

Development Committee

Meeting Date: Tuesday, 04 December, 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

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

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. 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 - 6 November 20181
3. **Declarations of Interest**
4. **Mayoral Minute**
5. **Deputations and Presentations**
6. **Notices of Motion / Questions on Notice**

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

Nil

Development Committee

Delegation:

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 section 8.11 or section 8.9 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 7 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 8.11 and 8.9 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, 6 November 2018
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Joanna Gash - Chairperson
Clr Amanda Findley
Clr Patricia White
Clr John Wells
Clr Nina Digiglio
Clr Annette Alldrick
Clr Greg Watson
Clr Bob Proudfoot
Mr Russ Pigg - General Manager

Apologies / Leave of Absence

Apologies were received from Clr Levett, Clr Pakes, Clr Gartner, Clr Guile and Clr Kitchener.

Confirmation of the Minutes

RESOLVED (Clr White / Clr Findley) MIN18.889

That the Minutes of the Development Committee held on Tuesday 11 September 2018 be confirmed.

CARRIED

Declarations of Interest

Nil.

DEPUTATIONS AND PRESENTATIONS

DE18.69 - Exhibition Outcomes and Next Steps - Proposed Interim Policy - Development Adjoining Narrow Laneways across Shoalhaven (Page 11)

Greg Clarke spoke against part of the recommendation.

Kelvin Atkinson spoke in favour of the recommendation.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Aldrick / Clr Digiglio) MIN18.890

That the matter of item DE18.69 – Exhibition Outcomes and Next Steps – Proposed Interim Policy – Development Adjoining Laneways across Shoalhaven be brought forward for consideration.

CARRIED

DE18.69 Exhibition Outcomes and Next Steps - Proposed Interim Policy - Development Adjoining Narrow Laneways across Shoalhaven

HPERM Ref: D18/233210

Recommendation (Item to be determined under delegated authority)

That Council

1. Adopt the Interim Policy – Development Adjoining Narrow Laneways as amended to apply to secondary access lanes only, provided in Attachment 1.
2. Apply the Interim Policy until Shoalhaven Development Control Plan 2014 has been amended to include development controls for development adjoining and fronting onto narrow laneways.
3. Prepare a draft amendment to Shoalhaven Development Control Plan 2014 to insert specific development controls for development adjoining narrow laneways in residential zones for Council consideration prior to proceeding to exhibition.
4. Notify those people who provided a submission of this resolution.

RESOLVED (Clr Wells / Clr White)

MIN18.891

That Council

1. Adopt the Interim Policy – Development Adjoining Narrow Laneways as amended (provided in Attachment 2) to apply to secondary access lanes only and with an adjustment to the wording of 3a. of the policy to read: “laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access”.
2. Apply the Interim Policy until Shoalhaven Development Control Plan 2014 has been amended to include development controls for development adjoining and fronting onto narrow laneways.
3. Prepare a draft amendment to Shoalhaven Development Control Plan 2014 to insert specific development controls for development adjoining narrow laneways in residential zones for Council consideration prior to proceeding to exhibition.
4. Notify those people who provided a submission of this resolution.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Aldrick, Clr Watson and Russ Pigg

AGAINST: Clr Proudfoot

CARRIED

NOTICES OF MOTION / QUESTIONS ON NOTICE

**DE18.68 Notice of Motion - DA18/1998 - 64 Seagrass Avenue
Bayswood (Vincentia)**

**HPERM Ref:
D18/377205**

Recommendation (Item to be determined under delegated authority)

That DA18/1998 at 64 Seagrass Avenue, Bayswood be called in for consideration by Council. There have been around 30 objections to this development and the application has caused considerable public concern. And also that Council Staff organise a public briefing to allay the fears of Bayswood residents that this proposed development is not in accordance with the original Bayswood Masterplan and that it contravenes Dual Occupancy Guidelines and relevant Development Control Plans.

RESOLVED (Clr Proudfoot / Clr White)

MIN18.892

That

1. DA18/1998 at 64 Seagrass Avenue, Bayswood be called in for consideration by Council. There have been around 30 objections to this development and the application has caused considerable public concern.
2. Council Staff organise a residents' briefing to allay the fears of Bayswood residents that this proposed development is not in accordance with the original Bayswood Masterplan and that it contravenes Dual Occupancy Guidelines and relevant Development Control Plans.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr Watson / Clr Proudfoot)

MIN18.893

That an additional item DA18/2020, 43 Willowford Road, Woollamia, Lot 80 DP 9289 be introduced as a matter of urgency.

CARRIED

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

DE18.74 Additional Item - DA18/2020 - 43 Willowford Road, Woollamia

RESOLVED (Clr Watson / Clr Proudfoot)

MIN18.894

That DA18/2020 at 43 Willowford Road, Woollamia be called in for consideration by Council due to public interest.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

REPORTS

DE18.69 Exhibition Outcomes And Next Steps - Proposed Interim Policy - Development Adjoining Narrow Laneways Across Shoalhaven

HPERM REF:
D18/233210

Item dealt with earlier in the meeting see MIN18.891.

DE18.70 Exhibition Outcomes and Proposed Finalisation - Review of LEP and DCP Flood Controls

HPERM Ref:
D18/238835

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Planning Proposal (PP012) with a minor amendment being the retention of the existing Clause 7.3(5) definition in Shoalhaven Local Environmental Plan 2014.
2. Progress the draft amendment to Shoalhaven Local Environmental Plan 2014 by:
 - a. Forwarding PP012 to Parliamentary Counsel to draft the resulting amendment to Shoalhaven Local Environmental Plan 2014; and
 - b. The resulting amendment to Shoalhaven Local Environmental Plan 2014 be made using Council's delegation.
3. Adopt and finalise draft DCP Amendment No. 8 with the following amendments:
 - a. Amend the Dictionary to:
 - Update the definition of Flood Planning Level definition to be consistent with Shoalhaven Local Environmental Plan 2014.
 - Add the following definition for 'flood free land'
Flood free land means land above the probable maximum flood level.
 - Be consistent with changes made to the Dictionary by other recent amendments to the DCP.
 - b. Amend Draft Chapter G9 to:
 - Update the advisory note in Section 2 as outlined in this report.
 - Reword P3.1 as follows:
P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.
 - Amend the note in Schedule 2 to clarify that 'existing use rights' are defined in the NSW Environmental Planning and Assessment Act 1979.
 - Include two new supporting maps for the *Floodplain Risk Management Areas – Riverview Road Area and Terara Village* to clearly identify the land to which relevant site-specific controls apply, remove the supporting map for Lake Wollumboola, and reformat and reorder all the maps.
 - c. Amend the Chapter G9 Supporting Document to insert the words "or with a local planning consultant" after "Please check with Council...."
 - d. Amend Draft Chapter G10 to update the advisory note in Section 1 as outlined in this report.
 - e. Update all references to 'Section 149 Planning Certificates' to Section 10.7 Planning Certificates in both Draft Chapters G9 and G10 and all supporting documents.

- f. Make general formatting changes to improve the readability of both Draft Chapters G9 and G10 and all supporting documents.

RESOLVED (Clr Wells / Clr White)

MIN18.895

That Council:

1. Adopt and finalise Planning Proposal (PP012) with a minor amendment being the retention of the existing Clause 7.3(5) definition in Shoalhaven Local Environmental Plan 2014.
2. Progress the draft amendment to Shoalhaven Local Environmental Plan 2014 by:
 - a. Forwarding PP012 to Parliamentary Counsel to draft the resulting amendment to Shoalhaven Local Environmental Plan 2014; and
 - b. The resulting amendment to Shoalhaven Local Environmental Plan 2014 be made using Council's delegation.
3. Adopt and finalise draft DCP Amendment No. 8 with the following amendments:
 - a. Amend the Dictionary to:
 - Update the definition of Flood Planning Level definition to be consistent with Shoalhaven Local Environmental Plan 2014.
 - Add the following definition for 'flood free land'
Flood free land means land above the probable maximum flood level.
 - Be consistent with changes made to the Dictionary by other recent amendments to the DCP.
 - b. Amend Draft Chapter G9 to:
 - Update the advisory note in Section 2 as outlined in this report.
 - Reword P3.1 as follows:
P3.1 The development (subdivision and intended future use) is a suitable land use, and is adequately designed, for the defined hazard/hydraulic category.
 - Amend the note in Schedule 2 to clarify that 'existing use rights' are defined in the *NSW Environmental Planning and Assessment Act 1979*.
 - Include two new supporting maps for the *Floodplain Risk Management Areas – Riverview Road Area and Terara Village* to clearly identify the land to which relevant site-specific controls apply, remove the supporting map for Lake Wollumboola, and reformat and reorder all the maps.
 - c. Amend the Chapter G9 Supporting Document to insert the words "or with a local planning consultant" after "Please check with Council...."
 - d. Amend Draft Chapter G10 to update the advisory note in Section 1 as outlined in this report.
 - e. Update all references to 'Section 149 Planning Certificates' to Section 10.7 Planning Certificates in both Draft Chapters G9 and G10 and all supporting documents.
 - f. Make general formatting changes to improve the readability of both Draft Chapters G9 and G10 and all supporting documents.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE18.71 Draft Planning Agreement – Lot 172 DP 755923 and Lot 823 DP 247285 Berringer Rd, Cunjurong Point Rd and Sunset Strip Manyana

**HPERM Ref:
D18/347434**

Recommendation (Item to be determined under delegated authority)

That in accordance with the Committee's delegated authority from Council, the Committee endorse the draft Planning Agreement between Shoalhaven City Council and the developer (Ozy Homes Pty Ltd) of Lot 172 DP 755923 Cunjurong Point Rd and Lot 823 DP 247285 Sunset Strip Manyana which was publicly exhibited from 12 September – 10 October 2018.

RESOLVED (Clr White / Clr Alldrick)

MIN18.896

That in accordance with the Committee's delegated authority from Council, the Committee endorse the draft Planning Agreement between Shoalhaven City Council and the developer (Ozy Homes Pty Ltd) of Lot 172 DP 755923 Cunjurong Point Rd and Lot 823 DP 247285 Sunset Strip Manyana which was publicly exhibited from 12 September – 10 October 2018.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

DE18.72 Development Application – 54 Eastbourne Ave, Culburra Beach – Lot 494 DP 12278

**HPERM Ref:
D18/352598**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Confirm that it supports, pursuant to clause 4.6 (exceptions to development standards) of SLEP 2014, the applicant's request to vary the height limit of 7.5 metres to 9.08 metres; and
2. Refer the development application (DA17/2605) back to staff for determination.

RESOLVED (Clr Wells / Clr White)

MIN18.897

That Council:

1. Confirm that it supports, pursuant to clause 4.6 (exceptions to development standards) of SLEP 2014, the applicant's request to vary the height limit of 7.5 metres to 9.08 metres; and
2. Refer the development application (DA17/2605) back to staff for determination.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

**DE18.73 Exhibition Outcomes - Draft Planning Proposal
Guidelines 2018**

**HPERM Ref:
D18/355726**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt the Planning Proposal (Rezoning) Guidelines 2018 as exhibited and repeal the 2013 version of these guidelines.
2. Advise those who made a submission during the exhibition of these guidelines of this resolution.

RESOLVED (Clr Findley / Clr Wells)

MIN18.898

That Council:

1. Adopt the Planning Proposal (Rezoning) Guidelines 2018 as exhibited and repeal the 2013 version of these guidelines.
2. Advise those who made a submission during the exhibition of these guidelines of this resolution.

FOR: Clr Gash, Clr Findley, Clr White, Clr Wells, Clr Digiglio, Clr Aldrick, Clr Watson, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

There being no further business, the meeting concluded, the time being 5.30pm.

Clr Gash
CHAIRPERSON

DE18.75 Potential Planning Controls - Character - Cambewarra Escarpment

HPERM Ref: D18/240772

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Attachment A: Land Zone Map [↓](#)

Purpose / Summary

Obtain direction from Council regarding the most appropriate way forward in relation to potentially establishing character controls for future development along the Cambewarra Escarpment.

Recommendation (Item to be determined under delegated authority)

That:

1. Council proceed to investigate the possibility of an amendment to the Shoalhaven Local Environment Plan (LEP) 2014 by way of application of the Scenic Preservation Overlay or additional local clause to help protect the character of the Cambewarra Escarpment,
2. Council staff report back on specific detailed options in this regard to be included in a Planning Proposal.

Options

1. Investigate the possibility of an LEP amendment by way of application of the Scenic Preservation Overlay or additional local clause to protect the character of the Cambewarra Escarpment by including stronger considerations for the assessment of development applications. This would include preparing a further report to Council that identifies the detail in this regard, including possible implications.

Implications: This would enable LEP controls that focus specifically on the Cambewarra Escarpment area to be pursued. Such an amendment could include the application of the Scenic Protection Area Map or a new local clause, which would need to be considered in the development application process.

Approximately half of the land within the vicinity of the escarpment is already zoned either E2 Environmental Conservation or E3 Environmental Management and carries specific objectives relating to the protection of scenic and aesthetic values. However, these specific objectives do not apply to rural-zoned land in the vicinity of the escarpment.

The inclusion of area-specific provisions relating to the protection of amenity within the Shoalhaven LEP 2014 would reinforce the overall scenic and aesthetic values of the Cambewarra Escarpment. However, these controls would be rather subjective in nature and would not necessarily address specific design considerations for minimising visual impact.

2. Investigate the possibility of incorporating an area-specific chapter in the Shoalhaven Development Control Plan (DCP) 2014 to provide detailed development controls for future development along the Cambewarra Escarpment.

DE18.75

Implications: This would enable the development of detailed development controls specifically for the Cambewarra Escarpment, which would provide landowners, developers, and the community with clearer direction for future development regarding building design, setbacks, colours and materials, bulk and scale, visual amenity etc. However, DCP controls do not carry the same legal weight as controls within the LEP and are able to be varied or set aside.

An amendment of this nature has the potential to be resource hungry and may need the engagement of external specialist consultants to assist with the preparation of character assessments and appropriate development controls specifically for the area.

3. Investigate the possibility of incorporating stronger development controls for all rural and environmental-zoned land throughout the Shoalhaven Local Government Area (LGA) into the Shoalhaven DCP 2014.

Implications: This option would involve detailed development controls being developed for all rural and environmental zoned land throughout the LGA, not just the Cambewarra Escarpment. This option recognises that much of the City has high scenic and environmental values and would allow Council to implement controls that ensure development is sympathetic and consistent with prevailing landscape character throughout the LGA.

It should be noted there are some existing controls within Shoalhaven DCP 2014 relating to rural and environmental areas, for example, within Chapters G1, G12, G13 and G15. These are dispersed throughout the entire document rather than being consolidated in a specific chapter. Therefore, this option would also require amendments to other chapters of Shoalhaven DCP 2014 to remove controls relating to rural and environmental-zoned land, to avoid repetition and ensure consistency through the document.

Because of the scope of this approach it would be resource hungry and would take some time to complete.

4. Not proceed further with the investigation into character controls for the Cambewarra Escarpment at this stage.

Implications: At present, land within the vicinity of the Cambewarra Escarpment is subject to controls within the Shoalhaven LEP 2014 and Shoalhaven DCP 2014 relating to environmental protection and visual amenity, for example, land zones, height of buildings mapping, and generic development controls for certain types of development. Any application received by Council will be assessed on merit and compliance with the relevant development controls.

Furthermore, there are relevant Planning Principles relating to visual amenity, view sharing, and visual impact on public domain views, in particular, [Tenacity Consulting v Warringah \[2004\] NSWLEC 140](#) and [Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor \[2013\] NSWLEC 1046](#). Although Planning Principles are not legally binding and do not prevail over Council's plans and policies, they may assist with making a planning decision where there is deemed to be a void or lack of clarity within Council policy.

A general review of 'tourist and visitor accommodation' in rural and environmental zones is currently being undertaken as a separate process. This is likely to address many of the community concerns regarding the impact of larger tourist developments in the vicinity of the escarpment.

5. Adopt an alternative recommendation, for example a combination of Options 1 and 2 that could see an LEP provision supported by relevant DCP controls.

Implications: Implications of adopting an alternative recommendation are not known at this stage and would be dependent on the nature of the resolution.

Background

Emergence of Issue and Works Program Priority

The adopted Strategic Planning Works Program (SPWP), which aims to manage and prioritise Council's Strategic Planning projects and effort, identifies the review of the Cambewarra Escarpment character controls as a 'priority project'. As part of the development of the SPWP it was specifically resolved that the *development of controls to protect the vicinity of the Berry to Cambewarra Escarpment* be considered as a priority (MIN16.950).

This project was initially flagged as an issue for consideration in 2010 following the lodgement of a development application for a tourist cabin development at 941 Kangaroo Valley Road, Bellawongarah (DA10/1602). The application was withdrawn; however, during the assessment process there was a high level of community concern around impacts on amenity, traffic, flora and fauna, and the like. The potentially detrimental impact of future development of this nature in the Bellawongarah, Beaumont and Berry Mountain areas was also raised.

Following the withdrawal of this application, Council resolved on 21 December 2010 to hold a public meeting to allow for community input into the formation of area-specific development controls for the Bellawongarah, Beaumont and Berry Mountain area. This meeting was held in June 2011 and generated a substantial amount of interest and community support for the implementation of character controls for the area. However, given limited staff resources and specifically the (then) priority review of the Shoalhaven LEP 2014 and Shoalhaven DCP 2014, the matter was deferred and identified as an "Issue for Consideration" as part of future reviews of the Shoalhaven DCP 2014.

During 2014, two further development applications for tourist accommodation developments were lodged in the area, which again generated a high level of community interest and public objection. A summary of the two applications and their determination is provided below.

- ***RA14/1004: 801 Kangaroo Valley Road, Bellawongarah:***
 - Proposed "Rockfield Park" Eco-tourist Facility and Ancillary Function Centre on land zoned part RU1 Primary Production and part E2 Environmental Conservation
 - Application lodged with Council, November 2014 and determined by the Southern Joint Regional Planning Panel (JRPP), 12 November 2015 by way of refusal.
 - Determination based on the permissibility of the proposed function centre, characterisation of the development as an 'eco-tourist facility', and potential noise impacts of the development.
 - Applicant appealed the decision in the Land and Environment Court (LEC) - the JRPP's determination was upheld.
- ***DA14/2381: 260 Mount Hay Road (Priv), Broughton Vale:***
 - "Mount Hay" - Additions and Alterations to Existing Tourist Cabin Facility on land zoned E3 Environmental Management

- Application lodged with Council, November 2014 and refused in November 2015.
- Determination based on inconsistencies with the Shoalhaven LEP 2014 and Shoalhaven DCP 2014, impact on visual amenity, and incompatibility of the development with the public interest.
- Applicant appealed the decision in the LEC - refusal was overturned and application subsequently approved in May 2016.

It is noted that any future review of planning controls for the Cambewarra Escarpment need not be limited to the areas/localities of Bellawongarah, Beaumont and Berry Mountain noted above, as there may be other localities (or parts of them) along the escarpment that may warrant inclusion in the investigation area, for example, Broughton, Village, Broughton Vale, Broughton, Woodhill, Bundewallah, Browns Mountain and part of Cambewarra (north of the existing scenic protection hatching around Cambewarra Village) - see locality map below.

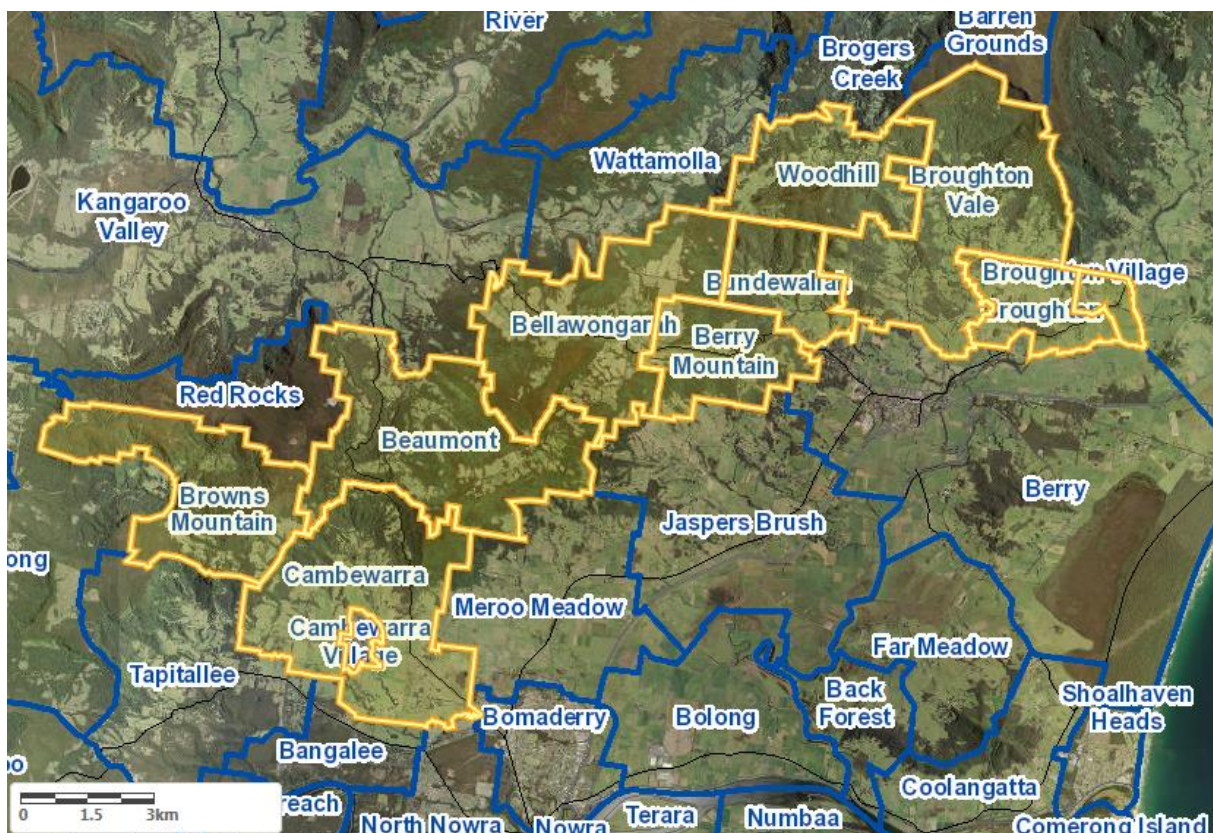


Figure 1: Map showing potential localities to be considered.

General Review - Tourist and Visitor Accommodation, Rural and Environmental Zones

As noted above, the lodgement of the development applications raised a significant amount of community objection, particularly regarding:

- Traffic impacts and road safety;
- Visual and scenic amenity;
- Site suitability;
- Environmental impacts;
- Impacts on the economic viability of existing tourist and visitor accommodation; and
- Cumulative impacts caused by future development of a similar nature.

DE18.75

Because of these concerns, Council is also undertaking a separate general citywide review of planning controls relating specifically to tourist and visitor accommodation in rural and environmental zones throughout Shoalhaven (MIN16.979). This is currently being undertaken as a separate project to the potential review of character controls for the Cambewarra Escarpment, and will be reported to Council for consideration in due course.

It is noted, however, that both projects emerged during the development of the SPWP and from concerns raised over development proposals; therefore, the outcomes of each review will ultimately need to align to ensure consistency in Council's planning controls.

Existing Council Planning Controls

At present, land within the vicinity of the Cambewarra Escarpment is subject to the provisions of the Shoalhaven LEP 2014 and Shoalhaven DCP 2014 relating to environmental protection and visual amenity, generally as summarised below.

Shoalhaven LEP 2014

Approximately half of the land along the escarpment is currently zoned E2 Environmental Conservation or E3 Environmental Management. The land uses permitted in the E2 zone are relatively limited, with the only tourist uses permitted in this zone being 'bed and breakfast accommodation' and 'eco-tourist facilities'. The E3 zone however permits a wider range of uses with 'camping grounds', 'eco-tourist facilities' and 'tourist and visitor accommodation' (Note: excluding hotel or motel accommodation and serviced apartments) being permitted.

These zones also have specific zone objectives relating to the preservation of areas with special ecological, scientific, cultural or aesthetic values. Any development application that is lodged over this land must satisfy the zone objectives in this regard. It is noted, however, that these specific objectives do not apply to other land within the vicinity of the escarpment that is zoned for RU1 Primary Production or RU2 Rural Landscape, although the RU2 zone does contain an objective related to maintaining the rural landscape character.

