

Development Committee

Meeting Date: Tuesday, 13 March, 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

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

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

Agenda

1. **Apologies / Leave of Absence**
2. **Confirmation of Minutes**
 - Development Committee - 13 February 20181
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

Nil
7. **Reports**
 - DE18.15 Proposed Policy - Development Potential of Narrow Laneways across Shoalhaven9
 - DE18.16 Update and Proposed Next Steps - Nowra CBD Fringe Medium Density Study Recommendations Report - Public Exhibition23
 - DE18.17 Proponent Initiated Planning Proposal - Lot 3 DP 846470 Jervis Bay Road, Falls Creek36
 - DE18.18 Exhibition - Draft Works in Kind Agreement - DA15/1102 - 21 Beach Street, Huskisson49
 - DE18.19 Nowra CBD Contributions Discount Subsidy Policy - Review52

DE18.20	Exhibition Outcome and Finalisation - Draft Amendment No 22 - Shoalhaven Development Control Plan 2014 - Chapter N19: Huskisson Mixed Use Zones.....	57
DE18.21	Aboriginal Land Claim No.41831 - Illaroo	64
DE18.22	SF10586 – 11 Grahams Rd, Meroo Meadow – Lot 2 DP 861948.....	77

8. Confidential Reports

Nil

Development Committee

Delegation

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

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

Schedule

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

MINUTES OF THE DEVELOPMENT COMMITTEE

Meeting Date: Tuesday, 13 February 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.02pm

The following members were present:

Clr Amanda Findley
Clr Joanna Gash - Chairperson
Clr Patricia White
Clr John Wells
Clr John Levett
Clr Nina Cheyne
Clr Kaye Gartner
Clr Mitchell Pakes
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

Apologies were received from Clr Guile and Clr Alldrick.

Confirmation of the Minutes

RESOLVED (Clr Wells / Clr White)

MIN18.77

That the Minutes of the Development Committee held on Monday 22 January 2018 be confirmed.

CARRIED

Declarations of Interest

Clr Watson – less than significant non pecuniary declaration of interest - DE18.8 Worrowing Heights Precinct Plan and Strategic Directions Report - Public Exhibition Outcomes – Clr Watson may be called in as a witness to matters in court that are alleged to involve one of the property owners — will leave room and will not take part in the discussion or vote.

DEPUTATIONS AND PRESENTATIONS

Mr Daniel McConell addressed the Committee in relation to DE18.8 Worrowing Heights Precinct Plan and Strategic Directions Report - Public Exhibition Outcomes

Mr Gavin Maberly-Smith – representing Rest Point Holdings P/L addressed the Committee in relation to DE18.10 Planning Proposal - 9 Browns Road South Nowra – Caravan Park

Mr John Willmott – representing Mr Babington addressed the Committee in relation to DE18.11 Planning Proposal - Building Height Review - Southern Part of Ulladulla CBD

Dr Morgan Sant addressed the Committee in relation to DE18.12 Aboriginal Land Claims 7780, 7781 and 41110 – Rose Street, Hyams Beach

Procedural Motion - Bring Item Forward

RESOLVED (Clr Pakes / Clr Proudfoot)

MIN18.78

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

- DE18.8 Worrowing Heights Precinct Plan and Strategic Directions Report - Public Exhibition Outcomes
- DE18.10 Planning Proposal - 9 Browns Road South Nowra – Caravan Park
- DE18.11 Planning Proposal - Building Height Review - Southern Part of Ulladulla CBD
- DE18.12 Aboriginal Land Claims 7780, 7781 and 41110 – Rose Street, Hyams Beach

CARRIED

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

**HPERM Ref:
D17/392947**

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

Worrawing 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 Worrawing 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, Worrawing 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 Worrawing Heights Precinct Plan and Strategic Directions Report of Council's resolution in this regard.

RESOLVED (Clr Gartner / Clr Cheyne)

MIN18.79

That:

1. Council receive the submissions provided in respect of the draft Worrawing Heights Precinct Plan and Strategic Directions Report for information.
2. Council adopt the Worrawing 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 Worrawing Heights Precinct Plan and Strategic Directions Report.
4. The review of the Jervis Bay Settlement Strategy continue to be undertaken in accordance with Council's adopted Strategic Planning works program and as part of this consider the incorporation of the Worrawing Heights Precinct Plan and Strategic Directions Report as an input into the review of the Jervis Bay Settlement Strategy.
5. Council to defer consideration of the Planning Proposal for 1310 Naval College Road, Worrawing Heights, to enable the matter to be discussed with the proponent.
6. Council advise landowners, submitters and State Government Agencies to the Draft Worrawing Heights Precinct Plan and Strategic Directions Report of Council's resolution in this regard.

Clr Watson – less than significant non pecuniary declaration of interest - DE18.8 Worrawing Heights Precinct Plan and Strategic Directions Report - Public Exhibition Outcomes – Clr Watson may be called in as a witness to matters in court that are alleged to involve one of the property

owners — will leave room and will not take part in the discussion or vote.

FOR: Clr Findley, Clr Gash, Clr White, Clr Wells, Clr Levett, Clr Cheyne, Clr Gartner, Clr Pakes, Clr Proudfoot and Russ Pigg

AGAINST: Clr Kitchener

CARRIED

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

**HPERM Ref:
D17/421697**

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.

RESOLVED (Clr Cheyne / Clr Gartner)

MIN18.80

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.

Note: Clr Watson returned to the meeting, the time being 6.11pm.

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

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D18/17734**

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.

RESOLVED (Clr White / Clr Gash)

MIN18.81

That Council:

1. Endorse Planning Proposal (PP030) Building Height Review – Southern Part of Ulladulla CBD (**Attachment 1**) with the following change:
 - a) Include 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) with a mapped height of 11m in line with the outcomes of the Review of Building Heights Report endorsed by Council on 14 November 2017 (MIN17.954).
2. Submit the modified Planning Proposal to the NSW Department of Planning & Environment for a Gateway determination.
3. Notify Ulladulla & Districts Community Forum, affected landowners and key stakeholders of this decision and of further opportunities to be involved as this matter progresses.

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

AGAINST: Nil

CARRIED

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

**HPERM Ref:
D18/18069**

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.

RESOLVED (Clr Watson / Clr Pakes)

MIN18.82

That Council

1. Notify the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit that Council:
 - a. 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.
 - b. 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.
2. Once the land claim has been dealt with, that the General Manager immediately report back to Council

- a. On the options to change the reservation to permit community use over Lot 79
- b. Opportunities to appoint a community group to undertake the restoration and renovations of the building

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

AGAINST: Clr Cheyne and Clr Gartner

CARRIED

REPORTS

DE18.7 Proposed Submission - Draft Greener Places Policy

HPERM Ref:
D18/19106

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.

RESOLVED (Clr Findley / Clr Wells)

MIN18.83

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

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

AGAINST: Clr Pakes

CARRIED

DE18.8 WORROWING HEIGHTS PRECINCT PLAN AND STRATEGIC DIRECTIONS REPORT - PUBLIC EXHIBITION OUTCOMES

HPERM REF:
D17/392947

Item dealt with earlier in the meeting see MIN18.79

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

HPERM Ref:
D17/419590

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.

RESOLVED (Clr Findley / Clr White)

MIN18.84

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.

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

AGAINST: Clr Pakes and Clr Watson

CARRIED

DE18.10 PLANNING PROPOSAL REQUEST - PROPONENT INITIATED - 9 BROWNS ROAD, SOUTH NOWRA - CARAVAN PARK

HPERM REF: D17/421697

Item dealt with earlier in the meeting see MIN18.80

DE18.11 PLANNING PROPOSAL - BUILDING HEIGHT REVIEW - SOUTHERN PART OF ULLADULLA CBD

HPERM REF: D18/17734

Item dealt with earlier in the meeting see MIN18.81

DE18.12 ABORIGINAL LAND CLAIMS NUMBERS 7780, 7781 AND 41110 - ROSE STREET, HYAMS BEACH

HPERM REF: D18/18069

Item dealt with earlier in the meeting see MIN18.82

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

HPERM Ref: D18/23344

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.

RECOMMENDATION (Clr Wells / Clr White)

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.

CARRIED

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

**HPERM Ref:
D18/24118**

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 500m² minimum lot size set by clause 4.1 of Shoalhaven Local Environmental Plan 2014 for Lot 2 at 443.6 m² (555.7m² 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.

RECOMMENDATION (Clr Wells / Clr White)

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 500m² minimum lot size set by clause 4.1 of Shoalhaven Local Environmental Plan 2014 for Lot 2 at 443.6 m² (555.7m² 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.

CARRIED

There being no further business, the meeting concluded, the time being 6.49pm.

Clr Gash
CHAIRPERSON

DE18.15 Proposed Policy - Development Potential of Narrow Laneways across Shoalhaven

HPERM Ref: D17/397661

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Desktop Assessment Culburra Laneways - Development Potential [↓](#)

Purpose / Summary

Identify current/emerging issues associated with development on narrow laneways across Shoalhaven, that have arisen as a result of two Development Applications (DA) at Allerton Lane at Culburra Beach.

In response to these issues, seek direction from Council on the establishment of an 'interim' policy position regarding the development of such laneways across the City. The resolved interim policy position will then inform a subsequent review and potential housekeeping amendment to Shoalhaven Development Control Plan (DCP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Establish an 'interim' policy position in relation to development on narrow laneways in Shoalhaven that includes:
 - a. Laneways are not to be used as primary frontages.
 - b. Development proposals to increase densities along narrow laneways that have a road reserve width of less than 10m are not supported.
 - c. Development proposals to increase densities across along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:
 - i. The development results in minimal impact on existing residential amenity, and
 - ii. Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.
2. Undertake a review of Shoalhaven Development Control Plan 2014 to:
 - a. Identify any gaps in planning policy in relation to development in laneways.
 - b. Prepare development controls that may allow for sympathetic infill development or increased densities in certain laneways across Shoalhaven consistent with Council's adopted policy decision.
3. Receive a further report to endorse the reviews to Shoalhaven Development Control Plan 2014, prior to public exhibition.

DE18.15

Options

1. Adopt the recommendation to establish an 'interim' policy position in this regard and based on this undertake a review of the Shoalhaven DCP 2014 to establish appropriate controls.

Implications: This is the preferred option, as it will help mitigate future ad-hoc development outcomes from occurring along narrow laneways that do not have the capacity to support increased densities.

This option will also enable Council to consider a possible amendment to the Shoalhaven DCP 2014 to enable future development that is sympathetic to residential amenity and neighbourhood character, and that is able to be supported by existing infrastructure networks and services.

The recommendation means that development will not be supported where laneways are less than 10m and where greater than 10m, the development must treat the laneway as a rear access.

2. Adopt an alternative recommendation.

Implications: Depending on the nature of the alternative recommendation this could create certain risks. This may also establish a precedent with respect to increased densities in laneways and use of laneways and primary frontages.

3. Not adopt the recommendation.

Implications: This is not preferred. Council does not currently have a policy position on developments that propose to utilise rear laneways for primary vehicular access and frontage. Narrow rear laneways across Shoalhaven are typically not designed to cope with the same level of traffic, and do not have the same level of infrastructure and services as primary streets.

Approval of individual DA's along these laneways without first establishing a policy position would set an undesirable precedent for potentially inappropriate development along narrow laneways, with potentially detrimental impacts on existing infrastructure and neighbourhood amenity.

Background

Council is currently in receipt of the following two DA's on separate sites that adjoin Allerton Avenue at Culburra Beach:

1. SF10588 – 15 Allerton Avenue, Culburra Beach
 - Lodgement date: 18 May 2017
 - Proposal: Two (2) lot residential subdivision
2. DA17/1992 – 19 Allerton Avenue, Culburra Beach
 - Lodgement date: 8 August 2017
 - Proposal (as originally submitted): Detached dual occupancy and two-lot Torrens title subdivision

Both applications as originally submitted sought to utilise Allerton Lane (situated to the rear of Allerton Avenue) as a primary frontage for future development. A map showing the subject sites is provided below (Figure 1).



Figure 1 - Subject Sites - 15 and 19 Allerton Avenue, Culburra Beach

DE18.15

Although each of these applications, in isolation, do not raise critical concerns in terms of infrastructure provision and impact on amenity, the lodgement of two applications in a three-month period on sites close to each other triggered a review of the existing situation and Council's planning controls regarding the use of rear laneways as a primary frontage for future development. This was considered necessary to do given the growing potential for people to seek to redevelop for higher uses along these laneways.

At present, the development controls within the Shoalhaven Local Environmental Plan (LEP) 2014 and the Shoalhaven DCP 2014 do not explicitly exclude this land from being developed for increased densities (i.e. residential subdivision or dual occupancy development).

This report does not seek to make a determination on either of these applications, rather it covers the following:

- Highlights the policy gap that presently exists regarding future development off or adjacent to narrow laneways across Shoalhaven,
- Identifies the physical limitations of these laneways, and
- Discusses potential precedents that could be set by allowing these laneways to be used as a primary frontage for future development.

Summary of Development Applications

As noted above, two DA's have been lodged that propose to utilise the narrow rear lane of Allerton Lane as a primary access and frontage for future development.

Council staff have identified a number of issues in the assessment of each of these applications regarding the use of Allerton Lane for primary access. Impacts such as the

capacity of existing infrastructure, impacts on ageing infrastructure, car parking, pedestrian safety and waste collection are all relevant.

In determining these applications, there is a potential that a precedent will be set for future development along similar laneways throughout Shoalhaven.

The two applications, one for subdivision and the other for a development and subdivision also demonstrate a slightly different assessment regime which further highlights the need for a consistent policy position and approach.

SF10588 – 15 Allerton Avenue, Culburra Beach

This application is currently under assessment by Council staff and seeks to subdivide the existing lot into two, with one lot (containing an existing dwelling) continuing to gain access from Allerton Avenue, and the proposed additional lot to the rear utilising Allerton Lane as its primary frontage.

The initial stages of the assessment raised some concerns regarding waste collection - Council's Waste Services Section noted that the narrow width of the Allerton Lane was insufficient for waste collection for the proposed vacant lot.

Neighbouring landowners were notified of the application and at the time of writing, no submissions had been received regard to this application.

At the time, a meeting was held between the applicant, landowner and relevant Council officers to discuss a way forward. An interim agreement was reached to enable the proposed lot to be serviced by waste collection from nearby Mowbray Road or Woodland Street and no other significant concerns were raised at that point regarding the use of the laneway as a primary road frontage.

Following the subsequent lodgement of the second DA at 19 Allerton Avenue (as detailed below), Council staff became aware of the potential impacts of increasing densities along the laneway. It was determined that a formal policy position should be sought from Council regarding future development along not only Allerton Lane, but also other narrow laneways across the Shoalhaven, a process that could delay the determination of, and provide future direction for, this application.

DA17/1992 – 19 Allerton Avenue, Culburra Beach

DA17/1992 is currently under assessment by Council staff and originally proposed a detached dual occupancy development including two-lot Torrens title subdivision, retention of the existing dwelling fronting Allerton Avenue, and construction of a new dwelling utilising Allerton Lane as a primary frontage.

The initial stages of the assessment saw a number of significant concerns raised by Council officers, including the:

- Narrow road reserve width:
 - Is insufficient for garbage collection;
 - Is unsuitable for two-way traffic and on-street car parking;
 - May not be capable of supporting essential infrastructure, including kerb and gutter, stormwater drainage, footpaths, street lighting, etc.
- Potential cost of upgrading the road surface to accommodate increased traffic;
- Lack of available stormwater infrastructure;
- Impact on amenity for existing residents and neighbourhood character; and

- Impact on amenity and safety for future occupants, whose dwellings will front a narrow, poorly lit laneway with views to back fences.

Neighbouring landowners were notified of the application and four (4) submissions were received during this process objecting to the proposal. The submissions raised concerns with the proposed use of the laneway for primary access and the impacts this would have on existing residents and neighbourhood amenity, including:

- Impacts of car parking on vehicular movement along the laneway
- Visitor car parking restricting rear-lane access to garages/carports for existing residents; and
- Resident safety and amenity.

Because of the concerns, the applicant for DA17/1992 has substantially modified the proposal to comply with Council's existing planning controls to move forward with the application. Amended plans were submitted to Council on 22 December 2017, and are currently under assessment. The application now proposes partial demolition of the existing dwelling to gain access to a new dwelling to the rear, which will be accessed via an access handle from Allerton Avenue. The rear laneway is no longer proposed to be utilised as a primary frontage.

Although this application has been substantially modified and no longer proposes to utilise the laneway for primary access, there is still a need for Council to consider the development potential of these laneways, and establish appropriate development controls to ensure future development occurs in an appropriate manner.

History of Laneways

Allerton Lane, which runs parallel to Allerton Avenue and Penguins Head Road, is a 20ft (6.1m) wide narrow rear laneway and one of many similar laneways found in Culburra Beach and across the wider Shoalhaven. Although Allerton Lane is formed with a gravel surface and light bitumen seal, and contains water supply and reticulated sewer infrastructure, there is a distinct absence of other formal infrastructure and services along most of the laneway including stormwater drainage, formed kerb and gutter, street lighting, pedestrian footpaths and waste collection locations.

Laneways of this nature form part of the historic subdivision pattern of many towns and villages in the Shoalhaven, and were not intended to be utilised as a primary frontage for dwellings or other residential accommodation. The laneways were historically designed to allow access to the rear of properties for services such as 'night cart' collection and milk/ice box deliveries, and later, secondary vehicular access. At present, most narrow rear laneways within Culburra Beach are used by residents to gain access to detached garages/outbuildings in their backyards, or for direct rear-yard access for the parking of boats, caravans, and the like.

Approximately 50% of properties along Allerton Lane have a rear access to the laneway and detached garages/outbuildings that are directly accessed from the laneway. The detached structures are generally built close to the boundary.

Although many properties that have rear access to Allerton Lane, or other laneways of a similar nature, could be considered to have a dual frontage, there are challenges that are faced when considering their potential use of these as a primary frontage for future development. For example, the laneways are not designed to cope with the same level of traffic as primary streets and are generally not constructed to the same standard. Similarly, narrow lanes can present significant manoeuvring difficulties for vehicles, particularly when turning into garages and driveways at 90-degrees. They are also often physically incapable of being serviced by Council's garbage collection services and other large service vehicles.

Thus, most laneways do not have the necessary infrastructure in place to enable the same level of development that is found along existing primary streets.

If the purpose of the laneways was proposed for increased densities or extensive infill development, then significant functional and redesign implications would need to be considered to address reasonable amenity, safety and accessibility for all users including existing residents. This potentially raises significant financing and logistical issues, and may not be able to be accommodated in some instances.

To assess the potential impact of infill development in laneways, a desktop assessment was undertaken of Culburra Beach to understand the development potential of sites with laneway access. It should be noted that this assessment was broad and based on existing planning controls within the Shoalhaven LEP 2014 and DCP 2014, including, land use zone and minimum lot size. The assessment did not consider specific site constraints including but not limited to topography, vegetation, coastal hazards, or existing site-specific development.

