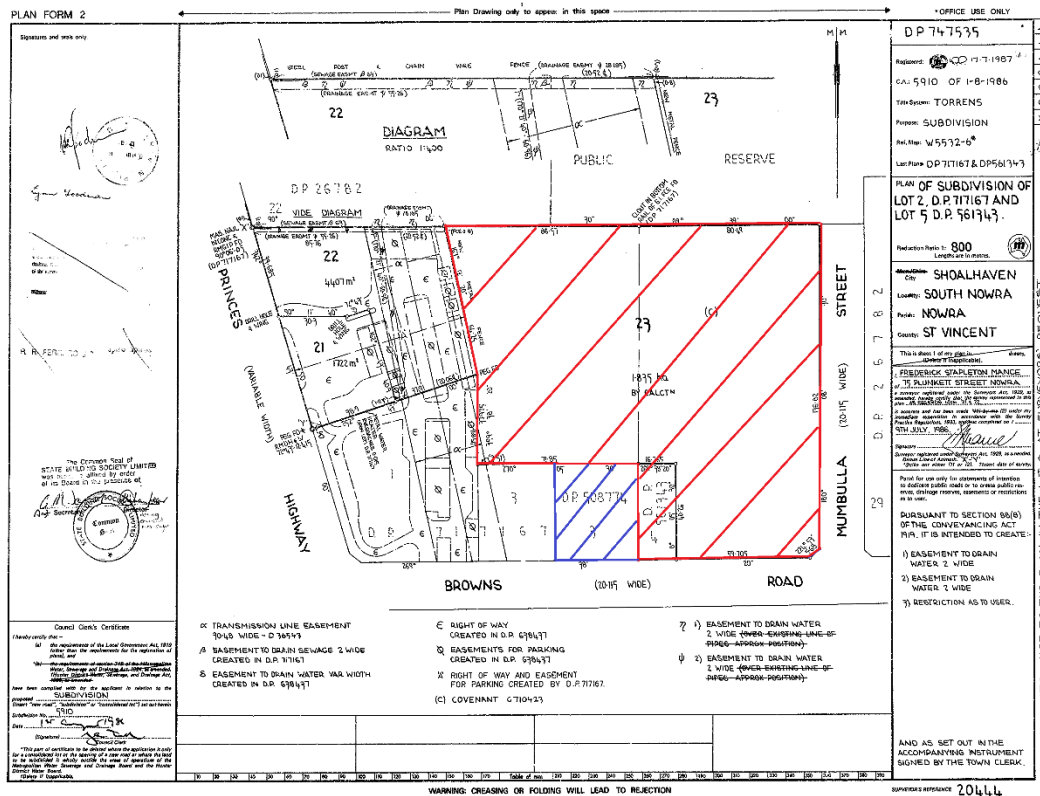
‘Residential accommodation’ (except for ‘shop top housing’) and ‘tourist and visitor accommodation’ (except for ‘hotel or motel accommodation’ and ‘serviced apartments’) is prohibited in the B5 zone. ‘Caravan parks’ are also prohibited in the B5 zone.

As outlined below, due to previous approvals for a caravan park and tourist accommodation, the site has certain ‘existing use rights’ under the Environmental Planning and Assessment Act 1979.

**Site History**

The use of part of the site as a caravan park dates back to the 1970’s.

The land underwent lot consolidation in 1986. A marked-up version of this plan is provided below.



**Deposited Plan with Mark Up - DP 747535**

Historically, the use of the site as a caravan park was confined to Lot 23 DP 747535 and Lot 4 DP 561343, highlighted in red above. The area highlighted in blue, Lot 3 DP 508774 was consolidated with Lots 4 and 23 in 2005 but was not used as part of the caravan park. Consequently, at the commencement of Shoalhaven LEP 2014, Lot 3 DP 508774 did not benefit from an ‘existing use right’ for a caravan park.

In 2004, the owner sought and obtained development consent for a tourist facility on the former Lot 3 (outlined in blue above). This development comprised 8 tourist cabins. These cabins however cannot be occupied by permanent residents under the current LEP provisions.

DE18.10

In summary, the caravan park currently has 61 long term sites and an area approved for 8 tourist cabins that the proponent also wishes to use for long term accommodation.

### The Proponent's PP

The proponent's PP request was received on 2 November 2017 from Coastplan Group (on behalf of the owners, Restpoint Holdings) and seeks to amend Shoalhaven LEP 2014 to allow caravan parks on the entirety of the site as an 'additional permitted use' (via inclusion in Schedule 1 of the LEP). The proponent's submission (see **Attachment 1**) includes a draft PP.

This will essentially allow the whole of the caravan park to be used for long term accommodation.

### Preliminary Planning Assessment

The following is an overview of strategic planning documents that are relevant to this proposal.

- *Shoalhaven LEP 2014*

The subject land is currently B5 Business Development under Shoalhaven LEP 2014. The objectives of this zone relate to enabling businesses that require a large floor area, and allowing a diverse range of activities that do not significantly conflict with the operation of existing or proposed development.

In context of the site's current and historical use, the proposal is not considered to be inconsistent with these objectives, noting that the underlying zoning will be retained.

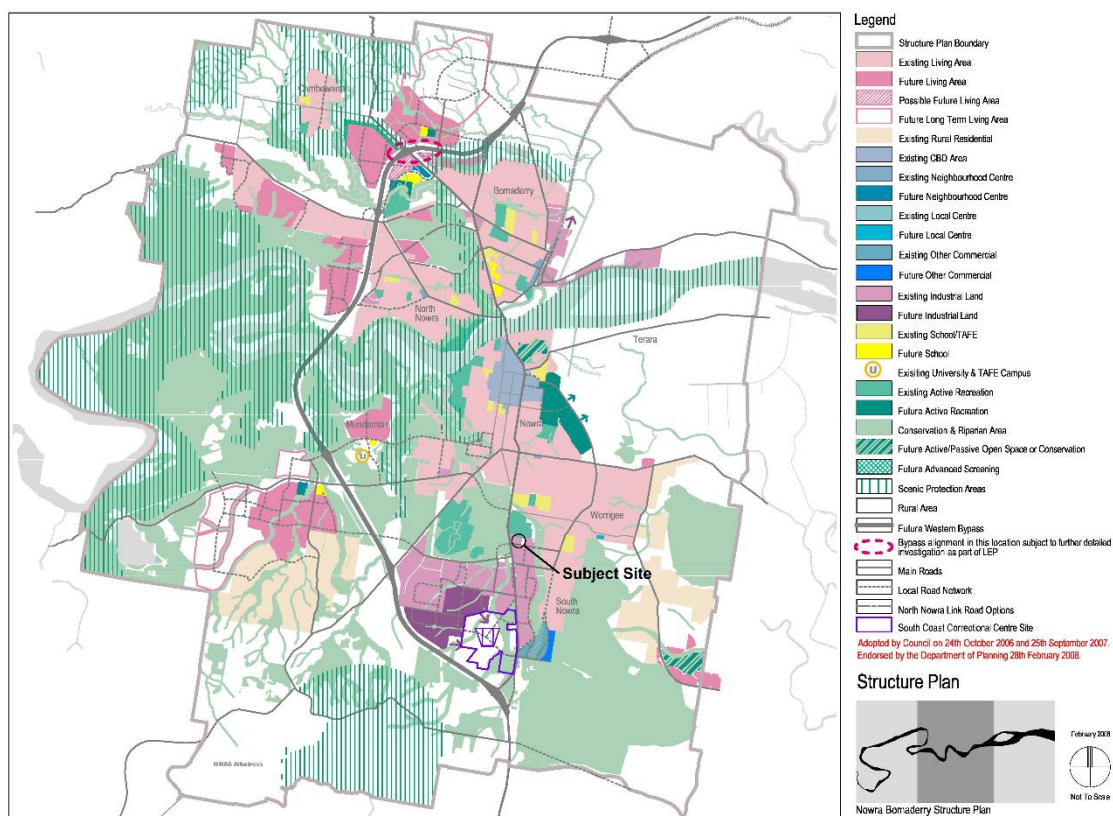
- *Illawarra-Shoalhaven Regional Plan*

The Regional Plan was released by the NSW Government in late 2015. This PP is minor in nature and is not inconsistent with any of the provisions of this plan given the site's current and historical use.

- *Nowra-Bomaderry Structure Plan*

The land is within the Nowra-Bomaderry Structure Plan area and is identified as being "*Existing Industrial Land*". The Structure Plan is provided below.





### Nowra-Bomaderry Structure Plan

This PP is minor in nature and is not inconsistent with any of the provisions of this plan given the site's current and historical use.

- *Shoalhaven Affordable Housing Strategy*

Council adopted the Shoalhaven Affordable Housing Strategy in December 2017 in response to a range of issues surrounding the availability of affordable housing in Shoalhaven. One of its 'medium term' (within 3-5 years) strategies is to:

*Provide opportunities for permanent sites in caravan parks.*

The Strategy notes that caravan parks are an important source of affordable housing in Shoalhaven, with on-site vans and manufactured homes being able to be rented by all low-income households and some very low-income households. It is however also noted that there appears to be a decreasing supply of permanent sites in some areas through their conversion to tourist use.

In the case of this PP it is essentially looking at enabling the whole of the current caravan park to be used long term accommodation, given that part (former Lot 3) only currently benefits from 'existing use rights' for tourist use.

The PP is generally consistent with this Strategy as it will provide additional permanent sites within this caravan park.

- *Council's Planning Proposal (Rezoning) Guidelines*

These guidelines detail the circumstances when a PP is likely to be supported by Council and provide a range of detail on the PP process. The guidelines were adopted by Council in 2016 and note that a PP is likely to be supported in the following circumstances:

- Proposed amendment is supported by Council or State Government strategy or plan.
- Clear zoning anomaly exists on site.
- Proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.

The guidelines also note that the proponents should have pre-lodgement dialogue with Council staff before formally lodging a PP.

The guidelines make it clear that PP's that are not supported by a strategy or plan and are considered speculative will generally not be supported by Council.

Pre-lodgement engagement with the proponents regarding this matter took place during 2016 and the PP is minor in nature (see comments below).

- *NSW Guide to Preparing PPs*

The NSW Guide to Preparing Planning Proposals provides an assessment framework for PP's. This framework requires the planning authority (Council) to answer questions in determining the merit of a PP. These are considered below:

*Q1. Is the Planning Proposal a result of any strategic study or report?*

The proposal is not the result of any strategic study or report. A minor amendment is proposed in acknowledgement of the specific history of this site. It seeks to allow that part of the site currently used for tourist accommodation so that it can be used for long term stay accommodation.

Council recently adopted the Shoalhaven Affordable Housing Strategy and the role that caravan parks and manufactured homes play in assisting with affordable housing is acknowledged in this strategy. It is also acknowledged that the current short-term sites are not in a desirable tourist location and as such converting them to longer term use will have minimal impact and will potentially assist with affordable housing in the Nowra-Bomaderry area.

*Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The PP is the only way to permit a caravan park across the entire site given the 'existing use rights' scenario – amending the LEP is the only way to overcome the prohibition that currently applies across the site.

Allowing caravan parks as an additional permitted use is the most appropriate way to amend the LEP in the circumstance and recognise the continuation and minor expansion of an existing use which is currently prohibited under Shoalhaven LEP 2014.

*Q3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?*

The Illawarra-Shoalhaven Regional Plan is the relevant regional strategy.

The Regional Plan does not contain any provisions that are relevant to this minor PP.

*Q4. Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?*

The Nowra-Bomaderry Structure Plan anticipates that the South Nowra industrial precinct will provide a "mix of industries including storage & large footprint commercial". The use of the subject land as a caravan park is inconsistent with this expectation, whether it is occupied on a temporary or permanent basis.

This PP will not alter the existing inconsistency between the existing use of the land and the expectation of this plan. It seeks only to allow for the permanent occupation within that part of the park which can only currently be used for short term stays. The PP is minor and in and of itself is not inconsistent with this plan and the underlying B5 zoning will be retained.

*Q5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?*

No inconsistencies have been identified at this stage.

It is noted that under the provisions of SEPP 36 – Manufactured Home Estates, any urban land on which a caravan park is permissible may also be developed for a manufactured home estate. This is considered satisfactory in the context of this site as it is largely consistent with the existing development on site.

The NSW Government has released a discussion paper in 2015 that looked at Improving the regulation of manufactured homes, caravan parks, manufactured home estates and camping grounds. The proposed reforms may provide opportunities regarding this matter. Council made a submission to this review, however its status is unknown, and it has not advanced.

*Q6. Is the Planning Proposal consistent with applicable Ministerial Directions?*

There is a minor inconsistency with 117 Direction 1.1 Business and Industrial Zones. This direction requires the protection of employment land in business and industrial zones. This PP would allow for the permanent occupation of that part of the site that is currently used for tourist accommodation. The change from tourist development to residential accommodation is contrary to the protection of employment land. It is considered that this inconsistency is minor. The difference in employment opportunities between 8 tourist cabins and 8 manufactured homes in a fully maintained park are minimal. It is also noted that the underlying B5 zoning will be retained.

*Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

The site has been extensively cleared and is used as a caravan park. It is not identified in Council's mapping as being an area of ecological significance.

*Q8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?*

No other environmental effects are likely to result from this minor PP.

*Q9. Has the Planning Proposal adequately addressed any social and economic effects?*

No other social or economic effects are anticipated to result from this PP, which is of a minor nature.

*Q10. Is there adequate public infrastructure for the Planning Proposal?*

The development is supported by existing infrastructure and the PP will not increase demand.

*Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?*

The required consultation will be undertaken if the PP proceeds. A small part of the site is mapped as bushfire prone land and the PP will need to be referred to NSW Rural Fire Service (RFS) as a result.

### Conclusions

As detailed above, the PP is of a minor nature. If Council supports the PP, it is recommended that a Gateway determination be sought requiring no specialist studies to be prepared.

### **Community Engagement**

Upon receipt of the proponent's PP request the surrounding landowners and the park residents were notified in writing. One submission was received raising concerns that caravans would be installed on the site. It was clarified with the submitter that manufactured home estates are permissible in urban areas where caravan parks are permissible.

If the PP proceeds, formal public exhibition will be required including advertising in a local newspaper and a mail out to surrounding landowners.

### **Policy Implications**

The PP is minor and is consistent with Council's adopted Planning Proposal (Rezoning) Guidelines.

### **Financial Implications**

If Council support the PP it will be pursued on a 100% cost recovery basis, to be funded by the proponent, in accordance with Council's adopted fees and charges.

## DE18.11 Planning Proposal - Building Height Review - Southern Part of Ulladulla CBD

**HPERM Ref:** D18/17734

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

**Attachments:** 1. Planning Proposal - Building Height Review - Southern Part of Ulladulla CBD - Pre-Gateway Version (under separate cover) [⇨](#)  
2. Report to Development Committee on 14 November 2017 [↓](#)

### Purpose / Summary

Obtain endorsement to submit the Planning Proposal (PP) in this regard to the NSW Department of Planning & Environment (DP&E) to obtain initial Gateway determination.

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

That Council:

1. Endorse Planning Proposal (PP030) Building Height Review – Southern Part of Ulladulla CBD (**Attachment 1**) and submit to the NSW Department of Planning & Environment for a Gateway determination.
2. Notify Ulladulla & Districts Community Forum, affected landowners and key stakeholders of this decision and of further opportunities to be involved as this matter progresses.

### Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable the initial lodgement of the PP (**Attachment 1**) to advance an amendment to the height of building controls in the southern part of the Ulladulla CBD (subject land). On 14 November 2017, Council's Development Committee provided in principle support for the preparation of the PP (MIN17.954).

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay an amendment to Shoalhaven Local Environmental Plan (LEP) 2014 to increase the height of building controls for the subject land.

3. Not amend the height of building provisions in Shoalhaven LEP 2014 for the subject land.

Implications: Given the Height of Buildings Review that has recently been undertaken, its recommendations and Council's recent recommendation (MIN17.954) to prepare a PP to increase heights for the subject land, this is not a preferred option as the existing height provisions in Shoalhaven LEP 2014 will not be amended and it will be difficult to stimulate and facilitate development consistent with a CBD location.



## Background

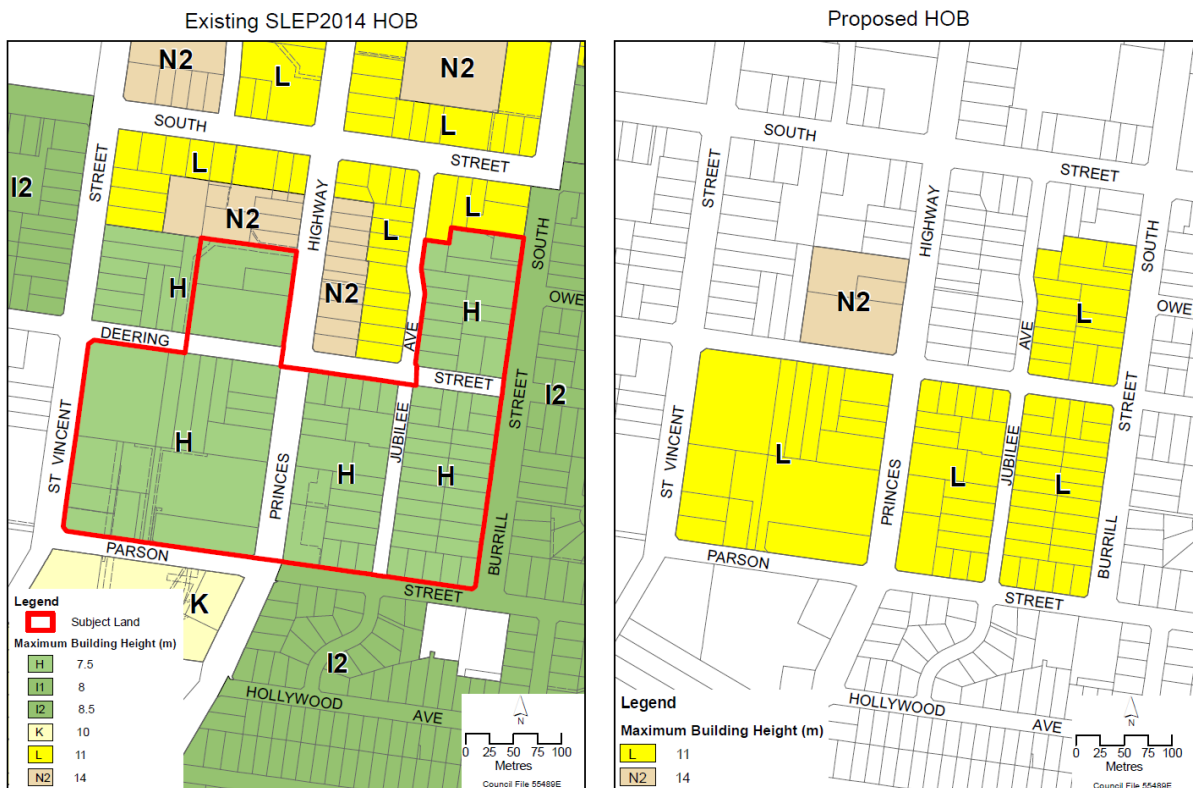
On 14 November 2017, Council resolved (MIN17.954 – part 1 & 3) to:

1. Prepare a Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 to increase the height across the Study Area (excluding land subject to PP025) to part 11 metres and part 14 metres as per the Review of Building Heights Report.
3. Consider a further report/s that contains the detail of the Planning Proposal for submission to the NSW Department and Planning and Environment for Gateway determination ...

The report to Councils Development Committee on 14 November 2017 is provided at **Attachment 2**.

The initial PP document has now been prepared for submission to DP&E for Gateway determination and is included as **Attachment 1** to this report. In line with the above recommendation:

- The subject land has been refined to exclude the land that is covered by the proponent initiated PP025 (i.e. land known as Lots 1-7, 9 DP 21597 and Lot CP SP 42583, St Vincent and Deering Streets, Ulladulla). This land will be progressed through an independent PP; and
- The proposed height of building map shows an increase in height from 7.5m to part 11m and part 14m (see Figure 2 below).



**Figure 2 - Existing and Proposed Shoalhaven LEP 2014 Height of Building Mapping**

DE18.11

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### **Community Engagement**

The PP will be exhibited for comment in accordance with Council's Community Engagement Policy at Level 1 to 'inform' and 'consult', and in accordance with the relevant legislative requirements. The Gateway determination will also specify the minimum exhibition period and any government agencies with whom Council must consult. Community Consultative Bodies and other interest groups will also be advised of the future formal exhibition arrangements.

### **Policy Implications**

The existing height of buildings provisions in Shoalhaven LEP 2014 are dated and somewhat inconsistent with the proposed direction of the Milton-Ulladulla Structure Plan and general future desired character and amenity expectations outlined in Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014.

The proposed height increase will assist in facilitating development and resolve the current inequitable and inconsistent building height controls that exist. In this regard the adjacent lower density residential areas currently have a greater height limit (8.5m) than the study area (7.5m).

### **Financial Implications**

Based on the recommended approach, there are no immediate financial implications as this matter is being resourced within the existing Strategic Planning budget.

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

HPERM Ref: D17/333579

Group: Planning Environment & Development Group  
Section: Strategic Planning

Attachments: 1. Review of Building Heights Report (Part Ulladulla CBD) (under separate cover)  
2. PP025 Gateway Determination 29 August 2017 (under separate cover)

### Purpose / Summary

To present the outcomes of the Building Heights Review relating to the southern part of the Ulladulla CBD as per MIN17.218.

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

That Council:

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

### Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will commence the process to amend the heights in Shoalhaven Local Environmental Plan (LEP) 2014 relating to the Study Area (excluding land subject to PP025) to reflect the outcomes of the review. It will also facilitate the required amendments to Shoalhaven Development Control Plan (DCP) 2014 to reflect the proposed change in height across the Study area and enable good design and built form outcomes.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the revision and updating of height provisions in Shoalhaven LEP 2014 and could result in

provisions that do not facilitate appropriate development outcomes within the Study Area.

3. Not amend the height of building provisions in Shoalhaven LEP 2014 across the Study Area.

**Implications:** Given the review that has been undertaken and its recommendations, this is not a preferred option as the existing height provisions in Shoalhaven LEP 2014 will not be amended and it will be difficult to stimulate and facilitate development consistent with a CBD location.

### Background

On 14 March 2017, Council's Development Committee considered a development application (DA16/2412) for a three (3) storey office building at proposed Lot 15 Parson Street, Ulladulla.

The proposal sought a 46% (3.5 metre) variation to the 7.5 metre height prescribed in the Shoalhaven LEP 2014 for the land. Although the Committee originally resolved to support the variation (MIN17.183), a rescission motion was considered at the 28 March 2017 Ordinary Meeting (MIN17.217) and it was resolved to not support the proposed variation (MIN17.218). As part of this resolution, Council also resolved (part 2) to:

*Undertake a review of the 7.5 metre building heights in this part of the Ulladulla Town Centre in the next 6 months which is limited to the area south of Deering Street and the B5 and R3 zones.*

It is noted that the area of the review was expanded beyond that of the Council resolution to ensure a holistic review of land in this vicinity with a building height of 7.5 metres in the LEP.

The Study Area (Figure 1) is located within the southern precinct of the Ulladulla CBD and is generally bounded by St Vincent Street, Parson Street, Burrill Street South, Jubilee Avenue, Deering Street and the Princes Highway, Ulladulla. The Study Area includes all land with a building height currently mapped at 7.5 metres (Figure 2) as indicated in Shoalhaven LEP 2014 and is zoned B4 Mixed Use, B5 Business Development and R3 Medium Density Residential.



Figure 1: Study Area



Figure 2: Existing Height of Buildings

Consultants, City Plan Services and Atlas Urban were engaged in June 2017 to undertake a Building Height Review as an urban design and strategic planning exercise to investigate and reconsider the urban form height controls for the Study Area. The Review is based on a detailed analysis of the Study Area and context, as well as targeted consultation with the Ulladulla & Districts Community Forum, community and Council representatives.

#### Community Consultation

On 31 July 2017, two consultation workshop sessions were held; one with the Ulladulla & Districts Community Forum and community (approximately 30 attendees), and another with Councillors. The purpose of the workshops was to enable stakeholders to provide feedback on the height strategy proposed by the consultants. Generally, there were varying opinions as to what the planned heights should be, from no change to up to 17 metres. Other key themes included relationship to the existing neighbourhood character and height, preservation of views, affordable housing opportunities and the ability to stimulate economic growth and job opportunities.

It was identified during the CCB/community workshop that certain members of the community were unable to attend the workshop due to work commitments, and as a result, the consultant's workshop presentation was made available for public review for a period of one week between 2 and 9 August 2017. As a result of this, seven (7) submissions were received:

- Three (3) were in support of an increase in height, two (2) specifying a height of 17m.
- Three (3) did not support any increase in height.
- One (1) considered a height increase appropriate only where existing amenity and character is maintained and quality design controls are provided.

Refer to the Review of Building Heights Report at **Attachment 1** for more detail.

#### Outcomes of the Building Height Review

Balancing the outcomes of the targeted consultation and the strategic, statutory and physical parameters of the Study Area, the Review of Building Heights Report prepared by the consultants (**Attachment 1**) recommends considering an increase in height across the Study Area from 7.5 metres to part 11 metres and part 14 metres as shown in Figure 3 below.



