Development & Environment Committee

Meeting Date: Tuesday, 06 April, 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Mitchell Pakes - Chairperson
Clr Bob Proudfoot
All Councillors
Chief Executive Officer 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.

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Nil

Development & Environment Committee

Delegation:

Pursuant to s377(1) of the *Local Government Act 1993* (LG Act) the Committee is delegated the functions conferred on Council by the *Environmental Planning & Assessment Act 1979* (EPA Act), 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, as well as the preparation, entry into, and review of works in kind agreements that provide a material public benefit in part or full satisfaction of a condition imposed 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 Chief Executive Officer 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 Chief Executive Officer 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.

i. The preparation, adoption and review of policies and strategies of the Council in respect to sustainability matters related to climate change, biodiversity, waste, water, energy, transport, and sustainable purchasing.

j. The preparation, adoption and review of policies and strategies of the Council in respect to management of natural resources / assets, floodplain, estuary and coastal management.

MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 2 March 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.01pm

The following members were present:

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner
Clr Nina Digiglio
Clr Annette Alldrick
Clr Andrew Guile – (remotely) joined 5.06pm
Clr John Levett
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

RESOLVED (Clr Proudfoot / Clr Digiglio) MIN21.102

That the Minutes of the Development & Environment Committee held on Monday 18 January 2021 be confirmed.

CARRIED

Declarations of Interest

Nil

MAYORAL MINUTES

Introduction of Items as Matters of Urgency

RESOLVED (Clr Findley) MIN21.103

That the following addendum reports be introduced as matters of urgency:

1. DE21.20 Mayoral Minute - Exploration License Application 6196 Cudmirrah

CARRIED

The Chairperson ruled the matters as ones of urgency as they relate to urgent business of Council and allowed their introduction.

DE21.20 Mayoral Minute - Exploration License Application 6196 Cudmirrah — HPERM Ref: D21/79598

Recommendation (Item to be determined under delegated authority)

That Council:

1. Make a submission to the NSW Resource Regulator in respect to ELA 6196 (Exploration License Application) expressing concerns in regard to the establishment of a license over high value conservation nature of the land that is being applied for, its proximity to a residential settlement and possible negative impacts on Swan Lake. According to NSW Estimates "Regional NSW, Industry & Trade" the application has been "put on hold while we gather information" (Beattie to Field, page 58, Attachment 1).
2. Write to the Premier, Deputy Premier, Minister for Local Government, Minister for Environment, Minister for Planning and the Shadow Ministers, advising that Council supports the communities of Cudmirrah / Swan Haven and Sussex Inlet desire to be removed from the exploration license register and remain mine free.
3. Notes that correspondence has been received from Jerrinja Land Council notifying that the area covered by the ELA mapping is highly sensitive and of high cultural significance.

RESOLVED (Clr Findley / Clr White) MIN21.104

That Council:

1. Support the local residents and community organisations in their campaign to ensure no applications for exploration or mining or extraction takes place in their local area and provide assistance to residents where requested or necessary.
2. Make a submission to the NSW Resource Regulator in respect to ELA 6196 (Exploration License Application) expressing concerns in regard to the establishment of a license over high value conservation nature of the land that is being applied for, its proximity to a residential settlement and possible negative impacts on Swan Lake. According to NSW Estimates "Regional NSW, Industry & Trade" the application has been "put on hold while we gather information" (Beattie to Field, page 58, Attachment 1).
3. Write to the Applicant Geoscience Australia Pty Ltd and their Consultants Austwide Mining Management Pty Ltd confirming that Shoalhaven City Council does not support any application(s) for exploration, extraction or mining of construction sand or minerals in the Cudmirrah, Swanhaven or Berrara areas.
4. Write to the NSW Government - Premier, Deputy Premier, Minister for Local Government, Minister for Environment, Minister Planning and Opposition Leader - confirming that Council does not support any exploration, extraction or mining applications in the Cudmirrah,

Swanhaven, or Berrara areas.

5. Notes that correspondence has been received from Jerrinja Land Council notifying that the area covered by the ELA mapping is highly sensitive and of high cultural significance.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DEPUTATIONS AND PRESENTATIONS

DE21.11 - Exhibition Outcomes - Proposed Finalisation of Planning Proposal (PP052) - The Arbour Victoria Street, Berry

James Robinson - FOR

DE21.12 - DA20/1966 - 29 Strongs Road, Jaspers Brush - Lot 215 DP 1210788 - Single A-Frame Advert Sign

David Cannon, SET Consultants (representing Hotondo Homes South Coast) - AGAINST

DE21.13 - DA20/1222 - 466 Kangaroo Valley Road, Berry Mountain - Lot 8 DP1037100

Richard Flora - AGAINST

Sally Larsen - AGAINST

Leon Cunio - AGAINST

Georgina and Joel Agresta - AGAINST

Colin and Yolanda Gifford - AGAINST

Beth Patterson - AGAINST

DE21.14 - DA20/2110 - 1666 Kangaroo Valley Rd Kangaroo Valley – Lot 2 DP 593972

Tim Foley, Allen Price & Scarratts (representing the Proponent) – AGAINST

REPORTS

DE21.9	**Replacement of Nominated Member of Southern Regional Planning Panel**	**HPERM Ref: D21/14847**

Recommendation

That Council

1. Accept the resignation of Mr Ernie Royston as Alternate Member of the Southern Joint Regional Planning Panel; and
2. Allow this vacated position to remain vacant until representatives are re-determined at the Council meeting in October 2021.

RECOMMENDATION (Clr Gash / Clr White)

That Council

1. Accept the resignation of Mr Ernie Royston as Alternate Member of the Southern Joint Regional Planning Panel; and
2. Allow this vacated position to remain vacant until representatives are re-determined at the Council meeting in October 2021.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.10 Proposed Submission - Draft Illawarra Shoalhaven Regional Transport Plan — HPERM Ref: D21/24598

Recommendation (Item to be determined under delegated authority)

That Council endorse the proposed submission (Attachment 1) on the draft *Illawarra-Shoalhaven Regional Transport Plan* and forward it to the NSW Government (Transport for NSW) for consideration.

RESOLVED (Clr Wells / Clr Proudfoot) MIN21.105

That Council:

1. Amend the proposed submission on the draft Illawarra-Shoalhaven Regional Transport Plan (Attachment 1) to also request the elevation of Initiative 13 Princes Highway Upgrade – Jervis Bay Road Intersection from Initiatives in Planning (0-10 years) to Initiatives in Delivery (0-10 years) to respond to the urgent need for this infrastructure and Transport for NSW's current work on a preferred option for this intersection.
2. Endorse the amended submission and forward it to the NSW Government (Transport for NSW) for consideration.
3. Provide in the submission that the State Government fast track the grade separation of the Kalandar Street intersection and the widening of the Princes Hwy from Nowra Bridge through to South Nowra upon completion of the third Nowra Bridge.
4. Seek assurances from Transport for NSW that this Motion will not delay or defer the complete bypassing of the Nowra-Bomaderry Township.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.11 Exhibition Outcomes - Proposed Finalisation of Planning Proposal (PP052) - The Arbour Victoria Street, Berry **HPERM Ref: D21/35289**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt and finalise Planning Proposal (PP052) as exhibited.
2. Forward PP052 to the Office of the NSW Parliamentary Counsel (PCO) with a request to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
4. Advise the Berry Forum and submitters of Council's decision once the LEP amendment has been notified.

RESOLVED (Clr White / Clr Alldrick) MIN21.106

That Council:

1. Adopt and finalise Planning Proposal (PP052) as exhibited.
2. Forward PP052 to the Office of the NSW Parliamentary Counsel (PCO) with a request to draft the amendment to Shoalhaven LEP 2014.
3. Make the resulting amendment to Shoalhaven LEP 2014 using Council's delegation.
4. Advise the Berry Forum and submitters of Council's decision once the LEP amendment has been notified.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.12 DA20/1966 - 29 Strongs Road, Jaspers Brush - Lot 215 DP 1210788 - Single A-Frame Advert Sign **HPERM Ref: D21/5069**

Recommendation (Item to be determined under delegated authority)

That DA20/1966, for the temporary use of land for the placement of an A-frame advertising sign on a trailer, be determined by way of refusal for the reasons set out in the Notice of Determination, Attachment 1 to this report.

MOTION (Clr Findley / Clr Digiglio)

That DA20/1966, for the temporary use of land for the placement of an A-frame advertising sign on a trailer, be determined by way of refusal for the reasons set out in the Notice of Determination, Attachment 1 to this report..

AMENDMENT (RESOLVED) (Clr Watson / Clr Pakes) MIN21.107

That the matter be deferred pending legal advice as to whether the construction works being carried out on the site by Hotondo Homes and their control of the site as the builder would facilitate a method of approving an advertising sign for the period of construction works.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Guile, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Levett, Clr Alldrick and Stephen Dunshea

CARRIED

The AMENDMENT became the MOTION and was CARRIED.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Guile, Clr Watson, Clr Kitchener and Clr Proudfoot

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Levett, Clr Alldrick and Stephen Dunshea

DE21.13 DA20/1222 – 466 Kangaroo Valley Road, Berry Mountain – Lot 8 DP1037100 — HPERM Ref: D21/29974

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/1222 for alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development at Lot 8 DP 1037100, 466 Kangaroo Valley Road, Berry Mountain be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

MOTION (Clr Wells / Clr Guile)

That Development Application DA20/1222 for alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development at Lot 8 DP 1037100, 466 Kangaroo Valley Road, Berry Mountain be refused as it is contrary to the public interest, specifically with respect to traffic and safety issues.

AMENDMENT (Clr Digiglio / Clr Alldrick)

That the item be deferred to allow the applicant opportunity to make further adjustments to address the traffic and safety concerns raised by the Kangaroo Valley community.

FOR: Clr Digiglio and Clr Alldrick

AGAINST: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

LOST

Clr Findley raised a Point of Order against Clr Watson under Clause 15 of the Code of Meeting Practice, stating that his comments on delays and refusals of applications bring Council into disrepute, and asked that he apologise and withdraw the comments. The Chairperson ruled against the Point of Order, on the basis that Clr Watson was asking questions that had been raised in other debates.

Clr Findley raised a Point of Order against Clr Watson for having “verballed” her personally by stating she had mentioned him. The Chairperson ruled against the Point of Order.

Clr Watson raised a Point of Order against Clr Findley for having accused him of a serious action of “making mischief” by asking the CEO a question about the cost of Land and Environment Court actions, and requested she apologise. The Chairperson ruled against the Point of Order.

MOTION (RESOLVED) (Clr Wells / Clr Guile) — MIN21.108

That Development Application DA20/1222 for alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development at Lot 8 DP 1037100, 466 Kangaroo Valley Road, Berry Mountain be refused as it is contrary to the public interest, specifically with respect to traffic and safety issues.

FOR: Clr Pakes, Clr Findley, Clr Wells, Clr White, Clr Gartner, Clr Levett, Clr Guile and Clr Proudfoot

AGAINST: Clr Gash, Clr Digiglio, Clr Alldrick, Clr Watson, Clr Kitchener and Stephen Dunshea

CARRIED

DE21.14 Development Application DA20/2110 - 1666 Kangaroo Valley Rd Kangaroo Valley – Lot 2 DP 593972 **HPERM Ref: D21/40595**

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2110 to construct one (1) tourist cabin at Lot 2 DP 593972, 1666 Kangaroo Valley Road, Kangaroo Valley be refused subject to the reasons contained in Attachment 2 of this report.

RESOLVED (Clr Wells / Clr Guile) MIN21.109

That Development Application DA20/2110 to construct one (1) tourist cabin at Lot 2 DP 593972, 1666 Kangaroo Valley Road, Kangaroo Valley be deferred pending the submission by the applicant of additional information and positive concurrence from WaterNSW, to be referred back to staff to deal with under delegation if the report is favourable.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Clr Gartner raised a Point of Order against Clr Watson, stating he had disrespected all Councillors who had previously voted to decline the Development Application. The Chair ruled against the Point of Order.

DE21.15 Response to Question on Notice - Edendale St, Woollamia **HPERM Ref: D21/3289**

Recommendation (Item to be determined under delegated authority)

That the Response to Question on Notice - Edendale St, Woollamia report be received for information.

RESOLVED (Clr Levett / Clr Gash) MIN21.110

That the Response to Question on Notice - Edendale St, Woollamia report be received for information.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Procedural Motion - Adjournment of Meeting

MOTION (Clr Findley / Clr Gartner)

That the meeting be adjourned for 5 minutes.

Note: The meeting adjourned, the time being 7.13pm

Note: The meeting reconvened, the time being 7.18pm

The following members were present:
Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells
Clr Patricia White
Clr Kaye Gartner
Clr Nina Digiglio
Clr Annette Alldrick
Clr Andrew Guile – (remotely)
Clr John Levett
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

DE21.16 Legal Proceedings - Short Summary of Matters before Courts — HPERM Ref: D20/518188

Recommendation (Item to be determined under delegated authority)

That the content of the report on Legal Proceedings - Short Summary of Matters before Courts be considered and received for information.

RESOLVED (Clr Wells / Clr Levett) MIN21.111

That the content of the report on Legal Proceedings - Short Summary of Matters before Courts be considered and received for information.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.17 Quarterly Review for Compliance Matters — HPERM Ref: D21/9039

Recommendation (Item to be determined under delegated authority)

That Council receive the quarterly report on compliance matters for information.

RESOLVED (Clr Wells / Clr White) MIN21.112

That Council receive the quarterly report on compliance matters for information.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.18 Response from the EPA & Forestry Corporation to Notice of Motion (MIN20.771) - South Brooman Forestry — HPERM Ref: D21/45793

Recommendation (Item to be determined under delegated authority)

That this report be received for information.

RESOLVED (Clr Findley / Clr Gartner) MIN21.113

That the report on Response from the EPA & Forestry Corporation to Notice of Motion (MIN20.771) - South Brooman Forestry be received for information.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Guile, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Watson

CARRIED

DE21.19 Chair for the Central Coastal Management Program Advisory Committee — HPERM Ref: D21/60210

Recommendation (Item to be determined under delegated authority)

That either of the existing North and Southern Coastal Management Advisory Committee Chairs, Councillor Wells or Councillor White, Chair the Central Coastal Management Advisory Committee until after the September 2021 Council Elections when all committee Chairs are re-appointed by Council.

MOTION (Clr White / Clr Gash)

That Clr White chair both the Southern and Central Coastal Management Advisory Committees until the September 2021 Council Elections when all committee Chairs are re-appointed by Council.

Clr Watson raised a Point of Order that the Chair of the Committee is appointed by Council, not the Committee.

Note: Clr Kitchener left the meeting at 7.41pm

AMENDMENT (Clr Gartner / Clr Findley)

That Clr Gartner chair the Central Coastal Management Advisory Committee until the September 2021 Council Elections when all committee Chairs are re-appointed by Council.

FOR: Clr Findley, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett and Stephen Dunshea

AGAINST: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Guile, Clr Watson and Clr Proudfoot

LOST

The Chairperson asked Clr Alldrick and Clr Levett to withdraw comments about vote stacking. Clr Alldrick and Clr Levett withdrew the comments.

MOTION (RESOLVED) (Clr White / Clr Gash) MIN21.114

That Clr White chair both the Southern and Central Coastal Management Advisory Committees until the September 2021 Council Elections when all committee Chairs are re-appointed by Council.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Guile, Clr Watson, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Alldrick and Clr Levett

CARRIED

Procedural Motion - Matters of Urgency

RESOLVED (Clr Watson / Clr Proudfoot) MIN21.115

That an additional item COVID-19 Refund Policy Clarification be introduced as a matter of urgency.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Alldrick, Clr Guile, Clr Watson and Clr Proudfoot

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Levett and Stephen Dunshea

CARRIED

The Chairperson ruled the matter as urgent as being in the public interest.

DE21.21 Additional Item - COVID-19 Refund Policy Clarification

MOTION 1 (Clr Watson / Clr Wells)

That the COVID-19 Refund Policy be clarified by being amended to read in the relevant parts as follows.

1. The Applicant/Owners of a Development where the Application was lodged before the commencement date of the Policy are eligible for a refund of S7.11 and S64 contributions as defined in the Policy if an Occupation Certificate has not been issued prior to the date the Policy came into force, in the case of staged applications before the subject date; the stages which are not the subject of a previous Occupation Certificate remain eligible for a refund.
2. Developments which have been completed and an occupation certificate has been issued after the date of the commencement of the policy retain the right to a refund within the Policy guidelines.
3. If any applications for refunds have been refused because of this inconsistency in policy interpretation, such applications be reassessed in line with amended Policy.

AMENDMENT (Clr Findley / Clr Gash)

That the CEO report back and clarify to the next Strategy & Assets Committee meeting on the following amendments to the COVID-19 Refund Policy:

1. The Applicant/Owners of a Development where the Application was lodged before the commencement date of the Policy are eligible for a refund of S7.11 and S64 contributions as defined in the Policy if an Occupation Certificate has not been issued prior to the date the Policy came into force, in the case of staged applications before the subject date; the stages which are not the subject of a previous Occupation Certificate remain eligible for a refund.
2. Developments which have been completed and an occupation certificate has been issued after the date of the commencement of the policy retain the right to a refund within the Policy guidelines.
3. If any applications for refunds have been refused because of this inconsistency in policy interpretation, such applications be reassessed in line with amended Policy.

FOR: Clr Findley, Clr Gash, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett and Stephen Dunshea

AGAINST: Clr Pakes, Clr Wells, Clr White, Clr Guile, Clr Watson and Clr Proudfoot

CARRIED

The AMENDMENT became the MOTION.

The Chairperson asked Clr Gartner to withdraw her comment about a Councillor being “a clown”. She withdrew the comment and apologised.

Clr Gash raised a Point of Order against Clr Watson for stating a mistruth about something she had said, which she had never said. The Chairperson ruled against the Point of Order.

Clr Gash raised a Point of Order against Clr Watson for implying that only some Councillors have trust in Council’s system, when all do. The Chairperson ruled against the Point of Order.

The Chairperson asked Clr Gartner to withdraw a comment, which she withdrew.

MOTION (Clr Findley / Clr Gash)

That the CEO report back and clarify to the next Strategy & Assets Committee meeting on the following amendments to the COVID-19 Refund Policy:

1. The Applicant/Owners of a Development where the Application was lodged before the commencement date of the Policy are eligible for a refund of S7.11 and S64 contributions as defined in the Policy if an Occupation Certificate has not been issued prior to the date the Policy came into force, in the case of staged applications before the subject date; the stages which are not the subject of a previous Occupation Certificate remain eligible for a refund.
2. Developments which have been completed and an occupation certificate has been issued after the date of the commencement of the policy retain the right to a refund within the Policy guidelines.
3. If any applications for refunds have been refused because of this inconsistency in policy interpretation, such applications be reassessed in line with amended Policy.

Note: Clr Gash, Clr Digiglio, Clr Alldrick, and Clr Gartner left the meeting at 8.04pm prior to the vote.

FOR: Clr Findley, Clr Levett and Stephen Dunshea

AGAINST: Clr Pakes, Clr Wells, Clr White, Clr Guile, Clr Watson and Clr Proudfoot

LOST

FORESHADOWED MOTION (RESOLVED) (Clr Watson / Clr Guile) MIN21.116

That the COVID-19 Refund Policy be clarified by being amended to read in the relevant parts as follows.

1. The Applicant/Owners of a Development where the Application was lodged before the commencement date of the Policy are eligible for a refund of S7.11 and S64 contributions as defined in the Policy if an Occupation Certificate has not been issued prior to the date the Policy came into force, in the case of staged applications before the subject date; the stages which are not the subject of a previous Occupation Certificate remain eligible for a refund.
2. Developments which have been completed and an occupation certificate has been issued after the date of the commencement of the policy retain the right to a refund within the Policy guidelines.
3. If any applications for refunds have been refused because of this inconsistency in policy interpretation, such applications be reassessed in line with amended Policy.
4. Should there be any issues in respect of the implementation of this policy clarification, the CEO report back in respect of that part of the motion.

FOR: Clr Pakes, Clr Wells, Clr White, Clr Guile, Clr Watson, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Findley and Clr Levett

CARRIED

There being no further business, the meeting concluded, the time being 8.11pm.

Clr Pakes
CHAIRPERSON

DE21.22 Notice of Motion - DA20/2284 - Island Point Rd St Georges Basin - Lot 11 DP 1143842 - Extension of Time

HPERM Ref: D21/117811

Submitted by: Clr Greg Watson

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation (Item to be determined under delegated authority)

That the time for submission of additional changes to Development Application DA20/2284 - Island Point Rd St Georges Basin - Lot 11 DP 1143842 by the applicant be extended by 5 weeks from today's date, and Council provide advice as to whether, subject to the requested changes being made, it could support an approval potentially against RFS advice.

Background

Council has requested that the proposed building be moved into an Asset Protection Zone and this issue must be clarified before the applicant spends more money to make the requested changes.

DE21.23 Notice of Motion - Biodiversity Conservation Act Exemption for Employment Lands

HPERM Ref: D21/122033

Submitted by: Clr Greg Watson

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation (Item to be determined under delegated authority)

That:

1. The CEO and other appropriate staff take part in a joint Deputation with the property owners of 13 Central Avenue South Nowra (Lot 36 DP 19407) to the Minister for the Environment The Hon. Matt Kean MP with a view to having the NSW Government introduce a general exemption from the biodiversity offset scheme for zoned employment lands in NSW.
2. The deputation be organised through the Member for South Coast the Hon. Shelley Hancock MP.

Background

The unintended consequences of the biodiversity offset scheme is to reduce the investment in employment-generating enterprises and as a result employment opportunities, particularly in regional NSW where we have always struggled to generate jobs. Another major issue for the future is the mapping of minor water which create a powder keg and fuse situation by increasing the bushfire risk by the preservation of vegetation corridors through a future developed industrial area.

The following is an assessment of the additional impost which would be imposed on the subject land which is a potential deal breaker in respect of the enterprise going ahead.

<u>From John and Moya Norman, Normans Plant Hire:</u>

The purpose of this letter is to bring to your attention concerns I have with respect to the cost burden of undertaking business in NSW as a result of the biodiversity offset scheme introduced by the Biodiversity Conservation Act.

We are the owners of 13 Central Avenue South Nowra (Lot 36 DP 19407). We purchased the subject land on the 17th April 2018.

This land is an undeveloped parcel of industrially zoned land (IN1 General Industry under the Shoalhaven Local Environmental Plan 2014). The land as far as I am aware has been zoned industrial since at least 1985. I wish to be able to develop the land in accordance with the industrial zoning that applies to the land.

The development of the land will necessitate the clearing of the bushland vegetation that covers the majority of the land. In formulating a development application that would seek approval to enable the land to be cleared to enable it to be developed in a manner consistent with the industrial zoning that applies to the land I employed the services of NGH Consulting to undertake a preliminary ecological assessment or a preliminary Biodiversity Assessment Methodology (BAM), A copy of the preliminary BAM advice prepared by NGH is attached to*

this letter for your information. The cost of this preliminary BAM advice was $ 5, 630.00 (plus GST).

As you will note from a review of the findings of the attached preliminary report by NGH, the clearing of the subject land to enable it to be developed for its intended purpose under the zoning that applies to the land would involve the following biodiversity offsetting costs:

- *To purchase and retire Ecosystem credits directly to the Biodiversity Conservation Trust will cost $ 491,514.98 (incl GST).*
- *In addition to the above, in terms of potential threated species, subject to undertaking targeted surveys, the threatened species credits are estimated to cost $ 1,089,991.77 (incl GST).*
- *Combined to purchase and retire the ecosystem and threated species credits for the subject land could potentially cost $ 1,581,506.75 (incl GST) at the time that the NGH report was prepared.*

The land was purchased for $1.2 million (plus GST) (as well as involving an additional $ 58,000 stamp duty paid to the NSW Government). Clearly the cost of the ecosystem and targeted species credits that could potentially apply to the development of this land will be worth more than the cost of the land when I purchased it. In my view this is excessive.

It is understood that the above estimated costs for the ecosystem and threatened species credits are preliminary only at this stage and would need to be subject to targeted surveys and a Biodiversity Development Assessment Report to further refine the credits that will be applicable to the development of this land. However at first glance there would appear to me something very wrong that the development of land that has been long identified for industrial purposes should be subject to such an exorbitant impost on its development costs.

These cost imposts would appear to be to be completely at odds with both the Federal and NSW Government's efforts to stimulate the economy following the 2019 / 2020 bushfire crisis that had such a devastating impact on the Shoalhaven economy, as you know, and now coupled with the further devastating economic impacts arising from the COVID 19 crisis.

Both the Federal and NSW Governments are implementing a range of measures in an attempt to stimulate the economy to save and create jobs. However the significant cost impost created by the biodiversity offset scheme under the Biodiversity Conservation Act as outlined above and supported by the attached report by NGH, will in my view undermine the efforts that both the Federal and NSW Governments are undertaking to stimulate the economy.

Under the above circumstances I would request that you make representation on my behalf to the NSW Government, to bring their attention to this considerable impost on development that in my view will undermine Federal and state government attempts to stimulate the NSW economy.

* Note: Not attached to this report.

DE21.24 Notice of Motion - Call In - DA21/1145 - DA20/2061

HPERM Ref: D21/127571

Submitted by: Clr Patricia White

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation (Item to be determined under delegated authority)

That Council call in the following Development Applications for determination by the Development & Environment Committee:

1. DA21/1145 - 59 Journal St, Nowra – Lot 21 DP 2607 due to public interest.
2. DA20/2061 – 60 Macleay Street Narrawallee – Lot 145 DP 718994 due to public interest – Garrads Reserve & E2 land.

DE21.25 Public Exhibition Outcomes and Finalisation - Planning Proposal: Jervis Bay Road, Falls Creek (PP035)

HPERM Ref: D21/83338

Department: Strategic Planning
Approver: Robert Domm, Director - City Futures

Attachments:
1. PP035 Summary of State Agency Submissions (under separate cover) ⇨
2. Final Planning Proposal PP035 Jervis Bay Road Falls Creek (under separate cover) ⇨

DE21.25

Reason for Report

- Consider the outcomes of the public exhibition of the Planning Proposal (PP035) to amend Shoalhaven Local Environmental Plan (LEP) 2014 to allow for community title subdivision of a maximum of 13 housing lots and one neighbourhood conservation lot on Lot 3 DP 846470, Jervis Bay Road Falls Creek.
- Obtain endorsement to finalise PP035 and proceed to amend the LEP.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Planning Proposal (PP035) as exhibited.
2. Liaise with the Office of the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven LEP 2014.
3. Ensure that Aboriginal cultural heritage values are considered and addressed as part of the development application to undertake the community title subdivision that will be permitted by the proposed LEP amendment.
4. Advise key stakeholders of this decision when the LEP has been amended.

Options

1. Adopt the PP as exhibited.

   Implications: This is the preferred option. The resulting LEP amendment will potentially allow (subject to development approval) for the subdivision of the subject land (Lot 3 DP 846470) into a community title arrangement, as proposed by the proponent, to provide conservation and land management benefits, consistent with the findings of detailed site investigations.

   Part 3 of the recommendation is in response to a submission from Heritage NSW.

2. Adopt an alternative recommendation.

   Implications: This will depend on the extent of any changes to the recommendation and may require an alteration to the Gateway determination and re-exhibition of the PP.

3. Not adopt the recommendation.

Implications: This is not a preferred option as it would not enable the benefits of the proposal to be realised. The current planning controls permit development across the subject land, and do not include an area set aside for environmental conservation. Substantial site-specific planning investigations have informed PP035 in order to balance development and environmental conservation outcomes, whilst minimising natural hazard risks.

Background

The subject land is Lot 3 DP 846470, Jervis Bay Road, Falls Creek (refer to **Figure 1** Location Map). It has an area of 25.21 hectares and is located on the southern edge of the Falls Creek Large Lot Residential area (south of McArthur Drive/Stapleton Street).

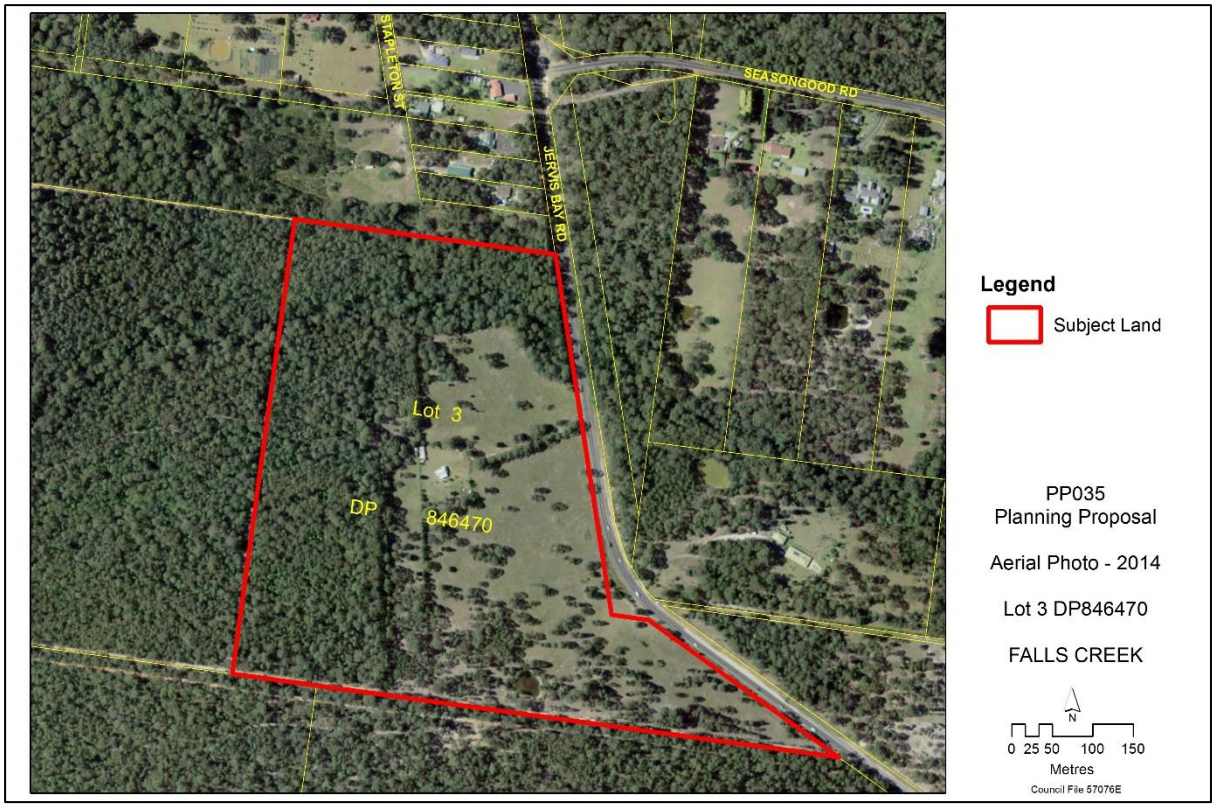


Figure 1: Location Map

Council originally received a Planning Proposal (PP) request in late November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner, T. Pasialis). The request was also accompanied by a Development Application (DA) for a community title subdivision (SF10637). Assessment of this DA has been on hold pending the PP outcome.

The PP seeks to better balance the provision of new housing with long-term biodiversity conservation outcomes by potentially allowing a community title subdivision which will provide for the long-term maintenance of bushland on the site. The proposal will cluster housing lots in the predominantly cleared areas of the site, close to Jervis Bay Road, without reducing the theoretical subdivision yield permitted under current planning controls.

Council's resolved to progress the PP on 13 March 2018 (MIN18.162) and a favourable Gateway determination was received on 10 September 2018, requiring the completion of a number of technical studies and resulting revision of the proposal in response to the findings of the studies.

Adjustments to the PP were considered by Council on 7 April 2020 and it was resolved (MIN20.253) to:

1. *Update the Planning Proposal for Lot 3 DP 846470, Jervis Bay Road, Falls Creek (PP035) to reflect the completed studies, and include the following changes prior to public exhibition:*
    a. *Update zoning, minimum lot size, and terrestrial biodiversity maps to reflect the revised development footprint.*
    b. *The intended outcome be revised to allow up to 13 residential lots, no smaller than 4,000 m^2.*
    c. *Replace the reference to amending Clause 4.2B of the LEP with a statement that the legal mechanism to achieve the intended outcome of the Planning Proposal will be determined in consultation with NSW Parliamentary Counsel.*
2. *Place the Planning Proposal and the supporting information on public exhibition for a minimum of 28 days.*
3. *Adopt a policy position that should the Planning Proposal ultimately be finalised on the basis of a minimum lot size of 4,000 m^2, that town water will not be supplied to the subject land (regardless of whether the land/subdivision complies with Council's Rural Water Supply Policy).*

The PP was updated in accordance with this resolution to enable it to proceed to exhibition.

DE21.25

Overview - Planning Proposal (PP035)

The PP seeks to amend planning controls in the Shoalhaven Local Environmental Plan 2014 (LEP) to facilitate a small rural residential subdivision via a proposed community title subdivision comprising up to 13 residential lots (each 4,000 m^2 or larger) within the cleared area adjacent to Jervis Bay Road, with a communally-owned neighbourhood lot covering the forested land.

Community title is a form of land subdivision with individually owned properties and a common area shared between all owners in the subdivision. The communally-owned neighbourhood lot would be managed for conservation by future residents.

The land is currently zoned predominantly R5 Large Lot Residential, with the south-west corner being zoned RU2 Rural Landscape (**Figure 2**). The R5 land currently has a 2 hectare minimum lot size requirement and the RU2 area a 40 hectare minimum lot size (**Figure 3**). Under current planning controls, it is possible (with consent) to subdivide the majority of the site into rural residential housing lots (minimum of 2 hectares each).

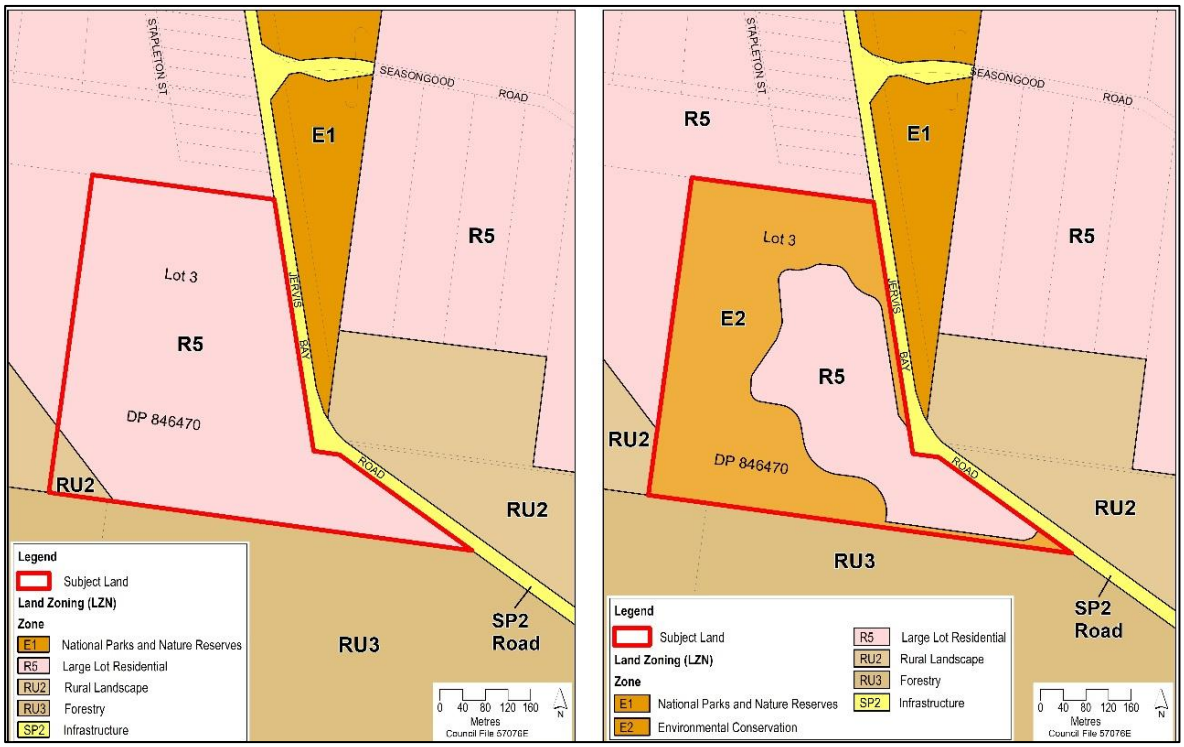


Figure 2: Land Use Zoning Maps (current zoning left and proposed zoning right)

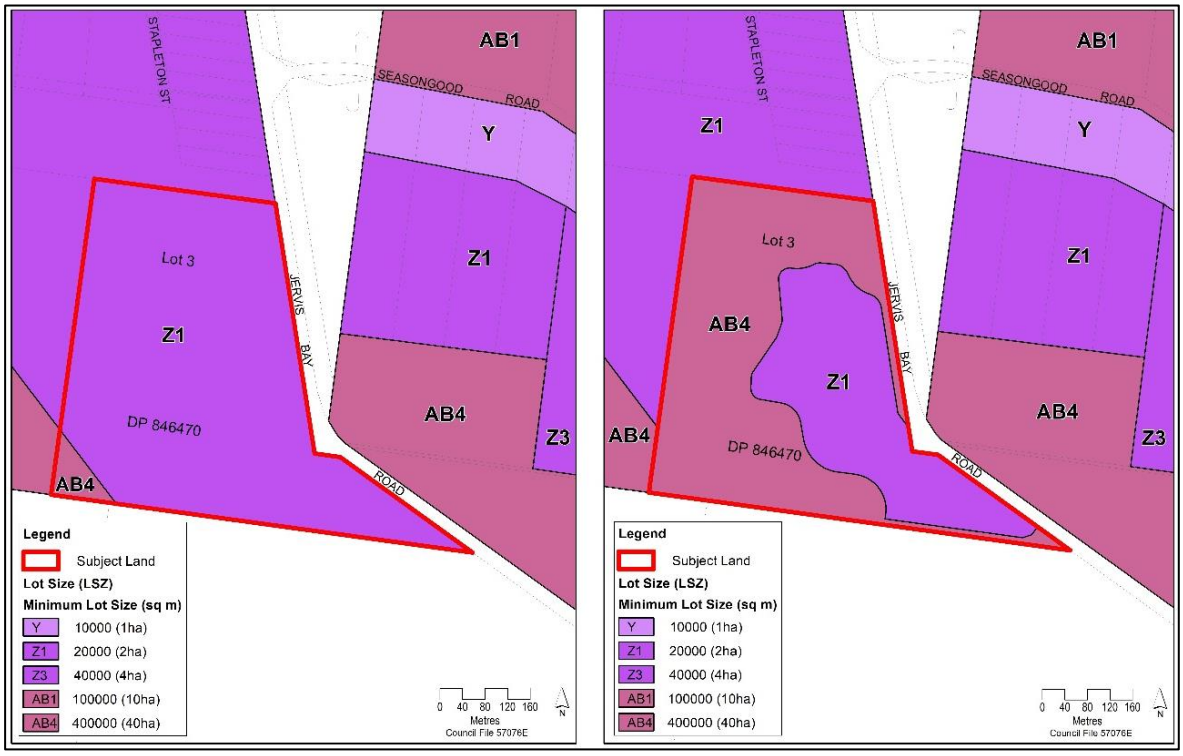


Figure 3: Lot Size Maps (current controls left and proposed controls right).