In summary the desktop assessment identified 21 laneways within Culburra Beach that provide potential secondary access to 234 existing allotments. Laneways were found to be either 6m wide, 9m wide or 12m wide. In summary, only four laneways are constructed to a bitumen seal standard and deemed suitable for primary access and kerbside waste collection. However, there is a hypothetical potential for a further 298 dwellings in Culburra Beach as a result of maximising all subdivision and dual occupancy potential along existing lanes, including gravel and vegetated laneways. This would have significant implications including but not limited to infrastructure, stormwater drainage, access and movement, parking congestion, waste truck access, neighbourhood character, built form, amenity, noise, privacy and surveillance. Due to this significant development potential and associated implications, it is considered pertinent that a policy position is established in relation to development on narrow laneways.

A copy of the full desktop assessment is also provided as **Attachment 1**.

Precedent

The approval of any of the current applications has the potential to set a precedent for future development in laneways of a similar nature across Shoalhaven. The approval of any one of these DAs may result in an undesirable outcome that could lead to an overuse of laneways for a purpose for which they were not originally intended.

Policy Issues

There is some merit in facilitating small secondary dwellings in laneways, essentially emulating rear outbuildings that do not detract from the existing character, primary street pattern and building densities. Both State Government and Council's current planning controls allow for increased development in areas where laneways are located. For example:

- Subdivision of residential zoned land that meets the minimum lot size prescribed by Shoalhaven LEP 2014.
- Development for the purposes of dual occupancies (attached where the land area is greater than 500m², detached where the land area is greater than 700m²)
- Subdivision of land that contains an existing approved dual occupancy and multi dwelling housing development under Clause 4.1A of Shoalhaven LEP 2014 (prescribed areas with a 350m² and 400m² minimum lot size).
- Secondary dwellings.

It is also noted that SEPP (Affordable Rental Housing) 2009 also permits secondary dwellings as Complying Development. The Jervis Bay Settlement Strategy and other broader policy documents also highlight the opportunities that exist for urban renewal and increasing densities, particularly in settlements that have limited or no outward expansion potential.

To assist with this, it is considered appropriate that an amendment be undertaken to Shoalhaven DCP 2014 to establish appropriate controls to manage development outcomes in laneways. A scope of works will be prepared for a DCP Amendment once a policy position has been adopted by Council and a review of the existing controls within the DCP undertaken. In the 'interim' this report recommends a policy approach that will be utilised until the DCP Amendment is completed.

Community Engagement

Wider community engagement regarding future laneway development has not been undertaken at this stage.

Any potential future amendment to the Shoalhaven DCP 2014 will involve extensive consultation with relevant stakeholders and the community in accordance with the *Environmental Planning & Assessment Regulations 2000*.

Policy Implications

The purpose of this report is to seek a formal resolution of Council to establish a clear 'interim' policy position with regard to the future development of lots with dual frontages to narrow laneways across Shoalhaven.

The two DAs when considered with regard to the recommended policy position demonstrates the following:

- SF10588 – As there is no structure proposed as part of the application, there is a risk a future CDC for a dwelling could follow.
- DA17/1992 – The redesign of the dual occupancy is now consistent with the recommended interim policy in that it re-orientates the development to face Allerton Avenue and is accessed, and has its waste collection from Allerton Avenue.

Depending on the resolution of Council, this may lead to a future amendment to Shoalhaven DCP 2014.

Financial Implications

Should Council resolve to amend Shoalhaven DCP 2014, this would be undertaken within the existing Strategic Planning budget.

Risk Implications

Approval of individual DA's along narrow laneways could result in a problematic precedent being set that would lead to an overuse of laneways for a purpose for which they are not intended. The immediate and cumulative negative impacts of such developments on infrastructure, services, neighbourhood character and amenity for existing and future residents is significant.

Conclusion

A determination is not being sought with respect to the DAs but rather the DAs highlight the need for a policy position. The issue with the subdivision DA, is that a subsequent CDC

could be sought and obtained which will result in a development facing a narrow laneway. If other similar development ensues there will be a cumulative impact with respect to waste collection, car parking, stormwater etc.

Desktop Assessment Culburra Laneways – Development Potential

Purpose of Assessment

The purpose of this assessment is to identify the potential for infill development on allotments with access to a laneway in Culburra Beach. The extent of the development potential investigated related to subdivision and dual occupancy development.

Laneway Types

The assessment identified twenty-one laneways within Culburra Beach that provide secondary access to a total of 234 existing allotments. **Map 1** (appended to this Desktop Assessment) identifies the location of the laneways subject to the desktop assessment. Laneways were found to be one of the following typical types:

- Approximately 6m (20ft) wide lane
- Approximately 9m (30ft) wide lane
- Approximately 12m (40ft) wide lane

The above widths are the total distance between property boundaries and are significantly smaller than the standard 20-30m wide road reserves in Culburra Beach.

Extent

In Culburra Beach, 6m wide lanes are more common, with a total of thirteen (13) laneways 6m wide. The wider laneways were less prevalent with a total of seven (7) laneways 9m wide, and one (1) laneway 12m wide.

Table 1 provides a breakdown of the development potential of lots in Culburra Beach with access to existing laneways:

	Development Potential – Estimated Dwelling Yield				
	A	B	C	D	E
Laneway Widths	Lots adjoining laneway	Lots with subdivision/dual occupancy potential	Maximum number of dual occupancy	Total dwellings (C x 2)	Additional dwelling yield (D – A)
6m wide lanes (13)	149	137	149	298	149
9m wide lanes (7)	74	68	107	214	140
12m wide lanes (1)	11	10	10	20	9
Total	234	215	266	532	298

Table 1 - Development Potential

As laneways are not intended to provide primary access, the condition of laneways is secondary to primary roads and includes sealed, gravel and unconstructed lanes. From a primary access and waste collection perspective, lanes should ideally be at least 9m wide and constructed of a bitumen seal standard.

Based on the desktop assessment, only four of these laneways are constructed to a bitumen seal standard and deemed suitable for primary access and kerbside waste collection; Broadview Avenue (9m width), Marina Lane (9m width), Araluen Way (9m width) and Wollumboola Lane (12m width). All other laneways are either gravel or completely vegetated, and primarily serving a stormwater drainage or pedestrian access purpose.

Based on the above table, there is a hypothetical potential for a further 298 dwellings in Culburra Beach as a result of maximising all subdivision and dual occupancy potential along existing lanes. This would have significant implications including but not limited to:

- Infrastructure, including service connections, utilities, lane construction, maintenance, stormwater drainage.
- Access and movement, including managing conflicts between all road users (pedestrians, vehicles, cyclists, waste trucks), parking congestion, waste truck access.

- Planning policy, including impacts on existing neighbourhood character, built form, amenity, noise, privacy, surveillance, parking, landscaping.

Site Constraints

Following the desktop assessment, a site inspection was undertaken to determine the construction standards of Culburra laneways and their physical capability for future development. Examples of these laneways can be seen in **Figures 1 to 7** below.

It was found that, although there are a significant number of narrow laneways within Culburra Beach, a number of these are not physically capable of being developed for increased densities due to topography, access, or coastal hazard constraints. However, based on topography and prevailing site constraints, Allerton Lane may, in particular, have the potential to be developed for the purposes of dual occupancies and additional subdivision.

The prevailing subdivision patterns and street layout lends to increased development, which could significantly impact on the amenity of approximately 80 properties that currently have direct access to the laneway.



Figure 1 - Allerton Lane between Ocean Street and North Crescent, facing north-west



Figure 2 - Allerton Lane between Ocean Street and North Crescent, south-east



Figure 3 - Allerton Lane between North Crescent and Woodland Street, facing north-west



Figure 4 - Allerton Lane between Woodland Street and Mowbray Road, facing north-west



Figure 5 - Properties fronting The Marina, Culburra Beach



Figure 6 - Properties fronting The Marina, Culburra Beach



Figure 7 - Properties fronting The Marina, Culburra Beach

Servicing and Infrastructure Issues

Based on the desktop assessment there is a concern that the existing services and ageing infrastructure would be unable to cope with the potential level of development along laneways.

Similar development scenarios have already occurred along other narrow laneways elsewhere in Shoalhaven, particularly along Kent Lane and Winnima Lane in Huskisson, which has presented a number of challenges for Council with regard to infrastructure servicing and maintenance, and public safety.

On this basis, it is important that Council establish development controls in regard to development in laneways. The initial findings of the desktop assessment and further investigation of development potential in laneways in Shoalhaven will enable Council to be proactive in achieving better planning outcomes with regard to future servicing and infrastructure, rather than resolving/considering the issue as part of future individual DA's.

The following is a summary of the various current and future potential infrastructure related issues that could result from development utilising the laneways.

Waste Collection

There are a number of properties that currently utilise narrow laneways as a primary frontage in Culburra Beach. These are identified in **Figures 8 and 9**. Council's Waste Services Section have advised that garbage collection for these lots takes place in the following manner:

- 39-59 Allerton Avenue - Standard kerbside collection from Allerton Lane. Laneway accommodates one-way traffic only, in an east-west direction.
- Marina Lane - Waste bins are wheeled by residents to neighbouring streets for standard kerbside collection.



Figure 8 - Properties at 39-59 Allerton Avenue



Figure 9 - Properties along The Marina, Culburra Beach

The widths of these laneways are comparable to Allerton Lane and constructed to a similar standard, being a 6 to 7m (approximately) wide road reserve with a light bitumen seal, limited areas of kerb and gutter, and limited formed stormwater infrastructure.

It is acknowledged that, at present, there are eleven (11) properties along Allerton Avenue that utilise Allerton Lane as a primary frontage, with garbage collected from the laneway.

Council's Waste Services Section have advised that waste collection is provided to these properties under this arrangement due to historic subdivision patterns and the unformed nature of the Allerton Avenue road reserve to the north. Waste Services have expressed concerns that increasing densities along narrow laneways has the potential to create significant difficulties in terms of servicing, vehicle manoeuvrability and public safety.

Similar issues have been encountered in Huskisson where densities are increasing as a result of recent development approvals, which has had significant implications for ongoing waste collection. To avoid a similar situation occurring in Culburra, Waste Services have recommended that a minimum 6.26m wide sealed road reserve is required to facilitate safe, efficient and effective garbage collection, and additional sections of Allerton Lane should not be utilised for waste servicing.

Road Infrastructure

Council's Assets and Works Section have expressed concerns about the physical capacity of narrow laneways within Culburra Beach to accommodate additional vehicular movements resulting from increased densities. It is not advised to utilise narrow laneways for heavy vehicles, as the road surface will not be physically capable of supporting this level of traffic. Similarly, additional traffic movements have the potential to significantly damage any underground infrastructure, such as asbestos mains or clay pipes.

Stormwater Drainage

At present, there is limited stormwater drainage along Culburra Beach's narrow laneways, with no existing stormwater drainage along the entire length of Allerton Lane. This will inevitably present problems should the land along the laneway be developed more intensively in the future.

Council's Subdivisions Section has indicated that currently the only solution for stormwater drainage in the vicinity of Allerton Lane is for properties to drain to Penguins Head Road to the south, which will require the creation of drainage easements along both new and existing properties along the laneway.

It is likely that many of the other laneways in the City will present the same challenges regarding stormwater drainage.

Shoalhaven Water Infrastructure

Shoalhaven Water are satisfied that the potential increase of additional lots/dwellings spread across Culburra Beach will not impact the water supply or sewerage system requiring augmentation. However, as some water supply and gravity sewer pipelines are located in laneways, these may require relocation and lowering should the laneway be formalised/paved, to ensure pipeline serviceability.

In cases where Torrens Title subdivision is sought, extension of the water supply or sewer service will be required including the linking to existing or proposed water mains to ensure a robust reticulation system. Some gravity sewer mains are also marked as critical in Shoalwater's GIS system and connections and extensions may require substantial works to the existing system. Should any of these works be required by a development, they would normally be at the developer's expense.

Generally, narrow laneways may also pose some difficulties in being able to fit and/or construct all required infrastructure (water pipes, sewer pipes, electricity, phone lines, etc.) in their respective allocations. In addition, costs for works in difficult locations can be significantly higher than Greenfield subdivisions and may require land acquisition.

DE18.16 Update and Proposed Next Steps - Nowra CBD Fringe Medium Density Study Recommendations Report - Public Exhibition

HPERM Ref: D17/407927

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Nowra Medium Density Recommendations Report (under separate cover) [↗](#)
2. Response from Department of Planning and Environment - Nowra CBD Fringe Medium Density Study Draft Recommendations Report [↓](#)

Purpose / Summary

Report the outcomes of the Nowra CBD Fringe Medium Density Study – Recommendations Report (Recommendations Report) undertaken for Council by urban design consultants, Studio GL, and obtain endorsement to release it to enable public comment.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Receive the attached Nowra CBD Fringe Medium Density Study - Recommendations Report prepared by Studio GL for information and endorse it being placed on public exhibition for a minimum period of 28 days to enable community comment.
2. Consider a further report following the exhibition of the Nowra CBD Fringe Medium Density Study Recommendations Report on any comment received, with a view to proceeding to: prepare a Planning Proposal for submission for initial Gateway determination to revise relevant Local Environmental Plan provisions; and a supporting Area Specific Chapter to be inserted in Shoalhaven Development Control Plan 2014.

Options

1. Adopt the Recommendations Report for public exhibition and consider a further report following the exhibition on the need for a PP (and supporting DCP Chapter) to establish a new Heritage Conservation Area (HCA), and amend building heights and land use zoning in the study area.

Implications: This is the preferred option as it will enable the community to comment on the Recommendations Report which contains suggested controls that could subsequently be inserted into the Development Control Plan (DCP) and inform a PP to establish Local Environmental Plan (LEP) controls to conserve the character of the study area.

2. Consider changes to the proposed LEP and DCP recommendations contained within the Recommendations Report prior to public exhibition.

Implications: This option is not preferred. The Recommendations Report has been developed through extensive testing and community consultation. Any changes to the draft controls contained in it may delay the public exhibition of the Recommendations Report and could impact on the ability to conserve the character of the study area.

3. Not proceed further with this matter.

DE18.16

Implications: This option is not recommended given the work that has already been undertaken and the community engagement that has already occurred.

Background

In 2016, following receipt of development applications for medium density developments, Council recognised that areas to the west and south of the Nowra CBD (study area), which are predominately now zoned R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential, had the potential to undergo significant change.

Increasing development pressure in the area was acknowledged as having the capacity to change the area's existing character, which is currently predominately detached single storey dwellings on larger lots, with interspersed heritage items.

In November 2016, Council considered a report on 'Central Nowra Residential Zones – Character Related Development Controls'. This covered the engagement of urban design consultants, Studio GL (consultants) to undertake a review and analysis of the character of Central Nowra and provide recommendations on suitable mechanisms to maintain its character whilst also facilitating an appropriate mix of densities and high-quality housing.

In consideration of the report, Council resolved to:

1. *Finalise the character analysis that is currently underway in central Nowra, including the planned consultation with the Old Houses Our History group, landowners and other key stakeholders.*
2. *Following the completion of the character analysis, Council:*
 - a. *Receive a further report on the outcomes of the consultant's work including recommendations on suitable mechanisms to protect the character of central Nowra.*
 - b. *Identify specific locations to be considered for a back zoning to an R2 Low Density Residential Zone, where appropriate.*
 - c. *Prepare a set of detailed planning and character development controls that seek to maintain the character of the central Nowra area.*

Separately, Council resolved (in part) on 8 August 2017, in adopting the Nowra CBD Urban Design Planning Controls, that:

8. *Council receive a further report to consider a wider Heritage Conservation Area to the west of the Nowra CBD Commercial Core Area as part of the project that is underway in this regard."* (MIN17.685).

The study area for this piece of work is shown in **Figure 1** below. In completing the Recommendations Report, the consultants undertook a review of the current LEP and DCP controls, photographic study, spatial analysis and a series of workshops with Council staff, Councillors, local community members, land owners and development industry representatives.

The consultants have now completed the Nowra CBD Fringe Medium Density Study – Recommendations Report and a copy is provided as **Attachment 1**.



Figure 1 – Study Area (outlined in red)

Recommendations Report - Findings Overview

As per Council's resolution of November 2016, the consultants undertook an analysis of the study area and have developed potential draft development controls that would enable opportunities for high quality and sympathetic medium density housing without fundamentally damaging/altering the existing character of the area.

DE18.16

The study area, as shown in Figure 1, is located to the west and south of the Nowra CBD, and is one of the oldest residential areas of Nowra. It was also noted that the study area contains a high number of late 19th and early 20th Century houses which form considerable evidence of Nowra's early development and expansion, particularly in the area to the west of the CBD. During the community workshops, it was noted that these buildings and areas, with their substantially intact streetscapes, have an attractive character that is highly valued by residents and the wider community.

The study area contains several listed heritage items (identified in the Local Environmental Plan) and no complete HCA's. There is however a small HCA along Plunkett Street that is partially within the study area (shown in Figure 2 below).

There is some sentiment from the community that, without adequate protection and controls, the character of the area may be irreversibly changed, damaged or lost.

Local Character

The study area is characterised not only by many older houses, but also a combination of elements in the public and private realm, which can be grouped into three domains; land, urban form and built form.

It was noted that every property, public place or piece of infrastructure contributed to the overall neighbourhood character, whether great or small. It is the combination of the underlying land, urban structure, and built form that establishes neighbourhood character. The following is a brief overview of the three components that exist in the study area:

The Land

The area is generally undulating, with an overall fall to the floodplain to the north and east. High points have northerly mountain views. Key tree-lined streets include Junction Street, North Street, sections of Shoalhaven Street, Douglas Street and Berry Street.

The Urban Form

The area has an underlying 200m by 200m grid based east-west structure with 20m wide road reserves. Most blocks are further divided with a 15m or 20m wide mid-block road. While the majority of lots are narrow and deep, there is a large variety in lot size and shape. Streets have upright kerbs, wide grassed verges and some have concrete footpaths. Public parks and open space tend to lie on the edges of the study area and open space has an informal, bushland character.

The Built Form

The area has a diverse range of existing dwelling styles, including Victorian and Federation houses, Californian bungalows, simple mid-century fibro houses, dwellings from the 1970s, 1980s and 1990s, as well as more recent developments. The majority are detached single storey dwellings, although many recent developments include slab on ground, brick veneer villas and townhouses. Where front fences are provided, they are predominately low and partially open. Front setbacks vary greatly, side setbacks are often small but tend to be wider on one side, and rear setbacks often contain large trees. Parking is generally to the side or rear of dwellings.

The Recommendations Report provides a detailed commentary on the range of things that make up the local character.

