

Development & Environment Committee

Meeting Date: Tuesday, 06 April, 2021

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Attachments (Under Separate Cover)

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PP035 – Jervis Bay Road, Falls Creek – Community Title Subdivision

Summary of submissions – State Agency Submissions

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Endeavour Energy

Date of submission

6 January 2021

Summary of Submission

Subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site, Endeavour Energy has no objection to the Planning Proposal.

There are low voltage and 11 kV high voltage overhead powerlines traversing part of the site, from the bend of Jervis Bay Rd to a pole mounted substation. Low voltage lines extend from the substation to private poles and the existing dwelling on site. These are to be managed as if an easement exists in accordance with Endeavour Energy's policies and Australian Standards. Alternatively, in some instances the adoption of an underground solution may be warranted.

Whilst the pole mounted substation located on the site is likely to have some spare capacity, it may not be sufficient to facilitate the proposed development. An extension and / or augmentation of the existing local network is likely to be required. The extent of the works will not be determined until the final load assessment is completed. In due course the applicant will need to submit an appropriate application based on the maximum demand for electricity and the method of supply will be determined.

Endeavour Energy also provided detailed comments relating to the various policies and standards that future subdivision proposals would need to consider at detailed design stage

and comply with throughout the life of the development. These have been passed on to the proponent.

Response

The existing power lines service the established dwelling and shed. They do not extend beyond the subject site and service other properties or development.

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 allotments in the subdivision. This will be undertaken in accordance with detailed electrical engineering plans to be further approved by Endeavour Energy and to be constructed in accordance with their requirements.

The local network will need to be extended as part of the development. No significant capacity issues have been raised at this stage. The network extension will be assessed and implemented as part of the subdivision stage of development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Transport for NSW

Date of submission

27 January 2021 & 29 January 2021

Summary of Submission

TfNSW initially requested that the PP be delayed until intersection upgrades at the Jervis Bay/Princes Highway intersection are resolved. However, additional advice was issued after discussions regarding the minimal amount of additional development proposed as part of this PP and the distance between the site and the Princes Highway intersection.

Advice issued on 29 January 2021 stated:

All access to the PP site will be via Jervis Bay Road (regional road). TfNSW notes the Planning Proposal – PP035 document dated November 2020 suggests that a CHR/BAL treatment would be required at the intersection of the subdivision access and Jervis bay Road. TfNSW determines it more appropriate for councils to consider and determine if proposed arrangements for developments on regional roads are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency).

TfNSW has no objections to the planning proposal in principle as it is unlikely to have a significant impact on the state road network.

TFNSW strongly supports development which will reduce car dependency and encourage the use of sustainable modes of travel including buses, bicycles and walking.

Response

Traffic issues have been considered throughout the assessment process. Council's Traffic Section have reviewed the submitted traffic assessment and accepted the proposed intersection treatment. In addition to provision of an upgraded turning intersection, additional widening of Jervis Bay Road may be necessary (additional design and assessment will occur at subdivision stage).

Jervis Bay Road is a very car-dominated environment and although there is a bus route, there are no nearby bus stops. It is difficult to reduce car dependency in rural residential areas. Community title arrangements however can facilitate (and lower the cost of) innovative communal transport options such as car shares and community-owned electric vehicle charging stations. These are not necessarily included in the proposal, but the legal subdivision arrangement provides more opportunities for shared infrastructure should future residents' desire.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

NSW Rural Fire Service

Date of submissions

16 October 2020 (pre-exhibition); 29 January 2021 (exhibition)

Submission

Consultation with the NSW RFS occurred prior to the public exhibition of PP035. Advice issued on 16 October 2020 stated:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;
- Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;
- Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (i.e. increased Asset Protection Zones (APZs) and/or construction standards or other protection measures) commensurate with the risk; and
- Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.

Advice received from the NSW RFS on 29 January 2021 reiterated previous advice, and presented a revised position on water supply for firefighting, stating:

The NSW Rural Fire Service has no objection to the progression of the planning proposal based on our previous advice dated 16 October 2020, with the following revision;

- 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.

Response

Density

Overall site density will remain rural-residential in nature. The Planning Proposal manages the development footprint across the site, reducing the area able to be developed for housing by clustering rural residential lots in the cleared part of the site, close to the road and excluding development over the majority of the site. With the clustering of development in a smaller part of the site and smaller proposed lot sizes (minimum of 4,000 m² each) development intensity

will increase in the R5 zoned area but will decrease (there will be no development) in the E2 zoned area.

Under current planning controls most of the land is zoned R5 Large Lot Residential, permitting Torrens Title subdivision (of up to 12 lots) and housing development across the site. The proposal seeks to cluster rural-residential housing lots (up to 13 lots) in the cleared portion of the site. This represents an increase in potential yield of one (1) lot, up to a maximum number of thirteen (13) lots when the land is subdivided as community title. Thirteen (13) lots represent the maximum development yield for the site, and the number of lots to be developed will be subject to further investigations and detailed design at subdivision stage (the eventual lot yield could be reduced due to development constraints emerging during subdivision design and assessment).

The Planning Proposal provides benefits for bushfire risk management, for example through clustering of development in one area of the site and provision of efficient perimeter roads (rather than the currently possible pattern of allowing homes surrounded by bushland dispersed across the site and limited access). Community title also provides opportunities for holistic bushfire risk management, including providing for coordinated land management plans and ongoing funding for maintenance of communally-owned infrastructure and bushland. The alternative of Torrens Title subdivision (as currently permitted) would result in up to 12 privately-owned housing lots with no communally owned land or infrastructure and reliance on individual land management and bushfire risk mitigation actions.

Compliance with Planning for Bushfire Protection 2019

Planning for Bushfire Protection 2019 includes specific guidance related to rural-residential subdivisions as these are generally located in areas of increased bushfire risks, stating:

The NSW RFS has seen an increase in developments involving the subdivision of large rural blocks into smaller rural-residential allotments. In these circumstances, developers, designers and Consent Authorities need to be made aware that additional BPMs [Bushfire Protection Measures] ... will be a requirement to allow for safer and appropriate outcomes for future occupants. (page 40).

The proponent's Strategic Bushfire Study (Ecological, 16 September 2019) recognises the significant risk of bushfire to the site and concludes that bushfire risk mitigation measures can be provided to comply with *NSW Planning for Bushfire Protection (PBP) 2019* and reduce the risk to appropriate levels. These include:

- Provision of a road system that complies with PBP 2019 (including min. 8 m wide perimeter road); and,
- PBP compliant setbacks from bushfire prone vegetation (APZs);

The Study also canvassed additional possible risk mitigation measures (bushfire protection measures in addition to the required prescriptive standards in PBP 2019), including:

- Additional APZ provision (biannual slashing of a 20 m wide buffer area along the subdivision interface);
- Establishment of a Strategic Fire Advantage Zone (SFAZ) over the community title allotment around the northern and western edges of the property to allow for more frequent hazard reduction burning in this area; and

- Development of a Bushfire Emergency and Evacuation Management Plan to coordinate actions (and evacuation of residents/pets) on days of higher Fire Danger Ratings.

Detailed bushfire mitigation responses would be assessed during the subdivision application stage, should the land rezoned, with applications referred to the NSW RFS for their concurrence under Section 100B of the *Rural Fires Act 1997*. The implications of these additional measures on flora and fauna are discussed further below and will need to be investigated further and ameliorated at subdivision stage.

Water supply for firefighting

Additional consultation occurred with the NSW RFS during the public exhibition period. Advice was sought as to the acceptability of providing static water supply for firefighting instead of access to reticulated (town) water hydrants. Advice from Shoalhaven Water opposes connection of reticulated water to the site (in part due to an inability to guarantee supply for this area during a bushfire). This position is reinforced by the Council resolution of 7 April 2020 not to provide reticulated water to the site. PBP 2019 requires a minimum of 10,000 L of static (tank) water per dwelling to be provided for firefighting purposes on rural-residential lots 1,000 m² – 10,000 m² in size.

The NSW RFS have indicated for the subject land that any future subdivision would need to provide double this amount (20,000 L / dwelling) for firefighting purposes. The proponent has indicated that provision of 20,000 L/dwelling of static water supply for firefighting is possible and will be incorporated into subdivision planning for the site. Any development applications for the site require the NSW RFS to issue a Bushfire Safety Authority under section 100B of the *Rural Fires Act 1997* which will reiterate requirements such as provision of the additional static water supply.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Biodiversity & Conservation Division, Department of Planning, Industry and Environment (Environment, Energy and Science)

Date of submission

5 February 2021

Submission

No major objection to the proposal, subject to the following points:

- That all development, including any bushfire mitigation works, be wholly contained within the proposed R5 – Large Lot Residential portion of the site and not extend into the proposed E2 – Environmental Conservation portion.
- That any subsequent development application appropriately assess the biodiversity impacts of the proposal.
- Recommend that the large E2 portion proposed to be retained be placed under some form of conservation agreement, such as a biodiversity stewardship agreement, so that it is protected and managed for conservation in perpetuity. BCD do not object to PP035, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the

development application stage. BCD also suggested that the proposed neighbourhood lot (to be zoned E2 Environmental Conservation) could be managed in perpetuity under a biodiversity conservation agreement.

Response

Impact of bushfire protection measures on biodiversity

The Flora and Fauna Assessment (Ecological Aug 2019) and draft Planning Proposal indicated that all bushfire protection measures required to comply with *Planning for Bushfire Protection (PBP) 2019 (NSW RFS)*, for example clearing and vegetation management for asset protection zones, can be contained within the area proposed to be rezoned R5 Large Lot Residential. However, given the NSW RFS' advice that *additional* bushfire protection measures may be required to further minimise risk (*in excess* of the general prescriptive requirements of PBP 2019), which could have implications for land zoned E2 Environmental Conservation. Bushfire protection measures will be detailed further as part of the subdivision application process, in consultation with the NSW RFS. It is expected any potential impacts could be avoided or managed in the subdivision design. The E2 zoned land area will also be mapped as a 'habitat corridor in the LEP Terrestrial Biodiversity maps, providing additional protection over this ecologically sensitive area. The Planning Proposal provides a suitable framework to balance environmental protection and bushfire risk reduction which will be further explored and evaluated during the subdivision phase of development.

Assessing biodiversity impacts in DAs

All DAs for the subject land are required to assess biodiversity impacts, and applications must address and give effect to the strongly environmentally-focused objectives of the E2 Environmental Conservation zone as well as Clause 7.5 Terrestrial Biodiversity in SLEP 2014.

Biodiversity Conservation Agreements

A conservation agreement could provide an effective management mechanism to maintain the ecological values of the property and open up potential grant funding opportunities for environmental land management.

There are a variety of different conservation agreements, ranging from wildlife refuge agreements, to 'in-perpetuity' conservation agreements and stewardship agreements (which allow for the sale of biodiversity offset credits for protected land to fund ongoing management). Landowners with conservation agreements may also benefit from financial concessions and incentives. Conservation agreements are voluntary, and in this case could be investigated at the subdivision development application stage of development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

Heritage NSW

Date of submission

5 February 2021 & 24 February 2021 & 3 March 2021

Submission

In the submission dated 5 February 2021 Heritage NSW objected to the proposal on the basis that the impact of future development on Aboriginal cultural heritage has not been considered.

The submission recommended an Aboriginal cultural heritage assessment (ACHA) be undertaken to inform the Planning Proposal.

The submission made the following points:

- *The AHIMS search attached to the proponents Planning Proposal is insufficient to address cultural heritage requirements for a PP and is over 12 months old and no longer valid.*
- *Previous advice was provided by the Office of Environment and Heritage to Shoalhaven City Council, in a letter dated 6 July 2012, that Aboriginal cultural heritage would need to be considered as part of the Planning Proposal for the Falls Creek/Woolamia Deferred Areas. We note the current Planning Proposal was one of the Lots included in the previous advice.*
- *An Aboriginal cultural heritage assessment, and consultation with the Aboriginal community, needs to occur early in the planning process to identify Aboriginal cultural heritage values that may occur within the proposal area and establish how this may constrain future development.*
- *An Aboriginal Cultural Heritage Assessment undertaken early and as part of the planning process will also provide increased certainty to any future development applications and may minimise further assessment at a later stage.*
- *The consideration of heritage values as part of the Planning process is in line with Direction 3.4 of the Illawarra Shoalhaven Regional Plan 2036 and Strategy 23.1 of the Draft Illawarra Shoalhaven Regional Plan 2041.*

In addition, Heritage NSW recommended that the Planning Proposal be revised to adequately consider the Aboriginal cultural heritage values and constraints of the proposal and to ensure consistency with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the Environment Planning and Assessment Act 1979.

After discussions with Council staff and a review of the complex planning history of the site, Heritage NSW provided the following additional comments on 24 February 2021:

- *Have reviewed the project context and history and understand that Council is unable to undertake a heritage assessment as part of this Planning Proposal due to the late stage in the process.*
- *Reiterate that in order to achieve best outcomes for Heritage conservation, an upfront assessment should always be undertaken at the planning stage in order to refine and mitigate impacts to Aboriginal cultural heritage. In future, recommend that Shoalhaven City Council is engaging fully with this process, irrespective of whether a heritage assessment is technically required by DPIE.*
- *Shoalhaven area has high Aboriginal cultural heritage values and consequently the protection of these values needs to be a strong consideration, particularly during the planning process.*
- *In acknowledgment of the complex planning history of the site, advise that a clear commitment needs to be given to undertaking an Aboriginal cultural heritage assessment(s) and Aboriginal consultation at the Development Application stage of the project.*
- *Remind Council that without an understanding of the heritage significance and values of the Proposal Area, Heritage NSW cannot guarantee that we will be able to issue an*

Aboriginal Heritage Impact Permit (AHIP) over the area as part of any subsequent Development Application.

After further discussions with Council, final advice was issued by Heritage NSW on 3 March 2021, confirming the objection put forward in correspondence dated 5/02/21 is resolved. An option was discussed with Heritage NSW of adding a subclause to the enabling community title subdivision to ensure that Aboriginal cultural heritage is considered at the subdivision stage. Heritage NSW was supportive of this approach. Heritage NSW's comments of 3 March 2021 are summarised below:

- *In regards to the proposed approach, Heritage NSW are satisfied with the proposed condition and wording and would expect the recommendation to be included as part of Councils endorsement of the Planning Proposal.*
- *We also understand that you cannot guarantee that this requirement will be incorporated, however we would hope that PCO will be supportive and Council will advocate for this outcome.*
- *While our objection more broadly to a lack of heritage assessment during the Planning Proposal stage remains, we consider our objection in relation to this Planning Proposal resolved.*
- *We would reiterate however, that without an understanding of the heritage significance and values of the Proposal Area, Heritage NSW cannot guarantee that we will be able to issue an Aboriginal Heritage Impact Permit (AHIP) over the area as part of any subsequent Development Application.*

Response

Potential impacts of the Planning Proposal on Aboriginal cultural heritage have been considered, with the proposal seeking to limit impacts on any heritage items and places by reducing the area of developable land on the site (as the land is currently zoned majority R5, Large Lot Residential). The reduction of the R5 zone will allow large lot residential development only within the already disturbed and cleared areas of the site.

The proposal also includes rezoning the majority of the subject land, including areas of bushland and a ~50m buffer area around the watercourse, to E2 Environmental Conservation. The environmental zoning of this area will minimise future disturbances and development impacts. The existing land use zone of R5 Large Lot Residential applies across the site (except for a small area of RU2 Rural Landscape zone in the south-west) and allows for subdivision and development across a large part of the site, subject to detailed development assessment.

Council supports the principle of undertaking heritage assessments early in the planning process to ensure that heritage values are appropriately protected. However, it is Council's position that key study requirements, such as an Aboriginal cultural heritage assessment (which typically take around 5 months to complete and involve considerable expense) should be detailed within the Gateway determination.

In this case, an Aboriginal Cultural Heritage Assessment (ACHA) was not a study required by the Gateway determination issued on 10 September 2018 or by the subsequent Gateway alteration dated 2 March 2020. In the pre-gateway planning proposal submission to the NSW DPIE in June 2018, no request to undertake additional Aboriginal cultural heritage study, or ACHA, was included. Several potential reasons for this are outlined below:

- No items or specific places of significance are currently known to occur on the site;
- The AHIMS search submitted at lodgement of the PP was valid at the time, and an additional contemporary AHIMS search will be required, at a minimum, at the subdivision development stage of development.
- The extensive strategic planning history of the site and the similarities of the proposal to the Woollamia/Falls Creek Deferred Areas PP (LP406/PP018) where a decision was made to not require an ACHA at PP stage;
- The nature of the proposal in reducing the developable area of the site and thereby being viewed as minimising development impacts (all other contemporary PPs that seek to allow additional development do require Aboriginal cultural heritage studies);
- The cleared/disturbed nature of the proposed R5 zoned area (used historically for logging, grazing and rural-residential related uses) and the nature of the proposed E2 Environmental Conservation zone which will extend across the majority of the site and restrict development in this area (including the watercourse and 50m buffer);
- Present planning controls allow residential development and subdivision across the site, existing legal requirements to consider Aboriginal cultural heritage issues as part of any development application; for example, Shoalhaven LEP 2014 Clause 5.10(8) Heritage Conservation, Chapter 2 Part 4 Aboriginal Cultural Heritage, also needs to be addressed at DA stage, in addition to the requirements of the *National Parks & Wildlife Act 1974* and various operational codes and policies issued by Heritage NSW (i.e. the former DECCW and OEH). These requirements remain unchanged by the PP (which seeks to reduce the developable area across the site).

The Planning Proposal document has been updated to include additional commentary on Aboriginal cultural heritage planning considerations, including additional justification outlining how the Section 9.1 Direction 2.3 Heritage Conservation has been satisfied. The PP is not inconsistent with the Planning Direction 2.3 Heritage Conservation issued under the *Environmental Planning and Assessment Act 1979*.

Staff agree that consideration of potential impacts of future development on any Aboriginal cultural heritage values is crucial at all stages of the planning process, recognising that consultation with the Aboriginal community should occur early and throughout. Heritage NSW's feedback will be utilised in future planning proposal preparation and has been forwarded on to the NSW DPIE for consideration.

In regard to consultation, the subject land parcel was rezoned to majority R5 Large Lot Residential (theoretically allowing for vegetation clearing and development across the site) as part of the introduction of the standard instrument, city-wide, Shoalhaven Local Environmental Plan 2014. This city-wide LEP project broadly considered Aboriginal cultural heritage matters and included consultation with Jerrinja Local Aboriginal Land Council (and consultation with other Aboriginal Land Councils and members of the Aboriginal community). Jerrinja Local Aboriginal Land Council made multiple submissions as part of the city-wide LEP process, but none related to the subject land. Jerrinja Local Aboriginal Land Council, and the (former) Office of Environment and Heritage, were consulted as part of the Deferred Areas Woollamia/Falls Creek Planning Proposal (PP018), which covered land in close proximity to the subject land. As part of the current PP035, notification of the proposal was sent to Jerrinja Local Aboriginal Land Council, inviting them to make a submission or to contact Council for more information if desired. No submission was received. It is recognised that the consultation for PP035 occurred within constraints during the Covid-19 pandemic.

In relation to previous advice issued by OEH in 2012, relating to the Woollamia/Falls Creek Deferred Areas Planning Proposal (PP018), the subject land did not form part of that PP, as the scope of that proposal was significantly reduced over the course of its assessment (initially applying to over 340 lots, and reduced to just 15 lots). The need to undertake cultural heritage investigations was also revised (confirmed in the revised Gateway determination for PP018 of 8 September 2015) due to the greatly reduced scope of the proposal and OEH continued to be involved with the progression of PP018. Like the current PP035, the Woollamia/Falls Creek Planning Proposal (PP018) sought originally to permit an increase in rural-residential development or density over a wider area, consistent with strategic plans of the time, including the Shoalhaven Rural Plan, Jervis Bay Settlement Strategy and Shoalhaven Growth Management Strategy. However, over time, the intent of the proposals was changed to reduce development footprints and restrict further expansion of rural-residential development or widespread intensification, based on changing environmental standards, land-based constraints and landowner requests.

Therefore, the current planning proposal seeks to restrict the development footprint across the site to limit development over the majority of the site, which is considered to have a positive impact on environmental values and any cultural heritage values that may be present. The process to consider any potential impacts to cultural heritage values within the area proposed to accommodate rural-residential development remain unchanged by the Planning Proposal and will be investigated further at the subdivision stage of development, where opportunities to avoid or minimise any potential impacts can be explored at this more detailed design phase.

Whilst planning legislation does require additional consideration of Aboriginal cultural heritage issues, it is proposed to suggest insertion of a subclause highlighting this requirement, within the proposed legal mechanism/local clause that will enable community title subdivision on the subject land. This proposal will be subject to discussion and acceptance by Parliamentary Counsel and Heritage NSW supported and accepted this proposed outcome.

In conclusion, the PP complies with relevant legislative requirements and can proceed on this basis. Aboriginal cultural heritage values will be assessed further at the development application stage, in the context of a detailed subdivision design, and against all relevant strategies and policies.

Implications for Planning Proposal

The Planning Proposal document has been updated to include additional commentary on Aboriginal cultural heritage planning considerations, in particular providing additional information illustrating consistency with section 9.1 Direction 2.3 Heritage Conservation.

The feedback received from Heritage NSW has been forwarded to Council's Development Assessment, City Development Division and discussed with, and forwarded to, the NSW Department of Planning Industry and Environment.

Shoalhaven Water

Date of submission

5 May 2020; 16 February 2021

Submission

Advice on servicing the proposed subdivision was sought from Shoalhaven Water in early 2020. Shoalhaven Water indicated reticulated sewer was not available and opposed supply of reticulated (town) water given the following risks:

- Ongoing issues with water pressure and flows in nearby areas;
- Inability to guarantee water supply for bushfire fighting purposes; and
- Potential water quality risks. Should town water be provided, the proposed lot sizes of a minimum of 4000 m² will be insufficient to provide suitable on-site sewerage management systems – i.e. the effluent management areas will be undersized as households with town water are expected to use more water (at least about 20% more) than those that rely on rainwater tanks.

This advice was reconfirmed after the public exhibition period.

Response

The proposed development will be self-sufficient in terms of water and on-site effluent (wastewater) management, consistent with Shoalhaven Water's advice. The proponent has provided technical studies to illustrate that sufficient water can be supplied to the development for domestic and firefighting uses. An on-site wastewater management and water quality report was also submitted which shows water can be treated on-site without adverse impacts on water quality. The proposed self-sufficiency will provide environmental benefits, as water consumption will be less than the equivalent rural residential development connected to town water supplies.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

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

Date of submission

17 February 2021

Submission

The DPI Marine Operations Unit do not wish to provide a submission in this case due to the proposal being unlikely to have an impact on the Marine Park.

Response

Response acknowledged and noted – no adverse impacts on Jervis Bay Marine Park are expected as a result of the proposed development.

Implications for Planning Proposal

No changes to the Planning Proposal are recommended in response to this submission.

PLANNING PROPOSAL – PP035

Shoalhaven Local Environmental Plan 2014

Jervis Bay Road, Falls Creek Community Title Subdivision

Prepared by
Strategic Planning, City Futures Group
Shoalhaven City Council

File: 57076E
Version 1.3 Final
Date: February 2021

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541
telephone (02) 4429 3111
facsimile (02) 4422 1816
e-mail planning@shoalhaven.nsw.gov.au
internet www.shoalhaven.nsw.gov.au

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Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

1 Introduction

This Planning Proposal (PP) seeks to facilitate development of a small rural residential estate at Jervis Bay Road, Falls Creek on land legally described as Lot 3 DP 846470. Large lot housing will be allowed over the mostly cleared part of the site with the remaining land set aside and managed for environmental conservation. The land is intended to be subdivided under community title, providing for up to 13 individual housing lots and one common neighbourhood lot. The neighbourhood lot will encompass the forested and environmentally sensitive areas and be communally owned and managed in perpetuity for environmental conservation.

Accordingly, this PP (PP035) seeks to rezone the subject site from part *R5 Large Lot Residential* and part *RU2 Rural Landscape*; to part *R5 Large Lot Residential* and part *E2 Environmental Conservation*.

The current minimum lot size control of 2 ha will be retained over the proposed R5 zoned area. It is proposed to include a local clause or other legal mechanism to allow community title subdivision over the land, permitting development of a maximum of 13 housing lots, no less than 4,000 m² in area each. This will enable a cluster of housing lots in the cleared area of the site. The community title scheme will provide for the ongoing conservation of the forested and environmentally sensitive areas of the site by providing plans and funding for long-term management. The current minimum lot size for subdivision applying to the *RU2 Rural Landscape* portion of the site is 40 ha, and it is proposed to extend this control across the area zoned *E2 Environmental Conservation* to prevent land subdivision and fragmentation.

Except for the narrow strip of land between the R5 area and Jervis Bay Road, the area zoned *E2 Environmental Conservation* will also be designated as “Biodiversity—habitat corridor” on the Terrestrial Biodiversity Map, to protect flora and fauna from potential development impacts. A dense landscape screen will be required in the narrow strip of land adjacent to Jervis Bay Road (measuring approximately 15 m wide and 200 m long) to mitigate visual impacts from Jervis Bay Road and improve amenity for the residents of the future development. This strip between Jervis Bay Road and the R5 area will be zoned E2 Environmental Conservation.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

1.1 Subject Land

The subject land is Lot 3 DP 846470 located on Jervis Bay Road, Falls Creek. It has an area of 25.21 ha (according to the Deposited Plan). It is located on the southern edge of the Falls Creek Large Lot Residential precinct. A Location Map is provided as **Figure 1** below.

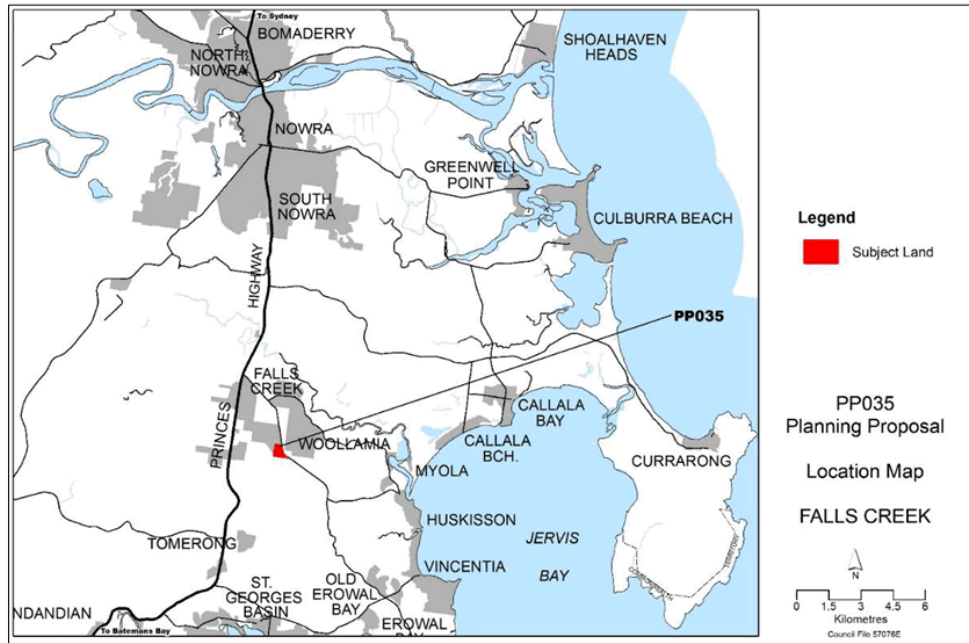


Figure 1: Location Map

The land to the south is part of the Tomerong State Forest. The land to the west is forested land in private ownership, and is also zoned part *R5 Large Lot Residential*, part *RU2 Rural Landscape*. The land to the north contains large lot housing and is zoned *R5 Large Lot Residential*. A wedge-shaped area of National Park on the eastern side of Jervis Bay Road separates the subject land from large lot housing to the north east. The current zoning of the site and neighbourhood is provided in **Figure 2** on the following page.

The subject land is currently zoned part *RU2 Rural Landscape* (0.76 ha / 3%) and part *R5 Large Lot Residential* (24.45 ha / 97%) under Shoalhaven Local Environmental Plan (SLEP) 2014.

The objectives of the RU2 zone relate to facilitating primary industries and maintaining rural character. The objectives of the R5 zone relate to providing large lot (semi-rural/rural lifestyle) housing while avoiding adverse environmental, social and economic impacts.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

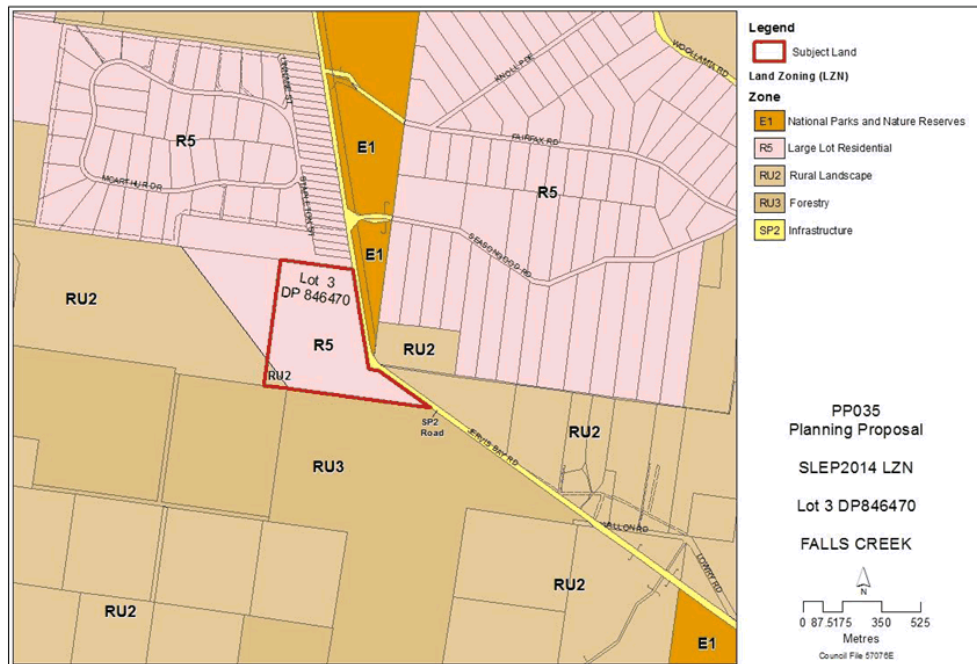


Figure 2: Current Land Use Zones

In this location, the SLEP 2014 prescribes a minimum lot size for subdivision of 40 ha for the RU2 zone and a 2 ha minimum lot size for the R5 zone (refer to the existing Minimum Lot Size map in Part 4).

The proponent contends that the lot size controls provide a development potential of 12 lots across the 24.5 ha of land zoned R5 Large Lot Residential. However, this is only a theoretical maximum yield. The actual yield under current planning controls is likely to be lower given the environmental constraints of the site.

The subject land has distinct cleared and vegetated areas as can be seen in the aerial photograph provided below. The site has previously been used for primary industry (logging and grazing) and is identified as native forest regrowth in the flora and fauna assessment.

The RU2 zoned part of the site is mapped under SLEP 2014 as having biodiversity significance (refer to the existing Terrestrial Biodiversity map in Part 4). This area is part of the Jervis Bay habitat corridor system that was previously identified in the Jervis Bay Regional Environmental Plan 1996 (now repealed).

The cleared area contains a dwelling house, outbuildings and two (2) earth dams. An aerial photograph of the site is provided as **Figure 3**.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

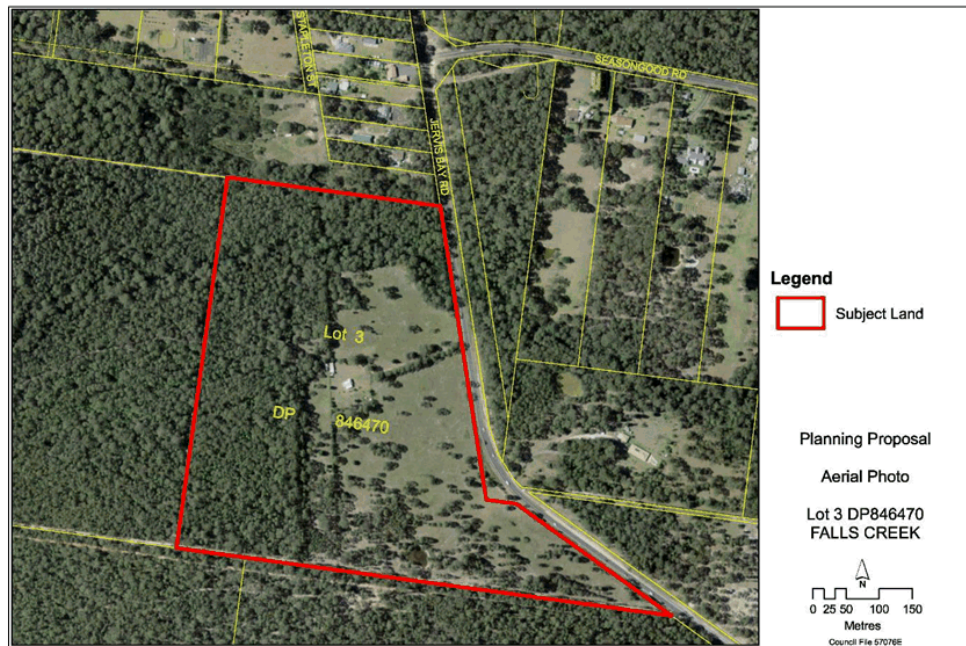


Figure 3: Aerial Photo

The proponent submitted a flora and fauna assessment prepared by Eco Logical Australia (refer to Attachment 3). This assessment concluded that the vegetation communities present are not threatened ecological communities. It also did not find any threatened plant species on the site. The assessment noted, however, the presence of threatened fauna, including Green and Gold Bell Frogs and Grey-Headed Flying-Foxes on the site. There was also evidence of Glossy Black-Cockatoo foraging on the site.

Parts of the subject land are identified on the flood planning area map (see **Figure 4**). This relates to an east-flowing intermittent watercourse that flows through the northern part of the subject land. This watercourse is a tributary of Currumbene Creek, which flows into the Jervis Bay Marine Park.

The subject land is classified as bushfire prone and a strategic bushfire study and bushfire assessment report have been prepared by Eco Logical Australia (see Attachment 3).

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

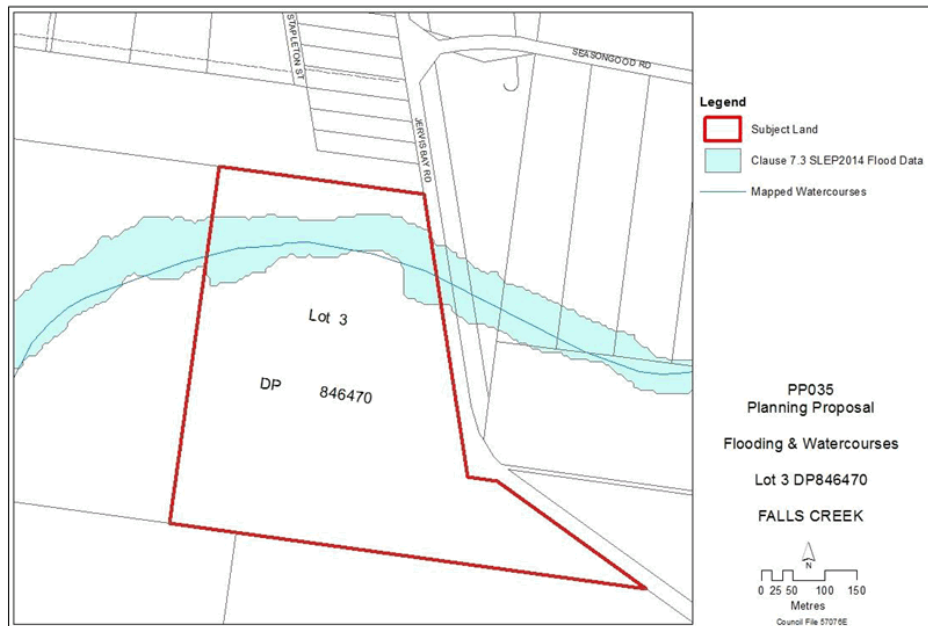


Figure 4: Flooding and Watercourses Map

1.2 Background – Rural Residential Deferred Areas

Council initially considered the suitability of this land for rural residential development in 1993 when it received a rezoning request from the then owners of the land. This request was ultimately rolled into the 'Rural Plan' being prepared by Council at the time. The Rural Plan originally proposed to amend the zoning of 344 rural-zoned properties in the Falls Creek / Woollamia areas to potentially enable increased rural residential densities. The then Department of Urban Affairs and Planning, however, "deferred" the zoning of these rural residential areas (including the subject land) when the Rural Plan LEP amendment was finalised in 1999 (LEP Amendment No 127).

The Jervis Bay Settlement Strategy (JBSS) (2003) recognised the need to resolve planning for the deferred areas, including the subject land. Section 10.4 stated that the deferred rural residential land "will be further investigated for [its] potential to provide increased rural living opportunities for the Region".

The Growth Management Strategy (GMS) adopted by Council in 2014 recognised that the situation was still unresolved and provided at section 5.2.4 that "the [potential of the] existing rural residential deferred areas to accommodate increased densities will be investigated and resolved".

Originally, the rural residential deferred areas related to 344 properties. However after agency consultation, completion of technical studies, and landowner requests, the areas

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

proposed to be rezoned were greatly reduced. Only 15 properties were ultimately rezoned by the [Falls Creek / Woollamia Deferred Areas Planning Proposal](#) (PP018) , which was finalised in April 2018. The subject land did not form part of the Falls Creek / Woollamia planning amendment (PP018 / Amendment No 17 to SLEP 2014) as it was taken out in the early stages of that project. The subject land was removed from PP018 – Woollamia/Falls Creek Deferred Areas, because it was rezoned separately (to the current mix of R5 Large Lot Residential and RU2 Rural Landscape zones) as part of the introduction of the standardised city-wide Shoalhaven Local Environmental Plan (LEP) 2014. The drafting of the Shoalhaven LEP 2014 ran from 2006 – 2014 and involved significant community and agency consultation.

The proponent's Planning Proposal request was received on 27 November 2017 from Cowman Stoddart Pty Ltd (on behalf of the owner, T. Pasialis). The request originally sought to permit the subdivision of the land into a community title scheme comprising 12 housing lots and a neighbourhood property lot as an additional permitted use under Schedule 1 of the LEP. The lots proposed were to have a minimum area of 5,635 m². The proponent's PP request was accompanied by a Development Application (DA) that was also submitted the community title subdivision. Assessment of this DA (SF10367) was placed on hold pending the outcome of the PP.

On 13 March 2018, Council's development committee considered a report on the matter. The committee resolved under delegation:

That Council:

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

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

5. *Advise the proponent of this resolution and that the proposal will be subject to fees and charges for proponent initiated Planning Proposals, including a requirement that the full cost of all specialist studies be borne by the proponent.*

A Planning Proposal document (PP035) was subsequently prepared and submitted for Gateway determination in July 2018. The then NSW Department of Planning and Environment issued a Gateway determination in September 2018 (see Attachment 4) which included the following conditions:

1. *Technical studies on flora and fauna assessment; onsite wastewater management plan; water quality and stormwater management; and bushfire hazard assessment are to be prepared and included in the planning proposal prior to public exhibition.*
2. *The explanation of the provisions and maps are to be updated, following the completion of the technical studies, into a revised planning proposal prior to public exhibition.*

The required studies have been completed and the PP has been updated to reflect the findings of these studies.

Council's Development and Environment Committee considered the results of the studies and updated proposal at their meeting of Thursday, 9 April 2020 (reconvened from Tuesday 7 April 2020) and resolved under delegation:

That Council:

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 m².*
 - 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 m², 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).*

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

1.3 Summary of Proposal

The following changes to the Shoalhaven Local Environmental Plan (SLEP) 2014 are proposed to enable rural-residential development on the land:

- The mostly cleared area in the east of the subject site is proposed to retain the existing *R5 Large Lot Residential* zone allowing this area to be subdivided into large housing lots (9.65 ha).
- The remainder (15.56 ha) is proposed to be rezoned to *E2 Environmental Conservation*, with a minimum lot size of 40 ha (precluding further subdivision).
- Introduce a legal mechanism to allow for community title subdivision on the land to allow up to 13 residential lots no smaller than 4000 m² over the land zoned *R5 Large Lot Residential* and one community lot over the area zoned *E2 Environmental Conservation*.
- The E2 zoned area will be recognised as a habitat corridor through inclusion on the Terrestrial Biodiversity map, with the exception of the narrow strip adjacent to Jervis Bay Road (the primary value of this strip is visual impact mitigation.)

In response to the flora and fauna report, the area to be zoned for housing (R5) has been reduced to avoid Green and Golden Bell Frog habitat and the extent of the land to be zoned *E2 Environmental Conservation* has been increased from the original PP request (+2.11 ha for a total area of 15.56 ha).

Introducing an effective legal mechanism to enable community title subdivision of the land is a key part of this proposal. Community title is a form of land subdivision with individually owned properties and a common area shared between all owners in the subdivision. A community title subdivision would provide benefits because communal ownership of the E2 zoned land will provide for coordinated management of bushland and ongoing funding. Details of how this land will be managed will be resolved as part of the development application assessment process. Community title subdivision can also provide for coordinated bushfire risk management and management of infrastructure. The most appropriate and effective legal mechanism to enable community title subdivision will be developed with the NSW Department of Planning, Industry and Environment (DPIE) and Parliamentary Counsel.

This PP has been updated to reflect the proponent's amended concept subdivision layout as reported to Council in April 2020. The scheme now proposes 13 residential lots and one (1) neighbourhood lot to provide for environmental conservation. In the concept, the proposed housing lots range from 4,048 m² to 8,755 m², with the bushland being retained in a large community lot (15.56 ha). The concept illustrates that wastewater (domestic effluent) can be satisfactorily treated and managed on site and effluent disposal areas are shown for each lot. The concept also shows a satisfactory visual outcome can be achieved by providing a wider building setback to Jervis Bay Road and additional landscaping. A copy of the plan (showing potential lot layout and on-site effluent disposal areas) is provided as **Figure 5**.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

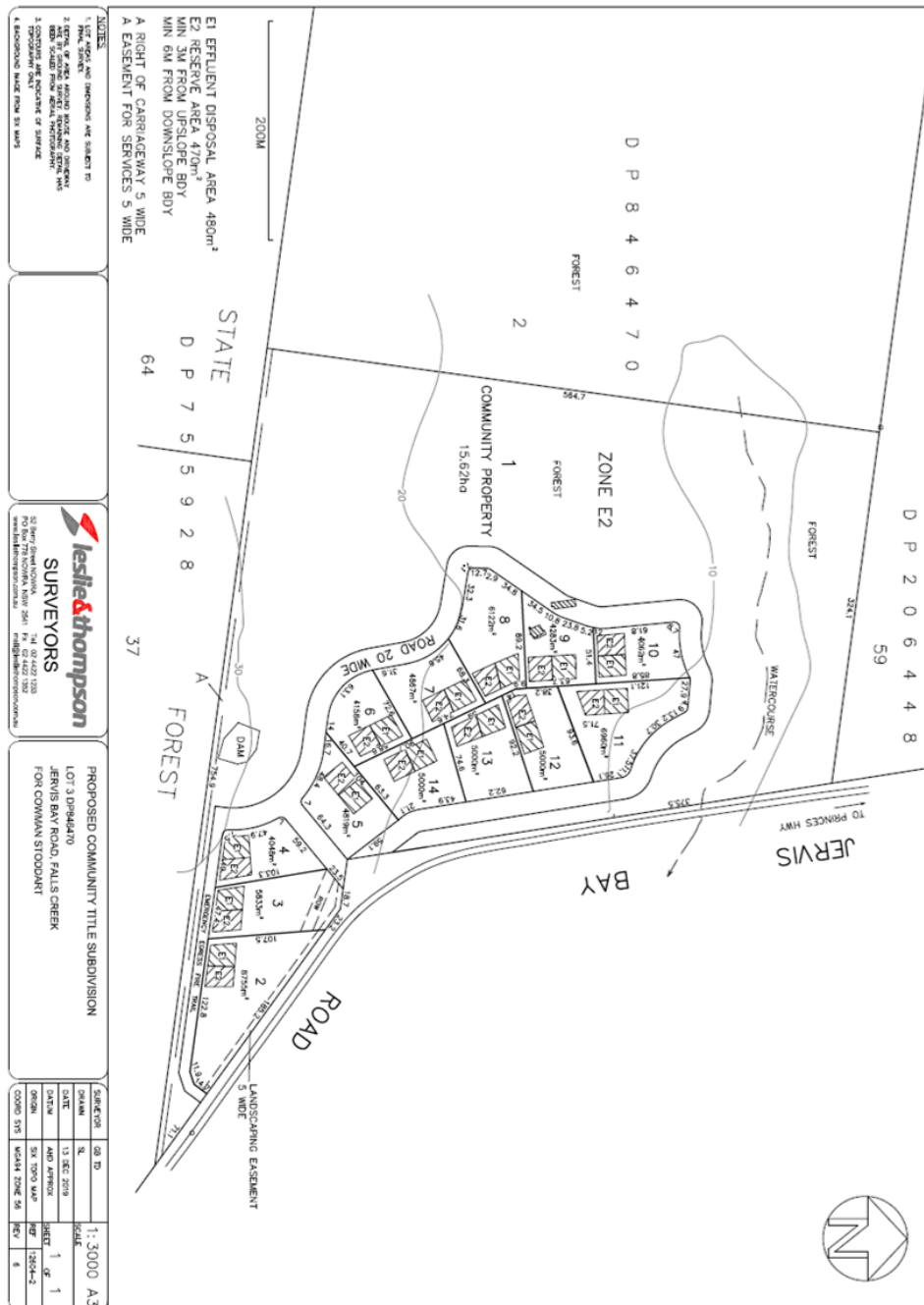


Figure 5: Proponent's concept subdivision plan.

Note: Fire trail (10 m wide) shown along southern boundary of Lots 2-4 will be a perimeter road (8 m wide) to satisfy bushfire requirements as described in Strategic Bushfire Study by Eco Logical Sept 2020.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

It is noted that this Planning Proposal (PP) seeks to allow a community title subdivision as described but it does not seek to lock in this exact subdivision design. The design could be amended as part of the development application assessment provided it is within the planning parameters of this PP and demonstrates compliance with state and local planning policies and controls.

The PP describes planning control changes that will facilitate future development. One of these changes will include a restriction on the maximum lot yield for the community title subdivision, which has been informed by a range of environmental and infrastructure capacity studies (summarised below). The maximum residential lot yield that can be accommodated within the constraints of the proposal is proposed to be limited to 13 housing lots. Each lot must have a minimum of 4000 m² to provide for sufficient area to effectively manage effluent onsite.

1.4 Specialist Studies informing this Planning Proposal

The results of the specialist studies and their implications for the proposed development are briefly summarised below. In summary, the constraints applying to the site have resulted in a reduced development footprint and a shift away from increasing development density as outlined in the Jervis Bay Settlement Strategy 2003. The proposal seeks to limit the R5 Large Lot Residential Zone to the existing cleared areas of the site and to rezone the remainder of the site E2 Environmental Conservation.

Onsite Wastewater Management Report

Cowman Stoddart – dated November 2017 and updated August 2019

The proposal will not be connected to reticulated (town) sewerage services and on-site management of wastewater (effluent) will be required. The onsite effluent/wastewater report (by Cowman Stoddart and dated November 2017 and supplementary addendum by Cowman Stoddart, dated 19 August 2019) states that effluent can be effectively managed for the proposed subdivision via onsite treatment and disposal, taking into account the constraints applying to the land.

The report assumes that town water will not be available to the subdivision and makes recommendations regarding wastewater management on that basis. However, the large lot residential areas to the north of the subject land are provided with access to town water and Council has a Rural Water Supply Policy, which could potentially allow for town water to be extended to the subject land. If town water were made available to the proposed subdivision, larger onsite effluent management areas would be required because residents would be expected to use more water (approximately 20% more than those that rely on rainwater tanks) and therefore create more wastewater. In this case, lot sizes would potentially need to be larger than the proposed minimum of 4000 m² in order to provide adequate onsite effluent management areas.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Shoalhaven Water have provided feedback on the proposal and have recommended that town water not be extended to the proposal, as the infrastructure in the area may become overstretched and suffer issues with pressure and flows. In addition, there may not guaranteed water supply for bushfire events.

To avoid any uncertainty in this regard, Council resolved to: *“Adopt a policy position that should the Planning Proposal ultimately be finalised on the basis of a minimum lot size of 4,000 m², 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).”*

As a result, from a wastewater treatment point of view, a minimum lot size of 4000 m² is considered acceptable for the proposed community title subdivision. Shoalhaven Water’s technical advice that town water should not be provided to the subject land is reinforced by Council’s adopted policy position that town water will not be provided to the subject land.

Hence, the subdivision will be supplied by individual rainwater tanks for domestic and firefighting purposes. This will also achieve water conservation goals (as rural-residential homes not connected to town water use less water on average) and reduce costs related to the possible need to upgrade town water infrastructure in the area.

Stormwater treatment and water quality – Neutral or Beneficial Effect Assessment

The proponent’s Stormwater Assessment was completed by SEEC in August 2019 to ensure water quality impacts could be managed to not adversely affect downstream catchments. There is a watercourse on the site which flows to the Jervis Bay Marine Park. This assessment is called a NorBE assessment which stands for ‘Neutral or Beneficial Effect’, as planning policies require development to ensure that waterways are not adversely impacted by pollution or run-off. This assessment found that the required neutral or beneficial outcome for water quality could be achieved based on appropriate design and management of future development. Specifically, the assessment described the following design and management measures for future development:

- A loop road would encompass most of the development and be drained via grassed-line swales to a single bioretention basin.
- The water quality measures (swales and bioretention basin) would be maintained by the body corporate under a community title subdivision that would enter into a contract with an appropriately qualified contractor. The bioretention basin would have a defined life and would require replacement (or at least re-generation) every 15-20 years or so. Such work would also be the responsibility of the body corporate.
- Proposed Lots 2, 3 and 4 in the far south of the site could drain offsite with no treatment.