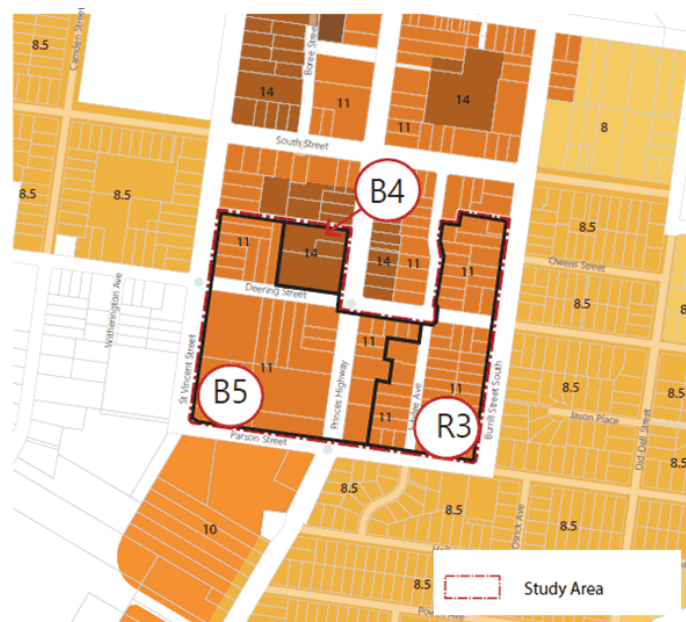


Figure 3: Proposed Height of Buildings

The recommended change in height enables a modest transition to lower density development to the south, east and west and reflects the height of the Ulladulla CBD core to the north of the Study Area. It also will enable the stimulation and facilitation of development consistent with the vision and strategic direction of the:

- Milton-Ulladulla Structure Plan; and
- General future desired character and amenity expectations as outlined in Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014.

#### Proposed approach

Should Council be comfortable with the changes recommended by the consults, to enable the change in building height across the Study Area, a formal amendment to Shoalhaven LEP 2014 will be required. This would be facilitated via a Planning Proposal (PP).

In this regard, on 5 June 2017, the Development Committee resolved (MIN17.476) to give in principle support for a proposed rezoning and building height review for a site located within the Study Area (Figure 4), known as Lots 1-7, 9 DP 21597 and Lot CP SP 42583, St Vincent and Deering Streets, Ulladulla.

The Gateway determination (**Attachment 2**) for this Planning Proposal (PP025) included a condition requiring the final height for the site to be shaped by the outcomes of the Review of Building Heights Report. PP025 is proponent initiated and it is considered, in the interest of clarity and transparency, that:

- The land subject to the proponent PP (identified as pink in Figure 4) be excluded from the Building Height Review Planning Proposal; and
- The proponent PP should continue to progress independently to any future PP relating to the Review of Building Heights Report.

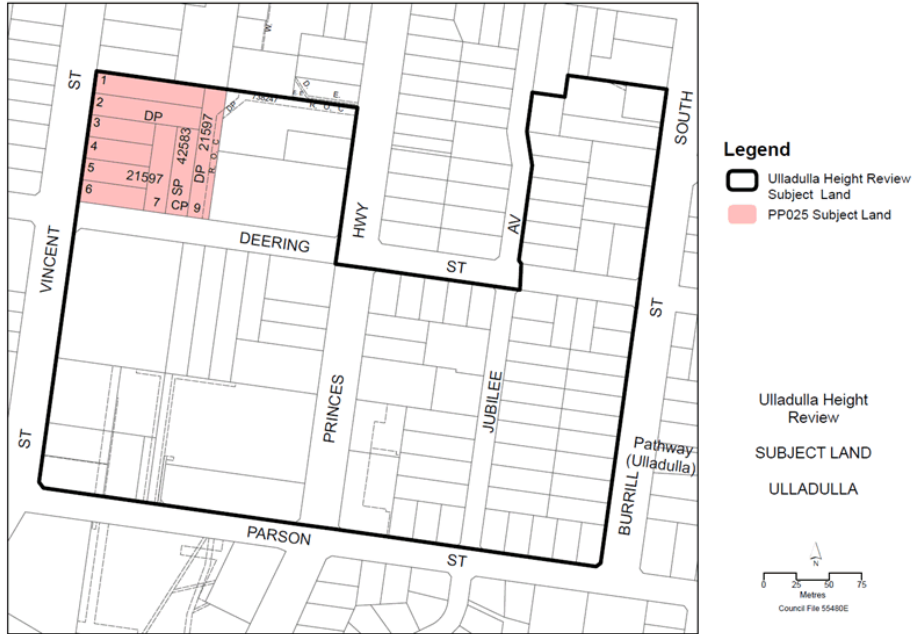


Figure 4: Study Area and PP025 Area

The Review of Building Heights Report recommends that Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014 also be amended to reflect the proposed change in height across the overall Study Area (including PP025 area). This would facilitate good design and built form outcomes and would relate (not exclusively) to the general context, built form and character, views and vistas, setbacks and height references in the area.

Any associated amendments to the Shoalhaven DCP 2014 would be exhibited concurrently with the PP and PP025 to ensure a strategic approach to planning provisions across the broader Study Area.

#### Conclusion

The Review of Building Heights Report discussed in this report recommends an increase in height across the Study Area from 7.5 metres to part 11 metres and part 14 metres. It is considered that an amendment to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would effectively facilitate this increase in height.

#### Community Engagement

The community engagement undertaken as part of the Review of Building Heights Report 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 affected landowners, adjoining landowners, relevant community groups and other interested parties.



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

**Policy Implications**

The existing height provisions in Shoalhaven LEP 2014 are dated and somewhat inconsistent with the proposed direction of the Milton-Ulladulla Structure Plan and general future desired character and amenity expectations outlined in Chapter S8: Ulladulla Town Centre of Shoalhaven DCP 2014.

The proposed height increase would assist in facilitating development and resolve the current inequitable and inconsistent building height controls that exist - the adjacent lower density residential areas currently has a greater height limit (8.5 metres) than the Subject Area (7.5 metres).

Should a PP be prepared to amend the height, then amendments will also be required to Shoalhaven DCP 2014 to reflect new heights and to resolve any inconsistencies resulting from the modifications.

**Financial Implications**

As per MIN17.476, the funding for the Building Heights Review is based on a pro rata arrangement between the Strategic Planning budget and the proponent of PP025.

Any future amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 would be managed within the existing Strategic Planning budget.

Fees for the remaining stages of PP025 will be charged in accordance with Council's Fees and Charges.

## **DE18.12 Aboriginal Land Claims Numbers 7780, 7781 and 41110 - Rose Street, Hyams Beach**

**HPERM Ref:** D18/18069

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

**Attachments:** 1. Request for Information - Aboriginal Land Claim - Rose Street Hyams Beach [↓](#)

### **Purpose / Summary**

Obtain direction regarding Aboriginal Land Claims (ALC) numbers 7780, 7781 and 41110 at Rose Street, Hyams Beach which are now being investigated for determination by the NSW Government.

*Note:* This matter is being report to the Development Committee due to the need to meet an extended deadline to provide comment.

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

That Council notify the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit that Council:

1. Does not support the granting of ALC Numbers 7780 and 7781 over Lot 79 DP 755907 and two Part Lots 78 DP 755907 at Rose Street, Hyams Beach.
2. Has no objection to the granting of ALC Number 41110 over the two Part Lots 78 DP 755907 at Rose Street, Hyams Beach, subject to any agreements, easements of rights of way required by Council being excluded from the claims, or being resolved as part of the determination of the Claim.

### **Options**

1. Notify the NSW Department of Industry (DoI) – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that Council does not support the granting of ALC No's 7780 and 7781; however, has no objection to the granting of ALC No. 41110 at Rose Street, Hyams Beach, subject to any agreements, easements of rights of way required by Council being excluded from the claims, or being resolved as part of the determination of the Claim.

Implications: This is the preferred option, as it enables Council to assist DoI with their investigations, and protect and maintain existing assets and water and sewer infrastructure that service Hyams Beach village, which are located on the two Part Lots 78 DP 755907.

2. Provide alterative advice to the DoI regarding ALC No's 7780, 7781 and 41110 at Rose Street, Hyams Beach as directed by Council.

Implications: This option is not preferred, as the advice provided to DoI needs to be justified and as such may not be consistent with known history of the land at the date the claims were lodged.

3. Not respond to the invitation to comment on these ALC's.

Implications: This is not preferred as it does not enable Council to present evidence to DoI regarding the status of the land at the date the claims were lodged.

### Background

Council received advice from DoI on 6 November 2017 that ALC numbers 7780, 7781 and 41110 at Rose Street, Hyams Beach, were under investigation for determination. These multiple claims were lodged over the former Hyams Beach Rural Fire Station site, and affect the following lots:

- ALC No. 7780: Lot 79 DP 755907 (Por 79)
- ALC No. 7781: Two Part Lots 78 DP 755907 (Por 78)
- ALC No. 41110: Two Part Lots 78 DP 755907 (Por 78)

Council has been asked to provide comments on the claims (see **Attachment 1**) and specifically whether, *at the date the claims were lodged*, the subject land was:

- Lawfully used or occupied
- Needed or likely to be needed for an essential public purpose.

Any comment, assertion or statement that is made by Council should be as at the date of the lodgement of the claims (see below) and be supported by evidence:

- ALC 7780: 6 October 2005
- ALC 7781: 6 October 2005
- ALC 41110: 8 August 2016

Council has been granted an extension of time until 16 February 2018 to respond to the claims to allow the matter to be reported for consideration.

### Overview Summary of the Subject Land

The subject land covered by these claims comprises three separate lots, located at the corner of Rose and Aster Streets, Hyams Beach in the north-western corner of the village. They are bounded to the north, west and south by Jervis Bay National Park, and to the east by the Rose and Aster Street road reserves and residential properties (as shown in Figure 1 below).

All three lots are currently zoned SP2 Infrastructure - Emergency Services Facilities under the provisions of Shoalhaven Local Environmental Plan (SLEP) 2014.

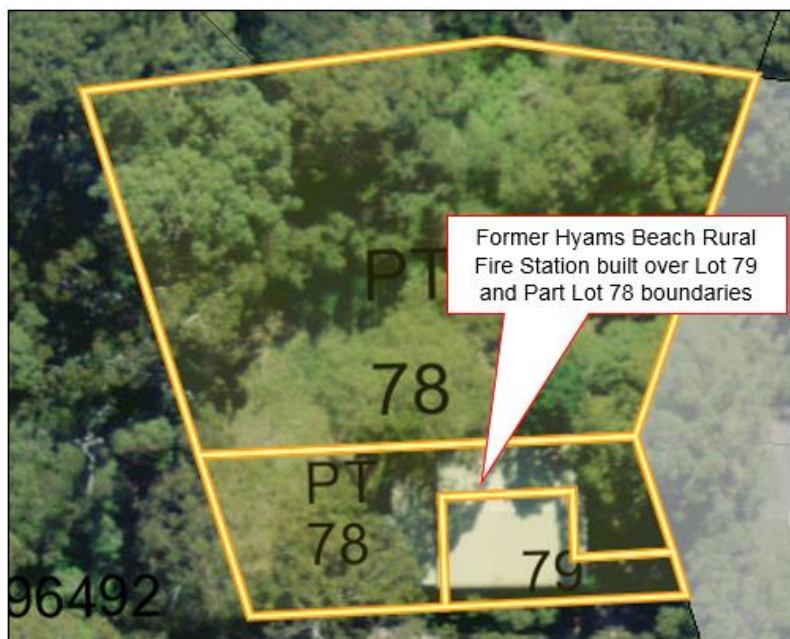


**Figure 1**  
Aerial image of the subject land (outlined in orange)  
at Rose Street, Hyams Beach.

- *Lot 79 DP 755907 (Por 79)*

Lot 79 is the smallest of the three lots and contains the former Hyams Beach Rural Fire Station building, which is constructed over the boundary of the adjoining Part Lot 78 to the north and west (refer to Figure 2).

Although this lot is identified as a Crown Reserve (number R96492) with the Reserve Purpose of “Bushfire Brigade Purposes”, it should be noted that the land is currently owned by Council and is classified as “community” land. Consequently, Lot 79 is the subject of ongoing discussions between Council’s Property Unit and Crown Lands regarding future land tenure.



**Figure 2**  
Location of the former Hyams Beach Rural Fire Station

- *Part Lot 78 DP 755907 (Por 78) – Southern Portion*

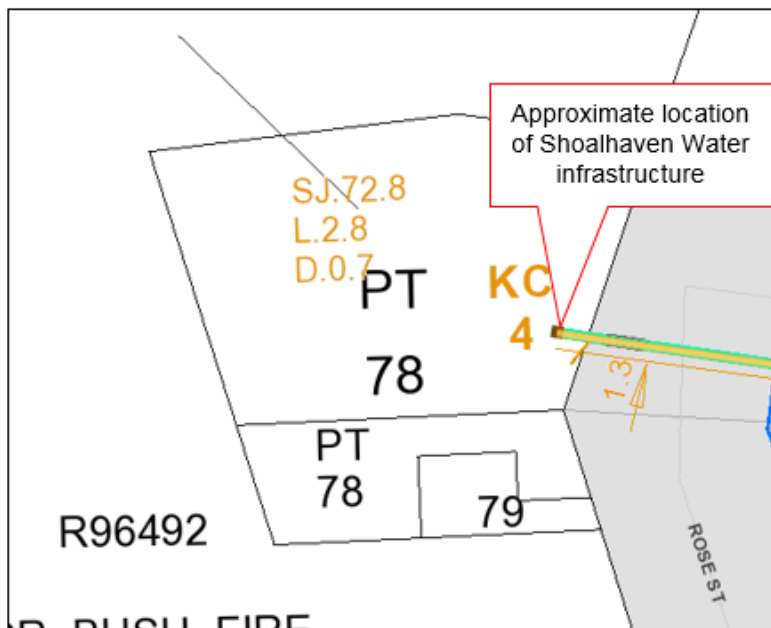
Part Lot 78 (southern portion) is Crown Land with Council as Trust Manager. The Crown Reserve number for the site is R96492, with the Reserve Purpose of “Bushfire Brigade Purposes”. It is a heavily vegetated site that contains approximately 40% of the gross floor area of the former Hyams Beach Rural Fire Station, as shown in Figure 2 above.