Consultants Recommendations

The Recommendations Report makes the following recommendations that could be considered by Council to respond to this issue consistent with the earlier resolutions.

LEP Recommendations

The consultants reviewed the following existing controls in Shoalhaven LEP 2014:

- Heritage items and HCA;
- Building heights; and
- Land use zoning.

As a result, various changes to the above controls within the study area have been recommended for consideration and these are summarised below.

Heritage and conservation

1. Assess the area's heritage significance and, if justified, establish a HCA as shown via the blue dashed land in **Figure 2**. The area has the highest concentration of older dwellings.

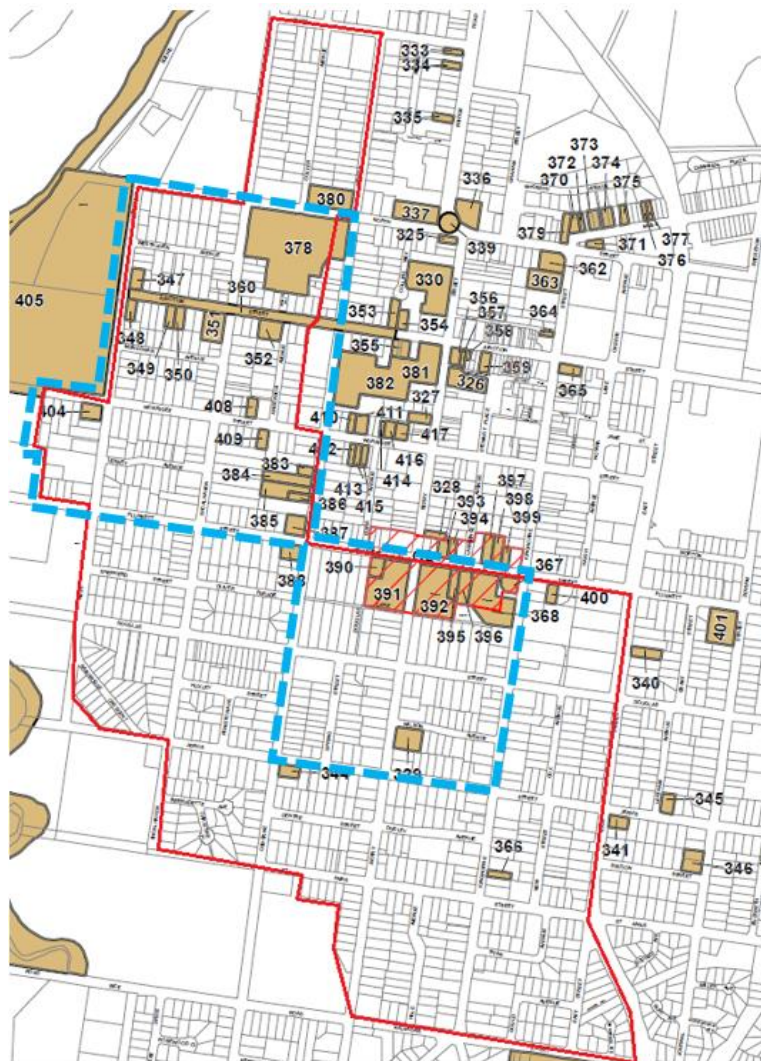


Figure 2 – Recommended HCA boundary (blue dashed outline)

Key to the above map:

Red line – study area boundary. Brown colour - existing heritage items. Red hatch – existing HCA

2. Consider whether the boundaries to any future HCA should include whole properties, or alternatively only be along streets.
3. Identify items of heritage value as well as contributory and non-contributory items within any future HCA, to help future development respect the character of the area/zone. Contributory and non-contributory items could then be identified in a DCP Chapter.

Building heights

The recommended possible changes to building heights are summarised below (the numbers correspond with those shown in Figure 3).

1. Reduce the building height to the west of the CBD between North Street and Plunkett Street to a maximum of 8.5m (currently 11m). As noted previously, this area has the highest concentration of older dwellings and is consistent with the recommended HCA boundary.
2. Reduce the maximum building height to the south of the CBD between Plunkett Street, Jarvis Street, Osbourne and Kinghorne Street to 8.5m (currently 11m). This area also has a concentration of older dwellings and is consistent with the recommended HCA boundary.
3. Increase the maximum building height along Shoalhaven Street and along Colyer Street north of North Street and south of Hyam Street to 11m (currently 8.5m).
4. Increase the maximum building height of the lots bounded by Bainbridge Crescent, Douglas Street, Osbourne Street, and Jarvis Street to 11m (currently 8.5m).
5. Increase the maximum building height of the lots with a current height limit of 7.5m along the north-west edge of the study area to 8.5m. Note, this will ensure consistency with adjoining land and the current height control is a carryover from the previous Foreshore DCP that set the height of the first development lot back from a waterbody at 7.5m.

These possible changes are shown graphically on Figure 3 below, along with the existing LEP building heights.

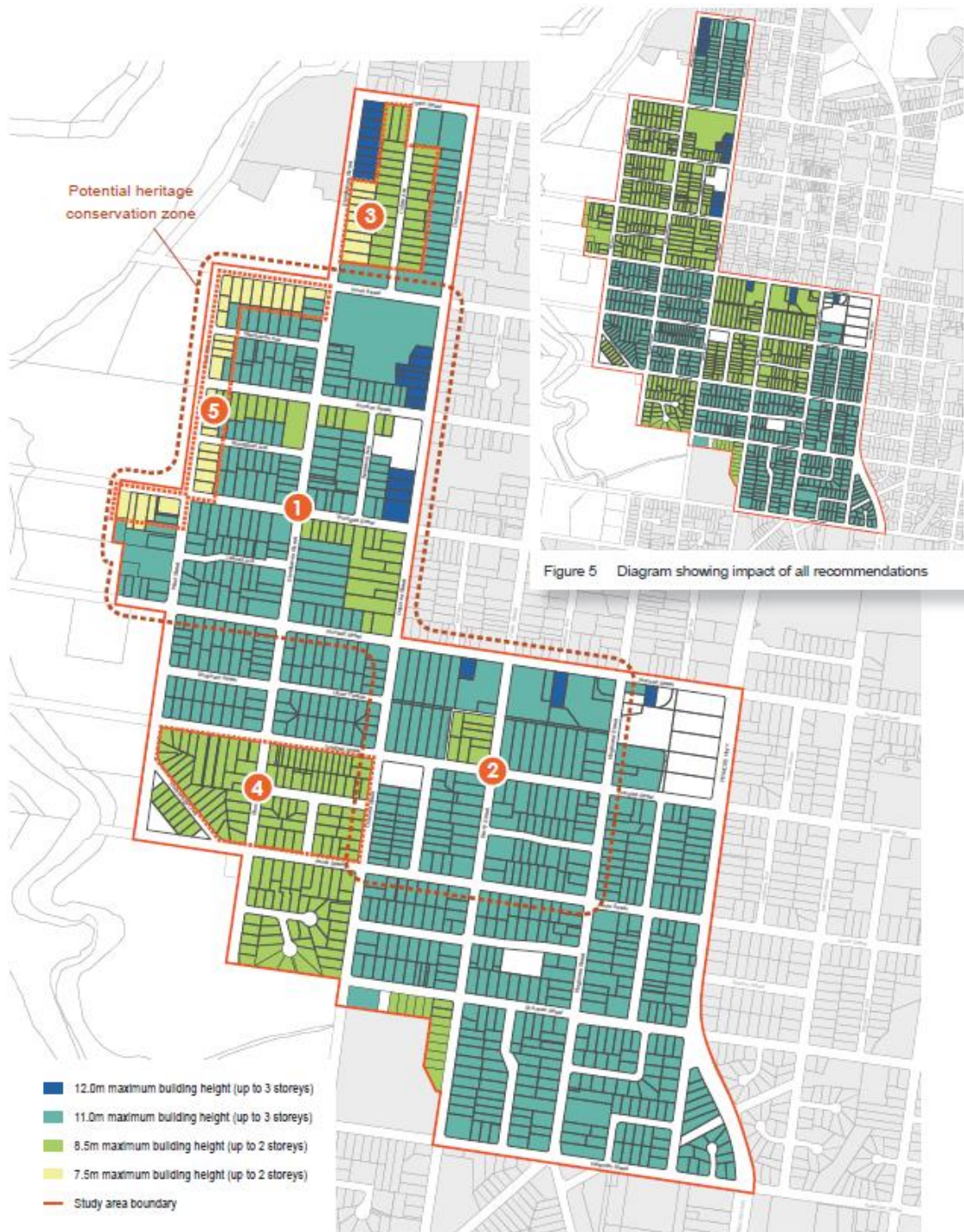


Figure 3 – Existing & Recommended Building Heights

Land use zoning

The recommended possible changes to the land use zoning are summarised below (the numbers correspond with those shown in **Figure 4**).

1. Retain the area of R3 Medium Density as this is well located land near the CBD. Local character can be adequately considered by the provisions of the HCA, reduced building heights and new DCP controls.
2. Change the zone of the lots bound by Bainbridge Crescent, Douglas Street, Osborne Street, and Jervis Street to R1 General Residential (from R2), subject to advice

regarding bushfire. This area has fewer older dwellings, some very large lots and a concentration of fibro dwellings. The zoning change suggested would still allow single dwellings, but would also allow a range of other residential housing types.

3. Change the zoning of the block to the west of the Princes Highway from R1 General Residential to R3 Medium Density, subject to consultation with NSW Roads and Maritime Services. Changing the zoning of areas with fewer heritage items outside the HCA should provide the incentive to replace individual dwelling houses with purpose built development that can create a buffer to the highway, whereby the design could mitigate some of the noise issues and use may well be of a rental/shorter term nature.
4. Change the zoning of the block to the north of North Street, south of Hyam Street and west of the hospital to either R1 or B4 to enable greater development in this well-located area close to the hospital. The B4 Mixed Use zoning could enable future medical uses, whereas an R1 General Residential zoning could be more appropriate if purely residential uses are preferred. It was noted that through site links would need to be considered, and this recommendation would change the existing character of Colyer Avenue.

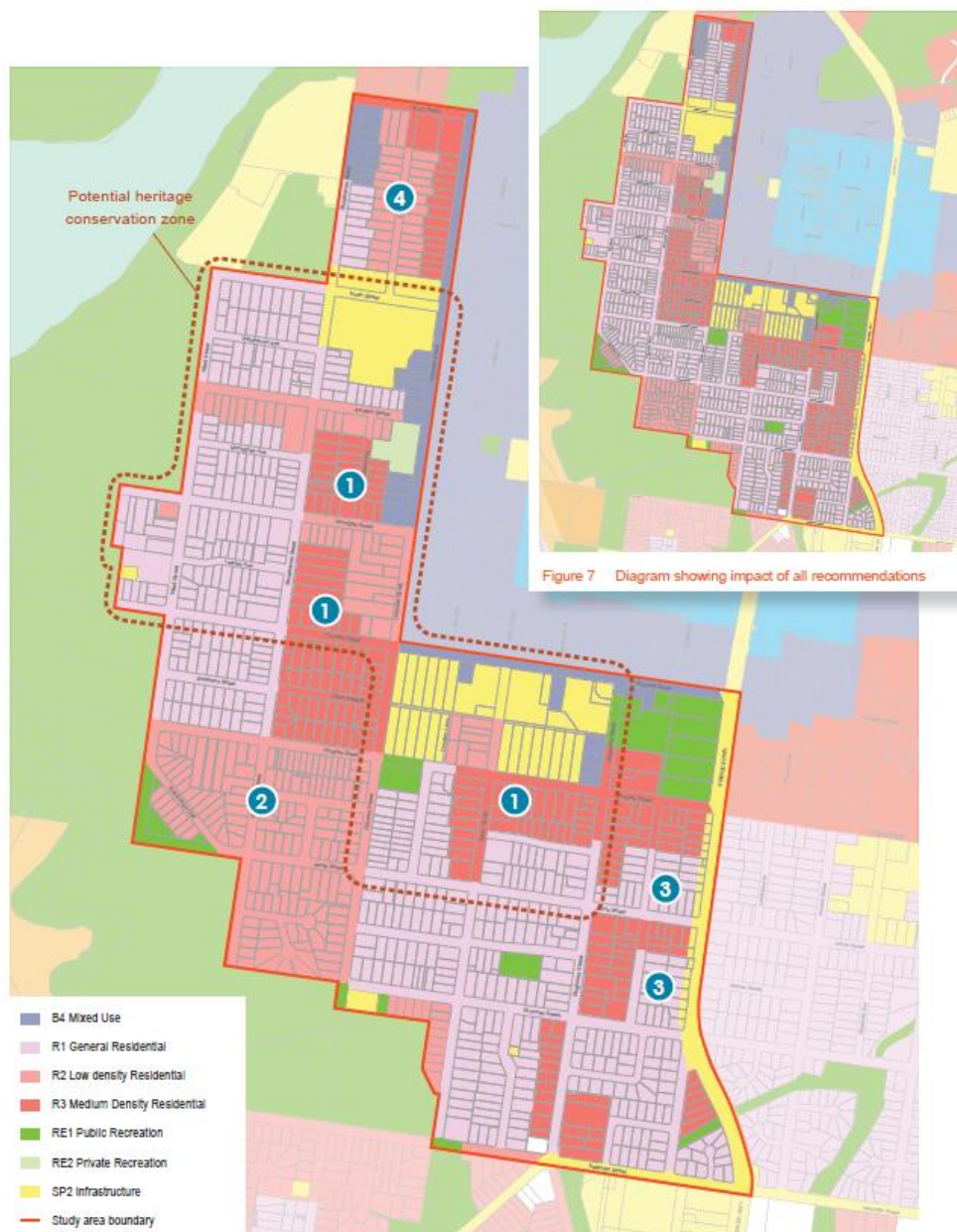


Figure 4 – Existing & Recommended Land Use Zoning

Depending on the approach Council wishes to take, at a minimum, it is preferred that a HCA be applied to the area mapped in **Figure 2**, rather than extending the number of items individually heritage listed. The HCA will ensure that the special character, setting or streetscape of the area is retained, rather than more specific considerations that apply to individual heritage items.

Preliminary advice from Council's heritage advisor has demonstrated that some areas and streets with a high level of intactness can demonstrate key historic periods. These streets are of a scale, character and built form continuity that is significant as it provides important physical evidence of the development history of the town of Nowra. An expanded HCA would have many benefits including:

- Greater certainty for existing owners and future buyers that the amenity of the area will be protected.
- Positive contribution to property values through the maintenance of original features and heritage qualities of residential buildings.
- Future proposed development will need to consider how it will protect, preserve and reinforce the existing character of the HCA. All new development within a HCA should acknowledge the established heritage values of the existing place or building and respond by seeking to avoid any reduction in its value or any undesirable intrusion into the streetscape.
- Protect against inappropriate development that may detract from individual properties and the unique identity of the HCA.
- Limiting complying development to ensure all new development is assessed by Council and appropriate consideration can be given to the impact on the existing heritage character of the area.
- Infill development must achieve a sympathetic relationship with the HCA.

Should the option of a HCA be pursued further following the proposed public exhibition, additional heritage assessment work may be required to support any future PP, either prior to submission for Gateway determination or following as a condition of any determination received.

DCP Recommendations

Chapter 4 of the Recommendations Report (**Attachment 1**) includes recommendations for new DCP controls that could apply specifically to the study area.

These recommended controls would support the overarching LEP controls noted above and ensure that buildings are designed in such a way that their location, size and appearance all help to improve the character of a street or area. It is noted that without these area specific DCP controls, development could still potentially occur that is not sympathetic to the heritage character of the area.

The recommended controls address building and floor heights, street setbacks, side setbacks, rear setbacks, landscaped area, private open space, streetscape interface, access and parking and architectural appearance.

The recommended DCP controls include Performance Criteria and Acceptable Solutions that would encourage development that respects the existing or desired future character of the study area. The full set of recommended controls have been tested and refined in a staff workshop to ensure that they are usable.

The report can form the basis of a new Area Specific Chapter in the Shoalhaven DCP 2014. Before proceeding to prepare this DCP Chapter, it is recommended that the

Recommendations Report be publicly exhibited and as part of that process, a further community workshop will be held to assist understanding and gain feedback.

Advice from NSW Department of Planning & Environment (DP&E)

Given that the Recommendations Report contains a range of possible changes to the LEP, a copy was provided to DP&E to get initial feedback. Their response is provided as **Attachment 2**.

DP&E in their response noted that a Planning Circular had recently been released relating to “Stepping up planning and designing for better places: respecting and enhancing local character” (16 January 2018). The circular provides detail of tools available for Council’s to incorporate consideration of local character into strategic planning and detailed planning for places.

DP&E indicated that they would be willing to consider many of the changes detailed in the Recommendations Report, subject to adequate justification being provided through any future PP.

Community Engagement

In May and June 2017, the project consultant undertook workshops with landowners, community, Councillors and development industry representatives to obtain feedback about how development controls for the study area could encourage a mix of density and high-quality housing, consistent within the existing zoning, whilst also respecting existing character. The feedback obtained through the workshops was used to inform the Recommendations Report.

It is recommended that the Recommendations Report should now be publicly exhibited for a minimum period of 28 days to enable the community to comment on its recommendations. As part of this exhibition process, follow up workshop with landowners, the community and development representatives are also planned to be held.

Should the changes to the LEP and DCP recommended in the Recommendations Report proceed they will be separately consulted on and notified as required by legislation.

Policy Implications

LEP Amendment

Preparation of a PP to establish a HCA, amend height of building heights and land use zonings in the study area will ultimately amend Shoalhaven LEP 2014.

DCP Amendment

As noted above the Recommendations Report can form the basis of a new Area Specific DCP Chapter. This process will involve an amendment to Shoalhaven DCP 2014 to add a new chapter.

Financial Implications

The current work is being undertaken and managed within the existing Strategic Planning budget and is in accordance with the Council endorsed Strategic Planning Works Program.

Planning &
Environment

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Shoalhaven City Council
By email: molly.porter@shoalhaven.nsw.gov.au

Your ref: 48168E (D17/349382)
Our ref: OBJ17/01433

Dear Ms Porter

Nowra CBD Fringe - Medium Density Study - Draft Recommendations Report

I refer to Council's 27 October 2017 letter concerning the above draft report and its request for the Department to provide comment in relation to the recommended LEP and DCP changes. I note that Council has asked whether these recommendations are likely to receive support should they be pursued through a planning proposal. Council has also requested advice as to the types of background studies or supporting information which would be required to support the above changes in a future planning proposal, in addition to the work already completed by Studio GL.

I understand that the purpose of the report is to review the residential zoned land to the west and south of the Nowra CBD and to prepare development controls that would enable opportunities for high quality medium density housing without fundamentally impacting on the existing character of the area.