Flora and Fauna Assessment

The proponent’s flora and fauna assessment was completed by Eco Logical Australia in August 2019. The report found that no fauna habitats of importance will be removed and

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

tree removal would be minimised due to clustering of development in the predominantly cleared area of the site. There are scattered mature trees across the cleared portion of the site, including an identified Glossy Black Cockatoo feed tree. The assessment does not detail the amount of vegetation removal necessary to accommodate roads, dwellings, bushfire protection and effective on-site wastewater treatment for each of the proposed lots. Whilst design measures of future homes could limit tree removal, Shoalhaven Council planning controls currently allow tree removal above a line 45 degrees from the vertical extension of the wall of any building measured from its base (where a tree is closer than its own height from an approved building). Therefore, mature trees could be removed post-development approval within housing lots.

However, the PP is considered to result in less vegetation clearing than if the land was developed under the current planning controls, given a larger extent of the site is currently zoned for residential purposes. If rural residential development were to extend across the site (as is currently permitted) larger areas of the site would need to be cleared to accommodate buildings and associated infrastructure and be maintained as an Asset Protection Zone (APZ) for bushfire protection purposes. In addition, similar rural-residential development in the locality consists of managed land around dwellings with retained mature trees, which contribute to the bushland character of the area.

No threatened ecological communities listed under the NSW *Biodiversity Conservation Act* (BC Act) or the Commonwealth *Environment Protection and Biodiversity Conservation Act* (EPBC Act) were present in the study area. No threatened flora species were recorded in the study area, and none were identified as likely to occur there. Three threatened fauna species were recorded in the study area: Grey-headed Flying-fox, Glossy Black-cockatoo and Green and Golden Bell Frog (GGBF). The two dams and the watercourse, as well as a 40 m buffer will be retained and zoned *E2 Environmental Conservation*, with these water sources providing habitat corridor links.

One migratory species listed under the EPBC Act, the Black-faced Monarch, was recorded on the northern fringe of the study area, although all suitable forest habitat for this and other potentially occurring migratory species would be retained. The report found referral to federal agencies is not required under the EPBC Act.

A 7-part test, under the NSW *Threatened Species Conservation Act 1995* (in place at time of lodgement), concluded that the proposed development is unlikely to have a significant impact on assessed threatened species provided the recommended mitigation measures are implemented.

The measures recommended to mitigate any development impacts include:

- Limiting development to previously cleared areas to retain intact vegetation, riparian areas and threatened species habitats.
- A Management Plan should be prepared for the proposed Lot 1 Community Property to guide appropriate management activities and maintain its natural values.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

- Green and Golden Bell Frog management measures should be implemented including pre-clearing surveys, frog exclusion fencing, enhancement of frog habitat (on-site dams) and connectivity to adjoining forest and following of hygiene protocols with ongoing monitoring and reporting.

The following map (**Figure 6**) from the Flora and Fauna Assessment report shows the identified threatened species habitat.

It is noted that the Strategic Bushfire Study suggested additional (biannual) slashing of vegetation along the subdivision interface to the west and north to provide an additional 20 m wide buffer to the fire hazard and reduce risk of crown fires. This additional recommendation was not detailed further (e.g. whether tree removal would be necessary/the extent of any required tree removal) and would be designed to complement required bushfire control measures (such as APZ management). This scenario was not considered in the Flora and Fauna Assessment submitted with the Planning Proposal, but would be considered as part of a subdivision application should the eventual subdivision design propose additional bushfire mitigation measures (beyond those required by Planning for Bushfire Protection 2019).

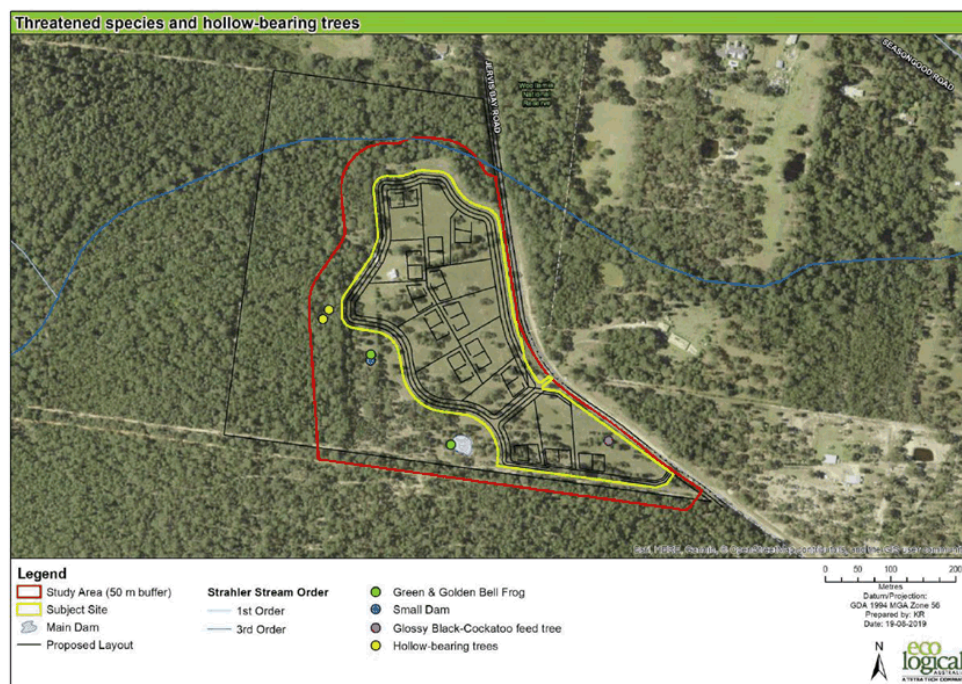


Figure 6: Threatened species habitat within proposed development footprint (Source: Eco Logical Australia)

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Bushfire hazard assessments

The proponent's original bushfire hazard assessment report was completed by Eco Logical Australia in August 2019. A Strategic Bushfire Study was completed by Eco Logical Australia September 2020. The recommendations made by these reports to reduce bushfire risk to the proposed subdivision are discussed below.

Access

The initial bushfire assessment noted the concept design provided a perimeter road around most of the proposed lots, except for the southern edge of the proposed residential subdivision adjacent to Lot 37 DP 755928, where a 10 m wide fire trail was proposed. This fire trail was an 'alternate solution' to a provision of a perimeter road. A subsequent Strategic Bushfire Study (discussed further below) indicated a perimeter road (8 m wide pavement) would be provided around the entire subdivision, to comply with the performance Criteria and Acceptable Solutions of Planning for Bushfire Protection 2019.

Construction standard and Asset Protection Zones (APZs)

The minimum required bushfire asset protection zones (APZs) to achieve a maximum Bushfire Attack Level (BAL) of BAL-29 range from 24 m to 50 m based on the development footprint enabled by the Planning Proposal. Building envelopes would be restricted as part of any future development consent for a subdivision to ensure APZs could be provided.

An APZ is an area between a bushfire hazard and a building, which is managed to minimise fuel loads, inhibit a fire path and reduce the effects of heat, flame, ember and smoke attack. The bushfire assessment report states that the majority of the necessary APZ is already in place and the additional area needed can be provided via the construction of roads. The need for tree removal has been minimised due to clustering of future housing within the largely cleared areas of the site.

Water supply and electricity provision

Based on the assumption that the subdivision will not be serviced by town water, each lot will require a static water supply of 10,000 L for firefighting purposes as required by *Planning for Bushfire Protection 2019*. The bushfire report also states that electrical transmission lines within the subdivision should be underground. The report states future development can comply with these requirements.

Strategic Bushfire Study

The Planning for Bushfire Protection (PBP) policy used by government and the NSW Rural Fire Service (RFS) to assess proposals was updated in 2019. Planning for Bushfire Protection (PBP) 2019 introduced additional strategic planning considerations. Correspondence in August 2020 from the RFS recognised significant bushfire risks to the site and requested additional assessment to address Chapter 4 Strategic Planning of PBP 2019.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

A Strategic Bushfire Study for 48 Jervis Bay Road Falls Creek was prepared by Eco Logical Australia, dated 16 September 2020. The Study provides an assessment of the landscape bushfire risk and the residual risk for development following the provision of recommended bushfire protection measures.

This study notes that the site is already identified by the Shoalhaven LEP 2014 as an area for rural residential development, being mostly zoned R5 – Large Lot Residential and allowing for lots with an area of 2 ha (thus theoretically allowing for up to 13 lots to be created subject to meeting other planning requirements). This Planning Proposal is generally consistent with the R5 zone objectives, as it seeks to develop the predominantly cleared portion of the site into 13 smaller lots, with the balance of the site being retained as a Community Lot and managed for its ecological and passive recreational value. Therefore, the overall (theoretically allowable) density of lots is not increased (13 lots); however, these lots are proposed to be clustered closer together towards the road. This clustering of development in a community title scheme provides benefits, including for coordinated land management, infrastructure maintenance, community bushfire planning and evacuation. The bushfire risk of buildings being clustered closer together is considered manageable as the lots will be larger than 4,000 m² leaving ample space for buildings with generous setbacks from each other and lots will be managed as Asset Protection Zones.

The risk of bushfire in the landscape was described in the study as most hazardous to the west and south, as larger landscape wide bushfires were more likely from these directions and typically be more difficult to control. Significant fire hazard was noted from the north, mitigated to some extent by rural residential properties. Bushfire hazards to the east were present but mitigated by lower hazard managed agricultural properties and generally less adverse fire weather conditions from this direction.

The vegetation types present on the subject land are forest types with potential for maximum fire intensity, higher flame heights, spotting, crown fires and the possibility of pyrocumulonimbus (firestorm) formation. It was recognised that the surrounding forests, such as the nature reserve and state forest are unlikely to be managed in a way that will reliably lower bushfire risk each year.

The position of the subject land in the bush fire prone landscape (from a slope perspective) was assessed in the Study as relatively advantageous (no slopes of significance where fire can run steeply uphill at increased intensity on a long fire run towards the proposed development). The subject land benefits from bushfire protection from the north in the form of the existing rural-residential subdivision associated with Macarthur Drive and from its position in the landscape requiring potential larger fires to spread downhill toward the site. The fire history, showing that only one of the multiple fires that have occurred in the study area over the 50 year period has directly impacted the subject land, supports that the site's position within the landscape has such bushfire protection benefits.

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The Strategic Bushfire Study also assessed climate and weather patterns to determine fire risk and noted that climate change is expected to bring a longer bushfire season, increased numbers of extreme fire weather days and increased fire intensity.

Overall, the assessment of fire risk factors indicated that uncontrollable fire intensities could occur in the forest vegetation abutting the development site particularly to the west and the south of the site and that higher intensity fires will impact the future development periodically. The Study recognised that design of development needs to stringently account for these risks in accordance with Planning for Bushfire Protection 2019 requirements.

Strategically, the Study made the following points in support of the proposal:

- *The land is capable of providing the necessary APZ [Asset Protection Zone] setbacks to ensure that all future dwellings will be exposed to no greater than 29 kW/m² of radiant heat flux from a surrounding bushfire.*
- *All dwellings will be required constructed to the requisite bushfire construction standard as determined by PBP.*
- *The increased resilience of any proposed development designed under PBP will potentially lower the life and property risk currently posed by fire in Tomerong State Forest to properties to its north, given the area's proximity to State Forests.*
- *The establishment of a Community Title (CT) allotment to the west and north of the proposed development may also provide an opportunity for the establishment of a Strategic Fire Advantage Zone (SFAZ) to benefit the proposed subdivision which will also provide the opportunity for a reduction in the rate of fire spread across the landscape.*
- *The loop road perimeter access proposed for the development will also provide improved access for fire suppression and mitigation within the local landscape and for the existing dwelling.*

The Study concludes that, 'the planning proposal considers bushfire risks strategically in the landscape rather than just site specific bushfire risk and in so doing facilitates a better outcome compared to that [allowable] under the current LEP provisions.'

The Study found that the proposal can comply with the Performance Criteria and Acceptable Solutions within Planning for Bushfire Protection 2019, by illustrating the following:

- *PBP compliant setbacks from bushfire prone vegetation (APZs);*
- *A PBP compliant road system designed to provide safe access and egress from the site;*
- *Underground electricity and gas services where possible;*
- *Compliant water supplies; and*
- *Appropriate design for emergency and evacuation response.*

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The Study also provided additional measures for consideration that could be used to minimise bushfire risk and complement the requirements of PBP. These additional measures could include:

- Biennial slashing of a 20 m buffer from the subdivision interface (perimeter road) to fire hazards to the west and north, to reduce the potential for crown fire impact on the edge of the development land.
- Establishment of a Strategic Fire Advantage Zone (SFAZ) over the Community Title (CT) allotment around the western and northern sides of the development to allow for more frequent hazard reduction burning within this area.
- A Bushfire Emergency and Evacuation Management Plan should be considered for the development including provisions for relocation of residents/pets on days of higher Fire Danger Rating (FDR).

More detailed bushfire protection design is required at the subdivision stage, yet the Strategic Bushfire Study concludes that a range of risk reduction measures are available and that the proposal can comply with PBP 2019.

The Map on the following page (**Figure 7**) illustrates that the APZ required to reduce bushfire risk to dwellings in accordance with PBP 2019 can be accommodated on the subject site. The map does not show the additional recommended 20 m wide slashed buffer or any SFAZ.

Access

The Conceptual Development Layout provides:

- two egress routes; a central road off the primary access road to the east to Jervis Bay Road and a perimeter road to the south-east to Jervis Bay Road; and
- 8 m wide perimeter road between the bushfire hazard and all future buildings.

The Strategic Bushfire Study states that the Conceptual Development Layout is capable of meeting the compliance criteria within PBP.

Emergency Services Impact

The development increases the density of dwellings on the site from 1 to 13 but will provide more resilient buildings and access. The bushfire study states the potential fire suppression workload resulting from the additional 12 dwellings is considered more than compensated for by the interface buildings being constructed to contemporary bushfire protection standards and the interface having a wider (safer) perimeter road i.e. 8 m wide.

The increase in population in the area resulting from the Planning Proposal will be similar to what is potentially allowable under current planning controls. The planning proposal and the increase in buildings and occupants is relatively small and is not considered likely to increase the 'load' on emergency services requiring an upgrade of their services.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

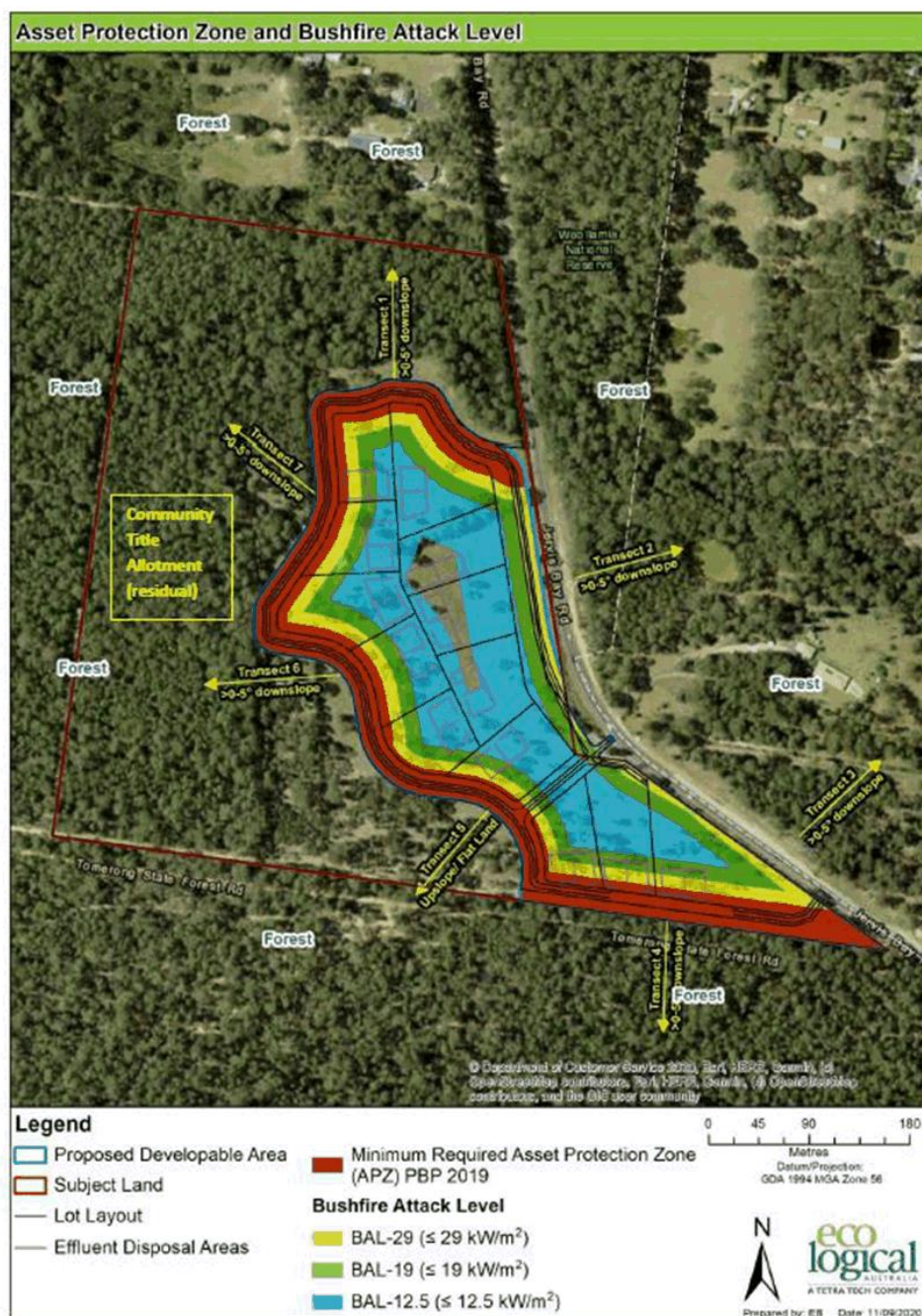


Figure 7: Required Asset Protection Zones for proposed subdivision concept

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Evacuation

Future residents will be located <600 m from egress onto Jervis Bay Road which leads north back to the Princes Highway and onto Nowra, or south to the villages of the Bay and Basin area. Evacuation of future residents is considered feasible for fire emanating from all directions, with the primary risk likely to be associated with a NW approaching fire. Under a fire threat from this direction the egress routes from the proposed development are not likely to be cut as they are located on the eastern side of the development. The bushfire study also found that even a fire from the south under a southerly wind is likely to impact directly on only one of the evacuation points onto Jervis Bay Road.

Evacuation of the proposed site is also unlikely to complicate or adversely affect evacuation from existing surrounding residents as they similarly have the option for relocation to Nowra or relocation towards the villages of the Bay and Basin. The report recommends a Bushfire Emergency and Evacuation Management Plan be prepared for the development including provisions for relocation of residents/pets on days of higher Fire Danger Rating (FDR). Having a bushfire plan and early evacuation is strongly encouraged by authorities in areas of significant fire risk.

Infrastructure including water supply

The Study indicates the development can comply with the PBP requirements for electricity and gas supply.

Planning for Bushfire Protection requires a minimum static water supply for dwellings of 10,000 L. Additional information submitted by the proponent indicated additional static water supply could be provided, doubling the amount of water required for bushfire fighting purposes to 20,000 L. This static supply could be plumbed to the road for ease of access by tankers and personnel. This information was provided in response to comments received from the RFS, who initially requested reticulated water supply for the area, as discussed later in this report. Shoalhaven Water has recommended against reticulated water supply in this location, which is supported by a recent Council resolution (also discussed later in this report).

Visual Impact Assessment

The scenic character of the area currently provides semi-rural and bushland outlooks with existing rural-residential development mostly obscured when viewed from the road, due to topography and presence of native vegetation. Where rural-residential development is visible, buildings are generally modest in size and recessive in the landscape, with many large mature trees retained across the landscape.

A [Visual Impact Assessment \(VIA\)](#) was completed on Council's behalf by Envisage in August 2019. The VIA considered the potential for view impacts given the clustering of development in the eastern and south-eastern corners of the site, close to Jervis Bay Road.

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The report acknowledged the likelihood of larger modern dwellings (including potential double-storey dwellings) and associated buildings being constructed. The VIA provides recommendations to reduce potential visual impacts of development, including:

- A minimum 15 m setback between Jervis Bay Road and internal roads to be landscaped.
- Revise layout to enable more of the existing trees within the overall development footprint to be retained.
- Reduce the number of lots – set a minimum lot size of 5,000 m² so that the density of dwellings is lower.

The concept subdivision plan has considered these recommendations and incorporates a wider setback (approx. 15 m) and provides for additional landscaping. The lot layout was also revised to enable more of the existing trees on the site to be retained. The proposed E2 Environmental Conservation Zone extends along the majority of the development's boundary to Jervis Bay Road to maximise tree retention in the area and provide a landscape buffer to reduce visual impacts from new development.

The proponents' revised subdivision plan is now generally consistent with the key findings of the VIA, except that six (6) of the lots are smaller than 5,000 m². Importantly however, all but one of the lots adjacent to Jervis Bay Road are 5,000 m² or greater. This is considered acceptable provided the other key recommendations outlined above are also implemented. Whilst the minimum proposed lot size is 4,000 m² for the community title, a range of lot sizes above this figure are likely in future subdivision because of the shape of the R5 zoned area and site constraints. In addition, a local clause or similar mechanism will enable community title subdivision on the land and limit the housing yield to 13 lots.

A conceptual image (**Figure 8**) from the VIA showing a 15 m setback and landscape screening illustrates how potential visual impacts can be mitigated through subdivision design and landscaping. Further visual impact mitigation measures could be explored during development assessment including landscaping of lots, colour and material selection for buildings, limiting hardstand areas, fencing design etc.

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Figure 3-3: Conceptual image of recommended changes – i.e. increased setback (15m) & screening along Jervis Bay Road

Figure 8: Concept image from Visual Impact Assessment (Source: Envisage)

Note: The proponent's amended subdivision design incorporates the recommended 15 m wide landscape screening.

Traffic Assessment: Traffic Intersection (Turning Warrants) Assessment

Jervis Bay Road links the Princes Highway to the west with the Jervis Bay Region to the east and facilitates access to other towns and villages including Huskisson and Vincentia. This area experiences seasonal travel peaks associated with tourism. The proposed development (limited to 13 housing lots) will generate minor additional traffic movements. Two access/egress points into the subdivision are proposed off Jervis Bay Road and all lots will be accessed via internal roads.

An additional study was commissioned post-Gateway Determination to investigate safety requirements at the intersection entering and exiting the subdivision onto Jervis Bay Road. This road has a speed limit of 90 km/hr with limited sight distances (the site is located on a bend), is seasonally very busy and has vehicle crash history. The speed limit in this area has recently been lowered from 100 km/hr in recognition of safety issues in the area.

A Traffic Intersection (Turning Warrants) Assessment was completed by Allen Price & Scarratts in February 2020. This assessment recommends that a CHR(S)/BAL intersection (Channelised Right Turn / Basic Left Turn) with Jervis Bay Road would adequately address safety requirements in accordance with Austroads Guide to Traffic Management (Part 6) 2019. The CHR(S) would reduce the risk of rear-end collisions occurring, particularly in relation to stationary/vehicles entering/departing the subdivision. Further detailed design and assessment would be undertaken as part of the development application if the Planning Proposal is supported and finalised.

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2 Planning Proposal

The following assessment provides details of the proposal to fulfill the requirements of Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and has been prepared in accordance with the NSW Department of Planning and Environment's *A guide to preparing planning proposals (2018)*.

Part 1 – Intended Outcome

The intended outcome of this Planning Proposal is to allow the subject land to be subdivided under a community title scheme. The subdivision would create a large lot housing area on the cleared part of the site (9.65 ha) and a common lot principally for environment conservation on the remainder of the land (15.56 ha).

This proposal seeks to minimise any potential water quality impacts resulting from development. Accordingly, lot sizes in the scheme will be large enough to safely accommodate onsite effluent disposal and prevent any downstream environmental impacts. The dwellings will be self-sufficient in terms of water supply, maximising water use efficiency. The overall footprint and the maximum lot yield have been informed by specialist studies and considers environmental constraints such as flooding and bushfire risk, habitat for threatened species, downstream water quality and visual impact of development.

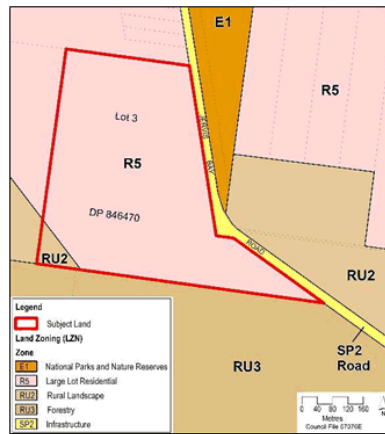
Part 2 – Explanation of Provisions

The following amendments are proposed to Shoalhaven Local Environmental Plan 2014:

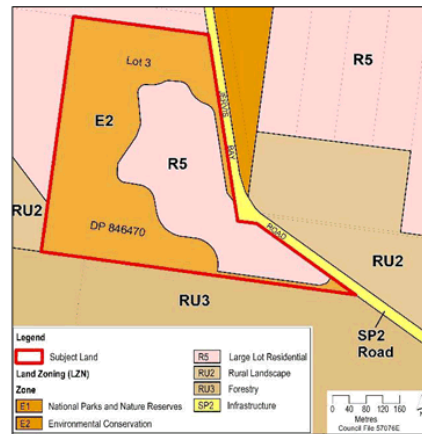
1. Amend the Land Use Zoning Map to rezone land from RU2 Rural Landscape and R5 Large Lot Residential to R5 Large Lot Residential and E2 Environmental Conservation.
2. Amend the Minimum Lot Size Map to extend the 40 ha minimum subdivision lot size control over the E2 Environmental Conservation zoned area.
3. Amend the Terrestrial Biodiversity Map to include all the land to be zoned E2 Environmental Conservation as a habitat corridor with the exception of the narrow strip adjacent to Jervis Bay Road for visual impact mitigation.
4. Include a legal mechanism to allow a community title subdivision of the land allowing up to 13 residential lots (no smaller than 4,000 m² each) on the land and one neighbourhood lot over the environmental conservation land. The mechanism shall also prohibit dwelling houses and dual occupancies on the neighbourhood (communally owned) property (zoned E2 Environmental Conservation). The appropriate legal mechanism will be determined in consultation with NSW Parliamentary Counsel.

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Thumbnail maps (for full-sized maps see Part 4)



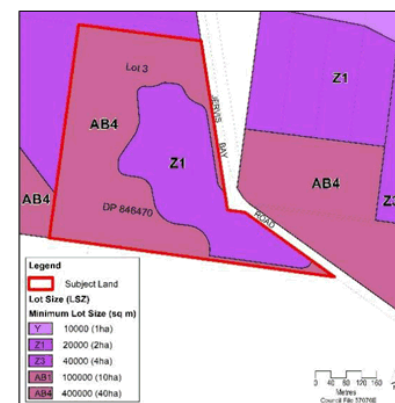
Existing land use zones



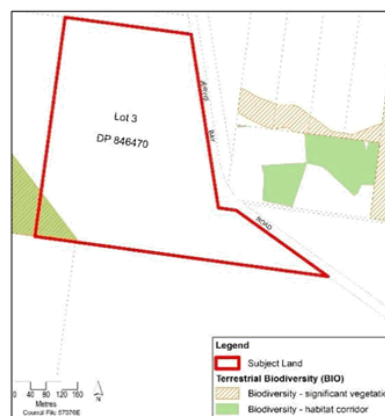
Proposed land use zones



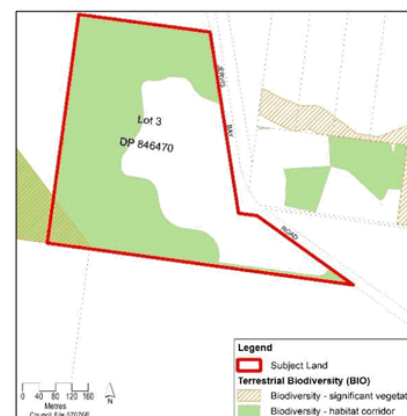
Existing min. lot size for subdivision



Proposed min. lot size for subdivision



Existing terrestrial biodiversity



Proposed terrestrial biodiversity

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Part 3 – Justification

3.1 Need for the Planning Proposal (Section A)

3.1.1 Is the Planning Proposal a result of any strategic study or report?

Yes.

The Jervis Bay Settlement Strategy 2003 (JBSS) provides an action to resolve planning for deferred rural residential areas in Woollamia/Falls Creek. Part 10.4 states that the deferred rural residential land (including the subject site) “*will be further investigated for (its) potential to provide increased rural living opportunities for the Region*”.

The Shoalhaven Growth Management Strategy 2014 reiterates the need to resolve planning for the deferred rural residential areas of Woollamia/Falls Creek.

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

Yes.

The PP process is the most appropriate way to allow the community title subdivision to occur on the land and provide for improved environmental management over sensitive areas. The option presented in this proposal is considered the best way to protect environmentally sensitive areas of the site and provide for rural residential development as described in the JBSS. The overall area zoned R5 Large Lot Residential (allowing for housing) will be reduced to protect native bushland and threatened fauna on the site.

However, the rural residential area will allow for smaller lot sizes (4,000 m² compared to the current 2 ha limit) to enable a viable community title subdivision (of up to 13 housing lots). A cluster of rural residential development in the cleared area of the site with the remaining land set aside, managed and equitably funded for environmental conservation via a community title subdivision is considered preferable to land being subdivided in a Torrens Title arrangement, whereby bushland is held in fragmented private ownership. The exact mechanism to enable the community title subdivision of the site is to be determined in consultation with the NSW Department of Planning, Industry and the Environment and Parliamentary Counsel.

Alternative options for the site (not preferred) include also amending the minimum lot size for subdivision control from 2 ha to 4,000 m² over the R5 zoned area of the site. This option would not provide any incentive or coordinated mechanism to secure the protection and ongoing management of the environmentally sensitive land. Another option could involve keeping the current zoning across the land and allowing for the community title subdivision via an additional permitted use in Schedule 1 of the Shoalhaven LEP 2014. This option would mean the zoning of the land would not allow for increased protection of environmentally sensitive lands (to occur through rezoning of part of the land to E2 Environmental Conservation). Zoning changes provide for clearer and more transparent planning controls than use of Schedule 1.

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3.2 Relationship to strategic planning framework (Section B)

3.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Yes.

Illawarra-Shoalhaven Regional Plan (ISRP)

The Regional Plan was released by the NSW Government in late 2015. *Direction 2.1 - Provide sufficient housing supply to suit the changing needs of the region* adopts the forecasts and planning intent of Shoalhaven Growth Management Strategy 2014 (GMS) which is discussed below. The proposal will also achieve a biodiversity conservation outcome that is desirable under Goal 5 of this plan.

The GMS identifies the need to resolve the status of the Falls Creek rural residential deferred areas (as discussed further below) and hence the PP is consistent with direction 2.1 of the ISRP.

There is no relevant subregional strategy applicable to the subject land.

The draft Illawarra-Shoalhaven Regional Plan 2041 was placed on public exhibition in late 2020. The draft updated Regional Plan forms part of a 5 yearly review and builds on the existing plan in a number of ways, including:

- Strengthening Metro Wollongong as a connected, innovative and progressive city;
- Growing Nowra and Shellharbour City Centres as regional cities;
- Developing a Green Grid network of connected open spaces;
- Building more resilient communities to cope with the changing climate and natural hazards.

Relevant sections of the draft Regional Plan include recognition of improved road connectivity between Nowra, Huskisson and Jervis Bay; increasing resilience to natural hazards and enabling new rural residential development only where it has been identified in a local strategic plan. In this case, the PP enables limited rural-residential development in accordance with various adopted strategic plans including the Jervis Bay Settlement Strategy and Shoalhaven Growth Strategy.

3.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Yes.

Shoalhaven City Council's Community Strategic Plan

The Proposal is consistent with Council's Community Strategic Plan and the relevant priorities below:

- 2.2 Plan and manage appropriate and sustainable development

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2.3 Protect and showcase the natural environment

Shoalhaven Growth Management Strategy (GMS) 2014

The Shoalhaven Growth Management Strategy (GMS) was adopted by Council in 2012 and endorsed by the NSW Department of Planning in 2014. The GMS does not itself rezone or change the use of land within Shoalhaven, rather it identifies broad areas for potential rezoning and development in the future, and strategic directions to guide the planning outcomes for these areas if they are rezoned or developed.

The 2014 GMS provided at part 5.2.4 that *“the existing rural residential deferred areas... to accommodate increased densities will be investigated and resolved”*. This action was derived from the Jervis Bay Settlement Strategy 2003 (JBSS) which is discussed below.

Jervis Bay Settlement Strategy 2003 (JBSS)

The Jervis Bay Settlement Strategy was adopted by Council and endorsed by the NSW Department of Planning in 2003. The broad aim of JBSS is to manage future growth and settlement in the Jervis Bay / St Georges Basin area. The JBSS does not itself rezone or change the use of land, rather it identifies broad areas for potential development in the future, and strategic directions to guide the planning outcomes for these areas if they are rezoned or developed.

The JBSS provides an action to resolve planning for deferred rural residential areas in Woollamia/Falls Creek. The JBSS recognises the ecological sensitivity of the area, noting the subject land and surrounds are upstream of significant wetlands and form part of a habitat corridor. The JBSS notes some potential to increase the density of rural residential development in certain locations (no outward expansion/infill development only) if proposals also result in beneficial outcomes for biodiversity and riparian areas. The subject site is zoned majority R5 Large Lot Residential and allows for subdivision of housing lots no smaller than 2 ha.

The JBSS suggests enabling subdivision in the area down to an ‘absolute minimum of 1 ha’ (as had been proposed in the 1999 Rural Plan LEP Amendment No. 127) subject to the constraints of the land. The proposed minimum lot size of 4,000 m² for the community title subdivision is therefore inconsistent with the 1 ha minimum noted in the JBSS/GMS for investigation.

However, the proposal presents several justifications for reduction in the minimum subdivision lot size from the 1 ha recommended in the JBSS, including:

- The proposal seeks to reduce the extent of the R5 Large Lot Residential Zone over the site, and to provide environmental benefits by rezoning the majority of the site E2 Environmental Conservation.
- The Onsite Wastewater Management Report, supplementary letter and amended subdivision plan illustrate how effluent management areas can be accommodated

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on each lot (based on a 4 bedroom residence on each lot supplied by rainwater tanks), limiting water quality impacts.

- The Stormwater Assessment report shows a neutral or beneficial effect on water quality can be provided with stormwater from the majority of lots (all except proposed Lots 2, 3 and 4 in the south) draining via swales to a bio-retention basin for treatment.
- The proposed community title arrangement provides for an environmental management and funding mechanism in perpetuity over the conservation land (community lot) and for ongoing funding and maintenance of water quality measures and therefore environmental and community benefits.
- The proposal will not allow for Torrens Title subdivision below the minimum lot size of 2 ha because the mechanism allowing for lot sizes of $\geq 4,000 \text{ m}^2$ will only apply to a community title arrangement which brings associated conservation benefits.

The landscape quality of Jervis Bay is an important feature of the region, and the JBSS provides principles for proposals to identify and conserve the scenic landscape qualities of the area.

Clustering of housing lots (no smaller than $4,000 \text{ m}^2$) on the cleared areas of the site and communal ownership of the bushland in a community title arrangement as proposed by the landowner, provides for better environmental conservation outcomes than if a conventional rural residential subdivision occurred, and the bushland was held in fragmented private ownership. Clearing for bushfire protection purposes will also be minimised because of clustered development in already cleared areas. In summary, the community title subdivision model enables better development and environmental outcomes to be achieved in this instance, than can be achieved in a conventional Torrens title subdivision.

A [Visual Impact Assessment \(VIA\)](#) was prepared by Envisage on Council's behalf. The VIA considered the potential visual impacts of development facilitated by this proposal. The proponent revised their subdivision plan in response to the VIA and this revised subdivision plan is generally consistent with the VIA's key findings. Setbacks are proposed to provide for mature tree retention and additional landscaping between Jervis Bay Road and the development to soften any visual impacts of development.

It is considered that the PP is consistent with the underlying intent of the JBSS - to provide for rural residential development within defined areas whilst minimising impacts on water quality, and scenic landscapes in the area and providing for positive biodiversity outcomes. This conclusion is based on the assumption that the land will be developed as a community title subdivision, so that appropriate planning mechanisms can be put in place to ensure development proceeds as intended to achieve environmental outcomes, consistent with the JBSS. The number and size of the residential lots also assumes that the subdivision will be self-sufficient in terms of water supply.

3.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

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Yes.

Applicable State Environmental Planning Policies (SEPPs) are considered below. Attachment 6 provides a comprehensive list of SEPPs. Note that the following SEPPs were in place when the PP was submitted for Gateway determination but have since been repealed:

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No. 62 – Sustainable Aquaculture

State Environmental Planning Policy (Rural Lands) 2008

State Environmental Planning Policy (Koala Habitat Protection) 2020

In November 2020, the NSW Government announced plans to revert to operations under the former State Environmental Planning Policy No. 44 - Koala Habitat protection (SEPP 44) while a new policy is developed in 2021 that would protect koalas and the interests of farmers. The State Environmental Planning Policy (Koala Habitat Protection) 2020 commenced on 30 November 2020 to replace and repeal the State Environmental Planning Policy (Koala Habitat protection) 2019 (2019 Koala SEPP).

The Koala SEPP 2020 replicates the objectives and provisions of SEPP 44, which was in force from 1995 through to 2019. This change does not have any implications for the proposal, because the proposed rezoning does not seek to expand any residential land use zone over the site.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 6 (Contamination and remediation to be considered in zoning or rezoning proposal) of SEPP 55 was repealed on 17/4/2020 and its requirements effectively transferred to a new Ministerial direction (No 2.6) under section 9.1 of the Environmental Planning and Assessment Act. The Ministerial direction is addressed in section 3.2.4 of this PP.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

This SEPP replaces SEPP No.62 – Sustainable Aquaculture and SEPP (Rural Lands) 2008.

Division 4 of this SEPP provides for consideration of effects of proposed development on oyster aquaculture. This SEPP requires consideration of the impact of development on any oyster aquaculture areas as part of a development application and consideration of the NSW Primary Industries NSW Oyster Industry Sustainable Aquaculture Strategy 2016. This strategy states Currumbene Creek historically supported up to 13 ha of oyster aquaculture leases but had no oyster lease areas as of January 2016 and is not designated as priority oyster aquaculture area. This strategy also sets out water quality requirements, recognising the health of waterways is paramount for healthy oyster production. Maintaining water quality is a key aim of this proposal, therefore the current planning proposal is not inconsistent with the provisions of this SEPP.

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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

This SEPP commenced on 25 August 2017 and forms part of a package of biodiversity reforms undertaken by the NSW Government. The PP and accompanying development application were submitted prior to the provisions of this SEPP and associated reforms coming into effect. The proposed development will be confined to the mostly cleared areas of the site, minimising the need for vegetation clearing. Future tree removal activities on the site will be assessed at development application stage and will be subject to the provisions of the *Biodiversity Conservation Act 2016*, the provisions of this SEPP and Council's Development Control Plan and vegetation permit process.

3.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. Applicable Ministerial Directions are discussed below.

1.5 Rural Lands

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary). The proposal rezones a small corner of land currently zoned RU2 Rural Landscape to E2 Environmental Conservation and extends the E2 zoning across the vegetated areas of the site. The area is native bushland with minimal agricultural value, and it will be managed to protect environmental values, consistent with the requirements of this direction.

2.1 Environment Protection Zones

The PP proposes to rezone the forested areas to E2 Environmental Conservation, which will also be mapped on the Terrestrial Biodiversity LEP overlay. Management arrangements for this forested area will be developed via community title subdivision. These provisions increase the environmental protection standards applying to the site and the proposal is therefore consistent with the requirements of this direction.

2.3 Heritage Conservation

The PP will reduce the area of the R5 Large Lot Residential zoned land to the cleared area of the site and zone the remainder of the site to E2 Environmental Conservation. The subject land has been historically disturbed for logging and has not been identified as containing any heritage items or places of heritage significance. No Aboriginal Cultural Heritage Assessment (ACHA) was required by the Gateway determination and an ACHA was not prepared for this proposal, as the proposal seeks to reduce the developable area of the site and limit development footprint, whilst rezoning the majority of the site for environmental conservation (excluding most development types and associated impacts). The subject land was rezoned to the current extent of R5 Large Lot Residential as part of the introduction of the Shoalhaven Local Environmental Plan 2014. This process considered a wide variety of planning matters, including heritage considerations, and involved extensive community

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consultation, including with Jerrinja Local Aboriginal Land Council (LALC). Jerrinja LALC were notified of the subject PP (PP035) and no comments have been received.

The PP does not contain any provisions that would hinder the conservation of any heritage value that the site might have, or which may be revealed at later stages subject to detailed subdivision design and site investigations.

The proposal will not change/alter any requirements that currently apply to address heritage conservation, including investigating Aboriginal cultural heritage, at development application stage. For example, development will be required to comply with the requirements under the *National Parks and Wildlife Act 1974*, clauses 5.10 and 7.20 of SLEP 2014, and the various policies of former Department of Climate Change and Water (DECCW) and former Office of Environment and Heritage (OEH) including but not limited to:

- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH, 2011)
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW, 2010)
- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW, 2010)
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW, 2010)

The proposal is not inconsistent with the requirements of this Direction.

2.6 Remediation of Contaminated Land

The proposal is consistent with this direction as the land is already zoned for rural residential uses. The small area of RU2 that will be rezoned to E2, is native vegetation and has not been used for agricultural purposes.

In addition, the proponent's PP report states that:

The subject site is not identified as being contaminated. Furthermore, the subject site has not been subject to land use practices potentially causing concern with land uses being restricted to residential use (existing dwelling which is being retained in the subdivision layout) and passive grazing of the cleared areas, currently by horses.

3.1 Residential Zones

The PP would increase the variety of rural-residential housing options by enabling a community title estate. This estate would comprise relatively small rural residential lots with a large environmental lot that will be collectively owned and managed by the estate's residents.

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The proposed reduction in area of the R5 Large Lot Residential zone and reduction in minimum subdivision lot size provisions will result in more efficient use of infrastructure and services, through clustering of rural-residential development in the cleared area of the site adjacent to the road. The proposal is therefore considered to be consistent with the requirements of this direction.

4.3 Flood Prone Land

All of the flood prone land within the subject land is within the area to be zoned E2. There are no inconsistencies with this direction.

4.4 Planning for Bushfire Protection

A Bushfire Assessment was completed by Ecological dated August 2019. The NSW Rural Fire Service's Planning for Bushfire Protection (PBP) guideline was updated after the lodgement of this assessment and was legislatively adopted in the Environmental Planning & Assessment Regulations on 1 March 2020.

Consultation with the NSW Rural Fire Service (RFS) was carried out between July and November 2020, consistent with this section 9.1 Direction. The RFS requested submission of an additional assessment report – a Strategic Bushfire Study, to address the recently introduced strategic planning requirements in Chapter 4 of PBP 2019.

A Strategic Bushfire Study addressing the requirements of Table 4.2.1 in PBP 2019 was submitted in September 2020 and sent to the RFS for comment. Additional comments from the RFS were received on 16 October 2020 and are reproduced below:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- *The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;*
- *Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;*
- *Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (ie increased APZs and/or construction standards or other protection measures) commensurate with the risk; and*
- *Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.*

The PP will limit rural residential density to no more than 13 housing lots on the site in a community title arrangement. The current rural residential density allowed under planning controls is one housing lot per 2 hectares (i.e. a total of 12 lots are theoretically possible).

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The clustering of dwellings is recognised in PBP (section 5.1.1) as a good bushfire risk mitigation measure. Provision of the perimeter road, APZs and other bushfire protection measures compliant with the requirements of PBP 2019 are able to be accommodated on the land (as shown in the concept plan).

The subdivision is not proposed to be provided with a reticulated water supply, as Shoalhaven Water have recommended against it and cannot guarantee adequate pressure for firefighting purposes. Additional clarification has been requested from the RFS and additional consultation will occur during the public exhibition period.

The specific requirements of Direction 4.4 Planning for Bushfire Protection are addressed in the table below:

Section	Direction	Comment
4	<i>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made.</i>	Consultation with the NSW RFS has occurred in accordance with the Gateway determination requirements and is ongoing.
(5)(a)	<i>A planning proposal must: (a) have regard to Planning for Bushfire Protection 2019</i>	The bushfire assessment was completed before the introduction of PBP 2019, however, performance-based solutions were developed using the pre-release version of Planning for Bush Fire Protection 2018 to determine a number of bushfire protection measures. It is noted that rural residential development is recognised in PBP 2019 as possibly requiring additional bushfire protection measures commensurate to level of risk (page 40). A Strategic Bushfire Study was submitted in September 2020 and addresses the updated PBP 2019, illustrating compliance with the relevant provisions of PBP 2019 and suggesting additional bushfire protection measures.
(5) (b)	<i>introduce controls that avoid placing inappropriate developments in hazardous areas, and</i>	The area is currently zoned for large lot housing and similar development exists in the area. The proposal will reduce the area zoned for large lot housing and cluster future development in the already cleared section of the site close to Jervis Bay Road.
(5) (c)	<i>ensure that bushfire hazard reduction is not prohibited within the APZ</i>	The required APZ can be contained on the subject land as demonstrated in the Strategic Bushfire Study. Additional protection is also recommended to further reduce bushfire risks (e.g. slashing up to 20 m beyond the APZ).

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		Bushfire hazard reduction is not prohibited in the adjacent E2 Environmental Conservation zone; however, it is strategically beneficial for asset protection to be contained within the developable land area to minimise future biodiversity impacts.
(6) (a)	<p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <p>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</p> <p>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road.</p>	<p>The submitted bushfire assessment report provides for APZs which incorporate a perimeter road, and inner and outer protection areas.</p> <p>The Strategic Bushfire Study indicates APZ can be accommodated entirely on the subject land. If the APZs overlap onto adjoining properties within the proposed subdivision, easements will need to be established as part of the subdivision process. A community title subdivision provides mechanisms to manage the outer protection area in a coordinated manner in relation to any communal areas.</p>
(6) (b)	for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with	N/A the development is not development within an already subdivided area.
(6) (c)	contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks	The submitted Strategic Bushfire Study provides for a perimeter road around the entire subdivision.
(6) (d)	contain provisions for adequate water supply for firefighting purposes	The subdivision will not be connected to reticulated water supply. Shoalhaven Water has indicated current water supply infrastructure in the area may not be able to be guaranteed for firefighting purposes. PBP requires a static water supply for each dwelling of 10,000 L for firefighting purposes only. The submitted bushfire assessment report states the proposed subdivision can comply and suggests additional plumbed static water supply could be provided for the area (20,000L for each dwelling).

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(6) (e)	<i>minimise the perimeter of the area of land interfacing the hazard which may be developed</i>	The proposal minimises the area of land interfacing with the bushfire hazard because it reduces the area able to be developed for large lot housing and clusters future development into one area that is already mostly cleared of vegetation.
(6) (f)	<i>introduce controls on the placement of combustible materials in the Inner Protection Area</i>	This is a condition that could be placed on any future development; however, the proposed community title subdivision could provide a mechanism to reinforce such controls (e.g. via bylaws).
(7)	<i>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the noncompliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.</i>	Additional consultation with the NSW RFS will be undertaken throughout the public exhibition period of the Planning Proposal to confirm consistency with this Planning Direction.

5.10 Implementation of Regional Plans

The PP is not inconsistent with the Illawarra Shoalhaven Regional Plan as discussed earlier in this report.

6.1 Approval and Referral Requirements

The PP does not include provisions that require additional concurrences or referrals during the assessment period than would otherwise apply. Therefore, the PP is consistent with this direction.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. This direction requires that:

(4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- (a) allow that land use to be carried out in the zone the land is situated on, or*
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*

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(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.

(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

The PP seeks to maintain transparent planning standards and amends land use zoning to allow for large lot housing over part of the site (area to be zoned R5 Large Lot Residential) and to provide for limits on development over the remainder of the site (area to be zoned E2 Environmental Conservation). This proposed zoning clearly articulates the strategic intention and eventual expected development for each of these areas.

However, the proposal does seek a site-specific provision to enable and encourage community title subdivision of the subject site, as intended by the proponent. The exact site-specific provisions have not been defined and will be prepared in consultation with the NSW Department of Planning, Industry and Environment and Parliamentary Counsel.

The site-specific provision/s to facilitate community title subdivision provide an additional development option for the site and do not seek to unreasonably restrict permissibility of uses on the land. The current maximum (theoretical) lot yield for the site would be 12 rural residential lots 2 ha in size (not accounting for the environmental constraints of the site). The minimum subdivision lot size over the R5 Large Lot Residential zone will not be amended and will remain at 2 ha. The site-specific provision allowing for community title subdivision will provide a development yield up to 13 housing lots no less than 4,000 m² in size each over the less environmentally constrained areas of the site. The site-specific provision would also ensure that the land to be zoned E2 Environmental Conservation would not allow for a dwelling or dual occupancy to be constructed.

Enabling this community title arrangement will provide a similar yield to what is theoretically allowable under the current controls (+1 housing lot) and is therefore not a more restrictive planning control. Community title subdivision will provide future residents with a niche rural residential housing product – with a level of self-sufficiency (e.g. off-grid water and sewer) and communal conservation goals. Community title is considered the optimal outcome to balance provision of rural residential homes and environmental and hazard constraints on this site.

Should the land be rezoned, a Torrens Title subdivision could occur with lots 2 ha or greater in size (up to 4 lots), with uncertain environmental management outcomes across the residue bushland lot. In effect, the proposed provision will incentivise community title subdivision which will provide for a higher lot yield and ongoing management and funding

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for environmental conservation on common property, maintenance of internal roads and bushfire risk management.

The proponent has provided various iterations of concept subdivision plan, the latest of which is provided in this PP as an example only of a future development outcome, noting that the proponent also submitted a subdivision application concurrently with the PP application and which is currently held in abeyance. This PP illustrates how a future community title subdivision on the site can work within existing environmental constraints. It is not proposed to introduce controls that will restrict future development to a particular design.

A site-specific provision enabling community title will provide for improved development outcomes over the site, enabling clustering of large lot housing in the cleared portion of the site and allowing for ongoing management and conservation over the environmentally sensitive, vegetated areas of the site, which contain threatened species and habitat. The proposed yield (of up to 13 lots no smaller than 4,000 m² each) has been informed by specialist studies, largely avoids threatened species habitat, and provides sufficient area on each lot to maintain water quality and effectively treat and discharge wastewater.

Given the benefits of a community title arrangement on this constrained site, the introduction of a site-specific provision is justified in this case and any inconsistency with this direction is considered minor.