- *Part Lot 78 DP 755907 (Por 78) – Northern Portion*

Part Lot 78 (northern portion) is the largest of the three lots, and is Crown Land with Council as Trust Manager. The Crown Reserve number for the site is R86766, with the Reserve Purpose of “Public Hall”; however, this building has never been constructed.

There is also an existing approval on the site for the construction of a tennis court facility; however, this also remains unconstructed. This may however not be a valid reason for objection to any claim.

Advice received from Shoalhaven Water indicates the presence of water and sewer infrastructure on the eastern portion of the Lot, being a standard manhole and gravity main. This lot is currently vacant and heavily vegetated, and does not contain any structures other than the Shoalhaven Water infrastructure, the approximate location of which is shown in Figure 3 below.



**Figure**  
**Approximate location of existing Shoalhaven Water infrastructure over Part Lot 78 DP 755907 (northern portion).**

### History of the Rural Fire Station Building

Hyams Beach Bush Fire Brigade was officially formed on 2nd April 1965 with a fibro shed erected for the use of the Brigade in 1968. In later years, an annexe to the fire shed was built. The building was constructed over two lots – Lot 79 and the southern portion of Part Lot 78 – and covers a total area of 120.7m<sup>2</sup>. It is current listed as a heritage item of Local Significance in Schedule 5 of the *Shoalhaven Local Environmental Plan 2014*.

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The Hyams Beach Rural Fire Station was occupied by the local Bushfire Brigade until 2013, at which time the local service relocated to the nearby Erowal Bay Fire Station (and later the recently constructed Crossroads Rural Fire Station in Vincentia).

The building has remained vacant, and the land unoccupied, since this time.

#### Comment Summary

As noted above, a total of three ALCs have been lodged over the three lots and are now the subject of investigation by DoI. The following comments are provided regarding Councils interests (or not) in each claim:

##### *Claim Number 7780*

Was lodged over Lot 79 DP 755907 on 6 October 2005. Advice has been received from Council's Property Unit that, at this time, the land was lawfully occupied and being used for the Reserve Purpose of "Bushfire Brigade Purposes". It is also noted that, due to the land being in private ownership (Council), the land does not meet the criteria for Claimable Crown Land nor is an Aboriginal Land Council able to claim under the *Aboriginal Land Rights Act*.

Consequently, it is considered that ALC No. 7780 should not be supported.

##### *Claim Number 7781*

Was lodged over two Part Lots 78 DP 755907 on 6 October 2005. Advice has been received from Council's Property Unit that, at this time, the land was lawfully occupied and being used for the Reserve Purpose of "Bushfire Brigade Purposes".

Consequently, it is considered that ALC No. 7781 should not be supported.

##### *Claim Number 41110*

Was lodged over two Part Lots 78 DP 755907 (both the northern and southern portions) on 8 August 2016. As noted above, Council's records indicate that the local Fire Brigade vacated the Hyams Beach Rural Fire Station building sometime during 2013, and it has remained vacant and unoccupied since this time. As a result, the land is no longer being used for the lawful Reserve Purpose of "Bushfire Brigade Purposes". Consequently, it is considered that at the time this claim was lodged, the land was neither lawfully used or occupied, nor needed or likely to be needed for an essential public purpose.

However, as the building is an existing Council asset that has been constructed over the boundaries of Lot 79 and the southern portion of Part Lot 78, it will be necessary to create an easement over that part of Lot 78 containing the building for the purposes of ongoing maintenance, should ALC No. 41110 be granted.

In addition, the eastern boundary of Part Lot 78 (northern portion) contains existing Shoalhaven Water sewer infrastructure, which was installed in 1986 and services the Hyams Beach village area. For the purposes of assessing the claim, this portion of the land is needed for an existing essential public purpose, and Shoalhaven Water have advised that a minimum 2.4m wide easement over this infrastructure is required. This outcome is achievable subject to the legal creation of the easement and imposition of appropriate Section 88B restrictions (restrictions on the use of land).

Consequently, it is considered that Council should not object to the granting of ALC No. 41110, subject to the creation of easements for existing Council assets, being the former Hyams Beach Rural Fire Station building, and the Shoalhaven Water sewer infrastructure.

### **Financial Implications**

It is anticipated that the cost of creating the appropriate easements for existing Council assets and Shoalhaven Water infrastructure will be met by DoI. Should an easement be created over Part Lot 78 for the purposes of the former Hyams Beach Rural Fire Station building following the granting of ALC No. 41110, any ongoing costs associated with the maintenance of the building will continue to be met by Council for the foreseeable future.

### **Risk Implications**

There is no risk to Council in providing this advice to DoI, as it ensures that all relevant information is made available to assist in determining these land claims, while maintaining access to existing Council assets and infrastructure.





RM8 Reference: 05/1876

Reference to authorities and stakeholders via email:

Shoalhaven City Council	council@shoalhaven.nsw.gov.au
Endeavour Energy	geoff.riethmuller@endeavourenergy.com.au
Telstra	william.oxby@hsf.com
Transgrid	david.fayyad@transgrid.com.au maria.liu@transgrid.com.au
NSW Department of Industry - Geological Survey NSW	landuse.minerals@industry.nsw.gov.au
NSW National Parks and Wildlife Services Roads/access team	OEH.Roads@environment.nsw.gov.au

To whom it may concern

**Aboriginal Land Claims at Hyams Beach**

The Department of Industry (DoI) – Crown Lands, Aboriginal Land Claim Investigation Unit (ALCIU) is currently investigating the Aboriginal land claims shown on the attached list.

Lodging of an Aboriginal land claim creates an interest in the land. Prior to any future dealings in this land, consultation should be undertaken with DoI – Crown Lands.

Aboriginal Land Claims are investigated in accordance with the provisions of section 36(1) of the *Aboriginal Land Rights Act 1983*. Regardless of when an investigation is conducted the key date for the investigation is the **date the claim is lodged**.

The ALCIU is seeking information from your organisation as a relevant authority that may have evidence or hold an interest in the land at the **date of claim** that establishes:

- Lawful use or occupation
- Need or likely to be needed for an essential public purpose.

The Minister's decision is subject to appeal to the Land & Environment Court. It is important all information relevant to the claimed land be made available to the ALCIU to ensure the claim is properly and thoroughly assessed.

Any comment, assertion or statement you make should be as at the date of the claims and should be supported by documented evidence. Attached is an information sheet for your reference. The document also provides a definition of the assessment criteria mentioned above.

Please note, if the claimed land is subject to multiple claims, your response should address each claim and should provide evidence as at the date of each claim.



A response is requested to be provided by 4 December 2017. If you have no interest in the granting or refusal of this claim it would be appreciated if you could contact this office via e-mail advising of such. This will prevent unnecessary delays in processing claims, and we will not reference you further.

If you have any questions or require an extension of time to provide a response please contact me on (02) 6883 3306, or by email [renate.sherring@crowland.nsw.gov.au](mailto:renate.sherring@crowland.nsw.gov.au).

Yours sincerely

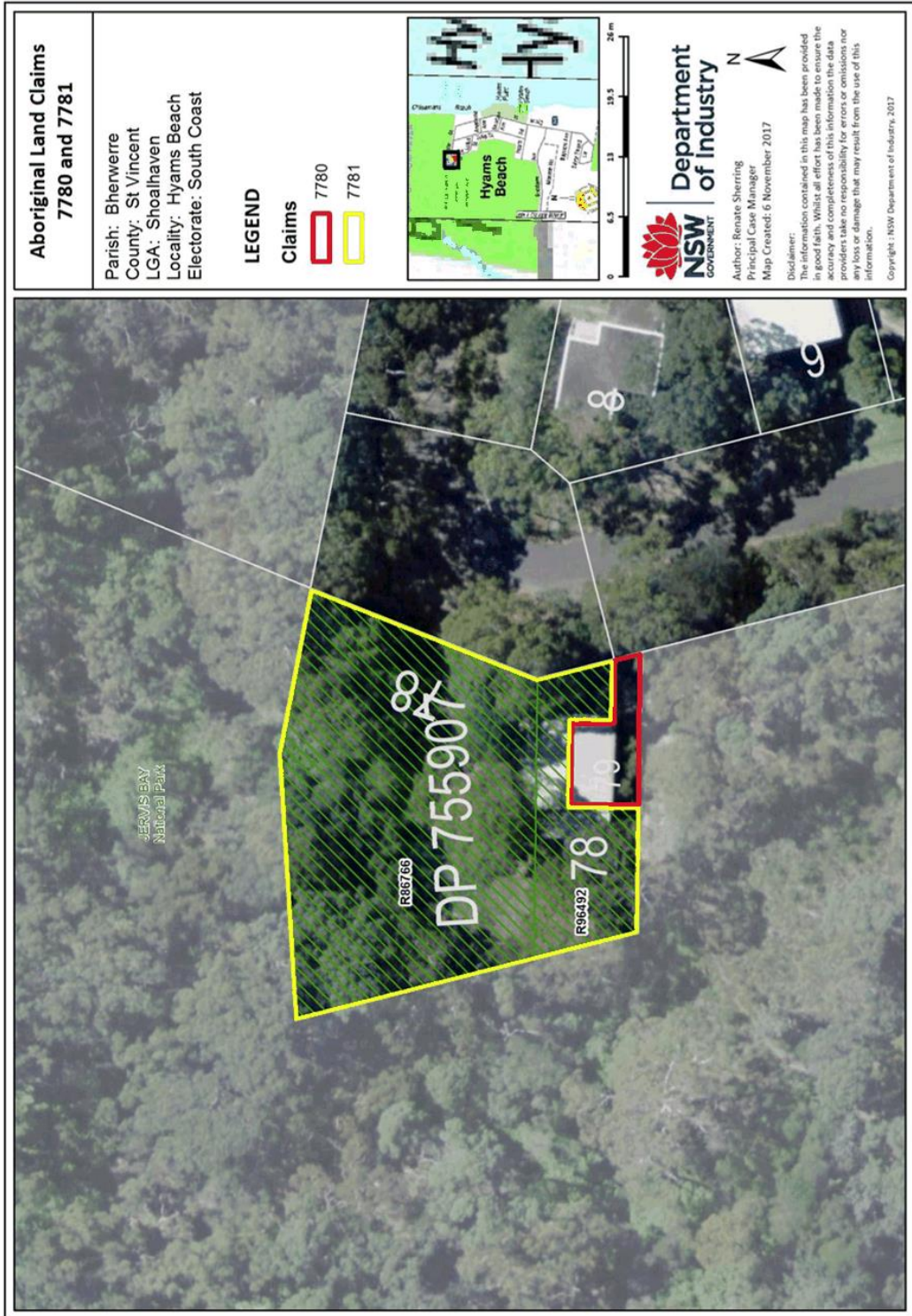


For the Manager  
Aboriginal Land Claim Investigation Unit

6 November 2017

Claim No	Land Council	Land Claimed	Lodged	Status
7780	NSWALC	Lot 79 DP 755907	6 Oct 2005	Vested in Council, subject to 25A declaration vide GG 10 Dec 1982
7781	NSWALC	Lot 78 DP 755907	6 Oct 2005	Part Reserve 86766 for public hall; part Reserve 96492 for bush fire brigade purposes. Managed by the Hyams Beach Reserve Trust (Council)
41110	NSWALC	Lot 78 DP 755907	8 Aug 2016	Part Reserve 86766 for public hall; part Reserve 96492 for bush fire brigade purposes. Managed by the Hyams Beach Reserve Trust (Council)

NSWALC = New South Wales Aboriginal Land Council





Lands & Forestry

NSW Department of Industry, Lands and Forestry  
Aboriginal Land Claim Investigation Unit  
PO Box 2185 DANGAR NSW 2309  
[cl.alc@crowmland.nsw.gov.au](mailto:cl.alc@crowmland.nsw.gov.au)  
[www.crowmland.nsw.gov.au](http://www.crowmland.nsw.gov.au)  
PH: 02 6883 3396 FAX: 02 6884 2067

### Information to assist you in your response

#### Lawful use and/or occupation

“*Lawful use*” of claimed lands occurs when use is to more than a notional degree. The lands need to be used for its specified public purpose or for a purpose that furthers or is ancillary to the public purpose. The use needs to be actual, not just contemplated or intended.

“*Lawful occupation*” encompasses legal possession, conduct amounting to actual possession and some degree of permanence. It involves an element of control, of preventing or being in a position to prevent the intrusion of strangers. Continuous physical presence on every part of the land is not required, however some physical occupancy is required, mere activities of maintenance are insufficient.