The Department has prepared a Planning Circular PS18-001– "Stepping up planning and designing for better places respecting and enhancing local character". The circular provides guidance for local councils and other relevant planning authorities, state agencies and communities about the tools available to them to incorporate consideration of local character into strategic planning and detailed planning for places. The Circular can be viewed on the Department's website: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-System-Circulars> and I encourage Council to read the Circular.

As a general comment, the Department is willing to consider many of the recommended changes to the Shoalhaven LEP 2014 identified in the report subject to adequate justification being provided through a planning proposal. I note that the consultant has identified the need for an assessment of heritage significance within the study area as a key consideration.

It is also considered important that any planning proposal addresses the projected housing needs for the Shoalhaven area, including the Nowra centre, identified in the Shoalhaven Regional Plan and Shoalhaven Growth Management Strategy. In particular, the following Directions and Actions of the Regional Plan are relevant to a future planning proposal:

- Direction 2.1 Provide sufficient housing supply to suit the changing demands of the region.
- Direction 2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres.

- Action 2.2.1 Investigate the policies, plans and investments that would support greater housing diversity in centres.

The consultant has identified areas that may be suitable for more intensive development to offset any reduction in development potential in identified heritage or special character areas. This approach is supported.

The following specific comments are provided in relation to the recommended changes to the Shoalhaven LEP:

Heritage and conservation:

The recommendation to undertake an assessment of the area's heritage significance and if justified, extend the number of properties listed and/or expand the amount of land that is within a conservation area, is supported. Council should ensure that the heritage study addresses the requirements of the Section 117 Direction 2.3 Heritage in relation to the protection of items, places, buildings, works, relics, moveable objects or precincts of heritage significance. Council may want to discuss the preparation of any heritage assessment with the Office of Environment and Heritage.

Imposing extensive heritage conservation areas may increase development costs and make housing in the area less affordable. It is recommended that Council adopt a balanced approach between protecting character and ensuring that adequate provision is made for a diversity of housing types, including affordable housing, in the study area.

Land use zoning:

The report recommends that, following the completion of the heritage study, a review of the current residential zonings in the study area (namely R1, R2 and R3 Zones) should be undertaken to identify areas having heritage value or residential character that are unsuited to higher density dwelling types. It also proposes to identify areas that are suitable for higher density development. The intent of the recommendations is supported in principle.

Council will need to address the requirements of Section 117 Direction 3.1 Residential Zones, particularly in relation to justifying any reduction in residential density as a result of permissible uses. Council will also need to address the requirement of Section 117 Direction 5.10 Implementation of Regional Plans in relation to meeting residential dwelling targets in the Nowra centre and to ensure that these dwelling targets can be facilitated through the planning controls proposed in the planning proposal. Council may consider undertaking an economic feasibility assessment to determine the feasibility of different zones, residential land uses and building heights in the study area to address the requirements of the Directions.

Building heights:

It is understood that the intent of the report's recommendations in relation to reviewing the building height controls in the study area, following the completion of the heritage assessment, is to identify areas that are unsuited to higher density development and areas that are suited to higher density development. The intent of the recommendations are supported in principle subject to addressing the Section 117 Directions 3.1 and 5.10 as described above in relation to the report's recommendations about land use zoning.

The Department would be pleased to work with Council on these matters and would like to meet with Council prior to the preparation of a planning proposal. Please contact George Curtis, Senior Planner, at the Department's Southern Region to discuss or to arrange a meeting. George can be contacted on telephone 4224 9465.

Yours sincerely



Graham Towers
Team Leader
Southern Region

22/1/18

DE18.17 Proponent Initiated Planning Proposal - Lot 3 DP 846470 Jervis Bay Road, Falls Creek

HPERM Ref: D18/7710

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Executive Summary - Proponent's Draft Planning Proposal [↓](#)
2. Proponents Draft Subdivision Layout [↓](#)

Purpose / Summary

Present a proponent initiated Planning Proposal (PP) that has been received to permit a community title subdivision at Lot 3 DP 846470 Jervis Bay Road, Falls Creek and obtain direction in this regard.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare a Planning Proposal to:
 - a. Permit a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls into rural residential lots and a neighbourhood environmental conservation lot; and
 - b. Rezone the land to part R5 – Large Lot Residential and part E2 - Environmental Conservation.
2. Submit this Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination.
3. Advise the NSW Department of Planning & Environment that the following studies are considered appropriate as part of the post Gateway stage of the Planning Proposal to determine the actual subdivision potential (prior to public exhibition):
 - a. Flora and fauna assessment
 - b. Onsite wastewater management plan
 - c. Water quality and stormwater management
 - d. Bushfire hazard assessment
 - e. Traffic study
 - f. Visual impact assessment
4. Receive a report once all the above studies have been completed to determine the number and size of lots prior to public exhibition of the Planning Proposal.
5. Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.

Options

1. Request a Gateway determination for the PP that:

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- a. Permits a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls; and
- b. Rezones the land to part R5 - Large Lot Residential and part E2 - Environmental Conservation.

Implications: This will enable the community title subdivision and provide a clear environmental outcome for the vegetated and/or environmentally sensitive land which comprises approx. 60% of the subject land. It is consistent with the approach taken by Council when 'lot averaging' was first introduced into the Shoalhaven LEP 1985. For example, Lot 5 Havilland Street, Conjola Park (Locality 7 in Shoalhaven Local Environmental Plan (LEP) 2014) is currently subject to a lot averaging provision and an environmental protection zone that limits where the smaller lots can be created. This option is the preferred option, noting that a decision on the number and size of the proposed will be made later in the process (i.e. prior to public exhibition) once all the required studies have been completed.

2. Request a Gateway determination for the PP that permits a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls without rezoning the residual land to E2.

Implications: This will allow the community title subdivision without increasing environmental protection for the majority of the land. This option is not preferred.

3. Not proceed with the PP.

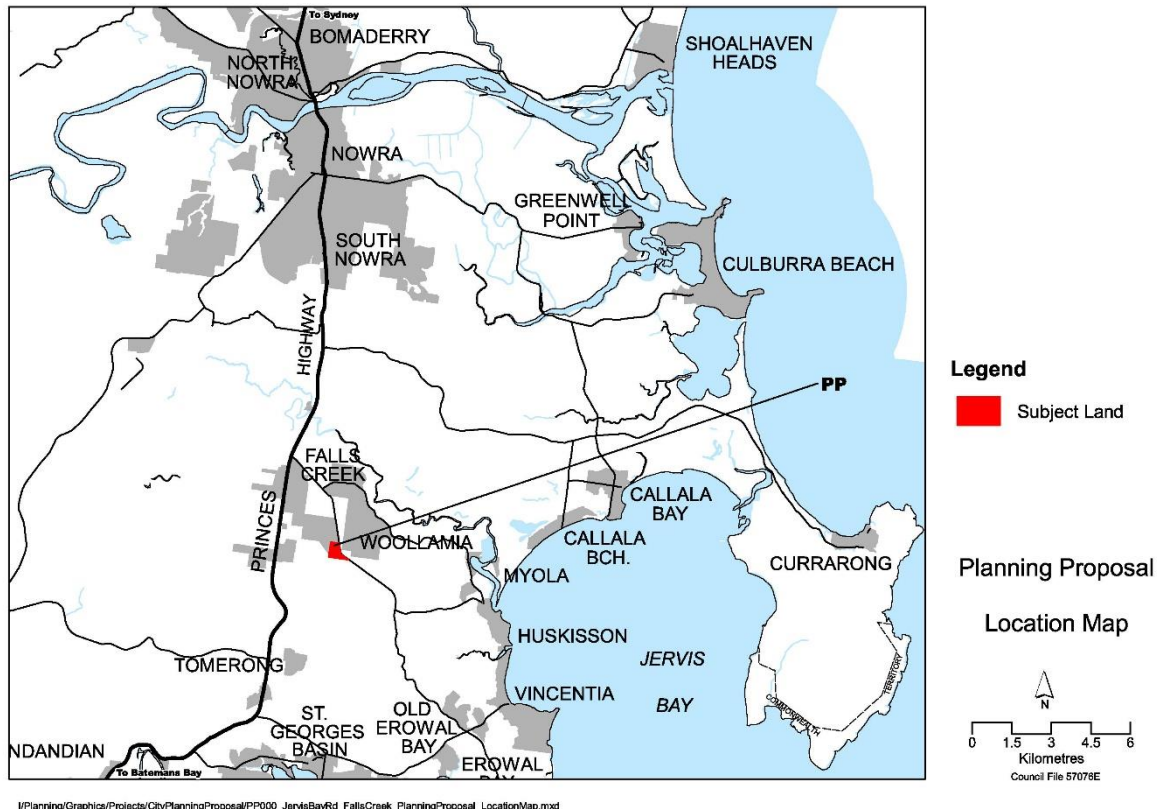
Implications: This will not allow the community title subdivision and the corresponding environmental outcome for the majority of the land. This option is not preferred.

Background

The Site

The subject land to which this proponent initiated PP relates is Lot 3 DP 846470 Jervis Bay Road, Falls Creek, which is located on the southern edge of the Falls Creek Large Lot Residential precinct. The land to the south is part of the Tomerong State Forest. The land to the west is forested land in private ownership, and is zoned RU2 – Rural Landscape. The large lot residential precinct of Falls Creek adjoins the subject land to the north and east.

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



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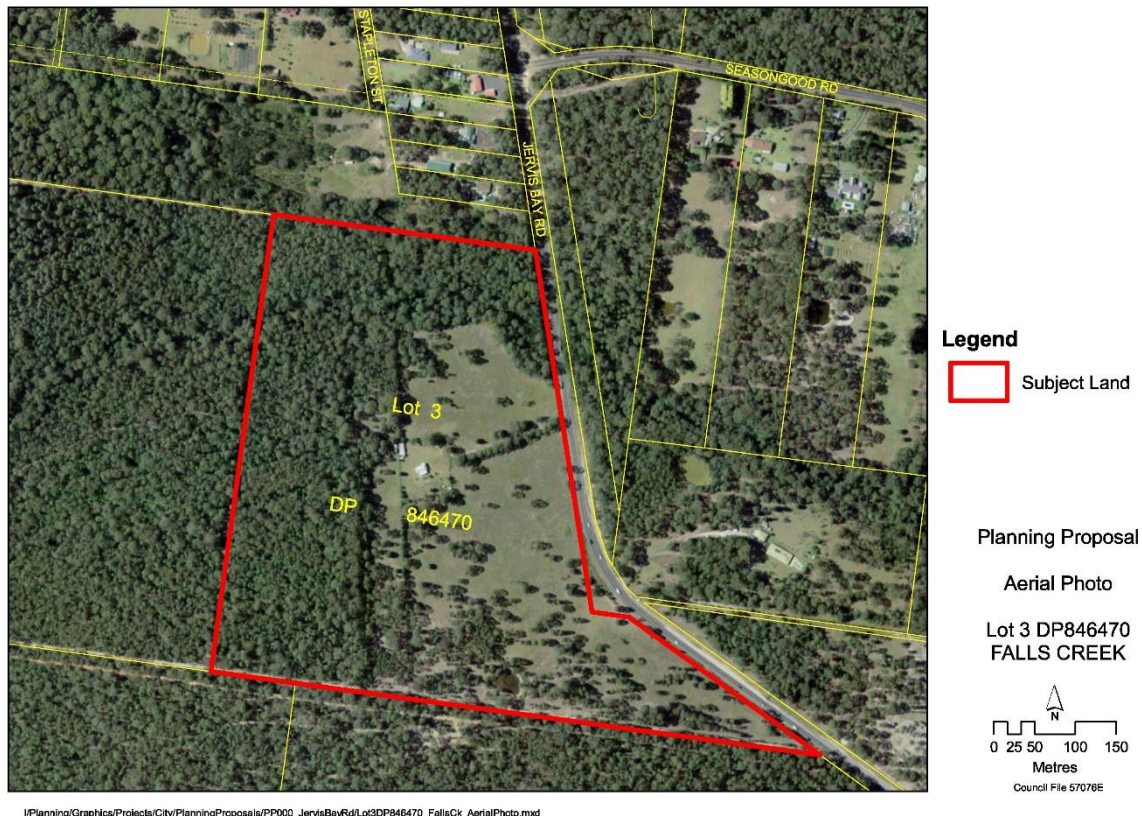
Subject Land – Location

The subject land is crossed by an east-flowing watercourse adjacent to its northern boundary. This watercourse is a tributary of Currumbene Creek, which flows into the Jervis Bay Marine Park.

The subject land has distinct cleared and vegetated areas as can be seen in the aerial photograph provided below. The watercourse is located within the vegetated part of the site. The cleared part contains a dwelling house, outbuildings and two (2) earth dams.

The proponent has provided a flora and fauna assessment of the site. This assessment concluded that the vegetation communities present are not threatened ecological communities. It also did not find any threatened plant species on the site. The assessment noted, however, the presence of Green and Gold Bell Frogs and Grey-Headed Flying-Foxes on the site. There was also evidence of Glossy Black-Cockatoo foraging on the site.

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Aerial Photograph – Lot 3 DP 846470

The Proponent's PP

The proponent's PP was received on 27 November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner T Pasialis) and seeks to permit the subdivision of the land into a community scheme comprising 12 lots and a neighbourhood property lot as an additional permitted use under Schedule 1 of the LEP. The lots are proposed to have a minimum area of 5,635 m². The PP was accompanied by a Development Application (DA) that was also submitted for a 12-lot community title subdivision consistent with the PP.

The proponent's submission includes a draft PP document, the executive summary of which is attached to this report (**Attachment 1**). This draft PP was accompanied by a Flora and Fauna Assessment, Bushfire Protection Assessment, Onsite Effluent Disposal Report, NSW Roads & Maritime (RMS) advice, and an Aboriginal Heritage Information Management System (AHIMS) search for the site.

The proponent also lodged a DA for the subdivision of the land concurrently with the PP. The assessment of this DA will occur in parallel with the PP process, but it will not be able to be approved prior to the making of a plan amendment.

Preliminary Planning Assessment

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

- *Shoalhaven LEP 2014*

The subject land is currently zoned part RU2 Rural Landscape (3%) and part R5 Large Lot Residential (97%) under Shoalhaven LEP 2014. The objectives of the RU2 zone relate to

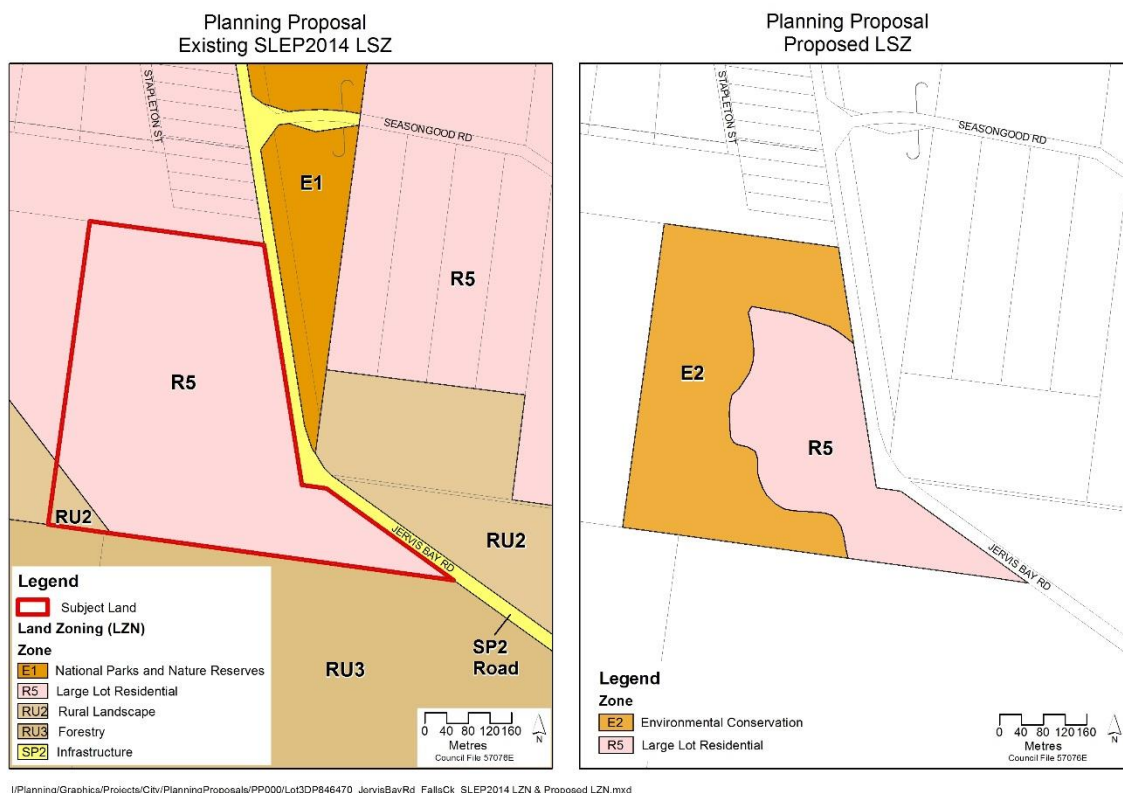
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conserving and maintaining rural landscape and facilitating primary industries. The objectives of the R5 zone relate to providing large lot housing while avoiding adverse environmental, social and economic impacts.

The LEP prescribes a minimum lot size of 40 ha for the RU2 zoned part of the site and a potential 2 ha minimum lot size for the R5 zoned part of the site. The proponent contends that this gives rise to a development potential of 12 lots for the 24.5 ha of R5 zoned land. However, this is only a theoretical maximum yield. The actual yield is likely to be lower given the site's constraints.

The RU2 zoned part of the site is mapped under the LEP as having biodiversity significance. This area is part of the Jervis Bay habitat corridor system.

Parts of the subject land are also identified on the flood planning area map that forms part of the LEP. This relates to the watercourse that runs through the land.



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Existing and Proposed Zones– Lot 3 DP 846470

- *Illawarra-Shoalhaven Regional Plan*

The Regional Plan was released by the NSW Government in late 2015. Direction 2.1 - Provide sufficient housing supply to suit the changing needs of the region adopts the forecasts and planning intent of Shoalhaven GMS 2014, which is discussed below.

- *Shoalhaven Growth Management Strategy (GMS) and the Jervis Bay Settlement Strategy (JBSS)*

Council initially considered the suitability of this land for rural residential development in 1993 when it received a rezoning request from the then owners of the land. This request was ultimately rolled into the 'Rural Plan' being prepared by Council at the time. The Department

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of Urban Affairs and Planning, however, “deferred” the zoning of this site (amongst others) when the Rural Plan amendment was finalised in 1999 (LEP Amendment No 127).

The Jervis Bay Settlement Strategy (2003) recognised the unresolved situation that applied to the land. It provided at Part 10.4 that the deferred rural residential land *“will be further investigated for (its) potential to provide increased rural living opportunities for the Region”*. The intention of the JBSS is for lots to be no smaller than one (1) hectare (as had been proposed in the LEP Amendment No. 127) subject to the constraints of the land.