3.3 Environmental, Social and Economic Impact (Section C)

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

The site contains threatened fauna species and forms part of a habitat corridor. The conservation of this land will be facilitated by this PP. This PP adopts a footprint for rural residential development so that environmentally sensitive parts of the site will be within the neighbourhood property that is to be managed primarily for conservation purposes (via community title subdivision). The submitted flora and fauna assessment report states that impacts on threatened species and habitats will be minimal. Importantly, identified Green and Golden Bell Frog habitat (an existing man-made dam, surrounded by managed land) will be protected from development (within the E2 Environmental Conservation zoned area).

This PP seeks to rezone a significant part of the site from R5 Large Lot Residential and RU2 Rural Landscape to E2 Environmental Conservation (over 15 ha). This is the most appropriate zone to protect threatened species, in addition a legal mechanism will enable community title subdivision of the land which will provide for the ongoing management of this land, and ongoing protection of threatened species.

The environmentally sensitive land will be managed, and habitat potentially enhanced under a community title scheme as opposed to the bushland being in fragmented private

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ownership in a conventional Torrens Title subdivision. This will give the consent authority the ability to condition a subdivision consent with requirements for the future community management statement to manage the environmental-zoned land as a single parcel. If the environmentally sensitive land were in fragmented Torrens Title ownership, the environmental value of this land would be diminished due to clearing along boundary fences and the land is less likely to be appropriately and consistently managed.

Tree removal is proposed to be minimised via clustering of development in the mostly cleared areas of the site.

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

The subject land is in an upper part of the catchment that drains to Jervis Bay Marine Park. Accordingly, downstream water quality impacts from development must be avoided. A stormwater assessment completed by SEEC Consultants on 29 August 2019, found that the large lot nature of the development provides flexibility for stormwater impacts to be managed on-site with minimal drainage offsite and to the stormwater system. Drainage off roads can be directed to swales and bioretention basins. Modelling in SEEC's report indicates that pollutant (sediment, nitrogen and phosphorus) concentrations and exports could be reduced if the recommended stormwater treatment measures are incorporated into the subdivision design and appropriately managed. On this basis, the PP is expected to achieve the required post-development neutral or beneficial outcome on water quality.

An effluent (wastewater) management study (by Cowman Stoddart Pty Ltd dated November 2017 and 19 August 2019) was submitted with the proposal which found that effluent can be effectively managed on site without adverse water quality impacts. These findings were based on each lot having a 4 bedroom home and an on-site treatment system (aerated wastewater treatment system with disposal of secondary treated effluent on site via irrigation or a septic tank and mound system where slopes are <7%). A further effluent disposal report may be needed for each lot when development applications are lodged at Council with the building plans for each lot.

Town water will not be provided to the proposed subdivision, conserving town water and resulting in residents being self-sufficient on rainwater.

3.3.3 How has the Planning Proposal adequately addressed any social and economic effects?

The subject site proposes to cluster development close to Jervis Bay Road, retaining development potential of the land for large lot housing (consistent with current zoning and strategic plans) whilst protecting native vegetation on site and rezoning environmentally sensitive areas to E2 Environmental Conservation (preventing housing development in these areas). Due to proximity to Jervis Bay Road, a Visual Impact Assessment was completed to assess the proposal's potential impact on the visual character and landscape quality of the area.

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The Visual Impact Assessment was completed by Envisage (dated 16 September 2019) and described the visual character of the area as *“dominated by bushland and undulating landform”*. The report stated that when travelling along Jervis Bay Road *“glimpses of rural properties are seen, however, most are partially screened by existing vegetation and built elements.”* The report acknowledged that new development could include a house on each lot plus rural outbuildings and noted secondary dwellings (granny flats) are also permitted.

The report found the proposed development would not impact on any distant views, but some rural-residential development will likely be visible when travelling past the site on Jervis Bay Road. The report made recommendations to maintain a bushland view including:

- Maximise retention of existing mature vegetation, especially along the roadside and along current driveway servicing the existing dwelling.
- Additional landscape planting along the roadside to assist in obscuring and softening views of development with a landscape plan provided at subdivision stage.
- Reduce the number of lots by requiring a minimum lot size of 5,000 m², thereby reducing the number and extent of dwellings and associated buildings.
- Combine the proposed lots 11 and 12 on the draft plan [which has since been revised] to maximise tree retention and break up views to the north of the site.
- Provide for rural fencing styles and roof materials.
- Require ancillary buildings to be recessive in the landscape (e.g. limited in height and coloured in darker tones).

The report concludes that the visual impact of development would be acceptable subject to the above recommendations. A number of these recommendations relate to the development application and subdivision stage of development and are specific in nature (relating to landscaping and material choices etc). These are factors that could be included in the community title subdivision, as design requirements or guidelines/bylaws. The development footprint (area to remain zoned R5 Large Lot Residential) has been adjusted to allow for more tree retention, and the concept subdivision plan illustrates how additional landscaping and setbacks to the road can be achieved. The proposed minimum lot size has not been altered, as it is likely that lots larger than 4,000 m² will be provided where they share a boundary with Jervis Bay Road, allowing for design flexibility for other lots in less visually prominent locations to be slightly smaller to a minimum of 4,000 m².

The subject site is bushfire affected and a bushfire protection assessment was completed by Eco Logical Australia dated 30 August 2019. The report found that bushfire risk can be managed through the provision and maintenance of APZs (the majority of which are already in place given the location of the development in the already cleared areas of the site). The coordinated maintenance of APZs is facilitated in a community title subdivision with a body corporate, strata-type fees and communally owned and managed land. The clustering of development in one area of the site also provides for more efficient and effective risk reduction compared to properties dispersed throughout areas of bushland and located further from the main road.

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The proposed community title subdivision will allow for rural-residential lots smaller than the 2 ha (minimum of 4,000 m²) required by Shoalhaven LEP 2014. The minimum allowable lot size of 4,000 m² in a community title arrangement allows for a small community of support to develop (landowners may be closer to neighbours than in other rural estates) and provides rural-lifestyle/environmentally-orientated properties that are easier and less expensive to maintain than larger 2 ha sized properties (e.g. lawn mowing, weed removal). The clustering of homes in the cleared areas of the site provide for an efficient and cost-effective road layout, minimising construction and maintenance costs for owners. The cost to provide on-site sewer systems and rainwater tanks involves higher capital costs for owners when building their dwelling, however these owners will not have to pay ongoing bills to Shoalhaven Water for service connections and usage.

3.4 State and Commonwealth Interests (Section D)

3.4.1 Is there adequate public infrastructure for the Planning Proposal?

The subject proposal will allow up to 12 new dwellings (plus retention/redevelopment of an existing dwelling) and will result in minimal additional demand for public infrastructure.

Shoalhaven Water has advised that reticulated sewer will not be provided to the site. Shoalhaven Water have also recommended that reticulated water not be provided to the site given infrastructure capacity issues in the vicinity. The rural-residential development is relatively small (up to 13 lots including the existing dwelling) and can accommodate on-site rainwater tanks (for domestic and firefighting uses) and onsite wastewater treatment, allowing residents to be self-sufficient in terms of water and wastewater. This has environmental benefits including for water conservation. The estate could attract conservation-minded owners given the bushland setting and presence of the environmental conservation land within the rural residential estate.

Reticulated power is available in the locality supplied by way of overhead power lines within the Jervis Bay Road reserve. The site is currently zoned R5 Large Lot Residential and it is likely electricity can be extended to the subject site subject to design at subdivision stage. Consultation with Endeavour Energy as part of the public exhibition of the proposal will confirm requirements for connections to the electricity grid.

The subdivision will have one access road from Jervis Bay Road. Given the road topography, bend, high speed limit (recently reduced to 90 km/hr) and restricted sight distances, an upgraded intersection treatment is required.

A Traffic Intersection (Turning Warrants) Assessment was completed by Allen Price & Scarratts in February 2020, which stated a CHR(s) (Channelised Turn) intersection treatment is likely to be required for right-hand turns with a BAL (Basic Turn) for left turns. These details require design input at subdivision stage. Preliminary feedback from the Roads and Maritime Services (RMS) indicated Jervis Bay Road is a regional classified road under the management of Shoalhaven Council and stated:

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In 2015, RMS reviewed its level of involvement on classified regional roads and determined it more appropriate for councils to consider the implications of development. In this case, recognising the matter is a planning proposal, RMS considers it a matter for Council to determine if appropriate access arrangements can be provided for the future development facilitated by this planning proposal.

3.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

The Gateway Determination dated 10 September 2018 stated that consultation was required with the following public authorities under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service
- Office of Environment and Heritage (now Biodiversity & Conservation Division, DPIE)
- Roads and Maritime Services (now Transport for NSW - TfNSW)
- Department of Primary Industries Water (now Natural Resources Access Regulator - NRAR)
- Shoalhaven Water
- Endeavour Energy and
- Jervis Bay Marine Park.

Consultation with these agencies occurred during the public exhibition period. Submissions were received from seven (7) agencies which are comprehensively addressed within the post-exhibition report to Council and briefly summarised below.

Endeavour Energy

Subject to the consideration of comments provided and the satisfactory resolution of the management of powerlines that traverse the site, Endeavour Energy has no objection to the Planning Proposal.

Implications for Planning Proposal

The comments provided by Endeavour Energy were considered and addressed – the future development will result in removal of existing electricity infrastructure upon the site with redesign of the network to occur as part of the future subdivision in accordance with all relevant standards and policies. No changes to the Planning Proposal were made in response to this submission.

Transport for NSW

All access to the PP site will be via Jervis Bay Road (regional road). TfNSW notes the Planning Proposal – PP035 document dated November 2020 suggests that a CHR/BAL treatment would be required at the intersection of the subdivision access and Jervis bay Road. TfNSW determines it more appropriate for councils to consider and determine if proposed arrangements for developments on regional roads are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency).

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TfNSW has no objections to the planning proposal in principle as it is unlikely to have a significant impact on the state road network. TfNSW strongly supports development which will reduce car dependency and encourage the use of sustainable modes of travel including buses, bicycles and walking.

Response

Traffic issues have been considered throughout the assessment process. Council's Traffic Section have reviewed the submitted traffic assessment and accepted the proposed intersection treatment. In addition to provision of an upgraded turning intersection, additional widening of Jervis Bay Road may be necessary (additional design and assessment will occur at subdivision stage).

No changes to the Planning Proposal were made in response to this submission.

NSW Rural Fire Service

Consultation with the NSW RFS occurred prior to the public exhibition of PP035. Advice issued on 16 October 2020 stated:

The NSW RFS notes that the site is subject to significant bush fire risk. As such Council shall be satisfied that the following comments are addressed prior to progressing the planning proposal:

- The planning proposal does not result in any increase in residential/rural residential density, to that currently applicable to the site;
- Future development is generally consistent with the proposed concept plan, including provision of an 8m wide paved perimeter road;
- Future development complies with the provisions for subdivisions detailed in Section 5 of 'Planning for Bushfire Protection 2019' and considers provision of increased bush fire protection measures (i.e. increased Asset Protection Zones (APZs) and/or construction standards or other protection measures) commensurate with the risk; and
- Future development includes a reticulated hydrant system meeting the provisions of AS2419.1:2005.

Advice received from the NSW RFS on 29 January 2021 reiterated previous advice, and presented a revised position on water supply for firefighting, stating:

The NSW Rural Fire Service has no objection to the progression of the planning proposal based on our previous advice dated 16 October 2020, with the following revision;

- 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.

Response

Planning considerations relating to bushfire are discussed below and also within sections 1.3 and 3.2.4 of this Report.

Density

Overall site density will remain rural-residential in nature. The Planning Proposal manages the development footprint across the site, reducing the area able to be developed for

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housing by clustering rural residential lots in the cleared part of the site, close to the road and excluding development over the majority of the site.

Under current planning controls most of the land is zoned R5 Large Lot Residential, permitting Torrens Title subdivision (of up to 12 lots) and housing development across the site. The proposal seeks to cluster rural-residential housing lots (up to 13 lots) in the cleared portion of the site. This represents an increase in potential yield of one (1) lot, up to a maximum number of thirteen (13) lots when the land is subdivided as community title. Thirteen (13) lots represent the maximum development yield for the site, and the number of lots to be developed will be subject to further investigations and detailed design at subdivision stage (the eventual lot yield could be reduced due to development constraints emerging during subdivision design and assessment).

Compliance with Planning for Bushfire Protection 2019

Planning for Bushfire Protection 2019 includes specific guidance related to rural-residential subdivisions as these are generally located in areas of increased bushfire risks, stating:

The NSW RFS has seen an increase in developments involving the subdivision of large rural blocks into smaller rural-residential allotments. In these circumstances, developers, designers and Consent Authorities need to be made aware that additional BPMs [Bushfire Protection Measures] ... will be a requirement to allow for safer and appropriate outcomes for future occupants. (page 40).

The proponent's Strategic Bushfire Study (Ecological, 16 September 2019) recognises the significant risk of bushfire to the site and concludes that bushfire risk mitigation measures can be provided to comply with *NSW Planning for Bushfire Protection (PBP) 2019* and reduce the risk to appropriate levels. Detailed bushfire mitigation responses would be assessed during the subdivision application stage, should the land rezoned, with applications referred to the NSW RFS for their concurrence under Section 100B of the *Rural Fires Act 1997*. The implications of these additional measures on flora and fauna are discussed further below and will need to be investigated further and ameliorated at subdivision stage.

Water supply for firefighting

Additional consultation occurred with the NSW RFS during the public exhibition period. Advice was sought as to the acceptability of providing static water supply for firefighting instead of access to reticulated (town) water hydrants. Advice from Shoalhaven Water opposes connection of reticulated water to the site (in part due to an inability to guarantee supply for this area during a bushfire). This position is reinforced by the Council resolution of 7 April 2020 not to provide reticulated water to the site. PBP 2019 requires a minimum of 10,000 L of static (tank) water per dwelling to be provided for firefighting purposes on rural-residential lots 1,000 m² – 10,000 m² in size.

The NSW RFS have indicated for the subject land that any future subdivision would need to provide double this amount (20,000 L / dwelling) for firefighting purposes. The proponent has indicated that provision of 20,000 L/dwelling of static water supply for firefighting is possible and will be incorporated into subdivision planning for the site. Any development applications for the site require the NSW RFS to issue a Bushfire Safety Authority under

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section 100B of the *Rural Fires Act 1997* which will reiterate requirements such as provision of the additional static water supply.

Given the concerns of the NSW RFS were addressed throughout the assessment process no changes to the Planning Proposal were made in response to the submissions received. Further detailed assessment and consultation with the NSW RFS will occur at subdivision stage.

Biodiversity & Conservation Division, Department of Planning, Industry and Environment (Environment, Energy and Science)

No major objection to the proposal, subject to the following points:

- That all development, including any bushfire mitigation works, be wholly contained within the proposed R5 – Large Lot Residential portion of the site and not extend into the proposed E2 – Environmental Conservation portion.
- That any subsequent development application appropriately assess the biodiversity impacts of the proposal.
- Recommend that the large E2 portion proposed to be retained be placed under some form of conservation agreement, such as a biodiversity stewardship agreement, so that it is protected and managed for conservation in perpetuity. BCD do not object to PP035, subject to further consideration of the potential impacts of bushfire protection measures on flora and fauna and adequate consideration of biodiversity issues at the development application stage. BCD also suggested that the proposed neighbourhood lot (to be zoned E2 Environmental Conservation) could be managed in perpetuity under a biodiversity conservation agreement.

Response

Impact of bushfire protection measures on biodiversity

The Flora and Fauna Assessment (Ecological Aug 2019) and draft Planning Proposal indicated that all bushfire protection measures required to comply with *Planning for Bushfire Protection (PBP) 2019 (NSW RFS)*, for example clearing and vegetation management for asset protection zones, can be contained within the area proposed to be rezoned R5 Large Lot Residential. However, given the NSW RFS' advice that *additional* bushfire protection measures may be required to further minimise risk (*in excess* of the general prescriptive requirements of PBP 2019), which could have implications for land zoned E2 Environmental Conservation. Bushfire protection measures will be detailed further as part of the subdivision application process, in consultation with the NSW RFS. It is expected any potential impacts could be avoided or managed in the subdivision design. The E2 zoned land area will also be mapped as a 'habitat corridor in the LEP Terrestrial Biodiversity maps, providing additional protection over this ecologically sensitive area. The Planning Proposal provides a suitable framework to balance environmental protection and bushfire risk reduction which will be further explored and evaluated during the subdivision phase of development.

Assessing biodiversity impacts in DAs

All DAs for the subject land are required to assess biodiversity impacts, and applications must address and give effect to the strongly environmentally-focused objectives of the E2

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Environmental Conservation zone as well as Clause 7.5 Terrestrial Biodiversity in SLEP 2014.

Biodiversity Conservation Agreements

A conservation agreement could provide an effective management mechanism to maintain the ecological values of the property and open up potential grant funding opportunities for environmental land management.

There are a variety of different conservation agreements, ranging from wildlife refuge agreements, to 'in-perpetuity' conservation agreements and stewardship agreements (which allow for the sale of biodiversity offset credits for protected land to fund ongoing management). Landowners with conservation agreements may also benefit from financial concessions and incentives. Conservation agreements are voluntary, and in this case could be investigated at the subdivision development application stage of development.

No changes to the Planning Proposal were made in response to this submission.

Shoalhaven Water

Advice on servicing the proposed subdivision was sought from Shoalhaven Water in early 2020. Shoalhaven Water indicated reticulated sewer was not available and opposed supply of reticulated (town) water given the following risks:

- Ongoing issues with water pressure and flows in nearby areas;
- Inability to guarantee water supply for bushfire fighting purposes; and
- Potential water quality risks. Should town water be provided, the proposed lot sizes of a minimum of 4000 m² will be insufficient to provide suitable on-site sewerage management systems – i.e. the effluent management areas will be undersized as households with town water are expected to use more water (at least about 20% more) than those that rely on rainwater tanks.

This advice was reconfirmed after the public exhibition period.

Response

The proposed development will be self-sufficient in terms of water and on-site effluent (wastewater) management, consistent with Shoalhaven Water's advice. The proponent has provided technical studies to illustrate that sufficient water can be supplied to the development for domestic and firefighting uses. An on-site wastewater management and water quality report was also submitted which shows water can be treated on-site without adverse impacts on water quality. The proposed self-sufficiency will provide environmental benefits, as water consumption will be less than the equivalent rural residential development connected to town water supplies.

No additional changes to the exhibited Planning Proposal, as the advice issued by Shoalhaven Water prior to public exhibition was unchanged.

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

The DPI Marine Operations Unit do not wish to provide a submission in this case due to the proposal being unlikely to have an impact on the Marine Park.

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Response

Response acknowledged and noted – no adverse impacts on Jervis Bay Marine Park are expected as a result of the proposed development. No changes to the Planning Proposal were made in response to this submission.

NSW Heritage

Heritage NSW made a submission to the PP during the public exhibition period and initially objected to the progression of the proposal without further consideration of Aboriginal cultural heritage impacts and the undertaking of an Aboriginal cultural heritage assessment (ACHA). Heritage NSW issued subsequent advice which acknowledged the extensive strategic planning history of the site and the intentions of this proposal to limit development footprints and development impacts across the site. This advice also acknowledged that an ACHA is not expected to be accommodated this late in the PP process, and reiterated advice to undertake cultural heritage assessment early in the planning process in all future proposals. Heritage NSW subsequently advised that they no longer objected to the PP but requested that Council consider measures to ensure that Aboriginal cultural heritage matters are adequately considered at the development application stage of development.

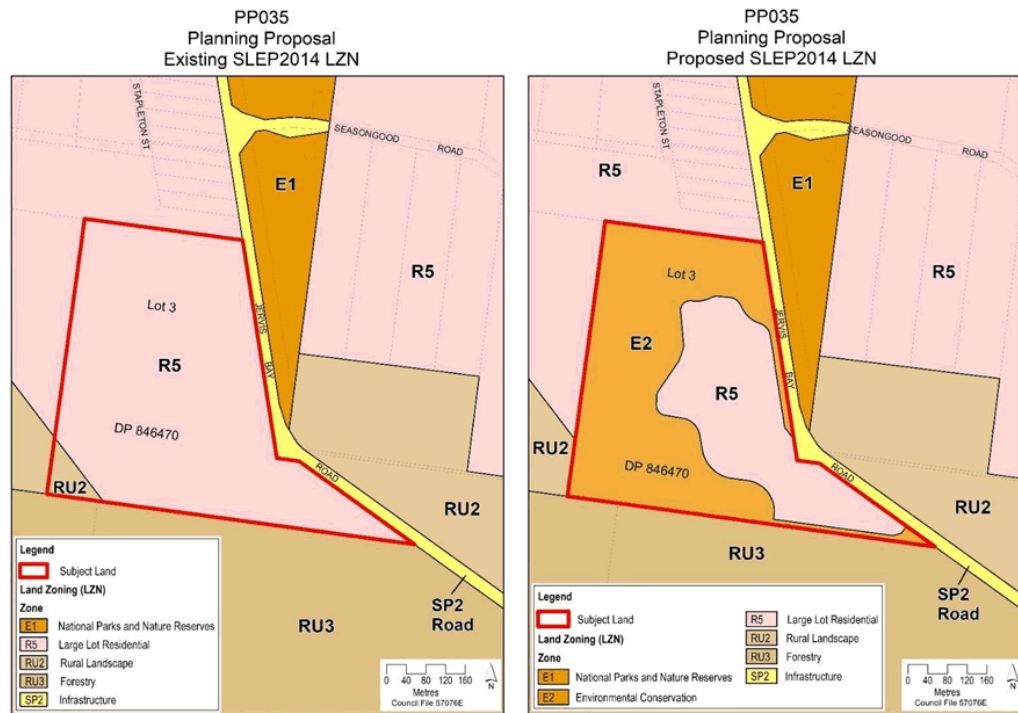
Response

An ACHA was not required as a condition of the Gateway determination for this proposal (PP035). In this case, the PP seeks to limit the development footprint across the site to the mostly cleared area and provides a buffer from development to the watercourse in the northern part of the site. Also, by rezoning the majority of the land to E2 Environmental Conservation, development will be restricted in that area, thereby reducing the likelihood of any impacts to any potential heritage values (compared to the current situation where development and associated impacts are permitted across the entire site). At this stage, no objects, items or specific places of Aboriginal cultural heritage significance are known to occur on the site and the area is currently zoned for rural-residential development, theoretically allowing for development and associated impacts to stretch across the site (subject to detailed merit-based assessment). The PP complies with all relevant legislative requirements and additional Aboriginal cultural heritage investigations can occur at the development application stage. The process to consider any potential impacts to cultural heritage values within the area proposed to accommodate rural-residential development remain unchanged by the Planning Proposal and will be investigated further at the subdivision stage of development, where opportunities to avoid or minimise any potential impacts can be explored at this more detailed design phase. Heritage NSW's feedback will be utilised in future planning proposal preparation and has been discussed with, and forwarded to, the NSW DPIE for consideration.

Part 4 – Mapping

The PP proposes to amend the following LEP Maps as shown below.

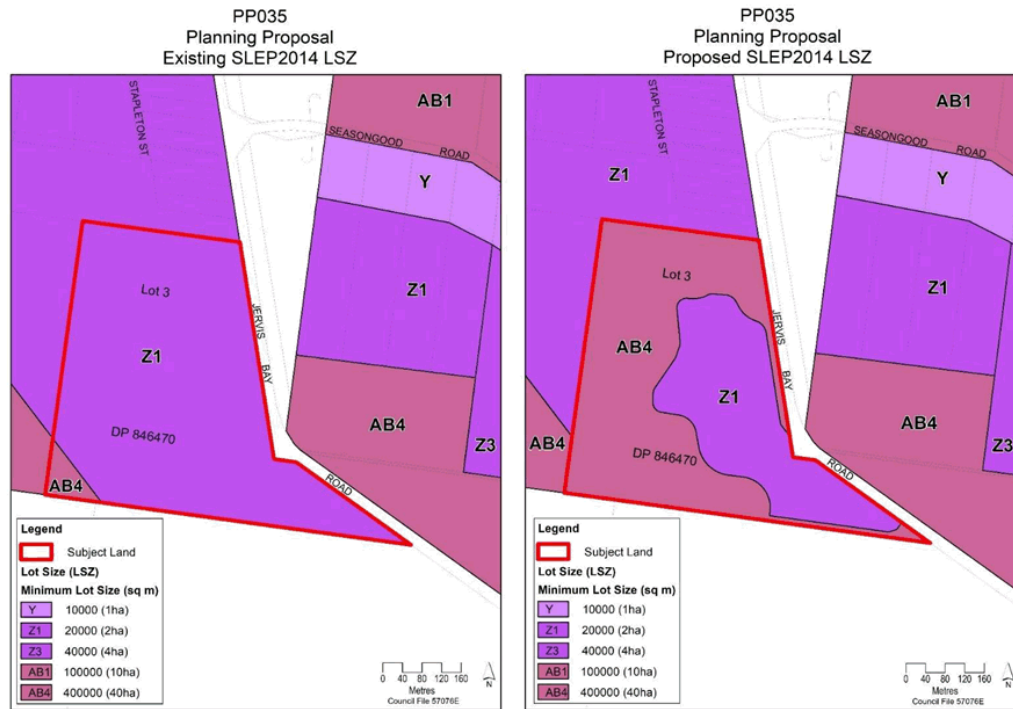
Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision



Map 1: Existing and Proposed Land Use Zone Maps

DE21.25 - Attachment 2

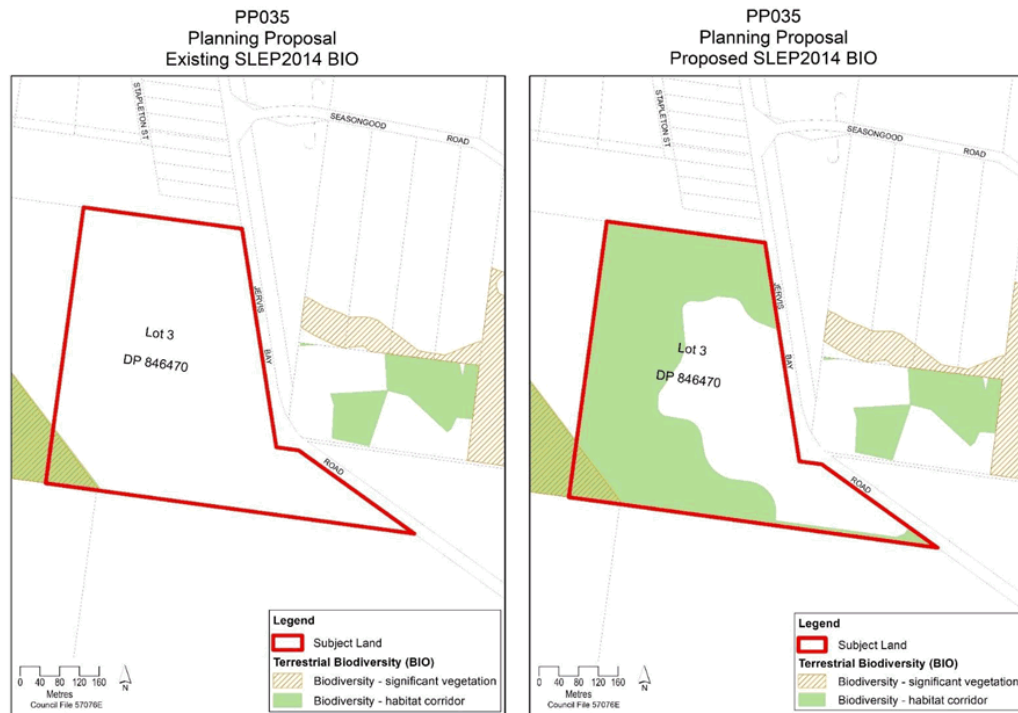
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Map 2: Existing and Proposed Lot Size Maps

DE21.25 - Attachment 2

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Map 3: Existing and Proposed Biodiversity Maps

Part 5 - Community Consultation

PP035 was publicly exhibited for a total of 31 days between Wednesday 6 January 2021 and Friday 5 February 2021 (inclusive). The exhibition was delayed to begin after the Christmas holiday period. The Gateway determination required a public exhibition period of a minimum of 28 days.

Nearby landowners (82), the Huskisson Woollamia Community Voice (CCB) and Jerrinja Local Aboriginal Land Council were notified in writing of the public exhibition and invited to make a submission.

The exhibition was affected by Covid-19 pandemic procedures and was placed on public exhibition during this time because of the looming Gateway determination deadline (10 March 2021) and advice from the NSW Department of Planning, Industry and Environment to continue to progress the Planning Proposal. The Planning Proposal and accompanying information were made available on Council's 'Documents on Exhibition' webpage and Council staff were available to answer questions. Council staff took several phone calls from notified residents with queries relating to access, community title subdivision, provision of water and questions about the development potential of surrounding land.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

No (0) submissions from residents or community groups were received during the exhibition period.

Part 6 – Project Timeline

Task	(Original) Anticipated Timeframe (July 2018)	Updated timeframe (updated Nov 2020)
Commencement date (date of Gateway determination)	August 2018	August 2018
Completion of Gateway determination requirements	April 2019	September 2019 (plus additional traffic study March 2020) Preliminary Consultation with RFS July - November 2020.
Public exhibition	June 2019	December – January 2021
Consideration of submissions	August 2019	January – February 2021
Post exhibition consideration of PP	September 2019	February 2021*
Finalisation and notification of Plan	February 2020	March 2021*

*subject to proposal having no unresolved objections

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachments

Attachment 1: Council Reports and Resolutions

[Report to Council's Development Committee 13 March 2018](#)

[Resolution: MIN18.162](#)

[Report to Council's Development & Environment Committee 7 April 2020](#)

[Resolution: MIN20.253](#)

DE21.25 - Attachment 2

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachment 2: Proponent's Planning Proposal

[Planning Proposal Report](#)* prepared by Cowman Stoddart D17/394310

[Annexure 1](#) Plans of Proposal/Subdivision sketch*

[Annexure 2](#) Flora and Fauna Assessment dated Nov 2017*

[Annexure 3](#) Bushfire Protection Assessment dated Nov 2017*

[Annexure 4](#) Report on Effluent Disposal dated Nov 2017*

[Annexure 5](#) Correspondence from RMS

Annexure 6 AHIMS Search - Cowman Stoddart dated 2017 – Note the AHIMS search did not show any listed Aboriginal sites or objects. AHIMS searches are not available for public viewing.

[Annexure 7](#) Chapter G11 of DCP Compliance Table

*Note: Changes have occurred to the proposal as described within the proponent's Planning Proposal Report dated November 2017.

These changes have occurred in response to the recommendations of subsequent technical studies. Some of the technical studies included above have also been updated - see Attachment 3 for copies of these studies.

DE21.25 - Attachment 2

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachment 3: Specialist Studies

[Stormwater Assessment - Neutral or Beneficial Effect \(NorBE\)](#) prepared by SEEC dated Aug 2019

[Flora and Fauna Assessment](#) prepared by Eco Logical Australia dated August 2019

[Bushfire Assessment](#) prepared by Eco Logical Australia dated August 2019

[Strategic Bushfire Study](#) prepared by Eco logical Australia dated September 2020

[Onsite Effluent Assessment](#) prepared by Cowman Stoddart dated November 2017

[Onsite Effluent Addendum Letter](#) prepared by Cowman Stoddart dated August 2019

[Turning Warrants Assessment](#) (Jervis Bay Road intersection) prepared by Allen Price & Scaratts dated February 2020

[Visual Impact Assessment](#) prepared by Envisage dated August 2019

DE21.25 - Attachment 2

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachment 4: Gateway determination

[Gateway determination](#) – issued by NSW Department of Planning and Environment dated 10 September 2018

[Gateway determination cover letter](#)

[Extension of Gateway determination](#) – issued by NSW Department of Planning, Industry and Environment dated 2 March 2020

[Extension of Gateway determination cover letter](#)

DE21.25 - Attachment 2

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachment 5: State Environmental Planning Policies

SEPP	Name	Applicable	Not inconsistent
		✓ / ✗	✓ / n/a
19	Bushland in Urban Areas	x	
21	Caravan Parks	x	
33	Hazardous and Offensive development	x	
36	Manufactured home estates	x	
46	Moore Park Showground	x	
50	Canal estate development	x	
55	Remediation of land	x	
64	Advertising and signage	x	
65	Design quality of residential apartment development	x	
70	Affordable Housing (Revised Schemes)	x	
	Aboriginal Land 2019	x	
	Activation Precincts 2020	x	
	Affordable Rental Housing 2009	x	
	BASIX : 2004	x	
	Coastal Management 2018	x	
	Concurrences and Consents 2018	x	
	Educational Establishments and Child Care Facilities 2017	x	
	Exempt and Complying Development Codes 2008	x	
	Gosford City Centre	x	
	Housing for Seniors or People with a Disability 2004	x	
	Infrastructure 2007	x	
	Koala Habitat Protection 2019	✓	✓
	Kosciusko National Park (Alpine Resorts) 2007	x	
	Kurnell Peninsula	x	
	Major Infrastructure Corridors 2020	x	
	Mining, Petroleum Production and Extractive Industries 2007	x	
	Penrith Lakes Scheme 1989	x	
	Primary Production and Rural Development 2019	✓	✓
	State and Regional Development 2011	x	
	State Significant Precincts 2005	x	
	Sydney Drinking Water Catchment 2011	x	
	Sydney Region Growth Centres 2006	x	
	Three Ports 2013	x	
	Urban Renewal 2010	x	

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

	Vegetation in Non-Rural Areas 2017	✓	✓
	Western Sydney Aerotropolis 2020	x	
	Western Sydney Employment Area 2009	x	
	Western Sydney Parklands 2009	x	

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

Attachment 6: Section 9.1 Directions

Direction	Applicable	Relevant	Not inconsistent
1 Employment and Resources			
1.1 Business and Industrial Zones	x		
1.2 Rural Zones	✓	✓	All of the RU2 land is proposed to be zoned E2.
1.3 Mining, Petroleum Production and Extractive Industries	x		
1.4 Oyster Aquaculture	x		
1.5 Rural Lands	✓	✓	Biodiversity values of site protected. No impact on agricultural production values.
2 Environment and Heritage			
2.1 Environmental Protection Zones	✓	✓	Environmentally significant land on the site is proposed to be rezoned to E2. The PP will not reduce the environmental protection standards that apply to the land.
2.2 Coastal Management	x		
2.3 Heritage Conservation	✓	✓	Not inconsistent. This is discussed in detail in the PP documentation. The land is already zoned for rural residential uses.
2.4 Recreation Vehicle Area	x		
2.5 E2 and E3 overlays Far North Coast	x		
2.6 Remediation of contaminated land	✓	x	The land is already zoned for rural residential uses.
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	✓	✓	Not inconsistent. This is discussed in detail in the PP documentation.
3.2 Caravan Parks and Manufactured Home Estates	x		
3.3 Home Occupations	x		
3.4 Integrating Land Use and Transport	x		
3.5 Development Near Regulated Airports and Defence Airfields	✓	x	The subject land is within the HMAS Albatross Military Aircraft Operating Area. The proposal will have no impact on operations however, given it represents low-rise rural residential development, currently enabled by SLEP 2014.
3.6 Shooting Ranges	x		
3.7 Short-term holiday rental	x		Applies to Byron Shire only.

Planning Proposal PP035 – Jervis Bay Road Falls Creek – Community Title Subdivision

4 Hazard and Risk				
4.1	Acid Sulphate Soils	x		
4.2	Mine Subsidence and Unstable Land	x		
4.3	Flood Prone Land	✓	✓	Flood prone land to be zoned E2 Environmental Conservation.
4.4	Planning for Bushfire Protection	✓	✓	This is discussed in detail in the PP. Not inconsistent as consultation with NSW carried out and no objection received.
5 Regional Planning				
5.1	Implementation of Regional Strategies	x		
5.2	Sydney Drinking Water Catchments	x		
5.3 – 5.9	Various site specific directions	x		Do not apply to Shoalhaven LGA
5.10	Implementation of Regional Plans	✓	✓	The PP is not inconsistent with the regional plan or the relevant local plans.
5.11	Development of Aboriginal Land Council land	x		
6 Local Plan Making				
6.1	Approval and Referral Requirements	x		
6.2	Reserving Land for Public Purposes	x		
6.3	Site Specific Provisions	✓	✓	This is discussed in detail in the PP. Any inconsistency is fully justified and minor.
7 Metropolitan Planning				
7.1-7.13	Various	x		Applies to various areas within the State, excluding Shoalhaven

Shoalhaven Development Control Plan 2014

Draft Chapter G13: Medium Density and Other Residential Development

Table of Changes

Old Section	New Section	Category	Recommended Change	Reason
Throughout		Editorial – renumbering	Update numbering to be sequential throughout the document.	To provide updated, correct numbering following insertion of new solar related provisions.
-	Section 5.3.2	Insertion	<p>Insert note box referring to the NSW Land and Environment Court – Planning Principle: Sunlight – Access to Sunlight</p> <p>Expand existing performance criterion (P16), add new acceptable solutions (A16.3 and A16.4) and a new note box that:</p> <ul style="list-style-type: none"> • Maintains solar access to both future and existing adjoining development. • Details the requirement for shadow diagrams for certain medium density development. 	<p>This is consistent with DCP Chapter G12 (low density residential development) and provides additional guidance to applicants.</p> <p>As infill medium density development continues to increase in low density residential areas (e.g. dual occupancies), greater consideration of solar preservation resulting from medium density development is required. Solar consideration is also important in greenfield development areas. Requirement of shadow diagrams will assist in identifying and assessing the level of impact of shadowing on surrounding development.</p>

The additions outlined above are highlighted in yellow.

Shoalhaven Development Control Plan 2014

Draft Chapter G13: Medium Density and Other Residential Development

5.3.2 Solar and Daylight Access

The specific **objectives** are to:

- i. Ensure that appropriate levels of solar and daylight access are provided to residents and maintained for surrounding **development**.

Note: Refer to the [NSW Land and Environment Court – Planning Principle: Sunlight – Access to Sunlight](#).

Performance Criteria	Acceptable Solutions
P16 Dwellings are sited and designed to maximise solar access to living areas and private open space of the development and surrounding residential development.	<p>A16.1 Dwellings are to be:</p> <ul style="list-style-type: none"> Oriented to make appropriate use of solar energy by maximising solar access to north-facing windows. Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced. Designed to locate living areas and private open space on the northern side of the development and non-habitable areas to the south and west of dwellings. <p>A16.2 The number of single aspect south facing dwellings shall be limited.</p> <p>A16.3 Direct solar access to the following must be maintained for at least 3 hours between 9am and 3pm on 21 June:</p> <ul style="list-style-type: none"> Existing rooftop solar systems; 10m² of north facing roofs where a rooftop solar system is not yet in place. <p>Note: North facing roofs are considered to be between the axes of 45° west and 45° east.</p> <p>A16.4 Certain medium density development may require shadow diagrams to show the impact of shadows resulting from existing and proposed building works.</p> <p>Note: A reliable and accurate shadow diagram may be required for:</p>

Shoalhaven Development Control Plan 2014

Draft Chapter G13: Medium Density and Other Residential Development

- Two storey developments, particularly development of streets running north-south.
- Development on sloping lots with south-east to south-west aspects.
- Development within the minimum setbacks to southern boundaries.

The shadow diagram shall demonstrate compliance with the solar access requirements in this Chapter, including the location of adjacent buildings affected by shadow, as well as the location of its living areas, private open space areas and any rooftop solar systems. Rooftop solar systems may require more than 3 hours of continuous direct sunlight for proper functioning. Building design and boundary setbacks should not unreasonably compromise existing performance of rooftop solar systems on adjoining developments. New development may need to be modified to protect solar access to existing rooftop solar systems.

In determining the extent of overshadowing, the impact of fences, roof overhangs and changes in level should be taken into consideration. Where sunlight to living areas and private open space is restricted, the setbacks of the proposal may need to be increased accordingly until the minimum requirement is met.

5.3.3 Private Open Space

The specific objectives are to:

- Ensure that the private open space provided for a dwelling is useable and meets user requirements for privacy, safety, access, active and passive outdoor recreational activities and landscaping.
- Locate private open space to take account of outlook, natural features of the site, solar access and neighbouring buildings or public domain.

Performance Criteria	Acceptable Solutions
<p>P17 Private open space is:</p> <ul style="list-style-type: none"> Functional and useable for residents all year round. 	<p>A17.1 A minimum area of private open space shall be provided for each dwelling in accordance with Table 5.</p> <p>A17.2 Private open space shall have direct access from a living area.</p>

Shoalhaven Development Control Plan 2014

Draft Chapter G17: Business, Commercial and Retail Activities

Table of Changes

Old Section	New Section	Category	Recommended Change	Reason
Throughout		Editorial – renumbering	Update numbering to be sequential throughout the document.	To provide updated, correct numbering following insertion of new solar related provisions.
-	Section 5.1.4	Insertion	Insert a Solar Access section that seeks to maximise solar access to the proposed and adjacent development.	To include provisions that assess the solar impacts of business, commercial and retail activities on adjoining development.
			Insert note box referring to the NSW Land and Environment Court – Planning Principle: Sunlight – Access to Sunlight	This is consistent with DCP Chapter G12 (low density residential development) and provides additional guidance to applicants.
			Insert a new performance criterion (P17) and acceptable solutions (A17.1 and A17.2) that: <ul style="list-style-type: none"> Ensures building design is energy efficient and provides good solar access. Details the requirement for shadow diagrams to demonstrate the impact of shadows resulting from existing and proposed building works. 	To include requirements for solar access to assist in reducing potential negative impacts for existing and future rooftop solar systems. Requirement of shadow diagrams will assist in identifying and assessing the level of impact of shadowing on surrounding development.

The additions outlined above are highlighted in yellow.

Shoalhaven Development Control Plan 2014

Draft Chapter G17: Business, Commercial and Retail Activities

- | | |
|---|--|
| <p>P16 Shop fronts and building entries address the street and provide active frontages to facilitate pedestrian movement and create a vibrant streetscape.</p> | <p>A16.1 Entrances are high quality and are designed to address the street and reflect the surrounding streetscape character.</p> <p>A16.2 Shops that are located on a corner allotment, address both street frontages.</p> <p>A16.3 Active uses are provided along street frontages and public spaces at ground/footpath level to encourage pedestrian movement, and to enhance surveillance and public security.</p> <p>A16.4 Local shops provide opportunities for outdoor dining or seating areas which encourage people to stay at the location.</p> <p>A16.5 Shop fronts are glazed wherever suitable to provide visual interest, light and foster natural surveillance of the street.</p> |
|---|--|

5.1.4 Solar Access

This Section seeks to maximise [solar access](#) to the proposed and adjacent [development](#).

Note: Council's assessment of development applications is guided by the [Land and Environment Court Planning Principles](#). In the case of sunlight access, Council may refer to the Planning Principle established in *The Benevolent Society v Waverly Council* [2010] NSWLEC 1082 to guide the decision making process.

Shoalhaven Development Control Plan 2014

Draft Chapter G17: Business, Commercial and Retail Activities

Performance Criteria	Acceptable Solutions
P17 The building design encourages energy efficient development and good solar access to the development and surrounding development.	<p>A17.1 Direct solar access must be maintained for at least 3 hours between 9am and 3pm on June 21 to:</p> <ul style="list-style-type: none"> Existing rooftop solar systems; 10m² of north facing roofs where a rooftop solar system is not yet in place. <p>Note: North facing roofs are considered to be between the axes of 45° west to 45° east.</p> <p>A17.2 A reliable and accurate shadow diagram may be required to demonstrate the impact of shadows resulting from existing and proposed building works between 9am and 3pm on June 21.</p> <p>Note: Council will determine if a shadow diagram is required based on the nature of the proposed development and the prevailing character and built form of the subject area.</p>

5.2 Markets

This Section applies to all land where markets are permissible with development consent.

The specific objectives are to:

- Reduce adverse effects upon the local area by providing guidelines for traffic, access, car parking and hours of operation.
- Recognise the importance of markets as a source of income to local community/charity groups and businesses, whilst also appreciating the economic implications that markets can have on existing commercial activities.
- Encourage the stall and product type to be from locally and regionally produced sources featuring "Make it, Bake it, Sew it, Grow it" products.

Shoalhaven Development Control Plan 2014

Draft Chapter G20: Industrial Development

Table of Changes

Old Section	New Section	Category	Recommended Change	Reason
Throughout		Editorial – renumbering	Update numbering to be sequential throughout the document.	To provide updated, correct numbering following insertion of new solar related provisions.
-	Section 5.3	Insertion	Insert a new performance criterion (P13) and acceptable solutions (A13.1 and A13.2) that: <ul style="list-style-type: none"> Ensures building design is energy efficient and provides good solar access. Details the requirement for shadow diagrams to demonstrate the impact of shadows resulting from existing and proposed building works. 	To include requirements for solar access to assist in reducing potential negative impacts for existing and future rooftop solar systems. Requirement of shadow diagrams will assist in identifying and assessing the level of impact of shadowing on surrounding development.

The additions outlined above are highlighted in yellow.

Shoalhaven Development Control Plan 2014
Draft Chapter G20: Industrial Development

Performance Criteria		Acceptable Solutions	
		<p>Note: The emerging character takes into account the past developments and potential future developments and redevelopments including the change in building and material forms over time.</p>	
P12	The development recognises and implements energy and water conservation principles.	A12.1	The industrial development is designed to reduce reliance on energy consumption and water usage.
P13	The building design is energy efficient and provides good solar access .	A13.1	<p>Direct solar access must be maintained for at least 3 hours between 9am and 3pm on June 21 to:</p> <ul style="list-style-type: none"> Existing rooftop solar systems; 10m² of north facing roofs where a rooftop solar system is not yet in place. <p>Note: North facing roofs are considered to be between the axes of 45° west to 45° east.</p>
		A13.2	<p>A reliable and accurate shadow diagram may be required to demonstrate the impact of shadows resulting from existing and proposed building works between 9am and 3pm on June 21.</p> <p>Note: Council will determine if a shadow diagram is required based on the nature of the proposed development and the prevailing character and built form of the subject area.</p>
P14	The roof/wall design and materials avoid glare hazard to traffic users in the adjacent road system.	A14.1	Roof and wall materials (especially uncoloured or light-coloured metal cladding) do not cause excessive glare to traffic using the adjacent roads.
P15	Car parking is located to avoid conflict and promote safety.	A15.1	Visitor and customer car parking is separated from delivery and operational vehicle movements.

5.4 Provisions for Fences and Screen Walls

If the proposed **fence** is not exempt under *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008, then the controls below apply.

Shoalhaven Development Control Plan 2014

Draft Dictionary

Table of Changes

Category	Recommended Change	Reason
Editorial	Remove the term 'solar collector' and replace with 'rooftop solar systems.'	'Rooftop solar systems' will capture anything related to solar installed on a roof or embedded within the material of the roof, where the term solar collector is not as broad.
Editorial	Amend the rooftop solar systems definition (formerly the 'solar collector' definition) to include 'and new and emerging technology'.	This will future proof the definition so that it will not need to be amended with changes in technology into the future.

The additions outlined above are highlighted in yellow, with deletions shown with strikethrough and yellow highlighting.

Shoalhaven Development Control Plan 2014

Draft Dictionary

Restricted development site means land identified as a restricted development site on the Natural Resource Sensitivity Land map overlay in the *SLEP 2014*.

Retailing when used in reference to *Chapter G19: Home Based Business Activities* involves the display for sale of goods in small quantities to the public but does not include mail order, 'Just in time' retailing or 'E-commerce'.

Retention means the storing of water for beneficial use. It applies to the storage volume available for reuse or systems that allow infiltration into the soil profile. Retention can apply to all forms of water including rainwater, stormwater and recycled water.

Rigid annexe when used in reference to *Chapter G10: Caravan Parks in Flood Prone Areas* is as defined by the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds & Moveable Dwellings) Regulation 2005*.

Note. The term is defined as an annexe that is not a flexible annexe.

Risk means the chance of something happening that will have an impact. It is measured in terms of consequences and probability (likelihood). In the context of *Chapter G9: Development on Flood Prone Land* and *Chapter G10: Caravan Parks in Flood Prone Areas*, it is the likelihood of consequences arising from the interaction of floods, communities and the environment.

Roof water means rain (water) that falls on the roof of a building.

Rooftop solar systems means photovoltaic cells, solar panels, skylights, solar hot water panels, windows, glazed doors, solar cells embedded within the material of the roof and new and emerging technology.

Roughness coefficients describe the resistance of the bed of a channel to the flow of water within it. They are used in equations calculating energy loss due to roughness of a surface.

Runoff means the same as **stormwater**.

Rural Lifestyle Area when used in reference to *Chapter V1: Lot Averaging Subdivision* refers to localities 1-8 identified in Clause 4.2B of *SLEP 2014*.

Scale means relative dimensions to ground level, including height, bulk and number of storeys.

Secondary frontage means:

- The longer frontage where an allotment has two or more frontages to a road; or
- The frontage that adjoins a lane where an allotment (not including a corner allotment) runs between a road and a lane.

Secondary treatment when used in reference to *Chapter G8: Onsite Sewage Management* means anaerobic and aerobic biological processing and settling or filtering of effluent received from a primary treatment unit. Effluent quality following secondary treatment is expected to be equal to or better than 20 g/m³ five-day biochemical oxygen demand and 30g/m³ suspended solids.

Shoalhaven Development Control Plan 2014

Draft Dictionary

Solar access means the ability of a dwelling to receive direct sunlight into living and private open spaces without obstruction by buildings or other impediments.

Solar collector means photovoltaic cells, solar panels, skylights, solar hot water panels, windows, glazed doors and the like.

Special waste means a waste that posed or is likely to pose an immediate or long-term risk to human health or the environment. This includes hazardous waste, clinical waste and contaminated waste. Special arrangements need to be made for the management of these wastes.

Split systems when used in reference to *Chapter G8: Onsite Sewage Management* means where black and grey water are split into separate waste streams at the source. Full on-site split systems dispose of both streams on-site but into separate disposal systems. Partial on-site split systems dispose of grey water on-site and rely on a cart-away system for the black water stream.

Stability analysis report or **geotechnical report** means a report that examines the geological profile of the site and includes the soil and moisture condition and watertable and bedrock characteristics.

Stacked parking means a parking arrangement with two parking spaces arranged one behind the other either in separate or same ownerships (may be self-managing and a management plan or arrangement may be required).

State significant development is development that is declared to be State significant development by a State Environmental Planning Policy, Regional Environmental Plan, Local Environmental Plan or the Minister as the case may be in a range of particular circumstances.

Storage depth means the amount of rainfall that would previously have been stored on site through surface ponding and infiltration prior to the addition of impervious surfaces.