<u>Note</u>: it is proposed to introduce the ability to subdivide land into lots ≥ 4000 m^2 only in a <u>community title</u> arrangement in the R5 zone (to enable a *maximum* of 13 community title housing lots). Any Torrens Title subdivision would need to comply with the 2 ha minimum.

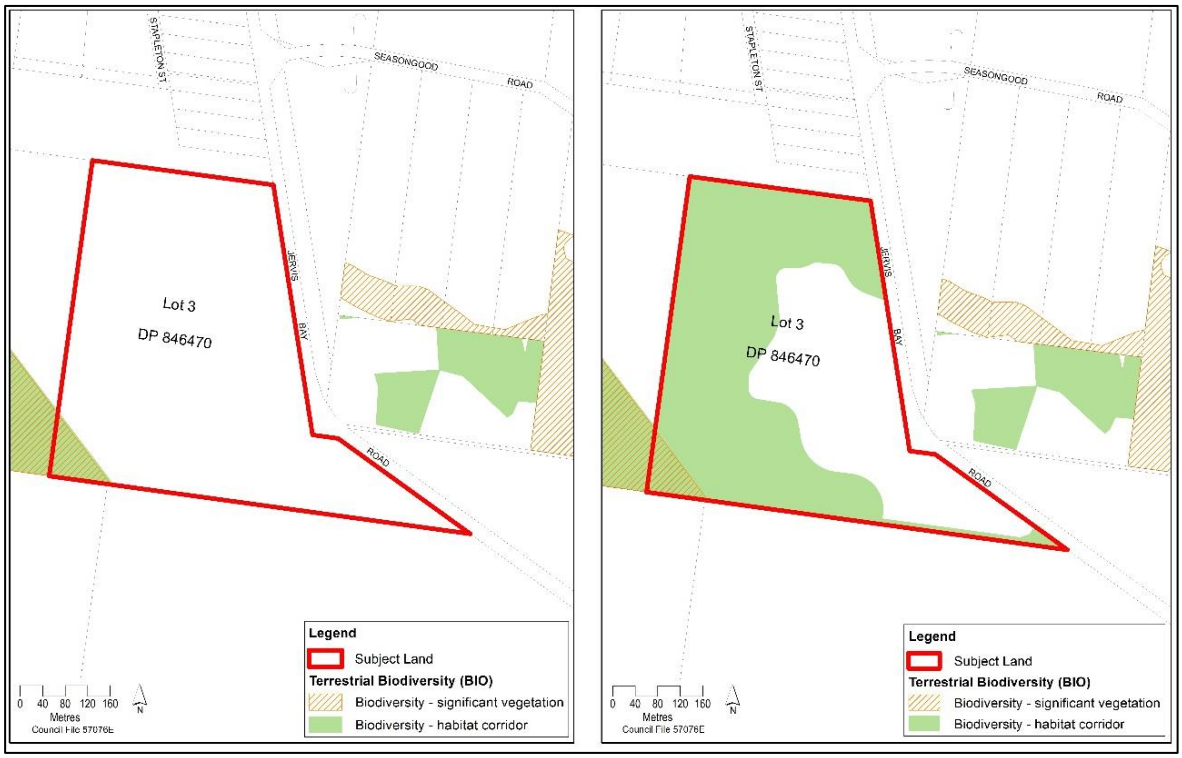


Figure 4: Terrestrial Biodiversity Maps (current map left and proposed map right).

DE21.25

Thus the PP seeks to reduce the area able to be developed for housing, allowing for smaller rural residential lots concentrated in the disturbed part of the site. The remaining bushland area is proposed to be zoned for environmental conservation and unable to be subdivided or developed for housing.

The following amendments are proposed to the LEP to facilitate this:

- Reduce R5 area from 24.45 ha to 9.65 ha - this will reduce the area where subdivision for housing will be permitted. (Figure 2).
- Rezone the remainder (15.56 ha) from R5/RU2 to E2 Environmental Conservation, including a 15 m wide strip adjacent to Jervis Bay Road (where a native vegetation screen will be established) to recognise the environmental significance of the area and protect existing vegetation (Figure 2).
- Amend the Minimum Lot Size Map to extend the 40 ha minimum subdivision lot size over the E2 zone to ensure this area is not subdivided and is retained as one lot (Figure 2).
- Retain the existing 2 ha minimum lot size control across the R5 zone, but introduce a legal mechanism (e.g. local clause) to allow a community title subdivision of up to 13 residential lots (no smaller than 4,000 m2 each), and one neighbourhood lot over the E2 zoned area. The E2 'neighbourhood' lot will not have a dwelling entitlement. This will allow the proposed community title subdivision. (Figure 3).
- Amend the Terrestrial Biodiversity Map to recognise the land to be zoned E2 as a habitat corridor, except for the narrow strip adjacent to Jervis Bay Road (where a native vegetation screen is proposed). (Figure 4).

Possible future development resulting from these proposed planning controls could be:

- Community title subdivision of up to 14 lots (thirteen (13) housing lots a minimum of 4,000 m2 in size and one environmental protection lot) or;

- Torrens Title subdivision of up to four (4) housing lots with a large residue area zoned for environmental protection.

The proposed community title subdivision model offers a number of positive planning and environmental outcomes in context of the subject land. Further details on the proposed planning controls, justification and assessment of potential impacts can be found in **Attachment 2**: Final Planning Proposal Document.

The proposed changes to the LEP provide a framework to assess the subdivision application SF10637. The LEP amendment does not guarantee approval of the DA, as a number of detailed design and planning control issues will need to be addressed (including further consideration of Aboriginal cultural heritage issues).

Exhibition Details

The PP was publicly exhibited for a total of 31 days, from 6 January to 5 February 2021 (inclusive). The Gateway determination required a public exhibition period of a minimum of 28 days. Note: Covid-19 pandemic procedures applied during this time. Exhibition could not be delayed any further due to the pending Gateway determination deadline (10 March 2021) and advice from the NSW Department of Planning, Industry and Environment (DPIE) to continue to progress the PP.

The exhibition was publicly notified via Council's website. Nearby landowners (82), the Huskisson-Woollamia Community Voice (CCB) and Jerrinja Local Aboriginal Land Council were notified directly in writing.

The PP package was available on Council's webpage. The exhibition package comprised the following (Note: links will expire on 5 May 2021):

1. PP035 - Public Exhibition Notice - (74kb)
2. PP035 - Explanatory Statement - (430kb)
3. PP035 - Frequently Asked Questions - (342kb)
4. PP035 - Planning Proposal - (2,522kb)
5. PP035 - Gateway Determination - (636kb)

Community Feedback/Submissions

Council staff took several phone calls from nearby residents. Queries related to access, community title subdivision, provision of water and questions about the development potential of surrounding land.

However, no (0) submissions were received from residents or community groups.

State Agency Consultation

The following NSW Government Agencies and other bodies were notified and invited to comment in accordance with the Gateway and to demonstrate consistency with the relevant Ministerial directions issued under S 9.1 of the *NSW Environmental Planning and Assessment Act 1979*:

- NSW Rural Fire Service (RFS)
- Heritage NSW
- NSW Department of Planning Industry and Environment - Environment, Energy and Science
- Transport for NSW

- NSW Department of Planning Industry and Environment - Natural Resources Access Regulator
- Shoalhaven Water
- Endeavour Energy
- Jervis Bay Marine Park (NSW Department of Primary Industries)

Submissions were received from seven (7) agencies. These are briefly summarised below and addressed detail in **Attachment 1**: Summary of submissions. No submission was received from DPIE – Natural Resources Access Regulator (former NSW Office of Water).

An initial objection by Heritage NSW (discussed further below) has been resolved and there are no outstanding objections or matters to be addressed resulting from State Agency submissions.

NSW RFS

Pre-exhibition consultation with the in June 2020 revealed the need to provide an additional Strategic Bushfire Study. This was completed in September 2020 and RFS comments on it received on 16 October 2020 and 29 January 2021.

In summary, there is no objection to the PP, on the basis that:

> *In recognition of the risk associated with the site within the landscape, additional quantities of static water shall be provided for each dwelling totalling 20,000L*.

The proponent's bushfire consultant was involved in formulating the above additional safety measure after the RFS initially suggested that reticulated water should be provided. (As noted below, technical advice from Shoalhaven Water does not support the provision of reticulated water. Furthermore, Council's adopted position is to not provide reticulated water.)

Heritage NSW

The submission received during the public exhibition period initially objected to the progression of the PP without further consideration of Aboriginal cultural heritage impacts and undertaking an Aboriginal Cultural Heritage Assessment (ACHA).

The submission mistakenly assumed the proposal formed part of the Woollamia/Falls Creek Deferred Areas PP (PP018) and that advice in 2012 from the former NSW Office of Environment and Heritage relating to that proposal had not been followed. The subject land was removed from PP018 early in the assessment of that proposal and was rezoned to its current split of majority R5 with some RU2 as part of the citywide Shoalhaven LEP process in 2014. Also, as discussed in Attachment 1, an ACHA was not required as a condition of the Gateway determination for this PP.

Heritage NSW issued subsequent advice which acknowledged the extensive strategic planning history of the site and the intentions of this proposal to limit site development footprints and impacts. The proposed development area will be located on disturbed already cleared land associated with the current rural-residential land use. Whilst the majority of the site was historically disturbed by logging and grazing activities, much of the land is heavily forested and development in this area will be controlled/restricted by the E2 zone. Thus the likelihood of any impacts to any potential heritage values will be reduced, compared to the current situation where development impacts may eventuate across most of the subject land.

Heritage NSW's advice, dated 24 February 2021, also acknowledged that an AHCA is not expected at this stage in the PP process, and reiterated advice to undertake cultural heritage assessment early in the planning process in all future proposals. In recognition of this, a recommendation is included to ensure that the Heritage NSW concerns in relation to the subject land are considered further as part of the community title subdivision application. In

this regard it is noted that potential impacts on Aboriginal cultural heritage values already need to be considered under clause 5.10 of the Shoalhaven LEP 2014.

On 3 March 2021, Heritage NSW confirmed that they no longer objected to the PP progressing. **Attachment 1** includes a comprehensive overview of the Heritage NSW submission.

Shoalhaven Water

Advised that reticulated sewer was not available and the supply of reticulated (town) water is opposed due to a range of factors including site constraints and ongoing issues with water pressure and flows in nearby areas.

As already noted, in response to the previous report on this matter, Council adopted a policy position to not extend reticulated water to the subject land (Part 3 of MIN20.253).

NSW Department of Primary Industries – Fisheries - Jervis Bay Marine Park

Advised that the PP is unlikely to have an impact on the Marine Park.

DPIE Biodiversity & Conservation Division (BCD)

Did not object to the PP, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the DA stage. Also suggested that the proposed neighbourhood lot (to be zoned E2) could be managed in perpetuity under a biodiversity conservation agreement.

Transport for NSW

Raised no objections to the PP in principle as it is unlikely to have a significant impact on the state road network.

Endeavour Energy

No objection to the PP, subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site.

Comment: It is understood that the developer proposes to remove the existing supply in conjunction with extending power, expected to be by way of underground cabling, to service the proposed future lots in the subdivision. This will be undertaken in accordance with detailed electrical engineering plans to be further approved by Endeavour Energy and constructed in accordance with their requirements.

Post-Exhibition Changes to Planning Proposal

The proposed land use zones, minimum lot size and terrestrial biodiversity maps have been retained as exhibited.

Additional information has however been added to the intended final version of the PP document (see **Attachment 2** - Final Planning Proposal) as summarised below:

- Commentary about the strategic planning history of the site has been added to the 'Background' section in response to comments from Heritage NSW, specifically to clarify the relationship between this PP and the Woollamia/Falls Creek Deferred Areas PP018 which applied to neighbouring land.

- Updated commentary on the new State Environmental Planning Policy Koala Habitat Protection 2020. This change has no implications for the PP as the SEPP reverts back to historical controls and the proposed development is not seeking to expand any residential zones across the site (and instead seeks to reduce the area of land zoned for residential development).
- Additional information added in relation to Section 9.1 Direction 2.3 Heritage Conservation in response to comments received from Heritage NSW. This information provides further justification illustrating that the PP complies with the objectives and requirements of this Direction.
- Updates to Section 3.4.2 to include feedback received from state government agencies.

Conclusion

The PP complies with required legislative requirements, included having satisfied all requirements of the Gateway determination. Additional detailed planning assessment will be required at the subdivision stage of development, as part of the development application process.

The proposed rezoning balances provision of rural residential development, environmental protection and bushfire risk mitigation by:

- rezoning the majority of the site for environmental conservation;
- limiting development to the cleared portions of the site close to the road; and,
- enabling a community title subdivision which will offer positive planning and environmental outcomes in respect of the subject land.

It is envisaged that any potential impacts of the proposal can be suitably managed/conditioned at the subdivision stage of the development. It is recommended that PP be finalised by Council as proposed.

Policy Implications

The PP complies with all relevant state government and Council planning policies required to be considered at this stage, as detailed in the final PP document (**Attachment 2**).

The proponent's proposed community title subdivision arrangement offers a number of positive planning and environmental outcomes in context of this specific site. Council's support of this PP should not be taken out of context and construed as support for community title subdivisions generally.

Financial Implications

There are no immediate financial implications for Council. The cost of preparing and finalising the PP is met by the proponent, consistent with Council's guidelines.

DE21.26 Proposed Housekeeping Amendment - Encourage Renewable Investment and Protect Rooftop Solar Systems – Shoalhaven DCP 2014 Amendment (DCP 2014.48)

HPERM Ref: D21/95097

Department: Strategic Planning
Approver: Robert Domm, Director - City Futures

Attachments: 1. Draft Chapters G13, G17, G20 and Dictionary (under separate cover) ⇨

Reason for Report

Obtain the required resolution to formally exhibit the draft Housekeeping Amendments (the draft Amendment) to the following chapters of Shoalhaven Development Control Plan (DCP) 2014 in this regard:

- Chapter G13: Medium Density and Other Residential Development.
- Chapter G17: Business, Commercial and Retail Activities.
- Chapter G20: Industrial Development.
- The DCP Dictionary.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse and proceed to exhibit the initial draft Housekeeping Amendments (the draft Amendment) to the following chapters of Shoalhaven Development Control Plan 2014 as outlined in Attachment 1 for a period of at least 28 days as per legislative requirements.
   a. Chapter G13: Medium Density and Other Residential Development.
   b. Chapter G17: Business, Commercial and Retail Activities.
   c. Chapter G20: Industrial Development.
   d. The Dictionary.
2. Receive a further report on the draft Amendments following the conclusion of the public exhibition period to consider feedback received and enable finalisation of the Amendments.
3. Notify key stakeholders (including CCBs and Development Industry Representatives) of the exhibition arrangements in due course.

Options

1. As recommended.

   Implications: This is the preferred option as it implements the intention of earlier resolutions and ensures that where development consent is required, greater consideration is given to the protection of rooftop solar systems on both public and private land, so they are able to perform at their optimum level of efficiency.

2. Adopt an alternative recommendation.

   Implications: This will depend on the extent of any changes and could delay the implementation of the suggested updated DCP provisions.

3. Not adopt the recommendation.

   Implications: This could stop the implementation of additional controls to assist in the protection of rooftop solar systems on both public and private land.

Background

Resulting from previous consideration by Council, the Development & Environment Committee resolved on 6 October 2020 (MIN20.711) that Council:

1. *Strengthen the following existing Council policies and plans to encourage individual renewable investment and protect solar roof panels on both private and public land:*
   a. *Shoalhaven Development Control Plan 2014.*
   b. *POL15/28 – Renewable Energy Installations on Council Assets.*
   c. *POL18/44 – Sustainable Energy Policy.*
   d. *POL16/10 – Tree Management Policy – Public Land*
2. *Receive a further report/s in a timely fashion to address the detail of the proposed amendments to the policies and plans identified at Part 1 and to progress this matter as efficiently as possible.*

As per Part 1 of the resolution, additional draft for possible inclusion the following existing chapters of Shoalhaven DCP 2014:

- Chapter G13: Medium Density and Other Residential Development.
- Chapter G17: Business, Commercial and Retail Activities.
- Chapter G20: Industrial Development.
- The Dictionary.

The Chapters with the proposed draft amendments are provided as **Attachment 1**. The key changes proposed are also outlined in **Table 1** below for convenience.

To reduce the size of **Attachment 1**, only the Table of Changes page and the relevant pages of the draft DCP chapters are included. The full DCP chapters with proposed changes will however be exhibited.

These additional controls will supplement and strengthen Shoalhaven's DCP to meet the intent of the Council resolution to help protect rooftop solar systems from adverse overshadowing without being overly detrimental to the design and form of future development.

Table 1: Summary of key changes proposed through the draft Amendments.

G13: Medium Density and Other Residential Development

• Editorial – updates to the numbering of performance criteria and acceptable solutions to be sequential throughout the document, following the inclusion of additional solar related provisions.
• Amended Performance Criteria P16 to require dwellings to be sited and designed to maximise solar access to surrounding residential development.
• Insertion of additional Acceptable Solutions requiring:
  – A minimum of 3 hours direct solar access to existing rooftop solar systems and north facing roofs where a solar system is not yet in place;
  – Certain medium density development to provide a shadow diagram with the DA package to show the impact of shadows resulting from existing and proposed building works.

G17: Business, Commercial and Retail Activities
• Editorial – updates to the numbering of performance criteria and acceptable solutions to be sequential throughout the document, following the inclusion of solar related provisions. • Insert additional controls for business, commercial and retail development that require the building design to maximise solar access to proposed and existing development, as follows: – New Performance Criteria that encourage energy efficient development and good solar access. – Additional Acceptable Solutions that specify solar access is to be maintained for a minimum of 3 hours to surrounding development.
G20: Industrial Development
• Editorial – updates to the numbering of performance criteria and acceptable solutions to be sequential throughout the document, following the inclusion of additional solar related provisions. • Insert additional Performance Criteria and Acceptable Solutions that ensure building design is energy efficient and provides good solar access. Direct solar access is to be maintained for a minimum of 3 hours to surrounding development, which may require the use of shadow diagrams to demonstrate the impact of shadows of the existing and proposed development.
Dictionary
• Remove the term 'solar collector' and replace with 'rooftop solar systems.' • Amend the definition of 'rooftop solar systems' to include 'and new and emerging technology.'

DE21.26

Update - Council Policies

Work on the review of a number of Council policies relating to the protection of solar roof panels is also underway, as per Part 1 of the resolution.

Council's Sustainable Energy Policy (now POL20/71) was amended on 24 November 2020 in response to the Council resolution. The policy was amended to reinforce Council's support of the policy through preserving solar access rights across the Shoalhaven Local Government Area on both private and public land, and to protect rooftop solar systems from adverse overshadowing.

The remaining policies will be updated to strengthen the protection of rooftop solar systems in due course and Council will be updated accordingly.

Conclusion

Council now needs to consider the proposed changes to the DCP so that they can proceed to exhibition, noting that the outcomes of the exhibition will be reported back a later date and to enable the finalisation of the suggested adjustments.

Community Engagement

Subject to the outcome of this report, the draft Amendments will be publicly exhibited for at least 28 days in accordance with legislative requirements. Documentation will be available for viewing on Council's website. Development Industry Representatives and CCBs will directly be notified of the exhibition arrangements.

Financial Implications

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

DE21.27 Proposed Housekeeping Amendment No. 8 - Shoalhaven Contributions Plan 2019 (CP2019.8)

HPERM Ref: D21/95878

Department: Strategic Planning
Approver: Robert Domm, Director - City Futures

Attachments: 1. Proposed New Schedule 2 - Old Subdivision Properties ⇩

Reason for Report

Obtain endorsement to proceed to formally exhibit the proposed housekeeping amendment (No. 8) to the Shoalhaven Contributions Plan 2019 (the Plan).

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the draft Housekeeping Amendment (draft Amendment) to Schedule 2 (Old Subdivision Properties) in the Shoalhaven Contributions Plan 2019 at Attachment 1 and proceed to exhibit the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider any feedback received, as well as any necessary adjustments and the finalisation of the amendment. If no submissions are received, resolve to adopt Amendment No. 8 as exhibited and proceed to finalise the draft Amendment.
3. Notify key stakeholders (including Development Industry Representatives) of the exhibition arrangements in due course.

Options

1. As recommended.

   Implications: This is the preferred option as it will enable the previous administrative error made in Amendment 1 to the Plan to be resolved and the correct list of Old Subdivision Properties (OSPs) to be provided in Schedule 2 of the Plan.

2. Adopt an alternative recommendation.

   Implications: This will depend on the extent of any changes and could delay the implementation of an update and improved Plan.

3. Not adopt the recommendation.

   Implications: This could stop the Housekeeping Amendment which would mean that Schedule 2 of the Plan would remain inaccurate.

Background

The Plan provides a mechanism for the levying of development contributions for land which is the result of a subdivision approved prior to 1993 that has subsequently been rezoned to enable development. These are known as “old subdivision properties” (OSPs).

Normally all land across the City would benefit from a 1 equivalent tenement (ET) credit as development contributions would have ordinarily been paid at the subdivision stage. As OSPs were created/subdivided prior to 1993 (the date when a contributions framework was established for Shoalhaven), future development may be required to pay contributions at the DA stage.

It is noted that contributions for OSPs are generally only levied for plan management, road, fire and drainage projects, as these properties have paid rates over many years which amounts to far more than a "one-off" contribution project payment for community and recreation facilities. Certain land in the Nebraska Estate, St Georges Basin and the former DCP 41 area in Callala Bay are the exception to this general rule and are required to pay all current development contributions at the time of development approval for a residential dwelling.

Amendment No. 1 (Housekeeping) to the Plan came into effect on 5 March 2021; however, during the implementation of this amendment, an administrative error associated with the list of OSPs in Schedule 2 of the Plan was discovered. The current list in Schedule 2 actually consists of the properties that should have been removed as part of Amendment 1.

The purpose of this draft Amendment is to resolve this administrative error to ensure that the correct list of OSPs is provided in Schedule 2 of the Plan. So this can occur, the OSP list that makes up the current Schedule 2 is proposed for deletion, with the content of **Attachment 1** being inserted in its place.

Conclusion

This matter needs to be corrected in a timely manner to resolve the administrative error that occurred when Amendment No. 1 (Housekeeping) to the Plan came into effect.

Community Engagement

If endorsed by Council, the draft Amendment will be publicly exhibited for at least 28 days in accordance with legislative requirements, on Council's website. The exhibition material will include the information at **Attachment 1**, as well as a brief explanatory statement.

Development Industry Representatives will be directly notified of the exhibition arrangements.

Policy Implications

The proposed Amendment seeks to correct an administrative error that occurred during Amendment 1 to the Plan.

Financial Implications

This draft Amendment is being resourced within the existing Strategic Planning budget.

Risk Implications

Should the draft Amendment not proceed, Council will miss out on revenue associated with the levying of development contributions for OSPs.

Proposed New Schedule 2 - Old Subdivision Properties - Shoalhaven Contributions Plan 2019 (Amendment 8)

Location	Address	UTE	Description
Basin View	66 Waterpark Rd	6149	Lot 287 DP 8399
Callala Bay	Chisolm St	27472	Lot 23 DP 9063 Sec 4A*
Callala Bay	Chisolm St	35345	Lot 12 DP 9063 Sec 22*
Callala Bay	Chisolm St	35346	Lot 13 DP 9063 Sec 22*
Callala Bay	Chisolm St	35347	Lot 14 DP 9063 Sec 22*
Callala Bay	Chisolm St	48006	Lot 24 DP 9063 Sec 4A*
Callala Bay	Chisolm St	59599	Lot 1 DP 732631*
Callala Bay	Cook St	36293	Lot 26 DP 9063 Sec 19*
Callala Bay	Cook St	36294	Lot 27 DP 9063 Sec 19*
Callala Bay	Cook St	36295	Lot 28 DP 9063 Sec 19*
Callala Bay	Cook St	36259	Lot 9 DP 9063 Sec 8*
Callala Bay	Cook St	36260	Lot 10 DP 9063 Sec 8*
Callala Bay	Cook St	36261	Lot 11 DP 9063 Sec 8*
Callala Bay	Cook St	36262	Lot 12 DP 9063 Sec 8*
Callala Bay	Cook St	36263	Lot 13 DP 9063 Sec 8*
Callala Bay	Cook St	36264	Lot 14 DP 9063 Sec 8*
Callala Bay	Cook St	36290	Lot 23 DP 9063 Sec 19*
Callala Bay	Cook St	36291	Lot 24 DP 9063 Sec 19*
Callala Bay	Cook St	36292	Lot 25 DP 9063 Sec 19*
Callala Bay	54 Emmett St	35363	Lot 7 DP 9063 Sec 21*
Callala Bay	56 Emmett St	27506	Lot 8 DP 9063 Sec 21*
Callala Bay	64 Emmett St	27509	Lot 20 DP 9063 Sec 5A*
Callala Bay	2 Emmett St	27498	Lot 11 DP 9063 Sec 6*
Callala Bay	Sheaffe St	28523	Lot 8 DP 9063 Sec 8*
Callala Bay	Sheaffe St	28526	Lot 7 DP 9063 Sec 19*
Callala Bay	Sheaffe St	28527	Lot 8 DP 9063 Sec 19*

Callala Bay	Sheaffe St	28528	Lot 1 DP 9063 Sec 22*
Callala Bay	Sheaffe St	36378	Lot 11 DP 9063 Sec 5*
Callala Bay	Sheaffe St	36379	Lot 12 DP 9063 Sec 5*
Callala Bay	Sheaffe St	36380	Lot 13 DP 9063 Sec 5*
Callala Bay	Sheaffe St	36381	Lot 14 DP 9063 Sec 5*
Callala Bay	Sheaffe St	36252	Lot 1 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36253	Lot 2 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36254	Lot 3 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36255	Lot 4 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36256	Lot 5 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36257	Lot 6 DP 9063 Sec 8*
Callala Bay	Sheaffe St	36258	Lot 7 DP 9063 Sec 8*
Callala Bay	Sheaffe St	28529	Lot 2 DP 9063 Sec 22*
Callala Bay	Sheaffe St	28530	Lot 3 DP 9063 Sec 22*
Callala Bay	Sheaffe St	28531	Lot 8 DP 9063 Sec 22*
Callala Bay	Sheaffe St	28484	Lot 16 DP 9063 Sec 21*
Callala Bay	Sheaffe St	28525	Lot 6 DP 9063 Sec 19*
Callala Bay	Sheaffe St	28508	Lot 16 DP 9063 Sec 7*
Callala Bay	Sheaffe St	28509	Lot 17 DP 9063 Sec 7*
Callala Bay	Sheaffe St	28510	Lot 18 DP 9063 Sec 7*
Callala Bay	Sheaffe St	28512	Lot 20 DP 9063 Sec 7*
Callala Bay	Sheaffe St	28524	Lot 1 DP 9063 Sec 19*
Callala Bay	Sheaffe St	36277	Lot 2 DP 9063 Sec 19*
Callala Bay	Sheaffe St	36278	Lot 3 DP 9063 Sec 19*
Callala Bay	Sheaffe St	36279	Lot 4 DP 9063 Sec19*
Callala Bay	Sheaffe St	36280	Lot 5 DP 9063 Sec 19*
Callala Bay	The Corso	36296	Lot 24 DP 9063 Sec 22*
Callala Bay	The Corso	36297	Lot 25 DP 9063 Sec 22*

Callala Bay	The Corso	28589	Lot 23 DP 9063 Sec 22*
Callala Bay	The Corso	28590	Lot 26 DP 9063 Sec 22*
Callala Bay	The Corso	28591	Lot 28 DP 9063 Sec 22*
Callala Bay	The Corso	36281	Lot 9 DP 9063 Sec 19*
Callala Bay	The Corso	36282	Lot 10 DP 9063 Sec 19*
Callala Bay	The Corso	36283	Lot 11 DP 9063 Sec 19*
Callala Bay	The Corso	36284	Lot12 DP 9063 Sec 19*
Callala Bay	The Corso	36285	Lot 13 DP 9063 Sec 19*
Callala Bay	The Corso	36286	Lot 14 DP 9063 Sec 19*
Callala Bay	Watt St	28753	Lot 22 DP 9063 Sec 19*
Callala Bay	Watt St	28754	Lot 15 DP 9063 Sec 8*
Callala Bay	Watt St	28755	Lot 16 DP 9063 Sec 8*
Callala Bay	Watt St	28756	Lot 1 DP 9063 Sec 5*
Callala Bay	Watt St	28757	Lot 2 DP 9063 Sec 5*
Callala Bay	73 Watt St	28735	Lot 8 DP 9063 Sec 4A*
Callala Bay	Watt St	28758	Lot 3 DP 9063 Sec 5*
Callala Bay	Watt St	28759	Lot 4 DP 9063 Sec 5*
Callala Bay	69 Watt St	28737	Lot 6 DP 9063 Sec 4A*
Callala Bay	67 Watt St	28738	Lot 5 DP 9063 Sec 4A*
Callala Bay	65 Watt St	28739	Lot 4 DP 9063 Sec 4A*
Callala Bay	63 Watt St	28740	Lot 3 DP 9063 Sec 4A*
Callala Bay	Watt St	28741	Lot 1 DP 9063 Sec 4A*
Callala Bay	Watt St	28742	Lot15 DP 9063 Sec 22*
Callala Bay	Watt St	28743	Lot16 DP 9063 Sec 22*
Callala Bay	Watt St	28744	Lot 17 DP 9063 Sec 22*
Callala Bay	Watt St	28745	Lot 19 DP 9063 Sec 22*
Callala Bay	Watt St	28746	Lot 20 DP 9063 Sec 22*
Callala Bay	Watt St	28747	Lot 21 DP 9063 Sec 22*

Callala Bay	Watt St	28748	Lot 22 DP 9063 Sec 22*
Callala Bay	Watt St	28749	Lot 17 DP 9063 Sec 19*
Callala Bay	Watt St	28750	Lot 18 DP 9063 Sec 19*
Callala Bay	Watt St	28751	Lot 20 DP 9063 Sec 19*
Callala Bay	Watt St	28752	Lot 21 DP 9063 Sec 19*
Callala Bay	Watt St	36367	Lot 18 DP 9063 Sec 22*
Callala Bay	61 Watt St	35416	Lot 2 DP 9063 Sec 4A*
Callala Bay	Watt St	36265	Lot 17 DP 9063 Sec 8*
Callala Bay	Watt St	36266	Lot 18 DP 9063 Sec 8*
Callala Bay	Watt St	36267	Lot 19 DP 9063 Sec 8*
Callala Bay	Watt St	36268	Lot 20 DP 9063 Sec 8*
Callala Bay	Watt St	36269	Lot 21 DP 9063 Sec 8*
Callala Bay	Watt St	36270	Lot 22 DP 9063 Sec 8*
Callala Bay	Watt St	36287	Lot 15 DP 9063 Sec 19*
Callala Bay	Watt St	36288	Lot 16 DP 9063 Sec 22*
Callala Bay	Watt St	36289	Lot 17 DP 9063 Sec 19*
Callala Bay	Woodhill St	28515	Lot 23 DP 9063 Sec 7*
Callala Bay	Woodhill St	36271	Lot 23 DP 9063 Sec 8*
Callala Bay	Woodhill St	36372	Lot 5 DP 9063 Sec 5*
Callala Bay	Woodhill St	36373	Lot 6 DP 9063 Sec 5*
Callala Bay	Woodhill St	36374	Lot 7 DP 9063 Sec 5*
Callala Bay	Woodhill St	36375	Lot 8 DP 9063 Sec 5*
Callala Bay	Woodhill St	36376	Lot 9 DP 9063 Sec 5*
Callala Bay	Woodhill St	36377	Lot 10 DP 9063 Sec 5*
Callala Bay	Woodhill St	36272	Lot 24 DP 9063 Sec 8*
Callala Bay	Woodhill St	36273	Lot 25 DP 9063 Sec 8*
Callala Bay	Woodhill St	36274	Lot 26 DP 9063 Sec 8*
Callala Bay	Woodhill St	36275	Lot 27 DP 9063 Sec 8*

Callala Bay	Woodhill St	36276	Lot 28 DP 9063 Sec 8*
Kangaroo Valley	Moss Vale Road	38069	Lot 17 DP 207410
Kangaroo Valley	Moss Vale Rd	38080	Lot 1 DP 589813
Kangaroo Valley	Nugents Creek Road	38330	Lot 25 DP 207410
Kangaroo Valley	Moss Vale Road	38334	Lot B DP 374733
Nowra Hill	18 Calymea St	43628	Lot 48 DP 29970
St Georges Basin	191 Island Point Rd	38562	Lot 39 DP 8082
St Georges Basin	The Wool Road	93705	Lot 1 DP 1052202*
Sussex Inlet	495 Sussex Inlet Rd	45361	Lot 151 DP 26732
Sussex Inlet	Sussex Inlet Rd	45362	Lot 149 DP 26732
Sussex Inlet	Sussex Inlet Rd	45370	Lot 141 DP 26732
Sussex Inlet	Sussex Inlet Rd	45381	Lot 130 DP 26732
Sussex Inlet	Sussex Inlet Rd	45388	Lot 123 DP 26732
Sussex Inlet	Sussex Inlet Rd	45410	Lot 97 DP 26638
Sussex Inlet	Sussex Inlet Rd	45416	Lot 91 DP 26638
Sussex Inlet	Sussex Inlet Rd	45453	Lot 65 DP 26637
Sussex Inlet	574 Sussex Inlet Rd	45469	Lot 49 DP 26637
Sussex Inlet	Sussex Inlet Rd	45471	Lot 48 DP 26637
Sussex Inlet	432 Sussex Inlet Rd	45483	Lot 32 DP 26636
Sussex Inlet	Old Berrara Rd	45503	Lot A DP 410550
Sussex Inlet	Old Berrara Rd	45509	Lot 14 DP 26636
Sussex Inlet	Old Berrara Rd	86099	Lot 15 DP 658723
Sussex Inlet	108 Old Berrara Rd	96116	Lot 2 DP 1080500
Sussex Inlet	Sussex Inlet Rd	100171	Lot 1 DP 1076384
Tomerong	Cambourne Rd	43748	Lot 39 DP 10814
Tomerong	Cambourne Rd	43751	Lot 34 DP 10814
Tomerong	83 Evelyn Rd	43760	Lot 9 DP 10814
Tomerong	Evelyn Rd	43765	Lot14 DP 10814

Tomerong	Evelyn Rd	43767	Lot 16 DP 10814
Tomerong	Parnell Rd	43790	Lot 65 DP 10814
Tomerong	Parnell Rd	43795	Lot 60 DP 10814
Tomerong	Parnell Rd	43801	Lot 53 DP 10814
Tomerong	Parnell Rd	43803	Lot 33 DP 10814
Tomerong	38 Hill St	43811	Lot 50 DP 10814
Woollamia	41 Edendale St East	29062	Lot 198 DP 13768
Woollamia	730 Woollamia Rd	38225	Lot 7 DP 23221
Woollamia	761 Woollamia Rd	38229	Lot 2 DP 9289
Woollamia	Sunnyside Ave	38238	Lot 7 DP 28453
Woollamia	Streamside St	38618	Lot 69A DP 15266
Woollamia	Woollamia Rd	42285	Lot 1 DP 9289
Woollamia	Woollamia Rd	42289	Lot 11 DP 9289
Woolamia	2 Allora Cl	57022	Lot 5 DP 717481
Callala Bay	71 Watt St	28736	Lot 7 DP 9063 Sec 4A*
Callala Bay	11 Woodhill St	28516	Lot 24 DP 9063 Sec 7*
Culburra Beach	104 West Cres	4995	Lot 311 DP 11892
Falls Creek	Hart Rd	43285	Lot 19 DP 15461
Falls Creek	Hart Rd	43286	Lot 20 DP 15461
Falls Creek	9 Stapleton St	42703	Lot 52 DP 206448
Kangaroo Valley	238 Moss Vale Road	38070	Lot 12 DP 207410
Kangaroo Valley	Moss Vale Road	38335	Lot 3 DP 386532
Kangaroo Valley	250 Moss Vale Road	63241	Lot 102 DP 749886
Kangaroo Valley	11 Rectory Park Way	84365	Lot 10 DP 285133
Nowra Hill	16 Calymea St	43629	Lot 49 DP 29970
Sussex Inlet	Sussex Inlet Rd	45341	Part Lot 170 DP 26730
Sussex Inlet	Sussex Inlet Rd	45385	Lot 126 DP 26732

Sussex Inlet	Sussex Inlet Rd	45420	Lot 87 DP 26638
Sussex Inlet	Sussex Inlet Rd	45475	Lot 43 DP 26637
Tomerong	37 Evelyn Rd	43757	Lot 6 DP 10814
Tomerong	80 Evelyn Rd	43779	Lot 75 DP 10814

DE21.28 Proposed Submission - Design and Place SEPP - Explanation of Intended Effects

HPERM Ref: D21/107753

Department: Strategic Planning
Approver: Robert Domm, Director - City Futures

Attachments: 1. Draft Submission - Proposed Design and Place SEPP ⇩

Reason for Report

Advise of the public exhibition by the NSW Department of Planning, Industry and Environment (DPIE) of an Explanation of Intended Effect (EIE) for a proposed new Design and Place State Environmental Planning Policy (SEPP) and obtain endorsement to make the submission at **Attachment 1**.

DE21.28

Recommendation (Item to be determined under delegated authority)

That Council make a submission (Attachment 1 of this report) to the NSW Department of Planning, Industry and Environment in relation to the proposed Design and Place State Environmental Planning Policy (SEPP).

Options

1. Endorse **Attachment 1** as Council's submission on the proposed SEPP.

   Implications: This is the preferred option as it will enable Council to provide a submission highlighting matters that should be considered, noting that the actual SEPP will be released later in the year for comment.

2. Amend **Attachment 1** and include additional comments as necessary and submit.

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

3. Not make a submission.

   Implications: This is not recommended as it would prevent Council from having any input and the opportunity to identity issues for consideration or resolution would potentially be missed.