The 2014 GMS recognised that the situation was still unresolved and provided at part 5.2.4 that *“the existing rural residential deferred areas... to accommodate increased densities will be investigated and resolved”*. Some of these deferred areas were considered in the Falls Creek / Woollamia Deferred Areas PP that was adopted by Council in 2017. The subject land was not part of that PP.

The JBSS considered in its discussion of density that an absolute minimum lot size of 1 ha should be allowed in the previously rural residential deferred areas. This PP would potentially result in a minimum lot size of 5000 m² on part of the site as part of a community title scheme. This is inconsistent with the 1 ha minimum expected by strategy. This could result in adverse and visual impacts on the landscape character in the locality. This impact will need to be assessed as part of the process and the PP should only proceed if it is satisfactory in this regard.

Subject to the outcome of a visual impact assessment (yet to be undertaken) there is an argument that in a community title scheme the area of the neighbourhood property should be considered in determining the density of the development (i.e. lot averaging). In this case, better environmental outcomes would be achieved by this approach because the environmentally sensitive land will be managed under a community title scheme as opposed to it potentially being in fragmented private ownership. The merits of this argument will be informed by the investigations that will be undertaken should Council resolve to progress the PP. If the lot averaging argument is accepted, most of the resulting lots may be far lower than one lot per hectare limit contemplated by strategy, subject to detailed assessment.

The proponent’s use of the current minimum lot size to determine a theoretical yield of 12 lots is not consistent the intent of the GMS to review densities in the previously deferred areas. The investigation demanded by these strategies is to consider the potential of the land in the context of its constraints. Should Council resolve to support this PP, the ultimate lot size and yield will be informed by investigations into the land’s constraints and capability, consistent with the GMS and JBSS. This may be more or less than 12 lots depending on the outcomes of the investigation.

There is a comparable case at Lot 4 DP 608099, 50 Mortimer Road Falls Creek. This land was included in the same “deferred” area as the subject land and has a similar history. Rather than pursuing a lot averaging approach, via a PP, the owner obtained development consent for a subdivision in which each lot complied with the current 2 ha minimum lot size. The result was a four (4) lot subdivision of a 20 ha parcel (one lot per 5 ha). This density was the result of the constraints of that particular site. It is noteworthy, however, that each lot created had a developable area that was less than 1 ha, with the remainder of each lot being fragmented environmental land.

In conclusion, the proposed minimum lot size is inconsistent with the 1 ha minimum noted in the JBSS/GMS for investigation. However, it is considered that the PP is consistent with the underlying intent of these strategies subject to the outcomes the detailed assessments and it will potentially result in a more desirable environmental outcome.

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It is considered that this PP can be supported as a consequence of the particular provisions in the GMS that relate to the Falls Creek/Woollamia Deferred Areas and given the particular historic circumstances of the case. Given this it will also not set a precedent for the rezoning of rural land elsewhere in the city.

- *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 Council is likely to support a PP 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. Some limited dialogue took place in this regard during 2015.

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.

As discussed above, it is considered that the PP request is generally consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Thus, it is consistent with these guidelines as a result.

NSW Guide to Preparing Planning Proposals

The NSW Guide to Preparing Planning Proposals provides an assessment framework for PP's. This framework requires the planning authority (Council) to answer a number of 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?

As discussed above, it is considered that the PP request is generally consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Thus, it is consistent with these guidelines as a result.

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

The PP process is the most appropriate mechanism to allow the community title subdivision to occur on the land. The actual detail of the PP and its provisions will need to be determined following the outcomes of specialist studies.

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. There is no relevant sub-regional or district plan for this area. The proposal is consistent with this plan as detailed earlier in this report.

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

The JBSS and the GMS are the relevant local strategies. As discussed above, the proposal is generally consistent with these strategies.

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

Various technical matters will need to be further investigated to demonstrate consistency with the relevant State Environmental Planning Policies. There are however no apparent inconsistencies at this stage.

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

No inconsistencies with any of the Ministerial Directions have been identified at this stage, noting that further investigations will be undertaken if Council resolves to progress the PP. It should also be noted that the proponent's proposed development footprint encompasses identified Green and Golden Bell Frog habitat. This report identifies a potential modified footprint which excludes this habitat.

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 contains threatened fauna species and forms part of a habitat corridor. The conservation of this land is an outcome that is to be achieved by this PP. The current extent of large lot residential development proposed by the proponent is considered to be unsatisfactory in this regard at present because it will isolate populations of Green and Golden Bell Frogs. The PP that is recommended adopts an altered footprint for rural residential development so that these frog habitats will be within the neighbourhood property that is to be used only for conservation purposes.

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

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to a range of environmental effects.

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

A number of technical matters will need to be investigated to demonstrate that the PP is satisfactory with regard to its impact on the landscape character of the locality.

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

The infrastructure requirements for the PP will be determined by the number of lots into which the land can be subdivided. If the yield is substantial, then it may be necessary to prepare an infrastructure delivery strategy that would then be implemented with the development of the land.

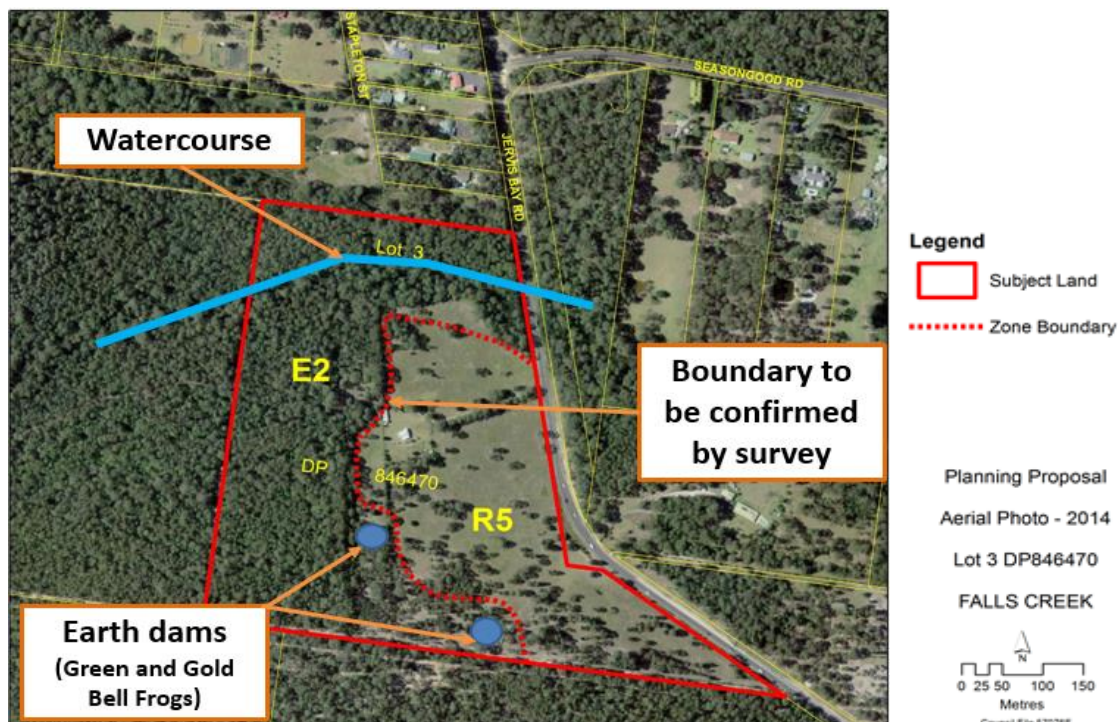
Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The required consultation will be undertaken if the PP proceeds.

Conclusion

As detailed above, subject to the outcomes of detailed investigations, there is some merit in supporting this PP in an amended form. If Council supports advancing the PP, it is recommended that a Gateway determination be sought that provides for:

1. The permissibility of a community title subdivision of Lot 3 DP 846470 Jervis Bay Road Falls into rural residential lots and a neighbourhood environmental conservation lot in terms similar to the existing “lot averaging” provisions of Clause 4.2B of the LEP.
2. The rezoning of part of the land to E2 - Environmental Conservation as shown in the figure below.
3. A requirement for a limit on the number of rural residential lots that may be created on the land based on the findings of the following specialist studies:
 - a. Flora and fauna assessment
 - b. Onsite wastewater management plan
 - c. Water quality and stormwater management
 - d. Bushfire hazard assessment
 - e. Traffic study
 - f. Visual impact assessment



Lot 3 DP 846470 - Aerial Photograph with Proposed Zone Boundary and key environmental features

Community Engagement

Upon receipt of the proponent's PP the surrounding landowners were notified in writing and provided an opportunity to review the documentation. No submissions were received.

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If the PP proceeds, public exhibition will be required including advertising in a local newspaper and a mail out to surrounding landowners. The Gateway determination will also set required consultation requirements.

Policy Implications

It is considered that the PP will be consistent with the underlying intent of the JBSS and GMS (subject to visual impact assessment). Should this PP proceed Council will separately need to re-consider at the appropriate point the remaining area of R5 zoned land on the adjacent property to the west, given that this land will most likely be left isolated and difficult to develop.

Financial Implications

The PP will be prepared on a 100% cost recovery basis to be funded by the proponent. Infrastructure requirements for the proposal are to be thoroughly investigated in the PP process to ensure that there are no adverse impacts on Council's adopted budget and forward estimates.

Planning Report to Support Planning Proposal

T. Pasialis (for Cafabe Pty Ltd ATF Pasialis Family Trust and Pasialis Superannuation Fund)
Lot 3 DP 847470, No. 48 Jervis Bay Rd, Falls Creek

EXECUTIVE SUMMARY

This Planning Report supports a Planning Proposal that is to be made to Shoalhaven City Council on behalf of Mr Theo Pasialis regarding Lot 3 DP 846470, No. 48 Jervis Bay Road, Falls Creek.

The subject land comprises a mixture of cleared grazing land, forested areas, and an un-named watercourse. The site is bounded by Jervis Bay Road to the east, private lands to the north comprising large lot residential/rural residential development, the Tomerong State Forest to the south, whilst opposite Jervis Bay Road are privately owned lands comprising both forested and cleared areas and which contain rural residential development. The land associated with this Planning Proposal comprises an area of 25.21 ha.

The subject site is mostly zoned R5 Large Lot Residential, with a small portion being RU2 – Rural Landscape. A minimum lot size of 2 ha currently applies to the part zoned R5, which would allow for the creation of up to 12 lots with the area of land available. However, rather than subdividing the entire site, it is considered that an improved planning outcome would result from a subdivision that would enable the protection of the watercourse and forested lands, with the predominantly cleared portion of the site being utilised to contain the developable allotments. To that end, it is considered appropriate that the land be subdivided by way of Community Title, with a Community Lot containing the forested lands with an area of some 13.5 ha, and the balance of the site being developed with up to 12 lots having a minimum area of 5635 m² up to 1.54 ha.

The purpose of the Planning Proposal is to request that Shoalhaven City Council:

- Including the subject site in Schedule 1 (Additional Permitted Uses) of the Shoalhaven LEP as follows:
 - Development for the purposes of a Community Title Subdivision allowing up to a maximum of 12 allotments with a minimum area of 5635 m², and one Community Title Lot,
 - the erection of a dwelling on each allotment being created.

The subject site is already identified under the Shoalhaven LEP 2014 for Large Lot Residential purposes, and the Planning Proposal simply seeks to excise the provided yield from that part of the site that is less constrained. The Planning Proposal will ensure that the features of the site having greater environmental attributes are suitably conserved to avoid adverse impacts.

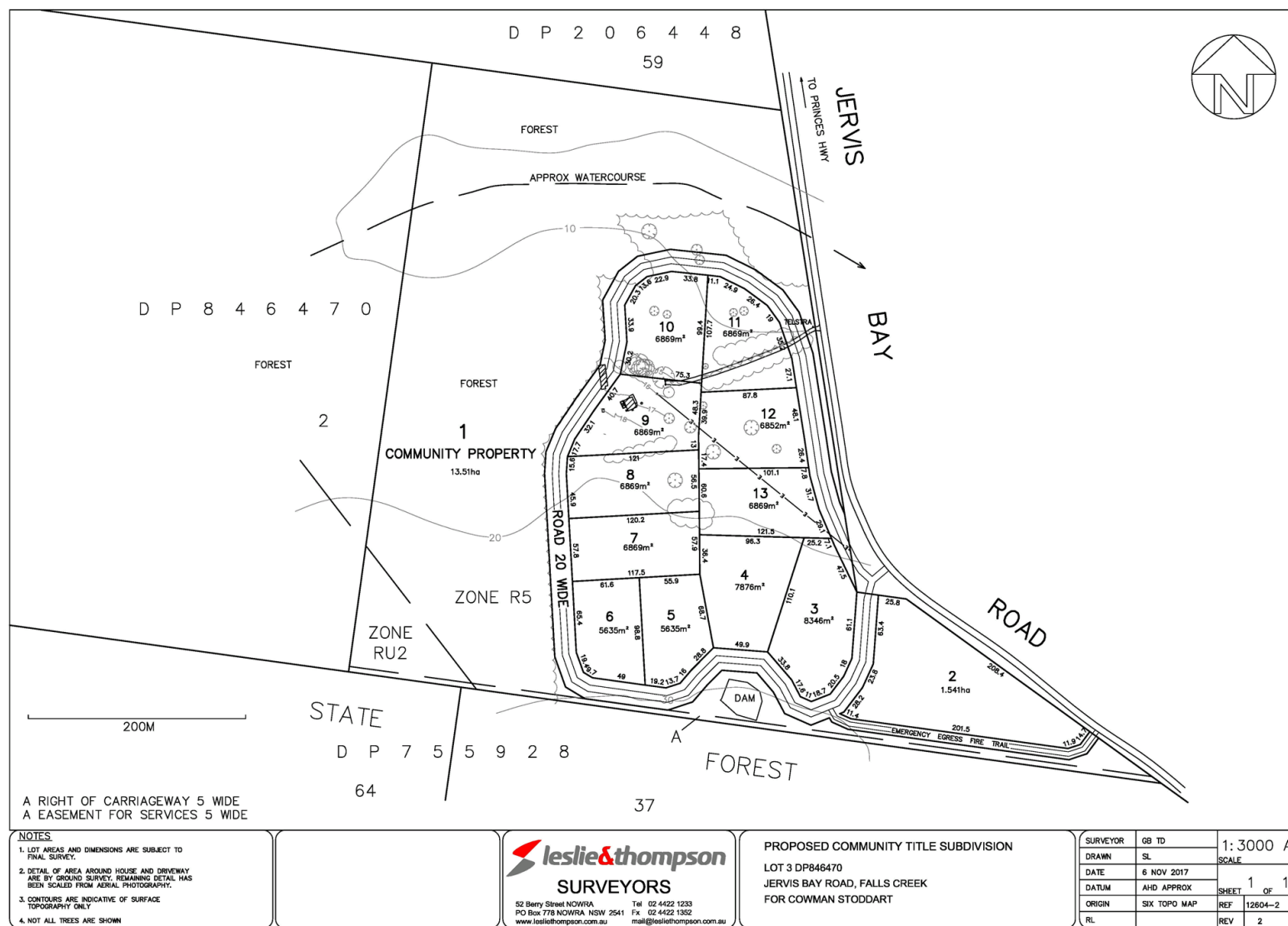
Planning Report to Support Planning Proposal

T. Pasialis (for Cafabe Pty Ltd ATF Pasialis Family Trust and Pasialis Superannuation Fund)
Lot 3 DP 847470, No. 48 Jervis Bay Rd, Falls Creek

The formulation of this Planning Proposal has been the subject of consultation between the land owner and Council. This report has been prepared having regard to issues arising from this consultation.

The proposal is consistent with relevant state, regional and sub-regional planning strategies and policies, and is generally consistent with the thrust of the Shoalhaven Growth Management Strategy.

Overall, the subject land is considered to be eminently suitable for the large lot residential development proposed and will ensure an on-going supply of large residential land anticipated by the Shoalhaven LEP 2014, however in a more environmentally sustainable manner than that currently allowed that is considerate of that part of the site containing attributes of greater significance.



DE18.18 Exhibition - Draft Works in Kind Agreement - DA15/1102 - 21 Beach Street, Huskisson

HPERM Ref: D18/46170

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Works in Kind Agreement - DA15/1102 (under separate cover) ➡

Purpose / Summary

Advise of the receipt of a draft Works in Kind (WIK) Agreement for works that have been undertaken associated with DA15/1102 (4 tourist cabins) at 21 Beach Street, Huskisson, and request endorsement of the draft WIK agreement to enable it to proceed to public exhibition.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Accept and proceed to publicly exhibit the draft Works in Kind agreement for 21 Beach Street, Huskisson (associated with DA15/1102) for a period of 28 days in line with the *Environmental Planning and Assessment Regulation 2000*; and
2. Receive a further report to consider the outcomes of the exhibition and enable the finalisation of the Works in Kind agreement.

Options

1. Accept the draft WIK agreement and proceed to publicly exhibit it.

Implications: This would enable the WIK Agreement to progress. It will be reconsidered by Council after the exhibition and to enable the consideration of any submissions received.

2. Do not publicly exhibit the WIK agreement

Implications: As the work has already been done on behalf of Council as part of DA15/1102, it would be unreasonable not to proceed with the WIK agreement as it is the mechanism by which Council can reimburse the developer for the work undertaken that Council is no longer required to fund and complete.

Background

On 16 December 2015, Council approved a development application (DA15/1102) which allowed for the construction of four new tourist cabins at the rear of 21 Beach Street Huskisson. Drainage work external to the property was required for the development to proceed.

The required drainage work forms part of an existing contribution project in Councils Contributions Plan - 03ROAD0062 Unnamed Lane (Huskisson).

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On 7 April 2016, development contributions were paid by the developer which included \$16,405.25 for 03ROAD0062.

The project covers the construction of a lane as well as further work for stormwater and drainage. The figure below shows the project area (in red), and the affected properties (in blue). The blue properties are the only ones that are required to pay contributions for the development of the laneway. The value of the stormwater and drainage work in the project is \$9,212 (as of March 2014).



Extract from 03ROAD0062, Shoalhaven Contribution Plan 2010

The developer has now completed the stormwater and drainage works outlined in project 03ROAD0062. The developer is now requesting a refund of \$9212 plus CPI, that is, \$9,983.38 from project 03ROAD0062.

Council's Assets Section has been consulted and agree that a refund of this amount is fair and reasonable for the works completed. The agreement for this is outlined in the Draft WIK Agreement at **Attachment 1**.

To enable this to progress to resolution, it is required that the Agreement be publicly exhibited for a period of at least 28 days. After exhibition the matter will be reported back to Council for final consideration, together with a summary of any submissions received.

Following its adoption and finalisation, Council is then able to reimburse the required amount to the developer.