A breakdown of predominant land zones currently existing throughout the escarpment area is provided below, with an overview map provided in **Attachment A**:

Land Zone	Area (ha)	Percentage	Comment
RU1 Primary Production	3660	36	A significant proportion of land within the vicinity of the Escarpment is zoned RU1, with the area supporting a range of agricultural, rural residential and recreational land uses. The purpose of the RU1 zone is to support the efficient use of resource lands for agriculture and other compatible land uses, while conserving and maintaining productive prime crop and pasture land, thus it is important to retain the RU1 zone for this purpose.
RU2 Rural Landscape	536	5	The application of the RU2 zone is less prevalent; however, is still important for supporting agriculture and other compatible land uses while ensuring that rural landscape values are retained.
E2 Environmental Conservation	3963	39	Over one third of land within the Escarpment area is zoned E2, which recognises the high biodiversity values and environmental attributes of the land. The range of permissible land uses is restricted, and the zone contains specific objectives relating to the protection of ecological, scientific, cultural or aesthetic values.
E3 Environmental Management	1236	12	The application of the E3 zone is less prevalent than E2 zone; however, the high environmental or scenic values of this land are reflected in the limited range of permissible land uses and the inclusion zone objectives relating to the protection of ecological, scientific, cultural or aesthetic values. The E3 zone is also applied as a transition between areas of high conservation value and rural land uses.

DE18.75

Note: the table above excludes land owned by National Parks and Wildlife Services and nominal amounts of other zoned land including E4 Environmental Living, SP2 Infrastructure and RE1 Public Recreation.

The Shoalhaven LEP 2014 also currently restricts development to a maximum building height of 11m along the escarpment, and there are biodiversity provisions relating to the retention of significant vegetation and/or habitat corridors along much of the escarpment and surrounding area.

Shoalhaven DCP 2014

At present, there are various controls within the Shoalhaven DCP 2014 relating to setbacks, bulk and scale, colours and materials, and the like for development on rural and environmental zoned land. These controls are dispersed throughout the entire DCP document and are dependent on the type of development being undertaken and the location, for example, dwellings, dual occupancies, tourist accommodation in rural areas etc.

It is acknowledged that there is a degree of subjectivity in merit-based assessments in the absence of specific development controls (general or locality based) regarding the suitability of building design, colours and materials, and the like. This follows on to subjectivity regarding the architectural merit or visual impact of development in scenic or prominent areas.

Application of Planning Principles

In addition to Council's planning controls, there are also relevant Land and Environment Court (LEC) Planning Principles relating to visual amenity, view sharing, and visual impact on public domain views that may assist with deciding on development applications that have the potential to impact on views, in particular:

- *Tenacity Consulting v Warringah [2004] NSWLEC 140*: View sharing: General Principles:
<https://www.caselaw.nsw.gov.au/decision/549f893b3004262463ad0cc6>
- *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046*: Impact on public domain views:
<https://www.caselaw.nsw.gov.au/decision/54a639903004de94513da747>
- *Architects Marshall v Lake Macquarie City Council [2005] NSWLEC 78*: Aesthetics: Weight to be given to expert opinion on architectural design:
<https://www.caselaw.nsw.gov.au/decision/549f883d3004262463acd460>

Although Planning Principles are not legally binding and do not prevail over Council's plans and policies, they may assist with making a planning decision where there is deemed to be a void or lack of clarity within Council policy.

Other Illawarra Councils – Planning Controls

To enable possible consideration of a consistent approach given the overall extent of the escarpment, a review of relevant planning controls from Wollongong, Shellharbour and Kiama Councils has been undertaken to determine how they consider and manage development along the Illawarra Escarpment and surrounding scenic rural areas, with a summary provided below:

Wollongong City Council

The Illawarra Escarpment is noted as being of State significance, with much of the area declared a State Conservation Area in 1980. In 1999, a Commission of Inquiry was held into the long-term planning and management of the escarpment, which found that an integrated planning and management approach was necessary to sustain the escarpment's natural significance.

As a result, Wollongong have taken a three-pronged approach to protecting the scenic and environmental attributes of the Escarpment and surrounding land, comprising the following components and strong development controls:

- Wollongong Local Environmental Plan 2009

Contains the following local clause and associated mapping relating to specifically to escarpment conservation:

Cl. 7.8 Illawarra Escarpment area conservation

- (1) *The objective of this clause is to provide specific controls to protect, conserve and enhance the Illawarra Escarpment.*
- (2) *This clause applies to land shown as being within the Illawarra Escarpment area on the Illawarra Escarpment Map.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - (a) *will be located so as to minimise any adverse impact on the natural features and environment of the Illawarra Escarpment, and*
 - (b) *will incorporate on the land, conservation and rehabilitation measures to enhance the Illawarra Escarpment.*

Much of the Illawarra Escarpment is affected by this clause/map, which provides a legal basis for considering the impact of development proposals on the escarpment, including visual and scenic amenity impacts. An extract of the associated Clause 7.8 mapping is provided below.

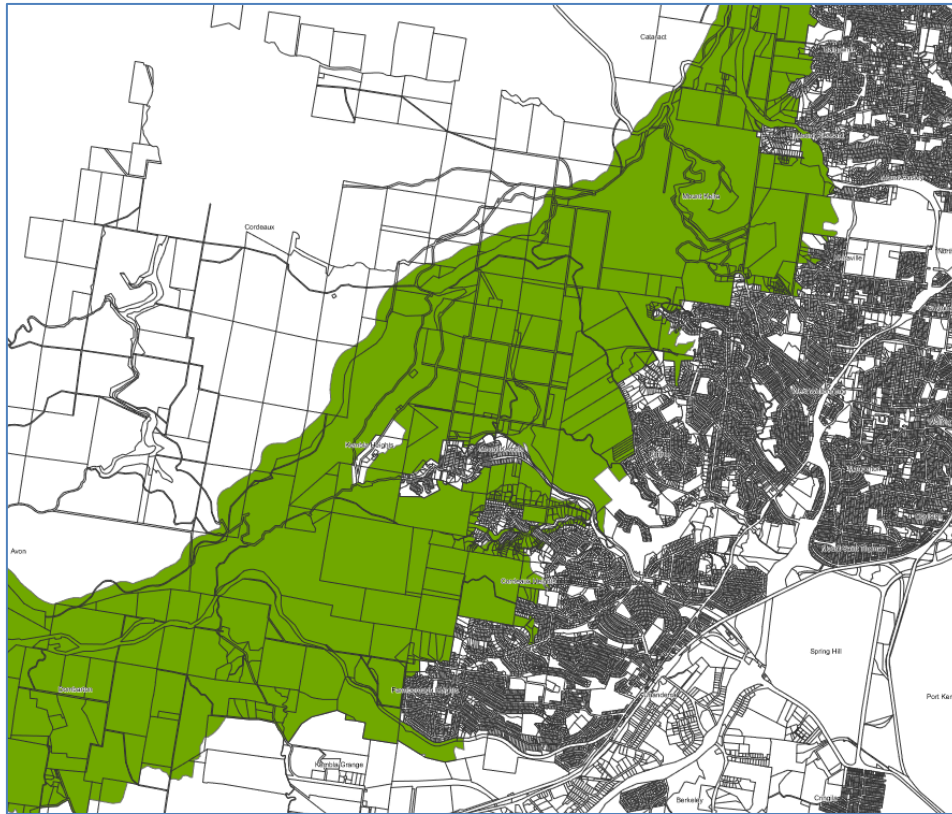


Figure 2: Extract from Wollongong LEP 2009 Illawarra Escarpment Area Conservation Map

- Wollongong DCP 2009

Also contains an area-specific [Chapter B6: Development in the Illawarra Escarpment](#). The chapter provides detailed guidelines for the development within the vicinity of the escarpment, specifically relating to:

- Visual impacts (including prominence of development and visual absorption capacity of the surrounding landscape);
- Building siting and design;
- External colours and materials,
- Bulk, scale, building separation and articulation;
- Subdivision of land;
- Fencing, landscaping and screening; and
- Environmental management (flooding, stormwater drainage, wastewater disposal and the like).

- Illawarra Escarpment Strategic Management Plan (IESMP) 2015

The IESMP is a strategic document prepared by the Council in consultation with various State Government agencies, including the NSW Department of Planning & Environment, NSW Office of Environment & Heritage and NSW National Parks and Wildlife Services. The IESMP is an overarching strategic document that aims to conserve the environmental attributes of the Escarpment and foothills by providing strategic directions for biodiversity and heritage conservation, land use planning and the like.

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Shellharbour City Council

Shellharbour does not have any specifically related controls within the Shellharbour LEP 2013; however, there are provisions within the Shellharbour DCP 2013 relating to visual landscape character in all rural and environmental zoned land throughout the area.

Chapter 34 – Visual Landscape Character of the [Shellharbour DCP 2013](#) includes a requirement for all development applications in rural and environmental areas to be accompanied by a Visual Landscape Character Assessment. This chapter also includes general controls that provide direction regarding the following in rural and environmental areas:

- Building form and roofline design;
- Colours and materials;
- Integration of outbuildings into existing development;
- Fencing and boundary treatments;
- Gateways, entrances and driveways;
- Use of vegetation for screening;
- Retention of natural lines along the skyline; and
- Light pollution.

This chapter provides quite specific controls to ensure that new development is consistent with prevailing rural and environmental character, with emphasis placed on preserving amenity and complementing the natural landscape.

Kiama Municipal Council

Kiama does not have any specific controls within the Kiama LEP 2011 relating to development of the Illawarra Escarpment; however, like Shellharbour, there are provisions within the Kiama DCP 2012 for the development of all rural and environmental land throughout the LGA.

Chapter 6 – Rural Development of the [Kiama DCP 2012](#) provides general development controls relating to design and siting of rural dwellings and ancillary development to minimise impacts on visual amenity and environmental attributes of the land. Some examples of these controls include:

- Dwelling houses, secondary dwellings or ancillary development or their building envelopes must not be located on ridgelines, saddles or knolls.
- Development must be designed in a way to avoid or mitigate the visual impact of development on the landscape as viewed from a public space.
- Dwellings and ancillary development in rural areas must be carefully and sensitively sited and designed to complement landscape rather than become conspicuous built elements in the landscape.
- Thorough site analysis is required to inform site planning and design to achieve satisfactory agricultural, environmental, natural hazard risk minimisation and rural amenity outcomes

Rather than specify character controls for these areas, emphasis is placed on preserving amenity and complementing the natural landscape.

Comment – Possible Approach

Shoalhaven LEP 2014 Amendment

At this point it is not considered feasible or perhaps necessary for the Cambewarra Escarpment to have controls and guidelines of the extent adopted by Wollongong City Council. However, there may be some merit in amending the Shoalhaven LEP 2014 to include stronger controls for consideration in the assessment of development applications.

There are several ways this could be achieved, as outlined below:

1. Amending the Land Use Table for Rural and Environmental zones

This option would enable Council to prohibit certain development types that may be deemed inappropriate or controversial for land within the vicinity of the escarpment, such as large-scale tourist facilities. However, it should be noted that an amendment of this nature would affect **all** rural and environmental land within the City and would not be limited to the Cambewarra Escarpment. Further, there are certain land uses that are mandated as permissible under the Standard Instrument LEP and cannot be changed, such as eco-tourist facilities and dwelling houses.

This option is not preferred at this point, as the implications would extend city-wide and would not be limited to land within the vicinity of the escarpment. As noted earlier in the report, the permissibility of tourist and visitor accommodation in rural and environmental zones throughout the City is being investigated as a separate process, and it would be prudent to allow that review to be undertaken in its entirety prior to any amendment being made as part of this process.

2. Amending the zoning of land within the vicinity of the Cambewarra Escarpment

This option would enable Council to investigate rezoning rural zoned land within the vicinity of the escarpment to E2 Environmental Conservation or E3 Environmental Management to reflect the environmental attributes of the land. This option would place greater emphasis on the protection of the ecological, scientific, cultural and aesthetic values of the land, but would potentially further restrict the range of permissible uses on the land.

This option is likely to be highly objectionable and is not preferred, as rural landholders would view this as a significant back-zoning of their land and a removal of their development rights. If this option were to be pursued, many land uses that are currently permissible under the rural zonings would become prohibited, such as agriculture, wineries and cellar door premises, recreation facilities (outdoor) and the like. This could have significant implications for the economic viability of the land and is therefore not recommended.

3. Amending the zone objectives for the RU1 zone

Council could investigate the possibility of amending the objectives of the RU1 zone to place greater emphasis on visual amenity and scenic preservation. However, it is important to note that such an amendment would apply to **all** RU1 zoned land throughout the LGA and is contrary to existing zone objectives that seek to encourage primary industries, enhance the natural resource base and maintain the viability of prime crop and pasture land. Thus, this option is not preferred.

4. Inclusion of a local clause and associated mapping for land within the vicinity of the Cambewarra Escarpment

This option would enable Council to implement planning controls relating to a range of potential issues associated with land in the vicinity of the Escarpment, such as visual amenity, slope stability, vegetation management etc. Under the provisions of the previous *Shoalhaven LEP 1985*, much of the Escarpment was zoned 7(e) Environment Protection (Escarpment) Zone, which carried the following zone objectives:

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- a) To protect scenic, ecological, educational and recreational values of escarpment areas;
- b) To conserve and, where appropriate, reinstate the natural vegetation so as to protect steep slopes from erosion and slippage; and
- c) To maintain the role of escarpments as habitat links between conservation areas.

The 7(e) zone was applied to escarpment areas throughout the City and was not limited to the Cambewarra Escarpment; however, the extent of this former zoning within the vicinity of the Cambewarra Escarpment is shown in Figure 3 below.

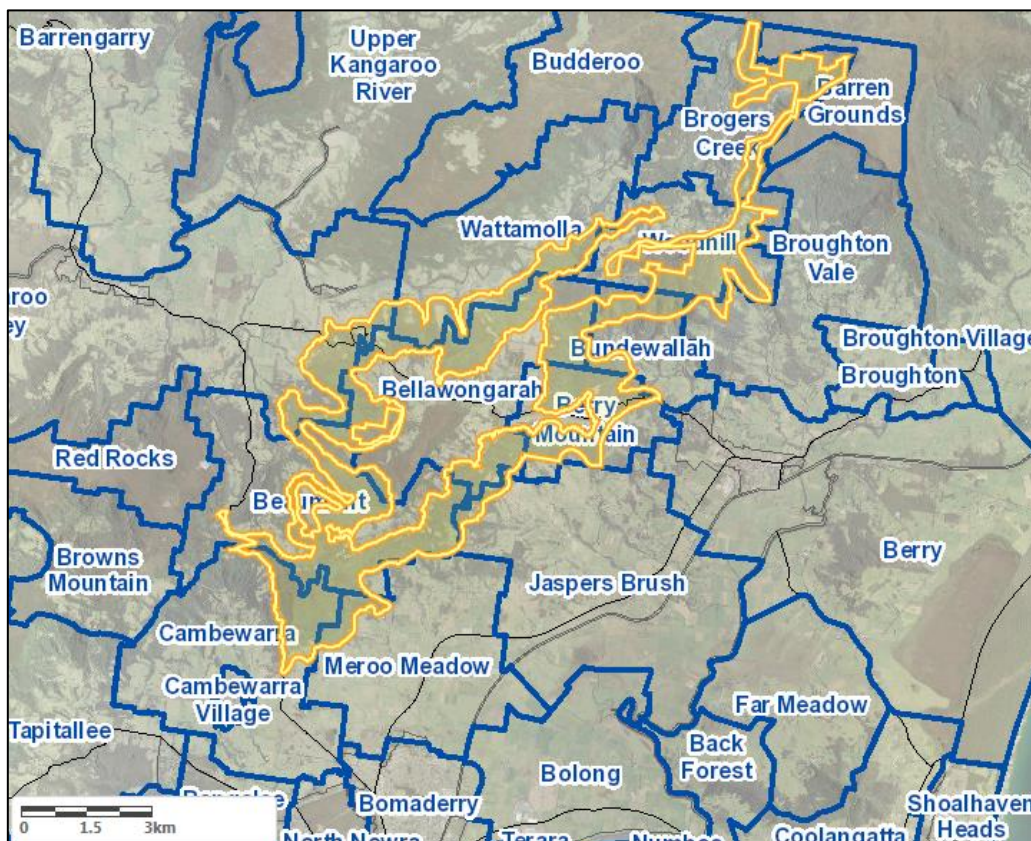


Figure 3:

Extent of land zoned 7(e) under the previous Shoalhaven LEP 1985, now zoned E2 Environmental Conservation.

The Standard Instrument LEP does not contain a zone specifically for escarpment areas; as such, this area is now zoned E2 Environmental Conservation as the closest equivalent zone in the Shoalhaven LEP 2014. While the E2 zone does contain provisions for environmental protection, these are general in nature and do not relate specifically to protection of the Cambewarra Escarpment. Thus, there may be some merit in applying a local clause and associated mapping to the area (like Wollongong) in the Shoalhaven LEP 2014.

This option would enable Council to retain the existing zones and their permissible uses and include a range of planning controls for the Cambewarra Escarpment area that would not necessarily be limited to scenic protection and visual amenity. However, as much of the subject land is located on cleared, visually prominent rural land on the foothills of the Escarpment, controls relating to slope stability and land slip mitigation may not be a necessary consideration for future development assessment. Further, it may be difficult to determine an appropriate methodology for defining the boundaries of the area to which

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this local clause would apply. For example, Council may need to consider the inclusion of areas or parts of areas such as Jaspers Brush and Meroo Meadow for the potential impact on scenic amenity; however, these areas are unlikely to be subject to slope instability or impacted by land slips along the Escarpment.

5. Amending the Scenic Protection Area overlay to include land within the vicinity of the Cambewarra Escarpment

The current Scenic Protection Area overlay in the Shoalhaven LEP 2014 was predominantly a direct transfer of previous planning controls from the Shoalhaven LEP 1985, with some additional areas added to support the strategic directions of the Nowra-Bomaderry Structure Plan. As the Cambewarra Escarpment was not previously identified as a Scenic Preservation Area, the area was not mapped in the Shoalhaven LEP 2014.

Extending the application of the Scenic Protection Area overlay would enable Council to apply controls to the Escarpment area relating specifically to scenic protection and visual amenity. However, this would not address other issues relating to the slope stability, vegetation management etc. If the overlay was added, possibly for the rural zoned areas, then the current Clause 7.8 Scenic Protection of Shoalhaven LEP 2014 would apply. This clause does not prohibit development, rather it requires closer consideration of visual impact, siting of buildings and tree removal/landscaping as part of any application.

The inclusion of area-specific provisions relating to the protection of scenic amenity within the Shoalhaven LEP 2014 would help reinforce the scenic and aesthetic values of the Cambewarra Escarpment; however, these controls may be seen as subjective in nature, and would not necessarily address specific design considerations for minimising visual impact. Similarly, as with the inclusion of a local clause noted above, there may be difficulties in defining the boundaries of the area to which this clause would apply.

Shoalhaven DCP 2014 Amendment

The Shoalhaven DCP 2014 already contains performance criteria and acceptable solutions relating to development in rural and environmental areas that are dispersed throughout the document and are general in nature. Thus, there may also be some merit in strengthening these provisions or including additional controls to emphasise the value of scenic amenity in rural and environmental areas by way of the inclusion of a new Chapter within Shoalhaven DCP 2014 specifically relating to rural and environmental zoned land. This is like the approach taken by both Shellharbour and Kiama Councils.

Alternatively, Council could consider preparing some area-specific development controls for the Cambewarra Escarpment for inclusion in the Shoalhaven DCP 2014, like Wollongong Council.

However, performance standards within a DCP do not hold the same legal weight as those within an LEP and are able to be varied or set aside. DCP controls do enable Council to provide specific direction to landowners and developers, which can guide better planning outcomes for specific land zones or localities. Provisions in the LEP, supported by DCP controls could also be considered.

Concluding Comments

Given the different options presented above and the outcomes they could potentially provide, Council needs to determine whether it wishes to proceed, and which approach it wishes to take in this regard. Council staff will then be able to work up a possible approach for further consideration.

Community Engagement

Community consultation has not been undertaken at this stage. However, it will be necessary as part of any future amendment to the Shoalhaven LEP 2014 or Shoalhaven DCP 2014. Future consultation will be dependent on the direction of Council and undertaken in accordance with the Environmental Planning and Assessment Regulations 2000.

Depending on the approach taken it may also be beneficial to undertake early community engagement with affected landowners, relevant Community Consultative Bodies (CCBs) and others prior to moving ahead with an option.

Policy Implications

The purpose of this report is to seek a clear initial direction from Council regarding the establishment of future development controls for the Cambewarra Escarpment area related to character, visual impact and related matters. Depending on the approach resolved by Council, this may lead to a future amendment of the Shoalhaven LEP 2014 or Shoalhaven DCP 2014.

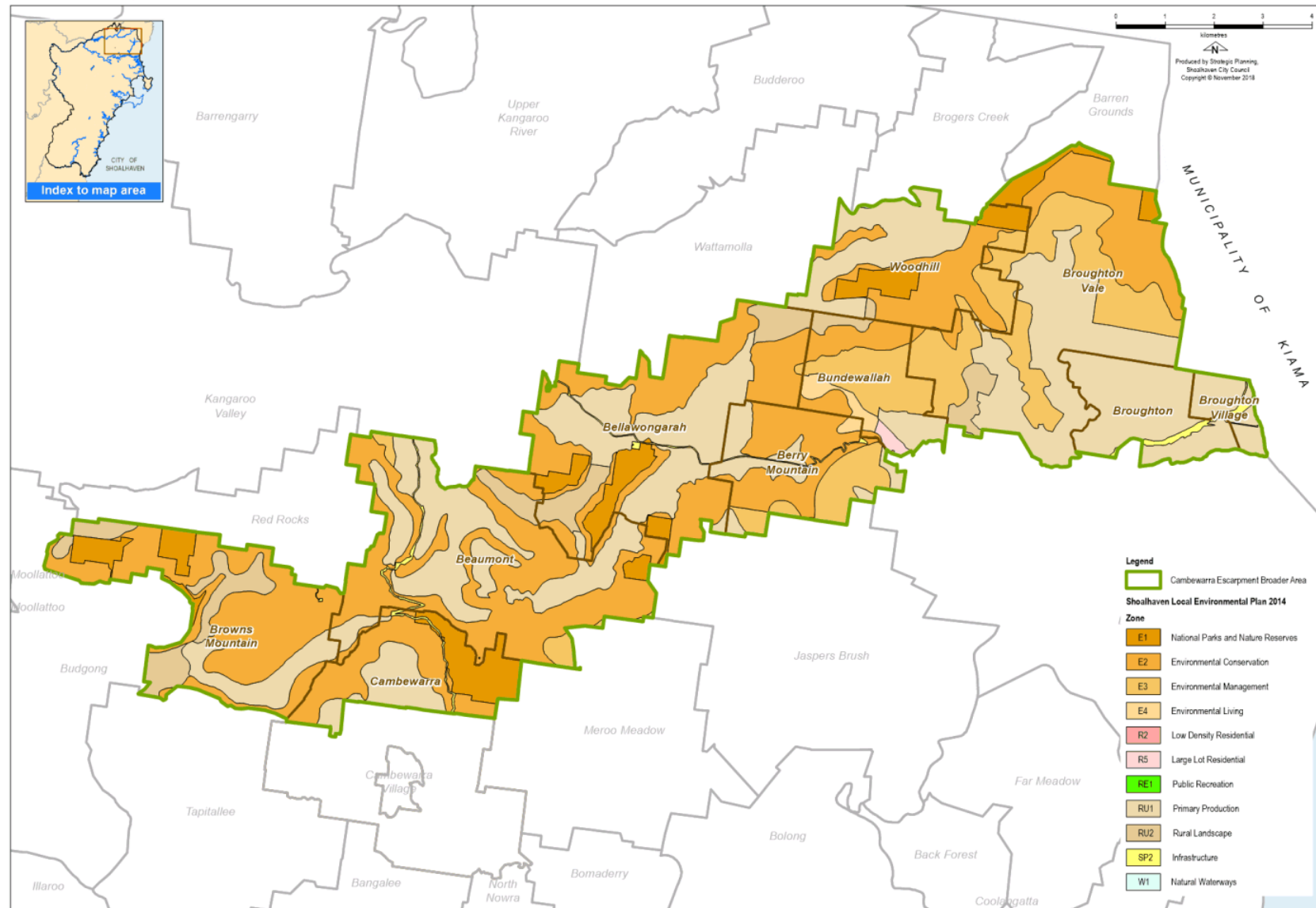
Financial Implications

Should Council resolve to amend the Shoalhaven LEP 2014 or Shoalhaven DCP 2014, the initial review would be undertaken within the existing Strategic Planning budget. However, there may be additional costs to engage external consultants to prepare character assessments or the like, should this be required to support or inform the changes.

Risk Implications

At present, any application lodged with Council for development in the vicinity of the Cambewarra Escarpment will be assessed on its merits and compliance with the relevant existing development controls related to height, setbacks, bulk and scale, colours and materials, and the like. As such, there is no immediate risk in maintaining the status quo; however, this approach does not provide any specific direction regarding future development in the vicinity of the escarpment, which could result in highly subjective development approvals that may be incompatible with the prevailing and desired future character of the escarpment.