Background

The NSW Government is working to simplify and consolidate policies and guidelines to deliver good design in NSW. The proposed Design and Place SEPP seeks to ensure that design and place considerations are strengthened in the NSW planning system. The Explanation of Intended Effect (EIE) for the proposed SEPP and its appendices (Urban Design Guide proposal, proposed changes to Apartment Design Guide and proposed changes to the BASIX SEPP) was on exhibition between 26 February and 31 March 2021.

The detailed exhibition package can be found at the following link:

https://www.planningportal.nsw.gov.au/design-and-place-sepp

The proposed SEPP will apply to all urban land in NSW and to planning and development proposals where the consent authority is either State or local government. It will apply to development of all scales, from precincts, significant developments, and buildings to infrastructure and public space. Site and precinct scale thresholds will determine where and when particular considerations will apply.

The proposed SEPP will be 'principle-based', integrating and aligning good design and place considerations into planning policy, and giving effect to a number of objects of the *NSW Environmental Planning and Assessment Act 1979*. DPIE has signalled an intention to move towards a 'principle-based' system rather than one solely reliant on prescriptive controls.

The proposed SEPP will be structured in three parts:

- The Why - Aims and principles
- The How – Design and place processes
- The What - Considerations

Five overarching 'principles' are proposed for the design and assessment of places in urban and regional NSW. The SEPP will also promote the NSW Premier's Priorities for a Better Environment (Greener Public Spaces and Greening our City).

PRINCIPLE 1.	PRINCIPLE 2.	PRINCIPLE 3.	PRINCIPLE 4.	PRINCIPLE 5.
Design places with beauty and character *that people feel proud to belong to*	**Design inviting public spaces** *to support engaged communities*	**Design productive and connected places** *to enable thriving communities*	**Design sustainable and greener places** *for the wellbeing of people and the environment*	**Design resilient and diverse places** *for enduring communities*

EIE Extract – Five Principles

The EIE notes that 'a principle-based planning system is one that is focussed around achieving a desirable outcome through a reasoned and considered approach. It is aimed at moving away from a system governed entirely by prescriptive controls. This allows for, and encourages, innovative and creative approaches to achieve an outcome. It is proposed the principles will be given effect through matters for consideration and application requirements.'

It is also noted that 'The principles reflect lessons reinforced during the recent global coronavirus pandemic, including the community's need for public space, recreation, and destinations, such as community infrastructure, that are local and walkable from their homes.'

The NSW Government intends that the proposed SEPP will:

- Provide a single point of reference for design-related considerations and performance criteria in the planning system;
- Define scales of development – precincts and significant development, and all other development;
- Establish mandatory matters (19) for consideration and application requirements that collectively respond to each of the principles. These will be refined as the detail of the SEPP is prepared clarify what is required at what scale (see Figure below);
- Introduce a robust and consistent design process through requirements for design skills, design evaluation and review, and design excellence;
- Integrate a design-led, place-based approach, which includes embedding the draft connecting with country framework;

- Be supported by existing, revised and new guidance, including the revised apartment design guide, a new urban design guide, and revisions to the building sustainability index (BASIX);
- Repeal and replace SEPP 65 – design quality of residential apartment development and SEPP (Building Sustainability Index: Basix) 2004 (BASIX SEPP;
- Consolidate design and place requirements in other SEPPs in the future;
- Have no immediate impact on existing LEPs and DCPs. However as part of the future review of these plans it is likely7 they will be revised to align with the new SEPP and ensure consistency across NSW. Consideration will also be given to amending Clause 4.6 (Exceptions to development standards) in the Standard LEP Order requiring variations to demonstrate that they result in an improved planning outcome and public good.

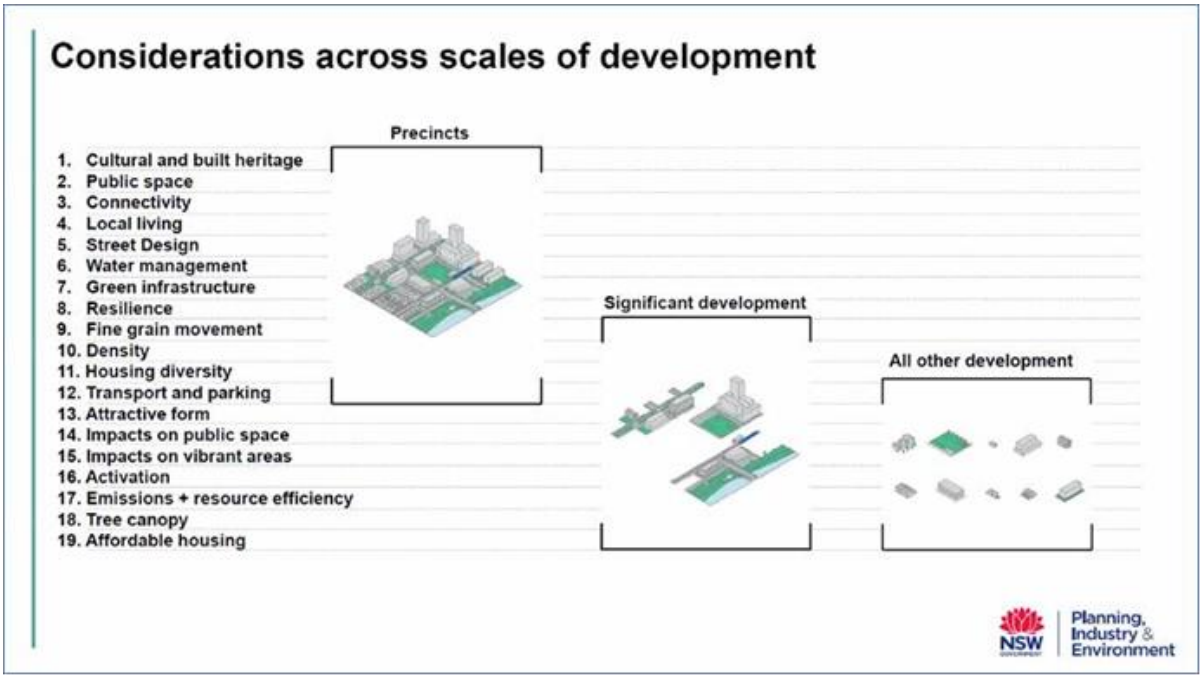


Figure – Possible Considerations across scales of development

Following this current consultation, the proposed SEPP will be drafted and exhibited in late 2021 for further comment. It is understood that the draft SEPP when released will include specific considerations and targets.

Draft Council Submission

Given the nature and applicability of this proposal, it is recommended that Council make a submission on the proposed SEPP.

The proposed Council submission (see **Attachment 1**) provides comments on the exhibited EIE based on the points:

- The broad intent to elevate, enhance and simplify design and place considerations in the NSW planning system is generally supported, but the new SEPP must not result in a further weakening of the local level design controls, such as those currently contained in the DCP, which have often been developed in consultation with the local communities of Shoalhaven.
- Consideration needs to be given to the additional specialist resources (e.g. urban design) required to meet the assessment and engagement requirements of the SEPP.

- Consideration needs to be given to the role of complying development in light of the proposed SEPP given the impact this form of development can have.
- Consideration needs to be given to the varying experiences and requirements of regional or local communities with regard to controls in the revised Apartment Design Guide.
- A principles-based approach should operate alongside firm controls developed for local contexts.
- Efforts to consolidate and simplify existing SEPPS and guidelines are supported but there needs to be evidence that these reforms are achieving their desired effect.
- It is critical that future exhibited material allows a proper timeframe within which to respond with the Council-endorsed position.

A copy of the proposed submission (**Attachment 1**) has been lodged through the NSW Planning Portal in order to meet the 31 March deadline. It is proposed that a further copy of the submission, endorsed by Council, will be submitted to replace the draft 'place holder' submission.

Conclusions

The proposed SEPP aims to elevate design and place considerations across NSW and this is generally supported, but the details and mechanisms are yet to be finalised and will need to be fully reviewed and considered to ascertain impacts, concerns etc.

It will be necessary to see the detail in the draft SEPP to identify any unintended consequences of the proposed legislation, or properly assess the efficiency or future operation of the proposed SEPP, particularly with regard to its application in Shoalhaven.

The draft SEPP when released will be the subject of a future report to Council.

Community Engagement

The Explanation of Intended Effect was on public exhibition between 26 February and 31 March 2021 to provide an opportunity for Council, community members and industry stakeholders to provide comments and feedback. The draft SEPP is expected to be exhibited later in 2021.

Policy Implications

The proposed SEPP will have no immediate impact on existing LEP's and DCP's, although when these plans are reviewed, it is likely they will need to be revised where necessary to align with the SEPP and for consistency across NSW.

The proposed SEPP will interface with multiple other SEPP's. Much is yet to be determined by the NSW Government in this regard and will be considered in light of feedback on the material currently exhibited.

Financial Implications

The proposed SEPP will require provisions for design skills and expertise in the design and review of planning and development proposals. For Council, this could mean particular design skills for assessment staff or access to a design review panel.

Additional resourcing requirements for councils are addressed in the submission. It is suggested that DPIE should consider providing financial assistance to meet additional assessment requirements, perhaps through Council Joint Organisations.

Risk Implications

There are no immediate risks for Council, however it appears that at this point in time, the proposed SEPP will increase requirements for design and development assessment which could impact Council planners, proponents and the community.

NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

By email only: designandplacesepp@planning.nsw.gov.au

Dear Sir/Madam

Submission – Proposed Design and Place SEPP – Explanation of Intended Effect

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for the proposed Design and Place SEPP (the SEPP).

Council generally welcomes the NSW Government's recognition of the importance of good design to local communities and its commitment to simplifying and strengthening this consideration in the NSW planning system.

The current EIE features a considerable amount of content to be reviewed in order for Council to provide a thorough and appropriate response. As you can appreciate, the submission process takes time to coordinate across multiple interested sections in Council. This submission has not yet received formal endorsement from the elected Council and a further endorsed submission will be submitted following Council's Development & Environment Committee Meeting on 6 April 2021.

The timeframes the NSW Government is working under to ensure that the draft SEPP is able to go on exhibition later in 2021 are acknowledged, however, it is critical that future exhibition periods allow sufficient time, at least 6-8 weeks, for the preparation of a properly considered and Council-endorsed response.

Design and Place in Planning

The broad intent of the proposed SEPP to elevate, enhance and simplify design and place considerations in the NSW planning system and establish a consistent approach to design and assessment is generally supported. Council has consistently advocated for good urban design principles in various planning strategies/policies and community feedback indicates that public space and local character are regarded as being of key importance. However, experience has shown across the State that design principles are not always applied consistently in decisions and are frequently relegated in favour of shorter-term considerations.

One of the major challenges faced by regional councils is communicating the value and importance of good design to property owners, the development industry and the broader community. The design quality of the built environment, whether good or bad, can often have broad lasting effects on the community. Balancing concerns such as local character and the natural environment with the pressures that arise in a growing LGA is an ongoing consideration in Shoalhaven. As such, the higher level aspirations of the SEPP are supported but it will be crucial to see the details in the draft SEPP to properly consider its potential impact and application. It is essential that the SEPP is workable and specifically when considered alongside the ongoing planning reforms that the NSW Government is also continuing to pursue.

The new SEPP's intention to ensure place, character and Country are central to design considerations aligns in principle with Council's stated position on local character. Council supports an approach that does not inhibit development per se but ensures that new development is designed to be not only high quality but also responsive to its context and the needs and aspirations of the local community. Local character is complex and in a large and diverse LGA can be difficult to define and tends to be considered differently by the various relevant stakeholders. There is a need to ensure the variety of local character conditions in a large regional LGA like Shoalhaven are able to be recognised and promoted through existing or locally developed controls and not completely subsumed by a 'one size

fits all' State based approach. In this regard, the SEPP must not result in a further weakening of the local level design controls, such as those found in the DCP, which have often been developed in consultation with Shoalhaven's local communities.

Codes SEPP, DCPs and Local Planning

The Minister's comments that historically the introduction of new SEPPs occurs where there is a need to address 'problems' in the planning system are noted. Issues have also arisen following the standardised, fast tracked complying development process and the weakened strength of local DCP controls. The ability for Councils to encourage and influence good design outcomes in the planning process has been somewhat constrained through the expansion of complying development and provisions in the EP&A Act that have reduced DCPs to 'guidance' documents only that can be set aside. Strong DCP's are fundamental in achieving good, context driven design at the local level.

It is noted that the new SEPP is intended to interface with the Codes SEPP but the relationship between the two SEPP's is yet to be determined. It is important to examine whether the existing exempt and complying development provisions in the Codes SEPP are consistent and compatible with the place-based design aspirations of the proposed SEPP. There is a sense that the community is slowly having fewer opportunities to have a say, particularly with regard to legislative changes. The community often does not understand policy or strategic planning but do understand the impact of actual development that is proposed or built in their local area. Notwithstanding these reservations about the current application of complying development in Shoalhaven, the stated intention to better align development permitted under the Codes SEPP with the design principles of the new SEPP is generally welcomed.

Consideration needs to be given to strengthening the role that DCP's can play under the proposed SEPP as they are critical in setting and achieving local planning outcomes. DCP controls are prepared with community input and should not be further diminished by State policy. The ability to 'flexibly apply' these controls does not always result in optimal built outcomes. The flexible, principles-based approach of an overarching SEPP should not further erode the local development controls that are intended to apply. Councils must be able, where needed, to define and realise local place making aspirations and utilise controls developed for that purpose. The new SEPP should not override or reduce the strength of local planning strategies and controls such as the LSPS, Local Character provisions and DCPs but should further enable and support these provisions.

Proposed changes to existing SEPP's and guidance will be further considered when the details of the new SEPP are on exhibition when impacts can be more fully considered and any unintended consequences highlighted. Following a preliminary review of the proposed changes to the Apartment Design Guide (ADG) there is a need to consider whether minimising car parking requirements in the ADG is generally appropriate in regional areas like Shoalhaven given the practical realities of a reliance on car use and the limited public transport options available. An undersupply of car parking can result in both private and public disbenefits. Minimum or maximum car parking requirements must be tailored to local circumstances and not be 'metro-centric' in nature.

Principles Based Planning System

The direction of the five identified principles is generally supported in principle. For example, Council supports embedding resilience in design considerations where relevant. Resilience is highly relevant to Shoalhaven: bushfires, floods, and COVID have caused various economic, social and environmental impacts across the LGA. Shoalhaven's LSPS and Adaptation Plan identify resilience building as a priority for the LGA. The new SEPP and proposed Resilience Toolkit have the potential to help ensure resilience is considered through the design process but these documents must provide clarity about requirements of Councils and also applicants.

'Principles' are welcomed but further detail on how they are interpreted and applied is needed and this should be included in the SEPP and its supporting guidance. The rollout of a principles-based planning

system and its possible influence on outcomes for the built environment in Shoalhaven will be monitored and it is likely that there still be a need to also have firm design controls and metrics in place where appropriate/required that have been tailored to respond to unique local circumstances. A principles-based approach and flexibility should enable the application of these tailored controls for local development, not entirely set them aside.

Simplifying and Consolidating Policies and Guidance

Council has previously expressed concern over the proliferation of new SEPP's and guidelines and therefore supports efforts to simplify the current NSW planning system through consolidation or reduction of the number of SEPPs.

Whilst it is appreciated that this is a work in progress, the status of some existing design guidance documents that are relevant to Shoalhaven, such as Urban Design for Regional NSW and Coastal Design Guideline (draft), is unclear in the EIE. Thus, Council would like clarity on how the SEPP relates to or operates with existing and proposed guidelines to avoid any confusion. Ideally a further rationalisation of these and other guidelines or policies currently in operation will occur and they could be included in one clear Urban Design Guide (UDG).

There is also concern that the new SEPP could place additional compliance burdens on Council officers and add to an already complex planning framework in NSW. The release of the draft SEPP later in the year will provide an opportunity to consider whether this reform makes the planning system more complex/challenged or assists and is of value to the system.

Assessment, Engagement and Resourcing

It is acknowledged that the additional requirements for assessment could be instrumental in achieving better design outcomes in Shoalhaven. However, there is a need to consider resourcing for those Councils who do not have design specialists (architects, urban designers or other design professionals) on staff.

Councils Development Assessment Planners often currently do not have the required expertise or practical design skills to meet the proposed design review requirements being considered for the SEPP. Council currently already bears additional costs obtaining independent advice from external urban design consultants. The Department may need to consider providing funding for Council positions or the establishment of a pool of appropriately qualified design professionals to meet this resourcing gap for regional (or other applicable) Councils. The Council Joint Organisations may be a mechanism to help deliver this. In the formation of any future Design Review Panel, consistent guidance via the Design Review Guide will be helpful, although input from Council as to the thresholds for design review would also be appropriate in Shoalhaven, rather than a State-wide one size fits all approach. Other information or resources to assist assessment staff may also be required and would be welcomed.

If the SEPP includes a new requirements for engagement with Aboriginal groups, consideration must be given to the additional burden this will place on these groups and any organisations representing Aboriginal voices. Council broadly supports the creation of opportunities to integrate Aboriginal perspectives in built environment projects and to engage with and utilise Indigenous knowledge in place making across Shoalhaven. However, recent feedback from Local Aboriginal Land Councils (LALCs) in Shoalhaven has indicated that these organisations are operating in a resource constrained environment and already under significant pressure to provide responses to current development proposals and a range of other matters. Increasing the consultation burden on LALCs is likely to exacerbate this situation and the Department should also give consideration as to how this pressure may be ameliorated.

The SEPP should not impose unreasonable burdens and costs on development. It is noted that further testing and detailed economic analysis will also be undertaken in the drafting of the SEPP. Robust feasibility analysis would be welcomed and an important tool in promoting the benefits of the SEPP to developers operating in Shoalhaven. Just as there is a need to practise sustainability with regard to the natural environment, there is also a need to sustain economic growth and a viable local construction industry.

Conclusion

It is important that the proposed draft SEPP is publicly exhibited and made available with sufficient time to comment (at least 8 weeks due to the scope), as the technical detail is where many of the unintended consequences of proposed legislation could lie and can be picked up.

Thus Council again requests that this and other future planning reform exhibitions/consultations allow sufficient time to fully consider the material presented and obtain endorsement from the elected Council for a submission.

The EIE provides a high-level overview of the proposed SEPP with several key elements yet to be fully determined. It is not possible to comment with any certainty on the efficiency or future operation of the proposed SEPP, nor can any future challenges or issues be fully assessed at this level of detail. We also note that there appears to be only a short, albeit unspecified, window between exhibiting the draft SEPP and its finalisation by the end of 2021. An additional workshop or presentation delivered to Council staff before the SEPP is made might also enable closer interrogation of detailed provisions to better understand any potential unintended planning implications.

Thank you again for the opportunity to comment on the EIE for the proposed Design and Place SEPP. Council appreciates the Department and Government Architect's consideration of the comments made in this submission and looks forward to seeing the draft SEPP. We remain available to discuss the content of this submission further, if required in the meantime.

DE21.29 Wetland Walking Tracks CL20.308

HPERM Ref: D21/69683

Department: Environmental Services
Approver: Phil Costello, Director - City Development

Attachments:
1. Preliminary Design Plans - Bherwerre Wetland ⇩
2. Bherwerre Wetland Concept Plan ⇩

Reason for Report

This report is submitted in response to CL20.308 Notice of Motion – Wetland Walking Tracks, Ordinary Meeting 15 December 2020, where it was resolved:

That Council:

1. Staff prepare a briefing on the potential to increase public access to appropriate wetland areas including Bherwerre Wetlands and the wetland adjacent to the Marketplace at Vincentia as well as the entire Shoalhaven; and
2. Investigate what grants might be available to do so and what collaboration would be necessary with the State Government.

DE21.29

Recommendation (Item to be determined under delegated authority)

That Council:

1. Note the report and await the outcome of the reclassification of the Bherewerre Wetlands site.
2. Await representations from community groups and/or from Council staff on areas that may be enhanced by the construction of wetland boardwalks.

Options

1. Council note the Report.

   Implications: Nil

2. Council determine another course of action.

   Implications: Unknown

Background

This report is submitted in response to CL20.308 Notice of Motion – Wetland Walking Tracks, Ordinary Meeting 15 December 2021.

The wetland adjacent to the Marketplace Vincentia (now named HOME CO Vincentia) is privately owned land. Any decision regarding activity on this land would need to be made by the owner and proceed through the usual Council approvals process.

DE21.29

Under the Shoalhaven Local Environment Plan 2014, this land is zoned E2 Environmental Conservation.

Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural, or aesthetic values.
- To prevent development that could destroy, damage, or otherwise have an adverse effect on those values.
- To protect water quality and the ecological integrity of water supply catchments and other catchments and natural waterways.
- To protect the scenic, ecological, educational, and recreational values of wetlands, rainforests, escarpment areas and fauna habitat linkages.
- To conserve and, where appropriate, restore natural vegetation in order to protect the erosion and slippage of steep slopes.

Development which is permitted with consent [in zone E2]

Bed and breakfast accommodation; Boat sheds; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Home businesses; Oyster aquaculture; Recreation areas; Research stations; Roads; Sewerage systems; Water recreation structures; Water supply systems.

Bherwerre Wetland

The Bherwerre Wetland currently has no formalised walking tracks through the area. The attached Preliminary Design Plans – Bherwerre Wetland (Attachment 1) is based on the

original concept plan developed by the community, with support of Council staff. Council endorsed the Bherwerre Wetland Concept Plan (Attachment 2) as the basis for future negotiations regarding the wetland at the Strategy and Assets Committee meeting on 16 May 2017.

In December 2019, Council was awarded grant funding via the Restart NSW Infrastructure Grant. This funding, together with funding from Council and the Ulladulla Local Aboriginal Land Council will fund seven sustainable tourism projects across the Shoalhaven. One of those projects is the Bherwerre Wetland Project. The budget for this project will be funded by the Restart NSW Grant (76%) and by Council (24%).

Work on this project has commenced and the original concept drawing has been further developed (Attachment 1). Design work is currently 95% complete.

Proposed works, subject to tendered rates received, include:

- Approximately 395m of 2.0m wide accessible low-level boardwalk, compliant with AS1428 (suitable for wheelchair access)
- Approximately 1200m of 1.2m wide low-level boardwalk
- Approximately 80m of aggregate pathways.
- A gravel carpark
- Seating and viewing platforms.
- Interpretive signage.

In addition, an Aboriginal study and Aboriginal Heritage Impact Permit (AHIP) application has been lodged and geotechnical work has been undertaken. The proposed completion date is November 2021; however, this is subject to the issue of the AHIP permit, which can take six to twelve months. The grant deadline for completion the project is December 2023.

The current grant funded project scope was derived from the original concept plan. Infrastructure included in the concept plan is aimed at minimising environmental impacts, enhancing the visitor experience, and protecting the wetland by encouraging users to remain on designated pathways and boardwalks.

The reclassification of the land encompassing the Bherwerre Wetland is currently being investigated. The land is classified as operational and a report to Council recommending reclassification of the land as Community Land – Wetland was deferred, requiring further information. When this report is received by Council and the outcome of the reclassification is determined, it is intended to prepare a Councillor Briefing on Bherwerre Wetland.

In regard to the remainder of the Shoalhaven local government area, Council manages a bushwalk network of 32 individual walks totalling 44km in distance.

All walks are well utilised, especially those within proximity to urban areas, such as Bens Walk, Basin Walk, Warden Head, Orient Point, One Track for All, Mahogany Creek, Mulgen Creek, and Vincentia Coastal Walk.

The bushwalks showcase the Shoalhaven's ecological diversity and allow the public the opportunity to experience it in a number of settings:

Rainforest	Wetlands*	Creek line (riparian)	Headland
Wilsons Walk	Orient Point	Mahogany Creek	Warden Head
Milton Rainforest	Callala Bay	Bens Walk–Nowra Creek	Crookhaven Heads
Condies-Bangalee	Narrawallee	Bomaderry Creek	North Head – One Track for All
Bundawallah	Burrill Lake	Mulgen Creek	Thompsons Point
	Bawley Point		Bendalong
			Cunjurong Point
			Bannister Head
			Ohara Head

Coastal foreshore	Forest	Lakes	River
Narrawallee	The Grotto	Basin View	The Grotto
Dunes-Shoalhaven Heads	Moeyan Hill	Basin Walk	Bens Walk
Vincentia Coastal	Weirs walk	Hazel Rowbotham	
Murramarang Coastal Walk	Forest-Bangalee		
	Lake Wollumboola		
	Garrad Reserve		

*Current wetland bushwalks, incorporating both boardwalks and track network, totals 5.25km.

Community Engagement

In the case of the Bherwerre Wetlands, Council has been engaged with the Basin Community Forum throughout the design phase and will continue to do so until the project is delivered.

In relation to the other wetlands boardwalks, Council has engaged with the local community groups and received feedback from them.

Policy Implications

Natural areas, other Council policy and relevant legislation adequately support future expansion of the boardwalk network as and when needed.

Financial Implications

Projects are only commenced when funding is available. Grant streams change from time to time due to Commonwealth and State government priorities.

The NSW Environmental Restoration and Rehabilitation Grants, for example, allow communities, councils, and other government organisations the opportunity to apply for different grant funding streams based upon their level of grant project management experience and/or capacity for projects that achieve long-term outcomes for the NSW environment. This grant has been offered each year for a number of years. This practice is expected to continue.

Council has been able to demonstrate its ability over time to deliver quality outcomes for the community and the environment.

This grant program which is conducted annually will open later this year and will be finalised by the end of 2021 calendar year.

The purpose of the scheme is to assist community and government organisations to contribute to the ongoing sustainable management and stewardship of significant environmental assets and services in NSW. In previous years applications were required to address key outcomes from the NSW Environmental Trust Strategic Plan 2020-24 namely:

- supporting threatened species recovery
- addressing climate change impacts on the natural environment – both mitigation and adaptation.

Council is identified as one of those with a good record in delivering positive outcomes in this space. Grants of up to $170,000 for project timeframes of 3-4 years have been available in the recent past.

These grants, if successful, could be applied to projects that focus specifically on “Upgrading or rationalisation of existing tracks that are causing degradation on sites of high conservation value”. Department of Planning, Industry & Environment, Environmental Restoration and Rehabilitation 2020 Program Guidelines, NSW Environmental Trust.

Ongoing maintenance of these types of facilities needs to be considered in Council budgets going forward, as grant funding is not generally available for this purpose.

Financial aspects of the Bherwerre Wetland will be made available when tenders have been let for works to commence.

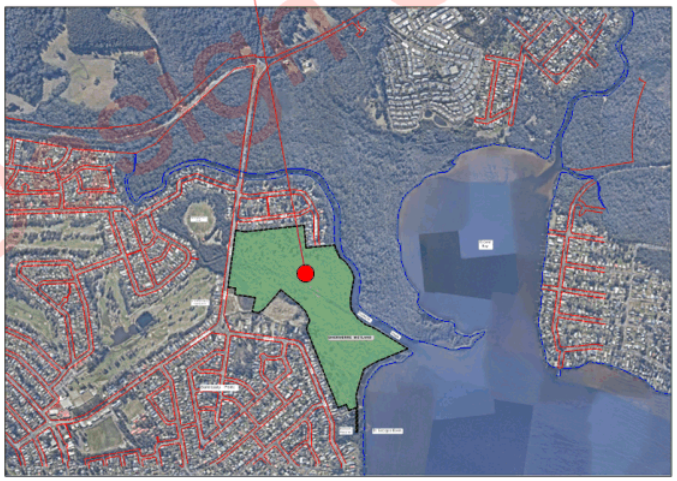
Shoalhaven City Council

Sanctuary Point - Bherwerre Wetland Sustainable Tourism Grant Project D4

List of Drawings

Drawing Number	Drawing Title
5384_05	Title Sheet / Locality Plan
5384_06	Index Sheet
5384_07	Detail Area 1 - Larmer Ave Entrance
5384_08	Detail Area 2 - Park Road Carpark Concept Plan
5384_09	Detail Area 3 - Accessible Boardwalk and Seating Area
5384_10	Detail Area 4 - Viewing Platform
5384_11	Detail Area 5 - Bridge Crossing
5384_12	Detail Area 6 - Platform 2
5384_13	Typical Path Details (sheet 1 of 2)
5384_14	Typical Path Deatils (sheet 2 of 2)

Sanctuary Point - Bherwerre Wetland
Sustainable Tourism Grant Project D4
Site Location



Locality Plan - Aerial Photo

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ISSUES & AMENDMENTS
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Shoalhaven City Council

CITY OF SHOALHAVEN
Sanctuary Point - Bherwerre Wetland
Sustainable Tourism Grant Project D4
Title Sheet / Locality Plan

SCALE: 1:10,000 for A1 size sheet, 1:20,000 for A3 size sheet
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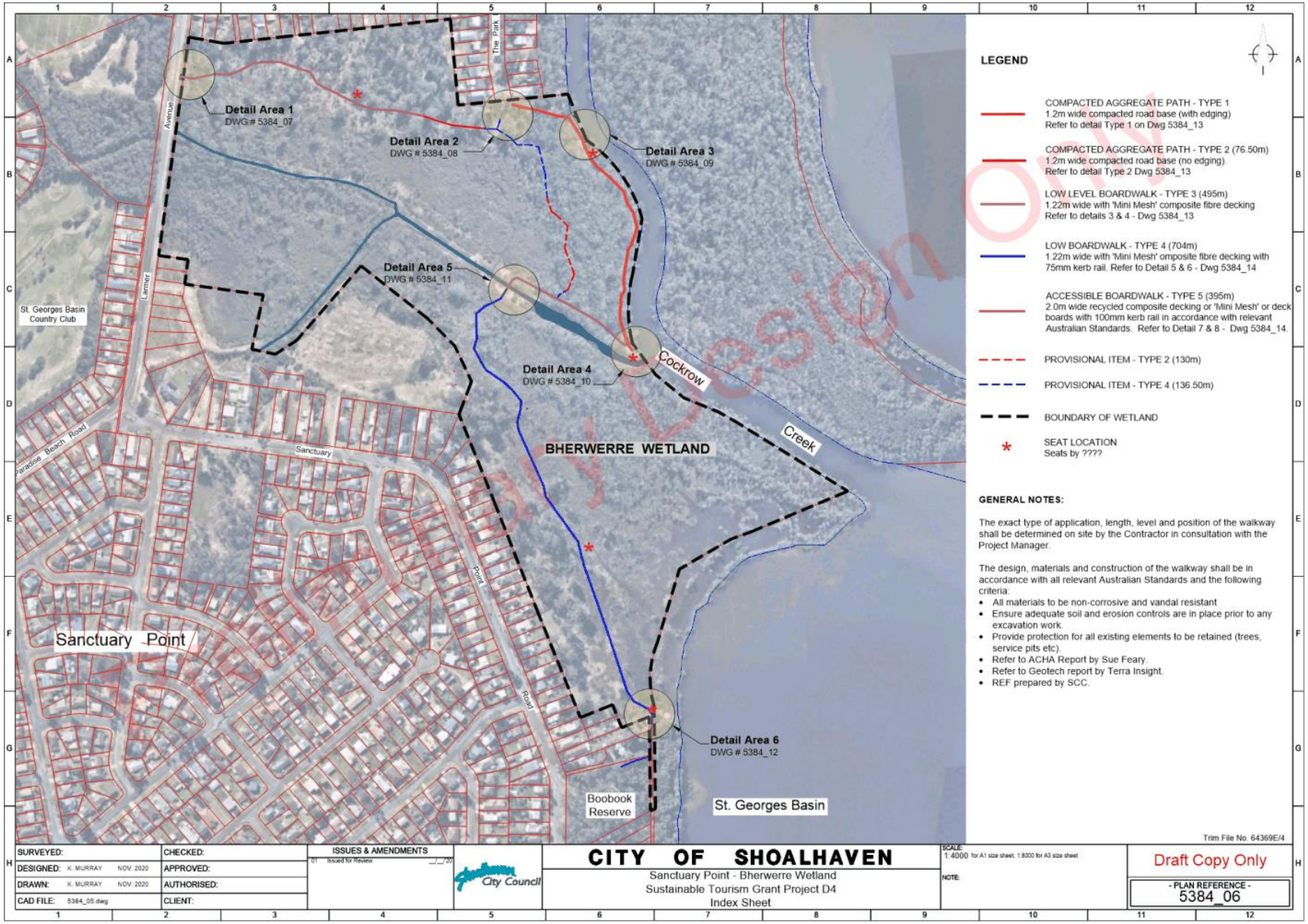

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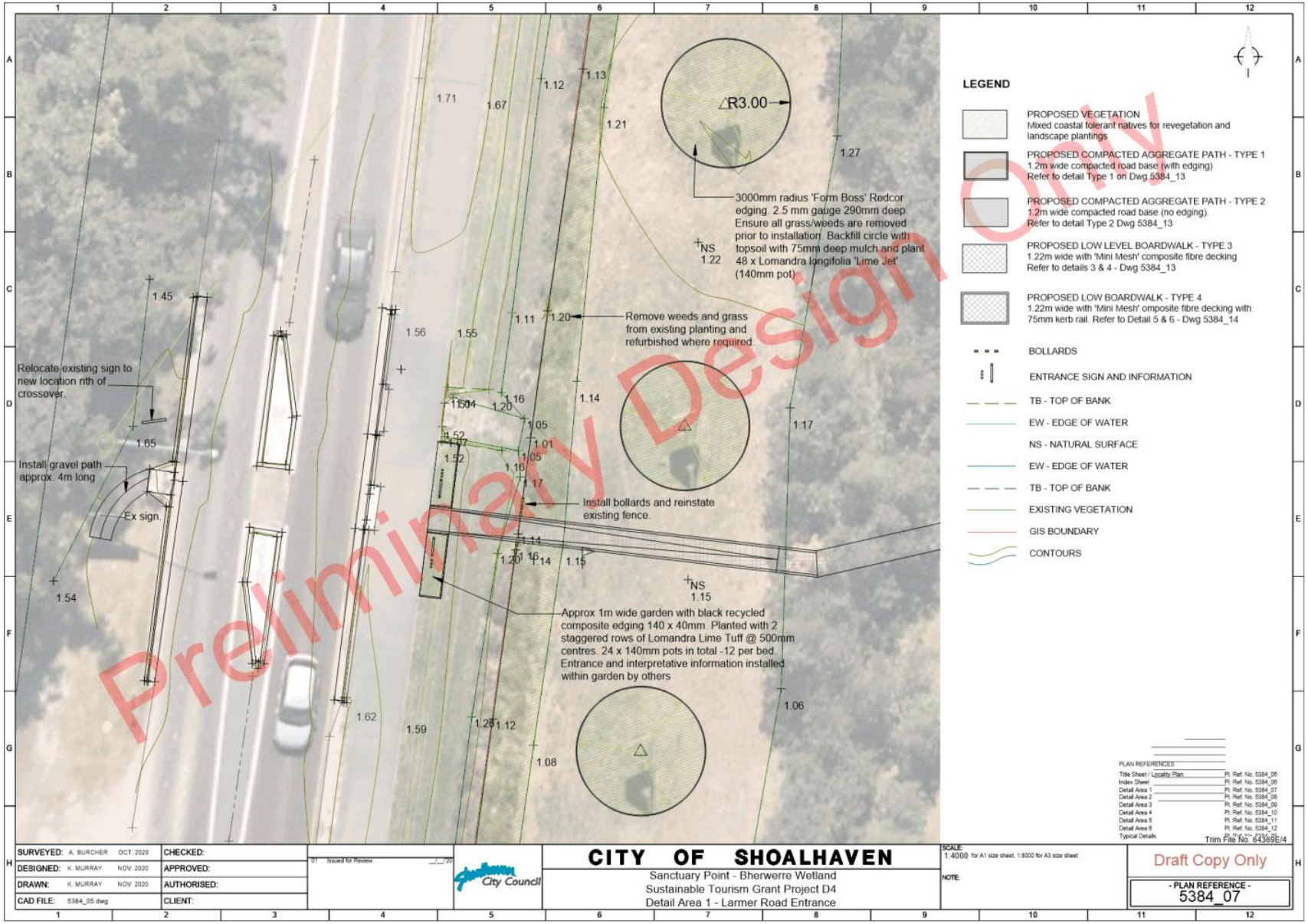

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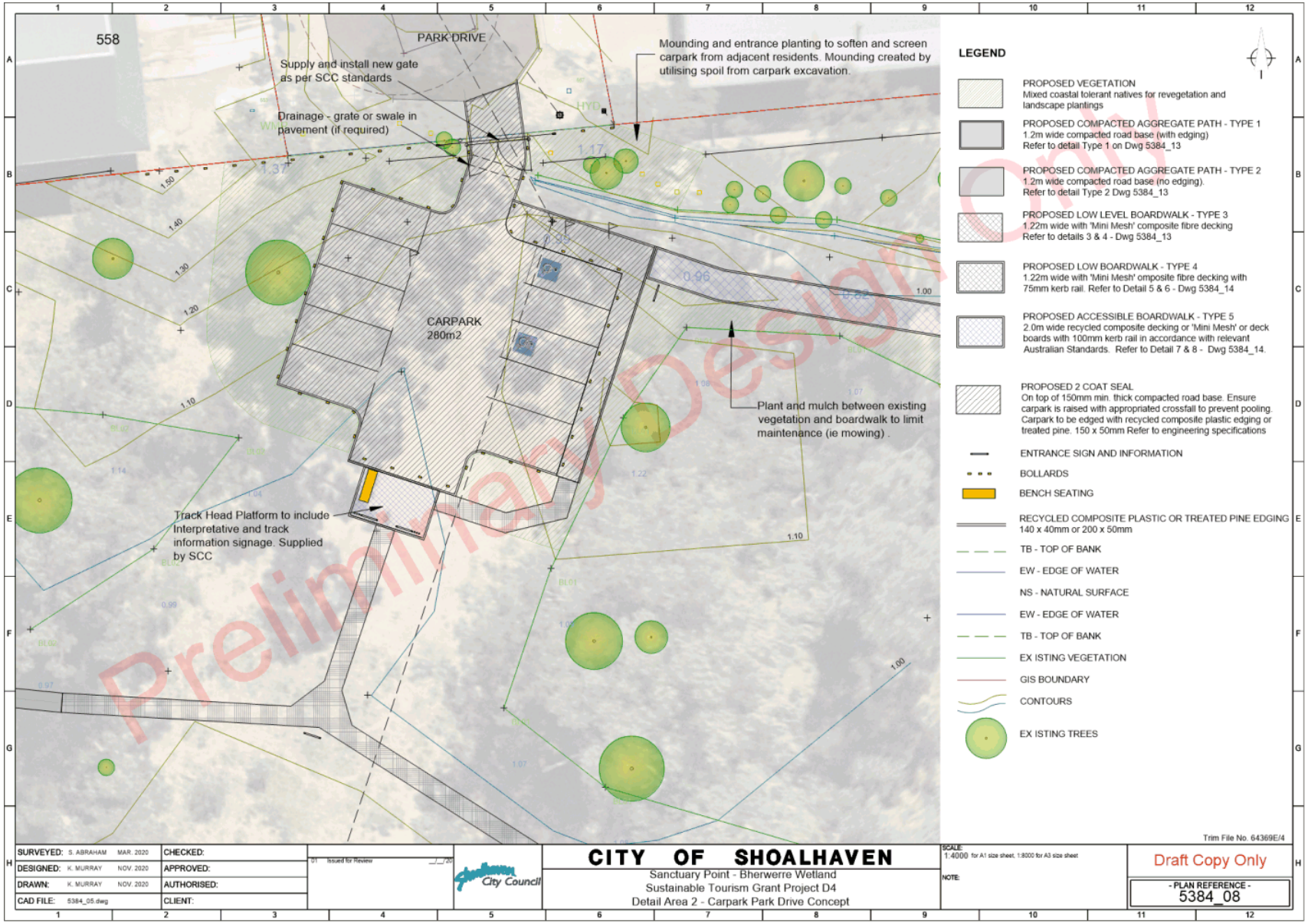