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Community Engagement

There are four properties that are directly affected by this agreement; the landowners will be notified directly by mail. The WIK agreement will also be notified in the local newspaper and will be available for viewing at Council's Administration Buildings in Nowra and Ulladulla and on Council's website. The period of public exhibition is 28 days as is required by the *Environmental Planning and Assessment Regulation 2000*.

Financial Implications

Council will be providing a refund to the value for the project that is estimated (plus CPI) in the Shoalhaven Contributions Plan 2010 but will now not have to fund and carry out this component of the project. There are no further financial implications to Council.

DE18.19 Nowra CBD Contributions Discount Subsidy Policy - Review

HPERM Ref: D18/52690

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Nowra CBD Contributions Discount Subsidy Policy [↓](#)

Purpose / Summary

Advise of the feedback from Nowra CBD Revitalisation Committee, Nowra CBD Business Chamber, and the Shoalhaven Business Chamber on the proposal to rescind the Nowra CBD Contributions Discount Subsidy Policy (the Policy), and obtain a decision on the future of the Policy.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Continue the operation of the Nowra CBD Contributions Discount Subsidy Policy; and
2. Consider, as part of the 2018/2019 Budget, allocating an annual budget of \$50,000 for the operation of the Nowra CBD Contributions Discount Subsidy Policy.

Options

1. Continue the operation of the Policy and consider the allocation of an annual budget to fund its operation.

Implications: This option is consistent with the feedback from the Nowra CBD Revitalisation Committee and will allow for the Policy to continue, however a funding source to support it needs to be clarified.

2. Rescind the Policy.

Implications: Rescinding the Policy is likely to have minimal impact as the Policy has only been utilised twice since it was established in 2014.

Background

The Nowra CBD Contributions Discount Subsidy Policy (**Attachment 1**) was put in place to encourage redevelopment within the Nowra CBD by providing a discount subsidy for the cost of car parking contributions for small to medium developments.

The Shoalhaven Contributions Plan 2010 allows Council to levy contributions on new development for the provision of essential community infrastructure. Where a commercial development cannot meet all their parking requirements on-site, a developer has the option of paying a monetary contribution in lieu of providing on-site parking. In the Nowra CBD, the current contribution rate for car parking is \$26,278.26 per space.

The subsidy was first introduced in response to concerns raised by the development industry and others that the cost of current car parking contributions was inhibiting development in the Nowra CBD. Council resolved to subsidise car parking contributions by 50% as a trial measure, to hopefully stimulate new development. This was intended to encourage redevelopment within the Nowra CBD through the provision of a short-term discount subsidy applied to the Nowra Car Parking Contributions Project. Council initially adopted the Nowra CBD Contributions Discount Subsidy Policy on 28 October 2014.

The policy is primarily aimed at small to medium development scenarios that generally have a net development area of less than 1,500m² and excludes supermarkets, clubs, and hotel and motel developments. The policy operates separately, and in isolation of, Council's Contributions Plan and the discount subsidy is to be paid from Council's general revenue funds and not from the contribution projects funds.

If Council continues its operation, a potential funding source will need to be identified in its annual Budget for the period of the subsidy. The amount required each year cannot be accurately predicted as it is dependent on take up, however, based on previous subsidy payments, an amount of \$50,000 should be sufficient. The status of the subsidy can be monitored through Council's quarterly budget reviews.

At the Development Committee meeting held on 12 September 2017, Council deferred the matter to enable feedback to be sought from the Nowra CBD Revitalisation Strategy Committee, the Nowra CBD Business Chamber, and the Shoalhaven Business Chamber.

Letters were sent to the Nowra CBD Business Chamber and the Shoalhaven Business Chamber with no response received. The matter was considered by the Nowra CBD Revitalisation Strategy Committee on 31 January 2018 and it was resolved that:

The Nowra CBD Revitalisation Strategy Committee supports the continuation of the Nowra CBD Contributions Discount Subsidy Policy.

As such, on this basis it is recommended that the Nowra CBD Contributions Discount Subsidy Policy continue, and consideration be given to the budget required to support its operation. The Policy will be reviewed again in the future following the election of a new Council, when all Council policies are reviewed for continuation.

Community Engagement

The Nowra CBD Revitalisation Strategy Committee, the Nowra CBD Business Chamber, and the Shoalhaven Business Chamber were provided the opportunity to comment on the future of the Policy.

The Nowra CBD Revitalisation Strategy Committee resolved to support the continuation of the Policy.

Financial Implications

If the Policy continues, Council needs to consider a funding source for the Policy as the money cannot be taken from the relevant contribution project. The amount required cannot be accurately predicted, however, it should at least be a similar amount to the current expenditure. Thus, an amount of \$50,000 is recommended. The status of this can be monitored through Council's quarterly budget reviews.



City Administrative Centre
Bridge Road (PO Box 42), Nowra NSW Australia 2541 - DX 5323 Nowra
Phone: (02) 4429 3111 - Fax: (02) 4422 1816

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Deering Street, Ulladulla - Phone: (02) 4429 8999 – Fax: (02) 4429 8939

Email: council@shoalhaven.nsw.gov.au

Website: www.shoalhaven.nsw.gov.au

For more information contact the Planning, Environment & Development Group

Nowra CBD Contributions Discount Subsidy

Policy Number: POL17/69 • **Adopted:** 28/10/2014 • **Amended:** 6/12/2016 • **Reaffirmed:** 9/05/2017 • **Minute Number:** MIN14.777, MIN16.947, MIN17.378 • **File:** 48884E • **Produced By:** Planning, Environment & Development Group • **Review Date:** 28/10/2017

1. PURPOSE

To encourage the delivery of redevelopment within the Nowra CBD through the provision of a short term discount subsidy that is applied to the following contributions projects:

- Nowra Car Parking Contributions Project

2. STATEMENT

In accordance with Council's Contributions Plan, contributions are levied on development (including redevelopment) where community / public infrastructure (identified in a contributions project) is required as a consequence of this development. The identification of a nexus and apportionment related to the infrastructure cost determines the amount that development will be levied per contributions project (i.e. it is a user pays system). The specific contributions project which development is levied and supporting information can be viewed in the Contributions Plan at: <http://s94.shoalhaven.nsw.gov.au/> .

Within the Nowra CBD the current contributions amounts levied on development have been identified as a potential hindering factor in regard to the delivery of development. Therefore, a lower contributions amount may stimulate new development within the Nowra CBD. The application of contributions discount subsidy is an incentive to attract the delivery of development within the Nowra CBD for a defined period.

3. PROVISIONS

The application of this policy is primarily aimed at small to medium development scenarios that generally have a net development area of less than 1,500m² and excludes supermarkets, clubs, hotel and motel developments.

This policy applies to Development Applications (including section 96 applications) received after the exhibition period for the draft of this Policy commenced (i.e. 30 July 2014) where the development is not complete and an Occupation Certificate has not been issued.

The policy requires full payment of the contributions applicable to a Development Consent within the Nowra CBD (as shown in the attached plan) and for Council to pay a discount subsidy after this payment is received.

The discount subsidy applied to the contributions projects listed in this policy is 50% of the amount paid for a period of 2 years which commences on Council adoption of this policy. The policy was extended for another 12 months [MIN16.947].

Payment of the subsidy will be made upon provision of a tax invoice to Council from the identity which made the related contribution payment to Council.

4. IMPLEMENTATION

This policy operates separately and in isolation to Council's Contributions Plan. Therefore any discount subsidy is paid from Council's General Revenue funds and not from the contribution projects funds. Therefore, Council will retain all contributions funds for the purpose that they were collected.

The application of the policy results in the requirement for Council to provide a funding source in its annual Management Plan for the period of the subsidy. The amount of subsidy paid per financial year is estimated to be \$100,000 however this amount cannot be accurately predicted. Therefore, the status of the remaining subsidy will be monitored every 3 months in Council's quarterly budget reviews.

5. REVIEW

The application of a discount subsidy will be monitored in Council's quarterly budget reviews. Depending on the uptake and financial implications of Council applying such a policy, Council reserves the right to review or amend the policy within its intended 2 year period. The policy was extended for another 12 months [MIN16.947]. Any future review may involve rescinding the policy with 21 days notice.

6. APPLICATION OF ESD PRINCIPLES

The application of the policy is aimed at encouraging the delivery of development in the short term within the Nowra CBD. The outcome of such development is to provide greater employment and retail opportunities in Nowra CBD and the associated community benefit.



DE18.19 - Attachment 1

DE18.20 Exhibition Outcome and Finalisation - Draft Amendment No 22 - Shoalhaven Development Control Plan 2014 - Chapter N19: Huskisson Mixed Use Zones

HPERM Ref: D18/47058

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft DCP Amendment No 22 - Chapter N19: Huskisson Mixed Use Zones (under separate cover) [↗](#)
2. Report - Development Committee Meeting - 10 October 2017 [↓](#)

Purpose / Summary

Report the outcomes of the public exhibition of draft Amendment No 22 to Shoalhaven Development Control Plan (DCP) 2014 - Chapter N19: Huskisson Mixed Use Zones to enable it to proceed to adoption and finalisation.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Amendment No. 22 to Shoalhaven Development Control Plan 2014 as exhibited, with the following minor amendment:
 - a. Highlighting of LEP and DCP dictionary terms.
2. Notify the adoption of Amendment No 22 to Shoalhaven Development Control Plan 2014 in the local newspapers in accordance with the requirements of the NSW Environmental Planning & Assessment Act 1979 and Regulations.

Options

1. Adopt the recommendation to adopt Amendment No 22 to DCP Chapter N19: Huskisson Mixed Use Zones with minor changes.
Implications: This is the preferred option. It will allow controls to be incorporated from the adopted DCP No. 99 Huskisson B4 Mixed Use Zone Precincts which was endorsed in 2014, and address other functional anomalies in the Chapter.
2. Adopt an alternative recommendation.
Implications: Dependent on the changes requested, this may delay the adoption of the Amendment to the DCP Chapter.
3. Not adopt the recommendation to amend the DCP Chapter.
Implications: This is not a preferred option as amendments to the DCP Chapter are required to incorporate the omitted controls from DCP No 99 Huskisson B4 Mixed Use Zone Precincts and improve its functionality and legibility.

DE18.20

Background

The detailed background to this draft amendment is detailed in a report to the 10 October 2017 Development Committee meeting – see **Attachment 2**.

Essentially in a review of the DCP Chapter, it was identified that some of the controls that were adopted as part of the Amendment No. 2 to DCP 99 - Huskisson B4 Mixed Use Zone Precincts were inadvertently missed as part of the adoption of the Citywide DCP.

Thus, a draft DCP amendment was prepared to reintroduce the omitted controls, and address other functional anomalies including consistent wording, deletion of duplicated or contradictory controls, address additional recent concerns raised by Councils Traffic Unit and Waste Services Section, minimise conflict between pedestrians and vehicles, and simplify the wording of existing controls relating to the three laneways covered by the DCP Chapter.

Council's Development Committee resolved on 10 October 2017 to:

1. *Prepare and publicly exhibit the proposed amendments to Draft Chapter N19 Huskisson Mixed Use Zones of Shoalhaven Development Control Plan 2014 for a minimum period of 28 days in accordance with the Environmental Planning & Assessment Act 1979.*
2. *Advise the relevant Community Consultative Body (Huskisson Woollamia Community Voice) of the public exhibition.*
3. *Report the outcomes of the public exhibition period to Council when appropriate.*

As a result, DCP Amendment No 22 (**Attachment 1**) was publicly exhibited in accordance with the statutory requirements from 25 October to 24 November 2017 (inclusive).

No submissions were received in respect to the DCP Amendment. Thus, it is recommended that the DCP Amendment be adopted and finalised as exhibited with the only change being the highlighting for consistency of LEP and DCP dictionary terms.

Further Amendments to DCP Chapter N19: Mixed Use Zones

In the report to Council's Development Committee on 10 October 2017, it was noted that issues were raised outside of the scope of works for Amendment No 22 and that they be considered as part of a future amendment to Chapter N19: Mixed Use Zones.

This consideration will be undertaken as part of Amendment No 10 (Area Specific Review) to Shoalhaven DCP 2014 that will be reported to Council at the appropriate point.

Community Engagement

Draft Amendment No. 22 to the DCP was publicly exhibited from Wednesday 25 October until Friday 24 November 2017 (inclusive) at the City Administration Centre, Bridge Road, Nowra.

Owners of land covered by the DCP Chapter and the Huskisson-Woollamia Community Voice (the local CCB) were directly advised of the exhibition.

During the exhibition period, no submissions were received.

Policy Implications

If adopted, DCP Amendment No. 22 will finalise an amendment to Shoalhaven DCP 2014, Chapter N19: Huskisson Mixed Use Zones.

Risk Implications

If Council does not resolve to amend the DCP chapter, public safety could be at risk due to the narrow width of waste collection in Kent Lane, Winnima Lane and Unnamed Lane. Amendment No 22 intended to mitigate against these risk implications.

DE17.70 Shoalhaven Development Control Plan 2014, Chapter N19 Huskisson Mixed Use Zones - Draft Amendment Preparation and Proposed Public Exhibition

HPERM Ref: D17/216331

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft DCP Amendment - Chapter N19 Huskisson Mixed Use Zones (under separate cover)

Purpose / Summary

To obtain endorsement for the preparation and public exhibition of Draft Chapter N19 Huskisson Mixed Use Zones (draft Amendment), Shoalhaven Development Control Plan (DCP) 2014 to:

- Include adopted changes from the rescinded DCP No. 99 Huskisson Foreshore Business Development Zones 3(g) Amendment No 2, which were inadvertently omitted during the conversion to the new Citywide DCP.
- Review and revise the waste and traffic management related controls that apply to the laneways in Precincts 1, 2, 3 and 4.
- Improve the overall legibility of the DCP Chapter.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Prepare and publicly exhibit Draft Chapter N19 Huskisson Mixed Use Zones of Shoalhaven Development Control Plan 2014 for a minimum period of 28 days in accordance with the *Environmental Planning & Assessment Act 1979*.
2. Advise the relevant Community Consultative Body (Huskisson Woollamia Community Voice) of the public exhibition.
3. Report the outcomes of the public exhibition period to Council when appropriate.

Options

1. Adopt the recommendation.

Implications: This will enable the intent of a previous Council resolution to be enacted, which sought to consider submissions received during the exhibition of Shoalhaven DCP 2014, relating to Area Specific Chapters.

The draft Amendment will incorporate controls previously adopted by Council and made effective by the previous DCP No. 99 Amendment No. 2, which addressed issues relating to traffic management and waste collection of the Huskisson Laneways, specifically Kent Lane, Winnima Lane and Unnamed Lane.

In addition, the draft Amendment will delete duplicate or contradictory controls, address additional concerns raised by Council's Development Services, Traffic Unit and Waste Services Section, and simplify the wording of existing controls relating to the three laneways.

2. Adopt an alternative recommendation or defer the public exhibition of the draft Amendment to enable further changes to the DCP.

Implications: Dependent on the changes requested, this may delay the adopted controls from DCP No. 99 being inserted as previously intended into Chapter N19. This may result in waste collection and traffic management issues for new development in the area.

3. Not support the recommendation to include the adopted changes from previous DCP No. 99 process.

Implications: DCP No. 99 was rescinded as a result of Shoalhaven DCP 2014 coming into effect. Given that the adopted changes to DCP No. 99 were carried over, the missing controls have no effect on any new development in Kent Lane, Winnima Lane and the Unnamed Lane.

Issues with respect to waste collection and traffic management cannot be appropriately mitigated or managed with the existing controls in Chapter N19 and as such may result in adverse impacts to existing and proposed development and the street network should this not be addressed.

Background

Following the notification of Shoalhaven Local Environmental Plan (LEP) 2014 in April 2014, Council had six months to make its single Citywide DCP effective. This task involved reviewing and consolidating over 100 DCP's into the single plan. Due to the limited time available to undertake this involved task, a number of DCP's were unable to be fully reviewed and amended as necessary. Housekeeping amendments to the DCP are continuing to take place to address issues as a result of this process and other issues that have arisen since its adoption.

In adopting the Shoalhaven DCP on 9 October 2014, the Special Development Committee also resolved the following (Part MIN14.728(a)):

That Council:

- a) *Consider the submissions received during the exhibition of the draft Shoalhaven DCP 2014 relating to Part 2 Area Specific Chapters and the individual preferred options/changes to the draft Shoalhaven DCP 2014 as set out in the sections of this report via the successive recommendations.*

Part a) of the above resolution sought to make changes to the Area Specific Chapters based on the successive recommendations addressing submissions received during the public exhibition of the draft Citywide DCP. The report to the Special Development Committee summarised a submission with respect to the Huskisson Mixed Use Zones precinct as follows:

"DCP 99 Huskisson Foreshore Business Development Zone 3(g), Duncan, Bowen, Fegan and Nowra Streets has recently been amended in 2012 and 2014. Ensure the amendments have been included in Chapter N19."

The corresponding resolution was to (MIN14.728 N19c):

“Ensure that the content of the 2012 and 2014 amendments to DCP No. 99 are included in Chapter N19.”

This draft Amendment essentially seeks to enact this resolution.

Draft Chapter N19 Huskisson Mixed Use Zones

The draft Amendments address important issues relating to waste collection and traffic management within Kent Lane, Winnima Lane and the Unnamed Lane at Huskisson. Other minor housekeeping amendments have been made with respect to Murdoch Street to ensure a consistent approach between the four precincts, improving the legibility of the chapter through use of simplified and clearer language and figures.

The draft Amendments are summarised with relevant justifications in the table of changes at the beginning of the draft Chapter (see **Attachment 1**). The draft Amendments throughout the document are highlighted in green, yellow and blue to indicate whether they are:

- Green - Existing controls to be reworded and/or relocated, or
- Yellow – Existing controls to be deleted, or
- Blue – New controls or additional advisory text to be inserted.

Generally, the changes seek to incorporate the missing controls adopted through DCP No. 99 Amendment No 2, utilise consistent wording (i.e. waste collection, not services), delete duplicated or contradictory controls, address additional recent concerns raised by Councils Traffic Unit and Waste Services Section, minimise conflict between pedestrians and vehicles, and simplify the wording of existing controls relating to the three laneways.

In preparing the draft Amendment, relevant Sections of Council were consulted including Development Services, Waste and Traffic. The issues they raised generally relate to the location of waste collection services in the subject laneways, consistent use of references, improving legibility of locational figures, structures and landscaping adjacent to laneways and traffic management.

Some issues had already been included and addressed as part of the draft Amendment, other issues raised were addressed through further revisions to controls where considered appropriate. Where issues raised were outside the scope of this draft Amendment, they have been noted and will be considered as part of a future broader Amendment to this DCP Chapter. It is also noted that as part of the post-exhibition review, LEP and DCP dictionary terms will need to be highlighted in this Chapter.

Proceeding to exhibit the draft Amendment to Chapter N19 will enable Council staff to action the two minutes referred to above.