Cambewarra Escarpment Land Zones



Cambewarra Escarpment Broader Area

\\CADDATA \\(file3)\\Planning\\Graphics\\Projects\\Strategy\\Planning\\CambewarraEscarpmentCharacterAssessment\\Review\\CambewarraEscarpmentBroaderArea.mxd

DE18.76 Required Housekeeping Amendment - Shoalhaven Development Control Plan 2014 - Medium Density

HPERM Ref: D18/370232

Group: Planning Environment & Development Group
Section: Strategic Planning

Purpose / Summary

Obtain the required resolution to commence the preparation of a housekeeping amendment to new Chapter G13: Medium Density and Other Residential Development (Chapter G13) of Shoalhaven Development Control Plan (DCP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Commence preparation of an amendment to Chapter G13: Medium Density and Other Residential of Shoalhaven Development Control Plan (DCP) 2014 consistent with Table 1 in this report and progress the amendment as part of the next appropriate housekeeping amendment to the DCP.
2. Consider any other amendments relevant to the Chapter G13 as the matters arise prior to part 3 of this recommendation.
3. Receive a further report on this matter as part of the relevant housekeeping amendment before proceeding to public exhibition.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to respond to and resolve the identified inconsistencies in Chapter G13 and ensure consistency with the wider Shoalhaven DCP 2014 approach.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could postpone the amendment.

3. Not adopt the recommendation.

Implications: This could halt or postpone the housekeeping amendment to Chapter G13. This approach is not preferred as the inconsistencies will remain and these have the potential to result in misunderstandings during the preparation and assessment of medium density development applications.

Background

On 28 August 2018, Council at its Ordinary Meeting resolved (MIN18.646) to make changes to the exhibited draft Chapter G13 and finalise the amendment. The new Chapter G13 was

made effective on 31 October 2018 and a copy is available on Council’s dedicated DCP website [here](#).

Due to the extensive nature of changes that were made to Chapter G13 via the Council resolution, three main inconsistencies have become apparent. These are outlined in **Table 1**.

Table 1: Initial Scope of Housekeeping Amendment to Chapter G13

Part of Resolution (MIN18.646)	Staff Comment: Implications and Recommendation
<p>1 h) Amend A6.2 to read:</p> <p><i>In addition to the formal landscaping area required at A6.1, a further area of at least 20% of the site is to be provided, which:</i></p> <ul style="list-style-type: none"> <i>Has a minimum dimension of 1m in any direction.</i> <i>Is inclusive of 40% deep soil planting.</i> <i>Can include landscaped area, decks, terraces, alfresco areas, swimming pools or other recreation areas/ structures.</i> 	<p>Relevant provision in effective Chapter G13: A6.2</p> <p>Implication of resolution: In adding dot point 3 to the acceptable solution, there is now a conflict with A6.4 (see below) which excludes encroachments, hard stand areas and the like.</p> <p><i>A6.4 The landscaping provided at A6.1, A6.2 and A6.3 excludes any encroachments (i.e. any part of a building or structure), hardstand areas and any areas used for storage, clothes drying, and water tanks.</i></p> <p>Recommendation: Delete dot point 3 of A6.2 being:</p> <p><i>Can include landscaped area, decks, terraces, alfresco areas, swimming pools or other recreation areas/ structures.</i></p> <p>The intent of the landscaping provision was to provide a further non-formal landscaped area for growing plants, grasses and trees. This meets the related objectives and relevant performance criteria which seek high quality amenity, ability to establish mature trees and shrubs, opportunity for surface water to infiltrate naturally to groundwater and minimise runoff. Allowing encroachments limits the ability of this area to achieve these objectives and performance criteria.</p>
<p>5 b) Mandatory provision 1 & 2 in Section 5.1.1 (minimum lot size) be converted to acceptable solutions. The performance criteria for these acceptable solutions should be the same as specific objective ii) in Section 5.1.1 – that is: “Ensure that any lot consolidation /amalgamation avoids the isolation of smaller lots surrounded by larger development”.</p>	<p>Relevant provision in effective Chapter G13: P1.1</p> <p>Implication of resolution: Objectives doubling up as performance criteria is generally not good planning practice and contrary to the wider Shoalhaven DCP 2014 approach.</p> <p>Recommendation: Amend P1.1 as follows:</p> <p><i>To promote good built form outcomes and the efficient utilisation of land, lot consolidation/ amalgamation avoids the isolation of smaller lots that would prevent future medium density development on those lots.</i></p> <p>This performance criteria only relates to:</p> <ul style="list-style-type: none"> Dual occupancies in the R3 Medium Density Residential zone. Multi dwelling housing in any zone. Multi dwelling housing (terraces) in any zone. A manor house in any zone.
<p>5 e) Mandatory provision within</p>	<p>Relevant provision in effective Chapter G13: P28.1</p>

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<p>Section 5.4.3 (universal design) is to be converted to an acceptable solution. The performance criteria for this acceptable solution should be the same as specific objectives i) & ii) in Section 5.4.3 – that is:</p> <p>i. <i>Ensure that a suitable proportion and wider variety of dwellings include layouts and design features to accommodate the changing access and mobility requirements of residents and visitors.</i></p> <p>ii. <i>Promote ageing in place by extending the usability of dwellings to meet 'whole of life' needs of the community.</i></p>	<p>and P28.2</p> <p>Implication of resolution: Objectives doubling up as performance criteria is generally not good planning practice and contrary to the wider SDCP 2014 approach.</p> <p>Recommendation: Delete P28.1 and P28.2. The performance criteria do not add any additional value to the assessment of an application beyond what is already covered in effective P28.3 and P28.4.</p>
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If supported, it is appropriate to resolve these inconsistencies as part of the next suitable housekeeping amendment to ensure the DCP chapter operates as intended and in a manner consistent with the wider DCP approach.

Community Engagement

Any amendment to the DCP would be publicly exhibited for 28 days at the Nowra Administrative Building in accordance with legislative requirements. Documentation would also be made available on Council's website and at the Ulladulla Administrative Buildings.

Policy Implications

The proposed housekeeping amendments would resolve inconsistencies within Chapter G13 and ensure the chapter is consistent with the wider DCP approach. This will enhance readability and reduce misunderstandings during the preparation and assessment of medium density development applications.

Financial Implications

Any amendment to the DCP would be resourced within the existing Strategic Planning budget.

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DE18.77 Proposed Exhibition - Amendment to Chapter V3 Shoalhaven Development Control Plan 2014 - Ulladulla/Mollymook Gateway Precinct

HPERM Ref: D18/343126

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Draft Chapter V3: Miscellaneous Site-Specific Issues (under separate cover)

Purpose / Summary

Present a draft amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan (DCP) 2014 that has been prepared for the 'Ulladulla/Mollymook Gateway Precinct' (the precinct) for initial consideration prior to proceeding to exhibition.

The DCP amendment has been prepared following Council's endorsement of the Citywide SP3 Tourist Zone Review Planning Proposal (PP) which seeks to rezone this gateway precinct from SP3 Tourist to R1 General Residential.

This report seeks a resolution that will enable the draft DCP amendment to be placed on public exhibition alongside the PP.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Proceed to exhibit the draft amendment to Chapter V3: Miscellaneous Site-Specific Issues of Shoalhaven Development Control Plan 2014 for a period of 28 days as per legislative requirements.
2. Receive a further report on the draft amendment to Chapter V3 following the conclusion of the public exhibition period.
3. Advise the Ulladulla & Districts Community Forum, subject land owners and adjoining land owners of the exhibition arrangements.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council to commence public exhibition of the draft amendment alongside the Citywide SP3 Tourist Zone Review PP in a timely manner. The amendment includes site specific provisions to encourage appropriate development in the precinct and reduce potential impacts on the amenity (e.g. privacy and overshadowing) of adjoining properties along Seaview Street, Mollymook.

2. Adopt alternative amendments to the DCP.

Implications: This will depend on the extent of any amendments and could delay the implementation of more appropriate site-specific development provisions in the precinct and the overall progression of the PP.

3. Do not proceed with the amendment to the DCP.

Implications: This is not the preferred option as future development in the precinct will be subject to the generic provisions of the DCP, not site-specific provisions which respond to the unique characteristics of the precinct. This may lead to undesirable outcomes from development in this high-profile site and negative impacts on the amenity of adjoining properties along Seaview Street, Mollymook (e.g. privacy and overshadowing). Whilst not ideal, the PP can proceed without the draft DCP amendment.

Background

The draft amendment to Chapter V3 of the DCP has been prepared in conjunction with the Citywide SP3 Tourist Zone Review PP which Council endorsed and resolved to submit to the NSW Department of Planning & Environment (DP&E) for a Gateway determination on 5 June 2018 (MIN18.420).

The overall PP seeks to rezone seven sites from zone SP3 Tourist to a residential zone that better reflects the current use and likely future use of the land. Council received a Gateway determination from DP&E on 24 September 2018 authorising the PP to proceed, subject to public exhibition and consultation with public authorities.

Site 6 in the PP is the 'Ulladulla/Mollymook Gateway Precinct' that is located on either side of the Princes Highway on the northern approach to the Ulladulla Town Centre (see **Figure 1**).



Figure 1: Planning Proposal Site 6

In its resolution of 5 June 2018, Council also resolved to prepare supporting DCP provisions for Site 6 to help guide future development in this gateway precinct and reduce potential impacts on the amenity (e.g. privacy and overshadowing) of adjoining properties, such as along Seaview Street, Mollymook.

Council staff have prepared a draft amendment to Chapter V3: Miscellaneous Site-Specific Issues of the DCP that includes possible site-specific provisions for the precinct (**Attachment 1**). It is intended to exhibit the draft DCP amendment alongside the PP to enable detailed landowner and community review/comment. The draft DCP amendment includes:

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- A map identifying the land to which the provisions apply (the same as **Figure 1** in this report excluding road reserves and Lot 1 DP 1079406 (western side of precinct) which is not visible from the highway);
- ‘Context’ section outlining the physical characteristics of the gateway precinct and the desired outcomes from development within the precinct. It recognises the opportunity for development along the Princes Highway to create a sense of arrival;
- ‘Objectives’ of the provisions - further refine the desired outcomes outlined in the ‘Context’. The objectives focus on enhancing and developing the character of the precinct as a gateway; minimising impacts on the amenity of adjoining properties; view sharing; and design that is responsive to the landscape, built form and environmental conditions of the locality;
- Development controls consisting of performance criteria and acceptable solutions, consistent with the wider DCP. The development controls are divided into six sections and are summarised in the following table.

Section	Proposed content
5.4.1 Building envelope, heights and setbacks	<ul style="list-style-type: none"> • The use of a building envelope and setbacks to control building bulk and scale and reduce overshadowing, loss of ventilation and privacy impacts on adjoining buildings. • Setbacks are the same as the generic chapters of the DCP relative to the development type, except for: <ul style="list-style-type: none"> - Side setbacks in Area 1 (eastern side of Princes Highway), which are to provide for view corridors to the ocean from the Princes Highway and public domain; - Rear setbacks, which are to provide space for drainage easements at the rear of lots where required in the future. • Building height is to be in accordance with LEP clause 4.3 (i.e. up to 11m) across the precinct.
5.4.2 Site and building design considerations	<ul style="list-style-type: none"> • Development of the Buchan Street Triangle is to be of a scale and form that defines its role as the key “gateway” site in the precinct. • Building design controls to ensure that buildings address the street, provide articulation and enhance the streetscape; • Controls to ensure that vehicular access and egress is safe and does not adversely affect the surrounding road network.
5.4.3 Views	<ul style="list-style-type: none"> • Controls to ensure that development does not significantly or unreasonably affect views of the ocean from the public domain or private property where it is possible to design for the sharing of views.
5.4.4 Landscaping	<p>Controls to ensure that:</p> <ul style="list-style-type: none"> • Where possible, existing mature trees and other significant vegetation are retained and integrated into the design of the development. • Development includes landscaping of the front setback area that contributes to the desired character of the area without impeding

	sight lines for traffic or visibility of pedestrians and cyclists.
5.4.5 Visual Privacy / Overlooking	<ul style="list-style-type: none"> Building layout, location and design controls to ensure that direct overlooking of main internal living areas and private open space of other dwellings and adjoining properties is avoided or minimised.
5.4.6 Fences and walls	<p>Controls to ensure that fences and walls within the front setback area:</p> <ul style="list-style-type: none"> Provide for views/surveillance of the street from buildings and do not impede the safety of pedestrians and cyclists. A maximum height of 1.2m for front fences and walls and 1.8m for fences/walls along a secondary frontage. Are compatible in design and materials with the development design and local streetscape.

Community Engagement

The draft amendment to DCP Chapter V3 will be publicly exhibited for a minimum of 28 days in accordance with legislative requirements. It is intended to exhibit the DCP amendment alongside the Citywide SP3 Tourist Zone Review PP. Documentation will be available on Council's website and at the Nowra and Ulladulla Administrative Buildings.

All directly affected landowners and the Community Consultative Body (CCB) for the area will be notified in writing of the draft DCP amendment exhibition arrangements.

To date there has not been any specific engagement with affected landowners, other than generally through the progress of the associated PP. Given that the PP has now received a Gateway determination, there is a need to progress to exhibit it in a timely manner. Any submissions received during the public exhibition period will be considered as part of the finalisation of the DCP amendment.

Policy Implications

The need for site specific development controls in this precinct was identified in the preparation of the associated Citywide SP3 Tourist Zone Review PP. The draft amendment to Chapter V3 of the DCP seeks to guide future development in the gateway precinct and reduce potential impacts on the amenity of adjoining properties.

Financial Implications

The draft amendment to the DCP will continue to be resourced within the existing Strategic Planning budget.

Risk Implications

Should the draft amendment to Chapter V3 of the DCP not proceed, future development in the precinct will be subject to the generic provisions of the DCP, not site-specific provisions which respond to the specific characteristics of the precinct. This may lead to undesirable outcomes from development at this location and negative impacts on the amenity of adjoining properties along Seaview Street, Mollymook (e.g. privacy and overshadowing).

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DE18.78 Proposed Council Submission - Multiple Aboriginal Land Claims - Bangalee Reserve

HPERM Ref: D18/386434

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments:

1. Aboriginal Land Claims over Bangalee Reserve - Claim Boundary Map
↓
2. Request for Information - Department of Industry Crown Lands - Multiple Aboriginal Land Claims - Bangalee Reserve ↓

Purpose / Summary

Obtain endorsement from Council to make a submission on Aboriginal Land Claim (ALC) numbers 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251, and part of ALCs 42454 and 42497 that relate to Bangalee Reserve, which are now being investigated for determination by the NSW Government.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Advise the NSW Department of Industry – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that it does not support Aboriginal Land Claim Numbers 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251 and part of the blanket claims 24254 and 24297 on the basis that, at the date of claim lodgement:
 - a. The land formed the Bangalee Reserve and was being lawfully used for its reserve purpose of Public Recreation;
 - b. Council held an interest in the land, being infrastructure to support the reserve purpose of Public Recreation;
 - c. Two of the lots were needed for an essential public purpose of electricity infrastructure.
2. Provide any necessary documents and evidence to the ALCIU to support this position.

Options

1. Advise NSW Department of Industry (DoI) – Crown Lands Aboriginal Land Claims Investigation Unit (ALCIU) that Council does not support ALC Numbers 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251 and part of the blanket claims 24254 and 24297 as at the date of lodgement for all claims the land formed the Bangalee Reserve and was being lawfully used for its reserve purpose of Public Recreation, and a substantial portion of the land contained existing Council infrastructure to facilitate this use.

Implications: This is the preferred option, as it enables Council to assist DoI with their investigations into the status of the land at the date the claims were lodged and ensure that the land continues to be made available for public use consistent with its reserve purpose. This option also recognises that the land, and the wider Bangalee Reserve, is an important community asset for a range of public recreational uses, which may no longer be possible if the land is transferred into private ownership.

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2. Advise DoI – Crown Lands ALCIU that Council has no objection to the granting of ALC 6348, 6349, 6369, 6370, 6427, 26195, 26210, 26224, 26229, 26238, 26251, and part of ALCs 42454 and 42497, subject to either the exclusion of land containing Council infrastructure and the Koloona Drive road reserve, or the creation of easements to protect this infrastructure and enable ongoing maintenance of Koloona Drive.

Implications: This option is not preferred. Although this option will still enable Council to assist DoI with their investigations, it does suggest that Council does not have any interest in the land other than the formed infrastructure, nor does it recognise that the remainder of the land is being used by members of the public for recreational purposes. In addition, this option does not recognise those parts of the land that contain infrastructure not owned by Council (such as the outdoor classroom and shelter hut), and it may not be practical or feasible to place easements across such a wide area of the land.

However, should Council resolve not to object to the claims, this option will still enable the protection of Council assets and the Koloona Drive road reserve.

3. Provide alternative advice to the DoI 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 the known history of the land at the date the claims were lodged.

4. Not respond to the invitation to comment on these ALCs.

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

Background

Council received advice from DoI on 1 March 2018 that ALC Numbers 6427, 26210 and 26251 at Koloona Drive, Watersleigh, were under investigation for determination. These claims were lodged over land that is now identified as Lot 7310 DP 1152344 (see Figure 1), which forms part of the Bangalee Reserve at Bangalee/Watersleigh.

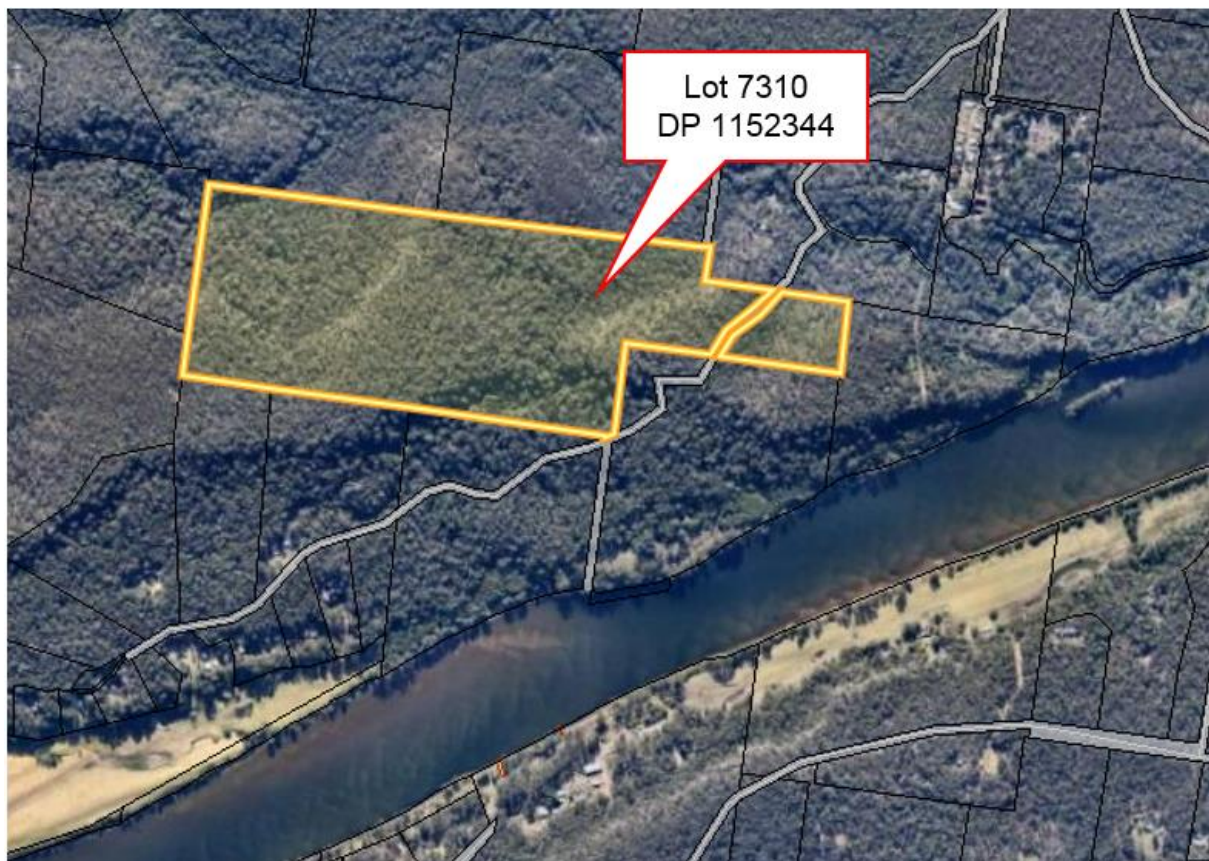


Figure 1: Aerial image of Lot 7310 DP 1152344, the subject of the initial investigations by the ALCIU.

This matter was reported to Council's Development Committee on 8 May 2018, where it was resolved under delegation (MIN18,338) not to support the three (3) claims over Lot 7310 on the basis that, when the claims were lodged, the land was being lawfully used for its Crown Reserve purpose of 'public recreation' and contained some informal Council-maintained walking trails to facilitate this use. As a result, a submission was made to the ALCIU on 18 May 2018 based on the Council resolution.

However, the ALCIU subsequently requested additional evidence from Council regarding the use of the land to progress the claims. Council staff contacted local interest groups to seek advice about the use of the land, which generated a significant amount of community interest, particularly regarding the future viability and potential fragmentation of the Bangalee Reserve.

As a result, the ALCIU made the decision to now investigate all eleven (11) unresolved ALCs related to the reserve collectively, in addition to those parts of the bulk/blanket claims that affect the land within the Reserve, rather than take an ad-hoc approach.

Council subsequently received formal advice from DoI on 14 August 2018 that all claims over land within the Bangalee Reserve are currently under investigation for determination. The following is a summary of the claims and the affected land, as shown in **Attachment 1**:

Land Claimed		Claim Number/s	Lodgement Date
1	Lot 7310 DP 1152344	6427 (Whole Lot) 26210 (Part Lot to east of Koloona Drive) 26251 (Part Lot to west of Koloona Drive)	23 March 2000 21 June 2010 21 June 2010

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2	Lot 7312 DP 1152344	6348	23 March 2000
3	Lot 117 DP 751273	6349	23 March 2000
4	Lot 1 DP 579501	6370	23 March 2000
5	Lot 47 DP 751273	6369 26238	23 March 2000 21 June 2010
6	Lot 48 DP 751273	26224	21 June 2010
7	Lot 7311 DP 1152344	26195 (Part Lot to west of Bangalee Scout Camp Road) 26229 (Part Lot to east of Bangalee Scout Camp Road)	21 June 2010 21 June 2010

In addition, all the land noted above falls under the following bulk/blanket land claims that were lodged over the South Coast in December 2016:

Land Claimed	Claim Number	Lodgement Date
All the above <i>plus</i> Lot 7009 DP 1002393	42454	15 December 2016
All the above <i>plus</i> Lot 7009 DP 1002393	42497	19 December 2016

Council has been asked to provide comments on all the claims (see **Attachment 2**) and specifically whether, at the date the claims were lodged, the subject land was:

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

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

- ALC No. 6427 – lodged 31 March 2000
- ALC No. 26210 – lodged 21 June 2010
- ALC No. 26251- lodged 21 June 2010

Council has been granted an extension of time until Friday 7 December 2018 to respond to the claims to allow the matter to be reported to this meeting for consideration.

Overview Summary of the Subject Land

As noted above, the subject land collectively forms the Bangalee Reserve, as shown in Figure 2 below, which is NSW Crown Lands, for which Council is the Reserve Trust Manager. The Reserve is of recreational and cultural heritage value to the local area, providing several facilities for public recreation including picnic/BBQ facilities, amenities building, jetty access to the Shoalhaven River and various walking trails and viewing barriers. Areas of the Reserve located along the river foreshore are regularly used for picnics, private events (weddings, birthday and engagement parties), while the various walking trails provide bushwalks of varying degrees of difficulty for bushwalkers, orienteering, birdwatching and the like.

Alignment of the Koloona Drive Road Reserve

As shown in Figure 2, three (3) lots are split into two portions by the Koloona Drive road reserve. It is noted that due to historical reasons many existing Council managed and maintained roads are constructed partly or wholly outside the designated road reserve, particularly in rural areas and/or where they run through Crown Land. Thus, a survey will be necessary to determine the actual location of Koloona Drive in relation to these three (3) lots, to ensure Council is able to effectively maintain the road in this location if the claims are granted.