Stormwater means rainfall that is concentrated after it runs off all urban surfaces such as roofs, pavements, carparks, roads, gardens and vegetated open space and includes water in stormwater pipes and channels.

Stormwater management plan means a concise report and/or drawing/s that provide sufficient information to demonstrate how the development meets the relevant stormwater controls and supporting guidelines.

Stormwater infiltration trench or **bioretention system** means a purpose built absorption trench designed to store and filter stormwater runoff from dwelling and associated structures.

Stream forming flow means the following percentage of the 2-year ARI flow rate estimated for the catchment under natural conditions:

- 10 per cent for low cohesion (e.g. sandy) bed and banks.
- 25 per cent for moderately cohesive bed and banks.
- 50 per cent for cohesive (e.g. stiff clay) bed and banks.

DRAFT



COLLINGWOOD BEACH DUNECARE ACTION PLAN

Document Number: D21/47351 **Adopted:** [Date] **Minute Number:** [MIN] **File:** 26279E
Produced By: City Development **Review Date:** [Review date]

RESERVE INFORMATION

Reserve Number: part Crown Reserve R64234
Land Tenure: Trust Manager: Shoalhaven City Council
Community Land Type: Natural Area

1. GOALS

The goal of the Collingwood Beach Dunecare Action Plan is to undertake on-ground activities that will:

1. Increase the stability and resilience of the dune system to help protect built and natural assets.
2. Maintain a healthy and functioning dune ecosystem that contributes to dune stability; and
3. Maintain the environmental, aesthetic and social values of the foreshore area for the enjoyment of all.
4. Accord with the NSW Manual of Coastal Dune Management and Rehabilitation Techniques; and NSW Coastal Management Act 2016

DRAFT

2. ACTION PLAN ACHIEVEMENTS TO DATE*

Actions	Lessons Learnt
A range of dune rehabilitation has been undertaken since a severe erosion event in 1974. Work has included sand replenishment and planting. This work over a number of decades has resulted in a much more resilient dune system.	Sand nourishment and revegetation has been very successful in re-establishing the dune system, providing protection for the shared pathway and adjacent homes and improving habitat values. As a result of the vegetation establishment, there have been occurrences of illegal vegetation vandalism, presumably as views have been interrupted.
Significant weed control has been done throughout the dune system.	Weed control has been highly successful. In general, there are very few introduced weeds within the dune system. Some significant weeds that were common in 2008 are now rare or absent such as Bitou Bush, Ground Asparagus, Madeira Vine, Climbing groundsel, Japanese Honeysuckle, Cotoneaster, Bamboo, English Ivy, Crassula, etc. Mother-of-millions, turkey rhubarb, buffalo grass and Fleabane continue to be present and other environmental weeds will require ongoing maintenance
Interpretive signs	Signs have been generally well accepted. However, feedback has been received that the sign at Susan Street needs to be reviewed and a more relevant photo included.

* based on actions in 'Vincentia - Collingwood Beach Reserve Bushcare Action Plan – 2008'.

DE21.30 - Attachment 1

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3. COLLINGWOOD BEACH DUNECARE ACTION PLAN AREA



Collingwood Beach Dunecare Action Plan Area (Moona Moona Creek to Susan St)

DRAFT

4. ACTIVITIES TABLE

Priority should be rated as H = High (started within 12 months); M = Medium (started 1-3 years); L = Low

ACTION	PRIORITY	METHOD	TIME
1. Weed control and revegetation of areas that are clear of weeds.	H	Removal of environmental weeds including buffalo grass, fleabane, turkey rhubarb and mothers of millions Manual weed control or herbicide use as per product labels or APVMA permits. Replacement plantings are not to impact on the existing views (i.e. ground cover species such as those listed in Section 10)	Ongoing
2. Maintain areas adjacent to the shared path, east of the fence.	H	Rubbish removed and placed in bins. Dead branches will be broken into smaller pieces and left on the ground or relocated within the dune areas, if practical, or removed.	Ongoing
3. Help maintain beach access ways to the required widths	H	Assist Council with ongoing pruning of overhanging vegetation along the shared path and beach access ways. Plant appropriate species to avoid pedestrian injury, allowing an appropriate distance, dependent on plant species, for plants to grow to full size without impacting on walkers.	Ongoing

DRAFT

ACTION	PRIORITY	METHOD	TIME
4. Help manage vegetation to provide a balance between stability, habitat and amenity	H	In August 2018, a trial commenced to develop a regime to manage vegetation – see the report ‘Collingwood Beach Dune Vegetation Action - Two-Year Trial Plan’. Volunteers will assist with the implementation of the outcomes of this work and the subsequent resolutions (Appendix 1), through actions such as weed control, revegetation with low-growing species, maintenance, removal (where dune health is benefitted, and the action is permitted) and monitoring of vegetation.	2021 on
5. Work with Council to improve signage	M	Include local photos on the sign	2021
6. Support implementation of the Coastal Zone Management Plan and Coastal Management Plan	M	Where required, work under instructions from Council in accordance with the Dune Care Action Plan goals	Ongoing
7. Support remediation of vandalised areas	L	Support Shoalhaven City Council in the remediation of vandalised areas in accordance with the Shoalhaven tree and vegetation vandalism prevention policy.	As needed

DRAFT

ACTION	PRIORITY	METHOD	TIME
8. Monitoring	H	Council and volunteers to establish monitoring of dune health, as resources allow.	2021 on

DRAFT

5. VOLUNTEER WORKPLACE HEALTH AND SAFETY

New volunteers must be inducted in Shoalhaven City Council's corporate induction process and volunteers must comply with the Volunteer Induction Handbook.

Based on the activities included in this action plan, a new site hazard and risk assessment will be completed. Volunteers are to be inducted on this revised risk assessment with the adoption of this plan. The 'site hazard and risk assessment' is to be revised as need be, for example, upon the identification of a new hazard, or of a new control measure for an existing hazard.

6. COUNCIL SUPPORT

Supply tools and materials within the constraints of budget

- Training and technical advice
- Administration support
- Assistance with grant applications, administration and management.
- Assistance with events
- Assistance from Council's Bush Regenerator staff as resources allow.

7. POSSIBLE FUTURE FUNDING

The following projects will be considered as funding opportunities become available:

Project
A bid has been submitted in 2020 under the NSW Government's Coastal and Estuary Grants Program to implement actions developed from the Collingwood Beach Dune Vegetation Two-Year Trial Action Plan.
The Dune Care group and Council will continue to seek grant funding where appropriate.

8. REVIEW

This plan will be reviewed six years from its adoption but can be reviewed sooner, if agreed.

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9. REGIONAL MANAGEMENT PLANS OR STRATEGIES

Name of document	Year it was produced	Produced by
Final Report Collingwood Beach Dune Vegetation Action - Two-Year Trial Action Plan	2018	Shoalhaven City Council
Foreshore Reserves Policy	2005	Shoalhaven City Council
Coastal Dune Management – A Manual of Coastal Dune Management and Rehabilitation Techniques	2001	NSW Dept of Land and Water Conservation
Shoalhaven Tree and Vegetation Vandalism Prevention Policy	2019	Shoalhaven City Council
Bushcare/Parkcare Policy	2018	Shoalhaven City Council
Coastal Zone Management Plan for the Shoalhaven Coastline	2018	Shoalhaven City Council
Local Strategic Plan 2016-2021	2016	South East Local Land Services
SCC Council resolutions: MIN20.927 (Appendix 1) MIN20.622 MIN20.113 MIN19.501	2020 2019	Shoalhaven City Council

DE21.30 - Attachment 1

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10. SITE WEED LIST

The following weeds have been recorded on the site

Scientific name	Common Name
<i>Acetosa sagittata</i>	Turkey rhubarb
<i>Asparagus aethiopicus</i>	Ground asparagus
<i>Bidens pilosa</i>	Cobbler's pegs
<i>Bryophyllum delagoense</i>	Mother-of-millions
<i>Cirsium vulgare</i>	Spear thistle
<i>Conyza species</i>	Fleabane
<i>Ehrharta erecta</i>	Panic veldtgrass
<i>Eleusine indica</i>	Crow's-foot grass
<i>Euphorbia maculata</i>	Eyebane
<i>Gamochaeta spp</i>	Cudweed
<i>Hypochaeris glabra</i>	Smooth flatweed
<i>Hypochaeris radicata</i>	Catsear/flatweed
<i>Lilium formosanum</i>	Formosan lily
<i>Paspalum urvillei</i>	Vasey grass
<i>Richardia brasiliensis</i>	White eye
<i>Senecio madagascarensis</i>	Fireweed
<i>Sida rhombifolia</i>	Paddy's lucerne
<i>Solanum nigrum</i>	Blackberry nightshade
<i>Sonchus oleraceus</i>	Common sowthistle
<i>Stellaria media</i>	Common chickweed
<i>Stenotaphrum secundatum</i>	Buffalo Grass
<i>Taraxacum officinale</i>	Dandelion

11. REVEGETATION SPECIES

Botanical	Common
<i>Actites megalocarpus</i>	Beach Sow Thistle
<i>Austrofestuca littoralis</i>	Beach Fescue
<i>Billardiera scandens</i>	Apple Berry
<i>Carpobrotus glaucescens</i>	Pigface
<i>Clematis aristata</i>	Old Man's Beard
<i>Correa alba</i>	Coastal correa
<i>Dianella caerulea var. caerulea</i>	Flax Lily
<i>Dianella congesta</i>	Flax Lily
<i>Dianella crinoides</i>	Flax Lily
<i>Dichondra repens</i>	Kidney weed
<i>Ficinia nodosa</i>	Knobby Club Rush
<i>Hardenbergia violaceae</i>	False sarsaparilla
<i>Imperata cylindrica var. major</i>	Blady grass
<i>Lomandra longifolia</i>	Spiny Mat-rush
<i>Pelargonium australe</i>	Coastal Geranium
<i>Pimelea linifolia</i>	Slender riceflower
<i>Scaevola calendulacae</i>	Beach Fan Flower
<i>Spinifex sericeus</i>	Spinifex
<i>Viola hederacea</i>	Native violet

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12. SITE SPECIES LIST

The following species have been recorded on the site:

TREES	
Botanical	Common
<i>Agonis flexuosa</i> *	Western Australian peppermint
<i>Araucaria heterophylla</i> *	Norfolk Island pine
<i>Banksia integrifolia</i> subsp. <i>integrifolia</i>	Coast Banksia
<i>Casuarina glauca</i>	Swamp she-oak
<i>Eucalyptus botryoides</i>	Bangalay, southern mahogany
<i>Melia azederach</i>	White cedar
<i>Pittosporum undulatum</i>	Sweet Pittosporum
SHRUBS	
Botanical	Common
<i>Acacia longifolia</i> var. <i>sophorae</i>	Coast wattle
<i>Breynia oblongifolia</i>	Coffee bush
<i>Correa alba</i> var. <i>alba</i>	White Correa
<i>Leptospermum laevigatum</i>	Coastal tea-tree
<i>Leucopogon parviflorus</i>	Coastal beard heath
<i>Monotoca elliptica</i>	Tree broom heath
<i>Myoporum insulare</i>	Boobialla
<i>Pelargonium australe</i>	Coastal Geranium
<i>Pimelea linifolia</i>	Slender riceflower
<i>Pittosporum revolutum</i>	Rough-fruit Pittosporum
<i>Rubus parvifolius</i>	Native raspberry
<i>Westringia fruticosa</i>	Native rosemary, coastal rosemary

* not local species

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SITE SPECIES LIST (cont.)

UNDERSTOREY (grasses, herbs)	
Botanical	Common
<i>Actites megalocarpus</i>	Dune thistle
<i>Ammophila arenaria</i> *	Marram grass
<i>Austrofestuca littoralis</i>	Beach fescue
<i>Cakile maritima</i> **	Sea rocket
<i>Carpobrotus glaucescens</i>	Coastal pigface
<i>Centalla asiatica</i>	Indian pennywort
<i>Commelina cyanea</i>	Scurvy weed
<i>Crinum pedunculatum</i>	Crinum lily
<i>Cynodon dactylon</i>	Couch, Bermuda grass
<i>Dianella caerulea</i>	Blue flax lily
<i>Dichondra repens</i>	Kidney weed
<i>Ficinia nodosa</i>	Knobby club rush
<i>Hydrocotyle bonariensis</i> *	American pennywort
<i>Imperata cylindrica</i>	Blady grass
<i>Lomandra longifolia</i>	Spiny-headed mat-rush
<i>Oxalis rubens</i>	Dune wood-sorrel
<i>Pelargonium australe</i>	Native storksbill, wild geranium
<i>Poa poiformis</i>	Beach Poa
<i>Pteridium esculentum</i>	Bracken
<i>Rhagodia candolleana</i>	Seaberry saltbush
<i>Scaevola calendulacea</i>	Dune fan flower
<i>Senecio minimus</i>	Shrubby fireweed
<i>Spinifex sericea</i>	Spinifex
<i>Sporobolus virginicus</i> var. <i>virginicus</i>	Sand couch
<i>Tetragonia tetragonoides</i>	Warrigal greens
<i>Themeda australis</i>	Kangaroo grass
UNDERSTOREY (vines & climbers)	
Botanical	Common
<i>Billardiera scandens</i>	Apple Berry
<i>Hibbertia scandens</i>	Guinea flower

* : introduced, planted to stabilise dunes, naturalised.

** : introduced but has become naturalised.

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APPENDIX 1 Resolutions of Council 15 December 2020

RESOLVED (Clr White / Clr Gash)

MIN20.927

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 Illfracombe Ave.

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

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

CARRIED



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 MODIFICATION
APPLICATION BY WAY OF
CONSOLIDATED DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979
DA18/2326
(Incorporating D20/1619)

Foxrun Commercial Building Pty Ltd
2/3 Bourrool St
KIAMA NSW 2533

being the applicant(s) for DA18/2326 relating to:

2 Lawrence Ave & 61 Kinghorne St, NOWRA – Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) & 1 DP 1243710

APPROVED USE AND OR 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 (*modified by DS20/1619*)

DETERMINATION DATE: 4 October 2019

S4.55 DETERMINATION DATE: To be confirmed

Pursuant to Clause 122 of the Environmental Planning and Assessment Regulation 2000, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM: 4 October 2019

CONSENT TO LAPSE ON: 4 October 2024

This consent is valid for five years from the date hereon.

In accordance with Section 4.53 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.

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

1. General (modified by DS20/1619)

This consent relates to a four (4) storey shop top housing development consisting of three (3) levels of commercial premises and one (1) level of residential units comprising 3 x 3 bedroom units, 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 must be carried out in accordance with this consent.

Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions prevail to the extent of that inconsistency.

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Combined Site Layout Plan A	CC Mod – 001A	A.T. FCB	Oct 2020
Combined Site Layout Plan B	CC Mod – 001B	A.T. FCB	Oct 2020
Site Layout Plan	CC Mod L-001A	A.T. FCB	Oct 2020
Basement Floor Plan	CC Mod L-002A	A.T. FCB	Oct 2020
Ground Floor Plan	CC Mod L-003A	A.T. FCB	Oct 2020
First Floor Plan	CC Mod L-004A	A.T. FCB	Oct 2020
Second Floor Plan	CC Mod L-005A	A.T. FCB	Oct 2020
Third Floor Plan	CC Mod L-006A	A.T. FCB	Oct 2020
Elevations Plan	CC Mod L-007A	A.T. FCB	Oct 2020
Roof and Heights Plan	L-004-D	A.T. FCB	Jan 2019
Sections Plan	CC Mod L-008A	A.T. FCB	Oct 2020
Long Section – Combined Site Layout Plan	001 - A	A.T. FCB	Jan 2019
Landscape Plans	CC Mod 1482/1-A	Captive Landscape Design	Oct 2020
Erosion & Sediment Control Plan	Project 17020052, C40P1	JN Engineering	28/5/18
Stormwater Layout Plan	JN-Mod C02.3	JN Engineering	August 2020
BASIX Certificate	9634588M	Aspect Z	22/10/2018
Waste Management Plan	-	-	-
Services Plan	CC Mod L-S02	A.T. FCB	Oct 2020
Site Layout (Longsection) Plan	JN-Mod C01.2	JN Engineering	June 2020
Longitudinal Section Plan	JN-Mod C104.1	JN Engineering	June 2020

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Swept Path Analysis	JN-Mod C200.1	JN Engineering	August 2020
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Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under Section 4.55 of the Act, or a fresh development application. No works, other than those approved under this consent, must be carried out without the prior approval of Council.

2. The approved development must not be occupied or the use must 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).
3. **Occupation Certificate**
An **Occupation Certificate** must be issued by the Principal Certifier (PC) before any of the approved development can be used or occupied.
4. **Construction within Boundary**
All approved construction including but not limited to footings, walls, roof barges and guttering are to be constructed wholly within the boundaries of the premises.
5. **Telecommunications / TV Antennae**
No more than one telecommunications/TV antenna will be provided to each building.

PART B – CONDITIONS THAT MUST BE COMPLIED WITH BEFORE WORK CAN COMMENCE

6. **Principal Certifier, Construction Certificate and Notice of Commencement**
The following must be undertaken prior to the commencement of any construction works:
 - a) A Principal Certifier (PC) must be appointed,
 - b) A Construction Certificate must be obtained from an Accredited Certifier,
 - c) Notice must be given to Council at least two (2) days prior to the commencement of any works, and
 - d) Council must be advised in writing of the name and 24hr contact number of the designated person/company nominated by the developer or their agent to be responsible for construction of all engineering works including erosion and sediment control measures and their maintenance.
 - e) Any clearing of vegetation approved under this consent is not permitted unless:
 - i) The erosion and sediment control measures required by this consent have been implemented and inspected by Council or the Accredited Certifier;
 - ii) Evidence of an application for a Construction Certificate is provided to Council;

The clearing is carried out in accordance with the relevant conditions of consent and the approved Waste Minimisation and Management Plans.
7. **Builders' Toilet**
Before commencing building operations, a builder's water closet accommodation must be provided to Council's satisfaction.

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A chemical toilet may be used on the site or alternatively the site may be provided with temporary closet accommodation connected to Council's sewer where sewer is available and operational. Under no circumstances will pit toilets or similar be accepted by Council.

8. **Shoalhaven Water**

All conditions listed on the Shoalhaven Water Development Application Notice under the heading "Prior to Commencement of demolition works" must be complied with and accepted by Shoalhaven Water prior to the commencement of demolition works.

For further information and clarification regarding the above please contact Shoalhaven Water's Development Unit on (02) 4429 3111.

9. **Existing services/damage to public assets (Dilapidation Report)**

Prior to the commencement of any work(s) associated with this development, the person benefitting from this consent must:

- a) Check that the proposed works are not affected by any Council, electricity, telecommunications, gas or other services. All services, existing and proposed, above or below ground are to be shown accurately on the engineering plans including longitudinal sections with clearances to proposed infrastructure clearly labelled. Any required alterations to services as a consequence of undertaking works under this consent or any repair to services will be at the expense of the person benefitting from this consent; and
- b) Undertake a site inspection and document any evidence of damage to the public assets prior to commencement of work. Any damage to the adjacent kerbs, gutters, footpaths (formed or unformed), walkways (formed or unformed), carriageway, reserves and the like, that occurs during development works must be repaired by the person benefitting from this consent. Failure to adequately identify existing damage will result in all damage detected by Council after completion of the building work being repaired at the expense of the person benefitting from this consent. A copy of the inspection documentation is to be submitted to Council prior to the commencement of works.

10. **Works within the Road Reserve**

Prior to undertaking any works within an existing road reserve, the contractor must obtain the consent of Council under section 138 of the *Roads Act, 1993* and have a set of Council approved plans and the letter of approval as per the development consent conditions. The following details must be submitted to Council to obtain the section 138 consent:

- a) Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the vehicular and pedestrian public. The TCP must comply with the current RMS's manual Traffic Control at Work Sites. Warning and protective devices must comply with the provisions of Australian Standard AS 1742.3 – 2002 Traffic Control Devices for Works on Roads. The plan must be prepared, signed and certified by a person holding the appropriate RMS accreditation, a copy of which is to be submitted with the plan.
- b) Insurance details.
- c) Name and contact information of the person/company appointed to supervise the construction.
- d) Should the contractor want a single section 138 approval to cover works additional to road, drainage and site regrading (e.g. water supply, sewerage, landscaping, etc), details of such works should be forwarded to the designer of the Traffic Control Plan. Copies of the layout plans and work method statements of these additional works are to be submitted to the

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Development Manager in conjunction with the section 138 application for road and drainage works.

Where the Traffic Control/Management Plan requires a reduction of the speed limit, a 'Direction to Restrict' must be obtained from the RMS - Traffic Operations Unit for RMS roads or Council for other roads and submitted with the section 138 application.

11. **Erosion and Sediment Control**

Prior to the commencement of works, a Soil and Water Management Plan (SWMP) and accompanying specifications for the construction phase of the works, prepared by a suitably qualified and experienced person and based on the Landcom manual - *Soils and Construction, Managing Urban Stormwater*, Vol 1, 4th Edition, March 2004", must be submitted to the PC (for works within the development lot) and Council (for works within the road reserve) for approval.

12. Prior to the commencement of any works, the approved erosion and sediment control measures must be implemented by the contractor, and inspected and approved by the PC prior to the commencement of any other site works. The erosion and sediment measures must be maintained for the life of the construction period and until runoff catchments are stabilised.

13. **Earthworks**

Documentation from the supplier that certifies that imported fill material is not contaminated based on analyses of the material is to be provided to Council. Sampling and analysis of the imported fill material must be conducted in accordance with the EPA Sampling Design Guidelines. Details of fill storage, disposal and materials haulage routes to and from the site must be submitted to Council for approval. All surplus excavated material must be taken to an approved landfill site.

14. **Sign – Supervisor Contact Details**

A sign must be erected in a prominent position on any site where any building, subdivision or demolition work is being carried out:

- a) Showing the name, address and telephone number of the PC 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; and
- c) Stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work is being carried out.

15. **Public Safety and Protection of Public Property**

The site/area where works are being undertaken is to be fenced in accordance with Safework NSW requirements prior to the commencement of works, suitable for keeping members of the public and unauthorised people out.

PART C – CONDITIONS THAT MUST BE COMPLIED WITH BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

16. **Shoalhaven Water**

Prior to the issue of a Construction Certificate and prior to making application for any water meters, a water meter servicing plan is to be submitted to Shoalhaven Water for assessment/approval.

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Prior to the issue of a Construction Certificate, all conditions listed on the Shoalhaven Water Development Application Notice under the heading "Prior to the Issue of a Construction Certificate" must be complied with and accepted by Shoalhaven Water. The authority issuing the Construction Certificate for the development must obtain written approval from Shoalhaven Water allowing a Construction Certificate to be issued.

Note: Relevant details, including monetary contributions (where applicable) under the Water Management Act 2000, are given on the attached Notice issued by Shoalhaven Water.

For further information and clarification regarding the above please contact Shoalhaven Water's Development Unit on (02) 4429 3111.

17. **Contributions for Additional Services and/or Facilities (modified by DS20/1619)**

The applicant's request to recalculate contributions based on a revised calculation of 1 space per 24 square metres, is refused. The table below reflects a revised calculation taking into account the net increase of one (1) parking space and the reduction of 3.3m² in gross floor area on the ground, first, and second floor levels.

This development will generate a need for additional services and/or facilities as described in Council's Contributions Plan 2019, as itemised in the following table.

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC5006	Northern Shoalhaven Sports Stadium	\$700.23	1.4	\$980.32	\$0.00	\$980.32
01AREC5007	Nowra Swimming Pool Expansion (Scenic Drive)	\$543.04	1.4	\$760.26	\$0.00	\$760.26
01AREC5009	Planning Area 1 recreational facilities upgrades (various locations)	\$733.01	1.4	\$1,026.21	\$0.00	\$1,026.21
01CARP3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghome Street	\$27,722.47	18.2	\$504,548.95	\$0.00	\$504,548.95
01CFAC5012	Nowra Integrated Youth Services Centre (Cnr Kinghome & Plunkett Streets)	\$29.98	1.4	\$41.97	\$0.00	\$41.97
CWAREC5005	Shoalhaven Community and Recreational Precinct SCArP Cambewarra Road Bomaderry	\$1,931.92	1.4	\$2,704.69	\$0.00	\$2,704.69
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	\$1,460.12	1.4	\$2,044.17	\$0.00	\$2,044.17
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$1,280.53	1.4	\$1,792.74	\$0.00	\$1,792.74
CWCFAC5007	Shoalhaven Regional Gallery	\$70.30	1.4	\$98.42	\$0.00	\$98.42
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	5.88	\$812.20	\$0.00	\$812.20
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	5.88	\$1,188.17	\$0.00	\$1,188.17
CWMGMT3001	Contributions Management & Administration	\$574.39	5.88	\$3,377.41	\$0.00	\$3,377.41
Sub Total:						\$519,375.52
GST Total:						\$0.00
Estimate Total:						\$519,375.52

Contribution rates are adjusted annually on 1st July in accordance with the indexation formula indicated in the Contributions Plan (currently the implicit price deflator) and the total contribution levied **will be adjusted accordingly at the time of payment**. (ie contributions are calculated on the rate applicable at the date of payment, not the date of development consent.)

A total contribution, currently assessed as per the table above or as indexed in future years must be paid to Council before the issue of a Construction Certificate.

Contributions Plan 2019 can be accessed on Councils website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

18. **Hydraulic Engineering Details for Water, Sewer & Drainage**

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Prior to the issue of a Construction Certificate for building works, a hydraulic detail designed by a qualified Hydraulic Engineer for water, sewerage and drainage for the development, is to be provided to Council prior to any works commencing on any water, sewerage and drainage.

19. **Demolition Certification**

Following the removal of all friable asbestos and **prior to further works being carried out on the site**, a clearance certificate from an independent occupational hygienist in accordance with the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos is to be obtained and submitted to Council.

Note: *This relates to friable asbestos only.*

Following the removal of all bonded asbestos and **prior to further works being carried out on the site**, a clearance certificate from an independent competent person current WorkCover Class 2 (Restricted) Asbestos Licence in accordance with the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos is to be obtained and submitted to Council.

Documentary evidence in the form of tip receipts from an approved Waste Management Facility shall be obtained demonstrating the appropriate disposal of the asbestos waste. Tip receipts shall be provided to Council at the completion of demolition works and prior to any further works on the site.

20. **Access for People with Disabilities**

Access for people with disabilities must be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*. Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance.

21. **Amended Landscape Plan**

Prior to the issue of a Construction Certificate an amended landscape plan is to be submitted to the Accredited Certifier for approval. The amended plan is to delete the landscaping along the southern boundary to show the widened driveway in this location as per the approved site plan.

22. **Disabled Toilets**

Plans and details of the disabled toilet/s complying with the relevant Australian Standards, the Building Code of Australia, and with regard to the Disability Discrimination Act 1992. Prior to the issue of a Construction Certificate, the plans shall demonstrate compliance. The plans must be approved by the Accredited Certifier prior to issue of a Construction Certificate.

23. **Dilapidation Report**

A Dilapidation Report is to be undertaken on all properties, which in the opinion of a suitably qualified engineer, could be potentially affected by the construction of the project. The Dilapidation Report shall be carried out prior to the issue of a Construction Certificate.

The Dilapidation Report is to be prepared by a suitably Qualified Chartered Professional Civil or Structural Engineer with current Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) or Geotechnical Practitioner.

The Report shall cover structural and geotechnical factors likely to arise from the development. A copy of this Report shall be submitted to the owners of all properties inspected and Council as a record.

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The person having the benefit of the development consent must, at their own cost, rectify any damage caused to other properties during the construction of the project.

Reason: Safety

24. Construction Management Plan

Prior to the issue of a Construction Certificate, submit to the Accredited Certifier a Construction Management Plan that clearly sets out the following:

- a) What actions and works that are proposed to ensure safe access to and from the site, and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, or static loads from cranes, concrete pumps and the like.
- b) The proposed method of loading and unloading excavation machines, building materials, formwork, and the erection of any part of the structure within the site.
- c) The proposed areas within the site to be used for a builder's site office and amenities, the storage of excavated material, construction materials and waste containers during the construction period.
- d) How it is proposed to ensure that soil/excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve – the proposed method of support is to be designed by a Chartered Civil Engineer.
- f) A Soil and Water Management Plan detailing all sedimentation controls.

25. Construction Traffic Management Plan (CTMP)

Prior to the issue of a Construction Certificate, the developer shall submit and have approved by Council's Engineers, a detailed Construction Traffic Management Plan (CTMP). The plan shall demonstrate how construction and delivery vehicles will access the development site during the demolition, excavation and construction phase of the development. The plan shall be certified by a suitably qualified and experienced traffic consultant and all traffic associated with the subject development shall comply with the terms of the approved Construction Traffic Management Plan.

The following matters (at a minimum) must be addressed in the CTMP:

- a) A detailed description and route map of the proposed truck/construction vehicle access routes.
- b) The locations of any proposed Construction Works Zones along the site frontage.
- c) Provide a construction schedule.
- d) Tradesperson parking (parking shall be provided on-site where possible).
- e) Provide relevant Traffic Control Plans (must be certified by a suitably qualified RMS ticket holder).
- f) Provide relevant Pedestrian Management Plans.

A site plan which indicates site entrances and exits, turning areas within the site for construction and spoil removal vehicles allowing a forward ingress and egress for all construction vehicles on the site (superimposed truck swept path diagrams). Site entrances and exits shall be controlled by a certified traffic controller.

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26. **Endeavour Energy requirements**

Prior to the issue of a Construction Certificate, the developer shall provide evidence to the PC of compliance with Endeavour Energy's requirements in relation to:

- a) Arrangements being made for achieving the required separation between the electricity supply pole and driveway at the corner of the site at Kinghorne Street;
- b) Achieving the required clearance from Endeavour Energy's electricity infrastructure for the proposed building and related construction activities.

27. **Support and Protection for Neighbouring Buildings**

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having the benefit of the development consent must, at the person's own expense, comply with the requirements of clause 98E of the Environmental Planning and Assessment Regulation 2000, including:

- a) protect and support the adjoining premises from possible damage from the excavation, and
- b) where necessary, underpin the adjoining premises to prevent any such damage.

Note: (a) and (b) of this condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Details shall be submitted to the Accredited Certifier prior to the issue of a Construction Certificate.

28. **Lighting Design**

Lighting is to be provided to the internal driveway, car parking area, pedestrian entrance from Kinghorne Street and to any gate providing vehicular or pedestrian access to the rear lane, in accordance with AS/NZS 1158 - Road Lighting Pedestrian Area, Category P Lighting, Performance and Installation Design Requirements. Lighting design plans are to be submitted to and approved by the private certifier prior to the issue of a Construction Certificate.

29. **Design Standards (modified by DS20/1619)**

Engineering design plans and specifications for civil works within the road reserve must be submitted to Council for approval, prior to the commencement of any further works. All work must be carried out in accordance with the approved plans.

Note: Plan checking and inspection fees will be required to be paid for the works within the road reserve as per Council's standard fees and charges.

30. Engineering design plans and specifications for all internal civil works referred to in this consent must be submitted to the nominated accredited certifier for approval with the Construction Certificate.

31. All civil works are to be in accordance with Council's Engineering Design Specifications and Development Construction Specifications current at the time of construction unless otherwise specified in this consent.

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32. Access Design Standards

Prior to the issue of a Construction Certificate by the Principal Certifier for works within the site, engineering design plans for a heavy-duty concrete gutter layback and footpath crossing must be designed at the driveway entrance in accordance with Council's Standard Drawings Plan Nos. 5104-07, 2026-05 and 2026-9 (Engineering Design Specification).

Where kerb and gutter exists, the plans must be detailed to ensure road seal and pavement is to be removed to a sufficient width to permit placing of formwork and the laying and compacting of suitable pavement material (1m minimum offset to lip line).

The Endeavour Energy infrastructure located close to the proposed driveway location is to be relocated or appropriate clearance provided in accordance with Endeavour Energy requirements.

33. Access Design Standards (modified by DS20/1619)

The applicant's request to delete part b of the condition is refused and is therefore retained in the condition below.

Prior to the commencement of any further works within the road reserve, engineering design plans for footpath works in the Lawrence Ave road reserve are to be submitted to Council for approval. Details are to be shown on the engineering design plans and must incorporate the following:

- a) Footpath levels must comply with a 3% cross fall from the boundary to top of kerb, or a design as approved by Council;
- b) Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual;
- c) The level of the footpath must match existing footpath levels adjoining the site on Lawrence Avenue at the property frontages and be a uniform grade over the length of the development site frontage, or where this cannot be achieved, a longitudinal section must be designed.

34. Stormwater Drainage Design and On-Site Detention (modified by DS20/1619)

Prior to the commencement of any further works, major and minor drainage systems must be designed by a qualified practising engineer in accordance with Council's Engineering Design Specifications section D5 (Stormwater Drainage Design) and DCP 2014 – Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control. The minor and major systems must be designed for 10% AEP for commercial areas and have consideration for the 1% AEP rainfall events respectively.

35. Stormwater Drainage Design and On-Site Detention (modified by DS20/1619)

The internal lot stormwater will need to connect to Kinghorne Street via an easement through Lot 1 DP1243710. The connection in Kinghorne Street will be at the kerb at the frontage to the development.

The adjacent southern lot stormwater lines which currently discharge into Kinghorne Street where the driveway is to be located are to be connected in Kinghorne St.

36. Stormwater Drainage Design and On-Site Detention

Prior to the issue of a Construction Certificate by the Principal Certifier, any services located within the road reserve must be surveyed and shown on the stormwater plans and stormwater long section to ensure clearance.

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37. **(modified by DS20/1619)**

On-site detention storage for stormwater runoff from the site must be provided such that the discharge from the site for design storm events up to and including the 100 year average recurrence interval does not exceed the pre-developed conditions. Details must be submitted to Council or an accredited certifier for approval prior to the commencement of any further works. All flow discharging from on-site detention is to be via gravity flow to an approved discharge location. Automatic pump-out systems from on-site detention will not be allowed.

38. **Carpark Design**

Prior to the issue of a Construction Certificate by the Principal Certifier for works within the site, engineering design plans demonstrating manoeuvring areas (excluding car parking spaces) for circulation from Kinghorne Street to Lawrence Avenue been designed in accordance with A.S. 2890 Parking Facilities for the 99% vehicle.

39. Prior to the issue of a Construction Certificate by the Principal Certifier for works within the site, engineering plans are detailing design for Light and or Heavy vehicular loadings depending on the usage. The pavement construction minimum standard as per below:

with a flexible compacted pavement minimum thickness of 200mm, surfaced with 30mm of AC10 asphaltic concrete on a primer seal or two coat bitumen seal using 14mm and 7mm aggregate, or to a concrete standard.

40. A total of twenty (20) car spaces must be provided for the development. At least five (5) of the on-site spaces must be available within the basement car park for the exclusive use of the residents and are to be signposted and linemarked to reflect their exclusive use.

41. The internal driveway and car park must be bordered by concrete kerbing, except where surface run-off is concentrated, in which case concrete integral kerb and gutter must be constructed. The work must comply with Council's Plan No. SC 2637-10 and SC 2637-09.

42. **Structural Design**

Detailed design 'where required internally' of any the following works must be certified by an NPER-III registered practising engineer and submitted for approval to the PC.

- a) major drainage structures, including OSD, stormwater pits/structures that require steel reinforcement.
- b) Retaining walls greater than 0.6 metre in height

Note: A NPER-III registered practising engineer will be required to certify that construction of the above structures has been completed in accordance with the approved plans prior to the release of the occupation certificate.

43. **Street Numbering of Dwellings**

Street numbering must comply with the State Governments Comprehensive Property Addressing System (CPAS), and Council's Property Address Numbering Policy. Street numbering for the development must be as follows:

Ground Floor
G01/2 Lawrence Avenue, Nowra

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First Floor

101/2 Lawrence Avenue, Nowra

Second Floor

201/2 Lawrence Avenue, Nowra

Third Floor

Unit 1 – 301/2 Lawrence Avenue, Nowra

Unit 2 – 302/2 Lawrence Avenue, Nowra

Unit 3 – 303/2 Lawrence Avenue, Nowra

The allocated house numbers must be shown on the Construction Certificate plans. Where plans and details are provided to service suppliers, numbers shall be in accordance with the above.

**PART D - CONDITIONS RELATING TO THE APPROVED WORK AND SITE
MANAGEMENT**

44. Building Code of Australia

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.

45. Access for People with Disabilities

Access for people with disabilities must be provided to the building in conformity with Part D3.2 of the Building Code of Australia and *Australian Standard AS1428.1-2009 "Design for access and mobility Part 1: General requirements for access – New building work"*.

46. Survey Certificate

In order to ensure compliance with approved plans, a Survey Certificate to Australian Height Datum shall be prepared by a Registered Surveyor as follows:-

- a) At the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries.
- b) At the completed height of the building, prior to the placement of concrete form work, or the laying of roofing materials.
- c) At completion, the relationship of the building and any penetrations thereto, to the boundaries.

Progress certificates in response to points a) through to c) shall be provided to the Council or the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the proposed works.

47. Nature Strip Reinstatement Works (modified by DS20/1619)

The disused gutter crossing is to be reinstated to the satisfaction of Council's Development Engineer or their nominee. The works are to be reinstated as follows:

- a) The road pavement is to be saw-cut parallel to the lip of the gutter;
- b) The existing layback and gutter is to be removed;

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- c) New cast in-situ kerb and gutter to match adjacent profile is to be poured and connected to the adjoining sections of kerb with suitable bitumen joining.
- d) Stormwater lines are to be connected to stormwater infrastructure in Kinghorne St via a connection as approved by Council

48. Details of Linemarking and Regulatory Signage

Details of proposed line markings and regulatory signs shall be submitted to Council for referral to the Shoalhaven Traffic Committee and subsequent recommendation to Council. Six to eight weeks should be allowed for this.

***Reason:** to ensure proposed access, onsite car parking, speed restrictions, turning bays, disabled parking, traffic movement's and/or loading facilities are clearly marked with signs, lines and arrows in accordance to AS2890.1.*

49. Speed Hump and Stop Sign on Exit

The applicant shall install a stop sign and a speed hump at the exit from the site. The stop sign must be accompanied by the associated line marking and the speed hump shall be set back by 1.5 metres from the boundary alignment. The devices shall be designed and constructed in accordance with the provision of all relevant Australian Standards. The building plans shall indicate compliance with this requirement prior to the issue of a Construction Certificate.

50. Zone of Influence

To prevent differential settlement of the proposed structures adjacent to or over the proposed pipeline, pier and beam footings shall be provided to at least the depth of the invert level of the pipe or solid rock. All other foundations shall be located so that buildings are founded below the zone of influence of the drainage line. The drainage line must be able to be repaired or replaced at any time without affecting the stability of the building. It may also be necessary to concrete encase the drainage pipe.

51. Letter Boxes

A letterbox structure(s) must be provided and be designed to comply with the requirements of Australia Post, located close to the major pedestrian entry to the site, and built from materials that are non-reflective and blend in with the approved development.

52. Colours and Materials

The development must be constructed in accordance with the approved schedule of colours, building materials and finishes.

53. Tree Removal

Trees to be cleared must be felled into the development area carefully so as not to damage trees to be retained in or beyond the development footprint.

- 54. Any hollow-bearing trees must be felled carefully in sections utilising a "cherry picker" or crane if necessary to allow the rescue of native fauna. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna.

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55. **Heritage**

Should any historical relics be unexpectedly discovered in any areas of the site, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with Section 146 of the *Heritage Act 1977*.

56. Should any Aboriginal relics be unexpectedly discovered in any areas of the site, then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service (NPWS) should be informed in accordance with Section 89A of the *National Parks and Wildlife Act, 1974*.

57. **Waste Minimisation and Management Plan**

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 must 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 must be demonstrated by the retention of relevant receipts. These must be submitted to Council, upon request.

Note: "Waste" has the same meaning as the definition of "Waste" in the *Protection of the Environment Operations Act 1997*.

58. When implementing the Waste Management Plan the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it
- e) Records are retained regarding the details and location of the disposal of all demolition and construction waste (including excavated material) and are to be kept on site as evidences of lawful disposal. Records are to include receipts and weighbridge dockets which verify material types and volumes, time and date of disposal and confirmation of the waste disposal facility
- f) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses
- g) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.

59. **Road Reserve, Footpath & Gutters**

The road reserve adjoining the development site must be kept clear of soil and debris.

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60. Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

61. Contaminated Land Unexpected Finds

In the instance works cause the generation of odours or uncovering of unexpected contaminants works are to immediately cease, Council is to be notified and a suitably qualified environmental scientist appointed to further assess the site.

The exposed material/excavation is to be evaluated by the supervising environmental consultant and an appropriate response determined in consultation with the applicant, which is agreed to by Council.

Note: Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the contaminated land situation and review any new contamination information. The applicant must also adhere to any additional conditions which may be imposed by the accredited site auditor.

62. Work Hours and Noise

The following must be complied with during demolition and construction works:

- a) To limit the impact of the development on adjoining owners, all demolition and construction work must be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 3.00pm Saturday. No work is to take place on Sunday or Public Holidays. Any proposed change to hours must be approved by Council in writing; and
- b) The noise from all activities associated with any demolition works and construction of the approved development must comply with the work practices as outlined in the NSW Department of Environment & Climate Change *Interim Construction Noise Guideline*. The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

63. Disruption of Traffic

During any construction works on the public road that is associated with this approval, the Applicant must provide appropriate signage and traffic control facilities as per the requirements of AS 1742.3 and the RTA "Traffic Control at Works Sites" manual.

64. Noise & Vibration

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupations. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

In the event of a noise or vibration problem arising, the person in charge of the premises must, when instructed by Council or the Accredited Certifier, cease work and carry out an acoustical survey and/or investigation by an appropriate acoustical engineer or consultant and submit the results to Council. The person in charge of the site must implement any or all of the

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recommendations of the consultant and any additional requirements of Council. Any requirements of Council in this regard must be complied with immediately.

65. Acid Sulphate Soils

Any excavation works carried out on site should be closely monitored to ensure no signs of Potential Acid Sulphate Soil (PASS) or Actual Acid Sulphate Soil (AASS) are observed. Indicators may include grey to greenish blue clays, unusual gold-yellow mottling or 'rotten egg' odours. If any of these indicators are observed, excavation of the site is to be stopped immediately, Council is to be notified and a suitably qualified environmental scientist should be contracted to further assess the site.

66. Dust Management

Dust emissions shall be confined within the site boundary. The following dust control procedures may be employed to comply with this requirement.

- a) Erection of dust screens around the perimeter of the site;
- b) Securely covering all loads entering or exiting the site;
- c) Use of water sprays across the site to suppress dust;
- d) Covering of all stockpiles of soil remaining more than 24 hours; and
- e) Keeping excavation surfaces moist.

67. Clothes Drying Facilities

Each of the units must be provided with a clothes dryer within the laundry to remove the need for clothes drying racks on balconies.

PART E – CONDITIONS THAT MUST BE COMPLIED WITH BEFORE AN OCCUPATION CERTIFICATE CAN BE ISSUED

68. Retaining Walls

Prior to the issue of an Occupation Certificate, all retaining walls must be designed and certified by a suitably qualified structural engineer. Retaining walls must be designed to meet long term serviceability requirements and must be provided with effective drainage systems.

69. Restrictions

The following must be created as restrictions-as-to-user under Section 88B of the Conveyancing Act.

- a) Easements for stormwater drainage, services and all public services / infrastructure on private and public property.
- b) Drainage Easements are to be placed over all subsurface drains, inter allotment drainage and swale drains benefitting and burdening property owners. The width of subsurface drain easements is to be a minimum of 1 metre wide, depending on the depth of pipe (refer to section D5.16 and D5.18 of Council's Engineering Design Specifications). Maintenance of the drains is to be included in the 88B instrument.
- c) Any Rights of Way must be maintained by each allotment benefitting, with the cost proportional to the length of the driveway used to gain access to each lot. The right of way is to be maintained in good trafficable condition for the life of the development.

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In preparing the Instrument setting out the terms of easements and restrictions affecting this land, ensure that such restrictions cannot be varied, modified or released without the consent of the necessary parties involved and without the consent of the Shoalhaven City Council, where appropriate.

Except those required by Council, the final plan and associated instruments must not contain restriction, that prohibit development allowed under the relevant environmental planning instruments applicable to the site.

70. Utility Services

Utility services must be provided in accordance with the following:

- a) The provision of electricity to service must be in accordance with the requirements of Endeavour Energy who are to confirm in writing that conditions of supply have been met.
- b) The submission of documentary evidence from an approved telecommunications carrier to the PC confirming that underground telecommunication services are available for this development.
- c) To facilitate broadband access, the application for broadband to the telecommunications provider.
- d) A Certificate of Compliance (CC) under Section 307 of Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Development Application Notice and prior to the issue of a Subdivision Certificate, as the case may be.

In the event that development is to be completed in approved stages or application is subsequently made for staging of the development, separate Compliance Certificates must be obtained for each stage of the development.

***Note:** Relevant details, including monetary contributions (where applicable) under the Water Management Act 2000, are given on the attached Notice issued by Shoalhaven Water. For further information and clarification regarding the above please contact Shoalhaven Water's Development Unit on (02) 4429 3111.*

71. Construction of Right of Way

The right of way is to be suitably paved and drained to the satisfaction of Council or the PC prior to the release of an Occupation Certificate. In this regard the applicant is to submit engineering design drawings to Council or the PC for approval and construct the works according to the plans as approved. The plans must take account of potential construction traffic, and include conduits to allow the later installation of services.

72. Covenant & Restriction as to User for Stormwater Controlled Systems (modified by DS20/1619)

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater facility (in regards to the on-site stormwater detention system (OSD)).

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Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of the required width over the proposed stormwater drainage line or service concurrently with any subdivision registration.

73. **Fencing**

The side boundaries of the site are to be fenced to a height of 1.8 metres and tapering 1.2m at the boundary. All fencing is to be installed in accordance with the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* prior to the issue of an Occupation Certificate.

74. **Verification of Works**

Prior to the issue of an Occupation Certificate, certification must be obtained from Council to verify that all works in the road reserve have been completed in accordance with the approved plans and construction specifications.

75. Works as executed' (WAE) plans certified by a consulting engineer or registered surveyor for all new works within the road reserve as required by this development consent must be submitted to Council for review and records upon completion of the works. The certification shall state the information shown on the plans is a true and accurate representation of the constructed works. The WAE information is to be marked in red is to be provided on a copy of the Council approved plans. Where works are not within the tolerances specified in Council's Development Construction Specifications, the certifying engineer / surveyor shall confirm, in writing, the works still comply with the intent of the original design, specifications and relevant Australian Standards.

76. **Damage to public assets**

Prior to the issue of an Occupation Certificate, any infrastructure within the road reserve along the frontage of the subject site or within close proximity, which has been damaged as a result of construction works, is to be repaired by the person benefitting from this consent and to the satisfaction of Council.

77. **Fire Safety**

The owner is to supply Council with a Final Safety Certificate for the fire safety measures specified in the Fire Safety Schedule. The fire safety measures must be implemented or installed in the building prior to its occupation. The building must not be occupied without a final Fire Safety Certificate being issued and an Occupation Certificate being issued.

78. **BASIX**

Prior to the issue of an Occupation Certificate, all the commitments listed in the relevant BASIX Certificates for the development must be fulfilled in accordance with Clause 97A of the *Environmental Planning and Assessment Regulation 2000*.

Prior to the final inspection being undertaken, the person benefitting from this consent must submit certification and/or documentation to the PC confirming that the buildings have been constructed in accordance with the details and commitments listed in the BASIX Certificate for the development.

Note: Clause 154B of the EPAR 2000 provides for independent verification of compliance in relation to certain BASIX commitments.

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79. Landscaping

Prior to the issue of an Occupation Certificate, landscaping is to be installed in accordance with the approved plan. The landscaping must be maintained in accordance with the details provided on that plan at all times.

PART F – CONDITIONS THAT RELATE TO THE ONGOING MANAGEMENT OF THE APPROVED DEVELOPMENT

80. Fire Safety – Annual Statement

At least once in every twelve month period an annual Fire Safety Statement is to be submitted to Council and to the Fire Commissioner of the NSW Fire and Rescue, Fire Safety Division in relation to the fire safety measures listed in the Fire Safety Schedule.

81. Site Maintenance

The owner or operator must at all times be responsible for on-going site management and maintenance in accordance with the following:

- a) Loading and unloading in relation to the use of the premises must occur in the designated loading areas;
- b) Goods or machinery must be stored, and all activities must occur, inside the building(s) and not in the carpark or drive way areas;
- c) Maintenance and replacement (if necessary) of all landscaping in accordance with the approved landscape plan;
- d) Maintenance of vehicular movement areas including driveways, carparking, manoeuvring areas, line marking, pedestrian facilities, lighting, to the standard specified by this consent;
- e) Ongoing waste and recycling is to be managed in accordance with the approved Waste Management Plan (Operational). Waste bins are not to be stored within the loading area/space that is visible from a public place;
- f) Maintenance of stormwater drainage pipes and systems to ensure efficient discharge of stormwater in accordance with the approved stormwater drainage plan;
- g) Maintenance of buildings, fencing, signage/markings to the standards specified in this consent; and

The removal of all graffiti within a maximum of 14 days of being notified by Council.

82. Garbage Bin Collection and Storage

Garbage bins (both general waste and recyclable waste) associated with the ongoing occupancy of the approved development must be stored in the on-site designated bin storage room. Collection of domestic waste by Council's contractor is not available within the development site due to vehicle mass and manoeuvrability restrictions so bins must be placed in Lawrence Avenue for collection.

83. The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.

84. The nominated kerbside collection point is to be utilised to facilitate the collection of waste and recycling bins for the development. All mobile garbage bins that are left kerbside for collection must be taken back within the property boundary on the same day of service.

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85. Where the transport of waste to the kerbside collection point incorporates the use of a lift, a contingency plan should be in place for the development to allow for the continual disposal and collection of waste if the lift cannot be operated.
86. **Noise**
The use of the approved development must not give rise to transmission of unacceptable vibration or an offensive noise to any place of different occupancy or the public in accordance with the NSW Environment Protection Authority's *Industrial Noise Policy 2000* and the *Protection of the Environment Operations Act 1997* (NSW).
87. **Lighting**
Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with relevant standards in this regard.
88. **Car Parking**
All visitor parking spaces must not at any time be allocated sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation.
89. The car parking area must allow for unimpeded access and use and be available for use by patrons/clients of the development during operational hours.