Examples of evidentiary materials supporting lawful use and occupation include, but are not limited to:

- Copies of tenure documents (licences, leases, permits etc.)
- Receipts
- Rosters, sign in books, attendance sheets etc.
- Photographs taken at time
- Documents that prove activity at the location
- Evidence of improvements made and/or maintenance undertaken
- Utilities bills
- Anything that establishes a presence upon the lands
- Diary entries
- Media material

If reference is made to a document in the course of providing a response, it would be appreciated that the entire document be provided as an annexure/attachment to support the response.

#### Needed or likely to be needed for an essential public purpose

“*Needed*” means required or wanted. Where lands are needed for an essential public purpose, a manifestation of political will is required to establish need. Where lands are likely to be needed for an essential public purpose, it is a question as to whether it is likely that there will in the future be a government requirement; and if this addressed by considering a trajectory, then the trajectory needs to be towards a requirement at the appropriate government level at the specified time in the future.

“*Likely*” is a real or not remote chance, a real chance or possibility, not more probable than not (possibility being a lower legal standard than probability). The essentiality of the need has to be sufficient to counteract the beneficial intent of the *Aboriginal Land Rights Act*. A 25 to 30 year time frame is appropriate when establishing a likely need.

“*Essential public purposes*” are those that are required and created by the government of the country, or purposes of the administration of the government of the country. To be essential, the purpose must be indispensable, or at least material and important. The use of the word essential sets a high standard. Public purposes may be served by private interests. Purposes carried out under statutory authority or requirement, for example, the *Local Government Act* (Shire Councils) can be public purposes.

Examples of evidentiary materials supporting the need or likely need for an essential public purpose include, but are not limited to;

- Government materials stating the lands are required for the essential public purpose
- Material illustrating a trajectory towards the land being developed for the essential public purpose
- Any documentation relating to the development of the land in general
- Documentation supporting the lack of development of the kind proposed
- Documentation showing the lack of other suitable lands in the area
- Documentation illustrating why the purpose proposed is important and indispensable
- Documentation proving that the intended use for the claimed lands existed as at the date of claim lodgement

Again, if reference is made to a document in the course of providing a response, it would be appreciated that the entire document be provided as an annexure/attachment to support the response.

**If you have any questions regarding this information please contact the Aboriginal Land Claim Investigation Unit on 02 6883 3396 or email [alc@crowmland.nsw.gov.au](mailto:alc@crowmland.nsw.gov.au).**

## DE18.13 Development Application DA17/1958 – 99 Sunset Strip, Manyana – Lot 115 DP 31711

**DA. No:** DA17/1958/2

**HPERM Ref:** D18/23344

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

**Attachments:** 1. Applicant's submission cl 4.6 variation [↓](#)

**Description of Development:** Alterations and additions to an existing dwelling.

**Owner:** Ivan and Belinda Harris  
**Applicant:** Integral Home Improvements

**Notification Dates:** 03 – 18 August 2017

**No. of Submissions:** Nil submissions

### Purpose / Reason for consideration by Council

This application is reported to Council as it is a clause 4.6 variation to the 7.5 metre maximum building height development standard required by clause 4.3 of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The application is requesting a 60% variation to the development standard to allow a maximum building height of 12 metres consistent with the existing building.

The assumed concurrence from the Secretary, Department of Planning requires that with all clause 4.6 variations in excess of 10%, the exercise of the assumed concurrence must be carried out by the full Council. The application is therefore presented to the committee for recommendation to the Ordinary Council Meeting.

### Recommendation

That the Development Committee recommends:

1. Council exercise the Secretary's assumed concurrence under clause 4.6 and support the 60% variation to the maximum building height development standard of 7.5m set by clause 4.3 of Shoalhaven LEP 2014 for alterations and additions to existing residence on Lot 115 DP 31711, 99 Sunset Strip, Manyana to a maximum building height of 12m;
2. The application be referred back to staff for determination.

### Options

1. Support the variation.

**Implications:** The development can proceed as proposed, subject to meeting the matters for consideration under section 79c of the Environmental Planning and Assessment Act 1979.



- 2. Variation not supported but applicant invited to submit revised plans.

Implications: The current variations are not supported but the applicant is given feedback on changes to reduce the requested variations. Therefore, revised plans may be resubmitted for determination by Council or by staff if the revised proposal is less than 10% variation.

**Location Maps**



Figure 1 – Location Maps

**Background**

Proposed Development

The existing property has a two storey pole frame home, approved in 1984. The proposal is to extend the existing upper deck at the rear by 1.3m to create a more useable deck off the living area as part of stabilising the existing structure. The application also proposes

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additions and alterations to the dwelling and new a garage at street level. (Coloured on site plan below)

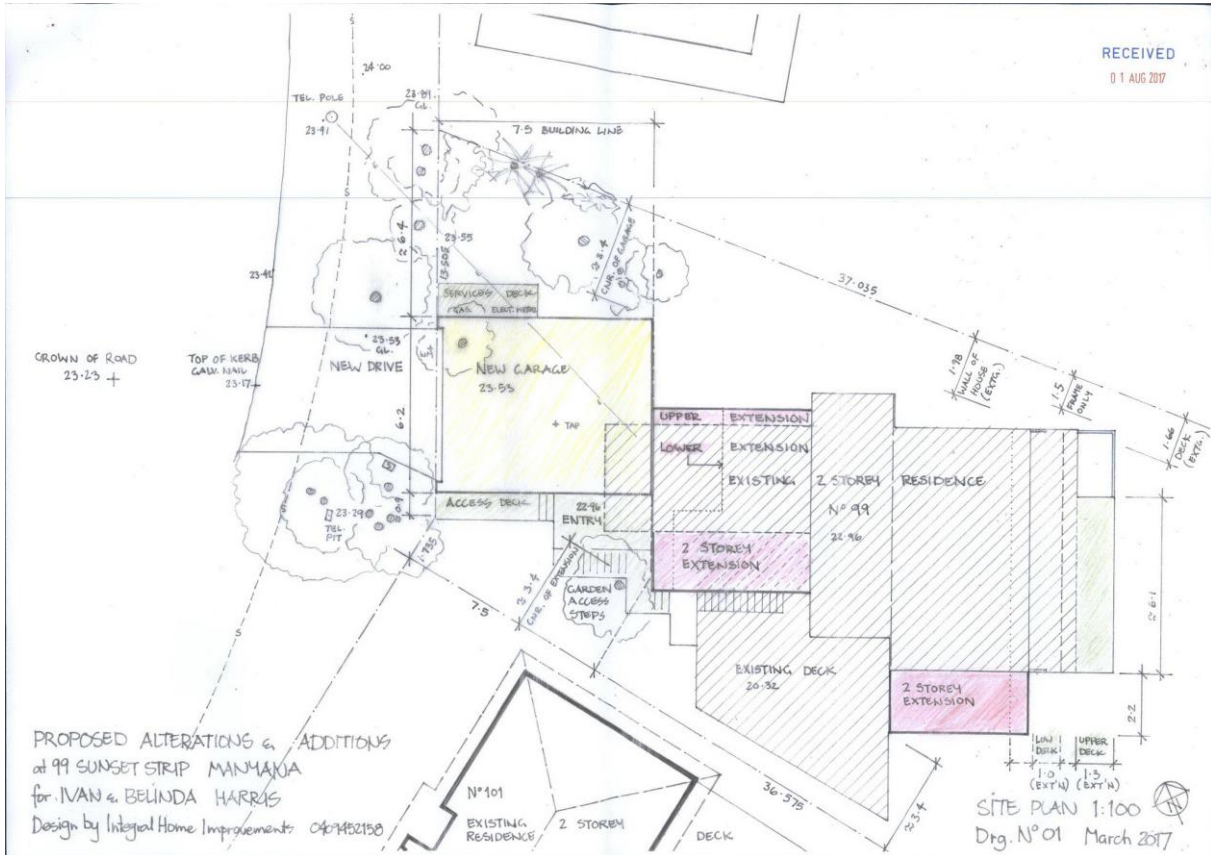


Figure 2 – Site Plan - Existing & Proposed Development

An Engineer’s review of the existing structure has identified a need to carry out remedial work to existing columns supporting the house and certain landscape retaining walls. In order to solve a number of issues, the application proposes to provide a lower level combined footing and retaining wall, and “open” steel frame to re-support the house and existing decks. The deck extension will provide a safe and more useable result, maintaining separation distances to neighbouring properties.

The following photos provide some context for the existing lower structure of the building:



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Figure 3 - Photos of existing structural elements

Subject Land

The land is a 626m<sup>2</sup> and is within an existing residential subdivision created in 1960's. The allotment frontage to Sunset Strip is 15.24m and has a depth of 36.6/37m. The land is zoned R2 - Low Density Residential and is subject to a 7.5m maximum building height under clause 4.3 of the SLEP 2014.



Figure 4 – Zoning Map

Site & Context

The site is steeply sloping with 9m of fall over the first 20m from the road frontage where the building is located. The majority of allotments on the south side of Sunset Strip east of this site are similar as shown on the map below with contours at 1m intervals. There are a



number of similar post frame designs along Sunset Strip due to the geotechnical challenges of the sites.



Figure 5 – Contour map



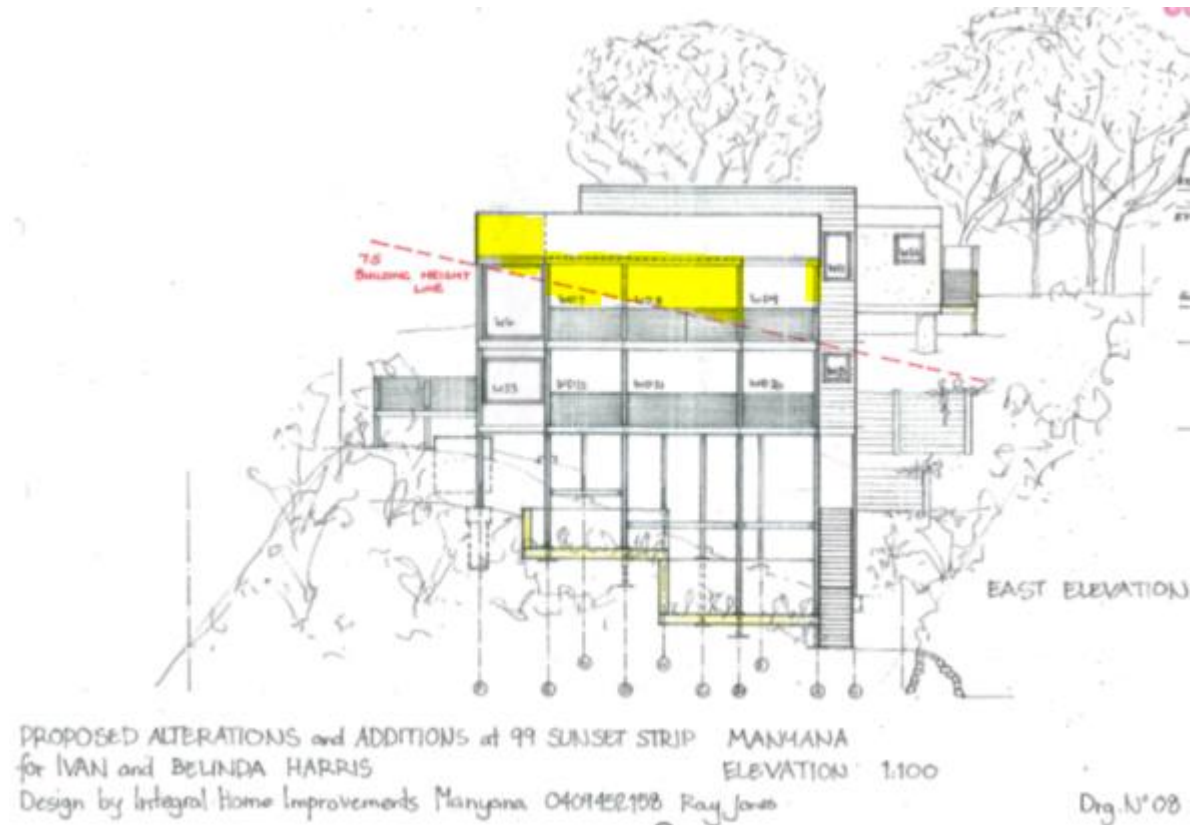
Figure 6 – Photos of existing building from front and rear

The property is identified as "Coastal Risk Planning" on Shoalhaven LEP 2014 overlay - clause 7.4 which applies to land that may be impacted by coastal hazards. A geotechnical report has been submitted with the application and its recommendations have been integrated into the design.