Community Engagement

The draft Amendment will be publicly exhibited for a minimum period of 28 days in accordance requirements of the *Environmental Planning & Assessment Act 1979*.

Policy Implications

The draft Amendment proposes changes to Chapter N19 of the Shoalhaven DCP 2014. The proposed amendments relate to an adopted position of Council from 2014 and additional matters to address concerns from Council's Waste Services and Traffic Unit.

Financial Implications

The draft Amendment is to be undertaken within the existing Strategic Planning budget.

Risk Implications

If the draft Amendment does not progress, there is a risk that any future development adjacent to Kent Lane, Winnima Lane or the Unnamed Lane will not provide sufficient space to allow for waste collection to be provided, or for waste collection trucks to safely manoeuvre in and out of the laneways. Including clear controls in the DCP will help provide clarity for future development applications.

The current laneway arrangement of narrow widths and limited kerb side access may restrict waste collection truck access to the laneways or ability to exit the laneway in a forward direction. This is a particular issue during holiday periods.

The proposed amendments to Chapter N19 are intended to mitigate against these risk implications.

DE18.21 Aboriginal Land Claim No.41831 - Illaroo

HPERM Ref: D18/48784

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Request for Information - Aboriginal Land Claim - Illaroo [↓](#)
2. Special Lease - Bundanon Trust [↓](#)

Purpose / Summary

To obtain direction regarding any proposed comment Council should make in regard to Aboriginal Land Claim (ALC) No. 41831 at Illaroo.

Note: This matter is being reported to the Development Committee to meet an extended deadline to provide comment.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Notify the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit that Council has no objection to the granting of Aboriginal Land Claim No.41831 at Illaroo, subject to the following being excluded from the Claim, or being resolved as part of the determination of the Claim:
 - a. Agreements to achieve the outcomes of the Bundanon Masterplan.
 - b. Easements/rights of way or similar to maintain legal and practical access.
 - c. Easements to establish and maintain Asset Protection Zones.
 - d. Preservation of the environmental significance of the area by ensuring that the registered wildlife sanctuary and threatened species habitats are not compromised, and existing environmental initiatives can continue.
 - e. Preservation of the cultural significance of the area, as demonstrated on the Commonwealth Heritage Listing.

Options

1. Notify the NSW Department of Industry (DoI) – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that Council does not object to the granting of ALC No. 41831 subject to agreements and easements being excluded from the claim or resolved as part of the determination of the claim.

Implications: This is the preferred option as it enables Council to respond to DoI, consistent with the advice provided by Bundanon Trust.

2. Provide alternative advice to DoI regarding ALC No. 41831 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. Any other position would potentially be inconsistent with the Bundanon Trust's submission.

3. Not respond to the Dol regarding ALC No.41831.

Implications: This is not preferred as it does not allow Council to present evidence that the lands which are being claimed have been reserved for future public purpose or are part of a wildlife refuge.

Background

Council received advice from Dol on 19 January 2018 that ALC No.41831 is now under investigation for determination. The claim is over parcels of land that form part of the “Bundanon” Estate at Illaroo, which is managed by the Bundanon Trust.

The subject land is shown at **Figure 1**, and comprises the following:

- Lot 7315 DP 1166783; and
- Lot 12 (Por 12) & 13 (Por 13) DP 751273

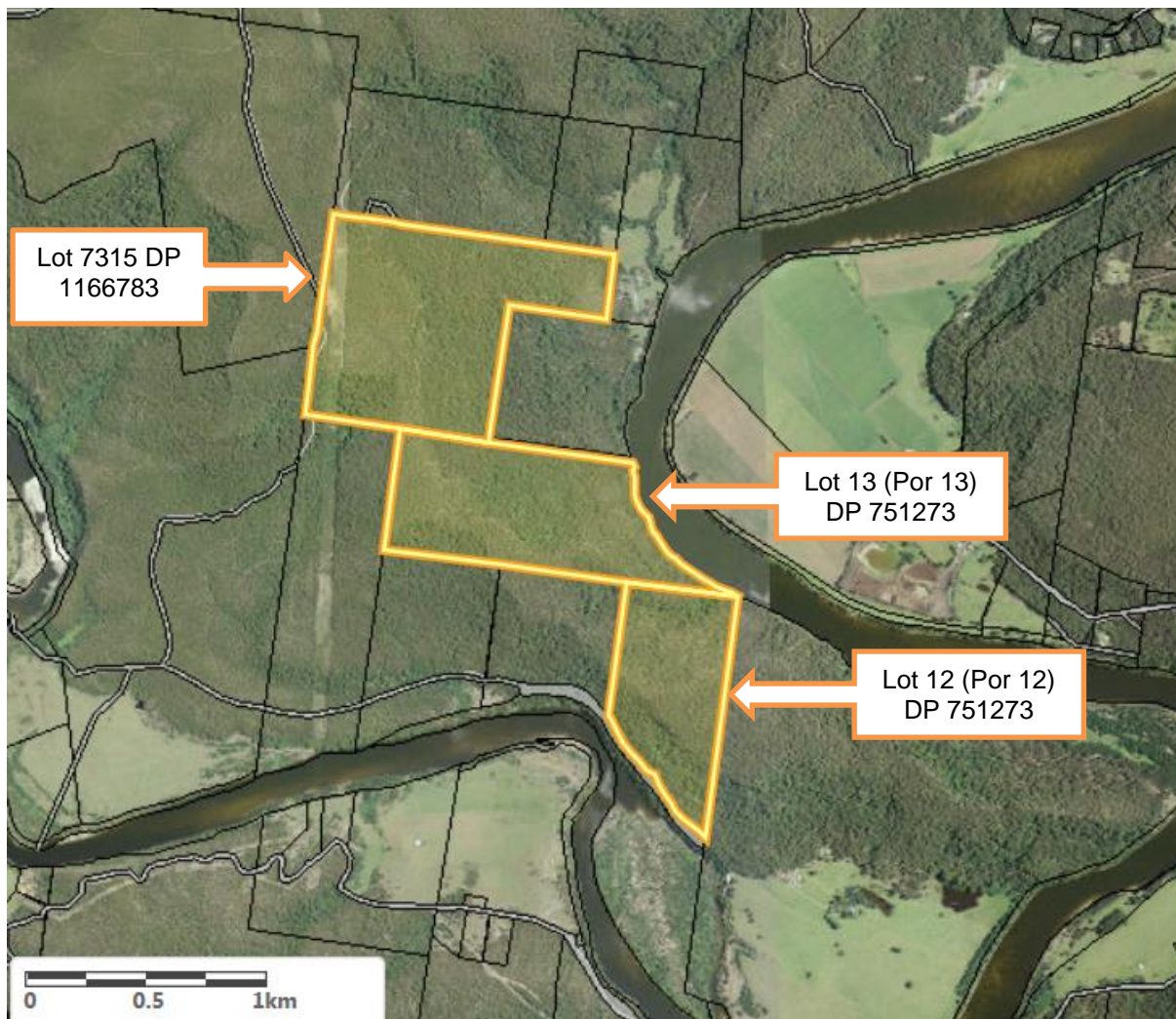


Figure 1 – Aerial image - Subject land – ALC No.41831

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

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

DE18.21

Any comment, assertion or statement provided regarding Councils interest in the land, should be as at the date of the claim, being 24 November 2016 and be supported by evidence. The claim was lodged by the NSW Aboriginal Land Council.

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

Summary of the Subject Land

The subject land comprises three separate lots situated between Bundanon Road and the Shoalhaven River.

The surrounding lots are all managed by the Bundanon Trust, with the exception Lot 15 DP 751273, that adjoins Lot 7315 DP (to the north), which is owned by the Nowra Local Aboriginal Land Council.

Lot 15 DP 751273 was subject to a previous ALC (No.6393) in 2000. Council resolved on 19 December 2000 to support the claim and on 7 December 2015 the claim was granted, and the land proceeded to be transferred to the Nowra Local Aboriginal Land Council (LALC). This highlights that land mapped as under the ownership of 'Bundanon Trust' is land which can be claimed by Nowra LALC as the Bundanon Trust is an agency arm of the Federal Government.

The following is an overview of the three lots covered by the current claim and comment where relevant:

- Lot 7315 DP 1166783

Lot 7315 is the largest of the three lots and borders Lot 101 DP 751273, which is the site proposed for the Bundanon Trust Masterplan.

Part of Bundanon Road exists in the western section of Lot 7315, although there is no formal road reserve in place. Whilst this 5.3km section of road which traverses the subject site is not a legal road reserve, Council's Assets and Works have indicated that this section of Bundanon Road has likely been formed and maintained by Council in the past. In determining the claim, an easement or similar over this portion of land is required in order to retain the legal and practical access for this section of Bundanon Road.

- Lot 7315 DP 1166783 & Lot 13 DP 751273 (Por 13)

Lot 7315 and Lot 13 are subject to an altered Special Licence (LI 194561) granted to the Bundanon Trust under Section 34 of the *Crown Lands Act 1989* in September 2016. A copy of the altered Special Licence is provided as **Attachment 2**. The purpose of the Special Licence is for the preservation of bushland. The alteration to this Special Licence followed the removal of Lot 15 DP 751273 from the licence after the lot was granted to Nowra LALC through a previous claim (No.6393).

Further, Crown Lands have advised that these two lots are part of Reserve No. 751273 for 'future public requirements', originally notified 29 June 2007. This reserve is Crown land held by the Bundanon Trust under Licence No. 194561 and commenced on 31 March 1993.

- Lot 12 DP 751273 (Por 12)

Lot 12 is part of the Bundanon Wildlife Refuge, which was gazetted 17 September 1982 (see **Figure 2**).

Further, Crown Lands has advised Council that this lot is part of Reserve No. 87526 for 'future Public Requirements' notified 28 November 1969. It is Crown land held by Bundanon Trust under expired Special Lease – LS 189571 (formerly Special Lease 1988/1 for business purposes which expired 31 December 2009).

The Bundanon Trust occupy Lot 12 under the holding provisions of the *Crown Lands (Continued Tenures) Act 1989* following the expiry of the Special Lease. Dealing I212864 shows that the Special Lease was transferred from the Boyd Family to the Bundanon Trust on 24 March 1993.

**NATIONAL PARKS AND WILDLIFE ACT, 1974.—
PROCLAMATION**

I, Air Marshal Sir JAMES ANTHONY ROWLAND, Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia, with the advice of the Executive Council and in pursuance of the powers vested in me under section 68 of the National Parks and Wildlife Act, 1974, with the consent of every owner and occupier do, on the recommendation of the Director of National Parks and Wildlife, by this my Proclamation, declare the lands described hereunder to be a wildlife refuge for the purposes of the abovementioned Act.

To be known as "Bundanon Wildlife Refuge".

Signed and sealed at Sydney, this 1st day of September, 1982.

L. W. STREET,
by Deputation from His Excellency the Governor.

By His Excellency's Command,

ERIC BEDFORD,
Minister for Planning and Environment.
GOD SAVE THE QUEEN!

Description

Land District—Nowra; City—Shoalhaven

County Camden, Parish Illaroo, 308.8 hectares being portions 12, 14 and 118 inclusive of reserved road and adjoining boundary road. NPWS W. 5086. (2601)

Figure 2 – National Parks and Wildlife Act 1974 Gazettal

Engagement – Bundanon Trust

As part of the consideration of this claim, Council staff contacted Bundanon Trust. It is acknowledged that this is not a formal or typical requirement of considering ALC's. However, given the community interest in this facility it was considered prudent.

Bundanon Trust advised that they had been notified of the claim by DoI and were making a separate submission. A copy of their draft submission will be available in the Councillor's room. The following is a summary of their points:

- Bundanon Trust raises no objection to the Claim in principle.
- Granting of the Claim may affect various interests the Bundanon Trust has in the land subject to the ALC including:

DE18.21

- Achieving the development outcomes of the Bundanon masterplan;
 - The establishment and maintenance of an Asset Protection Zone (APZ) within Lot 7315;
 - Maintaining fire safety egress across Lot 7315;
 - Maintaining unimpeded access to Lot 118;
 - Preserving the environmental significance of the area by ensuring that the registered wildlife sanctuary and threatened species habitats are not compromised, and existing environmental initiatives can continue; and
 - Preserving the cultural significance of the area – as demonstrated by its listing on the Commonwealth Heritage List.
- A deferred commencement development consent exists over Riversdale. The requirements of this include the creation and maintenance of an asset protection zone (APZ) which is required to go over a small part of Lot 7315 (subject to this ALC).
 - The subject land provides access to other Trust managed properties, including:
 - Lot 7315 which has been historically used for fire-trail access to the Riversdale property, enabling emergency vehicles to access the site.
 - Lot 12 provides the only access to the Eearie Park and Bundanon properties. It was noted that it is unclear whether the road reserve adjacent to Lot 12 is part of the ALC.
 - Lot 7315 and Lot 13 are subject to a Special Licence and Lot 12 is subject to a Special Lease. The Trust would like to maintain these for the foreseeable future.
 - The land surrounding Bundanon Trust is considered of cultural significance and is registered on the National Heritage List. The listing sites the significant views from the properties which were painted by Arthur Boyd, Sidney Nolan and others, and the inspiration of the landscape to generations of Australian artists.
 - Lots 7315 and 12 are of considerable cultural significance in modern Australian art history as they were the location of significant artworks painted by Boyd and Nolan.
 - Bundanon Trust is a registered Wildlife Sanctuary. The subject land has significant biodiversity and provides habitat to 13 threatened species.
 - Bundanon Trust has invested considerably in a major environmental initiative on portions abutting these lots, with significant private and public funds invested, which may be at risk should the custodianship of these portions be transferred to others.
 - It is critically important that the historical and ongoing social, cultural and ecological interests in Lots 7315, 12 and 13 are not affected.

Consequently, it is considered that Council should not object to the granting of ALC No. 41831, consistent with the submission from Bundanon Trust, subject to conditions relating to

DE18.21

creation of easements for access and APZ, and Agreements relating to the achievement of the Bundanon Masterplan and ongoing preservation of the subject sites environmental and cultural significance.

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.

There is a risk that if the claim is granted without establishing easements / right of ways, any legal and practical access to both Bundanon Road and to other properties managed by the Bundanon Trust (Riversdale) may be complicated or severed.



RM8 Reference: DOC18/010338

Reference to authorities and stakeholders via email:

Shoalhaven 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
NSW Fisheries	recfishingpolicy.administration@industry.nsw.gov.au

To whom it may concern

Aboriginal Land Claim 41831 at Illaroo

The Department of Industry (DoI) – Lands and Forestry, 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 – Lands and Forestry.

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.

A response is requested to be provided by 16 February 2018. 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 the Aboriginal Land Claim Investigation Unit on (02) 6883 3396, or by email alc@crowland.nsw.gov.au.

Yours sincerely



Jo Kleinig
Senior Case Manager
Aboriginal Land Claim Investigation Unit

19 January 2018

Claim No	Land Council	Land Claimed	Lodged
41831	New South Wales Aboriginal Land Council	Lot 7315 DP 1166783 Lot 12 and 13 DP 751273	24 November 2016



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@crowland.nsw.gov.au.



**Alteration of a licence pursuant to the provisions
of Section 34, Crown Lands Act, 1989.**

File Reference: NA93H82
Account No: LI 194561

PO Box 2215, DANGAR NSW 2309
Phone: 1300 886 235
Fax: (02) 4925 3517
cl.licences@crowland.nsw.gov.au
www.crownland.nsw.gov.au

15 September 2016

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Sir/Madam

In accordance with the above provisions, this Licence has been altered as follows:

Particulars

Holder	Bundanon Trust
Holding Number	LI 194561
Alteration Approved	15-SEP-2016
Purpose	1, preservation of bushland
Description of property to which Licence attaches	Crown land being whole Lot 7315 DP 1166783 and whole Lot 13 DP 751273 (part Reserve 751273 for future public requirements, notified 29-Jun-2007) as shown by red hatched edge on Schedule 3
Postal Address	PO Box 3343 NOWRA NORTH NSW 2541
Area	134.3ha

If you have any queries in relation to this correspondence please use the above contact details.

Yours faithfully

Lisa Burton
Department of Industry - Lands Business Centre

Licence: LI 194561

DESCRIPTION OF LANDS

PART 1

Local Govt. Area	SHOALHAVEN		
County	CAMDEN		
Parish	ILLAROO		
Locality	ILLAROO		
Status:	Lot	Section	Plan
Crown land being	7315		DP: 1166783
Crown land being	13		DP: 751273

PART 2

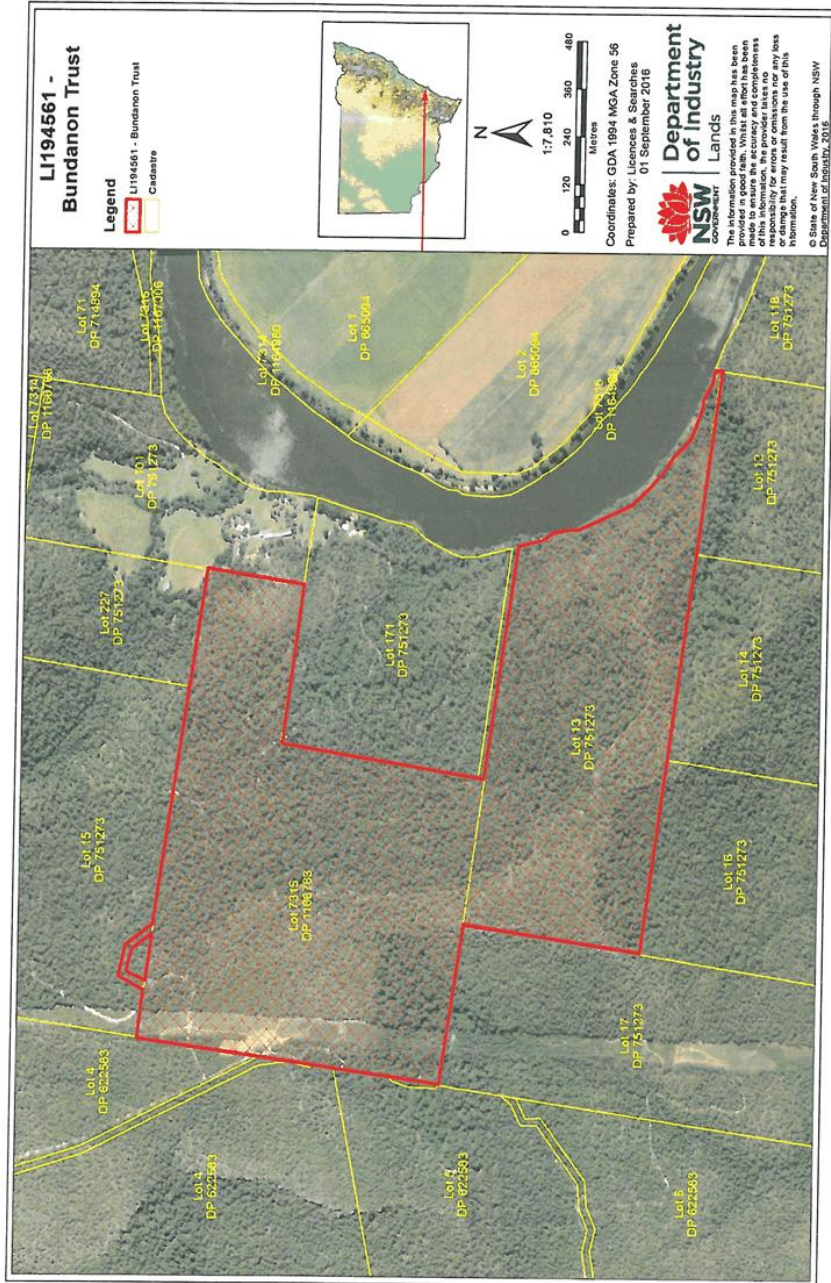
Plan/diagram: Schedule 3	Area: 134.3ha
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TEXT DESCRIPTION: Crown land being whole Lot 7315 DP 1166783 and whole Lot 13 DP 751273 (part Reserve 751273 for future public requirements, notified 29-Jun-2007) as shown by red hatched edge on Schedule 3

***** End of Description of Lands (Crown Land) *****

Licence No.: LI 194561

Schedule 3



***** End of Schedule 3 *****

DE18.22 SF10586 – 11 Grahams Rd, Meroo Meadow – Lot 2 DP 861948**DA. No:** SF10586/4**HPERM Ref:** D18/55215**Group:** Planning Environment & Development Group
Section: Development Services**Attachments:** 1. SF10586 - Plan of Proposed Subdivision - Lot 2 DP 861948 - 11 Grahams Rd, Meroo Meadow [↓](#)**Description of Development:** Two (2) Lot Rural Subdivision**Owner:** Kerry Hutton Pty Ltd**Applicant:** Lee Carmichael Town Planning**Notification Dates:** 15 May to 30 May 2017**No. of Submissions:** Nil**Purpose / Reason for consideration by Council**

This purpose of this report is to seek Council's direction as to whether a Restriction placed on the Section 88B Instrument of the subject land should be removed. The Restriction states that the lot cannot be further subdivided.

The Restriction was imposed by Council via a condition of consent in the most recent subdivision approval for the site (SF7377).

Should the removal of the Restriction be supported and the current application (SF10586) be determined by way of approval, a condition of consent would be included in any consent issued requiring the Restriction be removed prior to the issue of a Subdivision Certificate for SF10586.

Recommendation (Item to be determined under delegated authority)

That the Committee:

1. Confirms that it supports the removal of the Restriction that was placed on the section 88B Instrument of the subject land under SF7377; and
2. Refer the application (SF10586) back to staff for determination.

Options

1. Resolve to support the removal of the Restriction that was placed on title via the section 88B Instrument of under SF7377.

Implications: The deletion of the Restriction would enable Council to consider determining the current application (SF10586) by way of approval.

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2. Resolve to not support the removal of the Restriction that was placed on title via the section 88B Instrument under SF7377.

Implications: The application would either need to be withdrawn by the applicant or refused consent by Council, as any approval is contingent on the Restriction being removed.

Background

Proposed Development

The current application (SF10586) seeks approval for the subdivision of the existing 91.73ha lot into two lots that would have the following Lot numbers and areas:

- Proposed Lot 201 (western half of site) – 51.521ha
- Proposed Lot 200 (eastern half of site) – 40.207ha

See Attachment 1 for the Plan of Proposed Subdivision prepared by Johnson Procter Surveyors (Surveyor's Reference: 89045, dated 08/02/2017) (document D17/144901).

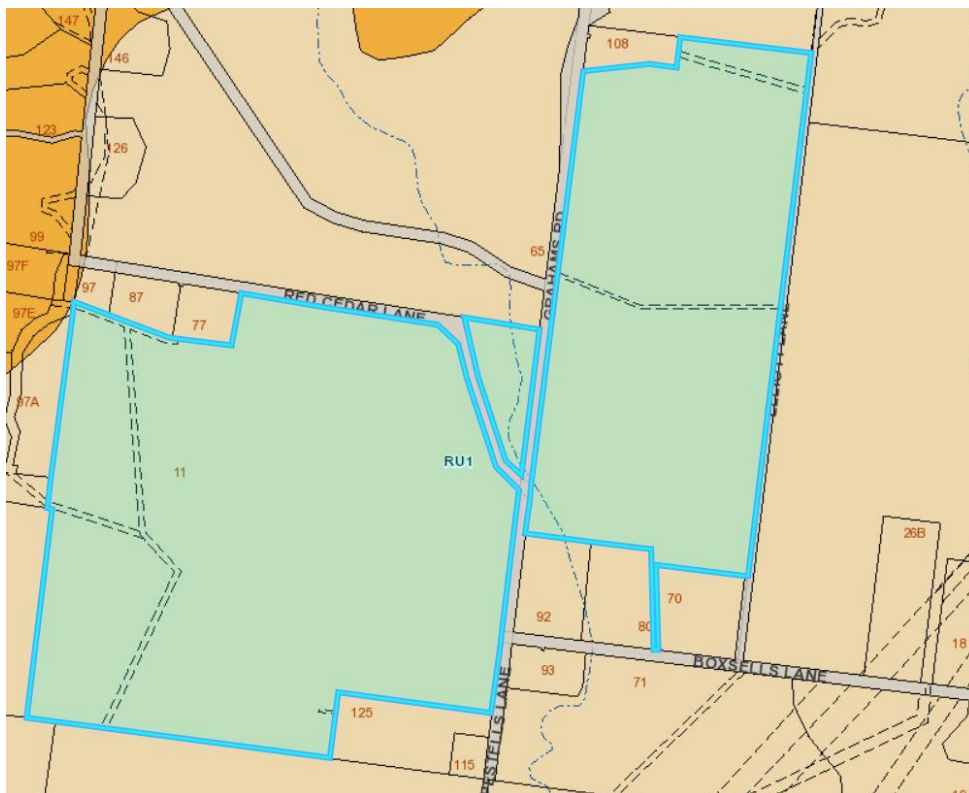
The areas are compliant with the controls within the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Subject Land

The subject site is 11 Grahams Rd, Meroo Meadow (legally known as Lot 2 DP 861948).

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Figure 1 – Location Map
(with Shoalhaven Local Environmental Plan 2014 (SLEP 2014) zoning overlay)



Site & Context

The subject site:

- Is a rural site utilised predominantly as a dairy farm by the owners (Hutton family) and is located in Meroo Meadow surrounded by other rural properties;
- Is zoned RU1 Primary Production and has an overall area of 91.73ha;
- Has a minimum lot size of 40ha as mapped in the SLEP 2014 Minimum Lot Size map;
- Is divided into two halves by Grahams Rd and has access via three driveways; one from each of the two lot halves to Grahams Rd and a third to Boxsells Ln to the south;
- Is not mapped as either bushfire prone land or within the Flood Planning Area;
- Contains various sheds and outbuildings to support the agricultural use of the land as well as three dwellings. These dwellings would be located on the respective proposed lots and have the following informal names:

Informal dwelling name	To be located on proposed lot	Approved	Details of approval
The Residence	Lot 201 (western lot)	Pre-1964	N/A
The Cottage	Lot 201 (western lot)	Yes – as rural worker's dwelling	DA94/1145 (approved 27/04/1994) & BA94/2901 (approved 11/11/1994)
The Dairy	Lot 200 (eastern lot)	Pre-1964 – No*	N/A

*The Dairy dwelling has a more complicated history which is detailed later in this report. Figure 2 below shows the location of the three dwellings.

Figure 2 – Location Map (Aerial photo with informal dwelling names)

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History

- i) **Original land ownership:** The current site is an amalgamation of two original 1964 holdings as outlined in blue and orange in Figure 3 below.

Figure 3 – Original 1964 holding ownership



ii) Building Application BA92/2637: Lodged 30/04/1992 and approved 16/06/1992

“The existing dwelling on site shall be rendered uninhabitable by the removal of all fittings and fixtures upon completion of the new building. The building then shall only be used for storage purposes.”

Figure 4 – Identification of Lot 1 DP 861948 (108 Grahams Rd, Meroo Meadow) which contains the dwelling approved under BA92/2637:



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iii) **Most recent subdivision approval – SF7377:** Lodged 25/08/1992 and approved 20/09/1993

SF7377 proposed:

- Boundary adjustment of the then two (2) existing lots. As detailed previously, these lots were created as residue lots after excision of the total concessional lot potential from the two (2) separate 1964 existing holdings to which these lots originally related;
- To create a proposed Lot 1 having an area of 1 hectare. This lot (see Figure 4 above) would contain the dwelling approved under BA92/2637. The dwelling was under construction at the time SF7377 was lodged; and
- To create the now subject Lot 2 which has an area of 91.783ha. This lot consolidated the two original 1964 holdings;

SF7377 was assessed under Council's previous Shoalhaven Local Environmental Plan 1985 (SLEP 1985). The minimum lot size for this site under SLEP 1985 was 40ha as it currently still is under SLEP 2014.

- Given the proposed boundary adjustment to create Lot 1 would have resulted in a lot of only 1 hectare, the applicant lodged an Objection to a development

standard under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1).

- The variation was to create an undersized lot by way of a boundary adjustment (i.e. not the actual creation of a new lot, as the ability to create concessional lots had already been exhausted as previously detailed).
- A report summarising the proposal and recommending that Council resolve to support the SEPP 1 Objection was put to Council at a meeting of 17/08/1993. Council resolved to support the SEPP 1 Objection, subject to there being the creation of a restriction as to user on the resulting 91.73ha lot, prohibiting its further subdivision.
- Council staff wrote to the then NSW Department of Planning seeking their concurrence to vary the minimum lot size requirement as per the SEPP 1 Objection, in a letter dated 23/08/1993. The Department's concurrence was subsequently provided in a letter dated 13/09/1993.
- Consequently, consent for SF7377 was granted on 20/09/1993. Conditions 3 and 6 are of relevance to the current application and currently read as follows:

Extract of conditions of consent from SF7377

RESTRICTIONS

3. For the purpose of registering, of Restrictions as to User under Section 88B of the Conveyancing Act, the following covenants shall apply to the subdivision:

(a) Proposed lot 2 shall not be further subdivided

CONDITIONS OF A GENERAL NATURE

6. The Director of the Department of Planning has concurred to this subdivision provided the existing dwelling is replaced by the dwelling located on proposed lot 1. The existing dwelling is to be made incapable of occupation prior to release of the final survey plans.

Note: "The dwelling on proposed Lot 1" is the dwelling that was approved under BA92/2637. "The existing dwelling" to be made uninhabitable is The Dairy.

- The Restriction was created and registered on the Section 88B Instrument.
- However, a review of all of Council's records relating to the subject site do not confirm that The Dairy dwelling was made uninhabitable. Council subsequently released the Subdivision Certificate for SF7377 on 05/09/1996. The subdivision was officially registered on 12/09/1996.
- The application was referred to the NSW Department of Agriculture who had concerns about the proposal, given it is Prime 3 Crop and Pastureland, but from a review of the SF7377 file, it seems it was ultimately Council's suggestion to place the Restriction on the land. The Department of Planning concurred.

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Issues

Given it was the elected Council's original decision (on recommendation of Council staff) to support the creation of the Restriction on the Section 88B Instrument and this was affected via Condition 3 of the SF7377 development consent, it is staff's opinion that the proposed removal of the Restriction needs to be reported back to Council for consideration, which is the overall purpose of this report.

Applicant's Submission

The applicant has provided justification within the submitted Statement of Environmental Effects (SEE) as to why the proposal overall is considered worthy of support.

In summary, the subdivision and 'de facto' approval of The Dairy dwelling would allow the land east of Grahams Rd to be more effectively managed as a dairy farm. It would also allow for succession planning for the younger members of the Hutton family to continue their long-standing association with the land and its use of the land for agricultural purposes.

If the removal of the Restriction is supported, the applicant has proposed that Council:

- Include a condition of consent requiring a Section 96 modification application to be lodged that would modify the existing SF7377 subdivision consent so as to delete Conditions 3 and 6; and
- Include a condition of consent requiring that the Section 88B Instrument relating to the current DP 861948 be modified so that the Restriction is removed prior to the issue of a Subdivision Certificate.

Note: Condition 12 of BA92/2637 that also required The Dairy dwelling to be rendered uninhabitable was not mentioned in the SEE. However, the deletion of this Condition would also need to be conditioned in any consent issued for SF10586.

Discussion

In summary:

- The Dairy is effectively an unauthorised dwelling that should have been made uninhabitable but seemingly this matter was not identified by Council at the time a Subdivision Certificate for SF7377 was issued. According to the SEE for the current application, the Dairy has been continually occupied since both BA92/2637 and SF7377 were approved;
- Under the current SF10586 application, both the proposed Lot 201 (west of Grahams Rd) and Lot 200 (east of Grahams Rd) would be above the minimum lot size of 40ha, thus automatically having dwelling entitlement under normal circumstances;
- The proposal under the current SF10586 application would not be inconsistent with the objectives of the site's RU1 Primary Production zoning.
- The Residence and The Cottage would be located on the proposed Lot 201 to the west of Grahams Rd. The Residence has 'de facto' approval having existed since before 1964 and The Cottage was approved as a rural worker's dwelling under DA94/1145 and BA94/2901;

- The applicant is seeking to use the current SF10586 application to regularise the use of The Dairy by requesting conditions be placed on any consent issued requiring the previous Conditions 3 and 6 under SF7377 to be deleted.

Planning Assessment

The DA has been assessed under s79C of the Environmental Planning and Assessment Act 1979. Other than for the complicated site history which has been previously detailed, there are no other planning grounds that would be grounds for a refusal of the application. If the removal of the Restriction is not supported, the application would need to either be withdrawn or refused.

Policy Implications

Nil.

Consultation and Community Engagement:

In accordance with Council's Community Consultation Policy for Development Applications the application was notified as follows:

- Individual property owners were notified of the proposal (within a 100m radius of the site – 25 letters sent. The notification period was from 15/05/2017 to 30/05/2017;
- The DA and supporting documentation are on display at Council's City Administrative Centre, Nowra as well as on Council's website through DA Tracking.

No submissions were received.

Financial and Legal Implications:

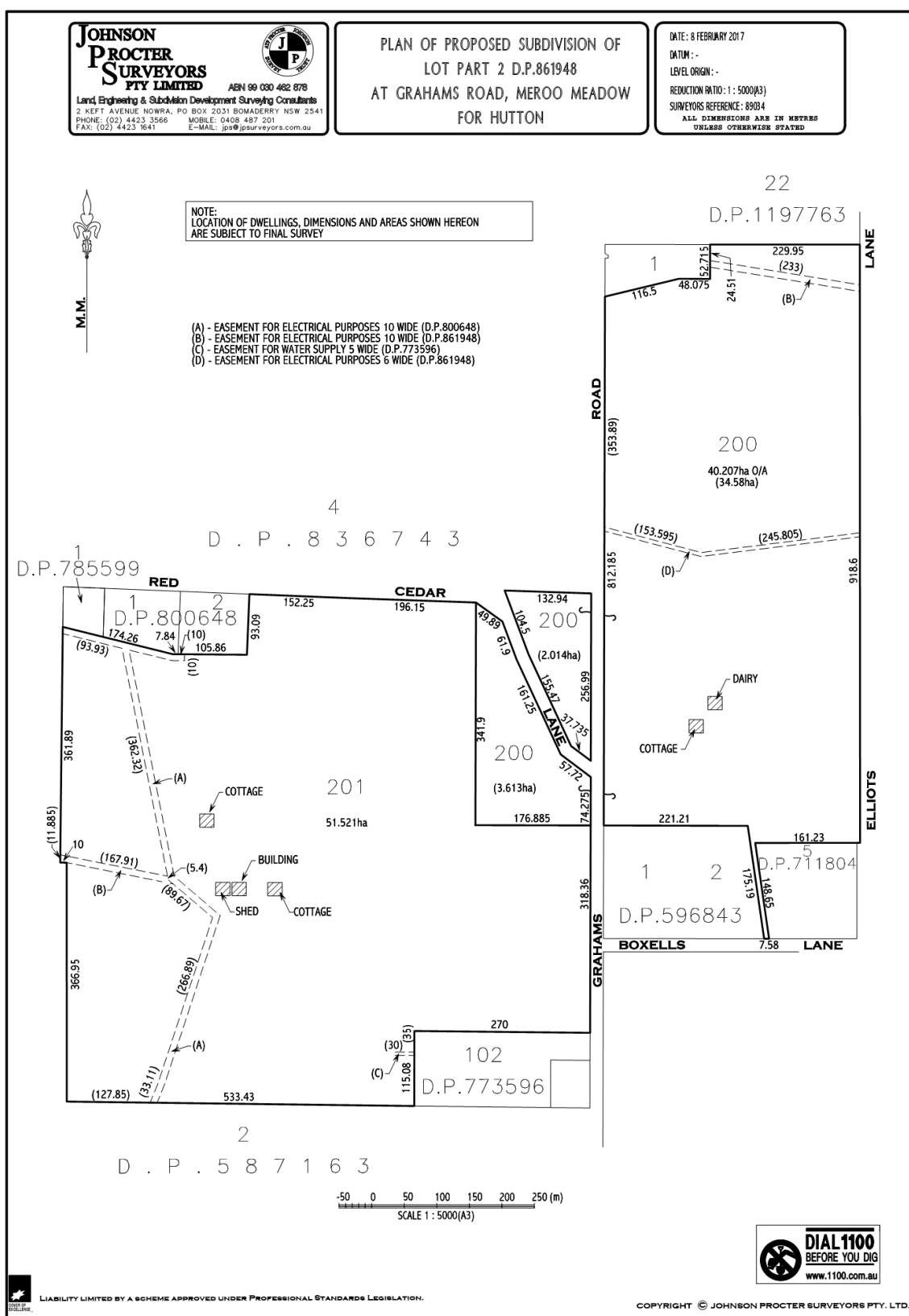
There are potential financial costs and legal implications for Council in the event of a refusal of the application. Such costs and implications would be associated with defending an appeal in the NSW Land and Environment Court.

Summary and Conclusion

If the removal of the Restriction is not supported and the applicant does not withdraw the application, the application will need to be refused. This could result in financial costs and legal implications to Council as stated above.

Despite the site's complicated history and in support of the application, both resulting lots would meet the minimum lot size, the site has (and has only ever had) a 40ha minimum lot size both under SLEP 1985 and SLEP 2014, and the proposal is not inconsistent with the objectives of the site's RU1 Primary Production zoning. Accordingly, support is recommended.

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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.