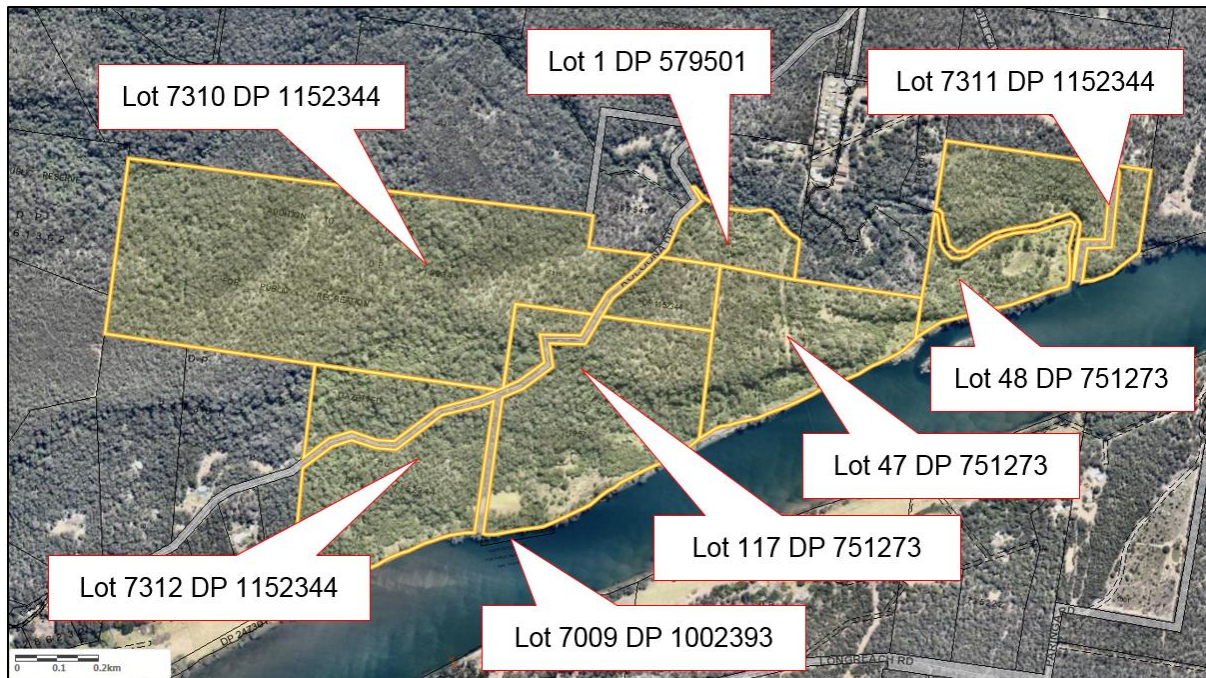


Figure 2: Aerial image of all lots within the Bangalee Reserve, which are now under investigation for determination.

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1. Lot 7310 DP 1152344

Lot 7310 has an area of 51.5 hectares and is zoned E2 Environmental Conservation under the Shoalhaven Local Environmental Plan (LEP) 2014 (Figure 3). The lot was gazetted as an addition to Crown Reserve R80062 on 28 December 1973, with the reserve purpose of Public Recreation. Council is Trust Manager.

The land is heavily vegetated and predominantly vacant; however, parts of the land do contain some Council infrastructure that is used for the reserve purpose of public recreation, being the 'Forest Walk' walking trail and viewing barrier. This infrastructure is maintained by Council, the approximate location of which is shown in Figure 4. There are no other formal Council assets or formed infrastructure on the land; however, there are other existing informal and unmaintained walking trails over other areas to the west of the 'Forest Walk', in addition to orienteering points that are utilised by local Scouting groups.

There are also several informal and unmaintained walking trails located throughout the western portion of Lot 7310, which provide connectivity between Bangalee Reserve and Tapitallee Reserve to the north-east. These are known to be used on occasion for guided bushwalk tours by a local bushwalking group.

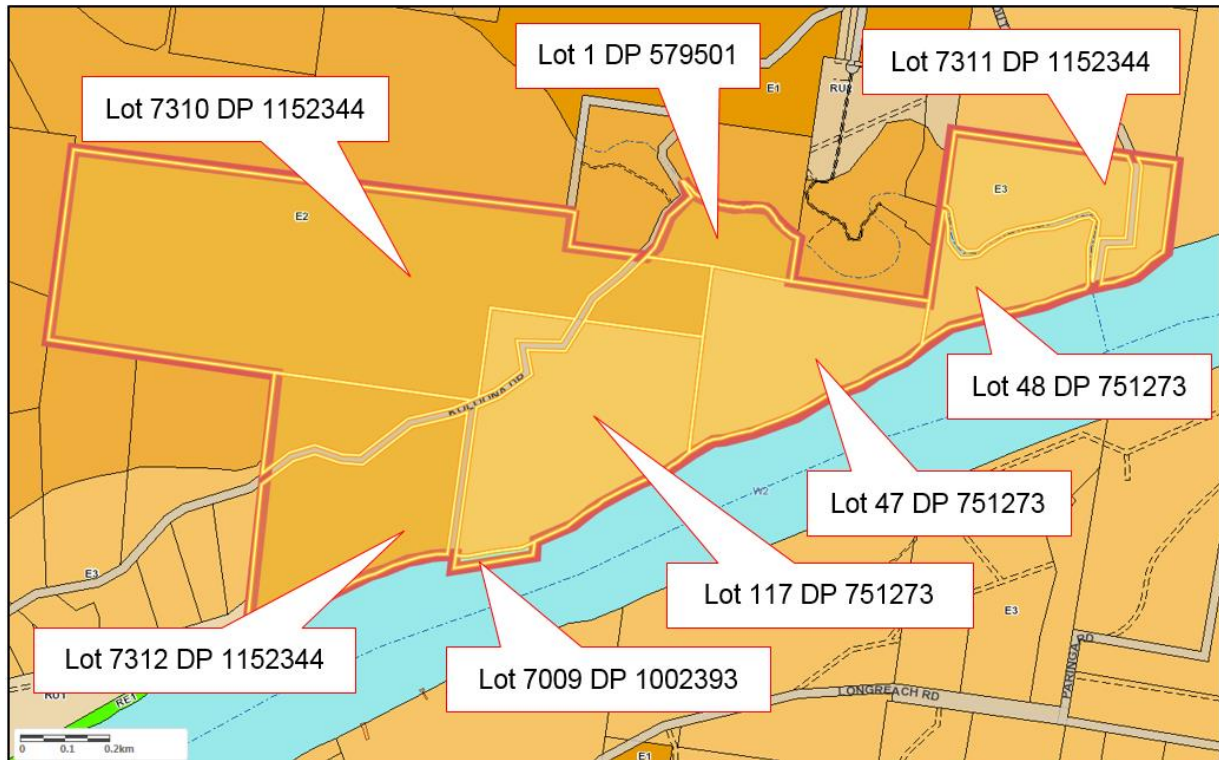


Figure 3: SLEP 2014 land zones over the Bangalee Reserve.

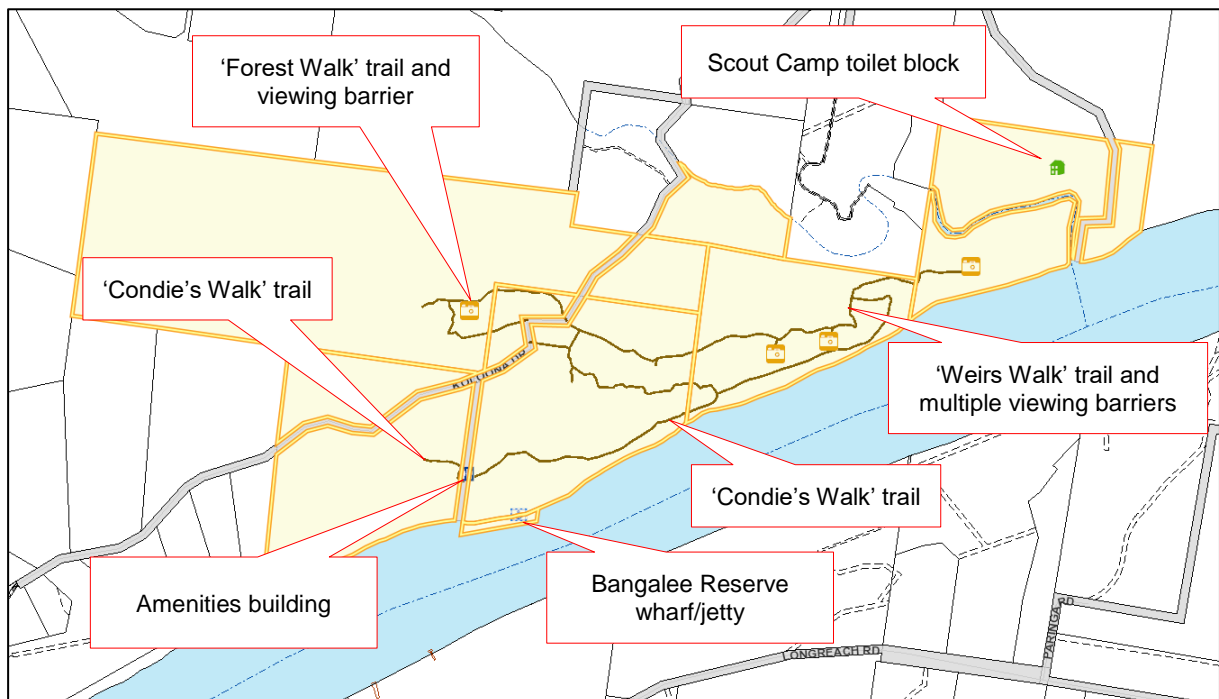


Figure 4: Location of Council owned or maintained infrastructure over the Bangalee Reserve.

2. Lot 7312 DP 1152344

Lot 7312 has an area of 19 hectares and is zoned E2 Environmental Conservation under the Shoalhaven LEP 2014 (Figure 3). Until late 1973, Lot 7312, together with Lot 117 noted below, was privately owned by Mr R A Condie, at which time the land was jointly purchased by Council and the NSW Minister for Lands for addition to the Bangalee Reserve and proposed establishment of a public recreation reserve along the foreshore of the Shoalhaven

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River. The lot was gazetted as an addition to Crown Reserve R80062 on 28/12/1973, with the reserve purpose of Public Recreation. Council is Trust Manager.

The land is heavily vegetated, steeply sloping, and is split in two by Koloona Drive. It is predominantly vacant, except for the western extent of 'Condie's Walk' walking trail, as shown in Figure 4, which is maintained by Council and used for the reserve purpose of public recreation.

3. Lot 117 DP 751273

Lot 117 has an area of 20.6 hectares and is zoned E3 Environmental Management under the Shoalhaven LEP 2014 (Figure 3). As noted above, Lot 117 was also jointly purchased by Council and the NSW Minister for Lands in late 1973 for addition to the Bangalee Reserve and proposed establishment of a public recreation reserve along the foreshore of the Shoalhaven River. The lot was gazetted as an addition to Crown Reserve R80062 on 28 December 1973, with the reserve purpose of Public Recreation. Council is Trust Manager.

The land is quite heavily vegetated and steeply sloping in parts with a large clearing on the foreshore of the Shoalhaven River, and is split into two by Koloona Drive. There are several public recreation facilities and other infrastructure located on this Lot, some of which are owned and maintained by Council (Figure 4), including:

- Outdoor classroom, all-weather shelter hut and BBQ facilities:
 - These facilities were designed and constructed in 1988 as part of a joint initiative between Council, NSW Lands Department, and First Year Architecture students of the University of NSW. The facilities were formally opened to the public on 24 September 1988 and continue to be used for a range of public recreation activities;
- Public amenities building (Council owned and maintained);
- 'Condie's Walk' walking trail that traverse the site along the foreshore and around to the top of the escarpment (Council owned and maintained);
- 'Weirs Walk' walking trail, which is located along the top of the escarpment (Council owned and maintained);
- [Heritage items associated with the former Condie's Farm Homestead:](#)
 - Homestead remnants, relics, graves, and trees.

All items located on Lot 117 form an integral part of the Bangalee Reserve and are significant assets that are well used by the broader Shoalhaven community.

4. Lot 1 DP 579501

Lot 1 has an area of 4.3 hectares and is zoned E2 Environmental Conservation under the Shoalhaven LEP 2014 (Figure 3). Lot 1 was gazetted as an addition to Crown Reserve R80062 on 20 February 1976, with the reserve purpose of Public Recreation. Council is Trust.

The land is heavily vegetated and steeply sloping toward Bengalee Creek to the north, which renders the site difficult to establish any formal infrastructure; thus, the site does not contain any formalised Council facilities. However, the Deposited Plan for Lot 1, which was surveyed in 1975, clearly identifies two separate, informal 'walking tracks' on the site – one along the banks of Bengalee Creek, the other along the top of the rocky outcrop to the south – which connect to other informal trails on adjoining lots.

There is also a high voltage transmission line running north-south through the eastern portion of the site. This asset is not owned or maintained by Council.

5. Lot 47 DP 751273

Lot 47 has an area of 11.8 hectares and is zoned E3 Environmental Management under the Shoalhaven LEP 2014 (Figure 3). Until late 1975, Lot 47 was privately owned, at which time the land was jointly purchased by Council and the NSW Minister for Lands for addition to the Bangalee Reserve and a proposal to establish a broader public recreation reserve along the foreshore of the Shoalhaven River. The lot was gazetted as an addition to Crown Reserve R80062 on 23 June 1978, with the reserve purpose of Public Recreation. Council is Trust Manager.

The lot is predominantly vegetated, with a steep rocky outcrop dropping to the Shoalhaven River foreshore. The land contains the following infrastructure and local heritage items:

- 'Weirs Walk' walking trail in two sections; one along the top of the cliff face and another along the river foreshore (Council owned and maintained);
- Electricity transmission line running north-south through the middle of the lot (not owned or maintained by Council);
- [Heritage items associated with the former Weir Family Homestead:](#)
 - Homestead and dairy remains, flood marker.

6. Lot 48 DP 751273

Lot 48 has an area of 5.7 hectares and is zoned E3 Environmental Management under the Shoalhaven LEP 2014. Lot 48 was gazetted as an addition to Crown Reserve R80062 on 14 March 1975, with the reserve purpose of Public Recreation. Council is Trust Manager.

The land is vegetated along the top of the escarpment, falling away to a cleared area along the foreshore of Bangalee Creek. The land contains the following infrastructure and local heritage items:

- 'Weirs Walk' walking trail and viewing barrier (maintained by Council);
- [Heritage items associated with the former Weir Family Homestead:](#)
 - Weir Family grave sites and monuments.

7. Lot 7311 DP 1152344

Lot 7311 has an area of 10 hectares and is zoned E3 Environmental Management under the Shoalhaven LEP 2014 (Figure 3) and is one of the original portions of the Reserve, having been gazetted as Crown Reserve R80062 on 18 October 1957 with a reserve purpose of Public Recreation. Council is Trust Manager.

The lot is heavily vegetated and steeply sloping in parts. The Bangalee Scout Camp toilet block is located on the site, which is owned by Council but maintained by Scouts. The toilet block was constructed in 1997 at the request of the Scout Camp Management Committee, to serve the patrons of the Scout Camp within the lower camping area.

8. Lot 7009 DP 1002393

Lot 7009 is a narrow strip of land that extends along the banks and into the Shoalhaven River. It covers an area of 0.4 hectares and is zoned W2 Recreational Waterway in the Shoalhaven LEP 2014 (Figure 3). Lot 7009 was gazetted as an addition to Crown Reserve R80062 on 17 March 1993, with the reserve purpose of Public Recreation. Council is Trust Manager.

Lot 7009 is captured by the bulk/blanket claims that were lodged over the South Coast in December 2016. The site contains the Bangalee Jetty, which was reconstructed in 2004. The

jetty is regularly used by the public for fishing and boating activities and is an important community public recreation asset within the reserve.

Comment Summary on Land Claims

As noted above, a total of eleven (11) individual ALCs have been lodged over the subject land, in addition to the two bulk/blanket claims, and are now the subject of investigation by DoI. The following comments are provided regarding Council's interests in relation to each claim and will be detailed in Council's submission.

Claim Number 6427 - Lot 7310 DP 1152344

Was lodged over the whole of the Lot 7310 on 31 March 2000. At the date of claim, the land formed part of the overall Bangalee Reserve and was being lawfully used for the Crown Reserve purpose of Public Recreation. As shown in Figure 4, there is some existing Council infrastructure on part of the site to the west of Koloona Drive, being the 'Forest Walk' walking trail and viewing barrier, which was in place at the date of claim. However, as noted above, even though there is no existing formal infrastructure over most of the site, this has not prevented the remainder of the land from being generally used by the public for recreational purposes such as bushwalking, birdwatching, mountain biking, orienteering and the like.

Council previously resolved on 19 December 2000 to not support ALC No. 6427 on the basis that the land was required for an essential public purpose (MIN00.1622). It is considered that this position remains the same, thus it is recommended that Council not support this claim on the basis that, at the date the claim was lodged, the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use.

Claim Number 26210 - Lot 7310 DP 1152344

Was lodged over that portion of Lot 7310 to the east of Koloona Drive on 21 June 2010. As noted above, at the date of claim lodgement, the land formed part of the Bangalee Reserve and was being lawfully used for the Crown Reserve purpose of Public Recreation. It is recommended that Council not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation.

Claim Number 26251 - Lot 7310 DP 1152344

Was lodged over that portion of Lot 7310 to the west of Koloona Drive on 21 June 2010. At the date of claim, the land formed part of the Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of "Public Recreation". Council infrastructure is also located on part of the Lot, as shown in Figure 3.

Council's position on this claim remains the same as that of ALC 6427. It is recommended that Council not support this claim (No.26251) on the basis that, at the date of claim, the land was being lawfully used for its reserve purpose of Public Recreation and it also contained formal infrastructure to facilitate this use.

Claim Number 6348 - Lot 7312 DP 1152344

Was lodged over Lot 7312 on 23 March 2000. At the date of claim, the land formed part of the overall Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of Public Recreation. Existing Council infrastructure is also located on part of the Lot, being the 'Condie's Walk' walking trail.

The absence of further formal infrastructure on the remainder of the site does not prevent the land from being used for passive public recreation activities consistent with the

environmental values of the land. It is recommended that Council not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use.

Claim Number 6349 - Lot 117 DP 751273

Was lodged over Lot 117 on 23 March 2000. At that time, the land formed an integral part of the overall Bangalee Reserve and was being lawfully used for the Crown Reserve purpose of Public Recreation.

At the date of claim lodgement, formal infrastructure was located across much of the land, including the Council-owned public amenities building and walking trails ('Condie's Walk' and 'Weir Walk'). In addition, the outdoor classroom, shelter hut and BBQ facilities that were constructed in 1988 are used regularly for public recreation activities and educational programs, such as picnics, private functions, school and youth camp excursions and the like. It is recommended that Council not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation and contained a substantial amount of formal infrastructure to facilitate this use.

Claim Number 6370 - Lot 1 DP 579501

Was lodged over Lot 1 on 23 March 2000. At the date of claim, the land formed part of the overall Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of Public Recreation.

Although there is no formal infrastructure on the site, there is evidence of two informal and unmaintained walking tracks that enable the land to be used by the public for recreational purposes such as bushwalking, birdwatching, orienteering and the like, consistent with its reserve purpose. It should also be noted that there is an electricity transmission line running north-south through the eastern portion of the site, which was in place at claim lodgement. Although this is not Council-owned infrastructure, it would be prudent to advise the ALCIU that the land was needed for an essential public purpose at the date of claim lodgement.

It is considered that Council should not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation and was also needed for an essential public purpose of electricity infrastructure.

Claim Number 6369 - Lot 47 DP 751273

Was lodged over Lot 47 on 23 March 2000. At the date of claim, the land formed part of the overall Bangalee Reserve and was being lawfully used for the Crown Reserve purpose of Public Recreation.

There is some formal infrastructure on the site to facilitate this use, being two branches of the 'Weirs Walk' walking trail and two viewing barriers, which are owned and maintained by Council. This is consistent with the land's lawful reserve purpose of Public Recreation. In addition, there is an electricity transmission line running north-south through the middle of the site, which was in place at claim lodgement, thus the land was also needed for an essential public purpose.

Consequently, it is considered that Council should not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation contained some formal infrastructure to facilitate this use and was also needed for an essential public purpose of electricity infrastructure.

Claim Number 26238 - Lot 47 DP 751273

Was lodged over Lot 47 on 21 June 2010. All matters relevant to the claim on Lot 47 noted above (ALC 6369 lodged 23 March 2000) were still in place at the date of claim lodgement, being infrastructure for public recreation and electricity supply. It is recommended that Council not support this claim on the basis that, at the date of claim, the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use and was also needed for an essential public purpose of electricity infrastructure.

Claim Number 26224 - Lot 48 DP 751273

Was lodged over Lot 48 on 21 June 2010. At the date of claim, the land formed part of the overall Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of Public Recreation. Council infrastructure is also located on part of the Lot, being the 'Weirs Walk' walking trail and viewing barrier. It is recommended that Council not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use.

Claim Number 26195 - Lot 7311 DP 1152344

Was lodged over that portion of Lot 7311 to the west of Bangalee Scout Camp Road on 21 June 2010. At the date of claim, the land formed part of the overall Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of Public Recreation. Council infrastructure is also located on this part of Lot 7311, being the Bangalee Scout Camp toilet block, which is owned by Council but maintained by Scouts. The toilet block was constructed in 1997 at the request of the Bangalee Scout Camp Management Committee, to serve the patrons of the Scout Camp within the lower camping area. It is recommended that Council not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use.

Claim Number 26229 - Lot 7311 DP 1152344

Was lodged over that portion of Lot 7311 to the east of Bangalee Scout Camp Road on 21 June 2010. At the date of claim, the land formed part of the Bangalee Reserve, and was being lawfully used for the Crown Reserve purpose of Public Recreation. Although there is no formal infrastructure located on this part of the lot, the land is known to be used by patrons of the Scout Camp, which adjoins the land immediately to the north and was in operation prior to 1990. It is recommended that Council should not support this claim on the basis that, at the date of claim the land was being lawfully used for its reserve purpose of Public Recreation.

Claim Numbers 42454 ad 42497 – All Lots

These claims are part of the bulk/blanket claims that were lodged by the NSW Aboriginal Land Council over the NSW South Coast on 15 and 19 December 2016. All lots mentioned earlier in this report, and in the claims noted above, are affected by these two claims, with the addition of Lot 7009 DP 1002393 that contains the Bangalee Jetty.

At the date of claim lodgement, all infrastructure and facilities within the Bangalee Reserve were in place and operational, and the land was being used for its Crown Reserve purpose of Public Recreation. Thus, it is recommended that Council not support the portion of these two claims that affect land within the Bangalee Reserve on the basis that, at the date of the claims the land was being lawfully used for its reserve purpose of Public Recreation and contained some formal infrastructure to facilitate this use, and some of the land was needed for an essential public purpose of electricity infrastructure.

Community Engagement

Local community and interest groups were consulted following Council's initial submission to the ALCIU regarding Lot 7310, to seek additional information regarding the use of the land. A substantial amount of information was provided, which will form part of Council's submission.

Wider community consultation has not been undertaken regarding the claims over the entire Reserve, as Council holds extensive records regarding the use of the Reserve, which will be used to substantiate the use of the land at the date of claim lodgement.

Financial Implications

There are no direct financial implications in providing this advice to DoI. Should the claims be refused, Council will continue to be Trust Manger for the land and bear the responsibility of maintaining the land and any of its associated infrastructure, and the Koloona Drive Road reserve.

Should the claims be granted subject to either the exclusion of land containing Council infrastructure and the Koloona Drive road reserve, or the creation of easements to protect existing Council assets, it is anticipated that any costs associated with both surveying the land and the creation appropriate easements (if required) will be met by DoI or the benefitting land council (either Nowra Local Aboriginal Land Council or the NSW Aboriginal Land Council).

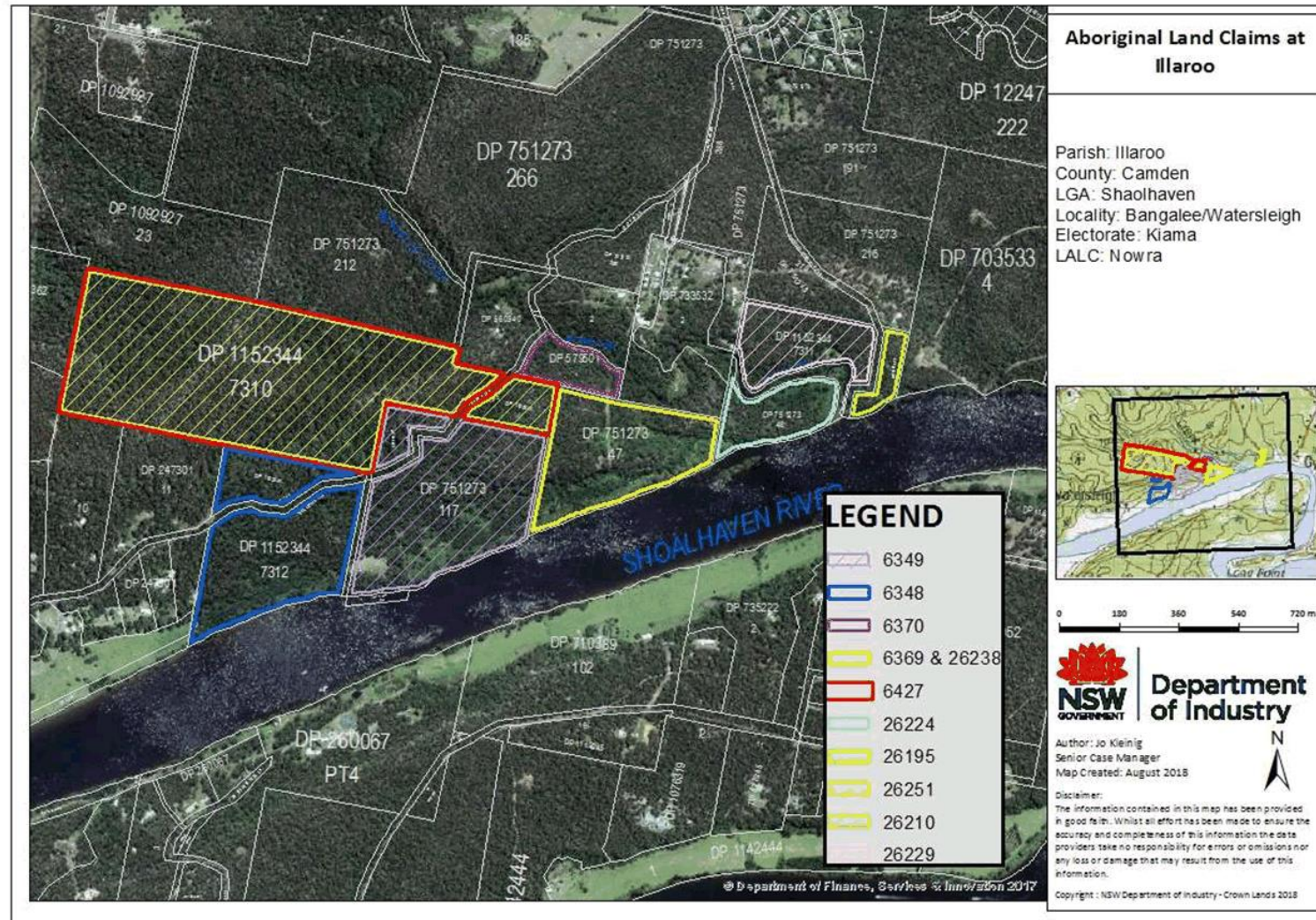
Any ongoing costs associated with the maintenance of any existing infrastructure will continue to be met by Council for the foreseeable future, as per the existing arrangement with Crown Lands.