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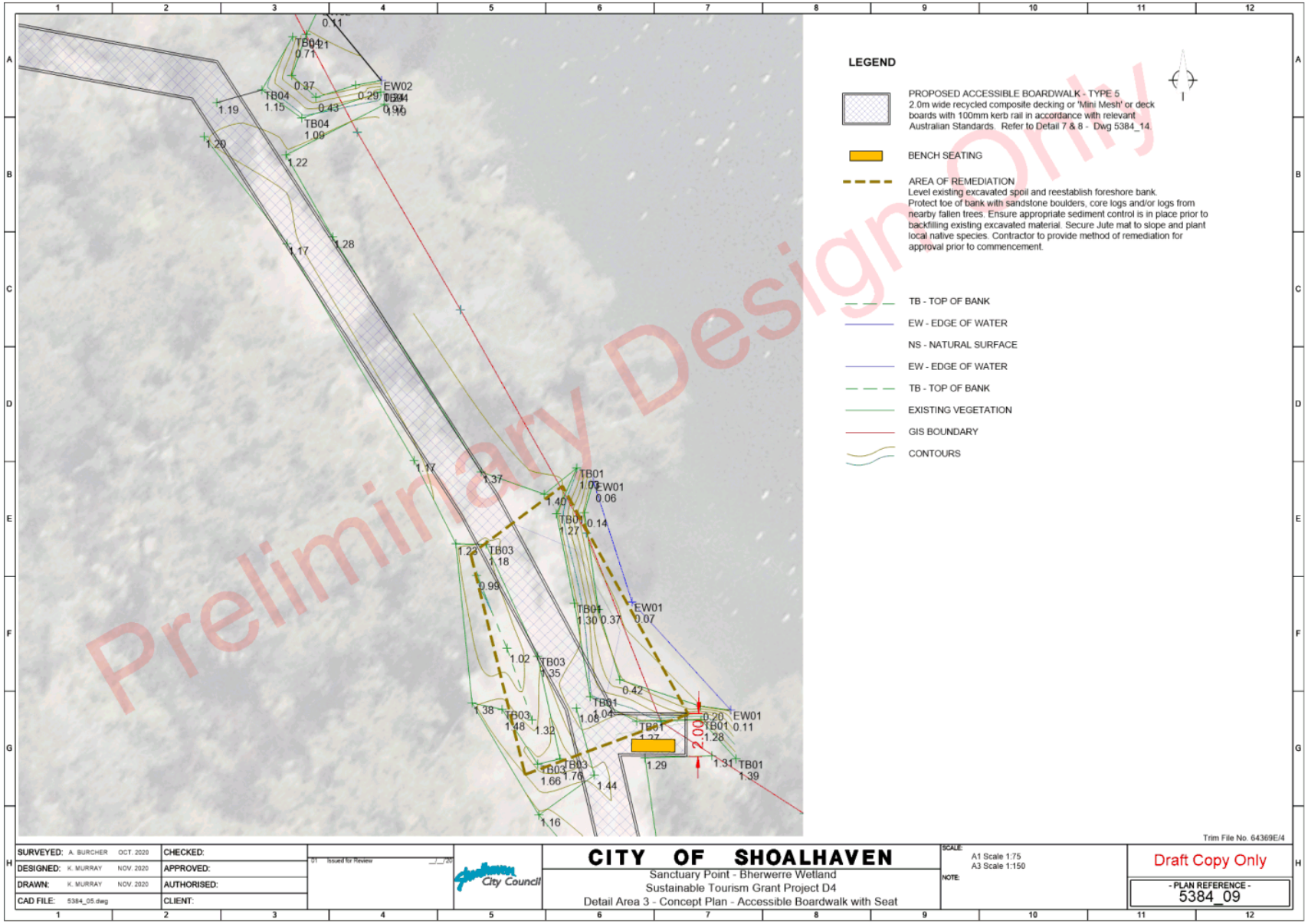
LEGEND
PROPOSED ACCESSIBLE BOARDWALK - TYPE 5
2.0m wide recycled composite decking or 'Mini Mesh' or deck boards with 100mm kerb rail in accordance with relevant Australian Standards. Refer to Detail 7 & 8 - Dwg 5384_14.
BENCH SEATING
AREA OF REMEDIATION
Level existing excavated spoil and reestablish foreshore bank. Protect toe of bank with sandstone boulders, core logs and/or logs from nearby fallen trees. Ensure appropriate sediment control is in place prior to backfilling existing excavated material. Secure Jute mat to slope and plant local native species. Contractor to provide method of remediation for approval prior to commencement.
TB - TOP OF BANK
EW - EDGE OF WATER
NS - NATURAL SURFACE
EW - EDGE OF WATER
TB - TOP OF BANK
EXISTING VEGETATION
GIS BOUNDARY
CONTOURS
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CITY OF SHOALHAVEN
Sanctuary Point - Bherwerre Wetland
Sustainable Tourism Grant Project D4
Detail Area 3 - Concept Plan - Accessible Boardwalk with Seat
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A3 Scale 1:150
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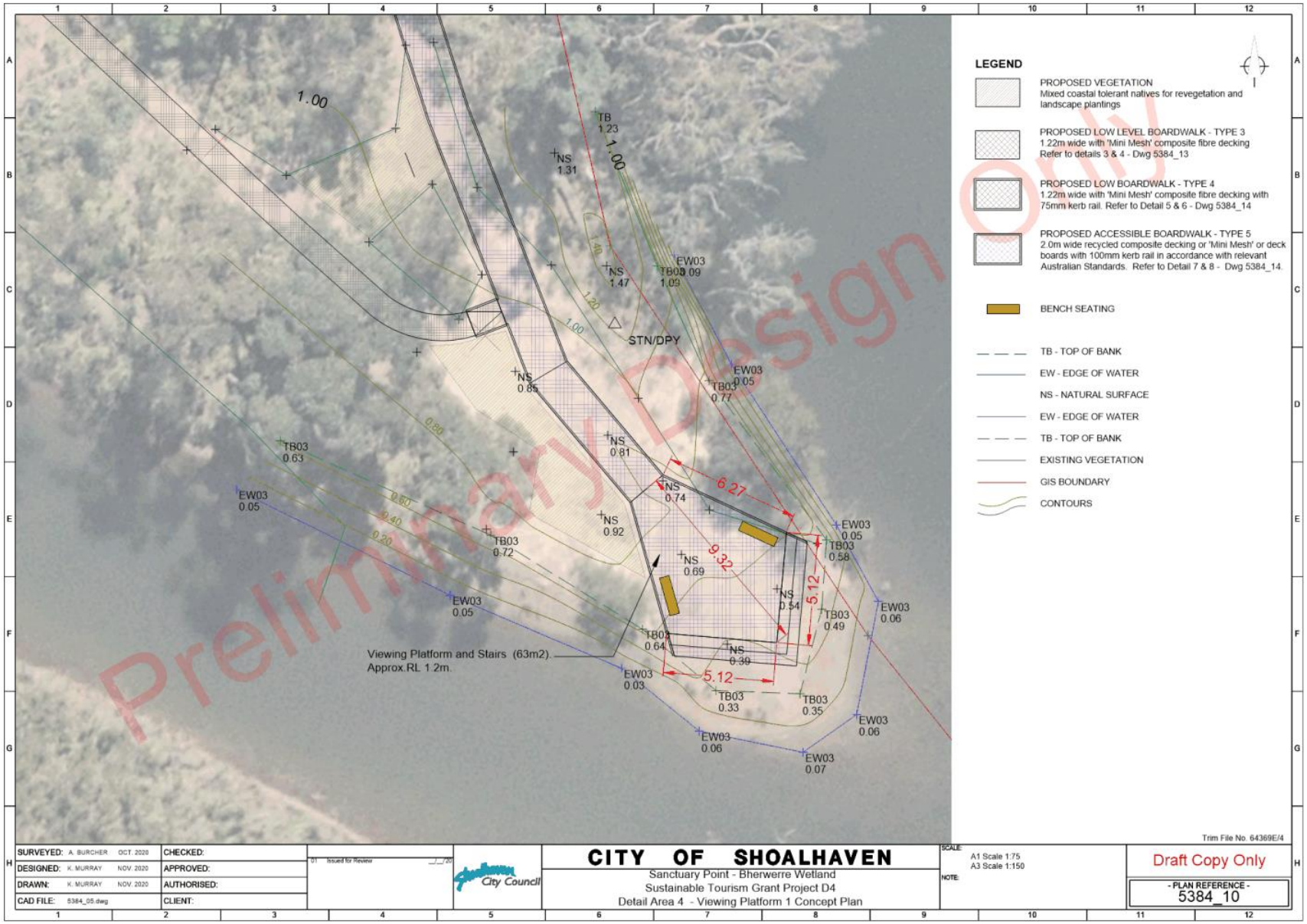

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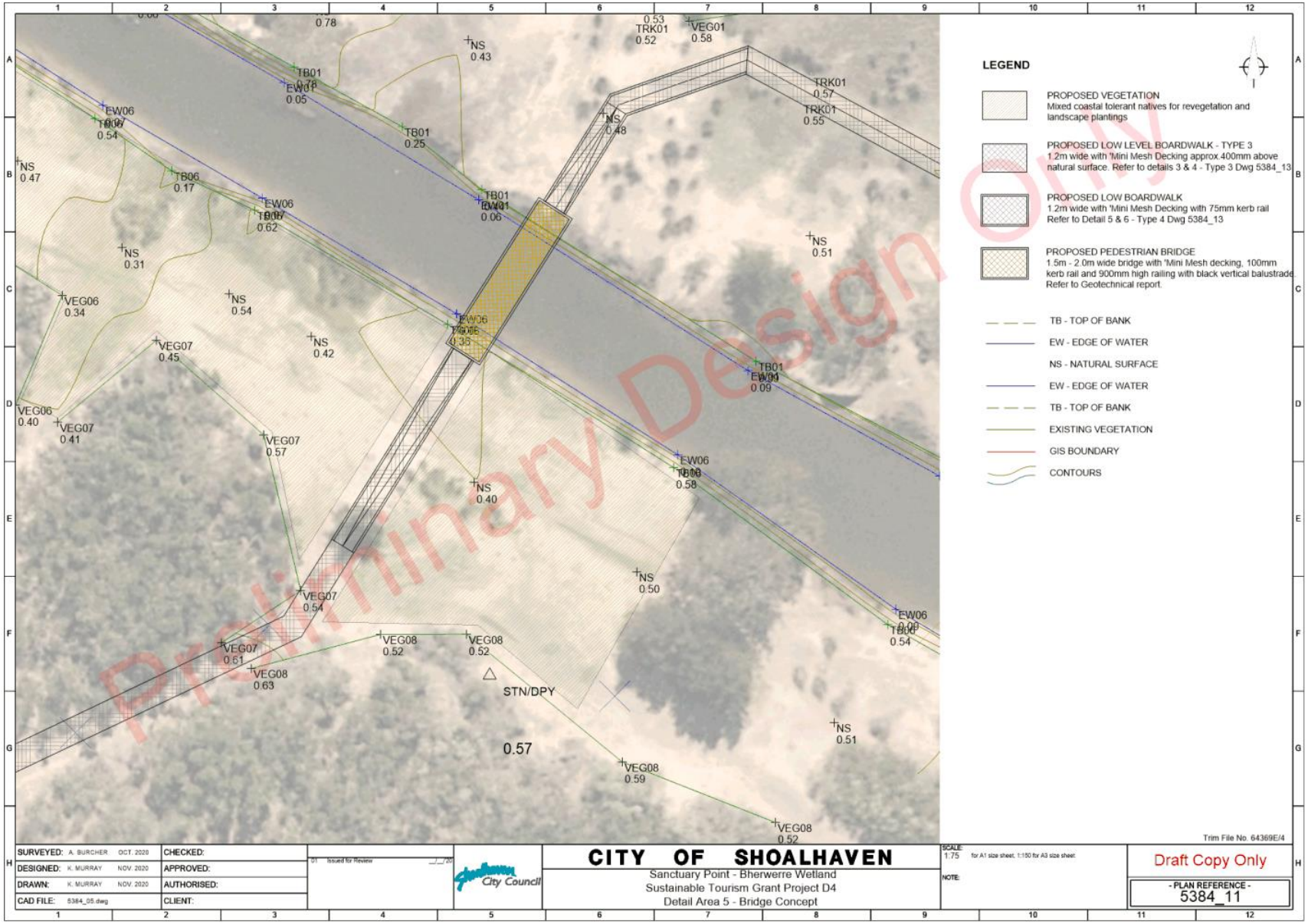

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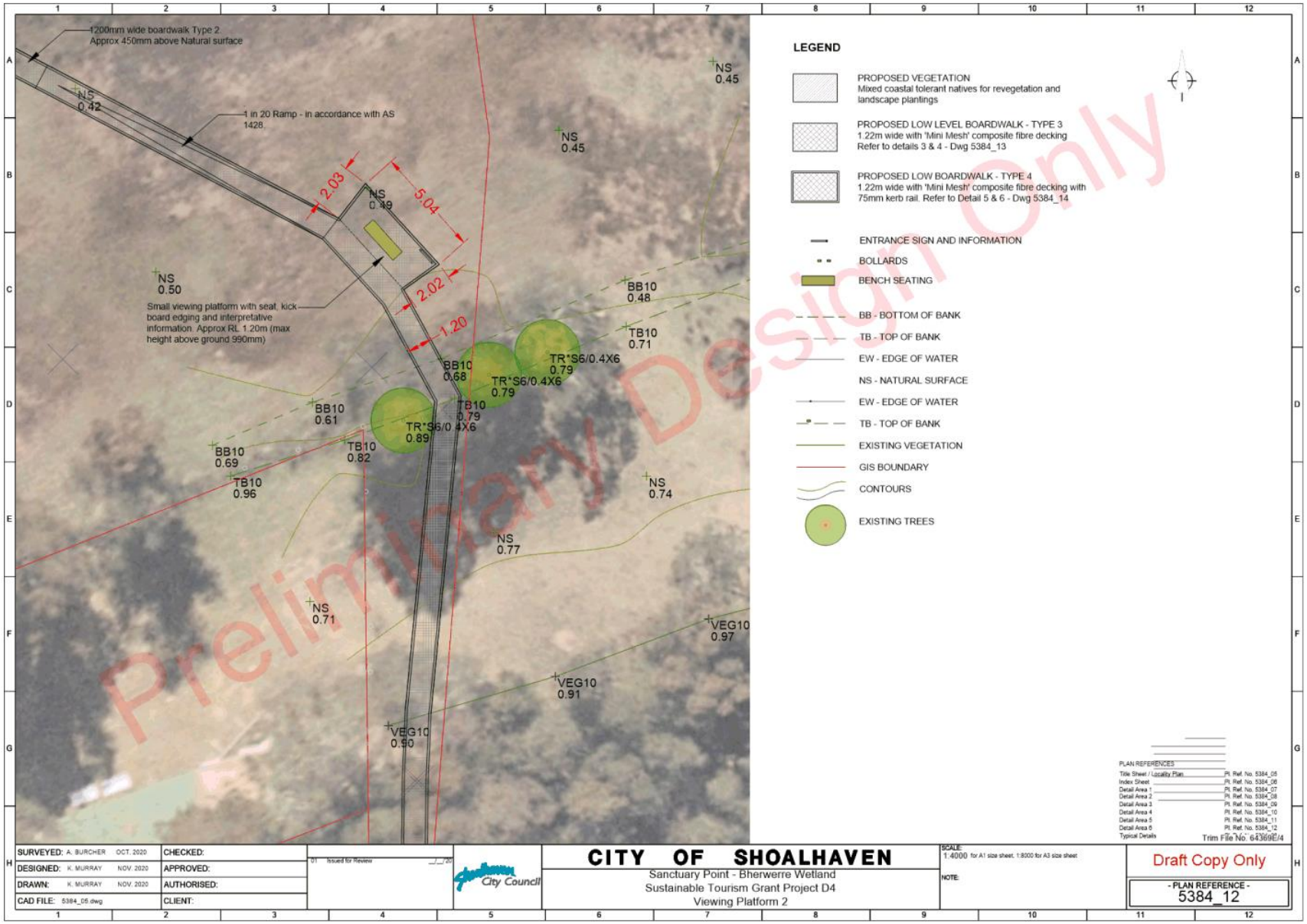

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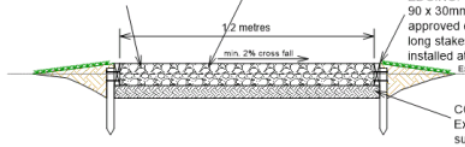

1 Typical Section: TYPE 2 - Compacted Aggregate Path with Edging
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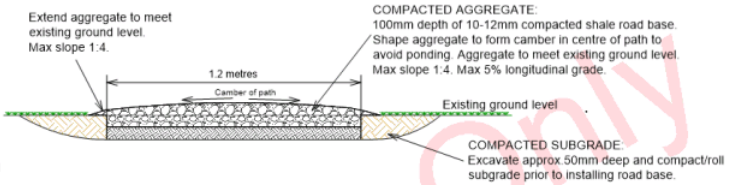

2 Typical Section: Type 2 - Compacted Aggregate Path
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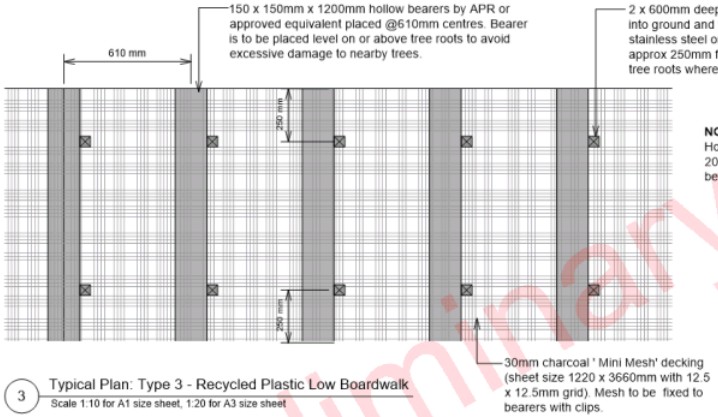

3 Typical Plan: Type 3 - Recycled Plastic Low Boardwalk
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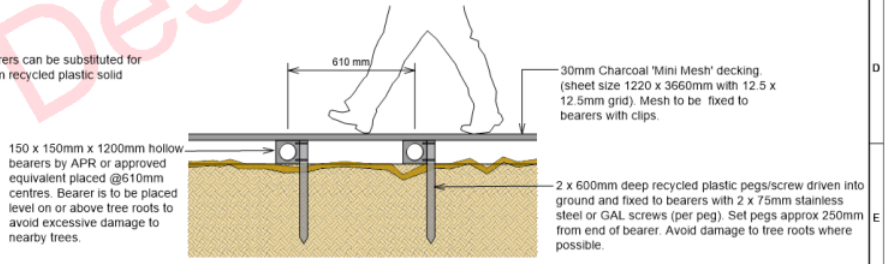
NOTE:
Hollow bearers can be substituted for 200 x 50mm recycled plastic solid bearers



4 Typical Section: Type 3 - Recycled Plastic Low Boardwalk
Scale 1:10 for A1 size sheet, 1:20 for A3 size sheet

GENERAL NOTES:

These Typical Details show indicative options for the proposed walkways Types 1-3. Refer to plan 5385_06. The exact type of application, length, level and position of the walkway shall be determined on site by the Contractor in consultation with the Project Manager.

The design, materials and construction of the walkway shall be in accordance with all relevant Australian Standards and the following criteria:

- All materials to be non-corrosive and vandal resistant
- Ensure adequate soil and erosion controls are in place prior to any excavation work.
- Provide protection for all existing elements to be retained (trees, service pits etc).
- Refer to ACHA Report by Sue Feary.
- Refer to Geotech report by Terra Insight.
- REF prepared by SCC.

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CITY OF SHOALHAVEN
Sanctuary Point - Bherwerre Wetland
Sustainable Tourism Grant Project D4
Typical Details - Sheet 1 of 2

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NOTE:

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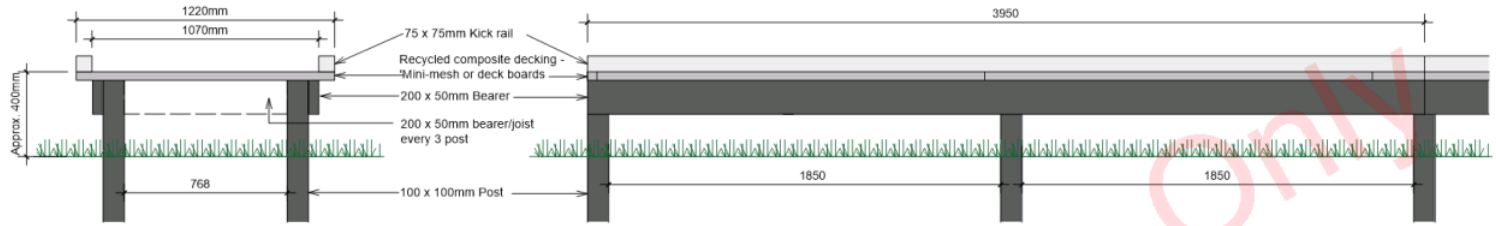


5 Typical Section: Type 4 - Recycled Composite Plastic Boardwalk

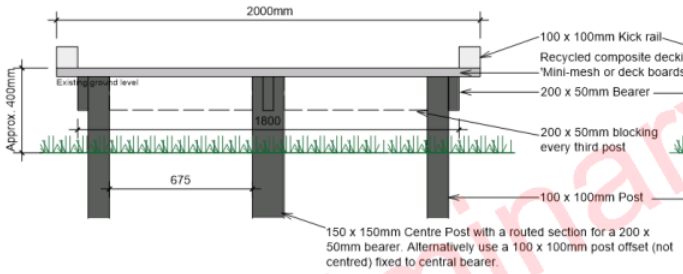
Scale 1:10 for A1 size sheet, 1:20 for A3 size sheet

NOTES

- This is an indicative detail to show design intent of the boardwalk where the bearers and joist are one. The detail will need to be structurally designed and certified in accordance with Australian Standards, manufacturers materials, specifications and site conditions.
- All materials to be recycled composite products, non-corrosive and vandal resistant

6 Typical Elevation: Type 4 - Recycled Composite Plastic Boardwalk

Scale 1:10 for A1 size sheet, 1:20 for A3 size sheet



7 Typical Section: Type 5 - Accessible Recycled Composite Plastic Boardwalk

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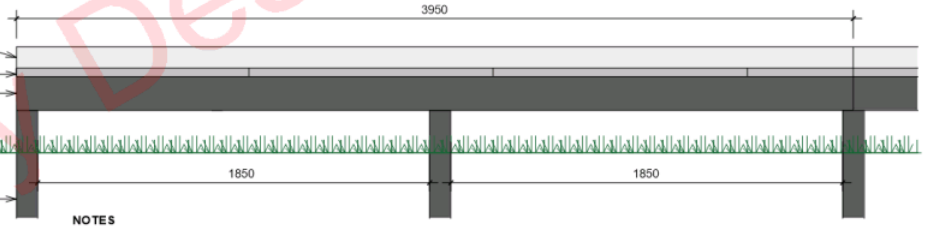

NOTES

- This is an indicative detail to show design intent of the boardwalk where the bearers and joist are one. The detail will need to be structurally designed and certified in accordance with Australian Standards, manufacturers materials, specifications and site conditions.
- All materials to be recycled composite products, non-corrosive and vandal resistant

8 Typical Elevation: Type 5 - Accessible Recycled Composite Plastic Boardwalk

Scale 1:10 for A1 size sheet, 1:20 for A3 size sheet

GENERAL NOTES:

These Typical Details show indicative options for the proposed walkways Types 4&5. Refer to plan 5385_06. The exact type of application, length, level and position of the walkway shall be determined on site by the Contractor in consultation with the Project Manager.

The design, materials and construction of the walkway shall be in accordance with all relevant Australian Standards and the following criteria:

- All materials to be non-corrosive and vandal resistant
- Ensure adequate soil and erosion controls are in place prior to any excavation work.
- Provide protection for all existing elements to be retained (trees, service pits etc).
- Refer to ACHA Report by Sue Feary.
- Refer to Geotech report by Terra Insight.
- REF prepared by SCC.

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Shoalhaven City Council

CITY OF SHOALHAVEN

Sanctuary Point - Bherwerre Wetland
Sustainable Tourism Grant Project D4
Typical Details (Sheet 2 of 2)

SCALE: As Shown

NOTE:

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Bherwerre Wetland - A Community Concept 3

DE21.29 - Attachment 2

DE21.30 Draft Collingwood Beach Dunecare Action Plan

HPERM Ref: D21/93736

Department: Environmental Services
Approver: Phil Costello, Director - City Development

Attachments:
1. Collingwood Beach Dunecare Action Plan (under separate cover) ⇨
2. Collingwood Beach Maintence Standard for cycleways and beach accessways ⇩

Reason for Report

To put forward the draft Collingwood Beach Dunecare Action Plan and report on progress in implementing the outcomes of resolution MIN20.927 following the tabling of the final report on Collingwood Beach Dune Vegetation Two-Year Trial Action Plan at the Development & Environment Committee of the 1 December 2020 and subsequent resolutions from the Ordinary Meeting of 15 December 2020.

MIN 20.297 RESOLVED.

That Council:

1. *Support the preparation of the Collingwood Beach Dunecare Action Plan to guide the work of the Collingwood Beach Dunecare Group under Council's Bushcare Program and completed within four months. Such plan to be in accordance with the NSW Coastal Dune Management manual and the NSW Coastal Management Act 2016. This plan will be supported by Council's 2020 Collingwood Beach Coastal and Estuary Grant, should it be successful.*
2. *Allocate $37,700 in the 2021/22 budget for Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.*
3. *Allocate a dedicated annual budget of $15,000 from 2021/22 onwards to continue to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven, noting the type of replacement trees planted in the dune from Susan Street to Albion Street must be on the approved revegetation species list in the Collingwood Beach Dunecare Action Plan.*
4. *Allocate additional funding for annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year for Collingwood Beach.*
5. *Undertake an audit of the stormwater outlets, shared pathway and accessways along Collingwood Beach to inform the Coastal Management Program to maintain the resilience of the dune and identify any future maintenance works that are required.*
6. *Submit a grant immediately under the CZMP funding opportunities for the implementation of the storm water discharge concept proposed by City Services, with the responsibility for all matters relating to the dunes of Collingwood Beach be transferred to City Services.*
7. *Receive the Final Report – Collingwood Beach Dune Vegetation Action Two Year Trial Plan for information*
8. *Re-endorse the Council resolution on February 11, 2020 (subject to a Recission Motion Council Meeting February 25, 2020 - defeated), that Council immediately remove all banksia root suckers, seedlings and saplings, and:*

a. *This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual and Council's publicly displayed acknowledgement the houses are built on the hind dune.*

b. *This resolution is to be included in the proposed Collingwood Beach Dune Vegetation Plan with the removal of the new growth banksia to be replaced with species from the list prepared for replanting as undertaken in Trial Site 1 and in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual.*

9. *Tall tree species that potentially endanger people, residences and infrastructure will not be planted particularly in unstable foredune areas.*
10. *All deadwood will be removed from Collingwood Beach Dune areas.*
11. *Undertake within the next 3 months further pruning and thinning of Banksia's where thickets occurring from Susan Street to the north to Ilfracombe Ave.*

DE21.30

Recommendation (Item to be determined under delegated authority)

That Council;

1) Adopt the Collingwood Beach Dunecare Action Plan (see attachment 1).
2) Endorse the Collingwood Beach maintenance standard for cycleways and beach accessways (see attachment 2).
3) Note that $37,700 has been allocated in the 2021/22 budget as Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.
4) Note that $15,000 has been allocated in the 2021/22 Operational Budget and onwards to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven.
5) That replacement trees planted will be on the approved re-vegetation species listed in the Collingwood Beach Dunecare Action Plan. (attachment 1)
6) Note that Council is awaiting advice from the Department of Planning Industry and Environment on the outcome of its grant application in relation to preparation of the Jervis Bay CMP.

Options

1) Adopt the recommendation as presented.

   Implications: This will progress action regarding implementation of the Dunecare plan and cycleway maintenance.

2) Not adopt the Recommendation
   Implications: This will prevent the implementation of the draft plan and strategy.

3) Determine an alternate course of action.

   Implications:

   Unknown

Background

Council's resolution noted receipt of the Final Report – Collingwood Beach Dune Vegetation Action Two Year Trial Plan. The document informed development of the Collingwood Beach Dunecare Action Plan and the Maintenance standard for cycleways and beach accessways.

Council's resolution supported preparation of the Dunecare Action Plan to guide the work of the Dunecare group. The plan acknowledges the principles of the NSW Coastal Dune Management manual and legislative framework on the Coastal Management Act 2016.

The Dunecare Action Plan incorporates Council's resolutions for "the removal of the new growth banksia to be replaced with species from the list prepared for replanting [in the Plan] in accordance with the NSW Coastal Management Act 2016 and the NSW Coastal Dune Management Manual".

In accordance with the resolution, "Tall tree species that potentially endanger people, residences and infrastructure will not be planted particularly in unstable foredune areas". Additionally, the requirement that "All deadwood will be removed from Collingwood Beach dune areas will be achieved by mulching smaller material on site and, if practicable, removal of larger material".

Management of banksias will commence when funds are available in the maintenance budget for the area in accordance with the Collingwood Beach Dunecare Action Plan, and the NSW Coastal Dune Management Manual.

a. Banksia root suckers and seedlings will be selectively removed from the area.
b. Selective pruning of banksias will occur, with the aim of improving the health and growth of these plants.
c. Shrub pruning will selectively occur with the aim of improving the health and growth of these plants.
d. All pruning to be undertaken in accordance with AS 4373 (2009), *Pruning of amenity trees*.
e. All pruning debris will be mulched were practicable and be retained on site.

The maintenance standard for cycleways and beach accessways will ensure that the Dunecare group and Council staff are aware of the requirements for these areas. Most of the work will be carried out by Council staff or contractors.

Staff from Environmental Services and Works and Services have inspected the site and reviewed the condition of the shared pathways and beach accessways. These areas will be maintained in keeping with the requirements of Collingwood Beach maintenance standard.

Council's Works and Services Department has allocated an annual vegetation, cycleway and beach accessway maintenance budget for works in the area. This will allow for at least three maintenance events each year at Collingwood Beach, in accordance with the maintenance standard.

Stormwater management will to be captured in the Jervis Bay CMP as a management objective. The CMP will be developed and certified over the coming 12-18 months. Once certified the pathway for funding under the Coast and Estuary Grant scheme is more secure.

Works and Services will prepare a separate report on the stormwater outlets once the audit is complete.

Species selection and maintenance regime

It should be noted that planting of the foredune is limited to species contained in the Collingwood Beach Dunecare Action Plan and the NSW Coastal Dune Management Manual.

Council will proceed with removal of deadwood from Collingwood Beach Dune areas if it has been determined that such action will not result in a detrimental environmental outcome.

Most material will be mulched and retained on site. Any removal will be in accordance with legislative requirements or if the material poses a threat to public safety.

Management of banksias will be conducted with the aim of improving the health and growth of these plants and will be in accordance with legislative requirements so that it can be demonstrated that no negative outcome results from works in the area.

Any other vegetation management works must be in accordance with a management plan pursuant to the objectives of s 36E of the Local Government Act 1993.

The management outcomes of community land categorised as a natural area are:

a. "to conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area, and

b. to maintain the land, or that feature or habitat, in its natural state and setting, and

c. to provide for the restoration and regeneration of the land, and

d. to provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion…"

Additionally, the land is also classified as foreshore. The requirements under s 36N of the Act are:

"The core objectives for management of community land categorised as foreshore are; -

a. to maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area, and

b. to facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use."

Under the provisions of s 65 of the State Environmental Planning Policy (Infrastructure) 2007, Council will be permitted to carry out works in the area on the following basis:

"65. Development permitted without consent.

(2) Development for any purpose may be carried out without consent -

(d) on Crown managed land, by or on behalf of -

(ii) a Crown land manager of the land [Shoalhaven City Council]

if the development is for the purposes of implementing a plan of management adopted for the land in accordance with the Local Government Act 1993 in relation to Crown managed land managed by a council."

The Coastal Zone Management Plan for the Shoalhaven Coastline 2018 (CZMP) which is certified under the Coastal Management Act, 2016 has a management action LA3.20 which states that "Any vegetation action plan must reduce the likelihood of erosion".

As the determining authority under the Environmental Planning & Assessment Act 1979, Council has a duty to consider environmental impacts of an activity and is required to consider all matters affecting or likely to affect the environment by reason of any proposed activity. Staff have considered the views of the community, reviewed the Trial Area outcomes and are of the opinion that the approach proposed will ensure compliance with Council's obligations.

In its role of Trust Manager of Crown Reserve 64234 at Collingwood Beach, Council is required to manage the area in accordance with the both the Crown Lands Management Act 2016 and Local Government Act 1993.

Community Engagement

Extensive community engagement has taken place with the local community and commentary has been received from further afield from interested citizens. Engagement will be ongoing as the area matures.

Policy Implications

A number of Council policies have been considered during the process. These include, but are not limited to:

- POL18/43 Bushcare / Parkcare Policy
- POL 16/242 Foreshore Reserves Policy
- POL16/157 Road Verge Improvements & Maintenance Policy
- POL19/44 Shoalhaven Tree and Vegetation Vandalism Prevention Policy
- POL16/159 Signs - Public Information Signs
- Generic Community Lands Plan of Management – Natural Areas – adopted by Council 24 May 2016

Financial Implications

$37,700 has been allocated in the 2021/22 budget as Council's contribution for the Collingwood Beach Coastal and Estuary Grant.

An additional $15,000 has been allocated in the 2021/22 and onwards to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven.

Currently, there is no implementation action regarding the stormwater management at Collingwood Beach in the CZMP. An application for grant funding is reliant on inclusion on the CZMP.

The grant process is based on a competitive process and has no guarantee of success.

Significant impact on the Council budget should Council elect to augment the stormwater at Collinwood Beach using its own resources.

Risk Implications

Recently, dune vegetation along Collingwood Beach has been deliberately damaged. Dune vegetation plays a significant role in dune building by altering the wind field on the beach.

The destruction of dune vegetation may result in dunes becoming more susceptible to wind and wave erosion in future storms.

The Collingwood beach foreshore is mapped as Coastal Hazard Zone, any diminution of the dune through unwarranted removal of native vegetation is a threat to residents and property in the Collingwood Beach area.

Document Number: D21/ **Adopted:**[Date]**Minute Number:**[MIN] **File:**D21/120754
Produced By: City Development **Review Date**:[Review date]

Collingwood Beach maintenance standard for cycleways and beach accessways

1 PURPOSE

One of the outcomes contained in Council resolution (MIN20.927) in response to the Collingwood Dune Vegetation Action Plan, contained the following:

*"**4.** Allocate additional funding for annual maintenance funds from 2021/22 onwards, to prune overhanging vegetation, to allow for at least three maintenance events each year for Collingwood Beach."*

The purpose of this document is to instruct staff on the limits of maintenance of vegetation along the accessways and shared pathway at Collingwood Beach.

An onsite assessment with interested parties from Environmental Services and Assets and Works was conducted. This document is an output from that assessment.

The aim of this standard is to ensure that cycleways and beach accessways in the Collingwood Beach precinct comply with good arboriculture maintenance practice and with the requirements set out in Australian Standard AS 4373 -2007 Pruning of amenity trees.

1 RELATED DOCUMENTS

1.1.1 SWMS 1453 Tree Removal and Pruning
1.1.2 SWMS 1205 Walking Track & Fence Construction and Maintenance
1.1.3 SWMS 1437 Asset Inspection
1.1.4 SWMS 1265 Planting, Propagation and Seed Collection
1.1.5 SWMS 330 Threatened Species Inspections and Night Surveys
1.1.6 SWI142[v2] Safe Work Instruction - Blower
1.1.7 SWI17[v2] Safe Work Instruction - Chainsaw
1.1.8 SWI181 Safe Work Instruction - Chipper
1.1.9 SWI243 Safe Work Instruction - Hedge Trimmer
1.1.10 SWI129[v2] Safe Work Instruction - Herbicide Spraying
1.1.11 SWI163[v2] Safe Work Instruction - Post Hole Digger
1.1.12 SWI183[v2] Safe Work Instruction - Saw - Pole

To allow staff to readily identify which vegetative material is required be removed in the situations that present themselves in the Collingwood Beach precinct, it is necessary to define the spaces where maintenance pruning will occur.

Identify the vegetation class:

Frangible vegetation – those plants with stems equal to or less than 70-100 mm when measured 300 mm above the finished ground level.

Groundcovers and shrubs are all generally frangible except for large shrub species exceeding 3.5m in mature height.

Trees are not considered frangible.

Non-Frangible' vegetation - plants with stems larger than 70-100 mm when measured 300 mm above the finished ground level.

Shrubs species exceeding 3.5 m in mature height and trees are considered non-frangible.