**Issues**

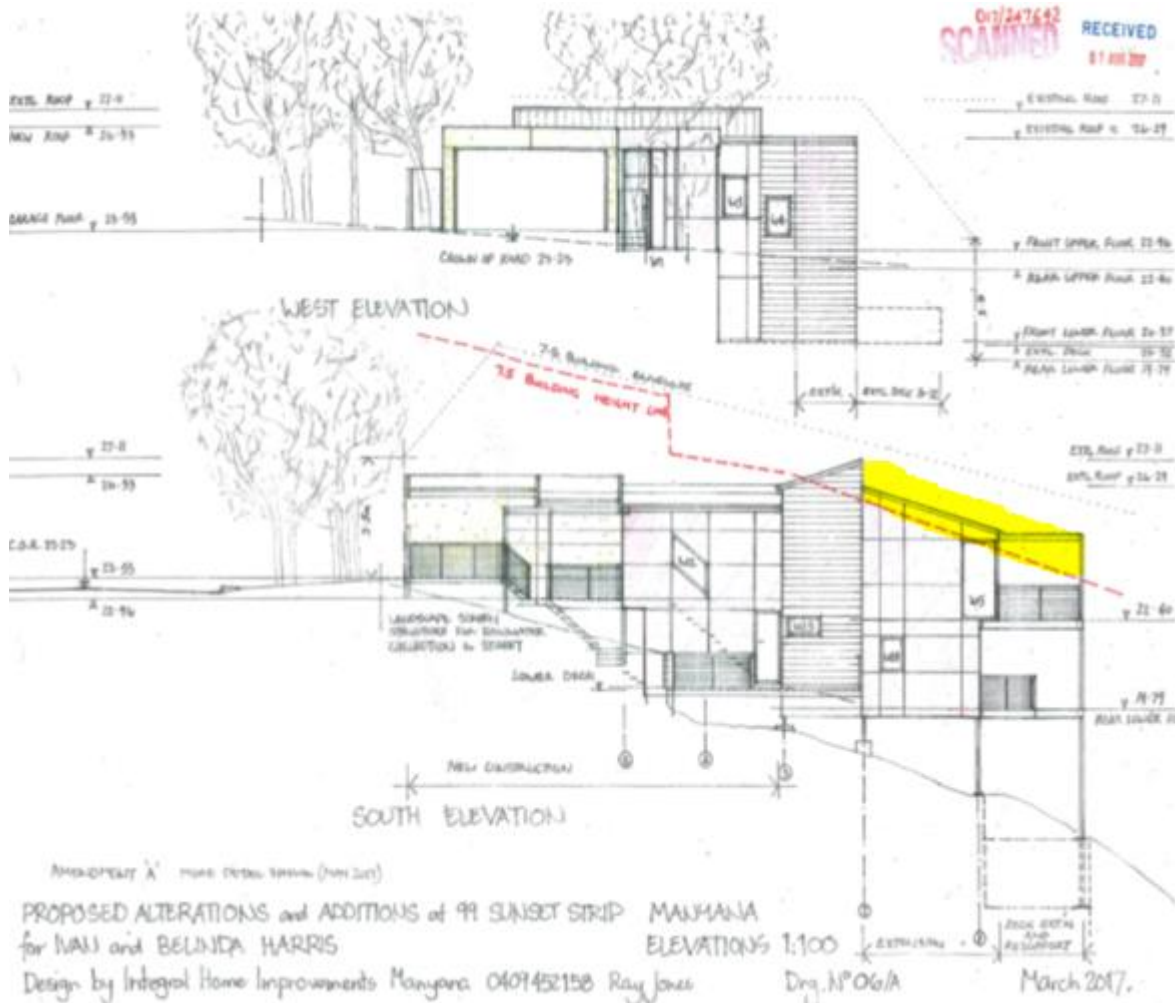
**Clause 4.3 Shoalhaven LEP 2014**

This clause of the LEP imposes a 7.5m maximum building height on the subject land. The application proposes additions to the existing building to a maximum height of 12m. The existing dwelling has building elements as high as 12.5m. The part of the building additions that exceed the 7.5m height limit include a section of the upper level deck and roof projecting east and extensions to the northern and southern side. These elements are highlighted in yellow and are shown in relation to the 7.5m building height line on the elevations below:

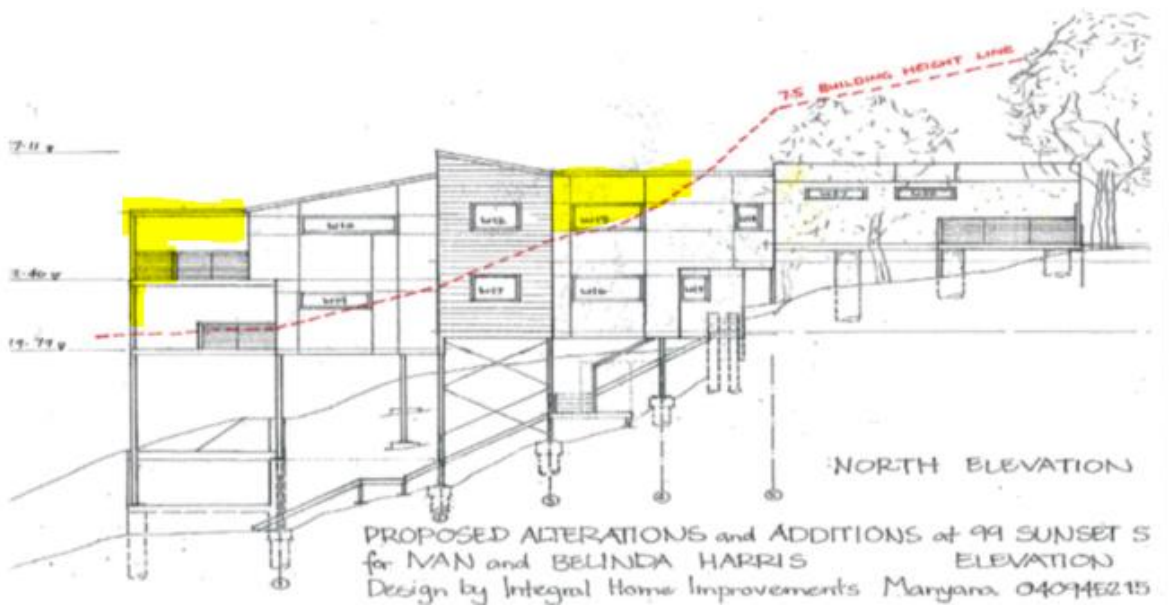


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Applicant's Submission

The applicant's Clause 4.6 variation statement and supporting information is included as **Attachment 1** in this report. This document satisfactorily addresses the matters required to support an application to vary a development standard and includes mapping where relevant.

The applicants supporting statement on how the proposal is consistent with the objectives of Clause 4.3 of the development standard includes:

*The proposal provides a more useable deck to accommodate an outside dining area for family and visitors with direct link to living and kitchen areas which is consistent with the housing needs and facilities of a residential dwelling. This improved facility provides for the day to day needs of the residents and is consistent with detached housing and is compatible with other adjacent development. The existing deck is not capable of providing a workable dining function catering for a reasonable number of occupants.*

*The small percentage of the proposal that varies from the standard is an “open” style frame and handrail design to support shading and provide safety. These elements will be in dark earthy toned colours to better blend into the hillside thus minimising the visual impact. The shading system will allow solar access, whilst the length and width of the deck extension is limited to protect views and privacy. The proposal is not on or in the vicinity of a heritage item or conservation area.*

*The existing site is a complex combination of splaying boundary shape and uneven slope whilst the existing residence is well established. The owners are trying to work with these parameters to achieve a “best fit” and relatively minor variation of the standard. The openness and treatment of the building elements, and again the limiting of the size of the deck and yet trying to meet the Development Standard as closely as practical shows genuine consideration by the owners.*

*If strict compliance with the standard was enforced the potential for a better social benefit being achieved for the owners and visitors to the property would be restricted since the proposed deck extension allows a more useable space which links to the existing functioning residence in an orderly and viable economic use of the land with this proposed development, without jeopardising the welfare of the community and environment.*

*The site and residence require slope instability hazard consideration. The existing structure is a risk of future failure. The style of the existing decks out of vertical supports and end infill treatment resembles a “mountain chalet” form, unrelated to the coast environment. It is proposed to provide a more conventional vertical support system incorporating a shading system providing protection and a safer solution which is more relevant to the coast.*

*The proposal is in the public interest in terms of improving the overall stability of the site and structure, thus avoiding the unfortunate scenario of landslip which has occurred on properties to the north of this site. It is intended to provide better structural connection between the existing house; and new footings which will act as a whole to create more stable conditions. The final result will be more aesthetically pleasing than the existing structure which appears to precariously “cling” to the hillside.*

### Discussion

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

An assessment of the proposed clause 4.6 variation against the five part test as outlined in Department of Planning, *Varying Development Standards, A Guide*, August 2011 follows:

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

The objectives of the development standard are:

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

It is considered that the objectives of the development standard are achieved notwithstanding noncompliance with the standard because:

- The maximum building height of the proposed additions and alterations is consistent with the existing dwelling and will sit comfortably with the existing character of the locality and is compatible with surrounding development;
- The bulk and scale of the development has been reduced through the cantilevering of building elements, clever articulation and selection of differing cladding systems;
- The visual impact from the development has been minimised through the existing vegetation which helps the home blend into terrain;
- Highly valued views have been retained due to the deck being an open form structure;
- There is no impact on views from houses either side or across the road.

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

The underlying objectives of Clause 4.3 preserve and support the zone objectives and the intentions of the SLEP 2014. The objectives of the R2 - Low Density Residential zone are

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*

It is considered that the proposal meets these objectives as it is proposing alterations and additions to an existing detached dwelling providing for the housing needs of the owner and does not propose any other land uses.

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

This provision is not relevant to this application

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

The development standard has not been abandoned or destroyed by previous decisions, this variation request is due to the topography of the land and existing development on the land.

In addition Council must take into account the Secretary's considerations required under clause 5.6(5) when assuming concurrence:

*4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional planning.*

It is considered that the variation does not raise any matter of significance for State or regional planning.

*4.6(5)(b) the public benefit of maintaining the development standard;*

There is no public benefit in maintaining the maximum building height of 7.5m over this lot as the existing building does not currently comply with this standard and was built before this standard was part of SLEP 2014 and the foreshore height code that applied at the time the dwelling was originally approved in 1984.

### **Planning Assessment**

The DA will be fully assessed under s79C of the Environmental Planning and Assessment Act 1979 upon Council's decision on this variation. The proposal does include a proposed variation to the acceptable solutions for front building setback which will be included in the final assessment, however, this part of the structure does not exceed the maximum building height and is consistent with existing development along this side of Sunset Strip and previous policies that applied specifically to this street due to the steep slope of lots on the southern side.

The proposal also does not comply with the building envelope acceptable solutions as the existing building does not, however, the proposed additions do not add significantly to this noncompliance and the issues are similar to the consideration of the height of the building. This issue can be addressed in the final assessment of the proposal.

### **Policy Implications**

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

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

Council's notification of the development resulted in no submissions being received. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site.

### **Legal Implications**

If the application is refused, or if the applicant is dissatisfied with Council's determination, or if the applicant can appeal on the basis of a deemed refusal because of Council's delay in determining the application, the applicant is entitled to appeal to the Land and Environment Court.

### **Summary and Conclusion**

The building height variation is supported for the following reasons:

- The new portions of the development do not exceed the existing height of the building above existing ground level;

- The site is steep and therefore provides challenges in designing a building of reasonable floor space, amenity and utility while minimising the number of levels;
- Houses in the street of a similar height were approved under DCP 91 prior to maximum building height of 7.5m being transferred to a development standard in SLEP 2014;
- The proposal is consistent with the height, bulk and scale of the existing and desired future character of the locality;
- The proposal has minimal visual impact, disruption of views, loss of privacy and loss of solar access to existing development;
- The applicant has adequately addressed the matters set out in clause 4.6 of Shoalhaven LEP 2014;
- The proposal will be in the public interest because it is consistent with the objectives of both the development standard and those of the R2 Low Density Residential zone.

Shoalhaven City Council - Varying Development Standards Shoalhaven Local Environmental Plans -  
Internal Procedure

Attachment A

Matters to be addressed in a written request to vary a development standard

To be submitted together with the development application (refer to EP&A Regulation 2000 Schedule 1 Forms).

Note: If more than one development standard is varied, an application will be needed for each variation (e.g. FSR and height).

1. What is the name of the environmental planning instrument that applies to the land?

SHOALHAVEN LOCAL ENVIRONMENTAL PLAN 2014

2. What is the zoning of the land?

R2 LOW DENSITY RESIDENTIAL

3. What are the objectives of the zone? Attach a zoning map of the land and surrounding properties

REFER TO ATTACHED COPY OF OBJECTIVES AND MAP

4. What is the development standard being varied and its numeric value? e.g. 40ha lot size. Attach a map of the development standard for the land and surrounding properties.

DEVELOPMENT STANDARD No 4.3 HEIGHT OF BUILDINGS  
AND D.C.P. CHAPTER 6.6 COASTAL MANAGEMENT AREAS LEP  
COPY OF MAP ATTACHED HEIGHT = 7.5 metres

5. Under what clause is the development standard listed in the environmental planning instrument?

SLEP 2014 Part 4 Clause 4.3

6. What are the objectives of the development standard?

REFER TO ATTACHED COPY OF OBJECTIVES

7. What is proposed numeric value of the development standard in your development application and the percentage variation (between your proposal and the environmental planning instrument)?