Risk Implications

There is no risk to Council in providing this information to DoI, as it ensures that all relevant information is made available to assist in determining these claims.

Should the claims be refused, the public will continue to gain access to the land and utilise it for its reserve purpose of Public Recreation.

Should the claims be granted subject to the exclusion of certain land or the creation of easements, Council will continue to gain access to existing assets and infrastructure, and the public will still be able to make use of the walking trails, amenities building, jetty, and the like; however, access to the remainder of the land may be prohibited should it be transferred into private ownership.





Our Reference: DOC18/172697

Reference to authorities and stakeholders via email:

Shoalhaven City Council	Council@shoalhaven.nsw.gov.au
Essential Energy	alc@essentialenergy.com.au
Telstra	william.oxby@hsf.com
Transgrid	alc@transgrid.com.au
NSW Department of Industry - Geological Survey NSW	landuse.minerals@geoscience.nsw.gov.au
NSW National Parks and Wildlife Services Roads/access team	OEH.Roads@environment.nsw.gov.au
Forestry Corporation	jude.parr@fcnsf.com.au

To whom it may concern

Aboriginal Land Claims at Illaroo

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

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

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

Available records indicate the claimed land was subject to Reserve 80062 for Public Recreation, known as Bangalee Reserve. Shoalhaven City Council was the trust manager of the reserve.

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.

PO Box 2185, Dangar NSW 2309, Australia
45 Wingewarra Street, Dubbo NSW 2830, Australia,
Tel: 02 6883 3396 Fax: 02 6884 2067 alc@crownland.nsw.gov.au www.industry.nsw.gov.au/lands

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

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

A response is requested to be provided by 11 September 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 to alc@crowland.nsw.gov.au.

Yours sincerely



Jo Kleinig
Senior Case manager
Aboriginal Land Claim Investigation Unit

14 August 2018

Claim No	Land Council	Land Claimed	Lodged
6348	Nowra LALC	7312/1152344	23 March 2000
6349	Nowra LALC	117/751273	23 March 2000
6369	Nowra LALC	47/751273	23 March 2000
6370	Nowra LALC	1/579501	23 March 2000
6427	Nowra LALC	7310/1152344	31 March 2000
26195	NSWALC obo Nowra LALC	Part 7311/1152344	21 June 2010
26210	NSWALC obo Nowra LALC	Part 7310/1152344	21 June 2010
26224	NSWALC obo Nowra LALC	48/751273	21 June 2010
26229	NSWALC obo Nowra LALC	Part 7311/1152344	21 June 2010
26238	NSWALC obo Nowra LALC	47/751273	21 June 2010
26251	NSWALC obo Nowra LALC	Part 7310/1152344	21 June 2010

Additionally, all land above falls under the following claims:

42454	NSWALC	All land above INCLUDING Lot 7009/1002393	15 December 2016
42497	NSWALC	All land above INCLUDING Lot 7009/1002393	19 December 2016

NSWALC = New South Wales Aboriginal Land Council
LALC = Local Aboriginal Land Council

PO Box 2185, Dangar NSW 2309, Australia
45 Wingewarra Street, Dubbo NSW 2830, Australia,
Tel: 02 6883 3396 Fax: 02 6884 2067 alc@crowland.nsw.gov.au www.industry.nsw.gov.au/lands



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.



Aboriginal land claims

Definition of terms

Over time, courts have provided some guidance on the definition of terms surrounding the *Aboriginal Land Rights Act 1983* (NSW) and the assessment of Aboriginal land claims. This fact sheet details two common terms and explains their interpretation.

Lawful use and/or occupation

Lawful: The term lawful means the activity being conducted on the claimed land at the date of claim was being conducted with the appropriate authority to do so. For instance, if the activity required the approval of the reserve trust, then that approval had been granted.

Lawful use: Lawful use of claimed lands occurs when the use is to more than a notional degree. The level required to demonstrate the use is more than notional will depend on the purpose for which the land is reserved. For example, a reserve for public recreation would be expected to have a higher level of use than a reserve for tree plantation.

The use of the land needs to be consistent with the reserve purpose; for a purpose that is in furtherance of or ancillary to the reserve purpose; or an authorised secondary interest.

The use needs to be actual, not just contemplated or intended.

Lawful occupation: 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 in isolation are insufficient.

Needed or likely to be needed for an essential public purpose

Needed: 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, the question is whether it is likely that there will in the future be a government requirement; and if this is 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: The term likely refers to a real, or not remote, chance; a real chance or possibility. It does not refer to something being 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: Essential public purposes are those that are required and created by the government, or purposes of the administration of the government. 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.

© State of New South Wales through Department of Industry 2017. The information contained in this publication is based on knowledge and understanding at the time of writing (November 2017). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Industry or the user's independent adviser.

DE18.79 Mandatory Controls - Shoalhaven Development Control Plan 2014

HPERM Ref: D18/403997

Group: Planning Environment & Development Group
Section: Strategic Planning

Attachments: 1. Legal Advice - Mandatory Controls in Shoalhaven DCP 2014
(Confidential - councillors information folder)

Purpose / Summary

Report back to Council with advice regarding the use of mandatory controls within Shoalhaven Development Control Plan (DCP) 2014. This report is provided specifically in response to the resolution, MIN18.646, specifically part 5a.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Retain existing mandatory controls within Shoalhaven Development Control Plan (DCP) 2014 and continue the use of mandatory controls as required in future amendments to the DCP.
2. Amend Chapter 1: Introduction of Shoalhaven DCP 2014 to make it clearer that a mandatory control can be varied subject to an applicant demonstrating to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development. This matter is to be addressed as part of the next appropriate housekeeping amendment to the Chapter.
3. Advise relevant stakeholders of this decision, including Industry Representatives.

Options

1. As recommended.

Implications: This approach is preferred as it will enable Shoalhaven DCP 2014 to continue to operate in the way it was intended. Mandatory controls are useful provisions which emphasise the importance of the standard, however, a mandatory control can be varied subject to an applicant demonstrating to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development. A future amendment to Shoalhaven DCP 2014 in this regard will make this clearer to an applicant.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could have implications for the operation and intent of Shoalhaven DCP 2014. This option is not preferred as the use of mandatory controls is consistent with the *Environmental Planning and Assessment Act 1979* (the Act) and they allow Council additional flexibility to apply higher order site or land use specific provisions as required.

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Background

Shoalhaven DCP 2014 is predominately a performance based DCP model, consisting of objectives, mandatory controls, performance criteria and acceptable solutions.

Chapter 1: Introduction of Shoalhaven DCP 2014 provides the following helpful summary of the elements of the DCP:

- Objectives: For each section or topic of relevance, objectives will clearly state what Council seeks to achieve once the controls or the performance criteria are met.
- Mandatory Controls: Are specific, prescriptive measures required for achieving the desired objectives.
- Performance Criteria: Identify how a development should perform so that the desired objectives can be achieved.
- Acceptable Solutions: Indicate how the development can achieve the desired performance and objectives.

Mandatory controls are currently only included in the following Shoalhaven DCP 2014 Chapters, given the nature of the areas/uses covered:

- Chapter G10: Caravan Parks in Flood Prone Areas.
- Chapter NB2: Worrigeer Urban Release Area.
- Chapter NB3: Moss Vale Road South Urban Release Area.
- Chapter G20: Jerbera Estate.
- Chapter S2: Badgee Urban Release Area.

Council will consider variations to mandatory controls where an applicant demonstrates to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development.

Council at its Ordinary Meeting of 28 August 2018 considered a Notice of Motion regarding the finalisation of the draft Medium Density Amendment to Shoalhaven DCP 2014. It was suggested as part of this that the use of mandatory controls within Shoalhaven DCP 2014 was inconsistent with Section 4.15(3A) of the Act being:

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, standards include performance criteria.

The [General Manager's Note in relation to the Notice of Motion](#) (Item CL18.193) clarified that mandatory controls within DCPs are established practice and are not inconsistent with Section 4.15(3A) of the Act. However, Council resolved (MIN18.646) to:

- 1.a. Delete any reference to 'Mandatory Controls' as such content would be contrary to Section 4.15 (3A) of the EPA Act 1979, which requires the council to be flexible in applying DCP provisions and allow reasonable alternative solutions that achieve

the objects of those standards for dealing with an aspect of a proposed development. The current DCP if adopted would lead to breaches of the EPA Act if mandatory controls were contained within it. Any control currently noted as mandatory is to be re-written as an acceptable solution.

5.a. The use of Mandatory provisions within all other DCP chapters is reported back to council at a later date for consideration as a separate amendment.

As such, this report is provided specifically in response to the resolution, specifically part 5a.

Legal Advice

To provide further clarification regarding this matter, legal advice was sought from Marsdens Law Group (**Councillors Information Folder**).

The legal advice is clear that the mandatory controls in Shoalhaven DCP 2014 are not contrary to section 4.15(3A) of the Act. Further, they do not change the fact that Shoalhaven DCP 2014 remains a guideline that cannot prohibit a development that does not comply with the provisions within.

Conclusion

Council's legal advice concluded that mandatory controls in Shoalhaven DCP 2014 are not contrary to section 4.15(3A) of the EP&A Act which was the basis of Council's previous resolution. It is therefore considered unnecessary to change the current approach which has been in place since the Citywide DCP was introduced in 2014 and also in some cases reflects outcomes that were negotiated with the NSW Government as part of an overall planning outcome (e.g. Jerbera Estate). As such, it is recommended that mandatory controls remain an appropriate and effective component of Shoalhaven DCP 2014.

It would be appropriate, however, to amend Chapter 1: Introduction of Shoalhaven DCP 2014 to make it clearer that a mandatory control can be varied subject to an applicant demonstrating to Council's satisfaction that the objectives of the relevant section/subsection and chapter have been met by the development.

Community Engagement

No community engagement has been undertaken with regards to this report, however it is noted that the Citywide DCP that introduced mandatory controls was exhibited in 2014 in accordance with legislative requirements. No submissions were received regarding mandatory controls.

Policy Implications

The legal advice is clear that the mandatory controls in Shoalhaven DCP 2014 are not contrary to section 4.15(3A) of the Act. Further, they do not change the fact that Shoalhaven DCP 2014 remains a guideline that cannot prohibit a development that does not comply with the provisions within. As such, removal of mandatory controls from Shoalhaven DCP 2014 is considered unnecessary, especially as variations to mandatory controls could still be considered by Council.

DE18.80 Development Application – 20 Norfolk Avenue, SOUTH NOWRA - Lot 30 DP 790535 - Concrete Batching Plant

DA. No: DA18/2054/4

HPERM Ref: D18/382826

Group: Planning Environment & Development Group
Section: Development Services

Attachments: 1. Clause 4.6 Variation Request [↓](#)

Description of Development: Concrete Batching Plant

Owner: Bitupave Ltd

Applicant: Boral Resources (Country) Pty Ltd

Notification Dates: 24 October to 26 November 2018

No. of Submissions: Nil in objection
Nil in support

Purpose / Reason for consideration by Council

Seek direction on a policy variation relating to the 11m height of buildings standard in clause 4.3 (Height of Buildings) of *Shoalhaven Local Environmental Plan 2014* (SLEP 2014).

The extent of the variation is such that staff do not have delegation to deal with the matter. Where a development standard is more than 10%, the variation must be reported to the elected Council.

Council can assume the concurrence of the Secretary of the Department of Planning and Environment for clause 4.6 variations to vary a development standard. Further information is available in the Department's Circular PS18-003.

Recommendation

That Council:

1. Confirm it supports, pursuant to clause 4.6 (Exceptions to development standards) of SLEP 2014, the applicant's request to vary the height limit of 11m to 23m; and
2. Refer the development application (DA18/2054) back to staff for determination.

Options

1. Support the requested variation to the maximum height of buildings requirement.

Implications: Will permit the application to proceed in its current form.

2. Not support the proposed variation to the maximum height of buildings requirement.

Implications: Will require the applicant to reconsider the design of the proposal.

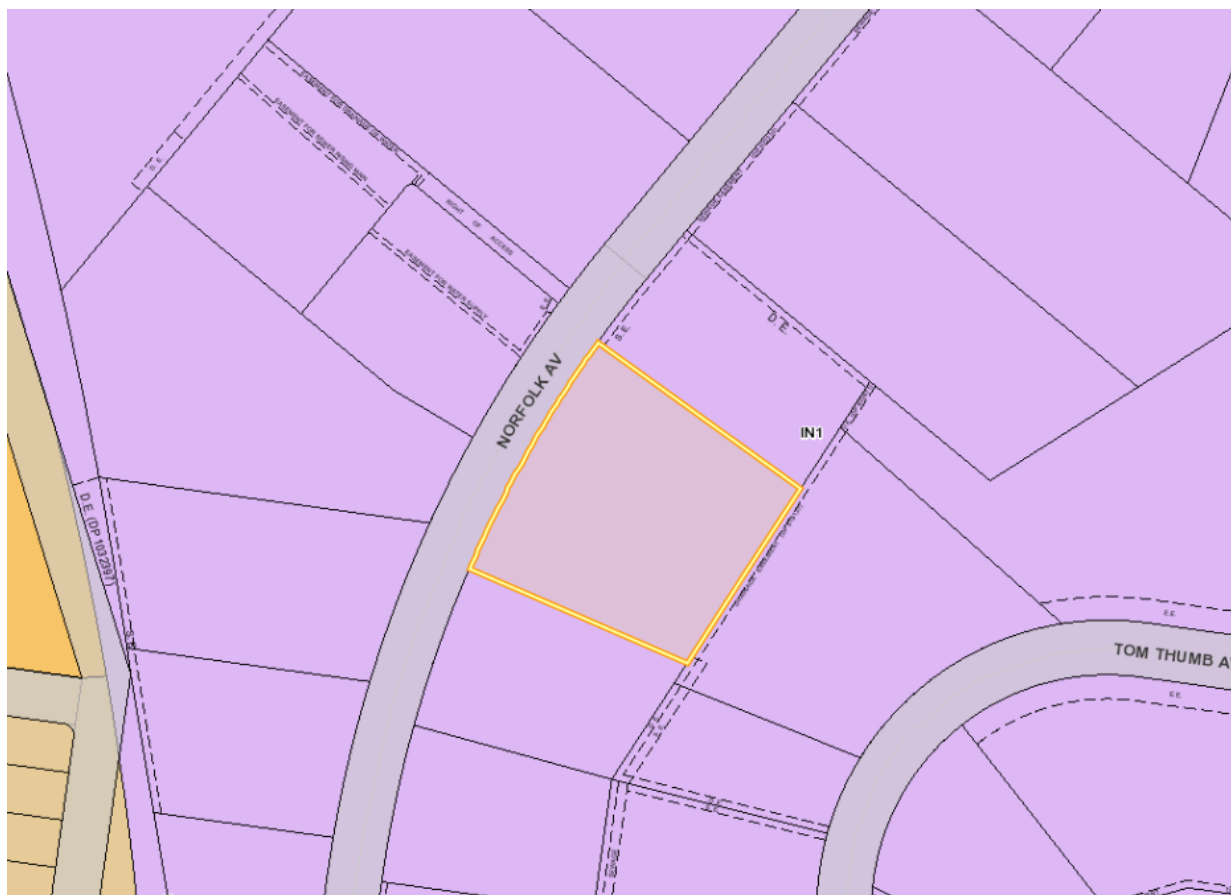
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3. Modify the recommendations contained in this report.

Implications: Will require Council to provide direction to staff.

Location Map

Figure 1 – Extract from the SLEP 2014 Land Use Zoning Map



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Figure 2 – Aerial image of the subject site in the local context.



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Background

Proposed Development

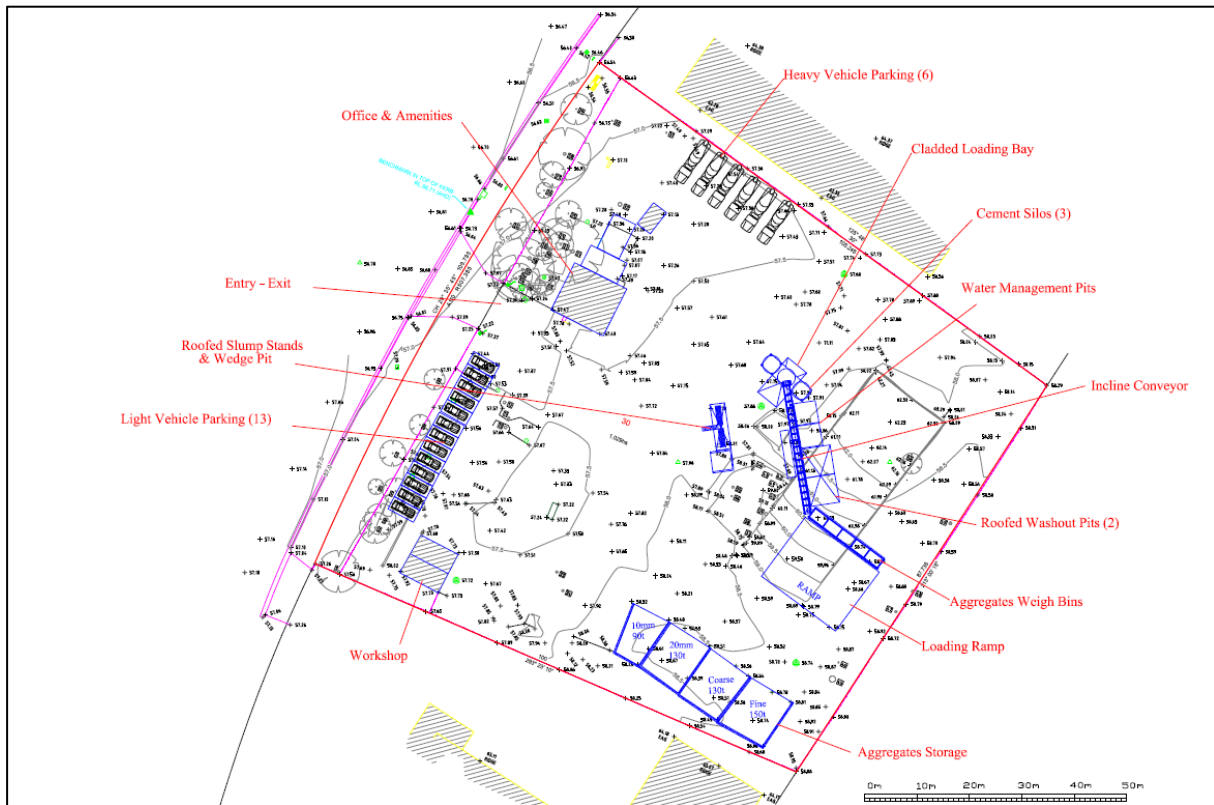
Council is in receipt of a development application seeking consent for the construction of a concrete batching plant (CBP) and associated infrastructure on land at 20 Norfolk Road, South Nowra.

The CBP will produce a maximum of 52,000m³ of pre-mixed concrete products per annum (125,000 tpa) for transport by road to customers. The proposed concrete plant will generate a peak of 222 truck movements per day during operation.

A site plan, landscape plan and elevations of the proposed development are provided in **Figures 3 – 5** below.

Note: Boral Resources (Country) Pty Ltd (Boral) currently operates a concrete batching plant at Yalwal Rd, West Nowra (BA74/0541). Boral has decided to decommission this operation and establish a new concrete batching plant on the subject site.