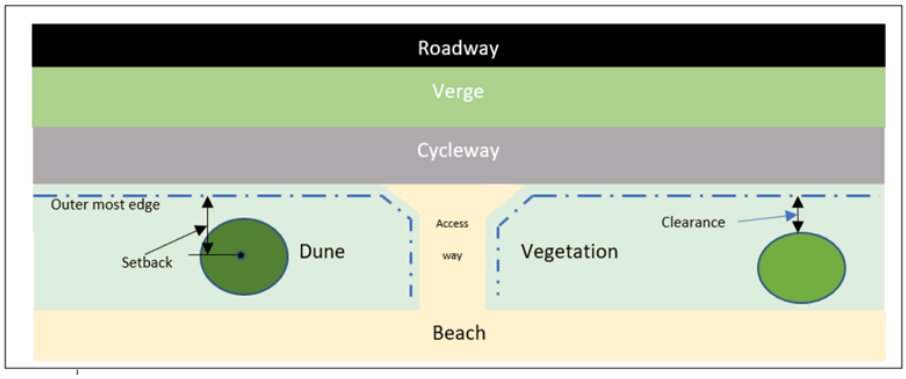
Determine clearances required:

Clearance – the horizontal distance measured from the existing fencing along cycleways and accessways to the circumference of the expected mature width or diameter of vegetation at maturity as determined by the size of the tree canopy.

Outer most edge – the edges of design components which require vegetation setbacks and clearances are measured from.

Outer most edges include, in the case of Collingwood Beach precinct:

- Outer face of design components e.g. retaining walls, walkways, steps, etc);
- Outer edge of other hardscape elements, e.g. fences;
- pathways relative to pedestrian/ cyclist facilities;
- maintained paths/ tracks;



Canopy Clearance Height – the vertical distance measured from the finished ground surface and the underside of a tree canopy (lowest bottom branches). Trees often need to be initially planted with a 'clear trunk' (under pruning during formative growth) to achieve a clear canopy height or promote growth in a particular way. This process may be ongoing and considered part of cyclical maintenance.

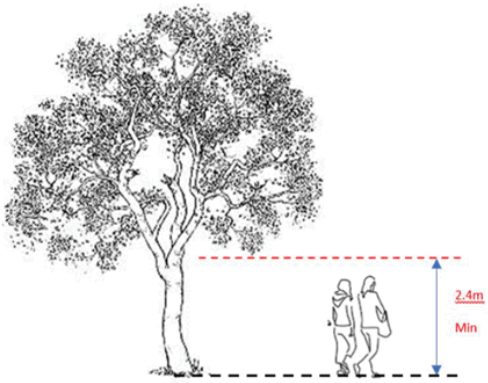
Crown lifting'– A pruning technique involving the removal of the lower branches of a tree to a desired height. This process is normally conducted once trees are established or are at maturity to form a clear trunk and retain required canopy clearance heights for safety purposes.

Often it takes some time to meet desired height clearances, and should be undertaken that the tree develops in a desired shape to facilitate clearances in the future. Crown lifting should be carried out in accordance with Australian Standard AS4373 – 2007; Pruning of amenity trees. Proper application of this technique can alleviate the development of "mallee" form growth that can occur if amenity pruning is poorly performed, leading to distorted and undesirable growth patterns.

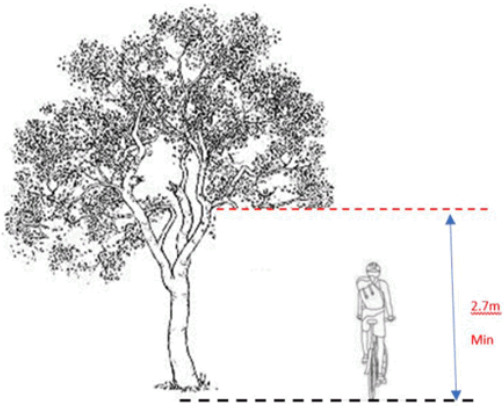
Minimum canopy clearance heights are:

• 2.4m in pedestrian facility environments, such as footpaths and walkways

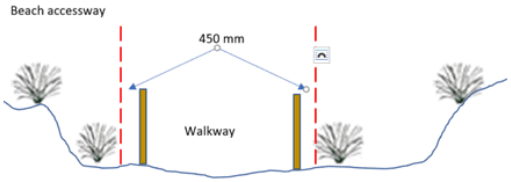
• 2.7m in cyclist facility environments, for example; cycle paths, cycleways and shared access paths



Pedestrians – footpaths and walkways



Cyclists – Cycleways and Shared pathways



Vegetation cleared/pruned 450 mm from fence deliniating walkway

DE21.31 Modification Application - DS20/1619 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710

DA. No: DS20/1619/4

HPERM Ref: D21/70921

Department: Development Services
Approver: Phil Costello, Director - City Development

Attachments:
1. Determination - Modified Consolidated Approval - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) & 1 DP 1243710 (under separate cover) ⇨
2. Assessment Report - S4.55 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) & 1 DP 1243710 (under separate cover) ⇨

Description of Development: Four (4) storey shop top housing consisting of three (3) levels of commercial premises and one (1) level of residential units comprising 3 x 3 bedroom apartments – S4.55(1A) Modification Application seeking minor alterations and modification to conditions of consent

Owner: Kingla Property Pty Ltd & Janack Nominees Pty Ltd
Applicant: Foxrun Commercial Building Pty Ltd

Notification Dates: 12 January 2021 to 28 January 2021

No. of Submissions: Nil

Purpose / Reason for consideration by Council

Council Resolved on 7 April 2020 (MIN20.240) with respect to COVID-19 Response, that:

> *"The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID-19 crisis.*
>
> *The refusal of a development application must only be by Council/Committee resolution."*

This Report recommends part approval, part refusal of the above s4.55(1A) Modification Application and is therefore prepared for consideration by the Development & Environment Committee in accordance with the 7 April 2020 Resolution of Council.

Recommendation (Item to be determined under delegated authority)

That Modified Development Application No. DS20/1619 seeking minor alterations and modification to conditions of Development Consent No. DA18/2326 be determined by way of part approval as set out in the Draft Notice of Determination (Attachment 1) and part refusal for the reasons outlined in this Report.

Options

1. Part Approval of the application in accordance with the Draft Determination at Attachment 1. (The request to modify two conditions are not supported for reasons contained in this report.)

   Implications: The development would proceed in accordance with the conditions of the draft modified development consent. The applicant can however apply for a section 8.2 review of Council's decision and/or lodge an appeal with the NSW Land and Environment Court against Council's decision

2. Approval of the application in full.

   Implications: Council would have to provide the environmental planning reasons / why the section 4.55 application could be approved, that is, provide planning reasons to support the development, having regard to section 4.15 considerations.

3. Alternative recommendation.

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

DE21.31

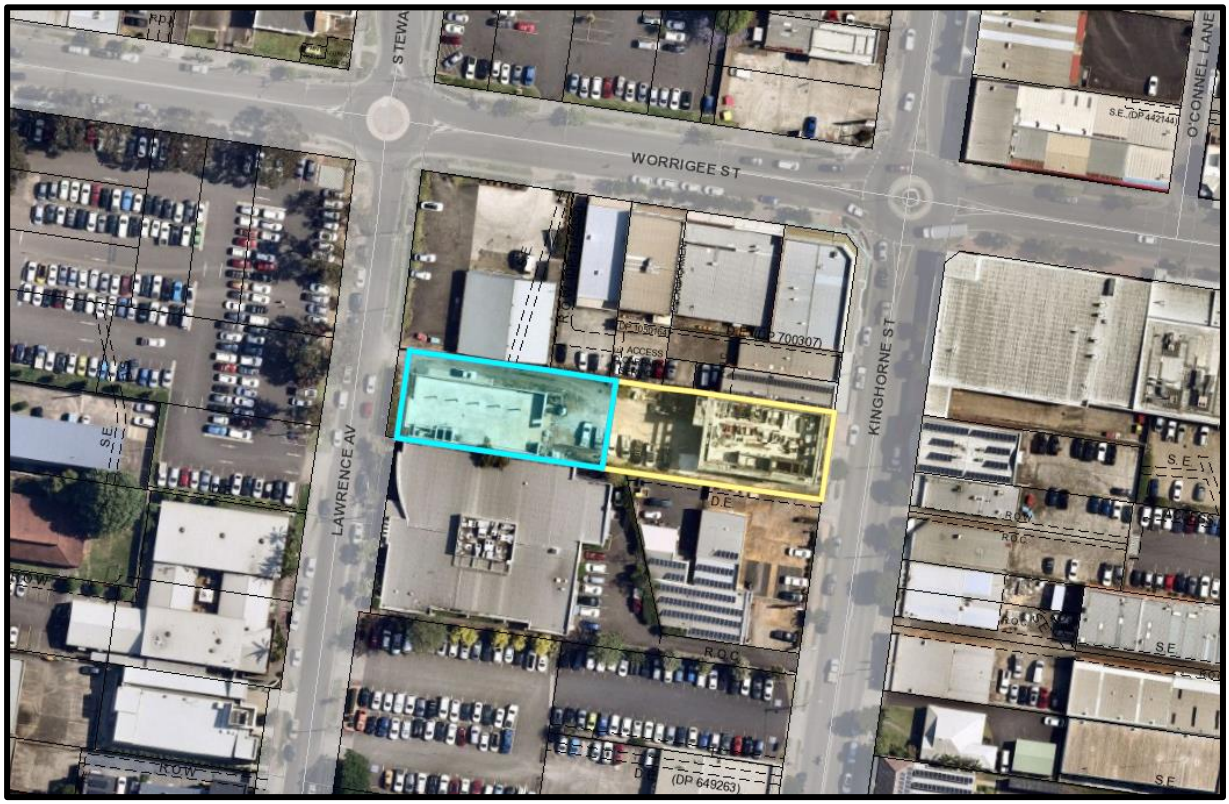


Figure 1 – Location Map (2 Lawrence Ave shown in blue and 61 Kinghorne Street in yellow)

Background

Proposed Development

The applicant (Foxrun Commercial Building Pty Ltd) has lodged a Modification Application under section 4.55(1A) of the Environmental Planning and Assessment (hereafter EP&A Act) 1979 to modify Development Application No. DA18/2326 relating to a four-storey mixed-use commercial and residential development at 2 Lawrence Avenue Nowra.

The purpose for the lodgement of the application is to seek minor alterations and additions to the layout of the approved development as well as modification to certain conditions listed within the development consent predominantly related to the development hold points in which conditions must be satisfied.

The following provides a brief summary of the proposed alterations to the conditions of consent proposed by the applicant (refer to Council's Planning Report at Attachment 2 for the applicant's proposed amended wording for each conditions):

- Condition 1 – 'General':
  Proposed modification to the approved plans as follows:
  - Amended stormwater layout with discharge via Kinghorne St.
  - Revision of finished floor levels (FFL) within the proposed building.
  - Construction of a fire rated access door and jamb within the lift shift on each level.
  - Minor alterations related to windows, balustrades, and balconies.
  - Deletion of garden bed upon entry to the basement carpark to permit installation of an electrical substation.
  - Designation of a second future lift and shaft between ground floor level and second floor level as part of the modified proposal and new 'service room' and shaft on the third level. The incorporation of the future lift and shaft results in a reduction in the size of the presently approved lift and results in the removal of the 'store' on each level presently marked on the approved plans. These works result in a reduction in floor area of 3.3m^2 across each level.

- Condition 17 – 'Contributions for Additional Services and/or Facilities':
  Proposed reduction in car parking contributions calculation having regard for the following (Council's discussion in Report below):
  - Reworking of car parking layout providing a net increase of one (1) space.
  - Additional lift bay and associated shaft resulting in a minor decrease of 9.9m^2 of commercial GFA compared with the approved development (i.e. 3.3m^2 of GFA across the ground, first and second levels).
  - Request for consideration for the parking rate applying to the ground floor commercial area to be assessed under the rate of 1 space per 40m² (applicable to office development under SDCP Chapter G21) as opposed to 1 space per 24m² (applicable to retail development under SDCP Chapter G21).

- Condition 29 – 'Design Standards':
  Modify to refer to 'Prior to Commencement of Works' as opposed to 'Prior to Construction Certificate.

- Condition 33 – 'Access Design Standards':
  Modify to refer to 'Prior to Commencement of Work' as opposed to 'Prior to Construction Certificate. Also seek to modify Parts A, B, and C of the condition having regard for the following:
  - Part A – Removal of mandatory requirement for compliance with a 3% crossfall to a design as approved by Council.
  - Part B – Proposed removal of this requirement until Council's design for the amended road reserve has been determined.
  - Part C – Replacement of 'Kinghorne St' with 'Lawrence Ave' given incorrect street address was nominated.

- Condition 34 – 'Stormwater Drainage Design and On-Site Detention':
  Insertion of the line 'Prior to the commencement of works within the road reserve' at the beginning of the condition.

- Condition 35 – 'Stormwater Drainage Design and On-Site Detention':
  Proposed modification to this condition to accord with the amended stormwater design proposed for disposal within Kinghorne St.

- Condition 37 – relating to onsite detention storage:
  Modify to refer to 'Prior to works commencing' as opposed to 'Prior to Construction Certificate.
- Condition 47 – 'Nature Strip Reinstatement Works':
  Proposed rewording of Condition 47 to align with the modified Condition 35 and the amended stormwater design proposed for disposal within Kinghorne St.
- Condition 72 – 'Covenant & restriction as to User for Stormwater Controlled Systems':
  Proposed rewording of condition having regard for the following:
  - There are no mechanical pump out systems nor any charged lines being proposed for use.

Subject Land

The site principally comprises Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710 prior the acquisition of the part of the land for the purpose of road widening) at No. 2 Lawrence Ave Nowra. Refer to Figure 1.

It is noted that the neighbouring property located at Lot 1 DP 1243710 at No. 61 Kinghorne St Nowra also forms part of the subject site for this development application (refer Figure 1). No. 61 Kinghorne Street Nowra has recently approved development consent for a similar four-storey mixed use commercial and residential development by the same developer (DA18/2325). The services, including the driveway access and stormwater disposal, under this subject application (DA18/2326) and the development consent for No. 61 Kinghorne Street (DA18/2325) are interrelated and thus both properties are affected by the proposed development.

The development consent for No. 61 Kinghorne Street Nowra (DA18/2325) remains unaffected by the proposed modifications under this subject application.

Site & Context

The development site:

- Lot 2 is partially constructed with the approved four (4) storey mixed use commercial and residential building following the issue of Partial Construction Certificate No. CC20/1109.
- Lot 1 is partially constructed with a separate approved four (4) storey mixed use commercial and residential building following the issue of Partial Construction Certificate No. CC20/1108.
- Has an area of 1,965.5m².
- Is zoned B3 Commercial Core (refer Figure 2 below).
- Is not identified as being either bushfire prone or flood prone.
- Has a minor slope downwards from a high point of approximately 13m AHD in the south-western corner at Lawrence Ave towards a low point of approximately 9m AHD in the northern eastern part adjacent to Kinghorne St.
- Is cleared of large scale vegetation given its location within the Nowra CBD area.
- Is located within the southern part of the Nowra CBD area and is surrounded by mixed commercial development.

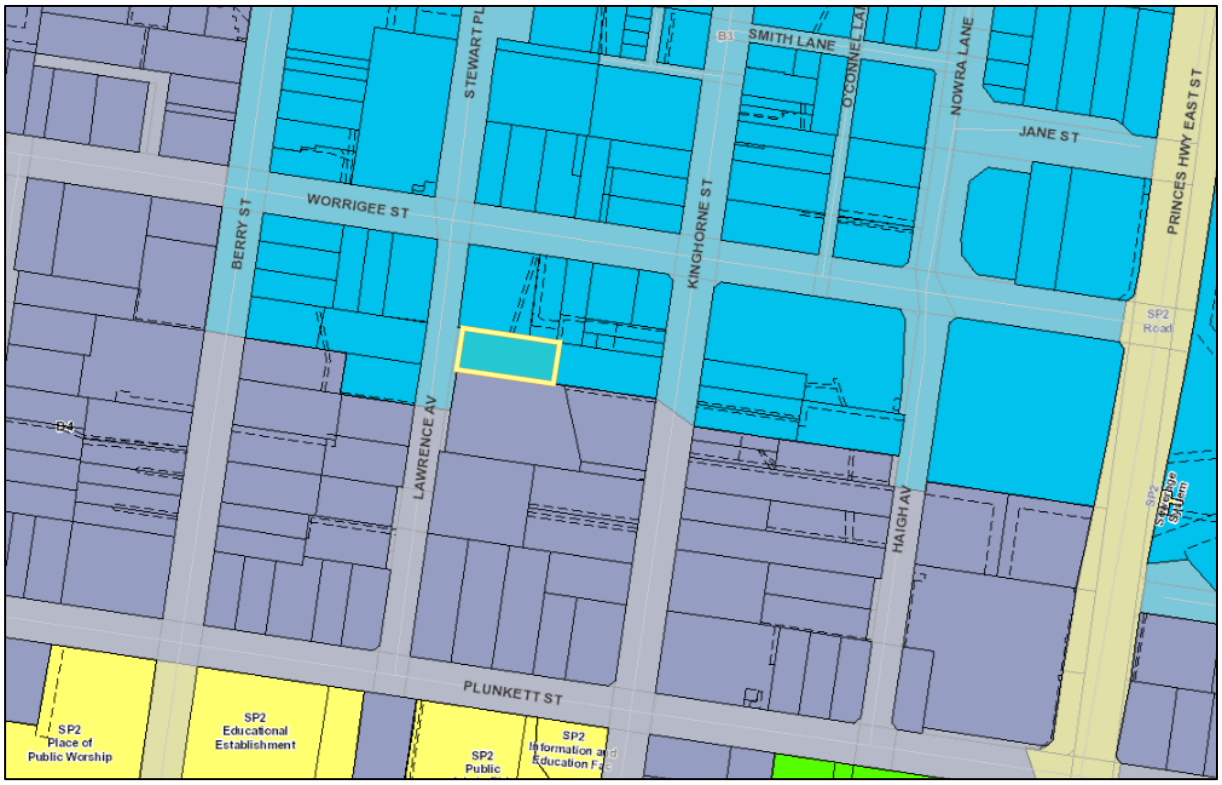


Figure 2 – Location and Zoning Map highlighting No. 2 Lawrence Ave Nowra

DE21.31

History

The following provides a summary of the approval history for the subject development and a timeline of events following the lodgement of DS20/1619 with Council:

- Development Approval No. DA18/2326 issued by Shoalhaven City Council on 4 October 2019 for a four (4) storey mixed use commercial and residential building.
- Modified Development Application No DS20/1001 – seeking a reduction in the car parking contributions payable under Condition 17 of the consent, was formally refused by Council on 7 April 2020.
- Partial Construction Certificate No. CC20/1109 issued for the construction of the basement car parking area and up to the ground floor level of the building issued by Shoalhaven City Council on 24 February 2020. A construction certificate has yet to be issued for the remainder of the proposed works, including (but not limited to) the first to third floors.
- This Modification Application No. DS20/1619, subject of this report, was lodged with Council seeking minor alterations and modifications to conditions of consent on 22 December 2020.
- Internal referral of DS20/1619 was made to Shoalhaven Water, Development Engineer, and City Services on 12 January 2021.
- Responses to internal referrals were received by Development Services on 5 March 2021. Recommendations provided (refer report at Attachment 2) include partial approval and partial refusal of the proposed modification to conditions.
- A meeting was held with Development Services, Development Engineering, Building & Compliance and the applicant on 10 March 2021, to identify key conditions required to be modified.
- An email from the applicant dated 15 March 2021 was submitted. It sought to amend the proposed Modification Application to include additional conditions to be modified.

- A further meeting between Development Services, Development Engineering, and applicant was held on 17 March 2021 to accurately confirm the conditions of consent to be modified. Note: Confirmation was also provided in writing to the applicant in this regard on 17 March 2021.
- 17 March 2021 – Email correspondence between applicant and Council staff confirming conditions to be amended. In this email exchange, the applicant concurred with Council's following statement:
  "Please be aware that where the requirement has been removed from prior to CC to now prior to the commencement of works, that this is at some (your) risk. In the event that there is an unexpected finding Council is unable to foreshadow how that situation may be dealt with or resolved. Prior to CC affords due process and opportunity for peer review and checking".

Issues

Of the nine (9) conditions to be modified, Council recommends the approval of the proposed modifications to Conditions 1, 29, 33 (with the exception of amendments to Condition 33(b)), 34, 35, 37, 47 and 72. The proposed modifications to these conditions are reflected in the draft recommended consent at Attachment 1.

Modification of **Conditions 17 and 33(b)** as proposed by the applicant, however, are not supported for modification for the reasons detailed below:

DE21.31

Proposed Modification to Car Parking Contributions – Condition 17

The original application DA18/2326 was approved under the provisions of Chapter G21 – Car Parking and Traffic of the Shoalhaven Development Control Plan (SDCP) 2014 (Version 3), which was amended by Version 4 on 23 October 2020.

Section 5.1 – Car Parking Schedule of Version 3 states the following parking requirements:

- *Shop Top Housing* – 1.5 spaces per dwelling of 56m^2 - 85m^2 and 2 spaces per dwelling of 86m^2 or greater with a 25% discount applicable as the site is within 200m radius of the Nowra CBD.
- *Commercial Premises* – 1 space per 24m^2 at ground level and 1 space per 40m^2 of floor space above ground level.

A 25% parking rate discount is applicable and has been applied to the shop top housing component.

The following Table 1 provides a breakdown of the total car parking required and the total car parking provided for the development as proposed to be modified:

Table 1 – Development Data					
DS20/1619 – 2 Lawrence Avenue, Nowra					
Level	**Land Use**	**Area**	**Parking Rate**	**Required parking**	**Total Car parking required**
Ground	Comm.	319.7m²	1 / 24m^2	319.7/24 = 13.32	39.20
First	Comm.	453.7m^2	1 / 40m^2	453.7/40 = 11.34	
Second	Comm.	401.7m^2	1 / 40m²	401.7/40 = 10.04	
Third	Resid.	Unit 1 106m^2 Unit 2 125m^2 Unit 3 106m^2	2 spaces 2 spaces 2 spaces	6 x .75 = 4.5 or 5 spaces	
Total Car Parking provided					21 spaces
Parking Shortfall					**18.2 spaces**

The proposed development (as modified) includes 21 car spaces, being 5 for the residential component and 16 for commercial. The modification proposes a net increase of one (1) parking space compared with the approved development under DA18/2326 as depicted on the modified plans (noting Spaces 21 and 22 are proposed whilst Space 20 is proposed to be turned into an electrical substation).

The above calculations also account for the designation of a second future lift and shaft between the Ground Floor Level and Second Floor Level as part of the modified proposal. The incorporation of the future lift and shaft results in a reduction in the size of the presently approved lift, and results in the removal of the 'store' which is presently marked on the approved plans. These works result in a reduction of 9.9m² in commercial gross floor area across the entire development (3.3m² across the ground, first, and second floor levels) compared with the development as originally approved.

It is highlighted that the reduction of floor area on the Third Floor is inconsequential with regard to parking as the residential parking is calculated per bedroom/unit.

The **18.20** space shortfall is proposed to be paid through s7.11 car parking contributions. The reduced car parking contribution rate is listed within the Report below (refer Shoalhaven Development Plan 2019).

Applicant's Submission

The applicant has sought a reduction in the shortfall of car parking spaces from 19.7 spaces (under the original development approval under DA18/2326) to **14.11** spaces based on the applicable parking rate for the proposed ground floor 'commercial' uses and the relevant definition for potential uses of these spaces. The justification from the applicant's supporting documentation is provided below:

- *"The attached plans indicate a reworking of the carparking layout, where an additional 2 x spaces are provided - (Nos 21 & 22 - located adjacent "Centrelink" Boundary).*
- *With the addition of a second lift shaft, and minor re-configuration of the connecting floors there is a reduction in floor space which impacts on car parking area calculations.*
- *Discussions, which have been on foot for the duration of this application, the proponents and all others involved (including Council officers, and various Councillors) recognise that while being technically within the CBD, Lawrence Avenue is unquestionably NOT a retail precinct.*
- *However it is unfortunately within a zoning that technically identifies the Lot for retail on the ground floor level, which in turn attracts a carparking space / m^2 ratio of 1 per 24 m^2, vs 1 per 40m² for commercial office space.*
- *It is our position that the ground floor space will only be used for commercial office space. We have deliberately NOT made any provision in the design for café type development as neither that type of operation, nor any other retail activity will ever be suitable for the building that is being built, and the location as noted is not attractive in any way to retail activity."*

Additionally:

- *"The ground floor is being technically built to meet the requirements of the NCC for a class 6 building to satisfy the zoning only.*
- *To further support this position, a report prepared by Bitzios Consulting (previously provided to Council Officers), having undertaken a review of 'office' parking rates from nearby Councils is summarised as follows:*
  - *Goulburn Mulwaree Council, specifies the parking rate of 1 space per 40m² GFA for an office premises.*

- *Moss Vale (Wingecarribee Shire Council) specifies a parking rate for a commercial development of more than one storey to follow the RMS Guide for Traffic Generating Developments (i.e. 1 space per 40m2 GFA).*
- *Shellharbour DCP specifies a parking rate of 1 per 40m²*
- *Wollongong DCP specifies a parking rate of 1 per 60m² in the city centre and 1 per 40m² city- wide."*

Discussion

Council considers that the carparking requirement has been appropriately calculated under the relevant rate for sites located within the B3 Commercial Core Zone. The following points are made having regard to the applicant's submission:

- Council has acknowledged that a reworking of the parking spaces has resulted in two additional parking spaces being provided. However when considering that space 20 would be repurposed as an electricity substation – a net increase of one (1) space has occurred. This has been reflected in a reduction to the parking contributions in the draft consent document.
- It is noted the need for a substation was flagged by Endeavour Energy in their submission to the original Development Application under DA18/2326 (dated 21/03/2019):

  "Given the type and size of the proposed development, an extension and/or augmentation of the existing local network will be required. However the extent of the work required will not be determined until the final load assessment is completed."

  It is not uncommon for development of this size and type to require a substation to be developed as part of the intensification of the use of the land.
- Council has acknowledged the designation of a future lift and shaft between the ground floor level and second floor level, and replacing a former 'store', results in a reduction in commercial floor area, and thus a reduction in the required parking and consequent applicable parking contributions for the parking shortfall. This monetary reduction is reflected in the amended Condition 17 as recommended for approval at Attachment 1.
- The site is mapped within the B3 Commercial Core Zone in accordance with the SLEP 2014 and is therefore formally part of the CBD area. There is nothing preventing the area becoming a retail precinct in the future in accordance with its zoning potential.
- Council also notes that clause 2.20A of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits a change of use from an 'office premises' to 'shop' as exempt development under Subdivision 1A - which reflects its potential as a retail precinct and also waives the requirement for further consideration of parking or relevant car parking contributions to be made in the future.
- Council notes that retail development already exists in this area of the CBD, highlighting its viability and potential for the proposed ground floor commercial spaces to be used as a retail premises. Food and drink premises, restaurants and shops are well established on Kinghorne Street, right up to the intersection with Plunkett Street; while around the corner along Worrigee Street, a range of retail premises operate down to the corner of Kinghorne Street. This site has connectivity from Kinghorne Street.
- There are no environmental planning instruments, plans or policies (i.e. such as the SLEP 2014, SDCP 2014, or SEPPs) which prevents retail development from being established in the ground floor section of this building. Further, a restrictive s88B covenant would be highly likely to be varied or set aside if development is otherwise considered appropriate for approval, as was reflected in the case of *D'Alterio v Newcastle City Council* [2017] NSWLEC 1058.

- There are no controls which are able to be established which would formally prevent the ground floor from being used for a retail purpose (further discussion in this regard is made as part of Council's assessment of DS20/1001 for the adjoining 2 Lawrence Street). Council cannot impose a condition of consent restricting the use of the ground floor to a specific type of commercial premises contrary to zoning provisions.
- The Bitzios Report was presented by the applicant as part of the previous application (DS20/1001). That application was considered by and previously refused by City Development under delegated authority on 07 April 2020.
- While the development is mapped as requiring a 1 space per 24m^2 for ground floor B3 Commercial Core Commercial Premises, it receives a concession in that it benefits from the 25% discount for this location in regard to the residential component.
- Section 5.1 – Car Parking Schedule of Council's DCP Chapter G21 – Car Parking and Traffic (originally adopted on 22 October 2014) was recently reviewed by Council. The review included a revisiting of the required car parking rate for 'Commercial Premises' within Zone B3 – Commercial Core. Following the review, Council reaffirmed that the parking rate of one (1) space per 24m² within Zone B3 represents a modern and up-to-date representation of the parking requirements for a new commercial development within the Nowra CBD area. Version 4 of SDCP 2014 Chapter G21 was subsequently adopted at Council's Development and Environment Committee Meeting held on 6 October 2020.

The calculations given in Table 1 identifying a shortfall of 18.20 spaces is therefore considered to be reasonable, soundly based on Council's adopted DCP noting also there is a concession in place (25%) and therefore appropriate.

To account for the additional parking space proposed by the applicant and the 3.3m² reduction in gross floor area across the ground, first, and second floor levels – the car parking contribution amount under Condition 17 would be reduced as follows:

Approved Charge

01 CARP 3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street	$27,178.89	19.51	$530,260.14	$0.00	**$530,260.14**

Proposed Charge

01 CARP 3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street	$27,722.47	18.2	$504,548.95	$0.00	**$504,548.95**

It should be noted that all Developer contributions associated with the subject development are subject to Council's adopted Contributions Discount Policy which would provide a 50% discount to the above amounts upon meeting the requirements of the policy.

Proposed Removal of Requirement for a Type 4 Footpath – Condition 33(b)

Condition 33 requires the detailed engineering design plans for footpath works in the Lawrence Ave road reserve to be submitted to Council.

This application seeks to amend the requirement for the submission of engineering plans to be moved from 'prior to Construction Certificate' to 'prior to the commencement of works within the road reserve', which council supports.

Condition 33(a) – (c) outline the standards the design of the footpath is required to meet with Condition 33(b) stating:

> *"… Details are to be shown on the engineering design plans and must incorporate the following:*
>
> *(b) Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual"*

Council's Streetscape Technical Manual provides design and construction detail for the nominated Town and Village Centres in Chapter G18 – Streetscape Design for Town and Village Centres of the SDCP 2014. This Chapter applies as the development includes a proposal for a commercial, mixed use, and shop top housing development in the Nowra CBD.

The purpose of the Streetscape Technical Manual is to establish a uniform design and material palette for Shoalhaven City Council (SCC), while also providing guidelines for each Town and Village to ensure their character is represented in the streetscapes. The manual states that the document is "*used to condition Development Consents as a basis for the design of the streetscapes by SCC* <u>*and by individuals as part of developments*</u>" (emphasis added).

A 'Type 4 Footpath' (refer description at Figure 3) is listed as a requirement under Council's Streetscape Technical Manual for this area of the Nowra CBD and was duly conditioned as a requirement by Council's Development Engineering Group under the original consent.

Type 4 - (Pathway)

Part width honed concrete with **brick header course** decorative margins.

- Concrete (32mpa) with full depth 'Colormix' "Charcoal Oxide" and 20mm "Burrier Gravel" aggregate "SCC Custom Mix" by 'Eziway Concrete'. Honed to R10 non-slip finish. Seal concrete with 'Klen' "Tuscan Seal".
- Brick Header Course 'Claypave' "Regal Tan Dark" 230 x 115 x 50mm thick pavers.

Figure 3 – Type 4 Footpath Streetscape Technical Manual

Chapter G18 – Streetscape Design for Town and Village Centres of the SDCP 2014 - Acceptable Solution A6.3 specifies the following requirement:

"Where the footpath/pathway design in the Streetscape Technical Manual differs to the existing footpath design, the new footpath is to be provided as per the Streetscape Technical Manual".

The existing footpath design differs from the design listed under the Streetscape Technical Manual and therefore, the new footpath requires a design which accords with the Manual. The applicant's proposed deletion of this condition would result in a non-compliance and departure from Acceptable Solution A6.3.

The Lawrence Avenue frontage of the site is mapped on the Land Reservation Acquisition Map and formally acquired by Council for the purpose of road widening in December 2020. Notwithstanding, Council's City Services section was consulted as part of the development application referral process and clarified that no redesign plan has presently been undertaken for the acquisition area or the remainder of Lawrence Ave.

City Services further indicated that the required redesign is not planned in the near future and in fact, may not occur for a number of years.

Applicant's Submission

"The procurement process of the land is complete, and Council has carried out on site survey works identifying the location of the adjusted road reserve and western boundary [Council note: The land has since been procured for road widening]. The streetscape of the neighbouring property to the South of Lot B (frontage to the 'Centrelink' Building) comprises extensive brick paving.

There are complications present with the interface of Lot B frontage and the 'Centrelink' pavers to the south with regard to Council's requirements for cross fall. The current paving has cross falls from the current boundary of Lot B ranging between 5.1% – 9%, with the alignment of the existing footpath having a grade of 8.3%.

The land acquisition will impact adversely at both the south and north ends of Lot B frontage. Compounding the issue is a dual driveway apron extending beyond the north boundary line of Lot B across the adjoining property 'Inspirations Paint'.

While it is incumbent on the Proponents to provide access from the site it would not be expected that their responsibility would extend beyond the boundaries. Given the above it is proposed to not make any changes to the existing footpath or streetscape of Lawrence avenue frontage.

Levels for the proposed road acquisition are unknown, and Council is unlikely to be in a position to provided proper design levels for the Proponent to work with. It is proposed to provide a wide access pathway from the existing footpath to the main entrance of the building. The pathway will be located at suitable grades to provide access for people with a disability in accordance with NCC."

Discussion

Council's Development Engineering Section, in conjunction with City Services, advised that given no redesign of the Lawrence Ave frontage is proposed within the near future, that compliance with the stated acceptable solution (i.e. A6.3 of Chapter G18) is required. Council further assesses that the footpath design as presented is non-compliant with Performance Criteria P6.

Performance Criteria P6 states the following:

"Allow for convenient and equitable pedestrian travel through provision of footpaths/pathways in centres. Footpath design is consistent to encourage visual continuity and legible centres".

It is considered that the proposal is non-compliant with Performance Criteria P6 for the following reasons:

- The incorporation of the site on the Acquisition Map and formal acquisition of the land for road widening is not considered to be an appropriate alternative to the provision of a

footpath that complies with the Technical Manual given the acquisition and a redesign of this street frontage is not planned over the short term future (as clarified with City Services).

- The Type 4 Manual as presented within the Streetscape Technical Manual represents Council's technical standard for footpaths. Non-compliance with this standard would deviate from Council's consistency and conformity in relation to the application of Council controls within the LGA broadly, and within the Nowra CBD and Lawrence Avenue specifically. This would result in:
  - an inequitable solution which does not accord with the design of footpaths through the Nowra CBD area.
  - a potentially inaccessible footpath along the length of Lawrence Ave should the footpath not be built to the Type 4 standards.
  - a lack of visual continuity and compromise the Nowra CBD as a legible centre from an urban design perspective.
  - the potential for a non-conforming design to be in place for an indefinite period of time. While Council has acquired the subject land for road widening, there are currently no immediate plans for the full acquisition of the length of Lawrence Ave.
  - a precedent being set whereby any future development along Lawrence Avenue, or more broadly the Nowra CBD, could be excused from meeting the technical manual standards.

In light of the above, Council should not be waiving the requirements of the applicant to provide a footpath per Council's technical manual standards. Full compliance with the required standards of Chapter G18 of the DCP and Council's Streetscape Technical Manual as required under the original consent, is considered to be appropriate.

Planning Assessment

The Modified DA has been assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 100m buffer of the site, during the period 12 January 2021 to 28 January 2021.

Nil public objections were received in relation to Council's notification of the development.

Financial Implications:

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

Legal Implications

Pursuant to section 8.2 of the Environmental Planning and Assessment Act 1979, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued the matter would be put to Council for consideration.

Summary and Conclusion

This application has been assessed having regard for section 4.15 (Matters for consideration) of the *Environmental Planning and Assessment Act 1979*.

For the reasons described in the Report above, it is considered that the application warrants a partial approval and partial refusal.

City Development advises that the proposed modifications to the following conditions of consent are supported:

- Condition 1 – General;
- Condition 29 – Design Standards;
- Condition 33 – Access Design Standards (Parts (a) and (c) only);
- Condition 34 – Stormwater Drainage Design and On-Site Detention;
- Condition 35 – Stormwater Drainage Design and On-Site Detention;
- Condition 37 – Stormwater Drainage Design and On-Site Detention;
- Condition 47 – Nature Strip Reinstatement Works; and
- Condition 72 – Covenant & Restriction as to User for Stormwater Controlled Systems.

City Development advises that the proposed modifications to the following conditions of consent are not supported for the reasons described in the Report above:

- Condition 17 – Contributions for Additional Services and/or Facilities; and
- Condition 33 – Access Design Standards (Part (b) only).

DE21.32 Development Application - DA20/2152 - 1282 Naval College Rd Worrowing Heights - Lot 1749 DP 28785

DA. No: DA20/2152/4

HPERM Ref: D21/70916

Department: Development Services
Approver: Phil Costello, Director - City Development

Attachments:
1. Determination - Refusal - 1282 Naval College Rd Worrowing Heights - Lot 1749 DP 28785 ⇩
2. Planning Report - 1282 Naval College Rd Worrowing Heights - Lot 1749 DP 28785 (under separate cover) ⇨
3. Plans - Site Plan - Lot 1749 DP 58785 - 1282 Naval College Rd Worrowing Heights ⇩

Description of Development: Rural Industry (Sawmill and Log Processing Works) and Depot

Owner: W A Seery & T M Barker
Applicant: PDC Lawyers & Town Planners

Notification Dates: Not able to be carried out – further details provided in report below.

No. of Submissions: As above – not able to be carried out.

Purpose / Reason for consideration by Council

Council Resolved on 7 April 2020 (MIN20.240) with respect to COVID-19 Response, that:

> *"The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis.*
>
> *The refusal of a development application must only be by Council/Committee resolution."*

This report recommends refusal of the above Development Application and is therefore prepared for consideration by the Development & Environment Committee in accordance with the 7 April 2020 Resolution of Council.

Recommendation

That Development Application No. DA20/2152 for use of the land as Rural Industry (Sawmill and Log Processing Works) and Depot pursuant to the Shoalhaven Local Environmental Plan (SLEP) 2014 at Lot 1749 DP 28785, 128 Naval College Rd, Worrowing Heights be determined by way of refusal for the reasons contained in Attachment 1 of this report.

Options

1. Refuse the Development Application (DA) in accordance with the recommendation.

   Implications: The development is unable to proceed as applied for. The applicant can, however, apply for a S8.2A review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court (LEC) against Council's decision.

2. Approve the application.

   Implications: Council would have to provide the grounds to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations. Should Council resolve to approve the DA with a suite of conditions which would be required to be drafted for reconsideration by the Development & Environment Committee. Under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

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

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Figure 1 – Location Map

Background

Proposed Development

The applicant proposes that the land be utilised for two (2) separate independent uses, as a 'Depot' and as a 'Rural Industry (sawmill and log processing works)' which are described as follows:

- Use of the site as a 'Depot' which is defined under the Shoalhaven Local Environmental Plan (SLEP) 2014 as:

  "a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use but does not include a farm building."

  The Depot would be for storage of plant / machinery used in association with an arborist/ tree lopping business. The applicant states that the actual business activity (tree lopping) occurs offsite. The storage area for the plant / machinery would be in the north-western front corner of the site (refer Attachment 3).

- Use of the site as 'Rural Industry (sawmill and log processing works)' which is defined under SLEP 2014 as :

  "a building or place used for handling, cutting, chipping, pulping or otherwise processing logs, baulks, branches or stumps, principally derived from surrounding districts, into timber or other products derived from wood."

  The Rural Industry would be for the placement of timber logs sourced offsite to be 'seasoned' and then processed into firewood for sale. The Rural Industry would take place in the central/eastern part of the site (refer Attachment 3). It would be a separate enterprise undertaken by the owner and would be independent of the proposed storage of plant / machinery, noting that it occurs in a different part of the site and is not exclusively reliant upon the plant / machinery storage.

The applicant also seeks consent for the following:

- Regularisation and use of three (3) existing unapproved structures including two (2) existing shipping containers and one (1) existing demountable building located in the central and western parts of the site.

  The applicant advises the structures would be used for storage of smaller items in association with the use of the site as the proposed 'Depot'.

- Construction of stormwater infrastructure (earthen bund) along the western side boundary to prevent egress of stormwater from the site. The applicant advises the earthen bund would be a maximum 0.5m high and stabilised with grass and/or mulch.

Subject Land

The development site comprises Lot 1749 DP 28785 (1282 Naval College Rd, Worrowing Heights). Refer to Figure 1.

Site & Context

The development site:

- Contains existing buildings including a weatherboard dwelling and attached shed in the northern part, an aviary, and unauthorised shipping containers (two (2)) and a demountable storage building in the central part of the property.
- Has a land area of 2.98 ha.

- Is located within Zone RU2 Rural Landscape (refer Figure 2 below).
- Has a primary road frontage to Naval College Rd in the northern part. This would form the point of access onto the site for the plant / machinery which are proposed to be stored on the site.
- Is mapped as being a 'Biodiversity – Habitat Corridor' in accordance with the SLEP 2014 and has a moderate level of vegetation cover, in particular in the southern rear part of the site.
- Is identified as being wholly bush fire prone land.
- Contains a mapped 'Category 2' watercourse traversing from east to west across the northern part of the site.
- Adjacent properties are typically constructed with single dwellings and detached outbuildings in similar sized parcels of land.
- Is located at a distance of approximately 350m from the Vincentia Marketplace development (east of the property) and 100m of the Bayswood Estate residential development (north-east of the site).

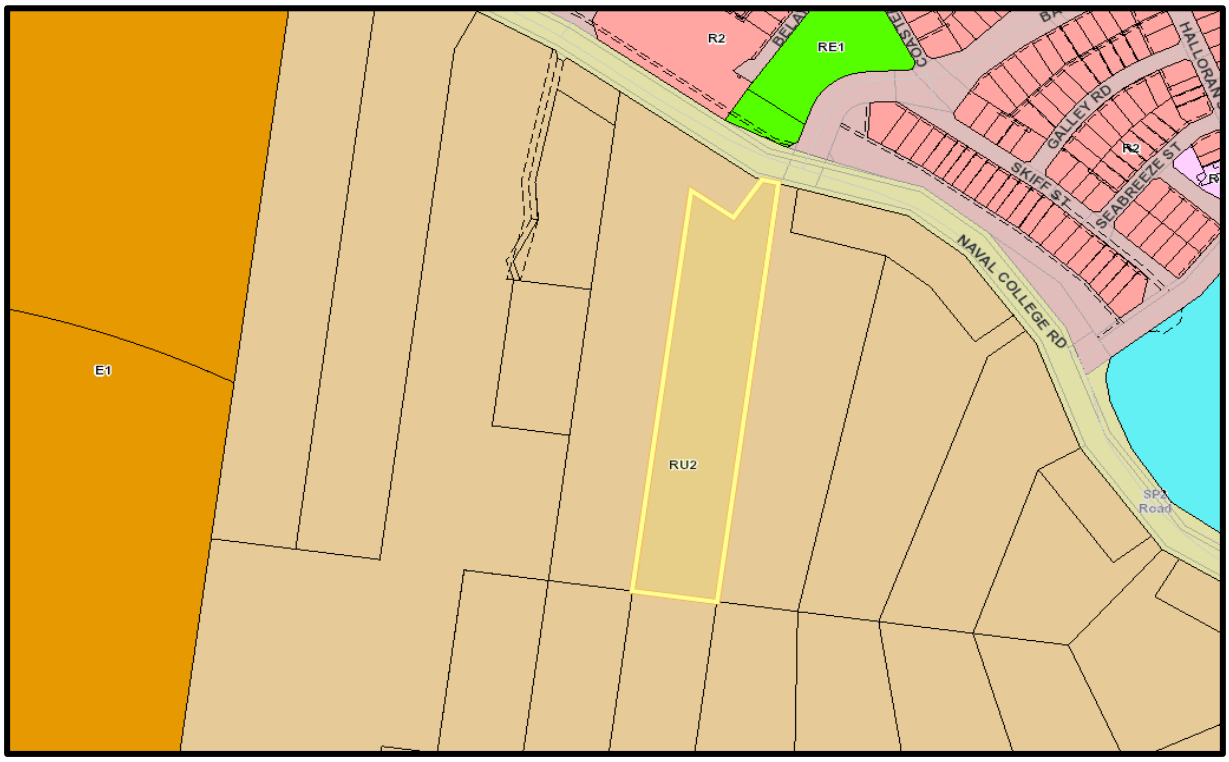

Figure 2 – Zoning Map

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History

The following provides a timeline of events following the lodgement of the Development Application (DA) with Council:

- The DA was formally lodged with Shoalhaven City Council on 2 September 2020. Invoice issued to applicant.
- Development Application fees paid 4 November 2020.
- Internal referrals were made to the Building Surveyor, Development Engineer, and Environmental Health Officer on 17 November 2020.

- First and only request for information was sent to the applicant on 17 November 2020 requested the following details:
  - Clarification as to the proposed development and how it satisfies the definition of *"Depot"* under SLEP 2014. Council questioned the proposed characterisation of the development referencing *Flowers v Wollondilly Shire Council* [2012] NSWLEC 1340.
  - Revised site plan prepared in accordance with Schedule 1, Environmental Planning and Assessment Regulation 2000 – indicating existing vegetation and trees on the land, the location and uses of all existing buildings on the land, the location and uses of buildings on sites adjoining the land (required for context, reference points and to ascertain impacts), and proposed methods of draining the land (noting particularly the proposed "earthen bund").
  - Detailed plans for the shipping containers and demountable building (i.e., floor plan, elevations, and sections) as the application proposes to regularise these structures to allow their retention onsite and use as part of the proposed development.
  - Written consent of **all** registered owners of the subject land (noting that the consent of only one owner had been provided).
  - Confirmation of the estimated cost of the development. A detailed cost report is to be submitted with methodology verifying the cost of the development.
- Telephone and email correspondence was sent to the applicant on 18 January and 12 February 2021 following on up on the status of the application. No response to Council's request for an update was received.
- In a message left with Council on 17 February 2021 and in a meeting with Council's Unit Manager – Development Services on 18 February 2021, the applicant advised attempts were made to contact the owner regarding their intentions to respond to the request but had been unsuccessful in this regard.
- The applicant was advised on 22 February 2021 of Council's intention to report the DA to the April Development and Environment Committee meeting with a recommendation for refusal.
- At the date of preparing this report, this information remains outstanding, with no advice received from the applicant for a likely date of receipt.

Issues

'Definition of the use and permissibility within Zone RU2 – Rural Landscape

- *Definition as a 'Depot'*

As part of the development application, the applicant seeks consent for storage of plant / machinery associated with an existing arborist/tree lopping business undertaken by the property owner (and occupant of the dwelling). The applicant clarified that the actual business activity (tree lopping/pruning etc) occurs offsite, and consent is only sought for the storage of such machinery when not in use.

The storage of the plant / machinery is a separate enterprise to the other component of the submitted application for Rural Industry (Sawmill and Log Processing Works) which involves the 'seasoning' and 'processing' of timber into firewood for sale. This component of the application would take place in a different part of the site and would not require exclusive use of the plant / machinery being separately stored to occur.

The applicant has advised that they consider the storage of plant / machinery to be defined as a *'Depot'* under the SLEP 2014 as follows:

> *"a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use but does not include a farm building."*

Council questions the characterisation of the development as a depot and refers to the Land and Environment Court Decision *Flowers v Wollondilly Shire Council* [2012] NSWLEC 1340.

This court case related to an appeal under then s97 of the *Environmental Planning and Assessment Act* 1979 ("the EPA Act") against the council's refusal of a development application for "the continued use of site for depot, excavations, retaining walls, and construction of a new farm shed and retaining walls". The applicant's description of the proposal included the storage of vehicles, machinery, and equipment in connection with a tree lopping business, amongst other things, within Zone RU2 – Rural Landscape. This case therefore has numerous similarities with the development proposed on the subject site.

This case outlines the key components of the definition of a 'depot' as follows:

(57) The key components of this definition are:

- *(i) a building or place used for the storage (but not sale or hire) of plant, machinery or other goods;*
- *(ii) that support the operations of an existing undertaking, when not required for use;*
- *(iii) but does not include a farm building.*

In the subject application, Council agree with (i) and (iii) that the building or place is to be used for the storage (but not for sale or hire) of plant and machinery, and that is not a farm building. However, the application has not sufficiently demonstrated that the storage of machinery is supporting an existing undertaking.

In their decision, Tuor C dismissed the appeal and held that the development was not defined as a Depot and was instead a prohibited land use within Zone RU2. The following comments are noted from the judgement that was made:

(53) to determine whether the proposal is prohibited is to establish whether the proposed development, properly characterised, is development for a purpose that is expressly listed in the zoning table. It is not correct, or necessary, to determine whether the proposed development, properly characterised, is development for a purpose that is not expressly listed in the zoning table.

(59) I accept that the component of the development that involves the storage, when not in use, of vehicles and plant that supports the operations of the tree lopping business would fall within the definition of 'depot'. However, the uses that are proposed on the site are broader than storage and are not for the purpose of a depot. The parking of staff cars and administration are activities directly associated with the tree lopping business, not the depot.

(63) In the circumstances of this case, an 'undertaking' would be an 'enterprise' which could occur either on or off the site. A significant component of the tree lopping business occurs off site and would and could not require development consent. However, the site is the registered address for the business and there are activities associated with and that constitute the 'existing undertaking' that occur on site, including its administration and parking for staff cars. There is currently no development consent for these activities and they are not ancillary to the residential use of the site or the proposed 'depot'.

(64) I do not accept that an 'existing undertaking' has to be limited to a use that is permissible within the zone. Given that the EPA Act regulates land use planning, an "existing undertaking" that is occurring on the site should be a lawful use of the land, by either

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having a valid development consent, existing use rights, not requiring development consent, or being a use for which consent could be granted, prior to any consent for a "depot":

(72) For the 'depot' to be permissible on the site it must support the operations of an 'existing undertaking'. I find that the tree lopping business is not an 'existing undertaking' for the purposes of the definition of 'depot' in the LEP as, in its current form, it is not a lawful use of the land as it requires consent, and no consent has been granted. Therefore, the proposal, on the facts of this case, is not permissible within the RU2 zone. (emphasis added)

In *Flowers V Wollondilly Shire Council,* the 'tree lopping business' included both the physical tree lopping which occurred off site, but also included a business/office component which was proposed as a 'home business'. The storage of machinery on the site could have been seen as 'supporting' the existing undertaking of the home business; however, in the above decision made by Tuor C, it was found that the home business was not meeting the definition of a 'home business', and thus the application refused.

In the instance of the proposed application, the storage of plant / machinery are activities that could reasonably be directly associated with the arborist / tree lopping business as opposed to being a separate primary use in its own right. Insufficient evidence has been provided however to demonstrate that the storage of the plant and machinery support an existing undertaking, in that no information has been provided to describe the 'existing undertaking'. In particular the applicant has not provided any information regarding how ancillary 'Depot' facilities such as an office for accounting and administration, location for parking of any staff cars, or location of servicing / washdown facilities would be provided.

Council requested this information on 17 November 2021 however no response was received.

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- *Characterisation of the use*

In characterising the proposed uses on the site, Council also notes that the proposed storage of the plant / machinery would not be considered ancillary or subordinate to any other existing or proposed use on the site. This is due to the fact the proposed storage of plant/machinery occurs in a different part of the site and the plant / machinery being stored is not for the exclusive use of the Rural Industry (Sawmill and Log Processing Works).

In establishing this position Council also notes Planning Circular PS 13-001 *'How to characterise development'* which provides:

- *if a component serves the dominant purpose, it is ancillary to that dominant purpose;*
- *if a component serves its own purpose, it is not a component of the dominant purpose but an independent use on the same land. It is a dominant use in its own right. In such circumstances, the development could be described as a mixed-use development.*

Council therefore finds that the proposed uses of the site are both dominant uses in their own right and the proposal is considered a mixed-use development (being a place comprising 2 or more different land uses). This is because the proposed storage of plant / machinery for the tree lopping business is not ancillary to any approved or proposed industry, business premises or retail premises on the same parcel of land.

Applicant's Submission

In the request for further information, Council requested that the applicant provide written clarification as to how the matters listed within *Flowers v Wollondilly Shire Council* [2012] NSWLEC 1340 have been satisfactorily addressed. Specifically, the following was requested:

> *"Written clarification as to the proposed development and how it satisfies the definition of "depot" under Shoalhaven Local Environmental Plan 2014. Council questions the proposed characterisation of the development and requests that you refer to the Court Decision Flowers v Wollondilly Shire Council [2012] NSWLEC 1340."*

No response to Council's request for information was received providing the written clarification requested by Council.

Discussion

Given the land use of the proposed development cannot be properly characterised in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014, Council cannot confirm that the use is permissible and Council are therefore unable to issue a consent for the occupation of the land for this purpose.

Any proposal for the operation of land for a prohibited purpose also demonstrates **a clear inconsistency with the zone objectives - which Council must have regard to under clause 2.3 (2) of the Shoalhaven Local Environmental Plan.**

The objectives for Zone RU2 – Rural Landscape are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

As Council cannot confirm that that the proposal would be defined as a 'Depot' or any other use which would be permissible with consent, it cannot be established whether the proposal would encourage sustainable primary industry production, maintain the present rural landscape of the land in question, or would provide for a use compatible with extensive agriculture.

Inadequate Documentation and Plans – Non-Compliance with Provisions of the Environmental Planning and Assessment (EP&A) Regulation 2000

The Development Application (DA20/2152) was lodged with Shoalhaven City Council on 2 September 2020. As part of Council's initial vetting of the application, the following matters were identified:

- The land is registered as being owned by two (2) persons; however, owner's consent from only one of the two owners had been provided.
  It is noted that landowner's consent from both owners is required under clause 49 of the EP&A Act 1979 which specifically states:

  "(1) A development application may be made—
  (a) by the owner of the land to which the development application relates, or
  (b) by any other person, with the consent of the owner of that land."

- A site plan was submitted which did not include details regarding the location of any existing trees, did not indicate the location of proposed works such as the earthen bund, and did include the location of any buildings on properties adjoining the site.

A site plan is required to incorporate the following detail in accordance with Schedule 1 of the EP&A Act 1979 which specifically states:

"(2) The site plan referred to in subclause (1)(a) must indicate the following matters—

(a) the location, boundary dimensions, site area and north point of the land,
(b) existing vegetation and trees on the land,
(c) the location and uses of existing buildings on the land,
(d) existing levels of the land in relation to buildings and roads,
(e) the location and uses of buildings on sites adjoining the land"

- No plans of the unauthorised shipping containers or demountable building proposed to be used in association with the proposed development were provided.

  Sketch plans depicting the development are required to be submitted as part of the subject application in accordance with Schedule 1 of the EP&A Act 1979 which specifically states:

  "(3) The sketch referred to in subclause (1)(b) must indicate the following matters—

  (a) the location of any proposed buildings or works (including extensions or additions to existing buildings or works) in relation to the land's boundaries and adjoining development,
  (b) floor plans of any proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building,
  (c) elevations and sections showing proposed external finishes and heights of any proposed buildings (other than temporary structures),
  (c1) elevations and sections showing heights of any proposed temporary structures and the materials of which any such structures are proposed to be made (using the abbreviations set out in clause 7 of this Schedule),
  (d) proposed finished levels of the land in relation to existing and proposed buildings and roads,
  (e) proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate),
  (f) proposed landscaping and treatment of the land (indicating plant types and their height and maturity),
  (g) proposed methods of draining the land."

In the request for further information, Council requested that the applicant provide owner's consent compliant with clause 49 and detailed plans compliant with Schedule 1 of the EP&A Regulation 2000. Specifically, the following was requested:

> *"Written consent of all registered owners of the subject land (noting that the consent of only one owner had been provided).*
>
> *Revised site plan prepared in accordance with Schedule 1, Environmental Planning and Assessment Regulation 2000. The plan must indicate the existing vegetation and trees on the land, the location and uses of all existing buildings on the land, the location and uses of buildings on sites adjoining the land, and proposed methods of draining the land (noting particularly the proposed "earthen bund").*
>
> *Detailed plans for the shipping containers and demountable building (i.e., floor plan, elevations, and sections) as this application proposes to regularise these to allow their retention onsite and use as part of the proposed development."*

No response to Council's request for further Information was received providing the written clarification requested by Council.

Discussion

Given no response was received to Council's request for further information, the development is non-compliant with the following **mandatory** requirements of the EP&A Regulation 2000:

- Clause 49 – Persons who can make Development Applications.

  As a response to the Request for Further Information was not provided, the consent of only one landowner is provided, which is not compliant with the requirements of Clause 49 of the EP&A Regulation 2000.

- Clause 77 – Notice of Development Applications
  As adequate plans capable of being notified in accordance with the requirements of Council's Community Consultation Policy were not provided, the development was unable to be notified within the surrounding locality per the requirements of Clause 77 of the EP&A Regulation 2000.

- Schedule 1 – Forms
  As neither an adequate Site Plan nor adequate plans depicting the development were not provided, the development is non-compliant with the provisions of Schedule 1 of the EP&A Regulation 2000.

Non-Compliance with Acceptable Solution A2.1 / Performance Criteria P2 of Chapter G17 – Business, Commercial, and Retail Activities of the Shoalhaven Development Control Plan 2014

Given the applicant proposes to carry out a commercial enterprise on the site, the provisions contained within Chapter G17 – Business, Commercial, and Retail Premises of the Shoalhaven Development Control Plan (SDCP) 2014 applies.

Acceptable Solution A2.1 of Chapter G17 states the following:

> *"Building materials and finishes must be durable, low maintenance and suitable in the context of the adjoining local streetscape and existing and/or future desired character."*

The sketch plans of the existing unauthorised structures (two (2) shipping containers and demountable building) were not provided as discussed above. Whilst certain assumptions can be made and conclusions drawn, a decision and assessment must be made on facts and information provided, including proper plans and information. As such, Council is unable to properly assess and conclude if building materials and finishes of each unauthorised structure are durable, low maintenance and/or suitable having regard to the rural zone and character of the locality.

Applicant's Submission

As discussed above, no response was received to Council's request for information concerning the provision of detailed plans, including floor plans, elevations, and sections of the buildings.

Discussion

Performance Criteria P2 of Chapter G17 – Business, Commercial, and Retail Premises of the Shoalhaven Development Control Plan (SDCP) 2014 states the following:

> *"Building exteriors, structures, awnings and fences are robust, complementary of the existing character and make a positive contribution to the streetscape, especially pedestrian thoroughfares and public spaces."*

Council assesses that the development is non-compliant with Performance Criteria P2 for the following reasons:

- Inadequate information.
- Council notes that the unauthorised shipping containers are located within a short distance (within 50m) from the dwelling on the adjoining property (located at No. 1270 Naval College Rd) and Council cannot guarantee now or in the future, based upon the information provided, that it would not have an adverse visual impact upon this property.
- Given no plans and/or structural certification of the unapproved structures (i.e., shipping containers and demountable building) have been provided – Council is unable to determine the structural integrity of the structures (i.e., whether they are in an acceptable condition and 'robust') and whether they would be suitable for use for storage purposes in association with the proposed development.

Planning Assessment

The DA has been assessed under section 4.15 of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Consultation and Community Engagement:

Public notification (100m buffer) was required to be carried out for a period of two (2) weeks in accordance with Council's Community Consultation Policy. However, as described in the report above, the application was deficient. Notification of the application did not occur.

Financial Implications:

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

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

Summary and Conclusion

This application has been assessed having regard for section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. Having regard to the assessment, the proposal is not considered capable of support and is recommended for refusal for the reasons at Attachment 1.

Bridge Rd, Nowra NSW 2541 | 02 4429 3111
Deering St, Ulladulla NSW 2539 | 02 4429 8999

Address all correspondence to
The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au

NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION BY WAY OF REFUSAL

Environmental Planning and Assessment Act, 1979
DA20/2152

TO:

PDC Lawyers & Town Planners
PO Box 214
WOLLONGONG NSW 2520

being the applicant(s) for DA20/2152 relating to:

1282 Naval College Rd, WORROWING HEIGHTS – Lot 1749 DP 28785

REFUSED USE AND/OR DEVELOPMENT:

Depot & Rural Industry

DETERMINATION DATE:

REFUSAL DATE:

Pursuant to Section 4.18 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the reasons as outlined in Part A:

REASONS FOR REFUSAL

1. The application has not satisfactorily demonstrated that the proposal is able to be defined as a Depot or any other use that is permissible with consent in Zone RU2 Rural Landscape in accordance with the Shoalhaven Local Environmental Plan 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)

2. The proposal is non-compliant with the objectives for Zone RU2 Rural Landscape in accordance with the Shoalhaven Local Environmental Plan 2014. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979)

3. The proposal is non-compliant with Acceptable Solution A2.1 and Performance Criteria P2 of Chapter G17 of the Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979)

4. Inadequate plans were provided which did not demonstrate compliance with Schedule 1 of the Environmental Planning & Assessment Regulation 2000. (Section 4.15(1)(a)(iv) of Environmental Planning and Assessment Act, 1979)

5. Owner's consent from both property owners was not provided as required by Clause 49 of the Environmental Planning & Assessment Regulation 2000. (Section 4.15(1)(a)(iv) of Environmental Planning and Assessment Act, 1979)

6. The likely impacts of the development, including environmental impacts upon the built environment, are not able to be properly determined given the inadequacy of information.. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979)

7. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979)

8. Having regard to the above matters, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979)

RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

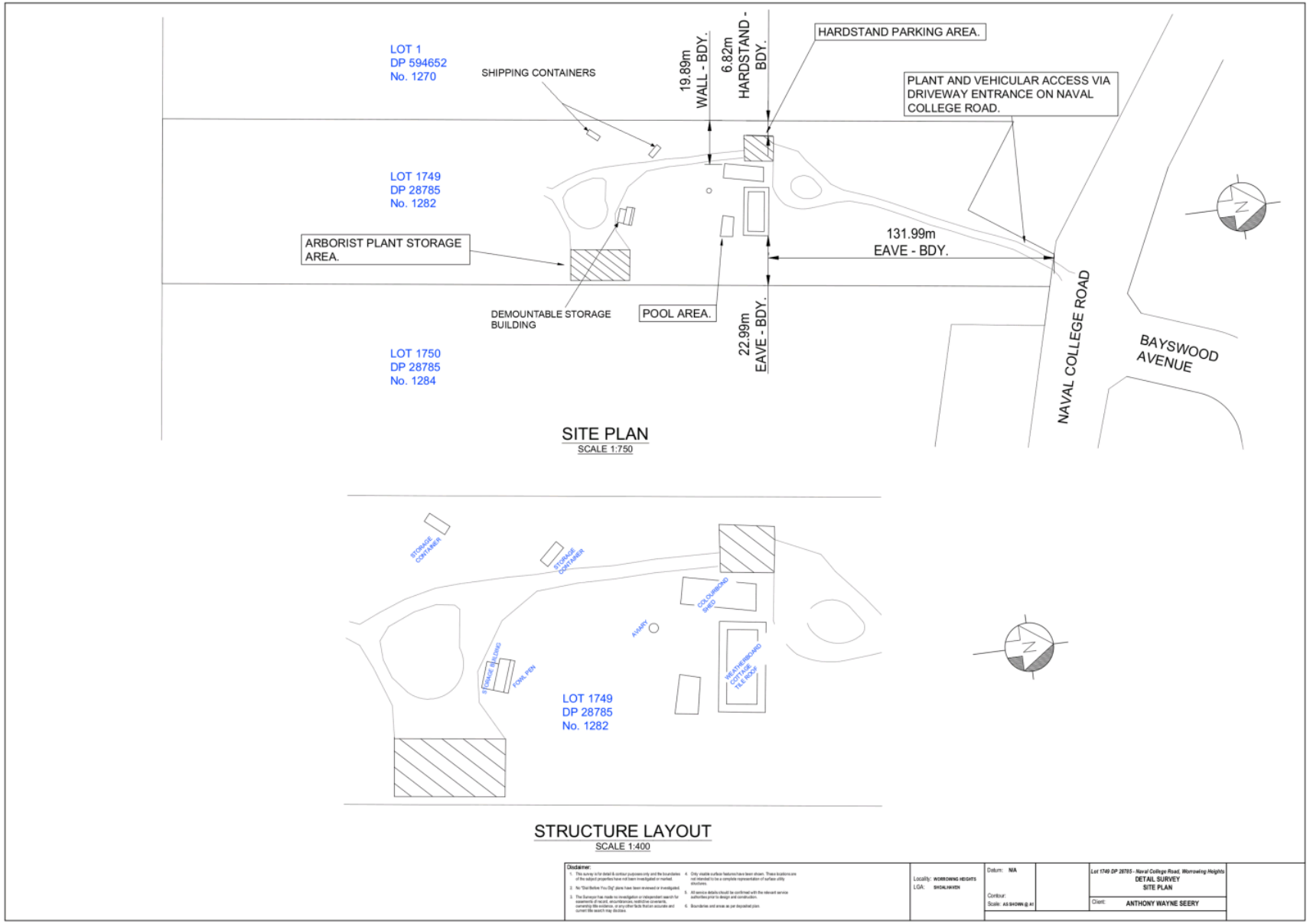
GENERAL ADVICE

Privacy Notification

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the Government Information (Public Access) Act 2009 (GIPAA).

SIGNED on behalf of Shoalhaven City Council:

Development Services
City Development



DE21.32 - Attachment 3

DE21.33 Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

DA. No: DA20/1494/4

HPERM Ref: D21/79136

Department: Certification & Compliance
Approver: Phil Costello, Director - City Development

Attachments:
1. 4.15 Assessment - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 (under separate cover) ⇨
2. Booking.com Listing - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
3. Stop Use Order - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
4. Show Cause Letter - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
5. Approved Floor Plans (DA16/2488) - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
6. Plans - Floor Plans - Lot 3 DP 713138 - 25 Sunnymede Lane Berry ⇩
7. Determination - Approval - DA16/2488 - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
8. Applicants' Justification - DA16/2488 - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
9. Response to Objections - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 ⇩
10. Draft - Determination - Approval - Development Consent - 25 Sunnymede Lane, Berry - Lot 3 DP 713138 (under separate cover) ⇨

DE21.33

Description of Development: Change of use of existing ancillary structure (shed) to detached habitable rooms

Owner: Philip Richard Scarr and Melissa Bevelyanna Scarr

Applicant: PDC Planners

Notification Dates: 10 June 2020 – 25 June 2020.

No. of Submissions: 10 in objection

Purpose / Reason for consideration by Council

Councillors called in DA20/1222 due to the significant public interest on 23 June 2020 (MIN20.423).

This matter was reported to the Development and Environment Committee meeting on 1 December 2020 where it was resolved to refer the matter back to staff for further consideration of:

a. If under 7.13 of the Shoalhaven Local Environment Plan the Council can legally require a further Development Application should a change to short term holiday letting be required by the owners;

b. The submissions by surrounding residents;

and that the matter be reported back to the Development and Environment Committee for determination (MIN20.888).

Recommendation (Item to be determined under delegated authority)

That Council determine Development Application DA20/1495 by way of approval subject to the conditions at attachment 10.

Options

1. Approve the Development Application as recommended

   Implications: This would allow the applicant to proceed with the proposal and complete the all-weather connection of the habitable rooms with the main dwelling.

2. Refuse the Development Application.

   Implications: This would mean the current use could not be regularised and the structure would need to revert back to a shed in accordance with DA16/2488. A Notice of Determination for Refusal will need to be prepared.

   The applicant can lodge an appeal with the NSW Land and Environment Court against Council's decision.

3. Alternative recommendation.

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

Background

The below information was previously included in the Council Report considered in the Development and Environment Committee Meeting on 1 December 2020. Additional commentary considering clause 7.13 of Shoalhaven LEP 2014 and the submissions by surrounding residents as required by Council resolution MIN20.888 has been included.

Subject Site & Surrounding Area:

The subject site is 25 Sunnymede Lane, Berry and it is legally described as Lot 3 in Deposited Plan 713138.

The site has a depth of 95m and a length of 214m and is 2.01ha in area. Sunnymede Lane directly connects to Beach Road which provides access to the site.

The topography of the subject site exhibits a fall of approximately 2.2 metres from the location of the proposed development towards the northern boundary. The building site is located on a level portion of the land.

The site currently contains an approved detached single dwelling house, swimming pool, effluent treatment area, sports court, dispersed vegetation and a detached shed. The applicant wishes to change the use of the detached shed to detached habitable rooms.

Figure 1 – The Subject Site with Existing Building Identified (Orange Circle).

The surrounding area primarily consists of detached single dwellings on large individual parcels of land. These dwellings are situated amongst an overall undulating topography that affords a typical rural residential vista.

The proposed development

The applicants have applied for approval to change the use of an existing ancillary structure (shed – Class 10a) to detached habitable rooms (Class 1a).

The existing detached shed has an overall height of 6.302m and a wall height of 5m. The gross floor area of the shed is 144m². Externally, the building presents as a typical barn type structure on a concrete slab. The walls and roof are clad with colorbond fitted to a steel frame.

The building was approved in 2016 and it has approval for an upper-level bathroom and a sink/tub on the ground floor (DA16/2488).

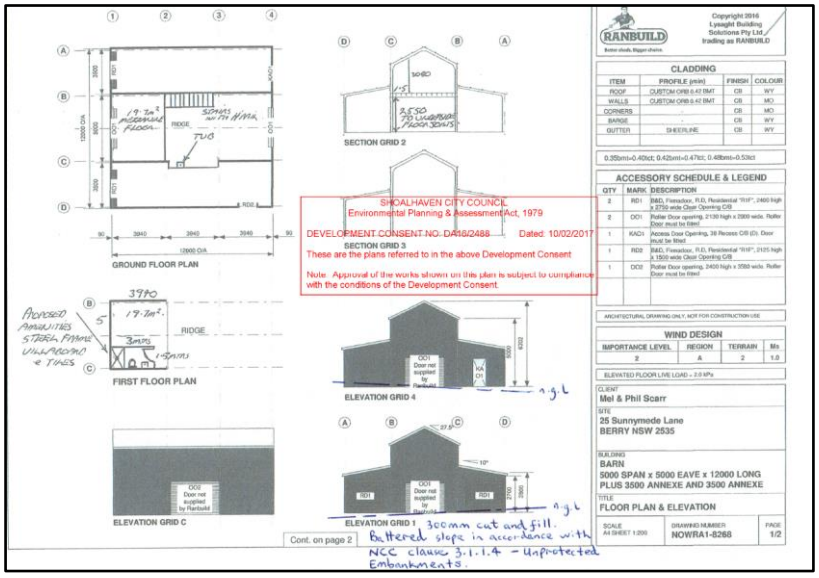


Figure 2 – Approved Plans (DA16/2488)

The Development Application under assessment relates only to the change of use. There are no structural changes or additional construction works proposed. The proposed floor plan is indicated in figure 3 below.

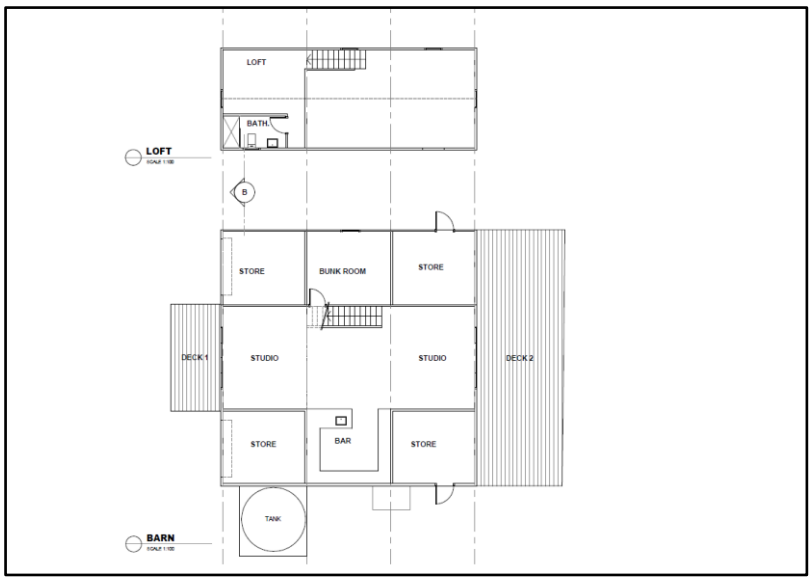


Figure 3 – Proposed Floor Plan (DA20/1494)

DE21.33

Background and History:

On 10 February 2017 Council approved the construction and use of a detached shed on the land at 25 Sunnymede Lane, Berry (DA16/2488). Condition 3 of the development consent related to the use of the structure and provides as follows:

> 1. *The detached shed shall not be used for any industrial, commercial, or habitable purposes.*

The approved plans and development consent for DA16/2488 are attached to this report (attachments 7 & 5). During the assessment of DA16/2488, the applicants were asked to qualify and expand on the reasons for the height and size of the shed. In response to this request, the following justification was received by Council (Also see attachment 8).

> *"The shed is separated into 3 different sections as each section will be used for a different purpose. One of the side sections will be used to store machinery, quad bikes, garden equipment, bikes, surfboards and things that are used more regularly than the other side section will be used for more long-term storage such as boxes, furniture and the like. The middle section will be used as an art studio/workshop.*
>
> *The mezzanine level will be used for storage of art supplies and a toilet. As you need to be able to stand up on the mezzanine level and also allowing for plenty of headroom if you are standing under the mezzanine floor this affects the overall height of the shed.*
>
> *In terms of floor area, we have a lot of things to store and we will not have a garage attached to the main house. Down the track, with renovations, the existing small garage will become part of the house and a carport built instead. Hence the need for external storage."*

Reviewing DA16/2488, it was put that the building was not envisaged to be a habitable space except for the use of the middle section as an arts studio. Council stipulated the building was not to be used for habitable purposes based on the applicants' statement (i.e. storage, and an art studio/workshop).

After receiving approval from Council, the applicants carried out the following works without approval:

(a) Fitting the shed with internal cladding.

(b) Installing kitchen cabinetry.

(c) Erection of additional internal walls.

(d) Erection of decks at the front and rear of the building.

(e) Modification of roller doors to sliding doors.

(f) Installation of seven new windows on the upper floor.

On 19 November 2018 Council received a complaint concerning visitor noise as the premises was being rented out and advertised on Airbnb. An investigation by Compliance Staff resulted in a show cause letter to the landowners on 27 November 2018 (refer attachment 4).

The show cause letter required "all unauthorised use of the detached shed to cease immediately". An order was issued concurrently on the basis that "the conversion of the detached shed into a habitable space meets the definition of a dwelling under the SLEP 2014" (Attachment 3). The show cause letter contained the following photographs that were obtained from the website for the Airbnb listing.

On 5 May 2020, the applicant submitted a Building Information Certificate pursuant to section 149B of the *Environmental Planning and Assessment Act 1979* to regularise the works described in (a) to (f) above (BC20/1034). The building information certificate application will be determined separately following the determination of this development application.

Issues

The key issue is whether the proposed development meets the criteria of a detached habitable room and whether or not the proposed use is appropriate for the land.

In establishing an appropriate determination for the development application, it is paramount to consider whether the building meets the criteria for a detached habitable room.

Detached Habitable Room:

The DCP dictionary defines a 'detached habitable room' as:

> *"means a room or suite of rooms that are separated from the main dwelling house (except by an all-weather connection) and are for use by members of the same household. The room or suite of rooms must not include a kitchen, laundry, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, or clothes-drying room and should rely on the main dwelling house for these purposes, to function as a single dwelling occupancy."*

For the proposed development to be considered a "detached habitable room" in accordance with this description, the building must satisfy the following matters:

(a) *Be separated from the main dwelling*: There is no definition of "separated" or "detached" in the *Shoalhaven Local Environmental Plan 2014,* the *Shoalhaven Development Control Plan 2014*, or the *Environmental Planning and Assessment Act 1979.*

It is reasonable to conclude the building is "separated" or "detached" from the principal dwelling. The building satisfies this requirement.

(b) *Afford an all-weather connection with the main dwelling*: Clause 6.2.3 of *SDCP 2014* includes a note that all-weather connection "must include a continuously roofed/covered deck or hard stand pathway between the principal dwelling and the detached habitable room/studio".

The plans show an all-weather connection between the dwelling and the detached habitable room.

(c) *Be used by members of the principal dwelling*: The building has been used for holiday rental accommodation. The building is no longer listed on Airbnb.

Conditions of consent will require that the detached habitable room only be used by members of the same household.

(d) *Not contain the prohibited facilities referenced in the DCP*: As noted on the submitted floor plans, the building proposes to contain a bar area which includes a countertop preparation area and a sink. Recommended conditions of consent will require the detached habitable room must rely on the main dwelling and the buildings must function as a single dwelling/domicile. Conditions of consent will require that the detached habitable room must not be fitted with any cooking facilities or any clothes washing facilities. Accordingly, the building is not considered a separate dwelling and it satisfies the *SDCP 2014* requirements for detached habitable rooms.

6.3.2 Detached Habitable Rooms and Studios – DCP 2014 – Chapter G12:

In addition to meeting the *SDCP 2014* dictionary definition for a detached habitable room, the proposed development must also comply with the relevant provisions of Chapter G12 of *SDCP 2014*.