REFER TO ATTACHED A3 DRAWINGS  
WHICH OUTLINE THE BUILDING ENVELOPE DRGS. B.E.01, 02



Shoalhaven City Council - Varying Development Standards Shoalhaven Local Environmental Plans -  
Internal Procedure

8. How is the proposal consistent with the objectives of the zone in which the development is proposed to be carried out?

The proposal provides a more useable deck to accommodate an outside dining area for family and visitors with a direct link to living and kitchen areas which is consistent with the housing needs and facility of a residential dwelling. This improved facility provides for the day to day needs of the residents and is consistent with detached housing and is compatible with other adjacent development. The existing deck is not capable of providing a workable dining function catering for a reasonable number of occupants.

9. How is the proposal consistent with the objectives of the development standard?

The small percentage of the proposal that varies from the Standard is an "open" style frame and handrail design to support shading and provide safety. These elements will be in dark earthy toned colours to better blend into the hillside thus minimising the visual impact. The shading system will allow solar access whilst the length and width of the deck extension is limited to protect views and privacy. The proposal is not on or in the vicinity of a heritage item or conservation area.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The existing site is a complex combination of splaying boundary shape a uneven slope whilst the existing residence is well established. The owners are trying to work with these parameters to achieve a "best fit" and relatively minor variation of the Standard. The openness and treatment of the building elements and again the limiting of the size of the deck and yet trying to meet the Development Standard as closely as practical shows genuine consideration by the owners.

11. How would strict compliance with the development standard hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act.

If strict compliance with the Standard was enforced the potential for a better Social Benefit being achieved for the owners and visitors to the property would be restricted, since the proposed deck extension allows a more useable space which links to the existing functioning residence in an orderly and ~~orderly~~ viable economic use of the land with this proposed development, without jeopardising the welfare of the community and environment

REFER TO ATTACHED COPY OF SECTION 5(a)(i) and (ii)

12. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

The site and residence require Slope Instability Hazard consideration. The existing structure is at risk of future failure. The style of the existing deck's out of vertical supports and end infill treatment resembles a "mountain chalet" form, unrelated to the coast environs. It is proposed to provide a more conventional vertical support system incorporating a shading system providing protection and a safer solution which is more relevant to the coast.

13. How will the proposal be in the public interest?

The proposal is in the public interest in terms of improving the overall stability of the site and structure, thus avoiding the unfortunate scenario of landslip which has occurred on properties to the north of this site. It is intended to provide better structural connection between the existing house and new footings which will act as a whole to create more stable conditions. The final result will be more aesthetically pleasing than the existing structure which appears to precariously "cling" to the hillside.

2014 No 179

Shoalhaven Local Environmental Plan 2014

Clause 2.8

Land Use Table

Part 2

stations; Veterinary hospitals; Water recreation structures; Water supply systems

**4 Prohibited**

Farm stay accommodation; Any other development not specified in item 2 or 3

**Zone R1 General Residential**

**1 Objectives of zone**

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To identify land suitable for future urban expansion.

**2 Permitted without consent**

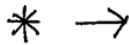
Home occupations

**3 Permitted with consent**

Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes, Exhibition villages; Group homes; Home-based child care; Home businesses; Home industries; Hostels; Jetties; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Recreation areas; Registered clubs; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Sewerage systems; Shop top housing; Tourist and visitor accommodation; Veterinary hospitals; Water supply systems

**4 Prohibited**

Farm stay accommodation; Any other development not specified in item 2 or 3



**Zone R2 Low Density Residential**

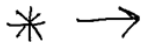
**1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.

**2014 No 179**

Clause 2.8 Shoalhaven Local Environmental Plan 2014

Part 2 Land Use Table



- To enable other land uses that provide facilities or services to meet the day to day needs of residents,
- To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.

**2 Permitted without consent**

Home occupations

**3 Permitted with consent**

Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Jetties; Neighbourhood shops; Places of public worship; Recreation areas; Respite day care centres; Roads; Sewerage systems; Water supply systems

**4 Prohibited**

Any development not specified in item 2 or 3

**Zone R3 Medium Density Residential**

**1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.

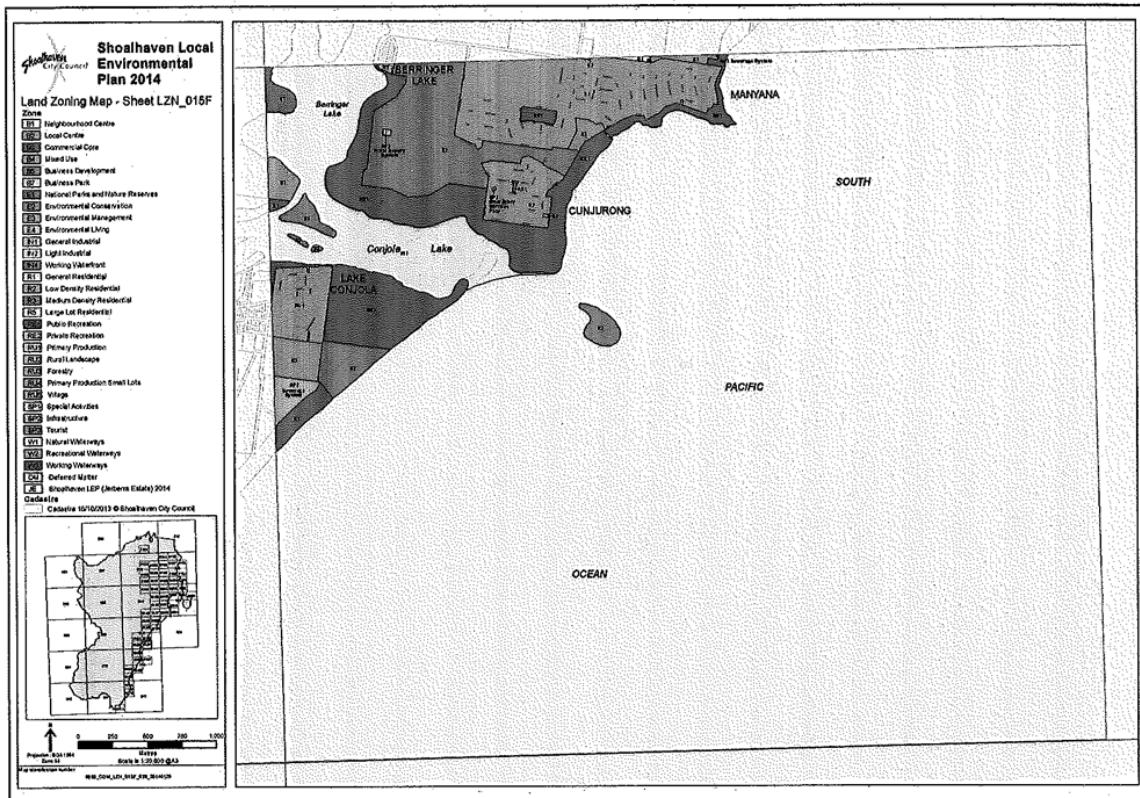
**2 Permitted without consent**

Nil

**3 Permitted with consent**

Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs;

ZONING MAP



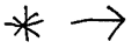
DE18.13 - Attachment 1

**2014 No 179**

Clause 4.3 Shoalhaven Local Environmental Plan 2014

Part 4 Principal development standards

- (d) the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.



**4.3 Height of buildings**

- (1) The objectives of this clause are as follows:
- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,
  - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
  - (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

**4.4 Floor space ratio**

- (1) The objectives of this clause are as follows:
- (a) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of a locality.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

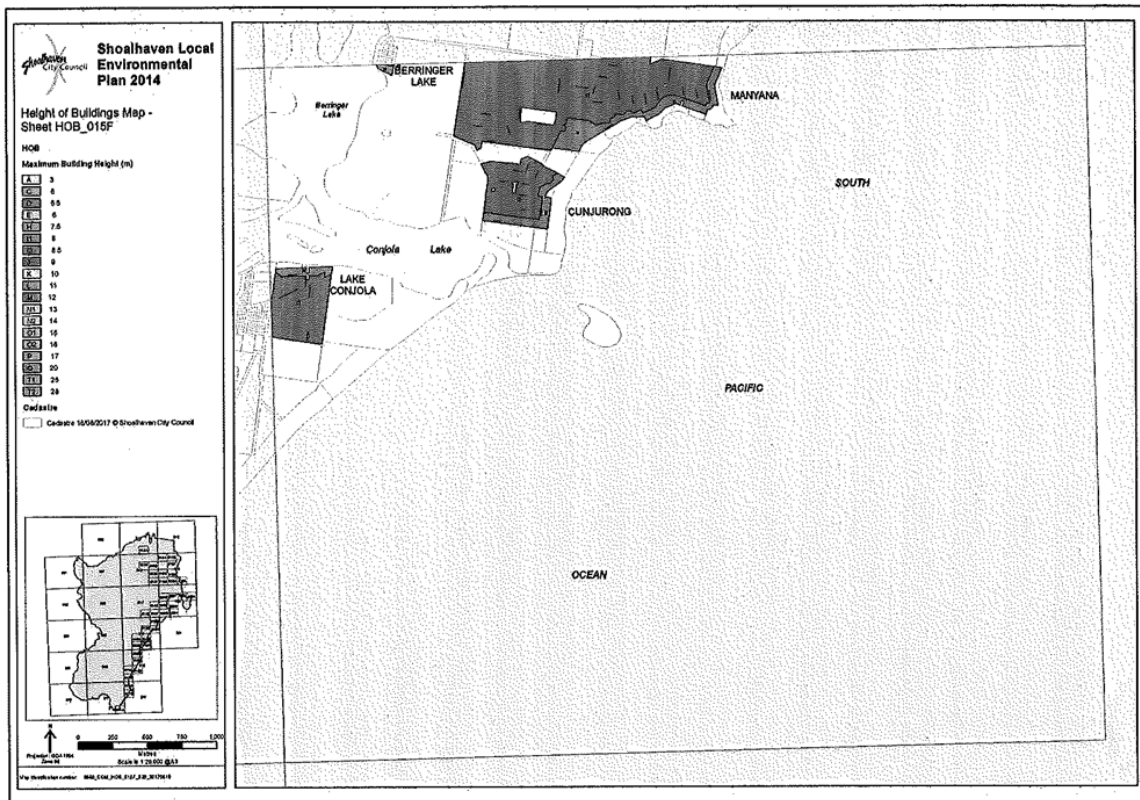
**4.5 Calculation of floor space ratio and site area**

**(1) Objectives**

The objectives of this clause are as follows:

- (a) to define *floor space ratio*,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
  - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
  - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
  - (iii) require community land and public places to be dealt with separately.

HEIGHT of BUILDINGS MAP



DE18.13 - Attachment 1



## Environmental Planning and Assessment Act 1979 No 203

Current version for 13 October 2017 to date (accessed 28 November 2017 at 09:55)

Part 1 ▶ Section 5

### 5 Objects



The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
  - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
  - (iii) the protection, provision and co-ordination of communication and utility services,
  - (iv) the provision of land for public purposes,
  - (v) the provision and co-ordination of community services and facilities, and
  - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species and ecological communities, and their habitats, and
  - (vii) ecologically sustainable development, and
  - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

## **DE18.14 Development Application – 56 Red Gum Drive Ulladulla – Lot 506 DP 1235307**

**DA. No:** DA17/2529/2

**HPERM Ref:** D18/24118

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

**Description of Development:** Erection of dual occupancy and Torrens Title subdivision.

**Owner:** Hazcorp Pty Ltd

**Applicant:** Joseph & Nicole Campisi

**Notification Dates:** 13 December 2017 to 28 December 2017

**No. of Submissions:** Nil submissions

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

Council is in receipt of a development application to construct a detached dual occupancy including Torrens Title subdivision. The site currently has an area of 957m<sup>2</sup> and the subdivision proposes two (2) allotments, Lot 1 - 401.6m<sup>2</sup> and Lot 2 - 443.6m<sup>2</sup> (555.7m<sup>2</sup> with the access handle).

Most of the existing lot is included in the mapped area for dual occupancy subdivision under clause 4.1A of Shoalhaven Local Environmental Plan 2014 (SLEP 2014) with minimum lot size of 350m<sup>2</sup>, however, a portion of the rear of the lot is outside this mapped area due to what appears to be a mapping anomaly that relates to the mapping that was done for the future Milton Ulladulla Bypass. Therefore, in accordance with clause 4.1, the lot size map requires a minimum subdivision lot size of 500m<sup>2</sup> for proposed Lot 2 (excluding the access handle) the proposed lot is 443.6m<sup>2</sup> which is a 11.3% variation to the development standard.

The assumed concurrence from the Secretary, Department of Planning requires that with cl 4.6 variations in excess of 10% the exercise of the assumed concurrence must be carried out by the full Council not by delegation to staff. The application is therefore presented to the committee for recommendation to the Ordinary Council Meeting.