PART G – OTHER APPROVALS
Section 68 – Local Government Act 1993

1. **General**
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 **prior to the issue of an Occupation Certificate.**
 - c) A sewer service diagram, one for each dwelling, 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 **prior to the issue of an Occupation Certificate.**
2. All plumbing and drainage work must comply with the Plumbing Code of Australia and Australian Standard AS/NZS 3500 and the relevant NSW amendments **prior to the issue of an Occupation Certificate.**
3. **Inspections**
Council must be given at least 24 hours' notice to allow for the inspections of:

Type of Inspection:

Stage of Construction:

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Internal drainage	All internal drainage pipework installed and under hydraulic test, including any required bedding material and stackwork, and prior to any backfilling or covering of the drainage lines.
Hot and cold water service (appropriately colour coded or identification markings)	All pipework installed and under hydraulic or pressure test, prior to the installation of any insulation or any internal lining.
External drainage	Pipework installed and under hydraulic test, septic tank installed or sewer connected (whichever is applicable), prior to any backfilling of the drainage lines.
Final inspection of drainage works prior to the issue of an Occupation Certificate	All drainage works (including stormwater where Council is the Principal Certifying Authority), prior to the issue of an Occupation Certificate.

4. **Before Commencing Construction**

The builder should locate the position and depth of the sewer junction before commencing construction, to ensure that the top of the overflow gully is a minimum of 900mm above the soffit of the sewer main. Copies of sewer main diagrams issued by Council must be treated as a guide only when locating the junction position.

5. **Yard Gully**

A minimum height of 150mm shall be maintained between the top of the overflow yard gully riser and the lowest fixture connected to the drain. The height shall be measured vertically from the overflow level of the gully riser, or from the invert level of the overflow pipe, to the appropriate point given in Table 4.3 of AS3500. The minimum height between the top of the overflow yard gully riser, or the invert of the overflow pipe, and the surrounding ground surface level shall be 75mm, except where the gully riser is located in a path or a paved area where it shall be finished at a level so as to prevent the ponding and ingress of water into the drainage system.

PART H – STATEMENT OF REASONS

Reasons for Approval

1. The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, notably the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).
2. The proposed development is, subject to the recommended conditions, consistent with the objectives of the Shoalhaven Development Control Plan 2014 (SDCP 2014).
3. The proposed development is considered to be suitable for the site.
4. The proposed development, subject to the recommended conditions will not result in unacceptable adverse impacts on the natural and built environments.
5. Any issues raised in submissions have been considered in the assessment of the application and where appropriate, conditions have been included in the determination.

Determination Notice - Page 22 of 25 – DA18/2326 (Incorporating DS20/1619)

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 7.11 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 I – 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 must be made **within three (3) months** of the date of the receipt of the determination to allow Council time to undertake the review within the prescribed period of six (6) months and be accompanied by the prescribed fee.

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 6 months after the applicant has been notified of the decision.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within 28 days after the date the objector is notified of the decision.

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.

Determination Notice - Page 23 of 25 – DA18/2326 (Incorporating DS20/1619)

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 J – GENERAL ADVICE TO APPLICANT

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

Nature of Determination

This is a s4.55 modification determination. It does not constitute a new development consent. Its form incorporates the modified conditions into the original development consent for ease of interpretation.

Private Use of Public Parking Spaces

If the temporary use of public parking spaces (either on street or off street) for private purposes is proposed to be undertaken during development construction and/or for maintenance purposes, a formal request for use of public parking must be submitted to Council, in accordance with Council's Policy – "Private use of public parking, policy No. POL08/408". Such request must be submitted to Strategic Planning and Infrastructure Group of Council, with the relevant application fee.

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).

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.

Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references *Australian Standard AS1428.1 - "Design for Access and Mobility"*. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act currently available in Australia.

Endeavour Energy Advice

Earthing

Determination Notice - Page 24 of 25 – DA18/2326 (Incorporating DS20/1619)

The construction of any building or structure (including fencing, signage, flag poles, hoardings etc.) whether temporary or permanent that is connected to or in close proximity to Endeavour Energy's electrical network is required to comply with Australian/New Zealand Standard AS/NZS 3000:2018 'Electrical installations' as updated from time to time. This Standard sets out requirements for the design, construction and verification of electrical installations, including ensuring there is adequate connection to the earth. Inadequate connection to the earth to allow a leaking/fault current to flow into the grounding system and be properly dissipated places persons, equipment connected to the network and the electricity network itself at risk from electric shock, fire and physical injury.

Prudent Avoidance

The electricity network is operational 24/7/365 ie. all day, every day of the year. The electricity industry has adopted a policy of prudent avoidance by doing what can be done without undue inconvenience and at modest expense to avert the possible risk to health from exposure to emissions from electricity infrastructure such as electric and magnetic fields (EMF) and noise which generally increase the higher the voltage ie. Endeavour Energy's network ranges from low voltage (normally not exceeding 1,000 volts) to high voltage (normally exceeding 1,000 volts but not exceeding 132,000 volts / 132 kV).

In practical terms this means that when designing new transmission and distribution facilities, consideration is given to locating them where exposure to the more sensitive uses is reduced and increasing separation distances. Endeavour Energy believes that likewise Council should also adopt a policy of prudent avoidance by the siting of more sensitive uses away from any electricity infrastructure – including any possible future electricity infrastructure required to facilitate the proposed development. Even with less sensitive non-residential development, Endeavour Energy believes that a policy of prudent avoidance should be considered.

Please find attached a copy of Energy Networks Association's 'Electric & Magnetic Fields – What We Know' which can also be accessed via their website at <http://www.ena.asn.au/> and contains the following advice:

Electric fields are strongest closest to their source, and their strength diminishes rapidly as we move away from the source.

The level of a magnetic field depends on the amount of the current (measured in amps), and decreases rapidly once we move away from the source.

Typical magnetic field measurements associated with Endeavour Energy's activities and assets given the required easement widths, safety clearances etc. and having a maximum voltage of 132,000 volt / 132 kV, will with the observance of these separation distances not exceed the recommended magnetic field public exposure limits.

Vegetation Management

The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure. Only low growing shrubs not exceeding 3.0 metres in height, ground covers and smaller shrubs, with non-invasive root systems are the best plants to use. Larger trees should be planted well away from electricity infrastructure (at least the same distance from overhead power lines as their potential full grown height) and even with underground cables, be installed with a root barrier around the root ball of the plant. Landscaping that interferes with electricity infrastructure may become a potential safety risk, cause of bush fire, restrict access, reduce light levels from streetlights or result in the interruption of supply. Such landscaping may be subject to Endeavour Energy's Vegetation Management program and/or the provisions of the Electricity Supply Act 1995 (NSW) Section 48 'Interference with electricity works by trees' by which under certain circumstances the cost of carrying out such work may be recovered.

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Endeavour Energy has noted that as shown in the following extracts of the Landscape Plan, the proposal involves the removal of the existing street trees to facilitate the proposed road widening and the planting of a new street tree. Due to the large mature size of the proposed street tree in proximity of the overhead power lines, Endeavour Energy's recommendation is that it be replaced with an alternative smaller planting to ensure appropriate clearances are maintained whilst minimising the need for future pruning. Alternatively, depending on the timing of the proposed road widening and if the existing overhead power lines are undergrounded, then the mature size of the street tree is not an issue.

Disclaimer – Conveyancing Act 1919 – Division 4 – 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.

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 Principal Certifier 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:

City Development

Planning Report – S4.55(1A) Assessment – DS20/1619 - 2 Lawrence Av, NOWRA - Lot 2 DP 1243710 & Lot 1 DP 1243710

	Planning Report – S4.55(1A) – Environmental Planning & Assessment Act 1979
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Parent Consent	DA18/2326
DS Number	DS20/1619
Property	2 Lawrence Av, NOWRA & 61 Kinghorne St, NOWRA - Lot 2 DP 1264717 (formally Lot 2 DP 1243710) & 1 DP 1243710
Applicant(s)	Foxrun Commercial Building Pty Ltd
Owner(s)	Kingla Property Pty Ltd

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

Name

Senior Development Planner

25/03/2021

1. Detailed Proposal

Development Approval: Development Consent No. DA18/2326 was issued by Shoalhaven City Council on 4th October 2019 for a Four (4) Storey Mixed Use Commercial and Residential Building (refer TRIM Ref No.s D19/346880 – Development Consent and D19/348149 – Approved Plans).

Current Application: The applicant (Foxrun Commercial Building Pty Ltd, acting on behalf of the owner Kingla Property Pty Ltd) has lodged a Modification Application under s4.55(1A) of the Environmental Planning and Assessment (EP&A) Act 1979. 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.

A meeting was held between Council and the applicant on 17th March 2021 to clarify which conditions of consent the applicant is seeking to modify. Following the meeting, the applicant advised via email to Council on 17th March 2021 (refer TRIM Ref No. D21/107175) that they agree that the following is an accurate representation of the conditions of consent they are seeking to modify:

The applicant proposes to modify Condition 1 to read as follows:

General

This consent relates to a four (4) storey shop top housing development consisting of three (3) levels of commercial premises and one (1) level of residential units comprising 3 x 3 bedroom units. 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 must be carried out in accordance with this consent.

Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions prevail to the extent of that inconsistency.

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Combined Site Layout Plan A	001-A CC Mod – 001A	A. T. FCB	Sept 2019 Oct 2020

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Combined Site Layout Plan B	CC Mod – 001B	A.T. FCB	Oct 2020
Site Layout Plan	L-004 CC Mod L-001A	A.T. FCB	Jan 2019 Oct 2020
Basement Floor Plan	L-003-A-1 CC Mod L-002A	A.T. FCB	June 2019 Oct 2020
Ground Floor Plan	L-003-B-1 CC Mod L-003A	A.T. FCB	June 2019 Oct 2020
First Floor Plan	L-004-A-1 CC Mod L-004A	A.T. FCB	June 2019 Oct 2020
Second Floor Plan	L-004-B-1 CC Mod L-005A	A.T. FCB	June 2019 Oct 2020
Third Floor Plan	L-004-C-1 CC Mod L-006A	A.T. FCB	June 2019 Oct 2020
Elevations Plan	L-005-A CC Mod L-007A	A.T. FCB	Sept 2019 Oct 2020
Roof and Heights Plan	L-004-D	A.T. FCB	Jan 2019
Sections Plan	L-006 CC Mod L-008A	A.T. FCB	Jan 2019 Oct 2020
Long Section – Combined Site Layout Plan	001 - A	A.T. FCB	Jan 2019
Landscape Plans	Project 1482, Issue 1, DA1, DA2, DA3, DA4 CC Mod 1482/1-A	Captivate Landscape Design	13/7/18 Oct 2020
Erosion and Sediment Control Plan	Project 17020052, C40P1	Jones Nicholson Consulting Engineers	28/5/18
Stormwater Layout Plan	Project 17020052, CQ2P1 JN-Mod C02.3	Jones Nicholson Consulting Engineers	28/5/18 August 2020
BASIX Certificate	9634588M	Aspect Z	22/10/2018
Waste Management Plan	-	-	-
Street Frontage Plan	JN-Mod C101	JN Engineering	Dec 2019
Services Plan	CC Mod L-S01	A.T. FCB	Oct 2020
Site Layout (Longsection) Plan	JN-Mod C01.2	JN Engineering	June 2020
Longitudinal Section Plan	JN-Mod C104.1	JN Engineering	June 2020
Swept Path Analysis	JN-Mod C200.1	JN Engineering	August 2020

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under Section 4.55 of the Act, or a fresh development application. No works, other than those approved under this consent, must be carried out without the prior approval of Council.

Applicant Note:

The modification to the plans are required for the following reasons:

Planning Report – S4.55(1A) Assessment – DS20/1619 - 2 Lawrence Av, NOWRA - Lot 2 DP 1243710) & Lot 1 DP 1243710

- Depiction of an amended stormwater layout with discharge via Kinghorn St.
- Revision of FFL levels within the proposed building.
- Construction of a fire rated access door and jamb within the lift shaft on each level as recommended.
- Minor alterations to the building as it relates to the location of windows, balustrades, and balconies.
- Deletion of garden bed upon entry to the basement carpark to permit installation of an electrical substation.

The applicant proposes to modify Condition 17 to read as follows:

Contributions for Additional Services and/or Facilities

This development will generate a need for additional services and/or facilities as described in Council's Contributions Plan 2019, as itemised in the following table.

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC0009	Planning Area 1 recreational facilities upgrades various locations	\$730.69	1.4	\$1,022.97	\$0.00	\$1,022.97
01AREC2006	Northern Shoalhaven Sports Stadium	\$570.62	1.4	\$798.87	\$0.00	\$798.87
01AREC3007	Nowra Swimming Pool Expansion	\$406.19	1.4	\$568.67	\$0.00	\$568.67
01CARP3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorn Street	\$27,178.89	19.51 11	\$530,260.14 \$298,967.79	\$0.00	\$530,260.14 \$298,967.79
01CFAC2012	Nowra District Integrated Youth Services Centre	\$32.51	1.4	\$45.51	\$0.00	\$45.51
CWAREC0005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	\$2,473.36	1.4	\$3,462.70	\$0.00	\$3,462.70
CWCFAC0007	Shoalhaven Regional Gallery	\$70.87	1.4	\$99.22	\$0.00	\$99.22
CWCFAC2002	Shoalhaven Multi-Purpose Cultural & Convention Centre	\$1,510.35	1.4	\$2,114.49	\$0.00	\$2,114.49
CWCFAC2006	Shoalhaven City Library Extensions, Berry Street, Nowra	\$850.55	1.4	\$1,190.77	\$0.00	\$1,190.77
CWFIRE2001	Citywide Fire & Emergency services	\$135.42	7.32	\$991.27	\$0.00	\$991.27
CWFIRE2002	Shoalhaven Fire Control Centre	\$198.11	7.32	\$1,450.17	\$0.00	\$1,450.17
CWMGMT3001	Contributions Management & Administration	\$563.13	7.32	\$4,122.11	\$0.00	\$4,122.11
Sub Total:						\$546,126.89
GST Total:						\$0.00
Estimate Total:						\$546,126.89

Contribution rates are adjusted annually on 1st July in accordance with the indexation formula indicated in the Contributions Plan (currently the implicit price deflator) and the total contribution levied **will be adjusted accordingly at the time of payment.** (ie contributions are calculated on the rate applicable at the date of payment, **not** the date of development consent.)

A total contribution, currently assessed as per the table above or as indexed in future years must be paid to Council before the issue of a Construction Certificate.

Contributions Plan 2019 can be accessed on Council's website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

Applicant Note: The applicant provided a detail summary with their reasoning for the proposed modification to the car parking contribution provided in the above condition – refer TRIM Ref. No. D20/566455.

The applicant proposes to modify Condition 29 to read as follows:

Design Standards

"Engineering design plans and specifications for civil works within the road reserve must be submitted to Council for approval, prior to ~~the issue of a Construction Certificate~~ the commencement of works. All work must be carried out in accordance with the approved plans"

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Applicant Note: Refer to submitted Jones Nicholson Drawing "Street Frontage Plans C101 & C102 and Drawing No. CC Mod – 001B.

The applicant proposes to modify Condition 33 to read as follows:

Access Design Standards

~~Prior to the issue of a Construction Certificate for works within the site the commencement of works within the road reserve, engineering design plans for footpath works in the Lawrence Ave road reserve are to be submitted to Council for approval. Details are to be shown on the engineering design plans and must incorporate the following:~~

- a) ~~Footpath levels must comply with a 3% cross fall from the boundary to top of kerb, or a design approved by Council;~~
- b) ~~Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual Deleted;~~
- c) ~~The level of the footpath must match existing footpath levels adjoining the site on Kinghorne Street Lawrence Avenue at the property frontages and be a uniform grade over the length of the development site frontage, or where this cannot be achieved, a longitudinal section must be designed.~~

Applicant Note:

Part A – The 3% cross fall was not able to be achieved (reference to onsite meeting with Council on 2nd December 2020).

Part B – There is no road design available for construction levels. Propose existing pathway to remain until Council design levels are determined.

Part C – Incorrect property nominated.

The applicant proposes to modify Condition 34 to read as follows:

Stormwater Drainage Design and On-Site Detention

~~"Prior to the commencement of works, major and minor drainage systems must be designed by a qualified practising engineer in accordance with Council's Engineering Design Specifications section D5 (Stormwater Drainage Design) and DCP 2014 – Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control. The minor and major systems must be designed for 10% AEP for commercial areas and have consideration for the 1% AEP rainfall events respectively."~~

Applicant Note: Refer Drawing C02.3 for OSD and stormwater drainage & CC Mod – 001B for revised stormwater separate discharge to kerb.

The applicant proposes to modify Condition 35 to read as follows:

Stormwater Drainage Design and On-Site Detention

~~The internal lot stormwater will need to connect to extended stormwater infrastructure in Kinghorne Street via an easement through Lot 1 DP1243710. The connection in Kinghorne Street will be via a grated kerb inlet pit at kerb at the frontage to the development.~~

~~The adjacent southern lot stormwater lines which currently discharge into Kinghorne Street where the driveway is to be located are to be connected to the extended stormwater infrastructure in Kinghorne St via a trafficable grated inlet pit.~~

Applicant Note: Refer Drawing C02.3 for OSD and stormwater drainage & CC Mod – 001B for revised stormwater separate discharge to kerb.

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The applicant proposes to modify Condition 37 to read as follows:

Stormwater Drainage Design and On-Site Detention

*“On-site detention storage for stormwater runoff from the site must be provided such that the discharge from the site for design storm events up to and including the 100 year average recurrence interval does not exceed the pre-developed conditions. Details must be submitted to Council or an accredited certifier for approval prior to the ~~issue of a Construction Certificate~~ **the commencement of works**. All flow discharging from on-site detention is to be via gravity flow to an approved discharge location. Automatic pump-out systems from on-site detention will not be allowed.”*

Applicant Note: Refer drawings JN Mod C02 & CC Mod – 001B for OSD/ Stormwater drainage lines and discharge to Kinghorne street.

The applicant proposes to modify Condition 47 to read as follows:

Nature Strip Reinstatement Works

The disused gutter crossing ~~and pipe outlets are~~ is to be reinstated to the satisfaction of Council's Development Engineer or their nominee. The works are to be reinstated as follows:

- a) The road pavement is to be saw-cut parallel to the lip of the gutter;*
- b) The existing layback and gutter is to be removed;*
- c) New cast in-situ kerb and gutter to match adjacent profile is to be poured and connected to the adjoining sections of kerb with suitable bitumen joining.*
- d) Stormwater lines are to be connected to stormwater infrastructure in Kinghorne St via ~~a trafficable grated inlet pit~~ **a connection as approved by Council**.*

Applicant Note: The modification is proposed as there are no piped crossings within Lawrence Avenue.

The applicant proposes to modify Condition 72 to read as follows:

Covenant & Restriction as to User for Stormwater Controlled Systems

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater facility (in regards to the on-site stormwater detention system (OSD), ~~mechanical pump-out system, charged lines (which are related to the OSD system), etc.~~

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of width of the required width over the proposed stormwater drainage line or service concurrently with any subdivision registration.

Applicant Note: The modification is proposed as there are no mechanical pump out systems or charged lines proposed and makes a correction for double wording.

2. Background

Subject Site

The site is described as Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) at No. 2 Lawrence Ave Nowra and Lot 1 DP 1243710 at No. 61 Kinghorne St Nowra. Together the site has a total area of 1,965.5m² and is located within Zone B3 – Commercial Core in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014.

Proposed works including the approved four (4) storey mixed commercial and residential development and basement car parking area would all be located within No. 2 Lawrence Ave Nowra.

Planning Report – S4.55(1A) Assessment – DS20/1619 - 2 Lawrence Av, NOWRA - Lot 2 DP 1243710) & Lot 1 DP 1243710

The neighbouring property located at No. 61 Kinghorne St, Nowra forms part of the subject site as services including driveway access, stormwater disposal, and electricity are integrated with the approved development on this lot.

Development Approval History and Assessment Timeline

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 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.
- This Modification Application No. DS20/1619 lodged with Council seeking minor alterations and modifications to conditions of consent on 22 December 2020.
- Internal referral of DS20/1619 to Shoalhaven Water, Development Engineer, and City Services on 12 January 2021.
- Response to internal referrals 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.
- Meeting between Development Services, Development Engineering, Building & Compliance and applicant on 10 March 2021 to identify key conditions required to be modified in light of Construction Certificate timeframes.
- Email from applicant dated 15 March 2021 seeking to amend the proposed Modification Application to include additional conditions to be modified.
- Further meeting between Development Services, Development Engineering, and applicant on 17 March 2021 to confirm the conditions of consent being sought to be modified. Note: confirmation was also provided in writing 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 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".

3. Consultation and Referrals

Internal Referrals		
Referral	Recommendation	Comment
	<p>Referral response provided by the Development Engineer on 1st March 2021.</p> <p>The following comments were made regarding the proposed modifications to the conditions of the consent:</p> <p>Condition 1 – Whilst no objections were raised regarding proposed modifications to the Combined Site Layout Plans, Site Plan, submitted floor plans, or Elevations /</p>	<p>The comments provided by the Development Engineer would be incorporated into Council's response regarding this matter.</p>

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	<p>Sections, the following objection was raised in relation to the submitted 'Street Frontage Plan':</p> <p><i>The applicant now proposes not to undertake works on the Lawrence Avenue frontage in accordance with the DCP due to the existing levels and obstructions of the neighbouring properties as outlined in the modification request and the previous site inspection. Further advice provided by Council's Design staff indicates that Council has not undertaken a design for the future widening of Lawrence Avenue and would be unlikely to do so in the distant future. Without further specific advice from Council's City Design Manager – this modification cannot be supported as there isn't sufficient evidence to indicate that Council would undertake this work within a (sic) ascertainable timeframe.</i></p> <p>Assessment Officer Note: The requirement for the provision of a Type 4 part-width concrete footpath is a requirement from Council's Streetscape Technical Manual and would be enforced. Not providing the required footpath would also represent a non-compliance with Acceptable Solutions A6.3/Performance Criteria P6 of Chapter G18 – Streetscape Design for Town and Village Centres of the Shoalhaven Development Control Plan (SDCP) 2014 (further discussion provided in the Report below).</p> <p>Condition 17 – This matter was referred to the Development Planner for review and assessment. Detailed review of Council's position in relation to this matter can be found under Chapter G21 – Car Parking and Traffic of the SDCP 2014 in the Report below.</p> <p>Condition 29 – As discussed in Council's meeting held between Council's development services and development engineering staff and the applicant, Council agreed that an amendment to the wording to read 'prior to the commencement of works' would be a suitable outcome.</p> <p>The applicant was advised however, that where the requirement has been removed from prior to CC to prior to the commencement of works, that this at some (their) risk. Council advised that, where there is an unexpected finding they would be unable to foreshadow how that situation may be dealt with or resolved as a prior to CC assessment affords due process and opportunity for peer review and checking.</p> <p>Condition 33 – The proposed modification to Parts A and C of this condition were supported, however an objection was raised regarding the proposed modification to Part B of this condition (proposed deletion by the applicant). The following comments were provided:</p>	
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Planning Report – S4.55(1A) Assessment – DS20/1619 - 2 Lawrence Av, NOWRA - Lot 2 DP 1243710) & Lot 1 DP 1243710

	<p><i>Modification of sub-conditions a and c above are supported. Sub-condition b has been discussed further with Council's City Services department who have indicated that due to Council not yet undertaking any design for the Lawrence Avenue widening works, this condition should still be fulfilled by the applicant. Removal/modification of sub-condition b is not supported unless specific advice is sought from Council's City Design Manager.</i></p> <p>As stated above in relation to Condition 1, the requirement for a Type 4 footpath is a requirement of the Streetscape Technical Manual and would be enforced. This would also represent a non-compliance with A6.3/P6 of Chapter G18 – Streetscape Design for Town and Village Centres of the Shoalhaven Development Control Plan (SDCP) 2014).</p> <p>Council therefore supports the following amended wording to Condition 33 as recommended by the Development Engineer:</p> <p><i>Prior to the issue of a Construction Certificate for works within the site, engineering design plans for footpath works in the Lawrence Ave road reserve are to be submitted to Council for approval. Details are to be shown on the engineering design plans and must incorporate the following:</i></p> <p><i>a) Footpath levels must comply with a 3% cross fall from the boundary to top of kerb, or a design as approved by Council;</i></p> <p><i>b) Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual;</i></p> <p><i>c) The level of the footpath must match existing footpath levels adjoining the site on Lawrence Avenue at the property frontages and be a uniform grade over the length of the development site frontage, or where this cannot be achieved, a longitudinal section must be designed.</i></p> <p>Condition 34 – As discussed in Council's meeting held between Council's Development Services and development engineering staff and the applicant, Council agreed that an amendment to the wording to read 'prior to the commencement of works' would be a suitable outcome.</p> <p>The applicant was advised however, that where the requirement has been removed from prior to CC to prior to the commencement of works, that this at some (their) risk. Council advised that, where there is an unexpected finding they would be unable to foreshadow how that situation may be dealt with or resolved as a prior to CC assessment affords due process and opportunity for peer review and checking.</p> <p>Condition 35 – The proposed modified wording for Condition 35 was supported by the Development Engineer and would form part of the recommendation.</p>	
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	<p>Condition 37 – As discussed in Council's meeting held between Council's development services and development engineering staff and the applicant, Council agreed that an amendment to the wording to read 'prior to the commencement of works' would be a suitable outcome.</p> <p>The applicant was advised however, that where the requirement has been removed from prior to CC to prior to the commencement of works, that this at some (their) risk. Council advised that, where there is an unexpected finding they would be unable to foreshadow how that situation may be dealt with or resolved as a prior to CC assessment affords due process and opportunity for peer review and checking.</p> <p>Condition 47 – The proposed modification to Condition 47 was supported with the following comments being provided:</p> <p><i>There are no stormwater outlets on Lawrence Avenue or Kinghorne Street in the vicinity of the proposed driveway location so the requirement to re-instate any pipe outlets on the existing kerb and gutter is supported for removal.</i></p> <p><i>In relation to the stormwater discharge location, the revised stormwater plan shows this connection being made directly to the kerb and gutter through an approved connection.</i></p> <p>Condition 72 – The proposed modified wording for Condition 35 was supported by the Development Engineer and would form part of the recommendation.</p>	
City Services – Traffic & Transport Unit	<p>Referral response provided by City Services on 5th March 2021.</p> <p>Response given advising that the Traffic and Transport Unit's comments have been incorporated within the comments provided as part of the referral response given by the Development Engineer.</p> <p>Nil further requirements or recommendations were given further to the comments provided by the Development Engineer.</p>	The comments provided by the Development Engineer would be incorporated into Council's response regarding this matter.
Shoalhaven Water	<p>Referral response provided by Shoalhaven Water on 12th February 2021.</p> <p>A response was provided objecting to the proposed modification to Condition 18. The following reasoning was given for the objection:</p> <ul style="list-style-type: none"> Due to the complexity of the development a suitably qualified <u>engineer</u> is required to complete the design. 	The applicant advised that a design was prepared by a qualified engineer. Hence no modification to Condition 18 was necessary.

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	No further comments or objections were raised regarding the proposed modifications to any of the other conditions of consent.	
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4. Other Approvals

External Referrals

No external referrals were required to be undertaken to inform the assessment of the Development Application.

Council further notes that the modified development proposal was not identified as being an Integrated Development pursuant to section 4.46 of the Environmental Planning and Assessment (EP&A) Act 1979. Accordingly, no integrated development referrals were required to be carried out to inform the assessment of the Development Application.

5. Statutory Considerations

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The following planning instruments and controls are relevant to the proposed modification:

Instrument
State Environmental Planning Policy No 55 - Remediation of Land
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Infrastructure) 2007
Shoalhaven LEP 2014

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 6 of this report.

6. Section 4.55(1A) Modification of Consent - Considerations

This application is seeking to modify Development Consent No. DA18/2326 and is classified as **S4.55(1A) – Modifications involving minimal environmental impact** under the EP&A Act.

The following provides an assessment of the submitted application against the matters for consideration under Sections 4.55(1A) & 4.15(1) of the EP&A Act.

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact

Council is satisfied that the proposed modification is of minimal environmental impact.

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(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)

Council is satisfied that, subject to the recommendations provided in this Report, the proposed modification would be substantially the same as the development which was originally approved.

The modified development as recommended by Council will result in no significant changes and the proposal is considered to be quantitatively and qualitatively the same as the development as originally approved.

(c) it has notified the application in accordance with the regulations or a DCP

Notification was carried out in accordance with Council's Community Consultation Policy for a period two weeks between 12th and 28th January 2021.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan

Nil submissions objecting to the proposal were received during the designated notification period.

6. Section 4.55(3) – Matters Relevant to the Application

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

i) Environmental planning instrument

EPI	Provision	Comment
SEPP No. 55 – Remediation of Land		No further issues have been raised in relation to contamination as part of the subject modification application.
SEPP (Building Sustainability Index: BASIX) 2004		No amendments to the stamped approved BASIX Certificate were requested by the applicant, nor do the amendment under this modification require the approved BASIX to be amended.
SEPP (Infrastructure) 2007		The requirements listed under Clause 45 of the policy were considered. DS20/1618 – 61 Kinghorne St was referred to Endeavour Energy having regard for the proposed relocation of the power pole on this frontage. DS20/1619 was not required to be referred to Endeavour Energy as no additional building works were proposed which would encroach towards the overhead power lines than that which has already been consented to.
SLEP 2014	Cl. 2.7	No further demolition works are proposed to be carried out as part of the subject modification.

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	Cl. 4.3	No additional increase of the building height over and above that which has already been consented to is proposed.
	Cl. 4.4	No floor space ratio which applies to the site.
	Cl. 4.6	Not applicable.
	Cl. 5.1	The land to the Lawrence Avenue frontage of the site has been acquired by Council on 3 December 2020. Accordingly, the site no longer is affected by the land acquisitions map and is not affected by this clause any longer.
	Cl. 5.10	The amended proposed layout of the development would maintain consistency with cl. 5.10 and would not have an additional impact upon nearby heritage items over and above that which has already been consented to.
	Cl. 7.1	It remains that any earthworks already consented to would not occur below 5m AHD or result in a lowering of the water table. No amendment to the existing condition relating to ASS is proposed to be undertaken.
	Cl. 7.2	No further earthworks are proposed to be undertaken over and above that which has already been consented to.
	Cl. 7.3	The subject site remains outside the designed 1% AEP flood level and flood planning area.
	Cl. 7.5	The property remains outside of any mapped areas of terrestrial biodiversity.
	Cl. 7.6	The property remains outside of 40m to any Category 1, 2, or 3 water courses.
	Cl. 7.7	The property remains unaffected by slopes exceeding 20% or Council's landslide risk / land degradation mapping.
	Cl. 7.8	The property remains unaffected by Council's scenic protection area mapping.
	Cl. 7.11	All essential services remain accessible to the subject development.
	Cl. 7.16	The amended proposed layout of the development would maintain consistency with Cl. 7.16 – no residential development is proposed on the ground floor level.

ii) Draft Environmental Planning Instrument

Draft EPI	Provision	Comment
Draft Illawarra-Shoalhaven Regional Plan 2041		The modified development proposal is consistent with the objectives of the Draft Regional Plan 2041.

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iii) Any Development Control Plan

SDCP 2014 Chapter	Comment
Chapter G1 – Site Analysis	The submitted Site Plan remains consistent with the provisions contained within Chapter G1 and the Environmental Planning and Assessment Regulation 2000.
Chapter G2 – Stormwater	As discussed in the Report above, Council's Development Engineer has assessed the modified stormwater design in accordance with the requirements listed under Chapter G2 of the SDCP 2014 and has found the development to be consistent with these controls.
Chapter G3 – Landscape Design Guidelines	<p>An amended Landscape Design Plan was provided by a qualified landscape architect (Drawing No. CC Mod – 1282/1A drawn by Captivate Landscape Design, dated Oct 2020).</p> <p>The amended Landscape Design Plan modifies the design by removing the proposed garden bed adjacent to car parking space no.s 15 to 20 (23 x Coastal Rosemary plants – height up to 0.8m).</p> <p>The purpose for the removal of this garden bed is to cater for the placement of an electrical substation within former car parking space 20 and the replacement of these parking spaces on the southern side of the driveway.</p> <p>Whilst the amended proposal represents a reduction in landscaping, the layout provided is considered to maintain compliance with the provisions of Chapter G3 of the SDCP 2014. No reduction in landscaping visible from the public street frontage is proposed to occur.</p> <p>The landscaping is considered to maintain compliance with the requirements of the Apartment Design Guide as the remaining elements of the landscape proposal are considered to be viable and sustainable.</p>
Chapter G4 – Removal and Amenity of Trees	No further vegetation is proposed to be removed from the site over and above that already undertaken as part of the original consent.
Chapter G7 – Waste Minimisation and Management Controls	Compliance with the approved Waste Management would continue to be required.
Chapter G13 – Medium Density and Other Residential Accommodation	The proposal is considered to maintain compliance with the applicable provisions of the Apartment Design Guide. No further departures are proposed further to those which were originally consented to.
Chapter G18 – Streetscape Design for	<p>Chapter G18 of the SDCP 2014 applies as the development includes a proposal for a commercial, mixed use, residential flat building development.</p> <p>The applicant wishes to delete Condition 33(b) which states the following:</p>

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Town and Village Centres	<p><i>Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual;</i></p> <p>The proposed deletion of this condition would result in a non-compliance and departure from Acceptable Solution A6.3 of Chapter G18 which states the following:</p> <p><i>“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”.</i></p> <p>The existing footpath design differs from the design listed under the Streetscape Technical Manual and therefore requires a design which accords with the Manual.</p> <p>Whilst the Lawrence Avenue frontage of the site is mapped on the Land Reservation Acquisition Map and has since been acquired, Council's City Services clarified that no redesign plan has been undertaken for this area – and further that a redesign is not planned in the near future. Therefore compliance with the required standard as specified within the acceptable solution is considered to be appropriate.</p> <p>Performance Criteria P6 states the following:</p> <p><i>“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”.</i></p> <p>It is considered that the proposal is non-compliant with Performance Criteria P6 for the following reasons:</p> <ul style="list-style-type: none"> • 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 and non-compliance with this standard would deviate from Council's consistency and conformity in relation to this matter. This would result in: <ul style="list-style-type: none"> ○ An inequitable solution which does not accord with the design of footpaths through the Nowra CBD area and potentially inaccessible. ○ Visual continuity and would support of a legible centre has the potential to be compromised. ○ 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, a full acquisition for the length of Lawrence Ave is unknown. ○ A precedent being set whereby any future development along Lawrence Avenue could be excused from meeting the technical manual standards. • Therefore Council should not be waiving the requirements of the applicant to provide a footpath per Council's technical manual standards for this reason and compliance with the required standard as specified within the acceptable solution is considered to be appropriate.
Chapter G21 – Car Parking and Traffic (Version 3)	<p>5.1 Car Parking Schedule</p> <p>The land use table in this Chapter specifies the following parking requirements:</p> <ul style="list-style-type: none"> • <i>Shop Top Housing</i> – 1.5 spaces per dwelling of 56m²-85m² and 2 spaces per dwelling of 86m² or greater with a 25% discount applicable as the site is within 200m radius of the Nowra CBD.

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<ul style="list-style-type: none"> Commercial Premises – 1 space per 24m² at ground level and 1 space per 40m² of floor space above ground level. <p>Table 1 – Development Data below provides the modified and updated car parking calculations for the development which incorporate the following:</p> <ul style="list-style-type: none"> The net increase of one (1) parking space proposed by the applicant as depicted on the modified plans (Spaces 21 and 22 are proposed whilst Space 20 is proposed to be turned into an electrical substation). 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. 					
Table 1 – Development Data					
DS20/1619 – 2 Lawrence Avenue, Nowra					
Level	Land Use	Area	Parking Rate	Required parking	Total Car parking required
Ground	Comm.	319.7m ²	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 / 40m ²	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
<p>21 car spaces are provided, 5 for the residential component, the remaining 16 for commercial. The modification proposes a net increase of one (1) parking space as depicted on the modified plans (Spaces 21 and 22 are proposed whilst Space 20 is proposed to be turned into an electrical substation).</p> <p>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 gross floor area across the entire development (3.3m² across the ground, first, and second floor levels).</p> <p>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).</p>					
<p>It is noted that car parking for the development is required to be calculated in accordance with the below requirement as specified within s5.1 – Car Parking Schedule of Chapter G21 of the SDCP 2014:</p> <p><i>"Within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking 1 space per 24m² gross floor area. At 1st floor and above 1 space per 40m² gross floor area.</i></p> <p><i>Elsewhere 1 space per 40m² gross floor area".</i></p>					

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	<p>The applicant has requested that the car parking rate for the ground floor level of the development be instead determined at the rate given for 'Elsewhere 1 space per 40m² of gross floor area' (i.e. rate given for developments located outside of the B3 Commercial Core Area). They provided the following justification for this interpretation:</p> <ul style="list-style-type: none"> • <i>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)</i> • <i>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.</i> • <i>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.</i> • <i>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 / m2 ratio of 1 per 24 m2, vs 1 per 40m2 for commercial office space.</i> • <i>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.</i> <p>Council staff disagree with this interpretation and considers that the development has been appropriately calculated under the required rate for developments located within B3 Commercial Core. The following points are made:</p> <ul style="list-style-type: none"> • 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. <p>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) where they stated: <i>"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"</i>. This 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.</p> <ul style="list-style-type: none"> • Council has acknowledged the second lift shaft which has resulted in a reduction of 3.3m² of gross floor area on each of the ground, first, and second floor levels which has resulted in a reduction in the parking contributions and 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.
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	<ul style="list-style-type: none"> • 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 similar 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. • There are no environmental planning instruments, plans or policies (i.e. such as the SLEP 2014, SDCP 2014, or SEPPs) which prevent 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 <i>D'Alterio v Newcastle City Council</i> [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. The Bitzios Report was presented by the applicant as part of the previous application (DS20/1001) and was already considered by and refused by Council. • While the development is mapped as requiring a 1 space per 24m² for ground floor B3 Commercial Core Commercial Premises, it also benefits from a 25% discount for being within the nominated concession area. <p>The calculations given in the above Table identifying a shortfall of 18.20 spaces is therefore considered to be appropriate.</p>
Chapter N8 – Nowra CBD Urban Design Development Controls	No further non-compliances with the acceptable solutions of Chapter N8 of the SDCP 2014 are proposed in addition to those already consented to.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Nil

iv) **Environmental Planning and Assessment Regulation 2000**

No additional matters for consideration.

Shoalhaven Contribution Plan 2019

The proposed development would be unlikely to increase demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan) above and beyond that which was already consented to as part of the original approval given as part of DA18/2326.

Discussion regarding the car parking contributions is provided in the Report above (refer Chapter G21 – Car Parking and Traffic) – there is a reduction in the shortfall of parking spaces from 19.51 spaces to 18.20 spaces which has resulted in the following reduction in s7.11 Development Contributions charges for the development:

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Section 94 ET Calculations - DS20/1619 (UPN: 121510)

Close Reset Print Return Calc

☒ Residential ☐ Non-Residential

Calculation Type: Medium Density/Dual Occupancy

Medium Density/Dual Occupancy

Proposed:

0 1 Bedroom Units

0 2 Bedroom Units

3 3 Bedroom Units

0 4 Bedroom Units

Existing:

1 Lots/Dwellings

0 1 Bedroom Units

0 2 Bedroom Units

0 3 Bedroom Units

0 4 Bedroom Units

Total ETs: 1.4

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building / subdivision).

Section 94 ET Calculations - DS20/1619 (UPN: 121510)

Close Reset Print Return Calc

☐ Residential ☒ Non-Residential

Non Residential

Note: enter area in m2 and calculator will convert area to ETs.

Retail: 0 Proposed - Gross Area m2

Commercial Office: 1175.1 Proposed - Gross Area m2

Hotel/Restaurant: 0 Proposed - Gross Area m2

BulkyGoods: 0 Proposed - Gross Area m2

Industrial: 0 Proposed - Gross m2, include parking/landscape

Retail: 0 Existing - Gross Area m2

Commercial Office: 0 Existing - Gross Area m2

Hotel/Restaurant: 0 Existing - Gross Area m2

BulkyGoods: 0 Existing - Gross Area m2

Industrial: 0 Existing - Gross m2, include parking/landscape

Total ETs: 11.75 **Management Project ETs: 5.88**

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building / subdivision).

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC5006	Northern Shoalhaven Sports Stadium	\$700.23	1.4	\$980.32	\$0.00	\$980.32
01AREC5007	Nowra Swimming Pool Expansion (Scenic Drive)	\$543.04	1.4	\$760.26	\$0.00	\$760.26
01AREC5009	Planning Area 1 recreational facilities upgrades (various locations)	\$733.01	1.4	\$1,026.21	\$0.00	\$1,026.21
01CARP3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorn Street	\$27,722.47	18.2	\$504,548.95	\$0.00	\$504,548.95
01CFAC5012	Nowra Integrated Youth Services Centre (Cnr Kinghorn & Plunkett Streets)	\$29.98	1.4	\$41.97	\$0.00	\$41.97
CWAREC5005	Shoalhaven Community and Recreational Precinct SCarP Cambewarra Road Bomaderry	\$1,931.92	1.4	\$2,704.69	\$0.00	\$2,704.69
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	\$1,460.12	1.4	\$2,044.17	\$0.00	\$2,044.17
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$1,280.53	1.4	\$1,792.74	\$0.00	\$1,792.74
CWCFAC5007	Shoalhaven Regional Gallery	\$70.30	1.4	\$98.42	\$0.00	\$98.42
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	5.88	\$812.20	\$0.00	\$812.20
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	5.88	\$1,188.17	\$0.00	\$1,188.17
CWMGMT3001	Contributions Management & Administration	\$574.39	5.88	\$3,377.41	\$0.00	\$3,377.41
Sub Total:						\$519,375.52
GST Total:						\$0.00
Estimate Total:						\$519,375.52

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	The minor modifications would be unlikely to have an adverse impact upon the natural environment over and above that which resulted from the original development approval.
Built Environment	The minor modifications would be unlikely to have an adverse impact upon the built environment over and above that which resulted from the original development approval.

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Head of Consideration	Comment
	In particular the development would not result in an increase in the building footprint nor the building height and would generally have the same appearance top that which was originally approved.
Social Impacts	Subject to Council's recommendation (i.e. enforcement of requirement for a Type 4 Footpath in accordance with the Streetscape Technical Manual), the modifications would be unlikely to have an adverse social impact upon the surrounding locality.
Economic Impacts	No further adverse economic impacts are envisaged to take place as a result of the proposed modifications.

(c) Suitability of the site for the development

The subject site continues to be an appropriate site for the proposed development.

(d) Submissions made in accordance with the Act or the regulations

The s4.55 Modification Application was notified in accordance with the Community Consultation Policy for a period of two (2) weeks between 12th and 28th January 2021. No submissions were received during this period.

(e) The Public Interest

Consideration has been given to the wider public interest in terms of both environmental and economic impact.

Subject to the recommendations given by Council in relation to the proposed modification, the development would remain within the public interest.

Delegations

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed. Council's resolution of 7 April 2020 (MIN20.240) which states the following is noted:

"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."

Given this report recommended part approval, part refusal, the s4.55(1A) Modification Application is required to be determined by the Development & Environment Committee of Council.

Recommendation

This application has been assessed having regard to the Heads of Consideration for Section 4.55(1A) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that Modification Application No. **DS20/1619** relating to Development Consent No. DA18/2326 be approved in part and refused in part.

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The following provides further detail regarding the nature of Council's recommendation:

The proposed modification to Condition 1 would be modified to read as follows:

General

This consent relates to a four (4) storey shop top housing development consisting of three (3) levels of commercial premises and one (1) level of residential units comprising 3 x 3 bedroom units. 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 must be carried out in accordance with this consent.

Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions prevail to the extent of that inconsistency.

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Combined Site Layout Plan A	CC Mod – 001A	A. T. FCB	Oct 2020
Combined Site Layout Plan B	CC Mod – 001B	A. T. FCB	Oct 2020
Site Layout Plan	CC Mod L-001A	A. T. FCB	Oct 2020
Basement Floor Plan	CC Mod L-002A	A. T. FCB	Oct 2020
Ground Floor Plan	CC Mod L-003A	A. T. FCB	Oct 2020
First Floor Plan	CC Mod L-004A	A. T. FCB	Oct 2020
Second Floor Plan	CC Mod L-005A	A. T. FCB	Oct 2020
Third Floor Plan	CC Mod L-006A	A. T. FCB	Oct 2020
Elevations Plan	CC Mod L-007A	A. T. FCB	Oct 2020
Roof and Heights Plan	L-004-D	A. T. FCB	Jan 2019
Sections Plan	CC Mod L-008A	A. T. FCB	Oct 2020
Long Section – Combined Site Layout Plan	001 - A	A. T. FCB	Jan 2019
Landscape Plans	CC Mod 1482/1-A	Captivate Landscape Design	Oct 2020
Erosion and Sediment Control Plan	Project 17020052, C40P1	Jones Nicholson Consulting Engineers	28/5/18
Stormwater Layout Plan	JN-Mod C02.3	JN Engineering	August 2020
BASIX Certificate	9634588M	Aspect Z	22/10/2018
Waste Management Plan	-	-	-
Services Plan	CC Mod L-S02	A. T. FCB	Oct 2020
Site Layout (Longsection) Plan	JN-Mod C01.2	JN Engineering	June 2020
Longitudinal Section Plan	JN-Mod C104.1	JN Engineering	June 2020
Swept Path Analysis	JN-Mod C200.1	JN Engineering	August 2020

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Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under Section 4.55 of the Act, or a fresh development application. No works, other than those approved under this consent, must be carried out without the prior approval of Council.

The proposed modification to Condition 17 would be modified to read as follows:

Contributions for Additional Services and/or Facilities

This development will generate a need for additional services and/or facilities as described in Council's Contributions Plan 2019, as itemised in the following table.

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC5006	Northern Shoalhaven Sports Stadium	\$700.23	1.4	\$980.32	\$0.00	\$980.32
01AREC5007	Nowra Swimming Pool Expansion (Scenic Drive)	\$543.04	1.4	\$760.26	\$0.00	\$760.26
01AREC5009	Planning Area 1 recreational facilities upgrades (various locations)	\$733.01	1.4	\$1,026.21	\$0.00	\$1,026.21
01CARP3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghome Street	\$27,722.47	18.2	\$504,548.95	\$0.00	\$504,548.95
01CFAC5012	Nowra Integrated Youth Services Centre (Cnr Kinghome & Plunkett Streets)	\$29.98	1.4	\$41.97	\$0.00	\$41.97
CWAREC5005	Shoalhaven Community and Recreational Precinct SCArP Cambewarra Road Bomaderry	\$1,931.92	1.4	\$2,704.69	\$0.00	\$2,704.69
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	\$1,460.12	1.4	\$2,044.17	\$0.00	\$2,044.17
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	\$1,280.53	1.4	\$1,792.74	\$0.00	\$1,792.74
CWCFAC5007	Shoalhaven Regional Gallery	\$70.30	1.4	\$98.42	\$0.00	\$98.42
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	5.88	\$812.20	\$0.00	\$812.20
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	5.88	\$1,188.17	\$0.00	\$1,188.17
CWGMGT3001	Contributions Management & Administration	\$574.39	5.88	\$3,377.41	\$0.00	\$3,377.41
				Sub Total:		\$519,375.52
				GST Total:		\$0.00
				Estimate Total:		\$519,375.52

Contribution rates are adjusted annually on 1st July in accordance with the indexation formula indicated in the Contributions Plan (currently the implicit price deflator) and the total contribution levied will be adjusted accordingly at the time of payment. (ie contributions are calculated on the rate applicable at the date of payment, not the date of development consent.)

A total contribution, currently assessed as per the table above or as indexed in future years must be paid to Council before the issue of a Construction Certificate.

Contributions Plan 2019 can be accessed on Council's website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

The proposed modification to Condition 29 would be modified to read as follows:

Engineering design plans and specifications for civil works within the road reserve must be submitted to Council for approval, prior to the commencement of any further works. All work must be carried out in accordance with the approved plans.

Note: Plan checking and inspection fees will be required to be paid for the works within the road reserve as per Council's standard fees and charges.

The proposed modification to Condition 33 would be modified to read as follows:

Access Design Standards

Prior to the commencement of any further works within the road reserve, engineering design plans for footpath works in the Lawrence Ave road reserve are to be submitted to Council for approval. Details are to be shown on the engineering design plans and must incorporate the following:

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- a) Footpath levels must comply with a 3% cross fall from the boundary to top of kerb, or a design as approved by Council;
- b) Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual;
- c) The level of the footpath must match existing footpath levels adjoining the site on Lawrence Avenue at the property frontages and be a uniform grade over the length of the development site frontage, or where this cannot be achieved, a longitudinal section must be designed.

The proposed modification to Condition 34 would be modified to read as follows:

Stormwater Drainage Design and On-Site Detention

Prior to the commencement of any further works, major and minor drainage systems must be designed by a qualified practising engineer in accordance with Council's Engineering Design Specifications section D5 (Stormwater Drainage Design) and DCP 2014 – Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control. The minor and major systems must be designed for 10% AEP for commercial areas and have consideration for the 1% AEP rainfall events respectively.

The proposed modification to Condition 35 would be modified to read as follows:

Stormwater Drainage Design and On-Site Detention

The internal lot stormwater will need to connect to Kinghorne Street via an easement through Lot 1 DP1243710. The connection in Kinghorne Street will be at the kerb at the frontage to the development.

The adjacent southern lot stormwater lines which currently discharge into Kinghorne Street where the driveway is to be located are to be connected in Kinghorne St.

The proposed modification to Condition 37 would be modified to read as follows:

On-site detention storage for stormwater runoff from the site must be provided such that the discharge from the site for design storm events up to and including the 100 year average recurrence interval does not exceed the pre-developed conditions. Details must be submitted to Council or an accredited certifier for approval prior to the commencement of any further works. All flow discharging from on-site detention is to be via gravity flow to an approved discharge location. Automatic pump-out systems from on-site detention will not be allowed.

The proposed modification to Condition 47 would be modified to read as follows:

Nature Strip Reinstatement Works

The disused gutter crossing is to be reinstated to the satisfaction of Council's Development Engineer or their nominee. The works are to be reinstated as follows:

- a) The road pavement is to be saw-cut parallel to the lip of the gutter;
- b) The existing layback and gutter is to be removed;
- c) New cast in-situ kerb and gutter to match adjacent profile is to be poured and connected to the adjoining sections of kerb with suitable bitumen joining.
- d) Stormwater lines are to be connected to stormwater infrastructure in Kinghorne St via a connection as approved by Council

The proposed modification to Condition 72 would be modified to read as follows:

Covenant & Restriction as to User for Stormwater Controlled Systems

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the

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Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater facility (in regards to the on-site stormwater detention system (OSD).