Figure 3 – Site Plan



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Figure 4 – Landscape Plan

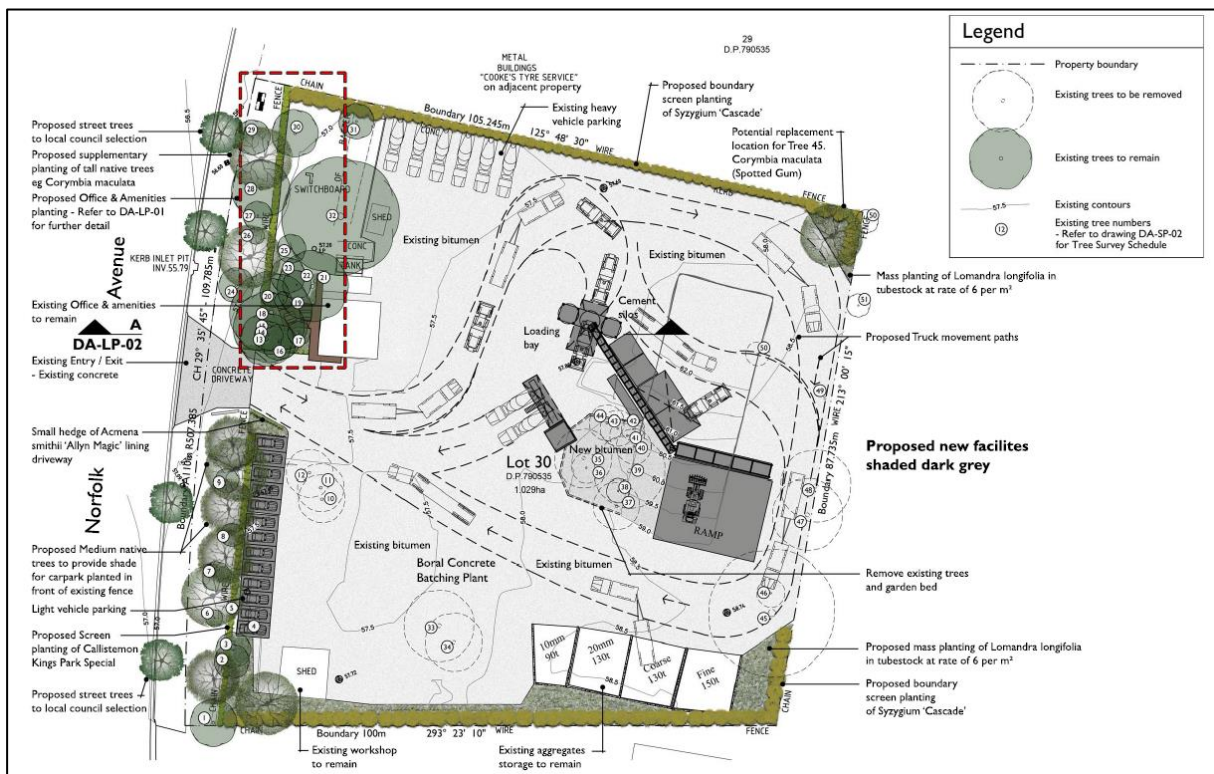
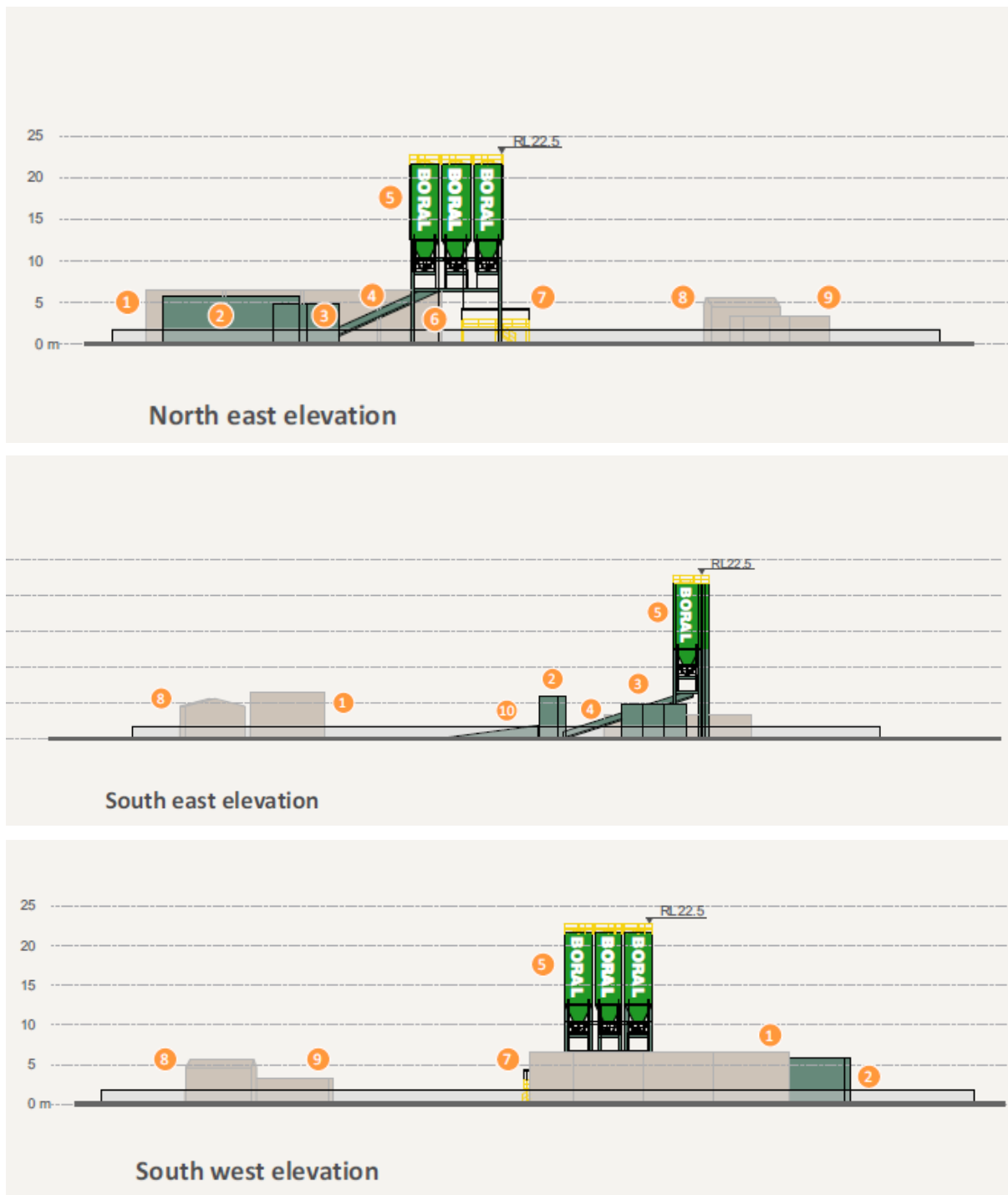
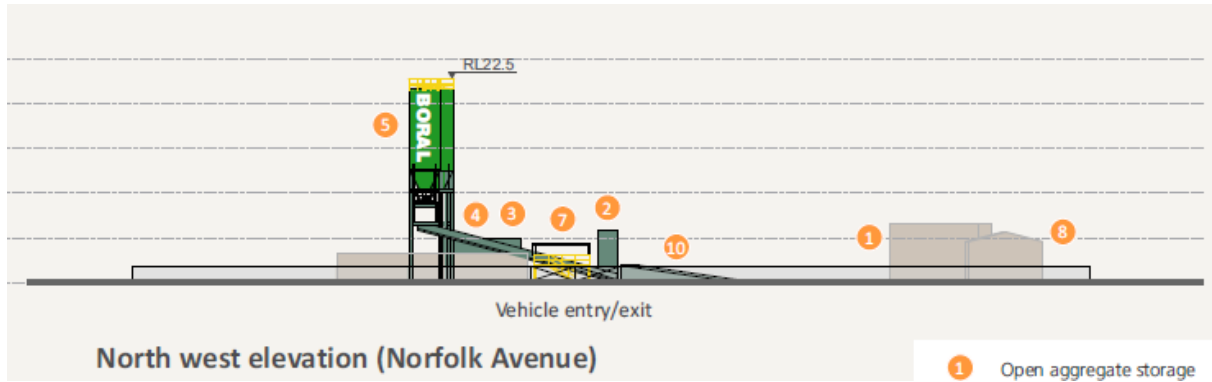


Figure 5 – Elevations of the proposed development



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Subject Land

The site is located 4.5km south of the Nowra CBD within the established South Nowra and Flinders Industrial Estate. The site is identified as Lot 30 DP 790535, 20 Norfolk Road, South Nowra.

The lot is a regular shaped allotment with a frontage of 109.7m to Norfolk Avenue and an average depth of 102m to the rear boundary. The site has an overall area of 1.09ha.

The site is in a highly disturbed and modified industrial area and contains several remnant native trees and vegetation and ornate landscaping along the Norfolk Avenue frontage. Any significant vegetation has been cleared to facilitate construction of the original asphalt plant (DA88/2443). Generally, vegetation comprises a mixture of native and exotic plant species of limited ecological significance.

The site does not contain any watercourses or other significant natural features.

The site grades generally from the eastern rear boundary to the western front boundary with Norfolk Avenue.

The site is identified as containing Class 5 acid sulfate soils and is not within 500m of Class 4, 3, 2 or 1 classified soils.

The site is identified on Council's Potential Contaminated Land (PCL) Register as being potentially contaminated land due to the prior use as an asphalt plant.

The site is not impacted by any other natural hazards of significance.

The site does not contain any items of local or state heritage significance in accordance with Schedule 5 of SLEP 2014.

Site & Context

The site was previously used for asphalt production in accordance with Development Consent No. DA88/2443, until 2011 when operations ceased. Council has subsequently approved the staged demolition of the existing asphalt plant (DA13/1463) and the applicant has acted upon the consent through the demolition of a number of structures on the site.

The site and surrounding area is zoned IN1 – General Industrial under SLEP 2014. The locality is characterised by light industrial, warehousing and storage premises.

The site is adjoined by the following land uses:

- 18 Norfolk Avenue – Industrial/warehouse building which is currently occupied by a vehicle repair station (Cokes Tyre Service);
- 22 Norfolk Avenue – two (2) industrial/warehouse buildings which are currently being occupied for the purpose of light industry (Stormtech Pty Ltd) and warehousing and distribution (Longford Southern Deliveries).

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- 13 Tom Thumb Avenue – waste storage and treatment depot (South Coast Liquid Treatment).
- 15 Norfolk Avenue – Two Industrial Buildings comprising Offices, Factory and 68 Storage Units and associated Car Parking and Landscaping

There are no sensitive land uses within the immediate vicinity of the site. It is noted that the closest residential dwelling on Albatross Road is approximately 370m to the west-south-west of the site. Additional residential premises are located along The Links Road (approximately 715m south-east of the site), and Prosperity Road (approximately 975m east of the site).

There are no additional sensitive land uses (including child care facilities, schools or churches) within proximity to the site.

History

11 October 1989 – Council granted Development Consent No. DA 89/1941 to Bitupave Ltd (Boral) for the construction and operation of an asphalt plant

14 April 1993 – Council granted Development Consent No. DA93/0749 to Bitupave Ltd (Boral) for the construction and operation of a laboratory to support the asphalt plant.

11 September 2013 – Council granted Development Consent No. DA13/1463 to Bitupave Ltd (Boral) for the staged demolition of the existing asphalt plant.

19 September 2018 – the current application was lodged with Council.

1 November 2018 – site visit conducted and confirmed that the applicant had substantially commenced work in relation to the staged demolition of structures on the site in accordance with Development Consent No. DA13/1463.

Issues

Clause 4.3 (Height of buildings) of SLEP 2014

Clause 4.3 stipulates the objective and development standard for the height of buildings in Shoalhaven. Relevantly Clause 4.3(2)&(2A) state as follows:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

The 'Height of Buildings Map' does not show a maximum building height for the subject site. As such, the maximum height of any building, under this clause, must not exceed 11m as stipulated by subclause (2A).

The development does not comply with this development standard as it will have a maximum height of 23.7m for the proposed silos, see Figure 5 elevations above. This represents a variation to the numerical standard of 12.7m or 115.5%.

Clause 4.6 (Exceptions to development standards) of SLEP 2014

The applicant has submitted a written request to justify the contravention of the development standard pursuant to the requirements of clause 4.6 of SLEP 2014. Refer to **Attachment 1** for the detailed request.

Council is required to consider subclauses (3), (4) and (5) of Clause 4.6. Clause 4.6(3)-(5) are extracted from SLEP 2014 below:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request

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from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence."*

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

It is considered that the applicant has satisfactorily demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The proposal's physical impacts on surrounding development are capable of being acceptable (subject to the regulatory controls and conditions associated with the ongoing management of the site operations).
3. The proposed development of the site has been undertaken with due consideration of the existing and future redevelopment of neighbouring properties in the IN1 General Industrial zone.
4. The proposed batching plant infrastructure is a preowned and prefabricated gravity fed batching system, of which silos are made to a standard specification; e.g. one set size. Should a different height silo be sought, which would need to be a custom build, the operation of the plant will need to be altered to achieve the same production capacity (e.g. additional silos added to the plant to achieve storage volumes required, an increased plant footprint, changes to the traffic management plan to take into account the larger plant, additional conveyor belts within the plant and additional truck movements to the site to more frequently top up the silos).
5. The proposed height is consistent with other existing concrete batch plants in Nowra, with Eziway Concrete's proposed silo being 22.8m and Holcim Concrete in Cumberland Ave existing silo having a similar height.

6. The proposed height of the plant is consistent with other plants of the same efficiency which Boral has developed across the state. An example of the Boral facilities which have implemented similar silos heights are provided in **Figures 7 - 9** below:

Figure 7 – Boral CBP located at 75 Reserve Road, Artarmon



Figure 8 - Boral CBP located at 1 Mort Street, Granville



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Figure 9 - Boral CBP located at 1 Baker Street, Banksmeadow



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There are sufficient environmental planning grounds to justify contravening the development standard

The particular environmental planning grounds which distinguish it from other potential requests to vary the height of building development standard are summarised below:

1. The Boral agitator truck fleet requires the plant to be developed to a particular height, in order to ensure that the vehicles can drive through the plant in one direction, and not be required to reverse in to the plant, which would present a safety risk; it is best practice to design drive through batching plants;
2. The exceedance of the height of building development standard is typical of other CBP in South Nowra and the broader region;
3. Consideration should be given to the height of building development standard only being a default height limitation. The default height is not the result of a detailed strategic review or visual impact assessment of the area;
4. The proposed development is of an overall height, scale, bulk, design and external appearance that is in keeping with the existing development on the site, as well as nearby industrial land uses in the same industrial estate;
5. The additional height above the 11m maximum building height will not result in unreasonable overshadowing, overlooking or amenity impacts in excess of that pre-existing at the site;
6. The proposal will aid in the provision of additional industrial land uses, encourage additional employment opportunities (the site would employ up to 11 staff at any one time over two separate shifts per day), facilitates the continued utilisation of industrial land for industrial purposes and has the potential to provide for an industrial activity that does not significantly conflict with the operation of existing or proposed development (subject to full assessment by Council and regulatory authorities).
7. Although the height contravention appears numerically large, the previous bitumen batching plant approved pursuant to Development Consent No. DA89/1941 was

constructed with stack heights of 17m and accordingly the height of the proposed development is not inconsistent with the height of the structure previously on the site prior to demolition. Refer to **Figure 11** for a comparison of the existing silo (prior to demolition) and the approximate silo height.

Figure 11 - Existing silo image with proposed silo approximated

(image extracted from Visual Impact Assessment prepared by Mansfield Urban Pty Ltd dated 31 July 2018 and lodged in support of the application.)



8. The applicant's documentation has indicated that the height of the "proposed silos cannot be reduced to achieve numerical compliance with the maximum building height for the site, as the silos need to be of a minimum capacity of 130 tonnes to store the required volume of cement powder or fly ash and the silos need to be elevated substantially above the ground, to provide sufficient clearance for the agitator trucks to drive underneath. Therefore, it is considered the proposed development, in its current form, represents a positive outcome for the site, encompassing a degree of flexibility without compromising other facets of the development, or compromising on the amenity of surrounding sites."

Is the variation in the public interest?

Clause 4.6(4)(a)(ii) of SLEP 2014 states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the development standard under Clause 4.3 of SLEP 2014 are provided in the table below:

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Objectives of the Height of Building Development Standard (Clause 4.3)	Comment
<i>(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,</i>	The proposed development is of an overall height, scale, bulk, design and external appearance that is in keeping with the previous development on the site (DA89/1941), as well as nearby industrial land uses in the industrial estate.
<i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	<p>The development application is supported by a Visual Impact Assessment prepared by Mansfield Urban dated 31 July 2018 which has considered the impact on the existing visual context in terms of the application's potential to impact upon: viewers; broader visual context; cultural value; view permanence; scenic quality and consistency with planning objectives.</p> <p>The proposal is considered to have a satisfactory visual impact when assessed against the above criteria.</p> <p>It is not considered that the proposal will result in any loss of privacy and loss of solar access to existing development</p>
<i>(c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.</i>	The proposal is not within the vicinity of a heritage item or within a heritage conservation area.

The objectives of the IN1 General Industrial zone are provided in the table below:

Objectives of the IN1 General Industrial zone	Comment
• <i>To provide a wide range of industrial and warehouse land uses.</i>	The proposal will provide an additional industrial land use in an existing industrial area.
• <i>To encourage employment opportunities.</i>	The site would employ up to 11 staff at any one time over two separate shifts per day.
• <i>To minimise any adverse effect of industry on other land uses.</i>	Subject to a full assessment, the development may be capable of minimising any adverse effects on other land uses.
• <i>To support and protect industrial land for industrial uses.</i>	Complies.
• <i>To allow a diversity of activities that do not significantly conflict with the operation of existing or proposed development.</i>	Subject to a full assessment the development is capable of satisfactorily addressing this objective.
• <i>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</i>	The proposal is not inconsistent with this objective.

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Matters of state or regional significance (clause 4.6(5)(a))

The contravention does not raise any matters of significance having regard to State or regional environmental planning. It does not have implications for any State Environmental Planning Policies in the locality or impacts which are considered of a State or regional scale.

The public benefit of maintaining the standard (clause 4.6(5)(b))

There is no public benefit in strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the height of buildings standard, whilst better planning outcomes are achieved.

With respect to subclause (5) having regard to the applicant's request and Council's assessment, there are environmental planning benefits associated with the contravention of the standard. The extent of the departure from the height control, whilst numerically large is essential for the efficient operation of the concrete batching plant.

Planning Assessment

The DA is being assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*. Part of the assessment requires resolution of the height issue pursuant to clause 4.6 which is the subject of this report.

Consultation and Community Engagement:

The application was notified in accordance with Council's Community Consultation Policy and the Environmental Planning and Assessment Regulation 2000 for a period of 30 days, with letters being sent within a 120m buffer of the site, including Shoalhaven Business Chamber and advertised in the South Coast Register during the period 24 October to 26 November 2018. As with all applications, the application is also viewable on Council's DA tracking website.

No submissions to the application have been received to date.

Financial Implications:

There are potential cost implications for Council in the event of not supporting the requested variation to the height limit and refusal of the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

If the requested variation is not supported and the application subsequently refused, or if the applicant is dissatisfied with Council's determination, the applicant has the right of appeal to the Land and Environment Court (subject to deemed refusal).

Summary and Conclusion

The applicant's submission has provided adequate justification to demonstrate that contravention of the development standard in the specific circumstances of this case are well founded for the following reasons:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- there are sufficient environmental planning grounds to justify contravening the development standard; and

- the proposed development will be in the public interest because it is consistent with the objectives of the Height of Building Development standard under Clause 4.3 and the objectives for development within the IN1 zone; and
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The proposal results in a better planning outcome in that a scheme strictly complying with heights above existing ground level would significantly impact on the efficient use of the site within identified operational constraints; and
- The contravention does not raise any matter of State or Regional significance.

Clause	Overview and project Implications
	operation of the Western Bypass Corridor.

5.3.3 Clause 4.6 Variation Request – Height of Buildings

As outlined in **Table 17**, the maximum building height permitted for the site in the absence of mapping is 11 m as per Clause 4.3 of the LEP.

The proposed silos will have a total maximum height of 23.7 m (measured from ground level to the top of the silos including the safety rail guards). Refer to **Figure 7** for the proposed silo structure elevation heights. The remaining structures on the site comply with the height guideline.

Although the height of the proposed silos exceeds the maximum building height permitted for the site, this variation to the development standards is justified on the following grounds:

- the three new silos will allow Boral to deliver a consistent supply of ready-mix concrete to the Shoalhaven region, including large and local infrastructure and construction projects, by increasing cement and fly-ash storage capacity at the site, thereby reducing the risk of running out of raw materials due to cement deliveries being held up by traffic congestion or other logistical influences;
- the site at 20 Norfolk Avenue was selected as it is currently vacant land owned by Boral within an existing industrial area separated from residential receivers. Relocation of the concrete plant would avoid continued adverse impacts to encroaching residential land uses at the current concrete plant on Yalwal Road, West Nowra, whilst not compromising Boral's commitment to the supply of quality concrete products to planned infrastructure projects and residential/commercial developments in Shoalhaven and beyond;
- the existing asphalt plant infrastructure installed in accordance with the original development consent, contains elements which are at a height which exceeds 11 m and as such are non-conforming with the LEP which was established following original construction of the asphalt plant. The new silos will be approximately 6 m higher than the existing asphalt plant infrastructure, and as such would only protrude a relatively small height above the skyline of the existing infrastructure at the site;
- there are other industrial developments in the same South Nowra Industrial Estate in the vicinity of the site, namely the Holcim concrete plant at 11 Cumberland Avenue and State Asphalts Plant at 14 Tom Thumb Avenue, that both have similar silos and supporting infrastructure, which are comparable in height and built form to the proposed silos at the South Nowra concrete plant;
- the three new silos will be located within the centre of the site, replacing the position of the existing asphalt plant infrastructure, and would be away from the Norfolk Avenue street frontage. The proposal to retain existing perimeter fencing and mature street frontage vegetation, supplemented by proposed landscaping at the site, will assist in minimising views of the new silos from most focal viewpoints opposite the site along Norfolk Avenue;
- the three new silos will not introduce a new visually obtrusive colour;
- the three new silos are unlikely to result in any additional shadowing of neighbouring properties; and
- the three new silos will not significantly change the form and scale of the existing land use.

As highlighted in **Chapter 12**, a visual impact assessment was conducted to assess the potential visual impacts of the development and concluded the following:

- the overall extent and type of potential visual change resulting from the project is minimal;
- the site will contain less bulk and built form than that of adjacent and opposite lots, however the silos will potentially extend beyond the mature height of existing and proposed native tree vegetation;
- although a number of new visual elements are proposed by the project, the height of the silos is the most visual departure from the existing context, bulk and scale of the site;
- the site has the opportunity to retain existing mature trees within the front setbacks and supplementary landscape areas within the boundary, particularly along the Norfolk Avenue frontage, and will strengthen the existing screening vegetation in this location through supplementary plantings;
- as the project does not alter the immediate landscape setting, no adverse impact is anticipated; and
- it is anticipated that there would be an improvement on the visual context of Norfolk Avenue after maturation of proposed landscape measures.

Therefore, given the marginal impact that the proposed silos are likely to have on the visual amenity of the site or location, or the views of surrounding land owners or commuters, an exception to the development standards is sought under Clause 4.6 of the LEP. It is considered this departure is within acceptable limits given the context of the existing asphalt plant infrastructure at the site, the existence of similar industrial land uses in the immediate area, and the general nature of the industrial precinct.

Validity of Clause 4.6 to Seek an Exception to a Development Standard

The Department of Planning and Infrastructure's publication "*Varying development standards: A Guide*" (August, 2011), states that:

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- *Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP); and*
- *State Environment Planning Policy No 1 – Development Standards (SEPP1).*

In this instance, SEPP 1 does not apply, as the LEP is a Standard Instrument LEP. It is noted that the Guidelines do not identify any other mechanisms (such as a Planning Proposal) to vary a development standard.

With respect to this, the Department of Planning and Infrastructure's publication "*A guide to preparing planning proposals*", states that:

"a planning proposal is a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan."

Further, the planning proposal guidelines state clearly that:

"A planning proposal relates only to an LEP amendment. It is not a development application nor does it consider specific detailed matters that should form part of a development application."

Given the proposed exceedance of the maximum permitted building height, an exception to the development standard is requested under Clause 4.6 of the LEP. The objectives and requirements of the clause and relevant responses are outlined below.

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development; and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In this instance, the strict application of the development standard for the maximum building height is unreasonable and unnecessary. It is considered that it would be appropriate to allow flexibility in the application of the maximum building height restriction for the site as the proposed development is a compatible form of development when having regard to the nature of development in the immediate area more general. The proposal thereby does not result in substantial changes or unreasonable impacts on the amenity of the site, or the surrounding area.

The application demonstrates a positive outcome for the site given the proposed development is of an overall height, scale, bulk, design and external appearance that are in keeping with the existing site, and adjacent industrial land uses in the South Nowra Industrial Precinct. The proposed silos will be positioned within the centre of the site and set back from the streetscape, and screened with existing (to be retained) mature vegetation, with additional supplemented landscaping efforts focused on the Norfolk Avenue street frontage to be completed. As such, the proposed development would not substantially compromise or impact on the visual amenity of the site, or be so visually obtrusive so as to be visible from beyond the site at visually sensitive locations.

The height of the proposed silos cannot be reduced to achieve numerical compliance with the maximum building height for the site, as the silos need to be of a minimum capacity of 130 tonnes to store the required volume of cement powder or fly ash and the silos need to be elevated substantially above the ground, to provide sufficient clearance for the agitator trucks to drive underneath. Therefore, it is considered the proposed development, in its current form, represents a positive outcome for the site, encompassing a degree of flexibility without compromising other facets of the development, or compromising on the amenity of surrounding sites.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The proposal seeks to vary the building height standard applicable to the site in the subject development application and does not introduce new controls across an area. The Clause 4.6 guidelines also state specifically when this clause is not to be used, namely:

"...in Rural or Environmental zones to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in the following SI zones: Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living."

Neither the site nor the proposed development is included within these criteria and therefore, the use of Clause 4.6 to vary the building height standard is appropriate in this instance.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In this instance, the strict application of the development standard for maximum building height is unreasonable and unnecessary. The objectives of Clause 4.3 (Height of buildings) within the LEP are as follows:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

(c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

The proposed development is consistent with this objective as outlined in the responses provided to other Clause 4.6 objectives outlined above.

Accordingly, the proposed silos are considered to be consistent with both the strategic objectives of Council, as well as the objectives of the IN1 General Industrial zone and in this context, the numerical building height non-compliance is considered acceptable.

Sufficient environmental planning grounds to justify contravening the development standard

This EIS demonstrates that the resultant environmental impacts of the proposed development of three silos will be satisfactory. The variation will enable a well-considered general industrial structure to be provided that addresses the site constraints and relevant objectives of both the standards and the zone, and result in a development which is entirely consistent with other concrete batching plants across the country. Further, the proposed development will not result in any unreasonable amenity or environmental impacts. In this case, strict compliance is unnecessary and unreasonable.

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

(a) the consent authority is satisfied that:

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

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

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

The proposed variation to the maximum building height standard for the proposed development enables the site to deliver a consistent supply of ready-mix concrete to the Shoalhaven region, including large and local infrastructure and construction projects, by increasing cement and fly-ash storage capacity at the site, thereby reducing the risk of running out of raw materials due to cement deliveries being held up by traffic congestion or other logistical influences. Should the height not be allocated as proposed, it will result in a substantial underutilisation of the site, and would potentially hinder the efficient delivery of local, regional and state significant development. Furthermore, the proposed development is of an overall height, scale, bulk, design and external appearance that are in keeping with the existing development on the site, as well as nearby industrial land uses in the same

industrial estate. Therefore, as demonstrated, the proposed development will be in the public interest as it is consistent with the objectives of the building height standard and the objectives for development within the zone in which the development is proposed to be carried out.

In conclusion, this Clause 4.6 variation request has been prepared in response to Council recommendations and as it is not possible to erect additional silos at the site that comply with the permitted building height. The assessment above demonstrates that compliance with the maximum building height standard contained in clause 4.3 of the LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in terms of planning merits.

As such, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the LEP.

In accordance with DP&E's Planning Circular for '*Variations to development standards*' (DP&E, February 2018), as the proposed variation to the development standard contravenes the numerical standard by greater than 10%, a delegate of Council must not assume concurrence of the Secretary of DP&E and the variation should be referred to Council's Development Committee for assessment prior to determination of the development application.

5.3.4 Shoalhaven Comprehensive Development Control Plan 2014

The purpose of the DCP is to support the LEP, guide future development in the LGA and protect and enhance the public domain.

The aims of the DCP are outlined in Chapter 1, Section 5 of the DCP.

In order to ensure that the project is not in conflict with the objectives of the DCP, respective provisions of the DCP have been incorporated into the design of the project where relevant and feasible. **Table 18** outlines the relevant requirements of the DCP and application to the project.

DE18.81 Development Application - 8 Admiralty Crescent, Huskisson - Lot 4 DP16055 (DS18/1343)

HPERM Ref: D18/416422

Group: Planning Environment & Development Group
Section: Building & Compliance Services

Attachments:

1. Draft Consolidated Consent (under separate cover) ⇨
2. Approved Plans for DA14/2580 (original consent) (under separate cover) ⇨
3. Revised plans submitted on 29 October 2018 (under separate cover) ⇨
4. Section 4.15 and 4.55 Planning Assessment Report (under separate cover) ⇨
5. Report - Assessment of Submissions (under separate cover) ⇨
6. Submission - Cowman Stoddart Pty Ltd on behalf of J H & J M Lawrence (10 Admiralty Crescent) (under separate cover) ⇨
7. Response to Submissions by SET Consultants (under separate cover) ⇨
8. As built survey by SET Consultants (under separate cover) ⇨
9. Supporting letter by SET Consultants dated 18 October 2018 (under separate cover) ⇨
10. Revised shadow Diagrams dated 17 October 2018 (under separate cover) ⇨
11. Further submission by Cowman Stoddart on behalf of J H & J M Lawrence (under separate cover) ⇨
12. Variation Statement by SET Consultants (under separate cover) ⇨
13. Independent shadow review - shadow elevations (under separate cover) ⇨
14. Independent shadow review - solar access - 'birds eye view' (under separate cover) ⇨
15. Response - Stephen Richardson - Cowman Stoddart - Architectural Plans (under separate cover) ⇨

Description of Development: Modification to approved dual occupancy – internal and external modifications

Owner: PR and V Latimer

Applicant: Hotondo Homes South Coast

Notification Dates: 22 August to 6 September 2018 and 29 October to 13 November 2018

No. of Submissions: Eight (8) in objection
Two (2) in support

Purpose / Reason for consideration by Council

This application was called in by Council due to the significant public interest in the development (MIN 18.722).

Recommendation (Item to be determined under delegated authority)

That Development Application DS 18/1343 for the modification of an approved attached dual occupancy development be approved as per the Consolidated Consent at **Attachment 1** to

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this report.

Options

1. Approve the application in accordance with the recommendation.

Implications: The neighbour at 10 Admiralty Crescent, Huskisson has agreed to this variation. This will enable the applicant to complete the construction of the development in accordance with the most recent amended plans lodged on 28 November 2018 and the conditions of approval. It may also influence the decision of the Land and Environment Court in the matter related to the first modification application, DS17/1265.

2. Approve the application with an alternative recommendation.

Implications: Council will need to provide justification for an alternative recommendation consistent with Section 4.15 and Section 4.55 considerations. It may also influence the decision of the Land and Environment Court in the matter related to the first modification application, DS17/1265.

3. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused consistent with Section 4.15 considerations. The applicant could continue to complete the development in accordance with the original approval or the modified proposal approved under DS17/1265, unless that modified consent is subsequently found to be invalid by the Land and Environment Court. A decision of this nature may also influence the decision of the Land and Environment Court in the matter related to the first modification application, DS17/1265.

Location Map

The subject site is shown outlined in yellow in Figure 1 below.



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Figure 1 – Location map

Background

Proposed Development

A Section 4.55 application was lodged seeking to modify development approval DA14/2580 – dual occupancy. The proposed modifications are described in the Statement of Environmental Effects as follows:

- Lengthening of the overall building by 2 metres;
- Partially reinstating the tapering of the rear portion of the building; and
- Other minor alterations (these include internal changes, changes to window types, slight relocation of the posts supporting the seaward patios and roof, addition of skylights, and other minor changes).

The plans approved under the original approval (DA14/2580) are provided as **Attachment 2**. The revised plans submitted on 29 October 2018 in respect of the current application that is the subject of this report are provided at **Attachment 3**.

Subject Land

The subject land is Lot 4 DP16055, No.8 Admiralty Crescent, Huskisson. It is an irregular shaped block with an area of 961 m². The site falls from about 9 metres AHD at its boundary with Admiralty Crescent to Mean High Water Mark at its frontage with Currambene Creek.

Site & Context

The site has frontage to Admiralty Crescent which is a sealed road of relatively narrow width. Its eastern boundary is essentially Currambene Creek. There are existing one and two storey dwellings to the north and south of the subject site. The nature of the surrounding development is primarily residential.

History

The original application (DA14/2580) was approved on 16 March 2015. An application to modify the original application (DS17/1265) was approved on 21 February 2018. That application was described as constituting ‘internal and window changes’. Construction of the building commenced in March 2018.

Following the commencement of construction, it became apparent that the building had several departures from the approved plans. The most notable was the lengthening of the overall building by 2 metres. This was raised by SET Consultants during a meeting with Council Officers on 13 July 2018. Council’s Officers directed that a further modification application be submitted for assessment to address this issue.

Before the modification application was submitted, the owner of the adjoining property at 10 Admiralty Crescent (to the south) alerted Council to an issue they had with the extended length of the building and its apparent closeness to their side boundary. They were concerned with the potential impacts this may have on their views north up Currambene Creek and solar access to the northern windows of their upstairs living area.

On 20 July 2018 a meeting was held with the applicant (Hotondo Homes) and the owners of 10 Admiralty Crescent along with their consultants to discuss the concerns. At this meeting it was identified that the first modification application was somewhat more than had been expressed in the application. It was identified that the plans had not been fully annotated to highlight the extent of the changes and Council did not notify this application based on the assumption it only related to “internal and window changes”.

At the end of the meeting on 20 July 2018, it was agreed the applicant needed to submit a further modification application to address all issues including the lengthening of the building by 2.0 metres. It was stressed that all amendments needed to be clearly identified in the plans by “clouding” or other means.

Because the first modification application had not been notified to the owner of 10 Admiralty Crescent, they commenced action in the NSW Land and Environment Court (LEC) seeking that the consent for DS17/1265 be declared invalid. There have been preliminary directions hearings in the LEC. At the most recent of these hearings a deferral was granted until 1 February 2019 to allow Council to determine the modification application that is the subject of this report.

The current modification application was lodged on 10 August 2018 (DS18/1343). This application identifies the full extent of the modifications. Following the assessment of the application by Council Staff, the plans have been amended to secure compliance with the solar access requirements.

After the matter being lodged with the LEC, the application was called in for determination by Council.

During the assessment it was identified that the application did not provide the required minimum solar access to the northern living room windows of the adjoining dwelling at 10 Admiralty Crescent. Amended plans were submitted on 17 October 2018 that achieve this requirement, supported by detailed shadow diagrams

Council received further representations from the owner of 10 Admiralty Crescent on 23 October 2018 in relation to the accuracy of the plans and shadow diagrams. Council staff then requested the applicant to provide an 'as built' survey plan depicting the height of the building, its setback from boundaries and its relationship to adjoining buildings. A copy of the survey plan is provided as **Attachment 8**.

The survey plan shows that the building is compliant with the 7.5 metre height limit and the 10% "view corridor" side setback. The survey plan also highlighted an encroachment of 0.56 metres into the 15.24 metre foreshore building line. The late discovery of this encroachment has arisen because of the inaccurate depiction of the building on the site plan originally submitted with this modification application.

On 26 October 2018 the applicant submitted revised plans and a Variation Statement in respect of the 15.24 metre foreshore building line (see **Attachment 12**). Shadow diagrams were revised based on the more accurate survey plan information.

Due to the identification of the building line variation, the revised plans and additional information was notified for a further 14 days in accordance with Council's Community Consultation Policy (i.e. from 29 October to 13 November 2018).

Further submissions were received from the owners of 6 and 10 Admiralty Crescent during the second notification period. The submission made on behalf of the owner of 10 Admiralty Crescent acknowledged that the solar access to that property now complied with the requirements of Council's DCP and advised that the objection to the plans in respect of that issue had fallen away. However, both submissions confirmed their ongoing objection to the loss of views.

On detailed assessment of the objections and a view analysis conducted in accordance with the NSW Land and Environment Court's Planning Principle on View Loss, it was determined that the loss of views encountered by 6 Admiralty Crescent was considered minor and could be accepted. The view loss at 10 Admiralty Crescent was considered significant and could not be supported.

When advised of this finding, the applicant considered their position and made further amendments to the plans that address the additional view loss caused to 10 Admiralty Crescent. While the assessment is detailed below in this report and in the Section 4.15 and 4.55 Assessment at **Attachment 4**, it is considered that the amended plans lodged on 28 November 2018 now provide an acceptable sharing of views between the subject site and its neighbour at 10 Admiralty Crescent.

The view sharing achieved by these most recent amended plans is similar to the original approved plans under DA14/2580. On 29 November 2018 the owner of 10 Admiralty Crescent agreed to the revised amended plans via a submission from their consultant, Cowman Stoddart (See **Attachment 15**).

Issues

The following section covers the issues associated with the application.

Encroachment beyond building envelope (Shoalhaven DCP Chapter G6)

The plans slightly encroach beyond the building envelope prescribed by DCP Acceptable Solution A5.1. The non-compliance arises from the following encroachments, as shown highlighted in red in Figure 2 below.

- an encroachment of about 200mm by the south eastern tip and of about 500mm by the north eastern tip of the awning roof over the first-floor deck.

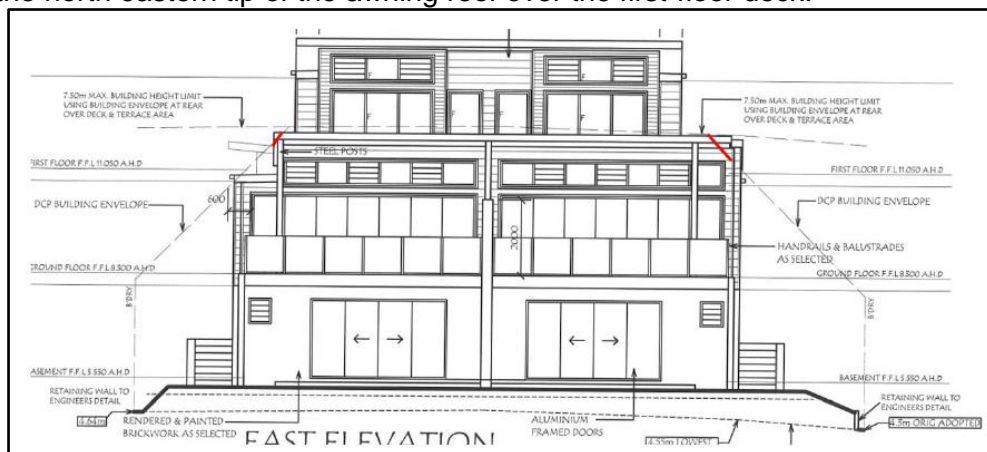


Figure 2 – Eastern elevation showing encroachment beyond Chapter G6 building envelope

Applicant's Submission

The applicant acknowledges this non-compliance and identified it in the Statement of Environmental Effects. The Response to Submissions prepared by SET Consultants further submits as follows:

"Whilst the proposed modification involves a variation to the building height plane, this non-compliant portion does not result in a loss of views from No. 10 Admiralty Crescent. The non-compliant portion is located on the roof of the structure and has no impact on view loss.

As demonstrated in the comparison of view from the northern window of No.10, the major influence of impact is the orientation of the dwelling and the northern window itself allowing for a sliver of view. The difference between the approved and proposed view corridor and the subsequent loss resulting from the widening and lengthening of the building is minimal."

Discussion

Despite the non-compliance with Acceptable Solution A5.1 contained in Shoalhaven DCP2014 Chapter 6, the proposal has been assessed against Performance Criteria P4.1 to P5.3 and found to be satisfactory (refer to DCP Chapter 6 checklist in the Assessment Report - **Attachment 4**). The revised shadow diagrams demonstrate that satisfactory solar access is provided to the adjoining dwelling and the relevant encroachment has no impact on the amenity of adjoining properties or of the adjoining foreshore area, including in terms of loss of views to No.6 Admiralty Crescent.

The view from No.10 Admiralty Crescent is discussed later in this report where it is recommended that the deck is cut back and splayed with no change to the roof.

It is recommended that the variation be supported.

Encroachment beyond 15.24m foreshore building line (Shoalhaven DCP Chapter V2)

The survey plan identifies an encroachment of 0.56 metre into the 15.24 metre foreshore building line established in Shoalhaven DCP Chapter V2. The encroachment is by the south eastern corner of the seaward deck and awning structure.

Applicant's Submission

The applicant submitted a supporting letter on 29 October 2018 containing a Variation Statement in respect of this building line variation (refer pages 14 to 17 of **Attachment 12**). It is stated that the encroachment is relatively minor and will go unnoticed from the foreshore area, the waterway and other areas of the public domain. It further contends that the encroachment will have a minimal impact on views available to 10 Admiralty Crescent.

In terms of precedent, the statement notes that an encroachment of 3 metres into the foreshore building line was approved for 10 Admiralty Crescent under DA16/2302.

The variation statement at **Attachment 12** shows a plan, provided by the applicant comparing the original approval and the modified plans. This is reproduced at Figure 3 below.

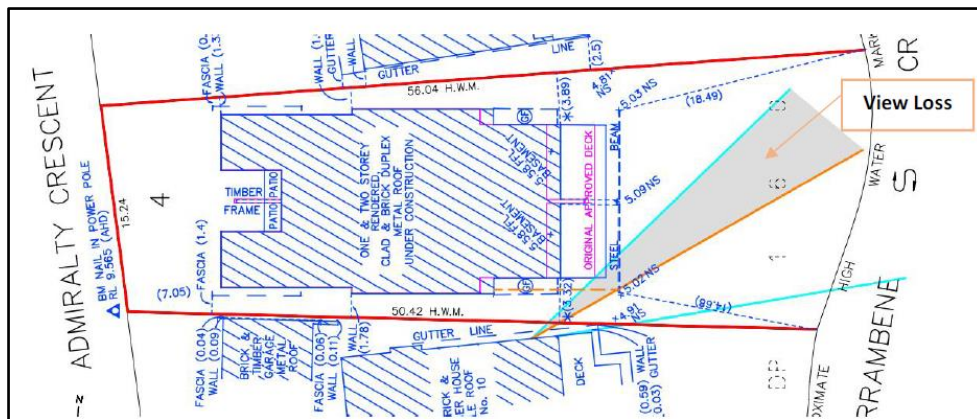


Figure 3 – Plan showing a comparison in view loss between the original approved plans and the modified plans

Discussion

The parts of the building that encroach beyond the building line are the edge of the verandah roof, the post supporting the verandah roof and the edge of the first-floor deck and privacy screen, on the south eastern corner of the building, as shown on the elevation in Figure 4 below. This is a 0.56 metre encroachment.

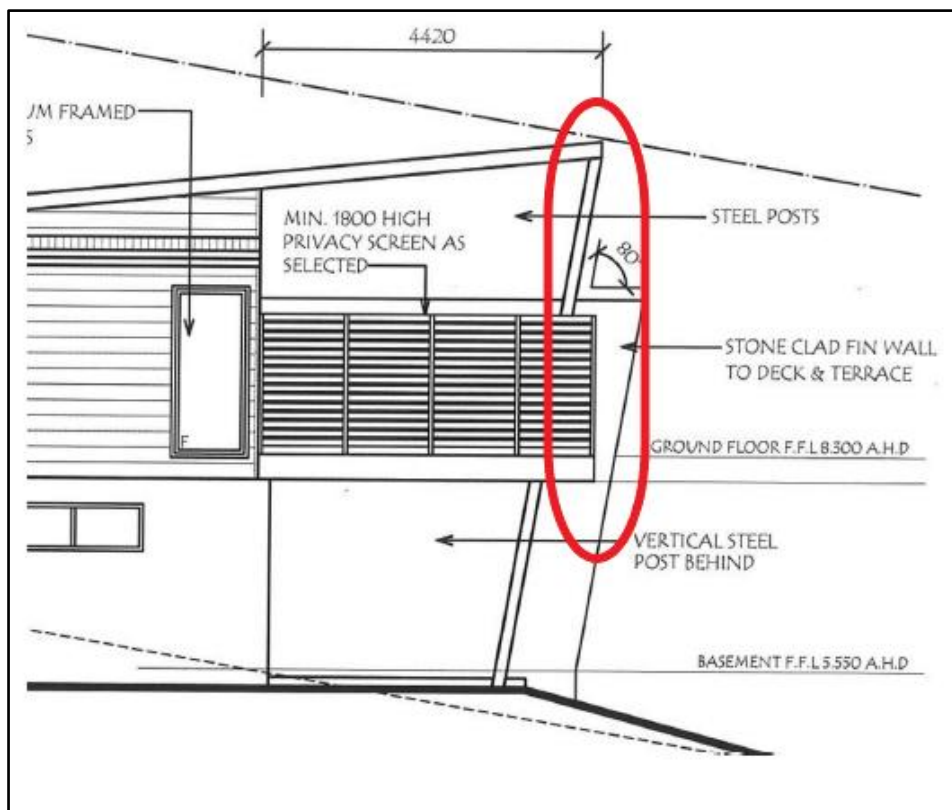


Figure 4 – Plan showing those parts of the building that encroach beyond the foreshore building line

As some of these parts are already constructed, a judgement can be made about the extent of view loss that will arise from the encroachment. This can be done by reference to the photograph at Figure 5 below that is included in the second submission by Cowman Stoddart Pty Ltd (**Attachment 11**).

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Figure 5 – Photograph from the living room of 8 Admiralty Crescent. The area to the right of the red vertical line shows the approximate extent of view loss attributable to the encroachment beyond the foreshore building line.

While the variation is numerically small (0.56 metre or 3.7%), the overall view assessment from No.10 Admiralty Crescent found that the deck encroachment beyond the foreshore building line resulted in an unreasonable outcome in terms of view sharing. This outcome was drawn to the attention of the applicant who on 28 November 2018 submitted amended plans that now achieve an acceptable view sharing result.

There remain encroachments on the ground floor and the roof awning that are beyond the foreshore building line. These no longer have an unacceptable impact on views and the variations are considered satisfactory.

Accordingly, the variation to the 15.24m foreshore building line is supported.

Loss of views

There are five properties where concern has been expressed about loss of views.

For three of the properties (5 and 7 Admiralty Crescent and 15 Wood Crescent), the major concern appears to arise from the already-constructed westerly two storey section of roof. This part of the building is not affected by changes proposed in the current application.

A survey plan was sought from the applicant to confirm the compliance of the existing parts of the building with the 7.5 metre height limit. The survey plan confirms that the building complies with the 7.5 metre height limit.

The properties at 6 and 10 Admiralty Crescent directly adjoin the subject property. The proposed changes do affect their views, and each is addressed separately in this report.

Assessment of loss of views is aided in this case by the fact that the framework of the verandah, including the steel portal frame that supports the awning roof and the floor structure, is already in place in its proposed location.

Scaffolding is also in place and this lies between the line of the building and the waterfront. The scaffolding appears in the Figures through this section of the report but has been disregarded for view assessment purposes as it will be removed once construction has been completed.

Privacy screens will have an impact on views and these have been highlighted in the Figures to assist with clarity.

The NSW Land & Environment has published a planning principle to determine the impact on views. This principle is based on the ruling in *Tenacity Consulting v Warringah Council NSW Land and Environment Court 140* dated 7 April 2004. Any application that has potential to impact views must address this planning principle and the controls as outlined below.

6 Admiralty Crescent

Views to be affected

The views to be affected are across the side boundary between 6 and 8 Admiralty Crescent and are those of the northern tip of the Myola peninsula and beyond into Jervis Bay. An indication of the available views is shown in Figure 6 below.



Figure 6 – View from the centre of the first-floor deck at 6 Admiralty Crescent

Figure 6 shows the view from the first-floor deck towards the east/southeast. The waters of Currambene Creek are in the foreground; the tip of the Myola spit is in the middle ground; and the southern headland of Currambene Creek, Voyager Memorial Park and the Huskisson Hotel are in the right middle ground and Point Perpendicular and the waters of Jervis Bay are in the distant background.

From what part of the property the views are obtained

The views are obtained from the front (seaward) rooms of the dwelling and from the front ground level patio and first floor deck. The views that are affected are across a side boundary and there is no difference between standing and sitting views. Figure 7 is a view of 6 Admiralty Crescent taken from the waterfront boundary.

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Figure 7 – View of the waterfront elevation of 6 Admiralty Crescent (the development site is to the left of view)

At the southern end of the first-floor verandah is a small alcove used as an outdoor sitting area where the wall of the building is relieved by approximately 1.5 metres. A balustrade of brick construction delimits this area and is shown in Figure 8 below.



Figure 8 - Alcove at the southern end of the first-floor deck at 6 Admiralty Crescent

This part of the building is most vulnerable to loss of views caused by the building on the adjoining site.

The ground floor is similarly vulnerable, but this is already compromised by existing vegetation that is located on 6 Admiralty Crescent, which screens the view to the east/southeast as shown in Figure 9 below.



Figure 9 – View from southern end of ground floor patio at 6 Admiralty Crescent

Extent of the impact

Due to the building at 8 Admiralty Crescent extending further toward the waterfront boundary than under the original approval (DA14/2580), there will be some additional loss of views when compared with that original approval.

The existing dwelling at 6 Admiralty Crescent will retain all views across its own waterfront boundary but will lose views of parts of the village of Huskisson to the south of the vegetated parkland of Voyager Memorial Park. This view loss will include the loss of views of the Huskisson Hotel and Club Jervis Bay. Figure 10 highlights the approximate location of the building extremities and privacy screening and it also demonstrates the extent of view loss from the most vulnerable part of 6 Admiralty Crescent (i.e. the first-floor alcove).



Figure 10 – View from the southern end of the first-floor deck at 6 Admiralty Crescent, showing the likely extent of view loss caused by the building at 8 Admiralty Crescent

The following Figures 11, 12 and 13 highlight the extensive and high-quality views enjoyed from most other parts of the waterfront of this property.



Figure 11- View to the northeast, Currumbene Creek upstream, from the first-floor deck at 6 Admiralty Crescent

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Figure 12 - View to the east across Currumbene Creek and the tip of the Myola Spit, from the first-floor deck at 6 Admiralty Crescent



Figure 13 - View to the south east, across Currumbene Creek, with the tip of the Myola Spit to the left and the northern extent of the village of Huskisson to the right, with the waters of Jervis Bay beyond (from ground floor deck at 6 Admiralty Crescent)

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Reasonableness of the proposal

The overall view loss from 6 Admiralty Crescent is assessed as **minor** and is considered to be reasonable. While the plans approved with the original application may have resulted in less view loss, the revised proposal maintains substantial views and would most likely have been supported had the original application sought this outcome.

10 Admiralty Crescent

Views to be affected

The views to be affected are across the side boundary between 8 and 10 Admiralty Crescent and are upstream views of Currumbene Creek and Myola. The views include moorings of several sail and motor boats, which provides an appealing composition against the back drop of the unspoilt natural character of the opposite (Myola) shore. The views available from an unaffected part of the first-floor deck are shown in Figure 14 below.



Figure 14 – View of Currumbene Creek upstream from the first-floor deck of 10 Admiralty Crescent

From what part of the property the views are obtained

The views are obtained from the front (waterfront) rooms of the dwelling and from the front ground level patio and first floor deck. The views that may be affected are across a side boundary and there is no difference between standing and sitting views. Figure 15 is a view of 10 Admiralty Crescent taken from the waterfront boundary.

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Figure 15 – View of the waterfront elevation of 10 Admiralty Crescent (the development site is to the right of view)

A submission on behalf of the owner of 10 Admiralty Crescent has identified the owner's main concern about view loss being from the northern first floor windows which adjoin an informal living area. Figure 16 highlights the area concerned.



Figure 16 – View from the first floor living room at 10 Admiralty Crescent to the north (Currambene Creek is in the background)

Extent of the impact

Due to the building at 8 Admiralty Crescent extending further toward the waterfront boundary, there will be some additional loss of views when compared against the original approval. The existing dwelling at 10 Admiralty Crescent will retain all views across its own waterfront boundary but will lose some oblique views of Currambene Creek. The lost views from the northern window of the first floor living room are shown at Figure 17.

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Figure 17 – View from the first floor living area at 10 Admiralty Crescent looking north, showing the likely extent of view loss caused by the building at 8 Admiralty Crescent

The red hatched area depicts the total view loss resulting from the modified proposal. The plans approved under the original development approval would still have resulted in view loss however, the extended deck has made this worse (refer Figure 18).