### **Recommendation**

That the Development Committee recommends that:

1. Council exercise the Secretary's assumed concurrence under clause 4.6 and support the 11.3% variation to the 500m<sup>2</sup> minimum lot size set by clause 4.1 of Shoalhaven Local Environmental Plan 2014 for Lot 2 at 443.6 m<sup>2</sup> (555.7m<sup>2</sup> with the access handle) for subdivision of the dual occupancy to be erected at Lot 506 DP 1235307, 56 Red Gum Drive Ulladulla; and
2. The mapping anomaly in relation to clause 4.1A in this location is included in a future housekeeping planning proposal to amend Shoalhaven Local Environmental Plan 2014; and
3. The application be referred back to staff for determination.

DE18.14

## Options

1. Support the cl 4.6 SLEP 2014 variation.

Implications: Subject to the satisfactory completion of the section 79C assessment of the development application the application can then be determined under delegated authority.

2. Not support the variation.

Implications: The application could not proceed and it would be determined by way of refusal. The applicant would have a right to appeal to the Land and Environment Court.

## Location Map

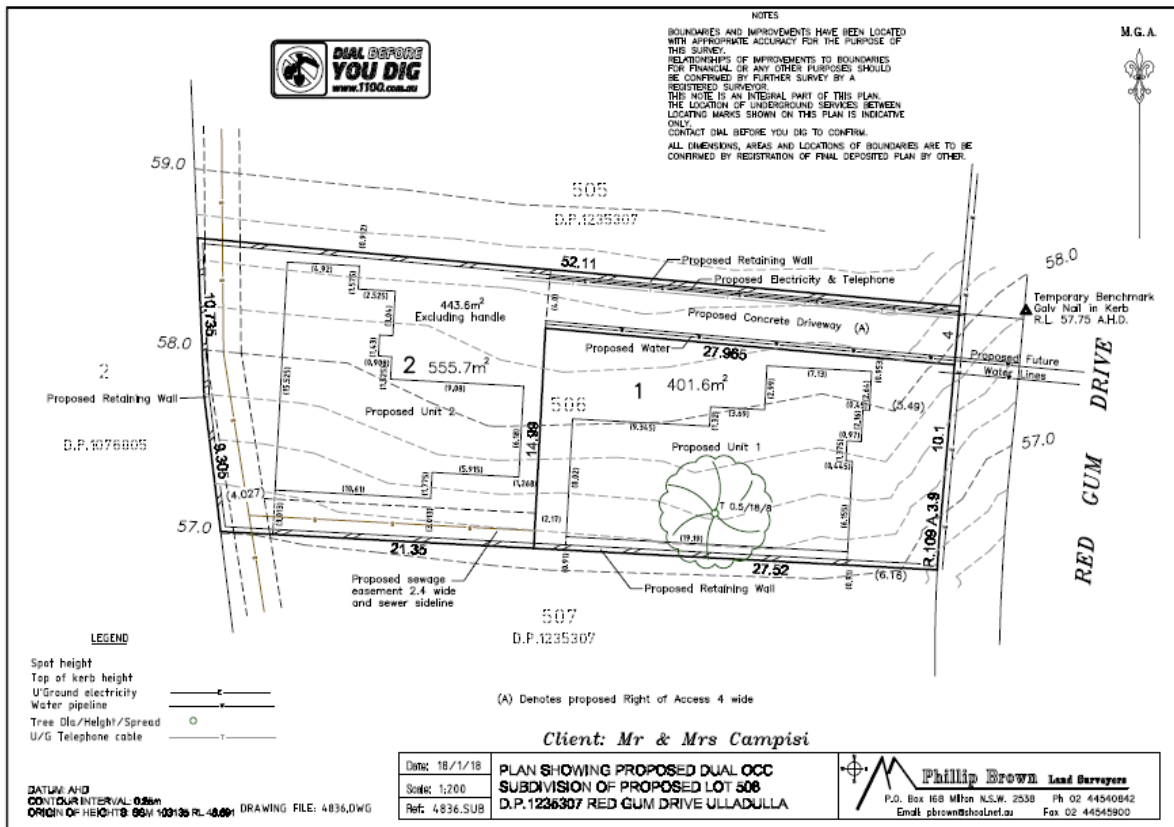


Figure 1 – An aerial view showing the location of allotment on Red Gum Drive

## Background

### Proposed Development

The proposal is to construct a detached dual occupancy on the existing allotment and subdivide on completion in the layout of the as shown in Figure 2.



DE18.14

Figure 2 - Proposed dwellings location and subdivision plan

Subject Land

The subject site is identified as Lot 506, DP1235307, 56 Red Gum Drive, Ulladulla. The site is located in a recent stage of a subdivision in Red Gum Drive Ulladulla and adjoins part of the proposed Milton Ulladulla bypass at the rear.

Site & Context

The site is located on the southern part of Red Gum Drive which is an extension of the Royal Mantle Estate and is located approximately 1.5km north-west of Ulladulla Town Centre. The estate extends north from Golden Wattle Drive towards the Princes Highway and is bounded on the west by the land zoned for the future Milton Ulladulla bypass.

The adjoining allotments to the north and south are all of similar size and there are larger size allotments within the estate. A group of lots to the north (which were part of an earlier stage land release in 2009), also on the western side of Red Gum Drive, have been subdivided for dual occupancy development in the same lot pattern as proposed by this application as they are not impacted by the mapping anomaly.

History

This site is part of a larger staged subdivision that has been developed over several years. The southern part of Red Gum Drive is the most recent released stage. This application is one of the first Council has received in this recent land release.

Prior to SLEP 2014 part of the rear of the land was zoned 5D Special Uses under SLEP 1985 and was part of the land required for the Milton Ulladulla bypass road. During the



exhibition of the Draft LEP the RMS advised that they no longer required this part of the land and it was rezoned to R1 General Residential in SLEP 2014.

The SLEP 2014 Lot Size Maps have two layers that apply to the subject land. The Lot Size Map and the Lot Size Clauses Map (cl 4.1A). During the development of SLEP 2014 the Lot Size Map was created corresponding with the Land Zone Map, however the Lot Clauses Map inadvertently followed the SLEP 1985 Land Zone Map and so created the anomaly that now exists. The Lot Size Map covers the entire lot and a 500m<sup>2</sup> minimum lot size applies to the land, and the Lot Size Clauses Map that allows dual occupancy subdivision to min 350m<sup>2</sup> (blue line) applies to approximately 600m<sup>2</sup> of the front of the lot as can be seen in Figure 3 below.

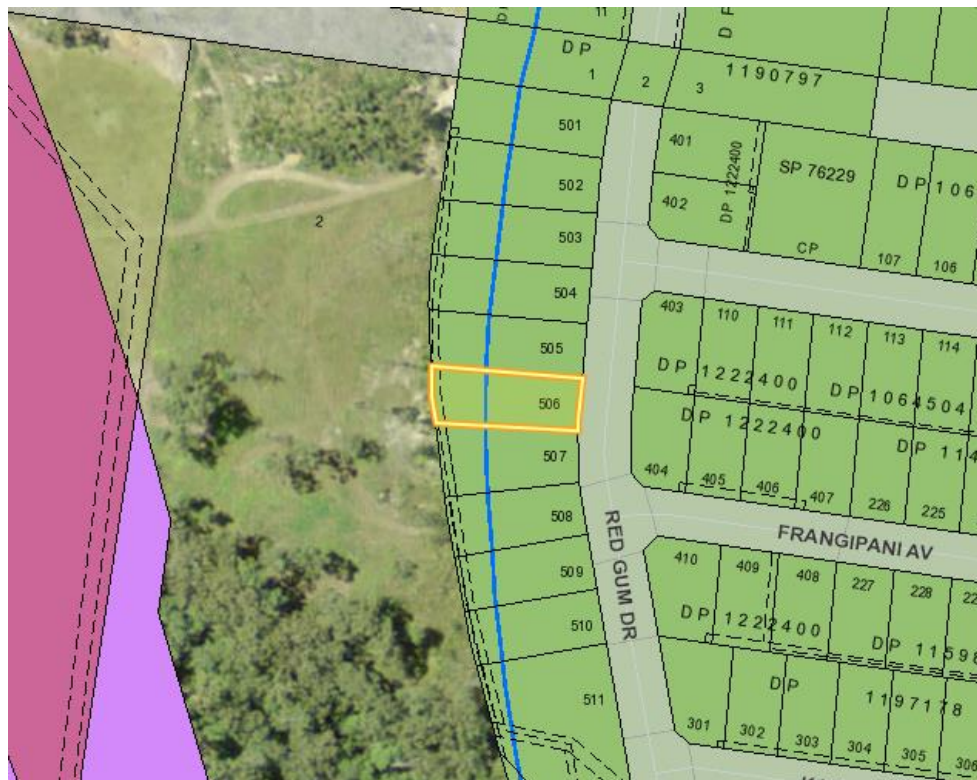


Figure 3 - SLEP 2014 Lot Size and Clauses Map

## Issues

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

The subdivision proposes 2 allotments, Lot 1 - 401.6m<sup>2</sup> and Lot 2 - 443.6m<sup>2</sup> (555.7m<sup>2</sup> with the access handle). Clause 4.1 of SLEP2014 requires a minimum lot size of 500 m<sup>2</sup> and SDCP 2014 requires that the access handle is not included in the calculation of the minimum lot size, this means Lot 2 is 443.6m<sup>2</sup>. This represents an 11.3% variation to the development standard (i.e. 56.4/500 = 11.3%).

Clause 4.1A of SLEP relates to exceptions to the minimum lot sizes for dual occupancies and multi dwelling housing. This applies to the land as the land is partly mapped within the area identified as “Area 1” on the “Lot Size Map” of SLEP 2014. Area 1 permits subdivision of lots down to a minimum of 350m<sup>2</sup>. Therefore, only Lot 1 can rely on this clause for subdivision. This appears to be a mapping anomaly as discussed previously.

### Applicant's Submission

The reasons outlined in the applicant's variation statement include:

- *Part of the lot is mapped in 4.1A Exceptions to minimum lot size for dual occupancies and multi dwelling housing which allows for subdivision down to 350m<sup>2</sup>.*
- *The Lot Size Map – Area 1 appears to be in error given that that it does not include the whole lot.*
- *The proposal is consistent with the objectives of the R1 zone as it will provide for the needs of the community and adds to the available housing types.*

Discussion

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

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

The objectives are:

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

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

- The resultant allotment is only a 11.3% variation to the standard and is considered compatible with the existing subdivision pattern;
- Both proposed allotments can achieve a reasonable single storey three bedroom dwelling house with adequate off street vehicle parking and sufficient private open space;
- The proposal also meets the general requirements of Council’s Chapter G13 Dual occupancy development of Shoalhaven Development Control Plan 2014 (SDCP2014), including solar access;
- The proposed development will not have an adverse impact on adjoining development in terms of loss of views, privacy and amenity.

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

The underlying objectives of Clause 4.1 preserve and support the zone objectives and the intentions of the SLEP 2014.

The objectives of the R1 – General residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To identify land suitable for future urban expansion.*



Development for the purpose of detached dual occupancy is permissible with consent. The proposal to subdivide the completed development will provide a greater diversity of housing stock which will support the housing needs of the community. Retaining the land as one allotment is inconsistent with the objectives of improving housing affordability.

Single storey houses on small lots as proposed provide for more manageable low maintenance dwellings that appeal to the ageing population. The development is located a short drive to the Ulladulla Town Centre that provides a wide range of services and facilities.

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

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

The issue has arisen due to a mapping anomaly and a relatively minor variation. Therefore, compliance with the 500m<sup>2</sup> minimum lot size would be unreasonable in this instance.

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

The development standard has not been abandoned, this variation request is due to a mapping anomaly on the Lot Size Clauses Map which does not align with the underlying Land Zone Map, Lot Size Map or lot cadastre.

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

As discussed above the parcel is zoned correctly and the variation request is due to a mapping anomaly. In addition, Council must take into account the Secretary's considerations required under clause 5.6(5) when assuming concurrence:

*4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional planning.*

It is considered that the variation does not raise any matter of significance for State or regional planning.

*4.6(5)(b) the public benefit of maintaining the development standard; and*

There is no public benefit in maintaining the lot size standard over this lot as the intent of SLEP 2914 was that the reduced lot size for dual occupancy would apply to the whole of the existing lot.

### **Planning Assessment**

The DA will be assessed under s79C of the Environmental Planning and Assessment Act 1979 following Council's decision on exercising the Secretary's assumed concurrence.

### **Policy Implications**

There are no specific policy implications that arise from this matter. Clause 4.6 of Shoalhaven Local Environmental Plan 2014 provides the legal ability for Council to grant the variation to development standards and Councils adopted Internal Procedure PRD15/143 provides the framework to ensure the process is conducted in a manner which does not undermine the development standard. This request has been considered in accordance with the most recent notification of assumed concurrence issued by the Secretary on 27 November 2017.

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

Notification was carried out in accordance with Council's Community Consultation Policy with letters sent to owners of ten (10) properties within a 100m buffer of the site. The notification was for a 14 day period.

No submissions were received during or after the notification period.

### **Financial Implications:**

Nil

### **Legal Implications**

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

### **Summary and Conclusion**

The request for the variation to the minimum lot size is considered to be well founded and:

- The proposed development complies with Councils DCP provisions;
- The development will not significantly impact upon the surrounding development;
- No submissions were received in relation to the development or the variation.

## 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.