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of the required width over the proposed stormwater drainage line or service concurrently with any subdivision registration.

All other conditions are to remain unchanged.

Development Services
City Development
15/03/2021

Planning Report – S4.15 Assessment - 1282 Naval College Rd, WORROWING HEIGHTS - Lot 1749 DP 28785

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/2152
Property	1282 Naval College Rd, WORROWING HEIGHTS - Lot 1749 DP 28785
Applicant(s)	PDC Lawyers & Town Planners
Owner(s)	W A Seery & T M Barker

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

Name

Senior Development Planner 9/03/2021

1. Detailed Proposal

In accordance with the submitted Site Plan (submitted by PDC Lawyers & Town Planners on behalf of the owners W A Seery & T M Barker), the applicant proposes to carry out the following on the subject site:

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

"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 applicant advises that the Depot would be used for the storage of plant / machinery used in association with an arborist / tree lopping business and clarifies that the actual business activity (tree lopping) occurs offsite with only plant/machinery to be stored on site. As depicted on the Site Plan, the storage area for the plant / machinery would be in the north-western front corner of the site adjacent to the dwelling and attached garage.

Note: In accordance with the judgement made in Land and Environment Court Decision *Flowers v Wollondilly Shire Council* [2012] NSWLEC 1340, Council considers that insufficient evidence has been provided to suitably demonstrate that the proposal is capable of being defined as a separate land use (i.e. a 'Depot'). This is because further details describing how the activities are directly associated with a 'Depot' (i.e. such as an ancillary office for accounting and administration, location for parking of any staff cars, any servicing or washdown facilities for plant / machinery following use) have not been provided.

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

"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".

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The applicant advises that part of the site (central and eastern part of the site as shown on the Site Plan) would be used for storage of timber logs sourced offsite through the arboriculture / tree lopping business. The timber will be 'seasoned' and then processed into firewood for sale.

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

The applicant advises that these three existing structures would be used for the storage of smaller items in association with the arborist / tree lopping business. As part of the Request for Further Information sent to the applicant, Council requested detailed plans (including Floor, Elevations, Sections) depicting the development – however no response to Council's request has been received.

- Construction of stormwater infrastructure along the western side boundary of the property to prevent stormwater from leaving the site. The applicant advises that the earthen bund would be offset from the side boundary, a maximum of 0.5m high, and stabilised with grass and/or mulch. Council requested the provision of an amended Site Plan depicting the location of the proposed earthen bund – however no response to Council's request has been received.

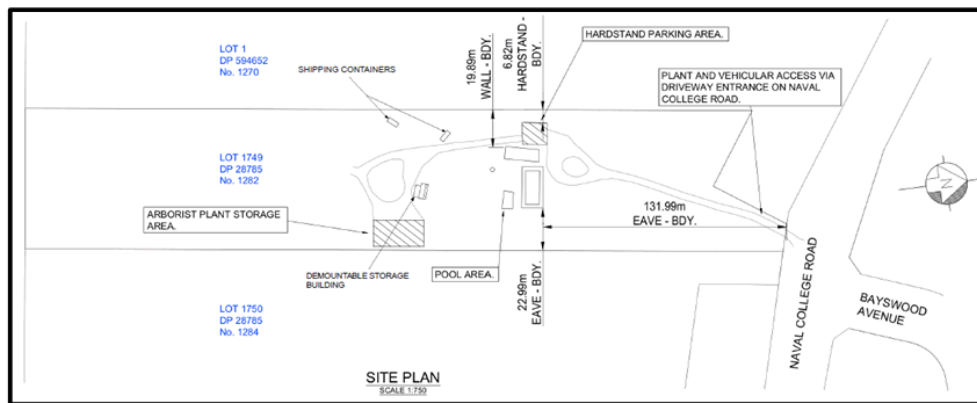


Figure 1 – Subject Site

2. Subject Site and Surrounds

The site is described as Lot 1749 DP 28785 and is located at No. 1282 Naval College Rd Worrowing Heights. It has a total property area of 2.98 hectares and is located within Zone RU2 – Rural Landscape in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014.

The following provides a further detailed description of the subject site and its context within the surrounding locality:

- The site is constructed with existing buildings including an existing weatherboard dwelling and attached shed in the northern part, an adjacent aviary, and detached buildings including two (2) shipping containers and a demountable storage building in the central parts of the property.
- The site 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.
- Council notes that the demountable buildings described above are unapproved structures and the applicant seeks consent for the regularisation and use of the structures as part of the subject development proposal (refer further discussion in Report above regarding their intended use).

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- 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.
- Council notes that the location of the proposed 'Depot' and 'Rural Industry' parts of the proposal would be located in a part of the site subject to an existing clearing – no vegetation removal has been proposed to take place as part of the development proposal.
- The site is mapped as being bushfire prone land (Vegetation Category 1 and Buffer Area).
- The site is located within a semi-rural area on the northern side of Naval College Rd.
- Adjacent properties are typically constructed with single dwellings and detached outbuildings in similar sized parcels of land.
- It 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).
- **Figures 1 and 2** below depict the subject site and its context within the surrounding locality.

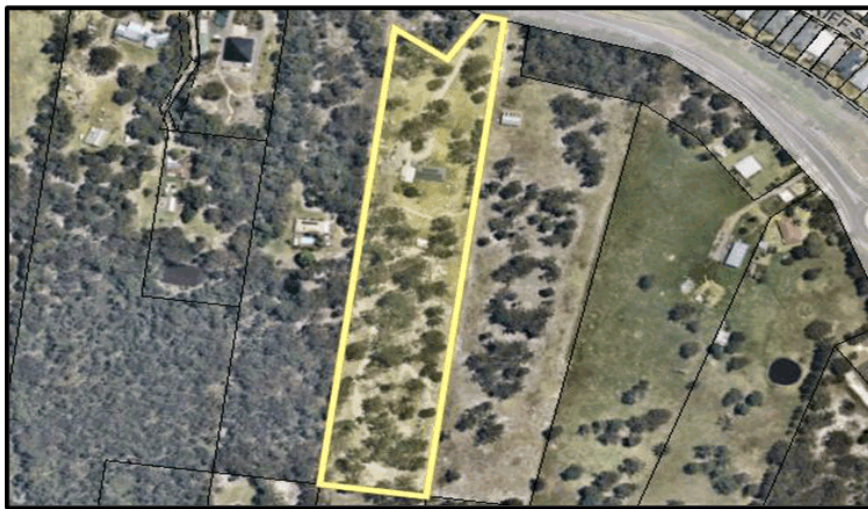


Figure 1 – Subject Site

Planning Report – S4.15 Assessment - 1282 Naval College Rd, WORROWING HEIGHTS - Lot 1749 DP 28785



Figure 2 – Subject Locality

Deposited Plan and 88B Instrument

A review of the Deposited Plan for the site (DP 28785 registered with Land Registry Services on 30th April 1953) has found that there are no easements or other restrictions upon the use of the land which would impact upon the proposed development.

3. Background

Post-Lodgement

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

- Development Application formally lodged with Shoalhaven City Council on 2 September 2020.
- Internal referral of Development Application to Building Surveyor, Development Engineer, and Environmental Health Officer on 17 November 2020.
- First RFI Request sent to the applicant on 17 November 2020 requesting the following details:
 - Written clarification as to the proposed development and how it satisfies the definition of “depot” under SLEP 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.
 - 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.
 - 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.

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- Response to all internal referrals received by the assessment officer on 8 December 2020.
- 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 provided that they had attempted 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.
- Recommendation for refusal provided to the Development and Environment Committee Meeting – March 2021. At the date of preparing this report, this information remains outstanding, with no advice received from the applicant for a likely date of receipt.

Site History and Previous Approvals

Darts - since 1st July 2005

Application	Appl. Date	Application Type	Proposal	Status	Completed
DA20/2152	04/11/2020	Development Application	Aboriculture/Tree Lopping & assoc works	Incomplete	

Plain Sailing - since 2nd September 1996

Application	Appl. Date	Proposal	Status	Status Date
DR99-8279	09/12/2002	Septic Tank Application	Approved (P)	09/12/2002
DR99-8279	18/12/2001	Septic Tank Application	Approved (P)	18/12/2001
DR99-8279	30/06/1999	Septic Tank Application	Approved (P)	20/07/1999

Old Applications prior to 2nd Sept 1996

Application	Proposal	Decision	Owner	Original Lot
BA77/0206	W/Board Dwelling	Approved	Martyn RJ&SJ	
BA79/0556	Garage	Approved	Martyn R&S	
ST77/0084		Approved	Martyn RJ&SJ	

4. Consultation and Referrals

Internal Referrals				
Referral	Required	Recommendation	Comment	
Development Engineer	<input checked="" type="checkbox"/>	Referral response provided by the Development Engineer on 8 th December 2020. Recommended conditions of consent provided relating to the internal driveway access standards and runoff and erosion controls.	Conditions are able to be imposed.	
Building Surveyor	<input checked="" type="checkbox"/>	Referral response provided by the Building Surveyor on 18 th November 2020. Recommended conditions of consent provided regarding requirement for a	Conditions are able to be imposed.	

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		Construction and Occupation Certificate, upgrade requirements for the existing buildings to achieve compliance with the NCC, and fire safety requirements.	
Environmental Health Officer	<input checked="" type="checkbox"/>	Referral response provided by the Environmental Health Officer on 1 st December 2020. Recommended conditions of consent provided relating to the protection of the amenity of the surrounding locality and regarding the prevention of the emission of offensive noise.	Conditions are able to be imposed.

5. Other Approvals

Integrated Approvals and Concurrences

The development is not described as being an Integrated Development in accordance with Section 4.46 of the Environmental Planning and Assessment (EP&A) Act 1979.

6. Statutory Considerations

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The following planning instruments and controls apply to the proposed development:

Instrument	Relevant
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Koala Habitat Protection) 2020	<input checked="" type="checkbox"/>
Shoalhaven LEP 2014	<input checked="" type="checkbox"/>

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 7 (Statement of Compliance/Assessment) of this report.

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

Environmental Planning and Assessment Act 1979

Clause 4.14 – Consultation and development consent – certain bushfire prone land

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Clause 4.14 of the Environmental Planning and Assessment (EP&A) Act 1979 provides that development consent is not permitted to be granted to development for any purpose on bushfire prone land unless the consent authority –

(a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development

Section 8.3.2 – Class 10 Structures of the Planning for Bushfire Protection (PBP) 2019 states the following:

'The NCC defines a Class 10 building as a non-habitable building or structure such as a:

a. Class 10a – a non-habitable building being a private garage, carport, shed or the like".

The development is considered to be a Class 10a non-habitable structure as defined by the NCC. Section 8.3.2 of the PBP 2019 provides the following comments in relation to Class 10a structures:

"There is no bush fire protection requirements for Class 10a buildings located more than 6m from a dwelling in bush fire prone areas. Where a Class 10a building is located within 6m of a dwelling it must be constructed in accordance with the NCC".

Given the structures for which regularisation and use is being sought as part of the proposed development (i.e. shipping containers and demountable building) are proposed for use as storage associated with the arborist / tree lopping business, they are appropriately classified as a Class 10a building. Council notes that, according to the submitted Site Plan, they would be located at a distance of more than 6m from the existing residential dwelling on the site. Hence no bushfire protection measures would apply to the development as stated within Section 8.3.2 of the PBP 2019.

i) Environmental planning instrument

SEPP 55 Remediation of Land

Question	Yes	No
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	X Proceed to Question 3	to Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?	X Proceed to Question 3	to Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: <ul style="list-style-type: none"> ▪ Child care facility ▪ Educational use ▪ Recreational use ▪ Health care use ▪ Place of public worship ▪ Residential use in a commercial or industrial zone 	Proceed to Question 5	X to Proceed to Question 4
4. Review the property file and conduct a site inspection of the site and surrounding lands.	Proceed to Question 5	X to Proposal satisfactory under SEPP 55 and DCP.

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Question	Yes	No
Is there any evidence that the land has been used for a listed purpose?		
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	Proposal satisfactory under SEPP 55 and DCP.

Council notes that the proposed use of the site for the 'seasoning' and preparation of timber logs for sale as firewood constitutes use for a listed purpose in accordance with Table 1 of the Managing Contaminated Land Planning Guidelines (i.e. wood preservation).

Notwithstanding, a review of the previous land use history of the site has not revealed any evidence of prior use of the site for a listed purpose. Based upon this and given the site's present and ongoing use for residential purposes, Council are satisfied that the site is not presently contaminated in its existing state.

Subject to the above assessment and given any wood preservation being undertaken would be significantly separated from the dwelling, Council finds that the requirements of Clause 7 of the policy have been satisfied.

SEPP (Koala Habitat Protection) 2020

In accordance with Clause 7 of the State Environmental Planning Policy (Koala Habitat Protection) 2020, the provisions within this policy apply given the total area of the site exceeds one (1) hectare (land is 2.98 hectares in area).

In accordance with *Clause 8 – Is the land potential koala habitat?*, before a Council may grant consent to a development, they must be satisfied whether or not the land is a potential koala habitat.

Council finds that the land is not a suitable potential koala habitat in particular when considering the following:

- The part of the site where the development is proposed to be carried out is within an existing clearing;
- No vegetation is required to be removed to cater for the proposed development;
- Vegetation on the site is scattered and not continuous

In accordance with Clause 8(3)(a), the Council are not prevented because of this policy, from granting consent to the development application.

Shoalhaven LEP 2014

Land Zoning

The land is zoned RU2 Rural Landscape under the SLEP 2014.

Characterisation and Permissibility

The proposed use of the site for the 'seasoning' and preparation of timber logs for sale as firewood is most appropriately defined as 'Rural Industry (sawmill and log processing works)' under the SLEP 2014. This land use is permitted within Zone RU2 with the consent of Council.

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The applicant advises that the proposed use of the site for the storage of plant / machinery used in association with an arborist / tree lopping business is defined as a 'Depot' under the SLEP 2014. Council questions the characterisation of the development as a depot in accordance with the following commentary (Note: clarification regarding the land use definition was sought by Council as part of the 1st RFI Request for which no response was received from the applicant).

Council notes 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 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":*

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(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'. In this case, the storage of machinery on the site could have been seen as 'supporting' the existing undertaking of the home business. In the above decision made by Tuor C, it was found however that the home business was not correctly defined, 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.

Zone objectives

Objective	Comment
<i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i>	Use of the site for the purpose of Rural Industry would not impact upon the ability of the remainder of the site to be used for primary production purposes. 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 satisfies the objective.
<i>To maintain the rural landscape character of the land.</i>	Subject to the implementation of noise controls as recommended by the Environmental Health Officer, use of the site for the purpose of Rural Industry would be capable of maintaining the rural landscape character of the land. 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 satisfies the objective.
<i>To provide for a range of compatible land uses, including extensive agriculture.</i>	Use of the site for the purpose of Rural Industry is considered to be a use compatible with 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

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DP 28785

	cannot be established whether the proposal satisfies the objective.
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SLEP 2014 Clauses

Clause	Relevant	Comments	Complies/ Consistent
Part 4 Principal development standards			
4.3	<input checked="" type="checkbox"/>	<p>The site is not mapped as being subject to a specific building height limit.</p> <p>As such, in accordance with Clause 4.3 of the SLEP, a building height limit of eleven (11) metres applies on the site. The height of the existing structures for which regularisation and use is being sought are compliant with Clause 4.3 and do not exceed 11m.</p>	Yes
Part 7 Additional local provision			
7.1	<input checked="" type="checkbox"/>	<p>The site is mapped within a Class 5 acid sulphate soils area.</p> <p>However given it is located at a distance of more than 500m from any Class 1 to 4 mapped areas, the preparation of an acid sulphate soils management plan is not required in this instance.</p>	Yes
7.5	<input checked="" type="checkbox"/>	<p>The site is mapped within a 'Biodiversity – Habitat Corridor' Area and therefore the provisions Clause 7.5 of the SLEP 2014 applies.</p> <p>Before determining a Development Application to which this clause applies, the consent authority must consider whether or not the development is likely to have:</p> <p><i>(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and</i> <i>(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</i> <i>(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</i> <i>(iv) any adverse impact on the habitat elements providing connectivity on the land.</i></p> <p>In accordance with the submitted Site Plan, Council notes that the location of works on the site are within existing cleared parts of the site - in particular the following:</p> <ul style="list-style-type: none"> • The seasoning and preparation of timber logs into firewood – within an existing clearing in the central eastern part of the site; and • Storage of plant / machinery in the north-western part of the site – within an area constructed with existing hardstand. • The applicant advises that no vegetation clearing is required to be undertaken. 	Yes

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		As a result Council assesses that the development complies with the provisions of Clause 7.5 of the SLEP given the carrying out of the proposed development would not be likely to have an adverse impact upon the condition or ecological value of fauna or flora on the land, the habitat and survival of native fauna, or the function or composition of the land.	
7.11	<input checked="" type="checkbox"/>	The site and existing residential dwelling is provided with an appropriate supply of services including onsite sewage and water and a supply of electricity. An internal augmentation of such services is able to be carried out should a connection to services be required for the subject development.	Yes
7.20	<input checked="" type="checkbox"/>	The site is mapped within the Jervis Bay area and therefore the provisions listed within Clause 7.20 are applicable to the subject development. A review of the property and its surrounds has found: <ul style="list-style-type: none"> • It is not located within the vicinity of the Huskisson–Tapalla rock platform. • It is not located within the vicinity of the Point Perpendicular lighthouse group. • It is not located within the vicinity of any coastal sand dunes or rocky headlands. • Whilst it is mapped within a 'Biodiversity–Habitat Corridor', the development has been sited to minimise impacts and avoid disturbance towards native species of fauna and/or flora. 	Yes

ii) Draft Environmental Planning Instrument

Draft Illawarra–Shoalhaven Regional Plan 2041

The Draft Illawarra Shoalhaven Regional Plan (DISRP) 2041 is a 20-year land use plan prepared in accordance with Section 3.3 of the Environmental Planning and Assessment Act 1979 and applies to the local government areas of Wollongong, Shellharbour, Kiama and Shoalhaven.

It is designed to inform Council's land use planning, private sector, and wider community of the NSW Government's approach to creating a connected, sustainable, innovative and vibrant Illawarra Shoalhaven.

The DISRP lists the following four themes which contain a total of 30 objectives:

- *A productive and innovative region*
- *A sustainable and resilient region*
- *A region that values its people and places*
- *A smart and connected region.*

A review of the proposed development has found that it is generally consistent with the themes and objectives of the DISRP.

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iii) Any Development Control Plan

Shoalhaven DCP 2014

Generic Chapters	Relevant
G2 : Sustainable Stormwater Management and Erosion/Sediment Control	<input checked="" type="checkbox"/>
G7 : Waste Minimisation and Management Controls	<input checked="" type="checkbox"/>
G17 : Business, Commercial and Retail Activities	<input checked="" type="checkbox"/>
G21 : Car Parking and Traffic	<input checked="" type="checkbox"/>

Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control

The Development Application was referred to Council's Development Engineer for assessment under the provisions of Chapter G2 – Sustainable Stormwater Management and Erosion/Sediment Control of the SDCP 2014.

Following their assessment, the Development Engineer determined that the development satisfactorily addresses the requirements of Chapter G2 subject to the implementation of conditions including the following:

- Runoff / erosion and sediment controls.

The above assessment was provided notwithstanding Council's request for the proposed earthen bund to be depicted on the submitted Site Plan (further discussion in Report below).

Chapter G7: Waste Minimisation and Management Controls

A Waste Management Plan (WMP) was submitted by the applicant as part of the Development Application. Compliance with the WMP would be required to be achieved as a condition of any development consent.

Chapter G17: Business, Commercial and Retail Activities

The proposal is compliant with the majority of applicable acceptable solutions of Chapter G17 of the SDCP 2014 – however a departure is proposed to Acceptable Solution A2.1 of Chapter G17 which is described below. A full assessment against the applicable development controls can be found at **Appendix A**.

DEPARTURE TO ACCEPTABLE SOLUTION A2.1 OF CHAPTER G17

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"

Given sketch plans of the existing unauthorised structures (two shipping containers and demountable building) were not provided, Council were unable to identify whether the materials of the structure would be suitable within the context of the locality and/or the desired streetscape.

Performance Criteria P2 of Chapter G17 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".

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Chapter 1 – Introduction, Clause 11 of the SDCP 2014 requires that a 'Variation Statement' be prepared which justifies any non-compliance with the acceptable solution. Council notes that, as no response was received to Council's Further Information Request, appropriate justification demonstrating compliance with the performance criteria wasn't provided. As such, Council assesses that the development is non-compliant with Performance Criteria P2 for the following reasons:

- No plans have been prepared to demonstrate that the external appearance of the development, including materials and colours used, would be consistent with the character of the locality and/or would make a positive contribution to the streetscape.
- Council notes that the unauthorised shipping containers are located within a short distance (within 50m) from the dwelling on the adjoining property and cannot guarantee, based upon the information provided, that it would not have an adverse visual impact upon this property.
- Given no plans and/or photos 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 'robust') and whether they would be suitable for use for storage purposes in associated with the proposed development.

Chapter G21: Car Parking and Traffic

For the purposes of Schedule 5.1 – Car Parking Schedule of Chapter G21 – Car Parking and Traffic of the Shoalhaven Development Control Plan (SDCP) 2014, car parking for the development would be calculated at the rates provided for a 'Transport Depot' and 'Rural Industry (Sawmill and Log Processing Works)'. As such the following is noted:

- Depot – Council notes that details regarding the number of vehicles present at the time of peak usage are unavailable given further details regarding the nature of operations and/or number of vehicles to be kept on site has not been provided. However as the arborist / tree lopping business is presently carried out by a sole trader, it can be assumed that minimal parking outside of the presently marked area would be required.
- Rural Industry – The applicant has nominated in the submitted Statement of Environmental Effects that they are a sole trader business and the seasoning and preparation of the timber would be carried out by the owner on site.

As such, there is no additional demand for car parking on site created as part of this component of the development.

An assessment against the remainder of the development controls within Chapter G21 was undertaken by the Development Engineer as part of their referral of the Development Application. Following their assessment, the Development Engineer determined that the development satisfactorily addresses the requirements of Chapter G21 subject to the implementation of conditions including the following:

- New access driveway design standards.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements or draft planning agreements applying under Section 7.4 of the EP&A Act 1979 which relates to the proposal or subject site.

iv) Environmental Planning and Assessment Regulation 2000

Clause 49 – Persons who can make Development Applications

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Clause 49 – Persons who can make Development Applications of the Environmental Planning and Assessment Regulation 2000 states the following mandatory requirement for the lodgement of a Development Application:

- (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.*

Council notes that the consent of only one land owner was obtained and the consent of the second land owner is required to be provided in order for the application to proceed to approval. As such, Council had requested that the owner's consent of the second property owner be provided as part of the Request for Further Information.

However as no response was received to Council's request and to the following requests for updates, the provision of owner's consent in accordance with Clause 49 of the EP&A Act 1979 has not been provided.

Clause 92 – Additional matters that a Consent Authority must consider

Provision	Response
<i>In the case of a development application for the demolition of a building, the provisions of AS 2601</i>	No demolition work is proposed to be carried out.
<i>In the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule</i>	The land is not the subject of a subdivision order made under Schedule 7 – Paper Subdivisions of the EP&A Act 1979.

Division 8A – Prescribed Conditions of Development Consent

The Prescribed Conditions of Development Consent listed at Division 8A of the EP&A Regulation 2000 is able to be incorporated as a condition of any consent.

Schedule 1 – Forms

Schedule 1 – Forms, Part 1 – Development Applications, Clause 2 of the EP&A Regulation 2000 requires that a Site Plan and a sketch of the development be provided as part of any Development Application. In particular, the following is listed as mandatory requirements:

- (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*

A revised site plan was requested that indicated the location of 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").

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

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- (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,*

Detailed plans for the shipping containers and demountable building (i.e. floor plan, elevations, and sections) were requested as the application proposes to regularise these to allow their retention onsite and use as part of the proposed development.

However Council notes that, given no response was received to Council's request and to the following requests for updates, the provision of plans compliant with the mandatory requirements of Schedule were not provided.

Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan). The development is most aptly characterised as an Industrial development for the purpose of calculating contributions under the Plan.

According to the Site Plan (calculations made using Trapeze), the following ETs would be generated by each area of the proposed development:

- Depot (Plant / Machinery Storage) – 160m² (One (1) ET generated per every 200m² to be developed) – 0.8 ETs generated.
- Rural Industry (Timber log seasoning and preparation) – 380m² (One (1) ET generated per every 200m² to be developed) – 1.9 ETs generated.
- Total ETs generated by development proposal = 2.7 ETs generated.

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Section 94 ET Calculations - DA20/2152 (UPN: 46897)

Close Reset Print Return Calc

☐ Residential ☒ Non-Residential

Non Residential
Note: enter area in m2 and calculator will convert area to ETs.

Retail:	<input type="text" value="0"/>	Proposed - Gross Area m2
Commercial Office:	<input type="text" value="0"/>	Proposed - Gross Area m2
Hotel/Restaurant:	<input type="text" value="0"/>	Proposed - Gross Area m2
BulkyGoods:	<input type="text" value="0"/>	Proposed - Gross Area m2
Industrial:	<input type="text" value="540"/>	Proposed - Gross m2, include parking/landscape
Retail:	<input type="text" value="0"/>	Existing - Gross Area m2
Commercial Office:	<input type="text" value="0"/>	Existing - Gross Area m2
Hotel/Restaurant:	<input type="text" value="0"/>	Existing - Gross Area m2
BulkyGoods:	<input type="text" value="0"/>	Existing - Gross Area m2
Industrial:	<input type="text" value="0"/>	Existing - Gross m2, include parking/landscape
Total ETs:	<input type="text" value="2.7"/>	Management Project ETs: 2.7

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building / subdivision).

S7.11 development contributions charges in the amount of \$1,533.44 would be generated by the development (refer to the following table). This would be payable prior to the issue of any Construction Certificate for the development.

Project	Description	Rate	Qty	Total	GST	GST Incl
03 ROAD 4021	The Wool Road Bypass, St Georges Basin	\$176.11	2.7	\$475.50	\$0.00	\$475.50
CW FIRE 2001	Citywide Fire & Emergency services	\$138.13	2.7	\$372.95	\$0.00	\$372.95
CW FIRE 2002	Shoalhaven Fire Control Centre	\$202.07	2.7	\$545.59	\$0.00	\$545.59
CW MGMT 3001	Contributions Management & Administration	\$574.39	2.7	\$139.40	\$0.00	\$139.40
				Sub Total:		\$1,533.44
				GST Total:		\$0.00
				Estimate Total:		\$1,533.44

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	Given no vegetation is proposed for removal from the site and the components of the proposed development would take place either within existing clearings or on areas constructed with existing hardstand, it would be unlikely to have an adverse impact upon the natural environment.
Built Environment	Given Council cannot confirm that the development can be defined as a 'Depot' or any other use which may be permissible with development consent – the proposal has the potential to have an adverse impact upon the built environment. This relates to potential adverse impacts such as:

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Head of Consideration	Comment
	<ul style="list-style-type: none"> • Introduction of a land use which may be non-compatible with the land uses occurring with the surrounding locality – which is predominantly single residential dwellings on medium sized blocks of land. • Introduction of additional traffic within the locality and associated noise amenity impacts upon neighbouring residences resulting from the (potentially) continuous ingress and egress of vehicles from the site. • The proposed 0.5m high earthen bund described within the Statement of Environmental Effects is not considered to be an effective form of noise or acoustic mitigation towards neighbouring residences.
Social Impacts	Subject to implementation of the noise controls recommended by the Environmental Health Officer, it would be unlikely that the development would have an adverse social impact upon the surrounding locality.
Economic Impacts	It would be unlikely that the development would have an adverse economic impact upon the surrounding locality.

(c) Suitability of the site for the development

The site is NOT considered to be suitable for the proposed development for the following reasons:

- The land use characterisation for the development cannot be established based upon the information provided by the applicant.
- Given Council cannot establish the land use characterisation based upon the information provided, it cannot be established whether the proposal satisfies the objectives for Zone RU2 – Rural Landscape.
- The proposed use has the potential to have an adverse impact upon the built environment.
- Owner's consent required by Clause 49 of the EP&A Regulation 2000 was not provided.
- The development is non-compliant with the requirements listed under Schedule 1 of the EP&A Regulation 2000, particularly as it relates to the submitted Site Plan and the requirement for sketch plans depicting the development.
- In consideration of the above matters, the proposal is not considered to be within the public interest – in particular as notification according to Clause 77 of the EP&A Regulation 2000 was not able to be undertaken.

(d) Submissions made in accordance with the Act or the regulations

The Development Application was required to be notified for a period of two (2) weeks in accordance with the Community Consultation Policy.

However as no response was received to Council's Request for Further Information – the DA wasn't provided with required information including a Site Plan compliant with Schedule 1 of the EP&A Regulation 2000 or detailed plans depicting the existing buildings to inform the application.

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As such, the application was unable to be notified according to the provisions of the Community Consultation Policy and according to the requirements listed under Clause 77 of the EP&A Regulation 1979.

(e) The Public Interest

Having regard to the matters raised in the assessment of the Development Application above, the proposal is not considered to be within the public interest.

Council also notes that, given no response was received to Council's Request for Further Information (required information including a Site Plan compliant with Schedule 1 of the EP&A Regulation 2000 and detailed plans depicting the existing buildings wasn't provided), the carrying out of neighbour notification in accordance with Clause 77 of the EP&A Regulation 2000 wasn't able to be carried out.

Delegations

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the Development Application.

Given the nature of the recommendation in relation to the application, it must be determined by the Development and Environment Committee of the Council.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/2152 be refused.

City Development
Shoalhaven City Council
9/03/2021

Appendix A – Assessment Checklist: Chapter G17: Business, Commercial, and Retail Activities

G17: Business, Commercial, and Retail Activities	
Relevant Acceptable Solution	Comment
5.1 – Business Commercial and Retail Development	
A1.1 Where a front setback is applied, the area forward of the building line (towards the kerb) may function as a private extension of the elements used in the public domain / streetscape. All private elements within the setback shall contribute to interest and amenity (e.g. alfresco use, feature garden).	A1.1 – A significant set back of 131.99m ² is proposed to the front boundary with Naval College Rd.
A2.1 Building materials and finishes must be durable, low maintenance and suitable in the	A2.1 – DEPARTURE PROPOSED – Given sketch plans of the existing unauthorised structures (two shipping containers and

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<i>context of the adjoining local streetscape and existing and/or future desired character.</i>	demountable building) were not provided, Council were unable to identify whether the materials of the structure would be suitable within the context of the locality and/or the desired streetscape.
<p>A3.1 Active uses are included at the ground level along:</p> <ul style="list-style-type: none"> The primary frontage. The secondary frontage/s on corner allotments. An adjacent lane or path. <p>A3.2 Service vehicle access and parking facilities shall be provided away from the primary frontage, where possible.</p>	<p>A3.1 – This would be achieved. All active components of the development are located at ground level.</p> <p>A3.2 – The applicant has not nominated the requirement for any service vehicle access to the site. Notwithstanding, the Development Engineer has conditioned the required construction standards for internal access within the site.</p>
<p>A4.1 Development shall not obstruct:</p> <ul style="list-style-type: none"> Sight lines from each end of a laneway. Through-site links. 	A4.1 – No works would take place within the vicinity of the Naval College Rd frontage – therefore there would be no additional impacts upon sight lines as a result of the development.
A5.1 The proposal shall not cause unacceptable levels of perceptible odours (including cooking odours), fumes, smoke, gas, vapours, steam, soot, ash, dust or grit.	<p>A5.1 – Subject to the construction of the internal access driveway to the standards specified by Council, dust emission from the site would be minimised to an appropriate level.</p> <p>The proposal is not likely to result in the production of other perceptible odours, fumes, smoke, or gas, etc which would otherwise impact upon the surrounding locality.</p>
A6.1 The proposal shall not generate any contaminated waste.	<p>A6.1 – The proposed seasoning and preparation of timber logs for sale as firewood has the potential to be a listed purpose under Table 1 to the Managing Contaminated Land Planning Guidelines (wood preservation).</p> <p>As such, the development was referred to the Environmental Health Officer for consideration of the associated impacts. Hence recommended conditions of consent were provided to address any potential impacts.</p>
A7.1 Collection and disposal of waste should be through Council's regular collection service and/or a private waste contractor.	A7.1 – Waste would be disposed from the site in accordance with the methods described within the submitted Waste Management Plan.
A8.1 Hours of operation and trading days are appropriate for the location and type of business.	A8.1 – Any seasoning and preparation of timber logs would be required to take place within standard business hours as a condition of any development consent.

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<i>A9.1 All existing fire safety measures, and those that are proposed to satisfy the fire safety requirements of the new use, are to be described as part of the change of use DA.</i>	A9.1 – Recommended conditions of consent to achieve compliance with the requirements of the NCC have been recommended by the Building Surveyor.
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4.15 Assessment Report

DE21.33 - Attachment 1

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Proposal

Address	25 Sunnymede Lane, BERRY - Lot 3 DP 713138
Legal description	
Description of proposal	Change of use of existing ancillary structure (shed) to detached habitable rooms

Application details

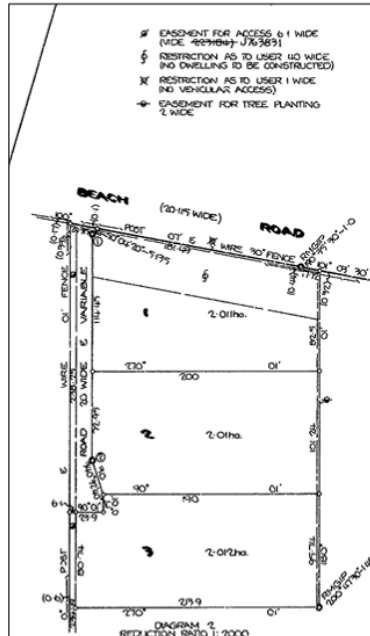
Application No:	DA20/1494
Applicant	PDC Planners
Owner	Philip Richard Scarr & Melissa Bevelyanne Scarr
Date lodged	22-May-2020
Cc applied for	NO
Is Council PCA	NO
Notification period	10/06/2020 to 25/07/2020
Submissions	10 Submissions Received

Subject site and surrounds

The subject site is an irregular shaped allotment which maintains lawful access to a public road (Sunnymede Lane). The topography of the subject site is a gradual fall extending beyond the northern and eastern boundaries with a slope of approximately 2.2°. The subject site currently contains a single dwelling with associated driveway, landscaping, and effluent treatment areas. The subject site also contains a swimming pool, hardstand sports court and a detached shed (the subject of this application). The subject site is moderately vegetated, although no vegetation is proposed for removal and there are no significant environmental encumbrances present on the subject site such as bushfire prone land, flood prone land, or biodiversity values.



The proposed development does not contravene any restriction as to user denoted on the deposited plan.



Bush fire prone land	Not Applicable
Buffers	Not Applicable
Threatened Species	Not Applicable
Aboriginal Cultural Heritage	Not Applicable
Contaminated land	Not Applicable

Background

Council's electronic database references the following Development Applications / Building Applications made with respect to the subject site:

Darts - since 1st July 2005

Application	Appl. Date	Application Type	Proposal	Status	Completed
BC20/1034	22/05/2020	Building Certificate	Building Certificate - Shed Structure & Plumbing	Incomplete	
DA20/1494	22/05/2020	Development Application	Change of use from shed to detached habitable rooms	Incomplete	
CC17/1198	27/02/2017	Construction Certificate	Detached Shed	Approved	21/02/2017
DR16/2117	19/12/2016	SMF Application (Amended)	Garages & Carports - Detached Shed	Approved	16/02/2017
DA16/2488	19/12/2016	Development Application	Detached Shed	Approved	10/02/2017
CD13/1343	14/11/2013	Complying Development	Swimming Pool - Inground	Approved	12/11/2013

Plain Sailing - since 2nd September 1996

Application	Appl. Date	Proposal	Status	Status Date
DA00-2351	29/03/2001	Dwelling Additions (Rural)	Approved (T)	29/03/2001
DR99-9469	09/11/2000	Septic Tank Application Amended	Approved (P)	09/11/2000
DA00-2351	14/06/2000	Dwelling Additions (Rural)	Approved (T)	12/07/2000
DR99-9469	14/06/2000	Septic Tank Application Amended	Approved (P)	12/07/2000
DR99-9469	06/08/1999	Septic Tank Application Amended	Approved (P)	09/08/1999

DA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
DA85/2531	3/09/1985	Home Activity	Approved	11/10/1985

BA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
ST85/0546	31/10/1985		Approved	25/11/1985
BA86/1994	16/10/1986	SWIMMING POOLS	Approved	23/10/1986
BA85/2358	31/10/1985	NEW RURAL DWELLING	Approved	18/11/1985

Assessment against planning controls

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments, policies, development control plans, planning agreements and regulations in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Council Policies

Section 64 Contributions

Not Applicable

Shoalhaven Contribution Plan 2019

Not Applicable

SEPP

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been supported by an appropriate BASIX Certificate.

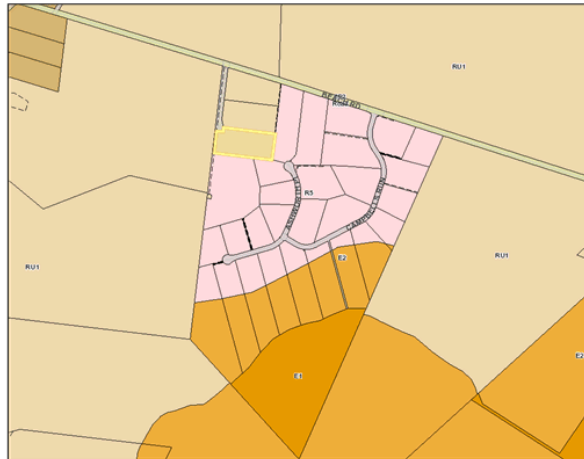
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

It is considered that the proposed development does not unduly impact upon any existing biodiversity or trees or vegetation on the site.

Shoalhaven Local Environmental Plan 2014

The Shoalhaven Local Environmental Plan 2014 is the statutory LEP for the subject site. The site is zoned RU1 Primary Production. The proposed development is defined as a Change of use of existing ancillary structure (shed) to detached habitable rooms and is a permissible form of development within the zone. It is considered that the proposed development is consistent with the objectives of the in this regard (should the building meet the criteria of a detached habitable room).



Zoning Map

Clause	Comment
2.1 Land use zones	Detached Habitable Rooms are permitted in the zone, ancillary to the use of a dwelling house.
4.3 Height of building	The subject site allows a maximum building height of 11m. The existing height of the building as approved under DA16/2488 is 6.302m. The application comprises a change of use and will not alter the height of the existing building.
4.4 Floor Space Ratio	Not applicable.
4.6 Exceptions to development standard	The proposed development does not seek to vary any development standards.
5.10 Heritage conservation	The site is not within a conservation zone and does not contain a listed Schedule 5 heritage item, nor does it directly adjoin or is within the visual curtilage of such an item.

7.1 Acid sulfate soils	The subject site is identified as soil class 5. The development comprises change of use only. No PASSA is required in this instance.
7.3 Flood planning	Not Applicable
7.4 Coastal risk planning	Not Applicable
7.5 Terrestrial biodiversity	The site is not within a Terrestrial Biodiversity Area as defined within Section 7.5 of the LEP, nor does it adjoin such precinct.
7.6 Riparian land and watercourses	The site is not within a riparian land or watercourse as defined within Section 7.6 of the LEP, nor does it adjoin such precinct.
7.7 Landslide risk and land degradation	The subject site does not include land with a slope greater than 20% (1:5).
7.8 Scenic protection	Not applicable
7.11 Essential Services	The proposed development will be connected to all essential services.
7.20 Development in the Jervis Bay region	Not applicable.

Development Control Plans

Chapters of the document relevant to the proposed Change of use of existing ancillary structure (shed) to detached habitable rooms on the subject site include:

Site Analysis, Site Design and Building Materials

The proposed development is solely for a change of use, external components of the building will not be altered.

G2 Sustainable Stormwater Management and Erosion/Sediment Control

Stormwater management as considered and approved under DA16/2488 will remain unchanged.

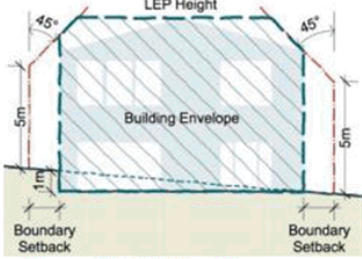
G12 Dwelling Houses and Other Low-Density Residential Development

The proposal has been assessed against the provisions of Chapter G12.

G12: Dwelling Houses and Other Low-Density Residential Development

The proposal has been assessed against the provisions of Chapter G12.

DCP COMPLIANCE TABLE
5 General Controls
5.1 Building Envelope

<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Provide practical building envelopes for development to ensure that the height and scale of new development is not excessive, relates well to the local context/ streetscape and is compatible with the existing or desired future environmental character within the locality. Minimise the visual impacts of elements of the development that exaggerate the built form and impacts negatively on desired future streetscapes. 		
<ul style="list-style-type: none"> The bulk and scale of the proposed development is compatible with the surrounding development. Vertical building envelope of 45 degrees at 5m (See figure 1).  <p>Figure 1: Building envelope</p> <p><i>Note: Exemptions to building envelope encroachments include gutter, fascias, downpipes, eaves up to 0.6m, aerials and masonry chimneys. Slopes greater than 10% require detail survey.</i></p>	Complies	The development is captured within the building envelope as described in figure 1.
<h2>5.2 Orientation and Siting</h2>		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Allow flexibility in the siting of dwellings and other buildings/structures. Ensure that design and site placement of dwellings and other buildings/structures is compatible with and enhances the existing and future streetscape. Locate dwellings and other buildings/structures to ensure minimal loss of amenity (e.g. privacy, views, overshadowing, solar access, or the like) to adjoining development. Achieve a site layout that provides a pleasant, attractive, manageable and resource efficient living environment. Ensure that development reflects the physical constraints prevalent on the site to minimise site disturbance. 		
A site analysis plan is submitted with the development application in accordance with A2.1.	Complies	The applicant has provided a site analysis plan which is deemed satisfactory.
<p>The proposed development is site responsive and considers the following;</p> <ul style="list-style-type: none"> The natural slope of the land. 	Not applicable	No change to DA16/2488.

<ul style="list-style-type: none"> Minimises excessive earthworks and the need for structural retaining walls above 1m. Cut and fill is limited to 1m (refer to Figure 2). Retaining walls do not impact upon the adjoining properties in relation to amenity and stormwater disposal. <p>Note: The development application must take into consideration the visual impact of retaining walls and fencing.</p>		
5.3 Local Character and Context		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Ensure that development enhances and makes a positive contribution to the character of existing buildings and streetscapes. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, particularly where there is a distinctive character, view or heritage significance. Minimise adverse impacts on the existing visual amenity and character of residential areas when relocating second-hand dwellings. Retain, incorporate, and sympathetically treat existing dwellings or buildings that contribute to streetscape character (including items of heritage significance or conservation significance). Encourage the sharing of views, while not restricting the reasonable development potential of a site. 		
<ul style="list-style-type: none"> The scale and visual appearance of the development contributes to the existing and future character. Heritage or conservation significance are retained and sympathetically treated. 	Complies	No change to DA16/2488
<ul style="list-style-type: none"> Existing or future views are not substantially or unreasonably affected (refer to planning principle). 	Complies	Given the average separation distance of ~165m between the building and nearby habitable buildings, impacts are not considered to be severe or devastating when assessed against the relevant NSW Land and Environment Court Planning Principles.
5.4 Building Form, Design and Materials		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Ensure the provision of low-maintenance development that will retain an attractive appearance. 		

<p>b) Ensure the materials used in construction are sound and suitable for the intended use.</p> <p>c) Ensure that new development enhances and makes a positive contribution to the character of existing buildings and streetscapes and reinforces the built form and environmental conditions of the locality.</p> <p>d) Ensure that in rural/environmental areas and scenic protection area, buildings complement the existing landscape value rather than detracting from it, particularly where visible from public vantage points.</p>		
<ul style="list-style-type: none"> The selection of building materials provides visual interest from the streetscape and the roof design is integrated into the overall built form. Development incorporates passive environmental design (BASIX). Articulation is provided to minimise the length of unbroken walls and glazed areas. In rural, environmental, foreshore and scenic protection areas, external materials and colours shall blend with the surrounding landscape. 	Complies	<p>No change to DA16/2488</p> <p>The application has been supported by an appropriate BASIX Certificate.</p>
<p>5.5 Visual and Acoustic Privacy</p>		
<p>The specific objectives are to:</p> <p>a) Ensure the design of the site and buildings minimises impacts on the amenity of future and adjoining/adjacent living areas and principal private open space in relation to visual privacy, overlooking and noise.</p> <p>b) Reduce the impacts of freestanding privacy screens on surrounding development.</p> <p>c) Ensure the thoughtful location of noise generating plant, equipment, and sources.</p>		
<p>The visual privacy of indoor living areas and private open space is protected (Refer figure 3 and 4).</p>	Complies	<p>Given the average separation distance of ~165m between the building and nearby habitable buildings, impacts are not considered to be severe or devastating when assessed against the relevant NSW Land and Environment Court Planning Principles.</p>
<p>Freestanding privacy screens shall meet the following minimum standards:</p> <ul style="list-style-type: none"> A maximum of two (2) freestanding privacy screens are permitted on each lot. Located behind the primary and secondary building line. 	Not applicable	

<ul style="list-style-type: none"> • Not attached to a common boundary fence. • Maximum height of 2.4m. • Maximum length of 6m. • Consistent colour and design. • Does not produce excessive glare. • Does not cause overshadowing. 		
<p>All noise generating (mechanical) plant and equipment must be:</p> <ul style="list-style-type: none"> • Well ventilated acoustic screening around air-conditioning units. • Sited to minimise noise impacts and located at least 3m away from bedroom windows. 	Complies	
5.6 Solar and Daylight Access		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Ensure that opportunities for passive solar design for energy efficiency are maximised. Minimise overshadowing impacts and reductions in the solar access of adjoining properties. Protect and maintain solar access to solar collectors and limit impacts on the solar access of north-facing roof areas on adjoining and neighbouring properties. 		
<p>The dwelling design ensures that adjoining properties retain at least 3 hours of direct sunlight between 9am and 3pm during the winter solstice.</p> <ul style="list-style-type: none"> • 10m² of private open space; and • 50% of windows and glazed doors of north facing living areas. 	Complies	<p>Given the average separation distance of ~165m between the building and nearby habitable buildings, impacts are not considered to be severe or devastating when assessed against the relevant NSW Land and Environment Court Planning Principles.</p>
5.7 Vehicle and Pedestrian Access		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> Encourage driveway design that minimises visual impact, stormwater runoff and retains established trees and vegetation. Encourage an approach to access design that considers the site and its elements holistically (e.g. landscaping). Provide adequate and safe vehicular and pedestrian access from the street to the site, development, and parking spaces. Ensure the safety of pedestrians and bicycle riders in proximity to the driveway area. 		

<p>Access arrangements are suitable for the development and provide an all-weather access for vehicles.</p> <ul style="list-style-type: none"> • Driveways minimise stormwater runoff and increase landscaping. • Retain established trees within the road reserve. • Use of appropriate all-weather materials. • Provide a continuous path of travel from the street to the dwelling. • Setback a minimum of 0.5m from the side and/or rear boundary. • Grade no greater than 1:4 with transitions. • Achieve minimum sight lines for pedestrian safety in accordance with AS2890.1 (Figure 3.3). • Vehicle crossover width no greater than 6m. <p>Note: All works in the road reserve require approval by Council (section 138 of the Roads Act 1993).</p> <p>Vehicular access (driveway and associated footpath crossing) must be designed in accordance with the relevant Australian Standards.</p>	Complies	No change to DA16/2488
5.8 Trees and Vegetation		
<p>The specific objectives are to:</p> <ol style="list-style-type: none"> a) Retain, protect, and incorporate as many mature shade trees as possible within and adjacent to the development. b) Improve the amenity and energy efficiency of new development and reduce the heat island effect by retaining (or replanting) mature shade trees. c) Encourage the planting of replacement semi-mature trees. d) Incorporate landscaped areas that are sufficient for the retention and planting of mature trees. e) To ensure appropriate landscaping in bushfire prone areas to reduce the likelihood of building loss during a bushfire event. 		
<ul style="list-style-type: none"> • Retain existing mature/canopy trees wherever practicable. • The development shall provide appropriate setbacks from the root zone of existing mature trees. • Mature shade tree proposed to be removed shall be replaced with a semi-mature tree with at least a 75L pot size. 	Complies	No vegetation proposed for removal.

5.9 Servicing		
The specific objective is to:		
a) Ensure residential areas are provided with essential services in a timely, cost effective and efficient manner.		
Development is adequately serviced.	Complies	The subject site has access to essential services.
<ul style="list-style-type: none"> Services including electricity, gas, water, sewer, roads, and drainage must be available to cater for the development. Where connection to the above services is not available, the development application must provide alternatives to Council's satisfaction. 		
5.10 Water Management and Conservation		
The specific objectives are to:		
a) Ensure the protection of public health, surrounding land and the natural environment including soils, groundwater, and surface waters.		
b) Encourage harvesting of rainwater and the incorporation of pervious areas.		
c) Protect the integrity of services, utilities, pipelines, and associated infrastructure located within an easement.		
<ul style="list-style-type: none"> Stormwater from roofed areas is collected and conveyed to an appropriate discharge point. Hardstand areas are graded to minimise the discharge of surface water onto adjoining land. Permeable areas are utilised to reduce stormwater runoff. Impervious areas do not exceed 65% of the site area. 	Complies	No change to DA16/2488
5.11 Waste Management – Demolition and Construction		
The specific objective is to:		
a) Minimise the impact of the demolition and construction of buildings on residents, adjoining land, pedestrians, and the environment.		
A Waste Management Plan is required to be submitted with the development application.	Not applicable	
<ul style="list-style-type: none"> Demolition and asbestos removal shall comply with relevant Australian Standards and Council's Asbestos Policy. 		