The listed objectives of 6.3.2 of the *SDCP 2014* are to

> *(i) Ensure detached habitable rooms/studios provide an option for a dwelling to have detached living spaces/bedrooms without being fully self-contained".*
> *(ii) Ensure detached habitable rooms/studios function operate as part of the principal dwelling and are linked by a continuously roofed or all-weather hard-stand connection.*
> *(iii) Ensure detached habitable rooms/studios fit with the appearance of the principal dwelling.*
> *(iv) Ensure there are no adverse impacts on the amenity, privacy or solar access of adjoining/neighbouring properties.*

Clause P27 of Chapter G12 of SDCP-2014 requires that the detached habitable room must "rely on the principal dwelling for either a laundry, bathroom, or kitchen". An inspection of the site revealed the building currently relies on the principal dwelling for laundry facilities. Conditions of consent will require the detached habitable room not be fitted with any cooking facilities or any clothes washing facilities. It is considered the requirements of P27 are satisfied subject to recommended conditions of consent.

The plans indicate the two buildings will be linked by an all-weather access and this will comply.

In terms of complementing the appearance of the existing dwelling, this would have been considered under the original DA and no changes are proposed. The building does not exacerbate any severe or devastating effects on privacy or solar access of the neighbouring properties.

Compliance with Shoalhaven Development Control Plan 2014

The proposed development has been assessed against the relevant chapters of the *Shoalhaven Development Control Plan 2014* (*SDCP 2014*). This is further outlined in the section 4.15 assessment report (attachment 1). The following brief comments are made as a result of the assessment:

Chapter G1 – Site Analysis, Site Design and Building Materials.

Comment: There are no changes proposed to the approved development under DA16/2488. The applicants have submitted a site analysis plan for this application.

Chapter G2 – Sustainable Stormwater Management and Erosion/Sediment Control.

Comment: There are no changes proposed to the approved stormwater management system as approved under DA16/2488.

Chapter G7 - Waste Minimisation and Management Controls.

Comment: The development application pertains only to the 'change of use', additional building waste will not be generated beyond that which was assessed under DA16/2488.

Chapter G12 – Dwelling Houses and Other Low Density Residential Development.

Comment: The proposed development will comply with this chapter.

Additional consideration of clause 7.13 of SLEP-2014

As per MIN20.888 it was resolved Council defer the item of DA20/1494 back to staff to consider if under clause 7.13 of the Shoalhaven Local Environment Plan the Council can legally require a further Development Application should a change to short-term holiday letting be proposed.

Clause 7.13 of the Shoalhaven LEP 2014 specifies:

7.13 Short-term rental accommodation

1) *The objective of this clause is to ensure that residential accommodation may be used as tourist and visitor accommodation for a short term without requiring development consent.*

2) *Despite any other provision of this Plan, development consent is not required for the use of residential accommodation for the purposes of tourist and visitor accommodation (except backpackers' accommodation or bed and breakfast accommodation) if the use is only short-term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.*

Note—

If a building or place is used for the holding of events, functions, conferences and the like it could be classified as a function centre and function centres are prohibited in all residential zones.

3) *In this clause, short-term means for a maximum period of 45 consecutive days in any 12-month period.*

Clause 7.13 in effect enables use of a dwelling for short term tourist and visitor accommodation with the exception of backpackers' accommodation or bed and breakfast accommodation.

backpackers' accommodation means *a building or place that—*

a) *provides temporary or short-term accommodation on a commercial basis, and*

b) *has shared facilities, such as a communal bathroom, kitchen or laundry, and*

c) *provides accommodation on a bed or dormitory-style basis (rather than by room).*

Note— Backpackers' accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

bed and breakfast accommodation *means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where—*

a) *meals are provided for guests only, and*

b) *cooking facilities for the preparation of meals are not provided within guests' rooms, and*

c) *dormitory-style accommodation is not provided.*

Note— See clause 5.4 for controls relating to the number of bedrooms for bed and breakfast accommodation.

Bed and breakfast accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

By clause 7.13 specifically excluding backpackers' accommodation and bed and breakfast accommodation from benefiting from the operation of the clause, it is suggested that the intent of clause 7.13 is to allow for the whole of a dwelling to be used as tourist and visitor accommodation as opposed to only part of it along with continued residential use of the dwelling. As such, it is viewed that as the proposed detached habitable room only comprises part of the dwelling, it would not benefit from the provisions of clause 7.13 to enable its use as tourist and visitor accommodation alongside the continued use of the main dwelling for ongoing residential accommodation.

A condition of consent could be imposed requiring additional development consent and a further Development Application to be lodged to enable the detached habitable room to be used for tourist accommodation.

There does not appear to be established case law dealing with the application of clause 7.13 in this regard, and it should be noted that this interpretation of the application of clause 7.13 and if a condition were imposed requiring further Development Application to be lodged to enable the detached habitable room to be used for tourist accommodation could be challenged in the Land and Environment Court.

It should also be noted that the exemption for short term rental accommodation is only enjoyed under 7.13(2) if it "…*does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation."*

Planning Assessment:

The application has been evaluated against the relevant matters pursuant to section 4.15 of the *Environmental Planning and Assessment Act 1979 (*See attachment 1).

Consultation and Community Engagement:

The proposed development was notified to affected neighbours in accordance with Council's Community Consultation Policy. Council has received 10 submissions from different households in objection. As per Council resolution MIN20.888 further consideration of the submissions by surrounding residents has been undertaken. Concerns raised in submissions and comments in response are as follows:

Issue	Comment
(a) Unlawful works have been carried out.	Compliance action has been instigated by Council. The Applicant has lodged a Building Information Certificate application in respect of the unlawful works, and these are being held in abeyance pending determination of this development application.
(b) The use of the building for habitable purposes contravenes conditions of consent imposed under DA16/2488.	The Applicant has lodged a Development Application seeking to legalise the use of the building as a detached habitable building. Condition 3 of DA16/2488 stipulates the building cannot be used for habitable purposes. If Council is of the mind to approve this application, recommended conditions of consent would have the effect of modifying condition 3 of DA16/2488 and would require the person benefiting from the consent to give notice of modification as required by clause 97 of the *Environmental Planning and Assessment Regulation 2000*.
(c) The capacity of the effluent treatment system.	The Applicant has provided additional information from a geotechnical consultant indicating the existing system is capable of supporting the expected load. It is considered that the existing on-site effluent treatment system has capacity to manage expected loads.
(d) The applicants are required to comply with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.*	The applicant has submitted a BASIX certificate. Conditions of consent will require compliance with the BASIX certificate.
(e) Use of the proposed development and negative impacts on adjoining neighbours' amenity through noise emissions.	Under the provisions of clause 7.13 of Shoalhaven LEP 2014, development consent is not required for use of residential accommodation as short-term rental accommodation so long as it does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation.

	It is viewed that the application of clause 7.13 of Shoalhaven LEP 2014 only can be utilised to allow the whole of a dwelling to be used as tourist and visitor accommodation as opposed to only part along with continued residential use of the dwelling. If Council is of a mind to approve this application, conditions of consent could be imposed requiring additional development consent and a further Development Application to be lodged to enable the detached habitable room to be used for tourist and visitor accommodation. Further to this point, the Applicant has advised that the intent is not to use the detached habitable room as short-term rental or tourist and visitor accommodation. The detached habitable room is situated over 85m from the closest neighbouring dwelling and it is considered that the proposed use as a detached habitable room would not have a significant adverse impact on the amenity of the area.
(f) Unlawful use of the building/site for functions	The application does not seek approval to operate as a function centre or to hold any events/functions. The use of the building/site for functions would not be permitted under this Development Application and any unlawful use of the premises would be subject to compliance action.
(g) Non-compliance with Acceptable Solutions in Chapter G15 of *Shoalhaven DCP 2014*	Some submissions indicate that the proposed change of use to a detached habitable room does not comply with the acceptable solutions in Chapter G15 of *Shoalhaven DCP 2014*. The provisions of Chapter G15 do not apply to the proposed development as the application is not seeking approval for use of the building as tourist accommodation as defined.
(h) The proposed development is not permissible in the land use zone RU1.	The application is for detached habitable rooms ancillary to an existing dwelling house which is permissible with development consent within the RU1 zone. Recommended conditions of consent will require that no cooking facilities will be permitted within the detached habitable room to ensure that the detached habitable room is not capable of being occupied as an independent dwelling.

The Applicant has prepared a response to the received submissions. The Applicant's response to submissions is summarised as follows (Refer attachment 9):

(a) The previous use of the site was subject to a stop-use notice which has been complied with.

(b) Any potential future use is entirely speculative.

(c) Detached habitable rooms are permissible within the RU1 zone.

(d) The noise and traffic impacts should be no greater than that associated with a single dwelling.

(e) Separation distances between the proposed building and neighbouring properties would limit light spill. The applicants could potentially provide landscaping to further limit these impacts.

(f) The building will be required to comply with the BCA under the submitted Building Information Certificate application and Council will not issue any consent approval for either the DA or the BC until this matter has been satisfied.

(g) The shed was approved with sinks and a bathroom connected to the existing effluent system. No change to the existing connections is proposed.

(h) As the cost of works is below $50,000, the development can be considered BASIX Optional Development.

(i) The structure meets the definition of a detached habitable room, is not fully self-contained and does not have laundry facilities. The kitchen area is not fully functional. An all-weather connection is provided between the principal dwelling and the detached habitable rooms.

Financial Implications:

If the application is appealed, it will result in costs to Council in defending the appeal. This is not a matter Council should 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.

Summary and Conclusion

The additional matters identified in MIN20.888 have been considered by Council staff in this report and it is advised that Council may be able to impose a condition of consent requiring that additional development consent and a further Development Application would be required if the detached habitable room were to be used for tourist and visitor accommodation. However, it must be noted that the application of clause 7.13 has not been tested in this way; this interpretation of the application of clause 7.13 and if a condition were imposed requiring further Development Application to be lodged to enable the detached habitable room to be used for tourist and visitor accommodation this may be able to be challenged in the Land and Environment Court.

Whilst the public interest was a major consideration for this application, the concerns raised are not such that would support refusal of the application.

It is recommended Council grant approval to the proposed development being detached habitable rooms on the land at 25 Sunnymede Lane Berry being Lot 3 DP 713138 subject to the draft conditions of consent (Refer Attachment 10).

Coronavirus (COVID-19) Support

×

- Holiday home info & price
- Facilities
- House rules
- The fine print
- No reviews yet

!

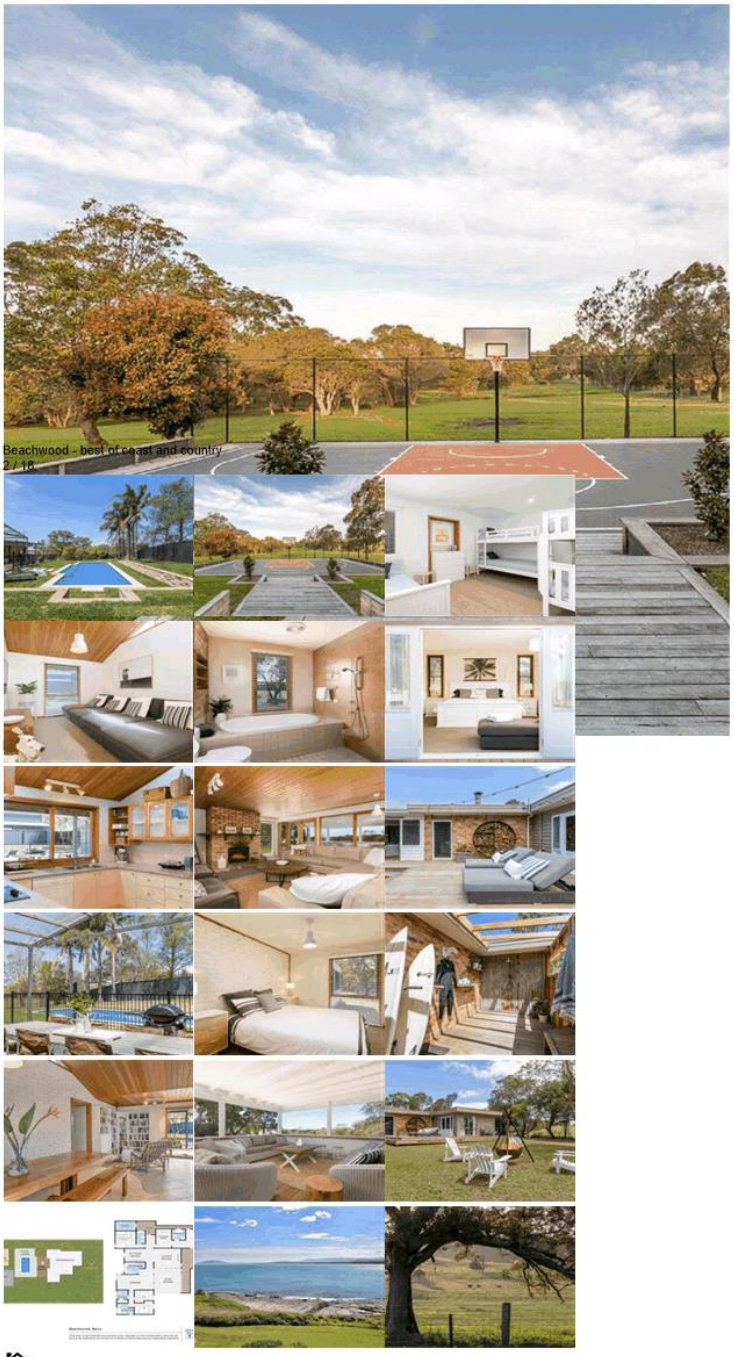
We're sorry, but it is currently not possible to make reservations for this hotel. **Click here to see nearby hotels**

Holiday home **Beachwood - best of coast and country**

Beachwood, 25 Sunnymede Ln, Berry , 2535 Berry, Australia – Show map

After booking, all of the property's details, including telephone and address, are provided in your booking confirmation and your account.

+18 photos
Close ×



Whole house

Pets allowed

Outdoor pool
BBQ facilities
Free WiFi
Beachwood - best of coast and country is set in Berry. The accommodation is 11 km from Gerringong.
A TV and a DVD player are featured.
Kiama is 21 km from the holiday home, while Nowra is 26 km away. The nearest airport is Illawarra Regional Airport, 37 km from Beachwood - best of coast and country.
Beachwood - best of coast and country has been welcoming Booking.com guests since 5 Aug 2019.
Distance in property description is calculated using © OpenStreetMap

Missing some information? /

Most popular facilities
Free parking
Swimming pool
Outdoor pool
Guests love...
Free WiFi
FREE parking!

Lock in a great price for your upcoming stay
Get instant confirmation with FREE cancellation at most properties on our site!

Find a cancellation policy that works for you
From 6 April 2020, your chosen cancellation policy will apply, regardless of Coronavirus. We recommend booking a free cancellation option in case your travel plans need to change.

Availability

We Price Match

When would you like to stay at Beachwood - best of coast and country?
Check-in date
Check-out date

Rooms 1 Adults 2 Children 0

Host Information

Company review score: 8.2 Based on 214 reviews from 362 properties

362 managed properties
3 years of experience

Property information
Set amongst the green hills of rural Berry with pool

Property surroundings

– Show map
Closest airports *
Illawarra Regional Airport
25.2 km
*
All distances are measured in straight lines. Actual travel distances may vary.

Are you missing any information about this area? /

Facilities of Beachwood - best of coast and country

Most popular facilities
Free parking
Swimming pool
Outdoor pool
Parking
- Free! Free public parking is possible at a location nearby (reservation is not needed).
- Street parking

Internet
- Free! WiFi is available in all areas and is free of charge.

Kitchen
Freedom to eat when you want
- Toaster
- Stovetop
- Oven
- Tumble dryer
- Kitchenware
- Electric kettle
- Kitchen
- Washing machine
- Dishwasher
- Microwave

- Refrigerator
- Kitchenette

Bathroom
- Bath or shower
- Hairdryer
- Bath

Media & Technology
Fun for everyone under one roof
- Blu-ray player
- Flat-screen TV
- DVD player
- TV

Room Amenities
Extra comfort
- Drying rack for clothing

Pets
- Free! Pets are allowed. No extra charges.

Outdoors
Sit back and relax
- Barbecue
- BBQ facilities
- Patio
- Balcony

Common areas
- Games room

Pool and wellness
- Swimming pool
- Outdoor pool

Cleaning services
- Laundry

Miscellaneous
- Heating

Missing some information? /

House rules Beachwood - best of coast and country takes special requests - add in the next step!

Check-in 15:00 - 23:30
You'll need to let the property know in advance what time you'll arrive.

Check-out 00:00 - 11:00

Cancellation/ prepayment
Cancellation and prepayment policies vary according to accommodation type. Please **enter the dates of your stay** and check the conditions of your required room.

Children and beds
Child policies
Children of any age are welcome.
To see correct prices and occupancy information, please add the number of children in your group and their ages to your search.

Cot and extra bed policies
There is no capacity for cots at this property.
There is no capacity for extra beds at this property.

No age restriction
There is no age requirement for check-in

Cards accepted at this property
Beachwood - best of coast and country accepts these cards and reserves the right to temporarily hold an amount prior to arrival.

Parties
Parties/events are not allowed

Quiet hours
Guests must be quiet between 22:00 and 08:00.

Pets
Free! Pets are allowed. No extra charges.

The fine print
Please note that there is a 1.94% charge when you pay with a credit card. Please note that this property does not have any policies, procedures or resources in place to accommodate the unique needs of school graduates during the annual 'Schoolies Week' period. It does not have adequate resources to engage qualified security personnel to guarantee the safety, comfort and convenience of school graduate guests during this period. Please note that this property has a 'No Party Policy'.
Please inform Beachwood - best of coast and country in advance of your expected arrival time. You can use the Special Requests box when booking, or contact the property directly with the contact details provided in your confirmation.
This property will not accommodate hen, stag or similar parties.
A security deposit of AUD 500 is required upon arrival for incidentals. This deposit is fully refundable upon check-out and subject to a damage inspection of the accommodation.

×

Council Reference: ON2018/6413 (D18/413297)
Council Contact: Chris Dwyer

P R & M B Scarr
51/1 Betty Cuthbert Ave
SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam,

Unauthorised Use Of Detached Shed (DA16/2488)
25 Sunnymede Lane BERRY

An investigation by Council officers regarding the property at 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (Subject Premises) has revealed that unauthorised development activities including (but not limited to) the use of the detached shed as a habitable building is occurring without the consent of Council in circumstances where Development Consent is required.

The subject property known as 25 Sunnymede Lane, Lot 3 DP 713138 is zoned RU1 – PRIMARY PRODUCTION under Clause 2.1 of the Shoalhaven Local Environmental Plan 2014) (SLEP).

Accordingly, the conversion of the detached shed into a habitable space meets the definition of "dwelling" under the SLEP 2014. (See below)

"Dwelling" means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The unauthorised development activities are occurring upon the subject property without the consent of Council in circumstances where Development Consent is required. Council is of the view that sufficient reason exists for the giving of an Emergency Development Control Stop Use Order (1) of the Table to Part 1 Schedule 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

If you need further information about this matter, please contact Chris Dwyer, Planning Environment & Development Group on (02) 4429 3677 or email council@shoalhaven.nsw.gov.au. Please quote Council's reference ON2018/6413 (D18/413297).

Yours faithfully

Chris Dwyer
Compliance Officer
27/11/2018

Council Reference: ON2018/6413 (D18/413297)
Council Contact: Chris Dwyer

P R & M B Scarr
51/1 Betty Cuthbert Ave
SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam,

EMERGENCY DEVELOPMENT CONTROL ORDER
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
SCHEDULE 5, PART 1, (1) STOP USE ORDER

Issue: Unauthorised use of Detached Shed

Premises: 25 Sunnymede Lane BERRY – Lot 3 DP 713138.

The Council of the City of Shoalhaven has determined to issue you, being the owner of 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (Subject Premises) with an Emergency Development Control Order, Stop Use Order (ON2018/6413) under item (1) of the Table for General Orders, Part 1 of Schedule 5, of the *Environmental Planning and Assessment Act 1979.*

Circumstances in which a Stop Use Order can be given:

Stop Use Order:

Premises are being used:

- for a prohibited purpose, or
- for a purpose for which a planning approval is required but has not been obtained, or
- in contravention of a planning approval.

Premises that is the subject of the Order:

25 Sunnymede Lane BERRY – Lot 3 DP 713138.

REQUIRED ACTION AND COMPLIANCE PERIOD

Stop Use Order

- Complete and comply with item 1 of The Specified Works **IMMEDIATELY**.

THE SPECIFIED WORKS

- Cease permitting the Detached Shed to be occupied/lived in or otherwise used as a habitable space/area/building or structure located at Lot 3 DP 713138 25 Sunnymede Lane BERRY.

REASONS FOR GIVING THE ORDER

Pursuant to Part 4 (5) of the *Environmental Planning and Assessment Act 1979*, this Order was given for the following reasons:

1. The approved detached shed has been converted to a habitable dwelling without prior development consent of the consent authority in a case where prior development consent is required.

2. There is insufficient evidence available to ascertain if the construction of the dwelling meet the deemed to be provisions of the Building Code of Australia as to construction methods.

3. There is insufficient evidence available to ascertain if the "electrical works" undertaken as part of the construction of the dwelling were carried out by a licenced electrician and meet the deemed to be provisions of the Building Code of Australia and relevant Australian Standards.

4. There is insufficient evidence available to ascertain if the "plumbing works" undertaken as part of the construction of the dwelling were carried out by a licenced plumber and meet the deemed to be provisions of the Building Code of Australia and relevant Australian Standards.

5. Due to the unauthorised work, the Council or PCA have not had an opportunity to assess the structural adequacy of the premises following the work(s).

6. A Development Application for the change of use has not been lodged with Shoalhaven City Council.

RELEVANT AUTHORITY

The relevant legislative provision is SCHEDULE 5 of the *Environmental Planning and Assessment Act, 1979.*

MODIFICATION OF ORDERS

The terms of this Order can only be modified by Council in writing, and only if the person to whom the Order was given agrees to that modification. In no circumstances can the terms of the Order be amended orally.

Any application to Council seeking an amendment of this Order must be made in writing, clearly setting out:

- the term(s) to be modified,

- the reasons for the modification of the term(s) and
- any substitute term(s) to be added to the Order (if applicable).

IMPORTANT NOTES

You are advised that the provisions of the Environmental Planning and Assessment Act, 1979 and Regulations made under the Act are not being complied with.

APPEAL

If you wish to appeal against this Order or a specified part of this Order, YOU MUST APPEAL TO THE LAND AND ENVIRONMENT COURT, LEVEL 4, 225 MACQUARIE STREET, SYDNEY WITHIN 28 DAYS OF THE SERVICE OF THIS ORDER UPON YOU.

PENALTY

It should be noted that failure to comply with this Order has a maximum monetary penalty of a Tier 1 offence under part 9 Division 9.37 of the EP&A Act. Under section 9.52 a Tier 1 offence has a maximum monetary penalty, in the case of a corporation of $5 million, and for a continuing offence—a further $50,000 for each day the offence continues, or in the case of an individual: $1 million and for a continuing offence—a further $10,000 for each day the offence continues. In addition, if the Order is not complied with, Council may give effect to the Order and recover the costs of doing so from you.

COMPLIANCE COST NOTICE

As a result of the issue of this Order, Council may also issue you with a Compliance Cost Notice under Schedule 5 part 12 of the Act. Where such a notice is issued it will require you to pay a specified amount, being Council's reasonable costs and expenses incurred in monitoring works and ensuring compliance with the Order. This may include the time spent by Council staff; including time spent undertaking inspections, as well as any other expenses incurred in taking steps to ensure that the Order is complied with. Where Council issues you with a Compliance Cost Notice you will have a right of appeal to the Local Court or, where you are also appealing against this Order, the Land and Environment Court in accordance with Division 8.6 Section 8.24 of the Act.

Please be advised that, in line with s281C of the Environmental Planning and Assessment Regulation 2000, the maximum compliance cost charges, in relation to an investigation that requires the serving of a notice of intention to serve an order under this Act, is $500. Please also be advised that, in line with s281C of the Regulation, the maximum compliance cost charges, in relation to an additional investigation into this matter that results in the serving of a formal order under this Act, is $1000.

CONTACT DETAILS

If you need any further information about this matter, please contact Chris Dwyer 4429 3677 between the hours of 9.00am to 10.30am weekdays or email council@shoalhaven.nsw.gov.au. Please quote Council's reference ON2018/6413 (D18/413297).

Dated: 27/11/2018

Ordered by and on behalf of Shoalhaven City Council.

……

Shaun Clay
for and on behalf of Council
by virtue of authority
delegated to me pursuant to Section 378
of the Local Government Act, 1993 by
the General Manager's authority dated **15 May 2018**

Council Reference: ON2018/6413 (D18/412783)
Council Contact: Chris Dwyer

P R & M B Scarr
51/1 Betty Cuthbert Ave
SYDNEY OLYMPIC PARK NSW 2127

Dear Sir/Madam

Show Cause – Development without Development Consent
25 Sunnymede Lane BERRY - Lot 3 DP 713138

Council records indicate that you are the owners of 25 Sunnymede Lane BERRY – Lot 3 DP 713138 (referred to below as the 'subject property') within the Shoalhaven Local Government area.

It has come to Council's attention that unauthorised development activities (including but not limited to the use of the approved Detached Shed for habitable purposes, unauthorised alterations to detached shed) has taken place upon the Subject Property (refer to Annexure A).

You are advised, it is a legal requirement under the *Environmental Planning and Assessment Act 1979* **(EP&A Act)** that all development and building works be in accordance with the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* OR have prior Development Consent approval issued by Council.

A search of Council records indicates that no Development Application has been received, nor has Development Consent been issued relating to this type of work.

In accordance with the *Shoalhaven Local Environmental Plan 2014* (SLEP) the subject premises is zoned RU1 – Primary Production. Therefore, Development Consent is required to carry out these activities. Development undertaken without approval is an Offence under the EP&A Act. Penalties apply.

Council requires all unauthorised use of the detached shed to cease immediately.

Below is a list of the Offence/s that have been committed to date, together with the Penalty Notice amount that could apply equally to all owners of the subject property and/or person/s involved in this matter:

- Section 4.2(1)(a) of the EP&A Act – Development without development consent – class 1a or 10b building – Individual ($1500).

- Section 4.2(1)(a) of the EP&A Act - Development without development consent - any other case – Individual ($3000)

Council also has the option to take this matter to the Local Court or the Land and Environment Court where the penalties may be much higher. In Council's consideration of this matter, you are hereby afforded an opportunity to Show Cause in writing by **4pm Tuesday 11th December 2018** as to why Council should not instigate further Regulatory Action for the Offence/s committed. In your submission, you may wish to include your intended cooperation and intentions to comply with the Development Consent conditions for DA16/2488.

If you need further information about this matter, please contact Chris Dwyer, Planning Environment & Development Group on (02) 4429 3677. Please quote Council's reference ON2018/6413 (D18/412783).

Yours faithfully

Chris Dwyer
Compliance Officer
27/11/2018

ANNEXURE A

ENTIRE HOUSE

Beachwood House & Barn - best of coast and country

Berry

Holiday Rental Specialists

16+ guests · 6 bedrooms · 6 beds · 4 baths

HOME HIGHLIGHTS

Great check-in experience · 90% of recent guests gave this home's check-in process a 5-star rating.

Helpful · Not helpful

Great location · 100% of recent guests gave this home's location a 5-star rating.

Helpful · Not helpful

Pool · This is one of few homes in this area that has this feature.

Helpful · Not helpful

Set amongst the green hills of rural Berry, Beachwood is only 3km from Seven Mile Beach and 5km to the historic village of Berry. With swimming pool, half basketball court, firepit, trampoline, media lounges, screened indoor/outdoor patio and beautiful barn conversion, there is something for everyone at this stylishly decorated property.

$1,190.00 per night

★★★★★ 12

Dates

Check in → Check out

Guests

1 guest

Book

You won't be charged yet

Enter dates and number of guests to see the total trip price, including additional fees and any taxes.

This home is on people's minds.

It's been viewed 191 times in the past week.

Report this listing

Search

Become a host · Help · Sign up · Log in

ENTIRE HOUSE

Beachwood House & Barn - best of coast and country

Berry

Holiday Rental Specialists

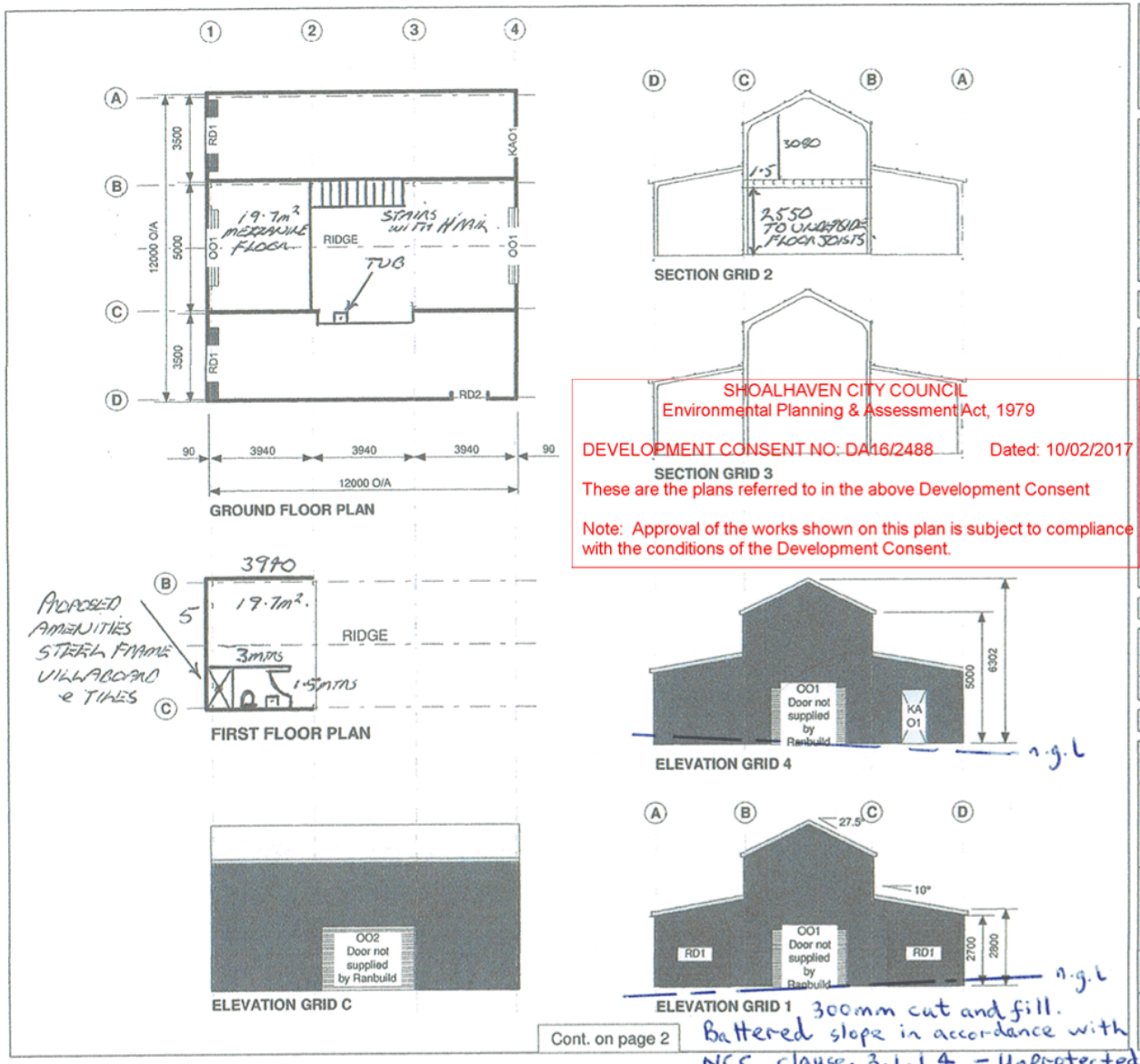
16+ guests · 6 bedrooms · 6 beds · 4 baths

$1,190.00 per night

★★★★★ 12

Dates

Check in → Check out



SHOALHAVEN CITY COUNCIL
Environmental Planning & Assessment Act, 1979

DEVELOPMENT CONSENT NO: DA16/2488 Dated: 10/02/2017

These are the plans referred to in the above Development Consent

Note: Approval of the works shown on this plan is subject to compliance with the conditions of the Development Consent.

Cont. on page 2

RANBUILD
Better sheds. Bigger choice.

Copyright 2016
Lysaght Building Solutions Pty Ltd
trading as RANBUILD

CLADDING

ITEM	PROFILE (min)	FINISH	COLOUR
ROOF	CUSTOM ORB 0.42 BMT	CB	WY
WALLS	CUSTOM ORB 0.42 BMT	CB	MO
CORNERS	-	CB	MO
BARGE	-	CB	WY
GUTTER	SHEERLINE	CB	WY

0.35bmt=0.40tct; 0.42bmt=0.47tct; 0.48bmt=0.53tct

ACCESSORY SCHEDULE & LEGEND

QTY	MARK	DESCRIPTION
2	RD1	B&D, Firmadoor, R.D, Residential "R1F", 2400 high x 2750 wide Clear Opening C/B
2	OO1	Roller Door opening, 2130 high x 2900 wide. Roller Door must be fitted
1	KAO1	Access Door Opening, 38 Recess C/B (D). Door must be fitted
1	RD2	B&D, Firmadoor, R.D, Residential "R1F", 2125 high x 1500 wide Clear Opening C/B
1	OO2	Roller Door opening, 2400 high x 3580 wide. Roller Door must be fitted

ARCHITECTURAL DRAWING ONLY, NOT FOR CONSTRUCTION USE

WIND DESIGN

IMPORTANCE LEVEL	REGION	TERRAIN	Ms
2	A	2	1.0

ELEVATED FLOOR LIVE LOAD = 2.0 kPa

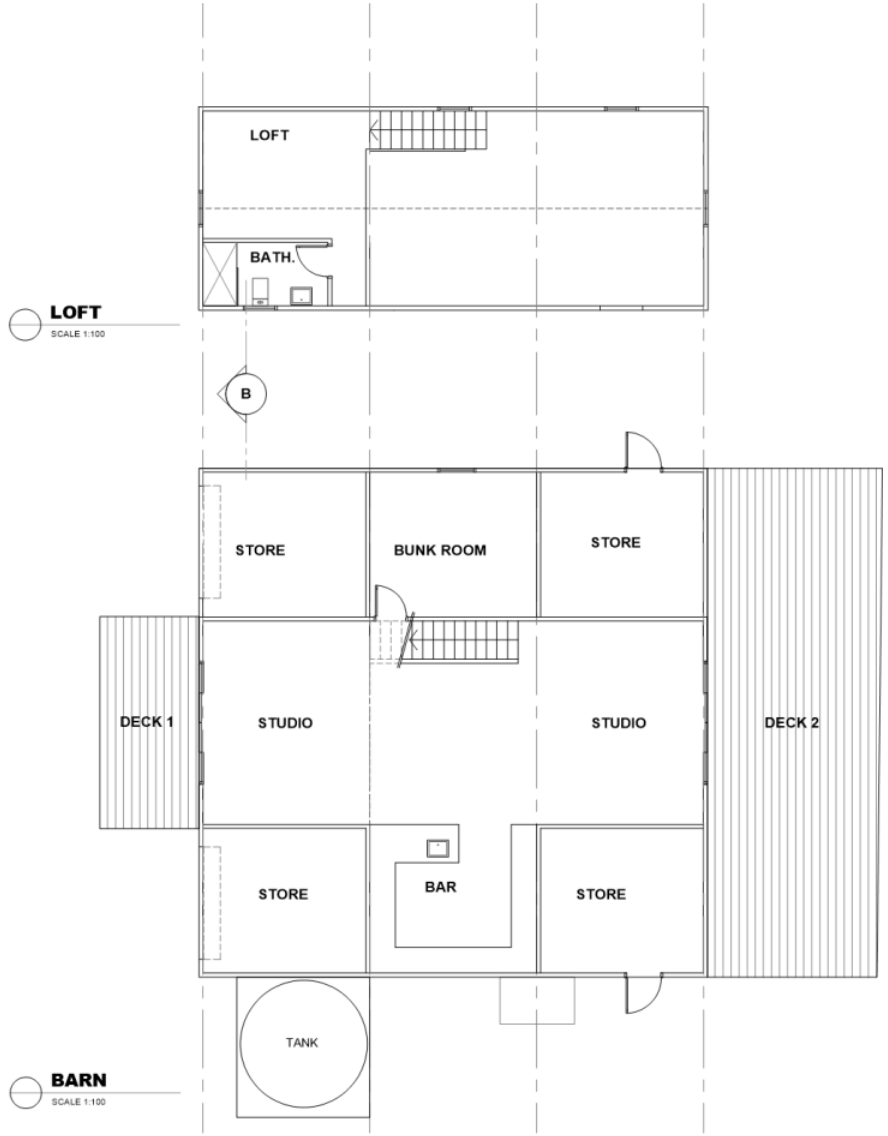
CLIENT
Mel & Phil Scarr

SITE
25 Sunnymede Lane
BERRY NSW 2535

BUILDING
BARN
5000 SPAN x 5000 EAVE x 12000 LONG
PLUS 3500 ANNEXE AND 3500 ANNEXE

TITLE
FLOOR PLAN & ELEVATION

SCALE	DRAWING NUMBER	PAGE
A4 SHEET 1:200	NOWRA1-8268	1/2



PHILL AND MELISSA SCARR, 25 SUNNYMEDE LANE, BERRY	ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO CLIENT BEFORE PROCEEDING	BARN FLOOR PLANS		Date: NOV 2019 Scale: 1:100	Dwg No: Rev:

NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION

DEVELOPMENT CONSENT

Environmental Planning and Assessment Act, 1979
DA16/2488

TO:

Philip Richard Scarr
5 AVON CL
PYMBLE 2073

being the applicant(s) for DA16/2488 relating to:

25 Sunnymede Lane, BERRY - Lot 3 - DP 713138

APPROVED USE AND OR DEVELOPMENT:

Detached Shed & Demolition of Existing Shed

DETERMINATION DATE: **10-Feb-2017**

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM: **10-Feb-2017**

CONSENT TO LAPSE ON: **10-Feb-2022**

DETAILS OF CONDITIONS

The conditions of consent and reasons for such conditions are set out as follows:

PART A

CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT

General

1. This consent relates to **Detached Shed & Demolition of Existing Shed** as illustrated on the plans (referenced in the table below), specifications and supporting documentation stamped with reference to this consent, as modified by the following conditions. The development shall be carried out in accordance with this consent.