Figure 18 – View from the north eastern corner of the first-floor deck at 10 Admiralty Crescent looking north, showing the likely extent of view loss caused by the building at 8 Admiralty Crescent

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Figures 19, 20, 21 and 22, highlight the extensive and high-quality views enjoyed from most other parts of this property.



Figure 19 - View from the east-facing window of the first floor living area, directly across Currumbene Creek to the shore of the Myola Spit.



Figure 20 - View from the first-floor deck at 10 Admiralty Crescent looking upstream along Currumbene Creek

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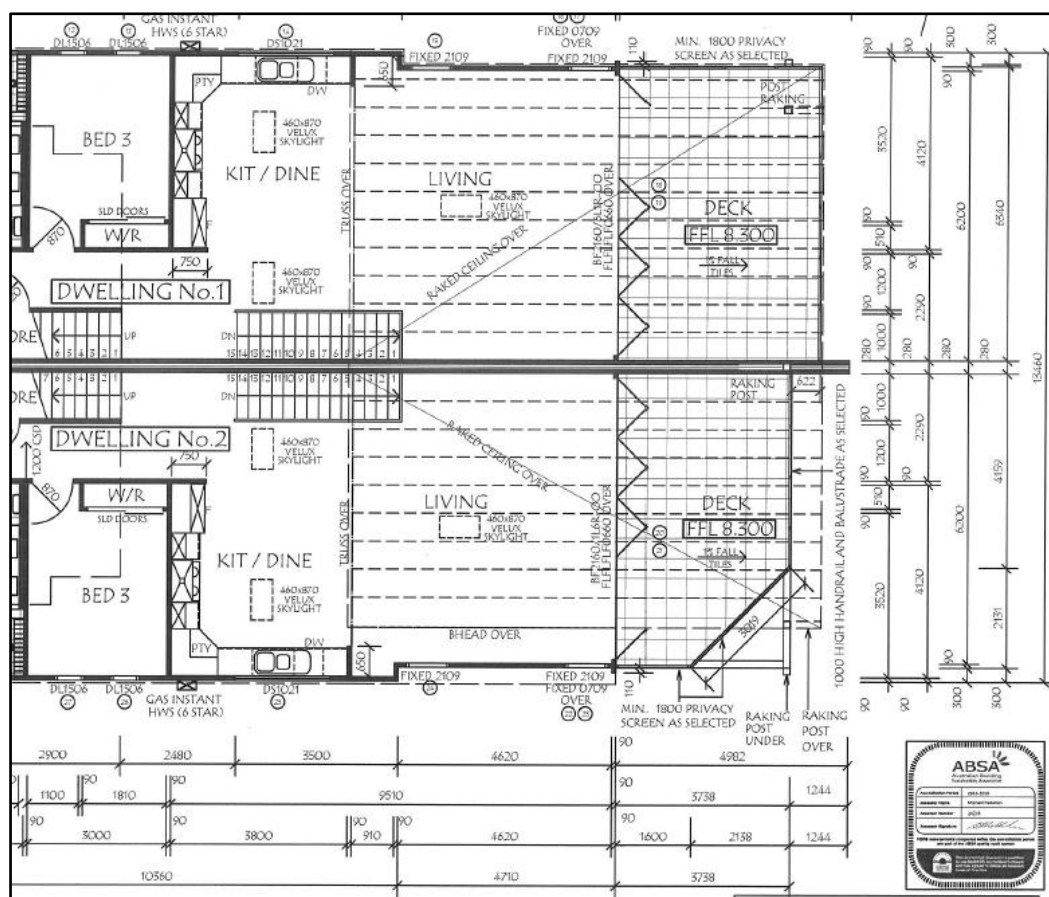
Figure 21 - View to the south east from the first-floor verandah deck at 10 Admiralty Crescent, across the mouth of Currambene Creek, with the Voyager Memorial Park in the right middle ground and Point Perpendicular visible across the waters of Jervis Bay.



Figure 22 - View from the ground floor patio at 10 Admiralty Crescent, with Currambene Creek in the foreground, the tip of Myola Spit in the centre middle distance, the Voyager Memorial Park to the right and Point Perpendicular visible across the waters of Jervis Bay.

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The unreasonable loss of views was put to the applicant, who responded by submitting amended plans on 28 November 2018. These plans introduce a splay to the south eastern corner of the first-floor deck, with a corresponding reduction in the length of the privacy screen that extends along the southern edge of the deck. The length of the deck (east-west) is also reduced by 0.622 metre. These changes are shown on the amended floor plan at Figure 23 below.



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- Council ensure the development is constructed in accordance with the further revised plans.
- Council impose a condition on the approval that requires the deck for Dwelling No.2 to be constructed with the reduced length and splayed corner as shown in the revised plans.
- There is a concern that the use of slats for the privacy screen may over time be removed by future residents diminishing the utility of this screen and reducing the level of privacy between the two dwellings. Under these circumstances they request Council to impose a condition requiring that the privacy screen be constructed of full

sheets to reduce the potential for this issue to arise over time, and to preserve the level of privacy and amenity between the two dwellings.

Council will ensure the building is constructed in accordance with the revised plans and has imposed a condition to this effect. With respect to the screening, any removal of screens will become a development compliance issue. There is no need to seek full screens as these too may be removed once again placing the development in non-compliance with the consent.

Figure 24 shows the resulting amended view with the splay corner of the deck removed and the privacy panels in place.



Figure 24 - View north from the first floor living area at 10 Admiralty Crescent, looking to the north east up Currambene Creek. The red line shows the approximate location of the privacy screen and this would be in the approximate location of the original approval.

With the changes brought by the amended plans lodged on 28 November 2018, the view loss of the modified proposal is considered to be similar to that caused by the original approval (DA14/2580). In terms of the scale established by the NSW Land and Environment Court's Planning Principle on View Loss, the view loss is assessed as **minor**.

The view loss is considered reasonable.

Solar access to 10 Admiralty Crescent

The original plans submitted with this modification application did not achieve the required 3 hours of midwinter sunlight being received by 50% of the area of north facing windows to living areas. The relevant first floor living area windows are shown in Figure 25.

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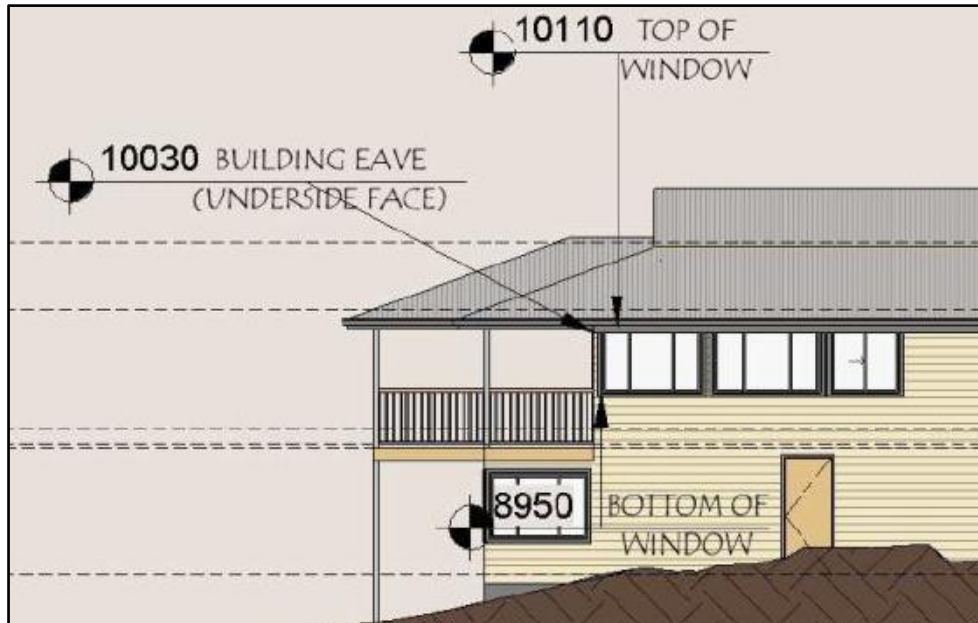


Figure 25 – Northern elevation of 10 Admiralty Crescent

The applicant submitted revised plans and shadow diagrams on 17 October 2018. These revised plans changed the south eastern edge of the roof over the living area in the southern dwelling unit. The roof in this portion of the building was lowered resulting in compliant solar access (i.e. 3 hours of direct solar access to at least 50% of the north facing windows of 10 Admiralty Crescent). This access is achieved between the hours of 10:30 am and 1:30 pm.

The relevant shadow diagrams are reproduced below at Figures 26a to 26e. A copy of the full shadow diagrams is provided in **Attachment 10**. These depict the amount of shade and sun falling on the northern first floor windows of 10 Admiralty Crescent.

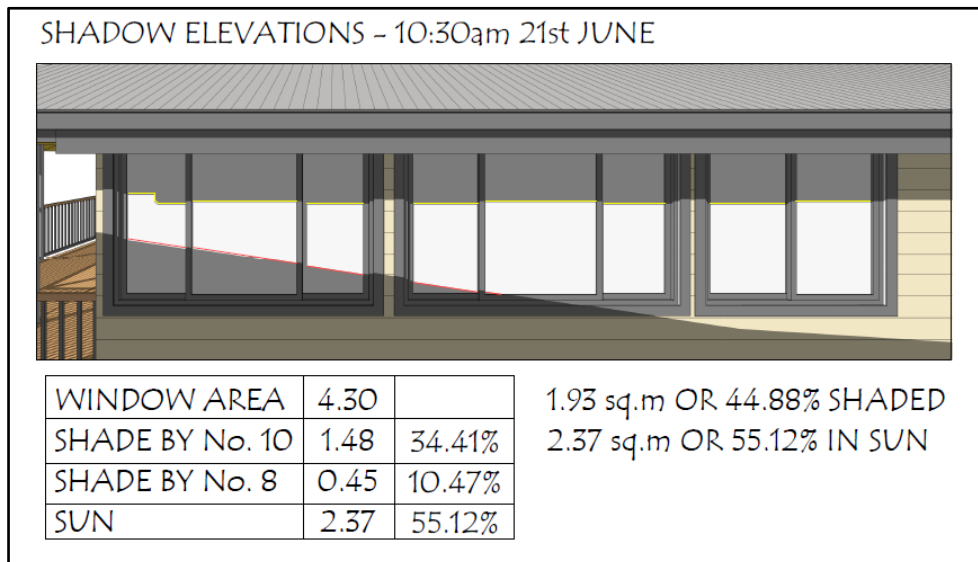


Figure 26a – Revised shadow elevations for 10 Admiralty Crescent at 10:30 am

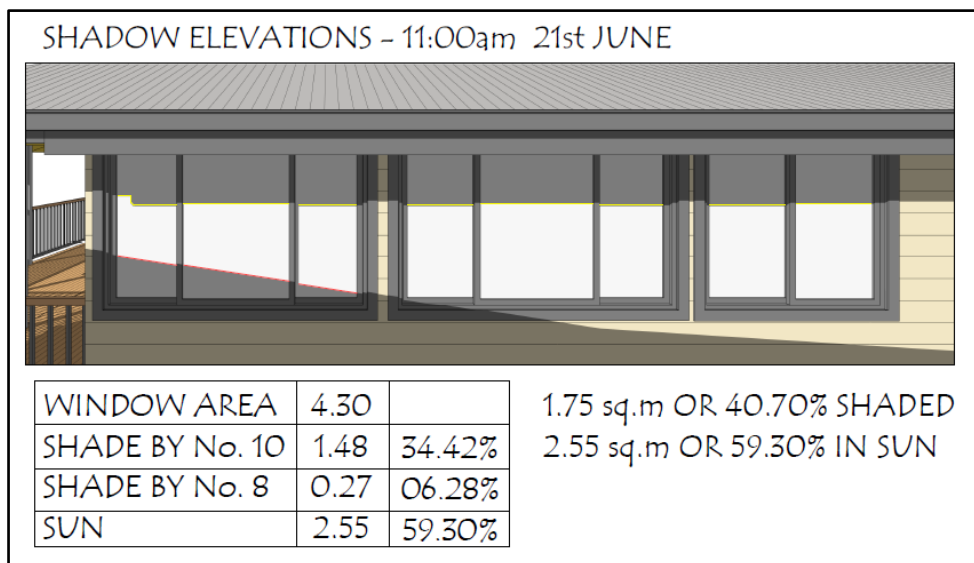


Figure 26b – Revised shadow elevations for 10 Admiralty Crescent at 11 am

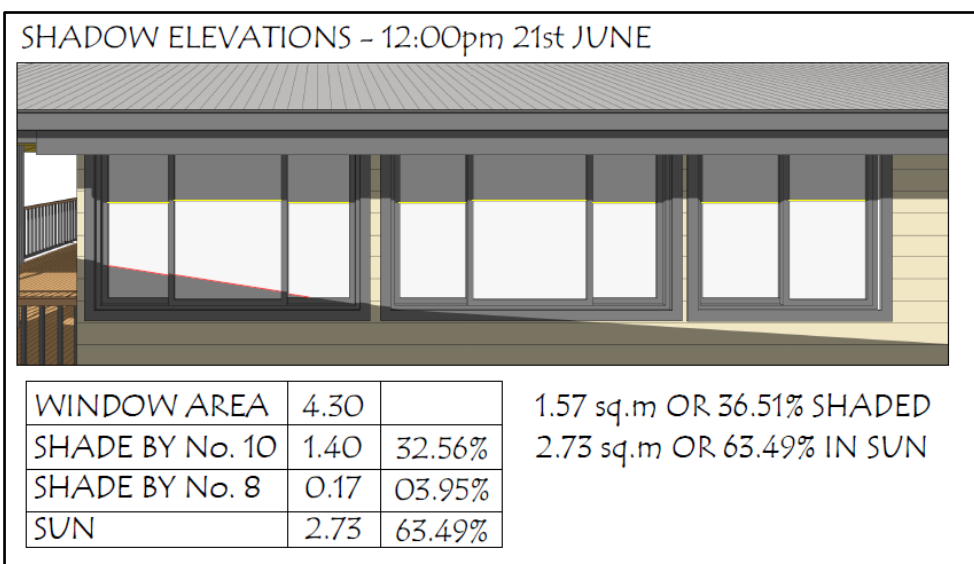


Figure 26c – Revised shadow elevations for 10 Admiralty Crescent at 12:00 noon

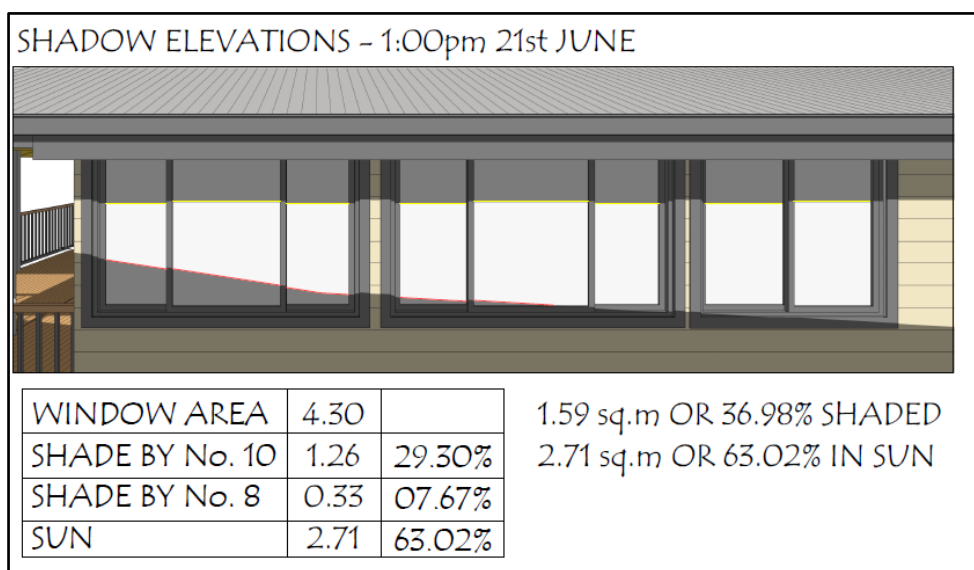


Figure 26d – Revised shadow elevations for 10 Admiralty Crescent at 1:00 pm

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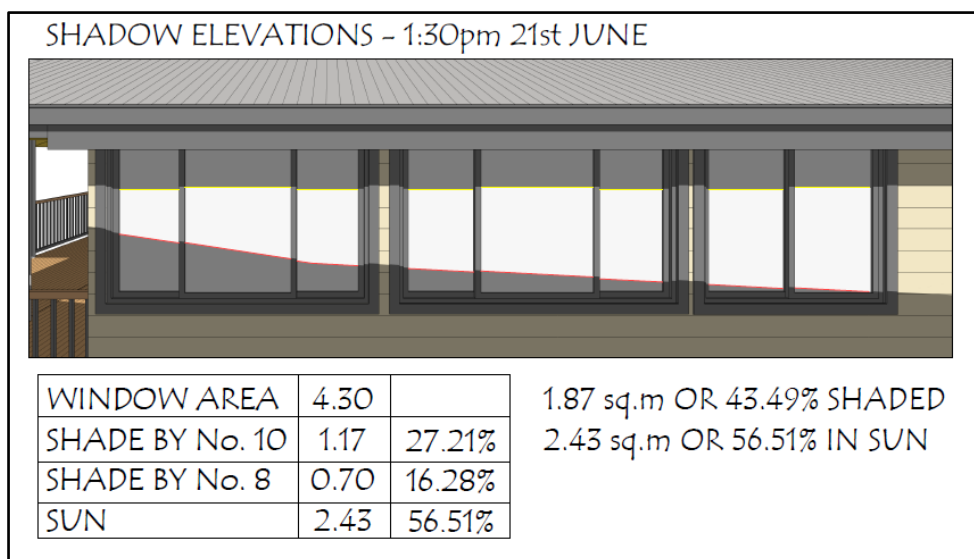


Figure 26e – Revised shadow elevations for 10 Admiralty Crescent at 1:30 pm

Due to the complexity of the shadow assessment and submissions received, a specialist consultant was engaged to undertake an independent shadow review.

This review confirmed that the proposal complied with the solar access requirements. A copy of the independent shadow review is provided as **Attachments 13 and 14**.

Planning Assessment

The development application has been assessed under sections 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 (refer **Attachment 2**).

Policy Implications

There are no policy implications arising from the consideration of this application. The variation to building envelope has been dealt with in accordance with the policy for dealing with such variations as expressed in Chapter 1 of Shoalhaven DCP 2014.

Consultation and Community Engagement:

The application was notified on two separate occasions. The first notification period was from 22 August until 6 September 2018. This was extended following a request from a neighbour until 13 September 2018.

The second notification period was from 29 October until 13 November 2018. This notification was undertaken as the application was amended to include a variation to the 15.24 metre foreshore building line.

First notification period

During the first notification period, submissions were received from seven (7) individuals or organisations, as detailed below:

1. Huskisson Woollamia Community Voice Inc.
2. Strata Committee for SP65581 (15 Wood Crescent)
3. Julie Englert (7 Admiralty Crescent Huskisson)
4. Joanne and Frazer Roberts (6 Admiralty Crescent)

5. Alan Dickenson (5 Admiralty Crescent)
6. Cowman Stoddart Pty Ltd for JH and JM Lawrence (10 Admiralty Crescent)
7. V Latimer (joint owner of 8 Admiralty Crescent).

The applicant was invited to respond to the issues raised in submissions. A response prepared by SET Consultants was submitted on 5 October 2018. The following Attachments relate to these submissions:

- **Attachment 5** – Assessment of submissions;
- **Attachment 6** – Submission by Cowman Stoddart
- **Attachment 7** – Response to Submissions by SET Consultants

The main issues raised in submissions were:

- Loss of solar access to 10 Admiralty Crescent;
- Loss of views from 6 and 10 Admiralty Crescent and from units at 15 Wood Crescent;
- Actual height of the building is believed to exceed the 7.5m height limit;
- Concern about possible reduction in view corridor width;
- Application is seeking to regularise unauthorised works that will adversely affect the amenity of the adjoining dwelling at 10 Admiralty Crescent;
- Application does not meet the test for minimal environmental impact under s.4.55(1A)

Second notification period

During the second notification period, further submissions were received from:

1. Cowman Stoddart Pty Ltd for JH and JM Lawrence (10 Admiralty Crescent)
2. Joanne and Frazer Roberts (6 Admiralty Crescent)

The key issues raised as a result of the notifications are discussed below.

Height of existing building and width of view corridor

Several submissions expressed concern about the height of the existing building and the width of the view corridor and the impact on loss of views for nearby properties.

Comment

*The plans submitted with the application show the building height and view corridor width are compliant with the LEP and DCP provisions respectively. Due to matters raised in submissions and to the average quality of the plans, the applicant was requested to provide an additional survey plan to verify compliance with these requirements. The survey plan confirmed compliance. A copy of the survey plan together with the supporting letter are provided at **Attachments 8 and 9** respectively.*

Application does not meet the test for minimal environmental impact

One submission asserted that the application did not meet the test for minimal environmental impact and that Council should therefore not assess it under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Comment

The assessment of the application has found that the major possible impacts of the modified proposal are loss of solar access to 10 Admiralty Crescent and loss of views to 6 and 10 Admiralty Crescent. These impacts are not unusually significant for a modification application and it is considered the application can and should be dealt with as a modification of minimal environmental impact.

Application is seeking to regularise unauthorised works

Several submissions have expressed concern that the current application is seeking approval for works that have been conducted otherwise than in accordance with the original approval (DA14/2580) as modified by the first modification application (DS17/1265).

Comment

The application does seek approval for unauthorised works that have been partly constructed. Whether the variation from the original approval was intentional or accidental is unclear. Notwithstanding this, the application needs to be properly assessed in accordance with applicable planning controls. If it is sufficiently compliant and the impact on adjoining properties is considered to be acceptable, there is no reason why the application should not be approved.

The offence for not complying with the original approval has been forwarded to Council's Compliance Officers for investigation and action. The compliance action will travel separately to this development assessment.

Loss of views from units at 15 Wood Crescent and from 5 and 7 Admiralty Crescent

The submissions raising this issue identified the loss of views as arising from the parts of the building that have already been completed.

Comment

*The approved plans for the original consent (DA14/2580) identified the maximum building height as compliant with the LEP height limit of 7.5 metres. As some submissions have challenged the building height being compliant, a survey plan was sought from the applicant. The survey plan confirms that the height of the existing building is compliant (refer to **Attachment 8** and supporting letter at **Attachment 9**.)*

Loss of views from 6 and 10 Admiralty Crescent

Submissions have been received from or on behalf of the owners of these two properties which directly adjoin the subject property. The submissions purport that the modified development will reduce views available from those properties.

Comment

This issue has already been addressed in detail in the 'Issues' section of this report. It has found that:

- *the impact on 6 Admiralty Crescent is minor and no further action is needed; and*
- *the impact on 10 Admiralty Crescent has been addressed and the amended plans lodged on 28 November 2018 result in an acceptable outcome in terms of view sharing that is no worse than the original approved plans.*

Loss of solar access to 10 Admiralty Crescent

The submission from Cowman Stoddart on behalf of the owners of 10 Admiralty Crescent (**Attachment 6**) sets out detailed concerns about the loss of solar access to the first floor living area of 10 Admiralty Crescent. These concerns are supported by their own shadow diagrams. The second submission by Cowman Stoddart (**Attachment 11**) advises that it now accepts that the shadow impact falls within acceptable guidelines and the objection to this aspect of the plans is withdrawn.

Comment

This issue has already been addressed in detail in the 'Issues' section of this report. It has found that the submission from Cowman Stoddart was accurate and design amendments needed to occur in order to rectify the situation. These amendments have been made to the roof and the solar access now complies.

Financial Implications:

If the application is appealed it will result in costs to Council in defending the appeal. This is not a matter Council is required or entitled to consider in determining a development application. Accordingly, it should not be given any weight in Council's decision.

Legal Implications

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

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

An appeal has already been lodged with the Land and Environment Court against the approval of an earlier modification application (DS17/1265). The approval or otherwise of the current application may influence the decision of the Court in respect of that appeal.

Summary and Conclusion

This application is for the modification of an approved dual occupancy that is in an advanced stage of construction. When the modification application was submitted it did not meet the requirements for solar access to the adjoining property. The applicant lodged amended plans that provide satisfactory compliance with DCP requirements for solar access and this has now been resolved.

The other major issue was the question of view loss or view sharing. This was complicated by the discovery that the building is located such that it has a slight encroachment (0.56m) beyond the 15.24m foreshore building line to Currumbene Creek.

The assessment of the submitted plans identified that the loss of views to 10 Admiralty Crescent was unreasonable. The applicant lodged amended plans on 28 November 2018 which improved the view sharing with 10 Admiralty Crescent and these were sent to the owner of 10 Admiralty Crescent for comment. On 29 November 2018, Cowman Stoddart, the consultant for the owner of 10 Admiralty Crescent, confirmed their support of this amendment. The amended plans result in no greater view loss than the original approved plans (DA14/2580). The view loss is now considered reasonable.

The application is recommended for approval.

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.