6 Dwelling Houses, Rural Worker's Dwellings and Associated Development		
6.1 Principal Controls		
6.1.1 Density		
The specific objective is to:		
a) Ensure that the bulk and scale of new development is compatible with the existing streetscape amenity and the existing or desired future character of the area.		
The maximum floor space ratio for the site is 0.5:1, where the site is located in the following zones:	Not applicable	
<ul style="list-style-type: none"> R1 General Residential. R2 Low Density Residential. R5 Large Lot Residential, where the site area is less than 2000m². RU5 Village. SP3 Tourist. 		
6.1.2 Height and Setbacks		
The specific objectives are to:		
a) Minimise the visual impacts of elements of the development that exaggerate the built form and impacts negatively on desired future streetscapes.		
b) Encourage design that creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered and not adversely impacted.		
c) Allow adequate separation between buildings to promote natural light, solar access, ventilation, landscaping, and privacy.		
d) Retain the amenity of the public domain.		
<ul style="list-style-type: none"> The height of development must comply with Clause 4.3 of Shoalhaven LEP 2014 or Shoalhaven LEP (Jerberra Estate) 2014. 	Not applicable	
<ul style="list-style-type: none"> The front setback is generally consistent with adjoining development or complies with Table 1. Side Setbacks comply with Table 2. <p>Note: Additional building line and setback controls are included in Chapter G6: Coastal Management Areas, Chapter V2: Building Lines, Chapter V3: Miscellaneous Site-Specific Issues, and other area specific chapters.</p>	Not applicable	
6.2 Amenity		
6.2.1 Landscaping		

<p>The specific objectives are to:</p> <ul style="list-style-type: none"> a) Ensure that landscaping maximises amenity for residents, neighbouring dwellings, and the public domain. b) Ensure the provision of adequate and appropriate landscaping that is sympathetic to the local character. c) To ensure appropriate landscaping in bushfire prone areas to reduce the likelihood of building loss during a bushfire event. 		
<p>A minimum landscaped area is provided in accordance with Table 3.</p> <p>Note: The landscaped area excludes any encroachments (i.e. any part of a building or structure), hardstand areas and any areas used for storage, clothes drying, and water tanks.</p>	Not applicable	
6.2.2 Private Open Space		
<p>The specific objectives are to:</p> <ul style="list-style-type: none"> a) Ensure that the private open space provided for a dwelling is useable and meets user requirements for privacy, safety, access, active and passive outdoor recreational activities and landscaping. b) Locate private open space to take account of outlook, natural features of the site, solar access and neighbouring buildings or the public domain without compromising the amenity or privacy of adjoining dwellings. 		
<p>A private open space area of 50m² must be:</p> <ul style="list-style-type: none"> • Located behind the front building line. • Have a gradient no steeper than 1:20. • Minimum dimension of 2m in any direction. • Direct access from a living area. 	Not applicable	
6.2.3 Storage and Laundry Facilities		
<p>The specific objectives are to:</p> <ul style="list-style-type: none"> a) Improve the functionality of dwellings by ensuring adequate storage areas are provided of an appropriate size. b) Ensure that the location of storage areas do not impact on amenity, accessibility or the functionality of other spaces associated with the dwelling. c) Ensure laundry and clothes drying facilities are integrated into the development, can be conveniently reached, require minimal maintenance, and do not detrimentally impact the streetscape. 		
<ul style="list-style-type: none"> • Laundry facilities proposed in a garage must be in accordance with Figure 7. 	Not applicable	
6.2.4 Car Parking		

The specific objective is to:		
a) Provide convenient, accessible, and safe parking to meet the needs of residents and visitors.		
Car parking shall be provided in accordance with Chapter G21: Car Parking and Traffic of this Development Control Plan.	Not applicable	
6.3 Configuration and Design		
6.3.1 Building Form, Design and Materials		
The specific objectives are to:		
a) Ensure that new development enhances and makes a positive contribution to the character of existing buildings and streetscapes and reinforces the built form and environmental conditions of the locality.		
b) Ensure opportunities for passive surveillance of the public domain and entrance to the development.		
The front door must address the street at the ground level.	Not applicable	
The width of garage facades addressing the street shall not exceed 9m or 50% of the length of the frontage, whichever is the lesser.	Not applicable	
6.3.2 Detached Habitable Rooms and Studios		
The specific objectives are to:		
a) Ensure detached habitable rooms/studios provide an option for a dwelling to have detached living spaces/bedrooms without being fully self-contained.		
b) 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.		
c) Ensure detached habitable rooms/studios fit with the appearance of the principal dwelling.		
d) Ensure there are no adverse impacts on the amenity, privacy, or solar access of adjoining/neighbouring properties.		
Detached habitable rooms. <ul style="list-style-type: none"> Function as a part of the principal dwelling, and not as a separate dwelling. Rely on the principal dwelling for either a laundry, bathroom, or kitchen. Provide an all-weather connection between the detached habitable room and principal dwelling. 	Complies	<p>It is considered that the development functions as a detached habitable room and not as a separate dwelling.</p> <p>The submitted plans show an all weather connection to the principal dwelling and recommended conditions of consent will require that all cooking facilities be removed from the detached habitable room.</p>

6.3.3 Relocation of Second-Hand Dwellings		
<p>The specific objectives are to:</p> <ul style="list-style-type: none"> a) Minimise adverse visual amenity and character impacts when relocating second-hand dwellings. b) Ensure construction materials are sound and suitable for the intended use. c) Ensure that renovations are completed in a reasonable time frame. 		
<p>The dwelling being relocated is compatible with the existing and future character of the area.</p> <ul style="list-style-type: none"> • Capable of being restored prior to occupation. • An asbestos clearance certificate must be submitted. • All renovations are to be completed within six months of relocating the dwelling to the proposed site. 	Not applicable	
6.3.4 Fences and Walls		
<p>The specific objective is to:</p> <ul style="list-style-type: none"> a) Ensure boundary fencing is of a high quality, promotes safety and surveillance and does not detract from the streetscape or public domain. 		
<ul style="list-style-type: none"> • Front fences and walls along the primary frontage shall be no higher than 1.2m. • The secondary frontage shall be no higher than 1.8m. • Fencing does not exceed 10m in length without providing articulation for visual interest. • 50% transparency or for colourbond fencing, landscape screening shall be provided within a 1.5m for the full extent of the fence. • A front fence higher than 1.2m will only be supported on a classified road. • Maintains appropriate sight distances in accordance with the relevant Australian Standards. • Solid metal fencing shall not be erected along a primary or secondary frontage; 	Not applicable	
6.3.5 Universal Design		
<p>The specific objectives are to:</p>		

<p>a) Ensure that where an accessible or adaptable dwelling is proposed, the layout and design features accommodate the changing access and mobility requirements of residents and visitors.</p> <p>b) Promote ageing in place by extending the usability of dwellings to meet 'whole of life' needs of the community.</p>		
Access is provided from the car parking space to the entrance of the dwelling.	Not applicable	
6.3.6 Waste Management – Bin Storage, Presentation and Collection		
<p>The specific objectives are to:</p> <p>a) Ensure waste storage and recycling areas are designed to be conveniently reached and require minimal maintenance.</p> <p>b) Ensure waste storage and recycling areas are attractive and compliment the streetscape.</p> <p>c) Ensure appropriate kerbside frontage is provided for bin presentation and collection.</p>		
<ul style="list-style-type: none"> Bin storage areas must be identified on the site plan and located behind the front building line. 	Not applicable	
7 Secondary Dwellings		
<p>This Section applies to secondary dwellings and must be considered in addition to Section 5 of this Chapter.</p>		
<p>The specific objective is to:</p> <p>a) Ensure the secondary dwelling does not impact on the amenity of the principal dwelling or adjoining dwellings.</p>		
<ul style="list-style-type: none"> The proposed secondary dwelling shall comply with Clause 5.4(9) Secondary Dwellings Shoalhaven LEP 2014. The proposed secondary dwelling shall address State Environmental Planning Policy (Affordable Rental Housing) 2009. 	Not applicable	
8 Ancillary Structures and Non-Habitable Structures on Vacant Land		
<p>Sections 8.1 - 8.3 apply to ancillary structures which includes carports, garages, sheds, freestanding pergolas, swimming pools, tennis courts and the like.</p>		
<p>The objectives of Sections 8.1 – 8.3 are to:</p> <p>a) Minimise the impacts of ancillary structures on adjoining properties.</p> <p>b) Ensure that residents have access to ancillary buildings and structures that are consistent with domestic needs.</p>		
8.1 Density, Height and Setbacks		
<p>The specific objectives are to:</p>		

<p>a) Ensure that the bulk and scale of new development is compatible with the existing streetscape amenity and the existing or desired future character of the area.</p> <p>b) Minimise the visual impacts of elements of the development that exaggerate the built form and impacts negatively on desired future streetscapes.</p> <p>c) Encourage design that ensures that the amenity of surrounding development is properly considered and not adversely impacted.</p> <p>d) Allow adequate separation between buildings to promote natural light, solar access, ventilation, landscaping, and privacy.</p> <p>e) Minimise the impacts upon the site and surrounding land following construction of non-habitable structures before the construction of a dwelling.</p> <p>f) Retain the amenity of the public domain.</p>		
A33.1 The maximum floor space and wall height shall be in accordance with table 4.	Complies	No change to DA16/2488
Setbacks shall comply with the provisions in Table 1 and Table 2 (Section 6.1.2 of this Chapter).	Complies	No change to DA16/2488
8.2 Building Form and Design		
The specific objective is to:		
<p>a) Ensure that new development enhances and makes a positive contribution to the character of existing buildings and streetscapes and reinforces the built form and environmental conditions of the locality.</p>		
The width of garage facades addressing the street shall not exceed 9m or 50% of the length of the frontage, whichever is the lesser.	Complies	
8.3 Swimming Pools		
The specific objective is to:		
<p>a) Ensure the design of the swimming pool is safe and minimises impacts on the amenity of future and adjoining/adjacent living areas and principal private open space in relation to noise.</p>		
Refer to the Swimming Pool Act 1992 and associated regulations for information relating to swimming pool safety fencing and gate requirements.	Not applicable	
8.4 Use of Non-Habitable Structures		
Section 8.4 applies to non-habitable structures on vacant land prior to the construction of a dwelling. The construction of non-habitable structures on vacant land will only be considered where the structure is permissible with development consent.		
The specific objectives are to:		

<p>a) Ensure that non-habitable structures on vacant land are not used for habitable/residential purposes.</p> <p>b) Ensure a dwelling can be located on the land in the future.</p> <p>c) Minimise the impacts upon the site and surrounding land following construction of non-habitable structures before the construction of a dwelling.</p>		
A non-habitable structure on vacant land is only permissible with an approved dwelling.	Not applicable	
9 Advisory Information		
9.1 Other legislation or policies you may need to check		
Council Policies & Guidelines	<ul style="list-style-type: none"> • Shoalhaven Contributions Plan • Asbestos Policy • The Shoalhaven Plant Species List 	
External Policies & Guidelines	<ul style="list-style-type: none"> • Building Code of Australia • Livable Housing Design Guidelines • NSW Land & Environment Court Planning Principles • Relevant Australia Standards • Planning for Bushfire Protection 	
Legislation	<ul style="list-style-type: none"> • Roads Act 1993 • Swimming Pool Act 1992 (and associated regulations) • State Environmental Planning Policy (Affordable Rental Housing) 2009 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 • Shoalhaven Local Environmental Plan 2014 • Shoalhaven Local Environmental Plan (Jerberra Estate) 2014 	

Likely impacts

The likely impacts of the development have been considered within this report and are deemed to be acceptable, subject to conditions.

Suitability of the site for the development

The site is suitable for the proposed development.

Public interest

The proposal is in the public interest. It is considered appropriate with consideration to the zoning and the character of the area. The development proposal is appropriate and is consistent with surrounding land uses. The proposal is not expected to have negative cumulative impacts.

Submissions and consultation

Community

The proposed development was notified in accordance with the requirements of the Shoalhaven Development Control Plan 2014. In response, 10 submissions were received highlighting the following issues:

Issue	Planning comment / response
The applicants have carried out unlawful works.	The applicants have previously been subject to compliance action by Council. The applicants have lodged a Building Certificate Application with Council in respects of the unlawful works.
The use of the building currently contravenes conditions of development consent imposed by Council.	The applicants have previously been subject to compliance action by Council. The applicants have lodged a Development Application seeking to legalise the use of the building.
The capacity of the effluent treatment system.	The applicants are required to supply confirmation by a suitably qualified geotechnical consultant that the existing effluent treatment system (septic tank) is suitable to cater for the additional potential bedrooms as defined by Sydney Water in <i>Neutral or Beneficial Effect on Water Quality Assessment Guidelines (2015)</i> .
The applicants are required to comply with <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	This depends on how the building is classified. If the building resembles a dwelling, then it would become a <i>BASIX affected building</i> as defined in the <i>Environmental Planning and Assessment Regulation 2000</i> . A 'detached habitable room' as such is not necessarily a <i>BASIX affected building</i> , or <i>BASIX affected development</i> but may be <i>BASIX Optional Development</i> .
Use of the proposed development negatively impacts on adjoining neighbours' amenity through noise emissions.	There are prescribed conditions in the <i>Protection of the Environment Operations Act 1997 No 156</i> which regulate noise emitted from a residential building. Should this application be determined by way of approval, conditions of development consent will be imposed further regulating this noise.
The proposed development is not permissible in the land use zone RU1	Depending on the classification of the building, it may be permissible in the RU1 zone. A detached habitable room would be permissible, ancillary to the use of a dwelling house, a dual occupancy (detached) or detached secondary dwelling, would not be permissible in the zone.

Internal Referrals

No internal referrals required.

External Referrals

No external referrals required.

Conclusion

With regards to the provisions of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory.

Recommendation

That Council, as the consent authority, refuse development consent to DA20/1494 for the following reasons:

1. The proposed development represents a building use that contravenes clause 2.1 (Land Use Zones) of the SLEP 2014 and is not permissible in the RU1 Land Use Zone.
2. The proposed development does not comply with performance criteria P27 of the SDCP 2014 Chapter G12.
3. The proposed development does not meet the SDCP 2014 Dictionary definition of a 'detached habitable room'.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest.

Assessment

Report prepared by	Harley Lockhart
Position	Development Assessment Officer
Signature	
Delegation	Assessment Officer
Report date	12/08/2020
<p>Conflict of interest declaration:</p> <p>In preparing this report, I have considered the potential for a conflict of interest under the Code of Conduct and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.</p>	



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 APPLICATION DEVELOPMENT CONSENT

Environmental Planning and Assessment Act, 1979
DA20/1494

TO:

PDC Planners
PO Box 214
Wollongong NSW 2520

being the applicant(s) for DA20/1494 relating to:

25 Sunnymede Lane, BERRY - Lot 3 - DP 713138

APPROVED USE AND OR DEVELOPMENT:

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

DETERMINATION DATE: Error! Unknown document property name.

Pursuant to the Section 4.18 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: Error! Unknown document property name.

CONSENT TO LAPSE ON: Error! Unknown document property name.

This consent is valid for five years from the date hereon.

In accordance with Section 4.53 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.

DETAILS OF CONDITIONS:

The conditions of consent and reasons for such conditions are set out as follows:

DE21.33 - Attachment 10

Determination Notice by way of Refusal - Page 2 of 11 - DA20/1494

PART A: GENERAL CONDITIONS

1. General

The consent relates to Change of use of existing ancillary structure (shed) to detached habitable rooms as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan	-	-	-
Barn Floor Plans	-	-	Nov 2019
Barn Elevations and Section	-	-	Nov 2019
Structural Assessment Report	098.2019 – Rev.1	Element Consulting Engineers	April 2020
Report o Geotechnical Investigation for Site Classification	Terra20-014.Rep1.Rev0	TerraInsight	27/2/2020

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. Prescribed Conditions

The development must comply with the [Prescribed Conditions of Development Consent](#), Division 8A, *Environmental Planning and Assessment Regulation 2000*, as applicable.

3. Rectification Works

The rectification works as recommended in the Structural Assessment Report, Ref: 098.2019 – Rev.1, prepared by Element Consulting Engineers must be undertaken.

4. Occupation / Use

The development must not be occupied or used before an Occupation Certificate has been issued by the Principal Certifier. If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e. a security).

5. Use of Detached Habitable Room

a) The detached habitable rooms (as shown on the approved plans) shall not be fully self-contained or used for any separate occupation to the dwelling. In this regard the detached habitable rooms shall not be fitted with:

- i) Any cooking facilities
- ii) Any clothes washing facilities comprising of at least one washtub and space for a washing machine.

Determination Notice by way of Refusal - Page 3 of 11 - DA20/1494

- b) The detached habitable rooms and the dwelling house must operate as a single dwelling house.
- c) An all-weather connection, in the form of a path, shall be constructed between the existing dwelling and the detached habitable rooms. The all-weather connection shall be maintained for the life of the development.
- d) The detached habitable room must only be occupied by members of or visitors to of the main dwelling and must not be used for commercial tourist and visitor accommodation. A separate Development Application would be required to change to use of the detached habitable room to allow for short term rental accommodation or tourist and visitor accommodation.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

- 6. **Construction Certificate**
A Construction Certificate must be obtained from either Council or a certifier before any building work can commence.
- 7. **Appointment of Principal Certifier**
Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.
- 8. **Notice of Commencement**
Notice must be given to Council at least two (2) days prior to the commencement of building or subdivision work by completing and returning the form ['Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority'](#)
- 9. **Toilet Facilities - Temporary**
Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
 - a) be a standard flushing toilet connected to a public sewer, or
 - b) have an onsite effluent disposal system approved under the Local Government Act 1993, or
 - c) be a temporary chemical closet approved under the Local Government Act 1993.
- 10. **Run-off and Erosion Controls**
Prior to the commencement of site works, run-off and erosion controls must be implemented and maintained during construction to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:
 - a) diverting uncontaminated run-off around cleared or disturbed areas.

Determination Notice by way of Refusal - Page 4 of 11 - DA20/1494

- b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.
- c) preventing the tracking of sediment by vehicles onto roads.
- d) stockpiling topsoil, excavated materials, construction and landscaping supplies and debris within the lot.

11. Dilapidation Report

The developer must engage a competent person to prepare a dilapidation report in respect of the neighbouring premises and adjacent public infrastructure, including adjacent kerbs, gutters, footpaths (formed or unformed), driveways (formed or unformed), carriageway, reserves and the like to document evidence of any existing damage.

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 0.9metres of the shared boundary.

Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. The repairs must be completed by the developer at the developer's cost.

Not less than seven (7) days before works commence, the developer must notify the owner of any affected property of the intention to carry out approved works. The developer must also furnish the owner with details of the approved work.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

12. Modification of Conditions of Existing Development Consent – DA16/2488

Prior to issue of a Construction Certificate, the person benefitting from this development consent is to give notice of modification of development consent DA16/2488 as required by clause 97 of the Environmental Planning and Assessment Regulation 2000, specifically:

- a) Modification of condition 3 to specify that "the detached shed shall not be used for any industrial or commercial purposes"

13. Waste Management Plan

Prior to the issue of a Construction Certificate a Waste Management Plan (WMP) must be prepared in accordance with Chapter G7 of Shoalhaven Development Control Plan 2014. The WMP must be approved by Council or the Certifier prior to works commencing.

14. Long Service Levy

Prior to the issue of a Construction Certificate any long service levy payable under the [Building and Construction Industry Long Service Payments Act 1986](#) and prescribed by the [Building and Construction Industry Long Service Payments Regulation 2017](#) must be paid or, where such a levy is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

15. National Construction Code – cl. 93

Determination Notice by way of Refusal - Page 5 of 11 - DA20/1494

Council considers that pursuant to clause 93 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regs)*, it is appropriate to require the existing building to be upgraded to partial conformity with the National Construction Code (NCC) in force at the date of issue of the Construction Certificate. In this regard, the entire building is to be upgraded to meet the performance requirements of the NCC: (modify as required)

- a) Category 1 fire safety provisions of the as defined by EP&A Regs.
- b) Structural Professional Engineer (as defined by the NCC) certification is to be provided certifying the structural adequacy of the entire building/s are in accordance with the NCC for the proposed use.

Prior to the issue of a Construction Certificate, plans and specifications must be provided to the satisfaction of the Certifier, detailing how the existing building will be upgraded, as outlined above, to conformity with the NCC in force at the date of issue of the Construction Certificate.

16. Soil and Water Management Plans (SWMP)

Prior to the issue of a Construction Certificate, a Soil and Water Management Plan must be prepared by a Professional Engineer, (as defined in the National Construction Code) to the satisfaction of the Certifier.

- a) All implemented measures must:
- b) not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).
- c) be maintained at all times.
- d) not be decommissioned until at least 70% revegetation cover has been established.

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

NIL

PART F: DURING WORKS

17. Hours for Construction

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

18. Noise

The noise from all demolition and construction activities associated with the approved development must comply with the work practices as outlined in the NSW Department of Environment & Climate Change Interim Construction Noise Guideline. The LA10 level measured over a period of not less than 15 minutes during works must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

19. Aboriginal Objects Discovered During Excavation

Determination Notice by way of Refusal - Page 6 of 11 - DA20/1494

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately
- b) The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

20. Archaeology Discovered During Excavation

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) All work must stop immediately in that area
- b) In accordance with the *Heritage Act 1997*, the Office of Environment, Energy and Science must be advised of the discovery.

21. Maintenance of Site and Surrounds

During works, the following maintenance requirements must be complied with:

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- d) The developer must maintain the approved soil water management measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.
- e) During construction:
 - i) all vehicles entering or leaving the site must have their loads covered, and
 - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.

22. Waste Management Plan

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not 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 WMP must be demonstrated by the submission of tip receipts to the Certifier.

Note: "Waste" is defined in the Dictionary to the Protection of the Environment Operations Act 1997 (POEO Act).

23. Earthworks and Excavation

Determination Notice by way of Refusal - Page 7 of 11 - DA20/1494

- a) Approved earthworks (including any structural support or other related structure for the purposes of the development):
 - i) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.
 - ii) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.
 - iii) that is fill brought to the site, must contain only virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 to the *Protection of the Environment Operations Act 1997 (POEO Act)*.

Documentation must be provided to the Certifier certifying that imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste.
 - iv) that is excavated soil to be removed from the site, must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.
- b) Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-78544-2) published by Safe Work Australia in October 2018

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

24. Compliance

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e. a security).

25. BASIX

Prior to the issue of an Occupation Certificate, documentary evidence prepared by a suitably qualified person must be submitted to the Certifier confirming that all commitments listed in the BASIX Certificate(s) are fulfilled in accordance with Clause 97A of the *Environmental Planning and Assessment Regulation 2000*.

26. Dilapidation Report – Evidence

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier and Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION / STRATA CERTIFICATE

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

27. Noise

Determination Notice by way of Refusal - Page 8 of 11 - DA20/1494

The use of the approved development must not give rise to transmission of unacceptable vibration or an offensive noise to any place of different occupancy or the public in accordance with the NSW Environment Protection Authority's *Noise Policy for Industry and Noise Guide for Local Government* (guideline) and the *Protection of the Environment Operations Act 1997 (POEO Act)*.

28. Overland Stormwater Flow, Redirecting and/or Concentrating Stormwater

All excavation, backfilling and landscaping works must not result in:

- a) 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.
- b) the redirection and/or concentration of stormwater flows onto neighbouring properties.

29. Landscaping – Noxious and Environmental Weeds

The planting of plant species listed in the South East Regional Strategic Weed Management Plan 2017 – 2022 is prohibited for the life of the development. No exotic perennial grasses listed on the 'Final Determination of the NSW Scientific Committee for the key threatening process Invasion of native plant communities by exotic perennial grasses' must be sown within the outer protection area or the asset protection zone for the life of the development. Native grasses must be sown in these areas, as this is the interface between disturbed areas and the remaining native vegetation for the life of the development.

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

NIL

PART K: REASONS FOR CONDITIONS

The application has been assessed as required by section 4.15 of the *Environmental Planning and Assessment Act 1979* and has been determined by the granting of conditional development consent.

Statutory requirements

The development proposal, subject to the recommended conditions, is consistent with:

- a) the objects of the Environmental Planning and Assessment Act, 1979.
- a) the aims, objectives and provisions of the applicable environmental planning instruments,
- b) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- c) the aims, objectives and provisions of relevant Council policies.

Public notification

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2000* and Council's Community Consultation Policy for Development

Determination Notice by way of Refusal - Page 9 of 11 - DA20/1494

Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

Submissions

Any submissions received during the public notification period are available on [DA Tracking](#)

Community views

Issues and concerns raised by the community in submissions have been considered in the assessment of the application and, where appropriate, conditions have been included in the determination to mitigate any impacts.

Suitability of the Site

The application has been approved because the development proposal is considered to be suitable for the site.

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.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the *Water Management Act 2000* have been applied as required.

Impacts of the Development

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

- a) the development will not result in unacceptable adverse impacts on the natural and built environments.
- b) the amenity and character of land adjoining and in the locality of the development is protected.
- c) any potential adverse environmental, social or economic impacts of the development are minimised.
- d) all traffic, car parking and access arrangements for the development will be satisfactory.
- e) the development does not conflict with the public interest.

PART L: 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.

Determination Notice by way of Refusal - Page 10 of 11 - DA20/1494

Review of Modification Decision

An application for a review under section 8.3 of the Act is to be made 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.

PART M: GENERAL ADVICE

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "*Design for Access and Mobility*".

Disclaimer –Conveyancing Act 1919 – Division 4 – 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.

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.

Determination Notice by way of Refusal - Page 11 of 11 - DA20/1494

SIGNED on behalf of Shoalhaven City Council:

Choose an item.

Choose an item.

Planning, Environment & Development Group

Planning Report – S4.15 Assessment - 95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/2280
Property	95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892
Applicant(s)	Carl Sebastian Reijo Tauni
Owner(s)	C S R Tauni and R E Tauni

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

1. Detailed Proposal

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

2. Subject Site and Surrounds

- The subject site currently contains an approved single dwelling, as approved by BA81/1146.
- The subject site is zoned R2 Low Density Residential and is approximately 923.19m² in area.
- The subject site has existing access from Greenbank Grove.
- The subject site is identified as being wholly flood prone.
- The subject site adjoins land zoned R2 Low Density Residential.
- The site is located within an established residential area. Adjoining lots to the north, east, south and west all contain single dwellings.



Figure 1- Subject Site

Planning Report – S4.15 Assessment - 95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892

3. Background

Post Lodgement

- 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.
- 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.

Site History and Previous Approvals

Darts - since 1st July 2005

Application	Appl. Date	Application Type	Proposal	Status	Completed
DR20/2257	30/11/2020	Sewer Connection	New Dwelling - Detached Dual Occupancy - Two Lot Torrens Title Subdivision	Incomplete	
DA20/2280	30/11/2020	Development Application	Dual Occupancy (Detached 1 New Unit) & Torrens Title Subdivision	Incomplete	
OC20/2181	27/11/2020	Final Occupation Certificate	Dwelling Alterations, Awning & Deck	Approved	17/11/2020
CC20/1503	01/06/2020	Construction Certificate	Dwelling Alterations, Awning & Deck	Approved	27/05/2020
DA20/1255	19/03/2020	Development Application	Dwelling Alterations, Awning & Deck	Approved	11/05/2020

Old Applications prior to 2nd Sept 1996

Application	Proposal	Decision	Owner	Original Lot
BA81/1146	BV Dwelling	Approved	Ruffin AP&M	
ST81/0489		Approved	Ruffin AP&M	

BA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
SD90/4081	25/10/1990			

4. Consultation and Referrals

Internal Referrals

Referral	Recommendation	Comment
Development Engineer	<p>No objections subject to recommended conditions of consent (dated 05/03/2021).</p> <p>It is recommended that vehicular access to the existing dwelling be formalised. This would be conditioned for prior to the issue of a Subdivision Works Certificate.</p> <p>As per the applicant's request to amend the internal</p>	Conditions to be imposed should the application be determined by approval.

Planning Report – S4.15 Assessment - 95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892

	driveway construction standard for proposed Lot 1, the Development Engineer confirmed that the construction of the driveway to a gravel standard remains consistent with Chapter G13, SDCP 2014 and raised no objections (email dated 23/03/2021).	
Natural Resource & Floodplain Section	No objections subject to recommended conditions of consent (dated 21/12/2020).	Conditions to be imposed (with minor amendment) should the application be determined by approval. Changes are required with regard to placement of conditions (i.e. recommended conditions under General Part A that were better suited under "Prior to Issue of a Construction Certificate" Part D.
Shoalhaven Water	Notice provided (dated 25/01/2021).	Conditions to be imposed should the application be determined by approval. The Notice is to be issued once application is sought for a Certificate of Compliance, in accordance with the requirements of section 305, Water Management Act 2000.
GIS	No objections subject to recommended property addressing (dated 15/12/2020).	Condition to be imposed, should the application be determined by approval.

External Referrals

Not required.

5. Statutory Considerations

Environmental Planning and Assessment Act 1979

Section 4.46 – Integrated Development

Not applicable.

Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017

The proposed area of clearing is based off the minimum lot size. The minimum lot size for the subject site is 500m². Reference to the clearing thresholds provided under s.7.1 of the Regulation the clearing threshold is **0.25ha**. The clearing required for the proposed development is **7 trees** which is under the clearing threshold.

Planning Report – S4.15 Assessment - 95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892

Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply
Less than 1 ha	0.25ha or more
1ha to less than 40 ha	0.5ha or more
40ha to less than 1000ha	1ha or more
1000ha or more	2ha or more

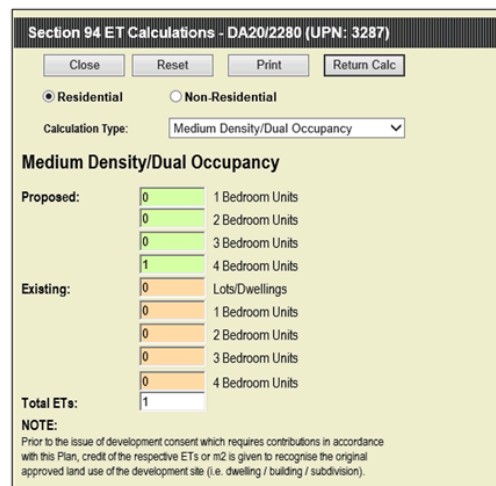
A site inspection has been undertaken along with a desktop review and it is concluded that the proposed development is unlikely to have a significant impact.

A review of the proposed development against the BOS triggers has concluded that the proposal does not trigger entry into the BOS.

Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan). The development is most aptly characterised as an Medium Density/Dual Occupancy development for the purpose of calculating contributions under the Plan.

The contributions would be payable prior to the issue of a Construction Certificate.



Section 94 ET Calculations - DA20/2280 (UPN: 3287)

Close Reset Print Return Calc

☒ Residential ☐ Non-Residential

Calculation Type: Medium Density/Dual Occupancy

Medium Density/Dual Occupancy

Proposed:

- 0 1 Bedroom Units
- 0 2 Bedroom Units
- 0 3 Bedroom Units
- 1 4 Bedroom Units

Existing:

- 0 Lots/Dwellings
- 0 1 Bedroom Units
- 0 2 Bedroom Units
- 0 3 Bedroom Units
- 0 4 Bedroom Units

Total ETs: 1

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building / subdivision).

Project	Description	Rate	Qty	Total	GST	GST Incl
02AREC0004	Planning Area 2 - Recreation facilities upgrade various locations	\$424.46	1	\$424.46	\$0.00	\$424.46
CWAREC0005	Shoalhaven Community and Recreational Precinct ScaRP Cambewarra Road Bomaderry	\$2,522.83	1	\$2,522.83	\$0.00	\$2,522.83
CWCFAC0007	Shoalhaven Regional Gallery	\$72.29	1	\$72.29	\$0.00	\$72.29
CWCFAC2002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$1,540.56	1	\$1,540.56	\$0.00	\$1,540.56
CWCFAC2006	Shoalhaven City Library Extensions, Berry Street, Nowra	\$867.56	1	\$867.56	\$0.00	\$867.56
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	1	\$138.13	\$0.00	\$138.13
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	1	\$202.07	\$0.00	\$202.07
CWMGMT3001	Contributions Management & Administration	\$574.39	1	\$574.39	\$0.00	\$574.39
				Sub Total:		\$6,342.29

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GST Total: \$0.00
Estimate Total: \$6,342.29

Council Policies

Dealing with Development Applications Lodged by Staff or Councillors– POL 16/235

As per the provisions of 3.2 and 3.3, the following assessment has been conducted against the policy listed above.

3.2 Relationship between Assessing Officer and Applicant and/or Land Owner (when Applicant and/or Land Owner is a Council Staff Member or Councillor)

3.2.1 If a Council staff member is the applicant and/ or land owner, any discussion relating to the affected DA processing, status, etc, must be undertaken in the staff member's (ie, applicant) own time, in a public location (eg, foyer, front counter) and the applicant should be treated in the same manner as any other member of the public.

One of the registered landowners is a Council staff member. As such, the application has not been discussed with the staff member and has been treated in the same manner as any other DA.

3.2.2 If a Councillor or staff member is the applicant and/ or land owner, the Councillor or staff member must not use his/ her position to influence the Assessing Officer in the processing of his/ her application.

The land owner has not been involved with the assessment and is therefore considered to not have any influence in the assessment of the DA.

3.2.3 The assessing officer is to ensure that all processes undertaken during the assessment of any DA are in accordance with Council's policies and procedures and the applicant is neither given any special treatment nor discriminated against.

The requirements of any applicable policies and procedures have been stringently applied to the application assessment without any special treatment nor discrimination.

3.3.1 The scale and extent of the DA lodged eg, pergola vs larger commercial proposal;

The DA seeks approval for a detached dual occupancy and subsequent Torrens Title subdivision of the development.

3.3.2 The proposed DA seeks a substantive variation to any performance-based DCP or Council Policy;

The application seeks a small variation to Chapter G13: Medium Density and Other Residential Development regarding the rear setback listed in Table 2: Setbacks for dual occupancy development in R1, R2, R3 and RU5 zones. The rear setback listed is 3m (average) whereas the proposed development seeks a rear setback of 2m, a variation of 1m or 33%. This proposed variation is not considered to be a substantive variation as per the policy.

3.3.3 The proposed DA creates significant public interest and/ or large numbers of submissions;

The proposed DA was neighbour notified in accordance with the Community Consultation policy. Accordingly, no submissions were received during the notification period. There has not been any public interest in the application.

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3.3.4 *Whether an independent assessment and/ or peer review has been undertaken;*

An assessment has been undertaken and internally peer reviewed. The land owner has not been involved in the peer review assessment.

3.3.5 *The applicant and/ or land owner is a staff member within the development assessment sections of the Planning, Environment and Development (PED) Group; and*

One of the land owners is a staff member within the Development Services Section of the City Development Group. Therefore, the application must be reported to Council for determination.

3.3.6 *The extent of any public perception of a possible conflict of interest that may exist between the DA lodged and the applicant's and/ or landowner's relationship with the PED Group (ie, relevant assessment staff)*

The application is to be reported to Council for determination as there is a small possibility for public perception of a possible conflict of interest given the role of the land owner within Council.

6. 4.15 Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

i) Environmental Planning Instruments

Instrument
Shoalhaven LEP 2014
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Coastal Management) 2018
State Environmental Planning Policy No 55—Remediation of Land

• SEPP (Coastal Management) 2018

The subject site is identified as within the coastal environment area and the provisions of clause 13 have been considered. Accordingly, the development is unlikely to cause any adverse impact on those matters listed under subclause (1). The development has been sited to avoid any adverse impact referred to in subclause (1) and Council is satisfied that the development will not cause any increased risk of coastal hazards on the subject site or other land.

The proposed development is consistent with the objectives of the SEPP.

• SEPP 55 Remediation of Land

Question	Yes	No
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	✓ Proceed to Question 3	Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?	Proceed to Question 3	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: ▪ Child care facility ▪ Educational use	Proceed to Question 5	✓ Proceed to Question 4

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Question	Yes	No
<ul style="list-style-type: none"> Recreational use Health care use Place of public worship Residential use in a commercial or industrial zone 		
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	Proceed to Question 5	✓ Proposal satisfactory under SEPP 55 and DCP.
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	Proposal satisfactory under SEPP 55 and DCP.

Council has no records indicating the site has previously been occupied for a purpose of a listed nature (per Table 1 of the Managing Land Contamination Planning Guidelines).

Further, the site was inspected on 8 January 2021, with there being no indication of obvious contamination. As such, there are no concerns from a contaminated land perspective, and it is considered that the proposal is satisfactory under SEPP No 55 and SDCP 2014.

• **SEPP Basix 2004**

Question	Answer
Are the street address, postcode and LGA correct on the BASIX certificate?	YES
Are the dwelling type and the number of bedrooms correct?	YES
Is the site area on the certificate correct?	YES
Is the roof area correct?	YES
Are the conditioned and unconditioned floor areas on the certificate correct?	YES
Are the landscaping/lawn areas correct on the certificate?	YES

Certificate No. 1131065S

• **Shoalhaven LEP 2014**

Land Zoning

The land is zoned R2 Low Density Residential under the SLEP 2014.

Characterisation and Permissibility

The proposal is best characterised as *dual occupancy (detached)* and *subdivision of land* under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.

Zone objectives

Objective	Comment
To provide for the housing needs of the community within a low-density residential environment.	The proposed detached dual occupancy creates an additional housing opportunity on an existing lot that is consistent with the low-density character of the area.

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<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed dual occupancy is not inconsistent with this objective.
<i>To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.</i>	The proposed dual occupancy complies with this objective.

SLEP 2014 Clauses

Clause	Comments	Complies/ Consistent
Part 2 Permitted or prohibited development		
2.6 Subdivision – Consent requirements	Subdivision is sought through this application.	Consistent.
Part 4 Principal development standards		
4.1A Exceptions to minimum lot sizes for dual occupancies and multi dwelling housing	A detached dual occupancy in the R2 zone requires 700m ² for Torrens Title subdivision to be permissible in accordance with subclause (2). The subject site is 923.19m ² . The subdivision is permissible as per Subclause (4), as the subdivision is to be in conjunction with an approved dual occupancy to enable each of the individual dwellings to have a separate title.	Complies.
Part 7 Additional local provisions		
7.1 Acid sulfate soils	Development consent is being sought for development on Class 5 land. The subject site is within 500m of Class 1 and 2 soils; however, the water table is unlikely to be altered as an outcome of the proposed development.	Complies.
7.2 Earthworks	Earthworks are ancillary to the development to the development (dual occupancy). The likely impacts and effects of the earthworks have been considered and appropriate conditions relating to erosion and sediment control are to be imposed to mitigate the impacts of the development.	Complies.
7.3 Flood Planning	Flood planning has been considered as the property is entirely flood affected. It is considered that the proposed development is compatible with the land's flood hazard. The proposal includes minor associated earthworks that will raise the new dwelling above the flood level. A flood report prepared by SET Consultants accompanies the proposed development application. As such, it is considered the provisions of subclause (3) have been satisfied.	Complies.

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7.11 Essential services	Essential services are available to the site as an existing dwelling is approved on the site that has access to services.	Complies
7.20	The proposed development will not have any adverse impacts to the cultural or environmental values of the Jervis Bay area.	Complies

ii) Draft Environmental Planning Instrument

Draft Illawarra Shoalhaven Regional Plan 2041 does not raise any additional matters for consideration in this application.

iii) Any Development Control Plan

- **Shoalhaven DCP 2014**

Generic Chapters
G1: Site Analysis, Sustainable Design and Building Materials
The application has considered the opportunities and constraints of the site.
G2: Sustainable Stormwater Management and Erosion/Sediment Control
Compliance with the applicable acceptable solutions of Chapter G2 has been achieved with the following being specifically noted: <ul style="list-style-type: none"> • An erosion and sediment control plan has been submitted with the application which is to be conditioned in the consent. • A stormwater plan accompanied the application which indicated the point of discharge for the development. Further, conditions of consent were recommended by the Development Engineer in this regard.
G3: Landscaping Design Guidelines
A suitable landscaping plan has been provided in accordance with the objectives of this chapter and the requirements set by G13.
G4: Removal and Amenity of Trees
The proposed development proposes to remove 7 trees and a tree stump as part of the application. 6 of the trees are Casuarina (She-Oak) and 1 is a Eucalyptus (Gum Tree). None of the 7 trees have a hollow or are heritage listed. The proposed clearing is under 0.25ha within an urban area. The proposed clearing is considered to be consistent with the objectives of G4.
G7: Waste Minimisation and Management Controls
A Waste Management Plan (WMP) was submitted as part of the DA. Compliance with the submitted WMP would be required as a condition of consent.
G11: Subdivision of Land
The development generally complies with the provisions of this chapter (refer to Appendix A).

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G13: Medium Density and other Residential Development

The development is generally compliant with the provisions of this chapter, albeit with a variation (refer to Appendix B for a full assessment). Council notes that there are departures proposed to Acceptable Solution A5.1, which states that dual occupancy development shall comply with the setback provisions in Table 2 (pg 12). The setback provision to be varied is the rear setback, which is to be 3m (average).

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 one (1m) metre towards 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."

The applicant proposes to site the second dwelling 2m from the rear setback, a variation of approximately 33%. 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.

The minor non-compliance is not overbearing to the street and avoids loss of view, undue overshadowing and privacy, there is no traffic safety impacts. The minor non-compliance results in a better outcome for the site by enabling greater separation between the existing dwelling on the site and increases space for on-site traffic maneuvering and parking.

Furthermore, a departure is proposed for Acceptable Solution A13.1, relating to the driveway setback. Driveways are to be setback a minimum of 0.5m minimum from the side/or rear boundary to accommodate appropriate landscape elements. A variation is sought to enable appropriate vehicle maneuvering on the site to achieve appropriate access to and from the site in a forward motion.

The applicant provided the following justification:

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."

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.

G21: Car Parking and Traffic

The development is generally compliant with the provisions of this chapter, albeit with a variation proposed to 5.1 Car Parking Schedule. As per 5.1 Car Parking Schedule, any dual occupancy must provide 2 spaces where the dwelling contains 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. This is considered a minor non-compliance; however,

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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.

The existing dwelling currently does not have any formalised car parking. The development application proposes to install a carport behind the building line to create one covered car parking space. A variation is sought as 2 spaces would be required. The application is silent on access improvement to the existing dwelling. As per the recommended conditions of the development engineer, the access to the dwelling will need to be formalised. It is considered that the second car parking space will be provided within the driveway as a stacked parking arrangement. Updated plans showing this detail will be required to be provided prior to CC stage.

A variation is furthermore proposed to Acceptable Solution A7.2, which requires a setback of 0.5m for driveways for landscaping, as also required by A13.1 of Chapter G13. The proposed variation is for a section of the driveway to enable on-site vehicle manoeuvring. This section is proposed to be less than 0.5m from the side boundary. This minor non-compliance is considered appropriate to improve traffic safety and enable forward access to and from the site and to prevent on-street manoeuvring.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Nil

iv) Environmental Planning and Assessment Regulation 2000

Clause	Comment
cl.92 Additional matters that consent authority must consider	Additional matters have been considered. Demolition is not sought nor is the development on a site subject to a subdivision order made under Schedule 5 to the Act.
cl.97A Fulfilment of BASIX commitments	The fulfilment of BASIX requirements is to be conditioned.
Cl98 Compliance with the BCA and insurance requirements	Conditions to be imposed to ensure compliance with the BCA
98A Erection of signs	Whilst building works are completed, a sign is to be displayed as per the requirements of clause 98A.

v) REPEALED

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	Subject to recommended conditions of consent as detailed in this report, it is considered that there will be no adverse impacts upon the natural environment.
Built Environment	It is considered that there will be no adverse impacts upon the built environment.
Social Impacts	It is considered that there will be minimal social impacts.

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Head of Consideration	Comment
Economic Impacts	No adverse economic impacts are envisaged.

(c) Suitability of the site for the development

Subject to recommended conditions of consent, it is considered that the site will be suitable for the development.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. No submissions were received by Council during the notification period.

(e) The Public Interest

The proposed dual occupancy development complies with the provisions of SLEP 2014 and is broadly consistent with the SDCP 2014 (albeit with minor departures proposed to Acceptable Solution A5.1 of Chapter G13 in relation to the rear setback of the proposed single dwelling and Acceptable Solution 13.1 in relation to driveway setback to the side boundary (in addition to Chapter G21 – Acceptable Solution 7.2)). Subject to conditions of consent, the development is not expected to have any negative impacts on the environment or the amenity of the locality as detailed in this report.

Delegations

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the Development Application. As the application is for a staff member of Development Services, the application must be determined by the elected Council.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/2280 be approved subject to appropriate conditions of consent.

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Appendix A – Assessment Checklist: Chapter G11 – Subdivision of Land

5.9 – Utility Services

A66.1 Design and provision of utility services, including broadband, conforms to the requirements of the relevant service authorities.

Comment: The provision of services is available to the site and subject to conditions of any consent granted.

A67.2 Compatible services are located in common trenching.

Comment: Noted. The site is located within an older area that is serviced by overhead powerlines.

A67.3 Subdivisions are located where there is adequate water for domestic and fire-fighting purposes.

Comment: Satisfied.

A67.4 Subdivision is staged to ensure that each stage is fully serviced before a new area is released.

Comment: Not applicable.

A67.5 Water supply and sewerage networks are accessible, easy to maintain and cost effective based on life cycle costs.

Comment: Satisfied.

A67.6 Adequate buffers between utilities and houses are provided, to protect residential amenity and health provide.

Comment: Satisfied.

A67.7 Underground electricity supply is provided to residential areas, except where major technical difficulties are encountered, such as the presence of significant rock.

Comment: Noted. Underground to be used for the new dwelling. The existing dwelling is serviced by above-ground powerlines due to the age of the residential area.

A67.8 Provision of reticulated gas is subject to requirements of the service provider.

Comment: Noted.

A67.9 Underground telecommunications service, including NBN, is to be installed where underground electricity is to be provided.

Comment: Noted. As above.

A67.1 Where required, the subdivider is to provide, at no cost to Council:

- Suitable easements for water and sewer rising main;
- An agreed area of land for pumping stations;
- Easements or land for access to pumping stations;

Comment: Not applicable.

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5.10 – Stormwater Drainage

A68.1 Design and construction of systems is in accordance with the requirements of this Section and Council's *Engineering Design Specifications - D5 Stormwater Drainage Design*.

Comment: This is to be in accordance with the submitted stormwater plans and conditions recommended by the Development Engineer.

A69.2 Detention basins may be considered/required where downstream systems are inadequate. Design is to be based on the 1% AEP storm event.

Comment: Not applicable at this stage.

A69.1 Provide an overland flow path capable of containing the 1% AEP rainfall event and/or provide adequate detention storage.

Comment: Complies.

A70.2 Connection of a new system to an existing system with capacity less than 1% AEP:

- Satisfies the requirement of the 1% AEP event; and
- Provides a suitable transition between the systems.

Comment: Not applicable.

A70.1 Habitable floor levels are consistent with the requirement in Chapter G9: Development on Flood Prone Land of this DCP.

Comment: Noted.

A71.2 Subdivision and engineering plans show minimum floor levels adjacent to drainage paths, including roads where they are used as overland flow paths in the design concept.

Comment: Not applicable.

A71.1 Waterways and riparian/wetland vegetation, where they exist, are incorporated into the drainage design, with respect to threatened species and their habitats.

Comment: Not applicable.

A72.2 Sports grounds and other less flood sensitive land uses are incorporated into the local drainage corridor.

Comment: Not applicable.

A72.3 Detention basins, where necessary, are located to control stormwater subject to preserving and/or enhancing the natural integrity of the stream.

Comment: Noted.

A72.4 System design ensures there are no flow paths that increase the risk to public safety and property.

Comment: Not applicable.

A72.1 Design and construction of minor storm drainage systems is in accordance with this Section and *Engineering Design Specifications Section D5 Stormwater Drainage Design*.

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Comment: This is to be in accordance with the submitted concept stormwater plan dated 16/02/2021, prepared by SET Consultants.

A73.2 Drainage networks are well defined to ensure there are no hidden flow paths that could reduce their capacity to convey design flows.

Comment: Noted.

A73.3 Design of minor systems takes full account of existing downstream systems.

Comment: Noted.

A73.1 Minor road drainage systems are designed for the 20% AEP event.

Comment: Noted.

A74.2 Low flow pipes within public reserves contain 25% of the 10% AEP flow.

Comment: Noted.

A74.1 Design and construction of minor storm drainage systems is in accordance with this Section and Engineering Design Specifications Section D5 Stormwater Drainage Design.

Comment: This is to be in accordance with the submitted concept stormwater plan dated 16/02/2021, prepared by SET Consultants.

A75.2 Access for maintenance is available where a portion of the minor system lies within a site.

Comment: Not applicable.

A75.3 Selection of materials is based on their suitability, durability, maintainability and cost effectiveness.

Comment: Noted.

A76.1 Where site topography prevents the discharge of stormwater directly to the street gutter or a Council controlled piped system, inter-allotment drainage is provided to accept runoff from all existing or future impervious areas that are likely to be directly connected.

Comment: Noted.

A77.2 Easements favouring the benefiting allotments are created over inter-allotment drainage.

Comment: Noted.

A77.3 Stormwater discharge from a development site, including inter-allotment drainage, is in accordance with *Engineering Design Specifications Section D5 Stormwater Drainage Design*.

Comment: This is to be in accordance with the submitted concept stormwater plan dated 16/02/2021, prepared by SET Consultants.

5.11 – Stormwater Quality Management

This is to be in accordance with the submitted concept stormwater plan dated 16/02/2021, prepared by SET Consultants.

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5.18 – Drainage

Proposed drainage systems comply generally with the performance criteria and acceptable solutions of this section.

5.24 Dual Occupancy Subdivision

E1: The first or existing dwelling is completed and the second dwelling has reached the mandatory framework stage inspection.

Comment: The dual occupancy is being concurrently assessed as part of this application. The first dwelling is already existing on the site. Satisfied.

E2: The proposed subdivision of an approved dual occupancy development must ensure that all required development consent conditions (siting, car parking, open space, landscaping, fencing, services and facilities) are complied with for each lot.

Comment: Condition to be imposed to state that all conditions of the Development Consent must be met.

E3: *Not applicable - Not a corner lot*

E4: *Not applicable – not a battle-axe allotment*

E5: *Not applicable – not a Rural or Environmental Protection Zone*

P112: A dual occupancy is approved on the subject land.

Comment: A dual occupancy is proposed through this application. Should the application be approved, this condition will be satisfied. Complies.

P113: Minimise the occurrence and impact of grouped dual occupancy subdivisions on the local streetscape.

Comment: Complies, no adjacent dual occupancies on the street.

P114: The resultant subdivision and dwellings must conform to the dual occupancy guidelines under which the dual occupancy was approved.

Comment: This application involves both a dual occupancy and subsequent subdivision. Therefore, the resultant subdivision will be consistent with the dual occupancy.

P115: Provide coincidental legal and practical access.