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Amended Site Plan	Council Document No D17/40759	-	Revised February 2017
Amended Floor Plan & Elevation	Drawing No NOWRA1-8268 Page 1/2	Ranbuild	Date Registered 09/02/2017
DOCUMENTS	**REF/SHEET NO.**	**PREPARED BY**	**DATED**
Waste Minimisation & Management Plan	Council Document No D16/401404	Philip Scarr	Date Registered 21/12/2016

Notes:

- *Any alteration to the plans and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s96 of the Act, or a fresh development application. No works,* ***other than those approved under this consent,*** *shall be carried out without the prior approval of Council.*

- *Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency.*

2. The **Detached Shed & Demolition of Existing Shed** shall not be occupied or the use shall not commence until all relevant conditions of development consent have been met or unless other satisfactory arrangements have been made with council (i.e. a security).

Use

3. The Detached Shed shall not be used for any industrial, commercial or habitable purposes.

PART B

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE WORK CAN COMMENCE

Notice of Commencement

4. Notice must be given to Council **at least two (2) days prior to the commencement of building work.** (The attached form *'Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority'* is to be completed and returned to Council.)

Residential Building Work

5. Any licensed contractor(s) *performing* ***residential building work valued at $20,000 or more*** must obtain indemnity insurance as required by the Home Building Act 1989. Evidence of such insurance must be provided to the Principal Certifying Authority (PCA) before building works commence.

Notes:

- *This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.*
- *If appointed as PCA,* ***Shoalhaven City Council WILL NOT INSPECT any building work unless evidence of indemnity insurance has been provided.*** *A copy of the Certificate of Insurance will suffice.*

Construction Certificate

6. A Construction Certificate must be obtained from either Council or an accredited certifier before any building work can commence.

Damage to Public Assets

7. The developer or his agent must undertake a site inspection of the adjacent kerbs, gutters, footpaths, walkways, carriageway, reserves and the like, prior to commencement of work and document evidence of any damage to existing assets. Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the applicant's expense.

PART C

CONDITIONS RELATING TO THE APPROVED WORK AND SITE MANAGEMENT

Building Code of Australia

8. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

   Note: *This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.*

Erection of Signs

9. A sign must be erected in a prominent position on any site which building work or demolition work is being carried out:

   a) Showing the name, address and telephone number of the Principal Certifying Authority for the work.

   b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours.

   c) Stating that unauthorised entry to the site is prohibited.

   Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Road Reserve, Footpath & Gutters

10. The kerb, gutter and footpath adjoining the site shall be kept clear of soil and debris.

Soil and Water Management

11. All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur.

    In particular, a silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). The fence must be regularly inspected and cleaned out and/or repaired as necessary and all collected silt must be disposed of to the satisfaction of the Principal Certifying Authority (PCA).

    Unnecessary disturbance of the site (eg excessive vehicular access) must not occur.

    All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.

    All the above requirements must be to the satisfaction of the PCA. Reference/Guidance should be made to the 'Blue Book' – Managing Urban Stormwater – Soils and Construction (as amended and updated).

Construction Hours

12. To limit the impact of the development on adjoining owners, *all* construction work shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 3.00pm Saturdays. No construction work shall take place on Sundays or Public Holidays.

Footpath Trees

13. Any existing trees along the footpath must be retained unless approval is obtained from Council, in writing, for their removal. The applicant is responsible for all costs involved in any lopping or removal. No excavation shall occur inside the drip line of the tree, without the prior consent of Council.

Waste Minimisation and Management

14. All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Minimisation and Management Plan (WMMP) or

removed to an authorised waste disposal facility. No waste shall be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site.

Compliance with the WMMP shall be demonstrated by the retention of relevant receipts. These must be submitted to Council, upon request.

Exterior Materials

15. Exterior materials (excluding windows and other glazing) are to be non-reflective and of a texture and colour which blend with the existing surroundings. White, light grey or bright colours are not acceptable. Metal roofing and wall cladding shall be pre-coloured at the manufacturing stage. Water tanks shall be painted to match either the roof or walls, or a dark green or brown colour. In this regard the following colour schedule is approved:

- Walls – Monument
- Roof – Windspray

Excavations, Retaining Walls and Drainage

16. All excavations and backfilling must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent a danger to life or property.

    As such owing to the grade of the site, soil conditions will require that suitable retaining walls with appropriate agricultural and stormwater drainage be provided to prevent the movement of soil and subsequent nuisance to adjoining properties. All roof and surface stormwater from the site must be conveyed to a legal point of discharge.

Overland Stormwater Flow

17. Stormwater runoff occurs when water flows along a natural gradient over properties on its way to a watercourse.

    All excavation, backfilling and landscaping works must not result in any change to the overland stormwater flow path on your property and or a neighbouring property. If any change to the overland flow path occurs on a property, the stormwater runoff shall be collected and directed to a legal point of discharge.

Redirecting and/or Concentrating Stormwater

18. All excavation, backfilling and landscaping works must not result in the redirection and/or concentration of stormwater flows onto neighbouring properties.

    Note: A property owner cannot be held liable when surface or seepage water flows naturally onto an adjoining property. However, a property owner may be held liable if the actions undertaken cause or are likely to cause damage to property.

Restrictions on the Use of the Land

19. The applicant shall comply with the restrictions-as-to-user placed over the title at the time of subdivision.

Effluent Disposal

20. All new sanitary fittings are to be connected to the existing on-site waste management system.

21. Appliances and fixtures with at least a four star ratings are to be installed in the detached shed to minimise the volume of wastewater produced.

22. Should the existing effluent disposal system fail at any time through improper use or inadequate absorption/disposal area, a new On-Site Sewage Management Report prepared by a suitably qualified and practising Geotechnical Consultant will be required to be submitted to Council at the owner's expense. The report shall be prepared in accordance with Shoalhaven Development Control Plan 2014 – Chapter G8 (Onsite Sewage Management) and the requirements under the Local Government Act, 1993, as amended. The owner is responsible for the correct operation of the effluent disposal system.

Demolition

23. Demolition work shall be carried out in accordance with Australian Standard AS2601-2001: The Demolition of Structures.

Demolition – Adverse Effects to Adjoining Owners

24. Suitable measures shall be taken to ensure that there is no adverse effect to occupants of adjoining buildings and the public by the generation of dust and/or noise during demolition.

Demolition – Protection of Public Places

25. Protection shall be afforded to users of any adjoining public places by the provision of suitable hoardings.

Demolition – Work Cover

26. Precautions shall be taken in accordance with the requirements of the SafeWork NSW in respect of:

    a) Protection of site workers and the public;

    b) Asbestos handling and disposal where applicable.

PART D

REASONS FOR CONDITIONS

Conditions of consent have been imposed to:

1. Ensure the proposed development:

    a) achieves the objects of the Environmental Planning and Assessment Act, 1979;

    b) complies with the provisions of all relevant environmental planning instruments;

c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.

2. Ensure that the relevant public authorities and the water supply authority have been consulted and their requirements met or arrangements made for the provision of services to the satisfaction of those authorities.

3. Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.

4. Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.

5. Minimise any potential adverse environmental, social or economic impacts of the proposed development.

6. Ensure that all traffic, carparking and access requirements arising from the development are addressed.

7. Ensure the development does not conflict with the public interest.

PART E

OTHER COUNCIL APPROVALS AND CONSENTS

Section 68 Local Government Act, Section 138 Roads Act

Stormwater

1. Stormwater from the Detached Shed is to be conveyed to the proposed water tank with overflow to an absorption/distribution trench via drainage designed and constructed in accordance with AS/NZS 3500.3.2 – Stormwater drainage and the Building Code of Australia. Note: The absorption trench is to be located not less than 3.0m from any building and must not be above any effluent disposal area.

Approval to Connect to Sewerage System

Approval for Sewerage, Plumbing and Stormwater Drainage is granted subject to the following conditions:

General

2. In accordance with the Plumbing and Drainage Act 2011, plumbers and drainers must submit the following documents to Shoalhaven City Council.

   a) Notice of Work is to be issued to Shoalhaven City Council no later than two (2) business days prior to the commencement of any work.

   b) A Certificate of Compliance is to be issued to Shoalhaven City Council and to the person for whom the work was carried out on completion of the final inspection.

   c) A sewer service diagram is to be issued to Shoalhaven City Council and the owner of the land or the owner's agent at the completion of the drainage works.

3. All plumbing and drainage work must comply with the Plumbing Code of Australia and Australian Standard AS/NZS 3500, and the relevant NSW amendments.

Inspections

4. Council must be given at least 24 hour's notice to allow for the inspections of:

Type of Inspection:	**Stage of Construction:**
Internal drainage	All internal drainage pipework installed and under hydraulic test, including any required bedding material, and prior to backfilling.
Hot and cold water service	All pipework installed and under hydraulic test.
External drainage	Pipework installed and under hydraulic test, septic tank installed or sewer connected (which ever applicable)
Final inspection of drainage works	All drainage works including stormwater

Both the internal and external drainage lines are to be under Hydraulic test at the time of the inspection.

PART F

ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

Under section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a Complying Development Certificate, Designated Development or Integrated Development. The request must be made ***within six (6) months*** *of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised ***within six (6) months*** *after receipt of this notice.*

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within ***twelve (12) months*** *of the date of determination.*

PART G

ADVICE ABOUT WHEN THIS CONSENT LAPSES

This consent is valid for five years from the date hereon.

In accordance with Section 95 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.

PART H

GENERAL ADVICE TO APPLICANT

Privacy Notification

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the *Government Information (Public Access) (GIPA) Act 2009.*

Trees Located on Public Land

Please note that any works carried out on the subject property or within the road reserve, such as construction of a driveway, that damages or otherwise detrimentally impacts on the health or safety of any tree located on public land may result in the applicant incurring the costs of any remedial action or removal of the tree(s). If you are proposing to carry out any works that may impact on any tree on public land, it is recommended that you contact Council for advice before carrying out those works.

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on

a) A matter of national environmental significance (NES) matter; or

b) Commonwealth land

without an approval from the Commonwealth Environment Minister.

This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation.

It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of consent as notification to you that the Commonwealth Act does not have application.

The Commonwealth Act may have application and you should obtain advice about this matter.

There are severe penalties for non-compliance with the Commonwealth legislation.

Disclaimer – s88B Restrictions on the Use of Land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under Clause 1.9A of Shoalhaven Local Environmental Plan 2014 agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

Occupation Certificate

An **Occupation Certificate** must be obtained from the Principal Certifying Authority (PCA – i.e. Council or an accredited private certifier) before any of the approved (e.g. tourist cabin) development can be used or occupied.

If Council is the appointed PCA for this project, a minimum of twenty four (24) hours' notice must be given to Council to make an inspection of the work.

Principal Certifying Authority

A Principal Certifying Authority (PCA) must be appointed before any building work can commence.

DBYD Enquiry - 'Dial Before You Dig'

In order to avoid risk to life and property it is advisable that an enquiry be made with "Dial Before You Dig" on 1100 or www.dialbeforeyoudig.com.au prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

Inspections

If Council is the appointed PCA for this project, a minimum twenty-four (24) hours notice must be given to Council to make an inspection of the work.

SIGNED on behalf of Shoalhaven City Council:

Signature

Name **David Anstiss**
Certification Supervisor – Building & Compliance
Planning & Development Services Group

Detached Shed at 25 Sunnymede Lane Berry

Chapter G12 of DCP No 2014.

Clause 5.2.3 – Setback and Building Lines

As per Table 2 the prescribed setbacks in rural areas for properties over 10,000m^2 is a:

- 10 metre side boundary setback and
- 7.5 metre side boundary setback.

The proposed shed complies with the prescribed setbacks.

Clause 5.3.8 – Ancillary Structures

There is no prescribed maximum floor area for sheds where the land area is over 10,000m^2. There are also no prescribed maximum wall heights.

The proposed ground floor area of the shed is 144m^2 plus a 20m^2 mezzanine. The proposed shed is an American Barn type structure with 2.7 metre ground floor wall heights.

The owner has provided the following reasons for the proposed shed size and height:

The shed is separated into 3 different sections as each section will be used for a different purpose. One of the side sections will be used to store machinery, quad bikes, garden equipment, bikes, surfboards and things that are used more regularly and the other side section will be used for more long term storage such as boxes, furniture and the like.
The middle section will be used as an art studio/ workshop.

The mezzanine level will be used for storage of art supplies and a toilet. As you need to be able to stand up on the mezzanine level and also allowing for plenty of headroom if you are standing under the mezzanine floor this affects the overall height of the shed.

In terms of floor area, we have a lot of things to store and we won't have a garage attached to the main house. Down the track, with renovations, the existing small garage will become part of the house and a carport built instead. Hence the need for external storage.

The proposed colours of the shed are Windspray roof and Monument walls.

PDC
PLANNING | DEVELOPMENT | COMMERCIAL
LAWYERS & TOWN PLANNERS

22 July 2020

The General Manager
Shoalhaven City Council
P.O. Box 42 Nowra NSW 2541

ATTN: Harley Lockhart

Dear Mr Lockhart,

RESPONSE TO COMMUNITY OBJECTIONS RELATING TO DA20/1494 – CHANGE OF USE TO DETACHED HABITABLE ROOMS 25 SUNNYMEDE LANE, BERRY

We would like to take this opportunity to respond to the objections received in relation to the change of use application submitted for an existing shed at 25 Sunnymede Lane Berry (DA20/1494). Thirteen objections have been uploaded onto Council's DA tracking webpage, however a few of these have been uploaded more than once. A total of 10 unique objections were received, four of which were from neighbouring properties.

The objections generally raised the same concerns, namely:

- Previous unapproved use/works
- Noise, traffic and amenity impacts
- Light spill
- Potential unapproved use(s) in the future

Two objections also raised the following concerns:

- Compliance with BCA/structural suitability
- Effluent disposal calculations
- Need for BASIX Certificate
- Compliance with definition of detached habitable rooms
- Compliance with DCP controls for tourist and visitor accommodation

The first list of issues, raised in all submitted objections related to either past, or possible future unauthorised uses of the site, namely as tourist and visitor accommodation and/or a function centre.

As noted in the objections, and the development application itself, the previous use of the site was subject to a stop-use notice, which we are instructed has been complied with. Any potential future unapproved use is entirely speculative. While it is possible that unapproved uses could be undertaken in the future, this would be true of any development/site. If consent were granted, any use other than 'detached habitable rooms' be in contravention of the consent and subject to compliance actions from Council.

The owners have indicated that they would like to retain the habitable use of the structure and have therefore prepared an application for a proposed change of use to detached habitable rooms, which is

Planning Development Commercial
Level 2, Suite 1, 144 Junction St Nowra NSW 2541
Level 2, 73 Church Street, Wollongong NSW 2500

Mailing Address: PO Box 214 Wollongong NSW 2520
T: (02) 4288 0150 W: www.pdcplanners.com.au E: mail@pdcplanners.com.au

ABN 64 612 774 848

permissible in the zone. Detached habitable rooms, by definition, are used *in association* with the residential dwelling. The noise and traffic impacts arising from this use should therefore be no greater than that associated with the use of the residential dwelling to which they are related.

The image below shows the setbacks from the nearest residential receivers and the location of existing vegetation. It would appear that light spill from the basketball court would be limited given the separation distances, however to address this concern additional landscaping could be provided on the northern and southern boundaries in the vicinity of where the measurement lines are shown in the image below.

Figure 1: Site image (nearmaps aerial photo) showing setback from basketball court to nearest residential properties

The second list of concerns raise unique issues that are not speculative (potential future use) or related to previous uses that have since ceased. I have addressed each of these concerns below.

Compliance with BCA/structural suitability

The Building Certificate Application submitted to Council 22/05/2020 (BC20/1034) will be required to demonstrate compliance with the relevant sections of the Building Code. It is recognised that Council will not issue any consent/approval for either the Building Certificate or the Change of Use until this matter has been satisfied.

PDC

Effluent disposal calculations
The shed was approved with sinks and bathroom facilities connected to the existing effluent disposal system. As detached habitable rooms used in association with the existing dwelling no change to the existing connections/system are proposed.

Need for BASIX Certificate
As the cost of works is below $50,000 we believe the development can be considered Basix Optional.

Compliance with definition of detached habitable rooms
The submitted Statement of Environmental Effects addresses how the proposal meets the definition of detached habitable rooms.

To address the specific concerns raised in the objection we note that the structure is not fully self-contained as it does not have laundry facilities. One objection claimed that the existing 'kitchen' area in the proposed detached habitable rooms is fully functional, however this is not accurate. This area contains only the approved sink, cabinetry and a fridge.

The detached habitable rooms are therefore not capable of independent occupation and relies on the main dwelling for both kitchen and laundry functions. In addition to sharing these two essential functions the buildings are separated by less than 16m and share a driveway, parking areas and recreational amenities (pool, basketball court).

The link between the main dwelling and detached habitable rooms is unroofed, however it is all weather and the structures share common facilities, including essential functions as outlined.

Compliance with DCP controls for tourist and visitor accommodation
These controls have not been considered in the application as tourist and visitor accommodation is not proposed.

Should Council require any additional information regarding this application, please contact us to discuss this matter further.

Sincerely
Kristin Holt
Town Planner

DE21.34 Development Application - DA20/2280 - 95 Greenbank Gr Culburra Beach - Lot 214 DP 11892

DA. No: DA20/2280/4

HPERM Ref: D21/95023

Department: Development Services
Approver: Phil Costello, Director - City Development

Attachments:
1. Planning Report - 95 Greenbank Gr Culburra Beach - Lot 214 DP 11892 ⇩(under separate cover)
2. Determination - Draft - 95 Greenbank Gr Culburra Beach - Lot 214 DP 11892 ⇨(under separate cover)

Description of Development: Construction of a Single Dwelling House to create a Dual Occupancy (Detached), Construction of a Single Carport for the Existing Dwelling House; and Two (2) Lot Torrens Title Subdivision

Owner: C S R Tauni and R E Tauni
Applicant: Carl Sebastian Reijo Tauni

Notification Dates: 15 December 2020 to 15 January 2021

No. of Submissions: Nil

Purpose / Reason for consideration by Council

Council's Policy POL16/235 *Dealing with Development Applications Lodged by Staff or Councillors*, as the owner of land the subject of Development Application (DA) is a staff member within the development assessment section of the City Development Group.

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2280 to construct one (1) single dwelling house to create a dual occupancy (detached) and a single carport for the existing dwelling house and subdivide the land into two (2) Torrens Title lots at Lot 214 DP 11982, 95 Greenbank Grove, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

Options

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

   Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the application.

   Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations. The applicant would be entitled to seek a review and / or pursue an appeal in the Land and Environment Court.

3. Alternative Recommendation

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

Figure 1 – Location Map

DE21.34

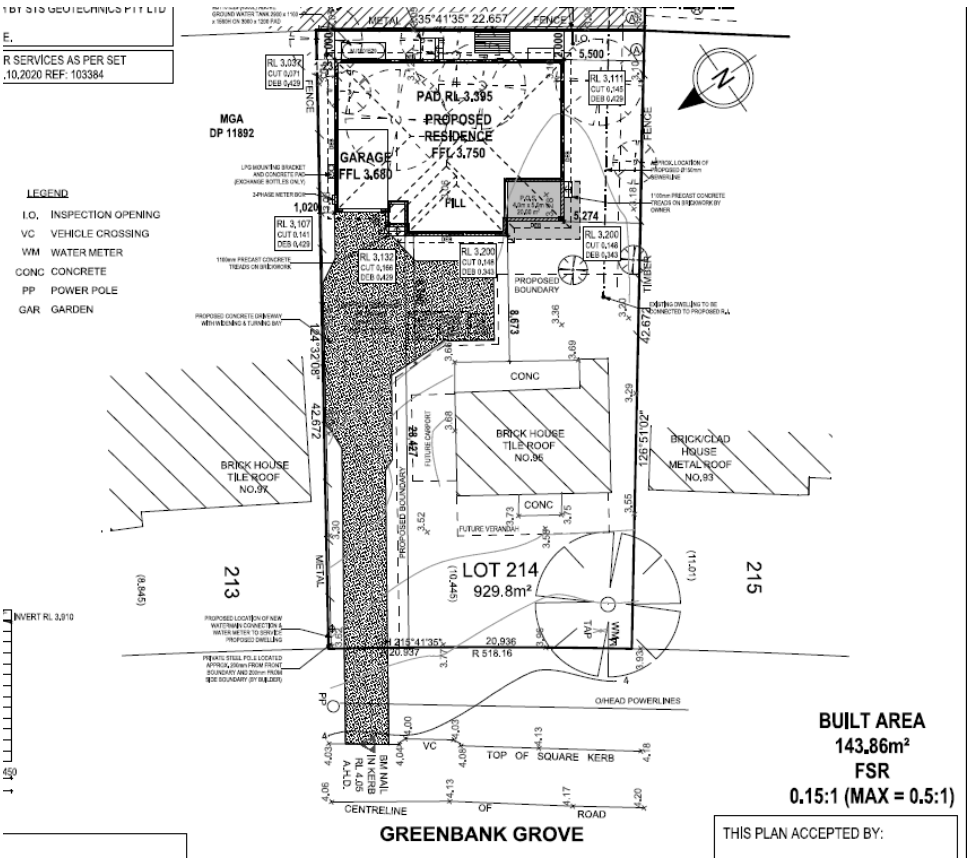
Background

Proposed Development

The DA seeks approval for the construction of one (1) dwelling to create a dual occupancy (detached), a single carport ancillary to the existing dwelling onsite and subsequent Torrens Title subdivision to create two (2) separate allotments. The single storey dwelling proposed is to contain four (4) bedrooms, two (2) bathrooms and a single garage with associated outdoor living and appropriate landscaping.

Vehicular access for both dwellings is proposed from Greenbank Grove.

Figure 2 – Site Plan



DE21.34

Subject Land

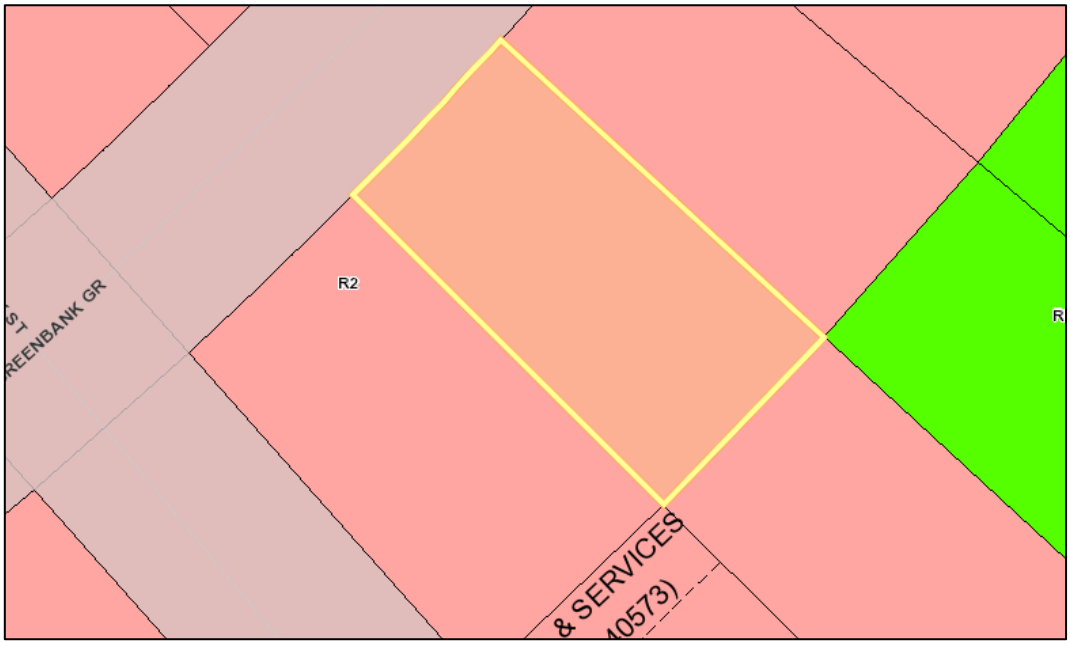
The development site comprises Lot 214 DP 11892 (95 Greenbank Grove, Culburra Beach). Refer to Figure 1.

Site & Context

The development site:

- Is regular in shape and currently contains a single dwelling, as approved by BA81/1146.
- Is zoned R2 Low Density Residential and is approximately 923.19m^2 in area.
- Has existing access from Greenbank Grove.
- Is identified as being wholly flood prone.
- Adjoins land zoned R2 Low Density Residential.
- Is located within an established residential area. Adjoining lots to the north, east, south and west all contain single dwellings.

Figure 3 – Zoning Extract



DE21.34

History

The following provides detail on post-lodgement actions and general site history for context.

- The application was lodged on 17 November 2020.
- As a result of detailed assessment of the application, on 2 December 2020 additional information was requested, being floor plans and proposed parking provisions. This information was provided to Council on 2 December 2020.
- The application was assessed and internally reviewed. An assessment against Council's Policy POL16/235 revealed that the application must be reported to Council for determination due to the owner of land the subject of the DA being a staff member within the development assessment section of the City Development Group.
- Draft conditions of consent were forwarded to the applicant for comment on 16 March 2021.
- The applicant provided comments on the draft conditions of consent by email dated 18 March 2021.
- Council reviewed these comments and amended the draft condition relating to the standard of construction of the internal driveway for proposed Lot 1 on 23 March 2021. The amendment proposed to enable the construction of the driveway to be designed to a coloured, patterned or stamped concrete standard *or reinforced gravel driveway finish.* This was discussed with Council's Development Engineer and considered appropriate.

Issues

Subclause 3.3 (5) of POL16/235 – Dealing with Development Applications Lodged by Council Staff or Councillors

Subclause 3.3(5) states "The applicant and/or landowner is a staff member within the development assessment sections of the Planning, Environment and Development (PED) Group".

As the part owner of the subject site is a member of the development assessment section of the City Development Group, the DA must be reported to Council for determination.

Council's Development Control Plan (DCP) Controls:

The development generally complies with the provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014) and has utilised performance solutions in regard to the following:

Acceptable Solution A5.1 of Control 5.1.3 Building Envelope, Heights and Setbacks. Chapter G13 Medium Density and other Residential Development, SDCP 2014

It is noted that there is departure proposed to Acceptable Solution A5.1, which states that dual occupancy development must comply with the setback provisions in Table 2 (p.12). The setback provision to be varied is the rear setback, which is to be 3m (average).

Applicant's Submission

The applicant proposes to site the second dwelling 2m from the rear boundary, a variation of approximately 33%. The applicant provided the following justification for the proposed variation:

> *"Given the (site restrictions and demonstrated need for adequate on-site vehicle manoeuvring),along with the reduced separation between the rear of Dwelling 1 and Dwelling 2 to accommodate DCP standards for nominated private space hardstand areas, I have resited Dwelling 2 two (2m) metre from the rear lot boundary which would permit the additional car space, a B99 turning radius and allow Dwellings 1 and 2 to gain 1m additional separation."*

Discussion

The proposed siting of the dwelling is deemed to achieve the Performance Criteria. It does not undermine the integrity of prevailing building lines, is complementary to existing setbacks in proximity to the site and does not impact on the existing dwelling located to the rear of the subject site.

Acceptable Solution A13.1 of Control 5.2.3 Vehicle and Pedestrian Access. Chapter G13 Medium Density and other Residential Development, SDCP 2014

Driveways are to be set back a minimum of 0.5m from the side or rear boundary to accommodate appropriate landscape elements. A variation of less than 0.5m is sought to enable appropriate vehicle manoeuvring on the site to achieve appropriate access to and from the site in a forward motion.

Applicant's Submission

The driveway is *"built with a 0m setback for 10m of the driveway due to the need to provide a B99 Reverse Manoeuvre from the driveway. The first 20m of the driveway from the street proposes a landscape setting as shown on the proposed concept landscape plan."*

The design of the driveway *"avoids a gun-barrel effect down the side boundary through providing a curved appearance and landscaped to Council's satisfaction to break up the appearance of the gun-barrel design and achieves the minimum sight lines for pedestrian safety in accordance with AS2890.1."*

Discussion

This minor non-compliance does not prevent the site from achieving the landscaping requirements of the chapter and is considered to be consistent with the objectives of 5.2.3 Vehicle and Pedestrian Access.

Control 5.1 Car Parking Schedule of Chapter G21 Car Parking and Traffic, SDCP 2014

As per 5.1 Car Parking Schedule, any dual occupancy must provide two (2) spaces where the dwelling contains three (3) or more bedrooms or rooms capable of use as a bedroom, with the spaces to be enclosed within the dwelling footprint.

For the proposed new dwelling, one (1) car parking space is proposed behind the building line and a second space located within the driveway.

The existing dwelling currently does not have any formal car parking. It is proposed to provide one (1) space in the proposed carport and a second in the driveway.

Applicant's Submission

> *"The existing dwelling 1 has no formal parking and has not had a formal parking arrangement since its construction in the 1980s. The existing dwelling parking arrangement has been convenient, accessible and safe and met the needs of residents and visitors without any impacts for over 30 years."*

The development application proposes to install a carport behind the building line to create one (1) covered car parking space. The application is silent on access improvement to the existing dwelling. However, it can be reasonably assumed that a driveway will be provided. As per the recommendations of Council's Development Engineer, the access to the dwelling will need to be formalised.

> *"Primary plans for the proposed Dwelling 2 considered the inclusion of a double car garage however this arrangement was not chosen due to the loss of usable open space for Dwelling 2. A single car garage results in an improved amenity for the dwelling, less hard stand area and a building that is not visually dominant when viewed from the street. The proposed development provides one formal car space in the garage."*

A second space is to be provided within the driveway. This is considered a minor non-compliance; however, the site constraints render the ability to provide both spaces within the dwelling footprint unviable. The proposed development meets the required number of spaces, despite not providing both spaces within the dwelling envelope. The proposed carparking arrangement is deemed to satisfy the objectives of the chapter regarding the proposed additional dwelling.

Discussion

The minor non-compliances to Chapters G13 and G21 are considered appropriate given the site constraints that render the ability to provide sufficient car spaces within the dwelling footprint and achieve sufficient open space unviable. The proposed development meets the required number of spaces, despite not providing both spaces within the dwelling envelope. The proposed carparking arrangement is deemed to satisfy the objectives of the chapter regarding the proposed additional dwelling.

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 1.

Consultation and Community Engagement:

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

The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site. The notification was for a 31-day period.

Financial Implications:

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

Legal Implications

A section 8.2 review or an appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The proposed development is compliant with the provisions of SLEP 2014 and is broadly consistent with the SDCP 2014 (albeit for the alternative solutions proposed under Chapters G13 and G21 as detailed earlier in this report).

The application is considered capable of support as there are no substantive planning reasons to warrant refusal. Accordingly, it is recommended it is approved subject to the recommended conditions of consent as per Attachment 2.

DE21.35 CL21.30 - Response to Question on Notice - West Culburra Development

HPERM Ref: D21/81267

Department: Development Services
Approver: Phil Costello, Director - City Development

Reason for Report

This report is in response to a series of Questions on Notice pertaining to the proposed West Culburra Development.

Recommendation (Item to be determined under delegated authority)

That the Response to Question on Notice – West Culburra Development report be received for information.

Options

1. Receive the report for information as recommended.

   Implications: Nil.

2. Recommend otherwise.

   Implications: This would depend on the recommendation adopted.

Background

At the Development and Environment Committee of 2 March 2021 a "*Question on Notice – West Culburra Development – Report Request*" was put forward. There were 6 questions in that Notice. This report includes responses to the questions.

The West Culburra Development has received recent attention as the Department of Planning, Industry and Environment (Department) received an Amendment Report for the West Culburra Mixed Use Subdivision (SSD 3846) as part of a merit appeal currently before the NSW Land and Environment Court (LEC) for determination (Case Number 2019/00078149).

The amended plans now relied upon by Sealark Pty Ltd (the Applicant) were publicly exhibited in February 2021 by the Department and the Independent Planning Commission (IPC) as part of the merit appeal process. Council was notified of the appeal and invited to comment and provide recommended conditions. Council's submission was provided to the Department on 26 February 2021.
Council is not party to the proceedings as it is not the consent authority for the application which was initially lodged with the Department as a Part 3A Application under the *Environmental Planning and Assessment Act 1979*. Part 3A is now repealed and the project is now being dealt with as a State Significant Development Application.

Questions

Members of the Culburra community have been asking questions in regard to the latest iteration of the West Culburra Application. A recent community meeting was limited to "supporters of the development only" which left those who are undecided or firmly against the development no forum in which to ask questions. The following questions are submitted on behalf of the community.

1. **Has or will the NSW Department of Planning, Infrastructure and Environment / Land and Environment Court of NSW undertake an analysis in respect to the proposed retail development?**

   Background: There are concerns that the proponent's development will have a major negative effect on the retail economy of Culburra Beach / Orient Point.

   The proponent's own Economic Impact Statement that Culburra Beach has a large oversupply of retail space, based on Australian local average retail space per capita:

   > **"*At an existing population of around 3,600 residents, this would suggest the Culburra Beach Catchment Area could demand around 4,000sqm of retail floorspace. An estimate of retail floorspace in the Culburra Beach Town Centre identified some 7,100sqm of retail floorspace, suggesting the Catchment Area is already oversupplied by some 3,000sqm of retail floorspace. It is therefore unsurprising that the Town Centre has faced historically high levels of vacancy given the limited resident population."***

   The proponent expects the development to lead to an increase in population of 847 residents. From the proponent's own numbers this increase has the potential to absorb 930 square metres of Culburra's 3,000 square metre excess. This would still leave approximately 2,100sqm of excess retail space, based on Australian local average retail space per capita:

   > ***"Based on a retail demand ratio of 1.1sqm per person, new residents accommodated through the Proposal could demand an additional 930sqm of retail floorspace".***

   Yet despite this, the proposal includes adding a further 2,438sqm of retail space in Culburra.

<u>Response</u>

Council is not party to the current ongoing legal proceedings, and the section 34 conference is a confidential forum to enable discussions without prejudice between the applicant (Sealark Pty Ltd) and the consent authority (the Department).

More information about Conciliation can be found via this link:
https://www.lec.nsw.gov.au/lec/dispute-resolution.html

Council's involvement is limited to the request for comment and recommended conditions which occurred through the February 2021 exhibition of the revised application. As previously mentioned, Council is not party to the proceedings.

Council's submission raised concern with regard to the Economic Impact Assessment (Atlas Urban Economics, Job No. J80, 29.09.2020) and the discrepancy between the proposed retail floor space as part of the proposed development and the existing and resultant oversupply of retail floor space in Culburra. The submission identifies that should further oversupply of retail be proposed within the subdivision, existing retail within the Culburra Beach Town Centre may be impacted. It can only be assumed that this would be considered in the discussions and potentially be a matter for exploration in a hearing if the matter is not resolved at Section 34 conference.

Council's submission on the proposal recommended a condition be imposed on any Concept Approval that requires *future development applications for mixed use and retail/commercial development be supported by an Economic Impact Statement which assesses the impact of proposed additional retail floor space and the uses proposed, on the existing Culburra Town Centre.* Council would likely be the assessment authority for any such application.

2. What justification has been made for a 140% expansion of the Culburra Beach industrial precinct?

Response

The proposal includes 13 industrial lots facilitating some 11,837sqm of industrial floor area. The existing industrial area in Culburra Beach comprises two large freestanding warehouse/factory buildings and two strata-titled industrial complexes comprising six individual industrial suites. The Economic Impact Assessment (Atlas Urban Economics, Job No. J80, 29.09.2020) states that there are strong market conditions based on sales analysis of Culburra Beach and the broader Shoalhaven LGA and provides the following implications of the proposal:

- *"The Concept Scheme envisages the creation of 13 new industrial lots ranging from 1,900sqm to 5,800sqm in site areas and overall totalling to some 3.29ha. This would represent an increase of 0.6% of Shoalhaven's existing industrial land.*
- *The Proposal represents a logical extension of the Culburra industrial precinct along Culburra Road.*
- *The location of the Site will likely attract service industrial and service commercial businesses who are more reliant on proximity to population catchments as opposed to arterial motorways. This is in contrast to South Nowra which typically attracts transit-orientated occupiers by virtue of its location adjacent the Princes Highway".*

DE21.35

3. What studies have been undertaken with regard to demand for that level of space? Particularly given the proximity to South Nowra industrial precinct?

Response

The amended application as exhibited by the Department included an Economic Impact Assessment prepared by a property and land use economist at Atlas Urban Economics (Job No. J80, 29.09.2020). A link to the report is here:

https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-3846%2120210113T062159.312%20GMT.

The report states:

> *"The Culburra Beach industrial market is a minor industrial precinct – measuring some 2.3ha and accounting for less than 1% of the broader Shoalhaven LGA industrial market. Very little market activity has been observed in recent years with the precinct understood to be fully occupied."*

In relation to South Nowra, the report identifies that:

> *"South Nowra is understood to be emerging as a 'freight and logistics hub' given its ideal location along the Princes Highway, proximity to both Wollongong and Canberra and affordability of land compared to markets further north in the Wollongong LGA."*

Meanwhile, in relation to industrial development in Culburra it is noted:

> "*The Culburra Beach industrial precinct is primarily an urban services-focused precinct – proximity to the surrounding resident population and affordability being the primary driver for occupiers as opposed to proximity to Princes Highway.*"

4. Has Council or the State Government undertaken a peer review of the proponent's Economic Impact Statement to verify the claims made in respect to job creation as the Economic Statement appears to over inflate the overall jobs available for the existing and new populations?

Response

The Department is the assessment authority, and any further assessment or 'peer review' would be a matter for review by the Land and Environment Court or the Department which Council is not privy to at this time, given the matter is within a conciliation phase. In the event that the matter proceeds to a hearing, the contentions that are not resolved during conciliation will be potentially examined and 'argued' before the Court, with relevant experts producing expert reports and cross examined.

5. Council is not the approval authority for this development, but does Council have any obligation to test the validity of the claims in respect to water runoff from the site into Curly's Bay considering that should the development be approved Council will have the ultimate responsibility to mitigate and manage runoff from the new subdivision?

Response

As Council is not the determination authority, there is no obligation to test the validity of claims in respect to water quality. Should the application be approved by the Land and Environment Court, Council will be the assessing authority for future subdivision development applications to assess the application against any condition of consent imposed by the Court, if an approval is forthcoming, Further, any such assessment would involve the application of best practice in regard to water quality discharge.

6. Will Council or the NSW State Government undertake any further unbiased community consultation to further inform the process and to understand the issues that community members have?

Response

Council was not originally and is not the assessment authority of this application. Council is not part of the assessment process other than to provide comment as part of the exhibition process undertaken by the Department and the Land and Environment Court.

It is highlighted that the application was determined by way of refusal (following consideration of a report produced by the Department) by the Independent Planning Commission, and it is now subject of an appeal in the Land and Environment Court. As mentioned earlier, Council is not a party to these proceedings.

Council will not be undertaking any community consultation as it is not a matter which is within Council's jurisdiction. Whether any further community consultation is undertaken will be primarily dependent upon whether there are any further amendments to the DA and whether the State Government is advised by its legal team to undertake such consultation.

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.