Comment: Each lot has legal and practical access using separate driveways.

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Appendix B – Assessment Checklist: Chapter G13 – Medium Density and Other Residential Development

5 Medium Density Development			
5.1 Principle Controls			
Control	Performance Criteria	Acceptable solution	Compliance
5.1.1 Minimum Lot Size	<p>P1.1 Ensure that any lot consolidation /amalgamation avoids the isolation of smaller lots surrounded by larger development.</p> <p>P1.2 To create lots of an appropriate size for the purpose including:</p> <ul style="list-style-type: none"> • Provision for building footprint, landscaping, car parking, driveway, private recreation areas, manoeuvring on site, setbacks, services • Preservation of the integrity of existing or desired future streetscape and neighbourhood character to enable consistent and visually harmonious development within the locality. • Provision of high quality amenity for residents and neighbours. 	<p>A1.1 The minimum lot size of the development site meets the SLEP 2014, and the following:</p> <ul style="list-style-type: none"> • Dual occupancy (attached) - 500m². • Dual occupancy (detached) - 700m². <p>A1.2 Minimum lot sizes, where a reticulated sewerage scheme is not available, must be increased to accommodate on-site disposal of effluent in accordance with Chapter G8: Onsite Sewage Management of this Development Control Plan.</p>	<p>The lot is 923.19m² which exceeds the required 700m² for detached dual occupancy. Complies.</p> <p>Reticulated Sewer available.</p>
5.1.2 Density	<p>P2 The bulk and scale of new development, particularly on the perimeter of the development site, or where that locality or development site has heritage significance and/or distinctive character, is:</p> <ul style="list-style-type: none"> • Compatible, consistent and sympathetic to the bulk and scale of development. • Sympathetic with the streetscape and complements the existing and desired future character of the area. 	<p>A2.1 The maximum floor space ratio or gross floor area complies with Table 1 below.</p> <ul style="list-style-type: none"> - Clause 4.5 of SLP 2014 • A maximum of 50m² for the combined total garage floor area in a dual occupancy development may be excluded from the gross floor area calculation where the garages are located within the dwellings. 	<p>Table 1 specifies on a lot <1000m², a FSR of 0.5:1. The total floor space (including patio / decks) is approximately 240m² as per the provided site plan which equates to FSR of 0.258:1. Complies.</p>
5.1.3 Building Envelope,	<p>P3.1 The bulk and scale of development is compatible</p>	<p>A3.1 Buildings are sited within a building envelope</p>	<p>Both dwellings are single</p>

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Heights and Setbacks	<p>with the existing or desired future character of the area and minimises adverse amenity impacts on neighbours, the streetscape and public domain.</p> <p>P3.2 Development enables view sharing with neighbours and the public domain.</p>	<p>determined by the following method: planes are projected at 45 degrees from a height of 5m above ground level (existing) at the front, side and rear boundary. See Figure 2.</p>	<p>storey and would meet the required planes.</p>
	<p>P4 The height of development:</p> <ul style="list-style-type: none"> • Is compatible with the existing or desired future character of the area. • Minimises adverse amenity impacts associated with overlooking and overshadowing of adjoining properties. • Relates to the land form, with minimal cut and fill. 	<p>A4.1 Building heights must comply with Clause 4.3 of Shoalhaven LEP 2014 or Shoalhaven LEP (Jerberra Estate) 2014.</p> <p>A4.4 The difference in building height between existing buildings and new development is compatible when viewed from the public domain.</p> <p>A4.5 For dual occupancy (detached), the dwelling furthest from the street (or adjacent to a side street for a corner lot) shall be of single storey construction unless it can be demonstrated that there will be no adverse amenity impacts.</p>	<p>The height of each dwelling is below the mapped maximum height of 8.5m.</p> <p>Both dwellings are single storey, which would appear compatible when viewed from the street.</p> <p>Single storey.</p>
	<p>P5.1 The front setback is generally consistent with adjoining development and does not undermine the integrity of the prevailing building lines.</p> <p>P5.2 The location and siting of the building complements existing setbacks in proximity to the site, and the streetscape.</p>	<p>A5.1 Dual occupancy development in the R1, R2, R3 and RU5 zones shall comply with the setback provisions in Table 2 and Figure 3 below.</p> <p>A5.2 Dual occupancy development in the RU1, RU2, RU4, E3, E4 and R5 zones shall comply with the setback provisions in Table 3 below.</p>	<p>VARIATION PROPOSED</p> <p>A variation of approximately 33% is proposed for the rear setback as per Table 2. Table 2 states that the rear setback is to be 3m (average). The</p>

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	<p>P5.3 The development is setback and of a scale that is relative to the street reserve width to ensure pedestrians do not feel buildings are overbearing.</p> <p>P5.4 Setbacks avoid loss of view, undue overshadowing and provide/maintain privacy and traffic safety.</p> <p>P5.5 Setbacks are progressively increased to reduce bulk and overshadowing while maintaining adequate daylight and sunlight.</p> <p>P5.6 Adequate levels of light and ventilation to adjoining buildings, landscaping, services and infrastructure are protected.</p> <p>P5.7 Proposal maintains adequate on-site parking.</p>	<p>A5.3 Garages must be setback a further 1m behind the front building line.</p>	<p>proposed setback is to be 2m. It is considered this reduction in setback is appropriate to enable greater separation between the existing dwelling on the site and enable greater vehicle manoeuvring on the site. The proposed reduced setback is not proposed to have a negative impact on the neighbouring lot or the streetscape.</p> <p>The application complies with A5.3.</p>
<p>5.1.4 Landscaping</p>	<p>P6.1 Sufficiently dimensioned landscaping provides amenity to residents, effective screening and enables tree and large shrub planting.</p> <p>P6.2 suitably sized deep soil planting area encourages:</p> <ul style="list-style-type: none"> • Mature tree/shrub growth. • Opportunity for surface water to infiltrate naturally to groundwater. <p>P6.3 Unpaved or unsealed areas are maximised and are designed to facilitate on-site infiltration of stormwater run-off subject to soil/drainage conditions.</p> <p>P6.4 Major existing trees are retained where</p>	<p>A6.1 At least 10% of the site area is to include high quality formal landscaping, which:</p> <ul style="list-style-type: none"> • Has a minimum dimension of 1.5m in any direction. • 100% deep soil planting. • Is provided with an automated watering system. <p>A6.2 In addition to the formal landscaping area required at A6.1, a further area of at least 20% of the site is to be provided, which:</p> <ul style="list-style-type: none"> • Has a minimum dimension of 1m in any direction. • Is inclusive of 40% deep soil planting. • Can include landscaped areas, decks, terraces, alfresco areas, swimming pools or other recreation areas / structures. 	<p>Complies. High quality formal landscaping of at least 10% is provided as per the plan. Total of 97m² is proposed for the site (10.4%).</p> <p>A further 20% is provided in the form of grassed areas, plantings, and outdoor entertaining areas. Complies as per provided</p>

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	<p>practicable through appropriate siting of structures.</p> <p>P6.5 Provision is made for appropriate street tree planting having regard to the appearance and role of the street, solar access requirements and utility services.</p>	A6.3 At least 35% of the front setback is to be landscaped.	Landscaping Plans.
5.2 Siting the Development			
Control	Performance Criteria	Acceptable solution	Compliance
5.2.1 Local Character and Context	<p>P7 The scale and appearance of new development is compatible with, and sympathetic to, existing and future desired:</p> <ul style="list-style-type: none"> • Development in the locality; and • Amenity and character of the locality; <p>Particularly where the development site or its surrounds has some heritage significance or distinctive character.</p>	<p>A7.1 The development must consider/ address the following:</p> <ul style="list-style-type: none"> • The local character/context of the area and streetscape. • How the proposal is sympathetic and compatible with the existing or future desired character, development, and amenity of the locality. • How the visual appearance and articulation of the development contributes to the existing streetscape and character of the local area. <p>A7.2 The development must demonstrate that items of heritage or conservation significance are retained and sympathetically treated.</p>	<p>The development is suitable and is generally consistent with the built form of the local area and is sympathetic to the existing character. This enables the proposed development to blend with the streetscape.</p> <p>No items of heritage significance nearby.</p>
	<p>P8 Existing views from the private or public domain (including heritage or familiar dominant landmarks that are recognised and valued by the community) are not substantially or unreasonably affected where it is possible to design for the sharing of views.</p>	<p>A8.1 Any reduction in views from existing dwellings or the public domain is not to be severe or devastating based on the following NSW Land & Environment Court Planning Principles:</p> <ul style="list-style-type: none"> • Views – General principles. • Views - Impact on public domain views. 	<p>Minimal loss of views are envisaged given both dwellings are single storey. Neighbours were notified as part of the application process. No submissions were received.</p>
	<p>P9 The number, location and distribution of existing and proposed</p>	<p>A9.1 With the exception of land in the R3 Medium Density Residential zone, the</p>	<p>There are no other dual occupancies</p>

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	developments do not significantly alter the amenity and character of the area through concentrated localised areas of higher density development.	<p>cumulative impact of the development must be considered where:</p> <ul style="list-style-type: none"> • More than three (3) consecutive dual occupancy, multi dwelling housing, multi dwelling housing (terraces) or manor house developments (total, not per development type) are proposed within a street, including in a cul-de-sac; • Neighbouring dual occupancies or multi dwelling housing is proposed in the head of a cul-de-sac. <p>A9.3 Building design shall attempt to reduce the impact of clustering by providing individual dwelling architecture that is sympathetic with the existing or desired future streetscape.</p>	<p>on neighbouring properties. Complies.</p> <p>Consistent.</p>
5.2.2 Orientation and Siting	<p>P10.1 The site analysis informs the site design and layout.</p> <p>P10.2 The site layout integrates with the surrounding environment through:</p> <ul style="list-style-type: none"> • Adequate pedestrian, cycle and vehicle links to street and open space networks. • Buildings that face and address streets and the public domain. • Buildings, streetscape and landscape design that relates to the site topography and to the surrounding neighbourhood character. <p>P10.3 The site layout enhances personal safety and minimises potential for crime and vandalism.</p>	<p>A10.1 A site analysis plan is submitted with the DA which:</p> <ul style="list-style-type: none"> • Meets the requirements of Chapter G1 of this DCP. • Provides the following detail for the site and adjoining development: <ul style="list-style-type: none"> - Height and use of buildings. - Front setbacks. - Driveways. - Boundary treatments (including retaining walls). - Easements. - Stormwater management. <p>A10.2 The proposed site layout responds to and implements the findings of the site analysis prepared in accordance with A10.1.</p>	<p>A suitable site analysis plan was provided. Complies.</p> <p>Complies.</p>
	P11.1 The frontage, entries and habitable room windows of dwellings address the street.	<p>A11.1 Each dwelling adjacent to the street frontage must:</p> <ul style="list-style-type: none"> • Address the street by having a front door facing the 	The proposed single dwelling is to be constructed at

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	<p>P11.2 The design and orientation of the dwellings:</p> <ul style="list-style-type: none"> • Enhance the streetscape. • Complement existing development in the vicinity. • Provide visual interest. • Allow casual surveillance of public or communal streets or public domain. 	<p>street at the ground level where dwellings are adjacent to the primary frontage.</p> <ul style="list-style-type: none"> • Ensure that any walls facing a street frontage include a window to a habitable room on each level. • Provide surveillance of the street and entrance to the development. <p>A11.2 In addition to A11.1 and where practical, the front door of all other dwellings are to be visible from the street.</p> <p>A11.3 On corner lots where practicable, one dwelling is to address the primary frontage and the other dwelling is to address the secondary frontage.</p>	<p>the rear of the property in a battle-axe arrangement. The front door will face the street at ground level.</p> <p>A11.2 visible from the driveway</p> <p>A11.3 N/A – not a corner lot.</p>
5.2.3 Vehicle and Pedestrian Access	<p>P12.1 Access arrangements are suitable for the development.</p> <p>P12.2 The design of the site and driveways, including manoeuvring areas, has regard to the safety of pedestrians, cyclists and vehicles.</p> <p>P12.3 Multiple driveways are avoided.</p>	<p>A12.1 The site is designed to encourage pedestrian access by providing a continuous path of travel from the street to each dwelling.</p> <p>A12.2 In sites with a single frontage, both dwellings are to utilise a common access point from the public road unless Council is satisfied (in non-rural areas) that separate access points would result in a better design outcome.</p> <p>A12.3 For corner allotments, each dwelling is to have a separate road presentation and driveway access.</p>	<p>Given the low traffic volume at the location, the proposed pedestrian and vehicle access is sufficient. Each dwelling has suitable driveway access, despite being on the same road frontage.</p>
	<p>P13.1 The visual dominance of driveways is minimised by:</p> <ul style="list-style-type: none"> • The selection of paving materials e.g. decorative paving and brick banding. • Breaking up the appearance of driveways with landscaping and screen planting. 	<p>A13.1 Driveways must be designed to:</p> <ul style="list-style-type: none"> • Be all-weather and service every dwelling. • Minimise the hardstand/paved footprint. • Be setback a minimum of 0.5m from the side and/or rear boundary to accommodate appropriate landscape elements. 	<p>Conditions have been recommended by the Development Engineer to ensure the driveway access is of an all-weather surface.</p>

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	<p>P13.2 Driveways are designed to:</p> <ul style="list-style-type: none"> • Minimise the volume of stormwater runoff. • Increase the area available for landscaping. • Retain established trees and vegetation. • Accommodate public services and infrastructure. 	<ul style="list-style-type: none"> • Accommodate all public services and infrastructure • Avoid a gun-barrel effect down the side boundary. Where a gun-barrel driveway cannot be avoided, the driveway must be curved and landscaped to Council's satisfaction to break up the appearance of the gun-barrel design. • Grade no greater than 20%. • Maximise the availability of on-street parking. • Achieve minimum sight lines for pedestrian safety in accordance with AS2890.1 	
5.3 Amenity			
Control	Performance Criteria	Acceptable solution	Compliance
5.3.1 Building Separation and Visual/Acoustic Privacy	<p>P14.1 Adequate separation between buildings is provided in proportion to the height and scale of the building.</p> <p>P14.2 Direct overlooking of main internal living areas and private open space of other dwellings and adjoining properties is minimised by building layout, location and design of windows, balconies, screening devices, landscaping or other effective means.</p>	<p>A14.1 All dwellings shall be designed and orientated to minimise overlooking of adjoining/ surrounding dwellings and private open space.</p> <p>A14.2 Habitable windows shall not be located adjacent to a shared driveway at the ground level.</p> <p>A14.3 Direct views between living area windows of adjacent dwellings shall be screened or obscured where:</p> <ul style="list-style-type: none"> • Ground and first floor windows are located within the privacy sensitive zone area, being a 9m radius from any part of the window of the adjacent dwelling. • In the case of a dwelling with three or more storeys, windows are within the privacy sensitive zone described by a 12m radius. <p>A14.4 Direct views from living areas of dwellings into the principal POS of adjacent dwellings is screened within a privacy sensitive zone</p>	<p>Complies. Given the proposed dwelling are single storey – they would not directly overlook the private open space (POS) area of any neighbouring dwellings.</p>

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		(12m radius from living area windows).	
	P15 Site layout and building design protects the amenity of residents and/or adjoining properties by minimising noise transfer and nuisance.	<p>A15.1 Dwellings adjacent to high levels of external noise shall be designed to minimise the entry of that noise.</p> <p>A15.2 The following shall be located away from the habitable rooms and private open space of dwellings:</p> <ul style="list-style-type: none"> • Communal swimming pools and ancillary facilities. • Communal open space • Parking and vehicle access 	<p>Proposed development is located in an area of low noise generation.</p> <p>Complies.</p>
5.3.2 Solar and Daylight Access	P16 Dwellings are sited and designed to maximise solar access to living areas and private open space.	<p>A16.1 Dwellings are to be:</p> <ul style="list-style-type: none"> • Oriented to make appropriate use of solar energy by maximising solar access to north-facing windows. • Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced. • Designed to locate living areas and private open space on the northern side of the development and non-habitable areas to the south and west of dwellings. 	The proposed relocated dwelling will have the lounge room and two bedrooms facing north. Enables passive solar access to be achieved.
5.3.3 Private Open Space	<p>P17 Private open space is:</p> <ul style="list-style-type: none"> • Functional and useable for residents all year round. • Dimensioned to suit the projected requirements of the residents, and to accommodate outdoor recreational needs and service functions. • Capable of serving as an extension of the function of the dwelling for relaxation, dining, entertainment, active recreation and children's play. 	<p>A17.1 A minimum area of private open space shall be provided for each dwelling in accordance with Table 5.</p> <p>A17.2 Private open space shall have direct access from a living area.</p> <p>A17.3 Where POS is provided at ground level it:</p> <ul style="list-style-type: none"> • Include a defined hardstand area of usable space which: <ul style="list-style-type: none"> - Is setback at least 1.2m from an external boundary. - Has a minimum dimension of 5m x 4m, of which 50% 	Reference is made to the submitted plans – which depicts a total POS area which complies with the requirements.

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	<ul style="list-style-type: none"> • Located to take advantage of outlook and natural features of the site. • Located to mitigate against external noise. • Designed to take account of the impact of adjoining dwellings on privacy and overshadowing. 	<ul style="list-style-type: none"> • Shall be covered to provide protection from the elements. • Have a minimum dimension of 2m for all other areas. • Gradient no steeper than 1:20. • Be adequately screened to provide privacy to residents. 	
5.3.4 Storage and Laundry Facilities	<p>P18.1 External clothes drying facilities are provided for each dwelling that are:</p> <ul style="list-style-type: none"> • Adequate and easily accessible. • Well located. • Visually screened from the public domain. <p>P18.2 A laundry is provided within each dwelling.</p>	<p>A18.1 Separate laundry and external clothes drying facilities shall be provided for each dwelling.</p> <p>A18.2 External clothes drying facilities are to be:</p> <ul style="list-style-type: none"> • Provided at a rate of 16m of line per dwelling. • Located behind the front building line. • Screened from view from the public domain. 	Laundry facilities are marked on the submitted floor plan.
	<p>P20.1 Adequate, well-designed storage areas are provided for each dwelling.</p> <p>P20.2 Storage areas are sympathetically integrated into the building design.</p>	<p>A20.1 In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided per dwelling:</p> <ul style="list-style-type: none"> • 1 bed: 6m³. • 2 bed: 8m³. • 3+ bed: 10m³. <p>A20.2 At least 50% of the required storage is to be located within the dwelling.</p>	Adequate area for storage is available within and external to the dwelling.
5.3.5 Car and Bicycle Parking	P21 Parking is suitable for the development.	<p>A21.1 Car parking is:</p> <ul style="list-style-type: none"> • Provided according to Chapter G21 of this DCP. • Wholly accommodated within the site. <p>A21.2 For open car spaces, the maximum allowable grades are:</p> <ul style="list-style-type: none"> • Longitudinal - 5%. • Cross fall - 6.25%. 	<p>The proposal provides the required parking.</p> <p>The maximum grades are not exceeded.</p>

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	P22 Car parking arrangements are suitable for, and consider, the surrounding road network.	A22.1 To mitigate the adverse impacts on the surrounding road network, tandem parking in a dual occupancy development shall be limited to access streets and laneways only.	The carparking is located wholly within the property.
5.4 Configuration and Design			
Control	Performance Criteria	Acceptable solution	Compliance
5.4.1 Building Form, Design and Materials	<p>P24.1 The selection of building materials and design complements existing development and is sympathetic to the streetscape and existing landscape.</p> <p>P24.2 Roof treatments are integrated into the building design and make a positive contribution to the streetscape.</p> <p>P24.3 Building walls use modulation and articulation, and are limited in length to minimise massing and bulk issues as well as impact on neighbours and the public domain/streetscape.</p> <p>P24.4 The building design, detailing and finish provide an appropriate scale to the street, add visual interest and enable differentiation between dwellings when viewed from the public domain.</p> <p>P24.5 External metallic wall and roof materials are suitable and minimise reflectivity.</p> <p>P24.6 The development incorporates passive environmental design.</p>	<p>A24.1 New development, including alterations and additions, shall complement existing built form and be sympathetic to the streetscape.</p> <p>A24.2 Roof design integrated harmoniously with the overall building form through the incorporation of:</p> <ul style="list-style-type: none"> • Complimentary building materials. • Design proportionate to building size, scale and form. • Balanced composition of solid elements. <p>A24.3 Building design shall use detail, modulation and articulation of building elements to:</p> <ul style="list-style-type: none"> • Enable each dwelling to be identified from a public road. • Articulate facades to minimise length of unbroken walls & glazed areas. <p>A24.4 Buildings shall have a maximum unarticulated length of 15m to a public street frontage.</p> <p>A24.6 External metallic walls and roof surfaces shall consist of colours and finishes that will minimise the reflectivity of the surface when viewed from the public domain or another dwelling.</p> <p>A24.7 Variation to each dwelling must be provided to</p>	<p>The proposed building materials are sympathetic to the existing character of the area.</p> <p>The roof design integrates with the surroundings.</p> <p>Buildings are well articulating and identifiable from the public road.</p> <p>Complies.</p> <p>Each dwelling is significantly different.</p> <p>Consistent.</p>

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		present different but compatible design elements. A24.8 Mirror reversed facades fronting the street are to be avoided.	
	P26 Mailboxes, numbering and external storage facilities, as well as associated signage, are sited and designed for attractive visual appearance and efficient and convenient use.	A26.1 Individual mailboxes shall be located close to each dwelling entry, or a mailbox structure located close to the major pedestrian entry to the site, that complies with the requirements of Australia Post.	To be conditioned in the consent.
5.4.2 Fences and Walls	<p>P27.1 Front fences & walls:</p> <ul style="list-style-type: none"> • Enable outlook from buildings to the street for safety and surveillance. • Do not impede the safety of pedestrians and cyclists.. • Assist in highlighting entrances and in creating a sense of communal identity within the streetscape. • Designed and detailed to provide visual interest. • Constructed of materials compatible with the proposed development. • Compatible with facilities in the street frontage area, such as mailboxes. 	<p>A27.2 On a corner lot, the fence or wall along the secondary frontage, behind the front building line (see Figure 9), shall be no higher than 1.8m.</p> <p>A27.4 A fence or wall along a primary or secondary frontage must contain:</p> <ul style="list-style-type: none"> • Open elements that make it at least 50% transparent; or • Where there are solid panels, articulated elements such as landscape screening, setbacks and varied materials. 	Not a corner lot. N/A
5.5 Environment			
Control	Performance Criteria	Acceptable solution	Compliance
5.5.1 Water Management and Conservation	<p>P29 Stormwater is appropriately accommodated in the design including:</p> <ul style="list-style-type: none"> • Stormwater from roofed areas is collected, stored and/ or conveyed to appropriate discharge points or disposal areas. • Paved areas associated with buildings and driveways are graded and drained to minimise the discharge of surface water onto adjoining land. 	<p>A29.1 Roof water is collected by gutter and downpipe or other equivalent means, and conveyed to an approved discharge point via:</p> <ol style="list-style-type: none"> A gutter or table drain in a road reserve, or A stormwater easement or easement to drain water, or A disposal/absorption trench, where (a) and (b) above are not available, and soil conditions are suitable, A water tank / on-site detention system with an overflow connected to a 	To be conveyed to the proposed kerb and gutter according to conditions of consent.

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	<ul style="list-style-type: none"> • Permeable areas are utilised to reduce stormwater runoff. 	<p>disposal method in (a), (b) or (c) above.</p> <p>A29.2 Surface water from paved areas including driveways is to be directed to an approved discharge point (see A29.1) that minimises impact on adjoining land.</p>	<p>To be directed to the street.</p>
5.5.2 Servicing	<p>P30.1 Development is adequately and safely serviced.</p> <p>P30.2 The design and provision of public utilities, including sewerage, water, electricity, street lighting, telecommunication/ internet and gas services conform to the cost-effective performance measures of the relevant servicing authority.</p> <p>P30.3 Compatible public utility services are co-ordinated in common trenching.</p>	<p>A30.1 Services and utilities including electricity, gas, water, sewer, roads and drainage must be available for the initial development and ongoing needs.</p> <p>A30.2 Where connection to the services outlined in A30.1 is not available, the development application must provide alternatives to Council's satisfaction.</p> <p>A30.3 Individual water meters will be required to assist the individual billing of each dwelling.</p>	<p>All services are to be connected as part of the development.</p> <p>To be connected.</p> <p>To be conditioned.</p>
5.5.3 Waste Management	<p>P31.1 Bin storage, presentation and collection arrangements:</p> <ul style="list-style-type: none"> • Are appropriate for the nature of the development. • Consider site configuration and adequate street frontage, especially lots at the head of cul-de-sacs and battle-axe lots. <p>P31.2 Bin storage is sited and designed for attractive visual appearance and for efficient and convenient use.</p>	<p>A31.1 For each dwelling, the kerbside frontage required is at least 1m per bin, 0.5m separation between bins and 1m behind each bin.</p> <p>A31.2 Bin storage is required and identified on the site plan for all developments.</p> <p>A31.3 Bin storage areas must be located behind the front building line.</p> <p>A31.5 Bins must be able to be easily manoeuvred from the bin storage area for presentation at the kerbside.</p>	<p>In accordance with the submitted plans, provision for bin storage has been provided behind the building line of the dwelling.</p>



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 APPLICATION
DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979
DA20/2280

TO:

Carl Sebastian Reijo Tauni
8/485 Church Street
NORTH PARRAMATTA NSW 2151

being the applicant(s) for DA20/2280 relating to:

95 Greenbank Gr, CULBURRA BEACH - Lot 214 DP 11892

APPROVED USE AND OR DEVELOPMENT:

Construction of Dwelling House to create Dual Occupancy (Detached), Construction of Carport for Existing Dwelling; and Two (2) Lot Torrens Title Subdivision

DETERMINATION DATE:

Pursuant to the Section 4.18 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:

CONSENT TO LAPSE ON:

This consent is valid for five years from the date hereon.

In accordance with Section 4.53 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.

DETAILS OF CONDITIONS:

The conditions of consent and reasons for such conditions are set out as follows:

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PART A: GENERAL CONDITIONS

1. General

The consent relates to **Construction of Dwelling House to create Dual Occupancy (Detached), Construction of Carport for Existing Dwelling; and Two (2) Lot Torrens Title Subdivision** as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan (existing)	Sheet 1 of 3		03.03.20
Elevations	Sheet 2 of 3 Issue A		03.03.20
Floor Plan (Existing Dwelling)	Sheet 3 of 3 Issue A		03.03.20
Carport General Arrangement	Drawing Number NOWRA1-11489 Rev: A	Ranbuild	N.D.
Site Plan	Sheet 2 of 17	McDonald Jones	17.02.21
Proposed Concept Landscaping Plan	Sheet 1 of 1	SET Consultants	18.02.21
Stormwater Design Plan	Ref: 103834/2 Rev: 1	SET Consultants	16.02.21
Proposed Subdivision Plan	Ref: 103834 Rev:2	SET Consultants	16.02.21
Floor Plan (New Dwelling)	Sheet 4 of 17	McDonald Jones	17.02.21
Elevations Front & Rear / Section	Sheet 6 of 17	McDonald Jones	17.02.21
Elevations Left and Right	Sheet 7 of 17	McDonald Jones	17.02.21
Waste Minimisation and Management Plan		McDonald Jones	10.11.20

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. Prescribed Conditions

The development must comply with the [Prescribed Conditions of Development Consent](#), Division 8A, *Environmental Planning and Assessment Regulation 2000*, as applicable.

3. Occupation / Use

The development must not be occupied or used before an Occupation Certificate has been issued by the Certifier. If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e. a security).

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

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PART C: PRIOR TO THE COMMENCEMENT OF WORKS

4. **Construction Certificate**
A Construction Certificate must be obtained from either Council or an accredited certifier before any building work can commence.
5. **Appointment of Principal Certifier**
Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.
6. **Notice of Commencement**
Notice must be given to Council at least two (2) days prior to the commencement of building or subdivision work by completing and returning the form '[Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority](#)'
7. **Toilet Facilities - Temporary**
Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
 - a) be a standard flushing toilet connected to a public sewer, or
 - b) have an onsite effluent disposal system approved under the *Local Government Act 1993*, or
 - c) be a temporary chemical closet approved under the *Local Government Act 1993*.
8. **Run-off and Erosion Controls**
Prior to the commencement of site works, run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:
 - a) diverting uncontaminated run-off around cleared or disturbed areas.
 - b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.
 - c) preventing the tracking of sediment by vehicles onto roads.
 - d) stockpiling topsoil, excavated materials, construction and landscaping supplies and debris within the lot.
9. **Dilapidation Report**
The developer must engage a competent person to prepare a dilapidation report in respect of the neighbouring premises and adjacent public infrastructure, including adjacent kerbs, gutters, footpaths (formed or unformed), driveways (formed or unformed), carriageway, reserves and the like to document evidence of any existing damage.

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 0.9metres of the shared boundary.

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Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. The repairs must be completed by the developer at the developer's cost.

Not less than seven (7) days before works commence, the developer must notify the owner of any affected property of the intention to carry out approved works. The developer must also furnish the owner with details of the approved work.

10. **Works within the Road Reserve**

Prior to undertaking any works within an existing road reserve, the developer must obtain the consent of Council under *section 138 of the Roads Act, 1993*.

The following details must be submitted to Council as part of the application:

- Any civil works design required by this consent.
- Evidence of the contractor's Public Liability Insurance to an amount of \$20 million.
- Name and contact information of the person responsible for all relevant works.
- A Traffic Control Plan prepared, signed and certified by a person holding the appropriate Transport for NSW (TfNSW) accreditation.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **Evidence**

A Construction Certificate must not be issued until the Certifier has received notification from, or evidence of, any Council approval that is required Prior to the Commencement of Works.

12. **Local Infrastructure Contributions**

This development will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2019 and itemised in the following table:

Project	Description	Rate	Qty	Total	GST	GST Incl
02AREC0004	Planning Area 2 - Recreation facilities upgrade various locations	\$424.46	1	\$424.46	\$0.00	\$424.46
CWAREC0005	Shoalhaven Community and Recreational Precinct ScaRP Cambewarra Road Bomaderry	\$2,522.83	1	\$2,522.83	\$0.00	\$2,522.83
CWCFAC0007	Shoalhaven Regional Gallery	\$72.29	1	\$72.29	\$0.00	\$72.29
CWCFAC2002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$1,540.56	1	\$1,540.56	\$0.00	\$1,540.56
CWCFAC2006	Shoalhaven City Library Extensions, Berry Street, Nowra	\$867.56	1	\$867.56	\$0.00	\$867.56
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	1	\$138.13	\$0.00	\$138.13
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	1	\$202.07	\$0.00	\$202.07
CWMGMT3001	Contributions Management & Administration	\$574.39	1	\$574.39	\$0.00	\$574.39

Sub Total: \$6,342.29
GST Total: \$0.00
Estimate Total: \$6,342.29

The total contribution, identified in the above table or as indexed in future years, must be paid to Council prior to the issue of a Construction Certificate. Evidence of payment must be provided to the Certifying Authority.

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Contributions Plan 2019 can be accessed on Councils website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

13. Long Service Levy

Prior to the issue of a Construction Certificate any long service levy payable under the [Building and Construction Industry Long Service Payments Act 1986](#) and prescribed by the [Building and Construction Industry Long Service Payments Regulation 2017](#) must be paid or, where such a levy is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

14. Exterior Materials

Prior to the issue of a Construction Certificate a schedule of colours, building materials and finishes must be provided to the Certifier. Exterior colours, building materials and finishes (excluding windows and other glazing) must be non-reflective and of a texture and colour which blend with the existing surroundings. White or bright colours are not acceptable. Metal roofing, wall cladding, and rainwater tanks must be pre-coloured at the manufacturing stage.

15. Street Numbering of Dwellings

Street numbering must comply with the State Governments Comprehensive Property Addressing System (CPAS), and Council's Property Address Numbering Policy.

Street numbering for the development must be as follows:

Lot 1 – 95 Greenbank Grove, Culburra Beach (Existing Dwelling)

Lot 2 – 95A Greenbank Grove, Culburra Beach

The allocated numbers must be shown on the engineering plans with the Construction Certificate. Where plans and details are provided to service suppliers, numbers must be in accordance with the above.

16. Existing Infrastructure

Prior to the issue of a Construction Certificate, all infrastructure, existing and proposed, is to be shown accurately on the engineering plans including longitudinal sections with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. Any required alterations to infrastructure will be at the developer's expense.

17. Shoalhaven Water – Prior to the Issue of a Construction Certificate

Prior to the issue of a Construction Certificate, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading "Prior to the Issue of a Construction Certificate" must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

18. Flooding

Prior to the issue of a Construction Certificate, a professional engineer, (as defined in the National Construction Code) must submit to the satisfaction of the Certifier, certification that the following items have been detailed on the construction drawings:

- a) All habitable floor levels must be constructed at or above the Flood Planning Level (FPL) (1% Annual Exceedance Probability (AEP) flood level plus 500mm freeboard) as documented on a Flood Certificate obtained from Council that is based on the latest flooding information held.

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- b) Any proportion of the structure below the Flood Planning Level (FPL) must be built from flood compatible materials.
- c) All electrical installations must be constructed above the Flood Planning Level (FPL) or be able to be isolated prior to a flood event

19. **Flooding – Construction Certificate Structural Soundness Requirements**

Prior to the issue of a Construction Certificate, a professional engineer, (as defined in the National Construction Code) must submit to the satisfaction of the Certifier, certification that the building and associated structure(s):

- a) Can withstand forces of floodwaters including debris and buoyancy forces up to a 1% Annual Exceedance Probability (AEP) flood event.

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

20. **Design Standards - Subdivision Works**

Prior to the issue of a Subdivision Works Certificate, certified engineering design plans and specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor in accordance with Council's Engineering Design and Construction Specifications and approved by the Certifier. Specifications can be found on Council's web site.

21. **Erosion and Sediment Control Plan (ESCP)**

Prior to the issue of a Subdivision Works Certificate, an Erosion and Sediment Control Plan (ESCP) must be prepared by a Professional Engineer, (as defined in the National Construction Code) to the satisfaction of the Certifier.

All implemented measures must:

- a) not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).
- b) be maintained at all times.
- c) not be decommissioned until at least 70% revegetation cover has been established not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).

22. **Design Standards – Works Within Road Reserve**

Prior to the issue of a Subdivision Works Certificate, all subdivision works proposed within road reserves must be approved by Council.

23. **Driveway Design Standards Lot 1**

Prior to the issue of a Subdivision Works Certificate, certified driveway design engineering plans must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier. The road design must comply with the following:

- a) A concrete crossover is to be constructed from the existing layback to the property boundary of proposed Lot 1 in accordance with Councils Engineering Design Specifications.
- b) A minimum number of 2 spaces must be provided on site.
- c) The internal driveway must be constructed in accordance with the following:
 - i) for light vehicular loading
 - ii) to a coloured, patterned or stamped concrete standard or reinforced gravel driveway finish.

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24. **Driveway Design Standards Lot 2**

Prior to the issue of a Subdivision Works Certificate, certified driveway design engineering plans must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier. The driveway crossover must comply with the following:

- a) Shall be generally in accordance with Concept Engineering Design Plan, Ref. No: 103834/2.2 Rev 1 by SET Consultants dated 16/02/2021.
- b) Integral kerb and gutter layback in accordance with Council's Standard Drawings.
- c) Councils Engineering Design Specifications.

25. **Existing Services**

Prior to the issue of a Subdivision Works Certificate, the developer must check that the proposed works are not affected by or do not affect any Council electricity, telecommunications, gas, or other service. All services existing and proposed, above or below ground are to be shown accurately on the engineering plans including longitudinal sections with clearances to proposed infrastructure clearly labelled. Any required alterations to services will be at the developer's expense.

26. **On-Site Detention – Infill Subdivision and Development**

Prior to the issue of a Subdivision Works Certificate, certified engineering design plans and specifications must be prepared by professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The on-site stormwater detention (OSD) design must comply with the following:

- a) Designed such that stormwater runoff from the site for design storm events up to and including the 1% AEP does not exceed the pre-developed conditions.

27. **Stormwater Drainage Design Standards (Urban)**

Prior to the issue of a Subdivision Works Certificate, certified engineering design plans, specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The stormwater drainage design must comply with the following:

- a) Major and minor drainage systems in accordance with Council's Engineering Design Specifications - Section D5 - Stormwater Drainage Design and utilising Australian Rainfall and Runoff (ARR, 2019) Guidelines.
- b) The minor and major systems must be designed for a 18.13% AEP and 1% Annual Exceedance Probability (AEP) rainfall events, respectively.
- c) Generally, in accordance with concept stormwater drainage plan 103834/2 Rev 1 prepared by SET Consultants dated 13/10/2020.
- d) The existing stormwater drainage system of the existing dwelling is to be adjusted to suit the new works.

PART F: DURING WORKS

28. **Hours for Construction**

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

29. **Excavation**

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Excavation must be carried out in accordance with *Excavation Work: Code of Practice* (ISBN 978-0-642-78544-2) published by Safe Work Australia in October 2018.

30. **Aboriginal Objects Discovered During Excavation**

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately
- b) The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the [National Parks and Wildlife Act 1974](#).

31. **Archaeology Discovered During Excavation**

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) All work must stop immediately in that area
- b) In accordance with the *Heritage Act 1997*, the Office of Environment, Energy and Science must be advised of the discovery.

32. **Maintenance of Site and Surrounds**

During works, the following maintenance requirements must be complied with:

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- d) The developer must maintain the approved Water Management Plan measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.
- e) During construction:
 - i) all vehicles entering or leaving the site must have their loads covered, and
 - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.

33. **Waste Management Plan**

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not 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 WMP must be demonstrated by the submission of tip receipts to the Certifier.

Note: "Waste" is defined in the Dictionary to the Protection of the Environment Operations Act 1997 (POEO Act).

34. **Imported Fill - VENM or ENM Only**

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Where fill is imported to the site it must be characterised as virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 of the *Protection of the Environment Operations Act 1997 (POEO Act)*.

Documentation must be provided to the Certifier certifying that imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste.

35. Excavation and Filling

A professional engineer, (as defined in the National Construction Code) must certify the satisfactory compaction of all filling, the stability of the site, whether the development of the site will adversely affect the stability of the site; and whether the site stability could have adverse impacts on the proposed development.

The filling is to:

- a) be protected against erosion and subsequent sediment movement prior to any works commencing at the site. All sediment controls must be maintained at all times and must not be decommissioned until at least 70% revegetation cover has been established
- b) The filled areas must not have a detrimental impact on surface or sub-surface drainage on the site or on adjoining land/s.
- c) Imported fill must be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material or the known history of the site where the material is obtained.

36. Earthworks and Excavation

- a) Approved earthworks (including any structural support or other related structure for the purposes of the development):
 - i) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.
 - ii) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.
 - iii) that is fill brought to the site, must contain only virgin excavated natural material (VENM) as defined in Part 3 of schedule 1 to the *Protection of the Environment Operations Act 1997 (POEO Act)*
 - iv) that is excavated soil to be removed from the site, must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.
- b) Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-785442), published in July 2012 by Safe Work Australia.

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

37. BASIX

Prior to the issue of an Occupation Certificate, documentary evidence prepared by a suitably qualified person must be submitted to the Certifier confirming that all commitments listed in the BASIX Certificate(s) are fulfilled in accordance with Clause 97A of the *Environmental Planning and Assessment Regulation 2000*.

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38. **Dilapidation Report – Evidence**

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier and Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.

39. **Landscaping Compliance**

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier with written evidence from a suitably qualified landscape professional that all landscape works have been completed in accordance with the approved landscape plans.

The Certifier must be satisfied that any required Street trees have been installed in accordance with requirements.

40. **Letter Boxes**

A letterbox structure(s) must be provided and be designed to comply with the requirements of Australia Post, located close to the major pedestrian entry to the site, and built from materials that are non-reflective and blend in with the approved development.

41. **Compliance**

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e. a security).

42. **Shoalhaven Water – Certificate of Compliance**

Prior to the issue of any Occupation Certificate, a Certificate of Compliance under Section 307 of the *Water Management Act 2000* must be obtained from Shoalhaven Water to verify satisfactory compliance with all conditions for the supply of water and sewerage, as listed on the Notice of Requirements.

If the development is to be completed in approved stages, or application is subsequently made for staging of the development, separate Compliance Certificates must be obtained for each stage of the development.

43. **Works as Executed - Stormwater Drainage**

Prior to the issue of the Occupation Certificate, Works as Executed Plans and certification must be submitted to the Council by a licenced plumber certifying compliance of all drainage works with the approved design plans and the National Construction Code.

The Works as Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans. This plan must verify surface and invert levels on all pits, invert levels and sizes of all pipelines, and finished surface levels on all paved areas. All levels must relate to Australian Height Datum.

Where the system includes an underground tank, a certificate of structural adequacy must be prepared and provided by a professional engineer (as defined in the National Construction Code).

44. **Works in the Road Reserve - Evidence of completion**

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Prior to the issue of an Occupation Certificate, the developer must provide the Certifier with a Construction Inspection Ticket provided by council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

45. On-site Detention System

Prior to the issue of the Subdivision Certificate, the developer must:

- a) create a restriction on use under the *Conveyancing Act 1919* over the on-site detention system and provide it to the Certifier as follows:
 - i) The registered proprietor of the lot burdened must not make or permit or suffer the making of any alterations to any on-site stormwater detention system on the lot(s) burdened without the prior consent in writing of the authority benefited. The expression 'on-site stormwater detention system' must include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater as well as all surfaces graded to direct stormwater to those structures. Name of the authority having the power to release, vary or modify the restriction referred to is Shoalhaven City Council.
- b) create a positive covenant under the *Conveyancing Act 1919*, requiring the property owner(s) to undertake maintenance in accordance with the Construction Certificate approved On-Site Stormwater Detention System and Maintenance Schedule
- c) provide a certificate from a professional engineer, (as defined in the National Construction Code) to verify the structural adequacy of the on-site detention facility and that the facility has been constructed in accordance with the approved Construction Certificate plans.

46. Works as Executed Plans

Prior to the issue of a Subdivision Certificate, Works as Executed Plans must be prepared by a registered surveyor / professional engineer, (as defined in the National Construction Code) and be submitted to council and the Certifier demonstrating compliance with the approved design plans. The Works as Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans and comply with the following requirements:

- a) Council's Development Engineering Construction Specification.
- b) Show compliance with the approved design plans of all road and drainage works.
- c) Certify that all storm water pipes, and other services are wholly within an appropriate easement.
- d) Show the extent, depth and final levels of filling.
- e) Show any retaining walls including footings.
- f) Show the location of all underground service conduits.
- g) Include all deviations from the approved Civil Engineering Plans.

47. Prior to the issue of a Subdivision Certificate:

- a) all existing easements must be acknowledged on the final subdivision plan.
- b) All existing restriction on the use of land must be acknowledged on the final subdivision plan.
- c) A minimum one (1) metre wide easement to drain water must be created over any encroaching drainage pipes.
- d) A minimum one (1) metre wide easement for services must be created over any encroaching utility service.

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48. **Subdivision Certificate**

A Subdivision Certificate must be obtained from Council or an accredited certifier prior to lodgement of the Final Plan of Survey with NSW Land Registry Services.

49. **Schedule of Compliance**

The Subdivision Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with Council (i.e. a security). A schedule of compliance in table format must be submitted with the application for a Subdivision Certificate. The schedule must provide evidence of how all relevant conditions of development consent have been fulfilled.

50. **Utility Services**

Prior to the issue of a Subdivision Certificate, utility services must be provided in accordance with the following:

- a) The provision of electricity to service allotments and street lighting in the subdivision must be in accordance with the requirements of Endeavour Energy who are to confirm in writing that conditions of supply have been met.
- b) The submission of a Telecommunications Infrastructure Provisioning Confirmation from an approved telecommunications carrier to the Certifier or Council (as applicable) confirming that satisfactory arrangements have been made for the provision of telecommunication services to all individual lots.
- c) A Certificate of Compliance under Section 307 of Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Notice of Requirements and prior to the issue of a Subdivision Certificate, as the case may be.

Note: Relevant details, including monetary contributions (where applicable) under the *Water Management Act 2000*, are given on the attached Notice issued by Shoalhaven Water. For further information and clarification regarding the above please contact Shoalhaven Water's Development Unit on (02) 4429 3547.

51. **Works in the Road Reserve - Evidence of completion**

Prior to the issue of a Subdivision Certificate, the developer must provide the Certifier with a Completion of Works in Road Reserve Letter provided by council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

PART I: ONGOING USE OF THE DEVELOPMENT

NIL

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

1. **Approval to Connect to the Reticulated Sewerage System**

Approval for Sewerage, Plumbing and Stormwater Drainage is granted subject to the following conditions:

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- a) All plumbing and drainage work must comply with the Plumbing Code of Australia and AS/NZS 3500.1 Water services– 3500.2 Sanitary Plumbing and Drainage– 3500.4 Heated Water Services and 3500.3 Stormwater Drainage.
- b) In accordance with the *Plumbing and Drainage Act 2011*, plumbers and drainers must submit the following documents to Shoalhaven City Council and to the person for whom the work was carried out.
 - i) Notice of Work no later than two (2) business days prior to the commencement of any work.
 - ii) A Certificate of Compliance for drainage works must be provided within seven days (7) after the external drainage works have been completed.
- a) A sewer service diagram, one for each dwelling, must be provided within seven days (7) of the drainage works have been completed.

2. **Inspections**

Council, as the water authority, must be given at least 24 hours' notice to allow for the inspection of:

Type of Inspection:	Stage of Construction:
Internal Drainage	All internal drainage pipework, including stackwork, installed and under test as per AS 3500.2 Section 15, including any required bedding material as per AS3500.2 Section 5, and prior to any backfilling of the drainage lines. All pipework must be visible to the inspector.
Hot and Cold-Water Service (appropriately colour coded or identification markings)	All pipework installed and under hydraulic / pressure test, as per AS 3500.1 Section 18 - 18.3 – 18.3.1 prior to the installation of any insulation or any internal lining. Non – Drinking Water Service – Rainwater Lines to be installed as per AS 3500.1 Section 9.
External Drainage	Pipework installed and under test as per AS 3500.2 Section 15, including any required bedding material as per AS3500.2 Section 5. All pipework must be visible to the inspector.
Final Inspection of Drainage Works	All drainage works, including stormwater installed as per AS 3500.3 where Council is the Principal Certifier, to be completed prior to the issue of an Occupation Certificate.

3. **Before Commencing Construction**

The builder must locate the position and depth of the sewer junction before commencing construction, to ensure that the top of the overflow gully is a minimum of 900mm above the soffit of the sewer main. Copies of sewer main diagrams issued by Council must be treated as a guide only when locating the junction position

4. **Yard Gully**

A minimum height of 150mm must be maintained between the top of the overflow yard gully riser and the lowest fixture connected to the drain. The height must be measured vertically from the overflow level of the gully riser, or from the invert level of the overflow pipe, to the appropriate point given in National Construction Code. The minimum height between the top of the overflow yard gully riser, or the invert of the overflow pipe, and the surrounding ground surface level must be 75mm, except where the gully riser is located in a path or a paved area where it must be finished at a level so as to prevent the ponding and ingress of water into the drainage system.

5. **Rainwater Facility**

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Water stored in the tank must be plumbed into the dwelling such that it is supplied to each of the fixtures listed in the BASIX Certificate for the property. Plumbing must be in accordance with the current edition of AS 3500.1 Water Services – Section 16

It will be necessary to install, maintain and repair the facility so that it functions in a safe and efficient manner in accordance with the current editions of AS 3500.1 Water Services, the New South Wales Code of Practice Plumbing and Drainage and in accordance with the following:

- a) The tank inlet must be located a minimum of 500mm below the outlet of the eave gutter.
- b) The tank is to be installed on a firm flat and stable platform in accordance with manufacturer's recommendations. Tanks located over fill material should be placed on a concrete slab.
- c) Pumps must be located and installed to minimize any potential noise nuisance to surrounding residents, and in the case of a permanent electric pump, must be installed by a licensed electrician. Pump performance must achieve a minimum 300 Kpa output.
- d) Overflow from the tank must be directed into the approved storm water system.
- e) Any town water top-up of the tank must be by indirect connection by means of a visible "air gap", external to the rainwater tank, in accordance with the provisions of the National Plumbing and Drainage Code, AS3500.1 – Minimum air gap requirements.
- f) Marking and labelling of rainwater services must be in accordance with AS 3500.1 Section 16.
- g) The charged line to the above ground rainwater tank is to have a flush point installed at the lowest reduced level (RL) into a 450mm x 450mm pit to enable the line to be flushed. This is to prevent the line becoming blocked.
- h) For partially buried or fully buried rainwater tanks the property owner is required to have a dual check valve with atmospheric port valve installed at the boundary water meter. Zone protection will be required at the tank or cross connection point to be installed in accordance with AS3500.1 – Section 4.

PART K: REASONS FOR CONDITIONS

The application has been assessed as required by section 4.15 of the *Environmental Planning and Assessment Act 1979* and has been determined by the granting of conditional development consent.

Statutory requirements

The development proposal, subject to the recommended conditions, is consistent with:

- a) the objects of the Environmental Planning and Assessment Act, 1979.
- b) the aims, objectives and provisions of the applicable environmental planning instruments,
- c) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- d) the aims, objectives and provisions of relevant Council policies.

Public notification

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2000* and Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

Suitability of the Site

The application has been approved because the development proposal is considered to be suitable for the site.

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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.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the *Water Management Act 2000* have been applied as required.

Impacts of the Development

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

- a) the development will not result in unacceptable adverse impacts on the natural and built environments.
- b) the amenity and character of land adjoining and in the locality of the development is protected.
- c) any potential adverse environmental, social or economic impacts of the development are minimised.
- d) all traffic, car parking and access arrangements for the development will be satisfactory.
- e) the development does not conflict with the public interest.

PART L: 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.

PART M: GENERAL ADVICE

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

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Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references *Australian Standard AS1428.1 - "Design for Access and Mobility"*.

Disclaimer –Conveyancing Act 1919 – Division 4 – 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.

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.

Shoalhaven Water – Building Plan Approval

A Water Development Notice must be obtained from Shoalhaven Water before any works commence. This allows Shoalhaven Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Please go to <https://shoalwater.nsw.gov.au/planning-building/developers-consultants/water-development-notice> or call (02) 4429 3214 to learn more about applying.

Following application, Shoalhaven Water will assess the development and if required will issue a "Notice of Requirements" letter detailing all requirements that must be met. Please apply early as building of water and services can be time consuming and may impact on other parts of your development such as building, driveway or landscaping.

SIGNED on behalf of Shoalhaven City Council: